(2018) 10 CAL CK 0083

In the Calcutta High Court

Case No : W.P.25814(W) Of 2015, Can 8402 Of 2018

Surya Alloy Industries Ltd. & Anr @APPELLANT@Hash West Bengal Electricity Regulatory Commission & Ors

Date of Decision : 11-10-2018

Acts Referred:

Citation : (2018) 10 CAL CK 0083

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Joydeep Kar, Subir Pal, Ritwik Pattanayak, Gautam Shorff

Final Decision : Disposed Off

Judgement

The petitioner has filed the present connecting application being CAN No. 8402 of 2018 thereby assailing the notice of disconnection dated 3rd

October, 2018 issued by the Chief Engineer (Commercial) Damodar Valley Corporation (hereinafter referred to as DVC) thus directing the petitioner

to pay a sum of Rs. 1,16,38, 884/- only in terms of Tariff order dated 3rd October, 2018 passed by WBERC within 15 days from the date of issuance

of this notice, failing which the petitionerâ??s power supply line will be disconnected without any further reference.

Mr. Mitra, learned Senior Advocate appearing for the petitioners, submits that challenging the vires of the Regulation 4.4 of the WBERC (Terms and

Conditions of Tariff) Regulations, 2011, the petitioners already filed a writ petition being W.P. No. 25814(W) of 2015. The application being C.A.N

3447 of 2018 is arising out of the said pending writ petition. Mr. Mitra further submits that when the writ petition was filed since the petitioners were

not facing additional charges towards penalty, therefore, no interim order was passed in favour of the petitioners as also there was no threat of disconnection order from the Damodar Valley Corporation. The petitioners were subsequently served with a notice of disconnection unless the

petitioners make payment of Rs. 58 lakh- towards additional charges. Assailing the impugned order, the petitioners moved the earlier application being

C.A.N 617 of 2016. In that application , this Court after refusing the interim order passed the following order:

â?? After hearing the learned Advocates for the respective parties and after considering the respective cases I find no reason to pass any interim

order at this stage. It may be mentioned that while the writ petition was admitted on November 26, 2015 a learned Single Judge had specifically

observed that there was no scope for passing an interim order at that stage. The only change of circumstance as mentioned by Mr. Saha, the learned

Senior Counsel for the petitioners is that because of the subsequent non-payment by the petitioners of the energy bills raised by the D.V.C. the

respondents have issued a notice of disconnection That , however is no change of circumstance for which an interim order which was refused at the

initial stage may be granted, particularly in view of the fact that the provisions of law under challenge have not yet been stuck down.

However, Mr. Kar, the learned Senior Counsel for the Damodar Valley Corporation authorities has assured the Court that in case the writ petition

succeeds they shall refund/adjust the entire sum with interest to the petitioners. In such view of it, the petitioners will be at liberty to make the payment

subject to the final result of the writ petition. Let this matter appear for hearing in the Combined Monthly List of March , 2016.â??

Since the amount was meager of Rs. 58 lakh 75 thousand 5 hundred 11, therefore, petitioners paid Rs. 58 lakh 75 thousand 5 hundred 11. Accordingly,

disconnection was not taken place. Again assailing the order dated 31st January, 2018 issued by the Chief Engineer (Commercial), Damodar Valley

Corporation directing the petitioners to pay Rs. 1.76 crore towards the additional charges, failing which the supply would be disconnected, petitioners

filed a C.A.N application. In that CAN application (CAN 1317 of 2018) , the interim order was passed on 15th February, 2018 thereby directing the

petitioners to pay Rs. 50,00,000/- in two instalments against the outstanding dues of Rs. 1,76,00,000/-. Accordingly, in two instalments the petitioners

paid the said amount. All on a sudden by the impugned order , the petitioners have been asked to pay Rs. 1 crore 36 lakh 2 hundred 64 towards the outstanding dues failing which supply will be disconnected. Mr. Mitra further submits that additionalÂ charges towards penalty is the subjectÂ matter

of the main writ petition. Mr. Mitra also submits , therefore, every month the petitionersÂ are asked to pay the actual charges for consumptionÂ and

also the additional chargesÂ towardsÂ penalty.

Resultantly it is very much difficult to run the business . Mr. Mitra further submits that in this business more than 1,000 workersâ?? livelihood and

their families are involved. Mr. Mitra further contends that if the Â supply is disconnected , then the Company will face huge loss and functioning of

the machineries will be highly affected. It is also submitted by Mr. Mitra that the Distribution Company on the one hand is raising additional charges

and on the other , they are gaining a lot by exporting the energy. In conclusion, Mr. Mitra submits that Court should restrained the respondents not to

give effect to the order dated 1st June, 2018.

Per contra, Mr. Kar, learned Senior AdvocateÂ appearingÂ for the Damodar Valley Corporation , submits that according to the Regulation, the

petitioners are under obligation to pay the excess charges as per Clause 4.4 which is quoted below:

â?? 4.4 If in a 15 minutes time block a consumer draws power more than the restricted drawal, if any, imposed by the licensee then the consumer will

pay additional energy charge at a rate twice the applicable rate for that consumer at that time block. Such additional energy charge shall be payable in

addition to the amount that is payable as energy charge for consumption of energy in that particular time block.â??

Therefore, the petitioners cannot take the plea of burden of additional energy charge just to avoid the payment. Mr. Kar further submits that the law is

very much clear and still in force. This Court disposed of the earlier CAN applications being CAN No . 3447 of 2018, CAN 1317 of 2018 and CAN

617 of 2016 on 14th June, 2018. Therefore those CAN applications were disposed of thereby directing the petitioner to make payment of 60% of the

total dues for additional charges during the restricted drawal. Accordingly, the petitioner paid 60% of the total dues. Unfortunately, by the impugned

order dated 3rd October, 2018 as appears at page 94, the petitioner company cannot ask to pay total amount of Rs. Â 1,16,38,884/-Â within 15

daysÂ failing whichÂ the connection would be disconnected without any further notice. Â Â

Therefore, considering the interim order passed by this Court earlier during pendency of the final hearing of the writ petition, IÂ direct the petitioner

companyÂ to make paymentÂ of 60 % of the totaldues towards the period of restricted drawal by 24th October, 2018. I make it clear that petitioner

has to pay the entire amount towards the delayed payment of surcharge. If the petitioner fails to make payment of 60% of the said amount towards

the restricted drawal, as indicated above, then the Damodar Valley Corporation is at liberty to take steps on the basis of the letter dated 3rd October,

2018 without any further notice. If the payment is made, as indicated above, the impugned order dated 3rd October, 2018 issued by the Chief Engineer

(Commercial) , Damodar Valley Corporation is stayed.I make it clear that till the pronouncement of judgement this arrangement will continue. With

this direction, the CAN application being No. 8402 of 2018 is disposed of.