

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/026/2022**(Present: A. Chandrakumaran Nair)****Dated: 11th August, 2022**

Appellant : Smt. Shahidha. N. Neeliyatt
Neeliyatt House,
Mangalam. P.O.,
Malappuram Dist. 676561

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Alathiyur, Malappuram Dist.

ORDER**Background of the case:**

The appellant's case is about the drawing of electrical line over her property without any consent. Earlier Sri. Saithalavi, father of appellant has given consent for drawing line over his property for giving power supply to some of his neighbours. Later, the respondent converted this single-phase line into three phase line, which made a potential threat of accident. Sri. Saithalavi approached the respondent for shifting the line through the road by paying the estimate amount. Now this line has entered almost 3 M in one side and around 1.6 M in other side of the appellant's property. The line is touching trees grown in the property, which will be threat of accidents. Appellant demanded to shift the line over the road, avoiding crossing of her property and approached Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode vide OP No.45/2021-22.

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

Arguments of the appellant:

The appellant purchased 10 cents of land during 2010 for constructing a house. The appellant was residing her husband's place, which is away from the said premises. There is a road of width 3 M outside their property. When her father requested for shifting the line through the road, he submitted the consent of Mr. Rajeev and there was no objection from him. When the line is re-routed, the posts were wrongly placed and hence, the line entered unauthorizedly into the land owned by the appellant. There was no proper supervision when the work was executed and only workers were there and they have done as they like. The appellant who was staying in her husband's house was not informed. Appellant's father Sri. Saithalavi was not able to be at site throughout the work due to Covid restriction and expected that the respondent shall execute as per the proposal. The appellant complained that almost one cent of land of 10 cents purchased is going to be unused because of this line crossing. If the post has been placed properly as per the consent of Mr. Rajeev, this issue would have not been there.

The CGRF ordered that the Licensee shall shift the line after obtaining the consent from the concerned. If any additional cost occurs due to the modification works, it shall be paid by the appellant. If there is any issue in getting the consent, the utility shall take up the matter with ADM.

Arguments of the respondent:

The application of the appellant for shifting the line has been considered and estimate has been prepared and intimated. The consent of the neighbours are also required for shifting the line. The appellant could not produce the required consent. The CGRF also ordered in same line and then also the appellant could not produce the consent. As the consent was not getting, ADM, Malappuram has been approached as per the order of CGRF.

The line has been shifted to the present route as per the petition of appellant's father to the CGRF vide No.148/19-20 and the Forum ordered on 23-07-2020 paying the cost of shifting. Now, the appellant's demand is to shift the existing line as it is passing over the appellant's land.

The shifting of line is done with the knowledge of appellant's father as per the order of CGRF(N) dated 23-07-2020. The CGRF(N) order dated 24-02-2022 is fully complied with and submitted the complaint to ADM, Malappuram and the order is awaited. This has been intimated to the appellant verbally as well as in writing.

The petition to ADM was filed only on confirming the fact that the appellant is not able to produce the consent from the neighbours concerned. It is submitted that on getting the decision of ADM on this matter, the same will be fully complied with.

Analysis and findings:

The hearing of the case was conducted on 03-08-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The appellant Smt. Shahidha. N. Neeliyatt along with Sri. Yasir. T were attended the hearing and Sri. Jayakumar Surendran, Assistant Executive Engineer, Electrical Sub Division, KSEBL, Alathiyur and Sri. Anil Kumar. P.K., Nodal Officer (Litigation), Electrical Circle, Tirur were attended the hearing from the respondent's side. 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.

There was single phase line crossing the property of Sri. K.K. Saithalavi and the same has been shifted through the present route as per request of Sri. Saithalavi with the consent of Sri. Rajeev. The 10 cents of land was purchased by the appellant during 2010 for constructing a house. The appellant has not given consent for drawing the line over her property. The positioning of the posts was not done properly, which results this property crossing and tree touching.

The Section 17 of Indian Telegraph Act states "Removal or alteration of telegraph line or post on property other than that of a local authority" :

“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.”

The Section 164 of Indian Electricity Act 2003 “Exercise of powers of Telegraph Authority in certain cases” states 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 (13 of 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.”

Section 10 (d) of Indian Telegraph Act 1885, states “in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.”

In this Section, it is clear that the Licensee has to pay the expenses for the damages to the private property.

However, it is mandatory to obtain the consent of the owner before crossing their property. If not, it has to be treated as encroachment. When the owner of the property demand for shifting the line, which has executed unauthorisedly by the Licensee, the same has to be shifted at the cost of Licensee.

Section 16 (1) of Indian Telegraph Act 1885, states “If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.”

This Section is very clear that the District Magistrate may take a decision at his discretion, which is to be implemented by the Licensee.

This matter is now pending for the decision of ADM and the respondent agreed that the decision of ADM will be implemented.

Decision: -

From the analysis of the arguments of appellant and respondent and the hearing, the decision is taken as follows:

- (1) On getting the decision of ADM, Malappuram, the same is to be implemented by the Licensee.

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

ELECTRICITY OMBUDSMAN

P/026/2022/ _____ dated _____.

Delivered to:

1. Smt. Shahidha N. Neeliyatt, Neeliyatt House, Mangalam. P.O., Malappuram Dist. 676561
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Alathiyur, Malappuram 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, Gandhi Road, Kozhikode