

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

Review Petition No: 120 of 2023
Date of Institution: 20.12.2023
Heard on: 01.02.2024
Decided on: 23.02.2024

CORAM

Devendra Kumar Sharma

CHAIRMAN

Yashwant Singh Chogal

MEMBER (LAW)

Shashi Kant Joshi

MEMBER

In the matter of:

M/s Ankur Solar Power Project having its registered Office at
Village Malhanta, PO Fatehpur, Tehsil Fatehpur,
Distt. Kangra, H.P. through its
Authorised Signatory Sh. Ankur Dogra

.....Petitioner

Versus

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

.....Respondent

**Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with
Regulation, 63 of the HPERC (Conduct of Business) Regulations, 2005 for
review of Order dated 03.11.2023 passed in Petition No. 110 of 2023.**

Present:-

Sh. L.S. Mehta and Sh. Ashok Kumar Verma, Ld. Counsel for the
Petitioner.

Sh. Dhananjay Sharma, Ld. Counsel for the Respondent.

ORDER

The present Petition has been filed by the Petitioner seeking
review of Order dated 03.11.2023 passed in Petition No. 110 of 2023.

A Joint Petition for the approval of Power Purchase Agreement (PPA for short) filed by the Petitioner and the Respondent was allowed by the Commission vide Order dated 03.11.2023 allowing tariff of Rs. 3.38 per kWh, which was prevalent for the control period w.e.f 01.04.2021 to 31.03.2022. Feeling aggrieved with the tariff of Rs. 3.38 per kWh, the Petitioner has come out with the present Review Petition that there are errors apparent on the face of record in the Order dated 03.11.2023 and that the Petitioner is entitled for the tariff of Rs. 3.75 per kWh.

2. The Petitioner was allotted Solar Power Project namely M/s Ankur Solar Power Project (1 MW) situated at Village Malhanta, Post Office Fatehpur, Tehsil Fatehpur, Distt. Kangra, H.P. by the HIMURJA vide letter No. HIMURJA(F-7) 2/SPV Projects/21-22-8897 dated 24.03.2022 and the Provisional Registration was extended further for one year by the HIMURJA vide letter No. HIMURJA(F-7) 2/SPV Projects/21-22-9602 dated 28.08.2023 with Completion/ Commissioning Schedule as 13.04.2024. As per the Petition, the Commission vide Order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023 has determined the Generic Levellised Tariff in respect of Solar Power Projects for the year 2023-2024 for period w.e.f. 01.04.2023 to 30.09.2023 under 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) and the Joint Petitioners had agreed for the tariff of Rs. 3.75 per kWh as determined by the Commission vide Order dated 31.03.2023, as the Project is situated at a rural area.

3. As per the Petition, the Commission vide Order dated 22.07.2021 in Suo Moto Petition No. 22 of 2021 while determining the generic levellised tariff w.e.f. 01.04.2021 to 31.03.2022 has ordered in Para 15 E (i) as under:

(i) In cases where the joint petition for approval of PPA is submitted to the commission on or after 01.04.2021, but not later than 31.03.2022, this tariff shall be applicable for such capacity(ies) as are commissioned on or before 31.03.2023”.

4. It is averred that as per Para 15 E (i) of the Order dated 22.07.2021 (Annexure P-I), only the Projects filing the Joint Petitions for approval of PPA w.e.f. 01.04.2021 to 31.03.2022 and commissioned on or before 31.03.2023 were entitled to the tariff @ Rs. 3.38 per kWh subject to adjustment of subsidy. However, the Commission vide Order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023, while determining the Generic Levellised Tariff for the period 01.04.2023 to 30.09.2023 has provided in Para 12 E (i) of the tariff Order as under:

- (i) *“In cases where the Joint Petition for approval of PPA is submitted to the Commission on or after 01.04.2023, but not later than 30.09.2023, this tariff shall be applicable for such capacity(ies) as are commissioned on or before 31.03.2025”.*

5. According to the Petitioner, as per Order dated 31.03.2023, the projects filing the Joint Petitions in between 01.04.2023 to 30.09.2023 and commissioned on or before 31.03.2025 shall be entitled to get tariff @ Rs. 3.75 per kWh, subject to adjustment of subsidy. It is also averred that the steps for connectivity were taken well in time on 31.01.2023 (Annexure P-5) by depositing the fee of Rs. 2 lakh and thereafter the Petitioner kept on requesting the HPSEBL for the connectivity but the connectivity was provided only on 19.09.2023 (Annexure P-6).

6. As per the Petitioner, on receipt of the certified copy of the Order dated 03.11.2023 (impugned Order), the Petitioner made a representation dated 30.11.2023 to the Respondent that the Commission has observed in the Order that the prayer had been made for the Tariff of @ Rs. 3.38 per unit but no such averments were made in the Joint Petition. Not only this, the other Project namely M/s Kartik Solar PV Project (Petition No. 65/2022 Annexure P-8) allotted at the same period was granted tariff of Rs. 3.75 per kWh whereas a tariff of Rs. 3.38 per kWh has been granted to the Project of the Petitioner. The Petitioner has also highlighted that the Project was allotted to the

Petitioner by the HIMURJA on 24.03.2023 and it was not possible for the Petitioner to file the Petition for approval of PPA within a period of one week as a significant time is taken for approval of inventory by the HIMURJA, preparation of DPR and signing of connectivity etc. and requested the HPSEBL/Respondent for filing the Joint Review Petition so that the Tariff of Rs. 3.75 per kWh is granted. However, no action was taken by the Respondent.

7. As per the Petitioner, the Commission has committed an error while granting the tariff of Rs. 3.38 per unit under wrong premise that both the parties had requested for the tariff of Rs. 3.38 per kWh which infact was not prayed and rather, the parties had agreed and claimed tariff of Rs. 3.75 kWh. Further, the Commission has applied two different set of principle to the Projects allotted at the same month by the HIMURJA, by granting tariff of Rs. 3.38 per kWh to the Project of Petitioner, whereas tariff of Rs. 3.75 per kWh was granted to other Project namely Kartik Solar PV Project.

8. Further, the Commission has committed an error by not appreciating the fact that huge delay had occurred in obtaining the connectivity and filing the Joint Petition, therefore, the provisional tariff of Rs. 3.38 per unit cannot be made applicable to the Petitioner for no fault of the Petitioner and that the tariff of Rs. 3.38 per unit was only in

respect of the Projects which had filed the Petitions for approval of PPA between 01.04.2021 to 31.03.2022 but the Petitioner had filed the Joint Petition on 30.09.2023 in terms of Order dated 31.03.2023 passed in Suo Moto in Petition No. 11 of 2023, and thus, the Petitioner's Project is entitled to get the tariff @ Rs. 3.75 per unit subject to adjustment of subsidy. As per the Petitioner, the error apparent on the face of record in the Order dated 03.11.2023 has resulted in manifest injustice and there are sufficient reasons for reviewing the Order.

9. It is also averred that immediately on receipt of copy of the Order, the Petitioner made representation dated 30.11.2023 for filing the Joint Review Petition but no response was made by the Respondent, as such, there is no delay but by way of abundant caution, a separate application for condonation of delay has been filed.

10. The Petition has been resisted by the HPSEBL by filing its reply that the Petitioner has not shown any legal basis that the Commission has committed an error while passing the impugned Order. Also averred that the Petitioner had approached the HPSEBL on 30.09.2023 for signing the PPA i.e. on the last day of the eligibility period for the Generic Levellised Tariff determined by the Commission vide Order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023, and the

Replying Respondent expeditiously processed the application and filed the Joint Petition for the approval of PPA at the Generic Levellised Tariff of Rs. 3.75 per kWh which was not allowed by the Commission for want of delay in filing the Joint Petition as the Project had been allotted in the month of March, 2022.

11. It is admitted that there was delay in signing the connection agreement due to system constraints on 11 kV Rey-Malhanta feeder as prior to the application of the Petitioner, connectivity request had been received from K-Solar Power Project, Ankit Solar Power Project and Kartik Solar Power Project.

12. As per the Replying Respondent, the Joint Petition No. 110 of 2023 was filed before the Commission on 30.09.2023 and that the Petition was fulfilling the eligibility criteria given under tariff Order dated 31.03.2023 for the tariff of Rs. 3.75 kwh. Further, both M/s Kartik Solar PV Project and the Project of the Petitioner were allotted under the Scheme for harnessing 20 MW of Solar Power from the Projects ranging 250 kWp to 1000 kWp and M/s. Kartik Solar Power Project submitted the documents for PPA on 30.07.2022 and the Petition in said case was filed on 29.08.2022 and tariff of Rs. 3.75 per kWh was granted. However, the Petitioner had applied for the connectivity to the Replying Respondent on 31.01.2023 after delay of 10 months whereas

as per the allotment letter, the agreement was required to be signed within 20 days and the financial closure was required to be obtained within six months. Also averred that the Generic Levellised Tariff determined by the Commission vide Order dated 22.07.2021 in Suo Moto Petition No. 22 of 2021 was applicable for the Solar Projects filing Joint Petition between 01.04.2021 to 31.03.2022 and not linked to the date of allotment of Project.

13. According to the Replying Respondent, no explanation for delay has come from the Petitioner for filing the Petition for approval of PPA and obtaining the connectivity and accordingly, the Commission has presumed that the Petitioner had purposely delayed the signing of PPA for claiming higher tariff and, therefore, the tariff of Rs. 3.75 per kWh was not provided. It is averred that the Commission has considered each and every aspect before passing the impugned Order and there is no error apparent on the face of record.

14. We have heard Sh. L.S. Mehta, Ld. Counsel for the Petitioner and Sh. Dhanajay Sharma, Ld. Counsel for the Respondent.

15. Sh. L.S. Mehta, Ld. Counsel for the Petitioner has submitted that the allotment of the Project was made only on 24.03.2022 and the control period as per the Order dated 22.07.2021 was only upto 31.03.2022, as such, it was not possible to submit the application within

a period of 7 days as many formalities were required to be completed in this regard and the tariff of Rs. 3.38 per kWh was certainly not meant for the Project of the Petitioner. It has also been submitted by Sh. L.S. Mehta, Ld. Counsel that a considerable time was consumed in the completion of the requisite formalities including preparation of DPR and arranging the finance, as a fee of Rs. 2,00,000/- itself was necessary for filing the application for the connection agreement which could only be filed on 31.01.2023 and the connectivity was provided on 19.09.2023 and, thus, the Petition was filed on 30.09.2023 but the Commission has inadvertently not taken this hardship into consideration which has resulted in miscarriage of justice as tariff of Rs. 3.38 per kWh was allowed instead of tariff of Rs. 3.75 per kWh. It has also been submitted by Sh. L.S. Mehta, Ld. Counsel for the Petitioner that the Commission has not taken note of the averments made in the Joint Petition that both the parties had agreed for the tariff of Rs. 3.75 per kWh and no prayer had been made for the tariff of Rs. 3.38 per kWh, as observed by the Commission in impugned order. He has further submitted that the Commission has also not taken note of the fact that the allotment agency i.e. HIMURJA had considered the genuine request of the Petitioner and had extended the provisional registration of the Project upto 28.02.2024 vide letter dated 28.08.2023. Not only this, the

Commission has treated the Petitioner differently from another similarly situated Solar Project i.e. Kartik Solar PV Project which was also allotted in the same month and year but a different tariff of Rs. 3.75 per kWh has been allowed in favor of said Project.

16. Sh. Dhananjay Sharma, Ld. Counsel for the Respondent, on the other hand, has submitted that it is in the domain of the Commission to allow the tariff keeping in view the facts of a particular Project and, the Commission has considered each and every aspect of the matter and there are no errors apparent on the face of record.

17. 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 03.11.2023 passed in Petition No. 110 of 2023?

Point No. 2: **Final Order**

18. For the reasons to be recorded hereinafter in writing out point wise findings are as under.

Point No. 1: Yes

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

REASONS FOR FINDINGS

Point No. 1:

19. Before we advert to the merits of the Petition, it is relevant to mention that the Petitioner has averred that soon after the receipt of Order dated 03.11.2023, a representation was filed with the Respondent for filing the Joint Petition on 30.11.2023, but no response was gathered from the Respondent, as such, the Petition for review could not be filed immediately after the Order and though there is no delay in filing the Review Petition yet by way of abundant caution, a separate application for condonation of delay has been filed. A careful perusal of the record shows that a Joint Petition for approval of Power Purchase Agreement had been filed agreeing for the tariff of Rs. 3.75, as such, it was necessary for the Petitioner to approach the Respondent for filing the Review Petition jointly but having submitted the representation on 30.11.2023 (Annexure P-7), no response was gathered, the Petitioner was constrained to file Review Petition individually. Therefore, the delay is not intentional and is hereby condoned.

20. The scope and ambit of the power of review was elaborately considered by the Hon'ble Supreme Court *in Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 wherein it has been 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 proves 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 of 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’.”

21. The allotment of the Project was made on 24.03.2022 by the HIMURJA vide letter No. HIMURJA(F-7) 2/SPV Projects/21-22-8897 and as per the allotment letter, the application for approval of the PPA was to be filed within 20 days. It is also apparent from Clause 11 of the letter of HIMURJA dated 24.03.2022 that the tariff as determined by the Commission will be applicable and the Regulations notified by the Commission, from time to time, will prevail. Apparently, for filling the Petition for the approval of the PPA, several formalities are required to be completed i.e. preparation of DPR, approval of inventory and connectivity to the system. Besides, a significant fee of Rs. 2,00,000/- was also required to be deposited for applying the connectivity. Although, the Project was allotted on 24.03.2022, yet for bringing the Project within the ambit of the control period w.e.f. 01.04.2021 to 31.03.2022, the Petitioner was required to submit the application within 7 days which was certainly not possible for want of DPR, approval of

inventory, connectivity and finance. No doubt, the application for connectivity was filed by the Petitioner after a delay of several months but the Respondent has categorically mentioned in the reply that there were constraints in the system and the connectivity could not be granted in time. Further, as observed above, a significant fee was required to be deposited alongwith application for the connectivity, hence, the delay does not seem to be intentional. Undisputedly, the connectivity was provided vide letter dated 19.09.2023 and connection agreement was signed only on 29.09.2023. In the circumstances, the condition in the allotment letter of filing the application for approval of the PPA within 20 days from the date of allotment if the Project is of no consequence. Otherwise also, according to Para 15 (E) (i) of Order dated 22.07.2021, the PPA could have been filed in between 01.04.2021 to 31.03.2022.

22. The record also shows that the Petitioner made representation to the HIMURJA for extension of the provisional registration which was considered and the provisional registration of the Project was extended upto 28.02.2024. It is specifically mentioned in the letter dated 28.08.2023 by the HIMURJA that the Project is required to be completed within the extended period. Since it was not possible for the Petitioner to submit for approval of the PPA within 7 days and there

were constraints in the system of the Respondent for providing connectivity, perhaps for said reasons, the registration was extended.

23. Significantly, it was specifically mentioned in the Joint Petition that both of the parties had agreed for the tariff of Rs. 3.75 per kWh, but this vital aspect escaped the attention of the Commission due to inadvertence simply for the reasons that there was delay in filing the application for the approval of the PPA. Here, it is also relevant to point out that this Commission has allowed the tariff of Rs. 3.75 per kWh in respect of M/s Kartik Solar PV Project. Perusal of the record shows that the Project of the Petitioner and M/s Kartik Solar PV Project were allotted during the month of March, 2022 and both were to be connected to the same feeder. Since the connectivity to M/s Kartik Solar PV Project had been allowed much earlier, the Kartik Solar Power Project submitted the application for the approval of PPA on 04.10.2022 and accordingly, tariff of Rs. 3.75 per kWh was allowed in respect of said Project whereas, the Petitioner could not submit the application for connectivity for the reasons that there were system constraints in the feeder and since a connectivity fee of Rs. 2 lakhs was required, the Petitioner submitted the application only on 31.01.2023. Thus, being similarly situated to M/s Kartik Solar PV Project and connected to the same feeder, the Project of the Petitioner was also required to be

treated similarly but this vital aspect has escaped the attention of the Commission as no such explanation had been provided in Petition No. 110 of 2023 in this regard.

24. In the circumstances, the Petitioner has substantiated that there is an error apparent on the face of record in the Order dated 03.11.2023 in Petition No. 110 of 2023 and on account of the same, a grave injustice has occurred to the Petitioner as despite the eligibility of the tariff of Rs. 3.75 per kWh, a tariff of Rs. 3.38 per kWh only has been allowed. The Commission is also satisfied that in case this error is permitted to continue, the same would lead to the failure of justice. Hence, there are sufficient reasons for reviewing the Order dated 03.11.2023 in Petition No. 110 of 2023. Point No. 1 is accordingly answered in favour of the Petitioner.

Point No. 2 (Final Order)

25. In view of the above said discussion and findings, the Petition succeeds and allowed. A tariff of Rs. 3.75 per kWh is allowed to the Project of the Petitioner. The parties are directed to sign the PPA accordingly within a period of 30 days from this order. In case the PPA has already been signed vide Order dated 03.11.2023 in Petition No. 110 of 2023, the parties shall sign the Supplementary Power Purchase Agreement in a period of 30 days from today. The other terms and

conditions as mentioned in Order dated 03.11.2023 in Petition No. 110 of 2023 shall remain the same.

The file after needful be consigned to records.

Announced
23.02.2024

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman

HPPERC