

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/027/2019
(Present: A.S. Dasappan)
Dated: 13th June 2019

Appellant : Smt. Aniamma George
Valiyaparambil House,
Edathua P.O.,
Alappuzha

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Edathua,
Alappuzha

ORDER

Background of the case:

The appellant has filed an appeal petition in P/027/2019, being aggrieved by the decision taken by the CGRF in OP No. 60/2018-19 dated 05-03-2019. The appellant is a domestic consumer under Electrical Section, Edathua having consumer number 4790. The appellant finds difficulty for smooth trafficking due to erection of the Stay in her property. The CGRF, Ernakulam has disposed the petition filed by the appellant with the following orders. "(1) The respondent is directed to shift the stay wire within 7 days from the date of remittance of the labour charges by the petitioner, to the border to the compound wall of the petitioner's property. 2) If the petitioner is not agree with this decision, the petitioner shall submit the consent from the concerned neighbours to shift the stay wire and remit the required charges."

Still aggrieved by the order of the CGRF, the Appellant has filed the Appeal Petition before this Authority.

Arguments of the appellant:

The following arguments are put forward by the appellant in the appeal petition.

The appellant has mentioned and consistently maintained throughout the proceedings of the case that the stay wire was installed by KSEB, Edathua in the year 1993 (25 years ago) by trespassing on her family property without her knowledge, without her consent and without her and her family members written permission while they were outstation (in their absence) and her house and main gate was locked whereas the observations, conclusion and decision of the CGRF states that the stay wire was inserted by KSEBL without her consent , trespassing into her property and has omitted the words "without her knowledge" from its order dt:5-3-2019.

The main gate of the appellant's residence was installed in the year 1985, thirty three (33) years ago by her husband late V.M. George and the passage connecting the main gate to her residence has been in existence and use since 1985 whereas the observations, conclusions and decisions of the CGRF states that the disputed stay wire was erected in the plaintiffs / appellant's property years back by the respondents and during that period there was no pathway or gate. At present, a gate was provided on the side of a road which passes in front of the property of the plaintiff / appellant.

The old gate was replaced and the new and widened main gate was installed on 16-06-2018 and not in the month of Nov 2017 as earlier mentioned by the plaintiff / appellant due to oversight.

The new and widened main gate of the appellant's residence was installed on 16-06-2018 only after legally and lawfully depositing a fee of Rs.236.00 (Rs.224.00 + Rs.12.00) vide Receipt Nos. 55070180616101206 & 55070180616101207 dated: 16-6-2018 respectively with KSEBL, Edathua on a request application moved by the appellant on 16-6-2018 itself and not two years back as claimed by the CGRF vide its order dated 05-03-2019.

The actual facts which are the ground reality and the basis of the case filed by the appellant and the site photographs including digital photographs depicting the initial gate installed in 1985 (thirty three (33) years ago) and the new gate installed on 16-06-2018 (after the passage widening) have been totally ignored and not taken into consideration by the CGRF.

The photographic and digital evidence submitted by the appellant clearly proves existence of the old gate of the appellant's residence even

after construction of the new Anaparambal Marthoma Church on front side of her residence.

The stay wire was forcefully installed by KSEB, Edathua without the appellant's and her family members knowledge, consent and written permission 25 years ago by trespassing on their family property by forcefully climbing their residence boundary wall & locked main gate which itself is a criminal offence and is punishable under section 441 IPC 1860 proving an unlawful entry into the appellants family property.

The appellant informs that in the normal course of day to day life or in the event of an emergency situation, whereby she is required to reach / or be rushed to any hospital/ medical Centre for getting immediate medical attention / treatment, and any vehicle / ambulance supposed to carry her is unable to reach her doorstep because of the obstruction being created by the installed electric stay wire , and in the process precious time is lost resulting in any mishappening leading to electrocution / serious health complications leading to her death, the full responsibility and liability of which / such shall rest on the respondent.

The appellant's submission in the appeal petition is to pass an appropriate order to remove/relocate the stay wire / stay cable to the adjacent land on the expense of KSEB, Electrical Sub-Division, Edathua and mitigate the grievance of a consumer who is aged eighty (80) years old and a senior citizen of India and in the process uphold the sanctity of human rights.

Arguments of the respondent:

The spot is about 100 Mtrs away from Vettuthode junction along Ambalappuzha-Thiruvalla road towards south. The Stay in question is provided for a PSC pole and LT Single phase 3 wire line leading towards Kunthirikkal. On enquiry with neighbors, public and church authorities nearby it is known that the age of the above LT line will come to above 25 years and that time there was no separate pathway or gate available at the present spot where the stay in question provided.

The present gate was constructed 2 years back from which the stay became inconvenient to the appellant. The KSEBL is willing to shift the said stay to the opposite side and corner of the appellant's pathway on remitting the required expenses but the appellant is not willing to shift the stay anywhere in her property and not willing to meet the expenses. KSEBL is not in a position to shift the stay or pole in private property without obtaining consent from property owners.

Analysis and findings:

The hearing of the case was conducted on 29-05-2019, in the office of the State Electricity Ombudsman, Edappally, Kochi 24 and Sri R. George, represented the appellant and Sri. V.S. Jayasankar, Assistant Executive Engineer, Electrical Sub Division, Edathua was present and they have represented the sides of the Appellant and Respondent respectively. On examining the Petition, the statement of facts filed by the respondent, considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision.

The issue referred in this appeal is with respect to shifting of existing stay wire which creates obstruction for the vehicular trafficking of the appellant. The request is for shifting the stay wire from her property. The appellant was directed to remit labour charges for shifting the stay wire to the border of her property or to obtain consent from the neighbouring property owner for shifting the stay wire in that property, as ordered by the CGRF. The respondent submitted a sketch of the disputed location of the line and poles situated in the place for verification and this Authority inspected the site on 07-06-2019 in the presence of the appellant's representative and the respondent. It is found the existing stay wire was erected in the appellant's property about 25 years back and the appellant is also admitted this fact. The appellant's grievance is that the stay wire was erected without her knowledge and consent while they were outstation. The respondent has proposed a feasible location for erecting the stay wire to the extreme boundary of the appellant's property, but this proposal is not acceptable to the appellant.

The provisions under Regulation 95 of Supply Code, 2014 has to be adhered in the case of shifting of electric line, plant etc. If the Distribution Licensee (KSEB Limited) requires the shifting of the existing overhead line, stay wire etc, in the interest of safety and reliability of electric supply or in public interest, the licensee can initiate action but has to confirm that the parties likely to affect are informed or get their consent. So the primary duty of licensee was to ensure that, it must be done causing least inconvenience to the neighbouring property owners or the others who are likely to be affected by the action and it must be done without giving room for any complaint.

This Authority has found that the proposal submitted by the respondent is technically feasible and practically possible and the CGRF has also taken a decision approving the proposal submitted by the respondent on this issue. Regulation 95(4) (b) reads "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 path way available for shifting the electric line and the electrical plant.”

The main point of the allegation raised by the appellant is that the stay wire erected across her property unauthorisedly without her knowledge and consent. The respondent has not furnished a satisfactory answer to this but stated that the stay wire was erected some 25 years before. The appellant argues that the stay wire installed 25 years ago by trespassing on her family property by forcefully climbing in her residence boundary wall & locked main gate. But this argument of the appellant is not acceptable since the gate and the compound wall are seen constructed few years back. It is surprising to note that the appellant has not raised objections against the stay wire during the past long years. Since the stay wire was reported to be erected without any objection, at that point of time and stood there for the last so many years, which itself reveals that there is no merit in the allegation of the appellant, that the stay wire was installed unauthorisedly. In this case, there is no evidence to prove that the appellant has filed any objection in time, before the respondent or its superior officers.

Considering the safety aspect of the electric pole, the shifting of the stay wire shall be done from the present location only after finding a technically feasible location. The respondent prepared a proposal for the shifting of the stay wire to a technically feasible location which is nearby the barbed wire fencing of her property. On inspecting the property by this Authority, it is convinced that the obstruction and the inconvenience can be avoided by implementation of this proposal. The distance between the new location of the stay proposed by the respondent in the boundary of the appellant's property and the location proposed by the appellant in the nearby property is only less than one feet. The adjacent property of the appellant's property fencing belongs to the church authorities and at present the shifting of the stay wire to that property is possible with their consent only.

As per regulation 95 (4) (c) of the Kerala Electricity Supply Code, 2014, the appellant has to remit the labour charges for shifting the stay wire. If the appellant is willing to accept the proposal of the respondent, the respondent shall shift the stay wire to the barbed fencing border of the appellant's property after remittance of the labour charge. If she is not willing to shift the stay wire in her property as proposed by the respondent, the appellant has to submit the consent from the church authorities for shifting the stay wire in the adjacent property, and remit the labour charges for the shifting and the respondent shall take action to shift the stay wire accordingly.

Decision:

From the analysis done above and the conclusions arrived at, this Authority upheld the decision taken by the CGRF in OP No.60/2018-19 dated 05-03-2019.

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

ELECTRICITY OMBUDSMAN

P/027/2019/ _____ /Dated: _____

Delivered to:

1. Smt. Aniamma George, Valiyaparambil House, Edathua P.O., Alappuzha
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Edathua, Alappuzha

Copy to:

3. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
4. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
5. The Chairperson, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.