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June 10

[TRIANTAFYLIDIS, J.]

GEORGE
KONIOTIS
v.
REPUBLIC
(REGISTRAR OF
MOTOR VEHICLES)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGE KONIOTIS

Applicant

and

THE REPUBLIC OF CYPRUS, THROUGH
THE REGISTRAR OF MOTOR VEHICLES,

Respondent.

(Case No. 85/66).

Motor Vehicles—Licensing fees—Exemption from such fees in respect of vehicles “specially constructed or adapted for use” by persons physically incapacitated—Second proviso in Part I of the Schedule to the Motor Vehicles and Road Traffic Law, Cap. 332 as introduced by the Motor Vehicles and Road Traffic (Amendment) Law, 1962 (Law No. 2 of 1962)—“Specially constructed”, “adapted” in the said proviso—Meaning and legal effect.

Road Traffic—Motor Vehicles—Licensing fees—Exemption—See above.

Licensing fees—Exemption—See above.

Words and Phrases—Motor vehicles “specially constructed or adapted for use”—Meaning and effect.

Constitutional Law—Equal treatment—Article 28 of the Constitution—Activities of the administration contrary to law do not create precedents on which to found a claim by a person to be treated likewise—Therefore the refusal of the Respondent in the present instance to grant to Applicant an exemption from payment of licensing fees in respect of his car—Whereas in the past such exemptions had been granted in similar cases—Does not amount to a discrimination.

Equality—Principle of—See above.

Discrimination—See above.

By this recourse under Article 146 of the Constitution the Applicant complains against the decision of the Respondent

Registrar of Motor Vehicles—communicated to the former by letter dated the 31st January, 1966—rejecting an application of the Applicant for exemption from the licensing fees in respect of his car BZ60, for the year 1966, prescribed in Part I of the Schedule to the Motor Vehicles and Road Traffic Law, Cap. 332, as introduced by the Motor Vehicles and Road Traffic (Amendment) Law, 1962 (Law No. 2 of 1962). The Applicant based his claim for exemption on the second proviso to Part I of the said Schedule which reads as follows:

“Provided further that any motor vehicle *specialy constructed or adapted for use* («είδικώς κατασκευασμένα ή διασκευασμένα δια χρήσιν») and, to the satisfaction of the Registrar of Motor Vehicles, *actually used* by any person who is physically incapacitated shall be exempted from the payment of the fees set out in Part I of the Schedule”.

It is common ground that the Applicant is the owner of a car under Registration BZ60, and that he is actually using such car; furthermore that he is a person physically incapacitated owing to osteoarthritis as a result of which he was operated upon and has now to avoid putting weight on his left knee. It is common ground, also, that the Applicant's car in question is a fully automatic one, in the sense that gears are being changed automatically without being necessary to operate a clutch pedal for the purpose

On the 28th December, 1965, Applicant applied to the Respondent Registrar for exemption from payment of the aforesaid licensing fees, under Part I to the Schedule to Cap. 332 (*supra*) for the year 1966 in respect of his car BZ60 in question. He stated in his application that due to incapacity he was obliged to use a car to get around and that it had to be an automatic car, so that he would be able to drive it by using only one leg, as he had been medically advised not to use his left leg. He also referred to three other cases, allegedly similar to his own, in which an exemption, such as the one applied for by him, had been granted. By a letter dated the 31st January, 1966, the Respondent informed the Applicant that he could not accede to his request because the exemption applied for was not within the ambit of the relevant provision (*supra*).

It is against this refusal that the Applicant made his recourse in the present case

The Court in dismissing the recourse:—

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Held, (1). What falls to be decided in the present case is whether or not the relevant legislation (*supra*) was correctly applied to the facts of this Case, namely, whether or not the car in question of the Applicant was rightly regarded as not “specially constructed or adapted for use” by a person who “is physically incapacitated”.

(2) It is convenient to start with the meaning of the term “adapted” («διδασκευασμένα») in the relevant second proviso (*supra*). I am of the opinion that the term “adapted” must, in the particular context, be taken to mean “altered and made fit for”—and not “being fit and apt for”—because it is used disjunctively as an alternative to the term “constructed” («κατεσκευασμένα») (See: *Maddox v. Storer* [1962] 1 All E.R. 831, at pp. 832–833, per Lord Parker L.J.; and *Burns v. Currell* [1963] 2 W.L.R. 1106, at p. 1112, per Lord Parker, C.J.).

(3) (a) There remains next to consider whether the Applicant’s car in question which is not “adapted”, in the sense that it has not been altered to be made fit for a physically incapacitated person, is a vehicle, “specially constructed («ειδικῶς κατεσκευασμένον») for use by such a person.

(b) I am of the opinion that the only proper meaning which one can give to the expression “specially constructed”, in the context of the provision concerned, is “specially constructed for use by a physically incapacitated person” and not merely so constructed that, though intended for general use—in the present instance as an improved type of vehicle—it can be used too by persons suffering from a certain type of physical incapacity, such as Applicant’s.

(4) It follows that the Applicant’s car BZ60 cannot be held to be either “specially constructed or adapted for use by a physically incapacitated person” in the sense of the second proviso to Part I of the Schedule to Cap. 332 (*supra*) and that, therefore, the Respondent correctly refused the application of the Applicant for exemption.

(5) It would seem that in past years exemptions were granted to other physically incapacitated persons using the same type of car as that of the Applicant. But such exemptions being contrary to law, cannot be regarded as precedents entitling the Applicant to equal treatment in the sense of Article 28 of the Constitution; thus no question of discrimination against the Applicant could arise in the present case.

Application dismissed.

No order as to costs.

Cases referred to:

Maddox v. Storer [1962] 1 All E.R. 831, at pp. 832-833, per Lord Parker, L.J. *applied*;

Burns v. Currell [1963] 2 W.L.R. 1106 at p. 1112, per Lord Parker, C.J. *applied*.

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Recourse.

Recourse against a decision of the Respondent whereby Applicant's application for exemption from the payment, in respect of his car for 1966, of licensing fees prescribed in Part I of the Schedule to the Motor Vehicles and Road Traffic Law, Cap. 332 was turned down.

G. *Cacoyiannis*, for the Applicant.

K. *Talarides*, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by.

TRIANAFYLLIDES, J.: By this recourse the Applicant complains against a decision of the Respondent—communicated to him in a letter dated 31st January, 1966 (see *exhibit 1*)—by means of which there was turned down an application of the Applicant for exemption from the payment, in respect of his car BZ60, for 1966, of the licensing fees prescribed in Part I of the Schedule to the Motor Vehicles and Road Traffic Law, Cap. 332; such Schedule having been introduced by means of the Motor Vehicles and Road Traffic (Amendment) Law 1962 (Law 2/62).

The Applicant based his claim for exemption on the second proviso in Part I of the said Schedule which reads as follows:

«Νοεῖται περαιτέρω ὅτι μηχανοκίνητα ὀχήματα εἰδικῶς κατασκευασμένα ἢ δισκευασμένα διὰ χρῆσιν καὶ πραγματικῶς χρησιμοποιούμενα ὑπὸ σωματικῶς ἀναπήρων προσώπων, τῇ ἱκανοποιήσει τοῦ Πρωτοκολλητοῦ Μηχανοκινήτων Ὁχημάτων, ἔξαιροῦνται τῆς πληρωμῆς τῶν φόρων ἢ τελῶν τῶν ἀναγραφομένων εἰς τὸ Μέρος I τοῦ Δελτίου».

(“Provided further that any motor vehicle specially constructed or adapted for use and, to the satisfaction of the Registrar of Motor Vehicles, actually used by any person who is physically incapacitated shall be exempted from the payment of the fees

set out in Part I of the Schedule”—see the translation of Law 2/62 prepared by the Ministry of Justice).

It is common ground that the Applicant is the owner of an Austin Cambridge A60 car, under registration BZ60, and that he is actually using such car; furthermore that he is a person physically incapacitated, in view of the fact that his right leg is permanently ankylosed at the knee and, thus, greater weight was falling on his left knee, which developed osteoarthritis, as a result of which the Applicant was operated and has now to avoid putting weight on his left knee.

The events leading up to this recourse are, in short, as follows:

In March 1963, the Applicant imported the car in question, which is a fully automatic one, in the sense that gears are being changed automatically, without being necessary to operate a clutch pedal for the purpose.

After the importation of this car the Ministry of Finance refunded, *ex gratia*, to the Applicant one half of the import duty which had been collected on its importation.

On the 3rd October, 1963, the Applicant applied to the Minister of Interior for exemption from payment of the fees provided for in Part I of the Schedule to Cap. 332 (see *exhibit 2*).

On the 4th October, 1963, the Police informed the Ministry of Interior that the Applicant's car was "an ordinary motor vehicle fitted with an automatic clutch" and that it was "not specially adapted for use by invalids" but that it could also "be driven by invalids" (see *exhibit 8*).

On the 29th November, 1963, the Applicant was informed by the Ministry of Finance—to which the Applicant's application had been transmitted—that his application could not be granted (see *exhibit 3*).

On the 15th March, 1965, the Applicant applied to the Minister of Interior for a reconsideration of his case (see *exhibit 4*); his application was recommended by the District Officer Limassol.

On the 23rd August, 1965, the Respondent informed the Applicant that his application for exemption could not be granted (see *exhibit 5*) as his car was not specially constructed or adapted for use by physically incapacitated persons.

On the 28th December, 1965, Applicant applied to the Respondent for exemption from payment of the licensing fees, under Part I of the Schedule to Cap. 332, in respect of the year 1966 (see *exhibit 6*). He stated in his application that due to incapacity he was obliged to use a car in order to get around and that it had to be an automatic car, so that he would be able to drive it by using only one leg, as he had been medically advised not to use his left leg. He also referred to three other cases, allegedly similar to his own, in which an exemption, such as applied for by him, had been granted.

On the 29th December, 1965, the Respondent forwarded to the Director-General of the Ministry of Finance, the application of the Applicant. In a covering letter (see *exhibit 7*) the Respondent recommended the grant of the exemption applied for, stating that the case of the Applicant did not differ from the other three cases to which Applicant had referred in his application; to the said covering letter of the Respondent there were attached reports indicating the nature of the vehicles involved in the three other cases.

On the 18th January, 1966, the Ministry of Finance informed the Respondent that it could not approve the application of the Applicant for exemption (see *exhibit 9*).

The matter was, also, referred to the Attorney-General of the Republic and a Counsel of the Republic advised, on the 22nd January, 1966, that the exemption could not be granted because cars with an automatic clutch could not be considered as specially constructed or adapted for physically incapacitated persons (see *exhibits 11(a) and 11(b)*).

On the 27th January, 1966, a letter was written by the Respondent to the Applicant informing him of the rejection of his application (see *exhibit 10*). Applicant alleges that he never received such a letter and it may well be that it was never actually sent to him because a few days later, on the 31st January, 1966, another letter to the same effect was addressed to the Applicant (see *exhibit 1*). By such letter the Applicant was informed that a circulation permit, free of payment of the necessary fees, could not be issued to him in respect of his car BZ60 because such a course was not within the ambit of the relevant provision.

What falls to be decided in the present Case is whether or not the relevant legislation was correctly applied to the facts of

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this Case, namely, whether or not the car in question of the Applicant was rightly regarded as not specially constructed or adapted for use by a person who is physically incapacitated.

It is convenient to start with the meaning of the term “adapted” (δισκευασμένα) in the relevant proviso.

I am of the opinion that the term “adapted” must, in the particular context, be taken to mean “altered and made fit for”—and not “being fit and apt for”—because it is used disjunctively as an alternative to the term “constructed” (κατεσκευασμένα)

In the English case of *Maddox v. Storer* ([1962] 1 All E.R., p. 831) it was held that the term “adapted”, when being used on its own, and not as an alternative to “constructed”—in the context of paragraph 1(1) of Schedule 1 to the Road Traffic Act, 1960—should be given an adjectival meaning, namely, “fit and apt for the purpose”. But Lord Parker, C.J. had this to say (at p. 832–833) in relation to the meaning of the term “adapted” when used disjunctively as an alternative to “constructed”:

“Where ‘adapted’ is used disjunctively, as an alternative to ‘constructed’, it can only have one meaning, namely, if the thing was not originally constructed for the particular purpose then it has been altered and made fit for that purpose. In other words, the word ‘adapted’ can only mean a physical alteration making the thing fit. The word could not possibly be given the meaning that the thing is merely apt, fit, and suitable, because, if so, the word would add nothing or detract nothing from the original word ‘constructed’. When, however, one finds the word ‘adapted’ used on its own, then one must look to the context. One can find illustration after illustration, on looking at the Road Traffic Act, 1960, itself, where ‘adapted’ when used disjunctively with ‘constructed’ must mean a physical alteration, and, as it seems to me, other cases where the word ‘adapted’ alone is used and where it must be given the adjectival meaning of being fit and apt for the purpose”.

Also in *Burns v. Currell* ([1963] 2 W.L.R. p. 1106) Lord Parker, C.J. has stated (at p. 1112) the following:

“So far as the other word, ‘adapted’, is concerned, as was pointed out in *Maddox v. Storer*, the word ‘adapted’ is used throughout the Road Traffic Act, 1960, in a number

of different contexts. Sometimes it is used as an alternative to 'constructed'—'constructed or adapted', and it seems clear, and indeed it has been so held for a very long time that 'adapted' there means altered".

There remains next to consider whether the car of the Applicant which is admittedly not "adapted", in the sense that it has not been altered to be made fit for a physically incapacitated person, is a vehicle "specially constructed" (ειδικῶς κατασκευασμένον) for use by such a person.

Counsel for the Applicant has submitted that "specially constructed" does not mean specially constructed for a particular person, but for a particular purpose. Assuming that this is so, I still cannot but find that the only proper meaning which one can give to the expression "specially constructed", in the context of the provision concerned, is "specially constructed for use by a physically incapacitated person" and not merely so constructed that, though intended for general use—in the present instance as an improved type of vehicle—it can be used *too* by persons suffering from a certain type of physical incapacity, such as Applicant's.

I am, therefore, of the opinion that the Respondent correctly refused the application of the Applicant for exemption because his car BZ60 could not be held to be either specially constructed or adapted for use by a physically incapacitated person in the sense of the second proviso in Part I of the Schedule to Cap. 332.

It does appear that the Applicant is right in alleging that in past years exemptions were granted to other physically incapacitated persons using the same type of car as that of the Applicant. But such exemptions being contrary to law, cannot be regarded as precedents entitling the Applicant to equal treatment; thus no question of discrimination against the Applicant could arise in the present Case.

Whether or not the aforesaid cases of a wrong application of the proviso in question would warrant an *ex gratia* refund to the Applicant of the relevant fees, paid by him in respect of the period in which they occurred, is a moral, and not a legal, issue which I cannot decide in this Case and I leave to the appropriate authorities to consider, if need be.

In the result this recourse is dismissed; but there shall be no order as to costs.

Application dismissed.

No order as to costs.