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AFR

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Court No. - 42

Case :- WRIT - C No. - 2637 of 2023

Petitioner :- Tehsil Bar Association , Sadar Tehsil Parisar, Gandhi Nagar, Ghaziabad

Respondent :- U.P. Power Corporation Limited And 3 Others

Counsel for Petitioner :- Vivek Prakash Mishra

Counsel for Respondent :- Pranjal Mehrotra, Krishna Agarawal

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Anish Kumar Gupta,J.

(Per: Anish Kumar Gupta, J.)

1. In this writ petition, the petitioner, Tehsil Bar Association, Sadar Tehsil Parisar, Gandhi Nagar, Ghaziabad, is an association of advocates registered under Societies Registration Act, 1860. The members of the petitioner association are the advocates engaged in a legal practice and all the advocates have got their chambers at the Tehsil Sadar campus with valid electricity connection installed by the respondent Power Corporation. As per the tariff schedule for Financial Year 2016-17 available on the website of respondent Power Corporation, the residential premises of professionals such as advocates including their chambers are treated as domestic and well covered under schedule LMV-1. After the grant of electricity connection in the chambers of such advocates the respondent started charging the electricity charges at commercial rates which were objected by the petitioner association and since their grievances were not redressed, they filed the *Writ C No. 6115 of 2019 (Tehsil Bar Association and 12 others v. State of UP and 6 others)*, which was disposed of by this Court vide order dated 22.02.2019, as under:-

"Heard Sri Vivek Prakash Mishra, learned counsel for the petitioners.

By means of this writ petition, the petitioners have come to this Court raising a grievance that in the court campus of Tehsil Bar Association, Sadar Tehsil, Gandhi Nagar district Ghaziabad in the advocates chamber, the electricity connection has been installed and the bill is being charged on commercial basis whereas tariff schedule for the Financial Year 2016-17 clearly states that LMV-1 (domestic) would be applicable to the chambers of professionals such as advocates, doctors, artists, consultants etc. Under the Right to Information Act, the information supplied to the petitioner on 13.8.2017 is that the meters installed

in the advocates' chamber comes under domestic category. However, it is stated that the bills are being sent for commercial category.

The writ petition is disposed of with the observations that in case the petitioners make a representation to the Executive Engineer, Paschimanchal Vidyut Vitran Nigam Ltd., Meerut, the same be considered and appropriate orders be passed and, if so required, electricity bills be corrected. The said decision shall be taken by the Executive Engineer within a period of two months from the date a certified copy of this order is produced before him. "

2. In the aforesaid order, it was categorically observed that the tariff schedule for the Financial Year 2016-17 clearly states that LMV-1, domestic rates would be applicable to the chambers of professionals such as advocates, doctors, artists, consultants etc. It was observed that under the Right to Information, the information supplied on 13.08.2017, it is categorically stated that the electricity connection installed in the chambers of advocates in District and Sessions Court, Ghaziabad, were issued under domestic category and the electricity charges are charged upon as per the tariff rates LMV-1 as determined by the UP State Electricity Regulatory Commission.

3. In terms of the aforesaid order dated 22.02.2019 passed by this Court, the petitioner association made a representation before the respondent no. 4, which has been disposed of by order dated 27.07.2019. The respondent no. 4, relying upon clause 3.3 (e) of the UP Electricity Supply Code, 2005, observed that since the chambers of the advocates in the tehsil compound are not in the category of domestic use of electricity, therefore, electricity consumed cannot be treated as domestic consumption. The aforesaid order is reproduced hereinbelow:-

"सकारण आदेश

अध्यक्ष/सचिव तहसील बार एसोसियेशन, गाजियाबाद के द्वारा दिनांक 18.07.2019 को प्रस्तुत किये गये प्रत्यावेदन विषय तहसील बार एसोसियेशन के 13 नम्बर अधिवक्ता / सदस्यों के द्वारा प्रत्यावेदन एवं मा० उच्च न्यायालय के दायर याचिका 6115/2019 एवं 3874 / 2019 में पारित आदेश के अनुपालन में प्रकरण में अध्ययन करने पर पाया गया कि विद्युत नगरीय वितरण खण्ड- तृतीय, गाजियाबाद द्वारा तहसील परिसर में अधिवक्ताओं के चैम्बर में दिये गये संयोजन उ०प्र० इलैक्ट्रिसिटी कोड-2005 के अनुसार लागू टैरिफ दर पर निर्गत है।

उ०प्र० विद्युत प्रदाय संहिता 2005 के नियम 3.3. (ई) जो निम्नलिखित है--

Professionals architects chartered accountants, engineers, doctors, lawyers and teachers etc. may utilize a maximum of 50 square meters of residential space in their possession, for carrying out professional practice of consultancy work, and this shall not attract non-domestic tariff के अनुसार अधिवक्ता द्वारा घरेलू परिसर का अधिकार प्राप्त होने पर उस परिसर क्षेत्र में अधिकतम 50 वर्ग मी० ऐरिया को प्रोफेशनल या कन्सलटेन्सी में प्रयोग करने पर उक्त घरेलू क्षेत्र का प्रयोग Non-domestic Tariff में नहीं होगा। उक्त प्रकरण में अधिवक्ता तहसील परिसर में विद्युत का प्रयोग कर रहे हैं जो कि घरेलू परिसर का क्षेत्र नहीं है। तहसील परिक्षेत्र में अधिवक्ता कक्ष को घरेलू विद्या में नहीं लिया जा सकता है।

तहसील परिसर में ऊर्जीकृत अधिवक्ता कक्ष के संयोजन वाणिज्यिक विद्या से घंरंतु विधा में परिवर्तित करने योग्य नहीं है। अतः आवेदन दिनांक 18.07.2019 को निस्तारित किया जाता है।

अधिशायी अभियन्ता

अधिशायी अभियन्ता

विद्युत नगरीय वितरण खण्ड-तृतीय

गाजियाबाद"

4. The aforequoted order has been modified vide order dated 13.04.2023, as under:-

"सकारण आदेश

माननीय उच्च न्यायालय, इलाहाबाद द्वारा पारित निर्णय दिनांक 06.04.2023 के अनुपालन में खण्ड कार्यालय द्वारा पूर्व में पारित सकारण आदेश सं0-4667 दिनांक 27.07.2019 को पुनः निम्नवत् संशोधित किया जाता है।

विद्युत नगरीय वितरण खण्ड-तृतीय, गाजियाबाद द्वारा उत्तर प्रदेश पावर कारपोरेशन लि० एवं माननीय उत्तर प्रदेश विद्युत नियामक आयोग द्वारा समय समय पर जारी आदेश एवं निर्धारित रेट शेड्यूल के अनुसार विद्युत संयोजनों की बिलिंग करने हेतु प्राप्त आदेशों का पालन किया जाता है। वर्तमान में माननीय उत्तर प्रदेश विद्युत नियामक आयोग द्वारा अनुमोदित वर्ष 2020-21 के टूरुअप वर्ष 2021-22 की ए०पी०आर० तथा वर्ष 2022-23 के सकल राजस्व एवं टैरिफ के सम्बन्ध में पुनरीक्षित दरों को लागू करने हेतु प्राप्त दिशा निर्देश के अनुपालन में सामान्य नियनों / प्राविधानों के अन्तर्गत टैरिफ के बिन्दु सं०- 13 निम्नवत् आदेशित है:-

CONSUMER NOT COVERED UNDER ANY RATE SCHEDULE OF EXPRESSLY EXCLUDED FROM ANY CATEGORY:

For consumers of light, fan & power (excluding motive power loads) not covered under any rate schedule of expressly excluded from any LMV rate schedule will be categorized under LMV-2.

उत्तर प्रदेश पावर कारपोरेशन लि० को माननीय विद्युत नियामक आयोग द्वारा समय समय पर निर्धारित रेट शेड्यूल के अनुसार संयोजनों की श्रेणीवार बिलिंग करने हेतु आदेशित किया जाता है। विद्युत नियामक आयोग द्वारा जारी रेट हैड्यूल (टैरिफ) में अधिवक्ताओं के तहसील परिसर में स्थित कक्ष में स्थापित विद्युत संयोजनों की बिलिंग घरेलू श्रेणी के अन्तर्गत करने हेतु कहीं कोई विशेष स्पष्ट आदेश नहीं है। अधिवक्ता चैम्बर में स्थापित संयोजनों का किसी श्रेणी के अन्तर्गत परिभाषित ना होने के कारण अघरेलू श्रेणी के अन्तर्गत एलएमवी-2 विद्या रेट अनुसार बिलिंग की जा रही है।

एवं उत्तर प्रदेश विद्युत प्रदाय सहित 2005 के नियम 3.3 (ई) जो कि निम्न प्रकार परिभाषित है:-

Professionals architects chartered accountants, engineers, doctors, lawyers and teachers etc. may utilize a maximum of 50 square meters of residential space in their possession, for carrying out professional practice of consultancy work, and this shall not attract non-domestic tariff. के अनुसार अधिवक्ता द्वारा घरेलू परिसर का अधिकार प्राप्त होने पर उस परिसर क्षेत्र में अधिकतम 50 वर्ग मी० ऐरिया को प्रोफेशनल या कनसेलटेन्सी में प्रयोग करने पर उक्त घरेलू क्षेत्र का प्रयोग Non-domestic Tariff नहीं होगा। उक्त प्रकरण में अधिवक्ता तहसील परिसर में विद्युत का प्रयोग कर रहे हैं।

अतः इस प्रकार के संयोजनों का विद्युत नियामक अयोग द्वारा जारी टैरिफ शेड्यूल के अन्तर्गत घरेलू क्षेत्र (एलएमवी-1) के अन्तर्गत तहसील परिसर में स्थित अधिवक्ता चैम्बर को परिभाषित नहीं किया गया है। एवं उत्तर प्रदेश विद्युत प्रदाय

सहित 2005 के धारा-3.3(ई) के अनुसार तहसील परिसर के अन्तर्गत अधिवक्ता चैम्बर की बिलिंग अघरेलू श्रेणी (एलएमवी-2) के अन्तर्गत की जा रही है। खण्ड द्वारा माननीय नियामक आयोग के नियमों के अनुपालनार्थ टैरिफ / बिलिंग से भिन्न टैरिफ में बिलिंग करने का कोई अधिकार प्राप्त नहीं है। अतः तहसील परिसर स्थित अधिवक्ता चैम्बर में विद्युत संयोजन की किसी अन्य विधा (श्रेणी) में बिलिंग हेतु माननीय उत्तर प्रदेश विद्युत नियामक आयोग द्वारा आदेश जारी किये जाने की आवश्यकता है। याचिकाकर्ता माननीय उत्तर प्रदेश विद्युत नियामक आयोग के समक्ष भी प्रकरण प्रस्तुत कर सकते हैं।"

5. Aggrieved by the aforesaid order dated 27.07.2019, the petitioner has filed the instant petition praying for the following relief:-

"I. Issue a writ, order or direction in the nature of certiorari to quash impugned order dated 27.07.2019 passed by the respondents (Annexure No.6 to this writ petition).

II. Issue a writ order or direction in the nature of mandamus directing to the respondents to stop the arbitrary act of the respondents whereby they have. treated them as commercial power user and continuously sent electricity bills with levied of commercial tariff plan @ Rs. 8.50 per unit.

III. Issue a writ order or direction in the nature of mandamus directing to the respondents to re-adjust the extra bill paid amount as commercial user being treated as domestic power user.

IV. Issue a writ order or direction in the nature of mandamus directing to the respondents to stop the recovery of current bill from petitioner Association and its members till disposal of its conversion into domestic bills.

V. Issue any other suitable writ, order of direction, which this Hon'ble court may deem fit and proper in the circumstances of the case.

VI. Award costs of the writ petition to the petitioner."

6. Learned Counsel for the petitioner submitted that as per the tariff schedule for the Financial Year 2016-17, residential premises of the professionals such as advocates, doctors, artists, consultants etc., including their chambers were covered under the category of LMV-1 (domestic), therefore, also according to the admission by the respondent no. 4, in the information annexed as Annexure-3 to the writ petition, the electricity connection in the Advocates' chambers, is issued under the domestic category in District and Sessions Court, Ghaziabad. Likewise, having regard to the order dated 22.02.2009 passed in *Writ C No. 6115 of 2019*, the Noida Power Corporation Limited has accepted the observations made in the said order and it started charging for the electricity in the chambers of advocates at District Bar Association, Noida, at domestic rates. The members of the petitioner Association should also be treated as domestic consumer of electricity and they should be charged at the rate applicable to the domestic users of electricity. Learned counsel for the petitioner further submitted that the profession of an advocate is not a commercial activity rather it is service to the society and the lawyers are active players in the administration of justice like the judges. Professional activity by an advocate or a Judge goes side by side on the bar and both are the same profession. The function of each are different but it is the same profession, the object is administration of

justice according to law. Therefore, the lawyers' profession is a kind of profession which can be said to be carried as social service, which is certainly not a profession of commercial nature. Therefore, the commercial rates of electricity, supplied to the Chambers of advocates in the court campus cannot be applied and they must be charged as per the domestic schedule of electricity supply.

7. Learned Counsel for the petitioner has placed reliance on the following judgments:-

1. Sakha Ram Narayan Kherdekar v. City of Nagpur Corporation reported in AIR 1964 Bombay 200.

2. Ramanathan v. State of Kerala reported in 1991 Vol. I KerLT 89.

3. B.N. Magon v. South Delhi Municipal Corporation reported in 217 (2015) DLT 55.

4. M.P. Electricity Board and Others v. Shiv Narayan and Another reported in (2005) 7 SCC 283.

5. Arup Sarkar v. C.E.S.C. Limited and others reported in 2020 STPL 4200 Calcutta.

6. Sasidharan v. M/s Peter and Karunakar reported 1984 AIR SC 1700.

8. Learned Counsel for the petitioner has also relied upon a Circular No. 4177-HC/R-83 dated 28.11.1983 which provides the rate schedule under category LMV-1, which is applicable to the judiciary. He further relied upon Circular No. 2446- HC/R-83 dt. 08.10.1985 which provides that office of a lawyer or firm of lawyers is to be billed under rate schedule LMV-1, applicable to domestic light, fan and power consumers.

9. Learned counsel for the petitioner relying upon Clause 1.5 of U.P. Electricity Supply Code, 2005, submits that the aforesaid circulars which specifically provide for applicability of rate schedule under category LMV-1 to the office or firm of lawyers are saved as per clause 1.5 of the U.P. Electricity Supply Code as there is no specific provision in the new rate schedule with regard to the electricity supply to the lawyers chambers.

10. Sri Pranjal Mehrotra, learned Counsel for the respondent no. 4 relying upon the rate schedule as approved for the year 2022-23 by the U.P. Electricity Regulatory Commission submits that activity in the lawyers' chambers is not a domestic activity. Thus, the activity of lawyers in their chambers is a non-domestic activity. Therefore, as per Clause 13 of rate schedule for Financial Year 2020-23, the use of electricity in the advocates' chambers is a non-domestic activity and LMV-2 will apply for the supply of electricity to the lawyers' chambers. The rate schedule for the year 2022-23

does not provide for specific rate schedule for Lawyers' Chambers, therefore, Clause 13 provides for the applicability of LMV-2, for an activity/ category, which is not covered in any rate Schedule. Mr. Mehrotra, learned counsel for the respondent, further submits that the rate schedules are approved by the U.P. Electricity Regulatory Commission and the respondent no. 4 being the distribution company is bound by the rate schedule as approved by the U.P. Electricity Regulatory Commission. If the petitioner has any grievance with regard to the rate schedule as approved by the U.P. Electricity Regulatory Commission, they can raise their grievances before the U.P. Electricity Regulatory Commission itself. Hence, in view of the availability of the alternative remedy, the writ petition is not maintainable and is liable to be *dismissed*.

11. Learned counsel for the petitioner has heavily placed reliance on the decision of the Hon'ble Supreme Court in *MP Electricity Board and Another v. Shiv Narayan and Another reported in (2005) 7 SCC 283*, whereby the matter was referred to Larger Bench, doubting the correctness of the judgement in *New Delhi Municipal Council v. Sohan Lal Sachdev reported in (2002) SCC 494*. The Larger Bench of the Hon'ble Supreme Court had affirmed the judgement in *Sohan Lal Sachdev (Supra)*, holding that the same does not require any re-consideration. However, it is pertinent to note that the Hon'ble Supreme Court has not gone into the question as to whether or not the advocate can be said to be carrying on any commercial activity.

12. In view of the aforesaid submissions of the counsel for the parties the following questions emerges for determination by this Court:-

1. Whether the activities/profession of an advocate is a commercial activity, which will attract the commercial rate of electricity consumption?
2. Whether the Rate Schedule LMV-2, which is applicable for the commercial activities, can be applied for the electricity supplied to the Lawyers Chambers?
3. Whether the respondents can discriminate between the electricity supply to the advocates' chambers in different court compounds?

13. **Circular No. 4177-HC/R-83 dated 28.11.1983** read as under:-

"Central and State Government offices who are engaged in commercial activities should be billed at the Rate Schedule LMV-2 applicable to Commercial Light fan and Power while others at the Rate Schedule LMV-1 as detailed below:

A. Where LMV-2 is applicable

1. All India Radio

2. Doordarshan

B. Where LMV-1 is applicable

1. Revenue Departments

2. Police Department

3. State Road Transport Corporation 3. Judiciary

4. Bridge Corporation

5. Development Authorities of Towns

6. All State Govt./Central Govt. Undertakings and Corporations

7. P&T Deptt.,

8. Railways (upto 5 kW) [Beyond 5 kW to be billed under LMV-10(4)(b)]

9. U. P. Rajkiya Nirman Nigam

10. U. P. Housing Board"

14. Circular No. 2446-HC/R-83 dt. 08-10-85 provides as under:-

"Office of a lawyer or firm of lawyers is to be billed under rate schedule LMV-1, applicable to domestic light, fan and power consumers."

15. As per rate schedule LMV-1 for the Financial Year 2022-23, the applicability clause is as under:-

"Premises for residential / domestic purpose, Accommodation for Paying Guests for Domestic purpose (Excluding Guest Houses), Janata Service Connections, Kutir Jyoti Connections, Jhuggi / Hutments, Places of Worship (e.g. Temples, Mosques, Gurudwaras, Churches) and Electric Crematoria, Shelter Homes, orphanages, old age homes, Institutions run for mentally retarded and forsaken children. Non- commercial places occupied by religious persons, of any religion, are also entitled in this category, for a maximum load up to 5 kW, subject to the condition that such non-commercial place shall have a valid registration/recognition from a charitable trust."

16. The rate schedule LMV-2 for non-domestic light, fans and power is applicable to all consumers as under:-

"This schedule shall apply to all consumers using electric energy for Light, Fan and Power loads for Non-Domestic purposes, like all type of Shops including Patri Shopkeepers, Hotels, Restaurants, Private Guest Houses, Private Transit Hostels, Private Students Hostels, Marriage Houses, Show- Rooms, Commercial/Trading Establishments, Cinema and Theatres, Banks, Cable T.V. Operators, Telephone Booths / PCO (STD / ISD), Fax Communication Centres, Photo Copiers, Cyber Café, Private Diagnostic Centres including X-Ray Plants, MRI Centres, CAT Scan Centres, Pathologies and Private Advertising / Sign Posts / Sign Boards, Commercial Institutions / Societies, Automobile Service Centres, Coaching Institutes, Private Museums, Power Looms with less than 5 kW load and for all companies registered under the Companies Act, 1956 with loads less than 75 kW."

17. The rate schedule LMV-4 light and power of public and private institutions applies to the following:-

"This schedule shall apply to:

(a) Government Hospitals / Government Research Institutions / Offices of the Government Organizations other than companies registered under Companies Act 1956.

(b) Government & Government aided (i) Educational Institutions (ii) Hostels (iii) Libraries.

(c) Religious and charitable trusts & Institutions having a valid registration under Section 12 AA & 80 G issued by the Income Tax department including hospitals, colleges and those providing services free of cost or at the charges / structure of charges not exceeding those in similar Government operated institutions.

(d) Railway Establishments (excluding railway traction, industrial premises & Metro) such as Booking Centres, Railway Stations & Railway Research and Development Organization, Railway rest houses, Railway holiday homes, Railway inspection houses.

(e) All India Radio and Doordarshan.

(f) Guest houses of Government, Semi-Government, Public Sector Undertaking Organisations."

18. From the careful perusal of the rate schedules, as approved for the Financial Year 2022-23 by the U.P. State Regulatory Commission it is apparent that the activities of advocates and professionals or the public institutions like Judiciary do not find place in any of the rate schedule. Clause 13 of the general provisions with regard to rate schedule for Financial Year 2022-23 provides as under:-

"CONSUMERS NOT COVERED UNDER ANY RATE SCHEDULE OR EXPRESSLY EXCLUDED FROM ANY CATEGORY:

For consumers of light, fan & power (excluding motive power loads) not covered under any rate schedule or expressly excluded from any LMV rate schedule will be categorized under LMV-2."

19. Clause 1.5 of the U.P. Electricity Supply Code, 2005 provides as under:-

"1.5 Existing Provisions in Licensee's own Manuals :

The licensee may refer to their own manual or orders in the matters not specifically covered in this Supply Code, provided that such guidelines are not inconsistent with any of the provisions in this Supply Code and the Electricity Act 2003."

20. Sub Clause (e) of Clause 3.3 provides as under:-

"(e) Professionals, architects, chartered accountants, engineers, doctors, lawyers and teachers etc. may utilize a maximum of 50 square meters of residential space in their possession, for carrying out professional practice or consultancy work, and this shall not attract non-domestic tariff."

21. Sub-section (1) of Section 3 of the Electricity Act, 2003 enshrines a duty upon the Central Government to formulate the tariff policy in consultation with the State Government. Sub-section (3) of Section 3 of Electricity Act, 2003 further provides for review and revision of the National Electricity Policy and tariff policy by the Central Government from time to time with the consultation of the State Governments and the Authority. Section 86 of the Electricity Act empowers the State Commission to

determine the tariff for generation, supply, transmission and wheeling of electricity. While determining the tariff policy, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3, as provided in Sub-section (4) of Section 86. Clause (f) of Sub-section (1) of Section 86 of the Electricity Act empowers the State Commission to adjudicate upon the disputes between the licensee and generating companies and to refer any dispute for arbitration.

22. LMV-2 is applicable for non-domestic purposes like all type of shops including Patri Shopkeepers, Hotels, Restaurants, Private Guest House, Private Transit Hospitals, Private Student Hostel, Marriage House, Show Rooms, Commercial/Trading Establishment, Cinema and Theatres, Banks, Cable TV, Operator, Telephone Booths, Photo Copiers shop, Cyber Cafe etc. If we look into the non-domestic purposes as indicated in rate schedule LMV-2, the profession of a lawyer is not covered under the non-domestic purpose as has been illustrated in this rate schedule. The proposition is well established that the words occurred in the same context must take its colour from each other. In order to bring the lawyers' office within the categories of non-domestic purposes, the activity must be established to be of similar nature as illustrated in rate schedule under category LMV-2. In **Dr. D.M Surti Vs. State of Gujarat, (AIR 1969 SC 63)**, the Hon'ble Supreme Court has held as under:

“The words take as it were their colour from each other that is, the more general is restricted to sense analogous to a less general. “Associated words take their meaning from one another under the doctrine of noscitur a sociis the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim Ejusdem Generis.”

Thus from the plain reading of the illustrative definition of the non-domestic purpose as indicated in the rate schedule under LMV-2, we are of the firm view that the lawyers' chambers would not come within the definition of non-domestic purpose as illustrated in rate schedule LMV-2 as the illustrative activities indicate the activities of commercial nature. The legal profession in catena of cases has been held to be non-commercial activity and it is not a trade or business. By the Rules framed by the Bar Council of India, the Lawyers are also prohibited from actively participating in any trade or profession. Hon'ble Supreme Court in **M.P. Electricity Board and Ors. v. Shiv Narayan Chopra (Supra)** held that the advocates' office cannot be charged additional tariff at the commercial rate as the legal profession is not a commercial activity.

23. In **Dr. D.M Surti Vs. State of Gujarat (Supra)**, Hon'ble Supreme Court further observed that “a professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is fundamental

distinction between a professional activity and an activity of commercial character.”

24. In *Sudha v. President, Advocates Association, Chennai and Ors.* reported in (2010) 14 SCC 114 observed as under:-

"The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification prescribed by different universities, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society."

25. 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."

26. The word 'profession' has also been defined in the Advanced Law Laxicon 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 1048)"

"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."

27. In V. Sasidharan v. M/s Peter and Karunakar reported in **AIR 1984 (4) SCC 230**, Hon'ble Supreme Court has held that the office of a lawyer or a firm of lawyers is not a commercial establishment within the meaning of the provisions of Kerala Shops Commercial Establishment Act, 1960. It was further observed in para-9 of the said judgment 'whatever may be the popular conception or misconception regarding the role of today's lawyer 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'.

28. In Chairman, M.P. Electricity Board vs. Shiv Narayan reported in **2005 7 SCC 283**, the Hon'ble Supreme Court has observed as under:

"12. 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".

"14. 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...."

29. The legal profession has been described in a passage in the book of Ethics of Bar and Bench by Hicks at pages 229 and 230, as follows:

"The practice of law is not a business open to all, but a personal right, limited to a few persons of good moral character, with special qualifications ascertained and certified after a long course of study, both general and professional, and a thorough examination by a State Board appointed for that purpose. The right to practise law is in the nature of a franchise from the State conferred only for merit...."

"The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client. There would be neither contract nor privity between, him and the client and he would not owe even the duty of counsel to the actual litigant. The corporation would control the litigation, the money earned would belong to the corporation, and the attorney would be responsible to the corporation only. His master would not be the client but the corporation, conducted it may be wholly by layman organised simply to make money and not to aid in the administration of justice which is the highest function of an attorney and counsellor at law. The corporation might not have a lawyer among its stockholders, directors, or officers. Its members might be without character, learning, or standing. There would be no remedy by attachment or disbarment to protect the public from imposition or fraud, no stimulus to good conduct from the traditions of an ancient and honourable profession and no guide except the sordid purpose to earn money for stockholders. The bar, which is an institution of the highest usefulness and standing, would be degraded if even its humblest members became subject to the orders of a money-making corporation engaged not in conducting litigation for itself, but in the business of conducting litigation for others. The degradation of the bar is an injury to the State."

30. In **Ramanathan Vs. State of Kerala (1991 (1) KLJ 410)**, the Kerala High Court, while dealing with the matter relating to the Kerala Shops and Commercial Establishment Act, 1960, observed that the profession of a lawyer does not involve commercial or industrial activity.

31. In **Arup Sarkar Vs. CESE Limited & Others**, (Writ Petition No. 18367 of 2019 Judgment dated 11.02.2020), the Calcutta High Court has held that the Chambers of litigation Lawyers are clearly used for his livelihood based on his personal professional skills, therefore, their activity cannot be said to be commercial activity. Hence, they cannot be charged under the category commercial (urban) and directed the lawyer's chambers to be charged under the category "Domestic (Urban).

32. In **Sakharam v. Nagpur Corporation (AIR 1960 Bombay 200)**, a Division Bench of Bombay High Court dealt with the question as to whether Advocate's office can be declared as establishment under Bombay Shops and

Commercial Establishment Act. After examining the various facets of legal profession, it was observed that the activity of a lawyer is one carried out by him by his personal skill, intelligence, study, integrity and individual characteristics. Finally, the Division Bench after analysing the salient features of legal profession concluded that the office of a legal professional is not a commercial establishment under the provisions of the said Act.

33. An advocate or a legal practitioner is duty-bound to act as an officer of the Court. An advocate is prohibited to do any business or involve in any commercial activity and they are also restrained by the rules framed by the Bar Council of India from advertising their professional activities. The Bar Council of India has also defined the duties of an Advocate towards his client and towards the Court, towards colleagues and opponents. An advocate is prohibited from creating any self interest in the subject matter of the case, for he is engaged. He cannot stipulate a fee contingent on the result of the case nor he can agree to share the proceeds of the case. All these are the features, which categorically distinguish, the legal profession from the trade or business. Therefore, the legal profession by no stretch of imagination can be called as the commercial activity, trade or business.

34. Having held that the legal profession is not a commercial activity, involving any trade or business, the rates schedule LMV-2, which is though phrased as 'non-domestic users under the LMV-2, categorically indicates commercial activities, which are purely commercial relating to trade and business. Hence the said rates schedule cannot be applied to the offices of the legal professionals, whether such offices are in the residential buildings or are situate in the court premises. The lawyers' chambers, which are within the court compounds are part of the judicial premises, where as per the circular dated 28.11.1983, LMV-1 is applicable. The circular dated 08.10.1985 also mandated that office of a lawyer or firm of a lawyer is to be billed at the rate schedule LMV-1 applicable to domestic light and power consumers, which is an established practice. However, in the rate schedule issued for the financial year 2022-23, the lawyer's profession or activities do not find place in any of the rate schedules prescribed. Merely because of Clause - 13 of the rate schedule, which is a residuary clause, the rate Schedule LMV-2, which is applicable to commercial activities, cannot be applied in case of the lawyer's chambers in Court premises.

35. It has been argued by learned counsel for the petitioner that after the order dated 22.02.2019 passed by this Court in earlier Writ Petition being Writ C No. 6115 of 2019, the Noida Power Corporation Limited has started to charge for the electricity consumption at the Lawyers Chambers situated in Court Compound, Surajpur District Courts of District Gautam Budh Nagar as per the rate schedule LMV-1. Hence, the petitioner also being similarly

situated cannot be treated differently and the same rate schedule ought to have been applied to their chambers as well. In support of their contention the petitioner has also produced a copy of the electricity bill dated 31.12.2022 of one of such lawyer's chamber. Learned Counsel for the respondent submitted that electricity supply to lawyers chambers in District Court, Gautam Budh Nagar are governed by the different power corporation and not by the U.P. Power Corporation, hence, the said rate cannot be applied. It is apparent that in the entire State of U.P., the rate schedule are approved by the U.P. Electricity Regulatory Commission and the same rates are applicable in the entire State of U.P. Hence, the contention of the learned counsel for the respondent is baseless and is devoid of merit. Therefore, the different power corporation and companies cannot treat the consumers of electricity in different manner in the same State.

36. The advocate's profession cannot be categorised to be charged under LMV-2, which is applicable to the commercial activities. The lawyer's activities are not commercial establishment as held by the Supreme Court and by various High Courts.

37. In view of the aforesaid conclusions, we sum up the answers to the issues raised in the instant petition in the following manner:

1. The activities/profession of an advocate is a not a commercial activity, attracting the commercial rate of electricity consumption as prescribed in Rate Schedule LMV-2, as applicable in the State of U.P. approved by the U.P. Electricity Regulatory Commission.
2. The Rate Schedule LMV-2, which is applicable for the commercial activities, cannot be applied for the electricity supplied to the Lawyers Chambers. The Lawyers chambers / offices shall be charged only under LMV-1 Domestic category as the lawyers neither do any trade or business nor are involved in any commercial activity.
3. The respondents cannot discriminate between the electricity supply to the advocates' chambers in different court compounds, in the same State, where the rate schedules are approved by the same authority.

38. Thus in view of the above discussion, the writ petition is **allowed**. The respondents are directed to charge for the consumption of electricity by the lawyers in their chambers in the court premises as per the rate schedule LMV-I as approved by the U.P. Electricity Regulatory Commission.

Order Date :- 03.08.2023

Shubham Arya/A.Pd.