

APPEAL NO. 89 OF 2025 & IA No. 456 OF 2025
APPEAL NO. 94 OF 2025 & IA No. 433 OF 2025
&
APPEAL NO.135 OF 2025 & & IA No. 796 OF 2025

Present: Hon`ble Ms. Seema Gupta, Officiating Chairperson
Hon`ble Mr. Virender Bhat, Judicial Member

APPEAL NO. 89 OF 2025 & IA No. 456 OF 2025

IN THE MATTER OF:

... Appellant(s)

VERSUS

- | | |
|--|--------------------|
| 1. HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
Through its Secretary,
Vidyut Aayog Bhawan, Block No.37,
SDA Complex, Kasumpti,
Shimla-171009. | |
| 2. HP STATE ELECTRICITY BOARD LIMITED
Through its Chief Engineer (Commercial),
Vidyut Bhawan, Shimla,
H.P.-171004. | Respondent(s) |

Counsel on record for the Appellant(s) : Mr. Vishrov Mukherjee
Mr. Yashawi Kant

Mr. Girik Bhalla
Mr. Pratyush Singh
Mr. Damodar Solanki

Ms. Priyanka Vyas
Mr. Raghav Malhotra
Ms. Anamika Rana
Ms. Juhi Senguttuvan
Ms. Shreya Sundraramam

Counsel on record for the
Respondent(s)

: Mr. Pradeep Misra
Mr. Manoj Kumar Sharma for Res.1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Amal Nair
Ms. Shivani Verma
Ms. Devyani Prasad for Res.2

APPEAL NO. 94 OF 2025 & IA No. 433 OF 2025

IN THE MATTER OF:

HIMACHAL PRADESH POWER CORPORATION LIMITED
Through its General Manager (Generation),
Himfed Building, BCS, New Shimla
Shimla, H.P. 171009
Having office at Plot No.171009

... Appellant(s)

VERSUS

1. HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
Through its Secretary,
Vidyut Aayog Bhawan, Block No.37,
SDA Complex, Kasumpti,
Shimla-171009.
2. HP STATE ELECTRICITY BOARD LIMITED
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Counsel on record for the Respondent(s) : Mr. Pradeep Misra
Mr. Manoj Kumar Sharma for Res.1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Amal Nair
Ms. Shivani Verma
Ms. Devyani Prasad for Res.2

APPEAL NO.135 OF 2025 & IA No. 796 OF 2025

HIMACHAL PRADESH POWER CORPORATION LIMITED
Through its General Manager (Generation),
Himfed Building, BCS, New Shimla
Shimla, H.P. 171009
Having office at Plot No.171009

... Appellant(s)

VERSUS

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Ms. Devyani Prasad for Res.2

JUDGEMENT

PER HON'BLE MRS. SEEMA GUPTA, OFFICIATING CHAIRPERSON

1. The present batch of Appeals have been filed by Himachal Pradesh Power Corporation Limited (**"the Appellant"**), assailing the orders dated 05.06.2024 (herein referred as **"Impugned Orders"**) passed by Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as **"HPERC/State Commission"**). The Impugned Orders pertains to the approval of capital cost, including additional capitalization, and determination of tariff from the Commercial Operation Date ("COD") up to FY 2023–24 for three projects (Sainj HEP – 2x50 MW, Kashang –I HEP 1x65 MW and Sawra Kuddu HEP – 3x37 MW) . The details of the present Appeals are set out hereinbelow:

Sl.	Appeal No.	Details
1.	89 of 2025	Assailing Order dated 05.06.2024 in Petition no. 25 of 2024 for 2 X 50 MW Sainj Hydro Electric Project
2.	94 of 2025	Assailing Order dated 05.06.2024 in Petition No. 24 of 2024 for 1X65MW Kashang Hydro Electric Project
3.	135 of 2025	Assailing Order dated 05.06.2024 in Petition No. 26 of 2024 for 3 X 37 MW Sawra Kuddu Hydro Electric Project

DESCRIPTION OF PARTIES:

2. The Appellant- Himachal Pradesh Power Corporation Limited (HPPCL), is a generating company under Section 2(28) of the Electricity Act, 2003 and operates 3 hydro power stations including Sainj HEP (2X50 MW), Kashang HEP (3 X 65 MW) and Sawra Kuddu HEP (3 X 37 MW).

3. Respondent No 1 is the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “ **HPERC/State Commission**”) exercising the powers and discharging the functions under the provisions of Electricity Act, 2003.

4. Respondent No 2, the Himachal Pradesh State Electricity Board Ltd. (“**HPSEBL**”) is formed after the reorganization of erstwhile Himachal Pradesh State Electricity Board (HPSEB) under the Electricity Act, 2003, and is a distribution licensee operating in the State of Himachal Pradesh.

Factual matrix of the Case:

5. The Appellant has developed three hydroelectric projects in Himachal Pradesh under the Himachal Pradesh Clean Energy Development Investment Program funded by the Asian Development Bank (“ADB”). The details of the said

projects, along with their respective Commercial Operation Dates (“COD”), as approved by the State Commission, are set out hereinbelow:

- i. Sainj HEP (100 MW – 2x50 MW) in District Kullu. Both units achieved actual COD on 04.09.2017, with COD approved by HPERC as 04.09.2017.
- ii. Kashang HEP (195 MW – 3x65 MW) in District Kinnaur. Units 1, 2 & 3 achieved actual COD on 31.03.2017, 01.09.2016 and 03.03.2017 respectively, with COD approved by HPERC as 31.03.2017.
- iii. Sawra Kuddu HEP (111 MW – 3x37 MW) on Pabbar River in Rohru & Jubbals Tehsils, District Shimla. COD approved by HPERC as 21.01.2021

6. On 29.03.2023, a long-term PPAs were executed between HPPCL and HPSEBL for sale of 100% of net saleable energy from Kashang HEP Stage-I (1x65 MW), 50% of net saleable energy from Sainj HEP (2x50 MW), and 100% of net saleable energy from Sawra Kuddu HEP (3x37 MW), effective 01.04.2023 till the useful life of the projects. The remaining 50% power from Sainj HEP was tied up for sale to the World Bank.

7. HPPCL filed petitions No. 24 of 2024 on 24.06.2023 (Kashang HEP-1x65 MW), Petition No 26 of 2024 (Sawra Kuddu HEP-2x50MW) & Petition No 25 of 2024 (Sainj HEP-3x37MW) on 03.06.2023 seeking approval of capital cost, additional capitalization and determination of tariff for these three HEPs from COD to FY 2023-24.

8. HPERC passed the Impugned Tariff Orders dated 05.06.2024 determining capital cost and aggregate revenue requirement for all three HEPs. The approved capital cost after deduction of 90% of the GoHP Loan is Rs. 357.83 crore for Kashang HEP, Rs. 436.89 crore for Sainj HEP, and Rs. 942.18 crore for Sawra Kuddu HEP.

9. HPPCL filed review petitions challenging the Impugned Tariff Orders on the issue of HPERC treating 90% of the GoHP Loan as a 'grant' instead of loan and deducting the same from the project capital cost for computation of debt, equity, depreciation, return on equity, interest and financing charges. HPERC dismissed the review petitions on 05.11.2024 for Kashang and Sainj HEPs and on 19.11.2024 for Sawra Kuddu HEP.

10. Aggrieved by the findings in the Impugned Tariff Orders and Review Orders, HPPCL has filed the present appeals.

ANALYSIS AND DISCUSSION

11. The Appellant has raised several issues in all the three appeals, however the issue of treatment of 90% of the GoHP Loan as 'grant' and its deduction from capital cost for tariff determination is common to all three appeals. At the outset it was submitted by Learned Counsel for the Appellant that present appeals may be confined to the aspect of consideration of loan to the Appellant Company as grant and liberty may be granted to raise balance issues by way of separate Appeals.

Since, the only issue i.e "treatment of 90% of GoHP Loan amount as Grant and deduction of the same from Capital Cost for computation of tariff" to be

adjudicated in all the three appeals is common, all the three appeals are disposed of by this common judgement. Accordingly, we heard Mr. Vishrov Mukharjee, learned Counsel for the Appellant, Mr. Pradeep Mishra, learned counsel on behalf of Respondent No 1- State Commission and Mr. Anand Ganeshan, learned counsel on behalf of Respondent No 2-HPSEBL, written submissions filed by parties and Impugned Order and other documents relevant for adjudicating the issue.

Submissions Urged on behalf of Appellant

12. Learned counsel for the Appellant submitted that on 10.09.2008, the Government of India ("GoI") entered into a Framework Financing Agreement with the Asian Development Bank ("ADB"), whereby ADB agreed to extend a multilateral/multi-tranche financing facility amounting to USD 800 million to GoI under the Himachal Pradesh Clean Energy Development Investment Program.

13. On 10.11.2008, The GoI and ADB executed a Loan Agreement for Tranche-1 inter alia for civil works pertaining to one unit (65 MW) and the common powerhouse for all units of Kashang HEP. Under the said Loan Agreement, ADB agreed to lend an amount of USD 150 million to GoI with a repayment tenure of 20 years along with a grace period commencing from 10.11.2008 to 15.10.2013, with the last instalment being payable on 15.04.2033. The said agreement further provided that GoI shall pay interest to ADB at LIBOR + 0.60%, less a credit of 0.40%, on a semi-annual basis.

14. It is submitted that the said Loan Agreement specifically contemplated that the proceeds of the loan would be made available by GoI to the Govt of Himachal Pradesh (GoHP) and, thereafter, the GoHP to make available an amount of USD 147 million, being approximately 98% of the total loan amount, to HPPCL under

arm's length on-lending arrangements acceptable to both ADB and Gol. The agreement further stipulated that the rights and obligations arising out of the On-Lending Agreements could neither be assigned, amended, abrogated nor waived except with the satisfaction and approval of ADB and Gol.

15. In furtherance of the policy of the Gol aimed at encouraging investment and promoting development in special category states such as Himachal Pradesh, the loan amounts received from ADB were released by Gol to the Government of Himachal Pradesh on concessional terms, wherein 90% of the financial assistance was treated as grant and the remaining 10% was treated as loan.

16. Subsequently, GoHP executed an On-Lending Agreement with HPPCL, which specifically notes that Gol had obtained a loan facility of USD 800 million from the ADB for financing part of the cost of Kashang, Sainj, Sawra Kuddu and Shongng Karcham Hydro Electric Projects, and that the loan proceeds would be transferred by Gol to GoHP, which would further transfer the same to HPPCL. The said Agreement further provided that GoHP would make available the said funds to HPPCL by way of a loan carrying simple interest at the rate of 10% per annum, with interest being payable annually on or before 15th January of each financial year and the repayment obligation towards interest commencing immediately. It is also stipulated that HPPCL would repay the principal amount of each tranche of the loan within a period of 10 years from the expiry of the applicable grace period of 5 years, tranche-wise. The Agreement additionally provided that GoHP would remain responsible for repayment of the loan to Gol/ADB and that HPPCL would bear no direct liability towards Gol or ADB in that regard.

17. However, the State Commission in the Impugned Orders has deducted the GoHP Loan amount from the approved Capital cost of the projects, which is ex facie contrary to Regulations 10-C, 11 and 26(1) & (2) of the Hydro Tariff Regulations, 2011. It is submitted that the amounts released by the GoHP to HPPCL were not in the nature of consumer contribution, grant or subsidy, but constituted a loan arrangement, inasmuch as the said amounts were repayable by HPPCL together with interest at the rate of 10% per annum.

18. It is submitted that even pursuant to the Impugned Tariff Orders, HPPCL wrote to GoHP highlighting the severe financial implications arising from the Impugned Orders and requested either conversion of the GoHP loan into grant or issuance of appropriate directions under Section 108 of the Electricity Act to HPERC for treating the said amount as loan. However, vide letter dated 19.03.2025, GoHP rejected the said request and categorically reiterated that the financial assistance extended to HPPCL would continue to be treated as a loan and not as a grant.

19. Subsequently, GoHP continued to demand payments from HPPCL towards the said loan, and HPPCL, in compliance thereof, made substantial payments towards interest on the loan, including approximately Rs. 290.20 Crore paid as on 31.12.2024. Vide letter dated 27.06.2025, GoHP directed HPSEB to adjust an amount of Rs. 324.52 Crores, being the interest due from HPPCL, against the subsidy payable by GoHP to HPSEB. Thereafter, on 24.10.2025 and 28.11.2025, HPPCL made further payments aggregating to Rs. 500 Crore towards interest on the said loan.

20. It is submitted that Section 61(d) of the Electricity Act mandates the Commission to safeguard consumer interests while also ensuring recovery of cost of electricity in a reasonable manner, whereas Section 61(g) mandates that

the tariff should progressively reflect the cost of supply. It is settled law that while protection of consumer interest is an important consideration, the same cannot override the generator's entitlement to recovery of its legitimate costs, as noted in ***"Punjab State Power Corpn. Ltd. v. PSERC"***, (2015) 7 SCC 387 & ***"BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission & Ors."***, (2023) 4 SCC 788.

21. It is submitted that under the cost-plus tariff regime, all input costs relating to generation, including Capex and Opex, are ordinarily treated as pass-through components in tariff, subject to prudence check by the Commission. This Tribunal, in various judgments, has held that tariff is a reflection of the actual cost and unless any imprudence is established in the manner of incurring cost, the expenditure claimed by the generating company under Section 62 of the Electricity Act 2003 should be allowed and passed through in tariff, as also held in ***"NTPC v. CERC" 2009 ELR (APTEL) 916***.

22. Accordingly, in the absence of any imprudence by HPPCL in obtaining the loan, HPERC ought to have treated the GoHP Loan as a 'loan' and not as a 'Grant' and allowed the same to be recovered through tariff. However, on account of the Impugned Orders, HPPCL is not allowed to recover the cost of its generation, which is contrary to the principles of project-specific cost-reflective tariff determination under Sections 61 and 62.

23. Learned counsel for the Appellant stated that the Allocation of funds either by way of Grant or loan is a policy decision of the government. HPERC, exercising powers under Section 79(1) of the Electricity Act, has no jurisdiction to question or sit in appeal over a policy decision taken by the government. It is a settled position of law that the Courts cannot interfere with policy decisions of the government, including decisions relating to allocation of funds and resources and

grant of loans, which fall under policy domain of the government, as held in following judgments; **Balco Employees Union (Regd) vs. UOI & Ors**, (2002) 2 SCC 333; **Small Scale Industrial Manufactures Asso. v. UOI**, (2021) 8 SCC 511; **Rahul Mohod v. Govt. of NCT Delhi & Ors.**, 2023 SCC OnLine Del 5492; Judgement dated 19.12.2024 in Appeal No. 284 of 2018 titled **Green Infra Wind Solutions Ltd. v. APERC & Ors.**

24. HPPCL is suffering grave and irreparable loss on account of the Impugned Orders, inasmuch as the reduction in the approved Capital Cost pursuant to deduction of 90% of the loan amounts has rendered HPPCL incapable of operating the projects and servicing its debt obligations towards the GoHP at the tariff approved by the HPERC and as a consequence thereof, HPPCL is facing a projected annual financial shortfall of approximately Rs. 114.31 Crore.

Submissions Urged on behalf of State Commission - Respondent No.1

25. It is submitted that the common question of law involved in the present Appeals pertains to the loan arrangement executed between the Asian Development Bank and the Government of India for the purpose of encouraging investment and promoting development in special category States such as Himachal Pradesh, wherein it was stipulated that 90% of the financial assistance would be treated as grant and the remaining 10% would be treated as loan. However, Govt of Himachal Pradesh has provided the said amount to the Appellant as loan.

26. State Commission upon consideration of the funding structure of the project, was of the view that since the loan assistance received from the Asian Development Bank by the State of Himachal Pradesh was structured as 90%

grant and 10% loan, the State of Himachal Pradesh ought to adopt the same methodology while extending such financial assistance, in the interest of the consumers of the State. It is submitted that the said Order was passed on a provisional basis with liberty granted to the Appellant to renegotiate the terms with the State of Himachal Pradesh and, in the event of any difficulty, to approach the replying Commission afresh. Thereafter, the Appellant filed Review Petitions before the replying Commission; however, the same were dismissed as not maintainable.

ANALYSIS & DISCUSSION

27. The issue under consideration in all the three appeals is confined to a narrow compass, namely, whether the State Commission was justified in treating the loan advanced by the Government of Himachal Pradesh to the Appellant for the three hydro projects as a grant, and consequently deducting the said amount from the capital cost for tariff determination.

28. It is to note that on 10.09.2008, a Framework Financing Agreement (“FFA”) was executed between Asian Development Bank, (ADB) and the Government of India (GoI), wherein a loan of USD 800 million multi-tranche loan was sanctioned to GoI for the construction of four HEPs namely, Kashang, Sainj, Sawra Kuddu and Shongtong-Karcham under Himachal Pradesh Investment Program (“Investment Program”). Thereafter, on 10.11.2008, 12.03.2010, 17.01.2011 and 19.11.2012, GOI and ADB entered into various loan agreement for the disbursement of the sanctioned loan amount in the four tranches for a principal repayment period of 20 years, at interest rate of LIBOR+ 0.60%, Less applicable credit. Tranche 1 and Tranche 2 covered Kashang and Sawra Kuddu HEPs, while Tranche 3 covered Sainj and Kashang Stage-II & III.

29. A Loan Agreement “ On Lending Arrangement “ signed between Govt of Himachal Pradesh and the Appellant on 29.11.2009, also stipulates that Govt Of India is taking a loan of 800 million US dollar from ADB for development of four hydro projects in Himachal Pradesh including above referred three projects (Sawara Kuddu- 111 MW, Keshang 195 MW and Sainj HEP 100 MW). The loan agreement stipulates that the Govt of India shall transfer the loan to Govt of Himachal Pradesh and which *inter-alia* will transfer the same to the Appellant. It is very clear from the loan agreement that funds so given shall be in the form of loan carrying simple interest @ 10 % per annum. Para 3 &4 of the loan agreement are reproduced hereunder :

“3. The second party hereby agrees that the funds so received shall be in the form of loan carrying simple interest @10% per annum. The interest will be payable annually on 15th January of each calendar year and payment of interest will start immediately. The interest will be calculated from the date of transfer/release of money by first party to the second party.

4. The second party agrees to repay principle amount of each tranche of the loan on annual installment basis in 10 years period starting after initial five years (i.e. grace period) after the signing of the loan agreement of that particular tranche in total 10 equated installments payable on 15th January of each calendar year.”

30. Thus, it is apparent that funds so received from ADB to Govt of India has been extended to the Appellant by Govt of Himachal Pradesh as interest bearing loan for the implementation of referred projects with repayment liability and interest payment liability.

31. It is further pertinent to note from the Power Purchase Agreements executed between the Appellant, HPSEBL and the respective Hydro Electric Projects on 29.03.2023, that the tariff payable for supply of electricity from these

projects shall be governed by the Tariff Regulations, Notifications, Orders and Directions issued or to be issued by the Himachal Pradesh Electricity Regulatory Commission from time to time. Significantly, our attention has not been drawn to any provision or stipulation in the said Agreements which makes the purchase of electricity contingent upon the Appellant availing any grant from the Government of Himachal Pradesh for implementation of the projects. The contractual framework thus reinforces that the tariff determination is to be regulated strictly in accordance with the statutory instruments of the Commission, and not subject to any extraneous condition of grant funding.

32. The State Commission, while adjudicating upon the tariff petitions filed in respect of the subject hydro projects, has recorded their findings in the respective Impugned Orders. For the sake of brevity, and since the reasoning adopted therein is materially similar, the observations as contained in the Impugned Order pertaining to Kashang–I Hydro Electric Project are reproduced herein as representative. The said extract is set out below, and the same may be read *mutatis mutandis* in relation to the other projects under consideration.”

“3.8.16 The Commission takes serious note against consideration of the amount which is available as grant (90% of overall amount) to the State as loan which shall unnecessarily burden the consumers of the State due to such treatment. It is also observed that the Petitioner is already facing financial challenges and has been unable to service the loans against which deferment has been sought time and again. 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 utility as well as the consumers of the State which would have to bear the burden of the additional interest cost and repayment of such loan which has been provided as grant.

3.8.17 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 consider debt: equity as 70:30 for the balance amount in line with Regulation 10(C) of the HPERC 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;"

33. Accordingly, after considering 90 % of loan as Grant and deducting it from the total approved project cost approved, balance cost was apportioned as Debt 70 % and equity 30 %, for the purpose of determination of tariff for all the three HEPs,

Rs. in Crore

Particulars	Kashang HEP (A. No. 94 of 2025)	Sainj HEP (A. No. 89 of 2025)	Sawra HEP (A. No. 135 of 2025)
Project Capacity	1x65 MW	2x50 MW	3x37 MW
Approved capital cost (A)	Rs 822.51Cr	Rs. 1096.84 Cr.	Rs. 1530.42 Cr.
GoHP loan	Rs.516.31Cr	Rs. 733.28 Cr.	Rs. 653.60 Cr.
Deduction of 90% GoHP Loan (B)	Rs.464.68 Cr	Rs. 659.95 Cr.	Rs. 588.24 Cr.
Balance Requirement after deduction of 90% loan amount [C = A-B]	Rs 357.83 Cr	Rs. 436.89 Cr.	Rs. 942.18 Cr.
Debt 70 %	Rs 250.48 Cr	Rs 305.82Cr	Rs 659.53Cr
Equity 30%	Rs107.35 Cr	Rs131.07Cr	Rs282.65Cr

34. In our view, the Commission's approach of re-characterizing the loan as a grant, merely on the premise that a substantial portion of the upstream funding

from GoI to GoHP was in the nature of grant, is legally untenable. The Commission cannot disregard the binding contractual framework and substitute its own characterization of the transaction. Such deduction from capital cost is contrary to the On-Lending Agreement, and amounts to an error apparent on the face of the record.

35. It has been brought to our notice that subsequent to passing of the Impugned Order, Appellant had approached GoHP vide its letter dated 12.12.2024, to either consider passing of ADB loan as 90 % grant and 10 % loan or issue necessary direction to State Commission under Section 108 to consider terms and Conditions of “on lending Agreement”. Govt. of Himachal Pradesh vide its letter dated 19.03.2025 conveyed its regret to pass on the ADB loan as 90 % grant to the HPPCL. Thus, there is no doubt that as of now the fund extended for the implementation of these projects by GoHP are to be treated as loan with liability of payment of interest and repayment of loan on the Appellant as per ‘On lending Agreement’.

36. It is of relevance to advert to the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011 (“Hydro Regulation 2011”). The scheme of the Regulations provides that the capital cost deployed in a project, after prudence check by the State Commission, shall be considered in the ratio of 70% loan and 30% equity, where actual equity deployed exceeds 30%, and not more than 30% equity otherwise. The Regulations further stipulate that capital works undertaken by a generating company utilizing grants received from the State or Central Government, including funds received under various schemes, shall be classified under the category of “Grants.” Regulation 10(C)(3) clarifies that capital works

carried out with funds of similar nature, or amounts received without any obligation to return the same and carrying no interest liability, shall likewise be classified as consumer contribution, deposit works, capital works or grants.

37. Admittedly, the funds received by the Appellant for implementation of the projects from the Government of Himachal Pradesh do not fall within any of the categories contemplated under Regulation 10(C)(3). The financing arrangement is in the form of a loan, carrying a contractual liability of repayment together with interest at 10% per annum. Such funds cannot, by any interpretative device, be re-characterized as grants.

38. Thus, treating the loan as grant on the premise that since Govt. of India extended the ADB funds by way of grants to GoHP and the same should have been extended by GoHP to the Appellant as Grant, is devoid of legal and regulatory basis.”, On such erroneous premise, the State Commission proceeded to reduce the admissible capital cost by the corresponding amount. This approach is contrary to the express provisions of the Hydro Tariff Regulations, 2011, which mandate that, save and except for capital works financed through grants, the capital cost is to be considered in the debt: equity ratio of 70:30, with equity capped at maximum 30 %. Significantly, the Regulations do not contain any provision permitting a loan, even provisionally, as grant, with corresponding reduction in capital cost for determination of tariff. State Commission has not referred to any provisions in the Regulations to this effect.

39. The methodology adopted by the State Commission in the Impugned Order, whereby the loan advanced by the Government of Himachal Pradesh has been provisionally treated as grant, is in clear contravention of the statutory framework. Section 61 of the Electricity Act, 2003 mandates that while determining tariff, the

Commissions shall ensure that generation, transmission and supply of electricity are conducted on commercial principles. The Commission is duty-bound to safeguard consumer interests, but equally to ensure recovery of the legitimate cost of electricity in a reasonable manner, with tariff progressively reflecting the actual cost of supply. This has been categorially held by Hon'ble Supreme Court in "**Punjab State Power Corpn. Ltd. v. PSERC**"; (2015) 7 SCC 387 & "**BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission & Ors**";, (2023) 4 SCC 788).

40. Tariff determination under Section 62 of the Act requires the Commission to consider the total debt employed for construction of the project on the basis of the loan agreements executed between the generating company and its lender, subject to the debt-equity ratio prescribed under the applicable tariff regulations.

41. By treating the loan received for implementation of the projects as 90% grant, the Commission has artificially lowered the tariff, thereby jeopardising the Appellant's ability to discharge its contractual obligations of servicing interest and repaying principal under the Loan Agreement with the Government of Himachal Pradesh.

42. While, the protection of consumer interest remains a paramount objective under given framework, the same cannot be invoked to defeat or curtail a generator's statutory right to recover its legitimate costs. In a regulated regime, the Commission is bound to act strictly in accordance with the governing provisions of the Act and the Regulations framed thereunder. The Commission cannot, under the guise of advancing consumer interest, disregard or deviate from the express regulatory framework governing tariff determination. Any departure from the prescribed mechanism can only be effected by way of a formal amendment to the Regulations in accordance with law, and not otherwise.

43. We are in agreement with the submissions of the Appellant that allocation of funds either by way of grant or loan is a policy decision of the Government. The State Commission, exercising powers under Section 86 of the Act, has no jurisdiction to question such policy decisions. It is a settled position of law that Courts and Tribunals cannot interfere with policy decisions of the Government, including those relating to allocation of funds and resources or grant of loans, which fall squarely within the policy domain. The reliance has been placed on (***Balco Employees Union (Regd.) vs. UOI & Ors***"; (2002) 2 SCC 333, ***Small Scale Industrial Manufactures Asso. v. UOI***"; (2021) 8 SCC 511; ***Rahul Mohod. v. Govt. of NCT Delhi & Ors***"; 2023 SCC OnLine Del 5492), wherein it has been observed that the court have consistently refrained from interfering with economic decisions unless the economic decisions are violative of constitutional or legal limits. In other words, it is not the court/tribunal duty to consider relative merits of economic framework and to consider whether a wiser or better one can be evolved. The issue, if any, of the Government of Himachal Pradesh passing of funds received from the Government of India as loan to the Appellant is an inter-se matter between the two Governments and the State Commission has no jurisdiction to re-characterize such funds as grant for the purpose of Tariff determination.

44. Accordingly, issue of treatment of loan as Grant and corresponding reduction in Capital Cost cannot be sustained in law.

CONCLUSION

In view of the foregoing deliberations and findings, we hold that the Impugned Orders of the State Commission, insofar as it treats 90% of the loan advanced by

the Government of Himachal Pradesh to the Appellant as grant and correspondingly reducing the cost for determination of tariff for all the three HEPs, is unsustainable in law and is accordingly set aside on this issue.

The matter is remanded to the State Commission for fresh consideration of the treatment of the loan in capital cost strictly in terms of the applicable Regulations. It is however, clarified that the exercise shall, remain subject to review in the event the Government of Himachal Pradesh, by subsequent policy decision, converts the loan extended to the Appellant into grant. The State Commission is directed to pass the consequential order in remand expeditiously, preferably within two months from the date of receipt of this judgment.

The Appellants are granted liberty to raise the balance issues, if so advised, by way of fresh appeals. The captioned appeals, together with all pending IAs, stand disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 03rd DAY OF JULY, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

Pr/dk/ag/ak