

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.387 Of 2015
(Through hybrid mode)**

***The Executive Engineer, WESCO
Electrical Division, Bolangir and
another***

Petitioners

Mr. Prasanta Kumar Tripathy, Advocate

-versus-

***Permanent Lok Adalat for Public
Utility Service, Bolangir and others***

Opposite Parties

Mr. Ramdas Acharya, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
22.03.2022**

**Order No.
08.**

1. Mr. Tripathy, learned advocate appears on behalf of petitioners and submits, his client is licensee and engaged in business of distribution and supply of electricity. He submits, the Permanent Lok Adalat (PLA) made judgment dated 17th October, 2014 directing, inter alia, shifting of sub-station.
2. He submits, with reference to record in order dated 15th March, 2022, there were points formulated for adjudication. Paragraph 3 from order dated 15th March, 2022 is reproduced below.

“3. Parties will be heard firstly, on whether adjudication is possible by the Lok Adalat that results in a judgment and secondly, regarding location of sub-station,

whether comes within meaning of public utility service under section 22A(b)(iii) in Legal Services Authorities Act, 1987. It is recorded that a sub-station is necessary for the purpose of distribution as opposed to supply of power to a consumer.”

3. Mr. Acharya, learned advocate appears on behalf of private opposite parties and submits, the sub-station is in front of his clients’ house and blocking the drain. There should be no interference with impugned judgment.

4. He relies on judgment of the Supreme Court in **Bar Council of India Vs. Union of India** reported in (2012) 8 SCC 243, paragraphs 26 and 27. He submits, the apex Court had declared law to be settled that an authority empowered to adjudicate dispute between the parties and act as a tribunal, may not necessarily have all the trappings of the Court. It is not a constitutional right of any person to have the dispute adjudicated by means of Court only.

5. He submits with reference to impugned judgment that facts of the case were correctly appreciated by the PLA. One 11/0.4 KV 250 KVA electric substation has been installed in front of the house of his clients at Malpada of Bolangir town near Masjid Chowk, without their consent. The PLA passed judgment directing petitioners to relocate the substation.

6. Order made by impugned judgment is reproduced below.

“ The application is allowed in part on contest against the Respondent No.1 and without contest against the Respondent No.2.

The Respondents are directed to shift the Sub-Station from its existing location to Metakani Chowk near Metakani Sub-Station or to any other suitable place selected by the Respondents within three months from the date of this order.

Here, we make it clear that, in case, the Respondents fail to shift the Sub-Station in question within the stipulated period, a sum of Rs.1,00,000/- (Rupees one lakh) only shall be realized from them and after realization of the amount, the Applicants shall place the same before the Secretary, District Legal Services Authority, Balangir for utilization of the amount in giving legal aid to the poor and needy persons of the society.

The Applicants are at liberty to execute the Award through the process of the Civil Courts in case the Award is not complied by the Respondents.”

7. It appears, directions made by the order in the judgment is in the alternative. Petitioners, at first instance, were directed to shift the substation to any other suitable place selected by them. Failing the shifting within stipulated period of three months, petitioners were to pay, as realized from them, Rs.1,00,000/-(Rupees one lakh). Applicants before the Lok Adalat were then given liberty to execute the award through process of civil Courts in case of non-compliance.

8. There cannot be dispute on the proposition that adjudication

must be in accordance with law, if it is to be recognized as adjudication. Rule 32 in order XXI, Code of Civil Procedure (CPC) provides, inter alia, for mode of execution of a decree for injunction. The mode of execution provided is by detention in civil prison or by attachment of property or both. The alternative direction in the award for realization of Rs.1,00,000/-(Rupees one lakh) from petitioners must be seen as a direction for payment of compensation. It cannot be a direction of costs because the provision for costs given by section 35(CPC) empowers Courts to use discretion to award it. The PLA, not being a Court and the legislative intent being settlement of disputes below a certain pecuniary limit, by the tribunal to prevent overcrowding in Court, excepts the tribunal out of it invoking the provision to exercise discretion to award costs. Compensation was not asked for by applicants before the PLA.

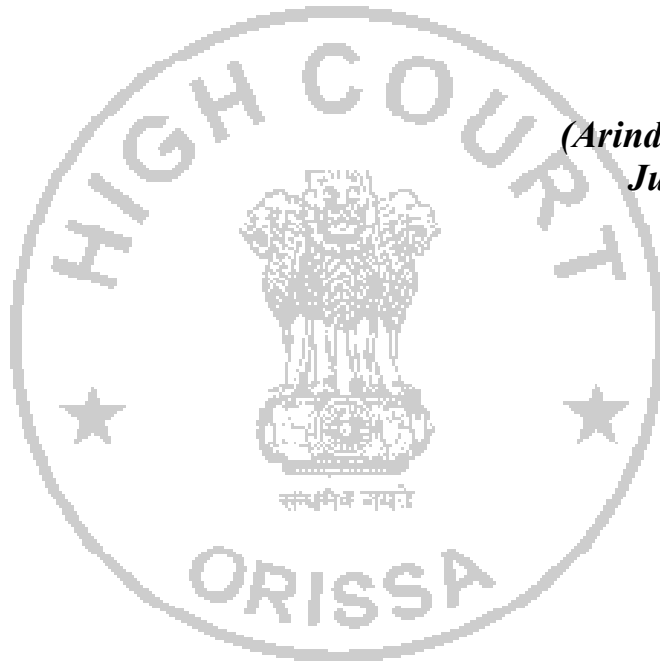
9. For ascertaining whether shifting of a substation belonging to the licensee, supplying electricity to consumers, is covered by section 22 A (b)(iii) in Legal Services Authority Act, 1987, Court posed to Mr. Acharya query on the direction, does it pertain to supply of power to his client? Mr. Acharya submitted, the substation is for the purpose of supplying power and, therefore, covered by meaning of public utility services given in clause (b) of section 22A.

10. The PLA has impliedly issued a writ of Mandamus. It appears the award, instead of settling the issue between parties before the PLA, has caused several questions to arise in the working of directions made in the award. As such, this Court is convinced that the award suffers illegality and was made with material irregularity.

11. Impugned award is set aside and quashed.

12. The writ petition is allowed and disposed of.

Prasant



(Arindam Sinha)
Judge