

(2000) 11 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 37485 of 1999

M. Shivaprakash

APPELLANT

Vs

The Karnataka Power Transmission Corporation Limited and
Another

RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g)
Electricity (Supply) Act, 1948 — Section 49

Citation : (2001) 1 KCCR 281

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : R. Nataraj, for the Appellant; H. Srinivasa Rao, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The Petitioner who is a practising Advocate has filed this writ petition for issuance of a writ in the nature of mandamus directing the Respondents not to collect the consumption charges treating the installation of his office bearing No. EH 2493 on non-commercial basis pending disposal of the statutory appeal in No. 413-14 of 1999. Further, the Petitioner has sought for issuance of writ of mandamus directing the Respondents not to disconnect the abovesaid installation and also sought for quashing the Karnataka Electricity Power Tariff, Schedule 1998 in so far as it relates to classifying the Advocate's office under "All Offices" in Tariff Schedule LT-3 and also sought for declaratory relief declaring that the profession of the Petitioner is not commercial for the purpose of classifying the same under LT-3 in Tariff Schedule LT-3 of Karnataka Electricity Board Electric Power Tariff, 1998 (in short "the Power Tariff"), urging various legal contentions.

2. In so far as the first prayer is concerned, the Petitioner has filed statutory appeal before the second Respondent challenging the correctness of the consumption bill issued by the Respondents on the ground that the charges are

commercial under LT-3 therefore he is not liable to pay and further stated that there is threat of disconnection of electricity for non-payment of charges under LT-3 as demanded by the Board. It is contended by Mr. Nataraj the learned Counsel for the Petitioner that, classifying the Advocate's office under heading "All Offices" in LT-3 is violative of Articles 14 and 19(1)(g) of the Constitution of India as the profession which has been undertaken by the Petitioner is Advocacy which is not commercial one. Therefore, there is no rationale behind the said classification. Further, the learned Counsel strongly states that the Petitioner's office should have been classified under Power Tariff LT.1(b) under heading "Domestic Lighting and Government Hospitals Lighting". Therefore, the learned Counsel for the Petitioner sought for quashing of LT-3 as the interpretation of Office occurred is liable to be struck off holding it is not applicable to the practising Advocate's office. Further, it is contended that at no stretch of imagination, the offices which are being run by the Advocates can be considered as commercial as held by Supreme Court in V. Sasidharan Vs. Peter and Karunakar and Others, . Hence, the learned Counsel has prayed for grant of relief sought for in this writ petition.

3. Per contra, a detailed statement of counter is filed by Respondent-Corporation traversing various petition averments justifying consumption charges levied to the Petitioner's office installation under LT-3 Power Tariff framed by the KEB in exercise of its power under Regulation 49 of the Electricity (Supply) Act, 1948 (in short "the Act") which empowers the Board to levy different tariffs for different consumer having regard to (i) geographical position of any area (ii) the nature of supply (iii) the purpose for which the supply is required and (iv) any other relevant factor. The tariff is divided depending upon the usage by the consumer and one type of supply is not allowed to be interchanged by the consumer himself without the sanction and approval of the Board as per Regulation Nos. 41 and 44.02 of Karnataka Electricity Supply Regulations. Further, it is stated in the counter statement that, no doubt the Petitioner's profession does not involve any production activity or commercial activity as the profession is a career and full time activity rendering legal services to public litigant. However, the profession being non-domestic it cannot be classified in the LT-3(1)(b) domestic category of power Tariffs framed by the Board, unless the professional activity is carried on by the occupant in any part of the residential premises. The meaning of commercial activity dealt under Rent Control Law, Industrial Law or Shops and Commercial Establishments Act is totally different and the same cannot be compared with the classification made under the tariff regulation. Further, the Respondents' Counsel strongly submitted that the Petitioner is not entitled for the relief of declaration sought for in this petition.

4. In support of the said contention, the learned Counsel for first Respondent-Corporation has strongly relied on the judgment of Supreme Court reported in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, holding that Section 49 of the Act contained two powers (i) to prescribe terms and conditions of supply; and (ii) to fix the tariff. Further, he has placed strong reliance on the

judgment of Division Bench of Delhi High Court reported in A.K. Singhla Vs. New Delhi Municipal Committee, wherein similar question has been extensively dealt with by the Delhi High Court at Paragraphs 5 and 13 of the said judgment which are extracted hereunder:

5. The learned Counsel for the Petitioners have cited good number of decisions in support of the proposition that use of premises for the purposes of a profession or for rendering professional services does not amount to a commercial user and does not convert the premises into shops/commercial establishments/industry. These decisions are Dr...

13. In our opinion the resolution so adopted by NDMC is a very reasonable and fair policy in the matter of levying tariff on the consumers. It is consistent with the principle of determination of the user of the premises by reference to the primary or pre-dominant purpose. It is true that a profession is not a business and certainly not a commercial activity in the sense in which commerce is understood. The fact remains that by engaging in a profession one does earn livelihood and maintains himself and his family. Profession is chosen as a career and is mostly a full time activity yielding earnings. When it comes to classifying a profession it will have to be placed under non-domestic and not domestic head. The premises where profession is practised shall therefore have to be held as being subjected to non-domestic use in contradistinction with domestic use. Still realising the fact that mostly the profession can be and is generally carried on by individuals from a part of the residential premises, the Respondents have taken a very reasonable policy decision keeping in view the representation, convenience and practical difficulties of the professionals. The Petitioners must feel satisfied with it.

5. Heard the learned Counsel for the parties at length. It is an undisputed fact that Section 49 of the Act confers absolute power upon the KEB/Corporation to frame the regulations and to fix the power tariff schedules. Now the question which has to be considered is whether inclusion of a professional lawyer's office under category LT-3 is arbitrary or unreasonable keeping in view the power conferred upon the KEB/Corporation u/s 49 of the Act and the law laid down by the Supreme Court in Ferro Alloy's case referred to supra and the law laid down by the Division Bench of Delhi High Court in A.K. Singhla's case referred to supra. To appreciate the contention of the learned Counsel for the parties, it is necessary to extract the relevant portion of the judgment reported in Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another, in the case of Ferro Alloys which reads thus:

97. The attack against Section 49 is that it does not contain any norm or guideline with regard to framing of terms and conditions for the supply of electricity and in particular, the demand of payment of interest on the amounts due to the Board. Further, the principle of fairness of action has not been explicitly set out so as to make it a visible guide. The words occurring in the section "as the Board thinks fit" must be construed as "reasonably thinks fit". We

are unable to countenance this argument. A careful reading of Section 49 clearly discloses as was noted in *Hindustan Zinc Limited v. APSEB*, Sub-section (1) of the said section starts with the words "subject to the provisions of the Act and of regulations, if any made in this behalf", therefore, the Board has to conform to the various provisions of the Act and the regulations. Section 49 contains two powers: 1. to prescribe terms and conditions of supply; and 2. fix the tariff. No guidelines are required in this regard.

6. Having regard to the law laid down by the Apex Court in the said case and the law laid down by the Delhi High Court in *A.K. Singhla's* case referred to supra, the contention of the Petitioner that office of a practising Advocate will not come under "All Offices" category is wholly untenable in law and hence the same is liable to be rejected. Further, the reliance placed on by the Petitioner's Counsel in the case reported in *Shiv Narayan and Another Vs. M.P. Electricity Board and Others*, is not applicable to the facts of this case. Hence, the same is liable to be rejected. On the other hand, submission made by the learned Counsel for the Respondents placing reliance on the Apex Court in *Ferro Alloys* case and Division Bench judgment of Delhi High Court referred supra with all force applicable to the facts of this case. Further this Court has to declare that, classification of Petitioner's office under LT-3 category in exercise of power u/s 49 of the Act and under the Regulation is within the power conferred upon the Board and the same is neither arbitrary nor unreasonable. Even though the Petitioner and such others are running the office involving no commercial activity that has to be construed as the office coming under "All Offices" under LT-3 as the Petitioner has chosen it as a career fulltime activity yielding income.

7. In this view of the matter, stand taken by Respondent-Corporation that the profession of lawyers comes within the purview of LT-3 of Power Tariff is perfectly justified and the same cannot be interfered with by this Court. For the reasons stated supra, the Petitioner must fail. Accordingly, the writ petition is dismissed.