

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

Review Petition No:	22 of 2022 in Petition No. 52 of 2021
Date of Filing:	30.03.2022
Arguments Heard on:	30.04.2022
Decided on:	17.05.2022

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

Joint Petitioner No. 1

And

M/s Ginni Global Pvt. Ltd.
2nd Floor, Shanti Chamber 11/6B, Pusa Road,
New Delhi-110005

Joint Petitioner No. 2

Joint Review Petition under under Section 94 of the Electricity Act, 2003 read with Regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for the review of the Order dated 13.01.2022 in Petition No. 52 of 2021.

CORAM

DEVENDRA KUMAR SHARMA
CHAIRMAN

BHANU PRATAP SINGH
MEMBER

YASHWANT SINGH CHOGAL
MEMBER (Law)

Present:-

Sh. Kamlesh Saklani, Authorized Representative for Joint Petitioner No. 1
Sh. Vikas Chauhan, Ld. Counsel for Joint Petitioner No. 2

ORDER

This Review Petition has been filed by the Joint Petitioners that a Joint Petition was filed for the approval of Power Purchase Agreement (PPA for short) which was registered as Petition No. 52 of 2021. The Petition was decided by the Commission vide dated 13.01.2022 (Annexure P1). As per Petitioners, the Joint Petitioner No. 2 and Government of Himachal Pradesh (GoHP for short) have

signed Second Supplementary Implementation Agreement (SSIA for short) on 20.04. 2017 whereby a period of 3 years 10 months and 16 days has been considered as force majeure period and consequently supplementary power purchase agreement was required to be executed between the parties. Accordingly, Petition No. 52 of 2021 was filed for the approval of Supplementary Power Purchase Agreement which was allowed by the Commission vide order dated 13.01.2022 according the approval for signing the Supplementary Power Purchase Agreement subject to certain conditions.

2. It is averred that in the Para 4 (i) of the Order dated 13.01.2022 in Petition No. 52 of 2021, it has been mentioned as under:-

“Second (2nd) para of the preamble of the Power Purchase Agreement dated 07.06.2004 shall be substituted as under:-

“whereas as per the Implementation Agreement and the Supplementary Implementation Agreement, the company shall provide to the HPSEBL at the interconnection point (as defined herein under), free of cost, 10% of the deliverable energy (as defined hereunder), for the extended period of 3 years, 10 month and 16 days commencing from the completion of 15 years from the date of synchronization of the first unit of the project i.e. 15.11.2007”.

3. As per the Joint Petitioners, Clause (i) of Para 4 of Order dated 13.01.2022, needs to be reviewed that the force majeure period as allowed/treated by the GoHP vide 2nd Supplementary Implementation Agreement dated 20.04.2017 extending the useful life of the Project for a period of 3 years 10 months and 16 days be taken care of and the 2nd Para of Preamble of the Power Purchase Agreement dated 07.06.2004 may be ordered to be substituted as under:-

“whereas, as per the Implementation Agreement and supplementation Agreement, the company shall provide to the Board at the interconnection point (as defined hereunder), free of cost 10% of the deliverable Energy (as defined herein under) commencing from the date falling fifteen years plus the extended period of 3 years

10 months & 16 days from the date on which company synchronized the first unit of the project i.e. 15.11.2007.”

4. We have heard Sh. Kamlesh Saklani, Authorised Representative for Joint Petitioner No. 1 and Sh. Vikas Chauhan, Ld. Counsel for Joint Petitioner No. 2.

5. Sh. Vikas Chauhan, Ld. Counsel for Respondent has submitted that the Project of the Joint Petitioner No. 2 came to a stand still and remained non operational for a period of 3 years, 10 months and 16 days due to force majeure events and when the matter was taken up with the GoHP, the GoHP was pleased to treat said period as force majeure and 2nd Supplementary Implementation Agreement was signed to this effect between the GoHP and Joint Petitioner No. 2 on 20.04.2017 incorporating that the life of the Project has been extended by a period of 3 years, 10 months and 16 days with consequent extension of Royalty on water usage amnesty in the shape of free Power to be reckoned from the actual commercial operation date of the Project i.e. 15.11.2007. As per him, the order dated 13.01.2022 is not specific to this effect and may be interpreted differently and thus, the same is required to be reviewed.

6. Sh. Kamlesh Saklani, Authorised Representative for Joint Petitioner No. 1 has adopted the submissions of Sh. Vikas Chauhan, Ld. Counsel that the GoHP has considered the period of 3 years, 10 months and 16 days as force majeure and therefore, the Joint Petition had been filed for extending the amnesty of supplying free power for the extended period.

7. We have carefully gone through the submissions made by the Counsel and Authorized Representative of the Petitioners and have perused the record.

8. 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 HEPERC Conduct

of Business Regulations, 2005 and Section 114 read with Order 47 of the Civil Procedure Code 1908.

9. As per the said provisions, the specific grounds on which order may 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.

10. 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:-

“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 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.”

It is also held by the Hon’ble SC as under:-

“There is a clear distinction between an erroneous decision and an error apparent on the fact 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.”

11. It is apparent from the copy of Joint Petition No. 52 of 2021 that the Project of the Petitioner No. 2 got damaged due to landslide and remained out of operation

w.e.f. 07.03.2021 to 18.02.2013 and from 29.03.2014 to 06.03.2016 (total 3 years 10 months and 16 days) and this fact was also mentioned by HIMURJA in its letter No. HIMURJA/SHP-IA-GGL(28)-2003-11363 dated 25.11.2016. It is also mentioned in the Joint Petition No. 52 of 2021 that a committee was constituted to access the loss on account of non operation of the Project during the aforesaid period which furnished its report on 20.06.2014 that the above events were force majeure. It was also mentioned in the above Petition No. 52 of 2021 that second Supplementary Implementation Agreement was signed by the GoHP and Joint Petitioner No. 2 on 20.04.2017 pursuant to letter No. NES-F(2) 4/2007 dated 20.12.2016.

12. It is clear from the second Supplementary Implementation Agreement dated 20.04.2017 that the period of 3 years 10 months and 16 days has been ordered to be treated has force majeure as the Project remained out of operation during the said period for the reasons which were beyond the control of the Joint Petitioner No. 2 and that the life of the Project has been extended from a period of 40 years to 43 years 10 months and 16 days with consequent amnesty to supply the free power. It is relevant to reproduce clause 7.1 and of the second Supplementary Implementation Agreement dated 20.04.2017 as under:-

“Royalty on water usage in respect of sale of power within the State (captive use or sale to HPSEB Ltd.) in the shape of free power (Energy) to the State from Taraila (5.00MW) SHEP is waived off for a period of 15 years plus the extended period of 3 years 10 months and 16 days and the date shall be reckoned from the actual Commercial Operation Date (COD) of the Project i.e. from 15th November, 2007. Beyond 15 years plus extended period, royalty shall be @ 10% upto the date of taking over of the project by First Party referred to in Clause 3.1 of this agreement.”

13. It has been claimed by the Joint Petitioners that if this aspect of deferment of free Power is not taken care of and considered, the Joint Petitioner No. 2 would

suffer an irreparable loss and injury as in that event, Joint Petitioner No. 2 will have to supply the free power in the initial years.

14. On perusal of order dated 13.01.2022 in Petition No. 52 of 2021, it is evident that no provision of amnesty of aforesaid period of 3 years 10 months and 16 days has been taken note in Para 4 of the Order. As a result, the Joint Petitioners have approached the Commission for the review of Order and to avoid the ambiguity. The Petition is duly supported by an affidavit. Therefore, taking into consideration the aforesaid facts and circumstances, especially the fact that the life span of the Project has been extended for a period of 3 years 10 months and 16 days with consequent amnesty of supply of free power as per clause 7.1 of the second Supplementary Implementation Agreement dated 20.04.2017, the provisions for deferment of the free power to is required to be made specifically in the order on the lines of Para 7.1 of the second Supplementary Implementation Agreement dated 20.04.2017.

15. In view of the aforesaid, the Joint Petitions have made but a case for review of Order dated 13.01.2022 in Petition No. 52 of 2021 that there is an error apparent on the face of record and the amnesty of supplying of free Power for a period of 3 years 10 months and 16 days, the period during which the Project of Joint Petitioner No. 2 remained non-operational, is required to be taken note and is required to be incorporated by reviewing Para 4 of the Order dated 13.01.2022 in Petition No. 52 of 2021. Hence, the Review Petition is allowed. Para 4.1 of Order dated 13.01.2012 in Petition No. 52 of 2021 is reviewed and would read as under :-

“Second Para of the preamble of the Power Purchase Agreement dated 07.06.2004 may be substituted with following:

“Royalty on water usage in respect of sale of power within the State (captive use or sale to HPSEB Ltd.) in the shape of free power (Energy) to the State from Taraila (5.00MW) SHEP (Project of Joint Petitioner

No. 2) is waived off for a period of 15 years plus the extended period of 3 years 10 months and 16 days and the date shall be reckoned from the actual Commercial Operation Date (COD) of the Project i.e. from 15th November, 2007. Beyond 15 years plus extended period, royalty shall be @ 10% upto the date of taking over of the project by First Party GoHP referred to in Clause 3.1 of the agreement dated 20.04.2017.”

16. Other terms and conditions of order dated 13.02.2022 in Petition No. 52 of 2021 shall remain the same. Necessary changes in the PPA are accordingly authorized.

17. Let a copy of this order be placed immediately before order dated 13.01.2022 in Petition No. 52 of 2021 for ready reference and record.

18. The file after needful the tagged with the record of Petition No. 52 of 2021 and then be consigned to records.

Announced
17.05.2022

-Sd-	-Sd-	-Sd-
(Yashwant Singh Chogal)	(Bhanu Pratap Singh)	(Devendra Kumar Sharma)
Member(Law)	Member	Chairman