

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/013/2020

(Present: A.S. Dasappan)

Dated: 12th July 2021

Appellant : Smt. Lali. K. Varghese,
Kalapurackal, Kandankary,
Thayamkary, P.O., Champakulam,
Alappuzha Dist. 689722

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEBL,
Ponkunnam, Kottayam Dist.

ORDER**Background of the case:**

The appeal petition subject pertains to the shifting of a 100 kVA distribution transformer erected by KSEB Ltd. in 2017 under Electrical Section, Pampady under Electrical Circle, Palai. The appellant is not a consumer of Electrical Section, Pampady, but having some landed property in the Section office area. The respondent erected the transformer in the road side and near to the boundary of the property. As per respondent, if the shifting is to be done, the shifting charge required shall be met by the appellant and there will not be any objections from any part around the newly proposed location. The respondent had taken up the subject before the District Magistrate, Kottayam. Since the respondent did not take action to shift the transformer, the appellant filed a petition in Consumer Grievance Redressal Forum (CGRF), Southern Region vide OP No. 62/2020 and the Forum in its order dated 01-01-2021 issued the following :

(1) “The respondent is directed to ascertain and confirm whether the transformer fencing or any other portion of transformer installation have situated, the licensee shall shift that portion of the installation at their own cost within two months.”

(2) “The respondent is also directed to prepare a detailed estimate for shifting the entire transformer installation to a convenient place as requested and intimate the same to the petitioner.”

Aggrieved by the decision of CGRF, the appellant filed this appeal petition before this Authority on 24-02-2021.

Arguments of the appellant:

The appellant is having a property under the Electrical Section, Pampady, Kottayam, survey number 525/1-1-2 Thandaper 6845 of Pampady village. The KSEB has installed a transformer and its accessories and charged, inside the appellant's property by encroaching without appellant's knowledge or consent. The appellant is staying in Middle East since last few years. The appellant had deputed Mr. Appachankutty, one of his relative to look after the property and unfortunately, he passed away before this incident and due to the flood situations in the year 2018 & 2019, the appellant also couldn't visit this area when the appellant has been on leave and approached the authorities, when it is noticed and requested them to remove the transformer and accessories from the property which situated and fouling appellant's proposed house construction site and its entrance. This has become a serious threat to appellant's family's life and safety. Even after continuous persuasions and follow ups with KSEB Ltd. no positive steps has been taken by the department, then the appellant raised a grievance to Consumer Grievance Redressal Forum, Kottarakkara last year and received an order from them. Accordingly, appellant communicate with Pampady division and came to know a proposal has been submitted by the Assistant Engineer and waiting for higher authority approval. At present, the appellant is not a consumer of KSEB in this area and as an individual affording entire estimate cost for shifting the transformer is a burden, in order to facilitate 200 consumers to resolve their low voltage issue. Even if they shift it to outside the fence, it will restrict the Panchayath road users and the unsafe condition remains same as now. As a permanent solution, it is better to shift it to nearby main road side, which has enough space and more convenient, either by KSEB Ltd. at their own expense or distribute the amount among these 200 consumers accordingly and the appellant can be a part of it. Hence, the appellant requests to intervene to this issue and solve the grievance.

Arguments of the respondent:

The appellant has applied for shifting of the 100 kVA Kallepuram Transformer to another place under Electrical Section, Pampady, which was installed by the side of Manthuruthy to Kallepuram panchayath Road.

This transformer was installed after constructing 0.51 Km of 11 KV line in Voltage Improvement scheme in the annual plan for the year 2016-2017. The work was executed to rectify the low voltage complaints and for improving the Voltage around Kallepuram area.

At the time of the installation of this transformer no complaint was raised either by the appellant (property owner) or public. The transformer station is constructed in the side of Panchayath road with least inconvenience to the nearby property owners and to the public. The work was completed and commissioned on 13.6.2017. Now around 200 consumers are the beneficiaries of the subject transformer.

Based on this application, from the appellant the Assistant Engineer. Electrical Section, Pampady inspected the site and reported that the transformer is erected with least inconvenience to the appellant. It is further noted that for shifting the transformer station, it is necessary to obtain consent from nearby property owners for erecting stays.

The estimate amount for shifting the transformer station was informed to the appellant. Since the transformer station is installed in the Panchayath road side and the appellant is the only beneficiary of shifting of the transformer, the work deposit amount is to be borne by the appellant. So far, the appellant has not expressed his willingness to remit the estimate amount and not taken any steps to obtain consent from the nearby property owners.

The appellant was not interested in placing the transformer station in front of any part of his property and the adjacent property owners also not to express their willingness to place the transformer station in front of their property.

Kerala State Electricity Board Limited continues to be a licensee for distribution of electric supply as per the provisions of 172 (a) of the Electricity Act 2003, is bound by the provisions of the Electricity Act for the supply of electricity.

The shifting work can be done in deposit work scheme i.e. the work can be executed by remitting the expense of the work in KSEBL by the appellant. The estimate amount for the work is around Rs 2,10,000/-.

The contention of the appellant before CGRF was that the transformer had been installed inside his property and that transformer blocking their main entrance and construction of his proposed house. The security fencing provided on the transformer is alleged to have crossed the boundary of his property. So, he prays the Forum for shifting the transformer station from the present position.

CGRF directed the licensee to ascertain and confirm whether the transformer fencing or any other portion of the transformer installation have situated in the land of the appellant or not. If situated, the licensee shall shift that portion of the installation at their own cost within two months. The respondent is also directed to prepare a detailed estimate for shifting the entire transformer installation to a convenient place as requested and intimate the same to the appellant.

The present transformer was erected during 2017 under Voltage Improvement Scheme at Manthuruthy Kallepuram area benefitting about 200 consumers. The 100 kVA transformer was erected on a two-pole structure at the Panchayath road side. At the time of erecting the transformer there was no clear demarcation of "puramboke land" and that of the applicant subsequently on standardizing with fencing and to meet statutory regulation, various development work was undertaken subsequently.

Under the above circumstances, on the basis of application received, the respondent examined scope for relocating the present transformer station. But a feasible location without any objection is not a possibility.

After studying the order of Consumer Grievance Redressal Forum, the Secretary (Administration) of KSEB Ltd. advised the respondent to file a petition before the District Collector, Kottayam in terms of Indian Telegraph Act. In accordance with the above direction, the matter stands referred to the Hon.ble District Magistrate, Kottayam, who is the statutory authority to decide upon the disputes raised by the appellant. Therefore, it is submitted before this Authority that the matter remains under the active consideration of Hon'ble District Magistrate, Kottayam, who is vested with statutory powers to resolve the dispute raised by the appellant and as such the maintainability of this appeal may be taken

as a primary issue and decided upon prior to going into the contentions raised by the appellant.

On the basis of the above, it is prayed that this Authority may be pleased to accept this version and to dismiss the appeal petition with costs to KSEB Ltd.

Analysis and findings:

An online hearing was conducted at 11-30 AM on 07-04-2021 with prior intimation to both the appellant and the respondent. Sri. Samuel. T.M., attended the hearing for the appellant and Sri. Mathewkutty, Assistant Executive Engineer, Electrical Sub Division, Ponkunnam attended for the respondent. 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 decision thereof.

The appellant's grievance is that KSEB Ltd. installed a distribution transformer and its accessories inside the appellant's property without their knowledge and consent. The requirement of the appellant is to shift the transformer and its accessories to any other location at KSEB Ltd.'s expense.

The argument of the respondent is that there was no objections while installing the transformer and which was installed in the Panchayat road side with least inconvenience to the nearby property owners. The work was completed in June 2017. In order to shift the transformer to another location, the expense has to be met by the appellant and consent from the nearby property owners to be obtained.

If the Distribution Licensee (KSEB Ltd.) requires new installation or the shifting of any electrical installation in the interest of safety and reliability of electric supply or in public interest or if somebody requests for shifting KSEB Ltd. can initiate action but has to confirm that the parties likely to affect are informed or get their consent. So, the primary duty of KSEB Ltd. is to ensure that their action for new installation or the shifting of the installation does not attract objections or causes the minimum disputes from others, who are likely to be affected by the erection or the shifting of the installations.

The respondent stated that the subject case was taken up with the District Magistrate, Kottayam after issuing orders by the Consumer Grievance Redressal

Forum, Southern Region. Here, the shifting of the transformer can be done by clearing objections from the property owners near to the proposed location and chances are there to file objections by other property owners. As such, it is not proper to entertain the appeal petition.

Regulation 47 of Kerala Electricity Supply Code 2014 says,

47(1) Obtaining right of way for placing line and acquiring land for construction of substation in accordance with the rules issued by the Government of Kerala, shall be the responsibility of the licensee.

47(2) The licensee shall follow the rules issued by the Government of Kerala in accordance with Section 67 and Section 164 of the Act, in the case of obtaining right-of-way, paying compensation to the affected parties, clearing the objection to work involving private property crossing etc.

47(3) If the owner of the property to be crossed by the proposed line, objects to the carrying out of the work, action shall be taken by the licensee to clear the objection as per the rules issued by the Government of Kerala, as provided in Section 67 and Section 164 of the Act or any other law for the time being in force.

Regulation 95 (4) of Kerala Electricity Supply Code 2014 says,

95 (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 shall remit the labour charges and material charges required for shifting the electric line or electric plant as estimated by the Licensee as per the cost data approved by the Commission from time to time in accordance with the Regulation 33 of the Kerala Electricity Supply Code 2014”.

As per Clause 22(d) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2005 provides that “**Maintainability of the Complaint**” (1) No representation to the Ombudsman shall lie:

- (a) unless the Complainant has made a written representation in the prescribed form, to the Forum;
- (b) unless the Complainant is aggrieved on account of his complaint being not redressed by the Forum within the period and manner specified in these Regulations;
- (c) unless the representation against an order of the Forum was made within the period specified in these Regulations and is not in respect of the same subject matter that has been settled by the Ombudsman in any previous proceedings;
- (d) in cases 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.

Decision: -

From the analysis done above and the conclusions arrived at, it is decided to reject the appeal petition filed by the appellant since the same subject is before the District Magistrate for a decision. The order of CGRF, Southern Region in OP No. OP No. 62/2020 dated 01-01-2021 is set aside.

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

ELECTRICITY OMBUDSMAN

P/013/2021/_____ dated _____.

Delivered to:

1. Smt. Lali. K. Varghese, Kalapurackal, Kandankary, Thayamkary, P.O., Champakulam, Alappuzha Dist. 689722
2. Assistant Executive Engineer, Electrical Sub Division, KSEBL, Ponkunnam, Kottayam Dist.

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, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.