

(2019) 03 CAL CK 0014

In the Calcutta High Court

Case No : Writ Petitions (Wp) No. 5063 (W) Of 2019

Surya Alloy Industries Limited & Anr.

APPELLANT

Vs

Damodar Valley Corporation (Dvc) & Ors

RESPONDENT

Date of Decision : 05-03-2019

Acts Referred:

Electricity Act, 2003 — Section 62(6)

Citation : (2019) 03 CAL CK 0014

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Abhrajit Mitra, Rajshree Kajaria, Satadeep Bhattacharyya, Ritwik Pattanayak, Cardina Roy, Pradip Kumar Tarafder, Subir Pal

Final Decision : Disposed Off

Judgement

The issue before this Court in the instant writ petition at the interim stage is arising out of the following facts:

Damodar Valley Corporation of which the writ petitioners are consumers, was billing the petitioners like all other consumers under two several heads. One is a fixed cost, which includes the generation and transmission charge. The other head is the distribution or also otherwise called the retail tariff charges.

Disputes arose sometime in the year 2006 onwards towards the quantum of fixed costs when the Central Electricity Regulatory Commission suo motu chose to determine the fixed cost that was being charged by the DVC to all its consumers.

The C.E.R.C. found that the excess amounts were being charged under the fixed cost component by the DVC to its consumers. The fixed charges came to be revised and reduced by the C.E.R.C. The order of the C.E.R.C. reducing the fixed cost was carried in appeal before the Appellate Authority otherwise known as APTEL.

The APTEL in turn upheld the fixed cost as determined by the C.E.R.C. Not

satisfied with the order of APTEL, DVC challenged the same before the Hon'ble Supreme Court of India.

Initially when the statutory appeal was being admitted before the Hon'ble Supreme Court of India, the parties were directed to submit all the disputed items to be taken into account in tariff fixation including any document that may be relied upon by the DVC at the final hearing.

The order of refund as directed by the APTEL affirming the order of C.E.R.C. was stayed until the disposal of the statutory appeal before the Hon'ble Supreme Court of India.

The statutory appeal being Civil Appeal No. 488 of 2010 was dismissed by a judgment and order dated 3rd December, 2018 and the operating part of the order, the Hon'ble Supreme Court of India has stated as follows:

"27. When the matter went back pursuant to the remand order in the first round of litigation which has become final in view of the dismissal of appeal by this Court, the Central Commission has only reiterated the procedure in the matter of calculating interest on loan by reducing the loan amount by the cumulative depreciation. This is a procedure to which exception was not taken in the first round when the appellant could have taken exception to the same. This is also for the period prior to 31.3.2006. Having regard to what is stated in paragraph 57 in the earlier round of litigation, therefore, on a point which has become final in the earlier round, we are not persuaded to hold that it will be open for the appellant to raise the same issue in the second round in respect of a matter which has attained finality. On this ground, we think that the appellant is not entitled for consideration of the said point at our hands. Accordingly, we refuse to answer the question of law which is raised. The upshot of the above discussion is that the appellant has not made out a case for interference. The appeal fails and is dismissed. The parties will bear their respective costs."

In the aforesaid paragraph, the Hon'ble Supreme Court of India was referring to in confirmation of the order dated 10th May, 2010 passed by the APTEL, paragraph 107 whereof is set out hereinbelow:

"107. Since, we do not find any substance in the grounds raised in the Appeal, we deem it fit to dismiss the Appeal as devoid of merits. Consequently, we direct the Appellant (DVC) to implement the Tariff as determined by the Central Commission vide its order dated 06.08.2009. DVC is also directed to revise the electricity bills raised by it for electricity consumption during April, 2006 onwards of its licensees and HT consumers and refund the excess amount billed and collected along with the interest at the rate of 6% per annum in the line with Section 62(6) of The Electricity Act, 2003. Alternatively the Appellant (DVC) may adjust the excess amount recovered, along with interest at the rate of 6% per annum, in 24 equal monthly prospective installments, starting from July, 2010 by giving credit in the monthly bills of the consumers/licensees. Thereafter, the DVC is directed to approach the concerned State Electricity Commissions for getting

the final order relating to the Retail Tariff who in turn will fix the retail tariff according to law."

It is abundantly clear from the above that the fixed charge as confirmed and finalised by the APTEL was required to be implemented by the DVC. The DVC was supposed to do the following:

(i) To prepare revised electricity bills for electricity consumption during April 2006 onwards of its consumers and refund the excess amount billed and collected under the fixed cost component with interest at the rate of 6% per annum.

(ii) Alternatively the DVC was to adjust the excess amount recovered, under the fixed cost component, along with interest at the rate of 6% per annum in 24 equal monthly instalments.

(iii) It is only after complying with the aforesaid two directions that the DVC was directed to approach the State Electricity Commission for getting the final order relating to retail tariff, who were directed to fix the same in accordance with law.

Counsel for the DVC would argue that the distribution or retail tariff cannot be determined unless the generation and transmission tariff are reconsidered by the State Electricity Commission. They also argue that the bills were raised from 2006 onwards on the consumers were provisional.

In my view, the provisional part of the bill can only be to this extent of the retail tariff and not otherwise.

The DVC says that in the event, the retail tariff is determined after taking into consideration the fixed cost and what is being collected from the consumers, it may be entitled to a refund from the consumers. Hence, the fixed cost component also needs to be revised by the W.B.E.R.C. They are, therefore, not in a position to refund any part of the fixed component to the consumers.

This Court finds that the argument of DVC is in direct contradiction if not contempt of the order of the Hon'ble Supreme Court of India upholding the order of APTEL. The fixed cost as already decided by APTEL and confirmed by the Hon'ble Supreme Court of India cannot be touched by the DVC or even the State Electricity Commission.

Hence, the determination as ordered in paragraph 107 of the APTEL's order set out hereinabove can only go to the extent of the actual retail amount paid or payable further or refundable by the consumers, inter alia, like the writ petitioners.

In those circumstances, it is ordered that the writ petitioners shall be allowed to deduct a sum of Rs.25,00,000/-(Rupees twenty five lakhs only) per month and maintain the same in a separate interest bearing deposit account with any Nationalised Bank upon due notice to the DVC.

The writ petitioners shall refund the balance amount already deducted apart from

the aforesaid sum of Rs.25,00,000/- (Rupees twenty five lakhs only) within a period of seven days from the date to the DVC.

This deduction shall be continued until such time the West Bengal State Electricity Commission determines the retail tariff for the period from 2006 to 2009.

It is submitted by the DVC that the West Bengal Electricity Regulatory Commission has by an order dated 1st March, 2019 asked the DVC to submit its tariff petition for the period from 2006 to 2009 in terms of the direction of the Hon'ble Supreme Court of India in Civil Appeal No. 488 of 2010 and the APTEL's order dated 10th May, 2010 in Appeal No. 146 of 2009.

The DVC shall do so within a period of seven days from the date. The West Bengal Electricity Regulatory Commission shall determine the retail tariff for the said periods based on the basis of the fixed tariff already determined by the APTEL and affirmed by the Hon'ble Supreme Court of India within a period of three months from the date.

Until final determination of the retail amount by the W.B.E.R.C., there shall be an order of stay of disconnection of the writ petitioners' electricity supply. The writ petitioner shall, however, continue to pay its monthly bills as may be raised on them less a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) as indicated hereinabove.

It is made clear that in default of payment of the monthly bills, the DVC shall be entitled to act in terms of their Statutes which includes the right of disconnection in default in payment of monthly bills or deposit of the aforesaid sum of Rs.25,00,000/- (Rupees twenty five lakhs only).

It is made clear that this order is restricted to the writ petitioners only.

Let the affidavit-in-opposition to the instant writ petition be filed by the DVC within a period of four weeks from the date. Reply, if any, thereto be filed two weeks thereafter.

Let this writ petition be mentioned for hearing after pleadings are complete.