In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 5079 of 2023

H R Ispat Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5213 of 2023

Xpro India Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5214 of 2023

Ruhr Ispat Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5215 of 2023

HMB Ispat Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5227 of 2023

Shree Ramdoot Rollers Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5231 of 2023

HP Ispat Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5244 of 2023

Venky Hi-Tech Ispat Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5250 of 2023

Expandable Enterprise Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5270 of 2023

Calstar Sponge Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5273 of 2023

Shree WarisPiya Steel Company Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5297 of 2023

Alishan Steels Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5301 of 2023

SumangalIspat Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5306 of 2023

Jai Ambey Metals Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5324 of 2023

Haldia Steels Private Limited Unit-I and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5642 of 2023

Surya Alloy Industries Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5643 of 2023

Metsil Exports Private Limited and another
Vs.
The West Bengal Electricity
Regulatory Commission and others

With

W.P.A. No. 5822 of 2023

M/s Ispat Damodar Private Limited and another
Vs.
Damodar Valley Corporation and others

With

W.P.A. No. 5825 of 2023

M/s Sonic Thermal Private Limited and another
Vs.
Damodar Valley Corporation and others

For the petitioners in all the writ petitions except WPA 5079 of 2023, WPA 5324 of 2023, WPA 5822 of 2023 and WPA 5825 of 2023	:	Mr. Bikash Ranjan Bhattacharya, Mr. Surajit Nath Mitra, Mr. Tanoy Chakraborty, Mr. Siddharth Shroff, Mr. Shyak Mitra
for the petitioners in WPA 5079 of 2023	:	Mr. Tanoy Chakraborty, Mr. Shayak Mitra, Mr. Abhijit Sarkar, Mr. Abhik Chitta Kundu, Mr. Abhipiya Sarkar
For the petitioners in WPA 5324 of 2023	:	Mr. Tanoy Chakraborty, Mr. Debsoumya Basak, Mr. Viswajit Neogi (Dasgupta)

For the petitioners in WPA 5822 of 2023 and WPA 5825 of 2023	:	Mr. Sagar Bandopadhyay, Ms. Sutapa Sanyal, Mr. Koushik Chatterjee
For the DVC in all the writ petitions except in WPA 5213 of 2023	:	Mr. Prsun Mukherjee,, Mr. Deepak Agarwal
For the DVC in WPA 5213 of 2023	:	Mr. Abhratosh Majumder, Mr. Prasun Mukherjee, Mr. Deepak Agarwal
Hearing concluded on	:	13.03.2023
Judgment on	:	16.03.2023

Sabyasachi Bhattacharyya, J:-

1. The present bunch of writ petitions arise out of disconnection notices issued by the Distribution Licensee, being the Damodar Valley Corporation (DVC), on the allegation of non-payment of arrears in terms of the decision dated May 5, 2022 passed by the West Bengal Electricity Regulatory Commission (WBERC).

2. By separate orders passed in different appeals preferred against such WBERC decision for the control period 2017-18, the Appellate Tribunal for Electricity (APTEL) constituted under Section 110 of the Electricity Act, 2003 (for short, "the 2003 Act") on June 6, 2022 and June 21, 2022, granted interim protection to the respective appellants/consumers from payment of arrears in terms of the WBERC decision, subject to the

condition that the appellants pay full tariff at the rate as determined by the impugned order for the date commencing from the date of the impugned order and continue to do so month by month against periodic bills raised by the licensee.

3. *Vide* order dated July 1, 2022, the APTEL took into consideration that the impugned order of the WBERC may impel other similarly affected parties to approach the Tribunal by independent appeals on identical grounds, leading to multiplicity of proceedings. In order to preclude such flood of appeals, it was observed that the interim relief granted in the earlier two matters be adopted for the purposes of appeals and suitably modified so that there is no need for other similarly affected parties to approach by fresh appeals. Accordingly, the APTEL, by the said order, stayed the direction of the respondent commission for payment of arrears in respect of all similarly affected parties, on condition that the said parties comply with the conditions as imposed by the APTEL in the earlier orders.

4. On October 17, 2022, while taking up a challenge against orders dated May 5, 2022 and June 17, 2022, for the control periods of financial years 2017-18, 2018-19 and 2019-20, the APTEL passed an interim order staying the orders impugned in the appeals before the APTEL till a final decision was taken on the interim applications.

5. On a challenge being preferred by the DVC against the said order, passed in eight appeals, the Supreme Court, *vide* order dated November 23, 2022, clarified that the stay would be subject to the respondent/consumers (appellants before the APTEL) paying the full tariff at the rate as determined by the WBERC from the date of passing of the impugned orders, that is,

May 5, 2022 and June 17, 2022. The order dated June 6, 2022 of the APTEL was restored to that extent.

6. Learned senior counsel appearing for the petitioners argue that by issuing the present impugned disconnection notices on the ground of non-payment of arrears in terms of the WBERC orders, the DVC has patently flouted the order dated July 1, 2022 passed by the APTEL which was substantially maintained by the Supreme Court.

7. It is contended that apart from the fact that the APTEL order was binding on the DVC, by virtue of picking and choosing between its consumers for the purpose of issuance of disconnection notices for non-payment of arrears without any reasonable basis of classification, the DVC has flouted the right to equality enshrined in Article 14 of the Constitution of India.

8. Learned senior counsel appearing for the DVC in all the matters argues that there is no question of violation of any order of the APTEL by the DVC. It is contended that in all the orders barring that dated July 1, 2022, interim protection had been given to the respective appellants therein.

9. It is contended that the Supreme Court, *vide* order dated November 23, 2022, modified the orders of the APTEL to the extent that the benefit of the APTEL order dated June 6, 2022, which was the initial interim order of protection granted by the APTEL, would be restored to the extent that it would be applicable to the individual appellants in the said matters. As such, it is submitted that the interim order passed by the Tribunal, after the decision of the Supreme Court, cannot be said to operate in respect of all and sundry consumers of the DVC.

10. Hence, it is argued that the disconnection notices issued by the DVC to the present petitioners, who were not the appellants before the APTEL, was justified.

11. Learned senior counsel for the DVC places reliance on a judgment of the Supreme Court reported at *(2012) 1 SCC 321 [Ashok Kumar Lingala Vs. State of Karnataka and others]* for the proposition that the power to make an interim order is, except where it is specifically taken away by the statute, implicit in the power to make a final order. The law does not permit the making of an interim order by one authority or court pending adjudication of the dispute by another except where it is exercised by the authority who has to make the final order or an authority exercising appellate or revisional jurisdiction against an order granting or refusing an interim order.

12. In the present case, it is submitted, the order sought before this Court ought to have been prayed for before the APTEL itself and/or the Supreme Court and not this Court under Article 226 of the Constitution of India.

13. In fact, it is argued, if the relief sought by the petitioners is granted, this Court would virtually be sitting in review over its own order dated February 17, 2023, whereby the challenge to the WBERC decision in respect of the control period 2017-18 was turned down.

14. It is submitted that the said order of this Court was passed subsequent to all the orders of the APTEL.

15. It is further argued that certain subsequent challenges before the APTEL in similar lines were dismissed as withdrawn by the APTEL. In view of the changed circumstance of this Court's order, which has not yet been

successfully challenged before any superior forum, it is contended that the APTEL orders have been rendered academic.

16. Learned senior counsel for the DVC cites *M/s. East India Commercial Co. Ltd. Calcutta and another Vs. Collector of Customs, Calcutta*, reported at *AIR 1962 SC 1983,* wherein the Supreme Court observed that an administrative tribunal cannot ignore the law declared by the highest court in the State. In the present case, it is argued, after the order of this Court dated February 17, 2023, the APTEL did not have jurisdiction to pass any order contrary to the same, thereby reviving the challenge to the 2017-18 WBERC adjudication.

17. Upon hearing learned counsel for the parties, it is seen that the short premise of the present challenge revolves around the question as to whether the DVC acted without legal authority in issuing the disconnection notices by discriminating between different consumers standing on similar footing and in violation of the APTEL order dated July 1, 2022.

18. For deciding the issue, the scope of the order dated June 6, 2022 passed by the APTEL is required to be looked into. By the said order, annexed at page 155-156 of the writ petition, the APTEL stayed the direction of the WBERC for payment of arrears subject to the condition that the appellants therein pay full tariff at the rate as determined by the impugned order dated May 5, 2022 and continue to do so month by month against periodic bills raised under the contract between the parties.

19. The tenor of the order dated June 21, 2022 was similar.

20. Both the aforesaid orders applied to their respective appellants only.

21. However, a similar order was repeated by the APTEL *vide* its decision dated July 1, 2022, whereby an element of judgment *in rem* was introduced by the APTEL insofar as it observed that the interim relief granted in the earlier two matters be not only adopted for the purposes of the appeal at hand but also suitably modified so that there is no need for other similarly affected parties to approach by fresh appeals. Accordingly, an interim protection was granted by the APTEL by staying the direction of the WBERC for payment of arrears subject to the condition that the "affected parties, including the appellant", pay full tariff at the rate as determined by the impugned order of the WBERC dated May 5, 2022 for the control period 2017-18.

22. The order dated October 17, 2022 passed by the APTEL, however, was passed with regard to a challenge to two impugned orders of the WBERC dated May 5, 2022 as well as June 17, 2022, rendered in respect of the financial years 2017-18, 2018-19 and 2019-20.

23. In the said matter, a blanket stay was granted by the APTEL in respect of the impugned orders which would, obviously, benefit all the consumers of the DVC who were affected by the said orders.

24. We are next required to explore the ambit of the Supreme Court order passed on November 23, 2022 in the appeal preferred against the APTEL order dated October 17, 2022. While clarifying the matter, the Supreme Court directed the respondents therein, who were appellants before the APTEL in the matters-in-question, to pay the full tariff at the rate as determined by the WBERC starting from the date the WBERC had passed the impugned orders, that is, from May 5, 2022 and June 17, 2022. It was

also observed that the order dated June 6, 2022 of the APTEL was restored "to that extent".

25. Such 'clarification' and the expression "restored to that extent" used by the Supreme Court has been sought to be interpreted by the DVC to the effect that the order dated June 6, 2022, which was the basis of the order dated July 1, 2022 of the APTEL, was restricted to the parties to the appeal only.

26. If such interpretation is to be accepted, of course, the order has to be restricted to the respondents before the Supreme Court, who were the appellants in the matters before the APTEL when the order dated October 17, 2022 was passed, all of whom were not common with the appellants in the order dated June 6, 2022 by the APTEL.

27. The alternative possible view is that the clarification given by the Supreme Court and the extent to which the order dated June 6, 2022 was restored pertained not to merely the appellants in the said matter but referred to the condition of continuous payment of current bills in terms of the WBERC decision being re-imposed in order for the stay to continue operating.

28. The second view is more plausible, since the Supreme Court was not hearing any challenge against the APTEL order dated July 1, 2022, which has never been challenged successfully before any forum. The '*in rem*' element introduced in the said order, thus, stands unchallenged till date.

29. Hence, it cannot be said that the binding effect of the said interim order passed in similar matters by the APTEL with regard to all similarly affected consumers of the DVC was never modified by the Supreme Court.

30. A close look into the order dated October 17, 2022 passed by the APTEL, which was under challenge before the Supreme Court, reveals that the

same incorporated a blanket order of stay, *sans* the condition of continuous payment of current electricity charges in terms of the WBERC order.

31. The clarification/modification introduced by the Supreme Court to the said order was restricted to the re-imposition of the condition for continuance of the stay order passed by the APTEL *vide* order dated October 17, 2022.

32. Read harmoniously and in conjunction with all the orders passed by the APTEL, in particular the initial order dated June 6, 2022, what was revived by the Supreme Court was the initial order of the APTEL dated June 6, 2022, by which the appellants therein were protected from paying arrear charges subject to the condition of going on paying current charges as per the WBERC decision. Again, the operation of the said order was extended to all similarly affected consumers of the DVC *vide* order dated July 1, 2022 passed by the APTEL, which still stands.

33. Thus, the basis of the order dated July 1, 2022, that is, the order dated June 6, 2022 was merely revived by the Supreme Court with the condition imposed therein, without effecting any change to the *in rem* perspective of the order dated July 1, 2022, which never fell for consideration or was discussed by the Supreme Court in its order dated November 23, 2022 at all.

34. Inasmuch as the order dated February 17, 2023 passed by this Court is concerned, the same was restricted to a challenge thrown against the WBERC adjudication regarding the control period 2017-18 on the specific ground that the said tariff order was based on a single year control period, which was allegedly against the multi-year tariff structure contemplated in

the 2003 Act and Regulations. Such issue is reflected clearly from second paragraph of the said judgment.

35. On the other hand, the challenges pending before the APTEL are on the merits of the WBERC tariff orders dated May 5, 2022 and June 17, 2022, with regard to the control periods 2017-18, 2018-19 and 2019-20. Such challenge on the merits has to be decided independently of the adjudication by this Court.

36. The writ petitions were dismissed by this Court by the order dated February 17, 2023 upon the court coming to the conclusion that the single year tariff structure resorted to by the WBERC was valid in law. However, not a single sentence was dedicated to the merits of the case, more so since an appeal is provided under Section 111 of the Electricity Act against a WBERC order on its merits.

37. Hence, it cannot, by any stretch of imagination, be argued that the dismissal of the said challenges by this Court automatically renders the appeals pending before the APTEL infructuous. Hence, the argument made by the DVC that in view of the said order of this Court, the disputes pending before the APTEL have been rendered infructuous, cannot be accepted. Moreover, as held earlier, the scope of the challenge under Article 226 before this Court pertained to the Constitutionality and legality of the single year tariff structure adopted by the WBERC while passing the impugned tariff orders. The challenge on merits does not lie before this Court under Article 226 of the Constitution of India but a specific appellate forum has been designated in Section 111 of the 2003 Act, against which

an appeal has been provided for to the Supreme Court under Section 125 of the said Act. Thus, the above contention of the DVC is also turned down.

38. Insofar as the judgment of *Ashok Kumar Lingala (supra)* is concerned, the proposition laid down therein does not have a direct bearing on the present case. The proposition was that the law does not permit making of an interim order by one authority or court pending adjudication of the dispute by another.

39. In the present writ petitions, the writ petitioners do not seek a fresh interim order from this Court in any manner whatsoever but pray for the relief that the DVC be consistent, without undue discrimination, in application of the interim order dated July 1, 2022 of the APTEL in respect of all its consumers.

40. Although the premise/ground of such prayers is the order of the APTEL dated July 1, 2022, no similar further order is sought from this Court, thereby obviating the applicability of the proposition laid down in *Ashok Kumar Lingala (supra).*

41. Insofar as *M/s. East India Commercial Co. Ltd. Calcutta (supra)* is concerned, the ratio laid down therein is also not applicable to the present case. First, the APTEL is not a mere Administrative Tribunal over which this Court, being the highest court of the State, exercises revisional or appellate or supervisory jurisdiction as such. The APTEL is constituted under Section 110 of the Electricity Act, 2003, which is a special statute in the branch of electricity legislation. Section 125 of the said Act clearly provides for an appeal to the Supreme Court for any person aggrieved by any decision of the APTEL. Since the Supreme Court is one notch abovein

Indian judicial hierarchy than this Court and other High Courts within the Constitutional framework of our country, it cannot be said that this Court exercises parallel superior jurisdiction with the Supreme Court over orders passed by the APTEL.

42. Hence, the principle laid down in *M/s. East India Commercial Co. Ltd. Calcutta (supra)* is not attracted to the present case at all. This Court cannot be said to "declare" law which would be binding as such on the APTEL, which is a parallel appellate authority in its own right even as per the concerned statute that is the 2003 Act and not a mere "Administrative Tribunal" as contemplated in the cited judgment of the Supreme Court.

43. Hence, the said ratio is also not apt for adjudication of the present case.

44. In view of the above discussions, no intelligible criterion has been demonstrated by the DVC to discriminate between the consumers affected by the impugned orders of the WBERC, who stand amongst themselves on equal footing.

45. Insofar as the APTEL order dated July 1, 2022, which governs all such affected consumers of the DVC, is concerned, the same applies in full rigour in respect of all the present writ petitioners, who are similarly affected consumers of the DVC.

46. Hence, the discrimination meted out by the DVC in issuing the disconnection notices against the present writ petitioners selectively is palpably without jurisdiction and *de hors* the law, causing gross miscarriage of justice which is liable to be set aside under Article 226 of the Constitution of India, being violative of the doctrine of equality embedded in Article 14 of the Constitution of India.

47. Hence, WPA No.5079 of 2023, WPA No.5213 of 2023, WPA No.5214 of 2023, WPA No.5215 of 2023, WPA No.5227 of 2023, WPA No.5231 of 2023, WPA No.5244 of 2023, WPA No.5250 of 2023, WPA No.5270 of 2023, WPA No.5273 of 2023, WPA No.5279 of 2023, WPA No.5301 of 2023, WPA No.5306 of 2023, WPA No.5324 of 2023, WPA No.5642 of 2023, WPA No.5643 of 2023, WPA No.5822 of 2023, WPA No.5825 of 2023 are allowed, thereby setting aside the impugned disconnection notices issued by the DVC against the respective petitioners. The said impugned notices are hereby quashed. The DVC shall not take any coercive steps in terms of the said disconnection notices against any of the writ petitioners. In the event the notices have already been given effect to in the meantime, *status quo ante* will be restored in such cases of disconnection by restoring the said electricity connections of the disconnected petitioners within a fortnight from date.

48. There will be no order as to costs.

49. Urgent certified copies, if applied for, be issued to the applicants subject to compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)