

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

**Review Petition No: 118 of 2024**  
Instituted on: 20.09.2024  
Heard on: 25.10.2024  
**Decided on: 26.12.2024**

**CORAM:**

DEVENDRA KUMAR SHARMA  
CHAIRMAN.

YASHWANT SINGH CHOGAL  
MEMBER (Law).

SHASHI KANT JOSHI  
MEMBER.

**In the matter of:-**

M/s Sai Eternal Foundation,  
Sai Bhawan, Sector-4, New Shimla, HP-171009. through  
Sh. Munish Sharma, Chief General Manager. ....Petitioner

Versus

The HP State Electricity Board Limited.  
through Chief Engineer (System Operation),  
Vidyut Bhawan, Shimla-171004. ....Respondent

**Review Petition under Section 94 (f) of the Electricity Act, 2003 read with Regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for review of Order dated 09.09.2024 passed by the Commission in Petition No. 104 of 2024.**

Present:-

Sh. R.K. Barwal, Law Officer for the Petitioner.  
Sh. Kamlesh Saklani, Authorised Representative for the Respondent.

**ORDER**

This Review Petition has been filed 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 (the CBR, 2005 for short) for review of Order dated 09.09.2024 passed by the Commission in Petition No. 104 of 2024.

2. As per the Petition, a Joint Petition No. 104 of 2024 was filed before the Commission on 30.05.2024 pursuant to Order dated 14.07.2021 in Petition No. 20 of 2021. The Petition No. 104 of 2024 was allowed by the Commission vide order dated 09.09.2024 by observing the following in Para 16 and 20:-

*“16. Thus, the appropriate deduction of the admissible subsidy by the Central Government or the State Government is required to be made as per Para 8.14 (ii) of the SHP Order dated 22.12.2020 and Regulation 22-B of the RE Regulations, 2017 (as amended by Fourth Amendment Regulations), as the generating station shall be assumed/ deemed to have availed the benefit of any such generation based incentive notified for a particular renewable technology. Therefore, the parties were required to clearly mention as to how the impact of MNRE subsidy is to be considered but the entire Petition is silent.*

*20. Thus, taking into consideration above, the adjustment of applicable Industry subsidy as per the Project capacity is required to be made as per Para 8.14 (ii) of SHP Order dated 22.12.2020 and Regulation 22-B of the RE Regulations, 2017 (as amended by Fourth Amendment Regulations), in the applicable tariff of Rs. 4.67 per KWh, as per the relevant control period. Thus, after adjustment of Industry subsidy, the tariff of Rs. 4.38 per kWh would be applicable to the Project. However, said tariff of Rs. 4.38 per kWh shall also be a provisional tariff as the Petition is totally silent about the MNRE subsidy which too is required to be deducted. Thus, the aforesaid tariff of Rs. 4.38 per kWh shall be valid for a period of 6 months. After completion of a period of 6 months from today, either of the parties shall approach the Commission for the appropriate adjustment as per admissible MNRE subsidy for the Project.”*

3. As per the Petition, the Petitioner had requested for the adjustment of Industrial subsidy admissible under the Industrial Development Scheme (IDS) on its actual disbursement but the Commission vide order dated 07.09.2024 has made an adjustment of

Rs. 4,98,69,432/- whereas Industrial subsidy only of a sum of Rs. 2,91,94,719/- has been sanctioned by the Industry Department on 29.02.2024 per sanction order dated 29.02.2024 (Annexure P-2) which too is yet to be released.

4. Further, the Kareri Hydro Electric Project (HEP) (Project for short) was not eligible for the subsidy being granted by the Ministry of New and Renewable Energy (MNRE for short), Government of India pursuant to a scheme notified on 02.07.2014 which was in existence only till 31.03.2017. As per the Petitioner, the MNRE scheme (Annexure P-4) was in vogue during 12<sup>th</sup> plan upto 31.03.2017 but, the Petitioner was not eligible for the subsidy under said scheme.

5. It is averred that it was prayed in Joint Petition No. 104 of 2024 that the Industrial subsidy be adjusted only on its actual disbursement to avoid legal complications and multiplicity of litigation but the Commission after adjustment of Industrial subsidy of Rs. 4,98,69,432/- has granted provisional tariff of Rs. 4.38 per kWh. As per the Petition, only an amount of Rs. 2,91,94,719/- has been sanctioned as Industrial subsidy, therefore, only said amount is required to be adjusted while determining the tariff, failing which Petitioner would sustain loss.

6. It is averred that the eligibility criteria for subsidy being provided by the MNRE for the Small Hydro Projects (SHPs) as given in para 5 of

Annexure-B at page 7 of the scheme (Annexure P-3), is reproduced as under:-

*“The request on application form along with documentary proof, for the grant of financial support for the SHP project, complete in all respects from the developer should be submitted to the ministry within six months from the commencement of project work at the site or within six months from the date of first disbursement of loan from the Financial Institute/ Bank whichever is earlier.”*

7. It is averred that the commencement of the construction at site as per construction schedule (Annexure P-5) appended to the Power Purchase Agreement (PPA for short) commenced on 28.04.2018 on which date the subsidy scheme issued by the MNRE had already elapsed. Not only this, even the loan was sanctioned by the H.P. State Cooperative Bank on 21.12.2018 and the first installment was disbursed on 04.04.2019 (Annexure P-6).

8. It is also averred that the Petitioner had requested the Small Hydro Power Division, MNRE, Government of India (Gol for short) (Annexure P-7) for issuance of a certificate of non-disbursal of subsidy vide letter dated 04.05.2021 (Annexure P-8) and the requisite certificate was issued by MNRE on 20.05.2021 that no subsidy has been released to Kareri SHP (4.80 MW) in Shimla District of Himachal Pradesh till date. Hence, the Petition.

## **REPLY OF THE RESPONDENT**

9. The review Petition has been resisted by filing reply that the review is not maintainable as the grounds raised neither disclose any error apparent on the face of the record nor any averments that new evidence which could have been presented could not be produced earlier despite exercise of due diligence. Also that the Petition does not satisfy the grounds for review of the Petition as provided under Regulation 63 of the HPERC (Conduct of Business) Regulations, 2005 and the Petitioner has merely introduced new evidence.

10. As per the Respondent, the Petitioner has relied upon order dated 29.09.2024 regarding sanction of subsidy of Rs. 2,91,94,719/- but the Petitioner has failed to demonstrate that said document was not available or could not be obtained at the time of filing of the Petition No. 104 of 2024 or during pendency of the same despite exercise of due diligence. Also averred that, the Petitioner had applied for subsidy of Rs. 4,98,69,432/- and claims that against said amount only a sum of Rs. 2,91,94,719/- was sanctioned being 30% of the electro-mechanical cost but the electro-mechanical cost of the Project as submitted under IDC for claiming subsidy was Rs. 16,62,31,440/- which only is required to be taken into consideration for incentive/ subsidy. Further, the Petitioner was well aware of the sanctioned amount but despite reasons best known to it, the same was not brought to the notice of the

Commission and thus, the same cannot be considered in a Review Petition.

11. Also that the Petitioner has failed to attribute the reasons for deduction of subsidy amount from Rs. 4,98,69,719/- to Rs. 2,91,94,719/- being a substantial deduction which warrant a detailed explanation but no such explanation has been offered and no further correspondence made with the Industry department has been produced. Thus, the review on incomplete or selectively presented facts is not tenable.

12. Regarding MNRE subsidy it is averred that the same warrants consideration based on the facts of the case in the light of prevailing Regulations and the Order dated 15.02.2020.

13. On merits, the contents of the Petition have been denied reiterating the averments made in the previous paras.

14. 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.

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

**Point No. 1:** Whether there are sufficient reasons for reviewing the Order dated 09.09.2024 in Petition No. 104 of 2024?

**Point No. 2:** **Final Order**

**Point No. 1:** Yes.

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

### **REASONS FOR FINDINGS**

**Point No. 1:**

16. It is well settled 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”.”*

17. 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.”*

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

19. The simple case of the Petitioner is that the Commission vide order 14.07.2021 in Petition No. 20 of 2021 had allowed provisional tariff of Rs. 4.67 per kWh for a period of one year with a direction that the parties shall approach the Commission after completion of one year for appropriate tariff.

20. Thereafter, the parties filed Joint Petition No. 104 of 2024, pursuant to order dated 14.07.2021 in Petition No. 20 of 2021 that issue relating to disbursement of financial assistance/ subsidy under Industrial Development Scheme is pending consideration which is to the tune of Rs. 4,98,69,432/-. The Joint Petitioner No. 2 (Review Petitioner) had also furnished a certificate of the the General Manager, District Industries Centre Shimla that online claim of the Joint Petitioner No. 2/ Review Petitioner to the tune of Rs. 4,98,69,432/- has been received on the portal on 16.09.2020.

21. On the basis of the material placed on record, the Commission decided the Petition No. 104 of 2024 vide order dated 06.09.2024

observing that appropriate deduction of admissible subsidy is required to be made as per Para 8.14 (ii) of order dated 22.12.2020 in Suo Moto Petition No. 76 of 2020 and Regulation 22-B of RE Regulations, 2017, as amended vide Fourth Amendment that the Joint Petitioner No. 2/ generating company shall be assumed to have availed the benefit of such generation based incentive/ subsidy and after making adjustment of Rs. 4,98,69,432/-, the provisional tariff of Rs. 4.38 per kWh was allowed in favour of Petitioner for a period of six months and directed the parties to approach the Commission after six months for appropriate adjustment of admissible MNRE subsidy.

22. The Review has been sought that as against the anticipated subsidy amount of Rs. 4,98,69,432/- qua which the online claim had been submitted in the portal of Industry Department, a subsidy only of Rs. 2,91,94,719/- has been sanctioned in favour of the Petitioner under the Industrial Development Scheme which only may be considered for adjustment and the tariff be worked out accordingly. The Petitioner has also claimed that the Project was not eligible for MNRE subsidy as said scheme was in existence only till 31.03.2017, as such, no deduction/ adjustment in tariff in respect of MNRE subsidy is required to be made.

23. In support, the Petitioner has placed on record office order dated 29.02.2024, issued by the Director Industries, GoHP that only a subsidy of Rs. 2,91,94,719/- has been sanctioned under Industrial Development

Scheme in favour of the Petitioner meaning thereby that adjustment of only Rs. 2,91,94,719/- is required to be made in the tariff as against a sum of Rs. 4,98,69,432/- as made vide order dated 06.09.2024 in Petition No. 104 of 2024. Consequently, tariff of Rs. 4.38 per kWh as allowed vide order dated 06.09.2024 in Petition No. 104 of 2024 is required to be re-calculated.

24. A careful perusal of tentative construction schedule placed with the Petition shows that the starting date of the Project/ construction activity was 28.04.2018. The subsidy scheme floated by the MNRE for Small Hydro Projects (SHPs) was applicable for FY 2014-25 and remaining period of 12<sup>th</sup> plan i.e. upto 30.03.2017, extended upto 30.09.2017. The Petitioner has also placed on record the letter dated 20.05.2021 of the MNRE that no subsidy has been released to the Petitioner i.e. M/s Sai Engineering Foundation for setting up Kareri SHEP (4.80 MW) in Shimla Distt. Since, the tentative Construction Schedule shows the date of starting of the Project/ construction activity as 28.04.2018, on which date the MNRE subsidy was not in existence, the Project of the Petitioner was not eligible for MNRE subsidy. Thus, no deduction in respect of the MNRE subsidy is required to be made.

25. It is relevant to mention that when Petition No. 104 of 2024 was filed, the Petitioner had neither placed on record letter dated 29.02.2024 nor had pleaded that only a subsidy of Rs. Rs. 2,91,94,719/- has been

allowed, as against the amount of Rs. 4,98,69,432/- despite existence of the office order dated 29.02.2024. In the circumstances, the Commission was constrained to make adjustment of Industrial subsidy taking into account the subsidy amount of Rs. 4,98,69,432/- on the basis of access to credit @ 30% of investment in plant and machinery. Had the order dated 29.02.2024 been produced before the Commission, the applicable deduction would have been made by taking into account subsidy of Rs. 2,91,94,719/- only. Similarly, the Petitioner had also not placed on record the tentative construction schedule in Petition No. 104 of 2024 that date of starting of Project/ Construction activity was 28.04.2018. So much so, no satisfactory explanation with respect to MNRE subsidy had been made in Petition No. 104 of 2024. As such, the Commission had to make observation regarding MNRE subsidy.

26. In the circumstances, the Petitioner has made out a case that there are errors apparent on the face of the record regarding adjustment of subsidy of Rs. 4,98,69,432/- as against the actual sanctioned amount of Rs. 2,91,94,719/- which only has been sanctioned and is required to be adjusted. Also, there is an error apparent on the face of the record of adjustment of Rs. 5.00 Crore against MNRE subsidy for which the Petitioner was not eligible. Thus, after adjustment of Industrial subsidy of Rs. 2,91,94,719/- against the

tariff of Rs. 4.67 per kWh, the tariff which become admissible to the Project of the Petitioner comes to Rs. 4.50 per kWh, which is required to be paid from the date of SCOD. The Point No. 1 is accordingly decided in favour of the Petitioner and against the Respondent.

**Final Order**

27. In view of the above discussions and findings, the Petition succeeds and allowed. After adjustment of subsidy of Rs. 2,91,94,719/, the tariff comes to Rs. 4.50 per kWh which is required to be paid in respect of the Project from the date of SCOD. The Review Petitioner and the HPSEBL are directed to execute the Supplementary Power Purchase Agreement within a period of 30 days from the date of this order by making suitable adjustments in the appropriate clauses of the PPA and SPPA.

28. Let a copy of this order be supplied to the parties.

The file after needful be consigned to records.

**Announced**

**26.12.2024**

-Sd-

(Shashi Kant Joshi)  
Member

-Sd-

(Yashwant Singh Chogal)  
Member(Law)

-Sd-

(Devendra Kumar Sharma)  
Chairman