

1985 November 7

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

STRATA TOURS LIMITED,

Applicants,

v.

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE PERMITS AUTHORITY,
 2. THE MINISTER OF COMMUNICATIONS
AND WORKS,

Respondents.

(Case No. 427/83).

The Motor Transport (Regulation) Law—Law 9/82, s. 4—Hierarchical recourse to the Minister of Communications and Works—The test applicable to judge the validity of the decision of the Minister upon such recourse—Minister dismissing a recourse by applicant against a decision of the Licensing Authority whereby applicant’s application for a licence to own and manage 51 vehicles “hired without a driver” (Z cars) was rejected—Minister’s decision based, inter alia, on the fact that the Directors and/or shareholders of another company which already possessed 95 licensed “Z” cars were basically the same with the shareholders and/or directors of the applicant company—Company Law—The rule in Salomon’s case [1897] A.C. 22—Exception to the rule—S. 5(8) of Law 9/82—In view of the provisions of said sub-section and the special facts of the present case, this is a proper case to be treated as an exception to the rule against “lifting the veil” of incorporation (the rule in Salomon’s case).

Company Law—The rule in Salomon’s case (supra)—Exceptions to the rule.

Administrative act—Due inquiry—Reasoning of.

5 The applicant, a limited company, applied on 13.4.82 and on 14.4.82 to the Licensing Authority for a licence to own and manage 51 self-drive cars, commonly known as "Z" cars. The said applications were dismissed. The applicant challenged the decision of the Licensing Authority by filing a hierarchical recourse to the respondent Minister pursuant to the provisions of s. 4* of Law 9/1982. The Minister dismissed the said recourse. Hence the present recourse to the Court.

10 The decision of the Minister reads as follows: "Having taken into consideration all the facts of the case and in particular the fact that STRATA TOURS LTD. is exclusively engaged with the running of buses and the execution of contracts with the British Bases and that the company KEM TAXI LTD., which already holds 95 licensed "Z" cars has basically the same shareholders and/or directors, I dismiss the present recourse".

15 The applicant's main complaint is that the Minister in "lifting the veil of the incorporation" of the applicant company acted contrary to Law.

Held, dismissing the recourse:

20 (1) The test in determining the validity of the decision of the Minister is the same with that applicable to a decision of the Licensing Authority, namely whether it was reasonably open to the Minister, in view of the provisions of the Law and the material before him to decide as he did.

25 (2) There are exceptions to the rule in *Salomon v. Salomon*. [1897] A.C. 22, i.e. to the rule that a limited company is a legal entity, separate and distinct from its shareholders. The provisions of s. 5(8)** of Law 9/82 in respect of a legal entity, which applies for a licence to own and manage "a car hired without a driver" tantamount to substantially "lifting the veil of incorporation" of such entity at the least for the purpose of ascertaining the good character of "the persons having the responsibility of the enterprise of such legal entity".

* This section was repealed and re-enacted by s.4 of Law 84/84.

** Section 5(8) of Law 9/82 is quoted at pp. 2566-2567 post.

Once, however, the veil is lifted for the above purpose there is nothing to prevent examination whether the applicant and KEM TAXI LTD. were one commercial unit and whether the device of incorporation was being used for the improper purpose of acquiring more licences for self driven cars in view of the fact that KEM TAXI LTD. had already 95 licences. 5

The wording of s. 5(8) of Law 9/82 coupled with the special facts of this case render this case a proper case to be treated as an exception to the rule in *Salomon v. Salomon*. 10

(3) On the material before him the sub judge decision was reasonably open to the Minister, who did carry out a due inquiry.

(4) The sub judge decision is duly reasoned. 15

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Tsouloftas v. The Republic (1983) 3 C.L.R. 426;

Salomon v. Salomon [1897] A.C. 22; 20

Michaelides v. Gavrielides (1980) 1 C.L.R. 244;

Bank of Cyprus (Holdings) Ltd. v. The Republic (1983) 3 C.L.R. 636 and on appeal (1985) 3 C.L.R. 1883;

Merchandise Transport Ltd. v. British Transport Commission [1962] 2 Q.B. 173; 25

Petrides v. The Republic (1983) 3 C.L.R. 216.

Recourse.

Recourse against the refusal of the respondents to grant applicants licences to own and manage 51 vehicles "hired without a driver" commonly known as "Z" cars. 30

A. *Haviaras*, for the applicants.

M. *Tsiappa*, (Mrs.), for the respondents.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant, a
5 limited company, impugns by means of the present re-
course the decision of the Minister of Communications and
Works dated 14.9.83, given on a hierarchical recourse to
him from a decision of the Licensing Authority dated
10 30.9.82, whereby the respondent Minister affirming the
decision of the respondent Authority refused the granting
to the applicant licences to own and manage 51 vehicles
"hired without a driver" commonly known as "Z" cars.

The facts of this case are very briefly as follows:

15 The applicant, a limited company, applied on 13.4.82
and 14.4.82 to the Licensing Authority for a licence to
own and manage 51 self-drive cars.

The aforesaid applications were dismissed by the Li-
censing Authority on 30.9.82, the relevant decision having
been communicated to the applicant on 7.10.82.

20 The applicant company being dissatisfied with the de-
cision of the respondent Authority filed on 23.10.82 a
hierarchical recourse to the respondent Minister pursuant
to the provisions of s. 4 of Law No. 9/82 (it may be noted
25 here that this section was repealed and re-enacted by s. 4
of Law No. 84/84 which is of course inapplicable to the
recourse under consideration).

The respondent Minister after hearing the hierarchical
recourse to him dismissed same on 14.9.1983 thereby af-
firming the decision of the Licensing Authority; the afore-
30 said decision of the Minister on the hierarchical recourse
in question was communicated to the applicant company
by letter dated 22.9.1983.

Hence the present proceedings.

35 The grounds of law relied upon in support of the present
application are the following:

"1. The act and/or decision of the respondents was

reached at in excess of power and/or wrongful exercise of discretion.

2. Absence of due enquiry resulting in a misconception as to the facts.

3. Absence of due reasoning. 5

4. Act or decision in question was based on wrong interpretation of the law and/or is contrary to Law."

The sub judice decision reads as follows:

«Απόφαση του Υπουργού Συγκοινωνιών και Έργων στην προσφυγή της Εταιρείας STRATA TOURS LTD εναντίον αρνητικής αποφάσεως της Αρχής Αδειών σ' αίτηση της για τη χορήγηση 51 αδειών 'Ζ'. 10

Αφού έλαβα υπόψη όλα τα πραγματικά περιστατικά της υποθέσεως και ειδικότερα ότι η Εταιρεία STRATA TOURS LTD ασχολείται αποκλειστικά με την εκμετάλλευση λεωφορείων και εκτέλεση συμβολαίων με τις Βρετανικές Βάσεις και ότι η εταιρεία ΚΕΜ ΤΑΞΙ Λτδ η οποία κατέχει ήδη 95 αδειούχα αυτοκίνητα «Ζ» έχει βασικά τους ίδιους μετόχους ή/και διευθυντές, απορρίπτω την προσφυγή αυτή.» 15 20

("Decision of the Minister of Communications and Works on the recourse of the Company STRATA TOURS LTD. against the refusal of the Licensing Authority to accept an application by the company for 51 'Z' licences. 25

Having taken into consideration all the facts of the case and in particular the fact that the company STRATA TOURS LTD. is exclusively engaged with the running of buses and the execution of contracts with the British Bases and that the company ΚΕΜ TAXI LTD., which already holds 95 licensed 'Z' cars has basically the same shareholders and/or directors; I dismiss the present recourse"). 30

The test by which we must judge the validity of the de- 35

cision of the Minister is the same with that applicable to the Licensing Authority. It is this: Whether it was reasonably open to the Minister, in view of the provisions of the law and the material before him to decide as he did. (Vide 5 *Tsouloftas v. Republic* (1983) 3 C.L.R. 426 at p. 432).

In the present recourse the main complaint of the applicant is that the decision of the respondent Minister was contrary to Law in that he "lifted the veil" of the applicant company in order to reach at his decision.

10 In *Salomon v. Salomon* [1897] A.C. 22 it was laid down that a limited Company is a legal entity, separate and distinct from its shareholders.

In England, Courts like the Legislature, have refused to treat the principle of separateness of a company from its 15 shareholders as absolute. Exceptions have been recognised although going through the authorities, it is difficult to group them as referable to any distinct exceptional rule.

The separateness of the company from its shareholders was emphasized by our Supreme Court in *Michaelides v. Gavrielides* (1980) 1 C.L.R. 244 (a rent control case) 20 affirming the validity of the principle in *Salomon's case* (supra).

In spite of the decision in *Michaelides case* (supra) the Full Bench of this Court stated recently in this connection 25 "that notwithstanding what was said in *Michaelides case*, in a proper case there may be exceptions to the rule in *Salomon case*." (Vide judgment in R. A. 317 given on 30.8.1985—still unreported*—approving the first instance judgment in *Bank of Cyprus (Holdings) Ltd v. The Republic* 30 *Republic* (1983) 3 C.L.R. 636).

The topic is expounded at length in Palmer's Company Law 22nd edition at pages 160-163 and in Gower's Modern Company Law 3rd edition at pages 189-217.

35 Summing up the position with respect to "lifting the veil" under express statutory provisions, Gower's Modern Company Law (supra) at p. 200 states the following:

* Now reported in (1985) 3 C.L.R. 1883.

“It will therefore be seen that in a number of important respects the legislature has rent the veil woven by the Salomon case. Particularly is this so in the sphere of taxation and in the steps which have been taken towards the recognition of enterprise-entity rather than corporate-entity...”

Dealing with judicial interpretation of the same subject Palmer's Company Law (supra) lists down briefly instances in which modern company law disregards the principle that the company is an independent legal entity. At page 162 under serial No. 9 the following are stated inter alia: “The Courts have further shown themselves willing to ‘lift the veil’ where the device of incorporation is used for some illegal or improper purpose. So, where a transport company sought to obtain licences for its vehicles, which it was unlikely to obtain if it made application on its own behalf, by causing the application to be made by a subsidiary company to which the vehicles were to be transferred, the Court refused to treat parent and subsidiary as independent bodies, and decided the application on the basis that they were one commercial unit (*Merchandise Transport Ltd., v. British Transport Commission* [1962] 2 Q. B. 173).

The criteria for granting or refusing a licence to own and manage “a car hired without a driver” are set out in sections 5(8) & (14) and s. 10 of Law 9/82.

Section 5(8) of Law 9/82 reads as follows:

«5. - (8) Ούδεμία άδεια όδικής χρήσεως θά χορηγείται αναφορικώς προς οιονδήποτε άχημα δι' έκτέλεσιν οιασδήποτε μεταφορās επιβατών ή δι' έκτέλεσιν διεθνών όδικών μεταφορών ή προς οιονδήποτε άχημα έκμισθούμενον άνευ όδηγοϋ, έκτός εάν ό ιδιοκτήτης τούτου ίκανοποιήση τήν άρχήν άδειών ότι οϋτος, ή, όσάκις πρόκειται περι νομικού προσώπου, τά έχοντα τήν εύθύνην τών επιχειρήσεων τούτου πρόσωπα, είναι καλοϋ χαρακτήρος, επί τή βάση πιστοποιητικού έκδομένου υπό του Άρχηγού τής Άστυνομίας εις τό όποϊον θά πιστοποιηται ότι οϋτος δέν κατεδικάσθη κατά τά τελευταία δύο έτη δι' οιονδήποτε άδίκημα κα-

τὰ παράβασιν τοῦ περὶ Ναρκωτικῶν Φαρμάκων Νόμου ἢ τοῦ περὶ Ναρκωτικῶν Φαρμάκων καὶ Ψυχοτρόπων Οὐσιῶν Νόμου ἢ τῶν διατάξεων τοῦ περὶ Τελωνείων καὶ Φόρων Καταναλώσεως Νόμου τῶν ἀφορῶσάν εἰς τὴν ἀπαγόρευσιν ἢ περιορισμὸν τῆς εἰσαγωγῆς ἢ ἐξαγωγῆς ἐμπορευμάτων ἢ εἰς τὴν καταστολὴν τῆς λαθρεμπορίας ἢ τῶν διατάξεων τῶν ἀρθρῶν 144 ἕως 177, ἀμφοτέρων συμπεριλαμβανομένων, τοῦ Ποινικοῦ Κώδικος.»

10 (“5 (8) No road service licence shall be granted in respect of any vehicle for the transport of any passengers or for the execution of international road transports or of any vehicle hired without a driver, unless the owner satisfies the Licensing Authority that he, or, where the owner is a legal entity, the persons having the responsibility of the enterprises of such entity, are of a good character, on the basis of a certificate issued by the Chief of Police wherein it will be certified that he was not convicted for the last two years for any offence in contravention of The Narcotic Drugs Law or of The Narcotic Drugs and Psychotropic Substances Law or the provisions of the Customs and Excise Law in respect of the prohibition or restriction of the import or export of goods or the suppression of smuggling or the provisions of section 144-177, both inclusive. of the Criminal Code”).

It is abundantly clear from the wording of subsection 8, set out above, that when the applicant for a licence to own and manage “a car hired without a driver” is a legal entity—and the applicant in the present recourse being a Company Ltd., is a legal entity—“τὰ ἔχοντα τὴν εὐθύνην τῶν ἐπιχειρήσεων τοῦτου πρόσωπο” (the persons having the responsibility of the enterprise of such legal entity) must satisfy the Licensing Authority that they are of good character on the basis of a certificate issued by the Chief of Police wherein it will be certified that they were not convicted for the last two years for anyone of the offences referred to in sub-section (8) of s. 5 of Law 9/82.

40 Having given to this sub-section my best consideration, I hold the view that its wording tantamounts to substan-

tially "lifting the veil" of the company at least for the purpose of ascertaining the good character of "the persons having the responsibility of the enterprise of such legal entity."

But once the veil is being lifted for the above purpose, there is nothing to prevent the appropriate Authority from examining whether the applicant company and KEM TAXI LTD were in substance and in fact "one commercial unit" and whether the device of incorporation was being used for the improper purpose—to say the least—of acquiring more licences for self driven cars in view of fact that KEM TAXI LTD had already 95 such licences. (*Merchandise Transport Ltd. v. British Transport Commission* [1962] 2 Q. B. 173).

The wording of s. 5(8) coupled with the special facts pertaining to this case, render, in my view, the case under consideration, a proper case to be treated as an exception to the rule in *Salomon's case* (supra).

This main complaint of the applicants is therefore doomed to failure and is accordingly dismissed.

Applicants also complain for absence of due inquiry. In this connection it must be noted that when the respondent Minister was examining the present hierarchical recourse, all the documents which were examined in the first place by the Licensing Authority were before him; furthermore Mr. L. Markides appeared for the applicants as well as for the hierarchical recourses of the other companies on 26.4.83 and stated inter alia that the applicants were the owners of three tourist buses and had one of the biggest contracts with British Airways for the conveyance of passengers to the Sovereign British Bases (ex. 7). It was also stated that the applicants required the licences for self-drive cars for tourists and it was made clear that the needs of the applicants in this connection were presently served by KEM TAXI LTD.

In spite of this last statement no material was ever placed before the Minister as to any subsisting contracts between the applicant company and tourist organisations.

Having gone through the exhibits before me I am satis-

fied that the respondent Minister had carried out due enquiry and the sub judge decision was reasonably open to him in view of the material placed before him (including oral statements) and the provisions of the Motor Transport
5 Regulation Law.

As regards the complaint about the reasoning of the sub judge decision, I hold the view that inspite of the fact that the decision is a rather laconic one, it clearly conveys the reason why the hierarchical recourse was dismissed
10 (*Petrides v. Republic* (1983) 3 C.L.R. 216). Bearing in mind that the reasoning behind the decision may legitimately be supplemented from the material contained in the relevant files and having before me exhibits the material extracts thereof, I am satisfied that the sub judge decision is duly
15 reasoned.

In the result the present recourse fails and is accordingly dismissed. No order as to costs.

Recourse dismissed.

No order as to costs.