

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 5890-5893 OF 2024

DAMODAR VALLEY CORPORATION

...Appellant(s)

Vs.

DAMODAR VALLEY POWER CONSUMERS  
ASSOCIATION & ANR. ETC.

...Respondent(s)

O R D E R

1. This appeal is against the order of the Appellate Tribunal for Electricity (for short, the "Tribunal") dated 05.04.2024, by which it has rejected the appellant's interim application for vacation of stay order on payment of arrears dated 06.06.2022, and similar interim orders dated 21.06.2022, 01.07.2022, and 15.07.2022.

2. The West Bengal Electricity Regulatory Commission (for short, the "WERC") determined the tariff for the year 2017-18 by its order dated 05.05.2022. Appeals were filed against the said order, in which a limited stay of payment of arrears was granted by the Tribunal on 06.06.2022. Subsequently on 17.10.2022 the Tribunal granted a blanket stay pending the disposal of the appeal. In an appeal against the second interim order dated 17.10.2022, this Court vide order dated 23.11.2022 vacated the blanket stay and thereby restored the interim order dated 06.06.2022 to the following effect:

"Having heard learned senior counsel for the parties as also the other learned counsel, we note

that the matter lies in a very narrow compass. What is assailed herein is the interim order passed by the Appellate Tribunal for Electricity whereby an absolute stay has been granted on 17.10.2022.

Though on the last date of hearing, it was indicated to find out as to whether the appeal could be disposed of by the Tribunal, we are informed that the Tribunal was not in a position to take up the appeal for consideration for valid reasons pointed out. It is in that light, we find it appropriate to make an interim arrangement so that interest of all the parties are protected in the meantime pending consideration of the appeal. In this regard, we note that the Tribunal through its earlier order dated 06.06.2022 had stayed only the payment of arrears subject to the condition that the appellant before the Tribunal pay full tariff at the rate as determined by the impugned orders dated 05.05.2022 and 17.06.2022 which are pending consideration before the Appellate Tribunal. Since we have noted that the disposal of the appeal would take some time before the Appellate Tribunal, we feel it appropriate to restore the earlier interim arrangement, clarify and direct the respondents herein who are appellants before the Appellate Tribunal to pay the full tariff at the rate as determined by the West Bengal Electricity Regulatory Commission (WBERC) starting from the date the WBERC had passed the impugned orders i.e., from 05.05.2022 and 17.06.2022, during the pendency of the appeal before the Tribunal. The order dated 06.06.2022 of Appellate Tribunal to that extent stands restored.

In the meantime, we request the Appellate Tribunal to also consider and dispose of the appeal as expeditiously as possible.

We further clarify that the pendency of the appeal before the Appellate Tribunal shall not be an impediment for the WBERC to consider the issue relating to truing up charges which is pending before it and pass appropriate orders in that regard in accordance with law. All contentions of the parties are left open to be urged in the appropriate proceedings.

The appeals are, accordingly, disposed of."

3. In the meanwhile, the WERC concluded the truing up proceedings and passed an order on 18.09.2023.

4. Consequently, the appellant filed an application before the Tribunal praying for vacating the earlier interim order dated 06.06.2022 on the grounds of change in circumstances and undue hardship. By the impugned order dated 05.04.2024, the Tribunal was of the opinion that as Supreme Court had already interfered against the interim order on 17.10.2022 and had restored the order of 06.06.2022, it would not be proper to vacate or vary the interim order and therefore directed the parties to approach the Supreme Court for appropriate orders. It held that change in circumstance pursuant to the WERC's order dated 18.09.2023, and undue hardship suffered by the appellant due to a stay on the payment of arrears, warranting vacation of the interim order, could only be raised before the Supreme Court.

5. The order passed by this Court on 23.11.2022 was an interim arrangement pending disposal of appeals before the Tribunal. Considering the subsequent development of the WERC's order dated 18.09.2023, there was definitely an occasion to either re-consider the interim order or to dispose of the appeals pending before the Tribunal. Taking note of the large number of appeals pending before it, the Tribunal observed that the present appeals cannot be taken up out of turn. We respect this decision of the Tribunal.

6. We only clarify that the order of this Court dated 23.11.2022 shall not stand in the way of the Tribunal reconsidering the interim order dated 06.06.2022 in the light of WBERC's order dated 18.09.2023 or to hear the appeals on merit. We leave it to the Tribunal to adopt such course as it considers appropriate.

7. Needless to say, we have not expressed any opinion on the merits of the matter.

8. With these observations, the Civil Appeals are disposed of.

.....J.  
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.  
[PRASANNA BHALACHANDRA VARALE]

NEW DELHI;  
MAY 17, 2024.

ITEM NO.24

COURT NO.15

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 5890-5893/2024

DAMODAR VALLEY CORPORATION

Appellant(s)

VERSUS

DAMODAR VALLEY POWER CONSUMERS ASSOCIATION & ANR. Respondent(s)

(FOR ADMISSION and IA No.107217/2024-APPROPRIATE ORDERS/DIRECTIONS  
IA No. 107217/2024 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 17-05-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA  
HON'BLE MR. JUSTICE PRASANNA BHALACHANDRA VARALE

For Appellant(s) Mr. Abhishek Manu Singhvi, Sr. Adv.  
Mr. Vikas Singh, Sr. Adv.  
Mr. Shri Venkatesh, Adv.  
Mr. Nitin Saluja, AOR  
Ms. Kanika Chugh, Adv.  
Mr. Shryeshth Ramesh Sharma, Adv.  
Mr. Bharath Gangadharan, Adv.  
Mr. Ashutosh Srivastava, Adv.  
Mr. Nihal Bhardwaj, Adv.  
Mr. Siddharth Nigotia, Adv.  
Mr. Aashwyan Singh, Adv.  
Mr. Kartikay Trivedi, Adv.  
Mr. Shivam Kumar, Adv.

For Respondent(s) Mr. Amit Kapoor, Adv.  
Mr. Rajiv Yadav, AOR  
Mr. Akshat Jain, Adv.  
Ms. Mansi Agarwal, Adv.  
  
Mr. Sajan Poovayya, Sr. Adv.  
Ms. Dipali Sheth, Adv.  
Mr. Nikunj Dayal, AOR  
Mr. Shubham Mehta, Adv.  
Ms. Raksha Agarwal, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The Civil Appeals are disposed of in terms of the Signed  
Order.

Pending application(s), if any, shall stand disposed of.

(KAPIL TANDON)  
COURT MASTER (SH)

(NIDHI WASON)  
COURT MASTER (NSH)

(Signed Order is placed on the file.)