

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/044/2016

(Present: V.V. Sathyarajan)

Dated: 13th October 2016

Appellant : Sri. Sainudeen P.
Poozhithara House,
Nilaparamba,
Kuttipala P.O.,
Malappuram

respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Kottakkal,
Malappuram

ORDER**Background of the case:**

The appellant, Sri Sainudeen P, has filed this appeal petition, against the inaction of respondent to shift the single phase LT line passing through his property and to effect service connection to his newly built house. Since an LT line is passing nearby the newly constructed house, the respondent denied the service connection. It is alleged that though the appellant had approached the respondent for effecting service connection to his newly built house, the electric connection was not provided for want of statutory clearances between the line and the building.

As the respondent failed to take action on the above, the appellant has filed petition before the CGRF, Kozhikode vide petition No. OP No. 44/2013-14 and the CGRF has disposed of vide order dated 26-11-2013, with the remarks as; "The respondent shall shift the LT line as per the plan and estimate submitted by them, after collecting the estimate amount from the petitioner, and give electric connection to the petitioner within 21 days of receipt of this order." As the shifting of line was objected by the nearby property owners, it has not been done. So the respondent approached the Additional District Magistrate, Malappuram to get an order for settling the issue. The Additional District Magistrate after conducting an enquiry, issued proceedings that the CGRF shall review the

subject case. Accordingly the CGRF has disposed the review petition submitted by the respondent vide order Review Petition No.5/2016 dated 05-04-2016. Still aggrieved by the said order, the appellant 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 of the case that is narrated above. Further, the appellant has adduced the following arguments.

The CGRF had ordered to shift the line as per the sketch submitted by the respondent after collecting the estimate amount from the appellant. The estimated amount sent by demand draft was not accepted and returned by the Assistant Engineer, Edarikode. It is informed that for the line shifting as per the plan prepared by the respondent a stay wire is required to be installed in the property of the neighbour. Later the respondent informed the difficulty to shift the line for want of consent from the property owner to erect stay wire in his property. Due to non implementation of the order of CGRF, the appellant approached the KSERC and the Commission fined the respondent for non implementation of the order of CGRF. On the basis of the illegal order issued by the ADM, the respondent filed review petition before the CGRF and the CGRF had impleaded the other parties in the case and issued orders without considering the arguments of the appellant.

The appellant had submitted all the required documents including co-ownership certificate for the service connection requested. The action of the CGRF in admitting the review petition is not sustainable since the petition was time barred and the order of ADM to reopen the case once disposed is legally not correct.

The order of CGRF in OP No. 44/2013-14 was issued approving the sketch and estimate produced by the respondent. The denial of implementation of the orders issued in OP No. 44/2013-14 by the respondent stating erection of stay wire is with some bad intention.

The commission pointed out that instead of stay wire a strut could be given to support the post and such strut could be put up in the compound of the appellant. There were also other alternative such as UG cable, Ariel bunch conductor etc. The respondent intentionally not considered the possibility for implementation of the said proposal.

As per Section 67 of Electricity Act 2003, the licensee has the power to shift the line, the respondent has not acted accordingly due to some vested interests.

The reliefs sought for by the appellant are:

1. To provide the electricity connection after accepting the Cash Deposit and other charges.
2. To allow compensation wef 20-5-2013 @ Rs.1,000.00 per day as per the provisions in Section 43 (3) of Electricity Act.

Arguments of respondent:

The respondent has filed a statement of facts along with connected papers, denying all the averments raised by the appellant.

The appellant had submitted an application for shifting line before the submission of application for electricity connection. As per Regulation 95 of Kerala Electricity Supply Code, 2014, it is the liability of the applicant to propose the direction of shifting of line and to obtain and produce consent from the concerned parties. For shifting the line it is necessary to erect a stay in the adjacent property. The appellant was directed to submit a consent letter from the owner of adjacent property vide letter no. DB/EKD/Line Shifting/56/12-13 dated 19-07-2012. Since the appellant not complied with the direction, the connection was not provided to him.

The CGRF, in its order dated 05-04-2016 in review petition No. 5/2016, has directed to shift the LT line only in pursuance of the provisions in Regulation 95 of the Kerala Electricity Supply Code, 2014. On the basis of the direction issued from Commission, the respondent approached the Additional District Magistrate with a complaint for getting an order to shift the line. The Additional District Magistrate has ordered to reexamine the order issued by the CGRF in OP 44/13-14. Accordingly the respondent filed a review petition before the CGRF.

The respondent is willing to take action as ordered in RP 5/2015 by CGRF. But the appellant is not willing to obey the first proposal that to install a 9 meter post and to raise the height of the line. The consents of 5 owners of adjacent properties are required to implement the second proposal. The appellant has not obtained the consent and informed the respondent till date. Though the second proposal is accepted by him, the consent are not obtained and produced.

The respondent has stated that a case on the same subject matter is pending with the Consumer Disputes Redressal Forum, Malappuram. The respondent is ready to give connection to the appellant as per Electricity Act, 2003 and Kerala State Electricity Supply Code, 2014. The line can be shifted only on getting the consent letters.

Analysis and Findings:

The hearing of the case was conducted in the Court Hall of CGRF at Kozhikode on 06-09-2016. The appellant himself and Sri Rajan T represented the

appellant's side and Sri Asif, Assistant Executive Engineer, Kottakkal and Sri Kiran K, Assistant Engineer, Electrical Section, Edarikode represented for the respondent. On perusing the petition, the counter of the respondent, the documents filed and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The relief sought for by the appellant is to provide an electric connection to his newly built house and to award compensation @ Rs. 1,000.00 per day with effect from 20-05-2013 for the sufferings he was put to by the respondent.

On a perusal of the records it is revealed that there is no dispute that the appellant has submitted an application for a new service connection on 10-04-2013 but the same was returned to him for rectifying the defects. The appellant resubmitted the application on 20-05-2013 after rectifying the defects pointed out, and the same was accepted by the respondent. As per Regulation 6 of the Kerala Electricity Supply Code, 2005, which is in force at that time, ***“the licensee shall provide electricity connection to the owner or occupier of any premises requiring supply as per the time frame under clause 8 subject to the payment of required fees, charges and security and satisfying the conditions stipulated in the approved ‘Terms and Conditions of Supply’ of the Licensee by such owner or occupier of the premises:***

Provided that, the Licensee shall not be responsible for delay, if any, in extending supply, if the same is on account of delay in getting statutory clearances, right of way, land acquisition or the delay in consumer's obligation to provide necessary clearances or payment of required cost of work as per clause 7 and security deposit as per clause 13, or for any other similar reasons beyond the reasonable control of the Licensee. In all such cases, the Licensee shall take all reasonable steps to avoid delay.”

The licensee shall, on an application in the proper form from the owner or lawful occupier of any premises located in his area of supply, give supply of electricity to such premises within the time specified. Accordingly the licensee shall inspect the appellant's premises and prepare cost estimates including initial security deposits and notify the applicant within 7 days from the date of application. But, in the instant case, the respondent advised the appellant to remit the estimate amount for shifting the LT line under work deposit and only after completing this work, the service connection can be given to the newly constructed building.

The appellant's contention is that in spite of several requests no action was taken to shift the line and to provide electricity connection to the premises of the appellant. So the appellant filed a petition before the CGRF, Kozhikode which was disposed vide order dated 26-11-2013 with a direction to give electric connection within 21 days after shifting the line, as per plan and estimate

submitted by the respondent. The appellant further contended that the respondent has failed to take proper action in time by seeking enlargement of time and to file a review petition on the orders of CGRF and to seek other legal remedy. The respondent had filed a petition to remove the objection raised by the adjacent property owners, before the Additional District Magistrate, Malappuram only after receiving a direction from the Commission. The CGRF has issued orders in the review petition no 5/2016 accepting the two proposals submitted by the respondent, in pursuance of the orders issued by the Additional District Magistrate, Malappuram.

According to the respondent the appellant is not ready to accept the first proposal to install a 9 metre post in the existing line for maintaining the statutory clearance with the building. In the second proposal, consent of 5 adjacent property owners is required but the appellant has not obtained the same till date, though he is ready to accept this proposal. The respondent's argument is that the work could not be carried out for want of consent from the adjacent property owners. It is pertinent to note that the respondent has not considered alternate proposals like providing a strut instead of stay or providing underground cable or Aerial Bunched Conductor for shifting the line and to effect service connection as suggested by the Commission.

In this background, while conducting the hearing this Authority has directed to conduct a joint inspection considering the above aspects and to forward a proposal in order to settle the issues. But the respondent failed to suggest any alternate proposal to maintain the statutory clearance or to shift the line. Hence this Authority could not proceed further and to issue a settlement order. Regulation 95 of Supply Code, 2014 deals with the procedure for shifting electric line or electrical plant of the licensee.

As per Regulation 95

(1) "the owner of the land or his successor in interest who has given right of way for the construction of an existing line or electrical plant over, under, along, across, in or upon the said land, may apply for shifting the electric line or electrical plant to any other portion of his land for genuine purposes.

(2) The application for shifting the electric line or electrical plant shall be submitted in the local office of the licensee.

(3) On receipt of the application the licensee shall inspect the site and assess the technical feasibility of the proposed shifting.

(4) The application for shifting an electric line or electrical plant shall be granted only 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 any 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 appellant remits the labour charges required for shifting the electric line or electrical plant

(5) The licensee shall shift the electric line or electrical plant if the conditions specified in sub regulation (4) are complied with by the applicant.

On going through the records it can be seen that the appellant made a request to the respondent on 30-06-2012 for shifting the electric posts in order to construct a building in the appellant's premises. Based on the request, the respondent conducted an inspection in the appellant's premises and noticed that while shifting the line, consent of the nearby property owners is required and directed the appellant to produce the same on 19-07-2012. But the appellant has not produced consent so far and hence the shifting could not be carried out. The CGRF during the hearing on 26-11-2013 has noticed that the respondent has produced a sketch prepared by them showing the details of line to be shifted and the appellant also admitted this proposal. Hence Forum issued an order to shift the line as per the proposal after collecting the estimate amount and give connection to the appellant within 21 days from the date of receipt of order.

The reason for not implementing the above order was not furnished by the respondent. In that order, the issue of consent has not been raised by the respondent. Hence it can be presumed that if the respondent took appropriate steps to carry out the work, the issue could have been settled. The issue regarding giving service connection to the appellant's newly constructed building is pending with effect from 10-04-2013. At present the respondent submitted 2 proposals and in the first proposal statutory clearances with the building can be easily maintained by inserting a 9 metre post is found as an ideal one for which appellant has to remit an amount of Rs. 3,419.00 and Rs. 342.00 towards the supervision charges. Even though, the respondent submitted the above proposal as early as 10-04-2013, no action was seen taken to implement the same. Moreover, the respondent did not demand the payment of Rs. 3,761.00 in pursuance to the proposal to the appellant. It seems both sides sit idle on the proposal. In view of the above facts the respondent is directed to give connection to the appellant on remitting the estimated amount.

The second prayer of the appellant is the claim of compensation of Rs 1,000.00 per day for the alleged delay in effecting the service connection to the appellant's premises. On perusing the records it is seen that on the application of the appellant the Hon'ble Commission had already imposed penalty on the officials of the respondent for the non-compliance / delay in complying the orders of the CGRF. If the appellant is aggrieved for the alleged delay in providing connection, the matter of compensation if any is to be determined by looking into

various aspects like whether the delay is caused due to the sole negligence of the respondent, or if there is any contributory negligence on the part of appellant, and also is there any actual damage caused to the appellant. Hence this issue can be taken up with the licensee if he desires so.

Decision:

In view of the discussions the respondent is directed to give service connection to the appellant as per the first proposal without any delay at any rate within 2 weeks after the remittance of estimated amount by the appellant. With regard to the matter of compensation, this question is left open and the appellant is free to approach the licensee if he desires so.

The order of CGRF in review petition No. 5/2015 dated 05-04-2016 is modified to the extent as ordered. No order as to costs.

ELECTRICITY OMBUDSMAN

P/044/2016/_____ /Dated:_____

Delivered to:

1. Sri. Sainudeen P., Poozhithara House, Nilaparamba, Kuttipala P.O., Malappuram
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kottakkal, Malappuram

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, Gandhi Road, Kozhikode.