[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHILIPPOS DEMETRIOU & SONS LTD.,
Applicant,

and

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

(Case No. 321/66).

Trade—Import licence—Refusing import licence in respect of skimmed spray milk powder—The Defence (Importation of Goods) Regulations 1956 *and Notice thereunder published in the Official Gazette of the* 10*th February,* 1966 *under Not.* 70, *Supplement* 3*—Refusal complained of the product of a defective exercise of the relevant discretionary powers, as it has not been preceded by the correct ascertainment of all material facts, after, the appropriate enquiry for the purpose—Such refusal is, therefore, contrary to law, in abuse and excess of powers—It is also vitiated by a material misconception of law regarding the power to fix minimum retail price at which Applicant's locally packed imported milk powder would be sold in Cyprus—Regulation* 3(1)*(a) of the aforesaid Regulations* 1956.

Import licence—See above.

Licence—Import Licence—See above.

Administrative Law—Settled principles—An administrative act or decision has to be preceded by the correct ascertainment of all material facts, after the reasonably necessary inquiry for the purpose—Discretionary powers—Defective use—Decision contrary to law, in abuse and excess of powers—Misconception of law vitiates the administrative act or decision concerned—See, also, above under Trade.

Discretionary powers—Defective exercise of—Abuse and excess of powers—See above under Trade; Administrative Law.

Abuse and excess of powers—See above.

Excess and abuse of powers—See above.

Principles—General principles of Administrative Law—See above under Administrative Law.

Administrative act or decision contrary to law, in abuse and in excess of powers—See above under Trade; Administrative Law.

By this recourse the Applicant company challenges the validity of a decision of the Respondent Minister of Commerce and Industry whereby he refused to grant them an import licence in respect of two tons of skimmed spray milk powder; such powder was to be imported in bulk, and then it would be packed locally by the Applicant in appropriate packets for sale in Cyprus. It appears that the reason of the refusal was to promote thereby the consumption of locally produced fresh cowmilk, in accordance with the settled policy of the Ministry which led to the publication on the 10th February, 1966, in the Official Gazette (Not. 70 3rd Supplement) of a Notice of the Minister under the Defence (Importation of Goods) Regulations 1956, taking out of the then in force Open General Import Licence imports of milk powder; as from that date such imports can only be made under an import licence for each import.

As explained in evidence by the Senior Officer, Imports and Internal Trade, Ministry of Commerce and Industry local cowmilk was being sold at the material time at 50–60 mils per oke, whereas the liquid milk to be made from milk powder imported in bulk, and packed locally, by the Applicant, would cost only 22 mils per oke; therefore, it was in the public interest to refuse the import licence applied for by the Applicant company. On the other hand, it was contended by the Applicant that such milk would not cost less, or be sold at a lower price than the locally produced fresh cowmilk; it would only compete with the already-packed imported brands of milk powder. It is common ground that import licences have continued to be issued to importers in relation to imports of already-packed milk powder.

Annulling the refusal complained of, the Court:–

Held, (1)*(a)*. It is quite clear that the purpose of the Respondent Minister refusing the import licence sought by the Applicant was the protection, in the public interest,

of the local milk industry, and *not* the protection of any vested interests of importers of already-packed brands of milk powder.

(b) It follows that it was very material to establish with sufficient accuracy the actual cost of the milk to be made out of the milk powder which the Applicant sought to import and pack locally. Only then it would be known with certainty whether such milk would, in any case, compete, effectively, as regards price, with the locally produced fresh cowmilk, or whether it would only compete, as regards price, with the already-packed imported brand of milk powder.

(2) I have no difficulty in finding that a reasonably necessary inquiry, in this respect, has not been conducted by the Respondent, before the *sub judice* decision was reached. Neither was the Applicant requested to submit details of his estimated costs for the packing locally and the marketing of the milk powder sought to be imported in bulk; nor did the Respondent seek to ascertain, by any other means, the *total cost* of such milk to the eventual consumer.

(3)*(a)* It is a firmly established principle of Administrative Law that an administrative act or decision has to be preceded by the correct ascertainment of all material facts, after the reasonably inquiry for the purpose. (See, *inter alia, Iordanou* and *The Republic* (1967) 3 C.L.R. 245 at p. 257.

(b) It follows that, in the circumstances of the present case, the subject decision is the product of a defective exercise of the relevant descretionary powers, in that it has been reached in contravention of the said principle; it is, thus contrary to law, and in abuse and excess of powers of the Respondent, and it has therefore, to be, and is hereby annulled.

(c) It is now up to the Respondent to reconsider the relevant application of the Applicant company and to decide on it in the light of this Judgment and of all relevant, legal and factual, considerations.

(4) There is a further ground on which I should annul the decision complained of, and this is that Respondent has acted in this matter under a misconception of law in that the Ministry were acting under the belief that they would not be entitled, in granting the application applied for by

the Applicants, to fix the minimum retail price at which the locally packed milk powder would be sold in Cyprus. Yet, it is clear that the Respondent Minister possesses such powers by virtue of regulation 3(1)*(a)* of the aforesaid defence (Importation of Goods) Regulations 1956.

(5) It follows, therefore, that the Respondent in refusing the import licence in question, was acting under a most material misconception of law; the misconception being most material because what led to the refusal of the import licence was the fear of undercutting in price the locally produced fresh cowmilk. Thus, the refusal of the Respondent has to be annulled so that the matter may be examined in its proper legal context.

Sub judice decision annulled. Order for costs in favour of Applicant company.

Cases referred to:

Iordanou and *The Republic* (1967) 3 C.L.R. 245 at p. 257.

Recourse.

Recourse against a decision of the Respondent refusing Applicant an import licence in respect of two tons of skimmed spray milk powder.

A. Myrianthis, for the Applicant.

L. Loucaides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:–

TRIANTAFYLLIDES, J.: By this recourse the Applicant company complains against a decision of the Respondent to refuse it an import licence in respect of two tons of skimmed spray milk powder; such powder was to be imported in bulk, and then it would be packed locally by the Applicant, in packets of 1/2 lb. and 1 lb., for sale in Cyprus.

The relevant application of the Applicant is dated the 1st October, 1965 and it is *exhibit* 1A in these proceedings.

The decision to refuse such application was taken on the 13th October, 1966, as it appears from an entry on *exhibit* 1A, which reads as follows:

> "This import as you know is regulated for reasons of local production. As control over the proposed imports is not possible your request cannot be entertained".

This entry is signed by Mr. Andreas Thrassyvoulides, the Senior Officer, Imports and Internal Trade, in the Respondent Ministry.

On the 22nd November, 1966 the managing director of the Applicant, Mr. Vassilios Demetriou, addressed a letter to the Respondent (see *exhibit* 2) in relation to the refusal of the import licence in question; he stated, *inter alia,* therein that, as already-packed milk powder was allowed to be imported, the decision to refuse the import licence applied for by the Applicant was discriminatory.

A reply was given by the Respondent on the 5th December, 1966 (see *exhibit* 3) in which it was stated that the import licence had been refused in view of the fact that it was intended to promote the consumption of locally produced fresh milk.

Milk powder could be imported freely, in any form, in bulk or otherwise, until the 10th February, 1966, when the Respondent published in the official Gazette (Not. 70, 3rd Supplement) a Notice under the Defence (Importation of Goods) Regulations, 1956, taking out of the then in force Open General Import Licence imports of milk powder; then onwards such imports can only be made on the strength of an import licence for each import.

As stated in evidence by Mr. Thrassyvoulides, this step was taken after repeated representations to Government by cattle-breaders; a communique explaining the policy behind such step, namely, the protection of the local milk industry, was published in the press on the 11th February, 1966 (see *exhibit* 6).

It is common ground that import licences have continued to be issued to importers in relation to imports of already-packed milk powder, of the same nature as the one which the Applicant had sought to be allowed to import in bulk, and pack locally.

Mr. Thrassyvoulides has stated in evidence that the locally produced milk, which was to be protected by means of the Notice of the 10th February, 1966, was the fresh cowmilk; he explained that the importation of milk powder in bulk was disallowed, because, if such powder were to be packed, and then sold, locally, this would result in making available for local consumption milk costing much less than the locally produced fresh cowmilk.

Mr. Thrassyvoulides has explained that, at the material time, cowmilk was being sold at 50–60 mils per oke, whereas the liquid milk to be made from milk powder imported in bulk, and packed locally, by the Applicant, would cost only 22 mils per oke; therefore, it was in the public interest to refuse the import licence applied for by the Applicant. He admitted that he had based the said cost of 22 mils per oke on the actual cost of the milk powder to be imported by the Applicant; but he added that the difference in price, from locally produced fresh cowmilk, would be, so great as to cover all possible overheads of the Applicant, and that it was taken for granted that they would not amount to more than another 22 mils per oke of milk to be made out of the milk powder sought to be imported by the Applicant.

On the other hand, it has been contended by the Applicant company that such milk would not cost less, or be sold at a lower price, than the locally produced fresh cowmilk; it would only compete with the already-packed imported brands of milk powder.

It is quite clear that the purpose of Respondent in refusing the import licence applied for by the Applicant was the protection, in the public interest, of the local milk industry, and not the protection of any vested interests of importers of already-packed brands of milk powder.

It follows, that it was very material to establish, with sufficient accuracy, the actual cost of the milk to be made out of the milk powder which the Applicant sought to import in bulk and pack locally. Only then it would be known with certainty whether such milk would, in any case, compete, effectively, as regards price, with the locally produced fresh cowmilk, or whether it would only compete, as regards price, with the already-packed imported brands of milk powder.

I have no difficulty in finding that a reasonably necessary inquiry has not been conducted, in this respect, by the Respondent, before the *sub judice* decision was reached. The evidence before me, especially that of Mr. Thrassyvoulides, bears out this view, fully. It is quite clear that neither was the Applicant requested by the Respondent to submit details of his estimated costs for the packing locally and the marketing of the milk powder sought to be imported in bulk, nor did the Respondent seek to ascertain, by any other means, the *total* cost of such milk to the eventual consumer.

It is a firmly established principle of Administrative Law that an administrative act or decision has to be preceded by the correct ascertainment of all material facts, after the reasonably necessary inquiry for the purpose. (See, *inter alia, Iordanou* and *The Republic,* (1967) 3 C.L.R. 245 at p. 257). It follows that, in the circumstances of the present case, the *sub judice* decision is the product of a defective exercise of the relevant discretionary powers, in that it has been reached in contravention of the said principle; it is, thus, contrary to law, and in abuse and excess of powers of the Respondent, and it, therefore, has to be annulled.

It is now up to the Respondent to reconsider the relevant application of the Applicant for an import licence and to decide on it in the light of this Judgment and of all material, legal and factual, considerations.

There is a further ground on which I should annul the *sub judice* decision, and this is that the Respondent has acted in this matter under a misconception of law; my reasons for this view are as follows:-

It is common ground that the import licence applied for by the Applicant was refused by virtue of the powers vested in the Respondent under the Defence (Importation of Goods) Regulations 1956, as they were in force at the material time.

Mr. Thrassyvoulides—who has dealt with the matter in issue on behalf of the Respondent—told the Court that the Respondent would not be entitled, in granting the Applicant's application for an import permit, to fix the minimum retail price at which the locally packed milk powder would be sold in Cyprus.

Yet, it is clear that such power was possessed by the Re-

spondent, by virtue of regulation 3(1)(a) of the aforesaid Regulations.

It follows, therefore, that the Respondent, in refusing the import licence in question, was acting under a most material misconception of law; the misconception being most material because what led to the refusal of the import licence was the fear of undercutting in price the locally produced fresh cowmilk.

Of course, even if the Respondent had borne in mind the existence of the power to fix the price of the locally packed —by the Applicant— milk powder, the import licence might still have been refused on proper grounds; but the fact remains that the licence was refused under the misconception that the said power did not exist, and it follows, thus, that the *sub judice* decision has to be annulled so that the matter may be examined in its proper legal context.

In the circumstances, I do not find it necessary to deal with any other of the issues which have been raised in this case.

The *sub judice* decision is, in the result, declared to be null and void and of no effect whatsoever.

Also, there shall be an order for £25 costs against Respondent and in favour of the Applicant, (including the costs adjudged on the 2nd December, 1967), without prejudice to any other costs already specifically ordered to be paid by the Respondent.

Sub judice decision annulled.
Order for costs as aforesaid.