

1985 May 27

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

COSTAS PAPAKYRIAKOU MARKIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 455/83).

Administrative Law—Administrative acts or decisions—Reasoning—Vague and general reasoning—Because reasons for sub judice decision cannot be discerned therefrom or be supplemented from the material in the file—Court being in the dark as to the ground on which the sub judice refusal was based and in any event in real and substantial doubt—Fairer course the annulment of the sub judice decision and its remittance for re-examination.

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The applicant asked to be completely exempted from the payment of import duty in relation to an invalid's motor car on the basis of the provisions of paragraph 09 of class 01 of the Fourth Schedule to the Customs and Excise Duties Law, 1978. The respondent after taking into consideration the report* of the Medical Board which examined the applicant and the report** of the Senior Technical Examiner of the Office of Examiners for Drivers refused the application; and hence this recourse.

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Held, that the sub judice decision has to be annulled on the ground that its reasoning is vague and general inasmuch as it can neither be discerned therefrom nor supple-

* The report is quoted at p. 1396 post.

** The report is quoted at pp 1396-1397 post.

mented from the material in the file as to the reasons for refusing the applicant's application for exemption from import duty; that being, therefore, in the dark as to the ground on which the application was refused and in any event in real and substantial doubt (see *Constantinides v. The Republic* (1967) 3 C.L.R. 7) this Court feels that the fairer in the circumstances course is to annul the sub-
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Per curiam:

Where there is no interference with the exercise of administrative discretion by a person or organ having no competence in the matter under the relevant legislation, there is under the general principles of Administrative Law, no objection to the administration on its own free will to subject its administrative discretion to forms and limitations, not imposed and not provided for by the Law, as a choice of means to form an opinion (p. 1399 post).

Sub judice decision annulled.

Cases referred to:

Miltiados v. Republic (1983) 3 C.L.R. 590;

Kalli v. Republic (1984) 3 C.L.R. 443;

Ioannou v. Republic (1985) 3 C.L.R. 31;

Cytechno Ltd. v. Republic (1976) 3 C.L.R. 407 at p. 425;

Cytechno Ltd. v. Republic (1979) 3 C.L.R. 513;

Constantinides v. Republic (1967) 3 C.L.R. 7.

Recourse.

Recourse against the refusal of the respondent to exempt applicant from the payment of import duty in relation to an invalid's motor-car.

Chr. Trantafyllides, for the applicant.

S. Georghiades, Senior Counsel of the Republic,
for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The applicant asked to be completely exempted from the payment of import duty in relation to an invalid's motor-car on the basis of the provisions of paragraph 09 of class 01 of the Fourth Schedule to the Customs and Excise Duties Law, 1978 as amended.

His application dated the 14th March 1983, (Appendix "A") was in cyclostyled form and was completed by him. It was addressed to the Director-General of the Ministry of Finance and in so far as relevant it contains the following:

"I request that, on the basis of the provisions of Class 01/09 of the Fourth Schedule to the Customs Duties and Excise Laws be exempted fully from the payment of import and excise duty on an invalid's vehicle. This is necessary for me as on account of my invalidity I cannot drive an ordinary vehicle."

There follows his answer to a number of particulars, including his name, driving licence, date of birth, monthly income which is given at £524, immovable property being 30 donums of land at Yeri of a value of £15,00 and then under the heading particulars of the vehicles for which exemption is asked, it is stated "type Peugeot 505 diesel. Horsepower 204 c.c..... invalidity polyomyelitic paralis of the lower right limb."

The relevant statutory provision referred to above reads as follows:

("Description of exemption

Petrol and diesel motor vehicles of a horse power not exceeding 2000 c.c. and 2300 c.c. respectively suitable for use by persons suffering from body disablement imported by disabled persons whose disablement is duly certified by a Government Medical Board constituted for the purpose:

Provided that this exemption is not applicable to disabled person who:

- (a) Are the owners or possessors of another thus duty free imported vehicle;

- (b) are not the holders of a driving licence, provided that when disabled persons are the holders of a learner's driving licence the Director may grant such exemption on the condition that a driving licence will be obtained within one year from payment of customs duty for the vehicle or within such other period which he might consider reasonable"). 5

Under the heading "Extent of exemption" it is stated "As the Minister of Finance might decide on the basis of the financial position of the applicant." 10

The applicant was examined by a Medical Board consisting of the then Senior Orthopaedic Surgeon Specialist, the Senior Surgeon Specialist and the Principal Medical Officer, Nicosia which in its letter of the 3rd June 1983 (Appendix "B") gave the following opinion: 15

"On account of Polyomyelitis in his childhood he presents atrophy, weakness of the right lower limb with equinus deformity of the right foot.

The left lower limb and both upper limbs are normal. 20

Conclusions: Weakness, atrophy of the right lower limb with equinus deformity of the right foot on account of polyomyelitis."

The applicant was further examined in the light of the report of the Medical Board by the Senior Technical Examiner of the office of Examiners for Drivers, who found and so stated in his report to the respondents dated 18th July 1983, (Appendix "D"), that the applicant could drive a vehicle on the following conditions: 25 30

- "(a) The vehicle to be automatic.
 (b) The brake and fuel foot-pedal to be used with the left foot.
 (c) To use safety belts whilst driving.
 (d) If the vehicle runs on petrol not to exceed 2,000 35

cubic c.m. capacity and if on diesel, 2,300 cubic c.m.”

5 An investigation was also carried out by the Department of Social Welfare Services and a social investigation report was prepared (Appendix “C”). It transpires therefrom as regards the family condition of the applicant and his social and financial background that he is a bachelor who lives in a flat rented at £35 per month, that he is employed by the big construction firm of “J and P” since 1959 and he needs a car to move around. As to his financial position it is stated that the income of his immovable property is given by him to his mother for her personal needs and that he has £1,644 deposit with the National Bank of Greece and that he inherited an amount of £925 from his father and that he intends to use the amount of £1,644 as against the purchase of the price of the car whereas the other amount will be spent for the repairs to the house of his mother.

20 The relevant statutory provisions came under judicial consideration in three cases. The first was that of *Stylianous Miltiadous v. The Republic* (1983) 3 C.L.R. 590; the second *Kalli v. The Republic* (1984) 3 C.L.R. 443 and the third one is *Ioannou v. The Republic* (1985) 3 C.L.R. 31. As against *Kalli's case* an appeal was filed by the respondent Minister through the Attorney-General of the Republic, but when it came up for hearing it was withdrawn. In *Miltiadous case* the application of that applicant for relief from the payment of import duty was dismissed in view of the absence of any suggestion that that applicant was, because of his disability, in any way prevented or inconvenienced from driving an ordinary car. In fact his application for exemption was intended to enable him to import an ordinary car free of import duty.

35 Justice Pikis, held that the plain provisions of the Law confine relief from import duty to the importation of vehicles specially adapted to the condition of incapacitated persons. In other words vehicles suitable for invalids and that the Law did not purport to grant relief from import duty to disabled persons but only to those who imported vehicles specially adapted to the needs of incapacitated persons.

This case was the subject of comment by himself in *Kalli's* case (supra) where at p. 447 had this to say:

“I see no reason for deviating from what was decided in *Miltiadous*, that the object of the Regulation under scrutiny is to confer a right upon disabled persons to import a duty-free car, the use of which is made reasonably necessary by the special needs of the person afflicted with disability. On the other hand, for the determination of disability and assessment of its extent and implications the Regulation enjoins the Minister to confine his enquiry to one source only, namely, the Governmental Medical Board, envisaged therein. The Medical Board is the only competent authority to opine on the subject; it is not just any source from which advice may be sought. It is the only competent body to adjudge a necessary prerequisite for the exercise of Ministerial discretion, that is, the disability of the applicant. Therefore, it was wholly impermissible for the respondent to seek advice from another source on the condition of the applicant and, less permissible still, to rely on such opinion. If the Minister was of the view that the findings of the Board were inconclusive, he could seek further information from them, particularly with regard to the difficulties raised by the disability of the applicant, in the way of his using an ordinary car and, the extent to which these difficulties would be eased by the use of a car specially designed for disabled persons.”

A similar approach as regards the propriety and legality of seeking the opinion of the Senior Technical Examiner of the office of the Examiners for Drivers, is to be found in *Ioannou* case (supra) where Stylianides J., held, that the Medical Board is the competent organ to ascertain the physical incapacity of the applicant; that the Minister of Finance has to rely in accepting or refusing an application under this Order on the organ that the Order specifically provides; that the Minister is not entitled to seek the advice of any other body or person or to rely on such other organ or person; that the Minister, instead, referred the medical certificate and the applicant to an extraneous organ, not competent and not authorised by that Order—

the Senior Technical Examiner of Examiners of Drivers; that it was not permissible for the Minister to seek and act on the advice of the Senior Technical Examiner; that in arriving at the sub judice decision the respondent took
5 into consideration matters which he could not and thus acted on a misconception of Law and fact; accordingly the sub judice decision must be annulled.

Whatever the legal position is where there is no interference with the exercise of administrative discretion by a
10 person or organ having no competence in the matter under the relevant legislation, there is, under the General Principles of Administrative Law, no objection to the administration on its own free will to subject its administrative discretion to forms and limitations, not imposed and not
15 provided for by the Law, as a choice of means to form an opinion. In such a case what it cannot do thereafter is to ignore arbitrarily such opinions as same would constitute proof of inconsistent and arbitrary and therefore wrong exercise of discretionary power. The competent administrative
20 organ may, however, do so by giving reasons for that.

Though it may be said that in the present case there was nothing to suggest clearly that the respondent Minister was binding himself to accept the opinion of the Senior Technical Examiner etc., yet it was in the form of further opinion
25 and as part of the wider inquiry carried out by him in the matter. It is obvious that the ascertainment of the extend of invalidity of a person is not enough. It has to be correlated to the interference with safe driving and the requirement of any adaptation that a vehicle may need to meet
30 same (see *Miltiadous case* (supra)). Such self-binding of the administration, is not contrary to the General Principles of Administrative Law. (See Stassinopoulos, the Law of Administrative Acts, 1951 p. 333, Conclusions from the Case Law of the Greek Council of State, 1929-1959, p.
35 193 and Decisions of the Greek Council of State 738/1933, 934/1933 1062/1951.

These principles were adopted in the case of *Cytechno Ltd., v. The Republic* (1976) 3 C.L.R. 407 at p. 425. (It may be pointed out here that the first instance judgment
40 was reversed on appeal by the Full Bench (*Cytechno Ltd., v.*

The Republic (1979) 3 C.L.R. 513) but not on this point.).

Having said this I feel that it is unnecessary to go any further as the sub judice decision has in any case to be annulled on another ground, namely that its reasoning is vague and general inasmuch as it can neither be discerned therefrom nor supplemented from the material in the file as to the reasons for refusing the applicants application for exemption from import duty. The respondent Minister had before him a medical report speaking of a certain kind of disability. It had also the report of the Senior Technical Examiner etc., who was speaking of the need for an automatic vehicle and for the brake and fuel foot-pedal to be used with the left foot. The applicant in his application particularly in the cyclostyled part of it asked for exemption from import duty for an invalids vehicle which, as he states therein, is necessary as he could not on account of his invalidity drive an ordinary one. Yet in the part of the application regarding the particulars about the vehicle in respect of which the exemption was asked he described same by giving only its make, type and horsepower, that is what may be considered as an ordinary vehicle.

Being therefore in the dark as to the ground on which the application was refused and in any event in real and substantial doubt, (See *Constantinides v. The Republic* (1967) 3 C.L.R. 7) I feel that the fairer in the circumstances course is to annul the sub judice decision and send it back for re-examination in the light also of the judicial interpretation of the relevant legislative provision that has since then been given hereinabove set out.

For all the above reasons the recourse succeeds and the sub judice decision is annulled. There will be, however, no order as to costs.

*Sub judice decision annulled.
Nor order as to costs.*