BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISISON
GANDHINAGAR

Petition No. 1862 of 2020

In the Matter of:

Petition for extension of time limit for erection of the 66 KV transmission line for enhancement of the load from 4000 KVA to 7000 KVA.

Petitioner	:	Surya Roshni Limited, Survey No. 188, Village Bhuvad, Anjar-Mundra Highway, District: Kutch, Gujarat-370130.
Represented By	:	Mr. Kalpesh Ramjivan
		V/s.
Respondent No. 1	:	Gujarat Energy Transmission Corporation Limited Sardar Patel Vidyut Bhavan Race Course Circle Vadodara, Gujarat – 390007.
Represented By	:	Ld. Advocates Ms. Shrishti Khindaria and Mr. Aneesh Bajaj along with Mr. M.J. Vasava
Respondent No. 2.	:	Paschim Gujarat Vij Company Limited Paschim Gujarat Vij Seva Sadan Off. Nana Mava Main Road Laxminagar, Rajkot, Gujarat – 360004.
Represented by	:	Ld. Advocates Ms. Shrishti Khindaria and Mr. Aneesh Bajaj along with Mr. K.J. Patel, Mr. D.V. Gojiya and Mr. H.P. Toliya.

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

Date: 23/07/2026

ORDER

1. The present Petition is filed by the Petitioner, Surya Roshni Limited, for extension of time limit for erection of the 66 KV transmission line for enhancement of the load from 4000 KVA to 7000 KVA.

2. The Petitioner has prayed as under:

   (a) "Admit and allow this Petition;

   (b) This authority may be please to extend the time of 18 months in an agreement dated 16.12.2017 for installation of the 7000 KVA power in Petitioner's company;

   (c) This authority may be pleased to pass such further and other orders as the nature and the circumstances of the case may require."

3. The facts submitted in the petition are as under:

3.1. The Petitioner, Surya Roshni Limited, is the consumer of the Respondent No. 2, Paschim Gujarat Vij Company Limited (PGVCL) and at present having electricity of 7000 KVA. The Petitioner had applied for the enhancement of the electricity load from 4000 KVA to 7000 KVA on 28.06.2017 under consumer number 31537 on 66 KV Class. The work of the extension of 7000 KVA power was under construction and it was delayed due to obstacles created by the villagers of village Vavar and Chhasara and after putting best efforts of the Petitioner, Respondents and supplier, it was not resolved and the situation became worst when blooded fight was happened between two groups and several persons murdered and the situation became out of control of the Petitioner to complete the work.

3.2. It is submitted that as per the Act there is no specific provision to extend the time limitation for extension of time and there is no specific express provision to file application for extension of time and Respondent authority has no authority to extend the time as they are inferior authority to this authority. Hence, the Petitioner has no option other than to file present Petition before this authority, Hence, the Petitioner filed petition for extension of time for completing extension work. The

said petition was returned to the Petitioner with a direction to file complaint before Consumer Grievance Redressal Forum (CGRF) vide Order dated 27.02.2019. The said Order was challenged by the Petitioner before Hon'ble Gujarat High Court by way of SCA/16029/2019 and the said petition was partly allowed by the Hon'ble High Court vide Order dated 07.01.2020 and directed the Commission to adjudicate upon the petition of the Petitioner for extension of time for installation of power supply.

3.3. By way of present Petition, as directed by Hon'ble Gujarat High Court in SCA/16029/2019, the Petitioner is seeking favour of the Commission for extension of time for completion of extension work which is delayed due to unavoidable circumstances/ force major created by villagers for not carrying out extension work from their farms. The situation created by the villagers is beyond the control of the Petitioner and the Petitioner and its agency are putting their best efforts to complete the work, but they did not succeed.

3.4. The Petitioner submitted their various representations to the Respondent's authorities for extension of time and issuance of revised bills as per the previous cycle of 4000 KVA power but till date no action has been taken by the authority.

3.5. It is submitted that the Petitioner is the registered Public Limited company and having its unit at Survey No. 188, Village Bhuvad, Anjar-Mundra Highway, Taluka Anjar, Dist. Kutch – 370 130. The company is running its unit at above-mentioned address since year 2008 and the Petitioner is a consumer of Respondents since year 2009. The Petitioner was having that time 4000 KVA power supply and its consumer number is 31537.

3.6. It is submitted that the Petitioner is in need of more power for expansion of their company, so, it had applied for the enhancement of the power supply from 4000 KVA to 7000 KVA on 28.06.2017 and the necessary application fee of Rs. 25000/- for enhancement of power load from 4000 KVA to 7000 KVA was paid by Petitioner on 28.06.2017.

3.7. It is submitted that, after completing process of application and documentation, application of the Petitioner was forwarded to Respondent No. 2, PGVCL, for approval and necessary action and after verifying the application of the Petitioner it was approved by the Respondent No. 1, Gujarat Energy Transmission Corporation Limited (GETCO) on conditional basis on 06.11.2017. After payment of fees, the Respondent No. 2 issued letter to Respondent No. 1 for the feasibility examination.

3.8. After carrying out all the necessary test and possibilities were examined by the Respondent and on 06.11.2017 given estimate for catering 3000 KVA additional power demanded by Petitioner. The total estimated amount for catering additional power supply is estimated about Rs. 118.38 Lakh and the amount of estimate was paid by the Petitioner in month of December-2017.

3.9. It is submitted that on 16.12.2017 an agreement as per the Supply Code Regulations of the Commission was executed between the Petitioner and Respondent No. 2 for supply of electricity.

3.10. It is submitted that after payment of estimate amount, the Respondent informed to appoint GETCO approved vendor/supplier for carrying out extension work. As per the condition, the Petitioner appointed Hi-Tech Transpower Pvt. Limited as supplier and after appointment of supplier one joint meeting with the Respondents and supplier was carried on 23.01.2018. The target date was fixed on 31.05.2018. After joint meeting, work was started by the Hi-Tech Transpower Pvt. Limited and completed almost work and during the work of last phase some obstacles were created by the villagers of concerned village. So, supplier filed an application to PSI, Anjar for police protection on 17.04.2018 to carry out the extension work.

3.11. After filing application to the police station at Anjar, no response was given by police authority till month of June 2018. So, the supplier again filed an application to Collector of Bhuj and A.C.P. of Bhuj for the necessary favour for carrying out the work. The supplier tried their best to complete the work but due to out-of-control

situation created by villagers; it was not possible for the Petitioner to complete the work in time.

3.12. The kick of meeting was held on 23.01.2018 and work was started on very next date and as per the kick of meeting, the Petitioner was supposed to complete the work on or before 24.06.2018 but due to unavoidable circumstances, the Petitioner was not in position to complete the extension work and for the same the supplier had requested for police assistance.

3.13. A notice dated 25.06.2018 was issued to the Petitioner for starting minimum bill after 60 days. After receiving said notice, the Petitioner filed detailed representation to Respondent for not to start minimum bill amount and demand charged till the completion of work, but without considering the request, the Respondent raised minimum bill on 06.09.2018, 04.10.2018 and 05.11.2018.

3.14. It is submitted that the process of the inserting of Transmission line is in progress and almost two phases of the work is completed and last phase needs to be completed but due to obstruction by villagers, work is not completed and it is in very well knowledge of the Respondent No. 2 even-though, Respondent generated minimum bill from 06.09.2018, 04.10.2018 and 05.11.2018.

3.15. It is submitted that as the work is not progressed as per the timeline, the Petitioner requested Respondent No. 1 for intervention and resolving the issue as Petitioner's plant is ready and there is almost delay of five months from estimated time. The Petitioner is suffering from heavy financial losses due to non-supply of power.

3.16. It is submitted that as representation was pending for the consideration meanwhile Respondent No. 2 raised minimum bill to the Petitioner for month of August-2018 and immediately after receiving the bill, the Petitioner again filed objection and request to recall the minimum bill and also request for extension of time for completing work.

3.17. It is also in knowledge of the Respondents that the Petitioner has put its all energy behind completing the work, but the villagers are not settling the issue and Government Officer is also working in it and there is no fault on part of the Petitioner to complete the work and in-spite of having full knowledge Respondent.

3.18. It is submitted that in identical type of matter i.e. in case of M/s. K.P. Energy Pvt. Ltd. Vs Gujarat Energy Transmission Corporation Ltd. Petition No. 1206/2012 order for extension of time was granted on 14.06.2012. As per the judgment delivered by this authority the Petitioner's case is squarely covered by this judgment. So, time for extension of work is required to be granted.

3.19. The representation made by the Petitioner was rejected by Respondent No. 2 on 06.10.2018 and confirmed its order for issuance of minimum bill without considering actual position of delay which in beyond control of the Petitioner.

3.20. Being aggrieved by and dissatisfied with the Respondent by not extending time for completing work of extension of power supply from 4000 KVA to 7000 KVA and generating minimum bill for the power, which is yet not supplied, challenging the legality and validity of the said bills inter alia on the following amongst other grounds:

A. The minimum bill generated by the Respondent is in total violation of the agreement as no prior 60 days was served to the Petitioner till date and the bills generated by the Respondent No. 2 are bad, illegal, improper and in violation of principles of natural justice.

B. The Respondents are very well aware about the stage of the work and the work was not completed due to obstacles created by the villagers and for removal of obstacles government machinery and all other related department are working for the same even though bills were generated by the Respondent are improper.

C. The Respondents have erred in not considering the representation made to them till the date and issuing minimum bills are not proper. The

Respondents are very well aware about the progress of work and they are also putting their efforts to complete the work.

D. The Respondents have erred in not considering that, the Petitioner company had made lot of representation for extension of time which they are not considering and inspite of having full knowledge that the work is still pending due to obstacles created by the villagers which are beyond the control of the Petitioner even though the Respondent No. 2 generated minimum bills without any prior notice.

E. The Respondents have erred in not considering that, the Petitioner Company is ready to start and waiting only for the power supply and due to non supply of the power the Petitioner is facing heavy financial burden. The Petitioner had also requested for supply of uninterrupted 4000 KVA supply but in that also they are failing and generated 7000 KVA bills.

F. On side Respondents are neither considering representation made by the Petitioner for extension of time nor stopping to generating minimum bills. So, in this situation the Petitioner is facing problems from the company and Respondents. It is in the knowledge of the Respondents that the work is still not completed, and it was not completed due to obstacles created by the villagers which is beyond control of the Petitioner as well as the Respondents. The Petitioner and Respondents both are trying their best to resolve the problems but in spite of the fact the Respondent issued minimum bill amount of 7000 KVA to Petitioner which is bad in law.

G. The Respondents are very well aware that the Petitioner had established its plan and setup the plant and machinery and employed around 400 people for starting company but due to non-supply of electricity the Petitioner company is not in position to run the unit. Because of the non-supply of the electricity, the Petitioner is facing lot of financial problems because it had availed loan from banks but due to non starting of the project on time, the Petitioner is in very pecuniary situation.

H. In the identical type of matter i.e. in case of M/s. K.P. Energy Pvt. Ltd. Vs Gujarat Energy Transmission Corporation Ltd. Petition No. 1206/2012 order for extension of time was granted on 14.06.2012. As per the judgment delivered by this authority our case is squarely covered by this judgment, So, time for extension of work is required to be granted.

I. Even otherwise the action taken by the Respondent for generation on minimum bills are bad, illegal, improper, unreasonable, arbitrary and in violation of principles of natural justice and therefore the same action of the Respondent authorities are required to be directed to recall the bills or give the setoff in next regular bills of 4000 KVA till the installation of the 7000 KVA power.

4. The Respondent No. 1, GETCO, vide affidavit dated 11.06.2020 and the Respondent No. 2, PGVCL, vide affidavit dated 06.06.2020, submitted their replies as under:

4.1. It is submitted that the Petitioner has sought to enhance their existing contract demand of 4000 KVA to 7000 kVA on 28.06.2017 and after completion of formalities and payment of estimates, the agreement was executed by the Petitioner with the Respondent No. 2, PGVCL, on 16.12.2017. At such time, the Petitioner was fully aware of the Supply Code and Standard of Performance Regulations and was therefore aware of the timelines for its obligation to construct the line as well as the consequences of failure to meet such timelines.

4.2. It is submitted that Regulation 4.33 of the Supply Code, 2015 deals with the case of the applicant for connection choosing to get the extension 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."

4.3. It is submitted that Regulation 4.80 provides that in cases of load enhancement, the applicants have to apply in the format prescribed and the licensee and applicant shall follow the procedure and timelines laid down in Regulation 4.26 to 4.37 of the Supply Code 2015 which includes above Regulation 4.33:

"Load Enhancement
4.80 Applicant shall apply for load enhancement to the licensee in the format prescribed in Annexure I to II (as applicable) to this Code. The licensee shall process the application form in accordance with clauses 4.64- 4.66 of this Code. For site inspection and issuance & payment of demand note for the estimated cost of works, both the licensee and applicant shall follow the procedure and timelines as laid down in clauses 4.26 - 4.37 of this Code."

4.4. It is submitted that the Regulation 4.85 for load enhancement recognized timeline as under:

"4.85....
Timeline for releasing additional load (energisation)

Sr. No.	***Item***	***Time Limit (within)***
1	*Aggregate Loads up to 100 kVA /100 kW*	*Within 20 days after compliance of formalities/ demand notice, if no augmentation is required otherwise 60 days.*

Sr. No.	Item	Time Limit (within)
2	Aggregate Loads above 100 kVA/100 kW and up to 4000 kVA	Within 45 days after compliance of demand notice/formalities by the applicant
3	Aggregate Loads above above 4000 kVA	Within 180 days after completion of Demand notice/ formalities by the Applicant.

"

4.5. 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. The release of bulk power connections under 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.*

"

4.6. Accordingly, the Petitioner was required to complete the work by 180 days from 16.12.2017 which comes to 13.06.2018. However, the Petitioner failed to do so.

4.7. Therefore, PGVCL issued notice on 25.06.2018 for commencement of minimum billing after 60 days. Even after the said Notice, the work was not completed within the said 60 days. The Respondent No. 2 does not have any authority or power to grant any extension of time. There is no provision in the Supply Code for such extension of time to be granted to the Petitioner.

4.8. It is submitted that the consideration has to be whether the Supply Code allows for any extension and even assuming without admitting that there can be an extension, has the Petitioner justified the reasons for delay. In the present case, the Petitioner has claimed that it was delayed due to obstructions by the villagers. It is responsibility of the Petitioner to resolve any ROW issues. It is further submitted that Petitioner was well aware that all way leave clearances for line work etc. has to be obtained by Petitioner and it was specifically stated that GETCO would not be responsible for delay on this account.

4.9. The Petitioner has only annexed one application dated 17.04.2018 to Police Station and thereafter in 29.06.2018. There is no explanation for the period in the middle. The Petitioner has not followed up on the application nor taken the appropriate steps. The Petitioner has also not raised any specific issue or instance in its application to the respective police station or District Collector and instead had made a general statement regarding hurdles in carry out the work. (Application was made by Hi tech Power who was an EPC contractor of Petitioner). The claims now made by the Petitioner are not substantiated nor proved. The alleged bloodied fights and murders referred in Para 1 of the Petition have not been referred anywhere in any application annexed to the Petition.

4.10. The Petitioner had cited other reasons in its Letters to PGVCL which have not been stated in the Petition, and which demonstrates that Petitioner was well aware that they were without basis.

4.11. 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.

4.12. It is submitted that the Hon'ble High Court has only held that prima facie jurisdiction. The reliance on case of KP Energy may not be correct as that was a case of dispute between generating company and licensee which is within the jurisdiction of the Commission.

Admittedly, there is no provision in the Act or Supply Code for grant of extension and in any case, the Respondents have no authority to grant such extension. When admittedly, the Respondents have no authority to grant extension, the representations of the Petitioner could not have been acted upon.

The alleged reasons cited for delay of construction of line are to be proved by the Petitioner and vague statements cannot be accepted. It is denied that the Petitioner put its best efforts to complete the work. It is denied that there were any fights or murders, particularly in this regard. This is also clear from the fact that this was not mentioned in the application which are now annexed to the Petition. Further this was also not referred in the letters written by the Petitioner to PGVCL and specifically in the Letter dated 14.08.2018 which was written in response to the notice issued by PGVCL. The claims of the Petitioner are afterthought to avoid its liabilities.

4.13. It is submitted that the Petitioner had willingly executed the agreement being well aware of the timelines provided in the Regulations and had undertaken to construct the transmission line.

4.14. It is submitted that in terms of the Regulations, the Petitioner was required to complete the line by 13.06.2018. It was the Petitioner's responsibility to construct the line and to do so within the timeline prescribed. It is necessary to appoint GETCO approved vendors/suppliers as the line constructed by the Petitioner was to be connected to the grid and should meet the standards to ensure grid safety and stability. This had also been stated in the Estimate provided by GETCO.

The Petitioner has made allegations about obstacles during the last phase of work and it appears that as per the Petitioner, there was no issue when the work was being done and almost completed. The Petitioner however has not annexed any proof of the same. It may be noted that the Petitioner at this time had not informed PGVCL or the Commission of delays. The Petitioner had written to PGVCL only after the notice was issued by PGVCL as per Regulations. The contentions of the Petitioner are not admitted.

4.15. It is submitted that the timelines are as per the Regulations of the Commission and not what is decided in the kick off meeting. The Petitioner was required to construct the line by 13.06.2018. The contentions on the reason for delay by the Petitioner are not substantiated and are not admitted. It is reiterated that there is no provision for extension of time under the Regulations.

4.16. It is submitted that PGVCL has acted as per the Regulations and issued the Notice. There is no provision in the Regulations for extension of time for construction of the line by the consumer and even if there was, PGVCL is not the authority to grant such extension. Since the work was not completed even in 60 days period, PGVCL raised the minimum bill.

4.17. The contentions of the Petitioner on the alleged obstruction by villagers is not admitted. The Petitioner has not demonstrated the alleged causes of delay. It is

reiterated that PGVCL 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 PGVCL to any consumer in regard to work to be completed by the consumer. PGVCL cannot grant any extension as it is not within its jurisdiction. Thus, PGVCL was correct in raising the minimum bills.

4.18. It is submitted that the Respondent No. 1. has no authority to grant any extension of time. There was no default on part of PGVCL or even Respondent No. 1. The alleged losses suffered by the Petitioner are not relevant. There are a reason and purpose for prescription of a timeline for construction of line by the consumer and the requirement of minimum bills being raised in case of delays by the consumer. The said provision cannot be defeated by the Petitioner claiming financial losses of its own.

4.19. It is submitted that the case of KP Energy Pvt Ltd v. Gujarat Energy Transmission Corporation Ltd Petition No. 1206 of 2012 is not applicable to the present case. The Petitioner is mixing up two completely different scenario. The dispute in the said case was between a generator and licensee and not consumer. 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. Further, in the present case, the timelines are provided under the Regulations, and it is well settled principle that the Commission and parties are bound by the Regulations.

4.20. It is submitted that the Petitioner itself has admitted in its Petition that the PGVCL had on 25.06.2018 issued a notice for starting minimum bill after 60 days. In this regard, Petitioner has vide its letter dated 14.08.2018 represented to Respondent in response to such notice. It is thus misleading and wrong on part of Petitioner to now claim that there was no notice of 60 days. The bills raised by the PGVCL are valid, legal and proper. There can be no question of any violation of principles of natural justice.

4.21. The Petitioner has not pointed out any provision under which PGVCL had the discretion to grant extension of time. PGVCL cannot forego billing the consumers in such manner as it would increase the burden on other consumers.

4.22. Without prejudice to the contention that there is no provision for extension of time, it is submitted that even on merits, there is no case for extension. The alleged reasons of delay by the Petitioner are not admitted. The Petitioner has not demonstrated the alleged reasons for delay. The Petitioner is making vague and generic statements and have not provided any details of the alleged issues. The alleged efforts by the Petitioner for completion of work are also not admitted.

Further, the Petitioner did not inform PGVCL of any of the issues until after the period was over and PGVCL had written to the Petitioner. Therefore, there was no timely intimation of the issues, and this demonstrates that the said issues are being raised as afterthought once PGVCL had issued the notice and only to avoid the obligations. PGVCL 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.

It is denied that there was no prior notice. PGVCL had duly issued the notice on 25.06.2018 as stated by the Petitioner itself in the Petition in the earlier Paras.

4.23. It is reiterated that the alleged financial loss of the Petitioner is due to its own delays in completion of the line. PGVCL is ready to supply the full 7000 KVA. It is denied that there is any failure by PGVCL. The contentions of the Petitioner are vague, unsubstantiated and an afterthought to evade its own obligations.

4.24. It is also denied that the case of KP Energy Pvt Ltd is identical or even otherwise applicable to the present case. As submitted hereinbefore, the said case was a case of dispute between a generator and distribution licensee and not of a consumer. The provisions of Supply Code were not considered at all as they were not relevant

to the said case of KP Energy. However, in the present case, 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 cannot be considered. In any case, even on merits, the Petitioner has not demonstrated or justified the alleged reasons for delay.

4.25. It is submitted that there is an alternate remedy being Consumer Grievance Redressal Forum (CGRF) constituted under Section 42. In a similar case, M/s RSPL had approached the said Forum and further Ombudsman. The decision of the Ombudsman was in favour of the Distribution Company. It is submitted that the Hon'ble High Court has considered the prima facie view relying on case of K.P. Energy. However, as stated hereinabove, the said case 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 could not be considered by CGRF.

4.26. The Respondents have 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 Respondent No. 1, GETCO, vide affidavit dated 17.06.2020 and the Respondent No. 2, PGVCL, vide affidavit dated 01.07.2020 made their submissions on admissibility of the Petition as under:

5.1. It is submitted that the submissions are being filed on the preliminary issues of admissibility of the Petition on the issue of jurisdiction. There is a preliminary question which has to be considered as to whether the issues 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.

5.2. It is submitted that Respondent No 1, GETCO, being a State Transmission Utility is not the main contesting Respondent as there is no relief sought against it. The Petition is filed in regard to the issuance of notice and levy of demand charges by the Respondent No. 2, PGVCL, distribution licensee. The Respondent No. 1 is not directly related or affected by the issue of levy of demand charges.

5.3. 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 Consumer Grievance Redressal Forum 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."

5.4. 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."

5.5. 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 was 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 and 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 Section 85 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 repeal 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 low. 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 sold persuasive contention advanced. Be it a single or 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 Port 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 29.03.2006 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 23.05.2006 passed by CSERC while giving liberty to each one of the consumers 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."

5.6. 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.

5.7. 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.

5.8. It is submitted that the Hon'ble High Court in the case of Surya Roshni v. Gujarat Electricity Regulatory Commission dated 07.01.2020 in Special Civil Application No. 16029 of 2019 has considered the prima facie view relying 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.

5.9. It is submitted that the 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.

5.10. The Order in KP Energy was issued on the basis of the estimate issued read with the Commission's 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. Mis 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 nonutilization 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."

5.11. 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.

5.12. 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.

5.13. 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."*

5.14. 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."*

5.15. 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.

5.16. 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).”

5.17. In Haryana Power Generation Corporation Limited Haryana Electricity Regulatory Commission, decision dated 01.03.2012 in Appeal No. 131 of 2011, the Hon'ble Tribunal 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 provides 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 safeguard 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.”

5.18. It is submitted that 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.

5.19. 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 o 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 expert 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 PrakashAgarwal 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.*"**

5.20. 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 addresses 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.

5.21. In any case 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."*

5.22. It is 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 low 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."*

5.23. 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.

5.24. 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.

5.25. 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. 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 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.

6. The Petitioner, vide affidavit dated 01.07.2020, filed its rejoinders in reply to the submissions of Respondent No. 1 and Respondent No. 2, as under:

6.1. It is submitted that the total work of extension of high-power line was about 13.8 Km and only 4.56 Km work was pending due to the obstacles and protest done by the villagers of village Chhasara and Vavar. It is pertinent to note that, out of total extension work almost 70% work was over by the month of April 2018. It is further

submitted that, during the last phase of the extension line, the villagers of village Chhasara and Vavar of district Bhuj created obstacles and demanded illegal amount from the Petitioner and matter was not resolve, hence the contractor i.e. M/s Hitech Power wrote a complain to PSI, Anjar for the Police protection to complete the extension work on 17.04.2018. After filing complaint with police station Anjar, no response was given by them, so the representative of contractor visited police station for few days, but no positive response received from police authority.

6.2. It is submitted that after filing complaint with police station and taking lots of personal follow-ups, no response received from police station, so the representative of the contractor on 29.06.2018 filed another complaint to Collector of Bhuj and Police Superintendent at Gandhidham for providing police protection to complete the work. It is pertinent to note that, in complaint/application dated 29.06.2018, it was categorically mentioned that the Petitioner company is required police protection for completing work for five days starting from 09.07.2018. Again, no response received from both the authorities till 12.07.2018, so, again the representative of the contractor company filed another complaint/application to the Collector of Bhuj for providing the necessary police protection for completing work.

6.3. It is further submitted that on 16.07.2018 a letter from the Superintendent of Police, Gandhidham, was received by the contractor for payment of the necessary fees for police manpower. Amount of Rs. 1,20,310/- and GST of Rs. 21,656/-was paid to the office of the superintendent of Police.

6.4. It is further submitted that the Petitioner and its contractor were putting their best to complete the work but due to above mentioned series of obstacles created by villagers and even no help received from police and collector office, so, the work was not completed and the same incidences with the details was informed to the Respondent No. 2 vide letter dated 14.08.2018. In the said letter the details of progress and the problems faced by the Petitioner was clearly mentioned. It was also mentioned that the filing of FIR will not work so they need police protection to resolve the issue and complete the extension work.

6.5. It is submitted that after filing presentation to the Respondent No. 2 no positive response received form the authority. So again, the contractor of the Petitioner company requested Superintendent of Police Anjar for providing police protection for completing the extension work vide letter dated 25.08.2018. This time also no response was received by the Superintendent of Police office so, again, the contractor of Petitioner company requested for providing the police protection for completing the work.

6.6. It is further submitted that even after taking lots of follow-ups with police authority and collector office no response was received by the contractor of the Petitioner company. It is pertinent to note that, on 15.10.2018, the Petitioner company made detail representation about the progress of the work and also demonstrated the problems faced by them. The one of the problems was, the distance between the towers which was not in accordance with the prescribed rules, so additional towers were required to complete the work. That, the said additional was out of the purview of the agreement and it will take addition time to complete the work, but the same request was not considered by the Respondent No. 2.

6.7. It is submitted that the detail mentioned in the reply of Respondent No. 2 is true and the Petitioner is also saying the same thing as the Respondent No. 2 not having any authority for extension of time. Also, from the reply of Respondent No. 1 it is transpired that GETCO is not having any power for the extension of time in case of installation of power line. The same detail of not having authority for the extension of time is repeated in almost para of the reply and the stand of the Petitioner is also the same. The Petitioner demonstrated the cause of delay and the efforts put by them with documentary evidence to justifying the delay in completing the work. It is submitted that the Petitioner had produced almost documents which were available with them and shown the reasons for delay. To show the bloodied fights and murders referred in the Petition, the paper cutting is produced to demonstrate the same. On every stage Petitioner has updated the status of the progress to the Respondent No. 1 and 2.

6.8. It is further submitted that the contractor is working under the direction, supervision and control of GETCO and for the supervision of the same, the Petitioner has paid addition of 15% to the GETCO. The Petitioner has opted Option III because they were in need of urgent power supply under the control and supervision of GETCO, but the situation was adverse and work was not completed in time due to the obstacles by villagers as well as the new installation of the towers which was not mentioned in the work. The said progress and need to installation of the tower was approved by the GETCO and from that, GETCO cannot said that they were not aware about the progress of work. The contractor appointed by the Petitioner informed GETCO each and every information on time to time because the entire work was done under the control and supervision of the GETCO.

6.9. The Petitioner has submitted that the para wise reply given by Respondent No. 2 are not true and correct and not accepted by the Petitioner. In the reply majorly, they rely upon case of KP Energy and objected to give benefits of the said judgment and on ground of non-satisfactory reason for delay and they have no authority for extension of time. In our respectful submission, the order of the KP Energy delivered by this Commission was completely applicable to the Petitioner's case because the rational laid down by the Commission in the judgment are: (1) No dispute about the extension of time in our case they came with statement that they are not having power for extension of time, (2) No specific express provision in Act for extension of time in our respectful submission only superior authority is having power for extension of time. It is also relevant to understand scope and purpose of the issues involved in KP Energy case. The submission of PGVCL 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 PGVCL is misleading and without any merit.

1. 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 communication dated 06.04.2011.

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 21.03.2012 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 05.04.2012 to 30.06.2012 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 30.01.2010, 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 05.04.2012 to 30.06.2012 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 30.06.2012...

(Underline supplied)

2. Thus, from the Order dated 14.06.2012, 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 of given facts the case, circumstances and the Commission had extended time limit in favour of applicant by exercising its general regulatory powers.

6.10. It is submitted that it is very important to deal with the facts, issue and the prayer made by the Petitioner in the present Petition. In the present Petition, the work of erection of transmission line is undertaken by the Petitioner under Option-III on behalf of GETCO. The Petitioner has been experiencing / has experienced delay, reasons for which were not in control to the Petitioner / Distribution Licensee-PGVCL. 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.

6.11. It is further submitted that looking to the facts and circumstances of the case of the Petitioner, there is no complaint against PGVCL/GETCO considering the facts that (i) reasons for delay is not attributable to any fault/lacuna on part of Distribution

Licensee, (ii) under the provisions of Supply Code and SOP Regulations, when PGVCL/GETCO do not have any power/authority to grant extension of time, there cannot be any complaint / claim against GETCO/PGVCL seeking redressal of complaint before CGRF. In the present case, there is no dispute with PGVCL in regard to billing dispute and therefore CGRF cannot have jurisdiction. It is further submitted that there is no any express provisions in the CGRF Regulations which can authorize the forum to grant extension of time. In its submission, PGVCL and GETCO has also failed to point out that under which clause of CGRF Regulations, the forum has jurisdiction to grant extension of time.

6.12. It is further submitted that in absence of time limit extension order of the Commission, PGVCL is entitled to commence billing on deemed release basis and there cannot be any complaint against this action before CGRF being action of PGVCL is in accordance with the provisions of Supply Code. Therefore, issue involved in the present petition cannot be considered as billing dispute and there is no prayer for billing amount.

6.13. It is submitted that the Respondent No. 1 and 2 take contention 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. It is further submitted that when there is no complaint against PGVCL and GETCO and when there is no claim of compensation against PGVCL and GETCO for violation of SoP timeline, the issue involve in the present Petition cannot be entertained by CGRF.

6.14. It is further submitted that without prejudice to the above, it may also be appreciated that 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.

6.15. It is further submitted that it also needs to be appreciated that as per the provisions of the 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.

6.16. It is submitted that it is also the contention of the Respondent that the present Petition is filed only after issuance of 60 days' notice by PGVCL 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.

6.17. It is submission of PGVCL and GETCO that in similar case of M/s. RSPL, CGRF and Ombudsman has given decision in favour of PGVCL. The Petitioner, without going to 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. It is further submitted that the issue raised before CGRF by the RSPL was having totally different facts and circumstance then the Petitioner's case.

6.18. In view of above submission, under the circumstances and from reading of the pleadings even when there is no dispute with PGVCL/GETCO, if the issue involved in the present Petition is to be considered as billing dispute with PGVCL in that case there cannot be any complaint against PGVCL before CGRF as delay in completion of line is not attributable GETCO/PGVCL 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.

6.19. It is further 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 timeline 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. 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 revered and subject to relaxation/extension by the Commission due to time taken by local factors authority affecting the other and 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.

6.20. It is submitted that, let's presume 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 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 could not be intension of the statute. The provisions of Supply Code 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.

6.21. 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. The reliance placed by PGVCL 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. In this regard, it is to state 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.

6.22. Therefore, the contention of Respondents 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 Respondents 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 PGVCL 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.

6.23. It is further 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. It is humbly prayed that the

Commission should play its role and exercise regulatory powers to protect the interest of applicant and give justice.

6.24. It is also imperative to consider the plea made by the Petitioner in the Petition namely, to excuse the delay not in the control to the Petitioner. It is in the interest of justice that the applicant should not be punished with no fault. Therefore, it is expected that PGVCL/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.

6.25. It is also 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.

6.26. 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 express 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 in control 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.

6.27. 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. As submitted hereinabove, 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.

6.28. 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.

6.29. It is also submitted that the 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.

7. The Respondent No. 2, PGVCL, vide affidavit dated 05.08.2020, filed its reply to the rejoinder submitted by the Petitioner's as under. The submission already made above are not repeated for sake of brevity.

7.1. It is submitted that line work has already been completed, and additional load has also been released on 13.11.2018. Without prejudice to the contention that there is no provision in the Regulations, it is submitted that even otherwise, the burden of proof is on the Petitioner to demonstrate that the delay was not attributable to it. It is submitted that none of this delay is due to any local authority.

In the present case, the Petitioner has claimed obstacles by villagers and it is pertinent that the Petitioner had not informed PGVCL of any delay until 14.08.2018 and the Respondent No. 2 cannot verify the existence of any such obstacles and the Petitioner be put to strict proof thereof. The Petitioner was required to complete the line by 13.06.2018 and the Petitioner did not inform PGVCL until after the notice was issued by PGVCL.

The only proof is copies of complaint dated 17.04.2018 and 29.06.2018. The Petitioner claim is that its representative visited police station seeking police protection. There is no proof of actual obstacle caused nor is there is any proof of any visit to police station. The Petitioner has also not raised any specific issue or instance in its application to the respective police station or District Collector and instead had made a general statement regarding hurdles in carry out the work. (Application was made by Hi tech Power who was an EPC contractor of Petitioner). The contentions of the Petitioner are denied.

7.2. With regard to distance between the towers, the additional tower being outside the purview of the agreement is not a reason for delay. The Petitioner was required to carry out the work as per the rules and the Petitioner cannot claim that it needs additional time to do so. The contentions of the Petitioner are not verifiable and are not admitted.

7.3. It is submitted that the Petitioner had not written to PGVCL or approached the Commission within time and had only done so after notice was issued by PGVCL. It is thus denied that the Petitioner had updated the status of the progress to the Respondent No. 2 at every stage. In any case, the Petitioner admits that PGVCL does not have power to grant extension and there is no provision in the Regulations.

Without prejudice to the contention that there can be an extension of time, it is submitted that in any case, the Petitioner has to demonstrate that the delay was beyond its control and not due to any fault or delay attributable to it or its contractors. It is reiterated that resolution of ROW disputes is the responsibility of Petitioner.

It is denied that there is any direct relevance of any incident on the Petitioner, and the Petitioner had not referred to any such event in its correspondence with the Respondent.

7.4. It is submitted that the Petitioner has already made detailed submission on jurisdiction including related to the case of KP Energy and the same is not applicable to the present case.

It is reiterated 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 Petitioner has instead of addressing the basic issue has sought to confuse the issue by erroneously claiming that the petition of KP Energy did not relate to a generating company and licensee. The parties before the Commission were K.P. Energy which had a wind farm and GETCO, which is a transmission licensee. The issues related to transmission network and payment of transmission charges. Therefore, clearly the issue was between a generating company and a licensee. It is not understandable how the Petitioner is claiming that the petition was not between a generating company and a transmission licensee. Merely because the Petition did not refer to Section 86 does not mean that the jurisdiction of the Commission did not flow from Section 86.

In any case, the basic issue is that the issue in the KP Energy case could not have been addressed by CGRF as the KP Energy is not a consumer of distribution licensee. But in the present case, where the Petitioner is to be considered as consumer of distribution licensee, then the Petitioner can approach the CGRF. Unlike the case of KP Energy, Supply Code under Regulation 4.86 recognizes the jurisdiction of CGRF.

The above provision does not apply to KP Energy and there is no such provision for generators such as KP Energy. Similarly, Section 42 of the Electricity Act, 2003 does not apply to KP Energy. Both provisions apply to a consumer of distribution licensee the Petitioner is a consumer of the Respondent distribution licensee. KP Energy was a generating company and not a consumer.

The very nature of Order No.1 of 2010 under which the time limit for KP Energy was provided and for which extension was sought was related to wind power generating company and not to consumers. The Supply Code under which the timelines relevant to this petition are provided is related to consumers of distribution licensee. Therefore, clearly the two cases cannot be compared.

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.

It is further 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, including the Commission itself. The Regulations are delegated legislation and stand on a higher footing as compared to Orders.

The decision of the Commission in regard to such Order No. 1 of 2010 therefore cannot be, in any manner, a precedent for the present matter which is related to Supply Code. The attempt to draw similarity between the two orders is therefore not correct.

7.5. It is submitted that there is no provision in the Supply Code or Standard of Performance for extension of time. Admittedly there is no default or delay on part of PGVCL or for that matter GETCO. Admittedly, PGVCL is entitled to commence billing on deemed release basis. It is submitted that it is not upto PGVCL/GETCO to demonstrate the clause of CGRF regulations. The Supply Code under Section 4.86 and Section 42(5) of Electricity Act, 2003 recognize the jurisdiction of the CGRF for any grievances on action or omission of the Distribution Licensee and not just billing. If the Petitioner has no grievance against the Distribution licensee, then it cannot seek any relief against the licensee. It is upto the Petitioner to show under what provision of law it is seeking relief. If there is no power of CGRF to grant relief, there cannot be any relief granted to Petitioner.

7.6. It is submitted that it is the responsibility of the Petitioner to construct the transmission line and such option is recognized in the Supply Code. The attempt of the Petitioner to claim that there is no consumer distribution licensee is incorrect. Merely because the Petitioner is constructing the transmission line does not mean that it is not a consumer of the distribution licensee. In fact, the Petitioner is constructing the transmission licensee only due to its status as a consumer and not as a contractor or otherwise of GETCO. There is no complaint against GETCO nor is there any relief sought against GETCO. The relief has been sought only against the distribution licensee who has commenced billing under the Supply Code. The Petitioner is referring to hypothetical situations.

7.7. It is submitted that the issue of Concord cannot be raised here. The issue herein is that the Petitioner had only raised the issue after the delay had already occurred and only when the issue was raised by the Distribution Company of the delay and it became clear that there would be consequences of bills being raised. In fact, the Petitioner waited until after issuance of the notice. However, even in the case of Concord, the Petition had been filed after the issuance of Letter by MGVCL reiterating the time period of 180 days and after it became clear that there would be an issue of notice to commence the billing. This is clear from the fact that even in Concord Petition, one of the reliefs sought was to direct MGVCL to restrain from issuance of two months' notice.

7.8. It is submitted that it is not that CGRF decisions are binding on the Commission but to demonstrate that the CGRF has exercised jurisdiction on similar issues and decided the Petition. The issue is not of facts which affects the merits but of maintainability and jurisdiction at present.

7.9. It is submitted that if there is no grievance against the distribution licensee, then there cannot be any relief claimed against the distribution licensee. There is no reason why the distribution licensees be denied the minimum billing for no fault of it. This would in turn burden other consumers of the distribution licensee.

It is submitted that principles of natural justice are not applicable in the present case. The principles of natural justice do not relate to substantive rights being granted. In any case, such principles cannot be relied on to grant relief contrary to the Regulations.

7.10. It is reiterated that there is no provision for extension of time for consumers. It is submitted that the Regulations are binding. The contention of the Petitioner is that the Regulation should have provided for the relief to consumer. The Regulation has to be applied as it stands today. Whether the Regulation is right or wrong or there is lacuna in the Regulation is altogether a different issue. It is for the Commission to amend the Regulation as and when deemed appropriate to include similar provision for consumer by following the due process and procedure for amending the Regulation, inviting public comments, holding public hearing etc. for the future. The Regulations prevailing as on date have no provision entitling granting time-limit extension to consumers and these cannot be ignored or misinterpreted.

7.11. It is submitted that the claim of the Petitioner that because Clause 4.37 does not say "only" means that the clause is not restricted to licensees is completely erroneous and such contention would do violence to the basic understanding of interpretation of statue. When a provision refers to a licensee and provides relief for the licensee, the intention is to provide relief only to the licensee. If not, the provision would have referred to non licensees also.

7.12. It is submitted that the Petitioner has not alleged any delay in approval or process by PGVCL. It is denied that PGVCL would act in such a manner and the allegation that PGVCL may try to "abstract money" is frivolous, erroneous and denied. In any case, in fact there is no such opportunity for PGVCL. Further, it is submitted that the regulations as they stand have to be applied. It is submitted that if extension is granted to applicant, then the burden of the power arrangements made by Distribution Licensees would have to be borne by other consumers of Licensees for no fault of theirs. Therefore, in this context, there is a conscious decision not to include the extension for non licensees.

7.13. It is submitted that the Regulations are binding and inherent powers cannot be exercised contrary to the Regulations. The Petitioner cannot claim substantive relief only on the basis that interests of justice require the same even though there is no provision of law for the same. When the Regulation provides for extension to licensee and does not provide for non-licensee, it is implicit that the non-licensee cannot then claim the same relief. Otherwise, there would be no point in providing for such regulation.

7.14. It is submitted that Clause 9.24 is for a procedural aspect and this would not cover substantive right. Clause 9.25 is also procedural. It is submitted that the interpretation of the Petitioner on 9.24 and 9.25 is not correct. 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, reference is made to the judgment of Hon'ble Supreme Court in case of Arjun Singh V/s. Mohindra Kumar (AIR 1964 SC 993). Thus, it is not only any express provision but even by necessary implication the Court cannot override provisions of law through inherent powers.

7.15. It is submitted that the Order dated 07.01.2020 of the Hon'ble High Court is only a "prima facie view" and this does not preclude the Commission from considering the issue in detail. The Hon'ble High Court has referred to the case of KP Energy Pvt. Ltd v. Gujarat Energy Transmission Corporation Ltd Petition No. 1206 of 2012; however, the case is different as it relates to a wind generator and a transmission licensee. But in the present case, where the Petitioner is to be considered as consumer of distribution licensee, then the Petitioner can approach the CGRF. Unlike the case of KP Energy, Supply Code under Regulation 4.86 recognizes the jurisdiction of CGRF.

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.

7.16. In view of the above, it is submitted that the Petition filed by the Petitioner is without merits and deserves to be dismissed with costs.

8. The Respondent No. 1 GETCO vide affidavit dated 06.06.2023 and Respondent No. 2 PGVCL vide affidavit dated 10.06.2023, filed their submission as under. The submission already made above are not repeated for sake of brevity.

8.1. It is submitted that in the present proceedings, there is a question on jurisdiction which has to be considered. This issue was raised by the Commission during the hearing on 19.06.2020 had raised the issue of admissibility and directed the parties to file submissions and GETCO has filled the submissions dated 18.06.2020. The Commission vide order dated 03.05.2023 directed the parties to file their submissions including factual and legal aspects of the Petition including the issue of jurisdiction.

8.2. The Respondent have made reference to the following judgments:

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

8.3. Regarding reference to the decision of the Hon'ble High Court, it is submitted that the Hon'ble High Court in the case of Surya Roshni 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.

8.3.1. 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. 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.

8.4. Regarding Petitioner’s contentions on extension of time, it is submitted that GETCO has no role in consequences of the delay which is dealt by the distribution company. However, it is submitted that GETCO has no powers to grant extension under Supply Code or otherwise.

8.4.1. 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. The Petitioner has not demonstrated under what provision it is entitled to seek extension of time.

8.4.2. It is submitted that though there is a provision in Supply Code for extension of time to the licensee, there is no such specific provision for Consumer/Applicants. Regulations 4.37 and Regulation 4.38 only refer to licensees and do not refer to the

consumers as such. 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. It is well settled principle that the Regulations are binding (PTC India Limited v. Central Electricity Regulatory Commission (2010) 4 SCC 603 and Haryana Power Generation Corporation Limited -v- Haryana Electricity Regulatory Commission, decision dated 01.03.2012 in Appeal No. 131 of 2011).

8.4.3. It is submitted that 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 (Arjun Singh --Mahindra Kumar, (1964) 5 SCR 946: AIR 1964 5C 993, Gram Panchayat v. Lokesh Devi, 1998 SCC OnLine P&H 1520, (1999) 4 RCR (Civil) 313 (2): PLR (1999) 122 PGM, Ram PrakashAgarwal and Anr v. GopiKrishan and Ors (2013) 11 SCC 296, Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others (2017) 16 SCC 498, Power Grid Corporation of India Ltd Corporate Office -v- Green Infra Renewable Energy Limited, 2017 SCC OnLine CERC 261). It is also clarified that a provision barring exercise of inherent power need not be express but also may be implied. (Ram PrakashAgarwal and Anr v. Gopikrishan and Ors (2013) 11 SCC 296, Arjun Singh -v- Mohindra Kumar, (1964) 5 SCR 946: AIR 1964 SC 993).

8.4.4. In any case the inherent powers cannot affect substantive rights of parties (Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1, Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others (2017) 16 SCC 498-Concurring Judgment).

8.4.5. 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. PGVCL or even 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.

8.5. Regarding contentions on reasons for delays, it is 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. There was no delay on part of GETCO, and no allegation has been made against GETCO.

8.5.1. It is submitted that GETCO had immediately after the agreement dated 16.12.2017 informed Petitioner for choosing an agency as per approved list (on 27.12.2017). It is necessary to appoint GETCO approved vendors/suppliers as the line constructed by the Petitioner was to be connected to the grid and should meet the standards to ensure grid safety and stability. This had also been stated in the Estimate provided by GETCO.

8.5.2. GETCO had also organised a Kick off meeting on 23.01.2018 after the approvals were obtained for contract and vendor. It is stated that there was no delay by GETCO nor has any such delay been alleged in the Petition.

8.5.3. It is submitted that GETCO has no agreed to any date for completion of work. It is submitted that the target completion date as per the meeting was 31.05.2018 and not 24.06.2018. Further, the same is only an indicate and does not in any manner affect the timelines provided under the Supply Code or the obligation of the Petitioner to comply with same. 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 time line 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.

8.6. In the present case, the Petitioner has claimed that it was delayed due to obstructions by the villagers. In this regard, it is stated that it is the responsibility of the Petitioner to resolve any ROW issues and that the Petitioner was well aware that all way leave clearances for line work etc. has to be obtained by Petitioner. It was specifically stated that GETCO would not be responsible for delay on this

account. GETCO is always willing to assist the Petitioner but the responsibility of resolving ROW issues and clearances is of the Petitioner. It is submitted that admittedly no allegation has been raised against GETCO. In regard to delay, it is up to the Petitioner to substantiate its claims before the Commission with evidence and supporting documentation. It is pertinent that the Petitioner had not informed PGVCL of any delay until 14.08.2018 and PGVCL cannot verify the existence of any such obstacles. The Petitioner was required to complete the line by 13.06.2018 and the Petitioner did not inform PGVCL until after the notice was issued by PGVCL.

8.6.1. 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. the Petitioner has not alleged any delay in approval or process by PGVCL. The alleged reasons cited for delay of construction of line are to be proved by the Petitioner and vague statements cannot be accepted. The burden of proof is on the Petitioner to demonstrate that the delay was not attributable to it. PGVCL had denied the contentions and allegations of the Petitioner on delay and raised the issue the same has to be proved by the Petitioner. Despite the same, the Petitioner has not substantiated its claims and therefore the same cannot be accepted.

8.6.2. It is submitted that there is inconsistency in the submissions of the Petitioner. The Petitioner had cited other reasons in its Letters to PGVCL which have not been stated in the Petition, and which demonstrates that Petitioner was well aware that they were without basis. Similarly in the present petition, the Petitioner has alleged bloodied fights and murders which were no referred to in the letters written by the Petitioner to PGVCL and specifically in the Letter dated 14.08.2018 which was written in response to the notice issued by PGVCL. Thus, it is clear that the Petitioner is raising issues as an afterthought and to seek undue gain.

8.6.3. The Petitioner has not provided any substantial proof of ROW issues. The alleged ROW issues were sorted out by the parties themselves. GETCO in its reply has stated that there was no proof provided and GETCO cannot verify the existence or duration of the ROW issue as claimed by the Petitioner.

8.6.4. The Petitioner has only annexed one application dated 17.04.2018 to Police Station and thereafter in 29.06.2018. There is no explanation for the period in the middle. Similarly, a letter dated 25.08.2018 is referred to which was filed in the rejoinder. The Petitioner has not followed up on the application nor taken the appropriate steps. The Petitioner has claimed that its representative visited police station seeking police protection, there is no proof of actual obstacle caused nor is there is any proof of any visit to police station. The Petitioner has also not raised any specific issue or instance in its application to the respective police station or District Collector and instead had made a general statement regarding hurdles in carry out the work. (Application was made by Hi tech Power who was an EPC contractor of Petitioner). The alleged bloodied fights and murders referred in Para 1 of the Petition have not been referred anywhere in any application annexed to the Petition. Even otherwise, the Petitioner has not provided details of when the police protection was actually provided, and work could be done. Without such details, the contentions of the Petitioner cannot be considered in any case.

8.6.5. Further, the Petitioner is claiming that the additional towers had to be installed because the distance was not in accordance with the prescribed rules. This cannot be a reason nor is that the additional tower was outside the purview of the agreement. The Petitioner was required to carry out the work as per the rules and the Petitioner cannot claim that it needs additional time to do so.

8.6.6. The claim that there were any fights or murders has been denied. However, despite the denial the Petitioner has not provided any evidence. The Petitioner has only produced one newspaper article which is also not specific. The Petitioner has also not substantiated that said fights and murders relate to the Petitioner and work in consideration in the present Petition.

8.6.7. It is submitted that the newspaper articles are no sufficient proof. It is well settled that the newspaper reports are not evidence by itself:

(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 1030 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 newspaper. We have carefully perused his 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 forts 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 come 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- Chhattisgarh 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 centres and thereafter having failed to receive quality services from these call centres had planned a better system of customer interaction centre with an improved software. The Board further mention that the services, as were being provided by call centres, were being provided by the Board departmentally with the same efficiency as being done by call centres. 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 centres 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 arty person before whom the incident has occurred, it examined and prove the facts as such.

46. The above authorities clearly show that a newspaper report by itself does not constitute evidence of the contents thereof These 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 "legal evidence" which could have been examined to support the complaint."

8.6.8. Further, it is clear that there was no such occurrence as this was not mentioned in the application which are now annexed to the Petition. Further this was also not

referred in the letters written by the Petitioner to PGVCL and specifically in the Letter dated 14.08.2018 which was written in response to the notice issued by PGVCL. The claims of the Petitioner are afterthought to avoid its liabilities.

8.6.9. Without prejudice to the above contentions and even assuming but not admitting that the Petitioner has justified the delay, any such extension of time could be considered only by the Commission and PGVCL had no powers to grant any extension. Therefore, PGVCL was correct and valid in its actions.

8.7. Regarding the contention that Regulations provide for a fixed timelines for completion of work, the Respondent No. 2 PGVCL has referred to the Regulation 4.33 of the Electricity Supply Code and as well as Regulation 7 of the Licensee power to remove Expenditure incurred in providing supply and other Miscellaneous charges Regulations which recognize the option of the Applicant getting the work done itself. Regulation 4.8 of Supply Code is also refereed in this regard.

8.7.1. It is submitted that the Petitioner was fully aware of the Supply Code and Standard of Performance Regulations and was therefore aware of the timelines for its obligation to construct the line as well as the consequences of failure to meet such timelines. Admittedly, the Petitioner having understood the various options had selected Option III voluntarily and conveyed the same to the Respondents and had also been aware of the timeline of 180 days This was specifically stated by the Counsel for the Petitioner during the hearing on 19.06.2020 recorded in Daily Order dated 22.06.2020.

> *"2.9 On a query from the Commission as to which Options were offered to the Petitioner by the Respondents and whether the Petitioner itself willingly exercised Option ill for erection of line and the reasons for selection Option-III, Learned Advocate Shri Rovi Shah submitted that the Respondent i.e. Option-i, Option-il and Option-ill and the Petitioner was offered three options by Petitioner having understood the various Option during the meeting with the Respondents, on its own decided and voluntarily accepted the Option III and the same was conveyed. selection of Option - III is that the Petitioner was sure and confident to complete the entire work Involved much before the time limit*

of the reasons for 180 days and after dealing and deciding with relevant contractors/agency from the approved vendor list of GETCO the work also commenced after receipt of necessary approvals from relevant authorities……..”

8.7.2. Accordingly, the Petitioner was required to complete the work by 180 days from 16.12.2017 which comes to 13.06.2018. However, the Petitioner failed to do so.

8.7.3. The Petitioner cannot claim any period other than 180 days. The reliance on the date of completion in the kick off meeting is misconceived. Even if the meeting with GETCO referred to a target date, this was based on the estimate of the time it would take Petitioner to actually complete the work. GETCO has no power or authority to grant any extension for completion of work as per Supply Code. The timelines are as per the Regulations of the Commission and not what is decided in the kick off meeting. The Petitioner was required to construct the line by 13.06.2018.

8.7.4. In any case, GETCO itself has opposed the submission of the Petitioner in GETCO's reply which has clarified the target completion date (which was 31.05.2018 and not 24.06.2018) was only to indicate and does not in any manner affect the timelines provided under the Supply Code. As admitted by GETCO itself, it has no authority to grant any extension of timelines.

8.7.5. Since, the Petitioner did not complete the work by 180 days. PGVCL issued the Notice on 25.06.2018 for commencement of minimum billing after 60 days. The Petitioner has wrongly sought to claim in Para SA of the Petition that there was no notice of 60 days despite admitting in para 4.6 that the PGVCL had on 25.06.2018 issued a notice for starting minimum billing after 60 days. Further, in this regard, Petitioner has vide its letter dated 14.08.2018 (Page 105 of PGVCL Reply Dated 06.06.2020) represented to Respondent in response to such notice. There can be no question of any violation of principles of natural justice. Such contentions on part of the Petitioner are to be deprecated.

8.7.6. It is stated that even after the said Notice, the work was not completed within the said 60 days. Therefore, PGVCL commenced the billing for total contract demand

for monthly charges with effect from 24.08.2018. 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 13.11.2018.

8.7.7. It is submitted that the requirement of payment of minimum billing of enhanced contract demand is necessary 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.

8.7.8. 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.

8.7.9. It is submitted that PGVCL had proceeded on the basis of ensuring prompt connection to the consumer and had made necessary arrangements. PGVCL was ready to commence supply and in absence of consumer taking supply, there is a loss to PGVCL which is passed on to other consumers. PGVCL is ready to supply electricity and therefore PGVCL is entitled to the minimum demand charges.

8.7.10. The alleged losses suffered by the Petitioner are not relevant. There is a reason and purpose for prescription of a timeline for construction of line by the consumer and the requirement of minimum bills being raised in case of delays by the consumer. The said provision cannot be defeated by the Petitioner claiming financial losses of its own.

8.8. It is submitted that the contentions raised by the Petitioner on inherent powers of the State Commission 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. It is well settled principle that the regulations are binding.

8.8.1. The Respondent has referred to various judgements in this regard which are not repeated again.

8.8.2. Further, it is submitted that 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.

8.9. Regarding Limited aspect to be considered in the present proceedings, it is submitted that the Petitioner had stated before the Hon'ble High Court that it does not agitate the dispute regarding generation of minimum bill and it was based on such statement that the matter was relegated to the Commission by the Hon'ble High Court:

> *"2... Under Instructions, the Petitioner submitted that Petitioner does not agitate at this stage, dispute regarding generating of minimum bill till installation and the claim in set of all previous bills made by the Petitioner for the minimum bills generated from August 2018 till date in the forthcoming bills.*
>
> *3. In view of the aforesaid statement, it would be appropriate to relegate the Petitioner back to GERC with regard to issue of extension of time for installation of 7000 KVA power, which prima facie appears to be within jurisdiction of GERC, considering the decision of GERC in case of Mis K.P. Energy Pvt .Ltd v/s GETCO in Petition No. 1206 of 2012."*

8.10. Accordingly, the Petitioner cannot seek any prayer in regard to the minimum charges recovered by PGVCL and therefore cannot be any such claim. The prayer clause being Para 9 in the Petition does not seek any such relief. If the Petitioner has no grievance against the Distribution licensee, then it cannot seek any relief against the licensee.

8.11. The Petitioner itself during the hearing on 19.06.2020 as recorded in the daily Order dated 22.06.2020 has stated as under:

> *"2.5.....He submitted that the Hon'ble High Court of Gujarat partly allowed his Petition vide Order dated 07.01.2020 relegating the matter to the Commission*

and accordingly, the Petitioner has approached the Commission by filing the present Petition for the limited issue seeking extension of time limit for construction of 66 kV transmission line."

8.12. Further, without prejudice to the above contention that there cannot be any relief in regard to the minimum charges recovered by PGVCL, it is submitted that even otherwise, the Petitioner cannot seek refund of charges. The Petitioner did not approach the Commission in a timely manner to seek any extension even assuming but not admitting that there are powers to grant extension by Commission. In absence of the same, PGVCL was correct in raising the bills and recovering the charges. In such circumstances, the refund of such charges would be inequitable and would require adjustment of past arrears as PGVCL 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.

9. During the hearing on 28.08.2025, the Petitioner submitted that previously the Petitioner has made its submissions on the issue of maintainability of the Petition. The contention of the Respondent that the dispute is between consumer and licensee is not correct because the Petitioner has sought reliefs under the provisions of Regulations notified by the Commission wherein the task of laying down the transmission/distribution network is on the licensee and they are eligible to get extension in such timeline if the work is not completed within the stipulated time period of six months by approaching the Commission in this regard. The Petitioner submitted that there were issues of Right of Way (RoW) emerged while carrying out laying down the network by the Petitioner. Further, the Petitioner is required to obtain the permission from National Highway Authority for crossing the road created by the National Highway Authority. It is further submitted that the Petitioner has submitted relevant documents with regard to delay in creation of transmission/ distribution network which is beyond the control of the Petitioner. The delay in creation of network is for approximately 18 months only which is beyond the control of the Petitioner.

9.1. The Petitioner submitted that the work when carried out by the consumer on behalf of the licensee, they must be eligible to get extension in time period for carrying out

such work by applying equity between the parties. The Petitioner has carried out work under Option III given by the Respondent.

9.2. The Petitioner further submitted that in so far as facts of the case are concerned, the levy of demand charges by the Petitioner is also not valid because the delay in completion of work by the Petitioner is beyond the control of the Petitioner. It is submitted that there are other issues which are beyond the control of the Petitioner and qualified as force majeure events and the Petitioner is eligible for getting extension in time limit for completion of work. The levy of demand charges by the Respondent after 180 days is against the provisions of the Regulations notified by the Commission and it is also against the relief available on a force majeure event which occurred in the present case.

9.3. The Respondents submitted that the present Petition is not maintainable as it is a dispute between consumer and licensee and the same falls under Section 42 of the Electricity Act, 2003 read with the provisions of Electricity Supply code notified by the Commission wherein it is provided that the dispute pertaining to consumer and licensee falls under CGRF and appeal against such order before the Electricity Ombudsman. Thus, the Commission has no jurisdiction to decide the dispute. The Respondent referred to the Order dated 07.01.2020 of the Hon'ble High Court of Gujarat in SCA No. 16029 of 2019 wherein Hon'ble High Court has recorded that prima facie the case falls under the jurisdiction of the Commission. However, it is the duty of the Commission to consider the provisions of law and to decide whether the case fall under the jurisdiction of the Commission or not. Regarding the judgement of KP Energy V/s. GETCO in Petition No. 1206 of 2012, the Respondents submitted that the case of KP Energy Vs. GETCO is dispute between generating company and licensee which fall under the jurisdiction of the Commission under Section 86 (1)(f) of the Electricity Act,2003 while in the present case, the dispute is between the Petitioner who is consumer of the Respondent licensee and licensee which falls under Section 42 of the Electricity Act, before the CGRF and Electricity Ombudsman.

9.4. The Respondents further submitted that the prayer of the Petitioner is related to extension of time limit in completion of the work and not with regard to declaration of levy of demand charges by the Respondent due to delay in completion of transmission/distribution network by the Petitioner. The Respondents submitted that the agreement for supply executed between the parties for extension of load is not consist of force majeure provision in the agreement. Thus, the contention of the Petitioner that the force majeure happened in this case, and it is entitled for relief under it, is not permissible. It is submitted that the Regulations notified by the Commission does not provide for extension in time limit beyond 180 days. In that situation, the relief sought by the Petitioner for extension of time limit is not permissible under the Regulations which are sub-legislative in nature.

9.5. The Commission, vide Daily Order dated 08.09.2025 directed Petitioner and Respondents to file written submission the matter.

10. The Petitioner, vide submission dated 14.10.2025, filed its written submission in the present matter as under.

10.1. The Petitioner submitted tables showing the facts of the present petition and cause and delay period thereof, as under:

FACTS OF PRESENT PETITION:

Sr. No.	Particulars	Date	Days
1.	Date of Registration of Application	28.06.2017	0
2.	Issuance of Estimate by PGVCL	17.11.2017	142
3.	Estimate Payment by Petitioner	12.12.2017	25
4.	Agreement with PGVCL	16.12.2017	4
5.	Kick of Meeting with GETCO	23.01.2018	38
6.	First Application for Police Protection	18.04.2018	
7.	PGVCL Intimation Letter for 180 Days period (191 days from Date of Agreement)	25.06.2018	191
8.	Representation to District Collector	29.06.2018	-
9.	Second Request for Police Protection	29.06.2018	-
10.	Representation & request to Collector	12.07.2018	-

Sr. No.	Particulars	Date	Days
11.	Intimation Letter to PGVCL for Delay (55% work completion, 45% pending)	14.08.2018	-
12.	Billing by PGVCL for Deemed Release (60 days from the Notice for the same)	24.08.2018	60
13.	Riots & Curfew Village Chhasara (From 24.10.2018 to 27.10.2018)	27.10.2018	3
14.	Meter Sealing & release of power under Stop Gap Arrangement (332 days from Date of Agreement)	13.11.2018	332
15.	Total Delay in release of power under stop gap arrangement after 60 Days' Notice	-	92
16.	FINAL RELEASE OF POWER (WORK COMPLETION) GETCO office letter vide 19-20/DN/ANJ/PRJ/ 31-G/926 dated 10.06.2019	10.06.2019	-

CAUSE AND DELAY PERIOD THEREOF

Sr. No.	Particulars	Date	Days	Remarks
1.	ROW Issue:			
	From Date:	18.04.2018	118	i.e. from notice to Police Protection & Final Intimation for work delay on 14.08.2018
	To Date:	14.08.2018		
2.	NHAI Permission:			
	Application to NHAI by GETCO	23.04.2018		
	Approval with Conditions By NHAI	20.09.2018		Asking to submit BG before Work
	Approval to Start Work by NHAI	01.11.2018		On submission of BG by GETCO dated 01.10.2018, final approval issued
	NHAI Approval Delay days from 24.08.2018 (Deemed Release Date)		69	
3.	**TOTAL DELAY PERIOD**		**187**	

10.2. The Petitioner submitted that it has filed the Petition for grant of additional time for completion of 66 kV transmission line for addition of 3000 MVA Contract Demand.

10.3. The Petitioner submitted that as submitted by Respondent No. 1 GETCO that the issue of extension of time under the Supply Code relates to PGVCL and does not relate to GETCO, GETCO neither has the power nor authority to grant extension of time. Though the relief does not directly relate to GETCO, GETCO has filed reply to place the facts on record.

10.4. It is submitted that the Petitioner sought to enhance their existing contract demand of 4000 KVA to 7000 kVA on 28.06.2017 and after completion of formalities and payment of estimates, the agreement was executed by the Petitioner with the Respondent No. 2, PGVCL, on 16.12.2017. At such time, the Petitioner was fully aware of the Supply Code and Standard of Performance Regulations and was therefore aware of the timelines for its obligation to construct the line as well as the consequences of failure to meet such timelines.

10.5. It is submitted that as per the Supply Code, the Petitioner was required to complete the work by 180 days from 16.12.2017 which comes to 13.06.2018. However, the Petitioner failed to do so. PGVCL issued the Notice on 25.06.2018 for commencement of minimum billing after 60 days. Even after the said Notice, the work was not completed within the said 60 days and the Petitioner is seeking extension of time as provided under Supply Code. However, as submitted in its reply, the Respondent No. 1 does not have any authority or power to grant any extension of time.

10.6. As per the provisions of the Electricity Act, 2003, it is the duty of licensee to set up the required lines, sub-station and related infrastructure for supply of electricity to the Petitioner, which in the present case is 21.8 km (7 Km 66 kV Line from 220 kV Mokha S/S to 66 kV Mokha S/S and 14.8 Km line from 66 kV Mokha S/S to Petitioner Premises) of 66 kV transmission line and bays. As per the estimate issued only under Option III by Respondent No. 1 GETCO and Respondent No. 2 PGVCL,

the said transmission line work has to be undertaken as per the specifications of the Respondent No. 1, GETCO through its approved contractors. The Petitioner, in the interest of early completion, opted to accept the responsibility of erection of the said transmission line on behalf of and under the supervision of GETCO without any objections at its own risk and cost and has accordingly paid only the supervision charges on the cost of material and labour charges. The said transmission line consists of around 20.8 kms. of 66 kV overhead line and around 1.0 km of underground cable which is undertaken by the Petitioner with project cost of around Rs. 11.15 Crore.

10.7. It is submitted that the provision of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015, provides that the licensees are required to approach the Commission for any extension in time limit of the work undertaken by them which consists of laying of transmission lines and bays etc. Similar treatment to be also available, if work of laying of transmission line/distribution system etc. is carried out by the Consumer and any delay occurred in completion of work, the extension of time limit be decided by the Commission. The Commission is the appropriate authority vested with right to decide such issues, if any, arisen between the consumer and the Licensee. The Petitioner, who is a consumer, is not restrained to approach the Commission directly under the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 when issue related to delay in laying of transmission line and associated work or distribution system occurs when such work is carried out by the consumer for extension of the contracted demand or work related to fulfilment of additional contract demand applied by it to the distribution licensee. The GERC (Electricity Supply Code and Related Matters) Regulations, 2015, Provides that the Commission has jurisdiction to decide the extension of time limit specified in the GERC (Standard of Performance) Regulations, 2005 timelines for the work undertaken by the Petitioner as a consumer.

10.8. It is submitted that the Respondent No. 1, GETCO and the Respondent No. 2, PGVCL has raised preliminary issues regarding admissibility of the Petition on the issue of jurisdiction. As submitted by the Respondent No. 1 GETCO being transmission utility, that the issue of extension of time under the Supply Code relates to PGVCL

and does not relate to GETCO. GETCO neither has the power nor authority to grant extension of time. The Petitioner has filed petition to grant extension of work completion time pursuant to force majeure events and relief from levy of demand charges by the distribution licensee, PGVCL thereof, and hence the contention raised by the Respondent No. 1 GETCO and the Respondent No. 2, PGVCL is not much relevant in the matter. If the Commission is satisfied with the response of the Petitioner on the query raised by the Respondent, the Commission may pass appropriate order in accordance with the provision of the Electricity Act, 2003, Rules and Regulations framed under it.

10.9. It is submitted that Clause 4.3 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015, provides that the licensee is responsible for ensuring distribution system upgradation, extension, strengthening to meet the demand of the electricity in the area of supply for which the consumer is liable to pay the cost of extension of service connection as per the GERC (Licensee's Power to Recover Expenditure incurred in providing supply and other Miscellaneous Charges) Regulations, 2005. Thus, the licensee is responsible for carry out the work of laying down the necessary transmission/distribution network for extension / upgradation of system.

10.10. Clause 4.32 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015, provides that on receipt of the application from the consumer, the licensee is required to carry out various activities which includes ascertaining feasibility of work within certain period, issuance of it, if any, additional work required and intimating the same, issuance of demand note, payment of same within time line specified in the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, payment of supervision charges at the specified rate payable by the consumer to the licensee, if the work is carried out by the consumer itself. Further, it is also provided that failure to complete the work within time limit specified in the Regulations, notice to complete the work and avail the power supply within 60 days needs to be issued by the licensee.

10.11. It is submitted that Clause 4.37 of the GERC (Electricity Supply Code and related matters) Regulations, 2015, provides that the licensee can approach the Commission for seeking time limit extension for completion of line work on account

of any delay or in case where more time is required. The said provision provides that the licensee to approach the Commission for seeking extension in time limit for completion of the work. Clause 4.38 of the Supply Code, 2015 provides that the licensee shall not be responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control.

10.12. It is submitted that Clause 1.2 of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, Provides that this Regulations are applicable to all Licensees engaged in distribution of electricity in the State of Gujarat. Clause 9.3 of the SOP Regulations, 2005 provides that bulk power connections are to be released in time bound manner as per the timelines provided therein, which is 180 days after completion of Demand Notice/formalities by prospective consumers for load above 2500 kVA.

10.13. It is submitted that the above Regulations framed by the Commission provide for certain provisions in respect of licensees and such provisions should be made applicable to consumer also, when work is undertaken by the consumer on behalf of licensee for obtaining prompt supply or extension etc. The extension in time limit for completion of work granted to the licensee by approaching the Commission as per the Clause 4.37 of the Supply Code, 2015 and such rights must be available to consumer when the work is not completed within 180 days due to factors beyond the reasonable control of the Consumer.

10.14. It is submitted that Clause 9.21 to 9.25 of the GERC (Electricity Supply Code and related matters) Regulations, 2015, needs to be referred. Clause 9.21 provides that the Commission may, in public interest and for reasons to be recorded in writing, relax any of the provisions of aforesaid Code. Clause 9.22 provides that in case of any difficulty arising in giving effect to any of the provisions of this Code the matter will be referred to the Commission and the Commission shall pass necessary orders. In such matter when the time limit extension sought by the Petitioner due to event of force majeure. Hence the Commission may interpret the relevant Clauses of the Regulation and grant relief sought by the Petitioner. Clause 9.23 provides that the Commission has inherent power to make such orders as may be

necessary for ends of justice. Clause 9.25 provides that nothing in the GERC Supply Code expressly or impliedly, bars the Commission in dealing with any matter or exercising any power under the Act for which no Codes have been framed and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

10.15. It is submitted that Clause 4.37 of the Supply Code, 2015 provides that the licensee may approach the Commission, but it is not mentioned that only distribution licensee can approach and thus it has not been confined or limited to distribution licensee. It is open for other than distribution licensee or at least consumers may have right to approach the Commission, if similar situation has arisen. Therefore, there is no specific provision in the GERC (Electricity Supply Code and related matters) Regulations, 2015 which bars applicability of provisions of the GERC Supply Code to consumers.

10.16. It is submitted that if express provisions are provided for directing a particular act to be done in a particular manner, inherent powers cannot be used. In the present case no express provisions are provided restricting the consumers. In absence of specific provision of restricting the consumer to approach the Commission for particular subject matter, the consumers have right to approach the Commission and that the Commission can exercise in such case its inherent power. The Order dated 14.06.2012 in case of K.P. Energy Ltd. v. GETCO, it is argued that the Commission has granted the extension in completion of work of the transmission line to the Petitioner. In that case the captive generating plant set up by the Petitioner, there was delay in completion of transmission system within stipulated period specified in Order No. 1 of 2010 dated 30.01.2010 by the Commission. In that case the Commission has allowed extension of the time limit for completion of the transmission system by the Petitioner. The energy generated from the captive generating plant be consumed by the Petitioner. In the present case also the consumer who have opted for construction of transmission system was unable to complete the work due to condition beyond the control of the Petitioner. There is an issue of force majeure. Therefore, the Petitioner has approached the Commission for extension of the time limit for completion of work and also challenged the Supplementary bill issued by the distribution licensee. The dispute

arose between the parties is not dispute between the consumer and licensee. The Commission has power to adjudicate the dispute raised by the Petitioner in the present matter. The order of the Hon'ble High Court of Gujarat in SCA No. 16029 of 2019, vide its order 07.01.2020 has decided and directed that the Petitioner may approach the Commission to decide the dispute between the Petitioner and the Respondent Licensee. The Hon'ble High Court of Gujarat has also decided in similar matter of the present petition i.e. Surya Roshni Ltd. Vs. Gujarat Electricity Regulatory Commission that the Commission has jurisdiction to decide the dispute between the Petitioner and the Licensee. The order dated 07.01.2020 of the Hon'ble High Court of Gujarat decided that the Commission has jurisdiction to decide the matter. The said Order is not reviewed or modified by the Apex Court.

10.17. It is submitted that the Commission has inherent power as per the provisions of Clause 9.21 to 9.25 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and decide the matter. Moreover, if justice is not done to the consumer for action by the Respondent, then it is abuse of the process of law. The Commission has power to grant extension by applying Clause 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 to the consumer also.

10.18. It is submitted that the contention of the Respondent that it is a billing dispute, is not correct and the Commission has jurisdiction to decide the dispute between the Petitioner and the Respondent. The relief sought in the Petition is pertaining to extension of the time for completion of 66 kV transmission line work for additional 3 MVA contract demand. The Petitioner is not seeking relief of any levy of demand charge on demand release basis as independent relief in the Petition. Cause title of the Petition, grounds raised in the Petition and prayers made thereto clearly indicate that independent relief sought in the present Petition is for grant of time limit extension for completion of 66 kV transmission line work. The Petitioner is not seeking relief of levy of demand charges on deemed release of connection considered as per Agreement by the Respondent. Thus, the Commission has jurisdiction to adjudicate dispute.

10.19. It is submitted that there is no complaint against the Respondent PGVCL, considering the facts that:

(i) Reasons for delay is not attributable to any fault/lacuna on part of the distribution licensee,

(ii) Under the provisions of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, when the Respondent, PGVCL does not have any power/ authority to grant time extension, there cannot be any complaint/claim against the Respondent PGVCL, seeking redressal of complaint by the CGRF.

(iii) In the present case, there is no dispute with the Respondent PGVCL, let alone billing dispute and therefore CRF cannot have jurisdiction.

(iv) There are no any explicit / implicit provisions in the GERC (CGRF and Electricity Ombudsman) Regulations, 2019 which can authorize the forum to grant extension of time.

10.20. It is submitted that the Respondent GETCO has failed to point out that under which Clause of the GERC (CRF and Electricity Ombudsman) Regulations, 2019, the forum has jurisdiction to grant extension of time.

10.21. It is submitted that in case of petition filled by Petitioner Vs. Distribution Licensee PGVCL, Hon'ble High Court of Gujarat on 07.01.2020 decided that the jurisdiction to decide the similar dispute falls within the Commission. The contentions of the Respondent, GETCO, on the issue of the jurisdiction of the Commission is belated and nothing but after thought with intention to delay the entire process. The stand taken by the Respondent GETCO is contrary to the stand of the Respondent PGVCL.

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

10.23. In support of the fact that the Commission has jurisdiction; it is submitted that:

(i) The Respondent GETCO has duly recovered the supervision charges from the Petitioner for the work of erection of transmission line,

(ii) Even though line is constructed by the Petitioner at its own cost, the ownership of asset remains with Respondent GETCO

(iii) Line route, material, erection work etc. is carried out under direct supervision of the Respondent GETCO officials and in knowledge of ground reality

(iv) The construction work is carried out under the Section 68 (1) approval of Respondent GETCO

(v) The application for ROW clearance/ road clearance/approval etc. is also made and dealt by the Respondent GETCO.

10.24. The Petitioner submitted that sub-sections (5) and (6) of Section 42 of the Electricity Act, 2003 and definitions of (a) complaint, (b) Electricity Service, (c) Grievance stated in the GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019, provides that as per the above provisions of the Electricity Act, 2003 and the GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019, the following two ingredients are needed to be fulfilled for CGRF jurisdiction:

- There has to be compliant against concerned distribution licensee and
- The nature of the complaint shall be as defined in the definition of the 'Complaint' in the CGRF Regulations.

10.25. It is submitted that in the present case the work of erection of transmission line is undertaken by the Petitioner under Option-III on behalf of the Respondent GETCO. The Petitioner has been experiencing/has experienced delay, reasons for which are not attributable to the Petitioner/ distribution licensee, PGVCL. As per the provision of the GERC (Electricity Supply Code and Related Matters) Regulations,

2015, the Petitioner to complete the work as per the Standard of Performance Regulations, failing which the distribution licensee can commence billing on deemed release basis after issuance of 60 days' notice. Further, under the provisions of the Supply Code and Standard of Performance Regulations, notified by the Commission, the Commission has authority to grant extension of time for completion of work if any.

10.26. It is submitted that the Commission may admit the Petition and hear the matter on merits and decide the same. It is submitted that the total work of extension of High voltage Power line from 66 kV Mokha S/S to Petitioner Premises was about 13.8 KM and only 4.56 KM work was pending due to the obstacles and protest done by the villagers of Village Chhasara and Vavar. It is pertinent to note that, out of total extension work more than 70% work was over by the month of April, 2018. It is further submitted that, during the last phase of the extension line, the villagers of village Chhasara and Vavar of District Bhuj created obstacles and demanded illegal amount from the petitioner and matter was not resolves, hence the contractor i.e. M/s. Hitech Power wrote a complaint to PSI, Anjar for the police protection to complete the extension work on 17.04.2018. After filing complaint with Police Station Anjar, no response was given by them, so the representative of contractor visited police station for few days, but no positive response received from police authorities.

10.27. It is submitted that after filing complaint with police station and taking lots of personal follow-ups, no response received from police station. So the representative of the contractor filed another complaint on 29.06.2018 to Collector of Bhuj and Police Superintendent at Gandhidham for providing police protection to completing the work. In complaint/application dated 29.06.2018, it was categorically mentioned that the Petitioner company is required police protection for completing work for five days starting from 09.07.2018. That, again no response received from both the authorities till 12.07.2018, so, again the representative of the contractor company filed another complaint/application to the Collector of Bhuj for providing the necessary police protection for completing work.

10.28. It is submitted that on 16.07.2018 a letter from the Superintendent of police, Gandhidham was received by the contractor for payment of the necessary fees for police manpower. The amount of Rs. 1,20,310/ - and GST of Rs. 21,656/- was paid to the office of the superintendent of Police.

10.29. It is submitted that the Petitioner and its contractor put their best to complete the work but due to above mentioned series of obstacles created by villagers and even no help received from police and collector office, the work was not completed and the same incidences with the details was informed to the Respondent no. 2 vide letter dated 14.08.2018. In the said letter the details of progress and the problems faced by the Petitioner was clearly mentioned. It was also mentioned that the filing of FIR will not work so they need police protection to resolve the issue and complete the extension work. After filing presentation to the Respondent no. 2 no positive response was received form the authority. So again, the contractor of the Petitioner requested the Superintendent of Police Anjar for providing police protection for completing the extension work vide letter dated 25.08.2018. This time also no response was received by the Superintendent of Police office so, again, the contractor of the Petitioner requested for providing the police protection for completing the work.

10.30. It is submitted that even after taking lots of follow-ups with police authority and collector office no response was received by the contractor of the Petitioner. On 15.10.2018, the Petitioner made detail representation about the progress of the work and also demonstrated the problems faced by them. The one of the problems was, the distance between the towers which was not in accordance with the prescribed rules, so additional towers were required to complete the work. It was informed that additional work was out of the purview of the agreement and it will take additional time to complete the work, but the same request was not considered by the Respondent no. 2.

10.31. It is submitted that the reply of the Respondent no. 1 make it clearly transpired that, the GETCO is not having any power for the extension of time in case of installation of power line. The same detail of not having authority for the extension of time is repeated in almost all the paras of the reply and the stand of the Petitioner

is also the same. The para wise reply given by Respondent no. 1 below is not true and correct and not accepted by the Petitioner. The Petitioner already demonstrated the cause of delay and the efforts put by them with documentary evidence to justifying the delay in completing the work. It is stated that, the Petitioner had produced almost all documents which were available with GETCO and shown the reasons for delay. To show the bloodied fights and murders referred in submission, the Petitioner has produced the paper cutting. On every stage the Petitioner updated the status of the progress to the Respondent no. 1.

10.32. It is submitted that the contractor is working under the direction, supervision and control of GETCO and for the supervision of the same the Petitioner has paid additional 15% to the GETCO. The Petitioner opted Option-III because they were in need of urgent power supply under the control and supervision of GETCO, but the situation was adverse and work was not completed in time due to the obstacles by villagers as well as the new installation of the towers which was not mentioned in the work. The said progress and need to installation of the tower was approved by the GETCO and from that, GETCO cannot said that they were not aware about the progress of work. The contractor appointed by the Petitioner, informed GETCO each and every information on time to time because the entire work was done under the control and supervision of the GETCO.

10.33. The order of the KP Energy delivered by this Commission was completely applicable to the Petitioner's case because the rational laid down by the Commission in the judgment are, (1) No dispute about the extension of time - in Petitioner's case they came with statement that they are not having power for extension of time, (2) No specific express provision in Act for extension of time - only superior authority is having power for extension of time. It is also relevant to understand scope and purpose of the issues involved in KP Energy case. The submission of PGVCL 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.

10.34. In the present petition, the work of erection of transmission line is undertaken by the Petitioner under Option-III, which was only option provided by GETCO to the Petitioner, in fact GETCO should give option I, II and III. However, only one option, Option-III, was given to the Petitioner which made it mandatory for the Petitioner to construct the transmission infrastructure on behalf of GETCO. The Petitioner has been experiencing / has experienced delay, for reasons which were not in control to the Petitioner / Distribution Licensee-PGVCL. 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.

10.35. It is submitted that there is no complaint against PGVCL considering the facts that (i) reasons for delay are not attributable to any fault/lacuna on part of Distribution Licensee, (ii) under the provisions of Supply Code and SOP Regulations, when PGVCL do not have any power/authority to grant extension of time, there cannot be any complaint / claim against PGVCL seeking redressal of complaint before CGRF. In the present case, there is no dispute with PGVCL in regard to billing dispute and therefore CGRF cannot have jurisdiction. There are not any express provisions in the CGRF Regulations which can authorize the forum to grant extension of time. In its submission, PGVCL and GETCO has also failed to point out that under which clause of CGRF Regulations, the forum has jurisdiction to grant extension of time.

10.36. In absence of time limit extension order of the Commission, PGVCL is entitled to commence billing on deemed release basis and there cannot be any complaint against this action before CGRF being action of PGVCL is in accordance with the provisions of Supply Code. Therefore, issue involved in the present petition cannot be considered as billing dispute and there is no prayer for billing amount.

10.37. It is submitted that the Respondent no. 1 has contended that 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. It is further submitted that when there is no complaint against PGVCL and GETCO and when there is no claim of compensation against PGVCL and GETCO for violation of SOP time line, the issue involved in the present petition cannot be entertained by CGRF.

10.38. It is submitted that 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.

10.39. As per the provisions of the 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.

10.40. The present petition is filed only after issuance of 60 days' notice by PGVCL 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 be 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.

10.41. It is submitted that proviso to Clause 4.33 (2) of the Supply Code 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 time line to the consumer which is otherwise applicable to Distribution Licensee. When applicant is undertaking the erection of line work by its own, the same timeline 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. 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 revered 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 time line 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.

10.42. It is submitted that 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 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 could not 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.

10.43. The provisions of Clause 4.37 of Supply Code to state that only licensee is entitled for extension in time line and not the consumer. In this regard, it is to state 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. The contention of 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 GETCO is without any merit and against the principle of natural justice. This will also become a tool to extract money from the consumers on deemed release basis by delaying approval / process by PGVCL 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.

10.44. It is submitted that 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. It is prayed that the Commission should play its role and exercise regulatory powers to protect the interest of applicant and give justice. The delay not in the control to the Petitioner. It is in the interest of justice that the applicant should not be punished with no fault. Therefore, it is expected that PGVCL/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.

10.45. 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. As per clause 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 clause 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.

10.46. As per the above provisions of GERC Supply Code and as held by Hon'ble High Court of Gujarat in Order dated 07.01.2020, the Commission has regulatory jurisdiction to grant time limit extension and grant consequent relief thereto. 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 relief thereto.

10.47. The Petitioner submitted that with respect to persistence of heavy ROW issue and completed work before ROW issue, it is requested to review the GETCO internal office letter, marked CC to the Petitioner, vide. Ref. 19-20/DN/ ANJ/PRJ/31-G/926 dated 10.06.2019. In the said letter for "Sock Charging Permission of line thereof" the Executive Engineer, Division Anjar, GETCO states as below:

> *"As per request from M/s. Surya global Steel Tube Ltd for 3000 KVA additional power demand (raising C.D. 4000KVA on 11KV to 7000KVA) on 66KV* ***was released under stop gap by tapping of 66kV Ruchi Soya line due to as per served estimate vide letter under reference (4), only 3.7 km of hot line stringing work out of 13.8 KM from 66kV Mokha S/S to the switchyard of M/s. Surya Global was pending due to heavy ROW. Accordingly, 01 Nos 66KV Feeder Bay each at 220KV Mokha & 66KV Mokha S/S with 66KV S/C line on D/C tower with ACS Panther conductor was charged on 01.10.2018 and stop gap power was released on Date. 13.11.2018 due to non-completion of 66KV Mokha to 66KV Surya Global hot line stringing on Ruchi soya line.***
>
> *Now same work is almost completed except Jumpering and crimping work at 02 Nos location which will be completed within week on receipt of Police protection to avoid further theft and mischief it is requested to accord approval of sock charging of line from 66KV Mokha S/S to tapping point loc no 13A/0 till issuing permanent load release order formalities. There will be no change done in temporary stop gap arrangement.*
>
> *The necessary statutory approval of CEI, FOREST, R&B is received and PTCC approval under progress and line charging public notice copies are enclosed*

herewith. This is for your kind information & needful action from your end please."

10.48. From the above, it is clear that, (1) Out of 13.8 Km Line only 3.7 Km line work was not completed i.e. 73.19% line work completed and 26.81% was pending. (2) Work is delayed due to heavy ROW issues following which GETCO/PGVCL was agreed to release power under stop gap arrangement as stated above. (3) As on 10.06.2019, almost all work completed, however power supply to the Petitioner was available w.e.f. 13.11.2018 under stop gap arrangement.

10.49. It is submitted that regarding, delay in the NHAI permission for road crossing, the Commission is requested to review the GETCO office letter to NHAI vide. Ref. No.19-20/DN/ANJ/PRJ/31-G/934, dated 10.06.2019 regarding Returning of BG submitted to NHAI and other correspondence thereof. From the sai it is evident that, Application to Approval whole process for NHAI road crossing permission was done by GETCO (Not in direct control of the Petitioner) and Application was done on 23.04.2018 and final approval for work execution for road crossing was received on 01.11.2018. The Commission is requested to consider that the approval for road crossing received with delay of 69 days from the deemed release date 24.08.2018 of power and 129 days from last day 25.06.2018 of the 180 days' work completion period.

10.50. It is further submitted that the Supply Code, 2005, is defined keeping DISCOM as obliged entity for supply of electricity and creating necessary infrastructure for the same. Accordingly, it has all the provisions i.e. Obligations and Rights assigned to the DISCOM (Distribution Licensee) only. However, in order to facilitate timely completion of work, work under Option-III for establishment of necessary infrastructure by Consumer itself was allowed. Since, the Supply code is prepared by aiming at protecting Consumers Rights for timely supply of electricity it has provisions for work completion within 180 Days timeline from the payment of estimate. It is so to avoid financial loss and burden to Consumer only.

10.51. Considering, above its not under interest of natural justice, to penalize the Consumer for work he is taking on its own head on behalf of Discom/licensee

considering inability of DISCOM/Licensee to do so in timely manner. It's like Consumer pay penalty which is putted for its own protection against unwanted delay in power supply commencement by DISCOM.

10.52. Accordingly, considering above submission, the Commission is requested to consider the following prayers made in the Petition:

(i) To accept written submission as above.

(ii) To direct the Respondent No. 1, GETCO, to approve the extension of work completion period and issue the approval to Petitioner for the same.

(iii) To direct Respondent No. 2, PGVCL, to consider extended date of work completion as per the Commission's order.

(iv) To direct Respondent No. 2, PGVCL, to refund the deemed demand charges collected before actual release of power to the Petitioner.

(v) To pass any other order as the Commission may deem fit and appropriate under the circumstances of the case to avoid further delay and in the interest of justice.

11. 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.

11.1. 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.

11.2. 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.

11.3. 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….."*

11.4. 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.

11.5. 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."

11.6. 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 because in the case of the Petitioner, the present Petition is filed before the Commission on 06.02.2020 whereas the due date was in 2018. Thus, the Petitioner has approached the Commission after delay of 2 years and thus it clearly appears that the Petitioner had no issues until the Respondent issued notice, where after it was realised that the line with associated work is not completed in time. It is submitted that the Commission had also raised the issue of delay during the previous hearing and recorded the same in its Daily Order dated 22.06.2020 questioning the delay in approaching the Commission. However, the Petitioner in its additional submissions filed has not addressed this issue. The issue in the present matter is not delay in prescribed timelines because only when the notice is issued to complete the work in 60 days otherwise the billing will be started by the

Respondent distribution licensee. Hence, the issue only arose after completion of 180 days' and issuance of notice by distribution licensee.

11.7. 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 Clauses 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 66 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.*
> *……."*

11.8. 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.

11.9. 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

11.10. As regards the contention raised by the Petitioner and communication of Respondent 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.

11.11. 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.

11.12. 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.

11.13. 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.

12. 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 undertaken under Option III for enhancement of Contract Demand by 3000 kVA. 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.

12.1. 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.

12.2. 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 3000 kVA additional contract demand from Respondent No. 2 PGVCL. It is an admitted fact the Petitioner is an existing consumer of Respondent No. 2 already having 4000 kVA contract demand. Also, Respondent No. 1, GETCO is the Transmission licensee and engaged in creating necessary transmission system and infrastructure in the State of Gujarat. The Respondent No. 2 PGVCL is engaged in distribution and supply of electricity within its licence area. It also an admitted fact that the Petitioner desires to received 3000 kVA of additional power supply from Respondent No. 2 PGVCL, which is permissible only on utilisation of transmission network only, which is in the domain of Respondent No. 1 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. 1. In such case the person who desires to set up the transmission line requires to pay supervision charges etc. to Respondent No. 1 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.

12.3. We note that the Respondent No. 2 PGVCL 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. 1, 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.

12.4. According to the submissions made by the Respondent No. 1, 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. 1 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. 1 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. 1 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 additional contract demand power supply from Respondent No. 2 PGVCL being the distribution licensee which is feasible only through 66 KV transmission line.

12.5. 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. 2 PGVCL have executed an agreement dated 16.12.2017 in this regard.

12.6. Since delay had occurred in erection / construction of the transmission network with associated works, the Respondent PGVCL issued 60 days' notice to the Petitioner, on 25.06.2018, 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 with additional demand and thereafter, the Respondent PGVCL commenced billing considering additional demand of 3000 kVA as deemed release basis.

12.7. Per contra, it is submitted by the Petitioner that difficulties were faced by the Petitioner in completion of 66 KV transmission line work due to issue of strong farmer objections. Even though the Petitioner had approached various authorities of the Respondent PGVCL and also made various written references for withdrawal of bills for additional demand of 3000 kVA on deemed release basis and also requested to grant additional time for completion of work of transmission line and bays considering difficulties of various nature faced by the Petitioner but the Respondent PGVCL expressed its constraint to withdraw the bills levying demand charge on 3000 kVA additional load on deemed release basis and extending the time for completion of said transmission network.

12.8. Eventually, the present Petition has been preferred by the Petitioner before this Commission since disputes arose between the parties with regard to bills for additional demand charges raised by the Respondent PGVCL. As noted earlier the Petitioner has sought following prayers:

(a) "Admit and allow this Petition;

(b) This authority may be please to extend the time of 18 months in an agreement dated 16.12.2017 for installation of the 7000 KVA power in Petitioner's company;

(c) This authority may be pleased to pass such further and other orders as the nature and the circumstances of the case may require."

12.9. Since, the genesis of the issues that have arisen between the Petitioner and the Respondents is pursuant to additional contract demand sought by the Petitioner from the Respondent No. 2 PGVCL 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

12.10. The 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;"*

12.11. Section 42(1) 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 PGVCL on receipt of an application from the Petitioner for load extension by 3000 kVA referred the matter to the Respondent GETCO for construction of necessary

Transmission Network to enable catering the additional contract demand sought by the Petitioner. Thereafter, the Respondent No. 2 PGVCL furnished an estimate to the Petitioner stating that the necessary transmission network needs to be constructed by the Petitioner itself 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.

12.12. 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.

12.13. 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,

12.14. 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.

12.15. 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;

12.16. 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.

12.17. 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, amended 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.

12.18. 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."*

12.19. 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."

12.20. 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."

12.21. 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."

12.22. 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 Right of Way, approvals from Railway / Highway authorities 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 problems relating to right of way, acquisition of land etc. because even the consumer has by way of an agreement with the licensee agreed to lay down the network necessary for supply of electricity for additional contract demand.

12.23. According to the Petitioner, the Petitioner is facing identical issues of strong farmer objections along the line route and the same were also envisaged by the Respondents in view of the line passing through agriculture fields. The issues faced by the Petitioner are akin to the difficulties envisaged in Clause 4.38 of GERC Supply Code 2015 including issues related to Right of Way and approval from local authorities resulting in delay, over which the Petitioner has no reasonable control.

12.24. 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.

12.25. The Petitioner has further submitted that the applicability of Clause 4.33 (2) of the GERC Supply Code is limited to providing new electricity connection only and is not

applicable for load extension / enhancement of load. Therefore, the action of the Respondent PGVCL to issue 60 days' notice under Clause 4.33 (2) and commencement of billing of additional demand on deemed release basis is against the provisions of GERC Supply Code. The time period of 180 days provided in the GERC Standard of Performance Clauses can be relaxed by the Commission on basis of reasons related to RoW, Approvals from local authorities etc. which take considerable time. 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.

12.26. It is further submitted that the applicable provisions for enhancement of load are provided in Clauses 4.80 to 4.87 of the GERC Supply Code whereas Clauses 4.26 to 4.37 are applicable for providing new connection. The language used in Clause 4.80 is that, "for site inspection and issuance and payment of demand note for the estimated cost of works, both the licensee and applicant shall follow the procedure and timeline as laid down in Clause 4.26 – 4.37 of Code". Thus, as per the language of Clause 4.80, Clause 4.26 to 4.37 including Clause 4.33 is applicable for load enhancement and for the purpose of only site inspection and issuance and payment of demand note and not for subsequent procedure such as erection of line, issuance of 60 days' notice etc.

12.27. It is therefore, necessary to refer Clause 4.37 of the GERC Supply Code reads as under:

"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."

12.28. Clause 4.38 of the GERC Supply Code 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."

12.29. Clause 4.42 of the GERC Supply Code 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."

12.30. Clause 4.80 of the GERC Supply Code deals with Load Enhancement which reads as under:

"4.80 Applicants shall apply for load enhancement to the licensee in the format prescribed in Annexure I or II (as applicable) to this Code. The licensee shall process the application form in accordance with clauses 4.64 - 4.66 of this Code. For site inspection and issuance & payment of demand note for the estimated cost of works, both the licensee and applicant shall follow the procedure and timelines as laid down in clauses 4.26 - 4.37 of this Code."

12.31. Clause 4.81 of the GERC Supply Code reads as under:

"4.81 If on inspection there are no defects found, or on re-inspection the defects noticed earlier are found to have been removed, the licensee shall sanction the

additional load applied for, and issue a demand note in writing, under acknowledgment, within the timeline specified below:

Sr. No.	*Item*	*Time Limit (Within)*
1	*Aggregate Loads up to 100 kVA/100 kW*	*Within 10 days of receipt of Application*
2	*Aggregate Loads above 100 kVA/100 kW and upto 4000 kVA*	*Within 15 days of receipt of Application.*
3	*Aggregate Loads above 4000 kVA*	*Within 30 days of receipt of Application.*

Provided that the time taken by applicant in getting removed the defects/deficiencies found at the applicant's premises shall not be included in the timeline specified above."

12.32. 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.

12.33. 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.

12.34. 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.

12.35. 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.

12.36. 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 PGVCL for additional contract demand of 3000 kVA on deemed release basis.

12.37. 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 in the stipulated time period. As a consequence, thereof, the Respondent No. 2 PGVCL commenced raising monthly bills with 3000 kVA additional Contract Demand on deemed release basis. The Petitioner approached the authorities of the Respondent No. 2 PGVCL for withdrawing the said bills on account of difficulties faced by the Petitioner of obstruction by villagers. However, the Respondent No. 2 PGVCL expressed its inability to withdraw the said bills.

12.38. 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.

12.39. 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.

13. 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.

13.1. 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:

13.1.1. 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.

13.1.2. 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.

13.1.3. 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.

13.1.4. 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 provides 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 labour 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 from 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 consumers itself 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

13.1.5. 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.

13.1.6. 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.

13.1.7. 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.

13.1.8. It is also necessary to refer Regulations 4.80 to 4.85 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

> ***"Load Enhancement***
>
> *4.80 Applicants shall apply for load enhancement to the licensee in the format prescribed in Annexure I or II (as applicable) to this Code. The licensee shall process the application form in accordance with clauses 4.64 – 4.66 of this Code. For site inspection and issuance & payment of demand note for the estimated cost of works, both the licensee and applicant shall follow the procedure and timelines as laid down in clauses 4.26 – 4.37 of this Code."*

The aforesaid provision provides that the applicant shall apply for load enhancement to the licensee in the format prescribed in Annexure-I or II as applicable specified in the Code. The licensee shall process the application in accordance with clauses 4.64 – 4.66 of this Code. Further, it also provides that for site inspection and issuance and payment of demand note for the estimated cost of works, both the licensee and applicant shall follow the procedure and timelines as laid down in clauses 4.26 – 4.37 of this Code. Thus, it is recognised that the licensee shall carry out the inspection and issuance of payment of demand note, estimate of cost etc.

> *"4.81 If on inspection there are no defects found, or on re-inspection the defects noticed earlier are found to have been removed, the licensee shall sanction the additional load applied for, and issue a demand note in writing, under acknowledgment, within the timeline specified below:*

Sr. No.	*Item*	*Time Limit (Within)*
1	*Aggregate Loads up to 100 kVA/100 kW*	*Within 10 days of receipt of Application*
2	*Aggregate Loads above 100 kVA/100 kW and upto 4000 kVA*	*Within 15 days of receipt of Application.*
3	*Aggregate Loads above 4000 kVA*	*Within 30 days of receipt of Application.*

> *Provided that the time taken by applicant in getting removed the defects/deficiencies found at the applicant's premises shall not be included in the timeline specified above."*

The aforesaid provision provides that on inspection if there are no defects found or on re-inspection the defects noticed earlier are found that have been removed, the licensee shall sanction the additional load applied for and issue a demand note in writing under acknowledgement within the timeline specified below:

- Aggregate load up to 100 kVA/ 100 KW within 10 days of receipt of application
- Aggregate Loads above 100 kVA/100 kW and up to 4000 kVA within 15 days of receipt of application.
- Aggregate Loads above 4000 KVA within 30 days of receipt of application.

The Proviso provided in the said regulations state that the time taken by applicant in getting removed the defects/deficiencies found at the applicant's premises shall not be included in the timeline specified above.

> *"4.82 The licensee's written intimation sent along with the demand note to the consumer shall cover the following:*
>
> *(1) Whether the additional power can be supplied at existing voltage or at a higher voltage;*
>
> *(2) Addition or alterations, if any, required to be made to the system and the cost to be borne by the consumer;*
>
> *(3) Amount of additional security deposit, cost of additional infrastructure and the system strengthening charges or capacity building charges, if any, to be deposited; and*
>
> *(4) Change in classification of the consumer and applicability of tariff, if required.*
>
> *Provided that where the estimates are issued on the basis of per kW of demanded load sub- clauses (2) and (3) shall not be apply."*

The aforesaid provision provides that the licensee's written intimation sent along with the demand note to the consumer it shall cover the following:

(1) Whether the additional power can be supplied at existing voltage or at a higher voltage;

(2) Addition or alterations, if any, required to be made to the system and the cost to be borne by the consumer;

(3) Amount of additional security deposit, cost of additional infrastructure and

the system strengthening charges or capacity building charges, if any, to be deposited; and

(4) Change in classification of the consumer and applicability of tariff, if required.

The proviso in the aforesaid regulation provides that where the estimates are issued on the basis of per kW of demanded load sub- clauses (2) and (3) shall not be apply.

"4.83 The application form for enhancement of load shall not be accepted if the consumer is in arrears of payment of the licensee's dues. However, the application form may be accepted if such payment of arrear has been stayed by a Court of law, or the Commission or an authority appointed by the Commission."

The aforesaid provision states that the application form for enhancement of load shall not be accepted if the consumer is in arrears of payment of the licensee's dues. However, the application form may be accepted if such payment of arrear has been stayed by a Court of law, or the Commission or an authority appointed by the Commission.

4.84 If supply of enhanced load is feasible, the consumer shall:

(1) Pay additional security deposit, cost of addition or alteration required to be made to the system, if any, and system strengthening charges/capacity building charges, if any, within 30 working days of receipt of the demand note; and

(2) Execute a supplementary Agreement for the additional load.

The aforesaid provision provides that If supply of enhanced load is feasible, the consumer shall:

(1) Pay additional security deposit, cost of addition or alteration required to be made to the system, if any, and system strengthening charges/capacity building charges, if any, within 30 working days of receipt of the demand note; and

(2) Execute a supplementary Agreement for the additional load.

4.85 The overall timeline for releasing additional load, from the date of receipt of ***application****, shall be as under;*

Timeline for releasing additional load (energization)

Sr. No.	*Item*	*Time Limit (within)*
1	*Aggregate Loads up to 100 kVA /100 kW*	*Within 20 days after compliance of formalities/ demand notice, if no augmentation is required otherwise 60 days.*
2	*Aggregate Loads above 100 kVA/100 kW and up to 4000 kVA*	*Within 45 days after compliance of Demand Notice/formalities by the applicant*
3	*Aggregate Loads above 4000 kVA*	*Within 180 days after completion of Demand notice/formalities by the applicant*

The aforesaid provision provides that the overall timeline for releasing additional load, from the date of receipt of application, shall be as under:

Timeline for releasing additional load (energization)

Sr. No.	**Item**	**Time Limit (within)**
1	Aggregate Loads up to 100 kVA /100 kW	Within 20 days after compliance of formalities/ demand notice, if no augmentation is required otherwise 60 days.
2	Aggregate Loads above 100 kVA/100 kW and up to 4000 kVA	Within 45 days after compliance of Demand Notice/formalities by the applicant
3	Aggregate Loads above 4000 kVA	Within 180 days after completion of Demand notice/formalities by the applicant

13.1.9. It is also necessary to refer Regulations 4.86 and 4.87 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

> *"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.*

The aforesaid regulation provides 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.

4.87 If the application is *not decided by the licensee within the above-mentioned period, the applicant may, by a written notice to the licensee, draw its attention to the matter and yet if no decision is communicated to him within a further period of 15 days, the permission for enhancement of contract demand shall be deemed to have been granted.*

The aforesaid provision provides that If the application is not decided by the licensee within the above-mentioned period, the applicant may, by a written notice to the licensee, draw its attention to the matter and yet if no decision is communicated to him within a further period of 15 days, the permission for enhancement of contract demand shall be deemed to have been granted.

13.1.10. 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.

13.2. 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.

13.3. 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 arose with regard to Supply Code either for interpretation of the regulations or dispute arising 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.

13.4. 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.

14. Now we proceed with analyzing the reasons for delay in construction of network by the Petitioner required for release of additional demand by PGVCL.

14.1. As per Regulation 4.85 *(supra)* of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 the timeline for release of additional load (energization) for the aggregate load above 4000 kVA is within 180 days after completion of demand notice / formalities by the Applicant.

14.2. It is pertinent to note that neither the Petitioner nor the Respondents have placed on record any table / chart showing the planned vis-à-vis actual timeline / dates of various activities required for execution of the work. In the absence of the planned vis-à-vis actual dates of each such activity, it cannot be ascertained as to whom the delay in completion of the work is attributable.

14.3. To understand and analyse the time period elapsed in energizing the additional load 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.	PGVCL's letter to Petitioner issuing Estimate	17.11.2017	-	Respondent No. 2, PGVCL
2.	Estimate paid by the Petitioner	12.12.2017	-	Petitioner

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
3.	Agreement executed between the Petitioner and Respondent No. 2 PGVCL	16.12.2017	-	Petitioner
4.	Petitioner's Contractor requested to PSI, Anjar, for police protection	17.04.2018	122 days from Date of execution of Agreement between Petitioner and PGVCL	Petitioner
5.	GETCO applied to NHAI for permission for crossing to National Highway	23.04.2018	-	Respondent No. 1, GETCO
6.	PGVCL issued 60 days' Notice to the Petitioner for minimum billing as per Clause 4.33 of Supply Code	25.06.2018	-	-
7.	Petitioner's Contractor informed Collector, Bhuj, about execution of work and obstruction by villagers	29.06.2018	195 days from Date of execution of Agreement between Petitioner and PGVCL	Petitioner
8.	Petitioner's Contractor requested Superintendent of Police, Gandhidham, for police protection (Police protection for 5 days from 09.07.2018)	29.06.2018	195 days from Date of execution of Agreement between Petitioner and PGVCL	Petitioner
9.	Petitioner's Contractor requested Collector, Bhuj, for police protection and support in compensation to villagers	12.07.2018	208 days from Date of execution of Agreement between Petitioner and PGVCL	Petitioner
10.	Superintendent of Police, Gandhidham, informed Petitioner's Contractor for payment of fees for police manpower (Police protection for 5 days from 17.07.2018 with reference to Contractor's letter dated 26.06.2018)	16.07.2018	-	-
11.	PGVCL commenced the billing for total contract	24.08.2018	-	-

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
	demand for monthly charges w.e.f. 24.08.2018			
12.	Petitioner's Contractor requested Superintendent of Police, Bhuj, for police protection (Police protection for 3 days)	25.08.2018	252 days from Date of execution of Agreement between Petitioner and PGVCL	Petitioner
13.	Petitioner's Contractor requested Police Inspector, Anjar, for police protection	05.09.2018	263 days from Date of execution of Agreement between Petitioner and PGVCL	Petitioner
14.	NHAI gave permission to GETCO for crossing to National Highway	01.11.2018	192 days from Date of application of GETCO to NHAI	-
15.	Work completed and supply commenced under stop gap arrangement	13.11.2018	-	-

14.4. From the above details, it is clear that the Petitioner paid the estimate to PGVCL on 12.12.2017 and signed the necessary agreement on 16.12.2017 after completing the formalities. Accordingly, the start date for the Petitioner to commence the work execution is considered by the Commission as 16.12.2017. As per Regulation 4.85 of the Supply Code, 2015, the additional load of the Petitioner ought to be energized within 180 days i.e. latest by 14.06.2018 from the date of execution of the agreement. The work was completed and supply commenced under stop gap arrangement on 13.11.2018 resulting into total delay of 152 days in completion of work. It is necessary to scrutinize the reasons for such delay and identify whether the Petitioner or the Respondent/s or any other authority/ies are responsible for such delay. It is observed from the above Table and the records of the Petition that the Petitioner faced issue related to objections by the villagers in completion of the transmission line and its Contractor approached the Police authorities vide various letters i.e. letters dated 17.04.2018, 29.06.2018, 25.08.2018 and 05.09.2018 written to PSI, Anjar, Supt. of Police, Gandhidham, Supt. of Police, Bhuj, and Police Inspector, Anjar, respectively, seeking Police protection, and also sought intervention of the District Collector, Bhuj, vide letters dated 29.06.2018 and 12.07.2018 for resolving

the issue of demand of compensation raised by the villagers. The Supt. of Police, Gandhidham, vide letter dated 16.07.2018 informed the Petitioner's Contractor to make payment of the necessary fees for the police manpower. The Petitioner has submitted that an amount of Rs. 1,20,310/- along with GST of Rs. 21,656/- was paid to the office of the Supt. of Police. The Respondent No. 1 GETCO has submitted that it is the responsibility of the Petitioner to resolve the Right of Way issues and that all way leave clearances for the line work etc. have to be obtained by the Petitioner; that GETCO would not be responsible for the delay on this account; and that GETCO is always willing to assist the Petitioner but the responsibility of resolving Right of Way issues and clearances is of the Petitioner. Thus, the payment towards police protection for resolving the Right of Way issues was within the scope of the Petitioner. Moreover, the Petitioner has not placed on record any receipt / proof of the said payment claimed to have been made by it. Further, the actual date on which the police protection was received by the Petitioner also cannot be ascertained from the records of the present Petition. In absence of such documents, the Commission cannot ascertain as to whom the delay for the said period is attributable.

14.5. We further note from the letter dated 10.06.2019, from GETCO to NHAI, as submitted by the Petitioner, that the Respondent No. 1 GETCO applied to NHAI on 23.04.2018 seeking permission for crossing of National Highway. It is evident from the said letter that several communications were exchanged between GETCO and NHAI for grant of the said permission viz. letters dated 06.07.2018, 26.07.2018, 25.08.2018 and 14.09.2018 written by NHAI to GETCO and letters dated 09.07.2018, 27.07.2018, 20.09.2018 and 01.10.2018 written by GETCO to NHAI. Further, NHAI vide its letter dated 01.11.2018 granted the permission to GETCO for crossing of the National Highway. Further, from the letter dated 10.06.2019 from GETCO to NHAI, it transpires that the Bank Guarantee of Rs. 1,00,000/- dated 26.09.2018 was submitted by GETCO to NHAI vide its letter dated 01.10.2018. Thus, from the conjoint reading of the aforesaid letters, it transpires that the Bank Guarantee was given by GETCO to NHAI vide its letter dated 01.10.2018. From the aforesaid correspondences exchanged between GETCO and NHAI, it also transpires that certain queries / requirements were raised by NHAI from time to time during the process of grant of the said permission. However, there is nothing on record to

ascertain whether the said queries were resolved by GETCO itself or whether the same were referred by GETCO to the Petitioner and were resolved by the Petitioner and communicated back to NHAI through GETCO. Thus, it cannot be ascertained as to on whose account the delay in resolving the said queries during the period prior to 01.10.2018 is attributable. Hence, we consider the period from 01.10.2018 i.e. the date of the letter of GETCO submitting the Bank Guarantee to NHAI, till 01.11.2018 i.e. the date on which NHAI granted the permission for crossing of the National Highway. During the said period, the matter of grant of permission was pending exclusively between GETCO and NHAI and the Petitioner could not have carried out the work of highway crossing. The said process was not within the control of the Petitioner.

15. In view of the above discussion, we decide that the delay of 31 days i.e. from 01.10.2018 to 01.11.2018, in completion of the transmission line is not attributable to the Petitioner and hence the Petitioner is not liable to pay the minimum charges for the said period of 31 days.

16. We also decide that the Petitioner is not liable to claim any interest on the refund amount in accordance with the above direction.

17. With the above directions, the present Petition stands disposed of accordingly.

18. Order accordingly.

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

Place: Gandhinagar

Date: 23/07/2026