

1988 June 6

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDRÉAS NICOLAOU,

Applicant,

v.

- 1. THE MINISTER OF COMMERCE AND INDUSTRY,
- 2. THE REPUBLIC OF CUPRUS, THROUGH
THE ATTORNEY-GENERAL,

Respondents.

(Case No. 89/87).

Executory act—Confirmatory act—Refusing application to import goods—Letter of protest and, eventual filing of new application for the importation of the same goods—New refusal on the same grounds as before—Such new refusal is confirmatory of the first refusal—Therefore, it cannot be challenged by a recourse.

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Constitutional Law—Right to exercise trade—Constitution, Art. 25—Restrictions in the importation of goods—Law 49/1962, as amended by Law 7/67, section 2—So long as the restrictions are imposed in the public interest or for any other object mentioned in para. 2 thereof, they are not unconstitutional.

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Constitutional Law—Taxation—Constitution, Art. 24—Restrictions on the importation of goods—Art. 24 irrelevant.

Constitutional Law—Equality—Constitution, Art. 28—Restrictions on importation of goods—Failure to prove that licences for importation of similar goods have been given during the same period—Complaint for discrimination turned down.

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The recourse in this case was directed against a refusal to permit applicant to import a quantity of Athletic shoes from abroad. In dismissing the

recourse, the Court expounded the legal principles hereinabove indicated.

Recourse dismissed.

No order as to costs.

Cases referred to:

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Sofoclides and Co. Ltd. v. The Republic (1986) 3 C.L.R. 1302;

Meridian Trading Co. Ltd. v. The Republic (1988) 3 C.L.R. 1073;

Impalex Agencies v. The Republic (1970) 3 C.L.R. 361;

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

Recourse.

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Recourse against the refusal of the respondents to grant applicant a licence to import 50 dozen of athletic shoes.

Chr. Taramountas, for applicant.

P. Clerides, for respondents.

Cur. adv. vult.

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SAVVIDES J. read the following judgment. By this recourse the applicant challenges the decision of respondent 1 communicated to him by letter dated 2nd December, 1986 refusing the grant of a licence to import into Cyprus 50 dozen of athletic shoes.

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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, violates Articles 23, 24, 25 and 26 of the Constitution; that the regulations are ultra vires the law; that the sub judice decision amounts to an unreasonable discrimination in violation of Article 28 of the Constitution; and that the sub judice decision is unreasonable and unjustified.

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The facts of the case are briefly as follows:

The applicant is a business man operating an athletic goods shop and is also an importer of athletic goods.

Respondent 1 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 to the official Gazette of the Republic, dated 20th January, 1983, under Notification 7/83, whereby the importation of shoes falling within the customs classification 64.01 - 64.05 was placed under control and as such for their importation an import licence is required.

The applicant in 1985 submitted an application for an import licence for 50 dozen of athletic shoes KM - 211 from China. His application was refused.

As a result he wrote a letter protesting to such refusal and requesting reconsideration of the decision. At the same time he submitted a new application on 18th July, 1986 which was again refused on the ground of protection of local industry.

The applicant protested once again for the refusal and submitted another application dated 1st December, 1986 for exactly the same goods as mentioned in his previous application of 18th July, 1986 which was again refused on 2nd December, 1986, on the ground of protection of the local industry. As a result applicant filed the present recourse.

By his written address counsel for applicant contended that Law 49/62 as amended by Law 7/67 to the extent that it allows the imposition of restrictions on the importation of athletic shoes of the type applied for by the applicant as well as the Order issued by the respondent in pursuance of the powers vested in him by the said law are unconstitutional as violating Article 24 of the Constitution which only empowers the imposition of taxes and not absolute restrictions on the importation. He further contended that Article 25 does not empower the Minister to impose such

5 conditions and furthermore he contended that the fact that similar import licences were given to other importers amounts to a discrimination against the applicant in violation of Article 28 of the Constitution. He based his argument as to the violation of Article 28 on the fact that in June, 1987 he bought from another company 108 pairs of similar shoes which were imported from China.

10 I wish to state at this point that the allegation of the applicant that in June, 1987, he bought similar shoes from another company which might have been imported in 1987 is irrelevant to the present case as the case has to be considered on the facts prevailing at the time when the sub judice decision was taken, such date being before 1987.

15 Counsel for respondents on the other hand, raised a preliminary objection that the sub judice decision is confirmatory of a previous decision of the respondent which was given in July, 1986 when applicant applied for a import licence for the same goods from China. As such, counsel submitted, it is not of an executory nature and in any event the applicant failed to challenge the decision of July, 1986, in time.

20 Counsel further submitted that the sub judice decision does not come within the purview of Article 24, and there has not been a violation of Article 25.

25 Counsel further rejected the allegations of the applicant that during the material time any import licence was given to anybody else and argued that in any event the applicant has failed to prove that the goods in respect of which he alleges that a licence was given were identical to those applied for by him.

30 Counsel submitted that the sub judice decision was taken in the proper exercise by respondent 1 of his discretion and for the object, as stated therein, of the protection of local industry.

I shall deal first with the preliminary objection raised by counsel for respondents.

As earlier stated the applicant on 18th July, 1986 applied for the importation of exactly the same goods of the same value, which application was refused by respondent 1. The applicant instead of challenging such decision within the time limit provided by the Constitution wrote a letter protesting against the refusal and he filed a new application on 1st December, 1986, for the importation of the same goods which was refused on the 2nd December, 1986 by repetition of the same reasons as those given by respondent 1 in refusing applicant's application of 18th July, 1986.

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In the circumstances of the present case I am inclined to agree with counsel for the respondents that the sub judge decision is merely confirmatory of the previous decision which had not been challenged by him. The applicant having failed to file a recourse thought fit that he could overcome the provisions of the Constitution by putting in a new application in respect of the same subject matter soon after the period for filing a recourse against the decision had expired. Therefore, the recourse should fail on this ground.

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Notwithstanding my above finding I shall proceed to examine the recourse on its merits.

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Sub-section (1) of section 3 of Law 49/62 as replaced by section 2 of the Law 7/67 empowers the Minister of Commerce and Industry whenever it becomes necessary in the public interest to restrict and regulate the importation of goods for the encouragement, inter alia, of local production and industry, by Order published in the official Gazette of the Republic. By virtue of such powers the Minister issued an Order published in the official Gazette of the Republic dated 20th January, 1983, under Notification 7/83 restricting and regulating the importation of certain goods set out in the schedule therein included for reasons of public interest. Amongst the goods so restricted were shoes.

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The question as to whether the importation of restrictions on importation violates Article 25 of the Constitution was considered

by me in *Sofocliides 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 and reiterated in the case of *Meridian Trading Co. Ltd. and The Minister of Commerce and Industry* (1988) 3 C.L.R. 1073. I adopt what I
5 said in those cases as well as the relevant dicta in the judgment of A. Loizou, J. as he then was, in *Impalex Agencies v. The Republic* (1970) 3 C.L.R. 361 for the reasons stated therein, that s. 3 of Law 49/62, as amended, is constitutionally valid so long as the
10 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
15 for bringing it within the ambit of paragraph 2 of Article 25, the very terms of which render it manifestly a provision of law necessary in the public interest.

Article 24 on which counsel for applicant sought to rely has no
20 bearing at all in the present case. It is a provision empowering the imposition of taxes and it cannot be construed as authorizing the unrestricted importation of goods subject only to a right of imposition of high taxes. A construction in the way submitted by
25 counsel for applicant would have led to an absurdity and would have been contrary to the clear and unambiguous provision of such Article.

I come next to consider whether there has been a violation of Article 28 of the Constitution.

30 No evidence has been adduced by the applicant in support of his allegation that a permit for the import of similar products at the material time had been granted and, therefore, his allegation of discrimination in violation of Article 28 is untenable. As to his original ground of law which appears in support of his applica-
35 tion that the sub judge decision was based on regulations which are ultra vires the law no argument has been advanced by counsel

in his written address and no explanation in support of such ground. It may be, therefore, presumed that such ground has been abandoned.

Applicant has failed to satisfy the Court that the restriction was not aimed at the purpose of protection of local products and their marketing in the interests of the country as a whole and that it was arbitrarily imposed by the Minister of Commerce and Industry. 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).

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In the circumstances of the present case I find that the restrictions imposed by respondent 1 were within the ambit of paragraph 2 of Article 25 and they do not violate any Article of the Constitution and that the discretion of the respondent was properly exercised and no case has been made out for interference by this Court in the exercise of his discretion.

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In the result the recourse fails and is hereby dismissed with no order for costs.

Recourse dismissed.
No order as to costs.

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