In the High Court at Calcutta

Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

<u>W.P.A. No.4854 of 2023</u>

Centom Industries Limited and another
Vs.
West Bengal Electricity Regulatory Commission and others

For the petitioners	:	Mr. Surajit N. Mitra, Mr. Tanoy Chakraborty, Mr. Shayak Mitra, Mr. Abhijit Sarkar, Mr. Abhik Chitta Kundu, Ms. Abhipiya Sarkar
For the DVC	:	Mr. Abhratosh Majumder, Mr. Deepak Agarwal, Mr. Prasun Mukherjee
Hearing concluded on	:	15.03.2023
Judgment on	:	17.03.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioners are consumers of electricity under the Damodar Valley Corporation (DVC) and are members of the Damodar Valley Power Consumers' Association. The present writ petition has been preferred challenging a disconnection notice dated February 20, 2023 issued by the DVC to the petitioners.

2. Learned senior counsel appearing for the petitioners argues that in view of the successive orders passed by the Appellate Tribunal for

Electricity (APTEL), at present, the DVC is precluded from claiming any arrears for the tariff control periods 2017-2018 and 2018-2020.

3. It is contended that the basis of the disconnection notice impugned herein, however, was non-payment of such arrears.

4. Learned senior counsel for the DVC controverts such submissions and argues that in the impugned disconnection notice, it was specifically mentioned that the arrear amount for the control periods 2017-2018 and 2018-2020 were excluded. Hence, the said ground of challenge is not tenable in the eye of law.

5. It is further argued that previously the petitioners had left huge amounts of dues as electricity charges, which are being paid by the petitioners in agreed instalments. Although the present claim has no nexus with the said instalments, it is contended that the petitioners are habitual defaulters.

6. It is further argued that the petitioners have resorted to forum shopping inasmuch as different sets of consumers of the DVC have approached different forums, including the APTEL and this Court, by preferring appeals and applications under Article 226 of the Constitution respectively. Hence, it is argued that the writ petition ought to be dismissed.

7. Certain orders passed by the APTEL acquire relevance in the context. In a challenge preferred by one Inox Air Products Private Limited, the APTEL, *vide* order dated June 6, 2022 had passed an interim order staying the payments of arrears by the appellant therein subject to the condition that the appellant pays full tariff at the rate as determined by the impugned tariff order (for the control period 2017-2018) dated May 5, 2022 for the period commencing with the date of the impugned order and continues to do so month by month against the periodic bills raised under the contract between the parties.

8. The same tariff order was challenged by the Damodar Valley Power Consumers' Association, of which the petitioners are members. *Vide* order dated June 21, 2022, on an appeal preferred by the Association, the APTEL adopted the interim dispensation granted in the *Inox* matter. The present petitioners, in view of such interim order dated June 21, 2022 in favour of their Association, is, undoubtedly, entitled to protection under the same. By a subsequent order dated July 1, 2022, on another appeal preferred by a different consumer of the DVC, preferred against the same tariff order dated May 5, 2022 for the control period 2017-18, the APTEL adopted the same interim order in respect of all affected parties.

9. As a result, on and from July 1, 2022, all the consumers affected by the impugned tariff order for the control period 2017-18 were entitled to be protected from arrear charges levied on the basis of the said tariff order.

10. Again, *vide* order dated October 7, 2022, in another appeal filed by the Damodar Valley Power Consumers' Association against the tariff order dated May 5, 2022 (in respect of control period 2017-18) and the tariff order dated June 17, 2022 (for control period 2018-20), the APTEL granted a blanket order of stay of the said two impugned tariff orders.

11. The DVC moved Civil Appeal Nos.8091-8098 of 2022 against the said bunch of orders dated October 7, 2022 passed by the APTEL. The Supreme Court, *vide* order dated November 23, 2022 clarified the order, thereby restoring the initial order dated June 6, 2022 of the APTEL, by maintaining the stay of arrears charged on the basis of the impugned tariff orders, subject to the consumers going on paying current electricity charges raised on the basis of the impugned tariff orders.

12. As such, the current legal position is that the DVC is entitled to charge current electricity charges on the basis of the tariff orders dated May 5, 2022 (for 2017-2018) and June 17, 2022 (for control period 2018-2020), whereas the arrears chargeable on the basis of the said orders have been stayed.

13. In such perspective, the present petitions are justified in arguing that the DVC could not charge the arrears for the control periods 2017-2018 and 2018-2020.

14. However, a bare scrutiny of the impugned disconnection notice dated February 20, 2023 reveals that the said notice was issued on the basis of the non-payment of electricity charges as per energy bill raised on February 2, 2023.

15. The said energy bill is annexed at page 293 onwards of the writ petition. It is seen that the net amount charged in the bill was Rs.7,15,98,654/-.

16. The arrear installments for the control period 2018-20 was shown therein to be Rs.11,46,270/-.

17. In the impugned disconnection notice, however, the DVC clearly specified that instead of Rs.7,15,98,654/-, which was shown as the net payable amount in the bill dated February 2, 2023, upon exclusion of the arrear amount for the periods 2017-18 and 2018-20, the net payable comes down to Rs.7,04,52,384/-.

18. It is relevant to mention here that the arrears for the control period 2017-18 were not reflected in the Bill dated February 2, 2023 at all, whereas the arrear installment for the control period 2018-20, which was reflected in the said bill, was specifically excluded in the impugned disconnection notice.

19. As such, it is crystal-clear that the DVC, in the impugned disconnection notice, did not claim the arrear amounts for the control periods 2017-18 and 2018-20 from the petitioners at all.

20. Upon excluding such amount, the net payable amount came to Rs.7,04,52,384/-, out of which the petitioners had made payment of Rs.3,66,62,622/-. Hence, the DVC only claimed the balance amount of Rs.3,37,89,762/- which remained unpaid as on February 18, 2023 for the consumption month of January, 2023.

21. It is relevant to mention here that in the bill dated February 2, 2023, the due date of payment was shown as February 17, 2023. As such, the mention of February 18, 2023 as the relevant date when the arrears remained unpaid was absolutely in consonance with the bill.

22. It may further be noted that the Supreme Court, in its order dated November 23, 2022, had given protection to the extent that there would be stay of arrears regarding the control periods 2017-18 and

2018-20, on condition that the consumers go on paying current electricity bills, to be raised on the basis of the impugned tariff orders dated May 5, 2022 and June 17, 2022.

23. Thus, the claim made in the disconnection notice by the DVC was justified by all yardsticks.

24. Moreover, the DVC gave clear fifteen days' period from the date of issuance of the notice, failing which the power supply line of the petitioners was to be disconnected under Section 56(1) of the Electricity Act, 2003, read with Clause 4.1.1 of the WBERC (Electricity Supply Code) Regulations, 2013.

25. In view of the above discussions, I do not find any irregularity or illegality in the said disconnection notice issued by the DVC to the petitioners. The same, being in consonance with all the orders of the APTEL and the Supreme Court, does not call for any interference by the Writ Court.

26. Insofar as the argument regarding this Court having turned down the challenge to the 2017-18 control period tariff order dated May 5, 2022 is concerned, it was categorically mentioned in this Court's order that the ground of challenge was whether a single year tariff control period was tenable in the eye of law under the multi-year tariff structure to followed by the licensees. Such ground was rejected and the writ petition was dismissed. As such, it cannot be said that there was any bar on the petitioners from challenging the tariff orders dated May 5, 2022 and June 17, 2022 on merits otherwise than on the point decided by this Court.

27. Insofar as the allegation of forum shopping is concerned, the same is also not acceptable, since the appeals preferred before the APTEL under Section 111 of the Electricity Act, 2003 and the challenge thrown to the principle on which the tariff order was determined for the relevant control period under Article 226 of the Constitution were entirely different in scope. As such, the APTEL appeals operate in a different field than the challenge thrown before this Court under Article 226 of the Constitution of India. Hence, it cannot be accepted that the petitioners have been forum shopping.

28. However, in view of the observations made above, the present challenge cannot be allowed, since there was no illegality and/or irregularity in the disconnection notice issued on February 20, 2022 by the DVC, which is impugned herein.

29. Accordingly, WPA No.4854 of 2023 is dismissed on contest without any order as to costs.

30. However, it is made clear that nothing in this order shall prejudice the rights and contentions of the parties in the pending challenges before the APTEL.

31. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)