

1985 November 12

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NICOLAS TOOULIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE AND/OR
THE MINISTER OF FINANCE,

Respondents.

(Case No. 514/83).

The Customs and Excise Duties Laws 1978-1979, paragraph 09 of Class 01 of the Fourth Schedule—Importation of motor car duty free for invalid persons—Minister of Finance entitled to subject his discretion to forms and limitations not provided for by said paragraph 09—Therefore, apart from the opinion of the Medical Board specifically referred in the said paragraph 09, the Minister was entitled to seek the advice of the Senior Technical Examiner. 5

Administrative Law—General principles—The administration is entitled to subject on its own free will its discretion to forms and limitations not provided for in the law. 10

Administrative Law—Misconception of fact.

Administrative Law—Due inquiry.

The applicant applied under the provisions of paragraph 09 of class 01 of the Fourth Schedule to the Customs and Excise Duties Laws, 1978-1979 for a licence to import or buy a motorcar required by him for his work duty free on the ground that he is an invalid person. 15

The relevant part of the said paragraph 09 reads as follows:

"Description of exemption.

5 Petrol and diesel motor vehicles of a horse power not exceeding 2000 c.c. and 2300 c.c. respectively suitable for use by persons suffering from body disablement imported by disabled persons whose disablement is duly certified by a Government Medical Board constituted for the purpose:

10 Provided that this exemption is not applicable to disabled persons who.....".

And under the heading "Extent of exemption" it is stated:

15 "As the Minister of Finance might decide on the basis of the financial position of the applicant."

20 In the report of the Medical Board which was set up for the purpose in accordance with the above provisions the applicant is described as a person with normal functions of both arms and the right foot but with a left leg shorter by 2 cm. atrophical and weak to a moderate degree and a collapsed left foot.

The District Welfare Officer of Limassol stated in his report that the applicant is married and has two children aged 12 and 15 and that his net income is £300 per month.

25 The Director-General of the Ministry of Finance referred the applicant to the Senior Technical Examiner in the Office of Examiners for Drivers for examination in the light of the said medical report. The Senior Technical Examiner stated in his report that "the applicant can drive a motor car without any special adaptation".

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In consequence of the said reports applicant's application was rejected. The letter whereby the said decision was communicated to the applicant reads as follows:

35 "I have been instructed to refer to your application dated 3rd June, 1983 for a duty-free car for invalids, and wish to inform you that in accordance with the re-

ports of the Medical Board and other competent services of the Republic, it has been ascertained that your bodily condition does not require the use of a car specially adapted for use by invalid persons.”

As a result the applicant filed the present recourse. One 5
of the questions raised is whether or not the Minister is
entitled, in determining an application to import duty free
a motor car for invalid persons, to seek the advice not
only of the Medical Board which is specifically referred to
in paragraph 09 of class 01 of the 4th Schedule to to 10
Customs and Excise Laws, 1978-1979, but of other organs
as well.

Held, annulling the sub judice decision:

(1) Under the general principles of administrative law
there is no objection to the administration, on its own 15
free will, to subject its administrative discretion to forms
and limitations, not imposed by law as a choice of means
to form an opinion. The Minister of Finance was, therefore,
entitled to seek the advice of the Senior Technical Exa-
miner. *Markides v. The Republic* (1985) 3 C.L.R. 1393 20
followed. *Kallis v. The Republic* (1984) 3 C.L.R. 443 and
Ioannou v. The Republic (1985) 3 C.L.R. 31 not followed
in this respect.

(2) A perusal of the letter whereby the sub judice deci- 25
sion was communicated to the applicant shows that there
was a misconception of fact by the Minister when he took
the decision. Indeed the Medical Board did not state in
its report that the applicant's condition “does not require
the use of a car specially adapted for use by invalid per- 30
sons” as stated in the decision of the Minister. The phrase
“did not require a car specially adapted for use by invalid
persons” is merely a repetition of the opinion of the Senior
Technical Examiner contained in his report.

From the material before the Court there can be no
doubt that the Minister gave undue weight to the report 35
of the Senior Technical Examiner and he wrongly con-
strued the report of the Medical Board. If the Minister
wished to have a certification by the Medical Board as to
whether the applicant required a car “specially adapted for

invalid persons" he should have referred the report of the Technical Examiner to the Medical Board. By failing to do so he failed to carry out a due inquiry.

Sub judice decision annulled.

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£75 costs in favour of applicant.

Cases referred to:

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

Kallis v. The Republic (1984) 3 C.L.R. 443;

Ioannou v. The Republic (1985) 3 C.L.R. 31;

10 *Markides v. The Republic* (1985) 3 C.L.R. 1393;

Efstathios Kyriacou and Sons Ltd v. The Republic (1970)
3 C.L.R. 106.

Recourse.

15 Recourse against the refusal of the respondents to exempt applicant from the payment of import duty in relation to a motor car for invalid persons.

Chr. Kitromilides, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondents.

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Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant, by the present recourse, challenges the refusal of the respondent to exempt him from the payment of import duty in relation to a motor car for invalid person.

25 The applicant is a citizen of the Republic of Cyprus, he is 39 years old and he earns an income of £300.- per month. On account of poliomyelitis during his childhood his left leg remained shorter by two inches and atrophic.

30 Relying on the provisions of paragraph 09 of class 01 of the Fourth Schedule to the Customs and Excise Duties Law, 1978 (as amended), he addressed a letter dated 29.8. 1980 to the Director-General of the Ministry of Finance, asking for a licence to import or buy a motor car, required by him for his work, duty-free, on the ground that he is

an invalid person, setting out therein the cause of his invalidity and his personal and family circumstances.

On the 20th September, 1980, the Director-General of the Ministry of Finance requested the Chairman of a Government Medical Board, set up for the purpose of examining the applicant, to have the applicant examined by such Board and submit a report as to his condition to the Ministry of Finance. Also, by letter dated 23rd September, 1980 the Director-General requested the Director of the Ministry of the Department of Social Welfare Services to investigate the financial condition of the applicant and submit a social investigation report.

The applicant was medically examined by a Medical Board which was set up for such purpose and was composed of the Specialist Orthopaedic Surgeon of the Nicosia Hospital as Chairman and a specialist surgeon, and the District Medical Officer of Nicosia as members. A report signed by all three of them was submitted to the Director-General of the Ministry of Finance, on 14th November, 1980. The opinion of the Medical Board regarding the condition of the applicant is described, in such report, as follows:

“On account of illness in his childhood, he presents weakness and atrophy of moderate degree and shortening of the left leg by two c.m. with collapse of the left foot.

The muscular power and movement of both arms and the right leg are normal.

Conclusions: Atrophy, weakness of moderate degree and shortening of the left leg.”

On the 14th November, 1980, the District Welfare Officer of Limassol, informed the Ministry of Finance that notwithstanding their efforts they could not trace the applicant at the address given by him.

The matter remained in abeyance till 3.6.1983 when the applicant submitted a new application in the proper form repeating his request for a duty-free motor car.

The investigation by the District Welfare Officer of Li-massol was carried out and a social investigation report was prepared on 15th June, 1983, which was submitted to the Director-General of the Ministry of Finance. It emanates from such report that the applicant is married and has two children aged 15 and 12 years and he is occupied in the running of a family business of a block of 8 service flats owned in equal shares by him and his brother-in-law, which is worth £120,000 but is burdened with a debt of £26,580.- against which both owners pay annual instalments of £3,000.-. After deduction of interest and running expenses, the share of the applicant in the net profits is about £300.- per month.

The applicant was also referred by the Director-General of the Ministry of Finance to the Senior Technical Examiner in the office of Examiners for Drivers for examination, in the light of the report of the Medical Board. The Senior Technical Examiner after examining the applicant submitted his report on 7th September, 1983. According to such report, the applicant "can drive a motor car without any special adaptation."

In consequence of the above reports, the application of the applicant was rejected and the Director-General of the Ministry of Finance by his letter dated 15th September, 1983, communicated such decision to the applicant. The contents of such letter read as follows:

"I have been instructed to refer to your application dated 3rd June, 1983 for a duty-free car for invalids, and wish to inform you that in accordance with the reports of the Medical Board and other competent services of the Republic, it has been ascertained that your bodily condition does not require the use of a car specially adapted for use by invalid persons."

As a result, applicant filed the present recourse praying for:

"A declaration that the act and decision of the respondent dated 15th September, 1983 rejecting the application of the applicant for a duty-free car for invalids is null, void and illegal."

The legal grounds relied upon by the applicant in support of his prayer, as set out in the application are the following:

“ (1) The sub judice decision is the result of legal and factual misconception in that it ignores and/or is contrary to the spirit of the law for invalid persons and generally the welfare legislation. 5

(2) It lacks of due reasoning.

(3) It is the result of discriminatory treatment and lack of due inquiry.

(4) At the time when the sub judice decision was taken, the invalidity of the applicant was unlawfully and irregularly ignored and it was connected with other matters which had no relation with it. 10

(5) It was taken in violation of Articles 8, 9, 13 and 28 of the Constitution. 15

(6) The imposition of import duty on a motor car for invalid person is contrary to Articles 6 and 28 of the Constitution.”

The application was opposed and the grounds set out in support of the opposition are that the sub judice decision was taken lawfully and in the light of all relevant facts. 20

Counsel for applicant, by his written address, after having dealt with the relative statutory provisions and their interpretation, contended that the respondent did not evaluate properly, all the material before him and in particular the contents of the report of the Medical Board in which it is clearly mentioned that the applicant is an incapacitated person. Instead of relying on such report, counsel added, the respondent relied and gave undue weight to the report of the Senior Technical Examiner which he fully adopted. Counsel submitted that the wording of the decision of the Minister is such as it leads to the conclusion that the decision on the matter was taken by the Senior Technical Examiner, whose wording in his report is adopted by the Minister. Counsel drew the attention of the Court to the wording “a car specially adapted for invalids” which is mentioned in the re- 25 30 35

port of the Examiner and adopted by the Minister in his reply to the applicant. Counsel further relying on the decision of *Kallis v. The Republic* (1984) 3 C.L.R. 443 submitted that the only competent authority under the law
5 to express an opinion on the matter was the Medical Board and that it was not permissible for the Minister to seek advice from the Technical Examiner and rely on such opinion.

10 *Counsel for the applicant finally contended that the sub judice decision is not duly reasoned and the reasons given in such decision are outside the scope of the law. Also, that there was no due inquiry into the matter.*

The gist of the address of counsel for respondent is that:

15 (a) The case of *Kallis v. The Republic* is subject to a Revisional Appeal pending before the Full Bench of the Supreme Court.

20 (b) Though under the provisions contained in paragraph 09 of Class 01 of the Fourth Schedule to the law, there is no express mention that the car should be "specially adapted for the needs of an invalid so that it may be fit for use by an invalid", the provision should be construed as impliedly embodying such wording. In support of such interpretation he made reference to the decision in the case of *Miltiadous v. The Republic* (1983) 3 C.L.R. 590.

25 (c) The appropriate authority is entitled to ask the opinion of an expert, the Senior Technical Examiner in the present case, on a special or technical matter, if it thinks that such opinion, though not contemplated by law, is useful or necessary to enable it to take a decision on the
30 matter.

(d) The decision was not taken by the Senior Technical Examiner but by the Minister on the advice of such examiner who was properly asked to give such advice and which was lawfully taken into consideration.

35 Applicant's claim for a duty free car is based on the provisions of paragraph 09 of Class 01 of the Fourth Schedule to the Customs and Excise Duties Laws 1978-1979, which provide as follows:

"Description of exemption"

Petrol and diesel motor vehicles of a horse power not exceeding 2000 c.c. and 2300 c.c. respectively suitable for use by persons suffering from body disablement imported by disabled persons whose disablement is duly certified by a Government Medical Board constituted for the purpose: 5

Provided that this exemption is not applicable to disabled persons who:

- (a) Are the owners or possessors of another thus duty free imported vehicle; 10
- (b) are not the holders of a driving licence, provided that when disabled persons are the holders of a learner's driving licence the Director may grant such exemption on the condition that a driving licence will be obtained within one year from payment of customs duty for the vehicle or within such other period which he might consider reasonable." 15

Under the heading "Extent of exemption" it is stated: 20

"As the Minister of Finance might decide on the basis of the financial position of the applicant."

The above provision came under judicial consideration in a number of cases.

In *Stylianos Miltiadous v. The Republic* (1983) 3 C.L.R. 25 590, Piki J. in dismissing a recourse against the refusal of the Minister of Finance for relief from import duty for the importation of an ordinary saloon car by an incapacitated person said the following (at p. 592):

"Mere citation of the provisions of the law makes it unnecessary to go much further in holding the recourse of the applicant to be totally devoid of merit. The plain provision 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 30 35

5 by means of vehicular transport 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 duty to disabled persons only to those who imported vehicles specially adjusted to the needs of incapacitated persons.”

10 The above dictum was commented upon and clarified by the same Judge in *Kallis v. The Republic* (1984) 3 C.L.R. 443 at pages 447, 448 as follows:

15 “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.

40 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.” 5

As to the contention of counsel for respondent that the decision in *Kalli* case is subject to an appeal which is pending before the Full Bench of this Court, it is correct that an appeal was filed by the respondent but when it came up for hearing, it was withdrawn. 10

The question as to which is the proper organ on the advice of which the Minister of Finance should act, was considered in *Ioannou v. The Republic* (1985) 3 C.L.R. 31, in which Stylianides, J. had this to say at page 36: 15

“The certification of the incapacity of a disabled person by a specially constituted Government Medical Board is a *sine qua non* to the exemption from payment of duty. The law intends the certification-verification of the incapacity by the Government Medical Board obligatory and binding. Thus the application of the Order with respect to the existence of the incapacity is entrusted exclusively to the Medical Board and to no-one else. The certificate of the Medical Board is a decision and produces certain legal results. The compliance with the certificate of the Medical Board constitutes a continuation in the administrative process for the issue of the final act which is a composite administrative act. The issue of the certificate by the Medical Board is not simply an advisory act but an independent intermediate executory act—(Stassinopoulos —Law of Administrative Acts, pp. 224-225). 20 25 30

The Medical Board is the competent organ to ascertain the physical incapacity of the applicant. The Minister of Finance has to rely in accepting or refusing an application under this Order on the organ that the Order specifically provides. The Minister is not entitled to seek the advice of any other body or person or to rely on such other organ or person. The Mini- 35 40

ster, if he wanted clarifications on the report of the Medical Board, he could apply to those whom the Order envisages for the assessment of the incapacity of the applicant. The Minister, instead, referred the
5 medical certificate and the applicant to an extraneous organ, not competent and not authorised by that Order—the Senior Technical Examiner of Examiners of Drivers.”

The above cases were considered by A. Loizou, J. in
10 the recent case of *Costas Papakyriacou Markides v. The Republic* (1985) 3 C.L.R. 1393 where he expressed a different opinion as to the power of the Minister of Finance to obtain further opinion from another source not expressly mentioned in the law, as part of the wider inquiry carried
15 out by him. He had this to say at page 1399:

“Whatever the legal position is where there is no interference with the exercise of administrative discretion by a person or organ having no competence in the matter under the relevant legislation, there is,
20 under the General Principles of Administrative Law, no objection to the administration on its own free will to subject its administrative discretion to forms and limitations, not imposed and not provided for by the Law, as a choice of means to form an opinion. In
25 such a case what it cannot do thereafter is to ignore arbitrarily such opinions, as same would constitute proof of inconsistent and arbitrary and therefore wrong exercise of discretionary power. The competent administrative organ may, however, do so by giving
30 reasons for that.

Though it may be said that in the present case there was nothing to suggest clearly that the respondent Minister was binding himself to accept the opinion of the Senior Technical Examiner etc., yet it was in the
35 form of further opinion and as part of the wider inquiry carried out by him in the matter. It is obvious that the ascertainment of the extent of invalidity of a person is not enough. It has to be correlated to the interference with safe driving and the requirement of
40 any adaptation that a vehicle may need to meet same (see *Miltiadous* case *supra*). Such self-binding of the

administration, is not contrary to the General Principles of Administrative Law. (See Stassinououlos, the Law of Administrative Acts, 1951, p. 333, Conclusions from the Case Law of the Greek Council of State 1929-1959, p. 193 and Decisions of the Greek Council of State 738/1933, 934/1933, 1062/1951". 5

I fully endorse what was said by A. Loizou, J. in *Markides* case (supra) that under the general principles of Administrative Law, there is no objection to the administration, on its own free will, to subject its administrative discretion to forms and limitations, not imposed but prohibited by law as a choice of means to form an opinion. (Useful reference may be made in this respect to Stassinopoulos Law of Administrative Acts 1951 at p. 333. See, also, *Efstathios Kyriacou & Sons Ltd. and others v. The Republic* (1970) 3 C.L.R. 106). 10 15

Having reviewed the authorities on the matter and bearing in mind the dicta in *Markides* case which I have adopted, I come now to consider the merits of the present case, in the light of all facts before me. 20

A perusal of the letter of the Director-General of the Ministry of Finance dated 15th September, 1983 communicating the sub judice decision to the applicant, which appears to be a uniform cyclostyled form of reply in which only the material dates and the address of the applicant were filled in, shows that there was a misconception of fact by the Minister when he took his decision. Reference is made in that letter that according to the report, inter alia, of the Medical Board, it was ascertained that the bodily condition of the applicant did not require the use of a car specially adapted for use by invalid persons. 25 30

In the report of the Medical Board which was the appropriate authority under the statutory provision the applicant is described as a person with normal functions of both arms and the right foot but with a left leg shorter by 2 c.m. atrophical and weak to a moderate degree and a collapsed left foot. It is clear from the contents of such report that there was some degree of incapacitation of the left leg and foot of the applicant and in any case nothing 35

is stated in such report nor can it be inferred from its contents that the applicant "did not require a car specially adapted for use by invalid persons", as stated in the decision of the Minister. A comparison of the wording of
5 the letter of the Director-General of the Ministry of Finance and the report of the Senior Technical Examiner, leads to the inference that the use of the wording "did not require a car specially adapted for use by invalid persons" is merely a copying of the opinion of the Senior Technical Examiner
10 contained in his report.

From the material before me I have not the slightest hesitation in concluding that the Minister of Finance in reaching his decision has given undue weight to the opinion of the Senior Technical Examiner as against that of the
15 Medical Board, which materially affected his decision and that he wrongly construed the contents of the report of the Medical Board as suggesting that the applicant did not require a car for invalid person. If the Minister wished to have a certification by the Medical Board, the appropriate
20 expert organ provided by the law, as to the extent of the incapacity of the applicant and whether he required "a car specially adapted for use by invalid persons" he should have referred the report of the Senior Technical Examiner to the Medical Board for its expert opinion and not to
25 rely solely on the opinion of the Senior Technical Examiner as he did in the present case. By acting as he did, the Minister of Finance failed to carry out a proper enquiry into the matter.

For all the above reasons the sub judice decision has to
30 be annulled.

In the result, the sub judice decision is hereby annulled with £75.- against costs in favour of the applicant.

35 *Sub judice decision annulled
with £75.- costs in favour of
applicant.*