

“Will Alternate Dispute Resolutions be the Solution for Decreasing the Burden on Indian Court?”

“Observation of Working of Lok Adalat in Session Court on dated 12th Nov.2022”

Dr. Shelar Shivani S.

Introduction: - Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987. Under the said Act, the award (decision) made by the Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law. If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal against such an award, but they are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure, in exercise of their right to litigate.

There is no court fee payable when a matter is filed in a Lok Adalat. If a matter pending in the court of law is referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court on the complaints/petition is also refunded back to the parties. The persons deciding the cases in the Lok Adalats are called the Members of the Lok Adalats, they have the role of statutory conciliators only and do not have any judicial role; therefore, they can only persuade the parties to come to a conclusion for settling the dispute outside the court in the Lok Adalat and shall not pressurize or coerce any of the parties to compromise or settle cases or matters either directly or indirectly. The Lok Adalat shall not decide the matter so referred at its own instance, instead the same would be decided on the basis of the compromise or settlement between the parties. The members shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute.

On 12th November 2022 the District Legal Aid and Advice Committee organised Lok Adalat in the premises of City Civil and Session Court, Mumbai. I was consented one of the Panel Member as a Conciliator. There were different panels for different pending and trial cases. I was selected for the Panel No. 2, Court Room No. 63. In our Panel head was H.H.J. Shri V.M. Pathade, Adv. Chandraprakash Shukla and myself Dr. Shelar Shivani were assigned a role as conciliator for the pending cases of Court Room No. 23 and Court Room No. 58. We were assigned to solve the dispute amicably relating to electricity department. The cases which were filed under section 135 and 136 of The Electricity Act, 2003.

The relevant provisions provides that- Section 135. (Theft of Electricity): ---

1[(1) Whoever, dishonestly, --

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

(d) uses electricity through a tampered meter; or

(e) Uses electricity for the purpose other than for which the usage of electricity was authorised, so as to abstract or consume or use electricity

shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use –

(i) does not exceed 10 kilowatts, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatts, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station: Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer. (1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately

disconnect the supply of electricity: Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity: Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection: Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.]

(2) 1[Any officer of the licensee or supplier as the case may be,] authorized in this behalf by the State Government may –

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity 2[has been or is being,] used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

Section 136. (Theft of electric lines and materials): ---

(1) Whoever, dishonestly –

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located including during transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain, is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under subsection (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

Section 137. (Punishment for receiving stolen property): Whoever, dishonestly receives any stolen electric line or material knowing or having reasons to believe the same to be stolen property, shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both.

Section 151. (Cognizance of offences): No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose. 1 [Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973:

Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.] 2[151A. For the purposes of investigation of an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973. 151B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable.

Section 152. (Compounding of offences): --- (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.

Observation/ Experience of Lok Adalat: - The experience of working of Lok Adalat was very good and effective for me. I learn practically that how the Lok Adalat is functioning. We got the cases relating to stolen of electricity BEST department. Five officers and clerk were present before us. But most of the accused were absent on that day. The cases were registered in different Police station and therefore Police Hawaldar of different Police Station were also appeared before us. There were 67 cases put before us for amicable settlement. Out of which only 20 cases were solved and closed by the panel. Following are my observations-

1. Maximum accused were absent. Those who were present out of them some accused were not ready to settled the matter, because they did not carried a sufficient amount with them. So, we gave a next date to them for proceed their case before the regular court.
2. Less Fine amount were compromised. It means, if the obligation on accused have to pay Rs. 1Lack or 1.2 Lack, he/she is ready to pay only 25000/- to 30000/- with given different reasons like: - “मेरा आदमी मर गया है! मैं इतने पैसे कहासे लाऊ”, “ मैं बरतान मांजकर कमाती हू “, “मैं पैसे नहीं भर सकता.” Etc.
3. These cases are pending from last 3 to 4 years. And therefore, the BEST has no other option to close the matter with refund of less Fine amount.
4. All accused were from the slum areas like Sion Koliwada, Matunga Labour Camp and Dharavi. Most of them were Muslims. Most of them were illiterate, poor and illegally occupied slum area for stay.
5. Most of them habitual offender of charged u/sec. 135 of Indian Electricity Act, 2003. (Stolen Electricity).
6. Advocates had appeared in few cases only.
7. Most of the accused were confused about settlement. They were taking much time of the panel for their settlement.
8. In spite of these all observations, when I enquire about over all response for amicable settlement and withdrawn different cases were more than three hundred cases were solved.

Therefore, my opinion is that, yes, the Alternate Dispute Resolution is a good solution for decreasing the burden on Indian Courts.

Suggestions: -

1. Before submitting the case in front of panel required that both the parties settled their matter or at least they should know that for what purpose they are appearing before the

panel. Only need to do formality before the panel. It will save the time of panel, advocate and client. Then and then only the purpose of Lok Adalat will be fulfilled.

2. Some accused are habitual offender. It is required to understand by the Electricity department to find out their modus operand of stealing the electricity.
3. Under the concept of 'Welfare State' government can supply electricity in slum area either free of charge or with certain subscription. Because of which such type of cases will be reduce in future.

References: -

1. Legal Service Authority Act, 1987
2. The Electricity Act, 2003
3. Observations of National Lok Adalat organised on 12/11/2022 at Session Court, Mumbai.

Victor Dantas Law Corp