

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

GANDHINAGAR

IA No. 01 of 2024

in

Petition No. 1859 of 2020

In the matter of:

Application for urging additional grounds and amendment of prayers under Rule 17 of Order VI of the Code of Civil procedure, 1908.

Petitioner : J B Renewable LLP

Co-Petitioner : J.B. Ecotex LLP

Represented by : Ld. Adv Arijit Maitra.

Vs.

Respondent No. 1 : Dakshin Gujarat Vij Company Limited

Represented by : Ld. Adv. Ranjitha Ramchandran along with Mr. G. D. Bhaya.

Respondent No. 2 : Gujarat Energy Transmission Corporation Ltd.

Represented by : Ld. Adv. Ranjitha Ramchandran along with Mr. S.K. Nair and Mr. S. M. Soni.

Respondent No. 3 : Gujarat Urja Vikas Nigam Ltd.

Represented by : Ld. Adv. Ranjitha Ramchandran along with Mr. Saumil Shah.

Respondent No. 4 : Madhya Gujarat Vij Company Limited

Represented by : Nobody remain present

Respondent No. 5 : Energy & Petrochemical Department Govt. of Gujarat.

Represented by : Nobody remain present.

CORAM:

Mehul M. Gandhi, Member
S. R. Pandey, Member

Date: 26.11.2024.

Order on the Interlocutory Application filed by the Petitioner

1. The Petitioner has in the above matter filed interlocutory application to bring on record subsequent development and consequently urging additional grounds and for amendment of prayers.

2. The Applicant has requested to the Commission to consider addition of following prayer:

(e) to direct the Respondent No. 1 to give set off of the energy i.e., 2569247 units from the month of September 2019 to February 2020 by adjustment in the bills of Petitioner No. 2 for Sept 2019 to Feb 2020.

3. The facts stated in the application are as under:

3.1 The Petitioners are wind farm generator and consumer respectively. The Petitioner have sought relief against denial of Open Access for the third party sale and has challenged the impugned letter dated 30.08.2019 issued by the Respondent No.1

3.2 In meanwhile subsequent development have occurred which are required to be brought on record and consequently the Petitioners are filing the present Application for urging additional grounds and for amendment of prayers.

3.3 The Petitioner has made following Additional Grounds in the Petition after Ground 'I' at para 17 as follows:

J. That the Respondent No. 2 has granted the LTOA and collected the transmission charge from September 2019 to February 2020;

K. That the Respondent No. 1 had denied the LTOA or wheeling of power from the generating station of the Petitioner No. 1 to consumption place of the Petitioner No. 2, on August 30, 2019.

- L. The Respondent No. 1 has not given setoff of the wind energy from September 2019 to February 2020, which is partly and subsequent events after filling of the Petition. The Respondent No. 1 who has denied the LTOA vide its letter dated August 30, 2019 to the Petitioner affecting and the Petitioner No. 2 is deprived from the setoff of the wind energy which is generated and injected from the generating station of the Petitioner No. 1 into the grid and for such energy the Petitioner have paid the necessary transmission charges also, however, the Respondent No. 1 has denied to sign the energy wheeling agreement. Copies of the transmission charge bills, HDFC payment statement, GETCO certificate for share of electricity generated by the wind farm, are collectively submitted.
- M. That action of the Respondent No. 1 to deny the wheeling agreement based on letter dated August 30, 2019 resulted in denial of the setoff of the energy i.e. 2569247 units from the month of September to 2019 to February 2020.
- N. Therefore requested that the said communication dated August 30, 2019 may please be declared illegal arbitrary and also direct the Respondent No. 1 to give setoff of the said energy into the bills of the Petitioner No. 2 monthly bills of September 2019 to February 2020.
- O. That the energy generated from the Petitioner No. 1 generating station injected into the grid and transmitted up to the transmission substation of the Respondent No. 2, from where it was prayed to allow to consume in Respondent No. 1 Discom area. The said energy is received by the Respondent No. 1 and sold to other consumers and recovered the amount from them without paying any amount to the Petitioners. Thus the Respondent No. 1 which is a Government company is violation of the provisions of Act, rules and Regulations and carry out undue profit and deprived the Petitioners to procure energy from the 3rd party sale permitted under the Electricity Act, 2003."

3.4 The Petitioners/Applicant has added prayers After para (e) as under:

"(e) Direct Respondent No.1 to give set-off of the energy i.e. 2569247 units from the month of September, 2019 to February, 2020 by adjustment in the bills of the Petitioner No.2 for September 2019 to February, 2020;"

4. The Respondent DGVCL filed its reply on the Application of the Petitioner urging additional ground and amendment of the Prayers. The gist of the submission of Respondent No. 1 DGVCL on the amendment application filed by the Petitioner are as under:

- a. The proposed amendment seeking relief is barred by limitation
- b. The amendment is not necessary for determining the real question
- c. The amendment is not due to any subsequent event as claimed
- d. The Application for amendment was not made in good faith
- e. The amendment seeks to raise a new issue, enlarge the scope of the Petition and changes character of then Petition.
- f. The Application has been filed after Petitioner and Respondent No. 1 and 3 have already been heard i.e. after trial has commenced and the Petitioner has not fulfilled criteria of Proviso to Order VI Rule 17.

4.1 The Respondent submitted that an amendment cannot be permitted as in effect the Petitioners at a belated stage is seeking to introduce a new case through an amendment and is seeking to enlarge the scope of the Petition to claim set off, which is contrary to the settled principles of law.

4.2 It has been recognised that once the amendment introduces an entirely new dimension to the case of the parties and attempts to claim a relief which was earlier available and given up, such conduct cannot be accepted.

- 4.3 Further, the Respondent No.1 submitted that Order VI Rule 17 provides for amendment which is necessary for adjudication. The above additional grounds and prayer is not necessary to decide the real controversy in the Petition which was on interpretation of the Wind Power Policy 2016.
- 4.4 Further, it is submitted that the amendment sought by the Petitioner is contrary to the Open Access Regulations. When the Respondent No. 1 has denied Open Access and has not signed wheeling agreement, the Petitioner No. 1 could not have injected into the grid from the power project in absence of wheeling agreement. It was entirely open to the Petitioner No. 1 to identify another consumer who fulfils the eligibility as per the Wind Power Policy 2016 but the Petitioner chose not to do so. However, the Petitioner injected into the grid without appropriate wheeling agreement and in fact contrary to the specific denial by the Respondent No. 1 . There is no unfettered right to inject into the grid without appropriate open access and wheeling agreement. When the act of injection into the grid was wrongful, then Petitioner cannot claim any relief for such wrongful action. It is well settled principle that No one can take advantage of its own wrong. Therefore, requested to disallow the application.
5. The matter along with IA No. 01 of 2024 was kept for hearing on 22.10.2024
6. Ld. Adv. Mr. Arijit Mitra appearing on behalf of the Petitioner referred the prayers of the main Petition to submit that the Respondent No. 1 DGVCL has vide communication dated 30.08.2019 has wrongfully denied Long Term Open Access (LTOA) on the ground that wheeling of 2.1 MW capacity from wind project of Petitioner No. 1 JB Renewable LLP under third party sale arrangement exceeds capacity restriction of 50% contract demand at consumption end of Petitioner No. 2 J. B. Ecotex LLP. The said denial of Long Term Open Access by the Respondent No. 1 DGVCL is wholly unlawful in the teeth of GERC Open Access Regulations read with Section 42 of the Electricity Act, 2003.

6.1 It is further submitted that there is no provision in the GERC Open Access Regulations, 2011 which contemplates a restriction that has been placed by the Respondent No. 1 DGVCL by way of aforesaid communication dated 30.08.2019. The Ld. Adv. for the Petitioners further submitted that there is no such restriction in the Gujarat Wind Power Policy, 2016 to disallow Long Term Open Access on the grounds that the quantum to be wheeled under third party sale exceeds 50% of the contract demand at consumption end. The Gujarat Wind Power Policy 2016 specifically restricts the captive use of wind power up to 50% of contract demand, however, there is no such restriction for wheeling of energy from wind power project under third party sale arrangement. Thus, the letter dated 30.08.2019 issued by the Respondent No. 1 DGVCL is also contrary to the Gujarat Wind Power Policy, 2016 and Order No. 03 of 2016 issued by the Commission in the matter of tariff Framework for Wind Power Projects and Other commercial issues.

6.2 He further submitted that the Respondent No. 1, DGVCL has been incorrectly interpreting the provisions of the Wind Power Policy of 2016 against the Petitioners. The restrictions provided in the Wind Power Policy, 2016 with respect to 50% of contracted demand / sanction load is applicable for captive use and there is no such restriction for wheeling of power under third party sale arrangement as being in the present case.

6.3 He further referred the rejoinder filed by Petitioner to the reply submitted by the Respondent No. 1 and reiterated that the 50% restriction provided in the Gujarat Wind Power Policy, 2016 is applicable for captive wind power projects and not for third party sale. The WTG of the Petitioner No. 1 is not captive generator of the Petitioner No.2. The Petitioner No. 1 and 2 are completely two different unrelated entities involving third party transaction, hence the restriction of 50% cannot be applied on the said third party transaction between the Petitioners.

6.4 Ld. Adv. further submitted that the Respondent No. 1 DGVCL is erroneously and unlawfully applying the provision of Clause No. 18.3 of the Gujarat Wind Solar Hybrid Policy, 2018 which is applicable to Hybrid projects. It is submitted that the Wind Turbine Generator installed by the Petitioner No. 1 J.B. Renewable LLP is not Hybrid projects within the meaning of Wind Solar Hybrid Policy 2018 as the Petitioner has not installed any Solar Plant within the premise where the WTG is installed by the Petitioner No. 1. Therefore, the provisions of Wind Solar Hybrid Policy, 2018 is not applicable to the transactions for generation and supply energy by Petitioner No. 1 J. B. Renewable LLP from its 2.1 MW WTG for consumption place of the Petitioner No. 2 J.B. Ecotex LLP under third party sale arrangement.

6.5 The Ld. Adv for the Petitioner submitted that in any case the Open Access has to be granted in accordance with the provisions of Electricity Act, 2003 and Regulation specified by the Commission thereunder. The Respondents are unlawfully acting upon the Policy of the State Government to deny the Open Access.

6.6 He further submitted that the Gujarat Wind Power Policy of 2016 is in nature of general policy which at the most can be considered as guiding document but it is certainly not the directions issued by the State Government under Section 108 of the Electricity Act, 2003 to the State Commission. In any case, the Hon. Supreme Court of India in the catena of Judgements has interpreted the scope of directions issued by Government under Section 108 of the Electricity Act, 2003. As per the law settled by the Hon. Supreme Court of India in its various Judgements, even the directions issued under Section 108 of the Electricity Act, 2003 is not binding on the Commission. The State Government cannot interfere with the adjudicatory powers of the Commission.

6.7 Ld. Adv. further referred Section 42 of the Electricity Act, 2003 and submitted that the Petitioner No. 2 is the Open Access consumer of the Respondent No. 1. The

Petitioner No. 2 is going to pay applicable Open Access charges including surcharges as decided by the Commission for sourcing power from third party Wind Generator i.e., Petitioner No. 1.

6.8 He further referred the reply filed by the Respondent No. 1 DGVCL and submitted that the Respondent has also referred to the provisions of the Solar Power Policy, 2015 to state that the intention of the Government Policy is to provide the restrictions for both types of transactions i.e., captive as well as third party sale and accordingly, the Solar Power Policy also provides for solar capacity restriction up to 50% of the consumer's contract demand for wheeling of power both for captive use as well as Sale to third party. Ld. Adv. submitted that the reference to the provisions of Solar Power Policy by the Respondent No. 1 DGVCL is misplaced and misleading as in the present case the Petitioners are seeking Open Access for Wind Power Project and not for Solar Power project and therefore, Solar Power Policy is not applicable in the present case.

6.9 He further submitted that on one hand the Respondent No. 2 GETCO has already granted the Open Access to the Petitioners and executed bulk power transmission agreement dated 27.09.2018 with the Petitioners and GETCO has been raising the bills towards transmission charges under bulk power transmission agreement, on other hand the Respondent No. 1 DGVCL has unlawfully denied the Open Access and set off of energy at consumption place of the Petitioner No. 2.

6.10 It is further submitted that the Petitioners have filed IA No. 01 of 2024 dated 12.05.2023 placing on record subsequent developments and seeking for additional prayers to direct the Respondent No. 1 to give set off of the energy i.e., 2569247 units from the month of September 2019 to February 2020 by adjustment in the bills of Petitioner No. 2 for September 2019 to February 2020. Ld. Adv. has submitted that during the period from September 2019 to February 2020, 2569247 units was injected in the grid from 2.1 MW WTG of the Petitioner

No.1 for consumption place of Petitioner No.2. However, Respondent No. 1 has not given set off of such energy in the account of the Petitioner No. 2. He further submitted that by way of aforesaid IA No. 01 of 2024, the Petitioner is placing on record subsequent development and additional prayer in nature consequential relief to get set off of the energy i.e., 2569247 units from the month of September 2019 to February 2020 by adjustment in the bills of Petitioner No. 2, which needs to be allowed by the Commission. He submitted that under the Electricity Act, 2003 the Commission is not bound by the Code of Civil Procedure, 1908 and the Commission decide the Petition along with addition prayer made in the IA No. 1 of 2024 without passing formal order on the IA urging for additional grounds and amendment of prayers.

- 7 Ld. Adv. Ranjitha Ramchandran appearing on behalf of the Respondents has strongly opposed to the argument made by the Petitioners on the merit of the case pending the decision of the Commission on the IA No. 01 of 2024 filed by the Petitioners seeking for amendment in the Petition along with addition in the prayer. She further submitted that the Respondent has already filed its reply objecting to the admissibility of IA filed by the Petitioner. She further submitted that the main Petition was filed in the year 2020 wherein, the Petitioner did not disclose the fact regarding injection of 2569247 units from 2.1 MW WTG of Petitioner No. 1 during the period from September 2019 to February 2020 and getting set off of such energy against the consumption of Petitioner No. 2. This is not the case of subsequent development or discovery of new facts/evidence which requires amendment in the Petition and prayer therein. There can't be any prayer for set off of energy in absence of wheeling agreement with Respondent No. 1 DGVCL.

- 7.1 On the aspects of applicability of the CPC to the Commission as argued by the Petitioner, she submitted that the amendment to the Petition cannot be allowed by the Commission at any stage *de hors* to the provisions of the CPC. Under Order VI Rule 17 of the CPC, the amendment to pleadings shall be allowed only if it is necessary for the purpose of determining the real questions in controversy between the parties. The present case involves wheeling of energy injected from WTG of

Petitioner No. 1 for consumption by the Petitioner No. 2 and there cannot be set off of energy without wheeling agreement executed with the Respondent No. 1. Further, there is no reference in the main Petition with regard to injection of energy from the WTG of Petitioner No. 1 and getting set off of such energy in the account of Petitioner No. 2 in absence of agreement with the Respondent No. 1, and at the belated stage the Petitioners are making such claim by way of amendment in the Petition.

7.2 She further submitted that the relief sought by the Petitioner in the present IA are barred by Limitation as the Petitioner is seeking to raise its claim in 2023 based on events related to energy injection from September 2019 to February 2020 which was based on denial of LTOA on 30.08.2019 by the Respondent No. 1. It has been more than three years since the denial of Open Access and three years even from period for which set off is claimed. She further submitted that it has been more than three years from February 2020 which is the last month for which set off is claimed. The purpose of limitation is to ensure that parties do not sleep over their rights and the Petitioner cannot be permitted to raise the issues which are time barred. Even otherwise the Petition is barred by laches and delays. It is settled position of the law that when allowing the amendment defeats the law of limitation, such amendment cannot be allowed.

7.3 The Petitioner has made incorrect statement that the amendment is necessary to place on record subsequent development, whereas the event mentioned in the IA is related to denial of Open Access on 30.08.2019 and issue of injection of energy from September 2019, both the above events was prior to filing of the Petition on 17.12.2019 and therefore, this was not a subsequent event. The Petitioner has not provided any reason as to why it has not raise such issue of injection of energy and claim for getting set off of such energy at the time of filing of the Petition.

7.4 It is further submitted that proceedings in the present case are at advance stage, the pleading are being completed and infect the Petitioner as well as the Respondent had

already been heard on 13.10.2021. Therefore the proviso to Rule 17 of Order VI shall apply which provide that no application for amendment shall be allowed after the trial is commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial. The Petitioner has delayed in raising this issue and cannot be permitted now to raise such issue by way of amendment. No justification /explanation is provided by the Petitioner as to why this issue could not have been raised at the time of filing of the Petition or at the stage of hearing on 13.10.2021.

7.5 It is submitted that the accounts of the Respondent for period for which set off is sought are already been settled and at this stage to require any adjustment would be inequitable and further would affect the other entities.

7.6 She further submitted that amendment sought by the Petitioner is also contrary to the Open access Regulations of the Commission. When the Respondent had denied the Open access and not signed Wheeling agreement with the Petitioners, there could not be question of injection of any energy in the grid from the WTG in absence of the Wheeling agreement. The Petitioner was at liberty to identify another consumer who fulfil the eligibility as per the Wind Power Policy 2016. Therefore there is no unfettered right to the Petitioner to inject energy into the Grid without appropriate Open Access and Wheeling Agreement and cannot claim any relief for such wrongful action.

7.7 She submitted that the amendment sought by the Petitioner is first require to be decided by the Commission before arguing on the merit of the case. In case, amendment is allowed, the Petitioner shall require to amend the Petition and the Respondent shall be given an opportunity to file its reply on the amended Petition.

- 8 In response, Ld. Adv. Arijit Mitra on behalf of the Petitioner submitted that the additional prayers made in the IA is nothing but seeking for consequential relief only. If the Petition is dismissed on the merit, the IA would automatically be dismissed. Accordingly, Ld. Adv. of the Petitioner submitted that the Commission may decide the Petition along with the IA.
- 9 Ld. Adv. Ranjitha Ramachandran for the Respondents objected to the above contention of the Petitioner and submitted that the Application for amendment is to be decided first by the Commission as in case IA is being allowed than the Respondents would be given an opportunity to file the Reply on the amended Petition. Therefore, the Petition cannot be decided without the decision to the Application for the amendment. The Respondent has filed its reply on the main Petition and in case amendment is allowed, the reply needs to be filed by the Respondent on the merit of amended Petition also.
- 10 Heard the learned Advocates of Petitioners and the Respondents. We note that the Petitioner has advanced its arguments on the merit of the case stating that the Commission may decide the Petition along with IA as the IA is filed by the Petitioner to brought on record subsequent development and consequently urging for addition grounds and amendment of prayers. Per contra, the Advocate for the Respondent has strongly urged that the Commission may first decide the amendment Application stating the Respondent has filed its reply objecting to the maintainability of the Application and the Respondent shall require to file amended pleadings in case amendment to the Petition is allowed by the Commission.
- 11 Considering the rival submission of the parties, more particularly when the Respondent No. 1 has objected to the admissibility and maintainability of the Application for amendment, the Commission consider it appropriate to decide first as to whether Amendment to the Petition is to be allowed by the Commission or not and accordingly decide to pass Order in the present IA filed the Petitioners.

12 We have noted the submission of the Petitioners as well as Respondents on the Provisions of Rule 17 of Order VI of the CPC with regard to amendment of pleadings. The Rule 17 of Order VI of CPC, read as under:

ORDER VI

Pleadings Generally

R.1 Pleading – Pleading shall mean plaint or written statement.

R.17 Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose or determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

13 While considering the application for amendment, it is require to consider the Objective behind the Rules and settled position of Law laid down by various authorities. As a general rule, leave to amend will be granted so as to enable to decide the real controversy between the parties, where the amendment will cause no injury to the opposite party, except such as can be sufficiently compensated for by costs or other terms to be imposed by the order. Hence, leave to amend is always granted unless the party applying for amendment was acting mala fide, or that, by his blunder, he had done some injury to his opponent which could not be compensated by costs or otherwise. On the basis of various judgments, following principles should be kept in mind in dealing with the applications for amendment of the pleadings –

- (i) All amendments should be allowed which are necessary for determination of the real controversies in the suit;
- (ii) The proposed amendment should not alter and be a substitute of the cause of action on the basis of which the original list was raised;

- (iii) Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts would not be allowed to be incorporated by means of amendment;
- (iv) Proposed amendment should not cause prejudice to the other side which cannot be compensated by means of costs;
- (v) Amendment of a claim or relief barred by time should not be allowed;
- (vi) No amendment should be allowed which amounts to or results in defeating legal right to the opposite party on account of lapse of time;
- (vii) No party should suffer on account of the technicalities of law and the amendment should be allowed to minimise the litigation between the parties;
- (viii) Error or mistake which, if not fraudulent, should not be made the ground for rejecting the application for amendment of pleadings.

14 We note that the Respondent has objected to the Application for amendment on the ground that the Application is filed at belated stage as the Respondent has already filed its reply and the Petitioner has also filed its rejoinder and thus the pleadings are already completed in the matter. Per Contra, the Petitioner has submitted that the amendment application is nothing but seeking for consequential relief and to place on record subsequent development only. The matter is yet to be decided by the Commission on the merits of the case. If the Petition is dismissed on the merit, the IA would automatically be dismissed and therefore amendment Application is in no way causing prejudice to the Respondent.

15 The submission of the Respondent DGVCL stating that relief sought by the Petitioner in the Application is barred by laches and delay is concerned, we are of the view that the aspects of limitation, laches, delay etc as raised by the Respondent are the factors which require to be decided considering the facts and circumstances of the case and cannot be decided in limine. The Respondent would have liberty to file its amended pleading raising the issue of limitation which will be decided by the Commission as per the law.

16 We have considered the contents of the Application wherein the Petitioner has stated that the Respondent No. 2 GETCO has granted the LTOA and collected the transmission charges from the Petitioner for the period from September 2019 to February 2020. The Respondent No .1 DGVCL has not given set off of the Wind energy of 2560247 units injected for the Period from September 2019 to February 2020 which is partly and subsequent event after filing the Petition. The Respondent No.1 has denied the LTOA vide letter dated 30.08.2019 and therefore the Petitioner No. 2 is deprived from the set off of the wind energy which is generated and injected from the WTG of the Petitioner No. 1 in to the Grid and for such energy the Petitioner have paid the necessary transmission charges to the Respondent No. 2 GETCO, however, the Respondent No. 1 DGVCL had denied to sign wheeling agreement.

17 In the Application, the Petitioner has placed on record the copy of transmission charge bills, HDFC payment statement, GETCO certificate for share of electricity generated by the Wind Farm. It is also stated that the energy generated from the Petitioner No. 1 Generating station injected in to the Grid and transmitted up to the transmission sub-station of the Respondent No.2, from where it was prayed to allow consume in Respondent No. 1 DGVCL supply area. The said energy is received by the Respondent No.1 DGVCL and sold to other consumers and recovered from them revenue at the tariff rate of supply approved by the Commission without paying any amount to the Petitioners. Thus, the Respondent No. 1 DGVCL which is a government company is in violation of the provisions of the Act, Rules, and Regulations and carry out undue profit and deprived the Petitioner to earn revenue by way of energy sale permitted under the Electricity Act, 2003.

18 In the IA, the Petitioner has sought to add following prayer:

(e) to direct the Respondent No. 1 to give set off of the energy i.e., 2569247 units from the month of September 2019 to February 2020 by adjustment in the bills of Petitioner No. 2 for Sept 2019 to Feb 2020

19 We have noted that as per the Petitioner the aforesaid prayer sought to be added is nothing but urging for additional grounds and seeking for consequential relief and no prejudice would be caused to the Respondent in placing on record additional facts based on subsequent developments and seeking for consequential relief. We are of the view that the ground raised in the Application for amendment and prayer sought to be added, though contested by the Respondent, is required to be examined on merit after hearing the parties in detail in the interest of justice.

20 As per the settled position of the Law, the amendments can be allowed by the Court in order to avoid multiplicity of proceedings, where the amendment is a formal in nature, to clarify the pleadings, bona fide omission in making the necessary averments in the plaint etc. In contrast, where amendment is not necessary to determine the real question in controversy, introduction of totally different, new and inconsistent case or changes the fundamental character of the defence and when it is not bona fide and time-barred, and also affects the rights of parties, amendment can be refused. Moreover, at the stage of deciding the Application for amendment, merits of the claim or defence cannot be considered. We are of the opinion that if the amendments is allowed without touching their merits, it would not cause any prejudice to the Respondent as the Respondent would be at liberty to revise its reply and both sides will have opportunity to argue out their case at the time of hearing of the main Petition. The objection on limitation, affecting the right of the parties, etc can be considered after full-fledged hearing so as to finally decide all the issues. Allowing amendments does not mean allowing the Petition. The Petitioner has to prove its case on its own strength.

21 The Petitioner has sought the amendments in the main Petition dated 17.12.2019 by filing the present Application dated 12.05.2023 are concerned, without going into merit of the issues raised by the Respondents against admissibility and maintainability of the amendments in the Petition and reserving the rights of the Respondents intact, the Petitioner is permitted to carry out the amendments. The Parties are at liberty to file pleadings on the amendments prayed in this Application.

The Parties are also at liberty to argue on admissibility and maintainability of the proposed amendment and amended Petition at the time of its final hearing.

22 The Petitioner shall carry out the amendments in the main Petition, as decided in the earlier part of this Order, within a period of one week . The Respondents will be at liberty to file its amended reply/written statement within two weeks thereafter.

23 As decided in the previous hearing, the matter is listed on 28.11.2024 at 11.30 AM.

24 Order accordingly.

Sd/-

[S. R. Pandey]

Member

Sd/-

[Mehul M. Gandhi]

Member

Place: Gandhinagar.

Date: 26.11.2024.

