

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2092 of 2022

In the Matter of:

Petition under Section 42, 43, 50, 86 and 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 GERC seeking for deemed extension of time for completion of 66 KV transmission line for 5000 KVA contract demand on post facto basis and consequently directing MGVL to consider 60 days' notice period from the deemed extended date and to refund minimum demand charges levied by MGVL on deemed release basis on 5000 KVA contract demand till physical release of connection.

Petitioner : Virgo Aluminum Limited
Survey No. 363-2, 363-3, 357, 358, 370
Village Sokhda, Taluka Matar,
Dist. Kheda - 387 570.

Represented By : Shri D. S. Doshi
V/s.

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

Represented By : Ld. Adv. Harini Subramani alongwith 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. Harini Subramani alongwith Mr. Vasant
Patel

CORAM:

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

Date: 15.04.2023.

DAILY ORDER

1. The matter was heard by the Commission on 06.12.2022. On that day Shri D.S. Doshi, on behalf of the Petitioner argued as under.
2. Shri D. S Doshi on behalf of the Petitioner submitted that he is also representing the Petitioner in the Present Petition i.e. Petition No. 2092 of 2022 filed by the M/s. Virgo Aluminum Limited.
- 2.1. He submitted that he had advance argument in the Petition No. 1816 of 2019 in case of Indian Oil Corporation Limited Vs. Madhya Gujarat Vij Company Limited argument made please be consider as argument of the Present Petition so far as the preliminary issue of admissibility and jurisdiction is concerned only some factual aspects are different with regard to delay in construction, erection and commencement of the transmission line and bays, associated elements due to different reason. However, the claim of the demand charge was commenced by the Respondent No. 1., in the present case so far as the Petition No. 2092 of 2022 by MGVCL on deemed release basis from dated 25.11.2020.
- 2.2. He submitted that the Petitioner has established manufacturing unit at Village: Sokhda , Tal: Matar, Dist: Kheda for manufacturing/processing of aluminium sheets and coils.

- 2.3. The Petitioner has applied for power demand of 5000 KVA from the Respondent No. 1 MGVCL, on 31.07.2019. On 04.10.2019, Additional Chief Engineer, Corporate Office, GETCO had forwarded estimate to Respondent No. 1, MGVCL. Based on the estimate dated 04.10.2019 forwarded by the GETCO, the Respondent No. 1, MGVCL, had issued estimate on 01.11.2019.
- 2.4. He referred the provision of GERC (Standard of Performance) Regulations, and stated that as against the timeline of 30 days from the date of application for issuing estimate to the applicant, Respondent MGVCL had issued estimate on 01.11.2019 i.e. 92 days from the date of application.
- 2.5. He stated that the Respondent MGVCL and GETCO had issued estimate under option-III at their own and there was no request/representation from the Appellant to issue estimate under option-III i.e. consumer will carry out the entire work.
- 2.6. He submitted that with intention to get power supply on early basis, the Petitioner had deposited the estimate amount to the Respondent No. 1, MGVCL on 31.12.2019. The Petitioner has signed Power supply agreement with Respondent No. 1, MGVCL, on 16.01.2020.
- 2.7. He submitted that Respondent No. 1 on 17.01.2020, intimated to GETCO regarding payment of estimate and signing of HT Power supply agreement by the Petitioner. Further, Additional Chief Engineer (R&C), GETCO Corporate Office vide Letter dated 24.01.2020 informed to the Petitioner to finalize the contractor and vendor from approved list of vendor for execution of 66 kV line and bays works as per the GETCO's scope of work.

In the letter dated 24.01.2020 it was intimated that GETCO will arrange a kick of meeting jointly with GETCO's Engineering and Project Department with Petitioner's Representative and Contractor to work out the planning for drawing approval, vendor approval, inspection requirement and any other issue.

- 2.8. He submitted that the Petitioner appointed M/s HEC Infra Project Limited as contractor/vendor for execution of 66 KV line and bays works under GETCO's scope of work under Option-III. The same was intimated by the Petitioner to the GETCO vide letter dated 24.02.2020
- 2.9. He submitted that the Petitioner vide letter dated 06.03.2020 requested GETCO to arrange a kick of meeting at the earliest. A kick meeting was convened by GETCO on 16.03.2020 amongst the contractors and GETCO to decide the line of action for execution of 66 kV line work as per GETCO's scope of work.
- 2.10. He submitted that the on completion of 180 days from the date of signing of HT Power supply agreement, Respondent No. 1, MGVL vide letter dated 16.07.2020 issued notice to the Petitioner under 4.3 of the GERC Electricity Supply Code 2015 intimating the Petitioner to complete the GETCO's Scope of 66 KV line work under Option-III and avail power supply within 60 days from the notice failing to which the Petitioner shall be liable to pay demand charges and minimum monthly charges for 5000 KVA under HTP-I.
- 2.11. He submitted that as per the provision of GERC (Electricity Supply Code and Related Matters) Regulations, 2015, the licensee 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., 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, arise between the consumers and the Licensee. The Petitioner who are 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 occur when such work carried out by the consumer for new demand load application or extension of the contracted demand or work related to fulfilment of new contract demand applied by it to the distribution licensee.

- 2.12. The Respondent No. 2, GETCO has raised preliminary issues regarding admissibility of the Petition on the issue of jurisdiction. The Respondent No. 2 GETCO is being transmission utility is not the main contesting Respondent as no relief is sought against it. The Petitioner has raised the issue with regard to issuance of notice and levy of demand charges by the distribution licensee, MGVCL, 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 query raised by on the response of the Petitioner the

Commission may pass appropriate order in accordance with the provision of the Electricity Act, 2003, Rules and Regulations framed under it.

2.13. Referring to clause 4.3 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 he submitted that the licensee is responsible for ensuring distribution system upgradation, extended, strengthening to meet the demand of the Electricity in the area of supply, 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 laying down the necessary transmission/distribution network for extension / upgradation of system.

2.14. Referring to clause 4.32 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015, he submitted that on receipt of the application from the consumer the licensee shall require to carryout various activities which includes issuance of feasibility of work within certain period, issuance of it, if any, additional work require, the same may be intimated, issuance of demand note, payment 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 if the work is carried out by the consumer himself. The supervision charge at the specified rate be payable by the consumer to the licensee. 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.

2.15. He argued that Clause 4.37 of the GERC (Electricity Supply Code and related matters) Regulations, 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 the licensee to approach the Commission for seeking extension in time limit for completion of the work.

2.16. As per Clause 4.38 of GERC (Electricity Supply Code and related matters) Regulations, 2015, 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

2.17. Referring to Clause 1.2 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 he submitted that this Regulations are applicable to all Licensees engaged in distribution of electricity in the State of Gujarat.

2.18. 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.

- 2.19. He argued that the Regulations framed by the Commission provide for certain provisions in respect of licensees, 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 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.
- 2.20. He referred Clause 9.21 to 9.25 of the GERC (Electricity Supply Code and related matters) Regulations, 2015 and 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 this Code.
- 2.21. Further, Clause 9.22 of the GERC (Electricity Supply Code and related matters) Regulations, 2015 provides that in case of any difficulty arises in giving effect to any of the provisions of this Code the matter will be referred to the Commission and the Commission shall pass necessary orders. In such matter the time limit extension sought by the Petition due to event of force majeure. Hence, the Commission may interpret the relevant Clauses of the Regulation and grant relief sought by the Petitioner.
- 2.22. Clause 9.23, of the GERC (Electricity Supply Code and related matters) Regulations, 2015 provides that the Commission has inherent powers to make such orders as may be necessary for ends of justice.

2.23. Clause 9.25 of the GERC (Electricity Supply Code and related matters) Regulations, 2015 provides that the nothing in the GERC Supply Code expressly or impliedly, bars the Commission in dealing with any mater 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.

2.24. 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 distribution licensee. It is open for other than distribution licensee or at least consumers may have right to approach the Commission, if similar situation arise. Therefore, there is no specific provision in the GERC (Electricity Supply Code and related matters) Regulations, 2015 which bars applicability of provisions of GERC Supply Code to consumers.

2.25. He 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. He argued that in absence of specific provision of restricting the consumer to approach the Commission particular subject matter the consumer have right to approach the commission and that commission can exercise in such case its inherent power. He referred the order dated 14.06.2012 in case of K.P. Energy Ltd. Vs. GETCO wherein the Commission

has granted the 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 be consumed by the Petitioner. In the present case also the consumer who have opted for construction of transmission system was unable to complete the work due to condition 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 Discom. 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 of Gujarat in Civil Suit No.16029 of 2019 wherein Hon'ble High Court of Gujarat vide its order dated. 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. Hence, the Hon'ble High Court 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 pointed that the Commission has jurisdiction to decide the matter. The said order is not reviewed or modified by the Apex Court.

2.26. He argued that the Commission has inherent power as per the provision 9.21 to 9.25 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and decide the matter, if justice is not done to the consumer. The Respondent's action 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.

2.27. On query of the Commission that whether the Petitioner has obtained the permission under Section 68 of the Electricity Act, 2003 from the Government, Shri D.S. Doshi submitted that they have opted necessary permission 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.

2.28. The Petitioner further submitted that the relief sought in the Petition is pertaining to extension of the time for completion of 66 kV transmission line. The Petitioner is not seeking relief of any levy of demand charge on deemed release basis as independent relief in the Petition. Cause title of the Petition, grounds raised in the Petition and prayers made therein 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 and non-levy of the demand charge on deemed released basis, is a consequent relief.

3. Learned Advocate Ms. Harini Subramani 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 and challenge the bill issued by the distribution licensee MGVCL . The Petitioner has also sought relief to grant extension of time in completion of work. The same is only to seek non-levy of minimum demand charges which is also prayer in the Petition. Thus, the Petitioner is clearly claiming the relief for non-levy of demand charges against the non-completion of work undertaken by itself.

- 3.1. She referred the sub-sections 5 and sub-section 6 of the section 42 of the Electricity Act, 2003 and submitted that the Act itself has provides that for adjudication of the dispute between the consumer and distribution licensee, if any, the same is dealt and decided by the specialized forum with regard to grievance of consumer i.e. CGRF constituted under distribution licensee. As there is a specialized forum provided for redressal of grievance of consumer, no other forum has jurisdiction to adjudicate the dispute like Commission. It is also argued that the dispute between the Petitioner and the Respondent is not being dispute under the dispute of licensee and

generator under section 86 (1) (f) of the Electricity Act, 2003. As CGRF constituted under Electricity Act, 2003 and decision of CGRF challengeable before the Electricity Ombudsman. The Prayer of the Petitioner in the present case does not fall within the jurisdiction of the 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 section the Respondent relied on the following judgements.

1. Reliance Energy Limited Vs. Maharashtra Electricity Regulatory Commission in Appeal No. 30 of 2005 and batch dated 29.03.2006.
2. Chhattisgarh State Electricity Board Vs. Raghuvir Ferro Alloys Ltd. APTEL 134-Appeal No. 125, 126 and 127 of 2006 dated 28.11.2006
- 3.2. The reliance of the Petitioner on decision of the Hon'ble High Court dated 07.01.2020 in Special Civil Application No. 16029 of 2019 in case of Surya Roshini Vs. Gujarat Electricity Regulatory Commission and other is not applicable in the Present case as in the aforesaid judgement the Hon'ble High Court has considered the Prima Facie view relying on KP Energy Pvt Ltd. Vs. Gujarat Energy Transmission Corporation Ltd. in Petition No. 1206 of 2012 of the Commission decision. This is only prima facie view and this does not preclude the Commission from considering the issue in detail. She further stated that the dispute is between the generator and the transmission licensee in case of K P Energy Ltd vs. GETCO. While in the Present case the dispute is between the Consumer and the Licensee and 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 it 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.

- 3.3. She further argued that the Regulation 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 states regarding extension of the time refer to licensee and not to the consumer as such.
- 3.4. 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 by the consumer by itself the licensee shall not be held responsible for delay, if any, occurred on accounts of problems relating to Right of way, acquisition of Land or delay in consumer obligation on which the licensee has no reasonable control.
- 3.5. She further argued that when the regulation referred 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, other are being excluded.
- 3.6. She referred the judgement of the constitutional bench of Supreme Court of India in PTC India Limited vs. Central Electricity Regulatory Commission (2010) 4 SCC 603 and submitted that the Regulations notified by the Commission are sub- legislation and are binding to the Commission.

- 3.7. In support of the above she also relied on the decision of the APTEL dated 01.03.2012 in Appeal No. 131 of 2011 in Haryana Power Generation Corporation Limited Vs. Haryana Electricity Regulatory Commission.
- 3.8. 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, she relied on the following judgements of the Hon'ble Supreme Court.
- A. Arjun Singh Vs. Mohindra Kumar, (1946) 5 SCR 946 AIR 1964 SC 993.
 - B. Gram Panchayat Vs. 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 and ors. (2013) 11 SCC 296.
 - D. Gujara Urja Vikash Nigam Limited Vs. Solar Semi-Conductor Private Limited and others (2017) 16 SCC 498.
 - E. Power Grid Corporation of India Ltd Corporate office Vs. Green Infra Renewable Energy Limited 2017 SCC Online CERC 261.
- 3.9. The aforesaid judgement clarifies that a provision barring exercise of inherent power need not be expressed but may also 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 Vs. Devinder Bajaj and another (2010) 8 SCC 1.

3.10. 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.

3.11. The Regulation 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 case here 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 the ground that such relaxation is granted to the licensee. The same is also applicable to the consumer is contrary to the provision of the Regulations when the Regulations specifically exclude such situation and condition.

4. In response to the arguments made by the Respondent the Petitioner through rejoinder submitted as under:

- 4.1. The arguments of the Respondent, GETCO that Hon'ble High Court of Gujarat order dated 07.01.2020, in case of Surya Roshni Ltd Vs. 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. Vs. GETCO had not considered the implication of the CGRF Regulations is misplaced and without any merit. 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 implication of the CGRF as well as the Commission's order dated 14.06.2012 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 Order dated 07.1.2020 in SCA No. 16029 of 2019 relying on the decision of the Commission in the K.P Energy Ltd. vs. GETCO case, relegated the matter to the Commission for deciding the dispute between the parties. Hence, the submissions of the Respondent 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 hence the Commission has no jurisdiction, is not correct and is also against the decision of the Hon'ble High Court of Gujarat.
- 4.2. The Petitioner also contended that there is no complaint against the Respondent MGVCL, 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 GERC (Standard of performance) Regulations, 2005 when the Respondent, MGVCL do not have any power/authority to grant extension time, there cannot be any complaint/claim against the Respondent MGVCL, seeking redressal of complaint by the CGRF.
- iii) In the present case, there is no dispute with the Respondent MGVCL let alone billing dispute and therefore CGRF cannot have jurisdiction.
- iv) There is no any explicit / implicit provisions 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.

4.3. He argued that in case of Surya Roshini Ltd Vs. PGVCL 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 Contention 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 (MGVCL).

- 4.4. He argued that the Advocate appearing for the Respondent MGVCL and GETCO is common. It is strange that on one hand the Respondent MGVCL is supporting the jurisdiction of the Commission while the same advocate on behalf of the Respondent GETCO opposing the jurisdiction.
- 4.5. In support of the arguments that the Commission has jurisdiction he made following submission 1) the Respondent GETCO has duly recovered the supervision charges from the Petitioner for the work of erection of transmission line, 2) Even though line is constructed by the Petitioner at its own cost, the ownership of asset remain with Respondent GETCO, 3) Line route, material erection work etc. is carried out under direct supervision of the Respondent GETCO officials and in knowledge of ground reality, 4) the construction work is carried out under the Section 68 (1) approval of Respondent GETCO and 5) the application for ROW clearance/road clearance/approval etc. is also made and dealt by the Respondent GETCO.
- 4.6. Referring to sub section (5) and (6) 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;
- 1) there has to be a complaint against concerned distribution licensee and

2) The nature of the complaint shall be as defined in the definition of the complaint in the CGRF Regulations.

4.7. Based on the above, he 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 and 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 to complete the work as per the Standard of Performance Regulations failing 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, the Commission has authority to grant extension of time for completion of work.

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

5. Heard the parties.

6. 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 and the same 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 invoke its power to relax/inherent power for allowing deemed extension of time period upto Dec 2021 for completion of 66 KV line and bays works on post facto basis, and*
- d) *Consequently, direct the Respondent No. 1 to refund the amount recovered by it from the Petitioner with interest of 15% per annum towards bills for minimum demand charges for 5000 KVA on deemed release basis for the period from 25.11.2020 to 31.12.2021.*
- e) *The Hon'ble 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.*
- f) *Commission may please to pass such further order or orders as the Commission may deem just and proper in the circumstances of the Case.*
7. 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 in subsequent para of this Order.
- 7.1. Prayer (a) of the Petition states that "the Commission may take on record the present Petition" is generic in nature and do not come in way of deciding the preliminary issue raised by the Respondents, with regard to jurisdiction of the Commission.
- 7.2. 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 jurisdiction of the commission do not come in way of this prayer.
- 7.3. Now we deal with the prayer (C) of the Petition sought by the Petitioner. 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

and 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015, to the distribution licensee.

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 work to be completed within 180 days from the signing of the agreement.

The Petitioner has prayed in Prayer (C) to extend the time limit for completion of 66 KV transmission lines and bays for release of 5000KVA demand upto December 2021 which was 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 was required to complete by the Petitioner within 180 days. Thus, in the said prayer the Petitioner has sought extension of time limit for completion of work by itself instead of doing the same by the Respondents. The aforesaid relief sought under Regulations Clause 4.37 and 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 by the Respondent. Prior to deciding the same relief, it requires to hear the parties on facts and law and decide on merits, which is yet to be done by the Commission in this matter as part of preliminary issue.

7.4. Further, we refer the contentions relating to Prayer (C) which state that the Petitioner has prayed that the reason 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 delay for completion of work agreed to be carried out by the Petitioner itself instead of the same was carried out by the Respondents is beyond the control of the Petitioner. Prior to grant 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 it requires interpretation

of the Regulations clause 4.37 and 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 by the Commission, the same is yet not done in the present case.

7.5. The Petitioner has prayed in prayer (D) that “the Commission may direct the Respondent No. 1 to refund the amount recovered by it from the petitioner with interest of 15% per annum towards bills for minimum demand charges for 5000KVA contract demand on deemed release basis for the period from 25.11.2020. to 31.12.2021.” In the said relief the Petitioner has specifically prayed that the Commission may direct the Respondent No. 1, i.e., Madhya Gujarat Vij Company Ltd. (MGVCL) which is distribution licensee to;

- i) Withdraw the electricity bills issued to the Petitioner on deemed release basis. The said relief clearly proves that the Petitioner desire relief with regard to billing done by the Respondent no. 1 to the Petitioner who is consumer.
- ii) Further, the Petitioner has also prayed in the said prayer for the Respondent No. 1, MGVCL be restrained from issuance of bill for 5000 KVA contract demand on deemed release basis till completion of work of transmission line and bays.

The aforesaid prayer clearly proves that the Petitioner desire declaration and direction against the Respondent No. 1 that it cannot issue bill for 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 5000 KVA which was released by it on deemed release basis, prior to completion of transmission line and bays works by the petitioner.

7.6. Prayer “E” pertains to general in nature of prayer wherein the Petitioner has requested to 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 the way of deciding the present matter by the Commission.

7.7. Prayer “F” pertains to general in 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 does not come in the way of deciding the present matter by the Commission.

8. On plain reading of the prayers sought by the Petitioner, it clearly proves that the Prayer A, B, E, F, are in general in nature wherein principle of natural justice be considered by the Commission while passing the order. While prayer (C), (D) consists of different types of prayer interlinked with clause 4.37 and 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015.

Prayer (C) specifically state that the Petitioner 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 there is delay occurred in completion of work done by the Petitioner. The time limit extension sought by the Petitioner is up to December 2021, instead of the same work agreed by the Petitioner to complete within 6 months from the date of agreement/estimate paid by it with the Respondents. The said work was required to be completed on July 2020. The said relief is also sought under the clause 4.37 and 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015. The said relief is only pertinent to extension in time limit for completion of work with regard to 5000KVA contract demand sought by the Petitioner.

Similarly, prayer (C) is sought by the Petitioner is with regard to declaration from the Commission that the work of 66 KV construction and completion of transmission lines and bays is beyond the reasonable control of the Petitioner with consideration of provision of clause 4.36 and 4.37 of the

GERC (Electricity Supply Code and Related Matters) Regulations, 2015. The aforesaid prayer sought by the Petitioner is also not pertaining to the prayer related to billing dispute but only declaration for extension of time limit for completion of work on ground that the same is beyond the reasonable control of the Petitioner with consideration of provision of clause 4.36 and 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 notified by the Commission. Hence it is also not a prayer related to billing dispute.

Prayer stated as (D) is specifically demanded by the Petitioner under clause 4.37 and 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 is directly related to dispute regarding billing dispute between the Petitioner who is a consumer and the Respondent who is licensee. Thus, prayer (D) is specifically stated that relief sought by the Petitioner regarding direction to the Respondent is on the disputed issue of billing raised by the Respondent in the Electricity bill issued to the Petitioner. Hence, the said relief sought by the Petitioner is pertains to billing dispute.

9. On combined reading of the aforesaid prayers/reliefs sought by the Petitioner it appears that the prayer (C) is pertaining to billing dispute requires hearing of the matter on facts and law points. It requires detailed hearing on dispute to ascertain that it is billing dispute or not and whether Commission has jurisdiction with consideration on plain reading to prayers. The above prayers are pertaining to decide and declare 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 limit extension sought by the Petitioner up to December 2021 under the clause 4.37 and 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 is whether permissible as per the provision of the Act, Rules and Regulations, or not, are the issues needs to ascertain with facts and law point raised by the parties on complete hearing of the matter and whether it 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.

10. There is no argument advance with regard to prayer of (C) of the Petition by the parties. Prayer (D) pertains to billing dispute. However, the Petitioner is seeking relief of prayer (C) under the clause 4.37 and 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 read with GERC (Standard of Performance) Regulations, 2005, it is necessary to hear the parties on factual and law points on prayer (C) of the Petition prior to decide the same on merits. The said prayers also require to interpretate the provision of the Act, Rules, and Regulations, which is yet to be carried out by the Commission. Further interpretation of clause 4.37 and 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations 2015 and relief sought by the Petitioner under the (C) require verification of the facts of the case as well as arguments of the parties with regard to Act, Rules and Regulations applicable for relief sought by the Petitioner is permissible or not. And whether the arguments are pertaining to billing dispute or not. In absence of it is not possible to decide the aforesaid prayers.
11. We note that the prayer (D) is pertaining to billing dispute between the parties. We cannot ignore prayer (C) while deciding the matter which are pending before the Commission but shall hear the parties on merits considering factual and legal aspects on all issues including issues of prayers of (C). The issue raised in Prayer(C) by the Petitioner objected by the Respondents on factual and law point. Hence, we are of the view that it is incorrect to decide that the Commission has no jurisdiction only by referring payer (D) prayed by the Petitioner.
12. 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 prayers sought in the

Petition be allowed or not by the Commission including the issue of jurisdiction accordingly.

13. 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 3 weeks from the receipt of the daily order, with a copy to the opposite parties.
14. The next date of hearing will be intimated separately.
15. We order accordingly.

Sd/-
[S.R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 15.04.2023

