1985 March 22

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NICOS KYRIAKIDES & SONS LTD.,

Applicants,

v.

THE MUNICIPAL COMMITTEE OF LIMASSOL,

Respondents.

(Case No. 314/83).

Municipal Corporations—Bye-laws—Can be made by Municipal Councils—Article 54(g) of the Constitution—Section 28 of the Interpretation Law, Cap. 1.

Council of Ministers—Power of, to issue, amend, revoke or suspend public instruments—Article 54(g) of the Constitution—Section 28 of the Interpretation Law, Cap. 1.

Interpretation Law, Cap. 1—Powers of the Council of Ministers to issue public instruments—Section 28 of the Law.

Municipal Corporations —Refuse—Collection of, from premises other than dwelling houses—And imposition of charges therefor—Possible by virtue of section 123(1)(a) and (cc) of the Municipal Corporations Law, Cap. 240—Criteria on which assessment of the charges must be based—Said charges not a "tax" but "fees" which must be co-related to the costs incurred in rendering the services for the collection of the refuse—Fees assessed by taking into consiredation, inter alia, the financial position of applicants without an inquiry being carried out to this end—Sub judice assessment annulled for lack of proper inquiry and because an unreasonable method was used.

Municipal Corporations Law, Cap. 240—"House" in section 123(1)(p) of the Law—Limited to dwellings.

Words and phrases—"House" in section 123(1)(p) of the Municipal Corporatioos Law, Cap. 240.

Tax—Fee—Distinction—Charges imposed by Municipal Corporations for collection of refuse—Are fees.

Words and Phrases—"Tax"—"Fee".

The respondents, who were the Municipal Committee of the town of Limassol, by their letter dated the 21st May, 1983 demanded the payment from the applicants of the sum of £325.- as fee for the collection of refuse from premises occupied by them at 32, 34 and 41 Eleftherias Street, 58 Hellas Street and 120 Irinis Street, Limassol, which they used as shops and showrooms.

Upon a recourse by the applicants against the imposition of the above fee the following issues arose for consideration:

(a) Whether the Municipal Council of Limassol is empowered to make bye-laws since, under Article 54(g) of the Constitution, the only organ that is competent to make orders or regulations for the carrying into effect of any Law is the Council of Ministers and that such power cannot be delegated to another organ of the Republic;

(b) Whether the imposition of a fee by regulation 99* of the Limassol Municipal Bye-laws 1953 to 1962, as amended by the Municipal (Amendment) Bye-laws of Limassol, 1976 and the Municipal (Amendment) (No. 6) Bye-laws of Limassol, 1981 for the collection of refuse from premises other than dwellings is ultra vires the provisions** of the Municipal Corporations Law, Cap. 240;

(c) Whether, assuming the respondents were by the Law given the power to impose a fee for the collection of

* Regulation 99 is quoted at p. 615 post.

** The relevant provision is section 123(1)(p) of the Municipal Corporations Law, Cap. 240, as re-enacted by Law 64 of 1964, which imposes on Municipal Councils the duty to—«provide for the removal of all night soil and refuse from every house and regulate the fees to be taken for such removal».

refuse, the fee, not being a "tax" but a "rate" for services rendered, could be based on the financial condition of the citizens.

Section 125 of Cap. 240 provides that Municipal Councils may, with the approval of the Governor (now, under the provisions of Article 188 of the Constitution, the Council of Ministers) make, vary or revoke bye-laws which, in order to come into force, must be published in the official Gazette of the Republic.

On the 20th February 1953 bye-laws made by the Municipal Commission of Limassol came into force after they had received the approval of the Governor of Cyprus (at the time the Organ that under the Law had to give its approval) and after they were published in the Official Gazette.

The Municipal (Amendment) (No. 6) Bye-laws of Limassol 1981, which provides for the amount of the fees to be collected in respect of each class of premises were made by the Municipal Committee of Limassol and were published in the official Gazette after they were approved by the Council of Ministers.

Held, (1) that the provisions of section 28* of the Interpretation Law, Cap. 1 which remain in force after the establishment of the Republic and the coming into force of the Constitution, clearly show that the powers of the Council of Ministers were never intended to be abrogated, transferred or vested in another organ of the Republic, but they are retained by it intact as given to it by the relevant provisions of the Constitution; that the Council of Ministers retains an absolute control over the issuing of public instruments like, for instance, bye-laws, in that it can, at any time, amend, revoke or suspend them at its discretion and instance, and that it can at any time, withdraw its approval of them, in which case a bye-law will be of no legal effect; that bye-laws, despite the fact that they are issued and published in the name of Municipal Councils of Municipal Corporations, are in fact the act of the Council of Ministers and as such it cannot be said that they are made

* Section 28 is quoted at p. 619 post.

contrary to the provisions of the Constitution once they have been made, issued and published by virtue of and in compliance with the provisions of the Law.

(2) (a) That it is a cardinal principle of interpretation that words have their ordinary meaning unless otherwise defined by a statute; that having in mind this maxim and the fact that the word "house" has been in the Statute Books of Cyprus since 1885 when no factories, hotels etc. were in existance in Cyprus, the word "house" appearing in section 123(1)(p) has no other meaning than that which is limited to buildings exclusively used, occupied and adapted for living in, in other words, dwellings.

(2) (b) That section 123(1)(cc)* of Cap. 240 imposes on and gives the respondents and the Municipal Councils in general duties and powers connected with the protection of the health of the public and allows them to decide in which form and by which way refuse should be removed and where they are to be dumped; that any argument that occupiers of premises other than dwellings are at liberty to throw or dump their refuse wherever they think and to carry them there by means or ways that they choose fit, would be, in present days, absurd; that the respondents, having taken upon themselves the duty to remove the refuse from premises in their town are entitled by virtue of section 125(1)(a)** of Cap. 240 to impose or charge the occupiers of these premises a fee for the services rendered.

(3) That though regulation 99(4) gives to the respondents the power to impose on categories of premises a maximum fee for the collection of their refuse, nowhere in the Law or in the bye-laws criteria are set on which the respondents have to base their assessment of the fee to be imposed; that the charges imposed by the respondents cannot be held to be a "tax" but that they are "fees" which must be co-related to the costs incurred in rendering the services for the collection of the refuse; that though in imposing the sub judice fees the respondents, inter alia, took into consideration the financial condition of the applicants, they mention nothing about their source of informa-

* Section 123(1)(cc) is quoted at pp. 620-621 post.
** Section 125(1)(a) is quoted at p. 621 post

tion that the applicants were financially sound and to what degree; that, they, further, make no mention of the enquiry that they had carried out to this end; that it is impermissible, as being unreasonable, for an organ to base its assessment for the imposition of a fee for services rendered simply on the financial condition of a citizen; and that, therefore, the sub judice decision should be annulled as the respondents have failed to carry out a proper inquiry in reaching their decision and because in reaching it, they used an unreasonable method.

Sub judice decision annulled.

Cases referred to:

R. v. *Burah* [1878] 3 App. Cas. 889;

Hadge v. *R.* [1883] 9 App. 117;

Cubb & Co. Ltd. and Others v. *Kropp* [1966] 2 All E.R. 913.

Recourse.

Recourse against the decision of the respondent to impose on applicants a fee for the collection of refuse.

P. Anastasiades, for the applicants.

Y. Potamitis, for the respondents.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. This is one of a great number of recourses (22 of which have been heard) filed by companies and persons carrying on business in the town of Limassol, challenging the decision of the respondent Municipal Committee of Limassol, by virtue of which there was imposed on the applicants a fee for the collection of refuse.

The first issue that poses for decision in these recourses is that raised in Recourses Nos. 314/83, 93/84 and 153/84, namely whether the Municipal Council of Limassol is empowered to make bye-laws since, under Article 54(g) of

the Constitution, the only organ that is competent to make orders or regulations for the carrying into effect of any Law is the Council of Ministers and that such power cannot be delegated to another organ of the Republic.

The second issue, which is common in all applications before me is whether the imposition of a fee by regulation 99 of the Limassol Municipal Bye-laws 1953 to 1962, as amended by the Municipal (Amendment) bye-laws of Limassol 1976 and the Municipal (Amendment) (No. 6) Bye-laws of Limassol, 1981, for the collection of refuse from premises other than dwellings is ultra vires the provisions of the Municipal Corporations Law, Cap. 240.

The third issue is whether, assuming the respondents were by the Law given the power to impose a fee for the collection of refuse, the fee, not being a "tax" but a "rate" for services rendered, could be based on the financial condition of the citizens.

The respondents, by their written address, raise the following legal defence to the grounds of Law put forward by the applicants in support of their allegations that the sub judice decision is null and void and of no effect:

(a) The applicants are estopped and/or have waived any claim that the respondents have no power to impose rates for refuse collection from premises other than dwelling houses, in that in previous years they were paying the rates imposed on them without objection; that in 1982 and 1983 the applicants were delivering to the respondents and/or placing outside their premises their refuse for collection by the respondents and that in doing so they were acting in full knowledge that such refuse were refuse of business premises and not of a dwelling house.

(b) That the word "house" appearing in section 123(1)(p) of Cap. 240, as re-enacted by the Municipal Corporations Law, 1964 (Law 64/64), should be interpreted not in a narrow sense, but that it should be given such a wide meaning as to include not only dwelling premises but premises of any kind.

(c) That it was open to the respondents to exercise, in

good faith, the method of fixing the fees payable for the collection of refuse and that the fixing of the fees is within the discretionary powers of the respondents.

The facts that led the applicants in this recourse to seek the annulment of the sub judice decision are the following:

The respondents, who are the Municipal Committee of the town of Limassol, by their letter dated the 21st May, 1983, demanded the payment from the applicants of the sum of £325.- as fee for the collection of refuse from premises occupied by them at 32, 34 and 41 Eleftherias Street, 58 Hellas Street and 120 Irinis Street, Limassol, which they use as shops and showrooms.

For the same premises the respondents had imposed on the applicants as fees for the collection of their refuse the sum of £185.- for the year 1981 and £280.- for the year 1982. which fees were paid by the applicants with reservation as being unreasonably high.

As it appears from the written address filed on their behalf, the applicants in this recourse objected to the imposition on them of the said fee and the respondents, by their letter in reply, informed the applicants that in view of the increase of the costs in running the various services which they offer to the town and its residents, and in order to cover such increase without lowering the standards of the services offered, they were forced to amend accordingly the scales of the various taxes which constitute their basic and only sourse of income. After assuring the applicants that the amendment of the scales and the allocation of taxes is always made in a just manner, but in such a way as there would be no decrease in their income, they informed the applicants that they, having the above considerations in mind, as well as the financial condition of the applicants, came to the conclusion that the "tax" imposed as free for the removal of their refuse was reasonable and that they could not reconsider their decision.

Municipal Corporations of the towns of Cyprus are at present established by the Municipal Corporations Law, 1964 (Law 64/64), which incorporates the Municipal Corporations Law, Cap. 240.

Sections 123 to 180 of Cap. 240 specifically describe the duties and powers of the Council of a Municipal Corporation. In particular section 123 lays down the duties of the Municipal Councils and para. (p) of sub-section (1) of the section imposes on Municipal Councils the duty to-

> "provide for the removal of all night soil and refuse from every house and regulate the fees to be taken for such removal."

The duty of Municipalities "to provide for the removal of all night soil and refuse from every house within the Municipal area" was first imposed on Municipal Corporations by section 1 of the Municipal Councils Law, 1885 (Law 8/85), which came into force on the 26th March, 1885. This Law was enacted in order to regulate the duties and powers of Municipalities which were established by the Municipal Councils Law, 1882 (Law 6/82),

Laws 6 of 1882 and 8 of 1885 were repealed by the Municipal Corporations Law, 1930 (Law 26/30), which was enacted in order "to establish Municipal Corporations and to consolidate with amendments the Laws relating to Municipalities".

The power to regulate the collection of fees for the removal of "all night soil and refuse from every house" was for the first time given to Municipalities by section 115(1) (r) of this Law and although Law 26 of 1930 has since its enactment been repeatedly amended, the provisions-

(a) imposing on the Municipalities the duty to remove "the night soil and refuse from every house", and

(b) giving to the Municipalities the right to regulate the fees to be taken for such removal,

have never since been amended.

Section 115(1) (r) reads:

> "Provide for the removal of all night soil and refuse from every house and regulate the fees to be taken for such removal."

Having dealt with the historical evolution of the Laws

that provide for the establishment of Municipalities in Cyprus and the regulation of their rights and duties, I shall proceed to deal with the issue raised by the applicants in this case and in Cases Nos. 93/84 and 153/84, namely whether, after the establishment of the Republic and the coming into force of the Constitution, the provisions of section 125 of Cap. 240, by virtue of which Municipal Councils can make, vary or revoke bye-laws, subject to certain conditions, offend the provisions of Article 54(g) of the Constitution.

Section 125 of Cap. 240 provides that Municipal Councils may, with the approval of the Governor (now, under the provisions of Article 188 of the Constitution, the Council of Ministers) make, vary or revoke bye-laws which, in order to come into force, must be published in the Official Gazette of the Republic.

On the 20th February 1953 bye-laws made by the Municipal Commission of Limassol came into force after they had received the approval of the Governor of Cyprus (at the time the Organ that under the Law had to give its approval) and after they were published in the Official Gazette (see Cyprus Gazette No. 3673 of the 20th February 1953, Supplement No. 3, Not. 83).

Regulation 99, which is in issue in this recourse, then read:

> "99.- (1) Every owner or lessee or occupier of any *premises* within the municipal limits shall provide himself with a suitable sanitary receptacle for containing refuse.
>
> (2) Every sanitary receptacle shall have a closely fitting cover and shall be kept covered except when opened for loading or unloading."

This regulation was in 1972 deleted and replaced by a new one. Paragraphs (1) and (2) of this regulation were reproduced without any amendment or variation but two new paragraphs were added to it (paragraphs 3 and 4).

Paragraph 4, which was added to regulation 99 and which is material in these proceedings, (see No. 132 in

the Third Supplement to the Official Gazette of 1972) read:

«(4) Δέον νὰ πληρώνηται πρὸς τὸν Δημοτικὸν Ταμίαν οὐχὶ ἀργότερον τῆς τριακοστῆς πρώτης ἡμέρας τοῦ μηνὸς Αὐγούστου ἑκάστου ἔτους ὑπὸ ἑκάστου ἰδιοκτήτου, ἐνοικιαστοῦ ἢ κατόχου-

(α) οἰκίας, τέλος καθοριζόμενον εἰς ἑκάστην περίπτωσιν ὑπὸ τοῦ Συμβουλίου μὴ ὑπερβαῖνον τὸ ποσὸν τῶν £4.000 μίλς κατ' ἔτος ἢ μέρος τούτου·

(β) καταστήματος ἢ ἀποθήκης ἢ καφενείου, τέλος καθοριζόμενον εἰς ἑκάστην περίπτωσιν ὑπὸ τοῦ Συμβουλίου μὴ ὑπερβαῖνον τὸ ποσὸν τῶν £6.000 μίλς κατ' ἔτος ἢ μέρος τούτου·

(γ) ξενοδοχείου, οἰκοτροφείου, ξενῶνος ὕπνου ἢ πανδοχείου, τέλος καθοριζόμενον εἰς ἑκάστην περίπτωσιν ὑπὸ τοῦ Συμβουλίου μὴ ὑπερβαῖνον τὸ ποσὸν τῶν £36.000 μίλς κατ' ἔτος ἢ μέρος τούτου·

(δ) τυπογραφείου, λιθογραφείου, κλινικῆς, ἐργοστασίου, βιομηχανικῆς ἐπιχειρήσεως ἢ ὑποστατικῶν ἄλλων πλὴν τῶν ἀναφερομένων εἰς τὰς παραγράφους (α), (β) καὶ (γ) ὡς ἄνω, τέλος καθοριζόμενον εἰς ἑκάστην περίπτωσιν ὑπὸ τοῦ Συμβουλίου μὴ ὑπερβαῖνον τὸ ποσὸν τῶν £36.000 μίλς κατ' ἔτος ἢ μέρος τούτου.

("(4) There must be paid to the Municipal Cashier not later than the thirty first day of August in each year by each ower, lessee or occupier of-

(a) a house, a fee defined in each case by the Council not exceeding the sum of £4.000 mils per year or part thereof;

(b) a shop or ware house or coffee-shop, a fee defined in each case by the Council not exceeding the sum of £6.000 mils per year or part thereof;

(c) a hotel, boarding-house, guests house or inn, a fee defined in each case by the Council not exceeding the sum of £36.000 mils per year or part thereof;

(d) a printing office, lithographic office, clinic, fa-

ctory, industrial enterprise or establishments other than those referred to in paragraph (a), (b) and (c) above, a fee defined in each case by the Council not exceeding the sum of £36.000 mils per year or part thereof.")

Para. 4 of regulation 99, above, was in 1976 and in 1981 deleted and replaced by new ones, the effect of which was the increase of the fees which the Council was authorised to collect from the four classes of owners, lessees and occupiers, specified therein.

The above variations were published in Supplement No. 3 to the Official Gazette under Notification 49 of 1976, dated 2nd April, 1976, and Notification 219 of 1981, dated 18th September, 1981, respectively, after they were approved by the Council of Ministers.

Regulation 99, as amended by Notification 219 of 1981, reads:

«(4) Δέον νὰ πληρώνηται πρὸς τὸν Δημοτικὸν Ταμίαν οὐχὶ ἀργότερον τῆς τριακοστῆς πρώτης ἡμέρας τοῦ μηνὸς Αὐγούστου ἑκάστου ἔτους ὑπὸ ἑκάστου ἰδιοκτήτου, ἐνοικιαστοῦ ἢ κατόχου—

(α) οἰκίας, τέλος καθοριζόμενον εἰς ἑκάστην περίπτωσιν ὑπὸ τοῦ Συμβουλίου μὴ ὑπερβαῖνον τὸ ποσὸν τῶν £20.000 μίλς κατ' ἔτος ἢ μέρος τούτου·

(β) καταστήματος ἢ ἀποθήκης ἢ καφενείου, τέλος καθοριζόμενον εἰς ἑκάστην περίπτωσιν ὑπὸ τοῦ Συμβουλίου μὴ ὑπερβαῖνον τὸ ποσὸν τῶν £50.000 μίλς κατ' ἔτος ἢ μέρος τούτου·

(γ) οἰκοτροφείου, ξενῶνος ὕπνου ἢ πανδοχείου, ὠργανωμένου διαμερίσματος, τουριστικοῦ καταλύματος καὶ κέντρου ἀναψυχῆς, τέλος καθοριζόμενον εἰς ἑκάστην περίπτωσιν ὑπὸ τοῦ Συμβουλίου μὴ ὑπερβαῖνον τὸ ποσὸν τῶν £200.000 μίλς κατ' ἔτος ἢ μέρος τούτου·

(δ) ξενοδοχείου, τέλος καθοριζόμενον εἰς ἑκάστην περίπτωσιν ὑπὸ τοῦ Συμβουλίου μὴ ὑπερβαῖνον τὸ ποσὸν τῶν £2,000.000 μίλς κατ' ἔτος ἢ μέρος τούτου·

(ε) τυπογραφείου λιθογραφείου, κλινικῆς, ἐργοστα-

οίου, βιομηχανικῆς ἐπιχειρήσεως ἢ ὑποστατικῶν ἄλλων πλὴν τῶν ἀναφερομένων εἰς τὰς παραγράφους (α), (β), (γ) καὶ (δ) ὡς ἄνω, τέλος καθοριζόμενον εἰς ἑκάστην περίπτωσιν ὑπὸ τοῦ Συμβουλίου μὴ ὑπερβαῖνον τὸ ποσὸν τῶν £500.000 μίλς κατ' ἔτος ἢ μέρος τούτου.»

("(4) There must be paid to the Municipal Cashier not later than the thirty first day of August in each year by each owner, lessee or occupier of-

(a) a house, a fee defined in each case by the Council not exceeding the sum of £20.000 mils per year or part thereof;

(b) a shop or ware house or coffee-shop, a fee defined in each case by the Council not exceeding the sum of £50.000 mils per year or part thereof;

(c) a boarding-house, guests house or inn, hotel appartment, tourist establishment or entertainment establishment, a fee defined in each case by the Council not exceeding the sum of £200.000 mils per year or part thereof;

(d) a hotel, a fee defined in each case by the Council not exceeding the sum of £2,000.000 mils per year or part thereof;

(e) a printing office, lithographic office, clinic, factory, industrial enterprise or establishments other than those referred to in paragraphs (a), (b), (c) and (d) above, a fee defined in each case by the Council not exceeding the sum of £500.000 mils per year or part thereof.")

Counsel for the applicants in this case, in his written address, submitted that after Independence every Law has to be read in the light of the provisions of the Constitution; that it is a basic principle of Constitutional and Administrative Law that the regulatory power of the Administration, that is to say its power to legislate, must be based on the Constitution and that any making, variation or revocation of any bye-law, is invalid when made, varied or revoked by an organ other than the Council of Ministers, as

such act offends Article 54(g) of the Constitution.

A "bye-law" is, by the provisions of the Interpretation Law, Cap. 1, defined as a public instrument. Section 28 of this Law provides:

> "When power is given to the Governor or to the Governor in Council to make, issue or approve any public instrument, it shall include the power of amending revoking or suspending such public instrument or withdrawing approval thereof and of declaring the date of its coming into force and the period of its operation and also of substituting another therefor."

In my view, the provisions of this section which remain in force after the establishment of the Republic and the coming into force of the Constitution, clearly show that the powers of the Council of Ministers were never intended to be abrogated, transferred or vested in another organ of the Republic, but they are retained by it intact as given to it by the relevant provisions of the Constitution; that the Council of Ministers retains an absolute control over the issuing of public instruments like, for instance, bye-laws. in that it can, at any time, amend, revoke or suspend them at its discretion and instance, and that it can, at any time, withdraw its approval of them, in which case a bye-law will be of no legal effect.

In my view, bye-laws, despite the fact that they are issued and published in the name of Municipal Councils of Municipal Corporations, are in fact the act of the Council of Ministers and as such it cannot be said that they are made contrary to the provisions of the Constitution once they have been made, issued and published by virtue of and in compliance with the provisions of the Law.

This submission, therefore, of the applicants, fails.

In reaching my decision on the above issue, I found useful guidance from the following Privy Council cases:-

(a) *R.* v. *Burah*, [1878] 3 App. Cas. 889.

(b) *Hodge* v. *R.* [1883] 9 App. Cas. 117.

(c) *Cobb & Co. Ltd. and others* v. *Kropp*, [1966] 2 All E.R. 913,

and from Seervai on the Constitutional Law of India, 2nd ed., Volume 2, pp. 1186 at seq.

The second issue that calls for decision is whether the imposition of a fee by the respondents for the collection of refuse from premises that are not dwelling houses is ultra vires the provisions of Cap. 240.

Counsel for the applicants submitted that the word "house" appearing in section 123(1) (p) bears a strict meaning, that is it should be interpreted as covering only dwelling houses and that it cannot be given such a wide definition as to include any kind of premises.

Counsel for the respondents, on the other hand, argued that the word "house" in section 123(1) (p) should be given such a wide meaning as to include any kind of premises. He further submitted that even if this word has the meaning attributed to it by the applicants, the respondents have the power to impose fees for the collection of the refuse from the premises described in regulation 99, in view of the combined effect of sections 123(1) (cc) and 125 (1) (a) of Cap. 240, the first of which imposes on the respondents the duty to provide for the allotment of special places for the dumping of refuse, and it further gives them power-

(a) to prohibit the dumping of refuse at any other place, and

(b) to control, restrict and regulate the keeping and removal of refuse,

and the latter section which empowers the respondents to make, vary and revoke bye-laws in order to enable or assist them to perform the duties assigned to them by section 123 and to provide for the payment of fees or charges in connection therewith.

Section 123(1) (cc) reads:-

> "123 (1) Subject to the provisions of this Law and of any other Law in force for the time being the council shall within the municipal limits-

. . . . . .

(cc) with the approval or at the request of the Commissioner, provide for the allotment of special places, situated either within or without the municipal limits, for the dumping of refuse, and prohibit the dumping of refuse at any other place and control, restrict and regulate the keeping and removal of refuse;

. . . ."

Section 125 (1) (a) as amended by section 3 of the Schedule to the Municipal Corporations (Amendment) (No. 3) Law, 1970 (Law 89/70) reads:

"125 (1) A council may from time to time make and when made vary and revoke bye-laws for all or any of the following purposes and may impose a penalty not exceeding twenty five pounds for any breach thereof or in the case of continuing breach, not exceeding five pounds for every day during which such breach shall continue:

Provided that such bye-laws are not inconsistent with the provisions of this or any other law:

Provided also that every such bye-law or the variation or revocation thereof shall be subject to the approval of the Governor and shall not come into operation until it has been approved by him and published in the Gazette-

(a) to enable or assist a Council to perform any of the duties assigned to it by section 123 hereof and to provide for the payment of any fees or charges in connection therewith; and

. . . ."

Before proceeding to deal with the arguments put forward by the respondents on this issue, the question that poses for decision is what the word "house" appearing in section 123(1) (p) means. Definitions of the word given in English legal dictionaries and judicial authorities are of no help as the meaning attributed to this word in them

always depends on the interpretation given to it by a specific statute.

It is a cardinal principle of interpretation that words have their ordinary meaning unless otherwise defined by a statute. Having in mind this maxim and the fact that the word "house" has been in the Statute Books of Cyprus since 1885 when no factories, hotels etc. were in existence in Cyprus, I have come to the conclusion that the word "house" appearing in section 123(1)(p) has no other meaning than that which is limited to buildings exclusively used, occupied and adapted for living in; in other words, dwellings.

Having reached this conclusion, I shall deal with the submission of the respondents that the combined effect of sections 123(1)(cc) and 125(1)(a) gives them the power to impose on the applicants a fee for the removal of their refuse.

It is an undisputed fact that the respondents do provide a service for the removal of refuse from premises situated within the Municipal limits of their town, including those belonging or occupied by the applicants.

I have already referred to the provisions of section 123 (1)(cc). This section, in my view, imposes on and gives the respondents and the Municipal Councils in general duties and powers connected with the protection of the health of the public and allows them to decide in which form and by which way refuse should be removed and where they are to be dumped. In my opinion any argument that occupiers of premises other than dwellings are at liberty to throw or dump their refuse wherever they think and to carry them there by means or ways that they choose fit, would be, in present days, absurd.

The respondents, having taken upon themselves the duty to remove the refuse from premises in their town are they entitled to impose or charge the occupiers of these premises a fee for the services rendered? In my view section 125(1)(a) gives them that power but the question, which is the third issue raised by the applicants, is what are the considerations that have to be taken into account in assessing this fee.

As I have already said, regulation 99(4) gives to the respondents the power to impose on categories of premises a maximum fee for the collection of their refuse, but nowhere in the Law or in the bye-laws criteria are set on which the respondents have to base their assessment of the fee to be imposed.

The respondents, as it appears from the contents of the circular letter which they sent to the applicants in reply to the latters' objection for the fee imposed on them, based their assessment of the fee imposed on the increasing costs of the services generally rendered by them to the citizens of the town, their wish not to lower the standard of these services and the financial condition of the applicants.

The issue, therefore, that poses for decision under this head is what is the nature of the charge imposed by the respondents on the applicants. Is the charge a "tax" or a "fee"?

Seervai in his book "Constitutional Law of India", 2nd edition, Vol. 2, at p. 1250 et seq. quotes part of the judgment delivered by Mukherjea J. in the case of *Shirur Mutt,* where a clear distinction is made of what is a "tax" and a "fee". The relevant quotation reads:-

> "The definition of a tax given by Latham C.J. namely, 'A tax is a compulsory exaction of money by public authority for public purposes enforceable by Law and is not a payment for services rendered', [19] brought out the essential characteristics of a tax as distinguished from other forms of imposition which in a general sense are included in a tax. The second characteristic is that it is a public impost without any reference to services rendered, which is expressed by saying that a tax is imposed for the purpose of general revenue, and its object is not to confer any special benefit upon any particular individual and consequently there is no element of quid pro quo between the taxpayer and the public authority. A fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency and is supposed to be

[19] Mathews v. Chickory Marketing Board, 60 C.L.R. 263, 276

based on the expenses incurred in rendering the service, though in many cases, the costs are arbitrarily assessed. Ordinarily, fees are uniform and no account is taken of the varying abilities of different recipients to pay. A fee is not a voluntary payment because a careful examination shows that there is an element of compulsion in all fees. No doubt licence fees are charged from those who want a licence, but a person who wants to pursue an activity which requires a licence must pay the licence fee whether he wants to pay it or not. Public interest is at the basis of all imposition, but in a fee it is some special benefit which the individual receives. Since a fee is a sort of return for services rendered, it is essential that the provision for the levy of a fee should be co-related to the expenses incurred in rendering the services. If the money paid is set apart and is not merged in the public revenue for the benefit of the general public, it would be accounted as a fee, and not as a tax."

In the light of the above quotation, I have come to the conclusion that the charges imposed by the respondents cannot be held to be a "tax" but that they are "fees" which must be co-related to the costs incurred in rendering the services for the collection of the refuse.

Removal of refuse from premises in a town is a service rendered in the interest of public health for which the authority having the duty to provide for such service must be indemnified for doing so, or be able by charging the townsmen with a fee to cover the costs of rendering such service. The fee, however, which an authority can assess on the townsmen for services so rendered cannot be an arbitrary one, nor can it be imposed as if it is a "tax".

In Greece, in similar cases, criteria are set for imposing such kind of fees. They are, amongst others, the area of the premises served, the number of personnel employed there, the volume of refuse collected etc.

The first two criteria taken into consideration by the respondents in reaching their decision are, undoubtedly, sound, provided that these were related to the costs and standard of services intended to be rendered for the collection

of the refuse; but for the third one, namely the financial condition of the applicants, the respondents mention nothing about their source of information that the applicants were financially sound and to what degree. They further make no mention of the enquiry that they had carried out to this end.

In my view, it is impermissible, as being unreasonable, for an organ to base its assessment for the imposition of a fee for services rendered simply on the financial condition of a citizen.

Such fee should be based proportionately on the cost of the services rendered to the citizen and not the citizen to be asked to foot the bill for other services rendered by a public authority for other activities.

In the circumstances, I find that the sub judice decision should be annulled as the respondents have failed to carry out a proper inquiry in reaching their decision and because, in reaching it, they used an unreasonable method. No order as to costs.

Sub judice decision annulled. No order as to costs.