IN THE MATTER OF ARTICLES 28 AND 146
OF THE CONSTITUTIONS

NICOLAS MILIOTIS,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMUNICATIONS AND WORKS,

*Respondent.*

(*Case No.* 81/69).

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*Ports—Refusal by the Port Authorities to grant permit for the establishment of a kiosk for the sale of goods in the port area of Famagusta—Port authorities entitled, after taking into consideration the question of public interest and the needs of the people working or visiting the port area, to refuse such permit—General principles governing places dedicated for public use—*"Πράγματα κοινῆς χρήσεως" *or* "κοινόχρηστα"*—Cf. The Ports Regulation Law, Cap.* 294 *section* 15 *and regulation* 6 *of the Famagusta Harbour, Quay and Pier Regulations* 1927 *to* 1961*—See, also, herebelow.*

*Administrative act or decision—Refusal of permit for establishment of a kiosk in the port area—Allegation of misconception of fact—Applicant's case not put by him before the port authorities in the way he had suggested in the course of the proceedings—Reasonably open to them, from the context of his application to take the view they have taken.*

*Equality—Principle of equality and against discrimination—Article* 28.1 *and* 2 *of the Constitution—Onus on the Applicant to establish such discrimination—Onus not discharged in the present case.*

*Recourse under Article* 146 *of the Constitution—Time within which a recourse thereunder has to be filed—Article* 146.3 *of the Constitution—Provisions in relation to such period of time* (75 *days*) *mandatory and have to be given effect to in the public interest.*

*Places dedicated for public use purposes*—"Πράγματα κοινῆς χρήσεως" *or* "κοινόχρηστα"—*Rights of the public—In cases of increased common use a special permit is required—When such permit may be refused—Lawful restrictions and controls—Relative police powers.*

"Πράγματα κοινῆς χρήσεως" *or* "κοινόχρηστα"—*Rights of the citizen—Powers of the competent authorities—Increased common use—Special permit required—When it can be lawfully refused—See also hereabove under Places dedicated for public use purposes.*

*Words and Phrases*—"Πράγματα κοινῆς χρήσεως"—"Κοινόχρηστα".

In these proceedings under Article 146 of the Constitution the Applicant seeks to challenge the decision of the Director of the Department of Ports dated January 10, 1969, refusing to grant him a permit to establish a Kiosk within the port area of Famagusta for selling goods therein as a hawker.

It was contended by the Applicant that, *inter alia*, the port authorities acted in this case contrary to Article 28 of the Constitution in that they have discriminated against him because they had already issued a similar permit to a certain A.C. of Famagusta. On the other hand it was argued on behalf of the Respondent that the decision complained of was properly taken in order to avoid congestion and interference with passengers and other work within the port area.

Dismissing the recourse the Court:-

*Held,* (1). It is well established that the ports are included among the places dedicated for public use purposes, and are known under the name in Greek "Πράγματα κοινῆς χρήσεως" or simply "Κοινόχρηστα". It is, therefore, well settled that members of the public have, with regard to this kind of property, the right to use it. But, of course, it is to be understood that the Government, in exercising its police powers, may impose restrictions and control regarding the exercise of the right of user by the public of those places, taking into consideration the public interest (see the well-known textbook on Greek Administrative Law by Kyriakopoulos 4th ed. Vol. 'Γ' p. 427 et seq.).

(2) But it may be that the use of a public place by some persons, without in any way exceeding the use for which it was dedicated, exceeds the measure of ordinary and natural

use by the citizens. In such a case, it is an instance of increased common use for personal reasons; the placing of provisional constructions as for example, platforms, stalls, popular market pavilions etc. or tables and coffee shop chairs on pavements and squares. In such and similar instances, increased common use is presumably only subject to a special permit from the competent authority. The authority, however, is not entitled to refuse the permit as a matter of course, so long as no question of public interest is involved e.g. transport, security etc. but it may link the permit with terms aiming at the non-obstruction or non-alteration of common uses of the public thing (see Kyriakopoulos ibid.; see also Fleiner on Administrative Law 1928, 8th ed. at pp. 344 and 348).

(3) In my view therefore the port authorities were entitled, after taking into consideration the needs of the people working or visiting the port area, to refuse to grant to the Applicant a special permit to establish a kiosk for the sale of goods in the port area of Famagusta. Furthermore, it is clear in my mind that as the Applicant was seeking private rights of enjoyment, the port authorities were entitled, after taking into consideration the question of public interest involved here, to refuse to him a space for the establishment of a kiosk in the aforesaid port area.

(4) Regarding the Applicant's complaint of discrimination contrary to Article 28 of the Constitution that the Respondent had already issued a similar permit to the aforesaid A.C., I regret to state that I have found no reference at all in the evidence adduced before me. Having in mind that the onus is on the Applicant to establish that the port authorities had discriminated against him, I reached the conclusion that the Applicant has failed to establish a case of discrimination.

*Recourse dismissed with costs.*

Cases referred to:

*Miliotis* v. *The Republic* (1968) 3 C.L.R. 477 at p. 481;

*Constantinou* v. *The Republic,* reported in this Part at p. 190 *ante.*

**Recourse.**

Recourse against the decision of the Director of the Department of Ports refusing to grant Applicant a permit to

establish a kiosk within the port area of Famagusta for sellin goods therein as a hawker.

*Applicant* in person.

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

*Cur. adv. vult.*

The following judgment was delivered by:–

HADJIANASTASSIOU, J.: In these proceedings, under Article 146 of the Constitution, the Applicant seeks to challenge the decision of the Director of the Department of the ports, dated January 10, 1969, refusing to grant him a permit to establish a kiosk within the port area of Famagusta for selling goods therein as a hawker.

The Applicant is carrying out the trade of a hawker, selling piece goods, clothing, stockings, socks and haberdashery. When the Applicant and other hawkers were prevented from entering into the area of the Port of Famagusta for the purposes of selling their goods, the Applicant brought Recourse No. 188/67 in the Supreme Court, complaining against the decision of the port authorities. The case was heard by a single Judge of this Court, and judgment was delivered on August 17, 1968. I shall refer to this judgment later on.

The Applicant, three days after the delivery of the said judgment, addressed a letter dated August 20, 1968, *exhibit* 4, to the director of the department of the ports, requesting him to give instructions not to be prevented from entering into the port area in order to carry out his trade as a hawker.

In the meantime, on September 3, 1968, Mr. Mavroyiangos, the superintendent and senior pilot of the port, addressed *exhibit* 14 to the customs and police authorities, which is in these terms:–

«Ἔχοντας ὑπ' ὄψιν τὸν περὶ Ρυμθίσεως Λιμένων Νόμον Κεφ. 294, (ἄρθρον 15) καὶ τοὺς Κανονισμοὺς Λιμένος Προκυμαίας καὶ Λιμενοβραχίονος Ἀμμοχώστου 1927–1961 (Κανονισμὸς 6) ὡς καὶ τοὺς σκοποὺς χρήσεως τῶν λιμένων, διὰ ταύτης ἀπὸ σήμερον ἀπαγορεύω τὴν εἴσοδον παντὸς πλανοδιοπώλου, διὰ σκοποὺς πλανοδίου πωλήσεως, ἐντὸς τοῦ λιμένος διὰ τὴν καλὴν λειτουργίαν, τήρησιν τῆς τάξεως καὶ εὐπρέπειαν τοῦ λιμένος καὶ παρεμπόδισιν συνωστισμοῦ ἐν αὐτῷ.

2. Ὅθεν παρακαλεῖσθε ὅπως ἐκδώσητε αὐστηρὰς διαταγὰς εἰς τὰ ὑφ' ὑμῶν ὄργανα ἐπὶ τῆς εἰσόδου τοῦ λιμένος διὰ τὴν πλήρη ἐφαρμογὴν τῆς ἀνωτέρω διαταγῆς.»

As there was no reply, the Applicant wrote again on October 29, 1968, *exhibit* 5, which reads:–

«Ἐπιθυμῶ νὰ ἀναφερθῶ εἰς τὸ θέμα τῆς ἐν τῷ Λιμένι Ἀμμοχώστου πωλήσεως διαφόρων μικροαντικειμένων, καὶ νὰ παρακαλέσω Ὑμᾶς ὅπως λάβητε ὑπ' ὄψει τὴν διὰ τῆς παρούσης ὑποβαλλομένην Ὑμῖν αἴτησίν μου.

Γνωρίζων, Κύριε Διευθυντά, ὅτι ἕτερα πρόσωπα εἰσέρχονται ἐντὸς τοῦ εἰρημένου Λιμένος πρὸς πώλησιν διαφόρων εἰδῶν, ἐξαιτοῦμαι τὴν ὑφ' Ὑμῶν παροχὴν εἰς ἐμὲ σχετικῆς ἀδείας δι' εἴσοδον καὶ πώλησιν ψιλικῶν καὶ ἐνθυμίων ἐν τούτῳ.

Ἔχων ὑπ' ὄψιν τὴν ἐν τῇ ὑπ' ἐμοῦ καταχωρισθείσῃ ἐν τῷ Ἀνωτάτῳ Δικαστηρίῳ προσφυγῇ ἐκδοθεῖσαν ἀπόφασιν, ἀναφέρουσαν περιοριστικῶς τὰ ἐμπορεύσιμα εἴδη ἅτινα δυνάμει τοῦ καταρτισθέντος συμβολαίου ἐδικαιοῦτο ὅπως πωλῇ ὁ μισθωτὴς τῆς ἐν τῷ Λιμένι 'καντίνας', εἰδὼς δὲ τὸ γεγονὸς ὅτι καὶ ἕτεροι πωληταὶ εἰσέρχονται ἐν τούτῳ πρὸς πώλησιν διαφόρων εἰδῶν, θεωρῶ ὅτι δικαιοῦμαι τοιαύτης ἀδείας.»

On October 31, 1968, the director of the department of the ports replied to the Applicant by *exhibit* 6, that his letter for the purpose of granting to him a permit was received. On November 4, 1968, as there was still no reply, the Applicant wrote again, *exhibit* 7.

On November 14, 1968, Mr. Kantounas, the director of the department of the ports, in his reply to the Applicant, said in *exhibit* 8 that the port authorities had no intention of allowing the Applicant to enter into the port for the purpose of trading as a hawker.

There was further correspondence between the Applicant and the port authorities, and *exhibit* 10, written by Mr. Seryiou, reads as follows:–

«Εἰς ἀπάντησιν τῆς ἐπιστολῆς σας ἡμερομ. 21 Νοεμβρίου, 1968, ἐπιθυμῶ νὰ σᾶς πληροφορήσω ὅτι ὁ λιμενικὸς χῶρος προορίζεται διὰ λιμενικὰς ἐργασίας ἀπαγορεύεται δὲ ἡ

εἴσοδος παντὸς πλανοδιοπώλου, διὰ σκοποὺς πλανοδίου πωλήσεως, ἐντὸς τοῦ λιμένος διὰ τὴν καλὴν λειτουργίαν, τήρησιν τῆς τάξεως καὶ εὐπρέπειαν τοῦ λιμένος καὶ παρεμπόδισιν συνωστισμοῦ ἐν αὐτῷ.»

It would be observed that through the whole of the correspondence, the Applicant was asking to be given a permit to be allowed to exercise his trade within the port area. The Applicant, in his reply, said in *exhibit* 11:-

«Διὰ ταύτης μου ὑποβάλλω Ὑμῖν αἴτησιν πρὸς ἔκδοσιν ἀδείας ἐγκαταστάσεως ἐν τῷ Λιμένι Ἀμμοχώστου περιπτέρου πρὸς πώλησιν διαφόρων εἰδῶν ἐμπορευμάτων. Νομίζω ὅτι ἡ ἐγκατάστασις τοιούτου περιπτέρου δὲν ἐπηρεάζει τὴν τήρησιν τῆς τάξεως καὶ τὴν εὐπρέπειαν τοῦ Λιμένος, ἀλλ' ἀντιθέτως ἐξυπηρετεῖ τοὺς ἐν τούτῳ ἑκάστοτε εὑρισκομένους, ἐφ' ὅσον, μάλιστα, προτίθεμαι νὰ τοποθετήσω ἀντικείμενα ἅτινα δὲν πωλοῦνται ἐν τοῖς ἤδη ὑπάρχουσι περιπτέροις.»

On January 10, 1969, Mr. Seryiou replied, and *exhibit* 12 reads:-

« Εἰς ἀπάντησιν τῆς ὑπὸ ἡμερομηνίαν 3ης Ἰανουαρίου, 1969, ἐπιστολῆς σας ἐπὶ τοῦ θέματος τῆς ἐγκαταστάσεως περιπτέρου ἐντὸς τοῦ λιμένος Ἀμμοχώστου ἐπιθυμῶ νὰ σᾶς πληροφορήσω ὅτι τὸ Τμῆμα Λιμένων δὲν προτίθεται νὰ ἐνοικιάση χῶρον ἐντὸς τοῦ Λιμένος δι' ἐμπορικοὺς σκοπούς.

2. Κατὰ τὴν μελετωμένην ἀνέγερσιν τοῦ κτιρίου ἐπιβατῶν θέλει ληφθῆ πρόνοια δημιουργίας καταλλήλου χώρου διὰ κατάστημα, θὰ ζητηθῶσι δὲ προσφοραὶ ἐν καιρῷ.»

The Applicant, feeling aggrieved once again, because of the decision of the director of the department of ports, communicated to him on January 12, 1969, brought the present recourse on March 8, 1969, complaining, in effect, that by such decision he was prevented from establishing a kiosk in the port area of Famagusta. The application was based on Article 28 of the Constitution, the Applicant alleging that the decision of the director of the ports has been taken contrary to the principle of equality, because in the meantime, he had already issued a permit to another person.

On March 27, 1969, the opposition was filed; paragraph 2 of the facts reads:-

« Ὁ Διευθυντὴς Τμήματος Λιμένων ἀφοῦ ἐμελέτησεν τὴν ἐν λόγῳ αἴτησιν ἀπέρριψεν ταύτην δι' ἐπιστολῆς του ἡμ. 10.1.69 βάσει τῆς ἀκολουθουμένης τακτικῆς τοῦ Τμήματος ὅπως μὴ ἐνοικιάζῃ χώρους ἐντὸς τοῦ λιμένος δι' ἐμπορικοὺς σκοποὺς οἵτινες δὲν ἔχουν σχέσιν μὲ τὰς ἐργασίας καὶ τὴν κατὰ προορισμὸν χρῆσιν τοῦ λιμένος.»

On April 26, 1969, the Applicant stated to the Court, as the record reads, that the person referred to in the grounds of law of the application was Antonis S. Constantinou of Famagusta.

On July 7, 1969, the Applicant, in his evidence on oath before the Court, said that the port authorities, in refusing his application to grant him a permit to establish a kiosk, were acting under a misconception of the real facts, because he never intended to convey to them that he really wanted to erect such a kiosk; and that really, in effect, the kiosk to which he was referring would have been a stationary car in which he would have placed goods for sale, thus avoiding congestion among other persons visiting the port.

In answer to counsel for the Respondent he said:-

"It is true that the prohibition against all hawkers to enter into the Port area came to my knowledge on the 3rd September, 1968. I agree that this prohibition was applicable for all hawkers; as a matter of fact, this prohibition was typed and posted on the entrance of the Port Police Authorities."

Mr. Mavroyiangos, the superintendent of Famagusta port, whose department comes under the Ministry of Communications and Works, said in evidence:-

"On 3rd September, 1968, I issued an order prohibiting all hawkers from entering into the port area. I produce that order, *exhibit* 14. I must inform the Court that I have no personnel service in order to check the people who go in and come out of the port area. This job belongs exclusively to the harbour police authority. As far as I know, my people did not allow anyone from the hawkers to enter into the port, because of my order. Furthermore, there was no question of a complaint being made to me that my order was not complied with. If there was a complaint, I would have looked into the matter immediately."

Later on he says:-

"I must say that the canteen and the kiosks are so placed so as not to interfere with the traffic or the passengers or the rest of the people who visit the port."

In answer to Applicant he said:-

"As far as I am concerned, no official complaint was made to me since I have issued my orders that hawkers are still entering the harbour area and are still selling their goods without my permission. I have no knowledge of any complaints made by the Applicant, either personally or by correspondence. The reason I have issued my order prohibiting all hawkers, was due to the fact that if I had not done so, the numbers of them would have increased day by day. Sometime in August after the delivery of the judgment in case No. 189/67, the Applicant has visited me in my office. At that time I was acting director of the department of ports, not in my new capacity. It is true that my order was issued a few days after the Applicant visited me at my office."

The witness, when further questioned, said:-

"As a matter of fact, following my order, I have received official reports from the police authorities informing me that my order was strictly complied with. As a matter of fact, now that I am questioned by the Applicant, I carry checks without a warning once a week in order to find out whether hawkers are still allowed to enter the port, and I was satisfied that I have found nobody being given a permit to enter into the port."

The Applicant, in addressing the Court has contended: (a) that he had a right to enter and establish a kiosk in the port area for carrying out the trade of a hawker; (b) that the port authorities have acted contrary to the judgment of the Supreme Court in Case No. 189/67, when they had issued an order prohibiting him to enter into the port area and carry out the trade of a hawker.

Counsel for the Respondent, on the contrary, contended (a) that the authorities, in issuing an order of prohibition, acted within the provisions of para. 6 of the Port Regulation Law, Cap. 294; (b) that the application of the Applicant was

out of time, because the Applicant knew of the prohibition since September 3, 1968; and (c) that the prohibition of the establishment of the kiosk was properly taken, and it was made in order to avoid congestion and interference with passengers and other work within the port area.

I find it convenient to deal first with the second contention of the Applicant, viz: That the port authorities have acted contrary to the judgment of the Supreme Court in issuing an order prohibiting him to enter into the port area of Famagusta in order to exercise the trade of a hawker.

I would begin by saying that it is a well-established principle that the ports are included among the places dedicated for public use purposes, and are known under the name, in Greek, "Τὰ πράγματα κοινῆς χρήσεως" or simply "κοινόχρηστα". It is, therefore, well settled that members of the public have, with regard to this kind of property, the right to use it. But, of course, it is to be understood that the Government, in exercising its police power, may impose restrictions and controls regarding the exercise of the right of use by the public of those places, taking into consideration the public interest.

I think I can do no better than try and summarise the position from the well-known textbook by Kyriakopoullos, 4th edn. Vol. 'Γ' at p. 427, et seq. under the heading "Ta Pragmata Kinis Chriseos".

> " Public things which can be used freely by anyone and without a special permit from the authorities, are the ones which are dedicated for common use, usually called things of common use. Some of them are of common use in view of their very nature. Ports are indeed things of common use, but not everything lying within the port zone.
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> Things of common use are subject to the enjoyment of everyone. Their common use establishes a legal capacity of those things, and there lies their main destination. Everyone is vested with a general claim to be permitted the use of a common use thing at his pleasure for his own personal purposes, so long as this is possible without doing harm to anybody else.
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> Though the public places are subject to the enjoyment of all the members of the public, it does not follow that

its advantages could be shared equally by each one of them. It is a rule that common use things are all to be used by everyone without anything in exchange, and it makes no difference in what form such free use is exercised, but it cannot be said that this rule is applicable without exceptions in view of the legislation now in force. It may be that the use of a public place by some persons, without in any way exceeding the use for which it was dedicated, exceeds the measure of ordinary and physical use by the citizens. In such a case, it is an instance of increased common use for personal reasons; the placing of provisional constructions, as for example, platforms, stalls, popular market pavilions etc. or tables and coffee shop chairs on pavements and squares.

In such and similar instances, increased common use is only presumably subject to a special permit from the competent authority. The authority, however, is not entitled to refuse the permit as a matter of course, so long as no question of public interest is involved, e.g. transport, security etc., but it may link the permit with terms aiming at the non-obstruction or non-alteration of common uses of the public thing."

See also *Fleiner on Administrative Law*, 1928, 8th edn. at pp. 344 & 348.

Having summarised the position as regards the use of public places, I shall now deal with the contention of the Applicant, that the port authorities have acted contrary to the judgment of the Supreme Court in the case No. 189/67.

I agree and I would like to repeat what I said in *Ioannis Constantinou* v. *The Republic*, (reported in this Part at p. 190 *ante*) that it is a well-known principle that the administration is bound to comply with the decisions of the Supreme Court, particularly so, because of paragraphs 4 and 5 of Article 146 of our Constitution; but the question is: Is there a passage in the judgment of the Court which the authorities were bound to follow?

I propose reading some extracts from the judgment of the Court, reported in (1968) 3 C.L.R. 477 at p. 481:-

" Having perused the aforementioned contract, I am of the view that the fair and reasonable interpretation thereof

is that it enables the canteen-keeper to sell in the whole Famagusta Port Area the things which are specifically mentioned in his contract, or things of similar nature, and the Government's obligation to exclude therefrom hawkers covers only hawkers who sell the same things as the canteen-keeper is enabled to sell.

Thus, though such obligation is phrased in general terms I do not think that it can properly be construed, in the context of the relevant contract, as extending to hawkers who sell wares so remotely different from the things envisaged to be sold by the canteen-keeper such as combs, nail-clippers, shaving creams and the like, which the Applicant was selling in the Famagusta Port Area as a hawker.

In the circumstances I think that the total exclusion of the Applicant from the Port Area, as a hawker, was decided upon under the influence of a material misconception as to the extent of the obligation of the Government towards the canteen-keeper; all that need have been done pursuant to such obligation was to prohibit the Applicant from selling, as a hawker, things sold by the canteen-keeper under his contract (*exhibit* 6); it follows, thus, that the *sub judice* decision, being vitiated by a misconception, has to be declared to be *null* and *void* and of no effect whatsoever.

Of course, nothing in this judgment should be taken as laying down that the appropriate authorities are precluded from excluding hawkers in general from the Famagusta Port Area, if such step can be taken with lawful authority and on proper grounds; I leave this matter entirely open."

With respect to the Applicant, I find no justification in his argument, because I hold a different view on this issue. It would be observed from the extracts I have just read, that my learned brother, having annulled the *sub-judice* decision of the port authorities, on the ground of misconception of facts, he proceeded to make his own observations for the guidance of the administration as regards the exclusion of hawkers from the port area of Famagusta; but, at the same time, leaving the whole matter entirely open to be decided in due course.

In my view, therefore, it should not be taken by the Applicant that the Court was laying down any directions to the port authorities in that case, because, as I said earlier, the right of the port authorities to exclude hawkers from the port area on proper grounds, has been left entirely open. I would, therefore, agree with counsel for the Republic that the authorities, in reaching their decision not to grant the permit to the Applicant to enter and exercise the trade of a hawker, were not acting contrary to the said judgment of the Court; and because they were empowered, under the provisions of Rule 6 of the Famagusta Port Regulations Laws 1879 and 1925 (as amended) to refuse to grant to the Applicant a permit to exercise the trade of a hawker, for reasons appearing in *Exhibit* 10, which are reasons in the public interest. I would, therefore, dismiss this contention of the Applicant.

However, I find it necessary to state that the issue before me was not the refusal of a permit by the port authorities to the Applicant to exercise the trade of a hawker, but only the question of a permit to establish a kiosk. Because the Applicant, appeared before me without the services of an advocate, I allowed him to argue the issue of a hawker's permit, in the interests of justice. Having done so, without objection, I would express the view that the contention of counsel for the Respondent that the application is out of time on this issue is correct, because it was raised after the lapse of the period of 75 days provided for in para. 3 of Article 146 of the Constitution, which is mandatory and has to be given effect to in the public interest in all cases.

Furthermore, it is clear from the correspondence that, since November 14, 1968, the port authorities had refused to grant to the Applicant a permit to enter into the port area for the purpose of trading as a hawker. But, even if I took into consideration the decision of the 25th November, 1968, which of course, is not of an executory nature, but of a confirmatory one, then again it does not in any way avail the Applicant, because it is still out of time.

For these reasons, I would dismiss also this contention of the Applicant.

It appears from *exhibit* 13 that since March, 1967, the superintendent and senior pilot of the port of Famagusta was objecting to the establishment of a kiosk at the entrance of

the port by the Applicant, and that he was asked to remove it because it was placed there illegally. Be that as it may, shortly afterwards on May 25, 1967, an invitation for tenders for the letting of the canteen in the port area was published in the Official Gazette, and eventually it was let to a certain Panayiotis Georghiou. The agreement is contained in a document dated July 24, 1967, *exhibit* 15, and it provides, *inter alia*, that all the items referred to in paragraph 3(a) would be sold at approved prices, and that the hirer would have the exclusive use of the whole port area; and that the entrance of the hawkers therein would be prohibited. Furthermore, the hirer would be bound, in accordance with the terms of the contract, to establish four kiosks for the better service of the persons working at the port.

With regard to the first contention of the Applicant, the question which is posed before me is whether the port authorities were entitled to refuse to grant him a permit for the establishment of a kiosk.

There is no doubt that in such a case, the Applicant was already aware that a permit was needed; because the establishment of a kiosk is an instance of more than a mere increase of common use of the port area. In effect, the granting of such a special permit by the authorities to the Applicant, would have enabled him to derive a commercial gain or advantage. In my view, therefore, the authorities were entitled, after taking into consideration the needs of the people working or visiting the port area, to refuse to grant to the Applicant a special permit to establish a kiosk for the sale of goods. Furthermore, it is clear in my mind that as the Applicant was seeking private rights of enjoyment, the port authorities were entitled, after taking into consideration the question of public interest involved here, to refuse to rent him a space for the establishment of a kiosk in the port area.

I am not quite sure, of course, whether the Applicant challenges the right of the port authorities to refuse to grant him a special permit, or because they have refused to enter into an agreement with him. In any event, the Applicant now complains that the port authorities, in refusing to grant him a permit, have acted contrary to Article 28, and that they have discriminated against him because they had already issued a similar permit to Mr. Antonis S. Constantinou of Famagusta. Going through the evidence on record, I regret to state that I

have found no reference at all, either by the Applicant or by any of his witnesses, with regard to that particular person that he has obtained a permit. Furthermore, Mr. Mavroyiangos was never questioned about the permit to this particular person.

It is on the Applicant to satisfy me that the port authorities have actually discriminated against him, and I have reached the view, in all the circumstances of this case, that the Applicant has failed to prove a case of discrimination.

For the reasons I have endeavoured to explain, I am of the opinion that the Respondent, being the registered owner of this property, was entitled also, even under the existing regulations, to refuse to grant to the Applicant such special permit or to enter into an agreement with him for renting space in the port area. I am aware, of course, that the Applicant is now complaining that the authorities in refusing his application, were acting under a misconception of the real facts because, as he claims, he did not want to rent a space, but only to place in the port area a movable van with goods in it.

As I take the view that the Applicant has never put his case to the authorities in the way he has now suggested, it was reasonably open to them, from the context of his application, to take the view they have taken.

In the light of what I have already said, I have reached the conclusion that the decision of the port authorities is neither contrary to any of the provisions of the Constitution or of any law, nor is it made in excess or in abuse of powers. I would, therefore, dismiss the application with costs.

*Application dismissed with costs.*