

1982 February 24

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SALAMIS FLOUR MILLS LTD., AND OTHERS,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE GRAIN COMMISSION.

Respondents.

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(Case No. 20/70).

Grain Control Law, Cap. 68 (as amended)—Common flour—Decision of Council of Ministers fixing maximum sale price of, on the recommendation of Grain Commission—Section 5(1) of the Law —Grain Commission not seeking the advice of the Advisory Committee, set up under s.4A of the Law, before making its recommendations—Due compliance with the administrative procedural requirements laid down by s.4A an essential formality for the purpose of reaching validly the sub judice decision—Failure to conform with provisions of s.4A contrary to Law and entails the invalidity of the recommendation to the Council of Ministers— And since such recommendation an obviously most material factor on which the sub judice decision of the Council of Ministers was based its decision treated as being contrary to law and invalid too. 5 10

Administrative Law—Administrative acts or decisions—Composite administrative action—Invalidity of part of a composite administrative action leads to the invalidity of the action as a whole. 15

Administrative Law—Administrative procedural requirements laid down by the relevant statute—In this case the Grain Control Law, Cap. 68—An essential formality for the purpose of reaching validly a decision thereunder. 20

The applicants in this recourse sought the annulment of an

Order* which was made by the Council of Ministers by means of which the maximum sale price of common flour was fixed at 51 mils per oke. They, also, sought the annulment of the decision of the respondent Grain Commission to recommend
 5 to the Council of Ministers the fixing of the said price. In making its sub judge recommendation the Grain Commission did not rely or otherwise take into account any advice given in this respect by the Advisory Committee which was set up
 10 under section 4A** of Cap. 68; and no advice about the price of flour was sought from, or given by, such Committee.

Counsel for the applicants mainly contended that the administrative process prescribed by subsections (2) and (4) of section 4A of Cap. 68 was not duly implemented in that the Commission
 15 had not sought the advice of the Advisory Board set up under s.4A, before making its recommendation and therefore, the sub judge decision is invalid.

Held, that the provision in section 4A about consulting the Advisory Committee is mandatory (see, also, subsection (4) of section 4A); that, therefore, due compliance with the administrative procedural requirements laid down by the provisions
 20 of section 4A was an essential formality for the purpose of reaching validly the sub judge decision of the Council of Ministers; accordingly the failure on this occasion, of the Grain Commission to conform to the said section 4A is contrary to law and entails
 25 the invalidity of its recommendation to the Council of Ministers regarding the maximum price of flour; and, as such recommendation was, by virtue of section 5(1)(g) of Cap. 68, an obviously most material factor on which the sub judge decision of the Council of Ministers was based its decision has to be
 30 treated as being contrary to law also and, consequently, invalid, too.

Held, further, that the recommendation of the Grain Commission forms together with the sub judge decision of the Council of Ministers a composite administrative action and the invalidity

* The Order was made under section 5(1) of the Grain Control Law, Cap. 68 (as amended) which is quoted at p. 135 post.

** Section 4A is quoted at pp. 136-137 post. Section 4A(2) provides that "the Commission shall seek the Advisory Committee's advice on any matter within its competence and likely to affect materially any of the interests represented on the Advisory Committee, and may consult with it on any matter within its competence".

of such recommendation necessarily entails the invalidity of the said decision.

Sub judice decision annulled.

Cases referred to:

- Michaelouides v. Republic* (1979) 3 C.L.R. 56 at p. 72; 5
Papaleontiou v. Republic (1970) 3 C.L.R. 54 at p. 62:
Eraclidou v. Compensation Officer (1968) 3 C.L.R. 44 at p. 53.

Recourse.

Recourse against the decision of the respondents whereby the maximum sale price of common flour was fixed at 51 mils per oke. 10

G. Cacoyiannis, for the applicants.

S. Georghiades, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult. 15

TRIANAFYLLIDES P. read the following judgment. By means of the present recourse the applicants seek the annulment of an Order made on 30th October 1969 by the respondent Council of Ministers under section 5(1) of the Grain Control Law, Cap. 68 - as amended, in particular, by the Grain Control (Amendment) Law, 1966 (Law 83/66) - and published in the Official Gazette of the Republic on 7th November 1969 (see No. 885 in the Third Supplement to the Gazette). By such Order the maximum sale price of common flour was fixed at 51 mils per oke. 20
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The applicants seek, also, the annulment of the decision of the respondent Grain Commission to recommend to the Council of Ministers the fixing of the said price.

Flour was declared to be a "controlled article" by an Order made on 30th March 1961 by the Council of Ministers under section 3 of Cap. 68 and published in the Official Gazette of the Republic on 31st March 1961 (see No. 93 in the Third Supplement to the Gazette). 30

The Grain Commission was set up under section 4 of Cap. 68, as amended, in particular, by Law 83/66, and its functions are set out in section 5(1) of Cap. 68. One of such functions (see paragraph (g) of the said section 5(1)) was initially to fix, with the 35

approval of the Government, the maximum price at which a controlled article should be sold, but after section 5(1) of Cap.68 was amended, in this respect, by means of section 4(1)(b) of Law 83/66, the role of the Grain Commission was limited to making a recommendation to the Council of Ministers regarding the fixing of the said maximum price.

The relevant part of section 4(1)(b) of Law 83/66 reads as follows:

“4. Το άρθρον 5 του βασικοῦ Νόμου τροποποιεῖται ὡς ἀκολουθῶς:

(1) Εἰς τὸ ἐδάφιον (1) αὐτοῦ—

(β) ἡ παράγραφος (ζ) ἀντικαθίσταται διὰ τῆς κάτωθι:

‘(στ) νὰ συνιστᾷ εἰς τὸ Ὑπουργικὸν Συμβούλιον τὴν ἀνωτάτην τιμὴν ἢ κλίμακα τιμῶν εἰς τὰς ὁποίας τὸ ἐλεγχόμενον εἶδος θὰ ἀγοράζηται ἢ θὰ πωλῆται ὅπερ κατόπιν μελέτης τῆς γενομένης συστάσεως προβαίνει εἰς τὸν καθορισμὸν τῆς τοιαύτης τιμῆς ἢ κλίμακος τιμῶν διὰ διατάγματος αὐτοῦ δημοσιευομένου εἰς τὴν ἐπίσημον ἑφημερίδα τῆς Δημοκρατίας’.

“4. Section 5 of the principal Law is hereby amended as follows:—

(1) In sub-section (1) thereof—

(b) The following paragraph shall be substituted for paragraph (g) thereof:—

‘(g) to recommend to the Council of Ministers the maximum price or scale of prices at which the controlled article shall be purchased or sold, the Council of Ministers proceeding, after consideration of the recommendation made, to the fixing of such price or scale of prices by Order published in the official Gazette of the Republic;’

Also, by virtue of section 4A, which was introduced into

Cap. 68 by section 3 of Law 83/66, there was made provision for the creation of an Advisory Committee as follows:

“4A.—(1) Ἐπὶ τῇ ἐκδόσει Διατάγματος Ἐλέγχου καθιδρύεται Συμβουλευτικὴ Ἐπιτροπὴ συνισταμένη ἐκ τοῦ Διευθυντοῦ τῆς Ἐπιτροπῆς Σιτηρῶν ὡς Προέδρου, δύο προσώπων ἰκανῶν ὅπως ἐκπροσωπῶσι τὰ συμφέροντα τοῦ Συνεργατισμοῦ, τεσσάρων προσώπων ἰκανῶν ὅπως ἐκπροσωπῶσι τὰ συμφέροντα τῶν σιτοπαραγωγῶν καὶ τεσσάρων προσώπων ἰκανῶν ὅπως ἐκπροσωπῶσι τὰ συμφέροντα τῶν ἀλευροβιομηχανῶν, τῶν ἀρτοποιῶν, τῶν καταναλωτῶν ἄρτου καὶ τῶν καταναλωτῶν κτηνοτροφικῶν προϊόντων ἀντιστοιχῶς, ἀπάντων διοριζομένων ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου.

Ἡ περίοδος θητείας τῶν μελῶν θὰ εἶναι τριετής ἐκτὸς ἐὰν ἡ διορίζουσα ἀρχὴ ἀνακαλέσῃ τὸν διορισμὸν καθ’ οἰονδήποτε χρόνον πρὸ τῆς λήξεως τῆς θητείας.

(2) Ἡ Ἐπιτροπὴ ἐπιζητεῖ συμβουλὴν παρὰ τῆς Συμβουλευτικῆς Ἐπιτροπῆς ἐπὶ παντὸς ζητήματος ἐμπύπτοντος ἐντὸς τῆς ἀρμοδιότητος αὐτῆς καὶ ἐνδεχομένως οὐσιωδῶς ἐπηρεάζοντος οἰονδήποτε τῶν ἐν τῇ Συμβουλευτικῇ Ἐπιτροπῇ ἐκπροσωπουμένων συμφερόντων καὶ δύναται νὰ συσκευθῇ μετ’ αὐτῆς ἐπὶ παντὸς ζητήματος ἐμπύπτοντος ἐντὸς τῆς ἀρμοδιότητος αὐτῆς.

(3) Ἡ Συμβουλευτικὴ Ἐπιτροπὴ δύναται ἐξ ἰδίας πρωτοβουλίας νὰ προβῇ εἰς παραστάσεις πρὸς τὴν Ἐπιτροπὴν ἐπὶ παντὸς ζητήματος τὸ ὁποῖον ἐγείρεται ἢ ἐνδεχομένως δύναται νὰ ἐγερθῇ κατὰ τὴν ἀσκησιν τῶν λειτουργιῶν τῆς Ἐπιτροπῆς ὅπερ ἡ Συμβουλευτικὴ Ἐπιτροπὴ θεωρεῖ ὅτι ἐνδεχομένως οὐσιωδῶς ἐπηρεάζει οἰονδήποτε τῶν ἐν τῇ Συμβουλευτικῇ Ἐπιτροπῇ ἐκπροσωπουμένων συμφερόντων.

(4) Ἡ Ἐπιτροπὴ λαμβάνει ὑπ’ ὄψιν οἰονδήποτε συμβουλὴν παρεχομένην εἰς αὐτὴν δυνάμει τοῦ ἐδαφίου (2) ὑπὸ τῆς Συμβουλευτικῆς Ἐπιτροπῆς καὶ οἰασδήποτε παραστάσεις γενομένας ὑπ’ αὐτῆς δυνάμει τοῦ ἐδαφίου (3), καὶ εἰς περίπτωσιν μὴ ἀποδοχῆς τούτων ἐν ὅλῳ ἢ ἐν μέρει, εἰδοποιεῖ ἐγγράφως περὶ τούτου τὴν Συμβουλευτικὴν Ἐπιτροπὴν συναποστέλλουσα ἀντίγραφον τῆς τοιαύτης εἰδοποιήσεως πρὸς τὸ Ὑπουργικὸν Συμβούλιον τὸ ὁποῖον ἐπιλαμβάνεται καὶ λύει οἰονδήποτε ὑφισταμένην διχογνωμίαν”.

5 (“4A.-(1) Upon the making of a Control Order there shall be established an Advisory Committee consisting of the Manager of the Grain Commission as Chairman, two persons capable of representing the interests of the Co-operative Movement, four persons capable of representing the interests of grain producers and four persons capable of representing the interests of millers, bakers, bread consumers and stock-farming products consumers, respectively, all appointed by the Council of Ministers.

10 (2) The Commission shall seek the Advisory Committee’s advice on any matter within its competence and likely to affect materially any of the interests represented on the Advisory Committee, and may consult with it on any matter within its competence.

15 (3) The Advisory Committee may of its own motion make representations to the Commission on any matter arising or likely to arise in the exercise of the functions of the Commission, which the Advisory Committee considers as likely to affect materially any of the interests
20 represented on the Advisory Committee.

25 (4) The Commission shall give consideration to any advice tendered to it by the Advisory Committee under subsection (2) and to any representations made by it under subsection (3) and in the event of non-adoption thereof, in whole or in part, it shall notify in writing the Advisory Committee accordingly, sending at the same time a copy of such notification to the Council of Ministers which shall deal with and solve any existing dispute”).

30 One of the main submissions of counsel for the applicants, during the much protracted hearing of this case, has been that the administrative process prescribed by subsections (2) and (4) of section 4A of Cap. 68, as amended by Law 83/66, was not duly implemented and, therefore, the sub judice decision of the Council of Ministers is invalid.

35 As there appears clearly from the minutes of a special meeting of the Grain Commission, which was held on the 27th October 1969 (see *exhibit XIII*), the Chairman of the Commission informed its members about the contacts that had taken place

between the Government and the Association of Flourmillers on the matter of the price of flour and the Commission, after discussing such matter, decided to recommend to the Council of Ministers that the price of flour used for making ordinary bread must remain at 51 mils per oke. 5

In reaching its above decision the Commission did not rely or otherwise take into account any advice given in this respect by the Advisory Committee which was set up under section 4A of Cap. 68; and, actually, as there emerges from the minutes of the meeting of the Advisory Committee on the 18th September 1969 (see *exhibit XV*) no advice about the price of flour was sought from, or given by, such Committee. 10

It has been submitted by counsel for the respondents that the provision in section 4A about consulting the Advisory Committee is not mandatory but of a directive nature. I cannot, however, subscribe to this view: From the clear wording of subsection (2) of section 4A it can only be concluded that the procedure provided therein is mandatory, especially in cases such as the present one where the interests of parties participating, under section 4A(1), in the Advisory Committee may be materially affected. 15 20

My above view is confirmed as correct by the provisions of subsection (4) of section 4A to the effect that in case the Grain Commission does not adopt the advice given to it by the Advisory Committee the Commission should notify, in this respect, in writing, the Advisory Committee, sending, also, a copy of such notification to the Council of Ministers, which has to deal with and solve the dispute. 25

Having reached, thus, the conclusion that due compliance with the administrative procedural requirements laid down by the provisions of section 4A, above, was an essential formality for the purpose of reaching validly the sub judice decision of the Council of Ministers, I am of the opinion that the failure, on this occasion, of the Grain Commission to conform to the said section 4A is contrary to law and entails the invalidity of its recommendation to the Council of Ministers regarding the maximum price of flour; and, as such recommendation was, by virtue of section 5(1)(g) of Cap. 68, an obviously most material 30 35

factor on which the sub judice decision of the Council of Ministers was based its decision has to be treated as being contrary to law also and, consequently, invalid, too.

As regards the relevant principles of administrative law which seem to be applicable in the present instance useful reference may be made, inter alia, to Kyriakopoulos on Greek Administrative Law, (Κυριακοπούλου, 'Ελληνικὸν Διοικητικὸν Δίκαιον'), 4th ed., vol. B, pp. 391-394, Manual of Administrative Law by Spiliotopoulos (Σπηλιωτοπούλου, 'Εγχειρίδιον Διοικητικοῦ Δικαίου), (1977), pp. 405-406, para. 443, and Conclusions from Case-Law of the Council of State in Greece (Πορίσματα Νομολογίας τοῦ Συμβουλίου τῆς Ἐπικρατείας), 1929-1959, pp. 266-267.

There should, also, be added that the aforementioned recommendation of the Grain Commission forms together with the sub judice decision of the Council of Ministers a composite administrative action and the invalidity of such recommendation necessarily entails the invalidity of the said decision (see, inter alia, in this respect, *Michaeloudes v. The Republic*, (1979) C.L.R. 56, 72, *Papaleontiou v. The Republic*, (1970) 3 C.L.R. 54, 62, *Eraclidou v. Compensation Officer*, (1968) 3 C.L.R. 44 53 and Conclusions, supra, p. 244).

In view of all the foregoing both the relevant decision of the Council of Ministers and the recommendation of the Grain Commission that led to it have to be, and are hereby, annulled without it being either useful or necessary to pronounce on any one of the many other issues that were raised in the present proceedings.

In the light of all relevant considerations I have decided to make no order as to costs in this case.

Sub judice decision annulled. No order as to costs.