

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No: P/323/2012

(Present T P Vivekanandan)

APPELLANT : Mr. P.K.Viswanath,
Puthuparambil Veedu,
Mannarmala, Pathanamthitta.

RESPONDENT : The Assistant Executive Engineer
Electrical Sub division, KSEB,
Pathanamthitta.

ORDER.

BACKGROUND OF THE CASE: -

The appellant had lodged complaints before KSEB officials like the Asst. Engineer, Executive Engineer and Deputy Chief Engineer, against the erection of a 'Stay and Wire' in his property, by the Asst. Engineer, Electrical section, KSEB, Pathanamthitta, without obtaining his permission. This action was said to be done by the AE, to rectify the slanting of the electric Post erected on the Road side and also to set right the sagging of the electric OH line crossing the Road to the other side. Further it is necessary to maintain the statutory safety clearance of the line crossing the Road so as to maintain the supply to a consumer. The appellant is aggrieved at the 'stay to Post' erected in his land property without his consent. The new Stay wire erected, touches the rubber trees planted in his property and causes threat to life and also prevents tapping of the rubber trees, argues the petitioner. Since no reply or action was taken by KSEB, the appellant preferred a petition before the CGRF, Kottarakkara with a request to shift the 'stay' from his property. The CGRF had disposed the Petition vide order dated 6.10.2012, in OP No.803/2012, directing as; "the opposite party to examine the feasibility of shifting the post to a convenient place as suggested by him, to the extent possible". Still not satisfied by the decision of the CGRF, the appellant has filed the Appeal petition before this Forum.

Arguments of the Appellant: -

The Appellant has adduced the following arguments.

(1). On 23/2/2012, the Assistant Engineer, Electrical Section, Pathanamthitta, trespassed into the property of the appellant and inserted a stay there without his knowledge or consent. At the time of installation of the stay he was not at home and when he came to know about the unauthorized and authoritarian act, he had immediately given petitions to the Deputy Chief Engineer, Electrical Circle and the Executive Engineer, Electrical Division, Pathanamthitta, on 23.2.2012 and 24.2.2012 respectively. Since the appellant had waited for six months and no

action was taken to remove the unauthorized stay, the appellant preferred a petition dated 24.8.2012 before the CGRF, Kottarakkara.

(2). I have not requested to shift the post erected in the PWD road side. But it is from this post an electric OH 3-Phase Line is drawn across the Pathanamthitta-Adoor road, without providing cradle or taking any safety measures to give supply to a consumer in the opposite side.

(3). The appellant is not satisfied with the findings of CGRF and the order passed by the Forum.

Relief sought for :-

He prays for just and fair disposal, taking into account the request to shift the stay from his property so as to avoid any electrical accident to persons or property.

Arguments of the Respondent:-

The Respondent has filed the counter statement as follows;

(1). The respondent submits that in accordance with the CGRF's order dated 6/10/2012, he had inspected the location along with the Assistant Engineer, Electrical Section, Pathanamthitta. The electric line was constructed about 30 years ago, along the Pathanamthitta-Adoor main road. The post with stay was erected by the side of the road. A three phase overhead line was drawn across the road from this post and this line passes through the middle of a private road which is an entrance to residential buildings. Also an 11 KV feeder was passing through the other side of the main road. The shifting of the post to the opposite side will cause hindrance to conveyance of both vehicles and people and also affects the safety of human beings. Hence it is difficult to shift the post and stay. The same was reported to the CGRF as well as the Party.

(2). Moreover the post was situated by the side of the PWD road. The stay was erected for the safety of the line and causes no difficulties. The rubber trees planted by the appellant were very much leaned over the electrical line which is very dangerous. It is the duty of the KSEB to cut and remove the over hangings to avoid accidents and interruption of electrical supply.

Analysis and Findings: -

The Hearing of the Case was done on 14.5.2013 and 13.8.2013 in my chamber at Edappally, Kochi and the Asst. Executive Engineer, Electrical Sub Division, Pathanamthitta has appeared for the Respondent's side. The appellant was absent on both the hearing dates, but had submitted further remarks dated 18.01.2013, as rejoinder to the statement of facts filed by KSEB. In the same it was also stated that he has nothing more to offer than what is already stated by him. On examining the Appeal Petition, the counter of the Respondent, perusing the documents attached and the arguments in the hearing and considering the facts and circumstances of the case, this Forum comes to the following conclusions leading to the decision thereof.

(1.1). The appellant argues that the AEE has not made any proper investigation about his request for shifting the 'unauthorized stay' erected within his property by the Asst. Engineer. Further, he stress that he had not made any request to shift the electric Post, standing in the Road side. He also alleges that it is from this Post, that an electric OH three phase line was drawn across the road, without providing cradle or taking any safety measures, so as to give supply to a consumer residing on the opposite side.

(1.2) The respondent submits that there exists an electric post along the PWD road side, with a 'stay' to the Post, erected in the complainant's property earlier. He reports that the 'stay' given to the electric Post was seen missing due to reasons unknown. He added during hearing

that the OH Line was drawn across the Road, from the said post to give electric connection to Smt. Kunjoonjamma, Con. No. 16686, residing on the opposite side. This consumer has filed a complaint dated 15.01.2011, before the 'Janakeeya Vydyudhi Adalath-2011', organized by KSEB, requesting to re-tension the OH line, as it is sagging dangerously across her pathway. The complaint was registered as No. 17 and the action taken by KSEB is recorded as follows;

"The neighbour's consent to erect the 'stay' for the electric Post is not available. The slanting Post was set right and the grievance redressed temporarily".

(1.3) Here the question is whether there was a 'stay' to electric Post existed in the property of the appellant earlier?. The respondent says the 'stay' was removed by someone without the knowledge of the Board. It is the responsibility of the Board to ensure the safe condition of all electric supply lines, wires, fittings and apparatus belonging to them.

(1.4) Further, it is clear that the appellant is either not allowing to erect a 'stay' to the electric post in his property or objecting to renew the same. The KSEB says that the 'stay' has gone missing. Had there been a 'stay' to the electric post, which was found missing and anyone objects to renew it, or if it is found inevitable that a new 'Stay' has to be provided to the existing Electric Post, for the safety reasons of the Line and the public, the KSEB has to proceed as per rules, i.e. it has to approach the District Collector and get suitable orders.

(1.5) From the recordings of the 'Janakeeya Vydyudhi Adalath-2011' conducted during 2011, which is given under Para (1.2) above, I doubt whether there was any 'stay' to the existing Post earlier. This is because, the recorded statement done in year 2011 by KSEB as; *"The neighbour's consent to erect the 'stay' for the electric Post is not available"*, means that the stay was not in place at that time. It is not written that the 'Stay' was missing. More over, the reason for not providing 'cradling arrangement' across the road by KSEB, may be due to the deficiency of 'Stay' support, as without a 'stay to Post' it is not possible to provide the Cradle arrangement safely. It is noted that the 'Cradling' in Electric OH Line system, is a set of GI wires formed in the shape of a Cradle full across the road and is drawn beneath the electric OH Line in road crossings, so that if the Line breaks, it will fall on the cradle below and the Line supply is tripped, thereby averting an electrical accident.

(1.6) If the rubber trees planted in the property of the appellant are dangerously leaning over the line and needs urgent clearance, then in such cases the KSEB has to invoke provisions in the Act to remove the trees. Clause 68 (5) of the Electricity Act, 2003 reads as:

"Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit".

DECISION: -

In Clause 14(5) of the KSEB Terms and Conditions of Supply, 2005, it is clearly stated that even in the case of applicants for a new electric service connection, the KSEB should not be held responsible for the delay caused unless the consumer produces the consent in writing of the owner or the person in possession of the property to be crossed over for drawing electric line so

as to provide the service connection to him. The idea was to cause least damage, detriment and inconvenience to others as per Sec. 67 of the Electricity Act, 2003, for 'the opening up of streets to lay down or place electric supply lines'.

The Works of Licensees Rules, 2006, published by Ministry of Power, dated 18.4.2006, states; *3 (b) ".....Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate....."*

Hence the respondent should have considered the objection filed by the appellant seriously, even it is for the erection of a 'stay' to the electric Post and the matter should have been brought before the District Collector and acted as per the orders. In this case the KSEB (Respondent) has violated the said rule and acted in a high handed manner and has erected the 'stay' ignoring the objection of the appellant. I feel that the said unilateral decision taken by KSEB is neither reasonable nor justifiable. Hence I find that the actions of the Respondent or his subordinate officers in this case, have exceeded their powers and hence are liable to be proceeded against for abuse of power. The KSEBoard has to decide on this matter as the delinquents are its employees.

The plea for restoration of electric supply through the original way itself, i.e. by removing the 'stay' given to electric Post by KSEB, is declined because, on verifying the sketch of the Electric Line system in the area under dispute, it is clear that a 'Stay' to the electric Post is a necessity, as far as the electric OH line Construction practice is concerned. Hence the removal of 'Stay' to the Post, surely will pave the way for accidents sooner or later. Hence, I am of the view that the plea of the appellant to order to remove the 'stay' to the Post, erected in his property, is beyond the powers of this Forum, as such a decision may pose danger to life and property.

The KSEB ought to have acted after approaching the District Collector and getting suitable orders. My finding is that the KSEB officials has violated the rules and exceeded their powers, for which the Board has to decide on the appropriate action.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the consumer stands disposed of as the relief sought cannot be allowed. No order on costs. Dated the 11th of October, 2013,

Electricity Ombudsman

Ref. No. P / 323 / 2012 / 2002 / Dated 11.10.2013.

Forwarded to 1). Sri. Mr. P. K. Viswanath,
 Puthuparambil Veedu, Mannarmala, Pathanamthitta.
 2). The Assistant Executive Engineer,
 Electrical Sub Division, KSE Board, Pathanamthitta.

Copy to: - (1). The Secretary, Kerala State Electricity Regulatory Commission,
 KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
 (2). The Secretary, KSEBoard,
 Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
 (3). The Chairperson, Consumer Grievance Redressal Forum,
 KSEBoard, Vydyuthibhavanam, Kottarakkara.