The HPPTCL Versus M/s Bajoli Holi Hydro Power Ltd.

Review Petition No. 173 of 2025

25.09.2025

Present: Sh. Manoj Kumar, G.M. for the Petitioner.
Sh. Yashaswi Kant, Ld. Counsel for the Respondent No. 1.
Sh. Kamlesh Saklani, Authorised Representative for the Respondent No.2.
Ms. Narvada, Ld. Vice Counsel for the Respondent No. 3.

DAILY ORDER

This order would dispose of an application under Regulation 75 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 read with Order 6 Rule 17 of the Code of Civil Procedure for amendment of the Review Petition that post filing the Review Petition, it was gathered that the terms and conditions of the loan agreement, project agreement and On-lending agreement and provisions of Tariff Regulations were inadvertently skipped from the averments in the Review Petition which have direct bearing on the Petition. Therefore, it is necessary to amend the Review Petition for completion of facts and adjudication of the matter by inserting Para 8.21 after para 8.20 as under:-

> *"8.21 The review of the Order dated 10.09.2024 has been sought on account of the error apparent on the face of the record, in terms of the following:*
> *That, the Hon'ble HPERC vide its order dated 10.09.2024 in Petition No. 99/2024 has held vide Paras:*
>
> *"Para 3.8.10 In this specific instance, it is noted that the multilateral agency i.e. the ADB, is funding this project in collaboration with the GoI and the GoHP. However, the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL. While the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the Govt. of India, the entire*

loan proceeds were extended by GoHP to the Petitioner as loan carrying interest rate of 10% per annum.

3.8.11 The Commission takes serious note against consideration of the amount as loan which otherwise was available as grant (90% of overall amount) to the State. This shall result in unnecessarily burdening the consumers of the State due to such treatment. It is also observed that the Petitioner is already facing financial challenges. The Commission feels that it would be prudent that the Petitioner takes up the matter with the Govt. of Himachal Pradesh regarding restructuring of the loan amount availed against the project on same terms and conditions as envisaged under the original scheme of funding i.e., 90% of the amount to be converted to grant. This would be in interest of the consumers of the State who would have to bear the burden of the additional interest cost and repayment of such loan that is being provided as grant.

Para 3.8.12 Accordingly, the Commission has provisionally considered the debt amount availed under the ADB scheme as 90% grant and 10% debt. Further, after reducing such amount of grant from the total approved capital cost, the commission has considered debt:equity ratio as 70% debt and 30% equity for the balance amount in line with Regulation 10(C) of the HPERC Transmission Tariff Regulations, 2011 which specify the following:
(b) the debt-to-equity ratio shall be considered in accordance with regulation 16, after deducting the amount of financial support provided through consumer contribution, deposit work, capital subsidy or grant;"

That the said observation/order of the Hon'ble HPERC is in complete variance to the HPERC Transmission Tariff Regulations, 2011 (as amended upto date) for the reason the Regulation 17-A as inserted vide Second Amendment in the year 2017 only refers to the "Consumer Contribution, Deposit Work, Grant and Capital Subsidy". Therefore, the funds as received by the HPPTCL from the Government of H.P as Loan amount in terms of the On-Lending Agreement(s) (dated 21.04.2012, 03.12.2014 & 04.07.2024) executed between the Govt. of H.P & the HPPTCL shall not fall under the said Regulation 17-A (4)(b) <u>[wrongly stated as Regulation 10(C)(b) in Para 3.8.12 of the impugned order dated 10.09.2024 of the HPERC]</u> as it states "the debt to equity ratio shall be considered in accordance with regulation 18, after deducting the amount of financial support provided through consumer contribution, deposit work, capital subsidy or grant;". Meaning thereby in the given case of HPPTCL the Loan amount received from the GoHP should not have had been deducted by the Hon'ble Commission while considering the debt to equity ratio in accordance with the Regulation 18 for the purposes of determination of the tariff. Therefore, the order of the Hon'ble Commission treating the Loan received by HPPTCL from the Govt. of H.P as grant is in divergence to its own Regulations which nowhere *allows the HPERC to treat the Loan amount as a grant and that too in absence of any such regulation in the said regard.*

8.21.1 The Hon'ble Commission vide its order dated 10.09.2024 has erred to not take into account the terms of the initial On-Lending Agreement(s) executed dated 20.04.2012 (for Tranche-I) & 03.12.2014 (Tranche-II) between the GoHP & HPPTCL and also the subsequent restructured On-lending Agreement dated 04.07.2024 signed between HPPTCL with GoHP.

The initial On-Lending Agreement(s) dated 20.04.2012 & 03.12.2014 specifically stipulates the following terms & conditions: -

"3. The second party hereby agrees that:-
i) Rate of Interest shall be 10% per annum for all disbursements.
ii) Interest on 10% of the total disbursed amount will start immediately from the date of disbursement which will be payable by second party to the First Party annually.
iii) The Second Party will be given a grace period of 5 years in case of interest on the 90% of the total disbursed amount. Interest on this amount will start immediately at the end of 5th year which will be payable annually thereafter.
iv) Principal repayment will be made in 15 equal annual installments with a moratorium of 5 years."

Further, the restructured On-Lending Agreement(s) for Tranche-III specifically stipulates as under:-

- "The second party hereby agreed that:-
i. Rate of Interest shall be 10% per annum for 10% of all disbursements.
ii. Interest on 10% of total disbursed amount shall start immediately from the date of disbursement which will be payable by HPPTCL to the GoHP.
iii. 10% of all disbursement shall be infused as equity by GoHP.
iv. 80% of all disbursement shall be interest free loan.
v. Principal repayment for 90% of total disbursed amount will be made in 15 equal annual instalments with a moratorium period of 5 years.
vi. The interest will be repaid as due in January of each financial year. The amount of the interest will be calculated on the above rate and terms up to last day of the preceding month in which the payment is due i.e. 31st December."

Moreover, the restructured On-Lending Agreement(s) for Tranche-II specifically stipulates as under:-
"1. The second party hereby agrees to amend the Sr: No. 3 of existing agreement as under-
(i) Principal repayment due till Calendar Year (C.Y.) 2021 as per original onlending agreement is deferred till CY. 2023 and

shall be repaid in 11 equal instalments w.e.f. C.Y. 2024 (paid w.e.f. Jan., 2025 to Jan., 2035),

(ii) Interest on 90% portion of loan accrued up to Calendar Year 2021 as per original onlending agreement is deferred till calendar Year 2023. The interest shall be repaid w.e.f. C.Y. 2024 in 11 years i.e. (paid w.e.f. Jan., 2025 to 2035),
(iii) Interest on 10% portion of the total disbursed amount will continued to be paid by second party to the First Party Annually.
(iv) Restructuring of Loan w.e.f. Calendar year 2022 shall be as under:-

(a) 80% of disbursed loan will be converted in to interest free loan (b) 10% of disbursed amount will be kept as interest-bearing loan @10% rate of interest (c) 10% of disbursed loan will be converted into equity by GoHP.

(v) Principal repayment on 90% portion of disbursed loan due w.e.f. C.Y. 2022 is deferred till calendar Year 2023. The Principal shall be repaid w.e.f. C.Y. 2024 in eleven equal instalments i.e. (paid w.e.f. Jan. 2025 to 2035)."

8.21.2 The Hon'ble Commission also erred to not take into Consideration the terms and conditions of the Loan Agreement(s) executed between the GoI and the ADB more specifically Article III - Use of Proceeds of the Loan under Section 3.01 (b) which is as under:

"Subject to the provisions of the FFA, the Borrower shall cause the State to make the proceeds of the Loan available to HPPTCL under an Onlending Agreement on terms and conditions mutually acceptable to ADB. The Borrower shall submit, or cause the State to Submit, the Onlending Agreement to ADB within one month from the Effective Date."

8.21.3 The Hon'ble Commission again erred to not acknowledge the terms of the Project Agreements) executed between the ADB on the one Part and the State of H.P & HPPTCL on the other part, wherein the terms categorically state that the loan be made available to the State and HPPTCL and the same agree to undertake certain obligations towards the ADB as mentioned in the said Project Agreements). Moreso, the Clause 2.13 & 2.14 categorically stated:

"Section 2.13 Except as ADB may otherwise agree, the State and HPPTCL shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the project.

Section 2.14 Except as ADB and the Borrower may otherwise agree, the State and HPPTCL shall duly perform all their obligations under the

Onlending Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Onlending Agreement."

8.21.4 That the impugned order dated 10.09.2024 passed by the Hon'ble Commission is in complete variance to the material on record as well as the HPERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011 as amended upto date, the Onlending Agreement(s), Loan Agreement(s) and the Project Agreement(s). Keeping into consideration the above, there was no occasion for the Hon'ble Commission to treat the funds as received by the HPPTCL as grant instead of a Loan."

It has been submitted by Sh. Manoj Kumar, G.M. for the Petitioner that the proposed amendment neither sets up a new case nor the proposed amendment was intentionally left out and that the proposed amendment is necessary for adjudication of the controversy in the matter.

The application has been resisted by filing reply that the Petitioner intends to introduce new documents at a very advanced stage of pleadings, therefore, the application is required to be rejected being without any valid or sufficient reasons. Also averred that the scope of Review Petition is very limited to rectify the errors apparent on the face of the record on discovery of new and important matter of evidence which despite due diligence could not have been produced earlier but in the present case, the HPPTCL has sought to introduce new documents which were in its possession and knowledge at the time of filing of the Review Petition. Therefore, the amendment does not fall within the legal scope of review. Also averred that permitting the documents at the advance stage of proceedings would result in opening the entire case which is not permissible. According to the Respondent, its reply has come on record and allowing the application at this belated stage would require filing fresh reply which would delay the proceedings.

Further, averred that the Petitioner cannot be allowed to fill up the gaps in original proceedings and allowing the application at this belated stage would cause serious prejudice to the Respondent.

Sh. Kamlesh Saklani, Authorised Representative for the HPSEBL has submitted that the documents were well within the knowledge of the Petitioner and could have been produced earlier and admitting new documents at this belated stage would defeat the very purpose of the Review Petition and delay the disposal of the Review Petition.

We have carefully gone through the submissions and record. The entire claim of the Petitioner regarding Approval of Capital Cost and Determination of Tariff for the 4th Control Period from COD (11.01.2023) to FY 2023-24 for 400/220 kV System of 400/220/33 kV GIS Sub-station at Lahal (Asset-1) alongwith 400 kV D/C Lahal-Chamera Transmission Line (Asset-2) was based on the terms and conditions of loan, project agreement and On-lending agreement. It is apparent from the application that despite exercise of due diligence, the details of documents in question could not be mentioned in the Review Petition and thus, a necessity has arisen to amend the Review Petition for completion of facts.

The Petitioner by way of present amendment intends to insert para 8.21 of the Petition with new para as mentioned above. Though, the proceedings are at a very advanced stage but the documents in question and its relevance which are being sought to be introduced are material for adjudicating the controversy in the matter. The Review Petition has been filed pursuant to order dated 10.09.2024 for the Approval of Capital Cost and Determination of Tariff for the 4th Control Period from COD (11.01.2023) to FY 2023-24 for 400/220 kV System of 400/220/33 kV GIS Sub-station at Lahal (Asset-1) alongwith 400 kV D/C Lahal-Chamera Transmission Line (Asset-2). The Petitioner intends to produce the documents relating to the loan so as to complete the facts.

It is held by the Hon'ble Appellate Tribunal for Electricity in IA No. 771 of 2024 in Appeal No. 275 of 2015 & IA No. 776 of 2024 in Appeal No. 408 of 2022 & IA No. 772 of 2024 in Appeal No. 22 of 2022 decided on 17.02.2025 titled Damodar Valley Power Consumers Association & Anr. versus West Bengal Electricity Regulatory Commission & Anr. that the parameters which are to be considered at the time of deciding the application for amendment are no longer res integra. It has been observed by the Hon'ble Supreme Court in a catena of judgments that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the large interest of doing full and complete justice to the parties before the court.

On careful perusal of the application and documents sought to be produced, we are of the considered opinion that the explanation of loan and funding based on the agreement(s), is necessary for adjudication of the controversy in the Review Petition. The proposed amendment in our view nowhere sets up a new case. On the contrary, no prejudice whatsoever would occasion to the Respondent if the proposed amendment is allowed. Therefore, the present application under Regulation 75 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 read with Order 6 Rule 17 of the Code of Civil Procedure for amendment of Review Petition is allowed subject to costs of Rs. 5000/-. The Review Petition is allowed to be amended as prayed.

Let amended Review Petition be filed within 7 days with advance copy to the opposite party. The HPSEBL/ Respondent is directed to file reply to the amended Review Petition within 7 days from the receipt of copy of amended Review Petition.

List on 13.10.2025 at 11:00 AM for completion of pleadings.

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