

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 13133 of 2023

**Jai Balaji Industries Limited and another
Vs.
Damodar Valley Corporation and others**

With

WPA No. 13141 of 2023

**Jai Balaji Industries Limited and another
Vs.
Damodar Valley Corporation and others**

With

WPA No. 13326 of 2023

**Jagadamba Ispat Pvt. Ltd. and another
Vs.
Damodar Valley Corporation and others**

With

WPA No. 13333 of 2023

**Shree Waris Piya Steel Company Pvt. Ltd.
and another
Vs.
Damodar Valley Corporation and others**

With

WPA No. 13475 of 2023

**Maan Concast Private and another
Vs.
Damodar Valley Corporation and others**

With

WPA No. 13476 of 2023

**Jai Ambey Metals Pvt. Ltd. and another
Vs.
Damodar Valley Corporation and others**

With

WPA No. 13660 of 2023
City Alloys Private Limited and another
Vs.
Damodar Valley Corporation and others

For the petitioners in
WPA 13133 of 2023 and
WPA 13141 of 2023.

: Mr. Surajit Nath Mitra,
Mr. Kishore Datta,
Mr. Tanoy Chakraborty,
Mr. Chandak Dutta

For the petitioners in
WPA 13326 of 2023,
WPA 13333 of 2023,
WPA 13475 of 2023 and
WPA 13660 of 2023.

: Mr. Tanoy Chakraborty,
Mr. Debsoumya Basak,
Mr. Viswajit (Dasgupta) Neogi

For the DVC in
WPA 13133 of 2023.

: Mr. S. N. Mookherjee,
Mr. Abhratosh Mazumdar,
Mr. Prasun Mukherjee,
Mr. Deepak Agarwal

For the DVC in
WPA 13141 of 2023,
WPA 13326 of 2023,
WPA 13333 of 2023,
WPA 13475 of 2023,
WPA 13476 of 2023 &
WPA 13660 of 2023

: Mr. Prasun Mukherjee,
Mr. Deepak Agarwal

Hearing concluded on

: 22.06.2023

Judgment on

: 03.07.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioners in all the matters have challenged the Security Deposit charged by the respondents/Damodar Valley Corporation (DVC) for the period April, 2022 to March, 2023.
2. Learned counsel for the petitioners contends that several extraneous components have been clubbed to the Security Deposit chargeable under law by the Distribution Licensee.
3. It is argued that, as per Component B of the Bill, the total gross from “Other Bill” has been imposed.
4. Component C is the average gross of Components (A+B)/12, whereas Component A is the total gross from Monthly Bill. Such “Other Bill” is *de hors* the provisions of Section 47 of the Electricity Act, 2003 (hereinafter referred to as, “the 2003 Act”).
5. Component D, that is, the Contract Demand (CD) is multiplied with Component C to get the average monthly gross in Component E. Over and above, Component F, that is the Security Deposit Multiplier of 3, has also been applied.
6. Learned senior counsel places Section 47, which speaks about “reasonable” security as may be determined by Regulations. For all monies which become due to the Licensee--
 - a) in respect of the electricity supplied; or
 - b) where any electric line or plant or meter is to be provided for supplying electricity, in respect of the provision of such line or plant or meter.

7. Section 181(2)(v) stipulates that the State Commissions may, by notification, make Regulations consistent with the Act and the Rules to provide, *inter alia*, for reasonable security payable to the Distribution Licensee under sub-section (1) of Section 47.
8. In terms of Section 181, it is argued, Regulation 52 dated April 2, 2013, with regard miscellaneous provisions, was notified by the West Bengal Electricity Regulatory Commission (WBERC). Clause 4.1 thereof stipulates that, subject to the provisions of the Act, the Distribution Licensee may require any person to give Security Deposit with such Licensee, for an amount covering three months of estimated bills of consumption of electricity at the prevailing rates. The estimated consumption shall be based on twelve months' consumption of the previous period as on April 1 of each year or estimated consumption based on his application in case of a new applicant.
9. The proviso thereto says that in case of a new applicant, the estimated consumption based on his declared load shall be treated as an advance, which shall be appropriately adjusted with the amount of security deposit that would eventually be determined on the basis of his first twelve months' consumption, when the latter time-period is over.
10. Learned senior counsel for the petitioner next places a bill raised by the DVC, indicating Contract Demand of 13,000/-, which contains, *inter alia*, demand charge, additional demand charge, net demand charge as well as West Bengal Electricity Duty along with Energy

Charge. Such charges have been taken into consideration for calculating the security deposit, which is *de hors* the law. Learned senior counsel submits that Section 5 of the Bengal Electricity Duty Act, 1935 envisages that in case of energy supplied by a licensee, the licensee shall collect and pay to the State Government the electricity duty payable under Section 3 of the Act on the energy supplied by him to consumers.

11. The duty so payable shall be a first charge on the amount recoverable by the Licensee for the energy supplied by him and shall be a debt due by him to the State Government. The proviso to Section 5(1) stipulates that the licensee shall not be liable to pay the duty in respect of any energy supplied by him for which he is unable to recover his dues. As such, it is argued that, within the contemplation of the said provision, there is no incumbent duty of the licensee to pay the electricity duty to the State Government in the event such duty has not been recovered from the consumer. The Licensee merely acts as a collecting agent for the State Government. As such, it does not run the risk of not being able to recover such amount from the petitioner, yet having to pay the same to the Government. Hence, such duty cannot come within the contemplation of 'Security Deposit' as provided for in Section 47 of the 2003 Act.
12. Learned senior counsel for the petitioner next relies on certain Clauses of Regulation 48 dated April 25, 2011 of the WBERC, pertaining to terms and conditions of tariff.

13. In Clause 4.3.5 of the said Regulations, Demand Charge is stipulated to be levied on the basis of maximum demand recorded during the month, or 85 per cent of the Contract Demand, whichever is higher.
14. Again, Clause 4.10 of the same contemplates cases where no consumption of energy has taken place, when the fixed charge or demand charge of a consumer shall be calculated on the basis of the Contract Demand.
15. As per Clause 4.11, when a licensee bills a consumer for consumption of electricity covering only a part of a month caused by discontinuance of consumership before the expiry of a full month, the computation of fixed charge or demand charge shall be made for the entire month. Hence, the said Regulations are already lopsided against the consumer. Hence, in addition, it is argued that the demand charge ought not to be included within the Security Deposit.
16. Learned senior counsel also argues that the power to recover charges has been stipulated in Section 45 of the 2003 Act, which is limited to prices to be charged for the supply of electricity in pursuance of Section 43 in accordance with the tariffs fixed from time to time. The charges for electricity supplied, as per Section 45(3), include a fixed charge in addition to the charge for the actual electricity supplied and thereon or other charges in respect of any electric meter or plant provided by the Distribution Licensee. However, the same is dissociated with Section 47, which restricts Security Deposit to the electricity supplied to the person and charges in respect of provisions of such line or plant or meter which may be provided to the consumer.

- 17.** Learned senior counsel appearing for the respondents/DVC argues that the Security Deposit was claimed by the DVC absolutely in accordance with law.
- 18.** It is contended that no electricity duty has been levied while calculating the Security Deposit.
- 19.** Section 47(2) of the 2003 Act, it is argued, stipulates that where any person has not given such security as mentioned in sub-section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require the person, within 30 days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provisions of such line or plant or meter. In view of the petitioner having overdrawn electricity and allegedly exceeded the contract demand, the applicable amount of security deposit was calculated on the basis of the total Contract Demand. In doing so, it is argued that the DVC had foregone the excess amount of units consumed by the DVC over and above the Contract Demand.
- 20.** Section 47(1)(a), which pertains to security, contemplates that the Security Deposit includes all monies which may become due to the licensee “in respect of” the electricity supplied to such person, hence including all expenses incurred by the licensee for and in respect of electricity supplied. It is argued that the phrase ‘in respect of’ is of wide connotation and includes all charges incurred by the licensee for the supply of electricity.

21. In fact, Section 5 of the Bengal Electricity Duty Act, 1935 (for short, “the 1935 Act”) has been misinterpreted by the petitioner, it is argued by the DVC. The language used in Section 5(1) of the 1935 Act is “the duty so *payable* shall be a first charge on the amount *recoverable* by the licensee for the energy supplied and shall be a debt due by him to the State Government”.
22. The licensee is to collect and pay to the State Government at the prescribed time and in the prescribed manner, the electricity duty *payable* under Section 3 on the energy supplied by him to consumers. Thus, it is argued that the contemplation of the said statute is that the duty shall be calculated on the amount “payable” and shall be a first charge on the amount “recoverable” by the licensee and not merely the duty which shall be paid on actual recovery. The proviso to sub-section (1) of Section 5 stipulates that the licensee shall not be liable to pay the duty in respect of any energy supplied by him for which he has been unable to recover his dues.
23. It is submitted that on a composite reading, the entire Section clearly points to the liability of the petitioner to have the “payable” duty to be a first charge on the amount which is recovered by the licensee. Hence, even if the licensee cannot recover such duty, it becomes the first charge on the recoverable amount. The expression used is ‘recoverable’ and not ‘recovered’, it is pointed out.
24. Insofar as the impugned Security Deposit is concerned, learned counsel places reliance on the said Bill for the period from April, 2022 to March, 2023 and argues that the calculations have been made on

the total gross per MVA (Mega Volt Ampere). The gross per MVA from monthly bill (in Rs./MVA) come to Rs.4,32,87,927/-. In view of a tariff revision having taken place in the meantime, the total gross per MVA from "Other Bill" has been similarly calculated to be Rs.3,12,845/-. In any event, the Other Bill amount, if divided by 12, comes to a miniscule quantum, it is contended.

- 25.** Component C of the Security Deposit Bill is the average gross in respect of Components (A+B)/12. In Component D, the Contract Demand of the current month has been taken as 24, which is the total Contract Demand, in view of the petitioner having actually consumed more than the same in violation of the contract between the parties.
- 26.** Component C multiplied by Component D, that is, the average gross per MVA per month multiplied with the Contract Demand of the current month, has been taken to arrive at the figure at Component E. The same, multiplied by the Security Deposit multiplier of 3, in terms of the Regulations relied on by the petitioner, is the total SD value in rupees which comes to Rs.26,16,04,656/-.
- 27.** It has to be kept in mind, it is argued, that the calculation was on the basis of each Mega Volt Ampere, which is the basic unit of calculation. Hence, the calculation for each month during the relevant period must be the actual gross amount of electricity charges multiplied by the MVA consumed. For example, for the Month of April, 2022, the gross amount came to Rs.2,94,47,671/- which was calculated in the context of the no. of units (in MVA) consumed in the month, that is, 14.3.

- 28.** Taken in such a manner, there was no irregularity or illegality whatsoever in calculating the Security Deposit, it is argued.
- 29.** Heard learned counsel for the parties. The sole dispute raised in the present writ petition is with regard to the Security Deposit charged by the DVC against the petitioners for the period from April, 2022 to March, 2023
- 30.** The contention of the petitioners that Component B, regarding “Other Bill”, is not chargeable against the petitioners, is arguable on facts. The DVC, in its arguments, has given a *prima facie* explanation in that regard, on the score that the same was result of the tariff revision. The liability of the petitioners to pay in terms of the tariff revision, however, is, no doubt, arguable. However, such dispute pertains squarely to the domain of a billing dispute, falling within the jurisdiction of the concerned Grievance Redressal Officer on facts. However, on principle, such Other Bills could be added to Component A, the gross monthly bill.
- 31.** For coming to such conclusion, a perusal of the relevant law on the subject is necessary. Section 47 of the 2003 Act, in sub-section (1) thereof stipulates that the security will be “reasonable”, which is, however, qualified by the expression “as may be determined by Regulations”. Such security, as per the said sub-section, is for the payment to the Licensee of “all monies” which may become due to him.
- 32.** The context of such dues are:
- (a) in respect of the electricity supplied to such person; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter.

33. Thus, even as per the definition given in Section 47 of the parent Act, the Security Deposit, though reasonable, has to be calculated with regard to *all monies* which become due to the licensee *in respect of* electricity supplied to the consumer, which are broad terms.
34. Hence, the basis of charging Security Deposit is not restricted merely to the precise electricity charges as per units consumed but all monies payable “in respect of” the electricity supplied, which is placed on a much wider footing and includes every expense which the licensee might normally incur for supplying electricity.
35. Moving on to the concerned Regulation, which has been relied on by none other than the petitioners, that is, Regulation 48 of April 25, 2011, Clause 4 of the same defines Security Deposit as an amount covering three months of ‘estimated bills’ of consumption of electricity at the prevailing rates. The estimated consumption shall be based on twelve months’ consumption of the previous period as on 1st April of each year or based on the application, in case of a new applicant. The first limb applies in the present case, since the petitioners have been enjoying electricity from the DVC for past periods as well. The second limb of Clause 4 relates to a new applicant, which is not germane in the present case.
36. The next Regulation which comes to the fore is Regulation 55 dated August 7, 2013, framed by the WBERC. Clause 3.2.2 of the same,

sought to be relied on by the petitioner, merely stipulates the minimum details in an electricity bill and cannot have any direct bearing on the issue at hand. The nitty-gritties of the Bill, which are described as the “minimum” details, do not curb the prerogative of the licensee to include further ingredients, which would form a premise of calculating the Security Deposit. In any event, sub-clause (xix) of Clause 3.2.2 clearly mentions “Total charges”, which may include expenses levied by way of increase in tariff as well.

- 37.** Insofar as the reference to Section 56 of the 2003 Act is concerned, the same is neither here nor there, in the sense that it stipulates as default, neglect to pay “any charge for electricity or any sum other than a charge for electricity due from him to a licensee”. The same is extremely wide and, as such, cannot enure to the benefit of the petitioners. In fact, the liability to pay of the consumer to the licensee, taking a cue from Section 56, is not restricted to the charge for electricity but also any other sums than a charge for electricity, due from him to the licensee.
- 38.** Seen in such context, Clause 8.5 of Regulation 48 dated April 25, 2011 stipulates that the consumer’s bill shall also indicate different components of tariff “and duty”, which obviously includes electricity duty. Thus, it is well within the prerogative of the licensee to include the said duty as a component of the core quantum which is the basis of calculating “reasonable security” under Section 47.
- 39.** All the above, including electricity duty and increased tariff for the relevant period, may come within the broad conspectus of “all monies

which become due to the licensee”, in respect of the electricity supplies to the consumer. As such, there is no illegality on the principle applied by the DVC for charging the Security Deposit impugned herein.

- 40.** Insofar as the calculations are concerned, no palpable illegality in the decision-making process of the DVC can also be found.
- 41.** With regard to the respective components, Component A speaks about the total gross per MVA from the monthly bill and Component B, according to the DVC, is comprised of “Other Bills” which takes into consideration increased tariff.
- 42.** Component C is the average gross in rupees per MVA, which is the sum of Components A and B, divided by 12, to arrive at the monthly average gross. The Contract Demand of the current month, rightly, is Component D, which reached its maximum, that is, 24, and so rightly applied as a multiplier with Component C to arrive at the average monthly gross in rupees.
- 43.** Taken in conjunction with the same, the Security Deposit (SD) multiplier of 3, as per the three months as indicated in Clause 4.1 of Regulation 52 dated April 2, 2013, has been applied.
- 44.** Together, the above Components go on to arrive at the ultimate amount of actual security deposit required in rupees as depicted in the impugned Bill. There is no illegality or irregularity in such exercise.
- 45.** As regards the quantum being exorbitant, it is rightly contended by the DVC that, as shown in the Components of the Bill, each of the

calculations till Component D were in terms of the usage per MVA which, for each of the 12 months-in-question, have been clearly shown in the fourth column of the chart in the impugned Bill.

- 46.** That apart, the individual month's bills in rupees, adding up the gross amount plus adjustment plus ED plus ED adjustment, has been reflected (ED being Electricity Duty) in the bill.
- 47.** Again, the 'ED' and 'ED adjustment' elements have not been double calculated in the individual alphabetical Components again. The said component of Electricity Duty along with its adjustment, being a part of the money payable by the consumer to the petitioner in respect of use of electricity within the contemplation of Section 47 of the 2003 Act, was a reasonable basis for calculation of the total amount payable for each month for the preceding period of one year, as per Clause 4 of Regulation 52 of the WBERC.
- 48.** Thus, there is no rational basis for the challenge thrown in the present writ petition against the calculation of Security Deposit by the DVC.
- 49.** The ratio as held above applies in each of the writ petitions which were taken up for hearing together, due to the exact identity of the causes of action between the parties.
- 50.** Accordingly, WPA No. 13133 of 2023, WPA No. 13141 of 2023, WPA No. 13326 of 2023, WPA No. 13333 of 2023, WPA No. 13475 of 2023, WPA No. 13476 of 2023, WPA No. 13660 of 2023 are dismissed on contest, without any order as to costs.

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

(Sabyasachi Bhattacharyya, J.)

LATER

When the above judgment is delivered, learned counsel appearing for the petitioners in WPA No.13133 of 2023 prays for a week's time to put in the deposits-in-question, since otherwise the petitioners' electricity connection may be disconnected.

Considering the nature of the case, the time for depositing the necessary amount, which was disputed in the writ petition, by the petitioners is extended till July 10, 2023.

Let this order be treated to be a part of the above judgment.

(Sabyasachi Bhattacharyya, J.)