

**THE HIMACHAL PRADESH ELECTRICITY REGULATORY  
COMMISSION SHIMLA**

**Petition No:** 72 of 2023  
**Instituted on:** 28.07.2023  
**Heard on:** 01.08.2024  
**Decided on:** 26.09.2024

**CORAM:**

DEVENDRA KUMAR SHARMA  
**CHAIRMAN.**

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

SHASHI KANT JOSHI  
**MEMBER.**

**In the matter of:-**

M/s Usaka Hydro Powers (P) Limited,  
Corporate office at 339, F.I.E.,  
Patparganj, Delhi – 110092, through  
Sh. Varun Kumar Sharma, Authorized Signatory

.....**Petitioner**

Versus

1. The Himachal Pradesh State Electricity Board Ltd. through its  
Executive Director,  
Vidyut Bhawan, Shimla-171004. ....**Respondent No. 1**
2. The Himachal Pradesh State Electricity Board Ltd. through its  
Chief Engineer (System Operation),  
Vidyut Bhawan, Shimla-171004. ....**Respondent No. 2**

**Petition u/s 86 and 94 of the Electricity Act, 2003 for issuance of directions to the Respondents to sign the Joint Petition and paying the Tariff @ Rs. 2.57 kWh from the date of signing of the PPA and also for setting aside order dated 14.07.2023.**

**Present:-**

Sh. Ajay Vaidya, Ld. Counsel for the Petitioner.

Sh. Sumit Dhiman, Authorised Representative for the Respondents No. 1 and 2.

**ORDER**

This Petition has been filed by the Petitioner under Sections 86 and 94 of the Electricity Act, 2003 (Act for short) directing the Himachal Pradesh State Electricity Board Limited/ Respondents (HPSEBL/ Respondents for short) for signing the Joint Petition for approval of Power Purchase Agreement (PPA for short) under REC Mechanism and to pay tariff @ Rs. 2.57 kWh as fixed for the year 2023-24 in respect of Suman Sarbari Hydro Electric Project situated at Sarbari Khad, Distt. Kullu, H.P. (Project for short) and for quashing and setting aside the office Order dated 14.07.2023 passed by the Respondents.

**Petitioner's Case**

2. The Petitioner signed an Implementation Agreement (IA for short) (Annexure P-2) with the Government of Himachal Pradesh (GoHP for short) on 28.08.2002 for establishing Suman Sarwari Hydro Electric Project of 2.50 MW capacity (1<sup>st</sup> unit for short). After signing the above IA, the

Petitioner and the Respondents signed the PPA (Annexure P-3) on 23.12.2005 for supplying the net saleable energy from the Project to the Respondents @ Rs. 2.50 kWh for useful life of the Project.

3. On enhancing the capacity of the Project to 5.0 MW from 2.50 MW, the Petitioner further signed the Supplementary Implementation Agreement (SIA for Short) with the GoHP on 30.07.2010 (Annexure P-4). Therefore, the total capacity of the Project is 5.0 MW. The HPSEBL was under a mandate pursuant to the GoHP notification dated 06.05.2000 and December, 2000 to purchase the hydro electric power from the Projects upto 5.0 MW capacity from the IPPs @ Rs. 2.50 kWh and accordingly, the Article 6.2 of the PPA dated 23.12.2005 (wrongly mentioned as 3<sup>rd</sup> December, 2004) provides that the Respondent shall pay for the net saleable energy delivered by the Petitioner to the Respondent at the interconnection point at a fixed rate of Rs. 2.50 kWh.

4. After signing the IA dated 28.08.2002 & PPA dated 23.12.2005, the State of HP issued guidelines under the Hydro Policy, 2006, Water Act, 1974 and Environment Protection Act, 1986 that all the existing and upcoming hydro projects in the State of Himachal Pradesh shall maintain a minimum flow of water, downstream of the diversion structure throughout

the year at the threshold value not less than fifteen percent immediately downstream of the diversion structure all the time, including lean season from November to March, into the main river/ water body whose water is being harnessed by the project. Due to these directives, the Petitioner finds that the tariff of Rs.2.50 kWh fixed at the time of signing the PPA dated 23.12.2005 is inadequate to meet the additional expenditure being incurred on account of LADA Charges, forest and fisheries levies, increase in production cost, capital cost, minimum maintenance of water flow and payment of royalty @ 6%, 15% and 18 % for the first 12 years, next 18 years and for the remaining period of ten years, respectively.

5. According to the Petitioner, Sections 3, 61 (h), 66 & 86 (1)(e) and 178 of the Act and REC guidelines issued by the Central Electricity Regulatory Commission (CERC for short) provide for acceleration and development of Renewable Energy based generation. Further, the National Electricity Policy & Plan for development of power system based on optimal utilization of sources including Renewable Energy Sources (RE Sources for short) provide that the tariff regulations are to be guided by Promotion of Generation of Electricity from RE Sources and that the Commission shall endeavour to promote the development of market in such a manner as may

be specified and guided by the National Electricity Policy. Further, the CERC has issued modal guidelines for accreditation for RE Projects under REC Mechanism by framing the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 which provide for issuance of Renewable Energy Certificates (RECs for short). Further the Order dated 01.06.2010 passed by the CERC provides that the procedure shall be applicable to all the generating companies engaged in generation of electricity from renewable energy sources such as small hydro, wind, solar including its integration with combined cycle, biomass, bio fuel, cogeneration, urban or municipal waste and such other sources as recognized or approved by Ministry of New and Renewable Energy subject to fulfilment of eligibility conditions for participating under REC mechanism on or after April 1, 2010 in accordance with the provisions stipulated under the CERC REC Regulations. The CERC Order further provides that the State Agencies, as may be designated by the State Electricity Regulatory Commissions to act as State Agency for accreditation and recommending the renewable energy projects for registration, shall follow aforesaid procedure for accreditation of Renewable Energy Generating Companies

for their Renewable Energy Power Projects subject to fulfilment of eligibility conditions for participating in REC mechanism on or after April 1, 2010 in accordance with conditions outlined under the CERC REC Regulations. The State Agency shall undertake the accreditation of any renewable energy generation project of the generating company not earlier than six months prior to the proposed date of commissioning of such RE generation project. For existing eligible RE Generation Project, not bound by way of long term power purchase agreement, the State Agency shall undertake the accreditation of the RE Generation Project as and when the RE Generating Company makes an application for accreditation.

6. Also averred that the Electricity Act, 2003, the policies framed under the Act, as also the National Action Plan on Climate Change (NAPCC) provide for a roadmap for increasing the share of renewable in the total generation capacity in the country. However, the RE sources are not evenly spread across different parts of the country and in such States, where there is high potential of RE Sources, there are avenues for harnessing the RE potential beyond the RPO level fixed by the SERCs but the high cost of generation from RE sources discourages the local distribution licensees from purchasing RE generation beyond the RPO level mandated by the

State Commission. It is in this context that the concept of RECs assumes significance which seeks to address the mismatch between availability of RE sources and the requirement of the obligated entities to meet their RPO. It is also expected to encourage the RE capacity addition in the States where there is potential for RE generation as the REC framework seeks to create a national level market for such generators to recover their cost. It is averred that the CERC has notified Regulations on RECs in fulfilment of its mandate to promote renewable sources of energy and development of market in electricity in order to give push to RE capacity addition in the country with the following Salient Features:

- i) There will be a central level agency to be designated by the Central Commission for registration of RE generators participating in the scheme.
- ii) The RE generators will have two options - either to sell the renewable energy at preferential tariff fixed by the concerned Electricity Regulatory Commission or to sell the electricity generation and environmental attributes associated with RE generation separately.
- iii) On choosing the second option, the environmental attributes can be exchanged in the form of REC. Price of electricity component would be equivalent to weighted average power

- purchase cost of the distribution company including short-term power purchase but excluding renewable power purchase cost.
- iv) The Central Agency will issue the REC to RE generators.
  - v) The value of REC will be equivalent to 1 MWh of electricity injected into the grid from renewable energy sources.
  - vi) The REC will be exchanged only in the Power Exchanges approved by CERC within the band of a floor price and a forbearance (ceiling) price to be determined by CERC from time to time.
  - vii) The distribution companies, Open Access consumer, Captive Power Plants (CPPs) will have option of purchasing the REC to meet their Renewable Purchase Obligations (RPO). Pertinently, RPO is the obligation mandated by the State Electricity Regulatory Commission (SERC) under the Act, to purchase minimum level of renewable energy out of the total consumption in the area of a distribution licensee.
  - viii) There will also be compliance auditors to ensure compliance of the requirement of the REC by the participants of the scheme.

7. Further, the guidelines for payment of Fees & Charges for "Registration and Issuance" have also been laid which are also required to be followed by RE Generators w.e.f. 01.01.2012. It is averred that the REC mechanism is a market based instrument, which can be traded on CERC approved power exchanges to obligated entities or voluntary buyers to fulfil



their Renewable Energy Purchase Obligation. It is averred that keeping in view the above, the Petitioner requested the Respondent vide letter dated 17.02.2012 to modify and sign the existing PPA (dated 23.12.2005) and to sign the new PPA for enhanced capacity of the Project i.e. 5.0 MW so that a consolidated PPA may be signed under REC Mechanism.

8. As per the Petitioner, a Joint Petition No. 27 of 2018 was filed by the parties on 21.06.2018 which was allowed by the Commission vide Order dated 02.07.2018 observing as under:-

*(i) The proviso of section 6.1 of Article 6 of executed SPPA, shall be substituted as:*

*"Provided that the 50% of the total quantum of Net Saleable Energy from the Project in respect of the period from 16.06.2018 to 30.06.2023 (or such other extended period as may be mutually agreed) from the date of Synchronization of the both units of the Project shall be considered as supplied under REC Mechanism at the year wise rate as per section 6.2(b) of executed SPPA dated 12.11.2013. However, after the expiry of the said period i.e. 16.06.2018 to 30.06.2023 (or such other extended period as may be mutually agreed), the entire quantum of Net Saleable Energy shall be considered as supplied by the Company to the HPSEBL in accordance with section 6.2(a) of SPPA dated 12.11.2013."*

*(ii) section 10.1 of Article 10 of executed SPPA shall be substituted as: "The Agreement shall become effective upon execution and delivery by the parties hereto and unless earlier terminated pursuant to provision of the agreement shall have a term upto 40 years after the synchronization date of the first unit of the project. Out of which 50% of Net Saleable Energy shall be governed as per Long Term PPA executed on 23.12.2005 @ Rs. 2.50/kWh and the balance 50% of net*

*saleable energy shall be governed as per the SPPA under REC Mechanism upto 30.06.2023. After the period of sale under REC Mechanism upto 30.06.2023 or such extended period as may be mutually agreed by the parties), the entire quantum of Net Saleable Energy shall be considered as supplied by the Company to HPSEBL in accordance with Section 6.2(a) of SPPA executed on 12.11.2013."*

*3. Other terms and conditions of SPPA shall be as per the executed Supplementary Power purchase agreement (SPPA) dated 12th November, 2013 in respect of Suman Sarwari Hydro Electric Project (Additional capacity of 2.5 MW i.e. 2nd Unit).*

*4. In addition, all other terms and conditions including tariff i.e. at a fixed rate of Rs. 2.50 per kWh, in respect of long term PPA, already executed in respect of Suman Sarwari Hydro Electric Project on 23rd December, 2005 shall remain in force.*

*5. The SPPA shall be subject to provisions of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2010; the procedure for registration of Renewable Energy Generation Project by Central Agency; the procedure/Guidelines for accreditation of Renewable Energy Generation Project for REC Mechanism by State Agency; HPERC (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010; regulation 16(5) of Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination), Regulations, 2012 and Commission's order dated 31" October, 2013 in the petition 91/2013 (MA No. 126/2013).*

*6. The Petitioners are directed to execute the Supplementary Power Purchase Agreement (SPPA) accordingly and three copies of the executed Power Purchase Agreement be submitted to the Commission for record. It is so ordered."*

The copy of the order is placed on record as Annexure P-5.

9. As per the Petitioner, the parties signed the SPPA as per Order dated 02.07.2018 on 18.07.2018 (Annexure P-6). On 30.05.2023 (Annexure P-7), the Petitioner requested the HPSEBL for signing the PPA in respect of Project (i.e. 2.5MW +2.5 MW) under REC mechanism mentioning that the short term PPA dated 18.07.2018 under which 50% of the net saleable energy generated shall be sold under REC mechanism for a period of 5 years from the date of signing of the PPA is about to expire on 30.06.2023 (Annexure P-7).

10. The Respondents vide letter dated 14.07.2023 (Annexure P-8), intimated the Petitioner that the HPSEBL has decided not to extend the term of sale/ purchase of energy under REC mechanism for 2<sup>nd</sup> unit i.e. 2.5 MW beyond 30.06.2023 and that as per the provisions of Clause 6.1 & 10.1 of SPPA dated 18.07.2018 (Annexure P-6), after expiry of the period under REC mechanism (16.06.2018 to 30.06.2023), the entire quantum of net saleable energy shall be considered to be supplied by the Petitioner to the HPSEBL in accordance with Article 6.2 (a) of the SPPA dated 12.11.2013 at the tariff of Rs. 2.50 per kWh for the balance term of PPA dated 23.12.2005. It is averred that order dated 14.07.2023 (Annexure P-8) is

illegal, arbitrary and unreasonable and against the regulations framed by the Commission.

11. The Petitioner has raised the following questions of law:-

- A. Whether the Petitioner is entitled for the tariff @ Rs. 2.57 per unit under the REC Mechanism as determined by this Hon'ble Commission?
- B. Whether the Board is justified in refusing the extension of SPPA to the Petitioner when the Board (HPSEBL) has already granted extension on the same grounds to other IPPs?
- C. Whether the refusal of the Board (HPSEBL) not extending the period of SPPA is discriminatory, unreasonable and unjustified?

12. While raising the grounds of challenge, it is averred that the tariff of Rs. 2.50 per unit was fixed in year, 2005 taking into account cost plus approach and other indicative factors including inflation and the prevailing policy which was not as deterrent as compared to the present policy being enforced against the IPPs and that the action of the Respondents shall not only hit the current Projects financially but may also affect future development and may create a sense of insecurity. Further, when the PPA was signed in the year 2005, neither the REC Mechanism was in existence nor the evacuation of power of the Project had commenced, therefore, the Petitioner has not been benefitted from PPA under the preferential tariff and that the earlier tariff was fixed as per duties, taxes and policies existing

in the year 2000. Further, with the latest policy changes in respect of maintenance of minimum flow downstream, the generation of electricity will also be affected adversely and decrease resulting in increase of cost per unit requiring re-determination of the tariff. Also that the State of H.P. is suffering from deficit/ shortage of power, as such, there is no reason for not considering the REC Mechanism for the Project.

13. Also there is no reasonable basis to discriminate the Petitioner Project from those which are also under construction/ constructed and pending commissioning or commissioned and in view of the Orders passed by the Commission and the Hon'ble APTEL, the PPA executed and approved by the Commission can be reopened for ensuring that the benefit of tariff is made available to the developer. In the present case, though the PPA has been executed, yet the Petitioner cannot be permanently discriminated from other developers that the PPA has been executed on prior point of time. Not only this, as per Order dated 01.06.2010 passed by the CERC, it has been observed that "If RE Generating Station has no separate metering, but has part generation tied up under preferential tariff PPA & remaining generation under REC Mechanism then the entire RE generation shall be treated on pro-rata basis". Since, the earlier PPA has

been executed for 2.5 MW and the capacity has been enhanced to 5 MW subsequently, the case of the Petitioner is covered under Order dated 01.06.2010 and the new PPA can be executed under the REC Mechanism.

14. Further the Commission has also framed the Himachal Pradesh Electricity Regulatory Commission (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010, (RPPO Regulations for short) and definition of renewable energy sources, State Agency and Regulations 3, 4, 5, 7, 8 and 13 thereof have been reproduced. It is averred that the Commission under the above Regulations has retained the power to revisit the cases under REC mechanism on case to case basis and the case of the Petitioner clearly falls under the ambit of aforesaid Regulations and may be considered and the existing PPA may be scrapped and new PPA may be signed for the entire installed capacity under REC mechanism for the total capacity i.e. 5.0 MW. Also that while signing the earlier PPA, the Petitioner had little or no bargaining ability and that the provisions of existing PPA ( dated 23.12.2005 for 2.5 MW) are onerous and burdensome which was not a product commercial negotiation and same bargaining strength.

15. Also averred that Project meets all criteria set out by the Respondents and had legitimate expectation of being considered under REC mechanism and was similar situated to other IPPs, whose time period has been extended by the HPSEBL on similar facts and circumstances, and, therefore, the non-consideration of the extension of time period of the SPPA of the Project is arbitrary, irrational and against the settled law and principles of natural justice as all conditions being same, the entities similarly situated cannot be treated differently merely on whims and fancies. Also that the Petitioner has been denied the benefit under the REC Mechanism without assigning any reason as such the decision is illegal and discriminatory and shows malafide on the part of the Respondents.

16. Further the Respondents has an obligation to act fairly and objectively but have failed to act in a just, fair, transparent and objective manner. A reference has been made to the observations of Hon'ble Supreme Court in M/s Reliance Energy Limited & Another Versus Maharashtra State Road Development Corporation Limited & Others.

17. Further, the action of the Respondents is vitiated by the naked bias and is capricious, harsh, oppressive and monopolistic and against the public policy and interest and have ousted the Petitioner so as to benefit

others despite the fact that the Petitioner never resisted the pooled cost charges being paid towards the generation during the past period under REC Mechanism inspite of the fact that the rate under REC was even lesser than the rate under regular PPA for initial capacity of 2.50 MW i.e. less than Rs. 2.50 per kWh. Copies of the orders (Annexure P-9) of the similar situated PPAs in respect of M/s Ginni Global Private Limited, M/s Prodigy Hydro Power Private Limited and M/s Greenko Sumez Hydro Energies Private Limited (Annexure P-9) has been placed on record that the Petitioner case is similar to the same and thus, the Petitioner cannot be treated differently. Reliance has also been placed in the law laid down by the Hon'ble Apex Court in case titled as "The Vice Chairman & Managing Director V. Shishir Realty Private Limited, Civil Appeal Nos. 3956-3957 of 2017 and connected matters decided on 29.11.2021."

18. Also that the Commission has determined Rs. 2.57 per kWh as the average power purchase cost for the FY 2023-24 in Petition No. 1 of 2023 and the Petitioner had the reasonable expectation of the same being granted to the Project but the same has been denied. Hence, the Petition.



## **REPLY OF THE RESPONDENTS**

19. The Petition has been resisted and contested by filing reply raising preliminary submissions that the Respondents in compliance of the terms of PPA dated 23.12.2005 & SPPAs dated 12.11.2013, 31.05.2013 and 18.07.2018 have decided not to extend the terms of sale/ purchase of energy under REC mechanism for 2<sup>nd</sup> unit of the Project, beyond 30.06.2023 and conveyed the same to the Petitioner vide letter dated 14.07.2023 (Annexure P-8). According to the Respondents, a perusal of the SPPA dated 18.07.2018 clearly stipulates that until the terms of the agreement are mutually extended after 30.06.2023, the entire quantum of the net saleable energy shall be considered supplied by the Petitioner to the Respondents in accordance with the Clause 6.2 (a) of the SPPA dated 12.11.2013 (Annexure P-6).

20. According to the Respondents, the PPA dated 23.12.2005 (Annexure P-3) was executed for sale/purchase of power from the Project at preferential tariff of Rs. 2.50 kWh which was for the installed capacity of the project i.e. 2.50 MW, However, the Project capacity was enhanced to 5.0 MW from 2.50 MW and the Petitioner signed SIA with the GoHP on

30.07.2010 in this regard. The first unit i.e. 2.5 MW (original capacity) was, however, commissioned on 30.12.2012.

21. Further for the sale/ purchase of energy for the enhanced capacity of 2.50 MW (2<sup>nd</sup> unit) of the Project, the parties executed the SPPA on 31.05.2013 for a period of five years till 15.06.2018 and as per the said SPPA, the parties agreed to sell and purchase the entire saleable generation of 5.0 MW on the same terms and conditions including tariff, for the entire term as provided in the original PPA dated 23.12.2005 (Annexure P-3) with a provision that from the date of synchronization of both the units of the project, 50% of the total net saleable energy shall be sold under REC mechanism for a period of 5 years i.e. till 15.06.2018 or as may be mutually agreed.

22. It is averred that the parties subsequently executed the 2<sup>nd</sup> SPPA on 18.07.2018 to extend the terms of sale/ purchase of energy under REC mechanism for another five years till 30.06.2023 and as per Clause 10.1 of the 2<sup>nd</sup> SPPA dated 18.07.2018, the Agreement shall become effective upon execution and delivery by the parties and unless earlier terminated, pursuant to the provisions of the agreement, shall have a term upto 40 years after the synchronization date of the first unit of the project. Further

out of the total energy, 50% of net saleable energy (2.50 MW) shall be governed as per Long Term PPA signed on 23.12.2005 @ Rs. 2.50 kWh and the balance 50% of net saleable energy (2<sup>nd</sup> unit of 2.50 MW) shall be governed as per the SPPA under REC mechanism upto 30.06.2023.

23. It is also averred that SPPA dated 18.07.2018 explicitly provides that after the period of sale under REC Mechanism upto 30.06.2023 or the extended period, as may be mutually agreed, the entire quantum of net saleable energy be considered as supplied in accordance with Clause 6.2 (a) of SPPA dated 12.11.2013.

24. It is averred that the terms of the REC Mechanism of 50% of the net saleable energy delivered by the Project was only till 30.06.2023 and that the APPC tariff for FY 2023-24 i.e. Rs.2.57 kWh which is higher than the preferential tariff of Rs. 2.50 kWh agreed for the sale/ purchase of energy generated by the original capacity of 2.50 MW (1<sup>st</sup> unit) as per the PPA dated 23.12.2005 and, therefore, the replying respondent decided not to extend the term of sale/purchase of energy under REC mechanism for 2<sup>nd</sup> unit of 50% beyond 30-06-2023 in the interest of consumers of Himachal Pradesh reiterating that it has been specifically agreed by the parties in Clause 6.1 of the SPPA dated 18.07.2018 that after 30.06.2018, unless

mutually agreed, the entire quantum of net saleable energy shall be considered as supplied in accordance with Clause 6.2 (a) of the SPPA dated 12.11.2013.. Therefore the contention of the Petitioner that non extension of the terms of PPA under REC Mechanism beyond 30.06.2023 is arbitrary, irrational and against the well settled principles of law is baseless. Article 6.2 (a) of SPPA dated 12.11.2013 has been reproduced.

25. On merits, the contents have been denied that Petitioner has no cause of action to file and maintain the Petition as in the SPPA dated 18.07.2018, it was agreed by the Petitioner that after the expiry of term of 5 years i.e. 30.06.2023, in the absence of mutually agreed terms and conditions, Clause 6.2 (a) of the SPPA dated 12.11.2013 shall automatically come into play. Further, the tariff of Rs. 2.50 per kWh has been approved by the Commission in the year 2005 and once the PPA has been executed for the useful life of the Project, the parties are bound by the terms and conditions of the agreement. It is denied that the provisions of PPA amounts to eroding the economy of the Project. Also reiterated that after the execution of SIA in the year, 2012, the SPPA was executed on 31.05.2013 for additional capacity of 2.5 MW of the Project, wherein Clause 6.2 of the earlier SPPA (dated 2012) was modified which specifically states

that after exit from REC Mechanism in respect of additional capacity of 2.50 MW (2<sup>nd</sup> unit), the tariff for the entire net saleable energy (from total capacity of 2.5 MW x 2.5 MW) for the residual part of the tariff period shall be as per the long term PPA executed between the parties in respect of original capacity of 2.5 MW (1<sup>st</sup> Unit) on 23.12.2005 at fixed rate of Rs. 2.50 per kWh which shall not be changed due to any reason whatsoever. Not only this, when the SPPA was executed on 18.07.2018, Article 6 and 6.1 and Article 10 and 10.1 have been substituted as under:

*Article:6, Clause 6.1*

*"Provided that the 50% of the total quantum of Net Saleable Energy from the project in respect of the period from 16-06-2018 to 30-06-2023 (or such other extended period as may be mutually agreed) from the date of synchronization of the both units of the project shall be considered as supplied under REC mechanism at the year wise rate as per section 6.2(B) of executed SPPA dated 12-11-2013. However, after the expiry of the said period i.e. 16-06-2018 to 30-06-2023 (or such other extended period as may be mutually agreed), the entire quantum of Net Saleable Energy shall be considered as supplied by the Company to the HPSEBL in accordance with section 6.2(a) of SPPA dated 12-11-2023."*

*Article 10, Clause 10.1*

*"The Agreement shall become effective upon execution and delivery by the parties hereto and unless earlier terminated pursuant to provision of the agreement shall have a term upto 40 years after the synchronization date of the first unit of the project. Out of which 50% of net saleable energy shall be governed as per Long Term PPA signed on 23-12-2005 @ 2.50/ kWh and the balance 50% of net saleable energy shall be*

*governed as per the SPPA under REC mechanism upto 30-06-2023. After the period of sale under REC Mechanism upto 30-06-2023 (or such extended period as may be mutually agreed by the parties), the entire Net saleable energy shall be considered as supplied by the company to HPSEBL in accordance with Section 6.2 (a) of SPPA dated 12-11-2013."*

26. Further, the Order of Ld. CERC dated 01.06.2010 is not applicable to the present case in as much as that the parties have mutually agreed per SPPA dated 18.07.2018 that unless the term of SPPA is extended beyond 30.06.2023 mutually, entire quantum of net saleable energy shall be settled at a fixed tariff of Rs. 2.50 kWh as agreed in the original PPA (23.12.2005). Further the contracts executed between the parties have to be read in its literal form, as such, the contention qua legitimate expectation with respect to REC Mechanism is totally irrelevant. Further the Judgments as relied are not applicable to the facts of the present case.

27. In rejoinder the contents of the reply have been denied and those of the Petition have been reaffirmed.

28. We have heard Sh. Ajay Vaidya, Ld. Counsel for the Petitioner and Sh. Sumit Dhiman, Authorised Representative for the Respondents.

29. Sh. Ajay Vaidya, Ld. Counsel for the Petitioner has contended that when the initial PPA in respect of the 1<sup>st</sup> Unit of the Project i.e. 2.50 MW was signed by the Petitioner, the REC Mechanism was not in existence but

when the 2<sup>nd</sup> unit was commenced in the year, 2013, the REC Mechanism was under place and, as such, the Respondent agreed to purchase the power from the 2<sup>nd</sup> unit of the Project i.e. 2.5 MW under REC Mechanism and SPPA dated 12.11.2013 was accordingly signed for a period of five years which had been further been extended vide SPPA dated 18.07.2018 for a further term of five years till 30.06.2023. According to him, since the part generation i.e. the 2<sup>nd</sup> unit of the Project (2.5 MW) is tied up under the REC Mechanism and the 1<sup>st</sup> unit is tied up under the preferential tariff per PPA dated 23.12.2005, the entire generation from the Project of the Petitioner i.e. 5MW (2.5 MW + 2.5 MW) is required to be treated under REC Mechanism under pro-rata basis but the Respondents have denied the REC Mechanism to the Petitioner without any justifiable reasons and the action is illegal and arbitrary. He has also submitted that in view of the mandatory requirement of release of 15% of the water throughout the year including the lean season as per the directives of the Policy of the GoHP, the generation of the electricity from the Project has decreased, as such, the tariff as agreed to be paid per PPA dated 23.12.2005 which is Rs. 2.50 kWh is required to be re-determined. He has also submitted that the action of the Respondents in not extending the benefit of REC, at least for the 2<sup>nd</sup>

unit beyond 30.06.2023 is discriminatory, whereas the Respondents have provided the REC benefit in respect of the similar situated Projects i.e. M/s Ginni Global Private Limited, M/s Prodigy Hydro Power Private Limited and M/s Greenko Sumez Hydro Energies Private Limited and thus, on the same analogy, the Respondents are required to sign the SPPA w.e.f. 01.07.2023 under REC Mechanism in respect of the 2<sup>nd</sup> unit i.e. 2.50 MW. He has further submitted that the APPC rate as determined by the Commission i.e. Rs. 2.57 kWh for FY 2023-24 is required to be provided to the Project of the Petitioner and that the request of the Petitioner dated 30.05.2023 has been illegally rejected vide letter dated 14.07.2023.

30. Sh. Sumit Dhiman, Authorised Representative for the Respondents, on the other hand, has submitted that as per PPA dated 23.12.2005, the Petitioner has agreed to supply the power from the 1<sup>st</sup> unit i.e. 2.50 MW for the useful life of the Project at Rs. 2.50 per kWh, which is firm and final and cannot be changed in any manner and the Petitioner is bound to supply the power as agreed. In respect of the 2<sup>nd</sup> unit of 2.50 MW as per the enhanced capacity, commissioned in the year, 2013, he submits that the parties had mutually agreed to deal the same under REC Mechanism for a term of 5 years till 2018 and accordingly signed the SPPA on 12.11.2013. According



to him, the terms of SPPA dated 12.11.2013 were further extended mutually vide SPPA dated 18.07.2018 for a period of five years till 30.06.2023. According to him, it is specifically agreed in SPPA. dated 18.07.2018 that the entire quantum of net saleable energy of both units i.e. 2.5 MW + 2.5 MW shall be considered supplied by the Petitioner to the HPSEBL in accordance with Clause 6.2 (a) of the SPPA on exit from REC Mechanism and that beyond 30.06.2023, it has been decided not to extend the terms of sale/ purchase under REC Mechanism in the interest of consumers of the State. As such, the Petitioner cannot claim that the Petitioner is entitled for REC in respect of 2<sup>nd</sup> unit and is bound to supply the power at fixed rate of Rs. 2.50 per kWh as agreed till the useful life of the Project. According to him, the letter dated 14.07.2023 is in accordance with the SPPAs dated 12.11.2013 and 18.07.2018.

### **POINTS FOR DETERMINATION**

31. We have considered the submissions of the Ld. Counsel for the Petitioner, Authorised Representative of the Respondents and gone through the entire record carefully. The following points arise for determination in the present Petition:-

**Point No. 1.** Whether the Project is entitled for the tariff @ Rs. 2.57 per unit under the REC Mechanism as determined by the Commission for the Financial year 2023-24 and the Respondents have illegally refused the extension of SPPA dated 18.07.2018 in respect of the Project under REC Mechanism despite extending such SPPAs of other IPPs under REC Mechanism?

**Point No. 2.** Whether the refusal of not extending the period of SPPA in respect of the Project of the Petitioner beyond 30.06.2023 vide Order dated 14.07.2023 is discriminatory, unreasonable and unjustified?

**Point No. 3 (Final Order)**

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

Point No. 1 : No

Point No. 2 : No

Point No. 3 (Final Order): The Petition dismissed per operative part of the order.

**REASONS FOR FINDINGS**

**Points No. 1 and 2**

33. Both these points being interlinked and interconnected are being taken up together for adjudication. Before, we advert to the merits of the

case, it is relevant to refer to the undisputed facts. The Petitioner has not disputed signing of the PPA dated 23.12.2005 in respect of the 1<sup>st</sup> unit @ Rs. 2.50 kWh and SPPAs dated 12.11.2013 and 18.07.2018 under REC Mechanism. It is also not in dispute that initially the Project was conceived and constructed for 2.50 MW capacity after signing the IA on 28.08.2002. Similarly, it is also not in dispute that the Project capacity was subsequently enhanced from 2.5 MW to 5.0 MW and, the Petitioner and the GoHP consequently signed SIAs on 30.07.2010 and 30.04.2013. What is disputed by the Petitioner is that the earlier PPA dated 23.12.2005 is on account of less bargaining ability of the Petitioner and the provisions are onerous and burdensome and that the benefit of REC Mechanism in respect of the 2<sup>nd</sup> unit has been denied wrongfully to the Petitioner whereas other similar situate Projects have been provided such benefit.

34. Though the Petitioner has placed on record a copy of the SPPA alleged to be signed by the Petitioner with the HPSEBL on 31.05.2013 in respect of the 2<sup>nd</sup> unit of the Project under REC Mechanism alongwith the Petition and the HPSEBL has also referred to the same in reply but the Petitioner has omitted to refer to the said SPPA dated 31.05.2013 in the Petition whereas the Respondents have also not placed the same on

record. The Petitioner has also referred to the agreement dated 03.12.2004, and similarly, the HPSEBL has also referred to an agreement dated 2012 but said documents have not come on record. It appears that a wrong mention of these documents have been made due to typographical or clerical error.

35. It is the case of the Petitioner that after signing the PPA on 23.12.2005 in respect of the 1<sup>st</sup> unit of the Project (2.50 MW), the GoHP issued Policy guidelines under Hydro Policy, 2006, Water Act, 1974 and Environment Protection Act, 1986 making it mandatory for hydro projects for maintaining a minimum flow of 15% of water downstream of the diversion structure throughout the year the generation of the electricity in the Project has decreased. Further due to the aforesaid mandatory directives, Local Area Development Authority Charges (LADA Charges for short), forest and fisheries levies, increase in production cost, capital cost and payment of royalty etc, cost per unit will increase. In the grounds of challenge, the Petitioner has alleged that the tariff is required to be re-determined in respect of the 1<sup>st</sup> unit of 2.5 MW of the Project. However, no such relief has been claimed.

36. As mentioned above, the PPA in respect of the 1<sup>st</sup> unit of the Project was signed by the Petitioner on 23.12.2005, whereas, the IA in respect of the 1<sup>st</sup> unit had been signed on 28.08.2002. As per the IA dated 28.08.2002, the permission to implement the Project was granted for a period of 40 years from the commercial operation date. It is clearly mentioned in Article 13.3 of the IA dated 28.08.2002 that the Company (Petitioner) shall ensure minimum flow of water immediately downstream of weir/ barrage/ dam for downstream requirements which reads as under:-

*“The Company shall ensure minimum flow of water immediately downstream of weir/ barrage/ dam for downstream requirements as directed by the Government/ State Pollution Control Board.”*

37. A careful perusal of the Article 13.3 of the IA dated 28.08.2002 clearly shows that the Petitioner had agreed to release a minimum flow of water downstream the weir/ barrage/ dam for the downstream requirements as directed by the Government/ State Pollution Control Board which is obviously for preservation of fish culture, ecological health of the stream/ river, recreational rights in the river, water channels, reservoirs, lakes, irrigation, drinking etc. in the stream/ river downstream of the diversion structure till the point where tail race of the Project meets the stream/ river again. It is, therefore, not a scenario that the Petitioner has been taken by

surprise by the stipulation of mandatory discharge of water and rather the Petitioner had categorically agreed for releasing the water as directed by the Government/ State Pollution Control Board. Though, the Petitioner has tried to Project that in view the change of policy by the Government in the year, 2005 of mandatory release of 15% of water downstream, the generation of the electricity will be affected adversely and decrease and the cost per unit will increase, as such, the tariff is required to be increased but this contention is absolutely incorrect for the reasons that as per Article 2.2.73 of the PPA dated 23.12.2005, regarding water spillage, it was categorically agreed by the Petitioner that the water spillage means the amount of water spilled downstream of weir (without obtaining generation benefits) but shall not include the minimum release required to be ensured immediately downstream of the weir and shall also not include the water which would have spilled otherwise also in the absence of such factors.

38. It is also relevant to refer to Article 6.4 of the PPA dated 23.12.2005 that the generation envisaged shall be based on the inflows relating to 75% dependable year as per hydrological data contained in the approved DPR. The relevant portion of the Article 6.4 of the PPA dated 23.12.2005 is reproduced as under:-

#### **“6.4 DEEMED GENERATION**

.....  
(i) *If such period falls within the first twelve months after the COD of the Project, the generation envisaged for the month in which such period falls, based on inflows relating to 75% dependable year, as per the hydrological data confirmed in the Approved DPR, and*

(ii) *If such period falls subsequent to the first twelve months after the COD of the Project, the generation actually achieved including the Deemed Generation, if any, in the corresponding month of the previous Year or the one envisaged in that month based on inflows relating to 75% dependable year as per the hydrological data contained in the Approved DPR, whichever is less*

*The Board shall pay for the Saleable Deemed Generation, worked out on the basis of the Deemed Generation on above lines, at a fixed rate of Rs. 2.50 (Rupees two & paise fifty) per unit on monthly basis.”*

39. Not only this, Form P.P.2 {G.1.1.(a)} annexed to the Petition No. 130/2004 under which the PPA dated 23.12.2005 was signed in respect of the 1<sup>st</sup> unit, the generation of 18.946 MUs has been shown in 75% dependable year basis. However, the Petitioner had not produced any record, whatsoever, that the average generation based on 75% of dependable year had been for less than the 18.946 MUs from the 1<sup>st</sup> unit of 2.5 MW. Such record was necessary to appreciate the contention of the Petitioner and in the absence of the same, the Petitioner appeared to have made such opportunistic attempt to claim the higher tariff. No doubt, a specific percentage of release of 15% was not mentioned in the IA dated 28.08.2002 yet there is a condition in the Article 13.3 of the IA dated

28.08.2002 and Article 2.2.73 of the PPA dated 23.12.2005 that the Petitioner has to release a minimum flow of water as directed by the Government/ State Pollution Control Board. As observed above, the Petitioner has failed to produce any document on record showing that the energy generation in the Project ever since the Project was commissioned had been less than the 18.946 MUs based in 75% dependable year as mentioned above. So much so, no such averments have been made in the Petition. Similarly, there is nothing on record to infer that the design energy generation from the Project based in a 75% dependable year has reduced on account of the alleged release of water downstream of the diversion structure. In the absence of any such evidence on record and in view of above mentioned Article 13(3) of the IA dated 28.08.2002 vide which the petitioner has agreed to release a minimum flow of water downstream the weir/barrage/dam for the downstream requirements as directed by the GoHP and the State Pollution control Board and Article 2.2.73 of the PPA dated 23.12.2005 regarding spillage of water, wherein it was categorically agreed by the Petitioner that the water spillage means the amount of water spilled downstream of weir (without obtaining generation benefits) but shall not include the minimum release required to be ensured immediately



downstream of the weir and shall also not include the water which would have spilled otherwise also in the absence of such factors, the Commission does not find any merits in the prayer of the Petitioner for the enhanced tariff.

40. Coming to the PPA dated 23.12.2005, it was agreed by the parties under Article 6 that the Board (HPSEB) shall pay for net saleable energy at a fixed rate of Rs. 2.50 per kWh, which shall be firm and final without indexation and escalation and shall not be changed due to any reason, whatsoever. It is thus apparent from Article 6 of the PPA dated 23.12.2005 that the rate of Rs. 2.50 per kWh was agreed to be paid for the net saleable energy which is firm and final is not liable to be changed for any reason whatsoever. As per Article 10 of the PPA dated 23.12.2005, the agreement was executed for a term of 40 years after the synchronization of 1<sup>st</sup> unit of the Project which has been synchronised on 30.10.2012. Therefore, the Petitioner is bound by the terms and conditions of the agreement dated 23.12.2005 to supply the power from the 1<sup>st</sup> unit of the Project @ Rs. 2.50 kWh for the useful life of the Project i.e. 40 years.

41. Though the Petitioner has claimed that it had no bargaining power when PPA dated 23.12.2005 was signed but the said contention of the

Petitioner is without any substance, as the Petitioner had signed the PPA after clearly understanding all the terms and conditions. It is none of the case of the Petitioner that the signature of Petitioner were obtained under duress, coercion or undue influence. It was the Policy of the GoHP when PPA dated 23.12.2005 was signed that the energy of Hydro Electric Plants upto 5 MW capacity shall be mandatory purchased by the HPSEBL at a preferential tariff of Rs. 2.50 per kWh. The APPC rate which was determined by the Commission was far less, than the above preferential tariff which is also the admitted by the Petitioner in the Petition and accordingly, the PPA dated 23.12.2005 was signed. As such, it not true that the Petitioner had less bargaining power or the higher rate was not negotiated. Otherwise also, the Petitioner has kept silent ever since 2005 and has all of a sudden made such claim in the present Petition. Had the Petitioner suffered any loss as projected over the years, it would have approached the HPSEBL or the Commission immediately with the record of less energy generation by the Project than envisaged based on the 75% dependable year flows as mentioned above. This clearly shows that the contention of the Petitioner is an afterthought. The PPA was freely entered into between the parties. Ever since the signing of the PPA on 23.12.2005,

no objection has been raised and no record of generation has been produced that the average generation is less than the energy shown in the 75% dependable year. Therefore, it does not lie in the mouth of the Petitioner that the tariff as fixed in the year, 2005 in the PPA dated 23.12.2005 is on account of less bargaining power or was less and liable to be re-determined. Once the PPA has been signed out of free violation and without any undue influence and coercion, the same is binding on the parties and after a lapse of more than 20 years, it is not open to the Petitioner to allege that the same has been operating adversely against it. In this regard reliance may be placed in the law laid down by the Hon'ble Supreme Court in Transmission Corporation of Andhra Pradesh Limited v. Sai Renewable Power Private Limited (2010) 8 SCR 636 that once agreements are signed and were enforceable in law, such enforceable obligations could not be frustrated. Paras 39, 42 and 43 of the aforesaid law laid down by the Hon'ble Supreme Court are reproduced as under:-

*“39. [...] In the present case the order dated 20-6-2001 was fully accepted by the parties without any reservation. After the lapse of more than reasonable time of their own accord they voluntarily signed the PPA which contained a specific stipulation prohibiting sale of generated power by them to third parties. The agreement also had a renewal clause empowering TRANSCO/APTRANSCO/Board to revise the tariff. Thus, the documents*

*executed by these parties and their conduct of acting upon such agreements over a long period, in our view, bind them to the rights and obligations stated in the contract. The parties can hardly deny the facts as they existed at the relevant time, just because it may not be convenient now to adhere to those terms. Conditions of a contract cannot be altered/avoided on presumptions or assumptions or the parties having a second thought that a term of contract may not be beneficial to them at a subsequent stage. They would have to abide by the existing facts, correctness of which, they can hardly deny. Such conduct, would be hit by allegans contraria non est audiendus.”*

-----  
42. *Now, we will proceed to examine the merits or otherwise of the findings recorded by the Tribunal that the PPAs executed by the parties were result of some duress and thus, it will not vest the authorities with the power to review the tariff and other granted incentives. PPAs were executed prior and subsequent to the issuance of the order dated 20-6 2001. Different persons executed the contracts at different times in full awareness of the terms and conditions of such PPAS. To frustrate a contract on the ground of duress or coercion, there have to be definite pleadings which have to be substantiated normally by leading cogent and proper evidence. However, in the case where summary procedure is adopted like the present one, at least some documentary evidence or affidavit ought to have been filed raising this plea of duress specifically.*

43. *[..] From the record before us, nothing was brought to our notice to state the plea of duress and to prove the alleged facts which constituted duress, so as to vitiate and/or even partially reduce the effect of the PPAs. On the one hand, the Tribunal appears to have doubted the binding nature of the contracts stating that they contained unilateral conditions introduced by virtue of order and approval of the Regulatory Commission, while on the other hand, in para 53 of the order, it proceeded on the presumption that PPAS are final and binding and still drew the conclusion that the*

*Regulatory Commission could not revise the tariff. Even in the order, no facts have been pointed out which, in the opinion of the Tribunal, constituted duress within the meaning of the Contract Act so as to render the contract voidable.”*

42. Coming to claim of the Petitioner regarding the entitlement of tariff of Rs. 2.57 per kWh under REC Mechanism and denial of the Respondent for extending the REC Mechanism vide letter dated 14.07.2023, undisputedly the Petitioner augmented the Project capacity to 5.0 MW from 2.50 MW and signed the SIAs dated 30.07.2010 and 06.04.2013 in respect of the additional capacity/ second unit of 2.5 MW. The 2<sup>nd</sup> Unit was commissioned in the year, 2013 and the Petitioner signed the SPPA dated 12.11.2013 for a period of 5 years under REC Mechanism for supplying the power from the 2<sup>nd</sup> unit to the HPSEBL at the tariff not exceeding the average pooled cost of purchase of power i.e. Rs. 2.20 per kWh for FY2012-13 and subsequent years not exceeding the pooled cost of power purchase as approved by the Commission from time to time. It is evident from Article 6.1 of the SPPA dated 12.11.2013, which was signed by the parties under REC Mechanism in respect of 2<sup>nd</sup> unit that on exit from the REC Mechanism in respect of additional capacity i.e. 2<sup>nd</sup> unit, the entire net saleable energy of both the units i.e. 2.5 MW + 2.5 MW shall be considered as supplied in

accordance with Section 6.2 (a). Clause 6.1 of the SPPA dated 12.11.2013 is reproduced as under:-

***“Sale and Purchase of Energy***

*6.1 “From the Date of Synchronization of the first Unit of the Project, the Company shall supply the electrical Energy from the Project at the Interconnection Point. The Government Supply shall be delivered by the Company to the Board at the Interconnection Point free of cost. The Company shall sell and the Board shall purchase at the Interconnection Point the Net Saleable Energy i.e. the Energy received from the Project at the Interconnection Point less the Government Supply;*

*Provided that the 50% of the total quantum of Net Saleable Energy from the Project in respect of the period of 5 (five) years (or such other extended period as may be mutually agreed) from the date of Synchronization of the both the Unit of the Project shall be considered as supplied under REC Mechanism at the year wise rate as per Section 6.2(b). However, after the expiry of the said period of 5(five) years (or such extended period as may be mutually agreed by the parties), the entire quantum of Net Saleable Energy shall be considered as supplied by the Company to the HPSEBL in accordance with Section 6.2(a).”*

43. It is, therefore, evident that the SPPA dated 12.11.2013 was signed under REC Mechanism for a period of five years and it was agreed that after the expiry of period of 5 years or such extended period, as may be mutually agreed by the parties, the entire quantum of net saleable energy shall be considered as supplied by the Petitioner to the HPSEBL in accordance with Article 6.2 (a) of the SPPA dated 12.11.2013 which reads as under:-

*“6.2(a) Subject to provisions contained in sub para (b) of this Section, the HPSEBL shall pay for the Net Saleable Energy delivered by the Company to the HPSEBL at the Interconnection Point at a fixed rate of Rs. 2.50 (Rupees two and fifty paise) per Kilowatt hour. This rate is firm and fixed without indexation and escalation and shall not be changed due to any reason whatsoever. This rate shall also not be subject to any adjustment on account of change in the quantum (5) of Government supply.”*

44. The parties on expiry of term of 5 years of SPPA dated 12.11.2013 on 30.06.2018 agreed mutually to extend the delivery of power under REC Mechanism for another period of 5 years w.e.f. 01.07.2018 to 30.06.2023 and a supplementary PPA in respect of 2<sup>nd</sup> unit was executed on 18.07.2018. Articles 6 and 10 of SPPA dated 18.07.2018 are reproduced as under:-

*Article:6, Clause 6.1*

*"Provided that the 50% of the total quantum of Net Saleable Energy from the project in respect of the period from 16-06-2018 to 30-06-2023 (or such other extended period as may be mutually agreed) from the date of synchronization of the both units of the project shall be considered as supplied under REC mechanism at the year wise rate as per section 6.2(B) of executed SPPA dated 12-11-2013. However, after the expiry of the said period i.e. 16-06-2018 to 30-06-2023 (or such other extended period as may be mutually agreed), the entire quantum of Net Saleable Energy shall be considered as supplied by the Company to the HPSEBL in accordance with section 6.2(a) of SPPA dated 12-11-2023."*

*Article 10, Clause 10.1*

*"The Agreement shall become effective upon execution and delivery by the parties hereto and unless earlier terminated pursuant to provision of the agreement shall have a term upto 40 years after the synchronization date of the first unit of the project. Out of which 50% of net saleable energy shall be*

*governed as per Long Term PPA signed on 23-12-2005 @ 2.50/ kWh and the balance 50% of net saleable energy shall be governed as per the SPPA under REC mechanism upto 30-06-2023. After the period of sale under REC Mechanism upto 30-06-2023 (or such extended period as may be mutually agreed by the parties), the entire Net saleable energy shall be considered as supplied by the company to HPSEBL in accordance with Section 6.2 (a) of SPPA dated 12-11-2013."*

45. A combined reading of Article 6.1 and 6.2(a) of SPPA dated 12.11.2013 and Article 6 and 10 of SPPA dated 18.07.2018 leaves no matter of doubt that the both the SPPA, were entered for a period of 5 years each in respect of the 2<sup>nd</sup> unit of 2.5 MW and it was specifically agreed that on the exit from REC mechanism, the entire net saleable energy from the 2<sup>nd</sup> unit shall be considered to have been supplied @ Rs. 2.50 per kWh which was agreed tariff as per PPA dated 23.12.2005.

46. Though the Petitioner vide letter dated 30.05.2023 requested the Respondents to extend the terms of the SPPA dated 18.07.2018 under REC Mechanism beyond 30.06.2023 but said request of the Petitioner was not considered by the Respondents vide letter dated 14.07.2023 inviting the attention of the Petitioner to the long term PPA dated 23.12.2005 and SPPAs dated 12.11.2013 and 18.07.2018. It was specifically mentioned by the Respondents in letter dated 14.07.2013 that it has been decided not to give extension under REC Mechanism and rightly so, a clear stipulation



was made in the SPPAs dated 12.11.2013 and 18.07.2018 with regard to the tariff and supply of net saleable energy of the 2<sup>nd</sup> unit as per the PPA dated 23.12.2005 on fixed tariff of Rs. 2.50 per kWh till the balance of the term of PPA dated 23.12.2005 as it was agreed in the SPPAs dated 12.11.2013 and 18.07.2018 that all other terms and conditions including the tariff in respect of the long term PPA already executed on 23.12.2005 shall remain the same. Not only this, it is specifically mentioned by the Respondents in reply to the Petition that the HPSEBL has decided not to extend the SPPA under REC Mechanism in the interest of the consumers of the State and rightly so, the APPC rate for the FY2023-24 is Rs. 2.57 per kWh, whereas, the Petitioner is bound to supply the energy from the second unit as per PPA dated 23.12.2005 @ Rs. 2.50 per kWh. Therefore, so long the APPC rate was lower or at par with the rate of Rs. 2.50 per kWh, the SPPAs under REC Mechanism were executed but when the same exceeded the said rate, the Respondents have rightly refused the extension under REC Mechanism in the interest of the consumers. The letter dated 14.07.2023, therefore, can't be said to be illegal. In the circumstances, the claim of the Petitioner that the Project had been discriminated against similar situated IPPs i.e. M/s Ginni Global Private

Limited, M/s Prodigy Hydro Power Private Limited and M/s Greenko Sumez Hydro Energies Private Limited is not tenable as it was specifically agreed by the parties in the SPPAs dated 12.11.2013 and 18.07.2018 that on the exit from REC Mechanism, the energy of the 2<sup>nd</sup> unit of 2.5 MW shall be deemed to have been supplied as per the PPA dated 23.12.2005 at the rate of Rs. 2.50 per kWh for residual life of the Project.

47. Since the parties have mutually settled the terms and conditions and signed the PPA dated 23.12.2005 and SPPAs dated 12.11.2013 and 18.07.2018 out of free violation and without any undue influence, the parties are bound by the terms and conditions of the PPAs and SPPAs. Certainly, the cases of the IPPs i.e. M/s Ginni Global Private Limited, M/s Prodigy Hydro Power Private Limited and M/s Greenko Sumez Hydro Energies Private Limited are different and distinguishable and no prejudice, whatsoever, has occasioned the Petitioner in any manner. Similarly, the Respondents have acted as per the prevalent Regulations and agreed terms and conditions of the PPA and SPPAs, as such, the action of the Respondents is not arbitrary, unreasonable, capricious or discriminatory.

48. In view of the above the Petitioner has miserably failed to substantiate on record that the Project is entitled for the tariff @ Rs. 2.57

per unit under the REC Mechanism as determined by the Commission for the Financial year 2023-24 or that the Respondents have illegally refused the extension of SPPA dated 18.07.2018 in respect of the Project under REC Mechanism despite extending such SPPAs of other IPPs under REC Mechanism. The Petitioner has also failed to establish on record that the refusal of not extending the period of SPPA dated 18.07.2018 beyond 30.06.2023 in respect of the Project of the Petitioner vide order/ letter dated 14.07.2023 is illegal, discriminatory, unreasonable and unjustified. Points No. 1 and 2 are accordingly decided against the Petitioner.

**Final Order**

49. In view of our above said discussion and findings, there are no merits in the Petition, which is accordingly dismissed.

50. The miscellaneous applications, if any, are also disposed off.

The file after needful be consigned to records.

**Announced**  
**26.09.2024**

-Sd-  
(Shashi Kant Joshi)  
Member

-sd-  
(Yashwant Singh Chogal  
Member (Law)

-sd-  
(Devendra Kumar Sharma)  
Chairman