

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/027/2023
(Present A. Chandrakumaran Nair)
Dated: July-13-2023

Appellant : Smt. jayalakshmi S,
Koickkal Vilakathu Veedu,
Venganoor Street,
Pallichal P.O.,
Thiruvananthapuram.

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

ORDER

Background of the case

The appellant is a native of Pallichal, Trivandrum. She had constructed a house in 1999 behind the ancestral house in the ancestral property. She had also purchased 1.25 cents to make direct entry from the public road to the house constructed. The approved plan also shows the entrance from the road. She was using the access through the ancestral property. The licensee has erected a two-pole structure and the transformer blocking the entrance to the house. She was working in Ernakulam and residing in Kollam and occasionally visits Trivandrum. She noticed this blockage very late and then approached the licensee for the shifting the structure. As nothing was happened, filed petition to CGRF and CGRF issued order stating that the appellant has to approach the ADM, Trivandrum. The order was not received by her and hence the appeal was delayed. Aggrieved with the decision of CGRF, the appeal petition is filed to this authority.

Arguments of the Appellant

1. My native place is at Thiruvananthapuram and I am working in Ernakulam. I had constructed a house in 1999 behind my ancestral house in the plot gifted by mother in 1998. I had also purchased land of 1.25 cents in the year 1998, adjacent to the road, for making entrance to my house. Copies of the title deed made in for the property given by mother and purchased property of 1.25 cents for making entrance to my house in 1998 are attached please. Approved plan of my house showing entrance from road side is also attached for perusal please. I had not separated my property from my mother's property since the well and bathroom to my ancestral house was in my property. So, I was using the entrance of my ancestral home. Later my mother gave remaining property to my sister and she had constructed a new house in 2020.
2. My husband is Kollam native and hence my permanent residence is now at Kollam. We will shift permanently to Thiruvananthapuram after my retirement. My first child was disabled due to Spinal Muscular Atrophy (SMA). My husband and myself were trying our best to save our child by giving Ayurveda treatment and physiotherapy. My family was staying in Bangalore during 2009- 2010 for giving physiotherapy to my child. Unfortunately, my first child passed away in April 2010 due to pneumonia. I was staying in Ernakulam from May 2010 onwards and my second child was born in February 2011. So, I had rarely went to Thiruvananthapuram from 2009 onwards. My only one sister is working in Thrissur and hence she is staying there with family. My mother used to stay with me or with my sister. So, our family go and stay at Thiruvananthapuram occasionally only.
3. M/s KSEBL had erected one 11 kV transformer in front of the pathway to my home during the year 2010. This transformer is completely blocking my entrance to my home. I was not aware of this incident and hence I could not inform to KSEBL about the entrance of my house. I had not gone to my house at Thiruvananthapuram after 2010 for 1-2 years due to death of my first child and delivery of my second child. Second child is also disabled due to SMA.

I had not gone even to office for almost 3 years during 2011-2013 for giving better treatment to my second child. My first priority was to give better physiotherapy to my second child. So, I could not go to Thiruvananthapuram to lodge a complaint to M/s KSEBL to shift the transformer. Moreover, I do not want to separate my property with a separate entrance and compound wall when my mother was alive. My mother passed away in 2020 and my sister gave her house for rent.

4. We used to take our disabled child in hands from road to house when he was small. Now we could not carry him in our hands for about 40 meters from

road to house. So, vehicle has to go up to the door of the house to take my child inside the house. My child is undergoing Ayurvedic treatment at Thiruvananthapuram during his summer vacations to maintain his muscle strength. My husband is also undergoing Ayurvedic treatment at Thiruvananthapuram for diabetic retinopathy. So, I requested KSEBL to shift the transformer from my entrance to the property on 22/10/2021. I have personally met the Assistant Engineer two three times and requested to do the needful so that I could continue the treatment of child and husband during 2022 vacation. I had also met the Executive Engineer and Chief Engineer and submitted the copy of the complaint along with all necessary documents. No reply was received from KSEBL so far. So, I approached Consumer Redressal Forum, Kottarakkara. They had conducted the hearing in O.P no. 20/2022 I personally attended the hearing and informed my grievances and showed all the originals of title deed, details of the treatment of my child and husband. I had requested M/s KSEBL to send the letters to my home at Kollam since we are not staying at Thiruvananthapuram. But so far, I had not received order from the CGRF, Kottarakkara. On enquiry, with CGRF they told me that they have sent the order to Thiruvananthapuram address. But no letter/order is received from my locked home at Thiruvananthapuram. Hence now downloaded the copy of the order from KSEBL's site. CGRF's order is non-compliance of Section 67 of Electricity Act 2003. It is also against natural justice by blocking my entrance completely and denying the right of my disabled child to enter inside his home. Also, they have fabricated the story that I have subsequently purchased 1.25 cents of property for the purpose of constructing a separate pathway to my house and transformer was erected with full support of my mother. In this context the Honourable Ombudsman may kindly note that I have purchased the 1.25 cents of property in the year 1998 which is the path to the road as per the approved plan. Also, my mother was not staying in Thiruvananthapuram in 2010 when the transformer was erected. I wonder how can a CGRF consisting of KSERC appointed Advocate member sign such an order after verifying the title deeds made in 1998 and approved plan of the house showing the entrance from road. M/s KSEBL is claiming that I have to remit the expenditure of Rs. 3,22,058/- towards the cost of shifting transformer. I humbly submit that I could not find any provision in the Electricity Act 2003 or Supply Code 2014 that owner of the property has to bear the expenditure for shifting electrical installations erected in wrong locations without proper study of the location.

KSEBL has not collected the consent of the owner of the property before erecting the transformer. There is no provision in the Electricity Act to erect electrical installations after getting the support of the mother of the property owner as claimed by M/s KSEBL.

5. Now treatment of my child and husband have been missed during 2022 and 2023 summer vacations. My child's health has been deteriorated further due

to missing of Ayurvedic treatment. My child is forced to sit inside the car for hours in road whenever we go to my home at Thiruvananthapuram since we could not carry him in our hands. The concerned AE and AEE had seen my child sitting in the car when I went to KSEBL office / CGRF office and they had understood the difficulty of child in sitting hours in the car in road side. My property is 4 feet heigh from the road and hence taking him inside my home is possible only after leveling the property as that of road. This work could be carried out only after shifting the transformer. I have dug one new well and demolished the old bathroom so as to avoid the hindrance to my pathway to my house thinking that KSEBL will shift the transformer. Since entrance is blocked due to the transformer, I could not fill the old well with the help of JCB. Manual labour will be very high which I could not afford. I had also spent more money towards labour in taking construction materials inside the compound for constructing the compound wall to my property.

6. It may kindly be noted that erection of transformer blocking my entrance to home is violation as per following sections of Indian Electricity Act 2003

Section 67 (2)(a) of the Electricity Act 2003: Consent in writing of the owner shall be required for carrying out such works.

Section 67(2)(k) of Electricity Act 2003: Public nuisance and unnecessary damage to private property shall be avoided while doing electric works.

Section 67(3) of the Electricity Act 2003: Distribution licensee shall cause as little inconvenience as may be and shall make full compensation for inconvenience caused by him.

KSEBL has neither informed the owner of the property before erecting the transformer as per the Electricity Act 2003 nor shifted the transformer when asked for, that too mainly for doing the treatment my only child who is affected with SMA. His health will further worsen if we do not do the Ayurvedic treatment.

7. As a working women and mother of a disabled a child, I am facing lot of difficulties to maintain the health of my child and husband. Frequently my child gets admitted in hospital /ICU due to fever and cough. Special attention is also needed for giving best education to my child. He is now 7th standard student in CBSE school and class topper with A+ for all subjects. Trouble made by M/s KSEBL has further increased my difficulties in life.

Xerox copies of the following documents are enclosed for the kind perusal.

1. Request for shifting the transformer to KSEBL. 2. CGRF order downloaded from site. 3. Approved plan of my house and marked with transformer blocking the entrance. 4. Title deeds of the property made in 1998. 5. Test report of SMA of my son.

8. It is humbly requested that honourable Electricity Ombudsman may kindly intervene in the matter to shift the transformer which is completely blocking the entrance of my home from road to at the earliest. It is also prayed that the right of my family especially that of the disabled child to enter inside the house through the approved pathway of the house may kindly be protect.

Arguments of the Respondent

1. All the averments in the Complaints are denied except which are specifically admitted: This complaint is not maintainable either on law or on facts. The facts of the case are briefly furnished below.

This petitioner Smt. Jayalakshmy S. comes under Electrical section kalliyoor, under the Electrical Sub-division Balaramapuram. As per the first and second paragraph no commends from KSEB side.

2. As per the third paragraph, this transformer (companyvila 63kVA) erected on 2010 at the public place and not inside the property of Jayalakshmy, also at the extreme right side of Jayalakshmy's mother's property. At the time of erection of this transformer there is no pathway constructed, only one entrance available for the transportation to Jayalakshmy and Jayalakshmy's mother and Jayalakshmy's Sister.
3. The complaint raised regarding the common path way only on 2020. In this petition Jayalakshmy Stated that there is no issue regarding the common entrance to Smt. Jayalakshmy's residence up-to 2020. After 2020 only Jayalakshmy think for making separate entrance to her residence after demolishing the transformer and its Double pole Structure which is already erected at the public place. Also, at the extreme right side of Jayalakshmy's mother. More over this transformer situated around 5 feet Step down cutting from the property of Jayalakshmy.
4. In this circumstances Jayalakshmy's argument is not admissible since Jayalakshmy requested to shift the transformer after 10 years also no suitable locations available at nearby this transformer.

Considering the difficulty to her son and her Husband only one remedy to enhance the nearby transformer (Bunglaw 100 kVA) to 160 kVA, in order to shift all the service connections from companyvila 63k VA to Bunglaw 100 kVA transformer also this Companyvila transformer is now 80%, loaded. Then only we have to dismantle the companyvila 63kVA Transformer (Dispute) and its connected DP structure. This work can be done only remitting the estimate amount of Rs. 3,22,058/- (For enhancing, nearby Transformer and dismantling the Dispute Transformer and its DP Structure.

5. Another difficulty from the public near to this transformer is they strongly opposes to shifting/dismantling this transformer since this transformer installed on 2010 as per the request of public and nearby consumers. Another difficulty is this transformer located at the road side of a narrow road; no other locations seen found for shifting this transformer. So only one remedy is to dismantle this dispute Transformer and Enhance the nearby transformer from 100 kVA to 160 kVA.

Hence humbly requested that considering the above facts, the petition may please be dismissed.

Counter Arguments of the appellant

1. It is true that transformer is erected at public place and not inside my property. But KSEBL's transformer erected in public place is completely blocking my access from road to my home. I have marked the transformer position in the copy of the approved plan and submitted along with my appeal petition Dated -17 /05/2023.

KSEBL 's statement that transformer is erected at the extreme right side of my mother's property is not correct. Sri. P. Kuttappan was the owner of the 1.25 cents of land till the year 1998 and I have purchased this land from Sri. Kuttappan in the year 1998 to make pathway from road to my property gifted by mother in the year 1998. Pathway from road to my house is through these 1.25 cents of land as shown in the approved plan. Copy of the title deed purchased from Sri. Kuttappan, title deed of the property gifted my mother and approved plan were submitted to M/s KSEBL along with my application. If M/s KSEBL had verified the above documents, this wrong statement could have been avoided.

I am working in Ernakulam and hence I go and stay at Thiruvananthapuram occasionally. So, I was using the pathway to our ancestral home, later my mother gave that property to my sister.

2. The common path way or common entrance as stated by M/s KSEBL is not correct. There is no pathway/common entrance to my home and my ancestral home. As a family member, I was using the pathway to our ancestral house. Later Ancestral house was demolished and my sister constructed a new house. she gave her house for rent in the year 2020. I am not thinking of making a separate entrance to my house as stated by KSEBL. I have to make the pathway to my home through my purchased property, which is as per the approved plan and as per the rules.

There is hardly 2 feet left at the roadside of my property from the edge of KSEBL's transformer structure. So, the statement of the Respondent that the transformer is situated around 5 feet step down cutting from my property is also false.

3. Reason for delay in shifting the transformer 10 years is already explained in my request to KSEBL and my appeal to the Hon'ble Electricity Ombudsman. I had kept my property as such till death of my mother in 2020 and now I could not pass through the house given for rent by my sister. So, I cut the 2 feet gap after transformer to enter into my house. My property is 4 feet high from the road level. It is very difficult and not safe to enter inside my home through these 2 feet gap close to the live 11 kV transformer. Our disabled child could not be taken inside the house through these 2 feet gap and he has to sit inside the car for hours in road side. Most important thing is that health of my child is further worsened since we could not continue the Ayurvedic treatment.
4. I am not aware of the opposition from the public for shifting the transformer erected in front of my property, public opposition will not be there for enhancing the capacity of the Bunglaw transformer for demolishing the transformer which is blocking access to my home.

Analysis and findings

The hearing of this appeal petition was conducted on 22/06/2023 at 11:30 a.m. in the office of the State Electricity Ombudsman, DH Road & Foreshore Road Junction, near Gandhi Square, Ernakulam south. The hearing was attended by the appellant Smt. Jayalakshmi.S and the respondent Sri. Bindulal R.V., Assistant Engineer, Electrical Section, Kalliyoor (AEE in charge).

The appellant is the consumer of the licensee under Kalliyoor Section. The appellant's family is from Pallichal, Trivandrum and having ancestral property there. The appellant had constructed a new house in the ancestral property given by her mother during 1999. She had purchased 1.25 cents of land for a direct entry into the road during 1998. The copy of the land attached in supporting the arguments of the appellant. The building plan prepared and approved by the local self Govt. showing this pathway from the public road. Her husband is from Kollam and they are at present residing in Kollam. The appellant is working in Ernakulam. They used to visit and stay in the home at Trivandrum during weekends and vacation time. She has faced very crucial problems in life. The first son was disabled due to Spinal Muscular Atrophy (ASA) and given various treatment and the first child passed away in April 2010. She got a second child in 2011. Due to the death of the first child and the birth of the second child she could not visit Trivandrum nearly two years. The second child also disabled due to SMA.

The licensee has erected a two-pole structure and transformer on 2010 blocking the passage of the appellant to her house from the public road. As the appellant was working in Bangalore and then to Ernakulam and also due to the death of the first child and the birth of the second child she could not go to Trivandrum. She has not noticed this due to these problems.

Immediately on noticing the difficulty, she had approached the officials of licensee, but nothing had happened. The second child is undergoing treatment and is around 12 years old. When the child brought to the native place the car has to stop in the public road and he has to be carried by hand to the home around 40 meters. Her husband is not physically well and not able to carry the child.

The licensee has to shift the transformer so that the passage can be through and then car can go up to the house and then handling the child will also be easy. The medical certificate produced shows that the child is affected by SMA. The denial of free movement of a person who is physically not well is the human right violation. The society has to ensure the free movements of persons disabled due to illness and extend all necessary support to them. Here the licensee has denied the natural justice to the disabled person.

The argument of the licensee is that the installation was done by the side of the public road. Every person living close to the public road is having right to enter in to the public road for their commutation. The Respondent's view was that the transformer & the structure installed during 2010 and the appellant approached with complaint quite recently only and the reason is well unexplained by the appellant. The land for the passage was purchased during 1998, the plan approval shows this passage and hence this is not a new proposal. The passage was existing before 2010, but it was not made useful during that time.

The Section 67 of Indian Electricity Act 2003, speaks about the provision as to opening up of streets, railway etc.

The Indian Telegraph Act-1885 which is adopted to Indian Electricity Act- 2003 as per Section 164 of Indian Electricity Act-2003 as per Section 164 of Indian Electricity Act -2003.

Section 10(d) states that the licensee has to make only little damage when private property is concerned.

Section 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.”*

The feasibility of shifting of this structure and transformer has been checked. This transformer is of capacity 63 kVA. There is another transformer 100 kVA 150m away. This 100 kVA can be enhanced to 160 kVA and all load of this 63 kVA also could be shifted to this proposed 160 kVA. Then licensee will get

one 100 kVA and one 63 kA transformers as spare. This is seen to a workable solution and the same has been agreed by the respondent.

Then who will bear the cost? The structure erected blocking the passage which is denied of natural justice. Further this is blocking the movement of disabled person. The appellant stated that she is spending all her earnings for the treatment of his disabled child and she can't bear any expenses. The Section 17 of the Indian Telegraph Act 1885 tells about the removal or alteration of telegraph line.

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.”

In the case in hand as per the records no compensation has been paid. As such the charges to be paid for shifting the transformer and structure is zero. That means the licensee has to execute the job at their cost.

The structure and transformer were installed by the side of the road but the approach road is the right of the person.

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 structure and transformer has to be shifted by the licensee at their cost.
2. The electric load has to diverted to the nearby transformer by enhancing the capacity.
3. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/027/2023/ dated: _____.

Delivered to:

1. Smt. jayalakshmi S, Koickkal Vilakathu Veedu, Venganoor Street, Pallichal P.O., Thiruvananthapuram.
2. The Assistant Executive Engineer, Kerala State Electricity Board Ltd., Electrical Sub Division, Balaramapuram.

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.