

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

Review Petition No: 50 of 2021
Date of Filing: 07.12.2021
Arguments Heard on: 16.07.2022
Decided on: 06.08.2022

The HP State Load Despatch Centre through its
Superintending Engineer (HPSLDC)
SLDC Complex, Totu, Shimla-171011

.....**Review Petitioner**

Versus

1. The HPSEBL, through
Executive Director (Personnel),
Vidyut Bhawan, Shimla 171004
2. The HPPCL, through its
General Manager (Generation)
Himfed Building, B.C.S, Shimla, 171009.
3. The HPPTCL, through its
Managing Director,
Himfed Bhawan, Below Old MLA's Quarters,
Panjari, Tutikandi, Shimla 171005
4. The Directorate of Energy, through its
Director,
the Govt. of H.P., Shanti Bhawan,
Shimla, H.P.

.....**Respondents**

Review Petition for reviewing order dated 12.08.2021 in Petition No. 14 of 2021.

CORAM

DEVENDRA KUMAR SHARMA

CHAIRMAN

BHANU PRATAP SINGH

MEMBER

YASHWANT SINGH CHOGAL

MEMBER (Law)

Present:-

Sh. Sh. Desh Raj, Superintending Engineer, HPSLDC in person.

Sh. Kamlesh Saklani, Authorised Representative for Respondent No. 1.

Sh. Sangram Singh, DGM (SOP) for Respondent No. 2

Sh. Vikas Chauhan, Ld. Counsel for Respondent No. 3

Sh. Shanti Swaroop, Legal Consultant for Respondent No. 4.

ORDER

This Review Petition has been filed by the HP State Load Dispatch Centre (hereinafter to be referred as Petitioner) for review of Order dated 12.08.2021 in Petition No. 14 of 2021. The Petitioner had filed a Petition for the approval of true up of Financial Year 2018-19 and Financial Year 2019-20, provisional true up for Financial Year 2021-2022 and revised Aggregate Revenue Requirement (ARR for short) from Financial Year 2021-2022 to Financial Year 2023-2024 under Sections 62, 64 and 86 of the Electricity Act, 2003 read with HPERC (Levy and Collection of Fees and charges by the State Load Dispatch Centre) Regulations, 2011, as amended from time to time. The Commission allowed said Petition vide Order dated 12.08.2021.

2. As per Petitioner, majority of the prayers of the Petitioner have been considered and allowed by the Commission. However, the R&M expenses for Financial Year 2020-21 and expenses towards LDCD funds for Financial Year 2020-21 and some other expenses have been disallowed.

3. The Petitioner had requested the Secretary of the Commission vide letters dated 08.09.2021 for reconsideration of the aforesaid issues but the Commission vide letter dated 28.10.2021 has stated that any modification in the Order may be entertained only by way of Review Petition.

4. It is averred that in the FY 2020-21, the Petitioner has paid an amount of Rs.10,97,931/- and Rs.7,93,567/- towards repairs and maintenance charges payable to HPSEBL for the past period but an amount of Rs.64.74 lakhs was disallowed by the Commission under True-up for the FY 2018-19 and actual payment of Rs.18.97 lakh has been provisionally considered under R&M

expenses for the FY 2020-21. As per Petitioner, R&M expenditure approved under Mid-term Review is depicted in Table I of the Review Petition as under:-

Table 1
Approved R&M Expenses for FY 21 (Rs. Lakhs)

Particulars	FY:2020-21
General R&M expenses	10.00
AMC for integrated IT solution	-
AMC SAMAST (LOA3)	-
Payment to HPSEBL towards past period expense	18.91
Total	28.91

5. It is averred that the Commission has allowed R&M expense of Rs. 245.95 lakhs for the Financial Year 2019-2020 as one-time expenses. The R&M expense in the Financial Year 2019-2020 and Financial Year 2020-2021 are accounted mainly due to building, repairs and refurbishment and expenditure towards SAMAST Scheme which are considered as Revenue Expenses in the respective years and not as Capital Expenditure. This is depicted in table 2 of the Review Petition as under:-

Table 2
Approved R&M Expenses in MTR Order (in Rs. Lakhs)

Particulars	FY:2019-20	FY:2020-21
Total R&M approved (Rs. Lakhs)	245.95	28.91
Refurbishment of building & Other R&M	166.61	0
SAMAST	79.34	0

6. As per the Petitioner, total expenses of Rs.249.40 lakhs have been incurred by them towards refurbishment of building spread over the Financial Years 2019-2020 and 2020-2021 duly approved in 10th and 11th General Body Meetings dated 25.08.2020 and 18.03.2021 respectively, detailed in table III and IV of the review Petition. Therefore, out of total expenditure of Rs.249.40 lakhs (Rs. 2,32,33,680+ Rs.17,05,769.00), the Petitioner has incurred Rs. 166.61 lakhs in Financial Year 2019-2020 and Rs.82.79 lakh in the Financial Year 2020-2021 towards refurbishment of office building and other allied activities/ works as mentioned in table III and IV of the Review Petition but the Commission has allowed expenses

of Rs. 166.61 lakhs only incurred in the Financial Year 2019-2020 whereas the balance amount of Rs. 82.79 lakhs incurred towards refurbishment of building in the Financial Year 2020-2021 have not been allowed.

7. It is also averred that Petitioner has considered a total lump-sum amount of Rs.91.73 lakh towards revenue expenditure in FY 2020-21. The Petitioner has released the payment of Rs. 69.00 lakhs and Rs.22.73 lakhs on 07.12.2019 and 10.08.2020 respectively to M/s Kreate Technologies, LLP New Delhi as payments towards cost of development and implementation of an integrated IT solution/Software applications with an aim of implementation of SAMAST report of the Forum of Regulators in a time bound manner (Appendix-5 of the Review Petition) but the Commission has considered Rs. 71.73 lakh as capital expenditure and allowed only Rs. 28.91 lakh as R&M expenses for the Financial Year 2020-2021.

8. In so far as approval of LDCD fund for Financial Year 2020-2021 is concerned, it is averred that the Commission has approved an amount of Rs.291.96 lakhs lying as surplus with the Petitioner during Financial Year 2020-2021, which is inclusive of revenue surplus of Rs.105.26 lakhs and thus, the net revenue surplus during the Financial Year 2020-2021 comes to only Rs.186.70 lakhs. It is averred that out of total expenditure of Rs. 249.40 lakhs towards refurbishment of office building, the Commission has allowed only Rs.166.61 lakhs in the Financial Year 2019-2020. However, an amount of Rs.82.79 lakhs incurred towards refurbishment of office building in FY 2020-21 has been disallowed. Therefore, the amount is required to be recalculated, considering Rs. 82.79 lakhs as onetime expenses towards refurbishment of building and 91.73 lakhs towards recouping of State PSDF to be treated as O&M expenses for the FY 2020-21 especially when expenditure of Rs. 91.73 lakhs has been acknowledged in Para 6.1.16 of Order dated 12.08.2021 which has been received as grant and not as a revenue from (LTOA) charges for Financial Year 2020-2021 and should be taken out while calculating income collected from LTOA

customers in the Financial Year 2020-2021. It is also averred that the minimum time of 3 months be allowed to deposit the revised surplus amount (excluding surplus of the FY 2020-21) in the LDCD fund or up-till the finalization of Order in MTR Petition filed by the Petitioner.

9. It has also been averred that the provision for procurement of Network Switches, M-DAS and enclosures for DCUs amounting to Rs. 71.33 Lakhs was made in the CAPEX proposed for the implementation of SAMAST framework in the State of HP for the Financial Year 2020-2021 of the 4th Multi Year Tariff Control Period, as per in-principle approval granted by the Commission.

10. It is also averred that the HPSLDC intends to maintain its staff strength strictly as per the recommendations of the Technical Sub-Committee Group on Load Dispatch Centres (LDCs) of the Forum of Regulators constituted on 12.04.2018, in its report titled Capacity Building of India (CABIL) Load Dispatch Centres and as per the said Report, a minimum staff strength of 69 numbers has been recommended for small SLDCs which is depicted in table 10 of the Review Petition.

11. It is also averred that taking into consideration of the CABIL report, the proposed manpower structure of HPSLDC was placed before the 12th General Body Meeting of HP Load Dispatch Society (HPLDS for short) held on 28.10.2021 and 29.10.2021 respectively which is depicted in table 11 of the Review Petition.

12. It is also averred that the General Body of HPLDS has accorded its approval towards the proposed manpower and directed the Petitioner to submit complete case to the Govt. of HP for approval as depicted in copy of minutes (Appendix 10 of the Petition). Further submitted that the CAPEX for the purpose of construction of Staff quarters, for HPSLDC Staff was also sent to the Commission for approval which has been excluded from the approved Capital Cost. It is claimed that in the aforesaid meeting of HPSLDS held on 28.10.2021,

the proposal has been approved per minutes (Appendix 14 of the Review Petition), hence, additional CAPEX as mentioned in Table-14 below be allowed:-

Table:14
(Requirement of CAPEX for construction of staff quarters) (Rs. Lakhs)

Sr. No.	Purpose for which CAPEX required	FY:22-23	FY:23-24
1.	Procurement of private land measuring 02 Bighas and cost to be incurred towards landscaping, contouring, site development & design activities etc.	200.00	0
3.	Construction of 15-20 quarters	150.00	150.00
	Total:	350.00	150.00

13. The following prayers in Prayer 4. (II), (III) (IV) (V), (VI) have been made:

- i. To condone delay in submission of this review Petition.
- ii. To allow cost of **Rs. 82.79 Lakhs** as one-time expenses towards refurbishment of building and **Rs.91.73 Lakhs** towards Recouping of State PSDF as R&M expenses for FY: 2020-21 and **Rs. 91.73 Lakhs** shall not be considered as income to HPSLDC from LTOA/MTOA in FY: 2020-21 while computing the cumulative surplus by end of FY: 2020-21.
- iii. To re-consider and allow the revised ARR for FY: 2020-21, in view of the post impact of Revenue surplus and transfer of fund to the LDCD Fund Account for FY: 2020-21.
- iv. To allow a manpower strength of **69** in number, as per recommendations of the CABIL Report during FY: 2022-23 and FY: 2023-24.
- v. To allow a Capital expenditure of **Rs. 500.00 Lakhs** in FY: 2022-23 and FY: 2023-24, for the purpose of construction of quarters for HPSLDC staff.

14. The Petition has been resisted by the Respondents Nos.1 and 3 by filing separate replies.

15. The Respondent No.1 HPSEBL in its reply has averred that in so far as reconsideration and approval of repairs and maintenance expenses for Financial Year 2020-2021 are concerned, the accounts of the Petitioner pertaining to Financial Year 2020-2021 were not available when the Mid-term Review Petition

had been filled, therefore, without the audited/provisional accounts, such expenses were not taken into consideration. As per them, R&M expenses alongwith reconsideration of LDCD fund as prayed for the year 2020-2021 towards recouping of PSDF may be considered in the True-up for FY 2020-2021. In so far as allowing of manpower strength as per CABIL report, the issue has been elaborately considered by the Commission in its order dated 12.08.2021 at Para 4.3.13 and 7.2.3. Therefore, the matter of additional manpower requirement with proper justification for HPSLDC functions needs to be taken up separately and may not be considered in the Review Petition.

16. As per Respondent No.1, in so far as allowing of CAPEX for the purpose of construction of staff quarters for HPSLDC staff is concerned, the Commission has dealt the same at Para 6.1.15 observing that in view of the significant cost involved with respect to the new staff quarters, the HPSLDC need to evaluate alternate options instead of incurring such high capital cost and after evaluation of alternate options, the HPSLDC should submit a report to the Commission for approval. Further averred that at Para 8.2.1 of the MTR Order dated 12.08.2021, the Commission has also observed that the HPSLDC has proposed staff quarters for its employees at a cost of Rs. 10 crores which would put undue pressure on the Consumers of the State in the form of additional tariff, thus this matter needs to be taken up separately.

17. The Respondent No. 3 HPPTCL in its reply has also averred that impact of actual R&M expenses may be considered during trueing up. It is also averred that additional manpower requirement and CAPEX for purpose of construction of staff quarters of HPSLDC staff should be taken up by the Petitioner separately.

18. The HP Power Corporation Ltd. has submitted NIL reply to the Review Petition. No reply has been filed by Respondent No. 4.

19. We have heard Sh. Desh Raj, Superintending Engineer, HPSLDC, Sh. Kamlesh Saklani, Authorised Representative for Respondent No. 1, Sh. Sangram

Singh, DGM for Respondent No.2, Sh. Vikas Chauhan, Ld. Counsel for Respondent No.3 and Sh. Shanti Swaroop, Legal Consultant for Respondent No. 4.

20. Sh. Desh Raj, Superintending Engineer HPSLDC has submitted that the Petitioner had placed on record all relevant details on the queries made by the Commission but the vital detail has escaped the attention of the Commission while passing Order dated 12.08.2021 vide which some of the claims have been disallowed. He has also submitted that neither any appeal has been filed against the Order dated 12.08.2021 nor the Order dated 12.08.2021 is in question in any court of law and there are errors apparent on the face of record in the Order dated 12.08.2021 and in case all the documents as furnished in the main Petition are reconsidered, there are sufficient reasons to review the Order dated 12.08.2021. He has also submitted that the delay, if any, in filing the Review Petition may kindly be condoned.

21. The Respondents on the other hand have submitted that the Commission has considered each and every aspect of the matter while deciding Petition No. 14 of 2021 and no new and important matter of evidence has been produced by the Petitioner and, thus, there are no reasons to review the Order dated 12.08.2021. The Respondents have also submitted that the Petitioner may approach the Commission for reconsideration at the time of true up of the capital cost.

22. We have gone through the submissions and have also perused the record carefully. The following points arise for determination in the present Review Petition:-

1. Whether the Review Petition is within time?
2. Final order.

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

Point No. 1: No.

Point No. 2: (Final Order) :- Review Petition dismissed per operative part of the Order.

REASONS FOR FINDINGS

Point No. 1

24. It is none of the case of the Petitioner that the impugned order has been passed behind its back. On the contrary, Regulation 21(7) of the HPERC (Conduct of Business) Regulations 2005, as amended from time to time, provides that all the final Orders of the Commission shall be communicated within 7 days to the parties in the proceeding under the signature of the Secretary or an officer empowered in this behalf by the Chairperson or the Secretary. It is also none of the case of the Petitioner that it had not received the copy of the final Order within 7 days from the Commission.

25. The careful perusal of the file reveals that final Order in Petition No. 14 of 2021 was passed on 12.08.2021. The present Review Petition has been filed on 07.12.2021 i.e. after a delay of about 116 days. However, there is not even an iota in the Petition explaining the reason of not filing the review Petition immediately after receipt of the copy of order and for months together thereafter.

26. As per Section 94 (1) (f) of the Electricity Act, 2003, the Appropriate Commission shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 for the purpose of any enquiry or proceedings and for reviewing its decisions, directions or orders. Neither Section 114 nor Order 47 of Code of Civil procedure, 1908 specify any period of limitation for filing of Review Petition. Similarly, Regulation 63 of HPERC (Conduct of Business) Regulations, 2005, as amended from time to time, and Section 94 of the Electricity Act, 2003 also do not specify any time limit within which a Petition for Review has to be filed.

27. Therefore, in the absence of any prescribed period of limitation for filing the Review Petition under Section 94 of the Electricity Act, 2003, Regulation 63 of the HPERC (Conduct of Business Regulations, 2005) and Section 114 and Order 47 of Code of Civil Procedure, 1908, the Petitioner was required to file the

Review Petition within the time stipulated under the Limitation Act, 1963. Article 124 of the Schedule to the Limitation Act, 1963 provides that the limitation period for review of a judgment by the Court is 30 days from the date of the decree or the order. Here, it is relevant to refer to Sub-section (2) of Section 29 of the Limitation Act, 1963 which provides as under:

“Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

28. Section 3 of the Limitation Act, 1963 provides that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. In the present Review Petition, none of the Respondents have set up the limitation as defence but said silence on the part of Respondents is of no help to the Petitioner and if the Review Petition is not within time, the same can't be said to be maintainable.

29. Section 5 of the Limitation Act, 1963 provides for extension of the period of limitation that any appeal or any application may be admitted after the prescribed period, if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

30. As observed above, the order sought to be reviewed was passed in Petition No. 14 of 2014 on August, 12 of 2021 but the Petition has been filed only on 13.12.2021, after about 116 days after passing of the order. There is no explanation for the delay except the prayer that the delay be condoned. No application explaining the delay in filing the review Petition and for condoling the same has been filed.

31. As provided under Article 124 of the Limitation Act, 1963, the Review Petition is required to be filed within a period of 30 days from the date of receipt of copy of Order and for not filing the same within stipulated period, the Petitioner was required to file an application under Section 5 of the Limitation Act, 1963 explaining delay of each and every day and for condoning such delay. Since no explanation for delay has been provided and no application for condoning the delay has been filed, the present Review Petition is hopelessly barred by time and not maintainable. Point No. 1 is accordingly answered against the Review Petitioner.

Point No. 2 (Final Order)

32. In view of our aforesaid discussion and findings, the Review Petition is beyond the limitation period and, as such, the same is dismissed being hopelessly barred by time.

The file after needful be consigned to records.

Announced

6th August, 2022

Sd/-	Sd/-	Sd/-
(Yashwant Singh Chogal)	(Bhanu Pratap Singh)	(Devendra Kumar Sharma)
Member(Law)	Member	Chairman