

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IMPALEX AGENCIES LTD.,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF COMMERCE AND INDUSTRY,

Respondent.

(Case No. 343/69).

1970  
Oct. 30,

IMPALEX  
AGENCIES LTD.

v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

*Constitutional Law—Right to carry on any profession, trade, business or occupation—Article 25 of the Constitution—What is safeguarded and what is guarded against, by—The Imports (Regulation) Law 1962 (Law No. 49 of 1962) sections 3 and 4, (as amended by Law No. 7 of 1967)—Refusal of the Minister of Commerce and Industry to grant import licence for the importation of potato seed—Section 4(2)—Cf. section 3(1)—Order made under section 3(1) as well as the said refusal under section 4(2) are outside the purview of the provisions of Article 25 of the Constitution—But even assuming that such order and such refusal are within the purview of said constitutional provisions viz. that they directly interfere with the right of the Applicant company to carry on the business or trade of importers of potato seed—Then, again, such formalities, conditions or restrictions as prescribed by the said Law are only necessary for the protection of the rights and liberties guaranteed by the Constitution and are aimed at legitimate economic goals in the public interest, as provided by paragraph 2 of Article 25 of the Constitution—Consequently the sub judice decision on no account can be held to be repugnant to the provisions of that Article 25.*

*Liberty to exercise any profession and carry on any trade, business or occupation—Guarantees and restrictions—Article 25 of the Constitution—See supra.*

*Constitutional Law—The principle of equality and against discrimination—Article 28 of the Constitution—Meaning and effect of the terms “equal before the law, administration and justice” and “discrimination” in Article 28.1 and 2 of the Constitution,*

1970  
Oct. 30  
—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

*respectively—The said terms do not convey the notion of exact arithmetical equality—Nor do they exclude reasonable distinctions which have to be made in view of the intrinsic nature of things—Arbitrary differentiations are only excluded thereby—In view of the foregoing reasons, the refusal in the instant case of the Minister of Commerce to grant an import licence to the Applicants in respect of potato seed on the ground that they have ceased to trade in the importation of such commodity for a certain period preceding such refusal—Is not repugnant in the circumstances of this case to the provisions of Article 28 of the Constitution.*

*Equality and Discrimination—Principle of equality—Principle against discrimination—Article 28 of the Constitution—See supra.*

*Discrimination—Principle against—See supra.*

*Administrative Law—Excess or abuse of powers—Onus on the Applicant—Discretionary powers—To be exercised for the purpose for which they are given—Interference of the Supreme Court with discretion exercised by the Administration—Principles applicable restated—Lawful or proper exercise of discretion—Meaning and effect of the phrase—In the instant case, the refusal of the Minister to grant the import licence asked by the Applicant company for the importation of potato seed held to have been decided properly—The Minister having exercised in a proper manner the discretion vested in him under section 4(2) of the said Imports (Regulation) Law, 1962.*

*Discretionary powers—Vested in the Administration—Interference of the Supreme Court therewith—Principles applicable—Lawful or proper exercise of such powers—Meaning of the phrase—See supra.*

*Abuse and excess of powers—See supra.*

*Imports (Regulation) Law, 1962—Import licence—Refusal etc. etc.—See supra.*

*Potato seed—Import of—Licence required—See supra.*

*Profession, trade, business or occupation—Liberties and restrictions in relation thereto—See supra.*

In these proceedings under Article 146 of the Constitution the Applicants seek to challenge the decision of the Minister of Commerce and Industry of October 10, 1969, refusing to grant them import licences for the importation of potato seed,

the reason invoked for that refusal being that at no time within the preceding period of three years did they import in Cyprus any potato seed. It would appear, indeed, that the Ministry has decided to continue applying in the current year 1969-70 the policy adopted earlier in 1968 in this respect viz. not to grant such import licences to traders other than those who had imported potato seed within the period of three years preceding the relevant decision by the Minister. As a matter of fact, the Applicant company was importing potato seed throughout the period 1962 to 1964, but did not import any such stuff thereafter.

The relevant statutory provisions are sections 3 and 4 of the Imports (Regulation) Law, 1962 (Law No. 49 of 1962) as amended by Law No. 7 of 1967. Section 3 is quoted in full *post* in the judgment. Section 4 provides:

- “(1) Where under the provisions of any order a licence is required, the licence shall be in the prescribed form.
- (2) The Minister may, in his discretion:
  - (a) Grant or refuse such licence;
  - (b) make such licence subject to such conditions as he may deem fit.”

It was argued on behalf of the Applicants, *inter alia*:

(a) that the refusal of the Minister to grant the import licence asked for interferes with their constitutional right to carry on the trade or business as importers of potato seed, and is, therefore, contrary to the provisions of Article 25 of the Constitution (*infra*);

(b) that the said refusal discriminated against the Applicants vis-a-vis the other importers of potato seed who were granted the required licence, and such refusal is, therefore, repugnant to the provisions of Article 28 of the Constitution guaranteeing the equality before the law, the administration etc. etc. (*infra*);

(c) that the period of three years accepted by the Respondent as criterion for the granting of a licence to import potato seed (*supra*) was taken arbitrarily and without due regard to the views of the other importers to the effect that the right period should be five years instead of three;

1970  
Oct. 30  
—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

- (d) that the Minister, in any case, has wrongly exercised his discretionary powers under sub-section (2) of section 4 of the Imports (Regulation) Law, 1962 (as amended), *supra*, and has misdirected himself, because he could grant such licence to the Applicant company, subject to such conditions as he might deem fit to impose.

Article 25.1 and 2 of the Constitution reads as follows:

“1. Every person has the right to practise any profession or to carry on any occupation, trade or business.

2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest:

Provided that no such formalities, conditions or restrictions purporting to be in the public interest shall be prescribed by a law if such formality, condition or restriction is contrary to the interests of either Community.”

Article 28.1 and 2 of the Constitution provides:

“1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution.”

Rejecting all the submissions made on behalf of the Applicant company and dismissing its recourse, the Court:—

*Held, I: With regard to the submission that the refusal of the Minister to grant the import licence in question offends against the provisions of Article 25 of the Constitution (supra):*

(1) Article 25 of the Constitution (*supra*) safeguards only the right to practise any profession or to carry on any occupation, trade or business, subject to such formalities, conditions or restrictions as provided by law. What is guarded against are infringements in the exercise of this right as such; but controls in respect of objects which may be necessary for the exercise of such right are not excluded by this Article.

(2) The purpose of section 3 of the Imports (Regulation) Law, 1962 (see full text thereof *post* in the judgment) and the relevant order made thereunder is not the regulation of any profession, occupation, trade or business, but the regulation and the control of importation of certain goods including 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 to grant the import licence applied for interfere directly with the right, as such, of the Applicant company to carry on the business of an importer.

(3) (a) Even assuming that I am wrong in this finding, and that the refusal of the Minister to grant the import licence in question directly interfered with the right of the company to carry on the business or trade of importers 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 the said Law, are only necessary for the protection of the rights and liberties guaranteed by the Constitution, as provided by paragraph 2 of Article 25 of the Constitution (*supra*).

(b) Moreover, such formalities, conditions or restrictions were intended, in my view (a) for the marketability of this commodity and the protection of the Cyprus potato growers as well as the exporters (including the Applicants) from severe competition in the market abroad; and (b) for the controlling of the planting of too many acres of potatoes because of the acute problem of water supply.

(c) These in my view are legitimate economic goals which are in the public interest viz. in the interest of the economy of the country as a whole.

(4) In view of the foregoing, I hold that the decision of the Minister complained of in these proceedings is not at all

1970  
Oct. 30

—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

repugnant to the provisions of Article 25 of the Constitution (*supra*).

*Held, II: With regard to the submission that the sub judge decision is discriminatory against the Applicants and therefore, contrary to the provisions of Article 28 of the Constitution laying down the principle of equality (supra):*

(1) With regard to this argument put forward by counsel for the Applicants, I would like to reiterate the principle formulated in the case *Mikrommatis and The Republic*, 2 R.S.C.C. 125, at p. 131:

“ In the opinion of the Court the term ‘equal before the law’ in paragraph 1 of Article 28 of the Constitution does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. Likewise the term ‘discrimination’ in paragraph 2 of Article 28 does not exclude reasonable distinctions as aforesaid.”

(2) In my opinion, it follows that in view of the intrinsic nature of things the decision of the Minister constitutes a reasonable distinction between those traders who continued trading in the importation of potato seed and those who like the Applicant company ceased doing so.

(3) For these reasons the decision of the Minister complained of in these proceedings is not repugnant to the provisions of Article 28 of the Constitution (*supra*).

*Held, III. With regard to the argument that the Minister has exercised his discretion in a defective manner and, therefore, in excess and abuse of powers:*

(1) (a) The trend of the authorities is that as long as the discretion is exercised in a lawful manner, the Court will not interfere by substituting its own discretion for that of the administration, even if the Court could have reached a different conclusion had it been called upon to exercise its own discretion on the merits (see *Iacovides and The Republic* (1966) 3 C.L.R. 212).

(b) A discretion is exercised in a lawful manner if it is exercised for the purpose for which it was given; and, of

course, if in its exercise all material considerations have been taken into account, due weight is given to material facts and no material misconception of law or fact occurred.

(2) Once the Minister has exercised his discretion lawfully, impartially and in good faith, after taking into consideration the views of the importers including the Applicant company, as well as after taking into account the relevant statistics, there is no doubt in my mind that the Minister in refusing to grant the import licence in question to the Applicant company has properly exercised his discretionary powers. I would therefore dismiss this application.

1970  
Oct. 30  
—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

*Application dismissed.*

Cases referred to:

*Mikrommatis and The Republic*, 2 R.S.C.C. 125 at p. 131,  
*applied*;

*Iacovos Iacovides and The Republic* (1966) 3 C.L.R. 212.

#### **Recourse.**

Recourse against the validity of the refusal of the Respondent to grant to Applicants unconditional or conditional import licences for the importation of potato seed.

*G. Economou*, for the Applicant.

*S. Georghiades*, Senior Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following judgment was delivered by:

HADJIANASTASSIOU, J.: In these proceedings, under Article 146 of the Constitution, the Applicants seek to challenge the validity, of the decision of the Minister of Commerce and Industry, communicated to them by a letter of October 10, 1969, refusing to grant them unconditional or conditional import licences for the importation of potato seed, as being contrary to the Constitution and/or contrary to the provisions of the law and/or in excess or in abuse of the powers vested in the Minister.

The facts as shortly as possible are as follows:—

The Applicant is a company limited by shares, having its registered office at Famagusta, and the main object of the company is the import and export trade. During the period of 1962–1964, the company imported potato seed from abroad, although during the period 1965–1968 it did not import any potato seed. However, on October 8, 1969, the company applied for a licence for the importation of 400 tons certified potato seed from Northern Ireland, of the following varieties and quantity:

- (a) Arran Banner – 300 tons
- (b) Up to Date – 100 tons, all valued at £14,400.000.

On October 10, 1969, the Director-General of the Ministry in reply, said:—

“ Ένετάλην ὅπως ἀναφερθῶ εἰς τὴν αἴτησίν σας ὑπὸ ἡμερομηνίαν 8ην Ὀκτωβρίου, 1969, δι' ἧς αἰτεῖσθε ὅπως σᾶς παραχωρηθῆ ἄδεια δι' εἰσαγωγὴν πατατοσπόρου καὶ σᾶς πληροφρήσω ὅτι καὶ ἐφέτος ἀπεφασίσθη ὅπως ἡ εἰσαχθισομένη ποσότης πατατοσπόρου περιορισθῆ καὶ ὅπως υἱοθετηθῆ ἡ περυσινὴ διαδικασία, ὅτε παρεχωρήθησαν ἄδειαι βάσει τῶν πραγματοποιηθεισῶν εἰσαγωγῶν ἐκάστου εἰσαγωγέως κατὰ τὴν τριετίαν 1965–1967.

Ἐν ὄψει τῶν ἀνωτέρω, ὡς καὶ τοῦ γεγονότος ὅτι συμφῶως πρὸς τὰ εἰς χεῖρας μας στοιχεῖα οὐδεμίαν εἰσαγωγὴν πατατοσπόρου ἐγένετο ὑφ' ὑμῶν κατὰ τὰς ὡς ἄνω περιόδους, λυποῦμαι νὰ σᾶς πληροφρήσω ὅτι τὸ ἡμέτερον Ὑπουργεῖον δὲν δύναται νὰ ἐκδώσῃ δι' ὑμᾶς οἰανδήποτε ἄδειαν εἰσαγωγῆς πατατοσπόρου”.

On October 31, 1969, counsel for the company in reply, telegraphed the Minister that unless he would be willing to grant to the company permission for the importation of potato seed by the 3rd November, they would have no alternative but to institute legal proceedings against him.

On November 3, 1969, in reply to the Applicants, it was said on behalf of the Ministry that the controls as to the importation of quantities of potato seed were made having regard to the public interest. On November 6, 1969, the Company, feeling aggrieved, filed the present recourse.



On January 7, 1970, supplementary particulars of the grounds of law were filed:-

1970  
Oct. 30

"1. That the refusal of the Respondent to grant import licence for the importation of potato seed of Northern Ireland of the United Kingdom is:

—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

- (a) contrary to the provisions of Article 25.1 of the Constitution, in that it restricts the right of the Applicant, whose main business is the import and export trade, and which was an importer in previous years, of potato seed, by refusing to grant licence for importing such seed for the year 1969, by adopting arbitrarily a test which excludes the Applicants from obtaining the necessary permit;
- (b) contrary to Article 28 of the Constitution, in that the test adopted by Respondent does not afford equal treatment between other importers of potato seed and Applicants; i.e. Respondent in taking into consideration arbitrarily the amounts imported the last three years only by the various importers and basing the granting of import licences on that fact alone, excluded altogether Applicants who, although they did not import any seed potatoes for the last three years, have been doing so for a number of years prior to the said period".

On February 26, 1970, during the hearing of this case, counsel informed the Court that he abandoned the ground of unconstitutionality of the Imports (Regulation) Law, 1962, and has contended:-

(a) that the refusal of the Minister to grant a licence infringes the rights of the Applicant company to carry on the trade or business as importers of potato seed, and is contrary to the provisions of Article 25 of the Constitution;

(b) that the period of three years accepted by the Respondent as criteria for the granting of a licence to import potato seed, was taken arbitrarily and without taking into consideration the views of the other importers that the correct criteria should be a period of five years instead of three, and is contrary to section 3(1) of Law 49/62 (as amended by Law 7/67);

(c) that the refusal of the Minister discriminated against the Applicants, vis-a-vis, the other importers who were granted such licence for the importation of potato seed, and is contrary to Article 28 of the Constitution.

(d) that the Minister has wrongly exercised his discretionary powers under the provisions of section 4 of Law 49/62, and has misdirected himself, because he could grant such licence to the Applicant company, subject to such conditions as he may deem fit to impose.

Counsel for the Respondent, on the contrary, has contended:

(a) that the decision of the Minister does not contravene the provisions of Article 25, since it has been conceded by counsel for the Applicant company that the company had ceased to carry on the trade or business of importing potato seed for a period of three years preceding the decision of the Minister;

(b) that the Minister based his decision on section 3 of Law 49/62 and followed objective criteria, viz., he took into consideration the average quantity of potatoes imported during the last three years by each importer preceding his decision;

(c) that the said criteria were designed for the protection of the right safeguarded under Article 25 of the Constitution; and that the decision was taken in the public interest;

(d) that the said decision did not discriminate against the Applicant company, because the said company ceased to carry on the trade or business of importing potato seed, and because the criteria used were objective and reasonable.

I find it convenient to deal first with s. 3(1) of the Imports (Regulation) Law, 1962, (as amended), which is in these terms:-

“ The Council of Ministers may, by a decision, declare regulated the importation of any goods into the Republic for the purpose of encouraging local production and manufacture or improving the balance of trade or complying with international obligations of the Republic, provided that such regulation is in the public interest.

(2) Where a decision has been taken under sub-section (1), the Minister may, from time to time, by an order published in the Official Gazette of the Republic, restrict

and regulate the importation of any goods, having regard to the criteria set out in sub-section (1)".

1970  
Oct. 30

I now turn to section 4(1) which deals with the issuing of a licence for the importation of goods from abroad, which reads as follows:-

—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

“ Where under the provisions of any order a licence is required, the licence shall be in the prescribed form.

- (2) The Minister may, in his discretion;
  - (a) grant or refuse such licence;
  - (b) make such licence subject to such conditions as he may deem fit”.

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.

Counsel for the Applicant company, in support of his application, called Mr. Nearchos Hadjisoteriou, one of the directors of the company, who said that the company started importing the commodity of potato seed since 1962, which they were selling to the villagers who were dealing with the cultivation of potatoes. Because of the creation of the Potato Marketing Board in 1965, the company stopped importing temporarily potato seed, for a period of four years, in order to enable the directors to collect the money owed by the villagers, who were trading with the company. He explained that the directors of the company attended a meeting at the Ministry of Commerce and Industry, and were informed that the Minister intended to put controls in limiting the importation of potato seed, because of the shortage of water for the irrigation of the plantation of potatoes.

Moreover, he went on to say that at the meeting the directors were informed that the Minister was trying to find a proper distribution of the quota of the imported potato seed; and had agreed as to the proposed scheme, although they made it quite clear that they were not willing to accept the proposal

1970  
Oct. 30  
—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

that the criteria as to who would be entitled to import potato seed should be limited to go back to three years only, because such limit was unreasonable. Under the circumstances, they agreed that a period of five years was reasonable.

Questioned by counsel for the Respondent, he said that he did not remember whether at the meeting it was said that the Minister intended to place these controls in order to protect the price of the potatoes which were falling because of the overproduction. He further explained that the reason why it took the company three years to apply for a licence, was because with the controls imposed, the importation of potato seed became more profitable to all importers, who are selling this commodity in cash and not on credit. Their complaint, he said, was that the company lost the chance of earning profit, and because this profit is now earned by a single importer—the Co-Operative Society. However, he conceded that Hadjisoteriou & Sons Co., in which he holds shares, is still importing potato seed because that Company never stopped doing so.

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.

Now, with regard to the first submission of counsel for the Applicants, viz. that the decision or act of the Minister is contrary to the provisions of Article 25 of the Constitution, I am inclined to find myself in disagreement with this argument, because Article 25 safeguards only the right to practise any profession or to carry on any occupation, trade or business, subject to such formalities, conditions or restrictions as provided by law. What is guarded against are infringements

in the exercise of this right as such; but controls in respect of objects which may be necessary for the exercise of such right are not excluded by this Article.

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 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.

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.

In conclusion, I would repeat that from the material before me, such formalities, conditions or restrictions were intended in my view, (a) for the marketability of this commodity and the protection of the Cyprus potato growers as well as the exporters, including the Applicant company, from severe competition in the market abroad. These in my opinion, are legitimate economic goals which are in the interest of the economy of the country as a whole; and (b) for the controlling of the planting of too many acres of potatoes because of the

1970  
Oct. 30  
—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

1970  
Oct. 30

—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

acute problem of water in Kokkinotrimithia area, which is a potato growing area.

In view of these reasons, which constitute reasons in the public interest, I would dismiss this contention of counsel.

With regard to the third contention of counsel that the administrative act or decision of the Minister contravenes the provisions of Article 28 of our Constitution, I would like to reiterate the principle formulated in *Argiris Mikrommatis* and *The Republic*, 2 R.S.C.C. 125 at p. 131:—

“ In the opinion of the Court the term ‘equal before the law’ in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. Likewise, the term ‘discrimination’ in paragraph 2 of Article 28 does not exclude reasonable distinctions as aforesaid”—per Forsthoff, P.

In my view, it follows that in view of the intrinsic nature of things, viz. that the Applicant company had ceased to trade in the importation of potato seed for the period 1965–67 for the reasons appearing in this judgment, I am of the opinion that the decision of the Minister constitutes a reasonable distinction between all those traders who continued trading in the importation of potato seed and the Applicant company who ceased doing so. Needless to say that although such treatment appeared to be adverse to the company, nevertheless, from the evidence before the Court, it appears that it was made against all the traders who found themselves under similar circumstances as the Applicants. For these reasons, I am of the opinion that the administrative act or decision of the Minister is not repugnant to the provisions of Article 28.

With regard to the fourth submission of counsel, in reviewing the act or decision of the Minister, I am of the view that the company had failed to discharge the onus of establishing excess or abuse of power to the satisfaction of the Court; and it is a well settled principle that such onus rests with the person who makes such allegation against the administration. The fact, of course, that restrictions have been imposed in the public interest for the protection of the potato growers and exporters of this commodity, perhaps against the interest of

other traders, is not *per se* sufficient to establish excess or abuse of power, particularly so, because in the case of the Applicants, it was made clear that had it not been for the restrictions imposed, the company would not have cared to carry on the trade or business of the importation of potato seed.

For these reasons, and in view of the fact that restrictions were imposed in the public interest and not for the purpose of enabling the company to make a profit, I would again dismiss this contention of counsel.

The next question which is posed is whether the Minister in refusing to grant a licence to the Applicant company has properly exercised his discretionary powers. With regard to the discretionary powers, the trend of the authorities is that once a discretionary power is exercised, such exercise must be for the purpose for which it was given. As long as the discretion is exercised in a lawful manner, the Supreme Court will not interfere with the exercise of such discretion by substituting its own discretion for that of the authority concerned, even if in exercising its own discretion on the merits, the Court could have reached a different conclusion. See *Iacovos L. Iacovides v. The Republic* (1966) 3 C.L.R. 212 at pp. 219-220.

A discretion is exercised, of course, in a lawful manner, if in its exercise all material considerations have been taken into account, due weight is given to material facts, and has not been based on a misconception of law or fact. A defective exercise of a discretion may, therefore, amount to an excess or abuse of power.

Counsel today contends that the Minister has failed to exercise his discretion according to law, because his refusal was caused or influenced by wrong criteria, viz., that the company had not imported potato seed for a period of three years. I have no doubt that Law 49/62 which deals with the imposition of controls was thought to be in the public interest; and in so far as it necessarily involved detriment to some class of persons, it must have been thought to be in the public interest that they should suffer it. The law has conferred discretion on the Minister with the intention that it should be used to promote the policy and object of the legislation; the policy and objects of the law must be determined by construing the

1970  
Oct. 30  
—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

1970  
Oct. 30

—  
IMPALEX  
AGENCIES LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMERCE  
AND INDUSTRY)

law as a whole, and construction is always a matter of law for the Court.

In a matter of this kind, it is not possible to draw a hard and fast line, and I agree therefore, with counsel for the Applicants that perhaps a period of five years instead of three, might be considered as a whole as a more reasonable period. But, once the Minister has exercised his discretion lawfully, impartially and in good faith, after taking into consideration the views of the importers including the Company, with regard to the importation of potato seed, as well as after taking into account the statistics of this commodity imported in the island by each importer for the period 1965, 1966 and 1967, there is no doubt, that the Minister in refusing to grant a licence to the company, has properly exercised his discretion and I am not prepared to interfere with the exercise of his discretion by the substitution of my own discretion. I would, therefore, dismiss this application.

*Application dismissed.*