

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1826 of 2019

In the Matter of:

Petition under Sections 42, 43, 50, 86 & other applicable provisions of the Electricity Act, 2003 read with GERC (Electricity Supply Code and Related Matters) Regulations, 2015, GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and other applicable Regulations of the Commission seeking additional time for completion of 66 kV transmission line for 5000 KVA contract demand and consequently directing MGVL to suspend two months' notice dated 14.08.2019 issued to the Petitioner for levying demand charges on such contract demand on deemed release basis.

Petitioner/Applicant : J. K. Cement Limited
Ahmedabad – Indore Highway,
Village: Vadadala, Taluka: Balasinor,
District: Mahisagar, Gujarat.

Represented By : Mr. D. S. Doshi alongwith Mr. Anilkumar Singhal
V/s.

Respondent No. 1 : Madhya Gujarat Vij Company Limited
Sardar Patel Vidyut Bhavan, Race Course Circle,
Vadodara – 390007, Gujarat.

Represented By : Ld. Adv. Ms. Harsha Manav and Mr. J. R. Shah

Respondent No. 2. : Gujarat Energy Transmission Corporation Limited
Sardar Patel Vidyut Bhavan, Race Course Circle,
Vadodara- 390 007, Gujarat.

Represented by : Ld. Adv. Ms. Harsha Manav and Mr. Vasant Patel

CORAM:

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

Date: 27/04/2023.

DAILY ORDER

1. The matter was heard by the Commission on 05.07.2022 during which Mr. D. S. Doshi on behalf of the Petitioner argued as under:
 - 1.1. This Petition alongwith IA No. 11 of 2019 is filed by M/s J. K. Cement Ltd. and he is representing the Petitioner in these matters also.
 - 1.2. It is submitted that arguments have been advanced by him on behalf of the Petitioner in other matter being Petition No. 1816 of 2019 in case of Indian Oil Corporation Limited vs. Madhya Gujarat Vij Company Limited and the submissions/arguments advanced in said matter are being adopted and may also be considered as arguments on behalf of the Petitioner in the present Petition on the preliminary issue of admissibility and jurisdiction because only some factual aspects with regard to delay in construction, erection and commissioning of the said transmission line and bays, associated elements in this matter are different due to relevant reasons. However, even in this matter, the claim of the demand charge was commenced by the Respondent MGVCL on deemed release basis from 13.10.2019.
 - 1.3. It is submitted that the Petitioner is engaged in the production and marketing of cement and related products. The Petitioner had applied for new contract demand of 5000 KVA from the Respondent No. 1 Madhya Gujarat Vij Company Ltd. (MGVCL) on 17.09.2018 for their cement clinker grinding unit/plant at village Vadadala, Tal: Balasinor, District: Mahisagar.
 - 1.4. It is argued that pursuant to the concurrence report dated 22.11.2018 received from the Respondent No. 2 GETCO, the Respondent No. 1 had issued an estimate on 03.12.2018 to the Petitioner for granting the aforesaid new connection of 5000 KVA to be supplied at EHT level i.e. 66 KV voltage level. The scope of work involved for granting such power demand was laying of 66 KV overhead line of 5.8 km. from the 66 KV GETCO Rozva substation. The Petitioner had accordingly paid the estimate charges of Rs. 4.08 Crores on 01.02.2019 which includes the supervision charges of Rs. 39.96 lacs, GETCO pro-rata charges of Rs. 56.50 lakhs and Security Deposit of Rs. 3.12 crores.

- 1.5. On 11.02.2019, the Petitioner signed HT power Supply agreement with the Respondent No. 1 MGVCL for availing 5000 KVA power supply.
- 1.6. It is argued that as a matter of practice, MGVCL/GETCO mandatorily provide only Option-III to the applicant, wherein transmission line & associated work has to be undertaken by the applicant itself as per the GETCO specifications and approved contractors, on behalf of GETCO, at applicant's cost and risk under the supervision of GETCO. In that case, the Applicant has to pay only supervision charges on the cost of material and labour charges to GETCO. Thus, the applicant has no choice but to accept Option -III given by GETCO/MGVCL.
- 1.7. As per the estimate issued under Option III to the Petitioner, the said transmission line and bay work has to be undertaken as per specification of the Respondent No. 2 GETCO through its approved contractors. The Petitioner, in the interest of early completion, opted to accept the responsibility of erection of the said transmission line on behalf of and under the supervision of GETCO without any objections at its own risk and cost and has accordingly paid only the supervision charges on the cost of material and labour charges.
- 1.8. It is submitted that during the erection of the said transmission line, various issues arose resulting in delay for completing the said transmission line and related work.
- 1.9. It is further argued that as per the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, time limit for release of connection is within 180 days. Thus, upon completion of 180 days from 11.02.2019, when power supply agreement was signed by the Petitioner, the Respondent No. 1, MGVCL issued 60 days' notice on 14.08.2019 to the Petitioner purportedly under Clause 4.33 of the GERC (Electricity Supply Code and Related Matters) Regulation, 2015 to complete the work of 66 KV transmission line and bays and avail power supply within 60 days from the date of notice i.e. by 13.10.2019, failing which the Petitioner shall be liable to pay demand charges and minimum monthly charges for 5000 KVA power supply on deemed release basis.

- 1.10. It is argued that as per the provision of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015, the licensees are required to approach the Commission for any extension in time limit of the work undertaken by them which consists of laying of transmission lines and bays etc. Similar treatment to be also available, if work of laying of transmission line/distribution system etc. is carried out by the Consumer and any delay occurred in completion of work, the extension of time limit be decided by the Commission. The Commission is the appropriate authority vested with right to decide such issues, if any, arisen between the consumer and the Licensee. The Petitioner who is a consumer is not restrained to approach the Commission directly under the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 when issue related to delay in laying of transmission line and associated work or distribution system occurs when such work is carried out by the consumer either for new connection or extension of the contracted demand or work related to fulfilment of new / additional contract demand applied by it to the distribution licensee.
- 1.11. The Respondent No. 2, GETCO has raised preliminary issues regarding admissibility of the Petition on the issue of jurisdiction. The Respondent No. 2 GETCO being transmission utility is not the main contesting Respondent as there is no relief sought against it. The Petitioner has raised the issue with regard to issuance of notice and levy of demand charges by the distribution licensee, MGVL, and hence the contention raised by the Respondent No. 2 GETCO being STU is not much relevant in the matter. If the Commission is satisfied with the response of the Petitioner on the query raised by the Respondent, the Commission may pass appropriate order in accordance with the provision of the Electricity Act, 2003, Rules and Regulations framed under it.
- 1.12. Referring to Clause 4.3 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015, it is submitted that the licensee is responsible for ensuring distribution system upgradation, extension, strengthening to meet the demand of the electricity in the area of supply for which the consumer is liable to pay the cost of extension of service connection as per the GERC (Licensee's Power to Recover Expenditure incurred in providing supply and other Miscellaneous Charges) Regulations, 2005. Thus, the licensee is responsible for carry out the work of laying

down the necessary transmission/distribution network for extension / upgradation of system.

- 1.13. Referring to Clause 4.32 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015, it is submitted that on receipt of the application from the consumer, the licensee shall require to carry out various activities, which includes ascertaining feasibility of work within certain period, issuance of it, if any, additional work required and intimating the same, issuance of demand note, payment of same within time line specified in the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, payment of supervision charges at the specified rate payable by the consumer to the licensee, if the work is carried out by the consumer itself. Further, it is also provided that failure to complete the work within time limit specified in the Regulations, notice to complete the work and avail the power supply within 60 days needs to be issued by the licensee.
- 1.14. It is argued that Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulation, 2015, provides that the licensee can approach the Commission for seeking time limit extension for completion of line work on account of any delay or in case where more time is required. The said provision provides that the licensee to approach the Commission for seeking extension in time limit for completion of the work.
- 1.15. Clause 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulation, 2015 provides that the licensee shall not be responsible for delay, if any, in extending supply, if the same is on account of problems relating to right of way, acquisition of land or delay in consumer's obligation over which licensee has no reasonable control.
- 1.16. Referring to Clause 1.2 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, it is argued that said Regulations are applicable to all Licensees engaged in distribution of electricity in the State of Gujarat.
- 1.17. Clause 9.3 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 provides that bulk power connections are to be released in time

bound manner as per the timelines provided therein, which is 180 days after completion of Demand Notice/formalities by prospective consumers for load above 2500 KVA.

- 1.18. It is argued that the Regulations framed by the Commission provide for certain provisions in respect of licensees and such provisions should be made applicable to consumer also, when work is undertaken by the consumer. The extension in time limit for completion of work granted to the licensee by approaching the Commission as per the Clause 4.37 of the GERC (Electricity Supply Code and related matters) Regulations, 2015 and such rights must be available to consumer when the work is not completed within 180 days due to factors beyond the reasonable control of the Consumer.
- 1.19. Referring to Clause 9.21 to 9.25 of the GERC (Electricity Supply Code and Related Matters) Regulation, 2015, it is submitted that Clause 9.21 provides that the Commission may, in public interest and for reasons to be recorded in writing, relax any of the provisions of aforesaid Code.
- 1.20. Further, Clause 9.22 of the GERC (Electricity Supply Code and related matters) Regulations, 2015 provides that in case of any difficulty arising in giving effect to any of the provisions of said Code, the matter will be referred to the Commission and the Commission shall pass necessary orders. In such matter when the time limit extension sought by the Petitioner due to event of force majeure, hence the Commission may interpret the relevant Clauses of the Regulation and grant relief sought by the Petitioner.
- 1.21. Clause 9.23, of the GERC (Electricity Supply Code and Related Matters) Regulation, 2015 provides that the Commission has inherent power to make such orders as may be necessary for ends of justice.
- 1.22. Clause 9.25 of the GERC (Electricity Supply Code and Related Matters) Regulation, 2015 provides that nothing in the GERC Supply Code expressly or impliedly bars the Commission in dealing with any matter or exercising any power under the Act for which no Codes have been framed and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

- 1.23. Clause 4.37 of the GERC (Electricity Supply Code and related matters) Regulations, 2015 provides that the licensee may approach the Commission, but it is not mentioned that only distribution licensee can approach and thus it has not been confined or limited to the distribution licensee. It is open for other than distribution licensee or at least consumers may have right to approach the Commission, if similar situation has arisen. Therefore, there is no specific provision in the GERC (Electricity Supply Code and related matters) Regulations, 2015 which bars applicability of provisions of the GERC Supply Code to consumers.
- 1.24. It is further argued that if express provisions are provided for directing a particular act to be done in a particular manner, inherent powers cannot be used. In the present case no express provisions are provided restricting the consumers. It is argued that in absence of specific provision of restricting the consumer to approach the Commission for particular subject matter, the consumers have right to approach the Commission and that the Commission can exercise in such case its inherent power. Referring to the Order dated 14.06.2012 in case of *K.P Energy Ltd. Vs. GETCO*, it is submitted that the Commission has granted extension in completion of work of the transmission line to the Petitioner. In that case the captive generating plant set up by the Petitioner, there was delay in completion of transmission system within stipulated period specified in Order No. 1 of 2010 dated 30.01.2010 by the Commission. In that case the Commission has allowed extension of the time limit for completion of the transmission system by the Petitioner. The energy generated from the captive generating plant is to be consumed by the Petitioner. In the present case also the consumer who has opted for construction of transmission system was unable to complete the work due to conditions beyond the control of the Petitioner. There is an issue of force majeure. Therefore, the Petitioner has approached this Commission for extension of the time limit for completion of work and also challenged the Supplementary bill issued by the distribution licensee. The dispute arose between the parties is not dispute between the consumer and licensee. The Commission has power to adjudicate the dispute raised by the Petitioner in the present matter. He also relied on the order of the Hon'ble High Court in SCA No. 16029 of 2019, wherein Hon'ble High Court vide its order 07.01.2020 has decided and directed that the Petitioner may approach the

Commission to decide the dispute between the Petitioner and the Respondent Licensee. Thus, the Hon'ble High Court of Gujarat has also decided in similar matter of *Surya Roshni Ltd. Vs. Gujarat Electricity Regulatory Commission* that this Commission has jurisdiction to decide the dispute between the Petitioner and the Licensee. He further submitted that Order dated 07.01.2020 of the Hon'ble High Court of Gujarat points out that the Commission has jurisdiction to decide the matter. The said Order is not reviewed or modified by the Apex Court.

- 1.25. It is argued that the Commission has inherent power as per the provisions of Clause 9.21 to 9.25 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and decide the matter. Moreover, if justice is not done to the consumer for action by the Respondent, then it is abuse of the process of law. The Commission has power to grant extension by applying Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 to the consumer also.
- 1.26. On query of the Commission that whether the Petitioner has obtained the permission under Section 68 of the Electricity Act, 2003 from the Government, Mr. D. S Doshi submitted that they have obtained necessary permissions from the State Government. He further submitted that the Petitioner has not raised the dispute with regard to billing matter before the Commission. Hence, the contention of the Respondent that it is billing dispute is not correct and the Commission has jurisdiction to decide the dispute between the Petitioner and the Respondent.
- 1.27. The Petitioner further submitted that the relief sought in this Petition is pertaining to extension of the time for completion of 66 KV transmission line work for 5000 KVA contract demand sought from the licensee. The Petitioner is not seeking relief of any levy of demand charge on demand release basis as independent relief in the Petition. The Cause title of the Petition, grounds raised in the Petition and prayers made thereto clearly indicate that independent relief sought in the present Petition is for grant of time limit extension for completion of 66 KV transmission line work. The Petitioner is not seeking relief of levy of demand charges on deemed release of connection considered as per Agreement by the Respondent. Based on above, he submitted that the Commission has jurisdiction to adjudicate dispute.

2. Ld. Adv. Ms. Harsha Manav on behalf of the Respondent vehemently objected the admissibility of the present Petition on a ground that the Petition is filed by the consumer of the distribution licensee, seeking prayer for non-levy of the minimum demand charges by the Respondent No. 1 and challenging the bill issued by the distribution licensee MGVL. The Petitioner has also sought relief to grant extension of time in completion of work. However, the same is only to seek non-levy of minimum demand charges which is also prayer of the Petitioner in this Petition. Thus, the Petitioner is clearly claiming the relief for non-levy of demand charges against the non-completion of work undertaken by itself.
- 2.1. Referring to sub-section 5 and sub-section 6 of Section 42 of the Electricity Act, 2003, it is contended that the Act itself provides that for adjudication of the dispute between the consumer and distribution licensee, if any, the same has to be dealt and decided by the specialized forum with regard to grievance of consumer i.e. Consumer Grievance Redressal Forum (CGRF) constituted under the distribution licensee. As there is a specialized forum provided for redressal of grievance of consumer, no other forum like the Commission has jurisdiction to adjudicate the dispute. It is also argued that the dispute between the Petitioner and the Respondents is not a dispute between licensee and generator under section 86 (1) (f) of the Electricity Act, 2003. It falls under jurisdiction of CGRF constituted under Electricity Act, 2003 and decision of CGRF is challengeable before the Electricity Ombudsman. The prayer of the Petitioner in the present case is not falling within the jurisdiction of this Commission but it falls within the jurisdiction of the CGRF constituted under the Act, Rules and Regulations framed by the Commission. In support of the above, the Respondents relied on the following judgements:
- (a). *Reliance Energy Limited v. Maharashtra Electricity Regulatory Commission* dated 29.03.2006 in Appeal No. 30 of 2005 and batch matters by Hon'ble APTEL.
 - (b). *Chhattisgarh State Electricity Board v. Raghuvir Ferro Alloys Ltd.* dated 28.11.2006 in Appeal No. 125, 126 and 127 of 2006 by Hon'ble APTEL.
- 2.2. The reliance of the Petitioner on decision of the Hon'ble High Court of Gujarat dated 07.01.2020 in Special Civil Application No. 16029 of 2019 in case of *Surya*

Roshni v. Gujarat Electricity Regulatory Commission and other is not applicable in the present case as in the aforesaid judgement, the Hon'ble High Court of Gujarat has considered the *prima facie* view relying on decision in *K P Energy Pvt Ltd. v. Gujarat Energy Transmission Corporation Ltd.* in Petition No. 1206 of 2012 of the Commission. This is only a *prima facie* view of the Hon'ble High Court and this does not preclude the Commission from considering the issue in detail. She further stated that the dispute in case of *K P Energy Ltd v. GERC* is between the generator and the transmission licensee GETCO, while in the present case, the dispute is between the Consumer and the Licensee as well as the dispute is pertaining to the billing dispute wherein the Respondent, MGVCL, has demanded the demand charges relying on the Regulations of the Commission. Hence, such an issue does not fall under the jurisdiction of the Commission but falls within the jurisdiction of the CGRF and the Electricity Ombudsman. None of the section specified in Section 86 of the Act provides that the Commission is empowered to decide the dispute between the consumer and the licensee.

- 2.3. It is further argued on behalf of the Respondents that Regulation 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 states regarding extension of the time referred to licensee and not to the consumer as such.
- 2.4. Similarly, Regulation 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 states with regard to licensee and also says that in case of any delay in completion of the work undertaken by the consumer by itself, the licensee shall not be held responsible for delay, if any, occurred on account of problems relating to Right of way, acquisition of Land or delay in consumer's obligation on which the licensee has no reasonable control.
- 2.5. It is argued that when the Regulations refer only licensee no reliance can be placed by a non-licensee i.e. Consumer. When Regulations itself provide for extension for one entity and not for other entities, others are being excluded.
- 2.6. Referring to the judgement of the constitutional bench of the Hon'ble Supreme Court of India in *PTC India Limited v. Central Electricity Regulatory Commission* [(2010) 4 SCC 603] it is submitted that the Regulations notified by the Commission are sub-legislation and are binding to the Commission.

- 2.7. In support of above, Ld. Adv. for the Respondents also relied on the decision of the Hon'ble APTEL dated 01.03.2012 in Appeal No. 131 of 2011 in *Haryana Power Generation Corporation Limited v. Haryana Electricity Regulatory Commission*.
- 2.8. The argument of the Petitioner that the inherent power of the Commission to decide the present matter is misplaced. It is well settled principle that the inherent power cannot override the express provision of law. The inherent power cannot be exercised contrary to the Regulations. In support of the aforesaid submissions, the Respondents relied on the following judgements of the Hon'ble Supreme Court:
- A. *Arjun Singh v. Mohindra Kumar*, [(1946) 5 SCR 946; AIR 1964 SC 993].
 - B. *Gram Panchayat v. Lokesh Devi*, [1998 SCC Online P&H 1520; (1999) 4 RCR (Civil) 313 (2); PLR (1999) 122 P&H 741 at page 314]
 - C. *Ram Prakash Agarwal and Anr. v. Gopikrishan & Ors.* [(2013) 11 SCC 296].
 - D. *Gujarat Urja Vikas Nigam Limited v. Solar Semi-Conductor Private Limited and others* [(2017) 16 SCC 498].
 - E. *Power Grid Corporation of India Ltd Corporate office v. Green Infra Renewable Energy Limited* [2017 SCC Online CERC 261].
- 2.9. The aforesaid judgements clarify that a provision barring exercise of inherent power need not be express but also may be implied. When the legislature i.e. Electricity Act, 2003 has granted jurisdiction to the CGRF, to adjudicate the dispute between the consumer and the Licensee with regard to the billing dispute etc. the question of utilising inherent power of the Commission does not arise if the same is exercised to usurp the jurisdiction. The exercise of the inherent power cannot affect the substantive rights of the parties. In support of the aforesaid submissions, she relied on the decision of the Hon'ble Supreme Court of India in *Vinod Seth v. Devinder Bajaj & Anr.* [(2010) 8 SCC 1].
- 2.10. It is contended that reliance of the Petitioner on the decision of the Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Limited. Vs. Solar Semi-Conductor Private Limited and others* [(2017) 16 SCC 498] is not applicable in the present case. When jurisdiction of particular subject matter or issue does not fall within jurisdiction of the Commission, any interpretation against said principle is incorrect and arbitrary.

2.11. The Regulations 9.23 and 9.24 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 are procedural in nature and do not affect the substantive rights. Regulation 9.25 is for situation where no code is framed which is not the case in this matter as the Supply Code specifically recognizes certain timelines to consumer and provides for billing raised by the Licensee, thereafter. The relaxation sought by the Petitioner on ground that such relaxation is granted to the licensee and the same is also applicable to the consumer is contrary to the provisions of the Regulations when the Regulations specifically exclude such situations and conditions.

3. In response to the arguments made by the Respondent the Petitioner in rejoinder arguments stated as under:

3.1. The argument of the Respondent, GETCO that Order dated 07.01.2020 of the Hon'ble High Court of Gujarat in case of *Surya Roshni Ltd v. GERC & PGVCL* in SCA No. 16029 of 2019 is only relying on the Commission's Order dated 14.06.2012 in case of *K.P Energy Ltd. v. GETCO* and had not considered the implication of the CGRF Regulations is misplaced and without any merit. The Order dated 07.01.2020 of the Hon'ble High Court of Gujarat makes it amply clear that while passing the order, the Hon'ble High Court of Gujarat has considered the jurisdiction of the CGRF as well as the Commission's Order dated 14.06.2012 in case of *K.P Energy Ltd. v. GETCO* and relegated the matter to the Commission. In the said case, the Commission vide its letter dated 27.02.2019 gave reply to approach CGRF of the PGVCL which was under challenge. The Hon'ble High Court of Gujarat has after considering the submissions made by the parties passed an Order dated 07.01.2020 in SCA No. 16029 of 2019 relying on the decision of the Commission in the *K.P Energy Ltd. v. GETCO* case relegated the matter to the Commission for deciding the dispute between the parties. Hence, the submissions of the Respondents that in the present case the dispute is not between the licensee and the generating company but the dispute is between the Consumer and licensee and therefore the Commission has no jurisdiction is not correct. Hence the Commission has no jurisdiction is not correct is also against the decision of the Hon'ble High Court of Gujarat.

3.2. The Petitioner also contended that there is no complaint against the Respondent MGVL, considering the facts that:

- i) Reasons for delay is not attributable to any fault/lacuna on part of the distribution licensee,
- ii) Under the provisions of GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, when the Respondent, MGVL does not have any power/authority to grant time extension, there cannot be any complaint/claim against the Respondent MGVL, seeking redressal of complaint by the CGRF.
- iii) In the present case, there is no dispute with the Respondent MGVL, let alone billing dispute and therefore CGRF cannot have jurisdiction.
- iv) There is no any explicit / implicit provision in the GERC (CGRF and Electricity Ombudsman) Regulations, 2019 which can authorize the forum to grant extension of time.
- v) The Respondent GETCO has failed to point out that under which clause of the GERC (CGRF and Electricity Ombudsman) Regulations, 2019, the forum has jurisdiction to grant extension of time.

3.3. It is argued that in case of *Surya Roshni Ltd. v. GERC & Distribution Licensee PGVL*, the Hon'ble High Court of Gujarat on 07.01.2020 decided that the jurisdiction to decide the similar dispute falls within the Commission. He argued that the contentions of the Respondent, GETCO, on the issue of the jurisdiction of the Commission is belated and nothing but after thought with intention to delay the entire process. The stand taken by the Respondent GETCO is contrary to the stand of the Respondent MGVL.

3.4. Moreover, it is also argued that the Advocate appearing for the Respondent MGVL and GETCO is common. It is strange that on one hand the Respondent MGVL is supporting the jurisdiction of the Commission while the same advocate on behalf of the Respondent GETCO is opposing the jurisdiction.

3.5. In support of the arguments that the Commission has jurisdiction, he made following submissions:

- (i). the Respondent GETCO has duly recovered the supervision charges from the Petitioner for the work of erection of transmission line,
 - (ii). Even though line is constructed by the Petitioner at its own cost, the ownership of asset remains with Respondent GETCO
 - (iii). Line route, material, erection work etc. is carried out under direct supervision of the Respondent GETCO officials and in knowledge of ground reality
 - (iv). the construction work is carried out under the Section 68 (1) approval of Respondent GETCO
 - (v). the application for ROW clearance/road clearance/approval etc. is also made and dealt by the Respondent GETCO.
- 3.6. Referring to sub-sections (5) and (6) of Section 42 of the Electricity Act, 2003 and definitions of (a) complaint, (b) Electricity Service, (c) Grievance stated in the GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019, he submitted that as per the above provisions of the Electricity Act, 2003 and GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019 the following two ingredients are needed to be fulfilled for CGRF jurisdiction;
- (a). there has to be complaint against concerned distribution licensee and
 - (b). the nature of the complaint shall be as defined in the definition of the 'Complaint' in the CGRF Regulations.
- 3.7. It is further submitted that in the present case the work of erection of transmission line is undertaken by the Petitioner under Option III on behalf of the Respondent GETCO. The Petitioner has been experiencing/has experienced delay, reasons for which are not attributable to the Petitioner/distribution licensee, MGVCL. As per the provision of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 the Petitioner has to complete the work as per the Standard of Performance Regulations failing which the distribution licensee can commence billing on deemed release basis after issuance of 60 days' notice. Further, under the provisions of Supply Code and SOP Regulations, notified by the Commission has authority to grant extension of time for completion of work if any.

3.8. Based on above he submitted that the Commission may admit the petition and hear the matter on merit and decide the same.

4. Heard the parties.

5. The reliefs sought by the Petitioners are in common in nature.

5.1. As preliminary issue raised by the Respondent in the present case is regarding the jurisdiction of the Commission to pass Order in the Petition on the prayers stated in the Petition. It is therefore necessary to refer the prayers which are reproduced below:

- a) *In the facts and circumstances of the case, the Commission may please to take on record the present Petition.*
- b) *In the facts and circumstances of the case, the Commission may please to grant the Opportunity of being heard to the Petitioner,*
- c) *In the facts and circumstances of the Case, Hon'ble Commission may please to allow relief to the Petitioner as available under clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 and clause No. 15.2 Standard of Performance Regulations.*
 - i) *Hold that the stalling of line work from 27.07.2019 and consequently reasons for delay in completion of said work is beyond the reasonable control of the Petitioner.*
 - ii) *Consequently, extend the time period upto Feb 2020 for completion of 66 KV transmission lines and bays for release of 5000 KVA EHT connection.*
 - iii) *To direct the Respondent No. 1 to suspend the two months' notice dated 14.08.2019 issued by the Respondent No. 1 upto the period of extension of time as may be granted by the Commission in the present Petition.*
 - iv) *To hold and direct the Respondent No. 1, not levy demand charges and monthly minimum charges for the period for which time period as may be extended by the Commission for completion of line work in the present Petition.*
- d) *The Commission may allow to amend/alter/modify the contents of the Petition as and when required in the given facts and circumstances of the case.*

e) *Pass such further order or orders as the Commission may deem just and proper in the circumstances of the Case.*

5.2. It is necessary to see that the reliefs as stated above sought by the Petitioner fall within the jurisdiction of the Commission to decide the same or not with consideration of arguments advanced by the Petitioner and the Respondents. Hence, the same are dealt with in subsequent paras of this Order.

5.3. Prayer (a) of the Petition states that *“the Commission may take on record the present Petition”* is generic in nature and it is not coming in way of deciding the preliminary issue raised by the Respondents, with regard to jurisdiction of the Commission.

5.4. Prayer (b) says that *“an opportunity to be given to the Petitioner of hearing.”* It is in accordance with the principle of natural justice and also as per the provisions of the GERC (Conduct of Business) Regulations, 2004 notified by the Commission. Hence, preliminary issue raised by the Respondents with regard to no jurisdiction of the Commission is not coming in way of this prayer.

5.5. Now we deal with the prayer *“(c)”* of the Petition sought by the Petitioner consisting of four internal reliefs:

(i). Prayer (c) states that in the facts and circumstances of the case, the Commission may allow relief to the Petitioner as available under Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 and Clause 15.2 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 to the licensee.

(ii). In the facts of the case of the Petitioner, it is stated that the Petitioner was under the obligation to complete the transmission/distribution network under Option-III opted by itself. The transmission system work to be completed within 180 days from the signing of the agreement.

5.6. Now we refer the Prayer *“(c) (i)”*, wherein, the Petitioner has prayed to hold that stalling of line work from 27.07.2019 and consequently the reasons for delay in completion of work is beyond the control of the Petitioner. On plain reading of the aforesaid prayer, it transpires that the Petitioner desires declaration from the Commission in the said prayer that the delay for completion of work agreed to be

carried out by the Petitioner itself instead of the same being carried out by the Respondents is beyond the control of the Petitioner. Prior to granting the aforesaid relief, it requires to hear the Petitioner and the Respondent on the facts of the case as well on law point and also requires interpretation of the Regulation 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 and Clause 15.2 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 by the Commission, but the same is not yet done in the present case.

- 5.7. The Petitioner has prayed in Prayer “c (ii)” to extend the time limit for completion of 66 KV transmission lines and bays for release of 5000 KVA contract demand upto February-2020, which has expired instead of completing the work in 180 days with extension in the said period. As per the agreement between the parties with consideration of the provisions of the Regulations notified by the Commission etc. the said works of installation and commissioning of 66 kV transmission network and bays works were required to be completed by the Petitioner within 180 days. Thus, in the said prayer the Petitioner has sought extension of time limit for completion of work which has been carried out by the Petitioner itself instead of the same being done by the Respondents and seeking relief under Regulation Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and Clause 15.2 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005. Prior to deciding the said relief, it requires hearing the parties on facts, law and decide on merits, which is yet to be done by the Commission in this matter as part of preliminary issue.
- 5.8. The Petitioner has prayed in prayer “(c) (iii)” to direct the Respondent No. 1 MGVL to suspend the two months’ notice dated 14.08.2019 upto the period of extension of time as may be granted by the Commission and in prayer “(c) (iv)”, it is prayed to hold and direct the Respondent No. 1 to not levy demand charges and monthly minimum charges for the period for time period that may be extended by the Commission. Thus, the Petitioner in prayers “(c) (iii)” & “(c) (iv)” has specifically prayed that the Commission may direct the Respondent No. 1, i.e., Madhya Gujarat Vij Company Ltd. (MGVCL), which is a distribution licensee to: not levy demand charges and monthly minimum charges through the electricity bills issued to the

Petitioner for 5000 KVA contract demand on deemed release basis for the extended time period that may be decided by the Commission.

- i) Suspend two months' notice dated 14.08.2019 issued by MGVCL to the Petitioner who is consumer for 5000 KVA contract demand sought by the Petitioner. The said relief clearly proves that the Petitioner desires relief with regard suspension of two months' notice issued by the Respondent No. 1.
- ii) Similarly, the Petitioner has also prayed in the said prayer for the Respondent No. 1, MGVCL be restrained from issuance of demand charges / monthly minimum charges bill for 5000 KVA contract demand on deemed release basis.

Thus, through above prayers, the Petitioner desires declaration regarding suspension of notice and direction against the Respondent No. 1 that it cannot issue bill for demand of 5000 KVA demanded by the Petitioner by applying to the Respondents. The Petitioner has also prayed that the Respondent No. 1, Madhya Gujarat Vij Company Ltd. (MGVCL), be restrained from issuance of energy bill for said new contract demand of 5000 KVA, which was released by it on deemed release basis till completion of transmission lines and bays which is also the relief sought by the Petitioner, who is consumer, is related with the billing issue with the Respondent No. 1 and the Petitioner.

- 5.9. Prayer "(d)" pertains to general nature of prayer wherein the Petitioner has requested to allow/amend/alter/modify the contents of the Petition as and when required in the given facts and circumstances of the case. This prayer does not come in way of deciding the present matter by the Commission.
- 5.10. Prayer "(e)" pertains to general nature of prayer, wherein the Petitioner has requested the Commission may pass order as may deem just and proper in the circumstances of the case. This prayer also does not come in way of deciding the matter by the Commission on issue of jurisdiction.
6. From the perusal of the prayers sought by the Petitioner, it clearly appears that the Prayers "(a)", "(b)", "(d)" & "(e)" are general in nature wherein principle of natural justice be considered by the Commission while passing the order. While prayer

“(c)” consists of 4 (four) different types of prayers sought by the Petitioner under Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 and Clause 15.2 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005.

- (i). Prayer “(c) (i)” specifically states that the Commission may hold that stalling of the construction and completion of work of 66 kV lines and bays from 27.07.2019 and consequently the reasons for delay in completion of work is beyond the reasonable control of the Petitioner with consideration of provision of Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and Clause 15.2 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005. The aforesaid prayer sought by the Petitioner is also not pertinent to the prayer related to billing dispute but only to hold & declare that stalling of completion of aforesaid works from 27.07.2019 is beyond the reasonable control of the Petitioner with consideration of provision of Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and Clause 15.2 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 notified by the Commission. Hence it is also not a prayer related to billing dispute.
- (ii). Prayer “(c) (ii)” specifically states that the Petitioner is consequentially seeking extension of time for completion of 66 kV transmission lines and bays work carried out by itself instead of the said work to be carried out by the licensee who has Universal Service Obligation (USO) and obligation to lay down the network etc., wherein delay in work completion has occurred for the work done by the Petitioner. The time limit extension sought by the Petitioner is up to February-2020, instead of the same time period for completion of work agreed by the Petitioner within 6 months from the date of agreement/estimate paid by it with the Respondents. The said work was required to be completed on August-2019 as per the Agreement executed with the Respondent. The said relief is also sought under the Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 and Clause 15.2 of the GERC (Standard of Performance of

Distribution Licensee) Regulations, 2005 notified by the Commission. The said relief is only pertinent to extension in time limit for completion of work with regard to new contract demand of 5000 KVA sought by the Petitioner.

(iii). Prayers stated as “(c) (iii)” and “(c) (iv)” are specifically demanded by the Petitioner under Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 and Clause 15.2 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 whereby prayer “(c) (iii)” is seeking suspension of two months’ notice dated 14.08.2019 upto the period of extension of time as may be granted by the Commission.

(iv). Through prayer “(c) (iv)”, the Petitioner is seeking direction to the Respondent No. 1 regarding non-levy of demand charges and monthly minimum charges for the period as may be extended by the Commission for completion of 66 kV line work and bays undertaken by it which is directly related to dispute regarding billing dispute between the Petitioner who is consumer and the Respondent who is licensee. Thus, prayer “c (iv)” specifically states that relief sought by the Petitioner regarding direction to the Respondent is on the disputed issue of billing of new contract demand of 5000 KVA raised by the Respondent, MGVL in the Electricity bill issued to the Petitioner on deemed release basis. Hence the said relief sought by the Petitioner pertains to billing dispute.

7. On combined reading of the aforesaid prayers/reliefs sought by the Petitioner, it is clear that the prayers “(c) (i)”, “(c) (ii)” and “(c) (iii)” are whether pertaining to billing dispute or not is not established without hearing the matter on facts and law points. It requires detailed hearing on the dispute to ascertain that whether it is billing dispute or not and whether the Commission has jurisdiction or not with consideration with plain reading to above prayers. The above prayers are pertaining to deciding and declaration on dispute of completion of 66 KV transmission lines and bays and whether the same qualify to be beyond the control of the Petitioner or not. The time extension sought by the Petitioner upto February

2020 under the Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 and Clause 15.2 of the GERC (Standard of Performance) Regulations 2005 is whether permissible as per the provisions of the Act, Rules and Regulations or not, are the issues which need to be ascertained with facts and law point raised by the parties on complete hearing of the matter and whether falls in jurisdiction of the Commission or CGRF and Electricity Ombudsman. Further, above prayers are to be decided only after hearing the parties on facts and law points in the matter.

8. There is no argument advanced with regard to prayer of “(c) (i)”, “(c) (ii)’ and “(c) (iii)” of the Petition by the parties. Prayer “(c) (iv)’ is pertaining to billing dispute. Thus, the Petitioner is seeking reliefs of prayers “(c) (i)”, “(c) (ii)’ and “(c) (iii)” under Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 read with Clause 15.2 of the GERC (Standard of Performance) Regulations 2005, it is necessary to hear the parties on factual and law points prior to deciding the same on merits. The said prayers also require to interpret the provision of the Act, Rules and Regulations, which is yet to be carried out by the Commission. Further interpretation of Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 and Clause 15.2 of the GERC (Standard of Performance) Regulations 2005 and reliefs sought by the Petitioner under prayer Clauses “(c) (i)”, “(c) (ii)” and “(c) (iii)” require verification of the facts of the case as well as arguments of the parties with consideration of provisions of Act, Rules and Regulations applicable for the reliefs sought by the Petitioner only after hearing the parties on facts and law point and only thereafter, it is possible to decide that the issue is billing issue or not and whether the Commission has jurisdiction or not to decide it. In absence of it is not possible to decide the aforesaid prayers.
9. We note that the prayer “(c) (iv)” is pertaining to billing dispute between the parties. We cannot ignore prayers “(c) (i)”, “(c) (ii)’ and “(c) (iii)’, while deciding the matters which are pending before the Commission but hear the parties on merits considering factual and legal aspects on all issues including issues of prayers of “(c) (i)”, “(c) (ii)’ and “(c) (iii)” is necessary. The issue raised in “(c) (i)”, “(c) (ii)’ and “(c) (iii)” by the Petitioner is objected by the Respondents on factual and law point.

Hence, in absence of the submissions, arguments on merits on prayers “(c) (i)”, “(c) (ii)’ and “(c) (iii)” advanced by the parties, we are of the view that it is not proper in the interest of justice to hold that the Commission has no jurisdiction at this juncture.

10. We have heard the submissions & arguments advanced by the Petitioner and the Respondents on limited aspect of admissibility, maintainability and jurisdiction of this Commission in respect of Petition No. 1816 of 2019. It is further submitted by Mr. Doshi appearing for the Petitioner and Ld. Adv. Ms. Harsha Manav appearing for the Respondents that same are also adopted for Petition No.’s 1826 of 2019 and 1858 of 2020 and accordingly requested that the Commission may first decide the issue of admissibility, maintainability and jurisdiction for all the three Petitions. Thereafter, depending upon the decision of the Commission, the matter may be taken up for merits.
- 10.1. Considering the above we are of the view that it is appropriate to hear entire matter on all issues including admissibility and maintainability of the present Petition and jurisdiction of the Commission as well as prayer sought in the Petition be allowed or not by the Commission including the issue of jurisdiction accordingly.
- 10.2. The Petitioner and the Respondents are directed to file their submissions including factual and legal aspects of the Petition including the issue of jurisdiction, if so, desire by them within 2 weeks from the receipt of this Daily Order, with a copy to the opposite parties.
11. The next date of hearing will be intimated separately.
12. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 27/04/2023.