**M/s Kanchanjunga Power Company Pvt. Ltd. Vs. HPERC & Ors.**

**CWP No.12440 of 2026**

27.07.2026 Present: Mr. Sunil Mohan Goel, Senior Advocate with Mr. Vipul Sharda, Mr. Nishant Kumar and Mr. Raditya Katoch, Advocates, for the petitioner.

Mr. Vinay Mehta and Ms. Neha Shandil, Advocates, for respondent No.1.

Mr. Shubham Sood, Advocate, for respondent No.2.

Ms. Sunita Sharma, Senior Advocate with Ms. Harshita Dogra and Ms. Manisha Kumari, Advocates, for respondent No.3.

***CWP No.12440 of 2026 & CMP No.18471 of 2026***

Respondent No.1-Himachal Pradesh Electricity Regulatory Commission on 22.01.2025 (Annexure P-4) passed a Multi Year Tariff (MYT) Order for respondent No.2-Himachal Pradesh Power Transmission Corporation Limited for financial years 2024-25 to 2028-29 in Petition No.30/2024, wherein respondent No.2 was the petitioner. It is not in dispute that the aforesaid MYT order was issued by respondent No.1 in consonance with law and after following the prescribed procedure, viz.:-

**(i).** Respondent No.2 had filed Petition No.30/2024 under Section 64(1) of the Indian Electricity Act (in short 'the Act') on 15.01.2024 before respondent No.1 seeking approval of its Five Year Business Plan, Aggregate Revenue Requirement (ARR) and Transmission Tariff (TT). Section 64 of the Act reads as under:-

*"64. Procedure for tariff order.- (1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.*

*(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.*

*(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,-*

*(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;*

*(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:*

*Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.*

*(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.*

*(5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.*

*(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order."*

In terms of Section 64(2) of the Act, the original petition preferred by respondent No.2 before respondent No.1 was published on 24.02.2024 in 'The Tribune' and 'Amar Ujala'.

**(ii).** In accordance with Section 64(3) of the Act and as per Regulation No.51(5) of HPERC Transmission Tariff Regulations, 2023, respondent No.1 issued public notice in the 'Hindustan Times' and 'Amar Ujala' on 28.02.2024, inviting objections/suggestions from the stakeholders.

It is the case of the petitioner that it was satisfied and had no objection with the prayer made by respondent No.2 in its petition, therefore, it did not participate in the process for issuing the MYT order.

As noticed above, respondent No.1 passed MYT order on 22.01.2025 in respondent No.2's Petition No.30/2024, approving consolidated ARR for respondent No.2's Intra-State Transmission System for 5$^{th}$ control period.

**2.** Petitioner's grievance is to the order dated 20.05.2026 (Annexure P-5) passed by respondent No.1, reviewing the MYT order dated 22.01.2025. This order was passed in Review Petition No.206 of 2025 instituted by respondent No.2. In terms of the impugned order dated 20.05.2026, review petition was partly allowed with respect to recovery of pool transmission charges for Wangtoo, Karian, Dehan and Gumma assets. Based upon the impugned order dated 20.05.2026, respondent No.2 has issued invoice on 11.06.2026 (Annexure P-6), raising retrospective demand of Rs.2,70,39,585/- on the petitioner for financial year 2024-25, 2025-26 and April, 2026. It continues monthly recovery from May, 2026 onwards. This invoice has also been impugned in the present writ petition.

**3.** Learned Senior Counsel for the petitioner has urged that while passed the review order dated 20.05.2026 and while initiating the process for reviewing the original MYT order dated 22.01.2025, the procedure prescribed under Section 64 of the Act & Regulation No.51 of the HPERC (Transmission Tariff) Regulations, 2023, had not been followed by respondent No.1. Taking note of the contentions raised for the petitioner, following order was passed in this matter on 24.07.2026:-

> *"Notice. Mr. Vinay Mehta, learned Counsel, Mr.Shubham Sood, learned Counsel and Ms. Harshita Dogra, learned Counsel, appear and waive service of notice on behalf of respective respondents.*
>
> *In view of the grievance raised regarding not following the procedure mandated in terms of the Act, applicable regulations/ instructions etc. by the respondent No.1 in passing the impugned order dated 25.02.2026 (Annexure P-5), let learned counsel to have instructions in the matter.*
>
> *List on 27.07.2026."*

Pursuant to above, learned counsel for respondent No.1-HPERC has placed on record respondent No.1's short affidavit, which is to the effect that Section 94(1)(f) of the Act confers review power upon respondent No.1. The said section reads as under:-

> *"94. Power of Appropriate Commission.- (1) the Appropriate Commission shall, for the purposes of any inquiry or*

*proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-*

*(a) to (e) xxx xxx xxx*

*(f) reviewing its decisions, directions and orders."*

The affidavit also traces power of respondent No.1 to review its decisions, directions or orders under Regulations 7(5) and 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024, relevant portion of which reads as under:-

*"Regulation 7. Functions and duties of the Secretary.*

*(1) to (4) xxx xxx xxx*

*(5) The Commission shall always have the authority, either on an application made by any interested or affected party, or suo moto, to review, revoke, revise, modify, amend, alter or otherwise change any order made or action taken by the Secretary or other officers of the Commission, if the Commission considers it to be appropriate."*

*Regulation 70. Review of the decision, directions and order.*

*(1) Any person aggrieved by a direction, decision or order of the Commission, from which.*

*(a) no appeal has been preferred; or*

*(b) from which no appeal is allowed, may, upon the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent on the face of the record, or for any other sufficient reasons, desires to obtain a review of the direction, decision or order made against him may apply, within thirty days from the date of receipt of copy of such direction, decision or order, for a review of such direction, decision or order, as the case may be, to the Commission.*

> *(2) An application for such review shall be filed in the same manner as a petition under these Regulations.*
>
> *(3) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.*
>
> *(4) When the Commission is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for."*

**4.** The affidavit only encapsulates the provisions under the Act/Regulations empowering respondent No.1 to review its decisions/directions/orders. The power is not in question in the writ petition. In issue, is the procedure followed for exercising the power of review. From the affidavit, it cannot be discerned that procedure as delineated in Section 64 of the Act and Regulation No.51 of the HPERC Transmission Tariff Regulations was followed by respondent No.1 before passing the impugned review order, based upon which, the impugned invoice was raised by respondent No.2.

It would be in place to refer to ***(2017) 16 SCC 498 (Gujarat Urja Vikas Nigam Limited Versus Solar Semiconductor Power Company (India) Private Limited and another)***, paragraph 37 of which, *inter alia*, holds that *"Hence, the generic tariff once determined under the statute with notice to the public can be amended only by following the same procedure. Therefore, the approach of this Court* *ought to be cautious and guarded when the decision has its bearing on the consumers".*

The above decision was relied upon in ***Writ Petition (L) No.19437 of 2025 (O2 Renewable Energy VII Private Limited Versus Maharashtra Electricity Regulatory Commission and another)***, decided alongwith connected matters by the Hon'ble Bombay High Court on 03.11.2025. Portion relevant to the context is as under:-

> *"36. When one reads these Regulations together and holistically, namely, Regulation 28, Regulation 39 and Regulation 40, it is clear that if any review/amendment is to be made to a MYT order, notice to the affected parties has to be issued allowing them to make their submissions and/or representations to the proposed amendments/rectifications. This Procedure ensures transparency and fair play and falls into line with Section 86(3) of the Electricity Act, 2003 which stipulates that the State Commission shall ensure transparency while exercising its powers and discharging its functions. Admittedly, this procedure has not been followed by MERC, and as mentioned earlier, it is the case of MERC as well as MSEDCL that no notice whatsoever is required to be issued before reviewing a MYT' order, and the same can even be done suo motu by MERC. We are unable to agree with the aforesaid submissions. When, the Electricity Act, 2003 and the Regulations (the MYT Regulations, 2024 and/or the TOB Regulations, 2022) provide for certain matters, there is no question of the Commission invoking any inherent power to deviate therefrom. The inherent powers cannot be invoked to bypass the Act or Regulations. This is more so in the present case when Regulation 14 of the TOB Regulations, 2022 clearly stipulate that MERC can initiate any proceedings suo motu, but not review proceedings. Even assuming for the sake of argument that MERC in the present case could do so, it could only be in special circumstances as stipulated in Regulation 39, and no such special circumstance has been pointed out to us from the impugned review order.*
>
> *37. Whilst on this subject, it would be apposite to refer to the decision of the Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Limited Vs. Solar*

*Semiconductor Power Co. Pvt. Ltd. and Anr. [(2017) 16 SCC 498]. The Hon'ble Supreme Court was inter alia examining the extent to which the Commission could exercise its inherent power under the Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations, 2004. The Hon'ble Supreme Court came to the conclusion that under Regulations 80 to 82 [the concerned Regulations, and which are pari materia to Regulation 39 of the TOB Regulations, 2022], the Commission had powers to deal with any matter or exercise any power under the Act or the rules, for which no Regulations were framed. In other words, where something was expressly provided in the Act, the Commission had to deal with it only in accordance with the manner prescribed in the Act. In case of a specific subject, or exercise of power by the Commission on a specific issue that was provided under the Act, or the Rules, or the Regulations, the same had to be exercised by the Commission only taking recourse to that power and in no other manner. What the Supreme Court noted in its judgment, and what is important for our purpose, is that the interest of the consumers, as an objective, can be clearly ascertained from the Electricity Act, 2003. The preamble of the Act mentions protecting the interests of the consumers and requires that the interests of the consumers be safeguarded when determining the tariff. It noted that under Section 64, read with Section 62, determination of tariff is to be made only after considering all suggestions and objections received from the public. Hence, the generic tariff once determined under the statute, with notice to the public, can be amended only by following the same procedure. The relevant portion of this decision reads thus:-*

*xxx xxx xxx*

*38. We are clearly of the view that the ratio of this decision would apply with full force to the facts of the present case. Here also, when the original MYT order was passed by MERC [on a Tariff Petition filed by MSEDCL], it followed the procedure as laid down in Regulation 14 of the MYT Regulation, 2024 and invited all stakeholders to give their suggestions and objections. After taking into consideration their suggestions and objections, the MYT order dated 28“h March 2025 was passed. It would therefore stand to reason that the same procedure be followed whilst reviewing the MYT order, or else it would lead to grave injustice and chaos. In other words, when the MYT order is passed after taking inputs of all the stakeholders, it would be absurd to suggest that those very stakeholders, whose objections and suggestions were invited and considered, are not to be heard when* *the same MYT order is sought to be amended/reviewed, and that too to their detriment. Those very stakeholders would certainly have something to say if the said MYT order is to be reviewed, and more so if it would affect their interests, as in the present case. This is also clear on a holistic reading of the TOB Regulations, 2022. Even if one were to assume that Regulation 28(f) of the TOB Regulations, 2022 was not to apply, as contended by MERC and MSEDCL (not that we accept the said submission), Regulation 40(b), read with its proviso, makes it extremely clear that before any amendment or rectification is to be done [other than the ones mentioned in Regulation 40(a)], notice has to be given to the affected parties. This would also fulfill the mandate of transparency contemplated under Section 86(3) of the Act.*

*40. This is apart from the fact that the Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Limited (supra)[reproduced earlier], has categorically held that once determination of tariff is done after considering all suggestions and objections received from the public, the said tariff, once determined after notice to the public, can be amended only by following the same procedure.*

*41. Though a lot of judgments have been cited before us as to what effect breach of principles of natural justice would have on an order passed by MERC, in light of the findings given above, we need not burden this judgment by dealing with each and every one of those judgments. Suffice it to state that where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se may not lead to the invalidity of the orders passed, and prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest but also in the public interest [See State of Uttar Pradesh Vs. Sudhir Kumar Singh and Ors. (supra), paragraph 42.2]. In the facts of the present case, not only are there mandatory provisions for giving notice to affected parties [Regulation 40(b) of the TOB Regulations, 2022], but in the facts of the present case, serious prejudice is certainly caused to a substantial portion of the stakeholders, if the impugned review order is implemented without first hearing those stakeholders.*

*42. In view of the foregoing discussion, the impugned review order dated 25th June 2025 is hereby quashed and set aside. The matter is now remanded to MERC to decide the Review Petition filed by MSEDCL afresh after consulting all stakeholders and hearing and taking into consideration their objections, if any. Before MERC embarks upon this journey, it shall ensure that MSEDCL*

> *shall forward a copy of its Review Petition [alongwith its annexures, if any] to any stakeholder who seeks it. Additionally, MERC shall ensure that public notice is given by MSEDCL as contemplated under Regulation 14 of the MYT Regulation, 2024. We have passed these directions because in the facts of the present case, we find that the review sought by MSEDCL has far reaching consequences on the stakeholders, including the consumers. Once the aforesaid procedure is followed and MERC passes any order on the Review Petition filed by MSEDCL, the aggrieved party is free to challenge that order before APTEL under Section 111 of the Electricity Act, 2003. It is clarified that until MERC passes an order on the Review Petition, the parties shall be governed by the MYT order 28th March 2025."*

***Special Leave to Appeal (C) No(s).32900-32911/2025 (Maharashtra State Electricity Distribution Company Ltd. Versus O2 Renewable Energy VII Private Limited & Anr.)*** instituted against the above decision was dismissed by the Hon'ble Apex Court on 17.11.2025.

**5.** In view of above, taking into consideration the limited grievance raised by the petitioner about non-compliance with not only the principles of natural justice, but also with the mandatory statutory and regulatory mechanism by respondent No.1 before issuing the review order, the impugned order dated 20.05.2026 passed in Review Petition No.206 of 2025 (Annexure P-5) as also the invoice dated 11.06.2026 (Annexure P-6) issued by respondent No.2, shall remain stayed. Accordingly, *CMP No.18471 of 2026* to stand disposed of.

Reply to the writ petition be filed within two weeks.

List on ***12.08.2026***.

Jyotsna Rewal Dua
Judge

July 27, 2026
*Mukesh*