

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**Thiruvananthapuram**

**Present** : **Shri. Preman Dinaraj, Chairman**

**OP Nos. 1/19 to 29/19 & 36/19 to 41/19**

**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:**
1. P M Thomas S/o Mathew,  
Palliparambil House, Pallikunnu P O,  
Anjukunnu Village, Mananthavadi Taluk, Wayanad. (OP 01/19)
  2. Chacko K.M. S/o Mathai,  
Kallakkat House, Panamaram P.O,  
Cherukattoor Village, Mananthavadi Taluk. (OP 02/19)
  3. Joseph Mathew, S/o Mathew,  
Vengachuvattil House, Pallikunnu P.O,  
Kottathara Village, Vythiri Taluk, Wayanad. (OP 03/19)
  4. Shaija Varghese, W/o Biju K.C,  
Nadukudiyil House, Payyampally P.O,  
Mananthavadi Taluk, Wayanad. (OP 04/19)
  5. Sathimani W/o Radhakrishnan,  
Vellancheri House, Panavally P.o,  
Kattikulam, Thrissilery Village,  
Mananthavadi Taluk, Wayanad. (OP 05/19)
  6. K K Mani, S/o Kuttappan,  
Kallerimattathil House,

- Kattikulam P.O, Thrissilery Village,  
Mananthavadi Taluk, Wayanad. (OP 06/19)
7. ThenanMarakkar, S/o Muhammad,  
Thenan House, Tholpetty P.O,  
Thirunelli Village, Vythiri Taluk, Wayanad. (OP 07/19)
8. Aysha, W/o Kunjumammed,  
Kallingal House, Pinangode P.O,  
Chundale Village, Vythiri Taluk, Wayanad. (OP 08/19)
9. Devaki W/o Raman, & Narayanan,  
Puthukkudikunnu House, Pinangode P.O,  
Vengapally Village, Vythiri Taluk. Wayanad. (OP 09/19)
10. Bindu Baby W/o Baby,  
Kunnumpurath House, Payyampally P.O.  
Mananthavadi Taluk, Wayanad. (OP 10/19)
11. Subramanian S/o A.S. Nanjuchetty,  
MullankollyHouse, Edayoorkunnu,  
Thrissilery Village, Mananthavadi Taluk, Wayanad. (OP 11/19)
12. V.T. Karthiayani W/o Vellayan,  
Jaya Nivas, Appapara P.O, Thirunelli Village,  
Mananthavadi Taluk, Wayanad, (OP 12/19)
13. P. Sailthalavi S/o Ibrahim,  
Pallakkattil House, Ambilery, Kalpetta P.O,  
Vythiri Taluk, Wayanad. (OP 13/19)
14. Laly W/o Thomas,  
Thadathil House, Kattikulam P.O,  
Thrissilery Village, Mananthavadi Taluk, Wayanad. (OP 14/19)
15. Annakutty. N.J., W/.o P M Varghese,

- Poothamkunnel House, Payyampilly P.O,  
Mananthavadi Taluk, Wayanad. (OP 15/19)
16. P.J. Thomas S/o Joseph,  
Puthanpurayil House,  
Pallikunnu P.O, Anjukunnu Village,  
Mananthavadi Taluk, Wayanad. (OP 16/19)
17. V.V. KRukhiya W/o Yusuf Haji,  
Salamath Manzil, Koyyode P.O,  
Chembilode Village, Kannur. (OP 17/19)
18. Lakshmi D/o Thimmappan Chetty,  
Pulimoottil House, Panavalli. P.O,  
Thrissilery Village, Mananthavadi Taluk, Wayanad. (OP 18/19)
19. V.V. Saramma W/o P.L. Benniam,  
Puthenpurayil House, Kattikulamp.O,  
ThrissileryVillage, mananthavadi Taluk, Wayanad. (OP 19/19)
20. Subramanian S/o Thimmappan,  
Edayoor House, Kattikulam P.O,  
Thrissilery Village, Mananthavadi Taluk, Wayanad. (OP 20/19)
21. M. P Joseph S/o Philipose,  
Muzhayamkattil House, Panavally P.O,  
Thrissileryillage, Mananthavadi Taluk, Wayanad. (OP 21/19)
22. Sulochana W/o Chandran,  
Vettikkal House, Tholpetty P.O,  
Thirunelli Village, Mananthavadi Taluk, Wayanad. (OP 22/19)
23. P.G. Jose S/o Thomas,  
Palamattathil House, Pallikunnu P.O,  
Anjukunnu Village, Mananthavady Taluk, Wayanad. (OP 23/19)

24. C.K.Bindu W/o Sasi,  
Chengottukunnil House, Kattikulam P.O,  
Thrissilery Village, Mananthavadi Taluk, Wayanad. (OP 24/19)
25. Soudha W/o Jamal,  
Veluthedath House, Meenangadi P.O,  
Purakadi Village, SulthanBathery Taluk, Wayanad. (OP 25/19)
26. P.S. Joseph S/o Steephan,  
Palatty House, Chundal P.O,  
Achooranam Village, Vythiri Taluk, Wayanad. (OP 26/19)
27. P.V. Joseph S/o Varkey,  
Puthiyadath House, Cherukattoor P.O,  
Mananthavadi Taluk, Wayanad. (OP 27/19)
28. Mathew S/o Varghese,  
Madathileth House, Panavalli P.O,  
Thrissilery Village, Mananthavadi Taluk, Wayanad. (OP 28/19)
29. Ishaque S/o Aboobacker Haji,  
Zanha's, Iriveri P.O, Kannur. (OP 29/19)
30. M/s Peevees Plantations Pvt. Ltd. represented by  
P.V Ali Mubarak S/o Alavikutty,  
Director, Peevees office, Nilamboor, (OP 36/19 to 41/19)  
Malappuram District.

Petitioner

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

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

Respondent

Represented by: **Shri. Vijesh Lal, Legal Advisor, PGCIL**

**Order dated 26 . 06. 2020**

1. Shri. P. M. Thomas S/o Mathew and 29 Others (hereinafter referred to as the petitioners) filed these petitions 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 on account of enhanced compensation from the respondent, Power Grid Corporation of India Limited, a Government of India Undertaking (hereinafter referred to as PGCIL) for the loss claimed to be sustained by the petitioners on account of cutting of trees by the respondent, while drawing the 400 KV Mysore-Kozhikode Inter-State double circuit line and with the following prayers:
  - (a) To direct the respondents to file a statement relating to the date of Mahazer, date of award, date of clearance certificate and such other details and to file statement relating to the amount awarded to yielding crops and non-yielding crops separately;
  - (b) To pass an order directing the respondent to pay compensation with statutory interest from the date of cutting of trees till the date of payment;
  - (c) To direct the respondent to pay the costs;
  - (d) Grant such other reliefs.
2. The petitioners are the owners of various pieces of garden land in various survey numbers of Mananthavady and Vythiri Taluks in Wayanad District. The respondent, M/s Power Grid Corporation of India Limited has cut down their trees in order to erect the tower and to draw the 400 KV Mysore-Kozhikode Inter-State Double Circuit line. The Respondent stated to have passed awards towards compensation without considering the market value, compensation for diminishing the land value and loss of future yield. The petitioners have received the amount under protest. On being aggrieved over these awards, the petitioners filed these original petitions.
3. The first petitioner is the owner of the garden land lying in Sy No. 376/6 and Sy No. 401/2 of Anjukunnu villeg in Mananthawady Taluk. The respondent had awarded a total amount of Rs.1,90,906/- towards compensation on account of cutting of trees from his land in different locations and received the amount on 04-10-2012 and on various other dates. The petitioner received the cheque under protest. Tree clearance

certificate was issued on 14-12-2008. The first petitioner claimed an amount of Rs.5,00,000/- towards additional compensation. All the above petitioners have also produced similar documents as shown in the “List of Documents” attached along with their petitions containing the details like ‘number of details of crops’, ‘awarded amount’, ‘date of cutting of trees’ etc. They have also claimed additional compensation and also produced documents to substantiate their claims. A statement showing the details of all petitioners who filed for additional compensation is shown below;

<b>Sl. No.</b>	<b>File No.</b>	<b>OP No.</b>	<b>Petitioner.</b>	<b>Amount Claimed Rs.</b>	<b>Amount of Award passed &amp; Date of receipt.</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
1.	1986/ADL/2018	01/19	P.M.Thomas	5,00,000/-	63,703/- Dt. 19.3.09 91,656/-, dt.4.10.12 9,329/- dt Nil. 26,218/- dt. Nil.
2.	1987/ADL/2018	02/19	Chacko.K.M.	2,50,000/-	1,50,461/- dt. 24.3.08; 5280/- dt.23.9.08
3.	1988/ADL/2018	03/19	Joseph Mathew and others	20,00,000/-	10,90,810/- & 3,000,41/- dt.6.11.08
4.	1989/ADL/2018	04/19	Shaija Varghese	5,00,000/-	99,494/- dt. Nil. 1,07,017/- dt. 6.5.08
5.	1990/ADL/2018	05/19	Sathimani	1,50,000/-	38,613/- dt.29.1.09
6.	1991/ADL/2018	06/19	Mani.KK	12,00,000/-	5,17,330/- dt.26.9.09
7.	1992/ADL/2018	07/19	ThenanMarakkar	8,00,000/-	97,234/- dt. 23.5.11

8.	1993/ADL/2018	08/19	Aysha	5,00,000/-	57,394/- dt.30.4.09
9.	1994/ADL/2018	09/19	Devaki & Narayanan	5,00,000/-	1,69,481/- dt.17.7.09
10.	1995/ADL/2018	10/19	Bindu Baby	7,00,000/-	3,22,027/- dt.26.8.09
11.	1996/ADL/2018	11/19	Subramanian	7,00,000/-	97,250/- dt. 17.09.08
12.	1997/ADL/2018	12/19	V.T.Karthiayani	12,00,000/-	1,98,579/- dt.17.12.09; 3,34,515/- dt.17.8.10
13.	1998/ADL/2018	13/19	P. Saithalavi & others	20,00,000/-	3,44,083/- dt.29.4.10 88,049/- dt.30.4.09 48,715/- dt.29.4.09
14.	1999/ADL/2018	14/19	Lali	8,00,000/=	4,14,373/- dt.15.1.09
15.	2000/ADL/2018	15/19	Annakutty.N.J	13,00,000/-	10010/- dt. 5.3.07 2,78,095/- dt.13.3.08 1,66,247/- dt. 23.4.08 15,133/- dt. 11.7.08
16.	2001/ADL/2018	16/19	P.J.Thomas	10,00,000/-	1,53,544/- dt.30.1.09
17.	2002/ADL/2018	17/19	B.V.K.Rukhiya	12,00,000/-	4,33,753/- dt.16.9.09
18.	2003/ADL/2018	18/19	Lakshmi	6,00,000/-	1,59,593/- dt.21.9.09 14,394/- dt.28.4.09
19.	2004/ADL/2018	19/19	B.V.Samma	2,50,000/-	1,05,670/- dt.15.1.09
20.	2005/ADL/2018	20/19	Subramanian	7,50,000/-	2,41,336/- dt.21.9.09
21.	2006/ADL/2018	21/19	M.P.Joseph	3,00,000/-	1,65,002/- dt.29.1.09
22.	2007/ADL/2018	22/19	sulochana	6,00,000/-	4,95,069/- dt.18.2.10
23.	2008/ADL/2018	23/19	P.G.Jose	1,50,000/-	42,726/- dt.4.10.12
24.	2009/ADL/2018	24/19	C.k.Bindu	2,00,000/-	21,999/- dt.29.1.09
25.	2010/AD/2018	25/19	Soudha	25,00,000/-	1,09,160/- dt.12.8.10

26.	2011/ADL/2018	26/19	P.S.Joseph	40,00,000/- /-	14,91,206/- dt.26.3.10
27.	2012/ADL/2018	27/19	P.V.Joseph	8.00.000/-	30,657, /- dt.4.4.08
28.	2013/ADL/2018	28/19	Mathew	7,00,000/-	2,43,075. Dt. 29.1.09
29.	2014/ADL/2018	29/19	Ishaque	30,00,000/-	4,12,971/ - dt.Nil.
30.	*287/ADL/2019	36/19	M/s Peeves plantations represented by P.V. Ali Mubarak	15,00,000/-	4,02,133/- dt. 27.8.13
31.	*288/ADL/2019	37/19	- do-	17,00,000/-	2,26,618/- dt.23.5.11
32.	289/ADL/2019	38/19	-do-	4,00,000/-	31,979/- dt. 27.6.12
33.	290/ADL/2019	39/19	-do-	19,00,000/-	5,80,254/-dt. 17.8.10
34.	291/ADL/2019	40/19	-do-	15,00,000/-	4,83,118/- dt.27.8.13
35.	*292/ADL/2019	41/19	-do-	25,00,000/-	21,39,526/- dt.Nil

4. The Commission admitted these petitions as OP No.1/2019 to 29/2019 and 36/2019 to 41/2019. It may be noted that this Commission has disposed petitions of a similar nature as per Order dated 13-03-2020 and 23-03-2020 respectively. The OP No.9/2019 was filed by one Bro. Sebastian, Superior and Director, Azizi Snehasadan Ashramam, Francis Brother, Panavally Post, Thirunelli Village, Mananthavady Taluk, Wayanad District. The said OP (NO. 9/2018) was dismissed by the Commission for lack of jurisdiction as per order dated 13.3.2020 after hearing the petitioner along with other petitioners (OP.Nos.13/2018 to 55/2018) on 17.9.18, 27-2-19, 07-05-2019 and 16-09-2019. The OP.Nos.13/2018 to 55/2018 was disposed by this Commission as per Order dated 23-03-2020. During the hearing, Adv. M.O. Thomas presented the petitions and appeared on behalf of the petitioner in OP No.9/2018 and also represented all the above petitioners mentioned in the OP No. 13/18 to 55/18. Adv.Vineethkumar presented the preliminary objection for all the above-mentioned petitions and appeared on behalf of the respondent, Power Grid Corporation India Limited.
5. The OP Nos. 1/2019 to 29/2019 and 36/2019 to 41/2019 was posted for hearing through Video Conferencing Mode on 15-06-2020 at 11 AM. During the hearing,



Adv. M.O. Thomas represented the petitioners in the above petitions, but did not file any specific objection in view of the dismissal of petitions of similar nature. Shri. Vijesh Lal, Legal Advisor, PGCIL appeared on behalf of the respondent, M/S Power Grid Corporation India Limited and filed preliminary objection on behalf of all the above-mentioned petitions.

6. The summary of the issues leading to the filing of these subject petitions is given below:
  - i. M/s Power Grid Corporation of India Limited laid the 400 KV Inter-State Double Circuit Line from Kutta (Mysore) to Kozhikode with 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 petitioners are the owners of the various pieces of garden land in various survey numbers in Wayanad District. PGCIL had cut down valuable trees from the petitioner's property in order to erect the line. The respondent had awarded only a meager amount towards compensation in these cases.
  - iii. Petitioners have properly maintained their agricultural improvements which are high yielding varieties in high potential areas and prime locations which were badly affected by the drawing of the line;
  - iv. The respondent has given only a meager 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.
7. It may be noted that in OP No. 9/2018 the petitioner had 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) No. 213/09 and OP No. (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. But none of the above-mentioned petitioners have produced any documents or orders or judgments containing any direction to file petition before this Commission for adjudication of their disputes.
8. The Respondent, PGCIL also submitted arguments by filing preliminary objections dated 12-06-2020 on the following grounds: -

- a) The original petitions claiming additional compensation are 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 petitions 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 the District Judge, the appropriate Legal Forum for redressal.
  - d) The original petitions are 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 on the claim for additional compensation. It is further argued that being a Central Transmission Utility, the appropriate Commission in respect of the Respondent is the Central Electricity Regulatory Commission, as per Section 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 dated. 14/12/2016 in Civil Appeal No. 10951 of 2016) along with other prayers.
9. In OP No.9/2018 the petitioner filed reply statement 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. In OP No.13/2018 to 55/2018, no reply statements have been filed before this Commission. But in OP No. 9/2018, in the light of the rival contentions, this Commission has examined its maintainability and jurisdiction, examining the following questions for consideration.

- (a) *Whether the question of maintainability of the petition is attracted by the principle of “resjudicata” 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. The major portion containing analysis and decision of the Commission on the above questions is extracted below, -

**“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 Yenkitty Hawwa 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.*

Xxxx      xxxxx      xxx      xxxxxxx      xxxxx      xxxxxxxxxxxxxx

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, 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 any 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 Electricity Regulatory Commission or the State Electricity 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 any 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 which 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 is 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:*

xx

xxx

xx

xx

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 the 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 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: -*

***“(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 affect 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..*

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 the Judgments/Order produced by the Petitioner before this Commission has 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** is 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 rejected.*”

11. In the preliminary objection/counter filed by the Respondent (PGCL) dated 12-06-2020, it is stated that this Commission has no jurisdiction to entertain the petition in view of the judgments of the Hon’ble Supreme Court in *Energy Watchdog Vs CERC* and other order by the Hon’ble APTEL in Appeal No. 230 of 2017 between *KSK Mahanadi Power Company Limited v APERC and Ors*. This contention is not correct and not legally sustainable since the issues involved in these of petitions and subject matter contained therein is different.
12. It is an fact that the decision of the Hon’ble Supreme Court in *Power Grid Corporation of India Limited v. Century Textiles & Industries Limited &Ors* (2017) 5 SCC 143) is squarely applicable to the present issue. But the issues discussed and decided by the Hon’ble Apex Court in *Energy Watchdog’s* case (2017 (6) SCJ 398) and *KSK Mahanadi Power Company Limited v APERC and Ors* case are different, the issues therein arose from the decision of the Apex Court judgment in Adani’s case regarding the scope and extent of the Order dated 31-03-2015 of SC relating to “change in law” and “force majeure” and similar other issues decided by the Hon’ble APTEL as per judgment dated 07-04-2016 including Section 79 (1) (b) and Section 79 (1) (f) of the Electricity Act, 2003. But an error is seen to have crept into the Order dated 13-03-2020 in O P.No.9/2018 and Order dated 23-05-2020 in O P No.13/2018 to 55/2018 of this Commission to the effect that the decision of the Hon’ble Supreme Court in *Energy Watchdog’s* case and decision of the Hon’ble APTEL in *KSK Mahanadi Power Company Limited v APERC and Or’s* case is squarely applicable to this case, is not correct. Instead, the decision of the Hon’ble Supreme Court in *Power Grid Corporation of India Limited v. Century Textiles & Industries Limited &Ors* quoted by the Respondent is squarely applicable and is relevant to this case.
13. In view of the above analysis and decision taken in original petition No. 9/2018 filed by Bro. Sebastian, the Commission issued an order dated 13.3.2020, dismissing the original petition for lack of jurisdiction. Since the OP Nos.13/2018 to 55/2018 was also similar nature, all the above petitions were also dismissed.
14. The subject matter and relief sought for in OP. Nos. 1/19 to 29/19 & 36/19 to 41/19 are of similar nature, this Commission has no jurisdiction to entertain these

petitions also. Moreover, no additional document has been filed by any of the petitioners to prove that this Commission has jurisdiction to entertain these petitions. Hence, these petitions are also not maintainable due to lack of jurisdiction and liable to be dismissed.

**ORDER**

15. In these petitions, the petitioners could not produce any documents or material evidence to prove that this Commission has got jurisdiction to entertain these petitions. No specific objection has been filed by any of the petitioners in these cases in view of the dismissal of previous petitions of similar nature. The Respondent, being a Central Government entity and a Central Transmission Utility and the dispute being individual claims 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*, it can be hold that this State Commission has no jurisdiction to entertain these original petitions. Hence, these Original Petitions are dismissed for lack of jurisdiction.

These Petitions are disposed of accordingly.

Sd/-

**Preman Dinaraj  
Chairman**

**Approved for Issue,**

**C.R. Satheesh Chandran  
Secretary (i/c)**