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**REVIEW PETITION No. R.P-001/2021**  
**IN APPEAL PETITION No: P-011/2021**  
**(Present: A.S. Dasappan)**  
**Dated: 15<sup>th</sup> November 2021**

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

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

### **ORDER**

#### **Background of the case:**

The gist of the appeal petition preferred by the appellant / review appellant before this Authority is as follows:

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. 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 review appellant filed an appeal

petition before this Authority and registered vide P-011/2021 and the same was disposed of by rejecting the appeal vide order dated 12-07-2021 since the same subject was before the District Magistrate for a decision. Still aggrieved by the decision, the review appellant has submitted the review petition with a plea to review the order and to allow the reliefs sought for.

**Arguments of the appellant:**

The Appeal Petition No. P-011/2021 filed by the review appellant was dismissed by the Ombudsman with finding that subject matter is having pending before the District Magistrate vide order dated 12-07-2021. The review appellant has withdrawn the Petition No. DCKKD/8724/2020-D1 submitted to the Additional District Magistrate, Kozhikode way back on 10-11-2020, before the date on which the review appellant preferred the said Appeal in issue.

The review appellant is an employee of L&T InfoTech, Bangalore. He is the co-owner of the property admeasuring 11 Ares, 14.6 square metre in the Resurvey No.91/23 of Vadakara Village. It is in the ownership and possession of the Review Appellant and his mother. Presently, review appellant and his family are residing in the old ancestral house in the said property. The only vacant plot in the said property is a portion admeasuring 5 cents situates in the north-eastern side. The review appellant has planned to construct a new house in the said property.

While so on 09-11-2020, the review appellant received about the respondent's plan to install a 100 kVA Transformer under Dhyuthi Scheme at Poovadam Gate area in front of the said plot. Immediately the appellant informed the inconvenience ought to have incurred to him owing to such installation, viz. possible of threat to life, obstruction to the vehicular movement and the proximate rejection of building permit in the said property. Accordingly, the review appellant requested to shift the said transformer to some other convenient and technically feasible place. How be it, the review respondent turned a deaf ear to the situation. Apposite to underline that there are more convenient and technically feasible place. How be it, the respondent is having an implacable attitude, without recourse to the mandatory provisions envisaged in the relevant statutes.

Review respondent has submitted counter statement contending inter-alia that the place identified for the installation is situated at the land centre, most technically feasible location, no construction work going on in the said plot, identified site will not bring harm to the free movement of the public and enjoyment of the property by the nearby people and installation will not hinder the road access to the said property. It is further contended that one LT pole is existing at the proposed area, now it is proposed to install the new transformer structure by replacing the above mentioned LT pole with an HT pole and by erecting new additional HT pole.

Now pending of Petition No. DCKKD/8724/2020-D1 on the file of the District Magistrate is not brought on the record, since the review appellant got no opportunity to file rejoinder after getting the statement of facts filed by the review respondent owing to his self-quarantine since he got primary contact with a Covid-19 patient. While installing the transformer, the review respondent ought to have eliminated or reduce the risk of present injury to any person or property in consonance with Section 53 (b) of The Electricity Act 2003.

While installing the transformer, the review respondent ought to have observed the letter and spirit of Section 67(2) of The Electricity Act 2003. Especially consent of the local authority in writing for carrying out the works, avoidance of public nuisance and damage to the private property.

Pursuant to Regulation 95 (4) of the Kerala Electricity Supply Code 2014, the review respondent can shift the said installation if the shifting is technically feasible. Apposite to note that such a shifting is technically feasible. More so, there are other alternative places to shift without causing any obstruction or inconvenience either to the public or private person or property. Pursuant to Section 16 of the Indian Telegraph Act, 1885 the District Magistrate has no authority to resolve the disputes so far as the property of the local bodies is concerned.

No other complaint or representation concerning the same grievance is pending in any other proceedings before any Court, Tribunal or Arbitrator or any other Authority or decree or award or final order has already passed by any such Court, Tribunal, Arbitrator or Authority.

The request of the review appellant is to allow the review petition.

**Arguments of the respondent:**

At Poovadan Gate under the area of Electrical Section, Vadakara Beach. Kerala State Electricity Board Ltd has initiated the work for installing a 100 KVA transformer under Dhyuthi Scheme with an intention to provide quality power to the consumers. 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 centre. The place decided for the installation of the afore stated transformer is the side of a public road and the said place is well outside the compound wall of the nearby property and the same is the convenient as well as the most technically feasible location. It is further submitted that 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. It has been decided to install a new transformer DP structure by replacing the above mentioned LT pole with an HT pole and by erecting one new additional HT pole adjacent to it. Construction of the DP structure is almost completed. The above stated LT stays can also be replaced with one " V " type HT stay for DP structure. 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. Installation of the transformer would not be a hinder to the road access to the property of the review appellant.

Neither the review appellant nor others have informed this respondent about the withdrawal of the petition filed by Smt. Shymala Sreedharan before the Additional District Magistrate, Kozhikode till the receipt of the above Review Petition from the State Electricity Ombudsman.

The place identified for the installation of transformer is at the side of a public road and it is the most technically feasible location, predominantly as it is the load center and the proposed site for the installation of the transformer situates well outside the compound wall of the nearby property and also that there are no construction work going on in the property mentioned in the petition. Erection of the transformer at the identified site will not bring any harm and impediment to the free movement of the public and enjoyment of the property by the nearby people. Installation of the transformer would not be a hinder to the road access to the property of the review appellant.

It is further submitted that provisions relating to safety and electric supply have been taken and utmost care has been observed for protecting the public from damages while doing the above mentioned work.

While doing the work for installing transformer, the respondent has observed the provisions in the Works of Licensees Rules made by the Appropriate Government as per the provisions of Section 67(2) of Electricity Act.

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.”

Hence, it is prayed that this State Electricity Ombudsman may be pleased to accept the statement submitted by this review respondent and dismiss the Review Petition.

**Analysis and findings:**

An online hearing was conducted at 2-30 PM on 06-11-2021 with prior intimation to both the review appellant and the review respondent. Adv. Smt. T.O. Deepa attended the hearing for the review appellant and Sri. Uthrasenan. P.V., Assistant Executive Engineer, Electrical Subdivision, Vadakara attended the hearing for the respondent. On examining the review petition, the arguments filed by the review 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 request of the review appellant in the appeal petition P-011/2021 was 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 review appellant situated in Re-Survey No.91/23 of the Vadakara Village and to shift the installation to some other convenient and technically feasible area. In the review petition also, the review appellant made the same requirements and requested as above in a different situation of having no petitions are with the District Magistrate pertains to the subject matter.

In the review petition, the main argument is that the installation of the transformer in the location selected by the respondent is inconvenience to the review appellant and will cause obstruction to the vehicular movement to the property. The review appellant wants to remove the installation from the location fixed by the respondent.

In the reply to the review petition RP-001/2021, the review respondent argued that the location fixed by them for erecting the transformer in the road

side is technically feasible and creating no inconvenience to the review appellant. Also, the identified location is the load centre for the efficient distribution of electric power. The version of the respondent in Appeal Petition P-011/2021 was as follows:

“Smt. Shymala Sreedharan, Challokandiyil House, Customs Road, Vadakara has taken up this matter, mention in the appeal petition, with a petition before the Additional District Magistrate, Kozhikode for consideration and the matter is now pending as File DCKKD/8724/2020-D1 before the Hon’ble District Magistrate.”

While considering the appeal petition by this Authority, the respondent revealed that the subject matter was before the District Magistrate, Kozhikkode District. But in the version of the respondent on the review petition, it is stated that the subject case was withdrawn by the petitioner. Also, the respondent revealed that neither the review appellant nor others had informed the respondent about the withdrawal of the petition filed by Smt. Syamala Sreedharan before the Additional District Magistrate, Kozhikode till the receipt of the above Review Petition RP-001/2021 for remarks from this Authority.

Since the subject case was under the consideration of the District Magistrate, Kozhikkode, the appeal petition P-011/2021 filed by the appellant was rejected by this Authority on 12-07-2021. Though the appeal petition was rejected, Regulation 47 (1), 47 (2) and 47 (3) of Kerala Electricity Supply Code 2014 was discussed in the said order.

Regulation 47 of Kerala Electricity Supply Code 2014 says,

Right of way for placing line, acquisition of land for substation and clearing objections to placing lines and plant :-

“(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.

(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.

(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.”

On analyzing the appeal petition and the review petition, it is understood the fact that there is a dispute in installing the transformer in the present location identified by the respondent. In the hearing, the respondent revealed that, if the transformer station is shifted to some other place, there will also be disputes from others and the present location is the load centre, so as to distribute electric power effectively.

In brief, the present location identified by the respondent for erecting a 100 kVA transformer for strengthening the distribution network is disputed by the review appellant and as per respondent another location may also be disputed by others. As such, it is more proper to decide the subject of installation of transformer by the appropriate Authority. This Authority is not empowered to settle the disputes in this subject and issue directions. The review appellant and respondent are free to approach the appropriate forum as per rules.

This Authority took decision in the Appeal Petition P-011/2021 with the available records and the facts revealed in the hearing conducted. In the hearing, the respondent revealed that the subject matter was before the District Magistrate and the review appellant did not deny the fact.

Following the hearing on 06-11-2021, the respondent filed a statement regarding the present state of the installation of the transformer mentioned in the petition, which is as follow:

Though the double pole structure for erecting the above stated transformer is almost completed, transformer has not been placed on the DP structure till date. A transformer has already been allocated for this work and which is to be erected. Due to the objection of the review appellant, HT stay for the DP structure has not been provided till date. Presently there is no impediments for the free



enjoyment of the property of the complainant due to the installation of Kerala State Electricity Board Ltd. Around 3 metres space is available after the DP structure for entering into the property of the review appellant from the public road. This space is enough for the free movement of vehicles including lorry.

**Decision: -**

In view of the above discussions, I hold that the review petition is not maintainable before this Authority.

The appellant is free to approach the appropriate Forum for remedy. The review petition is dismissed and disposed of accordingly.

**ELECTRICITY OMBUDSMAN**

R.P/001/2021/\_\_\_\_\_ 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.