

AD-23
Ct No.09
24.03.2023
TN

WPA No. 196 of 2021
IA No: CAN 1 of 2023

Himshila Ferro Alloys Pvt. Ltd. and another
Vs.
Damodar Valley Corporation and others

Mr. Sagar Bandyopadhyay,
Ms. Soma Kar Ghosh,
Mr. Arabindo Pathak

.... for the petitioners

Mr. Joydip Kar,
Mr. Prasun Mukherjee,
Mr. Deepak Agarwal

.... for the DVC

In Re: IA No: CAN 1 of 2023

Since no affidavits have been invited, it is deemed that the allegations made in the application are not admitted by the respondents.

Substantially, what has been sought in the application is a relief regarding restoration of supply of electricity of the petitioners without demanding any further security deposit, which tantamounts to a fresh cause of action having arisen after the filing of the writ petition.

Since the same does not have a direct nexus with the cause of action of the original writ petition, IA No: CAN 1 of 2023 is disposed of by granting liberty to the petitioners to file a separate and independent writ petition challenging such cause of action.

It is made clear that the merits of the allegations made in the application have not been gone into by this court.

There will be no order as to costs.

In Re: WPA No. 196 of 2021

Learned counsel for the petitioners contends that the petitioners are entitled to interest on the amount of refund with regard to the service charges which was initially paid by the petitioners on an application for 15 MVA electricity connection.

However, subsequently the load was reduced and ultimately an agreement was entered into by the parties up to a load of 0.9 MVA. Thereafter, the petitioners had to move a writ petition for exacting refund of the extra charges paid by the petitioners of a 15 MVA connection. Ultimately, a coordinate Bench, vide order dated September 14, 2020 passed in WPA 6687 of 2020, observed that there are disputes with regard to accounts and that the petitioners were at liberty to approach the appropriate authority for payment by way of instalments, if so advised. The appropriate authorities were at liberty to consider the issue of adjustment, if so raised by the petitioners. Thereafter, the adjustment of the refundable amount

was ultimately made in or about August, 2020 in the petitioners' accounts by the DVC.

The learned Advocate appearing for the petitioners places further reliance on certain clauses of Regulation No. 46 of 2010 of the West Bengal Electricity Regulatory Commission (WBERC) to indicate that in similar circumstances but in case there is requirement of commission of a sub-station and/or any techno economic survey, there is a provision for payment of interest. It is submitted that the same principle ought to be imported to the present case, although no sub-station was required in the present case.

The learned Senior Advocate appearing for the DVC places reliance on a communication dated April 06, 2012 made by the DVC to the petitioners, annexed at pages-29 and 30 of the affidavit-in-opposition of the DVC to the writ petition. It is mentioned in Clause 2 of the terms and conditions thereof that the survey charge, service charge and service tax are provisional and subject to change depending on actual use of material during execution and also subject to adjustment with actual expenditure incurred by DVC in due course *without any interest payment* by either party.

Moreover, it is argued that the load was reduced to 0.9 MVA, after being initially reduced to 1.6 MVA, at the request of the petitioners and, as such, the DVC had no fault for such reduction at any point of time. Hence, it is argued that the prayer for interest on the refunded amount ought to be turned down.

A bare perusal of the materials annexed to the present application and the opposition thereto, to which no reply has been used by the petitioners, indicates that by a letter dated February 02, 2015, the petitioners itself had submitted a revised power supply scheme for supply of 1.6 MVA of power in place of 15 MVA and accordingly, the DVC by its letter dated June 23, 2015 had submitted a revised power supply scheme.

That apart, as rightly pointed out by the learned Senior Advocate appearing for the DVC, it is evident from the details annexed at page-43 of the writ petition, which is a part of the agreement entered into between the DVC and the petitioner no.1 on May 24, 2017, that in the details of requirement of electricity, the petitioners itself had mentioned that the initial contract demand was 0.9 MVA and the final contract demand was 1.6 MVA.

Moreover, read in conjunction with Clause 2 of the terms and conditions as indicated hereinabove,

there remains no scope of saddling the DVC with the liability to pay any interest at all on the amount refunded ultimately by virtue of the order of the learned coordinate Bench.

That apart, it has also been rightly contended by the DVC that since no prayer for interest had been made at any point of time before the coordinate Bench at the juncture when the previous order was passed, the said relief cannot be sought after the settlement of accounts at a subsequent stage.

Apart from the above considerations, it is seen that Regulation 46 of 2010 of the WBERC does not provide for payment of any interest in cases where there is no question of commissioning of a sub-station or a techno economic survey.

Hence, the argument that the petitioners are entitled to interest on the principles as incorporated in the said Regulation, cannot be accepted.

In fact, the petitioners submit that Clause 4.2 of the said Regulation applies to the petitioners, since there was augmentation of the distributing main and/or extension of feeder/line/cable which was required. The outer limit to give such connection is 270 days, as rightly argued. However, the said clause is not associated with any provision for payment of interest on the amount to be refunded.

Hence, the petitioners are not entitled to any claim of interest on the amount adjusted by the DVC in the year 2020 from any perspective whatsoever. Hence, the limited relief to which the writ petition was ultimately restricted, that is, the petitioners' claim of interest on the amount of refund, cannot but be turned down.

Accordingly, WPA No. 196 of 2021 is dismissed without any order as to costs.

However, nothing in this order shall preclude the petitioners from challenging any subsequent cause of action which might have arisen during pendency of the writ petition by way of a further writ petition.

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.)