

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

RP No. 6 of 2025
In
Appeal No. 301 of 2016

Dated: 4th September, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

- 1. The HP Electricity Regulatory Commission**
Through its Secretary
Block No. 37, SDA Complex,
Vidyut Aayog Bhawan, kasumpti, Shimla HP-171009
Email: secy-hperc@hp.gov.in ... Petitioner

Versus

- 1. M/s. Om Hydro Power Ltd.**
Through its Authorized Signatory, Shri Dinesh Kumar
Village Bandla, PO Nachhir,
Tehsil Palampur, Dist. Kangra,
HP-176061
Email: site@omhydropower.com
- 2. The HP State Electricity Board Ltd.**
Through its Director
Kumar House, Shimla HP-171004
Email: md@hpseb.in ... Respondent (s)

Counsel for the Petitioner(s) : Manoj Kumar Sharma
Pradeep Misra for App. 1

Counsel for the Respondent(s) : Tarun Johri

Ankur Gupta for Res. 1

Anand K. Ganesan

Swapna Seshadri

Amal Nair

Shivani Verma

Devyani Prasad for Res. 2

ORDER

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. By way of this Review Petition, the petitioner, Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as "the Commission") has sought review of our judgement dated 16th December, 2024 passed in Appeal No. 301 of 2016 which had been filed by 1st Respondent – M/s Om Hydro Power Ltd., a power generator having set up a 15 MW on hydroelectric project at Palampur, Himachal Pradesh.

2. The 1st Respondent had filed a petition before the Commission bearing Petition No. 149 of 2013 seeking determination of project specific tariff for its power project and had asserted a total project cost of Rs. 147.71 Crore. The Commission vide order dated 28th April, 2016, disposed off the petition thereby disallowing cost of Rs.47.48/- crores from the actual cost of the power project as asserted by the 1st

Respondent and has determined the levelized tariff at Rs. 2.31/kWh considering the useful life of the Project for 40 years.

3. Aggrieved by the said order of the Commission, the power producer had approached this Tribunal by way of Appeal No. 301 of 2016, which has been allowed vide order dated 16th December, 2024 which is sought to be reviewed. This Tribunal has held as under :-

- (a) With regards to the land cost, the Commission has failed to consider the relevant documents placed before it by the 1st Respondent and accordingly the claim of 1st Respondent for the differential cost of land for transmission and private land including stamp duty and registration charges was allowed.
- (b) With regards to the Civil Works, it has been observed that the State Commission has ignored the documentary evidence placed before it for the reasonable cost incurred by 1st Respondent on Civil works. It has also been held that the methodology adopted by the Commission is arbitrary and not in accordance with its own Regulations. Thus, deduction of Rs.11.06/- crore was found erroneous.

- (c) With regards to the Miscellaneous Expenses, the Commission was directed to re-examine the issue in the light of documents placed before it by the 1st Respondent.
- (d) With regards to the Communication/Road works also, it has been held that the Commission has failed to consider the relevant documents placed before it by the 1st Respondent and accordingly the Commission was directed to re-examine the claim of Rs.10.19 crores of the 1st Respondent in this regard.
- (e) On the aspect of Environment & Ecology for Compensatory Afforestation Tax, the Commission was directed to verify and re-examine the claim of 1st Respondent based on the documents submitted by it along with the Original Petition.
- (f) With regards to the Transmission Line Expenses also, the Commission was directed to re-examine the claim of 1st Respondent on the basis of the documents placed before it by the 1st Respondent.
- (g) The Commission was also directed to re-determine the Interest During Construction (IDC) subject to the Commercial Operation Date (COD) of the project as 6th May, 2013.

- (h) With regards to the MNRE Capital Subsidy, the Commission has been directed to re-examine the matter and in case the reasons for non-grant of subsidy by MNRE are not attributable to the Appellant, necessary corrections be made accordingly.
 - (i) On the aspect of Determination of Levelized tariff, it has been held that as a consequence of the judgement in the appeal based on the revision of capital cost approved, the tariff is to be revised and re-determined.
4. Accordingly, the impugned order of the Commission was set aside and the Commission was directed to pass consequential order in terms of the said judgement of this Tribunal within three months from the date of judgement.
5. The petitioner is seeking review of the said judgement dated 16th December, 2024 of this Tribunal on following issues :-
- i. Computation of Capital Cost of the Project;
 - ii. Interest During Construction; and
 - iii. Determination of levelized tariff
6. On the aspect of computation of capital cost of the project, it is argued on behalf of the Petitioner that the Commission had dealt with the

petition as per the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewable Sources and Co-generation by Distribution Licensee) Regulations, 2007 and, therefore, this Tribunal has erred in observing that the methodology adopted by the Commission is arbitrary as well as not in accordance with its own Regulations. It is submitted that these Regulations do not provide any specific methodology for doing prudence check on the capital cost incurred and, therefore, the Commission has exercised required due diligence for approving civil cost incurred by the project developer.

7. On the aspect of IDC, it is argued that the Commission, after proper perusal of the supporting document and the justification provided by the 1st Respondent, has disallowed one year of time delay on account of Force Majeure event as claimed by the 1st Respondent. It is submitted that this Tribunal has erred in directing the re-determination of IDC subject to COD of the project as 6th May, 2013 instead of 6th May, 2012 considered by the Commission.

8. With regards to the determination of regularized tariff, it is argued that this Tribunal has failed to consider that as per the HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Condition for Tariff Determination) Regulation, 2012, free

power more than 13% cannot be a pass through in the tariff and, therefore, the direction of this Tribunal to compute net saleable energy afresh is erroneous.

9. We note that all these submissions made on behalf of the Commission during the hearing of this Review Petition have already been taken note of and considered while passing the judgement dated 16th December, 2024. Mere fact that this Tribunal did not accept the submissions of the Commission on these issues and directed the Commission to make afresh determination in terms of the observations made in the said judgement, does not give rise to any cause or occasion for the Commission to seek review of the said judgement. Learned Counsel for the Commission has miserably failed to point out any patent error in the said judgement, which may persuade us to entertain this review petition. The errors pointed out in the said judgement by the Learned Counsel for the Commission, can only be got corrected by the higher forum i.e. Hon'ble Supreme Court in appeal as envisaged under the Electricity Act, 2003. Certainly, these errors pointed out by the Commission's counsel do not fall in the category of "errors apparent on the face of record" as envisaged in the Section 120(2)(f) of the Electricity read with Order 47 Rule 1 of the Code of Civil Procedure, 1908.

10. Hence, we do not find any merit in the Review Petition and accordingly dismiss the same.

Pronounced in the open court on this 4th day of September, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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