

ITEM NO.102

COURT NO.4

SECTION IV

## S U P R E M E C O U R T O F I N D I A

## RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1065 OF 2000

CHAIRMAN, M.P. ELECTRICITY BOARD AND ORS.  
ant

Appell

(s)

VERSUS

SHIV NARAYAN AND ANR.

Respondent

(s)

(With office report )

Date: 27/10/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE DR. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant(s)

Mr.M.L. Jaiswal, Sr. Adv.

Mr. Sakesh Kumar, Adv.

Mr. Rohit Singh, Adv.

Mr. D.K. Sinha, Adv.

For Respondent(s)

Rr-Ex-Parte, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

There will be no order as to costs.

Sukhwinder

(Jasbir Singh)

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1065 OF 2000

CHAIRMAN, M.P. ELECTRICITY BOARD & ORS.

Appellant (s)

2

VERSUS

SHIV NARAYAN & ANR.

Responde

nt (s)

O R D E R

The Respondent has remained absent even though served and in spite of notice

from this Court.

This Appeal is against the Judgment of the M.P. High Court dated 6th May, 1999.

Briefly stated the facts are as follows:-

The Appellants are a statutory Corporation constituted under Section 5 of the

Electricity (Supply) Act of 1948. The Respondent owns residential premises. He had let

out a portion of the premises to an advocate. Initially the advocate was residing in the

premises and also running a small office in a portion of those premises. Thereafter, the

advocate moved his residence to some other place but continued his office in those

premises. The Appellants, therefore, levied charges on commercial basis. The respondents

filed a writ petition for quashing the demand. That writ petition has been allowed by the

impugned Judgment.

When this matter reached before this Court on 24th August, 2005, a Bench of

this Court did not agree with the following view expressed by this Court in the case of

New Delhi Municipal Council v. Sohal Lal Sachdev [2002 (2) SCC 494]:

"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 contra distinguished 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 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 purposes"? 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 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."

The Bench therefore referred the matter for consideration by a Larger Bench .

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 classifies 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 classifies "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 Lal 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.

We, therefore, set aside the impugned Judgment and allow the Appeal. There

will be no order as to costs.

.....J.

4

(S.N. VARIAVA)

.....J.

(Dr. AR. LAKSHMANAN)

.....J.

(S.H. KAPADIA)

New Delhi,

October 27, 2005.