

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

Petition No: 45 of 2023
Date of Institution: 10.08.2023
Heard On: 01.02.2024
Decided on: 16.02.2024

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, Sunder Nagar-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 Order dated 11.07.2023 in Petition No. 35 of
2023.**

Present:-

Sh. Dhananjay Sharma, Ld. Counsel for the Petitioner.
For the Respondents No. 1 to 3: None.

ORDER

This Petition has been filed by the Himachal Pradesh State Electricity Board Limited (HPSEBL for short) for reviewing the Order dated 11.07.2023 passed by the Commission in Petition No. 35 of 2023 that the Commission in Para 24 of the Order dated 11.07.2023 has held as under:-

“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.”

2. It is averred that though the HPSEBL has been authorized to get the emergent works of Restoration, Repairs and Maintenance etc. valuing not more than Rs. 2 lakhs done through offline mode, yet as per the spirit of Para 24 (Supra), not even a single minute can be wasted in case of emergent conditions but said power is to be exercised on reasons to be recording in writing with prior written approval of the Chief

Engineer concerned under intimation to the concerned Director of HPSEBL. As per the HPSEBL, a considerable time will be consumed in seeking the approval from the Chief Engineer concerned which would delay the restoration process of the emergent works. In the circumstances, it has been prayed that the Order dated 11.07.2023 passed in Petition No. 35 of 2023 may be reviewed.

3. The notice of the Petition was issued to the Respondents but none appeared on behalf the Respondents despite notice.

4. We have heard Sh. Dhananjay Sharma, Ld. Counsel for the Petitioner and have perused the entire file with minute care.

5. Before we advert to the Petition, it is relevant to refer that the Commission vide letters dated 07.12.2022 and 31.12.2022 had issued directions to the HPSEBL for carrying out engineering, procurement and construction work valuing more than Rs. 50,000/- (Fifty Thousands only) through e-tendering process and the works valuing more than rupees One Crore through e-reverse bidding mode so as to increase fairness and transparency in the system. Consequently, the HPSEBL made the amendment in the Delegation of Financial Powers, (hereinafter to be referred as DoFP) vide Office Order dated 30.12.2022 and the Commission was intimated of the same vide letter No. HPSEBL/CE-(Comm.)/ SERC-11/ 2022-23- 13934-37 dated

31.12.2022. The Commission vide 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 and the HPSEBL carried out 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.”**

6. It is observed from the perusal of record that the Himachal Pradesh Power Contractors' Association (Respondent No. 1) met the Hon'ble Chief Minister, Himachal Pradesh for de-notifying the amendment carried out in DoFP vide office Order dated 30.12.2022. Consequently, a Petition was submitted before the Commission for reviewing/revisiting the directions issued by the Commission vide letters

dated 07.12.2022 and 31.12.2022 which was registered as Miscellaneous Petition No. 35 of 2023.

7. The Commission on considering each and every aspect of the matter and hearing the HPSEBL and HP Power Contractors' Association observed that the directions issued by the Commission had not restricted or curtailed the powers of the HPSEBL in any manner to carry out the repairs and maintenance works, operation and maintenance works, work orders and other engineering, procurements and construction works but has simply directed the HPSEBL that such works valuing more than Rs. 50,000/- must be carried out through e-tendering process and works valuing more that Rs. 1 Crore must be carried out through e-reverse bidding so as to ensure fairness, transparency and quality in the work awarded. Further, the Commission also observed that the directions issued by the Commission vide letters dated 07.12.2022 and 31.12.2022 do not operate as hardship, as claimed by the HPSEBL, and the Commission do not see any reasons to revisit the same.

8. However, the Commission has observed in Para 24 of the Order dated 11.07.2023 that mass destruction was caused during the recent rains and emergent and urgent situations may arise in winters where it would be of utmost necessity to restore the power without wasting even

a single minute and allowed to carry out the repairs and maintenance works, operation and maintenance works, work orders and other engineering procurements and constructions works valuing not more than Rs. 2 lakhs through offline mode.

9. Now the HPSEBL has come out with the present Petition that the directions, as given in Para 24 of the Order dated 11.07.2023 are operating as hardship as a significant time is consumed in obtaining the prior written consent of the concerned Chief Engineer.

10. Sh. Dhananjay Sharma, Ld. Counsel for the HPSEBL has submitted that this condition of prior written consent of the concerned Chief Engineer is required to be reviewed/revisited so that the restoration works in the emergent conditions are undertaken through offline mode without any prior approval.

11. As observed above, this Commission on considering each and every aspect of the matter was of the view that the directions dated 07.12.2022 and 31.12.2022 do not operate as hardship in any manner to the HPSEBL. Para 24 of the Order 11.07.2023 is reproduced as under:

“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.”

12. The Commission while considering the submissions of the HPSEBL in Miscellaneous Petition No. 35 of 2023, was considerate enough to permit execution of urgent and emergent works of restoration, Repairs and Maintenance (R&M) Works, Operation and Maintenance (O&M) Works, Work Orders and other Engineering, Procurement & Construction works in emergent conditions like natural disasters due to rains, floods, heavy snowfall and earthquake etc. of valuing not more than Rs. 2 lakhs by way of offline mode, however, subject to reasons to be recorded in writing with prior written approval of the Chief Engineer concerned under intimation to the concerned Director of the HPSEBL.

13. The purpose of issuing the directions vide letters dated 07.12.2022 and 31.12.2022 was to ensure fairness, transparency and

quality in the works awarded. Noted author Benjamin Franklin has observed as under:

“There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the government.”

14. Coming to the benefits of E-tendering, it provides level playing fields as the Vigorous competition among the tenderers helps the organizations to obtain the best value for the money. Conversely, when the competition is curtailed, there is scope of bid rigging and the quality in works is also compromised as the public officials choose to forego requirements and processes and favor a particular bidder whether for pecuniary considerations or otherwise. The E-tendering is also cost effective as it reduces the cost of publication of tender notice and paperwork and eliminates duplicate spending. It is also transparent, curtail mismanagement and malpractice. It also helps in improving the productivity of employees as the process is automated and it requires only a few employees. Not only this, everything is stored online in the electronic format and the information may be retrieved, whenever, necessary. The E-tendering also enhances the speed of the whole tendering process as every step is done online and there is no waiting period between different steps. This online process also helps to standardize the entire process in the organization and the different

departments of the organization can easily collaborate and there is less scope of manual errors.

15. In this modern era, with the advent of technology, the written approvals of proposals can be obtained in minutes. This Commission in various tariff Orders has adequately compensated the HPSEBL for technology intervention and improvement. Each and every Chief Engineer, Superintending Engineer, Executive Engineer of the HPSEBL have the facility of computers and internet in their establishment. It would be pertinent to mention here that e-office is being rigorously implemented in various departments of the State to enable paperless offices and to bring increased efficiency to office work and transparency in the system, including according of approvals of important nature of proposals speedily without wastage of time. Therefore, any proposal for approval of the Chief Engineer may be routed immediately through e-office or e-mail and the approval may be conveyed by return mail without wasting even a single minute.

16. It is also relevant to mention that during the emergent and urgent situation(s), as defined in Para 24 of the Order dated 11.07.2023, not only the Executive Engineer, who would know about such emergency or urgency but at the same time, the concerned Superintending Engineer and the Chief Engineer also have to be equally involved and are

expected to provide guidance and necessary professional and technical help to the Executive Engineer to tackle such emergent and urgent situation(s). In nutshell, being collective responsibility of the Executive Engineer, Superintending Engineer and Chief Engineer concerned, the question of getting the approval delayed is uncalled for and absurd. In case the reasons offered by the HPSEBL in the Petition are accepted, the same would lead to the promotion of serious irregularities and malpractices.

17. Therefore, this Commission do not find any reason that a significant time will be consumed by obtaining written approval of Chief Engineer or getting the approval delayed. It is highly strange and unfortunate that despite the establishments being upgraded and equipped with the computerization and facilities like e-office and e-mail and even mobile phones with related applications and facilities etc., the HPSEBL has come out with such a strange plea.

18. As observed above the Commission has dealt with each and every aspect of the matter in detail and the Petitioner has miserably failed to point out that there is an error apparent on the face of record justifying the review of impugned Order dated 11.07.2023 passed by the Commission in Miscellaneous Petition No. 35 of 2023. Similarly, the Petitioner has failed to point out discovery of any new and important

matter or evidence which after exercise of due diligence was not within its knowledge or could not be produced at the time when Order dated 11.07.2023 was made or there are any sufficient reasons warranting review.

19. In view of the foregoing discussion and limited scope of review jurisdiction, we are of the view that there are no merits in the Review Petition. Thus, the present Review Petition deserves dismissal and accordingly the same is dismissed.

The file after needful be consigned to record.

Announced
16.02.2024

-Sd-

(Shashi Kant Joshi)
Member

-Sd-

(Yashwant Singh Chogal)
Member (Law)

-Sd-

(Devendra Kumar Sharma)
Chairman