

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/031/2016

(Present: V.V. Sathyarajan)

Dated: 25th August 2016

Appellant : Sri T.S. Murali
Tharayil House,
Maravanthuruthu
Vaikom. Kottayam.

Respondent : The Assistant Executive Engineer,
KSE Board Limited,
Electrical Sub Division,
Vaikom, Kottayam.

ORDER**Background of the case:**

The appellant, Sri T.S. Murali had submitted an application to the Assistant Engineer, Electrical Section, Chempu and also to the Chief Minister of Kerala for shifting the single phase line passing through the middle of his property so as to construct a new building. The Assistant Engineer inspected the site and found that shifting of line from the appellant's property is not technically feasible and hence proposed to be shifted through the nearby private road. According to the respondent, since the road is owned by 10 individuals, consent from all of them is required. As the appellant is not in a position to obtain consent from the property owners he approached the CGRF, Kottarakkara with a complaint.

The CGRF disposed of the petition directing the respondent to shift the overhead line through the feasible private road, on production of the consent from the owners of the private road. Also it is directed the appellant to remit the labour charges for the shifting work as estimated by the respondent. Not satisfied with the above decision of the CGRF, the appellant submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant stated that he is in possession of only 6¼ cents of land in Maravanthuruthu Panchayath under the jurisdiction of Electrical Section, Chembu, Vaikom. The appellant had submitted an application to the Assistant Engineer, Electrical Section, Chempu, Chief Minister of Kerala and also to the Chairperson, CGRF, Kottarakkara for shifting the single phase line passing through the middle of his property for constructing a new building. The Assistant Engineer inspected the site and intimated that shifting of line can be done through the nearby private road for which consent of the property owners is to be produced. But the property owners are not ready to give consent for shifting the line.

The appellant's contention is that as per the deed of right of pathway registered by 9 persons there is provision for drawing electric line, telephone line and for availing water connection for the property owners and hence no separate consent is required for shifting the line through the said private road and he has also a right in the said private road because he purchased his property from the owners who signed parties as 6th, 7th and 8th in the deed. The line was drawn through his property for giving connection to Sri.Noshad, the 2nd party in the deed of right of way. Moreover, Panchayath has provided a water connection in the disputed private road. The appellant stated that he belongs to BPL category and requested to shift the overhead line from his property at free of cost for constructing a new building.

Arguments of the respondent:

The respondent has filed the statement of facts against the averments raised in the appeal petition. The main contentions of the respondent are the following.

The Assistant Engineer inspected the appellant's property and verified the technical feasibility of the proposed shifting of line. Though the date of inspection was communicated to the appellant over phone, the appellant was not present at the site. Upon inspection it is found that it is not technically feasible to shift the line along the property of the appellant itself. However, the line can be shifted to a nearby private road. Since this road is owned by 10 individuals, consent from all of them is required for shifting the line as proposed. Since the starting portion of the line crosses a private road and ends another property, consent of owners of private road and the property owner is required. Hence the appellant was directed to produce consent from the affected property owners. But the appellant never produced any consent.

On 08-02-2016, the appellant filed O.P. No 24/2016 before the Hon'ble CGRF, Kottarakkara without remitting any application fees at the office of the licensee. The Hon'ble CGRF in its order dated 13-04-2016 directed the

petitioner to produce consent from the owners of the private road. A letter to the appellant was sent from the office of the Assistant Executive Engineer, Electrical Sub Division, Vaikom intimating the appellant to produce the consent for shifting the line. On contacting the affected property owners by the respondent it is understood that they are not willing to give consent to the appellant, as the shifting will cause difficulties to them. Hence it is prayed that the petition may be dismissed.

Analysis and Findings

The hearing of the case was conducted on 04-08-2016 in my chamber at Edappally, and Sri T.S. Murali, the appellant himself appeared and Sri Jayan K, Assistant Executive Engineer, Electrical Sub Division, Vaikom represented for the respondent's side. On examining the petition and argument notes filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The claim of the appellant herein is to shift the overhead line passing through the middle of his property which is drawn for giving service connection to his neighbour, Sri. Noushad. According to the respondent, shifting of line through the appellant's property alone is not technically feasible but can be shifted to the nearby private pathway. The facts disclosed before this Authority reveals that the private pathway owned by Sri Noushad and 8 others. As per deed of right of pathway the parties in the deed are only allowed to draw electric line, telephone line, water supply line, cable connection etc. through the private pathway. Hence shifting of line through the private pathway can be carried out only after obtaining consent of the owners of the private pathway. According to the appellant chances of getting consent from the owners of the private pathway is very rare. Considering the significance of shifting of overhead line, this Authority has directed the respondent to conduct an inspection and to suggest alternate route or methods, if any, for shifting of line economically and technically feasible. But the respondent forwarded an estimate for an amount of Rs. 31,000.00 for shifting the single phase line with LT Arial Bunched Conductor.

Regulation 95 of Kerala Electricity Supply Code, 2014 deals with the procedure for shifting electric line or electrical plant of the licensee. **As per this Regulation, the application for shifting an electric line or electrical plant shall be granted if:**

(a) the proposed shifting is technically feasible, and

(b) the owner of the land or his successor in interest gives consent in writing to shift the electric line or electrical plant to an other

portion of his land or to any other land owned by him; or any alternate right of way along any public pathway available for shifting the electric line and the electrical plant; and

(c) the applicant remits the labour charges required for shifting the electric line or electrical plant.

Here in this case, even though the shifting of single phase overhead line from the appellant's property is not technically feasible, the respondent proposes an alternate route through the nearby private pathway for which consent of property owners is required. As per the deed of right of pathway, only the parties in the deed are free to draw electric line, telephone line, water supply connection line, cable connection etc through the pathway. It is found that Sri. Noushad, the neighbour of the appellant, who has been given consent for drawing electric line through the property of the appellant, is having a right to draw electric line over the private pathway. After enjoying the benefit of drawing of overhead line at the mercy of Sri T.S. Murali, the appellant, Sri Noushad cannot deny the legitimate request of the appellant now. It is true that Sri Noushad who is not a party to this proceeding has now acquired a right over the private pathway along with his co-owners. It is not fair from the part of Sri Noushad to obstruct the shifting of overhead line from the 6¼ cents of property owned by the appellant, for construction of a house.

In general, it is not advisable to put undue hardship or any inconvenience for a person who had given consent to draw an electric line through his property for giving service connection to his neighbour, when he requested to shift the line through a separate private pathway which is technically feasible for shifting the line and to effect connection to the same neighbour. Here in this case Sri Noushad has every right to retain and enjoy the electric connection he has already obtained. But at the same time the Sri Noushad herein cannot demand that the overhead line should be retained through appellant's property, when Sri Noushad has his own passage or pathway leading to his house, through which the line can be shifted to provide his service connection.

This being the fact, the appellant cannot be compelled to remit the amount required for the shifting the line, but if he is willing to deposit the amount, then the respondent has to act upon it, after giving notice to the beneficent of electric connection who has a right in private pathway in order to settle the issue, observing the Regulation 95 of Kerala Electricity Supply Code, 2014 and the provisions of Indian Telegraph Act 1885. The Hon'ble High Court of Kerala in its judgment dated 21-08-2007, has commented that as far as possible, electric line should be drawn over roadside and over pathways, so that private property will not be affected.

Decision

In view of the discussions it is proved that the beneficiary, Sri Noushad had a right to draw the line to his residence through an alternate route which is owned by himself and 8 others. Hence the request of the appellant is to shift the overhead line drawn through his property, for giving connection to Sri Noushad can be entertained by the respondent if it is found feasible. In the above circumstances, the respondent is directed to issue notice to Sri Noushad and take necessary steps for shifting the overhead line from the appellant's property observing Regulation 95 of Supply Code, 2014 and provisions of Indian Telegraph Act, 1885. The appeal is disposed of accordingly. The order of CGRF in OP No. 24/2016 dated 13-04-2016 is modified to the extent as ordered above. No order as to costs.

ELECTRICITY OMBUDSMAN

P/031/2016/_____ /Dated _____

Delivered to:

1. Sri T.S. Murali, Tharayil House, Maravanthuruthu, Vaikom. Kottayam.
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Vaikom, Kottayam.

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.