(2022) 01 CAL CK 0073

In the Calcutta High Court

Case No : Writ Petition No. 4168, 5985, 6047, 6068, 6075, 6077, 14166, 15428, 15432, 16040 Of 2021, CAN 1 Of 2021

Gagan Ferrotech Limited And Another — APPELLANT

Vs

West Bengal Electricity Regulatory Commission And Others — RESPONDENT

Date of Decision : 24-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Electricity Act, 2003 — Section 42(5), 42(6), 42(8), 52(5), 56, 56(1), 56(2), 62, 62(6), 64, 79, 79(1)(a), 79(1)(b),79(1)(d),79(d), 86, 8(1)(a)
Damodar Valley Corporation Act, 1948 — Section 20

Citation : (2022) 01 CAL CK 0073

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Surojit Nath Mitra, Siddharth Shroff, Gautam Shroff, Shiladitya Barma, Soumya Majumder, Tanoy Chakraborty, Riya Ghosh Pratik Dhar, Victor Chatterjee Sharmistha Ghosh, Victor Chatterjee, Prasun Mukherjee, Joydip Kar, Deepak Agarwal, Prasun Mukherjee

Final Decision : Disposed Of

Judgement

Sabyasachi Bhattacharyya, J

1. The above-captioned ten writ petitions are heard and adjudicated together since the questions involved therein are similar in nature.

2. A common question which has arisen for consideration in three of the writ petitions, bearing WPA No.4168 of 2021 (Debanjana Hard Coke Private

Limited and another vs. West Bengal Electricity Regulatory Commission and others), WPA No.15432 of 2021 (Jay Ambey Metals Pvt. Ltd. and

another vs. West Bengal Electricity Regulatory Commission and others) and WPA 16040 of 2021 (Surya Alloy Industries Ltd. and another vs. West

Bengal Electricity Regulatory Commission and others), which is different from those arising in the other seven, is :-

i. Whether the Damodar Valley Corporation (DVC) can, in 2020-21, claim dues on the basis of bills raised during the years 2009, 2010, 2011 and

2013.

3. The other cardinal questions involved in all the ten writ petitions are the same, being :-

ii. Whether Delayed Payment Surcharge (DPS) could be charged by the DVC from its consumers on the basis of the Central Electricity Regulatory

Commission (CERC) input tariff and/or otherwise, before the final retail tariff is settled by the West Bengal Electricity Regulatory Commission

(WBERC), for the periods 2006-2009 and 2009-2013;

iii. Whether the subsequent disconnection notices given by the DVC to its consumers are de hors the law, in particular, Section 56(2) of the Electricity

Act, 2003 (hereinafter referred to as â??the 2003 Actâ??).

4. At the outset, the DVC as well as the WBERC raise a preliminary objection as to maintainability of the writ petitions. The definition of

â??Consumer Grievanceâ?, as given in the prevalent Regulations issued under the 2003 Act by the WBERC, as amended under the 2020 Regulation,

it is argued, includes every possible dispute contemplated under the 2003 Act. Such grievances are referable to the Forum created under the

Regulations, being the respective Grievance Redressal Officer (GRO) and the Regional Grievance Redressal Officer (RGRO). As such, it is argued

that, in the absence of any challenge to the vires of the Regulations, the same prevails.

5. Since a special statute with a special forum is required to be exhausted before a party can approach a writ Court under Article 226 of the

Constitution of India, the writ court, it is submitted, ought to restrain its hands in the matters and relegate those to the GRO and/or RGRO concerned.

6. In this context, learned Senior Counsel appearing for the DVC relies upon (1983) 2 SCC 433 [Titaghur Paper Mills Co. Ltd. and another Vs. State

of Orissa and others], (2005) 8 SCC 264 [U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and another], (2014) 1 SCC 603 [Commissioner of Income

Tax and others Vs. Chhabil Dass Agarwal].

7. Learned Senior Counsel appearing for the WBERC contends that the disputes relating to the bills for electric charges raised by the DVC have to be

raised before the concerned GRO and/or Central Grievance Redressal Officer (CGRO), as contemplated under Sections 42(5), 42(6) and 52(5) of the

2003 Act, read with Regulation 3.5 of the 2013 WBERC Regulations.

8. It is argued that, in view of availability of such alternative efficacious remedy, the writ Court cannot be moved and the appeals are not maintainable

under Article 226 of the Constitution of India.

9. For such proposition, learned Counsel places reliance on (2005) 8 SCC 264 [U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and another], (2011) 2

SCC 575 [Transport and Dock Workers Union and others Vs. Mumbai Port Trust and another], (2013) 5 SCC 470 [Rajasthan State Industrial

Development and Investment Corporation and another Vs. Diamond & Gem Development Corporation Limited and another].

10. The dispute resolution mechanism within the purview of the 2003 Act and the Regulations have been upheld and approved by the Supreme Court

in (2007) 8 SCC 381[Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. and others].

11. No exceptional case for seeking judicial review under Article 226, by-passing the statutory alternative remedy as envisaged in (2018) 1 SCC 156

[Kamini Jaiswal Vs. Union of India and another] has not been made out in the present case, it is argued.

12. Learned Senior Counsel for the WBERC submits that, it being a matter of public policy, the disputes arising under the 2003 Act must be

adjudicated in the forum specified by the statute and before such forums are exhausted, no petitioner is permitted to move this Court under Article 226

of the Constitution of India.

13. (1983) 2 SCC 433 [Titaghur Paper Mills Co. Ltd. and another Vs. State of Orissa and others] and (2014) 1 SCC 603 [Commissioner of Income

Tax and others Vs. Chhabil Dass Agarwal] are cited in that regard.

14. By placing reliance on (2020) 4 SCC 650 [Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamatullah Khan

Alias Rahamjulla], on the question of limitation as stipulated in Section 56(2) of the 2003 Act, learned counsel argues that the said provision has no

manner of application in the facts and circumstance of the case.

15. That apart, it is argued, the outstanding due for the period 2010-13 was paid by 24 installments, the last of which was paid on March 30, 2019. In

view of the claim for DPS having been raised within two years thereafter, the question of limitation does not arise, in any event.

16. Mere acceptance of the instalments by the DVC do not amount to acquiescence and/or waiver, since the DVC, at no point of time, relinquished its

claim for DPS, either explicitly or implicitly.

17. The same line of arguments are adopted by learned Senior Counsel appearing for the DVC as well.

18. On merits, learned counsel for the petitioners in the bunch of three matters, where the first question for consideration arose, argue that, as late as

in the year 2021, the DVC could not claim dues on the basis of bills raised during June, 2009, May, 2010, 2011 and/or 2013.

19. Apart from such claims being barred under Section 56(2) of the 2003 Act in view of the acceptance of the 24 instalments which were agreed

upon between the consumers and the DVC in final settlement of the previous dues, the DVC could not claim any further dues, let alone DPS, on the

basis of previous bills.

20. It is argued that Section 62 of the 2003 Act provides specifically for determination of tariff by the â??Appropriate Commissionâ?. The

Appropriate Commissions respectively are the CERC and the State Electricity Regulatory Commission, in the present case, WBERC.

21. Section 79 of the 2003 Act categorically provides, in Clause (a) thereof, that the CERC shall regulate tariff of generating companies owned or

controlled by the Central Government. In other cases, Clause (b) of Section 79 provides that the CERC shall regulate the tariff of generating

Companies, other than those owned and controlled by the Central Government, if such companies entered into or otherwise have a composite scheme

for generation and sale of electricity in more than one State. Clause (d) of Section 79 specifies that the CERC shall also determine tariff for inter-

State transmission of electricity. On the other hand, Section 86 of the 2003 Act deals with the functions of the State Commissions. Clause (a) thereof

provides for determination of the tariff for generation, supply, transmission and wheeling of electricity, wholly, bulk or retail, as the case may be, within

the State.

22. As such, it is argued that, insofar as the retail tariff is concerned, it is the WBERC which has to settle such tariff.

23. It is further argued that Section 56 of the 2003 Act specifically provides for disconnection of supply in default of payment. Sub-section (2) thereof

specifically stipulates that no sum from any consumer, under Section 56, shall be recoverable after the period of two years from the date when such

sum became due, unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not

cut off the supply of the electricity.

24. It is argued that since the WBERC settled retail tariff only in the year 2020, no dues can be claimed for prior periods. The first occasion when the

amounts-in-question became payable was after the bills were raised for the respective periods of 2006-09 and 2009-13 and the rate of retail charges

were fixed finally on June 19, 2020 and March 19, 2020 respectively. Before that, it is contended, there could not be any electric charge payable by

the consumers, as contemplated under Section 56 of the 2003 Act.

25. Since Section 56(2) of the 2003 Act specifically debars the disconnection of electric supply on the ground of recoverability of any dues after the

period of two years and the claims in that regard made by the DVC were crystallized only after such bills were finally raised on the final tariff, prior

thereto, there could not arise any occasion for the consumers to pay electric charges and, as such, there could not have been occasioned any

â??defaultâ?? as such. Thus, the question of charging DPS does not arise at all.

26. Learned counsel for the petitioners argue that a perusal of sub-section (8) of Section 42 of the 2003 Act makes it abundantly clear that sub-

sections (5) and (6) of Section 42 provide for additional remedy in the given circumstances and not an alternative remedy. The other rights of the

consumers are expressly reserved under the said sub-section. Moreover, the mere availability of alternative remedies is not an absolute bar to litigants

approaching the High Courts under Article 226 of the Constitution of India.

27. The present disputes, it is argued, have been raised on the legality of the DVC claim for past dues and DPS, on the basis of earlier retail tariff,

even before the retail tariff was finally determined by the WBERC. Thus, the disputes in the present matters cannot be relegated to the category of

mere â??billing disputesâ??, to be decided by GROs and/or CGROs.

28. On the proposition that alternative remedies, even if available, do not operate as an absolute bar in filing a petition under Article 226 of the

Constitution, learned counsel places reliance on the following judgments:

i. AIR 1966 SC 197 [M. G. Abrol, Additional Collector of Customs, Bombay and another vs. Shantilal Chhotelal & Co. and others];

ii. (1977) 2 SCC 724 [State of U.P. and others Vs. M/s. Indian Hume Pipe Co. Ltd.];

iii. (1985) 3 SCC 267 [Ram and Shyam Company Vs. State of Haryana and others];

iv. (1998) 8 SCC 1 [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others]; and

v. (2011) 5 SCC 697 [Union of India and others Vs. Tantia Construction Private Limited].

29. It is iterated by learned counsel appearing for the petitioners that â?? surchargeâ?? means something over and in excess of the normal dues or

charge, in the context of electricity laws. Reference is made to (1976) 2 SCC 167 [M/s. Bisra Lime Stone Company Ltd. and another vs. Orissa State

Electricity Board and another] in such context.

30. The concept of â??defaultâ? has a notable element of willfulness or an element of mens rea or actus rheus. Even on the anvil of a civil liability,

the levy of surcharge is not automatic, unless there is a finality attached to such civil liability and the payment had actually become due to be

discharged. In view of the admitted position that the final rate of retail tariff was only determined in the year 2020 by the WBERC for both the periods

2006-2009 and 2009-2013, there could not arise any occasion to charge dues and/or DPS from the consumers prior thereto.

31. Learned counsel for the petitioners rely on the following judgments regarding disconnection notices being hit by the limitation period prescribed in

Section 56(2) of the 2003 Act:

i. 2012 (5) CHN (CAL) 213 [CESC Limited Vs. Shiva Glass Company Limited],

ii. (2020) 4 SCC 650 [Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamatullah Khan Alias Rahamjulla].

32. Learned counsel also places reliance on the following judgments to stress that the GRO being an officer of the DVC itself, there is all likelihood of

bias and violation of natural justice :

i. 2019 SCC OnLine SC 1517 [Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd.],

ii. (1985) 3 SCC 267 [Ram and Shyam Company Vs. State of Haryana and others],

iii. 1985(1) CLJ 332 [Shri Surendra Kumar Ray Chowdhury Vs. The Collector of Calcutta and others].

33. Learned counsel also drew the analogy of the bars stipulated in the Arbitration and Conciliation Act, 1996 to appointment of Arbitrators in the

above regard.

34. On merits, the DVC argues that there were different retail rates at various points of time. Bills were raised for the period 2006-2009 as well as

2009-2013 during the period 2009-2013. In spite of getting such bills, the consumers failed to clear the amounts stipulated therein. Ultimately, in order

to recover at least some amount, the DVC acceded to the consumers paying in 24 installments. However, the right to claim DPS was not relinquished

by the DVC at any point of time.

35. The consumers were never absolved from their liability to make due payments in time, in default of which they remained obligated to pay DPS as

claimed by the DVC for the respective periods of late payment/non-payment.

36. It is further contended by the DVC as well as the WBERC, that within the scheme of the 2003 Act and the Regulations framed thereunder, the

disputes raised in all the writ petitions can be broadly termed as â??billing disputesâ?? and ought to have been referred to and decided by the

respective GROs.

37. Bypassing such legal remedy, which is equally efficacious, if not more, the writ petitions ought to be dismissed, it is contended.

38. It is further argued by the DVC that there was no occasion to claim DPS prior to the final settlement of the retail charges by the WBERC in the

year 2020. However, the charges so payable relate back to the period during which each of the defaults were committed.

39. Learned Senior Counsel appearing for the WBERC, in particular, argues that no analogy can be drawn between the provisions of the Arbitration

and Conciliation Act, 1996 and the 2003 Act, which are entirely different in scope and operation.

40. The legislature, in its wisdom, created specific bars in the appointment of Arbitrators for adjudicating disputes as contemplated under the 1996 Act.

However, the technical decisions to be taken in dealing with disputes relating to electricity charges were left by the legislature, also in its wisdom, to

the GROs.

41. Upon hearing learned counsel appearing for the parties, I would be failing in my duty if I do not acknowledge and appreciate the co-operation

rendered by counsel appearing for all the parties in preparing succinct and lucid notes of arguments which largely enabled the Court to reach its

conclusions.

42. To consider the short backdrop of the present case, several ad hoc phases of transition were undergone by the DVC and its consumers, vis-Ã -vis

electricity charges.

43. The Damodar Valley Corporation Act, 1948 (for short, â??the DVC Actâ??), which was enacted to provide for the establishment and regulation of

a corporation for the development of the Damodar Valley in the Provinces of Bihar and West Bengal, came into force on and from April 2, 1948.

Section 20 of the DVC Act specifically empowered the DVC to fix the schedule of charges for the supply of electrical energy by the DVC, including

the rates for bulk supply and retail distribution, and to specify the manner of recovery of such charges. As such, the DVC had, since then, been validly

raising bills as per its own assessment of the tariffs.

44. However, the 2003 Act was subsequently promulgated, inter alia, with the object and purpose of independent determination of tariffs by Electricity

Regulatory Commissions, the policy of encouraging private sector participation in generation, transmission and distribution of electricity and

harmonization of the provisions of the previous Acts. The 2003 Act came into force with effect from June 10, 2003.

45. Section 62 of the said Act stipulates that the â??Appropriate Commissionâ? shall determine the tariff in accordance with the provisions of the

Act.

46. Section 79(1), Clauses (a), (b) and (d) provide that the Central Commission shall determine the tariff of the generating companies owned or

controlled by the Central Government and inter-State operators in the field of generation and transmission of electricity. Section 86 (1) (a) provides

that the State Commission shall, inter alia, determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State.

47. Read together, it is evident that the retail tariffs for the respective States have to be determined by the concerned State Commissions and not the

Central Commissions.

48. Although, obviously, such assessment of retail tariff depends largely on the bulk rates for generation and transmission of electricity, and could not

be ascertained finally unless the said bulk rates were determined by the CERC, the ultimate tariff for retail supply in the States is that, which has been

determined by the respective State Commissions.

49. As such, the expression â??any charge for electricity or any sum other than a charge for electricityâ?, as contained in Sections 56 of the 2003

Act, which provides for disconnection of electric supply in default of payment of due charges, has to be read in the proper perspective, as being

consonant with the rates of tariff determined for retail supply by the State Commissions (the WBERC, in the present case).Section 56(2) of the 2003

Act stipulates that, notwithstanding anything contained in other law for the time being in force, no sum due from any consumer under Section 56 shall

be recoverable after the period of two years from the date when such sum became first due, unless such sum has been shown continuously as

recoverable as arrear of charges for electricity supplied, and that the licensee shall not cut-off the supply of the electricity as contemplated in sub-

Section (1) of Section 56.

50. In the present case, the retail tariff for West Bengal was finally fixed by the WBERC on June 19, 2020 (for the period 2006-2009) and on March

19, 2020 (for the period 2009-2013).

51. The bills of arrears, based on such charges, were sent for the first time in each of the present cases, only in the year 2021 (although on different

dates of 2021).

52. It cannot be said that before 2021, when the bills were sent on the final tariff rates, there was any occasion or instance of prior dues in payment of

electricity charges on the part of the consumers for the purpose of disconnection of electric supply under Section 56 of the 2003 Act. A joint reading

of Sections 62, 79 and 86 of the 2003 Act would unerringly indicate towards such conclusion. In the event it was to be adjudicated that the charges for the purpose of attracting Section 56 were different for different periods, there would be no uniformity and/or certainty, which are essential

characteristics of a penal provision such as disconnection under Section 56 of the 2003 Act.

53. Although the DVCâ??s rights to disconnect arose from the expiry dates of the different periods for which the respective bills were raised, that is,

on different valid yardsticks, all such liabilities to pay electric charges on the part of the consumers merged in the final determination of tariff on June

19, 2020 (for the period 2006-2009) and March 19, 2020 (for the period 2009-2013). Since the bills based on such final rates were raised only in the

year 2021 in all the cases, the liability of the consumers with regard to payment of such dues only arose after the respective due dates as stipulated in

the 2021 bills; more so, since the DVC had not previously disconnected the supply of the consumers-in-question, in view of uncertainty and chaos

prevailing due to the inaction of the DVC itself in not applying of its own for tariff fixation.

54. Section 64 of the 2003 Act specifically lays down the procedure for tariff orders and casts an obligation on the generator/distributor/supplier, as the

case may be, to file an application for determination of tariff under Section 62. Since the DVC functions in all such capacities, it was for the DVC to

make such an application for the purpose of determination of tariff. However, despite having lost authority to determine its own electricity tariff, as

conferred by the DVC Act, after the coming into force of the 2003 Act on June 10, 2003, the DVC merrily continued to charge electricity supply

(retail) at its own rates instead of approaching the WBERC in that regard. First, the CERC fixed provisional tariff for generation and transmission and

thereafter determined the final tariff for such purposes, for the period 2009-2014, only on June 23, 2011 and September 30, 2013. Since the generation

and transmission components of the tariff were necessary pre-requisites for the State Commissions to fix the retail rates, the WBERC and the other

State Commissions were handicapped in the absence of any application on behalf of the DVC on such score. Only on the initiative of the WBERC

and the instigation of this Court by a judicial order did the DVC make an application for determination of retail tariff to the WBERC. Since the final

retail tariff was fixed only on June 19, 2020 (for the period 2006-2009) and on March 19, 2020 (for the period 2009-2013), the rates of retail tariff crystallized for the said period on the aforesaid dates respectively.

55. In the impugned summary statements raised by the DVC, DPS was charged for the first time by the DVC, although there were no prior instances

of prior defaults on the final rates.

56. Undoubtedly, we cannot lose sight of the fact that different yardsticks of fixation of retail tariff were prevalent at various periods of time, it is only

for the DVC itself to blame for not having approached the CERC and/or respective State Commissions for the final determination of tariff for the

purpose of generation, transmission and retail supply at an inter-State level.

57. The initial concrete yardstick for fixation of retail tariff materialized from April 2, 1948, when the DVC was empowered under Section 20 of the

1948 Act, to determine its own tariff. Thereafter, such tariff witnessed several phases. Initially the CERC determined input tariffs for 2006-2009 on

October 3, 2006, giving a transitory period of two years from April 1, 2004 to March 31, 2006 to the DVC.

58. Thereafter, on May 10, 2010 the Appellate Tribunal decided the DVC challenge thereto, affirming the CERC rates and directing that in case of

excess bill amounts refund with interest would be given under Section 62(6) of the 2003 Act, alternatively to adjust excess payments in 24

installments. The latter was done in the present case, which was a valid clearance of the dues by the consumers as per the Appellate Tribunalâ??s

order dated May 10, 2010.

59. The Supreme Court, in turn, stayed only the direction to refund, given by the Appellate Tribunal, on July 9, 2010. However, there was no stay of

the direction to approach the respective State Commissions.

60. The Supreme Court ultimately dismissed the challenge on December 3, 2018, whereafter the Calcutta High Court, on the application of a

consumer, directed the DVC to apply before the WBERC for determination of retail tariff.

61. Only thereafter, the retail tariffs were fixed finally, respectively on June 19, 2020 for the period 2006-2009 and March 19, 2020 for the period

2009-2013.

62. In the interregnum, the CERC had issued provisional tariff for generation and transmission on June 23, 2011, which was set aside by the Calcutta

High Court on December 7, 2012, holding the provisional tariff regulations ultra vires and setting aside the power bills based on the provisional tariff.

63. On the other hand, the Jharkhand High Court, in another challenge, upheld the provisional tariff as intra vires.

64. Hence, during the ensuing period a Schrodingerâ??s Cat dichotomy prevailed, inasmuch as the consumers of West Bengal were not bound to

honour the power bills based on such provisional tariff, while the Jharkhand consumers were so bound, both during the self-same period.

65. Ultimately on September 30, 2013 the CERC determined final tariff for generation and transmission for the period 2009-2014.

66. Accordingly, the Supreme Court decided two appeals pending before it, against the Calcutta High Court and the Jharkhand High Court judgments

respectively, on January 18, 2017, thereby setting aside both the said judgments. Soon thereafter, the DVC raised a bill asking the consumers to pay

differential amount on the basis of final tariff for generation and transmission.

67. Surprisingly, even thereafter, the DVC waited for a specific direction from this Court dated December 3, 2018 to apply before the WBERC for

final determination of the retail tariff. Such determination was made by the WBERC for the periods 2006-2009 and 2009-2013 on June 19 and March

19, 2020 respectively.

68. Albeit the WBERC was somewhat handicapped from ascertaining the final retail tariff till the tariffs for generation and transmission were finally

decided, the WBERC took no active suo motu initiative in that regard, at least as far as visible from the records, thereby shirking the duty cast on it

under Sections 62, 79 and 86 of the 2003 Act. The DVC also avoided discharging its statutory obligation to make applications under Section 64 of the

2003 Act for determination of tariffs under Section 62 of the Act. The consumers, under no stretch of imagination, can be faulted for such delay, both

on the part of the DVC and the WBERC, in any event.

69. Thus, only upon crystallization of the retail tariffs for the respective periods-in-question did the liability of the consumers to pay the retail tariff

arose. In fact, such dues came into the picture only after the bills were raised by the DVC in 2021 for the respective consumers. There is no

allegation of subsequent default of the consumers. Hence, DPS could not be raised for the first time in 2021, in the utter absence of any prior dues and/or consequent default.

70. As far as â??Delayed Payment Surcharge (DPS)â? is concerned, no definition thereof has been provided either in the 2003 Act or the

Regulations framed thereunder.

71. The only guiding light on that score is thrown by Clause 4.14 of the West Bengal Regulatory Commission (Terms and Conditions of Tariff)

Regulations, 2011, which is quoted herein below:

â??The rates of the applicable delayed payment surcharge arising from non-payment of electricity charges as also other charges by a

consumer shall be 1.25% per month of delay or pro-rated for part thereof upto 3 months of delay, at 1.5% per month of delay or pro-rated

for part thereof for any period beyond 3 months of delay but upto the next 3 months and at 2% per month of delay or pro-rated for part

thereof beyond first 6 months of delay. Delay in payment shall be counted from the due date for payment. This delayed payment surcharge

is without prejudice to the provisions of disconnection under the Act and the Regulations made thereunder.â??

72. Taking a cue from the said provision, the DPS is in the nature of a penalty, levied in addition to other charges, arising only on non-payment of such

other electricity charges. The expression â??chargesâ? has to be read in consonance with the definition of tariff within the contemplation of Sections

62, 79 and 86 of the 2003 Act and the extant Regulations. Construing so, there could not have arisen any occasion to charge DPS prior to the

finalization of the retail rates in the year 2020 and the raising of bills by the DVC thereon, in 2021. After 2021, there is no allegation as regards any

default. As such, the Delayed Payment Surcharge levied by the DVC for the period 2006-2009 as well as 2009-2013 for alleged previous defaults are

illegal and baseless.

73. The varying touchstones of retail charges at different periods of time all merged into the retail tariff finally determined by the WBERC and on the

DVC claiming bills thereon only, the liability of the consumers for payment of electricity charges arose in that regard. In fact, prior to such final

fixation of retail charges, the DVC had not claimed DPS at any point of time.

74. Any other interpretation than such merger would give rise to absurd consequences, since, in that event, the ad hoc arrangements as regards such

tariff, either by virtue of orders passed by the High Courts or the Supreme Court or the different Regulatory Commissions, being the CERC, the State

Commissions or the Appellate Tribunal, or the tentative tariffs prevalent as valid at various points of time, would have to be taken as the bases for

ascertainment of the retail tariff, de hors the provisions of Sections 62, 79 and 86 of the 2003 Act, which in terms specifically empower the

Appropriate Commission to determine such tariff.

75. Hence, the subsequent disconnection notices given by the DVC on the basis of such fluctuating yardsticks, even after final retail tariff had been

determined, were also illegal.

76. The DPS could not be charged at the first instance, without there being any default regarding bills raised on the final tariff at any previous point of

time.

77. Even if any DPS was to be retrospectively claimed on the basis of previous bills during the period 2009-2013, the same would be barred by the

two-year limitation as stipulated in Section 56(2) of the 2003 Act. In the present case, however, such question does not arise since the DPS was

claimed for the first time in 2021.

78. In view of the above discussions, the first question which fell for consideration is answered in the affirmative. The DVC could, in the year 2021,

claim dues on the basis of differential amounts of charges, between the total amounts actually paid by the consumers for the relevant periods and the

due amounts as per the retail tariff fixed on June 19, 2020 (for the period 2006-2009) and March 19, 2020 (for the period 2009-2013) respectively.

79. Such claims are justified in 2021, since the final tariffs were fixed only in June and March, 2020, respectively for the periods 2006-2009 and 2009-

2013 and bills for the differential amount between actuals and payables, even for the period during 2009-2013, were raised on the basis of such final

tariffs. Thus, the dates of fixation of final tariff became the starting points of limitation within the contemplation of Section 56(2) of the 2003 Act.

80. However, the second question which has come up for consideration in the present case has to be decided in the negative. The DVC is not entitled

to charge any DPS for any of the defaults allegedly committed prior to the fixation of final retail tariff on June 19, 2020 and March 19, 2020

respectively for the periods 2006-2009 and 2009-2013 which were committed, if at all, in respect of the then fluid ad hoc tariffs which all merged

ultimately into the final tariffs as fixed in 2020.

81. Issue No. iii is, consequently, also negated, since no question of any disconnection would arise, as there were no defaults in the first place on the

part of the consumers, regarding payment of electricity charges on the basis of the final retail tariff.

82. W.P.A. No.15428 of 2021, W.P.A. No.14166 of 2021, W.P.A. No.15432 of 2021, W.P.A. No.16040 of 2021, W.P.A. No.4168 of 2021 with

CAN 1 of 2021, W.P.A. No.5985 of 2021, W.P.A. No.6047 of 2021, W.P.A. No.6068 of 2021, W.P.A. No.6075 of 2021 and W.P.A. No.6077 of

2021 are thus disposed of in the light of the above observations.

83. The DVC shall restore the electric supplies of each of the writ petitioners, phase-wise or at one go, as expeditiously as feasible but, in any event,

within an outer limit of February 28, 2022.

84. All bills raised by the DVC on the writ petitioners on account of Delayed Payment Surcharge stand hereby cancelled and revoked.

85. However, the DVC shall be entitled, by duly raising bills, to claim from the writ petitioners/consumers, as arrears, the differential amounts between

the total actual amounts paid as electricity charges by the writ petitioners respectively and the total amounts due, as calculated on the basis of the final

rates fixed by the WBERC on June 19, 2020 and on March 19, 2020, for the periods 2006-2009 and 2009-2013 respectively, after giving due credit to

the petitioners for the amounts, if any, already paid by them by way of the 24 instalments granted by the DVC for the period between 2010 and 2013.

86. There will be no order as to costs.

87. Urgent photostat certified copies, if applied for, be issued to the parties on compliance of due formalities in that regard.

88. Copies of this common order be kept separately in the files of each of the above ten writ petitions for future reference.