

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/030/2017
(Present: A.S. Dasappan)
Dated: 10th July 2017

Appellant : Smt. Indira Bhai B
Haritham,
Kureekad P.O.,
Thiruvankulam,
Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.,
Pallimukku,
Kollam.

ORDER

Background of the case:

The appellant has filed the appeal petition, being aggrieved at the inaction of KSEB to shift the transformer installed in her property, situated under Electrical Section, Ayathil, in Kollam District. She alleges that the said transformer was erected long ago in her property without obtaining her consent. She owns about 5½ cents of land and due to the installation of transformer she finds obstructions for free use of the property. Though the appellant had approached the KSEB for shifting the transformer, they had not taken any action. Aggrieved by the inaction of KSEBL, the appellant filed a suit before the Hon'ble Munsiff Court, Kollam in OS 361/2009. Since no proper action was taken on the petition by the respondent,, she has also filed petition before the CGRF, South, Kottarakkara vide Petition No. OP No. 285/2016 and the CGRF has disposed it by order dated 02-02-2017, with the remarks as; "Hence the Forum views that as the case is pending before the Munsiff Court, Kollam in OS 361/2009, the Forum does not want to interfere the case in the

present position. The respondent shall take action according to the order of the Hon'ble Munsiff Court, Kollam." Still aggrieved by the said order, the appellant has filed the appeal petition, before this Authority.

Arguments of the Appellant:

The appellant has contended that the KSEB had installed a transformer in her property for a saw mill being run by one Rajeevan during the year 1990. The respondent had not obtained the consent or permission from the appellant or her brothers and sisters. The line was drawn from the transformer to the house of Sri Rajeevan and to another person named Sivadasan by crossing the appellant's property. Though this person, Rajeevan, owns 38 cents land, he misled the respondent and erected the transformer in the property of the appellant. It is alleged that respondent had not verified the sale deed documents and property tax receipts before the installation of the transformer. The appellant has also contended that she was out of station from 1985 onwards since her husband was working and residing at Ernakulam. The appellant argued that the transformer was installed by making an encroachment to a private property without the consent of the owners and without complying with the provisions of the Act and Regulations.

Arguments of the respondent:

The appellant has no locus standi to institute a complaint against KSEB Ltd. The appellant herself has filed a suit before the Hon'ble Munsiff Court, Kollam, OS 361/2009 alleging the same grounds in this petition as Secretary, KSEB as the 6th defendant (Copy is attached). The case is under trial. As per Section 10 of Code of Civil Procedure 1908, a suit must be stayed if the matter directly and substantially in issue in a previous suit that is pending. Therefore, the petition is to be dismissed in limine without entering, into the merits of the case. However, I may submit the facts relating to this case. During 1990, a transformer named Aswathy Transformer had been erected for providing supply to a saw mill owned by Sri Rajeevan. While erecting this transformer, no dispute or complaint has been raised over the ownership of the land in which the transformer had been installed. After observing all statutory formalities, the transformer was placed. 217 numbers of service connections were effected from this transformer (List attached).

As per Section 10, 16 of Indian Telegraph Act 1885 read with Section 164 of Electricity Act, 2003 KSEBL has authority to draw lines and install transformer through public pathway causing least inconvenience and hindrance to the public. Civil Courts lacks jurisdiction to entertain such matters and appropriate remedy available to the petitioner is to approach the District Magistrate.

The transformer is situated in a least inconvenient and technically feasible place. Kerala State Electricity Board Officials are duty bound to take steps when and where new service connection applications were received. The concerned officials under Electrical Section, Ayathil has acted only as per rules prevailing in KSEBL.

The Hon'ble Consumer Grievance Redressal Forum viewed that as this case is pending before the Munsiff court, Kollam in OS 361/2009, the Forum does not want to interfere the case in the present position and the respondent shall take action according to the order of the Hon'ble Munsiff Court, Kollam.

Analysis and Findings:

The hearing of the case was conducted on 23-06-2017 in my Office at Edappally and both parties were present. Smt B. Indira Bhai, the appellant appeared for the appellant's side and Smt. Sree Kumari Amma G., Assistant Executive Engineer, Electrical Sub Division, Pallimukku, Kollam for the opposite side.

The appellant has submitted the appeal petition on 09-03-2017 before this Forum and she has not raised any other grounds or arguments in this appeal petition, other than what she pleaded before the CGRF. Since the main reliefs sought are based on the same issues that are pending before the Hon'ble Munsiff Court for decision, I do not feel it appropriate to entertain the petition on the ground that the case is not maintainable before this Forum also, as per Clause 22 (d) of the Kerala State Electricity Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005. Hence this Forum declines to interfere with the orders of CGRF. The appellant has confirmed during the hearing that the suit filed before the Court is still pending for final decision.

At this juncture it is to be noted that, the Clause 22 (d) of the Kerala State Electricity Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, provides that;

“No representation to the Ombudsman shall lie in case where a representation for the same grievance by the complainant is pending in any proceedings before any Court, tribunal or arbitrator or any other authority or a decree or award or a final order has already been passed by any such Court, tribunal, arbitrator or authority”.

Since a suit filed by the respondent lies before the Court and in the light of the above provision under 22(d) of KSERC Regulations 2005, which restricts the maintainability of the petition filed for the same cause of action and relief, the appeal petition filed by the appellant, need no further action at this Forum and hence needs to be rejected.

Decision:

For the reasons detailed above, the appeal petition, filed by the appellant stands dismissed as it is found not maintainable before this Forum. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/030/2017/_____ /Dated:_____

Delivered to:

1. Smt. Indira Bhai B, Haritham, Kureekad P.O., Thiruvankulam, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Pallimukku, Kollam.

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.