

(2003) 07 JH CK 0018
In the Jharkhand High Court
Case No : C.W.J.C. No. 2897 of 1998 (R)

Arihant Sahkari Grih Nirman Samitee Ltd.	APPELLANT
Vs	
Bihar State Electricity Board and Others	RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 462

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.S. Mittal, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. M.S. Mittal, learned counsel for the petitioner. No body appears on behalf of any of the respondents inspite of repeated calls.

2. During the course of arguments, Mr. M.S. Mittal pointed out that the only point which he is raising in this case is that in a common area of a residential multi-storeyed building only domestic tariff would be applicable and not commercial tariff. In support of aforementioned connection, Mr. M.S. Mittal has filed in Court, today, photocopies of 9 (nine) judgments, which shall not form part of records of this case and will be kept as part of the said record. Mr. M.S. Mittal, first of all relies on the judgment delivered in the case of Council for Protection of Public Rights and Welfare Vs. The State of Bihar and Others . In that case at paragraph 23, the following question was raised :

"Whether levy of Commercial Tariff in the "common area" of Multi Storeyed Building is valid ?"

The answer to the aforementioned question has been given at paragraph 70 of the same judgment, which reads as follows :

"70. It has not been and could not have been disputed that the nature and the

purpose of supply to the domestic consumers or private residential premises or a multi-storeyed building is same. Classification sought to be made for levy of higher charges in respect of "common area", in our opinion, is not, based on reasonable differntia. There-fore, it must be held that the rates applicable to domestic tariff shall also apply for consumption of electrical energy in common area of a multi-storeyed building."

3. The second judgment relied upon by Mr. Mittal is in the case of Narmada Apartment Owner's Association and Others Vs. Bihar State Electricity Board and Others, . In that case relying upon the judgment passed in the case of Council for Protection of Public Rights and Welfare Vs. The State of Bihar and Others the High Court came to the following conclusion at paragraph 25 of the said Judgment :

"In these facts and circumstances this Court is satisfied that the respondent authorities are in error in raising bills for the common area of Narmada Apartment on pommercial rates and in imposing fuel surcharge etc. while is chargeable on connections in commercial category. The respondents are accordingly directed to revise the account of the connection in question by raising bills at domestic rates. Any excess payment made by the petitioner found on a revision of account will either be refunded to them or will be adjusted against future bills."

4. Mr. Mittal then relied on various other judgments.

5. In view of the settled principle of law enunciated in the aforementioned judgments and there being no representation on the part of the respondents, the writ application is accordingly allowed and following the decision of the Patna High Court in the aforementioned cases the bills raised on the basis of the commercial tariff are hereby declared to be illegal. The respondents are directed to revise the account of the petitioner and on such revision, if any amount is found to have been paid in excess, the same should be adjusted against future bills.

6. No order as to costs.