

1986 February 19

[DFMETRIADES J]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRISTAKIS AGATHANGELOU LTD.

Applicants

v

THE CYPRUS ELECTRICITY AUTHORITY

Respondents

(Case No 35,380)

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- 5 *Constitutional Law—Constitution, Article 24—Electricity consumption of—The Electricity Development Law, Cap 171 as amended and the Regulations made under s 44—Amount payable for consumption of electricity—Such amount is payable for services rendered—Article 24 1 is not applicable*
- 10 *Constitutional Law—Constitution Article 28—Reasonable distinctions are not prohibited—Electricity Authority of Cyprus—The Electricity Development Law Cap 171 as amended, s 44—The Regulations made under the said section—The Fifth schedule to the said Regulations as amended by the Electricity Development (Amendment) Regulations 1978—Tariffs 60, 61, 62 and 63—Basis of distinction between consumers charged under Tariffs 60 and those charged under Tariff 63 (Load of apparatus installed at consumer's premises) unreasonable and in the circumstances violative*
- 15 *Article 28—But basis of distinction between consumers charged under Tariff 60 and those charged under Tariff 61 (maximum demand) reasonable*
- 20 *Administrative Law—Misconception of fact—Burden to persuade the Court that the administrative authority acted under such a misconception—Cast on applicant*

Though the total load of electricity needed to operate all machinery in their foundry workshop was 133 KVA

the applicants, in their application to the respondents for the connection of their said premises with the electricity mains, stated that the maximum load required was 50 KVA. As a result there was installed in the premises a meter which would allow machinery operating at the same time to use electricity up to 50 KVA capacity or, else the fuses installed would blow 5

The respondents originally charged the applicants for the consumption of electricity by them on the basis of tariff 63, but after the abolition of the tariff in 1980, they charged them under tariff 61.* 10

It should be noted that (a) Tariff 60 applies when the respondents are "reasonably satisfied that the capacity of the apparatus installed... does not exceed 50 KVA", (b) The basis of Tariff 61 is the maximum demand, and (c) Tariff 63 applies when the respondents are reasonably satisfied that the capacity of the apparatus installed is in excess of 50 KVA 15

Counsel for the applicants complained that since their maximum demand never exceeded 50 KVA and that neither could the applicants make use of electricity of a capacity greater than that, the said decision of the respondents offends against the provisions of Articles 24 and 28 of the Constitution 20

Held, (1) Article 24 1 of the Constitution is not applicable in the present case because the amount payable is for services rendered to a specific individual and not to the public in general and such amount is calculated on the basis of such services and not as a contribution to public burdens. Further such an amount cannot be treated as a tax, duty or rate of a destructive or prohibitive nature as provided by Article 24 4 of the Constitution 25 30

(2) Reasonable distinctions, even resulting in practice in some inequality, do not violate Article 28 of the Con-

* The charges payable by consumers for the supply of electricity were governed by regulations made under s 44 of Cap 171 as amended. The 5th Schedule to the said regulations fixes the tariffs inter alia for the Commercial and Industrial supplies of electricity. This Schedule was amended by the Electricity Development (Amendment) Regulations 1978 Tariffs, 60, 61, 62 and 63 as enacted by the said regulations of 1978 are quoted at pp 196-199 post

stitution. What is of a particular importance in this case is that the applicants could not use 133 KVA, i.e. the capacity of their machinery operating at the same time, and that if they attempt to use more than 50 KVA a short while, their fuses will blow. The Court cannot see how a reasonable distinction can be made between consumers charged under Tariff 60 and those charged under Tariff 63. The basis of the distinction, i.e. the installed load, is unreasonable and, in the circumstances, it violates Article 28.

However, the distinction between consumers charged under tariff 60 and those charged under tariff 61, made on the basis of maximum demand is reasonable because in the case of maximum demand the respondent had to make special provisions and be always in a position to meet such demand and give to the consumer the amount of electricity for which he had switched on.

(3) In the light of the material before the Court the applicants on whom the burden is cast failed to persuade the Court that the respondents in placing the applicants under tariff 61 had acted under a misconception of fact.

*Sub judice decision partly annulled.
No order as to costs.*

Recourse.

Recourse against the decision of the respondents to charge applicants for the consumption of electricity at their foundry workshop on the basis of Tarrif No. 63 and after its abolition on the basis of Tariff No. 61.

L. Georghiades (Mrs.), for the applicants.

G. Cacoyannis, for the respondents.

Cur. adv. vult

DEMETRIADES J. read the following judgment. The applicants, who are the owners of a foundry workshop situated at the Sopaz area of Kaimakli quarter Nicosia, applied to the respondents, who are by law entrusted with the production and supply of electricity in the Republic, for the connection of their premises with the electricity mains.

Though the total load of electricity needed to operate at the same time all the machinery installed in the said premises is 133 KVA, the applicants, in their said application, stated that the maximum load required by them was 50 KVA. Following this, the respondents installed in the premises of the applicants an electricity meter of that capacity which would allow machinery operating at the time to use electricity up to that KVA capacity or, else, the fuses installed would blow.

Rates of charges payable by consumers for the supply of electricity to them are governed by Regulations made under section 44 of the Electricity Development Law, Cap. 171, as later amended. The 5th Schedule to these Regulations fixes the tariffs, amongst others, for commercial and industrial supplies of electricity. It was amended by the Electricity Development (Amendment) Regulations, 1978 (see No. 151 in the Third Supplement, Part I, to the Official Gazette of the 25th August, 1978), which provide:-

"TARIFFS FOR COMMERCIAL AND INDUSTRIAL SUPPLIES

The following tariffs apply to supplies of electricity for use wholly for the purposes of, or in connection with, any trade, business or profession, or for use in churches, monasteries, hospitals, schools, hostels (boarding schools), hotels, guest-houses, clubs or other similar buildings, establishments or institutions whether public or otherwise. These tariffs also apply to supplies of electricity for use wholly or mainly for the purpose of motive power or electromechanical or electrothermal processes in a factory, works, foundry, mill, pumping station or other industrial premises.

GENERAL TARIFF (CODE NO. 60)

Provided that the Authority is reasonably satisfied that the capacity of the apparatus installed in the premises for lighting, heating, motive power and any other purposes does not exceed 50 kilovoltamper, the prices chargeable bi-monthly for the supply of electricity under this tariff are:

In each month the unit prices shall be increased or reduced by 0.025 mils per unit for each 50 mils by which the cost of fuel per metric ton as may be prescribed by the Authority in the month, shall be above or below C£ 24 per metric ton.

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*SEASONAL MONTHLY MAXIMUM DEMAND
TARIFF (HIGH VOLTAGE, CODE NO. 62)*

The prices chargeable each month for the supply of Electricity under this tariff are:

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|------|--|-----------|----|
| (i) | A fixed charge of | C£ 65.000 | 10 |
| (ii) | For each kilovoltamper of maximum demand in each of the following months: January, February, March, November and December | C£ 2.600 | |
| | April to October inclusive | C£ 1.200 | 15 |

and

- | | | | |
|-------|---|-----------|----|
| (iii) | For units supplied in each month: for each of the first 200 units per kilovoltamper of maximum demand in the month | 18.7 mils | 20 |
| | For each additional unit | 13.7 mils | |

In each month the unit prices shall be increased or reduced by 0.024 mils per unit for each 50 mils by which the cost of fuel per metric ton as may be prescribed by the Authority in the month, shall be above or below C£ 24 per metric ton.

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TARIFF (RATE 63)

The following tariff shall be applied by the Authority in accordance with the conditions set out in Note 4 hereof.

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Provided the Authority is reasonably satisfied that the capacity of the apparatus installed in the premises of lighting, heating, motive power and any other purposes is in excess of 50 kilovoltamper the prices chargeable monthly for the supply of electricity under this rate are:

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- For each of the first 40 units per month per kilovoltamper of the total capacity of all apparatus installed whether electricity to that amount is used or not 22.5 mils
- 5 For each of the next 40 units supplied per month per kilovoltamper of the total capacity of all apparatus installed 20.0 mils
- 10 For each unit supplied in excess of 80 units per month per kilovoltamper of the total capacity of all apparatus installed 19.0 mils
- 15 In each month the unit prices shall be increased or reduced by 0.025 mils per unit for each 50 mils by which the cost of fuel per metric ton as may be prescribed by the Authority in the month, shall be above or below C£ 24 per metric ton.
- Where the supply is used for the purpose of electric arc or resistance welding, a service charge will be payable in addition to the aforementioned charges as follows:
- 20 For each kilovoltamper or part thereof of the nominal kilovoltamper rating of the largest machine installed 190 mils per month
- 25 And for each kilovoltamper or part thereof of the nominal kilovoltamper rating of each additional machine installed 19.0 mils per month
- 30 This tariff (Rate 63) will be withdrawn at the end of the period of account terminating closest to 31st August, 1979. Thereafter, the consumer will be charged on either the General Tariff or the Seasonal Monthly Maximum Demand Tariff as the case may be."

35 The respondents originally charged the applicants for the consumption of electricity by them on the basis of tariff No. 63, but after this tariff was abolished in 1980 they charged them under tariff No. 61.

The applicants are, by this recourse, challenging the decision of the respondents to charge them on the basis of

Tariff No. 63 and later, after its abolition, on the basis of
 Tariff No. 61, on the ground that since their maximum
 demand has never exceeded 50 KVA and that neither they
 could make use of electricity of a capacity greater than that
 nor the respondents could supply them with electricity in
 excess of that capacity, the decision of the respondents was
 unconstitutional in that it offended Articles 24 and 28 of
 the Constitution.

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Applicants further contended that the respondents acted
 under a misconception of fact, in excess or abuse of their
 powers and that they exercised their discretion in a de-
 fective manner.

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Regarding the alleged unconstitutionality counsel for
 the applicants argued that the amount payable by them
 should be treated as a tax, duty or rate of a destructive or
 prohibitive nature, contrary to Article 24 of the Constitu-
 tion and that there is no reasonable distinction between
 consumers charged to pay on the basis of the actual con-
 sumption under Tariff No. 60 and those charged to pay,
 on a theoretical basis, under Tariffs Nos. 61 and 63.

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Paragraphs (1) and (4) of Article 24 of the Constitution
 provide as follows:-

“1. Every person is bound to contribute according
 to his means towards the public burdens.

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4. No tax, duty or rate of any kind whatsoever
 other than customs duties shall be of a destruc-
 tive or prohibitive nature.”

Taking into consideration the fact that the amount due
 in the present case is payable for services rendered to a
 specific individual in a given case and not to the public, in
 general and that same is calculated on the basis of such
 services rendered and not as a contribution towards public
 burdens, I am of the view that Article 24.1 of the Con-
 stitution is inapplicable in the present case. I further find
 that such amount cannot be treated as a tax, duty or rate
 of a destructive or prohibitive nature, as provided by Arti-

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cle 24.4 of the Constitution and, therefore, the submission of counsel for the applicants in this respect cannot stand.

I now come to the complaint that Article 28.1 of the Constitution is violated by the decision of the respondents.

5 This Article provides that all persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

10 What has to be examined, therefore, on this issue, in the present case, is whether the classification of consumers and their emplacement under different Tariffs has some reasonable basis, as it is well settled that reasonable distinctions, even resulting in practice in some inequality, cannot be treated as violating the rights safeguarded by the provisions of Article 28 of the Constitution.

15 Counsel for the respondent Authority pointed out that if the arguments of counsel for the applicants as to the alleged infringement by the Regulations of Article 28 of the Constitution were to be accepted, then all consumers ought to be placed under Tariff No. 60 notwithstanding their in-
20 stalled load.

In the present case what determines the tariff under which the applicants were placed is the load installed on their premises, but particular importance must be paid to the fact that though the installed load on such premises is 133
25 KVA, the applicants can never make use of 133 KVA, and that even if they attempt to use more electricity than 50 KVA for a short while, their fuses will blow. In such a case, since the supply which could be provided by the respondent Authority is up to, actually 50 KVA, and the
30 meter installed on such premises is, also, up to such capacity, I fail to see how a reasonable distinction could be made between those consumers charged under Tariff No. 60 and those under Tariff No. 63 on the basis of the in-
35 stalled load. I, therefore, find that the differentiation made on the basis of such installed load is unreasonable, in the circumstances, and is violating the provisions of Article 28.1 of the Constitution.

However, regarding the distinction made between consumers placed under Tariff No. 60 and those placed under

Tariff No. 61. I am of the view that it could be taken into consideration by the Authority the maximum demand as a basis for finding the amount payable by a consumer, in which case the Authority had to make special provisions and be always in a position to meet such maximum demand and give to a consumer the amount of electricity for which he had switched on. In such a case, the applicants could be charged on the basis of such maximum demand under Tariff No. 61 without creating unequal treatment between them and the consumers charged under Tariff No. 60.

Having found in favour of the applicants on the issue of unconstitutionality of Tariff No. 63. I propose to deal very briefly with the other grounds raised by them regarding Tariff No. 61.

On the basis of the documents placed before the Court and the arguments advanced by counsel on both sides, I have reached the conclusion that the respondent Authority, in reaching its decision to charge the applicants under Tariff No. 61, had before it every relevant factor and the applicants, on whom the burden is cast in this respect, have failed to persuade me that the Authority had in any way acted under a misconception of fact.

Taking into consideration all the above, I am, also, of the view that the respondent Authority had not acted in excess or abuse of powers or in a defective exercise of its discretionary powers.

For all the aforesaid reasons, this recourse is partly allowed but with no order as to costs.

Sub judice decision partly annulled. No order as to costs.