

1987 July 21

[A LOIZOU, MALACHTOS, LORIS PIKIS, KOURRIS, JJ]

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

Appellant - Respondent,

v

1 KEM TAXI LTD , TRADING UNDER THE BUSINESS
NAME KEM TOURS,
2 M & M TRANSPORT LTD ,

Respondents - Applicants

(Revisional Jurisdiction Appeal No 600)

5 *Companies — Veil of incorporation — The rule in Salomon v Salomon [1897] A C 22 against lifting the veil of incorporation — Exceptions to the rule — The Motor Transport Regulation Law 9/82 — Section 5(8) — Cars hired without a driver — The said section provides for the lifting of the veil of a legal entity for a specified purpose, but once the veil is so lifted, there is nothing to prevent the organ concerned from looking at the realities of the situation*

10 *Administrative Law — General principles — Hierarchical recourse provided by statute — Powers of the organ dealing with such a recourse — It can take any decision that the subordinate body could reasonably take — Test applicable in order to determine the validity of the exercise of the discretion of the organ dealing with such a hierarchical recourse*

15 *The appellant Minister dismissed respondents' hierarchical recourse against the refusal of the Licensing Authority to grant to them licences for cars hired without a driver (Z cars), on the ground that both respondents are related with KEM TAXI LTD to which 8 «Z» licences have been granted after the partial acceptance of its recourse under No 24/67/2427»*

As a result the respondents filed a recourse for annulment and a Judge of this Court annulled the aforesaid decision of the Minister on the ground that the veil of incorporation of the Companies concerned was wrongly lifted

20 *Hence this appeal.*

Held, allowing the appeal (1) The rule in Salomon v Salomon [1897] A C 22 is not absolute, but it is subject to exceptions The separateness of a company from its shareholders was emphasized by this Court in Michaelides v. Gavrielides (1980) 1 C L R 244, but, as it has been held in Bank of Cyprus

(Holdings) Ltd v The Republic (1985) 3 C L R 1883, in a proper case there may be exceptions to the rule in *Salomon* case. In *Strata Tours Ltd v The Republic* (1985) 3 C L R 2560 a case identical with the present case it was held that section 5(8) of Law 9/82 lifts the veil of incorporation 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 lifted for the said purpose, there is nothing to prevent the authority from examining the realities behind the veil of incorporation 5

(2) In the light of the case law the appellant in this case was entitled to pierce the veil of incorporation and examine the «realities of the situation» 10

(3) An administrative organ entrusted to deal with a hierarchical recourse is entitled to take any decision that the subordinate body could reasonably take in the first instance (*Tsouloftas v The Republic* (1983) 3 C L R 426 approved). The test by which this Court as an administrative Court, Judges the decisions of such an organ is whether, in view of the provisions of the law and the material before it, it was reasonably open to it to take the decision it took 15

Appeal allowed No order as to costs

Cases referred to 20

Salomon v Salomon (1897) A C 22,

Merchandise Transport Ltd v British Transport Commission [1962] 2 Q B 173,

DHN v London Borough of Tower Hamlets [1976] 3 All E R 462,

Michaelides v Gavnelides (1980) 1 C L R 244, 25

Bank of Cyprus (Holdings) v The Republic (1985) 3 C L R 1883,

Strata Tours Limited v The Republic (1985) 3 C L R 2560,

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

Georghiades v The Republic (1982) 3 C L R 16,

Araouzos v The Republic (1968) 3 C L R 287 30

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Savvides, J) given on the 28th April, 1986 (Revisional

Jurisdiction Case No. 476/83)* whereby the decision of the appellant given on a hierarchical recourse to him from a decision of the Licensing Authority by virtue of which applicants were refused the granting of licences to own and manage «Z» cars was
 5 annulled.

M. Tsiappa (Mrs.), for the appellant.

L. Papaphilippou, for the respondent.

Cur. adv. vult.

A. LOIZOU J.: The judgment of this Court will be delivered by
 10 Loris, J.

LORIS J.: The present appeal is directed against the judgment of a Judge of this Court annulling 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
 15 Authority whereby applicants were refused the granting of licences to own and manage cars (hired without driver) commonly known as «Z» cars.

The main ground of appeal revolves on the issue of lifting the veil of a corporation. It is true that in *Salomon v. Salomon* [1897]
 20 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 shareholders as absolute. Exceptions have been recognised although going
 25 through the authorities it is difficult to group them as referable to any distinct exceptional rule.

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

30 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: «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
 35 taxation and in the steps which have been taken towards the recognition of enterprise-entity rather than corporate entity....»

* Reported in (1986) 3 C.L.R. 703

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).

It was stressed in the aforesaid case of *Merchandise Transport Ltd., v. British Transport Commission* (Supra) at pp 206 and 207 of the report, that «where the character of a company, or the nature of the persons who control it, is a relevant feature the court will go behind the mere status of the company as a legal entity, and will consider who are the persons as shareholders or even as agents who direct and control the activities of a company which is incapable of doing anything without human assistance.»

The above dicta were cited verbatim with approval in the case of *DHN v. London Borough of Tower Hamlets* [1976] 3 All E.R. 462 at p. 469 where it was held that «the Court was entitled to look at the realities of the situation and to pierce the corporate veil».

The position in Cyprus as regards the lifting of the veil of incorporation may be summed up as follows: The separateness of the company from its shareholders was emphasized by our Supreme Court in the case of *Michaelides v. Gavrielides* (1980) 1 C.L.R. 244 (Rent Control Case), whereby it was stressed that a limited company is a legal entity separate and distinct from its shareholders affirming thus the principle laid down in Salomon's case (Supra).

In the recent case of *Bank of Cyprus (Holdings) v. The Republic* (1985) 3 C.L.R. 1883, decided by the Full Bench of this Court, the following are stated at page 1889: «The case of *Michaelides v. Gavrielides* (1980) 1 C.L.R. 244, a rent control case, left no room for lifting the veil of corporation under any circumstances. We are

of the view that notwithstanding what was stated in Michaelides case, in a proper case there may be exceptions to the rule in Salomon case.»

5 In *Strata Tours Limited v. The Republic* (1985) 3 C.L.R. 2560, an identical case to the one under present appeal, I had the opportunity to state the following:

10 «It is abundantly clear from the wording of sub-section 8, set out above, that when the applicant for a licence to own and manage «car hired without a driver» is a legal entity - and the applicant in the present recourse being a Company Ltd., is a legal entity «τα έχοντα την ευθύνη των επιχειρήσεων τούτου πρόσωπα» (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.

20 Having given to this sub-section my best consideration, I hold the view that its wording tantamounts to substantially '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.'

25 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 the fact the KEM TAXI Ltd had already 95 such licences. (Merchandise Transport Ltd. v. British Transport Commission [1962] 2 Q.B. 173 at p. 206 and 207).

35 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).

Reverting now to the facts of the case under the present appeal: the respondents in this appeal, filed hierarchical recourses to the Minister of Communications and Works in accordance with the

provisions of the law applicable at the time. The said recourses of both respondents as well as the hierarchical recourse of KEM TAXI Ltd., were heard together by the Minister on the 25th April 1983.

At the hearing of the recourse aforesaid, Mr. L. Markides appeared on behalf of all applicants and gave evidence in support of all the hierarchical recourses stating inter alia that the applicants required the licences for self-drive cars for tourists, clarifying at the same time that the needs of the applicants in this connection were «presently» served by KEM TAXI LTD. 5

The Minister on the basis of the material before him and bearing in mind the evidence given on behalf of the applicants allowed partly the hierarchical recourse of KEM TAXI LTD., and by his decision dated the 2nd July 1983 invited the Licensing Authority to grant 8 additional «Z» licences to it. 10

By a further decision dated the 14th September 1983, (the sub-judice decision) the Minister dismissed the hierarchical recourses of the respondents relying particularly on the fact that both respondents «are related with KEM TAXI Ltd to which 8 «Z» licences have been granted after the partial acceptance of its recourse under No. 24/67/2427.» 15 20

We hold the view that in the light of the exposition of the law, at the beginning of this judgment, the appellant was perfectly entitled to pierce the veil of incorporation of the Companies concerned, as he did, and examine «the realities of the situation.»

There is one more point raised by the present appeal on which we feel duty-bound to pronounce in spite of the reversal of the judgment in the first instance on the major issue of «piercing the veil of incorporation.» 25

The point concerns the task of the administrative organ entrusted to deal with a hierarchical recourse which is specifically envisaged by a particular law; in the instant case the Minister of Communications and Works in exercising the powers vested in him by s. 4 of Law No. 9/82; (it may be noted that this section was repealed and re-enacted by s. 4 of Law No. 84/84 which is inapplicable in the present instance.) 30 35

This topic was explicitly dealt with by our learned brother Judge Piki in *Tsouloftas v. The Republic* (1983) 3 C.L.R. 426 at pages 431 and 432; it is useful to stress here two points from the aforesaid

judgment. The first point concerns the task and the competence of the organ dealing with the hierarchical recourse: «It is at least as feasible for the superior in hierarchy to take any decision that the subordinate body could reasonably take in the first instance.»

- 5 The second point refers to the test by which we must judge the validity of the decision of the organ dealing with the hierarchical recourse: «The test by which we must judge the validity of the decision of the Minister is the same with that applicable to the Licensing Authority. It is this: Whether it was reasonably open to
10 the Minister, in view of the provisions of the law and the material before him to decide as he did.»

- It is therefore, clear that the Minister in dealing with a hierarchical recourse under s. 4 of Law 9/82 can exercise his own discretion on the material before him, which may be constituted of
15 the material placed before the Licensing Authority plus any other material placed before him including relevant oral evidence - which is the present case - And provided that he exercises his discretion properly within the ambit of the law he may either affirm or reverse the decision of the Licensing Authority.

- 20 The case of *Georghiades v. The Republic* (1982) 3 C.L.R. 16 and *Araouzos v. The Republic* (1968) 3 C.L.R. 287 cited by learned counsel for respondents have no relevance with the case under consideration. In those cases the competence lay with the inferior administrative organ and the hierarchically superior
25 administrative organ should not interfere with the discretion of the competent organ. In the case of hierarchical recourse envisaged by law the issue is different: The Minister in the hierarchical recourse has competence, as the inferior organ has, to exercise his own discretion on the material placed before him acting always
30 according to law.

And we must say that having examined the material placed before the appellant Minister in the light of the relevant Law, as we have stated it above, we hold the view that the sub judice decision of the appellant was reasonably open to him.

- 35 In the result the present appeal is allowed and the sub judice decision of the appellant Minister is hereby affirmed.

In view of the novelty of the main issue we have decided to make no order as to costs.

- 40 *Appeal allowed.*
No order as to costs.