

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

**Petition No:** 36 of 2023  
**Date of Institution:** 03.01.2023/  
24.08.2024  
**Arguments Heard on:** 25.10.2024  
**Decided on:** 26.12.2024

**CORAM**

DEVENDRA KUMAR SHARMA  
**CHAIRMAN**

YASHWANT SINGH CHOHAL  
**MEMBER (LAW)**

SHASHI KANT JOSHI  
**MEMBER**

**In the matter of:**

M/s Swadeshi Distributors LLP,  
Registered office at One, First Floor Building,  
Village Guganh, Tehsil and 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 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.
- None for the Respondent No. 2
- Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 3.

**ORDER**

The present 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 only of the Central Assistance/subsidy as received from the Ministry of Commerce and Industry (MCI), as the subsidy/financial assistance by the Ministry of New and Renewable Energy (MNRE for short) for Renewable Energy Projects has been denied.

2. The Commission vide Order dated 26.07.2023, amended on 03.08.2023 disposed off the above application observing that there were no justifiable reasons for allowing tariff of Rs. 3.93 per kWh. However, the Petitioner was allowed to take up the matter afresh with the MNRE for grant of subsidy as per the Scheme of 2014, extended upto 30.09.2017 and also directed the MNRE to revisit and consider the case of the Petitioner sympathetically in the larger interest of Public and Consumers.

3. The aforesaid order of the Commission dated 26.07.2023, amended on 03.08.2023 was assailed by the Petitioner/ Appellant in Appeal No. 765 of 2023. The Hon'ble APTEL vide Order dated 13.08.2024 has set aside the above order dated 03.08.2023 and remanded the matter back to the Commission for its consideration afresh and in accordance with law. The operative part of the order dated 13.08.2024 in Appeal No. 765 of 2023 is reproduced as under:-

*"In light of the aforesaid submissions, we have no reason to doubt that the Commission would examine the Appellant's claim for higher tariff on the basis of the extant Regulations, and in accordance with law. Needless to state that the order now passed by us shall not be construed as our having expressed any opinion on merits; and it is open to learned counsel on either side to put forth all such submissions as are available to them in law before the Commission. The impugned order is set aside and the matter is remanded to the HPERC for its consideration afresh, and in accordance with law. All the pending IAs shall also stand disposed of. The appeal stands disposed of."*

4. Pursuant to order date 13.08.2024 of the Hon'ble APTEL remanding the matter for decision afresh, the matter was entered in its original number i.e. Petition No. 36 of 2023. The notices were issued to the parties with a direction to submit additional submissions, if any, but no additional submissions have been filed by the parties.

5. The case of the Appellant in brief is that a Joint Petition No. 3 of 2022 was filed by the Petitioner before the Commission which was disposed of on 28.09.2022 by observing the following in para 16 to 19:

*“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 levellised 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.”*

6. It is averred that pursuant to the directions issued by the Commission in the aforesaid Order dated 28.09.2022 in Joint Petition No. 03 of 2022, the Petitioner vide letters dated 27.10.2022 and 23.11.2022 approached the Respondent No. 2 (Ministry of New and Renewable Energy (MNRE) for releasing the subsidy. However, the Respondent No. 2 vide letter No. 287/69/2017 dated 29.11.2022 declined the request of the Petitioner for providing Central Financial Assistance/Subsidy (Subsidy for short) to the Project 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, respectively.

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

8. The application has been resisted by the Respondents No.2 and 3. However, the Respondent No. 1 has not filed any reply.

9. 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 Petitioner from the MNRE was pleased to direct the Petitioner/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 Petitioner (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 Petitioner 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.”*

10. 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.

11. 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.

12. 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 Petitioner/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.

13. 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.”*

14. 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.

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

16. Sh. Vikas Chauhan, Ld. Counsel for the Petitioner has submitted that though Regulation 22-B of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Fourth Amendment) Regulations, 2020 (RE Regulations, 2020 for short) provides for adjustment of subsidy but there is no mandate for the deduction in the tariff. According to him, despite submitting the case to the MNRE well in time and even subsequently after the direction of the Commission vide order dated 28.09.2022, the incentive/ subsidy has not been provided by the MNRE. Sh. Chauhan has placed on record the latest letter of the MNRE dated 25.10.2023 that the case was revisited in the Ministry but since no SHP scheme is available in the



Ministry (MNRE), the application of the Petitioner was not considered. Therefore, Sh. Vikas Chauhan submits that once the incentive/ subsidy has not been provided to the Project, the deduction in the tariff is not required to be effected and the Petitioner is entitled to the tariff of Rs. 3.93 per kWh.

17. Sh. Kamlesh Saklani, Authorised Representative on behalf of the Respondent No. 3 has submitted that the MNRE subsidy/ incentive was available to the Project and the Commission has rightly made the adjustment as per Regulation 22-B of the RE Regulations, and the tariff of Rs. 3.82 per kWh has rightly been allowed.

18. On the basis of the pleadings of the parties, the following points arise for determination in the present Petitioner:-

**Point No. 1:** Whether the MNRE Subsidy of Rs. 5.00 Crore was not available to the Petitioner and the Petitioner is entitled for the tariff of Rs. 3.93 per kWh without adjustment of MNRE subsidy?

**Point No. 2:** **Final Order**

19. For the reasons to be recorded hereinafter in writing, our point wise findings are as under.

**Point No. 1:** Yes.

**Point No. 2:** (Final Order) The Application allowed per operative part of the Order.

## **REASONS FOR FINDINGS**

### **Point No. 1:**

20. The Commission vide order dated 28.09.2022 in Petition No. 03 of 2022 and order dated 03.08.2023 in Petition No. 36 of 2023 had directed the Petitioner to take up the matter afresh with the MNRE for grant of incentive/ subsidy as per the Scheme of 2014, which was valid till 31.03.2017 and extended upto 30.09.2017. Simultaneously, the Commission also directed the MNRE to revisit the case of the Petitioner and consider the same sympathetically.

21. It is evident from letter dated 25.10.2023 of the MNRE addressed to the Petitioner that the case of the Petitioner was revisited in the Ministry (MNRE) but since no subsidy scheme is available in respect of the Renewable Energy Projects, the application cannot be considered as of now.

22. There is not even an iota in the letter of MNRE dated 25.10.2023 that the case of the Petitioner was incomplete or there was any infirmity or delay in submitting the case for claiming the incentive/ subsidy. The simple reason for not considering the case is that no subsidy scheme is available in respect of the Renewable Energy Projects after closure of the Scheme, as such, the application could not be considered.

23. The Commission vide Order dated 28.09.2022 in Petition No. 03 of 2022 has proceeded to adjust the MNRE subsidy of Rs. 5.00 Crore as per Regulation 22-B of the RE Regulations, 2020 (Fourth Amendment), which came into force w.e.f. 01.04.2020. The Regulation 22-B of the RE Regulations, 2020 (Fourth Amendment) is reproduced as under:-

*"22-B. Subsidy or incentive or grant/budgetary support by the Central/ State Government.- (1) While determining the generic levellised or project specific levellised 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 their agencies, but excluding accelerated depreciation benefit under the Income Tax Act:*

*Provided that the capital subsidy under the schemes of the Central or State Government or their agencies shall be adjusted in the normative capital cost and the cost so arrived, after such adjustment, shall be considered for computing Debt-Equity Components for the purposes of determination of generic levellised tariffs:*

*Provided further that where the Central Government or the State Government notifies, or has notified, any generation based incentive (GBI) scheme for a particular kind of renewable technology, such technology based generating station shall be assumed to have availed the benefit of such a scheme and their tariffs shall be reduced by the amount of generation based incentive (GBI) per unit for the period during which such incentive remains applicable.*

*(2) Where any additional project specific grant or budgetary support is available to any project, apart from the incentive and/or subsidy and/or grant available under sub-regulation (1) of this regulation, the Commission shall account for such budgetary support also, while determining project specific levellised tariff.*

*(3) The amount of subsidy shall be considered for each renewable source as per the applicable policy of the MNRE/State Government/Central Government and if the amount and/or mechanism of subsidy is changed by the MNRE/State Government/Central*

*Government, consequent corrections in tariffs may be carried out by the Commission in accordance with regulation 20.”*

24. No doubt, it is mentioned in the first proviso to Regulation 22-B that where central/ state Govt. has notified any government based incentive, the technology based generating station shall be assumed to have availed the benefit of such a scheme and the tariff shall be reduced by generation based incentive (GBI) per unit for the period during which such incentive remains applicable but it is evident from the letter dated 25.10.2023 of the MNRE that the subsidy has not been provided to the Petitioner. The subsidy scheme for Renewable Energy Projects was in vogue w.e.f. 02.07.2014 and continued till 30.09.2017. The Petitioner had submitted the application for availing the benefit of the scheme in time in the MNRE but the subsidy was not provided to the Petitioner as evident from letter dated 25.10.2023 of the MNRE. Even the MNRE re-visited the case of the Petitioner pursuant to the direction of the Commission vide order dated 26.07.2023, but the subsidy was not considered for the Project. Sub-Regulation (3) of the above Regulation 22-B clearly stipulates that the amount of subsidy shall be considered for each renewable source as per the applicable policy of the MNRE/ State Government/ Central Government and if the amount and/or mechanism of subsidy is changed by the MNRE/ State

Government/ Central Government, consequent corrections in tariffs may be carried out by the Commission in accordance with Regulation 20 (RE Regulations, 2017). The MNRE has clearly mentioned in the letter dated 25.10.2023 that the subsidy was not paid to the Project as no scheme is available as of now meaning thereby that no adjustment of Rs. 5.00 Crore in respect of MNRE subsidy in the tariff was required to be made. The case of the Petitioner, therefore, falls within the purview of Sub-regulation (3) of Regulation 22-B above. Having applied for the subsidy in time, nothing was required to be done on the part of the Petitioner. Therefore, no lapse can be attributed to the Petitioner. Hence, the correction in the tariff is required to be carried out.

25. The Hon'ble APTEL in Appeal No. 765 of 2023 has directed the Commission to consider the case of the Petitioner on the basis of extant Regulations i.e. Regulation 22-B of the RE Regulations, 2020. The Commission vide order dated 28.09.2022 in Petition No. 03 of 2022 has provided a provisional tariff of Rs. 3.82 per kWh for the Project. It is relevant to reproduce Paras No. 16 to 19 of the Order dated 28.09.2022 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 levelled 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.”

26. Since, the Petitioner had submitted the application well within time during the validity of the Scheme which remained in force till September, 2017, it was for the MNRE to consider the case but since, as of now, no scheme for incentive to renewable energy projects is available and the MNRE has declined the request of the Petitioner, the tariff of the Project was required to be considered without effecting any adjustment/ deduction in respect of the MNRE subsidy to the tune of Rs. 5.00 Crore as adjusted vide order dated 28.09.2022. Thus, the Petitioner has established on record that the tariff of Rs. 3.93 per kWh is required to be allowed to the Project of the Petitioner without adjustment of MNRE subsidy. Point No. 1 is accordingly answered in favour of the Petitioner and against the Respondents.

#### **Final Order**

27. In view of the above discussions and findings, the Petition succeeds and is accordingly allowed. The tariff of Rs. 3.93 per kWh for the Project w.e.f. from the date of the SCOD is allowed. The Petitioner and the HPSEBL are directed to execute the Supplementary Power Purchase Agreement within a period of 30 days from the date of this order by making suitable adjustments in the appropriate clauses of the PPA and SPPA.

28. It is made clear that in case any subsidy is provided in future to the Renewable Energy Projects by the MNRE, the case of the Petitioner shall be considered on priority and appropriate deduction shall be made accordingly.

29. Let a copy of this order be supplied to the parties.

The file after needful be consigned to records.

**Announced**  
**26.12.2024**

**(Shashi Kant Joshi)**  
**Member**

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

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