

**THE STATE ELECTRICITY OMBUDSMAN**

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**APPEAL PETITION No. P/047/2022****(Present: A. Chandrakumaran Nair)****Dated: 16<sup>th</sup> September, 2022**

Appellant : Sri. T.K. Ayyappan,  
Thadathivila Veedu,  
Kunnathoor,  
Thuruthikara. P.O.,  
Kollam Dist. 690 540

Respondent : Asst. Executive Engineer,  
Electrical Sub Division, KSEB Ltd.,  
Ezhamkulam, Pathanamthitta Dist.

**ORDER****Background of the case:**

The appellant is a consumer of Licensee under Electrical Section, Kadampanadu. He had filed a complaint at Electrical Section to shift the stay from his property which was installed by the licensee without his consent. He has remitted the application and processing fee of Rs.1,180/-. The Licensee asked him to remit Rs.34,780/- for shifting the stay wire from the present position to another place of his property. He is complained that he is unable to bear the cost, which was placed without his consent. This stay wire is blocking the frontage of his property, which makes the property unusable. He is surviving with small pension amount and he is not able to meet the cost.

Appellant approached CGRF (SR) and CGRF ordered that the respondent has to execute by collecting only labour charges and the cost of the material, if any, is to be borne by the Licensee. The respondent had revised the estimate to Rs.27,577/- charging only the labour charges.

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

**Arguments of the appellant:**

The appellant's property will be shared to his children and the road frontage of the property is less than 10 m to each property. One share portion of property has been encroached about 4 m for installing a stay wire of the 11 kV line by the Licensee without appellant's consent/knowledge. As such out of 5 cents of one shared property, one cent land could not be used for his proposed construction of a dwelling house.

The appellant has approached the Electrical Section and Sub Division offices to shift the stay wire from the site proposed to build a house for which construction materials are stored through this way. However, the Licensee has demanded to remit an estimated amount of Rs.34,781/-. As the stay wire is unauthorizedly installed in the appellant's property, it is the responsibility of the Licensee to remove or shift the stay wire without any hindrance to the appellant at their risk and cost. As such the appellant approached the CGRF (Southern Region) to get a favourable decision to shift the stay wire without any financial involvement to him.

The Consumer Grievance Redressal Forum, Kerala Electricity Board heard both parties. Sticking to their stand, the respondent requested the Forum to direct the appellant to remit the estimated amount for removing the stay wire and also took a contention that it is not technically feasible to remove the stay completely from the property as requested by the appellant.

The Forum, while disposing the application vide order dated 16.05.2022 directed the respondent to execute the work of shifting the stay wire after collecting only the labour charges. The material cost is to be borne by the Licensee.

Since it is the duty of the Licensee to remove the stay wire and the appellant is surviving with a meagre pension is unable to bear the expenses is constrained to approach this Authority on the following:

1. The Licensee has laid the stay wire in the appellant's property without his consent, permission, and knowledge or without any notice to the appellant.

2. The Licensee ought to have at least informed the appellant regarding installation of stay wire in his property.

3. The Licensee has installed the stay wire in an irresponsible manner without application of mind causing heavy inconvenience, loss and damages to the appellant.

4. The Licensee is bound to pay proper compensation to the appellant for putting up the stay wire in his property.

5. It is the primary duty of the Licensee to ensure that least inconvenience is caused to the property owner while the installation is done. The same is stipulated in Sec 10(d) of Indian Telegraph Act.

6. The stay wire is placed by the Licensee in such a way that it blocked the frontage of the property, making the property unusable. Therefore, the appellant humbly seeks an order: -

- (i) Waiving the entire labour cost required for the shifting of the stay wire to another location.
- (ii) Directing the Licensee (KSEB) to immediately execute the said work at their risk and cost to the satisfaction of the appellant.
- (iii) Directing the Licensee to pay compensation for putting stay wire in the appellant's property.

**Arguments of the respondent:**

The appellant Sri. T.K. Ayyappan filed an application on 06.12.2021 for shifting the stay of an existing electric line placed in his property and remitted required application fee and processing charges.

In pursuant to the above application, a joint site inspection was conducted from Electrical Section, Kadampanad and feasibility for shifting the stay as requested by the appellant was explored. The stay is provided for the safety and stability of an existing 11 KV DP structure which supports the 11 KV line constructed along Nediyaavila-Cheekkalkadav road with a tap line to Kollara area for supplying electricity to a KWA pump house, one industry and another distribution transformer to provide electric supply for consumers in the locality.

The 11 kV HT line extends to Cheekkalkadav for feeding another five distribution transformers with HT interconnection facility between other two nearby Electrical Section area and to another line of Kadampanad Electrical Section. The DP structure also carries an AB switch for the tap line to Kollara. Since the stay essential for the safety and stability of the DP structure, it is not feasible to remove it. So, proposal for shifting the stay towards one side of the appellant's property was prepared which requires shifting one pole of the DP structure and allied works.

The estimate amount including the cost of additional materials required, labour involved in the work with other applicable charges and taxes was Rs.34,780/-. Site inspection was conducted from higher offices also to check the feasibility of rearrangement and for sanctioning the estimate. After obtaining administrative sanction from the Executive Engineer, Electrical Division, Adoor, the Assistant Engineer, Electrical Section, Kadampanad vide letter No.DB 54/21-22/Demand Notice/AE/KMPD/28.12.2021 intimated the appellant to remit the amount of Rs.34,780/-. As per Regulation 95 of the Kerala Electricity Supply Code, 2014 and its amendment of Kerala Electricity Supply (Amendment) Code, 2020 dated 22.01.2020, the appellant is liable to remit the labour charges and material charges required for the proposed shifting work.

Then the appellant approached the CGRF (South) with a petition vide OP No. 87/2021 seeking orders to remove the stay wire from his property at the risk and cost of the licensee.

The respondents submitted before the Forum that the stay was placed long years back for the safety of an 11 kV DP structure erected beside the PWD road and it is not technically feasible to remove the stay completely from the appellant's property as requested by him and could be relocated to another portion of his property by minimizing his inconvenience. It was also submitted before the Forum that the relocation of stay requires shifting one post of the existing DP structure from its existing place and the estimate was prepared accordingly.

The Forum disposed the petition vide its order dated 16.05.2022 and directed the respondents, "to execute the work of shifting the stay wire after collecting only the labour charges required for the proposed shifting". The forum

also directed that the "materials charges estimated for the work shall be borne by the licensee".

In order to proceed with the direction of CGRF, the respondent sought direction from Law section of KSEB Ltd. vide letter no. DB/AEE-Ezhamkulam/2021-22/CGRF OP 87/2021/127 dated 26.05.2022. As per decision of the Hon'ble Director (D&SCM) to comply with the order of CGRF (south) as a special case creating no precedent, KSEB Ltd vide its order "Corporate Office (Law) office order (DD&SCM) no. 816/2022 (LB1/4568/2022) dated Thiruvananthapuram 16.06.2022" directed the respondent to comply with the order of CGRF (south). In pursuant to the above direction of KSEB Ltd to comply with the order of CGRF, the undersigned, vide letter no. DB/AEE-Ezhamkulam/ 2021-22/CGRF OP 87/2021/187 dated 23.06.2022 informed the appellant about the amount to be remitted for the proposed shifting as Rs.27,577/- which is excluding the cost of materials in the original estimate. In this letter it was also informed that the receipt of this amount and the execution of the work could be carried out only as per the decision in his representation P 047/2022 filed before this Authority.

The DP structure is a part of an HT/LT line constructed long years back (around 25 years back) for providing electricity to nearby areas. For the safety and stability of the DP structure, the stay is inevitable and is one erected at the time of installation of the electric line and the appellant had not objected the same till he demanded for removing the same vide his application to the Assistant Engineer. So, the argument that KSB Ltd has laid the stay wire in the appellant's property without his consent, permission and knowledge or without any notice to the appellant is baseless.

As per section 16 of The Indian Telegraph Act, 1885 read with section 164 of Electricity Act 2003, the Hon'ble District Magistrate is the authority to take decision in any dispute if any from the appellant for continuing the stay in his property, which was placed long years back for the supply of electricity in the area. In the application dated 30.11.2021 to the Assistant Engineer and in the petition OP No. 87/2021 filed before CGRF, the appellant stated that on partitioning the property to his son and daughter. the existing stay will create inconvenience. In the representation before this Authority also, the appellant repeated the same and

specified that the inconvenience will be to the northern portion after partition. From these statements it is evident that the disputed stay which was placed for a line constructed more than 25 years back was not creating any inconvenience to the property owner till date. Now the appellant claims that the stay will create inconvenience after his proposed partition. On receiving application from the appellant requesting to minimize such inconvenience, the respondents explored its feasibility and estimated the cost as per the approved rates and as per prevailing rules and regulations, for a feasible rearrangement of the existing stay.

As per Regulation 95 of Kerala Electricity Supply Code 2014 and its amendment The Kerala Electricity Supply (Amendment) Code, 2020 dated 22.01.2020, the applicant is liable to remit the labour charges and material charges required for the proposed feasible rearrangement.

As per the records in the billing software of the water authority pumping station (consumer no.1146136010685) connected to a transformer installed in this line, the date of availing the electric connection is 10.06.1996 and this reveals that the line was constructed during this period. This is in contradiction to the appellant's argument that the stay was installed during 2020.

The materials included in Part A of detailed estimate are required for carrying out the work and the rates are as per the rates in the prevailing cost data of distribution works approved by the Kerala State Electricity Regulatory Commission for KSEB Ltd vide order dated 27.04.2018 in OA No.17 of 2017. The labour charges for the work is as per the prevailing uniform labour data 2018 based on CPWD rates 2016 approved vide order Corporate Office (SBU-D) BO(FTD) No. 1189/2018 (D(D&IT)/D6-AE3/ULD/2018 dated Tvpm 07.05.2018 which is applicable to all distribution works of KSEB Ltd.

From the facts stated above and in pursuant to the order of CGRF in OP No. 87/2021 and the direction from KSB Ltd to comply with the order, the appellant is liable to pay Rs 27,577.00 towards the labour charges with applicable supervision charges and taxes for carrying out the proposed shifting work.

It is requested to dismiss the appeal and direct the appellant to remit the charges for carrying out the proposed shifting.

**Response to the Statement of Fact:**

The stay wire placed in appellant's property blocked the frontage of the property, making the property unusable. The KSE Board has failed to ensure that least inconvenience is caused to the property owner while installation is done. This is in violation of Section 10(d) of Indian Telegraph Act. Therefore, the appellant is not liable to remit charges sought for.

The argument that the stay wire was placed in the appellant's property 25 years back is wrong. The appellant constructed a building in his property during 2016, pursuant to permit No. A4-2669/16 dated 29/04/2016 issued by Kunnathoor Grama Panchayat which is produced herewith as Annexure A1. At that time, there was no stay wire placed in the appellant's property and the appellant could transport the building material comfortably. Now it is not possible to do so. Thereby it is clear that the stay wire has been placed in the appellant's property only after December, 2016.

The amount, Rs.27,577/- fixed as labour charges is highly exorbitant. It is reliably learnt that the respondent is intending to execute the work by engaging a private contractor. This will result in doubling in cost and also payment of 10% supervision charges and 18% GST. This is evident from letter No. DB/AEE-Ezhamkulam/2022-23/CGRF OP 87/2021/187 dated 23/06/2022 of the respondent. KSE Board could execute the said work directly and thereby reduce the expenditure by more than 60%.

The argument of the respondent that the stay wire in question was laid 25 years back is wrong. In fact, the stay wire was installed only after December 2016, i.e., after the construction work in the appellant's property pursuant to Annexure A1 was over. The installation of stay wire went unnoticed as the appellant was away from the place for a long period due to his personal inconvenience and medical treatment at Thiruvananthapuram.

The stay wire was installed in the appellant's property without his consent, permission and knowledge or without any notice as mandated by law. Therefore the respondent has no right to ask the appellant to bear the labour charges or any other expense.

As averred earlier, it is reliably learnt that the respondent is going to entrust the work to a private contractor instead of executing it directly. It is pertinent to

note that, if the work is executed directly by the KSE Board, one half of the cost could be saved. Besides, 10% for supervision and 18% GST could also be avoided, reducing the cost by more than 60% also.

**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. The appellant Sri. T.K. Ayyappan attended the hearing and Sri. Omanakuttan. S., Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Ezhamkulam 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 Licensee has installed a DP structure for the 11 kV line in the road in front of the property of the appellant to trench out two outgoing feeders from an incoming feeder. Then the stay was necessitated and the stay has been installed in the property of the appellant. The DP structure and stay has been an obstruction for the effective usage of the said land property. The respondent states that 11 kV line was drawn during 1996 and the stay wire also would have erected at the same time. The appellant produced copy of the building permit issued by Kunnathoor Grama Panchayat vide No. A4/2669/16 dated 29-04-2016 to construct a commercial building of area 64.06 Sq. m. The appellant also states that while constructing this house, this DP structure and stay wire was not there and materials of construction were stocked in this area only. Then this would have been erected after 2019 only and that is also without the consent of the appellant. The respondent could not produce any document to show that the year at which this was erected and also copy of the consent of the appellant. Then this is an unauthorized entry into the property of the appellant.

Regulation 164 of Indian Electricity Act 2003, states about exercising of powers of Telegraph Authority in certain cases by the Licensee " The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant 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 telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”

Section 10 (d) of Indian Telegraph Act 1885, states “in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.”

The owner of the property is eligible for the full compensation for any damages sustained by them on exercising this power.

Section 16 of Indian Telegraph Act 1885, states about “Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority” as follow:

Section 16 (1) 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.

Section 16 (3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

These Sections of Indian Telegraph Act is very clear to the power of District Magistrate in exercising this provision.

In this case in hand, the appellant has not given consent, no compensation was paid to him and the Section 16 (1) & 16 (3) are also not been applied. Then this is to be treated as unauthorized installation in a private property.

In this case, appellant is again agreed to keep the stay in his property and only requirement is that the stay is to be shifted to one corner of his property,

considering the HT line is for a public purpose. This is to be appreciated. This shifting of the stay wire to one corner is technically feasible by shifting one pole of the DP structure to other side, which has been agreed by the respondent and the estimate has been prepared accordingly. Respondent states that Section 95 of Kerala Electricity Supply Code 2014 is applicable. Section 95 details about the procedure for shifting electric line or electrical plant of the licensee in which Section 95 (1) states “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.”

This is clearly saying that the owner of the land or his successor (in interest), who has given right of way for the construction of one existing electric line. As the owner was not given the consent or Licensee is not able to produce any document showing the consent, this Section is not applicable to this case.

Though the existing stay wire of the DP structure has been erected without consent / unauthorized way, the owner is agreeing to shift the stay wire to one side of his property, but unable to meet the cost.

Considering the facts, the Section 10(d) of Indian Telegraph Act is not complied and Section 16 (1) & (3) of Indian Telegraph Act also not complied. Section 95 of Kerala Electricity Supply Code 2014 is also not applicable.

It is very important to note that the line is to be maintained and the same is used for feeding power supply to lot of consumers. Repositioning of the DP structure by shifting one pole to the other side and hence, the stay wire also to the side of the property is the only feasibility. The appellant agrees for shifting the stay wire to the side of his property, which is to be treated as the deemed consent.

**Decision: -**

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

- (1) The Licensee has to reposition the DP structure by shifting one of the pole to the other side and then shift the stay wire to the side of property with least disturbance to the appellant with immediate effect.
- (2) The appellant is liable to pay Rs.8,000/- to the Licensee as part of the labour cost for this shifting work.
- (3) The appellant has to give permission to shift the stay wire to the side of his property or it will be treated as deemed to be consent for the stay wire erection.
- (4) The order of CGRF, Southern Region, Kottarakkara in OP No. 87/2021 dated 23/06/2022 is modified to this extent.

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

**ELECTRICITY OMBUDSMAN**

P/047/2022/\_\_\_\_\_ dated \_\_\_\_\_.

Delivered to:

1. Sri. T.K. Ayyappan, Thadathivila Veedu, Kunnathoor, Thuruthikara. P.O., Kollam Dist. 690 540
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Ezhamkulam, Pathanamthitta 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.