

1987 March 14

[KOURRIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1 S CH JEROPOULOS AND CO LTD ,
2 GERMAN DEMOCRATIC REPUBLIC.

Applicants

v

THE REPUBLIC OF CYPRUS, THROUGH
THE CYPRUS PORTS AUTHORITY.

Respondent

(Cases Nos 153/86 and 172/86)

Administrative Law — Discretionary power — Abuse of — Principles applicable

*Ports and harbours — The Cyprus Ports Authority — Regulation 2 of
Regulation 45/76 — Power thereunder*

*Constitutional Law — Taxation — Constitution, Art 24 4 — Destructive or
prohibitive nature — Test applicable*

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Applicants' vessels are constructed for use either as open-decker vessels or closed decker vessels. They have greater net tonnage when used as open decker than when used as closed decker vessels. For each and every call at Limassol port the said vessels have called as closed-decker vessels, but the respondent Authority, acting under Regulation 2 of Regulations 45/76 raised charges based on the higher tonnage i.e. the tonnage of the vessels as open decker vessels.

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Hence the present recourses

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Held, dismissing the recourses (1) The onus is on the applicant to establish abuse of discretionary powers. Such powers should be exercised for the purpose for which they were given and the relevant act should not be contrary to law or to well settled principles of administrative law

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(2) This Court has not been persuaded that the respondent Authority, which acted under the said regulation 2, exercised its discretion in abuse of its powers

(3) The contention that the aforesaid regulation is contrary to Art 24 4 of the Constitution in that the charges in question were of a prohibitive or

destructive nature fails, because the charges in question were not exorbitant

*Recourses dismissed
with costs*

Cases referred to:

Impalex Agencies Ltd v The Republic (1970) 3 C L R 361, **5**

Tourpeki v The Republic (1973) 3 C L R 592

Xydias v The Republic (1976) 3 C L R 303.

The Singer Sewing Machine v The Republic (1978) 3 C L R 71 and on appeal (1979) 3 C L R 507

Recourses. 10

Recourses against the decision of the respondent to raise charges on applicants' vessels calling at Limassol port by taking the recorded tonnage of the vessel as open-decker and not as an closed-decker vessel.

St. Mc. Bride, for the applicants. **15**

N. Papaefstathiou with T. Papadopoulos, for the respondent.

Cur. adv. vult.

KOURRIS J. read the following judgment. By recourse No. 172/86 the applicants pray for.-

1. A declaration that the demands of the Respondent contained **20**
in their invoices 154-01/86, 235-01/86, 243-01/86 and 243/1-01/86 dated 27/1/86, 31/1/86, 31/1/86 and 6/2/86 respectively and attached hereto marked A,B,C and D respectively for the payment of £359 77, £276.80, £88.82 and £492 08 respectively are made in excess or in abuse **25**
of its powers.

2. A declaration that when closed shelter decker vessels call at **30**
Cyprus Ports the Cyprus Ports Authority (hereinafter CPA) abuses its powers should it raise its charges on the highest net registered tonnage for the vessel when open and not her net tonnage (and closed tonnage) as shown on her International Tonnage Certificate.

3. A declaration that the Applicants are entitled to the appropriate refund of the overcharges as set out in the statement of facts, or such overcharge as the Applicants shall show. **35**

By recourse No. 153/86 the applicants pray for identical reliefs but for different periods of time.

These recourses were heard together as they present common questions of law and fact.

- 5 The facts shortly are these:-The Cyprus Ports Organisation was established by Law No. 38 of 1973 and it was renamed to Cyprus Ports Authority by Law 59 of 1977, the present respondent.

10 The respondent Authority is a corporation of public law, the object of which is to manage and exploit the ports of the Republic and to undertake and manage the existing ports with all their assets and liabilities including the port of Limassol.

Applicant 1 is the agent of applicant 2 and he is liable to the respondent Authority for the payment of port charges, for the calls of the ships of the applicant 2 at Cyprus ports.

- 15 The vessels which are listed in the application are constructed for use either as open-decker vessels or closed-decker vessels and depending upon their use, the said vessels have a greater cubic capacity and thus lesser net tonnage when used as closed-decker vessels. For each and every call at Limassol port the said vessels at
20 all material times, have called as closed-decker vessels and the respondent Authority raised the charges for the said vessels as if the vessels entered the port as open-decker vessels.

25 The complaint of the applicant is that the respondent Authority ought to have raised the charges by taking the recorded tonnage of the vessel as closed-decker vessel and not as an open-decker vessel, when it was clear that the said vessels when using the port of Limassol, were using it as closed-decker vessels. Hence, the present recourse.

- 30 Counsel for the applicants contended that the Authority has abused its powers in the sense of paragraph 1 of Article 146 of the Constitution because the rules and the law do not make express provision for dual tonnage/purpose vessels and thus the Authority in applying the law and the rules made therein, had to act reasonably and equitably when raising these charges for vessels of
35 this nature. Further, he contended that even if there is an express provision for dual tonnage/purpose vessels then the Authority abused its powers because it charged for services rendered to a

vessel on a tonnage that had no relation to a vessel at the time the services were rendered

Counsel for the respondent contended that the Authority had power to raise the charges in respect of the ships in question in view of rule 2 of the regulations made in exercise of the powers vested in the Authority by s 25 of Law 38/73 which were published in Supplement No 3 to the Official Gazette under ΚΔΠ45/76 5

The maternal regulation for the purposes of this case is regulation 2 which reads as follows - 10

«καθαρά χωρητικότης' (κ.χ) σημαίνει την καθαράν χωρητικότητα σκάφους ήτις εμφανίζεται εν τω πιστοποιητικώ νηολογήσεως ή εν τω πιστοποιητικώ καταμετρήσεως αυτού, εις ήν δε περίπτωσιν εις τα τοιαύτα πιστοποιητικά αναγράφονται δύο ζευγη χωρητικότητων, την καθαράν χωρητικότητα του ζεύγους της μείζονος χωρητικότητος εις ήν περίπτωσιν το σκάφος δεν είναι εφωδιασμένον δια των ως άνω πιστοποιητικων, η καθαρά χωρητικότης αυτού υπολογίζεται ως ήθελεν ορίσει ο Οργανισμός» 15 20

(«Net tonnage' means the net tonnage of the vessel, which appears in the certificate of registration or the tonnage measurement certificate, and in case when in the aforesaid certificates there appear two pairs of tonnages, the net tonnage of the pair of the higher tonnage and in case where the vessel is not provided with such certificates, her net tonnage is calculated as the Authority may determine») 25

Counsel for the respondent Authority submitted that the Authority acting under regulation 2 and in accordance with the discretion given to it, fixed the fee in relation to the vessels at the higher tonnage as open-decker vessels 30

Regulation 2 of the said regulations refers to «εις ην περίπτωσιν εις τα τοιαύτα πιστοποιητικά αναγράφονται δύο ζεύγη χωρητικότητων».

(«in case when in the aforesaid certificates there appear two pairs of tonnage») 35

In my opinion this phrase refers to dual tonnage/purpose vessels and I have no doubt whatsoever that this regulation makes provision for dual tonnage/purpose vessels and the respondent

Authority was empowered to raise charges on the said vessels and the question arises whether they exercised their discretionary powers properly or in an abusive manner

5 It is regrettable that neither counsel referred the Court to any authorities on this point or any other point that falls for determination

10 I think that relevant on this point is the case of *Impalex Agencies Ltd v The Republic* (1970) 3 C L R 361 where it was held that the discretionary powers vested in the administration should be exercised for the purpose for which they are given otherwise it is abuse and excess of powers and that the onus is on the applicants to establish such abuse Also, in the case of *Tourpeki v The Republic* (1973) 3 C L R 592 the Court held that there is abuse and excess of powers if the act is contrary to law or to well settled
15 principles of administrative law

In view of the fact that the respondent Authority acted under regulation 2 of the said regulations I have not been persuaded by applicants that they exercised their discretion in abuse of their powers and this point fails

20 The next point raised by counsel for the applicants is that the said regulations are contrary to paragraph 4 of Article 24 of the Constitution in that the charges raised were of a prohibitive or destructive nature From the particulars set out in the application it appears that the overcharge alleged by the applicants amounted
25 to just over £100 - for each vessel

In accordance with our case law the charges paid should be exorbitant (*Vide Loizos Xydias v The Republic* (1976) 3 C L R 303 and *The Singer Sewing Machine Company v The Republic* (1978) 3 C L R 71 and on appeal (1979) 3 C L R 507) I do not
30 think that in view of the fees paid and the overcharge alleged that the fees are exorbitant in the sense of paragraph 4 of Article 24 Therefore, this point also fails

35 Having considered the facts which the respondent Authority had before it in raising the said charges, I am of the opinion that it was reasonably open to it to impose the charges which they did

In the circumstances both recourses are dismissed with costs

Costs to be assessed by the Registrar

*Recourses dismissed
with costs*