

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/014/2020
(Present: A.S. Dasappan)
Dated: 10th July 2020

Appellant : Sri. Gangadharan K
Kurungatt House,
Peechi P.O.,
Thrissur

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEBL,
Mannuthy,
Thrissur

ORDER

Background of the Case:

The appellant, Sri. Gangadharan K is a domestic consumer with Con no.1156767005738 under the jurisdiction of Electrical Section Pattikkad. The appellant being aggrieved with the delay in complying with his application for shifting an electric pole which was installed in his property years back, approached the CGRF, Ernakulam for refund of excess amount collected and for compensation for the lapses and delay caused in executing the work. The CGRF disposed of the case as “ The Licensee has to pay the compensation amount to the petitioner as per Standard of Performance, Clause 11(b) for the delay in execution of work excluding the period for rectification of Flood 2018, i.e., from the date of 25/11/2018 to the date of execution of work, which is to be realized from the concerned Assistant Engineer and Sub Engineer, vide order dated 17-01-2020 in OP No. 66/2019-20. Against the decision, the appellant has submitted this appeal petition before this Authority on 17-02-2020.

Arguments of the appellant:

The appellant filed an urgent petition before the respondent on 13.07.2016 for shifting an electric pole installed in his property. It was required for the purpose of construction of a house in that part of the property.

The Sub Engineer visited site on the same day and prepared an estimate of Rs.3997 including material cost, labour charges, supervision charges, etc.... The appellant was directed to remit Rs.1,054/- in office and pay the labour charges Rs.3000 in cash to the laborers while executing the work. No copy of the estimate was supplied. So, the appellant was ignorant of the exact estimate amount. Appellant remitted Rs.1,054/- in the Section office on 05.08.16 and contacted one of the workers over phone (number given by the Sub Engineer), to know when they will be coming to the site to do the work and asked casually whether they will give a hand receipt for the labour charges. Obviously, he was not pleased with this. Despite repeated calls the workers never turned up for doing the work. The Sub Engineer and the respondent were also not pleased with the appellant for this reason. The appellant commuted to the Section Office many times and reported fact. The complaints made in the website of KSEB and to the Customer Care failed to energize the respondents.

During the furious flood havoc in August 2018 the feeder line to the area of the appellant was washed away in rain. After three days groping in the darkness, supply was given temporarily from another feeder line. For this one new pole was erected in the road in front of the appellant's residence at the point whereto the post in the appellant's property was requested to be shifted. At that time the Assistant Engineer called the appellant over phone and said, if the appellant was willing to remit the amount, he shall simply revise the estimate at 2018 rates plus GST. The appellant readily agreed as shifting was urgent, for him. On demand the Assistant Engineer agreed to adjust earlier payment of Rs.1054 towards the revised estimate. The appellant remitted the estimate amount of Rs.5,548/- (6602-1054) on 21.08.2018 and waited for the execution of the work. Even after the payment, for reasons not known to the appellant, the shifting was delayed for another 4 months. The work was actually done on 02.01.2019. Aggrieved from this the appellant filed petition before the CGRF.

The finding of the Forum to the effect that the delay was only from 25.11.2018 to the date of execution of the work is wrong. This finding limited the quantum of fine imposed on the delinquent officials. Actual delay is from 05.08.2016. Since the Forum has not taken notice of actual delay, real delinquents have escaped from liability. The Assist. Engineer and the Sub Engineer during 2016-18 (till 24.11.18) were also responsible to execute the work as per the Standard of Performance of KSEB effective from 11.01.2016.

The Forum has imposed fine only from 25.11.2018 though, as per SoP, delay started from 21.09.2018. The Forum has not awarded compensation though the Forum has taken note of the loss of the appellant on account of escalation in cost of house construction due to delay. In the application the appellant had mentioned that the shifting was urgently required for construction of a house.

The Forum has noted that there was no undertaking or agreement executed by the appellant that labour charges shall be met by him. The Forum has rightly noted that merely collection of the material cost and supervision charge would not relieve the licensee from the process of finishing the work

as it cannot be expected that the consumer is well versed with the execution of such type of skilled jobs without the assistance of the licensee. But the Forum has not fined the respondent for this lapse in the initial stage. The Forum unwittingly believed the version of the respondents that the appellant orally agreed to undertake the work with his labourers.

The Forum was incorrect in its finding that the first estimate was prepared for Rs.1,054/-. The estimate showed that the estimate was for Rs. 3397 including labour charges. It was at the direction of the respondent the payment was split up and Rs.1054 remitted in the KSEB. No copy of any estimate was supplied to the appellant. The appellant obtained it under RTI.

The Standard of Performance was effective from 11.01.2016. Even if it is admitted, for the sake of argument, that the appellant agreed to execute the work on his own, it was the duty of the respondent, as per SoP, to execute the estimate by them either by realizing balance amount or by directing the appellant to complete the work within one month so that clause under the Standard of Performance is not invoked against them. The Forum has not gone into this aspect but simply noted that the appellant was misguided. In fact, the appellant was not asked to nor the appellant agreed to execute the work at his risk and cost.

The Forum failed to take notice that there was no GST in 2016 and it was solely due to the laxity of the delinquent respondents during 2016-18 the appellant was destined to pay the revised estimate of 2018 and GST on all items.

The appellant was destined to spent Rs. 4,500/- for meter box etc. at the instance of the Sub Engineer in charge in 8/16. The Forum failed to understand that the appellant will not incur such a huge amount for electrical installations without a directive from the Respondent.

The Forum has not ordered cost of the appellant. The appellant has spent enormous time and money for commutation and enquiry over phone and for filing OP before the CGRF and personal hearing at Ernakulam. Despite all possible efforts of the appellant, the work was not executed by the respondent due to sheer neglect of the Standard of Performance. The appellant was compelled to file OP before the CGRF as a last resort.

The appellant prayed to set aside the impugned order of the CGR Forum and order the licensee to pay the entire amount, with cost, as demanded in the original petition.

Arguments of the respondent:

The service Connection was earlier given to the consumer by drawing an overhead line from the post installed in his property. The appellant submitted an application for shifting the post for the purpose of construction of a house in that part of the property. The appellant has remitted 100/- for AF, 200/- for processing fee, vide receipt no. 10214,10215 dated on 5.08.2016

for shifting of post. The Maintenance Sub Engineer inspected the site and prepared an estimate amounting to Rs.3997/-.

The demand for material cost and supervision charge Rs.1054/-was remitted in the office by the party vide Rt no.101216 dated 5.08.2016. The party has promised to the officer that the labour charge will be given to the workers by himself. The responsibility of the licensee is only regard to supervision only and application for change of meter box was not submitted by the appellant.

Later in August 2018, the appellant contacted the Electrical Section office and informed that he is ready to pay the estimate including the labour charge. During the course of time the estimate amount increased due to increase in the labour charge, material cost, GST etc. So, the appellant remitted Rs 10/- as application fee for revision of the estimate amount and remitted Rs 5,538/- as revised deposit work amount vide receipt No.102122 dated 21.08.2019.

Since the great flood caused on August 2018, there was an unexpected delay in performing the jobs requested by the applicant. The work was completed on 2019 January. KSEBL has not charged twice the processing fee from the applicant when requested to do the work, the application fee Rs. 10/- only remitted by the applicant for revising the estimate. There was not any intentional delay or lapse made KSEBL on the part of service given to the appellant.

Analysis and Findings: -

An online hearing of the case was conducted on 29-06-2020 as per prior information to both the appellant and respondent and with willingness of them. The appellant, Sri Gangadharan present in the hearing and Smt. A Rajani, Assistant Executive Engineer, Electrical Sub Division, Mannuthy for the respondent's side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during 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 thereof.

The appellant's requests before the CGRF were to refund the excess amount of Rs. 2,443/- remitted by him as per the revised estimate. Secondly to refund an amount of Rs. 4,500/- being the cost of items purchased unnecessarily by him, as directed by the respondent and thirdly to allow compensation amounting to Rs. 30,000/- for the lapses on the part of the respondent. The CGRF allowed compensation only as per Standard of Performance, Clause 11(b) for the delay in execution of work excluding the period for rectification of Flood 2018, i.e., from the date of 25/11/2018 to the date of execution of work and also ordered that the same is to be realized from the concerned Assistant Engineer and Sub Engineer. Hence the appellant prayed to set aside the impugned order of the CGRF and requested a direction to pay the entire amount with cost, as demanded in the original petition.

The appellant gave an application for shifting an electric pole from his property which was done only on 02-01-2019. The version of the respondent is that they could not do the work due to Flood in August 2018. but there is no reason for not carrying out the work from 05-08-2016 the date on which material cost is remitted, to August 2018. The appellant remitted an additional amount of Rs.5548/- on 21-08-2018 as per the revised estimate as demanded by the respondent.

There is no dispute regarding the date of submission of the application for shifting the electric pole installed in his property by the appellant on 13-07-2016 and the appellant remitted Rs.1,054/- in the Section office on 05-08-2016 as shifting charges as directed from the Section. The shifting effected only on 02-01-2019, after the appellant remitted an additional amount of Rs. 5,548/- on 21-08-2018. It is observed by the CGRF that the licensee has not initiated any steps to carry out the work even if the issue is pending for more than 3 years. According to the respondent the reason for delay was due to the failure to submit an application for change of meter box by the appellant and the appellant has promised that the labour charge will be given to the workers by himself. Since the appellant remitted the material cost and supervision charges, it is the responsibility of the respondent to take further action. As no action has been taken by the respondent for 2 years, an increase in the cost of materials, labour charge, GST etc occurred additionally. Hence it is found justifiable to refund the excess amount of Rs. 2,443/- by the respondent. But regarding the expenses of an amount of Rs. 4,500/- being the cost of items purchased by him, the appellant has not produced any evidences to prove the claim, hence it is not admitted.

Considering the facts and circumstances of the case, this Authority finds that the issue is squarely covered in favour of the appellant to the extent stated above. The appellant is entitled to get compensation for the delay occurred to him, to get the post shifted in time, as per rules. But as this Authority is not competent to award compensation in first instance, it is left open to the appellant to approach the licensee for compensation as per regulation 16 of the Kerala State Regulatory Commission (Standard of Performance of Distribution Licensees) Regulations, 2015.

Decision

From the analysis done and the conclusions arrived at, which are detailed above, I take the following decisions.

1. The respondent is directed to refund Rs.2443/- to the appellant.
2. The request for refund of amount of Rs.4500/- is rejected.
3. The compensation allowed by the CGRF, Central Region is not sufficient considering the delay of completion of the shifting work. Hence the appellant may approach the Executive Engineer, Electrical Division for compensation as per regulation 16 of the Kerala State Regulatory Commission (Standard of Performance of Distribution Licensees) Regulations, 2015.

The order of CGRF, Ernakulam in OP No. 66/2019-20 dated 17-01-2020 is set aside.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed. No order on costs.

ELECTRICITY OMBUDSMAN

P/014/2020

Delivered to:

1. Sri. Gangadharan K., Kurungatt House, Peechi P.O., Thrissur
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Mannuthy, Thrissur

Copy to:

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