IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.23666 of 2019
and
W.M.P.No.23498 of 2019

1.S.R.Shenbaga Baabu

2.Saraswathi Muthiah ..Petitioners

Vs.

1.The TANGEDCO,
Tamil Nadu Generation and Distribution Corporation,
Rep. By its Chairman,
800, Anna Salai, Chennai – 600 002.

2.Tamil Nadu Electricity Regulatory Commission,
Rep. By its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road), Egmore,
Chennai – 8.

3.The Superintending Engineer,
South I/ Chennai, TANGEDCO,
110 KV Complex, K.K.Nagar,
Chennai – 600 078.

4.The Superintending Engineer / Enforcement,
TANGEDCO, 144, Anna Salai,
NPKRR Maaligai, Chennai – 600002.

5.The Executive Engineer,
TANGEDCO,
110 KV Complex, K.K.Nagar,
Chennai -600 078.

6.The Assistant Executive Engineer,
TANGEDCO, Alwarthirunagar,
Valasarawakkam, Chennai – 600087.

7.G.V.Sivaraj,
Assistant Engineer, TANGEDCO,
Alwarthirunagar, Valasarawakkam,
Chennai – 87.

8.E.Bhaskar,
Incharge, Electricity Protection Force,
Ex-servicemen Squad, TANGEDCO,
Chennai South - 600 087. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, calling for the entire records in respect of the 6th respondent's impugned provisional assessment order dated 31.01.2019 quash the same with further orders directing the 1st respondent to refund the compounding fee of Rs.16,000/- and Penal Charges of Rs.23,720/- collected towards giving effect to the impugned provisional assessment order.

For Petitioners : Ms.Saraswathi Muthiah, Petitioner- in-person

For Respondents : Ms.V.Revathy for Mr.L.Jai Venkatesh for R1, R3 to R6

Mr.T.Mohan for Mr.Abhinav Parthasarathy for R2

R7 & R8 (served) – No Appearance

<u>O R D E R</u>

The challenge in the Writ Petition is to the action of the Electricity Board in levying a provisional assessment on the petitioners, treating the use as commercial and charging at rates specified under the tariff LT-V.

2.The petitioners, who are practising Lawyers are occuping an apartment measuring about 357 Sq.ft. situated in ground floor of a residential apartment building at No.12, Nagireddy Street, Valasarawakkam. The petitioners were assigned LT Tariff I-A and had been paying the electricity bills based on the said premise. The premises of the petitioners was inspected on 31.01.2019 at about 12.40 p.m. and the Department found that the entire apartment was being used as a Lawyers' Office and hence, the levy should be under LT Tariff-V and not Tariff I-A. The petitioners were present at the time of the said inspection. They also paid compounding fee as well as the difference between the rates of Tariff I-A and Tariff-V for the one year, prior to the date of inspection. The respondent / TANGEDCO also passed an order stating that it is Tariff-V that would apply to the petitioners, since the petitioners are using the entire apartment for their Office purpose and required the petitioners to pay current consumption charges at the rates specified in LT-V instead of LT I-A.

3.Mrs.Saraswathi Muthiah, the 2nd petitioner appearing in person would vehemently contend that the premise, on which, the petitioners have been charged is incorrect. According to her, since it is a residential building and the petitioners are using an area of less than 200 Sq.ft., for their Office purpose, they would only fall within LT I-A and not LT-V. She would also contend that *de hors* the fact whether they are using the entire premises as Office or a portion of it as Office, if the area occupied is less than 200 Sq.ft, tariff under LT I-A alone would apply and not LT-V.

4.Contending contra, Ms.V.Revathy appearing for Mr.L.Jai Venkatesh, learned Standing Counsel for the 1st respondent would submit that the question as to whether a particular user is commercial or residential or professional or non-professional would not arise in the given circumstances. According to her, as per the tarrif rates approved by the Tamil Nadu Electricity Regulatory Commission (TNERC), the tariff prescribed in LT I-A woud be availed only if it is shown that the user falls within the purposes shown as A to M in the tariff rates approved by the TNERC. If it does not fall within the classifications mentioned in the Paragraph 6.2.2.1 of the tariff rates, the holder of the service connection or the consumer has to pay the rates prescribed in LT-V. She would further submit that as per clause 'g' of Paragarph 6.2.2.1 tarrif LT I-A could be applied only if the consulting room or the Office of the professional forms part of his or her residential house **and** the space occupied does not exceed 200 Sq.ft. Arguing further, the learned counsel would submit that if it is a stand alone Office, which is used only for Office purposes of a Lawyer or a Chartered Accountant, immaterial of the size, the consumer has to pay the charges prescribed under LT-V.

5.Mr.T.Mohan, learned counsel appearing for Mr.Abhinav Parthasarathy, learned counsel for the 2nd respondent would submit that this question as to whether a Lawyer's Office is a commercial use or not has been considered by this Court and the Hon'ble Supreme Court in several cases. He would submit that the TNERC had clarified that if it is part of the residence of the professional and area exceeds 200 Sq.ft in occupation then, LT-V will apply and if the area is less than 200 Sq.ft., LT Tariff I-A could be applied. If it is a stand alone Office, be it a part of a residential complex or an independent building or a commercial complex, irrespective of the size, LT-V will apply.

6.He would also draw my attention to the judgment of the Hon'ble Mr.Justice V.Ramasubramanian in **Syed Tajudeen Madani Vs. Tamil Nadu Electricity Board** reported in **2011 SCC Online Mad 2031** wherein, a direction was issued to the Tami Nadu Electricity Regulatory Commission to clarify the rationale behind limiting the application of Tariff I-A, only to professionals having consultation room in their own residence and not extending the same benefit to those having consultation rooms in the residences of other people. While doing so, it was observed as follows:-

> *19."While it may be possible to distinguish a consultation room located in a residential building from a consultation room located in a non-residential one, the distinction sought to be made on the basis of ownership, cannot be accepted."*

7.Pursuant to the said direction, the petitioner in the said case sought for a clarfication before the TNERC and the Commission issued a clarification on 01.10.2019. The said clarification as issued by the Commission reads as follows:-

> *"24. Accordingly, we clarify as follows:-*
>
> *(i) TANGEDCO on 31.01.2013 has filed extract of tariff orders containing various categories of consumers, dated 15.03.2003, 31.07.2010 and 30.03.2012. On perusal of the said Tariff Orders, it is seen that in the T.O. dated 15.03.2003 which applies for the period from 16.03.2003 to 31.07.2010 under Low Tension Tariff 1-A (domestic) specifies the consulting rooms attached to the residences of professional such as Doctors' clinics without any in-patients beds, chartered accountants, Lawyers and also to Goldsmith whose work is limited to manual labour. Under the above entry, the*

Advocate's office or Chartered Accountants' office not located/ attached to the residences of professionals are not covered specifically and therefore, they fall under LT-V which s applicable to all consumers not covered in Tariff category 1-A, 1-B, 1-C, II-A, II-B, II-C, III-A(1), III-A(2), III-B and IV.

(ii) Again in T.O. dated 31.07.2010 which applies for the period from 01.08.2010 to 30.03.2012 professionals are classified under LT-1A (domestic) and consulting rooms not attached to the residences are not covered by any specific entries and therefore, falls under Low Tension Tariff-V which applies to all consumers not categorized in other categories.

(iii) Similarly, in the T.O. dated 30.03.2012 which applies for the period from 01.04.2012 to 20.06.2013, Consulting rooms of size limited to 200 sq.ft. Of any professionals attached to the residence of such professionals fall under LT-Tariff – 1-A (Domestic) and consulting rooms exceeding 200 sq.ft. Attached to the residences and consulting rooms are not attached to the residences falls under L.T. Tariff – V which applies to all consumers not categorized in other categories.

(iv) We also clarify that when a consulting room of the professional is attached with the residence of such professional, it may not be correct to charge electricity used for the consulting room under non-domestic category. That is

why Commission allowed it under Domestic category in its earlier tariff order. That was further restricted to consulting rooms not exceeding 200 sq.ft. attached to the residences, so that substantial portion of consumption is used for domestic purpose only. If the area of consulting room are exceeding 200 sq.ft. or the consulting rooms are away from the residence, the consumption is not substantially used for domestic purpose and obviously for non-domestic purpose. Therefore, the Electricity charges under LT-Tariff-V is applicable to non-classified categories. We also hold that the consulting rooms attached to the residence and consulting rooms not attached to the residence are classified differently because in the former category the substantial use of electricity is for domestic use and in the latter category, it is used for non-domestic purpose and hence, there can be two different classification namely consulting rooms attached with the residence of the professionals and consulting rooms which are away from the residence of the professional and the above position was upheld by the Hon'ble Supreme Court in its order dated 27.10.2005 in C.A.No.1065 of 2010.

25. In view of the, decision of the Hon'ble Supreme Court in C.A.No.1065 of 2000 dated 27.10.2005, we hold that the position in this State is exactly the same as clarified by the Hon'ble Supreme Court in the above case inasmuch as our

Tariff categories specifies all the categories of the consumers not covered by the other LT categories under LT Tariff-V under which falls the consultation rooms of the professions which is used for non-domestic purpose. Though it is clubbed with commercial establishment also, would not mean that this Commission has classified such consulting rooms as commercial establishments. The confusion occurs because such consulting rooms (non-domestic) are clubbed with commercial establishments under a common tariff category of LT-Tariff V. Commission will however, consider to classify such consulting rooms under a separate category in future tariff orders"

A reading of the above clarification issued would show that a stand alone professional's Office *de hors*, the exent will not come within Tariff I-A. If it does not come within Tariff I-A, the applicable Tariff would be Tariff-V.

8.The Hon'ble Supreme Court in C.A.No.1065 of 2000 in **Chairman, M.P.Electricity Board and Others Vs. Shiv Narayanan and Another** reported in **2005 (5) Supreme 829** had held that though Advocates profession may not be treated as commerce or it cannot be called a commercial trading activity, it would still be a professional activity, which cannot be called domestic. While concluding, the Hon'ble Supreme Court upheld the right of the Electricity Boards to have separate Tariffs for such activities.

9 The 2nd petitioner appearing in person would rely upon the judgment of the Calcutta High Court in **Arup Sarkar Vs. C.E.S.C. Limited and Others** reported in **2020 Supreme (Cal) 102** wherein, the Court held that a Lawyers' Office cannot be treated as commercial. Unfortunately, for the petitioner, the said decision turned upon the classification in the Tariff orders of the Calculatta Electricity Supply Corporation Limited where, there were only two classifications like '*Domestic Urban'* and '*Commercial Urban'*. The Tariff order did not prescribe any other intermediate activity as found in the TNERCs' Tariff order. Therefore, the Calcutta High Court held that once it is concluded that the Lawyers' profession cannot be termed as commercial, it would come under domestic. As regards the Tariff orders issued by the TNERC, the position is very clear. If we have to examine the petitioners' case based on the provisions found in the Tariff orders of the TNERC, we will have to necessarily uphold the conclusions of the 1st

respondent that the activity of the petitioners will have to be charged under LT-V and not under LT I-A.

10.The petitioner would make an attempt to show that the apartment in question is her residence cum office. Unfortunately, in most of the communications addressed by her to the respondents and even in the affidavit filed in support of the writ petition, she has categorically admitted that the entire apartment is being used only as an Office. To cite an example in her communication dated 31.01.2019, she has stated "***the said premises being my own apartment, with UDS of 350 Sq.ft., I use the same as my Advocate Office as well. As my husband is also an Advocate and we do not have children at times we had to stay back in the Office itself as we work till 2 am***". Therefore, it is clear that the petitioners are not residing in the premises in question. Again in the communication dated 28.02.2019, the petitioners have claimed that use of residence for an Advocate Office does not fall under the category of commercial as per Clause stipulated by TNERC order on tariff in T.P.No1/2017 dated 11.08.2017.

11.In the light of the above categoric admission on the part of the petitioners that the entire apartment is being used as an Office, I am unable to countenance the contention of the petitioners that it being a residential building or a residential apartment, Tariff I-A should be applied.

12.In view of the above, the demand of the Authorities and the conclusion of the Authority that it would be Tariff-V that would apply and not Tariff I-A. However, the inspection in question was on 31.01.2019 and the Tamil Nadu Electricity Regulatory Commission issued a clarification only on 01.10.2019. Till 01.10.2019, the air was not clear and there were certain doubts about the Tariff that could be applied to a user like the present one.

13.I am therefore, of the opinion that the respondents are not justified in calcuating and collecting consumption charges under LT-V tarrif for the previous one year from the date of inspection along with compounding charges. The petitioners should also be given the benefit of doubt as the rule position itself was nebulus and despite direction issued by this Court to the TNERC to issue a clarification as early as on 09.11.2011, the TNERC chose to issue the clarification only on 01.10.2019. The petitioners should be given the benefit of doubt and their action cannot be treated as theft of energy or misuse of energy. The levy of compounding fees and the the difference between LT-IA and LT-V for a period of one year prior to the inspection is therefore, set aside. The sum of Rs.39,720/- collected from the petitioners on the date of the inspection shall be adjusted towards the difference between LT-I and LT-V from 01.10.2019 namely, the date of clarification issued by the TNERC till date. If there is any amount payable by the petitioners, after such adjustment the petitioners shall be given atleast three months time to pay the sum.

14.The respondents will be at liberty to charge LT-V on the petitioners' service connection situate at No.12, Nagi Reddy Street, Valasarawakkam from the current billing cycle. If the petitioners shift their residence to the said apartment and they are able to show that they are only using a portion of the apartment for their Office purpose, the TANGEDCO will make an inspection and change the Tariff, accordingly.

15.This Writ petition is disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

08.07.2022

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Index: No
Internet:Yes
Speaking

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R.SUBRAMANIAN, J.

KKN

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