

KERALA STATE ELECTRICITY REGULATORY COMMISSION
Thiruvananthapuram

Present : **Shri. Preman Dinaraj, Chairman**
Shri. S. Venugopal, Member

O.P.No. 09/2018

In the matter of: Claim of enhanced compensation towards loss sustained by the petitioners to their landed properties consequent to cutting of trees for drawing 400 kV Mysore-Kozhikode Inter-State double circuit line by the respondent- Petition filed under Section 67 (4) of the Electricity Act, 2003.

Petitioners: **Bro. Sebastian,**
Superior and Director,
Assisi Sneha Sadhan Ashramam (Calvery Ashram),
Franciscan Brothers, Panavally P.O, Mananthavady,
Wayanad District.

Petitioner
Represented by : **Adv. M.O. Thomas**

Respondent: **M/s Power Grid Corporation of India Limited,**
represented by the Deputy General Manager,
Areekode, Ugraparam P.O, Malappuram District.

Respondent
Represented by: **Adv.V.S.Vineeth Kumar**

Order dated 13 . 03. 2020

1. Bro. Sebastian (hereinafter referred to as the petitioner) filed this petition before the Commission under Section 67(4) of the Electricity Act, 2003 read with Rule 13(2) of the Works Licensees Rules, 2006, claiming additional compensation of

Rs.1,25,00,000/- (Rupees One Crore and Twenty Five Lakhs only) towards enhanced compensation from the respondent, Power Grid Corporation of India Limited, (hereinafter referred to as PGCIL) for the loss sustained to the petitioner on account of cutting of trees by the respondent, while drawing 400 KV Mysore-Kozhikode Inter-State double circuit line and also with the following prayers:

- (a) Direct the respondents to file a statement relating to the date of Mahazer, date of award and such other details and to file statement relating to amount awarded to yielding crops and non-yielding crops separately;
 - (b) Direct the respondent to pay the costs;
 - (c) Grant such other reliefs.
2. The petitioner is the owner of the garden land in Sy.No.353 of Thirunelli village in Mananthavady Taluk. The respondent, M/s Power Grid Corporation of India Limited has cut down his valuable trees in order to erect the tower and drawing 400 KV Mysore-Kozhikode Inter-State Double circuit line. The Respondent had passed four awards towards compensation without considering market value, compensation for diminishing land value and future loss of yield. The petitioner has received the amount under protest. On being aggrieved over these awards the petitioner filed this original petition.
 3. The Commission admitted this petition as OP No.09/2018 and hearing on this petition was conducted on 17.9.18, 27-2-19, 07-05-2019 and 16-09-2019. During the hearing, Adv.M.O.Thomas presented the petition and appeared on behalf of Bro.Sebastian and Adv.V.S.Vineethkumar presented the preliminary objection, filed reply statement and appeared on behalf of the Power Grid Corporation India Limited.
 4. The summary of the issues leading to the filing of this subject petition is given below:
 - i. M/s Power Grid Corporation of India Limited laid down 400 KV Inter-State Double Circuit Line from Kutta (Mysore) to Kozhikode under prior approval accorded by the Ministry of Power, Government of India under Section 68 (1) of the Electricity Act, 2003, for the construction of Inter-State double circuit line.
 - ii. The petitioner is the owner of the garden land in Sy No. 353 of Thirunelli village in Mananthavady Taluk. The PGCIL had cut down valuable trees from the petitioner's property in order to erect the line. The respondent had awarded a total amount of Rs.36,88,024/- towards compensation in four cases.

- iii. Petitioner has well maintained his agricultural improvements which are high yielding varieties in high potential areas and prime locations which is badly affected for the drawing of Line;
 - iv. The respondent has given only a meagre amount towards compensation without following the prevailing guidelines and also without considering the fact that productivity of the remaining area is highly affected and large numbers of coffee trees were damaged;
5. The petitioner had also produced copies of the Judgments dated 06-01-2015 and 13-01-2015 passed by the Court of Additional District Judge-II, Kalpetta, Wayanad in OP(E)213/09 and OP(E)8/2011 respectively. In both cases, the Hon'ble District Court had not examined the admissibility of the claim for compensation on merit, but dismissed as not pressed.
6. The Respondent, PGCIL also submitted arguments by filing preliminary objections on the following grounds: -
- a) The original petition claiming additional compensation is not maintainable for want of jurisdiction for this Commission. The respondent is a "Govt of India Enterprise" and a "Central Transmission Utility" under the control of Ministry of Power and also a "Govt Company" in terms of the Companies Act, 1956. The Respondent is also a transmission licensee under the provisions of the Electricity Act, 2003 and the Indian Telegraph Act, 1885.
 - b) The subject matter of the petition pertains to drawing of Kutta-Kozhikode 400 KV Power Inter-State Transmission Line which was executed and approved by the Ministry of Power, Government of India.
 - c) In case of alleged insufficiency in compensation paid or released, the affected party can approach District Judge, the appropriate Legal Forum for redressal.
 - d) The original petition is not maintainable since the Commission has no jurisdiction to entertain the petition. According to him as per the provisions of the Indian Telegraph Act, 1885 it is the District Judge who is having territorial jurisdiction and is the competent authority to adjudicate up on the claim for additional compensation. He further argued that being a Central Transmission Utility, the appropriate Commission in respect of the Respondent is the Central Electricity Regulatory Commission, as per S.67(4) of the Electricity Act, 2003. He has also produced a copy of the Judgment of the Hon'ble Apex Court in *Power Grid Corporation of India Limited v. Century Textiles & Industries Limited & Ors* (Judgment dt. 14/12/2016 in Civil Appeal No. 10951 of 2016) along with the argument notes to substantiate his arguments.

7. The argument notes submitted by the Respondent was forwarded to the Petitioner for obtaining his comments on it. In reply to the aforementioned arguments, Petitioner has furnished his reply stating that the appropriate Forum for determination and payment of compensation to affected persons is the “appropriate Commission” and as per Section 76(1) of the Electricity Act, 2003 it is the Kerala State Electricity Regulatory Commission as far as the State of Kerala is concerned. Further he had contended that the question of maintainability put forward by the Respondent is barred by the principle of “Res Judicata”, since the said question has already been considered before the Hon’ble District Court, Kalpetta. The said argument note furnished by the Petitioner been forwarded to the Respondent for obtaining his views.
8. In the reply statement filed by the respondent dated 6.8.2019, the respondent had reiterated their argument that since the Respondent is a Central Transmission Utility, the appropriate commission is the CERC for determining the issue. He further contended that the principle of ‘Res Judicata’ is not applicable to an erroneous decision as to jurisdiction and the petition before the Commission as well as before the Hon’ble District Court, Kalpetta on the earlier occasion filed u/s 67(4) of the Electricity Act, 2003 read with S.13(2) of the Works of Licensees Rules, 2006 is not maintainable either in law or facts.
9. In the light of the rival contentions, the following questions would arise for consideration.
 - (a) **Whether the question of maintainability of the petition is attracted by the principle of “res judicata” as alleged by the petitioner?**
 - (b) **Whether the State Commission is the “appropriate commission” and has jurisdiction to entertain the question of enhancement of compensation and its maintainability?**
10. On these questions, submissions were made by the learned counsel for the parties by filing statements which we have examined in detail.

Analysis and decision of the Commission

Question No- 1

11. The first question for our consideration is as to “whether the petition is attracted by the principle of res judicata?

In the hearing conducted by the Commission on 07.05.2019, the Counsel for the petitioner, submitted that earlier, they had filed two petitions before the Hon’ble District Court, Wayanad as OP(E)213/09 and OP(E)8/2011. However, on 20/04/2014, in a similar matter, **in OP(Ele)No.76/2010**, Hon’ble District court held that as per S.67 of the Electricity Act, 2003, the District Court had no jurisdiction to entertain/adjudicate the claim for additional compensation and dismissed the said original petitions with liberty to the petitioner therein to approach the appropriate Commission for seeking the relief. Hence, the petitioner had withdrawn his petitions as not pressed and filed fresh petitions before the Commission.

12. The Original petition No. 213/2009 and OP 8/2011 were filed by one Shri. K.C. Joseph, Manager and Supervisor, Assissi Snehasadan, Ashramam, Panavally, Thirunelli before the Additional District Judge II, Kalpetta, Wayanad under Section 51 of the Indian Electricity Act read with Section 10 and 16 of the Indian Telegraph Act to direct the PGCIL to pay additional compensation to the petitioner with statutory interest from the date of award.
13. The above referred OP (Electricity) **No. 76/2010** was filed by one YenkiyHawwa before the Hon’ble Court of Additional District Judge-II, Wayanad. The Hon’ble Court disposed the case as per order dated **20.12.2014**. In that case, while examining the question of jurisdiction, the respondent PGCIL contended that the District Court has no jurisdiction to entertain the petition. The court dismissed the OP with liberty to approach the appropriate commission for seeking the very same reliefs as sought before that Court, subject to Law of Limitation. It may be noted that since KSERC is not a party to the suit, the above referred order is not a binding precedent as far as KSERC is concerned. Moreover, the Hon’ble Apex Court has decided the legal position in *PGCIL Vs Centuary Textiles and Industries Ltd (Civil Appeal No. 10951/2016)* as per **judgment dated 14.12.2016**.

14. The relevant provision in Civil Procedure Code dealing with the legal principle of res-judicata is given below:

Res judicata. (Section 11 CPC)

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I- The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI- Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]

15. It may be noted that the Hon’ble Apex Court has examined the question of jurisdiction regarding appropriate forum for filing suit for enhancement of

compensation in *Power Grid Corporation of India Limited v. Century Textiles & Industries Limited &Ors* (Civil Appeal Nos. 5399-5400 of 2016). The Hon'ble Apex Court has clarified that *if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the concerned District Judge for this purpose.*

16. The relevant portion of the said judgment is extracted hereunder:

“(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 17 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.

26) These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the concerned District Judge for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated October 15, 2015 in this behalf which inter alia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per the said guidelines.”

17. The Hon'ble Supreme Court in *Mathura Prasad Bajoo Jaiswal &Ors vs Dossibai N. B. Jeejeebhoy* 1971(AIR 2355, 1970 SCR (3) 830) has held thus:

A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as res judicata. Similarly, by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata.

The principle of res judicata is a procedural provision. A jurisdictional question if wrongly decided would not attract the principles of res judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking procedural principle; (Management of Sonepat Co-op. Sugar Mills Ltd. v. Ajit Singh, AIR 2005 SC 1050.)

18. It is a settled legal principle that ***“where a former suit was dismissed by the trial court for want of jurisdiction or for fault of plaintiff’s appearance etc., and pointed out that in respect of such class of cases, the decision not being on merits, would not be a ‘res judicata’ in a subsequent suit.”***(1971 1 SCC 387, AIR 1999 SC 1823, 1980 KLT 690, AIR 1991 SC 993 etc.).

19. In similar situation, the question of jurisdiction regarding the enhancement of compensation has been examined by the Hon’ble Supreme Court in ***Power Grid Corporation of India Limited v. Century Textiles & Industries Limited & Ors (Civil Appeal Nos. 5399-5400 of 2016)*** as cited above. ***As per Article 141 of the Indian constitution, Law declared by Supreme Court the law declared by the Supreme Court shall be binding on all courts within the territory of India.*** Moreover, KSERC is not a party to the suit. The petitioner had withdrawn the case as not pressed before entering into the merit of the case and before deciding the question of jurisdiction. It may be noted that the Kerala State Electricity Regulatory Commission has not been impleaded in these original petitions and no order or direction has been passed by the Hon’ble District Court against this Commission. In view of the above referred decision of the Hon’ble Supreme Court and in view of the factual position discussed above, the argument raised by the petitioner regarding ***the question of res judicata is not applicable in this case.***

Question No. 2.

20. **The second question to be considered as to Whether the State Commission is the “appropriate commission” and has jurisdiction to entertain the question of enhancement of compensation and its maintainability?**

In the hearing conducted on 16.09.2019, the counsel for the petitioner, Adv.M.O.Thomas argued that as per sub-rule 3 of Rule 13 of the Works of Licensees Rules, 2006, the “Appropriate Commission” is empowered to deal with the disputes arises as to the amount of compensation determined under sub-rule (1) of the said Rules and as per the provisions of the Electricity Act, 2003, “Appropriate Commission” means either the Central Regulatory Commission or the State Regulatory Commission as the case may be. The conjunction used here is “or” and not “and”, hence it gives the parties the option of approaching the appropriate forum as and when disputes arises. He also contended that it can be concluded that “Appropriate Commission” means the Commission concerned of each State in respect of the dispute arises within the respective State. In the instant case, since the cause of action arose within the State of Kerala and the Power grid Corporation of India Limited is a Transmission Licensee, the appropriate commission as far as the State of Kerala concerned is the “Kerala State Electricity Regulatory Commission.”

21. In the preliminary objection filed by the respondent PGCIL, it is contended that the case is not maintainable either in law or facts for want of jurisdiction. The respondent is a “Government of India” enterprise and a Central Transmission Utility under the control of Ministry of Power and is a “Deemed Transmission Licensee” as emerged under Section 38 and 40 of the Electricity Act, 2003.
22. It was also contended that “the Government of India” in exercise of power conferred under Section 164 of the Electricity Act, 2003, had passed an Order dated 24.12.2003, vide Gazette of India No.1148 authorizing the Respondent to exercise all powers vested in the Telegraph Authority under Part III of the Indian Telegraph Act, 1885, in respect of electrical lines and electrical plants established or maintained, or to be so established or maintained for Transmission of electricity or for the purpose of Telephonic or Telegraphic communication, necessary for the proper coordination of the works.
23. The Respondent has also produced a copy of said notification as Annexure B. It was also contended that “in case of alleged insufficiency in compensation paid / released to the affected private land owners for the damages sustained during the course of execution of works, then the Jurisdictional District Judge is the

appropriate legal forum for redressal and that even Central Electricity Regulatory Commission does not have jurisdiction to deal with compensation cases.

24. It was also contended that as per Section 16 (3) of the Telegraph Act “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 situated, be determined by him”.
25. The Respondent also invited the attention of the Commission to the following decision, *M/s Power Grid Corporation of India Limited v. Century Textiles & Industries Limited &Ors* (Civil Appeal Nos. 5399-5400 of 2016) reported in (2017) 5 SCC 143):
26. On the basis of the above, the Commission had further directed the Counsel for the Petitioner to submit in writing his arguments to counter the issue of jurisdiction raised by the Counsel for the Respondent, with relevant judgment/ Act / Rule provisions.
27. The Counsel for the Petitioner submitted the following judgments and an order of the Hon’ble Commission to substantiate his arguments that the Commission has ample jurisdiction to entertain the Original Petition:
 1. M/s Pune Power Development Private Limited v. Karnataka Electricity Regulatory Commission (Judgment dated 23/02/2011 in Appeal No. 200 of 2009);
 2. Lanco Power Limited v. Haryana Electricity Regulatory Commission (Appeal No. 15 of 2011); and
 3. Order of the Commission dated 07.02.2017.
28. The Commission has examined the above referred judgments in detail as to whether this Commission has got jurisdiction to entertain the request for enhancement of compensation:

(i) In the first referred Judgment, Appeal No.200 of 2009 was filed by M/s Pune Power Development Private Limited against the order of the Karnataka Electricity Regulatory Commission dated 21.10.2009, whereby the State Commission declared that they have got jurisdiction to adjudicate upon the disputes raised in the petition filed by the Respondents Nos 2 and 3 in the Appeal., ie., M/s Mangalore Electric Supply Company Limited and M/s Power Company of Karnataka Ltd. The dispute that was raised by the 2nd respondent and 3rd respondent was a claim for compensation from the Appellant for alleged violation of a contractual agreement.

Hon'ble APTEL vide the Judgment dated 23.03.2011, observed that even though the Appellant is an Inter-State licensee, they are selling power to the Distribution licensee in the State of Karnataka, thereby having a nexus to the State. Since the procurement of power by the Distribution Licensee from the Trading Licensee is being done in the State of Karnataka, the Appellant falls within the jurisdiction of the State Commission under section 86(1)(b) of the Act. The procurement of power has a direct nexus with the State of Karnataka as the supply is to the Karnataka Distribution Licensee. Hence, Hon'ble APTEL had held that so long as the Distribution Licensees are involved in procurement of power in the State, the State Commission alone will have the jurisdiction under section 86(1)(f) to adjudicate upon the dispute.

(ii) The second referred Judgment is an Appeal No.15 of 2011, filed by M/s Lanco Power Limited against the order dated 02/02/2011 passed by the Haryana Electricity Regulatory Commission, by which the State Commission had directed the Lanco Power Limited to supply 300 MW power to the Haryana Power Generation Company (R2 in the said Appeal) and restrained Lanco Power Ltd from supplying the power to Chhattisgarh Power Trading Company Limited(R3). Challenging the same, Chhattisgarh Power Trading Co.Ltd was also filed an Appeal. No.52/2011 before Hon'ble APTEL.

In the above said Appeal, M/s Lanco power Ltd had contended that it is a generating company having its plant in Chhattisgarh and having its Head Office in Hyderabad. The Power Trading Co.Ltd, to whom M/s Lanco had intended to supply the power, is an Inter-State Trading License, operating under licence granted by the Central Commission and not by the State Commission.

Hon'ble APTEL, vide the common Judgment dated 02/02/2011 in Appeal Nos. 15 & 52 of 2011 had declared that since a deemed licensee of the Haryana State Commission, Haryana Power (R2) is involved in procurement of the power for the State of Haryana, for further distribution of the said power to the consumers of the State of Haryana, the Haryana State Electricity Regulatory Commission alone will have the jurisdiction u/s 86(1)(f) of the Electricity Act, 2003 to adjudicate upon the dispute between the licensee and the generating company.

(iii) The third referred case is a petition filed by the KSEB Limited against M/s Lanco Kondappalli power Limited regarding default in supply of 210

MW RTC power by the Respondent during August to September, 2015, for which a PPA had also been entered into, the Commission, vide the order dated 07.02.2017, overruled the objection raised by the respondents, M/s LKPL, that the dispute is not maintainable for adjudication by the State Commission. It was declared that all disputes between the generating companies and licensees which do not fall u/s 79(1)(a) to (d) are within the jurisdiction of the State Commission and hence, the State Commission had ample jurisdiction to entertain the petition filed by the KSEB Limited.

29. The Commission has examined the above referred Judgments in detail. But none of the Judgments are found relevant and acceptable to the issues involved in this Original Petition. At the same time, the Judgment of the Hon'ble Supreme Court in *M/s Power Grid Corporation of India Limited v. Century Textiles & Industries Limited & Ors (Civil Appeal Nos. 5399-5400 of 2016)* is highly relevant and acceptable to the present issue.
30. The above referred case (*Civil Appeal Nos. 5399-5400 of 2016*) was filed by M/s PGCIL before the Hon'ble Supreme Court against the Judgment of the Chattisgarh High Court in WA No. 42/2008 which was filed by Century Textiles & Industries Limited, in which Hon'ble HC even though upheld the decision of the Single bench with regard to the power of PGCIL to erect the towers on the land leased to the Century Textiles for mining activities, it has been directed to refer the matter to the District Collector concerned for determining the quantum of additional compensation. In the above said Civil Appeal, Hon'ble Apex Court vide Judgment dated 14.12.2016 has held that the authority to determine claims with regard to the compensation is vests with the District Judge as per S.16 (C) of the Indian Telegraph Act, 1885.
31. In the *Power Grid Corporation of India Limited v. Century Textiles & Industries Limited & Ors (Civil Appeal Nos. 5399-5400 of 2016)*, the Hon'ble Apex Court has examined the question of jurisdiction of the District Court in settling the dispute relating to the enhancement of compensation detail. The relevant portion of the decision is extracted hereunder: -

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“(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 17 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...”

21) *Section 10 of the Indian Telegraph Act, 1885 empowers the Telegraph Authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Indian Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Indian Telegraph Act, 1885 obliges the Telegraph Authority to ensure that it causes as little damage as possible and that the Telegraph Authority shall also be obliged to pay full compensation to all person interested for any damage sustained by them by reason of the exercise of those powers.*

22) *As Power Grid is given the powers of Telegraph Authority, Rule 3(1) of the Rules, 2006 ceases to apply in the case of Power Grid by virtue of execution clause contained in sub-rule (4) of Rule 3 which reads as under:*

“3(4). - Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.”

23) *We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary to the provisions of the Electricity Act, 2003.*

26) *These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the concerned District Judge for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated October 15, 2015 in this behalf which inter alia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per the said guidelines.*”

32. **The decision taken by the Hon’ble Supreme Court in the above discussed question of law is a binding precedent. Hence, the argument of the petitioner that this Commission has got jurisdiction to entertain the petition for enhancement of compensation is not correct and liable to be rejected.**
33. The question of “appropriate Commission to adjudicate upon the dispute of an Inter-State Transmission licensee of Electricity” was decided by the Hon’ble Supreme Court in *Energy Watchdog’s* case. Section 79 of the Electricity Act prescribes the functions of the Central Electricity Regulatory Commission. Clause (c) of sub-section (1) of Section 79 specifies the power of CERC to regulate the Inter-State transmission of electricity and clause (f) specifies the power of the Central Commission to adjudicate upon disputes involving generating companies or transmission licensee with regard to matters connected with clauses (a) to (d) of the said Section and to refer any dispute for arbitration. M/s Power Grid Corporation of India Limited had earlier submitted an argument note in which it had been stated that they had drawn the 400 KV Mysore -Kozhikode double circuit line for Inter-State transmission of electricity, the appropriate Commission to adjudicate the dispute regarding the quantum of compensation is the Central Commission.
34. The Commission had invited the attention of the Counsel for the Petitioners to the two Judgments governing the field, one by the Hon’ble Apex Court in *Energy Watchdog v. Central Electricity Regulatory Commission* (Civil Appeal Nos. 5399-5400 of 2016) and the other by the Hon’ble APTEL in Appeal No. 230 of 2017 (between *K.S.K. Mahanadi Power Company Limited v. APERC & Others*), wherein it has been held that the State Commission concerned have jurisdiction only where generation and supply takes place within the State(intra-State), otherwise, the Central Electricity Regulatory Commission has the authority to adjudicate upon the Inter-State disputes as provided under section 79(1)(f) of the Electricity Act, 2003.

35. The Hon'ble Apex Court in the recent decision in "*Energy Watchdog v. Central Electricity Regulatory Commission* (Civil Appeal No.5399-5400 of 2016) has examined the jurisdiction of the Central Electricity Regulatory Commission and State Regulatory Commission in detail. The relevant portion of the said judgment is extracted below:

“Jurisdiction of the Central Commission

21. In order to appreciate and deal with this submission, it is necessary to set out Section 2(5) of the Act which defines appropriate Government as follows:

“2. Definitions. In this Act, unless the context otherwise requires,

(5) "Appropriate Government" means, -

(a) the Central Government, -

(i) in respect of a generating company wholly or partly owned by it;

(ii) in relation to any Inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting

stations and any works of defense, dockyard, nuclear power installations;

(iii) in respect of the National Load Despatch Centre; and Regional Load Despatch Centre;

(iv) in relation to any works or electric installation belonging to it or under its control;

(b) in any other case, the State Government, having jurisdiction under this Act;”

Sections 25 and 30 also have some bearing and are set out as under:

“25. Inter-State, regional and inter-regional transmission.- For the purposes of this Part, the Central Government may, make region-wise demarcation of the country, and, from time to time, make such modifications therein as it may consider necessary for the efficient, economical and integrated transmission and supply of electricity, and in particular to facilitate voluntary interconnections and co-ordination of facilities for the Inter-State, regional and inter-regional generation and transmission of electricity.

*30. **Transmission within a State.**-The State Commission shall facilitate and promote transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity by economical and efficient utilisation of the electricity.”*

*22. The scheme that emerges from these Sections is that **whenever there is Inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86.** It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of Inter-State transmission and Inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub-clause (c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. **The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act.** What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.*

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“27. That this definition is an important aid to the construction of [Section 79\(1\)\(b\)](#) cannot be doubted and, according to us, correctly brings out the meaning of this expression as meaning nothing more than a scheme by a generating company for generation and sale of electricity in more than one

State. Section 64(5) has been relied upon by the Appellant as an indicator that the State Commission has jurisdiction even in cases where tariff for Inter-State supply is involved. This provision begins with a non-obstante clause which would indicate that in all cases involving Inter- State supply, transmission, or wheeling of electricity, the Central Commission alone has jurisdiction. In fact this further supports the case of the Respondents. Section 64(5) can only apply if, the jurisdiction otherwise being with the Central Commission alone, by application of the parties concerned, jurisdiction is to be given to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. We, therefore, hold that the Central Commission had the necessary jurisdiction to embark upon the issues raised in the present cases.”

36. It may kindly be noted that, Hon’ble Apex Court in the Judgment dated 11/04/2017 in *Energy Watchdog v. Central Electricity Regulatory Commission* (Civil Appeal Nos. 5399-5400 of 2016), undoubtedly put forward the principle that the State Commission’s jurisdiction is limited only where generation or supply of power took place within the State. On the other hand, in all cases involving Inter-State supply, transmission, or wheeling of electricity, the Central Commission alone has jurisdiction. In the instant case also, the dispute for enhancement of compensation involves Inter-State supply of electricity, i.e. for drawing 400 KV double circuit line for Inter-State transmission of electricity, from Kutta-Kozhikode.
37. The Commission has examined all the contentions raised by the Petitioner and the Respondent and documents produced in support of their arguments in detail. It may also be noted that the Petitioner could not produce any documents or judgments to substantiate that this Commission has got jurisdiction to entertain these Original Petitions. Moreover, the issues discussed and settled by the Hon’ble APTEL and this Commission in the Judgments/Order produced by the Petitioner have no application in the present OPs.
38. The Judgments produced by the Respondent in *Power Grid Corporation of India Limited v. Century Textiles & Industries Limited & Ors* and the recent decision of Hon’ble Apex Court in *Energy Watchdog* are relevant for deciding the question of jurisdiction.
39. **From the above discussion, it is evident that this Commission has no jurisdiction to entertain a petition regarding the enhancement of compensation for the loss sustained to the petitioner while drawing an Inter-State 400 kV line by the respondent corporation, a Central Government entity and the State**

Commission is “not the appropriate Commission to adjudicate upon the issues involved in the Original petition”.

40. In view of the above findings, we do not find any ground to entertain the petition filed by the petitioner for enhanced compensation. Hence the Original Petition is not maintainable and is liable to be dismissed for lack of jurisdiction.

ORDER

41. In the instant case, the petitioner could not produce sufficient material evidence or documents to substantiate that this Commission has got jurisdiction to entertain the petition. The Respondent, being a Central Government entity and a Central Transmission Utility and the dispute being individual claim of enhanced compensation in respect of drawing of Inter-State Electricity transmission line and in the light of the delineable dictums of the Hon’ble Apex Court in *Power Grid Corporation of India Limited v. Century Textiles & Industries Limited & Ors* and in *Energy Watchdog’s case*, it can be hold that this State Commission has no jurisdiction to entertain this original petition. Hence, this Original Petition is dismissed for lack of jurisdiction.

This Petition is disposed of accordingly.

**Sd/-
S. Venugopal
Member**

**Sd/-
Preman Dinaraj
Chairman**

Approved for issue,

**C.R. Satheesh Chandran
Administrative Officer
(in charge of the Secretary)**