(1995) 12 PAT CK 0055

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4497 of 1987

Dr. Ram Sharan Sinha and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:
Electricity (Supply) Act, 1948 — Section 46, 49

Citation : (1996) 1 PLJR 695

Hon'ble Judges : Ashish N. Trivedi, J

Bench : Single Bench

Advocate : Indu Shekhar Prasad Sinha, Shivendra Narayan Sinha and Shashi Nath Jha, for the Appellant; Shiva Kirti Singh and Samrendra Pratap Singh, for the Respondent

Final Decision : Allowed

Judgement

Ashish N. Trivedi, J.—The Petitioners approached this Court complaining that the Respondents had raised demand for payment of charges for consumption of electrical energy on the basis of Tariff applicable to commercial service instead of Tariff for domestic service applicable to the case of the Petitioners and have prayed for appropriate directions to the Respondents.

2. The case of the Petitioners is that the Petitioner No. 1 is running a private Nursing Home in the premises owned by the Petitioner No. 2 and electrical energy is consumed for the purposes of the Nursing Home since 5.2.1974 from the service connection, the sanctioned load of which is 1.68 K.W. and the Petitioners had been paying the charges for consumption of electrical energy regularly on the demands raised in the bill on the basis of Tariff applicable to domestic service. But suddenly in the consolidated bills for October, November and December, 1984 the charges for consumption of electrical energy have been levied on the basis of Tariff applicable to commercial service.

3. The contention of learned Counsel for the Petitioners is that under the Tariff

Notification of 1983, they are liable to pay Tariff applicable for domestic service as the Petitioner No. 1 is running a Nursing Home and the rate of Tariff applicable in case of Nursing Home is the same as is applicable for domestic service in view of the fact that the rate of Tariff for domestic service has also been made applicable where the electrical energy is used in Schools, Colleges, Hospitals, Clubs, Temples, Mosques, Churches, Charitable and Industrial Institutions as is provided in the Tariff Schedule of the Tariff Notification of 1983.

4. The contention of learned Counsel for the Respondents is that Petitioner No. 1 is doing the business and therefore the Tariff applicable for commercial service has to be paid for consumption of electrical energy in the private Nursing Home of the Petitioners.

5. By an order dated 25.9.1987 this Court passed an interim order in pursuance of which the Petitioners were required to pay and the Board was directed to accept the electricity charges on the basis of Tariff applicable for domestic service without prejudice to the rights of the parties.

6. Having considered the submissions made by learned Counsel for the parties and the material on record, I find force in the contention of learned Counsel for the Petitioners.

7. In exercise of the powers conferred under Sections 46 and 49 of the Electricity (Supply) Act, 1948, the Bihar State Electricity Board with the approval of the State Government framed its revised Tariff for all categories of consumers served or to be served by the Board and laid down terms and conditions for supply of electricity to its consumers which was published vide Notification dated 17th June, 1983 in the Extraordinary Gazette dated 12th August, 1983. In the Tariff Schedule, the Tariff applicable for domestic service has been prescribed as under:

Applicability.- For use for domestic purpose including domestic pumping set and household electric appliances in a private residence. Space provided in dwelling houses for office and professional work and occasionally used for business is also considered as a private house for the purpose. This rate is also applicable where the supply is used in schools, colleges, hospitals, clubs, temples, mosques, churches, charitable institutions, industrial institutions.

And the Tariff Schedule provides Tariff for commercial service as under:

Applicability.- For use for lighting, ventilation and motive power in any trade, business, shops, cinemas, Hotels, X''ray plants, public offices, Railway Stations. fuel-oil service station (including vehicles service stations) and such other installation.

A bare perusal of the provisions reproduced above would show that there is no distinction between a private and a public hospital in the Tariff Schedule for the purposes of applicability of the Tariff for domestic service, the rate of which has been made applicable to schools, colleges hospitals etc. and it is only for the purposes of X''ray plants that Tariff for commercial service is applicable. It is not the case of the Respondents that the electrical energy is consumed for an X''ray plant or for any other purpose mentioned in the clause applicable for commercial service reproduced hereinabove. It is wholly irrelevant whether the hospital is a private hospital or a public hospital. The Tariff Notification of 1983 was superseded by the Tariff Notification dated 26th August, 1991 published in the Extraordinary Gazette dated 20th September, 1991 in which Tariff for domestic service and Tariff applicable for commercial service has been prescribed as under:

Applicability.- For use for domestic purpose including domestic pumping set and household electric appliances in private residence such as Radios, Fans, Televisions, Desert Coolers, Air Conditioners, Motors upto 1 BHP for lifting water for domestic purposes and other household electrical appliances not covered under any other schedule.

This rate is also applicable where the supply is used in religious institutions such as Temples, Gurudwaras, Mosques, Church and Burial/Crematorium grounds and other Charitable institutions.

Tariff applicable for commercial service is as under:

Applicability.- For use for Lights, Fans and Power loads non-domestic purpose like shops, Hospital (Private or Government), Clinic, Nursing home, Restaurants, clubs, workshops, Show-rooms, Office (Private or Central/State Governments and their Undertakings), Commercial Establishments, Cinemas, X''ray plants, Schools (Private or Government) Colleges (Private or Government, Hostel (Private or Government), Boarding/Lodging houses, Libraries (Private or Government), Defence installations, Recognised Research Institutions, Hotels, Railway Stations, Fuel-Oil Stations (including Vehicle Services Station), All India Radio/T.V. installation, Printing Press, Housing Co-operative Societies for availing power, common services in Multistoreyed building and such other installations not covered under any Tariff Schedule.

8. On comparison of the provisions of the Tariff Schedule contained in the Tariff Notification of 1983 and that of the Tariff Notification of 1991 would make it clear that it is only after the commencement of the Tariff Notification of 1991 that hospitals (Private or Government), clinic, nursing home etc. are liable to pay Tariff applicable for commercial service.

9. This being so, the Respondents are not justified and have no authority in law to levy Tariff applicable for commercial service in case of consumption of electrical energy in a Nursing Home so long as the Tariff Notification of 1983 remained in operation. The Respondents are legally entitled and justified to levy Tariff applicable for commercial service on the commencement of Tariff Notification dated 26th August, 1991. The Tariff Notification of 26th August, 1991 was superseded by the Tariff Notification of 1993 which contained the provisions similar to that of 1991 Tariff Notification.

10. It appears, during the pendency of the writ Petition the Respondents in an

inspection found that the connected load in the premises in question was more than the sanctioned load and they accordingly determined the connected load as 6.55 K.W. and consequently placed the Petitioners in category C.S. III i.e. commercial service-III and accordingly demanded payment of electricity charges on that basis which has also been questioned in the present proceedings by a Supplementary Affidavit filed by the Petitioners.

11. Learned Counsel for the Respondents is right in contending that the question whether the inspection was validly done or that the connected load is 6.55 k.w. is a matter to be determined by the Respondents and cannot be questioned in the present proceedings as remedy for redress has been provided for such cases in the Tariff Notification itself. Clause 15.4(d) of the Tariff Notification of 1993 is as under:

15.4(d). If the consumer has any dispute over the bill he must make a complaint in writing to the offices of the Board who has issued the bill but mean while payments in full as per the bill must be made "under protest" within the due date to avoid disconnection or payment of "Interest for delayed payment.

12. In absence of sufficient material on record, it is not possible to adjudicate whether the enhancement of load as mentioned in Annexure-19 has been validly done or not as the same would require enquiry into questions of fact besides statutory alternative remedy is available to the Petitioners to dispute the bills contained in Annexures-19 and 20 in accordance with Clause 15.4(d) of the Tariff Notification dated 23rd June. 1993.

13. In the result the writ petition is allowed and the Respondents are directed to treat the Petitioners as consumers of electrical energy under the domestic service category so long as the Tariff Notification of 1983 was in force and thereafter apply Tariff applicable to commercial service under the Tariff Notification of 1991 and 1993. In case the Petitioners dispute the bills in accordance with the manner prescribed in Clause 15.4(d) of the Tariff Notification of 1993 before the Chief Engineer, Patna Electric Supply Undertaking within eight (8) weeks from today, the Chif Engineer Patna Electric Supply Undertaking shall within six weeks thereafter, after giving opportunity of hearing to the Petitioners and also permit the Petitioners to raise the question of enhancement of load from 1.68 to 6.55 K.W. and decide the dispute in accordance with law. No order as to costs.