
(2021) 03 KL CK 0158

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34061 Of 2021

K.N. Raveendranadhan And Ors

APPELLANT

Vs

Kerala State Electricity Board And Ors

RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:

Electricity Act, 2003 — Section 43, 43(3), 82, 142
Indian Telegraph Act, 1885 — Section 16(1)
Constitution Of India, 1950 — Article 21

Citation : (2021) 03 KL CK 0158

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : V.A. Muhammed, V. Rajasekharan Nair, P.K Radhika, M.R Hariraj, P.A. Kumaran, K. Rajagopal, N. Raphy Raj, Vineetha B, N. Satheesh, Vipin P. Varghese, Jestin Mathew

Final Decision : Dismissed

Judgement

1. To light up a tiny bulb in his tiny house Sainuddeen had to walk from pole to pole. An order of the Consumer Grievance Redressal Forum (CGRF) in his favour could not dispel the darkness at his home and the State Electricity Regulatory Commission mulcted two officers of the Board for delay in giving electricity connection and thus these two officers are before this Court.

2. Sri. P. Sainuddeen, the 3rd respondent applied for electric connection to his newly built house of 300 square feet extent before the Assistant Engineer, Electric Section, Edarikkode, (hereinafter referred to as 'AE' for brevity) vide his application dated 20.05.2013. The AE, by Ext.P1 letter dated 28.05.2013, informed the 3rd respondent that the house is constructed without keeping the minimum distance from the Low Tension electric line (L.T. line) and that only after shifting the electric line, the electric connection can be given. Aggrieved by the said stand of the AE and complaining of the delay in granting electric connection, the 3rd respondent filed Ext. P2 complaint under Section 43 (3) of

the Electricity Act, 2003 (hereinafter referred to as 'the Electricity Act' for short) before the CGRF constituted under the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005 (herein after referred to as 'Regulations 2005' for brevity).

3. As evident from Ext. P3 minutes of hearing, the CGRF (North), Kozhikode directed the parties to inspect the property jointly and prepare a sketch showing feasible line. The minutes also shows the statement made by the Assistant Executive Engineer (AEE) before the CGRF wherein it is stated by the AEE that maintenance of statutory clearance of 2.7 meters between L.T. line and the 3rd respondent's house was necessary and the existing distance is only 30 cms. After hearing the parties, the CGRF (North), Kozhikode by Ext.P4 order dated 26.11.2013, directed the AEE and the AE; the writ petitioners 1 and 2 respectively, to shift the LT line as per the plan and estimate submitted by the AEE and AE after collecting the estimate amount from the 3rd respondent and to give electric connection to the 3rd respondent within 21 days of receipt of the said order.

4. After the expiry of the period stipulated in the order of CGRF, the 3rd respondent filed Ext.P11 petition dated 01.01.2014 before the Kerala State Electricity Regulatory Commission (Regulatory Commission), the additional 7th respondent, complaining that the AEE and AE did not comply with Ext.P4 order of the CGRF, in spite of remitting the estimate amount by the 3rd respondent.

5. The AE by Ext. P10 letter dated 10.01.2014 informed the 3rd respondent that electric connection can be granted only on receiving consent from the 4th respondent, the adjacent land owner in whose premises a stay wire has to be planted for shifting the line.

6. The Regulatory Commission called for report from the AEE and on receipt of report, issued Ext.P12 letter dated 11.02.2014 to the AE informing that raising the issue of "consent" from the adjacent property owners at the time of implementation of CGRF order cannot be admitted and directed to initiate steps for shifting the line immediately after getting orders from the Additional District Magistrate (ADM), if necessary.

7. The AEE submitted Ext. P13 petition dated 22.2.2014 under Section 16 (1) of the Indian Telegraph Act, 1885 before the ADM for orders to shift the electric line going across the house of the 3rd respondent.

8. Since Ext.P4 order dated 26.11.2013 of the CGRF was not complied with even after lapse of four months, the Regulatory Commission issued show cause notice on 07.04.2014 to the AEE and AE to explain why action under Section 142 of the Electricity Act should not be initiated against them. They submitted their explanation wherein they have stated that for supplying electricity to the 3rd respondent, L.T. line has to be shifted and the premises of the third parties have to be used for providing service line and therefore consent of such persons are necessary in the light of the provisions of Regulations 5 (7) and 6 (1) of Kerala

State Electricity Supply Code, 2005 and the matter has been taken up with the ADM and is pending for disposal.

9. Since the Regulatory Commission found the explanation of the writ petitioners as not satisfactory and prima facie found there is violation of Regulation 27(6) of the Regulations 2005 in not complying with CGRF order, issued notice on 22.08.2014 intimating that the Regulatory Commission intends to proceed further under Section 142 of the Electricity Act and gave an opportunity of hearing and the writ petitioners were heard on 03.09.2014. At the time of hearing, the petitioners stated that they have not willfully delayed the electric connection to the house of the 3rd respondent and reiterated their stand in their earlier explanation.

10. While so, the ADM passed Ext.P14 order dated 17.09.2014 holding that Ext.P4 order of the CGRF is unilateral and liable to be reviewed and directed to hear affected parties before shifting the line.

11. In the light of Ext.P14 order of ADM, the AEE submitted Ext.P15 application dated 01.10.2014 for review of Ext.P4 order before the CGRF.

12. The Regulatory Commission by Ext.P18 order dated 12.11.2014 found the non-compliance of the order of CGRF by the writ petitioners as willful and treating the same as non-compliance of the provisions of the Electricity Act imposed a penalty of Rs.50,000/- on the 1st petitioner and Rs.25,000/- on the 2nd petitioner, in exercise of the powers conferred under Section 142 of the Electricity Act. The Regulatory Commission rejected the contention of the writ petitioners that delay in giving connection was due to non-production of consent letter from nearby property owner. The reasoning of the Regulatory Commission in Ext. P18 in not accepting the said contention is that the sketch for the proposed line alignment was prepared and produced before the CGRF by the writ petitioners themselves, and not by the 3rd respondent and the 3rd respondent had accepted the same and was ready to remit the required shifting charges as per the estimate prepared by AEE and AE. The Regulatory Commission observed that the AEE and AE must have been well aware of the fact that the stay has to be planted in the property of the 4th respondent for shifting of the line, but, they have willfully hidden the fact before the CGRF. The Regulatory Commission also found that the AEE has not followed the procedure for removal of objection and the ADM was not moved for removal of objection with dispatch. The Regulatory Commission observed that there are many technical alternatives for the shifting of the existing electric line which has not been considered by the petitioners while providing the proposed route sketch before the CGRF. It was also observed that the writ petitioners considered only one proposal, and the easier alternatives like providing a strut instead of stay or providing underground cable, or Aerial Bunched Conductor etc which do not require the consent of the owner of the nearby property were not considered. The Regulatory Commission also observed that the writ petitioners did not produce their files on the subject before the Commission in spite of specific directions. Ext.P18 order is impugned in the writ

petition.

13. In this writ petition the main contentions of the petitioners are that the order of CGRF could not be implemented, as the 3rd respondent has not obtained the consent of the owner of the property through which the line has to cross and that the ADM is the authority to grant orders for shifting the line through the premises of adjacent land owner and therefore Ext. P4 order of the CGRF is beyond their jurisdiction. It is also contented that the other viable alternatives were not available as the CGRF in Ext. P4 order has made clear that the L.T line should be shifted as per the plan and estimate submitted by the writ petitioners.

14. At the time of admission of the writ petition, this Court had stayed the operation and implementation of Ext.P18 which was later extended until further orders.

15. A counter affidavit is filed by the 3rd respondent resisting the averments in the writ petition and supporting Ext. P18 order of the Regulatory Commission. According to the 3rd respondent, the petitioners were deliberately delaying the supply of electricity to the house of the 3rd respondent with ulterior motive and that the petitioners were sleeping over the legal directions and that his family is living in the house having an extent of only 300 square feet without electricity for the last many years and sought for dismissal of the writ petition.

16. Heard Sri.V.A.Muhammed, learned Counsel for the petitioners, Sri.Jestin Mathew, learned Government Pleader, Sri.N. Satheesh, learned Standing Counsel for the Electricity Board, Sri.M.R.Hariraj, learned Counsel for the 3rd respondent and Sri.Vipin P. Varghese, learned Standing Counsel for the additional 7th respondent.

17. The application for supply of electricity to the house of the 3rd respondent was received by the writ petitioners on 20.05.2013. Section 43(1) of the Electricity Act reads as follows:

"43. Duty to supply on request.-- (1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply".

Therefore, it is the statutory duty of the 1st respondent Board to supply electricity to the 3rd respondent within one month after receipt of the application. As per the provisions under Regulation 7 read with Regulations 2 (e) (i) and (f) (vii) of Regulation, 2005, a complainant, who includes an applicant for new connection of electricity, can approach the CGRF for redressal of grievance in connection with supply of electricity. Ext. P2 is the complaint of the 3rd respondent before CGRF for not giving supply of electricity to his house. The objection of the writ petitioners in giving supply to the premises of the 3rd respondent, as evident from Ext.P1 and the statement given before the CGRF was that there is no statutory clearance between L.T. line and the 3rd

respondent's house. Accordingly, the CGRF directed the parties to inspect the property jointly and prepare a sketch showing feasible line. On submission of the sketch and hearing the parties, the CGRF directed the AEE and the AE to shift the L.T. line as per the plan and estimate submitted by the AEE and AE after collecting the estimate amount from the 3rd respondent and to give electric connection to the 3rd respondent within 21 days of receipt of the said order. There is nothing on record to show that the CGRF was informed that for shifting the line a stay wire has to be planted in the premises of the 4th respondent. It is one month after the order of the CGRF the writ petitioners raise the issue of consent letter of the owner of the premises, where stay wire has to be planted. Even when the Regulatory Commission informed the writ petitioners that the issue of consent cannot be raised at the time of implementation of the order of CGRF, the writ petitioners did not take steps to provide electric supply and the ADM was moved under Section 16(1) of the Indian Telegraph Act only after about three months after the order of CGRF and after the observation of the Regulatory Commission. In Ext.P13 filed by the AEE before the ADM, the requirement of consent of the 5th respondent in the writ petition, another property owner in whose property a stay wire is to be planted is also raised for the first time. The ADM did not pass any orders exercising his powers under Section 16 (1) of the Telegraph Act, but ordered that Ext. P4 order of CGRF is liable to be reviewed and directed to hear affected parties before shifting the line. It is not necessary to examine the legality and propriety of the said order for the propose of this writ petition. After about 11 months after the order of CGRF the writ petitioners preferred a Review Petition before CGRF to review Ext.P4 order. The fate of Ext.P15 Review petition is not placed on record. Considering all these factors, this Court agree with the finding of the Regulatory Commission in Ext. P18 order that the writ petitioners willfully did not inform CGRF that for shifting the line a stay wire has to be planted in the premises of the 4th respondent and they went back on the proposal submitted by them before CGRF. Ext.P4 order of CGRF has been flouted by the writ petitioners.

18. Regulation 27(6), as inserted by the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) (Third Amendment) Regulations, 2010 provides that non-compliance of awards/orders/directions of the CGRF and Ombudsman by the Distribution Licensee shall be considered as non-compliance of the provisions of the Electricity Act, 2003 and the regulations made thereunder and Kerala State Regulatory Commission shall proceed accordingly.

19. Section 142 of the Electricity Act deals with punishment for non-compliance of directions by Appropriate Commission and reads as follows:

"142. In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after

giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction".

Appropriate Commission has been defined in the Electricity Act to include the State Regulatory Commission constituted under Section 82 of the Act. In view of the provisions contained under Regulation 27(6), non-compliance of the orders of CGRF shall be considered as non-compliance of the provisions of Electricity Act, 2003 and non-compliance of the provisions of Electricity Act, 2003 would entail punishment under Section 142 of the said Act.

20. This Court also agrees with the view of the Regulatory Commission that when easier technical alternatives for the shifting of the electric line like providing strut instead of stay, providing underground cable or Aerial Bunch Conductor etc are available, such alternatives are to be resorted to. The contention of the petitioners that other viable alternatives were not available as the CGRF in Ext.P4 order has made it clear that the L.T. line should be shifted as per the plan and estimate cannot be sustained. As rightly pointed out by the Regulatory Commission, these technical alternatives for the shifting of the line has to be considered by the officials of KSEB Ltd. while providing the proposed route sketch before the CGRF. If such technical alternatives are proposed, the CGRF would have looked into its feasibility and issued orders whereby supply could be given to the applicant without delay.

21. Electricity is a basic amenity in life. Water and electricity are integral part of right to life within the meaning of Article 21 of the Constitution of India. Section 43 of the Electricity Act provides that there is a statutory duty on the distribution licensee to provide electric connection to the applicants within one month after receipt of the application requiring such supply. The 1st respondent Board is the sole distribution licensee for electricity within the State and therefore the Board and its officials shall make every endeavor to provide electricity supply to applicants without any delay. On a query made by this Court, the Standing Counsel for the Board on instruction submitted that, the 3rd respondent has been given electric supply during the pendency of this writ petition.

I find no reason to interfere with Ext.P4 order of CGRF and Ext.P18 order of the Regulatory Commission. The writ petition fails and is accordingly dismissed.