

1988 February 11

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CHINAS,

Applicant.

v.

1. THE MINISTER OF FINANCE, AND
2. THE DIRECTOR OF CUSTOMS AUTHORITY,

Respondents.

(Case No. 522/85).

Contempt of Court—Annulling decision—Whether copy of relevant order served on the respondent ought to have been endorsed as provided by Order 42A of the Civil Procedure Rules—Question determined in the negative—Kyriakou v. Republic (1986) 3 C.L.R. 300 not followed.

- 5 *Recourse for annulment—Procedure—The Supreme Constitutional Court Rules 1962, Rule 18, making applicable the Civil Procedure Rules “in so far as circumstances permit”—Court must apply the Civil Procedure Rules in so far as they are compatible with the inquisitorial character of the revisional jurisdiction proceedings.*
- 10 *Contempt of Court—Annulling decision—Constitution, Art. 146.5 and Art. 150.*

Annulling decision—Duty of administration—Constitution, Art. 146.5—Nature and ambit of.

- 15 The applicant challenged the decision of the Director of Customs refusing his application for the importation of a duty free car. On the 11th April, 1986, the Supreme Court annulled, in the exercise of its original jurisdiction, the decision of the Director.

On 25th February, 1987, the applicant Andreas Chinas applied for the

imprisonment and/or punishment of the Director of Customs for contempt of Court. It is the case for the applicant that the Director deliberately disobeyed the order of the Court and for that he ought to be punished for contempt.

The application was opposed on the ground, inter alia, that the copy of the order of the Court served upon the Director was not endorsed as provided by Order 42A, r.1, of the Civil Procedure Rules, made applicable by r.18 of the Supreme Constitutional Court Rules, 1962. 5

The matter of the applicability of Order 42A was set down for determination preliminarily to the hearing of the substance of the application. 10

Held, (1) The Rules of the Supreme Constitutional Court 1962 provide in r. 18 that the Civil Procedure Rules shall apply *mutatis mutandis* in all proceedings before a Court of revisional jurisdiction, so far as circumstances permit. The expression "so far as circumstances permit", reflects the inherent differences between the exercise of revisional jurisdiction and the exercise of the civil jurisdiction. In applying the Civil Procedure Rules, the Court must apply them only in so far as they are compatible with the inquisitorial nature of proceedings under Art.146. 15

(2) The first question is whether the Constitution itself makes provision for the enforceability of judgments and orders made under Art. 146 and if so, whether any further room is left for regulation of the subject. 20

Article 146.5 of the Constitution does not empower the Court to award any additional remedies to those specified in para. 4 of the same Article of the Constitution; it is a substantive enactment defining the compass and range of application of judgments given under Art. 146, and serves to identify the duties of all those to whom it is directly addressed. It is interwoven with the provisions of Art. 150 of the Constitution empowering the Court to punish for contempt of itself. The inference is that everyone coming under a duty to give effect to the judgment is liable for contempt, if he fails to carry out the obligations imposed by para.5 of Art. 146. 25 30

There is no power to add any qualification or superimpose any additional condition to the activation of the duty under para.5. Hence Ord. 42A is inapplicable being incompatible with the nature of the jurisdiction under Art. 146 and the specific obligations imposed by para.5 of that Article of the Constitution. 35

(3) A decision voiding action of the administration casts upon the

administration in virtue of Art. 146.5 a duty to obliterate the decision and take all necessary steps to restore the legality to the extent it had been upset by the decision that was annulled. Jurisdiction is conferred to impose penal sanctions for any deliberate flouting of the order of the Court by Art. 150 of the Constitution.

Cases referred to:

Republic v. Nissiotou (1985) 3 C.L.R. 1335;

Kyriacou and Others v. Republic (1986) 3 C.L.R. 300.

Application.

Application for the imprisonment and/or punishment of the Director of Customs for contempt of Court.

P. Angelides, for the applicants.

G. Frangou (Mrs), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. Andreas Chinas challenged the decision of the Director of Customs refusing his application for the importation of a duty free car. On the 11th April, 1986, the Supreme Court annulled, in the exercise of its original jurisdiction, the decision of the Director. Annulment was ordered pursuant to the provisions of para. 4(b) of Art. 146 of the Constitution.

On 25th February, 1987, Andreas Chinas applied for the imprisonment and/or punishment of the Director of Customs for contempt of court. It is the case for the applicant that the Director deliberately disobeyed the order of the Court and for that he ought to be punished for contempt. The application was opposed on the ground, *inter alia*, that the copy of the order of the Court served upon the Director was not endorsed as provided by Ord. 42A, r.1, of the Civil Procedure Rules, made applicable by R. 18 of the

Supreme Constitutional Court Rules 1962. The Registrar of the Supreme Court, we were told, refused an application for the endorsement of the judgment of the Court, seemingly taking the view that Ord. 42A has no application to judgments or orders made under Art. 146 of the Constitution. Because of the importance of the issue and the repercussions of the decision of the Court on the administration of justice, the matter was set down for determination preliminarily to the hearing of the substance of the application. Also if it is found that Ord. 42A is applicable, this may seal the outcome of the proceeding.

5

10

Rival submissions were advanced with regard to the applicability of Ord. 42A. For the applicant it was submitted that the Registrar was right in his refusal to endorse the decision of the Supreme Court arguing that it has no application to declaratory judgments of the Supreme Court in the exercise of its original jurisdiction. An obligation to act in obedience to an order made under Art. 146.4(b) is cast by the ensuing provision para.5 of Art. 146 of the Constitution. That provides: "Any decision given under para. 4 of this article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned".

15

20

For her part counsel for the respondents submitted that Ord. 42A is applicable and should unfailingly be complied with as a condition precedent to punishment for contempt; because of the penal consequences and implications of contempt.

25

The Rules of the Supreme Constitutional Court 1962* provide in R.18 that the Civil Procedure Rules shall apply *mutatis mutandis* in all proceedings before a Court of revisional jurisdiction, so far as circumstances permit.

The rules were made in exercise of the rule making power vested in the Supreme Court by Art. 135 of the Constitution to regulate proceedings before it. The rider added to R.18 respecting the applicability of the Civil Procedure Rules respecting the

30

* Made applicable by s. 17 of Law 33/64.

applicability of the Civil Procedure Rules reflects the inherent differences between the exercise of revisional jurisdiction and the exercise of the civil jurisdiction of the High Court and Courts subordinate thereto. Proceedings under Art. 146 are of an inquisitorial character, whereas civil proceedings are modelled on the adversarial system of justice evolved under English Law. Consequently, in applying the Civil Procedure Rules, the Court must have regard to this reality and apply them only in so far as they are compatible with the inquisitorial nature of proceedings under Art. 146. Furthermore, their application is dependent on the circumstances of a particular case and the issues that call for resolution.

The first question we must determine is whether the Constitution itself makes provision for the applicability of judgments and orders made under Art. 146 and if so, whether any further room is left for regulation of the subject. In *Republic v. Nissiotou**, it was decided that para. 5 of Art. 146 is not an adjectival enactment and does not empower the Court to award any additional remedies to those specified in para. 4 of the same article of the Constitution. It is a substantive enactment defining the compass and range of application of judgments given under Art. 146. Furthermore, it serves to identify the duties of all those to whom it is directly addressed. It is interwoven with the provisions of Art. 150 of the Constitution empowering the Court to punish for contempt of itself. The inference is that everyone coming under a duty to give effect to the judgment is liable for contempt if he fails to carry out the obligations imposed by para. 5 of Art. 146. It is worthy of notice that para. 5 of Art. 146 does not stipulate any other condition for the activation of the duty to heed and give effect to a judgment given under para. 4 of Art. 146. That being the case, there was no power to add any qualification or superimpose any additional condition to the activation of the duty under para. 5. Anyone coming under a duty to give effect to the judgment must carry out that duty as a matter of constitutional obligation. Hence Ord. 42A is

(1985) 3 C.L.R. 1335.

inapplicable being incompatible with the nature of the jurisdiction under Art. 146 and the specific obligation imposed by para. 5 of that article of the Constitution.

5 In the context of the examination of the issue here under
consideration, we may with profit make brief reference to the
nature and implications of a decision given under para. 4(b) of
Art. 146 voiding administrative action. A declaration of voidance
under para. 4(b) entails the obliteration of the decision in law. A
10 decision voiding action of the Administration operates erga omnes
and is addressed to everyone responsible for the restoration of
legality upset by the impugned administrative action.* The
implications stemming from a declaration of annulment are
discussed by Mr. Kourousopoulos, President of the Greek
15 Council of State, in an illuminating article on the nature and effect
of the jurisdiction of the Greek Council of State**. A decision
annulling administrative action erases the action in its entirety and
for all purposes. It binds everyone to heed the judicial declaration
in the interest of the efficacy of judicial review and the sustenance
20 of the rule of law. Thereupon the Administration comes under
duty to obliterate the decision and take all necessary steps to
restore the legality to the extent it had been upset by the decision
that was annulled. Default on the part of anyone under duty to
eradicate a decision and restore legality is penally and
25 disciplinarily punished in Greece by virtue of the express
provisions of the organic law providing for the establishment of
the Greek Council of State***. A similar duty is cast on the
Administration in Cyprus to restore legality by virtue of the
provisions of para.5 of Art. 146, and jurisdiction is conferred to
30 impose penal sanctions for any deliberate flouting of the order of
the Court by Art. 150 of the Constitution. This, I believe, has been
recognized to be the case by the decision in *Nissiotou* (supra).

* *Conclusions of the Greek Council of State 1929-1959 p. 271.*

** *See lecture to the Nicosia Bar Association 1984, p. 11.*

*** *See s. 54 — 3713/1928.*

I have purposely avoided discussion of the decision in *Kyriacou & Others v. Republic* (1986) 3 C.L.R. 300 for the obvious reason that it has a bearing on the substantive issues raised by these proceedings; namely, amenity to found contempt proceedings for breach of a decision of the Supreme Court voiding administrative action. Moreover, the decision in the above case is subject to appeal R. A. 563 in which judgment will be given on 6th April, 1988. Nonetheless, to the extent that it suggests that Ord. 42, r.1, applies, I differ, with very great respect, from the view taken by my learned brother Judge A. Loizou.

In conclusion I hold that Ord. 42A, r.1, is inapplicable to contempt proceedings founded on Art. 146.4 (b) and para. 5 of the same article and Art. 150 of the Constitution.

A date will be given for consideration of the merits of the application.

Order accordingly.