

**THE STATE ELECTRICITY OMBUDSMAN**

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APPEAL PETITION NO. P/053/2016

(Present: V.V. Sathyarajan)

Dated: 18<sup>th</sup> November 2016

Appellant : Smt. Vijayalekshmi Amma,  
Prabhath, Ayinkamam,  
Padanthalumood,  
Parassala,  
Thiruvananthapuram.

Respondent : The Assistant Executive Engineer,  
KSE Board Limited,  
Electrical Sub Division,  
Parassala,  
Thiruvananthapuram.

**ORDER****Background of the case:**

The appellant Smt. Vijayalekshmi Amma is a consumer with consumer No. 10430, under Electrical Section, Parassala. A service wire was drawn by crossing the appellant's property for giving service connection to her neighbour, Smt. Visalakshi Amma for conducting a flour mill with consumer No. 1128. It is alleged that the service wire was drawn years back without any consent of the appellant. As the appellant wants to do some adjoining construction in the existing building, this service wire becomes a hindrance. So the appellant made a request to shift the service wire through which an overhead line drawn for giving domestic connection to Smt. Visalakshi Amma.

The grievance of the appellant is against the inaction on the part of respondent for not shifting the weather proof 3 phase service wire passing through her property. Further, the Assistant Engineer, Parassala demanded an amount of Rs. 16,369.00 from the appellant for carrying out the shifting work. But the appellant raised objection against the demand. According to the appellant the expenses for shifting the service wire shall be borne by the consumer who availed the service connection with consumer No. 1128. So the appellant filed a petition before the CGRF, Kottarakkara, which was disposed of vide order in OP No. 1604/ 2015 dated 21-12-2015, directing the appellant to

remit the labour charges for shifting the service wire. Not satisfied with the order of the Forum, the appellant approached this Authority with this appeal.

**Arguments of the appellant:**

The appellant herein is a consumer of electricity under Electrical Section, Parassala. A service line of a three phase connection with consumer No. 1128 is crossing over the property of this appellant causing proper enjoyment of the property. Since the request of this appellant to shift/ remove the said service line crossing over the property was never processed properly by the licensee, this appellant approached the CGRF (South) as directed by the State Regulatory Commission. However, the Hon'ble CGRF also failed to deliver justice to this appellant by its order on the complaint. Thereby, this appeal is submitted before this Hon'ble Electricity Ombudsman seeking such remedies and reliefs prayed in.

The three phase service line to consumer No. 1128, crossing the property of this appellant is causing hindrance to proper usage and enjoyment of her property. Repeated requests were made to the owner of consumer No. 1128 to shift service line which crosses the appellant's property but are in vain. Thereby, this appellant submitted an application dated 12-03-2014 addressed to the Assistant Executive Engineer, Electrical Sub Division, Parassala for shifting/removing the above service line crossing the property and the necessary application fee were also remitted.

In reply to that, the Assistant Engineer, Parassala issued a demand letter asking this appellant to remit Rs. 16,369.00, which is the total estimate cost of the work. Also directed to present consent from the owner of the property through which the single phase distributing main of the licensee was already drawn. However, the estimate was never communicated to the appellant. Aggrieved by this, the appellant submitted a letter dated 17-07-2014 to the Assistant Executive Engineer stating that as per the agreement executed by consumer No. 1128, the expenses for shifting the service line shall be borne by the consumer and requested him to take actions accordingly. To that, the Executive Engineer, Neyyattinkara communicated a letter asking this appellant to remit the same amount of Rs.16,369.00 dated 30-10-2014, which the appellant was understood to be the total estimate cost of the works. Aggrieved by this, this appellant submitted a complaint to the Hon'ble State Regulatory Commission dated 12-11-2014. The Hon'ble Commission communicated a letter dated 16-06-2015 stating that, the complaint has been forwarded to the Executive Engineer to take actions within 30 days and it is not being done by him, this appellant may approach the CGRF (South) for redressing complaint. Accordingly this appellant approached the CGRF (south) Kottarakkara, with a petition.

After hearing, the Hon'ble CGRF issued its order dated 22-12-2015 on the petition and communicated. However the version of the respondent and the

documents along with it were never communicated to the appellant as required before the commencement of the hearing. Thereafter the Assistant Engineer Parassala issued a letter dated 05-01-2016 in connection with the order of the CGRF, asking this appellant to remit same amount of Rs. 16,369.00 even though it was specifically stated in the order that labour charges as under Clause 95(4) (C) of Supply Code, 2014 shall only be collected. It was also asked to produce consent from the property owner.

In response to letter of the respondent, the appellant submitted a letter dated 17-02-2016 to the Assistant Engineer stating that, as per the information available to the appellant, for shifting electric lines, the applicant is only required to remit the labour charges. In response to the letter above, the Assistant Engineer communicated a letter dated 18-02-2016 stating that, since this appellant has not remitted the amount as per the earlier letter and not produced the required consent of the property owner, to convert the existing single phase distributing main to enable the shifting of weather proof service line. It was further informed thereby; it is decided to shift the line through the boundary of this appellant's property. For that, Rs. 2,846.00 shall be remitted. This letter was accompanied with an estimate superscripting revised estimate as per the direction of the CGRF (South) vide order No. OP No. 1550/2015 amounting; while no such order was there on a complaint of this appellant to which was written as amount payable by the applicant. It was also accompanied with a diagram showing the existing service line and the proposed shifting. By the present proposal the service line crossing was not at all eliminated, where the request was to remove the crossing of property. Even though it is stated in the letter the new route is proposed through the boundary of the property of this appellant, in the diagram it was proposed by crossing almost through the middle of the property in perpendicular direction and then in a slated direction. The original position of the service line crossing the property is in a diagonal position. By this proposal no advantage is created to this appellant to enjoy the property peacefully.

Finding no relief after all the efforts since the complaint dated 12-03-2014, and order of the CGRF, this appellant approached the Hon'ble State Regulatory Commission and submitted a complaint dated 23-02-2016. A reply was communicated by the Hon'ble Commission dated 01-04-2016. Again this appellant submitted another submission to the Hon'ble Commission dated 18-04-2016. The Hon'ble Commission communicated this submission to the CGRF (South) with specific directions and copy of it was communicated to this appellant. This appellant also communicated a representation to the CGRF also dated 20-06-2016.

Thereafter, the CGRF reviewed its order" suo moto and communicated an order stating "the weather proof line shall be shifted to the convenient second proposed route suggested by the respondent after collecting labour charges for shifting the weather proof line". In this matter it is respectfully submitted that, this second proposed route is as in the estimate and diagram was

communicated to this appellant dated 18-02-2016 well after CGRF order on complaint OP No. 1604 which was communicated 22-12-2015. Then naturally a question arises, how this CGRF could suo moto review an order communicated dated 22-12-2015 in reliance with estimate and diagram which was created and communicated to this appellant dated 18-02-2016, this is well after 22-12-2015, the date of communication of order from CGRF. Also, it is ambiguous that, how the CGRF arrived at a conclusion the second proposed route is convenient to this appellant without having a hearing, while the complaint, was for seeking orders for shifting the service line from the property of this appellant and hence eliminate the property crossing. There by, the suo moto review order of the CGRF dated 22-06-2016 is inappropriate and violates all principles of natural justice. Thereafter the Assistant Engineer communicated a letter asking this appellant to remit Rs. 2846.00 for shifting the service line along with the same estimate and diagram.

Since the first estimate for Rs. 16369.00 was never communicated to this appellant and for knowing the second estimate based on which suo moto review order was issued, this appellant submitted a letter to the CGRF (South) for issuing the copy of the same. The CGRF issued the two estimates with a covering letter dated 18-07-2016. The second estimate referred in suo moto review order is found to be same estimate and diagram.

In this matter, it is respectfully submitted that consumer No. 1128 is a three phase connection provided to a flour mill in the land property owned by Smt. Visalakshi Amma, which is not at all disputed by the respondent licensee. In the same land property just behind the flour mill there is another residential building having single phase connection. This connection is provided from the single phase overhead distribution main through the property and terminating there in the property of one, Mr. Krishanakumar. From the same post from which electric connection to the house of Smt. Visalakshi Amma is effected, another connection is given to a building owned by one Smt. Nirmala also.

Thereby, the overhead line terminating in the property of Mr. Krishnakumar is a distributing main of the licensee. When application was submitted, estimate for Rs. 16,368.00 was prepared and accordingly demand notice for the amount was issued, however this estimate was never communicated along with the demand notice. This appellant disputed the only because of the estimated amount of Rs. 16,368.00 was the total of the cost of work and the cost of materials. In the Regulation of Supply Code, 2014, the labour charges shall only be realized from an applicant for shifting electric line. Despite making several efforts the licensee never issued the demand for the labour charges only, in accordance with first estimate. The CGRF did apprise the facts and had stated vide Para 5 of order in OP No. 1604 of 2015 that, "the Forum views that the weather proof can be shifted by drawing overhead line for which the required labour charges to be remitted by the beneficiary/ petitioner as per Regulation 94 (4) (C) of Kerala Electricity Supply Code, 2014". Then even after receiving order of the CGRF, the Assistant Engineer asked this appellant to

remit Rs. 16,369.00 vide demand letter dated 05-01-2016, in violation of the CGRF order and further delayed the matter. There by, this appellant has to move before the State Regulatory Commission. As far as the consent is concerned, the existing single phase line terminating in the property of Sri Krishnakumar is not a service line, but it is a distributing main of the licensee catering to more than one consumer. The licensee has no case that Sri Krishnakumar has objected to draw two phase conductors in the existing single phase line for shifting the service line of consumer No. 1128 to the terminal post. No such evidence has ever been brought before the CGRF, for the CGRF to make an observation that, consent of Sri Krishnakumar is to be presented. Moreover, after issuing CGRF order disposing the complaint, the circumstances under which second estimate and diagram came before the consideration of the CGRF and basing that, the CGRF issued suo moto review order is unknown.

The action of the CGRF (South) vitiates the very principle of fairness and natural justice. This appellant respectfully submits that the Hon'ble CGRF had erred while issuing suo moto review order, since second estimate and diagram was never a document in the proceedings of hearing. It is also respectfully submitted that, the overhead portion of the single phase line to be converted as three phase line is a distributing main of the licensee constructed through the property of Sri Krishnakumar. In the matter of converting this distributing main of the licensee on any reasons, this appellant need not obtain consent from the property owner. It is the duty of the licensee to draw the line as per the provision under Electricity Act, 2003. Thereby, the licensee and the CGRF in jointly acted, vitiating very principle of natural justice and further caused grievance to the appellant. It is respectfully submitted that, on the above grounds and which are to be urged during the hearing, this Hon'ble Forum may issue appropriate orders for shifting the service line crossing the property of this appellant as per the proposal under diagram and collecting the charges for shifting as provided under Clause 95(4) (C) of Supply Code 2014.

Nature of relief sought from the Ombudsman

1. To call for the documents and issue orders to remove the over crossing the service line from the property of this appellant by shifting and providing electricity supply to consumer No. 1128 after converting the single phase overhead portion of the distributing main to three phase in the property of Mr. Krishnakumar and drawing service line to consumer No. 1128 through the property of Smt. Visalakshi Amma as proposed under estimate and diagram.
2. To issue orders to collect amounts as provided under Clause 95(4) (C) of Supply Code, 2014 towards the expenses for shifting and removing the over crossing service line of consumer No. 1128 from the property of this appellant.

3. To issue orders to pay expenses of the appeal to the appellant, which the Hon'ble Ombudsman find adequate
4. Such other reliefs the appellant prays for, during the course of appeal

**Arguments of the respondent:**

A three phase service connection was given to Smt. Visalakshi Amma, consumer number 1128 by drawing weather proof wire passing through the property of the appellant. As per the records, this service was effected on 01-04-1957. On 12-3-2014, the appellant had submitted a request to shift the weather proof line passing through her property. Since there is no feasible route to shift the weather proof line, the respondent prepared an estimate for Rs. 16,369.00 for drawing overhead line to consumer No. 1128 and informed the appellant on 28-06-2014. On 17-07-2014, a letter was given to the Assistant Engineer denying to remit the estimate amount and also argued that the amount has to be remitted by the consumer 1128, Smt. Visalakshi Amma. On 06-03-2015, the appellant was informed that she is liable to remit the amount and also to get consent from the adjacent property owner Sri. Krishnakumar to shift the line as the appellant is the beneficiary of the shifting.

The appellant lodged a complaint before the KSERC in which it was directed by the Commission to the respondent to take necessary action after examining property crossing agreement accordingly a disconnection notice was issued to Smt. Visalakshi Amma as per Regulation 138 (4) of the Kerala Electricity Supply Code, 2014. But Smt. Visalakshi Amma has reported that she got the connection in 1957 and no property crossing agreement was entered at that time. She also requested that not to disconnect the connection since she is a handicapped person lives depending only from the income of the saw mill and she is regularly remitting the current charges without fail. The Additional District Magistrate issued a stay order against the service for a period of one month. Hence the service connection to the consumer no. 1128 has not been disconnected. The consumer Smt. Visalakshi Amma also approached the CGRF with a plea not to disconnect the connection and the CGRF disposed of the petition with a direction to remit the shifting charge by the beneficiary vide order OP No. 1550/2015 dated 9-11-2015.

The appellant also filed a petition before CGRF in OP No.1604/2015. It was ordered by the CGRF that weather proof shall be shifted to the convenient route after collecting required labour charges for the shifting the line. As per the orders of CGRF, the respondent has prepared two proposals with estimate for shifting the line as per the first proposal, the estimate comes to Rs. 16,369.00 and the consent of Sri. Krishna Kumar is required. This proposal is considered as not a convenient route since the cost includes labour charge and extra material cost and the line passes through another person's property. In the second proposal, the line can be rerouted through the compound wall of the appellant and the labour charge estimated is Rs. 2,746.00 only. The appellant

was informed about this proposal and asked to remit the amount. But she is not willing to accept this proposal.

### **Analysis and Findings**

The hearing of the case was conducted on 26-10-2016 in my chamber at Edappally, and Advocate N. Sasidharan Unnithan, the Counsel of the appellant appeared for the appellant and Sri R. Saji Kumar, Assistant Engineer, Electrical Section, Parassala represented for the respondent's side. On examining the petition and argument notes filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The main allegation of the appellant is that the respondent demanded an amount of Rs. 16,369.00 for shifting the service wire drawn across her property for giving connection to her neighbour, Smt. Visalakshi Amma (consumer No.1128). It is also directed to produce consent of another property owner Sri Krishnakumar for converting the single phase overhead line to three phase. In the original proposal for shifting the service wire an amount of Rs. 16,369.00 was prepared including labour charges and the material cost. Later, as per the direction of CGRF, revised proposal for an amount of Rs. 2,746.00 was prepared towards labour charges only. The CGRF '*suo moto*' reviewed its earlier order and directed the respondent to revise the estimate to the convenient second proposed route suggested by the respondent after collecting labour charges from the appellant. Though the revised estimate amount is lesser than the original estimate, the appellant has not accepted the proposal as the crossing of service wire was not fully avoided from the appellant's property.

The grievance of the appellant herein is to dismantle the service wire drawn by crossing over the property of the appellant for giving service connection to consumer No. 1128. But the appellant was not ready to remit the amount and argued that the amount has to be remitted by Smt. Visalakshi Amma. At the same time Smt. Visalakshi Amma argued that she got the connection during 1960 and at that time there was no house nearby and hence no property crossing agreement was made. When the issue came up before CGRF, the Forum directed the respondent to shift the weather proof wire to the convenient route after realizing the labour charges from the appellant as per Regulation 95(4) (c) of Supply Code, 2014.

Based on the appellant's complaint to Hon'ble Commission directed the CGRF to issue necessary clarification of the route by suo moto review. Accordingly, CGRF issued suo moto order in OP No. 1604/2015 dated 22-06-2016 that the "weather proof line shall be shifted to the convenient **second proposed** route suggested by the respondent after collecting labour charges for shifting the weather proof line". In the above circumstances, the appellant raised contention that the Forum issued suo moto order without issuing any

notice or any hearing of the appellant thus causing more inconvenience by order dated 26-06-2016. Moreover, the appellant was not aware of the second route proposed by the respondent.

It is also revealed that the Chairperson of the CGRF personally visited the premises of the appellant, but no follow up action is seen taken by the time this appeal was filed. So the appellant requested that the whole issue is to be reconsidered afresh by the CGRF and hence remanded to the CGRF. The appellant also requested to pass an order directing the respondent to shift the line as directed by the CGRF vide order dated 21-12-2015 after realizing the labour charges. On the other hand, the respondent intimated that as per suo moto order dated 28-06-2016 of CGRF, intimation was given to the appellant to remit an amount of Rs. 2,846.00, but the appellant failed to remit the amount. The respondent's contention is that the shifting of weather proof wire can only be done after remitting the amount.

During the hearing this Authority tried for a settlement by directing the respondent to have a joint inspection of the site along with the appellant and find out a suitable proposal for shifting the service wire. But so far no such proposal is seen submitted by the respondent and hence this Authority could not proceed further in this regard.

**Whether a subsequent consent is needed for the conversion of an existing line and who will bear the cost of shifting of the existing service wire is the main dispute raised in this case?**

The facts disclosed before this Authority reveal that a 3 phase service connection to consumer No. 1128, Smt. Visalakshi Amma was effected about 57 years back after crossing the appellant's property. It is also clear that there exists an overhead single phase line drawn through the property of Sri Krishnakumar for giving domestic connection to Smt. Visalakshi Amma.

**Regulation 95 of 4(c) of Supply Code, 2014 clearly states that the application for shifting an electric line or electrical plant shall be granted if the applicant remits the labour charges required for shifting the electric line or electrical plant.**

Since there is an existing LT line, there is no need for obtaining further consent for conversion of this line into 3 phase. From the averments and documents produced it can be seen that the respondent prepared an estimate for an amount of Rs. 16,369.00 for shifting the service wire after conversion of 35 metre single phase overhead line to three-phase drawn through the property of Sri Krishnakumar and the construction of 10 metre fresh 3 phase 4 wire through the property of Smt. Visalakshi Amma. Since the above said estimate amount includes both labour charges and material cost, the Forum directed the respondent to carry out the work only after collecting the labour charges. The appellant has also agreed to this proposal.



In view of the above legal and factual position the respondent is liable to be directed to prepare a revised estimate for labour charges for shifting the service wire to the route proposed originally without insisting for a consent from the owner of property in which the line exists. The respondent shall carry out the work as per **Section 67(3) of Electricity Act, 2003.**

### **Decision**

In view of the above discussions, the respondent is directed to prepare a fresh estimate for labour charges for the shifting through the originally proposed route within 2 weeks from the date of receipt of this order and to complete the work without any further delay from the date on which the appellant remits the amount as per revised estimate. It is clarified that the respondent should not insist for further consent from the property owner for the conversion of the line. The order of CGRF in OP No 1604/ 2015 dated 21-12-2015 is upheld. No order as to costs.

### **ELECTRICITY OMBUDSMAN**

P/053/2016/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. Smt. Vijayalekshmi Amma, Prabhath, Ayinkamam, Padanthalumood, Parassala, Thiruvananthapuram
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Parassala, Thiruvananthapuram.

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, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.