Case 95/86

Ferriere San Carlo SpA
v
Commission of the European Communities

Order of the Third Chamber of the Court, 17 March 1987 1413

Summary of the Order

Action for failure to act — Action concerning the refusal of the Commission to revise the rate of interest charged to an undertaking which had been granted time to pay a fine — No requirement to grant time for payment — Action based on the second paragraph of Article 35 of the ECSC Treaty — No allegation of misuse of powers — Inadmissible

(ECSC Treaty, Art. 35, second paragraph)

ORDER OF THE THIRD CHAMBER OF THE COURT
17 March 1987 *

In Case 95/86

Ferriere San Carlo SpA, whose registered office is at 1 Via Nazionale, Caino (Italy), in the person of its chairman, Dante Busseni, represented by Fabrizio Massoni, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of André Elvinger, 15 Côte d'Eich,

applicant,

* Language of the Case: French.

V

Commission of the European Communities, represented by its Legal Adviser, Michel van Ackere, acting as Agent, assisted by Piero A. M. Ferrari, of the Rome Bar, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

concerning, at this stage of the proceedings, the admissibility of the action,

THE COURT (Third Chamber)

composed of: Y. Galmot, President of the Chamber, U. Everling and J. C. Moitinho de Almeida, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

after hearing the views of the Advocate General,

makes the following

Order

1 By a decision of 13 August 1982 the Commission imposed on San Carlo a fine of 165 570 ECU for exceeding its production quotas. The company brought an action for the annulment of that decision which was dismissed by the Court in its judgment of 30 November 1983 (Case 235/82 *Ferriere San Carlo* v *Commission* [1983] ECR 3949). In a further judgment of 11 June 1986 (Case 235/82 Rev. *Ferriere San Carlo* v *Commission* [1986] ECR 1799), the Court also dismissed an 'application for revision' brought by the company against that judgment.

2 At the request of the applicant, the Commission, by a decision of 10 February 1984, gave it time for payment of the fine but required interest at the rate of 20%. Those conditions of payment were accepted by the company on 20 February 1984.

3 By a letter of 7 January 1985, however, San Carlo informed the Commission that it considered the rate of 20% to be inequitable and asked the Commission to confirm the rates of interest currently applied by it in respect of fines and to state its point of view concerning San Carlo's case. The Commission replied that it was indeed a rate of 20% that was to be applied.

4 By a registered letter with form of acknowledgment of receipt dated 24 January 1986, which was received by the Commission on 27 January 1986, San Carlo requested the Commission 'to revise the rate of interest in accordance with the corresponding rate on the European market for the ECU in 1984/85 and to refund the excess charged'. The Commission did not reply to that request, and the company therefore brought an action for failure to act, on the basis of Article 35 of the ECSC Treaty.

5 The Commission has raised five objections of inadmissibility in respect of that action. It is not necessary to rule on those objections; since the Commission was not required by any provision of the Treaty or of secondary Community law to grant time for the payment of a fine, San Carlo's action could be based only on the second paragraph of Article 35 of the ECSC Treaty. Under that provision, the undertakings concerned may bring proceedings before the Court against the implied decision of refusal which is to be inferred from the Commission's silence on their request only where its failure to reply 'constitutes a misuse of powers'. The company made no submission of misuse of powers in its application, but only in its reply. It follows that pursuant to Article 42 (2) of the Rules of Procedure that submission cannot be taken into account.

6 It is true that San Carlo argues that the submissions put forward in its initial application, that is to say a breach of the principle of equality and infringement of the provisions of the Treaty concerning the free movement of capital, constitute an allegation of misuse of powers.

7 That argument cannot be upheld. The submissions made could constitute an allegation of misuse of powers only if the applicant were to have submitted that the Commission had refused to act in this case for a purpose other than that for which

its powers in the matter were granted to it. Such an allegation is not made in the application, nor indeed in the reply.

8 It follows that the conditions for the admissibility of the action laid down in the second paragraph of Article 35 of the ECSC Treaty are not met and that San Carlo's action is therefore inadmissible.

Costs

9 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been requested in the successful party's pleadings. Since the applicant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

(1) Dismisses the action as inadmissible;

(2) Orders the applicant to pay the costs.

Luxembourg, 17 March 1987.

P. Heim
Registrar

Y. Galmot
President of the Third Chamber