

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/048/2022**(Present: A. Chandrakumaran Nair)****Dated: 16th September, 2022**

Appellant : Sri. K.S. Rajeev, Advocate,
Thapovanam Sacks,
Kanakakunnu, Veliyam West P.O.,
Kottarakkara,
Kollam Dist. 691540

Respondent : Asst. Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Veliyam, Kollam Dist.

ORDER**Background of the case:**

The appellant is the owner of an organic farm in 4 acres of land and a consumer of the Licensee under Veliyam Electrical Section with consumer number 26991. The connection is an agricultural purpose. The appellant has remitted Rs.58,656/- as the cost of drawing the line including 4 electric posts. These posts are installed in his property. The line works have been executed in the expense of the appellant. The electric line was passing over the jackfruit saplings. On realizing the danger of this Over Head line, requested Assistant Engineer to shift the line. The lines were shifted to another pumphouse utilizing only one post. The three electric posts, which were installed became redundant. Appellant requested Licensee to hand over these posts or reimburse the cost to him and this is not agreed to.

The appellant approached the Consumer Grievance Redressal Forum (CGRF), Southern Region, Kottarakkara and the Forum ordered vide OP No. 01/2022 dated 24-05-2022 that the complaint is devoid of merits and disposed.

Aggrieved by the decision of the Forum, the appellant approached this Authority by filing the appeal petition.

Arguments of the appellant:

It so happened that the employees of the KSEB Ltd have installed the post of electric line in the absence of the appellant. Consequently, the overhead service line was negligently drawn over growing Jackfruits saplings which had already attained sufficient growth. The appellant who arrived the spot realizing the danger of drawing overhead line above the growing jackfruit trees, requested the Asst Engineer to shift the line but was turned down as the lines were already drawn.

Within a short span of time the Jackfruit trees came dangerously close to the overhead service line. To avert any danger there was no option for the appellant but to submit written request for shifting of the line before the KSEB Ltd.

The overhead service line was thereafter shifted to another pump house close to the public road for which only one electric post alone was used being the shortest route. Three electric posts therefore become redundant. Despite the request of the complainant to handover the excess electric posts to him, the employees of KSEBL appropriated the same.

The cost of 3 electric posts would come to Rs.36,000/- which was already realized from the appellant by the KSEBL. The overhead service line is not drawn through any public property nor it was used for giving electric connection to any persons other than the appellant. The overhead service line in question is drawn entirely through the property of the appellant and used solely for giving power connection to the appellant. It is therefore not part of any distribution system of the KSEBL after its dismantling. In terms of Sec 24 of Kerala Electricity Supply Code, 2014 the service line and its accessories shall be deemed to be the property of the Licensee so long as they are connected to the distribution system of the Licensee.

When the service line is not used for giving supply to another person as contemplated in clause 22 of KSEB Terms and Conditions of Supply, the KSEBL cannot claim any ownership right over the electric posts used exclusively for giving connection to the appellant realizing appropriate cost from him.

The appropriation of 3 electric posts has resulted in unlawful enrichment of KSEB and consequent loss to the appellant. The KSEBL can put the electric posts to use for at least 3 more decades at the expense of the appellant. The shifting of the service line was necessitated because of the negligent action on the part of the employees drawing the line' over the growing jackfruit trees.

The appellant who had suffered financial loss, mental agony and inconvenience due to the unfair trade practice and deficiency of service of KSEB has filed complaint, OP No: 1/2022 before the CGRF, Kottarakkara for realizing Rs.36,000/- with 18 interest from the date of dismantling from the KSEBL towards cost of 3 Electric posts appropriated. The appellant has also claimed Rs.10,000/- towards compensation for the mental agony, inconvenience etc suffered by the appellant.

The reasons stated by the CGRF for rejecting the complaint are unsustainable. The CGRF had considered only Regulations 95 and 96 of Kerala Electricity Supply Code 2004 and held that it is the duty of the Licensee to dismantle the redundant portion of the line and KSEBL had exercised that duty only and that since there is no provision in the Supply Code for giving refund or compensation to consumer for dismantling the unused line, the claim for compensation is devoid of merit. The CGRF has misdirected itself and arrived at a wrong conclusion relying on Regulation 95 and 96 and absence of provisions for payment of compensation.

The CGRF failed to note that the claim for compensation or refund of the cost paid for the 3 posts arose only in the context of the KSEBL had appropriated 3 electric posts for which the full cost was realized from the appellant. The case and grievance of the appellant before the CGRF was that the KSEBL ought not have appropriated the electric posts. The compensation/refund was claimed only in the context of illegal appropriation of electric posts by the KSEB. The CGRF failed to understand this position.

The CGRF failed to consider whether the appropriation of electric posts by the KSEBL is proper or legal under the provisions of the Supply Code as well as the KSEB Terms and Conditions of Supply. In the event it is found that the electric posts were appropriated illegally, the CGRF ought to have noted that it has every power under KSEB (CGRF & Electricity Ombudsman) Regulations, 2005 to order refund and compensation.

The CGRF even though quoted the contention of the complainant relying, on Regulation 24 of the Supply Code has failed to consider the import of the said regulation as well as clause 22 of KSEB Terms and Conditions of Supply 2005. The CGRF ought to have considered the above provisions and decided whether the appropriation of 3 electric posts by the KSEBL is proper or in accordance with the provisions of the Supply Code and the Conditions of Supply.

The CGRF ought to have noted that the service line and its connected equipment will remain as the property of the KSEBL as long it is connected to the distribution system of the KSEBL. In the case at hand, the service line was drawn through the property of the appellant for giving power connection to him alone. It is not connected to or part of the distribution system of KSEBL when the line was shifted dismantling the existing lines. None of the provisions of the Act, Supply Code or the Terms & Conditions of Supply permits the KSEBL to appropriate the electric posts installed in the private property of the appellant or the sole purpose of power connection to him alone on its dismantling.

The KSEBL has also realized further charges for dismantling the line and effecting shifting of the same. By appropriating the electric posts, the KSEBL had enriched itself unlawfully at the expense of the complainant. In such circumstances the appellant is legally entitled to compensation or in the alternative return of the electric posts taken from his plot.

The complainant is legally entitled to claim compensation from the KSEBL for the mental agony, inconvenience and expenses incurred for fighting his cause before me authorities under the Act.

The CGRF ought to have allowed the complaint granting refund and compensation as prayed for.

For these find other grounds to be urged at the time of hearing, it is requested to this Authority to set aside the order dated 24/05/2022 in OP.No: 1/2022 of CGRF, Kottarakkara and allow the relief sought for in the complaint before CGRF.

Arguments of the respondent:

Date of connection to Consumer No 26991 Veliyam Section is on 2.8.2018. Connection was in the name of KS Rajeev, Kanahakunn, Vetiyam West P O. Its Tariff LTV A, purpose agricultural

There were existing Single Phase Overhead LT line through path of property of the appellant from pole No VN 97 / 3 towards bottom pond pumphouse of his own.

Appellant has been submitted applications dated 24-08-2020 for shifting Meter from the bottom pond. In that application he wanted to shift the Energy Meter to farm house from bottom pond so that underground LT cable laying will be done by himself from the farm house through his own property to the pump at the bottom pond, so that danger OH line can be dismantled.

As per Supply Code 2014 Section 95 proceeding of service requests shifting done in Veliyam Electrical Section. After site inspection by Assistant Engineer/Revenue Wing Sub Engineer, prepared estimate for shifting the Energy Meter and to dismantle existing line 3 Span from pole No VLM/VN/97/4 and intimated the same to the appellant. He remitted the estimate amount with shifting charges of the Meter on 29.10.2021.

Since there is no other connection from the existing at the bottom pond this line is useless. So as per the Supply Code 2014 Section 96, the 0 H line removed for safety. Since the line is a capitalized one, material including three PSC poles taken back to the Electrical Section, Veliyam vide estimate. Since the line is capitalized, material is of K S E B Ltd., so the materials including electric poles has been taken back.

Three electric poles were dismantled for safety. Unlawful action done by this appellant by non-considering rule that trees not to plant just below electric line. The material is taken back material of K S E B Ltd. as per Regulation 24 (1) of the Kerala Electricity Supply Code 2014, Service Line, Meter and associated equipment deemed to be the property of the licensee and shall remain under his control so long as they are connected to the distribution system of the licensee.

So, the CGRF-South order in OP No 01/2022 that the action of the Licensee was as per the existing regulations of the Kerala Electricity Supply Code 2014, hence admissible and Petitioner's complaint is devoid of merits.

Analysis and findings:

The hearing of the case was conducted on 06-09-2022 at the Court room of Kerala State Electricity Regulatory Commission, Thiruvananthapuram Smt. Sheeba. A.S., Advocate attended the hearing on behalf of the appellant and Sri. S.M. Rafi, Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Veliyam from the respondent's side attended the hearing. 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 appellant has availed a service connection from the Licensee as an agricultural connection for his jackfruit farm. The service line has been extended to the pumphouse of the appellant by installing four electric posts and the cost of the same Rs.58,656/- has been remitted by the appellant. When the appellant found that the service line is drawn over the jackfruit saplings and on growth, there is dangerously touching the line, he requested the Licensee to shift the line to other side of his property where this type danger won't be there. The Licensee has executed the work of shifting the service line, then only one post was used and three posts were becoming surplus for which the appellant has been paid. The unused service line and posts were dismantled. The shifting work was completed on 30-10-2021 and Rs.5,525/- has been paid as the shifting charges.

The Section 2 (70) of Kerala Electricity Supply Code 2014 define the "Service Line" as "any electric supply line through which electricity is, or is intended to be, supplied:-

- (i) to a single consumer either from a distributing main or immediately from the premises of the distribution licensee; or
- (ii) to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main."

This line was provided for a single consumer in his own premises and hence, this line is to be treated as "Service line". Further, the appellant requested to shift the service line crossing his own property. Then for shifting the line as per the request of the consumer, the Section 94 of Kerala Electricity Supply Code 2014 is only applicable and not Section 95.

Section 94 of Kerala Electricity Supply Code 2014 define the "Procedure for shifting of meter or service line within the premises of the onsumer" as follow:

94 (1) The consumer shall apply for shifting the meter within the existing premises or for deviation of existing service lines within his property, in the format specified in Annexure - 10 to the Code.

94 (2) The licensee shall process the application in accordance with the provisions of the Code.

94 (3) For site inspection as well as issuance and payment of demand note for the estimated expenditure for works, both the licensee and applicant shall follow mutatis mutandis, the procedure and timelines as laid down in regulations 77 to 83 of the Code.

94 (4) The following time schedule shall be observed for completing the works from the date of payment of expenditure:-

Sl. No.	Purpose	Time Schedule
(i)	shifting of meter or weather proof service line or both	seven days
(ii)	shifting of LT service line	thirty days
(iii)	shifting of HT service line	Forty-five days
(iv)	shifting of transformer	thirty days.

94 (5) Excess payment if any, made by the consumer shall be adjusted by refund and deficit payment if any, shall be realised by way of an additional demand note.

This Section is very clear the procedure to be adopted for shifting the service line.

The Section 24 (1) of Kerala Electricity Supply Code 2014 states “The service line, meter and associated equipment deemed to be the property of the licensee:- The whole of service line, meter and other associated equipment shall be deemed to be the property of the licensee and shall remain under his control so long as they are connected to the distribution system of the licensee.”

As per this Section, the service line and posts are the property of Licensee till it is connected to the distribution Licensee. Here the line is disconnected. Then the Licensee has to dismantle the line to avoid electrical accidents as per Section 96 (4). Here nothing is spelt out about the dismantling of the service line, which is executed at the cost of the consumer.

Section 94 (3) of Kerala Electricity Supply Code 2014 states that the procedure and time lines as laid down in Regulation 77 to 83 of the Supply Code is also to be applied.

Section 83 (3) of Kerala Electricity Supply Code 2014 define the “Payment of expenditure as per demand note” as “On actual execution of the works, if it is found that certain items of works as provided in the demand note, are not required to give connection to the applicant, the expenditure for such items of works at the rates in the cost data approved by the Commission shall be refunded to the applicant by the licensee.”

The posts which became redundant were installed during 2018 and dismantled in 2021. These posts have a depreciated value, while the Licensee is totally taking under custody. The depreciated value would have been adjusted in the estimate prepared for shifting the service line and any excess was there, it would have been refunded to the appellant.

Though there is no Regulations about returning the assets to the consumer, which he has been paid while this becoming redundant, it is the natural justice the depreciated value is to be adjusted. The Licensee is taking back this asset to their books of account on the depreciated cost. The same posts could be reused elsewhere for the new connections and then again, the cost will be realised.

Decision: -

From the analysis done and the conclusions arrived at as detailed above, following decisions are hereby taken:

- (1) The depreciated cost of the posts are to be assessed and the estimate is to be revised as per Clause 83 (3) of Kerala Electricity Supply Code 2014 and the amount, if any, is there to be refunded to the appellant.
- (2) The order of CGRF, Southern Region, Kottarakkara in OP No. 01/2022 dated 24-05-2022 is set aside.

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

ELECTRICITY OMBUDSMAN

P/048/2022/ _____ dated _____.

Delivered to:

1. Sri. K.S. Rajeev, Advocate, Thapovanam Sacks, Kanakakunnu, Veliyam West P.O., Kottarakkara, Kollam Dist. 691540.
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Veliyam, Kollam 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, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.