

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

Review Petition No: 32 of 2023

Instituted on: 12.04.2023

Heard on : 19.08.2023

**Decided on : 26.09.2023/
01.11.2023**

CORAM

Devendra Kumar Sharma

CHAIRMAN

Yashwant Singh Chogal

MEMBER (Law)

Shashi Kant Joshi

MEMBER

In the matter of :

The HP Power Transmission Corporation Ltd. through its
DGM (C&M),
Himfed Bhawan, Panjari, Shimla-171005.

.....**Petitioner**

Versus

1. The State of HP (MPP & Power) through its
Secretary, Govt. of HP,
Secretariat, Shimla-171002.
2. The HP State Electricity Board Limited, through its
Chief Engineer (Commercial),
Vidyut Bhawan, Shimla-171004.
3. The HP Power Corporation Limited, through its
Managing Director,
Himfed Building, BCS, New Shimla-171009.
4. The Directorate of Energy, Govt. of HP, through its
Director,
Shanti Bhawan, Sector-6, Phase-III, New Shimla-171009.
5. The HIMURJA through its
Director,
SDA Complex, Kasumpti, Shimla- 171009.

.....**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, as amended from time to time, seeking review of the order dated 28.09.2022 passed by the Commission in Petition No. 30 of 2022.

Present:

For the Petitioner: Sh. Prakhar Kulshresta, Tariff Consultant for the Petitioner.

For the Respondents: Sh. Shanti Swaroop, Ld. Legal Consultant for Respondents No. 1& 4.
Sh. Kamlesh Saklani, Authorised Representative for Respondent No. 2.
None for Respondent No. 3.
Sh. Vivek Singh Thakur Ld. Counsel for Respondent No. 5.

ORDER

A Petition No. 30 of 2022 was filed before the Commission seeking approval of Capital Cost and determination of tariff in respect of 33/132 kV, GIS Sub-Station at Pandoh along with LILO of one circuit of 132 kV D/C Kangoo-Bajaura Transmission Line (Asset-1 for short) and Additional 33/132 kV, 31.5 MVA Transformer at 33/132 kV GIS Sub-station at Pandoh (Asset-2 for short) for the period from COD to FY 2023-24. The Commission vide Order dated 28.09.2022 disposed off the Petition. 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. 30 of 2022 on the following four issues:

- (i) Review due to Non-consideration of Audited Capital Cost of Rs. 15.21 Crore as on COD and Rs. 16.41 Crore as on 31.03.2021 for Asset-2 submitted to the HPERC vide Affidavit dated 18.07.2023 and revision of approved ARR.
- (ii) Review of the Disallowance of IDC of Rs. 1.53 Crore claimed post COD with respect to Asset-1 and IDC & DC of Rs. 0.29 Crore claimed post COD for Asset-2 and allowance of consequential impact of change in Capital Cost of Asset-2.
- (iii) Review of disallowance of actual Debt Equity Ratio as on COD for Asset-1 and 2.
- (iv) Review of Depreciation for Asset-2 during the COD Year and IOWC for Asset-1 & 2 during the COD Year.

2. It is averred that due non consideration of audited capital cost of Rs. 15.22 Crore as on COD i.e. 08.10.2020 and Rs. 16.41 Crore as on 31.03.2021 for Asset-2 submitted to the Commission through affidavit dated 18.07.2023, the Commission has inadvertently missed on considering the audited capital cost for Asset-2 as on COD i.e. 08.10.2020 and as on 31.03.2021. It is averred that the following additional submissions had been made in affidavit dated 18.07.2022:-

"2. That vide query no. 5 of deficiency note dated 25.11.2021, Hon 'ble HPERC had directed HPPTCL to provide final Auditor Certificate to certify the capital cost

of Asset-2. In reply to the same, HPPTCL had stated as under:

"It is humbly submitted that Asset-2 i.e. installation of additional 33/132kV transformer at Pandoh S/s has achieved COD on 08.10.2020. As the annual accounts for FY 2020-21 are yet to be finalized, therefore, the provisional certificate of auditor for Asset-2 was enclosed with the petition. The said certificate will be provided before the Commission for appraisal once the accounts are finalized".

3. That HPPTCL's Annual Accounts for FY 2020-21 have been finalized and accordingly HPPTCL is submitting Auditor Capital Cost of Asset-2 i.e. additional 33/132kV,31.5MVA Transformer at Pandoh and copy of same are placed as Anenxure-1."

3. It is averred that the additional submissions made by the Petitioner through affidavit dated 18.07.2022 were received by the Commission on 19.07.2022, as evident from letter (Annexure-2) thus, non consideration of audited capital cost for Asset-2 as on COD and as on 31.03.2021 amounts to an error apparent on the face of record.

4. It is also averred that the disallowance of IDC of Rs. 1.53 Crore claimed post COD with respect to Asset-1 of IDC and DC of Rs. 0.29 Crore claimed post COD with respect to Asset-2 amounts to an error apparent of face on record and required to be reviewed.

5. It is also averred that the Petitioner would like to submit that the Approval of Additional Capital Expenditure (ACE for short) with respect to Asset-1 has been in line with the claim of the Petitioner except for the disallowance of IDC of Rs. 1.53 Crore claimed post COD during FY 2019-2020. The Commission has also disallowed the IDC & DC of Rs. 0.29 Crore claimed as ACE for Asset-2 post COD during the FY 2020-21. It is

also submitted that CERC as a standard practice in its various Tariff Determination and Truing Up Orders for various Transmission assets of PGCIL has been allowing the claim of undischarged and accrued IDC and DC as a part of ACE during the COD Year and Financial Years immediately following the COD Year. It is further submitted that the matter has been dealt in detail by Hon'ble APTEL in its Judgment dated 03.10.2019 in Appeal No. 231 of 2017 (Power links Vs. CERC & Ors.), wherein it has been held as under:-

ix) The Central Commission should have taken into consideration the aspect that whatever be the types of funds it is never free of cost. There is always a cost of funding. The argument that no actual loan for additional capital expenditure was taken and therefore it is not admissible for any normative IDC is wrong. It is the commercial decision of the Appellant whether to borrow the money from the market for the purpose of additional capitalisation or use its internal accruals. In either case, the capitalisation deserves to be given the Interest during Construction. For the simple reasons that if the internal accruals were not to be used as additional capital then it would have been invested in the market in any interest earning instrument. Additional capitalisation is therefore entitled to be compensated in terms of normative IDC. The Central Commission should have considered this aspect that no funds are free funds."

6. It is averred that the Hon'ble APTEL has held that funds are never free of cost and, therefore, normative IDC on additional capitalisation should have been allowed. Subsequently, the Hon'ble CERC dated 02.11.2021, in its Order in Petition No. 588/TT/2020 has also allowed normative IDC on additional capitalisation and, therefore, it has been prayed to allow IDC claimed on actual loans availed. As per the

Petitioner, the non-consideration of IDC & DC post COD also amounts to an error apparent on the face of record and needs to be reviewed. Copy of Judgment/ Orders of the Hon'ble APTEL and CERC are enclosed as Annexure-3.

7. It is also averred that the disallowance of the actual Debt Equity Ratio as on COD for Asset-1 & 2 is contrary to the Regulation 18 of HPERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011 (Tariff Regulations, 2011 for short) regarding the debt equity ratio for the purpose of tariff determination which 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."

8. From the above, it is clear that the Regulation speaks about the consideration of actual debt or equity deployed during execution of the project and do not specify anything with regard to the 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 is worked out to be 75.06:24.94 and 58.85:41.15 (considering the

Audited Capital Cost of Rs. 962.08 Crore which is equal to total capital cost of Rs. 1520.91 minus Grant Funding of Rs. 558.83 Crore) for Asset 1 and Asset 2 respectively.

9. Further averred that 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.

10. As per the Petitioner, in order to comply with the condition put forward by this Commission in the order dated 28.09.2022 sought to be reviewed, the Petitioner is submitting the BoD approval for revised project funding in the present Review Petition. It has been prayed to accept the actual debt and 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. Copy of BOD approval taken on HPPTCL is enclosed as Annexure-4. Further, it is submitted that Asset-2 i.e. Additional Transformer at Pandoh is covered under KfW funding with approved funding ratio of 40:40:20 (grant:debt:equity) and if grant portion is removed, said ratio works out as 66.67:33.33. As approved funding ratio exceeds normative equity of 30%, there is no need to take approval of actual funding as equity in excess of 30% is not regulatory permissible.

11. Regarding review of depreciation for Asset-2 and IOWC for Asset-1 and 2 during the COD year. It is observed that the Annual Depreciation of Rs. 39.82 lakh as worked out by HPERC has been incorrectly pro-rated for 88 no. of operational days instead of 175 no. of operational days. The Petitioner also submits that the approved interest on Working Capital is on lower side owing to the lower approval of constituent individual components. With respect to IOWC approved for Asset-1 and Asset-2 during the COD Year, it is observed that HPERC has not pro-rated the Annual IOWC worked out. In view of the above, computation of depreciation and IOWC merits review .

12. The Petition has been resisted by the Respondent No. 2 i.e the HPSEBL which has submitted the reply on each of the four issues as under:-

- (i) *Review due to non consideration of Audited Capital cost of Rs. 15.21Cr. as on COD and Rs. 16.41 Crore as on 31.03.2021 for Asset-2 submitted to Hon'ble HPERC vide affidavit dated 18.07.2023 and revision of approved ARR:*

It is submitted that Commission has dealt this aspect in the Order dated 28.09.2022 at para Nos. 3.5.31 to 3.5.37, where there is no reference regarding reconsideration of audited cost after finalisation of accounts FY 2021-22 for revision of ARR.

- (ii) *Review of the disallowance of IDC of Rs. 1.53Cr. Claimed post COD with respect to Asset-1 and IDC & DC of Rs. 0.29Crore*

claimed post COD for Asset-2 and allowance of consequential impact of change in Capital Cost of Asset-2. :

It is submitted that Commission has dealt this aspect (IDC) in the Order dated 28.09.2022 at paras 3.8.5 & 3.8.6 and accordingly, Hon'ble Commission at para 3.8.7 has approved the additional capitalization for both the Assets.

(iii) Review of disallowance of actual debt to equity ratio as on COD for Asset-1 & 2:

It is submitted that Commission has dealt this aspect in the Order dated 28.09.2022 at para 3.7.6 to 3.7.8 wherein Hon'ble Commission has considered the debt to equity ratio of 80:20 based on the DPR & requisite approvals.

On the aforementioned issues, HPSEBL submits that there is no error apparent in the tariff order dated 28.09.2022, therefore, any change /reconsideration in the Debt to Equity ratio may be allowed at the time of truing-up of the tariff.

(iv) Review of depreciation for Asset-2 during the COD year and IOWC for Asset-1 & 2 during the COD year :

It is submitted that Commission has dealt this aspect in the Order dated 28.09.2022 at para 4.2 & 4.6. However, the Petitioner has submitted that the Annual Depreciation of Rs 39.82 Lakh as worked out by HPERC has been incorrectly pro-rated for 88 No. of operational days

instead of 175 No. of operational days. After scrutinising table No. 27, the operational days for Asset-2 from COD i.e. 08.10.2019 to 31.03.2020 has come out to 175 days and same need to be corrected.

13. It is also averred that interest on Working Capital has been approved by the Commission according to the relevant Regulations.

14. The Respondents No. 1 and 4 have not filed any reply. The Respondents No. 3 and 5 have stated that their reply be treated as Nil.

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

16. We have heard Sh. Prakhar Kulshreshta, Tariff Consultant for the Petitioner, Sh. Shanti Swaroop, Ld. Legal Consultant for Respondents No. 1 and 4, Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 2 and Sh. Vivek Singh Thakur, Ld. Counsel for the Respondent No. 5 and have perused the entire record carefully.

17. It is settled law 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.

18. 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 Judgment 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.”

19. In view of the above settled position of law, we now proceed to discuss each of the four issues separately on which the review has been sought as under :-

20. **Issue No.1:- Review due to Non-consideration of Audited Capital Cost of Rs.15.21 Crore as on COD and Rs. 16.41 Crore as on 31.03.2021 for Asset-2 submitted to the HPERC vide Affidavit dated 18.07.2023 and revision of approved ARR.**

(i) The Commissions has dealt with this aspects in detail in order dated 28.09.2022 at Para 3.5.20 to 3.5.37 and has approved the capital cost of the project based on the Petitioner submissions, facts of the case and suitable assumptions/considerations where satisfactory explanation has not been offered. It is quite relevant to, mention here that the Auditor Certificate submitted by the Petitioner against the capital cost claim of Rs 16.41 Crore as on 31.03.2021 has been higher to the claim as on COD i.e. 8.10.2020 for Asset 2. Any additional cost claim post COD has to be justified with proper facts and figures with adequate explanation especially when there are cost items beyond the scope of the DPR of the Project. Mere submission of Auditor Certificate does not justify the case for the higher capital cost. The Petitioner has submitted the Auditor Certificate for the claimed capital cost of Rs. 16.41 Cr as on 31.03.2021 with no acknowledgement/ submission with regards to actual capital cost as on COD. Moreover, some of the cost items appearing in the Auditor Certificate were not even claimed by the Petitioner in the original Petition No. 30 of 2022.

(ii) Also the record shows that the capital cost considered as on COD has been based on the submissions of the Petitioner in the original Petition and replies to the deficiency letters. The Petitioner was provided sufficient time during the proceedings for submission but in vain and any

additional information shall be considered at the time of the truing up exercise.

Hence, the claim of the Petitioner is devoid of any merit and there is no error apparent on the face of record.

21. Issue No. 2:- Review of the Disallowance of IDC of Rs. 1.53 Crore claimed post COD with respect to Asset-1 and IDC & DC of Rs. 0.29 Crore claimed post COD for Asset-2 and allowance of consequential impact of change in Capital Cost of Asset-2.

(i) The Commissions has dealt with this aspects in detail in order dated 28.09.2022 at Para 3.6.8 to 3.6.31, taking into consideration the submissions and entire record .

(ii) It is settled accounting principle that 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 is allowed on the borrowed capital. This is well accepted accounting principle. Accordingly, IDC has been approved as discussed in Para 3.6.8 to 3.6.31 in the Order dated 28.09.2022. till COD. It is relevant to mention here that the Petitioner has not provided any supporting working/documents to corroborate its claim of IDC post COD of the project.

(iii) In so far as the Judgment of the Hon'ble APTEL and Orders of the Hon'ble CERC as relied upon by the Petitioner are concerned , the same are not applicable to the facts and circumstances of this matter,as no

evidence of additional capital expenditure has been provided. Otherwise also, from CoD interest on loan has been allowed which also disentitled the Petitioner for IDC post CoD. Hence, there is no question of any IDC from CoD on borrowed/ normative capital. Thus, there is no error apparent on the face of record warranty review .

22. Issue No. 3: Review of disallowance of actual Debt Equity Ratio as on COD for Asset-1 and 2.

(i) The Commissions has dealt with this aspects in detail on the basis of the submissions and record in order dated 28.09.2022 at Para 3.7.6 to 3.7.11, which are reproduced as under:-

“3.7.6 The Commission has examined the information and various documents submitted by the Petitioner with regard to the funding of both the Assets. It is observed that although the loan of Asset-1 was secured from ADB and for Asset-2 from kfw, GoHP act as the nodal agency. The loan granted by both the agencies to GoHP has been transferred to the Petitioner which is the designated implementing agency for the transmission projects.

3.7.7 The Asset-1 was originally envisaged at a debt: equity ratio of 80:20 as provided in the DPR against which the Petitioner has claimed a higher equity infusion. The Commission believes that since the funding of the asset was secured in accordance with the DPR on which CEA has also accorded its approval, it is prudent to consider the debt equity ratio as per the original DPR. Accordingly, the Commission has considered the debt equity ratio of 80:20 for Asset -1 for computation of IDC and components of the ARR. Further, as per submission of the Petitioner no grant has been provided for Asset-1.

3.7.8 With regards to Asset-2, the Petitioner has sourced debt from KfW with the disbursement being done by GoHP. Further, the Petitioner has received MNRE-NCEF grant for the asset. Balance amount has been reflected as equity by the Petitioner.

3.7.9 The Commission upon scrutiny of the loan agreement, sanction letter, actual disbursement, etc., observed that the grant and debt received against the asset is much higher than claimed thereby affecting the debt: equity ratio. As per the documents submitted by the Petitioner in response to the clarifications in this regard, a total grant of Rs. 6.98 Cr. was received by the Petitioner from MNRE while a total debt amount of Rs. 7.36 Cr. was availed from KfW towards the asset.

3.7.10 The Commission sought justification for the same from the petitioner. In absence of satisfactory response received from this account, the Commission is relying upon the documentary proofs submitted and approves the project funding.

3.7.11 Further, during the tariff proceedings, the Petitioner failed to submit the equity infusion specific to Asset-1 and Asset-2. In reply, 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”.

(ii) It is clear from the above that the Project funding has been approved in accordance with the approved DPR of the Project i.e. 80:20 ratio for Asset-1 and as per the submission with respect to debt equity and grant for Asset-2 based on the documents filed alongwith the main Petition received, which is as per the Tariff Regulations, 2011. Otherwise also, equity infused in any Project should be from the internal accruals or from the surpluses available with the Company. The same cannot be met from raising long from any Financial Institution. The Petitioner has miserably failed to place on record sufficient justification/papers substantiating its claim for the debt:equity ratio of 75.06:24.94 and 58.85:41.15 and in the absence of any supporting documents, the reliance placed in Regulation 18 of the Tariff Regulations, 2011 is misplaced. Accordingly, the Petitioner has not been able to show that there is any error apparent on the face of record.

23. Issue No. 4: Review of Depreciation for Asset-2 during the COD Year and IOWC for Asset-1 & 2 during the COD Year.

(i) The Petitioner has prayed for review regarding depreciation for Asset-2 and IOWC for Asset-1 and 2 during the COD year as approved by the Commission vide order dated 28.09.2022. The Petitioner on this issue has submitted as under:-

“i. The Petitioner in its submission submits that with regard to Depreciation of Rs. 9.55 Lakh approved for Asset-2 during the COD year, it is observed that the Annual Depreciation of Rs. 39.82 lakh as worked out by HPERC has been incorrectly Pro-Rated for 88 no. of operational days instead of 175 no. of operational days. The Petitioner also submits that the approved Interest on Working Capital is on lower side owing to the lower approval of constituent individual components. With respect to IOWC approved for Asset-1 and Asset-2 during the COD Year, it is observed that HPERC has not pro-rated the Annual IOWC worked out.

ii. In view of the above, computation of depreciation and IOWC merits review as it amounts to error apparent on the face or record and therefore it is requested to be allowed.”

ii) The HPSEBL in its reply has submitted that the Annual Depreciation of Rs. 39.82 lakhs as worked out by the HPERC has been incorrectly pro-rated for 88 No. of operational days instead of 175 No. of operational days and after scrutinizing the Table No.27, the Number of operational days for Asset-2 from CoD i.e. 8.10.2019 to 31.03.2020 come out to be 175 days and same need to be corrected.

iii) We have considered the submissions made in the Review Petition, reply by the HPSEBL and have also perused the record carefully. On careful analysis, we are of the view that there is an inadvertent error in the order dated 28.09.2022 on working out the depreciation. Accordingly, in exercise of the powers of review vested in the Commission, Tables No. 27, 29, 36 and 38 have been corrected by giving correct figure as under:-

Table No. 27: Depreciation approved by Commission (INR Lakh)

Particulars	FY20	FY21	FY22	FY23	FY24
Asset-1					
Opening GFA	3,839.49	4,151.49	4,151.49	4,151.49	4,151.49
Addition	312.00	-	-	-	-
Less: Grant	-	-	-	-	-
Less: Freehold Land	-	-	-	-	-
Depreciable Value	4,151.49	4,151.49	4,151.49	4,151.49	4,151.49
Rate of Depreciation	5.10%	5.10%	5.10%	5.10%	5.10%
Depreciation – Asset-1	122.94*	211.56	211.56	211.56	211.56
Asset-2					3.
Opening GFA		1,509.50	811.54	811.54	811.54
Addition		-	-	-	-
Less: Grant		697.96	-	-	-
Less: Freehold Land		-	-	-	-

Particulars	FY20	FY21	FY22	FY23	FY24
Depreciable Value		811.54	811.54	811.54	811.54
Rate of Depreciation		4.91%	4.91%	4.91%	4.91%
Depreciation – Asset-2		19.09*	39.82	39.82	39.82
Total Depreciation	122.94	230.65	251.38	251.38	251.38

**Asset-1: Depreciation expense pro-rated for FY2019-20 based on COD (i.e. 24th Aug, 2019)*

**Asset-2: Depreciation expense pro-rated for FY2020-21 based on COD (i.e. 8th Oct, 2020)*

Table No. 29: Interest on Loan approved by Commission (INR Lakh)

Particulars	FY20	FY21	FY22	FY23	FY24
Asset-1					
Opening Balance	3,071.59	3,198.25	2,986.69	2,775.14	2,563.58
Addition	249.60	-	-	-	-
Repayment	122.94	211.56	211.56	211.56	211.56
Closing Balance	3,198.25	2,986.69	2,775.14	2,563.58	2,352.02
Rate of Interest (%)	10.00%	10.00%	10.00%	10.00%	10.00%
Interest on Loan – Asset-1	189.29*	309.25	288.09	266.94	245.78
Asset-2					
Opening Balance		735.97	716.88	677.06	637.24
Addition		-	-	-	-
Repayment		19.09	39.82	39.82	39.82
Closing Balance					

Particulars	FY20	FY21	FY22	FY23	FY24
		716.88	677.06	637.24	597.42
Rate of Interest (%)		10.00%	10.00%	10.00%	10.00%
Interest on Loan – Asset-2		34.83*	69.70	65.72	61.73
Total Interest on Loan	189.29	344.08	357.79	332.65	307.51

*Asset-1: Interest on Loan pro-rated for FY2019-20 based on COD (i.e. 24th Aug, 2019)

*Asset-2: Interest on Loan pro-rated for FY2020-21 based on COD (i.e. 8th Oct, 2020)

Table No. 36: Interest on Working Capital approved by Commission (INR Lakh)

Particulars	FY20	FY21	FY22	FY23	FY24
Asset-1					
O&M Expenses for 1 month	5.11	8.75	9.06	9.38	9.71
Maintenance Spares (at 15% monthly O&M Expenses)	0.77	1.31	1.36	1.41	1.46
Receivables for 2 months	76.30	128.23	125.11	122.17	119.27
Total Working Capital	82.18	138.30	135.53	132.96	130.43
Interest Rate (%)	11.55%	10.75%	10.00%	10.00%	10.00%
Interest on Working Capital – Asset-1	9.49*	14.87	13.55	13.30	13.04
Asset-2					
O&M Expenses for 1 month		1.15	2.49	2.58	2.67
Maintenance Spares (at 15% monthly O&M Expenses)		0.17	0.37	0.39	0.40
Receivables for 2 months		12.48	25.67	25.17	24.68
Total Working Capital		13.81	28.53	28.14	27.76

Particulars	FY20	FY21	FY22	FY23	FY24
Interest Rate (%)		10.75%	10.00%	10.00%	10.00%
Interest on Working Capital – Asset-2		1.48*	2.85	2.81	2.78
Total interest on Working Capital	9.49	16.35	16.41	16.11	15.82

*Asset-1: IoWC pro-rated for FY2019-20 based on COD (i.e. 24th Aug, 2019)

*Asset-2: IoWC pro-rated for FY2020-21 based on COD (i.e. 8th Oct, 2020)

Table No. 38: Summary of Consolidated ARR approved by Commission (INR Lakh)

Particulars	FY20	FY21	FY22	FY23	FY24
Depreciation	122.94	230.65	251.38	251.38	251.38
Interest on Loan	189.29	344.08	357.79	332.65	307.51
Return on Equity	74.79	134.31	140.41	140.41	140.41
O&M Expenses	61.29	118.89	138.68	143.51	148.59
Interest on Working Capital	9.49	16.35	16.41	16.11	15.82
Total ARR	457.81	844.28	904.67	884.05	863.71

24. As observed above in Para 23, the Petitioner has been able to show that there is an error apparent on the face of record qua working out correct depreciation and there are sufficient grounds for reviewing the issue regarding Depreciation for Asset-2 during the COD Year and IOWC for Asset-1 & 2 during the COD Year and accordingly, the Commission allows the review of Issue No. 4 above qua depreciation.

25. In so far as issues No. (i) to (iii) above regarding (i) Non-consideration of Audited Capital Cost of Rs. 15.21 Crore as on COD and Rs. 16.41 Crore as on 31.03.2021 for Asset-2, (ii) Disallowance of IDC of Rs. 1.53 Crore claimed post COD with respect to Asset-1 and IDC & DC of Rs. 0.29 Crore claimed post COD for Asset-2, (iii) disallowance of actual Debt Equity Ratio as on COD for Asset-1 and 2 are concerned, the Commission has given its findings on merits while disposing off the Petition. The Petitioner in the various grounds in the present Petition has been able to point out any infirmity in respect of the aforesaid issues in the impugned order that there is any clerical omission, mistake or the like grave error warranting review. Hence, the law laid down aforesaid by the Hon'ble Supreme Court is squarely applicable to the facts and circumstances of the present matter qua issue Nos. (i) to (iii) above.

26. In view of the foregoing discussion and limited scope of review jurisdiction, the Petition partly succeeds and allowed partly qua the depreciation for Asset-1 during CoD year and IOWC for Asset 1 and 2. However, the Petition qua review of issues (i) Non-consideration of Audited Capital Cost of Rs. 15.21 Crore as on COD and Rs. 16.41 Crore as on 31.03.2021 for Asset-2, (ii) Disallowance of IDC of Rs. 1.53 Crore claimed post COD with respect to Asset-1 and IDC & DC of Rs. 0.29

Creore claimed post COD for Asset-2, (iii) disallowance of actual Debt Equity Ratio as on COD for Asset-1 and 2 fails and dismissed.

27. Let a signed copy of this order be placed immediately above the order in Petition No. 30 of 2022 decided on 28.09.2022.

The file after needful be consigned to records.

Announced
26.09.2023/
01.11.2023

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman