

Article 12(C).

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இலங்கை மனித உரிமைகள் ஆணைக்குழு  
HUMAN RIGHTS COMMISSION OF SRI LANKA

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திகதி } 28/02/2018  
Date }

K.C.Rasadari  
Lakshmi Market Bare,  
Ragalakanda  
Alauwa

**Complainant**Complaint Number: **HRC/4036/13/L-13****vs.**

1. Chief Electrical Engineer  
Ceylon Electricity board,  
Katana road,  
Kegalle
2. Divisional Secretary  
Office of the Divisional Secretary,  
Warakapola

**Respondents****A. THE COMPLAINT**

1. The Complainant is the daughter of a jaya bhumi landowner who has a rubber plantation in Alauwa since 1991.
2. The Complainant states that the Respondents have installed electricity lines over the Complainant's property without her permission.

**B. RELEVANT FACTS**

3. One Jayagath Kumara made an application to the 1<sup>st</sup> Respondent for an electricity connection on 08.03.2013. However, the Complainant's father K.A. Podi Appuhami, expressed his objection when his land was being measured to supply electricity to Jagath Kumara.
4. Thereafter, the 1<sup>st</sup> Respondent issued a notice to the Complainant's father on 20.03.2013 to seek permission to install an electricity line over his property.
5. As the Complainant's father did not respond to the notice, the 1<sup>st</sup> Respondent by letter dated 2013.04.23, instructed the 2<sup>nd</sup> Respondent to hold an inquiry. However, the Public Utilities Commission, by letter dated 2013.06.17, citing Section 25 of the *Sri Lanka Electricity Act No.20 of 2009*, has instructed the 1<sup>st</sup> Respondent that responsibility to obtain permission to install an electricity line lies solely with the 1<sup>st</sup> Respondent.

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Head Office }

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14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04.  
14, R. A. De Mel Mawatha, Colombo - 04.

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Chairperson }

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6. Thereafter, an inquiry was held with the Grama Niladari officer where the Complainant's father agreed that the said land is adjoining a Government owned land and necessary steps should be taken to measure the land.
7. By letter dated 07.10.2013 the Public Utilities Commission has informed the 2<sup>nd</sup> Respondent that according to the *Sri Lanka Electricity (Amendment) Act, No. 31 of 2013*, the 2<sup>nd</sup> Respondent should decide on matter relating to granting of an electricity line on, under or over any land.
8. On 07.01.2014, the Complainant states that without prior notice, the 2<sup>nd</sup> Respondent and other officers have come and measured her property and surrounding areas. The Complainant's father issued a letter questioning the 2<sup>nd</sup> Respondent as to why he was not informed that his land was being measured on the said date.

**C. PROCEEDINGS BEFORE THE HUMAN RIGHTS COMMISSION**

9. An inquiry was held on 07.08.2014 before the Human Rights Commission.
10. At the inquiry, the 1<sup>st</sup> Respondent stated that as the 2<sup>nd</sup> Respondent did not have authority to conduct an inquiry, the 1<sup>st</sup> Respondent together with the applicant for electricity, Vasantha Kumara, had an inquiry where it was decided to provide electricity to the applicant.
11. The 1<sup>st</sup> Respondent accepted that to determine the boundaries of the Complainant's land, the 2<sup>nd</sup> Respondent needs to intervene in this matter.

**D. OBSERVATIONS**

12. In the first instance, when the 1<sup>st</sup> Respondent did not receive a response from the landowner, the 1<sup>st</sup> Respondent was to hold an inquiry with the 2<sup>nd</sup> Respondent. However, after receiving instructions from the Public Utilities Commission that the 1<sup>st</sup> Respondent had the sole authority to conduct an inquiry under the 2009 Act, the said inquiry with the 2<sup>nd</sup> Respondent did not take place. However, at the inquiry before the Human Rights Commission the 1<sup>st</sup> Respondent disclosed that an inquiry was held with the applicant for electricity and it was decided that he should be granted electricity. It is unclear on what ground an inquiry was held and a unilateral decision was arrived at to grant electricity to the Applicant without providing the Complainant, who is the land owner, an opportunity to be heard.
13. In the second instance, the 1<sup>st</sup> Respondent conducted the inquiry with the Grama Niladari officer. *Sri Lanka Electricity Act No.20 of 2009* does not stipulate that a Grama Niladari officer was needed to conduct the inquiry.
14. *Sri Lanka Electricity (Amendment) Act, No. 31 of 2013* which was passed in August 2013 states that the 2<sup>nd</sup> Respondent should conduct an inquiry when the landowner objects to a way leave. This was brought to the notice of the 2<sup>nd</sup> Respondent by the Public Utilities Commission by letter dated 07.10.2013. However, the 2<sup>nd</sup> Respondent has not intervened in this matter to conduct an inquiry and obtain a way leave from the landowner.
15. Presently, the 1<sup>st</sup> Respondent needs to follow the procedure stipulated in *Sri Lanka Electricity (Amendment) Act, No. 31 of 2013* to obtain a lawful way leave over a land to install an electric

line. While the 1<sup>st</sup> Respondent during the inquiry at the HRC had recognized that the 2<sup>nd</sup> Respondent needs to address the objections by the landowner, the 1<sup>st</sup> Respondent as the lawful licensee has not taken steps to refer this matter to the 2<sup>nd</sup> Respondent.

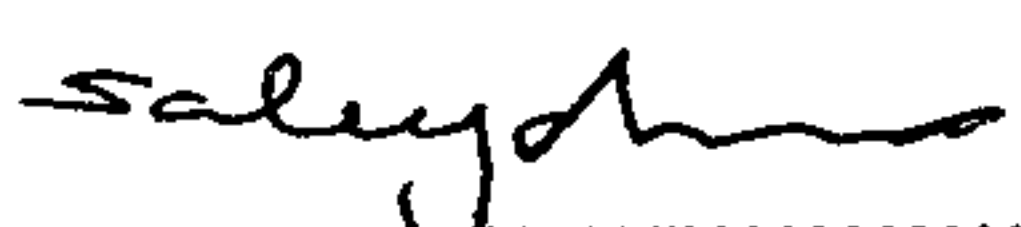
16. Therefore, it is evident that the 1<sup>st</sup> Respondent has acted arbitrarily in installing an electricity line over the Complainant's land.
17. Even though the 2<sup>nd</sup> Respondent was instructed by the Public Utilities Commission to conduct an inquiry under the *Amendment Act No. 31 of 2013*, the 2<sup>nd</sup> Respondent has not taken necessary steps in this regard.

**E. CONCLUSION**

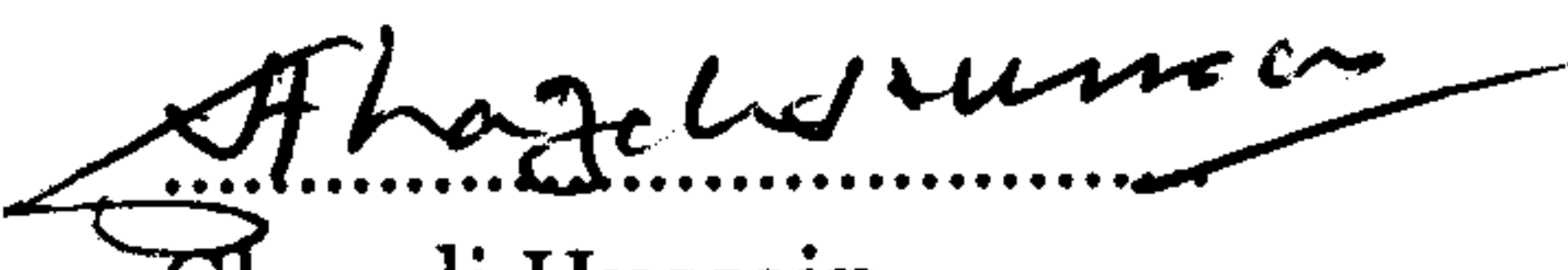
18. Through the arbitrary and unlawful acts and omissions by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, it is concluded that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have violated the Fundamental Rights of the Complainant guaranteed by Article 12(1) of the Constitution.

**F. RECOMMENDATIONS**

19. On the finding of violation of Article 12 (1) of the Constitution, we make the following recommendations:
  1. In categorical condemnation of the violation committed by the Respondent public body, the recommendation report of this case is hereby sent to the Chairman, Ceylon Electricity Board in terms of the provisions in section 15 (6) of the HRC Act.
  2. In terms of Section 15(3) (c) of the HRC Act, the Commission hereby recommends the 1<sup>st</sup> Respondent to consider for an alternative way leave to draw the electricity line, to provide electricity to the 3<sup>rd</sup> party concerned, at the expense of Ceylon Electricity Board.
  3. The Commission also recommends the Respondents to pay the Complainant a sum of 25000/ as compensation and costs, payable by each respondent, totalling Rs. 50000/.
  4. In terms of Section 15(7) of the HRC Act, the Commission hereby recommends the Respondents to report to the Commission regarding the actions taken to implement the recommendation within 3 months from the date of this recommendation.

  
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Saliya Pieris PC  
Commissioner  
Human Rights Commission of Sri Lanka

**Commissioner**  
Human Rights Commission of Sri Lanka  
No. 14, R.A. De Mel Mawatha,  
Colombo 04.

  
.....  
Ghazali Hussain  
Commissioner  
Human Rights Commission of Sri Lanka

**Commissioner**  
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Copy to- Chairman, Ceylon Electricity Board