Shiv Narayan and anr. Vs. M.P. Electricity Board and ors.

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Court : Madhya Pradesh

Decided On : May-06-1999

Reported in : AIR1999MP246

Judge : A.K. Mathur, C.J. and ;Dipak Misra, J.

Acts : Electricity (Supply) Act, 1948 - Sections 49; Constitution of India - Article 14; Advocates Act, 1961 - Sections 30

Appeal No. : M.P. No. 411 of 1987

Appellant : Shiv Narayan and anr.

Respondent : M.P. Electricity Board and ors.

Advocate for Def. : M.L. Jaiswal, Adv.

Advocate for Pet/Ap. : D.K. Dixit, Adv.

Disposition : Petition allowed

Judgement :

A.K. Mathur, C.J.

1. The petitioners have by this petition raised a very interesting question whether the legal profession is a commercial activity or it is a trade or business. Before we attempt to answer this question, it would be relevant to dilate few facts.

Petitioner No. 2 G. D. Padrah is an Advocate and the petitioner No. 1 Shiv Narayan is landlord of the House No. 403 Gol Bazar, Jabalpur. Petitioner No. 2 G. D. Padrah, Advocate lives at first floor as a tenant. The petitioner No. 2 occupied the upper floor premises up to 1981 and was living in the said house and also maintained his office as an Advocate. Thereafter he shifted in his own house but maintained his office in the said tenanted premises. There is an electric service line in that house and it is in the name of the petitioner No. 1 and he is paying the domestic charges. On 17-1-1986, some officer of the MPEB (M.P. Electricity Board) inspected the service meter and served a notice to the petitioner No. 1 that he is using the service connection for commercial purposes instead of domestic purposes. Annexure B is the copy of notice. The petitioner No. 1 replied to the notice that he never used the premises for commercial purposes. However, the petitioner No. 2 has his office as an Advocate. The respondents did not consider the reply of the petitioner satisfactory and served upon him a notice of demand in the sum of Rs. 6065.28 p. along with the bill for May, 1980 to November, 1985 (Annex. E).

2. Then again, the respondent No. 2 served another notice of demand dated 4-11-1986 (Annex. F) for a sum of Rs. 2825.75 p. Again on 1-12-1986, a notice was issued to the petitioner No. 2 to make payment of the demand raised and that too was replied by him. Similar notices were again issued demanding the amount treating thepremises in question to be commercial establishment. It is alleged that the Board has issued all these notices of demand on the basis of circular issued by the respondents Annex. K whereby they have laid down different tariff for domestic purposes and for commercial purposes. In this background, the petitioners have challenged the validity of the circular issued by the M.P. Electricity Board Annex. K classifying the office of the Advocate as a commercial establishment and also prayed that the demand notices issued vide Annexures F and J. may be quashed.

3. In order to appreciate the contents and the import of the circular issued by the M.P.E.B., it is necessary to refer to the same. Section 49 of the Electricity Supply Act, 1948 which enables the Electricity Board to issue a uniform tariff. Section 49 of the Act of 1948 reads as under :

'49. Provision for the sale of electricity by the Board to persons other than licensees.-- (1) Subject to the provisions of this Act and of regulations, if any made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.

(2) In fixing the uniform tariffs, the Board shall have regard to all or many of the following factors, namely :--

(a) the nature of the supply and the purposes for which it is required;

(b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee;

(c) the simplification and standardisation of methods and rates of charges for such supplies;

(d) the extension and cheaping of supplies of electricity to sparsely developed areas.

(3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person.'

In view of this, uniform tariff was issued from time to time and we are concerned with the tariff which has been issued by the M.P.E.B. by notification 'Low Tension Tariffs' dated 30th January, 1982. This tariff classifies (A) for lights and fans, radios and power both for urban areas and rural areas and for domestic purposes and commercial purposes. M.P.E.B. issued a Circular with reference to earlier

Circular dated 4-5-71 reclassifying L & F connections between domestic and commercial consumers providing guidelines indicating therein. Circular dated 21-7-71 reads as under :--

'MADHYA PRADESH ELECTRICITY

BOARD, RAMPUR

JABALPUR

No. 5/II/S/III/49-A

Dated 21-7-71

To,

All Divisional Engineers, M.P. Electricity Board Sub : Reclassification of L&F; connection between domestic and commercial consumers.

1. Reference is invited to Circular No. 5/II/S/ III/49-A dated 4-5-71 in which instructions have been issued regarding connections.

2. Proper classification of domestic and commercial heat and small power, also the industrial power is necessary. Although at present the same tariff is applicable for the commercial and industrial power loads, proper classification of these loads is still very necessary from load survey and statistical point of view. It is desired that these loads be reclassified correctly on the basis of the guidelines indicated therein :--

(i) All power connections given for residential premises and used for domestic purposes may be classified as domestic small power; for this purpose the residential premises will include student hostels but will not include hostels, Dharamshalas, nursing homes and hospitals (please see para 2 of the Circular dated 4-5-71 referred to above).

(ii) Connections given for air conditioners, air-coolers, refrigerators, water-coolers, heaters, sterilizers, cooking ranges, water pump-sets, mixing and grinding equipments, wireless sets and battery chargers used in educational institutions, laboratories, hospitals, nursing homes, public parks, gardens, cinemas, dispensaries, restaurants,hotels, dharamsalas, guest and rest houses, offices, shops and other similar establishments shall be classified as 'Commercial small power'.

(iii) Premises other than those specified in (i) and (ii) foregoing fall under 'Industrial premises' and all power loads inclusive of the type indicated in (ii) above installed in such industrial premises will be classified as 'industrial' loads.

Urgent instructions may please be given to the distribution centres for proper reclassifications. It may, however, be noted that the foregoing instructions are for doing classification only and that the loads falling in groups (ii) and (iii) will be billed at the industrial tariff(s) as at present. However, if as a result of these instructions any charge (or correction) in application of the tariff(s) is required to be made the charge will apply for the future billing only but billing so far made will not be reopened. Cases may be referred to this office first before introducing the change in billing.

Secretary,

M. P. Electricity Board

Jabalpur.'

The Board issued another Circular dated 8th July, 1975 classifying Commercial and Domestic Consumers. The Circular reads as under :--

Madhya Pradesh Electricity Board

Rampur : Jabalpur

No. 6/II/8/III/49-A/54/5404 dated 8th July, 1975

The Divisional Engineer,

M. P. Electricity Board,

Sub : Classification of Commercial and Domestic Power Consumers

Reference is invited to the Circular No. 5/II/S/ III/49-A dated 21-7-1971 wherein the categories of consumers which could be classified as 'Commercial' were indicated. Further to the classes of consumers mentioned therein the following consumers shall also be classified as 'Commercial' :--

(1) Clubs

(2) Petrol Pumps (with or without service stations)

(3) Shops (including chemists)

(4) Tailoring shops

(5) Carpenters and furniture makers

(6) Washing and Dyeing and/or Ironing

(7) Railway stations

(8) X-Ray Machines

(9) Printing Presses (irrespective of load and tariff)

(10) Sugarcane crushers (sugarcane juice)

(11) Mixies used for juice and lassy etc.

(12) Grinders for grinding masala (when used in a shop)

(13) Advertisement services

(14) Air Compressors for filling air in automobiles by cycle shops

(15) Public places like town halls, public halls, public libraries and reading rooms

(16) Places of public entertainment

(17) Typing institutes

(18) Single phase Toy-making industries

(19) Nickel Plating on small-scale

(20) Photographers

(21) Book-binders

(22) Private Medical Practitioners (Clinic or Consulting place)

2. Tariffs and other terms and conditions applicable for Commercial L & F consumers shall be applicable to the L & F connections in the premises of aforesaid categories of consumers.

3. Small power connections given to the aforesaid categories of consumers shall be governed with the conditions applicable to Commercial small power consumers and shall be billed at the L.T. Industrial tariff(s) as applicable now.

(S. C. Gupta)

Deputy Chief Engineer

(Commercial)

On 2nd April, 1976, the Board issued Circular revising tariff for supply of electricity. This Circular reads as under :--

MADHYA PRADESH ELECTRICITY

BOARD RAMPUR : JABALPUR

No. 5/GA/147/37/2358 Dated 2nd April, 1976 The Divisional Engineer, M. P. Electricity Board Sub :-- Revision of tariff for supply of electricity

Reference is invited to Circular No. 5/GA/ 147/98/1834 dated 11-3-1976 with which a copy of the notification No. 5/GAA47-B dated 11-3-1976 showing the revised tariff for supply of power to LTY consumers, was sent. As mentioned therein the revised rates shall come into force with effect from April, 1976 i.e. for electricity supplied in April, 1976 and billed in May, 1976. To make it more clear, the consumption of only such LT consumers for whom meter readings were taken after 15-4-1976 and shall be billed at the revised LT tariffs referred to above. It means that the consumption of such LT consumers in respect of whom readings were taken on or before 15-4-1976 shall be billed at the pre-revised tariffs.

2. In the case of consumers whose readings are taken once in two months, the consumption corresponding to readings taken on or before 15-4-1976 shall be charged at the pre-revised tariffs; half of the consumption corresponding to the readings taken during the period 15-4-1976 to 15-5-1976 shall be charged at the pre-revised tariff, while the other half shall be charged at the revised tariff and consumption corresponding to readings taken on or after 16-5-1976 shall be billed at the revised tariffs.

3. Domestic Light & Fan tariff as well as electricity duty for the consumers for whom meter-readings are taken once in two months shall be as under :

For billing once in two months :

Energy consumption Rate

First 100 units in two months 30paise/unitOver 1

There being no slab for domestic power, commercial, light and fan and commercial power tariff, these tariffs will not be affected in such cases where billing is done once in two months. Consumption slab for payment of electricity duty will stand modified as below :

Energy consumption Rate of electricity duty

Up to 100 units 6.5 paise/unit

in two months

Next 200 units 7.0 paise/unit

in two months

Over 300 units 12.0 paise/unit

in two months

For any other categories, whenever there are slabs for payment of electricity duty and billing isdone once in two months, the consumption for the purpose of electricity duty would stand modified in the aforesaid basis i.e. the quantum of consumption slabs where billing is to be once in two months; may also be made twice that of consumption per month for the purpose of tariff (including tariff minimum as well as for electricity duty calculations)

4. It would be observed that a separate tariff has now been prescribed for commercial power purposes. LT tariff (E) of the said notification shall be applicable for supply of electricity to Commercial and Non-domestic premises like shops, business houses, offices, educational institutions/buildings, hospitals, hotels, cinemas etc. The following consumers covered under the aforesaid categories shall be broadly classified as commercial :--

i) Clubs

ii) Shops including Chemists

iii) Carpenters and Furniture makers

iv) Railway stations

v) Mixies used for juice and lassy etc. in business establishments

vi) Projectors used for advertisement purposes

vii) Public places like Town-halls, Public-halls, Public-Library

viii) Nickel and other electro-plating on small scale, Paper cutting machines etc; when used by the book-binders

x) Printing presses

xi) Petrol pumps and service-stations

xii) Tailoring shops using electrically operated knitting and sewing machines

xiii) Washing and dyeing and/or ironing in shops

xiv) Sugarcane crushers for selling sugarcane juice in hotels/stalls

xv) Grinders for grinding masala when used in shops

xvi) Air Compressors for filling air in automobiles by shops

xvii) Cinema

xviii) Single-phase toy-making industries

xix) Air-conditioners and Coolers/heaters and refrigerators used in shops and offices and those used by private Medical offices and those used by private Medical Practitioners in Clinics or Consulting places

xx) Lifts and other power appliances in the shopping centres, business houses and offices

xxi) Machines and electrically operated equipments (except machines in Laboratories and workshops) in educational institutions/buildings

xxii) Machines and equipments other than X-Ray plants in hospitals/dispensaries

xxiii) Cooking ranges in hotels and other non-domestic installations.

5. No increase has been made in the tariff for supply of electricity to irrigation pumps at consumers. It means irrigation pump-set consumers who are being charged maintenance charge at Rs. 4/HP/month in accordance with the instructions contained in the last para of this office Circular No. 5/GA/144/39 dated 22-10-1974 shall continue to pay at the same rate till the expiry of their agreement period.

6. There are quite a large number of premises where supply is availed for residential/shops/ offices through common meter. As mentioned in this office Circular No. 5/GA/144/dated 28-1-1975, charging of consumption in such cases at

higher tariff is in order as long as separate meters are not provided. However as per the instructions contained in the aforesaid circular, in case the consumers having common meters have domestic light & fan/power and commercial light & fan/ power apply for separate connections for Commercial L&F;/power purposes, expeditious action should be taken by the field officers be given separate connections. It means, the request of such consumers should be given due priority and separate connections should be given as soon as formalities are completed by the consumers.

Secretary

M. P. Electrical Board

Jabalpur.'

The Board further clarified the matter by issuing another notification Annexure K dated 30-11-1976 which reads as under :--

Madhya Pradesh Electricity Board

Rampur : Jabalpur

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/ 5111/49-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.'

4. It is alleged that this notification has also been issued by the Electricity Board in exercise of powers under Section 49 of the Act. By virtue of this notification, the energy consumed in the residential premises of the Advocate shall be treated as domestic even though he carries out the professional work at his residence. However, the consumption of energy in the premises which are away from the residential premises and exclusively used for professional shall be billed at 'low tension tariff applicable for commercial purposes. This circular also covers Doctors, Writers, Poets, Artists. We need not examine the circular in respect of Doctors, Poets, Writers, Artists because we are only concerned with the Advocates. Therefore, the argument in the present case wasonly advanced with regard to Advocates i.e. the legal profession. Thus, we confine our enquiry on the validity of this notification qua Advocates and legal profession. The intention of this notification appears to be that the Board has classified the legal profession as a commercial profession and has only given relaxation to the Advocates who have

their office in the residential premises, same is treated as domestic connection.

As against this, if an Advocate/Vakil has office away from his residence, that would be treated to be a commercial establishment. Whether such categorization of legal profession as commercial establishment is sustainable in law or not. Legal profession at all times has been considered to be a profession and it is not like a trade or a business. The expression 'commercial' primarily deals with the trade and business whereas the art of advocacy is skilled art and one has to acquire it by dint of his skill and legal study. Therefore, to compare legal profession as a commercial profession, in our humble opinion is far from correct.

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 SE 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 peoples or States and the citizens or inhabitants thereof, including 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 (1893) 153 US 289 14 S Ct 829 38 L Ed 719; Railroad Co. v. Fuller (1872) 84 US 568 L. ED. 710; Hoke v. United States (1912) 227 US 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 communicationamong 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 occu-pied with business and commerce. Anderson v. Humble Oil & Refining Co., 226 Ga 252, 174 SE 2d 415. 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.

5. Similarly, in The Law Lexicon 1997 Edition--by P. Ramanatha Aiyar, word 'commerce' has been defined as under :

Commerce. 'Commerce' is a term of the largest import. It comprehends intercourse for the purpose 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. Missoury, (1874) 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 (Section 2(13), Income-tax Act.

The word 'profession' has been defined in Black's Law Dictionary--Sixth Edition as under :

'Profession. A vocation or occupation requiring special, usually advanced education, knowl-edge, 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 theology, 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 Law Lexicon 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]59ITR699(SC) , Income-tax Act, 1961, Section 28.

One definition of a profession is an employment, especially an employment requiring a learned education, as those of law and physic (Worcest 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 uses 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 (Section2(36), Income-tax Act and Section 150, Indian Evidence Act); 2. Section 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 : AIR1964 Bom200 (Bombay Shops and Establishments Act (79 of 1948, Section 2(4)).

The multifarious functions call for theexercise 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 : AIR1968 Bom283 . Bombay Shops and Commercial Establishments Act (76 of 1048).

A profession or occupation is carried on for the purpose of earning a livelihood and a profit motive does not underlie such carrying of profession or occupation. L. M. Chitale v. Commissioner of Labour AIR 1964 Mad 131 (Constitution of India, Article 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, kit 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.

6. In this connection, our attention was invited to a decision in the case of V. Sasidharan v. Peter and Karunakar : (1984)IILLJ385SC . In this case, question arose whether the office of a lawyer is a commercial establishment or not and the Apex Court answered this question in negative. It was observed that the office of a lawyer or of firm of lawyers is not commercial establishment within the meaning of the Act. It was observed (Para 9) :

'.....It does not require any strong argumentto justify the conclusion that the office of alawyer 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.'

Their Lordships of Apex Court have categorically held that the office of a lawyer is not a commercial establishment. This observation was with regard to Kerala Shops and Commercial Establishments Act; nonetheless, the fact remains that it has been held categorically without any manner of doubt that the profession of a lawyer is not a commercial activity and it is absolutely erroneous to cover it by a tariff which is essentially meant for commercial purposes. The heading of the 'tariff', as pointed out above, is for the supply of the energy for the commercial purposes. Since the lawyer's profession is not a commercial activity, therefore, tariff imposed by the MPEB to cover the office of a lawyer as commercial establishment is not a correct categorisation of the lawyer's profession.

Our attention was also invited to the case of Narendra v. State of Maharashtra 1986 Lab IC 318 -- a decision of Bombay High Court. Therein also, the Division Bench while dealing with the amendment in the Maharashtra Act of 1977 by which the establishment of legal practitioner was' categorised as a commercial establishment, their Lordships struck down the enactment and observed that :--

'..... We are, however, of the view that the amendment, so far as it relates to the establishment of legal practitioner, is liable to be struck down as it herds together commercial establishments with the establishment of a legal practitioner, which herding together is irrational and arbitrary.....'

In this connection, our attention was also invited to a decision of House of Lords in (1949) 1 All ER 1026, Stuchbery & Sons v. General Accident, Fire and Life Assurance Corporation, Ltd., wherein also question arose with regard to the goodwill under the Landlord and Tenant Act, 1927. In this case, the tenant was a solicitors' firm and was also acting as an agent for Insurance Company. Hence, question was whether the so-licitors carried on a trade or business, and their Lordships held thus :

'(i) the carrying on of a solicitor's business was not the carrying on of a 'trade or business' within the meaning of Sections 4(1) and 17(1).

(ii) If it was shown that a trade or business in the statutory sense was carried on the premises in addition to a profession, the only relevant goodwill for the purpose of the Act was that referable to the activities of the trade business to the exclusion of goodwill, if any, attributable to a profession.

(iii) There being no evidence of any goodwill exclusively attaching to their trade or business activities, the tenants' claim failed.'

In this connection, Lord Geene M.R. observed that :--

'.....I should think it would require a verybold man to say that a solicitors' practice is to be put into the 'trade or business' class and excluded from the professional class.....'

He further observed as under :

'..... I have no difficulty in coming to theconclusion that the carrying on of this solicitors' business is not the carrying on of a trade or business within the meaning of that phrase in this Act of Parliament.'

Their Lordships were very clear that the legal profession does not fall in the category of a trade or business; it is a profession which can only be practised by those who possess necessary and requisite skill in the subject which distinguishes it from any trading or business activity.

7. As against this, our attention was invited to a decision of this Court in the case of Taramal v. Laxman Sewak Surey 1971 MPLJ 888. This was a case of Single Bench under the M.P. Accommodation Control Act, 1961 and in that context, His Lordship observed that profession of a lawyer is a business within the meaning of 'business' defined under the aforesaid Act. But that decision given by learned

Single Bench is a judgment in per-curiam, because of the decision given by Apex Court in the case of V. Sasidharan : (1984)IILLJ385SC (supra).

8. Learned Counsel also placed reliance on the Apex Court decision in the case of S. Mohan Lal v. P. Kondiah : [1979]3SCR12 which is a case under the A.P. Buildings (Lease, Rent and Evic-tion) Control Act, 1960. In this case, their' Lordships gave an extended meaning to Section 10(3)(a)(iii) and observed :

'..... In our view the expression business occurring in Section 10(3)(a)(iii) is used in a wide sense so as to include the practice of the profession of an Advocate.'

This observation was made in context of the expression 'business' used in the aforesaid section. However, in subsequent decision referred to above in the case of V. Sasidharan : (1984)IILLJ385SC (supra), where their Lordships have categorically held that legal profession is not a business or commercial activity.

Our attention was also drawn on a decision in the case of L. M. Chitale v. Labour Commissioner AIR 1964 Mad 131, which was a case under the Madras Shops and Establishments Act and it was held that office of Chartered Architect is not a shop and not a premises where any trade or business is carried on or where services are rendered to customers. It was observed :

'..... It cannot therefore be said that thecarrying on of a profession is the same thing as the carrying on of a trade or business. A fundamental difference between a profession and a trade or business, seems to be implicit in the reference to 'profession, occupation, trade or business' in Article 19. It is normally understood that trade or business is carried on with a profit motive. But though a 'profession' or an 'occupation' is carried on for the purpose of earning a livelihood, it cannot be said that a profit motive underlies the carrying on of those activities.'

9, In another case of Bombay High Court in the case of N. E. Merchant v. State : AIR1968 Bom283 , question was whether the office of a Chartered Accountant with article clerks and one salaried ordinary clerk can be brought under the definition of 'commercial establishment' under the provisions of Bombay Shops and Commercial Establishments Act. It was observed :

'One of the important elements to be considered when the question whether a man is exercising a profession is to see whether he is a member of an organised professional body with a recognised standard or ability enforced before he can enter it and a recognised standard of conduct enforced while he is practising it. A Chartered Accountant is approached by his client for adviceand guidance in his problems with regard to trade, business or industry, and it is expected that the Chartered Accountant, to the best of his ability would be in a position to help him in his difficulties and not betray the confidence that is placed in him. This is one of the elements which should be sought when considering whether a particular person is practising a profession or is merely doing a business.'

In this connection, their Lordships quoted from a English decision given in the case of Currie v. Inland Revenue Commissioner (1921) 2 KB 332.

10. Our attention was also invited to the decision of Apex Court in the case of Dr. D. M. Surti v. State of Gujarat : 1969 CriLJ285 , where the question arose whether the private dispensary of a Doctor is a commercial establishment or not. Their Lordships observed thus (Para 7) :

'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 and unless the profession carried on by a person also partakes of the character of a commercial nature, he cannot fall within the ambit of Section 2(1) of the Act.'

Therefore, Doctor's dispensary run by virtue of his professional skill and intelligence cannot fall within the meaning of commercial activity so as to cover by the provisions of Bombay Shops and Establishments Act.

11. A survey of the aforesaid cases would show that there is always distinction between professional activity and business or commercial activity. Their Lordships have kept this distinction clearly in view and observed that in a case of professional activity, an individual has to apply his professional skill as against commercial or business activity where the transaction is done with the active cooperation of employer and his employees for sale of certain goods or with the

profit motive. In case of profession, one works for livelihood and not only for a profit motive. In the present case, the M.P.E.B. has categorised as a commercial activity and under that heading, they have included lawyers and vakils meaning thereby that the MPEB has categorised the profession of a lawyer or a vakil as a commercial activity. This, in our opinion, is absolutely illegal, irrational and arbitrary; therefore, it is ultra vires of Article 14 ofthe Constitution of India. This arbitrary classification of putting the lawyers under the head of 'commercial activity' deserves to be struck down asviolativeof Article 14 of the Constitution of India.

12. Shri Jaiswal, learned Counsel for the Board has submitted that the M.P.E.B. has a right to lay down a tariff for various activities and it can classify item-wise also. So far as competence of the Board for lying down tariff for different professions is concerned, nobody disputes the authority of the Board; but to call the legal profession as a commercial activity is totally alien to the profession and this classification of covering the legal profession in a commercial activity is totally bereft of any legal sanction and is per se arbitrary and irrational.

13. As a result of above discussion, we hold that the circular dated 30-11-1976 Annexure K which classifies Advocate and Vakil under the heading of 'commercial' and provides for payment of consumption of energy as commercial is struck down. The writ petition is accordingly allowed and the bills issued by the M.P. Electricity Board charging the petitioner at commercial rate for consumption of power is quashed. It would, however, be open for the Electricity Board to charge the petitioner with the domestic tariff in accordance with law.