1984 June 26

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE NICOSIA RACE CLUB, THROUGH ITS SECRETARY YIANNAKIS STROVOLIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE IMPROVEMENT BOARD OF AY. DHOMETIOS,
2. THE DISTRICT OFFICER OF NICOSIA, AS CHAIRMAN OF THE IMPROVEMENT BOARD OF AY. DHOMETIOS,

Respondents.

(*Case No.* 459/82)

Administrative Law—Administrative acts or decisions—Executory act—Act of execution—Meaning—Regulations obliging applicants to collect from each player a tax on sweepstakes and bets in race courses and pay it over to the respondent Board—Letter by Board requesting applicants to comply with the Regulations — Not an act of execution but an executory act which can be made the subject of a recourse under Article 146.1 *of the Constitution.*

Villages (Administration and Improvement) Law, Cap. 243*—Regulations made under section* 24(*h*)(*i*) *of the Law regulating the imposition and collection of tax on sweepstakes and bets—Not ultra vires the Law—And not contrary to Articles* 24.4, 25 *and* 28 *of the Constitution.*

Constitutional Law—Taxation—Destructive taxation—Right to exercise any trade or business—Principle of equality—Articles 24.4, 25 *and* 28 *of the Constitution—Regulations made under section* 24(*h*)(*i*) *of the Villages (Administration and Improvement) Law, Cap.* 243 *regulating the imposition and collection of tax on sweepstakes and bets—Are not of a destructive or prohibitive nature and they do not contravene the above Articles of the Constitution—Article*

25 protects the right to exercise a profession or to carry on any occupation, trade or business from direct and not indirect restrictions or interference.

The applicants were a club owning the Nicosia Race Course. On the 25th June, 1982, by virtue of section 24(h)(i)* of the Villages (Administration and Improvement) Law, Cap. 243 (as amended by section 7(b) of Law 27/1982) Regulations were published regulating the imposition and collection of tax on sweepstakes and bets. Under regulation 163 of these Regulations applicants were obliged to collect from each player and pay over to the respondent Board a tax as specified in the aforesaid section 24(h)(i). Following the enactment of the said Regulations the respondents wrote** to the applicant club on the 27th August, 1982, requesting their compliance with the Regulations; and hence this recourse.

Counsel for the applicants mainly contended:

(a) That the Regulations were ultra vires section 24(h)(i) of Cap. 243. It was argued in this respect that section 24(h)(i) provides that the tax has to be collected by the applicant and paid over to the respondent Board in accordance with an agreement concluded between them; and since no such agreement has ever been concluded the Regulations are ultra vires.

(b) That the Regulations were unconstitutional as being contrary to the provisions of Articles 24.4, and 25 of the Constitution. It was argued in this connection that such tax being 0.75% of the value of each sweepstake or bet, in effect entails such fragmentation of the currency that it is commercially impossible to deal in sweepstakes or bets by giving back to the player the exact change; and that, consequently, the Regulations will have a prohibitive and/or destructive effect on the applicants' business, contrary to Art. 24.4 of the Constitution. It was, also, argued that such obligation casts such a burden upon the applicants

* Section 24(h)(i) is quoted at pp. 807–808 post.

** The letter is quoted at p. 804 post.

that in effect it interferes with their freedom to carry on their business—such interference not being justified by the provisions of Article 25.2 of the Constitution, but being contrary to it.

(c) That since such obligation has not been imposed on any other business within the Improvement area, applicants were, thus, being subjected to discriminatory treatment contrary to Article 28.

Held, (I) *On the preliminary objection of the respondents that the decision complained of is not an executory administrative act or decision but an act of execution:*

That an act of execution is the subsequent act of the administration by which an executory act is realised; that as in the present instance there is no pre-existing executory act—the Regulations being a regulatory act and as such not capable of being challenged by a recourse—it is clear that the sub judice decision is not an act of execution since such act requires the existence of an executory act; that an executory act must be an act by means of which the "will" of the administrative organ concerned has been made known in a given matter; an act which is aimed at producing a legal situation concerning the citizen affected and which entails its execution by administrative means: that in the present instance the sub judice letter of the respondent falls within the above definition of an executory act and can thus be challenged by the present recourse.

Held, (II) *on the merits of the recourse:*

(1) That the agreement can only refer to the manner of payment of the tax collected in accordance with the Law and not, as argued by the applicants to the question of collection of tax, since this is already prescribed by the Law itself; that, moreover, the Regulations are within the framework as laid down by the enabling law their provisions being no different from the provisions of the said law; and they are intra vires Cap. 243.

(2) That the Regulations are not of a destructive or a prohibitive nature with adverse financial effects on the applicants' business and, they are, therefore, not contrary to Article 24.4 of the Constitution; that, further, the obligation by the applicants to collect such tax does not interfere with their freedom to carry

on their business in contravention of Article 25 because apart from the fact that the amount of such tax is so small that it cannot possibly be considered as onerous, such tax is not imposed upon the applicants but on third parties, i.e. the players and consequently Article 25 has no application in any case since the protection of the Article is in respect of direct and not indirect restrictions or interference on a person's right to exercise a profession or business.

(3) That though it is true that the said Regulations presently affect the Nicosia Race Course only there is nothing to suggest that if there were or will be in future other race courses, the said Regulations would not apply to them also; that, in any case, the tax imposed is payable by the players and not by the applicants, whose only duty under the Regulations is to collect such tax and pay it over to the respondent Board; and that since they already are under the duty of collecting tax from the players for the government by virtue of Law No. 23 of 1976 their position cannot possibly be more onerous than it were before and it should also be borne in mind that the position the applicants find themselves is not unique because there are many similar instances under Cyprus Law where Tax is collected from 3rd parties and paid over to the Government; accordingly the Regulations are not contrary to Article 28 of the Constitution.

Application dismissed.

Cases referred to:

Colocassides v. *Republic* (1965) 3 C.L.R. 542 at p. 551;

Shanaham v. *Scott* (1957) 96 C.L.R. 245 at p. 250;

Marangos v. *Municipal Committee of Famagusta* (1970) 3 C.L.R. 7 at p. 13;

Menicos and Others v. *Republic* (1983) 3 C.L.R. 1130 at pp. 1135–1136;

Apostolou v. *Republic* (1984) 3 C.L.R. 509;

Xydias v. *Republic* (1976) 3 C.L.R. 303 at p. 312;

Kissonerga Development v. *Republic* (1982) 3 C.L.R. 462 at p. 487.

Recourse.

Recourse against the decision of the respondents to demand from applicants to submit all books, returns and statements for the period 25th June, 1982 to 27th August, 1982 containing

sweepstakes and bets placed in respect of the race meetings between the above dates.

R. Stavrakis with *G. Triantafyllides*, for the applicant.

E. Odysseos, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicants seek a declaration that:-

(a) the decision of the respondents to demand from applicants to submit all books and returns and statements for the period of 25th June, 1982 to 27th August, 1982 containing the sweepstakes and bets placed in respect of the race meetings between the above mentioned dates as well as a summary of all the sums of sweepstakes and bets placed for the race meetings that had taken place between the above dates as well as all the sums of any tax imposed and collected on the above sweepstakes and bets is null and void and of no effect whatsoever.

(b) the decision of the respondents to demand from applicants to produce each week the books and returns and statements containing the sweepstakes and bets placed in respect of the previous weeks' race meeting as well as a summary statement showing the amounts of the sweepstakes and bets placed in respect of the race meeting of the immediately preceding week and the amounts of any tax imposed and collected on such sweepstakes and bets placed is null and void and of no effect whatsoever.

(c) the decision of the respondents to demand from applicants to pay the above mentioned tax is null and void and of no effect whatsoever.

The applicants are a Club owning the Nicosia Race Course. On the 25th June 1982, by virtue of section 24 (h)(i) of the Villages (Administration and Improvement) Law, Cap. 243, as amended by section 7(b) of Law No. 27 of 1982 Notification No. 200 was published in Supplement III to the Official Gazette of the Republic regulating the imposition and collection of tax on sweepstakes and bets. In accordance with regulation 163 C,

applicants were obliged to collect from each player and pay over to the respondent Board of Ayios Dhometios a tax as specified in the aforesaid section 24(h)(i).

As a result, the applicants filed recourse No. 310/82 challenging the validity and constitutionality of such regulations; this recourse, however, was dismissed as it was found by me that the said regulations by their very nature were a regulatory act of a legislative content and of a general application and not an executory administrative act and could not thus be challenged by a recourse under Article 146 of the Constitution.

In the meantime, the respondents wrote to the applicant Club, on the 27th August 1982, requesting their compliance to the regulations, stating, inter alia, as follows:-

> "You are therefore requested to submit each week, during working hours at the offices of the Improvement Board of Ayios Dhometions, the books, forms and statements showing the sweepstakes and bets placed in respect of the horse race meeting of the immediately preceding week and that you produce a summary statement showing -
>
> (a) the amounts of the sweepstakes and bets placed during the immediately preceding week in connection to the race meeting which took place at the Race-course situated at the Ayios Dhometions Improvement Area during the immediately preceding week, and,
>
> (b) the amounts of the tax imposed and collected on the aforesaid sweepstakes and bets.
>
> ..... ".

The applicants as a result filed the present recourse which is based on the following grounds of law:-

1. The regulations have a prohibitive and/or destructive effect on the applicants' business, contrary to Art. 24.4 of the Constitution.

2. Applicants are being discriminated against because in no other case, within the Improvement Board of Ay. Dhometios or any other Improvement Board or indeed, any other taxing situation, a tax payer is obliged to embark upon the collection of a tax from third parties if such collection has such adverse effect on his business.

3. Article 25 is also contravened because the obligation cast upon applicants, in effect, interferes with their freedom to carry on their business, such interference not being justified by any of the matters enumerated in Article 25.2 of the Constitution.

4. In any case, it is alleged that the Regulations complained of are ultra vires the enabling law because the relevant section (s. 24(h)(i)) of Cap. 243 provides that the collection and payment of the tax will be made by the Nicosia Race Club to the respondents in accordance with an Agreement made between the parties. No such Agreement having been made, regulation 163 C is, therefore, ultra vires the law.

The respondents in their opposition contend that the decision complained of is not an executory administrative act or decision and it is thus not subject to a recourse under Article 146 and/or alternatively that it is:

(a) an act of execution or application of the relative bye-laws enacted by the respondent Improvement Board, and/or,

(b) a request of the respondents to the applicants to comply with the provisions of the said bye-laws; and/or

(c) a reminder and/or notification and/or a warning given by the respondents to the applicants to comply with the obligations imposed on applicants by the aforesaid bye-laws;

It is necessary therefore before going into the merits of this case to deal with this matter first.

An act of execution is defined in *Tsatsos Recourse for Annulment* (3rd Edition 1971) as follows at pp. 127-129:

"....της πράξεως εκτελέσεως προϋποτίθεται πράξις εκτελεστή δεκτική προσβολής. Η δια πράξεως εκτελέσεως εκφραζομένη βούλησις δεν είναι πρωτογενής, αλλ' αναφέρεται ουσιωδώς εις την πράξιν, της οποίας αποτελούσιν εκτέλεσιν και την οποίαν ηδύναντο να προσβάλωσιν οι ενδιαφερόμενοι και της οποίας η ακύρωσις δια παράβασιν του νόμου ήθελε καταστήσει αδύνατον την πράξιν εκτελέσεως".

(In English)

"... an executory act capable of being challenged is a pre-requisite of an act of execution. The will expressed by an act of execution is by no means self-existing but is essentially related to the act, of which they effect execution and which the persons concerned would be able to challenge and of which the annulment for breach of the law would render the act of execution impossible."

And in *Kyriakopoulos: Greek Administrative Law* Vol. C p. 95:

"Αι πράξεις εκτελέσεως, ήτοι αι μεταγενέστεραι ενέργειαι της διοικήσεως δι' ων πραγματοποιείται η επιταγή εκτελεστής πράξεως".

(In English)

"The acts of execution, that is the subsequent actions of the administration by which the order of an executory act is realised."

As in the present instance there is no pre-existing executory act - the regulations being a regulatory act and as such not capable of being challenged by a recourse - it is clear that the sub judice decision is not an act of execution since such act requires the existence of an executory act.

As regards the exact nature of the sub judice decision relevant is what is stated in the case of *Nicos Colocassides v. Republic* (1965) 3 C.L.R. 542 at p. 551.

"An administrative act and decision also is only amenable within a competence, such as of this Court under Article 146, if it is executory (εκτελεστή); in other words it must be an act by means of which the 'will' of the administrative organ concerned has been made known in a given matter, an act which is aimed at producing a legal situation concerning the citizen affected and which entails its execution by administrative means (see Conclusions from the Jurisprudence of the Council of State in Greece 1929-1959, pp. 236-237)."

And in the present instance it is my view that the sub judice letter of the respondent falls within the above definition of an

administrative act and can thus be challenged by the present recourse.

I shall now proceed to deal with the grounds of law put forward by the applicant Club.

I consider it pertinent to dispose first of the question whether the Regulations are ultra vires section 24(h)(i) of Cap. 243 as amended by law No. 27 of 1982 section 7(b)(i). As argued, section 24(h)(i) provides for the imposition of the said tax on each sweepstake or bet, which tax burdens the player; it is to be collected from the players by the Authority which has the responsibility of collecting it and paying it over to the Board, in accordance with an agreement concluded between them. And it is argued since no such agreement was ever concluded, the Regulations are ultra vires.

The enabling section 24(h)(i) as amended by section 7 of Law No. 27 of 1982 provides as follows:

"(i) να επιβάλλη εφ' εκάστου ιπποδρομιακού στοιχήματος και εφ' εκάστου ιπποδρομιακού λαχείου κατά την διενέργειαν αυτών, είτε ταύτα διενεργούνται εντός του ιπποδρόμου είτε εκτός αυτού, φόρον μέχρι 0,75% ή ποσόν αντιπροσωπεύον το 0,75% δια την περίοδον μέχρι της 31ης Δεκεμβρίου, 1983, και φόρον μέχρι 1% ή ποσόν αντιπροσωπεύον το 1% από της 1ης Ιανουαρίου, 1984, επί του ποσού εκάστου ιπποδρομιακού στοιχήματος ή εκάστου ιπποδρομιακού λαχείου, αναλόγως της περιπτώσεως, το οποίον διενεργείται αναφορικά προς ιππόδρομον κείμενον εντός της πεοιοχής Βελτιώσεως του Συμβουλίου τούτου:

Νοείται ότι ο επιβαλλόμενος φόρος βαρύνει τον παίκτην και δεν λογίζεται ως συνιστών μέρος του ιπποδρομιακού στοιχήματος ή ιπποδρομιακού λαχείου, η δε είσπραξις τούτου θα διενεργήται υπό της ιπποδρομιακής αρχής, ως ο όρος ούτος ερμηνεύεται εις τους περί Φορολογίας Ιπποδρομιακών Στοιχημάτων και Λαχείων Νόμους του 1973 και 1976, ήτις φέρει την ευθύνην εισπράξεως και καταβολής τούτου εις το Συμβούλιον συμφώνως προς γενομένην μεταξύ των συμφωνίαν".

(In English, it provides:)

"(i) to impose on every sweepstake and on every bet played

whether these are played within the racecourse or outside it, tax upto 0.75% or a sum representing the 0.75% for the period until the 31st December 1983, and tax upto 1% or a sum representing the 1% as from 1st January 1984, on each sweepstake or bet, as the case may be, which is played in relation to a racecourse situated within the Improvement area of such Board.

Provided that the tax imposed burdens the player and is not considered as constituting a part of the sweepstake or bet and its collection shall be made by the Horse-racing Authority, as such term is defined in the Horserace Betting (Taxation) Laws 1973 and 1976, which bears the responsibility of collecting and paying same to the Board in accordance with an agreement concluded between them".

And regulation 163 B provides:

"Κανονισμός 163Β:

Εφ' εκάστου ιπποδρομιακού στοιχήματος και εφ' εκάστου ιπποδρομιακού λαχείου, είτε τούτο διενεργείται εντός του ιπποδρόμου είτε εκτός αυτού, επιβάλλεται κατά την διενέργειαν αυτού φόρος καθοριζόμενος εις 0,75% ή ποσόν αντιπροσωπεύον το 0,75% δια την περίοδον από της ενάρξεως της ισχύος των παρόντων Κανονισμών μέχρι της 31ης Δεκεμβρίου, 1983 και 1% ή ποσόν αντιπροσωπεύον το 1% από της 1ης Ιανουαρίου, 1984, επί του ποσού εκάστου ιπποδρομιακού στοιχήματος και επί του ποσού εκάστου ιπποδρομιακού λαχείου αντιστοίχως τα οποία στοιχήματα ή λαχεία διενεργούνται εν σχέσει προς ιπποδρομίαν διεξαγόμενην εντός του ιπποδρόμου:

Νοείται ότι ο άνω επιβαλλόμενος φόρος βαρύνει τον παίκτην και δεν λογίζεται ως συνιστών μέρος του ιπποδρομιακού στοιχήματος ή ιπποδρομιακού λαχείου:

Νοείται περαιτέρω ότι εις περιπτώσεις κατά τας οποίας ιπποδρομιακόν στοίχημα ή ιπποδρομιακόν λαχείον δι' οιονδήποτε λόγον ακυρούται και το υπό του παίκτου σχετικώς καταβληθέν ποσόν αποδεδειγμένως επιστρέφεται υπό της Ιπποδρομιακής Αρχής εις τον παίκτην, ο επιβληθείς και καταβληθείς φόρος επιστρέφεται ωσαύτως".

(In English:)

"On every sweepstake and on every bet played, whether this is played within the racecourse or outside it, there is imposed a tax specified at 0.75% or a sum representing the 0.75% for the period from the commencement of the present regulations until the 31st December 1983, and 1% or a sum representing the 1% as from 1st January 1984, on the amount of each sweepstake and on the amount of each bet, respectively, which sweepstakes or bets are placed in relation to a race played within the racecourse.

Provided that the above imposed tax burdens the player and is not considered as constituting a part of the sweepstake or bet.

Provided further that in the instances where a sweepstake or bet is for any reason cancelled and the sum accordingly paid by the player is proved to have been refunded to the player by the Horse-racing Authority the tax imposed and paid is refunded also."

As regards the power given to local authorities to make regulations it is stated in the judgment of the High Court of Australia in the case of *Shanahan v. Scott* (1957) 96 C.L.R. 245 at p. 250:

"The result is to show that such a power does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provisions. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary the plan which the legislature has adopted to attain its ends."

And in *Demetrios Marangos v. Municipal Committee of Famagusta* (1970) 3 C.L.R. 7 at p. 13:

"When subsidiary legislation - such as the said Regulations - is examined with a view to deciding on a contention that it is ultra vires, the answer to this question depends in every case, on the true construction of the relevant enabling

enactment (see Halsbury's Laws of England, 3rd ed. vol. 36, p. 491, para. 743).

If there is involved interference with a fundamental right, such as the right to property, any doubt about the extent and effect of the relevant enactment has to be resolved in favour of the liberties of the citizen (see *FINA (Cyprus) Ltd. and The Republic*, 4 R.S.C.C. 26, at p. 33; *Chester v. Bateson* [1920] 1 K.B. 829, at p. 838; *Newcastle Breweries, Ltd. v. The King* [1920] 1 K.B. 854).

Also, in examining whether or not subsidiary legislation is ultra vires its parent enactment, it has to be borne, particularly, in mind the state of the law at the time when such enactment was passed and the changes which it was passed to effect, as well as the structure of such enactment as a whole. (See *Attorney-General v. Brown* [1920] 1 K.B. 773, at p. 791)."

And see also *Menicos and others v. Republic* (1983) 3 C.L.R. 1130 at pp. 1135-1136.

After careful scrutiny of the enabling section of the regulations, I have reached the conclusion that the interpretation given by the applicants on the question of the "agreement" is not correct but as rightly stated by the respondents the agreement can only refer to the manner of payment of the tax collected in accordance with the Law and not, as argued by the applicants, to the question of collection of tax, since this is already prescribed by the Law itself. Moreover, the regulations are within the framework as laid down by the enabling law their provisions being no different from the provisions of the said law.

Having thus reached the conclusion that the said regulations are intra vires Cap. 243, this argument of the applicants should fail, and I must now proceed to consider the remaining grounds of law.

It is contended that the said regulations are unconstitutional being contrary to the provisions of Articles 24.4 and 25 of the Constitution. It is argued that such tax being 0.75% of the value of each sweepstake or bet, in effect entails such fragmentation of the currency that it is commercially impossible to deal in sweepstakes or bets by giving back to the player the exact change.

Moreover in practice during a very short period of time before each race, a great number of players rush to buy sweepstakes or place bets. In accordance with the regulations, such players are expected to pay to the applicants 0.75% of the value of each sweepstake or bet but due to the above mentioned fragmentation it will be virtually impossible for the applicants to accept such sweepstakes or bets simply because there will not be enough time to pay back the exact change. Consequently, the above regulations will have a prohibitive and/or destructive effect on the applicants' business, contrary to Art. 24.4 of the Constitution.

Also such obligation casts such a burden upon the applicants that in effect it interferes with their freedom to carry on their business - such interference not being justified by the provisions of Article 25.2 of the Constitution, but being contrary to it.

As regards the impossibility of collecting such tax which due to its amount will be of a destructive or prohibitive nature with adverse financial effects on the applicants' business, I find such allegation untenable. Nor can I accept that the obligation by the applicants to collect such tax interferes with their freedom to carry on their business in contravention of Article 25. Apart from the fact that the amount of such tax is so small that it cannot possibly be considered as onerous, such tax is not imposed upon the applicants but on third parties, i.e. the players and consequently Article 25 has no application in any case since the protection of the Article is in respect of direct and not indirect restrictions or interference on a person's right to exercise a profession or business. As stated by the Full Bench in the case of *Costakis P. Apostolou v. Republic* (Cases Nos. 116/83 etc) (not yet reported).*

> "It is a well settled principle that Article 25 of the Constitution protects the right to exercise a profession or to carry on any occupation, trade or business, from direct and not indirect restrictions or interference. Ample authority can be found inter alia in the following cases, *The Police and Liveras,* 3 R.S.C.C. pp. 65-67; *Psaras v. The Republic,* (1968) 3 C.L.R. 363, 364; *Antoniades and others v. The Republic* (1979) 3 C.L.R. 641, 659; *Ioannis Voyias v. The Republic* (1974) 3 C.L.R. p. 390, 413; *Impalex Agencies*

* Now reported in (1984) 3 C.L.R. 509.

Ltd. v. The Republic (1970) 3 C.L.R. 361; and *Antoniades* case (supra) at p. 655."

Also the Authority is already burdened to collect a tax of 10% on the amount of each sweepstake or bet from the players by virtue of the Horserace Betting and Sweepstakes (Taxation) Law 1973 as amended by Law No. 15 of 1976, therefore the imposition and collection of this further tax would not burden the applicant authority any further and this argument must fail too.

Finally, the applicants complain that since such obligation has not been imposed on any other business within the Improvement area, they are thus being subjected to discriminatory treatment contrary to Article 28.

It is true that the said regulations presently affect the Nicosia Race Course only but there is nothing to suggest that if there were or will be in future other racecourses, the said regulations would not apply to them also.

In any case it should not be forgotten that the tax imposed is payable by the players and not by the applicants, whose only duty under the regulations is to collect such tax and pay it over to the respondent Board. And since they already are under the duty of collecting tax from the players for the government by virtue of Law No. 23 of 1976, as aforesaid, their position cannot possibly be more onerous than it were before and it should also be borne in mind that the position the applicants find themselves is not unique. There are many similar instances under Cyprus Law where Tax is collected from 3rd parties and paid over to the Government, for instance,

(i) The Tourist Places of Entertainment Law, 1979 imposes upon the proprietors of places of entertainment the duty to collect a tax of 3% from their customers in favour of the Cyprus Tourist Organisation. It was stated in *Shistris v. C.T.O.* (1983) 2 C.L.R. 72 at p. 82:-

"The law makes it an offence of the proprietor of a tourist centre to fail or to omit to collect the 3% charge. He not only has the right but a duty to collect it."

(ii) Under Cap. 243, also, by virtue of sections 21(k) and 22(k)(a) as amended by section 6 of Law 31 of 1969, entertainment duty is imposed on all tickets of entrants

of cinematographic or theatrical performances which is collected by the owners of the cinemas or theatres. Relevant is the case of *Loizos Xydias v. Republic* (1976) 3 C.L.R. 303 where at p. 312 it was stated:

"In considering the question of constitutionality of a statute we have to be guided by certain well established principles governing the exercise of judicial control of legislative enactments. A rule of precautionary nature is that no act or legislation will be decalred void except in a very clear case or unless the act is unconstitutional beyond all reasonable doubt. (*The Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640 at page 654).

When taxation laws are attacked on the ground that they infringe the doctrine of equality the legislative discretion is permitted by the judiciary a great latitude in view of the complexity of fiscal adjustment; in other words, the power of the state to classify for purposes of taxation is of wide range and flexibility. (*Matsis v. The Republic* (1969) 3 C.L.R. 245 at page 259)."

In *H. M. Seervai's, Constitutional Law of India* (2nd Edition), Vol. 1, it is stated at p. 211 on the principle of equality.

"(h) Even a single individual may be in a class by himself on account of some special circumstances or reasons applicable to him and not applicable to others; a law may be constitutional even though it relates to a single individual who is in a class by himself."

And a further passage from *Seervai* at p. 222 was cited in the case of *Kissonerga Development v. Republic* (1982) 3 C.L.R. 462 at p. 487, a case dealing with the imposition by the Council of Ministers of a percentage of 3% to be added to bills for sleeping accomodation or entertainment of clients of hotel and tourist establishments and places of entertainment with the exception of those on mountain resorts:

"However, it was held in *East India Tobacco Co. v. A.P.**

* 1963 1 SCR 404, 409 (62) A.SC 1733.

that the wide latitude given by our Constitution to the legislature in classification for taxation was correctly described in the following words:

> 'A state does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably ..... The (U.S.) Supreme Court has been practical and has permitted a very wide latitude in classification for taxation.'"

Thus it leaves me with no doubt that the respondents, in imposing the taxation complained of, did not act in a discriminatory manner vis a vis the applicant Club and consequently this ground must also fail.

For the above reasons this recourse fails and is hereby dismissed but in the circumstances there will be no order as to costs.

Recourse dismissed with no order as to costs.