

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

Miscellaneous Petition No: 35 of 2023
Date of Institution: 04.04.2023
Decided on: 11.07.2023

CORAM

Devendra Kumar Sharma

CHAIRMAN

Yashwant Singh Chogal

MEMBER (LAW)

Shashi Kant Joshi

MEMBER

In the matter of:

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

.....**Petitioner**

Versus

1. The Power Contractor Association through
Ranjit Singh (General Secretary)
130/2 Rambagh, Upper Haripur, Sundernagar-1,
Distt. Mandi, H.P. 175018.
2. Ms. Soma, Village Chakkdyal, Near Sr. Secondary School
Bhatakufar, Shimla Rural-171006.
3. Sh. Shyam Chopra R/o Tovru, P.O. Kamla Nagar
Bhatakufar Tehsil and Distt. Shimla 171006.

.....**Respondents**

**Petition for review of the directions issued for using e-tendering for
carrying out Engineering, Procurement and Construction works of value
more than fifty thousand rupees (Rs. 50,000).**

Present:-

Sh. Kamlesh Saklani, Authorised Representative for the Petitioner.

Sh. Ranjeet Singh, General Secretary of the Respondent No. 1.

None for the Respondents No. 2 and 3 i.e. Ms. Soma and Sh.Syam Chopra.

ORDER

This Petition has been filed by the Himachal Pradesh State
Electricity Board Limited (the Petitioner or the HPSEBL for short) for
reviewing/ revisiting the directions issued by the Commission vide

letters dated 07.12.2022 and 31.12.2022 for carrying out Engineering, Procurement and Construction works valuing more than fifty thousand rupees (Rs. 50,000/-) through e-tendering process in order to increase fairness and transparency in the system and works valuing more than one crore through e-reverse bidding mode.

2. As per the Petitioner, in view of the above directions of the Commission, the amendments in Delegation of Financial Power (DoFP for short) were carried out vide office order dated 30.12.2022 and the Commission was informed of the same vide office letter No. HPSEBL/CE-(Comm.)/ SERC-11/ 2022-23- 13934-37 dated 31.12.2022 which is reproduced as under:

“ In Chapter V, Para 53 the following paras shall be substituted:-

“Open Tender:-

- i. Open Tender enquiries are those which are issued besides displaying at HPSEBL website, through either of the following mode:-*
 - a) All tender/ NIT having value more than Rs. 50,000/- (Rupees Fifty Thousand Only) shall be invited through online mode only.*
 - b) All tenders having estimated value more than Rs. 1,00,00,000/- (Rupees One Crore Only) shall be invited on e-reverse auction mode only”*

3. It is averred that the Commission vide letter No. HPERC-F(1)-27/ 2021-2673-75 dated 31.12.2022 reiterated that all Open Tenders, Limited Tenders, Single Tenders, Repair & Maintenance (R&M) Works, Operation and Maintenance (O&M) Works, Work Orders and other

Engineering, Procurement & Construction works of value more than fifty thousand rupees (Rs. 50,000/-) must be undertaken through e-tendering only.

4. In Compliance of the above said directions issued vide letter dated 31.12.2022, the HPSEBL has made the following amendment in DoFP vide office Order dated 02.01.2023, which is reproduced as under:-

“Open Tender:-

i. Open Tender enquires which are issued, besides displaying at HPSEBL website, through either of the following modes:-

a) All open tender, limited tender, single tender, work order, supply order for all the works including repair & maintenance (R&M), operation & maintenance (O&M) and other engineering, procurement & construction works of value more than Rupees fifty thousand (Rs. 50,000/-) in the HPSEBL shall be undertaken through e-tendering mode only.”

5. It is averred that, in the meanwhile, the HP Power Contractor's Association (Respondent Association for short) met the Hon'ble Chief Minister, Himachal Pradesh and requested for de-notifying the above amendments carried out in the DoFP and requested the HPSEBL vide letter No. HPCA/ Gen-2022-23-147 dated 12.01.2023 for de-notifying the amendments in the DoFP and also to carry out related amendments.

6. It is averred that the threshold limit of tenders through online process in Irrigation and Public Health Department (I&PH for short) is Rs. 5,00,000/- (Annexure-A) and in Himachal Pradesh Public Works Department (HPPWD for short) is Rs. 1,00,000/- (Annexure-B). Also averred that the Govt. of Himachal Pradesh (GoHP for short) had earlier desired to review the DoFP in respect of tenders and submit the proposal for making necessary changes to carry out all Engineering, Procurement & Construction works through offline mode. Hence, the Petition.

7. In the Petition, the Power Contractor Association was arrayed as party without referring it as Respondent. The Commission, therefore, has treated Power Contractor Association as Respondent No. 1. The Commission has also received responses from Ms. Soma Devi and Sh. Shyam Chopra on the issue, who have been shown as Respondents No. 2 and 3.

8. On notice, the Power Contractor Association has put in appearance and filed the reply. However, the Respondents No. 2 and 3 have not put in appearance.

9. The Respondent No. 1 in its reply has submitted that the Tenders of valuing upto Rs. 5,00,000/- (Five Lakhs Only) be permitted through offline mode and e-reverse bidding mode for the works valuing above

Rs. 5,00,00,000/- (Five Crores Only) excluding taxes be allowed. It has been averred as under:-

- i) *“In offline mode, it is not that the contractors will get higher rates, the rate of each and every item is clearly bench marked by the department in cost data, and none of the tender is awarded above these rates, it is only that in offline mode the local unemployed contractors will get work uniformly to earn their livelihood.*
- ii) *Sir, by online mode, we local contractors are not able to compete with the contractors of outside state, because many of these contractors outside state are also the manufacturer of all the items that are used in the electricity board works also sometimes just to clear their pending stock of items these contractors-cum-manufacturer file the rates below 40-50% of the estimated cost which is beyond our competition.*
- iii) *Also just to make an entry in the HPSEBL works these contractors file such unexpected below rates and financially finish the small contractors of Himachal and for the next time competition they make their monopoly of rates and the rates of the same works are filled 30-40% high of the estimated cost and the HPSEBL is left with only option of work award to them.*
- iv) *Sir, in this online system there is no work left with the local contractors and we will come in the category of unemployment, eventually there will be no money left to pay our laborers as well. The result will be that, we will*

have to withdraw our labor also, and this will increase unemployment among a large number of Himachalis.

- v) *Sir, due to online system, the out of state contractors will fetch the maximum work as explained why, this will result in increase in revenue deficit of the State and the HPSEBL, because the GST paid by the outside contractor is directly paid to the center and not to the state of Himachal, because they pay only IGST and not SGST. Whereas 9% GST is added to the revenue of the State and Board on every work bill/ invoice of the local contractor.*
- vi) *In Industrial areas like Baddi, Nalagarh, Kala-Amb, Parwanoo, Nahan where the load consumption is highest in the state. These Industries will never tolerate the breakdown for long time (online process takes much time for work award) as they are the highest revenue payers and they want Power Supply Breakdown rectification within few hours/ Days to be restored as their losses are very high if the same Power supply is not restored within time and it is not possible with online tendering process which is more time consuming.*
- vii) *Sir, when Power supply of any area has to be restored immediately, we the local contractor with his laborers start working within time and restore the power supply in few hours or days. Whereas, if the same work has to be processed through online tendering, it will take minimum 20 days for work award and after that the process of restoring the supply will start, and this shall result in big revenue loss, further delay in power supply restoration can*

be imagined clearly and the Government can't keep the public deficit of power supply for so long.”

10. The Respondents No. 2 and 3, Ms. Soma Devi and Sh. Shyam Chopra have mentioned in their responses that the directions issued by the Commission to the Petitioner to undertake all Engineering, Procurement and Construction Works of Value exceeding fifty thousand rupees (Rs. 50,000/-) through e-tendering mode in order to ensure fairness and transparency, are commendable which will not only ensure absolute transparency and fairness but also the quality in execution of Engineering, Procurement and Construction Works of the Petitioner.

11. The Commission has also received the comments/ response from the Consumer Representative. The comments of the Consumer Representative are reproduced as under:-

“Normative Rates proposed for 1.4.2023 onwards

The actual basis to calculate the normative rates per annum are proposed by escalating @ 5% per annum (Simple Rate) on the rates applicable as on 31.03.2023 for service line for HT connection above 50 KW/KVA and up to 150 KW load and 150 KVA contract demand etc. The same appears to be rational, however, not based on actual assumptions. The prayer of the Petitioner is to approve the normative rates by escalating @ 5% per annum (Simple Rate) on the rates applicable as on 31.03.2023 submitted with the Petition.

The HPSEBL appears to have not submitted the actual assumptions which may project the true and factual normative rates for 01.04.2023. The Commission may keep this aspect in mind before adjudicating the Petition.

Enforcement of the directions of the Hon'ble Commission issued to HPSEBL for use of e-tendering mode.

The Petitioner has been directed by this Hon'ble Commission vide letter dated 03.12.2022 for use e-tendering mode to carry out Engineering, Procurement and Construction works of the value more than Rs. 50,000/- and award of works of more than Rs. 1,00,00,000/- (One Crore only) through reverse bidding mode. The objective of these directions was to ensure transparency and fairness in the process. However, the Petitioner is not complying with the directions of the Commission in true spirits till date. The Petitioner to has sought the permission of the Commission to allow the award of tenders without e-tendering process on the pattern of government department/ instructions on the matter.

The ibid instructions/ directions of the Hon'ble Commission vide letter dated 03.12.2022 are in the larger interest of the consumers and the organization to ensure fairness and transparency in the system. These directions shall ensure elimination of an element of arbitrariness and discretion at the hands of the officers/competent authority of HPSEBL in allotment of tenders. The process of e-tendering shall not only bring transparency but also promote competitive bidding reducing costs and ensuring time bound quality work completion. This is an important area which can bring down the costs civil and other works of the DISCOM and improve fairness and transparency in the system.

Hon'ble Commission may increase the minimum ceiling of Rs. 50,000/- to Rs. 1,00,000/- for e-tendering process if deem fir in the facts and circumstances.

The burden of any cost escalation should not be shifted to the common Consumer for the inefficiencies of the Petitioner. If required such escalations may be compensated either by the State or reducing its losses by enforcing the transparency and fairness in HPSEBL.

12. We have heard Sh. Kamlesh Saklani, Authorised Representative for the Petitioner and Sh. Ranjeet Singh, General Secretary of the Respondent Association and have also perused the entire record carefully.

13. The Kamlesh Saklani, Authorised Representative of the HPSEBL has submitted that the threshold limit of Rs. 50,000/- for putting up the

tenders through online process is operating as a hardship for the HPSEBL as with the e-tendering process, it has become difficult to carry out the urgent and emergent repairs and maintenance works, operation and maintenance works and other Engineering, procurement and construction works within the limit of Rs. 50,000/- which is too small and needs to be enhanced so as to get such work done through off line mode in case of emergency without delay. According to him, the threshold limit of e-tendering process in other departments like I& PH is Rs. 5,00,000/- and the same is Rs. 1,00,000/- in HPPWD and thus, the aforesaid limit of Rs. 50,000/- be reviewed.

14. At the very outset, we may state that the directions dated 07.12.2022 and 31.12.2012 have not been issued by the Commission on a Petition. Rather, said directions were issued in the administrative capacity being the Regulator. Therefore, there was no occasion for the HPSEBL to seek review of directions. However, the directions issued by the Commission has a direct bearing on the exchequer of the HPSEBL and any expenditure incurred by the HPSEBL in carrying out such works is required to be borne by the Consumers. Therefore, we have considered it appropriate to hear the Petition as a Miscellaneous Petition.

15. By virtue of Section 60 of the Electricity Act, 2003, the Commission may issue such directions as it considers appropriate to a

licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry.

16. As per the preamble of the Electricity Act, 2003, one of the objects of enacting the same is to protect the interest of the Consumers. Therefore, incurring of any Capital Expenditure by the HPSEBL on carrying out repairs and maintenance work, operation and maintenance work and any Capital Expenditure in Engineering, procurement and construction has a direct bearing on the Consumers and the Commission has a duty to protect their interest as per the mandate of the Electricity Act, 2003. Further, while determining the tariff, the guiding principles are safeguarding the interest of the Consumers and rewarding efficiency in performance as per the Electricity Act, 2003, amongst other factors. Thus, in exercise of the functions enshrined upon the Commission under the Electricity Act, 2003, the aforesaid directions were issued in order to get the work of all Open Tenders, Limited Tenders, Single Tenders, Repairs & Maintenance (R&M) Works, Operation and Maintenance (O&M) Works, Work Orders and other Engineering, Procurement & Construction works valuing more than fifty thousand rupees (Rs. 50,000/-) through e-tendering process

and works valuing more than one crore through e-reverse bidding so as to increase fairness and transparency in the process.

17. In fact, the Commission has neither curtailed the powers of the HPSEBL in awarding the aforesaid works nor introduced any new process. The Commission has simply conveyed the HPSEBL that all Open Tenders, Limited Tenders, Single Tenders, Repairs & Maintenance (R&M) Works, Operation and Maintenance (O&M) Works, Work Orders and other Engineering, Procurement & Construction works valuing more than fifty thousand rupees (Rs. 50,000/-) be awarded through e-tendering process and e-reverse bidding be used for works valuing more than Rs. 1,00,00,000 /- (one crore only).

18. In so far as the threshold limits of 5 lakh and one lakh respectively fixed by the I&PH and the Public Works departments are concerned, the same has no bearing and applicability for the HPSEBL as the HPSEBL is a regulated entity under the Electricity Act, 2003, whereas, the I&PH and PWD are the Government Departments. Therefore, whatever yardsticks are existing in the government system, the same cannot be made ipso facto applicable to the HPSEBL, being a regulated entity.

19. Coming to the objection/submissions of the Respondent Association that tenders valuing upto Rs. 5,00,000/- (five lakh only) be allowed in off line and e-reverse bidding mode be allowed for the works

valuing above Rs. 5 Crore (excluding taxes), it can be stated that the same are not sustainable for the following reasons:-

- i) The first contention of the Association that in the offline mode, it is not that the contractors will get higher rates as the rate of each and every item is clearly bench marked in cost data and none of the tenders is awarded above the rates. These submissions, though appear to be attractive, but in practice, neither the awarded works are always similar nor rates of each and every item is bench marked. Each and every contract/work has its own peculiarities and there may be additions or deletions. All such, loopholes can be taken advantage when the rates are quoted in the tenders. In case the local contractors are preferred as submitted by the Respondent Association in their submissions, the same will be against the very spirit of competitive market. Further, if the contention of the Respondent Association is believed, there will be less competition and work will be allotted locally within a particular geographical area, which is contrary to the spirit of the Competition Act, 2002 which provides for preventing practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interest of Consumers and to ensure freedom of trade. Therefore, this contention of the Association is not tenable.
- ii) The second contention of the Respondent Association that by online mode, the local contractors will not be able to compete with the contractors of outside the State as the contractor outside the State being manufacturers of the items used in the electricity board works, submit bids sometimes to clear their pending stocks of items and quote the rates below 40-50% of the estimated cost

which would be beyond their competition (local contractors) which too is hypothetical as no identical works are awarded every time. Similarly, it will be not be necessary that all the manufactures produce identical items which are used in repairs and maintenance or operation and maintenance etc. Rather, e-tendering is a structured process and provides level playing field for everyone to participate. Hence, this contention is also untenable.

- iii) The third contention of the Respondent Association that the contractors outside the State file unexpectedly low rates in order to financially finish the small contractors of Himachal Pradesh and for the next time monopolize the rates and even the rates for the same works are quoted 30-40% high of the estimated cost and HPSEBL shall be left with no option except to award the work to them is also hypothetical and self contradictory as the Contractors Association has itself mentioned in Para (I) of their objections that the rates are standardized. Contrary to the contention of Respondent Association, in the online tendering process, there will always be chance of quoting the competitive rates without any restrictions for the local contractors to participate. Not only this, when competition is curtailed, there may be chances of quoting higher prices and the HPSEBL shall have no option but to accept the same. Therefore, the off line mode is neither price effective nor the quality will be ensured. Hence, this contention is also not tenable.
- iv) The fourth contention of the Respondent Association that with the online system, there will be no work left with the local contractors who will become unemployed and there will be no money to pay the laborers. This contention is again hypothetical as by way of e-

tendering, everyone will get a fair chance of competition and the local contractors only will be more proficient in doing the works being aware of the local conditions.

- v) The fifth contention of the Respondent Association that due to online system, the outside State contractors will fetch the maximum work, which will result in revenue deficit of Himachal Pradesh and the HPSEBL, because the GST paid by the outside contractors is directly paid to the Centre and not to the State of Himachal Pradesh, because they pay only IGST and not SGST and 9% GST will be added to the revenue of the State and Board on every work bill/invoice of the local contractor. This contention too is without any substance as any work done within the State will be considered as done in the State of Himachal Pradesh and there would be no revenue loss as projected.
- vi) The sixth contention of the Respondent Association that in Industrial Areas like Baddi, Nalagarh, Kala Amb, Parwanoo, Nahan, where the load consumption is highest in the State, the industries will never tolerate the breakdown for a long time as online process takes too much time for awarding the work which will delay the rectification of breakdown and re-starting the power. This contention is also not tenable as the Respondent Association is on wrong assumption that online tendering process is time consuming. Conversely, the online or e-tendering process is time efficient and the Commission believes that the HPSEBL has various options available with it for restoration of supply. The major material required for such restoration works, namely, transformers, conductors, cables, poles etc are procured centrally by the HPSEBL and are available in their regional stores. So far as restoration of the faults is concerned, the HPSEBL may even

consider outsourcing such services if not available in house. The online tender for hiring such services may be done by the HPSEBL in advance on yearly basis. Further, the HPSEBL can devise a mechanism to tackle such exigencies.

vii) The last contention of the Respondent Association that when the power supply of any area has to be restored immediately, the local contractors with their laborers start working within time and restores the power supply in few hours or days. Whereas, if the same work has to be processed through online tendering, it will take minimum 20 days for works award and after that the process of restoring the supply will start and this shall result in big revenue loss. As observed above, the Commission believes that the HPSEBL has various options available with it for restoration of supply. Hence, this contention too is untenable.

20. Significantly, we have also received the comments from the Consumer Representative who has submitted that the objective of the directions issued by the Commission is to ensure transparency and fairness in the process but the Petitioner is not complying with the directions of the Commission in true spirits. It is further submitted that instructions/directions of the Commission issued vide letter dated 03.12.2022 are in the larger interest of the Consumers and the organization to ensure fairness and transparency in the system. These directions shall ensure elimination of an element of arbitrariness and discretion at the hands of the officers/competent authority of HPSEBL in allotment of tenders. It is also submitted that the process of e-tendering

shall not only bring transparency in the system but also promote competitive bidding, reducing costs and ensuring time bound quality work completion. The Consumer Representative, however, has also submitted that the Commission may increase the minimum ceiling of Rs. 50,000/- to Rs. 1,00,000/- for e-tendering process so that the burden of any cost escalation is not shifted to the common Consumers for the inefficiencies of the Petitioner and if required, such escalations may be compensated either by the State or reducing its losses by enforcing the transparency and fairness in HPSEBL. Further submitted that the suggestions may be considered in the larger interests of the Consumers of the State and no additional burden on the Consumers on account of proposed normative rates be allowed.

21. Importantly, this Commission has also received the suggestions from HPSEBL Contractors Association, Una, Distt. Una, HP in which said association has submitted that carrying out the tendering process of various works above Rs. 50,000/- through the offline tenders system will encourage corruption and degradation of quality of works. It further mentioned that promoting online Tenders will bring quality in the works and transparency.

22. Interestingly, two Consumers Ms. Soma and Sh. Shyam Chopra have also submitted that the limit fixed by the Commission for undertaking all Engineering Procurement and Construction Works of

value exceeding fifty thousand Rupees (Rs.50,000/-) through e-tendering mode in order to ensure fairness and transparency will go a long way in ensuring not only the transparency and fairness in the works but also improve the quality in execution of engineering procurement and construction works of HPSEBL.

23. As observed above, the Commission has in no manner restricted or curtailed the power of the HPSEBL to carry out Repairs & Maintenance (R&M) Works, Operation and Maintenance (O&M) Works, Work Orders and other Engineering, Procurement & Construction works valuing more than fifty thousand rupees (Rs. 50,000/-). The Commission has simply directed the HPSEBL that all such works exceeding Rs. 50,000/- must be carried out through e-tendering process and works valuing more than Rs. One Crore must be carried out through e-reverse bidding so as to ensure fairness, transparency and quality in the works awarded. Therefore, the directions issued by the Commission certainly do not operate as hardship, as claimed by the HPSEBL and the Respondent Association, and we do not see any reason to revisit the same.

24. However, fact remains that Power is an essential item for smooth running of life. We have seen mass destruction due to the recent rains in Himachal Pradesh. Emergent and urgent situation may also arise in winters where it would be of utmost necessity to restore the power

without wasting even a single minute. Thus, in order to cater to such exigencies and emergencies, we permit the HPSEBL to get the emergent work of restoration, Repairs and Maintenance (R&M) Works, Operation and Maintenance (O&M) Works, Work Orders and other Engineering, Procurement & Construction works valuing not more than Rs. 2 lakhs through offline mode, only in emergent conditions like natural disasters due to rains, floods, heavy snowfall and earthquake etc., on reasons to be recorded in writing, with the prior written approval of the Chief Engineer concerned under intimation to the concerned Director of the HPSEBL.

25. We make it clear that the routine exigencies occurring almost every year during rainy/winter seasons shall not be construed as emergent conditions, as mentioned above, and for such exigencies, the HPSEBL shall make planning in advance by identifying the quantum of such works for which e-tenders be floated in advance.

26. Rest of the works shall be carried out as usual as directed by the Commission vide letters dated 07.12.2022 and 31.12.2022.

27. The Petition is disposed off in the above terms.

The file after needful be consigned to records.

Announced
11.07.2023

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman