

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WA.No. 1580 of 2015 () IN WP(C).23677/2013

AGAINST JUDGMENT IN WP(C) 23677/2013 of HIGH COURT OF KERALA DATED 08-01-2014

APPELLANT/PETITIONER:

B. RAMACHANDRAN AGED 50 YEARS
S/O. K.B. NAIR, ADVOCATE, PUTHULLI ROAD
KOCHI-682018.

BY ADVS. SRI. DINESH R. SHENOY
SMT. M. CHANDRALEKHA
SRI. SANIL JOSE

RESPONDENTS/RESPONDENTS:

1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VAIDYUTHI BHAVAN
THIRUVANANTHAPURAM, PIN-695001.
2. THE DEPUTY CHIEF ENGINEER
KERALA STATE ELECTRICITY BOARD, ELECTRICAL CIRCLE
POWER HOUSE ROAD, KOCHI-682018.
3. THE ASSISTANT ENGINEER
KERALA STATE ELECTRICITY BOARD, ELECTRICAL CIRCLE
POWER HOUSE ROAD, KOCHI-682018.

R1-R3 BY ADV. SRI. JAICE JACOB, SC, KERALA STATE ELECTRICITY BOARD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 14.10.2015, THE COURT
ON 20.10.2015 DELIVERED THE FOLLOWING:

smv

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

W.A. No.1580 of 2015

Dated this the 20th day of October, 2015

JUDGMENT

Shaji P. Chaly, J.

This writ appeal is filed by the petitioner against the judgment in W.P.(C) No.23677 of 2013 dated 08.01.2014, by which the learned Single Judge has declined the relief sought for by the petitioner for quashing Exts.P6 and P7 and for other related reliefs under the Indian Electricity Act and allied Rules.

2. Brief facts for the disposal of the writ petition are as follows:

3. Appellant is a practicing lawyer. Appellant purchased a building bearing Door No.CC 42/1893 with electric connection bearing consumer No.2056 in the year 2004. After the purchase, appellant modified the house and concreted the roof and constructed a first floor. Appellant is using the ground floor for his residential purpose and first floor as his Advocate office from 2004 onwards. Electric connection to the first floor is provided from the ground floor itself. The average monthly consumption

of electricity was around 800 units and respondents were issuing bills for electricity charges under Tariff LT 1A, applicable to residential buildings. Appellant contended that in accordance with the power consumption successive bills were issued by the respondents.

4. Along with the bill dated 21.12.2012 3rd respondent issued a notice to the appellant informing that as an Advocate firm is functioning in the residential building, a new connection for electricity shall be taken or tariff presently enjoyed by the appellant shall be changed from LT-1A to LT-VIB. The said information is evident from Ext.P2. It is the contention of the appellant that even though appellant met the 3rd respondent and informed that he is the owner of the building and as many advocates run their offices in the houses, it cannot be treated as an Advocate firm functioning in a commercial building and electricity charges cannot be changed under LT-VIB. It is further contended that respondents did not consider the request of the petitioner and consequently Ext.P3 bill dated 25.02.2013 was issued, imposing electricity charges under Tariff LT-VIB and

accordingly an amount of Rs.7,164/- was demanded against earlier demand of maximum of Rs.4,000/-.

5. However, appellant took a separate connection for first floor with consumer No.22762 and thereafter separate bills were issued for the ground floor and the first floor under LT – 1A and LT-VIB respectively. It is further contended by the appellant that appellant again approached and informed the 3rd respondent that, changing of tariff for the first floor was not proper and requested to include first floor also under Tariff LT-1A. But the grievance of the appellant is that, in spite of the said request made to change the tariff of the first floor, respondents were imposing charges invoking tariff under LT-VIB.

6. That apart along with Ext.P6 bill dated 30.08.2013 a demand notice was issued to consumer No.2056, i.e. the ground floor, demanding an amount of Rs.4,197/- towards security deposit to equate the same with security for monthly current charges for three months, which demand is evident from Ext.P7. It is the contention of the appellant that the electricity charge at present for consumer No.2056 is only Rs.1825/- bimonthly and

since already there is a cash deposit of Rs.3,855/-, the present demand as per Ext.P7 is unsustainable.

7. Aggrieved by the aforesaid action of the respondents, appellant has submitted Ext.P9 representation dated 19.9.2013 to the 3rd respondent to change the tariff of consumer No.22762 from LT-VIB to LT-1A. He also submitted yet another representation, Ext.P10 dated 19.9.2013 requesting to withdraw Ext.P7 notice demanding additional security deposit. But in spite of the earnest efforts of the appellant, no action was initiated by the respondents to ventilate the grievances voiced by the appellant. It is thus aggrieved by the inaction on the part of the respondents to ventilate his grievance, this writ petition was filed.

8. A counter affidavit was filed by the respondents denying the contentions and allegations in the writ petition and contending that the Advocate office functioning in the first floor of the building or the tariff of the entire building cannot be changed in view of the relevant provisions of tariff published by the Electricity Regulatory Commission. In view of the specific

statement made by the appellant that the first floor is being used as an Advocate Office, the tariff applied to the first floor is LT VIB. It was also contended by the respondents that the connection was provided to the first floor of the building with consumer No.22762 in accordance with the entries made in the application submitted by the appellant himself and that the tariff fixed in accordance with the application submitted by the appellant, is also in accordance with the existing laws and regulations. In the application it was specifically mentioned that the connection is to the Advocate office. Therefore, respondents sought dismissal of the writ petition.

9. Appellant has filed a reply affidavit contending that the ground floor of the building is given for lease for residential purpose from the year 2008 onwards, evident from Ext.P11. In the first floor two rooms are being used as office of the appellant and the remaining rooms for his residential purpose. Therefore, it was contended that in view of the use of the first floor of the building for residential and Advocate office, the same may be assessed only under tariff LT-IA.

10. Learned Single Judge after hearing the appellant and the respondents has dismissed the writ petition holding that as per the schedule of tariff which was brought into effect from 01.01.2010, the categorization is done mainly as domestic, industrial, agricultural, non-domestic, commercial, temporary extensions, public lighting etc. and LT VIIA, LT VII B, LT VIIC are the commercial tariffs whereas LT VIA and LT VIB are categorized as non-domestic. Therefore, the tariff LT VIA and VI B will indicate that those are not included in the commercial category but are only offices of Government and other organizations, educational institutions, hostels, guest houses etc. Further distinguishing the decision of the Hon'ble Apex Court in **M.P. Electricity Board and others v. Shiv Narayanan and another** reported in [(2005) 7 SCC 283] learned Single Judge held that the said decision only indicates a declaration that the lawyer's profession is not a commercial activity and office of the lawyer cannot be considered as a commercial establishment. Therefore, learned Single Judge held that the inclusion of lawyer's office in the category of non-domestic purpose is not in

any way illegal or unsustainable and thereupon learned Single Judge dismissed the writ petition.

11. Heard learned counsel for the appellant and learned counsel for the respondents.

12. The prime contention advanced by learned counsel for the appellant is that, the schedule of tariff and terms and conditions for retail supply by KSEB have a note while detailing domestic tariff which reads thus:

“Domestic consumers shall be allowed to utilize electrical energy in some portion of their residence for their own use for purpose other than domestic as defined under LT-I when such connected load does not exceed 20% of the total connected load or 500 Watts in their premises. When connected load other than domestic use in such cases exceeds the above 20% or 500 W whichever is less, such loads shall be segregated and separate service connection obtained under appropriate tariff. When this is not done, the tariff applicable to the whole service shall be at the appropriate tariff applicable to the connected load used for purpose other than domestic, if such tariff is higher than the tariff for LT-I (a).”

13. Taking cue from the said note of the Regulatory

Commission, learned counsel for the appellant contended that the appellant is also entitled to get benefit of the same and therefore canvassed to allow the writ petition and sought direction to the 3rd respondent to re-consider the issue as to whether the tariff can be changed from LT VIB to LT IA for consumer No.22762 i.e., first floor of the building.

14. Learned Single Judge has dismissed the writ petition also taking into account, the contradictory statements contained in the writ petition and the reply affidavit regarding the use of the ground floor and the first floor of the building. Therefore, it was also held that, appellant is not entitled to get any relief for want of consistent pleading and also for the reason that as per the specific pleading in the writ petition the ground floor was used for residential purpose and the first floor for running the Advocate Office of the appellant.

15. Learned counsel for the respondents has invited our attention to Ext.P9 request of the appellant addressed to the 3rd respondent stating that the ground floor was used for his residential purpose and first floor as his Advocate office.

Learned counsel invited our attention to Annexure A which is the application submitted by the appellant to secure connection from the respondents. Therein also the purpose for connection was shown as Advocate office. So also the total connected load is also mentioned thereunder, which exceeds the conditions stipulated by the Tariff Regulatory Commission as extracted supra.

16. Having evaluated the facts and circumstances and the evidence on record, we are of the considered opinion that the appellant had a consistent case in his writ petition with regard to the nature of occupation of the two floors of the building and it is his definite case that the first floor of the building is used for Advocate office and the ground floor is used by him for residential accommodation. A change was made to the said specific contention, in the reply affidavit filed by him stating that he is using the first floor of the building for residential as well as for the Advocate Office and therefore, the tariff is to be changed from LT VIB to LT IA. The inconsistency in the vital pleadings contained in the writ petition as well as in the reply affidavit

alone is sufficient to assess the bonafides of the appellant with regard to the request made by him before the Board authorities.

17. In view of the inconsistent pleadings, we are unable to express a definite opinion as to the nature of occupation for the first floor of the building in order to issue any direction also to the 3rd respondent. We do not find any illegality, legal infirmities or other unjustifiable circumstances warranting interference in the judgment of the learned Single Judge.

Appeal fails and it is accordingly dismissed.

Sd/-

**K. SURENDRA MOHAN
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.A. to Judge

smv
14.10.2015