* **THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

WRIT PETITION No.13003 of 2015

% 11.08.2015

Between:

Sri N.S.S.Prasad.

… Petitioner

AND

Telangana State Southern Power Distribution Company Ltd.,
Rep.by its Chairman-cum-Managing Director,
Vidyuthsoudha, Somajiguda, Hyderabad,
and others.

…Respondents

Counsel for petitioner: Sri M.Rajendra

Counsel for the Respondents : Sri R.Vinod Reddy (SC for Transco)

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> Head Note:

? CITATIONS:

1. (2000) 2 SCC 494
2. (1996) 8 SCC 27
3. (2005) 7 SCC 283
4. 2011 (5) Bom.C.R.25

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

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Telangana State Southern Power Distribution Company Ltd.,
Rep.by its Chairman-cum-Managing Director,
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and others.

….Respondents

DATE OF JUDGMENT PRONOUNCED: 11.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? **Yes**/No

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? **Yes**/No

3. Whether His Lordship wishes to see the fair copy of the Judgment? **Yes**/No

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.13003 of 2015

ORDER:

The petitioner is a Chartered Accountant and also the owner of the property bearing Flat No.108, First Floor, S.R.Complex, opposite CCMB Compound, Habsiguda, Hyderabad. The said premises is having an electricity connection under category LT I(B). While so, a notice was issued on 24.07.2013 by the third respondent stating that the service connection was inspected by a team of officials and it was noticed that the petitioner was utilizing power supply for his office and since he was utilizing the supply for unauthorized purpose, the power supply was disconnected on 31.08.2013. He paid an amount of Rs.8,594/- under protest on 31.08.2013 for restoration of the power supply and thereafter he paid an amount of Rs.9,731/- on 12.11.2013 against the demand made by the second and third respondents pursuant to their letter dated 24.07.2013. Thereafter, the petitioner submitted a representation on 01.08.2013 to the third respondent stating that he was a practising Chartered Accountant and he was advising his clients in the said premises and there was no unauthorized use of electricity. He further stated that he comes under the domestic category of LT I(B) instead of

LT II(B). He submitted another representation to the second respondent on 12.08.2013 to the same effect. When no reply was received, the present Writ Petition is filed challenging the change of category from I(B) to II(B) and not considering his representations dated 01.08.2013, 12.08.2013 and 11.09.2013.

A counter affidavit is filed by the respondents stating that the premises, where the petitioner is carrying on his profession, is surrounded by commercial complexes and in fact, the entire ground and first floors of his premises were having shops and commercial establishments. The electricity service connection was given under category I(B) as he represented that the said premises is a residential flat. Since he has been utilizing the said premises for office purpose, it should be categorized under LT Category II(B) Non-domestic/commercial. He cannot be billed under domestic category as there is no residence attached to the office and it is exclusively used for office purpose.

Learned Counsel for the petitioner submitted that the profession carried on by the petitioner cannot be termed as commercial activity and it should not be billed under the category II(B). On the other hand, learned Standing Counsel for the respondents submitted that when the premises is not being used for residential purpose, the category under which the service to be treated is non-domestic/commercial.

The facts in the case are not disputed. The petitioner has been carrying on his profession as Chartered Accountant in the premises owned by him i.e., Flat No.108, First Floor, S.R.Complex, opposite CCMB Compound, Habsiguda, Hyderabad. The service connection was given under category I(B) (domestic). But, the contention of the respondents is that since he has been carrying on his profession without any residential activity, the service connection should be treated as category II(B) (non-domestic/commercial).

The case of the Chartered Accountant was considered by this Court in W.P.No.18535 of 2006, dated 26.09.2006, and a learned single Judge of this Court held that it cannot be treated as category-II (commercial/non-domestic) and the service connection should have to be treated as category-I (domestic). The said decision was rendered based on the nature of activity undertaken by the petitioner therein. I followed the said decision in W.P.No.8230 of 2004, dated 10.12.2013.

In **New Delhi Municipal Council v. Sohan Lal Sachdev**[1] the Supreme Court considered the case of a guest house in relation to the charge of appropriate tariff for the same. The Supreme Court by relying on **Municipal Corporation of Greater Bombay v. Mafatlal Industries**[2] held that the guest house cannot be treated under a residential category. The said decision was doubted in **Chairman, Madhya Pradesh Electricity Board v. Shiv Narayan**[3], wherein a case of Advocate was considered. The matter was referred to a Larger Bench. However, a three Judge Bench of the Supreme Court on such reference considered the matter in Civil Appeal No.1065 of 2000 on 27.10.2005 and upheld the view taken in **Sohan Lal Sachdev**'s case (supra). The relevant observations are as follows:

> "…We find that the Tariff entry classificates into two categories viz. (a) "domestic purposes" and (b) "commercial and non-domestic purposes". This classification has been done statutorily in exercise of powers under Section 49 of the Electricity Supply Act, 1948.
>
> The classification clubs "commercial and non domestic purposes" into one category. Thus the question whether an Advocate can be said to be carrying on a commercial activity does not arise for consideration. As the user is admittedly not "domestic" it would fall in the category of "commercial and non-domestic". In such cases even for "non-domestic" use the commercial rates are to be charged. Exclusively running an office is clearly a "non-domestic" use.
>
> Thus, in our view the judgment of this Court in **Sohan Lal Sachdev** is correct and requires no reconsideration."

Learned single Judge of Bombay High Court in **Rajendra G.Shah v. Maharashtra State Electricity Distribution Company Limited**[4] followed the three Judge Bench decision of the Supreme Court. Recently, a learned single Judge of this Court in W.P.No.25833 of 2011, dated 16.07.2015, also followed the three Judge Bench decision in the case of an Advocate's office.

The view taken by me in W.P.No.8230 of 2004, dated 10.12.2013, relying on W.P.No.18535 of 2006, dated 26.09.2006, without noticing the three Judge Bench decision in Civil Appeal No.1065 of 2000, dated 27.10.2005, does not lay down the correct law.

In view of the above authoritative pronouncements, the Writ Petition is liable to be dismissed, and the same is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

11.08.2015
vs

[1] (2000) 2 SCC 494
[2] (1996) 8 SCC 27
[3] (2005) 7 SCC 283
[4] 2011 (5) Bom.C.R.25