

1988 December 29

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IACOVOS PHOTIADES FOODSTUFF SUPPLIERS LTD.,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMERCE AND INDUSTRY,

Respondents.

(Case No. 341/87).

Import licence—The Imports (Regulation) Law (Law 49/62), section 3—Discretion thereunder has to be exercised properly—In this case applicant failed to establish that it was not exercised in a proper manner.

5 *Constitutional Law—Equality—Constitution, Art. 28—Refusal to grant licence for import of vegetable oil in tins of 20 litres each, on ground that such licences are only granted for tins up to 5 litres each—In the circumstances the distinction between tins of up to 5 litres and tins of more than 5 litres was reasonable—Otherwise local industry would have been affected by the influx of such large size tins, which could have been sold at more competitive prices.*
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The facts of this case appear sufficiently in the Judgment of the Court.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

15 *Micrommatis v. The Republic*, 2 R.S.C.C. 125.

Recourse.

Recourse against the refusal of the respondents to issue to applicant an import licence of 1200 twenty litre tins of vegetable oil (palm oil).

G. Triantafyllides, for the applicants.

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M. Tsiappa (Mrs.), for the respondents.

Cur. adv. vult.

A. LOIZOU P. read the following judgment. By the present recourse the applicant Company seeks a declaration of the Court that the decision of the respondent dated the 16th April 1987, to reject its application dated the 7th April 1987, for an import licence of 1200 twenty litre tins of vegetable oil, (palm oil), is null and void.

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The applicant Company which is a Company of a limited liability is engaged, inter alia, in the import of foodstuffs. Its application for a licence to import the aforesaid goods was not approved as such licences were only granted in respect of one, two three, four and five litre tins, for the purpose of the protection of the local industry.

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It was contended on behalf of the applicant Company that the sub judice decision is contrary to Article 28 of the Constitution in that it results in unequal treatment between imports in tins upto five litres and twenty litre tins which contain one and the same product. The sub judice decision was thus reached in abuse and/or excess of power as such differentiation is arbitrary and contrary to law.

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Section 3 of the Imports (Regulation) Law 1962, (Law No. 49 of 1962) as amended by Section 2 of Law No. 7 of 1967, gives the respondent a discretion to regulate and restrict the importation of goods. It provides as follows:

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5 "Whenever it becomes necessary, in the public interest, to restrict and regulate the importation of goods for the encouragement of local production and manufacture, the improvement of the balance of trade, compliance with international obligations or the development of the economy of the Republic, the Minister may, by Order published in the official Gazette of the Republic, restrict and regulate the importation of the goods specified in the Order."

10 Such discretion given by the Law to grant or not import licences has to be exercised properly and in this instance I find that it was so, the applicant Company having failed to satisfy the Court that such decision was not aimed at the above purpose, but was arbitrarily reached by the respondent. Indeed I find from the files of the respondent that the restriction of imports upto tins of five
15 litres was thought necessary for the protection of the local industry which would otherwise be adversely affected as a result of the influx of such large sized tins of the commodity into the market, which would have been sold at a lower and more competitive price than the smaller ones.

20 I further find that there is no violation of Article 28 of the Constitution because such Article only guards against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. (See *Micrommatis v. The Republic*, 2 R.S.C.C. 125, at 131). In fact it
25 would have amounted to discrimination as against the other importers had the respondent not followed a uniform practice and granted licences to some of them for the import of vegetable oils in tins of 20 litres and to others in tins of not more than five litres.

30 In conclusion, I find that the sub judice decision was reasonably open to the respondent Minister who exercised his discretion properly and in accordance with the Law.

For all the above reasons this recourse fails and is hereby dismissed, but in the circumstances there will be no order as to costs.

Recourse dismissed.

No order as to costs.

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