THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.917 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner is filed impugning the letter, dated 17.11.2006, *vide* letter No.SAO/O/ELR/HT/D.No.237/2006 received by the petitioner on 18.11.2006, demanding the petitioner to pay an amount of Rs.13,41,949/- towards arrears of electricity consumption charges due and payable by M/s A.P Bagasse Products Limited as illegal and void and to consequently direct the respondent to drop all further proceedings pursuant to the said notice/letter.

2. I have heard the submissions of *Sri G. Uday Bhaskar*, learned counsel for the writ petitioner, and of *Sri M. Ravindra,* learned Standing Counsel appearing for the respondent. I have perused the material record.

3. The case of the petitioner is this:

The petitioner and his family are having 12 electricity service connections for shops including the portion of residence. The petitioner is paying electricity consumption charges in respect of those 12 service connections regularly without fail and any delay. He was the Managing Director and promoter of M/s A.P Bagasse Products Limited, which is a public limited company registered under the Companies Act, 1956. The said company is a joint venture of A.P. State Agro Industries Development Corporation, which is an autonomous body of the State. The Unit was financed by A.P.I.D.C and A.P.S.F.C by way of term loans and by Indian Bank by providing working capital. The Industrial Finance Corporation, ICICI, and IDBI participated in the Unit by extending direct subscription and equity share capital. The company was registered in the year 1980. Production was started in June, 1991. However, due to certain adverse conditions and circumstances, the Unit was closed in the year 1993 after trial run. The Unit could not be revived due to lack of working capital. As such, the APIDC seized the Unit in February, 1996, by invoking the provisions of APSFC Act. The Unit was put to auction number of times. Ultimately, the Unit was sold by way of auction-cum-private negotiations for a meagre amount to a third party in December, 1998, and the Unit was handed over to that party in January, 1999. The said purchaser has taken over the assets after paying necessary bid amount to APIDC. The company became defunct and insolvent. The liability of the Director is only limited to the extent of assets of the company as per law. To the utter surprise and dismay of the petitioner, a letter was issued by the respondent in the name of the petitioner as Managing Director of the defunct company; and by that letter, dated 10.05.2000, he was asked to pay the alleged dues against the account of the said company to a tune of Rs.13,41,949/-, which is said to be outstanding towards arrears. In the said letter, it is stated that unless the amount is paid within 7 days from the date of receipt of the said letter, the service connections standing in the name of the petitioner will be disconnected under Section 49 of the Indian Electricity Act, 1910, without any further notice. The said letter was received on 12.09.2000. The petitioner therefore earlier filed W.P.No.17203 of 2000 questioning the same as illegal, null and void. The writ petition was admitted and stay orders were granted on 19.09.2000 in W.P.MP.No.21871 of 2000 not to disconnect the 12 service connections of the petitioner. The said writ petition was ultimately disposed of on 23.06.2005 for want of show cause notice without going into the contentions raised by the petitioner, and with liberty to issue show cause notice and permitting the petitioner to offer explanation. Pursuant to the orders of this Court, the respondent issued letter dated 09.11.2005 asking the petitioner to submit explanation. Explanation, dated 30.11.2005, was submitted reiterating the objections raised in the earlier writ petition and *inter alia* stating that the petitioner is not personally liable to pay the alleged amount due towards power supply charges recoverable from M/s. A.P. Bagasse Products Limited since it is a public limited company and as the petitioner's liability is to the extent of his share capital. Thereafter, the petitioner received the impugned letter stating that the objections raised are untenable and he is liable to pay the amount demanded in the letter within four weeks. In the said letter it is also stated that on the failure of the petitioner to pay the amount as demanded, the 12 service connections in his name would be disconnected. The letter is *ex facie* illegal, arbitrary, void and is violative of principles of natural justice. The petitioner has no objection if the respondent proceeds against the assets of M/s. A.P. Bagasse Products Limited. As per settled law, there is a vast difference between a partnership firm and a public limited company. Partners are individually liable whereas as Directors have no personal liability. Their liability is limited. The liability of the defunct company is a contractual liability between the company and the respondent. It is not statutory in nature. The electricity was consumed by consumer on the basis of written contract as prescribed in the form approved by the Act and admittedly power supply was given to the company, which has become defunct and not personally to the petitioner for his personal consumption. The respondent, if entitled, may collect the dues from the erstwhile industry or the new management of the factory/unit but not from the petitioner. Further, the arrears claimed relate to a period prior to 1996. If at all the respondent is entitled to recover the amount, recovery proceedings ought to have been initiated within two years from the due date, which is prior to 1998. Therefore, in any view of the matter, the claim is hopelessly barred by law of limitation. Hence, the writ petition is filed.

4 The averments in the counter of the respondent, in brief, are as follows:

HT electrical supply connection no.ELR 316 was released in favour of M/s. A.P. Bagasse Products Limited at Chintapurru, Palacole Mandal, West Godavari District, on 12.03.1991, with a contracted maximum demand of 500 KVA and contracted load of 1400 HP. The HT agreement was executed by the petitioner in the capacity of Managing Director. Due to non payment of current consumption charges, an amount of Rs.14,15,193/- was accumulated as arrear against the said service connection. With a view to extend co-operation in the revival of the company, two instalments were granted by the erstwhile APSE Board vide letter No.FA & CCA ®/A1/HT/ELR, dated 31.05.1993. The first instalment of Rs.5,00,000/- is payable on or before 10.06.1993 and second instalment for the balance amount is payable on or before 30.06.1993. Not event first instalment was paid by the petitioner. A show cause notice was issued by the then Board as per orders of this Court; and on finding that the explanation of the petitioner is not satisfactory, the final notice requesting to pay Rs.13,41,949/- was issued. The demand is being continuously made from time to time. Therefore, the arrears being claimed are not barred by law of limitation. A decision has been taken to proceed against individual service connections of the petitioner since he was at the helm of affairs as promoter and Managing Director of the defunct company. The petitioner has become responsible for accumulation of consumption charges by his acts and also on account of extension sought by him for payment of arrears and the further permission sought for payments by way of instalments. The petitioner wants to avoid and escape from the liability incurred under various grounds like contractual obligations and law of limitation. There is no merit in the writ petition. The petition is liable to be dismissed.

5. On the admitted facts, which are in a narrow compass, the questions that arise for determination in this writ petition are – 'Whether or not the petitioner is a consumer under Section 49 of the Indian Electricity Act, 1910? And, whether or not the demand made by the respondent against the petitioner is sustainable under facts and in law?

6. Admittedly, the HT supply service connection was provided to M/s. A.P. Bagasse Products Limited of which the petitioner was promoter and Managing Director. The HT agreement was also entered into by the petitioner in his capacity as Managing Director of the said company and not in his individual capacity. The electricity consumption was also made by the company and not by the petitioner in his personal capacity. Admittedly, the said company is a joint venture with A.P. State Agro Industries Development Corporation, which is an autonomous body of the State, and the Unit was financed by A.P.I.D.C and A.P.S.F.C by way of term loans and Indian Bank by providing working capital; the Industrial Finance Corporation, ICICI and IDBI participated in the Unit by extending direct subscription and equity share capital; the company was registered in the year 1980; production was started in June, 1991;

however, the Unit was closed in the year 1993 after trial run; the Unit could not be revived due to lack of working capital; the APIDC seized the Unit in February 1996 by invoking the provisions of APSFC Act; the Unit was put to auction number of times; ultimately, the Unit was sold by way of auction-cum-private negotiations.

7. Coming to the question whether the arrears demanded, due and payable by the company, which has become defunct, are recoverable from the petitioner in his individual capacity, it is trite to mention that the said question is no longer *res integra* in view of the decision of this Court in Dr. J. Ramachandra Rao v. A.P. Eastern Power Distribution Co.Ltd., and another[1] wherein under similar facts and circumstances the petitioner therein contended that he is not a consumer and that he is not liable to pay the arrears demanded and that he executed HT agreement on behalf of M/s Delta Oils and Fats Limited, Prathipadu, as Managing Director and that, therefore, the said company is the consumer and hence, the arrears of the said company cannot be collected from him though he was the Managing Director. This Court having referred to the various provisions of the Electricity Act and the Companies Act held that the respondents-electricity department can proceed against the company which is a juristic person but not against the petitioner merely because he entered into the agreement representing the company as its Managing Director. The decision of this Court is rendered following the decisions of the Supreme Court. In the instant case also the petitioner is not the consumer and he entered into the HT agreement in his capacity as Managing Director of the company and the electricity was also supplied to the company but not to the

[1] AIR 2009 AP 19

petitioner in his personal capacity and, therefore, merely because he entered into the agreement in his capacity as Managing Director of the company he cannot be made personally liable for the electricity consumption charges/arrears due and payable by the company which is defunct by now.

8. Before parting it is necessary to note that the learned standing Counsel urged that the matter be referred to the Conciliation Forum for settlement as the amount due is recoverable from the share capital of the petitioner in the Company. Since the Company has become defunct is not in dispute, in the opinion of this Court the said request cannot be considered in this writ petition. Nonetheless, it is needless to state that the respondent is always at liberty, if he so chooses, to bring the matter before the said forum for settlement, provided the law permits so to do.

9. On the above analysis, this Court finds that the writ petition is to be allowed.

10. The Writ Petition is, accordingly, allowed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

21-02-2017
Vjl