

AD. 27.
May 17, 2022.
MNS.

WPA No. 8274 of 2022

Jai Venkatesh Concast Private Limited and another
Vs.
Damodar Valley Corporation and others

Mr. Saptanshu Bose,
Mr. S. K. Banerjee,
Mr. Suchayan Banerjee,
Mr. Souradeep Banerjee

...for the petitioners.

Mr. Prasun Mukherjee,
Mr. Deepak Agarwal

...for the DVC.

Affidavit-of-service filed in Court today be kept
on record.

The learned Senior Advocate appearing for the petitioners argues that there were previous litigations and ultimate the petitioners have been enjoying electricity connection, subsequent to reconnection of the said supply being given by the Damodar Valley Corporation (DVC) pursuant to an order of a co-ordinate Bench of this Court dated June 4, 2021 in W.P.A. 10545 of 2021.

However, when the petitioners applied for enhancement of the electricity load for the purpose of running the petitioners' business from the premises, the DVC has been insisting upon prior deposit of the security deposit for getting such enhancement.

The learned Senior Advocate submits that, as per the version of the DVC itself, as communicated by an email dated May 9, 2022, during pendency of the writ petition, the petitioners' request for instalments for deposit of additional amount of security was not being allowed as per the existing policy of the DVC and the same shall be possible only after one year of reconnection of power supply. The printout of the said purported email is handed over in Court today and be kept on record.

It is submitted that the said one-year period after reconnection will be expiring some time on or around June 11, 2022. As such, it is contended that the DVC ought to reconsider the petitioners' request for granting instalments to the petitioners for depositing the said amount of additional security.

Learned counsel appearing for the DVC, on instruction, submits that, in view of the checkered history of the matter and considering the past conduct of the petitioner, the DVC is not willing at present to grant further instalments to the petitioners for the purpose of depositing the additional security.

It is contended, by placing reliance on the order dated March 23, 2021 passed by a co-ordinate Bench in WPA No. 11020 of 2020 that, although in respect of a different writ petition, but under similar circumstances, such a prayer had been refused by the Co-ordinate Bench since the petitioners therein

were unable to demonstrate that they were in a position to make any payment to the respondent authorities or that there were any *bona fides* on the part of the petitioners.

Learned counsel further places reliance on the order dated June 4, 2021 passed by another co-ordinate Bench in WPA No. 10545 of 2021 on a writ petition filed by the present petitioners, wherein a conditional order of reconnection was made by the co-ordinate Bench, subject to the petitioners complying with the stipulations as given in the said order.

It is submitted that in view of the aforesaid events and the subsequent development in the meantime, insofar as a CIRP proceeding was initiated in respect of the petitioner no. 1-company, the fate of which is not yet known to the DVC, the DVC is not inclined to grant any further instalment to the petitioners for putting in the additional security deposit, since the DVC is no longer confident about the antecedents of the petitioners in respect of clearing dues.

Be that as it may, it appears from the printout of the email dated May 9, 2022, as handed over in Court today by the learned Senior Advocate appearing for the petitioners, that, in its reply, the DVC had apparently communicated to the petitioners that the instalment for additional amount

of security could not be allowed as per the existing policy of the DVC and that the same should be possible only after one year of reconnection of power supply. Hence, there is no impediment to the DVC considering afresh the petitioners' request for instalments upon expiry of one year from the reconnection given to the petitioners.

However, the other contention of the petitioners, insofar as Clause - 4.2.1 of Resolution No. 52 of the WBERC dated April 2, 2013 is concerned, it is evident that it is clearly within the discretion of the Distribution Licensee to grant up to 10 instalments to the consumer.

Such discretionary right of the Distribution Licensee cannot confer any corresponding right on the consumer, which would be enforceable by an order of court, particularly by way of a prerogative writ issued by this Court under Article 226 of the Constitution of India. However, since the DVC apparently took the initial stand that, in view of the existing circumstances and its policy, the DVC cannot even consider the grant of instalments prior to expiry of one year of reconnection of power supply, another opportunity ought to be given to the petitioners to renew its request for grant of instalments upon expiry of one year from the date of reconnection.

Accordingly, WPA No. 8274 of 2022 is disposed of by granting the liberty to the petitioners to apply for instalments in payment of the additional security deposit, as a pre-condition to enhancement of the electricity load enjoyed by the petitioners, after the expiry of one year subsequent to reconnection of power supply to the petitioners by the DVC.

If such a request is made subsequent to the aforementioned period, the DVC shall consider the same afresh, on the basis of the existing circumstances as on the said date and subject to and in accordance with the extant Regulations and the policy of the DVC and communicate its decision thereon to the petitioners at the earliest after making such application.

It is made clear that the respective rights and contentions of the parties in respect of the alleged dues in respect of the electricity charges from the petitioners to the DVC have not been entered into by this Court.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)