BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No: 199 of 2025
Date of Institution: 11.08.2025
Arguments Heard on: 12.08.2025
Decided on: 26.08.2025

CORAM:

YASHWANT SINGH CHOGAL
MEMBER (Law)-cum-Chairman.

SHASHI KANT JOSHI
MEMBER.

M/s Sarswati Solar Power Project,
Village Beri Darolan, Post Office Behana Jattan,
Tehsil Jhandutta, Distt. Bilaspur, H.P. **…....Petitioner.**

Versus

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

Review Petition under Regulation 75 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 seeking review of Order dated 10.04.2024 passed by the Commission in Petition No. 62 of 2024.

Present:-

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

ORDER

This order would dispose off the Petition filed by M/s Sarswati Solar Power Project (Petitioner for short) that a Joint Petition being Petition No. 62 of 2024 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 by allowing tariff of Rs. 3.65 per kWh vide Order dated 10.04.2024 permitting the Joint Petitioners to sign the PPA.

2. The Review Petition has been filed by the Petitioner seeking review of order dated 10.04.2024 with the following prayer:-

> *“It is therefore, most respectfully prayed that this petition may be allowed and respondent/ HPSEBL may be directed to make billing of the Petitioner project from the date of COD @ Rs. 3.65 per kWh in the interest of justice and fair play. Further, Respondent be directed to not levy the liquidated damages of Rs. 1,60,000/- and thus, notice dated 30.06.2025 may kindly be quashed and set aside.”*

3. The Petitioner has reproduced condition (v) of Para 13 of the order dated 10.04.2024 as under:-

> *“(v) The Scheduled Date of Synchronisation of the Project is 27.09.2024 and Scheduled Commercial Operation Date (SCOD) of the project is 12.10.2024 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. 12.10.2024, 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 10.04.2024 has been annexed as Annexure P-1.

4. According to Petitioner, the PPA was executed as per order dated 10.04.2024 and the tariff component was incorporated in Article 6 of the PPA which has been reproduced in the Review Petition.

5. It is averred that the Petitioner achieved the COD of the project on 21.03.2024 which is beyond the Scheduled Commercial Operation Date (SCOD) i.e. 12.10.2024, as contained under order dated 10.04.2024. Thus, the tariff of Rs. 3.65 per kWh was not allowed by the Respondent and rather, a tariff of Rs. 3.50 per kWh was allowed.

6. According to the Petitioner, the Commission has determined Generic Levellized Tariff for Solar PV Projects for the period w.e.f. 01.10.2023 to 31.03.2024 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 04.11.2023 in Suo Moto Petition No. 6 of 2023 whereby the tariff for the Project upto 1.0 MW to be set up in areas other than industrial and urban areas shall be Rs. 3.65 per kWh. Further, as per Clause 12 (E) of the above order dated 31.03.2023,the above tariff shall remain valid till 31.03.2025 provided the Petition for approval of PPA is submitted to the Commission on or after 01.10.2023 but not later than 31.03.2024. The order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 has been annexed as Annexure P-2. According to the Petitioner, the Project was commissioned on 21.03.2024 that the Petition had been filed on

27.03.2024, as such, the Petitioner is entitled to the tariff of Rs. 3.65 per kWh but the Respondent is paying tariff of Rs. 3.50 per kWh only.

7. 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:-

> *"20. This Commission while determining the generic levellized tariff for FY 2023-24 vide order dated 04.6.2023 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 04.6.2023 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 04.6.2023 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 04.6.2023 in Suo Moto Petition No. 6 of 2023 is entitled to the tariff of Rs. 3.65 per kWh till 31.03.2025.*
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> *21. In the circumstances, there are merits in the Petition and accordingly the Petition succeeds and allowed. It is ordered that the Petitioner shall be entitled to the tariff of Rs. 3.65 per kWh, in case the SCOD is achieved before 31.03.2025. In case the SCOD is delayed beyond 31.03.2025, the tariff for the period in which SCOD is achieved shall be applicable.*
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> *22.The parties are directed to execute the Supplementary Power Purchase Agreement (SPPA for short) within a period of 30 days from the date of this order. Three copies of the executed SPPA be submitted to the Commission for record."*

The Copy of order dated 26.12.2024 has been annexed as Annexure P-3.

It has also been prayed that the Liquidated Damages of Rs. 1,60,000/- are not required to be levied.

8. No reply has been filed as Sh. Kamlesh Saklani, Authorized Representative appearing on behalf of the HPSEBL has submitted that the Commission has already considered such matters in the past and appropriate order be passed.

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

10. Sh. Ashok Verma, Ld. Vice Counsel for the Review Petitioner has submitted that the Project of Petitioner is entitled to the tariff of Rs. 3.65 per kWh, as mentioned in the order dated 10.04.2024 in the Petition No. 62 of 2023 which is strictly in accordance with tariff order dated 04.11.2023, passed by the Commission in Suo-Moto Petition No. 6 of 2023 whereby the tariff for the Solar PV Project for period for 01.10.2023 to 31.03.2024 was determined. According to him, the Commission in order dated 04.11.2023 in Suo-Moto Petition No. 6 of 2023 has clearly provided under Clause 12(E) (i) and that in cases where the Petition for approval of the PPA is submitted to the Commission on or after 01.10.2023 but not later than 31.03.2024,

said tariff shall be applicable for such capacity(ies) as are commissioned on or before 31.03.2025.

11. According to him, the Joint Petition was filed on 27.03.2024, strictly as per order dated 04.11.2023, as such, tariff of Rs. 3.50 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. 3.50 per kWh is contrary to order dated 04.11.2023.

12. Sh. Kamlesh Saklani, Authorized Representative for the Respondent has submitted that HPSEBL has acted in accordance with the order dated 10.04.2024 in the Joint Petition and executed PPA 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. 3.50 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, there are no errors apparent on the face of record.

13. 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 10.04.2024 in Petition No. 62 of 2024 and the Petitioner is entitled to the tariff of Rs. 3.65 per kWh?
Point No. 2:	Whether the notice dated 30.06.2025 for levying the liquidated damages of Rs. 1,60,000/- is required to be set aside?
Point No. 3:	**Final Order**

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

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:

15. 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."*

16. 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 1962 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."

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

18. It is simple case of the Petitioner that a tariff of Rs. 3.65 kWh was allowed to the project vide order dated 10.04.2024 in the Petition No. 62 of 2024 but on account of stipulation in order dated 10.04.2024 that in case the commissioning of project is delayed beyond SCOD i.e. 12.10.2024 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.

19. It is mentioned in the Petition that the project could only be commissioned on 21.03.2024 which was within the currency of the

tariff order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 but instead of allowing tariff of Rs. 3.65 per kWh, lower tariff of Rs. 3.50 per kWh has been allowed which is contrary to the order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 whereby the Generic Levellized Tariff for the Solar PV Projects for a period w.e.f 01.10.2023 to 31.03.2024 was determined by the Commission allowing tariff of Rs. 3.65 kWh for the projects upto 1 MW capacity situated in the rural areas which was valid uptill 31.03.2025 provided that the Petitions are filed on or after 01.10.2023 but before 31.03.2024.

20. The Joint Petition No. 62 of 2023 had been filed before the Commission on 27.03.2024, as evident from the copy of order dated 10.04.2024 (Annexure-P1). A careful perusal of Clause 12 (E)(i) of the tariff order dated 04.11.2023 in Suo-Moto Petition No. 6 of 2023 clearly provides that the tariff as determined vide order dated 04.11.2023 shall remain valid till 31.03.2025, provided the Petitions for the approval of PPA are filed on or after 01.10.2023 but not later than 31.03.2024. 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 01.10.2023, but not later than 31.03.2024, this tariff shall be applicable for such capacity)ies) as are commissioned on or before 31.03.2025"*

21. Undisputedly, the Joint Petition No. 62 of 2024 had been filed on 27.03.2024, which was within the currency of the period as provided in tariff order dated 04.11.2023 in Suo-Moto Petition No. 6 of 2023. The Project of the Petitioner has been commissioned on 21.03.2024 within the currency of the period provided for commissioning of the Projects i.e. 31.03.2025, therefore, the tariff of Rs. 3.65 per kWh was applicable to the project and not Rs. 3.50 per kWh, as allowed by the HPSEBL.

22. In fact, the stipulation in the order dated 10.04.2024 in Petition No. 62 of 2024 that in case the commissioning of the Project is delayed beyond SCOD i.e. 12.10.2024, 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 04.11.2023 in Suo Moto Petition No. 6 of 2024. Thus, said condition in order dated 10.04.2024 in Petition No. 62 of 2024 is inconsequential. Therefore, there is an error apparent on the face of the record in order dated 10.04.2024 in Petition No. 62 of 2024 and as a result thereof, a serious prejudice has been occasioned to the Project of the Petitioner which is required to be corrected by providing tariff of Rs. 3.65 per kWh and not Rs. 3.50 per kWh as allowed by the HPSEBL and billing is required to be

made on the tariff of Rs. 3.65 per kWh from the date of commissioning of the Project i.e. 21.03.2024. Point No. 1 is accordingly decided in favour of the Petitioner.

Point No. 2

23. The Petitioner has also claimed that the order imposing the Liquidated Damages of Rs. 1,60,000/- for delay of 160 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 10.04.2024 in Petition No. 62 of 2024 regarding the Liquidated Damages which are to be levied as per the PPA. In the circumstances, no order of review in respect of Liquidated Damages 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

24. 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. 3.65 per kWh as allowed vide order dated 10.04.2024 in Petition No. 62 of 2024 w.e.f. the date of commissioning of the Project and the billing

from the date of commissioning of the Project is ordered to be made @ of Rs. 3.65 per kWh.

25. However, the Petition qua the demand of Liquidated Damages of Rs. 1,60,000/- is dismissed.

26. The Joint Petitioners are directed to execute the Supplementary Power Purchase Agreement as per the above order after carrying out the necessary additions and alterations within 30 days from the date of this order. Three copies of the executed Supplementary Power Purchase Agreement be submitted to the Commission for record.

27. Other terms and conditions of the order dated 10.04.2024 in Petition No. 63 of 2024 shall remain the same.

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

The file after doing the needful be consigned to records.

Announced
26.08.2025

-Sd-	**-Sd-**
(Shashi Kant Joshi)	**(Yashwant Singh Chogal)**
Member	**Member (Law)-cum-Chairman**