

(1988)

1988 May 27

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

[SAVVIDES, J.]

DEMETRIS CHRYSANTHOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE DIRECTOR OF CUSTOMS DEPARTMENT,

2. THE ATTORNEY - GENERAL OF THE REPUBLIC,

*Respondents.*

(Case No. 207/87).

*Customs and Excise duties—Duty free importation of motor vehicles for invalid persons—The Customs and Excise Duties Laws 1978—1979, Fourth Schedule, para. 09 of class 01—Having obtained the report of the Medical Board, respondent referred the matter to the Senior Technical Examiner in the Office of Examiners—Latter's report, in virtue whereof the applicant could drive without any restriction, was not referred back to the Medical Board—Such omission rendered defective the exercise of the discretion—Review of conflicting authorities on the subject whether the matter could have been referred to the Senior Technical Examiner.* 5

The facts of this case appear from the judgment.

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*Sub judice decision annulled  
with £125 costs against respondent.*

*Cases referred to:*

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

*Markides v. The Republic* (1985) 3 C.L.R. 1393;

*Tooulis v. The Republic* (1985) 3 C.L.R. 2478;

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

*Kyriacou v. The Republic* (1985) 3 C.L.R. 2414;

5 *Siampettas v. The Republic* (1987) 3 C.L.R. 1823.

### Recourse.

Recourse against the refusal of the respondents to exempt the applicant from the payment of import duty in relation to a motor car for invalid persons.

*P. Angelides*, for the applicant.

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*D. Papadopoulou (Mrs)*, for the respondents:

*Cur. adv. vult.*

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SAVVIDES J. read the following judgment. The applicant by the present recourse, challenges the refusal of the respondent Director of Customs to exempt him from the payment of import duty in relation to a motorcar for invalid persons.

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The applicant is a citizen of the Republic of Cyprus. He is 28 years old and he is a draftman, earning an income of £230 per month. On account of an accident in 1974 his right leg remained shorter by six cms and with partial ankylosis of the right knee.

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Relying on the provisions of paragraph 0.9 of class 0.1 of the Fourth Schedule to the Customs and Excise Duties Law, 1978 (as amended) he applied on the 22nd April, 1986 to the Director of Customs seeking permission to buy a Mercedes automatic 250 diesel Motorcar required by him for his work, duty free, on the ground that he is an invalid person, setting out in the application

the cause of his invalidity and his personal and family circumstances. Attached to such application he submitted a discharge certificate from the National Guard issued on 9th July, 1980 before completing his Military Service, on the ground of inability to serve due to his aforesaid invalidity.

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The Applicant's application was referred to a Government Medical Board set up for the purpose, with the request to have the applicant examined and submit a report as to his condition.

The applicant was examined by the Medical Board which was composed of the Senior Specialist Orthopaedic Surgeon, a Senior Specialist Surgeon and the District Medical Officer of Nicosia as members. A report signed by all three of them was submitted to respondent 1 on the 19th December, 1986. The opinion of the Medical Board regarding the condition of the appellant is described in such report as follows:

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"On account of a traffic accident in 1974 he suffered a fracture in the middle of his right femur.

He presents shortness of six cms and partial ankylosis of the right knee.

He also presents considerable muscular atrophy in the front surface of the thigh.

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He complains of swelling of the leg and that he gets tired easily.

He uses a special kind of shoe.

Both the higher limbs and the left lower limb are normal."

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On the 21st January, 1987 the applicant was referred by respondent 1 to the Senior Technical Examiner in the Office of Examiners for drivers for examination in the light of the report of the Medical Board. The senior Technical Examiner after examining

the applicant submitted his report on 11th February, 1987. According to such report the applicant "can drive a motorcar without any restriction." In consequence of the above reports applicant's application was rejected and respondent 1 by his letter dated 26th  
5 February, 1987 communicated such decision to the applicant. The contents of such letter read as follows:

"With reference to your application dated 22nd April, 1986 for relief from import duty in respect of a car for invalid persons I wish to inform you that on the basis of the report of the  
10 appropriate Medical Board your bodily condition does not justify the use of a car specially adapted for use by invalid persons."

As a result applicant filed the present recourse praying for a declaration that the act and/or decision of the respondent is null  
15 and void and of no legal effect.

The legal grounds on which the recourse is based are that the sub judice decision lacks due reasoning, it was taken in abuse and/or excess of power, under circumstances amounting to unlawful delegation, under a misconception of law and misinterpretation of the report of the Medical Board.  
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Counsel for applicant in support of his grounds of law submitted that the only competent organ under the relevant regulations which can advise respondent 1 as to the invalidity of the applicant is the Medical Board. Respondent 1 in the present case instead of  
25 relying on the advice of such Board referred the matter to an incompetent person, the Senior Technical Examiner of Drivers to express an opinion as to whether the applicant could drive without any restriction and on whose opinion respondent 1 relied in reaching his decision. The reliance placed on such report, counsel  
30 submitted, should lead to the annulment of the sub judice decision as it was based on the opinion of an incompetent organ. In support of his submission he sought to rely on the judgment in *Kalli v. The Republic* (1984) 3 C.L.R. 443.

Counsel for the respondent on the other hand submitted that the sub judice decision was lawful and correct and was taken after a due inquiry into all relevant material before the Director of Customs, in accordance with the Customs and Excise Duties Laws 1978-1979 and the provisions of the Fourth Schedule to the said laws. 5

Counsel submitted that the respondents after complying with the requirement of the relevant statutory provision concerning the examination of the applicant by a Medical Board, rightly referred the applicant to the Senior Technical Examiner to be examined as to whether he could drive an ordinary vehicle or whether he was in need of a car specially adapted to his need. She submitted that an administrative authority may on its own free will make further inquiry in addition to that expressly provided by law as a choice of means to form an opinion. In support of her proposal she sought to rely on the dicta in *Markides v. The Republic* (1985) 3 C.L.R. 1393 and *Tooulis v. The Republic* (1985) 3 C.L.R. 2478. 10 15

Applicant's claim for a duty free car is based on the provisions of paragraph 0.9 of class 0.1 of the Fourth Schedule to the Customs and Excise Duties Laws 1978-1979 which provides as follows: 20

"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: 25

provided that this exemption is not applicable to disable persons who: 30

(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  
5 payment of customs duty for the vehicle or within such other period which he might consider reasonable."

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 above provision was considered in a number of cases.

In *Kalli v. The Republic* (supra), Pikis, J. in annulling the decision rejecting a claim for a duty free car by an invalid person had this to say at pp. 447, 448.

15 ".....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 Government 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  
20 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  
25 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.  
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To my comprehension, the Regulation does not stipulate, as

a precondition for the importation of a duty-free car, either total inability to drive an ordinary car, or absolute necessity for the use of a car, adapted to the needs of his incapacitation. Provided other conditions are satisfied, the importation of a duty-free car by a disabled person is permissible whenever the applicant has, on account of his disability, reasonable need of a car adjusted to his condition. What is reasonable, is a matter of fact and degree. For instance, if a disabled person, though able to drive an ordinary car, can do so with great difficulty, or at great cost to his health or comfort, a case of reasonable need may be said to be made out. However, I repeat, the arbiter of his disability, its extent and implications, is the Government Medical Board envisaged by the Regulation. Nobody else. Certainly, not the examiner upon whose opinion the respondent mostly rested his decision in this case. The evaluation of the findings of the Government Medical Board and the reasonableness of the need for a car specially adapted to the needs of the applicant, are matters for the discretion of the Minister."

A similar opinion was expressed by Stylianides, J. in the cases of *Joannou v. The Republic* (1985) 3 C.L.R. 31, 36, 37 and *Kyriacou v. The Republic* (1985) 3 C.L.R. 2414, 2422.

The case of *Kalli* and *Joannou* were considered by A. Loizou J. (as he then was) in the case of *Markides v. The Republic* (1985) 3 C.L.R. 1393 where he expressed a different opinion as to the power of the Minister of Finance to obtain further opinion from another source not expressly mentioned in the law, as part of the wider inquiry carried out by him. He had this to say at p. 1399:

"Whatever the legal position is 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. 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 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 and as part of the wider inquiry carried out by him in the matter. It is obvious that the ascertainment of the extent 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 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. 193 and Decisions of the Greek Council of State 738/1933, 934/1933, 1962/1951."

The above view was endorsed by me in *Tooulis v. The Republic* (supra) in which I concluded as follows at pp.2491:

"From the material before me I have not the slightest hesitation in concluding that the Minister of Finance in reaching his decision has given undue weight to the opinion of the Senior Technical Examiner as against that of the Medical Board, which materially affected his decision and that he wrongly construed the contents of the report of the Medical Board as suggesting that the applicant did not require a car for invalid person. If the Minister wished to have a certification by the Medical Board, the appropriate expert organ provided by the law, as to the extent of the incapacity of the applicant and whether he required 'a car specially adapted for use by invalid persons he should have referred the report of the Senior Tech-



nical Examiner to the Medical Board for its expert opinion and not to rely solely on the opinion of the Senior Technical Examiner as he did in the present case. By acting as he did, the Minister of Finance failed to carry out a proper inquiry into the matter."

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The above opinion was adopted by Triantafylides, P. in *Siampettas v. The Republic* (1987) 3 C.L.R. 1823, in which he found that the omission of the Director of Customs to refer the report of the Senior Technical Examiner to the Medical Board for its expert opinion rendered his enquiry on the matter defective and in consequence annulled the sub judice decision.

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All the material circumstances in the present case are similar to those in the cases of *Tooulis* and *Siampettas* (supra). In the present case as well the Director of Customs failed to refer the report of the Senior Technical Examiner to the Medical Board for its expert opinion in the light of the incapacity mentioned by it in its report and obviously gave undue weight to the report of the Senior Technical Examiner. By so acting the Director of Customs failed to carry out a proper inquiry into the matter.

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For all the above reasons the sub judice decision has to be and is hereby annulled with £125.- against costs in favour of the applicant.

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*Sub judice decision annulled  
with £125.- costs in favour of applicant.*