

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 99 of 2017

Dated : 11th September, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Chettinad Power Corporation Private Ltd.

Rani Seethai Building

603, Anna Salai

Chennai – 600006

E-mail: prasanth.s@chettinad.com

... Appellant

Versus

1. Power Grid Corporation of India Limited

Through Chairman & Managing Director

Saudamini Plot No. 2,

Sector-29, IFFCO Chowk, Gurgaon – 122001

Email ID: kamohan@powergridindia.com

2. Central Electricity Regulatory Commission

Through Secretary

3rd & 4th Floor, Chanderlok Building,

Janpath, New Delhi – 110001

Email ID: secy@cercindi.gov.in

3. Central Transmission Utility of India Limited

Through its Chairman & Managing Director,

1st Floor, Saudamini,

Plot No. 2, Near IFFCO Chowk Metro Station

Sector 29, Gurugram – 122001

Email id: achoudhary@powergrid.in

... Respondent (s)

Counsel for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Harsha Rao for App.

Counsel for the Respondent(s) : Deep Rao Palepu for Res. 1
Abiha Zaidi
Suriti Chowdhary
Manoj Bhargav
Anuj Bhave for Res. 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The order dated 8th March, 2017 passed by 2nd Respondent – Central Electricity Regulatory Commission (in short “Commission” or “CERC”), vide which it held that as per Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Mid-term Open Access in the Inter-State Transmission and related matters) Regulations, 2009, (herein after referred to as “Connectivity Regulations”), the Long-term access applicant being effected by Force Majeure or reasons beyond its control cannot be a ground for non-signing of the Long Term Access Agreement and the failure to sign the LTA agreement within the stipulated period would necessarily result in encashment of Bank Guarantee submitted along with LTA application, has been assailed in this appeal.

2. The brief facts of the case which are necessary for the disposal of the instant appeal are that the Appellant proposed to set up 2x600 MW sub-critical thermal plant at Erukkatanchery, Kazhippanallur and Manickapangu villages in Tharangambadi Taluk of Nagapattinam district in Tamil Nadu. The project was scheduled to be commissioned in the year 2015. The Appellant applied for connectivity on 23rd September 2010 and for Long-Term Access (LTA) on 15th February, 2011 for 1110 MW. The application was accompanied by a Bank Guarantee of 1.10 crores in accordance with the connectivity Regulations. In the 13th meeting of the Southern Region Constituents (SRC) regarding connectivity and LTA applications, the Appellant was granted connectivity as well as LTA for 1110 MW and was advised by the 1st Respondent Power Grid Corporation of India Limited (now CTUIL i.e. the Central Transmission Utility India Limited), vide letter 23rd December, 2011, to sign the LTA agreement within a period of 30 days from the date of the letter. The Appellant was granted environmental clearance for the power project on 20th January, 2011 on the basis of the recommendations of Environment and Assessment Committee, Ministry of Environment and Forests, Government of India. The said environmental clearance was challenged before National Green

Tribunal (NGT) and vide order dated 30th May, 2012, NGT observed that the Appellant was in substantial compliance and directed the Appellant to rectify certain procedural errors. Upon compliance with these directions of the NGT, Ministry of Environment and Forest (MoEF) issued a corrigendum dated 13th June, 2013 to the environment clearance granted to the Appellant. Even the said corrigendum dated 13th June, 2013 was challenged by certain organizations before NGT Southern Zone. The matter was transferred to the NGT, Principal Bench and was numbered as Appeal No. 87 of 2014. The matter is still stated to be subjudice before NGT.

3. Meanwhile, in the 17th Meeting of Southern Region Constituents held on 31st July, 2014, the Appellant and CTUIL agreed that CTUIL may encash the Bank Guarantee of the Appellant on or after 1st February, 2015 if the Appellant did not get environmental clearance from NGT by that date. The relevant portion of the said meeting is extracted herein below :-

“6.5 DGM (CTU) informed that LTA was granted to Chettinad Power Corporation Ltd. (2x600 MW) ON 27.12.2011 but the generation developer failed to sign LTA agreement and furnish Bank Guarantee till date. The representative from Chettinad Power Corporation informed

that they have received all necessary clearances but the final hearing of NGT order on environment clearance for their project has not yet received and so, they requested for time extension of six months for execution of the LTA Agreement and furnishing of construction stage BG. In this regard, Director, CEA suggested that Chettinad Power may submit a letter within say one week mentioning that CTU may encash their BG on after 1.2.2015 if they still do not get environmental clearance from NGT, which was agreed by CTU and M/s Chettinad Power.

4. In pursuance to the discussion held in the said meeting, the Appellant vide its letter dated 14th August, 2014 gave its acceptance to the CTUIL towards encashment of Bank Guarantee subject to the extension till the end of February, 2015. The relevant portion of the said letter of the Appellant is quoted hereinbelow :-

“In the light of the views taken by the August Committee, we have left with no other option and yet in order to retain the healthy business relationship between us, our management has decided to give it acceptance towards invocation of Bank Guarantee, upon failure to enter the Long term Access Agreement within the stipulated extended period, i.e. until the end of February, 2015. However, such acceptance has been given by us, without prejudice to our other rights, remedies, and contentions available under law from time to

time.”

5. The Appellant vide letter dated 30th January, 2015, requested CTUIL for extension of time till end of March, 2015 to sign the LTA agreement. The relevant portion of the said letter is reproduced herein below :-

“For the foregoing reasons, we request you to extend the time for signing of LTA Agreement and also request you not to invoke the Bank Guarantee No. 61/2010- 11, as stated by you in the Minutes of Meeting, otherwise we will be put to great hardship and irreparable loss. On the other hand, we hereby agree and accept that PGCIL shall be at liberty to invoke the Bank Guarantee on the expiry of the final deadline fixed by PGCIL.”

6. In response to the said letter dated 30th January, 2015 CTUIL vide its letter dated 6th February, 2015 stated that Appellant’s request would be discussed in the next meeting of Southern Region Constituent and any decision in this regard would be based on the deliberations during the meeting. Thereafter, vide letter dated 5th March, 2015 CTUIL granted a final opportunity to the petitioner to sign the LTA on the following terms :-

“Thus, your obligation to sign the Long Term Transmission Agreement is patently in the Regulations and the Detailed Procedure. However, despite the fact that Long Term Access was granted to you on 17.08.2011, you have not signed the LTA Agreement. It may be noted that you have had several opportunities for doing the same. However, you have failed to sign the LTA agreement.

A final opportunity is given to you to sign the LTA Agreement within 15 days of receipt of this notice, failing which the Bank Guarantee shall be liable to be invoked and the Long Term Access granted to you shall be liable to be cancelled.”

7. In the 18th meeting of SR Constituents regarding LTA and connectivity Applications in Sothern Region held on 7th March, 2015, it was decided and agreed to close the connectivity and LTA granted to the Appellant. The relevant portion of the said meeting is extracted herein below :-

“AGM (CTU-Planning) explained that LTA application for Chettinand Power Corporation Private Limited was discussed during 17th meeting of Southern Region constituents regarding Long Term Access and Connectivity applications wherein time extension up to February`15 was granted for signing of LTA Agreement. The applicant

till date has not signed the LTA agreement even after repeated reminders. Representative from Chettinad Power Corporations Private Limited requested for further time extension of two months for signing of LTA agreement.

CTU explained that as per the CERC regulations, 2009, the LTA Agreement has to be signed within 30 days from grant of Long Term Access. As POWERGRID is to abide with CERC Procedure/Regulations, therefore, the granted LTA may be cancelled. It was discussed and agreed that the Connectivity and LTA application shall be closed in accordance with provisions in regulations and Detailed Procedures.

However, after obtaining all the required clearances, the applicant may apply again with a fresh application.”

8. Thus, the LTA granted to the Appellant was sought to be cancelled on the ground that the Appellant failed to sign the LTA agreement within 30 days from the date of grants of LTA, as stipulated under CERC Procedures/Regulations.

9. It is the said letter dated 5th March, 2015 received by the Appellant from Power Grid Corporation of India Ltd. (CTUIL) that was challenged by the Appellant before the 2nd Respondent – Commission by way of

Petition No. 96/MP/2015 and further seeking extension of time for signing of LTA agreement till disposal of appeal by the NGT. The prayers made in the petition by the Appellant are reproduced herein below :-

“(a) Call for the records of the respondent comprised in the proceedings for the 18th Southern Regional meeting dated 5.3.2015, in so far as it relates to the Petitioner and the letter dated 5.3.2015 bearing No. C/CTU/Plg/LTA/N-LTAA/Chettinad and quash the same as arbitrary and illegal and direct the provision of extension to the Petitioner to execute the LTA until disposal of Appeal No. 87 of 2014 pending before the Hon`ble NGT, Principal Bench, New Delhi upon such terms and conditions as this Hon`ble Commission may deem fit and pass such further or other orders as this Hon`ble Commission may deem fit in light of the facts and circumstances of this case and thus render justice.

(b) Issue an interim injunction restraining the Respondent, its men and agents from in any manner seeking to enforce the decision arrived at in the 18th Southern Regional meeting dated 05.03.2015 with respect to the Petitioner’s project pending disposal of the petition

(c) Issue an interim stay of the Respondent’s communication dated 05.03.2015 bearing No. C/CTU/Plg/LTA/N-LTAA/Chettinad and all proceedings

pursuant and consequent thereto pending disposal of this petition upon such terms, including extension of the Bank Guarantee of a value of Rs. 1,11,00,000.

10. It appears that the Commission had initially, by way of an interim order, directed the PGCIL/CTUIL not to encash the Appellant's Bank Guarantee subject to the Appellant extending the validity of the Bank Guarantee till the disposal of the petition. However, the petition was ultimately disposed off vide impugned order dated 8th March, 2017 rejecting the Appellant's prayers while holding that the provisions of connectivity Regulations and detailed procedure clearly provide that failure to sign LTA agreement within the stipulated period will necessarily result any encashment of Bank Guarantee. The relevant part of the impugned order is extracted herein below :-

"The Connectivity Regulations do not provide that if the applicant is able to prove that if it is affected by circumstances beyond its control or is prevented by force majeure event which prevents it from signing the LTA Agreement, its bank guarantee should not be encashed. In other words, the applicant being affected by force majeure or reasons beyond its control cannot be a ground for non-signing of the LTA and if the applicant fails to signs the LTA within the period intimated in the LTA intimation letter, then

the bank guarantee shall be encashed by the nodal agency.”

11. Thus, the Appellant is before us in this appeal being aggrieved by the said order dated 8th March, 2017 of the Commission.

12. We may note here that initially only Power Grid Corporation of India Limited (PGCIL) was arrayed as Respondent No. 1 in the appeal. However, upon noting that vide notification dated 9th March, 2021, CTUIL was notified as Central Transmission Utility India Limited under Section 31 of the Electricity Act, 2003 and started functioning from the said date as wholly owned subsidiary of PGCIL to undertake and discharge of the functions of Central Transmission utility under Electricity Act, 2003 as well as the functions assigned for Regulations/Directions by Central Commission/Authority, CTUIL was impleaded as 3rd Respondent in this appeal in pursuance to the order dated 13th March, 2024 issued by this Tribunal.

13. In view of the factual matrix involved in this case and the reasons given by the Commission in the impugned order for rejecting the petition of the Appellant, the scope of this appeal is limited to the interpretation of Regulation 12 of the Connectivity Regulations, 2009 issued by the

Commission. For the sake of convenience, we reproduce herein after the said Regulation 12 of the Connectivity Regulations, 2009 :-

“12. Application for long-term access

(1) The application for grant of long-term access shall contain details such as name of the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured along with the quantum of power and such other details as may be laid down by the Central Transmission Utility in the detailed procedure:

Provided that in the case where augmentation of transmission system is required for granting open access, if the quantum of power has not been firmed up in respect of the person to whom electricity is to be supplied or the source from which electricity is to be procured, the applicant shall indicate the quantum of power along with name of the region(s) in which this electricity is proposed to be interchanged using the inter-State Transmission system;

Provided further that in case augmentation of transmission system is required, the applicant shall have to bear the transmission charges for the same as per these regulations, even if the source of supply or off-take is not identified;

Provided also that the construction of such augmentation of the transmission system may be taken up by the CTU or the

transmission licensee in phases corresponding to the capacity which is likely to be commissioned in a given time frame after ensuring that the generating company has released the advance for the main plant packages i.e. Turbine island and steam generator island or the EPC contract in case of thermal generating station and major civil work packages or the EPC contract in case of hydro generating stations for the corresponding capacity of the phase or the phases to be commissioned, subject to a minimum of 10% of the sum of such contract values:

Provided that a generating company after firming up the beneficiaries through signing of long term Power Purchase Agreement(s) shall be required to notify the same to the nodal agency along with the copy of the PPA:

Provided also that in cases where there is any material change in location of the applicant or change by more than 100 MW in the quantum of power to be interchanged using the inter-State Transmission system or change in the region from which electricity is to be procured or to which supplied, a fresh application shall be made, which shall be considered in accordance with these regulations.

(2) The applicant shall submit any other information sought by the nodal agency including the basis for assessment of

power to be interchanged using the inter-State Transmission system and power to be transmitted to or from various entities or regions to enable the nodal agency to plan the inter-State transmission system in a holistic manner.

(3) The application shall be accompanied by a bank guarantee of Rs 10,000/- (ten thousand) per MW of the total power to be transmitted. The bank guarantee shall be in favour of the nodal agency, in the manner laid down under the detailed procedure.

(4) The bank guarantee of Rs. 10,000 /- (ten thousand) per MW shall be kept valid and subsisting till the execution of the long-term access agreement, in the case when augmentation of transmission system is required, and till operationalization of long-term access when augmentation of transmission system is not required.

(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalization of such rights when augmentation of transmission system is not required.

(6) The aforesaid bank guarantee will stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during

construction phase when augmentation of transmission system is required, in accordance with the provisions in the detailed procedure.

(Emphasis supplied)

14. Perusal of the said Regulation would reveal that application for Long-Term Access (LTA) has to be submitted containing all such details as provided in the Detailed Procedure issued under Regulation 27 of the connectivity Regulations. The application shall be accompanied by a Bank Guarantee in the sum of Rs.10,000 per MW of the total power to be transmitted in favour of the nodal agency, in the manner laid down under the Detailed Procedure. If as a result of system studies, it is found that no further augmentation of the transmission system is required, the application will be required to sign the LTA agreement and the Bank Guarantee already submitted will remain valid till the operationalization of the LTA. If it is found that the augmentation of the transmission system is required, the Appellant will be required to enter into the LTA agreement and submit a fresh Bank Guarantee for construction period calculated as per Detailed Procedure and the Bank Guarantee given earlier along with LTA application shall stand discharged. We may here

note clause 24 of the Detailed Procedure laid down by the Commission providing timeline for entering into LTA agreement :-

“24. Processing of Applications

ii) Where system strengthening is involved

(ii) The nodal agency shall intimate grant of long term access on format [FORMAT LTA- 5] indicating identified system strengthening with direction to the applicant to enter into Long term access agreement, Bulk Power Transmission Agreement (BPTA) with CTU within thirty days.”

15. Accordingly, in view of the provisions of the Connectivity Regulations and Detailed Procedure, the application who has been granted long-term access is required to sign LTA agreement, with the nodal agency i.e. CTUIL or any other inter State Transmission Licensee, if involved, within a period of 30 days from the date of grant of LTA. Where system strengthening is involved, the applicant shall be required to submit a fresh Bank Guarantee and the Bank Guarantee earlier submitted along with LTA application shall stand discharged.

16. Regulation 12(5) of the Connectivity Regulations, 2009, envisages that the Bank Guarantee submitted along with LTA application may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are

relinquished prior to the operationalization of such rights when augmentation of transmission system is not required.

17. Clause 23(5) of the Detailed Procedure also assumes importance on this aspect which provides that bank guarantee may be encashed by the nodal agency: (i) if the application is withdrawn by the applicant; or (ii) if the long-term access rights are relinquished prior to the operationalization of such long-term access when augmentation of transmission system is not required; or (iii) If the applicant fails to sign the Long Term Access Agreement with CTU or a tripartite agreement with CTU and transmission licensee, as the case may be, and fails to furnish appropriate BG for construction phase, within stipulated time as indicated in the intimation letter; (iv) if the applicant fails to revalidate the earlier furnished BG at least 30 days prior to its expiry; and (v) If the applicant fails to firm up beneficiaries in terms of clause 22.7, 3 years prior to intended date of Long Term Access.

18. Thus, upon conjoint reading of Regulation 12(5) of Connectivity Regulations, 2009 and Clause 23(5) of the Detailed Procedure, following are the valid grounds for the nodal agency i.e. CTUIL for encashing the Bank Guarantee submitted along with the LTA application;

- a) Withdrawal of LTA application;
- b) Relinquishment of LTA rights prior to the operationalization of such rights. When augmentation of transmission system is not required;
- c) Not signing of LTA agreement within stipulated period of 30 days from the date of grant of LTA.
- d) Failure to furnish Bank Guarantee for construction phase.

19. The power/authority to encash the Bank Guarantee of LTA applicant has been given to the nodal agency under Regulation 12(5) of the Connectivity Regulations, 2009, which has already been quoted herein above. We may emphasize here that the word used in the said Regulation is “May”.

20. The issue which arise for consideration is whether the Bank Guarantee of LTA applicant is to be necessarily encashed by the nodal agency i.e. CTUIL on the basis of any of the grounds existing in a particular case, as noted herein above, or the nodal agency is required to exercise its discretion in doing so on case to case basis in view of the facts and circumstances involved in a particular case. In other words, the issue to be decided would be whether the word “May” used in Regulation 12(5) is merely directory in nature or has a mandatory force.

21. According to the Commission, as held in the impugned order, the said Regulation 12(5) is mandatory in nature and the expression “May” has to be read as “Shall”.

22. According to the Appellant, the Commission has proceeded on an erroneous interpretation of Regulation 12(5) for the reasons that the purpose of requirement of Bank Guarantee along with the LTA application is only to provide a security to CTUIL against any potential damage and is not meant as a measure of liquidity damages or penalty. Reliance placed upon decision of Delhi High Court in NSL Nagapatnam Infrastructure Pvt. Ltd. Vs. Central Electricity Regulation Commission and Ors., W.P.(C) 6791 of 2017, decided on November 24, 2022. It is further argued that the CTUIL was not entitled to encash the Appellant’s Bank Guarantee in the absence of a provision for liquidated damages as well as in the absence of any proof of loss or damages suffered by it on account of delay on the part of the Appellant in executing the LTA agreement.

23. On behalf of the 3rd Respondent – CTUIL, it is argued that as per settled law of statutory interpretation, the word “May” and “Shall” can be used interchangeably depending upon the context. It is argued that a plain reading of the said Regulation 12 would make it abundantly clear

that only discretion which the nodal agency is required to exercise is to satisfy itself about the occurrence of either of the two events namely (a) withdrawal of application by the applicant or (b) the LTA has been relinquished prior to the operationalization of such rights when augmentation of transmission system is not required. Reliance is placed upon judgement of the Hon'ble Supreme Court in Smt. Bachahan Devi and Anr. vs. Nagar Nigam, Gorakhpur and Anr. AIR 2008 SC 1282 and judgment of this Tribunal in Appeal No. 197 of 2014 Jayaswal Neco Urja Limited Vs. PGCIL and Anr. decided on 15th April, 2015.

24. We have given thoughtful consideration to the detailed rival submissions made by the Learned Counsels and have also gone through the Written Submission filed by them. The judgements cited by the Learned Counsels in support of their arguments have also been perused.

Our Analysis :

25. At the outset like to refer to what the Hon'ble Supreme Court has observed/held on the aspect of interpretation of words "May" and "Shall" used in a statute in Bachahan Devi's case. The same are quoted herein below : -

"31. It is well-settled that the use of word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word 'may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word 'may' should be interpreted to convey a mandatory force. As a general rule, the word 'may' is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word 'shall', which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words 'may 'shall', and 'must' are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The on conferment of power. Depending upon the context, 'may' does not always mean may. 'May' is a must for enabling compliance of provision but there are cases in which, for various reasons, as

soon as a person who is within the statute is entrusted with the power, it becomes his duty to exercise that power, Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.

32. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word 'may' will not prevent the court from giving it the effect of Compulsion or obligation. Where the statute was passed purely in public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word 'may' that power must be construed as a statutory duty. Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense. Although in general sense 'may' is enabling or discretionary and 'shall' is obligatory, the connotation is not inelastic and inviolate." Where to interpret the word 'may' as directory would render the very object of the Act as nugatory, the word 'may' must mean 'shall.'

26. Thus generally the word “May” is permissive or directory in nature and confers discretion whereas the word “shall” is imperative in nature as it imposes a duty. However, there may be cases where the word “May” used in a Statute or Regulation ought to be interpreted to convey a mandatory force. In order to ascertain that a word “May” used in a

Statute or a Regulation is directory, merely conferring discretion or conveys a mandatory force, the Court or Tribunal must consider :-

- a) The object and scheme of the Act/Regulations;
- b) The context and the background in which the word has been used;
- c) The purpose and the advantages sought to be achieved by the use of word;
- d) Whether giving the word directory significance would render the very object of the Acts/Regulations as nugatory; and
- e) The intent of the legislature along with the relevant circumstances.

27. Here we are concerned with the interpretation of the word “May” used in Regulation 12(5) of the Connectivity Regulations, 2009 which is reproduced here at the cost of repetition:-

“(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalization of such rights when augmentation of transmission system is not required.”

28. In order to find out whether the word “May” has been used in a directory sense or in a mandatory sense in the said Regulation 12(5), we need to refer to the Statement of reasons to the Connectivity Regulations, 2009, in which it is found. The same reads as under :-

“68. We are of the view that furnishing of Bank Guarantee is required to bring seriousness to the applications made by applicants. However, a provision has been made requiring the bank guarantee to stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during construction phase when augmentation of transmission system is required, in accordance with the provisions in the Detailed Procedure. Furthermore, the amount of Bank Guarantee has been reduced from the originally proposed Rs. 1 lakh per MW to Rs. 10,000 per MW.”

29. It is limpid from these statement of reasons that the only object/purpose of requiring and LTA applicant to annex the Bank Guarantee of requisite amount along with LTA application is to bring seriousness to the application made by the applicants.

30. The Bank Guarantee so annexed to the LTA application would automatically stand discharged upon submission of another Bank Guarantee required to be given by the applicant to the CTUIL during construction phase when augmentation of transmission system is required. We may also note that in the draft Regulations, the Commission had proposed a Bank Guarantee of Rs.1,00,000/- per MW which was later on reduced to Rs.10,000/- per MW.

31. This would definitely indicate that the encashment of Bank Guarantee furnished along with LTA application is at the discretion of the nodal agency i.e. CTUIL and the Regulation 12(5) of the Connectivity Regulations cannot be construed to make it mandatory or necessary for the CTUIL to encash the Bank Guarantee in all cases where the LTA applicant does not execute the LTA agreement within a stipulated period of 30 days from the date of grant of LTA. The purpose of requiring an LTA applicant to furnish Bank Guarantee along with LTA application manifestly appears to be only to ensure that serious applicants alone apply for LTA and do not submit such application for mere fancy.

32. We may note here that even the maker of the Connectivity Regulations, 2009 i.e. the Commission itself has conveyed to the Delhi High Court in W.P.(C) 6791 of 2017 that Commission's intention was never that Regulation 12(5) be read as mandatory requiring encashment of Bank Guarantee in all cases. This is evident from the following portion of the judgement dated 24th November, 2022 passed by the High Court in the said writ petition :-

“10. Mr T.V.S. Raghvendra Sreyas, learned counsel appearing for CERC, submits that present petition is not

maintainable. He also submits that the word “may” is used in Regulation 12(5) of the Connectivity Regulations as encashment of the bank guarantees furnished along with the application for LTA is at the discretion of CTU. He submits that Regulation 12(5) of the Connectivity Regulations cannot be read as mandatory and necessarily requiring the CTU to encash the bank guarantee in all cases where the application does not proceed to the construction phase or result in grant of LTA.

11. *He referred to the Statement of Reasons for framing the Connectivity Regulations and drew the attention of this Court to paragraph 68 of the said Statement of Reasons, which reads as under:*

“68. We are of the view that furnishing of Bank Guarantee is required to bring seriousness to the applications made by applicants. However, a provision has been made requiring the bank guarantee to stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during construction phase when augmentation of transmission system is required, in accordance with the provisions in the detailed procedure. Furthermore, the amount of Bank Guarantee has been reduced from the originally proposed Rs. 1 lakh per MW to Rs. 10,000 per MW.”

12. *He contended that it was never the intention of CERC that the Regulation 12(5) of the Connectivity Regulations be read as necessarily requiring encashment of bank guarantee in all cases.*

He emphasized that the purpose was to ensure that only serious applicants apply for LTA and do not move the application at a premature stage.”

33. In the said Writ Petition also, the High Court was called upon to interpret Regulation 12(5) of Connectivity Regulations, 2009 and upon consideration of all the relevant aspects, the High Court has held as under :-

“15. We are of the view that Regulation 12(3) – which, it is important to note, has not been impugned by the petitioner – requiring furnishing of the bank guarantee in the sum of ₹10,000/- per MW, cannot be considered as a penal provision. The requirement of furnishing the bank guarantee may also be considered as a regulatory measure. Concededly, CERC has the power to impose a regulatory fee. The fact that the bank guarantee is discharged in terms of Regulation 12(6) of the Connectivity Regulations, with the CTU undertaking the construction phase, indicates that the said security dovetails into a higher security – bank guarantee in the sum of ₹5,00,000/- per MW – which is furnished at that stage. There is no dispute that thereafter, if there is any failure on the part of the applicant to proceed further, the requisite compensatory payment is required to be made and recovered from the bank guarantee.

16. Having stated the above, there is much merit in the

contention that Regulation 12(5) of the Connectivity Regulations cannot be read to mean that the CTU must necessarily, in all cases, encash the bank guarantee where the applicant does withdraw the application or relinquishes his rights prior to operationalization.

17. *The word “may” can never be read as “must” (see **Nicholas v. Baker: 59 LJ Ch 661**). In certain circumstances, the use of the word “may”, in a statutory provision, indicates an enabling power that is coupled with a duty to exercise the same. In such cases, use of the word “may” would not change the mandatory character of the said provision. However, in this case, requirement of furnishing a bank guarantee is to screen the applicants to ensure that only serious applicants apply. To that extent, it is meant to regulate the applicants.*

18. *In the aforesaid context, it is difficult to accept that there is a necessary requirement for the CTU to encash the bank guarantee in all cases. The question, whether a bank guarantee is required to be encashed, would have to be determined by the CTU, keeping in mind the facts of each case. There may be cases of genuine hardship where an applicant, who has already committed sufficient resources, is unable to proceed further. It would be erroneous to accept that in such cases, the encashment of the bank guarantee is required to serve as a further deterrent.”*

34. We find ourselves in total agreement with the decision of the High Court in the said Writ Petition. It is amply clear that the only purpose requiring the Bank Guarantee to be submitted along with the LTA application is to have an overview of the applicants and to screen the applicants to ensure that only serious applicants apply. At best, the requirement for furnishing Bank Guarantee along with application may be considered as a regulatory measure. The fact that the Bank Guarantee submitted along with LTA application gets automatically discharged upon submission of fresh Bank Guarantee by the LTA applicant for construction period as per the Detailed Procedure, also indicates that the object of the initial Bank Guarantee submitted along with the LTA application is merely to demonstrate the seriousness of the LTA applicant and nothing more and hence its encashment by the CTUIL is not necessary or mandatory merely for the reason that the LTA applicant fails to sign the LTA agreement within the stipulated period.

35. Hence, we are of the firm opinion that the word “May” used in Regulation 12(5) of Connectivity Regulations does not convey any mandatory force and the said Regulation cannot be read to mean that CTUIL must necessarily encash the Bank Guarantee in all cases where the applicant withdraws the LTA application or relinquishes its LTA

rights prior to operationalization or fails to sign LTA agreement within the stipulated period. Whether the Bank Guarantee submitted along with LTA application is required to be encashed or not would depend upon the facts and circumstances of each case and shall have to be determined by the CTUIL having regard to all those facts and circumstances. There may be cases where the applicant, who has been granted LTA, is prevented from executing the LTA agreement within the stipulated period by some genuine hardship or by the reasons beyond its control. Serious mis-carriage of justice would entail if Regulation 12(5) is termed as mandatory in nature requiring encashment of Bank Guarantee in those cases also.

36. Accordingly, the impugned order of the Commission can not be sustained. Same is hereby set aside. Appeal stands allowed.

37. We hold and declare that Regulation 12(5) of the Connectivity Regulations, 2009 is only directory or discretionary and it is not mandatory for the nodal agency i.e. CTUIL to encash the Bank Guarantee furnished along with LTA application in every case of default. Decision in this regard shall have to be taken by the CTUIL upon considering all the relevant facts and circumstances which may have

prevented the LTA applicant from complying with the conditions upon which LTA has been granted.

38. Hence, we remand the matter back to the Commission with the directions to determine whether the CTUIL was justified in encashing the Bank Guarantee of the Appellant in this case and to pass a fresh order in this regard within one month from receipt of this judgement.

Pronounced in the open court on this 11th day of September, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

✓

REPORTABLE / NON-REPORTABLE

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