

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/073/2021**(Present: A.S. Dasappan)****Dated: 21st January, 2022**

Appellant : Sri. Justin M.V.,
Mampampil House
Fathima Road,
Kottekkad, Kuttur P.O.,
Thrissur – 680013

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Viyyur, Thrissur Dist.

ORDER**Background of the case:**

The appellant is a consumer of Electrical Section, Viyyur with consumer number 1156805011619 under LT 1A tariff. The date of connection is 18-03-1997. The appellant requested the Licensee for the shifting of a “stay” to the electric pole from the property of the appellant and remitted Rs.18,972/- for the shifting work. After the completion of the shifting work, the appellant came to know about Consumer Grievance Redressal Forum (CGRF) and filed a petition for the refund of the amount remitted for the shifting of the stay. The CGRF, Central Region registered the petition vide OP No. 19/2021-22 and issued order on 10-09-2021 with a decision to dismiss the petition.

Aggrieved by the decision of the Forum, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

There was an 'electric post stay wire' installed in the appellant's property, which was not installed for any purpose/use related to the appellant and hence, requested KSEB, Viyyur for removal of the same. KSEB insisted that the appellant should bear the expenses. Hence, the appellant paid an amount of Rs.18,972/- on 20-03-2021 towards expenses for shifting and work was completed. Subsequently, upon coming to know about Consumer Grievance Redressal Forum, the appellant filed a petition before CGRF for reimbursement of the same and CGRF rejected the petition quoting a part of Regulation 95 of Kerala Electricity Supply Code, 2014.

The conclusions/findings in the Order of CGRF-CR are as given below;

"The stay in the initial position in the petitioner's compound was erected years back. No objection was seen raised by the petitioner against the erection of the stay at the time of installation or later."

There is no denial of the fact that the stay wire was installed years back. It may also be noted that the installation was made in the property for someone else's use and not for the appellant's use. It is crystal clear from the order of CGRF that neither permission was sought from the appellant's parents for them to raise any objection nor any 'Right of way' was obtained by KSEB. If so, the order should have mentioned that aspect.

"Again, the petitioner did not raise any objection and amount was found remitted without any protest."

How CGRF concluded that no objection was raised before making the payment is not mentioned in the order. All the explanations/discussions had in the subject of options for shifting of stay wire and payment of expenses were only oral communications apart from the request letter and application form submitted. The concerned KSEB officer was adamant that 'consumer' has to pay. The appellant had no solution but to pay and approach Hon'ble High Court in this connection. The appellant came to know about CGRF later only.

"Clause (c) of the Sub-Regulation (4) of Regulation 95, "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."

No thought was put in before rejecting appellant's petition because the order does not speak anything about how the various limbs of Regulation 95 apply in this case.

The title of Regulation 95 reads thus; "95. Procedure for shifting electric line or electrical plant of the licensee."	The appellant presumes that 'electrical stay wire' is treated as electrical plant.
Regulation 95(1) reads thus: "(1) The owner of the land or his successor in interest who has given right of way for the construction for genuine purposes."	The appellant had neither given any right of way nor it was obtained. KSEB simply encroached upon part of the property and the instalment was made not for the appellant's use but for someone else.

Shifting of electric line or electrical plant comes into picture only after it is installed. Regulations 37 and 47 deals with the procedure for installation.

Attention is invited to Regulation 37(1) at this juncture, which reads;

"37. Expenditure for service line, plant etc., for providing supply: (1) The consumer shall bear the expenditure for the service line or of the plant or of both, provided exclusively for him by the licensee."

It clearly speaks that the expenditure towards installation has to be borne by the consumer if provided exclusively for him. Similarly, it can easily be inferred that expenditure towards removal of installation has to be borne by the consumer, only if the installation was provided exclusively for him.

In this case, the 'stay wire' was installed by KSEB and expenditure for installation was borne by KSEB then, and the same was not installed for any use of the appellant but for someone else's use. Then, the expenditure towards removal of the abovementioned installation has to be borne by KSEB itself or to be borne by the beneficiaries of that installation. But the appellant was made a

scapegoat and made to bear the expenditure which clearly is denial of natural justice.

Regulation 47 is reproduced below;

"47. 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."

If KSEB takes a dubious stand that 'oral consent' would have been obtained at the time of installation, it will be nothing but a deliberate attempt to whitewash the improper/illegal activity of KSEB officials. Violation of natural justice cannot be justified simply by suggesting "would have been/should have been.." etc. KSEB records should speak or testify their claims.

Hence, it is requested that justice be rendered. An illegal/improper action will not become legal simply because of the fact that it was questioned years later and as such to take remedial action, the person who had already suffered should suffer again by paying for the expenditure arising thereafter. It is highlighted again that the stay wire was installed in the appellant's property not for any use related to the appellant. The appellant got electricity connection on 18-03-1997 as mentioned in the CGRF's-CR order. Stay wire was installed even long back. Hence, charging the appellant at Rs.18,972/- for the expenditure for

removal of equipments installed in the appellant's property for someone else's use, is not justifiable.

"It may add burden to the expenditure of KSEB which may in turn result in increase in tariff of electricity connection" should not be a reason to uphold an injustice/illegal/improper activity. It will act as a morale boost for KSEB officials to do any such illegal activities in the future. If KSEB is not ready to bear the expenditure for shifting of electric stay wire that was in appellant's property, KSEB should charge the beneficiaries of that electric stay wire. Since the appellant had no benefit/use of that electric stay wire and was not a beneficiary but victim, charging appellant for the expenditure is not correct.

The appellant requested to refund the amount charged, with interest and necessary compensation that deem fit.

Arguments of the respondent:

The appellant submitted a letter dated 16/02/2021 to the Assistant Engineer requesting to shift the LT stay alleged as installed at his premises without his permission. On inspection it was found that the stay in the existed position was erected long years back and the objection regarding the stay if any raised at this stage is not relevant and sustainable in law. This position was explained to the appellant and also informed about the conditions including the remittance of the estimate amount for shifting the stay as per the existing rules.

Accordingly, the appellant had submitted an application to remove the stay from his property on 20-03-2021. Based on his application the amount as per estimate prepared based on the cost data approved by the Hon'ble Commission for the proposed shifting was remitted by the party on the same day. The remitted amount of Rs.18,972/- includes the estimate amount of Rs.18,615/- and the application and processing fee as per the existing rules.

The proposed shifting work has to be executed by erecting a new cut pole with stay in the line for the purpose of removing the existing stay from the applicant's property.

The work as per the estimate carried out in time and after the removal of the stay, it is seen that the appellant extended his house to the position of the dismantled stay in the appellant's property.

The estimate was prepared in accordance with the provisions of the Supply code 2014, Regulation 95, which makes liable the applicant to remit the charges required for shifting the stay. As per the said Regulation, the applicant shall remit the labour charges and material charges required for shifting the electrical line or electrical 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.

Regulation 37 and 47 not coming under the application i.e, shifting of the stay from appellant's property.

The respondent acted only in accordance with law and there is no deficiency in service on the part of the respondent. There are no merits in the complaint raised by the appellant and is liable to be dismissed as such.

Analysis and findings:

An online hearing was conducted on 17-01-2022 with prior intimation to both the appellant and the respondent. Sri. Justin. M.V., the appellant attended the hearing and Sri. Ramesh. M.K., Assistant Executive Engineer, Electrical Subdivision, Viyyur from the respondent's side. 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 regarding the amount remitted for the shifting of a stay-wire, erected years back, from the property of the appellant for avoiding the inconvenience with stay-wire. The appellant requested the Assistant Engineer, Electrical Section, Viyyur on 16-02-2021 to shift the stay-wire from the property of the appellant. The respondent prepared an estimate for the shifting of the stay-wire from the property of the appellant and the

estimated amount was Rs.18,615/- along with the processing fees. The appellant remitted the amount on 20-03-2021 and the work was carried out by the Licensee. Later, the appellant filed a petition before Consumer Grievance Redressal Forum with a request to refund the amount remitted since the shifted stay-wire was installed in the property of the appellant without any permission. The Forum did not allow the request of the appellant.

The main argument of the appellant in this case is that the stay was erected in the property without any permission and hence, the appellant is not liable to remit the shifting charge. The expenditure for the shifting work had to be met by the Licensee.

According to the respondent, the appellant is liable to remit the amount as per Regulation 95 of Kerala Electricity Supply Code 2014. In the hearing conducted on 17-01-2022, the respondent revealed that shifting of the stay-wire from the property of the appellant led to some additional work in the existing Low Tension (LT) three-phase line for safety.

The respondent produced the estimate for the shifting of the stay. The material portion of the estimate is Rs.7,289/- and the balance is the labour portion with required tax. The respondent used an additional electric pole with stay and electric line fittings in the deviated route of the LT line to dismantle the stay-wire from the property of the appellant.

Regulation 37 of Kerala Electricity Supply Code 2014, reads about “the expenditure for service line, plant etc. for providing supply”. Regulation 47 of Kerala Electricity Supply Code 2014 reads about “Right of way for placing line acquisition of land for substation and clearing objection to placing line and plant.” The above Regulations dealt with the expenditure for providing supply and formation of electrical network. Regulation 95 speaks about “Procedure for shifting electric line or electrical plant of the licensee”:

Regulation 95

- (1) The owner of the land or his successor in interest who has given right of way for the construction of an existing electric line or electrical plant over, under, along, across, in or upon the said land, may apply for

shifting the electric line or electrical plant to any other portion of his land for genuine purposes.

- (2) The application for shifting the electric line or electrical plant shall be submitted in the local office of the licensee.
- (3) On receipt of the application the licensee shall inspect the site and assess the technical feasibility of the proposed shifting.
- (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.”

It is a fact that a “stay” to the electric pole situated in the road side had been erected in the appellant’s property earlier. Now the appellant requested to shift the ‘stay’ from the property of the appellant. But the Licensee could not find a technically feasible location to shift the stay, but only way was to dismantle the ‘stay’ and to provide some additional works for the safe standing of the electric pole, when the ‘stay’ is removed. As per Regulation 95 (4) of Kerala Electricity Supply Code 2014, the application for shifting an electric line or electrical plant shall be granted only if the proposed shifting or removing of stay is technically feasible and hence, the respondent prepared some alternate arrangements in the electric line to make it technically feasible. As such the appellant is liable to bear the expenditure for the additional works required.

In the hearing, it revealed that the appellant is satisfied with the removal of ‘stay’ from his property. Moreover, the electric pole for which the stay had

been provided is situated in the road side. In the version of the appellant, the service connection to the appellant was provided on 18-03-1997. The nature of work was not the shifting of stay from the property of the appellant to some other location in the same property, but was dismantling of the stay.

Decision: -

For the reasons detailed above, the Appeal Petition filed by the appellant stands dismissed as it is found having no merits. The order dated 10-09-2021 in OP No. 19/2021-22 of CGRF, Central Region is upheld.

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

ELECTRICITY OMBUDSMAN

P/073/2021/ _____ dated _____.

Delivered to:

1. Sri. Justin M.V., Mampampil House, Fathima Road, Kottekkad, Kuttur P.O., Thrissur – 680013
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Viyyur, Thrissur Dist.

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, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.