1988 November 19

[PAPADOPOULOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DOMESTICA LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF COMMERCE AND INDUSTRY,
2. THE DIRECTOR OF CUSTOMS AUTHORITIES,

Respondents

(Cases Nos. 692/85, 747/85).

Technical matters—Report of scientific committee of experts—Judicial control—Principles applicable.

Experts—Report of scientific committee of experts—Judicial control—Principles applicable.

The crucial question in this case concerns the classification of applicants as mere importers, not manufacturers, of gas heaters. If they are mere importers, they cannot import such goods freely, whereas if they are manufacturers, they can do so.

Aided by a report submitted by a technical scientific committee of experts to the effect that the applicants did not possess machinery for manufacturing, but only for assembly of parts of gas heaters, respondent 1 classified the applicants as importers.

Held, *dismissing the recourse:*

This Court cannot go into the merits of an administrative decision regarding a technical matter. The sub judice decision was reasonably open to the Administration.

Recourse dismissed.
No order as to costs.

Cases referred to:

Georghiou and Another v. Municipality of Nicosia (1973) 3 C.L.R. 53;

Ioannou v. The Republic (1982) 3 C.L.R. 380;

Health and Diet Centre v. The Republic (1986) 3 C.L.R. 1529.

Recourses.

Recourses against the decisions of the respondents permitting applicants to import only a limited number of gas heaters and imposing conditions and limitation on the importation of the above gas heaters.

K. Talarides with P. Liveras, for the applicants.

N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

PAPADOPOULOS J. read the following judgment. The Applicants are a well-known company in Cyprus which deals in a number of activities. One of its activities has been the dealings in gas heaters.

By recourse 692/85 they seek a declaration of the Court whereby the decision of the Ministry of Commerce and Industry, dated 28/6/85, permitting the applicants to import only a limited number of gas heaters (1247), as part of the quota for 1985, is null and void and of no effect whatsoever.

By recourse 747/85 they seek a declaration of the Court to declare as null and void the decision of the Director of Customs and Excise, dated 20/6/85, whereby certain limitations and conditions were imposed on the importation of a limited number of gas heaters.

As it transpires from the documentary evidence in the file of this case, the question of gas heaters imports was a matter of great concern for the Minister of Commerce and Industry. Like a number of other goods it gave a headache to the Authorities. On the one hand there was the notion of free enterprise and on the other the desire of protecting local industries. In this context Law 49/62 was enacted which was aimed at facilitating the Minister to strike a balance at the opposing interests. More particularly, it gave the Minister of Commerce and Industry powers to regulate the importation of goods. Section 3(1)(2)(3) reads as follows:

"3 - (1) Το Υπουργικόν Συμβούλιον δύναται δι' αποφάσεως αυτού να κηρύξη ρυθμιζομένην την εν τη Δημοκρατία εισαγωγήν οιωνδήποτε εμπορευμάτων, ίνα ενθαρρυνθή η τοπική παραγωγή και βιομηχανία, βελτιωθή το εμπορικό ισοζύγιον, τηρηθώσιν οι διεθνείς υποχρεώσεις της Δημοκρατίας, ή αναπτυχθή η οικονομία της Δημοκρατίας, νοουμένου ότι η τοιαύτη ρύθμισις γίνεται εν τω δημοσίω συμφέροντι.

(2) Οσάκις ελήφθη απόφασις δυνάμει του εδαφίου (1) ο Υπουργός δύναται, εκάστοτε, διά Διατάγματος δημοσιευομένου εν τη επισήμω εφημερίδι της Δημοκρατίας, να περιορίζη και ρυθμίζη την εισαγωγήν οιωνδήποτε, εν τω Διατάγματι ειδικώτερον καθοριζομένων, εμπορευμάτων, λαμβανομένων υπ' όψιν των κριτηρίων των αναφερομένων εις το εδάφιον (1).

(3) Παν Διάταγμα δύναται να εμπεριέχη τοιαύτας δευτερευούσας, επακολούθους και συμπληρωματικάς διατάξεις, ως ο Υπουργός ήθελε κρίνει αναγκαίας ή σκοπίμους διά την εφαρμογήν του Διατάγματος και άνευ επηρεασμού της γενικότητος της προμνησθείσης διατάξεως, παν τοιούτον Διάταγμα δύναται να προνοή την προηγουμένην εκ του Υπουργού, παροχήν αδείας διά την εισαγωγήν των τοιούτων εμπορευμάτων."

Section 5 of the same Law is apparently a consequence of the

provisions of s.3, above. Section 5 reads:

"5. Απαγορεύεται η εκτελώνισις εμπορευμάτων αναφορικώς προς άτινα απαιτείται δυνάμει των διατάξεων του παρόντος Νόμου η έκδοσις αδείας μέχρις ου η τοιαύτη άδεια προσκομισθή εις τον αρμόδιον Τελωνειακόν Λειτουργόν."

By virtue of the provisions of the above Law and the powers vested in him, the Minister of Commerce and Industry issued orders for the regulation of imports specifying goods which could not be freely imported.

By Order 327 dated 24/5/68, the Minister placed under his control - for import purposes - various goods. Such goods could only be imported after a permit from the Ministry of Commerce and Industry. With two other notices of the Minister, dated 10/4/81 and 22/6/84, gas heaters as well as parts of gas heaters were scheduled under the control of the Minister in pursuance of the provisions of Law 49/62.

It is common ground that no permit was needed for the importation to such goods by manufacturers. The condition of the import permit was imposed only on importers not manufacturers.

It is the contention of the Applicants that they were manufacturers of gas heaters when the sub judice decision was taken by the Minister of Commerce and Industry and the Customs Officer. It is the submission of the Applicants that in their capacity as manufacturers they did not fall under the provisions of Law 49/62. They base their submission on the fact that they were given a permit to manufacture gas heaters by the Ministry of Commerce and Industry itself. This permit was communicated to them by a letter from the Ministry dated 14/3/83. They further allege that the Ministry is estopped from classifying the applicants as importers and not manufacturers, since the Ministry itself encouraged them to extend their activities from mere importing to manufacturing.

There is no difficulty in pin-pointing the crucial question in these proceedings: This is the classification of the applicants as either manufacturers or importers. If they are mere importers, they have to go through the procedure as laid down by the Ministry for the allocation of a "quota" of gas heaters. If not, such procedure is not necessary.

The examination of the status of the applicants took many routes and voluminous correspondence. I have before me lengthy correspondence, a heap of documents and various suggestions, allegations and submissions. I shall make an attempt to shorten the issues.

I consider that my duty is to examine whether it was reasonably open to the Minister of Commerce and Industry and the Customs Officer to reach the decisions which are challenged with these recourses.

As I said earlier, once the applicants were classified as manufacturers of gas heaters, no question of quota would arise (See Note 5 in file 208/K dated 7/6/85). Also, according to section 11 of 03.34 of the 4th Schedule of Customs Law 18/78, no customs duty would be imposed for articles which are imported (for the use in the manufacture of gas heaters).

I do not think I shall have to go into the correspondence and the reasons which compelled the Ministry to classify various products into various categories for the imposition of conditions, customs, etc. I think this is not disputed as it is within the powers of the Ministry in the interest of the country. What is disputed is the decision of the Ministry regarding the status of the applicants.

In examining this case I found a most interesting piece of evidence regarding the status of the applicants. The Minister had appointed a special Technical Scientific Committee to examine this matter and to report to him as to whether the applicants were or not an industry in the sphere of gas heaters. This Committee in their report, dated 24/1/85, decided that the applicants cannot in

any way be classified as manufacturers. In fact, they only have machinery for the assembly and not for the manufacture of gas heaters. I think that this is a most important piece of evidence which gives light to the whole problem before me. There was a great dispute as to this issue, but a specialized Scientific Committee has made its enquiry and produced its findings. I do not think that the Court can interfere with this finding. In fact, there has been no material at all, on which the Court could find that this Committee acted in any way improperly. The Court cannot go into the merits of an administrative decision when such decision is taken by a competent Technical Committee. (See *Georghiou and Another v. Municipality of Nicosia* (1973) 3 C.L.R. 53, 57:

> "This Court, in the exercise of its revisional jurisdiction, as an administrative Court, cannot go into the merits of an administrative decision regarding a matter of technical nature."

Also, *Ioannou v. The Republic* (1982) 3 C.L.R. 380 and *Health and Diet Centre v. Republic* (1986) 3 C.L.R. 1529. It is evident from the authorities that the Court will not check or decide for or against a decision taken by a Technical Committee.

As to the allegation of the applicants that the respondents (Ministry of Commerce and Industry), are estopped from taking a contrary stand to the one that they have already taken, because they encouraged the applicants to alter their activities from importation to manufacturing, I feel that is has no merit at all and there is no reason to pursue it any further. The Ministry encouraged the applicants to proceed with the manufacture of gas heaters and the applicants proceeded to establish a unit for the assembly of gas heaters. I fail to see how it has any bearing on the issue before me.

On the basis of what I have already said, I find that the Ministry has not acted in any improper manner and I feel that they exercised their discretion, as given to them by Law 49/62, reasonably.

In the result, I find that it was reasonably open to the administrative organs to take the sub judice decision.

Recourses dismissed without any order as to costs.

Recourses dismissed.
No order as to costs.