In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 7644 of 2023

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

For the petitioners	:	Mr. Subir Sanyal, Mr. Siddhartha Banerjee, Mr. Debasish Karmakar, Mr. Arya Nandi, Mr. Parikshit Lakhotia
For the DVC	:	Mr. Joydip Kar, Mr. Prasun Mukherjee, Mr. Deepak Agarwal
Hearing concluded on	:	09.08.2023
Judgment on	:	17.08.2023

Sabyasachi Bhattacharyya, J:-

1. The conspectus of the challenge is very short. The petitioner no.1-Company, of which the petitioner no.2 is a director, was a consumer of electricity from the respondent no.1-Damodar Valley Corporation (DVC). However, due to non-payment of electricity charges, the connection of the petitioner no.1 was severed. Subsequently, the petitioners sought restoration of the connection upon payment of the dues.

2. The DVC raised a bill, *inter alia*, stipulating a particular amount payable as security deposit. The present challenge has been thrown by the petitioners only against the quantum and basis of calculation of the security deposit.

3. As a brief aside, a challenge, being WPA No.169 of 2023, was preferred in connection with the alleged previous dues, which came up for an interlocutory order before a co-ordinate Bench. Certain directions of payment were passed therein. However, those issues are not gone into now since the parties do not agitate those herein.

4. Learned counsel for the petitioner argues that there is disparity in the amount of security charges claimed by the DVC at different points of time. Whereas, when the petitioner no.1 was enjoying electricity previously, with a contract demand of 0.9 MVA, the security deposit charged by the DVC was Rs.23,49,000/-. However, although the contract demand at present is 0.5 MVA, which is about half the previous contract demand, the security deposit charged is about double, to the tune of Rs.43,23,000/-. *Ex facie*, such claim is exorbitant, it is argued.

5. Learned counsel for the petitioner next contends that the DVC is taking a contradictory stand, once insisting that the connection to be given to the petitioners would be a reconnection, thereby implying that the old connection is subsisting, and, in other places, while assessing security deposit, proceeding on the premise that it will be a new connection.

6. Apart from such contradiction, the petitioners also argue that the DVC ought to give credit to and adjust the security deposit still lying with the DVC in connection with the previous deposits made by the petitioners.

7. Lastly, learned counsel for the petitioners submits that the load factor of 0.65, taken by the DVC as the basis of calculation of the security deposit is without any reasonable basis whatsoever. Such whimsical assessment by the DVC has unnecessarily raised the security deposit, it is argued.

8. Learned senior counsel appearing for the DVC submits that there has been no contradiction in the stand of the DVC. Whereas the petitioner was a consumer previously, the said jural relationship between the petitioner and the DVC was snapped after 180 days from the disconnection of electricity, in terms of the relevant clause of the agreement between the parties as well as the extant WBERC Regulations.

9. It is argued that there are different variables for calculating the security deposit. The load factor is roughly equivalent to the contract demand divided by the gross energy. It is submitted that the gross energy consumed by the petitioner on previous occasions varied from time to time, which led to the calculation of security deposit on such occasions.

10. It is further argued that there have been two tariff revisions since the previous calculations, which also contributed to the increase of the security deposit. Learned senior counsel places reliance on the copies of such tariff revision orders, which have been annexed to the affidavit-in-opposition of the DVC.

11. Learned senior counsel reiterates that the contract between the parties ended after 180 days from disconnection and the fresh connection is to be treated as a new connection.

12. Thus, the basis of calculation of the security deposit, including the load factor, is the demand of the petitioner. It is, in any event, subject to adjustment after twelve months, based on the actual consumption by the consumer, as per the relevant clause in the agreement between the parties and the prevailing Regulations of the WBERC. It is submitted that the previous balance of security deposit amount has already been adjusted, as reflected in the communication by the DVC dated January 4, 2023.

13. Upon hearing learned counsel for the parties, it is clearly revealed from the communication of the DVC dated January 4, 2023, that the DVC calculated the security deposit to be paid by the petitioner on the contract demand of 0.5 MVA to be Rs.43,23,000/-.

14. In the same breath, the DVC has clarified that the security deposit available after invocation of bank guarantee of Rs.23.49 lakh was Rs.8,56,442/. After adjusting necessary payables, the said remaining balance has been deducted from the total amount of security deposit of Rs.43,23,000/-, arriving at the figure of Rs.34,66.558/- which is the amount claimed by the DVC from the petitioner at present.

15. Insofar as the alleged contradiction in stands of the DVC is concerned, the said argument cannot be accepted. The expression "reconnection" is used, wherever it is, obviously since the petitioner had been enjoying electricity from the DVC in the recent past, and need not *per se* connote that the previous contract is subsisting.

16. Clause 23 of the Power Supply Agreement between the parties stipulates that if the power supply to any consumer remains disconnected continuously for a period of 180 days, where the disconnection has been effected in compliance with any of the provisions of the Electricity Act, 2003 and clauses of the agreement, the agreement with the consumer shall be deemed to have been terminated with consequential effect on expiry of the said period of 180 days.

17. Apart from that, Clause 4.6.1 of Regulation 55 of the WBERC, the 'Electricity Supply Code', also contains the same stipulation. Since, admittedly, 180 days have passed after the previous disconnection, for all practical purposes, the agreement between the parties has terminated by operation of the said provision and the connection now sought by the petitioner would be a new connection for all practical purposes.

18. Clause 16 of the agreement between the parties provides for the charging of security deposit. In case of a new applicant, the estimated consumption based on its declared load shall be treated as an advance for the consumer, which shall be appropriately adjusted with the amount of security deposit that would eventually be determined on the basis of its first 12 months' consumption when the latter time-period is over. The provision as to existing consumers is not required to be looked into, since the present application is to be treated is one for new connection, as discussed above.

19. Hence, in any event, the challenge preferred in the present writ petition is premature, since the assessment made is merely on the basis of an estimate, arrived at on the basis of the declared load of the petitioner, and shall be appropriately adjusted, by being treated to be an advance, after the first 12 months' consumption.

20. The petitioners also allege disproportionate variation between load factor and security deposit as opposed to previous periods when the earlier contract was subsisting. However, the said argument is not tenable. The bill dated April 2, 2020, annexed by the petitioners to the writ petition, shows the load factor to be 4.93 and the gross energy consumed, in KWH, is 20,320, whereas in the bill dated May 2, 2020, that is, for the very next month, the load factor percentage is 0.36 whereas the gross energy in KWH is only 510. Again, in the bill dated July 1, 2020, the load factor percentage is 3.49 and the gross energy is 11,960. Thus, a perusal of the previous bills shows that the load factor varied hugely over a period of only a few months, being tied up with the gross energy consumed by the petitioner no. 1 during the said period vis-à-vis the contract demand, although the contract demand remained 0.9 MVA all along. Hence, the load factor is not the only determinant of security deposit. At this juncture, when a new connection is to be given, only a reasonable estimate can be made by the licensee, which has precisely been done by the DVC.

21. In fact, if an average of the load factor for the said period is taken, it would much exceed 0.65, which has been estimated as load factor in the present case by the DVC.

22. Thus, the average load factor of 0.65, calculated by the DVC as the basis of arriving at the figure of security deposit, cannot be faulted in any manner whatsoever.

23. The challenge of the petitioner to the break-up of calculation for the security deposit revolves primarily around the average load factor. Insofar as the other factors are concerned, no specific challenge has been thrown. Hence, those are not gone into.

24. Hence, on a comprehensive perusal of the materials on record and the relevant law and the provisions of the contract between the parties, the calculation of the DVC in respect of the security deposit payable by the petitioner for the connection-in-question, to the tune of Rs.43,23,000/-, is not exorbitant or arbitrary.

25. Moreover, the DVC has given due credit to the current amount lying with it. After adjusting current dues and invocation of bank guarantee of Rs.23.49 lakh, the remaining amount has been deducted from the security deposit calculated, after which, the claim of DVC is to the tune of Rs.34,66,558/-, which is fully justified.

26. Hence, there is no necessity to interfere with the impugned assessment of security deposit in any manner whatsoever.

27. Accordingly, WPA No.7644 of 2023 is dismissed on contest without, however, any order as to costs.

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

(Sabyasachi Bhattacharyya, J.)