

1984 March 10

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KALLIS N. KALLI,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent.*

(Case No. 368/83)

*Customs and Excise Laws—Regulations made under section 11(2) of the Laws granting relief from import duty to incapacitated persons importing vehicles—Object of—Respondent Minister refusing applicant's application to import a car duty free by relying on opinion of Senior Technical Examiner of Vehicles—And disregarding the views of the Government Medical Board the only competent authority to opine on the subject—Thus his decision was based on irrelevant matters—Annulled.*

*Administrative Law—Discretionary powers—Exercise of, by relying on irrelevant matters and disregarding relevant ones—Annulment of sub judice administrative act.*

Regulations made under s.11(2) of the Customs and Excise Laws confer, subject to conditions laid down therein, exemption from duty on disabled persons importing vehicles specially adapted for use by incapacitated persons. The applicant applied to import a car duty free and his application was dismissed for the reason that his physical condition did not necessitate the use of a vehicle specially adapted for disabled persons. The dismissal was primarily based on a report by a Senior Technical Examiner of Vehicles to whom the matter was referred for his opinion.

The Medical Board, set up for the specific purpose of examining the applicant and ascertaining his condition, confirmed

that applicant suffered from a degree of disability on account of poliomyelitis contracted in infancy. As a result, the upper and lower limbs of the right side were affected. In particular, the grip of the right hand could be achieved with the greatest difficulty, whereas there were limitations to the flexion of the right hand. More relevant still, was the disability affecting the flexion of the right foot. 5

*Upon a recourse by the applicant:*

*Held*, that the object of the relevant Regulation is to confer a right upon disabled persons to import a duty free car the use of which is made reasonably necessary by the special needs of the person afflicted with disability; that for the determination of disability and assessment of its extent and implications the Regulation enjoins the Minister to confine his enquiry to one source only, namely, the Government Medical Board, envisaged therein; that the Medical Board is the only competent authority to opine on the subject; and that, therefore, it was wholly impermissible for the respondent to seek advice from another source on the condition of the applicant and, less permissible still, to rely on such opinion; that the evaluation of the findings of the Government Medical Board and the reasonableness of the need for a car specially adapted to the needs of the applicant, are matters for the discretion of the Minister; that in this case, the respondent not only relied for his decision on irrelevant matters, but, further, failed to evaluate and ponder the findings of the Government Medical Board whose views were essentially disregarded; accordingly the sub judice decision must be annulled. 10 15 20 25

*Sub judice decision annulled.*

Cases referred to:

*Miltiadous v. Republic* (1983) 3 C.L.R. 590. 30

**Recourse.**

Recourse against the decision of the respondent dismissing applicant's application to import a car duty-free.

*P. Angelides*, for the applicant. 35

*M. Photiou*, for the respondent.

*Cur. adv. vult.*

PIKIS J. read the following judgment. In *Miltiadous v. The Republic* (1983) 3 C.L.R. 590, I concerned myself with the object

and effect of a Regulation made under s.11(2) of the Customs and Excise Laws\*, conferring, subject to conditions laid down therein, exemption from duty on disabled persons importing vehicles specially adapted for use by incapacitated persons. The  
 5 object of the law is not, as pointed out, to bestow a privilege upon handicapped persons merely by reference to their disability, but to improve their amenity to move by the use of vehicles adjusted to their needs whenever reasonably necessary, on account of their condition. Relevant is the following quotation:

10 “The plain provisions of the law confine relief from import duty to the importation of vehicles specially adapted to the condition of incapacitated persons, in other words, vehicles suitable for invalids. Nor is it difficult to discern the purpose of the law, to facilitate by means of vehicular transport  
 15 the movement of disabled persons not otherwise possible. Evidently, it was not the intention of the law to afford relief from import duty to disabled persons, at the discretion of the Minister for the importation of any car. In other words, the law did not purport to grant relief from import  
 20 duty to disabled persons; only to those who imported vehicles specially adjusted to the needs of incapacitated persons.....”

So far as I am aware, there is no other decision illuminating the ambit of the Regulation in question. Counsel are of the  
 25 same view. In *Miltiadous*, application for relief from the payment of import duty was dismissed in view of the absence of any suggestion that applicant was, because of his disability, in any way prevented or inconvenienced from driving an ordinary car. In fact, his application for exemption was intended to enable  
 30 him to import an ordinary car, free of duty.

The applicant in this case, like *Miltiadous*, applied to import a car duty-free. Unlike *Miltiadous*, his application was for the importation of an automatic car. His application was dismissed primarily because of a report by a Senior Technical Examiner of  
 35 Vehicles to whom the matter was referred for his opinion. This is evident from a juxtaposition of the decision of the respondent, of 1.8.83 and the report of the Senior Technical Examiner, of 9.7.83. The application was dismissed for the reason that the

\* Official Gazette, Part III(I) No. 1553-14.9.79.

physical condition of the applicant did not necessitate (ἀπαιτεί) the use of a vehicle specially adapted for disabled persons.

Counsel for the applicant submitted the facts of the present case distinguish it from that of Miltiadous, in that -

- (a) unlike Miltiadous, the applicant in this case applied for the importation of a vehicle adapted to the vicissitudes of disability and, 5
- (b) the report of the Government Medical Board of 27.5.83 confirmed his incapacitation and supported his claim for the importation of a car specially designed for disabled persons. 10

The Medical Board set up for the specific purpose of examining the applicant and ascertaining his condition, confirmed that applicant suffered from a degree of disability on account of poliomyelitis contracted in infancy. As a result, the upper and lower limbs of the right side were affected. In particular, the grip of the right hand could be achieved with the greatest difficulty, whereas there were limitations to the flexion of the right hand. More relevant still, was the disability affecting the flexion of the right foot. 15 20

The Medical Board confined itself to a verification of the condition of the applicant. They made no attempt to correlate it to his ability to drive. Presumably, they felt the condition of the applicant was such that it was self evident he would experience difficulties in using an ordinary car. Significant is that the respondent made no attempt to evaluate these findings or seek further elucidation, if considered necessary, for the purpose of his decision. 25

In addition, respondent sought the opinion of the Senior Technical Examiner to whose report we have already referred. 30

Counsel for the applicant submitted that the decision must be set aside because respondent exceeded as well as abused his powers by seeking advice on the nature and implications of the disability of the applicant, from someone other than the Government Medical Board; worse still, he based his decision on the opinion of the Senior Technical Examiner in disregard of the findings and opinion of the Medical Board. Therefore, his decision is vulnerable to be set aside for misconception of material facts as well. Counsel for the respondent supported the 35

decision as justified in the light of the enquiry conducted by the respondent into the need applicant had of a car specially designed for incapacitated persons. The pertinent question is whether a disabled person has, on account of his condition, a need for a car specially designed for disabled persons. Counsel acknowledged that in this case the respondent did not, at all, base or relate his decision to the nature of the vehicle to be imported.

I see no reason for deviating from what was decided in *Miltiadous*, that the object of the Regulation under scrutiny is to confer a right upon disabled persons to import a duty-free car, the use of which is made reasonably necessary by the special needs of the person afflicted with disability. On the other hand, for the determination of disability and assessment of its extent and implications the Regulation enjoins the Minister to confine his enquiry to one source only, namely, the Government Medical Board, envisaged therein. The Medical Board is the only competent authority to opine on the subject; it is not just any source from which advice may be sought. It is the only competent body to adjudge a necessary prerequisite for the exercise of Ministerial discretion, that is, the disability of the applicant. Therefore, it was wholly impermissible for the respondent to seek advice from another source on the condition of the applicant and, less permissible still, to rely on such opinion. If the Minister was of the view that the findings of the Board were inconclusive, he could seek further information from them, particularly with regard to the difficulties raised by the disability of the applicant, in the way of his using an ordinary car and, the extent to which these difficulties would be eased by the use of a car specially designed for disabled persons.

To my comprehension, the Regulation does not stipulate, as a precondition for the importation of a duty-free car, either total inability to drive an ordinary car, or absolute necessity for the use of a car adapted to the needs of his incapacitation. Provided other conditions are satisfied, the importation of a duty-free car by a disabled person is permissible whenever the applicant has, on account of his disability, reasonable need of a car adjusted to his condition. What is reasonable, is a matter of fact and degree. For instance, if a disabled person, though able to drive an ordinary car, can do so with great difficulty, or at great cost to his health or comfort, a case of reasonable need

may be said to be made out. However, I repeat, the arbiter of his disability, its extent and implications, is the Government Medical Board envisaged by the Regulation. Nobody else. Certainly, not the examiner upon whose opinion the respondent mostly rested his decision in this case. The evaluation of the findings of the Government Medical Board and the reasonableness of the need for a car specially adapted to the needs of the applicant, are matters for the discretion of the Minister. 5

In this case, the respondent not only relied for his decision on irrelevant matters, but, further, failed to evaluate and ponder the findings of the Government Medical Board whose views were, in my judgment, essentially disregarded. 10

The decision is hereby set aside. It is annulled.

There shall be no order as to costs.

*Sub judice decision annulled. No order as to costs.* 15