

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CARBC No. 15 of 2025****Reserved on: 19.11.2025****Decided on: 28.11.2025**

Himachal Pradesh State Electricity Board Ltd. ... Petitioner

Versus

Engenrin Hydro Power Ltd. ... Respondent

Coram***Hon'ble Mr. Justice Ajay Mohan Goel, Judge.*****Whether approved for reporting?¹**

For the petitioner : Ms. Sunita Sharma, Senior Advocate
with Ms. Meenakshi Katoch,
Advocate.

For the respondents : Mr. Atul Jhingan, Advocate.

Ajay Mohan Goel, Judge

By way of this petition filed under Section 34 of the Arbitration and Conciliation Act, the petitioner herein has assailed the award dated 31.12.2022, passed by the learned sole Arbitrator in favour of the claimant, in terms whereof, the following reliefs have been granted to the claimant:-

“Metering

[40] As per Article 7.1 of the PPA Ex.CW1/3, Main Meter and Check Meter, one set is to be installed by Company and the Board and as per Article 7.5, such meters are to be calibrated and tested once during every year. Thus expenditure for one set of meter is to be borne by the Board so also calibration and testing. The averments

¹ Whether reporters of the local papers may be allowed to see the judgment?

made in the claim qua expenditure incurred by the claimant and cost that is to be met by the Board has not been disputed by the Board. Thus a sum of Rs. 2,94,720/-.

Civil Work

[41] The Board has claimed expenditure for civil work and it is admitted by the RW1 Amit Patial that entire expenditure has been charged to the claimant. It is not disclosed in the documents furnished by the Board what civil works relating to sub station/switchyard were executed. It is simply saying that it spent money on civil works. No doubt approach road is required to be maintained. There is only stretch of 3 Kms which is connected with the switchyard. The total length is 12 Kms and thus it comes to 1/4th out of share of the company by any conservative estimate under this head. Thus chargeable amount to the claimant company is as under:-

<i>2015-16</i>	<i>41,794</i>
<i>2016-17</i>	<i>50,339</i>
<i>2017-18</i>	<i>59,337</i>
<i>2018-19</i>	<i>39,248</i>
<i>2019-20</i>	<i>57,844</i>
<i>2020-21</i>	<i>14,942</i>
<i>Total</i>	<i>2,63,504</i>

R & M of Upkeep of Rest House, residential and non residential building, street lighting

[42] The Board is charging expenditure for maintenance and upkeep of residential and non residential building, rest house, street lighting and entire expenditure is being charged to the sub station as per statement of RW 1 Amit Patial. The 12 persons are deployed at the

sub station and they are also residing in the accommodation provided by the Board. The maintenance of their residences and providing electricity is also a charge. Thus, 50% of the cost out of the share of the company under this head is reasonable. Thus year wise expenditure chargeable to the claimant company is as under:-

2015-16	18,549
2016-17	16,213
2017-18	13,401
2018-19	69
2019-20	33,066
2020-21	614
Total	81,912

[43] Thus total refund due to the claimant company is as under-

Expenditure		Payment recd by Board
[1]Salaries	63,44,410	1,98,26,943
[2]Fire Fighting 3	8,151	
[3]R&M Tpt	1,94,415	
4]Inspection	13,196	
[5]Civil works	2,63,504	
[5]R&M Rest		
House, residential		
Non residential		
Building etc	81,912	
Total	69,35,588	1,98,26,943
Refund to claimant		1,28,91,355
Payment to claimant on		
Account of Metering		2,94,720

Total payment to be made to

Claimant company by Board 1,31,86,075

[One crore thirty one lacs eighty six thousand fifty seventy five only]

Issue No.2

[44] The Board withheld the actual expenditure that was incurred and recoverable from the claimant company despite there being express agreement in terms of clause 6.5 of O & M Agreement and continue to retain the amount with it. The cause of action arose to the claimant when it sent communication dt 28/12/2020. In terms of Section 31 of the Arbitration and Conciliation Act, 1996, the claimant is entitled to interest on Rs. 1,31,86,075/-@ 11% p.a. from 28/12/2020 till 31/12/2022 which works out to Rs.29,16,832/- The claimant is also entitled to further interest on Rs.1,61,02,907/- @11% p.a. w.e.f. 1.1.2023 till payment.

Issue No.3

[45] It is claimed by the respondent that claim so preferred is time barred as such not arbitrable.

[46] It is not disputed that as per clause 6.3 of the O & M Agreement Ex.CW1/2, the Board is required to intimate the tentative amount required to be deposited for normal operation and maintenance of the Interconnection Facility for ensuing year and such estimates were being sent to the claimant. In terms of clause 6.5, the Board was required to intimate actual expenses payable by the Company to the Board on account of operation and maintenance of the Sub Station for a year on the above basis[including departmental charges] to the company on or after the expiry of 30 days from the closure of financial year to which the expenses relate. These documents were

not supplied and this being the position, there is breach of clause 6.5 of O&M Agreement. The Board also rely on such provisions. It is clear from the documentary evidence on record that no intimation was ever sent to the Company in terms of Clause 6.5 of O & M Agreement. The company sent communication dt 28/12/2020 to the Chief Engineer System Operation claiming that since no actual expenses were ever sent to the Company, thus, there is dispute and refund be made to the Company (page 219 of claimant documents). This was the point when cause of action accrued to the claimant company and Arbitrator was appointed on 6.8.2021, thus claim so laid is within time. The plea of the respondent Board is rejected.

Issue No.4[Relief]

[47] In view of the aforesaid discussion, an award is passed in favour of the claimant company amounting to Rs.1,31,86,075[one crore thirty one lakhs eighty six thousand seventy five only] and interest on this amount @ 11% w.e.f. 28/12/2020 till 31/12/2022 amounting to Rs.29,16,832/- is allowed on it. Further interest @ 11% on Rs. 1,61,02,907/-[one crore sixty one lakhs two thousand Nine hundred seven only] is allowed w.e.f. 1.1.2023 till payment. Claimant is allowed cost of arbitration which works out to Rs.2,65,454/-[two lakhs sixty five thousand four hundred fifty four] being share of cost payable by the respondent.

Announced today the 31st December 2022 in the presence of the parties and their counsels.”

2. The case of the petitioner is that the respondent

developed a small Hydro Electric Project in the State of Himachal Pradesh which was set up by the respondent in its capacity as an independent power producer. Like most of the other Hydro Electric Projects, the same was interfaced with the nearest grid station. Respondent developed Baner-III Hydro Electric Project on the Baner Khadd and IKU-II Hydro Electric Project on the Iku Khadd, a tributary of river Beas in District Kangra. The installed capacity of each project was 5MW. These projects as per the petitioner are interfaced with the petitioner's 33KV substation at Baner, District Kangra. Further as per the petitioner, as per the terms and conditions of operation and maintenance of interconnection facilities agreement dated 15.02.2008, the parties had agreed that the petitioner shall erect, test and commission 33 KV interconnection facility and the respondent shall bear the cost. It was further agreed that as per the said agreement, the petitioner will operate and maintain said interconnection facility comprising of 33 KV terminal Bay and metering equipment and respondent will pay actual operational and maintenance cost. In terms of clause 2.2.14 of agreement dated 15.02.2008, the interconnection was defined as the point where the physical touch point of the project line and the allied equipment for being the part of the interconnection facilities are connected at 33KV Bus Bars of Baner Power House-1 substation of

the petitioner. A claim was preferred by the respondent qua the method adopted by the petitioner-Board for working out the operation and maintenance cost of the interconnection facility on the ground that the same was irrational, illogical and in violation of the guidelines framed by the regulatory authority. According to the petitioner, the Himachal Pradesh Electricity Regulatory Commission has formulated Aastha guidelines and which are followed while working out the operation and maintenance charges. The case was initially filed before the Electricity Regulatory Commission, but subsequently, in terms of the arbitration clause, the matter was filed before the High Court and the High Court appointed a learned Arbitrator to adjudicate the dispute. The claim of the respondent-claimant was contested by the petitioner, however, in terms of the impugned award, the claimant's claim was allowed by the learned Arbitrator and feeling aggrieved, the petitioner has filed the present petition.

3. Learned Senior Counsel for the petitioner took the Court thorough the Award in issue and she submitted that the award under challenge was not sustainable in the eyes of law and the same was passed in violation of the public policy, i.e. Aastha Guidelines of the HPERC. She further submitted that interest of cost awarded by learned Arbitrator was on the higher side and in violation of the

judgment passed by this Court in OSA No. 11 of 2006, dated 29.09.2022, titled as HPSEB vs. M/s Continental Constructions, whereby the interest has been reduced from 18% per annum to 9% per annum. Learned Senior Counsel further argued that learned Arbitrator further erred in awarding a sum of Rs.63,44,410/- as salary of the employees, without appreciating the fact that the Board has categorically proved on record that the staff of substation cannot be compared with the staff of generating substation, however, as this aspect of the matter was not correctly appreciated by the learned Arbitrator, the same rendered the award to be bad, being in violation of the public policy. Learned Senior Counsel also argued that otherwise also, the award was bad, being against the public policy of India, as the learned Arbitrator erred in awarding a sum of Rs.2,28,229/- as maintenance allowance, a sum of Rs. 1,94,415/- as transportation facility and also a sum of Rs. Rs. 13,196/- as inspection of the vehicles, without there being any foundation for passing such award. Learned Senior Counsel further argued that the learned Arbitrator travelled beyond the express terms and conditions of the award letter and the terms of the contract, which resulted in grave miscarriage of justice. He erred in not appreciating that the claim was hit by delay and laches and on these counts, learned Senior Counsel argued that the impugned award was liable to be set

aside.

4. On the other hand, learned Counsel for the respondents argued that in light of the fact that the scope of interference by this Court under Section 34 of the Arbitration and Conciliation Act was limited as per parameters laid down by Hon'ble Supreme Court, which is fairly narrow because the mandate under Section 34 of the Act is to respect the finality of the award. Learned Senior Counsel argued that in terms of the law laid by Hon'ble Supreme Court, the award under challenge calls for no interference because the award is a reasoned award which has been passed by the learned Arbitrator after taking into consideration the respective contentions of the parties and after appreciation of the evidence on record as well as the terms of the contract. He argued that in the absence of there being any material to demonstrate that the award was vitiated or perverse, or against the public policy of India, the petition deserved dismissal.

5. I have heard learned Counsel for the parties and carefully gone through pleadings and documents appended therewith including the impugned award.

6. Before the Court addresses respective contentions of the parties, it is necessary to refer to the scope of interference by this Court in a petition which is preferred under Section 34 of the

Arbitration and Conciliation Act. Hon'ble Supreme Court of India in UHL Power Company Limited vs. State of Himachal Pradesh, (2022) 4 Supreme Court Cases 116, *inter alia* has been pleased to hold that the jurisdiction conferred on Courts under Section 34 of the Arbitration and Conciliation Act is fairly narrow and when it comes to the scope of an appeal under Section 37 of the Arbitration and Conciliation Act, the jurisdiction of an appellate Court in examining an order, setting aside or refusing to set aside an award is all the more circumscribed. Hon'ble Supreme Court has held that if there are two plausible interpretations of the terms and conditions of the contract, then, no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. Hon'ble Supreme Court has referred to its earlier judgment passed in Dyna Technologies (P) Ltd. Vs. Crompton Greaves Ltd. (2019) 20 SCC 1, in which Hon'ble Supreme Court was pleased to hold that Section 34 of the Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts and arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Hon'ble Supreme Court further held that Section 34 is different in its

approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the parties autonomy to get their dispute adjudicated by an alternative forum as provided under the law. Hon'ble Supreme Court has further held that if the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternative dispute resolution would stand frustrated.

7. Coming to the present case, a perusal of the award demonstrates that the claimant had approached the learned Tribunal alleging that the respondent-Board charged excessive amount under the head of salary of staff which violated interconnection facility as defined in O&M agreement and the respondent was liable to refund excess amount w.e.f. 2014-15 till date. The claimant further alleged that the respondent charged exorbitant amount under firefighting equipment facility whereas there were only three fire extinguishers of Co2 of 50Kgs, 25Kgs and 9Kgs and three fire extinguishers of 4.5 Kgs, whereas the respondent was charging for Fire Extinguisher of 50Kgs, 25Kgs, 9Kgs and five fire extinguishers of 4.5 Kgs in violation of 6.5 of the O & M agreement and the excess amount was required to be refunded. It was also the contention of the claim that the Board was charging

O&M charges against the maintenance allowance for the Substation, civil works and approach road, upkeep of HPSEBL Rest House, Electricity light in residential and non-residential buildings and the charges being levelled by the Board were in violation of the relevant clauses of the O & M agreement as the same were not being levied as per clause 6.5 thereof, as were detailed in the claim petition and also referred in the award. It was also the contention of the claimant that the Board was liable to refund the claimant the actual expenditure on one matter as detailed in the claim petition and refund of deposited departmental charges as mentioned in the claim petition were also liable to be refunded and the Board also owed certain amounts to the claimant on account of replacement of two energy meters which were replaced eight times. According to the claimant, the Board had charged for transportation facility for the staff, which was not covered by clause 6.5 of the O & M agreement and the charges were required to be refunded.

8. A perusal of the award further demonstrates that the Board asserted that whatever was being charged, was in accordance with the Aastha Guidelines and it prayed for rejection of the claim petition.

9. Learned Arbitrator framed the following Issues for consideration:-

(i) *Whether claimant is entitled to Rs. 1,55,22,759/- as*

refund from the respondent HPSEBL? OPC

- (ii) Whether claimant is entitled to interest @ 12% p.a.? OPC*
- (iii) Whether the claim is time barred? OPR*
- (iv) Relief.”*

10. In terms of the award, Issue No. 1 stands decided/answered by the learned Arbitrator by holding that the Board was liable to refund to the claimant an amount of Rs.1,38,86,075/- . This refund amount was arrived at by the learned Arbitrator in terms of the findings returned on the said Issue from para 25 onwards. Learned Arbitrator worked out on the basis of reasoning assigned from paras 24 to 42 the refund to which the claimant-Company was entitled by holding as under:-

“[43] Thus total refund due to the claimant company is as under-

<i>Expenditure</i>		<i>Payment recd by Board</i>
<i>[1]Salaries</i>	<i>63,44,410</i>	<i>1,98,26,943</i>
<i>[2]Fire Fighting 3</i>	<i>8,151</i>	
<i>[3]R&M Tpt</i>	<i>1,94,415</i>	
<i>4]Inspection</i>	<i>13,196</i>	
<i>[5]Civil works</i>	<i>2,63,504</i>	
<i>[5]R&M Rest</i>		
<i>House, residential</i>		
<i>Non residential</i>		
<i>Building etc</i>	<i>81,912</i>	
<i>Total</i>	<i>69,35,588</i>	<i>1,98,26,943</i>
<i>Refund to claimant</i>		<i>1,28,91,355</i>

Payment to claimant on

Account of Metering 2,94,720

Total payment to be made to

Claimant company by Board 1,31,86,075

[One crore thirty one lacs eighty six thousand fifty seventy five only]"

11. With regard to Issue No. 2, learned Arbitrator held that the Board withheld the actual expenditure that was incurred and recoverable from the claimant company despite there being express agreement in terms of clause 6.5 of the O&M agreement and cause of action as per the learned Arbitrator arose in favour of the claimant when in sent communication dated 28.12.2020. Learned Arbitrator further held that in terms of Section 31 of the 1996 Act, the claimant was entitled to interest @ 11% per annum from 28.12.2020 to 31.12.2022 and also entitled to further interest @ 11% w.e.f. 01.01.2023 till payment.

12. On Issue No. 3, learned Arbitrator held that as per Clause 6.3 of the O & M agreement Ext CW1/2, the Board was required to intimate the tentative amount required to be deposited for normal operation and maintenance of the interconnection facility for ensuing year and such estimates were being sent to the claimant. Learned Arbitrator further held that in terms of clause 6.5, the Board was required to intimate actual expenses payable by the Company to the Board on account of operation and maintenance of

the Sub Station for a year on the above basis including departmental charges to the company on or after the expiry of 30 days from the closure of financial year, to which the expenses relate. Learned Arbitrator held that as these documents were not supplied and this being the position, there was breach of clause 6.5 of the O&M agreement. Learned Arbitrator further held that it was evident from the documentary evidence on record that no intimation was ever sent to the Company in terms of Clause 6.5 of the O&M agreement and the Company sent communication dated 28.12.2020 to the Chief Engineer System Operation claiming that as no actual expenses were ever sent to it, thus there was dispute and refund be made to the company. Learned Arbitrator held that this was the point when the cause of action accrued to the claimant and Arbitrator was appointed on 06.08.2021 and thus the claim was within time.

13. The findings returned by the learned Arbitrator on the Issues stand returned after taking into consideration the respective contentions of the parties as well as the documents placed on record by the parties in respect of their respective contentions. This demonstrates that the findings returned by the learned Arbitrator stand returned after taking into consideration the material available before him on record. Careful perusal of the award passed by the

learned Arbitrator demonstrates that there is a detailed discussion on the respective contentions of the parties and the reasoning which has been assigned by the learned Arbitrator for the conclusions arrived at by him, which reasoning is borne out from the record of the case. That being so, as in light of law declared by Hon'ble Supreme Court of India, which has been referred by me hereinabove, there is no occasion for this Court to interfere with the award passed under Section 34 of the 1996 Act. This Court concurs with the findings returned by the learned Arbitrator that the claim petition was filed within limitation and the allegations of the Board that the claim was against the Aastha Guidelines was not been substantiated in the course of arguments. Even otherwise, as the spirit of arbitral proceedings is to respect the finality of the arbitral award until and unless there is grave and glaring perversity therein and in the absence of there being any perversity in the award, this Court sees no reason to interfere with the same.

Accordingly, in light of above discussion, this petition being devoid of merit is dismissed Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

November 28, 2025
(narendar)