

THE STATE ELECTRICITY OMBUDSMAN

D.H. Road & Foreshore Road Junction, Near Gandhi Square,
Ernakulam, Kerala-682 016

Ph: 0484 2346488, Mob: 8714356488

www.keralaeo.org Email: ombudsman.electricity@gmail.com

Appeal Petition No. P/022/2023
(Present A. Chandrakumaran Nair)
Dated: June-27-2023

Appellant : Jino Sebastian
Confident Group, Elite,
Flat No. 401,
Christopher Nagar,
Ollur, Thrissur
Pin: 680306.

Respondent : Assistant Executive Engineer,
Kerala State Electricity Board Ltd.,
Electrical Sub Division,
Ollur, Thissur.

ORDER

Background of the case

The appellant Sri. Jino Sebastian purchased 5.80 cents of land at Edakkunni village of Trichur Corporation to build a house. The appellant is a Kottayam native and residing in Trichur as he is posted in Trichur. The building permit was obtained and the construction has been started. The 11 Kv line drawn to provide power for the Thaikkattussery Ayurveda college is rerouted as per the request of the Principal, Ayurveda college for the expansion of the college. The proposed route of the 11 Kv line was approved by the ADM. The line with ABC cable was drawn by the side of the road in front of the plot owned by the appellant. One stay wire of the post was placed inside this property without the consent. The appellant wants this stay wire is to be removed from the property. The appellant approached the CGRF and CGRF issued order vide order dated 31/03/2023. Aggrieved by the order of the CGRF, appellant filed the appeal petition to this Authority.

Arguments of the Appellant

1. Sir, I purchased 5.80Cents of Land in Re Sy No 75/59 of Edakkunni Village, Thrissur Corporation in order to construct a house therein for my family. I am a non-local person hailing from a small village "Vadayar" in Kottayam District. I stay in Christopher Nagar, Thrissur. After obtaining the building permit, when I visited my site along with my engineer for starting the construction works, I observed shockingly that KSEB Ollur had encroached into my property and fixed a stay wire inside my plot without my knowledge or consent. On enquiry, I learnt that in connection with pulling an 11kv line as per the request of M/s Vaidyaratnam Ayurveda College, KSEB Ollur erected a post adjacent to my plot and fixed its stay wire inside my property without asking my permission. The stay wire is fixed at one end of my plot where the proposed boundary wall is to be constructed. My Car Porch also comes there as per the plan. Thus, the constructions of the Porch roof as well as the boundary wall are obstructed due to the presence of this stay wire.
2. I do not own any other property and I have only this limited space of 5.80 Cents of land for my proposed House Project. The construction is going on and the presence of this stay wire is not allowing me to construct the boundary wall and the porch as planned.
I met the AE in person and discussed this matter. A written complaint was given to the Asst Engineer, KSEB Ollur on 06.02.2023 to remove the stay wire from my plot and to fix it anywhere outside the plot. Since I didn't get any favourable response, a complaint was registered with KSEB CGRF.
3. My petition was rejected by CGRF saying that KSEB has done the work based on the order from the Honourable ADM, Thrissur. The order from the Honourable ADM refers only to permission for Pulling the 11 KV. There was no permission as such in the order, to trespass into any private property for doing the work.
In case of a similar post for the same 11 KV, KSEB Ollur erected a post with concrete basement, without any stay wire. KSEB Ollur could have looked for any such options in my case too, without disturbing my construction. They could also think of a different position for the post. Instead, they have neglected all such possibilities and gone on to encroaching to my plot. They could have discussed with me before proceeding with such actions. I feel that they have done this since I am a non-local person. Since I have got only this limited space for constructing my house. I humbly request your intervention. Kindly grant me the following Relief.
4. My house construction is going on. KSEB has entered my plot without my permission and fixed the stay wire inside my plot without my consent. The present position of the stay wire obstructs my construction of boundary wall and Car Porch. I do not have any other space for the same.

Hence, I want that stay wire to be removed from my plot. KSEB must relocate the post to avoid any hindrance to my construction. I humbly request you to kindly instruct the concerned to explore other possible options to install the Post such as fixing the post with concrete basement and without stay wire, fixing the post at a different position etc. and to remove the stay wire they fixed inside my property without my consent so that constructions of my boundary wall and car Porch are not obstructed.

Arguments of the Respondent

1. This complaint is related to line shifting of Thaikattussery Ayurveda College under Ollur section. Application has been made for shifting of existing 11 Kv line for construction of new buildings in Ollur Ayurveda College compound. As per the application, the site was visited by the officer of the said office and an estimate was prepared. The money was also paid as per that estimate. But due to the complaint of the people living in that area regarding shifting of the said line, the matter has been taken up with ADM to settle the dispute. According to the order of ADM, the OH line (bare conductor) which was originally prepared was drawn as ABC and the complaint was settled. Accordingly, it was imperative to maintain the safety of the stay line erected on the plaintiff's land. And it was not done to trouble him on purpose. Moreover, we were forced to do this work on the repeated insistence of the Ayurveda College Principal. Therefore, this statement informs that no specific harassment has been done on the part of KSEB to cause hardship to him and the above statements are completely truthful.

Counter Arguments of the appellant

1. The respondent has admitted in the reply that they were forced to do the work due to the continuous compulsion from the Principal, Ayurveda College, who is the actual beneficiary of the work. While doing so, obviously they have neglected my rights as the property owner. My limitation in the little space of land was never considered. Now, I am provided with no option to construct the boundary wall and Car Porch and it is causing me severe agony and mental stress.
The sketch approved by the Honourable ADM was prepared by KSEB Ollur only. While preparing the sketch, they have been one-sided, thinking of the feasibility of the college only. They did not take my inconvenience into consideration. This appears doubtful.
2. Knowing that, stay is required for the proposed 11KV line and that they will have to encroach to my property, KSEB Ollur could have contacted me and discussed so that they would have come to know the position of my Car porch and my inability to find an alternate position for the same in the limited space available. Thus, they would have been able to redesign the sketch, knowing

my limitations. Unfortunately, they did not do this. While submitting the sketch for the orders of ADM, the fact that KSEB will have to encroach to a private property to establish the line as per the sketch is not properly communicated to the ADM. Therefore, their argument that they have done this as per the direction of ADM should not be accepted.

3. Most importantly, if the current position of the post was the only choice available to them, they could have fixed the post with concrete basement so that encroaching to my property to fix the stay could have been avoided. As admitted by KSEB Ollur they had done the work due to continuous compulsion from the Ayurveda college. Hence the college would have borne the cost of fixing the post with concrete basement. The reason for skipping such a possibility is unknown and that is why the action of KSEB appears one sided and doubtful.
4. I am the only victim in this action of KSEB and I feel KSEB could have considered the possibility of Underground Cabling at least when the line had to cross the road near to my property.
5. Sir, I have only this 5.80 cents of Land and my approved plan is such that there is no other option to construct the car porch. Construction of the boundary wall is also obstructed. I humbly request you to take into account above points also while considering the facts mentioned in form B. I really stand helpless and beg your kind consideration. Kindly instruct KSEB to remove the stay from my property and use other safety options as suggested above.

Analysis and findings

The hearing of the appeal petition was conducted on 15/06/2023 at 11:30 am in the office of the State Electricity Ombudsman, DH Road & Foreshore Road Junction, near Gandhi Square, Ernakulam south. The hearing was attended by the appellant Sri. Jino Sebastian and the respondent Smt. Nisha A, Assistant Executive Engineer, Electrical Sub Division, Ollur.

The Vaidya Ratnam Ayurveda College, Thaikkattussery requested to the licensee to reroute the 11Kv line drawn through their compound and also the distribution transformer for the development works of Ayurveda College. This was a deposit work and the amount was deposited by the Ayurveda College. There were objections from residents of Ayur Garden area and hence the matter was taken up to ADM and ADM accorded the approval for the reroute with ABC conductors. The licensee has drawn the 11Kv line with ABC erecting the posts on the road. Stay wire of one of the posts has been erected in the property of the appellant where he is planned to construct a house. The appellant is a bank employee hailing from Kottayam and residing in Trichur in a rented house.

This land is purchased for constructing a house which is a dream of an employee in their life. The plan has been approved by the local authority; the roofing of car porch is obstructed by the stay wire. This stay wire erected in the property without obtaining the consent of the land owner obstructing his construction. The Section 164 of the Indian Electricity Act 2003 states to impose the provision of Indian Telegraph Act 1885 for placing the electrical lines and electrical plants.

The Section 10(d) & 16(1) of Indian Telegraph Act 1885 states about the placing the electrical lines and Section 17(1) states about the procedure of shifting the line as per the request of the owner.

Section 10 *“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, 10(d) “in the 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 referred to in clause(c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.”

Section 16(1) *“If the exercise of the powers mentioned in Section 10 in respect of the property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.”*

Section 17(1) *“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 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:*

Provided that, if compensation has been paid under Section 10, clause(d) he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may, be the smaller sum.”

Section 17(2) *“If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate with whose Jurisdiction the property is situated to order the removal or alteration.”*

Section 17(3) *“A District Magistrate receiving an application under subsection (2) may, in his discretion reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line post to any other part of the property or to higher or lower level or for the alteration of its form; and the order so made shall be final.”*

These Sections are very clear about placing of lines, posts or stay wires in a private property and the dispute settlement also to be adopted for shifting the line as per the requirement of the owner.

The solution for the case in hand, make the ABC cable on loose span and erect the post in a strong concrete pedestal and remove the stay wire. The respondent in the Argument note state that providing concrete foundation as suggested is not technically feasible since it adversely affect strength of the post and stability of the line. Hence the question comes why it is not technically feasible? Is the tensile strength is so high? Or the wind load is very high in this area? No. While making the loose span of ABC cable on both sides of the post the tensile strength will be get reduced. There is sufficient space between LT and HT line, so the loosening of ABC will not be a problem. Then about the wind velocity, this area is a residential area, many houses are there so the wind velocity is not so high.

Then next factor affecting this issue is the soil condition. In the hearing with appellant and respondent agreed that the soil is normal hard soil. Then the soil condition also favourable to this solution. Then the argument of respondent that erecting the pole in a concrete pedestal and removal of stay wire is not an issue at all. In the hearing the respondent agreed that the concrete pedestal could be done if the cost is borne by the appellant. Then the technical feasibility is favourable for this solution. Then the question is who will bear the cost? The Indian Telegraph Act Section 17 states that if the property owner want the alteration in the line or post, the property owner tender to the authority the amount requisite to defray the expenses of the alteration or half of the amount paid as compensation, whichever may be the smaller sum. Here the compensation paid is zero and half of the same also zero which is the smaller sum. This means that the appellant is not liable to pay the expenses of this alteration.

However, a site inspection was conducted along with consultant Consumer Advocacy Sri. Sreekumar on 26/07/2023 at 10 AM. The A.E of the Ollur Section was also present. It is noticed that the building construction is in progress. The stay wire is very close to the boundary of appellant where he planned to make the car porch. The super structure of the building is almost reaching the lintel level. There is bend in the ABC line and hence a stay is required for the HT line. A.E has informed during the inspection that they

arrived a solution by shifting the stay wire to neighbouring property and the consent has obtained from the property owner and hence the issue has been resolved.

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 has to remove the stay wire from the property of appellant as agreed during the site inspection.
2. The licensee has to bear the cost of this alteration or modification.
3. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/022/2023/ _____ dated: 27/06/2023

Delivered to:

1. Jino Sebastian, Confident Group, Elite, Flat No. 401, Christopher Nagar, Ollur, Thrissur, Pin: 680306.
2. Assistant Executive Engineer, Kerala State Electricity Board Ltd., Electrical Sub Division, Ollur, Thissur.

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