

THE HIGH COURT OF SINDH, KARACHI

Suit No. 1653 of 2022

[K-Electric Limited versus Province of Sindh and others]

Plaintiff : K-Electric Limited through Mr. Ayan Mustafa Memon, Advocate.

Defendants 1-4 : Province of Sindh and three [03] others through Mr. Mehran Khan, Assistant Advocate General Sindh alongwith Defendants 3 and 4; Abdul Mutalib Mannan, Project Manager and Nisar Shaikh, Project Manager, both are present in Court.

Date of hearing : 02-12-2022

Date of Decision : 02-12-2022

ORDER

Adnan Iqbal Chaudhry J. - The Government of Sindh [Defendants] is reconstructing a road, Shahrah-e-Noor Jahan, from Abdullah College to Qalandria Chowk near North Nazimabad, and by letter dated 16.09.2022 the project manager called upon the K-Electric [Plaintiff] to address underground electric cables. By letter dated 23.09.2022, the K-Electric estimated the cost of relocating the underground electric cables at Rs. 394,824,829/- and asked the project manager to pay the same, and until such time to stop construction of the road. Suit was filed by the K-Electric contending that the Defendants nonetheless continue with construction, thereby damaging underground electric cables.

2. By CMA No. 16243/2022, the K-Electric prays that in the interim the Defendants be restrained from constructing the road. Learned counsel for K-Electric submits that under clause 3.1.1 of the Consumer Service Manual, the cost of relocating underground electric cables has to be borne by the Defendants; that unless the Defendants are restrained from carpeting the road, they will bury the electric cables underneath, thereby preventing quick access in the event of a fault. On the other hand, the project manager states that the cables

were reveled upon excavation and thus the amount demanded by K-Electric was not envisaged in the project cost; that these cables have been laid haphazardly without SOP; that had the K-Electric followed SOP, the Defendants would have known of the cables underneath before commencing construction and would have made arrangements with the K-Electric before hand; that the Plaintiff is not required to relocate the cables but only to align them in a channel on one side; and for these reasons the Defendants are not liable to make any payment to the K-Electric.

3. On hearing the matter, counsel for K-Electric was asked whether the K-Electric can, for now, address the exposed electric cables without prejudice to its claim for costs from the Defendants; however, per learned counsel, the K-Electric is bound by the Consumer Service Manual.

4. Thus, as narrated above, there is a stalemate. The K-Electric is not willing to shift or align its underground electric cables until it is paid the cost estimated, and the Defendants are not willing to pay such cost stating that they are not liable. In the meanwhile, construction of a main road lies in limbo to the inconvenience and risk of the public. Documents filed today show that one worker at the site has already been electrocuted, but was fortunate to survive.

5. Clause 3.1.1 of the Consumer Service Manual on which the K-Electric relies to claim shifting costs from the Defendants reads as follows:

“3.1 RELOCATION OF DISTRIBUTION FACILITY

3.1.1 Due to Public Works

If, for public improvement such as road construction, street widening, grading, excavating sidewalk spaces, or for other reasons DISCO has to move distribution facilities from the existing position or new facility is to be provided for improvement of the system, the shifting/relocation/addition of the facility shall be carried out at the cost of the sponsoring agency.”

‘Sponsor’ is defined by clause 2(8) of the National Electric Power Regulatory Authority Eligibility Criteria for Consumers of

Distribution Companies, 2003 to mean “a person, entity, Government development agency, developer of real estate or a housing society situated within the service territory of a DISCO and which sponsors the development of a Sponsored Dedicated Distribution System for the supply of power in a specified area or a specified group of consumers”.

‘Sponsored Dedicated Distribution System’ is defined by clause 2(ix) the said Eligibility Criteria to mean “a system to be developed by a Sponsor for an area where a Common Distribution System does not exist and is required to be developed for provision of electric service.” A similar definition exists in clause 1.4(65) of the Consumer Service Manual itself.

6. From the above it appears firstly that the ‘sponsoring agency’ in clause 3.1.1 of the Consumer Service Manual refers to the sponsor of a *Sponsored Dedicated Distribution System*. It is not the case of K-Electric that electric cables underneath the public road being constructed were laid by it as a Sponsored Dedicated Distribution System. Secondly, the ‘Consumer Service Manual’ is defined in Rule 2(xxviii) of National Electric Power Regulatory Authority Licensing (Distribution) Rules, 1999 to mean “the manual of instructions developed by the licensee and approved by the Authority (NEPRA) detailing instructions and guidance to the consumers”. Clause 1.2 of the Manual itself makes it applicable to ‘consumers’. Therefore, I do not see how K-Electric can compel a non-sponsoring Government Department constructing a public road to make payment under the Consumer Service Manual. Learned counsel then submits that on previous occasions as well, while undertaking development projects in the city, Government Departments usually pay the K-Electric for shifting underground or overhead electric cables. While that may be so, however, where the Government contracts the services/expertise of K-Electric for shifting electric cables whilst undertaking public projects, that is apparently independent of the Consumer Service Manual and is completely different from saying that said Manual is enforceable at law against the Government where it is not acting as a consumer.

7. In the facts presented, this is not a case of aerial cables visible before commencement of construction, but where underground electric cables were discovered after the excavation. Separate from licenses granted under the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, the license to lay down or place electric supply lines for conveyance and transmission of energy is granted by the Provincial Government under section 3 of the Electricity Act, 1910. The procedure for breaking of streets (includes roads) to lay electric cables is also dealt with by the Electricity Act, 1910, section 13 whereof envisages that before doing so, the licensee (in this case, K-Electric) shall give prior notice to the person responsible for repairing the street (in this case, the Provincial Government) along with a section and plan of the proposed works for approval.

8. Thus far, nothing has been placed on the record by the K-Electric to demonstrate that the electric cables now unearthed had been laid by it pursuant to any plan/approval duly granted under the Electricity Act, 1910. Therefore, there is force in the submission of the project manager that since these cables were unknown, the costing of the road could not factor in the shifting of such cables, and resultantly, the Defendants cannot be compelled to pay the K-Electric for the same. Under the circumstances, the K-Electric has not been able to make out a *prima facie* case for restraining the completion of the road. The balance of convenience is also in favor of the Defendants and the public for whom the road is intended. Therefore, the listed applications are dismissed.

JUDGE

*PA/SADAM