

---

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

---

In the matter of an Application for Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:  
CA CPA 96/2021  
CA (PHC) 45/2021

Ceylon Electricity Board,  
No. 50,  
Sri Chiththampalam A Gardiner Mawatha,  
Colombo 02.

PHC of Western Province holden in  
Colombo Case No: HCRA 102/2020

Petitioner

MC Nugegoda Case No:  
28947

D. Yasaawathi Satharasinghe,  
No. 287/A,  
Arawwala,  
Pannipitiya.

Respondent

AND

Ceylon Electricity Board,  
No. 50,  
Sri Chiththampalam A Gardiner Mawatha,  
Colombo 02.

Petitioner-Petitioner

Vs.

D. Yasaawathi Satharasinghe,  
No. 287/A,  
Arawwala,  
Pannipitiya.

Respondent-Respondent

AND NOW BETWEEN

Ceylon Electricity Board,  
No. 50,  
Sri Chiththampalam A Gardiner Mawatha,  
Colombo 02.

Petitioner-Petitioner-  
Petitioner

**Vs.**

D. Yasaawathi Satharasinghe,  
No. 287/A,  
Arawwala,  
Pannipitiya.

**Respondent-Respondent-  
Respondent**

Before: **Prasantha De Silva,  
K.K.A.V. Swarnadhipathi, J.**

Counsel: Uditha Egalahewa, PC., with Ranga Dayananda AAL, for the  
Petitioner-Petitioner-Petitioner

Kapila Liyanagamage AAL, with Danuka Lakmal AAL, for the  
Respondent-Respondent-Respondent

Written Submissions: Written submissions filed on 12.01.2023 and 28.02.2023 by  
filed on Petitioner-Petitioner-Petitioner.

Written submissions filed on 10.02.2023 by Respondent-Respondent-  
Respondent

Delivered on: 01.09.2023

**Prasantha De Silva J.,**

### **Judgment**

The Ceylon Electricity Board being the Petitioner instituted action bearing no. 28847 in the Magistrate's Court of Nugegoda seeking an Order to enter the Respondent's land by force to cut and remove trees in terms of item 9(1) in Schedule II to the Sri Lanka Electricity Act No. 20 of 2009.

However, the learned Magistrate refused the said Application by the Petitioner. Consequently, the Petitioner invoked the revisionary jurisdiction of the Provincial High Court of Colombo. However, the learned Provincial High Court Judge too had refused the said revision application of the Petitioner.

Hence, the Petitioner had preferred this Appeal bearing No. PHC 45/2021 and revision application bearing No. CA 96/2021, seeking to set aside the Order dated 24.06.2020 by the learned Magistrate and the Order made by the learned High Court judge dated 06.08.2021 and obtain relief prayed in the Prayer to the Petition of Appeal as well as the Prayer in the revision application.

**Factual Background**

A project was started to lay a 220 KV transmission line from the Polpitiya grid substation to the Pannipitiya grid substation to meet the ever-increasing demand for electricity in the Western Province utilising a loan given by the Asian Development Bank after obtaining approval from the Cabinet of Ministers.

It was submitted by the Petitioner that necessary leave to draw electrical lines/conductors over the Respondent's land was duly granted to the Petitioner by the Divisional Secretary in writing [පෙ 11]. Further, permission had been granted by පෙ25 to cut and/or remove trees and branches that obstruct the said electrical line to the Petitioner in view of item 6 of Schedule I of the Electricity Act no. 20 of 2009.

On behalf of the Petitioner, it was submitted that all the 218 electrical lines have now been built and conductors have been drawn, even over the Respondent's land. Further, the link has partially been energized. However, full implementation was hindered due to the inability of the Petitioner to enter the Respondent's land to remove trees that obstruct the line.

Since the Respondent had not been permitted entry to her land, the Petitioner had made an Application to the Magistrate's Court of Nugegoda to obtain an Order to enter the Respondent's land in terms of item no. 9(1) to the Schedule II of the said Act.

The learned Magistrate had referred this Application of the Petitioner and held *inter alia*,

"ශ්‍රී ලංකා විදුලි බල පනතේ ප්‍රතිපාදන පිළිබඳව සැලකිල්ලට ගැනීමේදී පැහැදිලි වන්නේ එම පනතේ I වන උප ලේඛනයෙහි දක්වා ඇති අයිතමයන්හි "බලපත්‍රලාභියා යනුවෙන් පොදුවේ සඳහන් වන බවය. එහෙත් පනතේ II වන සහ III වෙනි උපලේඛන සැලකිල්ලට ගැනීමේදී පැහැදිලි වන්නේ II උපලේඛනයේ 7 හා 8 වන අයිතමය හැර සෙසු සියලු අයිතමයන්හි "බෙදාහැරීමේ බලපත්‍රලාභියා" පිළිබඳව සඳහන් කර ඇති බවය. II උපලේඛනයේ 7 හා 8 වන අයිතමයන් පරිශීලනය කිරීමේදී අනාවරණය වන්නේ එම අයිතමයන්හි බෙදාහැරීමේ බලපත්‍රලාභියකු විදුලි උත්පාදන බලපත්‍රලාභියකු සහ සම්ප්‍රේෂණ බලපත්‍රලාභියකු පිළිබඳව වෙන් වෙන්ව වෙන් කර දක්වා ඇති බවය. ඒ අනුව ශ්‍රී ලංකා විදුලිබල පනතේ II උපලේඛනය සැලකිල්ලට ගැනීමේ දී පැහැදිලි වන්නේ එම II උපලේඛනයේ 7 හා 8 වන අයිතමය හැර සෙසු අයිතමයන් බෙදාහැරීමේ බලපත්‍ර ජර්නලාභියකුට පමණක් බලපාන අයිතිවාසිකමක් වන බවය.

[...]

ඒ අනුව ශ්‍රී ලංකා විදුලිබල පනතේ 31 වෙනි වගන්තිය සමඟ පනතේ II උපලේඛනය සලකා බැලීමේදී පනතේ උපලේඛනයේ දක්වා ඇති 9 වන අයිතමය බෙදාහැරීමේ බලපත්‍රලාභියකුට පමණක් අදාළ වන අයිතමයක් බවට නිගමනය කළ හැක.

[...]

ඒ අනුව මෙම නඩුවේ පෙත්සම්කාර පාර්ශවය වන ශ්‍රී ලංකා විදුලි බල මණ්ඩලය හට සම්ප්‍රේෂණ බලපත්‍රයක අවසරයක් මත සිදු කළ යුතු කාර්යයක් ඉටු කිරීමට බෙදාහැරීම් බලපත්‍රයක අවසරය භාවිතා කිරීමේ හැකියාවක් නොමැති බව පැහැදිලිය. ඒ අනුව මෙම නඩුවට අදාළ පෙත්සම්කාර පාර්ශවය විසින් මෙම අධිකරණයෙන් ආඥාවක් අයැද සිටින කාරණය "සම්ප්‍රේෂණ බල පත්‍රයක" අවසරයක් මත සිදු කිරීමට අපේක්ෂිත කාරණයක් වන බැවින්, ඒ සඳහා විදුලිබල පනතේ II උප ලේඛනයේ දක්වා ඇති 9 වන අයිතමය යටතේ "බෙදාහැරීමේ බලපත්‍රලාභියකුට" තිබෙන අයිතිවාසිකම යටතේ ආඥාවක් නිකුත් කිරීමේ හැකියාවක් මෙම අධිකරණයට නොමැති බවට තීරණය කරමි.

Although the Petitioner challenged the said Order of the learned Magistrate before the Provincial High Court of Western Province the learned High Court Judge had dismissed the revision application filed by the Petitioner on the basis that,

- a) Petitioner’s Application ought to be dismissed as the pleadings were presented in English which is not the language of the Court;
- b) The Petitioner failed to file written submissions, although, the Parties agreed to dispose of the matter by way of written submission;
- c) The learned Magistrate had reached a correct conclusion after interpreting items 9, and 11 of the Second Schedule and sections 31 and 61 of the Sri Lanka Electricity Act;
- d) There were no exceptional circumstances to interfere with the Order of the learned Magistrate.

I will address each of these grounds in my judgment espoused below.

**Language of the Petition filed in the revision application and Failure to File Written Submissions**

It appears that the Respondent had raised an objection before the learned High Court Judge that there was no valid Petition before the Provincial High Court since the Petition was submitted in the English language.

It is to be noted that the learned High Court Judge had held that, although the Parties agreed to dispose of the matter by way of written submissions, the Petitioner had failed to file written submissions.

In this respect, it is the opinion of this court that merely because Parties agreed to file written submissions and failed to do so, Court cannot dismiss an application on the ground of failure to file written submissions. It is the duty of Court to look into the matter on the available material in the interest of justice.

However, from a perusal of the Record, it appears that Petitioner had filed written submissions and the written submissions can be found on page 735 of the brief.

Therefore, it clearly shows that the learned Provincial High Court Judge had dismissed the Petitioner's Application without considering the written submissions of the Petitioner, which amounts to a clear violation of the rules of natural justice. Thus, the impugned order of the learned High Court Judge ought to be set aside on that ground alone, for the simple reason that the learned High Court Judge had not exercised due diligence in respect of the revision application of the Petitioner. As such, it clearly manifests that Court is at fault. According to the legal maxim, '*actus curiae neminem gravabit*' no man would be prejudiced by an act of court.

This concept was elucidated by Dr. Amerasinghe in the case of ***Fernando Vs. Sybil Fernanda*** [1997(1) S.L.R 01] where he stated that,

“Judges do not blindly devote themselves to Procedures or ruthlessly sacrifice litigants to technicalities, although parties on the road to Justice may choose to act recklessly. On the contrary, as the indispensable vehicle for the appointment of Justice, Civil Procedure Law has a protective character. In its protective character, Civil Procedure Law represents the orderly, regularly and public functioning of the legal machinery and the operation of the due process of law this sense, the protective character of procedural law has the effect of safeguarding every person in his life, liberty,

reputation, livelihood and property and ensuring that he does not suffer any deprivation except in accordance with the accepted rules of procedure:”.

It should be noted that if the learned Provincial High Court Judge had gone through the written submissions of the Petitioner, he may have taken a different view.

*Anil Gooneratne J., opined in Perera Vs. Geekiyana [2007 (1) S.L.R 202],*

*“It is settled law that cause of justice cannot be thwarted by procedural technicalities. A party cannot be refused just relief mainly because of some mistake, negligence or inadvertence.”*

*“Attitude of the court should be to avail frivolous technicalities. Supreme Court is a Court of Law, which should not be trammelled by technical objections and that it is not an Academy of Law.”*

For the purpose of dispensing justice, it is my opinion that court should be discouraged from entertaining technical objections for the sake of it. Parties should be encouraged to seek justice by dealing with the merits of the case. The Court will have to exercise its discretion looking at the broad principles of justice and take judicial notice of a point, that is patent on the face of the proceedings and discourage mere technical objections.

Similarly, the learned Provincial High Court Judge had also dismissed the revision application *in limine* on the ground that a proper Petition had not been filed before Court as the Petition was submitted in English.

In respect of this, the attention of this Court was drawn by the Petitioner to gazette notification No. 1/78 dated 07.09.1978, according to which the then Minister of Justice with the concurrence of the Cabinet of Ministers has directed Courts to permit the use of English language for all purposes in relation to the records and proceedings of any Court in the country. The veracity of the said gazette notification has not been challenged by the Respondent.

However, I note down the following observations made by *Samarakoon C.J*, in *Coomaraswamy V. Shanmugaratna Iyar and Another (1979/1980) 1 SLR 324 at 325-326*,

*“By virtue of the powers vested in him by Article 24(4) of the Constitution, the Minister of Justice, acting with the concurrence of the Cabinet of Ministers, issued on 7<sup>th</sup> September 1978 a direction permitting **“the use of the English language for all purposes in or in relation to the records and proceedings in all Courts throughout Sri Lanka”**.*

*By a subsequent direction dated 7<sup>th</sup> May 1979, the Minister made an Order that the said direction of 7<sup>th</sup> September 1978, should be read subject to the following modification.*

*“I hereby direct that in any Court other than the Supreme Court and the Court of Appeal a language other than a National language may be used for any purpose in any case in which the conduct of proceedings in a National Language might be prejudicial to the proper adjudication of any such matter in such proceedings.*

*Provided, however, that the Pleadings, Applications, and Motions in all such cases shall also be in such National language as is used in such Court”.*

It is noteworthy that the Minister has not made the above gazettes applicable to the Provincial High Courts since such Courts were not in existence at the time. Neither has any subsequent Gazettes been issued regarding the same.

Furthermore, Article 24 of our Constitution provides for carrying out the proceedings in the language of the court as elucidated below;

*Article 24 (1) of the Constitution states, “Sinhala and Tamil shall be the languages of the Courts throughout Sri Lanka and Sinhala shall be used as the of the courts in all the areas of Sri Lanka except those in any area where Tamil is the language of administration. **The record and proceedings shall be in the language of the Court. In***

*the event of an appeal from any court records shall also be prepared in the language of the court hearing the appeal, if the language of such court is other than the language used by the court from which the appeal is preferred.*

*Provided that the Minister in charge of the subject of Justice may, with the concurrence of the Cabinet of Ministers direct that the record of any court shall also be maintained and the proceedings conducted in a language other than the language of the court.”*

It is the opinion of this Court that as the Provincial High Court acts in a similar capacity to the Court of Appeal in its exercise of Revisionary or Appellate Jurisdiction, the Provincial High Court can permit pleadings to be filed in the English language similar to the Court of Appeal. This is also a practice that has been adopted in the Commercial High Court which is also a Provincial High Court. Thus, it has become a part of our *cursus curae* to allow pleadings to be filed in English, if it causes no prejudice to the other Party. Furthermore, if the Court is of the opinion that allowing pleadings to be filed in English would prejudice the other party, it should direct the Parties to file a direct Sinhala or Tamil translation of the pleadings according to the legal maxim ‘*nunc pro tunc*’ (now for then) and not dismiss the application appeal *in limine*.

In view of the above, the language of the Court can be a language other than a National language since the Minister had not made the above gazette applicable to the Provincial High Courts, and neither has any subsequent gazettes been issued regarding the same.

### **Exceptional grounds**

The learned Provincial High Court Judge had held that there were no exceptional grounds to interfere with the Order of the learned Magistrate.

It was contended by the Respondent that the Petitioner had preferred an Appeal against the Order of the learned Magistrate [marked A2] before the Provincial High Court of Colombo and before the Court of Appeal which is not provided for in the Electricity Act. Accordingly,



as the learned Magistrate had made an Order on 24.06.2020 [A2] pursuant to the Application made by the Petitioner under item 9(1) of Schedule II of the Sri Lanka Electricity Act, No. 20 of 2009, there is no provision in the Act which allows for an Appeal.

As such, the Respondent submitted that the Magistrate's Order marked A2 cannot be impugned before the Court of Appeal against the Judgement of the learned Provincial High Court Judge of the Provincial High Court of the Western Province holden in Colombo; by citing the judgment *Janakerege Bandulasena and Others v Galla Kankanamage Chaminda Kushantha CA (PHC) 147/2009 [CAM 27.09.217]*.

It was emphasised by *Surasena J.*, in the above case that the right given to an aggrieved party to appeal to the Court of Appeal by operation of law against the Order of the learned Provincial High Court Judge exercising revisionary jurisdiction, in a case of this nature should not be taken as an Appeal in the true sense but in fact an Application to examine the correctness, legality or the propriety of the Order made by the High Court Judge in the exercise of its revisionary powers.

However, it is pertinent to note that in the instant case, the Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Colombo against the Order [marked A2] of the Magistrate due to the fact that the Right of Appeal had expressly been taken away by item 9(4) to the Schedule II of the Sri Lanka Electricity Act.

Furthermore, the Petitioner had preferred an Appeal bearing No. CA PHC 45/2011 challenging the Order of the learned Provincial High Court Judge of the Provincial High Court of Colombo in terms of Article 154P(6) of the Constitution. Therefore, it is not an Appeal in the true sense against the Judgment of the learned Magistrate, it is an Appeal from a revision application made to the Provincial High Court which is permitted by our law.

The said Appeal was accelerated on 12.12.2022 by this Court in case bearing no. Misc 3/2022 and Court made an Order to have both the said Appeal and the revision application together and to pronounce one Order/Judgment in respect of both matters.

In the case of *Jayasekarage Bandulasena and others V Galla Kankanamge Chaminda Kushantha and others (supra) Surasena J* has held that,

According to Section 364 of the Code of Criminal Procedure Act, as well as section 753 of the Civil Procedure Code, the Court exercising revisionary jurisdiction, can call for and examine the record of any case for the purpose of satisfying itself as to the legality or

propriety of any Order passed therein or as to the regularity of the proceedings of such Court. Thus, three aspects that a Court could consider in revisionary proceedings have been specified in both the above sections.

They are,

- i. legality of any Order,
- ii. propriety of any Order, and
- iii. regularity of the proceedings of such Court.

It is my opinion that, this is one of the rare cases where all three grounds for a revision application exist before this court.

As I have stated above, there is an irregularity of proceedings in the Provincial High Court as the learned Provincial High Court Judge has stated that there was a failure by the Petitioner to file written submissions when the Petitioner has evidently filed written submissions in the Provincial High Court Proceedings which have not been considered by the learned High Court Judge.

More importantly, the Court finds itself obliged to confront an indisputable legal quandary of substantial nature, namely the entitlement vested in a holder of a transmission license to enter into a premises by force under the Schedule II of the Electricity Act.

It was the contention of the Respondent that the Petitioner does not have any right to invoke the jurisdiction of the Magistrate Court of Nugegoda under item 9(1) of Schedule II of Sri Lanka Electricity Act No. 20 of 2009.

The said item 9(1) of Schedule 11 is reproduced below,

*'If, in an attempt to exercise any of the powers of entry conferred by this Schedule, the distribution licensee has made all reasonable efforts, otherwise than by the use of force, to obtain entry to the premises; and those efforts have been unsuccessful, it may apply, ex parte, to the Magistrate's Court having jurisdiction over the place where the premises are situated for an Order authorizing the licensee or an officer authorized by the licensee to enter the premises by force.'*

Therefore, the Respondent asserts that only a distribution licensee has the right to invoke the jurisdiction of the Magistrate's Court under item 9(1) of Schedule II to the Electricity Act No 20 of 2009.

According to the initial Examination report [marked R1], the Petitioner is engaged in constructing a 220 KV transmission line from Polpitiya grid to Pannipitiya grid, which goes over the Respondent's premises.

As such, the Respondent contended that as far as the said transmission line from Polpitiya to Pannipitiya is concerned the Petitioner is not a distribution licensee, but a transmission licensee.

The attention of this Court was drawn by the Respondent to the interpretation section of the Sri Lanka Electricity Act, section 61, regarding the relevant terms [Reproduced below]

Accordingly, term 'distribute' has been defined in the following manner,

*"distribute" in relation to electricity means distribute by means of a system which consists(wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system and the expressions "distribution" and 'distribution system' shall be construed accordingly;*

*"distribution licensee" means a person who has been granted a distribution licence.*

As such, a distribution licensee is a person who has been granted a license to distribute, electricity in the manner set out above.

Furthermore, according section 61 of the said Electricity Act defined the word 'transmit' to mean

*Transmit in relation to electricity means the transportation of electricity by means of a system, which consists (wholly or mainly) of high voltage lines and electrical plant used for conveying electricity from a generating station to a substation, from one generating station to another or one substation to another, and the expression 'transmission', 'transmission system' should be constructed accordingly.*

*"transmission licensee" means a person who has been granted a transmission license under the Act.*

Thus, the Respondent is of the view that the terms electricity 'distribution' and 'transmission; are completely two different matters and the Petitioner does not have a distribution license to place a high-volt transmission line from Polpitiya at No 287/A, Arawwala, Pannipitiya.

Contrary to this, the learned Counsel for the Petitioner has submitted that the transmission license holder is given a right under item 7 of Schedule II of the Act to enter into a premises as provided below,

7. (1) Any officer authorized by a distribution licensee, a generation licensee or a transmission licensee, as the case may be, may, subject to item 8, **enter any premises for the purpose of-**

**(a) placing a new electric line or new electrical plant in place of, or in addition to, any existing line or plant which has already been lawfully placed; or**

**(b) repairing or altering any such existing line or plant.**

.....

Moreover, the procedure to be followed in order to exercise the above right of the license holder given under item 8 Schedule II is as follows,

8. (1) An electrical inspector or a licensee (or officer of a licensee) authorized to enter upon any land or premises under this Act shall not demand to do so as of right unless-

**(a) three days' notice of the intended entry has been given by the electrical inspector or the licensee or officer of the licensee stating as fully and accurately as possible the nature and extent of the acts intended to be done;**

**(b) if required to do so, he or she has produced evidence of his or her authority;**

**(c) reasonable compensation is paid to the owner of the land or premises for any disturbance, disability or damage that may be caused pursuant to the entry.**

(2) Any notice referred to in subparagraph 1(a) shall-

**(a) where the land is occupied, be given to the occupier;**

**(b) where the land is not occupied, be given to the owner if his or her name and address are known or can with reasonable diligence be ascertained;**

**(c) where the land is not occupied and the name and address of the owner cannot with reasonable diligence be ascertained, be exhibited in some conspicuous position on the land; and**

**(d) where the land is used or reserved for any public purpose, be given to the officer or other person in charge of the execution of that purpose.**

(3) The electrical inspector or the licensee or person authorized by the licensee in writing on that behalf shall be entitled to enter the land, for the purpose of giving a notice referred to in subparagraph 1(a).

*(4) Where any person exercises any powers conferred by this item, the licensee by whom he or she was authorized in writing shall make good any damage done to the land as a result of such entry.*

*(5) Where in the exercise of any power conferred by or under this Act any damage is caused to any land or to any moveable property, any person interested in the land or moveable property may recover.*

It seems that the Petitioner had in fact followed the procedure set out in item 8 of Schedule II, and;

- has asked for permission from the Respondent [පෙ7];
- has obtained permission from the Divisional Secretary to cut and remove the trees obstructing the transmission lines;
- has agreed to provide reasonable compensation amounting to 6.8 million rupees;
- has obtained necessary way leave to draw the electrical line/conductor over the Respondent's land [පෙ, 8,9,10 and 11];

However, the Respondent has refused to allow the Petitioner to enter the premises even after all reasonable measures have been followed.

In the event of such refusal, legal redress for the same is provided for in item 9 of Schedule II. However, it seems that even though item 7 of Schedule II (as given above) allows all three license holders, (transmission license, generating license and distribution license holders) to enter into premises for placing a new electric line or new electrical plant or repair of the same, legal redress by way of an Application to the Magistrate's Court for forced entry is only expressly provided to the distribution licensee.

It seems to this Court when considering items 7,8 and 9 of Schedule II in line with the purpose of the licenses provided in the Act, failure to mention the other two license holders in item 9 is a grave omission by the Legal Draftsman.

The Petitioner has submitted to solve this omission, by interpreting items 7, 8 and 9 of Schedule II should in line with section 24(2) [reproduced below] of the Sri Lanka Electricity Act,

According to section 24,

*(1) A transmission licensee shall-*

*(a) develop and maintain an efficient, coordinated, reliable and economical transmission system;*

*(b) procure and sell electricity in bulk to distribution licensees so as to ensure a secure, reliable and economical supply of electricity to consumers; and*

*(c) ensure that there is sufficient capacity from generation plant to meet reasonable forecast demand for electricity.*

**(2) Sections 6, 25, 26, 27, 28, 29, 40, 41, 42, 54 and 56 and Schedules I, II and III to this Act shall mutatis mutandis, apply to bulk sales of electricity by a transmission licensee, as they apply to the supply of electricity by a distribution licensee.**

The term 'bulk sale' is defined in section 61 of the Act to mean,

*“bulk sales” in relation to the sale of electricity means the sale of electricity in bulk by the transmission licensee via its transmission system, to-*

*(i) distribution licensees; and*

*(ii) those consumers who are connected to the transmission licensee's transmission system and identified in the transmission licence;*

As such, it seems that the present endeavour by the Petitioner includes bulk sale of electricity [schedule I of A11(a)] and the Petitioners are governed by *bulk supply transmission guidelines* formulated by the PUCSL [A11(b)].

Therefore, the relevant sections given and items in schedules I, II and III *mutatis mutandis* applies to transmission licensees (including the Petitioner) as they apply to supply of electricity by a distribution licensee.

The term *mutatis mutandis* is defined in the Blacks' Law dictionary as, “*all necessary changes having been made; with necessary changes in points of detail*” in essence, with the necessary changes having been made or with consideration of the respective differences, similar terms apply with relevant changes being made in respect of the differences.

Therefore, this Court will now consider whether item 9 Schedule II is such a provision that should apply to transmission licensees with necessary changes being made. Necessary change in this case, would be to allow the transmission licensee the same right to invoke the jurisdiction of the Magistrate in an Application for forced entry.

As I have reiterated above, item 7 and 8 clearly provides transmission license holder the same right to entry as a distribution license holder, however, due to an omission in item 9, same legal redress is not permitted for a transmission license holder if item 9 is interpreted as a standalone provision. This would defeat purpose of item 7 and 8 of Schedule II as well as the ability of the transmission license holders to exercise their rights.

For example, if this was an instance where an electrical line has become faulty and requires repair, if the owners of a premises refuse to give permission to enter, an entire area would suffer a black-out and the transmission license holder would have no legal redress.

In the instant case, 218 electrical lines have now been built and conductors have been drawn and yet the project cannot be completed as the Respondent is refusing to allow entry to the Petitioner.

Therefore, it seems that the provisions applicable to distribution licensees as provided for in Section 24(2), specifically item 9 Schedule II *mutatis mutandis* apply to Transmission licensees. Therefore, the Transmission license holder *may apply, ex parte, to the Magistrate's Court having jurisdiction over the place where the premises is situated for an order authorizing the licensee or an officer authorized by the licensee to enter the premises by force.*

Moreover, it seems to me that a strict application of the literal rule of interpretation as implied by the Respondent would be manifestly unjust and it would cause injustice and lead to absurdity. Therefore, the golden rule of interpretation or the 'mischief rule' should be applied in this case, in line with the purpose and context of the Act.

In the case of *Luke v. Inland Revenue Commissions (1851) 11CB 378 at 391 Lord Reid held that,*

*"To apply the words literally is to defeat the obvious intention of the Legislature and to produce a wholly unreasonable result. To achieve the obvious intention and to produce a reasonable result we must do some violence to the words . . . The general principle is well settled. It is only when the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result, that the words of the enactment must prevail."*

In Maxwell, on The Interpretation of Statutes (12th Ed, at p.228), under the heading "Exceptional Construction" identifies the exceptions to the rule highlighted by Lord Morton, in *Magor and St Mellons Rural District Council v Newport Corporation (supra)* as he states:

*"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence" [emphasis added].*

*He further stated that,*

*"What is, then being discussed here are the instances in which the Court will depart from the literal rule. Such instances are, however, exceptional and it is impossible to lay down any categories of cases in which ordinary grammatical interpretation will inevitably be abandoned: the Courts are very reluctant to substitute words in a statute or to add words to it" (emphasis added).*

N.R. Bindra on Interpretation of Statutes (9th Ed) at p. 279, under the title of "Anomaly", states thus:

*"Although, it is one of the recognised cannons of interpretation of statutes that the words used in a statute should normally be given their plain ordinary meaning, if such a method of interpretation leads to manifest anomaly and is calculated to defeat the professed and declared intention of the Legislature, it is proper for the Courts to give a go-by to the rule mentioned above and to interpret the words used as to give effect to the intention of the Legislature. That could be done if necessary even by modification of the language used. The Legislators do not always deal with specific controversies which the Courts decide. They incorporate general purpose behind the statutory words and it is for the Court to decide a specific issue. If a given case is well within the general purpose of the legislation but not within the literal meaning of the statute, then the Court must strike the balance."*

....

*"It is equally the duty of the Court to accept a contention which promotes the object and for that purpose the Court can go beyond the language in order to give effect to the intention of the Legislature. The Court has to discharge the onerous duty of ascertaining the intention of the lawmaker which may be obscure due to errors in draftsmanship. Statutes must not be construed in a manner leading to absurd results defeating the legislative intent."*

In a recent case, ***Nandasena Gotabhaya Rajapakse vs. Director General Commission to Investigate Allegations of Bribery and Corruption C.A.(Revision)APN No. 29/2018 [CAM 12.09.2019]*** Achala Wengappuli, J. referring to the above scholarly opinions held that,

*"Thus, it is clear that there are exceptions even to the rule of interpretation that Courts should attribute literal meaning to a statute and not legislate by filling the gaps in Statutes, since the authorities and the learned text writers permit even to modify the meaning of the words and the structure of the sentence, to substitute words in a statute or to add words or to ignore certain words, in giving effect to the intended*



*meaning of the lawmaker, if and when the reading of distorted text in a statute leading to absurdity.”*

Therefore, the phrase ‘transmission licensee’ should be added to item 9 of Schedule II in order to give effect to the intention of the Parliament which is enshrined in section 24(2) and items 7 and 8 of Schedule II. The intention of the Parliament under the Act *inter alia* is to facilitate electricity transmission, generation, and distribution, which includes allowing a transmission license holder to enter into premises after obtaining necessary permissions in order to repair electricity lines and to place new electricity lines in order to carry out electricity transmission, distribution, and generation.

Furthermore, the concept of *ubi jus ibi remedium* (where there is a remedy, there is a right) would be defeated if this court refuses to recognise the Petitioner’s right to make an application in the Magistrate court to exercise the statutory powers given to a transmission license holder under the Sri Lankan Electricity Act.

The application of this maxim was explained in the celebrated case of *Sriyani Silva v Iddamalgoda (2003) 2 SLR 63* where it was held that,

*"If a statute which creates a right does not prescribe a remedy for the party aggrieved by the violation of such a right, a remedy will be implied and the party aggrieved may have relief, in an appropriate action founded upon the statute. The creation of a new duty or obligation or the prohibition of an act formerly lawful carries with it by implication a corresponding remedy to assure its observance."(Interpretation of Statutes, 7th edition, pp. 729-730)*

*This concept, viz., a right must have a remedy, is based on the principle which is accepted and recognized by the maxim ubi jus ibi remedium - "there is no right without a remedy". Thus, one cannot think of a right without a remedy as the right of a person and the remedy based on the said right would be reciprocal."*

It is the opinion of the court that, the maxim of *ubi jus ibi remedium* applies to legal rights given by statutes including to matters that are discussed in the instant case. Therefore, the Petitioner should be allowed to make an Application to exercise his statutory right to a competent Court, in this case the Magistrate’s Court.

In light of the above factual and legal considerations, I am of the view that the learned Provincial High Court has erred in law by failing to recognise the existence of exceptional circumstances to exercise its revisionary jurisdiction as explained above. Therefore, Order of the learned Provincial High Court Judge dated 06.08.2021 affirming the Order of the learned

Magistrate is set aside and as such the Order of the learned Magistrate dated 24.06.2020 is also set aside.

The courts hereby grant permission for the Petitioner to enter the Respondent's premises as provided for in item 7 read with item 9 Schedule II of the Electricity Act and the Petitioner shall pay reasonable compensation to the Respondent including for any damage done to the property.

Furthermore, as the Parties agreed to abide by the judgment in appeal bearing case No. CA CPA 0096/2021 to CA (PHC) 45/2021, both matters are hereby concluded and the judgment in this case shall apply to CA (PHC) 45/2021.

*Appeal allowed.*

**JUDGE OF THE COURT OF APPEAL**

**K.K.A.V. Swarnadhipathi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**