

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/096/2022**(Present: A. Chandrakumaran Nair)****Dated: 10th February, 2023**

Appellant : Sri. Janardhanan. P.S.,
HRA-19, Harithagiri,
Kanjirampara,
Thiruvananthapuram Dist.-695030

Respondent : Asst. Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Vellayambalam, Thiruvananthapuram Dist.

ORDER**Background of the case:**

The appellant is a resident of Kanjirampara, Trivandrum and a consumer of the Licensee under Electrical Section, Vattiyookavu. The appellant requested the Licensee to shift the stay-wire of the Pole VK/VM-57/10/1 for making a gate for the entry of the vehicle inside his property. The site inspection was conducted by the Assistant Engineer and found that it is not feasible to shift the pole due to the objection made by the neighbours. When this post is shifted to other side of the road as suggested by the appellant, the stay wires are to be installed in the property of neighbours for which they are objecting. The appellant filed the petition to the CGRF (SR) and as per the direction of CGRF (SR), the respondent visited the site and two proposals submitted; one with an A type pole and other by installing a fly-stay for the existing pole. The estimate for the first proposal was Rs.55,025/- and that of second was Rs.11,263/-. Consumer Grievance Redressal Forum ordered vide order dated 08-12-2022 that as the shifting of the post to other side of the road is objected by the neighbours, the appellant can approach ADM for a decision.

Aggrieved by the decision of the Forum, the appellant filed the appeal petition to this Authority.

Arguments of the appellant:

The appellant is a retired person aged 65, mostly worked in private companies during his career. Now, the appellant does consultancy and business related to logistics. To expand business, the appellant need to convert the existing garage into a warehouse for storing items arriving for local distribution. For keeping his car; sufficient space at the back side of appellant's house with road access for construction of a new garage. A stay wire installed by KSEB is blocking entry to appellant's compound at the rear side and because of this, he is not able to make use of the free space available at the rear side of his house for construction of the new garage.

First, appellant has requested the local KSEB office at Vattiyoorkavu to remove the stay wire. Upon rejection of request, filed an application before CGRF, Kottarakkara. In their order No: CGRF/KTR/OP No. 45/2022/375 with signature dated 08/12/2022, two options were mentioned which required installation of additional posts within appellant's compound. The appellant is not the beneficiary of the electric post supported by this stay wire and it does not make any sense to install additional posts in appellant's compound to support this post. So, appellant rejected these options. As suggested by the Asst. Excutive Engineer, if it is required to install a stay wire inside the compound owned by Smt. Prema PK., who is the primary beneficiary of the post, why the provisions of the Indian Telegraph Act 1885 are not being applied to overrule their objections. In the CGRF order, this rule is misinterpreted as if it is applicable only to the appellant. KSEB is a limited company and now they cannot enjoy the statutory rights provisioned in the Telegraph Act 1885. This Act is regarding placing of telegraph lines and posts for the purpose of telegraph established or maintained by the Government and not by limited companies.

Enjoying undue benefit of the post and the stay wire causing inconvenience to the appellant for 30 years does not make it a right to enjoy forever. Now, it has become necessary for the appellant to utilize the free space in his compound for construction of a garage. Will the licensee compensate for the price of the land which has become unusable to the appellant because of the stay wire? Instead of facilitating the stay wire required to support the post from which the consumers are taking the service connection, they make blind objections. It is not appellant's responsibility to facilitate post and stay wire for providing service connection for my neighbours. The stay wire is preventing me from free-hold usage of the property for which the appellant paying tax. This is

violation of fundamental rights as no one has the right to block entry to others property. Quoting a rule of 1885 is nonsense.

It is very strange that CGRF is not taking any favourable action on appellant's request. They support arguments made by the beneficiaries of the post and stay wire quoting silly reasons that the Indian Telegraph Act is specially made for the appellant and it is applicable only to him. Since CGRF is not willing to resolve the problem without causing additional inconvenience to appellant, I request this Authority to resolve the problem by relocating the post and the stay wire to the opposite side of the road. Now electricity supply is not a right of citizens to be satisfied by the government. As a company, KSEB can refuse electricity supply to customers, if they are not willing to take care of the post from which they are taking the service connection. It is silly for KSEB company to argue that it is appellant's responsibility to facilitate the necessary infrastructure needed for providing service connection to their customers.

The rules quoted in the order from CGRF is not in line with the current status of KSEB. The CGRF decision is biased and they are favouring irresponsible and ignorant customers without any consideration for the inconvenience caused by the stay wire blocking entry to appellant's property. Appellant requested to this Authority to re-examine the decision made by CGRF by giving due consideration to his grievance and issue orders to KSEB to relocate the stay wire at the earliest without causing additional inconvenience to him.

Arguments of the respondent:

The appellant is a consumer under the area of Electrical Section, Vattiyoorkavu. The demand of the appellant is that to shift the safety stay wire of the existing pole bearing number VK/VM-57/10/1 for entering vehicle inside his property after demolishing backside of the compound wall. The appellant has applied before the Assistant Engineer, Electrical Section, Vattiyoorkavu on 06.06 .2022 for removing the stay wire. The Assistant Engineer has inspected the site based on appellant's application and informed him that the relocation of the subject post is not feasible as per site condition, on 22.06.202

After that on 07.07.2022 the appellant has filed a grievance petition before the CGRF (Southern Region), Kottarakkara as OP. No.45/2022. The letter from CGRF received to this office on 16.07.2022 for submitting version on the grievance duly countersigned by the Executive Engineer. Site inspection has

conducted by the respondent on 20.07.2022. The safety stay ("G") is an unavoidable one for the protection of the existing pole ("E") and its allied electric lines. If the pole VK/VM-5 7/10/1 ("E") is shifted in front of the compound wall of the building number HRA-22 (Consumer Number: 9441) as per the appellant's request on work deposit basis, the position of the stay "G" should also be shifted from the existing place to in front of the building inside the compound wall of Smt. Prema.P.K. A written objection handed over to the Assistant Engineer, Electrical Section, Vattiyoorkavu by Sri. M.P. Chandramohan (H/o Smt. P.K.Prema) dated 23.05.2022 against the installation of pole and stay in front/inside of his building/property.

In addition to that Sri. K.Raju, owner of the building number HRA-2 (Consumer Number: 10199) submitted an application/petition before the Assistant Engineer, Electrical Section, Vattiyoorkavu dated 16 .06.2022. In his petition, mentioned that the pole VKNM-57/10/1 ("E") and its stay ("G") were existing for the past thirty years without any objection. If the pole "E" and stay "G" are shifted to another place, that will affect his vehicle transportation. The service connection of consumer numbers 10199, 9441 and 11474 were effected from the pole number VK/VM-5 7/10/1 by using weather proof wires. If the pole "E" is shifted to another place, the location/position of the stay "G" and weather proof wires of connections will also be changed in connection with the shifting of pole. This warrants objections. At present two objections were raised, one from Sri. M.P.Chandramohan and another from Sri.K Raju against the shifting of pole "E" and stay "G".

On inspection from this office, it is seen that the existing pole "E" and its stay "G" were installed in a convenient and most suitable place, as per the site condition without any hindrance to others. The shifting of pole and stay to another place as mentioned in the complaint of the appellant is not feasible after considering the present road condition, location of the existing buildings, objections etc. The pole and its stay were existing outside the property and compound wall of the appellant for the past thirty years. Presently the appellant has installed three gates for the entrance of his premises/compound (building number: HRA-19). Out of the three, one (1) and two (2) are having four-wheel vehicle entrance facility with two side open and sliding, respectively. And three (3) is small for human entrance.

For settling the grievance of the appellant, enquired the matter with Sri. K.Raju (HRA-21) and Sri.M.P.Chandramohan (HRA-22) for obtaining their

willingness to install the stay in any one of their property in connection with the shifting of pole VKNM-57/10/1, on 20.07.2022 at the time of site inspection. They intimated their objections at site and a joint written complaint addressed to the Assistant Executive Engineer, Electrical Sub Division, Vellayambalam dated 20.07.2022 and handed over the same to this office through the Assistant Engineer, Electrical Section, Vattiyoorkavu. The pole "E" being an angle pole requires the existing or additional stays, if shifted to another location.

Conducted hearing by the CGRF on 26.09.202. The appellant and the Assistant Executive Engineer, Electrical Sub Division, Vellayambalam are present in the hearing. As per the oral direction of the Forum in the hearing, conducted site inspection by the respondent and submitted two proposals before the Forum. The two proposals are as follows.

1. Installing a new "A" pole inside the compound wall of the appellant for exempting the existing pole VK/VM-5 7/10/1 and its stay. Estimate amount for the work-on-work deposit scheme is Rs: 55 ,025/-.
2. Installing one fly stay inside the compound wall of the appellant for shifting the LT stay "G" of pole VK/VM-5 7/10/1, without changing position of the existing pole. Estimate amount for the work-on-work deposit scheme is Rs: 11,263/-.

The details of two proposals and the amount to be remitted for the works were explained to the appellant, at site. But the appellant revealed his unwillingness and also informed the respondent to intimate the same before the Forum.

By considering all the facts and circumstances of the case, the Forum ordered as per order No. CGRF/KTR/OP No.45/2022/ 1375 dated 08.12.2022, as follows.

"Since the proposals put forward by the respondent to remove the stay wire is not acceptable to the petitioner and petitioner's proposal to shift the post to the other side of the road is objected by three other residents of the area due to various reasons, the petitioner can approach the Hon'ble Additional District Magistrate for the settlement of his complaint in this regard".

Regulation- 17(2):- If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situated to order the removal or alteration.

Regulation- 17 (3):- A District Magistrate receiving an application under sub-section (2) may, in his discretion reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line post to any other part of the property or to higher or lower level or for the alteration of its form; and the order so made shall be final.

Smt. Prema.P.K has raised and submitted their objections against the shifting of pole VK/VM-57 /10/1 and its stay from the existing place to her compound. In future, if any one of the petitioners (Sri. M.P.Chandramohan or Sri. K.Raju), give their willingness to install the pole and its stay in their compound and meet/remit the expenditure (estimate amount) for the works either by the appellant or by the petitioners, then the work can be done on work deposit scheme by KSEB Limited.

In view of these, the two proposals mentioned are the most techno-economic feasible and convenient, in connection with the complaints of the appellant. If the appellant is ready to accept any one of the proposals and willing to remit the estimate amount, KSEB Limited can complete the work at an early date.

Considering the above, it is requested by the respondent that the petition filed by the appellant may be disposed directing to accept any one of the two proposals put forth by the licensee which are the most techno-economic feasible for settling the grievance.

Version of the appellant against arguments of respondent:

The respondent is not giving any valid technical reason for objecting the relocation of the post and the stay wire to the opposite side of the road. The neighbours complain about minor inconveniences without proper justification ignoring the fact that the stay wire is causing major inconvenience to the appellant by preventing free usage of the property for which appellant pay tax. Instead of giving valid technical reasons for the objection, the respondent is quoting silly reasons raised by the selfish primary beneficiaries of the post. The respondent is making use of these silly reasons as an excuse to relocate the post inside appellant's compound instead of relocating it close to their compound wall.

The respondent failed to give any valid explanation for the facts submitted by appellant in the Statement of facts or narration of the case attached to Form-B. Appellant stated that KSEB is now a limited company

and it cannot enjoy the statutory rights provisioned in the Telegraph Act 1885. This Act is regarding placing of telegraph lines and posts for the purpose of telegraph established or maintained by the Government and not by limited companies. Without confirming the applicability of this Act to KSEB in the present state, the respondent is reproducing Rules from the Telegraph Act. And the respondent failed to explain how they are relevant to the grievance submitted by appellant. The respondent is biased and it is quite natural to doubt that he is bribed by the beneficiaries of the post objecting to its relocation to their side of the road.

If the respondent believes that the Telegraph Act is applicable in this case, why this Act is not applicable to the neighbours also? The respondent makes a senseless argument that the Telegraph Act is applicable on the right side of the road and it is not applicable on the left side of the road. The extracts from this Act quoted by the respondent clearly states that the Act is regarding the transmission of electricity. In this case, the post is used for providing service connection to the neighbours and the respondent cannot give the benefits of the Telegraph Act to the neighbours since they are the direct beneficiaries of the post. It is the responsibility of the direct beneficiaries to take care of the post from which they are availing the service connection, when it is relocated.

The neighbours supported by the respondent need not worry about the area of compound owned by appellant or the number of gates provided by him to his compound. It is too cheap for a so called educated Asst Exe Engineer to quote objections raised by the neighbours resulting from jealousy. Appellant had paid for the land and the facility for the road access which is enjoying now. It is none of the business of the neighbours to question this.

Three consumers are availing service connection from the post located at the corner of the plot. All the consumers are on the opposite side of the road. The service connection wires are crossing the road blocking traffic of heavy vehicles. If the post is relocated near the compound wall of HRA-22, the service connection wires will not be crossing the road and their length can be reduced to half. Instead of appreciating the benefit of availing service connection from a post located near to the compound wall, the neighbours are pointing out inconveniences by quoting silly excuses and the respondent is endorsing their arguments. After relocation of the post, if any of these neighbours are worried about property crossing by weather-proof wires, they should install separate-

posts for their service connection. Facilitating a post is a primary requirement for an electric connection. And it is the primary responsibility of the consumer to facilitate a post for the service connections instead of freely enjoying the benefit of availing service connection from a post on the opposite side of the road supported by a stay wire blocking entry to compound. For the past 30 years, they have been enjoying this benefit at a cost to me in the form of blockage of entry to appellant's compound. It does not mean that they can enjoy it forever. Now, it has become a requirement for appellant to open a new gate at the back side of his compound and the neighbours should stop enjoying the undue benefit which they have been enjoying all these years.

Mr. MP.Chandramohan is complaining about the same post from which he is taking the service connection and does not give any sensible reason for his objection. Finally, he is requesting KSEB not to help appellant and this indicates personal vengeance on appellant. KSEB is not an entity that can be utilized by Mr.Chadramohan to satisfy his personal vengeance on others. This sentence itself makes his objection not legally sustainable and it was a wrong decision taken by the respondent to formulate his arguments based on this.

Mr. K.Raju is not giving any valid reason for his objection with proper justification. He is worried about the area of appellant's compound and the number of gates through which I enter the compound. The 7-metre road mentioned by him is a public road owned by the Trivandrum corporation. He is foolish enough to argue that no one can make an entry to a public road from their property. How someone making entry to a public road can cause traffic block for other users of that road. The Asst. Ex Engineer should have rejected this letter of objection outrightly stating that he is representing matters relating to personal vengeance and jealousy towards his neighbour and KSEB is not an entity that can be used for this purpose. This last paragraph makes his objection legally not sustainable and it was a wrong decision taken by the respondent to formulate his arguments based on this.

From the sketch, it is obvious that there is sufficient space available only at the backside of the house for the proposed garage. This is the reason behind the request for removal of the stay wire. For outsiders, mainly motivated by jealousy, this problem may not become obvious. It is too strange that KSEB is getting played in the hands of these outsiders ignoring the fact that prevention of free entry to the property of any person is a violation of the rights guaranteed by the constitution.

The respondent is exhibiting many photographs to justify his argument. Most of the pictures are irrelevant for the grievance submitted by appellant. And he is deliberately omitting the most important picture to favour the neighbours arguing against the relocation of the post. The picture shows that the stay wire is supported by appellant's compound wall which he need to open up to make entry for the vehicles from the rear side of the compound.

The respondent is insisting on installing additional post within appellant's compound with cost around Rs.55000/-. Appellant do not find any reason to do this just for the benefit of the neighbours who will be taking service connection to their home from this post. Why the respondent is not insisting on convincing the neighbours (the primary beneficiaries of the post) about the need for facilitating the post and the stay wire from which they are taking the service connection. Providing a post for the service connection is a basic requirement for the electric connection. Instead of convincing the neighbours about this basic requirement by quoting relevant clauses of Kerala Electricity Supply Code, the respondent wants appellant to facilitate the infrastructure required for their service connection. Appellant is willing to pay for the cost of relocation of the post on the road and not in his compound.

The compound is in 3 levels and vehicles cannot be moved between these levels from within the compound. Since appellant converting the cellar area in level 1 to a storage space, which cannot use it as a garage in future. The first entry (marked X) in the diagram will not be available for vehicle entry. The west side has a depth of only 370 cms and this space is insufficient for keeping vehicles of the current size. At the back side of the compound in level 3, which has free space with a depth of 500 cms. This space is sufficient for keeping vehicles of size of the present generation. The neighbours can make silly comments and observations without understanding the real facts based on measurements and the way in which appellant plan to use his compound. And it is weird that an educated Asst. Executive Engineer is endorsing the silly objections raised by ignorant neighbours who look at the problem from the point of view of personal vengeance, selfishness, and jealousy. No one can be blamed if they doubt bribery behind it.

Considering the points mentioned above, it is requested by the appellant that the matters mentioned in the statement of facts submitted by the respondent may be rejected since they are meaningless and favours the beneficiaries of the post. Orders may be issued to KSEB to clear way for vehicle

entry to the backside of appellant's house by relocating the post and the stay wire near the compound wall of the beneficiaries of the post.

Analysis and findings:

The hearing of the case was conducted on 24-01-2022 at 11-30 AM in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The appellant Sri. Janardhanan. P.S. was attended the hearing and Sri. Sreekumar V., Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Vellayambalam from the respondent's side attended the hearing. On examining the appeal petition, 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 comes to the following findings and conclusions leading to the decision thereof.

The appellant is planning to construct a Car shed in the rear side of his property. There is a stay wire of the electric post, which is an obstruction for the entry to the proposed carpark. The appellant approached the Licensee for shifting the electric post to the other side of the road. There are three service connection to three of the neighbours from this post. When this post is shifted, there should require stay wires, which are to be installed in the properties of the neighbourers. Two of the neighbours have given written objections for shifting the line. The appellant is having three gates in which two are accessible for vehicle and one is for the entry of persons. One of the present car-shed is to be converted to a warehouse for storing items arriving for local distribution. The other car-shed is not suitable for the cars having more length. This situation urges the appellant to construct a new car-shed at the rear side of the land.

As the proposal of the appellant to shift the post to the other side is objected by the neighbours, the officials of the Licensee has proposed two proposals to ease out the construction of car-shed.

Option – 1 : Convert the existing electric post into a 'A' type structure, which will be erected in a concrete pedestal. The portion of the pedestal will extend to the property of the appellant and the cost estimated to Rs.55,025/-.

Option – 2 : Installing a Fly Stay inside the compound wall of the appellant for shifting the existing stay. The estimated cost is Rs.11,268/-.

The appellant is contenting that why the Licensee cannot execute the power given as per Indian Telegraph Act for the purpose.

Regulation 17 Removal or alteration of telegraph line or post on property other than that of a local authority : -

Regulation 17(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

Regulation 17 (2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

Regulation 17 (3) A District Magistrate receiving an application under sub-section (2) may, in his discretion reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line post to any other part of the property or to higher or lower level or for the alteration of its form; and the order so made shall be final.

The appellant is also contenting about the applicability of Indian Telegraph Act 1885 for KSEBL. The Section 164 of Indian Electricity Act 2003 is very clearly specified about this. Section 164 of Indian Electricity Act 2003 states on "Exercise of powers of Telegraph Authority in certain cases" as follow:

"The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained."

By this, the appropriate Govt. may by order confer upon any public officer, Licensee or any person engaged in the business of supplying electricity under this Act. The State Govt. already authorized the Engineers of KSEBL to execute the same.

According to these Sections, the authority to take decision on this is the District Magistrate, whose jurisdiction that site is coming.

Section 95 of Kerala Electricity Supply Code 2014 deals with the shifting of electric line or electrical plant of the Licensee, states as: -

Section 95 (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.

Section 95 (2) The application for shifting the electric line or electrical plant shall be submitted in the local office of the licensee.

Section 95 (3) On receipt of the application the licensee shall inspect the site and assess the technical feasibility of the proposed shifting.

Section 95 (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 shall remit the labour charges and material charges required for shifting the electric line or electric plant as estimated by the licensee as per the cost data approved by the Commission from time to time in accordance with the Regulation 33 of the Kerala Electricity Supply Code, 2014.”

Section 95 (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.

According to this Section, the appellant is responsible for getting the consent of the land to whose property, the line or accessories shifted and also the appellant has to remit the labour charges required for shifting.

There are two options for the appellant to ease out the construction of the Car-shed, which is practical and feasible. One option could be selected and the Licensee has to execute accordingly.

Decision: -

From the analysis done and the conclusions arrived at as detailed above, following decision is hereby taken:

- (1) The appellant may select one of the feasible option and Licensee shall execute the shifting as a deposit work meeting the expenses by the appellant.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/096/2022/ _____ dated _____.

Delivered to:

1. Sri. Janardhanan. P.S., HRA-19, Harithagiri, Kanjirampara, Thiruvananthapuram Dist.-695030
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Vellayambalam, Thiruvananthapuram Dist.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.