(2010) 11 PAT CK 0040

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 556 of 1999

Tripolia Social Service Hospital APPELLANT

Vs

Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Citation : (2010) 11 PAT CK 0040

Final Decision : Dismissed

Judgement

Sudhir Kumar Katriar, J.—Both these writ petitions raise common issues of law and facts and are, therefore, being disposed of by a common judgment. In view of the issues involved in the matter, C.W.J.C. No. 556 of 1999 was admitted for final hearing by order dated 28-3-2000, to be heard by a Division Bench. By order dated 1-3-2001, passed in the analogous C.W.J.C. No. 1947 of 1998, the same has been directed to be heard along with C.W.J.C. No. 556 of 1999, because of the common issues involved in these writ petitions. That is how both these writ petitions have come up for final disposal. 2. A brief statement of facts giving rise to C.W.J.C. No. 556 of 1999, may be indicated. Tripolia Social Service is a society established by Sisters of Mercy of the Holy Cross, a group of religious Sisters in the Catholic Church. The Society has established and operate Tripolia Social Service Hospital, the Petitioner herein. The memorandum of Tripolia Social Service sets out charitable purposes as the aims and objects of the society. It is, inter alia, engaged in a number of activities including medical relief to the poor and the needy.

2.1. The Petitioner has taken three electricity connections, namely, numbers 26401600, 26401601 and 26401602, in 1962. The present dispute commenced in 1994, and the present writ petition is with respect to the period August 1991 to January 1998, for which period the Bihar State Electricity Board (hereinafter referred to as ''the Board'') had called upon the Petitioner to make payment of power supply after applying the commercial tariff with respect to two of the connections, namely, Nos. 26401601 and 26401602, renumbered as A/C

75994/26401803 and A/C 149721/26401805. The Board has, from time to time, been issuing tariff notifications in exercise of its statutory powers under Sections 46 and 49 of the Electricity (Supply) Act, 1948. These tariffs provide the yardstick i.e. the rates at which power will be supplied to different consumers. It has statutory flavour. The Board had been raising its bills to the Petitioner as per its tariff enforced from time to time. The Petitioner, being a hospital, was required to pay electricity bills treating it to be a domestic service (D.S. III for short), as per the Tariff Notification published in the Bihar Gazette (Extra), August 12, 1983. A dispute arose about the category in which it is covered after issuance of tariff notification dated 20-9-1991 (Annexure 7), replacing the said tariff notification dated 12-8-1983, whereby categorization of power consumers was changed. The Petitioner asserted that it continues to be in D.S. III, the rates of which are lower than commercial service (hereinafter referred to as ''C.S.''). On the other hand, the Board took the stand that, in view of recategorisation of power consumers in Tariff Notification dated 20-9-1991, hospitals have been transferred from D.S. III to C.S. In order to realize bills at the appropriate rate, namely, the commercial tariff, the Board issued two supplementary bills, both dated 4-3-1998 (Annexures 11/A and 11/B). The Petitioner challenged the two supplementary bills, by preferring C.W.J.C. No. 3119 of 1998, which was disposed of by a learned Single Judge of this Court by order dated 22-4-1998 (Annexure 12)5 whereby the Petitioner was directed to submit appropriate representation before the Director of Accounts (Revenue), who shall dispose of the same with a speaking order. Certain directions were also recorded for payment of part of the bill amount. The Director of Accounts rejected the representation by a reasoned order dated 24-12-1998 (Annexure i7), followed by the consequential order dated 9-1-1999 (Annexure 17), upon the Petitioner to make payment, of the bills, and impugned herein.

3. A brief statement of facts giving rise to C.W.J.C. No. 1947 of 1998, may also be indicated. This dispute commenced in 1991. This writ petition covers the period May 1992 to January 1998, and the Board had called upon the Petitioner to make payment of the electricity dues as per the Commercial, i.e. non-domestic, rates. The Kejriwals of Muzaffarpur set up the Petitioner hospital allegedly for charitable purposes. In view of issuance of supplementary bills on the basis of commercial tariff, the Petitioner preferred C.W.J.C. No. 4383 of 1996, which was disposed of by the learned Single Judge of this Court by order dated 19-11-1996 (Annexure-8), whereby the Petitioner was directed to submit an appropriate representation before the Senior Legal Advisor of the Board to be disposed of by a reasoned order. The Senior Legal Advisor rejected the representation by a speaking order dated, 4-4-1997 (Annexure 9). The Petitioner challenged the same by preferring C.W.J.C. No. 3811 of 1997, which was allowed by order dated 20-10-1997 (Annexure 10), the order; of the Senior Legal advisor was set aside, and the matter was remitted to the same authority for a fresh decision in accordance with law and the observations made therein. The Senior Legal Advisor reconsidered the entire matter, and passed an exhaustive order

whereby the representation has once again been rejected by order dated 31-10-1998 (Annexure 13). Hence this writ petition.

4. While assailing the validity of the impugned action, learned Counsel for the Petitioner of C.W.J.C. No. 556 of 1999, submits before us that the Petitioner has been recognized as a charitable institution within the meaning of Section 4(K) of the Patna Municipal Corporation Act, 1951. He next submits that the Petitioner is a recognized charitable institution within the meaning of Section 12(A), read with Section 2(15), of the Income Tax Act, and is being assessed there on the footing that it is a charitable institution. The Petitioner''s nature and character as a charitable institution is hot in dispute in view of the orders of various Courts, notwithstanding which the Board is not treating the Petitioner as a charitable institution. He also submits that the order of the Board suffers from an error apparent on the face of it. They have not correctly appreciated the order of the Supreme Court in determining the nature and character of a hospital being run without profit motive. He relies on the following reported judgments:

(i) Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, (Paragraph Nos. 18 and 19).

(ii) Assistant Commissioner of Income Tax Vs. Thanthi Trust, : The Assistant Commissioner of Income Tax, Madras Vs. Thanthi Trust etc. etc., (Paragraph No. 25).

(iii) Victoria Technical Institute Vs. Addl. Commissioner of Income Tax, Madras and another, (Paragraph 3).

(iv) Yogiraj Charity Trust Vs. Commissioner of Income Tax, New Delhi, (Paragraph 17)

(v) C.I.T., Madras v. Andhra Chambers of Commerce Etc., AIR 1981 SC 1766

4.1. Taking us through the provisions of the series of tariff notifications issued by the Board from time to time, he submits that there is a golden thread consistently running though grant of exemptions to a hospital like the present Petitioner being run without profit motive. He submits in the same vein that the Board has failed to realize that income after all has to be generated by different methods to retain the charitable nature of the hospital. The primary question whether or not the hospital is being run without any profit motive has to be ascertained from the functioning of the hospital.

5. The Petitioner of C.W.J.C. No. 1947 of 1998 has assailed the validity of the impugned order on ''diverse grounds. He has advanced submissions akin to those of the learned Counsel for the Petitioner of C.W.J.C. No. 556 of 1999. He has in addition relied on the following reported judgments:

(i) P.C. Raja Ratnam Institution Vs. Municipal Corporation of Delhi and Others,

(ii) Commissioner of Income Tax v. Gujarat Maritime Board (2007) 14 SCC 704 : AIR 2007 SCW 7912.

6. Learned Counsel for the Board has taken us through the provisions of different tariff, and has submitted that ever since issuance of tariff notification dated 20-9-1991 (Annexure 7), and that of 23-6-1993 (Annexure 8), hospitals and dispensaries are being treated to be under the commercial category. In his submission, it has been carved out from the domestic category of charitable institutions, and is now included in the commercial category. He relies on the judgment of a learned Single Judge of this Court in the case of Dr. Ram Sharan Sinha and Another Vs. The State of Bihar and Others,

7. We have perused the materials on record and considered the submissions of learned Counsel for the parties. The previous tariff notification, and the two relevant Ones in the present context, may be noticed. The Board had published its tariff notification in the Bihar Gazette (Extra), August 12, 1983. Paragraph No. 1 of the same is reproduced:

THE TARIFF SCHEDULE

LOW TENSION SUPPLY

DOMESTIC SERVICE (SYMBOL D.S.)

1. 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.

(Emphasis added)

7.1. The same was replaced by tariff notification published in Bihar Gazette (Extra) September, 20, 1991. The relevant portions of which are reproduced hereinbelow:

THE TARIFF SCHEDULE LOW TENSION SUPPLY Domestic Service (Symbol: Ds)

1. 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.

14. BIHAR GAZETTEE (EXTRA), SEPTEMBER 20, 1991

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.

COMMERCIAL SERVICE

1. Applicability.- For use for Lights, Fans and Power loads non-domestic purpose

like shops, Hospitals (Private or Government). Clinic. Nursing Home. Restaurants, clubs, Workshops, Show-rooms, Office (Private or Central/State Governments and their Undertakings), Commercial Establishments, Cinemas, X-rays Plants; Schools (Private or Government), College, (Private or Government Hostel (Private or Government), Boarding/Lodging houses, Libraries (Private or Government), Defence installations, Recognized Research institutions, Hotels, Railway Stations, Fuel-Oil Stations (including Vehicle Service Station), All India Radio/T.V. Installation, Printing Presses, Housing Co-operative Societies for availing power, common services in Multi-storied building and such other installations not covered under any Tariff Schedule.

(Emphasis added)

7.2. This tariff notification was replaced by the notification published in the Bihar Gazette (Extra) 23 June, 1993. The relevant portion of the same are reproduced herein-below:

THE TARIFF SCHEDULE LOW TENSION SUPPLY

DOMESTIC SERVICE (SYMBOL : DS)

1. Applicability:

For use for domestic purpose including domestic pumping set and household electric appliances in private residence such as Radios, Fans, Televionsi 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 recognized charitable institutions.

Non-Domestic, Light, Fan and Power Service

1. Applicability:

For use for Lights, Fans and Power loads non-domestic purpose like shops, hospital (Private or Government) Clinic, Nursing home, Restaurants, Clubs, Workshops, Central Air Conditioning Unit, Office (Private or Central/State Govts. and their undertakings) Dispensaries. Show-rooms, Commercial Establishments, Cinema, X-Ray Plants, Schools and Colleges (Private or Government), Boarding lodging Houses, Libraries (Private or Government), Defence Installations, Recognized Research Institutions, Hotels, Railway Stations, Fuel-oil Stations (including Vehicle Service Station), All India Radio/T.V. tnitallation, Printing Presses, Housing Co-opterative Societies for availing power, Common Services in Multi storeyed building, Universities, Trust, Museum, Poultary Farms, Banks and such other installations not covered under any Tariff Schedule.

(Emphasis added)

8. It is evident on a perusal of the brief history of the successive tariff notifications that 1983 notification included hospitals, and charitable institutions, as separate entries under D.S. The same was replaced by that of 1991, whereby hospitals have been deleted from D.S., and incorporated in C.S. In fact, the description of hospitals has been given a longer and wider description in the C.S. in the tariff notification of 1991, under the head C.S. It is further relevant to state that charitable institutions continue in D.S. The same position continues under 1993 notification, i.e. hospitals continued to be in the C.S. The periods in question in the present proceeding are covered by tariff notifications of 1991 and 1993. It is thus evident that the tariff-makers consciously deleted hospitals from D.S., and included them in C.S., in the notifications of 1991 and 1993. We thus conclude that both the writ petitions are covered by the tariff notifications 1991 and 1993, and shall have to pay for electric supply as per the rates applicable as C.S. for the periods in question.

9. It is evident that hospital was specifically included in D.S. in 1983 tariff notification, was omitted therefrom and transferred to the category of C.S. in 1991 notification, and continued as such in 1993 notification, makes the intention of the Board that it shall be treated as C.S. with promulgation of the 1991 notification. The intention is obvious and highlights the intention of the tariff-maker in taking hospital etc. out of D.S., and inserting it specifically in C.S. Learned Counsel for the Petitioner has rightly relied on the judgment of a learned single Judge of this Court, in Dr. Ram Sharan Sinha (supra), wherein the same view has been taken. We approve of the view taken therein.

10. In view of foregoing discussion, we do not consider it necessary to consider the remaining submissions advanced on behalf of the Petitioners. We have not applied our minds to the nature and character of the functioning of the two Petitioners, and whether or not these are engaged in charitable activities providing service free of charges, or without any profit motive. Therefore, the decision of the authorities under the notifications remains untouched.

11. In the result, we dismiss the two writ petitions, though we rest our conclusion on grounds different from the ones indicated in the impugned orders. The Petitioners have made part payment as per interim orders of this Court. The Board shall, therefore, issue fresh bills to the Petitioners after making adjustment of the interim payments made by the Petitioner. If the Petitioners make payment of the balance amount within a period of four weeks from the date of service of fresh bills, they shall not be required to pay any amount towards delayed payment surcharge, and/or any other penalty or interest by whatever name called. In the circumstances of the case, there shall be no order as to costs.