

Madras High Court

R. Raju vs The Government Of Tamil Nadu And ... on 27 July, 1998

Author: P Sathasivam

Bench: P Sathasivam

ORDER P. Sathasivam, J.

The prayer in the writ petition is as follows:--

To issue a writ of Mandamus or any other writ or order against the respondents: (1) by ordering them to forbear from assessing and collecting from the petitioner electricity consumption charges in respect of consumer service Nos. W-163 and W-166 Kodaikanal, Madurai District under Tariff-VIII intended for commercial tariff but instead charge the said Consumer Service Nos. W-163 and W-166 Kodaikanal, Madurai District under Domestic Tariff of (1) only, and (2) to refund the excess amount collected by the respondents from the petitioner either by way of penalty or as compensation so far amounting to more than Rs. 5,000/- or adjust the same towards future bills, (3) restore the electricity consumption charges to Consumer Service No. W-166 Kodaikanal, Madurai District immediately, and (4) to direct the second respondent to charge electricity consumption charges for Service Connection Nos. W-163 and W-166, Kodaikanal Madurai District under Domestic Tariff of Tariff-I until the disposal of the above Writ Petition.

2. The case of the petitioner as seen from the affidavit is briefly stated hereunder. According to him he is the owner of Anand Cottage, Bearsnola Road, Kodaikanal, Madurai District. There are six flats known as RR flats in the Anand Cottage. The main bungalow is used by him for residential purposes and the electricity connection is under S.C. No. 95 and a separate connection for the first floor bearing Service Connection No. 94 for the flats which are let out. S.C. No. 166 is connected to flats 1 to 3 which are leased by him to Neyveli Lignite Corporation from April 1987 for residential use of their officers during seasons. Similarly S.C. No. 163 represents three flats i.e. Flat Nos. 4, 5 and 6 out of which 4 was leased out to one Mr. Satyanathan and family from 12-4-1987 to 11-3-1988. Flat Nos. 5 and 6 are leased out to M/s. Bharat Petroleum Corporation for the residential occupation of their staff from 1-6-1987 and the flats were occupied by them only from 1-4-1988. It is stated that, even for the residential occupation of the Bungalow, the second respondent has been charging under Tariff-IV applicable to industries and the said Tariff was levied from the date of the service connection. Thereafter the petitioner approached the department to revise the tariff to domestic by application dated 26-5-1986, the same was returned by Junior Engineer after 15 months noting that since there are two connections in one building, the revision is not possible. However, the matter was set right by the higher authorities and changed the same to Domestic Tariff with effect from 21-5-1988. Suddenly in September 1988, he received a notice for Service Connection Nos. W-166 and W-163 accusing him of misuse of Tariff and demanding a sum of Rs. 2/- per unit as penalty for 4858 units covering a period from March 1987 to April 1988 in respect of W-166 and another sum of Rs. 4,566/- for consuming 2253 units from March 1987 to April 1988 for Service Connection No. W-163. The petitioner made several representations to the respondents. It is also stated that the services mentioned have to be treated only as domestic and Domestic Tariff-I alone should be charged in view of the entire premises being used only for residential purposes. His further submission was that there was no mess, canteen or any office run by the said tenants viz., Neyveli

Lignite Corporation and Bharat Petroleum Corporation. In such circumstances, the petitioner has approached this Court by way of the present writ petition.

3. On behalf of the second respondent, the Superintending Engineer, Anna Electricity Distribution Circle has filed a counter-affidavit wherein it is stated that all the three flats viz., 1, 2 and 3 in Service Connection No. 166 are used as guest houses by the staff of the Bharat Petroleum Corporation who are coming on visit to Kodaikanal and not for bona fide domestic use. Likewise flat Nos. 5 and 6 are used by the staff of the Neyveli Lignite Corporation who visit Kodaikanal on tour and not for bona fide dwelling purposes. He has further stated that S.C. No. 166, Kodaikanal was inspected by Assistant Executive Engineer, Anti Power Theft Squad, Madurai on 27-4-1988 and found that the above service was not used for bona fide domestic activities. As such, as per the rules of the Board, compensation charges were levied as misuse of Tariff, from March 1987 to April 1988. The compensation worked out to Rs. 9,716/-. Accordingly the consumer was asked to pay 50% on that assessment + Inspection charges Rs. 50/- within 15 days. Since the amount was not paid, the service connection was disconnected on 15-10-1988. He has further stated that as per the terms and conditions of Supply of the Board, compensation charges is to be levied for a period of 12 months prior to the date of inspection. He has also stated that the action was taken in accordance with the said terms and conditions of Supply. There is no irregularity or illegality in the action taken by the second respondent and accordingly he prayed for dismissal of the writ petition.

4. In the light of the above pleadings, I have heard the learned counsel for the petitioner as well as the respondents.

5. Mr. C. Lakshminarain, the learned counsel appearing for the petitioner has raised the following contentions:--

(i) The action of the respondents in levying electricity charges to the petitioner's Service Nos. W-163 and W-166 at Kodaikanal, Madurai District under Tariff-VIII (Commercial) instead of Tariff-I (Domestic) is illegal.

(ii) The action of the respondents is against the principles of natural justice since they have not issued any notice prior to changing the Tariff from I to VIII.

(iii) The action of the respondents is not only arbitrary, unreasonable but also violative of the provisions of the Electricity Act.

6. On the other hand, the learned counsel appearing for the respondents, after taking me through various averments made in the counter-affidavit as well as the relevant Tariff, has contended that inasmuch as the premises in question were leased out to Neyveli Lignite Corporation and Bharat Petroleum Corporation and taking note of the activities, the action of the respondents changing the Tariff from I to VIII is in accordance with the Tariff applicable at the relevant point of time. He also submitted that inasmuch as the action was taken in accordance with the provisions, the petition is liable to be dismissed.

7. I have carefully considered the rival submissions.

8. The point to be decided in this Writ Petition is whether the respondents are entitled to claim electricity consumption charges under Tariff-VIII when the premises in question were used by the undertakings of the Government of India viz., the Neyveli Lignite Corporation and Bharat Petroleum Corporation. According to the petitioner, the flats/premises in question were leased out to Neyveli Lignite Corporation as well as the Bharat Petroleum Corporation for occupation of their staff as and when they visit Kodaikanal. It is also the definite case of the petitioner that those premises/flats were used only for residential purposes. It is also specifically stated that there is no mess, canteen or any office run by the said tenants viz., Neyveli Lignite Corporation and Bharat Petroleum Corporation. It is seen from the letter from the Superintending Engineer, Anna Electricity Distribution Circle, Dindigul addressed to the petitioner, it is mentioned "the Service Nos. 163-W, 166-W, Kodaikanal standing in your name were inspected by Anti-Power Theft Squad, Madurai on 27-4-1988. During inspection it was found that there was no bona fide activity in the above premises and they were used as Rest House for the employees of the Neyveli Lignite Corporation and Bharat Petroleum Corporation on tour. As such the appropriate Tariff applicable is only Tariff-VIII and, therefore, the necessary compensation charges had to be levied. ...." The above factual position supports the case of the petitioner that the said premises were let out only to the Neyveli Lignite Corporation and Bharat Petroleum Corporation for their use whenever they come to Kodaikanal. In other words, even after inspection, the only activity as found by themselves was letting out to the two Government of India undertakings. It is not the case of the respondents that other domestic activities are being engaged in the said premises. It is also not their case that any mess, canteen or any office is being run by the said tenants.

9. In this regard it is useful to mention the relevant Tariff applicable to the petitioner's premises. It is clear from the letter No. 728/ Administration Br./Tariff-I (2)/86-l, dated 24-12-1986. The said letter relates to revision of Tariff effective from 1-1-1987. Part B deals with Low Tension Supply. Low Tension Tariff-I refers to Domestic purposes for lights and fans including radios and power loads 55 paise per KWH. Minimum monthly current consumption charges Rs. 4 per service. Tariff-II to VII refers to various other categories. By pointing out Low Tension Tariff VIII, the learned counsel appearing for the respondent contended that in the light of the activities being carried out in the premises in question they are entitled to charge under Tariff-VIII. Tariff-VIII speaks about all categories of consumers not covered under Low Tension Tariff-I, II, III, IV, V, VI and VII. In the light of the submission made by the learned counsel for the respondents, I have carefully perused the various clauses in the letter referred to above. Admittedly "Rest House or Guest House" has not been included in any one of the Tariff mentioned in that letter. Taking note of the fact that there is no such specific reference in any one of the clauses, is contended, the respondents are not justified in claiming charges under Tariff-VIII.

10. I have already referred to the categorical statement that the flats in question were being used by the Neyveli Lignite Corporation and Bharat Petroleum Corporation for residential purposes. I have also referred to the report of the Superintending Engineer after inspection of the premises in question. In the light of the factual position stated above and in the absence of any specific reference in the revision of Tariff effective from 1-1-1987, I am unable to accept the arguments of the learned

counsel for the respondents.

11. In this regard it is relevant to mention the word "Guest" explained in Oxford Advanced Dictionary as persons staying or paying a visit to another's house or being entertained at a meal. In Dictionary of Law by L.B. Curzon, the word "Residence" is explained, a place where a person abides viz., where he has his home. Likewise in the Oxford Advanced Dictionary for the word "Residence" is stated that living in the house officially provided for him -- place where one resides. In the light of the meanings referred to above, if according to the respondents those premises/flats were being used only as "Rest House". If that is so, the relevant Tariff would be only Tariff-I. It is also clear that except for residence those flats/premises have not been used for any other purposes. In such circumstances, the petitioner is justified in claiming that the proper Tariff would be only Tariff-I and not Tariff-VIII as contended by the respondents. Accordingly the relief prayed for in item Nos. 1 and 2 has to be granted in favour of the petitioners.

12. Net result, I pass the following order:--

(1) The respondents are hereby restrained from assessing and collecting from the petitioner the electricity consumption charges in respect of Consumer Service Nos. W-163, W-166, Kodaikanal, Madurai District under Tariff No. VIII.

(2) The respondents are entitled to collect the same under Tariff-I in respect of the said service connections.

(3) The respondents are directed to refund the excess amount collected by them from the petitioner either by way of penalty or as compensation. I also make it clear, for Service No. 95 if there is any excess payment claimed and paid, the same may be refunded to the petitioner.