BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No:	**205 of 2025**
Instituted on:	18.08.2025
Heard on:	13.10.2025
Decided on:	**27.11.2025**

CORAM:

YASHWANT SINGH CHOGAL
MEMBER (Law)-cum-Chairman

SHASHI KANT JOSHI
MEMBER.

In the matter of:-

M/s Flowgen Renewable Energy Private Limited,
Registered Office at House No. 137, Pritam Nagar,
Tehsil Bhatiyat, Distt. Chamba, H.P.-176001, through,
Sh. Manoj Kumar, Authorised Signatory.

…..….Petitioner.

Versus

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

Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 for review of order dated 17.07.2025 passed by the Commission in Petition No. 12 of 2025.

Present:-

Sh. L.S. Mehta, Ld. Counsel for the Review Petitioner.
Sh. Kamlesh Saklani, Authorised Representative for the Respondent.

ORDER

This Review Petition has been filed by M/s Flowgen Renewable Energy Private Limited (the Petitioner for short) under Regulation 94 (1) (f) of the Electricity Act, 2003 (Act for short) and Regulation 70 of the

Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 (the CBR, 2024 for short) for review of order dated 17.07.2025 passed by the Commission in Petition No. 12 of 2025 titled as M/s Flowgen Renewable Energy Pvt. Ltd. versus the Himachal Pradesh State Electricity Board Limited (the HPSEBL/ Respondent for short).

2. The Petitioner has set up a Small Hydro Electric Project known as Jail Small Hydro Electric Project (1.20 MW) situated at Jail Nallah, a tributary of Parvati river in Beas Basin, Distt. Kullu, H.P. (Project for short) and a Petition under Section 86 (1) (b) of the Electricity Act, 2003 was filed for the approval of Power Purchase Agreement, being Petition No. 101 of 2015 which was allowed vide order dated 16.09.2015 with the following conditions:-

> *"(i) the generic levellized tariff, with depreciation benefit, shall be Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh for the rest period of the useful life of the project alongwith other conditions specified in the clause 6.2 (i) of the PPA is required to be modified accordingly.*
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> *(ii) The other terms and conditions of the PPA shall be subject to provisions of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012 and Commission's order dated 20.05.2013 and 30.06.2015."*

3. Accordingly, the PPA was executed between the Petitioner and the HPSEBL on 10.09.2025. Clause 6.2 and 8.8 of the PPA have been reproduced as under:-

"6.2 TARIFF FOR NET SALEABLE ENERGY

Case 'A'

The HPSEBL, shall pay for the Net Saleable delivered and sold to it by the Company at the Interconnection Point at a fixed rate of Rs. 3.14 per kWh for the first 12 years and 3.27 per kWh for the remaining period of the project i.e., upto 40 years. This rate also accounts for:-

(i) The Government supply including Free Power/ Energy/ (for Home State) @ 2% for 12 years, 12% for remaining useful life of the project in addition to 1% free power towards the Local Area Development Fund;

(ii) Capital subsidy @ Rs. 1.50 Cr.

(iii) ………..

(iv) Mandatory water discharge downstream from diversion structure of the Project based on the instructions of the State government which presently provide that for the purpose of determination minimum discharge, the threshold value not less than 15% of the minimum inflow observed in the lean season shall be considered.

These rate of Rs. 3.14 per kWh & Rs. 3.27 per kWh (as cited above) are firm and fixed and shall not be subject to any indexation, escalation, adjustment or review due to any reason whatsoever except for specific provisions under Section 8.8.

(Complete details with regards to items (i) to (iv) above to be given)

…………………………………………………………..

8.8 LEVIES, TAXES, DUTIES, CESS ETC.

(1) Save as provided in Sub-sections (2) and (3) of this Section, the per kWh rate mentioned in Section 6.2 shall be firm and shall not be subject to any review.

(2) In the event of any change in the structure of free power (Govt. Supply), for the Project from that considered in the per kWh rate under Section 6.2, the HPSEBL shall adjust the said rate, but only to the extent of permissible limits as per the formula and other terms and conditions contained in Regulation 35 of the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012.

(3) If after the effective Date:

i) A water cess or tax on generation is levied which impacts all or any of the projects, and/ or

ii) The limit of 13% for the pass through of the Government Supply (free power) in the tariff, as per the National Hydro Policy/ Tariff Policy is revise, and/ or

iii) The mechanism or the quantum of the capital subsidy or budgetary grant mentioned, in Section 6.2 and Regulation 21 *of the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determinations) Regulations, 2012 is changed as a matter of policy, and/ or*

iv) The State Government revises its instructions with regard to the minimum flow of water downstream of diversion structure of the Small Hydro Projects and implements the same:

and, taking into consideration these factors, the Commission reviews the tariff by a general order for a specific order for the Project for any period in accordance with Sub-regulation 3 of Regulation 19 of the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determinations) Regulations, 2012, such revised rate, alongwith the terms and conditions, as ordered by the Commission shall be applicable for the period for which it is so ordered by the Commission."

4. According to the Petition, the Commission notified the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2012 (RE Regulations, 2012 for short). The Regulations 21 and 19 whereof read as under:-

"21. ***Subsidy or incentive or grant/budgetary support by the Central/ State Government.-*** *(1) While determining the generic levellised or project specific levellised tariff, as the case may be , for the renewable energy project(s) under these Regulations, the Commission shall take into consideration any incentive and /or subsidy and /or grant available under the schemes of the Central or State Government or its agencies, including accelerated depreciation benefit under the Income Tax Act.:*

Provided that for tariff determination, 90% of the capital subsidy available to the project as per applicable scheme of the MNRE/State Government shall be considered:

Provided further that the Commission may evolve suitable mechanisms for incorporating impact of the subsidy component for determination or adjustment of generic levellised tariffs for various categories of projects:

Provided further that the capital subsidy under the schemes of the Central or State Government or its agencies , shall, unless the circumstances otherwise warrant, be ordinarily adjusted against the principal *component of the loan amount as additional reduction apart from the normal payment:*

Provided further that where the Central Government or the State Government notifies or has notified any generation based incentive (GBI) scheme for a particular kind of renewable technology, such technology based generating station shall be assumed to have availed the benefit of such a scheme and their tariffs shall automatically be treated as reduced by the amount of generation based incentive (GBI) per unit for the period during which such incentive remains applicable.

(2) Where any additional grant or budgetary support is available to any respect, apart from the incentive and /or subsidy and /or grant available under sub-regulation (1) of this regulation, the Commission shall account for 100% of such budgetary support, while deterring project specific liveliest tariff.

(3) The amount of subsidy shall be considered for each renewable source as per the applicable policy of the MNRE/ State Government and if the amount and /or mechanism of subsidy is changed by the MNRE/State Government, consequent corrections in tariffs may be carried out by the commission in accordance with regulation 19.

(4) The Commission shall determine two generic levellised tariffs or project specific levllised tariffs, as the case may be, one by considering accelerated depreciation and the other without it, and the tariff to any renewable energy generator shall be applicable as provided in succeeding sub- regulation(5):

Provided that for ascertaining income tax benefits on account of accelerated depreciation for the purpose of tariff determination –

(a) assessment of benefit shall be based on normative capital cost or the cost admitted ,a s the case may be, accelerated depreciation rate, as per relevant provisions under the Income Tax Act and the Corporate Tax rate ;

(b) in case of generic levellised tariff, capitalization of renewable energy projects shall be considered during second half of the financial year and in case of project specific levellised tariff, the expected date of commencement of operation of the project shall be considered:

(c) per unit benefit shall be derived on levellised basis at the discount factor equivalent to the post tax weighted average cost of capital.

(5) It shall be assumed that the renewable energy generator shall avail the benefit of accelerated depreciation and accordingly the tariff, which accounts for the accelerated depreciation, shall be applicable unless the renewable energy generator establishes, to the satisfaction of the distribution licensee, that he has not availed or is not entitled to such a benefit."

"19. Review of tariff- *(1) Save as provided in sub-regulations (2) and (3) , the generic levellised tariff or project specific levellised tariff, as the case* *may be, determined in accordance with the provisions of these Regulations shall be firm and shall not to subject to any review.*

(2) Impact of any change (s) in the rate of free power under the general policy for allotment of sites, but only to the extent permitted under regulation 35 and further within the limit of 13% as per the National Tariff Policy and /or National Hydro Policy, shall be payable /adjustable as per the provisions of regulations 35.

(3) If, after the determination of the generic levellised tariff for the control period or the project specific levellised tariff for a project,-

(i) a water cess or atx on generation is levied which impacts all or any of the projects; and /or

(ii) the limit of 13% for the pass through of free power in the tariff, as per the National Hydro Policy/Tariff Policy is revised: and/or

(iii) the mechanism or quantum of the capital subsidy or budgetary grant mentioned in regulation 21 is changed as a matter of policy; and /or

(iv) the State Government revises its instructions with regard to the minimum flow of water downstream of diversion structure of the SHPs and implements the same :

The Commission may, suo moto or on an application made to it, by generic or specific order, review the tariff for the residual tariff period or such other part as it may deem fit, for the projects or group of projects actually impacted, to account for the impact of such changes:

Provided that while revising the tariff, the Commission may incorporate such terms and conditions, including the period for which such revised tariff shall be applicable, as it may deem fit."

5. It is averred that the Government of Himachal Pradesh (GoHP) vide notification dated 07.11.2020 has allowed One Time Amnesty for the Project by re-defining the zero date for Project(s) which were under the investigation and clearance stage where IAs had already been

signed and by re-defining the Scheduled Commercial Operation Date (SCOD) for the Project(s) under construction stage.

6. In line with the aforesaid one time amnesty scheme dated 07.11.2020, the Petitioner signed the 2nd Supplementary Implementation Agreement (2nd SIA for short) on 23.12.2020 with the GoHP. Pursuant thereto, the SCOD in respect of the Project has been redefined as 11.01.2021 and the DoE also approved the revised construction schedule. The Project was commissioned on 11.01.2021, as evident from the letter issued by the independent engineer dated 11.01.2021.

7. As per the Petitioner, the Ministry of Commerce and Industry, Government of India (GoI for short) vide notification No. 2 (2)/ 2018-SPS dated 23.04.2018 had notified the 'Industrial Development Scheme (IDS, 2017 for short) for the States of Himachal Pradesh and Uttarakhand', applicable w.e.f. 01.04.2017 to 31.03.2022, whereby the Central Capital Investment Incentive (subsidy) was being given for access to credit @ 30% of the investment in plant & machinery with an upper limit of Rs. 5.00 Crores (Industrial subsidy for short). However, as per the requirement of Item No. 17 of the IDS, 2017, all eligible units were required to register under the scheme on the Portal of Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and

Industry, Government of India (GoI) prior to becoming eligible for any benefit of the IDS, 2017. Accordingly, the Applicant got registered on the DIPP portal on 27.02.2021. On enquiring about the status of its application for IDS on 13.09.2024, the Industries Department, the Petitioner was apprised vide letter No. Ind.Klu.CCIIAC/17/Misc-1675 dated 28.09.2024 that "as on date the status of the application is reflected on DPIIT portal as "closed". So the unit is not eligible for any kind of incentive under IDS, 2017".

8. As per the Petition, the Project is not eligible for availing any subsidy either under IDS, 2017 or subsidy being provided by the Ministry of New and Renewable Energy (MNRE) for Hydro Electric Projects.

9. It is averred that the Petitioner made detailed representation to the Respondent on 14.11.2024 that in the light of the decision of the Government to close the IDS, 2017, the subsidy amount of Rs. 1.50 Crore, which has been adjusted in the tariff under Clause 6.2 of the PPA requires reconsideration and the tariff is to be re-calculated without adjustment of subsidy but no fruitful action has been taken. In the circumstances, the Petitioner had been compelled to file the Petition No. 12 of 2025 for re-calculation of tariff considering the adjustment of without subsidy of Rs. 1.50 Crore. In said Petition, the Commission

directed the Petitioner to file affidavit giving chronology of events from the date of allotment of the Project and signing of Implementation Agreement (IA) till the filing of application for availing subsidy under IDS, 2017 which was filed by the Petitioner on 27.02.2025 giving the chronology of events as under:-

> *"2. That in compliance with the order passed by this Hon'ble Commission, the chronology of events is submitted as under:*
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> *(a). The Government of Himachal Pradesh (GoHP), through the Special Secretary (NES), in accordance with its policy guidelines, issued a consent letter dated 11.06.2009 in favor of M/s Rainbow Hydro Power Co-operative Society Ltd. for detailed investigation of the Jail Hydro Electric Project (HEP) of 1.00 MW capacity located in District Kullu, HP. The company subsequently conducted detailed investigations and submitted a Detailed Project Report (DPR) for an enhanced capacity of 1.20 MW.*
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> *(b). The Directorate of Energy (DoE), GoHP, vide its office order dated 08.02.2013, accorded Techno-Economic Clearance (TEC) to Jail (1.20 MW) Small Hydro Electric Project (SHEP) on Jail Nallah, a tributary of the Parvati river in the Beas basin, District Kullu, HP, in favor of M/s Rainbow Hydro Power Co-operative Society Ltd.*
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> *(c). The GoHP, in accordance with its policy guidelines, entered into a Tripartite Agreement dated 16.05.2013 for the change of name of the entity from M/s Rainbow Hydro Power Co-operative Society Ltd. to M/s Flowgen Renewable Energy Pvt. Ltd.*
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> *(d). An Implementation Agreement (IA) was executed between GoHP and M/s Flowgen Renewable Energy Pvt. Ltd. on 14.08.2013 for the implementation of Jail SHEP (1.20 MW).*
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> *(e). A Supplementary Implementation Agreement (SIA) was signed on 05.12.2014, wherein both parties agreed to execute the project subject to the terms and conditions in the original IA and amendments introduced by the SIA.*
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> *(f). The Hon'ble Commission, vide its order dated 16.09.2015 in Petition No. 101 of 2015, granted consent for the Power Purchase Agreement (PPA) under Section 86(1)(b) of the Electricity Act, 2003.*
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> *(g). Pursuant to the said order, the PPA was executed between M/s Flowgen Renewable Energy Pvt. Ltd. and HPSEBL on 09.10.2015.*
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> *(h). Post allotment, the company undertook steps to obtain approvals and NOCs from concerned authorities to initiate construction. Copies of some NOCs are collectively annexed herewith as* ***Annexure-A.***
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> *(i).The Central Government, vide notification dated 02.07.2014, notified the MNRE subsidy scheme, which allowed a subsidy of ₹1.50 crore*

per MW. This subsidy was accounted for in the PPA, and the scheme remained in force until 30.03.2017. PFC Green Energy Limited, a wholly owned subsidiary of Power Finance Corporation Limited, granted in-principle approval for term loan assistance of ₹6.47 crore with a debt-to-equity ratio of 70:30, subject to certain terms and conditions. Copy of MNRE notification dated 02.07.2014 and loan sanction letter dated 30.03.2017 are annexed herewith as ***Annexure-B& Annexure-C.***

(j). That the work on the project commenced in October 2015 after obtaining all the required clearances, and the first installment was disbursed to the company in 2016.The company's previous management, vide letter dated 29.02.2016, requested MNRE, GoI, to avail of eligible financial assistance in the prescribed format along with relevant enclosures for setting up the 1.2 MW Jail SHP. Copy of letter dated 29.02.2016 is annexed herewith as ***Annexure-D.***

(k). That subsequently, in response to MNRE's letter seeking reasons for the delay in completing the project on time, the petitioner, vide letter dated 21.03.2018, submitted that local issues and geographical conditions, such as landslides at the power house site and the manual shifting of materials due to the lack of an accessible road to the weir site, had extended the timeline beyond expectations. Additionally, the increased project cost necessitated an enhancement in the loan amount and a proportional infusion of equity, which further contributed to the delay in arranging the required equity for the project. Copy of letter dated 21.03.2018 is annexed herewith as ***Annexure-E.***

(l). The previous management could not expedite construction due to local issues and cost overruns, resulting in the project remaining stalled. Meanwhile, the MNRE scheme was closed by the government in March 2017.

(m). The Ministry of Commerce and Industry introduced the 'Industrial Development Scheme (IDS) for Himachal Pradesh &Uttarakhand' through its Notification dated 23.04.2018.

(n). The old management, through its letter dated 30.12.2019, requested GoHP for the transfer of 100% shares of Jail SHEP (1.20 MW). The payment terms were discussed via an MoU dated 27.02.2020. HIMURJA, vide its letter dated 30.07.2020, informed the petitioner that the Government had approved the transfer of shares, subject to the payment of requisite fees by new shareholders. Copies of the MoU dated 27.02.2020 and letter dated 30.07.2020 are annexed as ***Annexure-F*** *and* ***Annexure-G****.*

(o). The new management took over the project, acquired bank loans from Power Finance Corporation Limited, placed supply orders, awarded contracts, and completed construction work, including the weir site, penstock, power house, transmission line, and related infrastructure. Copies of the relevant extracts of work orders, supply of items, and invoices are collectively annexed herewith as ***Annexure-H.***

(p). That however, the project encountered substantial setbacks due to the outbreak of COVID-19, resulting in restricted site access which disrupted supply chains. The Gram Panchayat, where the project is located, imposed restrictions on the entry of outsiders. Additionally, stringent workplace SOPs and adherence to COVID-19 protocols resulted in a significant decline in daily output at the project site.

(q). The GoHP, vide notification dated 07.11.2020,announced a one-time amnesty scheme. In line with this notification, the company signed a Supplementary Implementation Agreement on 23.12.2020, redefining the SCOD to 11.01.2021, which was approved by DoE.

(r). The Company executed a Connection Agreement with HPSEBL on 23.11.2020, and the project was successfully commissioned on 11.01.2021. Copy of connection agreement is annexed herewith as ***Annexure-I.***

(s). The Petitioner registered on the DIPP portal and applied for IDS scheme benefits on 27.02.2021.

(t). The Company submitted a letter dated 13.09.2024 to the Industries Department seeking a status update. In response, the Industries Department, vide its letter dated 28.09.2024, stated that the application status was reflected as "Closed" on the BPIIT portal, rendering the unit ineligible for IDS-2017 incentives.

3. The Petitioner applied for the MNRE subsidy scheme dated 02.07.2014 as well as the IDS-2017 scheme benefits within the prescribed timeline. However, due to subsequent policy changes or the closure of the schemes, the company should not be deprived of the intended benefits.

4. That the delay in filing this affidavit was due to the Petitioner's counsel being out of station during winter vacations and the deponent's official commitments. The delay is neither intentional nor deliberate but due to bona fide reasons. The deponent respectfully prays that this Hon'ble Commission may kindly take the present affidavit on record."

10. Also averred that during the hearing of the Petition No. 12 of 2025, on 01.04.2025 and 25.04.2025, the Petitioner was granted time by the Commission to place on record relevant correspondence made with the Ministry of New and Renewable Energy (MNRE), GoI in respect of the Project which was placed on record vide application dated 30.05.2025. The copy of application dated 30.05.2025 and copy

of MNRE Scheme dated 02.07.2014 have been annexed as Annexure P-2 and Annexure P-3, respectively.

11. On 17.06.2025, during the hearing of Petition No. 12 of 2025, the Commission further directed the Petitioner to file an affidavit containing chronology of events within a week in proper format, which was filed on 25.06.2025. However, the Commission dismissed the Petition No. 12 of 2025 vide order dated 17.07.2025.

12. The Review Petition has been filed on the ground that the Commission has failed to consider that the tariff rate of Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh thereafter, as fixed under Clause 6.2 of the PPA, was determined after taking into account subsidy of Rs. 1.50 Crore, as per the provisions of Regulation 21 of the RE Regulations, 2012 and the Petitioner had applied for both the subsidies being provided by the MNRE and Ministry of Commerce and Industry, within the stipulated time but the subsidy has not been released. Also that the Project achieved commercial operation on 11.01.2021 but in the absence of release of capital subsidy, the Petitioner has been unjustly burdened. In the circumstances, the tariff is liable to be revised and re-calculated.

13. Also the Commission has failed to consider that the Petitioner applied for subsidy within stipulated time under the MNRE Scheme on

29.02.2016 after commencement of construction of the Project in October, 2015 and disbursement of first loan installment was made in the year 2016. However, the MNRE scheme was closed on 31.03.2017. The MNRE vide letter dated 29.04.2025 has categorically mentioned that no scheme currently exists to support new SHEPs.

14. According to the Petitioner, the subsidy of Rs. 1.50 Crore has been factored into by the Commission while calculating the tariff of Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh for the remaining period and the denial of MNRE subsidy has unduly burdened the Petitioner, warranting revision of tariff. Further, there is no inefficiency on part of the Petitioner as all procedural formalities were completed under the MNRE Scheme and IDS, 2017. Thus, the order dated 17.07.2025, suffers from errors apparent on the face of record and the capital subsidy of Rs. 1.50 Crore, as accounted for while determining the tariff is required to be excluded and tariff is liable to be revised.

15. Further, the benefit under the MNRE Scheme has been denied solely on account of policy changes and closure of the scheme and in this regard, the Petitioner had placed on record the copy of letter dated 29.02.2016 addressed to the MNRE seeking financial assistance, letter dated 21.03.2018 explaining the delay in completion of the Project,

MNRE's letter dated 29.04.2025 is response to letter dated 07.04.2025 of the Petitioner seeking status update on the subsidy application which have not been considered by the Commission while passing order dated 17.07.2025.

16. According to the Petitioner, Regulation 19 (3) empowers the Commission to review the tariff either Suo Moto or on application for the residual tariff period or any part thereof, where capital subsidy or budgetary grant under Regulation 21 is altered post determination of tariff. Thus, the capital subsidy adjusted in the tariff under Clause 6.2 of the PPA, which has not been disbursed, is required to be excluded.

17. According to the Petition, the errors apparent on the face of record do not require detailed examination, scrutiny, elucidation and it is a fit case for the Commission to exercise its review jurisdiction to prevent miscarriage of justice. Hence, the Petition.

REPLY OF THE RESPONDENT

18. The Review Petition has been resisted by the Respondent by filing reply that as per Section 114 read with Order 47 of the Code of Civil Procedure (CPC) and Regulation 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024, a review is maintainable on the following grounds:-

(a) if there are mistakes or errors apparent on the face of the record, or

(b) on discovery of new and important matter or evidence which, after due diligence, was not within the knowledge or could not be produced at the time of making the order, or

(c) if there exist other sufficient reasons.

19. According to the Respondent, the power of review is permissible only to the extent of mistake or error apparent on the face of record and the error must be obvious that it strikes at a mere glance of record, without requiring elaborate reasoning. Further, the Review cannot be equated with the original hearing of a case and has a limited purpose and cannot be allowed to be an appeal in disguise and cannot be exercised on the ground that the decision was erroneous on merits. However, at the same time, the material on record cannot be ignored.

20. According to the Respondent, the Petition is not maintainable as the Petitioner has neither demonstrated any error apparent on face of the record nor discovery of new evidence which was unavailable despite due diligence. Rather, the Petitioner has sought to introduce new facts and arguments which were not part of the original Petition.

21. According to the Petitioner, revision of tariff in Petition No. 12 of 2025 was sought on the ground of non-availment of subsidy/ incentive under the IDS, 2017. However, the IDS, 2017 was never a factor in determination of tariff for Jail HEP and the tariff was determined vide order dated 30.06.2015, by the Commission considering the MNRE

subsidy of Rs. 1.50 Crore, as admissible under MNRE Subsidy Scheme, 2014. The IDS, 2017 did not even exist at that time.

22. According to the Respondent, the Petitioner neither mentioned details of its application for availing the MNRE subsidy nor any communications relating to MNRE subsidy in the original Petition (Petition No. 12 of 2025) which is being introduced by way of present Review Petition. The documents sought to be introduced in the present Review Petition were within the knowledge of the Petitioner and thus, the conduct of the Petitioner falls outside the permissible grounds of Review and amounts to improving the case. As per the Respondent, the Petitioner intends to introduce a new case seeking to adjust the MNRE subsidy which was neither pleaded earlier nor falls under the jurisdiction of Review Petition. Further, even if the communication made with the MNRE is taken into consideration, the Petitioner's claim for revision of tariff is expressly barred by Clause 8.8 (1) (3) (iii) of the Power Purchase Agreement dated 09.10.2015, which categorically stipulates that the tariff agreed upon is firm and can only be reopened, if there is a subsequent modification in the subsidy mechanism, or if the quantum of subsidy or budgetary grant already accounted for under Clause 6.2 of the PPA is altered as a matter of policy.

23. It is also averred that the liability of the Petitioner to secure MNRE subsidy owing to delay in commissioning of the Project cannot be construed as a change in subsidy policy. It is also averred that though the MNRE Scheme was valid till 31.03.2017, the MNRE has continued to release subsidy, even after the said date to eligible Small Hydro Projects (SHPs) as per item 16 of the scheme but the Petitioner has failed to explain why it failed to obtain the in-principle approval despite ample opportunity.

24. According to the Respondent, the only correspondence placed on record by the Petitioner merely shows that the Petitioner simply informed the MNRE about the delay in commissioning of the Project, without demonstrating that it has taken timely steps to secure eligibility. The Project construction began in October, 2015 with declared completion schedule of September, 2017 but the Project was actually commissioned in January, 2021, almost four years behind schedule and the failure to obtain subsidy is directly attributable on part of the Petitioner and cannot be perceived a policy change and inefficiency of the Petitioner cannot be rewarded.

25. Also averred that reasons for denial of subsidy, whether attributable to deficiencies in the application of the Petitioner or decisions of the concerned Ministry/ Department, does not create any

enforceable right against the Commission and the matter lies outside the jurisdiction of the Commission and cannot form a basis for review of tariff.

REJOINDER

26. In rejoinder, the contents of the reply have been denied and those of the Petition have been reaffirmed.

SUBMISSIONS OF THE PARTIES

27. We have heard Sh. L.S. Mehta, Ld. Counsel for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent and have perused the record carefully.

28. Sh. L.S. Mehta, Ld. Counsel for the Petitioner has submitted that the impugned order suffers from errors apparent on the face of record as the Commission has not considered the fact that the Petitioner had applied for claiming both the subsidies i.e. subsidy being provided by the Ministry of New and Renewable Energy (MNRE), providing financial assistance to set up new Small Hydro Projects upto 25 MW, introduced on 06.07.2014 which was valid till 31.03.2017 and industrial subsidy being provided by the Ministry of Commerce and Industry which was introduced in the year 2017, but both the subsidy schemes were discontinued by the Ministries and, therefore, the Project could not avail the same, except the first installment under the MNRE scheme,

therefore, the capital subsidy of Rs. 1.50 Crore, which has been adjusted while allowing tariff of Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh for the remaining period of the PPA vide order dated 10.09.2015 is required to be excluded and tariff is required to be reworked.

29. Further, the Commission has committed an error in admitting the contention of the HPSEBL that availing benefits under both the MNRE and IDS, 2017 schemes has led to a confusion but mere submission of applications under both the schemes does not dis-entitle the Petitioner from claiming exclusion of subsidy of Rs. 1.50 Crore from the tariff calculation which has also been factored into while allowing tariff of Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh for the remaining period. Further, the Commission has fallen in error by not considering the documents i.e. copy of letter dated 29.02.2016 addressed to the MNRE seeking financial assistance, letter dated 21.03.2018 to the MNRE explaining the delay in completion of the Project, letter dated 07.04.2025 of the Petitioner addressed to the MNRE seeking status and response of the MNRE dated 29.04.2025, as such, the impugned order is liable to be reviewed.

30. It is also submitted that Regulation 19 (3) of the Renewable Energy Tariff Determination Regulations, 2012 empowers the

Commission to review the tariff when the capital subsidy or budgetary grant under Regulation 21 is altered post determination of generic levellized or project specific tariff. Thus, the tariff is required to be re-calculated.

31. Sh. Kamlesh Saklani, Authorised Representative on the other hand has submitted that the Review Petition is not maintainable as the Petitioner has neither demonstrated any error apparent on the face of record nor any new evidence which was available but could not be produced despite due diligence and rather, has tried to introduce new evidence which was never a part of the original Petition and is impermissible under law. Further, the Petitioner in the original Petition had neither disclosed the details about the application for availing the MNRE subsidy nor the subsequent communication which were within the knowledge of the Review Petitioner rendering the delay non-maintainable. Further submitted that the tariff as per Clause 8.8 (1) (3) (iii) of the PPA dated 09.10.2015 is firm and final and cannot be altered and that the failure to avail the MNRE subsidy is directly attributable to the Petitioner and cannot be perceived as a Policy change.

POINTS FOR DETERMINATION

32. We have carefully gone through the submissions and perused the entire record carefully. The following points arise for determination in the Petition:-

Point No. 1: Whether there are sufficient reasons for reviewing the Order dated 17.07.2025 in Petition No. 12 of 2025?

Point No. 2: Final Order

Point No. 1: No.

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

REASONS FOR FINDINGS

Point No. 1:

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

34. 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."

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

36. The review against the order dated 17.07.2025 in Petition No. 12 of 2025 has been sought by the Petitioner that the Commission has committed an error apparent on the face of record by not excluding capital subsidy of Rs. 1.50 Crore, which was considered by the Commission while allowing tariff of Rs. 3.14 per kWh for the first 12 years and Rs. 3.27 per kWh for the remaining period, in accordance with the provisions of Regulation 21 of the Renewable Energy Tariff Determination Regulations, 2012 (RE Tariff Regulations, 2012) vide order dated 16.09.2015 in Petition No. 101 of 2015. Further, ground of review is that the Petitioner had applied for availing subsidy on 29.02.2016, after commencement of construction in October, 2015 being granted by the MNRE and though, first loan installment was disbursed in the year 2016, yet no other subsidy has been made

available to the Project as the MNRE scheme was valid only till 31.03.2017. It is also the case of the Petitioner that the MNRE vide letter dated 29.04.2025 has declined to release the subsidy that no Scheme exists for the new SHPs as of now. The Petitioner has also claimed that the Commission has fallen in an error in accepting the contention of the Respondent that availing of the benefits under both the MNRE and IDS, 2017 schemes had led to a confusion but mere submission of application for claiming both the subsidies does not dis-entitle the Petitioner from claiming exclusion of subsidy amount of Rs. 1.50 Crore from the tariff calculation.

37. Another ground on which review has been sought is that on the directions of the Commission vide order dated 01.04.2025 and 25.04.2025 in Petition No. 12 of 2025, the Petitioner had filed the relevant correspondence with the MNRE, GoI regarding the Petitioner's Project and in compliance thereof, the Petitioner duly filed (i) copy of the letter dated 29.02.2016 addressed to the MNRE seeking financial assistance, (ii) letter dated 21.03.2018 explaining the delay in completion of the project in response to MNRE's communication, (iii) letter dated 07.04.2025 seeking status update on the subsidy application, and (iv) MNRE's reply dated 29.04.2025 categorically stating that no scheme presently exists to support new SHPs but these

documents have not been considered by the Commission while passing the order dated 17.07.2025, thereby constituting an error apparent on the face of the record.

38. A Petition being Petition No. 12 of 2025 was filed by the Petitioner for exclusion of Capital subsidy of Rs. 1.50 Crore and re-calculation of the tariff as allowed by the Commission vide order dated 16.09.2015 in Petition No. 101 of 2015 and for execution of Supplementary Power Purchase Agreement (SPPA for short).

39. The Petitioner had averred the following in para 1.3, 8.10 and 8.11 in Petition No. 12 of 2025:-

> *"1.3 That the petitioner had applied for the Industrial Subsidy within the effective period of the scheme; however, the Government has subsequently decided to close the scheme effective from 31st March 2022 as a policy decision. Consequently, the capital subsidy of Rs. 1.50 crore, which was adjusted in the tariff as per Clause 6.2 of the Power Purchase Agreement (PPA), requires reconsideration in light of Clause 8.8 of the PPA and the provisions of the RE Tariff Regulations, 2012. Since the Industry Department has not released the subsidy amount to the company, the adjustment made to the tariff on account of this subsidy may no longer be valid. Accordingly, the company seeks the correction/recalculation of the applicable tariff without the subsidy adjustment, in compliance with the terms of the PPA and Regulations 19 & 21 of RE Tariff Regulations, 2012.*
>
> *8.10. That the Petitioner respectfully submits that the Ministry of Commerce and Industry, vide Notification No. 2(2)/2018-SPS dated 23-04-2018, introduced the 'Industrial Development Scheme for Himachal Pradesh & Uttarakhand' (hereinafter referred to as the 'IDS'). Under this scheme, the Central Capital Investment Incentive was provided at 30% of the investment in plant and machinery, subject to a maximum limit of ₹ 5.00 crores. The scheme was applicable from 01-04-2017 to 31-03-2022. As per requirement specified in Item No. 17 of the scheme, all eligible units were required to register under the scheme through the Department of Industrial Policy and Promotion (DIPP) Portal, Ministry of Commerce and Industry, Government of India, prior to becoming eligible for any benefits. The Petitioner company also registered in DIPP portal/applied for availing the benefit of the said scheme on 27.02.2021.*

8.11. That the company has submitted letter to Industries Department on 13.09.2024 regarding status of their application for availing IDS benefits and in the response of above mentioned letter, Industries Department intimated vide their letter No. Ind.Klu.CCIIAC/17/Misc-1675 dated 28.09.2024 that "as on date the status of the application is reflected on BPIIT portal as "Closed", so the unit is not eligible for any kind of incentive for availing any subsidy under MNRE or Industries Department. Copy of letter dated 28.09.2024 issued by industry department with reply dated 25.07.2024 and application dated 27.02.2021 are annexed herewith as Annexure P-9 (Colly)."

40. It is apparent from the above that the entire thrust of the Petitioner in Petition No. 12 of 2025 was about the ineligibility of the Project for the subsidy being granted by Ministry of Commerce and Industry and exclusion of Industrial subsidy. There was no mention in the said Petition about submission of an application for claiming subsidy under the MNRE Scheme. Further, no averments were made in the Petition No. 12 of 2025 in respect of correspondence made with the MNRE and reasons for delayed commissioning of the Project and denial of subsidy by the MNRE.

41. No doubt, the Petitioner in said Petition No. 12 of 2025 had filed an affidavit containing chronology of events eversince the allotment of the Project and signing of IA till the filing of application for availing the subsidy under IDS, 2017, as directed by the Commission vide order dated 20.01.2025, and it was mentioned in said affidavit of chronology of events that the Central Government had notified the MNRE Subsidy Scheme on 02.07.2014, which allowed a subsidy of Rs. 1.50 per MW,

which has been accounted for in the PPA and the first installment was disbursed to the Petitioner in the year 2016 but as observed above, there was no detail in respect of the MNRE subsidy in the entire Petition No. 12 of 2025 and rather, as mentioned above, the entire thrust of the Petitioner in said Petition was that the Project was not eligible for any incentive under IDS, 2017 or under the MNRE subsidy Scheme. So much so, even there was no mention in Petition No. 12 of 2025 of receiving the 1st installment under the MNRE Scheme, actual amount received and date on which said 1st installment was received. Thus, in the absence of the requisite detail, it was not permissible for the Commission to infer anything without pleadings in this regard and alter the tariff.

42. No doubt, the Petitioner had annexed copies of letter dated 29.02.2016, 21.03.2018, 07.04.2025 and 29.04.2025 (correspondence with the MNRE) with application under Section 151 of the Code of Civil Procedure on 04.06.2025, after the Commission had directed to file affidavit of chronology of events, but still no detail thereof was made either in the Petition No. 12 of 2025 or in affidavit of chronology of events, except a mention that the 1st installment of MNRE subsidy was disbursed to the company in the year 2016. Therefore, such documents without pleading were not relatable to the averments made in the

Petition, as such, there was no occasion for the Commission to draw any inference regarding the exclusion of subsidy and altering the tariff.

43. Contrary to the claim of the Petitioner, the Commission has carefully considered entire detail, as mentioned in the affidavit of chronology of events filed in said Petition that the first installment was disbursed to the Petitioner in the year 2016, as also the fact that the previous management of the Petitioner had asked for grant of eligible subsidy but in the meanwhile, said subsidy was closed. Para 26 of the order dated 17.07.2025 is reproduced as under:-

> *"26. Since there was no detail of the subsidy of Rs. 1.50 Crore as reflected in the PPA at Clause 6.2, the Petitioner was asked to file affidavit of chronology of the events eversince the allotment of the Project which has been filed on 25.06.2025. It has been mentioned in the affidavit of the chronology of events that the work on the Project had commenced in the month of October, 2015 after getting all requisite clearances and that a subsidy of Rs. 1.50 Crore per MW was accounted for in the PPA as said scheme was valid till 30.03.2017. Not only this, the first installment was disbursed to the Petitioner in the year 2016. The affidavit further shows that the previous management of the Petitioner had also requested for the grant of eligible subsidy but in the meanwhile said scheme was closed. Thus, it is evident from the affidavit of chronology of events that the Central Government notified the MNRE Subsidy Scheme on 02.07.2014 and allowed subsidy of Rs. 1.50 Crore per MW are the Scheme was valid till 30.03.2017. It is thus, clear from the above that while approving the PPA and determining the generic levellized tariff for the Project, the Commission has taken into account only the MNRE Subsidy of Rs. 1.50 Crore as available at that time as per Regulation 22 of the RE Tariff Regulations, 2012."*

44. Thus, the Commission has considered each and every averment of the affidavit of chronology of events and there is no error apparent on the face of record.

45. The Commission has carefully perused the MNRE Scheme notified on 02.07.2014 (at page 67 of the Review Petition and at Page 171 of the Original Petition) and Annexure-B of the Scheme clearly stipulates that the first installment of the scheme was to be released as advance on award of E&M works, 50% loan disbursement, achieving 50% progress and submission of physical & financial progress reports, photographs, Audited Statement of Expenditure and the fund will be released only on the receipt of Bank Guarantee for proposed release of funds. The 2nd installment of the MNRE subsidy was to be released on successful commissioning of the Project and receipt of completion report, utilization certificate, generation data, Audited Statement of Expenditure (based on actual expenditure on the project etc.), performance testing for project above 1 MW, physical inspection report for the project of 1 MW and below, 80% of generation for the corresponding months as envisaged in the DPR for a minimum of three consecutive months or 80% cumulative annual generation for one year as envisaged in the DPR. No explanation was made in the Petition about the delay in commissioning of the Project which was scheduled to be commissioned in September, 2017 which actually was commissioned on 11.01.2021, after availing the benefit of the one time amnesty scheme, introduced by the GoHP in the year, 2020 when the

2nd SIA was signed on 23.12.2020 by the Petitioner with the GoHP. The requisite detail leading to delay in commissioning was required to be mentioned in the Petition No. 12 of 2025 which led to non-release of subsidy but as observed above, the requisite detail was lacking and rather, the entire thrust of the Petition was on exclusion of industrial subsidy, which had not been accounted for while allowing the tariff, being not in existence at that time.

46. There is no dispute that the Commission was required to give its decision on the case filed by the Petitioner and averments made therein and it was not permissible for the Commission to build a case for the Petitioner and provide enhanced tariff by altering or revising the tariff. The Commission has based its decision on the pleadings made in Petition No. 12 of 2025 strictly in accordance with law by considering each and every aspect of the matter.

47. It appears that upon getting the benefit under One Time Amnesty Scheme introduced by the GoHP in the year, 2020 and signing of the 2nd SIA, the Petitioner applied for the subsidy under IDS, 2017 and once said subsidy was declined, the Petitioner claimed exclusion of the same and revising the tariff. However, as mentioned in the previous paras, no pleadings regarding the MNRE subsidy was made. In the circumstances, if so advised, the Petitioner may file a proper Petition

giving detail of the application made for claiming the MNRE subsidy and all related details and reasons of delay in commissioning of the Project etc, so that the Commission is able to examine as to whether the unavailed subsidy may be excluded.

48. Hence, the Petitioner has not been able to substantiate that the impugned order suffers from errors apparent on the face of record or there are sufficient reasons for reviewing the same. Point No. 1 is accordingly decided against the Petitioner and in favour of the Respondent.

Final Order

49. In view of the above discussions and findings, the Petition fails and is accordingly, dismissed.

50. The pending applications, if any, are also deemed to have been disposed off.

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

The file after needful be consigned to records.

Announced
27.11.2025

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