

**THE STATE ELECTRICITY OMBUDSMAN**

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**Appeal Petition No. P/033/2024  
(Present A. Chandrakumaran Nair)  
Dated: 24/07/2024**

Appellant : Shri. Joe Francis  
Uruvath House  
Jeevan Jyothi Road,  
Parappukkara P.O., Thrissur Dist.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
Karuvannur, Thrissur Dist.,

**ORDER**

**Brief Background of the case**

The appellant Shri. Joe Francis is having a plot of 9 cent land at Parappukkara in Thrissur District. The entire family was residing in Mumbai for several years. During the absent of the property owner and without obtaining the consent, the Licensee had installed a stay wire in side the property. The appellant had constructed a residential building in the property to live in the native place. The stay wire is obstructing the construction of compound wall. The appellant approached the section office of the Licensee for shifting this stay wire. They have demanded Rs. 8433/and subsequently revised to Rs.12,547/- towards the cost of shifting. The petition is filed to CGRF for a favourable order that the stay wire is to be shifted at the cost of the Licensee as the same was placed without the consent. The CGRF issued order on 17/04/2024 stating that the Licensee shall shift the post and stay wire at the cost of the appellant. Aggrieved by the decision of CGRF this appeal petition is filed to this Authority.

## **Arguments of the Appellant**

In the year 2021, the complainant constructed a residential building in that property and started residing there with his mother in accordance with her ambition. Now the complainant wants to construct a compound wall for the property. But the stay wire is standing as an obstacle for such construction. Therefore the complainant submitted complaint dated 28/11/2023 before the Assistant Engineer, Electrical Section office, Parappukkara seeking removal of stay wire from the property. Since there was no response to that complaint, the complainant visited the office of the Assistant Engineer and that office issued a demand notice for Rs. 8433/- to him for the purpose of removing the stay wire as if the complainant has done some illegal activity. Complaining against the said demand, the complainant submitted a petition dated 16/03/2024 before the Consumer Grievance Redressal forum, Kalamassery.

The Forum issued final order in the petition as per Order No CGRF- CR/OP NO 101/2023-24 52 dated 17/04/2024 which is under challenge in this petition. The Forum considered Regulation 95 of the Kerala Electricity Supply Code and directed to replace the stay wire upon receipt of estimated amount from the complainant. The legal question involved in this petition is as to whether Regulation 95 of the Supply Code is applicable to the facts of the case. The complainant never given any right of way to the KSEBL for construction of the alleged stay wire. The above provision is applicable only in a case where the consumer gave consent for the drawal of the stay wire. Here the KSEBL trespassed into the private property of the complainant and installed the stay wire. Therefore the above order is legally incorrect and is liable to be set aside by this Honourable authority.

A completely illegal act is committed by the KSEBL by trespassing into the property of the complainant and installing stay wire inside the compound of the complainant without obtaining his permission. After committing that illegal activity now the KSEBL is demanding the Complainant to make payment for removing the said stay wire. There is absolutely no rhyme and reason for such a demand. The KSEBL is liable to remove the stay wire from the property of the complainant at their expense. The contention by the KSEBL is that the stay wire was installed 40 years back and there was no objection from the part of the complainant. The complainant and family were residing far away at Mumbai and the KSEBL has no case that the stay wire was installed with the consent of the complainant. They have absolutely no case that they can trespass into a private property and install stay wire therein without permission from owner of the property. In the absence of any evidence on the part of the KSEBL to prove that the stay wire was installed inside the property of the complainant with the consent of the complainant the KSEBL is bound to remove that stay order at its expenses.

Admittedly it is technically feasible for the KSEBL to replace the stay wire from the compound of the complainant to some other location. But the proposal to do that work at the expense of the complainant as if the installation of the stay wire was at the instance of the complainant amounts to an uncivilized act on the part of the KSEBL. 10. Regulation 95 of the Electricity Supply Code is applicable only in cases where the complainant has given right of way for the construction of the stay wire and not in a case where the KSEBL has trespassed and installed stay wire in a private property. Complainant reserves his right to raise all his contentions at the time of personal hearing of the case.

It is humbly requested that the Ombudsman may be pleased to set aside Order No CGRF-CR/OPNO 101/2023-24 52 dated 17/4/2024 issued by the Consumer Grievance Redressal Forum Central Region, Kalamassery and to direct the Assistant Engineer, Electrical section, Parappukkara, Kerala State Electricity Board Limited to remove the stay wire from the property of the complainant at the expense of the KSEBL.

### **The statements of facts submitted by the Respondent**

. It is submitted that the stay wire and the associated electrical pole against which this complaint has been raised now has been existing in the said location for more than 50 years. The electric pole bearing number NN 67/1 is the first pole at the beginning of the Agathi Mandiram road and further poles are inserted through the road. One of the service connection in this line is consumer number 1156416000388. As per the records, this connection was effected on 24.01.1969. A true copy of the profile of this consumer is submitted herewith and marked as Annexure R (1). It is also submitted that the complainant has got the possession over the property only during 2020 and he has already constructed the compound wall. A true copy of the photograph of the constructed compound wall is submitted and marked as Annexure R (2).

The complainant approached the office of the Assistant Engineer, Parappukkara for removal of stay wire from his property .A true copy of the application dated 28.11.2023 of the complainant is submitted herewith and marked as Annexure R (3).As per the direction of the Assistant Engineer, Sub engineer visited the site. Due to safety aspects, the R2 removal of stay was not possible. However the electric post and stay together can be relocated. This fact was appraised to the complainant. An estimate was prepared amounting to Rs.8433/- for the purpose which was subsequently revised to Rs.12547.02/- due to the increase in cost data. A true copy of the final estimate is submitted herewith and marked as Annexure R (4). However, the complainant was reluctant to remit the estimate amount.

The complainant approached Hon'ble CGRF (central region) Ernakulam for the removal of stay. The Hon'ble CGRF (central region) disposed the complaint with the following observation "The licensee shall replace along with the pole and the stay wire according to the submitted sketch and estimate, if technically feasible upon receipt of the estimate amount from the petitioner". Against the above order of the CGRF (Central region) the above complaint has been filed before the Hon'ble Ombudsman.

It is submitted that KSEBL has never trespassed or encroached the property of the complainant. An electric line (3 phase line) at the Agathi Mandhiram road and electric post with its stay in front of the complainant premises are existing for many years and no objections have been raised other than now. The complainant has submitted a letter before the AE, KSEBL to remove the stay and remitted AF&TF fee on 28.11.2023 for the service of site inspection. As per the Section 95 of supply code 2014, those who wish to shift the KSEBL O H line and its associated systems from their property, have to remit the estimated cost for shifting work by the beneficiary themselves if it is feasible to shift in accordance with the safety regulations 2010 (amendment 2023). Hence estimated cost of the aforesaid shifting work amounting to Rs.8433/- was informed to the complainant. The estimated cost now comes into Rs.12547/- due to revision of labour data. A true copy of the sketch of proposed shifting is submitted herewith and marked as Annexure R (5).

It is submitted that the complainant himself has claimed that the property has been transferred to him in the year 2020. It is pertinent that the stay has been existing there even before the complainant got possession over the property. The licensee has acted only as per the rules in force by raising the estimate amount for shifting the post and stay. The complainant is liable to remit the estimated amount as per law. It is submitted that the complaint lacks merit. This Hon'ble forum may kindly accept the above submission of the respondent, and dismiss the above complaint.

### **Counter Arguments Submitted by the Appellant**

The case of the complainant is that the Consumer Grievance Redressal Forum went wrong in issuing Order No CGRF- CR/OP No 101/2023-24 /52 dated 17/4/2024 by directing the petitioner to pay the estimate amount for shifting the stay order from his property relying on Regulation 95 of the Electricity Supply Code. Regulation 95 of the Electricity Supply Code is quoted as follows. Procedure for shifting electric line or electrical plant of the licensee.- (1) The owner of the land or his successor in interest who has given right of way for the construction of an existing electric 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 path way available for shifting the electric line and the electrical plant; and (c) the applicant 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.

In the statement filed by the respondent there is no statement that the petitioner or his predecessor in interest has given right of way to the KSEBL for constructing the alleged stay wire in the property of the petitioner. Therefore it is an admitted fact that the KSEBL constructed the said stay wire in the property of the petitioner without obtaining right of way from the owner of the property. In other words KSEBL trespassed into the property of the petitioner and constructed the stay wire therein. In the absence of any right of way given by the property owner for construction of stay wire in his property, Regulation 95 of the Supply Code has no application and hence the CGRF went wrong in issuing direction to the petitioner to pay the estimated cost of shifting work of the stay order relying on that provision.

In the above circumstances it is most humbly requested that the Hon Ombudsman may be pleased to direct the respondent to shift the stay wire from the property of the petitioner at their cost and allow this petition.

### **Analysis and Findings**

The hearing of this petition was conducted on 25/06/2024 at KSEBL, IB, Sulthanpet, Palakkad and represented by the appellant Shri.Joe Francis and the respondent Shri.Saju.M.S. Asst.Executive Engineer, Electrical Sub Division Karuvannur of KSEBL.

The appellant had constructed a house in the property owned by him during 2021. This property was an ancestral property originally owned by his grandfather. Then this was transferred to his father and then to him. The appellant was residing in Mumbai for the last several years and recently returned to native place. The appellant could not construct the compound wall as the stay wire which is placed inside the land is obstructing. The respondent states that the line,post and stay wire installed more than 50 years back.One of the service connection from this line was connected on 24/01/1969. Then the line was existing Since 1969. Then the question raised by the appellant is that whether the concrete post was in use during 1969? Then there may be a chance of replacing the

old posts by the concrete posts which also would have been installed long back.

The main contention raised by the appellant is that the Licensee would have placed the stay wire inside this property without obtaining the permission or consent. Then the main point is that why the appellant or his predecessors kept silent about this which would have been placed many years back. As this post and stay wire were installed many years back and the appellant or previous owners were never challenged the installation of this stay wire. Then it is to be treated as a deemed consent. *The Indian Telegraph Act 1885 section 10(d) states as below "The telegraph Authority may from time to time, place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property provided that in exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and when it has exercise those powers in respect of any property other than that under the control or management of local authority shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers".*

The Electricity Act 2003, section 164 states about the exercise of powers of Telegraph Authority in certain Cases. This empower the Government to authorize the persons of Licensee to exercise the powers of Telegraph Act in placing the lines, posts etc.. As per the above acts the officers of the Licensee have the right to place the lines, stay wire etc..and the property owners can claim the compensation of the damages suffered by them.

Then what is the procedure for shifting the electrical lines posts or stay wire etc ? The detailed procedure is explained in the regulation 95 of the Kerala Electricity Supply Code 2014.

*" Procedure for shifting electric line or electrical plant of the licensee:-(1) The owner of the land or his successor in interest who has given right of way for the construction of an existing electric 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 path way available for shifting the electric line and the electrical plant; and*

*(C) the applicant 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.”*

According to the above regulation, the applicant who is requesting for shifting the line has to bear the cost of shifting. Then the contention is that the regulation 95 is applicable only for those who have given right of way. Here the appellant has not given right of way. The lines and stay wire installed many years back and the owners never objected and hence it is to be considered as a deemed consent or deemed right of way. Then this regulation only is applicable. The respondent have confirmed that it is feasible to shift the post stay wire around 10 ft so that the stay wire will be close to the compound wall.

The respondent produced photograph showing that the appellant have already constructed the compound wall. However if the stay wire is shifted close to the compound wall it will be more convenient.

The section 17 of the Indian Telegraph Act 1885 describes about the procedure for Removal or alteration of telegraph line or post on property. other than that of a local authority. Subsection(2)of section 17 says as:-

*“If the Telegraph Authority omits to comply with the regulation the person making it may apply to the District Magistrate within whose Jurisdiction the property is situated to order the removal or alteration”.*

Have the final authority to decide on this matter is the District Collector/District Magistrate.

## **Decision**

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The Licensee shall shift the post and the stay wire to avoid obstruction of the compound wall upon bearing the cost by the appellant.
2. If the appellant is not satisfied with the above decision(1)the appellant may approach the District Magistrate for the decision.
3. No costs are ordered

## **ELECTRICITY OMBUDSMAN**

No. P/033/2024/\_\_\_\_\_ dated:\_\_\_\_\_

Delivered to:

1. Shri.Joe Francis,Uruvath House, Jeevan Jyothi Road P.O,  
Parappukkara, Thrissur Dist.,
2. The Assistant Executive Engineer, Electrical Sub Division, Kerala State  
Electricity Board Ltd., Karuvannur, Thrissur Dist.,

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, 220 kV Substation Compound, HMT Colony P.O., Kalamassery, Pin- 683503