

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

**Petition No:** 36 of 2022  
**Date of Institution:** 03.01.2023  
**Arguments Heard on:** 22.06.2023  
**Decided on:** 26.07.2023

**CORAM**

DEVENDRA KUMAR SHARMA  
**CHAIRMAN**

YASHWANT SINGH CHOGAL  
**MEMBER (LAW)**

SHASHI KANT JOSHI  
**MEMBER**

**In the matter of:**

M/s Swadeshi Distributors LLP,  
Registered office at One First Floor Building, Vill. Guganh,  
Teh. & Distt. Chamba, HP-176314

.....Petitioner

Versus

1. The Directorate of Energy, Govt. of HP,  
Shanti Bhawan, Sector-6, Phase III,  
New Shimla-171009.
2. The Ministry of New and Renewable Energy  
(Small Hydro Power Division), Govt. of India,  
Block No. 14, C.G.O. Complex, Lodhi Road,  
New Delhi 110003.
3. The HP State Electricity Board Ltd. through,  
Chief Engineer (System Operation)  
Vidyut Bhawan, Shimla-171004.

.....Respondents

**Application under Regulation 68 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 read with Section 151 of the Code of Civil Procedure, 1908 on behalf of the Applicant/Joint Petitioner No. 2 for the appropriate order in terms of the Commission's Order dated 28.09.2022 in Petition No. 3 of 2022.**

**Present:-**

- Sh. Vikas Chauhan, Ld. Counsel for the Petition.  
Sh. Shanti Swaroop, Ld. Legal Consultant for the Respondent No. 1.  
Sh. Rajinder Thakur, Ld. Counsel for the Respondent No. 2  
Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 3.

**ORDER**

This Application/Petition has been filed by the Petitioner under Regulation 68 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 read with Section 151 of the Code of Civil Procedure, 1908 for allowing the tariff @ 3.93 per unit after considering the adjustment of only the Central Assistance/subsidy as received from the Ministry of Commerce and Industry (MCI), as the subsidy/financial assistance of Ministry of New and Renewable Energy (MNRE for short) has been denied.

2. As per the Petitioner, the Commission has observed in Para 16 to 19 in the Order dated 28.09.2022 passed in Petition No. 03 of 2022 as under:-

*“16. The Petition is duly supported by the affidavit of Joint Petitioners. Therefore, taking into consideration the aforesaid and the powers vested in the Commission under Section 86 (1)(b) of the Electricity Act, read with Regulations 50 and 50-A of the HPERC (Conduct of Business) Regulations, 2005, the Joint Petitioners have made out a case for approval of Second Supplementary Power Purchase Agreement. Hence, the Petition succeeds and allowed with tariff as under:-*

- (i) The Applicable Tariff without considering the subsidy under Generic levellised tariff of 2nd Control Period was Rs.4.04 per unit.*
- (ii) Considering the adjustment of Rs. 5.00 Crore Central Assistance/Subsidy as received from the Ministry of Commerce & Industry (MCI), the tariff comes to Rs. 3.93 per unit.*
- (ii) After adjustment of the admissible subsidy/Financial assistance of MNRE, the interim tariff of the Project of the Joint Petitioner No. 2 comes to Rs. 3.82 per unit.*

17. Thus, the provisional tariff which shall be applicable to the project of Petitioner comes to Rs. 3.82 per unit. Therefore, the Second Supplementary PPA is ordered to be approved accordingly subject to the following conditions:-

- (1) The Company shall intimate to the joint Petitioner No. 1 i.e. HPSEBL, about the receipt of financial assistance/subsidy released to the Project by the Ministry of New and Renewable Energy, within 15 days of the receipt of the same and an affidavit to this effect shall be furnished by the Company i.e. joint Petitioner No. 2 which shall form part of the PPA.
- (ii) The provisional tariff shall be valid for a period of two years or immediately after the settlement of such adjustment as per item (i) above, whichever is earlier, for continuation of this tariff or for any other tariff as may become applicable to the Project.
- (iii) The matter regarding adjustment of financial assistance/subsidy shall be governed as per the orders as may be issued by the Commission after receipt of Petition as per item (ii) of this para.
- (iv) The clause 6.2 of PPA shall be modified to the extent that the levelled provisional tariff shall be subject to further adjustment as per the order(s) as may be issued by the Commission after receipt of Petition as per item (ii) of this para.

18. We trust and believe that the MNRE shall consider the case of the Joint Petitioner No. 2 sympathetically and shall allow the subsidy of Rs. 5.00 Crores under the MNRE Subsidy Scheme in the interest of Public/Consumers as discussed in para 14 above.

19. In case the subsidy/financial assistance is denied by the MNRE by rejecting the application of Joint Petitioner No. 2 for valid reasons, it shall be open to the Joint Petitioner No. 2/Joint Petitioners to approach the Commission for appropriate order.”

3. It is averred that pursuant to the directions issuance by the Commission in the aforesaid Order dated 28.09.2022, the applicant vide letters dated 27.10.2022 and 23.11.2022 approached the Respondent No. 2 for releasing the subsidy. However, the Respondent No. 2 vide letter No. 287/69/2017 dated 29.11.2022 has declined the request of the applicant for providing Central Financial Assistance/Subsidy

(Subsidy for short) to the applicant that presently there is no Small Hydro Power Scheme available in the Ministry to provide financial support to SHP Projects. The copies of letter dated 27.10.2022, 23.11.2022 and 29.11.2022 are annexed as Annexure A-2 to A-4.

4. It is averred that in view of denial of subsidy in respect of the Project of the Petitioner i.e. Salun SHP (9 MW), the applicant is eligible for the tariff of Project @ Rs. 3.93 per unit as allowed by the Commission in the aforesaid order.

5. The application has been resisted by the Respondents No.2 and 3.

6. The Respondent No. 1 has not filed any reply.

7. The Respondent No. 2 (MNRE) in its reply has made the following preliminary submissions:-

*“that the Hon’ble Commission vide Order dated 28.09.2022 (Annex I) in above Petition No. 3 of 2022 while considering the issue of adjustment of the subsidy to be availed by the applicant from the MNRE was pleased to direct the applicant/IPP to approach MNRE for release of the subsidy under the financial assistance scheme as notified by the MNRE vide letter No. 14(03)2014-SHP dated 02.07.2014 (Annex II). The applicant (M/s Swadeshi Distributors LLP) requested Respondent No. 2 (MNRE) to release the subsidy for Salun SHP (9 MW) vide letter dated 27.10.2022 (Annex III). In response, Respondent No. 2 (MNRE) informed the applicant vide letter dated 29.11.2022 (Annex IV) that there is no SHP Scheme available in this Ministry to provide financial support to SHP projects and hence, your request for providing CFA for setting up of Salun SHP (9 MW) project cannot be considered as of now. It is further submitted that the SHP*

*Scheme, 2014 dated 02.07.2014 was valid up to 30<sup>th</sup> September 2017 only.”*

8. In reply on merits, it is averred that the detailed reply has been filed in Petition No. 3 of 2022 (Annexure-V) (wrongly mentioned as W.P (C), which may be considered as part and parcel of this reply. It is further averred that the tariff has been determined under Section 62 of the Electricity Act, 2003 (Annex-VI) and CERC RE Tariff Order (Annex-VII) and that the Regulation 22 (1) of the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and conditions for Tariff Determination) Regulations, 2017 (hereinafter referred to as RE Tariff Regulations, 2017) provide that the Commission shall take into consideration any incentive, grant or subsidy from the Central Government or State Government, including accelerated depreciation benefit, if availed by the Project while determining the tariff under these Regulations.

9. As per the Respondent No. 2, no relief from the MNRE has been sought and that the Respondent No. 2 be dropped from the array of Respondents.

10. The Respondent No. 3/HPSEBL in its reply has submitted that the Commission vide Order dated 28.09.2022 in Petition No. 3 of 2022 was pleased to direct the applicant/IPP to approach the MNRE for release of

the subsidy under the financial assistance scheme as notified by the MNRE vide letter No. 14(03)2014-SHP dated 02.07.2014.

11. It is also averred that in Para No. 15 of the Order dated 28.09.2022, the Commission has observed as under:-

*“As per RE Regulations 2017, the amount of Subsidy is required to be considered for each Renewable Source as per applicable policy, which in the case of Project of Joint Petitioner No. 2 was for 12<sup>th</sup> plan period ending on 31.03.2017 extended upto September, 2017. Hence, the subsidy of Rs. 5.00 Crore is being deducted while determining the tariff as deemed availed.”*

12. It is further averred that the subsidy Scheme of MNRE was in existence when the application for availing the same had been filed and as such the Commission while passing the aforesaid order has taken into account this subsidy as deemed availed as per the RE Tariff Regulations, 2017 and the Commission has addressed the issue of the adjustment of said subsidy in its Order dated 28.09.2022.

13. We have heard Sh. Vikas Chauhan, Ld. Counsel for the Petition, Sh. Shanti Swaroop, Ld. Legal Consultant for the Respondent No. 1, Sh. Rajinder Thakur, Ld. Counsel for the Respondent No. 2 and Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 3 and have also gone through the record carefully.

14. In so far as the entitlement of Subsidy of the MNRE by the Project of the Applicant is concerned, the Commission in its Order dated 28.09.2022 in Petition No. 3 of 2022 has observed as under in Para 14:-

*“Significantly the project of the Joint Petitioner No. 2 has been commissioned on 13.12.2019 and ever since 28.03.2016, the Joint Petitioner No. 2 had been making sincere efforts for availing the MNRE subsidy. The Scheme floated by the MNRE on 2<sup>nd</sup> July, 2014 is for facilitating the implementation of Small Hydro Power Projects (upto 25 MW capacity). It is a promotional Scheme, therefore, the application of the Joint Petitioner No. 2 was required to be considered in its right perspective. The MNRE being patron and promoter of the Scheme, it was expected from them to guide the Small Hydro Producers to avail the subsidy but it appears that the Joint Petitioner No. 2 was neither properly guided nor any interim subsidy was released by MNRE in respect of the Project. It is apparent from the affidavit of MNRE that the Joint Petitioner No. 2 supplied the requisite documents from time to time. The entire affidavit of the MNRE is silent that the application of Joint Petitioner No. 2 was rejected and the rejection was conveyed to Joint Petitioner No. 2. No doubt, as per Clause 31 of the Annexure ‘B’ of the Scheme, the incomplete applications, in any form and without requisite documents would not required to be entertained but the case of Joint Petitioner No. 2 is entirely different as Joint Petitioner No. 2 has complied with all the requirements and submitted the documents time to time as called for. Since, the Joint Petitioner No. 2 has sent all the documents and the applications of the Joint Petitioner No. 2 has not been rejected and some queries were raised even after lapse of the Scheme, we presume that the MNRE shall consider all such cases which were delayed for want of a few documents, where the applications were filed well within the validity of the Scheme. Therefore, we are of opinion that the Joint Petitioner No. 2 has submitted the requisite documents well within time and the MNRE did not provide the subsidy within the currency of the Scheme which was required to be provided. Therefore, the case of the Joint Petitioner No. 2 shall be considered sympathetically by the MNRE which is otherwise in the interests of the Consumers as direct impact of non grant of subsidy would be on the Consumers.”*

15. It is, thus, apparent from the aforesaid that the Applicant had submitted all the documents for availing the Subsidy but neither the

application has been outrightly rejected nor the Subsidy has been granted. Not only this, the Commission had also observed that the Ministry of New and Renewable Energy shall sympathetically consider the case of the Applicant so that the Consumers of the State are not burdened.

16. It is the case of the Applicant that immediately after the Order dated 28.09.2022 in Petition No. 03 of 2022, the MNRE was approached but the application for subsidy was not considered by the MNRE stating that there is no Small Hydro Power Scheme available in the Ministry to provide financial support to SHP Projects. The contents of letter dated 29.11.2022 of MNRE/Respondent No. 2 addressed to the Applicant are reproduced as under:-

*“Kindly refer to you letter No. SDLLP/2022-23 (69)-43 dated 27.10.2022, wherein request for release of Central Financial Assistance (CFA) was made for setting up of Salun SHP (9MW) project located at Chamba district, Himachal Pradesh.*

*2. In this regard, your kind attention is drawn to this Ministry’s letter of even no. dated 16.02.2021 wherein it was informed that there is no SHP Scheme available at present, for supporting the SHP projects. Hence, the request for CFA for setting up of Salun SHP (9 MW) project cannot be considered as of now.*

*3. This is once again to inform you that presently there is no Small Hydro Power Scheme available in this Ministry to provide financial support to SHP projects and hence, your request for providing CFA for setting up of Salun SHP (9MW) project cannot be considered as of now.”*



17. It is relevant to mention here that the Commission has proceeded to adjust the Subsidy/CFA as per Regulation 22-A(1) of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (RE Tariff Regulations, 2017 for short) which is reproduced as under:-

*“(1) While determining the generic levelled or project specific levelled tariff, as the case may be, for the renewable energy project(s) under these Regulations, the Commission shall take into consideration any incentive and/or subsidy and/or grant available under the schemes of the Central or State Government or its agencies, but excluding accelerated depreciation benefit under the Income Tax Act:*

*Provided that the Commission may evolve suitable mechanism(s) for incorporating impact of the subsidy component for determination or adjustment of generic levelled tariffs for various categories of projects:*

*Provided further that the capital subsidy under the schemes of the Central or State Government or its agencies, shall, unless the circumstances otherwise warrant, be ordinarily adjusted in the middle of first 12 months from the commencement of the tariff period against the principal component of the loan amount as additional reduction apart from the normal payment.”*

18. It is, therefore, apparent that as per RE Tariff Regulations, 2017, the amount of Subsidy is required to be considered for each Renewable Source as per applicable policy, hence, the subsidy of Rs. 5.00 Crore has been deducted while determining the tariff as deemed availed and tariff was fixed at 3.82 Per unit.

19. In fact, the similar response was given to the Applicant in the year, 2021 vide letter dated 16.02.2021 which is also annexed by the Petitioner as Annexure A-4. The Commission has observed in Order dated 28.09.2022 in Petition No. 3 of 2022 that the Applicant had furnished all the requisite details from time to time to the MNRE but neither letter dated 16.02.2021 nor the letter dated 29.11.2022 contain even an iota that the documents furnished by the Applicant/Petitioner were incomplete in any manner. Similar neither letter 16.02.2021 nor letter dated 29.11.2022 contain the detail/reasons as to why the case of the Applicant/Petitioner for the grant of Subsidy was not considered and it is simply mentioned in both the letters that the request could not be considered as no such Subsidy Scheme was existing on the date of issuance of the same letters for supporting the SHP Projects as of now i.e. on 16.02.2021 and 29.11.2022. The Applicant had approached the MNRE/Respondent No. 2 for releasing the Subsidy during the validity of the Scheme i.e. 12<sup>th</sup> plan period ending on 31.03.2017 extended upto September, 2017. Therefore, the application for subsidy was required to be considered on the basis of the subsidy Scheme available up to September, 2017 but despite seeking documents and clarifications even after the validity of the Scheme, a fair treatments has not been provided to the Applicant and the Subsidy has been withheld without any cogent reason.

20. We have also observed in Para 14 of the Order dated 28.09.2022 in Petition No. 3 of 2022 that the MNRE shall consider the case of Joint Petitioner No. 2 (Applicant in the present case) sympathetically and shall allow the subsidy of Rs. 5 Crore under the MNRE Subsidy Scheme in the interest of Public/Consumers but to our utter dismay and surprise, the case of the Applicant has not been considered in the manner it ought to have been considered.

21. Coming to the prayer of the Applicant for allowing it a tariff of Rs. 3.93 per unit by excluding the MNRE Subsidy being not granted, the prayer cannot be considered for the reasons that this Commission has proceeded to adjust the Subsidy as per the Regulation 22-A(1) of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017. Therefore, unless such subsidy is granted by the concerned agency (MNRE in the case), the relief cannot be granted to the Applicant. Though, the Commission has also mentioned in Para 19 of the Order dated 28.09.2022 in Petition No. 3 of 2022 that the Joint Petitioner No. 2 (Applicant) shall be free to approach the Commission for appropriate Order but we are of the view that MNRE had not considered the case of the Applicant in its proper perspective, as such it would not be appropriate for the Commission to alter the tariff in any manner. In this

regard, we once again impress upon the MNRE to revisit the case of the Applicant for grant of Subsidy as per the MNRE Subsidy Scheme of 2014 which was extended upto 30.09.2017. We also permit the Applicant to exhaust any other legal remedy available to it under the law for claiming the Subsidy.

### **Final Order**

22. In view of the above, we don't find any justifiable reasons to allow the tariff of Rs. 3.93 per unit to the Project of the Applicant as prayed. The Applicant is allowed to take up the matter afresh with the MNRE for the grant of Subsidy as per the Scheme of 2014, extended upto 30.09.2017. We also direct the MNRE to revisit the case of the Applicant and consider the same sympathetically in the larger interest of the Public and Consumers.

The Petition of the Applicant/Petitioner is accordingly disposed off. The file after needful be consigned to records.

**Announced**  
**26.07.2023**

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

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

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