

(2003) 04 JH CK 0068
In the Jharkhand High Court
Case No : Writ Petition (C) No. 765 of 2003

Maresh Kumar Saboo

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Citation : (2003) 3 JCR 580

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : A.R. Choudhary, for the Appellant; A.K. Mehta, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The petitioner while sought for a declaration that he is liable to pay energy bill at the rate of domestic consumption in respect to common area of apartment in question, namely, Vandana Apartment, has also challenged the bill raised by the respondents for the period April, 1999 to 4th January, 2001, stated to have been raised by the respondents in respect to common area of apartment in question.

2. The Respondent-Jharkhand State Electricity Board (J.S.E.B.) and its officials while accepted that the bill relates to common area of apartment in question, taken plea that the domestic tariff rate is charged in respect to such common area where motor pump is below 1 H.P. Its stand is that the load of water pump if increases more than 1 H.P. then the consumer is to pay tariff as payable by commercial services consumer. It is pleaded that the petitioner is using water pump/motor of 1.5 K.W. which is equivalent to 2 H.P.

3. Similar question fell for consideration before the Patna High Court in the case of Narmada Apartment Owner's Association and Others Vs. Bihar State Electricity Board and Others, . Taking into consideration the relevant provisions of Electricity (Supply) Act, 1948, 1993 Tariff and Clause-F of a notification dated 14th August, 1996, the Court held as follows :

"I am unable to accept the submission. It is no longer necessary to go into the

question whether the decision in council for Protection of Public and Welfare related to a multi storeyed building which was purely residential in nature or to any other kind of multi storeyed building because following the amendment/clarification in the tariff notification the question will be governed not by the decision but by the provisions of the amended tariff. It is well settled that the Board's tariff is statutory in nature and as long as its provisions are clear and capable of only one interpretation its applicability cannot be narrowed down with reference to any earlier decision that might have led to the introduction of the amendment. Here the amendment introduced by circular dated 14.8.1996 is very clear. The domestic rates of tariff are made applicable for consumption of electric energy in common area of a multi storied building regardless of any qualification that the building should be purely residential in nature and the meaning of the statutory provision of the tariff cannot be narrowed down with reference to the decision in Council for protection of Public Rights and Welfare.

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 commercial rates and in imposing fuel surcharge etc. which is chargeable on connections in commercial category. The respondents are accordingly directed to revise the account of the connection in questions by raising bills at domestic rates. Any excess payment made by the petitioners found on a revision of the account will either be refunded to them or will be adjusted against future bills."

4. In another case of Rameshwaram Apartment v. J.S.E.B. W.P. (C) No. 6410 of 2002, this Court vide its judgment dated 4th March, 2003 while noticed the aforesaid judgment, held that the judgment ,of the Patna High Court which was delivered on 1st March, 2000, is binding on this Court as also on J.S.E.B.

5. In view of the aforesaid decisions, the Court feels that the respondents should re-consider the matter and, if necessary, should raise fresh bill for the period in question taking into consideration the 1993 tariff, Clause-F of Notification dated 14th August, 1996 and the judgment of the Patna High Court and this Court as referred above.

6. The case is, accordingly, remitted to respondent No. 2, the General Manager-cum-Chief Engineer, Ranchi Area Electricity Board, Jharkhand State Electricity Board, Jharkhand, Ranchi, who will determine the question of legality and propriety of bill in question and, if necessary, will order to issue fresh bill within two months from the date of receipt/production of a copy of this order.

7. If the petitioner has deposited/ deposits 50% of the bill amount for the period April, 1996 to 4th January, 2001, the authority will restore the electrical connection immediately, subject to the decision as may be taken by the General Manager-cum-Chief Engineer, Ranchi, Area Electricity Board, Jharkhand State Electricity Board, Jharkhand, Ranchi.

8. Further, if such 50% amount is deposited, the respondents will not Lake any

coercive step against the petitioner till any final decision is taken by the General Manager-cum-Chief Engineer, Ranchi Area Electricity Board, Jharkhand State Electricity Board, Jharkhand, Ranchi.

9. So far as other bills are concerned, the petitioner may move separately before the General Manager-cum-Chief Engineer, Ranchi Area Electricity Board, Jharkhand State Electricity Board, Jharkhand, Ranchi or before the Consumer Grievance Redressal Forum, Ranchi.

10. The writ petition stands disposed of, with the aforesaid observations/directions.