BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISISON
GANDHINAGAR

Petition No. 1826 of 2019 along with
I.A. Nos. 10 of 2019 & 11 of 2019

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 Commission seeking to grant additional time for completion of 66 kV transmission line for 5000 KVA Contract Demand and consequently directing MGVCL to suspend the Two months' notice (TMN) dated 14.08.2019 issued to the Petitioner for levying demand charges on contract demand 5000 KVA on deemed release basis.

Petitioner	:	J. K. Cement Limited, Ahmedabad – Indore Highway, Village: Vadodara, Taluka – Balasinor, District: Mahisagar, Gujarat.
Represented By	:	Mr. D. S. Doshi, Mr. Pranav Doshi and Mr. Vijay Bahadur Mourya
		V/s.
Respondent No. 1	:	Madhya Gujarat Vij Company Limited
Represented By	:	Ld. Adv. Ms. Shrishti Khindaria
Respondent No. 2.	:	Gujarat Energy Transmission Corporation Limited
Represented by	:	Ld. Adv. Shrishti Khindaria with Mr. Shobhraj Jaiswal

CORAM:
Pankaj Joshi, Chairman
Hiren Shah, Member
Jatin N. Thakkar, Member

Date: 22/07/2026

ORDER

1. The present Petition is filed by the Petitioner, J. K. Cement Limited, 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 Commission seeking to grant additional time for completion of 66 kV transmission line for 5000 KVA Contract Demand and consequently directing MGVCL to suspend the Two months' notice (TMN) dated. 14.08.2019 issued to the Petitioner for levying demand charges on contract demand 5000 KVA on deemed release basis.

2. The Petitioner has prayed as under:

(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, the Commission may please to allow relief to the Petitioner as available under Clause 4.37 of Supply Code 2015 and Clause 15.2 of 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 reasonable control of the Petitioner,

ii. Consequently, extend time period up to February 2020 for completion of 66KV transmission lines and bays for release of 5000 KVA EHT connection.

iii. Direct the Respondent No: 1 to suspend the Two Months' Notice dated 14.8.2019 issued by the Respondent No:1 up to the period of extension of time as may be granted by the Commission in the present petition.

iv. Hold and direct the Respondent No: 1 not to 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 this Commission may deem just and proper in the circumstances of the case."*

3. Brief of the facts of the Petition are as under:

3.1. The Petitioner, M/s. J. K. Cement Limited, a Company incorporated under the provisions of the Companies Act, 1956, is engaged with business interests in production and marketing of cement and related products.

3.2. The Respondent No. 1, Madhya Gujarat Vij Company Limited (MGVCL) is a Distribution Licensee in the State of Gujarat within the meaning of Section 2 (17) of the Electricity Act, 2003 and is undertaking Distribution and retail supply of electricity in Central part of the State.

3.3. The Respondent No. 2, Gujarat Energy Transmission Corporation Limited (GETCO) is the transmission licensee in the State of Gujarat and also holding the status of 'State Transmission Utility' (STU) under section 39 of the Electricity Act 2003.

3.4. It is submitted that the Petitioner has planned to set up cement clinker grinding unit at Village: Vadadala, Taluka: Balasinor, District Mahisagar in the State of Gujarat.

3.5. On 17.9.2018, the Petitioner applied for power demand of 5000 KVA to the Respondent No. 1, MGVCL, at its cement clinker grinding unit at Village: Vadadala, Taluka: Balasinor, District Mahisagar.

3.6. Pursuant to the concurrence report dated 22.11.2018 received from the Respondent No. 2, GETCO, the Respondent No. 1 had issued estimate on 03.12.2018 to the Petitioner for grant of new 5000 KVA connection to be supplied at EHT level i.e. 66 KV voltage level. As per the MGVCL estimate, the scope of work involved for granting such power demand is laying of 66 KV overhead line of 5.8 KM from 66 KV

GETCO Rozva Substation. The Petitioner has paid the estimate charges of Rs. 4.08 Crores on 01.02.2019 which includes the supervision charges of Rs. 39.96 Lakhs, GETCO pro-rata charges of Rs. 56.50 Lakhs and Security Deposit of Rs. 3.12 Crores.

3.7. On 11.02.2019, the Petitioner signed HT power supply agreement with MGVCL for availing 5000 KVA power supply.

3.8. It is submitted that as per the provision of the Electricity Act, 2003, it is the duty of licensees (MGVCL/ GETCO) to extend electric plant or electric line, if required, for giving electric supply to the premises, in the present case it is 5.8 KM of 66 KV line and bays. It is further submitted that, as a matter of practice, MGVCL / GETCO is mandatorily providing only Option-III to the Petitioner wherein transmission line work has to be undertaken by the Petitioner itself as per GETCO specifications and approved contractors, on behalf of GETCO, at Petitioner's cost and risk, under the supervision of GETCO. In that case, the Petitioner has to pay only Supervision Charges on the cost of material and labour charges to GETCO. As such, the Petitioner has no choice but to accept Option-III given by GETCO/MGVCL. In the interest of huge investment made in the project, it is not practicable for the Petitioner as a consumer to challenge each and every action / inaction of the GETCO/MGVCL, but to accept the same without dispute.

3.9. It is submitted that immediately after signing of power supply agreement on 11.02.2019, the Petitioner started the process of identification of the agency registered with GETCO to undertake the work of erection of 66 KV line. Thereafter, the Petitioner applied for vendor registration to the office of CE (Project) on 18.04.2019 and on receipt of vendor registration, a kick-off meeting was held between GETCO and the Petitioner along with the selected agency on 22.04.2019 and 23.04.2019 in reference to the erection of 5.8 KM 66 KV transmission line to be undertaken by the Petitioner on behalf of GETCO. In the meeting, there were detailed discussions with regard to the erection of 66 KV transmission line and bays by the Petitioner on behalf of GETCO under Option-III. As per the MoM dated 22.04.2019, the target date for completion of work was recorded as October-2019.

3.10. It is submitted that after completing other procedures, formalities, approvals of route, equipment designs, material specifications and inspection etc. from GETCO, the site work for erection of 66 KV line were commenced on 06.06.2019 for tower foundation work and continued in full swing till heavy rainfall in the route area had stalled the work on 27.07.2019. The line route is passing through the black cotton soil and unprecedented and continued heavy rainfall since last of week of July 2019 resulted into severe water logging related issues and damaging the approach. This situation forced to stall the work since 27.07.2019, though work force and resources were spared and deployed for taking up the work on urgent basis. Till the date of filing of present Petition, the site was inapproachable and the Petitioner was waiting for water logging to recede for resuming the work.

3.11. It is further submitted that the Petitioner casted 20 nos. of foundation out of total 26 nos, before torrential rain in Balasinor area stalled the work from 27.07.2019. Simultaneously, the feeder bay work at Rozva 66 KV GETCO Substation had already been undertaken under supervision of GETCO. Moreover, all feeder bay equipment were also unloaded at GETCO substation Rozva. The 66 KV line equipments like as isolators, LAs, CTs etc. have been erected and the completion of balance work would hardly take couple of days.

3.12. The work for erection of transmission line towers can be resumed as soon as monsoon atmosphere permits and water logging recedes in due course. It may also be noted that the 66 KV line route is also passing through private agriculture land having standing paddy crops till now. It is natural that farmers may not allow to undertake the line work due to damage to standing crop till paddy crop is harvested by end of December 2019. Considering the time period for water logging to be receded and completion of harvesting season by December 2019, it was estimated that the balance work of foundation of 6 nos. of line towers, erection of tower material and stringing work would be completed in all respect within couple months thereafter i.e. by end of February 2020.

3.13. It is further submitted that as per GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, time limit for release of connection is within 180 days.

Accordingly, upon completion of 180 days from 11.02.2019 when power supply agreement was signed, on 14.08.2019, MGVCL issued 60 days' notice to the Petitioner purportedly under Clause 4.33 of GERC (Electricity Supply code and Related matters) Regulations, 2015 (hereinafter referred to as Supply Code for sake of brevity), 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.

3.14. The Petitioner has submitted that as per provisions of the Electricity Act, 2003, it is the duty of Distribution Licensee to make available electric plants and line and supply power within time period specified by the Commission. In the present case, the Respondent No. 1 has conveniently ignored the express provision of the Electricity Act and proceeded in a mechanical manner in issuing Two Months' Notice calling upon the Petitioner to pay demand charges and monthly minimum charges on deemed release basis w.e.f. 13.10.2019. The Respondent No. 1 did not care to inquire into the matter regarding status of 66 KV line work with the Petitioner or even with GETCO before taking such actions.

3.15. Immediately upon receipt of Two Months' Notice from MGVCL, the Petitioner vide letters dated 29.08.2019 and 06.09.2019 has formally apprised the Respondent No. 1 regarding the status of line work and situation of unprecedented, continued and extended heavy rainfall in the area and stalling of work since 27.07.2019 due to such natural eventualities. It was conveyed to MGVCL that before stalling of work from 27.07.2019, the work for 20 nos. of towers was already completed out of total 26 nos. of towers (76% work completed). It was also specifically pleaded in the communication to MGVCL that the line route is having black cotton soil and due to heavy and continued downpour, the water logging has been taken place in the entire work route and even worksite is not approachable due to damage of approach. Accordingly, it was conveyed to MGVCL that under the circumstances, the work has been stalled forcibly with concurrence of GETCO officials at field level supervising the work.

3.16. In light of above situation, the Petitioner requested the Respondent No. 1 to consult GETCO officials for ascertaining the bonafide of the Petitioner and to grant further 3 months' time limit extension for completion of 66 KV line work and availing power supply.

3.17. It is submitted that adding agony to the Petitioner and without appreciating the facts that the delay in completion of 66 KV work is not attributable to the Petitioner but due to severe water logging related difficulties, the Respondent No. 1 vide letter dated 16.09.2019 has denied the genuine request of the Petitioner in a mechanical manner even without consulting GETCO which is the supervising authority of the line work.

3.18. It is submitted that while denying the request of the Petitioner for grant of additional time limit for completion of 66 KV line, the Respondent No. 1 has selectively referred to the provisions of GERC Supply Code and Standard Performance Regulations ignoring other expressed provisions of Regulations and without appreciating the ground reality of water logging related situation leading to stalling of line erection work and without consulting the GETCO authority who is supervising the work.

3.19. Under the scenario of indifferent approach taken by MGVCL, to seek support from the GETCO who is supervising the line work and thus is in knowledge of ground reality, the Petitioner vide letter dated 23.09.2019 has requested Managing Director of GETCO to intervene in the matter for granting time limit extension for completion of line due to heavy, unforeseen, continued and extended monsoon rainfall and not to levy demand charges and minimum monthly charges on deemed release basis from 13.10.2019. Similar request is also made to the Managing Director of MGVCL vide letter dated 3.10.2019. However, the request of the Petitioner to the authorities of Respondents went in vain as no formal relief is granted to the Petitioner.

3.20. In the given circumstances and facts as outlined in the present Petition, the Petitioner has no alternative but to invoke the jurisdiction of the Commission

seeking time limit extension for completion of 66 KV line work up to February 2020 and direction to the Respondent No. 1 to suspend the Two Months' Notice dated 14.08.2019 till that period and not to levy demand charges and monthly minimum charges of 5000 KVA on deemed release basis.

3.21. In support of the case of the Petitioner and in order to understand the true scope and purpose of present petition, the Petitioner referred to relevant provisions of the Electricity Act 2003 (Act) and Regulations framed thereunder by the Commission, as under:

- **Electricity Act 2003:**

Section 2 (41)

"local authority" means any Nagar Panchayat, Municipal Council, municipal corporation, panchayat constituted at the village, intermediate and district levels, body or port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;"

Section 42 (1)

"42. (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act."

Section 43

"43. (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission."

…….

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

Section 50

The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

Section 57. (Consumer Protection: Standards of performance of licensee):

(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination.

- **GERC (Electricity Supply Code and Related Matters) Regulations, 2015:**

Procedures to Settle Disputes

1.14 In the event of dispute regarding any provisions in the Supply Code between any User and the Distribution Licensee, the matter shall be referred to Gujarat Electricity Regulatory Commission and its decision shall be final.

Licensee's obligation to extend the distribution system and consumer's share in the cost

***4.3** The licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension/ up-gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof.*

***4.32** In case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 7 working days of receipt of the application from distribution licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.*

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Provided that the time taken by applicant in securing the compliance as provided in Clause 4.29 above and time taken by Transmission Licensee in giving feasibility report shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

***4.33** The demand note shall contain following details:*

(1) Details of the works (including service line) to be undertaken for providing electricity supply;

Provided that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken.

(2) Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

(3) Amount of security deposit as specified in the GERC (Security Deposit) Regulations, 2005 and amendments thereof.

***4.38** The licensee shall not be held 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.*

***4.42** On completion of the work, Licensee shall inform to the applicant for availing the power supply and if the applicant fails to avail of the power within the period of sixty days from such intimation, he shall be liable to pay the demand charges and minimum monthly charges as applicable. The Distribution Licensee may, in special circumstances, extend the above period of sixty days.*

Savings of Inherent Power of the Commission

9.23 *Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.*

9.24 *Nothing in this Code shall bar the Gujarat Electricity Regulatory Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of this Code, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.*

9.25 *Nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission 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.*

- **GERC (Standards of Performance of Distribution Licensee) Regulations, 2005**

Exemptions

15.2 *Adherence to specific standards of performance may be relaxed during Force Majeure conditions such as war, mutiny, civil commotion, riot, flood, cyclone, storm, lightening, earthquake, grid failure, and strike/curfew, lockout, fire affecting the licensee's installations and activities and also under wind or rainy conditions where safety of electrical equipment and personnel is not possible.*

Commission may, under specific circumstances relax provisions of Regulations in general or any specific Regulations for the period specified in its order.

The licensees shall strictly abide by the standards, benchmarks and timelines as specified in these Regulations. This shall however be subject to technical feasibility of the same. In cases where the licensee seeks extension of the timelines due to technical constraints or on any other grounds, due approval has to be taken from the Commission.

3.22. It is submitted that as per the provisions of the Section 42 (1) of the Electricity Act 2003, it is the duty of Distribution Licensee to maintain efficient, coordinated and economical distribution system in his area of supply. Further, as per Section 43 (1),

it is the obligation on part of distribution licensee to provide supply of electricity upon demand made by the occupier of the premises within the period of one month and in case where extension of distribution mains / substation is required, the distribution licensee shall have to supply the electricity within such period as specified by the Commission. Moreover, as per Section 43 (2), it shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises. The Section 43 (3) provides for consequences for failure of distribution licensee to supply electricity within the time frame specified in Section 43 (1).

3.23. In the present case, the Petitioner has been entrusted the work of transmission line and bays for release of 5000 KVA demand, therefore it may be appreciated that the Petitioner is acting on behalf of GETCO/MGVCL. Accordingly, MGVCL/GETCO may not be absolved from its responsibility of making available the electric plant or electric lines for providing electricity simply on the ground that the responsibility of the same is entrusted to the Petitioner.

3.24. It is submitted that as per the provisions of Clause 4.37 of Supply Code 2015, the timeline for release of connection is within the period of 180 days and in case more time required, the distribution licensee may approach the Commission for extension of time for completion of line/ substation in cases where more time is required.

3.25. Further, provisions of Clause 15.2 of GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, provides for relaxation in the timeline during force majeure conditions such as war, mutiny, civil commotion, flood, etc. and also under wind or rainy conditions where safety of electrical equipments and personnel is not possible. The present case of the Petitioner is also covered under the Regulation 15.2 entitling for relaxation in the time limit.

3.26. It is submitted that akin to the difficulties envisaged in Clause 4.38 of Supply Code 2015 and Clause 15.2 of GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, the Petitioner is also facing difficulties in nature of

unprecedented, unforeseen, extended and continued heavy rainfall in the State and in particular the Central Gujarat which has resulted into water logging and damage to the approach in the line route area, over which the Petitioner did not have reasonable control and could not foresee such situation with due diligence. The Petitioner submitted that it managed diligently and completed 76% of tower line and bay works before 27.07.2019 when work came to be stalled due to heavy water logging in the area.

3.27. It was and it is open for MGVCL / GETCO to visit the site and independently assess the current site situation and bonafide of the Petitioner in erection of 66 KV line work. However, the MGVCL has conveniently proceeded for issuing Two Months' Notice taking indifferent approach without analyzing site situation.

3.28. In the background of facts and circumstances of the case as stated hereinabove, the Petitioner has requested the Commission to grant extension of time for completing the work by invoking its regulatory jurisdiction and give end justice to the Petitioner on the following amongst other grounds:

(a) As per Clause 4.37 of the Supply Code 2015, the concerned distribution licensee is (i) entitled for extension of time for completion of line/ substation work, (ii) shall not be held responsible for delay in completion of work in specific cases over which the licensee has no reasonable control. Therefore, it is unjustified, unreasonable and illogical to content that only distribution licensee is eligible for extension of time and not to be held responsible for the delay for reasons in nature of beyond reasonable control but when the applicant undertakes the same work on behalf of licensee and faces the same difficulties which would have otherwise faced by the licensee, the applicant is not entitled for any relief. Contrary to this, the applicant is liable to pay demand charges and monthly minimum charges on deemed release basis without availing actual supply citing Standard of Performance of Distribution Licensee, which is primarily for Consumer Protection (Section 57 of Electricity Act). But in the present case, it is running counter-productive

leading to injustice to the Petitioner and undue financial implication with no fault.

(b) In the present case, though the responsibility of creation of supply mains is vested with the Licensees, the Petitioner has been entrusted the responsibility of creation of 66 KV transmission line of 5.8 KM and bays, from far-off Rozva Sub-station, which is not expertise domain of the Petitioner. On other hand, the Respondents are not appreciating the genuine difficulties faced by the Petitioner which is in nature of continued and extended rainfall related force majeure conditions and cannot be foreseen with reasonable due diligence.

(c) It may be kept in mind that it is the responsibility of the licensee (MGVCL/GETCO) to make available the required electrical network for providing power supply. However, in the present case, the Petitioner has been mandatorily entrusted to undertake the work of 66 KV line and bays under Option-III, on behalf of licensee. The Petitioner has shown its bonafide and also placed on record about the water logging situation in line route area leading to stalling of line work from 27.07.2019 due to unprecedented, unforeseen, extended and continued heavy rainfall. Therefore, the important aspect in the matter is, how much time GETCO would have taken to complete the works in the given facts and circumstances. It is not expected that the applicant has to complete the works within the stipulated time irrespective of encountering difficulties in nature of beyond reasonable control. Thus, it is illogical to state that only licensee is eligible for extension of time but the applicant is not eligible for extension of time even for genuine difficulties over which the party does not have reasonable control. Since, the Petitioner is acting in the shoes of the respondents, it is entitled to the same relief as available to the Respondents.

(d) As per the provision of Clause 4.42 of Supply code, the distribution licensee, in special circumstances, can extend the sixty days' notice period. However, in the present case, MGVCL has proceeded in a simpliciter manner without

analyzing genuine difficulties faced by the Petitioner. It is the contention of MGVCL that time limit extension is not permitted as per the provision 9.3 (3) of GERC Standard of Performance Regulations and advised the Petitioner to complete the work and avail power supply within 60 days from the date of notice dated 14.08.2019, failing which the Petitioner is liable to pay monthly minimum charges considering contract demand of 5000 KVA. Such type of contention of MGVCL is without any merit and is not correct. It is stated that while relying on provisions of Clause 9.3 (3) of Standard of Performance Regulations, MGVCL has conveniently ignored the expressed provision contained in Clause 15.2 of the same Regulations which provides for exemption and relaxation in the time limit on account of conditions in the nature of beyond reasonable control.

It is not expected that MGVCL has liberty to take any time without proper justification disregarding the time line provided in the Standard of Performance Regulations but when it comes to the applicant, MGVCL takes indifferent approach considering the time line provided in the Regulations sacrosanct and not extend the time frame even in case of genuine difficulty in nature of beyond reasonable control of the applicant. For instance, in case of MGVCL itself, it has taken 77 days for issuance of estimate to the Petitioner for 5000 KVA new connection as against specified time period of 30 days as per clause 4.81 of the Supply Code and Standard of Performance. It is not expected that the Respondent is free to take its own time irrespective of SoP timeline but will not consider/analyze the genuine request of the petitioner for the similar delay.

(e) It is also relevant to mention that the Petitioner is already suffering heavily due to delay in power supply after making huge investment for the plant. Over and above to this agony, MGVCL, without appreciating the ground reality, has proceeded to issue Two Months' Notice to the Petitioner for availing power supply requiring payment of demand charges and monthly minimum charges of 5000 KVA on deemed release basis with effect from 13.10.2019 though the

physical release of connection is pending due to difficulties in nature of beyond reasonable control of the Petitioner.

(f) The objectives of Regulations/Act in specifying time limit for providing power supply is for the benefit of consumers so that distribution licensee may not take unreasonable time to make available power supply. Thus, said provisions are to be interpreted in the interest of the consumers only. In the present case, the said Standard of Performance is acting counterproductive against the Petitioner which cannot be the objective of Act/ Regulations.

3.29. The Petitioner has submitted that it has taken due diligence for completion of transmission line and bays and the reasons for delay in completion are not attributable to the Petitioner but due to reasons which is beyond reasonable control of the Petitioner. The MGVCL has failed to appreciate that the Petitioner has acted in a diligent manner and taken all possible measures to complete the work within specified time limit by October 2019 as mentioned in MoM dated 22.04.2019 with GETCO officials. Upon signing of power supply agreement with MGVCL, the Petitioner has immediately proceeded for (i) vendor registration as required, (ii) selection of agency registered with GETCO for undertaking the work, (iii) preparation of Single Line Diagram, plan layout, detailed protection system etc, (iv) procurement of material as per specification given by GETCO, (v) procuring permits/ approvals from relevant authorities, (vi) Right of way Clearance, (vii) Physical work of erection of towers and bays. The Petitioner has completed work of 20 towers out of 26 towers (76%) and bays work up to 27.07.2019.

3.30. It is submitted that MGVCL has failed to appreciate that the current year's monsoon in the State and in particular in Central Gujarat, was unforeseen, unprecedented and extended even up to month of October 2019. The extended heavy rainfall in the month of September 2019 in the country and in the State of Gujarat in particular is also reported in newspapers stating that September rainfall to be highest in the history of 102 years.

3.31. MGVCL has also failed to appreciate that the line route is falling in the black cotton soil which is prone to severe waterlogging due to torrential, unprecedented and continued downpour. It is submitted that GETCO officials who are supervising the work is also aware of the situation that due to severe water logging and damaged approach, it is not possible to attend the site and resume the work till water logging recedes. The extended rainfall even in the month of September and initial days of October has created unapproachable site situation. This situation cannot be foreseen even with due diligence. It is submitted that the work force and resources were employed at site and spared for attending the work but heavy rain related situation has made it impossible to resume the work since 27.07.2019. In order to apprise the Commission with regard to site situation suffering from severe water logging, the Petitioner has placed on record the site photographs for the same.

3.32. As per the weather forecast, it is expected that the monsoon will be offset by middle of October 2019 and the site situation will be improved thereafter by end of November 2019 when water logging will be receded. Thus, heavy and continued rain has been stalling the work for RAT almost 4 months from August to November.

3.33. It is submitted that these four months' time during which the work of erection of 66 KV line is stalled forcibly, need to be excluded from the performance of obligations of the Petitioner and affected party is entitled for the extension of 4 months' time accordingly i.e. up to end of February 2020.

3.34. It is further submitted that the Supply Code Regulations provide for specific dispensation only to the licensees to seek extension of time from the Commission in case there is delay in completion of work of line/substation. However, such dispensation is not available under Clause 4.33 (2) of Supply Code when the work is undertaken by the applicant on behalf of licensee even in case of genuine difficulties.

3.35. It is submitted that when work is undertaken by the applicant on behalf of licensee, the applicant is to be treated similarly entitling him to the relief otherwise available to the licensee under Clause 4.37 of Supply Code.

3.36. The Petitioner has submitted that the provisions of clause 15.2 of Standard of Performance Regulations provide for relaxation in the Standard of Performance in the force majeure situation. The present case of the Petitioner is covered by the provisions of Regulation 15.2 entitling for relaxation and extension of time limit for the period for which work is affected due to heavy and continued rain related force majeure situations.

3.37. It is submitted that the Petitioner has already deployed manpower and spared the resources for resuming the work. It is submitted that the work for erection of transmission line towers can be resumed as soon as monsoon atmosphere permits and water logging recede in due course. It may also be noted that the 66 KV line route is also passing through private agriculture land having standing paddy crops till now. It is natural that farmers may not allow to undertake the line work due to damage to standing crop till paddy crop is harvested by end of December 2019. Considering the time period for water logging to be receded and completion of harvesting season by December 2019, it is estimated that the balance work of foundation of 6 nos. of line towers, erection of tower material and stringing work would be completed in all respect within couple months thereafter i.e. by end of February 2020.

3.38. In the circumstance enumerated in the present Petition and taking into account the genuine difficulties faced by the Petitioner while undertaking transmission line work on behalf of licensee, the Petitioner has requested the Commission to invoke its regulatory jurisdiction and allow the relief as available under Clause 4.37 of the Supply Code and Clause 15.2 of Standard of Performance Regulations. The Petitioner further requested the Commission to extend time limit for completion of work for period for which work is stalled due to torrential and extended heavy rain related force majeure situation prevailed from 27.07.2019 and estimated to be continued up to end up to December 2019 when water logging will be receded after offset of monsoon and harvesting of paddy crop by farmers. Accordingly, the Petitioner has requested the Commission to allow extension in time for completion of line work up to end of February 2020. In case time limit is not extended by the

Commission, the Petitioner would face irreparable financial losses and injury due to levy of demand charges by MGVCL for demand of 5000 KVA on deemed release basis from October 2019 and onwards. On other hand, the Petitioner is already suffering due to delay in getting power supply even after making huge investment for the project.

3.39. Subsequently, the Petitioner has filed an I.A. No. 10 of 2019 requesting the Commission for early hearing.

3.40. The Petitioner has also filed and I.A. No. 11 of 2019 for Ad Interim relief by directing the Respondent No. 1, MGVCL, not to take any action on the Two Months' Notice dated 14.08.2019 against the Petitioner / Applicant during the pendency of the present Petition.

4. The Respondent No. 1, MGVCL, vide affidavit dated 21.12.2019, submitted its reply as under:

4.1. It is submitted that the Respondent is filing the reply to the Petition itself and the contents of the same be read as reply to the Interim Application also. It is submitted that the Petitioner had not informed the Respondent No. 1 or approached the Commission for extension in a timely manner and waited until after issuance of notice by MGVCL to raise any such issues.

4.2. It is submitted that the Petitioner has sought to avail new connection having demand of 5000 KVA. The Petitioner filed its application on 17.09.2018. MGVCL requested for the Technical Feasibility Report from GETCO on 18.09.2018 and the estimate cum TFR was issued by GETCO on 22.11.2018 which was forwarded to the Petitioner on 03.12.2018. The estimate which was granted under Option-III was paid on 01.02.2019. The Petitioner, vide Letter dated 18.04.2019, stated that it has preferred to undertake the work as per Option-III and claimed that it has deposited the amount and allotted the work to approved vendor.

4.3. Therefore, having accepted the Option-III and acting under the said Option, it is not open to the Petitioner to now raise any contention to the contrary.

4.4. Though the estimate was given vide letter dated 03.12.2018, the Petitioner made the payment only on 01.02.2019. Accordingly, the agreement was executed between Petitioner and the MGVCL on 11.02.2019.

4.5. Thus, the Petitioner had agreed on Option-III and all parties had proceeded on the said basis.

4.6. It is submitted that on 15.02.2019, GETCO wrote to Petitioner informing them of the requirement under Option-III to fix up erection agency for transmission line and bay and the arrangement of material and that GETCO would arrange for a KICK OFF meeting and asked Petitioner to inform GETCO for arranging such meeting.

4.7. But the Petitioner had not informed GETCO in regard to the above. Therefore, on 18.03.2019, GETCO once again wrote to Petitioner to select vendor and erection agency to avoid delays. It was also specifically informed that delay in completion of work beyond 180 days would attract action by Distribution Companies.

4.8. Regulation 4.33 (2) of the Supply Code, 2015 deals with the case of the Petitioner for connection choosing to get the work done on its own:

> *"4.33.....*
> *.....*
> *Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.*
>
> *Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.*

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable."

4.9. It is further submitted that the Supply Code requires the applicant to get the work done within the time frame specified in the Standard of Performance of Distribution Licensee Regulations. As regards release of bulk power connections, Regulation 9.3 provides that for loads above 2500 kVA - the release of connection is within 180 days after completion of Demand Notice / formalities (Execution of necessary formal agreement) by prospective consumers:

"9.3 Bulk Power connections are to be released, in time bound manner as detailed below:

Sl. No	***ITEM/ACTITIVITY***	***TIME LIMIT (Within)***
1	***Loads up to 100 kVA /100 kW***	
	Issue of Demand Notice	*Within 10 days of receipt of application.*
	Release of connection	*Within 20 days after compliance of formalities/ demand notice, if no augmentation is required otherwise 60 days.*
2	***Loads above 100 kVA/100 kW and up to 4000 kVA for TPAL, loads above 100 kVA and upto 2500 kVA for TPSL and GEB***	
	Issue of feasibility clearance	*Within 7 days of receipt of application.*
	Issue of Demand notice	*Within 15 days of receipt of application.*
	Release of connection	*Within 45 days after compliance of Demand Notice/formalities by prospective consumers.*
3	***Loads above 2500 kVA for GEB and TPSL and load above 4000 kVA for TPAL***	
	Issue of feasibility clearance	*Within 15 days of receipt of application.*
	Issue of Demand notice	*Within 30 days of receipt of application.*

	Release of connection	*Within 180 days after completion of Demand notice/ formalities by prospective consumers.*

"

4.10. Accordingly, the Petitioner was required to complete the work within 180 days from 11.02.2019 which comes to 14.08.2019. However, the Petitioner failed to do so.

4.11. MGVCL vide Letter dated 14.08.2019 issued a Notice under Regulation 4.33 of Supply Code 2015 to complete the work and avail power supply within 60 days. On expiry of 60 days' notice period, as the work was not completed, Minimum Billing as per Contract Demand of 5000 KVA has been commenced with effect from 14.10.2019.

4.12. Thereafter, for the first time, vide Letter dated 29.08.2019, the Petitioner submitted a representation seeking extension of time by three months from execution of work up to 14.01.2020.

4.13. It is submitted that Supply Code provides for extension of time to be granted to the licensee; however, there is no such specific provision as to when the consumer does the work. Even assuming but not admitting that extension of time can be granted, but the same can be granted only by the Commission and not the distribution licensee.

4.14. It is submitted that the requirement of payment of minimum billing of enhanced contract demand is necessary beyond a certain period as the Distribution Company is obliged to make power arrangements to be ready to supply power. Such burden should not be passed on to other consumer of the distribution companies. Therefore, such payment of minimum billing is provided for in the Supply Code 2015.

4.15. It is submitted that no objection was taken at any time by the Petitioner about carrying out the work under Option-III. The Option-III of the Petitioner doing the

work themselves is recognized under the Regulations of the Commission and there is no bar to the Petitioner in carrying out the work themselves. Further, the Petitioner had not objected to the same and had voluntarily agreed to the said Option. It is therefore not open for the Petitioner to now claim that GETCO/MGVCL should have done the work. The Petitioner has not placed any request for the work to be carried out by GETCO. There is not even a single letter/correspondence by Petitioner seeking any other option. The Petitioner having accepted the same cannot now claim that it could not have challenged the action of GETCO/MGVCL. If the Petitioner had asked for other options, the estimate for the same would have been provided by GETCO/MGVCL. The attempt of Petitioner to claim that it had no other choice is not acceptable and is not borne out by any correspondence on record. There was no bar for the Petitioner to seek any other option and it could have at least written to MGVCL/GETCO on the same. If such option is sought by a consumer, MGVCL/GETCO are obliged to act on it. Without even an attempt for such option, the Petitioner cannot claim that it had no other choice. The contentions to the contrary are wrong and denied.

4.16. It is reiterated that the Petitioner had executed the agreement with MGVCL without any protest or objection and clearly accepting the Option-III. It is denied that the Petitioner was carrying out the work on behalf of GETCO.

4.17. It is submitted that as per the Regulations, the Petitioner had 180 days for completion of the line. The meeting itself was held after 2 months of the Agreement. The Petitioner took two months to identify the agency and applied for vendor registration only on 18.04.2019. This is despite the letters dated 15.02.2019 and 18.03.2019 by GETCO.

4.18. It is denied that there was any mutual agreement on target completion date. GETCO cannot affect any right or obligation under the Supply Code. GETCO cannot grant or extend any timeline granted under the Regulations/Supply Code and particularly when the consequences of delay in completion relate to MGVCL.

4.19. It is submitted that the Petitioner did not inform MGVCL of any delays at the relevant time in July 2019 and it was only after the Letters were sent by MGVCL seeking explanation after 180 days were over, that the Petitioner sought to give an explanation.

4.20. Further, the Petitioner has to justify and substantiate with evidence and supporting documentation that there was heavy rainfall and the impact on the project such as water logging etc. The Petitioner was well aware of the route of the transmission line and therefore the claim that it has to pass through private agricultural land cannot be an excuse. In the Petition, the Petitioner is now claiming that the work would be completed by February 2020 contrary to its earlier letter dated 29.08.2019 which sought extension until 14.01.2020.

4.21. It is submitted that the Petitioner has also requested for time limit extension for their temporary HT connection on the basis that their project work is delayed. The delay of the project may be a reason for seeking extension of the time.

4.22. It is submitted that the Notice dated 14.08.2019 was issued in accordance with the Supply Code.

4.23. It is submitted that the Regulations of the Commission recognize that the work can be carried out by an Applicant themselves. In this case, the Petitioner had agreed to Option-III i.e. to carry out the work themselves. The Petitioner cannot now claim that the MGVCL/GETCO should have carried out the work. The contentions of the Petitioner are without any basis or merit. The Supply Code recognizes that if the work is not completed within 180 days, a notice can be issued and therefore MGVCL had issued notice. MGVCL does not have to inquire into the status of the line work which is being carried out by the Petitioner. If the Petitioner was delayed, it was up to the Petitioner to inform MGVCL and further seek extension from the Commission, even assuming that the extension is permissible.

4.24. The Petitioner had only informed MGVCL after the issuance of notice by MGVCL. In any case, there cannot be any extension by MGVCL or even GETCO. Even assuming

that any extension can be granted, it has to be by the Commission. Further, the Petitioner is required to substantiate that the delay is beyond the control of the Petitioner.

4.25. It is submitted that the Petitioner has vaguely referred to Regulations without specifying which regulation has been ignored by MGVCL. It is reiterated that MGVCL had acted in accordance with Supply Code 2015 and no additional time could have been given as there is no provision in the Supply Code for such extension of time to be granted by MGVCL to any consumer in regard to work to be completed by the consumer. MGVCL cannot grant any extension as it is not within its jurisdiction. It is submitted that any consideration by the Commission has to be only as per terms of Supply Code which are binding Regulations. If no time is provided for extension, the request for extension may not be considered. In any case, even on merits, the Petitioner has to demonstrate the reasons for delay and substantiate the same with supporting documentation and evidence.

4.26. It is submitted that if no time is provided for extension, the request for extension may not be considered. In any case, even on merits, the Petitioner has to substantiate the reasons for delay.

4.27. It is submitted that the Commission under the Supply Code has provided for an Applicant to do the work and the same has been accepted by the Petitioner. The Petitioner cannot pass on the blame or responsibility to GETCO/MGVCL. GETCO/MGVCL cannot be required to construct the line once the Petitioner had accepted/agreed to do it. GETCO/MGVCL are only responsible for supervision of material etc and cannot be held responsible for delays by the Petitioner. Further, the issue in the present Petition is payment of minimum billing charges to MGVCL due to delay by the Petitioner. MGVCL is ready to supply electricity and therefore MGVCL has to be compensated for the same. The interpretation of the Petitioner is not admitted.

4.28. It is submitted that under Clause 4.37, a distribution licensee may approach for extension of time only when the line or sub-station has to be constructed by the

licensee. When the work is done by the Applicant/consumer itself, the distribution licensee cannot seek extension.

4.29. It is submitted that the issue of whether the Regulation 15.2 of Standard of Performance Regulations which relate to licensees would apply to a consumer/applicant and whether it can be considered in the facts and circumstances of the present case has to be considered by the Commission. In any case, the Petitioner has to justify and substantiate the alleged force majeure condition such as flood etc with evidence and supporting documentation.

4.30. It is reiterated that first the issue of whether the Regulation 4.38 of Supply Code and Regulation 15.2 of Standard of Performance Regulations apply to a consumer/applicant has to be established. Even assuming that the same would apply, the Petitioner has to demonstrate that there were unprecedented, unforeseen, extended and continued heavy rainfall and there was water logging and damage to the approach etc which has been claimed by the Petitioner. Mere statements are not sufficient. The Petitioner is required to prove the same. The contentions to the contrary are wrong and denied.

4.31. It is submitted that the Petitioner did not inform MGVCL until after the issuance of Notice. Therefore, there was no timely intimation of the issues. There is no obligation on MGVCL to visit the site. In any case, MGVCL cannot grant any extension. It is the responsibility of Petitioner to prove that the delays are beyond its control and the burden cannot be passed on to MGVCL to prove the negative.

4.32. The issue of whether there is any power to grant extension under the Regulations to a consumer/applicant has to be considered by the Commission. Though there is a provision for extension of time to the licensee, there is no such provision for Consumer/Applicants. Even assuming that extension can be granted, the same can only be granted if the Petitioner has proved that the delay was beyond its control/due to force majeure events. Further, the Petitioner should be required to take steps to intimate the delays and seek extension from the Commission in a timely manner and not wait until MGVCL had issued notice.

4.33. The requirement to pay monthly charges is recognized in the Supply Code and is provided to compensate the distribution licensee who is otherwise ready to supply power to the consumer. MGVCL had made arrangements and is ready to supply power to the Petitioner. Regulation 4.33 provides for demand charges and minimum monthly charges even without power supply. This is because the distribution licensee having made arrangements, the consumer should pay for the same as otherwise the burden would be passed on to other consumers. The reliance on Section 57 of the Electricity Act, 2003 is not correct. The Supply Code having provided for the payment, the same has to be implemented as it is binding Regulations.

4.34. The Petitioner had agreed to do the work under Option-III without any protest or objection or even a communication to GETCO/MGVCL for change in option. Therefore, the Petitioner cannot now contend otherwise or claim that it does not have expertise domain.

4.35. It is submitted that the Regulation 4.42 of Supply Code is not applicable when the work is done by the consumer/applicant. There is no such provision in Regulation 4.33 of the Supply Code.

4.36. It is submitted that even the Petitioner admits that there is no provision for extension under Supply Code. Even assuming extension can be granted by the Commission, the Petitioner has to demonstrate that the delay is not attributable to it and is beyond its control. The contentions to the contrary are wrong and denied.

4.37. It is submitted that the Petitioner is now claiming target date of completion as February 2020 whereas in previous communications, it had claimed 14.01.2020. The Petitioner has to substantiate its claim.

4.38. The Respondent No. 1 has submitted that in view of the above, the Petition filed by the Petitioner is without merits and deserves to be dismissed with costs.

5. The Petitioner, vide affidavit dated 13.01.2020, filed its rejoinder in reply to the submission of Respondent No. 1, as under:

5.1. It is submitted that the reply filed by the Respondent No. 1 is highly technical in nature, without appreciating the issues involved in the matter and without addressing the specific and categorical issues raised by the Petitioner in the Petition leading to delay in completion of 66 KV line works (66 KV J. K. Cement - GETCO Rozva substation).

5.2. The Petitioner has submitted that it is not making any allegation against Respondent No. 1 or Respondent No. 2. In the fact and circumstances of the case, the Petitioner is only seeking relief from the Commission in terms of extension of time for completion of 66 KV line works for the reasons not attributable to the Petitioner and consequently non levy of demand charges and other minimum charges on deemed release basis.

5.3. With regard to the contention of the Respondent No. 1 that the Petitioner had accepted Option-III to carry out 66 KV works at its own and that the Petitioner at relevant time did not object for Option-III, it is submitted that it is a known fact that where extension of 66 KV line works is involved, GETCO is offering only Option-III to the applicant wherein 66 KV line works is to be done by applicant. Therefore, the statement made by MGVCL that the Petitioner has accepted Option-III at its own is highly technical in nature. Further, there is no documents on record which shows that the Petitioner had demanded Option-III or the Petitioner had rejected Option-I.

5.4. It is also highly technical on the part of MGVCL to state that the Petitioner at the relevant time, did not object for Option-III. In this context, it is submitted that the availability of power supply in timely manner for any industrial set up, specifically new industrial set up, is one of the prime requirements. Therefore, the Petitioner and for that any applicant, is only interested to avail power supply in a timely manner. For that reason, it is not practicable for the Petitioner / Applicant to challenge each and every action of the licensee which will delay the process apart

from diversion of resources and consequently delay in commissioning of the project itself after investing huge amount of money. However, the fact remains that the Petitioner is acting on behalf of licensee for construction of 66 KV line.

5.5. Regarding contention of MGVCL that the Petitioner had made representation on 29.08.2019 seeking extension of time only after MGVCL had issued 60 days' notice dated 14.08.2019, it is submitted that by such contention, MGVCL is making deliberate attempt to ignore the fact that (i) MGVCL/GETCO has duly recovered supervision charges from the Petitioner for the work of erection of 66 KV line, (ii) even though line is constructed by the Petitioner at its own cost, the ownership of asset remain with GETCO, (iii) line-route, material, erection work etc is carried out under direct supervision of GETCO officials and in knowledge of ground reality, (iv) the construction work is carried out under the Section 164 approval of GETCO, (v) the application for RoW clearance / road crossing clearance etc. is also made by GETCO.

5.6. Thus, it is not open for MGVCL / GETCO that on one hand they will entrust the responsibility of erection of line works to the Petitioner, duly recover supervision charges in name of supervision of work, claim the ownership of the line but on other hand abscond from supervising responsibility. It may be appreciated that 66 KV line construction work is carried out under direct supervision of GETCO. The Petitioner has bonafidely put on record in the Petition that line work was to be suspended from 27.07.2019 due to heavy water logging owing to heavy monsoon rainfall. Since, the issue of water logging and consequent stalling of work was under knowledge of GETCO supervising authority, it was bonafide expectation of the Petitioner that the MGVCL being responsible organization would be coordinating with GETCO and would collect latest information from GETCO before taking such harsh actions.

5.7. It is submitted that there is no document on record which suggest that the delay / stalling of work was for the reasons attributable to the Petitioner. Therefore, when the Petitioner has carried out construction of line work for which MGVCL / GETCO has recovered supervision charges and ownership of line also rests with GETCO. It

is not correct on part of MGVCL to expect from the Petitioner to inform MGVCL about the stalling of work. On the contrary, the Petitioner was under bonafide impression that since MGVCL/GETCO has recovered supervision charges and when work is carried out under direct supervision of GETCO, MGVCL would not take harsh steps in a mechanical manner without verifying the bonafide of the Petitioner and without verifying ground reality.

5.8. It is wrong on the part of the Respondent to state that the Petitioner has not demonstrated and substantiated the reasons for delay. It is stated that the Petitioner has duly put on record that akin to the difficulties envisaged in Clause 4.38 of Supply Code 2015 and Clause of 15.2 of Standard of Performance Regulations 2005, the Petitioner had also faced difficulties in nature of unprecedented, heavy rainfall resulted into water-logging and damaged to the approach in the line route area. It may be appreciated that once tower locations are water-logged and approach is also damaged, it is not possible for the Petitioner or for any entity to continue the line work under such situation. In the circumstances, the only proof required is to demonstrate that the site is water-logged and approach to the line route is severely damaged. For that, the Petitioner in the Petition, has already put on record the site photographs. Further, GETCO being the supervising authority is also in the knowledge of the fact that due to heavy monsoon rain the tower locations are water-logged, approach is damaged and site remained unapproachable for long due to prolonged monsoon situation up to month of October 2019.

5.9. It is submitted that it is a known fact and even MGVCL has not disputed that monsoon of year 2019 was heavy, unprecedented and extended even up to the month of October 2019. The work force and resources were employed at site and spared for attending the work, but water-logged related situation had made it impossible to resume the work since 27.07.2019. It is submitted that it is / it was open for MGVCL to verify the site related situation / consult with GETCO to bring out facts and assist the Commission in the matter, but MGVCL had deliberately taken stand contrary.

5.10. It is the contention of the Respondent that the Supply Code recognizes time limit extension only for licensees and when the consumer undertakes the line work, it is not entitled for time limit extension. In this context, it is submitted that the objective of Regulations / Act in specifying time limit is for the benefit of consumer so that licensee may not take unreasonable time to make power supply available. Thus, the said provisions are to be interpreted in the interest of consumer only. Even otherwise it is not justified to state that only licensees are entitled for extension in time, but consumer is not entitled for extension in time even though the reason for delay is not attributable to the consumer and similar delay otherwise also would have been faced by the licensees.

5.11. It is submitted that as per the provisions of the Supply Code, the Commission is the appropriate authority vested with inherent powers for granting extension of time limit and deciding the prayer made in the Petition.

5.12. In this regard, the Petitioner has referred to the relevant regulations of GERC Supply Code, as under:

Power of Relaxation and Power to Remove Difficulties:

> *9.21. The Commission may, in public interest and for reasons to be recorded in writing, relax any of the provisions of this Code.*
>
> *9.22. If any difficulty arises in giving effect to any of the provisions of this Code or there is a dispute regarding interpretation of any provision, the matter may be expeditiously referred to the Commission. The Commission shall pass necessary orders after consulting the parties concerned, provided that the Commission may refuse to entertain the reference filed beyond 3 months' delay without sufficient cause.*

The Petitioner has also referred to Regulations 9.23 to 9.25 of Supply Code, which are not repeated again.

5.13. It is submitted that in terms of provisions of Regulations 9.21 and 9.22 of Supply Code, the Commission has power of relaxation and power to remove difficulties. Similarly, as per Regulation 9.23 of Supply Code, the Commission has inherent

power to pass such orders as may be necessary for end of justice. Further, as per Regulation 9.24, nothing shall bar the Commission from adopting a procedure which is at variance with any of the provisions of Supply code, if deems necessary. Moreover, as per the Regulation 9.25, there shall be no bar for dealing with any matter or exercising any power under the Act by the Commission, for which no Codes have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

5.14. The Petitioner has submitted that as per the above provisions of GERC Supply Code, the Commission has inherent power to exercise its regulatory jurisdiction to grant time limit extension and grant consequent relief thereto.

5.15. It is submitted that as a matter of practice GETCO is only offering Option-III to the applicant when 66 KV line work is involved for new connection/ additional load. MGVCL is also having knowledge of the same. There is no evidence on record which shows that the Petitioner had denied Option-I. Further, it is not practicable for the Petitioner to challenge the actions of GETCO and delay the power supply and consequently delay the commissioning of the project after investing huge sum of money. The Petitioner would like to make it clear that at this juncture, the Petitioner is not challenging action of / making any claim against MGVCL / GETCO. What the Petitioner is seeking is to put on record the correct facts of the case before the Commission.

5.16. As submitted in the preliminary rejoinder, it is duty of MGVCL / GETCO to make available transmission line for power supply. It is not open for MGVCL / GETCO, on one hand, to claim supervision charge, claim ownership of line, etc. but to disown the responsibility of inquiry into the matter and verify of bonafide of the applicant. It is wrong and denied that the Petitioner has taken excessive time to arrange kick-off meeting with GETCO. It is stated that immediately after signing of power supply agreement with MGVCL, the Petitioner had immediately started the process of identification of agency registered with GETCO to carry out 66 KV line work, to prepare scope of work for the agency and also applied for vendor registration and getting vendor registration from GETCO. This entire process took two months' time

before arranging kick-off meeting with GETCO. This shows that though the erection of 66 KV line work is not in the expertise domain of the Petitioner, it can be seen that the Petitioner had acted swiftly and taken diligent steps to carry out line work and there was no deliberate delay on the part of the Petitioner. It is wrong on part of MGVCL to state that the target date of October 2019 was not agreed in the MoM with GETCO. The documents on record clearly show that the target date for completion of line work was agreed to October 2019. The Petitioner has to act and carry out the work under the supervision of GETCO being EHT line work is involved. Therefore, MGVCL cannot be allowed to disown the target date of completion decided with GETCO after detailed deliberation, discussion and considering the nature and quantum of work involved. There cannot be a situation wherein on one side MGVCL would rely on GETCO for completion of 66 KV line and on other side would disown the action of GETCO.

5.17. It is submitted that it is wrong to cast the responsibility on the Petitioner alone to make MGVCL informed about the uncontrollable situation leading to delay in line work.

5.18. It is also wrong on the part of the Respondent to state that the Petitioner was well aware of the route of transmission line and therefore the claim that it has to pass through private agricultural land cannot be an excuse. In this context, the Petitioner has submitted that the Respondent has merely made mechanical statement in this regard without appreciating the relief sought in regard to line route passing through agriculture land. Firstly, in the selection of 66 KV line terminal and line route, limited role is to be played by the Petitioner. Secondly, the contention of the Petitioner in the petition is that the work of erection of transmission line tower can be resumed as soon as monsoon atmosphere permits and waterlogging recede. By the time, the crop in the field of farmers would be grown and therefore farmers would not allow to undertake line work due to damage to the standing paddy crop till the crop is harvested by the month of December 2019. It cannot be foreseen by any party even by MGVCL, that the monsoon of 2019 would continue and extended even up to October 2019 which is unprecedented.

5.19. It is unfortunate on part of MGVCL to refer to irrelevant and unconnected letter dated 28.9.2019 of the Petitioner requesting for time limit extension of temporary connection.

5.20. It is submitted that the reasons for seeking continuation of temporary connection is due to delay in availability of regular power supply of 5000 KVA. In the letter, it is clearly stated that the project work is under progress. It may be appreciated that due to want of regular power supply of 5000 KVA, the project could not be commissioned and therefore power is required at site for men and pre-commissioning activities. Therefore, it is wrong to conclude that the delay in line work is anyway connected to extension of temporary power supply, or the Petitioner has deliberately delayed the line work due to delay in project. The commissioning of the project is only delayed due to non-availability of regular power supply.

5.21. It is submitted that the Supply Code and Standard of Performance Regulations provides for extension of time for delay uncontrollable in nature faced by Distribution Licensee, specifically Regulation 4.37 of Supply Code and Regulation 15.2 of Standard of Performance Regulations. The relief as available under Regulation 4.37 of Supply Code to Distribution Licensee is not available to the applicant / consumer when the consumer has carried out the line work even when similar difficulty otherwise would have been faced by Distribution Licensee. However, Regulation 9.23 - 9.25 specifically saves inherent power of the Commission to grant any relief to do end justice. Therefore, it is expected that MGVCL / GETCO would inquire in to the matter and verify the bonafide of the reasons put on record by the Petitioner for the delay and assist the Commission to do end justice to the Petitioner in terms of provisions of Regulation 9.23 - 9.25 of Supply Code instead of taking harsh actions of demanding money on deemed release basis on mechanical manner.

5.22. It is submitted that as per provisions of Supply Code, Regulation 9.23 - 9.25, the Commission has inherent power to grant relief to do end justice. In the petition, the Petitioner has given proper reasons and justification for delay and made out a case

that the reasons for delay are due to waterlogging of tower locations and damage to approach to line route owing to heavy and extended monsoon in the year 2019 which is beyond reasonable control of the Petitioner. Under the circumstances, the Petitioner requests the Commission to invoke inherent powers and extend the timeline for completion of line work as stated in the petition.

5.23. It is submitted that though the work is carried out by the Petitioner under Option-III, MGVCL cannot be absolved from its prime responsibility to make available the requisite line. In any case, the Petitioner has now filed Petition for extension of time limit under provisions of Supply Code.

5.24. It is submitted that the timeline specified in Supply Code and SoP Regulations is for the benefits of the consumers and to protect the interest of the consumers and cannot be interpreted in a manner which work counter-productive of the consumers. The Petitioner has given proper documentary evidence, reasons and justifications for granting extension of time limit by the Commission under provision of Supply Code.

5.25. It is wrong on part of MGVCL to blame the Petitioner about intimating MGVCL for stalling of work due to waterlogging at tower locations. Further, it is wrong on part of MGVCL to deny even to inquire into bonafide of the Petitioner. When supervision charges are recovered from the Petitioner and ownership of line is claimed, it is duty of MGVCL to consult GETCO and verify the veracity of the claim of the Petitioner.

5.26. The Supply Code Regulations specifically saves the inherent powers of the Commission to grant relief as sought in the petition to do end justice. The Petitioner has given proper documentary evidence and justifications for granting extension of time limit. In case of delay by Distribution Licensee, there is no recovery of minimum charges on deemed release basis. The Petitioner is seeking for extension of time and consequent relief for delay for reasons uncontrollable in nature and similar delay would otherwise face by Distribution Licensee. It is denied that the

Petitioner has rejected the Option-I or Option-I was made available to the Petitioner.

5.27. It is further submitted that under Clause 4.37 of Supply Code, concerned Distribution Licensee is entitled for extension of time. Therefore, the Petitioner by way of present Petition has invoked jurisdiction of the Commission and the Commission has inherent power under provisions of Supply Code to grant time limit extension as prayed for in the Petition. It is wrong and denied that as per provision of Clause 4.42 of Supply Code, Distribution Licensee cannot extend the time limit of 60 days when work is carried out by the applicant.

5.28. It is wrong and denied that the Petitioner has not substantiated the claim for extension of time. It is submitted that the Petitioner has given proper documentary evidence and reasons for delay which is not attributable to the Petitioner. It was also open for MGVCL to consult GETCO who is supervising the work to verify the bonafide of the Petitioner.

5.29. In view of above, the Petitioner has requested the Commission to decide the Petition and allow the prayers.

6. The Petitioner vide affidavits dated 06.02.2020 and 12.06.2020 submitted its reply to the clarifications sought by the Commission vide Daily Order dated 27.01.2020, as under:

6.1. It is submitted that taking into account the cause title of the Petition, grounds raised in the Petition and prayer made thereto makes it amply clear that the independent relief sought in the Petition is extension of time for completion of 66 KV transmission line work for 5 MVA new contract demand. The other relief of directing MGVCL to withdraw electricity bills issued to the Petitioner on deemed release basis due to delay in completion of 66 KV line work, is a consequent relief, consequent upon the decision of the Commission on the main relief namely extension of time limit. Therefore, the Petitioner is not seeking to dispute notice issued by MGVCL and also not seeking relief for non-levy of demand charge on

deemed release basis as an independent relief in the Petition. The cause title of the Petition, grounds raised in the Petition and prayer made thereto clearly indicates that the independent relief sought in the present Petition is for granting time limit extension for completion of 66 KV line work and non-levy of demand charge on deemed release basis is only a consequent relief sought for.

6.2. The Petitioner has put on record that the Respondent No. 1, MGVCL, has already filed its reply on 21.12.2019 before the Commission in the present Petition. In its reply, MGVCL has categorically agreed to the jurisdiction of the Commission for extension of time under the provision GERC Supply Code 2015. MGVCL, in its reply, has fairly agreed that if any extension of time is to be granted to the Petitioner, the same can only be granted by the Commission as per the provision of Supply Code, considering the merit of the case. Thus, the Respondent has not disputed the jurisdiction of the Commission for deciding the present Petition.

6.3. It is submitted that as per the understanding of Respondent No. 1 (MGVCL) and also as per the bonafide understanding of the Petitioner, the Commission is the appropriate authority vested with powers to grant extension of time limit under the provisions of GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and GERC (Standard of Performance of Distribution Licensee) Regulations 2005 including interpretation of these regulations.

6.4. It is submitted that the Petitioner is undertaking the work of erection of 66 KV line under the permission under Section 164 granted to GETCO by the Government. Further, the proceedings for Right of Way clearance under Telegraph Act are also in name of GETCO / by GETCO. Thus, it may be appreciated that GETCO is actively involved in the matter which is supervising the work and under knowledge of reasons for delay in completion of line work. It may also be appreciated that the Petitioner is acting on behalf of GETCO / MGVCL and the reason for delay is beyond the reasonable control of the Petitioner / MGVCL / GETCO.

6.5. It is submitted that as per the provisions of Clause 4.37 of GERC (Electricity Supply Code and Related Matters) Regulations, 2015, in cases where more time is required,

the distribution licensee is entitled to approach the Commission seeking extension of time for completion of line / sub-station. However, when the line work is assigned to applicant, such dispensation of time limit extension is not available to the applicant under Clause 4.38 of GERC (Electricity Supply Code and Related Matters) Regulations, 2015, though the reason for delay is not attributable to the applicant and similar delay otherwise also would have been faced by the licensees.

6.6. It is submitted that if the licensee is entitled for extension of time as per Regulation 4.37 of the Supply Code. The Petitioner may also be allowed for the same relief of time limit extension for the reasons / difficulties otherwise would have been faced by the licensees also.

6.7. The Petitioner has submitted that it has no dispute / claim against MGVCL / GETCO. However, under the facts and circumstances of the case, the Petitioner has invoked the jurisdiction of the Commission seeking for extension of time limit for completion of 66 KV line work under the provisions of Supply Code in line with the relief otherwise available to the Licensee.

6.8. It is submitted that the as per the provisions of GERC Supply Code, the Commission has inherent power to exercise its regulatory jurisdiction / power to relax for granting time limit extension and grant consequent relief thereto. It is also submitted that since the issue involved in the matter is relating to extension of time for completion of 66 KV line works under the provisions of Supply Code and non-levy of demand charges on deemed release basis is only a consequent relief, such matter could not be raised before CGRF and the Commission is the authority to decide the time limit extension considering the merit of the case and consequent relief thereto. It is also to clarify that the scope of Petition and issues involved therein is very clear namely extension of time period for completion of 66 KV line work for the reasons not attributable to the Petitioner.

6.9. In light of above preliminary submission, the Petitioner has made following submission on the queries of the Commission:

(i) Whether the Petitioner is not challenging the bills issued by Respondent No. 1 on deemed release basis?

Reply:

It is submitted that the scope of the present Petition is seeking for extension of time limit beyond 180 days for completion of 66 KV line works and available consequent relief thereto due to delay beyond reasonable control of the Petitioner.

Further, as per the reply filed by MGVCL, it is also common understanding of MGVCL that the issue involved in the present matter is not related to billing dispute but involved the issue of extension of time period under the provision of GERC Supply Code for completion of 66 KV line works and accordingly agreed for the jurisdiction of the Commission for deciding the matter.

It is submitted that in the facts and circumstances of the case as mentioned in the Petition, since the delay in completion of 66 KV line is not attributable to the Petitioner, the Petitioner is seeking extension of time for completion of work of 66 KV line under the provision of supply code. In case, extension of time beyond 180 days is granted, the Petitioner is not liable to pay demand charges for the period for which the Commission extend the time period.

(ii) Whether the Petitioner is considering the bills issued by Respondent No. 1 on deemed release basis as legal and valid?

Reply:

It is submitted that the issue in the matter is in relation to extension of time limit for completion of 66 KV line work. The legality and validity of the bills issued by MGVCL on deemed release basis is not under challenge as per the scope of present Petition.

In case the Commission decides to extend time limit beyond 180 days, the Petitioner would not liable to pay demand charges on deemed release basis to

MGVCL for the period for which extension is granted by the Commission in the present Petition. Thus, the Petitioner would be entitled for such consequent relief.

(iii) If the answer to above questions (i) & (ii) is in affirmative, what are the reasons for making payment under protest?

Reply:

It is submitted that extension of time limit for completion of 66 KV line work is sought in the present Petition. In case the Petition is decided in favour of the Petitioner by allowing time limit extension, the Petitioner is not liable to pay demand charges on deemed release basis for the period for which extension is granted. Therefore, during pendency of the Petition, more particularly when the payment liability of demand charges is subject to outcome of the decision of the Commission in the pending Petition, the payment was made under protest reserving the rights to seek refund in case the time limit extension is granted.

It is also submitted that the Petitioner required temporary power connection at the site till the permanent connection is granted. If payment on deemed release basis is not made, MGVCL could have disconnected temporary power supply for non-payment in absence of any restraining order in the matter. Therefore, the only option available with the Petitioner was to make payment to MGVCL under protest subject to outcome of the pending Petition.

(iv) Whether the above referred letter dated 25.11.2019 of the Petitioner addressed to Respondent No. 1 stating that the payment of demand bill for the month of November-2019 is challenged before the Commission and which is part of the Petition is withdrawn or amended or modified?

Reply:

As stated in submission (iii), the payment liability of the Petitioner on deemed release basis for the period for which extension is sought, is subject to the outcome of the present Petition. The month of November 2019 for which communication was made to MGVCL, is also part of extension period sought by the Petitioner. In

case, the time limit extension is granted, the Petitioner is not liable for payment of demand charges on deemed release basis for the period for which time limit extension is granted. Thus, the payment liability of the Petitioner for demand charges on deemed release basis is consequent upon the decision of the Commission on the independent prayer of seeking time limit extension. Under the circumstances, during the pendency of the Petition, in the letter dated 25.11.2019, it was conveyed to MGVCL that until the final decision of the Commission in the sub-judice matter, the Petitioner shall make payment under protest.

Thus, the letter dated 25.11.2019 to MGVCL cannot be construed to mean that the Petitioner is raising billing related dispute before the Commission in the present Petition. Further, it is also clear stand of MGVCL that the present matter is related to time limit extension and agreed for the jurisdiction of the Commission in the matter as per the provisions of Supply Code.

(v) Whether the plea by Petitioner to suspend the 60 days' notice dated 14.08.2019 issued by the Respondent No. 1 up to the period of extension of time as may be granted by the Commission in the main matter does not imply that the Petitioner is objecting to the bills raised on deemed release basis by the Respondent No. 1?

Reply:

As stated hereinabove, the purpose of the present Petition is seeking for extension of time limit and to get consequent relief for excluding such extended time period from the performance obligations of the Petitioner and not making the Petitioner liable for payment of demand charges on deemed release basis on the ground that the delay is not attributable to the Petitioner and such delay otherwise would have been faced by the Respondents in case work is undertaken by the Respondents.

If the time limit extension is granted by the Commission, as consequent relief, the Two Months' Notice would be operational only after expiry of such extended time period. Thus, as consequent relief the pleas is made in the Petition to suspend 60 days' notice issued by MGVCL for the period for which extension as may be granted

by the Commission. This does not imply that the relief sought in the petition seeking for extension of time is a billing related dispute.

(vi) Whether the plea by Petitioner to hold and direct the Respondent No. 1 not to levy demand charges and monthly minimum charges for the period for which time period as may be extended by the Commission in the main matter does not imply that the Petitioner is objecting to the bills raised on deemed release basis by the Respondent No. 1?

Reply:

It is submitted that the Petitioner's submission hereinabove on the query Nos. (i) to (v) answers the above query.

6.10. It is submitted that the Petitioner is only interested in resolution of issues involved in the matter namely grant of time limit extension and consequent relief thereto. Therefore, in case the Commission decides that the Consumer Grievances Redressal Forum (CGRF) is the appropriate forum and have jurisdiction to decide issue of time limit extension under the provisions of Supply Code, as sought for in the present Petition, the Commission is requested to pass appropriate order on the issue of jurisdiction. Otherwise, the Petitioner would be left without resolution of issues for want of clarity on the jurisdiction issues namely having jurisdiction of CGRF or the Commission.

6.11. It is further submitted that MGVCL has already commenced the monthly billing of 5 MVA on deemed release basis. Therefore, in the interest of justice, the Petitioner requests the Commission to grant ad-interim relief, in the pending application, by restraining the Respondent No. 1 (MGVCL) from taking any coercive actions against the Petitioner including disconnection of temporary connection on account of non-payment of bills issued on deemed release basis till the matter is decided by the Commission.

6.12. The Petitioner has submitted that it has acted promptly and there is no delay attributable to the Petitioner in commencement of 66 KV line works. It is submitted

that numbers of activities, procedures and formalities are involved as per requirement of GETCO before commencement of physical work at site. It is further submitted that MGVCL/GETCO allows the activities related to line work only after signing of Power Supply Agreement with MGVCL, which was signed on 11.02.2019

6.13. It is submitted that after signing of agreement with MGVCL, the Petitioner has immediately proceeded for activities in relation to tending for selection of GETCO registered agency for undertaking line works, vendor registration with GETCO, seeking approval for material specification from GETCO etc.

6.14. The complete details and chronology of events from signing of Power Supply Agreement to commencement of physical work at site is submitted as under:

Event List of M/s JK Cement Ltd.

Date	Event
03-12-2018	Estimate issued
30-01-2019	Estimate paid at MGVCL
11-02-2019	Agreement executed
12-02-2019	Pre-biding meeting
14-02-2019	Inquiry floating to various parties (Manish Corp., Pragati, GPI Projects & Jaydeep Electricals) - 2 Week notice given to all parties
28-02-2019	Commercial negotiation - 1st stage
10-03-2019, 12-03-2019, 15-03-2019, 18-03-2019	Site visit of parties
20-03-2019	Final commercial negotiation with Manish Corporation
18-04-2019	Applied for vendor approval to GETCO
22-04-2019	Vendor Approval received from GETCO
27-04-2019	Applied for Route approval to GETCO
13-05-2019	Received Route approval from GETCO
20-05-2019	Submission of Profile to GETCO
22-05-2019	Approval of Profile received from GETCO
31-05-2019	Public notice given by GETCO
06-06-2019	Physical work started. i.e. Pit marking and then excavation

6.15. The Petitioner has requested the Commission to take on record the above submission of the Petitioner and allow the present petition.

7. The Respondent No. 2, GETCO, vide affidavits dated 02.06.2020 and 17.06.2020, submitted its reply as under:

7.1. It is submitted that though the issue does not directly relate to GETCO, GETCO is filing this reply to place the facts on record. It is submitted that the Petitioner has not placed the complete facts on record.

7.2. It is submitted that the Petitioner sought new power Contract Demand of 5000 KVA on 17.09.2018. The Petitioner filed its application with MGVCL and MGVCL requested for the TFR from GETCO and feasibility was called from field office of GETCO Nadia on 27.09.2018. In the meantime, as per routine procedure done for all the EHV consumers, the field office while getting the joint survey done with the Petitioner explained to the Petitioner the modality of carrying out the work done, i.e. either GETCO carries out work or the option that the Party (Petitioner herein) carries out the work and the supervision charge are collected by GETCO. The Petitioner on 20.10.2018 confirmed that the procedure is explained to them for modality of carrying out the work and it is decided by them to voluntarily accept the option of carrying out the work on their own. Accordingly, the estimate was issued on 22.11.2018. The estimate was granted under Option-III in view of the decision of the Petitioner. The estimate was paid on 01.02.2019 and at no point during the meeting, after issuance of estimate or at the time of payment of estimate, was there ever an objection to carry out the work under Option-III. Even after the estimate was paid, at no point of time did the Petitioner sought Option-1 or otherwise in any manner objected to Option-III as it had consciously agreed for Option-III. Further, the Petitioner executed the agreement on the basis of Option-III. Thus, the Petitioner requested for Option-III and agreed on Option-III and all parties had proceeded on the said basis.

7.3. Therefore, having accepted the Option-III and acting under the said Option, it is not open to the Petitioner to now raise any contention to the contrary. The Petitioner had agreed on Option-III and all parties had proceeded on the said basis.

7.4. It is submitted that the Option-III of the applicant doing the work themselves is recognized under the Regulations of the Commission. The Commissions Notification No 9 of 2005, Licensee's power to recover expenditure incurred in providing supply and other miscellaneous charges at Chapter VII part ix of the Notification mentions as follows:

> *"If the work is to be done by the developer or the applicant, Licensee shall charge 15% of the estimate as supervision charges to be deposited before work begins. In other cases, Licensee shall commence the work after the applicant has deposited the full amount of the estimate."*

7.5. Similarly, in the Supply Code also, it is clarified that party can do the work on their own at Regulation 4.33 which reads as follows:

> *"The demand note shall contain following details:*
>
> *(1) Details of the works (including service line) to be undertaken for providing electricity supply; Provided that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken.*
>
> *(2) Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof. Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used. Provided further that if the applicant chooses to get the extension work done*

on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable."

Therefore, the Commission in both the Notifications itself has given option for the applicant to carry out the work on their own if they desire. There is no bar in the applicant carrying out the work themselves.

7.6. Further, it is submitted that the Petitioner had not objected to the same and had voluntarily agreed on 20.10.2018 to the said Option. It is therefore not open for the Petitioner to now claim that GETCO should have done the work. The Petitioner has not placed any request for the work to be carried out by GETCO. There is not even a single letter/correspondence by Petitioner seeking any other option. On the other hand, the Petitioner had selected Option-III. The Petitioner having accepted the same cannot now claim that it could not have challenged the action of GETCO. If the Petitioner had asked for other options, the estimate for the same would have been provided by GETCO.

7.7. There was no bar for the Petitioner to seek any other option, and it could have sought the said option during discussions with GETCO or at least written to MGVCL/GETCO on the same. In fact, the Petitioner on detail explanation by Respondent No. 2 on the option available agreed for carrying out the work in Option-III. In any other case, whenever the Applicant requests Distribution Company/GETCO for Option-I they are obliged to act on it. Now simply because of delay in completion of work, the Petitioner cannot claim that it had no other choice.

7.8. Though the estimate was given vide Letter dated 03.12.2018, the Petitioner made the payment only on 11.02.2019. Accordingly, the agreement was executed between Petitioner and the MGVCL on 11.02.2019. The Petitioner has 180 days to

complete the work in terms of the Supply Code (Clause 4.33 read with 4.80 and 4.85) read with Standard of Performance of Distribution Licensee Regulations (Regulation 9.3).

7.9. It is submitted that the Petitioner was well aware of the route of the transmission line and therefore the claim that it has to pass through private agricultural land cannot be an excuse.

7.10. Further, GETCO had informed the Petitioner that the land passes through agricultural fields and any issues which may arise would have to be resolved by the Petitioner at its own cost. The General Terms and Conditions attached with the estimate also clarified that the way leave clearances, crop compensation etc shall be arranged by the Petitioner at its cost and GETCO would not be responsible for delay if any. Further, the Agreement also recognised that it was consumer's responsibility to get way leave clearances etc. Thus, the Petitioner was aware of the issues.

7.11. On receipt of the Letter dated 13.02.2019 from MGVCL stating that the Petitioner had made the payment and executed the agreement, GETCO had forwarded the technical details to the Petitioner on 15.02.2019 and informing the Petitioner to finalize the Contractor and Vendor for execution of work. GETCO had also informed the Petitioner that a kick off meeting would be organised once the vendors etc are finalised.

7.12. Subsequently, on 18.03.2019 GETCO also gave reminder on the same matter mentioning the clause of 180 days of GERC for releasing the power demand.

7.13. The Petitioner took two months to identify the agency and applied for approval of the Contractor and vendor only on 18.04.2019 and GETCO gave approval for the same on 22.04.2019.

7.14. The Kick off meeting was arranged on 22.04.2019 and target date was given by the Petitioner as October 2019. The target date was given by Petitioner and there was

no agreement or permission granted by GETCO. GETCO has no power to extend the timelines provided under Supply Code.

7.15. The Contractor of the Petitioner had submitted SBC report of soil for civil work at GETCO substation on 01.06.2019 which is basic requirement to commence the civil work. The Contractor had submitted SBC report after 39 days from kick off meeting with GETCO. The Petitioner had applied for civil work contractor on 11.06.2019 and GETCO had approved the same on 19.06.2019.

7.16. The Contractor of the Petitioner had asked standard drawings of equipment's vide letters dated 26.04.2019, 30.04.2019 and 04.05.2019, 25.05.2019, 01.06.2019, 13.08.2019 and 23.08.2019. GETCO had issued drawings vide letter dated 01.05.2019, 10.05.2019, 04.06.2019, 14.06.2019, 19.08.2019 and 04.09.2019 respectively. This indicates that the contractor had asked drawings of equipment's in parts which leads to delay in execution of manufacturing of equipment's and consequently delay in inspection and clearance of subject equipment's.

7.17. The Petitioner had also applied for approval of vendor for equipment's in parts manner vide letter dated 28.05.2019, 27.07.2019 and 26.06.2019. GETCO had approved vendor for equipment's vide letter dated 19.06.2019, 08.08.2019 and 19.07.2019 respectively.

7.18. The Petitioner applied for approval of vendor and contractor for work at their switchyard end on dated 20.09.2019 and GETCO has approved same on 30.09.2019.

7.19. It is submitted that the Petitioner was not carrying out the work on behalf of GETCO but was carrying out the work under Option-III. GETCO is only responsible for supervision of material etc and cannot be held responsible for delays by the Petitioner.

7.20. It is further denied that there was any agreement by GETCO as to any date for completion of work. GETCO cannot and did not grant or extend any timeline granted under the Regulations/Supply Code

7.21. It is submitted that during the discussions, the Petitioner had opted for Option-III (as can be seen from Letter dated 20.10.2018). GETCO had given an estimate on Option-III and the payment had been made by Petitioner and agreement signed without any protest or objection.

7.22. It is submitted that the Option-III of the applicant doing the work themselves is recognized under the Regulations of the Commission and there is no bar in the applicant carrying out the work themselves. There would be no meaning to such option being provided if it was not meant to be exercised.

7.23. Further, the Petitioner itself had opted for it during discussions. At no point did the Petitioner object to the same and in fact had voluntarily agreed to the said Option. There was not even a single correspondence seeking any other option. It is therefore not open for the Petitioner to now claim that GETCO/MGVCL should have done the work. The Petitioner has not placed any request for the work to be carried out by GETCO and had sought for Option-III themselves. The Petitioner having done so cannot now claim that it could not have challenged the action of GETCO. If the Petitioner had asked for other options, the estimate for the same would have been provided by GETCO. The attempt of Petitioner to claim that it had no other choice is not acceptable and is not borne out by any correspondence on record. There was no bar for the Petitioner to seek any other option, and it could have at least written to MGVCL/GETCO on the same. If such option is sought by a consumer, MGVCL would be obliged to act on it and GETCO would have also acted on it. Without even an attempt for such option, the Petitioner cannot claim that it had no other choice. The contentions to the contrary are wrong and denied.

7.24. It is submitted that the Petitioner had sought for Option-III, willingly executed the agreement and had commenced the work of erection of the line, without any issue on the said Option. Therefore, at this stage there cannot be any issue raised on

viability or feasibility or validity of such Option-III. It is denied that the work was being carried out on behalf of GETCO. It was the responsibility of the Petitioner to carry out the work and GETCO was only supervising the work. GETCO had written letters on 15.02.2019 and 18.03.2019 to Petitioner. However, even though the agreement was signed on 11.02.2019 and despite the letters, the Petitioner applied for vendor registration only on 18.04.2019 i.e. more than two months later. The kick off meeting was held immediately on 22.04.2019 and 23.04.2019. Even at this meeting, there was no objection or issue raised by the Petitioner on carrying out the work under Option-III and the Petitioner was willingly discussing on the work. It is further submitted that GETCO is not authorised to provide any extension of time under the Supply Code, nor did it do so.

7.25. It is submitted that the issue of delay has to be considered by the Commission and GETCO has no role. It is only submitted that Petitioner was well aware of the route of the transmission line and should have known that it has to pass through private agricultural land and prepared for the same. The approval of the way leave for laying the lines in any Agriculture land was known to the Petitioner as agreed by them in the Agreement.

7.26. The issues and contentions related to billing and notices are related to MGVCL and GETCO has no role in the same. GETCO cannot grant any extension of time, nor has it made any claim from the Petitioner. It is however submitted that the work was to be carried out by Petitioner, and it was Petitioner's responsibility to ensure that the work is completed within the prescribed time.

7.27. Further, it is submitted that GETCO has no role to play in regard to issue of extension of time for completion of work or related to monthly charges being demanded by MGVCL. GETCO is not empowered to grant any such relief as claimed by Petitioner or otherwise. The representations of Petitioner to GETCO could not be entertained by GETCO. The contentions of the Petitioner are denied.

7.28. It is submitted that the reliance on Section 42 and 43 for distribution system/transmission system is not correct. It is submitted that the Petitioner after

making a choice of undertaking the work cannot claim that the distribution system has to be maintained by the distribution licensee or transmission licensee. It is not open for the Petitioner to now claim that it was acting on behalf of GETCO/MGVCL. Further, even otherwise, having accepted and agreed to carry out the work, the Petitioner cannot pass on the blame or responsibility to GETCO. GETCO cannot be required to construct the line once the Petitioner had accepted/agreed to do it. The contentions to the contrary are wrong and denied.

7.29. It is submitted that the Supply Code recognizes the timelines and the issues of extension of time for licensees. The applicability of extension, if any, to Petitioner is not related to GETCO.

7.30. It is submitted that the contentions of the Petitioner that it is the responsibility of GETCO/MGVCL is not correct. It is reiterated that the Petitioner sought for and agreed to do the work under Option-III and commenced such work. Having chosen/accepted the option, it is not open for the Petitioner to raise any issue based on the same. The Petitioner had agreed to do the work under Option-III without any protest or objection or even a communication to GETCO/MGVCL for change in option. Therefore, the Petitioner cannot now contend otherwise or claim that it does not have expertise domain.

7.31. The issue of whether there can be extension of time granted or if so, whether it can be granted in the present case are not related to GETCO.

7.32. The timelines are provided under the Supply Code and GETCO has no power to provide any other timelines or extend the time. The contentions related to the Regulations and on extension of time are not relevant for GETCO and the same are not being dealt with. The Petitioner had approached GETCO two months after the agreement was signed for vendor registration. None of the other contentions on the delay are relevant for GETCO and are not dealt with. It is up to the Petitioner to demonstrate the same to the Commission.

7.33. It is submitted that no relief is sought against GETCO.

7.34. It is submitted that though the Petitioner has sought to claim that the Petition is for extension of time, the same is only to seek non levy of minimum demand charges which is also the prayer in the Petition. By clever drafting, the intent and ultimate relief of the Petition cannot be changed.

7.35. It is submitted that under Section 42 of Electricity Act, 2003, a specialised forum is provided for redressal of grievances of the consumers:

> *"(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.*
>
> *(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.*
>
> *(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.*
>
> *(8) The provisions of sub-sections (5),(6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections."*

7.36. It is submitted that Consumer Grievance Redressal Forum (CGRF) is a specialised forum for dealing with grievances of consumers and the Petitioner is a consumer who is seeking relief against distribution company. When there is a specialised forum provided for redressal of grievances of consumers, no other forum has jurisdiction:

a. Reliance Energy Limited v. Maharashtra Electricity Regulatory Commission in Appeal No. 30 of 2005 and batch dated 29.03.2006

> *"17. It is clear that entire initiation or inquiry or issue raised and the direction issued relates to wrong billing or over billing or adopting a wrong method of billing or wrong basis or billing excess or for a longer period than permissible*

on the alleged defect in meters or test or replacement thereof, are nothing but billing dispute between the licensee on one side and the consumer(s) on the other side. The contention. of the Respondents that the dispute relates to tariff or that it relates to implementation of tariff notified is a clear misconception. The entire dispute which were taken up by MERC is a dispute between consumer and Licensee with respect to billing, be it a wrong billing or excess billing or adopting wrong basis or procedure, illegal billing and it has nothing to do with tariff or tariff notification or enforcement thereof.

……

21. The relation between a consumer and a distribution licensee is governed by Part VI - Distribution of Electricity Section 42 (5) to (8) provides with respect to forum for redressal of grievance and the appellate forum as well. When a forum has been constituted for redressal of grievances of consumers by the mandate of Section 42, no other forum or authority has jurisdiction. The MERC, being a regulatory, the highest State level authority under The 2003 Act as well rule making authority has to exercise such functions as provided in the legislative enactment and it shall not usurp the jurisdiction of the consumer redressal forum or that of the Ombudsman. The special provision excludes the general is also well accepted legal position.

22. The Regulatory Commission, being a quasi judicial authority could exercise jurisdiction, only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise. On facts and in the light of the statutory provision conferring jurisdiction on the redressal forum and thereafter an appeal to Ombudsman, it follows that the State Regulatory Commission has no jurisdiction or authority to decide the dispute raised by Respondents 1 & 2, who are consumers or the Consumer Association. Apart from this, certain of the directions issued are not even applied and are in excess of jurisdiction. The Commission has to act within the four corners of The Electricity Act 2003 and the State Act in so far it is saved by Sec 185 of Electricity Act 2003. It is clear from the discussions the State Regulator has no jurisdiction to enter upon, inquire or on any part of the dispute on hand or adjudicate the same.

23. It is also to be pointed out, assuming for purposes of argument that Rules framed under The Electricity Act, 1910 is still applicable, even then the MERC is not the authority or successor to exercise the powers of adjudication. The MERC, which has framed the supply code should have confined itself to such exercise of powers as prescribed under Sections 50, 55, 57, 58, 59 and 60, in Part-VI of the Act. The provisions of Part-VII- Tariff in no way supports the contentions advanced by Respondents, as any direction in tariff order/notification has to be confined to the said Part. Section 26(6) of The Electricity Act, 1910 has no application to the case on hand as the Indian

Electricity Act, 1910 stands repealed and Section 185 of The 2003 Act has not saved Section 26(6) so also the limitation of six months prescribed there under. Two years limitation has been prescribed under Section 56(2) of 2003 Act. Mr. M.G. Ramachandran, learned counsel appearing for MERC very anxiously and strenuously contended that MERC has the authority and jurisdiction under Section 126; 127; 128; 129; and 130 etc., of the Act to issue the directions. We are unable to sustain the said contention advanced, as the grievances in respect of which MERC has assumed jurisdiction, relate to billing and being a billing dispute, its attempt to invoke those provisions cannot be sustained in law. The special provision in Section 42(5), (6) to (8) govern this and will exclude the applicability of all other provisions in 2003 Act.

24. Mr. M.G. Ramachandran further submitted that directions relate to innumerable number of consumers exceeding several lakhs of consumers and therefore, the MERC is justified in invoking the powers under Sections 129 and 130 of The Act. We are unable to sustain the said persuasive contention advanced. Be a single or it innumerable, with respect to grievance or complaint regarding Billing or Billing dispute, it is the competent authority under the Act, which has to exercise the powers. There cannot be a special provision or direction merely because consumers are too many. It is not open to the Commission to usurp jurisdiction by pointing out that the disputes are innumerable. That apart, it is impossible for MERC to examine the case of millions of customers which grievances are to be addressed by the forums specially constituted.

25. The reliance placed by Mr. M.G. Ramachandran on various pronouncements of the Supreme Court and various High Court, are of no avail nor the ratio laid down there apply to the case on hand and it is not necessary to refer to those pronouncements in detail. Mr. M.G. Ramachandran, learned counsel for MERC, vehemently and in his indomitable style pointed that the directions issued fall within the regulatory powers of MERC and therefore, it is not liable to be interfered. In this respect, the learned counsel relied upon three pronouncements of the Supreme Court., where their "Lordships examined the scope and purport of the expression "Regulate". Those decisions also do not advance the case of Respondent nor it is a ratio decidendi. Those pronouncements cannot be relied upon to exclude the jurisdiction of the authority constituted under Section 42 of the Act, which is a new forum constituted by the Legislature in the 2003 Act. However, laudable the object with which the Commission had taken upon itself and issued direction, in its anxiety, when it is a question of usurpation of jurisdiction, and exclusion of jurisdiction, we are well founded in interfering. The directions, once it is held to be without jurisdiction being a nullity, it will not also serve the cause of

consumers at whose instance and for whose cause the MERC had taken up and issued directions.

26. While recording and appreciating the able assistance of Mr. M.G. Ramachandran, learned counsel appearing for MERC, we are not persuaded to sustain various contentions advanced with an anxiety to assert and secure the Jurisdiction of MERC.

27. The consumers have a definite forum to remedy the Billing dispute under Section 42(5) and further representation thereof under Section 42(6). Further Section 42(8) also saved the rights of consumer to approach any other forum such as the forums constituted under the Consumer Protection Act, 1986 or other courts as may be available. In the circumstance, while making it clear that is for the consumers to workout the remedies as may be open to them in Law, we hasten to add that we not only declined to examine the merits of the case and counter case of both. parties as the issues or controversies are left open to be agitated before competent forum."

b. Chhattisgarh State Electricity Board v. Raghuvir Ferro Alloys Ltd., [2006] APTEL 134 - Appeal No. 125, 126 and 127 of 2006 dated 28.11.2006

"8. At this point, it will be pertinent to advert to Part VI of the Act, 2003, which governs relationship between a consumer and the licensee. Section 42(5) to (8) provides forum "for redressal of grievance" and the "appellate forum" as well. Factually, a forum for redressal of grievance of consumers as mandated by Section 42 has since been set up in the State of Chhattisgarh. In view of this no other authority has the jurisdiction for redressal of consumer grievance. In this context, the decision of this Appellate Tribunal decided in Appeal No. 30 of 2005, Appeal No. 164 of 2005 and Appeal No. 25 of 2006 on 29th March, 2006 is rightly relied upon by the learned Counsel for appellant. In the said judgment, it has been laid thus-

…….

9. The above judgment squarely applies to the facts of the present appeals.

10. In view of the above judgment on the jurisdictional issue and adverting to the averments made by the rival sides, we decide that the Commission has no jurisdiction or authority to adjudicate on the consumer dispute, viz., alleged excessive demand "of supply arranging charges" by the appellant Board. Therefore, in the result, we allow the three appeals and set aside the order dated 23rd May, 2006 passed by CSERC while giving liberty to each one of the consumer to work out their remedies before the competent forums. We make it clear that we have not gone into merits of various contentions advanced by

either side in other respect, and, therefore, our decision on the jurisdictional issue should not prejudice any further course of action that may be pursued by the 1st Respondent in these three appeals."

7.37. It is submitted that in a similar case as in present case, M/s RSPL had approached the said Forum and further the Ombudsman. The decision of the Ombudsman was in favour of the Distribution Company. The Petitioner cannot by clever drafting obscure the intent of the Petition which is to avoid payment of minimum demand charges, and which falls within the purview of billing dispute.

7.38. It is submitted that the Hon'ble High Court in the case of Surya Roshini v. Gujarat Electricity Regulatory Commission dated 07.01.2020 in Special Civil Application No. 16029 of 2019 has considered the prima facie view relying on case of KP Energy Pvt Ltd v. Gujarat Energy Transmission Corporation Ltd Petition No. 1206 of 2012. This is only a prima facie view and this does not preclude the Commission from considering the issue in detail. It is submitted that the said case of KP Energy Pvt Ltd v. Gujarat Energy Transmission Corporation Ltd Petition No. 1206 of 2012 is completely different as it relates to a wind generator and a transmission licensee. The CGRF is only for consumers of distribution companies and clearly the case of KP Energy as a generating company could not be considered by CGRF. There can be no dispute that disputes between a generating company and licensee is within the jurisdiction of the Commission. However, there is no such provision under Section 86 for disputes involving consumers of the distribution licensee.

7.39. The Order in KP Energy was issued on the basis of the estimate issued read with the Commission Order No. 1 of 2010 Determination of the tariff for Procurement of Power by Distribution Licensees from Wind Energy Generators and other commercial issues. In the said order at Para 6.4 - Security Deposit, the matter of Bank Guarantee and time extension are mentioned. The Order No 1 of 2010 states as under:

"6.4 Security Deposit

The objective of the order is to promote development of renewable energy in the state. A procedure of giving permission for the proposed wind projects, based on

the load flow studies has been followed by the GETCO. Thus, the proposed evacuation system from the pooling station of wind projects forms part of the overall GETCO System. While timely completion of power evacuation system of such wind projects is essential, timely execution of WEG project is also equally important. Non-completion of WEG projects leads to idling of transmission resources. Thus, to assure GETCO about seriousness of wind power projects, the project Developer shall be required to furnish a Bank Guarantee of Rs. 5 lakhs/MW to GETCO.

The Bank guarantee shall be forfeited if the project is not commissioned within a specified time period as follows:

	Prescribed Period for Commissioning of the project
1 to 100	***1** (one) Year from the date of allotment of transmission capacity*
101 to 200	*One and a half years from the date of allotment of transmission capacity*
201 to 400	*Two years from the date of allotment of transmission capacity*
401 to 600	*Three years from the date of allotment of transmission capacity*

Suggestions of the Objectors

GETCO suggested that date of allotment of the transmission capacity shall be considered from the date of issue of estimate for the wind farm site to the developer. M/s Kenersys India Pvt Ltd. and M/s. Azalea Enterprise Pvt Ltd. have suggested that a period of 3 years be given to the developer before any view is taken with regard to non-utilization of allotment. The security deposit of Rs. 5 lakhs per MW and that too for completion instead of starting of activities is not justified. M/s Acciona Wind Energy Pvt Ltd. has suggested that a minimum period of 4 years should be allowed irrespective of the capacity of the proposed project. Indian Wind Energy Association has suggested that the provisions of security deposit should not be made.

Commission's Ruling

As clarified above, the duty has been cast upon GETCO to create necessary infrastructure of transmission system for evacuation of power generated by WEG. If, GETCO fails to create the same, the power generated from wind energy is not utilized. Similarly, if the project developer fails to complete his project and evacuation system

upto GETCO inter-connection point within the stipulated time frame, the infrastructure created by the GETCO will remain unutilized and the burden of the network charges is borne by other consumers. Hence, the Commission does not agree to any change in the provisions regarding security deposit and prescribed time period.

So far as the allocation of transmission capacity is concerned, the date of estimate given by GETCO and receipt of the same by the project developer may be considered as starting date for this clause. It creates the right of the project developer on the proposed transmission system. With the above observation, the Commission decides that date of receipt of estimate from GETCO by the project developer shall be the starting date for the period of commissioning of WEG as well as power evacuation arrangement as stipulated in this clause."

7.40. It is submitted that in case of KP Energy, the extension of time was not granted to a consumer who had elected to construct the transmission line nor was it granted under Supply Code. The extension of time was granted to a wind generator who had to construct the line for evacuation of power from its generating station as per the wind tariff order No. 1 of 2010. It is submitted that the timelines considered for extension were provided in the Order. However, in the present case, the timelines are provided in the Regulation and the same are binding on all.

7.41. It is submitted that the Regulation 4.37 regarding extension of time refers to the Licensee and do not refer to the consumers as such.

"4.37 The overall timeline for releasing new electricity connection, from the date of receipt of application, shall be as per GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof:

Provided that the licensee may approach the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, in specific cases where extension of Distribution mains requires more time, along with details. In such cases, the licensee shall inform the consumer about the likely time of completion of works."

Similarly, Regulation 4.38 of Supply Code also refers only to licensee.

"4.38 The licensee shall not be held 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."

When the Regulation refers only to licensees, no reliance can be placed on the same by a non-licensee. When a Regulation provides for extension for one entity but not for others, the others are deemed to be have been excluded.

7.42. It is well settled principle that the Regulations are binding. In this regard, the Constitutional Bench of the Hon'ble Supreme Court in PTC India Limited v. Central Electricity Regulatory Commission (2010) 4 SCC 603 has held as under:

"40..... Making of a regulation in that regard is not a pre- condition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures a Central Commission takes under Section 79(1)(j) has to be in conformity with Section 178. ..... . A regulation under Section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an Order of the Central Commission under Section 79(1)(j)."

It is submitted that in Haryana Power Generation Corporation Limited -v- Haryana Electricity Regulatory Commission, in decision dated 01.03.2012 in Appeal No. 131 of 2011, the Hon'ble Tribunal has held as under:

"5. Bare reading of section 61 would make it clear that the State Commissions have been mandated to frame Regulations for fixing tariff under Section 62 of the Act and while doing so i.e. while framing such Regulations, State Commissions are required to be guided by the principles laid down in by the Central Commission, National Electricity Policy, Tariff Policy etc. It also provide that while framing the Regulations, the State Commissions shall ensure that generation, transmission and distribution are conducted on commercial principles; factors which would encourage competition and safe guard consumer's interest. Once the State Commission has framed and notified the requisite Regulations after meeting the requirement of prior publication under Section 181(3), it is bound by such Regulations while fixing Tariff under Section 62 of the Act and the Central

Commission's Regulations have no relevance in such cases. However, the State Commission may follow the Central Commission's Regulations on certain aspects which had not been addressed in the State Commission's own Regulations. The Haryana Electricity Regulatory Commission has framed Terms and Conditions for determination of tariff for generation in the year 2008 and the State Commission is required to fix tariff as per these Regulations. However, as per Regulation 33 the State Commission has power to relax any of the provisions of these Regulations after recording the reasons for such relaxation."

7.43. The reliance on inherent powers of the Commission is also misplaced. It is well settled principle that the Inherent Power Cannot override express provisions of law. At the outset it is submitted that the inherent powers cannot be exercised contrary to the Regulations. It is well settled principle that the inherent power cannot override express provisions of law.

a. Arjun Singh -v- Mohindra Kumar, (1964) 5 SCR 946 : AIR 1964 SC 993

"20. On this submission, which we might mention has been urged for first time in this court, the first question that arises is whether the Court has the inherent jurisdiction which learned counsel contends that it has. For the purpose of the discussion of the question in the context of the relevant provisions of the Code, it is unnecessary to embark on any detailed or exhaustive examination of the circumstances and situations in which it could be predicated that a Court has the inherent jurisdiction which is saved by Section 151 of the Civil Procedure Code. It is sufficient if we proceed on the accepted and admitted limitations to the existence of such a jurisdiction. ***It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code, need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates.*** *We shall confine our attention to the topic on hand, namely applications by defendants to set aside exparte orders passed against them and reopen the proceedings which had been conducted in their absence....."*

b. Gram Panchayat v. Lokesh Devi, 1998 SCC OnLine P&H 1520: (1999) 4 RCR (Civil) 313 (2) : PLR (1999) 122 P&H 741

"3. It is a settled principle of law that in the administration of justice, Civil Courts, as a necessary corollary to its very existence, must be deemed to possess inherent powers and jurisdiction. This is more so where the power is exercised by the Court to achieve the ends of justice or to undo the wrongs during the pendency of proceedings before the Court. The inherent powers also do not confer on the Court any additional jurisdiction to amplify the powers also do not confer on the Court any additional jurisdiction to amplify the powers specified in the Code. These are the powers which are in addition to complementary powers expressly conferred upon the Court under the provisions of the Code. It is also an equally settled principle of the law that if express provisions are provided for directing a particular act in a particular manner, inherent powers cannot be used to frustrate such limitations of the Court. The jurisdiction vested in the Court under the provisions of Section 151 of the Code of Civil Procedure and a jurisdiction ex debito justitial are certainly not ousted merely on the existence of another remedy (see (1997) 2 SCC 387: AIR 1997 SC 1348. AIR 1966 SC 1899, AIR 1987 Bombay 182, AIR 1944 Lahore 165 and 1946 Punjab Law Reporter 111)."

c. Ram Prakash Agarwal and Anr v. Gopikrishan and Ors (2013) 11 SCC 296

"13. Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity. The court can do justice between the parties before it. similarly, inherent powers cannot be used to re-open settled matters. ***The inherent powers of the Court must, to that extent, be regarded as abrogated by the legislature. A provision barring the exercise of inherent power need not be express, it may even be implied.*** *Inherent power cannot be used to restrain the execution of a decree at the instance of one who was not a party to suit. Such power is absolutely essential for securing the ends of justice, and to overcome the failure of justice. The court under Section 151 CPC may adopt any procedure to do justice, unless the same is expressly prohibited."*

d. Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others (2017) 16 SCC 498.

"37. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act."

e. Power Grid Corporation of India Ltd Corporate Office -v- Green Infra Renewable Energy Limited, 2017 SCC OnLine CERC 261

"84.....From the above two judgments, it emerges that the inherent powers can be exercised in order to address the procedural infirmities in the CPC in order to achieve the ends of justice and abuse of the process. ***In the present case there are no procedural infirmities in the Conduct of Business Regulations which prevents the Commission to address the issue of connectivity to the applicants who have been selected as successful bidders in SECI conducted bids. The difficulties have arisen in the absence of substantive provisions in the Connectivity Regulations to address the issue of connectivity in case of wind power generators/developers keeping in view the peculiarity of wind energy sector. In our view, inherent power of the Commission cannot be invoked under Regulation 111 of the Conduct of Business Regulations to grant relief to the Petitioner."***

7.44. It is submitted that the above judgments clarify that a provision barring exercise of inherent power need not be express but also may be implied. The Central Commission has also held that the difficulties arising in absence of substantive provisions cannot be addressed under inherent powers which are for procedural infirmities. When the legislature i.e. Electricity Act, 2003 has granted jurisdiction to the CGRF, the inherent powers of the Commission can be exercised to usurp the jurisdiction. If the jurisdiction is not otherwise provided to the Commission, the same cannot be exercised by way of inherent powers. In any case it cannot affect substantive rights of parties. In this regard, the Hon'ble Supreme Court in Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1 has held as under:

"27. We will next examine whether the power to make such an order can be traced to Section 151 of the Code, which reads:

"151. Saving of inherent powers of court - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court"

28. As the provisions of the Code are not exhaustive, section 151 is intended to apply where the Code does not cover any particular procedural aspect, and interests of justice require the exercise of power to cover a particular situation. Section 151 is not a provision of law conferring power to grant any kind of substantive relief. It is a procedural provision saving the inherent power of the court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court. It cannot be invoked with reference to a matter which is covered by a specific provision in the Code. It cannot be exercised in conflict with the general scheme and intent of the Code. It cannot be used either to create or recognize rights, or to create liabilities and obligations not contemplated by any law.

29. Considering the scope of Section 151, in PadamSen v. State of Uttar Pradesh, this Court observed (AIR p.219, paras 8-9),:

"8. ....The inherent powers of the court are in addition to the powers specifically conferred on the court by the Code. They are complementary to those powers and therefore it must be held that the court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature....

9. ...The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the courts for passing such orders which would affect such rights of a party."

7.45. It is further submitted that the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others (2017) 16 SCC 498, concurring judgment has relied on the judgments of Hon'ble Supreme Court. The Concurring judgment reads:

"58. By a reading of Regulation 80, it is clear that inherent powers of the State Commission are saved to make such orders as may be necessary:- (i) to secure the ends of justice; and (ii) to prevent abuse of process of the Commission. The inherent powers being very wide and incapable of

definition, its limits should be carefully guarded. Inherent powers preserved under Regulation 80 (which is akin to Section 151 of the Code) are with respect to the procedure to be followed by the Commission in deciding the cause before it. The inherent powers under Section 151 CPC are procedural in nature and cannot affect the substantive right of the parties. The inherent powers are not substantive provision that confers the right upon the party to get any substantive relief. These inherent powers are not over substantive rights which a litigant possesses.

59. The inherent power is not a provision of law to grant any substantive relief. But it is only a procedural provision to make orders to secure the ends of justice and to prevent abuse of process of the Court. It cannot be used to create or recognize substantive rights of the parties. In Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1, it was held as under:-

…. .

Same view was reiterated in Ram Prakash Agarwal and Another v. Gopi Krishan (dead through LRs.) and Others (2013) 11 SCC 296,"

7.46. It is submitted that there is a difference between exercise of powers and jurisdiction of the court. When the court does not have jurisdiction in a particular subject matter or issue, then it cannot exercise any power including inherent power in the matter. If the interpretation of the Petitioner on inherent power is accepted, then the Commission would be deemed to have jurisdiction over all matters by virtue of exercise of inherent powers and there would be no need for any other forum and more specifically the forum of CGRF. In any case, Regulation 9.23 to 9.24 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 here as the Supply Code specifically recognizes certain timelines to apply to consumers and provides for billing thereafter.

7.47. It is further submitted that when the Regulations provide for extension for the licensee but do not provide for such extension for non licensees, then this is a deliberate decision not to provide such extension. The non licensees cannot then under power to relax seek to act contrary to the regulations.

8. The Petitioner vide affidavit dated 30.06.2020 submitted its reply pursuant to Commission's Daily Order dated 04.07.2020 and in response to the Respondent No. 2, GETCO's, reply dated 17.06.2020, as under:

8.1. Regarding submission on interpretation and implication of Hon'ble High Court's Order dated 07.01.2020 in similar case of Surya Roshni Ltd., GETCO has submitted that the Order dated 07.01.2020 of Hon'ble High Court of Gujarat, in substance, is only relying on Commission's Order dated 14.06.2012 in case of KP Energy Ltd. vs GETCO and since the issue involved in that case was different being dispute between generator and licensee, the Commission was having jurisdiction.

8.1.1. The above submission of GETCO that Hon'ble High Court in its Order dated 07.01.2020 has only considered the implication of the Commission's Order dated 14.06.2012 (case of KP Energy Ltd) and not considered the implication of CGRF Regulations, is misplaced, baseless and without any merit. On the contrary, plain reading of order dated 07.01.2020 makes it amply clear that while passing the order, Hon'ble High Court has considered the implications of CGRF Regulations as well as Commission's Order dated 14.06.2012 and relegated the matter to the Commission.

8.1.2. For considering true interpretation and implication, it is relevant to consider the background of the case of Surya Roshni before Hon'ble High Court and the case of KP Energy Ltd v/s GETCO before the Commission as referred in the Order dated 07.01.2020 by Hon'ble High Court:

a. The Surya Roshni had approached the Commission in the year 2019 for extension of time limit for completion of 66 KV line works under Option-III due to reasons for delay not attributable to them.

b. In response, the Commission vide letter dated 27.02.2019 gave reply to Surya Roshni to approach CGRF of PGVCL under CGRF Regulations for redressal of grievances. stating that the dispute pertains to billing dispute between consumer and Distribution Licensees.

c. The letter dated 27.02.2019 of the Commission relegating the Petitioner to seek remedies from CGRF of PGVCL was under challenge before Hon'ble High Court in SCA No: 16029 of 2019.

8.1.3. Therefore, when the Commission's communication dated 27.02.2019 directing the Petitioner to approach CGRF of PGVCL was under challenge, it is incorrect to state that Hon'ble High Court has not considered the implication of CGRF Regulations and passed order dated 07.01.2020 by relying only on the Commission's Order in KP Energy case. In fact, it is clear that Hon'ble High Court has considered the implication of CGRF Regulations and relegated the matter back to the Commission by applying principles laid down in the Commission's Order in KP Energy case.

8.1.4. Therefore, it is also relevant to understand scope and purpose of the issues involved in KP Energy case. The submission of GETCO that in case of KP Energy, there was dispute between KP Energy being generating company and GETCO being Licensee and therefore the Commission was having jurisdiction under Section 86 of the Electricity Act 2003. However, there is no such provision under Section 86 of the Act for dispute involving consumer of Distribution Licensee. It is submitted that the said contentions of GETCO is misleading and without any merit.

8.1.5. It is submitted that the relevant part of the Order is read as under:

Cause Title of the Petition read as under:

In the Matter of:
Extension of time for erection of 66 KV transmission network for evacuation of 25 MW Wind Farm Generation from Wind Farm of M/s. K.P. Energy Private Limited as communication dated 6th April, 2011. per

Para 2.4

The petitioner submitted that he has taken all the necessary steps diligently to complete the work within the stipulated period. However, he is unable to complete the same due to situation beyond his control. He has requested the respondent vide letter dated 21st March, 2012 to extend the time limit for completion of works upto 30.06.2012 due to the above reasons and not to encash the Bank Guarantee submitted by the petitioner.

Para 2.7 [4]

[4] Shri D.J.Shah, on behalf of the respondent, submitted that…….

Based on the above submission, he submitted that the respondent has no objection to grant of extension of time limit from 5.4.2012 to 30.6.2012 for completion of the transmission network by the petitioner.

Para 6.2

According to clause 6.4 of the Commission's Order No.1 of 2010 dated 30.1.2010, the transmission network associated with wind farms having installed capacity upto 100 MW, is required to be completed within a period of one year.

Further, with the objective to ensure seriousness of the project developers, provision has been made regarding furnishing of bank guarantee of Rs.5 lakh per MW, which can be forfeited in case of failure of the project developer to complete the works within the stipulated period.

Para 6.4

In view of the facts stated above, we observe that the difficulties in completion of the transmission network for evacuation of power from 25 MW wind farm of the petitioner to GETCO 66 KV Kadamgiri substation is due to reasons beyond the control of the petitioner and the same is genuine. Hence, we grant extension of time limit from 5.4.2012 to 30.6.2012 to enable him to complete the above work. We also decide that the Bank Guarantee which was submitted by the petitioner shall not be encashed by the respondent till 30.6.2012.....

(underline supplied)

8.1.6. Thus, from the Order dated 14.6.2012, it is transpired that in KP Energy case:

(a) there was no dispute between generating company and licensee,

(b) the petition was also not under Section 86

(c) in the GERC Order No. 1 of 2010 dated 30.01.2010, there was clear provision to complete the transmission line within a period of 1 year but there was no provision of any nature for extension of time limit beyond 1 year.

(d) nowhere in the order, it is mentioned that the Commission has adjudicated dispute between generating company and transmission licensee for extension of the time limit for completion of transmission line.

(e) from the order, it is clear that in absence of any explicit provision in the Order dated 30.01.2010, in the given facts and circumstances of the case, the Commission had extended time limit in favour of applicant by exercising its general regulatory powers.

8.1.7. Thus, it is amply clear that in the Order dated 07.01.2020, Hon'ble High Court has considered two aspects, namely, (a) the case of KP Energy is similar to the case of Surya Roshni qua in case of Surya Roshni also, the line work was undertaken by the applicant on behalf of GETCO and similar to KP Energy case, Surya Roshni was also experiencing delay for the reasons not attributable to it, (b) Hon'ble High Court has also considered the facts that Surya Roshni has no dispute against Distribution licensee having jurisdiction of CGRF.

8.1.8. Therefore, Hon'ble High Court had applied the same principle that when the Commission had granted time limit extension to KP Energy by exercising regulatory jurisdiction with an intension to give justice to the applicant even though there was no explicit provision in the Order dated 30.01.2010 the same principle is need to be applied to the case of Surya Roshni also qua "to give justice and not to punish without default" and rightly relegated the matter to the Commission since there was no dispute between Surya Roshni and Distribution Licensee - PGVCL involving jurisdiction of CGRF.

8.1.9. It is submitted that in any case, the Order dated 07.01.2020 of Hon'ble High Court is binding to the Commission unless the order is reviewed / clarified by Hon'ble High Court in the Review Petition filed by the affected party.

8.2. Regarding the submission on role and conduct of GETCO, it is submitted that the contention of GETCO on the issue of jurisdiction of the Commission is belated and nothing but after-thought with an intention to delay the entire process.

8.2.1. It is therefore necessary to take into account the stand taken by GETCO up till 17.06.2020. It is also relevant to consider the stand of MGVCL being Distribution Licensee and stand taken by GETCO contrary to the stand of MGVCL. For this, following list of events are important to refer.

Date	Event
04-10-2019	Petition filed before the Commission.
21-12-2019	Reply filed by MGVCL on the Petition. MGVCL being Distribution Licensee, did not raise any issue related to jurisdiction. On the contrary, agreed for the jurisdiction of the Commission mentioning that only the Commission can grant time limit extension.
13-01-2020	Petitioner filed rejoinder to the reply of MGVCL
16-01-2020	First hearing held by the Commission.
27-01-2020	The Commission order issued Daily Order in relation to hearing held on 16.01.2020. In the order, the Commission had sought response from the parties on the aspect whether the issue involved in the petition is billing dispute having jurisdiction of CGRF and on the admissibility of the Petition.
06-02-2020	In compliance to Daily Order dated 27.01.2020, Petitioner filed its submission clarifying that the issue involved in the Petition is not billing dispute and as per the provisions of Supply Code and SoP Regulations, the Commission has jurisdiction to grant extension of time. However, GETCO / MGVCL did not file any response on the jurisdiction issue or on the submission the of Petitioner dated 06.02.2020, though liberty was granted to GETCO and MGVCL to file their submission jurisdiction issues.
17-06-2020	GETCO filed its additional submission raising the issue of jurisdiction and admissibility of petition.

8.2.2. From the above, thus it is clear that the stand of GETCO since beginning is that the Commission has jurisdiction for granting extension of time and applicant can directly apply to the Commission under the provisions of Supply Code for extension of time. The submission now made by GETCO, that too almost one year from filing

of the petition and six months after liberty granted by the Commission, is nothing but an after-thought with an only intention to delay and derail the matter.

8.2.3. It is also important to note that GETCO is taking stand contrary to its earlier stand qua agreeing for the jurisdiction during previous stage and sit for almost five months after opportunity granted by the Commission, GETCO may not be allowed to change its stand at this belated stage and therefore the Commission may just ignore the additional submission filed by GETCO.

8.2.4. It is submitted that it is relevant to appreciate that, (i) GETCO has duly recovered 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 remain with GETCO, (iii) line- route, material, erection work etc is carried out under direct supervision of GETCO officials and in knowledge of ground reality, (iv) the construction work is carried out under the Section 68 (1) approval of GETCO, (v) the application for RoW clearance / road crossing clearance / approval etc is also made and dealt by GETCO.

8.2.5. Considering the above facts, it is submitted that the role of GETCO in the present matter is to assist the Commission more particularly to analyze and verify the claim of delay raised by the Petitioner and to place on record factual aspects before the Commission as done in case of KP Energy Case. The contention of GETCO that the issue involved in present matter is billing dispute, is the issue between MGVCL and the Petitioner and therefore, it is not proper for GETCO to raise such issues.

8.3. In regard to contention of Respondent GETCO that the issue of the present matter is billing dispute and only CGRF has jurisdiction to deal with the issue, it is submitted that before dealing with the above contentions, it is imperative to refer relevant provisions of the Act, 2003 and the provisions of CGRF Regulations.

Section: 42 (5) and (6)

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal

of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

The relevant provisions of GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019 is read as under:

1.5 Definitions:

d) "Complaint" means any complaint made by a Complainant, either in writing, including e-mail and facsimile modes, or verbally over phone if such numbers are specified by a Licensee for lodging complaints, or by visiting personally to such offices of the Licensee which are designated by the Licensee for registering the complaints, to a Licensee, which may, without limitation, include complaints relating to:

i. any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by the Licensee in pursuance of a licence and/or any contract or agreement or under the Electricity Supply Code or in relation to Standards of Performance of Licensees, as specified by the Commission;

ii. any unfair trade practice or restrictive trade practice which has been adopted by the Licensee in providing Electricity Service; or

iii. Electricity Services which are being offered for use to the public in contravention of the provisions of any applicable law including safety code, rules and regulations, as prescribed by the competent authorities under the relevant laws or established through prudent industry practices, and as a result whereof the life and safety of the human beings, livestock or property is put at risk and endangered.

e) "Electricity Service" includes supply, billing, metering and maintenance of electrical energy to the Consumer and all attendant sub-services and also any other service which a Licensee is required to provide pursuant to his licence or under any applicable law.

……..

h) "Grievance" shall mean a grievance of the Consumer arising out of the failure of the Licensee to register or redress a Complaint, and shall include any dispute between the Consumer and the Licensee with regard to any Complaint or with regard to any action taken by the Licensee in relation to or pursuant to a Complaint

8.3.1. It is submitted that as per the above provisions the Act and CGRF Regulations, there are two ingredients which are to be fulfilled for CGRF having jurisdiction under GERC (CGRF) Regulations, 2019, namely, (i) there has to be a complaint against concerned Distribution Licensee, and (ii) the nature of complaint shall be as defined in the definition of the complaint in the CGRF Regulations.

8.3.2. Now, it is imperative to refer to the facts and issues involved in the present matter. In the present case, the work of erection of transmission line is undertaken by the Petitioner under Option-III on behalf of 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 provisions of Supply Code, the Petitioner has to complete the work as per the SoP timeline 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, only the Commission has authority to grant extension of time.

8.3.3. As per the case of the Petitioner, there is no complaint against Respondent MGVCL considering the facts that under the provisions of Supply Code and SoP Regulations, when Respondent MGVCL do not have any power / authority to grant extension of time, there cannot be any complaint/ claim against Respondent MGVCL seeking redressal of complaint before CGRF.

8.3.4. Further, it is submitted that there are no any explicit / implicit provisions in the CGRF Regulations which can authorize the forum to grant extension of time. In its submission, GETCO has also failed to point out that under which clause of CGRF Regulations, the forum has jurisdiction to grant extension of time.

8.3.5. It is further submitted that in absence of time limit extension order of the

Commission, MGVCL is entitled to commence billing on deemed release basis and there cannot be any complaint against this action before CGRF being action of MGVCL is in accordance with the provisions of Supply Code. Therefore, issue involved in the present petition cannot be considered as billing dispute.

8.3.6. Under the circumstances, what expected from MGVCL is assistance to the Commission in deciding the claim of the Petitioner with regard to delay in completion of line works. However, after analyzing the matter, if the Commission comes to the conclusion that there is genuine difficulty in completion of line and delay is not attributable to the Petitioner (as in case of KP Energy) in that case, the Petitioner is entitled to consequent relief.

8.3.7. It is the contention of GETCO that the Commission cannot exercise the regulatory power to grant time limit extension to the applicant under the provisions of Supply Code and SoP Regulations. If these contentions are accepted, in that case, it is not understood as to how CGRF can grant extension of time because CGRF has limited jurisdiction within the purview of CGRF Regulations only.

8.3.8. It is further submitted that when there is no complaint against MGVCL and when there is no claim of compensation against MGVCL for violation of SoP timeline, the issue involve in the present Petition cannot be entertained by CGRF.

8.3.9. In the present case, the applicant is constructing the transmission line on behalf of GETCO and therefore the present case does not involve the consumer - Distribution Licensee relationship having jurisdiction of CGRF.

8.3.10. Further, as per the provisions of the Electricity Act, 2003 and CGRF Regulations, the CGRF is having jurisdiction to entertain complaint against the concerned Distribution Licensee and not complaint against transmission licensee. Therefore, under Option-III, in case the delay in construction of transmission line is attributable to GETCO, the complaint of the same will not fall within the jurisdiction of CGRF and in that case, the issues of the applicant will be remained unresolved for want of jurisdiction, this could not be the intention.

8.3.11. It is also the contention of the Respondent that the present Petition is filed only after issuance of 60 days' notice by MGVCL for commencement of billing on deemed release basis and therefore it is billing dispute. As per this contention, if a person has filed petition before issuance of 60 days' notice for commencement of billing on deemed release basis, CGRF would not have jurisdiction since billing issue is not involved. For instance, in another case of Concord Bio, the Petition was filed before the Commission even before issuance of 60 days' notice for commencement of billing on deemed release basis. Thus, if above contention of the Respondent is accepted in that case, the issue involved in Concord Bio case, would not be considered as billing dispute and therefore the Commission would have jurisdiction whereas in other case if petition is filed after issuance of 60 days' notice, this would considered as billing dispute and therefore CGRF would have jurisdiction though the nature of issues involved in both the case are same. This would lead to unknown result as the jurisdiction issue cannot be decided based on timing of filing of petition.

8.3.12. It is also submission of GETCO that in similar case of M/s. RSPL, CGRF and Ombudsman has given decision in favour of PGVCL. The Petitioner, without going into the merit of the case, submitted that in a specific case if CGRF / Ombudsman has exercise jurisdiction, this is not binding to the Commission and the same cannot become precedent to be followed by the Commission.

8.3.13. In view of above submission, under the circumstances even when there is no dispute with MGVCL, if the issue involved in the present Petition is to be considered as billing dispute with MGVCL, in that case there cannot be any complaint against MGVCL before CGRF as delay in completion of line is not attributable to MGVCL or the Petitioner. In substance, the Petitioner would be penalized for no fault which is against principle of natural justice and cannot be the intension of any statute.

8.4. In regard to contention of Respondent GETCO that under the provisions of Supply Code and SoP Regulations, the applicant is not allowed to approach the Commission and the Commission cannot exercise the regulatory power to grant time limit

extension, it is submitted that it is relevant to refer proviso to Clause 4.33 (2) of the Supply Code which states that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005. Therefore, it is relevant to consider as to why Supply Code provides for applicability of SoP timeline to the consumer which is otherwise applicable to Distribution Licensee. The answer is straight and simple namely, when applicant is undertaking the erection of line work by its own, the same of SoP otherwise applicable to licensee is to be followed by applicant also. Meaning thereby, the applicant is acting in the shoe of licensee and therefore has to follow the SoP timeline.

8.4.1. It is submitted that since applicant has to follow SoP timeline, which is otherwise applicable to licensee, it is imperative to refer Sop Regulations, 2005 which provides that timeline stipulated in the Regulations is not sacrosanct and subject to relaxation / extension by the Commission due to time taken by local authority and other factors affecting the performance of Distribution licensee. Therefore, contention of the Petitioner is that in case the SoP timeline for completion of line is made applicable to the applicant, the other relaxation / extension in time otherwise available to licensee is also available to the applicant also. If not, in that case it is tantamount to asking the applicant to perform the impossible task. It is further submitted that take an example that the applicant of new connection has acted swiftly and taken timely actions for completion of line. However, there is delay in completion of line due to reasons beyond reasonable control of applicant such as stay order of competent court on Right of Way on the line route or there is abnormal delay in getting clearance / approval of Local Authority or there is abnormal delay from Respondent GETCO in giving line route / material permission etc, the applicant could not complete the line work within SoP time line. Therefore, in such a case, when delay is not attributable to the applicant and same delay would have otherwise been experienced by the licensee, if time limit extension is not granted, the applicant would be punished with no fault. This cannot be intension of the statute. The provisions of Supply Code are harmoniously to be read with SOP Regulations for meaningful interpretation. Otherwise, this would lead to a situation that when licensee is carrying out the line work, they are entitled for relief /

extension of time from the Commission but when the applicant is carrying out the same work and experiencing difficulties in nature of beyond reasonable control, he will not be entitled for the relief. This could not be the intention.

8.4.2. It is submitted that nowhere in the SoP Regulation is stated that the applicant is barred from approaching the Commission for seeking relief otherwise available to Distribution Licensee.

8.4.3. It is further submitted that the reliance placed by Respondent GETCO on the provisions of Clause 4.37 of Supply Code to state that only licensee is entitled for extension in timeline and not the consumer. It is submitted that in Clause 4.37, nowhere it is mentioned that only licensee can approach the Commission for time limit extension and consumer cannot approach for extension of time. Therefore, the contention of Respondent GETCO that in no case time limit extension is to be granted to the applicant is tantamount to denial of justice to the applicant and punishment with no fault. Accordingly, the said contention of Respondent GETCO is without any merit and against the principle of natural justice. This will also become a tool to abstract money from the consumers on deemed release basis by delaying approval / process by Respondent GETCO in case Supply Code is to be interpreted to mean that in no case the applicant is entitled for time limit extension for whatsoever reasons.

8.4.4. It is submitted that on the principle of natural justice and as per the provisions of Supply Code and read with Sop Regulations, the Commission can grant time limit extension by exercising regulatory powers available under the provisions of Supply Code and Sop Regulations which is also the intention of Hon'ble High Court in the order dated 07.01.2020 in case of Surya Roshni. It is submitted that the Commission should play its role and exercise regulatory powers to protect the interest of applicant and give justice.

8.4.5. It is also imperative to consider the plea made by the Petitioner in the Petition namely, to excuse the delay not attributable to the Petitioner. It is in the interest of justice that the applicant should not be punished for not his fault. Therefore, it is

expected that Respondent MGVCL / GETCO should also play constructive role in the matter by placing on record the factual aspects of the case for deciding the claim of delay by the Commission.

8.4.6. It is submitted that apart from powers available under the SOP Regulations, the Commission has authority and jurisdiction to grant extension of time limit to the Petitioner for completion of work for the delay not attributable to the Petitioner.

8.4.7. It is submitted that under the provisions of Regulations 9.21 and 9.22, the Commission has power to relax and power to remove difficulty. It is submitted that since there is no explicit provision in the Supply Code allowing consumer to approach before the Commission for extension of time limit, the consumer interest is badly affected in case of delay not attributable to consumer. Therefore, in the interest of public / general consumer who are undertaking extension of line works under Option-III and experiencing delay not attributing to such consumer, the Commission may exercise its regulatory power and grant relaxation to the effect that in case of delay not attributable to the applicant for erection of line work, such applicants are entitled to extension of time limit, in the best interest of justice.

8.4.8. It is also submitted that under the Clause 9.23 of Supply Code, the Commission has inherent powers to pass orders as may be necessary for end justice to meet or prevent abuse of process of Commission. In case the Commission does not exercise its jurisdiction and not grant time limit extension, it will cause to injustice to the consumer if delay is not attributable to consumer and issues will remain unresolved since issue involved in the present matter is not related to dispute with distribution licensee and therefore CGRF has no jurisdiction over this. This is a substantial provision, and the Commission should exercise the same in interest of justice.

8.4.9. It is submitted that as per Code 9.24, the Commission can adopt procedure which is at variance with any provision of Supply Code in a special circumstance. Further, as per the Code 9.25, there shall be no bar for the Commission for dealing the matter or exercising any power under the Act for which no code has been framed. In the

present case, there is no explicit provision in Supply Code allowing consumer for extension of time even though delay is not attributable to consumer. Under special circumstances, the Commission has jurisdiction and authority to deal with issue raised in the Petition and decide the prayer made thereto. It is submitted that as per the above provisions of GERC Supply Code and as held by Hon'ble High Court in Order dated 07.01.2020, the Commission has regulatory jurisdiction to grant time limit extension and grant consequent relief thereto.

8.4.10. It is submitted that as per the above provisions of GERC Supply Code and as held by Hon'ble High Court in Order dated 07.01.2020, the Commission has regulatory jurisdiction to grant time limit extension and grant consequent relief thereto. The Petitioner would also like to submit that since the issue involved in the matter is relating to extension of time for completion of line works under the provisions of Supply Code and non-levy of demand charges on deemed release basis is only a consequent relief, such matter could not be raised before CGRF and the Commission is the authority to decide the time limit extension considering the merit of the case and consequent relief thereto.

8.5. In regard to various judgments referred to by GETCO in support of contention that only CGRF has jurisdiction to deal with issue involve in the present Petition, it is submitted that the judgment of Hon'ble APTEL referred by GETCO is on the issue of involving billing dispute between consumer and Distribution Licensee. Whereas issue involved in present case is distinct and different. The Petition is for extension of time limit for completion of line work for delay not attributable to the Petitioner. Since, the delay is not attributable to MGVCL and there is no dispute/ claim against MGVCL, the judgment is of no help to decide the issue of jurisdiction.

8.5.1. Further, regarding the judgment relied on by GETCO to contend that Regulations are binding in nature, it is submitted that the reliance on these judgments by GETCO is misplaced and irrelevant. The Petition is filed within four corners of the Regulations of the Commission and therefore issue binding of regulations does not arise.

8.5.2. Regarding the judgements relied on by GETCO on the issue of exercise of inherent power of the Commission, it is submitted that these judgments of Hon'ble Supreme Court relied by GETCO, is supporting the case of the Petitioner. In the judgments of Arjunsingh v/s Mohindra Kumar, Gram Panchayat v/s Lokesh Devi and Ram Prakash Agrawal v/s Gopikrishan are in relation to decision of Hon'ble Supreme Court that (a) the inherent powers of court cannot be override express provisions of law, (b) A provision barring the exercise the inherent power need not be express, it may be even implied. It is submitted that in the Supply Code there is no explicit/implicit provision which bar the consumer for seeking extension of timeline, therefore, the issue of inherent powers overriding the express provision of Supply Code does not arise. Further, GETCO has failed to indicate as to how even by implication it can be construed that consumer is not allowed for extension of time. This contention is nothing but asking the applicant to perform impossible task and punish the applicant with no fault. On the contrary, provisions of Supply Code read with SoP Regulations allows for time limit extension for reasons for delay are beyond reasonable control. Since no explicit provision is there in Supply Code, the Commission can exercise inherent powers under the Supply Code.

8.5.3. It is submitted that the judgments of Supreme Court in case of GUVNL V/s. Solar Semiconductor, PGCIL v/s. Green Infra Renewable Energy Ltd. and Vinod Seth v/s Devinder Bajaj & Oths are in relation to inherent powers exercised under the Conduct of Business Regulations / Civil Procedure Code to grant substantive relief. The reliance on these judgments is also misplaced and not relevant. The present case is distinct and different. The exercise of inherent powers in the present case is not under the Conduct of Business Regulations but under the main regulations namely Supply Code and SoP Regulations itself. Therefore, issue of exercise of inherent powers to grant substantial relief under the Conduct of Business Regulations / CPC which is procedural in nature, does not arise.

8.6. It is submitted that no regulations in Supply Code or in SoP provides that extension in time limit cannot be granted to non-licensees. In case the Commission does not exercise its inherent powers, the Petitioner would be deprived of the justice and will be punished with no fault. Under the circumstances, this is a fit and proper case

for exercise of inherent powers and regulatory jurisdiction by the Commission in the best interest of justice.

9. The Petitioner vide affidavit dated 11.05.2023, filed its submission on the factual and legal aspects of the Petition including the issue of jurisdiction, as directed by the Commission vide Daily Order dated 27.04.2023.

9.1. It is submitted that as far as jurisdictional and legal issues are concerned, the Petitioner has already made elaborate submissions in the various affidavits filed before the Commission from time to time in compliance to daily orders passed by the Commission in the subject Petition. Same are not reiterated for sake of brevity.

9.2. Regarding the factual aspects, it submitted that the Petitioner has already placed on record the factual aspects and relevant documents as part of memo of present Petition for consideration of the Commission. Same are also not reiterated for sake of brevity.

9.3. The Petitioner has requested the Commission to take on record above submissions of the Petitioner and decide the Petition.

10. The Respondents MGVCL and GETCO, vide affidavit dated 31.05.2023 and 04.06.2023, respectively, filed their submissions in compliance to the Daily Order dated 27.04.2023 on the issue of factual and legal aspects of the Petition including the issue of jurisdiction. The submissions already made by both the Respondents are not repeated here for the sake of brevity.

10.1. It is submitted that the preliminary question to be considered is as to whether the issue is within the jurisdiction of the Consumer Grievance Redressal Forum under Section 42(5) to 42(8) of the Electricity Act, 2003 being a dispute between a consumer against the distribution licensee or whether there is any specific power under the Supply Code for the Commission to entertain and consider the issue of extension. Unless otherwise specifically recognized under the Supply Code, by virtue of being dispute of a consumer, the issue is within the jurisdiction of

Consumer Grievance Redressal Forum (CGRF).

10.2. It is submitted that the present Petition is filed by a consumer of the distribution licensee seeking non levy of the minimum demand charges by the distribution licensee. Though the Petitioner has sought to claim that the Petition is for extension of time, the same is only to seek non levy of minimum demand charges which is also the prayer in the Petition. By clever drafting, the intent and ultimate relief of the Petition cannot be changed. Under the Supply Code, the consumer has to approach the CGRF for any grievance of action or inaction of the distribution company:

> *"4.86 If the consumer feels aggrieved by the licensee's action or omission, the consumer may file his representation to the concerned Consumer Grievances Redressal Forum for redressal of his grievance."*

10.3. It is submitted that as per the decisions of the Hon'ble Courts, such disputes are to be agitated before the CGRF with further representation to Ombudsman and cannot be maintained by way of a Petition before the Commission. In this regard Section 86(1)(f) of the Electricity Act, 2003 restricts the adjudicatory jurisdiction of the Commission to disputes between licensees and generating companies or between two licensees and not disputes raised by a consumer on matters of invoices, billing etc.

10.4. In this regard the Commission has notified the GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019. It is submitted that the Ombudsman has dealt with similar issues, as raised in the present Petition, in Case No. 72 of 2019 vide Order dated 27.11.2019 in M/s. RSPL Limited -v- Executive Engineer, Paschim Gujarat Vij Company Limited, which was a representation made by the concerned consumer under Section 42(6) of the Electricity Act, 2003 in regard to the decision made by CGRF. The decision of the Ombudsman was in favour of the Distribution Company.

10.5. Further, it is submitted that under Section 86 of the Electricity Act, 2003, a State Commission can only adjudicate disputes between a licensee and a generating company. The Commission can exercise both adjudicatory and regulatory functions

under Section 86. The present Petition is adversarial in nature, which falls under Section 86(1)(f), which does not cover the case of the Petitioner. In this regard, the Respondent has relied on the following decisions:

a. Maharashtra Electricity Regulatory Commission -v- Reliance Energy Limited, (2007) 8 SCC 381

b. BSES Rajdhani Power Limited -v- Delhi Electricity Regulatory Commission in Appeal No. 181 of 2008 decided on 30.03.2009

c. Rashmikaban Navinbhai Patel & Others -v- Uttar Gujarat Vij Company Limited in SCA No. 18138 of 2016 dated 11.07.2022

d. Chhattisgarh State Electricity Board -v- Raghuvir Ferro Alloys Ltd., [2006] APTEL 134 Appeal No. 125, 126 and 127 of 2006 dated 28.11.2006

10.6. Regarding the current status of the Petitioner, it is submitted that the Respondent MGVCL has already issued the Notice dated 14.08.2019 under the Clause 4.33 for completion of work and availing of power supply by the Petitioner within 60 days and intimated that in case of failure to do so, the liability to pay demand charges would arise. Since, the Petitioner had failed to complete the work within 60 days, MGVCL has raised the bills for the months commencing from 14.10.2019. It is submitted that the billing is as per the Tariff Orders of the Commission as applicable to the consumer category of the Petitioner. The Petitioner has paid the bills. The Petitioner has completed the work, and the actual supply has commenced with effect from 20.03.2020.

10.6.1. It is submitted that, in the Petition, the Petitioner has claimed that the work would be completed by February 2020 contrary to its earlier letter dated 29.08.2019 which sought extension until 14.01.2020. However, the actual work was completed only on 18.03.2020 and physical supply commenced on 20.03.2020.

10.7. Regarding the contentions / allegations on the Option-III, it is submitted that the Petitioner sought to avail new connection having demand of 5000KV for which

work was to be done. It is submitted that it was in fact the Petitioner which had requested for Option-III and agreed that it would carry out the work and all parties proceeded on the said basis. The Petitioner cannot at this stage now raise any issues on the Option-III.

10.7.1. It is submitted that the Petitioner in the Rejoinder has wrongly claimed that there is no document on record that Petitioner had demanded Option-III despite the letters dated 20.10.2018 and 18.04.2019 written by the Petitioner. In fact, the said letters were produced in the replies by GETCO and despite the same, the Petitioner has in its Rejoinder made wrong statements and such conduct is to be deprecated. Further, the attempt to claim that GETCO was offering only Option-III is mischievous and the same has been denied by GETCO and is in any case, belied by the fact that the Petitioner had specifically written to GETCO about choosing Option-III. There was no reason to write such letters, if only Option-III was offered.

10.7.2. Therefore, having requested for Option-III and having accepted and acted upon the Option III, it is not open to the Petitioner to now raise any contention to the contrary or claim that the Respondent GETCO should have done the work. The Petitioner in its rejoinder has clarified that it is not raising any allegations against Respondents MGVCL or GETCO. Hence, the allegations made in the Petition may be ignored.

10.7.3. The Respondent MGVCL submitted that it is well settled principle that a party cannot approbate and reprobate. In this regard, the Respondent MGVCL relies on the following decisions:

a. State of Rajasthan v. Union of India, (2018) 12 SCC 83

"3. After hearing the arguments of the learned counsel for the parties, we find substance in the aforesaid submission of the defendants. Even if we presume that the suit was maintainable, at the same time the plaintiff also had remedy of filing the statutory appeals, etc. by agitating the matter under the Finance Act. It chose to avail the remedy under the Finance Act. The doctrine of election would, therefore, become applicable in a case like this. After choosing one

particular remedy the plaintiff cannot avail the other remedy as well, in respect of the same relief founded on same cause of action."

b. Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435

"11. In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683: AIR 1993 SC 352] this Court observed as under: (SCC pp. 687- 88, para 10)

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'."

12. The doctrine of election is based on the rule of estoppel-the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily. [Vide Babu Ram v. Indra Pal Singh [(1998) 6 SCC 358], P.R. Deshpande v. Maruti Balaram Haibatti [(1998) 6 SCC 507] and Mumbai International Airport (P) Ltd. v. Golden Chariot Airport [(2010) 10 SCC 422 : (2010) 4 SCC (Civ) 195].]"

10.7.4. It is submitted that Option III, i.e. Applicant to do the work, is a valid and legal mechanism under the Regulations framed by the Commission. The Electricity Supply Code as well as Licensee power to recover expenditure incurred in providing supply and other Miscellaneous charges Regulations recognise the option of the Applicant getting the work done itself.

10.7.5. The Respondents have referred to Regulation 4.33 of the Supply Code, 2015. Further, it is submitted that the Licensee power to recover Expenditure incurred in providing supply and other Miscellaneous charges Regulations reads as under:

"7. Manner of Accounting and Adjustments

…….

(ix) If the work is to be done by the developer or the applicant, Licensee shall charge 15% of the estimate as supervision charges to be deposited before work begins. In other cases, Licensee shall commence the work after the applicant has deposited the full amount of the estimate."

10.7.6. Therefore, the Commission in both the Notifications itself has given the option for the applicant to carry out the work on their own. There would be no meaning to such option being provided if it was not meant to be exercised.

10.7.7. There is no bar on the applicant carrying out the work themselves and not only did the Petitioner not object to the said Option, but in fact the Petitioner had voluntarily agreed on 20.10.2018 for the said Option and even executed agreements under said Option. Now simply because of delay in completion of work, the Petitioner cannot claim that it had no other choice.

10.7.8. Therefore, there cannot be any dispute on the fact that the Petitioner had agreed to Option III and all parties had proceeded on that basis. The Petitioner is raising this issue now only because of its own delays. Such contention is clearly an afterthought to avoid the liability as provided in the Regulations. The Petitioner having accepted to carry out the work, it has also accepted all the consequential obligations.

10.8. Regarding the issue of consequences of delay by the Applicant, it is submitted that the issue has to be considered in terms of Supply Code and Standard of Performance Regulations, which are binding Regulations.

10.8.1. In this regard, the Respondent has relied on Regulations 4.33 (2) and 9.3 of the Supply Code, 2015.

10.8.2. It is submitted that the Petitioner was required to complete the work within 180 days from 11.02.2019 which comes to14.08.2019. However, the Petitioner failed to do so.

10.8.3. The Respondent MGVCL has submitted that the Petitioner cannot claim any period

other than 180 days. The contention that there was a mutual agreement with GETCO as the completion date cannot be accepted. GETCO cannot affect any right or obligation under the Supply Code. GETCO cannot grant or extend any timeline granted under the Regulations/Supply Code and particularly when the consequences of delay in completion relate to MGVCL. In any case, GETCO itself has opposed the submission of the Petitioner in GETCO's reply which has clarified that GETCO has no power to extend timelines provided under Supply Code and stated that there was no agreement or permission by GETCO and the date was given by the Petitioner.

10.8.4. It is submitted that the Petitioner is seeking to raise irrelevant and unnecessary issues on alleged objectives of Electricity Act, 2003 or role of distribution licensee or GETCO which are not relevant to the present Petition which has to be considered in terms of Supply Code and Standard of Performance Regulations, which are binding Regulations. The Commission has to adjudicate and decide on the basis of the Regulations and not on basis of vague concepts of greater objectives or underlying schemes. The Regulations are clear.

10.8.5. It cannot be accepted that the timelines are only to protect the interests of the consumers. If this was so, there would be no provision under Supply Code for payment of minimum charges to the distribution licensee when the Applicant delays the completion of the line. The objective of timelines has to apply even to applicants who do the work themselves as the distribution licensees have to be ready to supply power at a particular date and in case the Applicant does not take power, it still has to compensate the distribution licensee.

10.8.6. Further, it is submitted that the Agreement entered into between the Petitioner and MGVCL recognised the liability of the Petitioner to pay minimum charges for its contract demand on the basis of deemed commencement of supply. Clause 2 read as under:

"2. DATE OF COMMENCEMENT OF THE AGREEMENT

(a) Under the conditions of this contract, the consumer shall take electrical

energy/power supply from the Distribution Licensee within a period of sixty days from the date of issue of intimation by the authorised Officer of the Distribution Licensee that supply of electrical energy is available, consumer shall not have right to cancel its application once such intimation letter is issued by the Distribution licensee.

(b) The provisions of this agreement shall be deemed to have come into force from the date of commencement of supply of energy or the date of expiry of sixty days' notice above referred to, whichever is earlier;

(c) In case the consumer is unable to receive supply of electrical energy before expiry of sixty days period from the date of issue of intimation by the authorised officer of the Distribution Licensee, it shall be considered as the power supply deemed to have been commenced from the date immediately following the date of expiry of sixty days period and the consumer shall be liable to pay the MINIMUM CHARGES as may be decided by GERC and applicable from time to time"

10.8.7. It is submitted that MGVCL had proceeded on the basis of ensuring prompt connection to the consumer and had made necessary arrangements. MGVCL vide Letter dated 14.08.2019 issued a Notice under Regulation 4.33 of Supply Code 2015 to complete the work and avail power supply within 60 days. The Supply Code recognizes that if the work is not completed within 180 days, a notice can be issued and therefore MGVCL had issued notice. MGVCL does not have to inquire into the status of the line work which is being carried out by the Petitioner. Further, the GETCO/MGVCL cannot be made liable to coordinate on behalf of Petitioner and adjust timelines (even assuming but not admitting that there was any such power) without any communication by the Petitioner.

10.8.8. The Respondent MGVCL was ready to commence supply and in absence of consumer taking supply, there is loss to MGVCL which is passed on to other consumers. The Respondent is ready to supply electricity and therefore it has to be compensated for the same.

10.8.9. The Respondent GETCO submitted that even assuming but not admitting that there is any consideration of extension of time, it is up to the Petitioner to demonstrate the delay. The issues of delay has to be considered by the Commission and GETCO

has no role.

However, it is submitted that there was no delay on the part of GETCO and GETCO had processed all approvals/requests expeditiously and in reasonable time.

10.8.10. It is submitted that GETCO had never agreed to any date for completion of the work. The target date was given by Petitioner and there was no agreement or permission granted by GETCO. The date has been recorded in the Minutes of Meeting for information, and this does not in any manner mean that GETCO has granted any permission or extension until such time. In fact, GETCO has no power to extend the timelines provided under Supply Code. GETCO cannot and did not grant or extend any timeline granted under the Regulations/Supply Code. Even in cases of delay, the anticipated date of completion would be recorded in the meeting and not the scheduled date.

10.8.11. it is submitted that as per the Petitioner itself in the kick-off meeting in April 2019, the anticipated date of completion was October 2019 which was beyond the 180 days provided in the Regulations.

10.9. Regarding contentions on grant of additional time, the Respondents MGVCL submitted that there is a time frame provided for completion of work by the Petitioner i.e. 180 days, and the consequences of the delays are also provided in the Supply Code. Admittedly, the Petitioner has failed to complete the work within time period as per the Regulations. Therefore, the Respondent MGVCL was entitled to take the appropriate steps.

10.9.1. It is submitted that the Petitioner has sought additional time in the present petition. The issue of whether there is any power to grant extension / additional time under the Regulations to a consumer / applicant has to be considered by the Commission. Though, there is a provision in Supply Code for extension of time to the licensee, there is no such provision for Consumer / Applicants.

10.9.2. Any waiver of the demand charges to be paid by one consumer by the Respondent

MGVCL would affect the other consumers. MGVCL being a distribution licensee is entitled to its aggregate revenue requirement and therefore any shortfall due to waiver of charges for one consumer would have to be compensated by higher charges on remaining consumers. Merely because supervision charges are paid by the Petitioner for the work to be carried out does not mean that the Petitioner can claim that it is not required to pay the demand charges as per the Supply Code 2015 and Agreement.

10.9.3. It is submitted that the distribution licensees make arrangement of power in order to supply to applicant and in case the applicant does not take the power, the distribution licensees still incur the costs associated with such arrangements. This cost has to be compensated and that is why Regulations provide for billing by the distribution licensees in case of delays by Applicants. There are timelines even when the Applicant does not do the work. This is to ensure seriousness of Applicants and to compensate for the cost of arrangement of power made by the distribution licensee and to prevent such costs being borne by other consumers of distribution licensees.

10.9.4. The requirement to pay monthly charges is recognized in the Supply Code and is provided to compensate the distribution licensee who is otherwise ready to supply power to the consumer.

10.9.5. The Respondent MGVCL submitted that even assuming but not admitting that the extension of time can be granted, the same can be only by the Commission and not the distribution licensee. The Respondent MGVCL / GETCO has no power or right to grant any extension of time. Further, the extension can only be granted if the Petitioner has proved that the delay was beyond its control/due to force majeure events.

10.10. Regarding reliance on Regulation 4.37 and 4.38 of the Supply Code and 15.2 of the Standard of Performance, the Respondent MGVCL has submitted that the issue of whether the referred Regulation which relate to licensees would apply to a consumer/applicant and whether it can be considered in the facts and

circumstances of the present case has to be considered by the Commission.

10.10.1. It is submitted that the Regulation 4.37 regarding extension of time refers to the Licensee and does not refer to the consumers as such. Similarly, Regulation 4.38 of Supply Code also refers only to licensee.

10.10.2. When the Regulation refers only to licensees, no reliance can be placed on the same by a non-licensee. When the Regulations provide for extension for the licensee but do not provide for such extension for non licensees, then this is a deliberate decision not to provide such extension. The others are deemed to have been excluded. The non licensees cannot then under power to relax seek to act contrary to the regulations.

10.10.3. Similarly, even in case of Regulation 15.2, the reference is to licensee. The Supply Code only incorporates the specific timelines and does not incorporate Regulation 15.2 for the consumers/applicants.

10.10.4. In any case, the Petitioner has to justify and substantiate the alleged force majeure condition such as flood etc. with evidence and supporting documentation.

10.10.5. Further, when the work is done by the Applicant/consumer itself, the distribution licensee cannot seek extension under Regulation 4.37. In the present case, further, the Petitioner itself had not provided any reasons for delay until after issuance of notice and even then, there is no substantiation of the same.

10.11. Regarding reliance on Regulation 4.42 of Supply Code, the Respondent has submitted that it is not applicable when the work is done by the consumer/applicant. This is clear from the requirement of licensee to inform the applicant on completion of work. When work is to be completed by the applicant itself, it is the applicant which has to submit the work completion report. The applicable provision in the present case is Regulation 4.33 (2) Second Proviso of the Supply Code. In fact, the Regulation specifically envisages the issuance of notice when the applicant has failed to get the work done within time.

10.11.1. Similarly, the additional extension of 60 days provided in Regulation 4.42 is not provided in Regulation 4.33. Even otherwise, the Petitioner has delayed beyond such period and in any case, there are no special circumstances in the present case.

10.12. Regarding the issue of alleged delay claimed by the Petitioner, the Respondents submitted that the Petitioner has to justify its case for extension of time, both under Regulations and by way of facts. Even assuming but not admitting that there can be extension of time for Applicants, even on merits the Petitioner has to demonstrate the reasons for delay and substantiate the same with supporting documentation and evidence. Further, the Petitioner should be required to take steps to intimate the delays and seek extension from the Commission in a timely manner and not wait until MGVCL had issued notice.

10.12.1. It is submitted that there is no specific provision in the Regulation for extension of time for consumer/Applicants. However, even assuming that the extension can be granted, this is not a fit case for extension.

10.12.2. It is submitted that the Petitioner had not informed the Respondent No. 1 or approached the Commission for extension in a timely manner and waited until after issuance of notice by MGVCL to raise any such issues. This demonstrates that the alleged delays are being claimed as an afterthought and only to wriggle out of its obligation to pay the charges. The Petitioner cannot conveniently claim that GETCO and MGVCL would coordinate on the issue of Petitioner's delays. It is the Petitioner's responsibility to complete the line and issues if any have to be dealt with by Petitioner.

10.12.3. It is submitted that the Petitioner has also requested for time limit extension for their temporary HT connection on the basis that their project work is delayed. Thus, it appears that the Petitioner's project requiring supply was delayed and the Petitioner had delayed its work or transmission line for that reason and is now raising various issues to avoid payment of charges.

10.12.4. It is submitted that MGVCL had not admitted to any of the claims of the Petitioner and in fact the claims were denied. Despite the denial of the clams of the petitioner in the reply filed by MGVCL and requiring substantiation and evidence for the events and for impact on the project, the Petitioner has not provided any proof or evidence. The burden of proof is on the Petitioner who is claiming rainfall, waterlogging etc and the Petitioner has not discharged the same. It is the responsibility of Petitioner to prove that the delays are beyond its control, and the burden cannot be passed on to MGVCL to prove the negative.

10.12.5. Further it is submitted that

a. The Petitioner has sought to rely on one newspaper article and there is no basis to demonstrate that this was in the Petitioner's area and the work of the Petitioner was affected. The newspaper articles are not sufficient proof. Further the Petitioner is relying on general statements rather than the specific impact. There is no specific proof provided.

b. It is well settled principle that the newspaper reports by themselves are not evidence.

(i) Quamarul Islam v. S.K. Kanta, 1994 Supp (3) SCC 5

"***48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence.*** *These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and Publisher, PW 4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly 'proved' only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW 5, who was the polling agent of the election petitioner and a resident of the locality in support of the correctness of the elereports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of*

the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent. The evidence of the election petitioner himself or of PW 4 and PW 5 to prove the contents of the messages and advertisements in the newspaper in our opinion was wrongly admitted and relied upon as evidence of the contents of the statement contained therein."

(ii) Chhattisgarh State Electricity Board -v- Chhattishgarh State Electricity Regulatory Commission, APTEL Decision dated 20.02.2008 in Appeal No. 119 of 2007

"7) We have heard the counsel for the Board Mr. K. Gopal Choudary and counsel for the Commission Mr.M.G. Ramachandran. It is submitted on behalf of the Board that the Board had done almost all that it could have done in the interest of the customer care as was required by the Commission in its tariff order. It first established the call centers and thereafter having failed to receive quality services from these call centers had planned a better system of customer interaction center with an improved software. The Board further mention that the services, as were being provided by call centers, were being provided by the Board departmentally with the same efficiency as being done by call centers. The Board submits that in view of the present services provided by the Board departmentally and its future project of improved services through SAP it has substantially complied with the direction of the Commission and is therefore not liable to any penalty. The Commission has found the Board's claim of continuing services through its staff in office not substantiated. This finding of the Commission is based on certain newspaper reports. We are constrained to observe that notwithstanding the desirability of establishment of call centers for improved services to consumers, the penal provision of 142 cannot be resorted to on the basis of any newspaper report.

The newspaper reports as such are hearsay evidence and not admissible *and no finding can be based on such evidence."*

(iii) R.P. Goenka vs. State of U.P. and Ors. decision dated Allahabad High Court, 2019 SCC OnLine All 3815: (2020) 2 All LJ 300: 2020 Cri LJ 1918: (2021) 115 ACC (Sum 11) 5

"40. Newspaper reporting, whether correct or not, has not been fortified. A newspaper reporting by itself is a hearsay secondary evidence and not admissible unless the Reporter is examined or any person before whom the incident has occurred, is examined and prove the facts as such.

46. The above authorities clearly show that a newspaper report by itself does not constitute an evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved either by production of Reporter who heard the statement and sent the same for reporting or by production of report sent by such Reporter and production of Newspaper's Editor or Publisher to prove such report. As held by Supreme Court in the above authorities a newspaper is at the best secondary evidence and not admissible in evidence without proper proof of contents under Indian Evidence Act, 1872. Trial Court cannot treat newspaper report as duly proved only by production of copies of newspaper. Thus the newspaper report was not a "legal evidence" which could have been examined to support the complaint."

c. In regard to the photographs, the authenticity of the photographs cannot be verified. In this regard MGVCL relies on the decision of the Hon'ble Tribunal in Power Grid Corporation of India Limited v. Central Electricity Regulatory Commission and others in Appeal No. 281 of 2014 dated 13.08.2015 which was also in case of claims of water logging:

"9.3..... So far as, the values of the photographs are concerned, they cannot be a legal proof of the fact unless proved as required by the Evidence Act. Simply, filing of any photograph does not, by itself, lead to the proof of the facts shown in the photograph. More clarity cannot be expected from the photographs showing any water logging or the extent of the water logging unless the photographer or the person preparing the photograph files his or her affidavit or proves the photograph in the manner as required under the Indian Evidence Act."

10.12.6. It is submitted that the Petitioner was well aware of the timelines of 180 days; however, it chose not to take any immediate steps. Even if the time period is considered, the extension is not as claimed by the Petitioner. The Petitioner is seeking extension for more time than contemplated by the alleged reason for delay. The alleged financial loss claimed by the Petitioner is in view of the provisions in Regulations and therefore cannot be considered. On the other hand, MGVCL being ready to supply and not supplying deserves to be compensated.

10.13. It is submitted that the Hon'ble High Court in the case of Surya Roshini v. GERC dated 07.01.2020 in SCA No. 16029 of 2019 has considered the prima facie view relying on case of KP Energy Pvt Ltd v. GETCO in Petition No. 1206 of 2012. This is only a prima facie view and this does not preclude the Commission from considering the issue in detail.

10.13.1. It is submitted that there is no discussion or analysis of the powers of CGRF and in fact there was a statement by the Petitioner that, *"in identical facts situated, GERC has exercised jurisdiction for extending period...."*. The Petitioner's case is not identical case to KP Energy. Further, if as claimed by the Petitioner the consideration by the Hon'ble High Court was that there was no dispute against the distribution licensee, then the same does not apply in the present case, when the Petitioner has made the Respondent MGVCL a party. In the present case, the issue is against the Distribution Company and not against Respondent GETCO.

10.14. Regarding contentions on inherent powers of the Commission raised by the Petitioner, the Respondent submitted that it is misconceived and erroneous. It is submitted that in the present case, there is a Supply Code and all parties and the Commission are bound by it.

10.14.1. The Respondent MGVCL submitted that it is well settled principle that the Regulations are binding. In this regard, the Constitutional Bench of the Hon'ble Supreme Court in PTC India Limited v. Central Electricity Regulatory Commission (2010) 4 SCC 603 has held as under:

"57..... Making of a regulation in that regard is not a pre- condition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures a Central Commission takes under Section 79(1)(j) has to be in conformity with Section 178. ..... .

58. A regulation under Section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an Order of the Central Commission under Section 79(1)(j)."

10.14.2. Further, it is submitted that the Regulations 9.21 and 9.22 of the Supply Code relate to power to relax and power to remove difficulties. Even otherwise, the reason of delay has to be substantiated. When the Regulations provide for extension for the licensee but do not provide for such extension for non-licensees, then this is a deliberate decision not to provide such extension. The non licensees cannot then under "power to relax" or "power to remove difficulty" seek to act contrary to the regulations. Power to relax are for general public interest and it is not only the interest of the specific consumer in question. The interests of consumers at large would also have to be considered as to who now have to bear the burden of the power arrangements made by the distribution company for the Petitioner, if the Petitioner is exempted from paying the minimum demand charges. This would not serve the public interest. The entire purpose of minimum demand charges is to ensure that the other consumers do not bear the burden and to ensure that the consumer like Petitioner acts in time.

10.14.3. Even assuming but not admitting that there can be any exercise of such powers, the Petitioner has to substantiate that there is delay beyond its control which has not been done.

10.14.4. Without prejudice to the above contentions and even assuming but not admitting that the Petitioner has justified the delay, it is submitted that any such extension of time could be considered only by the Commission and the Respondent MGVCL had no powers to grant any extension nor waive the demand charges. Therefore, the

Respondent MGVCL was correct and valid in its actions and in raising the invoices. The Petitioner did not approach the Commission in a timely manner even though it was delayed from the beginning. In such circumstances, the refund of such charges would be inequitable and would require adjustment of past arrears as the Respondent MGVCL has to be assured of its aggregate revenue requirements. Therefore, whether this is a fit case for refund of charges also has to be considered.

11. The Respondent No. 2, GETCO, vide affidavit dated 22.07.2025, filed its submissions in pursuance to the Daily Order as under:

11.1. It is submitted that at present, the mechanism is as following:

a. A consumer seeking power supply applies for their power demand (KVA) to the Distribution Company. In case of applicant seeking supply at 66 KV and above, GETCO is involved.

b. At the time of joint site visit / survey to finalize the Point of Supply, there are discussions held with the Applicant. In such discussions, the officers of GETCO explain to Applicant/Applicant's representative regarding the various Options available for execution of work required to cater to the requested demand. It is conveyed to the Applicant/Applicant's representative that in case of Option-1 (A), the transmission system would be constructed/developed by GETCO, for which applicant is required to pay the entire cost of work which includes material cost, erection cost and 15% supervision cost with GST. In case of Option-III, the entire transmission system will be developed by the Applicant through GETCO approved contractor for which the equipments/drawings are required to be approved from GETCO. The entire asset created under Option 3 would be transferred to GETCO (excluding consumer end feeder bay) after charging. GETCO would charge Supervision charges @ 15% with GST of estimate amount under Option-III.

c. After giving a clear understanding of the above options, the Applicant is requested to submit the chosen Option so as to enable GETCO to finalize estimate accordingly.

d. It is submitted that there is no compulsion on the Applicant to select a particular Option, and the choice is solely of the Applicant.

11.2. It is submitted that the above mechanism is being followed for all Applicants at present. Even prior to the above, there would usually be discussions held with the Applicant's representatives and the options considered. In cases such as the Petitioner herein, it is clear that there were discussions held wherein the two options were explained and the Petitioner thereafter vide Letter dated 20.10.2018 voluntarily selected Option-III. On basis of the above, estimate was issued on 03.12.2018 under Option-III. In fact, even after the above, in Letter dated 18.04.2019, it was made clear by the Petitioner that it had preferred Option-III. This has been pointed out in the Reply filed by GETCO. Therefore, no such issue can arise in the present case.

11.3. In some cases, there was no specific written communication by the Applicant and GETCO would issue the estimate after discussions. In case the estimate is issued at Option-III, and any objection would have been received, GETCO would have revised the estimate to Option 1A. However once the Applicant accepts the estimate by paying the estimate and signing the agreement and proceeds with the work, it cannot thereafter raise any issue on the Option.

11.4. However, in view of the issues which have arisen, GETCO has ensured that the above mechanism is followed in every case and the Applicant communicates its decision about the Option in writing to ensure clarity.

12. The Petitioner, vide affidavit dated 25.09.2025, filed its consolidated submissions in pursuance to the Daily Order dated 08.09.2025.

12.1. It is submitted that the Petitioner has already made elaborate submissions in the various affidavits filed before the Commission from time to time including submissions on the issue of jurisdiction and maintainability of the Petition.

12.2. The Petitioner has made its submission on the issue of jurisdiction as well as on the

merit of the case for grant of additional time for completion of 66 KV transmission line and bays.

12.3. The submission already covered above are not repeated for sake of brevity.

12.4. The Petitioner has requested the Commission to consider the submissions made by it and allow the present Petition and prayers made therein.

13. During the hearing of the matter, Ld. Advocate appearing on behalf of the Respondents argued that the preliminary issues including the issue of jurisdiction and powers of the Commission needs to be decided. The Commission needs to first decide whether the Commission can exercise its power to grant any extension because only if there is such power conferred on the Commission in law and/or the Clauses, then only the Commission can exercise the same and then only it has jurisdiction to exercise its powers, but if the statute/Clause itself does not have any such provisions which empowers the Commission to grant extension of time, then every grievance of the consumer including billing dispute or extension of time limit or any other issues of the consumers against the distribution licensee shall necessarily fall within the jurisdiction of the concerned CGRF of the distribution licensee and is required to be dealt by the concerned CGRF.

13.1. It is argued that the 60 days' notice issued by Respondent MGVCL under Clause 4.33 of Supply Code is in accordance with the provisions of Supply Code 2015 and therefore the said notice cannot be treated as arbitrary or *void ab-initio.*

13.2. It is submitted that the submissions made by Petitioner on inherent powers of the Commission relying on Clause No. 9.23 to 9.25 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 are misplaced and the Respondents do not agree with the interpretation of the judgments done by the Petitioner because it is well settled principle that the inherent power cannot override express provisions of law. It is submitted that the judgments referred by the Respondent have very clearly held that the provision has to be express but it has to be implied also. Thus, if there are specific provisions dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court, in this case

the Commission or the jurisdiction that may be exercised in relation to a matter, the inherent powers cannot be invoked to cut across the powers conferred and the prohibition need not be express but may be implied or be implicit from the very nature of the provision. In this regard referring to para 20 of the judgment of Hon'ble Supreme Court in case of Arjun Singh V/s. Mohindra Kumar (AIR 1964 SC 993) which reads as under:

> *"……..*
> *20. ……. It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code, need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates……*
> *….."*

Thus, it is not only an express provision but even by necessary implication the Court cannot override provisions of law through inherent powers. It is submitted that, for example, if a provision is given to extend timelines for a licensee but the same provision does not refer to the consumer and there is no other provision for the consumers, then there is a necessary implication that the Court / Commission does not want to extend the power for a consumer. It cannot be interpreted that the provision needs to expressly exclude the consumer or use of word 'only' is required to mean it is only for licensee and in absence of word 'only' it automatically extends to consumers. It is submitted that assuming there is a provision in a Clause which provides that the Commission can exercise power if certain conditions are met, then the Commission can exercise powers only when those conditions are met. However, as per the submissions advanced by the Petitioner, they say that though the Petitioner has not satisfied those conditions as provided in the Clause, but since the Clause does use the word 'only' to say that only when such conditions are met then only the powers can be exercised and therefore, in absence of use of word 'only', the Commission may exercise its inherent powers and still provide the relief sought. In such a case, then what's the point of that Clause or need to have such

Clause at all because if everything can be done on the basis of inherent powers then whether anything is provided in the Clauses or not, then there is no purpose of having such Clause. It is submitted that when a Clause says that the Commission can extend the power for a licensee but does not give that same right to a non-licensee what it means that by necessary implication that Clause is excluding Non-Licensee. It is submitted that as the Clause stands today irrespective of whether it is right or wrong or there is lacuna in the Clause is altogether a different issue. The fact of the matter is that the Clause which is prevailing as on date cannot be changed simply for any of such issues. It is for the Commission to amend the Clause as and when deemed appropriate to include similar provision for consumer by following the due process and procedure for amending the Clause, inviting public comments, holding public hearing etc. for the future. The Clauses prevailing as on date have no provision entitling granting time-limit extension to consumers.

13.3. It is submitted that Petitioner has not shown any provision within the Clause which says that the power to grant extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 to a licensee is coextensive for consumers then only the Commission can exercise its powers. But exercise of inherent power to read something in to a Clause which is not provided in the Clauses is not correct. It is further submitted that when a Clause provides for one thing but excludes the other person then by necessary implications it means that it was intended to exclude that other person.

13.4. It is submitted that similarly in the judgment of Gram Panchayat v. Lokesh Devi it is held that:

> *"……. The inherent powers also do not confer on the Court any additional jurisdiction to amplify the powers specified in the Code. These are the powers which are in addition to complementary powers expressly conferred upon the Court under the provisions of the Code. It is also an equally settled principle of the law that if express provisions are provided for directing a particular act in a particular manner, inherent powers cannot be used to frustrate such limitations of the Court….."*

13.5. It is submitted that if the express provision clearly says that extension can be granted to a licensee by the Commission then inherent powers cannot be used to

say that now Commission may grant extension to a 'Non-Licensee'. Since, there is express provision to grant extension only to a licensee and clearly chosen not to grant that power for 'Non-Licensee'. Similarly, in the judgment of Ram Prakash Agarwal and Anr vs. GopiKrishan and Ors it is very clearly held that:

> *"... A provision barring the exercise of inherent power need not be express, it may even be implied..."*

It is submitted that when a provision expressly says that it applies to 'licensee', it is implied that it does not apply to 'Non-Licensee'. Therefore, the reliance placed by Petitioner that Clause 4.37 impliedly empowers the Commission to grant the extension as prayed by the Petitioner as a consumer is incorrect because the said Clause clearly is with reference to the licensee and when 'consumer' is not mentioned in the said Clause, it is clear that the intention while drafting the same, 'consumer' was consciously excluded and therefore, the same cannot be read to co-extensively exist for consumers also. It is submitted that the present Clauses as they stand today only provide that the licensee can approach the Commission seeking extension of time i.e. extension can only be granted to the licensees.

13.6. It is submitted that inherent powers are exercised for correcting procedural infirmity but cannot be used for granting any substantive relief. Thus, in case there is any procedural infirmity, the same can be corrected by the Commission by exercising its inherent power. However, in the present case, the submission of the Petitioner is that though the Clauses don't have any substantive provision to address the issue for granting relief of extension of timelines to a consumer and despite that the Commission may exercise its inherent powers to grant the substantive relief as prayed by the Petitioner in the present matter. It is submitted that other judgments have also been relied by the Respondent on the aspect that inherent powers cannot be exercised to affect substantive rights of a party or to grant relief of substantive nature but are meant for correcting procedural infirmity only. Even, in the case of Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others, Hon'ble Supreme Court has relied on such judgments and given a concurring judgment, the relevant portion reads as under:

> *"……*

58. By a reading of Clause 80, it is clear that inherent powers of the State Commission are saved to make such orders as may be necessary:- (i) to secure the ends of justice; and (ii) to prevent abuse of process of the Commission. The inherent powers being very wide and incapable of definition, its limits should be carefully guarded. Inherent powers preserved under Clause 80 (which is akin to Section 151 of the Code) are with respect to the procedure to be followed by the Commission in deciding the cause before it. The inherent powers under Section 151 CPC are procedural in nature and cannot affect the substantive right of the parties. The inherent powers are not substantive provision that confers the right upon the party to get any substantive relief. These inherent powers are not over substantive rights which a litigant possesses.

59. The inherent power is not a provision of law to grant any substantive relief. But it is only a procedural provision to make orders to secure the ends of justice and to prevent abuse of process of the Court. It cannot be used to create or recognize substantive rights of the parties. In Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1, it was held as under:-

.....

Same view was reiterated in Ram Prakash Agarwal and Another v. Gopi Krishan (dead through LRs.) and Others (2013) 11 SCC 296."

13.7. As regards the 'Power to Relax', referring to Clause 9.21 of the GERC Supply Code wherein the Commission may in public interest and for reasons to be recorded in writing, relax any provisions submitting that 'public interest' as referred in the aforesaid clause does not mean interest of one single consumer only. Public interest has a wider connotation and also involves public interest as regards to the distribution licensee as well as the general body of consumers at large. In the present case, the Petitioner has demanded additional load and the distribution licensee has made arrangements for such power supply, the Petitioner signed Agreement / contract with licensees for additional load and now if Petitioner is not consuming but saying not to raise demand charges then who is going to pay for such capacity. It is submitted that obviously the remaining consumers will be burdened for the same and therefore, this issues also need to be considered by the Commission in public interest. Moreover, the 'Powers to Relax' cannot be used when the Clause is very specific and the basic contention of the Petitioner is that the said Clause is wrong and therefore, the Commission may relax the same. It is not open for the Petitioner to say that the Clause is not correct because the Clause stands as it is as on date and if in the opinion of the Petitioner, the said Clause was

not proper or wrong or 180 days is not sufficient, they ought to have challenged the said Clause or ought to come before the Commission seeking an amendment of the Clauses, which the Commission, if deemed appropriate may have suitably amended after following due process of law. Instead of following the aforesaid proper procedure, the Petitioner is relying on inherent powers or powers to relax. It is submitted that apart from the issue of interpretation, there is an issue of Clause 4.37, which applies to a licensee can be read to coextensively apply to a consumer, needs to be decided by the Commission. As regards Clause 9.22, it is submitted that the Petitioner has not addressed the issue that the Commission may refuse to entertain the reference filed beyond three months' delay without sufficient cause.

13.8. As regards the submissions made by the Petitioner relying on GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, It is submitted that Clause 9.3 of the said Clause provides for the time limits and as per Clause 4.33 of GERC Supply Code the consumer has the option to carry out the works in which case the timeframe specified in GERC Standard of Performance Clauses will apply. It is submitted that in the present case the Petitioner opted to carry out the work of 220 kV transmission line on its own and therefore, the timelines as per Clause 9.3 of the SOP Clauses will apply. Moreover, there is a 'Note' below Clause 9.3 of SOP Clauses which reads as under:

> *"…….*
> *Note: The time mentioned in the schedule would be reckoned after presentation of completed application and compliance with formalities (including granting of space for installation of transformers, if required, and meters) is completed.*
>
> *The above time limit for release of connection after receipt of demand note amount will be subject to the condition that connection is technically feasible and will meet with safety requirements. This duration would exclude the time attributable to the consumer / local authority. Further, any such extended period should also be conveyed to the Commission for its record.*
> *……."*

13.9. As per above 'Note', the time duration attributable to the consumer or local authority to be excluded from the prescribed timelines. Since, in the present case the Petitioner is constructing the line on its own the duration attributable to the consumer does not arise and cannot be considered but only the delay in time

attributable to local authority to be considered. Thus, any delay attributable to local authority is permissible and cannot be expanded to Right of Way issues or other issues. The Petitioner is required to demonstrate through documentary evidence duration attributable to local authority and which had to be informed to the Commission because the above note clearly says that the same should also be conveyed to the Commission. The Petitioner cannot come after two years before the Commission saying there were issues with local authority, if any, for laying of transmission line.

13.10. Therefore, for exercising Clause 9.22, which has very limited application and Petitioner is required to prove that the delay beyond 3 months is on account of local authority. The scope cannot be extended for any delay on account of other factors or reasons because the same is limited to local authority only. The Petitioner has to satisfy this limited aspect because there is no reasoning as regard to local authority

13.11. As regards the contention raised by the Petitioner and communication of Respondent No. 1 that as per Clause 4.37 if the powers have to be exercised for any extension of time, it has to be exercised by the Commission because Clause 4.37 says that the licensee may approach the Commission for extension of timelines. It is submitted that the Respondents in their replies have clearly said that the aforesaid Clauses do not refer to a consumer. It is submitted that the Respondents have never admitted that there is any power under the Clauses of the Commission to grant any time limit extension to a consumer and the Respondents have only stated that if there is any power under the Clauses then the same may be exercised by the Commission. It is further submitted that when the issue of jurisdiction arises in any matter the same can be raised at any time and has to be decided by the Court/Commission. Even, if the parties in dispute agree that the Commission has jurisdiction it does not mean that the Commission has jurisdiction. So irrespective of what is said or submitted by the Respondents, the jurisdiction issue has to be decided by the Commission and that the issue of jurisdiction can be raised at any time. It is submitted that if a court does not have jurisdiction irrespective of what parties say, jurisdiction cannot be given by parties to a court which otherwise does not have the jurisdiction to decide a particular matter. It is submitted that the issue of jurisdiction can be raised right from a lower court till even when the matter

reaches the Hon'ble Supreme Court.

13.12. It is submitted that if the consumer feels aggrieved by the licensee's action or omission, the consumer may file his representation to the concerned Consumer Grievances Redressal Forum for redressal of his grievance in terms of Clause 4.86 of the GERC Supply Code.

13.13. It is further submitted that the Commission, given the legal provisions and case laws, first needs to decide as to whether the Clauses of the Commission provides any such power to the Commission for granting extension of any time limit as may be sought by the consumer or not? It is submitted that the Commission may consider the submissions made on behalf of the Respondents in the present Petition including on the issues of admissibility, jurisdiction and whether Commission can exercise its 'Power to relax' or 'Inherent power' to grant the relief prayed in the Petition.

13.14. It is further submitted that in case the Commission decides that it has the jurisdiction to decide the issues as raised in the present matter and has powers to grant any time limit extension, then the Commission may list the matter for further hearing on the merits based on individual facts involved in the case. It is submitted that if the Commission holds that it is having no jurisdiction then the parties may approach appropriate Forum and argue the matter on merits before the Forum.

14. We have considered the submissions and arguments advanced by the parties. The Petitioner is seeking extension of time limit for completing the work of 66 kV transmission line and bays for release of 5000 kVA EHT connection undertaken under Option III. We also note that the Respondents have questioned the admissibility of the present Petition on the issues of jurisdiction of this Commission to consider the present matter and as to whether the Commission has powers to decide the matter or the Petitioner needs to approach the CGRF since the issue involved is related to billing dispute. Per contra according to the Petitioner, this Commission has the jurisdiction to decide this matter since it involves interpretation of the provisions of the Electricity Act and the Clauses framed thereunder by the Commission. The Respondents have argued that as such there is no provision under the Clauses of this Commission which empowers the

Commission to exercise jurisdiction and to grant the extension of time limit sought by the Petitioner. Therefore, the matter first needs to be decided on the issues of admissibility, jurisdiction and whether the statute or Clauses / rules framed thereunder by the Commission empowers the Commission to decide the relief sought.

14.1. Since the Petitioner and the Respondents have submitted that the Commission first needs to decide preliminary issues of admissibility, maintainability, jurisdiction and power of this Commission as to whether the present matter is admissible and maintainable before this Commission and that the Commission has jurisdiction to consider the matter for granting extension of any time limit sought by the consumer Petitioner. Accordingly, the Commission hereinafter proceeds to decide the preliminary issues of admissibility, maintainability, jurisdiction and powers of the Commission to admit this matter.

14.2. The present Petition is filed by the Petitioner seeking extension in time period for the completion of work of transmission/distribution network undertaken by it for receiving 5000 kVA EHT connection from Respondent No. 1 MGVCL. It is an admitted fact that the Petitioner is a company incorporated under the provisions of Companies Act 1956. The Respondent No. 2, GETCO is the Transmission licensee and engaged in creating necessary transmission system and infrastructure in the State of Gujarat. The Respondent No. 1 MGVCL is engaged in distribution and supply of electricity within its licence area. It is also an admitted fact that the Petitioner desires to avail 5000 kVA EHT connection from Respondent No. 1 MGVCL, which is permissible on utilisation of transmission network only, which is in the domain of Respondent No. 2 GETCO as part of transmission planning at intra state level. The work of construction of transmission line and associated activities may be carried out by the Transmission Licensee or in the alternative a person at its own cost who desires in utilising such network may construct on its own as per approved design, drawings, transmission route and network planning including materials and contractor(s) approved by the Respondent No. 2. In such case the person who desires to set up the transmission line requires to pay supervision charges etc. to Respondent No. 2 who is otherwise responsible for planning, construction and commissioning of the transmission network / lines, bays etc. and to maintain the

same with consideration of continuous power supply to the consumers within the State.

14.3. We note that the Respondent No. 1, MGVCL is a Distribution Licensee in the State of Gujarat within the meaning of Section 2 (17) of the Electricity Act, 2003 and the Respondent No. 2, Gujarat Energy Transmission Corporation Limited is the transmission licensee in the State of Gujarat and also holding the status of 'State Transmission Utility' (STU) under Section 39 of the Electricity Act 2003.

14.4. According to the submissions made by the Respondent No. 2, GETCO, in case of a consumer seeking supply of electricity from the concerned distribution licensee requiring erection and commissioning of transmission network, options are available to the person/consumer whereby either the transmission licensee may create the necessary transmission network or the person / consumer may carry out the necessary creation of transmission network by paying necessary charges to the distribution licensee and supervision charges to the Respondent No. 2 GETCO. In case of the transmission licensee undertaking the construction of such transmission network the responsibility i.e. material purchase, route survey, designing, drawing, selection of contractor etc. has to be carried out by the Respondent No. 2 GETCO, whereas under the other option where the person / consumer who desire to set up the transmission network on its own or by itself, the work associated for creation of such network i.e. purchase of material, engagement of agency approved by GETCO to carry out the work, route survey of transmission line, drawing approval from GETCO, RoW issues, designing, testing and commissioning of transmission line etc. has be carried out by such person and the Respondent No. 2 GETCO is not responsible for any such activity. The Respondent GETCO only provides support wherever necessary and supervision. In the present case as the Petitioner was desirous of 5000 kVA EHT power supply from Respondent No. 1 MGVCL being the distribution licensee which is feasible only through 66 KV transmission line.

14.5. The Petitioner vide letter dated 20.10.2018 intimated the Respondent No. 2, GETCO, about selection of Option for carrying out the work of erection of EHV transmission lines and bays. According to this letter, the Petitioner selected to take

up the work under Option II/III i.e. work of transmission line and feeder bay to be carried out by themselves. The Relevant portion of the letter dated 20.10.2018 of the Petitioner to the Respondent GETCO is reproduced below:

> *"……*
> *On completely understanding the procedure of carrying out the work, we M/s. JK Cement Ltd. have voluntary selected to take up the work under option- II/III i.e. work of transmission line and feeder bay will be carried out by us (COMPANY).*
> *……"*

14.6. It is admitted by the Petitioner that Option III was opted despite not having the expertise in laying of 66 kV transmission line for which the Respondent No. 2 has the experience and expertise.

14.7. Thus, it is an admitted fact that the Petitioner preferred to carry out the aforesaid work through the agency engaged by it for the said work and there is delay in the time taken for completion of such work. We also note that the Petitioner and the Respondent No. 1 MGVCL have executed an agreement dated 11.02.2019 in this regard.

14.8. Since delay had occurred in erection / construction of the transmission network with associated works, the Respondent MGVCL issued 60 days' notice to the Petitioner, on 14.08.2019, purportedly under Clause 4.33 of the GERC (Electricity Supply code and Related Matters) Regulations, 2015 to complete the work of 66 KV Transmission Line and Bays and avail power supply within 60 days from the date of notice, failing which the Petitioner shall be liable to pay demand charges and minimum monthly charges as applicable, the Respondent MGVCL commenced billing on 5000 kVA contract demand to the Petitioner with effect from 14.10.2019.

14.9. Per contra, it is submitted by the Petitioner that difficulties in nature of unprecedented, unforeseen, extended and continued heavy rainfall in the State and in particular the Central Gujarat were faced by the Petitioner in completion of 66 KV transmission line. The Petitioner submitted that the unprecedented rainfall has resulted into water logging and damage to the approach in the line route area, over which they do not have reasonable control and cannot foresee such situation with due diligence. The Petitioner had approached Respondents requesting to grant

additional time for completion of work of transmission line and bays considering difficulties on account of heavy rainfall.

14.10. Eventually, the present Petition has been preferred by the Petitioner before this Commission. As noted earlier the Petitioner has sought following prayers:

(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, the Commission may please to allow relief to the Petitioner as available under Clause 4.37 of Supply Code 2015 and Clause 15.2 of 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 reasonable control of the Petitioner,

ii. Consequently, extend time period up to February 2020 for completion of 66KV transmission lines and bays for release of 5000 KVA EHT connection.

iii. Direct the Respondent No: 1 to suspend the Two Months' Notice dated 14.8.2019 issued by the Respondent No:1 up to the period of extension of time as may be granted by the Commission in the present petition.

iv. Hold and direct the Respondent No: 1 not to 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 this Commission may deem just and proper in the circumstances of the case."

14.11. Since, the genesis of the issues that have arisen between the Petitioner and the Respondents is pursuant to new EHT connection sought by the Petitioner from the Respondent No. 1 MGVCL being the distribution licensee, it is necessary to refer the definition of the 'distribution licensee' under Section 2(17) of the Electricity Act,

2003 which reads as under:

> *"distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;"*

As per above definition the distribution licensee needs to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply

14.12. The Petitioner has also referred to definition of "local authority" under Section 2(41) of the Electricity Act 2003 (Act) which reads as under:

> *"local authority" means any Nagar Panchayat, Municipal Council, municipal corporation, panchayat constituted at the village, intermediate and district levels, body or port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;"*

14.13. The Petitioner has relied on Section 42(1) which is reproduced below:

> ***Section 42 (1)***
>
> *"It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act."*

The aforesaid section provides that it is the duty of the distribution licensee to develop and maintain an efficient, coordinated economical distribution system in its area of supply. In the present case as referred above the Respondent MGVCL on receipt of an application from the Petitioner for 5000 kVA EHT connection referred the matter to the Respondent GETCO for the Technical Feasibility Report. Thereafter, pursuant to voluntary selection by the Petitioner to take up the work under Option II/III, the Respondent No. 1 MGVCL has furnished an estimate to the Petitioner along with copy of letter of GETCO stating that M/s JK Cement shall undertake the work of power demand under Option III i.e. consumer will carry out the entire work and necessary expenses payable by the Petitioner which require to be recovered as per provisions of Section 43 read with Section 46 of the Electricity Act, 2003 which are reproduced below:

Section 43 (Duty to supply on request)

"43. (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission."

…….

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

"Section 46 (Power to recover expenditure)

46. The State Commission may, by Clauses, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply."

Section 43 (1) provides that pursuant to an application by the owner or occupier of any premises, the licensee shall provide supply of electricity at the premises of the consumer within one month from the date of application given by owner or occupier of any premises. The first proviso provides that where supply requires extension of distribution mains or commissioning of new sub-station, the licensee shall supply the electricity to such premises immediately after extension or commissioning of the system or within such period as specified by the Commission.

As per Section 43 (2), it shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1).

Section 43 (3) provides that failure on part of the distribution licensee to supply electricity within the time period specified in Section 43(1), the distribution licensee is liable to pay penalty which may extent to one thousand rupees per each day of default. Thus it is the duty of the licensee to construct the necessary distribution system which may include transmission system and supply the power within one month from the date of an application made by the consumer. Thus the distribution licensee is mandated to supply electricity within specified period as provided in aforesaid Section. Moreover, the work related to distribution network creation is of the licensee.

Section 46 permits the distribution licensee to charge from a person requiring supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply as per the Clauses notified by the State Commission.

14.14. Section 50 the Electricity Act, 2003 empowers the Commission to specify Electricity Supply Code. The said Section reads as under:

> ***"Section 50. (The Electricity Supply Code):***
>
> *"The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters."*

Aforesaid Section provides that the State Commission shall specify an Electricity Supply Code which provides for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment of electricity charges, restoration of supply of electricity; measures for preventing

tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on its behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

14.15. Section 57 the Electricity Act, 2003 provides for 'Standard of Performance of licensee' which reads as under:

> ***"Section 57. (Consumer Protection: Standards of performance of licensee):***
>
> *(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.*
>
> *(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:*
>
> *Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.*
>
> *(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination."*

Aforesaid Section provides that the Commission after consultation with the licensees and persons likely to be affected, specify Standards of Performance of a licensee or a class of licensees and if a licensee fails to meet the standards specified under sub-section (1), it shall be liable to pay such compensation to the person affected as may be determined by the Commission without prejudice to any penalty which may be imposed or prosecution be initiated,

14.16. We also note that the parties have referred to relevant provisions of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 as amended and advanced extensive submissions /arguments thereon. It is therefore necessary to refer the same.

14.17. Since this matter pertains to 'Consumer', Distribution Licensee' and 'Transmission Licensee', the definitions provided under the GERC Supply Code of the Commission

are relevant which read as under:

Clause 2.3 (18) Consumer

'Consumer' refers to any person who is supplied with electricity for his/her own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be. A consumer is specified as a:

(i) 'Low Tension Consumer (LT Consumer)' if he obtains supply from the licensee at low or medium voltage;
(ii) 'High Tension Consumer (HT Consumer)' if he obtains supply from the licensee at High Voltage;
(iii) 'Extra High Tension Consumer (EHT Consumer)' if he obtains supply from the licensee at Extra High Voltage;

Clause 2.3 (26) Distribution Licensee

'Distribution Licensee' refers to a person granted a license under Section 14 of the Act authorising him to operate and maintain a distribution system for supplying electricity to the consumers of his area of supply.

Clause 2.3 (41) Licence

'Licence' refers to a licence granted under Section 14 of the Act;

Clause 2.3 (64) Transmission Licensee

'Transmission Licensee' refers to a person who has been granted a licence under Section 14 of the Act authorising him to establish or operate transmission lines;

14.18. From the aforesaid definitions it is clear the consumer is a person who is supplied electricity by a licensee or Government or any other person engaged in the business of supplying electricity to the public under the Act or any other law. The said definition also specifies different category of consumers viz. LT, HT and EHT. The definition of distribution licensee states that a person who has been granted license under Section 14 of the Act authorising to operate and maintain a distribution system for supplying electricity to the consumer of his area. Licence is defined as licence granted under Section 14 of the Act. Transmission Licensee is a person

granted a licence under Section 14 of the Act to establish and operate transmission lines.

14.19. From the aforesaid definitions it is clear that the consumer, distribution licensee and transmission licensee are different and distinct from each other and their functions, duties, role, activities, are different and distinct. Therefore, the interpretation is very clear that where the word consumer, licence, distribution licensee or transmission licensee are referred in the Clauses, the same needs to be interpreted as per their respective definition in the Clause. It is not permissible to add, amend or alter the words where consumer, licence, distribution licensee or transmission licensee are used or read them as interchangeably. It is also not permissible to add any additional words which are not mentioned in the said Clause.

14.20. Clause 1.14 of the GERC Supply Code provides for Procedure to Settle Dispute which reads as under:

> *"1.14 In the event of dispute regarding any provisions in the Supply Code between any User and the Distribution Licensee, the matter shall be referred to Gujarat Electricity Regulatory Commission and its decision shall be final."*

14.21. Clause 4.3 of the GERC Supply Code provides for Licensee's obligation to extend the distribution system and consumer's share in the cost which reads as under:

> *"4.3 The licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension/ up-gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof."*

14.22. Clause 4.32 of the GERC Supply Code reads as under:

> *"4.32 In case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 5 working days of receipt of the application from distribution*

licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Provided that the time taken by applicant in securing the compliance as provided in Clause 4.29 above shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof."

14.23. We note that Clause 4.33 of the GERC Supply Code, 2015 deals with the case of the Petitioner opting to undertake the work of construction, erection, commissioning, testing etc. of the transmission system on its own. The relevant portion is extracted herein below:

"4.33 The demand note shall contain following details:

(1) Details of the works (including service line) to be undertaken for providing electricity supply;

Provided that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken.

(2) Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

(3) Amount of security deposit as specified in the GERC (Security Deposit) Regulations, 2005 and amendments thereof."

14.24. We also note that the Petitioner referring to Clause 4.37 and 4.38 of the GERC Supply Code has submitted that in the said provisions the word 'licensee' has been mentioned. The proviso in Clause 4.37 of the GERC Supply Code permits the licensee to approach the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 in cases where extension of distribution mains requires more time. Even, as per Clause 4.38 of the GERC Supply Code, the licensee is not responsible for delay in extending supply of electricity 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. It is argued by the Petitioner that as per the provisions of the Electricity Act, 2003 and the Clauses framed by this Commission in this regard, it is the duty of the distribution licensee to lay down the distribution system / network for providing additional contract demand. Clause 4.37 of the GERC Supply Code permits the distribution licensee to approach this Commission for time extension in case of delay and Clause 4.38 stipulates regarding exclusion of delay arising on account of problems relating to right of way, acquisition of land etc. Since, in the present case, the Petitioner consumer has undertaken the responsibility of setting up transmission network for supply of electricity and has encountered with issues of heavy rainfall which are beyond the reasonable control of the Petitioner / Consumer. Hence, the 'consumer' also needs to be allowed to approach this Commission for extension of time limit on account of delay and exclusion of time

period of delay arising on account of unforeseen reasons of heavy rainfall because even the consumer has by way of an agreement with the licensee agreed to lay down the network necessary for supply of electricity.

14.25. As per the provisions of Clause 4.37 and 4.38 of the GERC Supply Code 2015, the concerned distribution licensee is (i) entitled for extension of time for completion of line / substation work, (ii) shall not be held responsible for delay in completion of work, if the same is on account of reasons related to RoW, Approvals etc. over which the licensee has no reasonable control. However, such dispensation is not available under Clause 4.33 (2) of the GERC Supply Code when the work is undertaken by the Petitioner / Applicant consumer even in case of genuine difficulties.

14.26. The Petitioner has further submitted that the time period of 180 days provided in the GERC Standard of Performance Clauses can be relaxed by the Commission on basis of unforeseen reason. The provisions of Clause 4.37 for extension of time limit needs to be extended to the consumer also who have undertaken the obligation for completion of line / substation work on behalf of the licensee. It is also submitted that, it is unjustified, unreasonable and illogical to consider that only distribution licensee is eligible for extension of time and not to be held responsible for the delay for reasons in nature of 'beyond reasonable control'. However, when consumer like the Petitioner undertakes the same work and faces identical difficulties akin to those specified in Clause 4.38 of the GERC Supply Code which would otherwise been faced by the licensee in the event when same work was undertaken by it, but in such case the consumer is not entitled for any relief which is unfair and unreasonable.

14.27. The Petitioner has also persuaded the Commission to exercise 'Inherent Power' and 'Power to Relax' while submitting that the Commission has 'Inherent Power' and 'Power to Relax' as provided under Clause 9.21 to 9.25 of the GERC Supply Code which are reproduced below:

Power of Relaxation and Power to Remove Difficulties

9.21 The Commission may, in public interest and for reasons to be recorded in writing, relax any of the provisions of this Code.

9.22 If any difficulty arises in giving effect to any of the provisions of this Code or there is a dispute regarding interpretation of any provision, the matter may be expeditiously referred to the Commission. The Commission shall pass necessary orders after consulting the parties concerned, provided that the Commission may refuse to entertain the reference filed beyond 3 months' delay without sufficient cause.

Savings of Inherent Power of the Commission

9.23 Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.

9.24 Nothing in this Code shall bar the Gujarat Electricity Regulatory Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of this Code, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

9.25 Nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission 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.

14.28. Clause 9.21 says that where there is any public interest involved with regard to any provisions of the Supply Code, the Commission may by recording the reasons in writing relax the provisions of the Code. In the present case it is clear that the dispute is between a consumer seeking extension in time and the distribution licensee which has expressed its inability to grant the same. Thus, it does not qualify as a case of public at large where public interest is involved. Failure to carry out the work of distribution / transmission system required for catering additional contract demand opted by the consumer itself instead of assigning the same to the licensee(s) who had in the first instance agreed to carry out the same is not a case involving public interest. It is a case of failure of performing the work in timely manner accepted by the Petitioner / consumer and does not qualify as public

interest. Further, power to relax provided in this Clause is also subject to verification of the provisions of the Electricity Act, 2003. It is also necessary to see as to whether it is a case of any discrepancy between the provisions of the Act and the Clauses in which case the provisions of the Act will prevail and therefore, the contention of the Petitioner that under Clause 9.21 the Commission has power to relax the provisions of Supply Code is available is not applicable in present case.

14.29. Clause 9.22 states that in case any difficulty arises in giving effect to any of the provisions of the Supply Code or there is a dispute regarding interpretation of any provision the matter may be referred to the Commission and the Commission has power to interpret any provisions of the Supply Code and pass necessary order after consulting the parties. Further, the Commission may refuse to entertain such reference filed beyond delay of 3 months without sufficient cause.

14.30. We also note that relying upon Clause 9.23, 9.24 and 9.25 the Petitioner has submitted that the Commission has inherent powers provided in said Clauses. On the other hand, the Respondents have objected and stated that the Commission has inherent powers only in consonance with the provisions of Act and Clauses framed thereunder. We note that the Inherent powers in aforesaid Clauses are permitted to be utilised only when there is no clarity on any provision of the Supply Code. The said Clauses also provide that when the Inherent power is desired to be utilised by the Commission, it requires to be seen that the process of such utilisation of power must be in consonance with the Electricity Act, 2003.

14.31. We also note that 'Removal of Difficulty Power' provided in the aforesaid Clauses need to be applied where there is ambiguity in the interpretation or no clarity on interpretation. It is also necessary to see that while exercising the power of Removal of Difficulty, the preliminary issue is that whether any difficulty has arisen in the case before the Commission. If any difficulty has arisen for interpretation of the provision of the Clause or not. As noted in this case, the difficulty has arisen between the parties with regard to the provisions of the GERC Supply Code with regard to grant of extension in time period for completion of the transmission network within the specified time by the consumer and whether the consumer is liable to pay the bills raised by the Respondent MGVCL for new EHT connection of

5000 kVA on deemed release basis.

14.32. The Petitioner has also submitted that there is no provision in the GERC Supply Code which provides for redressal of the difficulty faced and that in case of any problem as stated by the Petitioner occurs where to get the remedy for same. We note that as recorded in earlier paragraphs the disputes arose due to failure of the consumer i.e. the Petitioner to construct and lay down the transmission / distribution system from the sub-station of the Respondent No. 2 GETCO to the place of consumption / premises of the Petitioner.

14.33. It is noteworthy that the genesis of the issue which has arisen in the present case is the delay in completion and testing of the transmission / distribution network that the Petitioner consumer itself decided to carry out. However, the Petitioner was not able to complete the said work within the stipulated time period. As a consequence thereof, the Respondent No. 1 MGVCL commenced raising monthly bills with 5000 kVA new EHT connection on deemed release basis. The Petitioner approached the authorities of the Respondent No. 1 MGVCL for extension of time limit for construction of transmission line on account of difficulties faced by the Petitioner due to heavy rainfall. However, the Respondents did not extend the time limit in view of the stipulations provided in GERC Supply Code.

14.34. It is submitted by the Petitioner that the Clauses 4.37 and 4.38 of the GERC Supply Code provide for the licensee to approach this Commission for seeking extension in time and exclusion of the time period for Right of Way, land acquisition. However, when same work is undertaken by the consumer, the same relaxation ought to be available to such consumer like the Petitioner in present case. The Petitioner has also pressed upon the Commission to exercise the powers available under provisions of Clauses 9.21 to 9.25 of the GERC Supply Code. We also note that 'Removal of Difficulty' power available under Clause 9.22 is applicable in the case where any dispute regarding any provision of Clause has arisen.

14.35. In the present case, in so far as allowing extension of time in completion of work has arisen between the parties. The submission of the Petitioner is that on one hand there is no clear cut provision in the GERC Supply Code akin to that available to a 'Licensee' under Clause 4.37 of approaching the Commission for extension of time

specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, in specific cases where extension of Distribution mains requires more time as well as similar to Clause 4.38 whereby licensee shall not be held 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 whereas on the other hand there is no express bar for a consumer which has undertaken the work which otherwise was the responsibility of the licensee to undertake to approach this Commission for similar reliefs as provided to the licensee in Clauses 4.37 and 4.38 of the GERC Supply Code. Therefore, the Commission also needs to allow the consumer having opted to lay transmission network / distribution system on its own, reliefs as available to a licensee under Clauses 4.37 and 4.38 of the GERC Supply Code.

14.36. Above submissions of the Petitioner are opposed by the Respondents resulting in dispute between the parties. Therefore, the relevant Clauses of the Supply Code requires interpretation.

15. We note that in the present Petition, the Respondent is relying on various provisions of the Act, Regulations framed under it by the Commission, and order of the Commission in various petitions as well as the decision of the Hon'ble High Court of Gujarat in case of Surya Roshni Ltd. vs PGVCL and also the judgment/ orders of the Hon'ble APTEL and apex courts, contended that the subject matter of the present Petition does not fall under the jurisdiction of the Commission.

Per contra, the Petitioner submitted that the subject matter falls within the jurisdiction of the Commission. Further, it is not only having issue of consumer billing but also having an issue of interpretation of provisions of Regulations, contract between the parties and also prayed for allowing the consumer at equity with the licensee whenever they are carried out the work on behalf of the licensee.

15.1. As the Petitioner and the Respondents have referred various provisions of Regulations, and also referred the provisions of Act, it is necessary to refer the same.

Now, we deal with the various provisions of the Rules and Regulations one by one as stated below:

15.1.1. It is necessary to refer Regulations 1.14 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which is reproduced below:

> *"**Procedures to Settle Disputes***
>
> *1.14 In the event of dispute regarding any provisions in the Supply Code between any User and the Distribution Licensee, the matter shall be referred to Gujarat Electricity Regulatory Commission and its decision shall be final."*

The aforesaid provision provides that in the event of any dispute regarding any provision of Supply Code between any users and the distribution licensee, the matter shall be referred to the Commission and the Commission's decision shall be final. The aforesaid provision specifically recognizes that whenever any dispute between the user and licensee, the same can be referred to the Commission and the concerned decision shall be final.

Here, we note that the user is defined in the GERC (Electricity Supply Code and Related Matters) Regulations as under:

> "……
>
> *2 (67) 'User' refers to any person having electrical interface with, or using the distribution system of the distribution licensee to whom this Code is applicable."*

The aforesaid definition provides that user is a person having electrical interface with, or using the distribution system of the distribution licensee to whom this Code is applicable.

The person is defined in the Electricity Act, 2003 in Section 2 (49) of the Act read as under:

> *"*
>
> *2(49) "person" shall include any company or body corporate or association or body of individual, whether incorporate or not or artificial judicial person;"*

The aforesaid definition provides that person is inclusive definition consist of any company or body corporate or association or body of individual, whether

incorporate or not or artificial judicial person. Thus, individual is also qualified as person under the provisions of Electricity Act, 2003.

The person defined in the Regulation 2 (51) of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 is as under:

> *"....*
> *2(51) 'Person' refers to any individual or company or body corporate or association or body of individuals whether incorporated or not, or artificial juridical person;"*

The aforesaid definition provides that Person refers to any individual or company or body corporate or association or body of individuals whether incorporated or not, or artificial juridical person. Thus, person consist of individual also.

15.1.2. It is also necessary to refer Regulation 4.3 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which is reproduced below:

> ***"Licensee's obligation to extend the distribution system and consumer's share in the cost***
>
> *4.3 The licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension / up-gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof."*

The aforesaid provision provides that it is the responsibility of the licensee i.e. distribution licensee for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension / up-gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof.

The aforesaid provision mandated to the distribution licensee to carry out the work related to laying the distribution system for supply of electricity to the consumers by way of extension/ upgradation of distribution main up to point of supply to the consumer to meet his demand and recover the charges for it from such consumer as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005.

15.1.3. It is also necessary refer the Regulation 4.32 of the GERC Supply Code Regulation which reads as under:

Procedure for providing New Electricity Service Connection Application Form

……

"4.32 In case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 7 working days of receipt of the application from distribution licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Provided that the time taken by applicant in securing the compliance as provided in Clause 4.29 above and time taken by Transmission Licensee in giving feasibility report shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof."

The aforesaid provision provides that in case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 7 working days of receipt of the application from distribution licensee, shall intimate the distribution licensee regarding feasibility or

otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

The proviso in the said Regulation provides that the time taken by applicant in securing the compliance as provided in Clause 4.29 of GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and time taken by Transmission Licensee in giving feasibility report shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Thus, the aforesaid regulation provides for time limit for consideration of application received from the consumer by the distribution/ transmission licensee and carry out the activities in a stipulated time as stated in the said Regulation.

15.1.4. It is also necessary to refer Regulations 4.33 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

"…..

4.33 The demand note shall contain following details:

(1) Details of the works (including service line) to be undertaken for providing electricity supply;

Provided that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken.

(2) Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall

procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

(3) Amount of security deposit as specified in the GERC (Security Deposit) Regulations, 2005 and amendments thereof.

……"

The aforesaid provision provides that the licensee issue demand notes to the person/ consumer with regards to the works (including service line) to be undertaken for providing electricity supply.

The proviso to the said regulation provides that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken

Clause (2) of the said regulation provides that Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

The first proviso to said regulation provide that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS

specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

The second proviso to said regulation state further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

The third proviso to said regulation state that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

The aforesaid provision provides for issuance of demand note by the distribution licensee to the consumer as and when such consumer carry out the work of laying down LT/EHT line on behalf of the respondent licensee i.e.. distribution licensee/ transmission licensee and recover the charges from the licensee.

Thus, the aforesaid provision recognizes that the consumer itself is eligible to carry out the work of laying down distribution / transmission network for receiving the power supply from the licensee by way of new connection or extension of load. Further, it is also provided that failure to complete the work within the stipulated period by the consumer, the distribution licensee by way of issuance of notice prior to 60 days of completion of work specified in the letter / notice to the consumer the licensee start recovery of demand charges

15.1.5. It is also necessary to refer Regulations 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

> *"4.37 The overall timeline for releasing new electricity connection, from the date of receipt of application, shall be as per GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof:*

Provided that the licensee may approach the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, in specific cases where extension of Distribution mains requires more time, along with details. In such cases, the licensee shall inform the consumer about the likely time of completion of works."

The aforesaid provision provides that the timeline for release of new connection from the date of receipt of application shall be as per the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amended thereto.

The proviso made in the aforesaid clause provides that the licensee may approach to the Commission for extension of time specified in the Standard of Performance of Distribution Licensee Regulations, 2005 and amendments made in it from time to time in specific cases where extension/ distribution main requires more time along with the details. In such cases, the licensee shall inform the consumer about the likely time to completion of works. Thus, the aforesaid provision recognizes that the licensee may approach to the Commission whenever there is extension of distribution mains required to it.

15.1.6. It is also necessary to refer Regulations 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

"4.38 The licensee shall not be held 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."

The aforesaid provisions provide that the licensee shall not be held 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.

15.1.7. It is also necessary to refer Regulations 4.42 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

"4.42 On completion of the work, Licensee shall inform to the applicant for

availing the power supply and if the applicant fails to avail of the power within the period of sixty days from such intimation, he shall be liable to pay the demand charges and minimum monthly charges as applicable. The Distribution Licensee may, in special circumstances, extend the above period of sixty days."

The aforesaid provision provides that on completion of the work, the licensee shall inform to the applicant for availing the power supply and if the applicant fails to avail of the power within the period of sixty days from such intimation, he shall be liable to pay the demand charges and minimum monthly charges as applicable. The distribution licensee may, as a special circumstances, extend the period of sixty days specified in the said regulation. Thus, the aforesaid regulation recognizes that the distribution licensees has power to extend the time limit of sixty days in case of non-completion of the work.

15.1.8. It is also necessary to refer Regulations 9.23 and 9.24 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

*"**Savings of Inherent Power of the Commission***

9.23 Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission."

The aforesaid regulation provides that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.

"9.24 Nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission 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."

The aforesaid regulation provides that nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission 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.

15.2. On combined reading of aforesaid regulations notified by the Commission, it is clear that the said regulations state the duties cast upon the licensee under the provisions of the Electricity Act, 2003 and these regulations that the licensees are mandated to provide the electricity supply to the consumers by carrying out various activities which needs to do by it. It provides while dealing with the consumer applications for electricity supply, extension of power supply, load, etc. the various activities which requires to be carried out by the licensee in specified time frame and also are eligible to recover the charges/ expenses if any, incurred by them while complying with the aforesaid provisions of the regulations. The aforesaid regulations are silent with regard to the activities for construction of distribution system, if any, required to carry out by the licensee, the same if any, done by the consumer on behalf of the licensee because the duties cast upon the licensee to lay down the distribution network in its license area with consideration of safety aspects as well as other aspects. Hence, whenever the licensee assigned its duties to the consumers by way of an option then in that case, the licensee is mandated to supervise the work also require to approve the necessary distribution system network with consideration of the technical parameters, materials, etc. In such situation, if the delay caused by the licensee while carrying out the aforesaid work and it affect the consumers in creation of distribution network, it cannot be ignored, and consumers are eligible to get relief with regard to delay if any occurred on account of licensee. Hence, we are of the view that the Petitioner, who is a consumer is eligible to approach the commission as and when there is dispute with regard to delay in laying down distribution network by the consumers for getting power supply or extension or variation in the existing load on contract demand supplied by the licensee the Commission has jurisdiction to deal with such issues and decide the same.

15.3. We note that the 'User' defined in the Electricity Supply Code which is subject matter in the present case as referred to above, the consumers who fall in the definition of person and User are eligible to approach the Commission in case of any grievance arising with regard to Supply Code either for interpretation of the

regulations or dispute arose between consumer and licensee to the Commission. Hence, we decide that the prayer sought by the petitioner in the present case for deciding fall within the jurisdiction of the Commission. Hence, the present Petition is maintainable.

15.4. The Petitioner has contended that the issue involved in the present Petition is billing issue is concerned, we note that there are other issues also. Further, the billing issue is also challenged by the Petitioner on a ground of the same of the said bill is not in accordance with the provisions of regulations notified by the Commission and it requires for the Commission to interpret and decide the same. On this ground also, the present Petition is admissible and maintainable.

16. Now we proceed with analyzing the reasons for delay in construction of network by the Petitioner required for release of new EHT connection by MGVCL.

16.1. As per Regulation 9.3 *(supra)* of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 the timeline for release of bulk power connection for the load of 5000 kVA is within 180 days after completion of demand notice / formalities by the prospective consumer.

16.2. To understand and analyze the time period elapsed in releasing the new EHT connection of the Petitioner, a summary, based on the records submitted by the Petitioner and the Respondents in the present Petition, have been prepared as under:

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
1	Petitioner selected the Option-III through letter dated 20.10.2018 to GETCO	20.10.2018	-	Petitioner
2	Estimate payment to MGVCL by the Petitioner	01.02.2019	-	Petitioner

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
3	Agreement executed between Petitioner and MGVCL	11.02.2019	-	Petitioner
4	GETCO wrote to Petitioner to select execution agency and material from GETCO approved vendor	15.02.2019	-	Respondent No. 2 - GETCO
5	Petitioner applied for vendor approval to GETCO	18.04.2019	66 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
6	Vendor Approval received from GETCO, Kick-off meeting with Agency	22.04.2019	4 days from Petitioner's application for vendor approval to GETCO	Respondent No. 2 - GETCO
7	Contractor asked for standard drawings of equipment from GETCO	26.04.2019, 30.04.2019, 04.05.2019, 25.05.2019, 01.06.2019, 13.08.2019, 23.08.2019	193 days (counted up to 23.08.2019 on which the last request for standard drawing was made by the Petitioner) from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
8	GETCO issued drawings of equipments	01.05.2019, 10.05.2019, 04.06.2019, 14.06.2019, 19.08.2019, 04.09.2019	12 days (counted from 23.08.2019 to 04.09.2019 i.e. date on which GETCO issued last drawing of equipment) from request from Contractor for standard drawings of equipment from GETCO.	Respondent No. 2 - GETCO

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
9	Petitioner applied for approval of vendor for equipments	28.05.2019, 26.06.2019, 27.07.2019	166 days (counted up to 27.07.2019 on which the last request for approval of vendor for equipment was made by the Petitioner) from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
10	GETCO approved vendor for equipments	19.06.2019, 19.07.2019, 08.08.2019	12 days (counted from 27.07.2019 to 08.08.2019 i.e. date on which GETCO approved vendor for equipments) from Petitioner's application for approval of vendor for equipments	Respondent No. 2 - GETCO
11	Petitioner's contractor submitted SBC Report of soil for civil work at GETCO substation	01.06.2019	110 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
12	Physical work started. i.e. Pit marking and then excavation	06.06.2019	115 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
13	Petitioner applied for civil work contractor to GETCO	11.06.2019	120 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
14	GETCO approved the civil work contractor	19.06.2019	8 days from Date of execution of Agreement between Petitioner and MGVCL	Respondent No. 2 - GETCO

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
15	Heavy rainfall and water logging stalled the work	27.07.2019	On 166th day from Date of execution of Agreement between Petitioner and MGVCL	-
16	Petitioner applied for approval of vendor and contractor for work at their switch yard	20.09.2019	221 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
17	GETCO approved for vendor and contractor for work at Petitioner's switch yard	30.09.2019	10 days from Petitioner's application for approval of vendor and contractor for work at their switch yard	Respondent No. 2 - GETCO
18	Work completed by Petitioner	18.03.2020	235 days from date when Heavy rainfall and water logging stalled the work i.e. 27.07.2019	-

16.3. From the above details, it is clear that the Petitioner paid the estimate to MGVCL on 01.02.2019 and signed the necessary agreement on 11.02.2019 completing the formalities as envisaged in Regulation 9.3 of the GERC (SoP) Regulations, 2005. Accordingly, the start date for the Petitioner to commence the work execution is considered by the Commission as 11.02.2019. As per SoP Regulations, the connection of the Petitioner ought to be released within 180 days i.e. latest by 10.08.2019 from date of signing the agreement. The Petitioner completed the work on 18.03.2020 resulting into total delay of 221 days in completion of work. It is necessary to scrutinize the reasons for such delay and identify whether the Petitioner or the Respondent/s is responsible for such delay. From the above Table it can be observed that as per the submission of the Petitioner there was heavy rainfall commenced from 27.07.2019. The work could be completed on 18.03.2020 i.e. after 235 days from the date when heavy rainfall and logging of water stalled the work. The Petitioner has not submitted the date on which the issue of water

logging and heavy rainfall was resolved and could commence the work. It is submitted by the Petitioner that 76% of work was completed in 51 days i.e. from 06.06.2019 to 27.07.2019 (the date on which rainfall commenced as per Petitioner). The Petitioner could not substantiate its claim of heavy rainfall days except a newspaper article and two photographs. The newspaper article as submitted by the Petitioner does not speak about heavy rainfall in the specific area where the Petitioner was required to execute the work. Also, the photographs submitted by the Petitioner do not have any date and time stamp and details of any location of which the photographs are. The Petitioner has also not produced on record any legal and valid certificate to authenticate the said photographs to be true. In absence of any reliable and verifiable document, the prayer of the Petitioner to extend time period up to February 2020 for completion of 66 kV transmission lines and bays for release of 5000 kVA EHT connection cannot be considered by the Commission. It is also observed from the above Table that the Petitioner asked for standard drawing of equipments from GETCO until 23.08.2019 which is delayed by 193 days from date of signing of agreement. Also, the Petitioner applied for approval of vendor and contractor for work at their switch yard on 20.09.2019 i.e. after delay of 221 days from date of signing of agreement. Thus, the Petitioner itself took unreasonable time for seeking various approvals from the Respondent No. 2 GETCO. In view of above, we do not find any justification for granting any relief to the Petitioner. Accordingly, we do not find any merit in the present Petition and the same is rejected.

17. In the result, we dismiss the present Petition and allied IAs.

Sd/-	Sd/-	Sd/-
[Jatin N. Thakkar]	**[Hiren Shah]**	**[Pankaj Joshi]**
MEMBER	**MEMBER**	**CHAIRMAN**

Place: Gandhinagar

Date: 22/07/2026