

HIGH COURT OF ORISSA: CUTTACK
W.P.(C) Nos. 14163 and 15058 of 2012

In the matter of applications under Articles 226 and 227 of the Constitution of India.

In W.P.(C) No.14163 of 2012

S.D.O. (Electrical), SOUTHCO of Orissa Ltd.,
(also Assistant Engineer/Assistant Manager),
Bijipur Sub-Division, Berhampur-01,
At : Bijipur, District: Ganjam

... Petitioner

-Versus-

Jawaharlal Palo, S/o. Prahallad Palo,
Engineer by Occupation, Baikuntha Nagar,
3rd Line, Dist :Ganjam

... Opp. parties

For Petitioner : M/s. Pradipta Mohanty,
D.N. Mohapatra, Smt. J. Mohanty,
P.K. Nayak & S.N. Dash

For Opp. parties : M/s. Devi Prasad Dash,
B.K. Mishra & S.K. Barik
[for Caveator]

M/s. B.S. Tripathy, M.K. Rath,
J. Pati, Mrs. M. Bhagat
[for Sole Opposite party]

In W.P.(C) No.15058 of 2012

Jawaharlal Palo, S/o. Prahallad Palo,
Engineer by Occupation, Baikuntha Nagar,
3rd Lane, P.S. Baidyanathpur, Berhampur,
Dist :Ganjam

... Petitioner

-Versus-

Southern Electricity Supply Company Orissa Ltd.
(SOUTHCO) and others

... Opp. parties

For Petitioner : M/s. Devi Prasad Dash,
B.K. Mishra & S.K. Barik

For Opp. parties : M/s. Pradipta Mohanty,
D.N. Mohapatra, P.K. Nayak &
S.N. Dash

P R E S E N T:

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment: 26.03.2013

B.N. MAHAPATRA, J. Writ petition bearing W.P.(C) No.14163 of 2012 has been filed by the petitioner-SOUTHCO with a prayer to quash order dated 28.07.2012 (Annexure-1) passed by the Permanent Lok Adalt (for short, "PLA"), Ganjam at Berhampur in PLA Case No.91 of 2012, wherein direction has been given to restore power supply which was disconnected on 26.07.2012 immediately to the premises of opposite party-consumer and to report compliance of the order to the PLA. It was further directed that if the parties reach at an agreement and final assessment bill is prepared in terms of Section 126(5) of the Electricity Act, 2003, the opposite party-consumer shall deposit the final assessment amount within a period of seven days.

Writ petition bearing W.P.(C) No.15058 of 2012 has been filed at the instance of the petitioner-consumer with a prayer to issue appropriate writ/writs directing the opposite parties to restore power supply to the residential premises of the petitioner and not to take any coercive action against him till final adjudication of the matter pending before the PLA in PLA Case No.91 of 2012.

2. The facts giving rise to the present writ petitions are that Jawaharlal Palo, petitioner in the second writ petition is a domestic

consumer under Southern Electricity Supply Company Orissa Ltd. (for short, "SOUTHCO") having consumer No.7B-2/586. His residential premises was inspected on 24.07.2012 by the Vigilance Squad and the MRT staff. On the basis of the dump report, it is alleged that the details of meter inspection of load census was made on 24.07.2012 for the period from July, 2011 to June, 2012. It is further alleged that on such inspection, it was found that the meter was running slow by 79%, for which the C.D. to be enhanced. Accordingly, bills on meter inspection and load census was made. On that basis, the Assessing Officer made the provisional assessment and issued it to the opp. party-consumer licensee calling upon him to file objection, if any and to be heard on 03.08.2012. The said provisional assessment was made assessing Rs.1,33,016/-. The dump report and the bills on meter inspection and load census report were also enclosed with such provisional assessment order dated 24.07.2012 and served on the consumer. According to licensee since unauthorized use of electricity by the consumer also simultaneously came within the purview of theft of electricity under Section 135 of the Electricity Act, 2003, the same was reported to the I.I.C., Energy Police Station, Berhampur, who on receipt of such allegation sent a notice to the consumer calling upon to show cause by 03.08.2012 and further restricting him from doing unauthorized use of electricity. Being aggrieved, the consumer filed a petition before the PLA, Ganjam which was numbered as PLA Case No.91 of 2012 challenging the aforesaid provisional assessment so also the action under Section 135 of the Electricity Act, 2003. The Consumer also filed an

interim application along with the petition. In the Misc. Case for interim stay, the consumer sought for setting aside the provisional assessment order dated 26.07.2012 and a direction to the I.I.C., Energy Police Station not to take any action or arrest the consumer. In the interim application for stay, the consumer further had prayed to restore power supply to his premises. PLA on receiving the aforesaid applications passed the interim order in favour of the consumer which is impugned in this writ petition.

3. Mr. P.K. Mohanty, learned counsel appearing for the licensee-petitioner in W.P.(c) No. 14163 of 2012 and opp. party in W.P.(c) No.15058 of 2012 submitted that the consumer conceded before the PLA that he was ready and willing to pay the amount if assessed u/s.126(5) of the Electricity Act, 2003 (in short, “the Act, 2003”) on final assessment. In the mean time, final order of assessment has already been passed raising demand of Rs.1,03,316/-. Mr. Mohanty further submitted that in the final proceeding despite service of notice the consumer neither filed any objection nor appeared. In any event, as per the admission of consumer before PLA he is required to deposit the entire amount. It was also open to the consumer to prefer appeal under Section 127 of the Act by depositing 50% of the assessed amount. This Court vide its order dated 30.8.2012 passed in Misc. Case No. 12466 of 2012 arising out of W.P.(c) No.15058 of 2012, as an interim measure, directed that subject to payment of 50% of the demand raised on provisional assessment order, the supply shall be restored to the petitioner’s premises till disposal of the writ petition. Mr. Mohanty submitted that provisions under Chapter-VI-A give guideline, jurisdiction

and procedure of PLA. Under this Chapter, the heading “pre-litigation Conciliation and Settlement” means that before any subject-matter of dispute is brought before any Court a party may come for intervention of PLA. In the instant case, the Assessing Officer is already in seisen of the matter of the assessment proceeding to deal with the matter as per Section 126 of the Act, 2003 as a Court. Referring to Sec.2 (1)(aaa) which defines “Court”, Mr. Mohanty submitted that the Assessing Officer who discharges quasi-judicial functions is a Court. Thus, the consumer has not approached the PLA at pre-litigation stage.

4. Mr. Mohanty further submitted that Electricity Act, 2003 was not born while Act, 1987 was enacted. Even though Section 25 of the Act, 1987 mandates the overriding effect, but the later Act of 2003 has also got overriding effect over other laws as stipulated under Section 174 of the Act, 2003. The nature of the proceeding before the PLA is initially a conciliation proceeding which is not adjudicatory in nature. Only if the parties fail to reach an agreement by conciliation, the PLA acts as an adjudicator and then decide the dispute. In support of his contention, Mr. Mohanty relied on judgment of the Hon’ble Supreme Court in *Inter Globe Aviation Ltd. Vs. N.Satchidananda*, (2011) 7 SCC 463. Further, in support of his contention that PLA has absolutely no power to pass an ex-parte order, Mr. Mohanty also relied upon the following judgments:

- (i) AIR 2011 Gauhati, 205 (para 11 to 17),
- (ii) AIR 2011 Jharkhand 130 (paras 3 and 5),
- (iii) AIR 2012 Punjab and Haryana 58 (paras 11 to 21),

- (iv) *United India Insurance Company Ltd. vs. Ajay Sinha and another*, AIR 2008 SC 2398 (paras 7,8,9,21,23,24,25 and 40),
- (v) *Jharkhand State Electricity Vs. State of Jharkhand and another* (W.P.(C) No.4630 of 2008 disposed of on 13.08.2009); and
- (vi) *S.B.I., Dhanbad Vs. State of Jharkhand and another* (W.P.(C) No.1449 of 2008 disposed of on 09.04.2009).

5. Mr. Mohanty further submitted that the provisions of assessment and appellate authority are self-contained provisions of the special Act conferring jurisdiction to decide the matter in question. In view of the decision of the Hon'ble Supreme Court in AIR 2010 SC 2061, Electricity Act, 2003 is a self-contained Act, which gives power to the expert authorities to adjudicate the matter. Initiation of proceeding before the PLA without consent of both parties more particularly, while the subject matter of dispute is already in a Court, i.e., of the Assessing Officer and so also the passing of interim order vide Annexure-1 is without jurisdiction and liable to be quashed.

6. Mr. Mohanty submitted that Writ petition No.15058 of 2012 is not maintainable as the said Writ Petition has been filed seeking direction from this Court for executing the interim order passed *ex parte* as an executing Court. As per Section 22E (5) of the Act, 1987, PLA may transmit award made by it to a Civil Court having local jurisdiction to execute the said award and not the High Court. On clear interpretation of both the provisions of Sections 126 and 135 of the Electricity Act, 2003, it is crystal clear that those proceedings under Sections 126 and 135 are parallel proceedings like departmental proceeding and criminal proceeding. The

unauthorized use of electricity has been enumerated under Section 126 of the Act, 2003 under Explanation (b). Such unauthorized use of electricity and meter tampering is also theft of electricity under Section 135 of the Act, 2003. In support of his contention, he relied upon judgment of the Hon'ble Supreme Court in the case of *Executive Engineer, Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO) vs. Seeta Ram Rice Mill*, (2012) 2 SCC 108. Further, placing reliance in the case of *Bihar State Electricity Board and others vs. Nand Kumar*, AIR 2011 (NOC) 22 Patna, it was submitted that against the assessment, appeal is the statutory remedy. Referring to the case of *Tarun Pal vs. the West Bengal State Electricity Distribution Company Ltd.*, AIR 2011 (NOC) 27 Calcutta; *Sri Radha Ranjan Haldar vs. The CESU Limited and others*, AIR 2011 (NOC) 28 Calcutta, *Kuban Sk. Vs. State of West Bengal*, AIR 2011 (NOC) 124 Calcutta, it was submitted that without payment of the assessed amount no reconnection of electricity can be made.

Concluding his argument, Mr.Mohanty submitted to allow the writ petition bearing W.P.(C) No.14163 of 2012 and to dismiss the W.P.(C) No.15058 of 2012.

7. Mr. D.P. Dash, learned counsel appearing for opposite party in W.P.(C) No.14163 of 2010 and petitioner in W.P.(C) No.15058 of 2012 submitted that there is no default on the part of the consumer-Jawaharlal Palo either in payment of electricity tariffs or any allegation till 15.07.2012 as evident from Annexure-1 attached to W.P.(C) No.15058 of 2012. The Electricity Bill dated 15.07.2012 (Annexure-1 in W.P.(C) No.15058 of 2012)

goes to show that the condition of the meter was normal/ok. On 24.07.2012, inspection was conducted by opposite party No.4-Mr. Biswajit Sahoo, Junior Manager (Vigilance) Electrical with one Baikuntha Nath Patnaik (J.T.) in the premises of the petitioner. On 26.07.2012 the above named consumer was served with the provisional assessment order under Section 126(2) of the Electricity Act, 2003. Under Annexure-2 to W.P.(C) No.15058 of 2012, the said consumer had been called upon to file objections on 03.08.2012. On 26.07.2012, the licensee Company disconnected power supply to the residential premises of the consumer as per the provisions under Section 135 of the Electricity Act, 2003. Simultaneously, opposite party No.4 lodged an F.I.R. on 26.07.2012 under Annexure-3 to W.P.(C) No.15058 of 2012, pursuant to which the show cause notice under Section 135 of the Act, 2003 was issued by the Energy P.S., Berhampur under Annexure-6 to W.P.(C) No.14163 of 2012. On 28.07.2012 the consumer invoked the jurisdiction of the learned PLA, Ganjam in PLA Case No.91 of 2012 under Annexure-4 who passed the order directing the S.D.O. of the licensee company inter alia to restore the power supply to the premises of the consumer and to show cause by fixing the date to 02.08.2012 for hearing on merit. Against the said order, the S.D.O. of the licensee company has filed W.P.(C) No.14163 of 2012 without impleading the PLA as a party though in paragraph 9 of W.P.(C) No.14163 of 2012 the licensee company made series of contemptuous allegations touching the integrity and conduct of the Hon'ble Members of the judicial Authorities in administration of their judicial functions being set up under

the provisions of law. As the licensee Company taking the pleas of the filing of W.P.(C) No.14163 of 2012 before this Court did not restore the power supply to the residential premises of the consumer, rather adopted dilatory tactics to linger the process, the consumer finding no other alternative remedy was constrained to file W.P.(C) No.15058 of 2012 before this Court.

8. Placing reliance upon the judgment of the Hon'ble Supreme Court in the case of *Ajay Sinha (supra)*, Mr. D.P. Dash, submitted that jurisdiction of PLA is of wide amplitude. When a court is created, the incumbents must be eligible to determine the lis. Further placing reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Interglobe Aviation Limited v. N. Satchidanand, (2011) 7 SCC 463***, it is submitted that the nature of proceeding before PLA is initially a conciliation which is no-adjudicatory in nature. Only if the parties fail to reach an agreement by conciliation, the PLA mutates into an adjudicatory body, by deciding the dispute.

9. Mr. Dash further submitted that the Licensee in colourful exercise of its power under Section 135 of the Act, 2003 disconnected the power supply to the premises of the consumer on 26.7.2012 and show-cause notice was issued under Section 135 of the Act, 2003 by the Energy Police Station, Berhampur on 26.7.2012. There is no remedy available under the provisions of the Act, 2003 except on payment of full demand raised under the provisional assessment order which is passed without hearing the consumer. Before filing objection U/s.126 and making payment of the demand raised under the provisional assessment order, the

petitioner (consumer) approached the PLA in PLA Case No. 91 of 2012. Placing reliance upon the provision of Section 22-A(a) (b) (iii) of the Act, 1987 it was submitted that the matter/dispute relating to public utility service including supply of power and light shall be decided by the P.L.A constituted as per the provisions of Sec. 22-B of the Act, 1987. Further placing reliance on the provisions of Sec. 22-C it is submitted that any party to a dispute may before the dispute is brought before any Court make application to the PLA for settlement of dispute. After an application is made under sub-section (1) to the PLA, no party to that application shall invoke jurisdiction of any Court on the same dispute. In the instant case the amount in dispute is Rs.1.03,316/- i.e. it does not exceed Rs.10 lakh and Section 135 of the Act, 2003 is compoundable offence as per Section 152 of the Act, 2003. Therefore, the PLA has jurisdiction to decide above noted dispute i.e. dispute U/ss.126 and 135 of the Act. The Act, 1987 shall have over-riding effect in view of Sec. 25 of the said Statute.

10. Alternatively, Mr. Dash submitted that even if the prayer made in W.P.(c) No.14163 of 2012 filed by the licensee is allowed and this Court holds that the show-cause notice issued in PLA case No. 91 of 2012 is *nonest* in the eye of law being without jurisdiction that cannot stand on the way of this Court to consider the prayer of the consumer made in W.P.(c) No.15058 of 2012 for the reason that there is no remedy available in the Electricity Act, 2003 against the order of disconnection of power supply passed U/s. 135 of the Act, 2003 for restoration except on full payment of demand raised by the licensee-company. Referring to sub-section (3) of

Section 135 of the Act, 2003, Mr. Dash submitted that no list containing signature of the occupant or consumer has been filed by the licensee – company though it is mandatory as per the aforesaid statutory provision laid down under Section 135 of the Act, 2003. Not a single scrap of paper has been produced by the licensee indicating compliance of Regulation 55 of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004 and Sec. 163 of the Act, 2003. Mr. Dash relying on paragraphs 16 & 17 of the Judgment of the Hon'ble Supreme Court in the case of *the Executive Engineer and another v. M/s. Sri Seetaram Rice Mill*, AIR 2012 (2) SC 108 submitted that there is clear distinction between Sections 126 and 135 of the Act, 2003. They operate in different fields and have no common premises in law. Placing reliance on the judgment in *Pramod Chandra Rath and others vs. Dr. Dhruba Charan Pattnaik and others*, 96(2003) CLT 296. Concluding his argument Mr. Dash prayed to dismiss W.P.(c) No.14163 of 2012 and allow W.P.(c) No.15058 of 2012.

11. On the rival contentions of both parties, the following questions fall for consideration by this Court:-

- (i) Whether in view of the order passed by the PLA (on the concession of consumer) to the effect that if the parties reached at an agreement and final assessment is prepared in terms of Section 126(5) of the Act, 2003, the appellant shall deposit final assessment amount within a period of 7 days there remains anything to be decided by the PLA?

- (ii) Whether in the facts and circumstances, W.P.(c) No. 15058 of 2012 filed by the consumer is sustainable in law in view of passing of the final order of assessment?
- (iii) Whether the consumer has a right to approach the PLA on receiving the provisional assessment order passed U/s.126(1) of the Act, 2003 and/or against disconnection of power supply under Section 135 of the Act, 2003 to his premises ?
- (iv) Whether in absence of consent in writing by rival parties, the PLA has no power/jurisdiction/authority to decide the dispute between the parties on merit in exercise of its power under sub-section (8) of Section 22(c) of the Act, 1987?
- (v) Whether the PLA is empowered to pass any interim order pending disposal of application made under Section 22-C of the Act, 1987?
- (vi) Whether in view of Sec. 174 of the Act, 2003 the provisions of the said Act shall have over-riding effect on the provisions of the Act, 1987?
- (vii) Whether the writ jurisdiction available under Articles 226 & 227 of the Constitution can be invoked in case of non-compliance of order passed by the PLA seeking a direction to the opposite parties for compliance of the said order?

12. Question nos. (i) and (ii) being interlinked, they are dealt with together.

It is not in dispute that the consumer conceded before the PLA that he was ready and willing to pay the amount if assessed under Section 126(5) of the Act, 2003 on the final assessment. On the basis of such concession, the PLA has passed the following order :

“....Hence, we direct the Respondent to restore the power supply which was cutoff on 26.07.2012 to the questioned premises immediately and report compliance to this Permanent Lok Adalat. If the parties reach at an agreement and final assessment bill is prepared in terms of Sec. 126(5) of the Electricity Act, 2003, the applicant shall deposit the Final Assessment amount within a period of seven days”

13. In the meantime, final assessment order has been passed raising demand of Rs.1,03,316.00, which is not challenged in this proceeding.

14. In view of the above, nothing remains to be adjudicated by the PLA. There is no need to decide other questions which are of academic interest only.

15. Both the writ petitions are disposed of accordingly.

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B.N. Mahapatra,J.