

1988 June 6.

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANTELIS A. HADJIPANTELI,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 441/86).

5 *Customs and Excise Duties—Motor vehicles, duty free importation of by incapacitated persons—Report of Medical Board simply stating applicants disability, but not expressing an opinion as to whether applicant could drive an ordinary car—Respondent rejected application on the specific ground that".... on the basis of the medical report the bodily condition of the applicant does not justify the use of a car specially adapted for disabled persons"—Misinterpretation of the report leading to misconception of fact.*

10 The facts of this case sufficiently appear in the Judgment of the Court. The fate of the sub judice act was sealed, as the specific reason given in support thereof, was the result of a misinterpretation of the relevant medical report. Such misinterpretation led to a misconception of fact.

*Sub judice decision annulled.
Costs against respondent.*

Recourse.

15 Recourse against the refusal of the respondent to exempt applicant from the payment of import duty in relation to a motor car for disabled persons.

N. Clerides, for the applicant.

D. Papadopoulou (Mrs), for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant by
the present recourse challenges the refusal of the respondent to
exempt him from the payment of import duty in relation to a mo-
torcar for disabled persons. 5

The applicant is a citizen of the Republic. He is 36 years old
and he is a radiotechnician. On account of a traffic accident in
1980 he suffered a fracture of the middle third of the shaft of the
right femur which was fixed by pinning resulting to a diminution
by 20% of the right knee joint with partial weakness. 10

Relying on the provisions of paragraph O.9 of class O.1. of
the Fourth Schedule to the Customs and Excise Duties Law, 1978
(as amended) he applied on the 15th November, 1983, to the Di-
rector-General of the Ministry of Finance seeking permission to
buy a car required by him for his work duty-free on the ground
that he is a disabled person. 15

The applicant's application was referred to a Government
Medical Board set up for the purpose with the request to have the
applicant examined and submit a report as to his condition. The
applicant was examined by the Medical Board which was com-
posed of the Senior Specialist Orthopaedic Surgeon, a Senior
Special Surgeon and the District Medical Officer of Nicosia , as
members. A report signed by all three of them was submitted to
the respondent on the 23rd March, 1984. The opinion of the
Medical Board regarding the condition of the applicant is de-
scribed as follows: 20 25

"On account of a traffic accident in 1980 he suffered a frac-
ture of the middle third of the shaft of the right femur. 30

The fracture was fixed by pinning.

He presents restriction in the bending of the right knee joint by about 20% with partial weakness. The left lower limb and both the upper limbs are normal."

5 The applicant was referred by the respondent to the Senior
Technical Examiner in the office of Examiners for drivers for ex-
amination in the light of the report of the Medical Board. The
Senior Technical Examiner after examining the applicant submit-
10 ted his report on 30th April, 1984. According to such report the
applicant who was a holder of a driver's licence which expired on
28th July, 1982 could drive a motorcar without any restriction.

In consequence of the above reports respondent rejected appli-
cant's application and by letter dated 15th May, 1984 communi-
cated his decision to the applicant.

15 Applicant reverted again to his claim for a duty free car on the
ground of his invalidity by submitting a new application dated 20th
December, 1985 and by letter dated 30th December, 1985 he re-
quested to be examined by a Medical Board on the ground that the
condition of his leg had deteriorated and it was difficult for him to
20 drive an ordinary motorcar.

The respondent by letter dated 10th January, 1986 informed
the applicant that his application was referred to the Customs De-
partment and as soon as the inquiry was completed he would be
informed accordingly.

25 On 30th January, 1986, the applicant was examined by the
Medical Board set up for the purpose which in fact consisted of
the same medical officers who found a deterioration of his condi-
tion compared to its previous report and which describes the condi-
tion of the applicant as follows:

30 "Τώρα παρουσιάζει ουλή στην έξω επιφάνεια του δε-
ξιού μηρού λόγω της επεμβάσεως.

Παρουσιάζει μερική ατροφία και αδυναμία στο δεξιό τετρακέφαλο σε σύγκριση με τον αριστερό περιορισμό της κάμψης της κατά γόνυ αρθρώσεως κατά 25% σε σύγκριση με το αριστερό.

Ο ασθενής υποκειμενικά αιτιάζεται για άλγη κατά το κάτω τριτημόριο του δεξιού μηριαίου και το γόνατο υποχωρεί. 5

Το αριστερό κάτω άκρο και αμφότερα τα άνω άκρα κατά φύση."

The English translation reads: 10

(Now he presents a scar on the outer surface of the right thigh due to the operation.

He presents partial atrophy and weakness in the right quadriceps in comparison with the left, reduction on the bending of the knee joint by 25% in comparison with the left. 15

The patient subjectively complains of aches in the lower third of the right thigh and the knee gives way.

The left lower limb and both upper limbs are normal).

By letter dated 8th April, 1986, as it appears in the relevant file of the administration which was produced as exhibit 1, the applicant was called for an interview by the Director of the Department of Customs for the 26th April, 1986. According to the notes in the said file, a Senior Collector of Customs has made the following entry addressed to the Director of Customs after the interview had taken place: 20
25

"From the medical certificate and a comparison of the new medical certificate with the old one as well as the statements of the applicant at the interview with me it appears that the applicant does not present a permanent incapacity preventing him

from driving an ordinary car.

5 The light deterioration of the condition of his right knee joint by 5% is not enough to justify the grant to him of a duty-free car in accordance with the provisions of paragraph 0.1/0.9 and I recommend the dismissal of the application."

This recommendation met with the approval of the Director of Customs as a result of which a letter was sent to applicant dated 15th May, 1986, the contents of which read as follows:

10 "I refer to your application dated 20.12.85 for exemption from import duty for a car for disabled persons and I wish to inform you that on the basis of the report of the appropriate Medical Board your bodily condition does not justify the use of a car specially adapted for disabled persons."

15 On the 10th June, 1986, applicant submitted a new application for re-examination of this case to which the respondent by letter dated 20th June, 1986, signed on behalf of the Director-General of the Ministry of Finance, informed the applicant that his application for re-examination was rejected as no new facts appeared justifying re-examination or reconsideration of the decision communicated to him by letter dated 15th May, 1986.

As a result the applicant filed the present recourse challenging the decision of the respondent dated 15th May, 1986 rejecting his application.

25 The legal grounds on which the recourse is based are that the Director of Customs operated under a misconception of fact in reaching his decision that the bodily incapacity of the applicant as found by the Medical Board does not justify the use of a car specially adapted for disabled persons and that the decision was taken in abuse of power and it is contrary to the law.

30 Counsel for applicant by his written address expounded on the ground of misconception of fact and law by contending that al-

though the Medical Board diagnosed incapacity of the applicant such fact was not sufficiently taken into consideration and no due inquiry was carried out for ascertaining whether the incapacity of the applicant was such as to render the use of a specially adapted car reasonably necessary. Nowhere in the medical report, counsel submitted, any mention is made as to the ability of the applicant to drive a car and the conclusion reached by the respondent on the basis of such report is arbitrary and not supported by the contents of the report. 5

Counsel for the respondent contended that the sub judice decision was properly taken by the respondent who took into consideration : 10

(a) The Medical Report,

(b) the refusal of the applicant to be examined by the Senior Technical Examiner of Drivers, and 15

(c) the interview at the Customs Department.

In the present case I find it unnecessary to go in length into the various arguments advanced by both counsel but I shall confine myself to the contents of the letter of the Director of Customs dated 15th May, 1986 which contains the sub judice decision and the reasons given therein for his refusal. 20

The only reason given in the said letter for refusing the application is that " on the basis of the report of the appropriate Medical Board the bodily condition of the applicant does not justify the use of a car specially adapted for disabled persons". I shall, therefore, examine the soundness of such reasoning. 25

The Medical Board in its report did not express any opinion as to the ability or not of the applicant to drive an ordinary car. The only thing that it was mentioned was that the condition of the applicant as from the date of his previous examination had deteriorated and, in fact, the incapacity of his right knee joint had gone 30

up to 25% instead of 20% and also that atrophy and weakness of the leg had developed. On the basis of such certificate the Director of Customs could not have reasonably reached such conclusion since there was no suggestion by the Medical Board or any opinion expressed to the effect as to whether the applicant was capable or not to drive an ordinary car. I, therefore, find that the Director of Customs misinterpreted the medical report which obviously led him to a misconception of a material fact. If the Director wished a specific opinion of the Medical Board as to whether in view of his incapacity he could drive an ordinary car or not he should have asked for such opinion from the Medical Board or make any other inquiry, the result of which he could submit to the Medical Board for any observations.

In the result this recourse succeeds and the sub judice decision is hereby annulled with costs in favour of the applicant.

*Sub judice decision annulled
with costs in favour of applicant.*