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July 30

[L. LOIZOU, J.]

HADJI  
KYRIACOS AND  
SONS LTD.  
v.  
REPUBLIC  
(MINISTER OF  
AGRICULTURE  
AND NATURAL  
RESOURCES)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

HADJI KYRIACOS & SONS LTD.,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF AGRICULTURE  
AND NATURAL RESOURCES,

*Respondent.*

(Case No. 136/69).

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*Recourse under Article 146 of the Constitution—Does not lie against a merely informatory act or a merely confirmatory act of a previous act or decision—Decision taken without any new inquiry but by merely adopting a previous decision is not an executory act but merely a confirmatory act which cannot be made the subject of a recourse.*

*Administrative acts or decisions in the sense of Article 146.1 of the Constitution—Which alone can be challenged by a recourse under that Article—Merely informatory acts—Merely confirmatory acts—See also supra.*

*Water Supply (Special Measures) Law, 1964 and Water Supply (Special Measures) Regulations, 1966—Refusal to allow use of water meters of a particular type—Recourse against such refusal out of time—Article 146.3 of the Constitution.*

*The Court, dismissing the recourse, held that :*

- (a) the act or decision challenged thereby is merely an informatory act, or at the maximum, an act merely adopting without any new inquiry a previous decision and as such it is therefore a merely confirmatory act or decision ; consequently, in either case no recourse lies against it ;*
- (b) what is really sought to be challenged in the present case is a decision taken and duly published about 18 months before the filing of the recourse ; but then the recourse is out of time.*

By this recourse the applicants challenge the validity of the decision of the Minister of Agriculture contained in his letter dated February 26, 1969, addressed to the applicants by

which he refuses to allow the use of Water meters of a particular type in areas declared to be controlled areas under the provisions of the Water Supply (Special Measures) Law, 1964, and/or of the decision of the Director of the Department of Water Development which the Minister mentions in his said letter and which he adopts.

The letter of the Minister (*supra*) is set out in full *post* in the Judgment of the Court. As to the aforesaid decision of the Director (*supra*), it should be noted here that it was published in the Official Gazette of the Republic of the 31st August 1967 under Not. 1237 and in the local press, *viz.* about eighteen months prior to the filing of this recourse.

Dismissing the recourse, the Court :

*Held*, (1). It does not seem to me that the Minister's letter of February 26, 1969 (*supra*) contains, or amounts to, any "act" or "decision" within Article 146.1 of the Constitution. It merely contains information as to the facts which led up to the decision of the Director (published in August 1967, *supra*) and the criteria which he took into consideration in deciding on the type of water meter to be used in controlled areas.

(2) As intimated in the said letter of the Minister, the Minister himself has no competence under the Law to decide as to the type of water meter to be used in controlled areas and quite obviously the recourse is directed at the decision of the Director which was published in the Gazette over 18 months before the filing of this recourse and in this respect the recourse is out of the time (75 days) prescribed in Article 146.3 of the Constitution.

(3) But quite independently of the above, even assuming that the letter of the Minister of February 26, 1969 (*supra*) or any paragraph thereof could be said to amount to any decision within the meaning of Article 146.1 of the Constitution and even if the Minister had competence to make a decision in the matter, such decision, admittedly taken without any new inquiry but by merely adopting the Director's said decision, is merely, confirmatory of the former decision and as such cannot be made the subject of a recourse.

*Recourse dismissed.*  
*No order as to costs.*

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## Recourse.

Recourse against the decision of the respondent refusing to allow the use of water meters of a particular type in areas declared to be controlled areas under the provisions of the Water Supply (Special Measures) Law, 1964 (Law 32/64).

A. *Hadjioannou*, for the applicants.

K. *Talarides*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:—

L. LOIZOU, J. : By this recourse the applicants seek a declaration that the decision of the Minister of Agriculture contained in his letter dated 26th February, 1969, addressed to the applicants by which he refuses to allow the use of water meters of a particular type in areas declared to be controlled areas under the provisions of the Water Supply (Special Measures) Law, 1964, and/or the decision of the Director of the Department of Water Development which the Minister mentions in his said letter and which he adopts is null and void and of no effect as being contrary to law and/or in abuse of powers or based upon a misconception of facts.

Applicants base their case (a) on article 25 of the Constitution in order to show that the decision challenged by the recourse and/or the decision of the Director of the Department of Water Development (hereinafter the Director) on which it is based is unlawful and/or unconstitutional and (b) on section 5 (1) of Law 33 of 1964, in order to show that the decision challenged and/or that of the Director was taken in abuse of powers and/or under a misconception of facts.

By the opposition it is, *inter alia*, alleged that the respondent Minister had no competence to specify the type of water meter to be used ; that his letter dated 22nd September, 1969, does not amount to any act or decision within the meaning of article 146 of the Constitution ; and that the recourse is in effect directed against the decision of the Director and is, therefore, out of time as having been made more than 75 days of the date when such decision was published.

In the course of the hearing the parties have agreed and have applied to the Court that the preliminary issue of the

limitation of time be determined in the first instance. I consider this course the more convenient and I, therefore, propose to deal with this issue first.

The facts which are relevant to this issue are briefly as follows :

The Director, in exercise of his powers under the Water Supply (Special Measures) Regulations 1966, specified the type of water meters to be used in controlled areas. This decision of the Director has been published in the *Gazette* of the 31st August, 1967, under Not.-No. 1237 and in the local press. The applicants were not then importing water meters of any kind. Sometime in October, 1968, the applicants started importing water meters of a kind which, admittedly, are not of the type specified by the Director and could not, therefore, be used in controlled areas.

The applicants, it would appear, saw the Minister of Agriculture some time at the beginning of January, 1969, and complained to him that the decision of the Director regarding the type of water meters to be used in controlled areas put their firm, as well as other importers of water meters, in a disadvantageous position and further that they believed and were prepared to prove that the water meters imported by them were the most suitable. In answer to a letter by the applicants (letter dated 18th January, 1969, attached to the application) confirming the points raised at their interview with the Minister the latter wrote to them the letter of the 26th February, 1968 (*exhibit 1*). I consider it useful and pertinent to set out this letter in full :

\* «Επιθυμῶ ὅπως ἀναφερθῶ εἰς ὑμετέραν ἐπιστολὴν ἡμερομηνίας 18ης Ἰανουαρίου 1969, ἐπὶ τοῦ θέματος τοῦ τύπου τῶν ὑπὸ τοῦ Τμήματος Ἀναπτύξεως Ὑδάτων ἐγκριθέντων ὑδρομετρητῶν καὶ εἰς ἀπάντησιν πληροφορήσω ὑμᾶς ὡς ἀκολούθως :—

(a) Ὁ καθορισμὸς τοῦ τύπου τοῦ ὑδρομετρητοῦ ὑπὸ τοῦ Διευθυντοῦ τοῦ Τμήματος Ἀναπτύξεως Ὑδάτων ἀποτελεῖ ὑποχρέωσιν αὐτοῦ ἀπορρέουσαν ἐκ τῶν προνοιῶν τοῦ περὶ Ὑδατοπρομηθείας (Εἰδικὰ Μέτρα) Νόμου. Ὁ τύπος ὡς καὶ ἄλλαι τεχνικαὶ προδιαγραφαὶ τοῦ ὑδρομετρητοῦ ἔχουν καθορισθῆ πρό πολλοῦ, πλήρης δὲ περιγραφή τούτων δίδεται εἰς τὴν ὑπ' ἀριθμὸν 1237 Γνωστοποίησιν τὴν δημοσιευθεῖσαν εἰς τὴν ἐπίσημον Ἐφημερίδα τῆς Δημοκρατίας τῆς 31ης Αὐγούστου, 1967.

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\* An English translation of this text is to be found at pp. 291-92 *post*.

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(β) Σχετικῶς πρὸς τὸν καθορισμὸν τοῦ τύπου τοῦ ὑδρομετρητοῦ ἐλήφθησαν σοβαρῶς ὑπ' ὄψιν μεταξὺ ἄλλων αἱ ἐν Κύπρῳ ὑπάρχουσαι συνθήκαι, ἡ φύσις τῶν ὑδροφόρων στρωμάτων καὶ ἡ ἐξ αὐτῶν κατὰ τὴν ἀντλησιν ἐξαγωγή ἄμμου ἡ ὁποία καὶ προκαλεῖ προβλήματα φθορᾶς τῶν κινητῶν ἐξαρτημάτων, ἡ ἀκριβῆς καταγραφή, ἡ εὐκόλος καὶ ὁμοιόμορφος ἀνάγνωσις τῆς ἐνδείξεως, ἡ ἀπόδοσις καὶ ἡ ἐκ τῆς ροῆς μέσῳ τοῦ ὑδρομετρητοῦ προκαλουμένη τριβή, ὡς ἐπίσης καὶ ἡ εὐκόλος καὶ εὐθυνη συντήρησις.

(γ) Ἐπὶ τῇ βάσει τῶν εἰς τὴν προμνησθεῖσαν Γνωστοποίησιν περιεχομένων προδιαγραφῶν ἐζητήθησαν προσφοραὶ, τελικῶς δὲ ἡ Κυβέρνησις παρέλαβε παρὰ τοῦ τελευταίου προσφοροδότητος ποσότητα ὑδρομετρητῶν τοὺς ὁποίους καὶ διαθέτει εἰς τοὺς ἐνδιαφερομένους οἵτινες ἐν τούτοις δὲν ἐμποδίζονται ἀπὸ τοῦ νὰ προμηθευθοῦν ὑδρομετρητὰς τοῦ καθορισθέντος τύπου ἐξ ἄλλων πηγῶν ὑπὸ τὸν ὅρον ὅτι οἱ τοιοῦτοι ὑδρομετρηταὶ θὰ ἱκανοποιοῦν τὰς προδιαγραφὰς καὶ τοὺς τεχνικοὺς ὅρους τοὺς ἀναφερομένους εἰς τὴν προμνησθεῖσαν Γνωστοποίησιν καὶ θὰ τύχουν τῆς ἐγκρίσεως τοῦ Διευθυντοῦ τοῦ Τμήματος Ἀναπτύξεως Ὑδάτων.

(δ) Παρ' ὅλον ὅτι οὐδέποτε ὑπεβάλατε δείγμα τῶν ὑφ' ὑμῶν εἰσαγομένων ὑδρομετρητῶν ἐν τούτοις ἐξ αὐτῶν τούτων τῶν δηλώσεών σας πρὸς τὸν Διευθυντὴν τοῦ Τμήματος Ἀναπτύξεως Ὑδάτων κατέστη πρόδηλον ὅτι οἱ εἰρημένοι ὑδρομετρηταὶ δὲν ἱκανοποιοῦν τὰς δημοσιευθεῖσας προδιαγραφὰς καὶ συνεπῶς ὁ προμνησθεὶς Διευθυντῆς δὲν δύναται νὰ ἐγκρίνη τὴν ἐγκατάστασιν των διὰ τοὺς σκοποὺς τοῦ περὶ Ὑδατοπρομηθείας (Εἰδικὰ Μέτρα) Νόμου. Ἐὰν ἐν τούτοις διαθέτετε ἄλλους ὑδρομετρητὰς, διαφοροτικοῦ τύπου τῶν προαναφερθέντων, οἵτινες ἱκανοποιοῦν τοὺς τεχνικοὺς ὅρους καὶ προδιαγραφὰς τότε ὁ Διευθυντῆς τοῦ Τμήματος Ἀναπτύξεως Ὑδάτων εὐχαρίστως θ' ἀναλάβη νὰ ὑποβάλῃ τούτους εἰς σχετικὸν ἔλεγχον καὶ εἰς περίπτωσιν ἱκανοποιήσεώς του νὰ παραχωρήσῃ τὴν ἐγκρίσιν του πρὸς διάθεσιν αὐτῶν μεταξὺ τῶν ἐνδιαφερομένων καλλιεργητῶν.»

Learned counsel for the applicants has stated in the course of his address that the decision against which the recourse is directed is contained in para. (d) of the above letter and is in fact the Minister's refusal to examine applicant's complaint on the pretext that he follows the decision of the Director which was published in the *Gazette* of the 31st August, 1967.

With all respect to learned counsel's argument, it does not seem to me that the letter *exhibit* 1 amounts to any

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“ act ” or “ decision ” in the sense of Article 146. It merely contains information as to the facts which led up to the decision of the Director and the criteria which he took into consideration in deciding on the type of water meter to be used in controlled areas, and advises the applicants that if they have any water meters of a type which satisfies the required specifications then the Director would gladly check them and, if satisfied that they are suitable, approve them for use.

It should, I think, be pointed out that, as intimated in the Minister's letter, the Minister himself has no competence under the Law to decide as to the type of water meter to be used in controlled areas and quite obviously the recourse is directed at the decision of the Director which was published in the *Gazette* and the local press over 18 months before the recourse was filed and some thirteen months before they started importing their own water meters.

But, quite independently of the above, even assuming that the letter *exhibit* 1 or any paragraph thereof could be said to amount to a decision within the meaning of Article 146 and even if the Minister had competence to make a decision in the matter, such decision, admittedly taken without any new inquiry but by merely adopting the Director's decision, is merely confirmatory of the former decision and cannot be the subject of a recourse.

Having reached this conclusion I must hold that the recourse is out of time and must, therefore, fail.

In all the circumstances I have decided to make no order as to costs.

*Recourse dismissed. No order as to costs.*

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\* This is an English translation of the Greek text appearing at pp. 289-90 *ante*.

“ I wish to refer to your letter dated the 18th January, 1969, on the subject of the type of the water meters approved by the Department of Water Development and in reply to inform you as follows :—

(a) The specifying of the type of water meter by the Director of Water Development Department constitutes an obligation of the Director emanating from the provisions of the Water Supply (Special Measures) Law. The type

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as well as other specifications concerning the water meter have been specified a long time ago, and a full description thereof appears in Notification No. 1237 of the Official *Gazette* of the Republic of the 31st August, 1967.

- (b) In specifying the type of water meter there were, *inter alia*, seriously taken into consideration the prevailing conditions in Cyprus, the nature of the water-bearing strata including the extraction of sand therefrom during pumping, which also tends to ruin the moving accessories, the accurate recording, the easy and uniform meter reading, the output and the friction created by the flow through the water meter as well as the convenient and cheap maintenance.
- (c) Tenders were invited on the basis of the specifications set out in the aforesaid Notification, and finally the Government obtained from the lowest tenderer a quantity of water meters which are offered to the persons concerned who are, nevertheless, not prevented from being supplied with water meters of the type specified from other sources on condition that such water meters will be in accordance with the specifications referred to in the aforesaid Notification and will be approved by the Director of the Department of Water Development.
- (d) Though you have never submitted a sample of the water meters imported by you, from your statements to the Director of the Department of Water Development themselves, however, it became apparent that the said water meters are not in accordance with the published specifications and consequently the said Director is unable to approve their installation for the purposes of the Water Supply (Special Measures) Law. If, however, you have any other water meters, of a type different than the ones referred to, which are in accordance with the Specifications then the Director of the Department of Water Development will gladly undertake to check them and in case he is satisfied to give his approval for their disposal to any cultivators interested".