

1988 May 10

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

JEVTRO LIMITED,

Applicants,

v.

THE CENTRAL BANK OF CYPRUS,

Respondents.

(Case No. 459/87).

Reasoning of an administrative act—May be derived from the material in the file.

Due inquiry—In this case there has been a thorough inquiry into all relevant aspects of the case.

5 *Exchange Control—The Exchange Control Law, Cap: 199, sections 11 and 40—Company limited by shares with 45% foreign participation—Such participation was allowed on condition that its activities would be restricted to mens' and boys' wears—Application for licence to manufacture ladies' wear as well—Refused—The powers and the breadth of the discretion of*
10 *the Central Bank under the said sections.*

The facts of this case sufficiently appear in the judgment of the Court.

Recourse dismissed.

No order as to costs.

Cases referred to:

15 *Vassos Eliades v. The Republic (1976) 3 C.L.R. 293;*

Ioannides v. Municipality of Nicosia (1968) 3 C.L.R. 551;

Mouzouris v. The Republic (1972) 3 C.L.R. 43.

Recourse.

Recourse against the decision of the respondents whereby applicants' request for permission to produce ladies wear in addition to men's and boy's suits in accordance with their permit was not approved. 5

P. Liveras, for the applicants.

A. Evangelou, Senior Counsel of the Republic, for the respondents. 10

Cur. adv. vult.

A. LOIZOU P. read the following judgment. The applicants are a company incorporated in Cyprus with limited liability.

On or about the 24th July, 1984, the respondent Central Bank granted a permit to the applicants by which 45% of the authorized and paid up capital of the company was transferred to International Holding Corporation of Luxembourg which is wholly owned by a Libyan Arab Foreign Investment Company of Tripoli. The terms of the said permit imposed, inter alia, the condition that the applicants should confine their activities to the production of men's and boys' suits only. By their letter to the applicants dated the 11th August 1984, the respondents amended the aforesaid condition to read: 15 20

"The company will confine its activities to the production of men's and boys' wear only as to-day. Except with permission the acquisition of shares/share in any other company/partnership or the involvement in any other activity is not allowed." 25

By a letter dated the 16th January 1986, through their accountants and addressed to respondents, the applicants requested permission to produce ladies wear as well because:

5 "(i) The foreign shareholders in the applicants' company felt that there was a market in ladies as well as men's wear to be exploited, through their connections and subsidiaries (with retail shops and distribution network) all over the African continent.

10 (ii) The foreign shareholders in the applicant company wished to import in Libya ladies wear for their personnel, their families and the Libyan market.

15 (iii) The applicants were informed by organizations in the Soviet Union with whom they were in close contact that the supply of ladies as well as men's wear would render feasible future agreements of sale to that country.

(iv) There would be a lower unit cost per item of clothing in promotional expenses if the salesmen of the applicants who travelled abroad could promote both ladies as well as men's wear.

20 (v) In times of crisis the demand for men's wear falls much faster than for ladies wear, and therefore with its present status the company's financial condition was more precarious."

25 The above letter was referred by the respondent Central Bank to the Ministry of Commerce and Industry for their views which Ministry did not recommend the said application which was thereafter submitted for further consideration by the respondent Central Bank, which decided that it could not be approved because the expansion of the production of the Company in new items would not serve the financial interests of Cyprus.

30 On the 9th December, 1986, the applicants submitted an application for reconsideration of their claim. It was stated in their rele-

vant letter that their application was based on the fact that the Council of Ministers in its decision No. 27.806, dated the 6th November 1986, has specifically permitted 100% foreign participation in the case of factories operating in the Free Industrial Zone, or in bonded factories or exclusively export oriented businesses. 5

This letter was again referred to the Ministry of Commerce and Industry and to the Director of Customs for their views. The Director of Customs suggested that the application should be considered by the committee which is in charge of the operation of bonded factories under the relevant legislation. On the other hand the Ministry of Commerce and Industry, by its letter dated the 21st March, 1987, informed the respondent Central Bank that it could not alter its previous stand. 10

Thereafter the respondent Central Bank as the body having competence in the matter considered the application and decided that it could not be approved because it has not been persuaded that the proposed widening of the activities of the applicants would serve the economic interests of Cyprus. 15

The applicants were informed of this decision by means of a letter of the respondent Central Bank, dated the 31st March, 1987. Following the receipt of this letter the applicants challenged the above by means of this recourse on the following two main grounds (a) lack of due reasoning and (b) absence of due inquiry. 20

Learned counsel for the respondent Central Bank submitted that the reasoning of an administrative decision can be supplemented by the material in the file and that in this case there is more than ample material in the file of the administration which supplemented the reasoning of the sub judice decision. He referred me to two minutes, dated the 27th June 1986, and the 27th March, 1987, signed by an official of the respondent Central Bank Mr. - Hadjigregoriou, - and addressed to the Senior Manager of the Exchange Department of the Central Bank. Appendices A and B respectively. 25 30

In the first minute the competent officer Mr. Hadjigregoriou deals first with the history of the matter and goes on to suggest that the application should be rejected on four grounds, namely:

5 (a) That before the grant of the permit for foreign participation, the whole production of the company related to men's and children's wear. Our permit has not differentiated negatively the production of the Company simply as it was submitted in its original application dated 17th January 1984, the intention of the Company for exclusively export orientation and/ or for maintaining the export markets of its products as well as
10 for the increase of the exports of the Company would henceforth constitute and so constitute our own exchange control conditions. In addition the improved productivity of the Company of the products hitherto produced by it have improved the financial position of the Company.

15 (b) There does not exist a question of viability by the non-approval of the request of the Company on the basis of argument (5) in the letter of Coopers and Lybrand dated 16th June, 1986

20 (c) I am informed by Mr. P. Koutouroushis, Director of Industry in the Ministry of Commerce and Industry that the applicants do not accept the term excluding export to Libya in respect of the new products of the Company

25 (d) Approval of the request of the Company would very probably affect negatively other Cyprus industries which traditionally during the last years deal mainly with exports of men's wear to Libya with unknown repercussions to the economy of Cyprus."

And the minute goes on to say:

30 "On the basis of the above matters I believe that the grounds invoked by the Company in support of its request cannot stand whilst the negative stand of the Ministry of Commerce and In-

dustry is absolutely justified.

It should be stressed here that though the Ministry in its above letter speaks of rejection of the request of the Company, such a reference should be considered as a recommendation only and that the competent authority to decide finally on the matter is the Central Bank." 5

In the minute Appendix B Mr. Hadjigregoriou refers again to the history of the matter and to the aforesaid decision of the Council of Ministers which was invoked by the applicants in support of their application and goes on to say: 10

"We note that the decision of the Council of Ministers dated the 6th November 1986, specifies the procedure and framework for consideration of applications for foreign participation in projects in Cyprus and there are made recommendations to the competent Government Services for the consideration of such application. 15

With regard to the new application of the Company we believe that the relevant data have not been differentiated in such a manner as to dictate a change of our previous decision dated the 28th September 1986. Rejection of the application is not inconsistent with the decision of the Council of Ministers. On the basis of the above we recommend rejection of the application dated the 9th December, 1986." 20

Going through the text of the above documents, that is Appendices A and B, I find that same is adequate and due reasoning of the sub judice decision. It is by now well settled (*Vassos Eliades v. The Republic* (1976) 3 C.L.R. 293; *Ioannides v. The Municipality of Nicosia* (1968) 3 C.L.R. 551; and *Mouzouris v. The Republic* (1972) 3 C.L.R. 43), that the reasons for which a decision is taken may appear in the file of the case. In view of this legal position it cannot be said that the sub judice decision lacks due reasoning. Therefore this ground fails. 25 30

Coming now to the ground of lack of due inquiry, from the material in the file, it is more than clear that the respondent Central Bank not only inquired into the matter themselves but also sought for and obtained the views of the Ministry of Commerce and Industry before deciding finally on the matter. It is also clear
5 from the file that the respondent Central Bank had embarked into a thorough study of all aspects of the matter and had considered all arguments and facts which were put before them by the applicants before deciding on the application. This ground should therefore also fail.

10

Before concluding I would add that the powers which have been exercised by the respondent Central Bank, in relation to the application in question emanate from the provisions of sections 11 and 40 of the Exchange Control Law, Cap. 199 and that it is provided thereunder that any permit granted by the Central Bank
15 may be absolute or conditional and such provision in my view, gives wide discretion and powers to the Central Bank.

For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

20

*Recourse dismissed.
No order as to costs.*