

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/029/2018
(Present: A.S. Dasappan)
Dated: 3rd July 2018

Appellant : Sri. Sadiq P.A.
President,
Jewel Riverwoods Flat Owners
Association, Aluva,
Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.,
Aluva Town,
Ernakulam

ORDER

Background of the case:

The appellant representing the Jewel Riverwoods Flat Owners Association, Aluva approached the Electrical Section, Aluva North for shifting two numbers of electrical posts installed in the flat compound to the private road outside the compound for which the flat owners have 50% ownership. But this was objected by the other owners of the private road and the matter was presented before the Additional District Magistrate (ADM) by the respondent. The ADM dismissed the petition after hearing both parties as he found the petition lacks merits. Then the appellant approached the CGRF-CR, Ernakulam by filing a Petition vide No. 88/2017-18 and the CGRF directed the respondent to realign the post and line to the boundary of the property of the appellant after collecting the required charges, vide its order dated 31-03-2018. The respondent has prepared an estimate for shifting the PSC pole and realignment of three phase line on work deposit basis. The work was not done since the shifting will cause damage to the pipelines of the sewage treatment plant of the appellant. Aggrieved against this, the appellant has submitted the appeal petition before this Authority.

Arguments of the appellant:

The averments raised by the appellant in the appeal petition are as follows:

The appellant's Consumer Number is 1155680015683 and the subject matter of this appeal is shifting of two electrical posts with LT connection of the Consumer Number 421 to the eastern side of the private road having 50% ownership with the appellant, of which one post was from the appellant's compound and the other one was from abutting the compound wall of appellant. (Two posts 'B' & 'C' to the position of 'D' & 'E'.)

The appellant is fully agreed with the proposal submitted by the Asst. Exe. Engineer, Electrical Sub Division, Aluva, vide their letter No.DB.20/ADM/ESD-ALV/2016-17/281 dated 06.03.2017 before the Hon'ble District Collector and Executive Magistrate, Ernakulum along with a signed detailed sketch plan. The appellant is also fully agreed for making the payment of its total expenses Rs. 10,600/- fixed by the KSEB Ltd as per aforesaid proposal for shifting two posts 'B' & 'C' to the position of 'D' & 'E' and the lines.

It was noticed that as ordered by the Hon'ble CGRF, the realign of post is not possible because the sewage treatment plant is situated very close to the post and entire sewage pipe lines are passing near the bottom of the electric post. Under any circumstances, this post cannot be possible to realign.

Arguments of the respondent:

A three phase Overhead Line feeding Consumer Number 421 under Electrical Section Aluva North is passing through the property of M/s Jewel Riverwood Flat and the private road which is common to the appellant and consumer No. 421 and some others. The appellant has filed complaint before Assistant Engineer, Electrical Section, Aluva North for shifting the post and the line. Due to lack of consent from Consumer No.421 and some others, who are the owners of the road, no action was taken by Assistant Engineer. The appellant has filed another complaint before the Executive Engineer, Electrical Division, Aluva on 17-01-2017. The complaint submitted by the appellant was endorsed to the respondent and consent was requested from Con. No. 421 as the private road was owned by him also. One Mr. Antony Mathew vide letter dated 16-02-2017 has informed that he will not give the consent. Due to objection from Con.No.421 the line could not be shifted. Hence the matter was taken up with Additional District Magistrate (ADM) from this office vide petition dated 06-03-2017 as per Indian Telegraph Act 1885 read with Section 164 of the Electricity Act 2003. The Additional District Magistrate (ADM) heard both the parties and decided not to interfere in the matter as the line and post are not in dangerous condition and the petition was dismissed as having no merits.

Again the appellant has filed appeal before the District Collector and the District Collector vide letter dated 06-09-2017 has informed the appellant that the order issued by the ADM in petitions filed as per clause 16(l) of Indian Telegraph Act 1885 and clause No.164 of Electricity Act 2003 is final and there is no provision for filing appeal against the above order and hence cannot be considered,

The appellant is willing to remit the expense needed for shifting the line. As District Collector also did not consider the case, the appellant approached Hon'ble Consumer Grievance Redressal Forum and submitted complaint there. The appellant has agreed before the forum, to remit the amount required for shifting the post 'C' to their boundary and to realign the three phase line. Hence the forum directed the respondent to shift the post 'C' and realign the line within one week from the date of remittance of the required amount. On inspection of the site it is noted that the post 'C' is located very close to the sewage treatment plant and shifting of the post may cause damage to the pipelines of the plant.

The shifting as requested by the appellant cannot be done without the consent of all the owners of the road. So if the appellant produces the consent of the other parties and remits the required amount, the shifting can be done as per the request of the appellant.

Analysis and findings:

The hearing of the case was conducted on 19-06-2018 in the office of the State Electricity Ombudsman, Edappally, Kochi and Sri. Sadiq P.A. appeared for the appellant's side and Smt. Jessy Rose Chacko, Assistant Executive Engineer, Electrical Sub Division, Aluva Town appeared for the respondent's side. On examining the petition and the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority came to the following conclusions leading to the decision.

The appellant argues that the present status of the post and line is inconvenient to them and will cause safety hazards. Since the electric line, originally passing through the appellant's properties or very close to their properties cannot be shifted towards the side of other parties, without obtaining their consent or orders of District Magistrate and causing more trespassing into their properties, it is an infringement on the Rights of the other parties.

If the Distribution Licensee (KSEB) requires the shifting of the existing Overhead Line or posts, in the interest of safety and reliability of electric supply or in public interest or if somebody requests for shifting a portion of the Line

passing through his/her property, the KSEB can initiate action but has to confirm that the parties likely to affect are informed or get their consent. So the primary duty of KSEB was to ensure that, their action of the shifting of the line does not attract objections or causes the minimum disputes, from others who are likely to be affected by the shifting of the existing Line.

If there is any objection to the proposed shifting of the Electric Line or posts, the KSEB has to approach the District Magistrate with a Petition and get orders and act accordingly. This is the procedure laid in the Sec.164 of the Electricity Act 2003, read with Section 10 of the Indian Telegraph Act, 1885. Similarly, 'The Works of Licensees Rules, 2006', published by Ministry of Power, dated 18.4.2006, states as;

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....."

Regulation 47 (3) of the Supply Code, 2014 also states as:
"(3) If the owner of the property to be crossed by the proposed line, objects to the carrying out of the work, action shall be taken by the licensee to clear the objection as per the rules issued by the Government of Kerala, as provided in Section 67 and Section 164 of the Act or any other law for the time being in force."

In this case, the respondent approached the District Magistrate due to the objection raised by the neighbor of the appellant against the shifting of the post and line. The District Magistrate heard both the parties and decided not to interfere in the matter and held that the line and post are not in dangerous condition. The CGRF and this Authority have no jurisdiction to interfere a case decided by the District Magistrate. The appellant approached Consumer Grievance Redressal Forum and submitted complaint there for shifting the posts and line. Now the CGRF has ordered to shift the post and line to the boundary of the compound of the appellant, after collecting the required charges since the appellant is willing to remit the estimate amount of the shifting. But the CGRF has ordered to shift the post and the line without examining the technical feasibility of the shifting.

Now, the respondent's only contention against implementation of the CGRF order is that the re-shifting will cause damage to the pipe lines of the sewage plant of the appellant. The only possibility to shift the post and line to eastern side of the road is obtaining the consent of all the owners of the road.

A site inspection was conducted by this Authority in the premises on 03-07-2018 in the presence of the appellant and the respondent. A LT PSC pole carrying four overhead conductors terminated in between the sewage treatment plant of the appellant and the compound wall and there is no space for the

shifting of the pole within the space available. Moreover the appellant is not willing for such a shifting. There are no orders from the District Magistrate for the shifting of the poles to the road.

In the site inspection the respondent is advised to look into the possibility of using LT Aerial Bunched Cable for replacing the overhead conductor without changing the location of the existing poles. The respondent informed that they are using LT Aerial Bunched Cable in similar cases.

Decision

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

The respondent is directed to prepare an estimate for the drawing of the LT Aerial Bunched Cable (ABC) in the place of existing three phase four wire overhead conductor for two span of line within 15 days from the date of the order and inform the appellant. If the appellant is willing to accept the proposal and to bear the expenditure, the respondent shall carry out the work within one month without changing the location of the existing electric LT poles.

The order of CGRF in OP No. 88/2017-18 dated 31-03-2018 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/029/2018/_____ /Dated:_____

Delivered to:

1. Sri. Sadiq P.A., President, Jewel Riverwoods Flat Owners Association, Aluva, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Aluva Town, Ernakulam

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.