

1984 March 28

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STAVROS MAKRIS LIMITED,  
(EX ELBANA DUTY FREE WAREHOUSES LTD.),  
*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR OF THE DEPARTMENT  
OF CUSTOMS AND EXCISE,  
*Respondent.*

(Case No. 312/83).

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*Practice—Recourse for annulment—Counsel of respondent not supporting sub judice decision—Yet responsibility for its annulment remains exclusively with the Court.*

5 *Customs and Excise Law, 1967 (Law 82/67)—Approval of places of security for the deposit, keeping and securing of goods—Within discretion of the Director of the Department of Customs—Section 71(1) of the Law.*

10 *Administrative Law—Administrative acts or decisions—Refusal to approve premises for the deposit, keeping and securing of goods—Under section 71(1) of the Customs and Excise Law, 1967 (Law 82/67)—Not duly reasoned and reached without a due or proper inquiry into the matter—Annulled.*

15 On or about the 24th November, 1982 the applicants submitted an application to the respondent for his approval, under section 71(1)\* of the Customs and Excise Law, 1967 (Law 82/1967) of their warehouse at Timayia Str. No. 18, Larnaca, as a special warehouse for the deposit, keeping and securing of duty free goods.

20 The respondent refused\*\* the application and hence this recourse.

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\* Section 71(1) is quoted at pp. 543-544 post.

\*\* The refusal is quoted at p. 542 post.

When the application came up for hearing Counsel for the respondent stated\* that the sub judge decision was lacking of due reasoning and it was taken without a due inquiry.

*Held*, (1) that in spite of the admissions of counsel for the respondents the responsibility for annulling an administrative decision remains exclusively in this Court in the exercise of its administrative jurisdiction under article 146 of the Constitution. 5

(2) That the approval of special warehouses is within the discretion of the Director of the Department of Customs, who is the only competent authority entrusted with the task of taking a decision in the matter (see s. 71(1) of Law 82/67); that a perusal of the contents of the letter of the respondent communicating to the applicants his refusal of their application makes it apparent that besides the fact that no due reasoning is given for his refusal in taking such decision, an inference may be drawn that he failed to exercise his own discretion in the matter under the law and that he, as mentioned in his letter, acted on "instructions" obviously of another by whom "he had been instructed to inform" the applicants that their application had been refused; that this Court is satisfied, from the facts before it and the admissions made by counsel for the respondents that the respondent failed to conduct a due and/or proper inquiry into the matter before taking his decision and that also it is abundantly clear that no reasoning is given why applicants' application has been refused; that failure of an administrative organ to make a due and/or proper inquiry is a ground for annulment and this ground is sufficient by itself to cause an annulment of the administrative act concerned; that, moreover, lack of due reasoning of an administrative act or decision is sufficient ground for the annulment of such act or decision; accordingly the sub judge decision must be annulled. 10  
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*Sub judge decision annulled.*

Cases referred to:

*Antoniou v. Republic* (1978) 3 C.L.R. 308 at p. 312;  
*HadjiPaschali v. Republic* (1980) 3 C.L.R. 101; 35  
*Tourpeki v. Republic* (1973) 3 C.L.R. 592;  
*Ioannides v. Republic* (1972) 3 C.L.R. 318;

\* The statement is quoted at p. 543 post.

*Fournia Ltd. v. Republic* (1983) 3 C.L.R. 262;

*Karageorghis v. Republic* (1982) 3 C.L.R. 435.

### Recourse.

5 Recourse against the refusal of the respondent to approve applicants' premises at Timayia Str. No. 18, Larnaca as a special warehouse of the deposit, keeping and securing of goods.

*L. Papaphilippou*, for the applicants.

*A. Evangelou*, Senior Counsel of the Republic, for the respondent.

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*Cur. adv. vult.*

SAVVIDES J. read the following judgment. This recourse is directed against the refusal of the respondent to approve the premises of the applicants at Timayia Street No. 18, Larnaca. as a special warehouse for the deposit, keeping and securing of  
15 goods.

The applicants are owners of warehouses in various parts of the Republic, approved by the respondent to operate as bonded stores for the deposit, keeping and security of duty free goods for export, under the provisions of section 71(1)  
20 of the Customs and Excise Law, 1967 (Law 82 of 1967). They were also shareholders in a company operating a similar warehouse at Timayia Street in Larnaca, which was finally wound up and discontinued carrying on such business. On or about the 24th November, 1982 applicants submitted an application  
25 to the respondent for his approval of their warehouse at Timayia Street No. 18, Larnaca, as a special warehouse for the deposit, keeping and securing of duty free goods. Such application was submitted through the Collector of Customs of Larnaca for his comments and recommendation as to whether the  
30 proposed premises were suitable for such purpose. The Collector of Customs of Larnaca inspected the premises and suggested certain structural modifications which were deemed necessary for safety purposes and which were accepted by the applicants who carried out such modifications at considerable  
35 cost. The Collector of Customs having inspected the premises in question after the structural modifications were carried out, forwarded their application to the respondent recommending its approval.

On or about the 8th July, 1983 the applicants by letter of their

advocate requested for an early reply to their application. The respondent by letter dated 19th July, 1983, communicated to the applicants his decision to refuse their application. The contents of such letter are as follows:

“With reference to the correspondence exchanged in connection with your application for the establishment and operation of a special warehouse for deposit, keeping and security of goods at Larnaca for serving passengers who travel abroad by sea, I have been instructed to inform you that your application has been refused.

(Sgd) The Director of the  
Department of Customs”

Hence, the applicants filed the present recourse praying for a declaration that the act or decision of the respondent contained in the aforesaid letter is null and void and of no legal effect whatsoever and that everything that had been omitted to be done should be done.

The legal grounds on which the recourse is based, as set out in the application are:

1. The respondent failed to exercise his own discretion in the matter and acted following the directions or orders of a third person, in contravention to the provisions of section 71 of Law 82/67.
2. The respondent acted contrary to Article 25 of the Constitution which guarantees the free exercise of an occupation, trade or business.
3. The respondent acted in a discriminatory manner towards the applicants in that in the same area he approved the licensing of similar stores belonging to others.
4. The respondent acted in violation of the principles of good administration in that through employees and/or agents of the Customs Department the applicants were encouraged to incur considerable expenses for the modification and improvement of their stores as suggested to them for such purpose.
5. The sub judge decision lacks any or due reasoning.
6. The respondent acted under a misconception of fact

in that he failed to take into consideration all the facts and circumstances of the case and in any event he failed to carry out a due and/or proper inquiry in the matter.

- 5 7. The respondent's action was instigated by ulterior motives and/or in obvious violation of the law and the Constitution.

When the application came up for hearing, counsel for the respondent, in fairness to the applicants, made the following statement:

10 "I do not intend to file an opposition in this case; having gone through the files of the administration, I have been satisfied that the decision, copy of which is attached to the recourse, is lacking of due reasoning, and, furthermore, having gone through the file of the case, it is not one of  
15 the cases in which the reasoning can be supplemented from the contents of the file. Furthermore, by inspecting the file, I have come to the conclusion that no due inquiry has been made in that case. Therefore, as in administrative recourses a judgment cannot be given by consent, I put  
20 these facts before the Court and I leave the matter to the Court to annul the decision".

Though the contentions of the applicants that the respondent failed to carry out a due and/or proper inquiry into the matter and that his decision lacks of due reasoning, have been admitted  
25 by counsel for respondents, nevertheless, the responsibility for annulling an administrative decision remains exclusively in this Court in the exercise of its administrative jurisdiction under Article 146 of the Constitution (*Antoniou v. The Republic* (1978) 3 C.L.R. 308 at p. 312). Section 71(1) of Law 82/67 to which  
30 reference has been made in this recourse, reads as follows:

"71.-(1) The Director may approve, for such periods, subject to such conditions as he thinks fit and to the payment of such fees as the Minister may determine, places of security for the deposit, keeping and securing-

- 35 (a) subject to such conditions and restrictions as he sees fit to impose, of any goods chargeable with a duty of customs without payment of that duty;
- (b) subject to such conditions and restrictions as afore-

said, of goods for exportation or for use as stores, being goods not eligible for home use;

(c) of goods permitted by or under the excise Laws to be warehoused without payment of any duty of excise chargeable thereon;

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(d) of goods permitted by or under the customs or excise Laws to be warehoused on drawback,

and any place of security so approved is in this Law referred to as a 'wharehouse'.

.....”.

It is clear from the above provisions that the approval of special warehouses is within the discretion of the Director of the Department of Customs, who is the only competent authority entrusted with the task of taking a decision in the matter.

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A perusal of the contents of the letter of the respondent communicating to the applicants his refusal of their application makes it apparent that besides the fact that no due reasoning is given for his refusal in taking such decision, an inference may be drawn that he failed to exercise his own discretion in the matter under the law and that he, as mentioned in his letter, acted on "instructions" obviously of another by whom "he had been instructed to inform" the applicants that their application had been refused.

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From the facts before me and the admissions made by counsel for the respondent, I am satisfied that the respondent failed to conduct a due and/or proper inquiry into the matter before taking his decision. Furthermore, from the material before me, it is abundantly clear that no reasoning is given why applicants' application has been refused.

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It is well settled in our administrative law that failure of an administrative organ to make a due and/or proper inquiry is a ground for annulment and this ground is sufficient by itself to cause an annulment of the administrative act concerned (see, inter alia, *HadjiPaschali v. The Republic* (1980) 3 C.L.R. 101, *Tourpeki v. The Republic* (1973) 3 C.L.R. 592, *Ioannides v. The Republic* (1972) 3 C.L.R. 318). It is also well established that

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lack of due reasoning of an administrative act or decision is sufficient ground for the annulment of such act or decision (see inter alia, *Fournia Ltd. v. The Republic* (1983) 3 C.L.R. 262 and the cases referred to therein, *Karageorghis v. The Republic*,  
5 (1982) 3 C.L.R. 435).

For all the above reasons this recourse succeeds and the sub  
judice decision is hereby annulled, with no order for costs.

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