

1988 May 27

[SAVVIDES, J.]

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. 398/86).

5 *Constitutional Law—Right to practice a trade—Constitution, Art. 25—Restrictions in the public interest—The Imports (Regulation) Law, 1962 (Law 49/62) as amended by Law 7167—Order placing safety matches under control—Refusal to grant licence for the importation of matches on ground of need to protect local industry—Not contrary to Art. 25.*

Constitutional Law—Right to property—Constitution, Art. 23—Imports—Restriction of—Art. 23 has no bearing on such a case.

10 *Constitutional Law—Equality—Constitution, Art. 28—The Import (Regulation) Law, 1962 (Law 49/62) as amended—Order placing safety matches under control—Differentiation between traditional and new importers—Reasonable.*

General principles of administrative law—Discretion of administration—Exercise of—Judicial control—Principles applicable.

15 *Imports—The Imports (Regulation) Law, 1962 (Law 49/62) as amended by Law 7167, section 3—Order by Minister of Commerce and Industry placing safety matches under control—The Minister was empowered under the section to make such an order.*

Ministers—The Public Service Law, 1967 (Law 33/67)—It empowers a Minister to act through the Director-General of the Ministry.

The Minister of Commerce and Industry issued an order under section 3 of Law 49/62, as amended by Law 7/67, placing safety matches within customs classification 36.06 under control. Consequently, their importation was subject to licence.

The applicants submitted at various times several applications for the importation of safety matches. On each occasion the respondent turned down the application on the ground of the need to protect local industry. The Minister explained that the importation was regulated by quotas and that licences were granted only to traditional importers, i.e. persons who were importing matches prior to the publication of the said order.

By means of this recourse the applicants impugned the validity of the refusal communicated by letter dated 9.4.86.

The applicants contended that the refusal is null and void because: a) It is contrary to Articles 23, 25 and 28 of the Constitution, b) it was taken by an unauthorized person, i.e. the Director-General of the Ministry, who signed the said letters, c) The Minister was not empowered by law to make the restrictive order, hereinabove referred to.

It must further be noted that the prayer of the recourse is not only for annulment of the refusal of 9.4.86, but, also, for the annulment of all previous and/or subsequent refusals.

Held, dismissing the recourse: (1) In the light of section 3 of the aforesaid law the contention that the Minister was not empowered to issue the said Order is untenable.

(2) The Public Service Law, 1967 (Law 33/67) empowers the Minister to act through the Director-General of the Ministry.

(3) Article 23 of the Constitution has no bearing on the case.

(4) Article 25 safeguards the right to practice any profession or to carry on any occupation, trade or business subject to such formalities, conditions or restrictions, as provided by the law. Paragraph 2 of Article 25 recognizes the imposition of conditions or restrictions to such right, necessary, inter alia, in the public interest. There is no doubt that in the modern state it is often found necessary to subject certain commodities to some form of governmental control for the purpose of, inter alia, the protection of local products and their marketability in the interest of the country as a whole. In the present case the applicant has failed to satisfy the Court that the restriction was not aimed at the above purpose and was arbitrarily imposed by the Minister of Commerce and Industry.

(5) There has been no violation of the principle of equality, because the

differentiation between traditional importers and new importers was reasonable in the circumstances.

5 (6) All previous decisions of the respondent in the present case were in respect of independent executory acts. Therefore, failure of the applicants to challenge each one of them within the defined period of 75 days has deprived him of any legitimate interest to challenge them by the present recourse.

*Recourse dismissed with
£100 costs against applicant.*

10 *Cases referred to:*

Sofoclidis and Co. Ltd. v. The Minister of Commerce and Industry and Another (1986) 3 C.L.R. 1302;

Iacovides v. The Republic (1966) 3 C.L.R. 212;

Constantinou v. The Republic (1966) 3 C.L.R. 572.

15 **Recourse.**

Recourse against the refusal of the respondents to grant to applicants a licence to import 2,000 cartons of safety matches,

A. *Skordis*, for applicants.

20 A. *Papasavvas*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

25 SAVVIDES J. read the following judgment. By this recourse the applicants challenge the decision of the respondent communicated to them by letter dated 9th April, 1986, refusing the grant of a licence to them to import into Cyprus 2,000 cartons of safety matches.

In fact by their prayer they also pray that any previous and/or subsequent act and/or decision to the same effect is null and void. I shall deal with this part of the prayer later in my judgment.

The legal grounds on which the recourse is based are briefly that Law 49/62 as amended by Law 7/67 on which the sub judice decision was based as well as the Order issued by the respondent under s: 3 of the said laws violate Articles 23, 25 and 28 of the Constitution; that the said order is ultra vires the law; that the sub judice decision was issued by an inappropriate organ; it was taken in abuse and/or excess of power; it amounts to an illegal exercise of discretionary powers; it was taken under a misconception of fact and it lacks due reasoning. 5 10

The applicants are a company of limited liability engaged in trade. Respondent, relying on s. 3 of the Imports (Regulation) Law, 1962 (Law 49/62) as amended by law 7/67 issued an order published in Supplement No. 3 of the Official Gazette of the Republic dated 20th January, 1983, under Notification 7/83 whereby the importation of matches falling within customs classification 36.06 was placed under control and as such for its importation an import licence was required. 15 20

On or about March, 1983, the applicants applied for the first time for the importation of matches and ever since a number of applications was submitted by them which, however, were refused by the respondent. The reason, as explained to them for refusing their applications was the protection of local products of this kind and that the importation was controlled and regulated by "quotas" and that licences were granted only to traditional importers. In fact the first application of the applicants which was submitted on the 29th March, 1983, was for the importation of 1,000 cartons of matches from Bulgaria. The applicants submitted a new application on 28th November, 1983, which was refused on 10th December, 1983. Both applications were refused for the reasons explained above. On 10th April, 1984, the applicant submitted a new application which was refused again on 3rd May, 1984, for the same reason as their previous applications. 25 30 35

The applicants reverted on the matter on 29th May, 1984, requesting reconsideration of their application to which respondent replied on 8th August, 1984, refusing same on the ground of protection of local industry.

5 On 17th September, 1984, applicants submitted a new application which was refused on 21th September, 1984, for the same reasons. A new application dated 28th January, 1985 was again refused on 4th April, 1985.

10 By letter dated 20th April, 1985, applicants protested to the repeated refusals of the respondent to issue to them a permit and stated that they were reserving their rights and that they were going to refer the case to their lawyers.

15 By letter dated 5th June, 1985, the respondent informed the applicants that their request was being considered and that he would communicate with them again. After a letter of reminder by the applicants the respondent on 19th October, 1985, informed the applicants that the application could not be granted for reasons of protection of the local industry. He further informed them that
20 the grant of permits in respect of which a "quota" has been imposed and also applications by new importers would be reconsidered by the end of 1985. On the 4th December, 1985, the applicants submitted a new application for the importation of 2,000 cartons of matches from Bulgaria which was refused again on 9th April, 1986, for the same reasons as previously mentioned, the
25 main one being that of the protection of local industry. As a result applicants filed the present recourse.

30 By his written address counsel for applicants contended that Law 49/62 as amended by Law 7/67 to the extent that it allows the imposition of restrictions of the importation of matches as well as the Order issued by the respondent in pursuance of the power vested in him by the said laws are unconstitutional as violating Articles 23 and 25 of the Constitution. He contended that Article 23 of the Constitution safeguards the right of acquisition and ownership of immovable property and Article 25 safeguards

freedom of trade. Any limitations to the exercise of the right of freedom of trade, counsel submitted, can only be imposed by legislation enacted by the House of Representatives and cannot be exercised by an organ vested with executive powers by virtue of delegated legislation in the nature of Orders imposing restrictions.

Counsel further contended that assuming that Law 49/62 is constitutional such power was delegated to the Minister as the appropriate organ to decide and it could not be delegated by him to officers or employees of the Ministry as it happened in the present case. The sub judge decision in the present case is signed by the Director-General of the Ministry who was unauthorized to act. The delegation of the power was made to the Minister and in any event being a delegatus he could not delegate his authority to anybody else.

Counsel further expounded on his other grounds of law in that there was an abuse of power as the restrictions imposed should have been based on grounds which should have been published in the official Gazette of the Republic; that there was abuse by the respondent of his discretionary power in that instead of applying the same restrictions to all importers the method of imposing the "quotas" in favour of existing importers and refusing a permit to new importers amounted to unequal treatment tending to promote the interests of certain importers against others. He finally submitted that there was lack of due reasoning.

Sub-section (1) of section 3 of Law 49/62, as set out in section 2 of Law 7/67 by which it was replaced, provides as follows:

"(1) Ο Υπουργός δύναται, οσάκις καθίσταται αναγκαίον εν τω δημοσίω συμφέροντι, όπως περιορισθή και ρυθμισθή η εισαγωγή εμπορευμάτων ίνα ενθαρρυνθή η τοπική παραγωγή και βιομηχανία, βελτιωθή το εμπορικόν ισοζύγιον, τηρηθώσιν αι διεθνείς υποχρεώσεις ή αναπτυχθή η οικονομία της Δημοκρατίας διά Διατάγματος δημοσιευμένου εν τη επισήμω εφημερίδι της Δημοκρατίας, να περιορίζη και ρυθμίζη την εισαγωγήν των εν τω Διατάγματι

καθοριζομένων εμπορευμάτων."

5 ("Whenever it becomes necessary, in the public interest, to restrict and regulate the importation of goods for the encouragement of local production and industry, the improvement of the balance of trade, compliance with international obligations or the development of the economy of the Republic, the Minister may, by Order published in the official gazette of the Republic, restrict and regulate the importation of the goods specified in the Order."

10 By virtue of the above powers which were vested in the Minister of Commerce and Industry, the Minister issued an order published in the official Gazette of the Republic of 20th January, 1983 under Notification 7/83 restricting and regulating the importation of certain goods set out in the Schedules therein included, 15 for reasons, as stated therein, of public interest for the purposes mentioned in sub-section (1) of section 3 of the Imports (Regulation) Law. Amongst the goods so restricted, as set out in Schedule 1 of the Law, were matches.

20 In the light of the above statutory provisions I find untenable the contention of counsel for applicants that the Minister was not empowered by law to make an order such as the one in the present case.

25 The question as to whether the imposition of restrictions on imports violates Article 25 of the Constitution was recently considered by me in case No. 570/84, *Sofoclidis and Co. Ltd. v. (1) The Minister of Commerce and Industry, (2) The Republic of Cyprus through the Attorney-General* (1986) 3 C.L.R. 1302 at pp. 1312-1316 in which I had the opportunity of explaining and reviewing the authorities on the matter. I said the following in my 30 said judgment which I fully adopt for the purposes of the present case:

"The question as to whether the imposition of restrictions on imports violates Articles 25 of the Constitution, came up

for consideration in a number of case both before the Supreme Constitutional Court and this Court. In *Hussein Irfan and 4 others and The Republic*, 3 R.S.C.C. 39, the Court had this to say at pages 42, 43:

'In the opinion of the Court, having regard to the impact on the economy of the country through the change of sovereignty and the creation of the Republic, it cannot be said that such powers to restrict and regulate imports as those given under the Regulations in question were not necessary in the public interest in the sense of paragraph 2 of Article 25, at the time of the coming into operation of the Constitution and at the relevant time, i.e. February 1961. 5 10

The period of time during which such Regulations would continue to be considered as 'necessary' in the above sense, is a question of fact which does not call for a decision in this Case. 15

(c) Regulation 3 of the Defence (Importation of Goods) Regulations, 1956, lays down that the importation of any goods is prohibited save under the authority of a licence for the purpose. The relevant power to grant or refuse a licence, was exercised, in the present case, in the public interest, i.e. for the purpose for which it was granted. The fact that by the exercise of such power the interests of a certain part of the population, i.e. the vine-growers, for whose protection the Vine Products Scheme exists, may have been served at some expense to the interests of traders and consumers of sugar in general, due to the importation of the more expensive U.S.S.R. sugar, is not sufficient to lead the Court to the conclusion that the power in question was exercised in abuse or excess thereof.' 20 25

In *Impalex Agencies Ltd. v. Republic* (1970) 3 C.L.R. 361 we read the following in the judgment of A. Loizou, J. at pp. 371, 372 and 373. 30

'It would be observed that the Minister of Commerce and

Industry, has power to restrict and regulate the importation of goods into the Republic, by an order published in the official Gazette, after taking into consideration the public interest, and quite rightly in my view, counsel for the Applicants conceded that the regulation of the importation of the potato seed was in the public interest and was approved by the Applicants.

I would like to begin by stating that in the modern state it is often found desirable to subject specified activities to some form of Governmental control. The purposes of such controls will vary. Sometimes a control is imposed for the purpose of collecting revenue; sometimes the type of activity may be such that it is desirable in the public interest to restrict the number of persons who exercise it. In practice, one of the commonest methods whereby controls can be imposed is the licence, and in the case in hand, the applicant company, like any other importer who desires to carry on with the business of importation of potato seed, is required to secure a licence from the Minister of Commerce and Industry, who is the licensing authority under the provisions of s. 4(1) of Law 49/62 (as amended). These import licences, I may add, are usually granted in pursuance of protectionist policies.

The purpose of section 3(1) of Law 49/62, and the order made under that section is not the regulation of any profession, occupation, trade or business, but the regulation and the control of importation of potato seed. The mere fact, therefore, that the importation of this commodity is a necessary means for the carrying on of the business of importation, cannot justify the conclusion that the regulation and control of this commodity and the refusal of the Minister interfere directly with the right, as such, of the applicant company to carry on the business of an importer. I would add that in this case, it is clear, that the company has not been granted a licence for the

importation of potato seed, simply because it did not conform to the test laid down by the Ministry, and that because for a period of three years prior to the decision of the Minister the Company decided not to trade with this commodity for reasons explained by Mr. Hadjisoteriou, one of the directors of the company. 5

In my judgment, therefore, I find that the decision or act of the Minister is not repugnant to the provisions of Article 25 of the Constitution.

I would like, however, to state that even assuming that I was wrong in this finding, and that the decision or act of the Minister directly interfered with the right of the company to carry on the trade or business of importer of potato seed, then again I would have had no difficulty in my judgment to make a finding that such formalities, conditions or restrictions which are prescribed by this law, are only necessary for the protection of the rights and liberties guaranteed by the Constitution, as provided for by paragraph 2 of Article 25 of the Constitution.' 10 15

In *Psaras v. The Minister of Commerce and Industry* (1971) 3 C.L.R. 151, the Court, had this to say at pp. 160, 161: 20

'In the light of what has been stated hereinabove as to the relevancy of the Cyprus Potato Marketing Law, 1964, to the sub judice decision I do not find that the determination of the constitutionality of this law or any part thereof is necessary for the purposes of these proceedings. Had it been necessary, however, to adjudicate upon it, I would have no hesitation in deciding that this law is not unconstitutional, as it comes within the ambit of para. 3 of Articles 25. 25 30

The next point for determination is (a) the unconstitutionality or not of section 3 of the Imports (Regulation) Law, 1962, and the order made thereunder, under which the decision com-

plained of was taken, and (b) the unconstitutionality or not of the said decision.

(a) Article 25 of the Constitution safeguards the right of the individual to practice any profession or to carry on any occupation, trade or business. Paragraph 2 thereof provides that the exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and are inter alia necessary only in the public interest. It regulates, therefore, the conditions under which a profession, trade or business may be exercised. The requirement of a licence for the importation of a particular type of goods does not amount to a prohibition to carry out a profession or occupation. One may still become an importer in respect of these goods or other goods subject to certain conditions which are necessary inter alia in the 'public interest'. I hold, therefore, that section 3 of Law 49/1962 as amended is constitutionally valid so long as the restriction or regulation of the importation of goods is made, as it is the case under consideration, in the public interest or for any other of the objects set out in the said section i.e. the encouragement of local production and manufacture, the improvement of the balance of trade, compliance with international obligations and the development of the economy of the Republic, all being objects that bring it within the ambit of para. 2 of Articles 25, the very terms of which render it manifestly a provision of law necessary in the public interest.

With the above in mind, I find myself unable to agree with the argument of counsel for applicants that the decision or act of the Minister in imposing restrictions on the importation of cheese is contrary to the provisions of Article 25 of the Constitution."

Article 25 safeguards the right to practice any profession or to carry on any occupation, trade or business subject to such formalities, conditions or restrictions, as provided by the Law. Paragraph 2 of Article 25 recognizes the imposition of conditions or restrictions to such right, necessary, inter alia, in the public inter-

est. There is no doubt that in the modern state it is often found necessary to subject certain commodities to some form of governmental control for the purpose of, inter alia, the protection of local products and their marketability in the interest of the country as a whole. In the present case the applicant has failed to satisfy the Court that the restriction was not aimed at the above purpose and was arbitrarily imposed by the Minister of Commerce and Industry. 5

It has been repeatedly stressed that the Court will not interfere by substituting its own discretion for that of the administration even if the Court would have reached a different conclusion (*Iacovides v. The Republic* (1966) 3 C.L.R. 212). 10

In the circumstances of the present case I find that:

(a) The restrictions imposed by the respondent were within the ambit of paragraph 2 of Article 25 of the Constitution and that they do not violate Article 25 or any other Article of the Constitution. 15

(b) There has been no violation of Article 23 of the Constitution which in any event has no bearing in the present case.

(c) The discretion of the respondent was properly exercised and no case has been made for interference by this Court with the exercise of his discretion. 20

I come next to examine the contention of counsel for applicants that an absolute prohibition is imposed on persons who were not previously importing such goods and who wished to do so whereas in the case of those who were importing similar goods previously instead of an absolute prohibition a permit was granted on the basis of a "quota". 25

In Constantinou v. The Republic (1966) 3 C.L.R. 572 it was said at p. 581: 30

"But an instance of discrimination can only arise if different

treatment is meted out in two cases which are similar in all material respects;"

5 In the present case the applicant does not fall within the category of persons who were importing these goods prior to the imposition of the restriction. Therefore, he cannot complain of discrimination between him and importers of the other category as such differentiation was a reasonable one and it does not violate the principle of equality of treatment.

10 As to the contention of counsel for applicants that the letter containing the sub judice decision was signed by the Director-General of the Ministry and not by the Minister I find such contention untenable, since under the Public Service Law, 1967 (Law 33 of 1967) the Minister is empowered to act through the Director-General of his Ministry.

15 I also find the contention of counsel for the applicants about lack of due reasoning as unfounded. The reasoning appears in the decision itself but it could also be supplemented by the material which was in the relevant file of the Administration.

20 Before concluding I find it necessary to deal briefly with that part of the prayer for relief which is directed against any previous decisions of the respondent to the same effect.

25 It is well settled that for an act to continue to have any executory effect it has to be challenged within the period of 75 days provided by Article 146(3) of the Constitution. Failure to do so deprives a person of a legitimate interest to challenge same. All previous decisions of the respondent in the present case were in respect of independent executory acts each time and the failure of the applicants to challenge each one of them within the defined period of 75 days has deprived him of any legitimate interest to challenge them by the present recourse.

30 In the result the recourse fails and is hereby dismissed with £100.- costs in favour of the respondent.

*Recourse dismissed with
£100.- costs against applicant.*