

the said purposes, CTUIL, as per Section 38(2)(b) of the Act, is mandated to coordinate with various entities including CEA, licensees and the generating companies.

(u) In pursuance of mandate of Section 38(2)(b) of the Act, CTUIL conducts various coordination meetings with all stakeholders for the purposes of implementing a new transmission system as well as augmentation of the existing Inter-State Transmission System (ISTS) network, apart from granting and operationalizing LTA, MTOA and STOA. Further, CTUIL also considers the inputs provided by the CEA and the generating companies. This is required for fulfilling the mandate of Section 38(2)(c) of the Act which requires that CTUIL has to ensure the development of an efficient, “coordinated” and economical system of ISTS lines for smooth flow of electricity from generating stations to the load centers.

(v) The development of the transmission corridors has to necessarily be done by CTUIL in consonance with the statutory mandate contained in Section 38(2)(b) and Section 38(2)(c) of the Act, inasmuch it has to take a holistic view and ensure that the transmission system to be developed would be efficacious or purposeful and commensurate with the ground realities concerning generating companies, amongst others.

3. The Petition was listed for hearing on admission on 24.5.2022 through virtual hearing. In response to the specific query of the Commission with regard to the relevant provisions of LTA agreement under which the relief(s) has been sought by the Petitioner and consequently the admissibility of the Petition, the Petitioner relied upon the Section 38 of the Act under which CTUIL is required to discharge the functions of planning and co-ordination relating to ISTS with the generating companies, amongst others. The Petitioner also relied upon the Notification issued by the Ministry of Power in regard to deferment of the LTA operationalization in the event of extension of SCOD of the Project on account of force majeure events. After hearing the parties, the

Commission directed the parties to file their arguments and reserved the order on admissibility.

4. The Petitioner, in its written submission dated 01.06.2022 on the admissibility of the Petition, has submitted as under :

(a) The Commission has already admitted a catena of cases wherein a similar issue of deferment LTA was the subject matter of the said cases. As such, the Petitioner in the present case, is a similar placed solar power generator, and there cannot at all be any differential treatment to the case of the Petitioner.

It is a settled principle of law that a court is bound by its own earlier orders. The reliance is placed on the judgment of the Hon`ble Supreme Court in the cases of Sub-Inspector Rooplal v. Lt. Governor, reported in [(2000) 1 SCC 644], and Govt. of A.P. v. A.P. Jaiswal, reported in [(2001) 1 SCC 748].

It is settled principle of law that a court has to grant parity/ similar treatment to the cases involving similar/ identical issues. In this regard, reference is made to the judgments of the Hon`ble Supreme in the cases of Birla Corpn. Ltd. v. CCE, reported in [(2005) 6 SCC 95] and Indian Oil Corpn. Ltd. v. CCE, reported in [(2007) 13 SCC 803]

(b) The Commission, being a court of first instance, is bound under law, to decide the present case on merits, as both jurisdiction and jurisdictional fact are in existence. Accordingly, this Commission needs to admit the present petition, and provide opportunity to the parties to file their respective pleadings.

(c) In the present case, the issue relates to deferment/ extension of operationalization of Long Term Open Access (LTA) granted to the Petitioner by CTUIL for the purpose of use of 'inter-State transmission system' of electricity. This means that this Commission has to 'regulate' the 'usage' of inter-State transmission system of CTUIL, which is a deemed transmission licensee, in terms of 2nd proviso of Section 14 of the Act.

Further, the Petitioner has alleged a dispute against CTUIL, that the said Authority is not deferring/ extending the operationalization of LTA and that it

cannot levy any transmission charges, as the Scheduled Commercial Date (SCOD) of the Petitioner is to be extended. Such extension is being sought based on the default committed by SECI [and the Distribution Licensees (TPDDL and BYPL)] in seeking necessary regulatory approval of the PSAs. As such, CTUIL, has to necessarily perform its functions of planning and coordination envisaged under Section 38 of the Act. Whether CTUIL has performed the said functions or not, is a matter which can only be decided upon adjudicating the present petition on merits, and that the same cannot be a ground of denial of admission or maintainability. Thus, the aforesaid means that there is a 'dispute' raised by the Petitioner, based on facts, which fulfils the existence of "jurisdictional fact" / valid cause of action for adjudicating the present petition on merits, under section 79(1)(f), read with section 79(1)(c) of the EA, 2003. In this regard, reliance has been placed on the judgment of the Hon`ble Supreme Court in the cases of Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, [reported in (2004) 9 SCC 512] and Ponnala Lakshmaiah v. Kommuri Pratap Reddy,[reported in (2012) 7 SCC 788]

(d) The Commission vide order dated 28.05.2022 in Petition No. 205/MP/2021, in the case of NTPC Ltd. v. Uttar Pradesh Power Corporation Limited & Ors., held that when a 'cause of action' is established in a petition, then the same is maintainable/ admissible before this Commission.

(e) Whether there exists a provision under the LTA Agreement for deferment/ extension of the operationalization of LTA, is 'immaterial' as far as jurisdiction of this Commission is concerned. The jurisdiction is conferred by the Act, which under Section 79(1)(c) grants enough regulatory powers to this Commission for deferring/ extending the operationalization of LTA, despite there being no provision under the Agreement.

(f) Surely, CTUIL or anyone else cannot argue that since the LTAA does not have any provision for deferment/ extension, even this Commission does not have the power to grant the said relief, when Section 79(1)(c) of the Act has been inserted by the Parliament/ legislature. A narrowly worded contract cannot prevent exercise of regulatory powers by this Commission in a dispute involving inter-State transmission.

(g) Initially, the Petitioner filed a combined petition [seeking extension of SCOD and deferment / extension of the operationalization of LTA], being Petition No. 192/MP/2021. Vide ROP dated 06.10.2021, this Commission granted liberty to the Petitioner to file a separate petition seeking aforesaid deferment of LTA, thereby resulting into filing of the present Petition. Pursuant to the said liberty granted by the Commission, once the present Petition is filed, it cannot be held that the same is not maintainable/ not admissible. Whether, finally the Petitioner succeeds or loses in the present case, the same cannot deny the right to be heard on merits, especially by a court of first instance, such as this Commission.

(h) The Petitioner relies upon a settled tenet of law that a quasi- judicial body being a creature of a statute, is bound to exercise its jurisdiction in conformity with the said statute. In this regard, the judgments of the Hon'ble Supreme Court are relevant in the cases of N.C Dhoundial v. Union of India reported in [(2004) 2 (SCC) 579], and Kuntesh Gupta v. Hindu Kanya Mahavidyalaya, [(1987) 4 SCC 525].

5. CTUIL, in its written submission dated 14.06.2022 has submitted as under :

The issue regarding synchronisation/alignment of date of LTA with SCOD has been deliberated and adjudicated by this Commission in its Order dated 23.05.2022 in Petition No. 525/MP/2020 (*Spring Renewable Energy Private Limited v. Central Transmission Utility of India Limited & Anr.*).

(a) Previous similar Petitions seeking deferment/alignment of LTA were admitted because the issue of deferment/alignment of LTA was under the considerate adjudication of the Commission. However, consequent to final adjudication on the issue by the Commission in Petition No. 525/MP/2020, the issue stands settled and the contention of the Petition regarding parity is misplaced and does not survive.

(b) During the hearing dated 24.05.2022, the Petitioner had sought to rely upon the provisions of Sections 38 Act to justify the admissibility of the Petition contending that under Section 38 of the Act, CTUIL is required to discharge the

functions of planning and co-ordination relating to ISTS with the generating companies, amongst others.

(c) CTUIL is obligated to administer the LTA and its grant (including LTA start date) as per the provisions of the Act/Connectivity Regulations and Detailed Procedure.

(d) In the entire regulatory scheme of connectivity and LTA grant, the relevant consideration, *inter alia*, was the transmission system availability as per the LTA commencement date indicated in the LTA application. The power purchase arrangements of the LTA grantee and the project SCOD i.e. the date from when the power sale/purchase obligations and arrangements under the executed PPA are to commence, are not the underlying considerations and CTUIL has no privity of contract whatsoever with the power purchaser and/or the project implementing agency, if any. Any request for extension of SCOD by the Petitioner made to SECI is an issue inter-se between the Petitioner and its beneficiaries. As per the terms of the LTA Agreement and the Regulations of this Commission, there is no provision to extend the start date of LTA on any such account.

Analysis and Decision

6. We have considered the submissions of the parties. The Petitioner has primarily sought extension/ deferment of operationalization of the Long-Term Access (LTA) granted to the Petitioner vide LTA Agreement dated 26.11.2019 and Supplementary LTA Agreement dated 21.09.2021, till the actual SCOD/ COD is achieved by the Petitioner.

7. During the hearing dated 24.5.2022, the Commission reserved the order on admissibility of the Petition. In support of the admissibility of the Petition, the Petitioner has contended that the Commission has already admitted a catena of cases wherein a similar issue of deferment LTA was the subject matter of the said cases is bound

under law, to treat the Petitioner similarly. Therefore, there cannot at all be any differential treatment to the case of the Petitioner as it is a settled principle of law, a court is bound by its own earlier orders.

8. The Petitioner has contended that there is a 'dispute' raised by the Petitioner, based on facts, which fulfils the existence of "jurisdictional fact" / valid cause of action for adjudicating the present Petition on merits, under Section 79(1)(f), read with Section 79(1)(c) of the Act.

9. *Per contra*, CTUIL has submitted that earlier, similar Petitions seeking deferment/alignment of LTA were admitted, because the issue of deferment/alignment of LTA was under the considerate adjudication of the Commission. However, consequent to the final adjudication on the issue by the Commission in Petition No. 525/MP/2020, the issue stands settled and the contention of the Petitioner regarding parity is misplaced and does not survive. CTUIL has further stated that it has no privity of contract whatsoever with the power purchaser and/or the project implementing agency, if any. Any request for extension of SCOD by the Petitioner made to SECI is an issue inter-se between the Petitioner and its beneficiaries. In the LTA Agreement and the Regulations of Commission, there is no provision to extend the start date of LTA on any such account.

10. Based on the submissions made by the Petitioner, as also endorsed by CTUIL, it is apparent that the Commission has admitted similar matters pertaining to deferment of LTA in the past. The Petitioner has furnished the details of such cases, namely ,Petition No. 79/MP/2022 - Masaya Solar Energy Private Limited (MSEPL) v. Solar Energy Corporation of India Limited (SECI) and Ors., Petition No. 107/MP/2021 - AP Avikiran Solar India Private Limited v. Power Grid Corporation of India Limited, Petition No. 21/MP/2019 - Adani Renewable Energy Park Rajasthan Limited v. Fatehgarh-Bhadla

Transmission Limited (FBTL) and Anr., Petition No. 107/MP/2021-AP Avikiran Solar India Private Limited v. Power Grid Corporation of India Limited, Petition No.269/MP/2017- Korba West Power Company Limited v. Power Grid Corporation of India Limited and Ors., Petition No. 21/MP/2019- Adani Renewable Energy Park Rajasthan Limited v. Fatehgarh-Bhadla Transmission Limited (FBTL) and Anr.,Petition No. 103/MP/2021- ACME Deoghar Solar Power Pvt. Ltd. & Ors. v. Power Grid Corporation of India Ltd. & Ors. and Petition No. 525/MP/2020 - Sprng Renewable Energy Private Limited (SREPL) v. Power Grid Corporation of India Limited and Anr

11. CTUIL has contended that consequent to the final adjudication on the issue by the Commission in Petition No. 525/MP/2020, the issue stands settled and the contention of the Petitioner regarding parity is misplaced and does not survive. We have considered the rival submissions. We are of view that the petition needs to be heard on merit as well.

12. Accordingly, the Petition is 'admitted'. The Respondents are directed to file their replies on merits, on or before 31.8.2022, after serving copy to the Petitioner who shall file its rejoinders, by 15.9.2022. The parties shall ensure the completion of pleadings within the due date mentioned. No extension of time shall be granted for any reason.

13. The Petition shall be listed for hearing 'on merits', in due course for which separate notice will be issued.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I. S. Jha)
Member