

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 348/2010

**Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member**

Date of Hearing: 19.7.2011

Date of Order: 8.2.2012

In the matter of:

Grant of connectivity to Ind Bharath Power (Madras) Ltd. under the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium term open access in inter-State Transmission and related matters) Regulations, 2009.

And

In the matter of:

Ind Bharath Power (Madras) Ltd, Hyderabad Petitioner
Vs	
Power Grid Corporation of India, Ltd. Gurgaon	... Respondent

The following were present:

1. Shri Sanjay Sen, Advocate for the petitioner
2. Miss Surbhi Sharma, Advocate for the petitioner
3. Shri Y.K.Sehgal, PGCIL
4. Shri Dilip Rozekar, PGCIL

ORDER

Ind Bharath Power (Madras) Ltd, the petitioner herein, through this petition has prayed for the following reliefs:

“Review the order dated 31.5.2010 to the extent indicated in this petition;

(a) clarify that the above order, to the extent that it makes a departure from the statutory obligation of the CTU to also develop the dedicated transmission line as a



part of planned and coordinated development of the inter State transmission system, is not applicable to the present case of the petitioner as the subject line was planned prior to the notification of the central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009 and;

(b) direct the respondent to comply with the provisions of the Central Commission made the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009 and treat the dedicated line of 90-100 km, connecting the petitioner's 2X660 MW power plant at Tuticorin, Tamil Nadu to the pooling point, as part of ISTS and construct the same and;

(c) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Briefly, the gist of the submissions of the petitioner, are as under:

(a) The petitioner is setting up a 1320 MW (2X660) imported coal based power plant at Manappad, Tuticorin District, Tamil Nadu (hereinafter referred to as "the project").

(b) The petitioner, vide its letter dated 19.9.2008 applied to the respondent for Long Term Open Access (LTOA). In response to the petitioner's letter seeking open access, the respondent, vide its letter dated 1.12.2008, had stated that there was a need to carry out detailed study for system strengthening which the respondent would do on consultancy basis.

(c) The petitioner vide its letter dated 21.1.2009 paid the consultancy charges to the respondent for carrying out detailed system studies on consultancy basis for injecting 945 MW in the Inter-State Transmission System (ISTS). The Petitioner further informed the Respondent that it is installing a 2 x 350 MW in the first phase of its project, where the injection will be only 473 MW. In the

second phase the Petitioner planned to add another 2 x 350 MW, totaling the power injection to 945 MW.

(d) The Respondent vide its letter dated 9.2.2009 informed the Petitioner that pursuant to its long-term open access application, some dedicated and some common transmission system needs to be identified and phased as per the requirements. The Respondent further submitted that the location of the pooling point will have to be tentatively fixed based on the relative location of different power plants coming in the vicinity.

(e) In order to discuss these issues, a meeting was conducted on 16.2.2009. The Respondent vide its letter dated 17.7.2009 provided the minutes of the meeting held on 15.7.2009 to the Petitioner wherein the transmission system for evacuation of power from the Petitioner (1,320 MW) and M/s Coastal-Energen Ltd (1,200 MW) power plants was finalized by the Respondent. Dedicated transmission system for evacuation of power from the Petitioner's plant was 400 kV D/C (quad) high capacity line from the Petitioner's switchyard to Tuticorin pooling station in addition to the common transmission lines. The petitioner has alleged that the Respondent had agreed for the establishment of 765 kV pooling sub-station in the vicinity of the proposed power plants which was within 40 km from the generating stations since Coastal Energen Pvt. Ltd. and the Petitioner offered 125 acres of land each for establishment of the pooling sub-station. The cost of 400 kV D/C line per km worked out to ₹ 1 crore per km

(approximately) and the proposed dedicated line would entail an expenditure of ₹ 40 crore

(f) Another meeting was conducted between the Respondent and the developers for long-term open access in southern region on 15.6.2009.

(g) The petitioner, by a letter dated 20.7.2009 informed the Respondent that instead of 4x350 MW, it was going to install 2 x 660 MW generating units.

(h) Another meeting was held between the Respondent and the developers on 27.8.2009 for discussing the LTOA applications in Southern Region. The Respondent by a letter dated 27.10.2009 intimated the grant of LTOA to the Petitioner. The Respondent further called upon the Petitioner to initial the Bulk Power Transmission Agreement (BPTA), furnish the requisite Bank Guarantee and provide an undertaking to sign the requisite BPTA upon its approval by CERC. A corrigendum to the minutes of meeting held on 27.8.2009 was circulated by the Respondent on 7.12.2009.

(i) Thereafter, the respondent filed a petition on 17.11.2009 which was numbered as Petition No. 233/2009, seeking regulatory approval and other reliefs for execution of the evacuation systems required in connection with the long term open access to a group of power generation developers including the petitioner.

(j) In the meantime, the Commission had notified the Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters Regulations, 2009 (hereinafter referred to as “ the 2009 Connectivity Regulations”) on 7.8.2009 which ***inter-alia*** provides as under:

“(8) An applicant may be required by the Central Transmission Utility to construct a dedicated line to the point of connection to enable connectivity to the grid:

Provided that a thermal generating station of 500 MW and above and a hydro generating station of 250 MW and above, other than a captive generating plant, shall not be required to construct a dedicated line to the point of connection and such stations shall be taken into account for coordinated transmission planning by the Central Transmission Utility and Central Electricity Authority.”

(k) On 12.1.2010, this Commission while hearing Petition No. 233/2009 directed the Respondent to seek information regarding the physical progress of execution of power projects from the power generation developers. In turn, the Respondent vide letter dated 14.1.2010, sought information from the petitioner regarding the progress made so far in its generation project.

(l) The petitioner submitted the status report of its project to the Respondent on 18.1.2010. The Petitioner vide letter dated 1.2.2010 informed the Respondent about revised schedule of commissioning of the project, which is as follows:

Unit- I	:	March 2012
Unit- II	:	December 2012

(m) A meeting was held in Central Electricity Authority on 1.2.2010 to ascertain the status of generation projects and to prioritize the development. The Respondent vide letter dated 15.2.2010 provided a copy of the draft BPTA to the Petitioner and called upon the Petitioner to furnish a Bank Guarantee @ ₹ 5 lakh per MW of total power to be transmitted, before the signing of the Bulk Power Transmission Agreement. The requisite Bank Guarantee was furnished on 19.2.2010 which is valid till 30.6.2013.

(n) A BPTA was signed between the Petitioner, the Respondent and Coastal Energen Pvt. Ltd. on 24.2.2010. The BPTA provides as under:

“(C) The transmission system required for direct evacuation of power from respective generating units to the pooling points of POWERGRID has been finalized in consultation with CEA, developers and Constituents and shall be built, owned, operated and maintained by respective Long Term Transmission Customers as indicated at Annexure 2.

6.0 (a) In case any of the developers fail to construct the generating station/ dedicated transmission system or makes an exit or abandon its project, POWERGRID shall have the right to collect the transmission charges and/or damages as the case may be in accordance with the notification/ regulation issued by CERC from time to time. The developer shall furnish a Bank guarantee from a nationalised bank for an amount which shall be equivalent to ₹ 5 (five) lakh/MW to compensate such damages. The bank guarantee format is enclosed as Annexure Y. The details and categories of bank would be in accordance with clause 2(h) above. The Bank guarantee would be furnished in favour of POWERGRID in accordance with the time frame agreed during the meeting held at CEA on 1/02/2010.”

(o) However, in the proceedings in Petition No. 233/2009, the Commission vide its interim order dated 26.3.2010 held as under:

“16. As regards the construction of dedicated transmission lines by the CTU, we are of the view that under section 10 (1) of the Electricity Act, it is the duty of the generating company to install,

operate and maintain the dedicated transmission lines in accordance with the provisions of the Act or the rules or regulations made there under. The 2004 Regulations did not provide for inclusion of the dedicated transmission lines as part of system strengthening and accordingly the CTU has not planned the dedicated transmission lines in the HCPTCs for which the regulatory approval has been sought in this petition. However, recently in 2009, the Commission after detailed deliberation has decided that the CTU should also develop the dedicated transmission lines as part of planned and coordinated development of inter- State transmission system and accordingly, provisions have been made in the 2009 Regulations. Such arrangement cannot be extended in case of the transmission lines which were planned prior to the said regulations as it will delay the construction of the HCPTCs and consequently bottle up the generation projects.

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18. *As regards the BG, some of the IPPs have argued for submission of the BG Within a period of three months from the date of signing of the BPTA in accordance with the 2009 Regulations. At this point, the Commission would like to clarify that the CTU had adopted an approach to take about 10% of the estimated cost of the transmission system as Bank Guarantee which works out to Rs.10-15 lakh/MW for the coverage of the risk towards construction of the transmission system. However, taking note of the concern of some of the IPPs and considering the provision in the 2009 Regulations, the Commission in the Record of Proceeding dated 12.01.2010 had directed the petitioner “to take Bank Guarantee in accordance with the provisions of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term open access in inter-State Transmission and related matters) Regulations, 2009 under the BPTA even for the cases of open access prior to the Regulations”. The Bank Guarantee of Rs 5 Lakh / MW for projects planned prior to the 2009 Regulations was allowed as a special dispensation which should not be construed that all the provisions of the 2009 Regulations shall be applicable to the IPPs whose applications have been considered and accepted by the CTU for grant of LTOA under 2004 Regulations. We make it clear that if any IPP is interested to be considered under the 2009 Regulations, it is at liberty to do so for which all provisions of the said regulations shall apply. However, in cases of IPPs which have already been granted LTOA by the CTU, such IPPs should sign the BPTA with the Petitioner and deposit the BG at the rate of Rs 5 lakh/ MW by 31.3.2010 in order to ensure that the progress of some of the IPPs which are in the most advanced stage is not stalled due to other IPPs.”*

(p) Later, the Commission vide its order dated 31.5.2010 in the above proceedings accorded regulatory approval *inter-alia* for the transmission system in Tuticorin area which is to cater to the needs of the petitioner as well.

(q) The Respondent by a letter dated 10.9.2010 informed the Petitioner that:

“As per Clause 7 of the BPTAs applicable for IPPs/ LTA Customers, a joint coordination meeting with the representative of each of the developers and POWERGRID is required to be held at regular intervals. The committee shall monitor/ review the progress of Generating Units along with its direct evacuation systems and also the common transmission system to be executed by POWERGRID. Accordingly the 1st Joint Coordination Committee meeting is scheduled to be held on 17th September 2010 in POWERGRID office, Gurgaon.”

3. The 1st Joint Coordination Committee meeting of the Independent Power Producers was held on 17.9.2010. It was only in this meeting that the Petitioner learnt that the Respondent proposed the establishment of the pooling station in a place which is about 100 km from the Petitioner's switchyard. As a result of this, the Petitioner has to bear an expenditure of about ₹ 140 crore which is three times the original proposal i.e. ₹ 40 crore. The Petitioner requested the Respondent to treat this line as part of ISTS and construct the same as per the 2009 Connectivity Regulations. The latest status report of the generation project was handed over to the Respondent in the meeting wherein the Petitioner mentioned that:

“Power Evacuation Lines-Due to above, the temporary measure for startup Power and initial evacuation may not be required. It is requested that PGCIL may kindly consider to take up the execution of the dedicated 400 kV D/c line from Switchyard of Ind-Barath Power generation to the Tuticorin Pooling Station as a

coordinated transmission system according to the CERC notification Chapter 3 connectivity Clause 8(8).”

4. The Respondent vide letter dated 28.9.2010 forwarded the report of the 1st Joint Coordination Committee Meeting of IPPs held on 17.9.2010, granting LTOA in Southern Region, to the Central Commission. This report indicated the progress of generation plants and transmission systems pertaining to High Capacity Power Transmission Corridors (HCPTC) VI, VII and VIII. The report of the 1st Joint Coordination Committee submitted that:

“The representative of Ind-Barath requested that as the length of the dedicated line is of the order of 90-100kms, he requested that this line may be treated as part of ISTS and constructed by POWERGRID as per the new CERC regulations, 2009. It was explained that this issue was already clarified by Hon’ble CERC in its order dated 31/05/2010 wherein following has been noted

“As regards the construction of dedicated transmission lines by the CTU, we are of the view that under section 10(1) of the Electricity Act, it is the duty of the generating company to install, operate and maintain the dedicated transmission lines in accordance with the provisions of the Act or the rules or regulations made there under. The 2004 Regulations did not provide for inclusion of the dedicated transmission lines as part of system strengthening and accordingly the CTU has not planned the dedicated transmission lines in the HCPTCs for which the regulatory approval has been sought in this petition. However, recently in 2009, the Commission after detailed deliberation has decided that the CTU should also develop the dedicated transmission lines as part of planned and coordinated development of interstate transmission system and accordingly, provisions have been made in the 2009 Regulations. Such arrangement cannot be extended in case of the transmission lines which were planned prior to the said regulations as it will delay the construction of the HCPTCs and consequently bottle up the generation projects.”

Chief Engineer(SP&PA), CEA stated that as per CERC order the construction of dedicated line is under the scope of generation developer, however if there is still any grievance then they may approach CERC.”

5. In the light of the above, the Petitioner has sought review of the Commission's order dated 31.5.2010 in Petition No. 233/2009 on the ground that the subject transmission line was not planned prior to the notification of the 2009 Connectivity Regulations. The Petitioner has submitted as follows:

(a) That the Respondent has interpreted/ applied the order dated 31.5.2010 passed by this Commission incorrectly. The 2009 Connectivity Regulations clearly provide that a thermal generating station of 500 MW and above, other than a captive generating plant, shall not be required to construct a dedicated line to the point of connection. It is the responsibility of the CTU and the CEA to take into account such stations for coordinated transmission planning.

(b) That a BPTA was executed between the parties subsequently on 24.2.2010. The Respondent cannot deprive the Petitioner of its statutory rights guaranteed under the 2009 Connectivity Regulations, on the basis of this Agreement.

(c) That it was clearly understood and agreed between the parties in the meeting held on 15.7.2009 that the Petitioner's expenditure for the establishment of the dedicated transmission system from the Petitioner's switchyard to pooling station will be limited only to ₹ 40 crore. The Respondent is now proposing to establish the pooling station in a place which is about 100 kms from the Petitioner's switchyard. As a result of this, the Petitioner will now have to bear an

additional expenditure of about ₹ 140 crore which is three times the original proposal.

(d) That the Hon'ble Supreme Court in the case of ***Maharshi Dayanand University vs. Surjeet Kaur JT 2010(7) SC 179*** has held that:

“9. ...It is a settled legal proposition that neither the Court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision.

10. The Court has no competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of statutory provisions. In State of Punjab and Ors. v. Renuka Singla and Ors. MANU/SC/0131/1994 : (1994) 1 SCC 175, dealing with a similar situation, this Court observed as under:

“We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations...”.”

(e) The Bulk Power Transmission Agreement was executed between the parties after the 2009 Connectivity Regulations were notified by this Commission. The Respondent is seeking to override the provisions of the 2009 Connectivity Regulations on the basis of a contract executed at a much later date between the parties.

(f) That the Hon'ble Supreme Court in ***Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs. [(2009) 14 SCC 663]*** held that the power of review can be exercised by the court in the event of discovery of a new fact, which despite exercise of due diligence was not within the knowledge of the applicant or could not

be produced by him at the time when the order was made. The Hon'ble Supreme Court in this case was pleased to hold that:

"8. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a Civil Court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code means subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration.

9. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

1.Application for review of judgment.- (1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or couldn't be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

.....

The power of review can also be exercised by the court in the event if new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason."

(g) That, despite the exercise of due diligence, the Petitioner was not aware of the location of the CTU's pooling point and could not have contemplated the same to be to at a distance of about 90-100 km from the generator's switchyard, at the time of passing of the order dated 31.5.2010. The location of the pooling sub-station was disclosed to the Petitioner only on 17.9.2010, to which the Petitioner protested.

6. Per contra, the respondent has contended as under:

(a) 2009 Connectivity Regulations was notified in August 2009 and came into force with effect from 1.1.2010. As against this, the transmission system was evolved and discussed with the constituents of the Southern Region in June 2009. In the meeting held in June 2009, establishment of a pooling station in Tuticorin area was discussed. Thus, the submission of the petitioner that the subject transmission line was not planned prior to the notification of the connectivity regulation is incorrect.

(b) As the application by the applicant, for long term open access was made, processed and finalized prior to the notification of the connectivity regulations, provisions of the regulations earlier in vogue would apply in the case.

(c) That the contention of Petitioner that Powergrid has agreed for establishment of Pooling Station in the vicinity of 40 km from generating station is not correct and in fact Powergrid has made all the efforts to optimize the transmission system inclusive of both

dedicated line to be constructed by IPP as well as the high capacity common transmission corridor for dispersal of power pooled by different IPPs upto the pooling point.

(d) In line with the 2009 Connectivity Regulations in force at that point of time, the power at the pooling station was to be pooled through dedicated transmission line to be constructed by generation project developers. Accordingly it may be seen that the contention of Petitioner that the subject line was not planned prior to the notification of the 2009 Connectivity Regulations, which were notified in August, 2009 and came into force from 1st January, 2010, is not correct.

(e) Powergrid has granted LTOA to the Petitioner in the month of October, 2009. Further, in view of the tight commissioning schedule (March, 2011) of Petitioner's generation project, Powergrid in all the meetings explained the necessity of signing of BPTA at the earliest to undertake implementation of associated transmission system. During this time the 2009 Connectivity Regulations, were notified and Powergrid was in the process of submitting detailed procedure, as per the said regulations, of which BPTA was the part. Therefore, as a proactive step to cut-down the implementation time, Powergrid had requested the Petitioner to initial the BPTA with undertaking to sign upon its approval by this Commission.

(f) Location of the pooling sub-station is decided based on a number of parameters such as availability of contiguous piece of land,

feasibility for transmission line off-takes including incoming and outgoing feeders, approachability, number of line crossings, proximity to the sea from saline pollution point of view, etc. In the instant case, location of the pooling sub-station was selected through a prudent and transparent practice and is located at approximately equal distance from the concerned IPP generation project location.

(g) The pooling sub-station at Tuticorin which was planned at 765 kV, is to be initially set up at 400 kV, to cater to the long term access requirements of other generation projects in the vicinity including Kudankulam Stage-II (2000 MW) generation project. The requirement of land for this sub-station is of the order of 125 acres. During the meeting, held in the month of July, 2009 with the power generation developers of Tuticorin area and Tamil Nadu Electricity Board wherein detailing of the implementation of above transmission system was discussed, both the generation project developers had offered land for establishment of Pooling station and it was decided that based on the joint site visit with the generation project developers and Powergrid officials the location of pooling station shall be finalized.

(h) Now-a-days, getting a contiguous piece of 125 acres is very difficult. Powergrid with lot of efforts is trying to acquire land for establishment of pooling sub-station with the district administration and land authorities. However, till date the proposal is yet to get final approval and the land for pooling sub-station is yet to be acquired. Therefore, under such circumstances, Powergrid just cannot commit

the Petitioner to establish pooling sub-station within a proximity of 40 km from the generating station as mentioned by the Petitioner in para-13 of the Petition. Therefore, it is not correct to state that Powergrid has made such commitment regarding setting up the pooling sub-station.

7. Besides what has been submitted above, the respondent has also pointed out that the petitioner has revised the commissioning schedule of the generating units for five times during the period September 2008 to April 2011, the details of which are as under:

	Item	Commn sch	Remarks
September, 2008	(As per LTOA application)	U#1 – Mar, 11 U#2- June, 11 U#3 – Dec, 11 U#4 – Mar, 12	Base Date
July, 2009	change in unit configuration from 4 x 350 MW to 2 x 660 MW	U#1 – Jan, 14 U#2 – Apr, 14	Deferment by approx. 3 years
February, 2010	(as per BPTA)	U#1 – Mar, 12 U#2 – Dec, 12	Advancement by about 2 years
September, 2010	(1 st Joint Coordination Committee)	U#1 – Sept, 12 U#2 – Feb, 13	Deferment by 6 months
April, 2011	(3 rd Joint Coordination Committee)	U#1 – Sept, 13 U#2 – _____	Deferment by 1 year

8. The petitioner in its rejoinder dated 9.6.2011 has submitted as under:

(a) The transmission system for evacuation of power from the petitioner (1,320 MW) and M/s Coastal-Energen Ltd. (1,200MW) power plants was finalized by the respondent on 15.7.2009. Dedicated transmission system for evacuation of power from the petitioner's plant was 400 kV D/C (Quad) high capacity line from the petitioner's switchyard to Tuticorin pooling sub-station in addition to the common

transmission lines. The respondent agreed for the establishment of 765 kV pooling sub-station in the vicinity of the proposed power plants which was within 40 km from the generating stations since both Coastal Energen Pvt. Ltd. and the petitioner offered 125 acres of land for establishment of the pooling station and the cost of transmission system from its switchyard to the pooling sub-station;

(b) At the time of signing of BPTA there was neither any clarity with respect to the exact location of the pooling sub-station nor was there any information available about the length of the dedicated transmission line from its switchyard to Tuticorin pooling sub-station. At the time of signing of BPTA, in terms of the understanding between the parties, the Petitioner was given impression that the transmission line of pooling station is about 40 km as the cost of investment would be about ₹ 40 crore. Therefore, on the basis of cost of ₹ 40 crore and distance of 40 km the petitioner have signed the BPTA.;

(c) The pooling sub-station at a distance of about 90-100 km was identified after the 2009 Connectivity Regulations came into force, and therefore, the Respondent is under the obligation to construct the same;

(d) The commissioning schedule of the project was changed due to financial closure, acquisition of land, availability of fuel etc.; and

(e) The respondent be directed to comply with the provisions 2009 Connectivity Regulations, and treat the dedicated line of 90-100 km,

connecting its 2x660 MW power plant at Tuticorin to the pooling point as part of ISTS and construct the same.

9. Having heard the parties and after considering the materials placed on record, the first question that arises for determination is as to whether the present petition has been filed within the time limit specified in the Commission's Conduct of Business Regulations, 1999. Prayer (a) seeks review of the order dated 31.5.2010 to the extent indicated in the petition. A review, under Regulation 103, can be filed within 45 days of the making of an order. However, the present petition has been filed on 29.11.2010. There is, therefore, a delay of around 4 months in filing the present petition. However, the said delay is condoned because technicality in this matter should not come in the way of delivery of justice.

10. The next question that arises for determination is as to whether the Petitioner has been able to satisfy the grounds necessary for allowing a review. While considering an Application for Review, the Commission will need to follow the grounds provided in Order XLVII of the Code of Civil Procedure, 1908. The three grounds available for review are:- (a) discovery of new or important matter or evidence which, after the exercise of due diligence, was not within the Applicant's knowledge or could not be produced by the Applicant at the time when the Order was passed; (b) mistake or error apparent on the face of the record; (c) any other sufficient reason. In the impugned Order, we had referred to our earlier order dated 26.3.2010 where we had ***inter-alia*** held that the 2009 Connectivity

Regulations providing for the CTU to take into account dedicated transmission lines as part of planned and coordinated development of inter-State transmission system was to take effect prospectively i.e., after the date of coming into force of the 2009 Connectivity Regulations on 1.1.2010. The above provision was said to be not to cover those transmission lines which were planned prior to the 2009 Connectivity Regulations because it would delay the construction of the High Capacity Power Transmission Corridors and bottle up upcoming Generation Projects. We do not see any error in this regard in the order dated 26.3.2010 or in the order dated 31.5.2010. The Petitioner has not been able to show any error apparent on the face of record, which would necessitate us to grant review as sought for.

11. On the other hand, the Petitioner signed a Bulk Power Transmission Agreement with the Respondent in terms whereof the Petitioner is specifically required to construct dedicated transmission system. Clause 6.0

(a) reads as follows:

“In case any of the developers fail to construct the generating station / dedicated transmission system or makes an exit or abandons its project, Power Grid shall have the right to collect the transmission charges and/or damages, as the case may be, in accordance with the Notification / Regulation issued by CERC from time to time.”

Hence, as per the contract signed by the parties, the onus is on the Petitioner to construct the dedicated transmission line. The Petitioner is aggrieved with the fact that initially the Respondent had agreed for the establishment of 765 kV pooling sub-station in the vicinity of the proposed power plants within 40 KM from the plants switchyard. However,

subsequently, the Respondent had proposed to establish the pooling station in a place about 100 km from the Petitioner's switchyard. This puts financial burden of about ₹ 140 crore on the Petitioner. On this ground, the Petitioner requested the Respondent to treat this line as part of the ISTS and to construct the same in accordance with the 2009 Connectivity Regulations. The Commission is of the view that an additional financial burden on the Petitioner on account of the Respondent's proposal to set up the pooling sub-station at a distance of about 100 km from its switchyard is not a valid ground under law to seek a review of the order dated 31.5.2010. The Petitioner must prove that either there is something material, which the Petitioner has discovered after the passage of the impugned order, which, if available to the Commission before passing of the said order dated 31.5.2010, would have resulted in a different decision. Or, the Petitioner must prove that there is an error apparent on the face of the impugned order. However, the grievance of the Petitioner is a matter of commercial and technical nature on which the parties are not *ad idem*. Certainly, the present petition is not within the scope of review proceedings. Moreover, once having signed the Bulk Power Transmission Agreement accepting the responsibility to construct the dedicated transmission line and thereafter, having requested the Respondent to take up the execution of the dedicated transmission line as a Coordinated Transmission System, the Petitioner cannot, as a last resort, seek a remedy in the nature of review of the order dated 31.5.2010 essentially on the ground that the pooling station which was proposed at a distance of about 40 km from the Generation Switchyard has now been extended to about 100 km in distance. It is also not a valid

contention on the part of the Petitioner that he is being deprived of the benefit of having the dedicated transmission line constructed by the Respondent as per the 2009 Connectivity Regulations, while on the other hand the Petitioner has submitted that its expenditure on the establishment of the dedicated transmission line from its switchyard to the pooling sub-station will be limited to ₹ 40 crore. None of the judgments cited by the Petitioner are of any help in view of the facts stated above.

12. The Petitioner has submitted that it was not aware of the location of the Respondent's pooling sub-station and could not have contemplated to have the same to be at a distance of about 100 km from the generator switchyard, at the time of passage of the impugned order dated 31.5.2010. We are of the view that it could not have changed the decision contained in our order dated 31.5.2010 wherein we have referred to our earlier order dated 26.3.2010 in which we had held that the arrangement cannot be extended to the transmission lines which were planned prior to the 2009 Connectivity Regulations. The prospective application of the 2009 Connectivity Regulations cannot be changed on the ground that the Petitioner agreed to bear the expenses for constructing the dedicated transmission line initially, however, later on the Petitioner finds it financially burdensome on account of the Pooling Station being proposed by the Respondent at a distance of 100 km from the Petitioner's switchyard. Furthermore, the fact that the Petitioner has sought a review of the impugned order dated 31.5.2010 in terms whereof the 2009 Connectivity Regulations are to be prospectively applied indicates a deemed admission on

the part of the Petitioner that the dedicated transmission line was planned prior to the 2009 Connectivity Regulations. The denial by the Petitioner in this regard defies the aforesaid fact. Likewise, the change in the commissioning schedule of the generating station due to external factors cannot be a ground for seeking review of the impugned order.

13. There is another infirmity in the present petition in that it seeks a review of the order dated 31.5.2010 whereas the decision not to require the Respondent to develop the dedicated transmission lines, if it was planned prior to the 2009 Connectivity Regulations, is contained in the order dated 26.3.2010. The petition is not maintainable on this ground as well. Hence, the other prayers (b) and (c) are also liable to be dismissed as not maintainable.

14. In view of the above, we are not required to go into the rival submissions of the parties, as the present petition suffers from serious legal infirmities as regards its maintainability.

15. In the circumstances, the petition stands dismissed as not maintainable.

Sd/-

(M.Deena Dayalan)
Member

Sd/-

(V.S.Verma)
Member

Sd/-

(S.Jayaraman)
Member

Sd/-

(Dr. Pramod Deo)
Chairperson