

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/008/2018
(Present: A.S. Dasappan)
Dated: 16th April 2018

Appellant : Sri. Viswamabaran K P.
Meghamalhar,
Viruthisseri Vayal,
Puthiyangadi P.O., Kozhikode

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., West Hill,
Kozhikode

ORDER

Background of the case:

The appellant had lodged complaints before KSEB against the erection of a 'Stay and Wire' in his property, by the KSEBL Officials, Electrical Section, West Hill, Kozhikode without obtaining his permission. This action was said to be done by the Section authorities as a part of system improvement and enhancing safety measures in the place of the wooden post replaced with a PSC post and stay attached earlier. The appellant is aggrieved at the 'stay to Post' erected in his land property without his consent. The appellant has approached the Board authorities for the removal of unauthorized, illegal erection of stay at appellant's property on 19-06-2014 to the electrical post P.P.32 under West Hill Electrical Section, Kozhikode and to get adequate financial compensation due to the difficulties, mischief, damages, obstructions, inconvenience caused to the life and property of the appellant and his family due to above illegal erection of stay even without obtaining any consent or intimation. Since no reply or action was taken by KSEB, the appellant preferred a petition before the CGRF, Kozhikode with a request to shift the 'stay' from his property. The CGRF had disposed the Petition vide order dated 09-01-2018, in OP No.116/2017-18, directing as; "The respondent shall shift the LT pole with stay to a location creating least inconvenience to the petitioner, with all safety measures. 2) the respondent shall carry out the shifting work within 30 days of remittance of DW amount. 3) the petitioner can approach the licensee for compensation."

Still not satisfied by the decision of the CGRF, the appellant has filed the Appeal petition before this Forum.

Arguments of the appellant:

The Appellant has adduced the following arguments.

The appellant and his family purchased the property to the extent of 4(four) cents of land in the year 2009 and thereafter constructed a house and ever since the appellant and his family in absolute possession and enjoyment of the property without any hurdles and obstructions and there were no stay for P.P.32 post neither at appellant's property and nor at any other place till the said unauthorized, illegal erection of stay on 19-06-2014.

The immediate next day i.e. 20-06-2014 the appellant filed a written complaint before the respondent against the unauthorized and illegal erection of stay and requested to remove the stay. Thereafter the appellant again sent complaint by registered post on 17-07-2014 and by orally at the office and by telephone etc on various occasions for removing the stay and to pay adequate compensation from the date of erection and obstructions caused till the date of removal of stay from the appellants property, but the respondent was not even to care to send a reply to the appellant's grievance.

The respondent demanded for remittal of an amount or Rs. 4,647/- by producing some work estimate for shifting the stay from the present position towards the edge of the compound of the appellant. Intact no stay is required for shirting the post towards the southern-western side and there are bare land and road side land are available at southern-western side for doing any activities of respondent. Moreover so many electrical posts installed around the said area are without any support of stay and some of the post installed with stay in parallel (Horizontal) basis on the road side without any hardships to the property holders. Moreover the respondent itself stated in the statement dated 04-11-2017 filed before the Hon'ble CGRF that there are inconveniences to the appellant due to the present condition of stay at appellant's property.

The learned Forum ought to have noted the fact that the respondent is illegally trespassed in to the appellant's property at a time when the appellant and family was not in the house and premises and unauthorisedly erected stay to the Electrical Post PP 32 without any intimation or consent from appellant at the western front side of the appellant's house on 19-06-2014.

In this regard the learned Forum failed to note the fact that, the respondent had caused great obstructions, difficulties/mischief, damages and inconvenience to the appellant and his family for peaceful life and comfortable use and enjoyment of the front side area of the appellant's land consequently the appellant could not use, walk or construct anything at that place.

It is further submitted that the place of the appellant is facing with water scarcity and without underground well it is very difficult to live there and the appellant has a suitable place at southern western side for digging well and due to presence of the stay at that place, the appellant could not dig under ground well consequently the appellant and family suffered indescribable loss and damages.

The learned Forum erred in finding that there is benefit to the appellant for shifting the illegal stay from one place to another place within the compound of the appellant. In fact the shifting of the stay into whichever or wherever area within the compound wall of the appellant, there is a definite difficulty to appellant and his family. In this regard the learned authority failed to understand that the complaint is filed by the appellant for the removal of unauthorized, illegal erection of stay to the electrical post and to get adequate financial compensation.

The learned Forum further erred in directing the appellant to approach the Licensee for compensation. The above order of direction is strange, ambiguous and vague and without fixing the quantum of compensation. Moreover The Hon'ble Forum totally failed to note the fact that the appellant was constrained to approach the Forum since the Licensee (Respondent) was denied the compensation in spite of several repeated approach from the appellant.

The averments in the written statements of the respondent in OP 116/2017-18 that, "since it is angle post, a stay has been provided to the post, to the plot of the appellant and on examination of the records and service connections given from this line, it is understood that the said post was installed about 20 years beforeand it was a wooden pole earlier which was later replaced with PSC Pole as part of system improvement and while replacing the pole the stay wire and stay rod were renewed and erected at the same place are false, untrue, misleading and against the fact and circumstances of the case. Moreover no proof is produced so far to prove the above contention of the respondent.

Arguments of the respondent:

A stay set is normally installed considering safety aspect of the matter and it is not meant for creating any inconvenience to anybody. Post No PP32 was originally a wooden post erected at public road which got deteriorated in due course of time. As part of system improvement and enhancing safety measures the above post was to be changed. Accordingly the wooden post was removed and PSC post was placed in there. The wooden post was installed earlier and was also attached with an adequate stay set which was fixed only 1.5m away from the post. As time passed the stay attached to the wooden post might have deteriorated and ceased to serve its purpose. It doesn't mean that there was no stay as pointed out by the appellant. Instead of the old stay a new stay has been provided to Pole No PP32 and right now

which is also for the safety of the appellant. The line mentioned by the appellant is a three phase line and the pole provided (PP32) is also an angle pole for which a stay is a must.

As per office records various poles including Pole No PP32 were changed after a tendering process and as per the estimate prepared for this purpose. Pole No PP32 was provided with a cross arm and a stay set.

The appellant has stated that he purchased the property to the extent of 4(four) cents of land in the year 2009. On examination of the records and service connections given from this line it is understood that the said post and stay were installed long before. The service connections from this line were given during 1999 itself. Connection for consumer No 13645 given in favor of Smt. Anitha V.V tapped from the electric pole No PP33 was effected on 16-07-1999. Hence it is very clear that the stay set was there for Pole No PP32 well before the appellant purchased the plot and started staying there.

The ground reality i.e. by the stay has been erected there attaching with post No PP32 which is an angular pole was explained to the appellant many times. But he was not prepared to heed to the explanation made by the authorities. The stay was provided at the property of the appellant in due consideration of safety measures.

Shifting of post or stay can be done for the benefit of any person he makes a request in that respect and his request can be admitted if it is technically feasible on deposit work basis only. Hence the respondent prepared an estimate amounting to Rs 4647 for shifting the pole and stay from the present position towards the edge of the compound of the appellant where it is only technically feasible. The appellant's argument that no stay is required for shifting the post towards "southern-western side" is baseless and this was convinced by the Hon'ble Consumer Grievance Redressal Forum during site inspection. The appellant was requested to remit deposit work amount only on the basis of rules in vogue in Kerala State Electricity Board Ltd.

Analysis and findings:

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 hearing of the case was conducted on 22-03-2018, in the office of the Electricity Ombudsman at Edappally, Kochi and Sri. Viswambaran K.P., the appellant and Sri. Rajan T.P. Assistant Executive Engineer, Electrical Sub Division, West Hill, Kozhikode were present and they have represented the sides of the Appellant and Respondent respectively.

The issue referred in this appeal is with respect to shifting of existing stay wire and placing the same in the appellant's property even without obtaining any consent or intimation. The respondent says that the pole No.

PP 32 and stay were installed long before and originally a wooden post erected at public road which got deteriorated in due course of time and also attached with a stay which fixed only 1.5 m away from the post. The respondent contended that the stay was provided for the safety of the consumers.

The provisions under Regulation 95 of Supply Code, 2014 has to be adhered in the case of shifting of electric line, plant etc.

The dispute is whether a stay was existed in the property of the appellant in the earlier years and is it proper for the respondent to install a new stay wire in the property of the appellant without obtaining consent?

It can be presumed that the respondent merely installed the new stay wire even without verifying the feasibility and inconvenience, if any, caused to the appellant. 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. But on going through the sketch of the LT 3 phase line, it is found that the erection of a stay to the post no PP32 cannot be avoided on safety aspects and hence no need to disbelieve the argument of the respondent regarding the existence of a stay to the said post previously.

The Works of Licensees Rules, 2006, published by Ministry of Power, dated 18.4.2006, states; 3 (b) “.....Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate.....”

Hence the respondent should have considered the objection filed by the appellant seriously, even it is for the erection of a “stay” to the electric Post and the matter should have been brought before the District Collector and acted as per the orders. In this case the KSEB (Respondent) has violated the said rule and acted in a high handed manner and has erected the “stay” ignoring the objection of the appellant. I feel that the said unilateral decision taken by KSEB is neither reasonable nor justifiable.

Here in this case, the respondent did not consider any of this aspects or totally ignored the rules and regulations and has installed the stay wire, as it thought that they are vested with powers to do so, which paved the way for the present dispute. Since the stay wire was installed, without obtaining his consent and trespassing into his property, it is an infringement on the rights of the appellant which cannot be permitted. Further the stay was provided not on the request of appellant or for exclusively for the use of the

appellant. It is revealed that there is possibility and technically feasible for shifting the pole and the stay from the present position towards the boundary of the compound of the appellant.

Regulation 95 of 4(c) of Supply Code, 2014 clearly states that the application for shifting an electric line or electrical plant shall be granted if the applicant remits the labour charges required for shifting the electric line or electrical plant.

Decision

In view of the above discussions, the respondent is directed to prepare a fresh estimate for labour charges for the shifting of the stay as proposed by the respondent within 2 weeks from the date of receipt of this order and communicated along with a notice to the appellant. It is also directed to complete the work without any further delay from the date on which the appellant remit the amount as per estimate. In case of any objections, the respondent is free to take action under Rule 3(b) the Works of Licensees Rules, 2006 and obtain necessary permission from the District Magistrate.

Having concluded and decided as above, it is ordered accordingly. The CGRF order No. 116/2017-18 dated 09-01-2018 is modified to this extent. No order on costs.

ELECTRICITY OMBUDSMAN

P/008/2018/ _____ /Dated: _____

Delivered to:

1. Sri. Viswamabaran K P., Meghamalhar, Viruthisseri Vayal, Puthiyangadi P.O., Kozhikode.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., West Hill, Kozhikode

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, Gandhi Road, Kozhikode

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