

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

Review Petition No: 184 of 2025
Date of Institution: 23.07.2025
Arguments Heard on: 12.08.2025
Decided on: 20.08.2025

CORAM:

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

SHASHI KANT JOSHI
MEMBER.

M/s Bhaskar Urja Solar Power Project,
Village and Post Office Proul, Tehsil Fatehpur,
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 for reviewing of Order dated 02.04.2024 passed by
the Commission in Petition No. 41 of 2024.**

Present:-

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

ORDER

This Review Petition has been filed by the Petitioner seeking review of order dated 02.04.2024 in Petition No. 41 of 2024 with the prayer that the tariff of Rs. 3.65 per kWh be allowed in terms of generic levlized tariff order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023.

2. A Joint Petition No. 41 of 2024 was filed for the approval of Power Purchase Agreement (PPA for short) by the Himachal Pradesh State Electricity Board Limited and the Petitioner which was allowed by the Commission vide Order dated 02.04.2024 permitting the Joint Petitioners to sign the PPA by allowing tariff of Rs. 3.65 per kWh.

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

“(v) The Scheduled Date of Synchronisation of the Project is 31.05.2024 and Scheduled Commercial Operation Date (SCOD) of the project is 15.06.2024 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. 15.06.2024, 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 02.04.2024 has been annexed as Annexure P-1.

4. According to Petitioner, the PPA was executed as per order dated 02.04.2024 on 14.05.2024 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 01.12.2024 which is beyond the Scheduled Commercial Operation Date (SCOD) i.e. 15.06.2024, as contained under order dated 02.04.2024. 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 setup in areas other than industrial and urban areas shall be Rs. 3.65 per kWh 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 and are commissioned on or before 31.03.2025. The order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 has been annexed as Annexure P-2.

7. As per the Petitioner, the Petitioner is squarely covered under Clause 12 E(i) of the order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023 and thus, tariff of Rs. 3.65 per kWh is applicable as said tariff was valid till 31.03.2025.

8. It is mentioned that an error apparent on the face of the record has crept in the order dated 02.04.2024 in Petition No. 41 of 2024, wherein it was mentioned that, in case commissioning of project is delayed beyond SCOD i.e 15.06.2024, and if the tariff in the said prevalent control period in which the Project is commissioned is less,

the Petitioner will have to provide the power of the Project to the Respondent on the said lower tariff only, whereas, as per Clause 12 (E)(i) of the tariff order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023, the tariff was valid uptill 31.03.2025 in case the Petition is filed on or after 01.10.2023 but not later than 31.03.2024. The parties had filed the Joint Petition on 21.03.2024 i.e. within the time limit provided in the order dated 04.11.2023 in Suo Moto Petition No. 6 of 2023, therefore, the aforesaid error is required to be corrected as the tariff was valid till 31.03.2025.

9. A copy of order dated 26.12.2024 passed by the Commission in Review Petition No. 133 of 2024 titled as M/s BS Farms Solar Venture versus the HPSEBL has also been placed on record in support of its contention as Annexure P-3.

10. 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.

11. We have heard Sh. Ashok Verma, Ld. Counsel for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent and have 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 02.04.2024 in Petition No. 41 of 2024 and the Petitioner is entitled to the tariff of Rs. 3.65 per kWh?

Point No. 2: **Final Order**

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

Point No. 1: Yes.

Point No. 2: The Petition allowed per operative part of the order.
(Final Order)

REASONS FOR FINDINGS

Point No. 1:

13. 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.”

14. 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 Tuleswar 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.”

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

16. It is simple case of the Petitioner that a tariff of Rs. 3.65 kWh was allowed to the project vide order dated 02.04.2024 in the Petition No. 41 of 2024 but on account of stipulation in order dated 02.04.2024 that in case the commissioning of project is delayed beyond SCOD i.e. 15.06.2024 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.

17. It is mentioned in the Petition that the project could be commissioned only on 01.12.2024 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 Levelled 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.

18. The Joint Petition No. 41 of 2024 had been filed before the Commission on 21.03.2024 as evident from Annexure P-1. 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.

“(i) 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”

19. Undisputedly, the Joint Petition No. 41 of 2024 had been filed on 21.03.2024, 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 01.12.2024 within the currency of the period provided for commissioning of the Projects i.e. 31.03.2025, therefore, the tariff of Rs. 3.65 per kWh was applicable to the project and not Rs. 3.50 per kWh, as allowed by the HPSEBL.

20. In fact, the stipulation in the order dated 02.04.2024 in Petition No. 41 of 2024 that in case the commissioning of the Project is delayed beyond SCOD i.e. 15.06.2024, 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 2023. Thus, said condition in order dated 02.04.2024 in Petition No. 41 of 2024 is inconsequential. Therefore, there is an apparent error on the face of record in order dated 02.04.2024 in Petition No. 41 of 2024 and as a result thereof, a serious prejudice has been occasioned to the Project of the Petitioner which is entitled to the 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. 01.12.2024. Point No. 1 is accordingly decided in favour of the Petitioner.

Final Order

21. In view of the aforesaid discussion and findings, the Petition succeeds and allowed. The Petitioner shall be entitled to the tariff of Rs. 3.65 per kWh, as allowed vide order dated 02.04.2024 in Petition No. 41 of 2024 w.e.f. the date of commissioning of the Project.

22. 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.

23. Other terms and conditions of the order dated 02.04.2024 in Petition No. 41 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
20.08.2025

Sd/-
(Shashi Kant Joshi)
Member

Sd/-
(Yashwant Singh Chogal)
Member (Law)-cum-Chairman