1984 May 29

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

P. M. TSERIOTIS LTD.,

Applicant,

v.

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

Respondent.

(*Case No.* 400/82).

Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Meaning—Decision of respondent eliminating importation of tomato ketchup by applicants according to declared quota for 1982*—Aimed at producing a legal situation and is of an executory character—Subsequent application of applicants for importation permit of further quantities for* 1982 *refused by respondents. Such refusal of a confirmatory nature and non justiciable—And as no recourse was filed against the previous executory decision within the time-limit of* 75 *days the recourse against the subsequent decision is out of time.*

Legitimate interest—Article 146.2 *of the Constitution—Free and unreserved acceptance of administrative act by applicants—Deprived them of a legitimate interest to challenge it by a recourse.*

On 7.3.1981 the respondent decided to control the importation of tomato ketchup in order to protect local industry; and in furtherance of this decision he eliminated by 50% (on the basis of average imporation for the years 1978-1980) the importation of tomato ketchup by all importers and informed applicants by virtue of a letter dated 14.5.1981 that the amount of tomato ketchup they were entitled to import up to 31.12.1981 was limited to 4,252 kilos.

On 27.5.1981 the applicants applied and on 29.5.1981 they

were granted permit to import 4,252 kilos of tomato ketchup "for covering their whole quota for the year 1981".

On 16.12.1981 applicants applied for permit to import 6,000 kilos of tomato ketchup for the year 1982 (the importation was to be effected on 30.4.1982); and they were given permit on 12.2.1982 to import only 4,252 kilos. On the second part of this application the respondents wrote the following in hand-writing which was dated 12.2.1982: "In accordance with the decision of the Minister the same quota as in 1981 to be allocated" and "With this permit you are granted your whole quota", (exh. 6).

No recourse was filed against the last decision.

On 26.7.1982 applicants filed with the Ministry of Commerce and Industry an application to import 20,200 kilos of Heinz tomato ketchup; and on 10.8.1982 their application was refused and the reason for such refusal was stated to be "for the purpose of protecting local industry". Hence this recourse.

On the preliminary objection raised by the respondents to the effect that the recourse was out of time; and that the act and/or decision impugned by the recourse was not of an executory nature;

Held, after dealing with the meaning of executory and confirmatory act—vide pp. 701-702 post, that the administrative decision of the respondent taken on 12.2.1982 (exh. 6) expresses the will of the administrative organ concerned—the respondent—and at the same time the act and/or decision in question "is aimed at producing a legal situation"; a legal situation which was brought about by the elimination of the importation of tomato ketchup by applicants according to the declared quota for 1982; and that, therefore, the above administrative decision is of an executory character; that the gist of the sub judice decision of 10.8.1982 was the confirmation by the respondent of his earlier decision of 12.2.1982 (exh. 6) wherein it was clearly stated that the permit for import of 4,252 kilos of tomato ketchup covered the whole "quota" allotted to the applicants for the year 1982; that, therefore, the decision on 10.8.1982 which confirms the earlier executory decision, and signifies the adherence of the respondent administrative authority to the course already adopted, is of a confirmatory nature having been issued by the same authority addressed to the same applicant having also

produced identical results in law with the previous decision of 12.2.1982 (exh. 6); accordingly the sub judice decision of 10.8. 1982 is of a "confirmatory" nature and therefore non justiciable; and that as the "executory" decision was given as early as 12.2. 1982 and the present recourse was filed on 29.9.1982, the recourse under consideration is doomed to failure on account of time.

Held, further, that the applicants quite freely and voluntarily accepted the administrative executory decision of the respondents dated 12.2.1982 (exh. 6) which was limiting their quota for the whole of 1982 to the amount of 4,252 kilos allocated to them by means of the decision of 12.2.1982; that having accepted the aforesaid decision unreservedly and having failed to attack same by a recourse for annulment they have been deprived of their "existing legitimate interest" envisaged by Article 146.2 of the Constitution which was neither present at the time of the filing nor at the hearing of the present recourse.

Application dismissed.

Cases referred to:

Kolokassides v. *Republic* (1965) 3 C.L.R. 549 and on appeal (1965) 3 C.L.R. 542;

Koudounaris v. *Republic* (1967) 3 C.L.R. 479;

Ktenas and another (No. 1) v. *The Republic* (1966) 3 C.L.R. 64 and on appeal (1966) 3 C.L.R. 820;

Papaleontiou v. *The Republic* (1966) 3 C.L.R. 557;

Varnava v. *The Republic* (1968) 3 C.L.R. 566;

Ioannou v. *The Grain Commission* (1968) 3 C.L.R. 612;

Megalemou v. *The Republic* (1968) 3 C.L.R. 581;

Kelpis v. *The Republic* (1970) 3 C.L.R. 196;

HjiKyriakos & Sons Ltd., v. *The Republic* (1971) 3 C.L.R. 286;

Police Association & Others v. *The Republic* (1972) 3 C.L.R. 1;

Liasidou v. *The Municipality of Famagusta* (1972) 3 C.L.R. 278;

Papademetriou v. *Republic* (1974) 3 C.L.R. 28;

Theodossiou v. *Attorney-General* (1974) 3 C.L.R. 213;

Salamis Holdings Ltd. v. *The Municipality of Famagusta* (1974) 3 C.L.R. 344;

Lordos Apartotels Ltd. v. *The Republic* (1974) 3 C.L.R. 471;

Ioannou v. *The Commander of Police* (1974) 3 C.L.R. 504;

Limassol Chemical Products Company Ltd. v. *The Republic* (1978) 3 C.L.R. 52;

G.M. Marangos Ltd. v. *The Municipality of Famagusta* (1979) 3 C.L.R. 73;

Ioannou v. *The Republic* (1982) 3 C.L.R. 1002;

Pieris v. *The Republic* (1983) 3 C.L.R. 1054 at p. 1063;

Constantinou v. *Republic* (1974) 3 C.L.R. 416;

Papasavvas v. *Republic* (1967) 3 C.L.R. 111;

Christofides v. *CY.T.A.* (1979) 3 C.L.R. 99;

Paschali v. *Republic* (1966) 3 C.L.R. 593;

HjiConstantinou and Others v. *Republic* (1980) 3 C.L.R. 184;

Neocleous and others v. *Republic* (1980) 3 C.L.R. 497.

Recourse.

Recourse against the refusal of the respondent to grant an import permit to applicants for the importation of 20,200 kilos of "Heinz Tomato Ketchup".

P. Polyviou, for the applicants.

St. Ioannidou (Miss), for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The applicants by means of the present recourse impugn the decision of the respondent dated 10.8.1982, which appears in appendix "D" attached to the recourse, by means of which the respondent refused to grant an import permit to the applicants with regard to the requested importation of 20,200 kilos of "Heinz Tomato Ketchup"; applicants pray for:

(a) A declaration of the Court that the said act or decision is null, void and of no effect whatsoever.

(b) A declaration of the Court that such an act or decision was contrary to Law and/or that it was reached in excess or abuse of power.

After the filing of opposition by respondent, to the contents of which I shall be reverting later on in the present judgment, written addresses were filed by the litigants pursuant to relevant directions of this Court. The applicants filed together with their application and the written address several documents and the respondent accompanied his written address by several

appendices. Counsel on both sides made oral clarifications at a subsequent time and counsel for respondent produced at this stage some more documents from the relevant administrative file bearing Nos. red 13, red 19, red 20 and red 89.

All the documents aforesaid appear in the file of the present case and reference to them will be made in due course in the present judgment.

The salient facts of this case may be very briefly thus summarised:

The applicants, who are, and have been for a considerable time in the past, the agents for H.J. Heinz Co. Ltd., manufacturers of preserved foods including "Tomato Ketchup", submitted to respondent on 2.3.1981 an application (vide appendix B attached to the recourse) to import for their own account approximately 12,648 kilos of "Heinz Tomato Ketchup". The above application was returned to applicants accompanied by a note from the Ministry of Commerce and Industry, dated 11.3.1981 (vide Appendix "C" attached to the recourse) advising applicants that importation of Tomato Ketchup has been placed under control in order to protect local industry, requesting at the same time applicant to provide the Ministry with statistical information in respect of the imports for the last three years (1978, 1979 and 1980) so that they could fix a 'quota'.

Similar circular letter likewise advising and requesting information from importers of Tomato Detchup was addressed by the respondent Ministry to the General Secretary of the Chambers to Commerce and Industry on 17.3.1981. (Vide exh. 3 attached to the written address of the respondent).

On 8.4.1981 applicants submitted the information requested which appears in appendix "X" (4 folios), attached to the written address of applicants.

The respondent in furtherance of his decision of 7.3.1981 (vide red 13) to control the importation of tomato ketchup in order to protect local industry eliminated by 50% (on the basis of average importation for the years 1978–1980) the importation of Tomato Ketchup by all importers (vide exh. 2 attached to the written address of the respondent) and informed applicants by virtue of letter dated 14.5.1981 (vide exh. 4 at-

tached to the written address of the respondent) that the amount of Tomato Ketchup they were entitled to import up to 31.12.1981 was limited to 4,252 kilos.

On 27.5.1981 the applicants applied and on 29.5.1981 they were granted permit to import 4,252 kilos of Tomato Ketchup "for covering their whole quota for the year 1981". (Vide exhibit 5 attached to the written address of respondent).

On 11.8.1981 applicants applied and on 13.8.1981 respondent refused permit for the importation of 4,382 kilos of Tomato Ketchup for the year 1981. (Vide red 89).

On 16.12.1981 applicants applied for permit to import 6,000 kilos of Tomato Ketchup for the year 1982 (the importation was to be effected on 30.4.1982); they were given permit on 12.2. 1982 to import only 4,252 kilos (vide exh. 6 attached to the written address on behalf of the respondent); I shall confine myself at this stage in referring to handwritting made by the respondent on two parts of this application; on the second part thereof one can read on the left hand side of the document "Σύμφωνα μὲ τὴν ἀπόφασιν τοῦ ὑπουργοῦ θὰ δοθοῦν καὶ τὰ ἴδια quota ὅπως τὸ 1981"; again on the second part of the application and at the bottom of the page it is stated "Μὲ τὴν ἄδειαν αὐτὴ ὁλόκληρο τὸ 'κότα' σας σᾶς παραχωρεῖται"; both these references aie handwritten as aforesaid and they bear the same date i.e. 12.2.1982.

Finally on 26.7.1982 applicants filed with the Ministry of Commerce and Industry an application to import 20,200 kilos of Heinz Tomato Ketchup.

On 10.8.1982 the application was refused by the respondent (vide appendix "D" attached to the recourse) and the reason for such refusal given therein is stated to be "for the purpose of protecting local industry".

The present recourse is challenging the latter decision of the respondent dated 10.8.1982 on the following grounds of law:

1. The said act or decision of the respondents is contrary to the Law and the Constitution of the Republic.

2. The said act or decision is in excess or abuse of power and is based on a wrongful, illegal, unreasoned arbitrary and discriminatoiy exercise of respondents' discretion

in the matter, and/or such exercise of respondents' discretion is contrary to the principles of due and just administration.

3. The said act or omission is not reasoned, or is unduly and/or inadequately reasoned, and/or its basis and reasoning are based on a misconception of law and fact, and/or one of its principal bases, i.e. the imposition of a quota, is contrary to law and the Constitution, and/or was imposed irregularly, arbitrarily and irrationally.

4. The said act or decision proceeds on an erroneous and/or inadequate and/or misconceived legal and/or factual basis.

5. The said act or decision is based on an insufficient examination of the facts and/or a demonstrable lack of due inquiry into the facts, and represents a wrong, misconceived and fatally flawed assessment of the commercial and industrial scene of Cyprus.

6. The said act or decision is contrary to Article 26 of the Constitution and consequently null and void and of no effect whatsoever.

7. The said act or decision is contrary to Article 25 of the Constitution and consequently null and void and of no effect whatsoever.

8. The said act or decision is contrary to Article 28 of the Constitution and consequently null and void and of no effect whatsoever.

The respondent in his opposition raises two preliminary objections as follows:

"1. The present application is out of time;

2. The Act and/or decision impugned by the application for annulment is not of an executory character".

Subject to the above objections and/or in the alternative the respondent maintains that the act and/or decision challenged is a sound one based on the law and the provisions of the Constitution and it was reached by him after due inquiry and proper exercise of his discretion; the respondent denies abuse or excess

of power on his behalf and further maintains that his decison is duly reasoned.

The two preliminary objections raised in the opposition examined in the light of the written address of respondent and the relevant oral clarifications, boil down to one and the same preliminary objection which goes to the question of jurisdiction of this Court and has therefore to be decided first.

The respondent maintains that his decision of 12.2.1982 (whereby a permit was granted to the applicants for importation of 4,252 kilos of tomato ketchup only—out of 6,000 kilos applied —represented the 'quota' the applicants were allowed to import during the year 1982) was a sound decision of an executory character which was never challenged by the applicants.

The decision of 10.8.1982 the respondent alleges, was a decision of a confirmatory nature confirming his previous decision of 12.2.1982 in the sense that the permit for import granted on 12.2.1982 covered the whole 'quota' allotted to the applicants for the year 1982. The submission of the respondent as I understand it, is to the effect that it is immaterial that a different number of kilos (20,200 kilos) was applied for, in the latter instance; the gist of the latter decision refusing permit, was the confirmation of the former decision of 12.2.1982 wherein it was clearly stated that the former permit for importation of 4.252 kilos of 'tomato ketchup' was given in full satisfaction of the 'quota' allotted to the applicants for 1982.

The preliminary objection raised by the respondent was attacked by applicants both in their written address in reply as well as viva voce before me by their learned counsel at the clarification stage. In their written address in reply (pages 1 and 2) the applicants maintain that exhibit 6 (attached to the written address of respondent) which contains "the act or decision relied upon by the Republic as the operative one is not of an executory nature but of a future or at most of a preparatory nature....."

Learned counsel appearing for the applicants elaborating viva voce on this preliminary issue argued vehemently, inter alia, that "a quota had not been validly established for 1982" and submitted that "exh. 6 does not represent a binding executory

act vis-a-vis the quota for 1982". He further indicated that the challenged decision of 10.8.1982 which appears in appendix "D" attached to the recourse does not mention as a reason for non approval of the relevant application "quota already given" but "for purposes of protecting local Industry".

Learned counsel conceded though, that if this Court agrees with the Republic's basis, namely "that the statement (in exh. 6) represents an executory act then it clearly emerges that the recourse is out of time on the ground of confirmatory act....."

Before proceeding to examine this preliminary objection I consider it pertinent at this stage to deal as briefly as possible with the legal aspect on this issue.

Executory Acts have been defined by the Council of State in Greece as follows: (vide Conclusions of the Council of State 1929–1959 at p. 237).

> ".. ἐκεῖναι δι' ὧν δηλοῦται βούλησις διοικητικοῦ ὀργάνου, ἀποσκοποῦσα εἰς τὴν παραγωγὴν ἐννόμου ἀποτελέσματος ἔναντι τῶν διοικουμένων καὶ συνεπαγομένη τὴν ἄμεσον ἐκτέλεσιν αὐτῆς διὰ τῆς διοικητικῆς ὁδοῦ. Τὸ κύριο στοιχεῖον τῆς ἐννοίας τῆς ἐκτελεστῆς πράξεως εἶναι ἡ ἄμεσος παραγωγὴ ἐννόμου ἀποτελέσματος, συνισταμένου εἰς τὴν δημιουργίαν, τροποποίησιν ἢ κατάλυσιν νομικῆς καταστάσεως, ἤτοι δικαιωμάτων καὶ ὑποχρεώσεων διοικητικοῦ χαρακτῆρος παρὰ τοῖς διοικουμένοις".
>
> (".....those acts by which the will of the administrative organ is declared, intending the creation of a legal consequence towards the subjects involving its direct execution by administrative means. The main element of the meaning of the executory act is the direct creation of a legal result, consisting of the creation, amendment or abolition of a legal situation, i.e. rights and obligations of an administrative character of the subjects").

The above definition was adopted by our Supreme Court in the leading case of *Kolokassides* v. *The Republic* (1965) 3 C.L.R. 549 and on appeal (1965) 3 C.L.R. 542, where at p. 551 the following are stated.

> "An administrative act (and decision also) is only amenable within a competence, such as of this Court under Article

146, if it is executory (ἐκτελεστή); in other words it must be an act by means of which the 'will' of the administrative organ concerned has been made known in a given matter, an act which is aimed at producing a legal situation concerning the citizen affected and which entails its execution by administrative means (see *Conclusions from the Jurisprudence of the Council of State in Greece* 1929–1959, pp. 236–237)".

A confirmatory act or decision of the administration is not of an executory character; according to Stassinopoulos on the Law of Administrative Disputes, 4th ed. at p. 174 "a confirmatory act is one which repeats the contents of a previous executory act and signifies the adherence of the administration to a course already adopted".

It is well settled that confirmatory acts are not justiciable; vide: *Koudounaris* v. *Republic* (1967) 3 C.L.R. 479, *Ktenas and another (No. 1)* v. *The Republic* (1966) 3 C.L.R. 64 and on appeal (1966) 3 C.L.R. 820, *Papaleontiou* v. *The Republic* (1966) 3 C.L.R. 557, *Varnava* v. *The Republic* (1968) 3 C.L.R. 566, *Ioannou* v. *The Grain Commission* (1968) 3 C.L.R. 612, *Megalemou* v. *The Republic* (1968) 3 C.L.R. 581, *Kelpis* v. *The Republic* (1970) 3 C.L.R. 196, *HjiKyriakos & Sons Ltd.*, v. *The Republic* (1971) 3 C.L.R. 286, *Police Association & Others* v. *Republic* (1972) 3 C.L.R. 1, *Liasidou* v. *The Municipality of Famagusta* (1972) 3 C.L.R. 278, *Papademetriou* v. *Republic* (1974) 3 C.L.R. 28, *Theodosiou* v. *Attorney-General* (1974) 3 C.L.R. 213, *Salamis Holdings Ltd.* v. *The Municipality of Famagusta* (1974) 3 C.L.R. 344, *Lordos Apartotels Ltd.* v. *The Republic* (1974) 3 C.L.R. 471, *Ioannou* v. *The Commander of Police* (1974) 3 C.L.R. 504, *Limassol Chemical Products Company Ltd.*, v. *The Republic* (1978) 3 C.L.R. 52, *Dr. G.N. Marangos Ltd.* v. *The Municipality of Famagusta* (1979) 3 C.L.R. 73, *Ioannou* v. *The Republic* (1982) 3 C.L.R. 1002.

In its recent decision in *Pieris* v. *The Republic* (1983) 3 C.L.R. 1054 the Full Bench of this Court held inter alia (at p. 1063) that—

"An act is confirmatory of a previous one if—

(a) it is issued by the same authority;

(b) it is addressed to the same person or persons, and

(c) it produces identical results in Law with a previous decision".

Having dealt as briefly as possible with the legal aspect pertaining the preliminary issue, I intend now to examine the factual substratum of same.

It is abundantly clear that the respondent is furtherance of his decision of 7.3.1981 to control the importation of Tomato Ketchup with a view to protecting local industry eliminated by 50% the importation of tomato ketchup by all importers informing all concerned accordingly; as already stated above the applicants were likewise informed by virtue of exh. 4 dated 14.5.1981.

It is also clear from red 19 that the respondent on 9.2.1982 took the same decision for 1982 with a view to protecting local industry. This latter decision was communicated to the applicants on 12.2.1982 by means of ex. 6.

Exhibit 6, which was characterised by learned counsel appearing for the applicants "as one of the most important, perhaps the most important document" in the present proceedings, is the application submitted on behalf of the applicants for a permit to import 6000 kilos of tomato ketchup for the year 1982.

It is common ground that inspite of the fact that the application in question was dated 16.12.1981 it was meant for the seeking of a permit with a view to importing tomato ketchup for 1982, as the importation in question was to be effected on 30.4.1982.

Close examination of exh. 6 reveals that the typed number of 6,000 kilos applied for, was substituted in ink–obviously by the respondent—with the number of 4,252 kilos and a permit for import of the latter quantity was granted by virtue of same; one can also read two more statements by respondent inserted in ink on exh. 6; the one is to the effect that the same "quota" allocated to applicants for 1981 has been allowed for 1982 as well, and the other statement is to the effect that by granting a permit for the importation of 4,252 kilos of tomato ketchup

(for the 30th April 1982), the whole quantity of tomato ketchup under the quota of 1982, was by virtue of exh. 6 being allocated to applicants.

Thus by virtue of exh. 6 dated 12.2.1982 th respondent allotting to applicants for 1982 the same "quota" of 1981 granted to them a permit for the importation of 4,252 kilos of tomato ketchup emphasizing "ex abundanti cautela" that by means of the permit in question, the whole quota for 1982 has thereby been allocated to them.

The above administrative decision of the respondent expresses the will of the administrative organ concerned—the respondent —and at the same time the act and/or decision in question "is aimed at producing a legal situation"; a legal situation which was brought about by the elimination of the importation of tomato ketchup by applicants according to the declared quota for 1982. Therefore the above administrative decision is of an executory character.

In this connection it must be emphasized that applicants did neither voice any protest against such decision nor did they challenge same by a recourse; on the contrary they accepted it and in the words of their learned counsel "ignored" whatever it was therein stated in connection with quota for 1982. Inspite of the contents of exh. 6, applicants submitted on 26.7.1982 to the respondent a new application for the importation of 20,200 kilos of "Heinz Tomato Ketchup" well knowing that their application would have been refused as they have already received the quota allocated to them for 1982; and in fact it was refused on 10.8.1982. The application in question and the refusal of the respondent appear in appendix "D" attached to the recourse.

It was argued on behalf of the applicants that their application of 26.7.1982 was turned down by the respondent on 10.8.1982 "for purposes of protection of local industry" a reasoning submitted which was apt to lead to confusion, whilst it would have been more obvious if the respondent simply stated "quota already given". In this connection I shall confine myself in reminding with respect, that the "quota" imposed by the respondent for the year 1981 (based on the statistical information, furnished so willingly by the applicants, in respect of their imports for

the last 3 years) as well as the "quota" for 1982 (which was communicated to the applicants by virtue of exh. 6 whereby their application was curtailed to 4,252 kilos) were imposed for one and the same purpose, notably "the protection of local industry".

I hold the view that the gist of the sub judice decision of 10.8.1982 was the confirmation by the respondent of his earlier decision of 12.2.1982 wherein it was clearly stated that the permit for import of 4,252 kilos of tomato ketchup covered the whole "quota" allotted to the applicants for the year 1982; I consider it immaterial that the application of applicants dated 26.7.1982 was praying for the permit of importation of 20,200 kilos i.e. a different number of kilos than the one applied for earlier; the substance of the decision of 12.2.1982 was the "quota" the applicants were entitled to import for the year 1982; and the applicants were perfectly aware by the decision of 12.2.1982 (a) what their "quota" was for 1982, (b) that they have imported by virtue of the aforesaid decision the whole quantity allocated to them for the year 1982.

So the decision of 10.8.1982 which confirms the earlier executory decision, and signifies the adherence of the respondent administrative authority to the course already adopted, is of a confirmatory nature having been issued by the same authority addressed to the same applicant having also produced identical results in law with the previous decision of 12.2.1982.

For the above reasons the sub judice decision of 10.8.1982 is of a "confirmatory" nature and therefore non justiciable; and as the "executory" decision was given as early as 12.2.1982 and the present recourse was filed on 29.9.1982, the recourse under consideration is doomed to failure on account of time.

I hold the view that the present recourse should fail for an additional reason namely lack of "existing legitimate interest adversely and directly affected" as envisaged by Article 146.2 of the Constitution.

Although such a preliminary objection was neither raised or argued before me I feel duty bound to indulge in the examination of same as the presence of such legitimate interest has

to be inquired into by an administrative Court even acting "ex proprio motu" (vide *Constantinou* v. *The Republic* (1974) 3 C.L.R. 416).

In this connection the requirements of Article 146.2 of the Constitution must be satisfied at the time of the filing and hearing of the recourse (*Papasavvas* v. *The Republic* (1967) 3 C.L.R. 111, *Christofides* v. *CYTA* (1979) 3 C.L.R. 99).

It has been repeatedly held by our Supreme Court that voluntary and unreserved acceptance of an administrative decision deprives the person concerned of the legitimate interest entitling him to file a recourse for annulment of that decision under Article 146.2 (vide *Paschali* v. *The Republic* (1966) 3 C.L.R. 593, *HjiConstantinou and others* v. *The Republic* (1980) 3 C.L.R. 184, *Neocleous and others* v. *The Republic* (1980) 3 C.L.R. 497).

In the present case the applicants quite freely and voluntarily accepted the administrative executory decision of the respondents dated 12.2.1982 which was limiting their quota for the whole of 1982 to the amount of 4,252 kilos allocated to them by means of the decision of 12.2.1982. Having accepted the aforesaid decision unreservedly and having failed to attack same by a recourse for annulment they have been deprived of their "existing legitimate interest" envisaged by Article 146.2 of the Constitution which was neither present at the time of the filing nor at the hearing of the present recourse.

Having decided as I did, I do not intend to proceed in examining the substance of the present recourse.

For the reasons above stated the present recourse fails and it is accordingly dismissed; in the circumstances there will be no order as to costs.

Recourse dismissed. No order as to costs.