

**Rajendra Kr. Agarwal Vs. the C.E.S.C. Ltd. and ors.**

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**Court :** Kolkata

**Decided On :** Nov-13-1992

**Reported in :** (1993)1CALLT491(HC),97CWN344

**Judge :** Kalyanmoy Ganguli, J.

**Acts :** [Constitution of India](#) - Article 226

**Appeal No. :** C.O. No. 531 (W) of 1992

**Appellant :** Rajendra Kr. Agarwal

**Respondent :** The C.E.S.C. Ltd. and ors.

**Advocate for Def. :** Suchit Kumar Banerjee, Adv.

**Advocate for Pet/Ap. :** Asutosh Ganguly, Adv.

**Disposition :** Application allowed

**Judgement :**

**Kalyanmoy Ganguli, J.**

1. In the instant application under Article 226 of the [Constitution of India](#), the petitioner challenges the action of the respondent No. 1 in treating the residential house of the petitioner as a commercial establishment and charging the petitioner on commercial rate for the electricity consumed at the residence of the petitioner.

2. The petitioner states that he has a residential house at No. 44, Chakraberia Road (South) consisting of 5 living rooms besides one kitchen, 2 bathrooms, 2 store rooms and corridor. There are 59 electric points in the said dwelling house. The drawing room of the petitioner has 7 electric points consisting of 4 light points, one fan point and 2 plug points.

3. It is the assertion of the petitioner that althroughout the petitioner was being charged for the consumption of electricity in respect of his dwelling house of the domestic rate.

4. It is the allegation of the petitioner that suddenly by a letter of the respondents dated January 8, 1991 it was revealed to the petitioner that pursuant to an ex parte investigation carried on, on December 29, 1990 it was discovered that the matter of the petitioner, besides controlling the domestic load, was also controlling the load of office in the petitioner's premises and for that reason the petitioner would be charged at commercial rate in respect of the said premises for the bills from the month of January, 1991 onwards. The petitioner was also charged at such commercial rate for the period from July, 1990 to December, 1990. So far as the retrospective effect of the rate of charge is concerned no reason has been given by the respondents in that legard and that part of the bills is totally bad in the absence of any allegation that the petitioner was having some commercial user of electricity in the premises with effect from July, 1990.

5. The petitioner, althrough the petition strongly asserts that his premises had never been used for any commercial purpose and as such the question of charging the petitioner at commercial rate does not arise. Even according to the respondents, only the drawing room is being used for some commercial purposes but without making any apportionment of such consumption the respondents have started charging the petitioner at the commercial rate for the entire premises for the entire period from July, 1990 upto date and onwards. The respondents first filed an affidavit-in-opposition in which virtually no documents have been annexed and nothing has been disclosed to show any reason for charging the petitioner's premises at commercial rates. In fact, the said affidavit-in-opposition is devoid of any particulars whatsoever regarding any evidence that a part of the premises was

used for commercial purposes. It has been asserted that certain inspection was carried on behind the back of the petitioner from which the authorities came to the conclusion that a part of the premises was used for commercial purposes. No details have been given by the respondents in the said affidavit- in-opposition as to any evidence on which the respondents came to the conclusion that the premises or a part of it was being used for a commercial purpose. It is the admitted position that the petitioner was never given an opportunity to rebut the presumption of the respondents as to the nature of the user of the premises. It may be noted in this connection that the petitioner is a Chartered Accountant and it is possible that he may sometimes entertain his clients for the purpose of consultation regarding accounting problems of their business. The work of a Chartered Accountant is not a business but is a profession like the work of a lawyer. The lawyer consults his clients at his chamber in his residence and a Chartered Accountant also consults his clients in the matter of their business at his residence and it was held in the case of *V. Sasidharan v. Peter & Karundkar and Ors.* reported in : (1984)IILLJ385SC that a lawyer's chamber is not a commercial establishment. From the ratio of the said decision it may also be said that the chamber of a Chartered Accountant is not a commercial establishment.

6. At a very late stage of hearing of the matter the respondents filed a supplementary affidavit in which they annexed 4 documents from which they wanted to establish that a part of the premises namely the drawing room was being used for commercial purposes. The said documents make an interesting reading. The first document is a report on investigation of 'meter reading'. All the queries in the said documents relate to the accuracy or otherwise running of the meter or otherwise, leakage of the meter or otherwise and reasons for increase in consumption. This is purely a format for deciding the accuracy of the meter and it is not designed to supply the information as to whether the meter is being used either for a residential or for a commercial purpose. This would further be evident from the fact that it is indicated in the said form that answers are to be given by 'tick' marks and the questions are very pointed. It appears that on the face of the said documents something like Dimuti is written and in the inspector's report column the words 'mix commercial' appeared. Then their remarks that the said meter is being used for commercial purpose and thereunder the words Dimuti

Finance Investment Company and Hanuman Finance Co. Ltd. The purpose for which this form is printed and the remarks made thereon are entirely for different purpose. Nothing has been stated in the aforesaid form as to the user or otherwise of the meter. The second document categorically states that the petitioner is a Chartered Accountant and his firm is at 149, M. G. Road, Calcutta-7 and that 'there is no establishment named Dimuti Finance Investment and Hanuman Finance Ltd. but men of the firm limited & others come there (i.e. at drawing room attached to his premises) for consultation with him regarding accounts'. The first document is dated 29.12.90, the second is dated 16.5.91 and the third is dated 9.9.91 from which it appears that 'after investigation locally it is known that official work of M/s Hanuman and Dimuti Finance is done in the drawing room of the consumer. The fourth document is dated 30.4.92 on which it is written 'court case and v. v. urgent'. This document came into existence after the court issued initially the interim order of injunction. This document also categorically states as follows:-

Found no such name-plate at the said name at the above premises found only meter No. 1686166 RO 1999.

It is very difficult to conclude from the evidence which are self contradictory that the premises of the petitioner was being used for any commercial purpose.

8. It has already been stated that even if the Dimuti Finance and Hanuman Finance people go to the chamber of the Chartered Accountant for their accounting problems the user of electricity in the said room shall not be for commercial purpose and even if by a violent stretch of imagination it may be stated that a part of the premises is being used for commercial purpose which is an insignificant part of the premises having only 7 electric points out of 59 electric points in the premises, the entire premises cannot be charged at the commercial rate.

9. Another point in the matter deserves the attention of the court and that there is flagrant violation of principles of natural justice and audi alterem partem inasmuch as at no stage the petitioner was given any opportunity to refute the charge of the respondents and the respondents never confronted the petitioner with any allegation that the petitioner is using the premises or any part of it for any

commercial purpose. Whatever was done was admittedly done behind the back of the petitioner. Even from the third document dated 9.9.91 it does not appear, as to the person or persons from whom the local investigation was made excepting the bald statement that some such investigation was made locally. The last document which came into existence during the pendency of the proceeding concludes the pictures completely and there is no iota in the evidence that the premises is or was at any point of time being used for any commercial purpose.

10. In the circumstances, this application succeeds and is allowed. The respondents are restrained from charging the petitioner at commercial rate in respect of the dwelling house of the petitioner situated at 44, Chakraberia Road (South) and whatever amounts had been charged at such commercial rate from July, 1990 onwards are to be adjusted forthwith from the future bills starting from the next bill.

11. The high-handedness with which the entire matter was conducted by the C.E.S.C. authorities compels this court to award costs in favour of the petitioner. Such cost is assessed at ten gold mohurs and such costs are also to be adjusted against the future bills of the petitioner.

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