BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No: 29 of 2025
Date of Institution: 28.02.2025
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 21.01.2025 in Petition No. 116 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 (Petitioner/ HPPTCL for short) under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 7(5) & Regulation 70 of HPERC Conduct of Business Regulations, 2024 seeking Review of the Order dated 21.01.2025 passed by the Hon'ble Commission in Petition No. 116 of 2024 seeking approval of Capital cost and Determination of Tariff for 4th Control Period starting from CoD to FY 2023-24 for 66/22 kV Substation Nirmand (Bagipul) (Asset-1) and 66 kV D/C Nirmand-Kotla Transmission Line (Asset-2) under the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011, as amended from time to time ("HPERC Transmission Tariff Regulations, 2011" for short) and under Section 62, read with Section 86 of the Electricity Act, 2003 (hereinafter referred to as "the Act").

2. It is averred that the Petitioner had filed Petition No.116 of 2024 seeking approval of Capital Cost and determination of Tariff for the Period starting from CoD to FY 2023-24 for 66/22 kV Substation

Nirmand (Bagipul) (Asset-1) and 66 kV D/C Nirmand- Kotla Transmission Line (Asset-2). During the course of proceedings in the matter, the Petitioner filed additional submissions and clarifications as sought by the Commission from time to time and the Commission vide Order dated 21.01.2025 disposed off Petition No. 116 of 2024. The summary of the capital cost as claimed vis-à-vis as approved by the Commission in the Order dated 21.01.2025 has been reproduced as under:-

Particulars	**Claimed (Rs. Crore)**	**Approved (Rs. Crore)**
Capital cost as on CoD: 04.03.2023		
66/22 kV Substation Nirmand (Bagipul) (Asset-1)		
Supply	27.59	27.59
Services	7.45	7.45
Land Acquisition Cost	0.54	0.54
Preliminary Works	0.51	0.51
Departmental Charges	*1.72*	*1.72*
IDC	*2.89*	*2.28*
Total	**40.7070**	**40.0935**
66 kV D/C Nirmand- Kotla Transmission Line (Asset-2)		
Supply	12.00	12.00
Services	16.10	16.10
Land Acquisition Cost	1.88	1.88
Preliminary Works	5.31	5.31

Particulars	Claimed (Rs. Crore)	Approved (Rs. Crore)
Departmental Charges	*1.99*	*1.99*
IDC	*2.78*	*2.16*
Total	**40.0761**	**39.4532**

3. A summary of Additional Capitalisation as claimed during FY 2023-24 vis-à-vis as approved by the Commission in the Order dated 21.01.2025 has been reproduced as under:-

Particulars	**Claimed (Rs Lakh)**	**Approved (Rs. Lakh)**
66/22 kV Substation Nirmand (Bagipul) (Asset-1)		
Amount released to contractor after COD	19.5	19.5
Other costs incurred after COD	2.26	2.26
Pending bills	56.59	56.59
DC after COD	0.91	0
Total Additional Capitalisation	**79.26**	**78.35**
66 kV D/C Nirmand – Kotla Transmission Line (Asset-2)		
Amount released to contractor after COD	61.91	61.91
Other costs incurred after COD	10.29	10.29
Pending bills	10	10
DC after COD	2.54	0
Total Additional Capitalisation	**84.74**	**82.20**

4. As per the Petition, while the Commission has approved the

Capital Cost and determined the transmission tariff for 66/22 kV Substation Nirmand (Bagipul) (Asset-1) and 66 kV D/C Nirmand – Kotla Transmission Line (Asset-2) but the Commission has not fully allowed claimed Debt:Equity as 70:30 in Asset-2 as per the Regulations and further has not approved funding for both the assets on the basis of actual terms & conditions of ADB loan received from GoHP during processing of the Petition and the actual equity infused by the Petitioner.

5. According to the Petition, the order suffers from errors apparent on the face of record and requires to be reviewed and has sought review of order dated 21.01.2025 in Petition No. 116 of 2024 on the following issues:-

Issue 1: Review of the Project funding (Debt: Equity) approved for Asset-2 i.e.66 kV D/C Nirmand – Kotla Transmission Line.

(i) The Petitioner had claimed the actual loan drawn from GoHP of Rs. 32.76 Cr which is 80% of project cost as on COD for the Asset-1 i.e. 66/22 kV Substation Nirmand (Bagipul). Further, the equity infused was Rs. 8.40 Cr which is 20% of the project cost as on COD for the Asset-1. As the equity component was lower than the normative equity of 30%, the funding of the project was claimed in the ratio of 80:20 for Asset-1 and the same was approved by the Commission vide the impugned Order.

(ii) It is averred that with regard to Asset-2 i.e. 66 kV D/C Nirmand – Kotla Transmission Line, the equity infused was more than the prescribed normative limit of 30% and thus, the normative debt: equity ratio 70:30 was claimed. The Commission, however, has approved Debt:Equity as 75:25 on the basis of DPR which is against the HPERC Transmission Tariff Regulations, 2011. The Project funding as claimed by the Petitioner was as follows:

Project funding proposed by the Petitioner (in INR Lakh)

Particulars	**As per DPR (INR Lakh)**	**Debt: Equity Ratio**	**Actual Funding**	**Debt: Equity Ratio**	**Funding Claimed**	**Debt: Equity Ratio claimed**	**Approved by HPERC**
Sub-station (Asset-1)							
Debt	4482	80%	3276	80%	3276	80%	80%
Equity	1120	20%	840	20%	840	20%	20%
Project Cost	5602	100%	4116	100%	4116	100%	100%
Transmission line (Asset-2)							

Debt	3101	75%	2137	53%	2803	70%	75%
Equity	1034	25%	1867	47%	1201	30%	25%
Project Cost	4135	100%	4004	100%	4004	100%	100%

(iii) Against the same , the Commission has approved the following funding:

Particulars	**Percentage**	**Amount (INR lakh)**
Substation		
Total Cost as approved by Commission	100%	4,009.35
Debt as per DPR	80%	3,207.48
Equity as per DPR	20%	801.87
Total Funding Requirement (A)		**4,009.35**
Normative Debt as calculated by Commission	Same as Debt as per DPR	3,207.48
Grant as per Normative Debt (B)	90%	2,886.73
Remaining Amount (C) =(A)-(B)		1,122.62
Approved Debt	70%	785.83
Approved Equity	30%	336.78
Transmission Line		
Total Cost as approved by Commission	100%	3,945.32
Debt as per ratio in DPR	**75%**	2,958.99
Equity as per ratio in DPR	**25%**	986.33
Total Funding Requirement (D)		**3,945.32**

Normative Debt as calculated by Commission	Same as Debt as per DPR	2,958.99
Grant as per Normative Debt (E)	90%	2,663.09
Remaining Amount (F) =(D)-(E)		1,282.23
Approved Debt	70%	897.56
Approved Equity	30%	384.67

(iv) It is averred that the HPERC Transmission Tariff Regulations, 2011 allow Equity infusion of up to 30% and, therefore, the Petitioner had claimed Return on equity (RoE) in accordance with the same.

(v) In view of the above, it is averred that the issue merits review under Regulation 7(5) & Regulation 70 of Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 as the same constitute an error apparent on the face of the record.

<u>Issue 2: Review of the methodology adopted to derive funding of both the assets.</u>

(i) It is averred that the Commission has discussed this issue in order dated 21.01.2025 in Petition No. 116/2024 as under:

> *"3.8.9 In this specific instance, it is noted that the multilateral agency i.e., the ADB, has funded this project in collaboration with the GoI and the GoHP. However, the GoHP has amended the terms and conditions*

of the financial assistance for extending it to the HPPTCL. While the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the Govt. of India, the entire loan proceeds were extended by GoHP to the Petitioner as loan carrying interest rate of 10% per annum.

3.8.10 The Commission, in its previous Orders, had directed the Petitioner to re-negotiate with GoHP and align the terms and conditions of the Loan Agreements in line with the tripartite agreement among Govt. of HP, ADB and HPPTCL. In compliance, the Petitioner has provided that GoHP, vide letter dated 04.03.2023, has conveyed approval for restructuring of the ADB loan as 80% of disbursed loan to be converted into interest free loan, 10% of disbursed loan to be kept as interest-bearing loan @10% and remaining 10% of disbursed loan to be converted to equity. It is observed that as per the GoHP letter dated 04.03.2023 and HPPTCL letter dated 08.08.2024, while partial relief has been provided but the entire terms and conditions have not been adopted resulting in additional equity consideration towards the project. The Commission is of the considered view that the debt equity considered against each scheme during the funding stage should be retained and the capital allocation by the GoHP to the Petitioner should be on the same terms & conditions as GoHP has received from the GoI on account of Himachal Pradesh being a special category State.

3.8.11 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;"

(ii) As per the Petitioner, the aforesaid observations in the order of the Commission 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 21.04.2012, 03.12.2014 & 04.07.2024) executed between the Govt. of H.P & the HPPTCL shall not fall under the above 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 of the Transmission Tariff Regulations, 2011 for the purposes of determination of the tariff. Therefore, the Order of the Commission treating the Loan received by the HPPTCL from the GoHP as grant is contrary 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 this regard.

(iii) 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 and the HPPTCL and also the subsequent restructured Onlending Agreement dated 04.07.2024 signed between the HPPTCL with the 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.*"

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

"I. *The second party hereby agreed that: -*

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

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

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

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

v. Principal repayment for 90% of total disbursed amount will be made in 15 equal annual instalments with a moratorium period of 5 years.

vi. The interest will be repaid as due in January of each financial year. The amount of the interest will be calculated on the above rate and terms up to last day of the preceding month in which the payment is due i.e. 31st December."

(v) Moreover, the restructured Onlending Agreement(s) for Tranche-II also specifically stipulates as under in this regard: -

"*1. The second party hereby agrees to amend the Sr. No. 3 of existing agreement as under -*

(i) Principal repayment due till Calendar Year (C.Y.) 2021 as per original onlending agreement is deferred till C.Y. 2023 and shall be repaid in 11 equal instalments w.e.f. C.Y. 2024 (paid w.e.f. Jan., 2025 to Jan., 2035),

(ii) Interest on 90% portion of loan accrued up to Calendar Year 2021 as per original onlending agreement is deferred till calendar Year 2023. The interest shall be repaid w.e.f. C.Y. 2024 in 11 years i.e. (paid w.e.f. Jan., 2025 to 2035),

(iii) Interest on 10% portion of the total disbursed amount will continued to be paid by second party to the First Party Annually.

(iv) Restructuring of Loan w.e.f. Calendar year 2022 shall be as under: -

(a) 80% of disbursed loan will be converted in to interest free loan

(b)10% of disbursed amount will be kept as interest-bearing loan @10% rate of interest

(c) 10% of disbursed loan will be converted into equity by GoHP.

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

(vi) 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 is as under:

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

(vii) 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 and that the parties had agreed to undertake certain obligations towards the ADB as mentioned in the said Project Agreement(s). Moreso, the Clauses 2.13 and 2.14 of the aforesaid agreement contain 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."*

(viii) It is further averred that the impugned order dated 21.01.2025 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). Keeping into consideration the above, there was no occasion for the Commission to treat the funds as received by the HPPTCL as grant instead of loan.

(ix) It has further been averred 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 approval letter dated

04.03.2023 of the GoHP. 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-2 of the Review Petition**).

(x) According to the Petitioner, the Commission, taking into 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 of the Petition) 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 Order in Petition No. 116 of 2024 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).

(xi) It is submitted that in compliance to the directions of the Commission, the Petitioner has written to the GoHP for revision of the terms vide letter dated 12.08.2024 (Annexure-4 of the Petition) but no response has been received from the GoHP. Further, GoHP has issued a letter dated 12.12.2024 to the Commission to consider the Terms of Financing of Transmission Projects being developed by HPPTCL through multilateral agencies in line with the "On Lending Agreement" executed between the Government of Himachal Pradesh and H.P. Power Transmission Corporation Ltd. (HPPTCL) while determining the transmission tariff of such Transmission Projects.

(xii) It is further submitted that the Petitioner has to repay its 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 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. 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.

(xiii) 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 GoHP as interest free loan, however, the same needs to be paid back. 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.

(xiv) It is further submitted that the Petitioner has executed the Agreement with GoHP and, therefore, the Petitioner is bound by the terms & conditions of the said agreement.

(xv) It is further averred that 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, **duly taking into account the schedule of repayment in accordance with the terms and conditions of relevant agreements of loan,** 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.*

……….….”

(xvi) 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 averred 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.

(xvii) It is also averred 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 2nd deficiency note dated 10.04.2024 had given the detail of actual loan drawn from the GoHP by attaching Audited Certificate (**Annexure-5**).

(xviii) The Petitioner has further made an additional submission in the present Review Petition regarding revised Funding of ADB spill over works. It has been averred that 19 Transmission projects (8 Sub-stations, 9 Transmission lines, 1 Joint Control Centre and Residential Quarters) were proposed to be funded under ADB Tranche-III which has closed on 29.09.2021. Out of these19 Transmission projects under ADB Tranche-III, 16 projects spilled over beyond the loan closure date of 29 September 2021, due to various reasons beyond the control of HPPTCL, such as hindrances in construction activities, non-availability of labour and delay in supply of equipment's due to lockdown imposed during COVID-19 pandemic etc, as detailed under:

S. No.	**Name of the Spill Over Transmission project under ADB Tranche-III**
1.	400 kV D/C Transmission Line Lahal- Chamera
2.	220 kV D/C Transmission Line Bajoli Holi -Lahal
3.	132kV D/C Transmission Line Barsaini-Charor
4.	132 kV LILO of Kurthala-Bathri at Mazra
5.	66 kV D/C Nirmand-Kotla Transmission Line

6.	220/132kV, 2x80/100MVA Substation at Mazra
7.	33/132 kV 2x31.5MVA GIS Sub-station at Barsaini
8.	220/66 kV, 2×50/63 MVA Substation at Gumma, Distt. Shimla
9.	220/132 kV, 80/100 MVA, Substation Charor, Distt. Kullu
10.	220/132 kV, 2×80/100 MVA, Substation at Sunda, Distt. Shimla
11.	66/22 kV Substation, 25 MVA at Bagipul, Distt. Kullu
12.	Augmentation of existing 220/132 Kangoo S/s and stringing of 2nd circuit of 220kV S/C TL on D/C towers from Dehar to Kangoo
13.	Supply, Testing, Installation and commissioning of Joint Control Center for remote operation and control of Sub-stations of HPPTCL.
14.	Residential quarters at Wangtoo Sub-station.
15.	Residential quarters at Chambi Sub-station
16.	Residential quarters at Charor Sub-station

(xix) It is further averred by way of additional submissions in the Review Petition that the instant Assets i.e. "66/22 kV Substation Nirmand (Bagipul) (Asset-1) and 66 kV D/C Nirmand – Kotla Transmission Line (Asset-2)" are also among those 16 projects. It is also averred that at the time of closure of the ADB loan Tranche-III, for 66/22 kV Substation Nirmand (Bagipul) (Asset-1), Rs.32.76Cr of funds were utilized from ADB funding and financial implication of Rs. 1.61 Cr was pending for the balance works.

Also, for 66 kV D/C Nirmand – Kotla Transmission Line (Asset-2), Rs.23.47 Cr of funds were utilized from ADB funding and financial implication of Rs. 6.19 Cr was pending for the balance works. Thus, even after consideration of ADB spill over fund (Debt), the claimed Debt: Equity shall remain 70:30 for Asset-2.

(xx) It is also mentioned in the Review petition that in view of the above, a DPR was prepared for total project cost of Rs. 196.19 Crore for completion of Spill Over Works of Himachal Pradesh Clean Energy Transmission Investment Programme (HPCETIP) ADB Tranche-III for financing of 90% i.e. Rs. 176.57 Crore against total fund requirement of Rs. 158.61 Crore excluding DC, IDC, contingency, Labor cess and GST etc. The matter for arranging the said funds was taken up by the petitioner (HPPTCL) with the Govt. of HP and it was advised vide GoHP letter dated 06.08.2021 to arrange the funds from open market without any Government's guarantee. Accordingly, the said matter for arranging the funds to meet the expenses of Rs.176.57 Cr from domestic financial institutions at competitive rate of interest towards Spill Over Works of HPCETIP ADB

Tranche-III against collateral security was placed for approval in the 56th BoD meeting and the same was approved.

(xxi) It is also mentioned in the Review Petition that after completion of various codal formalities, the loan amounting to Rs.176.57Cr was tied up with HP State Co-operative Bank (HPSCB) and the bank sanctioned the same on dated 02.01.2024 w.r.t. HPPTCL application dated 11.10.2023. Thereafter, as per requirement of sanction issued in favour of HPPTCL for the said term loan, the matter for mortgage deed of 400/220/66kV Sub-station Gumma for availing the loan was processed.

(xxii) As per the Petitioner, initially the HPSCB was requested to waive off the condition of insurance of Plant and Machinery Offer as Collateral Security against sanction term loan and further allow drawl of loan but the HPSCB has not waived off the same. The HPPTCL submitted the requisite documents along with mortgage deed and insurance copy for availing the said loan. Finally, the HPPTCL requested the HPSCB for release of Rs. 106.15 Crore in the HPPTCL account against term loan of Rs. 176.57 Cr.

(xxiii) However, in the interest of Spill Over Works of HPCETIP- ADB

Tranche-III, HPPTCL had to spend an amount of Rs. 110 Crore from its own sources till the processing/approval/drawl of loan from domestic funding agency (HPSCB) in order to maintain continuity in the execution of the works.

(xxiv) In view of above, the Petitioner has averred that the funding claimed in the instant petition at the time of filing i.e. prior to approval/drawl of said loan, shall change for both the assets i.e. "66/22 kV Substation Nirmand (Bagipul) (Asset-1) and 66 kV D/C Nirmand – Kotla Transmission Line (Asset-2)" on account of expenses already incurred by HPPTCL from its own resources towards the balance ADB Tranche-3 spill over works from the date of closure of ADB Tranche-3 i.e. 29.09.2021 to 29.10.2024, which have been now replenished from the Loan being drawn w.e.f. 29.10.2024 from HPSCB.

(xxv) It has been averred that the Petitioner is liable for debt servicing as per terms and conditions of loan agreement executed between HPPTCL and HP State Co-operative Bank. Therefore, HPPTCL has prayed the Commission to grant liberty to consider the revised funding during true up.

REPLY OF THE RESPONDENT

6. 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 as the grounds raised by the Petitioner do not meet said criteria and also 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.

7. It is averred that the present amended review petition fails to establish an error apparent on the face of the record. The Petitioner/ HPPTCL is seeking to reargue the merits of the original case, which is impermissible in a review Petition. The lending agreement dated 04.07.2024 and the restructuring terms communicated on 04-03-2023 could have been presented during the original proceedings.

8. Regarding the averments of review of the Project funding (Debt-Equity) approved for Asset-2 i.e. 66kV D/C Nirmand Kotla

Transmission Line, it is averred that the revision of the project pattern as prayed by the Petitioner is completely misplaced and misconceived as the Commission has dealt each and every aspect of the matter with proper scrutiny and prudence check in terms of the applicable laws.

9. On the point of review of the methodology adopted to derive funding of the Project, it is averred that the 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 extending it to the HPPTCL. It has been made clear in the impugned order by the Commission 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, the Commission has appreciated each and every aspect of the submissions of the parties in the main proceedings and after due consideration of the methodology adopted to derive funding of the project, well reasoned order has been passed

by the Commission in favour of the consumers of the State.

10. According to the Respondent, disbursements, which were grant are required to be paid back by the Petitioner and 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 which will directly impact 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.

11. It is also averred that the Commission has already taken its consistent view on such issue of methodology adopted by the Commission with respect to the Petitions of the HPPCL and others, thus, present review petition is sheer attempt to unsettle the settled regulatory position.

12. It has also been averred that the review Petition is not sustainable in the eyes of law and liable to be dismissed.

SUBMISSIONS OF THE PARTIES

13. 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.

14. Sh. 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 and thus, the order is required to be reviewed as prayed. He has also submitted that the Petitioner had apprised the Commission in respect of restructuring of the loan amount and signing of the Onlending Agreement on 04.07.2024, vide letter dated 08.08.2024 but the Commission had asked the Petitioner to file a separate Petition. Further, Regulation 20 (1) of the HPERC Transmission Tariff Regulations, 2011 mandates that actual loan terms shall be considered for the computation of interest and finance charges and considering grant as 90% of the total disbursement has adversely affected the finance of the Petitioner as the interest accrued has to be paid as per the Onlending Agreement.

15. 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 in the impugned order and there are no errors apparent on the face of record and Petition is liable to be dismissed. He has also submitted that the Petitioner has travelled beyond the scope of the review and has laid challenge to the impugned order as Appeal under guise of the review which is not permissible.

POINTS FOR DETERMINATION

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

Point No. 1: Whether the Order dated 21.01.2025 in Petition No. 116 of 2024 regarding Project funding (Debt:Equity) approved for Asset-2 i.e. 66 kV D/C Nirmand-Kotla Transmission Line suffers from errors apparent on record and liable to reviewed?

Point No. 2: Whether the Order dated 21.01.2025 in Petition No. 116 of 2024 regarding methodology adopted by the Commission with respect to the funding of the Project suffers from errors apparent on record and liable to reviewed?

Point No. 3: Final Order

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

Point No. 1: No.

Point No. 2: No.

Point No. 3: The Petition dismissed per operative part of the Order.

REASONS FOR FINDINGS

18. 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."*

19. 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."

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

21. The main Petition had been filed for the approval of the capital cost and determination of the tariff for the 4th Control Period for the period starting from CoD to FY 2023-24 for 66/22 kV Substation Nirmand (Bagipul) (Asset-1) and 66 kV D/C Nirmand- Kotla Transmission Line (Asset-2). In the present review Petition, the Petitioner has raised several grounds of challenge as that of Appeal by raising several new pleas 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 main 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 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 review of Project funding (Debt:Equity) approved for Asset-2 i.e. 66 kV D/C Nirmand-Kotla Transmission Line and the methodology adopted with respect to the funding of the Project for both the assets.

23. In view of the aforesaid, the Commission has considered the Review Petition, point wise as under:-

Point No. 1:

Review of the Project funding (Debt: Equity) approved for Asset-2 i.e. 66 kV D/C Nirmand – Kotla Transmission Line.

24. The Commission has discussed this aspect in detail in paras 3.8.10 and 3.8.11 in the Order dated 21.01.2025 as under:-

> *"3.8.10 The Commission, in its previous Orders, had directed the Petitioner to re-negotiate with GoHP and align the terms and conditions of the Loan Agreements in line with the tripartite agreement among Govt. of HP, ADB and HPPTCL. In compliance, the Petitioner has provided that GoHP, vide letter dated 04.03.2023, has conveyed approval for restructuring of the ADB loan as 80% of disbursed loan to be converted into interest free loan, 10% of disbursed loan to be kept as interest-bearing loan @10% and remaining 10% of disbursed loan to be converted to equity. It is observed that as per the GoHP letter dated 04.03.2023 and HPPTCL letter dated 08.08.2024, while partial relief has been provided but the entire terms and conditions have not been adopted resulting in additional equity consideration towards the project. The Commission is of the considered view that the debt equity considered against each scheme during the funding stage should be*

retained and the capital allocation by the GoHP to the Petitioner should be on the same terms & conditions as GoHP has received from the GoI on account of Himachal Pradesh being a special category State.

3.8.11 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;"

25. It is evident from the aforesaid that the Commission has considered debt:equity ratio as 70% debt and 30% equity 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;".

26. Accordingly, the actual debt: equity approved for Asset-2 as approved by the Commission in Table No. 29 of the impugned order is given as under:-

Transmission Line		
Particulars	**Percentage**	**Amount (INR Lakh)**
Total Cost as approved by Commission	100%	3,945.32
Debt as per ratio in DPR	75%	2,958.99
Equity as per ratio in DPR	25%	986.33

Total Funding Requirement (D)		**3,945.32**
Normative Debt as calculated by Commission	Same as Debt as per DPR	2,958.99
Grant as per Normative Debt (E)	90%	2,663.09
Remaining Amount (F) =(D)-(E)		1,282.23
Approved Debt	**70%**	**897.56**
Approved Equity	**30%**	**384.67**

27. The Petitioner, therefore, has not been able to substantiate that there are errors apparent on the face of the record regarding Debt: Equity as approved for Asset-2 i.e. 66 kV D/C Nirmand-Kotla Transmission Line or that the Commission has not allowed the debt: equity as per Regulation 10 (C) of the HPERC Transmission Tariff Regulations, 2011. Hence, Point No. 1 is decided against the Petitioner and in favour of the Respondent.

Point No. 2

Review of the methodology adopted to derive funding of the Project

28. The Commission while deciding the main Petition No. 116 of 2024 has dealt the aspect of funding of the Project and the methodology adopted in detail in paras 3.8.9, 3.8.10 and 3.8.11 in the Order dated 21.01.2025 in Petition No. 116 of 2024 as under:-

> *"3.8.9 In this specific instance, it is noted that the multilateral agency i.e. the ADB, has funded this project in collaboration with the GoI and the*

GoHP. However, the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL. While the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the Govt. of India, the entire loan proceeds were extended by GoHP to the Petitioner as loan carrying interest rate of 10% per annum.

3.8.10 The Commission, in its previous Orders, had directed the Petitioner to re-negotiate with GoHP and align the terms and conditions of the Loan Agreements in line with the tripartite agreement among Govt. of HP, ADB and HPPTCL. In compliance, the Petitioner has provided that GoHP, vide letter dated 04.03.2023, has conveyed approval for restructuring of the ADB loan as 80% of disbursed loan to be converted into interest free loan, 10% of disbursed loan to be kept as interest bearing loan @10% and remaining 10% of disbursed loan to be converted to equity. It is observed that as per the GoHP letter dated 04.03.2023 and HPPTCL letter dated 08.08.2024, while partial relief has been provided but the entire terms and conditions have not been adopted resulting in additional equity consideration towards the project. The Commission is of the considered view that the debt equity considered against each scheme during the funding stage should be retained and the capital allocation by the GoHP to the Petitioner should be on the same terms & conditions as GoHP has received from the GoI on account of Himachal Pradesh being a special category State.

3.8.11 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;."

29. As evident from the above, the Commission has considered each and every aspect of the matter in detail. 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. 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.

30. 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 agreements as relied upon by the Petitioner do not in any manner ameliorate the sufferings of the Petitioner. Significantly, the Commission vide order dated 22.04.2025 in Review Petitions No. 14 and 15 of 2025 directed the Petitioner to furnish the details regarding the loan advanced by

the Asian Development Bank 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. The HPPTCL was directed to furnish such detail/ explanation on 25.04.2025 as the present Petition and Review Petitions No. 14 of 2024 and 15 of 2024 have similar issue regarding the funding of the Project. 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 in so far as the methodology of the funding as approved by the Commission is concerned.

31. Even, the daily order dated 19.07.2023 in Petition No. 41 of 2023 is of no help to the Review Petitioner as the Commission only had directed the Petitioner to file the complete detail of restructuring failing which the Commission shall make the deductions accordingly.

Since, the detail as sought vide order dated 22.04.2025 in Review Petitions No. 14 and 15 of 2024 was not furnished, observations in order dated 19.07.2023 in Petition No. 41 of 2023 are of no help to the Petitioner.

32. It is relevant to refer here that 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:*
>
> *……………..….."*

33. Thus, 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. 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. Suffice to say, the Commission has based its decision on the pleadings and record made in Petition No. 116 of 2024 strictly in accordance with law by considering each and every aspect of the matter.

34. 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.

35. 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 failed to establish that there are sufficient reasons for reviewing the Order dated 21.01.2025 in Petition No. 116 of 2024.

Final Order

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

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

The file after needful be consigned to records.

Announced
26.02.2026

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