

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/024/2022**(Present: A. Chandrakumaran Nair)****Dated: 24th June, 2022**

Appellant : Smt. Sulochana Punnath
Punnath House,
Mathottathil Paramba,
Feroke P.O.,
Kozhikode

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Feroke, Kozhikode Dist.

ORDER**Background of the case:**

The appellant Smt. Sulochana Punnath, is a consumer of Licensee with consumer number 1166318002637 under Electrical Section, Feroke complains that the officials of the Licensee have installed a stay-wire on the appellant's property without their knowledge/consent. The appellant's husband has expired on 01-07-2020, thereafter she was continuously staying with her daughter and her only son was living abroad with family. The house and property were locked from outside. They are planning to construct a new house in this property for which this stay is going to be a hindrance. They have complained to the Assistant Engineer, Assistant Executive Engineer and no resolution arrived and hence the appellant approached the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode. The CGRF issued order vide OP No. 55/21-22 dated 16-03-2022 and the decision was "As it is a case of property crossing of an existing

stay which is essential for the utility for maintaining supply, the utility shall take up the complaint of the petitioner with ADM for necessary clearance."

Aggrieved by the decision of the Forum, the appellant filed the appeal petition to this Authority.

Arguments of the appellant:

The complaint is regarding a stay wire illegally installed in appellant's plot by the respondent KSEBL, Feroke Division without appellant's consent or permission. The respondent has installed the stay wire one year back in the middle (along the length) of appellant's small plot when no one was in the house and the plot was locked from outside. KSEBL staff entered appellant's compound illegally by jumping through the compound/boundary wall and used ladder & other facilities in the appellant's premises to install the stay wire. The appellant's neighbours had witnessed this act of KSEBL staff. The appellant would have been registered a police complaint against KSEBL for allowing KSEBL staff to do this illegal activity of entering a locked property without permission and damaging the property, but the appellant was not proceeded towards this, expecting a favourable and amicable solution from KSEBL. But the appellant really disappointed the way KSEBL treated the genuine complaint.

The appellant got the plan approved for new house construction in the same plot after demolishing the existing house. The stay wire installed is in the middle (along the length of plot) of the new plan, affecting new house construction. Moreover, small grandchildren are staying with the appellant and it is very dangerous to have the stay wire in the middle of the small plot.

With all the above concerns the appellant registered a complaint to the Assistant Engineer, KSEBL, Feroke Division on 1st September 2021. During appellant's visit to KSEBL, Feroke Division-AE office to submit the complaint, AE and Sub Engineer stated that this stay wire has been installed with the permission of appellant's husband and requested to show the authorization letter, but the respondent did not have it. Moreover, this stay wire was installed after the death of appellant's husband. Other false statements were also made by the Assistant

Engineer and Sub engineers. When we challenged all these statements as below, they did not have any answer:

1. Statement of permission given by appellant's husband, who expired on 1st July 2020, this stay wire was installed only one year back.
2. Permission has been given by someone in appellant's house at the time of installing the stay wire - This statement is totally wrong as authorized person to give permission is only the appellant and appellant's son. Appellant's husband was expired on 1st July 2020, thereafter the appellant has been continuously staying with her daughter with the property locked from outside. Appellant's only son is living abroad with his family. After the death of appellant's husband in July 2020, the appellant is staying with her daughter in Kadalundi, Kozhikode-at her house. And my only son is living abroad. This stay wire is installed one year back only when no one was in house and plot was locked from outside. Additionally, the appellant requested Assistant Engineer, KSEBL to show the proof of authorization they received from anyone towards this, but they did not have it.
3. Existing post was having stay wire - When asked for proof of existing post having stay wire, KSEBL doesn't have any proof or evidence that the existing post is having stay wire installed in appellant's plot. On enquiry for any previous approval for stay wire installation, they don't have. In fact, the appellant is there in the same house for more than thirty years and sure that there was no stay wire installed for this post in appellant's plot. AE is stating that he joined in the KSEBL Division office 2 years back only and don't have all these details.

Later KSEBL, Feroke Division sent a reply officially through CGRF on 14th Sep 2021. As all the statements in the reply are false, the appellant again submitted a complaint in person on 17th Sep 2021 to Assistant Engineer with detailed response to all statements in the AE's reply. During the visit to AE office for registering the complaint, the appellant requested Assistant Engineer, KSEBL to relocate the stay wire to some other areas, so that no threat to grandchildren and

it will also not affect new house construction. But they have not taken any action towards this also.

The appellant registered an official complaint to CGRF on 28th Sep 2021. After having the hearing on 31st Jan 2022, CGRF understood the case as genuine. But CGRF concluded the case after taking 6 months' time with a decision that the appellant may approach Electricity Ombudsman or ADM for further resolution on this.

The appellant expressed that all statements in the section "Version by Respondent" of the CGRF Order in Pages 2 to 4 are wrong through the appellant's responses as below:

1. "Electric post MT4 and connected stay wire have been there for last thirty years" - KSEBL doesn't have any proof or evidence that the existing post is a having stay wire installed in our plot. In fact, the appellant's family are staying in the same house for more than thirty years and sure that there was no stay wire installed for this post in the appellant's plot. Moreover, the location where KSEB installed the stay wire was 5 years back only and the appellant filled up with sand around 2meter height, levelled and compound wall was constructed. This activity would not have been possible if the existing stay wire was there in the location. So, it is very clear that no stay wire was installed in our plot for the existing post.
2. "Present electric line from which petitioner and the nearby consumers get electricity" - Appellant stated that no consumers are connected to this post MT4. It is a middle post to avoid road bend. However, there is one more post within 5 meter distance and lines can lay straight to that post without post MT4.
3. "Heavy branch of a tree in the property of the petitioner fell on this electric line last year and the post and stay wire got broken" - This not at all true. There was no such incident happened 1 year back or even last 30 years. If such cases happened KSEBL should have issued any written notification or warning to the appellant to cut the tree to avoid such incident in future. Also, if such kind of heavy damages has been occurred, the respondent should have claimed the amount from the appellant. No such warnings, letters or any claims was

submitted against the appellant. Nevertheless, the appellant submitted letters to the respondent to shut off the line power to allow to cut the tree branches on regular intervals. Recently also the appellant had requested the respondent to shut off the line to completely cut the tree in the plot near to this stay wire location as part of the new house construction plan. Even then the stay wire is installed by the respondent near to the location where we cut the tree to construct our new house.

4. "Without a stay post destined to fall" - This statement is also wrong as for earlier post there was no stay wire installed in the plot for more than 30 years. The respondent doesn't have any proof or evidence that the existing post is a having stay wire installed in appellant's plot. Over and above the requirement of stay wire for this post is also not clear as no consumer connection is attached to this post, there is no road major bending at this location and there is one more post straight alter this post within 5meter distance. All these are clear form the actual site plan prepared for appellant's new house construction plan. Further, there are more posts in the same route and many other locations without having any stay wire with loads and bends more than this.

5. "No scope for relocating the post to some nearby post" - As highlighted above, first of all the requirement of this post is not dear as no consumer connection is attached to this post, there is no major road bending at this location and within 5meter straight route after this post there is one more post. So, shifting or removal of this post is also possible as it can see from the marking made in the actual site plan prepared for appellant's new house construction. There are multiple alternate options to solve this issue such as installing the post MT4 opposite side of the road (Option 1) or installing lines straight to nearby post (MT5) without having this post (MT4) (Option 2). Moreover, points 4 & 5 above is very clear from the location alignment hand sketch submitted by KSEBL, Feroke Division to CGRF. As the sketch drawn by KSEBL is not reflecting true site condition, we marked the correct location of posts in the site plan and developed for appellant's new house construction. Respondent's site sketch is not at all reflecting the actual site.

6. "Petitioner did not raise any objection demanding shifting of the stay wire since it was erected" - As explained in appellant's compliant to the respondent earlier, the appellant's husband Mr. Rajan Punnath, Ex. Sub Inspector of Police was having cancer, he was continuously treated for almost 6 months from November 2019 after noticing the installation of stay wire, the appellant & her husband were staying with their daughter in Kadalundi, Kozhikode during his entire treatment period as their only son got stuck outside India due to corona travel restrictions at that time (Dec 2019 to August 2021). The appellant's husband was expired on 1st July 2020, thereafter the appellant is continuously staying with her daughter with the property locked from outside. When the appellant's son came after 2 years during August 2021 for a short leave and when he started area clearing activities as per the plan for the new house construction, he noticed this stay wire installed in the plot and immediately registered a complaint to KSEBL, Feroke Division on 1st Sep 2021 to replace this stay wire. The appellant approached the respondent, requesting to relocate the disputed pole and the appellant is ready to pay any expense towards removal of this pole, considering stay wire is a threat to grandchildren and the proposed new house of the appellant.

The appellant requests this Authority to take necessary action towards removal of the stay wire illegally installed from the plot, so that it will not affect house construction and will not make any threat to her grandchildren. Moreover, if this stay wire is not removed, it may get damages during new house construction activities.

Arguments of the respondent:

The petition is all about a stay installed on the property of the appellant. The stay is provided there in support of a post placed on a Panchayat Road outside the property of the appellant. The provisions of Electricity Act, 2003 provides the Licensee with sufficient powers to draw electric lines for supplying power to the needy. As per Section 164 of Electricity Act, 2003 the Licensee has got the powers under Indian Telegraph Act, 1885 with respect to the placing of telegraph lines and posts for the purpose of telegraph established or maintained by the

Government. Accordingly, Section 10 of the Indian Telegraph Act, 1885 confers the right on the Licensee to place and maintain an electric line under, over, along or across the property and to place post in or upon any immovable property. As per section 16(1) of Indian Telegraph Act, 1885 if any dispute arises while exercising the powers conferred under Section 10 of the said Act, the matter should be referred to the District Magistrate who is the competent authority to decide on such matters.

In *Sukumaran. P.G Vs Power Grid Corporation Ltd. and Others - (2010 (1) KHC 918 (DB))*, the Hon'ble High Court has held that owner of the land has no right to disrupt the drawing of electric lines or erecting posts. Objections if any have to be raised before the District Magistrate.

In the light of the above, as the cause of action raised by the appellant in her petition has nothing to do with any billing issues or paucity in service but, on the other hand, it is all about maintaining electric line, the petition may be dismissed even without entering to the merits of the case.

However, without any prejudice to whatever is stated above, following details with respect to the petition are submitted hereunder.

There is electric post (Post No. MT4) placed outside the compound wall of the appellant and this pole is supported by a stay wire installed just inside the compound wall. An electric post and a connected stay wire have been there for the last thirty years which means the present electric line from which the appellant and the nearby consumers get electricity was drawn about thirty years ago. It is against such an arrangement that the appellant has now come up with a complaint before this Authority. About one year ago the post outside the compound wall of the appellant, the stay wire and a nearby post got broken and damaged as a heavy branch of a tree standing on the property of the appellant fell on the line. The damaged posts and stay were replaced by new ones. One can even see the remnants of the replaced pole there. The post (MT4) is on such a spot that without an adequate stay to support it the post cannot remain there safely. The post cannot withstand the pressure exerted by the conductors on it and without a stay the post is destined to fall on the road, which is being used many

commuters. So, a grave safety issue is also there. There is only a small path hardly about three meters between the compound wall of the appellant and the boundary of the property lying opposite it and therefore, there is no scope for relocating the post to some other nearby spot.

The present spot for placing the post and the stay was selected years ago considering the interest of the public. In Friends Colony Development Committee Vs State of Orissa, (AIR 2005 SC 1) the Hon'ble Supreme Court has held that public interest always gives way to private interest and private interest stands subordinate to public interest.

The appellant had approached the respondent for shifting the stay wire and the respondent had explained to the appellant the safety issues involved. The appellant not satisfied with the explanation provided by the respondent, approached the Consumers Grievance Redressal Forum, Kozhikode. The Forum after examining the petition filed by the appellant observed as follows, "As it is a case of property crossing of an existing stay which is essential for the utility for maintaining supply, the utility shall take up the complaint of the petitioner with ADM for necessary clearance."

It is without allowing the respondent enough time to approach the Additional District Magistrate; Kozhikode as directed by the CGRF that the appellant has moved to this Authority.

The post in question is placed at such a spot that it will not stand safely without a stay. The stay is essential for supporting the post. There is no place other than the present area to relocate the stay safely. Any person who visits die site can see for himself the ground reality and such a person cannot take a different stand as opposed to die stand taken by the respondent.

The post and the stay have been installed at the present location thirty years back and all along this period the appellant did not raise any objection demanding shifting of the stay. Going by the spot where the post is situated, shifting of the stay is not feasible because it will create safety issues to the commuters. Besides,

the line route selected for drawing the line is the most suitable and time tested one also.

The respondent requested to this authority to dismiss the petition on the above grounds.

Analysis and findings:

The hearing of the case was conducted on 14-06-2022 in the office of the State Electricity Ombudsman, Edappally, Kochi. Smt. Sulochana. P and Sri. Deepak. A. were attended the hearing from the appellant's side and Sri. Reghunadh. P.V., Assistant Executive Engineer, Electrical Sub Division, Feroke of Licensee was attended the hearing from the respondent's side. 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.

The LT electric lines are passing through the narrow road in front of the appellant's property. When one post was broken, it was replaced with a new post and the stay-wire of this post was placed inside the private property of the appellant without any consent. The argument of the respondent that the post and stay was there for the last 30 years could not be proved as there was no document for this. The appellant argued that the officials of the licensee encroached their land and installed the stay without any consent.

Indian Electricity Act 2003, Section 163 (1) specifying the power of Licensee to enter the premises for inspecting, testing repairing or altering the electric supply lines, meters, fittings, works and apparatus or other works have been lawfully placed by the Licensee.

The Indian Electricity Act 164 specify the power of Licensee to exercise of powers of Telegraph Authority in certain cases as per the provision of Indian Telegraph Act 1885. The respondent mentioned above Section 10 of Indian Telegraph Act 1885. The Section 10 states as:

“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 and the Sub Clause (a) of Section 10 states that:

“(a) provided that the telegraph authority shall not exercise the powers conferred by this Section except for the purpose of a telegraph established or maintained by the Central Government or to be so established or maintained.”

By the above Section, Licensee is not having right to encroach the property of anybody to install a stay-wire.

The Section 17 of Indian Telegraph Act 1885 clearly specify the removal or alteration of telegraph line or post on property other than that of a local authority. Section 17 (1) states: “When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly”.

By analyzing the above Section, the Licensee has to remove or alter the line as per the requirement of the owner of the property.

On studying the configuration of the line in the road in front of the property, there are provisions to remove the stay from the property of the appellant.

- (1) The post MT4 is to be fixed in strong concrete pedestal to stop toppling down and loosen the conductors to reduce the tension.
- (2) As there is no service connection from MT4 post, remove the MT4 post and connect the line between MT3 and MT5 posts. If require extended cross arms, which are to be used and if required the position of MT5, which is to be adjusted accordingly.
- (3) Convert the overhead line from MT3 to MT5 as UG cables.

Decision: -

From the analysis of the arguments of appellant & respondent and the hearing and also considering the natural justice, the following decisions are taken:

- (1) The Licensee is liable to remove the stay installed in the property of the appellant by adopting any of the technical options as mentioned above at the cost of the Licensee.
- (2) The party, if any, is aggrieved by this decision shall take up the matter with the District Magistrate as per provision of the various Sections of Indian Telegraph Act, 1885.
- (3) The order of CGRF, Northern Region in OP No. 55/21-22 dated 16-03-2022 is set aside.

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

ELECTRICITY OMBUDSMAN

P/024/2022/ _____ dated _____.

Delivered to:

1. Smt. Sulochana Punnath, Punnath House, Mathottathil Paramba, Feroke P.O., Kozhikode
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Feroke, 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, KSE Board Ltd, Gandhi Road, Kozhikode