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APPEAL PETITION No. P/059/2017
(Present: A.S. Dasappan)
Dated: 28th September 2017

Appellant : Smt. Gracy Varghese
44/2014, Parackal House,
Asoka Road, Kaloor,
Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.,
Chalakydy,
Thrissur.

ORDER

Background of the case:

The appellant has filed the appeal petition, being aggrieved at the inaction of KSEB to shift the 11 kV electric line passing through her property to the road side, situated under Electrical Section, Chalakydy, in Thrissur District. She alleges that the said electric line was drawn long ago through her property. The 11 kV Muringoor feeder from the Chalakydy 110 kV substation to Muringoor under Electrical Section, Melur is partly passing through the property of the appellant. She owns the land and due to the Line passing above, she finds difficulty to construct a house in her property underneath the said Line. The KSEB authorities inserted one additional pole in her property without her consent. Though the appellant had approached the KSEB for shifting the 11 kV line and to remove the pole, it has not been materialized till date. Since no proper action was taken on the same, she has filed petition before the CGRF, Ernakulam vide Petition No. OP No. 129/2016-17 and the CGRF had disposed it by order dated 25-03-2017, with the remarks as;

“1. Through the petitioner’s property itself along the boundaries: The respondent agreed during the site visit that, they are ready to shift the existing line to the boundaries of the petitioner’s property at their own cost. The petitioner has also agreed to this proposal during the site visit”.

2. To shift the line through the side road as mentioned in the complaint by the petitioner: This side road is around 12 feet width and is not straight. This work requires large quantity of additional materials including poles. The consent of nearby property owners is also required for planting stays or struts etc while shifting the line. The amount required for shifting the line shall be met by the beneficiaries jointly”.

“In view of the above circumstances, the respondent is directed to intimate the estimate amount required for the second option to the petitioner within one week. If the beneficiaries agree, this work may be executed; otherwise first option shall be executed by obtaining written permission from the petitioner”.

Accordingly the respondent had sent a letter dated 31-03-2017 for obtaining consent to shift the line on the boundary of the appellant’s property. As the appellant had not responded to this letter, the respondent had also prepared an estimate amounting to Rs. 8,60,500/- and demanded the appellant to remit the same for shifting the line on the road side.

Still aggrieved by the said order of the CGRF, the Appellant has filed the Appeal Petition, before this Authority.

Arguments of the Appellant:

The main contentions of the appellant in the Petition are the following: -

The appellant aged 67 years is a widow. The appellant owns 19 cents land on the road side of Chalakudy Vettikadavu road. A 11 kV line is partly passing through the property of the appellant. The officials of KSEBL Chalakudy Section encroached the property without her consent and knowledge and erected a pole in the property. The KSEB employees entered in the property unauthorisedly by destroying the trees and teakwood plants in the property. The appellant had submitted petition before the Section authorities with a request to shift the 11 kV line, but due to the failure to take any action by them, she had approached the CGRF by filing a petition dated 25-01-2017. The appellant also alleged that after submitting the petition before the CGRF, the KSEB authorities again encroached in the property and further changed the alignment of the 11 kV line in the centre of the property which is detrimental to construct house and to plant any trees in the property. The KSEB officials had destroyed many trees planted in the property and stolen the agricultural equipments like shovel, axe, sickle, pitchforks etc. Though the phone number of the appellant is exhibited on the wall of the property, the respondent had not contacted her before erecting the post in the premises. All these facts were informed the CGRF during the hearing conducted on 27-02-2017 and no officers from the Section Office were present during the hearing. The Chairperson and the 2nd member of CGRF inspected the site on 28-02-2017 and they were convinced by the above facts.

The orders issued by the CGRF not contained the true facts. Though the respondent was not present during the hearing held on 27-02-2017, it is mentioned in the order that the respondent appeared for the hearing. The CGRF justified the illegal activities of the respondent in its order without any basis. The present alignment of the 11 kV line drawn and erection of the post is quite harmful for the free usage of the land for any purposes. The appellant had not agreed to shift the line to the boundary of the property, as stated in the order. The order of the CGRF to obtain the consent of nearby property owners by the appellant for shifting the line through the side road is not justifiable.

As per the rules of the Works of Licensees Rules, 2006 and relevant orders issued by the Kerala State Electricity Commission in the matter to carry out works and to lay down electric line prior consent of the owner or occupier of the land is required and in case of objections, the licensee shall obtain permission in writing from the District Magistrate and the respondent has purposefully violated these provisions.

The appellant's also submits that the order of CGRF is a vague one and incorrect and not considered all aspects of the case raised by her and requests to remove the 11 kV line from her property.

Arguments of the Respondent:

The respondent admits that an electric OH Line of 11 kV passes through the property of the appellant and it was drawn long ago. The respondent has denied the allegations raised by the appellant and submitted the following versions in reply to the petition.

The HT overhead line was constructed years back. The 11 kV Muringoor feeder from the Chalakudy 110 substation to Muringoor is partly using for supplying the Chalakudy town residential area which is passing through the appellant's property. Since the feeder is lengthy and due to the frequent power interruption in the Melur Section area, KSEBL has proposed the construction of 1100 m Aerial Bunched Cable (ABC) along the existing 11 kV overhead line exclusively for feeding the Chalakudy township under APDRP scheme and the work is nearing completion. As part of strengthening the 11 kV lines, the respondent have inserted one HT pole directly below the existing line, to avoid the line sag and to support the ABC. The inserted pole for the ABC line is not causing any hindrance to the property owner and the ABC is passing just below the overhead line is not making any difference from the old position and this work is done for confirming the security of public including the appellant. The appellant was informed and explained over phone about this work by the Section officials and the contractor. Since the work relates to strengthening the existing lines prior sanction is not required.

The alignment of the existing line was not changed and no trees were cut or damaged as alleged in the petition. The allegation of theft of agricultural equipments is not true and baseless.

In 2015, the appellant had remitted the application fee and processing fee at Electrical Section, Chalakudy for removing the line from her property. No decision on this was taken as the shifting may cause objections from the neighbours. The area in which the line is passing, is thickly populated and any shifting will cause strong objections from the public. The construction of 1100 metre ABC is nearing completion and the KSEBL is taking speedy action to commission the same for giving uninterrupted supply to the consumers.

The CGRF has issued orders after the site inspection and discussion conducted in the presence of the appellant and the respondent's officers. Though a letter dated 31-03-2017 was given to the appellant for obtaining consent to shift the line to the boundary of the property, no written consent received till date, hence the work was not carried out at the expenses of the Board. The line is passing through the properties of 8 owners. The councilors of the Municipality and the public have objected the shifting of the existing line to the public road. The appellant is also not rendered any help to conduct a joint meeting of the concerned for shifting the line to the public road.

The alternate option possible is dismantling the 11 kV OHL and ABC and provide the UG cables along the service road and for this purpose an estimate for Rs. 8,60,500/- is prepared as per the sanction received from the Executive Engineer. The appellant was issued a demand notice dated 23-05-2017 directing to remit the amount for carrying out the work. The line can be shifted subject to remittance of the estimate amount for using UG cables or to shift the existing 11 kV OHL and ABC along the public road side if the neighbouring land owners in the road offer consent to draw the lines and provide the support stays.

Analysis and Findings:

The hearing of the case was done on 21.07.2017 in my chamber at Ernakulum and the appellant's side was represented by Smt. Leena Varghese and the opposite side by Sri. E.S. Sivadasan, the Assistant Executive Engineer, Electrical Sub Division, Chalakudy and they have argued the case, mainly on the lines stated above.

On perusing the appeal petition, counter statement of the respondent, the documents filed, and considering all the facts and circumstances of the case, this Authority comes to the following conclusions leading to the final decisions thereof.

This appeal petition has been filed with the main prayer of shifting the Electric OH Line passing through her property to public road. The request of

the party seems genuine, because the appellant owns 19 cents of land through which passes the 11 kV Overhead (OH) Line and she fears difficulty to construct a house in it due to Line's obstruction. The OH Line was drawn long ago and traverse through many other's properties also in the vicinity of appellant's property. The disputed existing line passes 15 meters of the appellant's property. It is found that during the modification work, there occurred a slight deviation (1feet) from the existing route and erection of a pole in the property. The respondent has agreed to shift the line to the boundary of the property with respondent's cost. But the appellant disagreed with this proposal. The KSEBL is also willing to shift the Line by using UG cable provided the applicant remits the estimated amount. This 2nd option is acceptable to the appellant, but she is not willing to bear the estimated cost of Rs. 8,60,500/-.

The appellant had made a request to KSEB to shift the OH Line from her property to the public road passing in front of her property on 04-03-2015. The respondent has not taken any action on this. The present complaint arises due to the modification works of the existing 11 kV line and erection of a pole in the property without the consent of the appellant. The appellant approached the CGRF against the actions of KSEB and requested to shift the line from her property. The CGRF disposed of the petition by suggesting the above two options. The Licensee has asked the applicant to produce the consent of near-by land owners to consider the request. Why KSEB has insisted the appellant to bring the consent of others to shift the line to public road is not seen satisfactorily explained by the Respondent. Further, the estimate for shifting the Line passing through nearby other's land also, at the applicant's cost was not proper.

The CGRF on filing petition has directed KSEBL to prepare the estimate and the appellant has approached this Forum being not satisfied on the actions of KSEBL. The KSEB's version is that, since the work relates to strengthening the existing lines no consent is required. The relevant rules in 'The works of Licensees Rules 2006' is reproduced below:

“3. Licensee to carry out works. - (1) A licensee may –

- a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or where under any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;
- b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

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 or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.”

The procedure for shifting electric line or electrical plant of the licensee is specified in Regulation 95 of the Supply Code 2014, which reads as:

“95. Procedure for shifting electric line or electrical plant of the licensee.-

(1) The owner of the land or his successor in interest who has given right of way for the construction of an existing electric line or electrical plant over, under, along, across, in or upon the said land, may apply for shifting the electric line or electrical plant to any other portion of his land for genuine purposes.

(2) The application for shifting the electric line or electrical plant shall be submitted in the local office of the licensee.

(3) On receipt of the application the licensee shall inspect the site and assess the technical feasibility of the proposed shifting.

(4) The application for shifting an electric line or electrical plant shall be granted only if:-

(a) the proposed shifting is technically feasible; and

(b) the owner of the land or his successor in interest gives consent in writing to shift the electric line or electrical plant to any other portion of his land or to any other land owned by him; or any alternate right of way along any public path way available for shifting the electric line and the electrical plant; and

(c) the applicant remits the labour charges required for shifting the electric line or electrical plant.

(5) The licensee shall shift the electric line or electrical plant if the conditions specified in sub regulation (4) are complied with by the applicant”.

In this case the KSEB (Respondent) has violated the said rule and acted in a high handed manner and has erected the pole 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. My finding is that the KSEB officials has violated the rules and exceeded their powers, for which the Board has to decide appropriate action.

During the Hearings, I had the impression that KSEB’s action in this case is not sound or reasonable. The averment of the respondent that the officers of the Section and the contractor informed the work to the appellant over phone is not convincing and hence not admitted. It is a fact that the appellant had submitted a request for shifting the line in 2015 itself. The respondent is least interested in redressing the grievance of the appellant and hence dragged the case unnecessarily. When there is specific request to shift the Line from a property to road, the Respondent need to look into that possibility first and when it is not feasible, then only other alternative proposals has to be looked into. Moreover, the nearby property owners have no reason to concern or apprehension, whenever there is not at all any change of the Line (alignment of Line) passing through their Land, before and after the shifting work. The Respondent has to feed the actual information to others. Such a shifting work is completely confined to the public road and property of the appellant alone and there is no cause for any alteration of the alignment of the existing Line or any incursion of Line into other’s properties, due to the shifting work. Any other feasible option is permitted without undue compelling the appellant to bear unnecessary costs, required to shift the Line from other’s properties.

During the hearing, the respondent has stated that a petition submitted by the appellant is pending before the District Magistrate, Thrissur. But he has not produced any documents to substantiate this. At the same time, the appellant produced a letter dated 31-07-2017 vide no. c4-35424/2017/Ldis received from District Collector, Thrissur in which it is stated that a complaint

of Smt. Leena Varghese was sent to Assistant Executive Engineer, Electrical Sub Division, KSEBL, Chalakudy on 02-03-2017 for taking further necessary action in the matter. Hence it is considered that no petition is pending before the District Magistrate, Thrissur on this subject.

The lines to be shifted for the convenience of the appellant are not service line, but a portion of the distribution network. The line crossing is about 15 meters in 19 cents of the land owned by the appellant. Aerial Bunched Cable was drawn recently by the respondent through the existing 11 kV poles carrying OH line. The estimate demanding 9.6 lakhs towards the cost of laying double circuit underground cable through the road cannot be justified. The above proposal is not shifting, but rerouting with UG cable.

A site inspection was conducted by this Authority in the premises on 25-09-2017. The Assistant Executive Engineer, Electrical Sub Division, Chalakudy and the appellant were present at the time site inspection. It is understood from AEE that upgradation of Chalakudy 110 KV substation is in action and tendering in progress. As such in near future more power will have to be evacuated from the substation to local area through 11 KV feeders. This will lead to the possibility of laying cables, drawing ABC or OH line through the road near the properties in the said area. Even after shifting 15 meter of line, the remaining portion of the line will remain in other private lands owned by different owners. Hence KSEBL may look into the possibility of shifting the entire line passing through different property owners in the said area to the road in the context of upgradation of Chalakudy Substation.

The appellant is seen to have raised unnecessary accusations and complaints against the officers of the Board, which is not substantiated and should have been avoided. If she has any genuine complaint of destruction of trees and theft of agricultural equipments, it was proper to approach the appropriate authorities in time.

Decision: -

From the analysis done and conclusions arrived at, I take the following decision.

If the appellant is willing to shift the existing line to the boundaries of her property, the respondent shall carry out the work at their own cost as agreed by the respondent and ordered by CGRF in its order dated 25-03-2017 in OP No. 129/2016-17.

The second option is that the KSEBL shall take action to shift the portion of the 11 kV OH line and ABC from the property of the appellant along

with upgradation work of Chalakudy Substation, without collecting any cost from the appellant.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed to the extent it is ordered.

ELECTRICITY OMBUDSMAN

P/059/2017/ _____ /Dated: _____

Delivered to:

1. Smt. Gracy Varghese, 44/2014, Parackal House, Asoka Road, Kaloor, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Chalakudy, Thrissur.

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.