

JERSEY / JUDGMENT

JPMO v States and JPEMB

[2002] JRC 144 (05 August 2002)

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judgment

the DEPUTY bailiff: 1. On 18th December 2001, by an Act entitled the Jersey Potato Export Marketing Scheme 2001 (Approval) (Jersey) Act 2001 ("the Act"), the States adopted a scheme ("the Scheme") pursuant to Article 2(6) of the Agricultural Marketing (Jersey) Law 1953. The Scheme established the Jersey Potato Export Marketing Board ("the Board"). The key provisions of the Scheme were that:- (i) A producer of potatoes in Jersey is prohibited from exporting such potatoes unless he is registered under the Scheme and has entered into a marketing agreement with the Board; (ii) A marketing organisation is prohibited from receiving potatoes for export if it is not a party to a current management agreement with the Board. 2. On 26th February 2002 the Applicant ("JPMO") was given leave to apply for judicial review of the Act and the Scheme. JPMO contends that the Scheme is in contravention of applicable European Community Law and/or that it infringes the European Convention on Human Rights. 3. On 30th April 2002 the Court decided to refer certain questions of EC Law to the European Court of Justice pursuant to Article 234 of the EC Treaty. The parties have been working on the preparation of a suitable reference summarising the relevant facts and matters and the appropriate questions to the European Court of Justice. It is proposed that I should settle the final form of the reference within the next few days. However, before that can be done, it is necessary for the Court to resolve a dispute which has arisen between the parties as to the interpretation of the Scheme. THE ISSUE AND THE PARTIES' CONTENTIONS 4. The Scheme only applies to the "export" of potatoes. Paragraph 2 of the Scheme defines "export" as follows:- "the sending for sale of potatoes outside the Island whether directly or via some other place to a destination in the United Kingdom, the Bailiwick of Guernsey or the Isle of Man for consumption there." 5. "Potatoes" are defined in paragraph 2 as meaning:- "harvested potatoes grown in Jersey, not being maincrop potatoes and includes any product produced or derived from potatoes, whether consumable or not." 6. The dispute between the parties arises in this way. JPMO contends that the words "via some other place" in the definition of "export" can only mean in context "not directly" i.e. indirectly. The words must refer to the situation where there is an intermediary place where potatoes (as defined by the Act and so covering at all stages of the period of passage from Jersey to the United Kingdom all possible elements of the definition of "potatoes") arrive, and where potatoes, (as defined by the Act) exit for ultimate onward transmission to the United Kingdom for consumption there. The definition

of "potatoes" includes raw and processed potatoes and products processed therefrom such as chips, crisps or starch. Mr Le Cocq therefore submits that if, for example, a raw potato is sent to e.g. France for the purpose of undergoing any commercial or industrial treatment or process (for example, washing, packaging, bagging, canning or other treatment) for onward transmission to the United Kingdom for ultimate consumption there, such movement of goods falls within the meaning of "export" within the Scheme because the potatoes will have arrived in the U. K. "via" some other place. He argues that the Scheme would not have defined "potatoes" as it did or "export" as it did if a sending of raw potatoes from Jersey to France in order to undergo any treatment with a purpose of thereafter having those "potatoes" conveyed to the United Kingdom was not to be included within the scope of operation of the Scheme. 7. It is agreed by all parties that if JPMO is correct, (so that potatoes sent for processing in France with a view to their being sent on for ultimate consumption within the U. K. fall within the Scheme) the Scheme will affect actually or potentially the trade in goods between Member States and therefore be in breach of applicable EC law. They are further agreed that the Scheme would then have to be disapplied to that extent. 8. The States, on the other hand, submit that the words "via some other place" qualify the word "sending". The Scheme does not use the word "indirectly" and therefore no inference can be drawn from its alleged broadening effect as JPMO contends. The wording used is "directly or via some other place" and this describes the route by which potatoes are sent. The Solicitor General referred to the meaning of the word "via" from the Latin of "by the road" or "by the route". According to Collins dictionary the word "via" means "by way of" or "through". The Shorter Oxford Dictionary gives the meaning of the word "via" as "by way of" or "by the route which passes through or over (a specified place)." She argues that it is not consonant with the proper meaning of the words to speak of potatoes being "sent for sale via France to the United Kingdom" when they are sent to France in order to undergo processing there on the premise that the processed product, in which they are to be an ingredient, is later to be exported from France to the United Kingdom. 9. The States submit further that, if, hypothetically, paragraph 2 of the Scheme were capable of bearing the meaning for which JPMO contends, it would need to be read in the opposite sense so as to secure its conformity with Community law. As authority for this proposition they refer to Case C - 106/89, *Marleasing*, [1990] ECR I - 4135, paragraph 8. 10. Both parties made detailed written submissions and invited me to reach my decision without oral argument on the grounds that they had nothing to add to their written cases. I have acceded to that invitation. DECISION 11. The dispute is ultimately a short point of construction. In my judgment, the interpretation contended for by the States is correct. Omitting surplus wording for these purposes the definition of export is confined to "..... the sending of potatoes whether directly or via some other place to the United Kingdom for consumption there." I consider that in this context the natural meaning of the phrase "via some other place" is to describe the route by which potatoes are sent out of the Island to the United Kingdom. It qualifies the words "sending ... to the United Kingdom". That accords with the normal meaning of the word "via" as submitted by the States. Even allowing for the extended definition of "potatoes", I do not consider that such wording is the natural way of describing a situation where potatoes are sent to France for processing and then onward despatch in their processed form to the United Kingdom. Such a situation is not naturally described as sending the potatoes to the United Kingdom via France;

one would more naturally speak of sending the potatoes to France for subsequent despatch to the United Kingdom. 12. Accordingly I hold that potatoes which are sent to a Member State other than the United Kingdom (e.g. France) for processing and subsequent onward transmission to the United Kingdom for sale and consumption there are not "exported" within the terms of paragraph 2 of the Scheme. Such potatoes therefore fall outside the Scheme. The words "directly or via some other place" serve merely to ensure that there is no distinction drawn for the purposes of the Scheme between potatoes transported on ferries travelling directly to the United Kingdom and those transported on ferries travelling to the United Kingdom via ports in France or elsewhere. 13. Had I not concluded that the meaning contended for by the States is to be preferred to that contended for by JPMO, as a simple matter of construction, I would have had recourse to the principle laid down in *Marleasing* (referred to in paragraph 9). However I consider that the States slightly overstated that principle in their submissions. The principle can only apply where there is ambiguity in the provision to be construed. 14. The European Court of Justice has established the principle in a number of cases. In addition to *Marleasing*, I have also been referred to the following cases: Case C-468/93 *Gemeente Emmen*

[1996] ECR I-1721, at 1738-1739 per Advocate General Fennelly; Case C-168/95 *Criminal Proceedings against Arcaro*

[1996] ECR I-4705 at 4715 per Advocate General Elmer and paragraphs 40 - 43 of the judgment of the court; Case C-62/00 *Marks and Spencer Plc -v- Commissioners of Customs and Excise* (11th July 2002, paragraph 24). 15. The most comprehensive review of the principle is to be found in the opinion of Advocate General Elmer in the case of *Criminal Proceedings against Arcaro* as follows:- "38. The Court has declared that:- 'when it interprets and applies national law, every national court must presume that the State had the intention of fulfilling entirely the obligations arising from the directive concerned. As the Court held In applying national law, whether the provisions in question were adopted before or after the directive, the national court called upon to interpret it is required to do so, so far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter and thereby comply with the third paragraph of Article 189 of the Treaty'.

39. In that case-law the court has made it clear that the aforesaid rule of interpretation is to be applied 'so far as possible' in order to interpret provisions of national law in accordance with Community law. That rule of interpretation cannot however be applied so as to undertake an actual redrafting of the provisions of national law. That would be tantamount to introducing the direct effect of provisions of a directive imposing obligations on individuals by the back door and contrary to Article 189 of the Treaty. 40. In other words if the wording of the national rule allows of several interpretations, the national court must apply, from amongst the various interpretations, the one which will bring the provision of national law into harmony with Community law. If on the other hand the wording of the law leaves no room for interpretation because for example the law clearly says A, the rule of interpretation cannot be used contrary to the wording of the law so as to say B, even though

B (but not A) is in accordance with Community law." 16. Although all the cases referred to were in the context of directives, it is clear that the same principle must apply in respect of other provisions of Community law. It is agreed that, if JPMO's interpretation is correct, the Scheme will be inconsistent with Community law to the extent that it covers the sending of potatoes to a Member State such as France for processing and onward dispatch to the United Kingdom for consumption there. 17. The Scheme could properly be said to be ambiguous in the sense that the interpretation contended for by the States and JPMO respectively is each a possible interpretation. In these circumstances, the principle described above would lead me to choose that interpretation which would cause the Scheme to be in harmony with EC law. I appreciate that JPMO submits that, even on the States' interpretation of the Scheme, it is still incompatible with EC law but that is disputed by the States and the Board and will fall for decision by the European Court of Justice in due course. Given that it is beyond doubt that the interpretation contended for by JPMO is inconsistent with EC law to the extent that I have described, I rule that, had it been necessary, I would have applied the principle set out in cases such as Marleasing and this would have led me to uphold the States' interpretation rather than that of JPMO. 18. Accordingly, on both these grounds, I find for the States.

Authorities Case C - 106/89 Marleasing

[1990] ECR 1-4135. Case C - 468/93 Gemeente Emmen

[1996] ECR 1-1721. Case C - 168/95 Criminal Proceedings against Arcaro

[1996] ECR 1-4705. Case C - 62/00 Marks and Spencer PLC -v- Commissioner of Customs and Excise (11 th July, 2002). Page Last Updated: 22 Sep 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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