

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

<b>Review Petition No:</b>	<b>51 of 2021</b>
Date of Filing:	31.12.2021
Arguments Heard on:	16.07.2022
Decided on:	06.08.2022

The HP Power Transmission Corp. Ltd.  
Himfed Bhawan, Below Old MLA's Quarters,  
Tutikandi (Panjari), Shimla-171005

.....**Review Petitioner**

Versus

1. The Principal Secretary (MPP& Power),  
to the Govt. of HP, Shimla-171002.
2. The HP State Electricity Board Ltd.,  
Vidyut Bhawan, Shimla-171004.
3. The Himachal Pradesh Power Corporation Ltd.  
Himfed Building, BCS, New Shimla,  
Shimla, Himachal Pradesh 171009.

.....**Respondents**

**Review Petition under Section 94 (1) (f) of the Electricity Act, 2003, read with Regulation 63 of the HPERC (Conduct of Business) Regulations, 2005, as amended from time to time, for review of Order dated 26.08.2020 passed in Petition No. 03 of 2020 for Approval of Capital Cost and Determination of Tariff for the period 01.06.2016 to Financial Year 2023-2024 for 220 kV D/C Kashang-Bhaba Transmission line.**

**CORAM**

DEVENDRA KUMAR SHARMA  
**CHAIRMAN**

BHANU PRATAP SINGH  
**MEMBER**

YASHWANT SINGH CHO GAL  
**MEMBER (Law)**

Present:-

Sh. Vikas Chauhan, Ld. Counsel for the Petitioner.

Sh. Shanti Swaroop, Legal Consultant, for Respondent No. 1

Sh. Kamlesh Saklani, Authorized Representative for Respondent No. 2

Sh. Surinder Saklani, Ld. Counsel for Respondent No. 3.

## ORDER

This Review Petition has been filed seeking the following reliefs:

- a. Admit the Review Petition
  - b. Review the following issues as pleaded by the Petitioner and either revise the ARR approved or may consider the same at time of truing up as may be deemed fit by the Commission.
    - (i) Approval of revised capital cost of project of Rs.7789.7 Lakh for Kashang Bhabha Transmission Project.
    - (ii) Approval of debt equity ratio of 73.15:26.85.
    - (iii) Approval of R&M expenses with K factor of 1% for FY 201-20 to FY 2023-24, subject to true up based on actual at the end of the Control Period.
2. The case of the Petitioner is that Petition No. 3 of 2020 was filed by the Petitioner for approval of Capital Cost and Determination of Tariff for the period from 01.06.2016 to FY 2023-2024 for 220 kV D/C Kashang Bhabha Transmission line. During the course of the proceedings, additional submissions and clarifications as sought by the Commission were also supplied by the Petitioner and vide order dated 26.08.2020, the Petition was disposed of by the Commission disallowing part of the claims.
3. It is averred that the Summary of the Capital Cost as claimed vis-à-vis as approved by the Commission is as under:-

Particulars	Claimed (Rs. Lakh)	Approved (Rs. Lakh)
<b>Capital cost as on CoD</b>		
Supply-Transmission line material & erection stringing/ Civil works	5561.6	4961.0
Payment of Forest Department Charges	1196.8	649.1
Overheads	1941.0	1579.0
<i>Establishment</i>	<i>749.0</i>	<i>617.1</i>
<i>Contingency</i>	<i>117.7</i>	<i>117.7</i>
<i>IDC</i>	<i>1074.3</i>	<i>844.1</i>
<b>Total</b>	<b>8699.4</b>	<b>7189.1</b>

4. Thus, the Commission has not fully allowed the claims and reduced the capital cost and other norms as claimed by the Petitioner. The present Review Petition has been filed on the following three issues:-

- 1) Review of the capital cost as on CoD by proper reconciliation of the post transfer expenses of Rs. 2091.36 Crore.
- 2) Review of the approved debt equity ratio as on COD in line with the Review of the capital cost.
- 3) Variation in the approach adopted by the Commission in approval of R&M Expense for the fourth control period when compared with its earlier approach in similar asset of Petitioner viz. Bhoktoo Pooling Sub-station in Petition No. 04 of 2020.

5. In so far as issue (i) of review of the Capital Cost as on CoD, it is averred that same has been dealt in Paras 3.5.17, 3.5.22, 3.5.36 to 3.5.40 in the Order dated 26.08.2020.

6. It is averred that the Scheme was transferred to the Petitioner by the HPSEBL and the Petitioner has submitted detailed breakup and justification of various heads of Rs.6608 lakhs as per the information shared by the HPSEBL. As far as DPR is concerned, such information was not supplied to the Petitioner by the HPSEBL despite numerous reminders. However, with regard to post transfer expenses of the Scheme amounting to Rs.2091.36 lakhs, the Petitioner in the light of Additional information not previously known or available, would like to submit the revised re-conciliation of the expenses incurred and, therefore, seeks review of the Capital Cost. The revised cost is explained in Table I of the Review Petition.

7. With regard to the issue No.2 of review of approved debt: equity ratio, the Petitioner has averred that the same was dealt by the Commission in Paras 3.6.3, 3.6.4, 3.6.5, 3.6.7, 3.6.8 and 3.6.9 of the Order dated 26.08.2020.

8. It is averred that the Commission has considered the debt: equity ratio of

75.96:24.04 as proposed by the Petitioner considering that the same is below the normative debt: equity ratio of 70:30 allowed as per HPERC Tariff Regulations, 2011. It is averred that the Commission in the impugned order has taken cognizance of the fact that funding of the Capital Cost has been subjected to revision on account of internal adjustment between the entities. As per the Petitioner, the approved debt: equity ratio is required to be 75.13:26.85 for the purpose of calculation for Kashang-Bhabha Transmission line taking into consideration that the expenditure of Rs.2091.36 lakhs has been incurred by the Petitioner out of the internal resources, the detail whereof after reconciliation of such entire expenditure had been submitted by the Petitioner to the Commission. The revised debt: equity shares for transmission Project is depicted in Table-2 of the present Petition.

9. In so far as the issue No.3 of variation in the approach of calculation of R&M expenses is concerned, the Petitioner has reproduced Paras 4.5.4 and 4.5.5 of the Order dated 26.08.2020 where said issue has been dealt with.

10 It is averred that the Commission in a similar asset of the Petitioner, i.e. Pooling Station at Bhoktoo in Petition No. 4 of 2020 disposed off vide Order dated 25.07.2020 for the purpose of calculation of R&M expenses for fourth Control Period has adopted an approach in variation with the approach adopted for the Kashang-Bhabha line Scheme. Substantiating the same, Paras 4.5.4 and 4.5.5 of order dated 25.07.2020 in Petition No. 4/2020 have been reproduced as under:-

*“4.5.4 The Commission has examined the submission of the Petitioner on R&M expenses in line with HPERC MYT Transmission Regulations 2011. The Commission has the K Factor using actual R&M expenses provided by the Petitioner based on audited accounts and approved GFA for FY 2017-18 and FY 2018-19. The K factor computed is summarized in the table below:*

**Table 38: K-factor considered from FY 17 and FY18 (Rs. Lakh)**

<b>Particulars</b>	<b>FY 18</b>	<b>FY 19</b>
<i>Approved GFA</i>	3461.9	5197.9
<i>Actual R&amp;M expenses as per Audited Accounts</i>	27.4	42.0
<b>K factor as considered in MYT Petition</b>	<b>0.79%</b>	<b>0.81%</b>

4.5.5 The Commission observes that K factor for FY2017-18 and FY 2018-19 is significantly lower as compared with the claim of the Petitioner. For the purpose of computation of R&M Expenses of Bhoktoo Substation for fourth Control Period, the Commission has considered K factor of 1% along with WPI growth rate and shall be reviewed by the Commission at the end of the Control Period.”

11. It is averred that in respect of Pooling Station at Bhoktoo, the Commission for the 4<sup>th</sup> control period has considered the K factor of 1% that the K factor for the prior period is significantly low. Whereas in the present case, the K factor of 0.76% for both FY 2017-2018 and FY 2018-2019 is even less than that of K factor of 0.79% and 0.81% for FY 2017-2018 and FY 2018-2019 respectively in case of Bhoktoo Pooling Station and difference in approach in case of similar asset is sufficient for review of the Order dated 26.08.2020. Thus, the difference in approach of applying the K factor of 1% for the purpose of R&M expenses of both the Schemes is sufficient for reviewing the Order dated 26.08.2020. According to the Petition, the revised R&M expenses subject to true up at the end of Control Period will be as follows.

**Table 3 R&M expenses for the Kashang Bhabha Transmission Project (Rs. Lakh)**

<b>Particulars</b>	<b>FY 20</b>		<b>FY 21</b>		<b>FY 22</b>		<b>FY 23</b>		<b>FY 24</b>	
	<b>Approved</b>	<b>Claim</b>	<b>Approved</b>	<b>Claim</b>	<b>Approved</b>	<b>Claim</b>	<b>Approved</b>	<b>Claim</b>	<b>Approved</b>	<b>Claim</b>
<b>GFA</b>	7189.1	7789.1	7189.1	7789.7	7189.1	7789.7	7189.1	7789.7	7189.1	7789.7
<b>Growth Rate- WPI</b>	2.98%	2.98%	2.98%	2.98%	2.98%	2.98%	2.98%	2.98%	2.98%	2.98%
<b>K Factor</b>	0.76%	1.00%	0.76%	1.00%	0.76%	1.00%	0.76%	1.00%	0.76%	1.00%
<b>R&amp;M Expenses</b>	<b>56.10</b>	<b>80.22</b>	<b>57.80</b>	<b>82.61</b>	<b>59.50</b>	<b>85.07</b>	<b>61.30</b>	<b>87.61</b>	<b>63.10</b>	<b>90.22</b>

12. It is averred that no other Petition has been filed. Also averred that neither Section 114 nor Order 47 of Code of Civil Procedure, 1908 nor

Regulation 63 of HPERC (Conduct of Business) Regulations, 2005 nor Section 94 of the Electricity Act, 2003 specify timeline under which Petition for Review is to be filed, hence, the Petition is within time.

13. The Petition has been contested by the Respondents No. 2 and 3 by filing separate replies.

14. The Respondent No.3 HPPCL in its reply has averred that the Commission has approved the Capital Cost by scrutinizing the figure submitted in the main Petition and now no review can be made.

15. The Respondent No.2 in its reply has averred that the Commission has extensively dealt with each and every aspect in its Order dated 26.08.2020 in various paragraphs and has carefully considered the Capital Cost based on facts, time overrun and unexplained expenses. It is averred that there is no error apparent in Order dated 26.08.2020 and any change/reconsideration may be considered at the time of trueing up of the Tariff. Also averred that the review of Debt: Equity ratio and R&M expenses is also not permissible as there is no error on the face of record in Order dated 26.08.2020.

16. No reply has been filed by Respondent No.1.

17. In rejoinder the contents of replies have been denied and those of Petition have been re-affirmed.

18. We have heard Sh. Vikas Chauhan, Ld. Counsel for the Petitioner, Sh. Shanti Swaroop, Legal Consultant for Respondent No.1, Sh. Kamlesh Saklani, Authorised Representative for Respondent No.2 and Sh. Surinder Saklani, Ld. Counsel for Respondent No.3.

19. Sh. Vikas Chauhan, Ld. Counsel for the Petitioner 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 26.08.2020 whereby part of the claims

have been disallowed. He has also submitted that neither any appeal has been filed against the Order dated 26.08.2020 nor the Order dated 26.08.2020 is in question in any court of law and in the light of additional information not previously known or available, the Petitioner has submitted revised reconciliation of the expenses and, as such, there are sufficient reasons to review the Order. He has also submitted that the delay, if any, in filing the Review Petition may kindly be condoned.

20. The Respondents or the other hand have submitted that the Commission has considered each and every aspect of the matter while deciding Petition No. 3 of 2020 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 26.08.2020. The Respondents have also submitted that the Petitioner may approach the Commission for reconsideration at the time of true up of the Capital Cost.

21. 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.

22. 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**

23. Before adverting to the aspect of Limitation, it is relevant to refer that the Petitioner has claimed that no period of limitation is provided either under Section 94 of the Electricity Act, 2003 nor under Regulation 63 of the HPERC

(Conduct of Business) Regulations, 2005 nor Section 114 and order 47 Code of Civil Procedure, 1908 provide for any time for filing Review Petition, and therefore, the Petitioner declares that the Review Petition is within time. Para 6 of the Petition is reproduced as under:-

*“This Petition has been filed in line with Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 63 of HPERC Conduct of Business Regulations, 2005 and Amendments thereof. 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. The provisions related to Review are defined under Section 114 and Order 47 which does not specify for any timeline. Further, Regulation 63 of HPERC Conduct of Business Regulations, 2005 and its Amendments thereof also does not specify for a timeline under which a Petition for Review has to be filed. Therefore, the Petitioner declares that the Petition is within the limitation period, if any.”*

24. It is none of the case of the Petitioner that the Order dated 26.08.2020 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. 3 of 2020 was passed on 26.08.2020. The present Review Petition has been filed on 30.12.2021 i.e. after a delay of about 490 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 the final 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 setup 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. 3 of 2020 on 26.08.2020 but the Petition has been filed only on 30.12.2021, after about 490 days after passing of the Order. There is no explanation for the delay except a statement that no period of limitation is provided for Review either in Section 94 of the Electricity Act, 2003 or under Section 114 and Order 47 of Code of Civil Procedure, 1908 or under Regulation 63 of HPERC (Conduct of Business) Regulations, 2005 and, therefore, the Review is within time. No application explaining the delay in filing the Review Petition and for condoning 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**

**6<sup>th</sup> August, 2022**

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