

Vinodini, vs the Assistant Executive Engineer,

Vinodini, vs the Assistant Executive Engineer,

SooperKanoon Citation : sooperkanoon.com/1442065

Court : Kerala

Decided On : Feb-15-2022

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/1004/2022

Appellant : Vinodini,

Respondent : The Assistant Executive Engineer,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
TUESDAY, THE 15TH DAY OF FEBRUARY 2022 / 26TH MAGHA, 1943
WP(C) NO. 1004 OF 2022 PETITIONER: VINODINI, AGED 59 YEARS
W/O. VISWANATHAN, 32/2025, PUNATHIL PADAM ROAD,
EDAPPILLY.PIN: 682021 BY ADV O.D.SIVADAS RESPONDENT: THE
ASSISTANT EXECUTIVE ENGINEER, KERALA WATER AUTHORITY,
VYTTILA SECTION, KADAVANTHRA, ERNAKULAM, PIN 682 020. BY
ADV V.V.JOSHI THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 15.02.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: WP(C) NO. 1004 OF 2022 2

JUDGMENT

Dated this the 15th day of February, 2022 The petitioner, who is owner of a residential house situated at Edappilly, is aggrieved by the levy of water charges at the rate applicable to non-domestic consumers.

2. The petitioner states that he is the owner of a

residential house at Edappilly. A water connection was provided to the residential house of the petitioner with Consumer No.3119106306. Water charges were levied as per Domestic Tariff.

3. The respondent changed the Tariff into Non- Domestic category unilaterally in the Month of November,

2017. The change of Tariff was done without notice to the

petitioner. When the petitioner made enquiries, she was informed that the change of Tariff was due to the fact that she is accommodating workers in the said residential house. WP(C) NO. 1004 OF 2022 3

4. The petitioner states that she had given

accommodation in the said house to her own workers and on account of the said fact, the Tariff cannot be changed since the nature of accommodation is Domestic. There is no commercial activity being carried out in the residential house. Therefore, the action of the respondents in converting the category from Domestic to Non-Domestic is unsustainable.

5. The respondent opposed the writ petition. The

respondent submitted that the water connection is not in the name of the petitioner, but is in the name of one Lazzer Baby with I.D.3113106306. Connection was given on 29.07.2002. It was a Domestic connection at that time.

6. The respondent submitted that the Meter Inspector

reported on 18.01.2022 that building is used for accommodating staff of Keerthi Jewellery, Palarivattom and there are ten bachelors staying in the building. As per

Regulation 37(F) of the Kerala Water Authority Regulations, the connection is used for non-domestic purpose and hence it has been converted into Non-Domestic category.

WP(C) NO. 1004 OF 2022 4

7. The respondent submitted that as per Regulation

37(F), if consumption and usage is at restaurant or by inmates of Hotels, Boarding Homes, Lodging-cum-Boarding houses or residential clubs and for bath used by such inmates, the connection is Non-Domestic. Therefore, the change of Tariff is justified.

8. The learned Standing Counsel for the respondent pointed out that the petitioner had filed WP(C) No.35558/2018 challenging the conversion of the consumer connection to Non-

Domestic. This Court, as per Ext.P5 judgment, directed the respondent to hear the petitioner and take a decision on merit. Accordingly, the petitioner was heard and the Assistant Executive Engineer found that the connection is Non-Domestic. The learned Standing Counsel submitted that the Assistant Executive Engineer has ample power to change the Tariff, taking into consideration the usage of water connection.

9. The learned Standing Counsel forcefully argued that the Kerala Water Authority Regulations classify Clubs, Hotels, WP(C) NO. 1004 OF 2022 5 Boarding Homes, Lodging-cum-Boarding houses and residential

clubs into Non-Domestic category. The reason is that the occupation is in connection with a commercial activity. In the case of the petitioner's residence also, the residential facility is given to the staff of a Commercial Enterprises. Therefore, the action of the Assistant Executive Engineer is justified.

10. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

11. There is no dispute that the building of the petitioner

to which the water connection is given, is a residential building and is not a commercial complex. Regulation 37(F) of the Kerala Water Authority Regulations provides that if the consumption and usage is at (1) Restaurant, (2) By inmates of Hotels,

(3) Boarding Homes, (4) Lodging cum Boarding houses,

(5) Residential Clubs, (6) For bath used by such inmates, the consumer is liable to pay water charges at Non-Domestic rate.

12. The question is whether the building of the petitioner which is used for the residential purpose of employees can be clubbed along with the afore commercial units. The residential WP(C) NO. 1004 OF 2022 6

building is used to accommodate the petitioners workers. The petitioner submits that no charge is levied from the workers for the purpose of their accommodation in the building. It is obviously not a hotel or boarding home. It is not lodging-cum-boarding house or residential club. By boarding homes and lodging, what is intended is that such home should be open to

general public. The boarding homes and lodging-cum- boarding homes are independent commercial entities in themselves.

13. When employees of Government or Private

Enterprises are residing in a residential building, the same cannot be treated as lodging or boarding houses. Those are residential units used by employees. Such usage cannot, by no stretch of imagination, be treated as Non-Domestic purpose.

14. In the circumstances, Ext.P6 is set aside. The

respondent is restrained from levying water charges in respect of Consumer No. 3119106306 at Non-Domestic Tariff. The respondent shall immediately change the Tariff of the building from Non-Domestic to Domestic. Any excess amount paid by WP(C) NO. 1004 OF 2022 7 the petitioner towards water charges at the rate applicable to Non-Domestic purpose, shall be adjusted against the future bills.

The writ petition is disposed of as above. sd/- N.NAGARESH JUDGE hmh WP(C) NO. 1004 OF 2022 8 APPENDIX OF WP(C) 1004/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE BILLS ISSUED TO THE PETITIONER AT DOMESTIC TARIFF FOR THE PERIOD APRIL/2017 AND AUGUST 2017 Exhibit P2 TRUE COPY OF THE BILL DATED 12.12.2017 ISSUED TO THE PETITIONER AT NON-DOMESTIC TARIFF. Exhibit P3 TRUE COPY OF THE BILLS ISSUED TO THE

PETITIONER AT FOR THE PERIOD FEBRUARY/2018, APRIL/2018, JUNE/2018 AND AUGUST/2018 AT NON -DOMESTIC TARIFF. Exhibit P4 TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT WITH POSTAL RECEIPT. Exhibit P5 TRUE COPY OF THE JUDGMENT IN W.P.C NO. THE HON'BLE HIGH COURT. Exhibit P6 TRUE COPY OF THE PROCEEDINGS ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER. RESPONDENTS NIL EXHIBIT

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com