

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

Review Petition No: 113 of 2024

Date of Institution: **03.07.2024**

Heard on: **09.09.2024**

Decided on: 05.11.2024

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**YASHWANT SINGH CHO GAL
MEMBER (Law)**

**SHASHI KANT JOSHI
MEMBER**

The Himachal Pradesh Power Corporation Limited, through its
General Manager (Generation)
Himfed Building, BCS,
New Shimla, Shimla, H.P. 171009. **.....Petitioner**
Versus

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

**Petition for Review under Section 94 (1) (f) of the Electricity Act,
2003 read with Regulation 63 of the Himachal Pradesh Electricity
Regulatory Commission (Conduct of Business) Regulations, 2005
against the Order dated 05.06.2024 passed in Petition No. 25 of
2024.**

Present:-

For the Petitioner: Sh. Rohit Sharda, General Manager
(Generation) in person.

For the Respondent: Sh. Kamlesh Saklani, Authorised
Representative.

ORDER

This Review Petition has been filed by the Himachal
Pradesh Power Corporation Limited (the HPPCL/ Petitioner for short)

under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 63 of Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, as amended from time to time, seeking review of order dated 05.06.2024 in Petition No. 25 of 2024 regarding approval of Capital Cost and Determination of Tariff in respect of Sainj Hydro Electric Project (2x50 MW) from Date of Commercial Operation (COD) to Financial Year 2023-24.

2. According to the Petitioner, after filing the Petition, several deficiencies were pointed out by the Commission which were made good and detailed clarifications were supplied to the Commission. However, the Commission while disallowing certain claims has reduced the Capital Cost.

3. The Petitioner has claimed that the order dated 05.06.2024 under review suffers from errors apparent on the face of the record and has raised the following issues:-

- a) The Commission in para 3.5.26 of Order dated 05.06.2024 “Miscellaneous (O)” has not considered cost of construction of 400kV transmission line of Sainj HEP amounting to the tune of Rs. 7.03 Crore in the capitalized cost of Sainj HEP. The documentary proofs justifying this expenditure had been submitted as Annexure R 3-20 and has prayed for

reconsidering the expenses incurred to the tune of 7.03 Crore for construction of 400kV Transmission line of Sainj HEP under Miscellaneous head and the same may not be considered under the Additional Capital Expenditure.

b) The Commission has restricted the loan/equity amount (debt/normative debt component) by way of considering the corresponding debt/equity component as 'Grant Component' in Sainj HEP. It is averred that as on date, the books of accounts of the Petitioner reflect the said restricted amount as loan/equity (as the case may be) and also the books of accounts are in exact line in terms of the provisions of the On-lending Loan Agreement signed between the Government of Himachal Pradesh (GoHP for short) which are binding on the Petitioner, the tariff rate on the entire capitalization amount of loan and equity was required to be allowed. It is prayed that the issue is required to be reconsidered.

c) The Commission in para 4.8.10 of Order dated 05.06.2024 has approved 90% as NAPAF for the period from CoD to FY 2023-24 which seems to be on a higher side. It is prayed that considering the high silt in the peak season, due to which the plant has remained under shutdown during the peak season

from date of commissioning of project to FY2023-24 (details attached as Annexure-C), the NAPAF of Sainj HEP may be reviewed and approved as 85%.

4. It is averred that no other Petition has been filed.

REPLY OF THE RESPONDENT

5. The review Petition has been resisted and contested by the Respondent by filing reply that the Commission after prudence check in accordance with the Regulation 13 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Supply Tariff) Regulations, 2011, as amended from time to time, (Hydro Tariff Regulations, 2011) has considered the cost of 400 kV transmission line in the additional capital expenditure rather than in capital cost of Sainj HEP.

6. Further in respect of debt-equity ratio, the Commission has considered the Debt-Equity ratio in accordance with the Regulation 16 of the Hydro Tariff Regulations, 2011. Not only this, in Para 3.8.19 of the order dated 05.06.2024, the Commission has ordered that it shall take appropriate decision with regard to the treatment of such ADB loans during truing-up.

7. Further, the Commission in para 4.8.10 of order dated 05.06.2024 has approved 90% NAPAF from the period from COD to

FY 2023-24 in the absence of specific details regarding silt issues. The NAPAF is required to be kept as per provisions of relevant Regulations notified by the Commission.

8. The Commission vide Order dated 01.08.2024 observed that hearing of the Consumer Representative is necessary in the Petition and accordingly, issued notice to the Consumer Representative with direction to file reply within two weeks. The Consumer Representative has submitted that the grounds/ question of law raised by the Petitioner for reviewing the order dated 05.06.2024 have no justification as the Petitioner had raised the same/ similar grounds as raised in the main Petition which stood effectively dealt and considered by the Commission while passing the order dated 05.06.2024. Thus, there are no plausible grounds for reviewing the order and the Petition deserves to be rejected.

9. Further submitted that the observation of the Commission regarding the expenses of Rs. 7.03 Crore incurred for construction of 400 kV transmission line are in line with the submissions of the Petitioner and after careful perusal of the documents submitted in support by the Petitioner, the Commission has considered the amount in the Additional Capital Expenditure. Further, in view of the directions given in para 3.6.6 of the order dated 05.06.2024, there is no need file

review, as the Commission has agreed to consider the same at the time of subsequent filing.

10. Also averred that on the issue of reconsidering the Commission's order to restrict loan/equity amount and considering the same as grant, it is submitted that ADB loan as received from the Government of India (GOI for short) in the ratio of 90% grant and 10% debt for the Hydro Electric Projects (HEPs) to ensure promotion of clean energy at cheaper and affordable rates to benefit the consumers of the State and should have been passed on as grant to the Petitioner to reduce its interest burden. The consumers of the State should not be burdened for this arrangement between the State and the Petitioner and the issue should be resolved at State Govt. level to settle it for good.

11. On the issue of approved 90% NAPAF for COD to FY 2023-24 being on higher side, the Commission's order is based on the tabulated data (Table No.1) submitted in main petition, which showed that actual generation was already higher than the design energy from COD to FY 24. Further, no details as regard to silt has been submitted by the petitioner. Thus, the Commission has rightly approved the 90% NAPAF for FY 24, which requires no review.

12. In rejoinder, the contents of the reply have been denied and those of the Petition have been re-affirmed that the order under review suffers from patent errors, apparent on the face of the record, and required to be reviewed.

13. We have heard, Sh. Rohit Sharda, General Manager (Generation) for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent.

14. Sh. Rohit Sharda, General Manager (Generation) for the Petitioner has submitted that the impugned order suffers from errors apparent on the face of the record, *inter-alia*, that the Commission in para 3.5.26 of its Order "Miscellaneous (O)" has not considered cost of construction of 400kV transmission line of Sainj HEP amounting to the tune of Rs. 7.03 Crore in the capitalized cost of Sainj HEP despite submission of documentary proofs justifying this expenditure as Annexure R 3-20 and that the Commission has restricted the loan/equity amount (debt/normative debt component) by considering the corresponding debt/equity component as 'Grant Component' in Sainj HEP and that as on date, the books of accounts of the Petitioner reflect the said amount as loan/equity (as the case may be) and the books of accounts are in exact line in terms of the provisions of the on-lending Loan Agreement, as such, the Commission should reconsider

its decision of restricting the loan/equity amount as per the arrangement made by the GoHP by considering the same as Grant. Also submitted that the Commission in para 4.8.10 of the Order dated 05.06.2024 has approved 90% as NAPAF for the period from CoD to FY 2023-24 which seems to be on a higher side and need to be reviewed.

15. Sh. Kamlesh Saklani, Authorised Representative for the Respondent on the other hand has submitted that the Commission has considered each and every aspect of the matter as well as the events highlighted by the Petitioner in the impugned order and that there are no errors apparent on the face of record and Petition is liable to be dismissed.

16. We have carefully gone through the submissions and perused the entire record carefully. The following points arise for determinations in the Petition:-

Point No. 1: Whether there are sufficient reasons for reviewing the Order dated 05.06.2024 in Petition No. 25 of 2024?

Point No. 2: **Final Order**

17. For the reasons to be recorded hereinafter in writing, our point wise findings are as under.

Point No. 1: No.

Point No. 2: The Petition dismissed per operative part of the Order.

REASONS FOR FINDINGS

Point No. 1:

18. It is well settled law that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced at the time when the order was made. It may also be exercised where some mistake or error apparent on the face of the record is found but may not be exercised on the ground that the decision was erroneous on merits which is the domain of a court of appeal. While exercising the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. In this regard, reliance may be placed in *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 wherein it is held as under:-

“9. 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 face 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 of 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”.

19. Similarly in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 it has been held by the Hon’ble Supreme Court that the review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. Para 8 of the aforesaid law is reproduced as under:-

*“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleswar Sharma v. Aribam Pishak Sharma* [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)*

*“It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* [AIR 1963 SC 1909] , there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error*

apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

20. A similar view has been taken by the Hon'ble Supreme Court in Ram Sahu v. Vinod Kumar Rawat, (2021) 13 SCC 1.

21. Coming to the issue of consideration of the expenses of Rs. 7.03 Crore incurred for the construction of 400 kV Transmission Line of the Sainj HEP under the Miscellaneous head, the Commission has considered this aspect in detail in para 3.5.26 of the order dated 05.06.2024 which is reproduced as under:-

“3.5.26. Miscellaneous (O): The Petitioner has claimed Rs. 13.15 Cr. towards ‘Miscellaneous’ costs as against the DPR approved cost of Rs. 12.60 Cr. As per the DPR, the provision outlined for ‘Miscellaneous’ expenses are maximum up to Rs. 20 Crore. During scrutiny of supporting documents, an amount of Rs. 13.04 Cr. could only be validated against the claimed Rs. 13.15 Cr. Also, an amount of Rs. 7.03 Cr. was claimed against construction of 400kV D/C transmission line which was already being claimed under ‘Additional Capitalization’ in the subsequent years from COD. Therefore, the Commission has deducted this amount claimed towards transmission line from the total amount of Rs. 13.04 Cr. under the Miscellaneous head.”

22. The COD of both the units of Sainj HEP has been approved as 04.09.2017. Though letter dated 11.09.2018, Annexure R-3-20, (Utilization Certificate) was submitted showing that the Petitioner had deposited a sum of Rs. 5.00 Crore for the said 400 kV D/C

Transmission Line yet the balance amount was proposed to be adjusted from the fund deposited by the Petitioner to the Himachal Pradesh Power Transmission Corporation Limited (HPPTCL) for the construction of 220 kV D/C Transmission Line from Snail to Hatkoti. In line with the submissions of the Petitioner and after review of documents, the Commission has considered the said amount in Additional Capital Expenditure head. Further the Commission has allowed the Petitioner to submit all relevant documents in the subsequent filing in para 3.6.6 for considering the same under additional capital expenditure which is reproduced as under:-

“3.6.6. The Petitioner has not submitted the copy of work orders, payment proofs, classification of work and other related information for prudence check. Following a prudent review, the Commission in the absence of documentary proofs has not allowed the claimed ACE. The Commission further directs the Petitioner to submit all necessary details / documents with regard to ACE in the subsequent tariff filing.”

In the circumstances, once the aspect has been considered in detail and a liberty has been provided to the Petitioner to submit all the relevant details in the subsequent tariff filing, there is nothing on record to suggest that there is any error apparent on the face of the record.

23. Coming to the issue of Debt: Equity: Grant ratio, the Commission has considered the issue in detail in Order dated 05.06.2024. It has been mentioned by the Consumer Representative that the ADB loan as received by the Gol was 90% grant and 10 % debt for the HEPs to

ensure promotion of clean energy at cheaper and affordable rates in order to benefit the consumers of the State. The capital allocation to the Petitioner has to be on the same terms and conditions under which the Gol has allocated the same to the GoHP in the interest of the consumers of the State. As such, the Commission has also considered capital allocation from the GoHP to the Petitioner on 90% grant and 10% debt. Further, in case of funding through similar loan facility from ADB, the Commission has considered the availability of 90% of ADB loan as grant in line with the submissions of the Petitioner considering the special category status to the State of Himachal Pradesh.

24. Coming to the issue of review of NAPAF, the Commission, in the Order dated 05.06.2024, at Para 4.8.10, has approved 90% as NAPAF for the period from CoD to FY 2023-24 which the Petitioner claims to be on a higher side. The Commission vide Order dated 05.06.2024, has observed at para 4.8.11 that the Sainj HEP has been able to achieve close to 90% PAF in FY24 as well as FY22. Para 4.8.11 is reproduced as under:-

“4.8.11. It is observed that the plant has been able to achieve close to 90% PAF in FY24 as well as FY22. Further, no specific details regarding silt issues have been highlighted by the Petitioner. Therefore, the Commission according to the ‘HPERC Hydro Tariff Regulations, 2011’ has approved 90% as NAPAF for the period from COD to FY 2023-24.”

25. No specific details regarding silt issues has been highlighted by the Petitioner. Accordingly, the Commission has approved 90% as NAPAF for the period from COD to FY 2023-24. Further, in para 4.8.9 of the order under review, the Commission has directed the Petitioner to collect the relevant data with respect to silt level based on which the Commission may consider downward revision of NAPAF. Therefore, there is no error apparent on the face of record in the Order.

26. In the entire Petition, the Petitioner has not been able to show that the order under review suffers from any errors apparent on the face of record or that the review is necessitated on the discovery of new and important matter of evidence which after exercise of due diligence was not within the knowledge of the Petitioner or could not be produced when the order was made. In fact, the Commission has considered each and every aspect of the matter in the order under review and has passed the detailed order and nothing has been brought on record warranting review.

27. Thus, the Petitioner has failed to establish that there are sufficient reasons for reviewing the Order dated 05.06.2024 in Petition No. 25 of 2024. Point No. 1 is accordingly decided against the Petitioner.

Final Order

28. In view of the above discussions and findings, the Petition fails and is accordingly dismissed.

29. The pending applications, if any, are also dismissed.

The file after needful be consigned to records.

Announced
05.11.2024

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman

HPERC