

1987 November 7

[PIKIS J I]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE MERIDIAN TRADING CO LTD ,

Applicants,

v

THE MINISTER OF COMMERCE AND INDUSTRY,

Respondent

(Case No 452/86)

Constitutional Law — Right to property — Constitution, Art 23 — Does not safeguard a right to import goods into this Country

Constitutional Law — Right to carry on a trade — Importation of goods — Restrictions — The Imports Regulation Law, section 3 — Order made thereunder making importation of goods subject to licence — Does not affect freedom to engage in import trade as such, but the circumstances of carrying on such trade

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Constitutional Law — Equality — Constitution, Art 28 — Importation of goods subject to import regulation — Criteria designed to afford to each importer amenity to import a percentage of the products he intended to import — In this case that was not an unreasonable way of balancing conflicting interests

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Imports — The Imports Regulation Law, as amended by Law 7/67 — Order under section 3 — Competency for the issue of licences

Imports — The Imports Regulation Law, as amended by Law 7/67 — Section 3 — Order thereunder relating to gloves — Whether the «quota» should be distributed between traditional importers — No warrant for such a limitation

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The importation of gloves in Cyprus is in virtue of an order made in 1983 under s 3 of the said law subject to licence and control by the Minister of Commerce and Industry

On 7 3 86 the Minister determined various applications, which were then pending, for the importation of gloves. In each case he issued a permit for part of the quantity applied for

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The applicant feeling aggrieved filed the present recourse, seeking the annulment of the decision on the following grounds, namely that it was taken

3 C.L.R. **Meridian Trading v. Min. of Commerce**

by an incompetent organ, i.e. by an official of the Ministry and not the Minister himself, that the order of 1983 is ultra vires section 3 of the said law, that the quota of the gloves to be imported should have been confined to traditional importers and that it is contrary to Articles 23, 25 and 28 of the Constitution

5 Held, dismissing the recourse (1) Inevitably applications are processed through the appropriate channels of the Ministry before final determination that cannot but be presumed in the absence of an indication to the contrary, to be that of the Minister no doubt illuminated by the study and researches of the personnel of his department. In this case the contention as to the alleged
10 incompetency fails

2) This Court fails to see why the order of 1983 is ultra vires the law

3) The contention as to the quota is baseless. There is no warrant for such limitation either in the law or the order, not to mention the likelihood of incompatibility of any such limitation with the provisions of Art. 28 of the
15 Constitution

4) Article 23 of the Constitution is not applicable to the facts of this case. It does not safeguard the right to import goods into the country

5) The alleged grievance does not affect applicants' freedom to engage in the import trade as such but the circumstances of carrying on that trade a separate and distinct question. It follows that the sub-judice decision is not
20 inconsistent with Art. 25.1

6) The Ministry adopted certain criteria designed to afford to each importer amenity to import a percentage of the products he intended to import into the country. It was not an unreasonable way of balancing the conflicting interests of the importers
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Recourse dismissed
No order as to costs

Cases referred to

Police v. Hondrou and Another, 3 R.S.C.C. 82.

30 *Impalex Agencies Ltd v. The Republic* (1970) 3 C.L.R. 361.

Houssein Irfan and Others v. The Republic, 3 R.S.C.C. 39

Recourse.

35 Recourse against the decision of the respondent whereby applicants' application to import 1500 pairs of rubber gloves was approved for only 420 pairs of gloves

A. Scordis, for the applicants.

St. Ioannides (Mrs.), for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. In exercise of the powers vested in him by s. 3 of the Imports Regulation Law (as amended by s. 2 of Law 7/67), the Minister of Commerce and Industry promulgated in 1983 an order* making the importation of gloves subject to import regulation. In 1975** an absolute prohibition was imposed on the importation of gloves for the protection of local industry. The prohibition was relaxed from 1979 onwards, culminating in the order of 1983 making the importation of gloves subject to licence and control by the Minister of Commerce and Industry.

In March 1986 the applicants, a company in the import trade, applied for a licence to import 1500 pairs of rubber gloves. Apart from the applicants, other importers too applied for a licence to import similar articles. On 7th May, 1986, the Minister determined applicants' request and other applications for the importation of gloves. He approved the pursuers' application only in part authorizing the applicants to import 420 pairs of gloves. By the same token he judged, as we may gather from the material before us, other applications for the importation of gloves, allowing only the importation of a portion of the quantity applied for.

The decision of the Ministry was communicated to the applicants by an official of that department on behalf of the Director-General. The present proceedings are directed against the validity of that decision challenged as unconstitutional and otherwise bad for the variety of reasons. It is expedient to begin with the examination of the latter grounds first and then turn to questions of constitutionality. The first ground by reference to which the decision is challenged is that it emanated from and was issued by an incompetent organ. The argument is that whereas the power to determine an application for an import licence is entrusted to the Minister, the decision was taken by an official of the Ministry other than himself and on that account it is bad for lack

* RAA 7/83

** RAA 102/75.

of competency on the part of the organ taking the decision. The submission is, with respect, based on a fallacy. No doubt the Minister is the custodian of the powers vested by law in the Ministry of Commerce and Industry and he assumes ultimate
5 responsibility for them. Inevitably applications are processed through the appropriate channels of the Ministry before final determination that cannot but be presumed, in the absence of an indication to the contrary, to be that of the Minister; no doubt illuminated by the study and researches of the personnel of his
10 department.

The next ground upon which attention will be focussed is the submission that the 1983 order is ultra vires the law. I absolutely fail to see why. The relevant section of the law, notably s.3, expressly empowers the Minister of Commerce and Industry to
15 regulate the importation of any article by order published in the official Gazette whenever he deems it appropriate and conducive to the achievement of one or more of the purposes named in the law.

The order here under consideration was made in express
20 exercise of that power. It has long been settled that the Constitution of Cyprus raises no obstacle to the enactment of subsidiary legislation*; provided always that those to whom power is entrusted to enact secondary legislation keep within the confines of the law and heed the limitations imposed by the parent
25 legislation; a constraint duly observed by the Minister in this case.

The order of 1983 made in terms the Minister the custodian of the exercise of the power in the interest of the purposes specified in the order revolving as they do round the exigencies of the Cyprus economy. It was in the power of the Minister to restrict the
30 importation of gloves and nothing placed before me suggests that the power was in any way abused or exceeded. The suggestion that the quota, if I can use that expression, of the gloves to be imported should be confined to traditional importers of those articles, is baseless. There is no warrant for such limitation either in
35 the law or the order, not to mention the likelihood of incompatibility of any such limitation with the provisions of Art. 28 of the Constitution safeguarding equality before the Administration.

* *Police v. Hondrou & Another*, 3 R S C.C 82.

Furthermore, the contention that the decision is bad for lack of due reasoning is again groundless. It is evident from the material before me that the decision was taken in the interest of local manufacturers of gloves in the exercise of the discretionary power vested in the Minister to define the needs of the economy and determine measures for its protection through regulation of the import trade. 5

Lastly, the law and the order made thereunder are challenged as bad for breach of the provisions of Articles 23, 25 and 28 of the Constitution and sequentially thereon the sub judge decision as founded on the provisions of the impugned legislation. I truly fail to see how Art. 23 comes into play at all in the circumstances of this case. The sub judge decision does not limit the right of the applicants to own property. Art. 23 does not safeguard a right to import goods into the country, whereas para. 3 of Art. 23 allows limitations necessary, inter alia, for the promotion of public benefit. I shall concern myself no further with this aspect of the case. 10 15

Art. 25 safeguards the right of every person to practice any profession or carry on any occupation, trade or business. Neither the Import Regulation Law nor the order made thereupon purport to limit the freedom of the applicants to establish themselves as traders. In fact, they trade without hindrance. The alleged grievance does not, to my comprehension, affect their freedom to engage in the import trade as such but the circumstances of carrying on that trade, a separate and distinct question. This appreciation of the implications of s. 3 of the Imports Regulation Law has been judicially acknowledged and sanctioned in *Impalex Agencies Ltd. v. Republic* *. Moreover, in an earlier case, namely, *Houssein Irfan and 4 Others and The Republic (Minister of Commerce & Industry)***, the Supreme Constitutional Court took the view that regulation of the import trade is in any event a permissible cause for limitation of the freedom safeguarded by Art. 25.1. 20 25 30

Another ground upon which the validity of the decision is contested affects the distribution of the gloves that were to be imported among the several importers. As explained in the address of counsel for the respondents, the Ministry adopted 35

* (1970) 3 C.L.R. 361.

** 3 R.S.C.C. 39.

certain criteria designed to afford to each importer amenity to import a percentage of the products he intended to import into the country. *It was not an unreasonable way of balancing the conflicting interest of the importers and I find no justification for*
5 *interfering with the decision on that ground either.*

In the result the recourse is dismissed. The sub judice decision is confirmed pursuant to Art. 146. 4(a) of the Constitution.

Recourse dismissed.

No order as to costs.