

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/025/2023
(Present A. Chandrakumaran Nair)
Dated: July-07-2023

Appellant : Sri. George C.R.,
Cheeramban House,
Velur Bazar P.O.,
Trissur, Pin:680601.

Respondent : Assistant Executive Engineer,
Kerala State Electricity Board Ltd.,
Electrical Sub Division,
Kechery.

ORDER

Background of the case

The appellant is a consumer of the licensee under the section Kecheri. He is the owner of a land in kuttamkulam, Melur village, Kunnamkulam Taluk. The officials of kecheri section of licensee has erected stay wires of the posts in his property without the consent. Initially one straight stay wire and V type stay wire erected and then the licensee had removed one stay from the V type stay and now two straight stay wires are there. The stay wires inside his property are creating obstruction for the development of the land. The appellant filed petition to CGRF and CGRF issued order dated 31/03/2023 stating that if the appellant suggests an alternate feasible route the respondent can shift on remittance of cost. Aggrieved by the order of the CGRF, appellant filed the appeal petition to this Authority.

Arguments of the Appellant

1. I am a senior citizen with 76 years old. KSEB Kecheri Section authorities installed three stay wires for laying electric line in the month of October 2020 without my knowledge or consent on the 55 cents of land belonging to survey 1553/P number which I inherited at Kuttamkulam in Velur Village in Kunnamkulam Taluk of Thrissur district. They encroached the land and destroyed the plants.
2. Due to covid 19 restrictions, it was not possible to know that KSEB has installed stay wires on this land which is about 2 km away from the house where I live. I was informed by the family living near this land and when I went to the spot and inspected it, I found that the KSEB contractor had encroached on my land and cut down the plants and installed stay wires. So, I filed a complaint before A. E and A.Ex.E. After that Smt. Liji, A.E. said stay wires can be replaced but only one stay wire was replaced. After that I submitted a complaint before ADM, Thrissur. No report was submitted by KSEB Kecheri Section despite repeated requests from the ADM's office. later I got a reply that file is pending before ADM Thrissur.
3. KSEB Kechery Section submitted the report to the ADM office when a complaint was filed before CGRF, Ernakulam on 2023. My son Biju George has attended the hearing as I am an elderly person and find it difficult to travel. After the hearing, CGRF Chairperson members also visited the site and assured that the obstructing stay wires would be replaced. But vide order No. OP-78/2022-23 of CGRF, Ernakulam office received by me dated 06/04/23 it is recorded that I shall bear the expenses decided by KSEB for replacement of stay wires. This is totally unfair. Because without my knowledge or consent I am told to bear the expenses for replacing the stay wires installed by KSEB by trespassing on my land, totally unfair and injustice. The two-day period for filing the appeal was due to a mistake in the initial understanding of the above-mentioned order. I humbly request that my appeal be considered and an order be made to replace the stay wires under the responsibility of KSEB.

Arguments of the Respondent

1. All the averments admitted here under and are allegations in the Petition except those which are specifically not true and hence denied by these Respondents.

The Complaint is not maintainable either in law or facts. The subject matter

of the Complaint is with respect to the removal of Stays provided in their property in exercise of the powers conferred under the Act, and is not connected with any of the grievances to be qualified as a complaint as per the KSERC (CGRF & Ombudsman) Regulations, 2005.

2. However, the facts of the dispute is submitted for the kind consideration of the Hon'ble Ombudsman. As a part of Dhyuthi work - part 1- of Kerala State Electricity Board Ltd., for improving the distribution network under Electrical Section, Kechery carried out in the month of November 2020 for drawing 1 km HT ABC from Kuttamkulam to Thangalur for interlinking of the 11 KV feeders in the existing LT line route, a Double Pole structure was erected in the road and 3 Nos of stays (One V stay and a single stay) for the DP were provided in the Complainant's property as per the sanctioned estimate.
3. The Petitioner complained to the Assistant Engineer, Kechery to remove the stays from their property. On inspection by the Assistant Engineer, it was found that the property where the stays are provided is a plain vacant land with wide road frontage and the stays provided are essential and inevitable for maintaining the newly constructed line and work is carried out causing least inconvenience to the property of the Complainant. Even though the complaint is filed after the completion of the erection work, considering the grievance of the complainant, a proposal to replace the DP structure at the 90-degree cut point with Single cut pole and to remove one HT stay from the property was prepared to reduce the inconvenience of the Complainant.
4. Since it is a 90-degree angle location and also conductor is HT ABC, 2 no's stays are unavoidable and also these stays are provided as safe and favourable to the maximum extent possible to the complainant replacing the V stay and DP to avoid the hindrance to the proposed road as informed by him. The Assistant Engineer, Kechery directly conveyed and convinced the position to the consumer at the site and carried out the work accordingly without levying any cost for the same. The above plan work was completed in all aspects on 23.03.2021.
5. In response to letter No. DCTSR/11042/2020-C4/dtd.21.21.2020 from the Hon'ble Additional District Magistrate, Thrissur calling for the report on the complaint of the petitioner in this regard, a reply was submitted from this office, Thrissur as per letter dated 05.08.2021.
6. The complainant approached with the Hon'ble CGRF Central Region with the complaint as OP/78/2022-23 and as per the direction of the Hon'ble Forum in the hearing, this respondent to update the status of the complaint lodged by the petitioner before the Additional District Magistrate, Thrissur and submit a report regarding this before the Forum. As such, a letter was sent from the office of the Assistant Executive Engineer, Electrical Sub Division,

Kechery to the Additional District Magistrate, Thrissur vide No.GB-2/ADM/AEE/ESD/KRY2022-23/54/dated 28-02-2022 seeking the present status of the complaint lodged by the petitioner before the Additional District Magistrate, Thrissur. On 06-03-2023, the respondent received a reply from The Additional District Magistrate, Thrissur vide file No.DCTSR/11042/2020-C4/dated 06-03-2023 stating that as the work causing dispute is carried out by the KSEBL under Dhyuthi scheme, the dispute raised upon that work should also be settled by the KSEBL and that the Additional District Magistrate, Thrissur is not interfering in this complaint anymore.

7. The complaint of the Petitioner, was considered in detail by the Hon'ble CGRF and after the hearing of the Petitioner and the site inspection conducted by CGRF on 23/03/2023 the complaint was disposed as per order No: CGRF-CR/OP/No.78/2022-23/488 dated: 31.03.2023 upon the finding that the work is carried out for public purpose/benefit and the disputed stay wires is necessary for the safety of the electric post installed in front of the petitioner's property; thus, cannot be removed. The Forum also views that the electric post and stay wires can be shifted if the consumer proposes an alternate and feasible route on remittance of cost for shifting the post and stay wires approved by the Kerala State Electricity Regulatory Commission.
8. The grievance of the Petitioner has been resolved to the extent maximum possible from the Respondent's side as submitted above taking a lenient view in the matter which has been rightly upheld by the Hon'ble CGRF. These Respondent's has acted only in accordance with law and in the public interest as per the construction standards causing least inconvenience to the Petitioner for which these Respondents are duty bound as per Sec. 42 of Electricity Act, 2003 to develop and maintain an efficient, coordinated and economical distribution system in the area of supply and to supply electricity in accordance with the provisions contained in the Act.
Hence in the light of the above stated facts and the settled legal position in the matter, most humbly prayed that the Hon'ble State Electricity Ombudsman may be pleased to dismiss the petition.

Counter Arguments of the appellant

1. According to the Indian Telegraph Act 1885, installation of KSEB's post, stay wires or lines on property owned by a private person requires the consent of the owner of the property and adequate government permission. Then without any written or other notices, KSEB Kecheri Section officials illegally entered my property and illegally installed stay-wires, ignoring my and my family's objections.

2. Regarding the above matter, KSEB Engineer, Kecheri Section conducted site inspection and verbally informed that three stay wires can be replaced and later only one stay wire was replaced.
3. After filing a complaint before ADM, Thrissur regarding the above matter, ordered to KSEB section office to submit a detailed investigation report in this regard, but the KSEB section did not submit the report to the ADM office on time. I, the complainant in the above matter, have not received any justice from the KSEB authorities. As an old man, there are constant actions from the KSEB authorities which are troubling me. The Indian Telegraph Act, 1885 under Section 17(1) of the Act states that any stay wires or lines installed by KSEB without the consent of the owner of the property shall be removed or replaced at the expense of the KSEB Board. KSEB authorities have installed these stay-wires in such a way that the road to my property is obstructed without doing anything while trying to solve the problem by using advanced technologies like pole muffing or lattice tower etc.
4. I humbly request you to kindly issue an order that the KSEB Kecheri Section authorities to replace two more stay wires, currently installed on my land at KSEB's own expense for easy access to the property for me and my family members.

Analysis and findings

The hearing of this appeal petition was conducted on 26/06/2023 at 10:00 a.m. in the meeting room of KSEB Vydhyuthi bhavan, Thrissur. The appellant attended the hearing and the respondent AEE kecheri subdivision along with the AE, Kechery, section attended the hearing.

The Dhyuthi project implemented by KSEB for improving the distribution network. As part of this project the Electrical Section, Kechery has executed 1km, 11 KV over headline from Kuttamkulam to Thangallur for interlinking of 11KV feeders. This HT line was drawn with ABC conductors above the existing LT line. A double pole structure erected in the road in front of the entry to the property of the appellant. Then one V stay for the support of two pole structure and one straight stay also erected. The V stay and the straight stay were erected inside the property. Then the appellant complained to the AE, Kechery section and the two-pole structure was replaced with a cut pole and the V stay was replaced with a straight stay. Then also two stay wires were there in the property.

The appellant approached the District Collector for the resolution of the grievance as per the Indian Telegraph act 1885 and the DM issued order dated 06/03/2023 stating that as the KSEBL only erected the post and stay wire and hence KSEB itself has redress the grievance of the complainant.

The Respondent states that complaint is not maintainable as per law as the grievance is not connected with any of the grievance to the qualified as a complaint as per the KSERC (CGRF & Ombudsman) Regulation 2005.

The KSERC (CGRF & Ombudsman) Regulation 2005 describe about the compliance as per Section 2(f).

Section 2(f) *“Complaint means any grievance made by a complainant in writing on:”*

(vi) *“electricity services which are unsafe or hazardous to public life in contravention of the provisions of any law or rule in force”*

(vii) *“any other grievance connected with the supply of electricity by the licensee except those related to the following:-*

- (1) Unauthorised use of electricity as provided under Section 126 of the Act;*
- (2) Offences and penalties as provided under Sections 135 to 139 of the Act; and*
- (3) Accident in the distribution, supply or use of electricity under Section 161 of the Act” and*

hence the complaint is maintainable. Then District Magistrate states that the grievance resolution is to be addressed by KSEBL and then also this is maintainable in the CGRF as well as to Ombudsman.

The Respondent states that as per the Court Order the Engineers of the KSEBL and above Assistant Engineer’s are empowered to exercise for the purpose placing electric Line or electrical plant for the supply of electricity proper coordination work within their respective jurisdiction, all the powers which Telegraph authority possesses under part III of the Indian Telegraph Act 1885.

This order is issued by the State Government as per the Section 164 of the Indian Electricity Act 2003.

Section 164 *“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, 1885 (13 of 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.”*

This order is not given absolute right to the Engineers to place the post anywhere as they like.

The Indian Telegraph Act 1885-part 3 Section 10 states about the power for Telegraph authority to place and maintain Telegraph lines and posts.

Section 10 *“The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across and posts in or upon any immovable property:”*

Provided that-

- (a) “The telegraph authority shall not exercise the powers conferred by this Section except for the purpose of a telegraph established or maintained by the Central Government, or to be so established or maintained;*
- (b) The Central Government shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post; and*
- (c) Except as here in after provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority without the permission of that authority; and*
- (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.”*

As per section 10 (d), while drawing the line do as little damage as possible and should pay full compensation to all persons interested for any damages sustain by them. This clause has not been exercised by the concerned officials.

A site inspection was conducted on 26/06/2023 by the Ombudsman along with the consultant Consumer Advocacy and AEE, Kechery, Sub Division and AE, Kechery Section. It is noticed that 11 KV OH line with ABC conductors were drawn, and there is a 90⁰ turn in front of the property. There is a cut pole which is at 90⁰ turn, two stays provided to support tension of the cable at the turning. The two stay wires inside the property are creating inconvenience to the appellant. He is agreed to maintain one stay wire but the

other stay wire is to be removed. On checking feasibility to reduce the tension of the conductor of one side, one additional pole could be erected after the gate of neighbouring property, without blocking the gate. As this is in a straight line no stay for the new post is required. On placing this new post, the stay inside the property could be removed as the tension in the ABC is being negotiated.

Then the question is who will bear the cost? The Section 17 of Indian Telegraph Act 1885 States about the removal of line or portion property other than that of a local authority.

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 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 with whose Jurisdiction the property is situated 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 post to any other part of the property or to higher or lower level or for the alteration of its form; and the order so made shall be final.”*

This section is very clear that the appellant has to meet the expenses of the removal or half of the amount paid as compensation which ever may be the smaller sum. Here the compensation received by the appellant is zero and hence the appellant need not bear the cost.

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. The licensee has to remove one stay from the property by providing a tension releasing mechanism to the cable that is an additional post to support the ABC after the gate of the neighbouring property.
2. The shifting of the stay and installation of the post is to be done at the cost of licensee.
3. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/025/2023/ _____ dated: _____ .

Delivered to:

1. Sri. George C.R., Cheeramban House, Velur Bazar P.O., Trissur, Pin:680601.
2. Assistant Executive Engineer, Kerala State Electricity Board Ltd., Electrical Sub Division, Kechery.

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, 220 kV Substation Compound, HMT Colony P.O., Kalamassery, Pin- 683503