

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

**Review Petition No: 26 of 2023**  
Instituted on: 09.01.2023  
Heard on: 19.08.2023  
**Decided on: 26.09.2023**

**CORAM**

Devendra Kumar Sharma  
**CHAIRMAN**

Yashwant Singh Chogal  
**MEMBER (Law)**

Shashi Kant Joshi  
**MEMBER**

**In the matter of :**

The HP Power Transmission Corporation Limited through its,  
Deputy General Manager (C&M),  
Himfed Bhawan, Panjari, Near ISBT,  
Shimla-171004.

.....Petitioner

Versus

1. The HP State Electricity Board Limited, through its  
Chief Engineer (Commercial),  
Vidyut Bhawan, Shimla-171004.
2. The HP Power Corporation Limited, through its  
Deputy General Manager (Sale & Power),  
Himfed Building, BCS, New Shimla-171009.
3. M/s Tranda Hydro Power Pvt. Ltd., through its  
Authorised Signatory,  
Plot No. 226, Road No. 78, Phase-III,  
Jubilee Hills, Hyderabad, Telangana-500096.

.....Respondents

**Petition 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 seeking review of the order dated 28.09.2022 passed in Petition No. 29 of 2022 by the Commission.**

**Present:**

Sh. Prakhar Kulshreshta, Tariff Consultant for the Petitioner.

Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 1.

None for Respondent No. 2.

Respondent No. 3 ex-parte.

**ORDER**

This Petition has been filed by the Petitioner 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, as amended from time to time, seeking review of the order dated 28.09.2022 passed by the Commission in Petition No. 29 of 2022. The Review Petition has been filed on the following four issues:

- i) Review of the disallowance of Price Variation of Rs. 0.82 Crore claimed under the Services Head as a part of the Hard Cost.
- ii) Review of disallowance of IDC of Rs. 15.47 Crore claimed as Additional Capital Expenditure (ACE) post COD during FY 2019-2020.
- iii) Review of Project Funding approved for Asset.
- iv) Review of Treatment of Consumer Contribution.

2. The Petitioner had filed Petition No. 29 of 2022 seeking approval of Capital Cost and Determination of tariff for the period starting from CoD i.e. 29.09.2019 to FY 2023-24 for 400/220/66 kV GIS Pooling Sub-station at Wangtoo (Sherpa Colony). The Petition was disposed off vide order dated 28.09.2022.

3. Setting forth the grievances, the Petitioner has reproduced the summary of Capital Cost as claimed vis-à-vis as approved by the Commission vide order dated 28.09.2022 as under:-

Particulars	Claimed (Rs. Crore)	Approved (Rs. Crore)
<b>Capital cost as on CoD: 29.09.2019</b>		
<b>400/220/66 kV GIS Pooling Sub-Station at Wangtoo (Sherpa Colony)</b>		
Land and Forest Clearance Expenses	0.96	0.96
Cost Of Supply, Erection & Civil Works Cost	332.44	331.62
Entry Tax	4.47	4.47
Tender Expenses/Advertisement	0.02	0.02
Miscellaneous Expenses	0.002	0.002
Testing and Soil Investigation Charges	0.17	0.17
Other expenses including shifting of line, site development etc.	1.04	1.04
Overheads	75.47	66.72
<i>Establishment</i>	24.96	24.96
<i>IDC</i>	50.51	41.76
<b>Total</b>	<b>414.56</b>	<b>405.00</b>

4. The Petitioner has also reproduced the summary of Additional Capitalisation as claimed upto 31.03.2020 vis-à-vis as approved by the Commission in the Order dated 28.09.2020 is as follows:

Particulars	Claimed (in Rs Crores)	Approved (in Rs Crores)
Supplies	46.28	46.28
Services	2.97	2.97
Other Expenses	0.09	0.09
IDC	15.47	-
<b>Total Cost</b>	<b>64.81</b>	<b>49.34</b>

5. It is averred that though the Commission has approved the capital cost and determined the final tariff for the Pooling Sub-station, Wangtoo

(Sherpa Colony) but the Commission has not fully allowed the claim of the Petitioner and rather, reduced the Capital Cost as claimed by the Petitioner.

6. As per the Petitioner, the Commission has dealt with the disallowance of price variation of Rs. 0.82 Crore claimed under the services head as part of the hard cost in Para 3.4.23 as under:-

*“3.4.23 The Commission has reviewed the supporting documents such as copies of the letters of approval of Price Variation (PV) by HPPTCL, invoices etc. submitted against the additional cost claimed under each head and found them to be in order. With regards to Price Variation (PV) of INR 19.97 Cr. claimed under the services contract, proofs/bills/ approvals for amount equivalent to INR 19.15 Cr. only were made available by the Petitioner. Hence, the Commission has disallowed an amount of INR 0.82 Cr. (INR 19.97Cr.- INR 19.15 Cr.) under the services head forming part of the overall hard cost.”*

7. It is claimed that though the Petitioner had submitted the supporting documents and invoices alongwith the Petition to substantiate the claim of Price Variation of Rs. 19.97 Crore claimed under the Services Head as a part of the Hard Cost but inadvertently missed out on submitting the supporting documents and invoices to the tune of Rs. 0.82 Crore as observed by the Commission. It has been prayed to condone the same and accept and approve the Price Variation of Rs. 0.82 Crore on the basis of the supporting documents and invoices being submitted alongwith of the present Review Petition.

8. Also averred that the Commission has disallowed IDC of Rs. 15.47

Crore claimed as Additional Capital Expenditure post CoD during FY 2019-20 and has dealt with said aspect in Para 3.7.7 as under:-

*“3.7.7 With regards to IDC, the Commission believes that the Petitioner’s claim of IDC post COD is unwarranted as IDC as the name suggests is applicable during the time of construction until the time of COD of the project. Hence, the Commission disallows the Petitioner’s claim of IDC post COD as part of additional capitalisation approved for FY 2019-20. The IDC approved for the project has been discussed above in the relevant section of this Order.”*

9. As per the Petitioner, the Commission has erroneously disallowed the entire claim of IDC of Rs. 15.47 Crore claimed post COD during FY 2019-20 without giving due consideration to the fact that the IDC claimed for any Project pertains to the works carried out during the construction period up till COD of the Project. It is submitted that the Petitioner has received the loan from ADB under Tranche-I for a number of Transmission projects including 66/220/400kV Wangtoo Sub-station and even after completion of Sub-station, closure of loan for a particular project takes time. It is submitted that total IDC calculated upto 31.03.2020 in respect of 66/220/400kV Wangtoo Sub-station is Rs. 65.98 Crore which is calculated on total loan amount disbursed upto 31.03.2020 and proportional IDC of Rs 50.51 Crores is capitalised upto COD and balance IDC of Rs 15.47 Crores was capitalised after COD to 31.03.2020. It is averred that under normal Regulatory and Accounting Practice, IDC is claimed and allowed as and when the works are capitalized and the

liability is discharged which also includes the IDC liability being discharged after COD. Such IDC liability which is discharged after COD is normally allowed as ACE during the respective year in which the liability is being discharged and, therefore, even though the IDC of Rs. 15.47 Crore was incurred as on COD, the same was capitalised and discharged post COD and claimed post COD. Further, the Petitioner would humbly like to submit that Hon'ble CERC as a standard Regulatory Practice has been approving the undischarged and accrued IDC as on COD as ACE post COD during the COD year and Financial Year immediately following the COD Year for various Transmission Assets of PGCIL. Further in order to support the submissions made with regard to the Regulatory Practice being adopted by Hon'ble CERC, the Petitioner has annexed Copies of Orders passed in Petitions No. 85/TT/2019, 121/TT/2019 (being the Tariff Determination Orders from COD to FY 2018-19) and 36/TT/2020 (Being the True Up Order for FY 2014-19 Period) as **Annexure-2**, wherein Hon'ble CERC under Section "Interest During Construction (IDC)" has approved the undischarged IDC as on COD as ACE during the following Years. It is submitted that the disallowance of IDC claimed as ACE has negatively affected the ARR being allowed during the COD Year and its ripple effect would be observed during each year of the upcoming Control Periods and needs to be reviewed.

10. Also averred that the Commission has also not properly appreciated the Project funding approved for the cost and has dealt with said aspect in Para 3.6.7 of the order as under:-

*“3.6.7 Based on the submissions of the Petitioner and in accordance with the original DPR of the project, the Petitioner has secured a loan from ADB at a debt equity ratio of 80:20. The Commission has reviewed the submissions of the Petitioner viz. loan agreement, sanction letter, actual disbursal, etc. to assess the project funding.*

*.....”*

(i) As per the Petitioner, the Commission in the Order dated 28.09.2022, has held that the Scheme was conceptualized to be funded in Debt:Equity ratio of 80:20 as per the DPR which was further approved by BoD and CEA. It is averred that the BoD of HPPTCL in the Meeting held on 9.02.2011 vide item no. 10.08 has accorded its approval for the Scheme which does not specify for Debt:Equity ratio as held by the Commission. It is averred that the Regulation 18 of HPERC Tariff Regulations, 2011 regarding the debt equity ratio for the purpose of tariff determination reads as follows:

*“18. Debt-Equity Ratio*

*For the purpose of determination of the tariff, the equity and outstanding debt as determined for the base year by the Commission shall be considered as given. However, for any fresh capitalization of assets, the Commission shall apply a debt-equity ratio of 70:30 on the capitalised amount as approved by the Commission for each year of the control period:*

*Provided that where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as loan. The*

*interest rate applicable on the equity in excess of 30% treated as loan has been specified in regulation 20. Where actual equity employed is less than 30%, the actual equity shall be considered.”*

(ii) It is averred that the above Regulation speaks about the consideration of actual debt or equity deployed during execution of the project and does not specify anything with regard to consideration of proposed debt equity ratio in either DPR or BOD approval of the project for determination of Tariff. Accordingly, the actual debt equity ratio as on COD works out to be 70.56:29.44.

(iii) Further with respect to the issue of Equity Funding, the Petitioner has already submitted that the HPPTCL receives Equity as a whole from GoHP and the equity for a particular scheme is allocated internally. However, in order to comply with the condition, put forward by the Commission, the Petitioner will take the approval of BOD for revised project funding and seeks liberty for submitting BOD approval regarding debt: equity ratio for construction of said Transmission Project as an additional submission. It is prayed to accept the actual debt & equity infused by giving due consideration to the revised BOD approval for project funding and revise the ARR approved or may consider the same at the time of truing up as may be deemed fit by the Commission.

11. The Petitioner has also claimed that the Commission has also not



considered the aspect of treatment of Consumer Contribution in its proper perspective and dealt with said aspect in Para 3.6.10 of the order as under:-

*“3.6.10 Further, an amount of INR 3.27 Cr. has been provided as consumer contribution by M/S Taranda Hydro Power towards the project. In response to additional queries raised by the Commission, the Petitioner has submitted that an amount of INR 13.23 lakhs has been received towards interest accumulated on the installments received from the consumers. Accordingly, the Commission has considered INR 3.40 Cr. towards consumer contribution and has adjusted the same in the overall capital cost.”*

(i) As per the Petitioner, entire detail had been submitted in the Petition and subsequent replies pursuant to the queries of the Commission that the HPPTCL has received the Consumer Contribution of Rs. 3.27 Crore along with the Interest of 0.13 Crore during FY 2020-21 from M/s. Taranda Hydro Power, M/s. Panchor Hydro Power Private Limited and M/s. Ramesh Hydro Power Private Limited as bay cost towards the construction and usage of one 66 kV Bay at Wangtoo Substation for evacuation of Power in Joint Mode. Accordingly, the Petitioner has made the adjustment in Debt and Equity during FY 2020-2021.

(ii) It is averred that the Commission has rightly considered the Consumer Contribution amount of Rs. 3.40 Crore but the Year of receipt of the said Consumer Contribution i.e. FY 2020-21 inadvertently got overlooked while adjusting the Consumer Contribution in the overall

Capital Cost of the Project and thus, the Commission has adjusted the Consumer Contribution in the overall Capital Cost approved as on COD instead of adjusting the same during the year of Receipt i.e. FY 2020-21 which has led to the approval of erroneous funding as well as reduction of ARR.

(iii) It is further averred that Hon'ble APTEL vide Judgement dated 23.01.2013 in Review Petition No. 10 of 2012 in Appeal No. 89 of 2011 has held as under:

*“11. The Appellant has also submitted that Rs. 10 Crores deducted by the State Commission on account of consumer contribution should not have been deducted as it was not prescribed or allotted in the original tariff order and there was no regulation requiring the same. We do not find any substance in the arguments of the Appellant relating to deduction of amount of consumer contribution as at the time of original tariff order the amount of consumer contribution was not known and, therefore, the State Commission could not have considered the same in the original tariff order. Further, the Regulations were not available in the year 2005-06. Therefore, if the State Electricity Board has received the consumer contribution, the same needs to be deducted.”*

(iv) As per the Petitioner, it is inferred from the above judgment of Hon'ble APTEL that the Consumer Contribution cannot be adjusted in the Capital Cost at a Date when it has yet not been received by the Project Development Agency. Rather, it should be adjusted during the respective Financial Year in which the funds are received by the Project Development Agency and thus, the Petitioner has rightly adjusted the

Consumer Contribution received during FY 2020-21 which has been erroneously adjusted by the Commission as on COD. Accordingly, the Petitioner prays the Commission to review the same.

12. The Respondent No. 3 has not contested the Petition. The Respondent No. 2 has also submitted that its reply be treated as Nil.

13. The Respondent No. 1/ the HPSEBL in its reply has submitted that the supporting documents and invoices to the tune of Rs. 0.82 crore were with HPPTCL at the time of hearing original petition i.e Petition No. 29 of 2022 but were not provided for prudence check to the Commission as observed in para 3.4.23 of the Order dated 28.09.2022, hence, the same cannot be treated as discovery of new and important matter of evidence after the exercise of due diligence or that it was not within its knowledge or could not be produced by it at the time when the direction, decision or order was passed.

14. It is also averred that there is no error apparent on the face of record in the tariff order dated 28.09.2022 and that the HPPTCL could only provide supporting documents/invoices of Rs. 19.15 crore at the time of disposal of the Petition.

15. In respect of review of IDC of Rs. 15.47 Crore, it has been submitted that Regulation 16 of the HPERC (Terms & Conditions for determination of Transmission Tariff) Regulations, 2011 and subsequent

amendments thereof provides for additional capitalization. It is averred that no IDC on undischarged liability post COD is allowed in terms of Regulations framed by the Commission.

16. In respect of review of Project funding approved for the asset, it is averred that there is no error apparent in the tariff Order dated 28.09.2022 issued by the Commission, as such, the review petition is liable to be dismissed.

17. In respect of review of treatment of Consumer Consideration, the HPSEBL submits that there is error apparent in the tariff order dated 28.09.2022 at Table No. 24 wherein approved capital cost (as on COD 29.09.2019) is given as Rs. 405 crore which includes Rs. 3.40 crore on account of Consumer Contribution, hence Table No. 24 of the Order needs to be corrected. Further, in table 30, consumer contribution has been considered in FY20 which needs to be corrected & same be considered in FY21 and table 30 may be reworked. Accordingly, summary of the ARR approved at table 41 may be corrected.

18. In rejoinder, the contents of the reply have been denied and those of the Petition have been reaffirmed.

19. We have heard Sh. Prakhar Kulshreshta, Tariff Consultant for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 1 and have perused the entire record carefully.

20. The Petitioner has sought the review on the following four issues:-

- i) Review of the disallowance of Price Variation of Rs. 0.82 Crore claimed under the Services Head as a part of the Hard Cost.
- ii) Review of disallowance of IDC of Rs. 15.47 Crore claimed as Additional Capital Expenditure (ACE) post COD during FY 2019-2020.
- iii) Review of Project Funding approved for Asset.
- iv) Review of Treatment of Consumer Contribution.

21. It is settled that the scope of the review is very limited which can be granted only in case of clerical omission, mistake, or the like grave error and review cannot be exercised on the ground that the decision was erroneous on merit, but simultaneously the material on record, which on proper consideration may justify the claim cannot be ignored. However, there are definitive limits to exercise the power of review which may be exercised only 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 or it may also be exercised on any analogous ground. Therefore, the power of review is not to be confused with the appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an error is far from self-evident and has to be established by lengthy and complicated arguments, such an error cannot be cured in a review. Under Order 47 Rule I of the Code of Civil Procedure, 1908 while exercising the powers of review, it is not permissible for an erroneous decision to be reheard and corrected.

22. The scope and ambit of the power of review was elaborately considered by the Hon'ble Supreme Court in case titled as **Ram Sahu (Dead) through L.Rs and Others Vs. Vinod Kumar Rawat and Others MANU/SC/0821/2020** wherein it is held in paras 6, 7 and 8 as under:

*"In the case of Haridas Das vs. Usha Rani Banik (Smt.) and Others, (2006) 4SCC 78 while considering the scope and ambit of Section 114 CPC read with Order 47 Rule 1 CPC it is observed and held in paragraph 14 to 18 as under:*

*"14. In Meera Bhanja v. Nirmala Kumari Choudhary (1995) 1 SCC 170 it was held that:*

*"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, this Court, in Aribam Tuleswar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389 speaking through Chinnappa Reddy J. has made the following pertinent observations:*

*'It is true 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.'*

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the Applicant; (b) such important matter or evidence could not be produced by the Applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, AIR 1979 SC 1047, this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (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 a 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 matters 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 powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.”*

17. *The Judgement in Aribam case has been followed in Meera Bhanja. In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in Satyanarayan Laxinarayan Hegde v. Millikarjun Bhavanappa Triumale, AIR 1960 SC 137 were also noted:*

*“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the Rule governing the powers of the superior court to issue such a writ.”*

18. *It is also pertinent to mention the observations of this Court in Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715. Relying upon the judgments in Aribam and Meera Bhanja it was observed 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 proves 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 of 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’.”*

6.2 *In the case of Lily Thomas vs. Union of India, (2000) 6 SC 224, it is observed and held 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.*

*It is further observed in the said decision that the words “any other sufficient reason” appearing in Order 47 Rule 1 CPC must mean “a reason sufficient on grounds at least analogous to those specified in the rule” as was held in Chhajju Ram vs. Neki, AIR 1922 PC 112 and*



approved by this Court in *Moran Mar Basselios Catholicos vs Most Rev. Mar Poulouse Athanasius*, AIR 1954 SC 526. 12.3 In the case of *Inderchand Jain vs. Motilal*, (2009) 14 SCC 663 in paragraphs 7 to 11 it is observed and held as under:

7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a civil court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

"17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:

'1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the court which passed the decree or made the order.' "

8. An application for review would lie *inter alia* when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In *Rajendra Kumar v. Rambai* this Court held: (SCC p. 514, para 6)

"6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of

*which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.”*

9. *The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.*

10. *It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.*

11. *Review is not appeal in disguise. In Lily Thomas v. Union of India this Court held: (SCC p. 251, para 56)*

*“56. It follows, therefore, 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.”*

7. *The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. In the case of Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844, this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.*

8. *What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in the case of T.C. Basappa vs. T.Nagappa, AIR 1954 SC 440. It is held that such an error is an error which is a patent error and not a mere wrong decision. In the case of Hari Vishnu Kamath vs. Ahmad Ishaque, AIR 1955 SC 233, it is observed as under:*

*“It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.”*

8.1 In the case of *Parsion Devi vs. Sumitri Devi*, (Supra) in paragraph 7 to 9 it is observed and held as under:

7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.*, AIR 1964 SC 1372 this Court opined:

*“What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an ‘error apparent on the face of the record’. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an ‘error apparent on the face of the record’, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.”*

23. In view of the above settled position, we now proceed to discuss each of the four issues separately as under:

24. **Issue No. (i)**

Review of the disallowance of Price Variation of Rs. 0.82 Crore claimed under the Services Head as a part of the Hard Cost.

i) In this regard the Petitioner has reproduced para 3.4.23 of the Order of the Commission as under:

*“3.4.23 The Commission has reviewed the supporting documents such as copies of the letters of approval of Price Variation (PV) by HPPTCL, invoices etc. submitted against the additional cost claimed under each head and found them to be in order. With regards to Price Variation (PV) of INR 19.97 Cr. claimed under the services contract, proofs/bills/ approvals for amount equivalent to INR 19.15 Cr. only were made available by the Petitioner. Hence, the Commission has disallowed an amount of INR 0.82 Cr. (INR 19.97Cr.- INR 19.15 Cr.) under the services head forming part of the overall hard cost.”*

ii). As per the Petitioner, while submitting the supporting documents and invoices to substantiate the claim of Price Variation of Rs. 19.97 Crore claimed under the Services Head as a part of the Hard Cost, the Petitioner had inadvertently missed out submitting the supporting documents and invoices to the tune of Rs. 0.82 Crore and in order to accept and approve the Price Variation of Rs. 0.82 Crore, the supporting documents and invoices are being submitted alongwith the present Review Petition.

iii). Apparently, the Commission while disposing off the Petition vide Order dated 28.09.2022 has allowed INR 19.15 Cr against the claim amount of INR 19.97 Cr based on the supporting documents submitted by the Petitioner at the time of tariff proceedings. Though, the Petitioner has claimed that it had inadvertently missed out submitting the supporting documents and invoices to the tune of Rs. 0.82 Crore. But the omission to

submit the relevant documents, which were well within the possession of the Petitioner can't be treated as discovery of new and important matter of evidence which after exercise of due diligence could not be produced. Infact, sufficient time was provided to the Petitioner to produce all relevant documents but the Petitioner has miserably failed to produce the documents of 0.82 Crore. Not only this, as per the Review Petition submitted by the Petitioner, the claim value of INR 18.25 Cr only has been submitted as per Annexure 1 (Refer: Pg 68 of 282) of the Petition, which is lower than the claim already allowed of INR 19.15 Cr by the Commission in Order dated 28.09.2022. Therefore, the claim is devoid of any merits and cannot be considered in a review.

25. **Issue No. (ii)**

The Petitioner is aggrieved of the disallowance of IDC of Rs. 15.47 Crore claimed as an Additional Capital Expenditure post COD during FY 2019-20.

(i) The Commission has dealt with this aspect in the order dated 28.09.2022 in Para 3.7.7 as under:

*“3.7.7 With regards to IDC, the Commission believes that the Petitioner’s claim of IDC post COD is unwarranted as IDC as the name suggests is applicable during the time of construction until the time of COD of the project. Hence, the Commission disallows the Petitioner’s claim of IDC post COD as part of additional capitalisation approved for FY 2019-20. The IDC approved for the project has been discussed above in the relevant section of this Order.”*

ii) As per the Petitioner the Commission has erroneously disallowed the entire claim of IDC of Rs. 15.47 Crore claimed post COD during FY 2019-20 without giving due consideration to the fact that the IDC claimed for any Project pertains to the works carried out during the construction period up till COD of the Project and that the HPPTCL has received loan from ADB under Tranche-I for a number of Transmission Project including 66/220/400kV Wangtoo Sub-station and even after completion of Sub-station, closure of loan for a particular project takes time. Further the total IDC of Rs 65.98 Crores is in respect of 66/220/400kV Wangtoo Sub-station and is calculated upto 31.03.2020. Said amount is calculated on total loan amount disbursed upto 31.03.2020 and proportional IDC of Rs 50.51 Crores is capitalised upto COD i.e. 29.09.2019 and balance IDC of Rs. 15.47 Crores was capitalised after COD i.e. 29.09.2019 to 31.03.2020.

iii) The Commission in Order dated 28.09.2022 has dealt with this issue at length. IDC is allowed only till the time the project has achieved COD depending on the loan borrowed/drawn against the project. Thereafter, Interest on Loan has been allowed on the borrowed capital. This is well accepted accounting principle. It is apparent from para 3.7.7 of the Order dated 28.09.2022 that the IDC till COD only has been

approved by the Commission. Significantly, the Petitioner has not provided any supporting documents to corroborate its claim of INR 15.47 Cr. as IDC post COD of the project and has also not been able to substantiate that there is any error apparent on the face of record regarding disallowance of the IDC the law laid down by the Hon'ble APTEL which has been relied upon by the Petitioner is not applicable to the facts and circumstances of the present matter. Thus, there are no valid reasons for reviewing the same and the claim is devoid of any merits.

26. **Issue No. (iii)**

**Review of Project Funding approved for Asset.**

- (i) The Petitioner has prayed for reviewing the Project Funding approved for the Asset by the Commission vide Order dated 28.09.2022.
- (ii) The Commission in its Order dated 28.09.2022 has dealt with this issue at length in paras 3.6.7 and 3.6.9 which are reproduced as under:

*“3.7.7 With regards to IDC, the Commission believes that the Petitioner’s claim of IDC post COD is unwarranted as IDC as the name suggests is applicable during the time of construction until the time of COD of the project. Hence, the Commission disallows the Petitioner’s claim of IDC post COD as part of additional capitalisation approved for FY 2019-20. The IDC approved for the project has been discussed above in the relevant section of this Order.”*

“3.6.9 As discussed above, as per the DPR the project was originally envisaged at a debt equity ratio of 80:20. This was coupled by the fact that the Petitioner had received approval for the project from the competent authority i.e. BOD and the CEA. Further, there were no supporting documents with respect to equity received for the transmission asset. Accordingly, the Commission has considered the debt equity ratio as 80:20 considering that funding was allowed in accordance with the DPR and the requisite approvals.”

iii) It is apparent from the above that the funding of the project has been approved in accordance with the DPR against which the Petitioner has secured a loan from ADB at a debt equity ratio of 80:20 based on the supporting documents received. Significantly, during the tariff proceedings, the Petitioner has failed to submit the equity infusion specific to Wangtoo Project. Certainly the equity cannot be met from raising loans from any Financial Institution. The Petitioner was required to place on record sufficient justification/ papers substantiating its claim for debt equity ratio of 70.56:29.44. Therefore, in the absence of any supporting documents, the reliance placed in Regulation 18 of the Tariff Regulations, 2011 is misplaced. Rather, the Petitioner only submitted the equity infusion schedule at the Company level making it difficult for the Commission to validate the debt equity ratio of the project. Hence, considering the facts and supporting documents submitted by the Petitioner, the Commission has approved the Debt Equity ratio of 80:20. Thus, the claim now submitted in the review petition for reviewing the



Project funding approved for the assets is devoid of any merits and do not call for any review.

27. **Issue No. (iv)**

**Review of Treatment of Consumer Contribution.**

- (i) The last issue on which the review has been sought is with regard to the Treatment of Consumer Contribution.
- (ii) The Commission has dealt with this issue in para 3.6.10 in detail considering each and every aspect of the matter which is reproduced as under:

*“3.6.10 Further, an amount of INR 3.27 Cr. has been provided as consumer contribution by M/S Taranda Hydro Power towards the project. In response to additional queries raised by the Commission, the Petitioner has submitted that an amount of INR 13.23 lakhs has been received towards interest accumulated on the instalments received from the consumers. Accordingly, the Commission has considered INR 3.40 Cr. towards consumer contribution and has adjusted the same in the overall capital cost.”*

- iii) It is evident from the above that the Consumer contribution has been considered based on the submissions of the Petitioner and supporting documents. The Consumer contribution was known and already received by the Petitioner and accordingly the project funding was approved by the Commission while deciding the Petition vide Order dated 28.09.2022. Much reliance has been placed in the judgement of Hon'ble APTEL in Review Petition No. 10 of 2012 in Appeal No. 89 of 2011

decided on 23.01.2013 but the judgment of Hon'ble APTEL dated 23.01.2013 corroborates the Commission's methodology as consumer contribution was already known at the time of disposal of the Petition. Moreover, the timely recovery of the dues of bay cost has been the duty of the Petitioner. In case it is recovered after COD of the asset, the interest cost on the same cannot be allowed as a pass through in the tariff. Hence, there is no error on the face of record warranting review of Project funding approved for the assets and the claim is devoid of any merits.

28. A careful perusal of the Order dated 28.09.2022 shows that the Commission has considered each and every aspects of the matter in detail and has given its findings on merits while disposing off the Petition. The Petitioner in the various grounds in the present Petition has pointed out some infirmities in the impugned order for which the Petitioner was at liberty to approach the Hon'ble Appellate Tribunal but under the garb of review, the Petitioner cannot make this Commission to re-hear the matter and substitute a view. Hence, the law laid down aforesaid by the Hon'ble Supreme Court is squarely applicable to the facts and circumstances of the present matter.

29. As observed above the Commission has dealt with each and every aspect of the matter in detail and the Petitioner has miserably failed to

point out that there is an error on the face of record justifying the review of impugned Order dated 28.09.2022 passed by the Commission in Petition No. 29 of 2022. Similarly, the Petitioner has failed to point out discovery of any new and important matter or evidence which after exercise of due diligence was not within its knowledge or could not be produced at the time when Order dated 28.09.2022 was made or there are any sufficient reasons warranting review.

30. In view of the foregoing discussion and limited scope of review jurisdiction, we are of the view that there are no merits in the Review Petition. Thus, the present Review Petition deserves dismissal and accordingly the same is dismissed.

31. Let a signed copy of this order be placed immediately above the order in Petition No. 29 of 2022 decided on 28.09.2022.

The file after needful be consigned to records.

**Announced**  
**26.09.2023**

**-Sd-**  
**(Shashi Kant Joshi)**  
**Member**

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

**-Sd-**  
**(Devendra Kumar Sharma)**  
**Chairman**