

THE STATE ELECTRICITY OMBUDSMAN

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Review Petition No. RP/007/2023

(Present A. Chandrakumaran Nair)

Dated: September-04-2023

Review Appellant : The Assistant Executive Engineer,
Electrical Sub Division,
KSEB Limited, Kechery.

Review Respondent : Sri. George C.R.,
Cheeramban House,
Velur Bazar P.O.,
Trissur, Pin:680601.

ORDER

Background of the case

The review appellant The Asst. Exe. Engineer, Electrical Sub Division, KSEB, Kechery, Thrissur submitted this review petition to review the order placed by the Ombudsman for the appeal petition No. P/025/2023. The appellant of the original petition p/025/2023 is the owner of the land in Kuttamkulam, Velur village, Kunnankulam Taluk. The licensee has placed multiple stay wires in this property without the consent of the land owner. The District Collector issued an order stating that the case is not coming under Indian Telegraph Act and KSEB has to resolve the grievance. As the order of CGRF was not the favour of the complainant the appeal petition was filed and Ombudsman issued order on completing the procedural formalities dated 07/07/2023. The review petition was filed to review the order of the Ombudsman.

Maintainability of the Review Petition

The Section 27A of KSERC (CGRF and Electricity Ombudsman) Regulation 2005 states as below.

27A (1) *“The Electricity Ombudsman may, either on its own motion or an application of any person aggrieved by an order, review its order on the following grounds, namely: -*

(i) *On the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not with his knowledge or could not be produced by him.*

(ii) *Mistake or error apparent on the face of the record.”*

(2) *“An application under clause (1) shall be filed within period of fifteen days from the date of receipt of the order.*

Provided that Electricity Ombudsman may entertain an application after the expiry of the said period of fifteen days, if it is satisfied that the applicant had sufficient cause for not preferring the review within such period.”

(3) *“If on a preliminary examination of the application if the Electricity Ombudsman found that there is no sufficient ground for review, it shall reject the application after affording an opportunity of being heard to the applicant.”*

The review petition was submitted within the time and hence acceptable. There is no mistake happened in the order. But there is one new matter or evidence submitted with review petition which is the objection raised by the neighbor. Accordingly, this review petition is maintainable.

Arguments of the Review Appellant

1. The Complaint is not maintainable either in law or facts. The subject matter of the Complaint is not connected with any of the grievances to be qualified as a complaint as per the KSERC (CGRF & Ombudsman) Regulations, 2005.
2. The dispute raised in the complaint with respect to the removal of stays provided in their property in exercising the powers conferred by the Government of Kerala as per notification vide S. R. O. No. 534/2020 dated 24/08/2020 under section 164 of the Electricity Act, 2003 (Central Act 36 of 2003), upon the Engineers of the Kerala State Electricity Board Limited of and above the rank of Assistant Engineers all the powers which the telegraph authority possesses under Part III of the Indian Telegraph Act, 1885 (Central

Act 13 of 1885) with /respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained to exercise, for the purpose of placing of electric lines or electrical plant for the transmission and supply of electricity.

3. The decision of the Full Bench of Hon'ble Supreme Court in Power Grid Corporation of India Limited v. Century Textiles and Industries Limited and

Others (2017) 5 SCC 143 highlights the imperative and the need for unobstructed access for laying down the electricity transmission lines in the larger public interest as these are essential requirements for growth and development of the country, economy and well-being of the citizens. The Hon'ble Court while examining Section 164 of the Electricity Act had observed that the appropriate Government may by order in writing for the purpose of placing of electric lines or electrical plant for the transmission of electricity necessary for the proper coordination of works, confer on any public officer, licensee or any other person engaged in the business of supplying electricity under the Electricity Act any of the powers that the telegraph authority possesses under the Telegraph Act with respect to the placing of the posts and lines for the purposes of a telegraph and no prior permission from the property owner is necessary in exercising such powers.

4. Since it is a 90-degree angle location and also conductor is HT ABC, 2 no's stays are unavoidable and also these stays are provided ensuring safety of the general public as well as and least inconvenience to the Petitioner's property to the maximum extent possible replacing the V stay and DP to avoid the hindrance to the proposed road as informed by him. The Assistant Engineer, Kechery directly conveyed and convinced the position to the consumer at the on and carried out the work accordingly without levying any cost for the same. The above plan work was completed in all aspects on 23.3.2021.
5. The Petitioner filed a complaint in this regard to the Additional District Magistrate and in response to letter No.DCTSR/11042/2020-C4/dtd.21.12.2020 from the Hon'ble Additional District Magistrate, Thrissur calling for the report on the complaint of the Petitioner in this regard , a reply was submitted from this office, Thrissur as per letter dated 05.08.2021.
6. The complainant approached with the Hon'ble CGRF Central Region with the Complaint as OP 78/2022-23 and as per the direction of the Hon'ble Forum in the hearing, this respondent to update the status of the complaint lodged by the petitioner before the Additional District Magistrate, Thrissur and submit a report regarding this before the Forum. As such, a letter was sent from the office of the Assistant Executive Engineer, Electrical Sub

Division, Kecheri to the Additional District Magistrate, Thrissur vide No.GB-2/ADM/AEE/ESD/KRY/2022-23/54/dated 28-02-2023 seeking the present

status of the complaint lodged by the petitioner before the Additional District Magistrate, Thrissur. On 06-03-2023, the respondent received a reply from the Hon'ble District Collector, Thrissur vide file No.DCTSR/11042/2020-C4/dated 06-03-2023 stating that as the work causing dispute is carried out by the KSEBL under Dhyuthi Scheme, the dispute raised upon that work should also be settled by the KSEBL and that the District Collector, Thrissur is not interfering in this complaint anymore which itself justifies the action of these Respondents. The remedy available for the Petitioner is to challenge this

decision of the Hon'ble Collector before appropriate Forum having jurisdiction in interfering with the decision.

7. It is submitted that the matter was not referred to the Additional District Magistrate as per Section 16 of the Telegraph Act by this office as pointed out in the letter of the Hon'ble Collector since the line was constructed exercising the powers under Section 164 of the Electricity Act r/w Section 10 of the Indian Telegraph Act, 1885 and the objection was raised by the Petitioner after the construction of the line and no alternative route was possible to suggest. It is also submitted that if the Hon'ble Ombudsman insists so reference may be made to the Hon'ble ADM as per the provisions of the Act.
8. It is most humbly submitted that this Hon'ble Ombudsman lacks jurisdiction in the matter against this decision of the Hon'ble Collector to intervene in the matter and also to consider the dispute as a complaint as it is not included in any of the topics covered under the definition of "complaint" as per Sub Regulation 2(f) of KSERC (CGRF & Ombudsman) Regulations, 2005. The definition of complaint is reproduced for easy reference.

'Complaint' means any grievance made by a complainant in writing on: -

- (i) defect or deficiency in electricity service provided by the licensee;
- (ii) unfair or restrictive trade practices of licensee in providing electricity services;
- (iii) charging of a price in excess of the price fixed by the Commission for supply of electricity and allied services;
- (iv) errors in billing;
- (v) erroneous disconnection of supply;

(vi) electricity services which are unsafe or hazardous to public life in contravention of the provisions of any law or rule in force; or

(vii) any other grievance connected with the supply of electricity by the licensee except those related to the following:

(1) unauthorized use of electricity as provided under Section 126 of the Act;

(2) offences and penalties as provided under Sections 135 to 139 of the Act and

(3) accident in the distribution, supply or use of electricity under Section 161 of the Act.

9. The complaint of the Petitioner was considered in detail by the Hon'ble CGRF and after the hearing of the Petitioner and the site inspection conducted by CGRF on 23/03/2023 the complaint was disposed as per order No: CGRF-CR/OP/No.78/2022-23/488 Dtd: 31.03. 2023 upon the finding that the work

is carried out for public purpose /benefit and the disputed stay wires is necessary for the safety of the electric post installed in front of the petitioner's property; thus, cannot be removed.

10. The grievance of the Petitioner has been resolved to the extent maximum possible from the Respondents side taking a lenient view in the matter which has been rightly upheld by the Hon'ble CGRF. These Respondents has acted only in accordance with law and in the public interest as per the construction standards causing least inconvenience to the Petitioner for which these Respondents are duty bound as per Sec. 42 of Electricity Act, 2003 to develop and maintain an efficient, coordinated and economical distribution system in the area of supply and to supply electricity in accordance with the provisions contained in the Act.

Hence in the light of the above and the settled legal position in the matter, it is most humbly prayed that the Hon'ble State Electricity Ombudsman may be pleased to dismiss the petition.

Arguments of the Review Respondent

1. As stated in the review petition the case is filed only because of the V stay, single stay and the change of one stay in the V stay erected by the KSEB on the petitioners Property. The situation of the plaintiff has not changed and the obstruction to the property caused by the V stays and single stays previously erected remains the same.
2. Assistant Engineer Kecheri Section informed me over the phone that these stay wires can be replaced, and after that they approached me to ask for

directions to the place subject to the case/complaint, but nothing else has convinced me about the replacement of the wires.

On the basis of filing a complaint before ADM Thrissur regarding the replacement of stay wires, despite several instructions from the ADM Thrissur office, the report was not submitted due to the negligence of the KSEB Kecheri

section officials, and hence the ADM office could not take any further action, the complaint was submitted before the CGRF Ernakulam, called for a hearing, and the site of the complainant was inspected. The order states that that the stay wires can be replaced, but the petitioner shall bear the cost of replacing these stay wires.

3. After filing a complaint before the ombudsman, informed me during the hearing that there was a technical difficulty in replacing the two stay wires. Following the Ombudsman's order that one stay wire would be replaced, I, the complainant, was informed that I consented to the retention of one of the two stay wires obstructing the road on my private property. Following this, the Ombudsman conducted a site inspection and ordered the installation of a supporting post after the entrance gate of the neighbor's house to replace the wire standing on the north side of the property.
4. But in the review petition filed by the Assistant Executive Engineer against this order, it is indicated that the neighbor Suku has filed a written complaint against the installation of the supporting post. But by installing this supporting post, there is no road hindrance to the neighbor Suku.
5. It is a fabricated complaint by KSEB contractor Rocky who encroached on my property, the petitioner and installed stay wires. It has been learned from local residents that he has challenged that these stay wires cannot be replaced in any way.

It is totally unfair for the KSEB Kecheri Section authorities to justify the action of installing stay wires on the property of the petitioner and gave importance to the complaint of a person named Suku, who had obstructed the placing of a supporting post.

6. I humbly request you to kindly order to replace the stay wires illegally installed by KSEB authorities on my property and install modern technology like A pole muffing and lattice tower at the expense of KSEB for easy access of my family to the property.

Analysis and Findings

The hearing of the Review petition held on 23/08/2023 at 11:30 a.m. in the office of the State Electricity Ombudsman, D.H Road & Foreshore Road Junction near Gandhi square, Ernakulam South. The hearing was attended by the Review appellant Smt. Sindhu K.K., AEE, Electrical Sub Division, Kechery along with Nodal officer James T and from the Review Respondent's side Sri. Biju George and Sri. Bini Sebastian.

The stay wires for the 11kv ABC line were erected in the property of the review respondent, without their consent. They have agreed for maintaining one stay wire but the second stay has to be removed for the effective utilization of the land. Here the review appellant produced the copy of the order of Hon'ble Supreme Court in civil appeal no. 10957 of 2016 which the PowerGrid corporation of India Ltd Vs Century Textiles & Industries Ltd. and others pronounced on 14/12/2016. As per this judgment the Indian Telegraph Act 1885 Section 10 empowers the Telegraph Authority/ Licensee to place & maintain line under over, along or across and posts in or upon any immovable property. Accordingly, the prior consent or permission of the property owner is not required. However, the licensee has to make only little damages to the property and has to pay full compensation.

The Indian Telegraph Act 1885 states that the dispute resolution in shifting the line of required, then the authority is District Magistrate. District Magistrate/ Collector of Trissur issued order vide dated 06/03/2023 stating that this dispute is not to be redressed as per the Indian Telegraph Act 1885 and the grievance is to be redressed by the KSEB. Then the argument of the

Review appellant stating that this case is not coming under the Jurisdiction of Ombudsman is to be ruled out. The Ombudsman is to redress the grievance of the complainant against the KSEB and accordingly the petition was heard and disposed.

The solution suggested after the site visit along with consultant consumer advocacy was to place another post by the side of the road to reduce the tension of the line in front of the neighbor's property without obstructing the gate & movement. The review appellant produced an objection letter of the neighbor. This objection is not sustainable as the line/post/stay is not encroaching his property. Then this objection is over ruled. The post is to be installed on the public roadside for which the consent or objection of the neighboring property owner is not relevant.

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. As there is no merit found to review the petition, the review petition is dismissed herewith.
2. No order on cost.

ELECTRICITY OMBUDSMAN

No. RP/007/2023/_____ dated:_____.

Delivered to:

1. The Assistant Executive Engineer, Electrical Sub Division, KSEB Limited, Kechery.
2. Sri. George C.R., Cheeramban House, Velur Bazar P.O., Trissur, Pin:680601.

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.