

(2000) 03 PAT CK 0087
In the Patna High Court
Case No : C.W.J.C. No. 2695 of 1998

Narmada Apartment Owner's Association and Others	APPELLANT
Vs	
Bihar State Electricity Board and Others	RESPONDENT

Date of Decision : 01-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 49

Citation : AIR 2000 Patna 291 : (2000) 48 BLJR 1030 : (2000) 2 PLJR 279

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Navneet Pd. Singh, Jitendra Singh and Biswajeet Singh, for the Appellant; Mihir Kumar Jha and Mohit Kumar Shah, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—Whether the supply of electricity for the common area of a multi storied building would attract billing at commercial rates or at the lower rates for domestic service? This is the question that arises for consideration in this writ petition.

2. The answer to the question is quite simply provided in the circular letter, dated 14-8-1996 making amendment in the tariff notification, dated 23-6-1993 retrospectively with effect from 1-7-1993. Clause F of the amending circular, dated 14-8-1996, relating to nature of supply to multi storied building, provided as follows

"The rates applicable to domestic category of tariff shall also apply for consumption of electric energy in "common area" of a multi storied buildings."

3. Notwithstanding the clear stipulation introduced in the tariff notification the officials of the Board, on some pretext or other, continue to raise bills for the common area of a multi storied building where the petitioners are living at the much higher commercial rates and the petitioners seem to be running from the

pillar to the post for seeking their relief (s).

4. The material facts of the case are brief and can be stated as follows. The construction of the multi storied building in question known as Narniada apartment was undertaken by a certain M/s Ashiana Cooperative Housing Society Private Limited. For the purpose of construction the Society took an electricity connection bearing Consumer No. 10-179, A/c, No, 118563 and having Meter No. 127024/3x50/LCT. The connection taken for construction purposes was put in the commercial category as provided in the tariff. After the completion of construction in or around 1985 the flats in the apartment building were conveyed by the Society to different persons on ownership basis.

5. From the counter affidavit filed on behalf of the respondents it appears that there are separate electrical connections for different flats in the apartment building. There are altogether 87 domestic connections with separate meters for flats being used for domestic purposes; in addition to this there are 24 commercial connections with separate meters for flats and areas being used for non-domestic purposes. There is no dispute in so far as these one hundred eleven connections are concerned. And the dispute is confined only to the connection which supplies power to the common area in the multi storied building.

6. From the counter affidavit filed on behalf of the respondents it appears that since the completion of construction of the apartment building the earlier connection which was obtained in the name of M/s Ashiana Cooperative Housing Society Private Limited (bearing Consumer No, 10-179, A/c. No. 118563) is being used for supply of energy to the common area for the purposes of common facilities such as operating water pumps and lift(s) and for lighting the corridors, stairs, parking space etc. It appears that when the Board started raising bills for the common area (on the connection standing in the name of M/s Ashiana Cooperative Housing Society Private Limited) those bills were initially raised at domestic rates; a number of bills raised during the year 1991, copies of which are at Annexure 1 series and another bill dated 14-5-1986 (for the period January to May 1986) a copy of which is at Annexure 14 testify to this fact.

7. According to the petitioners, the bills for the common area for the period commencing from the end of 1985 to October 1992 were raised at domestic rates (see para 13 of the rejoinder affidavit). It is not denied on behalf of the Board that initially the bills for the common area were raised at domestic rates but it is sought to be explained that that was due to some mistake and the "mis take" was rectified as soon as the authorities became aware that the bills were being raised at lower rates.

8. It was in the bill for the month of October, 1992 that the "correction" was apparently carried out. The bill for the month of October, 1992 was not only for a much higher amount but it also showed a large sum as arrear. The petitioners made a representation in the Board's office against the bill for the month of

October, 1992 and the matter rested at that stage. Then for the month of June, 1995 the petitioners once again received a bill for an abnormally large sum; the bill also showed dues against the petitioner from October, 1992.

9. The Board is not in the habit of explaining the nature of arrears shown in its bills nor does it usually explain the reason(s) for an upward revision of the rates for raising the bill and it is not uncommon that one suddenly gets a bill showing unexplained arrears and an upward revision of the rates and one is then left guessing for the reasons behind the suddenly inflated demands. A visit to the Board's office is usually of no help as the officials there are mostly uncooperative and unresponsive. A consumer faced with such a situation, therefore, tends to take the easiest legal remedy available which is to approach this Court with a petition under Article 226 of the Constitution and this is what exactly happened in this case. On receiving the bill for the month of June 1995 the petitioners sought to challenge it before this Court by filing a writ petition being CWJC No. 5167 of 1995. It may be noted that at that stage the petitioners were not quite clear in their mind regarding the reasons for the demand of arrears and a much larger amount for the current charges and hence the challenge to the bill was not very focussed and it was in rather general terms.

10. At the time of filing of the earlier writ petition (CWJC No. 5167 of 1995) this Court was informed that the Board had evolved an internal mechanism for resolving disputes concerning bills which the consumer might feel to be inflated. As the dispute between the parties apparently related to the bill for the month of June 1995 this court thought it fit that the petitioners should approach the internal forum said to have been created by the Board for redressal of grievances. That writ pwtition was accordingly disposed of by order dated 25-8-1995 with the following directions:

"In case the petitioners file a representation and appear before the Committee within a month from today, it is expected and hoped that their grievances will not fail to receive its due attention. Their case will be duly considered and in case their grievances are genuine and well founded they shall be redressed expeditiously and in accordance with law. in the meanwhile, if the petitioner go on paying the current charges, their electric line will not be disconnected for not making payment of the disputed arrears, The question of payment of the arrears shall abide by the final decision of the Committee."

11. As directed by this court the petitioners filed their representation in the Board within time. However, the internal forum for redressal of consumers' grievances remained a non-starter. Thus the deep appreciation for the Board expressed by this Court in the order, dated 25-8-1995 turned out to be rather underserved and the petitioners were left remedyless in respect of their grievances.

12. In the aforesaid circumstances the petitioners had to suffer payment of bills (at least the current charges) at commercial rates for a further period of about

two and half years. The matter seems to have become unbearable for the petitioners when they received bill dated 23-2-1998 for the month of February, 1998. This bill was also for quite a large sum (Rs. 67078.80) and further indicated levy of short fuel surcharge which is chargeable only on commercial connections. Then the petitioners once again come to this Court in this writ petition.

13. Before proceeding to examine the objection raised by the respondent authorities to the maintainability of this writ petition and the justification given by them for raising bills for the common area of the apartment building in question at commercial rates it would be appropriate to briefly refer to a decision of this Court which inter alia led to the amendment of the relevant provision in the Board's tariff. A bench of this Court in Council for Protection of Public Rights and Welfare v. State of Bihar 1994 (1) PLJR 843 considered a number of grounds on which the tariff framed by the Board came under challenge. In C.W.J.C. No. 3085/ 93 which was one of the cases in the batch in which the decision was rendered the question that arose for consideration was whether a multi storeyed residential building can be subjected to the commercial tariff for the use of electrical energy in the common area without changing the nature of supply. In paragraph 23 of the judgment questions were formulated that required consideration by the Court. At serial No. VI was the following question :--

"Whether the levy of commercial tariff in the common area of the multi storeyed building is valid?"

The aforesaid question was considered in paragraphs 60 to 70 of the judgment and in paragraph 70 it was held and observed 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 differentia. Therefore, 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."

14. It was in the background of the aforesaid judicial pronouncement that the Board issued circular, dated 14-8-1996 introducing certain amendments/clarifications in the tariff notification dated 23-6-1993. In the circular dated 14-8-1996 it was specifically stated that it was being issued in the light of the decision of the Supreme Court in Civil Appeal No. 6320/94 and two judgments of this Court, including the one referred to above. The amendment/clarification relevant for the present purpose was in Clause F of the circular which is taken note of at the beginning of this Judgment.

15. The case of the petitioners simply rests on the amendment introduced in the tariff notification dated 23-6-1993 (effective from 1-7-1993) which provides that the rates applicable to the domestic category of tariff shall also apply for

consumption of electric energy in common area of a multi storeyed building.

16. The respondent authorities in the counter affidavit filed on their behalf do not try to meet the petitioners case based on Clause F of the circular, dated 14-8-1996. The respondents, however, try to resist the writ petition on some other grounds. It is stated that the writ petition is not maintainable for the reason that the connection in question stands in the name of M/s Ashiana Cooperative Housing Society (P) Limited and no writ petition can therefore be maintainable in respect of that connection by the present two petitioners. On the question of maintainability it is further stated that the connection at the time of its inception was a commercial connection and so long on a request made by the persons concerned it is not formally converted into a domestic connection it would continue to attract billing at commercial rates.

17. I am not inclined to uphold the objections regarding the maintainability of this writ petition as I find that those objections are fully met by the petitioners in the rejoinder affidavit filed on their behalf. In the rejoinder affidavit it is stated that by letters dated 30-6-1996 and 27-7-1996 the petitioners had requested the Assistant Electrical Engineer for changing the name of the consumer and for recording the name of petitioner No. 1 in respect of the electrical connection in question. The Assistant Electrical Engineer, however, responded by saying that any mutation of name was not possible as the connection in question was the subject matter of a court case. Though no case number on the name of the Court was indicated, the Assistant Electrical Engineer was presumably alluding to the earlier writ petition being C.W.J.C. No. 5167/95. In the aforesaid circumstance the respondents cannot be allowed to question the maintainability of the writ petition on the ground that no mutation of names was effected in respect of the connection in question.

18. As regards the second objection that in the records of the Board the connection in question still continued to be in the non-domestic category, I find that this objection too is without substance. It is explained on behalf of the petitioners, and in my opinion quite correctly, that initially there was no cause for raising any objection as during the period from the end of 1985 to October, 1992 the petitioners were being given bills at domestic rates. It was only in the bill for the month of October, 1992 that commercial rates were charged and the petitioners immediately protested by filing a representation before the Board on 30-9-1992. When no action was taken on the two representations submitted by them they came to this Court in C.W.J.C. No. 5167 of 1995 and since then the dispute has been continuing. In the aforesaid facts and circumstances I find no merit in the objection raised by the respondents regarding the maintainability of the writ petition.

19. Coming now to the justification given for charging commercial rates, Mr. Mihir Kumar Jha, learned counsel for the Board submitted that the apartment building in question (Narmada Apartment) was not a purely residential multi storied building, Learned counsel submitted that out of 111 electrical connections there,

24 were commercial connections, that is to say, more than "Ath of the building area was being used for non-domestic purpose. Mr, Jha further submitted that this Court in Council for Protection of Public Rights and Welfare 1994 (1) PLJR 843 (supra) was considering the case of common area of a multi stored building which was purely residential in nature and according to him the decision, holding that the electricity supplied for common area could be charged only at domestic rates, was only applicable in case of multi storied building which was purely residential in nature.

20. 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 Rights 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 1994(I) PLJR 843.

21. I may further make it clear that it is not my view that the decision in question was confined to common area in a multi storeyed building exclusively used for residential purposes. But assuming it to be so, for the sake of argument, that would not affect the legal position in view of the clear language of the relevant provisions in the tariff following the amendment by circular dated 14-8-1996.

22. Mr. Mihir Kumar Jha next submitted that from the inspection report it appears that from the connection supplying electricity to the common pool area, energy was also being taken for a Travel Agency on the ground floor of the building. Mr. Jha submitted that running a Travel Agency was clearly a commercial activity and electricity being drawn for that purpose would fully justify application of commercial rates.

23. Here also I find that the case of the respondent authorities appears to be based on incorrect facts and the respondents seems to have allowed themselves to be misguided on facts. In the rejoinder affidavit it is fully explained that the Travel Agency alluded to in the inspection report is running in a part in office No. 3 of Narmada Apartment which already has a commercial electricity connection. On the ground floor in the common area, near the store room the travel agency had simply put up a sign board with an arrow indicating the direction to its office

and that had led the inspection team to believe that the travel agency was running in the store room in the common pool area for which electricity was being drawn from the disputed connection. From the rejoinder affidavit it is quite clear that the travel agency is in fact running inside a flat which already has a commercial connection.

24. However, in order not to leave any room for doubt it will be open to the respondent authorities to re-inspect the premises and if they found that electricity from the connection in question is being taken for the travel agency or for any other commercial use it will be further open to them to disconnect the supply of energy from the connection to the travel agency or to any other commercial use.

25. 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 question 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.

26. In the result, this writ petition is allowed but with no order as to costs.