

## STATE ELECTRICITY OMBUDSMAN

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### **APPEAL PETITION NO. P/348/2013**

(Present: T.P. VIVEKANANDAN)

APPELLANT : Smt. Anida D  
Lyla bhavan, Valiyakattackalil,  
Nellanad, Venjaramoodu, Thiruvananthapuram DT.

RESPONDENT : The Assistant Executive Engineer,  
Electrical Sub Division, KSE Board,  
Venjaramoodu P O, Thiruvananthapuram Dt.

### **ORDER.**

#### **Background of the Case: -**

The appellant is a consumer under Electrical Section, Venjaramoodu. She is aggrieved by the encroachment of the Electric Posts and Lines, erected by the respondent in her neighbor's property, which was drawn consequent to order of the ADM on a property crossing dispute, for providing electric supply to a third party. Her main complaint is that the ADM's order was to draw the Line along her neighbor's property only and hence should not cross to her land.

The Posts were erected and the Lines were drawn on 07.07.2010 as per the order of the Additional District Magistrate dated 28.6.2010. The appellant's request for avoiding the lines passing over her property as it causes inconvenience and damage to the trees standing in her property. The appellant had submitted complaints at various levels of officers of the Board for redressal of her grievance. Lastly, she lodged a complaint before the CGRF, Kottarakkara on 26. 7. 2012 which was disposed of, by ordering to approach the ADM again for resolving the dispute, if she so desires, vide Order OP No. 789/2012 dated 25.09.2012. Aggrieved by this decision, the consumer has filed the Appeal Petition before this Authority.

#### **Arguments of the Appellant: -**

The arguments of the appellant are based on the brief facts and circumstances that are narrated above. Further the appellant has adduced the following;

(1). The appellant had submitted a number of complaints before various officers in the Board, but no officers like Asst. Exe. Engineer or his superiors has visited the site, inspected and enquired about the complaint. The Asst. Exe. Engineer, the respondent, has given a reply stating that there is no inconvenience or loss has occurred to her property and no further action is required.

(2). The appellant complains that the order dated 25.8.2012 of the CGRF was sent to him only on 08.02.2013 and he received the same on 13.2.2013. It was taken five months to forward the order and this itself was done after taking action under RTI Act.

(3). The appellant contended that she is not interested to approach the ADM for resolving the dispute, as ordered by the CGRF since she was not a party in the proceedings issued by ADM regarding effecting electric line through the boundary of the property of her neighbor.

**Arguments of the Respondent: -**

(1). The respondent submits that the statute covering such a dispute comes under Sec. 10 to 18 of the Indian Telegraph Act, 1885, read with Section 164 of the Electricity Act, 2003. The competent authority to decide any dispute arising while exercising such powers has been stated in the Indian Telegraph Act, 1885. Since the competent authority, ADM has issued an order that was already executed, the complainant need to approach the appellate authority. The present petition is not maintainable before this Forum as per Regulation 22 (d) of the KSERC (CGRF & Electricity Ombudsman) Regulations, 2005. The present dispute is not the one originated out of the consumer supplier relationship between the petitioner and KSEB. On the said ground the petition is not maintainable before this Forum. Hence the respondent requests to raise the same as preliminary issue and dismiss the petition.

(2). Smt. Gomathi, Vilangara Veedu, Ootukuzhy, Valiyakattakkal, Venjaramoodu applied for electric connection to her house and for that, the Line was proposed through the property of Smt. Lyna Nalinakshan, Ayanikunnil Rubber Nursery, Valiyakattakkal, Venjaramoodu. Since dispute was raised by her, the matter was brought before the District Magistrate through a petition for decision. Based on the petition, hearing was conducted and an order was issued by the ADM on 28.06.2010 vide order No. S1/46950/ 2009. The order was executed and the electric connection was effected to the domestic premises of Smt. Gomathi. The CGRF closed the petition after appreciating the facts and rule position involved. As such, there is no ground for warranting interference of this Forum.

**Analysis and Findings: -**

The Hearing of the case was conducted on 29.8.2013, in my chamber at Edappally, and Mr. K. Damodaran, represented for the appellant and Mr. Sivakumar S, Assistant Exe. Engineer, Electrical Sub Division, Venjaramood, represented the respondent. On the 1<sup>st</sup> hearing day, this Forum directed the respondent to conduct a joint inspection along with the appellant and to prepare a sketch marking the electric posts erected there and the lines encroaching, if any. It was also directed to take action to avoid the slanting of Posts, if any, so as to avoid passing of overhead lines through the appellant's property. The next hearing was done on 26.9.2013 and both the parties were present.

On perusing the Appeal Petition, the counter of the Respondent, the documents filed, the arguments raised during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

**1.0.** Firstly, the respondent raises question regarding maintainability of the petition before this Forum since the present dispute is not the one originated out of the consumer supplier

relationship between the petitioner and the respondent. As per the definition of 'complaint' given in the KSERC (CGRF and Ele. Ombudsman) Regulations, 2005, Section 2 (f) (vi) reads as complaint means- 'any other grievance connected with the supply of electricity.....' made by a complainant in writing on electricity services. Hence I am of the opinion that the matter can be heard by this Forum.

**1.1.** The proceedings of the ADM, Thiruvananthapuram issued vide order no. S1-46950/ 2009 dated 28/6/2010 relates to the dispute on providing Electric connection to the house of an applicant for electricity (Smt. Gomathi) by drawing the proposed overhead line through the property of, Smt. Lyna Nalinakshan. Though, Smt. Lyna has objected the proposal of KSEB to draw the Lines along her property to give connection to Smt. Gomathy, the ADM has rejected her objections and ordered to draw the Electric Line through the boundary of her property. The appellant of this case (Smt. Anida) was not made a party in the said Case filed before the ADM and hence it is clear that there was no permission or order to draw the electric line to cross over or pass through the land property of the appellant.

**1.2.** *Clause 5 (7) of the Electricity Supply Code, 2005 emphasis that, "Where for supplying electricity to any premises, another person's premises have to be used for providing service line/cable, service line/cable has to cross over or laid underground in another's premises, the applicant has to attach a consent letter from the owner of such premises".*

The respondent KSEB, has not a case that such consent has been obtained by them to draw the Electric Lines through the appellant's property.

**1.3.** In this case, the appellant's grievance is that, the new Electric Line constructed as per ADM's order has crossed over to her property. The ADM has ordered to erect the Posts and Electric OH Lines along the boundary but within the neighbor's (Smt. Lyna Nalinakshan's) property only.

**1.4.** It is understood that the ADM issues the order, after hearing those parties who have filed objections against the proposed 'Electric Lines' construction, which is likely to affect them by passing through their properties. The ADM selects the most feasible route, out of the various suggestions submitted by KSEB, so as to cause least inconvenience to others.

**1.5.** Here, had the KSEB felt that the appellant is also likely to be affected by drawing the proposed Line (intended to give electric connection to Smt. Gomathy), then KSEB should have included the appellant also as a party in the Case before the ADM and got suitable orders to draw the Line. In this case, no such thing has occurred which means the KSEB's proposal to draw the Line will not affect the appellant's property in any way. Without the inclusion of the

appellant as a Party, the respondent cannot draw the Line affecting him, after getting the order of the ADM.

In such a situation, it is certain that the respondent is bound to draw the Electric Line as ordered by the ADM, confining to the property/properties, through which it was ordered to draw the Line by the ADM and should not cross over to neighbor's property.

**DECISION: -**

From the analysis done and the findings and conclusions arrived at, which are detailed above, I take the following decision.

The joint inspection (appellant with respondent) of the disputed site, as directed from this end, has confirmed that there is slight slanting of Electric Posts with Lines, erected on the boundary, towards the appellant's property, causing the encroachment of the Lines. The ADM's order was to draw the Electric Lines along the boundary but has to be restricted within the property of the parties mentioned in the ADM's order. It is certain that the Line should not cross over to others properties including the appellant. Hence the respondent is directed to set upright all such slanting Electric Posts, so as to avoid crossing of Electric lines and Posts into the appellant's property. In extreme case, if such rectification works does not remove or clear the Lines from crossings over to others property, the option of providing 'side arms' in place of 'cross arms' to the Electric Posts, may also be looked into.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant is allowed to the extent ordered and is disposed of accordingly. The CGRF order vide OP No.789/2012 dated 25.8.2012 is set aside. No order on costs. Dated the 25<sup>th</sup> November, 2013.

Electricity Ombudsman.

Ref. No. P / 348 / 2013 / 2058 / Dated 25.11.2013.

- Forwarded to
- (1). Smt. Anida D,  
Lylabhavan, Valiyakattackalil, Nellanad,  
Venjaramoodu, Thiruvananthapuram.
  - (2). The Assistant Executive Engineer,  
Electrical Sub Division, KSE Board,  
Venjaramoodu, Thiruvananthapuram.
- Copy to: -
- (1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
  - (2). The Secretary, KSEBoard,  
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
  - (3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEBoard, Vydyuthi Bhavanam, Kottarakkara.