

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 168/MP/2017**

**Coram:  
Shri A.K.Singhal, Member  
Shri A.S.Bakshi, Member  
Dr. M.K.Iyer, Member**

**Date of Order: 29.01.2018**

**In the matter of**

Petition under section 79 (1) (f) read with section 79 (1) (c) and Regulation 32 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**

**In the matter of**

India Power Corporation Limited  
(formerly DPSC Limited)  
Plot No. XI-2 & 3, Block -EP  
Sector -V, Salt Lake City, Kolkata-700091

**...Petitioner**

**Vs**

1. Power Grid Corporation of India Limited  
"Saudamini", Plot No.2, Sector-29,  
Gurgaon (Haryana) - 122001

2. West Bengal State Electricity Transmission Company Limited  
Vidyut Bhavan, Bidhannagar,  
Block - DJ, Sector - II,  
Kolkata - 700 091

**...Respondents**

**Parties present:**

Shri Buddy A Ranganathan, Advocate, IPCL  
Shri Hasan Murtaza, Advocate, IPCL  
Shri Himanshu Mishra, IPCL  
Shri Debashish Das, IPCL  
Ms. Suparna Srivastava, Advocate, PGCIL  
Ms. Jyoti Prasad, PGCIL  
Shri Dilip Rozekar, PGCIL



## ORDER

The Petitioner, India Power Corporation Limited (*formerly DPSCCL*) has filed this petition under Regulation 32 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 (hereinafter called ‘the Connectivity Regulations) with the following specific prayers:

- (a) Quash the impugned communication dated 24.5.2017 of the CTU;*
- (b) Allow the present petition and direct the CTU to grant connectivity to IPCL in view of its application filed as well as the order issued by this Hon’ble Commission, as expeditiously as possible and preferably in a time bound manner; and or*
- (c) Pass any other order(s) or directions(s) as this Hon’ble Commission may deem fit and proper in the circumstances of the case.*

2. The Petitioner is a company registered under the provisions of the Companies Act, 1956. The Petitioner is an integrated utility engaged in the distribution of electricity over an area of approximately 618 square kms in Asansol-Raniganj belt of West Bengal and having embedded 12 MW thermal generation. The petitioner has submitted that its current distribution network is independent of the Central Transmission Utility (CTU) and draws power in radial mode through two 33/11 kV sub-stations from Damodar Valley Corporation (DVC) and four 33/11 kV sub-stations from West Bengal State Electricity Distribution Company Limited (WBSEDCL) and through its 220/33 kV sub-station at JK Nagar to meet its requirement of serving consumers of the distribution area.

3. The Petitioner in the Petition has mainly submitted the following;

- (a) In order to address the increasing demand of electricity in its licensed area and to meet its obligation under Sections 42 and 43 of the Electricity Act, 2003, the Petitioner is required to arrange for procurement of power from*



various sources available. Accordingly, it has become imperative that the Petitioner is connected with the inter-State Transmission System (ISTS) grid.

(b) The Petitioner applied for connectivity to ISTS to the nodal agency, CTU vide application dated 10.5.2011. After detailed deliberations, the application was referred by CTU and the CEA to the State Transmission Utility (STU) which led to considerable delay in processing of application.

(c) As the methodology adopted by CTU and CEA was not in conformity with the provisions of the Connectivity Regulations and the timelines for processing the connectivity applications was not adhered to by the respective agencies, the Petitioner filed Miscellaneous Petition No. 158/MP/2012 seeking reliefs under Section 79(1)(c) and Regulation 32 of the Connectivity Regulations.

(e) The Commission by order dated 21.9.2012 in Petition No.158/MP/2012 clarified that the Petitioner was an eligible applicant for connectivity under the Connectivity Regulations and other relevant regulations and directed CTU to process the connectivity application at the earliest possible.

(f) Pursuant to the above directive, PGCIL convened a meeting on 10.10.2012 vide letter dated 8.10.2012 and thereafter, vide its letter dated 12.10.2012 issued grant of transmission connectivity to the petitioner through LILO of Mejia-Maithon 400 kV line at Chalbalpur 400 kV substation of the Petitioner.

(g) The Petitioner appointed M/s Power Research & Development Consultants Pvt Ltd as a technical consultant for technical feasibility study for proposed 400 kV substation for ISTS connectivity and subsequently appointed M/s Lahmeyer International Ltd for preparing the Detailed Project Report for setting up 400/220/132/33 kV switchyard and substation at Chalbalpur in the distribution area. The technical consultants proposed the requirement of 13.33 acres of continuous land at the aforesaid location for the purpose of substation.

(h) The Petitioner proceeded for procurement of land for the proposed substation at Chalbalpur but was constrained by significant challenges in ROW and required land acquisition process and the Petitioner ended up procuring only 7.29 acres of land and that too in distributed manner. Some of the land owners who subsequently agreed to sell their land started demanding amounts, which were much higher than the prevailing market rates and which would have led to the project becoming unviable.

(i) The Petitioner opted for an alternative location of evacuation, as one having features of significantly easy land acquisition required for substation, shorter distance from Maithon 400 kV substation of the CTU and comparatively easy ROW issues.



(j) Meanwhile, the CTU vide its 8<sup>th</sup> JCC meeting for High Capacity Corridor conducted on 16.2.2016 for which the MOM was issued on 3.3.2016 inadvertently recorded that the project is abandoned. The Petitioner's representatives expressed their opposition in person with PGCIL authorities. However, PGCIL vide letter dated 7.6.2016 issued cancellation/revocation of connectivity granted, which was opposed by the Petitioner vide letter dated 14.6.2016 and in person as well. PGCIL vide communication dated 24.6.2016 noted the request against cancellation notice and mentioned to discuss the matter in the Connectivity/LTA meeting of Eastern Region constituents.

(k) The Petitioner did significant due diligence for the alternative location and found the location Debipur. The Petitioner wrote a letter dated 28.09.2016 for change in location of connectivity from the earlier location viz. Chalbalpur to revised location viz. Debipur. In the said letter, the Petitioner requested the CTU to consider for modification in grant of connectivity issued with respect to revised location of Debipur instead of Chalbalpur.

(l) The CTU conducted its 10<sup>th</sup> JCC meeting on Connectivity/LTA with Eastern Region constituents on 30.9.2016 for which MoM was issued on 24.10.2016. The respondent, CTU in its MoM directed the Petitioner to submit a fresh application for change in location of point of connectivity. Accordingly, CTU vide letter dated 27.10.2016 issued a letter of cancellation of earlier connectivity to the Petitioner, which was duly protested by the Petitioner. The Petitioner alternatively requested to amend the grant of connectivity by considering change of location from Chalbalpur to Debipur with all other pertinent variables remaining unchanged.

(m) The representatives of the Petitioner thereafter met the CTU authorities and reiterated their request for considering the alternate location and for revision of the grant of connectivity issued. However, the Petitioner was directed by CTU to submit fresh connectivity application which was submitted by the Petitioner on 18.1.2017.

(n) In the application format on the webpage of CTU, there was no option of distribution licensee under the nature of 'applicant' and the Petitioner therefore had no other option but to apply under the category of 'Bulk Consumer'. Subsequently, the Petitioner vide letter dated 3.4.2017 wrote to the CTU seeking status of the fresh application filed as the same had crossed the statutory limit of 60 days specified under the grant of connectivity regulations.

(o) The Petitioner vide letter dated 10.4.2017 requested the CTU to include its connectivity application as an agenda item to be discussed during the upcoming JCC Meeting of Eastern Region constituents. However, the Petitioner received a letter from PGCIL dated 12.4.2017 (a) denying to consider the



connectivity application during periodic LTA/connectivity meeting of Eastern Region constituents and (b) rejection of Petitioner's connectivity application.

(p) The Petitioner pursued the matter again citing references of the regulations and order of the Commission dated 21.9.2012 in Petition No. 158/MP/2012. Again vide letter dated 3.5.2017, the CTU was requested by the Petitioner to reconsider the connectivity application in view of the settled provisions. Subsequently, CTU issued MoM for 12<sup>th</sup> JCC meeting vide letter dated 9.5.2017 in which the matter found no mention.

(q) The Petitioner also requested the CEA to intervene in the matter vide letter dated 11.5.2017. The CTU vide letter dated 24.5.2017 denied to consider the application of the Petitioner on mere ground of the Petitioner being a distribution licensee. The CTU further replied that the findings and directives of this Commission in order dated 21.9.2012 in Petition No. 158/MP/2012 as an error apparent and concluded that the application of the Petitioner could not be processed as per the prevailing Connectivity Regulations.

(r) The Petitioner vide letter dated 1.6.2017 requested CEA for intervention into the connectivity application of the Petitioner but no response was received. The order of the Commission dated 21.9.2012 holds true in the case of the Petitioner as neither there is any STU connectivity in the region where connectivity has been sought nor there is any capital investment expectation by STU.

(s) According to the Petitioner, the impugned communication of CTU is arbitrary, unlawful and liable to be set aside as the same is contrary to Connectivity Regulations specified by the Commission.

4. Accordingly, the Petitioner has filed this Petition praying for the reliefs as mentioned in para 1 above.

5. The matter was admitted on 14.9.2017 and the Commission issued notice to the parties. The Commission directed the Petitioner to furnish copy of the letter dated 12.4.2017 refusing the grant of connectivity to the Petitioner. The Commission also directed PGCIL to explain the reasons for non- processing of the application for grant of connectivity and long term & medium term open access within the timeline specified under the Connectivity Regulations.



6. In compliance with the above directions, the Petitioner vide affidavit dated 7.10.2017 has filed the copy of the letter dated 12.4.2017 sent by the respondent, CTU. Also, by affidavit dated 23.10.2017, the respondent CTU has submitted the information as sought for by the Commission.

7. The Respondent, CTU vide its reply affidavit dated 11.12.2017 has submitted the following:

(a) Section 30 of the 2003 Act provides that the State Commission is to facilitate and promote transmission, wheeling and inter connection agreements within its territorial jurisdiction for the transmission and supply of electricity. Thus, it is clear that any entity which falls within the territorial jurisdiction of the State Commission and seeking inter connection agreements for transmission and supply of electricity in that state is amenable to the jurisdiction of the State Commission.

(b) The scheduling and despatch of electricity within a region is the responsibility of the concerned RLDC and scheduling and despatch of electricity within a state is the responsibility of the concerned SLDC. It follows that entities connected with a regional grid fall within the jurisdiction of RLDC in that region and entities connected with a State grid or seeking connectivity for transmission and supply of power in that state, fall within the jurisdiction of SLDC in that State.

(d) The CTU is required to develop an efficient, coordinated and economical system of inter-State transmission lines for smooth flow of electricity from the generating stations to load centres in ISTS. The STU is required to develop an efficient, coordinated and economical system of intra-State transmission lines for smooth flow of electricity from the generating stations to load centres in intra-State transmission system.

(e) Under the Scheduling and Despatch code in section 6.4 of the IEGC, the demarcation and responsibilities with reference to control area has been set out. Thus, the scheduling and despatch of power through use of ISTS (including accounting thereof) by various generating stations is controlled and coordinated by the Load Despatch Centre of the ISTS control area within which they fall.

(f) A 'Regional Entity' is defined in Clause 2 (kkk) of the IEGC to mean "such persons who are in the RLDC control area and whose metering and accounting is done at the regional level." The generating stations and bulk consumers fall under the category of regional entities. Power transactions by regional entities are thus metered by CTU at the inter- connection points by ISTS and the



metered data is forwarded to RLDCs under whose jurisdiction the regional entities fall. It is in the context of the generators connected to the ISTS and evacuating power through use of ISTS and the regional entities whose metering and accounting is done at the regional level, that the CTU is enjoined to undertake all the aforesaid activities as laid down under the Act and the IEGC notified by the Commission.

(g) Entities whose metering and energy accounting is done by SLDC are inter-State entities and fall within the SLDC control area. A distribution licensee who is supplying power within his area of supply to fulfil its universal supply obligation under section 43 is connected to the Intra-State transmission system of the State in which it is operating its license, even if operating in an islanded mode, falls within the control area of SLDC and whenever it is desirous of seeking grid connectivity for supply of power within the state, it is necessarily amenable to STUs jurisdiction which as per section 39 is the designated nodal agency for intra-State transmission system planning.

(h) The CEA which is responsible for preparation of generation and transmission plans and for coordinating the activities of planning agencies has published a manual on transmission planning criteria in January 2003 and has stated that the STU shall be the single point contact for the purpose of ISTS planning and shall be responsible on behalf of all intra-State entities for evacuation of power from their State's generating stations, metering requirement of distribution companies and drawing power from ISTS.

(i) Thus the power requirements of a distribution licensee are to be made through the STU to which the licensee is connected or required to be connected. Any direct connection with ISTS being operated by CTU can be permitted for a distribution licensee only in exceptional circumstances and on recommendations of the STU and that too subject to the distribution licensee continuing as an intra-State entity for the purpose of all jurisdictional matters and revenue accounting.

(j) Under Regulation 2 (i) of the Connectivity Regulations, as amended from time to time, connectivity to ISTS can be granted to a generating station or to a bulk consumer and there is no provision whatsoever in the said regulations for grant of connectivity to the distribution licensee. The same is in consonance with statutory/ regulatory scheme of distribution licensees falling within the SLDC control area and their scheduling, metering and accounting being done by SLDC.

(k) Connectivity is granted to an applicant (generating station or bulk consumer) for getting connected to ISTS. However, power transmission take place only upon grant of open access under the Connectivity Regulations. While granting connectivity, the no objection of STU is required in case the connectivity grant





involves the use of intra-State transmission system. Since the distribution licensee is not a permitted applicant for grant of connectivity, the NOC from STU whenever sought for is liable to be construed as a permission under the January 2003 CEA Manual on Transmission Planning Criteria.

(l) The Connectivity application of the Petitioner was discussed in the Meeting of Eastern Region held on 29.7.2011 as well as the meeting on Standing Committee on Power System Planning held on 8.2.2012. However, the connectivity could not be finalized as WBSETCL, the designated STU in State of West Bengal emphasized upon the need for taking in- principle approval from WBERC by the Petitioner. The CEA also opined that the Petitioner was a distribution company embedded in the state grid and fell within the domain of planning by STU, and as such its request for direct connectivity could be processed only with the concurrence of WBSETCL. This has resulted in the Petitioner filing Petition No. 158/MP/2012 and the Commission disposing of the same vide order dated 21.9.2012.

(m) A distribution licensee which was procuring power from various sources to supply power to fulfil its universal supply obligation under section 43 of the Act was connected to the Regional/ State grid at various inter connecting points and such connectivity was to comply with the technical standards made in the above regulations. However, by inadvertence and oversight, the Commission appears to have not taken into account the statutory/ regulatory provisions as per the Connectivity Regulations, 2009 which does not permit a distribution licensee to be granted connectivity with the ISTS, unless specifically so permitted by the concerned STU by way of exception. The same resulted in a mistake which was further repeated by CTU by its compliance. As a regulator and adjudicator under the Act, the mistake is liable to be rectified by this Commission and the Petitioner cannot be permitted to seek any rights or equities based on order passed in clear oversight of plain statutory provisions.

(n) The request of the Petitioner to treat the earlier connectivity application as Debipur at 220 kV level instead of Chalbalpur was discussed in the 10<sup>th</sup> JCC Meeting on 30.9.2016 and the Petitioner was advised to submit fresh application for change in location of point of connectivity. Upon receipt of the said application and considering the statutory/ regulatory provisions, the CTU informed the Petitioner that it was not an eligible applicant in terms of the provisions of the Regulations and accordingly the connectivity application was being enclosed. It was also informed that under clause 2.1 (b) of the Connectivity Regulations 2009 and the detailed procedure, 2009 only generator (other than captive) / captive generator / bulk consumer/ lead generator/ solar park developer are eligible for grant of connectivity and the distribution licensee does not qualify for grant of connectivity to ISTS system as per prevailing regulations.





(o) The rejection of Petitioner's application for grant of connectivity is in accordance with the provisions of the 2003 Act and the regulations framed thereunder by this Commission wherein a distribution licensee is not eligible for grant of connectivity for ISTS. It is a settled legal proposition that there can be no estoppel against statute and the Petitioner cannot claim grant of connectivity based on grant made pursuant to order of the Commission passed in oversight of statutory provisions. An exception could be carved out with respect to the general definition of requestor under Regulation 2(25) of the of the CEA (Technical standards to the connectivity of grid) Regulations, 2017 and the Manual on Transmission Planning Criteria in January 2003.

(p) As the Petitioner's case is squarely not covered under provisions of Connectivity Regulations, the Petitioner may seek to prefer an appropriate plea seeking removal of difficulty of power to relax under the appropriate regulations. Such a plea shall nevertheless have to be duly supported by the recommendations of the concerned STU, in line with the rationale provided in the Manual on Transmission Planning Criteria and in deference to the rationale in the decision of the Commission in Petition No. 526/MP/2015.

8. Accordingly, the Respondent, CTU has submitted that none of the prayers of the Petitioner ought to be granted as the same is ultra vires the provisions of the 2003 Act and the Connectivity Regulations.

9. During the hearing of the Petition on 20.12.2017, the learned counsel for the Petitioner reiterated the submissions made in the Petition and prayed that the reliefs sought for by the Petitioner may be granted. In response, the learned counsel for Respondent, CTU, in addition to its submissions made earlier, reiterated that there is no provision whatsoever in the Connectivity Regulations for grant of connectivity to a distribution licensee and the same is in consonance with the statutory / regulatory scheme of licensee falling within the SLDC control area. The learned counsel further pointed out that the Petitioner cannot claim connectivity based on the Commissions' order dated 21.9.2012 as the same was passed in oversight of statutory provisions. Referring to the Constitution bench judgment of the Hon'ble Supreme Court in A.R.Antulay v/s R.S.Nayak (1988) 2 SCC 602, the learned counsel submitted that the



mistake in the order dated 21.9.2012 is liable to be rectified by this Commission and the Petitioner cannot be permitted to seek any rights or equities based on an order passed in clear inadvertence and oversight of statutory provisions. This was objected to by the learned counsel for the Petitioner. The Commission after directing the Petitioner to file its written submissions reserved its order in the Petition. In compliance with the directions of the Commission, the Petitioner has filed its written submissions on 5.1.2018.

### **Written submissions of Petitioner**

10. The Petitioner in its written submissions has mainly submitted as under:

(a) The Petitioner is a distribution licensee in the State of West Bengal and is seeking connectivity to the ISTS for the purpose of seeking open access to procure power for its consumers.

(b) The application of grant of connectivity was rejected by the respondent for the second time vide their letter dated 24.5.2017 on the ground that the Petitioner is a distribution licensee and therefore is not entitled to connectivity to ISTS under the Connectivity Regulations.

(c) The reason for such rejection is ultra vires the Connectivity Regulations and the 2003 Act. The respondent, CTU is mandated to provide non-discriminatory open access to its consumers, generators and licensees in terms of section 2(47) and 38(2) of the 2003 Act. If individual consumers, generators and bulk consumers are entitled to connectivity in ISTS then equally distribution licensees cannot be deprived of connectivity to ISTS.

(d) PGCIL's interpretation of the Connectivity Regulations seeks to discriminate between the three categories of entities entitled to open access by suggesting that out of the said three categories, only consumers and generators can connect to ISTS for open access but not licensees. This is arbitrary and discriminatory especially when all three entities are part of the same category for the purpose of open access.

(e) The definition of 'applicant' as defined under the Connectivity Regulations, 2009 and as amended in 2010 was duly acknowledged while interpreting the eligibility of applicant for connectivity in Commission's order dated 21.9.2012. It is clear that CTU has misread and is completely misconstruing the definition of applicant in the Connectivity Regulations as interpreted by the Commission.



(f) Even logically, it makes absolutely no sense to disallow a distribution licensee to connect to the ISTS. If a new licensee wants to set up a network in an area, it cannot be told that it must take open access only through STU, even though there is no STU interface available in nearby area. This would virtually amount to CTU restricting open access to such licensee by not allowing such new licensees to connect to the ISTS except through the STU. There is absolutely no warrant for this either in the Act or in any Regulations.

(g) The letter of CTU dated 24.5.2017 which misinterprets the Connectivity Regulations is contemptuous in the face of the Commission's order dated 21.9.2012 and is liable to be quashed. The judgment of the Supreme Court in A.R.Antulay v/s R.S.Nayak (1988) 2 SCC 602 is entirely inapplicable to the facts of the present case for the reason that the Antulay's case dealt with the case where the earlier judgment was obiter dicta

### **Analysis and Decision**

11. We have considered the submissions of the Petitioner and CTU. Petition No. 158/MP/2012 was filed by the Petitioner for directions on the Respondent, CTU for grant of connectivity to ISTS. The Commission by order dated 21.9.2012 had disposed of the said Petition directing as under:

*“15. We direct the CTU to expeditiously process the application of the petitioner for grant connectivity in accordance with Connectivity Regulations and convey its decision to the applicant within two weeks of receipt of this order.*

*16. We further direct the CTU to ensure that the applications for connectivity and long term access and medium term open access is processed and decisions on the applications are conveyed within the timeline specified in the Connectivity Regulations.”*

12. In terms of the above directions of the Commission, the respondent CTU vide letter dated 12.10.2012 had granted connectivity to the Petitioner through LILO of Mejia-Maithon 400 kV at Chalbalpur sub-station of the Petitioner. However, due to land acquisition issues, restricted RoW choices and shifting of demand, the Petitioner had opted for change in location of connectivity from Chalbalpur to Debipur vide letter dated 29.8.2016 and accordingly, requested the Respondent, CTU for modification in grant of connectivity. In response, the CTU on 27.10.2016 cancelled



the connectivity granted to the Petitioner and also directed the Petitioner to file fresh connectivity application. Accordingly, the Petitioner on 18.1.2017 submitted application for connectivity and uploaded the application on the category of bulk consumer as there was no provision in the online system for uploading of application for connectivity by distribution licensees. CTU rejected the application vide its letter dated 12.4.2017. Further, CTU denied the request of the Petitioner to re-consider the closure of its application for connectivity vide letter dated 24.5.2017. The letter dated 24.5.2017 is extracted as under:

*“This is with reference to the closure of connectivity application [S.No. (iii)] on account of ineligibility as an applicant in terms of Connectivity Regulations, 2009. It is an admitted case of India Power Corporation Limited (IPCL) that it is a ‘distribution licensee’ and it has already been communicated [S.No. (ii)] that distribution licensee does not qualify for grant of connectivity under the extant Regulations / procedures.*

*Further, the reliance placed by IPCL on the CERC’s order dated 21.9.2012 in Petition No. 158/MP/2012 is misplaced as there appears to be an error apparent on the face of the record. The Hon’ble Commission appears to have relied upon the definition of an applicant for LTA/ MTOA [i.e. Regulation 2(1)(b)(ii)] instead of the provision for applicant in respect of grant of connectivity [i.e. Regulation 2(1)(b)(i)] (reference may be had to para 11 of the order). In no part of the order, the Commission interpreted or expanded the scope of Regulation 2(1)(b)(i). It is further pointed out that Clause 2(1)(b)(ii) deals with the definition of Applicant in respect of Long Term Access or Medium Term Open Access and is not applicable in respect of grant of connectivity.*

*In view of the above, IPCL’s application is not in conformity with the Regulations and its closure cannot be reconsidered.”*

13. Thus, CTU vide letter dated 24.5.2017 has taken the position that the Petitioner does not qualify for grant of connectivity as it is a distribution licensee and distribution licensee is not eligible for grant of connectivity in terms of Clause 2(1)(b)(i) of the Connectivity Regulations. CTU has further taken the position that there is an error apparent on the face of the record in the order dated 21.9.2012 in Petition No.158/MP/2012 as the Commission appears to have relied upon Regulation 2(1)(b)(ii) which defines an applicant for long term access and medium term open access instead of Regulation 2(1)(b)(i) of the Connectivity Regulations which defines



applicant for connectivity. The Petitioner has submitted that the letter rejecting the application of the Petitioner by CTU is in clear violation of Commission's order dated 21.9.2012 and contrary to the provisions of the Connectivity Regulations apart from being contemptuous in the face of the Commission's order dated 21.9.2012. CTU has submitted that the Commission's order dated 21.9.2012 cannot be made applicable in the present case as the Commission by inadvertence and oversight, appears to have not taken into account the statutory/regulatory position as per the Connectivity Regulations which does not permit a distribution licensee to be granted connectivity with ISTS, unless specifically permitted by the concerned STU by way of an exception. CTU has submitted that the order passed by the Commission in order dated 21.9.2012 in Petition No.158/MP/2012 is by "inadvertence" and "by overlooking" the statutory provisions of the Act and can be rectified by the Commission in the light of the judgment of Constitution bench of the Hon'ble Supreme Court in A.R.Antulay v/s R.S.Nayak (1988) 2 SCC 602. On the contrary, the Petitioner has clarified that the judgment of the Hon'ble Supreme Court in A.R.Antulay's case cannot be made applicable in the present case since the Antulay's case relates to a case wherein the earlier judgment was '*obiter dicta*' which was inadvertently applied to the facts of the case which were completely different and in that context, Hon'ble Supreme Court held that the mistake can be rectified. The Petitioner has further submitted that the CTU had failed to take note of the fact that in Commission's order dated 21.9.2012, the contentions of the CTU that STU's consent was required for the connectivity was specifically recorded in the said order and was rejected by the Commission. Accordingly, the Petitioner has contended that the order dated 21.9.2012 passed by the Commission is neither in 'inadvertence' nor by 'overlooking' the contentions of the CTU. The Petitioner has further stated that the CTU had done nothing about the



order dated 21.9.2012 for the past 5 years and has now taken upon itself the power to review the order of the Commission which is wrong.

14. In our view, the letter of the CTU dated 24.5.2017 refusing to reconsider the connectivity application of the Petitioner on the ground that the order dated 21.9.2012 in Petition No.158/MP/2012 suffers from an error apparent on the face of record is arbitrary and illegal and cannot be sustained due to the following reasons:

(a) The order was passed on 21.9.2012 in Petition No.158/MP/2012. Under Section 94(1)(f) of the Act read with the Regulation 103 of the Conduct of Business Regulations, a party can seek review of the order of the Commission if the conditions of Order 47 Rule 1 of the Code of Civil Procedure are attracted. Further, under section 111(1) of the Act, any person aggrieved by the order of the Commission can prefer an appeal to the Appellate Tribunal for Electricity. CTU has neither preferred the review nor filed the appeal against the said order. Further, the order has not been challenged by any other party, particularly the STU concerned. Therefore, the order has attained finality. All concerned authorities are bound to implement the said order. In fact, the CTU implemented the order and granted connectivity to the Petitioner through LILO of Mejia-Maithon 400 kV line at Chalbalpur 400 kV substation to be constructed by the Petitioner. CTU after a lapse of five years and without exploring the statutory remedies available to it under the Act cannot sit on judgement on the order of the Commission and pronounce that the said order was issued by the Commission in inadvertence and by overlooking the contention of the CTU. In our view, no such power is vested in the CTU under the Act and therefore, the letter dated 24.5.2017 issued by the CTU cannot be sustained in the eyes of law.

(b) CTU has placed reliance on the Constitutional bench judgment of the Hon'ble Supreme Court in Antulay's case and has submitted that in cases where orders passed



by the Courts are not in conformity to the statutory provisions of the rules, etc., the Courts can rectify the said orders. According to the CTU, since the Commission's order dated 21.9.2012 has been passed by 'inadvertence' or by 'overlooking' the statutory provisions of the Connectivity Regulations, the same can be rectified by the Commission. The contentions of the CTU are misplaced. In our view, the judgment of the Hon'ble Supreme Court in Antulay's case would not be applicable to the present case. While in the Antulay's case, the Hon'ble Supreme Court was dealing with an earlier judgment which was passed in violation of fundamental rules & natural justice and without jurisdiction (which was later set aside), in the present case the order dated 21.9.2012 did not suffer from such illegalities and the said order was passed on merits only after considering the contentions of the CTU and the Petitioner and in terms of the provisions of the Connectivity Regulations. Even otherwise, in case the CTU felt that the order dated 21.9.2012 was not in conformity with the said regulations, it could have approached the Commission seeking clarification or review of the said order or approached the Appellate Tribunal in appeal which has not been evidently done.

(c) The Commission after taking into account the provisions of the Connectivity Regulations and the submissions of the parties by order dated 21.9.2012 had directed the CTU to process the application of the Petitioner for grant of connectivity. The relevant portion of the order is extracted as under:

*"13. The petitioner is a distribution company in the state of West Bengal. Therefore, it fulfills the conditions of applicant under Connectivity Regulations and requester as per the CEA Technical Standards Regulations. The petitioner has filed an application for connectivity on 10.5.2011 with CTU for connectivity to the ISTS. In accordance with Regulation 8(2) of the Connectivity Regulations, it is the responsibility of the CTU to carry out necessary inter-connection study in consultation and through coordination with other agencies involved in the inter-State transmission system. The State Transmission Utility is required to be consulted only if the State network is likely to be used for the purpose of connectivity. The Connectivity Regulations leave no scope for consultation with the State Transmission Utility in the matter of grant of connectivity to the inter-State transmission system where the State network is not likely to be used. The petitioner through its application has sought to connect to ISTS directly without using the*





*network of the STU. The sub-station as well as the associated line would be constructed by DPSCL. The petitioner has submitted that as per the connectivity scheme proposed, there will be no interface with the network of WRSETCL. Therefore, we are of the view that contrary to the provisions of the Connectivity Regulations, CTU has been insisting on clearance/concurrence from WBSTCEL who in turn has advised the Petitioner to obtain investment approval from WBERC.*

*14. The purpose of Connectivity Regulations is to facilitate connectivity and long term access and medium term access to the inter-State transmission system. The purpose of the regulations should not be defeated by requiring concurrence of the STU where it has not been provided for in the regulations. In the process, considerable time has been lost and the prescribed time limit has not been complied with. In case of any difficulties, CTU should have approached the Commission for appropriate directions under proviso to clause (1) of Regulation 13 of the Connectivity Regulations. We are not pleased with the manner in which the matter has been handled by CTU and the Standing Committee on grant of connectivity.”*

The argument of the CTU that the Commission’s order has by ‘inadvertence’ overlooked the statutory provisions of the Connectivity Regulations is not correct as the Commission has examined the statutory provisions of the Connectivity Regulations and the submissions of the CTU while passing the said order.

15. We now proceed to examine the other submissions of the parties on merit. While the Petitioner has submitted that it is entitled to be granted connectivity in terms of the Connectivity Regulations and the order dated 21.9.2012 of the Commission, the CTU has contended that in terms of Regulation 2(i) of the Connectivity Regulations, connectivity to ISTS can be granted to a generating station or to a bulk consumer and there is no provision whatsoever in the said Regulations for grant of connectivity to the distribution licensee. It has also argued that while granting connectivity, the no objection of STU is required in case the connectivity grant involves the use of ISTS. Since the distribution licensee is not a permitted applicant for grant of connectivity, the NOC from STU whenever sought is liable to be construed as permission under the January 2003 CEA manual on Transmission Planning Criteria. The CTU has added that the power requirement of a distribution licensee is to be made through the STU to which the licensee is connected or required to be



connected. It has contended that any direct connection with the ISTS being operated by CTU can be permitted for a distribution licensee only in exceptional circumstances and on the recommendations of STU, subject to the distribution licensee continuing as an Intra State entity for the purpose of all jurisdictional matters and revenue accounting. The CTU has further stated that the distribution licensee who is supplying power within his area of supplying to fulfil its universal supply obligation under section 43 is connected to the ISTS of the State in which operating its license, even if operating in an islanded mode, falls within the control area of SLDC and whenever it is desirous of seeking grid connectivity of supply of power within the State, it is amenable to the jurisdiction of STU which is the designated nodal agency for Intra-State Transmission system planning. The Respondent has added that an exception could be carved out with respect to the general definition of 'requestor' under Regulation 2(25) of the CEA (Technical Standards for Connectivity to the Grid) Regulations, 2017 and the Manual on Transmission Planning Criteria in June, 2003. The CTU has referred to the Draft procedure issued by CEA on 9.10.2013 for coordinated planning through the Regional Standing Committee for Power System Planning and the Draft National Electricity Plan issued by CEA in February, 2012 and has submitted that the import export requirements through the ISTS has been envisaged to be within the planning realm of STU and the system strengthening schemes of STU for delivery of power from ISTS grid points upto the level of distribution licensee is also envisaged to be planned by STU. Accordingly, it has submitted that the prayer of the Petitioner for quashing the letter dated 12.4.2017/ 24.5.2017 ought not to be granted as the same is ultra vires the provisions of the 2003 Act and the Connectivity Regulations.



16. The Petitioner on the other hand has contended that there is no mandate for restricting open access to the distribution licensee either under the 2003 Act or under the Regulations made therein, much less the Connectivity Regulations. The Petitioner has further contended that the Connectivity Regulations leave no scope for consultation with the State transmission utility in the matter of connectivity to the ISTS, wherein the state network is not likely to be used. The Petitioner has argued that if individual consumers, generators and bulk consumers are entitled to connectivity to ISTS, then equally distribution licensees cannot be deprived of connectivity to the ISTS. The Petitioner has further contended that the attempt of the CTU to distinguish the Inter-State Transmission from the Intra-State transmission is entirely misplaced and contrary to Section 2(36) of the 2003 Act which provides that the conveyance of electricity within the State which is incidental to Inter-State transmission forms part of the Inter-State transmission system. Hence, if the Petitioner was connected to the ISTS, any transmission of power within the territory of State of West Bengal by reason of such connectivity, it would be ISTS. It has stated that the CEA Manual on Transmission Planning relied upon by CTU cannot override the Regulations framed by the Commission under section 178 of the 2003 Act. Also, the Connectivity Regulations framed by the Commission do not provide for any concurrence of the STU if an entity is not getting connected to the State grid. In this background, the Petitioner has prayed that the letter of CTU dated 24.5.2017 rejecting the connectivity application may be quashed and the CTU may be directed to grant connectivity to the Petitioner in a time bound manner.

17. We have examined the contention of the parties. Section 38 of the Act deals with function of the Central Transmission Utility and Section 39 deals with the function of the State Transmission Utility. Both the Sections are extracted as under:



**“Section 38. Central Transmission Utility and functions: ---- (1) The Central Government may notify any Government company as the Central Transmission Utility:**

*Provided that the Central Transmission Utility shall not engage in the business of generation of electricity or trading in electricity:*

*Provided further that the Central Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity of such Central Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as a transmission licensee, through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.*

**(2) The functions of the Central Transmission Utility shall be -**

**(a) to undertake transmission of electricity through inter-State transmission system;  
(b) to discharge all functions of planning and co-ordination relating to inter-State transmission system with -**

**(i) State Transmission Utilities;**

**(ii) Central Government;**

**(iii) State Governments;**

**(iv) generating companies;**

**(v) Regional Power Committees;**

**(vi) Authority;**

**(vii) licensees;**

**(viii) any other person notified by the Central Government in this behalf;**

**(c) to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres;**

**(d) to provide non-discriminatory open access to its transmission system for use by-**

**(i) any licensee or generating company on payment of the transmission charges; or**

**(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:**

*Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:*

*Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the Central Commission: Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:*

*Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.*

**Section 39. State Transmission Utility and functions: (1) The State Government may notify the Board or a Government company as the State Transmission Utility:**



*Provided that the State Transmission Utility shall not engage in the business of trading in electricity:*

*Provided further that the State Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.*

*(2) The functions of the State Transmission Utility shall be -*

*(a) to undertake transmission of electricity through intra-State transmission system;  
(b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with -*

*(i) Central Transmission Utility;*

*(ii) State Governments;*

*(iii) generating companies;*

*(iv) Regional Power Committees;*

*(v) Authority;*

*(vi) licensees;*

*(vii) any other person notified by the State Government in this behalf;*

*(c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;*

*(d) to provide non-discriminatory open access to its transmission system for use by-*

*(i) any licensee or generating company on payment of the transmission charges ; or*

*(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:*

*Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:*

*Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:*

*Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission:*

*Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.”*

18. It is clear from the above sections that both CTU and STU have been vested with the functions of planning and coordination relating to inter-State transmission system and intra-State transmission system respectively. While carrying out the functions of planning and coordination, both CTU and STUs are required to consult the licensees



which include distribution licensees. Further, both CTU and STU have been vested with the responsibility to ensure development of efficient, coordinated and economical system of transmission lines for smooth flow of electricity from the generating station to the load centres. Load Centres are the sub-stations of the distribution licensees which serve the load of a cluster of consumers of distribution licensees. Both CTU and STUs are also under obligation to provide non-discriminatory open access to their transmission system for use by any licensee or generating company or any consumer subject to the open access granted by the State Commission under section 42(2) of the Act. Thus, the functions of the CTU and STU are complementary to each other and the purpose of both is to ensure smooth flow of electricity from the generating stations to the load centres. Given their statutory responsibility to facilitate smooth flow of electricity from the generating station to the load centre, both CTU and STU shall have to work in tandem in order to achieve their common objectives under the Act. If the CTU network is located near to the load centre and connectivity to the ISTS would result in development of efficient, coordinated and economical transmission system, then connectivity to ISTS cannot be denied to a distribution licensee.

19. CTU has contended that Regulation 2(1)(b)(i) does not permit connectivity to a distribution licensee. Regulation 2(1)(b) dealing with definition of applicant for connectivity and long term access/medium term open access defines 'applicant' as under:

*“Applicant” means*

*(i) Generating station of installed capacity 250 MW and above, including a captive generating plant of exportable capacity of 250 MW and above or a bulk consumer in respect of grant of connectivity and*

*(ii) a generating station including a captive generating plant, a consumer, an Electricity Trader or a distribution licensee, in respect of long-term access or medium-term open access , as the case may be;*



20. The Commission was aware that Regulation 2(1)(b)(i) did not include a distribution licensee as applicant. The Commission therefore considered Regulation 2(25) of the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 which defined the term 'requester' for connectivity to include 'distribution licensee'. Accordingly, the Commission in its order dated 21.9.2012 had interpreted the provisions of Regulation 2(1)(b) of the Connectivity Regulations and the definition of the term 'requester' which included the distribution licensee and came to the conclusion that a distribution licensee cannot be denied connectivity to ISTS. Further, the Commission considered the provisions of Regulation 12 of the Connectivity Regulations in the context where the consultation with STU is required. As per Regulation 12, STU is required to be consulted for long term access if the system of STU is used. In the same analogy, the Commission decided that if the transmission system of STU is not used, there is no requirement for consultation with STU. Accordingly, the Commission allowed the prayer of the Petitioner and directed the CTU to grant connectivity. The Petitioner has made a fresh application for connectivity from the new location as advised by CTU and the said application for connectivity should have been considered by the CTU in the light of our decision in Petition No.158/MP/2012. We would also like to place on record that the Commission is displeased with the manner in which the present case has been handled by the CTU.

21. The Petitioner has submitted that the current distribution system of the Petitioner is independent of the CTU and draws power in radial mode through four 33 /11 kV sub-stations from DVC, four 33/11 kV from WBSEDCL and through its 220/33 kV sub-station at JK Nagar to meet its requirement of serving distribution area. It is pertinent to mention that the Appellate Tribunal for Electricity in its judgment dated





23.11.2007 in Appeal Nos. 271, 272, 273, 275 of 2006 & 8 of 2007 (DVC v/s CERC & ors) has held as under:

*“109. It may be mentioned that the definitions of ‘inter-State transmission system’ and ‘intra-State transmission system’ as given in Section 2(3) are identical to Section 2(gb) of Indian Electricity Act, 1910, Section 2(e) of Electricity Regulatory Commission Act, 1998 and Section 2(gc) of Indian Electricity Act, 1910 respectively. The term ‘transmission lines’ as defined in Section 2(72) of the Act is para-materia to the definition of “Main transmission lines” provided in Section 2(7) of The Electricity (Supply) Act, 1948.*

*110. Taking an integrated view of the above provisions and applying them to the instant case, it is clear that any ‘transmission line’ i.e. high pressure (HT) Cables and overhead lines (HT), excluding the lines which are essential part of distribution system of a licensee (WBSEB and JSEB as the case may be), used for the conveyance of electricity from a generating station owned by DVC and located in the territory of one State (either State of West Bengal or Jharkhand) to generating station or a sub-Station located in the territory of another State (either in the State of Jharkhand or West Bengal) together with any step-up and step down transformer, switch gear and other works necessary to and used for the control of such cables or overhead lines and such building or part thereof as may be required to accommodate such transformers, switch-gear and other works shall constitute the “Inter-State Transmission system” of DVC. Further, the transmission segments from the generating Stations to HT Consumers located in the same territory of a State are deemed ‘dedicated transmission lines’ and are to be maintained and operated by DVC.*

*111. DVC has been supplying power from its generating stations to West Bengal Electricity Board and Jharkhand Electricity Board along with nearly 120 HT-Consumers either through inter-state transmission lines or through the point-to-point ‘dedicated transmission lines’. We, therefore, conclude that all transmission systems of DVC be considered as unified deemed inter-state transmission system, insofar as the determination of tariff is concerned and as such regulatory power for the same be exercised by the Central Commission.”*

The Petitioner is already connected to the ISTS as the transmission of DVC has been declared as ISTS. There is no reason, why the Petitioner should be disallowed to be connected to the ISTS of PGCIL.

22. In view of the above discussions, we set aside the letter of the CTU dated 24.5.2017 and direct the CTU to grant the Petitioner connectivity to the ISTS within two weeks of receipt of this order.

23. Petition No. 168/MP/2017 is disposed of with above directions.

**-Sd/-**  
**(Dr. M.K.Iyer)**  
**Member**

**-Sd/-**  
**(A.S.Bakshi)**  
**Member**

**-Sd/-**  
**(A.K.Singhal)**  
**Member**

