

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

Review Petition No: 114 of 2024

Date of Institution: **03.07.2024**

Heard on: **09.09.2024**

Decided on: 19.11.2024

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. 26 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. 26 of 2024 which had been filed for approval of Capital Cost along with Additional Capitalization and Determination of Tariff in respect of Sawra Kuddu Hydro Electric Project (3x37 MW) from Date of Commercial Operation (COD) to Financial Year 2023-24 and the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011 (Hydro Tariff Regulations, 2011).

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 submitted but the Commission has disallowed certain claims and has thereby reduced the capital cost.

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

A. The impugned order dated 05.06.2024 passed by the Commission is required to be review to the extent it can be

challenged on the facts of the issues and additional supporting documents submitted.

- B. The Commission in order dated 05.06.2024 at para 3.3.29 has not condoned the delay of 773 days under Table 21 *'Reasons for Time Overrun in Package-II-C as per the MoM of BOD of the Petitioner'* against sr. no. III *'Hindrance by Local People'* as claimed by the Petitioner. This delay is from 01.04.2013 to 13.05.2015 instead from 14.05.2014 to 21.11.2016 as wrongly noted by the Commission. This delay of 773 days does not pertain to the Petitioner. In this regard, it is submitted that on 01.04.2013 when the demarcation of the transferred forest land was being carried out, the people of Thana Panchayat assembled at site and drove away the company and departmental officials. Subsequently, efforts were made to start the work on 07.10.2013 but again people assembled at site and prevented the work. People of the Panchayat also assembled in the office of General Manager, created chaos and warned against going ahead with the work. A resolution of the Thana Panchayat was also handed over to the General Manager with a copy to the Hon'ble Chief

Minister, recording their objections to the work. Subsequently, efforts with the support of local administration were made to convince the people to allow the execution of the Adit, but in vain. The matter was also taken up with the Central Institute of Mining & Fuel Research (CIMFR) Dhanbad , who after the site visit gave the Preliminary report allaying the fear of damage due to the construction of the Adit and gave go ahead for the same. The report was also shared with the local people, but they did not relent. The Hon'ble Chief Minister also sought briefing of the matter during his tour of the area in the month of May and October, 2014 and April, 2015 respectively. The Government Authorities ultimately got convinced to use the force to start the work. The first attempt was made on 05.05.2015 with the help of local police but work could not be started due to heavy resistance of the local people of the area. The local administration did not resort to use of force for some reasons. After the said event, force was requisitioned from Shimla and it was only in the presence of strong force of almost 90 police men that the work was started on

14.05.2015. In this period, local SDM, Tehsildar, DSP Rohru and ASP Shimla remained camped at the site to oversee the operation. Criminal cases were framed against the persons who tried to forcibly stop the work and damage the machinery during operation of start of the work. Hence, the Commission may consider the delay of 773 days on account of hindrances in the commencement of work of additional adit. It was only after the indulgence of the Higher Govt. Authorities/ Administration that the work could be started after the deployment of Police force on 14.05.2015. The copy of relevant documents attached as Annexure-C. Thus, the Commission may condone the delay of 773 days on account of hindrances by local people on the basis of above submitted facts and supporting and pro-rate the approved cost against various heads accordingly.

C. The Commission has not approved the cost paid to M/s Aban Coastal JV amounting to Rs. 64.53 Cr., as mentioned at para 3.5.30 of order dated 05.06.2024 under Table 39 '*Cost Claimed and Approved by the Commission for Package-II*' against sr. nos. I, II, III & IV on the reasons that

the Commission shall consider the same post the final decision of the court and on the basis of the recovery made by the Petitioner from the PBG and other claimed amount. The Petitioner has prayed to consider this amount of Rs. 64.53 Cr. and to approve the same, as the said amount has already been paid to the contractor by the Petitioner and the proof of payment thereof has already been submitted with the original petition.

D. The Commission has approved Rs. 3.34 Cr. only under Preliminary (A) head against the modified cost of Rs. 11.59 Cr. at para 3.5.15 of order dated 05.06.2014 under Table 32 '*Preliminary Cost-Claimed, Modified and Approved*' for want of requisite payment proofs. The proofs of payment for an amount of Rs. 1.08 Cr. incurred after merger of PVPCL and HPPCL, available at project site, have now been traced out and are attached at Annexure D. It has been prayed to consider the amount of Rs. 1.08 Cr. under Preliminary (A) head at para 3.5.15 of order dated 05.06.2024 in addition to the already approved amount of Rs. 3.34 Cr.

E. The Commission has not approved Rs. 5.28 Cr. under head '*Other Miscellaneous Works*' of Table 37 of para 3.5.25 of order dated 05.06.2024 for the reason that the requisite documents have not been submitted. The abstracts of payments were attached with the original petition at page no. 1454-1458. Now, the supporting documents amounting to Rs. 3.44 Cr. have been traced out and attached as Annexure E. Hence, it is prayed to consider the amount of Rs. 3.44 Cr. under '*Other Miscellaneous Works*' head at para 3.5.25 of order dated 05.06.2024.

F. The Commission has only approved the cost of Rs. 5.17 Cr. against the claimed amount of Rs. 21.36 Cr. at para 3.5.53 under Table 52 '*E&M Package Cost-Claimed and Approved*' against sr. no. II '*Cost Overrun due to Price Variation applicable for Electro-Mechanical package*' against the sr no. II of head '*Cost Overrun due to Price Variation applicable for E&M package*' by pro-rating the claimed cost. The same is objected on the grounds that the major supply under E&M package of Sawra Kuddu HEP was completed within the original completion period i.e.

June, 2012. The balance supply, however was also completed within the delayed period as condoned by the Commission. The scheduled completion as per original contract was 28.06.2012 and by taking the condoned period of 758 days, the date comes out to be 26.07.2014, upto which the price variation claims may be considered. The working sheet of abstracts of price variation (Supply and Service) in respect of Electro-Mechanical Package of Sawra Kuddu HEP working sheet is attached as Annexure-F. This fact can be authenticated from the price variation calculations submitted along with the original petition. The Annexure P-47 of original petition may also be referred for the same.

G. The Commission has only approved the cost of Rs. 6.83 Cr. against the claimed amount of Rs. 28.18 Cr. at para 3.5.53 under Table No. 52 '*E&M Package Cost-Claimed and Approved*' against sr. no. IV '*Cost Overrun due to Price Variation applicable for Electro-Mechanical package*' against the sr. no. III of head '*Cost Overrun due to Financial Claims against various Extension of Time of E&M package*' by pro-rating the claimed cost. The same is

objected to the extent of Rs. 64.03 lakhs which pertains to the intermediate storage, loading and unloading of over-dimensional components of E&M package occurred due to the bad condition of the roads upto the project site. As the Commission has approved the cost against the widening of roads amounting to Rs. 72 lakhs against sr. no. XII of head '*Cost Impact due to expenses incurred on facilitating the shipment of heavy equipment under E&M package*' of Table 52, therefore, the cost of Rs. 64.03 lakhs against sr. no. IV is also required to be approved in full and is not to be pro-rated, as the amount of Rs. 64.03 Cr. incurred due to intermediate storage, loading and unloading of over-dimensional components of E&M package was due to the bad road conditions. The Commission has already approved the cost of Rs. 0.72 Cr. against the same against sr. no. XII of Table 52. The Annexure P-49 (page no. 008964) of original petition may be referred for the same. Hence, it is prayed to consider Rs. 64.03 lakhs against sr. no. IV of Table 52 of order dated 05.06.2024.

H. The Commission has only approved the cost of Rs. 1.53 Cr. against the claimed amount of Rs. 6.33 Cr. at para

3.5.53 of Table 52 '*E&M Package Cost-Claimed and Approved*' against sr. no. IV '*Cost Overrun due to Price Variation applicable for Electro-Mechanical package*' against the sr no. XI of head '*Cost Impact due to Changes/implication of Statutory levies under E&M package*' by pro-rating the claimed cost. The same is objected on the grounds that the Entry Tax was enforced in the State of Himachal Pradesh from April, 2010 and the first consignment to the site was transported during July, 2010 and is not related to the delay in execution of the supply, even when the rate of Entry tax on supply remained unaltered. The cost against the entry tax would have incurred even when the project would have been completed within scheduled time. The Annexure P-55 of the original petition may be referred in this regard. Hence, it is prayed to consider the full amount of Rs. 6.33 Cr. against sr. no. XI of Table 52 of order dated 05.06.2024.

- I. That the Commission has not approved the claimed amount of Rs. 0.12 Cr. at para 3.5.53 of Table 52 '*E&M Package Cost-Claimed and Approved*' against the sr no. XIV of head '*Cost Impact due to Miscellaneous Charges*'

by pro-rating the claimed cost and on the reasons that these costs would not have been incurred if the project implemented as per the scheduled time frame. The same is objected on the grounds that these costs which includes dispute board member fees, advocate fees, Factory Act license fee, independent engineer's charges, electrical inspector charges etc. etc. which would have been incurred even if the project has been implemented within scheduled time and is not linked with delay. The Annexure P-58 of the original petition may be referred in this regard. Hence, it is prayed to consider and approve an amount of Rs. 0.12 Cr. against sr. no. XIV of Table 52 of order dated 05.06.2024.

J. The Commission has not approved an amount of Rs. 6.16 Cr. under head at Sr. No. VIII '*Miscellaneous Expenditure*' and Rs. 0.26 under head at Sr. No. IX '*Instrumentation*' of Table 39 at para 3.5.30 for want of payment proofs and work orders. The proofs of payment and the work orders against an amount of Rs. 0.26 Cr. have already been submitted with the original petition. The page nos. 1409 to 1422 of the original petition may be referred in this regard. Also, the abstracts of payments were attached with the

original petition at page no. 1967. Now, the supporting documents amounting to Rs. 4.30 Cr. have been traced out and are attached as Annexure G. Hence, it is prayed to consider and approve an amount of Rs. 4.56 Cr. (Rs. 0.26 Cr. + Rs. 4.30 Cr.) against sr. no. VIII & IX of Table 39 at para 3.5.30 of order dated 05.06.2024.

K. The Commission has not approved an amount of Rs. 17.22 Cr. under head at Sr. No. VII '*Other Miscellaneous Works*' of Table 40 at para 3.5.31 for want of supporting documents i.e. payment proofs and work orders. The abstracts of payments were attached with the original petition as Annexure P-34. Now, the supporting documents amounting to Rs. 13.15 Cr. have been traced out and are attached as Annexure-H. Hence, it is prayed to consider and approve an amount of Rs. 13.15 Cr. against sr. no. VII of Table 40 at para 3.5.31 of order dated 05.06.2024.

L. The Commission has not approved an amount of Rs. 1.02 Cr. under head Tools and Plants (III) of Table 49 at para 3.5.47 of order dated 05.06.2024 for want of supporting documents. Against the claimed amount of Rs. 1.02 Cr., the amount of Rs. 0.53 Cr. pertains to the expenditure

incurred against communication and internet during the project construction period and are petty monthly payments. However, the supporting documents amounting to Rs. 0.33 Cr. have now been traced out and are attached as Annexure-I. Hence, it is prayed to consider and approve an amount of Rs. 0.86 Cr. (0.53 Cr. + 0.33 Cr.) of Table 49 at para 3.5.47 of order dated 05.06.2024.

M. The Commission in order dated 05.06.2024 has observed in Table 17 that 'No details submitted' against head V 'Date of Award of Package-II-D to M/s Coastal Projects Ltd.' The detail of Extension of time is hereby submitted as under:-

Sr. No.	Completion date as per agreement	Total extension time granted(days)	Total extension of time approved	Remarks
1 st Extension of Time	10.11.2011	155	11.10.2011 to 13.03.2012	1 st extension of time approved by the General Manager Sawra-Kuddu HEP without levy of Liquidated damages from 11.10.2011 to 13.03.2012 & with levy of Liquidated damages from 14.03.2012 to 10.05.2012 conveyed vide no. HPPCL/GM SKHEP/Cont. Cell(Tender)/2012-13-539-44 dated 27.04.2012
	13.03.2012	58	14.03.2012 to 10.05.2012	

2 nd Extension of Time	10.05.2012	185	12.05.2012 to 12.11.2012	2 nd extension of time approved by the General Manager Sawra-Kuddu HEP with levy of Liquidated damages conveyed vide no. HPPCL/GM /SKHEP/Cont. Cell(Tender)/2012-13-962-67 dated 10.05.2012
3 rd & final extension of time	12.11.2012	180	13.11.2012 to 11.05.2013	3 rd extension of time approved by the General Manager Sawra-Kuddu HEP with levy of Liquidated damages conveyed vide no. HPPCL/GM /SKHEP/HRT/2012-13-4914 dated 08.11.2012

The justification in delay attributable to the Petitioner is shown in the following table.

Sr. No.	Package	Delay due to HPPCL	Delay due to Contract or	Delay due to Force Majeure events	Justification of the delay due to HPPCL
1	1 st Extension of Time	137	58	18	The reason for delays of 58 days is due to additional work & 18 days is due to cavity formation & treatment of Cavity & rectification work.
2	2 nd Extension of Time	0	185	0	
3	Final Extension of Time	0	180	0	

The relevant documents in this regard are attached as Annexure J. It is prayed that the same may be considered and allowed by the Commission.

N). The Commission restricted the loan/equity amount (debt/normative debt component) by way of considering the corresponding debt/equity component as 'Grant Component' in Sawra Kuddu HEP. Since, as on date, the books of accounts of the Petitioner are showing 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 GoHP and the Petitioner and the Petitioner is bound by the on-lending agreement, 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.

4. It is averred that the Commission has approved the capital cost and determined the final tariff for Sawra Kuddu HEP of the Petitioner, however, the Commission has not fully allowed the claims of the Petitioner and has reduced the capital cost and other norms as claimed by the Petitioner.

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

REPLY OF THE RESPONDENT

6. The review Petition has been resisted and contested by the Respondent by filing reply that in Point No. 7-iii-B to M, the Commission has reviewed and considered submissions of the Petitioners along with relevant documents and approved the cost against various heads after prudence check.

7. Further, the Commission in Point No. 7-iii-N, debt-equity ratio, has considered the Debt-Equity ratio in accordance with the Regulation 16 of the Hydro Tariff Regulations, 2011. In Commission's analysis at para 3.8.19, the Commission has ordered that it shall take appropriate decision with regard to the treatment of such ADB loans during truing-up.

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 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 dismissed. On the issue of not condoning the delay of 773 days etc., it is submitted that delay has been caused due to the inefficiencies of Petitioner and its failure to coordinate/ handle the situation at ground level effectively to ensure timely interventions by the administration to demarcate land. Moreover, it was the responsibility of the Petitioner to provide encumbrance/ litigation free land to the contractor before issuing the LOA. Thus, the Commission should not allow the prayer to condone delay. Further, on the issue of allowing costs amounting to Rs. 64.53 paid to M/s Aban Coastal JV, it is submitted that as per para 3.5.29 of the order dated 05.06.2024, the commission may consider the claim after the final decision of the Hon'ble High Court. Also submitted that on the issue of allowing only costs amounting to Rs.3.34 Cr. under preliminary (A) head etc. It is submitted that the demanded costs may not be allowed in the absence of the proofs of payment etc. No additional burden on the consumers of the State can be passed on this account. Further, on the issue of not allowing costs amounting to Rs.5.28 Cr. under head 'Miscellaneous Works', it is submitted that such costs cannot be allowed in absence of supporting documents. Further, the issues raised in paras F to N of para 7(iii) of the Petition, it is submitted that the Commission has dealt with the

issue in detail and there are no plausible reasons to allow the prayer. The costs have been rightly pro-rated by the Commission and the claims were found without supporting documents. On the issue of reconsidering Commission's order to restrict loan/equity amount and considering the same as grant, it is submitted that ADB loan as received from Gol in the ratio of 90% grant and 10% debt for the HEPs to ensure promotion of clean energy at cheaper and affordable rates to benefit the consumers of the state, should be passed on as grant to the Petitioner to reduce its interest burden. The consumer of the State should not be burdened for this arrangement between the State and the Petitioner. The issue should be resolved at State govt. level to settle it for good.

9. 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.

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

11. 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 as the Commission has not considered the documents which were submitted along with the original Petition and thus, the order is required to be reviewed as prayed.

12. 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 there are no errors apparent on the face of record and Petition is liable to be dismissed.

13. 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. 26 of 2024.

Point No. 2: **Final Order**

14. 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:

15. 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”.

16. 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.”

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

18. In so far as the delay of 773 days due to hindrance by local people is concerned, the Commission has considered this aspect in detail in para 3.3.29 which is reproduced as under:-

“Civil Works Package-II-C: The Petitioner has cited a delay in the work from 14.05.2014 to 30.09.2020, for which the Petitioner obtained the extension upto 21.11.2016. The final BOD approval upto 30.09.2020 is currently under review by the BOD. Additionally, the Petitioner has submitted documents with regard to the grant of time extensions, which detail the reasons for the delay and the attribution of the delay. Upon reviewing the submitted documents, the Commission has identified the following reasons for the claimed delay:

Table 21: Reasons for Time Overrun in Package-II-C as per the MoM of BOD of the Petitioner

S.No.	Reasons for Time Overrun in Package-II-C	Delay Attributed to the Agency	No. of Days
Extension of Time (14.05.2014 to 30.09.2020)			
I	Late submission of baseline schedule and Delay in Mobilisation by the Contractor	Contractor	15
II	Delay in issuance of construction drawings to the contractor	HPPCL	31
III	Hindrance by Local People	None	773
IV	Work executed during day shift	None	37
V	Period under Litigation (NGT Stay)	None	237
VI	Mobilisation period	Contractor	101
VII	Balance construction work period	None	144
VIII	Extension upto 30.09.2020	Under approval	-

The Commission noted that the delay from 14.05.2014 to 21.11.2016 was primarily due to hindrances by local people, delaying the project by approximately 773 days (S.No. III). The Commission does not condone this delay, as it is the Petitioner's duty to provide encumbrance-free land to the Contractor before issuing the LOA. Furthermore, the Commission condones the delay of approximately 237 days (S.No. V) caused due to litigation in the NGT. The Commission has noted that delays due to the issuance of construction drawings to the contractor for work execution, delay in submitting the work schedule, delay in mobilization, and balance work period could have been avoided by proper coordination and planning between the Petitioner and the Contractor. Further, the Petitioner has not provided any details with regard to the delay claimed under balance work period. Additionally, the Commission noted that as per 'S.No.-VIII', the extension of time from the BOD is still under approval for which no details have been provided by the Petitioner. In the absence of any details, the Commission has not condoned the delay on this account. Further, with regard to pending BOD approval as mentioned in 'S. No.-VIII', the Commission directs the Petitioner to submit the details of any future liquidated damages (LD) occurred due to the final BOD's approval. The Commission shall consider the same in subsequent tariff period. Hence, in view of all the above-mentioned statements, the Commission only condones 237 days of delay on account litigation and stay by NGT as per 'S. No.-V'. Further, no other delay has been condoned by the Commission as claimed in table no. 21 due to lack of proper planning, administrative failure in providing encumbrance free land and in the absence of adequate supporting documents."

19. It was the duty of the Petitioner to provide encumbrance-free land to the Contractor before issuing the LOA (Letter of Award). The onus of explaining the delay satisfactorily was on the Petitioner but the Petitioner had not been able to produce sufficient satisfactory proof that the delay is not attributable to the Petitioner and was on account

of hindrances by the local people. Once, the encumbrance free land was not awarded to the contractor before issuing the LOA and since no satisfactory evidence could be produced, the delay has not been condoned. Here it is relevant to mention that the Petitioner had submitted before the Commission that the matter has been submitted for the approval of BoD. The decision of BoD has also not been produced. In case the Petitioner files sufficient proof during the subsequent truing up filing, the Commission shall examine the same that the delay is not attributable to the Petitioner. However, at this stage, in the absence of any new evidence, the Petitioner has not been able to show that there is any error apparent on the face of the record.

20. Regarding non-approval of the payment of Rs. 64.53 Crore made to M/s Aban Coastal JV, the Commission has observed in para 3.5.30 of Order dated 05.06.2024, the contractor M/s Aban Coastal JV is required to bear the cost of execution of balance works which was awarded to M/s HCC post the termination of contract. The arbitration between the Petitioner and M/s Aban Coastal is sub-judice in the Hon'ble High Court. This has resulted in delay in recoveries from the original contractor. In the event of the favorable decision, the burden of the cost on the Petitioner would be NIL. Therefore, the Petitioner shall

submit the relevant proof at the time of subsequent filing/ truing up after the decision of the Hon'ble High Court so that the issue is considered with supporting evidence.

21. Coming to the issue of submission of supporting documents for miscellaneous works amounting to Rs. 1.08 Crore, the onus to submit the same was on the Petitioner. However, the Petitioner failed miserably to bring the satisfactory evidence/ supporting documents on record during the pendency of the Petition and could produce only the payment proof of Rs. 3.34 Crore against an amount of Rs. 11.59 Crore. The Commission has discussed this aspect in detail in para 3.5.15. The document being produced now were within the knowledge of the Petitioner and could have been produced during pendency of the Petition. However, in case the Petitioner submits sufficient proof against the aforesaid disallowed claim during subsequent truing up filing, the Commission shall examine the same.

22. Regarding submission of supporting documents for miscellaneous works amounting to Rs. 3.44 Cr., no satisfactory evidence/ documents could be placed on record by the Petitioner during the pendency of the Petition despite sufficient time made available to the Petitioner. This aspect has been discussed in detail in para 3.5.25 of the Order dated 05.06.2024. The document being

produced now were within the knowledge of the Petitioner and could have been produced during pendency of the Petition. However, in case the Petitioner submits sufficient proof against the aforesaid disallowed claim during subsequent true up filing, the Commission shall examine the same.

23. Coming to the issue of price variation for supply under E&M package of Sawra Kuddu HEP, the payment has been made by the Petitioner after the original contract period and therefore, the same has been rightly pro-rated by the Commission. However, on submission of sufficient satisfactory proof, the matter shall be taken up during true-up exercise for examination by the Commission.

24. Coming to the issue of Rs. 64.03 lakhs pertaining to the intermediate storage, loading and unloading of over-dimensional components of E&M package borne due to the bad condition of the roads upto the project site, the issue has been discussed in detail in para 3.5.53. The payment of Rs. 61.03 lakhs has been made by the Petitioner after the original contract period, therefore, the same has been rightly pro-rated by the Commission. However, on submission of sufficient satisfactory proof, the matter shall be taken up during true-up exercise for examination by the Commission.

25. Coming to the issue of the cost incurred on account of entry tax, the Commission has discussed this issue in detail in para 3.5.53 based on the submissions of the proof/ documents. In this case also, the payment has been made by the Petitioner after the original contract period and the cost has been incurred due to delay. Therefore the same has been rightly pro-rated by the Commission. However, on submission of sufficient satisfactory proof, the matter shall be taken up during true-up exercise for examination by the Commission.

26. Regarding issue of Miscellaneous Charges, the Commission has discussed this issue in detail in para 3.5.53 based on the submissions of the proof/ documents. The cost as claimed was not allowed in the absence of satisfactory proof/ documents. However, on submission of sufficient satisfactory proof, the matter shall be taken up during true-up exercise for examination by the Commission.

27. Coming to the issue of non-approval of an amount of Rs. 6.16 Crore under Miscellaneous Expenditure and Rs. 0.26 Crore under head at Sr. No. IX 'Instrumentation' of Table 39, the issue has been discussed in detail in para 3.5.30 based on the documents submitted by the Petitioner. The onus to submit the relevant documents and proof against the claims was on the Petitioner but no satisfactory proof/ documents have been produced. The document being produced

now were within the knowledge of the Petitioner and could have been produced during pendency of the Petition. However, in case the Petitioner submits sufficient proof against the aforesaid disallowed claims during subsequent truing up filing, the Commission shall examine the same.

28. Coming to the issue of non approval of an amount of Rs. 17.22 Crore under head at Sr. No. VII 'Other Miscellaneous Work' of Table 40, the issue has been discussed in detail in para 3.5.31 based on the documents submitted by the Petitioner. The onus to submit the satisfactory proof against the claim was on the Petitioner but no satisfactory proof/ documents have been produced. The document being produced now were within the knowledge of the Petitioner and could have been produced during pendency of the Petition. However, in case the Petitioner submits sufficient proof against the aforesaid disallowed claims during subsequent truing up filing, the Commission shall examine the same.

29. Coming to the issue of non approval of an amount of Rs. 1.02 Crore under head Tool and Plants (III) of Table 49, the issue has been discussed in detail in para 3.5.47 based on the documents submitted by the Petitioner. The onus to submit the satisfactory proof against the claim was on the Petitioner but no satisfactory proof/ documents have

been produced. The document being produced now were within the knowledge of the Petitioner and could have been produced during pendency of the Petition. However, in case the Petitioner submits sufficient proof against the aforesaid disallowed claims during subsequent truing up filing, the Commission may examine the same.

30. Coming to the issue of observation of the Commission that “No details submitted” under Head V ‘Date of Award of Package-II-D to M/s Aban Costal Projects Ltd.’ as described in Table 17 of order dated 05.06.2024. No satisfactory proof of documents had been produced. This issue has been discussed in para 20 above. The document being produced now were within the knowledge of the Petitioner and could have been produced during pendency of the Petition. However, in case the Petitioner submits sufficient proof against the aforesaid disallowed claims during subsequent truing up filing, the Commission shall examine the same.

31. 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 GoI 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.

32. In the entire Petition, the Petitioner has not been able to show that the order under review suffers from any error 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.

33. Thus, the Petitioner has failed to establish that there are sufficient reasons for reviewing the Order dated 05.06.2024 in Petition No. 26 of 2024. Point No. 1 is accordingly decided against the Petitioner.

Final Order

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

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

The file after needful be consigned to records.

Announced
19.11.2024

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman

HPERC