

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/019/2019
(Present: A.S. Dasappan)
Dated: 06th May 2019

Appellant : Sri. Basheerkutty
Aneesh Nivas,
Mylakkadu P.O.,
Kollam

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

ORDER

Background of the Case:

The appellant is the consumer under the Electrical Section, Kottiyam. The appellant has requested the respondent to shift the electric line and post located in appellant's property. Since no action has been taken by the respondent, the appellant filed petition before the CGRF, Kottarakkara in OP No.144/2018 requesting to shift the line and two posts from his property. Being not satisfied by the decision of CGRF, the appellant has filed this Appeal petition before this Authority against orders issued by the CGRF in OP No.144/2018 dated 12-02-2019.

Arguments of the appellant:

The appellant is the absolute owner and in possession of property comprised in Block No: 28, Thandaper No: 46/16 Resurvey No: 231/22 having an extent of 34 Ares 70 sq mts of landed property comprised of building and cultivation. The respondent is residing in the southern side and running a printing press with the un-numbered electric post located on the southern side of appellant's property. The electric lines were drawn through the middle portion of appellant's property in such a nature as if after the nature and lie of

property and causes immense threat and danger to appellant's property. For getting the immediate and urgent relief, the appellant approached the CGRF, Kottarakkara. The Forum redressed the complaint to distant the above post by depositing expenses by the appellant. The appellant challenged the above order on following grounds.

The order passed by CGRF dated 12/02/2019 is not as per law and not follow the rules laid down Electricity Act.

The order passed by CGRF is not considered that the electric post was installed without permission in such a manner as it causes immense threat and danger. The order passed by CGRF to bear the expense by the appellant for the removal of electric post from the property is improper and arbitral.

Reliefs sought for:

- (1) To pass an order directing the Assistant Executive Engineer Kottiyam to remove the electric post located in appellant's property.
- (2) To pass an order to pay compensation sum of Rupees 1 lakh to plaintiff from defendant.
- (3) To pass such other orders as this court deems fit and proper to do so.

Arguments of the respondent:

1. The Appeal Petition filed by the appellant herein is not maintainable under Reg 22(l)(d) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman), Regulations 2005. The complaint concerning the disputed matter filed by the appellant is pending disposal before the District Magistrate, Kollam, who is the statutory authority to exercise the powers conferred on him by virtue of section 16(1) of the Indian Telegraph Act 1885 read with section 164 of the Electricity Act 2003.

2. The Appeal Petition in also not maintainable by virtue of Reg 22(2) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2005. The Appellant herein has averred before the CGRF (S) that there is a case pending before the Hon'ble Munsiff Court Paravur in regard of the property dispute between the Appellant and Sri. Muhammad Kunju who was also the 1st Respondent in OP No. 144/2018.

It is obvious that the property dispute between appellant and Sri. Muhammad Kunju who runs Albusthan press is the cardinal ground for this Appeal Petition. Further the Appellant has agreed before the CGRF(S) that he would remit the cost required for shifting of the line (LT line drawn between pole No. KE 69/7 and KE 69/8) and thereby the CGRF(S) has ordered to shift the electric line passing through the property of the petitioner on payment of cost

of shifting by the petitioner. The appellant's case of property dispute was not yet decided by the Hon'ble Munsiff Court Paravur and he has preferred this appeal without adhering to the statement made by him before the CGRF agreeing to bear the cost of shifting the said line. Therefore the appeal is frivolous, vexatious, bereft of bonafides and without any sufficient cause which causes the appeal petition unsustainable under Reg 22 (2) of the KSERC (CGRF & Electricity Ombudsman) 2005.

3. There are electricity connections from pole No. KE 69/7 and KE 69/8 allegedly standing in the appellant's property, to consumer No. 12063 which was effected some 25 years back in the year 1991, consumer No. 17775 effected on 14.5.2002 and appellant's connection 21597 effected on 31.10.2007. This respondent has made a statement before the CGRF(S) to the effect that the OH line alleged to be passing through appellant's property has no safety related issues in existence and the said line was constructed conforming to the standards stipulated under rules and regulations prevalent then.

Analysis and findings:

Hearing of the case was conducted on 25-04-2019 in the office of the Vaidhyuthi Bhavanam, Alappuzha. Sri A. Basheerkutty and Sri. Vinod Babu, Advocate appeared for the appellant and Sri. Anilkumar R, Assistant Executive Engineer, Electrical Sub Division, Kottiyam appeared for the respondent. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

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.

The appellant has submitted the appeal petition on 12-03-2019 before this Authority. The respondent informed in its statement of facts to the Authority the pendency of a civil case at the Munsiff Court, Paravoor regarding the dispute in pathway. Also a complaint based on the same issues i.e. shifting of posts and line from his property, is given by the appellant to the District Magistrate on 24-11-2018. Since OS No.174/2018 lies pending before the

Court and a complaint also pending on the same issue before the District Magistrate, which restricts the maintainability of the petition filed for the same cause of action and relief, this Authority does not feel it appropriate to entertain the petition on the ground that the case is not maintainable, as per the Clause 22 (d) of the Kerala State Electricity Regulatory Commission CGRF and Electricity Ombudsman) Regulations, 2005

The Appeal Petition filed by the appellant, need no further action at this Forum and hence needs to be rejected.

Decision:

From the findings and conclusions arrived at as detailed above, I decide as follows.

The Appeal Petition filed by the appellant is rejected and stands disposed of as such. Whenever the dispute regarding the shifting of electric line before the District Magistrate is settled, the respondent shall take proper action as per the orders of District Magistrate.

Having concluded and decided as above it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/019/2019/_____ /Dated: _____

Delivered to:

1. Sri. Basheerkutty, Aneesh Nivas, Mylakkadu P.O., Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kottiyam, 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.