

1985 February 9

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEORGHIOS IOANNOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE.

Respondents

(Case No. 531/83)

5 *Customs and Excise Laws, 1978-1979—Exemption from payment of import duty in respect of a car suitable for an incapacitated person—By virtue of an Order made under section 11(2) of the Laws—Competent organ to ascertain the incapacity the Government Medical Board—Not permissible for respondents to seek advice of Senior Technical Examiner of Examiners of Drivers in considering an application for exemption.*

10 *Administrative Law—Administrative act or decision—Taken on the advice of an extraneous organ not competent and not authorised under the relevant law—Therefore respondents took into consideration matters which they should not and thus acted on a misconception of law and fact—Sub judice decision annulled*

15 The applicant, who was involved in an accident in 1968 and sustained serious personal injuries to his right arm and hand, applied to the respondents for exemption from payment of import duty for a car suitable for incapacitated persons. The application was based on an Order (“the
20 Order”) made by the Council of Ministers under section 11(2) of the Customs and Excise Laws, 1978-1979 which exempts from payment of import duty motor vehicles

suitable for use by incapacitated persons whose incapacity is duly certified by a Government Medical Board. The respondents referred the applicant to a Government Board which certified*, inter alia, that the gripping power of his right hand is weak. Thereafter he was referred to the Senior Technical Examiner of Examiners of Drivers who having examined the applicant, ascertained that he was in a position to drive a vehicle without any special adaptation. 5

The respondents, relying on the report of the said examiner rejected the application; and hence this recourse. 10

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 extra-neous 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 judge decision the respondent took into consideration matters which he should not and thus acted on a misconception of law and fact; accordingly the sub judge decision must be annulled. 15
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Sub judge decision annulled. 30

Recourse.

Recourse against the refusal of the respondents to exempt applicant from payment of import duty for a car suitable for incapacitated persons.

N. Stylianidou (Miss) for E. Efstathiou, for the applicant. 35

* The certificate is quoted at p. 35 post.

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

Cur. adv. vult.

5 STYLIANIDES J. read the following judgment. The
applicant, a refugee of the occupied village of Ayios
Vassilios, now residing in a refugee quarter at Kato Laka-
tamia and working at SOPAZ Central Stores, was in-
volved in 1968 in a domestic accident and sustained
serious personal injuries to his right arm and hand. He
10 received medical treatment in Cyprus and in Berlin as
a sponsored patient. (See certificate, exhibit No. 3, and
translation of the medical certificate issued by the
University Clinic of Berlin dated 31.5.79, exhibit No. 2).

15 The legislator by section 11 of the Customs & Excise
Laws, 1978-1979, exempted from payment of import and
excise duty the goods specified in the Fourth Schedule
under the conditions and circumstances set out therein,
provided that the application for exemption is submitted
before clearance from customs. The Council of Ministers
20 is empowered by subsection 2 of this section to make
any alterations, deletions or amendments of the classes
or any of them set out in the Fourth Schedule by order
to be published in the *Official Gazette of the Republic*.

25 The Council of Ministers made an order under s.11(2) of
the Customs & Excise Laws, 1978-1979, published in
the *Official Gazette* No. 1553 of 14.9.79 under No.
221/79, the material part of which reads as follows:

«Περιγραφή Απαλλαγής

30 Βενζινοκίνητα και πετρελαιοκίνητα οδικά οχήματα,
ιπποδυνάμεως μη υπερβαινούσης τα 2000 κυβ. εκατο-
στά και 2300 κυβ. εκατοστά, αντιστοίχως, κατάλληλα
προς χρήσιν υπό προσώπων πασχόντων εκ σωματικής
αναπηρίας εισαγόμενα υπό αναπήρων προσώπων των
οποίων η αναπηρία πιστοποιείται δεόντως υπό επί τού-
35 τω συγκροτούμενου Κυβερνητικού Ιατρικού Συμβου-
λίου:

Νοείται ότι η απαλλαγή αυτή δεν τυγχάνει εφαρμο-
γής επί αναπήρων προσώπων άτινα:

- (α) Είναι ιδιοκτήται ή κάτοχοι ετέρου ούτως ατε-
λώς εισαχθέντος οχήματος

ή

- (β) Δεν κέκτηνται άδειαν οδηγού, νοουμένου ότι
οσάκις ανάπηροι κέκτηνται άδειαν μαθητευομέ- 5
νου οδηγού ο Διευθυντής δύναται να παραχω-
ρήση απαλλαγήν υπό τον όρον ότι θα εξασφα-
λισθή άδεια οδηγού εντός ενός έτους από του
τελωνισμού του οχήματος ή εντός τιαυτήσ ε-
τέρας περιόδου ως ούτος ήθελε κρίνει εύλογον». 10

("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 dis- 15
ablement imported by disabled persons whose disable-
ment is duly certified by a Government Medical Board
constituted for the purpose:

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

- (a) Are the owners or possessors of another thus 20
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 25
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").

The extent of the exemption is left to the discretion of 30
the Minister of Finance having regard to the financial con-
dition of the applicant.

As the applicant resides away from his place of employ-
ment and his wife is a charwoman at the Nicosia General
Hospital, he applied on 3.5.83 for exemption from pay- 35
ment of import duty for a car suitable for incapacitated
persons under the provisions of the Order.

The applicant was referred to a Government Medical Board, as provided by the said Order, which, having examined him, reported to the Director of the Ministry of Finance, setting out in their said report the condition of the right upper limb of the applicant. The relevant part thereof reads:—

«Το 1968 λόγω κατ' οίκον ατυχήματος υπέστη σοβαράν κάκωσιν κατά την έσω επιφάνειαν της δεξιάς ηγχειοκαρπικής αρθρώσεως μετά διατομής των καμπτήρων και του ωλενίου νεύρου.

Παρουσιάζει ατροφίαν των μυών της δεξιάς άκρας χειρός οίτινες νευρούνται υπό του ωλενίου νεύρου.

Η λαθή της δεξιάς άκρας χειρός δύναται να εκτελεσθεί αλλά μειωμένη.

Το αριστερόν άνω άκρον και αμφοτέρα τα κάτω άκρα κατά φύσιν.

Πόρισμα: Διατομή του ωλενίου νεύρου και καμπτήρων της δεξιάς άκρας χειρός κατά την περιοχή της ηγχειοκαρπικής αρθρώσεως.

Αδυναμία της λαθή της δεξιάς άκρας χειρός».

Thereafter the Director-General of the Ministry referred the applicant to the Senior Technical Examiner of Examiners of Drivers whom he provided with a copy of the report of the Government Medical Board who, as alleged in the opposition, having examined the applicant, ascertained that he is in a position to drive a vehicle without any special adaptation.

The Welfare Officer submitted a report on the financial condition of the applicant which is relevant for the extent of the exemption, as set out in the fourth column of the Order.

The Director-General of the Ministry of Finance rejected the application of the applicant relying on the aforesaid reports on the ground that his physical condition does not necessitate the use of a special car suitable for incapacitated persons. His such decision was communicated to the applicant by letter dated 23.9.83.

The applicant challenges the validity of the said decision.

The certification of the incapacity of a disabled person by a specially constituted Government Medical Board is a sine qua non to the exemption from payment of duty. The law intends the certification-verification of the incapacity by the Government Medical Board obligatory and binding. Thus the application of the Order with respect to the existence of the incapacity is entrusted exclusively to the Medical Board and to no-one else. The certificate of the Medical Board is a decision and produces certain legal results. The compliance with the certificate of the Medical Board constitutes a continuation in the administrative process for the issue of the final act which is a composite administrative act. The issue of the certificate by the Medical Board is not simply an advisory act but an independent intermediate executory act — (*Stassinopoulos—Law of Administrative Acts, pp. 224-225*).

The Medical Board is the competent organ to ascertain the physical incapacity of the applicant. The Minister of Finance has to rely in accepting or refusing an application under this Order on the organ that the Order specifically provides. The Minister is not entitled to seek the advice of any other body or person or to rely on such other organ or person. The Minister, if he wanted clarifications on the report of the Medical Board, he could apply to those whom the Order envisages for the assessment of the incapacity of the applicant. 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.

In this case, however, the respondent rested its decision on the opinion of an incompetent organ. Though it is correct that the certificate of the Medical Board simply records the condition of the applicant and is not conclusive of the matters they are required to certify under the Law and they do not correlate the disability of the applicant to his ability to drive, nevertheless, it was not permissible for the Minister to seek and act on the advice of the Senior

Technical Examiner. In arriving at the sub judge decision the respondent took into consideration matters which he should not and thus acted on a misconception of law and fact. When the physical incapacity of a person, as provided
5 by the Order, is certified by the Government Medical Board, the discretion of the Minister is limited to the extent of the exemption, having regard to the financial condition of an applicant. The object of the Order is to facilitate the movement of disabled persons by means of
10 vehicular transport, depending on their financial condition. Certainly, the applicant must satisfy the other requirement provided in the Order and the vehicle must be of the capacity set out therein. The only and final arbiter of the physical incapacity is the Government Medical
15 Board.

In view of all that I have endeavoured to explain, the sub judge decision is hereby declared null and void and of no effect but in all circumstances I make no order as to costs.

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Sub judge decision annulled. No order as to costs.