

# **Chairman, M.P. Electricity Board And ... vs Shiv Narayan And Anr on 24 August, 2005**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, H. K. Sema**

CASE NO.:

Appeal (civil) 1065 of 2000

PETITIONER:

Chairman, M.P. Electricity Board and Ors

RESPONDENT:

Shiv Narayan and Anr.

DATE OF JUDGMENT: 24/08/2005

BENCH:

ARIJIT PASAYAT & H. K. SEMA

JUDGMENT:

**J U D G M E N T ARIJIT PASAYAT, J.**

An interesting question is raised in this appeal i.e. whether the legal profession is a commercial activity or is it a trade or business. The Madhya Pradesh Electricity Board (hereinafter referred to as the 'Board') and its functionaries charged the respondent No.2-Advocate for electricity consumption at the rate applicable for commercial consumers. The demand was questioned by filing a writ petition before the Madhya Pradesh High Court which by the impugned judgment held that the legal profession does not involve a commercial activity and, therefore, the rate applicable to commercial consumers was not applicable to him. The judgment is questioned by the Board in this appeal.

There is not much dispute on the factual aspect. Respondent no.1 was at the relevant point of time the landlord of the house where respondent No.2-G.D. Padraha, Advocate was staying as a tenant. He was occupying the tenanted premises till 1981. Thereafter, he shifted to his own house, but he maintained his office in the tenanted premises. There was an electricity service line in that house and it was in the name of the landlord who was paying at the rate applicable to domestic consumers. In January, 1986 some officials of the Board inspected the service meter and served a notice to the landlord alleging that he is using the service connection for commercial purposes instead of domestic purposes. The landlord replied stating that he had never used the premises for commercial purposes. However, the respondent No.2 had his office in the premises. Notice of demand was raised after considering the reply and it was held that the rate applicable to the commercial consumers was applicable, on the basis of a circular issued by the Board laying down different types of connections for domestic purposes and commercial purposes. The validity of the circular

classifying office of an advocate as a commercial establishment was questioned in the writ petition. The High Court as noted above held that the office of a lawyer or a firm of lawyers is not a 'commercial establishment' and therefore rates applicable to commercial consumers cannot be charged.

Learned counsel for the appellant-Board and its functionaries submitted that the High Court has not considered the relevant aspects. When a lawyer has his office-cum-residence in particular premises the domestic rate is applicable. Where however only the chamber is functioning, clearly commercial activities are being carried out and therefore commercial rate was rightly applied. According to him, the two categories of consumers have to be classified as domestic consumers and non domestic consumers. Those who are not domestic consumers fall to the second category and merely because for the sake of convenience the description has been given as "commercial" it does not make a difference. When one is not a domestic consumer, as a natural consequence the rate applicable to the other category has to be charged. Nobody appears on behalf of the respondents.

The circulars on which reliance was placed by the Board clearly show that a distinction was made between domestic consumers and commercial consumers. There is no substance in the plea that the classification was domestic and non domestic as the residual category. The Board's notification which formed the foundation for the Board's action reads as follows:

"Madhya Pradesh Electricity Board Rampur: Jabalpur No.5/GA/44/126/23256/356 dated 30th November,76 To, The Divisional Engineer, M.P. Electricity Board.

Reference is invited to this office circulars No. 5/121/5/111/49-A dated 21.7.1971 and 5/11/5/111/49-A/54/4506 dated 8.7.1975 wherein the categories of consumers which could be classified as 'Commercial' were indicated. Points have been raised in regard to the tariff which shall be applied to the consumption in the house a part of which is used for professional purpose by Advocate, Doctors, etc. The Board has considered the matter and has decided that the energy consumed in the residential premises of following persons, shall be treated as domestic purposes, even though these persons carry out some professional work in the residence.

- (i) Advocate, Vakils.
- (ii) Doctors.
- (iii) Writers, poets and artists.

However, consumption in the premises which are away from the residential premises and are exclusively used for the professional purposes even by the Advocate, Vakils, Doctors, Writers, Poets and Artists and shall be billed at Board L.T. Tariff applicable.

Director, Commercial M.P. Electricity Board Jabalpur."

List of consumers who are treated as belonging to the commercial category clearly shows that there is an element of commerce involved in them as would be evident from the Notification dated 8th July, 1975.

The word 'commerce' is a derivative of the word 'commercial'. The word 'commercial' originates from the word 'commerce' which has been defined in Black's Law Dictionary- Sixth Edition as under:

"Commerce.-The exchange of goods, productions, or property of any kind, the buying, selling, and exchanging of articles. Anderson v. Humble Oil and Refining Co.226 Ga.252, 174 S.E.2d 415,

417. The transportation of persons and property by land, water and air. Union Pacific R.Co. v. State Tax Commissioner, 19 Utah 2d 236, 429 p.2d 983, 984.

Intercourse by way of trade and traffic between different people or States and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and transportation of persons as well as of goods, both by land and sea. Brennan v. Titusville, 153 U.S. 289, 14 S.Ct.829, 38 L.Ed.719; Railroad Co. v. Fuller, 84 U.S. (17 Wall.) 568, 21 L.Ed. 710; Hoke vs. United States, 227 U.S. 308, 33 S.Ct 281, 57 L.Ed.523. Also interchange of ideas, sentiments, etc. as between man and man.

The term 'commerce' means trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country. National Labour Relations Act 2....."

The word 'commercial' has been defined to mean:

"Commercial. Relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce. Anderson vs. Humble Oil & Refining Co. 226 Ga.252, 174 S.E. 2d 415, 416. Generic term for most all aspects of buying and selling."

The expression 'commerce' or 'commercial' necessarily has a concept of a trading activity. Trading activity may involve any kind of activity, be it a transport or supply of goods. Generic term for most all aspects is buying and selling. But in legal profession, there is no such kind of buying or selling nor any trading of any kind whatsoever.

Therefore, to compare legal profession with that of trade and business is far from correct approach and it will totally be misplaced.

Similarly, in the Advanced Law Lexicon 3rd Edition 2005, Volume 1 at page 878 by P. Ramanatha Aiyar, word 'commerce' has been defined as under:

'Commerce' is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including transportation, purchase, sale, and exchange of commodities between the citizens of one country and the citizens or subjects of other countries, and between the citizens of different provinces in the same State or country. Walton v.

Missouri, 91 US 275; 23 L Ed.347.

Buying and selling together, exchange of merchandise especially on a large scale between different countries or districts; intercourse for the purpose of trade in any and all its forms (S.2 (13), Income Tax Act).' The word 'profession' has been defined in Black's Law Dictionary- Sixth Ed. as under:

'Profession- A vocation or occupation requiring special, usually advanced education, knowledge, and skill; e.g. law or medical professions. Also refers to whole body of such profession.

The labour and skill involved in a profession in predominantly mental or intellectual, rather than physical or manual.

The term originally contemplated only technology, law and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill.

Act of professing; a public declaration respecting something. Profession of faith in a religion."

The word 'profession' has also been defined in the Advanced Law Lexicon Volume-3 at page 3764 which reads as under:

"Profession- A 'profession' involves the idea of an occupation requiring either purely intellectual skill or 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 of sale of commodities. C.I.T. v. Manmohan Das (1966) 59 ITR 699, 710 (SC) Income Tax Act, 1961. Sec.28."

At page 3765 it has been further stated as follows :

"One definition of a profession is an employment, especially an employment requiring a learned education, as those of law and physics (Worcester Dict.). In the Century Dictionary the definition of profession is given, among others, as a vocation in which a professional knowledge of some department of science or learning is used by its practical application to the affairs of others, either in advising, guiding, or teaching them, or in serving, their interest or welfare in the practice of an art founded on it."

"The word implies professional attainment in special knowledge as distinguished from mere skill; a practical dealing with affairs as distinguished from mere study or investigation; and an application of such knowledge to use for others as a vocation as distinguished from its pursuits for its own purposes."

"The term is applied to an occupation or calling which requires learned and special preparation in the acquirement of scientific knowledge and skill.

1. The occupation which one professes to be skilled in and to follow; any calling or occupation by which a person habitually earns his living (S.2(36), Income Tax Act and S.150, Indian Evidence Act); 2. S.7, North Eastern Hill University Act."

"An activity to be a profession must be one carried on by an individual by his personal skill, intelligence and an individual by his personal skill, intelligence and dependent on individual characteristics. Sakharam Narayan Kherdekar v. City of Nagpur Corporation, (AIR 1964 Bom 200, 210 (Bombay Shops and Establishment Act (79 of 1948, S. 2 (4)).

The multifarious functions call for the exercise of integrity; intelligence and personal skill by the Chartered Accountant in the service of his client and so the preamble of the Chartered Accountant Act, 1949 describes the avocation of a chartered accountant as a profession. N.E. Merchant v. State. (AIR 1968 Bom 283, 287. Bombay Shops and Commercial Establishment Act (76 of 1948)"

"A profession or occupation is carried on for the purpose of earning a livelihood and a profit motive does not underline such carrying of profession or occupation. L.M. Chitala vs. Commissioner of Labour. (AIR 1964 Mad.131, 133 (Constitution of India, Art. 19(6))"

"Profession as distinguished with 'commercial' means a person who enters into a profession. It involves certain amount of skill as against commercial activity where it is more of a matter of things or business activity. In profession, it is purely use of skill activity. Therefore, two are distinct concepts in commercial activity one works for gain or profit and as against this, in profession, one works for his livelihood."

This Court in *V. Sasidharan v. M/s Peter and Karunakar* (AIR 1984 SC 1700) held as under:

".....It does not require any strong argument to justify the conclusion that the office of a lawyer or 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."

In *Harendra H. Mehta & Ors. v. Mukesh H. Mehta & Ors.* (1999 (5) SCC 108) it was noted as follows:

"1. Of, engaged in, or concerned with, commerce. 2. Having profit as a primary aim rather than artistic etc. value; philistine". (The Concise Oxford Dictionary). In the Black's Law Dictionary, "commercial" is defined as: "Relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce. *Anderson v. Humble Oil & Refining Co.*, (226 Ga 252: 174 SE 2d

415), "A broad and not a restricted construction should be given to the word "commercial" appearing in Section 2 of the Foreign Awards Act. In *R.M. Investment and Trading Co. (P) Ltd.*

(1994 (4) SCC 541), the terms of the agreement required the petitioner to play an active role in promoting the sale and to provide "commercial and managerial assistance and information"

which may be helpful in the respondents sales efforts. It was held that the relationship between the appellant and the respondents was of a commercial nature. The Court said that the word "commercial" under Section 2 of the Foreign Awards Act should be liberally construed."

In *Stroud's Judicial Dictionary* (5th Edition) the term "commercial" is defined as "traffic, trade or merchandise in buying and selling of goods".

A professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction, therefore, between a professional activity and an activity of a commercial character. Considering a similar question in the background of Section 2(4) of the Bombay Shops and Establishments Act (79 of 1948), it was held by this Court in *Dr. Devendra M. Surti v. The State of Gujarat* (AIR 1969 Sc 63) that a doctor's establishment is not covered by the expression "Commercial establishment".

In the above background, we would have dismissed the appeal. But we notice that in *New Delhi Municipal Council v. Sohan Lal Sachdev* (2000(2) SCC 494) certain observations are made, with which we do not agree. In para 12 it was observed as follows :-

"The two terms "domestic" and "commercial" are not defined in the Act or the Rules. Therefore, the expressions are to be given the common parlance meaning and must be understood in their natural, ordinary and popular sense. In interpreting the phrases the context in which they are used is also to be kept in mind. In Stroud's Judicial Dictionary (5th Edn.) the term "commercial" is defined as "traffic, trade or merchandise in buying and selling of goods". In the said dictionary the phrase "domestic purpose" is stated to mean use for personal residential purposes. In essence the question is, what the character of the purpose of user of the premises by the owner or landlord is and not the character of the place of user. For example, running a boarding house is a business, but persons in a boarding house may use water for "domestic" purposes. As noted earlier the classification made for the purpose of charging electricity duty by NDMC sets out the categories "domestic" user as contradistinguished from "commercial" user or to put it differently "non-domestic user". The intent and purpose of the classifications as we see it, is to make a distinction between purely "private residential purpose" as against "commercial purpose". In the case of a "guest house", the building is used for providing accommodation to "guests" who may be travellers, passengers, or such persons who may use the premises temporarily for the purpose of their stay on payment of the charges. The use for which the building is put by the keeper of the guest house, in the context cannot be said to be for purely residential purpose. Then the question is, can the use of the premises be said to be for "commercial purpose"? Keeping in mind the context in which the phrases are used and the purpose for which the classification is made, it is our considered view that the question must be answered in the affirmative. It is the user of the premises by the owner (not necessarily absolute owner) which is relevant for determination of the question and not the purpose of which the guest or occupant of the guest house uses electric energy. In the broad classification as is made in the Rules, different types of user which can reasonably be grouped together for the purpose of understanding the two phrases "domestic" and "commercial" is to be made. To a certain degree there might be overlapping, but that has to be accepted in the context of things."

Even if it is accepted that the user was not domestic, it may be non-domestic. But it does not automatically become "commercial". The words "non-domestic" and "commercial" are not inter-changeable. The entry is "commercial". It is not a residual entry, unless the user is commercial the rate applicable to be commercial user cannot be charged merely because it is not considered to be domestic user, as has been held in New Delhi Municipal Corporations' case (supra).

The view expressed in the said case does not appear to be correct. We, therefore, refer the matter to a larger Bench. Place the records before the Hon'ble Chief Justice of India for necessary orders.