1986 December 29

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEORGHIOS M. CHALIOS AND OTHERS,

Applicants,

v

THE IMPROVEMENT BOARD OF KAKOPETRIA, THROUGH ITS CHAIRMAN, THE DISTRICT OFFICER OF NICOSIA,

Respondents.

(Case No. 50/81).

Constitutional Law—Taxation—Constitution, Article 24.2—"Under the authority of a law"—Whether a bye-law is a "law" within the meaning of Article 24.2—Question answered in the affirmative—The Interpretation Law, Cap. 1, Section 30 and the definition of "public instrument" in section 2.

Constitutional Law—Taxation—Constitution, Article 24.2—Bye-law creating different classes of taxpayers based on annual earnings and conferring power to impose on each taxpayer falling within a particular class a maximum amount of tax—Said bye-law does not confer discretion to impose different taxes on persons with same income—But allows differentiations within the same class in respect of persons with different earnings—Said bye-law not contrary to Article 24.2.

Constitutional Law —Taxation —Constitution, Article 24.3— Tax imposed on basis of annual income earned in a particular year in virtue of legislation enacted during such year—Does not amount to retrospective taxation.

In September 1980 the respondents amended their bye-laws, which they were empowered, under section 24 of Cap 243, to make. In particular they amended bye-law

185, which authorised them to impose an annual fee on every person who, within the improvement area, carries on, exercises or practices any profession, business, trade or other calling in accordance with the approved scales, as the respondents may in each case determine. In virtue of the said amendment different classes of tax payers, based on annual earnings, were created and the respondents were given the right to impose on each tax payer falling within a particular class a maximum fee based on his annual earnings.

Following the said amendment the respondents relying on the amended bye-law, imposed during September, 1980 on each of the applicants a tax for the whole year 1980. The applicants objected. The respondents dismissed the objections and informed applicants accordingly by letter dated 16.12.80. Hence the present recourse.

Counsel for the applicants submitted that a "bye-law" is not a "law" within the meaning of Article 24.2 of the Constitution, which prohibits the imposition of tax, duty or rate, save by or "under the authority of a law", that bye-law 185 by providing for a maximum amount of tax conferred discretion to impose different taxes on taxpayers with the same income, that the amended bye-law was applied retrospectively, contrary to Article 24.3 of the Constitution, that the calculation of the sub judice tax was not made in proportion to the financial means of the respondents, that there was an unreasonable increase in comparison to the previous year, that the respondents did not carry a due inquiry into the financial means of the applicants, that the respondents acted in a discriminatory way against the applicants and that the sub judice decision lacks due reasoning.

Held, dismissing the recourse: (1) The tax imposed was that provided by bye-law 185 as amended. In the light of section 30* of the Interpretation Law, Cap. 1 in conjunction with the definition of the words "public instrument" in section 2 thereof, the Court reached the conclusion that the submission that the tax in question was not

* Quoted at p. 2600 post

imposed "under the authority of a law" cannot be accepted.

(2) The fact that bye-law 185 as amended provides for a maximum amount of tax in respect of each class of taxpayers does not imply that it confers discretion to impose less or higher tax on persons with the same income. It allows, however, differentiations, and this is most reasonable, in cases of persons who, though within the same class, earn less or more than others.

(3) The tax in question is an annual tax and as long as it was based on the earnings of the applicants during the year 1980, it cannot be said that it was imposed retrospectively (*Aristidou* v. *The Improvement Board of Ayia Phyla* (1965) 3 C.L.R. 686 at 699 followed).

(4) The tax imposed was calculated and imposed on the basis of the annual earnings of each applicant in accordance with the scales provided by bye-law 185 as amended. Therefore, each applicant was asked to contribute towards the public burdens according to his means.

(5) The increased tax was not an arbitrary one as it was imposed under the authority of a law (bye-law 185 as amended.

(6) The only inquiry that the respondents could carry out was to ask the employer of the applicants to give them their annual earnings which the respondents did.

(7) The applicants failed to substantiate the submission relating to the alleged discrimination.

(8) The letter of the 16.12.80, informing the applicants that the tax was imposed on the basis of their annual earnings, as declared by their employers, provides the due reasoning required in the circumstances.

Recourse dismissed.
Costs against applicants.

Cases referred to:

Aristidou v. *The Improvement Board of Ayia Phyla* (1965) 3 C.L.R. 686.

Recourse.

Recourse against the decision of the respondents to impose on applicants tax as persons exercising or practicing a profession, business or trade within the area of the Improvement Board of Kakopetria.

E. Vrahimi (Mrs.), for the applicants.

K. Michaelides, for the respondents.

Cur. adv. vult

DEMETRIADES J. read the following judgment. In September 1980 the respondents, who are the Improvement Board of Kakopetria village, a body established under the authority and provisions of the Villages (Administration and Improvement) Law, Cap. 243, amended their bye-laws by which they are empowered, under section 24 of the said Law, to make. In particular they amended bye-law 185 which authorises them to impose an annual fee on every person who, within their improvement area, carries on, exercises or practices any profession, business, trade or other calling, as mentioned therein, in accordance with the approved scales, as the Board may in each case determine.

By the amendment of 1980, of their said bye-laws, which were published in Part I of the 3rd Supplement of the Official Gazette of the Republic issued on the 19th September, 1980, No. 1630 under Notification 254, different classes of tax payers, based on annual earnings, were created and the respondents were given the right to impose on each tax payer falling within any particular class a maximum fee based on his annual earnings.

At the material time the applicants were employed by the Hellenic Mining company at the Chromium Mine, the main offices and place of business of which were situated within the Improvement area of Kakopetria.

In September 1980 the respondent imposed on each of the applicants the amount of tax that appears opposite the name of each one of them in Appendix A' which is attached to their application. The tax imposed was for the whole of the year of 1980, although bye-law 185 was amended in September 1980.

By letter dated the 22nd September, 1980, which was signed by all of them, the applicants objected against the above decision of the respondents, on the ground that the tax imposed was excessive (a) having regard to the tax imposed on other persons exercising other professions with higher earnings and (b) as compared with the amounts of tax paid by them in the previous year.

By their letter dated the 16th December, 1980, the respondents rejected the objection of the applicants and informed them that the tax imposed on them was in accordance with their bye-laws which came into force in 1980 and was based on the annual salary of each applicant as this was disclosed by their employers.

As a result the applicants filed, on the 6th February, 1981, the present recourse by which they challenge the decision of the respondents to impose on them the professional tax appearing in Appendix A' opposite their names.

The recourse is based on the following grounds of law:-
That

1. Section 24(1) of Cap. 243 and the Regulations made thereunder, on which the sub judice decision was based, are contrary to Article 24 of the Constitution.

2. The respondents acted under a misconception of the law in that the criterion used for the imposition of the tax was not the means of the applicants but the needs of the respondents.

3 The respondents acted arbitrarily.

4. The respondents acted in a way discriminatory against the applicants vis a vis other persons earning the same salaries.

5. The amount of tax imposed is disproportionate to the means of the applicants and excessive.

6. The sub judice decision is not duly reasoned

With regard to the first ground of law on which the applicants rely, their counsel made the following submissions

A. That bye-law 185 is not a law within the meaning of the provisions of Article 24.2 of the Constitution which provides that no contribution by way of tax, duty or rate of any kind whatsoever shall be imposed save by or "under the authority of a law".

B. That bye-law 185, as amended, provides a maximum amount of tax instead of fixing the exact amount of tax and that because of this discretion is given to the respondents to impose a tax which is different in similar cases (obviously by this counsel meant in cases in which taxpayers have the same annual income) and that taxation or its height cannot be the subject of discretion in that it contravenes Article 24.2 of the Constitution and

C. That as the tax was imposed for the whole of the year of 1980 and since bye-law 185 was amended in the 19th September, 1980, the amendment was applied retrospectively, contrary to the provisions of Article 24.3 of the Constitution which provides that no tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect

In support of submission (A) counsel argued that the respondents imposed the tax after the enactment of a law or a bye-law and not under "the authority of a law" as Article 24.2 of the Constitution provides

It is not in dispute that the respondents are by virtue of section 24(1)(c) of Cap. 243, empowered to impose professional tax on the classes of persons mentioned above. It is, also, not in dispute that the tax imposed was that provided by bye-law 185 after its amendment. The fact that this bye-law was amended does not mean that the respondents were not, in imposing the tax acting under the authority of a law as section 30 of the Interpretation Law Cap. 1, provides that.

"An act shall be deemed to be done under a Law or the authority thereof, or by virtue or in pursuance or execution of the powers conferred thereby if it is done under or by virtue of or in pursuance of any public instrument made or issued under any power contained in such Law."

What is a "public instrument" is defined in section 2 of Cap. 1 and bye-laws are included therein. It, therefore, follows that the decision taken by the respondents was under the authority of a law and, therefore, this submission fails.

I now come to the second submision of the applicants with regard to the first ground of law on which they base their recourse.

As I have earlier said, bye-law 185 creates specific classes of tax-payers which are based on their annual earnings and at the same time fixes the maximum amount of tax that persons falling within each class are bound to pay. This, in my view, does not give the respondents a discretion to impose less or higher tax on persons having the same annual income. It does, however, allow them to differentiate, and this is most reasonable, in cases of persons who, though falling within the same income bracket, earn less or more than others.

I, therefore, feel that this submission of the applicants fails.

The last submission of counsel for the applicants on this ground of law turns on the retrospectivity of bye-law 185 as amended by Notification 254 of 1980, aforesaid.

In the case of *Aristidou* v. *The Improvement Board of Ayia Phyla* (1965) 3 C.L.R. 686, the Full Bench of the Supreme Court, as it appears at p. 690, unanimously adopted the decision of the trial Judge (Munir J.) on the issue of "retrospectivity" of a tax or fee that is imposed annually, as in the present case. The relevant part of the judgment of Munir J., which is reported in (1965) 3 C.L.R., is at p. 699 and it reads:-

"In its judgment in the above-cited case of *HjiKyriacos & Sons Ltd.*, (5 R.S.C.C. 22) the Supreme Constitutional Court (at p. 30) stated as follows:-

'It is not retrospective taxation to tax in any year a person on the basis of his income in that particular year, by means of legislation enacted during that same year, because tax on income is imposed on an annual basis, and, therefore, the relevant legislation may be enacted at any time during the currency of the year concerned'.

Although in this case the subject-matter is not tax imposed on the basis of a person's income but is a fee imposed under bye-law 180 in respect of premises which had been let, in my opinion the above-quoted principle laid down in the case of *HjiKyriacos & Sons Ltd.*, applies equally to the facts of this case as it did to the facts of that case. The fee, which is the subject-matter of this case is also imposed on an annual basis, as is clear from the definition of 'annual value' in bye-law 184. I am, therefore, of the opinion that in view of the fact that the relevant bye-laws have actually been made, and the fee in question has actually been imposed, during the currency of the year concerned, namely, during the year 1962, the imposition of the fee in question is not retrospective in the sense of paragraph 3 of Article 24 and is not, therefore, contrary to the provisions of that Article."

I am in full agreement with the above quoted passage, which, as already stated, has also been adopted by the Full Bench on appeal and I, therefore, find this submission of counsel as unfounded.

The tax is an annual tax and as long as it was based on the earnings of the applicants during the year of 1980, it cannot be said that it was imposed retrospectively.

As a result, this ground of law fails.

Grounds of law 2, 3 and 5 can be dealt with together as the argument of the applicants on these grounds is in a

nutshell that the sub judice decision contravenes Article 24 of the Constitution in that the calculation and imposition of the tax was not made in accordance and in proportion to the financial means of the applicants, but it was made on the basis of the needs of the respondents; that the tax imposed on each applicant was unreasonably increased in comparison to the previous year and that the respondents carried no inquiry into their financial means.

My answers to the submissions of counsel on these grounds of law are:

(a) The tax imposed was calculated and imposed on the basis of the annual earnings of each applicant in accordance with the scales provided by bye-law 185 as amended. Therefore, each applicant was asked to contribute towards the public burdens according to his means.

(b) The increased tax was not an arbitrary one as it was imposed under the authority of a law (bye-law 185 as amended), and

(c) The only inquiry that the respondents could carry out was to ask the employer of the applicants to give them their annual earnings which the respondents did.

In the result, these grounds of law also fail.

The next ground of law upon which I am called to decide is that of discrimination against the applicants, contrary to the provisions of Article 28 of the Constitution. Counsel for the applicants contended that in the case of the applicants a high amount of tax was imposed, whilst on other persons, with higher earnings, a lesser amount was imposed. Although the list of all persons on whom professional tax was imposed by the respondents, containing, also, the amount paid by each person, was made available to counsel for the applicants, she failed to point out any instance of the alleged discrimination against the applicants vis a vis other persons in the same annual salary or income bracket. As a result, this ground must be dismissed.

The last ground of law that remains to be considered is

the reasoning of the sub judice decision. What amounts to due reasoning is always a question of degree. I find that the letter of the 16th December, 1980, informing the applicants that the tax in question was imposed on the basis of their annual earnings, as declared by their employers, provides the due reasoning required in the circumstances of the case.

In the result, this recourse fails and is hereby dismissed.

The applicants to pay the costs of this recourse.

Recourse dismissed with costs against applicants.