

(2002) 09 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37833 and 37836 of 2002

Sanjay Kumar Gupta

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 5 AWC 3608 : (2002) 3 UPLBEC 2707

Hon'ble Judges : M. Katju, J;K.N. Sinha, J

Bench : Division Bench

Advocate : H.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition and the connected Writ Petition No. 37836 of 2002, are being disposed of by a common Judgment.

2. This writ petition has been filed against the impugned recovery certificate issued by the Executive Engineer, Electricity Distribution Division, UP. Power Corporation, Fatehpur dated 17.7.2002 as well as the citation issued by the Tahsildar Sadar, Kanpur Nagar.

3. Heard learned Counsel for the parties.

4. The petitioner is Director of M/s. Sushila Alloys Pvt. Ltd., district Fatehpur which is a company registered under the Indian Companies Act. The company applied for sanction of electricity connection which was sanctioned vide order dated 30.10.1995 Annexure-1 to the writ petition. An agreement was entered into between the petitioner and the U.P. State Electricity Board on 2.11.1996 and the supply was released on 8.11.1996 vide Annexure-2 to the writ petition. Bills were issued in the name of the company vide Annexure-4 to the writ petition.

5. The Executive Engineer has issued recovery certificate dated 17.7.2002 for a sum of Rs. 95,99,446.85 vide Annexure-5 to the writ petition. The recovery

certificate was sent to the Collector, Kanpur who sent it to Tahsildar Sadar, Kanpur Nagar alongwith collection charges.

6. The grievance of the petitioner is that the Company is a distinct legal entity and hence the recovery cannot be made against the Director of the Company but only against the company.

7. A copy of the agreement for supply of electrical energy is Annexure-2 to the writ petition. This agreement made on 9.11.1999 is between the U.P. State Electricity Board and the petitioner.

8. Learned Counsel for the petitioner submitted that the agreement is really between the company and the Electricity Board. In our opinion, even if that is so it is not fit case for interference under Article 226 of the Constitution.

9. It is well known that huge dues of electricity are due to the U.P. State Electricity Board (whose successor is the U.P. Power Corporation Ltd.). Because of these huge unpaid dues the Electricity Boards in the country are running at huge losses of thousand of crores of rupees.

10. It is true that the legal principle is that a Company is a separate legal entity distinct from its Director and shareholders vide *Solomon v. Solomon & Co. Ltd.* 1897 AC 22 (HL) . However, the principle of piercing the veil of corporate personality has also been evolved by the Court, vide *Subhra Mukherjee and Another Vs. Bharat Coking Coal Ltd. and Others*, ; *Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta*, ; *New Horizons Limited and Another Vs. Union of India (UOI) and Others*, ; *Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another*, *The Commissioner of Income Tax, Madras Vs. Sri Meenakshi Mills Ltd., Ors.*, and *Juggi Lal Kamalapat Vs. Commissioner of Income Tax, U.P.*, etc.

11. In *Delhi Development Authority case (supra)*, the Supreme Court, following its decision in *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, observed :

"The law as stated by Palmer and Gower has been approved by this Court in *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, The following passage from the decision is apposite (Para 27 of AIR) : "Gower has classified seven categories of cases where the veil of a corporate body has been lifted. But it would not be possible to evolve a rational consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporate personality should be lifted or not. Broadly, where fraud is intended to be prevented, or trading with enemy is sought to be defeated, the veil of corporation is lifted by judicial decisions and the shareholders are held to be persons who actually work for the corporation."

12. In the same decision the Supreme Court also observed that the concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate

character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The Supreme Court also observed quoting "Gower's Modern Company Law,-- "Where the protection of public interest is of paramount importance, or where the company has been formed to evade obligation imposed by the law, the Court will disregard the corporate veil."

13. In the present case the public interest demands that electricity dues be paid, otherwise the State Electricity undertakings will run at huge losses, as has been going on in our country for decades. Hence in cases of demand of electricity dues the Court should pierce the veil of corporate personality, as that is only used to defraud the State Electricity undertaking of its genuine dues or to evade existing obligations.

14. In *State of U.P. v. Renusagar Power Co.*, 1988 (4) SCC 59, the Supreme Court observed:

"It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The horizon of the doctrine of lifting of corporate veil is expanding."

15. In *Tata Engineering's case* (supra) the Supreme Court observed that the doctrine of the lifting of the veil tints marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the Corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognized exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more.

16. Thus, the Supreme Court itself has stated that with the passage of time the exceptions to the rule of corporate personality can grow in number to meet the new requirements, and these exceptions have an expanding horizon. In our opinion, the doctrine of piercing the veil of corporate personality must be adopted by our Courts, in the matter of electricity dues, as this has assumed mammoth dimensions of hundreds or thousands of crores of rupees which unscrupulous businessmen are not paying under cover of the doctrine of corporate personality. Hence we are of the opinion that so far as electricity dues are concerned this Court will pierce the veil of corporate personality and shall not give shelter to the businessmen who seek protection under the doctrine of corporate personality.

17. In the present case dues against the company are almost a crore of rupees. Hence there is no reason why recovery should not proceed against the Directors including the petitioners in both these petitions.

18. There is no mention in the writ petition of the value of the assets of the Company. This seems to have been deliberately concealed. Hence it can be reasonably inferred that the value of the assets of the Company are negligible, or a tiny fraction of the electricity dues. In this situation the only way of realizing the electricity dues is to proceed against the Directors.

19. Moreover writ jurisdiction is discretionary jurisdiction and we are not inclined to exercise our jurisdiction in this case even assuming that there is a violation of law.

20. For the reasons given above, both the petitions are dismissed. No order as to costs.