BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2021

CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.154 of 2012
and
M.P(MD)No.2 of 2012
in WP(MD)No.8955 of 2011

A.P.Kalimuthu ... Appellant/Petitioner

Vs.

1.The Superintendent Engineer,
Tamil Nadu Electricity Board,
Ramanathapuram.

2.The Executive Engineer,
Distribution, Tamil Nadu Electricity Board,
Paramakudi.

3.The Assistant Executive Engineer(Distribution),
Tamil Nadu Electricity Board,
Kamuthi.

4.The Assistant Engineer(Distribution),
Tamil Nadu Electricity Board,
Perunali. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 23.12.2011 made in W.P(MD)No.8955 of 2011.

Prayer in WP(MD). 8955 of 2011 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue a Writ of Certiorari calling for the records relating to the proceedings of the Assistant Engineer Distribution, Tamilnadu Electricity Board, Perunali the 4th respondent herein in Na.Ka.En.U.Me.Po/ Vine/Perunali/Ko.Valaku/ A.No. 341/11 dated 22.07.2011/05.08.2011 and quash the same.

For Appellant : Mr.C.Meenakshi Rama Prabu

For Respondents : Mrs.Srimathy,
Standing Counsel

JUDGMENT
(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA,J.)

This Writ Appeal is directed against the order dated 23.12.2011 made in W.P(MD)No.8955 of 2011.

2.Brief facts of the case are as follows:

(i) The appellant is the Managing Director and one of the Directors of a Company namely Jaivairavan Private Limited in Ramnad. The said Mill is a Spinning Mill, which has to run for 24 hours only then it could compete in the market. The Mill was started by taking loan from the Tamil Nadu Industrial Investment Corporation and from the State Bank of India. As stated above, the Mill has to have continuous and uninterrupted supply of electricity “twenty-four by seven”. While so, the respondents Electricity Board in proceedings dated 11.09.1998 stated that there is excess use of electricity consumption above the permitted limit. The permitted limit was to use 144 HP and in the Mill additional machinery was installed and consumption was made to an extent of 126.25 HP. Therefore, the Mill had to pay a sum of Rs.3,12,896/-during the period 1998 - 1999. The Company also said to have made a part payment with protest. Thereafter, the Company also filed O.S.No.65 of 2004 on the file of the District Munsif Court, Kamuthi, for an injunction restraining the respondents Board from disconnecting the power supply pursuant to the order passed on 11.09.1998. However, the said suit was dismissed on 31.01.2011 and against the same A.S.No.61 of 2011 was filed before the Sub-Court, Paramakudi, which also ended up in dismissal on 27.02.2013 pending the above writ appeal.

(ii) As there was no power supply to the Mill, it was not possible for the Mill to run. While so, the respondents Board had filed a criminal case for theft of energy which ended in acquittal. However, a show-cause notice was issued in the year 2002 itself and against which O.S.No.85 of 2002 was filed by the Mill for declaration that the proceedings were null and void. While so, a demand notice was raised for Rs.3,12,986/- . As the same was not paid, electricity connection to Service Connection No. 916 LTCT of the Mill was disconnected on 22.06.2011 and further stated that the outstanding of Rs.3,12,986/- of the Mill, which is a private Mill, would be included in the domestic service connection of the appellant's house in service connection No.830 in the forthcoming bill. Aggrieved by the same, the petitioner filed W.P(MD)No.8955 of 2011.

(iii) As mentioned earlier, the demand made by the Board was upheld by the Civil Court by dismissing the appeal in A.S.No.6 of 2011. Therefore, the Board had demanded the consumption charges along with domestic service connection of the Managing Director. As the matter related to theft of energy, the learned Single Judge had held that the lifting of the corporate veil is permissible and therefore, upheld the demand made by the Electricity Board. Aggrieved by the same, the present Writ Appeal is filed.

3. Heard the learned counsel appearing on either side and perused the materials placed before the Court.

4. The learned counsel appearing for the appellant would argue that the Electricity Distribution Code and Supply Code contemplates only same person and not different persons and therefore, the residential connection of the Managing Director is different from the Low Tension Connection of the Mill. It was further pointed out that the concept of limited liability under the Companies Act, will have no meaning if the liability of the Company is fastened on the writ appellant's domestic connection. He further submitted that as the Company itself is defunct one with huge amount of debt and the financial institutions are taking action against them, it is open to the Respondents Board to realise its dues from the Company and they cannot proceed against the personal property of the Managing Director, who is the appellant herein, which is unethical.

5.Per contra, the learned standing counsel appearing for the respondents Board would submit that the learned Single Judge after hearing the submissions of either side passed the reasoned order, and the same requires no interference in this appeal.

6. The learned Single Judge has placed reliance on the decision rendered in **Vishnuvardhan Paper Mills Limited vs. TNEB decided on 23.11.2011 in W.P(MD)No.12507 of 2011.** The said judgment placed reliance on the decision in **Amit Products (India) Ltd., vs. Chief Engineer** reported in **2005 7 SCC 393.** In which it was held that arrears of electricity charges payable by a Company which was the previous consumer had to be cleared first. The change of Directors or by change of pattern of share holding will not make the Company a different entity.

7.In **Sangramsinh P.Gaewad vs. Shanta Devi** reported in **2005 (11) SCC 314**, it has been held that the principles of quasi partnership could be invoked when the Company in question is a family company. However, the learned counsel argued that in all the above matters, it was either the Company and its sister Company, whereas in this case, it is an individual, who was the Managing Director. Therefore, piercing the corporate veil will not arise.

8. While considering the personal liability of a Director of the Company, in case of default in payment of income tax, every Director would be jointly and severally liable. However, theft of energy is a fraud. A Director will be personally liable where he acts against the interest of the Company. When it is proved that his actions are fraudulent, he will be personally liable. In the instant case, the suit and appeal filed by the appellant herein are dismissed already pending the writ appeal. Theft of energy is an act against the Company's interest.

9. Though the Director is not personally liable as a Company is a separate legal entity, the concept of piercing the corporate veil shifts the liability. The reason is it is only group of individuals who are the beneficial owners of the body corporate property. A company being an artificial creature cannot act alone, it can act only through real persons. Any statutory privilege must be used only for legitimate business purpose. Once the legal entity is misused for false and unethical purpose, an individual cannot take refuge behind the corporate identity. In this case, the Sub-Court, Paramakudi, in A.S.No.61 of 2011, has already held that there was theft of energy by the Company by using additional equipments other than the permitted ones. There is a specific finding that the Company was carrying on the business of using additional power without sanction from the respondents Board amounting to theft of energy. This is with an intention to defraud the Electricity Board and the appellant having involved in this action, the corporate veil can be lifted. As the civil Court had already found that the said act was with the Director's knowledge , the appellant cannot absolve himself of the liability. Piercing or lifting the corporate veil is done mainly in public interest so that the misuse of security of limited liability by the Director can be restrained.

10. As pointed above, applying the principles in **Amit Products (India) Ltd., vs. Chief Engineer**, the corporate veil can be pierced when the corporate personality is found to have caused injustice and inconvenience to the interest of revenue or workmen or against public interest.

11. In such view of the matter, we do not find any infirmity in the order passed by the learned Single Judge and the same is confirmed and the writ appeal is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

+1 CC to M/s.A.V.ARUN, Advocate (SR-14618[F] dated 31/03/2021)

+1 CC to M/s.S.M.S.JOHNNY BASHA,Advocate SR-15243[F]dated 01/04/2021

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MJ(CO)
TR(23.04.2021) 5P 3C