# BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

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| **Review Petition No:** | **151 of 2025** |
| Date of Institution: | 19.03.2025 |
| Arguments Heard on: | 17.06.2025 |
| **Decided on:** | **03.07.2025** |

**CORAM:**

DEVENDRA KUMAR SHARMA
**CHAIRMAN.**

YASHWANT SINGH CHOGAL
**MEMBER (Law).**

SHASHI KANT JOSHI
**MEMBER.**

M/s MVD Solar Power Project,
Village and Post Office Thapkaur,
Tehsil Nurpur, Distt. Kangra, H.P. **…....Petitioner.**

Versus

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

**Review Petition under the provisions of Section 94 (1) (f) of the Electricity Act 2003 read with Regulation 7 (5) and Regulation 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024, for review of Order dated 10.11.2023 passed by the Commission in Petition No. 108 of 2023.**

Present:-

Sh. Ashok Kumar Verma, Ld. Counsel for the Petitioner.
Sh. Kamlesh Saklani, Authorised Representative for the Respondent.

## ORDER

This order would dispose off the Petition filed by M/s MVD Solar Power Project (Petitioner for short) that a Joint Petition No. 108 of

2023 was filed for the approval of Power Purchase Agreement (PPA for short) by the Petitioner and the Himachal Pradesh State Electricity Board Limited (HPSEBL/ Respondent for short) which was allowed by the Commission vide Order dated 10.11.2023 permitting the Joint Petitioners to sign the PPA (Annexure P-1).

2. The Review Petition has been filed by the Petitioner seeking review of order dated 10.11.2023 with the following prayer:-

> *"It is therefore, most respectfully prayed that this review petition may be allowed and respondent/ HPSEBL may be directed to execute SPPA to the effect of the tariff applicability of Rs. 3.72 per kWh and the notice for the Liquidated Damages amounting to Rs. 5,40,000/- may kindly be quashed and set aside in the interest of justice and fair play."*

3. The Petitioner has reproduced condition (vii) of Para 14 of the order as under:-

> *"(vii) The Scheduled Date of Synchronisation of the Project is 04.04.2024 and Scheduled Commercial Operation Date (SCOD) of the project is 19.04.2024 which has been specified in Schedule-I which shall form a part of the PPA. In case commissioning of the Project is delayed beyond SCOD i.e. 19.04.2024, and the tariff in the said control period is less, the Joint Petitioner No. 2 shall have to provide power to the Joint Petitioner No. 1 on said tariff only."*

Copy of order dated 10.11.2023 has been annexed as Annexure-P1.

4. According to Petitioner, the PPA was executed as per order dated 10.11.2023 on 28.02.2024 and the tariff component was incorporated in Article 6 of the PPA as under:-

*"6.2 tariff for net saleable energy:*

*(a) the HPSEBL shall pay for the net. saleable energy delivered and sold to it by the company at the interconnection point at a fixed rate of Rs 3.72 per kWh determined as per Commission's order dated 31.03.2023. in suo moto petition No 11 of 2023, in the matter of determination of generic levellised tariff for solar power projects for FY 2023-24 (for a period w.e.f. 01-04-2023 to 30-09-2023) under the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources Terms and Conditions for the Tariff Determination) Regulations, 2017.*

*(b) the rate of Rs 3.72 per kWh as per the Commission's order above, is provisional and can also be reviewed for adjustment on the following lines and for specific provisions under section 8.8:-*

*(i) the tariff of 3.72 per kWh is determined for the project being situated in the Rural Area as per the order of the Commission dated 31-03-2023. The affidavit to this effect attached at Annexure VI.*

*(ii) the rate given above shall be applicable if the entire capacity of the project is commissioned on or before scheduled commercial operation date (SCOD) i.e. 18-04-2024. However, if the commissioning of the project is delayed beyond 18.04.2024, the rate determined by the Commission for the category under which the total capacity of the project falls for the control period(s) in which the capacity(ies) are commissioned for the respective capacities or the rate of Rs 3.72 per kWh above whichever is lower, shall be applicable.*
*For this purpose, weighted average rate based on the capacities commissioned during different control period and respective applicable rates as per above provisions shall be worked out from time to time.*

*(iii) based on the financial assistance/subsidy, if any, released to the project, HPSEBL shall carry out adjustment of such benefit as per the provison of the order of the commission dated 31-03-2023 in suo motu petition no 11 of 2023 in the matter of determination of generic levellised tariff for solar power projects for FY 2023-24 (for a period w.e.f 01.04.2023 to 30-09.2023) under the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the renewable sources Terms and Conditions for the Tariff Determination) Regulations, 2017.*

*(iv) in case the subsidy/financial assistance is not availed or the company fails to approach the state/central government or its designated departments)/agencies, the same shall be deemed to be deemed to have been availed by the company and the HPSEBL shall carry out the adjustment of such benefit, if any, admissible to the project after a period of 2 years from the date of issuance of order dated 10-11-2023.*
*(v) in case the capital subsidy or incentive and/or subsidy and/or grant etc is admissible to the company, the tariff shall be adjusted as per the provision of the Determination of generic levelllised tariff for the solar power projects under Regulation 18 of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the renewable sources Terms and Conditions for the Tariff Determination) Regulations, 2017 and Commission's order dated 31-03-2023 in suo motu petition No 11 of 2023 in the matter of determination of generic levellised*

> *tariff for solar power project for FY 2023-24 (for a period w.e.f 01-04-2023 to 30-04-2023) under the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the renewable sources Terms and Conditions for the Tariff Determination) Regulations, 2017.*
> *(vi) the company shall apply to the state/central Government or its designated departments/ agency(ies) for the grant of applicable subsidy/ financial assistance to the solar project immediately on receipt of financial assistance/subsidy released to the government or its designated departments)/ agencies within 15 days of receipt of the same as per the affidavit attached at Annexure VII."*

5. It is averred that the Petitioner achieved the COD of the project on 07.12.2024 which is beyond the Scheduled Commercial Operation Date (SCOD) i.e. 19.04.2024, as contained under order dated 10.11.2023. Thus, the tariff of Rs. 3.72 per kWh was not allowed by the Respondent and rather, a tariff of Rs. 3.47 per kWh was allowed.

6. According to the Petitioner, the Commission has determined Generic Levellized Tariff for Solar PV Project for the period w.e.f. 01.04.2023 to 30.09.2023 under the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from Renewal Resources and Terms and Condition For Tariff Determination) Regulation 2017, vide order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023 whereby the tariff for the Project above 1.0 MW to 5.0 MW to be setup in areas other than industrial and urban areas shall be Rs. 3.72 per kWh provided the Petition for approval of PPA is submitted to the Commission on or after 01.04.2023 but not later than 30.09.2023 and are commissioned on or before 31.03.2025. The

order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023 has been annexed as Annexure P-3.

7. As per the Petitioner, the Petitioner is squarely covered under sub-clause 12 E (i) of the order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023 and thus, tariff of Rs. 3.72 per kWh is applicable as said tariff was valid till 31.03.2025.

8. It is mention that an error apparent on the face of the order dated 10.11.2023 in Petition No. 108 of 2023 has crept in as much as per the order dated 10.11.2023, in case commissioning of project is delayed beyond SCOD i.e 02.08.2024 and if the tariff in the said prevalent control period is less, the Petitioner was to provide the power of the Project to the Respondent on the said tariff only, whereas, as per Clause 12 (E)(i) the tariff order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023, the tariff was valid uptill 31.03.2025 in case the Petition was filed on or after 01.09.2023 but not later than 30.09.2023. The parties had filed the Joint Petition on 30.09.2023 i.e. within the time limit provided in the order dated 31.03.2023. Therefore, the aforesaid error is required to be corrected.

9. The Petitioner has also averred that in a similar Review Petition No. 133 of 2024 titled as M/s BS Farms Solar Venture versus the HPSEBL decided on 26.12.2024, the Commission has held as under:-

> *"This Commission while determining the generic levellized tariff for FY 2023-24 vide order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 has observed in para 12 E(i) that aforesaid tariff for the period w.e.f 01.10.2023 to 31.03.2024 shall remain valid till 31.03.2025. As such, the tariff determined vide above order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 shall be applicable for the Projects before 31.03.2025 as per the terms and conditions stipulated therein. Thus, the observation in the order dated 02.04.2024 in the Petition that in the event of delay of SCOD, the tariff of the control period in which the Project is commissioned shall be applicable is inconsequential in view of tariff order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 as this tariff is applicable till 31.03.2025. Thus, the Project of the Petitioner falls within the ambit of order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 is entitled to the tariff of Rs. 3.65 per kWh till 31.03.2025."*

The Copy of order dated 26.12.2024 has been annexed as Annexure P-2.

10. Not only this, the Respondent has also levied the Liquidated Damages (LD) to the tune of Rs. 5,40,000/- upon the Petitioner for a delay of 233 days in commissioning the project, as evident from Annexure P-4, annexed to the Petition, which too is required to be quashed.

11. The Review Petition has been resisted by the Respondent by filing the reply averring that the Commission in order dated 10.11.2023 has allowed the tariff of Rs. 3.72 per kWh with the stipulation that in the event of delay of commissioning beyond 31.03.2025, the tariff applicable during the Control Period in which the project is actually commissioned shall apply, if lower, and the PPA dated 28.02.2024 was accordingly executed with said stipulation.

12. It is averred that the Commission had approved the PPA vide order dated 10.12.2023 with certain modifications including the stipulation that in case the commissioning of the Project is delayed beyond 19.10.2024, the tariff applicable during the control period in which the Project is actually commissioned shall apply, if lower and since, the said PPA had been executed with said stipulation and the Project could not be commissioned on the stipulated date of SCOD, the tariff of Rs. 3.47 per kWh, as determined by the Commission for FY 2024-25, was applicable and thus, in compliance of the Order dated 10.11.2023 in Petition No. 108 of 2023 and in terms of PPA dated 28.02.2024, the tariff of Rs. 3.47 per kWh has been allowed which is strictly in accordance with order of the Commission.

13. We have heard Sh. Ashok Verma, Ld. Counsel for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent.

14. Sh. Ashok Verma, Ld. Counsel for the Review Petitioner has submitted that the Project of Petition is entitled to the tariff of Rs. 3.72 per kWh, as mentioned in the order dated 10.11.2023 in the Petition No. 108 of 2023 which is strictly in accordance with tariff order dated 31.03.2023, passed by the Commission in Suo-Moto Petition No. 11 of 2023 whereby the tariff for the Solar PV Project for period for 01.04.2023 to 30.09.2023 was determined. According to him, the

Commission in order dated 31.03.2023 in Suo-Moto Petition No. 11 of 2023 has clearly provided under Clause 12(E)(i) that in cases where the Petition for approval of the PPA is submitted to the Commission on or after 01.04.2023 but not later than 30.09.2023, said tariff shall be applicable for such capacity(ies) as are commissioned on or before 31.03.2025.

15. According to him, the Joint Petition was filed on 30.09.2023, strictly as per order dated 31.03.2023 as such, tariff of Rs. 3.47 per kWh cannot be allowed, merely because the commissioning was beyond the SCOD and the action of the Respondent in restricting the tariff to Rs. 3.47 per kWh and levying of liquidated damages is contrary to order dated 31.03.2023.

16. Sh. Kamlesh Saklani, Authorized Representative for the Respondent has submitted that HPSEBL has acted in accordance with the order dated 10.11.2023 in the Joint Petition and PPA dated 28.02.2024 wherein it was clearly mentioned that in the event of delay of SCOD, the tariff for control period in which project is actually commissioned shall be applicable, and the Petitioner shall have to provide the power to the Respondent on said tariff only and since the commissioning was delayed beyond the SCOD and the tariff on the date, when the project was commissioned was Rs. 3.47 per kWh, in respect of the capacity of the project, the review is not maintainable.

He has also submitted that the commissioning has been delayed without any reason and, therefore, the liquidated damages were righty levied. He also submitted that 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:-

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| **Point No. 1**: | Whether there are sufficient reasons for reviewing the Order dated 10.11.2023 in Petition No. 108 of 2023 and the Petitioner is entitled to the tariff of Rs. 3.72 per kWh? |
| **Point No. 2:** | Whether the notice for levying the liquidated damages of Rs. 5,40,000/- for 233 days is required to be set aside? |
| **Point No. 3:** | **Final Order** |

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

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| **Point No. 1:** | Yes |
| **Point No. 2:** | No |
| **Point No. 3: (Final Order)** | The Petition partly allowed per operative part of the order. |

## REASONS FOR FINDINGS

**Point No. 1:**

19. It is well settled that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers 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 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."*

20. 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)*
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> *"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."*

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

22. It is simple case of the Petitioner that a tariff of Rs. 3.72 kWh was allowed to the project vide order dated 10.11.2023 in the Petition No. 108/23 but on account of stipulation in order dated 10.11.2023 that in case the commissioning of project is delayed beyond SCOD i.e. 19.04.2024 and in case the tariff when the project is commissioned is less, the Joint Petitioner shall have to provide the power to the Joint Petitioner No. 1 on said lower tariff.

23. It is mentioned in the Petition that the project could be commissioned only on 07.12.2024 but instead of allowing tariff of Rs. 3.72 per kWh, lower tariff of Rs. 3.47 kWh has been allowed which is contrary to the order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023 whereby the Genetic Levellized Tariff for the Solar PV projects for a period w.e.f 01.04.2023 to 30.09.2023 was determined by the Commission allowing tariff of Rs. 3.72 kWh for the projects above 1 MW upto 5 MW capacity situated in the Rural Areas.

24. The Joint Petition No. 108 of 2023 had been filed before the Commission on 30.09.2023, as evident from the copy of order dated 10.11.2023 (Annexure-P1). Clause 12 (E)(i) of the tariff order dated 31.03.2023 in Suo-Moto Petition No. 11 of 2023 clearly provides that the tariff as determined vide order dated 31.03.2023 shall remain valid till 31.03.2025, provided the Petitions for the approval of PPA are filed on or after 01.04.2023 but not later than 30.09.2023. Clause 12(E)(i) reads as under.

> *"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"*

25. Undisputedly, the Joint Petition No. 108 of 2023 had been filed on 30.09.2023, which was within the currency of the period as provided in tariff order dated 31.03.2023 in Suo-Moto Petition No. 11

of 2023. The Project of the Petitioner has been commissioned on 07.12.2024 within the currency of the period provided for commissioning of the Projects i.e. 31.03.2025, therefore, the tariff of Rs. 3.72 kWh was applicable to the project and not Rs. 3.47 kWh, as allowed by the HPSEBL.

26. In fact, the stipulation in the order dated 10.11.2023 in Petition No. 108 of 2023 in case the commissioning of the Project is delayed beyond SCOD i.e. 19.04.2024, and the tariff in the said control period is less, the Joint Petitioner No. 2 shall have to provide power to the Joint Petitioner No. 1 on said tariff only runs counter to the Clause 12 (E) (i) of order dated 31.03.2023 in Suo Moto Petition No. 11 of 2023. Thus, said condition in order dated 10.11.2023 in Petition No. 108 of 2023 is inconsequential. Therefore, there is an apparent error in the face of record in order dated 10.11.2023 in Petition No. 108 of 2023 and as a result thereof, a serious prejudice has been occasioned to the Petitioner. Point No. 1 is accordingly decided in favour of the Petitioner.

**Point No. 2**

27. The Petitioner has also claimed that the order imposing the Liquidated Damagers of Rs. 5,40,000/- for delay of 233 days be quashed. It is settled law that the review can only be permitted for correcting the errors apparent on the face of the record in the order

under review. There is no mention in order dated 10.11.2023 in Petition No. 108 of 2023 regarding the Liquidated Damages. In the circumstances, no order of review can be entertained in the present Petition as claimed. However, in case the Petitioner, if so advised, may file a separate Petition before the Commission in this regard. Point No. 2 is accordingly decided against the Petitioner.

## Final Order

28. In view of the aforesaid discussion and findings, the Petition is partly allowed in favour of the Petitioner and partly against the Petitioner. The Petitioner shall be entitled to the tariff of Rs. 3.72 per kWh as allowed vide order dated 10.11.2023 in Petition No. 108 of 2023 w.e.f. the date of commissioning of the Project.

29. However, the Petition qua the demand of Liquidated Damages of Rs. 5,40,000/- is dismissed.

Let a copy of this order be supplied to the Joint Petitioners forthwith.

The file after doing the needful be consigned to records.

Announced
**03.07.2025**

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| **(Shashi Kant Joshi)** | **(Yashwant Singh Chogal)** | **(Devendra Kumar Sharma)** |
| **Member** | **Member (Law)** | **Chairman** |

HPERC