

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

**Review Petition No: 31 of 2023**

Instituted on: 09.11.2022

Heard on: 15.05.2023

Decided on: **01.06.2023**

**CORAM**

Devendra Kumar Sharma

**CHAIRMAN**

Yashwant Singh Chogal

**MEMBER (Law)**

M/s Kangra Hydro Power Ventures Pvt. Ltd. through its,  
Authorised Representative, having its Registered Office at  
V.P.O. Ranital, Tehsil & District Kangra, H.P. .....Petitioner

Versus

1. The Himachal Pradesh State Electricity Board Limited, through its,  
Chief Engineer (Commercial),  
Vidyut Bhawan, HPSEBL Ltd. Shimla-171004
2. The Himachal Pradesh Energy Development Agency (HIMURJA),  
Urja Bhawan, SDA Complex, Kasumpti, Shimla-171009 through its  
Chief Executive Officer.

.....Respondents.

**Petition under Section 94(1) (f) of the Electricity Act, 2003 read with Section 63 of the HPERC (Conduct of Business) Regulations, 2005 for review of Order dated 05.09.2022 passed in Petition 73 of 2019 in respect of Power Purchase Agreement of Gaj-III SHEP (5 MW) of M/s Kangra Hydro Power Ventures Pvt. Ltd.**

Present:-

Sh. L.S Mehta, Ld. Counsel for the Petitioner.

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

Sh. Rajinder Thakur, Ld. Vice Counsel for the Respondent No. 2.

**ORDER**

This Review Petition has been filed by the Petitioner M/s Kangra Hydro Power Ventures Pvt. Ltd. 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, 2003 for Review of Order dated 05.09.2022 passed by the Commission in Petition No. 73 of 2019.

2. As per Petitioner, the Petitioner and Respondent No. 1 Himachal Pradesh State Electricity Regulatory Commission (hereinafter referred as Respondent No. 1) had filed a Joint Petition for approval of the Power Purchase Agreement under Generic Levelled Tariff, which was allowed by the Commission vide Order dated 05.09.2022. In said Petition, the Petitioner also filed miscellaneous application No. 99/2020 for placing on record a certificate issued by Himurja vide letter dated 18.05.2020 that extension in time period for completion of the Project has been granted by the Government w.e.f. 07.10.2013 to 31.03.2016 with extension fee w.e.f. 01.04.2016 till the execution of the lease deed without extension fee for the reasons of non execution of lease deed by Revenue Department.

3. It is averred that the Commission vide interim Order dated 28.08.2020, accorded approval for signing the Power Purchase Agreement allowing approval of interim tariff of Rs. 3.27 per kWh

subject to further adjustment as per final Order in Joint Petition No. 73 of 2019.

4. As per Petitioner, during the pendency of Joint Petition, the Commission vide Order dated 30.04.2022 impleaded Respondent No. 2 Himurja as party to the Petition No. 73 of 2019 and directed the Himurja to file reply which was filed on 22.07.2022 giving chronology of the events leading to the condonation of delay which according to the Himurja was on account of non approval of lease in time by the Government of Himachal Pradesh.

5. The Commission vide Order dated 05.09.2022 while allowing the Joint Petition directed the Petitioner and Respondent No. 1 to execute Supplementary Power Purchase Agreement within a period of 30 days from the date of Order. However, the Commission in Para 15 and 16 of the Order has observed as under:-

*“15. In so far as Industrial subsidy/ Financial assistance is concerned, there is no mention of claiming such subsidy in the Petition. No document in this regard has also been filed. Said Scheme was also valid till 31.03.2022. The Project was eligible for said subsidy. Therefore, the admissible subsidy /Financial assistance in this regard amounting to Rs. 90,000,00/- per MW (on deemed normative basis) is require to be deducted while determining the tariff of the Project of the Joint Petitioner No.2.*

*16. Therefore, in view of the powers vested in the Commission under Section 86 (1) (b) of the Act and taking into consideration the notifications dated 15.05.2018 and 10.10.2018 of the GoHP and the tentative admissible MNRE subsidy of Rs. Five Crore and Industrial subsidy of Rs.90 lakh per MW and the interim order dated 28.08.2020 approving Provisional Tariff, the Joint Petitioners have made out a case for the approval of the PPA*

*under the generic levellised tariff as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations 2017. Hence, the Petition is allowed. The PPA is ordered to be approved subject to the following terms and conditions:-*

*i). The Provisional tariff which shall be applicable to the project of Petitioner shall be Rs. 3.53 per kWh after adjustment of Free Power, MNRE subsidy and subsidy /Financial assistance given under the Industrial Development Scheme.*

*ii). The Project has been synchronized on 21.12.2019 and considering that financial assistance /subsidy of MNRE and Industrial Development Scheme for Himachal Pradesh & Uttarakhand notified by the Ministry of Commerce & Industry, if any, may be received by the Joint Petitioner in due course as mentioned above, provisional tariff shall be applicable for a maximum period of 2 years.*

*iii). The Joint Petitioner No.2 shall intimate the Joint Petitioner No.1 i.e. HPSEBL, about the receipt of financial assistance/subsidy, if any, released to the Project, by the State /Central Government or its designated Department(s) /agency(ies) within 15 days of receipt of the same and an affidavit to this effect shall be furnished by the Joint Petitioner No.2 which shall form part of the PPA.*

*iv). The Petitioners shall approach the Commission at least 1 (one) month before completion of the period of 2 (two) years from the issuance of this order or immediately after the release of Financial assistance /subsidy as per item (iii) above, whichever is earlier, for continuation of this tariff or for any other tariff as may become applicable to the Project.*

*V). The provisional tariff of Rs. 3.53 per kWh allowed by this order shall be applicable from the date of synchronization of the Project i.e. 21.12.2019.*

*vi). The Clause 6.2 of PPA shall be modified to the extent that the levellised provisional tariff of 3.53 per kWh shall be subject to further adjustment as per the order(s) as may be passed by the Commission after receipt of Petition as per item (iv) of this para.*

6. It is averred that the Respondent No. 1 vide email dated 28.09.2022 intimated the Petitioner for signing the Supplementary

Power Purchase Agreement (SPPA for short) within 30 days at provisional tariff of Rs. 3.53 kWh per Order dated 05.09.2022. The Petitioner intimated the Respondent No. 1 vide email dated 01.10.2022 that the Petitioner has not yet received the Order of the Commission and on receipt will study the order and revert back. The Petitioner vide email dated 04.10.2022 and letter dated 06.10.2022 on receipt of copy of Order dated 05.09.2022 on 02.10.2022 intimated the Respondent No. 1 that the Commission has erroneously calculated the tariff of Rs. 3.53 per unit by considering the Industrial Subsidy to be availed by the Project of the Petitioner i.e. Gaj-III, SHEP, 5.00 MW as Rs. 4.50 Crores (Rs. 90 Lakh per MW) whereas the Project is entitled to only 30% cost of the plant and machinery or Rs. 5.00 Crores, whichever is less. According to the Petitioner, the cost of the plant and machinery (E&M) of the Project as per approved in the DPR is Rs. 885.06 lacs and actual hard cost incurred by the Project under (E&M) is Rs. 7.55 crore. Accordingly, the maximum subsidy available under the Industrial Subsidy Scheme for the Project would be 30% plant and machinery cost which is Rs. 2.27 crore (30% of Rs. 7.55 crores). However, the Commission has considered Rs. 4.50 crores as industrial subsidy which is higher than the maximum admissible subsidy under the Scheme for the Project of the Petitioner and the Petitioner requested the Respondent No. 1 to file a Joint Review

Petition before the Commission against the Order dated 05.09.2022. Copies of emails and letters dated 28.09.2022, 01.10.2022, 04.10.2022 and 06.10.2022 are annexed as Annexure P-2 (Colly).

7. As per the Petitioner, this Commission in an identical matter for approval of Power Purchase Agreement (PPA for short) under Generic Levellised Tariff in respect of M/s Shiva Power, has allowed adjustment of industrial subsidy of Rs. 2.69 crores worked out on the basis of Electro-mechanical Cost of the project prescribed in Techno-Economic Clearance (TEC for short). The copy of the Order dated 17.05.2022 in Petition No. 25 of 2022 has been annexed as Annexure P-3.

8. As per the Petitioner, the Electro-mechanical Cost of the Project of the Petitioner in Techno-Economic Clearance is Rs. 885.06 lakh as approved by the Directorate of Energy. Similarly, the Directorate of Energy vide Order dated 18.10.2017 has accorded concurrence to Kapru Baner SHP (3.00 MW) of aforesaid M/s Shiva Power in District Kangra on certain terms and Electro-mechanical Cost as prescribed in TEC is 879.39 lacs. The copy of TEC of Gaj-III and copy of TEC of Kapru Baner of M/s Shiva Power have been annexed as Annexure P-4 and P-5.

9. As per the Petitioner, after the Project of the Petitioner has been registered with Department of Industries under the Industrial

Development Scheme vide registration No. IDS/HP/2020/1333 on dated 29.09.2020 for the Subsidy and the claim for subsidy is under process with the Department of Industries.

10. It is averred that the Petitioner is aggrieved and dissatisfied with para 16 of the order dated 05.09.2022 in Petition No. 73 of 2019, whereby provisional tariff has been worked out erroneously by considering deduction of admissible subsidy of Rs. 90 lacs per MW on deemed normative basis and has reached a wrong conclusion causing injustice to the Petitioner, whereas the admissible industrial subsidy was required to be worked out on the basis of Electro-mechanical Cost of the Project prescribed in Techno Economic Clearance (TEC) which comes out Rs. 2.66 crore (30% of E&M cost) which comes to Rs. 53.20 lakh per MW. Thus, the Commission has committed an error by giving effect to the inadmissible Industrial Subsidy/Financial Assistance which requires reconsideration.

11. Further, if the actual cost of E&M works are considered, the subsidy admissible to the Project would be Rs. 2.27 crore ( 30% of Rs. 755 lakh) as the Electro-mechanical Cost of Kapru Baner 3.00 MW Project of M/s Shiva Power, as prescribed in Techno-Economic Clearance, was Rs. 879.39 lakh and the Commission while deciding said Petition No. 25 of 2022 of M/s Shiva Powers vide Order dated 17.05.2022 for determination of tariff, has considered 30% of the E&M

works plus transmission line works as the normative deemed subsidy i.e. Rs. 2.69 crore {30% of (Rs.879.39 Lac + Rs. 18.00 Lac = Rs. 897.39 Lac)}.

12. The Electro-mechanical Cost of the Project of the Petitioner prescribed in Techno-Economic Clearance (TEC) was Rs. 885.06 Lakh but in the case of the Petitioner, the admissible Industrial subsidy had been calculated as Rs. 90 Lakh per MW on deemed normative basis but in other matters, the admissible industrial subsidy has been worked out on the basis of Techno-Economic Clearance of the project (30% of E & M cost). As per the Petitioner, considering Rs. 4.50 crore as industrial subsidy as against Rs. 2.27 crore (30% of Rs. 7.55 crores) is higher than the maximum admissible subsidy under the Scheme. Therefore, the order is required to be revisited.

13. Further, the Commission has committed an error by not allowing the interest on the arrears accumulated due to the tariff difference while passing the impugned order. It is averred that the project of the Petitioner has been synchronized on 21.12.2019. The Petitioner has also availed loan in crores of rupees from the financial institutions/banks for the implementation of the project and for repayment of loan, the Petitioner is paying interest @ 11.50% PA. Since, the difference in tariff amount was retained by the Respondent No.1/ HPSEBL w.e.f. 21.12.2019 i.e. from the date of synchronization of the project, the



Petitioner is entitled to get interest @ 11% on the arrears accumulated due to the tariff difference.

14. It is averred that the errors in the present case are apparent on the face of record which do not require detailed examination, scrutiny and elucidation and, thus, impugned order is required to be reviewed in order to prevent miscarriage of justice.

15. The Petition has been resisted by the Respondent No. 1 by filing reply averring that the Petition is neither maintainable in law nor on the facts and that no grounds for reviewing the impugned order have been made out and the Petition is liable to be dismissed.

16. Also averred that no grounds of review have been made out in the entire Petition and that the foundation of the Petition that the Commission has not considered 30% of the Electro-mechanical Cost as approved by the DoE, the Petition is liable to be dismissed as the Powers of Review cannot be exercised on the ground that decision is erroneous which is the domain of the Appellate Court. Further, that the financial assistance/subsidy has been dealt by the Commission strictly in terms of the Regulation 14 of the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (RE Regulations, 2017) which provides for that it shall be made on normative basis.

17. On merits, it is averred that the Petitioner has applied for subsidy on 29.09.2020, whereas the Project was commissioned in the month of December 2019 but the Petitioner failed to disclose the amount of subsidy claimed from Industrial Department on the basis of actual E&M cost incurred by the Petitioner for Gaj-III HEP. Also averred that a mere allegation of an error is not enough to merit a review. Further, that Petitioner is availing the Generic Levellised Tariff determined by the Commission for Small Hydro Projects for 2<sup>nd</sup> Control Period (i.e. 1<sup>st</sup> October, 2019 to 31<sup>st</sup> March, 2020) under Regulation 14 of the HPERC RE Regulations 2017, which provides as under:-

*Item 8.13 'Subsidy or Incentive or grant/budgetary support by the Central/State Government' explicitly provides that since the MNRE, government of India is yet to notify the subsidy scheme for the SHPs for the current plan period and the SHPs coming up in this period may fall under different subsidy schemes depending upon the eligibility conditions, it is considered appropriate not to adjust any subsidy, at this stage while determining the generic levellised rate under this order and to adjust the tariff at appropriate subsequent stage after duly considering the eligibility conditions under the relevant applicable schemes of Government of India. Similarly adjustment on account of subsidy available under the Ministry of Commerce & Industry, Government of India and/or any other subsidy scheme(s) of Government (Central/State) shall also be made at appropriate stage (s) after taking into account the extent of subsidy(ies) available under such scheme(s). The adjustments on account of subsidies shall be made on normative basis.*

18. It is averred that the aforesaid Regulations do not reveal that adjustments of subsidy shall be made taking into account the Electro-

mechanical Cost approved in Techno Economic Clearance and, therefore, the Commission has rightly and legally taken into account the 30% of normative Electro-mechanical Costas 90 lakh per MW towards adjustment of admissible financial assistance out of the normative cost considered by the Commission. Hence, the claim of Petitioner is baseless.

19. Regarding Kapru Baner 3.00 MW of M/s Shiva Power, it is averred that the prescribed cost in TEC of said Project was Rs. 879.39 lakh and the Commission has considered 30% E&M works plus transmission line works as the normative deemed subsidy while deciding Petition No. 25 of 2022 of M/s Shiva Powers vide Order dated 17.05.2022. It is denied that the admissible Industrial Subsidy was required to be worked out as Rs. 2.66 crore on the basis of Electro-mechanical Cost prescribed in TEC. Thus, both cases of the Petitioner and M/s Shiva Power are different due to the following reasons:

A. Gaj-III HEP of the Petitioner has been commissioned since December, 2019, whereas the Kapru Baner HEP of M/s Shiva Power is yet to be commissioned. The difference in the commissioning date of the two projects makes a significant difference in the calculation of admissible industrial subsidy.

B. The terms and conditions of the Power Purchase Agreement (PPA) alongwith the tariff for Gaj-III SHP are subject to the provisions of RE

Tariff Regulations 2017 and Tariff order dated 15.02.2020, whereas the tariff applicable for Kapru Baner HEP has been worked out under the provisions of order dated 22.12.2020 issued by this Commission. The difference in the applicable regulations and provisions of respective tariff order(s), also has an impact on the calculation of admissible industrial subsidy.

20. Regarding interest on arrears accumulated due to tariff difference it is averred that the same cannot be allowed as the interim tariff was already provided vide Order dated 28.08.2020 and there was no delay on the part of the Respondent No. 1/HPSEBL in providing the interim tariff. Otherwise also, there is no clause in the PPA with respect to payment of interest accrued on account of differential tariff.

21. It is averred that the Commission has considered all the relevant facts and circumstances of the matter before passing the impugned order and there are no errors apparent on the face of record to exercise power of review.

22. No reply has been filed by Respondent No. 2.

23. In rejoinder the contents of reply have been denied and those of the Petition are reaffirmed.

24. We have heard Sh. L.S. Mehta Ld. Counsel for the Review Petitioner, Sh. Kamlesh Saklani Authorised Representative for the

Respondent No. 1 and Sh. Rajinder Thakur, Ld. Vice Counsel for the Respondent No. 2.

25. Sh. L.S. Mehta Ld. Counsel for the Petitioner has submitted that in the case of Kapru Baner 3.00 MW Project of M/s Shiva Power, the adjustment of Industrial Subsidy has been made on the basis of Electro-mechanical Cost prescribed in the TEC, whereas in the case of Petitioner, this principle has not been applied and rather, the Industrial Subsidy has been adjusted taking into account the normative cost, as a result, the Petitioner has suffered huge loss. Further, the interest on arrears has also not been awarded which ought to have been awarded. Sh. Mehta has also submitted that there are errors apparent on the face of record in the Order dated 05.09.2022, as such, the Order dated 05.09.2022 is required to be reviewed to prevent injustice.

26. Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 1 on the other hand has submitted that the Commission has considered each and every aspect of the matter and has made the adjustment of subsidy as per RE Tariff Regulations, 2017 and there are no reasons for reviewing the order. He has also submitted that there are no errors apparent on the face of record or discovery of any new and important matter of evidence warranting review.

27. We have carefully gone through the entire record and submissions. A careful perusal of Order dated 05.09.2022 reveals that the Commission has made adjustment of the Industrial Subsidy as deemed available on normative basis i.e. Rs. 90 lacs per MW [Normative capital cost for 2nd control period Rs. 90 lacs per MW by taking into account, the normative E&M cost considered as 270 lacs per MW (30% of total cost). As per the Industrial Scheme, it worked out to be Rs. 90 lacs per MW.

28. The record also reveals that the provisional tariff of Gaj-III SHEP (5.00 MW) was worked out as Rs. 3.70 per kWh vide Order dated 28.08.2020 subject to actual adjustment of incentive to be reimbursed to the project developer by the Ministry of Commerce and Industry. The Petitioner was required to submit its case for availing the subsidy through Nodal Agency and in case the IPP fails to submit its case through Nodal Agency appointed for the purpose for availing the incentive, the Commission may decide such adjustment in the tariff as per the provisions of Regulations. Significantly, while making adjustment, apart from the normative adjustment of Rs. 90 lacs per MW towards Industrial Subsidy, the capital subsidy adjustment as per MNRE Scheme has also been carried out in the tariff on deemed available basis and tariff has been worked out as Rs. 3.53 per kWh.

29. Coming to the calculations carried out by the petitioner based on TECs by the DoE, there is a considerable difference in per MW E&M cost of the project of the Petitioner even after considering the cost escalation detailed as under:-

Cost of E&M excluding Transmission approved by the DoE for Gaj-III (5.00 MW) in the TEC dated 12.02.2016.	Rs. 885.06 lacs, (price level April, 2014) i.e. Rs. 177 lacs per MW.
Cost of E&M excluding Transmission works approved by the DoE of Kapru Baner SHEP (3.00 MW) in the TEC dated 17.10.2017.	Rs. 879.39 lacs (price level March, 2016). i.e. Rs. 293.13 lacs per MW.

The capital cost as deemed available on normative basis i.e. Rs. 900 lacs per MW [Normative capital cost for 2nd control period Rs. 900 lacs per MW, the normative E&M cost derived as 90 lacs per MW ( $900 \times 0.33 \times 30\%$ ).MW .

30. After a careful analysis of the adjustment of Subsidy, it is apparent that neither any favour has been bestowed upon the Kapru Baner SHEP (3.00 MW) of M/s Shiva Power nor any different yardstick has been applied in the case of the Project of the Petitioner, as the per MW adjustment of the Industrial Incentive/Subsidy in the case of Kapru Baner of M/s Shiva Power has been considered as Rs. 89.66 lacs per MW, whereas in the case of the Petitioner, the same has been considered as Rs. 90 lacs per MW, which is as per the RE Tariff Regulations, 2017.

31. Significantly, the tariff which has been allowed to the Petitioner vide impugned Order dated 05.09.2022 is the provisional tariff and the Petitioner has been given a liberty to approach the Commission for appropriate tariff after availing the Industrial Subsidy. Therefore, whatever subsidy is considered and sanctioned by the Ministry of Industry and Commerce in case of the Project, appropriate adjustment shall be made accordingly. Therefore, there is no error apparent on the face of record or discovery of any new and important matter of evidence which has escaped the attention of the Commission while passing the Order dated 05.09.2022.

32. The another ground on which the review has been sought is that the Commission has erred in not allowing the interest on arrears accumulated due to tariff difference while passing the impugned Order. In this regard, it is relevant to mention that immediately on commissioning of the Project of the Petitioner, interim tariff had been allowed @ Rs. 3.27 per unit vide Order dated 28.08.2020 without any delay. After interim Order dated 28.08.2020 in Petition No. 73 of 2019, the Joint Petitioners executed PPA after the copy of the interim Order dated 28.08.2020 was sent to the parties. Thereafter, a Joint Miscellaneous application was filed by the parties i.e. Petitioner and HPSEBL on 13.08.2021 with certificate of Scheduled Commercial Operation Date of the Project as 22.12.2019. The delay in approaching



the Commission by the Petitioner by way of Joint Miscellaneous application had accrued not on account of Respondent/HPSEBL and, rather the same was on account of non execution of the lease deed by the Petitioner with the Government of HP and submitting the SCOD certificate. It is also relevant to mention here that no such prayer had been made by the Petitioner in the Joint Miscellaneous Petition filed on 13.08.2021 for claiming the interest on arrears. Therefore, the claim of the Petitioner for the interest on arrears is without any basis.

33. No doubt, under Section 94 of the Electricity Act, 2003 read with Section 114 and order 47 Rule I of the Code of Civil Procedure, 1908, the Commission has the powers to review its own order in order to prevent miscarriage of justice or to correct grave and palpable errors committed by it, 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. However, the power of review may not be exercised on the ground that the decision was erroneous on merits which is the domain of the court of appeal. 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.

34. 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 8.1 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 Tuleshwar 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 Tuleswar 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.”*

35. A careful perusal of the review Petition 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 vide Order dated 05.09.2022. The Petitioner has unnecessarily drawn comparison between its case and the case of Kapru Baner 3.00 MW wherein also same principle has been applied for the adjustment of subsidy. The interim tariff to the Petitioner has been awarded as per Order dated 28.08.2020 and the tariff of Rs. 3.53 vide Order dated 05.09.2022 is provisional tariff. Therefore, there was no occasion for awarding interest on arrears.

36. The Petitioner in the various grounds in the present Petition has pointed out infirmities in the impugned Order dated 05.09.2022, for which the Petitioner was at liberty to approach the Hon'ble Appellate Court 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.

37. The Commission has dealt 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 05.09.2022 passed by the Commission in Petition No. 73 of 2019. 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 05.09.2022 was made or there is any sufficient reason warranting review.

38. 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.

The file after needful be consigned to records.

**Announced**  
**01.06.2023**

-Sd-

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

-Sd-

**(Devendra Kumar Sharma)**  
**Chairman**