(2013) 07 MP CK 0143

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1681 of 2013

Shri Neoteric Developers Pvt. Ltd. — APPELLANT

Vs

Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd. and Others — RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:
Electricity Act, 2003 — Section 181, 3(1)(c), 4(1)(c), 45(3)(b), 46

Citation : (2013) ELR 1174 : (2013) 3 JLJ 378

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : Deepak Chandna, for the Appellant; Vivek Jain, for the Respondent

Final Decision : Disposed Off

Judgement

S.K. Gangele, J.—In this petition, the petitioner prayed a relief that respondent No. 1 be directed to accept the application of the petitioner (Annexure P/6) in regard to external electrification of its East Park Project situate at Gram Ohadpur, District Gwalior. The petitioner pleaded that it is a company incorporated under the provisions of Companies Act, 1956. The company purchased certain lands in the year 2010. On 6.5.2011 it received permission for development of a colony over 35750 sq. mtr. of land by the Joint Director, Town and Country Planning Department, Gwalior. The petitioner company also received necessary sanction from other agencies.

2. On 11th October 2012, the company submitted an application to the Assistant Engineer of respondent No. 1 in regard to grant of electricity connection for external electrification in the campus of said project. It is mentioned in the application, a copy of which has been filed as Annexure P/6 alongwith the petition, that the total requirement of electricity for the said campus is 1062 kW. The details are as under:

3. Dy. General Manager of the respondent company vide letter dt. 24.12.2002, a

copy of which has been filed as Annexure P/7, informed the petitioner that other projects undertaken by M/s. Neoteric Developers Pvt. Ltd., namely Gulmohar City, Green Park, Orchid Green, East Park Evenue are of the same group and the colony is the same, hence, the total requirement of electricity for the aforesaid colony is more than 2000 kW and for the aforesaid purpose construction of 33/11 kW Sub station is required and it has to be done by the applicant. Consequently, the request shall be considered after construction of this 33/11 kW sub station. The petitioner in the present petition challenged the aforesaid condition.

4. In the return, the respondent Company has pleaded that M.P. Electricity Regulatory Commission framed the regulation named as Madhya Pradesh Electricity Regulatory Commission (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) Regulations (Revision-I), 2009 [hereinafter referred to as Regulations of 2009]. Regulation 4.1.3(iii) of the Regulations of 2009 provides expenses, which have to be incurred by the applicant and if the total load of the complex/colony is more than 2000 kW, then installation of 33/11 kW Sub station has to be made by the applicant. Since the petitioner has not completed the aforesaid Sub station, hence, the request of the petitioner could not be accepted. It is further pleaded by the company that the petitioner is part of Neoteric Group and it has developed colonies under different four companies and the estimated load is near about 3416 kW. The details are as under:-

Colony name

Estimated load

Gulmohar City

1541 KW

Green Park

596 KW

Orchid Green

217 KW

East Park Avenue

1062 KW

Total

3416 KW

Hence, without complying the provisions of the Regulation 4.1.3(iii) of the Regulations of 2009, it is not possible to supply electricity to the petitioner. Respondent Company further pleaded that at present there is single Sub station at Mahalgaon named as "Mahalgaon 33/11 kW Sub station" of 5MVA capacity and against the aforesaid, load of 10500 kW has already been sanctioned. Hence, without construction of another Sub station it is not possible to accept the request of the petitioner.

5. Learned counsel for the petitioner has submitted that the load of colony developed by the petitioner company is near about 1062.6 kW as mentioned in the application (Annexure P/6), hence, it is less than 2000 kw. Consequently, provisions of Regulation 4.1.3(ii) of the Regulations of 2009 would be applicable in the case of the petitioner.

6. Contrary to this, learned counsel appearing on behalf of the respondent company has submitted that the provisions of Regulation 4.1.3(ii) of the Regulations of 2009 would be applicable because the GLR Real Estate has developed four colonies and in order to get benefit, four companies have been mentioned as promoters of the company, however all the companies are the same and are being controlled by one person Mr. R.D. Gupta.

7. As per the petitioner, the colony has been developed by Neoteric Developers Pvt. Ltd. and the name of the project is East Park situate at village Ohadpur, Gwalior. The respondents pleaded that Neoteric Group has developed four colonies namely Gulmohar City, Green Park, Orchid Green, East Park Evenue and all the colonies have been developed by one group named as Neoteric Group. In regard to Green Park, in the advertisement issued by the company it is mentioned that the green park is developed by GLR Real Estate Pvt. Ltd. Following facts are mentioned on the website:

Green Park is an affordable apartment in Gulmohar City with an appealing style of architecture against a backdrop of fabulous gardens. It comprises of 1, 2 & 3 Bedroom flats with a very well ventilated balconies. This signature developed is brought by GLR Real Estate Pvt. Ltd.

Similarly, Gulmohar City and Orchid Green have also been developed by GLR real estate. Following facts have been mentioned in the website-

After the Grand success of Gulmohar City & Green Park, GLR Real Estate brings new range of Affordable apartment ORCHID GREEN. Orchid Green is situated in front of Gulmohar City and Green Park and consists of Studio, One Bedroom & Two Bedroom Apartments.

It is also mentioned in the website that the colonies have been developed by Neoteric Group including Green Park:

After the huge success of Gulmohar City, Neoteric Group came with the affordable apartment project with a appealing style of architecture. It comprises of 1, 2 & 3 BHK flats with a very well ventilated Balconies.

8. In the website of Neoteric Group, it is mentioned that the Neoteric Group has since been developed and delivered 4000 homes, flats and housing complexes and the company today has near about 25 products cost of which is between Rs.

2.50 crores to Rs. 150.00 crores and it is a Group. It is also a fact that all the colonies are within the neighbouring area and premises are also adjoining. Although names of different companies have been mentioned as owner of the colony, but after perusal of the details mentioned on the website of the company and Neoteric Group, it is clear that the colonies have been developed by one group.

9. Regulation 4.1.3(ii) and 4.1.3(iii) of the Regulations of 2009 provide cost of extension required for providing power supply to the colonies. These regulations have been made in exercise of powers conferred by Section 181 read with Section 45(3)(b) and 46 of the Electricity Act, 2003. These regulations have statutory force of law. Regulation 4.1.3(ii) of the Regulations of 2009 are as under:-

(ii) The cost of extension required for providing power supply to such Colonies and Building shall comprise of HT line (in case of load upto 10000 kVA/EHT line (in case of load more than 10000 kVA), 33/11 kV Sub-station (in case of load more than 2000 kW)/Distribution Transformer Substation and LT Lines/cables along with associated equipment upto common point of metering in case of Multi-user Complex and upto the terminal pole of LT Distribution Mains for individual consumer (in case of Colonies) shall be borne by the Applicant(s). (iii) The supply shall be arranged through a separate Distribution Sub-station of adequate capacity. However, if combined load of the Complex/Colony is not more than 2000 kW, charges @ Rs. 500 per kW shall be levied towards System Development cost. Such Applicant(s) shall not be required to pay charges for installation of 33/11 kV Sub-station. If combined load of the Complex/Colony is more than 2000 kW, the Applicant(s) is/are required to pay charges for installation of 33/11 kV Sub-station of required capacity towards System Development.

10. From the aforesaid Regulations, it is clear that if the load is more than 2000 kW, then the applicant has to construct a 33/11 kW Sub-station alongwith other accessories as mentioned in the regulation. However, Regulation 4.1.3(iii) of the Regulations of 2009 is that if the load is less than 2000 kW, then the applicant shall not be required to pay charges for installation of 33/11 kW Sub-station.

11. Hon''ble Supreme Court in the case of State of U.P. and Others Vs. Renusagar Power Co. and Others, has held that under certain circumstances, it is permissible to lift the corporate veil in order to fix the liability of the company to pay tax. Hon''ble Supreme Court has held as under:-

63. It is high time to reiterate that in the expanding of 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 aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to

fulfil the condition of industrial licence of Hindalco through production of aluminium. It is also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of take over of the power station by the State or the Electricity Board. As the facts make it abundantly clear that all the steps for establishing and expanding the power station were taken by Hindalco, Renusagar is wholly-owned subsidiary of Hindalco and is completely controlled by Hindalco. Even the day-today affairs of Renusagar are controlled by Hindalco. Renusagar has at no point of time indicated any independent volition. Whenever felt necessary, the State or the Board have themselves lifted the corporate veil and have treated Renusagar and Hindalco as one concern and the generation in Renusagar as the own source of generation of Hindalco. In the impugned order the profits of Renusagar have been treated as the profits of Hindalco.

64. In the aforesaid view of the matter we are of the opinion that the corporate veil should be lifted and Hindalco and Renusagar be treated as one concern and Renusagar''s power plant must be treated as the own source of generation of Hindalco and should be liable to duty on that basis. In the premises the consumption of such energy by Hindalco will fall u/s 3(1)(c) of the Act. The learned Additional Advocate-General for the State relied on several decisions, some of which have been noted.

65. The veil on corporate personality even though not lifted sometimes is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon''s case (1897 AC 22) still visits frequently the hounds of Company Law but the veil has been pierced in many cases. Some of these have been noted by Justice P.B. Mukharji in the New Jurisprudence. (Tagore Law Lecture 183).

66. It appears to us, however, that as mentioned the concept of lifting the corporate veil is a changing concept and is of expanding horizons. We think that the appellant was in error in not treating Renusagar''s power plant as the power plant of Hindalco and not treating it as the own source of energy. The respondent is liable to duty on the same and on that footing alone; this evidence in view of the principles enunciated and the doctrine now established by way of decision of this Court in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, that in the facts of this case sections 3(1)(c) and 4(1)(c) of the Act are to be interpreted accordingly. The person generating and consuming energy were the same and the corporate veil should be lifted. In the facts of this case Hindalco and Renusagar were inextricably linked up together. Renusagar had in reality no separate and independent existence apart from and independent of Hindalco.

67. In the aforesaid view of the matter we are of the opinion that consumption of energy by Hindalco is clearly consumption by Hindalco from its own source of generation. Therefore, the rates of duty applicable to own source of generation have to be applied to such consumption, that is to say, 1 paisa per unit for the first two generating sets and nil rate in respect of 3rd and 4th generating sets. It

is appropriate to refer that having regard to the conduct of the State (in) the power-cuts matter and also the present proceedings the State should not be permitted to treat consumption of Renusagar''s energy by Hindalco as anything other than (and) different from consumption of energy by Hindalco from its own source of generation. We are, therefore, of the opinion that in facts of this case the corporate veil must be lifted and Hindalco and Renusagar should be treated as one concern and if that is taken the consumption of energy by Hindalco must be regarded as consumption by Hindalco from its own source of generation.

12. In view of the aforesaid judgment of the Hon''ble Supreme Court, it is clear that the court has power to lift the veil of the company and find out that whether the companies have been incorporated to benefit to each other and in order to fix the payment of liability of tax.

13. In the present case, the four projects have been developed by the same promoters. The projects are interlinked and they are situate adjacent to each others. The Neoteric Group in its website has claimed that it has developed and delivered 4000 homes, flats and housing complexes and the company today has near about 25 products cost of which is between Rs. 2.50 crores to Rs. 150.00 crores.

From the perusal of all the material, it is clear that the colony is the same although the petitioner company has claimed that it has developed East Park Project, but after perusal of the documents, in my opinion, it is a part and parcel of other projects and the residential colony is the same. After providing electricity, the load of electricity would be more than 2000 kW as submitted by the respondent. In such circumstances, in my opinion, the petitioner is liable to pay the charges for the electricity connection in accordance with the provisions of Regulation 4.1.3(ii) of the Regulations of 2009 and it has to be pay the expenses of installation of 33/11 kW Sub-station. If the petitioner fulfills the aforesaid condition, the respondent shall consider the application of the petitioner (Annexure P/6) in accordance with law.

With the aforesaid observation, the writ petition is disposed of. No order as to costs.