

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 20/RP/24
in
Petition No. 114/MP/2023**

**Coram:
Shri Jishnu Barua, Chairperson
Shri Ramesh Babu, Member
Shri Harish Dudani, Member**

Date of Order: 30th September, 2024

In the matter of:

Petition for review of Order dated 30.04.2024 passed in Petition No. 114/MP/2023 under Section 94(1)(f) & Section 94(2) of the Electricity Act, 2003, read with Regulation 52(2) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 and Section 114 read with order 47 Rule 1 of the Code of Civil Procedure, 1908.

And

In the matter of

Central Transmission Utility of India Limited,
Plot No. 2, Near IFFCO Chowk Metro Station,
Sector 29, Gurugram-122001 Haryana

.....**Review Petitioner**

Vs

1. Soltown Infra Private Limited,
R-1, Off No. - 1, Shree S Mohar Plaza,
Yudhistir Marg, C-Scheme, Jaipur- 302001, Rajasthan

2. Mr Rahul Gupta
R-1, Off No. - 1, Shree S Mohar Plaza,
Yudhistir Marg, C-Scheme, Jaipur- 302001, Rajasthan.

3. Mr Arunabh Mohanty
R-1, Off No. - 1, Shree S Mohar Plaza,
Yudhistir Marg, C-Scheme,
Jaipur- 302001, Rajasthan

..... **Respondents**

The following were present:

Shri M.G. Ramachandran, Sr. Advocate, CTUIL
Shri Alok Shankar, Advocate, CTUIL
Shri Kumarjeet Ray, Advocate, CTUIL
Shri Swapnil Verma, CTUIL
Ms. Priyansi Jadiya, CTUIL
Ms. Kavya Bhardwaj, CTUIL
Shri Sanjay Sen, Sr. Advocate, SIPL
Shri Parinay Deep Shah, Advocate, SIPL
Ms. Shikha Ohri, Advocate, SIPL
Shri Kartik Sharma, Advocate, SIPL
Ms. Ritika Singh, Advocate, SIPL

ORDER

The Review Petitioner, Central Transmission Utility of India Limited (hereinafter referred to as “CTUIL”) has filed the present Review Petition under Section 94 (1)(f) of the Electricity Act, 2003 (hereinafter referred to as “the Act”) read with Regulation 52 (2) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 seeking review of the order dated 30.4.2024 in Petition No. 114/MP/2023 (hereinafter referred to as ‘Impugned order’) along with the following prayers:

“(a) *Admit the present Review Petition;*

(b) *Review, modify, and rectify the errors crept in the judgment dated 30.04.2024 passed in Petition No. 114/MP/2023;*

(c) *Pass any further other order(s) as this Commission may deem fit in the facts and circumstances of the present case.”*

Background of the case

2. The Respondents, Soltown Infra Private Limited (Soltown) and its Directors, Mr. Rahul Gupta & Mr. Arunabh Mohanty, jointly had filed Petition No. 114/MP/2023 praying to set aside the CTUIL’s letter dated 23.3.2023 whereby Soltown and its Directors were blacklisted from applying for and obtaining connectivity or open access with CTUIL for a period of 3 years. Further, the Respondents had also prayed for the quashing of CTUIL’s second revocation letter dated 5.4.2023 and direction to CTUIL to permit them to covert the 675 MW Connectivity, initially granted under Connectivity Regulations, 2009, to Connectivity in compliance with the GNA Regulations. The Commission, in its Impugned order dated 30.4.2024, had observed that CTUIL had revoked the subsequent 675 MW Connectivity granted to SIPL vide its letter dated 05.04.2023 without the issuance of any show cause notice. Further,

no opportunity was given to Soltown to be heard with respect to any infirmity in the said 675 MW Connectivity Applications before the issuance of the revocation letter dated 5.4.2023. Further, the Petitioner was a Connectivity grantee for 675 MW as of 5.4.2023 who had already entered into a Transmission Agreement with CTUIL and carried rights under the Connectivity Regulations, 2009, and the GNA Regulations to transition its Connectivity under the GNA Regulations. Therefore, the revocation of 675 MW Connectivity vide letter dated 5.4.2023 was not in order, and accordingly, the revocation letter dated 5.4.2023 was set aside. The Commission also directed CTUIL to allow the Petitioner to convert the 675 MW Connectivity, initially granted under the Connectivity Regulations, 2009, to Connectivity in compliance with the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022.

3. Being aggrieved by the Commission`s order dated 30.4.2024, the Review Petitioner has preferred the present Review Petition.

Submission of the Review Petitioner

4. The Review Petitioner has mainly submitted as under:

(a) There are errors apparent on the face of the record qua the findings on this Commission in relation to the 675 MW Stage-II connectivity grants and need to be reviewed. Further, it is also pertinent to note that as already pointed out in pleadings in Petition No. 114/MP/2023, the Stage-II Connectivity Applications for the 675 MW were themselves deficient. In terms of the Revised Procedure notified by the CERC, there were two milestones that had to be achieved by an entity applying for Stage-II Connectivity in terms of Clause 9.2.2 of the Revised Procedure. Firstly, ownership or lease or land use rights for 50% of the land required for the capacity of Stage-II

Connectivity. Secondly, financial closure of the project or release of at least 10% of the project cost, including land acquisition cost through equity.

(b) It is pertinent to note that in terms of Form No. AOC-4 filed by Soltown in terms of Section 137 of the Companies Act, 2013, for FY21-22 (latest filed financial statements of Soltown available in the public domain), the authorized share capital of Soltown is Rs. 1,00,000 /- and the total equity share capital of Soltown is Rs. 1,00,000/-. When the authorized share capital itself is merely Rs. 1,00,000/-, under no circumstance can the project cost being released in equity on fulfilment of the condition specified be above the authorized share capital of Rs. 1,00,000/-. Therefore, the eligibility criteria for 675 MW applications are not satisfied as the cumulative total project cost for the same emanating from the Chartered Accountant's certification submitted along with the Stage-II Connectivity Application is Rs. 24,50,00,000 /-. Hence, to satisfy the eligibility criteria in terms of the Revised Procedure, Soltown was obligated to release at least Rs. 2,45,00,000 in equity.

(c) Therefore, there is an error apparent on the face of the record with regard to the submissions pertaining to the 675 MW connectivity applications. The Commission while recording the discrepancies in the 675 MW connectivity applications, has not passed any finding on the same. The Commission passes a finding on the said issue in the present proceeding as it is evident and clear that the substratum of the present 675 MW connectivity is itself fraudulent.

(d) In the present matter, the revocation of the 675 MW connectivity, as granted under the Connectivity Regulations, 2009, was only done as CTUIL, after blacklisting Soltown, could not have entered into new agreements with

them. It was due to this reason that the Revocation Letter was at all issued, and the Revocation Letter was merely consequential to the blacklisting of Soltown.

(e) Once the decision was taken to blacklist after examining the evidence against the Respondents and affording them a due hearing, there was no question of entertaining any further application or permitting the applicant to enjoy the fruits of its deliberate misconduct. Therefore, in terms of Regulation 37.2 of the GNA Regulations, the law on commercial freedom of government instrumentalities and blacklisting, CTUIL was required to revoke the 675 MW connectivity and offer it to entities who are in a position to utilize it to evacuate the power.

5. Subsequently, the Review Petitioner vide its affidavit dated 24.7.2024 informed the Commission that on 28.5.2024, CTUIL issued a show cause notice to Soltown in light of the irregularities observed in the financial credentials (CA certificates) submitted under 3 nos. of Stage-II Connectivity applications – 200MW, 350MW and 125MW [cumulative for 675MW] to CTUIL to satisfy the requirements of Connectivity Regulations/Procedure. Pertinently, these shortcomings were also highlighted by the Review Petitioner in the proceedings in Petition No. 114/MP/2023 without any adequate response on behalf of Soltown. The Respondent, Soltown, vide its show cause`s reply dated 21.6.2024, submitted certain additional facts. The new information and documents submitted by Soltown, *inter alia*, pertained to the sufficiency of the “authorized and paid-up equity share capital” of SIPL at the time of application. Upon additional independent examination and inquiry by CTUIL, including from the relevant details/documents available on the websites of the Ministry of Corporate Affairs and Zaubra Corp, and the evaluation of Soltown’s

675MW connectivity application on the basis of the practice, procedure, and standards which were employed in the scrutiny of applications by CTUIL at the time of the subject applications [with due consideration to principles of parity], it has been observed that the connectivity applications may be considered to be generally in compliance with the CERC Regulations/Revised Procedure. In pursuance of the above, CTUIL, vide its letter dated 24.7.2024 formally closed the show-cause proceedings initiated against Soltown. The Review Petitioner has submitted that in terms of the record of proceedings dated 21.8.2023, the 675MW capacity was reserved and has not been allocated to any other entity. The aforesaid capacity allocation shall be in terms of the final directions of the Commission in the present Review Petition.

Hearing dated 9.9.2024

6. During the course of the hearing, learned senior counsel for the Review Petitioner submitted that subsequent to the filing of the present Review Petition, the Show Cause proceedings in connection to the 675 MW connectivity have been closed, and connectivity to this extent has also been granted to Respondent, Soltown. Learned senior counsel further submitted that in the order dated 30.4.2024, the Commission *inter alia* also has observed that in view of the new dispensation under the GNA Regulations, a grant of connectivity automatically entitled the grantee to GNA or access to the ISTS network. However, the process of transition of the Stage II connectivity issued under the Connectivity Regulations, 2009 to connectivity under the GNA Regulations under Regulation 37 thereof may not be an “automatic” process. Learned senior counsel, accordingly, urged that the Commission may consider keeping the said question open for determination in another appropriate proceeding. Learned senior counsel for the Respondent, SIPL, submitted that the Respondent, as such, has no objection to keeping the above legal issue open for

determination in an appropriate case as prayed for by CTUIL. After hearing the learned senior counsel and learned counsel for the parties, the order was reserved on the Review Petition.

Analysis and Decision

7. The Review Petitioner, CTUIL, has filed the present Review Petition primarily on the ground that CTUIL was prevented from entertaining a new application for the transition of Stage-II Connectivity (without any implied rights for access to ISTS) to “Connectivity” in terms of the GNA Regulations, 2022 (with inherent rights for access to ISTS) as the Respondent was a blacklisted entity. The Review Petitioner has submitted that a connectivity grantee has entitlements under the GNA Regulations which were not contemplated under the Connectivity Regulations, 2009. The GNA Regulations have broadened the rights of connectivity grantees to include access. In terms of the GNA Regulations and the Detailed Procedure, the transition of a connectivity grant from the Connectivity Regulations to the GNA Regulations is not an automatic process. The requirements for transition under the GNA Regulations require compliances that are not ministerial. The Review Petitioner has submitted that since the connectivity of 675 MW granted to Soltown is proposed to be transitioned to connectivity under the GNA Regulations, the question has become academic for the present matter. However, the findings of the Commission may become a precedent for certain connectivity grantees who have still not transitioned to the GNA Regime. Therefore, the Commission may keep the question of law ‘Whether a connectivity grantee under the Connectivity Regulations has a vested right to be transitioned to the status of connectivity grantee under the GNA Regulations’ open, which may be adjudicated in a dispute raising relevant facts. Accordingly, the Review Petitioner may be disposed of. The Review Petitioner has

submitted that all other issues raised in the Review Petition have been rendered infructuous and are not being pressed for adjudication.

8. We have considered the submissions made by the Review Petitioner, CTUIL, and the Respondent, Soltown. Pending the present Review Petition, since the Show Cause Proceedings in connection to the 675 MW connectivity have already been closed and the said connectivity is to be transitioned to the connectivity under the GNA Regulations, CTUIL has stated that issues raised in the present Review Petition have been rendered infructuous and are not being pressed for adjudication. CTUIL has, however, also prayed that the question of law, i.e., Whether a connectivity grantee under the Connectivity Regulations has a vested right to be transitioned to the status of connectivity grantee under the GNA Regulations, be kept open for adjudication in a dispute raising a relevant fact and subject to this the instant Review Petition may be disposed of. On the other side, Soltown has also not opposed or objected to the above submission of CTUIL.

9. We have perused our directions in Order dated 30.4.2024 in Petition No. 114/MP/2023 which provides as follows:

“43. On the above aspect, we observe that the 675 MW Stage-II Connectivity was already subsisting as on the date of issuance of the blacklisting letter dated 23.03.2023, and accordingly, it cannot be termed as a fresh Connectivity. In this regard, the relevant provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 is as under:

“37.2. If Connectivity has been granted but Long Term Access has not been granted in accordance with the Connectivity Regulations, 2009 and Connectivity is yet to become effective as on the date of coming into effect of these regulations, the same shall be treated as under:

(a) The entity shall have the option of, either (i) to convert the Connectivity granted under the Connectivity Regulations, 2009 as Connectivity made under these Regulations complying with the requirements under these regulations, or (ii) to surrender such Connectivity.

(b) Such option under clause (a) of this Regulation shall be exercised by the applicant within one month of coming into effect of these Regulations, failing which the Connectivity granted under the Connectivity Regulations, 2009 shall be considered as surrendered.

(c) In case the Connectivity is surrendered in terms of option (ii) of clause (a) of this regulation or clause (b) of this regulation, Conn-BG1 and Conn-BG2, if any, furnished under the Connectivity Regulations, 2009 shall be returned.

Provided that in case the construction of terminal bay has been awarded for implementation under ISTS through CTU, Conn-BG2 furnished under the Connectivity Regulations, 2009 shall be encashed.

(d) In case, the entity exercises the option to convert the Connectivity granted under the Connectivity Regulations, 2009 as Connectivity under these Regulations in terms of option (i) of clause (a) of this regulation, the Nodal Agency shall, within next 30 days, intimate the amount of Conn-BG1, Conn-BG2 and Conn-BG3, to be paid by such entity in terms of Regulation 8 of these regulations, after adjusting bank guarantee, if any, paid by such entity under the Connectivity Regulations, 2009.

(e) Conn-BG1, Conn-BG2 and Conn-BG3 shall be furnished by the entity within two (2) months of intimation under clause (d) of this Regulation.

(f) On furnishing of Conn-BG1, Conn-BG2 and Conn-BG3 under clause (e) of this Regulation, existing agreements between the entity and the Nodal Agency shall be aligned with provisions of Regulation 10.3 of these regulations.

(g) On alignment of existing agreements under clause (f) of this Regulation, the entity shall become Connectivity grantee for all purposes under these regulations.

....”

As per the above provisions of the GNA Regulations 2022, if the Connectivity has been granted but Long Term Access has not been granted in accordance with the Connectivity Regulations, 2009, and the entity exercises the option to convert its Connectivity under GNA Regulations, on furnishing of Conn-BG1, Conn-BG2, and Conn-BG3, the existing agreements between the entity and the Nodal Agency shall be aligned with provisions of GNA Regulations and on the alignment of existing agreements, the entity shall become Connectivity grantee. Therefore, in terms of the GNA Regulations, the Connectivity granted to an existing connectivity grantee under Connectivity Regulations cannot be termed as fresh connectivity, but it is to be aligned as per GNA Regulations. As per the quoted guidelines for blacklisting by different Govt. organizations, blacklisting issued against any agency shall not override the rights of such agency already engaged in executing any other contract(s) till its completion, which implies blacklisting works for future contracts post - blacklisting and not on current contracts.”

As per the above, it was observed that the connectivity granted in accordance with the Connectivity Regulations, 2009, needs to be aligned with provisions of the GNA Regulations, and on the alignment of existing agreements, the entity shall become a connectivity grantee and, therefore, in terms of the GNA Regulations, the connectivity granted to an existing connectivity grantee under Connectivity Regulations cannot be termed as fresh connectivity, but it is to be aligned as per the GNA Regulations.

10. It is clarified that the issues raised by the review petitioner regarding “automatic conversion” or “a grant of connectivity automatically entitled the grantee to GNA or access to the ISTS network”, have not been decided in Order dated 30.4.2024 in Petition No. 114/MP/2023. Hence, the submissions of the Review Petitioner to keep the above question of law open for adjudication in another proceeding do not survive.

11. In light of the above, the Review Petition No. 20/RP/2014 is disposed of as infructuous.

Sd/-

(Harish Dudani)
Member

sd/-

(Ramesh Babu V.)
Member

sd/-

(Jishnu Barua)
Chairperson