

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/016/2023
(Present A. Chandrakumaran Nair)
Dated: May-26-2023

Appellant : Shri. M.A. Jose
Myladiyil House
Kozhuvinal P.O.,
Kottayam (Dist.)

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSEB Ltd.,
Pala, Kottayam

ORDER

Background of the case

The appellant Shri. M. A Jose is a consumer of the licensee (KSEB) under Paika electrical section with consumer no. 1156268000317 under LT 1A tariff. The service line for his connection is drawn through his property. Some trees grown and were touching the service line. These touching were removed by the KSEB. The branches of the rubber trees which were planted 6 feet away from the line and 6-year-old were removed and the trees were damaged. When the officials of the licensee have attended the replacement of the broken service line, they again damaged Cacao tree which were grown about 4 feet calculating the yield of the trees which were damaged, the appellant is to be compensated by the licensee and the claim made is Rs. 60,000/-. KSEB has rejected their claim stating that KSEB is not having the provision of paying the compensation for the removal of touching. The appellant filed petition to CGRF, and CGRF ordered that the CGRF is not competent to award compensation as demanded by the petitioner. Aggrieved by the decision of CGRF, the appellant filed this appeal petition to the authority.

Arguments of the Appellant

1. Appellant is a senior citizen and small-scale farmer, 317 th number consumer of Pala KSEB Paika section. A complaint (PLP6/22) has been filed by me on 29/10/2020 with AE of Paika Section, Executive Engineer, Electrical Division Pala, and Electrical Minister. Petition filed before the Pala Taluk Legal Committee Chairman, with Sreeja Vattakunnel Contractor and AE Paika Section as opposite parties in the month of February 22. Further proceedings had to be terminated as KSEB was told that there was no law to compensate the complainant.
2. He had given a complaint to Assistant Engineer, Electrical Section Paika on 29-10-2020, that a 6-year-old rubber tree of RR11.414 type standing at a distance of 6 feet from the electrical line to my house was pulled and destroyed by the workmen of KSEB contractor Sreeja N Vattakunnel Vattakulam PO as part of touching clearance. But no action was taken and then gave a complaint to KSEB Executive Engineer Electrical Division Pala on 18-06-2021. It was also said about the fact that a cocoa tree which was growing 4 feet tall and was standing in this garden was an obstacle to pick up the broken wire on the ground and the entire branches of this plant were cut and destroyed. About 350 cocoa plants are planted in the garden.
3. Also, he called Thiruvananthapuram Grievance Cell on 22-12-2020 and sent the complaint to Paika AE as per the instructions to send it. I was informed that same day at 12 pm it has been sent to Paika section for action. Along with that, he had sent a photo of fallen tree. On 13-07-2021, The Executive Engineer Electrical Division, Pala, replied that only the branches at the top of the rubber tree were cut and the cocoa tree was not destroyed and that the operation was legal under section 68 of the Electricity Act, 2003. In the letter, it was also said that because he did not agree to cut the branches of the cocoa tree, the broken line was only repaired. But this is not true. In my letter dated 5/08/2021 to Executive Engineer letter, KSEB, Pala, he asked to visit the place and be convinced.
4. The photo of rubber tree being driven and cocoa tree destroyed was sent to kseb on 5-08-2021 at 10:35 through Kozhuvinal Akshayakendra along with the complaint. I have not stopped the rubber tree branches from dying. I understand that under Section 68 of the Electricity Act 2003 only the District Collector has the power to destroy trees. In the letter dated 29-10-2020, the compensation claimed was not properly calculated and the age of the rubber was also neglected.

5. Average 11-year yield of RR11414 species tree is 74.02 gm per tapping as per Rubber Board. 5.92 gm weight of rubber is obtained per tree when 80 cuts are calculated per year. 178 kg when calculated for 30 years. Get the weight. The current price is Rs 180/- and it comes to Rs 32000 out of which cutting the labour fees and other expenses comes to Rs 25,000/-. Apart from that, after 30 years of rubber tree, we should get at least 10,000/- rupees more.
6. He had planted high yielding cocoa seedlings of Montelisa India, Foods Ltd. approved by Kerala Agricultural University in this plantation. An average of 200 fruits per seedling per year. 100gm of 1 fruit will make an abscess. An average of 5kg of dry fruit is obtained in a year. 150 kg of dried fruit can be obtained in 30 years. If we increase the current price by Rs.180/- , we should get Rs.27000/-. 25000 will be obtained after deducting the cost of labour charge.
7. Therefore, I request you to consider my application and charge (35000+25000) 60,000/- rupees as compensation from KSEB.

Arguments of the Respondent

1. The petitioner is a registered consumer of Electrical Section Paika vide Consumer Number 1156268000317 under LT I A tariff. It is admitted that complainant has lodged complaint to Assistant Engineer, Electrical Section Paika, Executive Engineer, Electrical Division Pala and Legal Services Committee Secretary, Meenachil Taluk asking for compensation for rubber plant and cocoa plant. The same was rejected by the appropriate authority saying that compensation cannot be paid by KSEBL towards damage incurred during touching clearing work.
2. The Assistant Engineer, Electrical Section Paika has submitted a report on the complaint by the petitioner and it states that branches of the rubber plant was cut as it was leaning towards LT line which is drawn for giving service connection to the complainant. The complainant also agrees that branches of the plant was cut from a height of 7 feet which is done only to clear the touching of the line for its maintenance and safety which is the duty of the licensee. More than that, the plants are planted without giving statutory clearance to the line.
3. Regarding the cutting of the branches of the cocoa plant, Assistant Engineer reported that as per the complaint lodged by the complainant regarding conductor snapping, the staff of Electrical Section Paika tried to

join the conductor but unable to lift the conductor as branches of the cacao plant planted underneath the line was causing hindrance. Hence the complainant himself cut and removed some of the branches of the plant for lifting the conductor which was witnessed and confirmed by KSEBL staffs Sri. Santhosh B and Sri. Ajesh P R. The photographs submitted by the complainant shows that only the branches of the plants were cut which is causing hindrance in maintaining statutory clearance and uninterrupted power supply.

4. The complaints of the complainant were properly heard and replied by the Executive Engineer, Electrical Division Pala.
Not satisfied with the reply of the licensee, the complainant has lodged bogus complaints to higher authorities like the Honorable Chief Minister, Electricity Minister, Vigilance alleging that the works under Electrical Section Paika like touching clearing, auction of poles are done without following norms and thereby causing losses to KSEB. All the queries were replied and vigilance department at Kottayam has conducted detailed inquiry and submitted the report. The complainant is in the habit of forwarding baseless allegations against the licensee and its officers, thereby tarnishing the image of the licensee.
5. The licensee has asked for the cut and removal of the plants. But the consumer refused to do the same. Subsequent to that, KSEBL raised the issue before the Honorable District Magistrate and has ordered the removal of the plants which are causing hindrance to the distribution line. But the complainant has not complied the same so far.
6. As per Electricity Act 2003 Section 68(5), the Executive Magistrate or any other authority ordered by appropriate government can order to cut and remove the plant or tree which is lying near the overhead line on application by the licensee. But here, the licensee has only removed the branches which is causing hindrance to the line. Hence the action of the licensee was in favor of the complainant as the act empowers the licensee for the complete removal of the plant which is planted subsequent to the placing of the line.

Regarding compensation, the respondent has not assessed compensation amount as there is no provision for compensation towards touching clearance done by the licensee. The compensation is paid for the total removal of the plants in connection with the construction of new lines by the licensee.

7. As recommended by the Honorable CGRF, the consumer can avail a Gate connection so that the metering equipment shall be placed at the gate of the consumer from there the supply will be fed through a UG cable at the cost of the consumer.

Hence, it is humbly prayed that the action of the licensee is in no way purposeful or to harm the complainant, but to ensure safety as well as uninterrupted power supply to the petitioner. Hence the demand of the petitioner for compensation may be disallowed.

Analysis and findings

The hearing of the case was conducted on 16/05/2023 at 11:30 a.m. in the office of the State Electricity Ombudsman, D.H Road & Foreshore Road Junction near Gandhi square, Ernakulam South. The hearing was attended by the appellant and AEE, Ramapuram who is holding the charge of AEE, Pala.

The service line has been drawn through the appellant's property for providing service connection to the appellant. Some of the rubber trees grown and they touched the line and was removed by the licensee to ensure safety and security of the line. The branches were cut at a height of 7 feet as a part of the clearing of touching. Some branches of the Cocoa plant were removed for lifting the broken electric line to join and reconnect. The appellant filed complaint claiming the compensation to the EE, Pala and they have been replied. Then the appellant lodged compliants to higher formations such as hon'ble CM, Electricity Minister, Vigilance, etc regarding the award of contract of touching removal.

The licensee (KSEBL) filed the complaint to District Magistrate and ordered the removal of the plants which are causing obstruction to the distribution line. In the hearing the appellant stated that he has filed review petition to review the order of ADM. This means that the case is pending with ADM.

The section 68(5), (6) of Indian Electricity Act 2003 deals with the authority to take decision on trees touching the line. Section 68 (5) “ *When any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.*”

Section 68(6) *“When disposing of an application under sub section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.”*

According to Section 164 of Indian Electricity Act 2003, the authority to exercise of powers of Telegraph Authority in certain cases are specified.

The Section 10(d) & 16 of Indian Telegraph Act 1885 deals with the compensation of the property. 10(d) “in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercise 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.”

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.”*

16(2) *“If, after the making of an order under sub section (1), any person resist the exercise of those powers, or, having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence under Section 188 of Indian Penal Code (45 of 1860).*

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.*

16(4) *“If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desired to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.”*

Above Section are very clear about the compensation while drawing the electrical lines and the competent authority to decide about this matter. This authority is not competent to take decision in this matter.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. This authority is not competent to take decision on payment of competition.
2. Appellant may take up to the competent authority to take decision on the demand of compensation.
3. The case is disposed.
4. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/016/2023/ 01158 dated: 26/05/2023

Delivered to:

1. M.A. Jose, Myladiyil House, Kozhuvinal P.O., Kottayam (Dist.)
2. The Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Pala, Kottayam.
3. Copy to:
 1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
 2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
 3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.