IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

REVIEW PETITION NO.15 OF 2023

Dated: 10.11.2025

Present: Hon'ble Ms. Seema Gupta, Technical Member (Electricity)
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Indian Renewable Energy Development Agency
India Habitat Centre,
East Court, Core-4A, First Floor,
Lodhi Road, New Delhi
Email: cmd@ireda.in … Petitioner(s)

Versus

1. **Kerala State Electricity Board Limited**
Through its Chairman & Managing Director
Vydyuthi Bhawanam, Pettorm,
Tiruvananthapuram, Kelara – 695004
Email: cmdkseb@kseb.in

2. **Renewable Power Corporation of Kerala Limited**
Through its Chief Executive Officer
Kanhangad South, Kanhangad,
Kasargod, Kerala – 671531
Email: ceo@rpckl.org

3. **Solar Energy Corporation of India Limited**
Through its General Manager
D-3, First Floor, Wing 'A',
Relegare Building, District Centre,
Saket, New Delhi – 110017
Email: md@seci.co.in

4. **Kerala State Electricity Regulatory Commission**
Through its Secretary
K.P.F.C. Bhavanam,
C.V. Raman Pillai Road,
Vellayambalam, Thiruvananthapuram – 695010
Email: kserc@erckerala.org … Respondent (s)

Counsel on record for the Petitioner(s)	:	Anand K. Ganesan Swapna Seshadri Amal Nair
Counsel on record for the Respondent(s)	:	Subhash Chandran K.R Krishna L.R for Res. 1 Suparna Srivastava for Res. 2 M.T. George for Res. 4

O R D E R

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant Indian Renewable Energy Development Agency (in short IREDA) has filed this review petition seeking review of the judgment dated 10.02.2022 passed by this Tribunal in appeal No.141 of 2021.

2. It appears that 1st respondent Kerela State Electricity Board Ltd. (in short KSEBL) and 3rd respondent Solar Energy Corporation of India Limited (in short SECI) had entered into a Memorandum of Understanding dated 18.02.2015 for development of solar power park and supply of solar power in the State of Kerala. Thereafter, the appellant, SECI and KSEBL entered into a tripartite agreement dated 31.03.2015 setting out the broad terms for development of project and sale of power from 50MW solar power project at Kasaragod, Kerala to KSEBL. As per this agreement, SECI was responsible to design, develop, construct and commission the project through an EPC arrangement.

3. In pursuance to a competitive bidding held by SECI, M/s Jackson Engineers Ltd. was selected for implementation of the project. Subsequently, on 23.03.2016 Supply Agreement, Erection Works Contract and Civil and Allied Works Contract was signed between SECI (on behalf of the appellant IREDA) and M/s Jackson Engineers Ltd. Thereafter, the appellant IREDA and KSEBL entered into a Power Sale Agreement (PSA) dated 31.03.2017 setting out the terms and conditions for generation and sale of electricity by the appellant to KSEBL.

4. On 13.06.2017, 2nd respondent Renewable Power Corporation of Kerala Limited (in short RPCKL) raised a demand for Rs.17.25 crores against appellant towards certain costs including the power evacuation costs and other solar park subsidies. Appellant paid the said amount to RPCKL on 12.07.2017. Therefore, RPCKL raised a further demand of Rs.8.12crores on 20.10.2018 which also was paid by appellant on 25.10.2018.

5. The power project was commissioned on 14.09.2017 upon incorporating a total project cost of Rs.310.88 crores. Accordingly, the appellant sought a tariff of Rs.4.95/unit as per the claims and parameters laid down in the applicable regulations by the Central Electricity Regulatory Commission. However, vide order dated 06.02.2019, the 4th respondent Kerela State Electricity Regulatory Commission (in short, the Commission) determined tariff at Rs.3.83/unit. This tariff order was challenged by the appellant before this Tribunal by way of appeal no.141 of 2021.

6. One of the issues raised in the appeal was the disallowance of Rs.25.38 crores paid by appellant to RPCKL as power evacuation cost.

7. On 03.01.2022, while hearing the appellant, this Tribunal had raised following queries: -

> *"a) Has RPCKL accepted Rs.25.38 crores towards developments charges/power evacuation, in the capacity of a contractor of IREDA?*
>
> *b) Is the evacuation facility in the present case an asset of the IREDA or KSEB?*

> c) *Status of the arbitration proceedings against the EPC contractor?"*

8. When the appeal came up for hearing again on 10.02.2022, it was stated by the appellant's counsel upon instructions that since the said amount of Rs.25.38 crores was paid to RPCKL under a different contractual arrangement/understanding, the appellant does not press the relief in this regard and sought liberty to initiate appropriate proceedings against the RPCKL for recovery of said amount. Upon such statement of the learned counsel for the appellant this Tribunal observed and held in the judgment under review as under: -

> *"6. The grievance raised by the appellant in above regard primarily has been that the above expenditure was incurred by the appellant towards project cost which should have been allowed as pass-through in entirety. After some hearing, however, having taken instructions, learned counsel submitted that since the amount in question, which has been denied, was paid to RPCKL under a different contractual arrangement/ understanding, the appellant does not press any relief*

in this regard at this stage for purposes of the tariff determination exercise and instead seeks liberty to pursue the matter of recovery of the amount paid in excess to RPCKL by taking out appropriate proceedings before the appropriate forum. We grant such liberty and thus treat the issue as not pressed in this appeal."

9. Now, it is contended in the review petition that the said amount of Rs.25.38 crores was not just limited to power evacuation cost but the total infrastructure cost including the land use.

10. It is fairly sated on behalf of the appellant/review petitioner that correct factual position was not conveyed to this Tribunal at the time of passing of the judgment dated 10.02.2022. However, it is argued by the learned counsel for the petitioner that the correct factual position was discovered subsequent to the passing of the judgment under review by this Tribunal, and therefore, the judgment needs to be reviewed on this aspect. The learned counsel also argued that if an error occurs in the order/judgment due to an incorrect submission made by the counsel of a party, that is a sufficient ground for review of said order/judgment.

11. Having gone through the judgment under review and having heard the learned counsel for the appellant/review petitioner, we do not find any merit in the review petition.

12. Even if it is assumed that the statement given by the appellant's counsel before this Tribunal on 10.02.2022 was factually incorrect, it is to be noted that the statement was not given by the counsel on his own but after taking due instructions from his client i.e. the appellant. In fact, the queries were raised to the appellant on 03.01.2022, as noted hereinabove, and the statement was given by the counsel upon instructions on 10.02.2022. There is no whisper in the entire petition about the identity of the official(s) of the appellant who had conveyed such instructions to the counsel and on what basis. From the averments made in the petition itself, it is manifest that the appellant had discovered the Land Use Agreement as well as the Implementation Agreement executed with RPCKL while preparing the responses to the queries raised by this Tribunal on 03.01.2022. This is evident from the following Paragraphs in the review petition: -

> *"29. It is submitted that only when the queries were raised by this Hon'ble Tribunal and while preparing responses to the same, did IREDA discover that the Land Use*

Agreement and the Implementation Agreement which were not placed before any forum. They could also not be informed to its counsel in time since IREDA is not a project developer or an entity that sets up projects and seek tariff on a regular basis. IREDA is a project financier and this being its first project, it could not give the necessary details in time, despite exercising due diligence."

13. It is inexplicable as to why the execution of these two agreements was not conveyed by the appellant to its counsel before the hearing on 10.02.2022 and on what basis were the instructions given to the counsel to state before the Tribunal that the disputed amount of Rs.25.38 crores was paid to RPCKL under different contractual arrangements/understandings and the appellant does not press the relief in this regard.

14. Be that as it may, it is to be noted that as per Section 114 of Code of Civil Procedures, read with Order XLVII, the application for review of a judgment/order is maintainable upon (i) discovery of a new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of the review applicant or could not be produced by him when

the judgment / order was passed; or (ii) on account of some mistake or error apparent on the face of record; or (iii) for any other sufficient reason.

15. It is not the case of the review petitioner that the judgment dated 10.02.2022 of this Tribunal suffers from any glaring mistake or a patent error. Every court/tribunal takes the statement of a counsel for the party at its face value and proceeds to pass order/judgment accordingly. That is what this Tribunal did in passing judgment dated 10.02.2022. The case of the petitioner, in fact, is that the statement of its counsel given to this Tribunal on 10.02.2022 was factually incorrect. However, we do not find anything from the record to suggest that incorrect instructions were conveyed to the petitioner's counsel bonafidely and inadvertently. As already noted hereinabove, while preparing the response to the queries raised by this Tribunal on 03.01.2022, the officials of the petitioner discovered the Land Use Agreement and Implementation Agreement which had been executed with RPCKL but had not been placed either before the Commission or the Tribunal. Still, the counsel was not apprised about the existence of these two agreements and no effort was made to place on record these two agreements before the Tribunal. Therefore, it cannot be said that the existence of these two agreements and the fact that Rs.25.38 crore was not paid to the RPCKL as power evacuation cost, was not within

the knowledge of the petitioner on or before 10.02.2022 and that these agreements/facts were discovered subsequent to the passing of the judgment under review by this Tribunal. Even otherwise also these could have been discovered by petitioner upon exercise of due diligence by going through the records of the case while preparing the response to the queries of this Tribunal.

16. Hence, we do not find any merit in the review petition and the same stands dismissed.

Pronounced in the open court on this the 10th day of November, 2025.

(Virender Bhat) Judicial Member	(Seema Gupta) Technical Member (Electricity)

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REPORTABLE / ~~NON REPORTABLE~~

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