

1988 October 15

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELEOURGIA PETTEMERIDES LIMITED,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF COMMERCE AND INDUSTRY,
2. THE DIRECTOR-GENERAL OF THE MINISTRY OF COMMERCE AND INDUSTRY,
3. THE MINISTER OF COMMERCE AND INDUSTRY,

Respondents.

(Consolidated Cases Nos. 494/86 and 224/87).

Constitutional Law—Right to property—Constitution, Art. 23—Refusing permit to import goods—The right of property is not violated thereby—Meridian Trading Co. Ltd. v. Minister of Commerce and Industry (1987) 3 C.L.R. 1930 adopted.

Constitutional Law—Right to exercise a trade—Constitution, Art. 25—Refusal to permit import of goods—Does not amount to violation of the aforesaid right—Meridian Trading Co. Ltd. v. Minister of Commerce and Industry (1987) 3 C.L.R. 1930 adopted. 5

Constitutional Law—Equality—Constitution, Art. 28—Refusal to issue permit to import olive-oil intended to be sold in the market in competition to olive-oil produced in Cyprus—Complaint of discrimination based on fact that import permits had been granted to two other legal entities—Such other importers possessed a refinery and their purpose was to mix foreign olive-oil with Cyprus olive-oil in order to reduce latter's acidity—Such purpose was within the ambit of government policy and Law 24/68 (The Olive Products Marketing Law, 1968)—Position of such other importers wholly different than that of applicants—Complaint for discrimination unfounded. 10 15

5 *Importation of goods—The Imports Regulation Law, 1962 (Law 49/62), as amended by Law 7/67—Refusal to issue permit for the importation of olive-oil, which had been declared as a controlled product—As regard olive-oil the same objective was pursued by The Olive Products Marketing Law 1968 (Law 24/68)—The refusal cannot be faulted for abuse of discretion exercised in furtherance of the stated ends.*

10 *Omission to reply—Constitution, Art. 29—When the law does not cast upon the administration the duty to act, the omission is not, as such, justiciable, but the failure to comply with Art. 29 can be made the subject of a review under Art. 146.1—With the issuance of a negative decision, the earlier omission to reply ceases to be cognizable.*

The legal principles expounded by the Court in dismissing both recourses sufficiently appear in the hereinabove headnote.

15 *Recourses dismissed.
No order as to costs.*

Cases referred to:

Meridian Trading Co. Ltd. v. Minister of Commerce and Industry (1987) 3 C.L.R. 1930.

Recourses:

20 Recourses against the refusal of the respondents to allow applicants to import a quantity of virgin olive-oil and refined kernel-oil.

Chr: Clerides, for the applicants.

G. Frangou (Mrs.), for the respondents.

25 *Cur. adv. vult.*

PIKIS J. read the following judgment. At issue in Recourse 224/87 is the validity of a decision taken on 21/1/87 refusing an application made by applicant to import a quantity of virgin olive-oil and refined kernel-oil. By the first recourse the applicants

treated the delay of the respondents to reply to their application as a refusal and anticipated in some way the decision that forms the subject matter of the second recourse. In the absence of a statutory duty casting a positive obligation on the respondents to act in the matter of the application for an import licence, the omission to reply to the applicants was not in itself justiciable; though the failure to observe the duty cast upon the Administration by article 29, could be made the subject of review under article 146 of the Constitution. With the issuance of the negative decision the earlier omission to reply ceased to be cognizable as such. Consequently, Recourse 494/86 cannot but be dismissed for failure to disclose a litigable cause under article 146 of the Constitution. And as such it must be dismissed. 5
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What we are required to review is the validity of the decision, subject matter of Recourse 224/87. 15

The applicants are licensed to operate a mill for the extraction of olive-oil from olives and own a plant for the packing of olive-oil products. They applied for licence to import 20 tons of virgin olive-oil and 50 tons of kernel-oil for sale in the local market. They sensed a real need for imported oil, considering that locally produced oil was selling at higher prices. The application was refused in exercise of the powers vested in the respondents by the *Imports Regulation Law* (Law 49/62, as amended by Law 7/67) and Regulations made thereunder*. The Minister, in exercise of the powers vested in him by law, declared olive-oil and kernel-oil to be controlled products and, on that account, their importation became subject to control. The order was made in the interests of the Cyprus economy, especially the protection of home producers and the marketing of their products. 20
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The Olive Products Marketing Law 1968 (24/68) was another piece of legislation enacted for the promotion and achievement of the same objectives. Provision was made for the establishment of 30

* (R.A.A. 7/83 - 21/6/83).

5 a marketing board with responsibility, inter alia, to promote local production of olive-oil and the making of provision for the packing and marketing of olive-oil products (s.26). The object of the law is to stimulate local production by the adoption of a variety of measures designed to ensure appropriate mechanisms for the processing of olive-oil products and the assurance of a market for them. SEKEP was established within the framework of the law, an organisation charged with responsibility for the creation of a proper admixture of different qualities of oil for purposes of marketing with a view to safeguarding the interests of the public in 10 the consumption of olive-oil of acceptable quality. The Organisation is allowed to import periodically virgin olive-oil for purposes of admixture with olive-oil of local extraction. The admixture is made in order to counterbalance the acidity of Cyprus olive-oil.

15 Besides SEKEP, United Cyprus Oil Industries Limited were periodically allowed to import virgin olive-oil for purposes of admixture with Cyprus kernel-oil, again intended for the production of a certain variety of olive-oil intended for local consumption (εδώδιμο ελαιόλαδο). They own a refinery suitable for the purpose. Moreover, import licences were issued within the context 20 of the policy to promote local manufacture of acceptable quality of olive-oil.

The applicants question the validity of the decision mainly on the following five grounds:

- 25 (A) For violation of the provisions of Article 23 and the right to property safeguarded thereby.
- (B) For breaches of article 25 of the Constitution. The refusal of a licence to import amounts, in the contention of applicants, to a restriction of the right to trade or carry on a 30 business.
- (C) For violations of article 28 deriving from the unequal treatment accorded to applicants compared to SEKEP and United Cyprus Oil Industries Limited.

(D) For breaches of the Association of Agreement between Cyprus and the European Economic Community concluded on 22 May, 1973.* The Agreement has superior force in virtue of article 169 and on that account should prevail, as submitted, over any provisions of the Cyprus law that conflict or are inconsistent with it. 5

(E) For failure to observe the norms of proper administration specifically emanating from failure to carry out a proper inquiry and absence of due reasoning. The inquiry was allegedly incomplete because of failure to elicit the facts relevant to the licensing policy of the respondents. 10

Counsel for the respondents supported the decision on every ground. In her submission, article 23 hardly comes into play at all, whereas the limitations to the right to import were reasonably open to the respondents in the interests of the Cyprus economy. 15

Recently, I had occasion to review the principles relevant to the application of articles 23 and 25 to import restrictions. It would, I believe, be a waste of effort to paraphrase what was said on the subject in *Meridian Trading Co. Ltd. v. Minister of Commerce and Industry* (1987) 3 C.L.R. 1930. I content with citing relevant extracts from the judgment in that case at p. 1934: 20

"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 judice decision as founded on the provisions of the impugned legislation. I truly fail to see how Article 23 comes into play at all in the circumstances of this case. The sub judice 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. 25 30

* (Published under 1022 No. 921, p. 381).

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* (1970) 3 C.L.R. 361. Moreover, in an earlier case, namely, *Houssein Irfan and 4 Others and The Republic (Minister of Commerce & Industry)*, 3 R.S.C.C. 39, 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..."

For similar reasons to those indicated above, articles 23 and 25 are of no assistance to the applicants. Limitations imposed on the importation of agricultural products are part of a wider government policy to promote local production of olives and sequentially thereto the production of olive-oil of appropriate quality for local consumption. Law 24/68 provided the necessary framework for the promotion of the above ends. The restrictions to the importation of olive-oil and kindred products were imposed in furtherance to the promotion of the above policy. The policy, therefore, cannot be faulted for abuse of discretion exercised in furtherance to the stated ends.

On examination of the facts placed before the Court in their totality, it emerges that licences to import oil were granted solely for the purpose of achieving the production of olive-oil of appropriate quality for consumption by the public. The Organisation of SE-KEP was the principal agency for the promotion of the objectives of the law whereas the licensing of United Cyprus Oil Industries Limited to import limited quantities of virgin olive-oil was incidental to the promotion of government policy. Those manufa-

cturers had an oil refinery, a fact that made possible the use of their plant for the purpose of producing olive-oil of proper quality. The licences given to United Cyprus Oil Industries Limited cannot be divorced either from the general policy of the Administration or the amenity of the manufacturers to put their plant to use for the attainment of that policy.

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Applicants were in a wholly different position from that of United Cyprus Oil Industries Limited. Their application for the importation of virgin olive-oil was not intended or associated with the promotion of government policy for the production of local olive-oil; on the contrary, they wanted to import foreign oil in order to compete in the local market with Cyprus olive-oil products. The circumstances of both SEKEP and United Cyprus Oil Industries Limited were, in consequence of the above, dissimilar to those of the applicants. No violation of article 28.1 was established.

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The Association Agreement with European Economic Community exempted agricultural products and no provision to the contrary has been introduced since its conclusion. No violation of that agreement has been established either.

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I cannot sustain the complaint that the decision is vulnerable to be set aside for lack of either a proper inquiry or due reasoning of the decision. The inquiry was thorough and formed part of a policy consistently pursued over the years, whereas the reasons given for the refusal were adequate and left no doubt why the licence was refused.

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The application is dismissed with no order as to costs.

Recourse dismissed.

No order as to costs.