
(2021) 06 CAL CK 0040
In the Calcutta High Court
Case No : Writ Petition No. 10544 Of 2021

Mansarovar Ferrous Private Limited & Anr.	APPELLANT
Vs	
West Bengal Electricity Regulatory Commission & Ors	RESPONDENT

Date of Decision : 08-06-2021

Acts Referred:

Citation : (2021) 06 CAL CK 0040

Hon'ble Judges : Arindam Mukherjee, J

Bench : Single Bench

Advocate : Surajit Nath Mitra, Tanoy Chakraborty, Goutam Shroff, Siddharth Shroff, Joydip Kar, Deepak Agarwal

Judgement

The matter was heard at length on 7h June, 2021. The submissions of the respective parties have been recorded in the said order.

On resumption, the petitioners to demonstrate that the acts of Damodar Valley Corporation (in short ""DVC"") which has ultimately given rise to the

disconnection notice dated 12th May, 2021 to be arbitrary has cited two judgments. The first judgment reported in (2004) 8 SCC 229 (Krishna

Bahadur vs. Purna Theatre and Others) is on the ground of waiver. Relying upon paragraph 9 of the said judgment it is submitted by the petitioners

that the letter dated 10th February, 2021 appearing at page 445 of the writ petition should not be construed as an admission on the part of the

petitioners or waiver of right by the petitioners. It cannot be said on a reading of the said letter that the petitioners fully knowing of their rights have

agreed not to assert the same for a consideration. In the said letter dated 10th February, 2021, the petitioners did not agree with the dues including the

Delayed Payment Surcharge (in short ""DPS"") claimed by DVC. Reserving such right the petitioners sought for 60 instalments to pay the amount

claimed by DVC. It therefor cannot be said that the petitioners had agreed not to assert their right disputing the claim of DVC for a consideration

being payment by instalments.

The petitioners then rely upon the judgment reported in (2020) 4 SCC 650 (Assistant Engineer (DI), Ajmer Vidyut Vitran Nigam Limited and Another)

to contend that the bills for December, 2009 to April, 2010, which according to DVC have remained unpaid, is a claim which accrued more than two

years prior to the claim made by DVC in its Summary of Actual Payable Amount, appearing at page 394, which was forwarded by a letter dated 1st

January, 2021. The petitioners relying upon paragraphs 4.2, 4.3, 4.5, 5.2, 5.3 and 5.4 of the said judgment say that DVC cannot disconnect the supply

of petitioner no.1 for alleged unpaid bills for the period December, 2009 to April, 2010 as claimed under such bills are barred by limitation.

The petitioners also refer to the Summary of Actual Payable Amount and its annexures to contend that DVC is trying to realise the alleged unpaid bills

for the period December, 2009 to April, 2010 twice. The petitioners therefor submit that in the facts and circumstances of the instant case, the notice

of disconnection dated 12th May, 2021 should be stayed by an interim order.

On behalf of DVC, the submissions made by the petitioners are disputed. It is submitted by DVC that the claim of DVC cannot be said to be a claim

for more than two years old in the fact scenario of the case. Assuming without admitting that the tariff rate at which DVC had raised the bills for the

months of December, 2009 to April, 2010 to be an invalid tariff rate but the fact remains that the petitioner no.1 during that period had consumed

electricity without making payment for the same. The unpaid amount has been carried forward and as such the dues for the period December, 2009 to

April, 2010 are not barred by limitation to attract the ratio of the judgment in Ajmer Vidyut Vitran Nigam (supra). On behalf of DVC it is further

submitted that the interpretation of the letter dated 10th February, 2021 sought to be given by the petitioners is also incorrect. The petitioners at the

highest in the said letter had denied right of DVC to charge DPS. The protest in the letter should be construed to be limited to DPS only and not to the

other dues mentioned and claimed in the Summary of Actual Payable Amount.

After hearing the parties I find that the issue of charging DPS, that the claim of DVC being barred by limitation or not and whether there was a

waiver on the part of the petitioner no.1 by making payment of at least two instalments in terms of their letter dated 10th February, 2021 and DVC's

letter dated 26th February, 2021, are questions which can be answered at the final hearing after version of the parties are available on affidavits.

Today we are concerned only with the interim order staying the operation of the disconnection notice dated 12th May, 2021. On this issue it appears

that the petitioner no.1 has made payment of two instalments in terms of DVC's letter dated 26th February, 2021 (may not be on the exact date when

the same fell due) written in reply to the petitioners letter dated 10th February, 2021. There is, as such, a prima facie evidence that the petitioners had

accepted the proposal of DVC given in the DVC's letter dated 26th February, 2021. The Court at this stage cannot go beyond this prima facie

evidence since these questions as I have already held are required to be finally adjudicated after the affidavits are filed. The Court cannot also re-

write any agreement between the parties unless the same is modified by the parties. The petitioners therefor have to adhere to the payment terms in

this letter dated 26th February, 2021 for the time being. Any payment will, however, be without prejudice to its rights of the petitioners since they have

reserved their right as against DPS in their letter dated 10th February, 2021. The issue of waiver as also limitation as raised by the petitioners are also

required to be considered at the final hearing. However, owing to the adverse commercial environment due to the pandemic, DVC should make an

endeavour to consider the petitioners' case sympathetically granting the petitioners some further time and breathing space to pay the amounts as

indicated in the DVC's letter dated 26th February, 2021. Any deviation that may be allowed by DVC from its letter dated 26th February, 2021 and

payments that may be made by the petitioner no.1 on the deviated terms shall be without prejudice to their respective rights.

The parties seek a day's adjournment to take instruction.

Let this matter appear on 9th June, 2021 for further consideration to the extent as indicated above.