

The Executive Engineer vs Johnson George

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Court : Kerala

Decided On : Mar-17-2023

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/33010/2016

Appellant : The Executive Engineer

Respondent : Johnson George

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL FRIDAY,
THE 17TH DAY OF MARCH 2023 / 26TH PHALGUNA, 1944

PETITIONER/S: 1 THE EXECUTIVE ENGINEER KERALA STATE
ELECTRICITY BOARD, PUNALUR. 2 THE ASSISTANT ENGINEER,
KERALA STATE ELECTRICITY BOARD, SECTION OFFICE,
KARAVALOOR. BY ADVS.SRI.N.SATHEESH SRI.V.V.BINU, SC, KSEB
ADV.JOSWIN THOMAS, KUNNATH, SC, KSEB RESPONDENT/S: 1
JOHNSON GEORGE NAZRETH HOUSE, THIRUVAZHIMUKKU,
KARAVALOOR - 691 318. 2 SAROJINIAMMA, CONSUMER NO.6990,
6989, MANGALATH,THIRUVAZHIMUKKU, KARAVALOOR P.O.,691

318. 3 BARGAVI AMMA, CONSUMER NO.6991,MANGALATH PUTHEN VEEDU,MATHRA P.O., PUNALUR - 691 315. (DIED) 4 THE KSEB OMBUDSMAN, EDAPALLY, KOCHI - 682 024. *ADDL.R5 ATHUL.S.NAIR, MANGALATHU THEKKETHIL VEEDU, KARAVALLUR, KARAVALLUR PO, PIN-691333. *ADDL.R6 AKHIL.S.NAIR, MANGALATHU THEKKETHIL VEEDU, KARAVALLUR, KARAVALLUR PO, PIN-691333. *ADDL.R5 AND R6 ARE IMPEADED AS PER ORDER DATED 31.10.2017 IN I.A.NO.17244/2017.

BY ADVS. SRI.B.MOHANLAL FOR R1 SRI.S.SREEKUMAR (KOLLAM) SMT.P.S.PREETHA SRI.T.PRASAD SRI.SAIJU S. SRI.S.SREEKUMAR KOLLAM FOR R2 THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Appellate Order, Ext.P4 dated 20.07.2016, and review order, Ext.P6 dated 26.08.2016 of the State Electricity Ombudsman are under challenge in this writ petition filed by the Kerala State Electricity Board.

2. The first respondent, a permanent resident in

house No.KP9-296 of Karavallur Grama Panchayat situated in the property comprised in Sy.No.174/1/57/3 with electricity consumer No.6992, alleging that an electric post erected in the road side was shifted to his property without his consent, had approached the Kerala State Electricity Board (petitioner herein) requesting for shifting of the same. But, the petitioner Board called upon the first respondent to remit an amount of Rs.6,766/- as per the provisions of Regulation 95(4)(c) of the Kerala Electricity Supply Code, 2014. Against the aforesaid demand, the first respondent approached the Consumer Grievance Redressal Forum. The Forum vide order, Ext.P2 dated 11.03.2013, in OP No.1657/2015, dismissed the petition and ordered to shift the electric post and line on verification of the technical feasibility and on receipt of the required labour charges from the first respondent herein. Instead of paying the charges and submission of an

application under Section 16 of the Indian Telegraph Act, 1885, the first respondent preferred Ext.P3 appeal before the Ombudsman constituted under

the Electricity Act. The Ombudsman vide Ext.P4 order

dated 20.07.2016 ordered the petitioner Board to remove the electric post without insisting for any charges. Ext.P5 review petition filed by the KSE Board against Ext.P4 order was also rejected by the learned Ombudsman as per Ext.P6 order dated 26.08.2016. These orders are under challenge in this writ petition.

3. Learned Standing Counsel appearing for the

KSE Board submitted that the Ombudsman does not have the jurisdiction and could not have waived the charges demanded as provided under Regulation 95(4)(c) of the Kerala Electricity Supply Code, 2014. The remedy available for the first respondent was to approach the Additional District Magistrate, who could have inspected the premises either by himself or sought report from the concerned Department.

4. On the other hand, the learned counsel

appearing on behalf of the first respondent submitted that the electric post, which was originally standing in the public road, fallen down in the calamity occurred in the year 2015 and the petitioner Board instead of erecting the new one in the existing place, erected it in the property of the first respondent without his consent and causing danger and threat to his residential building and family. The first respondent submitted an application to the petitioner Board to shift the electric post, and for the said purpose, the Board directed the first respondent to remit an amount of Rs.6,766/- towards the labour charges, which was not sustainable in the eyes of law. The first respondent submitted that even though the Consumer Grievance Redressal Forum did support the demand, the Ombudsman interfered with the same and directed the Board to shift the electric post without insisting any payment from the first respondent. Hence, it was submitted that the order of the Ombudsman is perfect and is based on the legal aspects and cannot be interfered with in this writ petition.

5. I have heard the learned counsel on both sides and perused the legal provisions and the documents produced in this writ petition.

6. Regulation 95(4)(c) of the Kerala Electricity Supply Code, 2014 reads as under:
"95. Procedure for shifting electric line or electrical plant of the licensee.-

(1) xxx

(2) xxx

(3) xxx

(4) The application for shifting an electric line or electrical plant shall be granted only if:-

(a) xxx

(b) xxx

(c) the applicant remits the labour charges required for shifting the electric line or electrical plant." Sections 16 and 17 of the Indian Telegraph Act read as under:
"16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.-

(1) 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.

(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).

(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.

(4) If any dispute arises as to the persons

entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a

District Judge under sub-section (3) or sub-section (4) shall be final: Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

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

(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.

(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.

(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 or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final. "

7. As per the aforesaid provisions of the Indian Telegraph Act, the power to entertain an application for shifting of an electric post vests with the Additional District Magistrate. The first respondent

without availing such remedy against the order

demanding an amount of Rs.6,766/- for shifting the electric post, approached the Consumer Grievance Redressal Forum, which upheld the demand. Thereafter in appeal, the Electricity Ombudsman deviated from the above and vide Ext.P4 ordered to shift the electric post without calling for a report and without insisting any charges from the first respondent herein. Even though the question of jurisdiction of the Ombudsman in deciding such an issue was reagitated in the review petition by the Board, the same was rejected vide Ext.P6 order. Going by the aforementioned provisions of law, this Court hold that the Additional District Magistrate is the authority to adjudicate on such an issue and the Ombudsman does not have the jurisdiction to pass Exts.P4 and P6 orders by ignoring the

aforesaid legal provisions.

8. For the reasons aforementioned, Exts.P4 and

P6 orders of the learned Ombudsman are unsustainable and are quashed accordingly. The writ petition stands allowed as above. Sd/- AMIT RAWAL JUDGE
jg APPENDIX OF WP(C) 33010/2016 PETITIONER EXHIBITS EXHIBIT-P1: TRUE COPY OF THE COMPLAINT SUBMITTED BY THE FIRST RESPONDENT BEFOR THE CGRF, KOTTARAKARA. EXHIBIT-P2: TRUE COPY OF THE ORDER PASSED BY THE CGRF IN O.P.NO.1657/2016. EXHIBIT-P3: TRUE COPY OF THE APPEAL FILED BY THE FIST RESPONDENT. EXHIBIT-P4: TRUE COPY OF THE ORDER PASSED BY THE FOURTH RESPONDENT IN APPEAL DATED 20.07.2016. EXHIBIT-P5: TRUE COPY OF THE REVIEW PETITION FILED BY THE PETITIONER BEFORE THE FOURTH RESPONDENT. EXHIBIT-P6: TRUE COPY OF THE ORDER PASSED BY THE FOURTH RESPONDENT IN REVIEW PETITION NO.P/26/2016. Exhibit P7 A TRUE COPY OF THE JUDGMENT DATED 7/10/2015 IN WPC NO.30354/2015 OF THE HON'BLE COURT

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