

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

W. P. No. 18367 (W) of 2019

Arup Sarkar
Versus
C.E.S.C. Limited & Ors.

For the Petitioner : Mr. Subir Sanyal
Mr. Usof Ali Dewan
Mr. Soumyajit Das Mahapatra
Mr. Kaustav Bagchi
Mr. Asif Dewan

For the Respondent CESC Ltd. : Mr. Rajiv Lall

Heard on : 19.11.2019, 17.12.2019 & 21.01.2020

Judgment on : 11.02.2020

Shekhar B. Saraf, J.:

1. The conundrum to be resolved in the present writ petition primarily revolves around the issue as to whether a lawyer using a domestic space as his chambers is liable to be charged with tariff on commercial basis. In the present factual matrix, the petitioner is a practicing lawyer enrolled in the year 2011, having a chamber in the ground floor of the multi storied building where he resides on the third floor. The petitioner has made an application

for a new electric connection on the ground floor under the category domestic (urban). However, the CESC limited has sent him a quotation for payment of service charges and security deposit on the basis of a commercial (urban) connection. Subsequent to receiving the said quotation the petitioner has written to the CESC limited raising an objection to the quotation and has sought a fresh quotation on the basis of domestic (urban) connection. This letter of the petitioner dated September 3, 2019 has not been replied to by the CESC limited, and therefore, aggrieved by the same the petitioner has filed this writ petition.

2. Mr. Subir Sanyal, counsel appearing on behalf of the petitioner has submitted that the profession of a lawyer cannot be equated as a commercial activity. He submitted that neither the Electricity Act, 2003 nor any Rules or Regulations framed thereunder define the term “commercial”. He, accordingly referred to **V. Sasidharan -v- M/s. Peter and Karunakar** reported in **AIR 1984 SC 1700** and **Dipti Kumar Base & Ors. -v- Chief Inspector, Shops and Establishment & Anr.** reported in **90 CWN 353** wherein under the Shops and Establishment Act the establishment of a legal practitioner/ firm of lawyers was held not to be a commercial establishment.

3. Mr. Rajiv Lall, appearing on behalf of the CESC limited firstly distinguished the two judgments cited by the petitioners on the ground that the issue in question in this writ petition is not related to classification of the

premises and wholly relates to the use of electricity in a premises and the imposition of electricity tariff for the said use. To buttress his arguments, he relied on an unreported Larger Bench judgment of the Supreme Court in **Chairman, M.P. Electricity Board and Others –v- Shiv Narayan and Anr. (Civil Appeal No. 1065 of 2000)** to indicate that the activity of a lawyer running an office falls under the category of non-domestic use. Mr. Lall further relied on **Rajendra G. Shah –v- Maharashtra State Electricity Distribution Company Limited** reported in **2011 (5) MhLj 360, Guj. Vij, Com. Ltd. and Ors. –v- Babulal Birabhai Renpara** reported in **AIR 2010 Guj 76** and **Gujarat Electricity Board –v- Ashwinbhai A. Maniyar and Ors.** reported in **(2010) 51 GLR 679** to advance his arguments that the judgment in **Shiv Narayan and Anr. (supra)** laid down the correct law and is being followed by different High Courts.

4. At the very outset, I would like to state that consumers as per the tariff order of CESC limited passed by the West Bengal Electricity Regulatory Commission dated July 4, 2018 have been bifurcated into various categories (18 categories) and the ones relevant to the present case are “2. Domestic (Urban)” and “3. Commercial (Urban)”. In the event, the ‘legal profession’ falls under the category of commercial, the matter would come to a rest; if not, the issue would remain whether in the present case the activity being carried out by the petitioner in a residential space would fall under the category of commercial (urban) as per the tariff.

5. Since the term “commercial” takes its roots from the word “commerce”. One may examine the definition of the word “commerce” alongwith the word “commercial” as defined in Black’s Law Dictionary, Tenth Edition as follows:

“**Commerce.** (16c) The exchange of goods and services, esp. on a large scale involving transportation between cities, states, and countries.

Commercial, adj. **1.** Of, relating to, or involving the buying and selling of goods; mercantile <commercial advertising>. **2.** Resulting or accruing from commerce or exchange <commercial gains>. **3.** Employed in trade; engaged in commerce <commercial travellers>. **4.** Manufactured for the markets; put up for trade <commercial products>. **5.** Of, relating to, or involving the ability of a product or business to make a profit <commercial potential>. **6.** Produced and sold in large quantities <commercial cosmetics>. **7.** Pejorative. More concerned with money than with quality <he sold out and became commercial>.”

6. For a better understanding one may further examine the meaning of the term “profession” as has been defined in the Black’s Law Dictionary, Tenth Edition as follows:

“**profession.** (15c) **1.** A vocation requiring advanced education and training; esp., one of the three traditional learned professions – law, medicine, and the ministry.

“Learned professions are characterized by the need of unusual learning, the existence of confidential relations, the adherence to a standard of ethics higher than that of the market place, and in a profession like that of medicine by intimate and

delicate personal ministrations. Traditionally, the learned professions were theology, law and medicine; but some other occupations have climbed, and still others may climb, to the professional plane." *Common-wealth v. Brown*, 20 N.E.2d 478, 481 (Mass. 1939)."

7. One may further look into *The Law Lexicon*, 3rd Edition, 2012 for the definition of the word "profession" and the distinction between "profession" and "trade" or "business" as follows:

“Profession. A ‘profession’ involves the idea of an occupation requiring either purely intellectual skill or if any manual skill, as in painting and sculpture or surgery, skill controlled by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities. *C.I.T. v. Manmohan Das*, (1966) 59 ITR 699, 710 (SC) [Income-tax Act (43 of 1961), S. 28]

Profession and Trade or Business (distinction). There is a fundamental difference between ‘profession’ and ‘trade or business’. The words ‘trade’ and ‘business’ do not mean the same thing. While all trades may be business, all business is not trade. The distinction between ‘business’ and ‘profession’ is emphasised in R. 40 of the Rules made by the Bar Council of India. The Rule says that an advocate shall not personally engage in ‘business’ and he may be a sleeping partner in a firm, if in the opinion of the appropriate State Bar Council the nature of business is not inconsistent with the dignity of the profession. It is therefore clear that the two terms ‘profession’ and ‘business’ are not synonymous. An advocate is approached by his client in regard to his problems with reference to his property, his trade business or industry and sometimes with regard to problems relating to his freedom and it is expected that an advocate would be in a position to help him in his difficulties, to the best of his ability and not betray the confidence reposed in him. This is one of the elements which should be borne in mind in considering whether a particular person is practicing a ‘profession’ or is merely doing a ‘business’. The profession of an advocate involves a high code of ethics and very considerable responsibility. The

profession of an advocate constitutes a learned 'profession' which cannot be termed as 'business' within the definition of Section 10(3)(c)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. Therefore the landlord who is an advocate cannot apply under Section 10(3)(c)(iii) of the Act for eviction the tenant from the premises on the ground that the respondent requires the same for 'locating his office' (MAHESWARAN, J) *M/s Kolapur Traders v. Subramania Mudaliar*, MLJ : YD (1979) Suppl to Feb. p. 526 : (1979) ILR 2 Mad 440 : (1979) 2 Ren CR 129 : (1979) 11 Lawyer 94 : (1980) 1 Ren LJ 247 : 92 Mad LW 290 : (1979) 2 Mad LJ 43.

Profession-professional.

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A profession or occupation is carried on for the purpose of earning a livelihood and a profit motive does not underlie such carrying of profession or occupation. *L. M. Chitale v. Commissioner of Labour*, AIR 1964 Mad 131, 133. [Constitution of India, Art. 19(1)(g)]”

8. In the Apex Court judgment in **V. Sasidharan (supra)**, it has been clearly held that the chambers of a lawyer does not involve any commercial activity. Relevant extract of the judgment is provided below:

“It does not require any strong argument to justify the conclusion that the office of a lawyer or of a firm of lawyers is not a 'shop' within the meaning of Section 2(15). Whatever may be the popular conception or misconception regarding the role of today's lawyers and the alleged narrowing of the gap between a profession on one hand and a trade or business on the other, it is trite that, traditionally, lawyers do not carry on a trade or business nor do they render services to 'customers'. The context as well as the phraseology of the definition in Section 2(15) is inapposite in the case of a lawyer's office or the office of a firm of lawyers.”

9. One may now examine the Larger Bench judgment in ***Shiv Narayan (supra)*** in greater detail. The relevant portion is extracted below:

“Thus the matter is before us. We have heard Mr. M.L. Jaiswal, learned senior counsel for the Appellant. We have perused the Circulars and seen the Tariff entries under which the levy has been made. We find that the Tariff entry classificates into two categories viz. (a) “domestic purposes” and (b) “commercial and non-domestic purposes”. This classification has been done statutorily in exercise of powers under Section 49 of the Electricity Supply Act, 1948. The classification clubs “commercial and non domestic purposes” into one category. Thus the question whether an Advocate can be said to be carrying on a commercial activity does not arise for consideration. As the user is admittedly not “domestic” it would fall in the category of “commercial and non-domestic”. In such cases even for “non-domestic” use the commercial rates are to be charged. Exclusively running an office is clearly a “non-domestic” use.”

Thus, in our view the Judgment of this Court in Sohan Sal Sachdev is correct and requires no reconsideration.

We clarify that we have not gone into the question as to whether or not an advocate can be said to be carrying on commercial activity.”

(emphasis supplied by me)

10. As is evident from a plain reading of the extract of the Supreme Court judgment in ***Shiv Narayan (supra)***, the tariff entries in the case before the Supreme Court were of two categories, that is, (a) “domestic

purposes” and (b) “commercial and non-domestic purposes”. The Supreme Court after examining held that as the use was not domestic it would fall in the category of “commercial and non domestic” and further held that running an office is clearly a “non-domestic” use. Furthermore, the Supreme Court clearly clarified that they had not examined the issue as to whether an advocate can be said to be carrying on a commercial activity.

11. In the Bombay High Court judgment cited by Mr. Lall, it was held that the legal profession would fall in the category “non-residential or commercial” while in the Gujarat High Court judgments it was held that the legal profession would fall under the category “non-residential”.

12. One can clearly see that in the three judgments cited by Mr. Lall, there was a category having the words “non-residential”, and therefore, one could argue that a lawyer’s chamber would fall under such category. In none of the judgments cited by Mr. Lall is the vocation of a lawyer being treated simpliciter as a commercial activity and being classified under the category “commercial”, including the Larger Bench Judgment of the Supreme Court. Ergo, all the judgement cited by Mr. Lall are distinguishable on law and facts, and it is crystal clear that the profession of a lawyer cannot be termed as a commercial activity.

13. In a recent case of a similar nature decided by the Division Bench of Hon'ble Gujarat High Court, ***Kanubhai Shantilal Pandya and Ors. -v- Vadodara Municipal Corporation (Special Civil Application No. 13289 of 2014, Decided on 04.08.2016)***, the petitioner was charged separately by the Municipal Corporation for the purpose of levying taxes as 'residential' and 'non-residential'. The petitioner was using some part of his property for non-residential purpose, that is, as a lawyer's office. The corporation imposed different rate of taxes for different category of use within a registered premise. The court held that such classification based on residential and non-residential use is not discussed in the statute, therefore it would be wrong to draw such distinction without any statutory obligation to do so. Relevant extract of the judgement mentioned in para 11 of the judgement is mentioned below:

“Since from the facts on record, we gather that all the petitioners are occupying residential units situated in residential areas or complexes for their residential purpose. Only a small portion of these units have been set apart for their legal work. That being the position, the Vadodara Municipal Corporation committed an error in splitting the properties in question for separate consideration for tax purpose. Section 141B of the BPMC Act does refer to classification of building into residential buildings and buildings other than residential use, nevertheless, it is doubtful whether such classification can be provided for the same building. If the unit was a commercial unit used by the lawyer for his legal profession or even if the entire residential unit was occupied by lawyer for his legal work, different considerations would perhaps apply. In the present case, when the predominant use of the residential unit was for residence of the owner-occupier for his family, mere setting apart a small area therein for his legal work would not change the

predominant use of the property and resultantly, we do not find that Vadodara Municipal Corporation could have charged such area separately at non-residential or commercial rate.”

14. In essence, the distinction drawn by the Apex court while highlighting that a professional activity involves a certain amount of skill as against commercial activity which is a matter of business is paramount. These two were held to be distinct concepts; while in commercial activity one works for gain or profit, as against this, in profession, one works for his livelihood. Accordingly, there is a fundamental distinction between a professional activity and an activity of a commercial character, and therefore, it is crystal clear that the legal profession would not fall under the category of ‘Commercial (Urban)’.

15. In the case at hand, the categorization in the tariff of CESC limited only contains two categories of relevance to the present case (a) Domestic (Urban) and (b) Commercial (Urban). Upon a reading of the judgment of the Supreme Court in ***Shiv Narayan (Supra)*** it is crystal clear that the legal profession would fall under the category of “non-domestic”. However, falling under the category of “non-domestic” would not automatically make the use “commercial”. The words “non-domestic” and “commercial” are not fungible, and therefore, cannot be interchanged. In the tariff of CESC Limited, the tariff entry of “Commercial (Urban)” is not a residual entry, and therefore, unless a

user is commercial, the rate applicable to a commercial user cannot be charged simpliciter because the profession of lawyer is considered to be a non-domestic use. In my view, a lack of clarity in the tariff cannot be used to the detriment of the user and the benefit of doubt would in such cases have to be given to the consumer.

16. In the present case, the space in the ground floor has been taken by the petitioner as an extension of his residence for the use of the space as his legal chamber. The above factual matrix is clearly distinguishable from law firms and proprietorship firms that are having offices in commercial spaces dealing with litigation and non-litigation work. The chambers of a litigation lawyer are clearly used for his livelihood, and accordingly, the benefit of doubt is required to be given to such a petitioner placing him in the category of the “Domestic (Urban)”.

17. In light of the conclusion reached above, the writ petition is allowed and the CESC Ltd. is directed to provide the new electric connection to the petitioner) under the category ‘Domestic (Urban)’ within a period of two weeks from date. Needless to mention, the petitioner shall comply with all formalities necessary in accordance with law.

18. Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)

Later

Mr. Rajiv Lall, learned counsel appearing on behalf of the CESC Ltd. prays for stay of operation of order passed in court today. Upon due consideration, I am of the view that the prayer of Mr. Lall is required to be rejected.

(Shekhar B. Saraf, J.)