

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/027/2022**(Present: A. Chandrakumaran Nair)****Dated: 11th August, 2022**

Appellant : Sri. Sijurajan. M.,
Siju Nivas,
Makkada P.O., Kakkodi,
Kozhikode.

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Kakkodi, Kozhikode Dist.

ORDER**Background of the case:**

The appellant Sri. Sijurajan is a consumer of the Licensee under the Electrical Section, Kakkodi. The Electrical line in front of the appellant property has been converted from single phase to three phase. When the line has been converted to three-phase, a stay wire was necessary due to the load of the conductor. At the time of construction, two temporary stay wires were tied to the trees in the land of appellant. The respondent approached the appellant to convert the temporary stay to permanent, the appellant not permitted them to do so. The temporary stay wire tied to the trees without any consent of the appellant. The Consumer Grievance Redressal Forum (Northern Region) has been approached and CGRF(N) vide order dated 15-02-2022 states that the Forum cannot interfere over a case which is pending before the ADM for property crossing and case is dismissed.

Vide order dated 04-04-2022, the ADM, Malappuram ordered to permit KSEBL to install permanent stay wire inside the property of the appellant.

Aggrieved by the decision of CGRF(N), the appellant filed the appeal petition to this Authority.

Arguments of the appellant:

KSEBL, Kakkodi Division had encroached appellant's land without consent by installing stay wire on two trees in appellant's compound for drawing a three-phase line about four years ago. Since then, the appellant has been approaching the Assistant Engineer, KSEBL, Kakkodi Division to get the stay rooted out from appellant's compound. But the Assistant Engineer who has some vested interest made fabricated statements about the matter and misconceived ADM also. The Assistant Engineer and ADM are of opinion there is no other way but to fix the stay only in the appellant's compound. This is untrue and against reality. If a survey is conducted it will be revealed that there is public land on other side of the canal also where the stay can be fixed. But the officers including ADM were blind to see this reality and was so adamant to fix the stay in appellant's compound itself. This is a gross injustice shown to the appellant.

The ADM has ordered to make the stay permanent in appellant's compound which is merely a justification for encroachment of appellant's property by KSEBL. Real facts about the land on both sides were deliberately concealed by the Assistant Engineer and ADM and have furnished deprive and fabricated information. The appellant is objected to this order of the ADM because the appellant afraid that it is done with prejudice and not with a fair mind without least consideration of appellant's grievances for the last four years risking the life of appellant and his family and property.

The appellant requested to frozen the order of ADM relating to make permanent stay in appellant's compound which is against his wish and is also a denial of right to own property. The appellant requested to issue orders related to a fair enquiry, survey of the land on both sides of the canal before implementation of the order of ADM. Until then the present status-co may be maintained.

The KSEB officer in charge had stated that, '80' families are the beneficiaries of the installed supply line but later on changed it into '15' families. However, factually such details are not available when requested for the details. Even if a million families were beneficiaries of the supply line, still it would be illegal to encroach on appellant's land. But here, on top of that, the office has been

producing factually incorrect replies which has been delaying legal actions on appellant's grievance.

There's public property (Govt owned) on the other side of the 'Canal' through which the lines have been passed. But such information was concealed from the ADM by the officials to raise a puppet argument that the stay wire is "trivial".

The sketch produced by KSEBL hides availability of public property on other side of Canal and also the sketch obtained from Village, that clearly shows the availability of public property on other side of Canal.

In the sketch that was produced by the KSEB officials, the availability of land on the side of appellant's property was purposefully concealed to argue that no other space was available for the installation of the stay wire.

Whereas the sketch obtained from the Village Office clearly shows the availability of land to the side of appellant's property, where installation of stay wire is possible. The appellant suspects hideous motives behind this repeated submission of factually incorrect and deceptive replies by the officials.

In the hearing that was held under the ADM, the appellant was brutally denied opportunity to speak anything. The only opportunity the appellant got to open his mouth was when he was asked by the ADM "Would you have given permission if you were asked?"

The tone of this question was extremely insensitive and arrogant that it literally voiced the synchronicity of ADM towards the encroachment. It was extremely exasperating to see an ADM disregarding a serious case of encroachment by stating extremely frivolous arguments like that.

For the past 40 and more years the appellant has been paying the tax of the property with all solid proofs and documents of his ownership. The respondent has encroached on appellant's land with some hideous motives and seems to be very stubborn in his decisions.

The order of ADM says that his decision to sustain the stay wire is based on the report from KSEBL, which claims that there are no alternate ways to establish the stay wire. Since the availability of government land beside the canal adjacent to appellant's property has already been established citing the official sketch from Village Office, the claim from KSEB's report that formed basis for ADM's order is

absolutely invalid and hence, that order must be revoked and analysis reconsidered.

The above stated order from ADM also claims that the appellant may okay with relocating the stay wire to somewhere else in appellant's property. The appellant state that this is a false claim and not at all ready to relocate the stay wire to anywhere in appellant's property.

Moreover, the proposal to shift the stay wire to the electric post in appellant's compound is not acceptable. The appellant had already informed the respondent that the area where this post is located is meant to be the plot to build a commercial building as a way of livelihood for appellant's son and already spent Rs.65,000/- to make arrangements for laying underground cable in the location of the post to make the plot ready for construction by eliminating the post.

Arguments of the respondent:

The temporary stay was provided in appellant's land in connection with single- phase to three-phase conversion work done under RAPDRP scheme under Electrical Section, Kakkodi. When this was a single-phase line, the stay was not required and no stay was provided. This particular line is passing through the corner of appellant's land and when converting to three-phase line, a stay is essential at this point for which the appellant is not permitting. At the time of construction, contractor has provided two temporary stays in appellant's land (tied on trees) and at that time he was not having any complaint. After the completion of the work, when approached to convert this temporary stay to permanent, the appellant was not allowing to do the same. There is no other option to replace this particular stay and it has been informed to the appellant many times at different levels. Since he was approaching different forums against this, the Assistant Engineer in writing has asked the appellant to give permission for placing the permanent stay in his land with the condition that, it will be removed if he gets favorable order from any forum, in order to avoid unsafe conditions. But the appellant didn't respond positively. Since this is only route for retaining the line, Electrical Section, Kakkodi approached the Hon'ble ADM, Kozhikode for getting sanction for making this stay permanent. Now, Hon'ble ADM, Kozhikode in his

Order dated 04/04/2022 has given permission to place the stay in the appellant's land.

The respondent requested to dismiss the petition filed by the appellant.

Analysis and findings:

The hearing of the case was conducted on 04-08-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The appellant Sri. Sijurajan. M. was attended the hearing and Sri. Anand. T.M., Assistant Executive Engineer, Electrical Sub Division, KSEBL, Kakkodi 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.

The single-phase line which was passing through the road outside the property of appellant has been converted into three-phase line. When the line has become three-phase, the load and tension increases and the post which is at a 90° turn requires a support. Then the workers tied the post to the trees of the appellant as a temporary stay. This has been done without a proper consent from the appellant, it is an encroachment only. The respondent approached the appellant for the permission to consent the temporary stay into a permanent stay and this was denied. As it was necessary to provide the support, the respondent approached the ADM for a decision. Here in this case, the irresponsible attitude of the officials of the Licensee is very clear. When the estimate is prepared for the renovation / augmentation of the line etc., the route is to be clearly studied and the position of post etc. are to be decided. If stay wires in private property is essentially required, the property owners are to be approached and get the consent during the estimate stage itself. If the consent is not available, alternate route/location etc. are to be examined. In this case, there is a canal passing through the other side of the road, which could have been utilized where the stay wire would have been erected.

During the construction phase of the line also the engineers have not requested for the consent of the owner for providing temporary stay.

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.”

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.”

Section 16 (2) “If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).”

Section 16 (3) “If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.”

As per the Indian Telegraph Act 1885 Section 10 (d), the property owner is eligible for compensation for the damage and any dispute arises, they can approach District Magistrate as per Section 16 (3).

The Indian Telegraph Act Section (1) is clear that the District Magistrate is vested with the power to take suitable decision in this regard. If anybody object to implement the order of DM, it shall be deemed to be an offence under IPC.

Now, the stay has been installed in the property as per the order of ADM. The respondent suggested another feasibility for the stay that the compound wall could be constructed as strong concrete wall, the stay can be fixed to hook provided on the wall. This will avoid the hindrance of the stay wire inside the property. The appellant states that there is a plan to construct some commercial space in that area to earn livelihood. Then this will be a good suggestion.

Decision: -

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

- (1) ADM, Kozhikode has issued the order as per Section 16 (1) of Indian Telegraph Act 1885 and hence, this Authority cannot interfere.
- (2) As an alternate technical option, if the appellant construct a compound wall in concrete strong enough, the respondent may tie the stay wire in the hook provided in the concrete compound wall.

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

ELECTRICITY OMBUDSMAN

P/027/2022/ _____ dated _____.

Delivered to:

1. Sri. Sijurajan. M., Siju Nivas, Makkada P.O., Kakkodi, Kozhikode.
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kakkodi, Kozhikode 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