1984 November 30

[HADJIANASTASIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MAKARONOPEION G. CARKOTIS LTD.,

Applicants,

v.

1. THE REPUBLIC OF CYPRUS, THROUGH
   (a) THE MINISTER OF COMMERCE AND INDUSTRY,
   (b) THE MINISTER OF FINANCE,
2. THE CYPRUS GRAIN COMMISSION,

Respondents.

(Case No. 167/80).

The Grain Control Law, Cap.68—Section 3(1)—Order thereunder declaring «hard corn» to be a «controlled article»—Whether «macaroni», which is produced of «hard corn» can be considered by virtue of said order as a «controlled article»—Section 19 of said law—Question answered in the negative.

The applicants own and operate a macaroni producing factory. They sell their product both in Cyprus and abroad. By letter dated 26.5.80 respondents 2 informed the applicants that for the purpose of a licence for export they will have to pay £20 per ton of exporting macaroni for the months of May and June 1980. As a result the applicants filed the present recourse.

It should be noted that macaroni is made entirely of hard corn and that hard corn had been declared under the provisions of s.3(1) of Cap.68 as a controlled article. Macaroni, however, was not declared as a controlled article under the said provision.

Counsel for the respondents submitted that as macaroni is made entirely of hard corn it should also be considered as a controlled article.

Held, *annulling the sub judice decision:* (1) If macaroni cannot be considered as a «controlled article», it does not fall within the provisions of Cap. 68 and, consequently, the imposition of tax for the purposes of export is legally unjustified and voidable.

(2) In the light of the provisions of s.19 of Cap.68 the aforesaid submission of counsel for the respondents cannot be entertained.

Sub judice decision annulled.
No order as to costs.

Recourse.

Recourse against the decision of the respondents whereby applicants were required to pay £20.- per ton of macaroni exported during the months of May and June, 1980 in order to secure an export licence.

Chr. Triantafyllides, for the applicants.
C. Velaris, for the respondents.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In the present recourse under Article 146 of the Constitution, the applicants have applied to this Court for the following relief: Declaration that the decision of the respondents contained in exhibit 1 dated 26th May, 1980, to prescribe or order that the applicant will have to pay £20 per ton exported for the months May and June 1980 in order to secure an export licence or any other sum or at all is null and void and of no effect whatsoever.

The Facts:

The following facts are relied upon in support of the present application: 1. The applicants own and operate a macaroni producing factory. 2. The said factory deals with local sales as well as with exports. 3. The factory deals with 90% of the exports of macaroni from Cyprus. 4. The exports of the said factory constitute 60% of its overall production. 5. On 26th May, 1980, the Cyprus Grain Commission addressed a letter to the factory of G. Carkotis Ltd., and had this to say: «By the present letter we inform you that for the purpose of a licence for export the prices which you will be paying for each ton of exporting macaroni will be £20 per ton for the months May and June 1980». 6. Exhibit 1 causes great damage to the applicants because they are forced to export and sell their products at a higher price which is not competitive in markets abroad. 7. The applicants allege that the decision complained of has been reached without any or proper inquiry as to the relevant facts. And 8. The applicants allege that quite apart from the illegality complained of, both the quantity and the amount prescribed, are neither justified nor supported by the facts of the case.

The present application is based on the following grounds of law: 1. There is no law or regulation authorising respondents to

reach the decision contained in Exhibit 1, and the said decision lacks completely legal basis. 2. The decision complained of has been taken in excess or in abuse of powers in that it is arbitrary and unreasonable having regard to the relevant facts pertaining to the matter. 3. The decision complained of is contrary to (a) Article 23 of the Constitution in as much as it constitutes a restriction and/or limitation on applicants' property which is not warranted under the said article. (b) Article 25 of the Constitution in as much as it constitutes a restriction and/or limitation on their rights to carry on freely their business not being a restriction and/or limitation which is warranted by the said article. (c) Article 28 of the Constitution in as much as other businesses are not likewise restricted or treated thus applicants are being discriminated against. 4. The respondents reached their decision complained of, without any, or any adequate inquiry as to all relevant facts and without affording applicants the opportunity of being heard. And 5. The decision complained of is not duly reasoned at all.

On 28th August, 1980, the respondents gave notice that they intend to oppose the said application, and their opposition is based on the following grounds of law: 1. The first respondents alleged that they have nothing to do with the act or decision complained of and seek the dismissal of the case vis-a-vis with costs. Nothing contained in the application discloses that they have taken any decision or did any act which could in any way form the subject-matter of the above-titled recourse. 2. The second respondents contend that the act or decision complained of contained in exhibit 1 attached to the application has been taken according to the Constitution, the Law (and in particular the Grain Control Law, Cap. 68 s.5(b) and (f), regularly, rightly and justly, all the facts and circumstances having been taken into account. 3. The said act or decision complained of is duly reasoned. The reasoning thereof is apparent from the file of the case. Indeed, the applicants have a macaroni factory in Cyprus and macaroni is produced from semolina a product of hard wheat. Hard wheat is a controlled article according to the Grain Control Law. Respondents 2 are a statutory body entrusted with the control and trading of grain product of hard wheat. One of their aims is the supply to Cypriots of cheap bread and grain products generally and for the purpose they are subsidised by the Government with 5-10 million pounds per annum. To meet their responsibilities accruing from the afore-

said law the second respondents purchase all the local harvest of controlled articles and when necessary make imports from overseas. At all material times the second respondents were purchasing hard wheat from local suppliers at £88 per ton and from overseas C.I.F. Cyprus at £100 per ton. Furthermore, the second respondents were encumbered with further costs including storage, transport, running and other expenses equalling about £7 per ton. By so doing the second respondents were subsidising the local hard wheat with £44 per ton and the imported one with £56 per ton. The said subsidies come out of the tax-payers money and were made for the benefit of the public at large within the Republic and not for the benefit of foreigners. In the cases of exports the second respondents were and are willing to sell controlled articles to manufacturers and merchants at cost and/or at a lesser subsidy than the one afforded for the local market as in the case of the applicants. Indeed the second respondents believe that their said act or decision complained of was taken in the public interest and is in accordance with the letter and tenor of the Constitution and the Law. Respondents 2 deny all and each of the facts relied upon in the application so far as they are inconsistent with the aforesaid.

On 24th November, 1980, in the absence of counsel for the respondents counsel for the applicants applied for a date of hearing and the case was fixed for hearing on the 7th May, 1981. In the meantime, counsel for the applicants applied for the change of the date because as he put it, he would be away abroad and the case was fixed for hearing on the 8th October, 1981, at 10.00 a.m.

The first submission of learned counsel for the applicant was that the term «regulate» cannot possibly be interpreted as containing a monetary burden. To support his submission he referred to the provisions of s.6 of Cap. 68 which provides as follows:-

> «The funds of the Commission shall consist of such money as may accrue from the operation of the Commission and such other money as may from time to time with the approval of the Governor be apportioned from public funds.»

I do not share the view that the above provisions limit the possibility to interpret the term «regulate» as containing a monetary burden also and I accept the submission of the learned counsel of the respondent authority that the provisions must be interpreted in a wider manner.

The vital issue which must be decided is whether macaroni is a «controlled article» and falls within the ambit of the provisions of the law (Cap.68) or whether it cannot be considered as a «controlled article» and therefore, the imposition of tax for the purposes of export is legally unjustified and consequently voidable.

Pursuant to s.3 of Cap.68:

> «3.(1) If at any time it appears to the Governor in Council to be necessary or expedient for the purpose of securing a sufficiency of any kind of grain essential to the well-being of the community or its equitable distribution or availability of fair prices or that public interest so requires, the Governor in Council may, by Order (hereinafter referred to as the Control Order) declare that kind of grain to be a controlled article and thereupon the provisions of this law shall have effect in respect of such article.»

It is accepted by both sides that macaroni itself has not been declared as a controlled article.

The submission of the counsel of the respondents is that macaroni is a controlled article because macaroni is made entirely of hard corn and hard corn is a controlled article within the meaning of the law.

The allegation prima facie seems to be reasonable but, in my view, it cannot be sustained since s.19 provides as follows:

> «If it appears to the Governor in Council that public interest so requires the Governor in Council may, in making a control order under subsection (1) of s.3 include bread therein as a controlled article and there upon the provisions of this law shall apply mutatis mutandis to bread as if it were a controlled article for the purposes of this law.»

It is obvious that bread which is the main derivative of grain cannot be and is not classified as controlled article as from the application of the law in relation to grain only but because there is a special provision for that purpose.

I do not agree therefore that the provisions of the law, in respect of grain are enough to give me the right to extend their application mutatis mutandis in the case of macaroni also.

It is undoubtedly a different product which cannot be classified as a controlled article unless it is declared as such pursuant to the provisions of s.3 of Cap. 68.

For the reasons hereinabove indicated, the recourse succeeds. There shall be no order as to costs.

Sub judice decision annulled.
No order as to costs.