

**(2003) 03 JH CK 0066**

**In the Jharkhand High Court**

**Case No : Writ Petition (Civil) No. 6410 of 2002**

Rameshwaram Apartment

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

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**Date of Decision : 04-03-2003**

**Acts Referred:**

Electricity (Supply) Act, 1948 — Section 49, 79(8)

**Citation : (2003) 51 BLJR 773**

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

**Bench : Single Bench**

**Advocate : Ajit Kumar and D.K. Pathak, for the Appellant; A.K. Mehta and C. Prabha, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

S.J. Mukhopadhaya, J.—This application has been preferred by petitioner against the energy bill dated 12th September, 2002 (for the month of August, 2002) raised on the basis of the Commercial mode of tariff.

2. According to petitioner, the energy bill in question which relates to the common area of its multistoried apartment (Rameshwaram Apartment) situated at South Office Para, Ranchi, has been wrongly raised by the Jharkhand State Electricity Board (JSEB for short) on the basis of "commercial" mode. It should have been raised on the basis of "domestic category" of tariff.

3. Counsel for the petitioner relied on 1993 Tariff as amended on 14th August, 1996. Reliance was also placed on letter No. 350 dated 11th August, 1994 whereby the relevant amendment made in 1991 Tariff was communicated. At Clause 1 (F) of the said letter dated 11th August, 1994, the following amendment was shown :

"The rates applicable to domestic category of tariff shall also apply for consumption of electrical energy in "Common Area" of a Multi-Storied building."

4. Counsel for the respondents while accepted that the billing of common area of the Multi-Storied building is being done as per the amended Tariff, relied on 1993 Tariff gazetted on 23rd June, 1993 to suggest that the billing of common area to be made as per "domestic supply" only when motor upto 1 H.P. is utilised for lifting water but, if the motor is of higher capacity then billing to be made as per ""commercial Supply".

Though the aforesaid stand has been taken by the respondents in their counter-affidavit and a copy of 1993 Tariff has been enclosed but the notification dated 14th August, 1996 whereby the Tariff Notification dated 23rd June, 1993 (1993 Tariff) was amended has not been enclosed.

5. The notification dated 14th August, 1996 were by 1993 Tariff Notification dated 23rd June, 1993 was amended, 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 Section 49 and 79 (8) of the Electricity (Supply) Act, 1948 and Clause-F of 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 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 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 stoned 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."

The aforesaid judgment of the Patna High Court was delivered on 1st March, 2000 and is binding on this Court as also on JSEB.

6. In the circumstances, following the decision of the Patna High Court in Narmada Apartment Owner's Association (*supra*), the impugned bill dated 12th September, 2002 for the month of August, 2002 having raised on the basis of commercial tariff, it is set aside. The respondents are directed to revise the account of the petitioner for the month in question by raising bills at domestic rates. On such revision, if any amount is found to have paid in excess by the petitioner, it may be adjusted against future bills.

7. The writ petition is allowed, with the aforesaid observations/directions.