

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2019

PRONOUNCED ON : 04.06.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE C.SARAVANAN

W.A.No.907 of 2013
and
M.P.No.1 of 2013

The Managing Director
Needle Industries Limited,
Ketti
The Nilgiris 643 002.

... Appellant

vs.

- 1.The Presiding Officer,
Labour Court, Coimbatore,
- 2.N.Stephen Daniel
- 3.A.Desouza
- 4.Grace Charles
Seldeen Wire Products, Cliff House,
Coonoor Taluk, Nilgiris Dist.
- 5.J.Malathi
- 6.J.Rajkumar
- 7.H.Geetha
- 8.K.Revathi
- 9.C.Savithri
- 10.C.Meenakshi
- 11.B.Sasikala
- 12.S.Leela
- 13.M.Guruchit
- 14.M.Maria Fathima
- 15.A.R.Praveen
- 16.K.V.Sarala
- 17.R.Sumathi
- 18.K.P.Vijaya
- 19.D.Sivamal
- 20.D.S.Latha
- 21.N.Janaki
- 22.N.Sivagami

23.C.Chitra
24.P.Vijaya
25.A.Asia
26.B.Latha
27.Rebekkal
28.M.Raji
29.B.M.Shanthi
30.J.Shereen
31.Soria Begum
32.D.Vanaja
33.R.Mary
34. R.Gomathi
35.A.Seetha
36.B.Uma Rani
37.L.Malathi
38.L.Sarasthi
39.K.Nirmala
40.H.Saraswathi
41.L.Saroja
42.R.Girija
43.R.Baby
44.C.Kasturi
45.Jebamalai Mary
46.H.Dharmaraj
47.M.Manjula
48.L.Parvathi
49.A.Shabeera
50.R.Revathi
51.B.Rajeshkumar

Prayer:Writ Appeal preferred under Clause 15 of the Letters Patent to set aside the order dated 22.02.2013 made in W.P.No.3299 of 2003.

Prayer in W.P.No.3299 of 2003:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari to for the records relating to the common award and dated 27.05.2002 passed by the first respondent in ID Nos 2 to 6,8,32 to 68,93 to 95 and 112 of 1996 and quash award.

For Appellant :Mr.Sanjay Mohan for
M/s.S.Ramasubramaniam & Asso.

For R1 to R3, R12 & R15 : No Appearance
For R4 to R11, R13, R14
and R16 to R51 : Mr.V.Prakash
Senior Counsel for Mr.M.Suresh for

Mr.S.Sai Prasad for R3
Mr.M.R.Dharanichander for R4

JUDGMENT

C.SARAVANAN, J.

The Appellant is aggrieved by the impugned order dated 22.02.2013 passed by the learned single judge in W.P.No.3299 of 2003.

2. By the impugned order, the learned single judge has dismissed the above writ petition and the connected miscellaneous petitions filed by the appellant and has upheld common award dated 27.5.2002 passed by the 1st respondent Labour Court in I.D.Nos.2 to 6, 8, 32 to 68, 93 to 95 and 112 of 1996.

3. By the common award dated 27.5.2002, the Labour Court has directed appellant to reinstate respondent Nos. 5 to 51 together with back pages and consequential benefits.

4. At the outset, the learned senior counsel Mr.Sanjay Mohan appearing for the appellant, submitted that the dispute with Respondent Nos. 5- 25, 27- 41, 43 --46 and 48- 51 has been settled and therefore the appeal is confined against respondent Nos. 26, 42 and 47.

5. The present appeal is thus confined to test the correctness and legality of the impugned award of the labour court as affirmed by the learned single judge vide the impugned order.

6. Respondent Nos. 2, 3 and 4 were the direct employees of the appellant.

7. While in employment of the appellant, these respondents were in charge of the separate ancillary units which catered to different needs of the appellant. Names of these ancillary units are as under:-

- i. Evergreen Enterprises;
- ii. Universal Enterprises;
- iii. Grind Well Enterprises;
- iv. Quality Printers;
- v. Packall Products;
- vi. Knitwell Industries;
- vii. Seldeen Wire Products,
- viii. V.J.V. Works;
- (All Located at Cliff House, Ketti Nilgiris.)
- ix. Nazareth Enterprises;
- x. Bob Enterprises;
- both located at Ketti.

8. Respondent Nos. 5 to 51 were employed in these units on piecemeal rates. Their employment were terminated without notice, enquiry or disciplinary proceedings by these ancillary units.

9. These ten units on paper had separate registrations under various laws including labour welfare laws.

10. 2nd respondent was in charge of Universal Enterprises, Evergreen Enterprises, Quality Printers at Happy Homes, Grindwell Enterprises, St Thomas Church road Otacamand.

11. The 3rd respondent was in charge of the Packwell Products, Coonoor.

12. The 4th respondent was in charge of Seldeen Wire Products, Ketti and a Director of the Appellant.

13. Therefore, these employees numbering in 47 raised industrial dispute under Section 2A of the Industrial Disputes Act, 1947 before the 1st respondent Labour Court and prayed for reinstatement with back wages.

14. They stated though on paper they were employees of the 10 units, these 10 units were indeed under the control of the appellant through the 2nd, 3rd and the 4th respondents.

15. In the aforesaid proceedings, it was alleged that some of the respondents were initially employed directly by the appellant and subsequently transferred in the units which came to be established from 1988 onwards to cater to the needs of the appellant.

16. They alleged that they continued to work without any break in service under harsh labour conditions in violation of their rights under various labour welfare legislations.

17. Respondent No.26 who had filed ID No 47 of 1996 before the Labour Court claimed that she was employed under the unit in charge of the 3rd respondent of the 1st respondent.

18. In the common counter before the Labour Court the Appellant has merely denied and has put the said respondent to strict proof.

19. Respondent No.42 filed I.D.No.63 before the Labour Court and claimed that she was employed under the unit in charge of the 4rd respondent of the 1st respondent.

20. In the common counter the Appellant has merely denied and has put the said respondent to strict proof.

21. Respondent No.47 filed I.D No.68 and claimed that she was employed under the unit in charge of the 4th respondent of the 1st respondent.

22. Respondent No 47 claim to have been in service since 1979 and stated that all the units were situated within the premises of the appellant and were operating with the machineries of the appellant and the materials supplied by the appellant.

23. In the common counter, the 3rd respondent has merely denied the allegation and has put the said respondent to strict proof.

24. No separate or detailed counter was filed by the appellant or by any of the 2nd to 4th respondents stating that the respondents 5 to 51 herein were only the employees of the individual units and not that of the appellant.

25. From the narration of the facts in the impugned order, it is evident that these 10 units were engaged in packing, inspection, sticking, patching, according, labelling, hopping, knobbing activities.

26. It was submitted these activities were ancillary to the main activity of manufacturing and selling of needles manufactured by the appellant.

27. In the industrial disputes raised by the contesting respondents, it was alleged that they were not paid the wages as per the Minimum Wages Act, benefits under the National and Festival Holidays Act, Bonus Act and other statutory benefits were denied.

28. It was further alleged that the 2nd respondent joined the services of the appellant in the year 1978 and was involved in creating sham transactions as if he was an independent contractor while he continued to be employment of the appellant.

29. It was submitted that all the 10 units catered to the needs of the appellant and it was the appellant who was the actual manufacturer who was in control of all the employees of the ancillary units through 2nd to 4th respondent.

30. It was submitted that the units were financed by the appellant and they are part of the same industrial establishment of the appellant.

31. Similarly, it was alleged that the 3rd respondent was also an employee of the appellant and that about

hundred female workmen were employed in Packwell Products and about 65 persons were employed at Knitwell Industries.

32. Similarly, the 4th respondent was the Vice President of the appellant and was in charge of Seldeen Wire Products Private Ltd. and employed about 500 female workers.

33. It was stated that all the 10 ancillary units were integrally connected with the appellant and had no independent existence. Similar view was taken against the other respondents as well.

34. 14 workmen were examined as WW-1 to WW-14 on behalf of the employees Mr.S.Stephen Daniel. The second respondent herein was examined as WW-15. On the side of the workmen 120 exhibits were marked as W1 to W120.

35. On behalf of the Appellant Management, the fourth respondent Mrs.Grace Charles the then Vice President of the appellant was examined as MW-1 and Exs. M1 to M59 were marked through her. The Labour Court marked 8 court Exhibits as C1 to C8.

36. After considering the deposition of the 2nd respondent N.Stephen who admitted that he was an employee of the appellant and had distribute wages through a series of vouchers and that the units were owned by the appellant and that he worked as manager at Cliff House unit where there were 5 to 6 units and were employing about 200 workers the Labour Court has concluded that the Appellant employed all the 47 employees through these units created by the appellant and managed under through 2nd to 4th respondent herein.

37. The labour Court further noted the deposition of the 2nd respondent N.Stephen hat required stationery items were also supplied by the appellant and all the documents were executed by the appellant.

38. The Labour Court, similarly referred to the deposition of the 3rd respondent Mr. A De'Souza who admitted

that he was a Works manager of the appellant and that he had not invested for the contract business and that he does not know the industries and was unaware of the implications of various labour legislations.

39. In his deposition, he has tacitly admitted that the ancillary units were that of the appellant and that the appellant was running units through these employees.

40. The labour Court noted that the 3rd respondent DeSouza had also not registered complied with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and was unaware of any of the labour legislations.

41. The Labour Court referred to several decision and the deposition particularly the deposition of the 2nd respondent Mr N Stephen Daniel who had been given the privilege which were not extended to the contesting respondents.

42. On the overall consideration of the facts, the Labour Court concluded that the appellant was in overall control over all the units and the units were fragmented on paper.

43. Thus, the Labour Court concluded that all the ancillary units were functioning under the control of the appellant and that these employees were employees of the appellant.

44. Aggrieved by the common passed by the Labour Court, the appellant preferred WP No. 3299 of 2003.

45. In the said writ petition, the petitioner primarily contended that the Labour Court erred in entertaining the industrial disputes under Section 2A of the ID Act, 1947 as the Labour Court had no jurisdiction to go into the question as to whether a contract was sham or genuine and whether employer-employee relationship existed between appellant and the contesting respondents.

46. In the writ petition, the appellant submitted that Labour Court converted a dispute raised under Section 2A into a dispute under section 2 (K) read with Section 10 of the Industrial Disputes Act, 1947.

47. It was submitted that the contesting respondents were employees of the individual contractors namely the ten units. Therefore, if at all they have to raise a dispute for a declaration that the contract was sham and without doing so, they cannot raise a dispute under Section 2A and claim that they are employees of the Appellant.

48. It was submitted that the Labour Court exceeded its jurisdiction and scope by converting a dispute raised under Section 2A of the Act into a dispute under Section 2(k) read with Section 10 of the I.D. Act.

49. It is further submitted that mere non-compliance of Contract Labour (Regulation and Abolition) Act 1970 does not make the individual contract of employment between the respective employees and the ten units a sham contract.

50. It was submitted that there was no prohibition under law or under the Articles of Association of the Appellant Management to do business its employees in their capacity "as independent contractor."

51. It was submitted that the contesting respondents were never employed by the Appellant and the documents filed by the parties show that they joined M/s.Seldeen Wire Products Private Ltd., after settling their claims with their previous employers. W-16, would show that most of the workmen were on the rolls of the said company.

52. It is further submitted that the Labour Court erroneously shifted the burden of proof on the Appellant when the onus was on the workmen.

53. Further, it is submitted that the Labour Court did not assign any reasons, as to how the documents which were filed on the side of the workmen establish that the other units were sham units and in a single line observed that all the documents established the case of the workmen.

54. Reliance to the decision of the Hon'ble Supreme Court in Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh, [(2002) 4 SCC 609] was placed. The Appellant also relied on another decision rendered by Hon'ble Mr. Justice K. Chandru in V. Kesavan and Another vs. The Presiding Officer, W.P. Nos. 35842 & 35843 of 2007, dated 05.06.2012.

55. It was submitted that the award passed by the Labour Court was perverse and was liable to be interfered. It was submitted the learned single judge erred in upholding erroneous award of the labour court.

56. Reliance was also placed on the decision of the Hon'ble Supreme Court in Shama Prashant Raje v. Ganpatrao, [(2000) 7 SCC 522] and the decision of the Hon'ble Division Bench of this Court in Madura Coats Ltd., vs. Presiding Officer, [2002-1-LLJ-313 (Mad)] which was rendered by following the said decision.

57. Questioning the jurisdiction of the labour Court, the learned Counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court in Bharat Heavy Electricals Limited vs. Anil and Ors., (2006) 11 Scale 567 .

58. Learned Counsel for the appellant submitted that the Labour Court failed to that individual licences granted by various statutory authorities to the units, the lease agreements, contracts, balance sheets, muster roll etc., which were filed by the fourth respondent and marked as Management Exhibits which clearly established that ten units were independent entities.

59. The learned counsel submitted that the Labour Court erroneously placed reliance on two awards passed in I.D.No.78 of 1996, dated 22.12.1998 and I.D.No.69 etc., of

1996, dated 05.11.1999 and submitted that those awards related to transfer of an employee and in the other case where the workmen claimed to be employee of the Appellant which was denied by the Management and such award was erroneously referred by the Labour Court in the impugned award.

60. The learned counsel emphasized that Exhibits filed by the appellant were not examined by the labour court and thus the award was perverted. It was further submitted that the documents filed by the workmen such as W-4, 5, 10, 47, etc., clearly established that the workmen were employed by the 2nd respondent.

61. Learned Counsel for the appellant submitted that relationship of employer-employee relationship was essentially a question of fact and as per the decision of Hon'ble Supreme Court in International Airport Authority of India v. International Air Cargo Workers' Union, [(2009) 13 SCC 374] and Ram Singh v. Union Territory, Chandigarh, [(2004) 1 SCC 126] it has been determined by the Labour Court.

62. Per contra learned Senior Advocate Mr .V.Prakash appearing for the contesting respondents submitted that the order of the Learned Single Judge upholding the award of the Labour Court was well reasoned and unassailable and prayed for dismissal of the present writ appeal.

63. He submitted that where any employer discharges, dismisses retrenches or terminates the services of a workman, any dispute or difference between the workman and his employer connected with or arising out of such dismissal or termination shall be deemed to be an "industrial dispute" and the provision is wide enough to cover all disputes and therefore, the Labour Court while dealing with a dispute raised under Section 2A, for the purpose of identification of the employer can consider whether the contract was sham and the amendment to Section 2A of the I.D. Act came into effect from 01.12.1965, and the purpose is to give complete remedy and the Court should adopt the Hyden's rule of interpretation, which is to compel to cure a mischief, advance the relief and suppress the mischief.

64. The learned counsel submitted that reference to the decision of the Hon'ble Supreme Court in Bharat Heavy Electricals case, referred to supra, was out of context. It is further submitted that the decision in W.P.No.35842 & 35843 of 2007, dated 05.07.2012, relied on by the learned counsel for the petitioner Management in any event had not attained a finality and the said case, the finding of fact was against the workmen where as this not so here.

65. The learned counsel further submitted that the Writ Courts are not a court of appeal and cannot interfere with the question of fact and sufficiency of evidence is no ground to interfere with the award. In support of the said contention, the learned counsel placed reliance of the decision of this Court in Management in Bata India Limited vs. P.O., 2010-2-LLJ-175 (Mad).

66. He submits that the scope of interference under Art.226 was limited and therefore the Court cannot sit as a court of appeal. He submitted that there was no perversity in the decision making process by the Labour Court.

67. We have considered the rival submissions advanced. We do not find any infirmities in the order passed by the learned single judge while upholding the order of the Labour court.

68. On facts, the appellant had submitted that there was no bar under law for its senior employees to act as independent contractors viz. as independent suppliers of goods and services.

69. It was further submitted that M/s. Seldeen Wire Products Private Limited was a private limited company and therefore the contesting respondent were not the employees of the appellant.

70. It was submitted that the termination of service of the contesting respondents were not by the appellant and therefore the appellant cannot be fastened with the liability of reinstating them with back wages.

71. It was further stated that none of the contesting employees could raise an industrial dispute against the appellant as they were not employed by the appellant and without answering the core issue, the Labour Court has passed the award and therefore exceeded in its jurisdiction.

72. The appellant also submitted that the labour court committed error in considering Exhibits W-4, 5, 10 and 47 which were the identity cards of some of the respondent employees employed under the 2nd respondent herein.

73. It was further submitted that the labour court failed to note that when the employees later shifted their employments with the ancillary units, the report of the Deputy Chief Inspector of Factories ought to have been seen.

74. The learned single judge after hearing the arguments advanced for the appellant and the respective employees held that the endeavour of the Labour Court while adjudicating dispute would be to find the exact dispute between the parties, adjudicate the same and grant appropriate relief.

75. The learned single judge noticed that the 10 ancillary units were controlled by the employees of the appellant namely 2nd to 4th employees and therefore duty was cast upon the labour Court to ascertain who' was the actual employer of the contesting respondents.

76. Viewed from the factual matrix, the learned single judge has correctly concluded that it can hardly be stated that the labour Court would have no jurisdiction to examine this question with a view to adjudicate the dispute while passing an award.

77. The learned single judge has noted that the 2nd respondent Stephen Daniel who was the director of the appellant and has given evidence in favour of the respondent employees.

78. In the individual disputes, the 2nd respondent Mr. Stephen Daniel has deposed in favour of the respondent employees.

79. The learned single judge has noted that WW-15 indicates sham agreements were signed by respondent Nos 2-4 with employees also were employed on piece rate basis to facilitate sham arrangement.

80. The argument of the appellant that the Labour Court while considering a dispute under Section 2A of the Industrial Disputes Act, 1947 cannot go into the question as to whether the contract was sham or not or whether the arrangement was genuine or not and who was the real employer based on the decision of the Honourable Supreme Court in The Municipal Corporation of Greater Bombay Versus K.V.Shramik Sangh (2002) 4 SCC 609 is distinguishable on facts.

81. The Honourable Supreme Court there referred to the decision rendered in Steel Authority of India Ltd.v.National Union Waterfront Workers's [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121 and declared that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India Statutory Corpn. v.United Labour Union, (1997) 9 SCC 377 : 1997 SCC (L&S) 1344] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

82. In Steel Authority of India Ltd.v.National Union Waterfront Workers [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121, it was also held that if the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

83. The Court further held that if the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

84. In para 126 of the same judgment, the court held that "We have used the expression 'industrial adjudicator' by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review."

85. The reasoning of the learned single judge's that the jurisdiction of the Labour Court or an Industrial Tribunal before which such dispute is referred to for adjudication, should necessarily extend and include a power to investigate and adjudicate upon such questions, unfettered by consideration based on contractual rights as between particular workmen and his employer.

86. It was submitted that before the labour Court 59 exhibits were produced on behalf of the appellant which has not been examined by the Labour Court and therefore the order of the labour court is perverse.

87. We therefore do not find any reasons to be interfere with the above view of the learned single judge.

88. In fact, from a cursory reading of the counter filed before the labour court it is evident that a common counter has been filed on behalf of the appellant and

respondent Nos 2-4 in response to the petition is filed by the respective contesting employees which were also in cyclostyled formats.

89. The undisputed fact of the case is that 10 ancillary units were managed by respondent Nos 2-4 herein. Respondent Nos 2-4 were directors/ senior employees of the appellants.

90. It is not as if they were carrying on business unconnected business with the business of the appellant. They were carrying on process which were ancillary to the main business of the appellant. It is evident the units were fragmented and multiple façade were created.

91. In this connection it may be useful to refer to the decision rendered in TELCO v. State of Bihar [AIR 1965 SC 40 : (1964) 6 SCR 885 : (1964) 34 Comp Cas 458]. The Hon'ble Supreme Court held as follows:-

"The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The Corporation in law is equal to a natural person and has a legal entity of its own. The entity of the Corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the Corporation. This position has been well established ever since the decision in Salomon v. Salomon & Co. [1897 AC 22 : (1895-99) All ER Rep 33, HL] was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. However, in the course of time, the doctrine that the Corporation or a Company has a legal and separate entity

of its own has been subjected to certain exceptions by the application of the fiction that the veil of the Corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus 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 recognised 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."

92. In LIC of India v. Escorts Ltd. [(1986) 1 SCC 264], the Hon'ble Supreme Court in para 90 held as under:

"While it is firmly established ever since Salomon v. Salomon & Co. Ltd. [1897 AC 22 : (1895-99) All ER Rep 33, HL] was decided that a Company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances. Pennington in his Company Law (4th Edn.) states:

'Four inroads have been made by the law on the principle of separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality,

and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to the many standard textbooks on Corporation Tax, Income Tax, Capital Gains Tax and Capital Transfer Tax.

a. The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members.'

In Palmer's Company Law (23rd Edn.), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in Gower's Company Law (4th Edn.), a chapter is devoted to 'lifting the veil' and the various occasions when that may be done are discussed. In TELCO [AIR 1965 SC 40 : (1964) 6 SCR 885 : (1964) 34 Comp Cas 458] the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19. In CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819 : 63 ITR 609] the corporate

veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In *Workmen v. Associated Rubber Industry Ltd.* [(1985) 4 SCC 114 : 1985 SCC (L&S) 957] resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."

93. In *McDowell and Co. Ltd. v. CTO* [(1985) 3 SCC 230 : 1985 SCC (Tax) 391 : (1985) 154 ITR 148] the Hon'ble Court examined the concept of tax avoidance or rather the legitimacy of the art of dodging tax without breaking the law.

94. The Court in *Calcutta Chromotype Ltd. v. CCE*, (1998) 3 SCC 681 noting the above decisions stressed upon the need to make a departure from the Westminster principle based upon the observations of Lord Tomlin in the case of *IRC v. Duke of Westminster* [1936 AC 1 : 1935 All ER Rep 259] that every assessee is entitled to arrange his affairs as to not attract taxes. The Court said that tax planning may be legitimate provided it is within the framework of law.

95. The Hon'ble Court held that "Colourable devices, however, cannot be part of tax planning. Dubious methods resorting to artifice or subterfuge to avoid payment of taxes on what really is income can today no longer be applauded and legitimised as splendid work by a wise man but has to be condemned and punished with the severest of penalties. If we examine the thrust of all the decisions, there is no bar on the authorities to lift the veil of a company, whether a manufacturer or a buyer, to see it was not wearing that mask of not being treated as related person when, in fact, both, the manufacturer and the buyer, are in fact the same persons.

96. The above case was rendered in the context of valuation under the Central Excise Act, 1955. It is evident that there has been a general drift for piercing the corporate veil to determine the person who is calling the shots.

97. The Court further held that "It is not only that both the manufacturer and the buyer are associated with each other for which corporate veil may be lifted to see who is behind it but also that they should have interest, directly or indirectly, in the business of each other. But once it is found that persons behind the manufacturer and the buyer are same, it is apparent that the buyer is associated with the manufacturer, i.e., the assessee and then regard being had to the common course of natural events, human conduct and public and private business it can be presumed that they have interest, directly or indirectly, in the business of each other (refer Section 114 of the Evidence Act). It is, however, difficult to lay down any broad principle to hold as to when the corporate veil should be lifted or if on doing that, it could be said that the assessee and the buyer are related persons. That will depend upon the facts and circumstances of each case and it will have to be seen who is calling the shots in both the assessee and the buyer."

98. The Court held that "True that shareholdings in a company can change but that is the very purpose to lift the veil to find out if the two companies are associated with each other.

99. In the present case it is evident that Respondent No.2-4 were employees /directors of the appellant and it is the appellant who was calling the shots. Therefore, it did not require a detailed enquiry as to the status of the appellant quay the contesting employees.

100. The reasons for getting separate registration for 10 units may be manifold. It could have been to evade tax as also to save the appellant from industrial disputes as the appellant was also labour intensive. We are not going to speculate on those aspects in this appeal.

101. However, the fact that the appellant's own employees were in charge of these 10 units, requires no other testimony to show that the separate registration under various enactment were a mere façade. Though records were prepared to show as if the 10 units were independent units, they were indeed not independent units as they were under the control of its employees namely 2nd to 4th respondents who were senior employees and directors of the Appellant.

102. 2nd respondent, S.Stephen Daniel, WW-15 has also categorically stated that he was an employee of the appellant and worked from 1978 to June 1989 and received salary from the appellant till he resigned and he has acted as per the directions and instructions of the Appellant.

103. He has further stated that Mrs.Grace Charles, Mr.J.N.Charles and others are only paper owners of the units and the appellant was real owner of the above 10 units.

104. Several documents were produced to show the pattern of movement of the workmen/employees from one concern to another closure of a concern and shifting enblock the workers to another concern and all units were functioning the in the same campus.

105. The fact that these units carried on activities for marketing the products manufactured by the appellant also cannot be ignored.

106. We also do not find any infirmity with the observation of the learned Single Judge that the Court can take the Judicial notice to the fact that in the standard terms and conditions of employment a prudent employer will impose a condition that during the course of employment, the employee shall not either directly or indirectly engaged himself in any other employment business or other avocation. Certain Managements have also placed an embargo on employee to continue to do same nature of work after their resignation or retirement for a specified period of time by accepting an employment with their competitor or a person in the same line of business. In such circumstances, it is rather surprising to note that the three persons, who are employees of the petitioner Management were running independent units with full power of Management within the premises of the petitioner Management. There is no evidence to show under what circumstances the S.Stephen Daniel (WW-15) was a Director of the one of the concern in which the respondent workmen were employed and on his resignation from the petitioner Management, the said concern itself is stated to have been dissolved and the workmen have enmass shifted to other units, where it is alleged to be managed by Mrs.Grace Charles. If really S.Stephen Daniel was an independent owner/Director of the said concern, the question of dissolving such concern or making it a non-entity on his resignation from the petitioner company is beyond ones comprehension."

107. In our view, the fact that barring the 4th respondent Mrs.Grace Charles who was the Vice President of the appellant, no body else has come forward to deny the allegation of the contesting employees. Therefore, the findings rendered by the Labour Court as affirmed by the learned Single Judge cannot be assailed as perverse.

108. Therefore, the decisions relied on by the learned counsel for the appellant in the cases of Shama Prashant Raje v. Ganpatrao and Madura Coats Ltd., vs. Presiding Officer has been correctly distinguished by the learned Single Judge.

109. The decision of the Hon'ble Supreme Court in the case of Bharat Heavy Electricals Limited, the Hon'ble Supreme Court taking note of the reference, which was made to the Labour Court held that section 2A does not cover every type of dispute between an individual and his employer.

110. We find no reason to find fault with the reasoning adopted by the learned Single Judge that in the case on hand there was a reference under Section 2A (2) and the Labour Court in order to determine as to what relief the workmen were entitled had to necessarily go into the question of employer-employee relationship particularly when the workmen had discharged the initial burden cast upon them by examining WW-15 and marking several documents through the said witness. In the absence of any objections raised by the appellant for the evidence of WW-15, or the document marked through him, the appellant was precluded from contending that the Labour Court had no jurisdiction to adjudicate into the question as to who is the true employer.

111. Since no objection was also not raised before the Labour Court, in our view, the reasoning of the Learned Single Judge that the appellant was precluded from raising the said issue before him and not be faulted.

112. In the facts of the case it is evident that the appellant's own employees namely 2nd-4th were running 10 units and the contesting employees along with 47 employees were employed in these 10 units and were shifted enmass to another unit once registration of the unit was surrendered.

113. The 10 units had no independent existence and there was an overall control of the 10 units through its own namely 2nd-4th respondents herein.

114. There is no contra evidence show that these ten units were engaged in independent activities for 3rd parties and the appellant was not in control of the employees through these respondents.

115. The fact that senior and current and serving employees of the appellant's were in charge of the business

of controlling and running the 10 units disguised as independent units cannot be ignored. In absence of independent evidence that they were independent units, we do not find any reasons to interfere with the order of the Learned Single Judge upholding the award of the labour Court.

116. Mere obtaining of separate statutory registrations by the 10 units ipso facto does not render them as independent contractors and employers. It is clear that the contesting respondents were indeed employees of the appellant and that the appellant had created a façade by obtaining separate registrations for the 10 units even though the 10 units were situated the same geographical location and were working as divisions of the appellant catering to the needs of the appellant. They have been created for facilitating the appellant to violate various labour welfare legislations with the sole object of maximising the profit for the appellant.

117. We are thus unable to interfere with the reasoning adopted by the Learned Single Judge upholding the award passed by the labour Court.

118. In view of the same, we are inclined to dismiss the above Writ Appeal. No cost. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

kkd

To

1.The Presiding Officer,
Labour Court, Coimbatore.

+1cc to M/s.S.Ramasubramaniam & Asso., Advocate SR.No. 45022

+1cc to Mr.K.Sudalaikannu , Advocate SR.No. 45304

W.A.No.907 of 2013

and

M.P.No.1 of 2013

A.SK(24/07/2019)