

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

Review Petition No: 133 of 2024
Date of Institution: 19.10.2024
Arguments Heard on: 22.11.2024
Decided on: 26.12.2024

CORAM:

DEVENDRA KUMAR SHARMA
CHAIRMAN.

YASHWANT SINGH CHOGAL
MEMBER (Law).

SHASHI KANT JOSHI
MEMBER .

M/s B.S. Farms (Solar Venture),
Village Anji, Post Office Barog,
Tehsil & Distt. Solan, H.P.
Correspondence Address at:
Dale view, Sector-2, Phase-II,
New Shimla, Distt. Shimla, HP.-171009.
through its Authorized Signatory Ms. Rupali Thakur.

.....Petitioner.

Versus

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

....Respondent.

Review Petition under the provisions of 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 extension of applicability of tariff upto 31.03.2025 of Order dated 02.04.2024 passed by the Commission in Petition No. 46 of 2024.

Present:-

Sh. Yatin Sood, Authorised Representative for the
Petitioner.

Sh. Kamlesh Saklani, Authorised Representative for the Respondent.

ORDER

This order would dispose off the Petition filed by M/s B.S. Farm (Solar Venture) (Petitioner for short) that a Joint Petition No. 46 of 2024 for approval of Power Purchase Agreement (PPA for short) was filed by the Petitioner and the Himachal Pradesh State Electricity Board Limited (HPSEBL/ Respondent for short) which was allowed by the Commission vide Order dated 02.04.2024 permitting the Joint Petitioners to sign the PPA (Annexure P-1). The parties also signed the Connection Agreement on 21.05.2024 (Annexure P-2).

2. It is claimed that the Petitioner, being a Government Officer was accorded approval on 10.01.2024 for the Project (Annexure P-4) and the permission for lopping and felling of trees was granted on 03.09.2024 (Annexure P-5).

3. It is averred that the Petitioner had applied for extension of time to the HIMURJA which has been accorded vide letter No. HIMURJA (F-7) SPV Projects/2023-4306 dated 21.09.2024 (Annexure P-6).

4. As per the Petitioner, a significant progress has been made in the Project and almost 60% work has been done and the Petitioner will complete the remaining work by 31.03.2025. Further, the Petitioner despite best efforts could not match the timelines for completion of the Project upto the COD i.e. 11.10.2024 and has

prayed that the tariff of Rs. 3.65 per kWh, as allowed to the Project, be permitted to be availed till the commissioning of the Project by 31.03.2025.

5. According to the Petitioner, the Commission vide order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 has determined the generic levelized tariff in respect of Solar Power Projects for FY 2023-24 (w.e.f. 01.10.2023 to 31.03.2024) under the RE Tariff Regulations, 2017. Para 12 E(i) of the tariff order reads as under:-

“12. E. The applicability of this tariff shall be governed as per the following provisions:-

(i) in cases where the joint petition for approval of PPA is submitted to the Commission on or after 01.10.2023, but not later than 31.03.2024, this tariff shall be applicable for such capacity(ies) as are commissioned on or before 31.03.2025.”

6. Thus, the Project is entitled to the tariff of Rs. 3.65 per kWh, subject to adjustment of subsidy, if any, having capacity of 1 MW.

7. The Petition has been resisted by the Respondent that Review Petition is not maintainable as the Petitioner has failed to satisfy the grounds stipulated under Section 94 of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and that the grounds raised do not stipulate any error apparent on the face of the record. Rather, the Petitioner has raised subsequent events which do not qualify as valid grounds for review. Not only this, the Review Petition is required to be filed within 30 days from the date of passing

of order under review and if the review is not filed within the stipulated time period, an application for condonation of delay is required. Thus, the review is not maintainable.

8. It is averred that the PPA was executed between the Petitioner and the Respondent on 21.05.2024 and Section 6.2 of the PPA governing the applicable tariff and its associated terms and conditions provides as under:-

“6.2 TARIFF FOR NET SALEABLE ENERGY

(a) xxxxxx

(b) The rate of Rs. 3.65 per kWh as per Commission’s order, above is firm and fixed and shall not be subject to any indexation, escalation, adjustment or review due to any reason whatever except for the adjustment on the following line and for specific provisions under Section 8.8:-

i) The tariff of Rs. 3.65 per kWh is determined for the Project being stipulated in the Rural Area as per the order of the Commission dated 04.11.2023. The Affidavit to this effect attached at Annexure-VI.

ii) The rate given above shall be applicable if the entire capacity of the project is commissioned on or before Scheduled Commercial Operation Date (SCOD) i.e. 11.10.2024. However, if the commissioning of the project is delayed beyond 11.10.2024, the rate determined by the Commission for the category under which the total capacity of the project falls for the Control Period(s) in which the capacities are commissioned for the respective capacity(ies) or the rate of Rs. 3.65 Per kWh as above whichever is lower, shall be applicable.

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xxxxxxxxxxxxxxxxx”

9. Therefore, in accordance with Article 6.2 (b), the tariff of Rs. 3.65 per kWh shall apply only if the Project is commissioned on or

before 11.10.2024 and in the event of delay in commissioning the Project beyond 11.10.2024, the applicable tariff shall be determined by the Commission for control period(s) in which the project is commissioned or Rs. 3.65 per kWh, whichever is lower, shall be applicable.

10. It is averred that the Petitioner was aware of the aforesaid provision that any delay in the commissioning will result in the revised tariff and since the commissioning of the Project has been delayed beyond 11.10.2024, the tariff applicable on said date shall be applicable.

11. Also averred that it has been held in multiple judgements that the PPA is sacrosanct and binding, therefore, the parties cannot be permitted to bypass the provisions of the PPA. Not only this, the PPA further provides that in the event of review of the construction schedule, the SPPA must be signed with the HPSEBL to make the same as part of the PPA but the same shall not result in revision of tariff.

12. Also averred that the HIMURJA vide letter dated 21.08.2024 while extending the provisional Registration of the Project for additional six months has clarified that the tariff shall be determined as per the rate prescribed by the Commission as per Regulation and since the extension was made on the request of the Petitioner, it is

the Petitioner who is responsible for delay and the Petitioner is liable to pay Liquidated Damages to the Respondent as expressively stipulated under Article 16.

13. On merits, the contents made in Para 1 to 15 of the reply have been reiterated denying the contents of the Petition. It is averred that the Petitioner was required to initiate the process of approval of the Government in time and thus, the Petition is liable to be dismissed.

14. We have heard Sh. Yatin Sood, Authorised Signatory for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent and have perused the entire record carefully.

15. Though, the Petition has been filed under Section 94 (f) of the Electricity Act, 2003 read with Section 63 of the HPERC (Conduct of Business) Regulations, 2005 but the Petition is only for the extension of tariff upto 31.03.2025. It is settled law that mere writing a wrong provision of law shall not debar the Tribunals from granting appropriate relief. Thus, mere mentioning of wrong provisions is of no consequence.

16. The sum and substance of the reply of the Respondent is that once the SCOD of the Project has been delayed, the tariff as allowed by the Commission cannot be changed as the PPA is binding between the parties. It is also the stand of the Respondent that the Petitioner was aware of the consequences of delay of the SCOD i.e.

11.10.2024 and since the delay is attributable to the Petitioner, the applicable tariff as on 31.03.2025 cannot be granted. However, the entire reply is silent about para 12 E(i) of order dated 04.11.2023 in Suo Moto No. 06 of 2023 vide which generic levelized tariff for FY 2023-24 (w.e.f. 01.10.2023 to 31.03.2024) for Solar Projects upto 5 MW has been determined by the Commission.

17. The Petitioner has mentioned that being a Government servant, she was required to seek permission from the Government which has been granted only on 10.01.2024. It is also mentioned that the permission for felling and lopping of tree was granted only on 03.09.2024. It is claimed that almost 60% work of the Project has been completed which shows that the Petitioner has made genuine efforts.

18. The Commission has observed in para 13 (v) of the order dated 02.04.2024 as under:-

“The Scheduled Date of Synchronisation of the Project is 26.09.2024 and Scheduled Commercial Operation Date (SCOD) of the project is 11.10.2024 which has been specified in Schedule-I which shall form a part of the PPA. In case commissioning of the Project is delayed beyond SCOD i.e. 11.10.2024, and the tariff in the said control period is less, the Joint Petitioner No. 2 shall have to provide power to the Joint Petitioner No. 1 on said tariff only.”

19. However, the fact remains that the tariff of Rs. 3.65 per kWh as allowed to the Project is provisional.

20. This Commission while determining the generic levelled tariff for FY 2023-24 vide order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 has observed in para 12 E(i) that aforesaid tariff for the period w.e.f 01.10.2023 to 31.03.2024 shall remain valid till 31.03.2025. As such, the tariff determined vide above order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 shall be applicable for the Projects before 31.03.2025 as per the terms and conditions stipulated therein. Thus, the observation in the order dated 02.04.2024 in the Petition that in the event of delay of SCOD, the tariff of the control period in which the Project is commissioned shall be applicable is inconsequential in view of tariff order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 as this tariff is applicable till 31.03.2025. Thus, the Project of the Petitioner falls within the ambit of order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 is entitled to the tariff of Rs. 3.65 per kWh till 31.03.2025.

21. In the circumstances, there are merits in the Petition and accordingly the Petition succeeds and allowed. It is ordered that the Petitioner shall be entitled to the tariff of Rs. 3.65 per kWh, in case the SCOD is achieved before 31.03.2025. In case the SCOD is delayed beyond 31.03.2025, the tariff for the period in which SCOD is achieved shall be applicable.

22. The parties are directed to execute the Supplementary Power Purchase Agreement (SPPA for short) within a period of 30 days from the date of this order. Three copies of the executed SPPA be submitted to the Commission for record.

Let a copy of this order be supplied to the Joint Petitioners forthwith.

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