

**BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

Present: Shri. T.M.Manoharan, Chairman
Shri. Mathew George, Member

Dated: 12th November 2014

In the matter of: Non-compliance of CGRF (North) Order dated 26.11.2013 in OP No. 44/2013-14 by the Assistant Executive Engineer, Electrical Sub Division, Kottakkal and Assistant Engineer, Electrical Section, Edarikode.

Petitioner(s) : Sri. Sainudeen.P, Poozhithara House, Clarimuchikkal, Kuttipala.P.O, Malappuram

Respondents : 1. The Assistant Executive Engineer, Electrical Sub Division, Kottakkal, KSEB, Malappuram Dist.
2. The Assistant Engineer, Electrical Section, KSEB Ltd, Edarikode, Malappuram Dist

ORDER

Background of the case:-

1. Sri. P. Sainudeen, Poozhithara, Poozhithara House, Clarimuchikkal, Kuttipala (P.O), Edarikode submitted a petition to the Commission on 1.1.2014 complaining that the order of the CGRF, (North) Kerala State Electricity Board Ltd, Kozhikode dated 26th November 2013 in OP No. 44/2013-14 was not complied with by Kerala State Electricity Board Ltd. It was alleged that in spite of several requests submitted by the petitioner, which were not at all responded by the opposite parties and in turn demanded fresh documents which are not mentioned in the CGRF order. The petitioner requested the Commission to take appropriate legal action in the matter.
2. The CGRF (North), Kozhikode in its order dated 26.11.2013 in OP No. 44/2013-14 had ordered as below:

“The respondents shall shift the LT line as per the plan and estimate submitted by them, after collecting the estimate amount from the petitioner, and give electric connection to the petitioner within 21 days of receipt of this order.”

3. The opposite party in the petition before the CGRF (North), Kozhikode was the Kerala State Electricity Board Ltd represented by the Assistant Executive Engineer, Electrical Sub Division, Kottakkal and the Assistant Engineer, Electrical Section, Edarikode.
4. The Commission called for the report of the Assistant Executive Engineer, Electrical Sub Division, Kottakkal on 8.1.2014 and sought for the reasons for non-compliance of the order of the CGRF (North), Kozhikode. The Assistant Executive Engineer submitted a detailed report on 20.01.2014, attaching thereto a number of documents showing communications on the matter with the petitioner.
5. The Assistant Executive Engineer reported that the petitioner has constructed a building for residential purpose beneath a LT single phase overhead line with vertical clearance less than 30 cms. The petitioner was informed about the construction underneath the electric line, violating the provisions of Central Electricity Authority Safety Regulations, 2010, with copies to Electrical Inspectorate and Secretary, Perumannachari Grama Panchayat.
6. The petitioner approached the 2nd respondent, the Assistant Engineer, Electrical Section, Edarikode and he was advised to remit the estimate amount for shifting the electric line under work deposit before effecting the electric connection to the newly constructed building.
7. The petitioner approached CGRF (North), Kozhikode and after examination of the case in detail, the CGRF ordered on 26.11.2013 to give electric connection within 21 days after shifting the line, as per the plan submitted by Kerala State Electricity Board Ltd, for which the amount as per the estimate submitted by Kerala State Electricity Board Ltd, has to be remitted by the petitioner.
8. The petitioner, in compliance to the above order, sent a demand draft for Rs. 9,040/- to Kerala State Electricity Board Ltd, but the same was returned on 26.12.2013 with a letter stating that since property crossing consent was not submitted by the petitioner the line shifting cannot be carried out as per the

sketch approved by both the petitioner and the respondents. It is also stated that it is the duty of the petitioner to obtain and submit the consent of the adjacent property owner Sri. Ashraf, Nelloliveedu, Kuroka (P.O).

9. Since it was established that the Kerala State Electricity Board Ltd officials had not complied with the orders of the CGRF (North), Kozhikode even after a lapse of four months from the date of issue of the order, the Commission issued show cause notice on 7.4.2014 to the following officials of the Kerala State Electricity Board Ltd,

1. Sri. K.N.Raveendranathan, Asst. Executive Engineer, Electrical Sub Division, Kottakkal, Malappuram

2. Sri. K. Keeran, Asst. Engineer, Electrical Section, Edarikode, Malappuram

to explain why action under section 142 of the Electricity Act, 2003, should not be initiated against them.

The Commission directed the officers to show cause why action under section 142 of the Electricity Act, 2003 should not be initiated against them individually and informed them that, if reply was not received within 15 days from the date of receipt of the notice, further action would be proceeded against them as if they had no explanation to offer in the matter.

10. The Assistant Executive Engineer filed his reply on 21.4.14. It was reported that

(i) The order of CGRF could not be complied with as such because it involves the consent from third parties who are not involved in the case. The plan and estimate was prepared for shifting the low tension line in good faith that the petitioner will get the consent from the property owners. The Regulation 5(7) of Kerala Electricity Supply Code, 2005 says,

“where for supplying electricity to any premises, another person’s premises have to be used for providing service line / cable, has to cross over or laid underground in another person’s premises, the applicant has to attach a consent from the owner of such premises”.

Here the petitioner did not produce any such consent.

- (ii) Second proviso to Regulation 6(1) of the Kerala Electricity Supply Code, 2005, says:

“provided that, the licensee shall not be responsible for the delay, if any, in extending supply, if the same is on account of delay in getting statutory clearances, right of way, land acquisition, or the delay in consumer’s obligation to provide necessary clearances, or payment of required cost of works as per clause 7 and security deposit as per clause 13, or for any other similar reasons beyond the reasonable control of the licensee.”

- (iii) Since, no consent was received in favour of the petitioner, the Assistant Engineer, wrote directly to the land owners for their consent. Since no consent was received and one objection received, the matter was taken up with the Additional District Magistrate, Malappuram. The case is now pending with him.
- (iv) The petitioner did not produce the panchayat number for his house, because the Edarikode panchayat denied numbering the house on the ground that the building does not have statutory clearance from the over head electric line.
- (v) Since the case is pending with the Additional District Magistrate, Malappuram, the Commission may refrain from any further action in the matter.

11. The Assistant Engineer, Electrical Section, Edarikode, submitted his reply on 19.4.2014. It was reported that

- (i) The CGRF order could not be complied with because the electric line shifting work requires consent from third parties and the same was not obtained and submitted before Kerala State Electricity Board Ltd, as per Regulation 5(7) of the Kerala Electricity Supply Code, 2005.
- (ii) As per the instruction from the Commission on 11.2.2014, the objection removal petition has been filed before the Additional District Magistrate, Malappuram and this case is still pending for disposal.

12. The replies submitted by the Assistant Executive Engineer and the Assistant Engineer did not contain proper reasons for non-compliance of the order of the CGRF even after a lapse of four months. The Commission had prima facie

reasons to conclude that a deliberate attempt was made by the officials of Kerala State Electricity Board Ltd to deny legitimate right to an intending consumer. The Commission had also prima facie found that there is violation of the provisions contained in Regulation 27(6) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005 which specifically states that

“Non-compliance of awards / orders / directions of the Consumer Grievance Redressal Forum and Ombudsman by Distribution Licensee shall be considered as non-compliance of the provisions of Electricity Act, 2003 and the regulations made there under and Kerala State Electricity Regulatory Commission shall proceed accordingly”.

13. Notice was issued to the two officials of the Kerala State Electricity Board Ltd on 22.8.2014 intimating them that the Commission intends to proceed further with the action contemplated under Section 142 of the Electricity Act, 2003 and they were given an opportunity for being heard at 12.30 hrs on 3rd September 2014 as contemplated under section 142 of the Electricity Act, 2003. They were instructed to appear in person if they wish to give reasons, if any, for not taking such action and for not imposing the penalty as prescribed under Section 142 of the Electricity Act, 2003.

Hearing on the Matter:-

14. Hearing on the matter was held on 3rd September 2014, at the Commission's Office at Vellayambalam, Thiruvananthapuram. Sri. K.N. Ravindranathan, Asst. Executive Engineer and Sri. K. Keeran, Asst. Engineer, Electrical Section, Edarikode of Kerala State Electricity Board Ltd gave a detailed response on the petition.

The main points raised by them are summarized below.

- (i) The order of CGRF has not so far been complied with and it can be complied with only after a decision from the Additional District Magistrate, Malappuram is obtained regarding fixing a stay wire in the property of Sri.Ashraf, Nelloli House, Karuka P.O, Kadungath kund. A

petition to remove the objection was filed for the above and the case is pending for disposal at District Collectorate, Malappuram.

- (ii) It is admitted that the order of CGRF, Kozhikode dated 26.11.2013 in OP No. 44/2013-14 was issued approving the sketch and estimate for shifting the impugned electric line, produced by them. The sketch was prepared in the presence of the petitioner and in the good faith that he would produce the consent from the adjacent property owners.
- (iii) Regulation 6(1), paragraph 2, says *“the licensee shall not be responsible for the delay, if any, in extending supply, if the same is on account of delay in getting statutory clearances, right of way, land acquisition or the delay in consumer’s obligation to provide necessary clearances or payment of required cost of works as per clause 7 and security deposit as per clause 13, or for any other similar reasons beyond the reasonable control of the Licensee”*.
- (iv) Regulation 5(7) of the Kerala Electricity Supply Code, 2005, says, *“ Where for supplying electricity to any premises, another person’s premises have to be used for providing service line/cable, service line/cable has to cross over or laid underground in another person’s premises, the applicant has to attach a consent letter from the owner of such premises”*.

Here the petitioner has not produced such a consent letter from the nearby property owner, where a stay wire is to be fixed for shifting the electric line, from above the building, for which supply of power is requested.

15. The Commission has directed the respondents to submit their relevant files for perusal of the Commission, on or before 19.09.2014. But both the respondents have not submitted the files relating to the subject till date.

Analysis of the Commission:-

16. The Commission examined the arguments raised by the respondents carefully.

17. The contention of the officers of Kerala State Electricity Board Ltd in light of Regulation 5(3) and Regulation 6(1) of the Kerala Electricity Supply Code 2005, that the prospective consumer has to produce the consent of the property owner for providing the electric line, if the same has to cross over another person's premises and for the delay on account of getting the clearances or right of way, the licensee cannot be made responsible; is in no way acceptable in the instant case, due to the following reasons.

- (i) The sketch for the proposed line alignment, was prepared and produced before the CGR Forum by the respondents only, and not by the petitioner. The petitioner has accepted the same and was ready to remit the required shifting charges as per the estimate prepared by the respondents. The respondents must have been well aware of the fact that the stay has to be planted in the property of Sri. Ashraf S/o Khader Haji, Nelloli House, Karuka P.O, for the shifting of the line. But they have wilfully hidden the fact before the Consumer Grievance Redressal Forum.
- (ii) If the consent of the property owner through which the electric line has to passover is not produced by the applicant for supply of electricity, there are well defined procedure to be adopted by the officers, as ordered by Kerala State Electricity Board Ltd on various occasions. As per the prevailing orders of the Kerala State Electricity Board Ltd, the Asst. Executive Engineer has to file petition to remove objection before the Additional District Magistrate of the concerned district and obtain necessary orders for removing the objection of the property owner. The Asst. Executive Engineer never cared to exercise this option, till the interference of the Commission. The Asst. Executive Engineer has filed the petition to remove objection before the Additional District Magistrate, Malappuram only after receiving a direction from the Commission.
- (iii) There are many technical alternatives for the shifting of the existing electric line which has not been considered by the officials of KSEB Ltd, while providing the proposed route sketch before the Consumer

Grievance Redressal Forum. It is pertinent to note that they have considered only one proposal, which required consent of the owner of the nearby property. Easier alternatives like providing a strut instead of stay or providing underground cable, or Aerial Bunched Conductor etc were not even thought off. If the sketch and estimate amount were to be revised, they could have approached the same forum with a petition to condone delay and with a review petition. All these show the careless approach of the officials in redressing the grievance of the consumer and in implementing the orders of CGRF.

18. The Commission directed through its daily order dated 3.9.2014 that the respondents should submit their files relating to the subject on or before 19.9.2014. But both the respondents have not produced the same before the Commission. The Commission can only draw adverse inference from such negligent or defiant actions of the officials of the licensee.

19. The Commission is satisfied that the order of the CGRF was not complied with for more than eleven months without any valid reasons or explanations. CGRF is a grievance redressal mechanism of the Licensee itself constituted under Section 42(5) of the Electricity Act, 2003 and two out of the three members of the forum are officers of the licensee itself. There is no reason to conclude that such a forum will issue an order which cannot be implemented by the licensee. Here the respondent officials have come up with fresh grounds of difficulties only after the Commission has initiated action. The respondents have slept over the orders of the CGRF for eleven months. They did not even care to seek enlargement of time or to file a review petition from the orders of CGRF or to seek other legal remedy. It is under these circumstances that the Commission had issued show cause notice to both the concerned officials to explain why action under Section 142 of the Electricity Act 2003 should not be initiated against them, for which the officials had not submitted any satisfactory response. Opportunity was also given to them to be heard in person before finalising the matter.

20. The arguments raised by the respondents were carefully examined by the Commission as stated above and the Commission found no reason why the

action initiated against them should be dropped. The non-compliance of the orders of the CGRF by the respondent officials can only be found as wilful and shall be considered as non-compliance of the provisions of the Electricity Act 2003 and regulations made thereunder. This is evident from Regulation 27(6) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005. In addition, the Commission also takes a serious view on the total disregard of the interim orders of the Commission seeking production of records for which the Commission has the same power as vested in a Civil Court as per CPC 1908 as per Section 94(a) of the Electricity Act, 2003. Under the above circumstances, the Commission has come to the findings that,

- (i) The order of CGRF, Kozhikode dated 26.11.2013 in OP 44/2013-14 was issued based on the proposal prepared and submitted by the Respondents.
- (ii) Admittedly by the Respondents, the order of CGRF dated 26.11.2013 has not been implemented so far.
- (iii) The Respondents have not moved the CGRF for enlargement of time or for review of its order dated 26.11.2013.
- (iv) Other viable alternatives such as giving a strut instead of stay wire, Under Ground cable, Arial Bunch Conductor etc for effecting connections have not been considered.
- (v) The Respondents have filed a petition before the Additional District Magistrate, Malappuram to remove objection, only after the initiation of proceedings by the Commission.
- (vi) The Respondents did not produce their files on the subject before the Commission, in spite of specific directions.

The above omissions and commissions on the part of the Respondents constitute violation of the statutory provisions in Electricity Act, 2003, read with the Kerala Electricity supply Code 2005 and Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005. Therefore it is decided to impose penalty on the respondent officials of KSEB Ltd under Section 142 of the Electricity Act, 2003 for the delay and non-compliance of the order dated 26.11.2013 in OP No. 44/2013-14 of the Consumer Grievance Redressal Forum (North), Kerala State Electricity Board Ltd, Kozhikode.

Orders of the Commission:-

21. Accordingly, in exercise of the powers conferred as per Section 142 of the Electricity Act, 2003 the Commission orders that:

- (i) Shri. K.N.Ravindranath, Asst. Executive Engineer, Electrical Sub Division, Kottakkal shall pay a penalty of Rs. 50,000/- (Rupees fifty thousand only)
- (ii) Shri. K. Keeran, Asst. Engineer, Electrical Section, Edarikode shall pay a penalty of Rs.25,000/- (Rupees twenty five thousand only)

The officials shall remit the penalty in the office of the Commission within thirty days from the date of receipt of this order.

Sd/-

Mathew George
Member

Sd/-

T.M. Manoharan
Chairman

Approved for issue

Secretary