

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/078/2021**(Present: A.S. Dasappan)****Dated: 17th March, 2022**

Appellant : Sri. Sulaimaan Mundoli,
Thaikkandy House,
Nallalam P.O.,
Kozhikode Dist. 673 027

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEBLtd.,
Kallai, Kozhikode Dist.

ORDER**Background of the case:**

The appellant is a consumer of KSEB Ltd., Electrical Section, Areekkad with consumer number 11167891009674. Previously the said connection was under Electrical Section, Beypore. A weather proof line was drawn through the property of the appellant for providing an electric connection to Sri. Moideenkutty, brother of the appellant and the connection for domestic purpose was effected on 13-01-2009 with consumer number 23143 under Electrical Section, Beypore. There was no objection from the side of the appellant while effecting the said connection. The appellant approached Hon'ble Munsiff Court, Kozhikode, District Vydhuthi Adalath conducted by KSEB Ltd., Human Rights Commission, Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode and before this Authority by filing Appeal Petition on 08-12-2021 against the order of CGRF in OP No.124/2020-21 dated 26-03-2021.

Arguments of the appellant:

While the appellant was working in gulf country and as he was away from his house, Mr. Mundoli Moideenkutty by influencing the officers concerned and without obtaining adequate consent/NOC from the appellant, managed to draw electricity lines to his property through the appellant's property.

As per Clause 3.7 of KSEB terms and conditions of supply 2005, while supplying electricity, to any premises through another person's premises/property, it is mandatory to attach a consent letter from the owner of such premises or property through which the line was drawn. In case the consent letter is not given, then the applicant has to execute an indemnity bond.

While drawing the above said electrical line, Mr. Mundoli Moideenkutty has neither obtained any consent letter from the appellant, who is the owner of the property through which the electricity line was drawn, nor executed any indemnity bond as stated above.

Since the said electric line was drawn illegally through the property of the appellant, he repeatedly contacted the officers concerned and repeatedly made requests to them for taking necessary actions to shift the WP wire from his property. But such requests were not being considered. Placed under such situation, for and on behalf of the appellant, the appellant's wife submitted a complaint before the Assistant Engineer, Electrical Section, Areekkad, Kozhikode, dated 04-05-16, to shift the illegally drawn WP wire at the cost of the Board or Mr. Mundoli Moideenkutty. But the Assistant Engineer did not consider the said complaint.

Under such circumstances, the applicant was forced to file OS No. 282/2017 before the 2nd Addl. Munsiff Court Kozhikode. Later, the case was settled in mediation, the terms of settlement was reduced into writing on 17/06/2019 and executed the same in the presence of witnesses and mediator. Accordingly, OS 282/2017 on the file of the 2nd Addl. Munsiff Court Kozhikode,

was not pressed. As per the above terms of compromise, Mr. Moideenkutty undertook that he would take necessary steps to shift the electric line from the property of the appellant and the expenses for the same shall be met by him alone.

Even though Mr. Mundoli Moideenkutty has undertaken to shift the WP wire, he has not taken any action in this regard. Therefore, the appellant submitted a complaint before the KSEB adalath. In the adalath, a report was sought from the Assistant Engineer, KSEB, Areekkad with respect to the feasibility of shifting the line and if possible, the estimated expenses for the same. Accordingly, the AE submitted a report to the effect that the line could be shifted and he estimated the charges as Rs. 10,908/-. On the basis of this report, the District Adalath Committee has decided to give a 25% reduction on the shifting charges to Mr. Mundoli Moideenkutty. But thereafter, nothing was taken place. Thus, the appellant took up the issue to the state Adalath Committee and the Committee took a decision. As per the directions of the State Adalath, the Assistant Engineer issued notice dated 25-03-2020 to Sri.Mundoli Moideenkutty asking him to pay a sum of Rs.8,181/- (The balance amount by deducting 25% from the work deposit money). On receipt of the said letter Mr. Mundoli Moideenkutty issued a reply letter on 17/07/2020 to the Asst. Engineer, KSEBL, Areekkad, seeking three months' time to pay the said amount.

But even after the expiry of the time sought in the reply letter, Mr. Mundoli Moideenkutty has not paid the said amount. Under such circumstances, the appellant was constrained to approach the Consumer Grievance Redressal Forum, Northern Region Kozhikode, for necessary directions to the officers concerned to shift the WP Wire illegally drawn through the property of the appellant.

The appellant has every right to get an adequate remedy from this authority. The non-payment of expenses for removal of WP

wire from the appellant's property would lead serious harms to the appellant and his property.

In exercise of the powers conferred by section 71 of the Kerala Revenue recovery Act, 1968, the Govt. of Kerala as per SRO No.169/69, it is declared that the provisions of the Kerala Revenue Recovery Act, shall be applicable to the recovery of amount due from any persons or class of persons, to the KSEBL.

Hence the appellant is forced to prefer the appeal petition.

Nature of relief sought from the Ombudsman:

By considering the facts and circumstances of the above case, it is prayed that adequate directions may be issued to the Board / respondent:

- A) To remove the illegally drawn WP wire to the property of Mr. Mundoli Moideenkutty through the property of the appellant.
- B) To do the said ct within a specific time frame.
- C) To do the said act at its own expenses and
- D) To rover the said expenses from Mr. Mundoli Moideenkutty as per the provisions of the Kerala Revenue Recovery Act, 1968.

Arguments of the respondent:

The appellant has earlier approached Kerala State Regulatory Commission; Munsiff Court, Kozhikode; District Vydyuthi Adalath conducted by KSEBL on 18-02-2020; the Consumer Grievance Redressal Forum, Kozhikode and the Human Rights Commission. Now the appellant has moved this Forum also on an experimental basis. Since the question raised by the appellant involved line drawal, the respondent referred the subject to the Additional District Magistrate, Kozhikode to have a final solution in the matter. The Additional District Magistrate, Kozhikode heard the concerned and has disposed of the matter vide proceedings dated 22-09-2021 as per which KSEBL may shift the line upon the

appellant or his brother Shri. Mundoli Moitheenkutty remitting the required shifting charges.

Since the issues raised by the appellant have already been disposed of by the Additional District Magistrate, Kozhikode who is the competent authority in such matters, this appeal petition filed by the appellant is not maintainable before this Forum.

However, without prejudice to what has been stated above, the following facts are submitted.

Earlier the appellant had filed an Original Petition before the Hon'ble Munsiff Court, Kozhikode (O.S.No.282/2017) against his brother. The suit was later dismissed by the Hon'ble Court as not pressed. Shri. Moideenkutty, the brother of the appellant applied for an electric connection. The connection was effected on 13-01-2009 assigning domestic tariff with consumer No. 23143 under Electrical Section, Beypore. While effecting the said connection there had not been any objection from the appellant. If the appellant had any objection, then he ought to have made a formal complaint before the section authorities within a reasonable time. However, the appellant did not bother to make any complaint for more than six years and after that much time the appellant lodged a complaint on 03-09-2015 against the drawal of electric line to his brother alleging that the line was drawn through, his property without his consent. The above connection was later transferred to Electrical Section, Areekkad.

The connection to the property of Sri. Mundoli MoideenKutty was effected along a foot-path leading to the house of Mr Moideen Kutti. At the time of effecting connection, there was no dispute over drawal of the line along the path which was then learnt to have been used by the other family members also. Naturally there had not been any objection from the side of the appellant.

The complaint lodged by the appellant against the drawal of line on 03-09-2015 was admitted by the Assistant Engineer, Electrical Section, Areekkad and the officials concerned had inspected the site in question. The appellant's demand was that the existing line from which connection was effected to his brother should be shifted, Since the appellant was the beneficiary, he was directed to remit shifting charges of Rs.10908/- for shifting the line from the then existing position as per clause 95 (4) of Kerala Electricity Supply Code 2014. But the petitioner did not care to budge.

The appellant had then moved to the Hon'ble Additional Munsiff Court-II, Kozhikode by filing OS.282/2017 for a direction to Assistant Engineer, Electrical Section, Areekad to shift the electric line that supplied electricity to his brother Shri. Moideenkuty and the said OS was dismissed by the Court as not pressed.

Since this was a pure case of property issue, the case was taken up with Hon'ble ADM, Kozhikode. Meanwhile the appellant grew climbing plants on the service wire connected to Mr. Moideenkutty's house and approached KSEB raising safety issues. But the appellant was reluctant to solve the safety issues and was non corporative with KSEBL. This issue too was taken up with Hon'ble ADM. The Hon'ble ADM heard both the brothers and issued direction stating that the service line can be shifted to the newly identified route after remittance of deposit amount and issued direction to take action to clear the safety issue.

The appellant is trying to mislead this Forum by making reference to Revenue Recovery Act. Provisions of Revenue Recovery Act are invoked when there is an amount in the books of accounts of KSEBL that, remains unpaid by the concerned even after a given time. In the case at hand the shifting charges can be remitted either by the appellant himself or by Mr Moideenkutty and as far as KSEBL is concerned shifting of lines will be carried out on receipt of the amount and till such time as either of the two remits the amount with KSEBL, no demand in that account can be created in the books of account of KSEBL as demand recoverable from consumers and as such there is no question of invoking provisions of RR Act as stated by the appellant.

In the light of what is stated above, this Authority may be pleased to dismiss this petition.

Analysis and findings:

An online hearing of the case was conducted on 28-01-2022 with prior intimation to both the appellant and the respondent. Sri. Sulaiman Mundoli, the appellant and Smt. Sreevijaya. P.B., Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Kallai from the respondent's side attended the hearing. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

At this juncture, it is to be noted that the clause 22 (d) of the Kerala State Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2005 provides that:

“No representation to the Ombudsman shall lie: 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”.

The appellant has submitted the appeal petition on 08-12-2021 before this Authority. The respondent informed in the statement of facts to this Authority that the respondent referred the subject to the Additional District Magistrate, Kozhikode and the Additional District Magistrate disposed of the matter vide proceedings dated 22-09-2021 as per which KSEB Ltd. may shift the line upon the appellant or his brother Sri. Mundoli Moitheenkutty remitting the required shifting charge. Since the decision on the subject of shifting the line from the property of the appellant was taken by the Additional District Magistrate, which restricts in maintainability of the appeal petition filed for the same causes of action and relief, this Authority does not feel it appropriate to entertain the

petition on the ground that the case is not maintainable as per clause 22 (d) of the Kerala State Electricity Regulatory Commission (CGRF and Electricity Ombudsman) Regulations 2005

The Appeal Petition filed by the appellant needs no further action, at this Forum and needs to be rejected. The CGRF, Northern Region issued order on 26-03-2021 and the Additional District Magistrate, Kozhikode took decision on 22-09-2021.

Decision:

From the findings and conclusions arrived at as detailed above, I decide as follows:

The Appeal Petition filed by the appellant is rejected and stand disposed of as such. Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/078/2021/ _____ dated _____.

Delivered to:

1. Sri. Sulaimaan Mundoli, Thaikkandy House, Nallalam P.O., Kozhikode Dist. 673 027
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kallai, Kozhikode 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, KSEBoard Ltd, Gandhi Road, Kozhikode