

1984 October 16

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALEXANDRA RENT A CAR LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMUNICATIONS AND WORKS,

Respondent.

(Case No. 437/83).

Administrative Law—Misconception of fact—Decision refusing licence for ownership of and management of “Z” cars—Annulled as founded on a misconception of facts.

5 *Company—It is a legal entity separate and distinct from its shareholders.*

10 *Administrative Law—Administrative acts or decisions—Reasoning—Though it is settled that it may be extracted from or supplemented by facts in the file of the case this principle does not permit supplementing of reasoning of a decision by reference to the facts of the case—And where the reasons of a decision are clear and unambiguous they must be taken and evaluated on their face value.*

15 The respondent Minister set aside a decision of the licensing Authority whereby the applicants were granted a licence to own and manage 10 “Z” cars; and hence this recourse. The above decision was set aside on the ground that applicants misused in the past licences for “Z” cars by trading in them in defiance or breach of the provisions of the law. As a matter of fact, however the applicants never owned “Z” cars in the past or at any time.

20 *Held, that since applicants never owned “Z” cars in the past or at any time the facts upon which the decision of the licensing*

authority was set aside were unfounded and therefore the decision was based on a misconception of the facts before the Minister; and that, accordingly, it must be annulled as founded on a misconception of facts.

Held, further, on the contention of counsel for the respondent that the misconception is not fatal to the validity of the decision considering that there was evidence before the Minister that shareholders of the applicant company had in the past improperly traded in "Z" cars owned by them: 5

(1) That even if it were permissible to read the decision of the Minister as saying something other than it did, and accept that what he wanted to convey was that the Company was no different from its shareholders, a question of misconception of the law would immediately arise because a limited company is a legal entity, separate and distinct from its shareholders (see *Salomon v. Salomon* [1897] A.C. 22; *Bank of Cyprus v. The Republic* (1983) 3 C.L.R. 363). 10 15

(2) That though the reasoning of an administrative decision may be extracted from or supplemented by facts in the file of the case, this principle does not permit supplanting the reasoning of a decision by reference to the facts of the case; and that where the reasons of a decision are clear and unambiguous as they were in this case, they must be taken and evaluated on their face value. 20

Sub judice decision annulled. 25

Cases referred to:

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

Bank of Cyprus v. Republic (1983) 3 C.L.R. 363;

Michaelides v. Gavrielides (1980) 1 C.L.R. 244 at p. 258.

Recourse. 30

Recourse against the dismissal by the respondent of applicant's hierarchical appeal from the decision of the Licensing Authority approving in part and subject to conditions applicant's application for a licence to own and manage 13 selfdrive cars.

M. Constantinides, for V. Vassiliades, for the applicants. 35

M. Cleridou-Tsiappa (Mrs.), for the respondents.

A. Panayiotou, for the interested party.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicants are a limited company, apparently formed, as we may surmise from their name, to own and hire self-drive cars, ordinarily identified as 'Z' cars. They applied to the Licensing Authority on 6.9.1982 under the provisions of the Road Transport Law* for a licence to own and manage 13 self-drive cars. After consideration of the matter, the Licensing Authority decided on 30.9.1982 to approve the application in part and subject to conditions specified therein. In particular, they granted licence for the ownership of 10 'Z' cars, subject to the condition that the owners should have no right to dispose of them by sale or otherwise as self-drive cars. If they ever decided to sell them in the future, they could dispose of them as private vehicles.

The interested parties, owners of 'Z' cars, objected to the decision and considering themselves prejudiced thereby, they appealed to the Minister on 21st October, 1982, to review the decision of the Licensing Authority inviting him to discharge it.

After the lapse of considerable time, the Minister decided** to set aside the decision of the Licensing Authority and refused the application in its entirety. It is a brief decision that singled out one factual consideration for refusing the application. Applicants, it is stated therein, misused in the past licences for 'Z' cars by trading in them in defiance or breach of the provisions of the law. For this reason their application ought to be dismissed. As a matter of fact, the applicants never owned 'Z' cars in the past or at any time. Consequently, the facts upon which the application was refused were unfounded. Evidently the decision was based on a misconception of the facts before the Minister.

Counsel for the respondent submitted the misconception is not fatal to the validity of the decision considering there was evidence before the Minister that shareholders of the applicant Company, the persons managing it, had in the past improperly traded in 'Z' cars owned by them. Even if it were permissible to read the decision of the Minister as saying something other than it did, and accept that what he wanted to convey

* Law 16/64 as amended—In particular by Law 9/82.

** 14th September, 1983.

was that the Company was no different from its shareholders, a question of misconception of the law would immediately arise. A limited company is a legal entity, separate and distinct from its shareholders*. The separateness of the company from its shareholders was emphasized in the most categorical terms by the Supreme Court in *Michaelides v. Gavrielides* (1980) 1 C.L.R. 244. It was depicted thus (p. 258):

“In the present appeal, there is no escape from the fact that the company is a legal entity entirely separate from its corporation. Here the company and the two individuals, the son and his wife, forming the company, are entirely separate entities, however complete the control might be of the two individuals over the company”.

It is settled the reasoning of an administrative decision may be extracted from or supplemented by facts in the file of the case. This principle, on the other hand, does not permit supplanting the reasoning of a decision by reference to the facts of the case. Where the reasons of a decision are clear and unambiguous, as they are in this case, they must be taken and evaluated on their face value. Any other approach would open the door to overriding administrative decisions by reference to the facts of the case. Such course would be arbitrary as it would be arbitrary in this case to read the decision of the Minister as saying anything other than it expressed, namely, that applicants improperly traded in ‘Z’ cars in times past. Evidently the Minister misconceived the facts either due to error on his part or misappreciation of the facts before him. The decision was founded on a misconception of the facts that invalidated it in its entirety.

It is unnecessary in the present proceedings to examine the amenity of an administrative authority applying the provisions of the Motor Transport Law, or any other law for that matter, to take into consideration in coming to a decision the conduct of the shareholders or management of the company as distinct from the conduct of the company itself, a separate legal entity. The question does not arise for consideration and I consider it

* *Salomon v. Salomon* [1897] A.C. 22; *Bank of Cyprus v. Republic* (1983) 3 C.L.R. 363.

inadvisable to express an opinion, more so as the subject was not canvassed at depth.

In the light of the above, the decision is set aside as founded on a misconception of facts. Let there be no order as to costs.

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Sub judice decision annulled. No order as to costs.