1984 June 26

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE NICOSIA RACE CLUB, THROUGH ITS SECRETARY YIANNAKIS STROVOLIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF INTERIOR AND OTHERS,

Respondents.

(*Case No.* 310/82).

Administrative Law—Administrative acts or decisions—Executory act—Regulatory act—Villages (Administration and Improvement) (Amending No. 3) Regulations of Ayios Dhometios 1982, *made under section 24(h)(i) of the Villages (Administration and Improvement) Law, Cap.* 243 (*as amended by section 7(b) of Law* 27/82) *—Do not constitute an executory administrative act—But are a regulatory act of a legislative content and of a general application, in effect delegated legislation—And as such cannot be challenged by a recourse under Article* 146 *of the Constitution.*

The applicants in this recourse sought a declaration that the Villages (Administration and Improvement) (Amending No. 3) Regulations of Ayios Dhometios including regulations 163B and 163C, which were made under section 24(h)(i) of the Villages (Administration and Improvement) Law, Cap. 243 (as amended by section 7(b) of Law 27/1982), were null and void and of no legal effect whatsoever.

In accordance with regulation 163C the applicants, a club owning the Nicosia Race Course, were under an obligation to collect from each player and pay to the respondents a tax of 0.75% on the value of each sweepstake or bet placed.

Held, that the sub judice regulations by their very nature do

not constitute an executory administrative act but are a regulatory act of legislative content and of a general application, in effect delegated legislation and as such cannot be challenged by a recourse under Article 146 of the Constitution; accordingly the recourse must fail.

Application dismissed.

Cases referred to:

Cyprus Industrial and Mining Co. Ltd. (No. 1) v. *Republic* (1966) 3 C.L.R. 467 at p. 472;

Kourris v. *Supreme Council of Judicature* (1972) 3 C.L.R. 390 at p. 400;

Lanitis Farm Ltd. v. *Republic* (1982) 3 C.L.R. 124 at pp. 130–131, 132.

Recourse.

Recourse against the validity of the Villages (Administration and Improvement) (Amending No. 3) Regulations of Ayios Dhometios, 1982.

R. Stavrakis with *G. Triantafyllides*, for the applicants.

A. Vladimerou, for respondent 1.

E. Odysseos, for respondents 2 and 3.

Cur. adv. vult.

A. Loizou J. read the following judgment. The applicants by the present recourse seek a declaration that the Villages (Administration and Improvement) (Amending No. 3) Regulations of Ayios Dhometios, 1982, Notification No. 200 published in Supplement III to the Official Gazette, on the 25th June 1982, including Regulations 163 B and 163 C are null and void and of no legal effect whatsoever.

The applicants are a Club owning the Nicosia Race Course. On the 25th June 1982 regulations made under section 24(h)(i) of the Villages (Administration and Improvement) Law, Cap. 243, as amended by section 7(b) of Law No. 27 of 1982, were published as above set out, regulating the imposition and collection of tax on sweepstakes and bets.

In accordance with regulation 163 C the applicants were under an obligation to collect from each player and pay to the respondents a tax of 0.75% on the value of each sweepstake or bet

placed. Thereupon they filed the present recourse which is based on the following grounds of law:

1. The regulations have a prohibitive and/or destructive effect on the Applicants' business, contrary to Article 24.4 of the Constitution.

2. Applicants are being discriminated against because in no other case within the Improvement Board of Ayios Dhometios or any other Improvement Board or, indeed, any other taxing situation, a tax payer is obliged to embark upon the collection of a tax from third parties if such collection has such adverse effects on his business.

3. Article 25 is also contravened because the obligation cast upon applicants in effect interferes with their freedom to carry on their business, such interference not being justified by any of the matters enumerated in Article 25.2 of the Constitution.

4 The regulations complained of are ultra vires the enabling law because the relevant section 24(h)(i) provides that the collection and payment of the tax will be made by the Nicosia Race Club to the respondents, in accordance with an agreement made between the parties. No such agreement having been made, Regulation 163 C is therefore ultra vires the law.

On behalf of the respondents, a preliminary objection was raised to the effect that the sub judice regulations do not constitute an administrative decision but are a legislative act and are not thus subject to a recourse under Article 146 of the Constitution. It was contended that they are delegated legislation enacted by the respondent Improvement Board of Ayios Dhometios under the powers conferred upon it by section 24 of the Villages (Administration and Improvement) Law, Cap. 243, and thus this Court cannot test their validity, since by the present recourse the applicants are not challenging any act or decision of an executory or administrative nature as required by Article 146 of the Constitution.

Section 24(h)(i) of the empowering Law, Cap. 243 as amended by section 7(b) of Law 27 of 1982 gives power to Improvement Boards to make bye-laws for the purpose, inter alia, of:

"(i) να επιβάλλη εφ' εκάστου ιπποδρομιακού στοιχήματος

και εφ' εκάστου ιπποδρομιακού λαχείου κατά την διενέργειαν αυτών, είτε ταύτα διενεργούνται εντός του ιπποδρόμου είτε εκτός αυτού, φόρον μέχρι 0.75% ή ποσόν αντιπροσωπεύον το 0.75% δια την περίοδον μέχρι της 31ης Δεκεμβρίου, 1983, και φόρον μέχρι 1% ή ποσόν αντιπροσωπεύον το 1% από της 1ης Ιανουαρίου, 1984 επί του ποσού εκάστου ιπποδρομιακού στοιχήματος ή εκάστου ιπποδρομιακού λαχείου, αναλόγως της περιπτώσεως, το οποίον διενεργείται αναφορικά πρός ιππόδρομον κείμενον εντός της περιοχής Βελτιώσεως του Συμβουλίου τούτου:

Νοείται ότι ο επιβαλλόμενος φόρος βαρύνει τον παίκτην και δεν λογίζεται ως συνιστών μέρος του ιπποδρομιακού στοιχήματος ή ιπποδρομιακού λαχείου, η δε είσπραξις τούτου θα διενεργήται υπό της ιπποδρομιακής αρχής ως ο όρος ούτος ερμηνεύεται εις τους περί Φορολογίας Ιπποδρομιακών Στοιχημάτων και Λαχείων Νόμους του 1973 και 1976, ήτις φέρει την ευθύνην εισπράξεως και καταβολής τούτου εις το Συμβούλιον συμφώνως προς γενομένην μεταξύ των συμφωνίαν".

(in English)

"(i) to impose on each sweepstake or bet played, whether these are played within the racecourse or outside it tax upto 0.75% or a sum representing the 0.75% for the period until the 31st December 1983 and tax upto 1% or a sum representing the 1% as from 1st January 1984, on the amount of each sweepstake or bet, depending on the case, which is played in relation to a racecourse situated within the Improvement Area of this Board:

Provided that the tax imposed shall burden the player and is not considered as constituting a part of the sweepstake or bet and its collection shall be made by the Horse Racing Authority, as such term is defined in the Horse-race Betting (Taxation) Laws 1973 and 1976, which has the responsibility of collecting and paying same to the Board in accordance with an agreement conducted between them".

Regulation 163 B published under Notification 200 has the

same provisions as section 24(h)(i) above, also it provides for the return of the tax to the player in the event of the cancellation of the sweepstake or bet.

Regulation 163C lays down the relevant procedure and provides for the keeping of books and accounts by the Horserace Authority which must be produced for inspection to the said Board, whenever required.

I have no doubts that the sub judice regulations, by their very nature do not constitute an executory administrative act but are a regulatory act of legislative content and of a general application, in effect delegated legislation and as such cannot be challenged by a recourse under Article 146 of the Constitution.

It may be, as the applicants contend, that as stated in the case of *Cyprus Industrial and Mining Co., Ltd. (No. 1)* v. *Republic* (1966) 3 C.L.R. 467 at p. 472:

> "It is, first of all, necessary to bear in mind that once an act or decision emanates from an organ of administration then, as a rule, it is an 'act' or 'decision' within the ambit of a revisional jurisdiction such as the one laid down under Article 146 (vide Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 p. 228)".

But though this may well be the general principle, I cannot agree that it should be indiscriminately applied to all cases in total disregard of the true nature of the decision act or omission being challenged. As stated in the case of *A. Kourris* v. *Supreme Council of Judicature* (1972) 3 C.L.R. 390, at p. 400:–

> "An examination of our case-law shows that the applicability of Article 146.1 has as a rule been tested mainly on the basis of the essential nature of the decision, act or omission being challenged (see, inter alia, *Papaphilippou and The Republic*, 1 R.S.C.C. 62, at p. 65; *Stamatiou and The Electricity Authority of Cyprus*, 3 R.S.C.C. 44, at p. 46; *Demetriou*, supra, at p. 127; *Eraclidou and Hellenic Mining Co. Ltd. and Others*, 3 R.S.C.C. 153, at p. 156; *Constantinides and The Cyprus Broadcasting Corporation*, 5 R.S.C.C. 34, at p. 39; *Sevastides* v. *The Electricity Authority of Cyprus* (1963) 2 C.L.R. 497, at p. 502, and *The Greek Registrar of the Co-operative Societies* v. *Nicolaides* (1965)

3 C.L.R. 164, at p. 170), the nature of the organ, authority or person from which a decision or act emanated, or which was allegedly guilty of an omission, has been treated as a relevant, but not always necessarily decisive, consideration in determining the essential nature of such decision, act or omission (see, inter alia, *Papaphilippou*, supra, at p. 64; *Police and Hondrou*, 3 R.S.C.C. 82, at p. 85; *Constantinides*, supra, at p. 39; *Sevastides*, supra, at p. 500; *Nicolaides*, supra, at p. 171, and *Sofocles Demetriades & Son* v. *The Republic* (1969) 3 C.L.R. 557).

In relation to the interpretation of Article 146.1 the framework of our Constitution should be borne in mind, especially because such framework undoubtedly establishes the separation of powers (see, inter alia, *Papaphilippou*, supra, at p. 65; *Haros and The Republic*, 4 R.S.C.C. 39, at p. 43); it is on the basis of this constitutional framework, as well as in the light of relevant principles of Administrative Law, that decisions, acts or omissions closely connected with the exercise of the legislative power, even though not actually amounting to the exercise of such power, have been found to be outside the ambit of Article 146.1 (see *Papaphilippou*, supra, at p. 64); and, likewise, decisions acts or omissions closely connected with the exercise of the judicial power have been found to be outside the ambit of such Article (see, inter alia, *Kyriakides*, supra, at p. 73; *Gavris and The Republic*, 1 R.S.C.C. 88, at p. 93; *Xenophontos and The Republic*, 2 R.S.C.C. 89, at p. 92 and *In re C.H. an advocate* (1969) 1 C.L.R. 561)".

Ample authority as to the nature of the regulations is to be found in the case of *Lanitis Farm Ltd.* v. *Republic* (1982) 3 C.L.R. 124 where at pp. 130-131 the following passage from Stassinopoulos' Law of Administrative Acts (1951) at p. 105, is quoted:

"Hence and test is a substantive one and foi that more difficult to ascertain. Efforts to specify the subjects which as of their nature belong to the regulatory authority and to place boundaries between these matters and the matters of legislative function, are futile as also is to attempt to

specify with absolute accuracy where it commences and where each of the functions of the State ends.

The content of the regulatory act as well as of the law is the establishment of legal rules and such situation of a legal rule constitutes the specification of that, which must be valid as law for everyone, in respect of whom there exists a factual situation concentrating characteristic features generally specified. So an undoubtedly internal characteristic of the regulatory act is the generality. In its generality lies mainly this, that the legal content of the act is not exhausted by one and only allegation, by one and only grant, but it retains its force to provoke new applications, on the undefined and future situations, which have the general prerequisites set out by the act. Consequently the ideal type of the regulatory act is the act which is addressed to everybody, is valid without limitation as to place or time and may be applied on a multitude of relations and objects".

And also at p. 132:-

".....regulatory acts of a legislative content whether issued by the Council of Ministers or other administrative organ cannot be directly challenged before the Supreme Court as not satisfying the prerequisites of Article 146 of the Constitution and this is the position regarding the order challenged by these two recourses. Support for this approach can also be derived from what was decided in the cases, inter alia, of *Police and Hondrou*, 3 R.S.C.C. 82; *Sophoclis Demetriades & Son and Another* v. *The Republic* (1969) 3 C.L.R. p. 557; and *Demetrios Philippou & Others* v. *The Republic* (1970) 3 C.L.R. 129".

That there is at present only one racecourse and consequently that the sub judice regulations apply to this only does not divest the regulations of their general applicability or prevent their application to "future situations" because if a new Horseracing Authority or new racecourses are set up in future the regulations will equally be applicable to them.

By the present recourse the applicant Club directly challenges the regulations themselves—and not their application—which

as explained above cannot be, and for this reason this recourse should fail.

Having reached this conclusion, it is unnecessary to determine the recourse on its merits which is accordingly dismissed with no order as to costs.

Recourse dismissed. No order as to costs.