

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2010

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.21731 of 2003  
and  
W.P.M.P.No.26956 of 2003

K. Kanagasabai

... Petitioner

Versus

1. The Superintending Engineer  
Kanniyakumari Electricity  
Distribution Circle,  
T.N.E.B.  
Nagercoil - 629 003.

2. The Chairman,  
T.N.E.B.  
Mount Road,  
Chennai - 600 002.

.... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of writ of mandamus, directing the respondents to reclassify the service connection to the petitioner's office in H6-274 as domestic tariff IA instead of Tariff V.

For Petitioner : Mr. R. Ramanlaal

For Respondents : Mr. N. Srinivasan

ORDER

The petitioner, who is practising as an Advocate in Nagercoil and also panel lawyer for Legal Aid and Advisory Board at Kanniyakumari District, would contend that he is having his office in a small portion of his house along with an Advocate Mr. K. Rathinasamy. The small portion of his house forms part of the office. When the petitioner applied for electricity service connection, he was directed to pay security deposit of Rs.2,500/-, treating the advocate office as a Commercial establishment. The Tariff was classified as IA for domestic purpose and Tariff V for Commercial Establishment. Since the portion of the petitioner's house is utilised as an office, the tariff to be levied was classified under Tariff V and bi-monthly billing was done under Tariff V.

2. According to the petitioner, the office of the Advocate does not come under the heading "Commercial" for payment of consumption of energy at commercial rate. The profession of an

advocate is different from commercial activity. According to him, the Advocate profession is a professional activity and he has to apply his professional skill as against the commercial or business activities and therefore, the tariff categorisation for having utilised a small portion of his house for the purpose of his profession is unlawful, illegal, irrational, arbitrary and violative of Article 14 of the Constitution of India.

3. In this connection, the learned counsel for the petitioner relied upon the Judgment reported in (V. Sasidharan vs. M/s. Peter and Karunakar and others) AIR 1984 SCC 1700 wherein the Supreme Court has categorically held that the Office of a Lawyer or Firm of a Lawyer is not a Commercial Establishment. The learned counsel for the petitioner also relied on the Division Bench Judgment of Madhya Pradesh High Court reported in (Shiv Narayan and another vs. M.P. Electricity Board and others) AIR 1999 MP 246 in which it was held that classification of Advocate and Vakkil under the heading "Commercial" for payment of consumption of electricity energy at commercial rate is arbitrary and irrational and ultra vires of Article 14 of Constitution of India.

4. According to the petitioner, Section 49 (2) (a) of Electricity Supply Act, 1948 clearly stipulates that while fixing the uniform tariff, the Electricity Board has to see the nature of supply and the purpose for which the energy is required. Therefore, inasmuch as there is no commercial activity involved in running the office of an advocate, the entry in the Metre card under Tariff V is wrong. Hence, the petitioner has filed the writ petition seeking a Writ of Mandamus directing the respondents to reclassify the service connection to the petitioner's office in H6-274 as domestic tariff IA instead of Tariff V.

5. The respondents have not filed any counter affidavit. The learned standing counsel for the respondents would contend that the petitioner is a Lawyer by profession and he has been conducting his business in a part of portion of his house. Hence, the classification made by the respondents under the category of business premises is valid and in accordance with law.

6. Heard both sides. The short point for consideration in this writ petition is

i) Whether an Advocate, who has his Office in his residential premises is liable to pay the electricity energy consumed under commercial tariff?

ii) Whether there is any commercial activity involved in the office of a lawyer, especially when the office is being run at the house of the petitioner for consultative purpose with his client?

7. The main ground of attack by the petitioner is a portion of his house is being utilised for the purpose of consulting, meeting his client and preparation of the case. While so, the discharge of his professional activity was erroneously construed as that of commercial activity by the respondents thereby they have classified the said activity for the purpose of collection of consumption charges as Commercial Establishment.

8. The contention of the petitioner is that the profession of an advocate is a noble profession and there is no commercial activity involved in the profession of the lawyer. In this connection, the learned counsel relied upon (V. Sasidharan vs. M/s. Peter and Karunakar and others) AIR 1984 SCC 1700 wherein the Supreme Court had an occasion to deal with the question as to whether a lawyer's firm can be construed as a Commercial Establishment for the purpose of collection of consumption charges under Kerala Shops and Commercial Establishment Act within the meaning of Section 2 (4) of the Kerala Shops and Commercial Establishment Act. In that decision, the Supreme Court had categorically held that the lawyer office is not a commercial establishment. In that ruling, the Supreme Court had categorically held that the office of the lawyer or firm of a lawyer is not a shop within the meaning of Section 2(15) of the Kerala Shops and Commercial Establishment Act warranting the authorities to levy consumption charges under commercial tariff. It was further observed that whatever may be the popular conception or misconception regarding the role of to-day's lawyers and the alleged narrowing of the gap between a profession on one hand and a trade or business on the other, it is trite that, traditionally, lawyers do not carry on a trade or business nor do they render services to 'customers'. The context as well as the phraseology of the definition in Section 2(15) is inapposite in the case of a lawyer's office or the office of a firm of lawyers. In para Nos. 7 and 8 of the Judgment, the Supreme Court, while dealing with the term Commercial Establishment, it was observed as follows:-

"7. The definition contained in Section 2(4) may be simplified by restating it in separate clauses as follows: (1) Commercial Establishment means five different kinds of establishments : commercial, industrial, trading, banking or insurance ; (2) Commercial Establishment means an establishment or administrative service in which the persons employed are mainly engaged in office work; (3) Commercial Establishment means a hotel, restaurant, boarding or eating house, a cafe or any other refreshment house; (4) Commercial Establishment means a theatre or any other place of public amusement or entertainment; and (5) Commercial Establishment includes such other establishment as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purpose of the Act. Commercial Establishment does not include a factory to which any of the provisions of the Factories Act, 1948 apply.

8. A lawyer's office or the office of a firm of lawyers cannot obviously fall under clauses (3) and (4) above. Nor has the Government issued any notification as contemplated by Section 2(4). The question thus narrows itself into whether a lawyer's office falls under either of the first two clauses."

9. Ultimately, the Supreme Court categorically held that the office of the lawyer or firm of the lawyer is not a commercial establishment.

10. In the decision rendered by the Division Bench of the Madhya Pradesh High Court, relied on by the learned counsel for the petitioner and reported in (Shiv Narayan and another vs. M.P. Electricity Board and others) AIR 1999 Madhya Pradesh 246, the Division Bench of the Madhya Pradesh High Court held that insofar as it relates to the supply of electricity to the office of the lawyer where there is no commercial activity involved, the classification of the tariff for the purpose of collection of consumption charges under commercial tariff does not arise as the lawyer's profession is not a commercial one. It was further held that in case of professional activity, an individual has to apply professional skill as against commercial or business activity, where the transaction is done with the active cooperation of employer and his employees for sale of certain goods or with the profit motive. In the case of profession, one works for livelihood and not only for a profit motive. The Division Bench of the Madhya Pradesh High Court, in para Nos 11 and 12 held as follows:

"11. A survey of the aforesaid cases would show that there is always distinction between professional activity and business or commercial activity. Their Lordships have kept this distinction clearly in view and observed that in a case of professional activity, an individual has to apply his professional skill as against commercial or business activity where the transaction is done with the active cooperation of employer and his employees for sale of certain goods or with the profit motive. In case of profession, one works for livelihood and not only for a profit motive. In the present case, the M.P.E.B. has categorised as a commercial activity and under that heading, they have included lawyers and vakils meaning thereby that the MPEB has categorised the profession of a lawyer or a vakil as a commercial activity. This in our opinion, is absolutely illegal, irrational and arbitrary; therefore, it is ultra vires of Article 14 of the Constitution of India. This arbitrary classification of putting the lawyers under the head of 'commercial activity' deserves to be struck down as violative of Art. 14 of the Constitution of India.

12. Shri Jaiswal, learned counsel for the Board has submitted that the M.P.E.B. has a right to lay down a tariff for various activities and it can classify item-wise also. So far as competence of the Board for laying down tariff for different professions is concerned, nobody disputes the authority of the Board; but to call the legal profession as a commercial activity is totally

alien to the profession and this classification of covering the legal profession in a commercial activity is totally bereft of any legal sanction and is per se arbitrary and irrational."

11. This judgment rendered by the Division Bench of the Madhya Pradesh High Court was taken on appeal by the Madhya Pradesh Electricity Board before the Supreme Court and the Supreme Court in the decision reported in (M.P. Electricity Board and others vs. Shiv Narayan and another) (2005) 7 SCC 283 held in Para No.14 as follows:-

"14. A professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction, therefore, between a professional activity and an activity of a commercial character. Considering a similar question in the background of Section 2(4) of the Bombay Shops and Establishments Act, 1948 (79 of 1948), it was held by this Court in Devendra M.Surti (Dr.) v. State of Gujarat that a doctor's establishment is not covered by the expression "Commercial establishment"

12. Before the Supreme Court, the judgment rendered in (New Delhi Municipal Council vs. Sohan Lal Sachdev (dead) rep. By Mrs. Hirinder Sachdev) (2002) 2 SCC 494 was relied on. The Supreme Court found that certain observations made in the decision rendered in (New Delhi Municipal Council vs. Sohan Lal Sachdev (dead) rep. By Mrs. Hirinder Sachdev) (2002) 2 SCC 494 to the effect that in the case of a guest house, a building is used for providing accommodation to 'guests' who may be travellers, passengers or such persons who may use the premises temporarily for the purpose of their stay on payment of charges and therefore, the electricity service connection provided to a guest house has to be classified under 'commercial establishment' was found to be incorrect and therefore, the matter was referred to a larger bench for consideration.

13. The larger Bench of the Supreme Court in the decision made in Civil Appeal No.1065 of 2000, dated 27.10.2005 held that the Advocate running his office from his residence cannot be charged the additional tariff on the commercial basis. However in case office is run in an independent commercial place then the advocate cannot be exempted from the same. A distinction has been made between the office in a residence and office in a commercial place.

14. Following the above decision of the Supreme Court, a Division Bench of the Rajasthan High Court, Jaipur Bench, had categorically held in the decision reported in (J.V.V.N. Limited and others vs. Smt. Parinitoo Jain and another) AIR 2009 Rajasthan 110 that the advocate running his office from his residence cannot be charged the additional tariff on commercial basis. However, in case of office is run in an independent commercial place, then the advocate cannot be exempted from the same. A distinction has been made between the office in a residence and office in a commercial place.

15. In this connection, it is worthwhile to consider the definition of Profession. The word 'profession' has been defined in Black's Law Dictionary - Sixth Edition as under

'Profession. A vocation or occupation requiring special, usually advanced education, knowledge, and skill; e.g. Law or medical professions. Also refers to whole body of such profession.

The labour and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual. The term originally contemplated only theology, law and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill.

Act of professing; a public declaration respecting something. Profession of faith in a religion.

16. The word 'profession' has also been defined in Law Lexicon which reads as under:

Profession. A 'profession' involves the idea of an occupation requiring either purely intellectual skill or any manual skill, as in painting and sculpture or surgery, skill controlled by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities. CIT v. Manmohan Das, (1966) 59 ITR 699, 710 : (AIR 1966 SC 798), Income-tax Act, 1961, Sec.28.

The term is applied to an occupation or calling which requires learned and special preparation in the acquirement of scientific knowledge and skill. In fact, in this ruling, the Supreme Court decision reported in 1984 SCC 1700 has been followed:

17. Taking into consideration the definition given to the word 'profession' mentioned supra and the observations made by the larger bench of the Honourable Supreme Court mentioned supra, which was also followed by the Division Bench of the Rajasthan High Court in (J.V.V.N. Limited and others vs. Smt. Parinitoo Jain and another) AIR 2009 Rajasthan 110 I hold that inasmuch as the petitioner is running his advocate office within his residential premises, the categorisation made by the respondents, classifying the service connection provided to the petitioner's office in H6-274 as Tariff V instead of domestic tariff IA is illegal, irrational and arbitrary and therefore it is ultra vires of Article 14 of the constitution of India.

18. In the result, the writ petition filed by the petitioner is allowed. No costs. The respondents are directed to re-classify the tariff to the petitioner from tariff V to tariff IA treating the activities of the petitioner for the purpose of consumption of electricity service connection as 'domestic' and not as a commercial establishment. Consequently, connected miscellaneous petition is closed.

Sd/-  
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

ogy/rsh

To

1. The Superintending Engineer  
Kanniyakumari Electricity  
Distribution Circle,  
T.N.E.B.  
Nagercoil - 629 003.
2. The Chairman,  
T.N.E.B.  
Mount Road,  
Chennai - 600 002.

NR(CO)  
Eu 9.6.11

W.P.No.21731 of 2003

सत्यमेव जयते

WEB COPY