

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.8926 of 2022**

**M.D., M/S. Rajlaxmi** ..... **Petitioner**  
**Construction Ltd., Cuttack**

**-versus-**

**Commissioner For Employees** ..... **Opposite Parties**  
**Compensation & Ors.**

**CORAM:**  
**JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER**  
**23.12.2022**

**Order No**

- 10.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. S. Mishra, learned counsel for the Petitioner and Mr. K.K. Jena, learned counsel appearing for the Opp. Parties.
3. The present writ petition has been filed challenging the order dtd.30.04.2017 passed by the Commissioner of Employees Compensation-Cum-Assistant Labour Commissioner, Cuttack, Odisha in E.C. Case No. 249-D/2015.
4. Mr. Mishra, learned counsel for the Petitioner contended that in order to set aside the order passed by the learned Commissioner on 14.12.2016, the Petitioner filed a petition under Order 9 Rule 13 of the Code of Civil Procedure with a prayer to set aside the ex parte judgment and to allow the Petitioner to contest the case on merit. But the learned Commissioner without proper appreciation of the grounds taken in the petition refused to recall the ex parte judgment passed on 14.12.2016 by holding that he is not empowered to recall the order.

5. Mr. Jena, learned counsel appearing for the Workman-Opp. Party on the other hand contended that the Petitioner appeared in the Proceeding with filing of his written statement and subsequently he also cross-examined the witnesses examined by the Workman. But in spite of several opportunities did not adduce any evidence on behalf of the Petitioner management. Accordingly, it is contended that since the Petitioner did not avail the benefit to examine the witnesses and remained absent, no illegality can be found with the impugned order dtd.03.04.2017.

6. Having heard learned counsel for the Parties and taking into account the submission made by the learned counsel for the Parties, this Court in view of the decision reported in the case of *M/s. Sri Rani Shakti Processors Vs. Gayatri Panda & 4 Ors. (2010 (I) OLR 300)*, petition under Order 9 Rule 13 of the CPC is very much maintainable before the learned Commissioner for Employees Compensation. Therefore, the stand taken by the learned Commissioner that he is not empowered to recall his own order cannot stand legal scrutiny in view of the aforesaid decision of this Court. Therefore, this Court is inclined to quash the order dtd.03.04.2017. However, while quashing the same, this Court directs the learned Commissioner to take up the matter from the stage of evidence and by permitting the Petitioner to adduce his evidence.

7. Since it is contended that the Petitioner did not avail opportunity to adduce his evidence, this Court directs the Petitioner to lead his evidence within a period of one month from the date of his appearance before the Commissioner. Learned Commissioner is also directed to conclude the hearing of the matter and dispose of

the same within a further period of one month from the date of closure of evidence from the Petitioner's side. This Court directs the Petitioner to appear before the Commissioner along with a copy of this order on 09.01.2023. On his appearance learned Commissioner shall allow him by fixing a short date to lead his evidence and close the same within a period of one month thereafter. Learned Commissioner after closure of the evidence from the Petitioner's side shall conclude the hearing and dispose of the matter within a further period of one month.

8. The writ petition is disposed of with the aforesaid observation and direction.

*Sneha*

**(Biraja Prasanna Satapathy)**  
**Judge**

