

RAJASTHAN HIGH COURT

J.V.V.N. Ltd.

Vs.

Smt. Parinitoo Jain

Civil Special Appeal No.31 of 2003
(Ashok Parihar and K.S Chaudhari, JJ.)

28.04.2009

JUDGMENT

Ashok Parihar, J.

1. The controversy in this appeal is in regard to the electricity tariff levied by the appellants on the offices of Advocates under the category of Non-Domestic Service. In a case arising out of second appeal on the civil side, this Court in case of *Sajjan Raj Surana v. JVVNL*, ¹ held as under :-

"Thus categorization and inclusion of profession of a lawyer as a commercial establishment or non-service by the defendant (RSEB) or the respondent (JVVNL) for the purpose of payment of electricity consumption at commercial rate or non-domestic/services charges under its any of the Tariffs of 1981 or 1985 or 2001 is and, therefore, it is *ultra-vires* of Article 14 of absolutely illegal, irrational and arbitrary the Constitution of India."

2. Learned Single Judge in the present case while relying on the judgment of this Court in case of *Sajjan Raj Surana* (supra) also held that lawyers' profession is not a commercial activity and tariff imposed by the JVVNL to cover the office of a lawyer as commercial establishment cannot be termed as correct categorization. While allowing petition filed by the respondent, the learned Single Judge ordered as under:-

"For the reasons aforementioned I allow the writ petition and direct the respondents not to charge the electricity tariff under Non-Domestic Service category. The respondents are further directed to charge the electricity tariff from the petitioners at the prevailing domestic rate and to compute the (Sic. and?) refund the excess amount received by them uptill now to the petitioners. Compliance of this order shall be made within sixty days from today. Costs

easy."

3. Learned counsel for the appellants, however, submitted that judgment of this Court in Sajjan Raj Surana's case have already been set aside by the Hon' ble Supreme Court in *(Jaipur Vidyut Vitran Nigam. Ltd. & Anr. v. Sajjan Raj Surana)* ² on 7th May 2008. The Hon'ble Supreme Court while setting aside the judgment of this Court in case of Sajjan Raj Surana had relied on judgment dated 27.10.2005 passed by three Judges Bench in Civil Appeal No. 1065 of 2000. The judgment dated 27.10.2005 of Larger Bench of Supreme Court has held that the advice ate running his office from his residence cannot be charged the additional tariff on the commercial basis. However in case office is run in an independent commercial place then the advocate cannot be exempted from the same. A distinction has been made between the office in a residence and office in a commercial place.

4. After hearing learned counsel for the parties, we have carefully gone through the material on record. In view of the judgments referred above, in our opinion, impugned judgment dated November 12, 2002 passed by the learned Single Judge cannot be sustained in the eyes of law and the same is set aside, more so, when admittedly the respondents are running their office in a commercial place. The appellants may now issue fresh demand notice to the respondents. However, in view of the pendency of the litigation before this Court, it is expected from the appellants on just and reasonable grounds that penal interest for the intervening period may not be included in the demand notice now to be issued.

5. With the above observation, the appeal is disposed of accordingly.

. Cases Referred.

1. 2002(2) WLC (Raj.) 182
2. Civil Appeal No. 7769/2002