

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/071/2018
(Present: A.S. Dasappan)
Dated: 26th October 2018

Appellant : Smt. Sreekala Mohan
Thekkeyattathu Veedu,
St.Thomas Nagar 64, Mangadu P.O.,
Kollam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Kundara,
Kollam

ORDER

Background of the Case:

The grievance of the appellant is against the shifting of an 11 kV electric pole to her property by the respondent which stood outside of compound wall of her property, without any consent. She alleges that the electric pole was shifted to her property without her consent and knowledge which has caused damage to her property and make obstruction for construction of building in the property. Aggrieved by this, the appellant filed a petition before the CGRF, Kottarakkara, which was dismissed vide order No. OP/56/ 2018 dated 16-07-2018. Not satisfied with the order of the Forum, the appellant approached this Authority with this appeal.

Arguments of the appellant:

The appellant is the sole owner of the property having the area of 50 cents, comprising survey No. 655 of Perinad village in Kollam District. She was residing 15 km away from the property. In the year 2016, the opposite party had encroached into the compound and placed one 11 kV post inside the compound wall of the property. Immediately after realizing the illegal placing of 11 kV post in to the property by the respondent, the appellant has made complaint to the respondent and as per the direction of respondent, the

appellant has remitted Rs. 1,000/- for shifting the 11 kV post. Even after receiving the demanded amount Rs. 1,000/- the respondent never take any step for replacing the 11 kV pole to the old place, at pathway.

Even though the appellant was heard and a commissioner visited the spot and realized that the 11 kV post placed in the property of the appellant was situated in the public pathway for last several years and which was shifted to the compound of the appellant without her consent and knowledge and which is causing heavy loss and inconvenience to the property of the appellant, but the CGRF ordered only to return Rs. 1000/- which was received by the respondent, and the main grievance to replace the 11 kV post to the old place was not ordered due to unknown reasons,

It is further submitted that due to the placing of the 11 kV pole in to the property the OH line is creating much inconvenience and that affected to 7 coconut trees. Last month the KSEB people had cut and removed a major portion of the leaves from the coconut trees, which caused irreparable loss to her. Moreover the appellant has to construct a residential building in the property, which is also obstructed by the illegal placing of the 11 kV post in to my property.

The contention of the CGRF is that the said post was placed 10 years back is incorrect and the finding is against the evidences and facts. The respondent admitted that the remains of the old teak wood post was traced in the pathway. It is also admitted that no consent was given from the appellant before placing an 11 kV post in to her property. If the post was placed 10 years back the remains of the post would not have been seen in the pathway. Moreover the respondent never says that on which year or date the post was placed in the property of the appellant. Actually the post was placed in the year 2016 March. Immediately after noticing the illegal action, the appellant had made complaint for shifting the 11 kV post. Hence the order of the CGRF is against the facts and evidence.

Hence the appellant prays to pass order to the respondent, to shift the 11 kV post to the public pathway from the property of the appellant for the reasons stated below and other.

1. The CGRF ought to have found that the placing of the 11 kV post in to a private property without consent is illegal and improper.
2. The CGRF ought to have found that the illegal placing of the 11 kV post is obstructed the construction of building in the property of the appellant.
3. The demand of Rs. 1000/- for shifting the 11 kV post was illegal and against the natural justice.
4. The interference and suggestions of the CGRF that "need not interfere in this case" is against natural justice and denial of justice.

The appellant requests to pass order to shift the 11 kV post to the old places from appellant's property compound ie. in to the public pathway and allow such other relief and redress the grievance of the appellant.

Arguments of the respondent:

The 11 kV line, which was passing through the property of the appellant was drawn for providing electric supply to the 'Starch' in Kundara. The line was drawn years back. The property of the Appellant is high above the road level for ensuring sufficient clearance an 'A' type pole was erected in the extreme end of the Appellant's property. After conducting a hearing, the CGRF (South) had appointed a commission and based on the report of the commission, the forum has issued its order on 16/07/2018.

The respondent has no deliberate intension in shifting the line. If the line is shifted sufficient clearance from the road could not be maintained. At present an A type pole was used for ensuring clearance. The height from road to the appellant's property is 14 metres. If the pole is shifted to the road level, sufficient clearance could not be maintained and sufficient clearance to many nearby houses in the pathway also could not be maintained.

Analysis and Findings

The hearing of the case was conducted on 11-10-2018 in the Court Hall of CGRF, Kottarakkara, and Sri. T.L. Mohan appeared for the appellant and Sri Shibu R, Assistant Executive Engineer, Electrical Subdivision, Kundara 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 issue referred in this appeal is with respect to shifting of existing 11 kV pole having a length of 11 metre and placing the same in the appellant's boundary after encroaching in the property. According to the respondent the 11 kV line was drawn years back.

The appellant's argument is that the shifting of the electric pole was carried out in her property without her consent or knowledge. It is found that the appellant had submitted an application on 11-07-2017 for shifting the 11 kV pole to the road and remitted an amount of Rs.1000/- for application fee as directed by the respondent. It is obligatory for the licensee to act according to the provisions in the Supply Code. The licensee shall shift the electric line or post if the conditions specified in *Sub Regulation (4) of Regulation 95* are complied with the applicant.

If the Distribution Licensee (KSEB Limited) requires the shifting of the existing overhead line, 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 licensee can initiate action but has to confirm that the parties likely to be affected are informed or get their consent. So the primary duty of licensee was to ensure that, it must be done causing least inconvenience to the neighbouring property owners or the others who are likely to be affected by the shifting of the existing line i.e. shifting must be done without giving room for any complaint.

If there is any objection to the proposed shifting of the electric line or post, the licensee has to approach the District Collector with a Petition and get orders and act accordingly. This is the procedure laid in the Section 67 of the Electricity Act, 2003, read with Section 10 of the Indian Telegraph Act, 1885, under the provision to opening up of streets to lay down or place electric supply lines. 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....."

The Enquiry Commission appointed by the CGRF has reported that the disputed post has not been shifted for the last 10 years. As per the appellant the post was earlier erected in the road side and the 11 kV post was shifted to the appellant's property without the consent and knowledge of the appellant.

On going through the records it can be seen that no written statement or consent was given by the appellant to erect a post in the property and this aspect was not challenged by the respondent. However, there is no evidence to prove that the shifting was done in 2017 as claimed by the appellant or 10 years back as reported by the Commission.

The site was inspected by this Authority on 11-10-2018 and found that the A pole (steel) is erected inside very close to the compound wall, carries an 11 kV single circular line with a tapping of another line. The height difference between the road and the land (in which the pole is erected) is around 6 feet. The re-erection of the pole in the road will reduce the vertical clearance with the nearby property/building situated beneath the line including that of the appellant.

Decision

From the findings and conclusions arrived at as detailed above, I take the following decision.

1. The shifting of the 11 metre 'A' pole to the road side will reduce the vertical clearance of the 11 kV line between the poles erected on either portions of the existing disputed pole. This may create complaints from other affected parties. The main grievance of the appellant is the erection of said pole in her property without her consent or knowledge. As such it will be better to approach the District Magistrate by the appellant for the remedy, if she desires, since the other property owners are objecting the shifting which cause the reduction of vertical clearance of the 11 kV line resulting safety problems.
2. The respondent shall refund the application fee subject to the decision, if any, of the District Magistrate.

Having concluded and decided as above, it is ordered accordingly. The order of CGRF, Kottarakkara in Petition No. OP/56/2018/dated 16-07-2018 is modified to this extent. No order on costs.

ELECTRICITY OMBUDSMAN

P/071/2018/_____ /Dated:_____

Delivered to:

1. Smt. Sreekala Mohan, Thekkeyattathu Veedu, St.Thomas Nagar 64, Mangad P.O., Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd. Kundara, Kollam

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.