

## **THE STATE ELECTRICITY OMBUDSMAN**

D.H. Road & Foreshore Road Junction, Near Gandhi Square,  
Ernakulam, Kerala-682 016

Ph: 0484 2346488, Mob: 8714356488

[www.keralaeo.org](http://www.keralaeo.org) Email: ombudsman.electricity@gmail.

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### **APPEAL PETITION No. P/067/2022**

**(Present: A. Chandrakumaran Nair)**

**Dated: 24<sup>th</sup> November, 2022**

Appellant : Sri. Sulaiman Kanakkassery,  
Kanakkassery House,  
Kuttippuram,  
Tirur, Pazhur. P.O.,  
Malappuram Dist. 679571

Respondent : Assistant Executive Engineer,  
Electrical Sub Division, KSEB Ltd.,  
Valancherry, Malappuram Dist.

### **ORDER**

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

The appellant is owing a paddy field measuring 29½ cent. This is under the jurisdiction of Electrical Section, Kuttippuram. There existed a three-phase LT overhead line for the last 25 years, which is for providing power supply to some part of Kuttippuram village. The line was so sagging that the farmers are not able to move their farming machinery underneath the line. Based on the complaints of the farmers, the Licensee inserted one post between the CK 25/7 and CK 25/8 posts to tighten the line and also to have sufficient clearance. The new post is in the middle of appellant's field, which is creating obstruction for his farming activities such as moving of machinery etc. He approached the ADM and ADM ordered that the post is not creating any obstruction. So, this is not to be shifted. The appellant approached the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode and CGRF (NR) order state that they agree with the order issued by the ADM, Malappuram.

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

**Arguments of the appellant:**

The appellant was working abroad and settled in the native place and later purchased 29 cents paddy field for farming to earn his livelihood. There existed a three-phase LT overhead line for the last 25 years, which is for providing power supply to some parts of Kuttippuram village. The LT, 3-phase 4-wire line was crossing the property of the appellant and the same was existing for a long period. The Licensee has inserted one additional post in between the existing post which was in the middle of appellant's paddy field without his consent. The new post is creating obstruction for his farming activities, mainly moving of machinery. Complaint was given to the Section Office, Kuttippuram and other various KSEBL offices, but no action has been taken in favour of the appellant. The appellant approached the ADM and ADM ordered in the Adalat against his requirement. Later, approached CGRF to redress his grievance, but the CGRF agreed with the order of ADM by dismissing appellant's petition.

KSEBL informed the appellant that the said shifting shall be carried out upon remitting the shifting charge. Since the KSEBL erected the post without the consent of the appellant, it was requested to this Authority to take necessary action to shift the post by KSEBL incurring the expenses by themselves.

**Arguments of the respondent:**

The appellant Sri. Sulaiman's premises are under the jurisdiction of Electrical Section, Kuttippuram. The premises is a paddy field having no service connection. Over the said paddy field there existed three-phase four-line LT overhead line for the past 25 years meant for feeding electric supply to the Kolathol area in Kuttippuram Village under the jurisdiction of Electrical Section Kuttippuram.

The farmers of the area filed complaints before the Assistant Engineer, Electrical Section Kuttippuram that they could not drive tractor into their paddy field for ploughing due to the very low ground clearance of the sagged LT line in between the Pole Nos. CK 25/7 and CK 25/8. Among these poles, one is locating

at the Southern boundary of the appellant's land and another is 10m North of the appellant's property.

Upon inspection, it was identified that the OH line span length between these poles were more than 55 meters whereas standard span length would be 35m. Seeing the safety aspect concerned, a new LT pole was inserted in between the poles and heightened the lowered line, subsequently solved the complaint of the native farmers. While inserting the pole, it was ensured the same could not be obstructed the cultivation of the appellant's farming in the same land by not altering the alignment.

The said LT pole insertion work was carried out under maintenance work of Electrical Section, Kuttippuram on 30.04.2020. The appellant then emailed his contention to CGRF(N), Kozhikode complaining against the action of the Section Office authorities. The appellant was heard upon the same while receiving the email from CGRF(N), subsequently inspected the premises. It was understood that the shifting of the pole required consent from nearby land owners. So, it was informed the appellant that the said shifting shall be carried out upon remitting the shifting charge (Work Deposit) with consent of the nearby land owners as it requires new stay insertion in their properties.

Instead of complying the same, the appellant approached Hon'ble ADM, Malappuram. After hearing and verifying the records, the Hon'ble ADM, Malappuram dismissed the petition vide order No. DCMPM/4005/2022-E3 dated 01.06.2022.

Subsequently, the appellant filed petition before CGRF(N) as vide OP No. 121/2021-22 on the same subject. The details were also submitted before CGRF(N). After hearing the same, CGRF(N) ratified the ADM's order and ordered accordingly on 20.07.2022,

The said OH line in between the poles Nos CK 25/7 and 25/8 is crossing the field of the appellant for the past 25 years. Due to unsafety standard of the sagged Live LT line in between the poles, upon resolving the complaints of the native farmers and by considering the safety aspects, it was inserted a pole in between the poles without altering the existing alignment. The work was purely carried out under the maintenance work head using Board's own fund.

Seeing the contention of the appellant, it was sought other ways to resolve the issue by looking a possibility of shifting the said inserted pole to the boarder of the appellant's property by changing the present alignment. It requires consent from the nearby plot owners for inserting new stays. The appellant was then informed the fact and asked to remit the shifting charge after obtaining the consent from nearby land owners. But the appellant did not submit shifting line/post application with relevant required data yet at Electrical Section, Kuttippuram. If and when, he completed the same, no other issue on shifting the line as requested by the appellant. The entire action of the licensee is for keeping safety assurance, for that no other way to rise the vertical height of the sagged line without altering the alignment.

Regarding the contentions, each and every petitions of the appellant were heard in time and informed him accordingly.

The facts stated herein are true and the respondent requested for favourable consideration and relevant order.

**Counter Arguments of appellant against statement of Respondent:**

Appellant emphasized that KSEBL has not maintained the primary formality of informing the owner of the property where the construction activity is being done for their convenience. If it was done on urgent safety requirement, the construction activities taken place should have been informed even after completion. As such, KSEBL action is unlawful and encroachment to the personal properties.

KSEBL detailing that span length between these poles were more than 55 meters since last 25 years, so that the post was inserted in the middle of the property. So, the appellant questioned that why the safety problem is now cropped up even after 23 years. However, now also the posts span length is remaining 45 M and 50 M. Hence, the appellant argued that the problem is not with the span length of the posts whereas the boundary of the property, which causes obstruction to the agriculture.

The appellant pointed out the double standard attitude of the KSEBL authorities that the respondent's apprehension of shifting the post will cause safety

problems, but, if the appellant bears the cost of shifting expenses, there may not be any safety issues. Besides, the consent of other property owners' is required to shift the post, but no consent was taken from the appellant when the post was erected in the appellant's property.

Respondents' argument that the post was erected based on the complaints from the local agriculturists is not correct. Because, there is no way out from the appellant's plot and if any difficulties occurred, the appellant can only complaint for the difficulties in tractor movement.

Firstly, the appellant filed petition in the CGRF (NR), but the decision was getting delayed. Then filed petition with the ADM, but the petition's merit was not considered by ADM diligently and dismissed the petition. On the basis of the ADM's decision, CGRF (NR) taken the same action.

KSEBL's demand for bearing the expenses for removing the post constructed in the appellant's property without his knowledge and consent is against appellant's rights. Nobody is opposing in removal of post from the middle of the appellant's property. Hence, the appellant requested to this Authority to take necessary action for shifting the post from the appellant's property.

**Analysis and findings:**

The hearing was conducted on 16-11-2022 in the office of the State Electricity Ombudsman, D.H. & Foreshore Road, Ernakulam South. The appellant Sri. Sulaiman Kanakkasserri was attended the hearing and on the respondent side, Sri. Shaju. K., Assistant Executive Engineer, Electrical Sub Division, Valancherry of Licensee was 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 LT, 3-phase 4-wire line was crossing the property of the appellant and the same was existing for a long period. The appellant was working abroad and settled in the native place and purchased this land for farming to earn his livelihood. The clearance between the line and ground was very low and hence, the

Licensee has taken action to raise the line to have sufficient ground clearance. The Licensee has inserted one additional post in between the existing post which was in the middle of appellant's paddy field. This is an obstruction for the movement of farming machinery like tractors, harvesting machineries etc. and hence, the farming activities. They approached the Licensee to shift the line but nothing happened.

The appellant approached ADM for a decision. The ADM issued an order as per the Section 17 (2) of the Indian Telegraph Act 1885 by dismissing the petition for shifting the line. The CGRF (NR) in their order dated 20-07-2022 had agreed with the order of ADM.

The Section 163 of Indian Electricity Act 2003 ensuing the power of Licensee to enter any premises or land under, over, along, across in or upon which the electric supply lines for the purpose of inspecting, testing, repairing, or altering the electric supply lines under intimation to the occupier. Here appellant states that he was not informed about the placement of post.

The Section 164 Indian Electricity Act 2003 states about the applicability of Indian Telegraph Act 1885.

The Section 17(1), 17 (2) & 17 (3) of Indian Telegraph Act 1885 states the authority of District Magistrate to take decision on such matters.

Section 17 (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

Section 17 (2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

Section 17 (3) A District Magistrate receiving an application under subsection (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.

These Sections are very clear and state that the decision of District Magistrate is final. As the final decision is taken by the competent authority, Ombudsman would not like to have any view on this decision. Appellant has to seek other legal remedies. However, if the appellant and respondent could arrive an amicable solution, this could be implemented on mutual agreement.

**Decision: -**

From the analysis of the arguments and the hearing, it is decided to dismiss the appeal petition filed by the appellant.

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

**ELECTRICITY OMBUDSMAN**

P/067/2022/\_\_\_\_\_ dated \_\_\_\_\_.

Delivered to:

1. Sri. Sulaiman Kanakkassery, Kanakkassery House, Kuttippuram, Tirur, Pazhur. P.O., Malappuram Dist. 679571
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Valancherry, Malappuram 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, Gandhi Road, Kozhikode