BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No: 14 of 2025
Date of Institution: 18.10.2024
Arguments Heard on: 19.12.2025
Decided on: 26.02.2026

CORAM

Yashwant Singh Chogal
MEMBER (Law)-cum-CHAIRMAN

Shashi Kant Joshi
MEMBER

In the matter of:-

The Himachal Pradesh Power
Transmission Corporation Limited (HPPTCL)
Himfed Bhawan, Below Old MLA's Quarters,
Tutikandi (Panjiri), Shimla, HP-171005. **………Petitioner**

Versus

The Himachal Pradesh State
Electricity Board Limited (HPSEBL)
Vidyut Bhawan, Shimla, HP-171004. **……….Respondent**

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 seeking review of order dated 12.06.2024 in Petition No. 28 of 2024.

Present:

Sh. Vikas Chauhan, Ld. Counsel for the Petitioner.
Sh. Kamlesh Saklani, Authorised Representative for the Respondent.

ORDER

This Petition has been filed by the Himachal Pradesh Power Transmission Corporation Limited (the Petitioner/ HPPTCL for short) under Section 94 (1) (f) of the Electricity Act, 2003 (Act for short) seeking review of the Order dated 12.06.2024 passed by the Commission in Petition No. 28 of 2024 seeking the approval of Capital cost and Determination of Tariff for the Period starting from CoD (23.06.2022) to FY 2023-24 for 220 kV LILO of Panchkula-Kunihar Transmission Line under the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011, as amended from time to time (Transmission Tariff Regulations, 2011 for short).

2. It is averred that the Petitioner filed Petition No. 28 of 2024 before the Commission for the approval of Capital Cost and determination of Tariff for the Period starting from CoD (23.06.2022) to FY 2023-24 in respect of 220 kV LILO of Panchkula-Kunihar Transmission Line. During the course of the proceedings, the Petitioner filed additional submissions and clarifications as sought by the Commission from time to time. The Commission vide Order dated 12.06.2024 disposed off the Petition No. 28 of 2024. The summary of the capital cost as claimed vis-à-vis as approved by the Commission in the Order dated 12.06.2024 has been reproduced as under:-

Particulars	Claimed (Rs. Crore)	Approved (Rs. Crore)
Capital cost as on CoD: 23.06.2022		
220 kV LILO of Panchkula-Kunihar Transmission Line		
Supply	3.67	3.71
Services	0.98	0.62
Miscellaneous Expenses (Tender Publication and A&G)	0.0027	0.0027
Departmental Charges	*0.18*	*0.19*
IDC	*0.40*	*0.26*
Total	**5.23**	**4.78**

3. A summary of Additional Capitalisation as claimed during FY 2022-23 vis-à-vis as approved by the Commission in the Order dated 12.06.2024 has also been reproduced as under:-

Particulars	Financial Year	Claimed (Rs Lakh)	Approved (Rs. Lakh)
Erection	FY 2022-23	1.58	1.58
A&G Expenses		0.01	-
Total Additional Capitalisation		**1.59**	**1.58**

4. As per the Petition, while the Commission has approved the Capital Cost and determined the transmission tariff in respect of 220 kV LILO of Panchkula-Kunihar Transmission Line but has not fully allowed all the claims made in the Petition. Further, the Commission has not considered the actual claimed funding pattern on the basis of actual terms and conditions of debt received from the GoHP during pendency of the Petition and the actual equity infused by the Petitioner. The Commission has also not allowed legitimate expenses paid with respect to the asset to other contractors amounting to Rs.

0.32 Cr and Rs. 0.21 lakhs as the Commission vide letter dated 07.09.2024 with regard to disallowing of cost has observed that the Commission shall consider the same at the time of truing up. Therefore, the said issue has not been agitated here. With regard to the revision of the funding, the Commission has asked the Petitioner to file a separate Petition, thus, the Review Petition is being filed on the following issue:-

1: Review of the methodology adopted to derive funding of the Project.

(i) The Commission has discussed this issue in the order dated 12.06.2024 as under:-

> *"3.7.12 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.*
>
> *3.7.13 The Commission takes serious note against consideration of the amount as loan which was available as grant (90% of overall amount) to the State 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 GoHP 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 which would have to bear the burden of the additional interest cost and repayment of such loan that is being*

provided as grant.”

(ii) It has been submitted that while submitting the response to the query raised in the 1st deficiency note dated 17.05.2023, it was mentioned that the HPPTCL had claimed the actual loan drawn from the GoHP i.e. Rs. 426.78 Lakhs which is 81.52% of project cost as on COD for the Asset. Further, the equity infused was Rs. 96.76 Lakh which is 18.48% of the project cost as on COD for the Asset. As the equity component was lower than the normative equity of 30%, the funding of the project was claimed in the ratio of 81.52:18.48 and the same was approved by the Commission

(iii) It has further been submitted that the Petitioner vide letter No. HPPTCL/C&M/HPERC Correspondence/207413/2023 dated 19.06.2023, had apprised the Commission regarding the restructuring of ADB loan and provided the GoHP approval letter dated 04.03.2023. The Petitioner has further apprised the Commission about the revised “Onlending Agreement” signed by the Petitioner with GoHP on 04.07.2024 regarding the restructuring of ADB loans along with its terms & conditions vide letter No. HPPTCL/C&M/HPERC Correspondence/5643-53 dated 08.08.2024 (Annexure-1).

(iv) According to the Petitioner, the Commission, taking into the cognizance of the revised terms of the Onlending agreement vide its Interim Order dated 19.07.2023 in Petition No. 41 of 2023 (Annexure-3) had directed the Petitioner to restructure the loan received from KfW in line with the restructured loan agreement with ADB. The Commission, however, while computing the annual transmission charges in the impugned Order has not considered the terms of debt as per the restructuring of ADB loan which it had directed to be emulated in case of KfW vide its interim order dated 19.07.2023 (in Petition No. 41 of 2023). Instead, the Commission has directed the Petitioner to take up the matter with GoHP to restructure the loan amount availed against the project on same terms and conditions as envisaged under the original scheme of funding.

(v) It is also submitted that in compliance to the directions of the Commission, the Petitioner has taken up the matter with the GoHP for revision of the terms vide letter dated 12.08.2024 (Annexure-4 of the Petition) but the response is awaited from the GoHP.

(vi) It is further submitted that the Petitioner has to repay the debt as per the terms of revised Onlending agreement and if such costs are not included in the transmission charges, the Petitioner will not be able to discharge its liabilities which include debt repayment, financial charges and upkeep of its transmission assets. It is averred that the approach adopted by the Commission is in contravention to the terms of loan as per the agreement dated 04.07.2024 and has caused grave prejudice to the financial health of the Petitioner. Further, if the transmission charges approved by the Commission do not include the liability to be discharged, it is apprehended that it will attract adverse remarks from the statutory auditors which will hamper the future projects of the HPPTCL badly.

(vii) It is also averred that the terms and conditions of the loan provided as per the “Onlending Agreement” between the GoHP and HPPTCL dated 04.07.2024 are as below:

“………………...

i. Rate of interest shall be 10% per annum for 10% of all disbursements.

ii. Interest on 10% of the total disbursed amount shall start immediately from the date of disbursement which shall be payable by HPPTCL to GoHP.

iii. 10% of all disbursement shall be infused as equity by GoHP.

iv. 80% of all disbursement shall be interest free loan ……………………….”

(viii) According to the Petitioner, it is evident from the Onlending agreement that out of the total loan disbursements, 80% of the loan has been transferred by the GoHP as interest free loan, however, the same needs to be paid back. The 10% of the loan is to be converted to equity and the balance 10% of the debt is to be repaid along with 10% rate of interest.

(ix) It is further averred that the Petitioner has executed the Agreement with GoHP and, therefore, the Petitioner is bound by the agreement.

(x) It is further averred that the non consideration of actual loan terms is not in accordance with Regulation 20(1) of the HPERC Transmission Tariff Regulations, 2011 which mandates consideration of actual terms of loans. Regulation 20 (1) of the HPERC Transmission Tariff Regulations, 2011, as amended, specifies as follows:

> *"**20. Interest and Finance Charges***
>
> *(1) Interest and finance charges on loan capital shall be computed on the outstanding loans, **<u>duly taking into account the schedule of repayment in accordance with the terms and conditions of relevant agreements of loan,</u>** bond or non-convertible debentures. Exception can be made for the existing or past loans which may have different terms as per the agreements already executed if the Commission is satisfied that the loan has been contracted for and applied to identifiable and approved projects.*
>
> *…………………."*

(xi) It has been prayed to reconsider the approach and revise the cost of funding based on the restructured loan agreement dated 04.07.2024, as considering 90% of the loan as grant shall severely affect the finances of the Petitioner. Further, the Petitioner is bound by the “Onlending Agreement” to pay 10% interest on 10% of the loan disbursement and has to repay 80% of the loan. It is also submitted that the interest accrued till 31.12.2021 as per the original Onlending agreements has to be paid by the HPPTCL to the Government as per the conditions of the restructuring.

(xii) It is also submitted that by considering grant at 90% of the Debt, the Commission has also reduced the equity component leading to double impact on the Petitioner. Further, the Petitioner, while submitting the response to the query raised in 1st deficiency note dated 17.05.2023 had given the detail of actual loan drawn from the GoHP by attaching Audited Certificate (Annexure-5).

(xiii) Vide the amended Petition, the Petitioner has also submitted that the Commission, vide order dated 12.06.2024 in Petition No. 28/2024, (impugned order) has held as under:-

> "*3.7.12 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.

3.7.13 The Commission takes serious note against consideration of the amount as loan which was available as grant (90% of overall amount) to the State 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 GoHP 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.

3.7.14 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;"

(xiv) As per the Petitioner, the aforesaid observations in the impugned order are in complete variance to the HPERC Transmission Tariff Regulations, 2011 (as amended upto date) for the reason that the Regulation 17–A of the above Regulations, 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 Onlending Agreement(s) (dated 20.04.2012, 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) as it states that 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 the Loan amount received from the GoHP should not have had been deducted by the 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 Commission treating the Loan received by HPPTCL from the GoHP as grant is in divergence to its own Regulations which nowhere allow the HPERC to treat the Loan amount as a grant and that too in absence of any such Regulation in the said regard.

(xv) The Petitioner has further submitted that the Commission, in the impugned order has erred in not taking into account the terms of the initial Onlending Agreement(s) dated 20.04.2012 & 03.12.2014 executed between the GoHP & HPPTCL and also the subsequent restructured Onlending Agreement dated 04.07.2024 signed between HPPTCL with GoHP. The initial

Onlending Agreement(s) dated 20.04.2012 & 03.12.2014 specifically stipulate 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."*

(xvi) Further, the restructured Onlending Agreement(s) 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 installments 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."*

(xvii) It is further averred that the Commission has also erred in not taking 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 reads 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*."

(xviii) The Petitioner has also averred that the Commission has again erred in not acknowledging the terms of the Project Agreement(s) executed between the ADB on the one Part and the State of H.P and the HPPTCL on the other part which categorically state that the loan be made available to the State and HPPTCL and the parties agreed to undertake certain obligations towards the ADB as mentioned in the said Project Agreement(s). Moreso, the Clause 2.13 & 2.14 of the aforesaid agreements contains as under:-

> "*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*."

(xix) It is further averred that the impugned order dated 12.06.2024 passed by the Commission is in complete variance to the material on record as well as the HPERC Transmission Tariff Regulations, 2011, as amended upto date, the Onlending Agreement(s), Loan Agreement(s) and the Project Agreement(s) and thus, there was no occasion for the Commission to treat the funds as received by the HPPTCL as grant instead of a loan. Hence, the Petition for reviewing the order.

REPLY OF THE RESPONDENT

5. The Review Petition has been resisted by the HPSEBL by filing the reply, inter-alia, that the Review Petition is not maintainable as a Review Petition is restricted to correcting errors apparent on the face of the record on discovery of new evidence that could not have been produced earlier or other sufficient reasons. The grounds raised by the Petitioner do not meet said criteria and that the Petitioner has attempted to reopen issues already considered and decided upon. According to the HPSEBL, such an approach violates the principle of finality of judicial and quasi-judicial orders.

6. It is averred that the Review Petitioner has failed to establish any error apparent on the face of the record and that the Petitioner/ HPPTCL is seeking to re-argue the merits of the original case, which is impermissible in a Review Petition. The restructuring terms of loan,

letter dated 04.03.2023 and Onlending agreements could have been produced earlier.

7. According to the HPSEBL, revision of the funding pattern as prayed by the Petitioner is completely misplaced and misconceived as the Commission has categorically dealt this aspect by noting that the multilateral agency i.e. ADB is funding the project in collaboration with the GoI and the GoHP, and the GoHP has amended the terms and conditions of the financial assistance for the extending it to the HPPTCL. It has been made clear in the order that the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the GoI. According to the HPSEBL, neither there is any error apparent on the face of the record nor any new material has been brought by the Petitioner, which could not be placed before the Commission at the time of the determination of the capital cost of the asset.

8. According to the Respondent, disbursements, which should have been grant, need to paid back by the Petitioner and the same will be recovered from Consumers of the State through ARR. Thus, granting the review would undermine consumers interest, as higher capital costs would lead to increased transmission charges, directly impacting retail tariffs for the electricity consumers in the State as

regulatory decisions must prioritize efficiency and affordability for consumers, and the Petitioner's request contradicts these principles.

9. It is averred that restructuring of the grant runs contrary to the mandate of the principle lending agreement wherein 90% of the amount was given as grant for the specific purpose of the development of the intra-state transmission network in the state of Himachal Pradesh.

10. It is also averred that the Commission has already taken a consistent stand on this issue viz. in the Petitions of the HPPCL and others matters, wherein the character of the grant of 90% stands unchanged irrespective of the pleading of the party concerned to the petition qua further restructuring though further loaning agreement. If the Commission allows the prayer of the petitioner, it would lead to unsettling of the settled regulatory position.

11. It is also averred that that the Commission has considered each and every aspect of the matter and has passed the impugned order after due consideration of the material on record and there are no reasons to allow the review which is liable to be dismissed.

SUBMISSIONS OF THE PARTIES

12. We have heard Sh. Vikas Chauhan, Ld. Counsel for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent and have perused the record carefully.

13. Sh. Vikas Chauhan, Ld. Counsel for the Petitioner has submitted that the impugned order suffers from errors apparent on the face of the record as the Commission has not considered the documents which were submitted along with the original Petition which has resulted in adoption of wrong methodology with respect to funding of the Project and thus, the order is required to be reviewed as prayed. According to him, in case the impugned order is not reviewed, the same would cause great prejudice to the Petitioner.

14. Sh. Kamlesh Saklani, Authorised Representative for the Respondent on the other hand has submitted that the Commission has considered each and every aspect of the matter and there are no errors apparent on the face of record and Petition is liable to be dismissed.

POINTS FOR DETERMINATION

15. We have gone through the submissions of the parties and the record carefully. The following points arise for determination in the present Petition:-

<u>Point No. 1</u>: Whether the Order dated 12.06.2024 in Petition No. 28 of 2024 suffers from errors apparent on record, as alleged, and is liable to reviewed?

<u>Point No. 2</u>: **Final Order**

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

Point No. 1: No.

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

<u>REASONS FOR FINDINGS</u>

<u>Points No. 1</u>

17. It is well settled law 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."*

18. 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 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."

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

20. It is simple case of the Petitioner that the Impugned order suffers from errors apparent on the face of record as the Commission has not taken into consideration the material which was on record which has resulted into adopting the wrong methodology with respect to the funding of the Project.

21. The main Petition No. 28 of 2024 had been filed for the approval of the capital cost and determination of the tariff for the period starting from COD to FY 2023-24 in respect of 220 kV LILO of Panchkula-Kunihar Transmission Line. In the present review Petition, the Petitioner has raised several grounds of challenge as that of Appeal by raising several new pleas and highlighting discrepancies in the order under review which are not permissible in a Review Petition

as the scope of the Review Petition is quite limited to the extent of what is pleaded in the original Petition and for correcting the errors apparent on the face of record in the order made on the basis of averments made in the main Petition. While considering an application for review, the Commission must confine its adjudication with reference to material which was available at the time of initial decision and the party cannot be permitted to re-agitate the issues which have already been addressed. The review Petition can't be on the grounds that the decision is erroneous on merits and can't be allowed to be an appeal in disguise as held by the Hon'ble Apex Court in the case of *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 and Ram Sahu v. Vinod Kumar Rawat (2021) 13 SCC 1. In the present review Petition, the Review Petitioner has travelled beyond the scope and ambit of the review as mentioned under Order 47, Rule 1, CPC and has highlighted several discrepancies and infirmities in the order which are not permissible under review. Therefore, the Petitioner may assail the order under review in an Appeal in so far as the averments made in the order is erroneous on merits.

22. However, the Commission has examined the Review Petition on the errors pointed out qua the methodology adopted with respect to the funding of the Project while approving the capital cost.

23. The Commission while deciding the main Petition No. 28 of 2024 has dealt the aspect of funding of the Project and the methodology adopted in detail in paras 3.7.11, 3.7.12, 3.7.13, 3.7.16 and 3.7.17 in the Order dated 12.06.2024 in Petition No. 28 of 2024 as under:-

"3.7.11 The Commission observes that ADB has sanctioned a multi tranche financing facility (MFF) of $350 million to the Government of India (GoI) under the Himachal Pradesh Clean Energy Transmission Investment Programme (HPCETIP) which was further channelized to HPPTCL through Government of Himachal Pradesh (GoHP). The proposed Program was targeted for the construction of transmission infrastructure of 66kV and above along with Sub-stations for evacuation of power of upcoming hydro power projects. However, the scheme itself implies that the financing support by the ADB is to promote the generation as well as evacuation of clean energy in the State. Further, the Commission is of the view that the Himachal Pradesh being a special category state receives these multi tranche financing from the GoI as 90% grant and 10% loan. The Commission has noted this aspect while finalising the tariff orders of the HPPCL hydro projects. However, no such information has been furnished by the Petitioner.

3.7.12 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.

3.7.13 The Commission takes serious note against consideration of the amount as loan which was available as grant (90% of overall amount) to the State 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 GoHP 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 which would have to bear the burden of the *additional interest cost and repayment of such loan that is being provided as grant.*

………………….……

………………..…..

3.7.16 In case of ADB loans availed by the HPPTCL, the Commission has been considering the same in the past tariff orders issued and therefore corresponding depreciation as well as interest for servicing of such loans were being allowed to the Petitioner. This treatment was undertaken in view of the limited information available to the Commission. However, the Commission had directed the Petitioner in these Orders to re-negotiate with GoHP and align the terms and conditions of the Loan Agreements in line with the tri-patriate agreement. But no information or update in this regard has been provided by the Petitioner. In this Order the Commission has preferred to consider the availability of loan through ADB funded projects as 90% grant considering the special category status to the State of Himachal Pradesh. The Commission shall also take appropriate decision with regard to the treatment of similar ADB loans for the previous projects during the truing-up.

3.7.17 The Petitioner is directed to take up this matter with the GoHP for extending the benefit of grant under the ADB funded projects and update the same to the Commission. Also, the Commission is of the view that the GoHP shall consider the transfer of grant as availed from the Government of India to the Petitioner for the benefit of the Consumers of the State.”

24. As evident from the above, the Commission has considered each and every aspect of the matter in detail but the Petitioner has selectively picked up few paras highlighting that impugned order suffers from errors apparent on the face of record. Much reliance has been placed on the loan agreements dated 15.12.2011, 29.09.2014 and 16.11.2018 signed between the GoI and the ADB, project agreements dated 15.12.2011, 29.09.2014 and 16.11.2018 signed between the ADB and State of HP and the HPPTCL as produced with the additional submissions dated 25.04.2025 in the present review

Petition. The Petitioner has also relied upon the Onlending agreements dated 20.04.2012, 03.12.2014 and 04.07.2024 signed between the GoHP and the HPPTCL. In so far as the aforesaid agreements dated 15.12.2011, 29.09.2014 and 16.11.2018 are concerned, the same were already within the knowledge and possession of the Petitioner. However, only the loan and Project agreements dated 16.11.2018 pertain to the asset in question and have been duly considered by the Commission while passing the impugned order.

25. Similarly, the onlending agreements dated 20.04.2012, 03.12.2014 were also well within the knowledge and possession of the Petitioner. The terms and conditions of the onlending agreement dated 04.07.2024 do not in any manner ameliorate the sufferings of the Petitioner as the Commission vide daily order dated 22.04.2025 has clearly observed that the Asian Development Bank had advanced the loan to the GoI for carrying out transmission works in the State of H.P but the Petitioner has not given any detail or explanation about the terms and conditions of the finance provided by the GoI to the GoHP or the HPPTCL as to whether the same was grant or loan and the HPPTCL was directed to furnish such detail/ explanation on 25.04.2025. However, despite affording sufficient opportunities to the

Petitioner, such information/ explanation has not come on record. Even the Review Petition was amended but the explanation regarding the terms and conditions of the finance extended by the GoI to the GoHP or the HPPTCL was not furnished. In the absence thereof, the Onlending agreement dated 04.07.2024 is not sufficient to infer and conclude that the order under review suffers from errors apparent on the face of record.

26. Further, as per Regulation 14 of the HPERC Transmission Tariff Regulations, 2011, as amended from time to time, the Commission is required to undertake a prudence check before approving the capital cost of the Project. Regulation 14 provides as under:-

> *"**14. Capital cost of project.-**(1)…….*
>
> *(2) The capital cost admitted by the Commission, after prudence check, shall form the basis for determination of tariff:*
>
> *Provided that prudence check of capital cost may be carried out based on the benchmark norms to be laid down by the Commission from time to time; and*
>
> *Provided further that in case where benchmark norms have not been specified, prudence check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of tariff:*
>
> *……………..….."*

27. As is evident from the above, the Commission is required to undertake due prudence check before approving the capital cost of the Project. The prudence check also includes scrutiny of the

reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for the determination of tariff in the interest of consumers so that the consumers are not burdened with exorbitant tariff. Similarly, the Commission has made the observations keeping in view the provision of the Transmission Tariff Regulations, 2011. Therefore, in exercise of the powers vested in the Commission, the Commission has made the observations regarding the funding of the Project which cannot be said to be beyond the jurisdiction. Significantly, the Commission has based its decision on the pleadings made in Petition No. 28 of 2024 strictly in accordance with law by considering each and every aspect of the matter.

28. In view of the above, in the entire Petition, the Petitioner has not been able to show that the order under review suffers from any error apparent on the face of record or that the review is necessitated on the discovery of new and important matter of evidence which after exercise of due diligence was not within the knowledge of the Petitioner or could not be produced when the order was made. Thus, the Petitioner has not been able to substantiate that there are errors apparent on the face of the record regarding methodology adopted to

derive funding of the Project. Point No. 1 is accordingly decided against the Petitioner and in favour of the Respondent.

Final Order

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

30. The pending applications, if any, are also dismissed.

The file after needful be consigned to records.

Announced
26.02.2026

-Sd-
(Shashi Kant Joshi)
Member

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