

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION SHIMLA**

Review Petition No. 1 of 2022

Instituted on 07.01.2022

Heard on 01.02.2022

Decided on **21.02.2022**

In the matter of:-

The HP State Electricity Board Ltd. through its,
Chief Engineer (Commercial)
Vidyut Bhawan, Shimla-171004 (HP)

..... **Petitioner No.1**

AND

M/s Sai Engineering Foundation,
having its Registered Office at Sai Bhawan,
Sector-IV, New Shimla-171009 (HP)
through Sh. Munish Sharma its
Chief General Manager

..... **Petitioner No.2**

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**BHANU PRATAP SINGH
MEMBER**

**YASHWANT SINGH CHOGAL
MEMBER (LAW)**

Counsel: -

For the Petitioner No.1:

Sh. Surinder Saklani, Advocate
a/w Sh. Kamlesh Saklani,
Authorised Representative

For the Petitioner No.2:

Sh. Vikas Chauhan, Advocate

ORDER

The Himachal Pradesh State Electricity Board Ltd., Vidyut Bhawan, Shimla (hereinafter referred as “the Petitioner No.1” or “the HPSEBL”) and M/s Sai Engineering Foundation, having its Regd. Office at Sai Bhawan, Sector-IV, New Shimla, HP-171009 (hereinafter referred as “the Petitioner No.2”), have filed Joint Review Petition bearing No. 01 of 2022 on 07.01.2022 under Section

94(1)(f) of the Electricity Act, 2003 (the Act in short) read with Regulation 63 of the HPERC (Conduct of Business) Regulations, 2005 (in short CBRs) for the review of the Commission's Order dated 23.10.2021, passed in joint Petition No. 37 of 2021 for approval of the Long Term Power Purchase Agreement under Section 86(1)(b) of the Act read with Regulations 50 and 50A of the CBRs of this Commission, in relation to the Shimla Hydro Project (5MW) located on Karedi, Dogarh and Dauli Nallah, a tributary of Khanyara Khad of Pabber River in Distt. Shimla (HP)(hereinafter referred as "the Project").

2. The factual matrix of the case is that-

- (a) With prior approval from the Commission, a Short/Medium-term Power Purchase Agreement (PPA in short), under REC Mechanism, was initially executed on 10.09.2015 between the Company i.e. Petitioner No.2 and the HPSEBL i.e. Petitioner No.1 for the sale/purchase of power from the Project, the term of which was up to 31.03.2016 and with the approval of the Commission, the term was extended up to 31.03.2021 by executing the various Supplementary PPAs under REC Mechanism.
- (b) The Petitioners had filed Joint Petition bearing No. 37 of 2021 on 27.09.2021, in respect of the Project for the approval of the Power Purchase Agreement on Long Term basis (under Generic Levellised Tariff) under Section 86(1) (b) of the Act, read with Regulations 50 and 50-A of the CBRs.
- (c) Ever since, 31.03.2021 the Project continued to deliver power to the Petitioner No.1 without any contractual arrangements and as stated by the Petitioners, there had been delay in approaching the Commission for approval of Long Term PPA mostly due to lockdown imposed in the State amidst COVID-19 Pandemic situation and further, due to time consumed in correspondence between the parties to ascertain applicable

tariff on account of applicable/availed capital subsidy/ financial assistance received from MNRE and scrutiny of documents for establishing that Accelerated Depreciation (AD) has not been availed by the Company i.e. Petitioner No.2.

- (d) The joint Petitioners have prayed that order dated 23.10.2021 passed in Petition No. 37 of 2021 be reviewed to the extent of change in the effective date as 01.04.2021 instead of 27.09.2021 or any other order be issued as the Commission may deem fit.

3. We have carefully gone through the submissions made by the Petitioners and have pursued the record. It is settled law that in the review proceedings, the scope of interference is very limited. The power of the Commission to review its own orders flows from Section 94(1)(f) of the Act, read with the Regulation 63 of the CBRs and Section 114, read with Order 47, of the Civil Procedure Code.

4. As per the said provisions, the specific grounds on which order already passed can be reviewed are-

- (a) if there are mistakes or errors apparent on the face of the record, or
- (b) on the discovery of new and important matter or evidence which, after due diligence, was not within the knowledge or could not be produced at the time of making the order, or
- (c) if there exist other sufficient reasons.

5. From the record, it is clear that Petitioner No.2 i.e. the Generating Company was supplying power to the Petitioner No.1, i.e. HPSEBL, under the REC Mechanism and the term of the Short Term PPA executed under REC Mechanism had expired on 31.03.2021. No extension of the PPA under the REC Mechanism was sought by the parties. The parties filed a Joint Petition on 27.09.2021 for approval of the Long Term PPA at the generic levelled tariff, with effective date as 01.04.2021. The Commission, while according its consent/approval to the PPA, considered, as a special case, the effective date as

27.09.2021 (i.e. the date of filing the Petition) instead of the date of the execution of the PPA as envisaged in the Model PPA.

6. As observed aforesaid, the power of review, legally speaking, is permissible where some mistake or error apparent on the face of the record is found and the error on the face of record must be such an error which may strike one on mere looking at the record and would not be equated with the original hearing of a case. Also, review has a limited purpose and cannot be allowed to be an Appeal in disguise and it cannot be exercised on the ground that the decision was erroneous on merits. It is held in **Parsion Devi and Others V/s Sumitri Devi and Others (1997) 8 SCC 715, 1997 Supp 4 SCR 470** as under:

“ It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1, CPC. Under Order 47, Rule-1, CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the fact of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power or review under Order 47, Rule-1, CPC. In exercise of the jurisdiction under Order 47, Rule-1, CPC, it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter can be corrected only by exercise of the review jurisdiction.”

7. In view of the foregoing discussion and limited scope of review jurisdiction, we are of the view that there are no merits in the prayer of the Petitioners to change the “Effective Date” in Clause 2.2.28 of the PPA as 01.04.2021, instead of 27.09.2021, especially when the Long Term PPA has not been signed and executed by the parties on 01.04.2021. The Joint Petition

bearing No. 37 of 2021 for the approval of Power Purchase Agreement on Long Term basis (under Generic Levellised Tariff) was filed on 27.09.2021, nearly after 6 months of expiry of the Short Term PPA under the REC Mechanism without seeking extension of the said short term PPA. Hence, the term of the Short Term PPA dated 10.09.2015, along with various extensions provided through Supplementary PPAs executed between the parties, expired on 31.03.2021.

8. However, fact remains that there was a Short Term Power Purchase Agreement under REC Mechanism between the parties which though expired on 31.03.2021 and no extension was sought by Joint Petitioners, yet the power was being supplied by the Joint Petitioner No.2 to Joint Petitioner No.1 without any interruption. For the said period w.e.f. 01.04.2021 to 26.09.2021, certainly a provision is required to be made and, therefore, in order to meet the end of justice, it is necessary to fill in the gap in relation to the tariff of the Project w.e.f. 01.04.2021 to 26.09.2021. Thus it would be fair to extend the term of the Short Term PPA under REC Mechanism from 01.04.2021 to 26.09.2021. We, therefore, accord the approval for the extension of the term of Short Term PPA at the rate provided in the Short Term PPA under REC Mechanism till 26.09.2021.

9. This Petition is disposed of accordingly. An attested copy of the order be also placed in joint Petition No. 37 of 2021 for record.

The file after needful be consigned to records.

-Sd-
(Yashwant Singh Chogal)
Member(Law)

-Sd-
(Bhanu Pratap Singh)
Member

-Sd-
(Devendra Kumar Sharma)
Chairman