

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/011/2021

(Present: A.S. Dasappan)

Dated: 12th July 2021

Appellant : Sri. Sree Shyam. C.
S/o. Sreedharan,
Chattokandiyil House,
Customs Road, Vadakara,
Kozhikode Dist. - 673 103

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Vadakara, Kozhikode

ORDER**Background of the case:**

The appeal petition pertains to the erection of a new distribution transformer by the respondent under system improvement work, so as to improve the efficiency of the distribution system. As per appellant the erection of the transformer in the road side creates inconvenience and hinder the vehicle passage to the appellant's property and hence, requested the respondent to shift it to any other location. But as per respondent, the location selected for the installation of the transformer is technically feasible and not creating any inconvenience to the appellant. The subject case is now under the consideration of Additional District Magistrate. Since the respondent proceeded to erect the transformer, the appellant filed a petition before the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode. The Forum registered the petition vide OP No. 83/2020-21 and dismissed the petition vide order dated 13-01-2021. Aggrieved by the decision of the Forum, the appellant filed this appeal petition before this Authority on 18-02-2021.

Arguments of the appellant:

On 09-11-2020 the appellant found staff of the respondent checking and surveying in front of the appellant's plot where the appellant plans to construct a new house. Upon enquiry it is perceived that the respondent is planning to install a Transformer in front of the said property.

The appellant then and there informed the inconvenience ought to have incur to him owing to the installation of the said Transformer, very especially the possibility of the threat going to pose to his children. That apart it will cause obstruction to the vehicular movement to the said property. Though the appellant requested to shift the said installation to some other convenient and technically feasible place, the respondent turned a deaf ear to the situation.

It is apposite to underline that though there is sufficient and more convenient space to install the said transformer, the respondent is having an implacable attitude towards the said project.

The present scenario is that the respondent started preliminary works, thereupon the complaint preferred the OP No-83/2020-21 on the file of the Consumer Grievance Redressal Forum, Northern Region, Kozhikode.

The respondent contended that they proposed to install a 100 kVA transformer under Dhyuthi Scheme, the present transformer is at its optimum load, thereupon necessitated Transformer at the locality to provide quality power to consumers. The present place in front of the property of the appellant is technically feasible location. It is further contended that the identified site will not bring harm to the free movement of the public and enjoyment of the property by the nearby people.

Though the appellant narrated the inconvenience caused to him at length, the learned CGRF in an illegal, arbitrary, and biased manner, dismissed the petition, with finding that, the appellant does not have any real grievances on the installation of the transformer in public road.

The appellant wants to direct the respondent to drop the project of installation of the 100 kVA Transformer at Poovadan Gate area, in front of the property of the appellant situated in Re-Survey No. 91 /23 of the Vatakara Village to some other place convenient and technically feasible area.

By the erection of the transformer, the said plot ought to have become worthless, since it will hinder the vehicular passage to the said property, since no other road access is possible therein. It will affect the right to ingress and egress to the said property. That apart, it would be a real threat to his children, as well as the passengers, so far as the dimensions of the said public road wherein the proposed Transformer is to be installed.

More so, the appellant would not be getting permission in the said plot for residential permission reckoned upon the distance criteria between the Residence and Transformer, in the eventuality of the installation.

That apart, it is accentuated that the respondent did not avail the mandatory permission from the local body for installation of the Transformer, on that count atone the Order of the CGRF is liable to be set aside.

The respondent is totally kept silent regarding the factum that such an installation would be hinder the road access to the property of the appellant, instead submitted that it will not harm to the free movement of the public and enjoyment of the property by the nearby people.

From the statement of facts of the respondent it is perceived that, they have reckoned upon the existing LT Pole in the proposed area. The Forum ought to have perceived that the installation of the LT Pole and the Transformer is incomparable, so far as the grievance of the appellant is concerned.

But the Forum pronounced the order without considering the documents, very especially the photographs, which crystal clearly depicts the grievances of the appellant as well as other two alternative and more technically feasible location, which is just 130 and 150 metres away from the said location in issue.

Hence, it is prayed that this Ombudsman may be pleased to (i) set aside the Order dated 13-01-2021 on the file of the OP No.83/2020-21 on the file of the Consumer Grievance Redressal Forum, Northern Region, Kozhikode and it is

further prayed (ii) to direct the respondent to drop the project of installation of the 100 kVA Transformer at Poovadan Gate area, in front of the property of the appellant situated in Re-Survey No.91 /23 of the Vatakara Village to some other place convenient and technically feasible area.

It is further prayed to stay the entire installation of the 100 kVA Transformer at Poovadan Gate area, in front of the property of the appellant situated in Re-Survey No.91/23 of the Vatakara Village, till disposal of this appeal petition.

Arguments of the respondent:

The location mentioned in the aforementioned representation comes under the area of Electrical Section, Vatakara Beach. Kerala State Electricity Board Ltd started the work for installing a 100 kVA transformer under Dhyuthi Scheme at Poovadan Gate area with an intention to provide quality power to the consumers. Now the consumers in the above area are being fed from Avikkal Transformer which is going to reach to its maximum load. Considering the present load growth, a new transformer is essential at the locality. The place identified by Kerala State Electricity Board Ltd to install the above transformer is at the side of a public road and lies exactly at the load center. The above site identified for the installation of the above stated transformer situates well outside the compound wall of the nearby property and the same is the most technically feasible location. It is further submitted that no construction work is going on in the property mentioned in the petition. Erection of the transformer at the identified site will not bring any harm to the free movement of the public and enjoyment of the property by the nearby people.

The installation of the transformer would not be a hinder to the road access to the property of the appellant. It is reiterated that erection of the transformer at the proposed site will not bring any harm to the free movement and appellant and for the enjoyment of the property by him .

One LT pole is existing at the proposed area . That pole was erected at the road side with two stays at the appellant's property when the LT line crossing the property of the appellant was shifted under the deposit scheme. Now it is proposed to install the new transformer structure by replacing the above mentioned LT pole

with an HT pole and by erecting one new additional HT pole. The above LT stays can also be replaced with one “V” type HT stay for DP structure.

Electricity industry in our land is governed by “Acts” like, Electricity Act 2003 (Central Act 36 of 2003), The Indian Telegraph Act 1885 etc. As per section 164 of Electricity Act 2003, “the appropriate government may, by order in writing, for the placing of electric lines or electric plants, for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions if any, as the appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraphic authority possesses under that Act with respect to the placing of telegraph lines and posts for the purpose of a telegraph established or maintained by the government or to be so established or maintained.”

Section 10 of Indian Telegraph Act 1885 permits the telegraph authorities to place poles, stays to poles etc. in the property belongs to the private individuals and public authority for drawing electric lines. Section 10 of Indian Telegraph Act 1885, states that “the telegraph authority may, from time to time, place and maintain a telegraph line under, over along or across, and posts in or upon any immovable property.”

Sub Section (1) of Section 16 of the above referred Act says that, “if the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

Smt. Shymala Sreedharan, Chattokandiyil House, Customs Road, Vatakara has taken up the matter mentioned in the above representation with a petition before the Additional District Magistrate, Kozhikode, for consideration and the matter is now pending as File No. DCKKD/8724/2020 – D1 before the Hon'ble District Magistrate.

Hence it is prayed that this Authority may be pleased to accept the version submitted by this respondent and dismiss the representation.

Analysis and findings:

An online hearing was conducted at 11 AM on 14-04-2021 with prior intimation to both the appellant and the respondent. Sri. Susmit. K.T.D., Advocate attended for the appellant and Sri. Uthrasenan. P.V., Assistant Executive Engineer, Electrical Subdivision, Vatakara attended for the respondent. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The grievance of the appellant is that KSEB Ltd. is planning to install a transformer outside the boundary of the property and which will create inconvenience to the appellant for their free movement from the road to the property. Preliminary works for the installation of the transformer was started. The appellant requested to shift the proposed location to another place.

The respondent stated that the location for erecting the transformer fixed by them is technically feasible and will not create any inconvenience to the appellant. The proposed location is the side of a public road. The transformer installation is required to strengthen the distribution system in the said areas.

If the Distribution Licensee (KSEB Ltd.) requires new installation or the shifting of any electrical installation in the interest of safety and reliability of electric supply or in public interest or if somebody requests for shifting, KSEB Ltd. can initiate action but has to confirm that the parties likely to affect are informed or get their consent. So, the primary duty of KSEB Ltd. is to ensure that their action for new installation or the shifting of the installation does not attract objections or causes the minimum disputes from others, who are likely to be affected by the erection or the shifting of the installations.

The respondent stated that the subject case was taken up with the District Magistrate, Kozhikode. Here, the shifting of the transformer can be done by clearing objections from the property owners near to the proposed location and chances are there to file objections. As such, it is not proper to entertain the appeal petition.

Regulation 47 of Kerala Electricity Supply Code 2014 says,

47(1) Obtaining right of way for placing line and acquiring land for construction of substation in accordance with the rules issued by the Government of Kerala, shall be the responsibility of the licensee.

47(2) The licensee shall follow the rules issued by the Government of Kerala in accordance with Section 67 and Section 164 of the Act, in the case of obtaining right-of-way, paying compensation to the affected parties, clearing the objection to work involving private property crossing etc.

47(3) If the owner of the property to be crossed by the proposed line, objects to the carrying out of the work, action shall be taken by the licensee to clear the objection as per the rules issued by the Government of Kerala, as provided in Section 67 and Section 164 of the Act or any other law for the time being in force.

Regulation 95 (4) of Kerala Electricity Supply Code 2014 says,

95 (4) The application for shifting an electric line or electrical plant shall be granted only if:-

- (a) the proposed shifting is technically feasible; and
- (b) the owner of the land or his successor in interest gives consent in writing to shift the electric line or electrical plant to any other portion of his land or to any other land owned by him; or any alternate right of way along any public path way available for shifting the electric line and the electrical plant; and
- (c) the applicant shall remit the labour charges and material charges required for shifting the electric line or electric plant as estimated by the Licensee as per the cost data approved by the Commission from time to time in accordance with the Regulation 33 of the Kerala Electricity Supply Code 2014”.

As per Clause 22(d) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2005 provides that “Maintainability of the Complaint” (1) No representation to the Ombudsman shall lie:

- (a) unless the Complainant has made a written representation in the prescribed form, to the Forum;
- (b) unless the Complainant is aggrieved on account of his complaint being not redressed by the Forum within the period and manner specified in these Regulations;

- (c) unless the representation against an order of the Forum was made within the period specified in these Regulations and is not in respect of the same subject matter that has been settled by the Ombudsman in any previous proceedings;
- (d) in cases where a representation for the same grievance by the Complainant is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.

Decision: -

From the analysis done above and the conclusions arrived at, it is decided to reject the appeal petition filed by the appellant since the same subject is before the District Magistrate for a decision. The order of CGRF, Northern Region in OP No. 83/2020-21 dated 13-01-2021 is set aside.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/011/2021/_____ dated _____.

Delivered to:

1. Sri. Sree Shyam. C., S/o. Sreedharan, Chattokandiyil House, Customs Road, Vadakara, Kozhikode Dist. - 673 103
2. The Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Vadakara, Kozhikode

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode.