1973
Sept. 15
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THE CYPRUS CEMENT COMPANY LIMITED

v.

THE REPUBLIC (MINISTER OF COMMERCE AND INDUSTRY)

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE CYPRUS CEMENT COMPANY LIMITED,

Applicants,

and

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

Respondent.

(Case No. 142/72).

Import Licence—Applicants, holders of a licence to manufacture cement under sections 3 and 5 of the Cement Industry (Encouragement and Control) Law, Cap. 130 —Which entitled them for a long period of time to be exempted from customs duties upon fuel oil imported into Cyprus—Applicants refused a licence to import fuel oil under the Regulation of Imports Law, 1962 (Law 49 of 1962 as amended)—Sections 3 and 4(1) of this latter Law—Order made thereunder and published under Notification 755 in Supplement No. 3 to the Official Gazette of the Republic No. 898, dated September 24, 1971, restricting the importation of certain goods including fuel oil—Sub judice *decision (refusal) of the respondent Minister taken under said Order—Refusal sustained by the Court as a valid one—Notwithstanding said provisions of Cap. 130, clause 9(1) of the applicants said licence of August 17, 1953, to manufacture cement etc.* (supra) *and section 12 of the subsequent Law No. 49 of 1962,* supra.

Imports (Regulation) Law, 1962 (Law No. 49 of 1962 as amended)—Section 12—Saving clause—Construction of section 12—It has not saved section 5 of the anterior Law Cap. 130 (supra) *or clause 9(1) of applicants licence of August 17, 1953 issued under Cap. 130—Cf.* infra.

Cement Industry (Encouragement and Control) Law, Cap. 130—Section 5—Proper construction of said section as well as of clause 9(1) of the applicants aforesaid licence

granted under the said statute—They have not been saved by section 12 of the said Regulation of Imports Law, 1962 (alias, *The Imports (Regulation) Law, 1962*), supra.

Statutes—Construction—Cardinal principles governing construction of statutes and judicial pronouncements thereon —Proper construction of section 5 of Cap. 130 (supra) *and of section 12 of Law No. 49 of 1962 (as amended),* supra—*Marginal notes—Used as an aid to construction —Marginal note to said section 5 of Cap. 130.*

Marginal notes—Whether they can be used as an aid to the proper construction of statutes—See immediately hereabove.

Discretionary powers—Valid exercise—Defective exercise amounting to excess and abuse of powers—Prerequisites of a valid and proper exercise of discretionary powers vested in the administration—Principles restated—Discretionary powers should be used only for the purposes for which they were given by law—On the other hand, all relevant factors should be considered and given proper weight—And the exercise of such powers and the resulting administrative decision should not be based on a misconception of fact or law—And as long as the relevant discretion is exercised in a valid manner, the Supreme Court will not interfere with the exercise of such discretion—And it will not substitute its own discretion for that of the administrative organ concerned —Even if, had the Court to exercise its own discretion, it would have reached a different conclusion.

Recourse under Article 146 of the Constitution—Damages and compensation—Recovery by person aggrieved by decision declared to be void under Article 146.4— Proper Court is the District Court—Article 146.6 of the Constitution—Supreme Court in its revisional jurisdiction under Article 146 has no jurisdiction in the matter.

Damages—Compensation—Jurisdiction—See immediately hereabove.

By the present recourse made under Article 146 of the Constitution the applicants seek to challenge the validity of the decision of the respondent Minister of Commerce and

Industry whereby (a) he refused to grant to them a licence for the importation of 8,000 metric tons of fuel oil, and (b) he refused to pay to them the difference in price between the imported fuel oil and the fuel obtained from the local refinery, as per their letters dated March 6 and April 13, 1972, respectively (such difference being 6 U.S. dollars per ton).

The main issues in these proceedings are two: (1) Are there powers vested in the Minister to take the *sub judice* decision? (2) If yes, has the Minister exercised such discretionary powers validly and properly? The learned Judge of the Supreme Court held that the answer to both these questions must be in the affirmative and dismissed the recourse accordingly.

The facts of the case are very briefly as follows:-

The applicants are a public company of limited liability and the holders of a licence issued on August 17, 1953, by the then Governor of the Colony of Cyprus pursuant to the provisions of the Cement Industry (Encouragement and Control) Law, Cap. 130, sections 3 and 5. It is the case for the applicants that the aforesaid refusal of the Minister to grant to them the import licence for 8,000 metric tons of fuel oil contravenes the provisions of the said Cap. 130 (saved, it is submitted, by section 12 of the subsequent Law No. 49 of 1962, *infra*), as well as the terms of their aforementioned licence of August 17, 1953. Clause 9(1) of this licence provides:

> "9(1) Immediately after the commencement of this licence the licensees shall be entitled to import into the Colony (now the Republic of Cyprus) free from any customs duties any materials or goods set out in the Schedule hereto
>
> *Provided* that for a period of *fifty* years from the commencement of this licence the Licensees shall be entitled to import into the Colony (now the Republic of Cyprus) *free from any Customs Duties* any materials or goods required and also the following materials or goods imported for use for any purpose *connected with the manufacture or packing of cement*:

(a) *fuel oil*, diesel oil and any other fuels solid or liquid;

(b) (c)

„

It is not disputed that the fuel oil in question in this recourse was required by the applicants for a use connected with the manufacture of cement. On the other hand a licence issued under the said section 3 "may provide for *exempting the holder thereof* ..... from the payment of any customs duties upon any material or goods imported into the Colony (now the Republic of Cyprus) in respect of any of the purposes or objects of the said licence and upon which the licence was granted and for which such duties would be payable under the provisions of any Law for the time being in force". (See section 5 of Cap. 130). It should be pointed out at this stage that the marginal note to the said section 5 reads: 'Licence may provide for exemption from customs duties".

Now, the Minister of Commerce and Industry, pursuant to his powers under the Regulation of Imports Law, 1962 (Law No. 49 of 1962) (as amended by Law No. 7 of 1967), issued and published an Order under Notification 755 in Supplement 3 to the Official Gazette No. 898 dated September 24, 1971, restricting the importation of certain goods including *fuel oil*, so that the Minister may now in his discretion, *inter alia*, grant or refuse an import licence in respect of *fuel oil* (see section 4(1) of the said Law No. 49 of 1962). It is precisely under this Order that the Minister of Commerce and Industry, for reasons pertaining to "local industry" (*viz.* the local oil refinery), refused in the instant case the licence (or permit) for the importation of the 8,000 metric tons of fuel oil in question. Section 12 of the Regulation of Imports Law, 1962 (Law No. 49 of 1962, as amended), relied upon by the applicants *supra*, reads as follows:

> "Nothing in this Law contained shall affect the provisions of any other Law, in force for the time being, dealing with importation of goods".

Those being the relevant provisions, counsel for the applicants argued that in view of the above his clients are entitled as of right (1) to import into Cyprus, for a period

of fifty years, commencing as from August 17, 1953, *fuel oil,* and (2) to be exempted in relation to such imports from the relevant customs duties. It is obvious, the argument went on, that the Minister of Commerce and Industry in taking the *sub judice* decision (refusal) has misdirected himself, because he refused the import licence (or permit) for the 8,000 metric tons of *fuel oil* in question, acting under his general Order of September 24, 1971 (made, as aforesaid, under the Regulation of Imports Law, 1962 (Law 49 of 1962 as amended), which Order, however, on the proper construction and application of clause 8(1) of the applicants' said licence of August 17, 1953 and section 5 of the Cement Industry etc. Law, Cap. 130, read in conjunction with section 12 of the said Law 49 of 1962 (*supra*), cannot be held to apply to the present case; and that, therefore, the Minister has no power to refuse the licence (or permit) for the importation of the 8,000 metric tons of fuel oil in question.

The short answer on behalf of the respondent Minister to the views advanced by counsel for the applicants is that, for a period of fifty years, they are entitled as of right merely to be exempted from customs duties in relation to any relevant importation of *fuel oil* they may be able or choose to make lawfully *viz.* in accordance with the laws in force for the time being; and that section 12 of the aforesaid Law 49 of 1962—the saving section relied upon by the applicants—is neither here nor there, because it concerns Laws dealing with importation of materials or goods, and not Laws imposing, or exempting from, customs duties. It may seem of interest to note here that the case for the respondent Minister was in substance put in a letter addressed to the applicants by the Director-General of the Ministry of Commerce and Industry dated April 13, 1972, which so far as material reads as follows:

> "(a) Section 5 of the Cement Industry (Encouragement and Control) Law, Cap. 130 provides for the exemption from customs duties upon any goods imported for the objects envisaged by the licence issued under the said Law. You realise that exemption from payment of customs duties does not imply the issue of an import licence which is necessary for certain items by virtue of a general control on imports of this item.

(b) Under section 12 of the Imports (Regulation) Law (Laws 49 of 1962 and 7 1967) the provisions of any Law relating to the importation of goods for purposes other than those provided by the Imports (Regulation) Law, are saved, such as *e.g.* protection of the health of animals and plants etc.

Consequently this argument (of yours) is not relevant to the matter under consideration....."

Dismissing the recourse, the learned Judge of the Supreme Court :-

Held, 1: *Regarding the issue whether the respondent Minister acted under a misconception of law* i.e. *whether there are powers vested in the Minister to take the* sub judice *decision* :
Note : after reviewing the general principles governing the construction of statutes, the learned Judge of the Supreme Court went on :

(1) In the light of these weighty judicial pronouncements, I do not think there is any difficulty in construing section 12 of the Regulation of Imports Law, 1962 (*supra*), because those words in their natural and ordinary meaning declare the intention of the legislature that other Laws dealing with the importation of goods remain unaffected. I should have added that this section is a saving clause and has been used in the said Law 49 of 1962 to preserve earlier Laws which would otherwise be repealed by it, or rights which would otherwise be abrogated thereby. But a saving clause cannot be said to give any rights which did not exist already.

(2) The further question arises whether section 5 of the earlier Law, The Cement Industry etc. Law, Cap. 130, is a substantive section dealing with importation of goods; if the answer is in the affirmative then it has been saved by virtue of the aforesaid section 12 of Law 49 of 1962 (*supra*). The crucial words in this respect are : "Notwithstanding anything to the contrary in any other Law contained, the licence may provide for exempting the holder thereof..... from the pay-

ment of any customs duties upon any materials or goods imported into the Colony in respect of any of the purposes or objects of the said licence....." I am not prepared to construe these words to mean or to imply that once a licence has been granted to the applicants by the then (in 1953) Governor of Cyprus, that this section conferred on them any vested right to import into Cyprus materials or goods of the kind referred to in the licence.

(3) In reaching the construction of this section 5 of Cap. 130 which in my view is the correct one, I have taken into consideration, *inter alia,* the relevant marginal note thereto, as, I think, I am entitled to do, particularly because Cap. 130 was enacted prior to the Independence of Cyprus when there was no Parliament to legislate.
Note: It is here reminded that the said marginal note reads as follows: "Licence may provide for exemption from customs and excise duties".

(4) For the reasons I have advanced, I have reached the conclusion that on the true construction of section 5 of the Cement Industry etc. Law, Cap. 130, it does not deal with importation of goods and, therefore, it is not saved by the provisions of section 12 of the Regulation of Imports Law, 1962 (Law 49 of 1962), *supra,* as it is the case for instance regarding the Firearms Law, Cap. 57, the preamble of which reads: "A Law to amend and consolidate the law relating to the importation, possession and use of firearms".

Held, II: *Regarding the question whether in this case the respondent Minister has exercised validly his discretionary powers in the matter:*

(1) Taking into consideration all facts and the material before me, including the correspondence exchanged between the parties, as well as the fact that import licences are granted in pursuance of *protectionist* policies by the Government, I have reached the view that the respondent Minister, in considering the application of the applicants, validly exercised his discretionary powers in re-

fusing to grant to them a licence to import the 8,000 metric tons of fuel oil in question. I do not propose therefore interfering with the exercise of the Minister's discretion.

(2)(a) I would take this opportunity to reiterate what has been said by this Court in a number of cases regarding the exercise of discretionary power and its judicial control. A discretionary power must be, first of all, exercised for the purpose for which it was given by law. I would add that a discretion is validly exercised, if in its exercise all material considerations have been taken into account and due weight was given to material factors and it has not been based on misconception of fact or law. In other words, there is a duty that a discretion must be exercised in a certain manner and the defective exercise of discretion may amount to excess or abuse of power (*see Constantinou* v. *The Republic* (1966) 3 C.L.R. 793).

(b) However, as long as the discretionary power is exercised in a valid manner, the Supreme Court will not interfere with the exercise of such discretion and will not substitute its own discretion for that of the administrative authority concerned, even if, in exercising its own discretion on the merits, the Court would have reached a different conclusion (*see Jacovides* v. *The Republic* (1966) 3 C.L.R. 212, at p. 220).

Held, III: *Regarding the second ground of relief* i.e. *the claim for annulment of the respondent's refusal to pay to the applicants the difference in price between the fuel oil they proposed to import and that obtained from the local refinery* :-

(1) In the light of my judgment as above this claim fails on the ground that the respondent Minister has validly exercised his discretionary powers in refusing to grant to the applicants the import licence applied for.

(2) Furthermore, this kind of relief is in the nature of compensation or a question of damages, and

in my view, the proper Court for the recovery of damages is the District Court; and the Supreme Court has no jurisdiction in the matter.

Recourse dismissed.

Cases referred to :

Jacovides v. *The Republic* (1966) 3 C.L.R. 212, at p. 220;

Constantinou v. *The Republic* (1966) 3 C.L.R. 793;

Zittis v. *The Republic* (reported in this Part at p. 37, *ante*);

Impalex Agencies Ltd. v. *The Republic* (1970) 3 C.L.R. 361, at pp. 374 - 375;

Michaelides v. *The Republic* (reported in this Part at p. 457, *ante*);

Fordyce v. *Bridges* [1847] 1 H.L.Cas. 1 at p. 4;

Re a Debtor [1948] 2 All E.R. 533, at p. 536, per Lord Greene, M.R.;

Longdon-Griffiths v. *Smith* [1951] 1 K.B. 295, at pp. 299 - 300;

R. v. *Bates* [1952] 2 All E.R. 842, at p. 844;

Bushell v. *Hammond* [1904] 2 K.B. 563, at p. 567, per Collins, M.R.;

Stephens v. *Cuckfield* R.D.C. [1960] 2 All E.R. 716, at pp. 719 - 720;

Re Cohen (A Bankrupt) [1961] 1 All E.R. 646, at p. 656 per Upjohn, L.J.;

Commissioners for Special Purposes of the Income Tax v. *Pemsel* [1891] A.C. 531, at p. 543.

Recourse.

Recourse against the refusal of the respondent to grant to applicants a permit to import 8,000 metric tons of fuel oil and to pay to the applicants the difference in price between the imported fuel oil and the fuel oil obtained from the local refinery.

G. Cacoyiannis, for the applicant.

N. Charalambous, 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 company seeks a declaration (a) that the decision of the respondent to refuse the granting of a permit for the importation by the applicants of 8,000 metric tons of fuel oil, and (b) to pay to the applicants the difference in price between the imported fuel oil and the fuel oil obtained from the local refinery communicated to them by respondent, by letters dated 6th March and 13th April, 1972, is null and void and of no effect whatsoever.

The applicants are a public company with limited liability and are the holders of a licence from the Government of the then Colony of Cyprus, issued by the Governor on August 17, 1953 pursuant to the provisions of s. 3 of the Cement Industry (Encouragement and Control) Law, Cap. 130. This section so far as relevant, is in these terms :-

> "3.(1) Subject to the provisions of subsections (2) and (3), the Governor, when satisfied that for the more effective exploitation of quarry materials and the encouragement of the manufacture of cement in the Colony, it is desirable to afford special facilities and in particular sufficient security of tenure in order to attract large capital sums and special technical experience without which the aforesaid purposes cannot be achieved, may, on the application of any person who satisfies the Governor that he commands the requisite capital and technical experience, grant to such person a licence (hereinafter referred to as 'the licence') on such terms and conditions, upon the payment of such fees and for such period not exceeding ninety-nine years, as he thinks fit.

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* For final judgment on appeal see (1974) 12 J.S.C. 1198 to be published in due course in (1974) 3 C.L.R.

(a) to manufacture cement and by-products and ancillary products of cement;

(2) The Governor may, from time to time, with the written consent of the holder of the licence vary or amend any term or condition of the licence or add or cancel any term or condition thereof.

(3) At any time after the grant of the licence and during the currency thereof, no other licence shall be granted to prospect for and quarry any quarry materials within the same area for which the licence was granted."

I propose quoting part of clause 9(1) of the licence, which reads as follows :-

"9.(1) Immediately after the commencement of this Licence the Licensees shall be entitled to import into the Colony free from any Customs duties any materials or goods set out in the Schedule hereto which are required for any of the purposes set out against each item of the said Schedule and where no such purpose is set out, for any of the purposes set out in sub-paragraphs (a), (b), (c) and (e) of sub-clause (1) of clause 3 of this Licence :

Provided that for a period of fifty years from the commencement of this Licence the Licensees shall be entitled to import into the Colony free from any Customs duties any materials or goods required for the construction, equipment or commencing the operation of a factory for the manufacture of cement or for the alteration, reconstruction or extension of any such factory and also the following materials or goods imported for use for any purpose connected with the manufacture or packing of cement :-

(a) fuel oil, diesel oil, and any other fuels whether solid or liquid;

(b) containers of all kinds or types for packing cement;

(c) spare parts or replacements for machinery.

Whenever the Licensees propose to avail themselves of the benefits conferred by this sub-clause, they shall declare at the time of importation that such materials or goods are imported for some purpose which entitles them under this sub-clause to exemption from Customs duties. Such declaration shall be in writing signed on their behalf by either one of their Directors or by their Secretary and shall state that the materials or goods, as the case may be, will not be sold or otherwise disposed of except as provided in this Licence."

On March 1, 1972, the respondent addressed a letter to the Director-General of the Ministry of Commerce and Industry informing him that they were currently negotiating a contract for the importation of 8,000 metric tons of fuel oil to be delivered to their cement works at Moni around the end of April, 1972, and had this to say :-

"The price we have been offered for the above contract is 13.50 U.S. Dollars C.I.F. per metric ton, as compared with 19.50 U.S. Dollars which we were recently offered by Shell for supplying us from the Larnaca Oil Refinery.

In view of the significant difference in price indicated above, and in view of the licence granted to our Company under the Cement Industry (Encouragement and Control) Law 1952, we should be grateful to have at your earliest convenience the relevant Import Licence so that we can proceed with the conclusion of the contract mentioned above."

There is no doubt that this fuel oil was required by the applicants for a use connected with the manufacture of cement, but on March 6, 1972, the Director-General in reply said that "he regretted to inform them that for local industry considerations your request could not be entertained".

On March 10, 1972, the applicants feeling dissatisfied because of the rejection of their application, in reply to the Director-General brought to his notice, (apparently in order to make him reconsider his stand) the provisions of s. 5 of the Cement Industry Law, Cap. 130, clause 9

of their licence, and section 12 of Law 49/62 (as amended by Law 7/67). They had this to say in paragraphs 4 and 5 :-

"In view of the aforesaid we consider your decision not to grant to us the aforesaid licence as null and void and of no effect as being contrary to the provisions of the Cement Industry Law, Cap. 130 (saved by section 12 of Law 49 of 1962) and our said Licence obtained thereunder.

Nevertheless, to avoid filing a recourse in the Supreme Court against your said refusal and as our factory is in urgent need of fuel oil supply we propose to arrange for our next delivery of fuel oil to come from the local refinery in which case we shall claim from you the difference between the price to be paid by us to the local refinery and the price of 13.50 U.S. dollars C.I.F. per metric ton, (*i.e.* a difference of 6 U.S. dollars per metric ton) which we would have paid had we imported the fuel oil as per the price offered to us for the importation of 8.000 metric tons of fuel oil which would have been delivered to our cement works at Moni around the end of April, 1972 (vide our letter to you dated 1st March, 1972)."

On April 13, 1972, the Director-General in reply to the applicants had this to say :-

«(α) Διά τοῦ ἄρθρου 5 τοῦ περὶ Βιομηχανίας Τσιμέντου Νόμου, Κεφ. 130 προνοεῖται ἡ ἐξαίρεσις ἐκ τῆς καταβολῆς τελωνειακοῦ δασμοῦ ἐπὶ ὑλικῶν ἅτινα εἰσάγονται διὰ τοὺς σκοποὺς τοὺς προβλεπομένους εἰς τὴν δυνάμει τοῦ ἐν λόγῳ Νόμου ἐκδοθησομένην ἄδειαν.

Ὡς ἀντιλαμβάνεσθε, ἡ ἀπαλλαγὴ δασμοῦ δὲν ἐξυπακούει τὴν ἔκδοσιν, ἀδείας εἰσαγωγῆς, ἥτις εἶναι ἀναγκαία δι' ὡρισμένα εἴδη δυνάμει γενικοῦ ἐλέγχου ἐπὶ τῆς εἰσαγωγῆς τοῦ εἴδους τούτου.

(β) Διά τοῦ ἄρθρου 12 τοῦ περὶ Κανονισμοῦ Εἰσαγωγῶν Νόμου, (Νόμοι 49 τοῦ 1962 καὶ 7 τοῦ 1967), ἐπιφυλάσσονται αἱ διατάξεις οἱουδήποτε νόμου ἀφορῶντος εἰς τὴν εἰσαγωγὴν ἐμπορευμάτων διὰ σκοποὺς ἑτέρους ἢ τῶν ὑπὸ τοῦ περὶ Κανονι-

σμού Εισαγωγών Νόμου, προβλεπομένων ώς π.χ. προστασία της ύγείας των ζώων, των φυτών, κλπ.

Συνεπώς καί τό έπιχείρημα τοΰτο είναι άσχετον πρός το έξεταζόμενον ζήτημα.'

'Ως γνωρίζετε, ποσοτικός περιορισμός έπιβάλλεται δυνάμει της περί εισαγωγών νομοθεσίας εις διάφορα εΐδη, συμπεριλαμβανομένου καί τοΰ τσιμέντου, χάριν άκριβώς τοΰ ίδίου σκοποΰ ήτοι της προστασίας της έγχωρίου βιομηχανίας».

("(a) Section 5 of the Cement Industry (Encouragement and Control) Law, Cap. 130 provides for the exemption from payment of customs duty upon any materials imported for the objects envisaged by the licence issued under the said Law. You realize that exemption from payment of customs duty does not imply the issue of an import licence which is necessary for certain items by virtue of a general control on imports of this item.

(b) Under s. 12 of the Imports (Regulation) Law (Laws 49 of 1962 and 7 of 1967) the provisions of any law relating to the importation of goods for purposes other than those provided by the Imports (Regulation) Law, are saved, e.g. protection of the health of animals and plants etc.

Consequently this argument too is not relevant to the matter under consideration.

As you know under the Imports legislation there is imposed a quantity restriction on various items including cement, just for the sake of the same purpose, that is the protection of local industry").

On May 17, 1972, the applicant feeling aggrieved filed the present recourse and the application was based on 7 grounds of law. On July 3, 1972, the opposition on behalf of the respondent was filed, and was based on 5 grounds of law.

I find it convenient to read section 5 of the law which provides that :

"Notwithstanding anything to the contrary in any other Law contained, the licence may provide for

exempting the holder thereof, subject to such conditions as may be specified in the licence, from the payment of any customs duties upon (any materials or goods imported into the Colony) in respect of any of the purposes or objects of the said licence and upon which the licence was granted and for which such duties would be payable under the provisions of any Law for the time being in force."

Now, why was the Cement Industry Law Cap. 130 passed? I think the purpose is very clear, it was to encourage the manufacture of cement in the then Colony of Cyprus and at the same time to empower the Governor to grant a licence to a person or persons by affording them special facilities in order to convince them to invest large capital for that industry of cement. The further granting of security of tenure for a period of 99 years to the licensees is self-evident of the importance the then Governor of Cyprus had in mind regarding the development of the economy of the then Colony of Cyprus. Reading, therefore, sections 3 and 5 of the said law, I find myself in agreement with counsel for the applicants that the purpose of the legislature was to protect the local industry of cement by enabling the applicants to import raw materials and other goods at cheaper prices with a view always of making it a viable industry and with the final object of protecting the ultimate consumer against high prices for cement.

Furthermore it is clear in my view that under the provisions of section 5 the applicants were given a right subject to such conditions as may be specified in the licence to exempt them from the payment of any customs duties upon any materials or goods imported into the Colony. However, in 1962, the Regulation of Imports Law 1962 (Law 49/62) was enacted, as amended by Law 7/67 amending s. 3 of the principal law, and sub-s. 2 reads as follows :-

"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."

The Minister of Commerce and Industry, pursuant to his power under that law issued and published an Order under Notification No. 755 in supplement No. 3 to the Cyprus Gazette No. 898 dated September 24, 1971, restricting the importation of certain goods including fuel oil.

Regarding the question of issuing a licence the powers given to the Minister are laid down in section 4(i) of the said law and he may in his discretion —

(a) grant or refuse such a licence;

(b) make such licence subject to such conditions as he may deem fit; and

(c) cancel, suspend or vary any such licence or any conditions thereof.

Regarding the question of the discretionary powers of the Minister, the question posed is :- Has the Minister exercised his discretionary power in the manner and for the objects contemplated by law in refusing to grant a licence to the applicant? Admittedly, the Minister in exercising his power under that law was entitled, after taking into consideration the public interest, to make an order restricting and regulating the importation of fuel oil for the encouragement of the local production and manufacture of fuel oil by the Cyprus oil refineries. But once the order was made restricting the fuel oil, the Minister, in the exercise of his discretionary powers under s. 4 of the said law, must take into consideration all relevant questions before making up his mind to grant or refuse such licence. I take, therefore, the opportunity to reiterate what has been said by this Court in a number of cases regarding the exercise of a discretionary power, that once a discretionary power is exercised, such exercise must be for the purpose for which it was given by law. As long, of course, as the discretion is exercised in a valid manner, the Supreme Court will not interfere with the exercise of such discretion by the substitution of its own discretion for that of the authority concerned, even if in exercising its own discretion on the merits, the Court

would have reached a different conclusion. (*Jacovides* v. *The Republic* (1966) 3 C.L.R. 212 at p. 220). Furthermore, I would add, a discretion is exercised in a valid manner, if in its exercise all material considerations have been taken into account and due weight is given to material facts and it has not been based on misconception of fact or of law. In other words, there is a duty that even a discretion must be exercised in a certain manner and the defective exercise of discretion may amount to excess or abuse of power: (*Constantinou* v. *The Republic* (1966) 3 C.L.R. 793).

Directing myself with those judicial pronouncements and taking into consideration all facts and the material before me including the correspondence exchanged between the parties, as well as the fact that import licences are granted in pursuance of protectionist policies by the Government, I have reached the view that the Minister, in considering the application of the applicants, validly exercised his discretionary powers in refusing to grant to them a licence, and therefore, I do not propose interfering with the exercise of the Minister's discretion. In reaching this decision, I would, however, express the view that in the circumstances of this case—particularly of the facilities granted to the applicants in the licence in question—it would, perhaps, have been more appropriate as a question of correct policy that the Minister ought to have found ways and means to afford an opportunity to the applicants to grant them an import licence subject to such conditions as the Minister would deem fit. With these observations in mind, I think I would further add that although in this particular case I might have been persuaded to reach a different conclusion, nevertheless, once the Minister had all the material before him, as I have said earlier in this judgment, he did not exercise his discretion in a defective manner, and I would, therefore, uphold his decision. See *Zittis* v. *The Republic* (reported in this Part at p. 37, *ante*); also *Impalex Agencies Ltd.* v. *The Republic (Minister of Commerce and Industry)* (1970) 3 C.L.R. 361, at pp. 374 - 375.

The next question is, has the Minister acted under a misconception of law? The argument of counsel on behalf of the applicants, which was resisted by counsel for the respondent, was that the Court in construing the provi-

sions of s. 5 of the Cement Industry (Encouragement and Control) Law, read in conjunction with s. 12 of Law 49/62, ought to have reached the conclusion that in the light of the correct interpretation of those two sections, the Minister misdirected himself on the question of law that the order in question regarding the importation of fuel oil applies also to the applicants.

Having considered carefully the arguments of both counsel and having in mind the objects of both enactments, I think I ought to state that it is a well-known principle of interpretation that where there is a new law making a provision inconsistent with a provision in an earlier law, it is the provision contained in the latter that must prevail unless expressly excluded by that law. With this in mind, I propose reading in Greek s. 12 of the Imports Law :-

> «Οὐδὲν τῶν ἐν τῷ παρόντι Νόμῳ διαλαμβανομένων ἐπηρεάζει τὰς διατάξεις τῶν ἐκάστοτε ἐν ἰσχύϊ, καὶ εἰς τὴν εἰσαγωγὴν ἐμπορευμάτων, ἀφορώντων, νόμων».

And in English it reads :-

> "Nothing in this Law contained shall affect the provisions of any other Law, in force for the time being, dealing with importation of goods".

What then is the correct construction of these two sections referred to earlier? Regarding the general principles of construction, it has been said in a number of cases that a statute is the will of the legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded "according to the intent of them that made it". (*Fordyce* v. *Bridges* [1847] 1 H.L.Cas. 1 at p. 4). If the words of the statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature. (*Commissioners for Special Purposes of the Income Tax* v. *Pemsel* [1891] A.C. 531 at p. 543). See also *Philippos*

Michaelides v. *The Republic*, (unreported) * dated September 3, 1973. Cf. *Stephens* v. *Cuckfield* R.D.C. [1960] 2 All E.R. 716 at pp. 719 - 720.

It appears, therefore, that the object of all interpretation of a statute is to determine what intention is conveyed, either expressly or impliedly, by the language used, so far as is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it. "If there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words expressly used". (*Re a Debtor* [1948] 2 All E.R. 533 at p. 536 per Lord Greene, M.R.).

In the light of these weighty judicial pronouncements, I do not think that there is any difficulty in construing the words of s. 12 of Law 49/62, because those words in their natural and ordinary sense declare the intention of the legislature that other laws dealing with the importation of goods remain unaffected. I should have added that this section is a saving clause and has been used in this law to preserve earlier laws which would otherwise be repealed by it, or rights which would otherwise be abrogated by it. But a saving clause cannot be taken to give any right which did not exist already. I think I can add this warning, that it can only preserve things in esse at the time of its enactment, and, therefore, cannot affect transactions complete at the date of the repealing statute. See Halsbury's Laws of England, 3rd edn., vol. 36 at p. 401 paragraph 605.

The further question arises whether s. 5 of the Cement Law is a substantive section dealing with importation of goods, and if the answer is in the affirmative then it has been saved by the provisions of s. 12 of Law 49/62. In construing this section, I must confess that adhering to the grammatical and ordinary sense of the words, one should think because there is a reference to the words (any materials or goods imported into the Colony) in respect of any of the purposes or objects of the said licence, one would be tempted to take the view, once a licence has been granted to the applicants, by the then

* Reported in this Part at p. 457, *ante*.

Governor, that this section deals with the importation of goods by implication. However, in my view, this construction would lead to some absurdity or some repugnance or inconsistency with the rest of the law, and I am not prepared to adopt such construction, because those words in brackets are preceded by the words "from the payment of any customs duties", which is in that part of our Law *i.e.* part II dealing with licensing.

In endeavouring to reach the proper construction of this section, I turn to the marginal notes to see whether they can be used as an aid to construction. I am aware, of course, that in Egland the Courts generally refuse to use a marginal note to a section as an aid to its construction on the ground that marginal notes are not considered by Parliament at any stage of the proceedings on a bill, and, on that ground, apparently, the weight of authority is against their use as an aid to construction. See *Longdon-Griffiths* v. *Smith* [1951] 1 K.B. 295 at pp. 299 - 300; and *R.* v. *Bates* [1952] 2 All E.R. 842 at p. 844. On the other hand, the judicial authorities conflict, and reliance has been placed in *Bushell* v. *Hammond* [1904] 2 K.B. 563 at p. 567, and Collins M.R. said :- "Some help will be derived from the side-note (though of course it is not part of the statute), which shows that the section is dealing with certain matters".

In *Stephens* v. *Cuckfield R.D.C.* [1960] 2 All E.R. 716, Upjohn, L.J., delivering the judgment of the Court of Appeal, had this to say at p. 720 :-

> "In our judgment, whether a piece of land is properly described as a 'garden' or 'vacant site' or 'open land' for the purposes of the section is a question to be determined in the circumstances of each case, and the Court whose duty it is to decide it must exercise its common sense on the matter. While the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief at which it is aimed with the note in mind".

In *Re Cohen (A Bankrupt)* [1961] 1 All E.R. 646, Upjohn, L.J., said at p. 656 :-

"In those circumstances a critical appreciation of the actual section itself cannot be out of place. I desire to draw attention only to the fact that the section is in that part of the Bankruptcy Act, 1914, which is dealing with the realisation of property. It follows s. 50. Section 50 is dealing with the sequestration of the profits of a benefice on bankruptcy, and it provides that the bishop may nevertheless appoint to the bankrupt a stipend for carrying out his duties. It is then, I think, material to read the marginal note to s. 51, although I appreciate that it cannot control the language used in the section itself."

In the light of these authorities, I am of the view that regarding the legislation which was enacted before the Independence of Cyprus, particularly because there was no Parliament, reliance should be placed on the marginal notes of a law and I propose using them in the present case as an aid to construction of the aforesaid section 5. The marginal note reads :- "Licence may provide for exemption from customs and excise duties".

For the reasons I have advanced, I have reached the conclusion that the proper construction of s. 5 is that it is not a law dealing with the importation of goods, and, therefore, it is not saved by the provisions of s. 12 of Law 49/62. Cp. The Firearms Law, Cap. 57, the preamble of which reads :- "A law to amend and consolidate the law relating to the importation, possession and use of firearms".

In the light of this judgment, I am of the view that the Minister has validly exercised his discretionary powers to refuse to grant a licence to the applicants, and has not acted under a misconception of the law in question. I would, therefore, uphold the decision of the Minister and dismiss also this contention of counsel.

Regarding the second ground of relief claimed by the applicants, that the respondent failed to pay to them the difference in price between the fuel oil which they proposed to import and the fuel oil obtained from the local refinery, I think, in the light of my judgment, the Minister validly exercised his discretionary powers in refusing to grant them the permit applied for. Further-

more, this second ground of relief is in the nature of compensation or a question of damages, and in my view, the proper Court for the recovery of damages is the District Court, assuming, of course, that the applicants can show that under the terms of their licence have acquired rights and that they are entitled to damages. On the assumption that such rights have been acquired by the applicants in view of the terms of their licence, I would observe that those rights may, perhaps, come within the ambit of s. 10 subsection 2 (c) of the Interpretation Law, Cap. 1, or indeed, under any other law. However, in view of the fact that this point has never been argued before me, I leave it open, because, as I said earlier, the question of compensation is within the jurisdiction of another Court.

For all the reasons I have endeavoured to advance, I am of the opinion that the decision or act of the respondent, is not contrary to any of the provisions of the Constitution, or of any law or is made in excess or in abuse of powers vested in the Minister, and I would, therefore, dismiss this application. Regarding the question of costs, I think that under these circumstances, I do not propose making an order for costs against the applicants.

Application dismissed
No order as to costs.