

1988 February 26

(TRIANTAFYLLOIDES, P., MALACHTOS, STYLIANIDES, JJ.)

MEROPI MICHAEL LOIZOU,

*Appellant - Defendant,*

v.

SEWAGE BOARD OF NICOSIA,

*Respondents - Plaintiffs.*

*(Civil Appeal No. 6608).*

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*Constitutional Law — Taxation — Constitution Art. 24 — The Sewage and Drainage Law 1/71 as amended by Law 15/78 — The rate under section 30(1)(e) is a tax — The amount, time, place of payment are made known annually — The requirement of certainty, which does not emanate from paragraph 4, but from paragraph 2 of Art. 24, is satisfied.* 5

*Constitutional Law — Taxation — Constitution, Art. 24 — Additional charge imposed by reason of the non payment in time of the tax — The Sewage and Drainage Law 1/71 as amended by Law 15/78, section 30(3) — It does not offend the provisions of Art. 24.4 nor is it a punishment in the sense of Art. 12.3.* 10

*Constitutional Law — Punishment — Constitution, Art. 12.3 — Additional charge imposed by reason of non payment of tax — The Sewage and Drainage Law 1/71, as amended by Law 15/78, section 30(3) — It does not impose a punishment in the sense of Art. 12.3.* 15

The plaintiffs-respondents are the Sewage Board of Nicosia, a Corporation of Public Law established under the Sewage and Drainage Law, 1971 (Law No. 1/71).

The plaintiffs in virtue of their powers under section 30(1)(b) of the Law and the Nicosia Sewage Regulations 1973, (regulations 32, 33, and 34) imposed three mils sewage rates on every pound of assessed value registered or recorded in the books of the D.L.O. for the years 1977, 1978, 1979 and 1980 on the immovables situated within the area of the Board which could be served by the Sewage System of the Board. 25

By virtue of Section 30(3), as amended by the Sewage and Drainage (Amendment) Law, 1978 (Law No. 15/78), every person who does not pay the rate due within the prescribed period of payment is bound to pay additional charge equal to 20% of the unpaid rate or fee.

As the appellant refused or failed to pay the aforesaid rate, the Board brought an action against her and obtained judgment for £85.200 mils sewage rates and £17.400 additional charge. Hence this appeal. The appellant raised the issue of constitutionality of sections 30(1)(b) and 30(3).

Held, *dismissing the appeal*: (1) The burden of proof is cast on the party who challenges the constitutionality of the Law.

(2) Appellant's complaint is that the sewage rates are uncertain and destructive, as there is no limitation of the period this taxation would continue to be imposed and the tax payer is not in a position to know for how many years he will be burdened with these rates

(3) The rates in this case are plainly a tax. They are a compulsory exaction of money by a public authority for public purposes, enforceable by Law and is not a payment for services rendered. The amount, time and place of payment, are made known annually by the publication of the decision of the Board in the Official Gazette of the Republic. The tax is certain for every year.

The principle of certainty in the tax is in contradistinction to arbitrary and uncertain tax. What is required to be certain is the time and mode of payment and the amount payable. This principle does not emanate from paragraph 4 of Article 24 of the Constitution, but from the requirement of certainty of the Law under the authority of which tax is imposed. (See paragraph 2 of Article 24 of the Constitution).

The contested legislation does not go against the above requirements of certainty.

It is certain that an owner or occupier of immovable property within the prescribed areas of the Sewage Board is liable to pay this tax - the sewage rates - annually. Uncertainty in the period of years for which this annual tax is payable does not make a Law repugnant to or inconsistent with the provisions of the Constitution.

(4) The payment of the additional charge is dependent on the objective criterion of non payment and not on any subjective criteria or the non payment for no reasonable cause. This does not offend the provisions of Article 24.4 of the Constitution, nor is it a punishment in the sense of Article 12.3 of the Constitution. It is in a

sense only a sanction prescribed by Law in order to prompt the tax payer to pay in time, a matter conducive to proper administration, taking cognizance of all burdens cast on public revenue by non punctual payment.

(5) In any event and whatever its nature is, the additional charge in question is not of such magnitude as to be considered of destructive or prohibitive nature. 5

*Appeal dismissed with costs.*

*Cases referred to:*

- The Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640; 10
- Georghallides v. The Village Commission of Ay. Phyla and Another*, 4 R.S.C.C. 94;
- Constantinides v. The Electricity Authority of Cyprus* (1982) 3 C.L.R. 798; 15
- Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509;
- Lami Groves Ltd. v. The Republic* (1986) 3 C.L.R. 2378;
- Kantara Shipping Limited v. Republic* (1971) 3 C.L.R. 176;
- Istambouli Bros. v. Director Department of Customs and Excise* (1986) 1 C.L.R. 465. 20

**Appeal.**

Appeal by defendant against the judgment of the District Court of Nicosia (N. Nicolaou, D.J.) dated the 1st July, 1983 (Action No. 3500/81) whereby she was adjudged to pay £85.200 sewage rate and £17.400 additional charge. 25

L. Clerides, for the appellant.

K. Michaelides, for the respondents.

*Cur. adv. vult.*

TRIANAFYLLIDES P.: The Judgment of the Court will be delivered by Mr. Justice Stylianides. 30

STYLIANIDES J.: The plaintiffs - respondents are the Sewage Board of Nicosia, a Corporation of Public Law established under the Sewage and Drainage Law, 1971 (Law No. 1/71).

The defendant was at all material times the owner of building sites situated within the area of the Sewage Board, which could be served by the Sewage System of Nicosia. The said plot is registered in the name of the defendant by virtue of Registration  
5 No. C128 and it is shown on D.L.O. maps as Plot 123 of Sheet/ Plan XXI/54.6.II, Block C. Its assessed value in the D.L.O. books of Nicosia was £7,100.-.

The plaintiffs in virtue of their powers under section 30(1)(b) of the Law and the Nicosia Sewage Regulations 1973, (Regulations  
10 32, 33 and 34) imposed three mils sewage rates in every pound of assessed value registered or recorded in the books of the D.L.O. for the years 1977, 1978, 1979 and 1980 on the immovables situated within the area of the Board which could be served by the Sewage System of the Board. The imposition of these rates for  
15 each year, the time and place of payment were published in the Official Gazette of the Republic, under Notification 333 for 1977, Notification 1/78 for 1978, Notification 1/79 for 1979, Notification 305/79 for the year 1980 respectively - (see Exhibits 1, 2, 3 and 4). Thus the sewage rates for the years 1977-1980, both  
20 inclusive, for building site Plot 123 totalled £85.200 mils. Besides the said official notifications, the time and place of payment were broadcasted on the radio and the T.V. and the rate payers were called to pay same not later than the times appointed in the said notifications. The appellant failed and/or refused to pay any  
25 amount.

By virtue of Section 30(3), as amended by the Sewage and Drainage (Amendment) Law, 1978 (Law No. 15/78), every person who does not pay the rate due within the prescribed period of payment is bound to pay additional charge equal to 20% of the  
30 unpaid rate or fee. Both the rate and the additional charge are paid, under the Law, into the Fund of the Board for the purposes of the Board as set out in the Law.

The Board instituted action against the appellant to recover these amounts.

35 The trial Court issued Judgment against the defendant adjudging her to pay £85.200 mils sewage rates and £17.400 additional charge.

Hence this appeal.

Two grounds of the appeal were pursued:

40 1. That Section 30(1)(b) is unconstitutional, as it imposes taxation, the nature of which is destructive, because such taxation

is uncertain and, therefore, contrary to Article 24.4 of the Constitution; and

2. That Section 30(3), whereby the additional charge is imposed in the case of non payment, is unconstitutional on the ground that it is destructive, because the additional charge is payable irrespective of whether the non payment was due to a reasonable cause, and because of its magnitude. 5

Paragraph 4 of Article 24 of the Constitution reads as follows:-

«No tax, duty or rate of any kind whatsoever other than customs duties shall be of a destructive or prohibitive nature.» 10

It is well settled that no act of legislation will be declared void except in a very clear case, or unless the act is unconstitutional beyond all reasonable doubt. This rule is expressed in another way that a Law is presumed to be constitutional until proved otherwise beyond all reasonable doubt. The burden of proof is cast on the party who challenges the constitutionality of the Law - (*The Board for Registration of Architects and Civil Engineers v. Christodoulos Kyriakides* (1966) 3 C.L.R. 640). 15

The material part of section 30(1) of the Sewage and Drainage Law, 1971, reads:- 20

«30-1 Τηρουμένων των διατάξεων του παρόντος Νόμου, το Συμβούλιον κέκτηται εξουσίαν οπως, εντός των ορίων της περιοχής του, επιβάλλη και εισπράττη διά τοιαύτην χρονικήν περίοδον και κατά τοιούτον τρόπον, ως ηθελεν εκάστοτε καθορισθή - 25

(α) .....

(β) εν τέλος επί των ιδιοκτητών ή κατόχων ακινήτου ιδιοκτησίας, οίτινες εξυπηρετούνται ή μέλλουν να εξυπηρετηθώσιν....»

«30(1) Subject to the provisions of this Law, the Board has power, within the area, to impose and collect for such period of time and in such a manner, as may be fixed for the time being - 30

(a) .....

(b) A rate on the owners or occupiers of immovable properties, which are or may be served.....». 35

Sub-section 2 restricts the height of the rates. They should be determined in such a way so that the annual income therefrom and revenue from other sources to be sufficient only to meet the expenditures for the carrying out of the duties and obligations of the Board, including the payment off of interest and capital of any loan contracted or bonds issued for works necessary and for a reserved fund for extensions, renovations, depreciations and other objects of similar nature.

The rates are determined annually by the Board. They can not exceed a certain amount in the pound of the assessed value and the time and place of payment have to be notified by publication in the Official Gazette.

The complaint of Mr. Clerides against this statutory provision is that the sewage rates are uncertain and destructive, as there is no limitation of the period this taxation would continue to be imposed and the tax payer is not in a position to know for how many years he will be burdened with these rates.

The rates in this case are plainly a tax. They are a compulsory exaction of money by a public authority for public purposes, enforceable by Law and is not a payment for services rendered. (See *Haris E. Georghallides v. The Village Commission of Ay. Phyla & Another*, 4 R.S.C.C. 94, at p. 97; *Aleccos Constantinides v. The Electricity Authority of Cyprus* (1982) 3 C.L.R. 798; *Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509; *Lami Groves Ltd. v. The Republic* (1986) 3 C.L.R. 2378.)

The Sewage and Drainage Law, 1971, was enacted for the establishment of Boards, the function of which is the construction of Sewage and Drainage Systems for the benefit, primarily, of the owners of immovable properties within the areas of the Board. The function and duties of such Boards, as set out in the Law, are to render essential services for the health and amenities of life in those areas. The owners or occupiers of immovable property, who are served, or can be served by such Sewage or Drainage Systems, or are benefited, or shall, or may be benefited, are the tax payers under this Law.

A fee is provided in section 30(1)(c) which, however, relates to the use of the Sewage System on the basis of the water consumption by the owner or occupier of immovable property.

The amount, time and place of payment are made known annually by the publication of the decision of the Board in the Official Gazette of the Republic. The tax is certain for every year.

The principle of certainty in the tax is in contradistinction to arbitrary and uncertain tax. What is required to be certain is the time and mode of payment and the amount payable. This principle does not emanate from paragraph 4 of Article 24 of the Constitution, but from the requirement of certainty of the Law under the authority of which tax is imposed. (See paragraph 2 of Article 24 of the Constitution).

The contested legislation does not go against the above requirements of certainty.

It is certain that an owner or occupier of immovable property within the prescribed areas of the Sewage Board is liable to pay this tax - the sewage rates - annually. Uncertainty in the period of years for which this annual tax is payable is beyond the dictates and scope of the constitutional provision. The alleged uncertainty is not a ground of unconstitutionality and does not make a Law repugnant to or inconsistent with the provisions of the Constitution.

In our taxation system there are many Laws which empower the imposition of annual tax with no limitation as to the period that the tax is to be imposed.

With regard to the second ground the argument was that this additional charge of 20% is imposed irrespective of failure to pay for a reasonable cause and that in view of its magnitude is of destructive nature.

The additional charge is fixed by the challenged legislation at 20% in case of non payment at the prescribed times.

The additional amount is paid into the Fund of the Board to be used for the purposes of the Board. The payment of this additional charge is dependent on the objective criterion of non payment and not on any subjective criteria or the non payment for no reasonable cause. The tax payer is charged with this additional burden for the sole reason of non payment at the prescribed time. This does not offend the provisions of Article 24.4 of the Constitution, nor is it a punishment in the sense of Article 12.3 of the Constitution. It is in a sense only a sanction prescribed by Law in order to prompt the tax payer to pay in time, a matter conducive to proper administration, taking cognizance of all burdens cast on public revenue by non punctual payment.

In *Haris E. Georghallides v. The Village Commission of Ay. Phyla & Another*, 4 R.S.C.C. 94, at p. 97 it was said that the requirement of sub - section 4 of section 9 of Cap. 287, that the additional amount collected under sub - section 3 of the said  
5 section shall form part of the public revenue does not render such additional amount a fine as it is clearly intended to meet the burden cast upon the administration by the arrears and their collection.

In *Kantara Shipping Limited v. Republic (Director of Inland Revenue)* (1971) 3 C.L.R. 176, it was held that the surcharge provided for in section 8(1) of the Tax Collection Law, 1962, is not in reality a «tax» but exactly what is described as being in the said  
10 provision, in other words a «surcharge», the purpose of which is not to impose an increase or disproportionate tax in any particular case but to compensate the public funds for the extra expense  
15 involved in the existence and functioning of a state machinery for the collection of overdue taxes of various kinds.

The power of the Taxing Authority to impose additional charge in default of payment of a tax is well recognized. The tax payer normally is burdened not only with interests on his unpaid tax, but,  
20 also, additional charge. These additional charges, including interest, are the result of the failure of the citizen to perform his duties towards the State or a Corporation of Public Law - (see Kyriakopoulos, Greek Administrative Law, 4th Edition, Part C. p. 353).

25 A similar approach is to be found in Stassinopoulos Discourses on Public Finance Law, 3rd edition, 1966, p. 292.

Along these lines one may see the approach of this Court in *Istambouli Bros., v. Director Department of Customs & Excise* (1986) 1 C.L.R. 465, in which the forfeiture of goods brought into  
30 the Republic in violation of the relevant Customs legislation was considered as an administrative measure and not as punishment that infringes Article 12.3 of the Constitution.

In any event and whatever its nature is, the additional charge in question is not in our view of such a magnitude as to be considered  
35 of destructive or prohibitive nature.

For the foregoing reasons this appeal is dismissed with costs.

*Appeal dismissed with costs.*