

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/032/2018  
(Present: A.S. Dasappan)  
Dated: 27<sup>th</sup> July 2018

Appellant : Sri. John Kurian  
Vilayil House, Chunakkara Naduvil,  
Chunakkara P.O.,  
Alappuzha

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd., Charummoodu,  
Alappuzha

### **ORDER**

#### **Background of the case:**

The appellant complains that the respondent cut and removed the trees in his property for drawing the 11 kV OH line for voltage improvement work at Kidanalmukku under Electrical Section Charummoodu in 2008, which caused heavy loss to the appellant. The appellant requested bank interest/damages for the delayed tree cutting compensation received only after 10 years. Being aggrieved, the appellant filed petition before the CGRF, Ernakulam which was dismissed due to lack of jurisdiction. Being not satisfied by the decision of CGRF, the appellant has filed the appeal petition.

#### **Arguments of the appellant:**

This appeal petition is filed by the appellant to peruse the deliberately caused delay of over ten years by the concerned KSEB officer(s) in compensating the trees cut from his property for drawing 11 K.V line in 2008 and for ordering the bank interest and damages due to him in this regard soonest.

The appellant aggrieved by this, submitted a petition before the CGRF, Kalamassery on Jan 15<sup>th</sup> 2018. The CGRF in its order No. CGRF-CR-OP No. 100/2017-18/87 dated 30/04/2018 has disposed the petition stating that "....As per existing rules and regulations, the award of tree cutting compensation and the related payment does not coming under the jurisdiction of this Forum..... "

During the hearing of the petition on April 19, 2018 the Forum never mentioned about this aspect of lack of jurisdiction and not dismissed the case at the petition stage itself , instead they asked the respondent the reason for the delay but he couldn't give a satisfactory answer to the Forum. Also, the then Asst. Executive Engineer responsible for the tree cutting and processing compensation documents were not summoned by the CGRF for hearing the case.

The appellant has requested a direction from the Ombudsman by ordering the respondent to pay rightful interest and damages due to him without any further delay.

**Arguments of the respondent:**

For drawing 11kV electric supply line for Voltage Improvement work at Kidangalmukku, under Electrical Section, Charummoodu KSEB Ltd has cut and removed Rubber trees, Tamarind tree, Aanjili from the property of the ap[pellant in 2008. The Tree cutting notice was issued in the name of Sri, Reji John, Vilayil House, Chunakkara Naduvil which was given as the address of the appellant at that time. These notices were not received by the appellant as the address was not correct. Sri John Kuriyan admitted himself that he could not follow up the matter as he had been a Non Resident Indian and was out of station during the period.

Through his letter dated 26/02/2009 the appellant intimated that his official name is John Kuriyan. On receipt of the application dated 21/06/2016 by the appellant furtherance to his communication way back in 2009 steps were taken on a war footing basis towards payment of the tree cutting compensation for the trees cut from his property.

Notice to attend the award enquiry was sent to the Appellant on 17/12/2016 and in response he attended the enquiry conducted on 20/12/2016 at Electrical Subdivision Charummoodu and produced the "Karyavivarapathrika", tax receipt copy, and other proofs of address. On receiving the above documents, the DVS was prepared and submitted to the Division Office along with the connected documents on 12/01/2017 and the same were verified and approved in the division office and disbursed an amount of Rs. 52,329/- on 31/03/2017. After clearing some objections in the records another amount of Rs. 17,481/-was also disbursed.

But before he produced the necessary certificates to this office, he complained to the KSEB Vigilance Office, Pattom about the non-receipt of tree cutting compensation.

Admitting the fact that delay occurred in timely settlement of compensation, it is requested to consider the fact that the tree cutting compensation was paid in time after the receipt of the appellant's recent

application applying all existing rules in Kerala State Electricity Board Ltd and Kerala State Government.

Regarding the delay occurred as stated in the Appeal, the matter was reported to higher-ups and enquiry is being proceeded at the office of the Chief Engineer (HRM).

**Analysis and Findings: -**

The Hearing of the case was conducted on 10-07-2018 in the office of the State Electricity Ombudsman, Edappally, Kochi. Sri John Kuriyan represented the appellant and argued the case on the lines stated above. Sri. Sujith Kumar P., Assistant Engineer, Electrical Sub Division, Charummoodu represented for the respondent's side.

On perusing the Appeal Petition, the counter of the Respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The respondent has stated that an amount of Rs.52,329/- was paid to the appellant on 31-03-2017 and another amount of Rs.17,481/- was disbursed in a later date. The delay was caused due to the non receipt of required documents from the appellant. The appellant's request is to allow bank interest for the delayed payment of compensation. The CGRF disposed the petition submitted by the appellant on the grounds of lack of jurisdiction.

As per Regulation 7 of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, the Consumer Grievance Redressal Forum and this Authority are allowed to take up any kind of grievance/complaints as defined in Regulation 2 (1)(f).

As per Regulation 2.1 (f) of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, a "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.

As per Regulation 2.1 (e) of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, a “Complainant” is defined as:

- (i) any consumer of electricity supplied by the licensee including applicants for new connections;
- (ii) a voluntary electricity consumer association/forum or other body corporate or group of electricity consumers;
- (iii) the Central Government or State Government - who or which makes the complaint
- (iv) in case of death of a consumer, his legal heirs or representatives

In the Act a consumer is defined as “any person who is supplied with electricity for his own use by a licensee or the government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of the licensee, the government or such other person, as the case may be”.

In the Act a “Defect” is defined as “any fault, imperfection or shortcoming in the quality, quantity, purity or standard of service, equipment or material which is required to be maintained by or under any law in force or under any contract, express or implied, or as is claimed, by the distribution licensee in any manner whatsoever in relation to electricity service”. “Deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, which is required to be maintained by or under any law in force or has been undertaken to be performed by distribution licensee in pursuance of a contract agreement or otherwise in relation to electricity or performance standard, violations of Electricity Supply Code, contraventions of Act, Rules or Regulations made there under with regard to consumer interest”. “Electricity Service” means in particular and without prejudice to the generality of the term, electricity supply, metering, billing, maintenance of supply, maintenance of distribution system and all other attendant sub service, etc. Considering the above regulations and definitions, the complaint is found related to tree cutting compensation and the petition matter not relates to any defects or deficiency as a consumer and hence not comes under the purview of this Authority.

Section 68 (6) of the Electricity Act, 2003 deals with the procedure for allowing tree cut compensation which reads as: “When disposing of an application under sub section (5), an Executive Magistrate or authority specified under the sub section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.”

Section 67 (4) of the Act specifies that “Where any difference or dispute including amount of compensation under sub section (3) arises under this section, the matter shall be determined by the Appropriate Commission.” In the light of the above discussion, I decide that the petition is not maintainable before this Authority.

**Decision:**

The grievance of the appellant has arisen due to the delay in settling the tree cutting compensation. It is clear that the petition itself is not maintainable before the CGRF or the Electricity Ombudsman as per the KSERC Regulations. That is any dispute or complaints pertaining to such matters are not maintainable before the CGRF and Electricity Ombudsman, as per Clause 2(1)(f) of KSERC (CGRF & Electricity Ombudsman) Regulations, 2005. Hence I decide that the Appeal Petition filed before this Authority by the appellant is not maintainable.

Having concluded and decided as above, it is ordered accordingly. The order No.100/2017-18 dated 30-04-2018 of CGRF, Ernakulam is upheld. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/032/2018/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri John Kurian, Vilayil House, Chunakkara Naduvil, Chunakkara P.O., Alappuzha
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Charummoodu, Alappuzha

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.