

BEFORE THE ELECTRICITY OMBUDSMAN
(For the State of Goa and Union Territories)
Under Section 42 (6) of the Electricity Act, 2003
3rd Floor, Plot No. 55-56, Udyog Vihar - Phase IV, Sector 18,
Gurugram (Haryana) 122015,
Phone No.:0124-4684708, Email ID: ombudsman.jercuts@gov.in

Appeal No.167 of 2022

Date of Hearing: 28.07.2022

Date of Order: 02.08.2022

Shri Panch Lall Shah,
Andaman & Nicobar Islands
Port Blair

.... Appellant

Versus

The Superintending Engineer,
Electricity Department, and others
Andaman & Nicobar Islands
Port Blair

.... Respondents

Parties present:

Appellant(s)

Shri Rakesh Kumar Shah,
Appellant' Son/Representative

Respondent(s)

Ms. Deepa Nair-Executive Engineer



Date of Order: 02.08.2022

The Appellant has preferred an Appeal against the Non- disposal of his grievance by Ld. CGRF- Andaman & Nicobar Islands, within the prescribed time lines. The appeal/representation received in this office on 02.06.2022 by email and the same was admitted for examination and consideration on 06.06.2022. Copy of the same as received was forwarded to the respondents with a direction to endeavour to settle the representation through mutual agreement within 10 days. In case no settlement is achieved through mutual agreement, respondents should file the affidavit of counter reply in the required format, to the appeal/representation within 20 days from the date of Admission Notice. The counter reply was filed by the Respondents/Electricity Department and copy of the same was supplied to the Appellant on 28.06.2022, who has filed the Rejoinder.

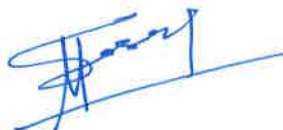
Settlement by Mutual Agreement

Both the parties appeared before the Electricity Ombudsman on 28.07.2022 at Port Blair as scheduled and were heard. Efforts were made to reach a settlement between the parties through the process of conciliation and mediation. However, no settlement mutually agreeable could be reached. The hearing therefore, continued to provide reasonable opportunity to both the parties to put forth their pleading on the matter.

(A) Submissions by the Appellant:

Appellant submitted the brief facts as under: -

1. I Panch Lall Shah, S/o Late Pavitar Shah aged about 78 years by religion Hindu occupation Rtd. Govt. Servant , R/o Dudh Line, Near Hawaghar Jn, Port Blair Tehsil, South Andaman District, I state as under :
 - (i) I say that I am a senior citizen, Govt. Retd. Servant my age is 78 years
 - (ii) I say that I have submitted my complaint to the office of the Assistant Engineer, Electricity Department, Port Blair on dated 05.06.2013. The same was duly received by the Electricity office on 05.06.2013. The same already submitted by me at the time of filing of the complainant at CGRF, A&N Islands.
 - (iii) I say that again I have submitted another complaint letter on 26.11.2015 for shifting the high voltage electric line pole. The same was duly received by the Assistant Engineer, Electricity Department, Port Blair on 30.11.2015.
 - (iv) I say that I have submitted the complaint on 03.01.2022 for shifting the electric pole which is in dangerous condition any time any incident will happen with me and with my family members or any other general public those who are surrounding my house then the electricity department will liable for the said incident.
 - (v) I say that I have submitted on 05.06.2013, 26.11.2015 and 03.01.2022 to the concerned Electricity Authority from 2013 to 2022. Till dated, I did not get any relief from the Electricity Department for shifting the electric pole.
 - (vi) I say that after receiving my complaint my pole was not shifted but besides my building namely M/s King Saffair Hotel lodged the complaint 03 year ago for shifting the electric poles in front of his building. The same was immediately shifted because the side building owner is economically sound. For that reason, the Electricity Department



immediately shifted the poles of side building owner best reason know to the Electricity Department, and I am poor person for that reason my poles are not shifted from 2013 to till date (since last more than 10 years)

- (vii) I say that I have fed-up because of the Electricity Department's harassment since last more than 10 years and being a senior citizen. Retd Govt. Servant, I have no option other than to file the appeal before your good Hon'ble Ombudsman for necessary relief of myself whereas no relief yet received from the Electricity CGRF, A&N Islands.
- (viii) I say that at the time of filling of this appeal, I have submitted my documents through PDF for kind perusal of your good Hon'ble Ombudsman.
- (ix) I say that after filling this appeal the Executive Engineer, HQ, Electricity Department filed his reply against my complaint alleging some baseless allegation against me the said allegations are false. In the reply of the respondent Para 2(ii) my son name is wrongly written.
- (x) I say that in the said reply the respondent stated that they have inspected the electric pole by Electricity officer while we did not get any information in official letter on behalf of inspection. All correspondence made by the Electricity Department for their internal sources. Further it is observed that this reply submitted by the Electricity Department to Ombudsman, the same was not endorsed to the complainant.
- (xi) I say that as per the Electricity Act, 2003 under Section 53(a) &(g) the Electricity Department could be shifted the electric pole but as per my complaint the respondent did not do the same but harassed me since last 10 years and for that reason, I have filed this appeal / complaint before for good Hon'ble Ombudsman for necessary relief of myself on the interest of justice.
- (xii) I say that as my prayer of appeal, may kindly allow by way of giving a direction to the responding authority to shift the high voltage electricity pole which is bent over my house immediately in the interest of my justice. Necessary photographs in this regard are enclosed for perusal please.
- (xiii) That the above stated statements made in the above paras are true to the best of my knowledge and believe and prayer of the appeal and para (xii) of my chief is my respectful submission before your ombudsman for necessary relief of myself.

(B) Submissions by the Respondents:

1. Ms. Deepa Nair-Executive Engineer for the Respondent filed the counter reply as under :-
2. That the deponent is working as Executive Engineer, and is authorized by Superintending Engineer, Electricity Department, A&N Administration (being Deemed Licensee) vide letter No. EL/HQ/Rev/Legal/3-37/2022 dated 15.06.2022, to file this reply and represent on behalf of Electricity Department, A&N Administration, in this case.
3. **That para-wise counter reply is as under :-**
 - i. The authorized officer of licensee i.e. Assistant Engineer, Sub-Division-II, HQ Division, has contacted to applicant twice i.e. on 17.06.2022 and 18.06.2022 over



mobile phone and requested to visit his office for discussion on the matter so as to redress the grievance by mutual consent if feasible.

- ii. In response, the applicant's son Shri. Rakesh Kumar Shah, S/o. Panch Lall Shah, has shown his inability to come to office of the authorized officer of licensee i.e. Assistant Engineer, Sub-Division-II, HQ Division for discussion.
- iii. Further, Shri. Rakesh Kumar Shah has informed that he is not willing for any settlement till the old RCC electric poles are removed from front of his house.

4. FACTS OF THE CASE:

- i. The overhead High Voltage Tension (33 KV & 11 KV) from Hawaghar Junction to Jayalaxmi Store, passing in front of applicant house has drawn on 2 pole structure almost 40 – 50 years back.
- ii. The Assistant Engineer-II, HQ Division, Electricity Department and Junior Engineer, Shadipur site office, Electricity Department, has inspected the site and found that the said HT & LT line is passing over the government land i.e. outside from boundary of applicant.
- iii. There is no vacant space available in that area for shifting of almost 5 span of HT line. Hence shifting of above said line cannot be possible at this juncture.
- iv. Further, now a days numbers of consumer constructing their building by violating the Safety Regulation as Classified in Section 60, 61 and 63 of CEA (Measures related to safety and related supply) Regulation 2010 and if we may consider any request of HT & LT shifting work, will create precedence for the other consumers.
- v. As per section 63 of CEA (Measures related to safety and related supply) Regulation 2010, any person proposes to erect a new building or Structure to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building, or structure or road, any, permanent or temporary addition or alteration, he shall give intimation in writing of his intention to do so, to the supplier or owner and to the Electrical Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, road or any addition or alteration and scaffolding thereof required during the construction, but in this case the applicant Shri Panch Lall Shah or any family member(s), has not furnished any intimation to this department while construction of the building.
- vi. Considering the above facts and non-cooperative behavior of applicant, it is humbly requested that the case may kindly be dismissed.

(C) Ld. CGRF-A&NI order , preferred for Appeal:

(i) Ld. CGRF-A&NI, has neither heard the matter nor has passed any order within the stipulated time as per Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.

(D) Deliberations during hearing on 28.07.2022 at Port Blair:-

Appellant's Submission:



- (a) Shri Rakesh Kumar Shah-Appellant's Son/representative, reiterated his version as submitted in the Appeal and requested early resolution to his complaint.
- (b) He further submitted that he is occupying this premises for the last more than 20 years and have constructed the house after getting approval for the building plans from the concerned authorities and now he wants to construct upper floors but the High-Tension lines are encroaching his premises. He apprehends that these can cause electrocution and he is not feeling safe.

Respondent's Submission:

- (a) Ms. Deepa Nair-Executive Engineer for the Respondent reiterated her version as submitted in the counter reply to the Appeal.
- (b) On being asked by this Court to explain the details of existing infrastructure. She explained that it's a composite line having 33KV plus 11 KV plus 440 Volts on H-Pole structure. On further deliberations it transpired that one end of H-Pole is outside the boundary wall of the Appellant and the line is passing through the Appellant premises as the existing pole has tilted. She further clarified that there is no space for shifting the line. However, she agreed to replace the tilted pole so that line passing through the Appellant premises could be realigned to maintain proper distance as per safety Regulations. She further requested for grant of 3 months' time for procurement of material/calling tenders etc., as per required procedures to do the job.
- (c) She further informed that other schemes are in pipeline for underground/Aerial bunched conductors for the whole area as part of system improvement/augmentation of existing power system.

(E) Findings & Analysis: -

1. I have perused the documents on record and pleadings of the parties.
2. The documents submitted by the parties have been believed to be true and if any party submitted a fake/forged document, then they are liable to be prosecuted under relevant Indian Penal Code/Rules/Regulations.
3. Following provisions have been notified in the Electricity Act, 2003:-

Section 67 of the Electricity Act, 2003

Quote

“

(1) A licensee may, from time to time but subject always to the terms and conditions of his license, within his area of supply or transmission or when permitted by the terms of his license to lay down or place electric supply lines without the area of supply, without that area carry out works such as:-

- (a) To open and break up the soil and pavement of any street, railway or tramway;
- (b) To open and break up any sewer, drain or tunnel in or under any street, railway or Tramway;
- (c) To alter the position of any line or works or pipes, other than a main sewer pipe;



- (d) To lay down and place electric lines, electrical plant and other works;
- (e) To repair, alter or remove the same;
- (f) To do all other acts necessary for transmission or supply of electricity.

(2) The Appropriate Government may, by rules made by it in this behalf, specify: -

- (a) The cases and circumstances in which the consent in writing of the Appropriate Government, local Authority, owner or occupier, as the case may be, shall be required for carrying out works;
 - (b) The authority which may grant permission in the circumstances where the owner or Occupier objects to the carrying out of works;
 - (c) The nature and period of notice to be given by the licensee before carrying out works;
 - (d) The procedure and manner of consideration of objections and suggestion received in Accordance with the notice referred to in clause (c);
 - (e) The determination and payment of compensation or rent to the persons affected by works under this section;
 - (f) The repairs and works to be carried out when emergency exists;
 - (g) The right of the owner or occupier to carry out certain works under this section and the payment of expenses therefore;
 - (h) The procedure for carrying out other works near sewers, pipes or other electric lines or works;
 - (i) The procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;
 - (j) The procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;
 - (k) The avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;
 - (l) The procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;
 - (m) The manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.
- (n,o,p)

Unquote

4. Following provisions have been notified in the “Works of Licensee Rules, 2006:-

Quote
“

3. Licensee to carry out works: -

- (1) A licensee may –
 - (a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, where over or where under any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;
 - (b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:



Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer: Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorized may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorized, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorized officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall affect the powers conferred upon any licensee under section 164 of the Act.”

Unquote

5. The Hon’ble High Court of Gujarat in Order dated 29.8.2013 in SCA No. 18334 of 2011 & amp; batch titled Dilip Singh Chauhan & amp; Ors. Vs. Gujarat Urja Vikas Nigam Limited has held as under:-

Quote

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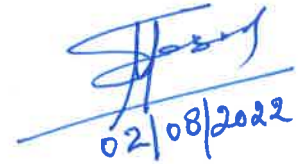
In our view, as observed by us herein above the Act itself provides two separate mode and mechanism for laying down the line by the licensee on the property of the owner or occupier. One mode is the procedure provided under Section 67(2) of the Act read with Rules of 2006. The later mode is available only if the power is so conferred by the appropriate Government under Section 164 of the Act and order is issued for such purpose. If the order is issued under Section 164 of the Act for conferring the power upon a particular licensee – Electricity Company, it will be for the concerned Electricity Company and its officers to follow the mode and mechanism as provided under Telegraph Act and not under Section 67 of the Act read with the Rules of 2006. It is only in absence of order under Section 164 of the Act, any licensee for laying down the land would be required to follow the procedure under Section 67 (2) of the Act read with the Rules of 2006. Under these circumstances, it cannot be said that even if the order under Section 164 of the Act is issued by the appropriate Government conferring power upon the licensee as that of the Telegraph Authority under the Telegraph Act, the licensee would be required to follow the procedure under Section 67(2) of the Act read with the Rules 2006. Therefore, the contention cannot be accepted.”

Unquote

6. Therefore, in my opinion, in view of the specific provisions u/s-67 of Electricity Act, 2003 read with section- 3(1) of Works of Licensee Rules- 2006, the Consumer Grievances Redressal Forum and Ombudsman has no jurisdiction in the present dispute.

(E) DECISION

1. For the reasons discussed above, the appeal of the Appellant is dismissed due to lack of jurisdiction.
2. Therefore, for lack jurisdiction, I do not propose to take up the grounds raised by Appellant/Respondents in this Appeal.
3. The Appellant is at liberty to approach the competent authority as per Works of Licensee Rules, 2006 for redressal of his grievances.
4. In case, the Appellant or the Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.
5. The appeal is disposed of accordingly.



02/08/2022

(M.P. Singh Wasal)
Electricity Ombudsman
For Goa & UTs (except Delhi)

Dated: 02.08.2022