

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/300/2012.

(Present: T.P. Vivekanandan)

APPELLANT: Sri. Jolly Joseph,
Rose Dale, Konjiracode,
Kundara P.O., KOLLAM

RESPONDENT The Assistant Executive Engineer,
Electrical Sub Division, KSE Board,
Kundara PO, Kollam Dt.

ORDER.

Background of the case:-

The issue involved in this Appeal Petition, preferred by Sri. Jolly Joseph, the appellant is that the electric supply to his House was disconnected on 12.6.2012 without notice. Further, one electric post and the connected Electric OH Line feeding supply to his house was shifted and the new alignment of the shifted Line was routed through his premise and crossing his property. It is alleged by the appellant that the shifting of the Line work was arranged by the respondent without obtaining his consent and against his verbal objection. As a result of the alleged shifting of the Electric Line, the supply to his house was interrupted for two days.

The Electric post was shifted at the request of the Principal, St.Antony's HSS, Kanjiracode, Kundara, to facilitate the construction of a school library in their compound. The appellant has demanded compensation for the loss and injury because of the disconnection of supply and also pleads to restore the Electric Post in the original position. The appellant has filed a Petition before the CGRF, Kottarakkara, which was dismissed vide order No. O P/ 760/2012 dated 7.7. 2012. Dissatisfied by the order, the appellant has preferred this Appeal before this Authority.

Arguments of the Appellant: -

The arguments of the appellant are based on the brief facts and circumstances which are narrated above. The main contentions of the Appellant in the Petition are the following.

1).The electricity connection to the petitioner's house was effected 60 years back and ever since it was in service and he was using the electricity for the last so many years. His specific case is that, the electricity connection to his house has been disconnected on 12.06.2012 with out issue of any notice to him and moreover, one electric post has been shifted. He prays for

compensation for the loss caused and mental injury suffered because of the disconnection and also to replace the post in the original position.

2).The CGRF after hearing both the parties had disallowed the prayer of the petitioner.

Aggrieved by the impugned order of CGRF, the appellant submit that;

1. The impugned order passed by the CGRF is against facts, law and evidence.
2. The findings of the CGRF are unsustainable under law and without legal footings.
3. The CGRF had misconstrued the facts and ignored the relevant question involved in the petition.
4. The CGRF for a split of a second has not applied its mind to see whether there is any truth set forth by the respondent.
5. The CGRF ought to have seen that the version filed by the Assistant Executive Engineer in 2nd para is against fact. The post in question is not situated on the boundary of the school compound and pathway.
6. The CGRF ought to have seen that the existing post marked as 's'(in the Sketch) is situated not in the boundary of the school but on the pathway exclusively belonging to the petitioner. The line marked 'SC' not passes through the property of the opposite party. It starts from the post 's' and the same is standing in the pathway belonging to the petitioner.
7. The CGRF ought to have seen that the petitioner objected the drawing of the new-line mainly due to the fact that no permission was sought from the petitioner prior to the dismantling of the old line which is against rules contemplated in Clause 30 of the KSEB Terms and Conditions of Supply, 2005. The objection was not heard by the concerned officers instead they took police assistance and executed the work unilaterally and the same is nothing but violation of natural justice.
8. The CGRF ought to have seen as a result of the alleged shifting of Electric Post, supply was cut off, for more than a day and the same has badly affected, Mr. Antony Joy, who was residing along with the petitioner and who is also a chronic diabetic patient. But as per the report submitted by the Assistant Exe. Engineer, Electrical Sub Division, Kundara that the above Mr. Antony did not experience any inconvenience and he did not lodge any complaint is not true. It is learned that they had illegally procured a letter from the above Mr. Antony, by hook or crook. After having understood the cheating, Mr. Antony had submitted an application on 13.06.2012, denying it. But this letter was deliberately concealed by the respondent.
9. The sketch and plan appended along with the opposite party's version is not tallying with the positions of the posts erected in the property in question.
10. The CGRF ought to have seen that though the brother of the petitioner, Mr. Jayan who happens to be a staff of KSEB, had lodged a complaint on 12.06.2012 to the Assistant Engineer, Electrical Section, Kundara, but no action was taken in this regard.
11. Suppression of material fact is evident from the records submitted and obtained from the Public Information Officer (Assistant Executive Engineer), Electrical Sub Division, KSEBoard, Kundara. There are two information issued by the Information Officer that are contradictory.

Therefore it is prayed that this Authority may be pleased to set aside the order passed by the CGRF or in the alternative, return that same for rehearing with all the available records.

During the Hearing the appellant prayed for the following;

- (A) Order to restore the shifted Electric Line to its original position.
- (B) There was supply interruption for 36 hours, occurred due to the unlawful act of the respondent. Hence compensation should be awarded for the same.

Arguments of the Respondent: -

The Respondent has opposed the contentions of the Appellant in the Petition and raises the following arguments among other things included in the replies submitted and stated during the Hearings.

- 1).The Principal, St. Antony's HSS, Kanjiracode, Kundra, requested to rearrange the Electric OH line (A-B-C in the sketch) so as to facilitate the construction of school library vide application dated 1.6.2012 (copy attached) and remitted the estimated cost for carrying out the said work (work deposit) amount of Rs.7646/- at Electrical Section Kundra, on 7.6.2012. Accordingly the line A-B-C portion was dismantled on 12.06.2012 and the supply to St. Antony's School was maintained from the post 'D' in the sketch, which was inserted as part of the shifting work. The Supply to the petitioner's house was maintained from the post 'C' by drawing fresh LT line 'S-C' through the school compound where 'S' and 'C' are the same existing posts.
- 2).The line A-B-C portion was dismantled on 12.06.2012, but the petitioner and his brother Sri. Jayan, who is working as overseer at Electrical Section, Kundra, Kanjiramkuzhy, had objected to draw the line 'S-C' from the existing post 'S' situated on the boundary of the school compound and the path way, hence the work could not be completed on 12.06.2012 itself. On 13.06.2012 the line 'S-C' was drawn with police protection and the supply to the petitioner's house was restored on that day.
- 3).The petitioner and his brother unnecessarily objected to draw the line 'S-C' even though the line is to be passed completely through the property of St. Antony's HSS and not through the petitioner's property. The delay in restoring the supply to the petitioner's house was occurred purely due to the objection by the petitioner and his brother in drawing the line 'S-C' and the complaint regarding the financial loss due to the spoiling of medicine, kept by the person who is residing in the petitioner's house now, has stated that he had no complaint or any problem faced or loss or occurred due to supply failure on 12.06.2012 as stated in the petition (copy enclosed).
- 4).The service connection to the premise of the petitioner is still effected from the same post which was effected before the shifting of the Line and the whole shifting work was carried out through the property of the School. Moreover, no change in the service line of the petitioner is occurred due to the shifting work.
- 5). The Clause 30 of KSEB Terms and Conditions of Supply, 2005, relates to Access to premises and Apparatus. In this case, for the subject shifting work, the need for entering the premises of the petitioner was not necessitated and Board has not altered the Electric supply lines in the premises or land of the petitioner. Hence no prior intimation has given to the petitioner.

6).Regarding the letter dated 12.06.2012, from Sri. Jayan, the brother of the petitioner, it was received only after dismantling the line "A-B-C " and found that the complaint was not genuine as the post 'S' is situated in the boundary of the school compound and the path way.

ANALYSIS AND FINDINGS: -

The hearing of the case was done on 14.12.2012, in my Chamber at Edappally, Kochi, and the appellant, Sri. Jolly Joseph was present and the respondent's side was represented by, Sri. Abdul Kalam, the Asst. Executive Engineer, Electrical Sub Division, Kundra and they have argued the case mainly on the lines stated above. On examining Petition and argument note filed by the appellant, the statement of facts of the Respondent, perusing the documents filed and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the final decisions thereof.

There are two reliefs sought by the petitioner and one among them is to restore the electric posts shifted, consequent to the request of the Principal of St. Antony's HS School to its original position and the second one is to award compensation for the deficiency of service on the part of the respondent in disconnecting the electric supply to his house without notice and thereby causing loss and injury to the petitioner. According to the appellant, no permission was sought from him prior to the dismantling of the old electric line feeding power supply to his house.

In this case, the existing Electric OH (Over Head) Line, drawn to supply power to the house of the petitioner was routed through the school compound with two Electric posts erected in that property. There is provision to shift the existing Electric OH Lines passing through a route or compound to another route, provided there is available an alternate feasible route. Also, as per rules, the applicant (the beneficiary) who put in the request to shift the existing electric line to a different location, should also produce the written consent or no objection letter from the parties whose properties are likely to be affected or crossed by the shifting of the line, by the erection of posts, by anchoring of Electric Post's stays, by the overhead line passing through the property etc. The Respondent (KSEB) then should inspect the site, verify and confirm that it is feasible to construct the line as per the request, enquire about the parties who are likely to be affected by the newly proposed work, confirm that the written consent of those affected parties are available and after satisfying these conditions only, the respondent should proceed to prepare the estimate cost of the work to be deposited by the applicant for carrying out the said shifting work. In case of any dispute, the respondent has to file a Petition, before the District Collector and get its orders.

In Clause 14(5) of the KSEB Terms and Conditions of Supply, 2005, it is clearly stated that even for the case of, applicants for a new electric service connection, the KSEB should not be held responsible for the delay caused unless the consumer produces the consent in writing of the owner or the person in possession of the property to be crossed over for drawing electric line so as to provide the service connection to him. In such a situation, it is obvious that the beneficiary who wants to shift the existing electric overhead line to another route, should also produce the written consent or no objection letter from those persons who will be or likely to be crossed or affected by the shifting of the overhead line. The idea was to cause least damage, detriment and inconvenience to others as per Section 67 of the Electricity Act, 2003, for 'the

opening up of streets to lay down or place electric supply lines'. The Works of Licensees Rules, 2006, published by Ministry of Power, dated 18.4.2006, states as;

3 (b) ".....Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate....."

Here, it is seen justifiable to shift the Electric Line passing through a School compound. But the Principal ought to have tried to obtain the consent of the affected party (by way of shifting the Line), i.e. the petitioner in this case. Not only that, the Respondent should have confirmed that the shifting of the Line will not affect others before collecting the 'Work Deposit' amount. The KSEB argue that that the 'shifting work', will not cross into the premise of the petitioner nor will alter the electric supply lines existing in the land of the petitioner and hence no prior intimation was given to the petitioner. But it is a fact, that the petitioner and his brother, Sri. Jayan, have lodged their protest, against such a shifting of the OH Line through their pathway. The respondent does not dispute the fact of, objection filed by Sri. Jayan, in this case.

The appellant's argument that, the existing Electric Post 'S' (referred in the Sketch filed by KSEB) is erected in his pathway, is more likely to be true, since it was seen erected at a later date for giving connection to Sri Jayan, Con.No 20500, which is a recently allotted connection. The pathway, in which the Post 'S' is erected, was also reported to be purchased in the year 2009 and is seen issued the ownership certificate 22.9.2012, by the Village Officer, Mulavana. Hence the respondent should have considered the objection filed seriously. Further, as per rules, when any objection against drawing of Electric Line is raised, the matter shall be placed before the District Collector and get suitable orders and act accordingly. In this case the KSEB (Respondent) has violated the said rule and acted in a high handed manner and drawn the Line with Police protection. How the KSEB can decide whether the disputed boundary belonged to School and not to the appellant? Only the appropriate Civil Courts can decide such matters like the ownership of disputed properties and in such a situation, I feel the unilateral decision taken by KSEB that disputed boundary with the erected Post belongs to the School management, is not justifiable nor reasonable and surely has surpassed its powers.

Another point is whether the shifting of the post has caused any inconvenience or injury to the appellant or its occupier? Normally nobody will favor a power failure. There was surely delay in restoring the electric supply to the appellant's house, due to the Line dismantling work carried on one day and failure to restore the supply on the same day. Even the KSEB agree that there was loss of supply for more than one day and supply was restored with Police protection by the next day only. The occupant of the house has filed complaint about the failure of electric supply and the hardships suffered initially, but have reduced the gravity of the complaint later. But it is an undisputed fact that, in the modern times it is difficult to live without electricity, in the way we were used to. The relevance of Electricity was aptly described as follows; "*a world in which humankind has become so dependent on electricity that without it we could not live a normal life as we know*". Hence I view the argument of KSEB that, Electric supply interruption caused no hardship to the consumer, does not deserve any merit.

Decision: -

The Respondent is found to have acted upon the request of the Principal of St. Antony's HS School, in a very hasty manner, violating the rules in force. Though the request of the Principal seems to be genuine, the respondent has to act as per rules only and as such has to approach the District Collector or the ADM and get suitable orders, when an objection was raised against the shifting of the existing Electric OH Lines to a different route. The objection can be either verbal or in writing. The respondent is not supposed to side with one party totally ignoring the contentions of the opposite party. Moreover, the respondent is also not empowered to decide on the issue of 'who is the rightful owner of a property or its boundary', when it is under dispute. Hence I find that the actions of the Respondent or his subordinate officers in this case, have exceeded their powers and hence are liable to be proceeded against for abuse of power. The KSEBoard authorities have to decide on this matter as the delinquents are its employees.

The appellant is eligible for the delay in getting the reconnection of his electric supply, under the 'KSERC (Licensees standard of performance) Regulations, 2006, caused due to unnecessary interruption of electric supply to the house of the appellant for two days, totally violating the rules in force and decide it as Rs. 100/- only.

The plea for restoration of electric supply through the original route itself, i.e. by redoing the Electric OH Line, that was already dismantled and removed earlier by KSEB, through the School compound, is found beyond the powers of this Forum and hence declined.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the consumer is found having merits and is allowed to the extent ordered. The related CGRF order, dated 7.7.2012, is set aside. The respondent is ordered to give the appellant a sum of Rs. 500/-, (Rs five hundred only) as litigation cost. Dated the 15th of April, 2013,

Electricity Ombudsman

Ref. No. P/ 300/ 2012/ 1694/ Dated 15.04.2013.

Forwarded to 1.Sri. Jolly Joseph
 Rose Dale, Konjiracode,
 Kundra P.O., Kollam Dt.
 2. The Assistant Executive Engineer,
 Electrical Sub Division, KSE Board,
 Kundra PO, Kollam DT.

Copy to: - (1). The Secretary, Kerala State Electricity Regulatory Commission,
 KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
 (2). The Secretary, KSEBoard,
 Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
 (3). The Chairperson, Consumer Grievance Redressal Forum,
 KSEBoard, Vydyuthibhavanam, Kottarakkara.