D/L.22.
May 18, 2026.
KAUSHIK

WPA No. 5144 of 2026

Devyani Food Industries Limited & Anr.
Vs.
Indian Power Corporation Limited & Ors.

Mr. Shyamal Sarkar
Mr. Rajesh Kumar Gupta
Mr. Aditya Chakraborty
Ms. Labony Ray
Ms. Ankita Upadhyay Agarwal
Mr. Anjani Shukla
Mr. Titas Sasmal
… for the petitioner

Mr. Anindya Halder
… for the respondent no. 1

The grievance of the petitioner is directed against the wrongful and illegal invocation of a bank guarantee dated 4th May, 2018 (as extended time to time) by the respondent no. 1.

Briefly, the petitioner as a consumer of electricity had furnished a bank guarantee to India Power Corporation Limited (respondent no.1). Such bank guarantee had been issued in terms of the WBERC Regulations for obtaining an independent electricity connection. By a letter dated 15th June, 2022, the respondent no. 1 had claimed differential tariff of an amount Rs. 1,15,13,124/- for the period January, 2017 to March, 2022 based on the tariff of Damodar Valley Corporation (DVC). It was alleged by the respondent no. 1 that the arrear charges be paid in ten installments from May, 2022 to February, 2023.

It is contended on behalf of the petitioner that the action of the respondent no. 1 in invoking the bank guarantee is grossly arbitrary and without any lawful authority. It is also submitted that the malafide conduct of the respondent no.1 would be evident from the fact that they have invoked the bank guarantee after a copy of the writ petition was served on them. The question of whether the respondent no. 1 is legally entitled to claim differential tariff for the period June, 2017 to March, 2022 is subjudice. The proceeding challenging the impugned demand is pending before the Ombudsman and there has been no final determination. The impugned demand was raised as far back as on 15 June, 2022. The respondent no. 1 has waited for more than 3 years. Any action by an authority or State must be with the authority of law.

Regulations 3.5.1 and 3.5.2 of the Supply Code provides as follows:

> *3.5.1 In case there is any dispute in respect of the billed amount, the consumer may lodge a complaint with the Grievance Redressal Officer or the Central Grievance Redressal Officer of the licensee and thereafter to the Ombudsman in appeal against the order of the Grievance Redressal Officer or the Central Grievance Redressal Officer, if the consumer is aggrieved by the order of the Grievance Redressal Officer or the Central Grievance Redressal Officer, in accordance with the*

provisions of the concerned Regulations. In such a case, the aggrieved consumer, pending disposal of the dispute, may, under protest, pay the lesser amount out of the following two options: - (i) an amount equal to the sum claimed from him in the disputed bill, or (ii) an amount equal to the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

The amount so calculated provisionally as per clause (ii) above by the licensee and tendered by the consumer shall be accepted by the licensee against that bill on provisional basis.

3.5.2 If any aggrieved consumer makes a provisional payment, as aforesaid, no penal measure including disconnection for non-payment shall be taken against him till the dispute is settled either at the level of the Grievance Redressal Officer or the Central Grievance Redressal Officer or the Ombudsman, as the case may be. However, imposition of a delayed payment surcharge, if applicable, shall not count towards a penal measure for this purpose. However, if the aggrieved consumer does not pay the provisional payment then disconnection for non-payment shall be effected if disconnection notice is issued as per regulation 4.1 of these Regulations.

On a plain reading of Regulation 3.5.1, it would be evident that the petitioner has the option to pay the lesser of either i) the disputed bill, or (ii) average charge for electricity during the preceding six months. It is also clear from the above Regulations that the payment of provisional amount is not mandatory but optional with a consumer. On a true construction of Regulation 3.5.2 of the Supply Code, the respondent no. 1 cannot claim payment of disputed bill during the pendency of the appeal before the Ombudsman, if the consumer has made payment under Regulation 3.5.1. The petitioner opted to make payment of provisional payment in accordance with Regulation 3.5.1, under protest to avoid penal measures including disconnection. Admittedly, the petitioner has paid an aggregate amount of Rs.6,05,76,782/- between the period June, 2022 and March 2023 as provisional payment.

The Regulation Code of the WBERC (Miscellaneous Provisions) Regulations, 2013 also provides as follows:

> *"4.2.7 The distribution licensee may, at any time, appropriate such deposit in whole or in part in satisfaction of any sum legally due or owing by the consumer to the licensee whether the supply of electric energy to the consumer continues or has ceased without prejudice to any other remedy to which the licensee may be entitled for recovery of such sum due or owed by the consumer under any other provisions of the Act or any other law."*

In this background, the petitioner had also initiated a proceeding before the Grievance Redressal Officer (GRO), challenging the above demand which was ultimately dismissed by an order dated 18 September 2025. Being aggrieved by the order dated 18th September, 2025 the petitioner had also filed a statutory appeal before the Ombudsman. It is an admitted position that proceeding before the Ombudsman is pending and there has not been any final decision.

In view of the above, there is no legal debt which has yet become due and payable by the petitioner to the respondent no. 1. The disputed bill is still pending final determination. This issue is being adjudicated and the rights and obligations of the parties have not yet crystalized. In this background, after having waited for a period of more than three years, the respondent no. 1 has arbitrarily and whimsically invoked the bank guarantee furnished by the petitioner and credited the proceeds thereof. Any action uninformed by reason or in violation of the Rule of Law is arbitrary and is liable to be struck down. There is no lawful justification which the respondent no. 1 has been able to demonstrate in invoking the above bank guarantee. In order to survive any interference, any action must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution.

In view of the above, the entire action of the respondent no. 1 in the invoking bank guarantee is arbitrary, unreasonable and without any lawful authority. The respondent no. 1 cannot be unjustly enriched and enjoy the fruits of their illegality.

In such circumstances, the writ petition stands allowed. The respondent is restrained from claiming any further sum on account of security deposit or demand any additional bank guarantee as security from the petitioners. The amount so invoked and credited in favour of the respondent no. 1 shall be treated as security deposit for the electricity connection granted to the petitioner. To this extent, WPA 5144 of 2026 stands allowed.

(Ravi Krishan Kapur, J.)