

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

**Petition No:** 77 of 2022  
**Instituted on:** 22.11.2022  
**Heard on:** 22.02.2023  
**Decided on:** 24.03.2023

**CORAM**

Devendra Kumar Sharma

**CHAIRMAN**

Yashwant Singh Chogal

**MEMBER (Law)**

Shashi Kant Joshi

**MEMBER**

**In the matter of:**

M/s Sai Engineering Foundation through its  
Chief General Manager, Munish Sharma,  
Sai Bhawan, Sector-IV, New Shimla, HP 171009.

**.... Petitioner**

Versus

1. The H.P. State Electricity Board Limited through its  
Chief Engineer (System Operation),  
Vidyut Bhawan, Shimla-171004.
2. The H.P. State Load Dispatch Centre through its  
Chief Engineer,  
Totu, Shimla-171011.

**.....Respondents**

**Petition under Section 86 (1) (b) of the Electricity Act, 2003 and Regulation 68 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 read with Section 151 of the Code of Civil Procedure, 1908 for the modification of Commission's order dated 21.02.2022 in the Review Petition No. 1 of 2022.**

Present:

Sh. R.K. Barwal, Ld. Counsel for the Petitioner.

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

Sh. Surinder Saklani, Ld. Counsel for Respondent No. 2.

## ORDER

This Petition has been filed by the Petitioner for modification of order dated 21.02.2022 in the Review Petition No. 1/2022 that a short term Power Purchase Agreement (PPA for short) was signed by the Petitioner with the Respondent No. 1 on 10.09.2015 with respect to Shimla Hydro Electric Project (Project for short) which was extended upto 31.03.2021 through Supplementary Power Purchase Agreements (SPPA for short) from time to time with the consent of the Commission.

2. It is averred that the Respondent No. 1 vide letter No. HPSEBL/CE/(SO)PSP-464/MISC/2020-21-2231-36 dated 19.11.2020 (Annexure P/1) asked the Petitioner for extension of the PPA for the whole year w.e.f. 01.04.2021 to 31.03.2022 under REC Mechanism and the Petitioner vide letter dated 22.12.2020 (Annexure P/2) apprised of signing long term PPA under Generic Levellised Tariff and that the PPA under REC Mechanism shall not be extended beyond 31.03.2021.

3. As per the Petitioner, a draft Joint Petition for approval of long term PPA under Generic Levellised Tariff was submitted by the Petitioner to the Respondent No. 1 vide letter dated 13.01.2021 (Annexure P/3) for onward transmission to the Commission. However, on account of country wide lockdown due to COVID pandemic and the protracted correspondence by the Respondent No. 1 with the Petitioner for supply of

documents resulted in delay in filing the Joint Petition with the Commission which was ultimately filed on 27.09.2021 that too on the repeated requests by the Petitioner which was registered as Joint Petition No. 37 of 2021 which was disposed off by the Commission vide order dated 23.10.2021 but the PPA was ordered to be made effective w.e.f. 27.09.2021 instead of 01.04.2021. It is averred that the PPA under REC Mechanism was only upto 31.03.2021 and though the Commission approved the PPA under Generic Levelled Tariff w.e.f. 27.09.2021, but no provision was made in the order dated 23.10.2021 by the Commission for the purchase of power by the Respondent No. 1 from the Petitioner w.e.f. 01.04.2021 to 26.09.2021. In the circumstances, a Joint Review Petition was filed by the Petitioner and the Respondent No. 1 for reviewing of Order dated 23.10.2021 in Joint Petition No. 37 of 2021 which was disposed off vide order dated 21.02.2022.

4. It is averred that the Petitioner in view of the Order dated 21.02.2022, requested the Respondent No. 2 vide letter dated 26.02.2022 (Annexure P-6) for issuing of SLDC report/certificate for the period from 01.04.2021 to 26.09.2021, but in vain. The Petitioner further requested the Respondent No. 2 vide letter dated 12.05.2022 (Annexure P-6) for the report/certificates for the period from 01.04.2021 to September, 2021 but the Respondent No. 2 vide letter dated 23.05.2022 (Annexure P-7)

declined the request of the Petitioner on the basis of the procedure framed by the Central Electricity Regulatory Commission.

5. Therefore, the Petitioner approached the Respondent No. 1 vide letter dated 06.06.2022 (Annexure P/8) for releasing the differential amount of Rs. 54,47,499/- on account of energy bills from 1<sup>st</sup> April, 2021 to 26<sup>th</sup> September, 2021 but in vain. The Petitioner again approached the Respondent No. 1 vide letter dated 23.07.2022 (Annexure P-9) for filing Joint Petition before the Commission for sale and purchase of power on preferential tariff mode on long term basis for the period from 01.04.2021 to 26.09.2021. The Respondent No. 1 vide letter dated 04.10.2022 (Annexure P/10) refused to re-agitate the matter before the Commission on the ground that the REC report/certificates has been declined by the Respondent No. 2 and, thus, the arbitrary action of the Respondent No. 2 be assailed. It is averred that though the Commission was considerate enough to extend the term of Short Term PPA under REC Mechanism from 01.04.2021 to 26.09.2021 vide Order dated 21.02.2022 in Review Petition No. 1/2022 but when the Petitioner proceeded as per Para 5 of the aforesaid order dated 21.02.2022 to avail the REC benefits, a huge setback was suffered by the Petitioner in terms of the procedure laid down for the Issuance of Renewable Energy Certificates to the Eligible Entity by the Central Electricity Regulatory Commission.

6. As per the Petitioner, the REC procedure as approved by the Central Electricity Regulatory Commission (CERC for short) in accordance with (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, as amended from time to time (CERC, REC Regulations for short) provides for the timelines in Clause 7.1 and taking into account the same, the Petitioner could not have had an opportunity to apply for the issuance of Renewable Energy Certificates after passing of the Order dated 21.02.2022 by the Commission in Review Petition No. 1 of 2022 for the period w.e.f. 01.04.2021 to 26.09.2021 with respect to the renewable energy generated and injected, in view of the fact that the timeline of six months to apply for issuance of RECs against the said generation had already been elapsed on the date of receiving of the authenticated copy of Order of the Commission in Review Petition No. 1 of 2022, which was received on 25.02.2022. In these circumstances, the Order dated 21.02.2022 in Review Petition No. 1 of 2022 has become ineffective and in-executable in light of the stand taken by the Respondent No. 2 as per the procedure laid by the CERC.

7. It is averred that there was a Joint prayer for grant of benefit of Long Term Levellised Tariff w.e.f. 01.04.2021 and not from 27.09.2021 as granted by the Commission and that no prayer had been made by either

of the parties to extend the short term PPA under REC Mechanism w.e.f. 01.04.2021 to 26.09.2021 either in original Joint Petition or in the Review Petition, therefore, the relief as granted in the Review Petition was beyond the prayer of the Petitioner. As such, Order dated 21.02.2022 is liable to be reconsidered to make the Long Term Levellised Tariff effective from 01.04.2021 instead of 27.09.2021. Further that the Petitioner had submitted the Joint Petition to the Respondent No. 1 on 13.01.2021 (Annexure P/3) and for the delay of the Respondent No. 1, the Petitioner cannot be made to suffer. Also that the Commission has inherent powers to pass any order to meet the ends of justice and, therefore, in view of the special circumstances, Long Term Levellised Tariff w.e.f. 01.04.2021 to 26.09.2021 is required to be granted in favour of the Petitioner.

8. The Petition has been contested by the Respondents by filing separate replies.

9. The Respondent No. 1 in its reply has averred that the Petitioner had signed Power Purchase Agreement with Respondent No. 1 on 10.09.2015 under REC Mechanism which was further extended from time to time upto 31.03.2021 with the approval of the Commission. On 19.11.2020, the replying Respondent sought consent from all the eligible generating companies having Power Purchase Agreement under REC Mechanism, whose term of PPA was going to expire by 31.03.2021, for

signing the same for the Financial Year 2021-2022 in order to firm up power supply availability for FY 2021-2022. On 13.01.2021, the Petitioner submitted draft Joint Petition alongwith draft Power Purchase Agreement for signing the long term agreement under Generic Levellised Tariff (Anexure P/3) as per the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms & Conditions for Tariff Determination) Regulations, 2012 (RE Tariff Regulations, 2012 for short) without Accelerated Depreciation benefits. It is averred that as per RE Tariff Regulations, 2012, it shall be assumed that the renewable energy generator shall avail the benefit of Accelerated Depreciation (AD for short) and accordingly the tariff, which accounts for the AD shall be applicable unless the renewable energy generator establishes to the satisfaction of the distribution licensee that it has not availed or is not entitled to such a benefit. Therefore, the claim of the Petitioner that it has not availed the AD benefit for its Project was required to be examined by the replying Respondent and also that the applicable/availed subsidy from Ministry of New and Renewable Energy for the Project was also to be ascertained before filing the Joint Petition. Accordingly, the matter was examined in the Finance Wing of the replying Respondent but due to imposition of lockdown in the wake of COVID-19 Pandemic, the matter could not be processed in time.

10. It is averred that the Petitioner and the replying Respondent after the finalization of the applicable tariff for the Project in Terms of prevalent Regulations, filed a Joint Petition being Petition No. 37 of 2021 before the Commission on 27.09.2021 for the approval of PPA under Generic Levellised Tariff for the remaining useful life of the Project and in the said Petition, it was mentioned that there was delay in filing the Petition due to Covid-19 Pandemic and on account of the correspondence between the parties to ascertain the applicability of tariff without AD benefit and had prayed for approval of the PPA w.e.f. 01.04.2021. The said Petition was disposed off by the Commission on 23.10.2021 but allowed the tariff w.e.f. 27.09.2021 i.e. the date of filing of the Petition. Accordingly, the parties have signed the PPA on 25.11.2021 under Generic Levellised Tariff.

11. It is averred that though the short term PPA dated 10.09.2015 under REC Mechanism extended from time to time, had come to an end on 31.03.2021 but the power from Project of the Petitioner was being continuously delivered without any contractual agreement and in view of allowing of the Generic Levellised Tariff w.e.f. 27.09.2021, the difficulty had arisen in settling the terms of power delivered by the Petitioner w.e.f. 01.04.2021 to 26.09.2021. Thus, the Petitioner and the Replying Respondent filed a Joint Review Petition on 07.01.2022 being Petition No. 1 of 2022 for reviewing the Order dated 23.10.2021 passed in Petition No.



37 of 2021 for change of the 'Effective Date' as 01.04.2021 instead of 27.09.2021. The said Review Petition was disposed off by the Commission on 21.02.2022 whereby the Commission did not agree to revise the effective date as 01.04.2021 (Annexure P/5) but extended the term of short term PPA under REC Mechanism from 01.04.2021 to 26.09.2021 and pursuant thereto, the replying Respondent has also made payment to the Petitioner for the net saleable energy received w.e.f. 01.04.2021 to 26.09.2021 at APPC rate under REC Mechanism.

12. It is averred that the Petitioner vide letter dated 23.07.2022 intimated the replying Respondent that the Respondent No. 2 was approached for issuance of RECs, for the aforesaid period of 01.04.2021 to 26.09.2021 but in vain and that the Petitioner has sustained a loss of Rs. 54,47,499/- against the energy supplied during 01.04.2021 to 26.09.2021, worked out on differential amount of Rs. 0.84 per unit between preferential tariff and APPC rate and further requested the replying Respondent to either reimburse the same to the Petitioner or to file Joint Application before the Commission for seeking permission to sell and purchase power on preferential tariff mode w.e.f. 01.04.2021 to 26.09.2021.

13. On 04.10.2022, the replying Respondent intimated the Petitioner that they have complied with the Orders of the Commission dated

23.10.2021 and 21.02.2022 in Petition No. 37 of 2021 and Review Petition No. 1 of 2022 and the payment has accordingly been made, it would not be appropriate to re-agitate the issue especially taking into consideration that the Respondent No. 2 has declined to verify the quantum for issuance of RECs and if deemed fit, the Petitioner may take legal recourse under law against the Respondent No. 2.

14. It is averred that the Replying Respondent had also filed a Petition before the Commission for authentication of the RE power procured against Renewable Power Purchase Obligations (Solar & Non-Solar) specified by the Commission for Financial Year 2020-2021 in which the replying Respondent has not considered the power procured from the Project of the Petitioner as RE (green) power delivered during 01.04.2021 to 26.09.2021 as the same was purchased at APPC rate. Further that Respondent No. 2 did not certify/issue energy injection report/ certificate to the Petitioner against the energy generated for the period from 01.04.2021 to 26.09.2021 on account of timelines for issuing the same specified under the procedure *ibid*.

15. It is submitted that the Petition is neither competent nor maintainable and that the Petitioner is seeking review in a review which is not permissible under the law as in case the Petitioner is aggrieved of the Order passed in a Review Petition, the remedy is to challenge the same

before the next higher forum. Also that the Petitioner has not exhausted remedies available under the law after refusal by the Respondent No. 2 for verification of energy injection report. It is averred that Order dated 21.02.2022 in Review Petition No. 01 of 2022 is binding upon the parties and there was no scope for filing another Joint Petition, if any, by the replying Respondent and the Petitioner. It is also averred that in case the prayer of the Petitioner on preferential tariff from the period 01.04.2021 to 26.09.2021 is allowed, in that eventuality, the replying respondent would be deprived of taking benefits of green component of the energy in terms of the RECs. As per the replying Respondent, revision of tariff under Generic Levellised Tariff w.e.f. 01.04.2021 to 26.09.2021 cannot be allowed as the benefit of REC against energy procured from the Project during said period shall not be available to replying Respondent.

16. The Respondent No. 2 in its separate reply has also averred that the Petition is neither competent nor maintainable in the present form and is liable to be dismissed as the Petitioner is seeking review in a review and in case the Petitioner is aggrieved of the Order passed by the Commission in Review Petition, the remedy lies to lay challenge before the next higher forum. Further that the Petition is bad for the reason that in the earlier Petition, the replying Respondent was not a party and has been made party for the first time in the Petition and further that the

Petition is abuse of the law and the replying Respondent has been unnecessarily dragged into the unwarranted litigation.

17. It is averred that the Petitioner vide letter dated 26.02.2022 and 12.05.2022 had requested the replying Respondent to verify the energy injection report from April, 2021 to September, 2021 and the replying Respondent vide e-mail dated 25.3.2022 and letter dated 23.05.2022 apprised the Petitioner regarding CERC procedure for issuance of Renewable Energy Certificates to eligible entity by Central Agency quoting Clauses 3.1, 3.2 and 7.1 of the procedure which makes it clear that the Petitioner is not eligible for applying and issuance/ verification of RECs from April, 2021 to August, 2021 and that the Petitioner was not having accreditation with the Department of Energy, Govt. of H.P., after 18.08.2021 without which the Replying Respondent could not verify the energy injection report for September, 2021. In nutshell, the case of the Petitioner has been denied.

18. In separate rejoinders, the contents of the replies have been denied and those of the Petition have been reaffirmed.

19. We have heard Sh. R.K. Barwal, Ld. Counsel for the Petitioner, Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 1 and Sh. Surinder Saklani, Ld. Counsel for the Respondent No. 2 and perused the entire record carefully.

20. Sh. R.K. Barwal, Ld. Counsel for the Petitioner has submitted that the Petitioner had made an application to the Respondent No. 1 to file the Joint Petition for approval of the PPA, well in advance, on 13.01.2021 (Annexure P-3) but a significant time was consumed in processing said application by the Respondent No. 1 due to Covid-19 pandemic, as such, the Joint Petition could be filed only on 27.09.2021 and due to late filing of the Petition, the commission considered the request for approval of the PPA only w.e.f. 27.09.2021 i.e. from the date of filing of the Joint Petition for approval of PPA which in fact should have been from 01.04.2021, as the arrangement under REC Mechanism had come to an end on 31.03.2021 but the power was supplied uninterruptedly. It has also been submitted that on coming to know that the PPA was not approved w.e.f. 01.04.2021, the Joint Petitioners filed the Petition seeking review of the Order dated 23.10.2021 in Petition No. 37 of 2021 vide Order dated 21.02.2022 in Review Petition No. 1 of 2022, the commission modified the Order dated 23.10.2021 in Petition No. 37 of 2021 by extending the term of the short term PPA under REC Mechanism from 01.04.2021 to 26.09.2021. As per him, the Petitioner immediately applied to the Respondent No. 2 for issuance of RE certificates but Respondent No. 2 refused to issue the report / certificates under the REC Mechanism for the period w.e.f. 01.04.2021 to 26.09.2021 in view of the timelines specified in

Clause 7.1 of the CERC Procedure as by the time order dated 21.02.2022 was passed, the time had elapsed, as such, the Order dated 23.10.2021 has been rendered in-executable.

21. Sh. Kamlesh Saklani, Authorised Representative for Respondent No. 1 has submitted that the Petition is neither competent nor maintainable as the Petitioner is seeking review in a review, which is not permissible under the law as in case the Petitioner was aggrieved of refusal of Certificate by the Respondent No. 2, the appropriate remedy was to challenge the action of Respondent No. 2 in the next higher forum. He has submitted that the replying Respondent has already authenticated the RE power procured by it against the Renewable Power Purchase obligation (Solar and Non Solar) in view of the Order passed by the Commission in Petition No. 41 of 2022, wherein the Respondent No. 1 has not considered the power procured from the Project of the Petitioner w.e.f. 01.04.2021 to 26.09.2021 as RE (Green) power and, therefore, it is not permissible for the Respondent No. 1 to agree for revision of the tariff at Generic Levellised Tariff for said period in view of the fact that benefit of Renewable Energy certificate against energy procured from the Project during said period shall not be available to Respondent No. 1.

22. Sh. Surinder Saklani, Ld. Counsel for the Respondent No. 2 on the other hand has also submitted that seeking review in a review is not

permissible under the law and if the Petitioner was aggrieved of the order passed in the Review Petition, the appropriate remedy was to lay challenge to the same in the next higher forum. Also that the Petition is bad for mis joinder of parties as Respondent No. 2 was not a party in the earlier Petition and has been arrayed for the first time. Also that the Respondent No. 2 is bound to obey the Procedure framed by the CERC under CERC, REC Regulations and unless said procedure is relaxed, it is not possible for Respondent No. 2 to consider the request of Petitioner and no illegality or irregularity has been committed by the Respondent No. 2 in refusal of the certificates.

23. We have carefully gone through the pleadings and the submissions including the written submissions and have perused the entire record carefully. The following points arise for determinations in the Petition:-

**Point No. 1:**

Whether the Petitioner had submitted the application on 13.01.2021 to the Respondent No. 1 to file Joint Petition for approval of PPA under generic levellised tariff but the Joint Petition could not be filed well before 31.03.2021 due to the reasons beyond the control of the Respondent No. 1.?

**Point No. 2**

If Point No. 1 is answered in affirmative, whether orders dated 23.10.2021 in Petition No. 37 of 2021 and order dated 21.02.2022 in Review Petition No. 1 of 2022 have resulted in injustice to the Petitioner and the Petitioner is entitled for the actual long term levelled tariff w.e.f. 01.04.2021?

**Point No. 3**

Whether the Petitioner is also entitled to the interest @ 12% per annum on deferential amount of Rs. 5447499/- from the date of filing of the Petition?

**Point No. 4 (Final Order)**

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

**Point No. 1:** Yes

**Point No. 2:** Yes

**Point No. 3:** No

**Point No. 4:** Petition partly allowed per operative part of the order.



## **Reasons for findings**

### **Points No. 1 to 3**

25. All these points being interlinked and inter-connected are being taken up together for adjudication.

26. Before we advert to the rival submissions to the parties, it is relevant to refer to the undisputed facts. It is not in dispute that the Petitioner and Respondent No. 1 had Short Term Power Purchase Agreement under REC Mechanism, which was in existence till 31.03.2021. It is also undisputed that though the Joint Petition for the approval of Long Term Power Purchase Agreement under Generic Levellised Tariff had been filed on 26.09.2021, yet the Power was being supplied by the Petitioner to the Respondent No. 1 uninterruptedly. It is also not in dispute that there were restrictions/curbs on account of Covid-19 Pandemic during the period under reference. It is also not in dispute that the Commission has allowed Sale and Purchase of power w.e.f. 27.09.2021 in a Joint Petition No. 37 of 2021 but on review, has regularized the period w.e.f. 01.04.2021 to 26.09.2021 under REC Mechanism.

27. It is the case of the Petitioner that its registration under the REC Mechanism had come to an end on 31.03.2021 and, therefore, the Joint Petition was required to be considered and allowed under Generic

Levellised Tariff w.e.f. 01.04.2021 because the Petitioner had filed the application with Respondent No. 1, well in advance on 13.01.2021 (Annexure P-3), for filing Joint Petition but the same could not be processed well in time by the Respondent No. 1 due to Covid-19 Pandemic and the delay, if any, had occurred on the part of the Respondent No. 1 for which the Petitioner cannot be made to suffer.

28. Coming to the Petition, the Petitioner has placed on record copy of letter dated 19.11.2020 (Annexure P-1) written by the Respondent No. 1 to the Petitioner and 5 other IPPs regarding PPAs signed under REC Mechanism seeking consent to sign/extension of PPAs for full year i.e. 01.04.2021 to 31.03.2022 by the 30.11.2020 so as to initiate further action failing which the Respondent No. 1 shall not consider signing/extension of PPA under REC Mechanism. The Petitioner vide letter dated 22.12.2020 (Annexure P-2) in response to letter dated 19.11.2020 (Annexure P-1) informed the Respondent No. 1 of not signing the PPA under REC Mechanism in respect of its Project w.e.f 01.04.2021 and rather, informed the Respondent No. 1 of its intention to sign the long term PPA under Generic Levellised Tariff w.e.f. 01.04.2021 and requested the Respondent No. 1 for supplying copy of preferential based tariff for filing the Joint Petition. It is, thus, apparent that the Petitioner had expressed its intention to withdraw from the REC Mechanism on and w.e.f. 01.04.2021.

29. A careful perusal of letter dated 13.01.2021 (Annexure P-3) shows that the Petitioner informed the Respondent No. 1 of signing the long term PPA under Generic Levellised Tariff without AD benefit and enclosed draft Joint Petition and PPA and requested for suitable date for signing the Joint Petition for approval of the PPA. Though, the Respondent No. 1 in its reply has admitted that the Petitioner submitted draft Joint Petition alongwith draft PPA on 13.01.2021, yet it is mentioned by the Respondent No. 1 that the matter was deliberated in detail qua AD benefit in the financial wing of Respondent No. 1 and also that the matter was delayed on account of imposition of lockdown by the Government of Himachal Pradesh in the State due to Covid-19 Pandemic and, therefore, the Joint Petition could be filed only on 27.09.2021 for the approval of the PPA on Generic Levellised Tariff for remaining useful life of the Project w.e.f. 01.04.2021. It is, thus, apparent on record that the Petitioner had submitted the application with Respondent No. 1 for filing Joint Petition well in time on 13.01.2021 but since the Petitioner had requested for AD benefit, a significant time was consumed by the Respondent No. 1 in examining the matter in its financial being. Further, the processing of the application was got delayed due to the Covid-19 Pandemic restrictions and, therefore, the Joint Petition could be filed only on 27.09.2021 and the

Commission allowed the signing of PPA w.e.f. 27.09.2021, the date on which the Joint Petition had been filed.

30. We have also perused the record of the Petition No. 37/2021 and Review Petition No. 1 of 2022 which shows that though it is mentioned in the said Petition that there is time lapse to approach the Commission for approval of Long term PPA due to lockdown on account of Covid-19 Pandemic yet the Joint Petition as also Review Petition were not accompanied by the application dated 13.01.2021 that the Petitioner had requested for filing the Joint Petition well in time. Had said application dated 13.01.2021 been annexed, the same would not have escaped the attention of the Commission to allow the Petition w.e.f. 01.04.2021. Thus, for want of complete detail, the order dated 23.10.2021 in Petition No. 37 of 2021 came to be made effective w.e.f. 27.09.2021.

31. It is apparent from the Petition that the Respondent No. 1 and the Petitioner immediately approached the Commission to regularize the period w.e.f. 01.04.2021 and 26.09.2021 under the long term generic levelled tariff and though the Commission regularized the period but the said period was regularized only under the REC Mechanism vide order dated 21.02.2022 in Review Petition No. 1 of 2022.

32. It is also the case of the Petitioner that soon after passing the order dated 21.02.2022 in Review Petition No. 1 of 2022, whereby the period

w.e.f. 01.04.2021 to 26.09.2021 was regularized under REC Mechanism, the Petitioner immediately approached the Respondent No. 2 for the Renewable Energy certificate benefit but said certificate/registration was refused by the Respondent No. 2 for want of accreditation of the Petitioner in view of the procedure prescribed under the CERC, REC Regulations.

33. Apparently, the short term Power Purchase Agreement between the Petitioner and Respondent No. 1 under REC Mechanism was only uptill 31.03.2022 and the accreditation/registration of the Petitioner under REC Mechanism had come to an end. However, as per Clause 7.1 of the Procedure prescribed under CERC, REC Regulations for Renewable Energy Certificate benefit, the application is required to be filed within six months from the month in which the renewable energy was generated and injected into the electricity grid and thereafter the eligible entity shall not be eligible to apply. Clause 7.1 of the above procedure is reproduced as under:-

*“7.1. The RE Generator as an Eligible Entity shall apply for issuance of renewable energy certificates within six (6) months from the month in which renewable energy was generated and injected into the electricity grid. Thereafter, the eligible entity shall not be eligible to apply for issuance of RECs against the said generation. However, the eligible entity shall apply for issuance of RECs for the complete month in sequential manner. For example, in the month of July, the applicant may apply for issuance of RECs*

*for the months of January, February, March, April, May and June of that calendar year. Further in the month of July, the eligible entity shall also ensure that while submitting the physical application alongwith the complete documents for issuance of RECs corresponding to generation in the month of January, the application should reach to Central Agency latest by 31<sup>st</sup> July for considering the application. Thereafter, application for injection corresponding to January shall not be considered. However, since the monthly injection report for January would not be available with the Central Agency before month end, application for issuance of RECs against energy injected during January can be made on 10<sup>th</sup>, 20<sup>th</sup> and last day in the subsequent six months. However, the eligible entity shall ensure that it should apply first for January before applying for February.”*

34. Further, Clause 3.2 (b) of the aforesaid procedure also provides that the status of Accreditation of the Eligible Entity with the State Agency should not have been expired and the status of Registration of the Eligible Entity with the Central Agency should also be in existence. Clause 3.2. (b) of the aforesaid procedure is reproduced as under:-

*b) The status of Accreditation of the Eligible Entity with the State Agency has not expired. The status of Registration of the Eligible Entity with the Central Agency has not expired.*

35. Apparently, the accreditation of the Petitioner under REC Mechanism had come to an end on 31.03.2021 and when the Petitioner applied for certificate under REC Mechanism with Respondent No. 2 on receipt of Order dated 21.02.2022, it was not possible for Respondent No. 2 to consider and allow the request as per Clauses 3.2 (b) and 7.1 of the

Procedure framed by CERC under the CERC, REC Regulations. Thus, Order dated 21.02.2022 in Review Petition instead of ameliorating the suffering of Petitioner has operated as hardship to the Petitioner and the Petitioner has suffered on account of no fault of it which has resulted in huge financial loss to the Petitioner as mentioned in the Petition.

36. Now the question arises whether or not the Commission may grant the actual Long Term Levellised Tariff w.e.f. 01.04.2021 to 26.09.2021 to the Petitioner. Undisputedly, the power has been supplied by the Petitioner to the Respondent No. 1 without any interruption. The stand of the Respondents is that the Petitioner has already sought review of the Order dated 23.10.2021 in a Review Petition and further/successive review is not possible and the remedy lies with the Petitioner to approach next higher forum and the relief claimed in the present Petition can't be granted. The another contention of the Respondent No. 1 is that they have already made the payment to the Petitioner for the energy of the period w.e.f. 01.04.2021 to 26.09.2021 and have already got authenticated the RE power procured by it against Renewable Power Purchase Obligations (Solar & Non-Solar) in view of Petition No. 41 of 2022, allowed vide order dated 28.11.2022, wherein the Respondent No. 1 has not considered the power procured from the Project during the period from 01.04.2021 to 26.09.2021 as RE (green) power. However,

fact remains that the Petitioner had submitted the application well in time on 13.01.2021 with the Respondent No. 1 for filing the Joint Petition for approval of the PPA under Generic Levellised Tariff w.e.f. 01.04.2021 but the filing of Joint Petition has been delayed on the part of Respondent No. 1 due to the Covid-19 Pandemic which was beyond the control of the parties. The Petitioner has sustained huge loss of Rs. 54,47,499/- for want of non issuance of certificate by Respondent No. 2, without any fault of the Petitioner. Therefore, even if the RE Power has been authenticated against Renewable Power Purchase obligation in view of Petition No. 41 of 2022 and the Power from the Project has not been considered for said purpose by the Respondent No. 1, the Petitioner can't be made to suffer. The Respondent No. 1 can take corrective measures to undone the harm. Hence, the contention of the Respondent No. 1 has no merits.

37. As observed above, the Respondent No. 2 was unable to issue the certificate of REC in favour of the Petitioner as per the CERC Procedure as according to Clause 7.1 of the procedure, the Petitioner was required to submit month wise application after a period of six months i.e. for the month of April, 2021, the Petitioner was required to apply in the month of October and likewise. No doubt, the Commission has extended the term of the short term PPA under REC Mechanism w.e.f. 01.04.2021 to 26.09.2021, vide Order dated 21.02.2022 in Review Petition No. 1 of 2022



but there was not registration of the Petitioner under REC Mechanism after 31.03.2021 and by the time of passing the order dated 21.02.2022, the time line as per CERC Procedure has elapsed, as such, said Order dated 21.02.2022 was of no help to the Petitioner and rather has operated as a hardship and injustice to the Petitioner.

38. This Commission has the inherent powers under Regulation 68 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations 2005, which reads as under:-

- (1) Nothing in these regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.*
- (2) Nothing in these regulations shall bar the Commission from adopting a procedure, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient.*
- (3) Nothing in these regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Act for which no regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.*

39. Under Section 151 of the Code of Civil procedure, 1908, this commission is possessed of inherent powers to make such orders as may

be necessary for meeting the ends of justice or to prevent abuse of the process of the court.

40. Therefore, once the Order dated 23.10.2021 passed by the Commission in Joint Petition No. 37 of 2021 and Order dated 21.02.2022 passed in Review Petition No. 1 of 2022 have operated as hardship to the Petitioner and has caused grave injustice, this commission in exercise of inherent powers can prevent the abuse of the process of the Commission.

41. There is another aspect of the matter as well. This Commission modified order dated 23.10.2021 in Petition No. 37 of 2021 in a Review Petition No. 1 of 2022 vide Order dated 21.02.2022 but instead of ameliorating the hardship of the Petitioner, said order has created more hardship to the Petitioner as in view of CERC Procedure, the Petitioner was not able to get the benefit of RECs. Section 144 of the Code of Civil Procedure provides for restitution of position of the parties. Section 144 of Code of Civil Procedure 1908 is reproduced as under:-

*(1) Where and in so far as a decree or an Order is varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose the Court which passed the decree or Order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or Order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may*

*make any Order, including Orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or Order.*

**Explanation:**

*For the purposes of sub-section (1) the expression "Court which passed the decree or Order" shall be deemed to include,-*

*(a) where the decree or Order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;*

*(b) where the decree or Order has been set aside by a separate suit, the Court of first instance which passed such decree or Order;*

*(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or Order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.*

42. It is held in (2016) 1 Supreme Court cases 411 Citibank N.A. V/s Hiten P. Dalal and others that Section 144 CPC vests expansive powers in the court to ensure equity, fairness and justice for both the parties.

Paras 17 and 19 of the aforesaid law are reproduced as under:

*17. In Kerala SEB also the view taken by this Court was similar. But it was further clarified that the court has a duty that in the matter of restitution justice be done as per facts of the case. In granting relief of restitution the court "should not be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitution is taken". This Court favoured a pragmatic view and grant of*

*relief in a manner as may be reasonable, fair and practicable without causing unmerited hardships to either of the parties. In South Eastern Coalfields Ltd., this Court re-emphasized that restitution is for meeting the ends of justice and depends upon the peculiar facts and circumstances of the case. This Court further clarified in para 27 that as held by the Privy Council in Jai Berham v. Kedar Nath Marwari, Section 144 CPC is rather a statutory recognition of an already existing rule of justice, equity and fair play and therefore even apart from Section 144 the court has inherent jurisdiction to order restitution so as to do complete justice between the parties. This Court approved the view of the Privy Council that the court has to act rightly and fairly according to the circumstances, towards all parties involved. 19. In the ultimate analysis we find that the law on restitution under Section 144 CPC is quite well settled. It vests expansive power in the court but such power has to be exercised to ensure equity, fairness and justice for both the parties. It also flows from more or less common stand of parties on the principle of law that for ascertaining the value of the property which is no longer available for restitution on account of sale, etc., the court should adopt a realistic and verifiable approach instead of resorting to hypothetical and presumptive value. It is also one of the established propositions that in the context of restitution the court should keep under consideration not only the loss suffered by the party entitled to restitution but also the gain, if any, made by other party who is obliged to make restitution. No unmerited injustice should be caused to any of the parties.*

43. The Hon'ble Supreme Court in Suo Moto Civil Writ Petition (c) No. 3 of 2022 has condoned the period of limitation on account of Lockdown due to Covid-19 Pandemic. Therefore, the Joint Petition No. 27 of 2021 would have been allowed w.e.f. 01.04.2021 had application dated

13.01.2021 (Annexure P-3) been annexed with said Petition, therefore, it is in the interest of justice to relegate the Petitioner to the original position by making the sale and purchase effective from 01.04.2021.

44. As observed above, the Order dated 21.02.2022 as made by the Commission has been rendered in-executable in view of the procedure lay down by the CERC regarding Renewable Energy certificates. Therefore, this commission in exercise of the power conferred on it under Sections 151 and 144 of the Code of Civil Procedure 1908 and Regulation 68 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 can mitigate the suffering of the Petitioner by making adequate provisions for making the sale and purchase of the power by the Petitioner to Respondent No. 1 effective w.e.f. 01.04.2021 so that the Orders dated 23.10.2021 in Joint Petition No. 37 of 2021 and 21.02.2022 in Review Petition No. 1 of 2022 do not operate as hindrance to the Petitioner.

45. Now the question arises whether the said exercise of power by the Commission would amount to reviewing of its own order. The simple answer is in negative for the reasons that the Petitioner is not at fault as it had moved the Respondent No. 1 well in time for approval of long term PPA under Generic Levellised Tariff vide application dated 13.01.2021 but for the reasons beyond control of the Petitioner and the Respondent No. 1

due to spread of Covid-19 pandemic at that point in time, the Joint Petition could not be filed in time which has resulted in making the order with effect from filing of the Petition i.e. 27.09.2021, though, the power has been supplied uninterruptedly w.e.f. 01.04.2021 but no provision has been made in respect of such power. Thus, the contention of the Respondent in this regard do not hold ground.

46. The Petitioner, has also claimed interest on the delayed amount but this commission is not inclined to allow the accrual of interest for the reasons that the Petitioner was also not vigilant about its rights as neither the application dated 13.01.2021 was brought to the notice of the commission at the time of filing of Petition No. 37 of 2021 nor at the time of filing of Review Petition. Had this vital aspect been brought to the knowledge of the Commission, the Commission would have allowed the Sale and Purchase w.e.f. 01.04.2021 on long term basis. In the circumstances, Points No. 1 and 2 are answered in favour of the Petitioner and against the Respondents. Point No. 3, on the other hand is answered against the Petitioner.

47. In view of the above, the present Petition is allowed in part. The Petitioner is allowed the actual Long Term Levellised Tariff w.e.f. from 01.04.2021 to 26.09.2021 with respect to the energy generated and supplied. The PPA as entered into between the Respondent No. 1 and

the Petitioner on 25.11.2021 is ordered to be revised accordingly by signing the Supplementary PPA. The other terms and conditions as mentioned in Order dated 23.10.2021 in Petition No. 37 of 2021 shall remain the same. The parties are directed to sign/execute the SPPA to this effect within a period of 30 days from the date of this Order. Three copies of the executed SPPA be sent to the Commission for record.

**Announced**  
**24.03.2023**

**-Sd-**  
**(Shashi Kant Joshi)**  
**Member**

**-Sd-**  
**(Yashwant Singh Chogal)**  
**Member(Law)**

**-Sd-**  
**(Devendra Kumar Sharma)**  
**Chairman**