

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

Review Petition No: 110 of 2024
Date of Institution: 02.07.2024
Arguments Heard on: 20.01.2025
Decided on: 17.03.2025

The HP Power Corporation Limited, through
General Manager (Gen.),
Himfed Building, BCS, New Shimla, HP-171009.

....Petitioner

VERSUS

The HP State Electricity Board Ltd. through
Chief Engineer (System Operation),
Vidyut Bhawan, Shimla, HP-171004.

....Respondent

Petition under Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 63 of the HPERC (Conduct of Business) Regulations, 2005, seeking review of order dated 12.04.2024 in Petition No. 48 of 2024.

CORAM

DEVENDRA KUMAR SHARMA
CHAIRMAN

YASHWANT SINGH CHOGAL
MEMBER (Law)

SHASHI KANT JOSHI
MEMBER

Present:-

Sh. Vishrov Mukhrjee, Sh. Vikas Chauhan and Sh.
Pratyush Singh Ld. Advocates for the Petitioner.

Sh. Kamlesh Saklani, Authorised Representative for the
Respondent.

ORDER

This Review Petition has been filed under Section 94 (1) (f) of the Electricity Act, 2003 (Act for short) read with Regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of

Business) Regulations, 2005 for review of order dated 12.04.2024 in Petition No. 48 of 2024.

2. A Joint Petition for approval of Power Purchase Agreement (PPA for short) in respect of Pekhubella Solar Power Project, 32 MWac, situated at Village Pekhubella, Distt. Una, H.P. (Project for short) was filed before the Commission by the Himachal Pradesh State Electricity Board Limited (the HPSEBL/ Respondent for short) and the Himachal Pradesh Power Corporation Limited (the HPPCL/ Petitioner for short) which was allowed by the Commission vide order dated 12.04.2024 in Petition No. 48 of 2024.

3. The review has been sought on the following grounds:-

“a)The Electricity Act, 2003, the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (as amended from to time) (“HPERC RE Tariff Regulations”), specifically under Regulations 13 and 18, as well as catena of case law on the subject, amply demonstrate that it is open to the parties to choose between two routes for tariff, either a project specific tariff determination process or tariff discovery through competitive bidding. In the present case, the parties had specifically opted for a project specific tariff determination which has been overlooked by this Hon’ble Commission while passing the Order dated 12.04.2024.

b)The tariff discovered through competitive bidding process under Section 63 of the Act has been wrongly applied as a

benchmark for a cost-plus project set up under Section 62 of the Act where a project specific determination under the extant HPERC Regulations was sought.

c) The Order dated 20.05.2023 in Petition No. 17 of 2023 passed by this Hon'ble Commission has been wrongly applied to the facts of the present case, even though the same was pertaining to tariff discovered through competitive bidding and a case where tariff was determined as per the regulations.

d) The mutually determined tariff of Rs. 3.50 per kWh along with the cost of land if levied in future by the Government as agreed by the parties in Minutes of Meeting (MoM for short) dated 24.01.2024 as calculated by the parties, pursuant to the directions of this Hon'ble Commission, in fact, is based on the norms provided in the HPERC RE Tariff Regulations and hence ought not to have been disregarded while passing Order dated 12.04.2024."

4. According to the Petitioner, the Commission vide daily order dated 29.11.2023 in Petition No. 48 of 2024 had directed the HPSEBL to arrive at a tariff nearer to the national average cost discovered by the Solar Energy Corporation of India (SECI for short) and accordingly, a meeting was held on 24.01.2024 between the parties, wherein the HPSEBL agreed to purchase the entire power from the Project at a tariff of Rs. 3.50 per kWh subject to approval by the Commission, and it was also mentioned in the Minutes of Meeting (MoM) dated 24.01.2024 that the reduction of tariff below

Rs 3.49 per kWh shall not be possible as the government may demand cost of the land at a later stage.

5. Also averred that the Commission vide order dated 20.05.2023 in Petition No. 17 of 2023 has laid down the guidelines about the procurement of solar power exceeding 5.0 MW by the HPSEBL that such procurement needs to be made by way of open bidding and that too on SECI approved/ discovered rates. However, keeping in view the peculiar geographical, topographical and climatic conditions, 15% additional cost over and above the SECI determined rates was allowed to be given.

Copy of order dated 20.05.2023 has been annexed as Annexure-B.

6. According to the Petitioner, the SECI had called for the tenders on 13.10.2023 for tariff based competitive bidding and the discovered rate was Rs. 2.52 per kWh, as available on the website of the SECI, and accordingly, the PPA was approved at the rate of Rs. 2.90 per kWh directing the parties to sign the PPA within 15 days if the said rate is acceptable to the Joint Petitioner and if said rate is not acceptable, the Petitioner may sell the same in the open market through power exchanges.

7. It is averred that the Joint Petition filed before the Commission was result of negotiation as both parties arrived upon a tariff of Rs. 3.49 per kWh but despite mutual concurrence, the Commission

granted tariff only of Rs. 2.90 per kWh. Further, the PPA could not be signed and extension of time was sought by the Petitioner by filing Petition No. 109 of 2024 on 28.05.2024 which was considered by the Commission on 24.08.2024 granting 15 days time but the PPA was not signed and further extension was granted.

8. According to the Petitioner, the HPPCL and the HPSEBL after extensive negotiations agreed upon a tariff of Rs. 3.49 per kWh for the sale/ purchase of power from the Project which was based on comprehensive technical and financial analysis showing cost of production, return on investment and market conditions. However, despite mutual negotiations, the Commission has granted a lower tariff of Rs. 2.90 per kWh which has adversely affected the financial viability leading to reduced return on investment and challenges in meeting financial obligations.

9. Also averred that Section 62 of the Electricity Act, 2003 envisages projects being setup on a cost-plus basis while, it is preferable that competitive bidding be adopted especially for projects above 5.0 MW, however, the extant law does not entirely preclude the Project to be set up under the Regulations, especially if the Project falls within the exceptions provided where the Commission was required to determine the tariff based on established norms. The parties in the present case had opted for the

Project specific tariff determination under Section 62 route clearly incorporating the same in the draft PPA. Thus, based on the above and extant Regulations, the parties had jointly sought tariff of Rs. 3.50 per kWh keeping in view the land cost in case the same is levied by the Government in the future, as agreed in MoM dated 24.01.2024. Further, the extant Regulations do not permit any benchmarking of tariff in case of determination of Project specific tariff under Section 62. Hence, no ceiling or benchmarking rate, especially derived from Section 63 of the Electricity Act, 2003 ought to be made applicable to the present case.

10. As per the Petitioner, the generation is a delicensed activity. However, the procurement of power can be done either by determination of tariff by the Commission under Section 62 i.e. cost-plus route or by adoption of tariff by bidding process under Section 63.

11. Further, the Petitioner has made reference to para 5.2 of the Revised National Tariff Policy dated 28.01.2016 (RTP) that all future procurement of power by the distribution licensee must be through competitive bidding except in case where there is an expansion of existing projects or where a State Government owned or controlled company is a designated developer and where the Regulator will determine the tariff based on established norms.

12. Regarding modes of power procurement under Sections 62 and 63 of the Electricity Act, a reference has been made to paras 88, 92, 121 and 122 of *Tata Power Limited Transmission v. MERC* (2023) 11 SCC 1. Based on the aforesaid judgment, it is mentioned that:

- (i) Distribution licenses are not mandated to procure power through competitive bidding.
- (ii) RTP does not place any bar on Distribution Licensees in procuring power through either Section 63 or Section 62. Section 63 cannot be considered as dominant mechanism for procurement of power.

13. Further, reference has also been made to the principles mentioned in Sections 61 and 62 of the Act that the Project which are established for operations on cost plus route under Section 62 of the Act, the Project developers have statutory assurances of reasonable returns as provided under Section 61 of the Act which form the basis of Tariff Regulations framed to guide the process of Regulatory Commissions and once the procurement of power from cost plus projects is permitted and the parties have mutually agreed and negotiated the tariff between them, the Commission was legally obligated and bound to determine the tariff for the Project as per the principles laid down under Sections 61 and 62 of the Act.

14. Also averred that the Commission in exercise of powers vested in Section 61, 66, 86 and 181 of the Act has framed the

Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (RE Tariff Regulations, 2017 for short) for determination of tariff and the tariff was required to be determined under said Regulations. Reference has also been made in paras 54, 55 and 56 of the law laid down by the Hon'ble Supreme Court in PTC India Ltd. v. CERC (2010) 4 SCC 603.

15. Also averred that as per the RE Tariff Regulations, 2017 the following is discernible:

- (i) Tariff to be determined by this Hon'ble Commission for the Project is to be in accordance with the HPERC RE Tariff Regulations.
- (ii) In terms of Regulation 8(2) of HPERC RE Tariff Regulations, in the event of **parties arriving at a mutual understanding on various issues of the PPA, including the tariff option under Regulation 13, the parties will file a joint Petition before the Hon'ble Commission for approval of the proposed PPA.**
- (iii) Under Regulation 13(4), in case of renewable energy sources other than small hydro projects, such as solar PV projects, the tariff options under Regulation 18 are available to the parties intending to enter into a PPA;
- (iv) As per Regulation 13(5) of the HPERC RE Tariff Regulations, the **parties will, while arriving at a mutual understanding about the sale / purchase of power also mutually decide the tariff option to be adopted and will before submitting the joint Petition for approval of the proposed PPA under Regulation 8, also reflect the same in the proposed PPA. Provided that the tariff option adopted in the PPA will be irrevocable and binding;**
- (v) Regulation 15 sets out the methodology and considerations for this Hon'ble Commission to determine the project-specific levelled

tariff, including the capital cost, the normative CUF, technology-specific parameters, financial norms, etc.;

- (vi) Regulation 18(4) provides that the renewable energy generator and the distribution licensee intending to sell/purchase power from the projects based on the renewable energy sources, for the entire useful life of the project, may, at the time of filing joint petition for the approval of the power purchase agreement, mutually agree to be governed by the generic levelled tariff, if the Commission has already determined or expressed its intention, by order, to determine such a rate for that technology, **or in absence of Commission having expressed any such intention, for determination of project specific tariff by the Commission.**
- (vii) Financial principles as laid down under Part IV of the HPERC RE Tariff Regulations *inter alia* including:
- Regulation 21-C: Capital Cost: capital cost shall be inclusive of all the expenses required to be incurred as per prudent practices upto the commissioning of the project.
 - Regulation 22-C: Subsidy or incentive or grant/budgetary support by the Central/ State Government.
 - Regulation 23-C: Debt-Equity Ratio: The normative debt equity ratio shall be 70:30.
 - Regulation 24-C: Loan and Finance Charges and Interest Rate.
 - Regulation 25-C: Depreciation.
 - Regulation 26-C: Return on Equity.
 - Regulation 27-C: Interest on Working Capital.
 - Regulation 28-C: Operation and maintenance expenses.
 - Regulation 29-C: Taxes and duties.

16. According to the Petitioner, the Regulation 13 of the RE Tariff Regulations, 2017 allows the parties to adopt any of the tariff options set out under Regulation 18 of the above Regulations, which had been reflected in the draft PPA which were irrevocable and binding and the RE Tariff Regulations, 2017 do not mandate competitive bidding to the exclusion of Tariff determination under Section 62. As per the Petitioner, in the absence of generic levelled tariff for the

Solar Projects exceeding 5 MW, the Commission is mandated to determine the tariff in accordance with Regulation 15. Further, in the draft PPA submitted by the parties for approval before the Commission and as approved by the Commission vide order dated 12.04.2024 in Petition No. 48 of 2024, the parties intended to choose the tariff as specified by the Commission with interim tariff of Rs. 3.49 per unit under Article 2.1.1 under the draft PPA which has been reproduced as under:

“6.1.1 The tariff to be charged & its associated Terms and Conditions for the electricity supplied from the Pekhubella SPP 32 MWac at the interconnection point shall be as per the Tariff Regulation/Notification/orders/directions issued/to be issued by the HPERC from time to time [...]

[...]

6.1.5 Till the tariff is finalized by Hon'ble HPERC, HPSEBL shall pay interim charges @ Rs. 3.00/kWh which shall be adjusted as per tariff finalized by Hon'ble HPERC.”

17. It is averred that the Commission vide order dated 14.03.2024 in Suo Moto Petition No. 1 of 2024 has determined the generic levelled tariff @ Rs. 3.47 or 3.52 (depending upon the location of the Project) for Solar PV Projects upto 5MW capacity but for the projects exceeding 5.0 MW capacity, no generic levelled tariff has been determined, as such, the Commission is bound by its Regulations especially Regulation 15, of the above Regulations to determine specific tariff for the Project. Thus, the application of tariff discovered by SECI, as a benchmark, is contrary to the RE Tariff

Regulations, 2017. Also the Commission ought to have considered mutually determined tariff of Rs. 3.49 per kWh computed specifically for the Project pursuant to the directions of the Commission vide order dated 14.03.2024, was in line with the generic levelized tariff as mentioned above.

18. Also averred that under cost plus regime, all input cost of generation (Capex and Opex) is an automatic pass through in the tariff subject to prudence check by the Commission. Further, the Hon'ble APTEL in various judgments has held that the tariff is the reflection of the actual cost and unless there is imprudence in the manner in which the cost is incurred, the expenditure claimed by the generation company should be passed on in the tariff. Reference has made to the judgment dated 06.05.2011 in Appeal No. 170 of 2010 titled as Madhya Pradesh Power Generation Company Limited v. MERC & Ors., judgment dated 23.11.2007 in Appeal No. 273 of 2007 titled as Damodar Valley Corporation v. CERC & Ors. and judgment in Dodson-Lindblom Hydro Power Pvt. Ltd. v. MERC [2011 SCC On Line APTEL 156].

19. According to the Petitioner, it is noteworthy that:

- (i) The tariff (i.e Levelized cost of energy (LCOE)) in the DPR was based on the insolation considered as per NASA data as 1945 kWh/m², however actual Global Horizontal Irradiance ("GHI") available in HP is 1451 kWh/m² as per Berra-Dol SPP which is around 25% lower than the considered value in DPR and have to

achieve the minimum annual guaranteed energy for the Project irrespective of GHI variation.

- (ii) Moreover, the tariff has to be computed by considering the actual awarded works for the Project through competitive tendering / bidding process, which has been worked out as Rs. 4.12/unit, Rs. 3.98/unit & Rs. 3.49/unit based on different parameters.
- (iii) Further, other factors may also pose challenges in ascertaining the financial viability of the solar power project. As regarding higher cost of derived per unit rate of energy, the following factors mainly attribute to this higher cost:
- Insolation level in HP area is less than that for area in Gujarat & Rajasthan. This fact is also substantiated through GHI data.
 - Transportation costs are comparatively higher.
 - Land availability & Land development costs are also comparatively higher.
- (iv) Further in the present case, cost of land and transmission line cost is not included. However, if the same is sought by the Government of Himachal Pradesh, the same will additionally be leveraged over and above to derive the new tariff.
- (v) As per HPSEBL in case of current scenario of power purchase, SECI rates quoted by various agencies under CPSU scheme are at Rs.2.68/unit including the trading margin of 7 paise/Unit at NR Periphery. Thus, cost at Discom Periphery is working out as Rs.4.72/Unit, if relevant effective rebates as being received by HPSEBL against its General Network Access as per regulations are considered. However, if waiver is not considered the cost comes to Rs 5.20/Unit.
- (vi) Therefore, further reduction of per unit cost below Rs. 3.49/unit will not be possible subject to condition that land cost if demanded by the Government at a later stage shall be added further to derive new applicable tariff.

In view of the foregoing, it was only after detailed deliberation the representatives of both HPPCL and HPSEBL agreed that HPSEBL will purchase the entire power from the Project at the minimum tariff of Rs. 3.50/unit along with the cost of land if levied by the Government in the future, under Minutes of Meeting dated 24.01.2024.

20. It is averred that the rate discovered by the competitive bidding cannot operate as cap on the determination of project specific tariff.

The Commission has erred in applying the tariff discovered by the

SECI by competitive bidding process under Section 63 as the benchmark, whereas as per the RE Tariff Regulations, 2017, the Commission was bound to determine the tariff after taking into account the mutually agreed rate and the departure from the RE Tariff Regulations, 2017 is erroneous and that the Commission has also erred by applying the ratio of the order in Petition 17 Order to the present case as said order applies to procurement via competitive bidding under Section 63 of the Act but under Section 62 of the Act and the RE Tariff Regulations, 2017, both routes i.e., project specific determination of tariff or competitive bidding are available to the parties and in the present case, the parties had expressly exercised their right to opt for a project-specific tariff determination under Section 62. Therefore, application of the order in Petition No. 17 of 2023 has rendered the whole order erroneous which is a factual error apparent on the face of record and is contrary to the RE Tariff Regulations, 2017. Also that the Commission has erred in applying the rate of Rs. 2.53 discovered pursuant to SECI tariff based competitive bidding, without taking into consideration the CUF, location and capital cost of the Project as mentioned in Regulation 15 of the RE Tariff Regulations, 2017 which requires these project-specific parameters and financial principles to have been factored in while determining the project-specific tariff.

21. Reference has also been made in para 18 of the law laid down in *Tata Chemicals Ltd. v. Commr. of Customs* (2015) 11 SCC 628 and paras 31 and 32 of the law laid down in *Babu Verghese v. Bar Council of Kerela* (1999) 3 SCC 422 that if law required something to be done in a particular manner, such thing has to be done in that particular manner only.

22. A reference has also been made to paras 22, 23 and 24 of judgment dated 02.05.2022 of the Hon'ble APTEL in Appeal No. 381 of 2018 titled *Cogeneration Association of India v. MERC & Ors.*

23. It is also averred that tariff considered in Order dated 12.04.2024 is not a suitable benchmark as the Project is of a far lower capacities than the capacity awarded under SECI tender and does not benefit from economies of scale, as evident from the generic levelled tariff determined by the Commission for Projects not exceeding 5 MW capacities, which is approximately Rs. 1/- higher than the tariff discovered under SECI tender dated 13.10.2023. Reference has also been made to judgment dated 25.10.2024 in Appeal No. 326 of 2021 titled *Amplus Sun Solutions Private Ltd. v. Haryana Electricity Regulatory Commission* that the tariff determined under competitive bidding route depends on various factors including location and size of the project.

24. Also the observations of the Commission in para 11 of the order dated 12.01.2024 that the Pekhubella Solar Power Project should be cost effective as the land is granted by the Govt. of H.P. are not as per record, as the Revenue Department, Govt. of H.P. has recommended for the transfer of the land to the Project on lease basis as per the provisions of the Himachal Pradesh Lease Rules, 2013, as amended from time to time, and the Petitioner has further been asked vide letter dated 29.07.2024 by the Govt. of H.P. (MPP & Power) to take necessary action in the matter.

25. Also that the interest of the consumers is not the sole criteria while determining the tariff as held by the Hon'ble Supreme Court in Andhra Pradesh Electricity Regulatory Commission v. R.V.K. Energy (P) Ltd. (2008) 17 SCC 769 wherein it was held that while consumer interest is a consideration of determination of tariff but it is not the sole criteria as the interest of generating companies is as equally important.

26. Also averred that the HPSEBL is liable to pay tariff from the COD of the Project for the power consumed from the Project as per the rate determined by the Commission and has referred to the order dated 24.03.2023 in Petition No. 77 of 2022 titled as M/s Sai Engineering Foundation V/s the HPSEBL & Anr. in this regard.

REPLY OF THE RESPONDENT

27. In reply, the contents of the Petition have been denied, inter-alia, that the review jurisdiction of the Commission is limited to rectifying the errors apparent on the face of the record or addressing new and important evidence which was unavailable at the time of the original proceedings and that the grounds such as dissatisfaction with the tariff determination or questioning the methodology adopted by the Commission, fall within the domain of Appellate jurisdiction under Section 111 of the Act and cannot be entertained in a review.

28. Further, an error apparent on the face of the record must be self evident, leaving no room for doubt or debate. The approved tariff of Rs. 2.90 per kWh was determined based on the SECI benchmark and is a well reasoned conclusion derived from the evidence and submissions presented during the original proceedings. Further the Petitioner has not identified any computational, factual or legal error which qualifies as an “apparent error.” It is settled position of law that a review cannot be granted to revisit the findings which are debatable or require a long drawn reasoning process.

29. Also that the tariff of Rs. 2.90 per kWh was determined after extensive analysis and joint deliberation by both the Petitioner and the Respondent which reflects a fair balance between the interests

of the generator, the distribution licensee and the consumers and reopening of the order would set an unhealthy precedent and erode the sanctity of Commission's approved order.

30. Further averred that the review Petition essentially raises the issues which were already deliberated or could have been raised during the original proceedings. By seeking enhancement of tariff, the Petitioner is attempting to substitute the Commission's well reasoned judgment with its own opinion which is impermissible in a review.

31. Further averred that for the maintainability of a review, it is necessary to show either discovery of new and important evidence which was not available during the original proceedings or an error apparent on the face record which undermines the basis of the original decision but the Petitioner has neither introduced new evidence nor pointed out any error of such a nature and the review rest entirely on grounds which were or could have been argued earlier, rendering the review untenable.

32. According to the Respondent, the Commission has consistently adhered to the SECI-discovered tariff benchmarks, with a 15% margin added to address State specific concerns. This approach ensures competitive procurement and affordability for consumers. Further, the approved tariff was determined after

considering all relevant submissions, and no deviation from established principles has been demonstrated by the Petitioner. Therefore, there is no basis for revising the tariff. Further, the Commission's reliance on SECI discovered tariff as a benchmark ensures that State level tariff remains in alignment with prevailing market trends and National Tariff Policy. The 15% increase, over and above the SECI discovered rate, accounts for State specific factors such as geography, infrastructure and operational costs and any deviation from this benchmark methodology would lead to higher procurement cost for the HPSEBL and its consumers, contravening to the principles of cost effectiveness. Also the Commission under Section 86 (1) (b) of the Act has a statutory duty to regulate the electricity purchase and procurement process of the distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power of distribution and supply within the State. The reliance of the Petitioner qua the mutual agreement of the parties in the joint Petition for approval of PPA does not preclude the Commission to exercise its power under Section 86 (1)(b) of the Act. Thus, the review Petition lacks merits and is liable to be dismissed. According to the Respondent, the instant review Petition is based on grounds of mere dissatisfaction

with the approved tariff, which cannot form the basis for invoking the review jurisdiction.

33. On merits, the contents have been denied reiterating the averments made in the previous paras of the reply that the grounds raised by the Petitioner do not demonstrate any error apparent on the face of the record. It is denied that the Commission has overlooked the option for project specific tariff determined under Regulation 14 and 18 of the RE Tariff Regulations and that the Commission has considered all statutory provisions, and regulatory principles. Also that the competitive bidding, as a benchmark is appropriate and is in line with the principles of transparency, economic efficiency and consumers interest. Further, the reliance on the order passed by the Commission on 20.05.2023 in Petition No. 17 of 2023 is relevant and has been appropriately applied. Regarding mutually determined tariff of Rs. 3.50 per kWh, as recorded in MoM dated 24.01.2024, it is averred that the same was based on the statement of the Petitioner that further reduction of per unit cost below Rs. 3.49 per kWh shall not be possible but said assertion was subject to the approval of the Commission.

34. It is averred that the tariff of Rs. 2.90 per kWh is as per the guidelines contained in order dated 20.05.2023 including the SECI discovered rates of Rs. 2.52 per kWh and the permissible 15%

additional cost whereas the Petitioner's request for the tariff of Rs. 3.50 per kWh was based on negotiations and was inconsistent with the regulatory framework. According to the Respondent, the review Petition is an attempt to delay the implementation of order passed by the Commission.

35. Regarding the assertion of the Petitioner for executing a short term PPA for one year, it is submitted that the same was inconsistent with orders dated 12.04.2024 and 28.08.2024. Subsequently, the Respondent filed MA No. 294 of 2024 on 03.09.2024 seeking extension of time for signing the PPA which was allowed vide order dated 26.12.2024 directing the parties to sign the PPA within 3 days which has accordingly been signed.

36. It is averred that mutually agreed tariff and draft PPA cannot oust the jurisdiction of the Commission under Section 86 (1) (b) of the Act as the Commission while approving the draft PPA has categorically held that the Commission under the Act is mandated to protect the interest of the consumers while allowing any power procurement. Also that the review has been filed in disguise of appeal are liable to be rejected.

SUBMISSIONS OF THE PARTIES

37. We have heard Sh. Vishrov Mukhrjee, Advocate alongwith Sh. Vikas Chauhan and Sh. Pratyush Singh, Advocates for the

Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent in detail.

38. Sh. Vishrov Mukhrjee, Ld. Counsel for the Petitioner has submitted that the Commission has erroneously benchmarked the tariff to the SECI discovered rate which is contrary to the RE Tariff Regulations, 2017 Revised National Tariff Policy and Sections 61 and 62 of the Electricity Act, 2003. According to him, the Commission was mandated and bound to determine the project specific tariff based on the actual cost and the norms provided under the RE Tariff Regulations, 2017 and, therefore, the order under review is contrary to Regulation 8 (2), Regulations 13 (4) and (5) and Regulation 18 (4) of the RE Tariff Regulations, 2017 as the parties had mutually agreed for the sale/ purchase of the power @ tariff not less than Rs. 3.49 per kWh and had incorporated the same in the draft PPA attached to the Joint Petition.

39. He has further submitted that as per Regulation 18 (4) of the RE Tariff Regulations, 2017 only two options are available with the Commission i.e. (1) generic levelled tariff already determined by the Commission and; (2) determination of project specific tariff and that the parties had selected the option of project specific determination of tariff which was irrevocable and binding on the parties as also the Commission and, thus, the Commission was

bound to determine the Project specific tariff as agreed and non determination, constitutes an error apparent on the face of the record. He further claims that though the generic levelized tariff for the Solar PV Projects not exceeding 5.0 MW capacity has been determined by the Commission vide order dated 14.03.2024 in Suo Moto Petition No. 01 of 2024, yet no generic levelized tariff has been determined for Projects exceeding 5.0 MW capacity and in the absence thereof, the Commission was bound to undertake project specific determination of tariff as per Regulation 18 (4) which had been indicated in Clause 6.1.1 of the draft PPA, annexed to the Joint Petition.

40. He has further, submitted that since the Commission was duty bound to determine the Project specific tariff, no separate prayer was required to be made for this purpose. Further submitted that the Electricity Act provides for procurement of power either by determination of tariff by the Commission under Section 62 of the Act or adoption of tariff under Section 63 of the Act, but para 5.3 of the National Tariff Policy provides for exemption in respect of future procurement of power by the distribution licensee in cases where the State Govt. owned or controlled company is the designated developer in which case the Commission will have to determine tariff

on the basis of established norms as per the RE Tariff Regulations, 2017.

41. He has also submitted that order passed by the Commission is contrary to the law laid down by the Hon'ble APTEL in the cases of Amplus Sun Solutions Private Ltd. v. Haryana Electricity Regulatory Commission and Ors. decided on 25.10.2024 in Appeal No. 326 of 2021, Cogeneration Association of India v. MERC and Ors. Appeal No. 381 of 2018 decided on 02.05.2022. He has also relied upon the law laid down by the Hon'ble APTEL in Gujrat Urja Vikas Nigam Ltd. v. Taxus Infrastructure and Power Projects and others, Review Petition No. 8 of 2020 decided on 27.05.2024, and the law laid down by the Hon'ble Supreme Court in Tata Power Company Limited Transmission v. MERC: (2023) 11 SCC 1.

42. According to him, the Commission has failed to consider that the Project is for a far lower capacity than the capacities of the Projects considered by the SECI, therefore, the Project does not benefit from economies of scale and thus, the Commission ought to have determined the Project specific tariff as per the RE Tariff Regulations, 2017.

43. Sh. Kamlesh Saklani, Authorised Representative for the Respondent on the other hand had submitted that the tariff of Rs. 2.90 per kWh has been allowed by the Commission after

considering all aspects of the matter and there are no errors apparent on the face of the record and the Petitioner is liable to be dismissed. According to him, the Review Petition raises new and independent pleas which were never raised in the original Petition, as such, such pleas are impermissible in the Review Petition and the Petitioner was at liberty to assail the order under review before the Hon'ble APTEL. He has also submitted that the Petitioner has not been able to show that the impugned order suffers from errors apparent on the face of the record nor any new evidence has been adduced which could not be produced despite due diligence. Thus, the Review Petition is not maintainable. He has also submitted that mere filing of joint Petition on mutually agreed tariff or mutual consensus for the tariff of Rs. 3.49 per kWh, does not dilute the powers of the Commission under Section 86 (1) (b) of the Electricity Act to reject the power procurement for the DISCOM if the procurement of power is not as per the market aligned rate as the procurement of power on exorbitant rate would have burdened the consumers of the State. He has further submitted that the impugned order is well justified and non-erroneous and that in case the procurement at the tariff as mentioned in the Petition i.e. Rs. 3.50 per kWh had been allowed, the same would have been passed on to the consumers to bear the burden of higher tariff cost despite the

same power being available at the market at much cheaper tariff. He has also submitted that Commission in various orders has categorically held that the solar power from the Solar PV Projects exceeding 5.0 MW capacity shall only be procured through competitive bidding process and since, the SECI had discovered the tariff of Rs. 2.52 per kWh as on date was when the Petition was filed, the Commission has rightly considered the rate of Rs. 2.52 per kWh plus 15% additional tariff keeping in view the peculiar topographical and geographical conditions of the State.

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

Point No. 1: Whether there are sufficient reasons for reviewing the Order dated 12.04.2024 in Petition No. 48 of 2024 as alleged?

Point No. 2: **Final Order**

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

Point No. 1: No.

Point No. 2: The Petition dismissed per operative part of the Order.

REASONS FOR FINDINGS

Point No. 1:

44. It is well settled that the power of review can be exercised for correction of a mistake but not to substitute a view. Such power can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced at the time when the order was made. It may also be exercised where some mistake or error apparent on the face of the record is found but may not be exercised on the ground that the decision was erroneous on merits which is the domain of a court of appeal. While exercising the review, the court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. In this regard, reliance may be placed in *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 wherein it is held as under:-

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise.”

45. Similarly in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 it has been held by the Hon'ble Supreme Court that the review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. Para 8 of the aforesaid law is reproduced as under:-

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

“It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909], there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

46. A similar view has been taken by the Hon'ble Supreme Court in *Ram Sahu v. Vinod Kumar Rawat*, (2021) 13 SCC 1.

47. The review has been sought on the following grounds as mentioned in Para I of the Review Petition:-

“a)The Electricity Act, 2003, the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (as amended from to time) (“HPERC RE Tariff Regulations”), specifically under Regulations 13 and 18, as well as catena of case law on the subject, amply demonstrate that it is open to the parties to choose between two routes for tariff, either a project specific tariff determination process or tariff discovery through competitive bidding. In the present case, the parties had specifically opted for a project specific tariff determination which has been overlooked by this Hon’ble Commission while passing the Order dated 12.04.2024.

b)The tariff discovered through competitive bidding process under Section 63 of the Act has been wrongly applied as a benchmark for a cost-plus project set up under Section 62 of the Act where a project specific determination under the extant HPERC Regulations was sought.

c) The Order dated 20.05.2023 in Petition No. 17 of 2023 passed by this Hon’ble Commission has been wrongly applied to the facts of the present case, even though the same was pertaining to tariff discovered through competitive bidding and a case where tariff was determined as per the regulations.

d)The mutually determined tariff of Rs. 3.50 per kWh alongwith the cost of land if levied in future by the Government as agreed by the parties in Minutes of Meeting (MoM for short) dated 24.01.2024 as calculated by the parties, pursuant to the directions of this Hon’ble Commission, in fact, is based on the norms provided in the HPERC RE Tariff Regulations and hence ought not to have been disregarded while passing Order dated 12.04.2024.”

48. A Joint Petition being Petition No. 48 of 2024 was filed before the Commission for the approval of PPA in respect of the Project, with the following prayer:-

- i. Take the accompanying file of Power Purchase Agreement on record;
- ii. Consider and approve the Power Purchase Agreement in respect of Pekhubella SPP 32 MWac.
- iii. Pass such orders as the Hon'ble Commission may deem fit, just and proper in the facts and circumstances of the case.

49. It was also mentioned in Paras (4) and (5) of the Petition No.

48 of 2024 as under:-

"4. Proceedings between HPSEBL & HPPCL and Provision under GoHP Swaran Jayanti Energy Policy, 2021:-

A meeting was held between HPSEBL and HPPCL on 29.06.2022, wherein it was agreed that the tie up of upcoming Hydro and Solar Power Projects of HPPCL shall be taken up depending upon their COD (Annex-A).

Further, as per National Tariff Policy, 2016 issued by MoP, all future requirement of power should continue to be procured competitively by distribution licensees except in case of expansion of existing projects or where there is company owned or controlled by the State Government as an identified developers and where regulators need to resort to tariff determination based on norms provided that expansion of generating capacity by private developer for this purpose would be restricted to one time addition of not more than 100% of the existing capacity."

AND Whereas GoHP vide Notification No. MPP-F(10)-43/2023 dated 21st September, 2023 has notified that the solar power produced by HP State Govt. Entities i.e. HPPCL and HIMURJA for the solar power projects shall be mandatorily purchased by HPSEBL at HPERC rate discovered through competitive bidding process. However, if a hybrid project has Solar power as component the tariff for purchase of solar power by HPSEBL exceeding 5MW shall be as determined by HPERC.

5. HPSEBL in deficit in power as per APSP attached at Annexure-B. Hence to bridge the gap between demand and availability, HPSEBL has agreed to tie up said Solar Power Project (SPP) which is also mandatorily for HPSEBL to be purchased as per latest amendment to Swaran Jayanti Policy, 2021"

50. A careful perusal of the prayer and averments made in paras (4) and (5) of the Joint Petition, it is evident that there was not even an iota in the Joint Petition that a Project specific tariff had been sought in respect of the Project. On the contrary, the averments of Paras (4) and (5), as reproduced above, clearly show that the power shall be mandatorily be purchased by the HPSEBL on the tariff discovered through competitive bidding process. Though, it is submitted by the Ld. Counsel for the Petitioner that no specific prayer for determination of project specific tariff was required to be made yet no explanation has come forward as to under what provisions of the Act, Regulations framed by the Commission or Guidelines, the Commission is obligated and bound to determine the project specific tariff of Solar Power Projects exceeding 5 MW capacity.

51. As mentioned above, the Joint Petition was for approval of the PPA mainly on the averments made in Paras (4) and (5) of the Joint Petition, as reproduced above. The whole Joint Petition was limited only to 3 pages. However, in the present Review Petition, the Petitioner has raised several grounds of challenge as that of Appeal spanning the Review Petition to 29 pages by raising several new pleas and highlighting discrepancies in the order under review which are not permissible in a Review Petition as the scope of Review

Petition is quite limited only to the extent of what is pleaded in the original Petition and for correcting the errors apparent on the face of record, in the order made on the basis of averments made in the main Petition. While considering an application for review, the Commission must confine its adjudication with reference to material which was available at the time of initial decision and the party cannot be permitted to re-agitate the issues which have already been addressed. The review Petition can't be on the grounds that the decision is erroneous on merits and can't be allowed to be an appeal in disguise, as held by the Hon'ble Apex Court in the case of *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 and *Ram Sahu v. Vinod Kumar Rawat* (2021) 13 SCC 1.

52. In the circumstance, the Review Petitioner in the Review petition has clearly travelled beyond the scope and ambit of the review as mentioned under Order 47, Rule 1, CPC. However, the Commission has examined the Review Petition on the errors pointed out in para 1 of the Review Petition, as mentioned above in para 47.

53. This Commission in exercise of the powers vested in it under Section 181 of the Act has framed HPERC RE Regulations, 2017, which have been amended subsequently from time to time. Regulation 3 of the above Regulations provides for scope and extent

of application of the Regulations. Sub-regulation (2) of Regulation 3 of the RE Regulations, 2017 reads as under:-

“(2) Save as provided in Regulation 16, these Regulations shall not apply in the following cases:-

(i) where long term agreements for disposal/use of energy have either already been signed by the renewable energy generators or have been approved by the Commission, or the joint petitions for the approval of the Power Purchase Agreements have been filed before the Commission, prior to the date of commencement of these Regulations:

Provided that in case the capacity has been enhanced subsequent to signing/approval of such agreement(s), the applicability of these regulations shall be ascertained, based on such criteria, separately for the original capacity and the additional capacity;

(ii) Omitted.

(iii) where the tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

(emphasis supplied)

54. It is thus, clear from the Sub-regulation (2) of Regulation 3 of the above Regulations that these Regulations have no applicability where the tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Govt.

55. The GoI vide notification dated 19.01.2005 notified the competitive bidding guidelines under Section 63 of the Electricity Act, 2003 for procurement of solar power which have been modified from time to time. The GoI on 03.08.2017 also notified Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects vide notification No.

23/27/2017-R&R.-1. Clause 2.1 of these guidelines dated 03.08.2017 shows that procurement of electricity from grid connected Solar PV Power Projects having size of 5 MW and above shall be made through competitive bidding. Clause 2.1.1 reads as under:-

“2.1.1. These Guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the ‘Procurers’ from grid-connected Solar PV Power Projects (‘Projects’) having size of 5 MW and above, through competitive bidding.”

56. The GoHP launched the H.P. Solar Power Policy, 2016, which was valid till 31.03.2022. Tariff for purchase of sole power upto 5 MW capacities was made to be determined by the Commission under the prevailing Regulations but tariff above 5 MW capacities was made to be discovered through competitive bidding. The GoHP further introduced the Swaran Jayanti Policy, 2021, vide which it was made mandatory for the HPSEBL to purchase the Solar power from Solar Power Projects upto 5.0 MW capacity on the tariff determined by the HPERC (Commission) from time to time and the tariff for the Projects above 5 MW capacities was made to be discovered by the HPSEBL through competitive bidding mode. The Swaran Jayanti Policy, 2021 was amended by the GoHP vide notification No. MPP-F(1)-2/2005-XV-1 dated 18.05.2023 and by virtue of said amendment, it was made mandatory for the HPSEBL

to purchase solar power generated by the solar projects of the H.P. Govt. entities i.e. the HPPCL and the HIMURJA at the tariff determined by the Commission.

57. As per the third proviso to Regulation 18 (2) of the HPERC RE Regulations, 2017, the Commission may in order to promote such technologies for smaller capacities, follow, mutatis mutandis, upto the limits as it may consider necessary separately for each such technology but not exceeding 5 MW for any such technology, any or all of the technological specific parameters, including capital cost, and other terms and conditions or the tariff, in respect of the relevant part of the control period. Third proviso to Regulation 18 (2) is reproduced as under:-

“Provided further that the Commission may, in order to promote such technologies for smaller capacities, follow, mutatis mutandis, upto the limits as it may consider necessary separately for each such technology but not exceeding 5 MW for any such technology, any or all of the technological specific parameters, including capital cost, and other terms and conditions or the tariff, in respect of the relevant part of the control period for the relevant renewable energy technology, as it may deem fit –

(a) as specified or adopted by the Central Commission for determining project specific tariff for any project(s) or generic levellised tariff for any category of project(s); or

(b) the rate discovered though competitive bidding undertaken by any Government agency; or

(c) the inputs available from any other sources, as the Commission may find appropriate.”

58. Accordingly, the Commission has been determining the generic levellized tariff for the Solar Projects upto the capacities of 5

MW, whereas, the tariff for the Projects above 5 MW capacities is to be discovered through the competitive bidding process as per the guidelines issued by the Gol.

59. It is held by the **Hon'ble Supreme Court in Civil Appeal No. 6503 of 2022 in Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors.** decided on **08.01.2024** that the State Commission is bound to take into consideration the bidding guidelines issued by the Gol. Para 83 of the aforesaid judgment is reproduced as under:-

*“83. We further find that it cannot be read from the orders of this Court that the State Commission was bound to accept the bids as quoted by the bidders till the bucket was filled. Firstly, no such direction can be issued by this Court de hors the provisions of Section 63 and 86(1) (b) of the Electricity Act and the Bidding Guidelines. In any event, vide order dated 19th November 2018, this Court had specifically directed the State Commission to decide the tariff under Section 63 of the Electricity Act having regard to the law laid down both statutorily and by this Court. **As such, the State Commission was bound to take into consideration the Bidding Guidelines and specifically clause 5.15 thereof.**”*

(Emphasis added)

60. Not only this, it is also held in *Energy Watchdog v. CERC*, (2017) 14 SCC 80 by the Hon'ble Apex Court that the State Commission was not a mere post office under Section 63, but was bound by the guidelines issued by the Gol and must exercise its regulatory functions albeit under Section 79(1)(b) only in accordance with those guidelines. Further, Section 86(1)(b) gives ample power to the State Commissions to regulate matters relating to the

procurement process of distribution licensees including the price of procurement. The Bidding Guidelines notified by the Central Government are to facilitate transparency and fairness in the procurement process and protecting consumer interests. Clause 5.1.5 of the Bidding Guidelines empowered the Commission to reject any price bids if found not aligned to market prices and even if a bidding process is found transparent generally, and in accordance with the Guidelines, there is no mandate to accept all bids that have emerged in the process. It is further held that the State Commission has full power to go into the question of the prices quoted being aligned to market prices and the State Commission is also not bound to accept the bids quoted by the Bidders till the bucket gets filled.

61. As observed above, the Government of India vide Notifications dated 19th January 2005 and 3rd August, 2017 has notified the Competitive Bidding Guidelines under Section 63 of the Electricity Act, 2003. One of the objectives of the Bidding Guidelines is to facilitate transparency and fairness in procurement processes and protection of consumers interest by facilitating competitive conditions in procurement of electricity.

62. This Commission vide order dated 20.05.2023 in Petition No. 17 of 2023 has made the following observations in paras 22 and 24 in

respect of the Solar power projects being set up by the Review
Petitioner/ the HPPCL:-

“22. With regard to the stand of the HPPCL regarding procurement of their Solar Power by the HPSEBL, we are of the opinion that the same can be procured by HPSEBL by the rate discovered through above competitive bidding process as mentioned above for the Solar Power Projects having capacity more than 5 MW. For the solar projects 5 MW and below, the Commission has already announced the generic levellised tariff. Therefore, the HPPCL can enter into PPA with the HPSEBL accordingly.

24. In view of the above discussions, the Petition succeeds and allowed. Permission is accorded to the Petitioner for procurement of 250 MW Solar Power through Tariff Based Competitive Bidding process from Grid Connected Solar PV power projects located within the State of Himachal Pradesh under Section 63 of the Electricity Act, 2003. However, the installation of Solar Power Generating Stations in HP should be cost effective vis-à-vis the cost of the solar power generated elsewhere in the country and the Petitioner shall have to specify in the bidding document that the tariff quoted by the bidders for grid-connected solar PV power plants shall not be more than the latest tariff of SECI plus 15% over and above said tariff keeping in view the peculiar geographical, topographical and climatic conditions of the State. Further in terms of the provisions of the Section 63 of the Act, the Commission shall have to examine whether the process of procurement of Solar Energy is as per the Guidelines of the GoI and Section 63 of the Electricity Act, 2003 so as to arrive the lowest tariff and for selection of the successful bidder and the Petitioner shall have to take the approval of the Commission under Section 63 of the Electricity Act, 2003 before according Letter of Award to the prospective successful bidders.”

63. It is thus, evident that the Commission has made it clear that any procurement of Solar Power by the HPSEBL, in future will be through the tariff discovered by way of competitive bidding process as mentioned above for the Solar Power Projects having capacity of more than 5 MW. Significantly, the Petitioner is one of the Respondents to the said Petition No. 17 of 2023 being Respondent

No. 2 and was thus, aware of the order dated 20.05.2023. However, the order dated 20.05.2023 has not been assailed by the Petitioner, which has attained the finality. The bidding guidelines dated 19.01.2005 and 03.08.2017 having been issued under Section 63 of the Act, are binding on the Commission. Thus, the Commission cannot allow the power procurements dehors the guidelines. Therefore, the contention of the Petitioner that the Commission has wrongly applied the order dated 20.05.2023 in Petition No. 17 of 2023 is without any basis and not tenable.

64. Now the question arises for consideration whether the Swaran Jayanti Policy, 2021, notified by the GoHP and amended in 2023 vide Notification No. MPP-F(1)-2/2005-XV-1 dated 18.05.2023 has precedence over the competitive bidding guidelines dated 19.01.2005 and 03.08.2017 notified by the Gol. The answer is in negative for the reason that the competitive bidding guidelines have been issued by the Gol in exercise of the powers vested in it under the Electricity Act more particularly Section 63 of the Act, whereas, the Swaran Jayanti Policy, 2021 has been issued administratively, as such, the bidding guidelines issued under Section 63 of the Act by the Gol have precedence over the Swaran Jayanti Policy, 2021 as amended in the year 2023 and thus, this Commission is bound to adhere to the competitive bidding guidelines dated 19.01.2005 and

03.08.2017 issued by the GoI under Section 63 of the Act and the Commission cannot allow any procurement dehors the guidelines. Thus, this assertion of the Petitioner has no merits and liable to be rejected.

65. Undisputedly, the capacity of the Project is 32 MWac and is standalone Solar Project. Once, the GoI has notified the competitive bidding guidelines under Section 63 of the Act which are binding on this Commission, the solar power from the Project can't be allowed to procured/ purchased dehors the guidelines. Further, since the aforesaid Regulations have no application to the Project, the contention of the Petitioner that this Commission was mandated under Regulations 8 (2), 13 (4) and (5), 15 and 18 (4) of the above Regulations to determine the project specific tariff on the Joint Petition filed by the parties is misplaced as in the absence of tariff discovered by the HPSEBL in view of the competitive bidding guidelines issued by the GoI, the Commission is bound to adopt the tariff discovered by the SECI through competitive bidding process under the guidelines issued by the GoI under Section 63 of the Electricity Act, 2003 for the Solar PV Project exceeding 5 MW capacity.

66. Much reliance has been placed by the Petitioner that the parties had expressly agreed to exercise their right to opt for a

project specific tariff determination under Section 62 and that both Section 62 and Section 63 operate in completely different manner and could not have been merged by the Commission, as such, the Commission was bound to determine the tariff after taking into consideration the mutually agreed tariff of Rs. 3.49 per kWh.

67. In order to appreciate the contention of the Petitioner, it is necessary to refer to Section 63 of the Act which reads as under:-

“63. Determination of tariff by a bidding process.- Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government.”

68. The interpretation of Sections 62 and 63 of the Electricity Act recently came up for consideration before the Hon'ble APTEL in Appeal No. 518 of 2023 & IA No. 215 of 2024 decided on 13.02.2025 in the case of Kerela State Electricity Board Limited v. Kerela State Electricity Regulatory Commission and Ors. wherein it is held that the Appropriate Commission does not act as a mere post office under Section 63 of the Electricity Act and that unlike Section 62 read with Section 61 and 64 of the Act, the Commission under Section 63 of the Act only adopts the tariff already determined, if the same has been discovered through competitive bidding guidelines.

The relevant paras of the above judgment as appeared in Pages 47, 48, 49 and 50 are reproduced as under:-

“Section 63 of the Electricity Act obligates the Appropriate Commission to adopt only such tariff as has been determined through a transparent process of bidding and in accordance with the guidelines issued by the Central Government. Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62. Unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not “determine” tariff but only “adopts” the tariff, already determined, under Section 63. Such “adoption” is only if such tariff has been determined through a transparent process of bidding, and this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. The appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. In Tata Power Co. Ltd. Transmission v. Maharashtra Erc, (2023) 11 SCC 1), the Supreme Court summarized the observations in Energy Watchdog v. CERC, (2017) 14 SCC 80, as under: (i) the appropriate Commission while “adopting” the tariff determined through bidding is not a mere “post office”; (ii) the Commission is mandated by Section 63 to adopt the tariff determined through bidding only if the bidding process was transparent, and such a process has been held in accordance with the guidelines issued by the Central Government under Section 63.

Section 63 of the Electricity Act has five significant features: (i) Section 63 begins with a non obstante clause. The non obstante provision overrides Section 62 alone and not all the provisions of the Act; (ii) as opposed to Section 62 where the Commission is granted the power to determine the tariff, under the Section 63 route, the bidding process determines the tariff; (iii) the Commission is mandated to adopt such tariff that is determined by the bidding process; (iv) the Commission has the discretion to not adopt the tariff determined through the bidding process only if the twin conditions as mentioned in the provision are not fulfilled; and (v) the twin conditions are that (a) the bidding process must have been transparent; (b) the bidding process must have complied with the guidelines issued by the Central Government.

Section 63 indicates that the provision would be invoked after the tariff has been determined by the bidding process. The non obstante clause in Section 63 must be read in the context of Sections 61 and

62. Section 62 bestows the Commission with wide discretion to determine tariff. Section 63 seeks to curtail this discretion where a bidding process for tariff determination has already been conducted. Section 63 contemplates that, in such situations where the tariff has been determined through the bidding process, the Commission cannot, by falling back on the discretion provided under Section 62, negate the tariff determined through bidding. This interpretation of Section 63 is fortified by the use of the phrase “such” in Section 63 — the Commission is bound to “adopt” “such” tariff determined through bidding. **(Tata Power Co. Ltd. Transmission v. Maharashtra Erc, (2023) 11 SCC 1)**

The appropriate Commission has the jurisdiction to look into whether the tariff determined through the process of bidding accords with the Central Govt Guidelines. **(Energy Watchdog v. CERC, (2017) 14 SCC 80)**. The regulatory powers of the State Commission, so far as tariff is concerned, are specifically mentioned in Section 86(1). When the Commission adopts tariff under Section 63, it does not function de hors its general regulatory power under Section 86(1)(b). Such regulation takes place under the Central Government's guidelines. **(Energy Watchdog v. CERC, (2017) 14 SCC 80; Jaipur Vidyut Vitran Nigam Ltd. v. MB Power (M.P.) Ltd., (2024) 8 SCC 513)**.

The TBCB Guidelines issued by the Central Government under Section 63 of the Act prescribe the mechanism of the bidding process. **(Tata Power Co. Ltd. Transmission v. Maharashtra Erc, (2023) 11 SCC 1)**. In a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 86(1)(b), only in accordance with those guidelines. **(Energy Watchdog v. CERC, (2017) 14 SCC 80).**”

69. The HPSEBL has not discovered the tariff under Section 63 of the Act as per the guidelines issued by the Gol. Therefore, it was incumbent upon the Commission to adopt the tariff, as discovered by the SECI, through competitive bidding process pursuant to the guidelines issued by the Gol under Section 63.

70. No doubt, it is mentioned in the Review Petition that pursuant to the directions issued by the Commission during the pendency of

the Petition No. 48 of 2024, a meeting was held between HPSEBL and HPPCL on 24.01.2024, wherein it was agreed by the HPSEBL to purchase the entire power of the Project at the minimum tariff of Rs. 3.50 per kWh, however, subject to approval of the Commission and that the reduction of cost per unit below Rs. 3.49 per unit shall not be possible as the Govt. may demand the cost of land, at a later stage. This assertion is also untenable as the said negotiation process undertaken by the parties pursuant to the order of the Commission was contrary to the bidding guidelines issued by the Govt under Section 63 of the Act i.e. the discovery of tariff through a transparent bidding process as also order of the Commission dated 20.05.2023 in Petition No. 17 of 2023, as such, the rate agreed in such negotiation was not binding upon the Commission. Therefore, the Commission while disposing off the Petition No. 48 of 2024 ordered that in case tariff of Rs. 2.90 per kWh is not acceptable to the Petitioner (Joint Petitioner No. 2/ HPPCL), the Joint Petitioner No. 2 shall be at liberty to sell the power through power exchange. Paras 19 and 21 of the order dated 12.04.2024 in Petition No. 48 of 2024 is reproduced as under:-

“19. The Joint Petitioner No. 1 is in dire need of power procurement. Since a Joint Petition has been filed that the procurement shall be on the rate approved by the Commission, the Petitioners have made out a case for the approval of PPA. In the circumstances, the PPA is ordered to be approved on the aforesaid rate of Rs. 2.90 per unit. In

case said rate is acceptable to the Joint Petitioners, the PPA may be signed on said rate within 15 days. In any case, said rate is not acceptable, the Joint Petitioner No. 2 shall be open to sell the same in open market through power exchanges. The decision of signing the PPA be taken within 30 days, failing which, the permission shall be deemed to have been denied.

21. It is made clear that it being a special case shall not be quoted as precedent in future. It is also made clear that the DISCOM shall follow the proper procedure for procurement of solar power for the future so that consumers of the State can avail benefit of solar power available at much cheaper rates and are not burdened with higher rates of power purchase. We also make it clear that the exemptions / waiver of transmission charges, available under GNA regulations, shall be availed as usual so that consumers of the State are benefited.”

71. Much reliance has been placed that the HPSEBL is in deficit of power, hence, to bridge the gap between demand and availability, the HPSEBL has agreed to tie up said Solar Power Project (SPP) at the rate of Rs. 3.49 per kWh and the solar power to be generated by the projects set up by the HPPCL and the HIMURJA, entities of the GoHP are to be mandatorily purchased by the HPSEBL even if the tariff is not in line with the tariff discovered through the competitive bidding guidelines under Section 63 by the Central Govt. This contention is also untenable in view of the law laid down by the Hon'ble APTEL in Appeal No. 518 of 2023 & IA No. 215 of 2024 decided on 13.02.2025 in the case of Kerela State Electricity Board Limited v. Kerela State Electricity Regulatory Commission & Ors. and the Hon'ble Supreme Court in Jaipur Vidyut Vitran Nigam Ltd. and Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors. in Civil Appeal No.

6502 of 2022 and Civil Appeal No. 4612 of 2023 decided on 08.01.2024 that the appropriate Commission does not act as a mere post office under Section 63 of the Act and it must adopt the tariff which has been determined through a transparent process of bidding, in accordance with the guidelines issued by the Central Government.

72. The provisions of Sections 62 and 63 of the Electricity Act, 2003 and powers of the appropriate Commission were also considered by the Hon'ble Supreme Court in the case of Energy Watchdog v. CERC, (2017) 14 SCC 80. Paras 19 and 20 of the judgment are reproduced as under:

“19. The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62.

Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not “determine” tariff but only “adopts” tariff already determined under Section 63. Thirdly, such “adoption” is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. What has been argued before us is that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this section on 19-1-2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into

whether the tariff determined through the process of bidding accords with Clause 4.

20. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions dehors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various sections must be harmonised. Considering the fact that the non obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways — either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to "regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used."

73. The ratio laid down by the Hon'ble Supreme Court in Energy Watchdog v. CERC, (2017) 14 SCC 80 especially Paras 19 and 20

thereof were quoted with approval by the Hon'ble Supreme Court in Jaipur Vidyut Vitran Nigam Ltd. and Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors. in Civil Appeal No. 6502 of 2022 and Civil Appeal No. 4612 of 2023 decided on 08.01.2024 by observing that the Section 86(1) (b) of the Electricity Act gives ample power to the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the power procurement including the price at which electricity shall be procured from the generating companies. It is further held that Section 86 (1) (b) of the Act is analogous to Section 79 of the Act which determines the functions of the Central Commission. Paras 67, 68, 69, 70 and 71 are relevant and reproduced as under:-

“67. It could thus be seen that it has been held by this Court that unlike Section 62 read with Sections 61 and 64, under the provisions of Section 63 of the Electricity Act, the appropriate Commission does not “determine” tariff but only “adopts” tariff already determined under Section 63. It has further been held that, such “adoption” is only if such tariff has been determined through a transparent process of bidding, and that, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. It was sought to be contended before this Court in the said case that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. However, rejecting the said contention, this Court observed that the appropriate Commission does not act as a mere post office under Section 63. It has been observed that, Clause 4, in particular, deals with tariff and the appropriate Commission certainly

has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

68. This Court in the said case, in paragraph 20, further observed that the entire Act shall be read as a whole. It has been held that, all the discordant notes struck by the various sections must be harmonized. It has been held that, considering the fact that the non obstante clause advisedly restricts itself to Section 62, there is no reason to put Section 79 out of the way altogether. It has been held that, either under Section 62, or under Section 63, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. It has been held that, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. It has further been held that, in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. It has further been held that, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can be used.

69. The aforesaid view of this Court in the case of Energy Watchdog (supra), which is a judgment delivered by two Judge Bench, has been approved by three Judge Bench of this Court in the case of Tata Power Company Limited Transmission (supra).

70. We have already referred to Section 86(1)(b) of the Electricity Act, which is analogous to Section 79 of the Electricity Act. Section 79 determines the functions of Central Commission, whereas Section 86 provides for the functions of the State Commission. Section 86 of the Electricity Act empowers the State Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

71. It can thus be seen that Section 86(1)(b) of the Electricity Act gives ample power on the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc.”

74. It is thus apparent that Section 86 (1) (b) of the Act gives ample power to the State Commission to regulate electricity purchase and procurement process of distribution licensee and to regulate the matter including the price at which electricity shall be procured from the generating companies. The Commission, therefore, is empowered to reject the power procurement if the prices are exorbitant and not market aligned.

75. It is claimed by the Petitioner that the lower tariff of Rs. 2.90 per kWh, as awarded by the Commission, has led to reduced return on investment and challenges in meeting the financial obligations making the Project unviable. Also that the National Tariff Policy issued by the GoI provides for adequate return on investment in the power Sector. On the perusal of the National Tariff Policy, it is seen that one of the objectives of the National Tariff Policy, as mentioned in Clause 4 of the National Tariff Policy is to ensure availability of electricity to the consumers at a reasonable and competitive rates. Therefore, while balancing the interest of the generating companies, the interest of the public at large and consumers also needs to be protected by supplying the electricity at reasonable rates. Apparently, when the Joint Petition was filed, the solar power was available at a lower rate (Rs. 2.53 per kWh) than the rate quoted by the Joint Petitioners in the Petition (Rs. 3.49 per kWh). Therefore,

the Commission was not obligated to approve the power procurement from the Project on said exorbitant rate which would have unreasonably burdened the consumers of the State with higher tariff. In this regard, reliance may be placed in the judgment of the Hon'ble Supreme Court in Civil Appeal No. 6503 of 2022 decided on 08.01.2024 in Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors. that it would not be permissible to take a lop sided view to protect the interest only of the generators ignoring the consumers and public interest. Para 92 of the aforesaid law is reproduced as under:-

*"92. It is needless to state that this Court, time and again, in various judgments including the one in the case of GMR Warora Energy Limited (supra) has recognised the requirement of balancing the consumers' interest with that of the interest of the generators. **It will not be permissible to take a lopsided view only to protect the interest of the generators ignoring the consumers' interest and public interest.**"*

(emphasis added)

76. Though it is projected by the Petitioner that Section 62 of the Act envisages determination of project specific tariff being set up on cost plus basis and thus, the tariff is required to be determined by the Commission as per the HPERC RE Tariff Regulations, 2017 and since the parties had opted for determination of project specific tariff on cost plus basis route and incorporated the same in the draft PPA, no ceiling or benchmark tariff especially derived from Section 63

ought to be made applicable. In fact, the entire thrust of the Petitioner is that despite mutual agreement for sale/ purchase of power @ Rs. 3.50/ 3.49 per kWh, the Commission ought not to have awarded tariff of Rs. 2.90 per kWh which has caused injustice to the Petitioner. The submissions of the Petitioner are not tenable in view of the law laid down by the Hon'ble APTEL in Appeal No. 518 of 2023 & IA No. 215 of 2024 decided on 13.02.2025 in the case of Kerala State Electricity Board Limited v. Kerala State Electricity Regulatory Commission & Ors., the Hon'ble Supreme Court in Energy Watchdog v. CERC, (2017) 14 SCC 80 and Civil Appeal No. 6503 of 2022 in Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors. decided on 08.01.2024 that the Commission is bound to adhere to the competitive bidding guidelines issued by the Gol and has every right to reject the power procurement in case the same is not in accordance with the guidelines issued by the Gol.

77. This Commission in the order under review has provided tariff of Rs. 2.90 per kWh by giving additional 15% over and above the SECI discovered tariff keeping in view the peculiar geographical, topographical and climatic conditions of the State. Further, an option was given to the Petitioner that in case said tariff was not acceptable to the Petitioner, the Petitioner may sell the power in the open

market through power exchanges. Therefore, no prejudice whatsoever has occasioned to the Petitioner.

78. The HPSEBL is mandated to supply power at reasonably lower tariff to its consumers and must definitely go for procurement of affordable power and merely because the Review Petitioner is a generating company, owned by the GoHP, the Petitioner cannot be allowed to sell the power from its Project to the DISCOM at the exorbitant rates which are not aligned to the market as held by the Hon'ble Supreme Court in **Civil Appeal No. 6503 of 2022 in Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors. decided on 08.01.2024**. The power procurement by a distribution licensee/ the HPSEBL from renewable energy sources has to be through competitive bidding process above the notified capacity i.e. 5.0 MW. As per the mandate given in the Electricity Act, 2003, the Commission has to watch the interest of the Consumers and the Public and cannot allow costly power to be procured from the same source when it is available at lower rates in the market. In fact, the Petitioner/ HPPCL, has to set up its Solar Plants purely on commercial basis so that the power produced is on the rate aligned to the market and cannot be allowed to forcibly sell costly power of its Project to the HPSEBL merely on the ground that the tariff below Rs. 3.49 per kWh will not be acceptable.

79. Significantly, the Commission has recently in Petition No. 151 of 2024 and Petition No. 17 of 2025 decided on 17.12.2024 and 10.02.2025 has allowed solar power procurement of approximately 1150 MW @ Rs. 2.56 per kWh, Rs. 3.04 per kWh, Rs. 3.05 per kWh and Rs 3.10 per kWh plus 7 paise commission of the SECI for a period of 25 years for the DISCOM/ HPSEBL. Therefore, when the same/ similar power is available in the market at lower competitive rates, the Petitioner is not justified in saying that the mutually agreed tariff was binding on the Commission. If this proposition is accepted, the HPSEBL will have to accept the costly power against the interest of the consumers.

80. It is pertinent to mention that the Managing Director of the Review Petitioner, the Respondent/ DISCOM as also the Department of Energy (DoE) was one and the same incumbent when the alleged mutual negotiation of the tariff took place and it was decided for the sale and purchase of the power of the Project @ Rs. 3.50 per kWh. There was definite conflict of interest between both the organizations, as such, the interest of the consumers was relegated to second and the Review Petitioner prevailed upon the DISCOM/ HPSEBL to buy the costly power of its Project, contrary to the interest of the consumers. This Commission has already

observed in paras 12.2.5 of tariff order dated 15.03.2024 regarding conflict of interest as under:-

“12.2.5. The Commission observed out that on account of the conflict of interest at the Top management level in the HPSEBL and the DoE, the interest of HPSEBL has received the least priority which has also not only adversely affected the rights of the Consumers but has greatly impacted the financial health of the HPSEBL. The Commission is of the opinion that cost of free power is already paid for by the Consumers of the State as the tariff calculation by the Commission to a hydro generator is after excluding the free power component so that the generator is not adversely affected. However, despite all this, the Management of HPSEBL has not been able to persuade the Govt. of HP that the Consumer of the State have the first right on the free power. No provision of allocation of free power to HPSEBL has been made in the Petition. Infact, the Commission does not find any logic depriving the Consumers of the State from this power inspite of the fact that they are paying for it twice. Thus, the Commission hereby directs the HPSEBL to take up this issue strongly with the GoHP that the HPSEBL/Consumers of the State have the first right on this power since they have already paid for this free power at the time of determination of the tariff by the Commission.”

81. Therefore, the Commission was within its right to disallow the tariff, as quoted by the parties which would have adversely affected the interest of the Consumers, as the burden of hundreds of Crores of Rupees during the life of the Project would have been passed on to the consumers and would have also deteriorated the financial health of the DISCOM. On this score also, the assertion that mutually agreed tariff is binding on the Commission is not tenable.

82. In fact, the Hon'ble Supreme Court in Civil Appeal No. 6503 of 2022 in Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors. decided on 08.01.2024 has

categorically held that the Commission is not a mere post office and can exercise its powers in public interest and in the interest of consumers if the tariff is found to be high and not aligned to the market prices and the Commission in exercise of the powers under Section 86 (1) (b) of the Electricity Act, 2003, may disallow such exorbitant tariff.

83. In so far as the law relied upon by the Ld. Counsel of the Petitioner i.e. Tata Power Co. Ltd. Transmission v. Maharashtra Electricity Regulatory Commission (2023) 11 SCC 1, the same has elaborately been discussed by the Hon'ble Supreme Court in Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. MB Power (Madhya Pradesh) Ltd. and Ors. decided on 08.01.2024. Thus, the same is not applicable. The other law as relied upon by the Petitioner has no application to facts and circumstances of the case in view of the law laid down in Jaipur Vidyut Vitran Nigam Ltd. & Ors. (Supra).

84. In the entire Petition, the Petitioner has not been able to show that the order under review suffers from any error apparent on the face of record or that the review is necessitated on the discovery of new and important matter of evidence which after exercise of due diligence was not within the knowledge of the Petitioner or could not be produced when the order was made. Thus, the Petitioner has failed to establish that there are sufficient reasons for reviewing the

Order dated 12.04.2024 in Petition No. 48 of 2024. Point No. 1 is accordingly decided against the Petitioner.

Final Order

85. In view of the above discussions and findings, the Review Petition fails and is accordingly dismissed.

86. The pending applications, if any, are also dismissed.

The file after needful be consigned to records.

Announced

17.03.2025

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

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

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