

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

Petition No. OP 20 /2020

In the matter of : Petition filed by Shri. M.O. Thomas, Advocate for return the Original Petitions filed for compensation and to refund of Court Fee remitted.

Petitioner : M.O. Thomas, Advocate, MGT Buildings, Kalpetta North Post, Wayanad District

Respondent : Deputy General Manager, Power Grid Corporation Ugrapuram Post, Areekode, Malappuram.

Petitioner represented by : Shri. M.O.Thomas.

Respondent represented by : Shri. VijeshLal, Deputy,General Manager (Law) & Shri. Abilash

Order dated 27.08.2020

1. Shri. M.O. Thomas, Advocate, MGT Buildings, Kalpetta North Post, Wayanad District filed a Petition (IA) as O.P. No.20/2020 pleading to return the Original Petitions filed before the Commission as O.P.No.1/19to 29/19 and 36/19 to 41/ 19 and for refund of Court fee remitted while filing the above-mentioned Original Petitions.

2. The background of the petition is as follows:

(i) Shri. P.M. Thomas and 35 others have filed Original Petitions (O.P.No.1/19 to 29/19 and 36/19 to 41/ 19) before this Commission in the matter of claim of enhanced compensation. The Petitioners have filed these petitions 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.

(ii) In similar matter this Commission had examined the above prayers in view of the following questions in O.P. No.9/2018 and the said O.P was dismissed as per Order dated 13-03-2020. The relevant portion of the said Order is extracted hereunder:

- (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?

..... 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”. 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.”

(iii) In view of the decision taken by this Commission in original petition No. 9/2018 filed by Bro. Sebastian as per Order dated 13.3.2020, the OP Nos.13/2018 to 55/2018 were dismissed as per Order dated 23-03-2020.

(iv) Since the subject matter and relief sought for in OP. Nos. 1/19 to 29/19 & 36/19 to 41/19 were of similar nature, the Commission had also dismissed the above petitions due to lack of jurisdiction as per Order dated 26-06-2020.

- 3. In the instant case, this petition is seen to have filed by the petitioner claiming refund of petition fee without mentioning any enabling provision contained in the Electricity Act, 2003 or any Regulations made thereunder so as to enable this Commission to examine its admissibility.
- 4. The petition was admitted as O.P.No.20/2020 and posted for hearing through Video Conferencing Mode on 04-08-2020 at 11 AM and formal communications were sent to the Petitioner as well to the Respondent as per letter dated 16-07-2020 by post and email.
- 5. The Video Conference hearing was conducted as mentioned in Para 4 above. During the e-hearing, Shri. M.O. Thomas, Advocate, the petitioner himself appeared and Sri.

VijeshLal, Deputy General Manager(Law) and Sri. Abhilash appeared on behalf of the Respondent. The petitioner submitted that he filed this petition to get refund of the petition fee already paid to the Commission and to return the Original petitions so as to enable him to file petition before the proper Forum. He further submitted before the Commission that the provisions of CPC is applicable to the Commission and shall file a detailed affidavit containing his argument notes and shall forward a copy to the respondent before 11-08-2020.

6. Sri. Vijesh Lal and Sri. Abhilash appeared on behalf of PGCIL and raised preliminary objections in the following lines:

The Commission is guided by provisions contained in the Regulations issued by the Commission and the Regulations issued by the CERC have no role in the SERC. As per Regulation 69 (1) of KSERC (Conduct of Business) Regulations, 2003, the Commission has inherent powers to issue appropriate Orders to meet the ends of justice or to prevent the abuse of the process of the Commission. The petitioner Advocate had filed two batch of petitions which were dismissed by the Commission and the Respondent has to pay Rs.2,89,300/- (Rupees Two lakh and Eighty-Nine thousand and three hundred only) towards litigation fee to the Advocate for the first batch of cases only. The Commission is empowered to issue Orders to pay costs to the respondent as per Regulation 41. Hence the Commission may issue appropriate Orders to pay costs to the petitioner.

7. In the circumstances mentioned above, the Commission issued a direction to the petitioner to submit detailed affidavit before this Commission on or before 11-08-2020 as promised by the petitioner and to communicate a copy to the respondent also so as to enable the respondent to file objections therein. In case, the petitioner fails to file the affidavit before 11-08-2020 as promised, the Commission may issue appropriate Orders.

8. The Respondent PGCIL filed an affidavit on 10-08-2020 in the following lines:

1. The respondents had earlier filed one batch of petitions before the Commission, which are numbered as OP (E) 13/2018 to 55/2018 (total 43 Nos) for enhancement of compensation and the respondent PGCIL had engaged Sri. Vineeth Kumar, Advocate and the Commission dismissed the petition for lack of jurisdiction. No order was passed as to cost and expenses to the petitioner.

2. The PGCIL had spent an amount of Rs.2,89,300/- to Adv. Vineet Kumar for defending the case. The respondents after getting the dismissal of their 43 Ops', once again approached the Commission by filing another batch of petitions which are numbered as 1/19 to 29/19 and 36/19 to 41/19(total 35 cases). PGCIL made the specific prayer No.2 & 3 to order cost and other expenses towards litigation. But the Commission did not allow the cost.

3. The respondent has again filed an application for refund of court fee which is defended by its Deputy General Manager (Law), SR-II, Kochi on behalf of PGCIL. There is no provision in KSERC Business Regulations, 2003 or any other regulations to refund of court fee.

4. In view of the Hon'ble Supreme Court's decision to impose cost of Rs.10,00,000/- due to unwanted litigation, the Commission may impose cost of Rs.10,00,000/- on the petitioner and to allow Rs.2,89,300/- towards advocate fee paid by the PGCIL in OP(E) no's 1/19 to 29/19 & 36/19 to 41/19. Reasonable cost may be allowed to the petitioner PGCIL in OP (E) No's 1/2019 to 29/2019 & 36/2019 to 41/2019.

9. But the Petitioner has sought further extension of time for one week as per email communication dated 11-08-2020. On 18-08-2020, the petitioner forwarded an argument note through email. The relevant portion of the said note is extracted hereunder:

1. The Original petitions were filed for getting compensation from the respondent (PGCIL) who have cut and removed various kuzhikoors from their property. All the original petitions were dismissed by the Commission due to lack of jurisdiction and the jurisdiction is solely vested with District court. In view of the above position of law the Original petition is not entertainable for lack of jurisdiction by the Commission. When Original petition itself is not entertainable for lack of jurisdiction, it was the duty (task) of the Commission to return the Original petition for representation before the authority having compensation to adjudication. And consequently, the court fee paid under the notification No. 2114/ADL/KSERC/2014, Dated 13-12-2017 was liable to be refunded to the petitioner. The petitioner has paid entire amount as fee by virtue of the said notification.

2. It was consequent in the presentation/submission of Original petition, the present notification dated 01/02/2018 was introduced and the same came into force w.e.f 01-02-2018. It is to be remembered that till coming into force of the aforesaid notification fee payable was only a consolidated amount of Rs.20,000/- alone.

3. The payment of fee was made on account of an error or mistake on the part of the petitioner or his counsel without understanding the jurisdiction of the Commission. Hence ever under section 73 of the Contract Act, money paid by mistake is liable to be refunded.

4. The Commission is bound to return back the file on the ground of lack of jurisdiction. No adjudication process was set in motion and it is only on the basis of preliminary issue regarding maintainability that the Commission has dismissed the Original petitions. Hence, the fee charged/paid is to be refunded to the petitioner.

5. The Order of the Commission is null and void wherein it had no jurisdiction to entertain the proceedings. Therefore, entire fee paid is to be refunded.

Analysis and Decision of the Commission

10. The Commission has examined the subject matter of the petition and the affidavit filed by the respondent PGCIL as well as the averments raised by the petitioner and the respondent and the Argument Note of the petitioner in detail. On analyzing the subject matter contained in the petition and arguments, the following questions would arise for consideration before this Commission:

1. **Whether the Commission has any contractual obligation to refund the fee paid to the Commission while filing an application or petitions. Is there any provision in the Electricity Act, 2003 and Regulations to refund the court fee paid to the Commission and return of plaint made thereunder as requested by the petitioner?**
2. **Whether the respondent PGCIL is eligible to get cost and other expenses spent towards litigation?**

Question No.1

11. The Kerala State Electricity Regulatory Commission is formed under the provisions of the Electricity Act, 2003 and all functions are being carried out in accordance with the provisions of the Electricity Act and the Regulations made there under. Procedure for initiation of proceedings, filing of petitions, admission of petitions, services of notice, remittance of petition fee, hearing of the petition, disposal of petition etc. are governed by the provisions contained in the KSERC (Conduct of Business) Regulations,2003. **Provisions of the Indian Contract Act, 1872 is not applicable to the proceedings of the Commission and the argument of the petitioner to that effect is not maintainable due to the following reasons:**

- (1) **The Commission had never entered in to any contract with the petitioner at any point of time.** The argument of the petitioner that “the payment of fee was made on account of an error or mistake on the part of the petitioner or his counsel without understanding the jurisdiction of the Commission and under Section 73 of the Contract Act, money paid by mistake is liable to be refunded” is not legally sustainable. Section 73 of the Indian Contract Act, is extracted here under:

Section 73 - Compensation for loss or damage caused by breach of contract:

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation. -In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

It may be noted that Section 73 of the Contract Act, 1872 deals with remedy available to the party who suffers such breach. The provision never deals with refund of petition fee. Since the Commission has not entered in to any contract with the petitioner, the question of breach and claim for compensation or damages does not arise. The applicability of Section 73 of the Indian Contract Act has been examined by the Hon'ble Supreme Court in various occasions as extracted hereunder:

“This Section makes it clear that damages arising out of a breach of contract is treated separately from damages resulting from obligations resembling those created by contract. When a contract has been broken, damages are recoverable under paragraph 1 of Section 73. When, however, a claim for damages arises from obligations resembling those created by contract, this would be covered by paragraph 3 of Section 73.

3.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act”.

(Mahanagar Telephone Nigam Ltd. vs. Tata Communications Ltd. (27.02.2019 - SC) : MANU/SC/0288/2019)

Section 73 stipulates a valid and binding contract between the parties. It deals with one of the remedies available for the breach of contract. It is provided that where a party sustains a loss on account of breach of contract, he is entitled to receive, from the party who has broken the contract, compensation for such loss or damage.

(Tarsem Singh vs. Sukhminder Singh (02.02.1998 - SC) : MANU/SC/0158/1998)

Further, in the instant case, no contract has been entered into between the petitioner and this Commission and hence the question of applicability of the Indian Contract Act, 1872 or its breach does not arise. As such the argument of the petitioner to that effect is not legally sustainable. Hence the petitioner's claim for refund of petition fees based on the provisions of an Act which was never invoked in this case by the Commission does not stand the test of reason and therefore liable to be rejected.

12. Moreover, the Electricity Act,2003 is enacted for the purpose of consolidating the laws relating to generation, transmission, distribution, trading and use of electricity and for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies constitution of Central Electricity

Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto. (MANU/ET/0054/2012)

Section 94 of the Electricity Act deals with the powers of the Appropriate Commission as follows:

94. Powers of Appropriate Commission. - (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) discovery and production of any document or other material object producible as evidence;*
- (c) receiving evidence on affidavits;*
- (d) requisitioning of any public record;*
- (e) issuing commission for the examination of witnesses;*
- (f) reviewing its decisions, directions and orders;*
- (g) any other matter which may be prescribed.*

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorize any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.

Section 95 states that the proceedings before the Appropriate Commission shall be deemed to be judicial proceedings and the Appropriate Commission shall be deemed to be a civil court. The relevant section is extracted hereunder:

95. Proceedings before Commission.- All proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860) and Appropriate Commission shall be deemed to be a civil court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 181 of the Act provides for the power of the State Commission to make Regulations. To the extent relevant, the Section reads as follows:

181. Powers of State Commissions to make Regulations. -(1) The State Commissions may, by notification, make Regulations consistent with this Act and the Rules generally to carry out the provisions of this Act.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under Section 3.

14. It may be noted that the Kerala State Electricity Regulatory Commission is functioning in accordance with the provisions of the Electricity Act, and the various Regulations made thereunder based on the delegated powers assigned by the Electricity Act, 2003 in a transparent manner. The Commission is discharging its functions, including the levy of fee, based on such Regulations contained in the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003. Regulation 64 of the said Regulations is extracted hereunder:

64. Fees on applications or petitions. - (1) *Every petition, application or complaint made to the Commission shall be made by payment of the appropriate fees prescribed in the schedule of fees as per Annex II to these Regulations. Provided that the petition/application shall be accompanied by a fee of Rs.10,000/- only and the balance fee payable, if any, shall be paid within two weeks of the admission of the petition/application.*

(2) *The fees payable under these Regulations shall be paid by means of bank draft or pay order, drawn in favour of the Secretary, Kerala State Electricity Regulatory Commission, payable at Thiruvananthapuram.*

(3) *The fee received shall be entered in a register prescribed for the purpose as per Annex III to these Regulations.*

(4) *The fees received by the Secretary of the Commission under these Regulations shall be remitted to the State Electricity Regulatory Commission Fund.*

The Commission, in exercise of powers conferred by sub-section (1) of Section 181 of the EA Act, and after considering the request of various stakeholders decided to re-fix the fee. The final notification was issued after obtaining suggestions and objections from the general public. Accordingly, the Commission as per Notification No.2114/ADL/KSERC/2014 dated 01-02-2018 has amended the fee structure as shown below:

(iv) Action while undertaking works, compensation etc. by licensee under section 67 (3)	1% of the claim amount subject to a minimum of rupees five hundred.
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15. The petitioner filed this petition mainly with a prayer to refund of petition fee remitted by the petitioner while filing petition bearing OP Nos. 1/2019 to OP Nos.29/2019 and OP Nos.36/2019 to 41/2019. The petitioner had filed petitions of similar nature including these petitions before the Commission on various dates from 27-03-2018 to 28-02-2019. The Commission had admitted these petitions after due process of law as stipulated in the Electricity Act and the Regulations concerned. Since all proceedings of

the Commission are deemed to be judicial proceedings, a final decision has to be taken only after complying with the procedure stipulated in the said Regulations in a transparent manner.

16. The first petition bearing No.9/2018 was filed by one Bro. Sebastian, Assisi Snehasadan Ashramam (Calvery Ashramam) claiming enhanced compensation on the following awards:

Awarded amount	TC No	Date of Award	Date of Receipt
Rs.4,93,494/-	TC 26/2007	14-12-2007	22.12.2007
Rs.4,21,988/-	TC 27/2007	14-12-2007	22.12.2007
Rs.5,99,029/-	TC 402/2008	18-12-2009	
Rs.21,73,513/-	TC 403/2008	18-12-2009	

The first petitioner, who has filed OP No.9/2018 before this Commission, had filed two Original petitions (Electricity) before the Addl District Court, Kalpetta, Wyanad bearing Nos. 213/2011 and 08/2011 respectively for enhancement of compensation. The said cases were withdrawn by the petitioner as not pressed and the Court dismissed the petitions as per Orders dated 06-01-2015 and 13-01-2015. Sri. Babu Mathew and Sri.M.O. Thomas, Advocates appeared on behalf of the petitioner. The relevant portion of the said Orders is extracted hereunder:

3..... The respondent specifically contended that the petition is not maintainable either in law or in facts....In view of Section 67 of the Electricity Act, 2003 (Act 36 of 2003), this Court has no jurisdiction to entertain the above OP and to decide the same on merit. The respondent specifically submitted that the question as to jurisdiction of the court to adjudicate the claim may be considered as a preliminary issue before proceeding with the matter on merit.

5. Today, when the case was taken up for consideration, the learned counsel for the petitioner endorsed that the petition is not pressed. Hence the petition is dismissed as not pressed.

17. The Commission considered the first petition bearing No.9/2018 which was filed by Bro. Sebastian and posted the case for hearing on 17-09-2018 and issued statutory notices dated 03-09-2018 to the parties to attend for the hearing and issued Daily Order therein on 03-10-2018. The OP was adjourned to 27-02-2019 and Daily Order issued on 07-03-2019 for representation of the Respondent. Meanwhile, 43 petitions of similar nature were also filed by various petitioners for the same relief and the Commission admitted these petitions as O.P.Nos-13/2018 to 55/2018. All these petitioners were represented by Sri.M.O.Thomas, Advocate. Since the subject matter of all these petitions are being the same, the Commission has decided to hear all these petitions along with O.P. No-9/2018 and posted the cases for hearing on 02-05-2019. **The respondent filed**

preliminary objection challenging the jurisdiction. The respondent, deviating from its earlier stand taken before the District Court, Wayanad in the same subject matter in OP Nos. 213/2011 and 08/2011 that the District Court has no jurisdiction, had argued in these cases that the Commission has no jurisdiction to entertain these petitions and the appropriate forum is the District Court concerned.

18. The first petition was admitted as OP No.09/2018 and hearing was conducted on 17.09.18, 27-02-19, 07-05-2019 and 16-09-2019 during which the examination of all the connected documents and hearing both parties took place. During the hearing, Adv.M.O.Thomas presented the petitions and appeared on behalf of Bro.Sebastian and other petitioners and Adv.V.S.Vineeth Kumar presented the preliminary objection, filed reply statement and appeared on behalf of the Power Grid Corporation India Limited. The Commission had dismissed the Original petition No. 9/2018 as per Order dated 13-03-2020. The said Order was issued after examining all the contentions raised by the Petitioner in detail and also after examining the objections raised by the respondent. The relevant portion of the said Order is extracted hereunder:

1. 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 OPs 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 Century Textiles and Industries Ltd (Civil Appeal No. 10951/2016) as per **judgment dated 14.12.2016**.

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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.**

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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?

36. 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.

37. 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.

38. **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 said to have been 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”.

39. *In view of the above findings, we do not find any ground to entertain the petition filed by the petitioner for enhance of compensation. Hence the Original Petition is not maintainable and is liable to be rejected.*

ORDER

40. 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 petitions. 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 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 rejected for want of jurisdiction.

19. It is a settled legal position that the Electricity Act, 2003 is a Complete Code. The Period of limitation, procedure for filing petitions, payment of petition fee mode of payment etc. are governed by the provisions contained in the Act and Regulations made thereunder. This legal position has been confirmed by the Hon’ble Supreme Court in various judgments. Relevant portion of some judgments are extracted hereunder:

The Electricity Act, 2003 being a complete code, which is self contained and comprehensive, the provision of Limitation Act, 1963 would not apply.

(T.N. Generation and Distbn. Corpn. Ltd. vs. PPN Power Gen. Co. Pvt. Ltd. (04.04.2014 - SC) : MANU/SC/0271/2014)

...In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.

(B.K. Educational Services Private Limited vs. Parag Gupta and Associates (11.10.2018 - SC) : MANU/SC/1160/2018)

20. In view of the decision taken in OP No.9/2018, as per Order dated 13-03-2020, all the remaining Original petitions bearing numbers 13/2018 to 55/2018 were dismissed as per Order dated 23-03-2020 and O P Nos. 1/2019 to and OP Nos.36/2019 to 41/2019 were also dismissed as per Order 26-06-2020. There is no provision in the Electricity Act or Regulations made thereunder enabling the Commission to refund the petition fee paid to the Commission. The submission that money paid by mistake is liable to be refunded cannot be applied in the present case. **In view of the legal position and the reasons discussed above, the petitioner's request to refund the petition fee paid by the petitioners is not legally sustainable and cannot be considered and hence liable to be rejected.**
21. However the petitioner's request to return the plaint can be considered in view of Regulation 64 of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003. The relevant provision is extracted hereunder:

66. Supply of authenticated copies. -(1) The Commission may, on such terms and conditions as the Commission considers appropriate, provide for the supply of the authenticated copy of the documents and papers available with the Commission to any person.

(2) Any person desirous of obtaining an authenticated copy of any order of the Commission or any document forming part of the records of proceedings before the Commission shall submit an application as per Form 6 attached hereto, accompanied by a fee of Rs.50/- in the form of Demand Draft/Pay Order in favour of the Secretary, Kerala State Electricity Regulatory Commission payable at Thiruvananthapuram.

(3) A Register of Applications for authenticated copy shall be maintained by the Commission in the format as per Annex V to these Regulations.

(4) As far as practicable, the authenticated copy shall be prepared in the order in which the applications are entered in the Register of Copy Applications.

(5) The copies shall be prepared by photocopying process and shall be authenticated by an officer designated, for the purpose, by the Commission.

(6) The fee payable for obtaining an authenticated copy shall be Rs.3/- per page irrespective of the number of words/lines in each page.

In view of the specific provision contained in the Regulation mentioned above, the request of the petitioner to return the Plaint and connected documents submitted by the petitioner can be considered and may be returned subject to the procedure stipulated in Regulation-66.

Question No. 2

2. Whether the respondent PGCIL is eligible to get cost and other expenses spend towards litigation?

22. The respondent PGCIL claimed the cost and legal expenses spent by them due to the reasons and circumstances stated above at Para 8. The said averments can be summarized as follows:
- (i) The respondents after getting the dismissal of their 43 Ops', due to lack of jurisdiction, once again approached the Commission by filing another batch of petitions which are numbered as 1/19 to 29/19 and 36/19 to 41/19 (total 35 cases).
 - (ii) The respondent PGCIL had paid an amount of Rs.2,89,300/- towards advocate fee to Adv. Vineet Kumar to represent in OP (E) 13/2018 to 55/2018 (total 43 Nos)
 - (iii) An amount of Rs. 10,00,000/- may be imposed to the petitioner towards cost for filing unwanted litigation in tune with the decision of the Hon'ble Supreme Court.
23. As discussed above at previous paras, petitions filed before the Kerala State Electricity Regulatory Commission are being dealt in accordance with its statutory powers and decision was taken therein in accordance with the provisions contained in the Electricity Act and the Regulations made there under. The petitioner had filed all these before the Commission on various dates from 27-03-2018 to 28-02-2019. The Commission had admitted these petitions after due process of law as stipulated in the Electricity Act and the Regulations concerned. The Commission had admitted the first case as OP. No.9/2018 and dismissed the case as per Order dated 13-03-2020 after hearing both parties and complying with the principles of natural justice. Other petitions of similar nature were also posted for hearing on 07-05-2019 and 16-09-2019. In view of the final decision taken in OP No.9/2018, all the remaining Original petitions bearing numbers 13/2018 to 55/2018 were dismissed as per Order dated 23-03-2020 and O P Nos. 1/2019 to and OP Nos.36/2019 to 41/2019 were also dismissed as per Order 26-06-2020. Hence the statement of the respondent that the same petitioner filed these petitions after disposal of the first batch of petitions is not correct.
24. It may be noted that the petitioner/respondent himself or an employee can represent before the Commission in the proceedings on behalf of the petitioner as well as the respondent and hence the representation of the Advocate is not necessary. The relevant provision contained in the KSERC (Conduct of Business) Regulations, 2003 is extracted here under:
30. *Representation at proceedings. -*
- (1) *A party to any proceedings under this Chapter may be represented before the Commission in one of the following manners, namely: -*
- (a) In person;**
 - (b) Through an authorised employee; or**

(c) Through an authorised professional who may be an Advocate or a Chartered Accountant, or a Cost and Works Accountant or a Company Secretary or a Graduate/Chartered Engineer, holding a certificate of practice.

Provided that an advocate (legal practitioner) appearing and acting in the proceedings on behalf of any person before the Commission shall file a vakalatnama duly executed by the person for whom he/she appears, if not already filed on the record of the case. A person other than a legal practitioner representing a party shall file a Memorandum of Appearance in the Form 4 attached hereto, duly signed by him/her.

(2) The representation of a party at the proceedings shall include the right to act and plead on his/her behalf, subject to such terms and conditions as the Commission may specify from time to time.

Hence the respondent PGCIL can authorize an employee of their own choice to represent the proceedings pending before the Commission. Since engaging an Advocate is not mandatory to represent the respondent before the Commission, the prayer to allow the amount spent by the PGCIL towards Advocate fee cannot be considered.

25. The Commission has the powers to award cost as stipulated in the Regulation 41 as extracted hereunder.

41. Costs.-(1) Subject to such conditions and limitations as may be directed by the Commission, the cost of all proceedings shall be awarded at the discretion of the Commission and the Commission shall have full power to determine by whom or out of what funds and to what extent such costs are to be paid and shall give all necessary directions for the aforesaid purpose.

(2) The costs shall be paid within 30 days from the date of the order or within such time as the Commission may by order, direct. The order of the Commission awarding costs shall be executed in the same manner as the decree/order of a civil court.

It is also a fact that the Hon'ble Supreme Court in a number of occasions imposed huge amount towards cost for vexatious appeals and frivolous litigations as extracted hereunder:

*It is high time that the Courts should come down heavily upon such frivolous litigation and unless we ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties as well as on learned Counsel who act in an irresponsible manner. (Vide: **Varinderpal Singh v. Hon'ble Justice M.R. Sharma and Ors. : 1986 Supp SCC 719; Ramrameshwari Devi and Ors. v. Nirmala Devi and Ors. MANU/SC/0714/2011 : (2011) 8 SCC 249; and Gurgaon Gramin Bank v. Khazani and Anr. MANU/SC/0718/2012 : AIR 2012 SC 2881)Phool Chandra and Ors. vs. State of U.P. (10.03.2014 - SC) : MANU/SC/0231/2014)***

But in the instant case, all these petitions were Original petitions. No review has been filed. Hence the Commission cannot consider the prayer to order cost and hence there is no Order as to cost.

Order of the Commission

1. The petitioner's prayer to refund the statutory fee remitted by the petitioner in OP No.1/2019 to 29/2019 and 36/2019 to 41/2019 is hereby rejected.
2. The Commission hereby directs to return the Plaint and connected documents subject to the satisfaction of the conditions specified in Regulation-66 of the KSERC (Conduct of Business) Regulations, 2003.
3. There is no Order as to cost.

**Sd/-
Preman Dinaraj
Chairman**

Approved for issue,

**C.R.Satheesh Chandran,
Secretary-in-charge**