IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15556 of 2011

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Jesuit Fathers Residence, Dighat Ghat, Patna through its Superior, Fr. K.C. Philip S.J. S/O Sri K.J. Chacko R/O Sanjivan Nivas, Digha Ghat, P.S.- Digha, District - Patna .... **Petitioner**

Versus

1. Bihar State Electricity Board through The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
2. Executive Engineer, Bihar State Electricity Board, Electric Supply Division, Patliputra, Patna
3. Assistant Electrical Engineer, Electric Supply Subdivision, Patliputra, Patna

.... **.... Respondents**

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Appearance :

For the Petitioner/s : Mr. K.M.Joseph, Advocate

For the Respondent/s : Mr. Anand Kumar Ojha, Addl. SC

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

01-10-2015

The petitioner Jesuit Fathers Residence, Digha Ghat, Patna through its superior Fr. K.C. Philip S.J. has filed the instant writ application for quashing the part of order, dated 28.7.2011 passed by the Chairman and Members, Consumer Grievance Redressal Forum (in short 'CGRF') whereby the petitioner has been placed under NDS tariff for electricity consumed, with effect from 30.10.2006.

2. It is worth noting that Jesuit Fathers also known as Jesuits, are member of religious order in the Catholic Church called Society of Jesus engaged in doing religious and charitable works. The Jesuit, when they enter the 'order' renounce all their rights to personal property and live in communities forming a religious family under the direction of a Religious Superior. St. Xavier's, Gandhi Maidan, Patna is the principal Jesuit Residence in Patna and Headquarters of

Patna Jesuit Province guiding the works of Jesuits in the State of Bihar. Later on, a separate Jesuit Residence for Jesuit Fathers, engaged in higher and rural education and animation programmes in several districts of Bihar, was established at Digha Ghat, Patna by the Jesuit Fathers of Patna Province of the Society of Jesus in the year 1990.

3. The case of the petitioner as also noticed by the learned CGRF, in short, is that Jesuit Residence is a residence of Jesuit Fathers and brothers, who are engaged in social research and education and publication of religious and moral education books for use in the schools. The residence consists of individual living rooms for the members of religious house and facilities like prayer room, kitchen, parlor and library etc. In the year 1990, an electric connection was granted under the Domestic Service Category (DS Category-III) for the Jesuit Residence. However, in the year 2003, without any notice, the Board changed the tariff from DS-III to NDS-III (Non Domestic) category and billed accordingly. The petitioner made its protest that the bill ought to be under DS category. However, the Board revised the tariff only from NDS-III to NDS-V category in view of tariff notification, dated 27.5.2002. In view of 2002 tariff notification, NDS-V category, now applied to non-domestic consumer like Temples, Mosques, Gurudwars, Churches,

Burial/Crematorium grounds, Public Museums, Government Educational Institutions, their hostels and libraries, non-profitable Government aided Educational Institutions, their hostels and libraries and non-profitable religious-cum-charitable-cum-Public Institutions.

4. Again under 2006 tariff, NDS-IV and NDS-V were merged into NDS-III Category and the petitioner was issued bill under this category up till March, 2010. NDS-III category applied to place of worship like Temples, Mosques, Gurudwars, Churches, Burial/Crematorium ground etc. However, if any portion of the premises was used for commercial purpose, a separate connection was warranted for such portion under NDS-II category. From March, 2010 the Board again without any notice altered the petitioner's category from NDS-III to NDS-II category, which is applicable to premises used for commercial purpose. The Board on 10.8.2008 issued a supplementary bill on the ground of change of tariff from NDS-V to NDS-III with effect from September, 2008 for a sum of Rs.57,091.10. Furthermore the bill for July, 2010 was issued under NDS II for a sum of Rs.57,201.61, as arrears of energy dues, as specified in the supplementary bill dated 10.8.2010.

5. The case of the petitioner is that he has been wrongly billed in Non-domestic category in place of domestic category. A representation was submitted on 21.9.2010 before the Electrical Executive Engineer, Patliputra Supply Division for revising the bill

which went unheeded. The respondents still issued a bill on 4.11.2010 under NDS-II Category. The petitioner again on 18.11.2010 protested and represented to the Electrical Executive Engineer, Patliputra Supply Division for issuing bills under DS Category, which too did not change the situation. The petitioner thereafter moved the learned CGRF for setting aside the bills issued under NDS-III, NDS-V and NDS-II category with a further prayer to direct the Electrical Executive Engineer, Patliputra Supply Division to refund the excess amount received from the consumer and to restrain the respondents from taking any coercive action for disconnection of power supply.

6. The case of the Board before CGRF in short was that one domestic connection was provided to the petitioner in 1990 for 1 KW sanctioned load under DS-III category, which was converted into NDS-III category for 11 KW load, on finding that the petitioner was also using electricity for purposes other than residential. In the year 2002-03, the petitioner was accordingly charged under NDS III category for 11 KW load. According to the respondents, the petitioner himself filed an application on 27.2.2003 (Annexure-5) addressed to the Electrical Executive Engineer, Patliputra Supply Division stating that the power is being utilized for charitable purposes as the Society is a non-profitable registered charitable society. It was further stated in the application that in the Patna Jesuit

Residence, Jesuit Fathers of Patna Jesuit Residence reside and do research on social and religious issues. In view of the written application of the petitioner, the tariff category was changed from NDS- III to NDS- V. Later on, NDS-V was merged into NDS-III tariff vide Board's tariff dated 1.11.2006 and the consumer has been paying the bill under NDS-III and no protest was made. As per Board's tariff w.e.f. 1.9.2008, the charitable institute comes under NDS-II tariff and accordingly the category was converted/changed to NDS-II w.e.f. 1.9.2008 and an amount of Rs.57,091.10 was raised accordingly.

7. After hearing the parties, the learned CGRF was of the view that the DS Category would be applicable to the petitioner up to 31.10.2006. Thereafter, the category of connection would be charged under NDS-V/NDS-II as per Board's tariffs dated 1.11.2006 and 1.9.2008.

8. The petitioner is aggrieved by the second part of the order of learned CGRF, whereby it came to a finding that the petitioner would be charged under NDS-V category and thereafter under NDS-II Category in accordance with the Board's tariff dated 1.11.2006 and 1.9.2008 respectively. While coming to the aforesaid conclusion, the learned CGRF observed that the premises is utilized for social and religious activities and also falls under registered religious charitable institution. The Forum observed that the electricity is also used for

other activities like purpose of research work on social and religious maters and publication of religious books and literature for the said purpose.

9. The petitioner has himself disclosed that the institution is a charitable institution and has also annexed a certificate to the aforesaid effect. The learned CGRF further observed that the petitioner unit would come within the domestic category under 1993 tariff, which was applicable up to 31.10.2006, as the domestic tariff then covered Temples, Gurudwaras, Mosques, Church and Burial/Crematorium grounds and other recognized charitable institutions.

10. Assailing the validity of impugned action, the petitioner submits that the premises are not used for any social or religious activities nor for imparting any training and research activities. No religious book or literature is published from the premises of the Institution which is done from a separate building known as ‘Prabhat Prakashan’ which is a publication centre and would be a NDS category. Though, the Patna Jesuit Society is a registered charitable society, the residential building at Digha Ghat is used only for residential purposes. The petitioner submits that the place which is used for residence should be treated as premises used for domestic purpose. In support of his submission, the petitioner has relied upon a decision of learned Single Bench in the case of ***Jeevan Sangham vs***

Bihar State Electricity Board & Ors passed in C.W.J.C. No.262 of 2011 disposed of on 1.2.2012 (Annexure-17). The relevant extract is quoted herein below:

> *"This Court finds that as far as the building which is utilized by the Jesuit Fathers for their own residential purposes, should be treated as a building used for domestic purposes. A place where the fathers reside cannot be treated as a place of worship, rather it would be treated as their residential quarter, which is different to a building which is utilized for a church, gurudwara or a mosque or for conducting public meetings or seminars. The Fathers like anyone else also have a right to their privacy. The rooms meant for their personal use which may include a prayer room, cannot be dubbed as a "Non-Domestic Service".*

11. The petitioner further submits that during the pendency of the complaint case before the learned CGRF, the premises was inspected by an inspection team of the Bihar State Electricity Board. The Board on inspection found that the connected load of the premises was 20 KW and the same was used for residence of Jesuit Fathers and Brothers. A copy of the inspection report, dated 25.3.2011 is annexed as Annexure-14 to the writ petition.

12. Faced with a challenge in view of its own report, the Board in turn relying on letter dated 27.2.2003 of the superior of the Jesuit submits that the premises is used for research and social activities. Further more, as Patna Xavier's Society is a charitable Society, the premises has rightly been placed under NDS category. He further contends that the tariff regulation is legislative in nature and a

consumer cannot avoid tariff laid down under the Regulations, as long as it is not struck down by the Court under Article 226 of the Constitution, as held by the Hon'ble Apex Court in the case of ***PTC India vs CERC reported in 2010 AIR SCW 1950.*** Furthermore, learned CGRF has adjudicated the dispute as per tariff provisions and after examining the contentions of the petitioner. He submits that drawing parity with the case of C.W.J.C. No.262 of 2011 ***(Jeevan Sangham)*** is totally misplaced, as nothing of the present dispute was argued, noticed or adjudicated. The agreement between the consumer and the licensee is statutory in nature and the tariff as revised from time to time is applicable as per agreement between the licensee and the consumer. The respondents in support of his submissions has relied upon a decision of the Hon'ble Apex Court in the case of ***Green Rubber reported in 1990 SC 699*** wherein it was held that the tariff's terms and conditions are binding and mandatory.

13. I have heard learned counsel for the parties.

14. One cannot dispute the submissions of the Board that tariff is legislative in nature and binding upon the consumer and the licensee. There also, can be no denial to the proposition that tariff as revised from time to time is applicable as per agreement between the licensee and the consumer. Nonetheless, it would be equally true that a particular tariff would cover the category for which it is framed. In other words, a tariff meant for N.D.S. category would not be

enforceable against domestic or any other categories. The tariff schedule has categorized different services for the purpose of levying tariff rates. Each of these categories has different tariff rates. As per tariff regulations right from 1993 up to 2010, if premises are used for domestic or residential purposes, the domestic tariff would be applicable.

15. The issue before this Court is whether the Jesuit Fathers Residence at Digha Ghat is used for domestic/residential purpose or for other purposes like commercial purpose/charitable purpose. In case, premises is used for purposes other than domestic purpose, the respondent Board would be right in levying a different tariff other than tariff applicable for domestic purpose.

16. Learned CGRF has observed that the premises is utilized for social and religious activities and is also a registered charitable institution. The electricity is utilized for the purposes of research work on social and religious matter and publication of religious book and literature for the said purpose. While coming to the conclusion the learned CGRF has placed reliance upon application of the petitioner dated 27.2.2003 addressed to the Electrical Executive Engineer, Patliputra Supply Division.

17. The case of the petitioner is that the building/premises is used for residential purposes. The Jesuit Fathers do research work on social and religious issue in their room and uses their library. They deny that the premises are utilized for social and religious activities. No training is imparted in the premises nor any publication works are done much less the religious texts.

18. This Court in the case of ***Jeevan Sangham*** observed that building which is utilized by the Jesuit Fathers for their own residential purposes, should be treated as a building used for domestic purposes. The rooms meant for their personal use, which may include prayer room, cannot be dubbed as "Non-domestic Service". Merely because there is a prayer room, the premises cannot be treated as a place of worship. However, if the church was appendixed to the residential quarters and was part of single block or unit, it would then require considerations whether it would come within the non-domestic services. A place which is restricted only for the domestic use of the Fathers, cannot be treated to be a common area just because they entertain some visitors who may be family members, or anyone on social visit. The learned Single Judge, however, observed that where there is a separate building which is used for meeting the visitors, entertaining guests and imparting training and education and conducting religious activities etc., the said building would come within the hub of activities and thus would

come under non-domestic commercial category.

19. It is noticeable that the learned CGRF while coming to the conclusion that the premises is utilized for social and religious activities and is also a charitable institution, has primarily relied upon the letter of the petitioner, dated 27.2.2003 addressed to the Electrical Executive Engineer, Patliputra Supply Division which is quoted herein below:

> *"Bihar Social Institute is a Jesuit Residence of the Patna Jesuit Society, a registered charitable society under the Registration of Societies Act XXI of 1860, Bihar and Orissa No.195 of 1930-31. This is a non-profit making charitable society with Income Tax exemption from the Income Tax Office. In this Patna Jesuit Residence, Jesuit Fathers of the Patna Jesuit Society reside and do research on social and religious issues. This residence is not involved in profit making activities of any sort".*

20. It is evident from the letter dated 27.2.2003 that it is the Patna Jusit Society which is a registered Charitable Society. A charitable society may possess a number of buildings, some of such buildings which are used for schools, training activities may fall under NDS category, but a building used for residential purposes would be one under domestic category.

21. In the instant case, there is no evidence on record that the Fathers impart any social, religious or any other training activities in the premises. Rather the petitioner's case is that the Jesuit Fathers do their research on social and religious matters in their own rooms with

aid of library and computers, which cannot be equated as commercial activities to bring the premises under non-domestic category. There is no material on record to even prima facie establish that any publication activity is going on in the premises. Equally, there is no evidence that any students are being taught in the premises. On the other hand, the own inspection of the respondent Board conducted during the hearing of the complaint before the learned CGRF, as contained in Annexure-14, demonstrate that the premises is used for residential purposes. Doing research on social and religious issues on one's own room is distinct from imparting training on social and religious activities.

22. In view of foregoing reasons, the learned CGRF has erred in placing the residential premises of the petitioner under non-domestic category in absence of any supporting materials. The impugned order is, accordingly, set aside and the writ application is allowed. However, it goes without saying that any part of the premises is found used for commercial activities other than for domestic purposes, then a separate connection would be required to be taken under the appropriate category.

(Samarendra Pratap Singh, J)

Md.Jamaluddin Khan

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