

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 10442/2004

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Date of decision: 2nd June, 2010.

RAJINDER SINGH

..... Petitioner

Through: Mr. Jagdeep Kumar Sharma,
Advocate.

Versus

M/S BELTEK APPLIANCES LTD. & ORS.

.... Respondents

Through: Mr. Jagat Arora & Mr. Rajat Arora,
Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner workman has instituted the present writ petition seeking a direction to the respondent no.1 M/s Beltek Appliances Ltd. and the respondent nos.2 & 3 described as Directors of the said M/s Beltek Appliances Ltd. to allow the petitioner workman to join duty henceforth and also to pay to him back wages with interest and to otherwise comply with the order dated 2nd February, 2002 of the Industrial Tribunal. The order dated 2nd February, 2002 of the Industrial Tribunal was made on an application under Section 33(2)(b) of the I.D. Act filed by one M/s Beltek Electronics Ltd. The Industrial Tribunal vide the said order dated 2nd February, 2002 held the said M/s Beltek Electronics Ltd. to have not conducted a valid inquiry prior to dismissal of the petitioner workman and the

said M/s Beltek Electronics Ltd. having failed to lead any evidence before the Industrial Tribunal and prove the misconduct, dismissed the said application. The petitioner workman in the writ petition had described the respondent M/s Beltek Appliances Ltd. as formerly known as M/s Beltek Electronics Ltd. It is also pleaded that Form-23 has been filed with the Registrar of Companies for change of name of M/s Beltek Electronics Ltd. to M/s Beltek Appliances Ltd. The petitioner workman contended that the effect of dismissal of the application under Section 33(2)(b) (supra) is that the order of termination of his services is *void ab initio* and he continued to be in employment. The petitioner workman further avers that M/s Beltek Electronics Ltd. has indulged in unfair labour practice by changing its name to M/s Beltek Appliances Ltd. to defeat the claims of the petitioner workman. The petitioner workman also claims the relief of prosecution of the respondents in the event of not complying with the orders.

2. Notice of the writ petition was issued to the respondents. The respondents filed a counter affidavit denying that the name of M/s Beltek Electronics Ltd. has been changed to M/s Beltek Appliances Ltd.; it is pleaded that M/s Beltek Electronics Ltd. is a separate legal entity. It is pleaded that M/s Beltek Appliances Ltd. was initially incorporated as M/s Beltek Electronics & Electricals Ltd. and has no concern with M/s Beltek Electronics Ltd. It is further pleaded that though the respondent no.2 was at one time also a Director of M/s Beltek Electronics Ltd. but he had since ceased to be a Director. It is thus pleaded that the right of relief, if any, of the petitioner workman is against M/s Beltek Electronics Ltd. and not against M/s Beltek Appliances Ltd. Along with the counter affidavit, a photocopy of the certificate of change of name of M/s Beltek Electronics & Electricals Ltd. to M/s Beltek Appliances Ltd. has also been filed.

3. The petitioner workman has not filed any rejoinder to the said counter affidavit. Vide order dated 25th March, 2010 the respondent no.2 was directed to appear before this Court in person to make a statement regarding the Companies aforesaid. The respondent no.2 Mr. Yash Pal Verma appeared before this Court on 11th May, 2010 and his statement on oath was recorded. He deposed that M/s Beltek Appliances Ltd. was incorporated in 1993 as M/s Beltek Electronics & Electricals Ltd. and the name so changed in the year 2004; that he and his two sons are the only Directors of M/s Beltek Appliances Ltd. and he, his wife, his two sons, his daughter-in-law, his nephew besides a few others are the shareholders of the said Company. He has further deposed that M/s Beltek Electronics Ltd. was a different Company from M/s Beltek Electronics & Electricals Ltd.; that he was also a Director in M/s Beltek Electronics Ltd. till the year 1991; various other persons are deposed to have been the other Directors of M/s Beltek Electronics Ltd. He has further deposed that M/s Beltek Electronics Ltd. was incorporated in 1973 and that the petitioner workman was employed in M/s Beltek Electronics Ltd. He has however disclosed that M/s Beltek Electronics Ltd. and M/s Beltek Electronics & Electricals Ltd. both were using the same name 'Beltek' because of an agreement between the shareholders and the Directors of the two companies under which the two Companies were manufacturing different items.

4. The petitioner workman has not been able to substantiate that M/s Beltek Appliances Ltd. against whom only this writ petition has been filed, was formerly known as M/s Beltek Electronics Ltd. with whom the petitioner workman was employed. No case of the respondent M/s Beltek Appliances Ltd. being the successor or assignee of M/s Beltek Electronics Ltd. has also otherwise been

made out. The writ petition filed against M/s Beltek Appliances Ltd. is thus misconceived. I also entertain doubt about the very maintainability of the writ petition. The remedies of the petitioner workman even against his employer M/s Beltek Electronics Ltd. are before the Labour Commissioner/Labour Court and not by way of filing the writ petition.

5. The counsel for the petitioner workman at the time of hearing has contended that both M/s Beltek Electronics Ltd. and M/s Beltek Appliances Ltd. even if different legal entities, belonged apparently to the same group. Though there are no pleadings or basis for the same but even if that be so, the entity of a Company is distinct from that of its shareholders/Directors. The claim of the petitioner workman can be enforced only against M/s Beltek Electronics Ltd. with whom the petitioner workman was employed and cannot be enforced against M/s Beltek Appliances Ltd. even if the shareholders and Directors of M/s Beltek Appliances Ltd. are the same as that of M/s Beltek Electronics Ltd. For enforcement of a claim of a workman, the corporate veil can certainly be lifted. However, for doing so a case for piercing the corporate veil has to be made out and which has not been done in the present case. The counsel for the petitioner workman in this regard has drawn attention to *N.T.C. (South Maharashtra) Limited Vs. Rupchand Sabhu Mohite* (1993) 1 SCC 218. However, that was a case under Section 25FF of the I.D. Act and has no application to the present case.

6. The Supreme Court in *Central Inland Water Transport Corporation Ltd. Vs. The Workmen* AIR 1974 SC 1604 has held that an inquiry whether a person is an assignee of the employer under the award is to be conducted by raising a

dispute on a reference under Section 10 of the I.D. Act and not under Section 33C(2) of the said Act. Following the said dicta, a case for piercing the corporate veil will also have to be made out by way of industrial dispute under Section 10 of the I.D. Act.

7. There is therefore no merit in the writ petition; the same is dismissed. However, the said dismissal shall not come in the way of the petitioner workman seeking reliefs, if any, entitled to against M/s Beltek Electronics Ltd. or the petitioner workman seeking a reference of the dispute for piercing the corporate veil against M/s Beltek Appliances Ltd.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

2nd June, 2010
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