

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

The Himachal Pradesh State Electricity Board Ltd.

...Petitioners

V/s

Small Hydro Power Projects and Others

...Respondents

Review Petition No. 85 of 2010

(Passed on 31.07.2010)

**CORAM**  
**YOGESH KHANNA,**  
**CHAIRMAN**

Counsels for:-

For the petitioner :

Sh. Bimal Gupta  
Advocate

For the respondent:

Sh. Satyen Vaidya  
Advocate  
Sh. Ajay Vaidya  
Advocate.

**ORDER**

The Himachal Pradesh State Electricity Board Ltd. (hereinafter called “the petitioner”) has sought the review of the Commission’s Order dated 9<sup>th</sup> Feb., 2010 passed to implement the verdict of the Hon’ble Appellate Tribunal modifying the Order dated 18<sup>th</sup> Dec., 2007 determining the tariff for purchase of energy from Small Hydro Power Projects (Upto and including 5 MW capacity) in conformity with the directions given by the Hon’ble Appellate Tribunal for Electricity vide its **Order dated 18<sup>th</sup> Sept., 2009 made in Appeal No. 50 of 2008 filed by M/s Techman Energy Ltd and Appeal No. 65 of 2008 filed by the Himachal Pradesh State Electricity Board Ltd.** The Hon’ble Appellate Tribunal vide para 23 of its said Order dated 18<sup>th</sup> Sept., 2009 observed that certain mistakes in arithmetical calculations, leading to determining tariff have been identified by the appellant and the Learned Counsel for the Commission has agreed to check the arithmetical errors and to make necessary corrections in the levelised tariff.

The APTEL further vide sub-para (vi) of para 26 of its said Order directed the Commission to remove arithmetical errors by recomputing the levelised tariff. In compliance to the aforesaid directions of the Appellate Tribunal, the Commission considered the arithmetical errors identified by the appellant, and after taking into consideration the submissions made by the appellant, the Commission recalculated the tariff at Rs. 2.95/ p.u by rectifying the arithmetical errors on account of royalty. The Order dated 18.9.2009 of the Hon'ble Appellate Tribunal, which formed the basis for making the consequential order dated 9.2.2010, has not been challenged either by way of review or appeal before a competent Court and has attained the finality, Apart from this the petitioner Board was also a party to the proceedings, before the Appellate Tribunal, as a consequence of which Order/direction of the Appellate Tribunal, sought to be implemented by this Commission has, emanated.

2. Sh. Bimal Gupta, Learned Counsel for the petitioner Board states that instead of the levelised tariff for Small Hydro Projects, the project specific capital cost and site specific CUF should be fixed for the 51 Hydro Electric Projects per list attached with the review petition. He further questions that the Order dated 9.2.2010, has been passed without hearing the petitioner Board and the IPPs. He, therefore, urges for the admission of the review petition moved by the petitioner Board.

3. The admission of this review petition has been resisted by the Small Hydro Power Association and the M/S Techman Energy Ltd. Sh. Satyen Vaidya, Advocate learned counsel on behalf of the Small Hydro Power Association strongly contends that review proceedings have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the CPC. Section 94 (1) (f) of the Act, empowers the Commission to review its decision, directions and orders and provides that the Commission is vested with the same powers as are given to Civil Court under Order 47 Rule 1 of the CPC, which provides for review on-

- (i) the discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him; or
- (ii) on account of some mistake or error apparent on the face of the record; or

(iii) for any other sufficient reason.

He in his support has cited the **APTEL decision dated 28.4.2009 passed in Ispat Industries Ltd. Mumbai V/s Maharashtra Electricity Regulatory Commission, Mumbai and others 2009 ELR (APTEL) 0618** wherein it holds that the review petition has to be entertained on the ground of error apparent on the face of the record and not on any other ground and it should be such an error which must strike one on mere looking out the record and would not require any long/drawn process of reasoning on the points where there may conceivably be two opinions.

4. Sh. Satyen Vaidya, Advocate also contends that a review cannot be equated with the original hearing of a case. A review petition has a limited purpose and in this case the impugned order, sought to be reviewed, has been made in compliance with the Orders of the Appellate Authority and in complying with the order of the Appellate Authority, there is no need for giving any hearing as stated by the petitioner Board. The fixation of a project specific capital cost and site specific CUF, cannot be considered in the present review petition for the general order and in case the petitioner feels aggrieved regarding tariff of any specific SHP, the petitioner has to file separate petitions/application for each case.

5. The Commission has given very thoughtful and serious consideration to the submissions, arguments and counter arguments advanced during the hearing, the legal position and authorities cited as well as known in the context of similar cases. The Commission is of the view that a very fair approach was adopted and the impugned order was passed after deep deliberation and consideration and the review petition does not bring out any new and important fact. The Commission, therefore, finds no error apparent and readily discernable reasons to interfere with the impugned order and as such it declines to entertain this review petition and dismisses it in limine.

It is so ordered.

(Yogesh Khanna)  
Chairman