

1984 March 24

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CONSTANTINOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF FINANCE,

*Respondent.*

(Case No. 302/80).

*Customs and Excise Laws, 1978-1980—Disabled person—Permit to import a duty-free motor vehicle—Meaning of “disabled person” —Deaf and dumb person—A disabled person—Rejection of application for a permit without asking applicant to undergo an examination by the Government Medical Board as provided by the Law—Sub judice refusal annulled as reached without due inquiry.* 5

*Administrative Law—Inquiry—Due inquiry—Rejection of application for permit to import a duty-free motor vehicle—Applicant not asked to undergo an examination, regarding his disability, by a Government Medical Board, as envisaged by the relevant legislative provisions—Sub judice decision reached without due inquiry into a most material aspect—Annulled.* 10

*Words and Phrases—“Disabled person”—Deaf and dumb person is a disabled person.* 15

The applicant, who was deaf and dumb from birth applied for a permit to import a duty-free motor vehicle. The respondent rejected his application without asking him to undergo an examination by the Government Medical Board as envisaged by the relevant legislative provisions; and hence this recourse. 20

*Held*, that applicant may be described as a "disabled person" in the generally accepted sense of the term (see the definition of the term by the United Nations General Assembly on the 9th December, 1975); that as the respondent rejected the application for the relevant permit without asking the applicant to undergo an examination by the Government Medical Board as envisaged by the relevant legislative provisions it has, thus, reached its sub judice decision without due inquiry into a most material aspect, with the result that its decision has to be annulled as being contrary to well settled principles of Administrative Law.

*Sub judice decision annulled.*

Cases referred to:

*Miltiadous v. Republic* (1983) 3 C.L.R. 590;

*Kalli v. Republic* (1984) 3 C.L.R. 443;

*Karageorghis v. Republic* (1982) 3 C.L.R. 435 at p. 460;

*Mesaritis v. Republic* (1983) 3 C.L.R. 238 at p. 241.

**Recourse.**

Recourse against the dismissal, by the respondent, of applicant's application for a permit to import a duty-free motor vehicle.

*C. Loizou*, for the applicant.

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

*Cur. adv. vult.*

25 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Ministry of Finance, dated the 30th August 1980, to dismiss his application for a permit to import a duty-free motor vehicle.

30 The applicant is deaf and dumb from birth and a graduate of the School for the Deaf in Nicosia.

He is the holder of a driving licence in which there are endorsed the conditions that the applicant must wear hearing aids when driving, that his car must have two front mirrors and that

it must also be fitted with special apparatus which, by lighting up a bright signal, warns the driver that the driver of another car is blowing his horn.

The relevant legislative provisions are item 09 of class 01 in the Fourth Schedule to the Customs and Excise Laws, 1978–1980, read in conjunction with an order of the Council of Ministers issued in the exercise of its powers under section 11(2) of the said Laws (see No. 221 in the Third Supplement, Part I to the Official Gazette of the 14th September 1979). 5

The effect of the above provisions was considered in cases such as *Miltiadous v. The Republic*, (1983) 3 C.L.R. 590, and *Kalli v. The Republic* (in which judgment was delivered on the 10th March 1984 and has not yet been reported).\* 10

A “disabled person” (“ανάπηρος”) was defined as follows by the United Nations General Assembly on the 9th December 1975 (No. 3447 (XXX) ): 15

“The term ‘disabled person’ means any person unable to ensure by himself or herself wholly or partly the necessities of a normal individual and/or social life, as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities”. 20

Having in mind the above definition and the fact that certain conditions were endorsed, as aforesaid, in applicant’s driving licence, which are not to be found in the driving licences of normal drivers, I am of the view that the applicant may be described as a “disabled” person in the generally accepted sense of the term. But, in accordance with the aforementioned legislative provisions, the applicant’s disability should have been duly certified by a Government Medical Board. 25

The respondent has rejected the applicant’s application for the relevant permit without asking the applicant to undergo an examination by the Government Medical Board envisaged by the relevant legislative provisions and has, thus, reached its sub judice decision without due inquiry into a most material aspect, with the result that its decision has to be annulled as being contrary to well settled principles of Administrative Law (see, in this respect, inter alia, *Karageorghis v. The Republic*, 30 35

\* Now reported in (1984) 3 C.L.R. 443.

(1982) 3 C.L.R. 435, 460, and *Mesaritis v. The Republic*, (1983) 3 C.L.R. 238, 241).

5       Consequently, this recourse succeeds and the refusal of the respondent Ministry to grant the applied for permit to the applicant is declared to be null and void and of no effect whatsoever; but I shall not make an order as to the costs of this case.

*Sub judice decision annulled.  
No order as to costs.*