

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

Petition No: 45 of 2021
Date of Institution: 04.05.2021
Arguments Heard on: 17.12.2022
Decided on: 30.01.2023

CORAM

Devendra Kumar Sharma
CHAIRMAN

Yashwant Singh Chogal
MEMBER (Law)

Shashi Kant Joshi
MEMBER

In the matter of:

M/s Panchhor Hydro Power Pvt. Ltd.
Registered office at Plot No. 226, Road No. 78,
Phase-III, Jubli Hills, Hyderabad- 500033 (A.P.).

Applicant

Versus

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

Respondents

**Application under Sections 86 and 94 of the Electricity Act,
2003, for paying Tariff @ Rs. 4.49 kWh from the date of
signing of Power Purchase Agreements in respect of Wanger
Homte SHP (24.60MW).**

Present:-

- Sh. Ajay Vaidya Ld. Counsel for Petitioner.
- Sh. Kamlesh Saklani, Authorised Representative for Respondent No.1 & 2.
- Sh. Shanti Swaroop, Legal Consultant for the Respondent No. 3.
- Sh. Rajinder Thakur, Ld. Central Government Standing Counsel for the Respondent No. 4.

ORDER

This Petition has been filed under sections 86 and 94 of the Electricity Act, 2003, for payment of tariff of re-determination of Rs. 4.49 kwh from the date of signing of the PPA.

2. The Applicant company has set up a Small Hydro Power Project having capacity of 24.60 MW in Wanger Khad, a tributary of the River Satluj, Distt. Kinnaur, H.P. which was commissioned on 15.02.2021. The Applicant and Respondent No. 1 Himachal Pradesh State Electricity Board Limited (HPSEBL for short) signed a Power Purchase Agreement on 12.02.2021 (Annexure P-2) and as per Clause 6.2 of the PPA, a tariff of Rs. 4.43 per kwh has been provided for the Project after deducting Rs. 0.06 per unit towards adjustment of capital subsidy of 5.00 Crore.

3. As per the Applicant, while filing the Joint Petition for the approval of the PPA, the Applicant had informed the HPSEBL vide letter No. PHHPL/CE/SO/HPSEBL/2020-21-16255 dated 29.12.2020 that the Project is eligible to avail capital subsidy from the Ministry of New and Renewable Energy (MNRE for short) to the extent of Rs. 5.00 Crore after successful commissioning of the Project as per the existing Scheme of MNRE and the

application to avail the capital subsidy will be submitted to the MNRE only after achieving the COD for the Project and in case the capital subsidy is not disbursed by MNRE, at a later stage, due to any reasons/changes in the Scheme, the Applicant reserve the right for the re-determination of Generic Levelled Tariff on account of non availability of capital subsidy. According to the Applicant, immediately after commissioning of the Project on 15.02.2021, the Applicant requested the MNRE vide letter No. PHPPL/MNRE/2020-21/3821, dated 08.03.2021 (Annexure-4) to confirm the availability of Capital Subsidy admissible to the Project as per the Scheme against which the necessary registration had already been done by the Applicant on 27.08.2012. However, the MNRE vide letter No. 287/214/2017-SHP dated 12.03.2021 (Annexure P-5) informed the Applicant that at present there is no SHP Scheme available for supporting the SHPs and the request for Central Financial Assistance (CFA for short) for the Project cannot be considered. It is claimed that in view of non-availability of the Scheme, the adjustment of Rs. 0.06 per unit made in the tariff, on account of CFA (Subsidy) is required to be included in the tariff as per Clause 6.2 of the PPA and the tariff of Rs. 4.49 per kwh is required to be allowed to the Applicant as per the Tariff Order dated 22nd December, 2020 passed by this Commission in Petition No. 76/2020. It is claimed that the issue of adjustment of Rs. 0.06 in the tariff was also taken up with the HPSEBL but no action has been taken.

4. As per the Applicant, in view of non-availability of the CFA (subsidy) as evident from letter dated 12.03.2021 (Annexure P-5), there are no reasons for adjusting the same and the Tariff of Rs. 4.43 per kwh as specified in the PPA after deduction of Rs. 0.06 is required to be corrected. Further that the HPSEBL has not acted on the request of the Applicant, as such a direction is required to be issued to the HPSEBL to rectify the Tariff of Rs. 4.43 per kwh to Rs. 4.49 per kwh from the date of signing the PPA so that the Applicant is not denied/deprived of the monetary benefits. Further that the Applicant was under a bonafide belief and was having legitimate expectation that in case the capital subsidy of 5.00 Crore is not received, he would be entitled to tariff of Rs. 4.49 per kwh. It is averred that the non consideration of adjustment of Rs. 0.06 per kwh not only amounts to the frustration of PPA but is also arbitrary and amounts to discriminating. Also that a legal right has been created in favour of the Applicant on non grant of capital subsidy and in case the Tariff of Rs. 4.49 kwh is not granted, the Applicant will suffer huge financial loss.

5. The Petition has been resisted by HPSEBL by filing reply averring that the Project was commissioned during the 3rd control period w.e.f. 01.04.2020 to 30.09.2023 fixed under the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms & Conditions for Tariff Determination) Regulations, 2017 (hereinafter referred as “RE Tariff Regulations, 2017”) and its subsequent amendments and

the Commission vide Order dated 22.12.2020 in Petition No. 76 of 2020 has determined the Generic Levellised Tariff for SHPs which is as under:

Category	Capacity	Generic Levellised Tariff in Rs./kwh of net saleable energy without considering subsidy
(i)	Above 100 kW to 2 MW capacity	4.54
(ii)	Above 2 MW but below 5 MW capacity	4.67
(iii)	5 MW to 25 MW capacity	4.49

6. It is averred that the as per Clause 8.14 (ii) of the tariff Order dated 22.12.2020 in Petition No. 76 of 2020, it was provided as under:-

“No adjustment on account of incentive and/or subsidy and/or grant etc. is being made in the value base for the calculations of Generic Levellised Tariffs under this order. However, the rates at which adjustments shall be made in the Generic Levellised Tariffs on this account have been worked out and mentioned in the attached calculation sheets for each category of the SHPs. The adjustment, if any, on account of the same shall be made at appropriate stage while applying the tariff after taking into account the eligibility conditions in each case.”

7. It is averred that as per the Tariff Order dated 22.12.2020, the applicable adjustment of subsidy was to be made in the tariff applicable to the Project on account of admissible subsidy and the Applicant had also intimated vide letter dated 29.12.2020 (Annexure R-I) that the Project is eligible for availing the CFA (subsidy) from MNRE to the extent of 5.00 Crore after successful

commissioning of the Project as per the Scheme. Also averred that on the basis of the letter dated 29.12.2020 (Annexure R-1), the HPSEBL had worked out the final tariff of Rs. 4.43 per kwh for the Project after adjusting the admissible CFA (subsidy) of Rs. 5.00 Crore and incorporated the same in the draft Power Purchase Agreement. Further the Commission vide Order dated 29.01.2021 in Joint Petition No. 2 of 2021 for approval of PPA accorded the approval for executing the Power Purchase Agreement subject to the conditions which is reproduced as under:-

“(I) As per sub-clause (ii) of clause 6.2 of PPA submitted for approval, the capital subsidy of Rs. 5.00 Crore is considered and by adjusting the same, the tariff works out as Rs. 4.43 per kWh, as per the Commission’s order dated 22.12.2020, for net saleable energy delivered and sold by the Company to the HPSEBL at the interconnection point. This tariff shall be subject to further adjustment on account of any incentive and/or subsidy scheme and/or grant etc. of Government (Central/State) as may become applicable, after this order, to Wanger Homte Hydro Electric Project (24.60 MW).”

8. Accordingly the Applicant and the HPSEBL signed PPA on 12.02.2021 which was further supplemented by signing Supplementary Power Purchase Agreement dated 31.07.2021.

9. Also averred that as per Clause 6.2 of the PPA, the Tariff of Rs. 4.43 per kwh shall not be subject to any indexation, escalation, adjustment or review

due to any reason, whatsoever, except for specific provisions under Clause 8.8. It is also averred that the Clause 5(i) of the subsidy Scheme for financial support to set up new SHP Projects upto 25 MW station capacity as notified by MNRE vide Notification No. 14 (03) 2014-SHP dated 02.07.2014 for SHPs where the Projects have commissioned on or after 01.04.2013 (Annexure R-2) provides that the request for availing the benefits under the Scheme alongwith all documentary proof, complete in all respect, should be submitted to the MNRE within 6 months from of the commencement of Project work at site or within six months of the date of first reimbursement of loan from the Financial Institution/ Bank, whichever is earlier. Further the Applicant vide letter dated 08.03.2021 had requested the MNRE for confirming the availability of this Scheme qua which the Applicant had made the registration on 27.08.2012 with MNRE but the MNRE vide letter dated 12.03.2021 intimated the Applicant that no Scheme was available at present for supporting the SHPs and the request for the CFA (subsidy) was not considered. It is averred that no other communication has been placed on record from 2012 till the commissioning of the Project. Therefore, the Applicant is not eligible under the above Scheme for the reasons attributable to the Applicant.

10. Also averred that the HPSEBL vide letter No. HPSEBL/CE(SO)/PSP-338/2021-22-2000 dated 08.07.2021 had requested the MNRE for providing information qua the Projects which had made the request for CFA (Subsidy) and an official was also deputed to the MNRE who visited the office on 9th

July, 2021. Reminders were also sent on 20.09.2021, 22.10.2021 and 27.11.2021 by the HPSEBL to the MNRE but no response has been received.

11. Since the entire controversy was revolving around the admissibility of CFA which was being provided by the MNRE, this Commission ordered impleadment of Director of Energy, Government of Himachal Pradesh and Ministry of New and Renewable Energy, Government of India as necessary parties to the Petition as Respondents No. 3 and 4 and notices were issued to them.

12. The Respondent No. 4, MNRE in its reply has averred that the MNRE is responsible for the development of Small Hydro Projects of 25 MW capacity and circulated a Small Hydro Power (SHP Scheme 2009) vide letter No. 14 (1)/2008-SHP dated 11.12.2009 to provide financial support for setting up Small Hydro Projects in Private/Co-operative/Joint Sector, etc. (Annexure-B) of the Scheme. The SHP Scheme 2009 was for the year 2009-2010 and remaining part of the 11th Plan upto 31 March, 2012 which was extended till 31.03.2013 vide OM No. 1(3)/PF.II/2011 dated 10.01.2013. As per the MNRE, the Applicant applied for grant of Central Financial Assistance (CFA) vide letter dated 27.08.2012 but the application annexed as Annexure-II was incomplete as financial details and commencement of commercial generation were not duly filled in and the following documents were also not enclosed:-

1. Proforma B-II of application.

2. Copy of letter of allotment of SHP site to the developer from State Government/Agency.
3. Copy of MOU between State Govt. and the developer for setting up of project.
4. Clearance from the State Electricity Board/Power Department/State Agency.
5. Forest Clearance.
6. Copy of State Government's recommendation addressed to the Ministry.

13. It is averred that as per Clause 33 of Annexure-B of the Scheme, incomplete proposals were not required to be entertained and, therefore, the proposal of the Applicant was not entertained/considered for the grant of subsidy. Meanwhile, a fresh Scheme was circulated, known as SHP Scheme, 2014 on 02.07.2014 (Annexure-III) which was valid till 31st March, 2017 (extended upto 30th September 2017) and as per Clause 6 of the Scheme of 2014, SHP Projects where construction work had commenced on or before 31st March 2013, the Central Financial Assistance was to be decided as per SHP Scheme 2009-2010. This Scheme of 2014 also provides that incomplete proposals in any form and without requisite documents will not be entertained.

14. It is averred that the application of the applicant (Panchhor Hydro Power Project) remained incomplete till the validity of the SHP Scheme i.e. 30.09.2017 and the Applicant approached them on 08.03.2021 only after the commissioning of the Project on 30.01.2021 to certify whether or not the amount of subsidy/CFA for setting up of the Project will be made available to

the Project. It is averred that by this time (08.03.2021), there was no existing SHP Scheme available, therefore, the MNRE vide letter No. 287/133/2017-SHP dated 12.03.2021 (Annexure-V) informed the Applicant that no SHP Scheme is available at present for the Project and the proposal cannot be considered. It is averred that as many as 14 proposals were received from the private developers within the validity of the SHP Scheme 2009 which were not considered for various reasons mentioned against each application.

15. No reply has been filed by Respondent No. 3.

16. In rejoinder, contents of the reply of HPSEBL were denied reiterating the contents of Application that the Applicant had submitted the application for the grant of Central Financial Assistance to MNRE on 27.08.2012, complete in all respect and it is denied that the application was not considered for want of complete documents. Also averred that the action of the Respondents is contrary to the principles of natural justice.

17. We have heard Sh. Ajay Vaidya Ld. Counsel for the Applicant, Sh. Kamlesh Saklani Authorised Representative for the Respondents No. 1 & 2, Sh. Shanti Swaroop Ld. Legal Consultant for Respondent No. 3 and Sh. Rajinder Thakur Ld. Central Government Standing Counsel for Respondent No.4 and have also gone through the written submissions submitted on behalf of the Applicant.

18. Ld. Counsel for the Applicant has submitted that the Applicant had informed the HPSEBL vide letter dated 29.12.2020 that the application to avail

the CFA (subsidy) will be submitted to the MNRE only after achieving the COD and in case the capital subsidy of Rs. 5 Crore is not disbursed due to any reason, including changes in the Government Policy, the Applicant reserves the right for re-determination of Generic Levellised Tariff. According to him, in the present case, the Applicant had submitted all the documents to the MNRE for claiming CFA (subsidy) and after commissioning the Project, the Applicant approached the MNRE but was informed that at present, the subsidy Scheme is not available for the SHPs. According to him, this Commission in Petition No. 20 of 2021 titled as M/s. Sai Engineering Foundation Vs HPSEBL has allowed provisional tariff of Rs. 4.67 per kwh, which shall be subject to adjustment on account of financial assistance/subsidy, as per the provisions of applicable Renewable Energy Regulations and that the issue regarding final adjustment in the matter of M/s Sai Engineering Foundation Vs HPSEBL is yet to be resolved by the parties as the Petitioner in said case has been directed to approach the Commission after completion of one year or immediately after settlement of such adjustment. According to him, the Applicant is also entitled for the tariff @ 4.49 per kwh instead of Rs. 4.43 per kwh and the further adjustment, if any, is required to be made only after the settlement of issue of subsidy with the MNRE.

19. Sh. Kamlesh Saklani, Authorised Representative for the HPSEBL has submitted that the case of M/s Sai Engineering Foundation Vs HPSEBL is entirely different from the fact and circumstances of the present case as in the

said matter, the claim of the Petitioner M/s Sai Engineering Foundation for subsidy was pending and, thus, provisional tariff had been provided for a limited period, which was subject to adjustment of grant/non grant of the subsidy, whereas in the present matter, the Applicant had requested vide letter dated 29.12.2020 for adjustment of the subsidy which has rightly been made.

20. Sh. Rajender Thakur, Ld. Central Government Standing Counsel for the Respondent No. 4, on the other hand has contended that as per the SHP Scheme of MNRE, there was a time span for obtaining the CFA (subsidy) being provided by the Central Government but after initial submission of application in the year 2012, the Applicant never approached the MNRE to know about the status of said application and non-release of subsidy. According to him, there was no provision in this Scheme that the MNRE was to be approached only after achieving the COD irrespective of the validity of Scheme and rather as per the Scheme, the Applicant was required to submit the application with all the requisite documents as mentioned in the Scheme, for claiming the subsidy and since the Applicant had approached only on 08.03.2021, when the Scheme had come to an end, the Applicant was rightly intimated that there was no Scheme for promotion of SHPs during the year 2021 as the Scheme was only upto 30th September, 2017.

21. We have carefully gone through the submission of Ld. Counsels for the parties, including the written submissions and have perused the record

carefully. The following points arise for determination in the present Application:-.

Point No. 1:

Whether the tariff of the Applicant is required to be re-determined at Rs. 4.49 per kwh instead of Rs. 4.43 per kwh as provided vide order dated 29.01.2021?

Point No. 2 : (Final Order)

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

Point No. 1: No

Point No. 2 : The application dismissed per operative part of (Final Order) the Order.

Reasons for findings

Point No. 1

23. The simple case of the Applicant is that the Applicant had submitted the application for grant of subsidy/CFA alongwith all the requisite documents well in time to the MNRE in the year 2012 on 27.08.2012 which was complete in all respect but the Applicant was not informed of the status of the said application, at any point of time, and when the Applicant approached the MNRE vide letter dated 08.03.2021 to confirm availability of the CFA/subsidy admissible to the Project, immediately after the COD of the Project of the Applicant on 15.02.2021, the Applicant was informed vide letter dated

12.03.2021 by the MNRE that at present, no Scheme is in existence for supporting the SHPs.

24. Therefore, the entire controversy in the matter revolves around the fact as to whether the MNRE has failed to consider the application of the Applicant for the grant of Central Financial Assistance/Subsidy as per the Schemes of 2009 and 2014, introduced by the MNRE, despite submissions of the application complete in all respect for claiming such Central Financial Assistance.

25. The HPSEBL has relied upon the Tariff Order in Petition No. 76 of 2020 dated 22.12.2020 determining the Generic Levellised Tariff for Small Hydro Projects as per RE Tariff Regulations 2017 as also letter dated 29.12.2020 of the Applicant regarding deduction of the admissible subsidy amount of Rs. 5.00 Crores. The HPSEBL has reproduced Clause/part 8.14 (II) of the Tariff Order dated 22.12.2020 as under:

“No adjustment on account of incentive and/or subsidy and/or grant etc. is being made in the value base for the calculations of Generic Levellised Tariffs under this order. However, the rates at which adjustments shall be made in the Generic Levellised Tariffs on this account have been worked out and mentioned in the attached calculation sheets for each category of the SHPs. The adjustment, if any, on account of the same shall be made at appropriate stage while applying the tariff after taking into account the eligibility conditions in each case. Similarly, adjustment on account of subsidy available under the Ministry of Commerce & Industry, Government of India and/or any other

subsidy scheme(s) of Government (Central/State) shall also be made at appropriate stage(s) after taking into account the applicable subsidy(ies) available under such scheme(s). The adjustments on account of incentives and/or subsidies and/or grants etc. are to be made at the rates indicated in the calculation sheets on normative basis by considering the provisions of regulations 20-B, 23-B, 24-B, 25-B and 26-B. For this purpose the total amount (in crore rupees) of incentive and/or subsidy and/or grant etc., shall be divided by the installed capacity of the projects and the per MW amount (in crore rupees) so arrived at, shall be multiplied by the rate indicated in the calculation sheet for the relevant category of SHPs.

26. It is, thus, apparent from the aforesaid that the adjustment on account of incentive/subsidy/grant was required to be made at the appropriate stage, as per the rates indicated in the calculation sheets on normative basis. The Applicant has not disputed letter dated 29.12.2020 (Annexure R-I) vide which the Applicant had intimated the HPSEBL that the Project is eligible to avail the capital subsidy from MNRE to the extent of Rs. 5.00 Crore after successful commissioning as per the existing Scheme of MNRE and in case the capital of Rs. 5.00 Crore is not disbursed by MNRE at a later stage, due to any reason or ensuing changes in Govt. of India Policy for giving financial assistance to SHPs, the company reserves the right for re-determination of Tariff. Thus, vide letter dated 29.12.2020 (Annexure R-1) the Applicant categorically mentioned that the Project of the Applicant is eligible for the admissible Capital Financial Assistance/Subsidy of Rs. 5.00 Crore being provided by MNRE and the

application for availing the same will be submitted to MNRE only after achieving the COD for the Project, however, in case the above capital subsidy of Rs. 5.00 Crore is not disbursed by MNRE at a later stage, due to any reason or ensuing changes in Govt. of India Policy for giving financial assistance to the SHP, the company reserves its right for re-determination of Generic Levellised Tariff on account of non availability of capital subsidy. Therefore, once the aforesaid requests vide letter dated 29.12.2020 (Annexure R-I) was made by the Applicant for adjusting the Central Financial Assistance/ Subsidy, the adjustment of the admissible subsidy of Rs. 5.00 Crore was rightly made by the Commission.

27. Now the another question which arises for consideration is whether the application, as submitted before the MNRE on 27.08.2012, for availing the subsidy was complete in all respect and the capital subsidy has wrongly been denied to the Project of the Applicant and whether it was permissible for the Applicant to submit such application after achieving the COD despite the Scheme being time bound.

28. In order to answer the aforesaid, it is relevant to refer to the reply of MNRE which shows that a SHP Scheme, 2009 was floated by the MNRE to provide financial support which was valid upto 31st March 2012, extended upto 31.03.2013 (Annexure R-I) and that a request dated 27.08.2012 (Annexure-II) from the Applicant for grant of CFA/Subsidy had been received in the Ministry which was containing application form, Performa B-I.

29. As per MNRE, Clause 33 of (Annexure-B) of SHP Scheme 2009, the incomplete proposals in any form and without requisite documents were not to be entertained. It is also the stand of MNRE that the application of the Applicant (Proforma B-I) was not accompanied by the following documents:

1. Proforma B-II of application.
2. Copy of letter of allotment of SHP site to the developer from State Government/Agency.
3. Copy of MOU between State Govt. and the developer for setting up of project.
4. Clearance from the State Electricity Board/Power Department/State Agency.
5. Forest Clearance.
6. Copy of State Government's recommendation addressed to the Ministry.

30. Significantly, the MNRE also floated an another Scheme for supporting the SHPs in the year 2014 (SHP Scheme 2014) which was valid upto 31st March 2017 but was extended upto 30.09.2017 and as per Clause 6 of said Scheme of 2014, the SHP Projects where the construction work had commenced on or before 31st March 2013, the Central Financial Assistance would be decided as per the SHP Scheme, 2009. A careful perusal of Clause 31 of the SHP Scheme, 2014 also provides that incomplete proposals, in any form without requisite documents were not to be entertained.

31. Admittedly, after the submission of the application in the year 2012 (27.08.2012), the Applicant never communicated with MNRE about the status

of the said application and also not apprised the MNRE of the status of construction and progress of the Project. Rather, the Applicant approached the MNRE only after achieving the COD vide application dated 08.03.2021 (Annexure IV).

32. A further careful perusal of the Schemes of 2009 and 2014 shows that the Schemes were executable in different phases. As observed above, when the Applicant submitted the application in Proforma B-I on 27.08.2012 along with annexures, the same was not complete of want of documents. Clause 20 of the Scheme of 2009 provides that the 1st installment of 50% was to be considered and released in advance so as to reduce the term loan, subject to the conditions of placement of order for Electro Mechanical equipment after disbursement 50% of the sanctioned loan by the Financial Institution/Bank, on submission of bank guarantee and subject to fulfillment of other conditions, if required and the balance 50% of the sanctioned financial support was to be released to the Financial Institution/Bank after commissioning, commercial generation and testing of the Project. Similarly, in the SHP Scheme 2014, as made applicable to the SHP Projects, where construction work had commenced on or before 31st March 2013, the subsidy was to be granted as per SHP Scheme 2009 and the SHP Projects commenced on or after 1st April 2013, the subsidy was also to be sanctioned in two installments as provided in SHP Scheme 2009.

33. Apparently, the Applicant had applied for the Central Financial Assistance/subsidy to the MNRE as per SHP Scheme 2009 which was valid

only upto 31 March 2012, though extended upto 31.03.2013. No doubt, the MNRE came out with another Scheme in the year 2014 (Annexure-III) for the implementation of Small Hydro Project (SHP programme) (upto 25 MW capacity) for the remaining period of 12th plan i.e. upto 31 March, 2017 and this Scheme was further extended upto 30.09.2017. Yet both the Schemes were well within the knowledge of the Applicant. As observed above, the procedure for availing the Subsidy/Central Financial Assistance was provided in both the Schemes and the 1st installment of 50% of the sanctioned financial support was to be considered as advance and the balance 50% of the sanctioned financial support was to be released to the Financial Institution/Bank on commissioning of the Project as evident from Clauses 20 and 22 of the SHP Scheme of 2009 (Annexure-B) and Clauses 18 and 20 of the SHP Scheme, 2014 (Annexure-B) of the Scheme and as per Clauses 23 of the Scheme of 2009 and Clauses 18, 20 and 21 of the Scheme of 2014. Although as per both Schemes, the release of 1st installment of 50% was optional to the developers and alternatively, total financial support could have been released after successful commissioning/commercial generation and testing of the Project, yet the Applicant had requested the MNRE vide letter dated 27.08.2012 for the subsidy and thereafter vide letter dated 08.03.2021 (Annexure-IV) after a gap of almost 9 years requested the MNRE to confirm whether or not the subsidy is available for the Project ignoring the vital details that the validity of the Scheme of 2009 was upto 31.03.2012 (extended upto 31.03.2013) and validity

of the Scheme of 2014 was upto 31 March 2017 (extended upto 30.09.2017). The Project of the Applicant was commissioned on 15.02.2021, much beyond the expiry of the aforesaid SHP Schemes. The entire Application is silent as to why the Applicant kept mum ever since he filed application dated 27 August, 2012. Infact, a careful perusal of both of the aforesaid Schemes reveals that various stages were provided for availing the subsidy and in alternate, the option was given that the entire available subsidy may be availed on completion of the Project but such action was required to be taken only within the validity of the Scheme. Since the Project of the Applicant could not be commissioned before 30.09.2017, when the Scheme had come to an end and no further Scheme for supporting the Small Hydro Projects was floated by the MNRE, there was no occasion for the MNRE to consider the application of the Applicant at a belated stage in the year 2021. Once the Applicant submitted the application and documents on 27 August, 2012 though incomplete, the Applicant was aware of the validity of the Scheme and, thus, was required to initiate all requisite actions only within the validity of the Scheme but the Applicant has kept silent throughout during the validity of Scheme and woke up only on 08.03.2021 when it had become impossible for MNRE to consider the request at the time of commissioning of the Project. The availing of MNRE subsidy has a direct impact on the Consumers and the Consumers can not be burdened with the extra tariff for the negligence of the applicant.

34. Apparently, as mentioned by the MNRE in the reply, the application of the Applicant was incomplete and on account of this, the application was not considered for grant of even the 1st installment. Thus, no fault can be found with the stand of the MNRE.

35. It is none of the case of the Applicant that the adjustment of Rs. 0.06 on account of Central Financial Assistance/subsidy of the MNRE is not as per the rates, which have been worked out for each category of the SHPs on the basis of admissible subsidy. The Petition for approval of the Power Purchase Agreement being Petition No. 02/2021 had been filed by the Applicant on 21.01.2021, when the MNRE Scheme for supporting the Small Hydro Projects has ceased to exist, meaning thereby that the subsidy/Central Financial Assistance being provided by the MNRE was deemed to have been availed and on this premise, the Commission accorded approval of the Power Purchase Agreement after adjustment of the admissible Subsidy of Rs. 5.00 Crore. Otherwise also, the Joint Applicant categorically mentioned vide letter dated 29.12.2020 that the Project is eligible for availing the capital subsidy from MNRE amounting to Rs. 5.00 Crore on successful commissioning of the Project, hence, there was no option with the Commission but to adjust the subsidy.

36. Though, much reliance has been placed in Para 5 of the Order dated 14.07.2021 passed by this commission in Joint Petition No. 20 of 2021, titled as HPSEBL and Ms Sai Engineering Foundation for the approval of PPA

whereby a provisional tariff of Rs. 4.67 per kwh without adjusting the subsidy has been provided and that a similar treatment is required to be given to the Applicant but on careful perusal of the entire record, we are of the opinion that the tariff which had been provided to M/s Sai Engineering Foundation was only a provisional as the issue of Subsidy was yet to be resolved by the HPSEBL and Sai Engineering Foundation, which is only for one year from the date of the order and liable to be reviewed keeping in view the current status of subsidy of said Project. Otherwise also, in the case of Sai Engineering Foundation, no individual letter had been written by MNRE to said organization that subsidy is not available. In the present matter, the Applicant has not made any efforts for availing the subsidy after submission of application on 27.08.2012 and approached the MNRE only on 08.03.2021 after lapse of almost five years of the validity of the subsidy Scheme. Not only this, vide letter dated 29.12.2020, the Petitioner informed the HPSEBL of admissibility of Subsidy and approaching the Commission for adjustment of the Subsidy is not provided. Hence, both the matters are not identical and distinguished and, thus, the adjustment of Rs. 0.06 has rightly been made.

37. In the entirety, the Applicant has failed to substantiate that his application has not been considered appropriately by MNRE despite submission of complete application or that the CFA/Subsidy has been wrongly refused. Similarly, the Applicant has failed to substantiate that the Commission has wrongly adjusted the subsidy or that there are good reasons for re-

