

M/S Kundlas Loh Udyog vs Hpsebl And Others on 3 December, 2024

Author: Sandeep Sharma

Bench: Sandeep Sharma

2024:HHC:13629

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 12178 of 2024 with
CWP Nos. 12180, 12273-12275, 12292, 12293, 12365-12372, 12397-
12403, 12407, 12413, 12414, 12486, 12494, 12497, 12500, 12503,
12545, 12547, 12549, 12557, 12560, 12565, 12624, 12631-12632,
12663, 12665-12669, 12671, 12675, 12678, 12683, 12690,
12692, 12695, 12772, 12774-12777, 12781, 12786-12789, 12803-
12809, 12812-12814, 12833, 12835, 12836, 12838, 12841, 12877,
12880, 12893, 12894, 12895, 12898, 12899, 12902, 12903, 12911,
12913, 12988, 12992, 13004, 13112, 13114, 13115, 13126, 13128,
13129, 13139, 13143, 13145, 13148, 13203-13205, 13208, 13213,
13216-13219, 13249, 13254, 13263, 13268, 13269-13271, 13273-
13277, 13297, 13299-13304, 13306-13309, 13329, 13333, 13336,
13341, 13367, 13371, 13380, 13381, 13385, 13387, 13389, 13405,
13415, 13421, 13423, 13428, 13430, 13432, 13434, 13436, 13439,
13441, 13469, 13471, 13472, 13473, 13475, 13486-13488, 13516,
13518, 13521, 13522, 13529, 13531, 13538, 13659, 13673, 13674,
13675, 13679, 13680, 13682, 13688, 13689, 13693, 13695, 1379,
13791, 13802, 13808, 13810, 13812, 13813, 13814, 13815, 13816,
13941 of 2024

Reserved on: November 29, 2024

Decided on: December 3, 2024

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1. CWP No. 12178 of 2024
M/s Kundlas Loh Udyog .. Petitioner
Versus
HPSEBL and others .. Respondents
 2. CWP No. 12180 of 2024
M/s Vardhman Ispat Udyog .. Petitioner
Versus
HPSEBL and others .. Respondents
 3. CWP No.12273 of 2024
M/s Salsan Steels Pvt. Ltd. .. Petitioner

- Versus
- HPSEBL and others .. Respondents
4. CWP No.12274 of 2024
M/s Aggarwal Steel Industries Pvt. Ltd. .. Petitioner
- Versus
- HPSEBL and others .. Respondents
5. CWP No.12275 of 2024
M/s Prime Steels Industries Pvt. Ltd. .. Petitioner
- Versus
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- CWP No. 12178 of 2024:
M/s Kundlas Loh Udyog v. HPSEBL and connected matters
- HPSEBL and others .. Respondents
6. CWP No.12292 of 2024
M/s J.B. Rollings Ltd. .. Petitioner
- Versus
- HPSEBL and others .. Respondents
7. CWP No. 12293 of 2024
M/s H.M. Steels Ltd. .. Petitioner
- Versus
- HPSEBL and others .. Respondents
8. CWP No.12365 of 2024
M/s India Steel Continental (P) Ltd. .. Petitioner
- Versus
- HPSEBL and others .. Respondents
9. CWP No. 12366 of 2024
M/s Amba Shakti Ispat Ltd. .. Petitioner
- Versus
- HPSEBL and others .. Respondents
10. CWP No.12367 of 2024
M/s Timco Steel Company .. Petitioner
- Versus
- HPSEBL and others .. Respondents
11. CWP No.12368 of 2024
M/s Theon Pharmaceutical Ltd. .. Petitioner
- Versus
- HPSEBL and others .. Respondents
12. CWP No.12369 of 2024
M/s Ruchira Papers Ltd. .. Petitioner
- Versus
- HPSEBL and others .. Respondents

13. CWP No.12370 of 2024
M/s LBG Power Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
14. CWP No.12371 of 2024
M/s Saboo Tor Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
15. CWP No.12372 of 2024
M/s Suraj Fabrics Industries Ltd. .. Petitioner
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M/s Kundlas Loh Udyog v. HPSEBL and connected matters
Versus
HPSEBL and others .. Respondents
16. CWP No. 12397 of 2024
M/s B.R. Agrotech Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
17. CWP No.12398 of 2024
M/s Amba Industrial Corporation & anr. .. Petitioners
Versus
HPSEBL and others .. Respondents
18. CWP No.12399 of 2024
M/s Tesna Tech Private Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
19. CWP No.12400 of 2024
M/s Vashisht Alloys .. Petitioner
Versus
HPSEBL and others .. Respondents
20. CWP No.12401 of 2024
M/s Shivalik Packaging Industries .. Petitioner
Versus
HPSEBL and others .. Respondents
21. CWP No.12402 of 2024
M/s Kumar Steelways Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
22. CWP No.12403 of 2024

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| M/s Jaiswal Metals Pvt. Ltd. | .. | Petitioner |
| | Versus | |
| HPSEBL and others | .. | Respondents |
23. CWP No.12407 of 2024
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| M/s Friends Alloys | .. | Petitioner |
| | Versus | |
| HPSEBL and others | .. | Respondents |
24. CWP No. 12413 of 2024
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| M/s Cosmo Ferrites Limited | .. | Petitioner |
| | Versus | |
| HPSEBL and others | .. | Respondents |
25. CWP No. 12414 of 2024
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- M/s Kundlas Loh Udyog v. HPSEBL and connected matters
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| M/s Maa Bhanbhoori Steels & Alloys | .. | Petitioner |
| | Versus | |
| HPSEBL and others | .. | Respondents |
26. CWP No.12486 of 2024
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| M/s Modulus Cosmetics Pvt. Ltd. | .. | Petitioner |
| | Versus | |
| HPSEBL and others | .. | Respondents |
27. CWP No.12494 of 2024
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| M/s Divyadhan Recycling Industries Ltd. | .. | Petitioner |
| | Versus | |
| HPSEBL and others | .. | Respondents |
28. CWP No.12497 of 2024
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| M/s Sylvan Greens Pvt. Ltd. | .. | Petitioner |
| | Versus | |
| HPSEBL and others | .. | Respondents |
29. CWP No.12500 of 2024
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| M/s Vardhman Textiles Ltd. & another | .. | Petitioners |
| | Versus | |
| HPSEBL and others | .. | Respondents |
30. CWP No.12503 of 2024
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| M/s RRD Oils and Fats Pvt. Ltd. | .. | Petitioner |
| | Versus | |
| HPSEBL and others | .. | Respondents |
31. CWP No.12545 of 2024
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| M/s Birla Textile Mills and another | .. | Petitioners |
| | Versus | |

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| HPSEBL and others | | .. Respondents |
| 32. CWP No.12547 of 2024 | | |
| M/s Valco Industries Limited | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
| 33. CWP No.12549 of 2024 | | |
| M/s Surya Textech | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
| 34. CWP No.12557 of 2024 | | |
| M/s Livguard Batteries Private Limited | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
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| | CWP No. 12178 of 2024: | |
| M/s Kundlas Loh Udyog v. HPSEBL and connected matters | | |
| 35. CWP No.12560 of 2024 | | |
| M/s Perfect Packaging | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
| 36. CWP No.12565 of 2024 | | |
| M/s Globe Precesion | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
| 37. CWP No.12624 of 2024 | | |
| M/s Jupiter International Limited | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
| 38. CWP No. 12631 of 2024 | | |
| M/s AB Tools Pvt. Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
| 39. CWP No.12632 of 2024 | | |
| M/s Milestone Gears (P) Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
| 40. CWP No. 12663 of 2024 | | |
| M/s Unix Biotech | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
| 41. CWP No. 12665 of 2024 | | |

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| M/s Mahodar Beverages | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
42. CWP No. 12666 of 2024
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| M/s Varav Biogenesis Pvt. Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and another. | | .. Respondents |
43. CWP No. 12667 of 2024
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| M/s Filmpac Pvt. Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
44. CWP No.12669 of 2024
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| M/s Mahodar Beverages | | .. Petitioner |
| | Versus | |
| HPSEBL and another. | | .. Respondents |
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45. CWP No.12671 of 2024
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| M/s Sunoxx International Pvt. Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
46. CWP No.12675 of 2024
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| M/s Zeon Life Sciences Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
47. CWP No.12678 of 2024
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| M/s Veer Plastics Pvt. Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
48. CWP No.12683 of 2024
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| M/s Geon International Pvt Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
49. CWP No.12690 of 2024
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| M/s Regency Carbide Pvt. Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
50. CWP No. 12692 of 2024
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| M/s Winsome Textile Industries Limited | | .. Petitioner |
| | Versus | |

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| HPSEBL and others | .. Respondents |
| 51. CWP No.12695 of 2024
M/s Valley Iron and Steel Company Limited
Versus | .. Petitioner |
| HPSEBL and others | .. Respondents |
| 52. CWP No.12772 of 2024
M/s Sidhartha Super Spinning Mills Limited
Versus | .. Petitioner |
| HPSEBL and others | .. Respondents |
| 53. CWP No. 12774 of 2024
M/s Himtex Textiles Pvt. Ltd.
Versus | .. Petitioner |
| HPSEBL and others | .. Respondents |
| 54. CWP No.12775 of 2024
M/s Him Teknoforge Limited
Versus | .. Petitioner |
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M/s Kundlas Loh Udyog v. HPSEBL and connected matters | |
| HPSEBL and others | .. Respondents |
| 55. CWP No.12776 of 2024
M/s Emmbros Aurtocomp limited
Versus | .. Petitioner |
| HPSEBL and others | .. Respondents |
| 56. CWP No.12777 of 2024
M/s Globe Precesion Industries Private limited
Versus | .. Petitioner |
| HPSEBL and others | .. Respondents |
| 57. CWP No. 12781 of 2024
M/s Mountain Steels Pvt. Ltd.
Versus | .. Petitioner |
| HPSEBL and others | .. Respondents |
| 58. CWP No.12786 of 2024
M/s Allkind Healthcare, Unit- III
Versus | .. Petitioner |
| HPSEBL and others | .. Respondents |
| 59. CWP No. 12787 of 2024
M/s Allkind Healthcare, Unit- I
Versus | .. Petitioner |
| HPSEBL and others | .. Respondents |

60. CWP No. 12788 of 2024
M/s Allkind Healthcare, Unit- II .. Petitioner
Versus
HPSEBL and others .. Respondents
61. CWP No. 12789 of 2024
M/s Allkind Healthcare, Unit- III .. Petitioner
Versus
HPSEBL and others .. Respondents
62. CWP No. 12803 of 2024
M/s Samana Industries limited .. Petitioner
Versus
HPSEBL and others .. Respondents
63. CWP No. 12804 of 2024
M/s Haripur Kraft Company .. Petitioner
Versus
HPSEBL and others .. Respondents
64. CWP No.12805 of 2024
M/s Trilokpur Power Pvt. Ltd. .. Petitioner
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M/s Kundlas Loh Udyog v. HPSEBL and connected matters
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65. CWP No. 12806 of 2024
M/s Him Chem Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
66. CWP No.12807 of 2024
M/s Jai Jawala Steels Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
67. CWP No.12808 of 2024
M/s GC Fibre Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
68. CWP No. 12809 of 2024
M/s Shree Siddi Vinayak Tor Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
69. CWP No.12812 of 2024
M/s Haripur Paper Mill Ltd. .. Petitioner

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HPSEBL and others		.. Respondents
70. CWP No. 12813 of 2024		
M/s Pooja Cotspin Pvt. Ltd.		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
71. CWP No.12814 of 2024		
M/s Shree Siddi Vinayak Forging Pvt. Ltd.		.. Petitioner
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HPSEBL and others		.. Respondents
72. CWP No.12833 of 2024		
M/s Vishal Engineering Company		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
73. CWP No. 12835 of 2024		
M/s Nixi Laboratories Pvt. Ltd.		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
74. CWP No. 12836 of 2024		
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M/s Kundlas Loh Udyog v. HPSEBL and connected matters		
M/s Pymen Cable Corporation		.. Petitioner
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HPSEBL and others		.. Respondents
75. CWP No.12838 of 2024		
M/s Vishal Engineering		.. Petitioner
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HPSEBL and others		.. Respondents
76. CWP No. 12841 of 2024		
M/s Virgo Aluminum ltd.		.. Petitioner
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HPSEBL and others		.. Respondents
77. CWP No. 12877 of 2024		
M/s Higgs Healthcare		.. Petitioner
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HPSEBL and others		.. Respondents
78. CWP No.12880 of 2024		
M/s Auraya Healthcare		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents

79. CWP No. 12893 of 2024
M/s Su-Kam Power Systems Ltd .. Petitioner
Versus
HPSEBL and others .. Respondents
80. CWP No.12894 of 2024
M/s Nikon Ferrochem & another .. Petitioners
Versus
HPSEBL and others .. Respondents
81. CWP No.12895 of 2024
M/s Aqua Vitoe Laboratories .. Petitioner
Versus
HPSEBL and others .. Respondents
82. CWP No. 12898 of 2024
Nahan Ferro Alloys and Chemicals Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
83. CWP No. 12899 of 2024
M/s Acme Formulations Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
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84. CWP No.12902 of 2024
M/s Immacule Life Sciences Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
85. CWP No. 12903 of 2024
M/s Acme Generies Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
86. CWP No.12911 of 2024
M/s Avni Castech Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
87. CWP No. 12913 of 2024
M/s Aqua Parental .. Petitioner
Versus
HPSEBL and others .. Respondents
88. CWP No.12988 of 2024
M/s Rica Enterprises .. Petitioner

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HPSEBL and others		.. Respondents
89. CWP No. 12992 of 2024		
M/s Orison Pharma International		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
90. CWP No. 13004 of 2024		
M/s Deepak Spinner Ltd.		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
91. CWP No. 13112 of 2024		
M/s PMW Metals and Alloys Pvt. Ltd.		.. Petitioner
	Versus	
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92. CWP No.13114 of 2024		
M/s Vimal Industries Ltd.		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
93. CWP No. 13115 of 2024		
M/s Shine Polymers		.. Petitioner
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HPSEBL and others		.. Respondents
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94. CWP No. 13126 of 2024		
M/s Amer-Sil Ketex Pvt. Ltd. Unit-II		.. Petitioner
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HPSEBL and others		.. Respondents
95. CWP No.13128 of 2024		
M/s Shine Industries		.. Petitioner
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96. CWP No.13129 of 2024		
M/s Amer-Sil Ketex Pvt. Ltd. Unit-I		.. Petitioner
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97. CWP No.13139 of 2024		
M/s Rajshree Fabrics		.. Petitioner
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98. CWP No.13143 of 2024
M/s Yamada Automations Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
99. CWP No. 13145 of 2024
M/s Angad Enterprises .. Petitioner
Versus
HPSEBL and others .. Respondents
100. CWP No.13148 of 2024
M/s Jay Aay Alloys Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
101. CWP No.13203 of 2024
M/s Biological E. Ltd. .. Petitioner
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HPSEBL and others .. Respondents
102. CWP No. 13204 of 2024
M/s MMG Healthcare .. Petitioner
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HPSEBL and others .. Respondents
103. CWP No. 13205 of 2024
M/s Eastman Auto and Power Ltd. .. Petitioner
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M/s Kundlas Loh Udyog v. HPSEBL and connected matters
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104. CWP No. 13208 of 2024
M/s JPD Precision Fasteners Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
105. CWP No. 13212 of 2024
M/s Morepen Laboratories Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
106. CWP No.13213 of 2024
M/s Sri Hans Packaging .. Petitioner
Versus
HPSEBL and others .. Respondents
107. CWP No. 13216 of 2024

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| M/s Barflex Polyfilms Unit-I | .. Petitioner |
| Versus | |
| HPSEBL and others | .. Respondents |
108. CWP No.13217 of 2024
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| M/s Barflex Polyfilms Unit-II | .. Petitioner |
| Versus | |
| HPSEBL and others | .. Respondents |
109. CWP No.13218 of 2024
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| M/s Barflex Polyfilms Ltd. Unit-III | .. Petitioner |
| Versus | |
| HPSEBL and others | .. Respondents |
110. CWP No.13219 of 2024
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| M/s Okaya EV Pvt. Ltd. and another | .. Petitioners |
| Versus | |
| HPSEBL and others | .. Respondents |
111. CWP No.13249 of 2024
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| M/s Ultratech Cement Ltd. | .. Petitioner |
| Versus | |
| HPSEBL and others | .. Respondents |
112. CWP No.13254 of 2024
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| M/s Ultratech Cement Ltd. | .. Petitioner |
| Versus | |
| HPSEBL and others | .. Respondents |
113. CWP No.13263 of 2024
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| M/s Micro Seamless | .. Petitioner |
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| HPSEBL and others | .. Respondents |
114. CWP No. 13268 of 2024
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| M/s Luminous Power Technologies Pvt. Ltd. | .. Petitioner |
| Versus | |
| HPSEBL and others | .. Respondents |
115. CWP No. 13269 of 2024
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| Pashupati Spinning and Weaving Mills Plant | .. Petitioner |
| Versus | |
| HPSEBL and others | .. Respondents |
116. CWP No.13270 of 2024
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| M/s Micro Turner Unit-II &VI | .. Petitioner |
| Versus | |

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117. CWP No. 13271 of 2024 M/s Amer-Sil Ketex Pvt. Ltd.	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
118. CWP No.13273 of 2024 M/s International Cylinder Pvt. Ltd.	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
119. CWP No. 13274 of 2024 M/s Alps Communication Pvt. Ltd.	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
120. CWP No. 13275 of 2024 M/s Power Star	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
121. CWP No. 13276 of 2024 M/s Balaji Storage Batteries Ltd.	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
122. CWP No.13277 of 2024 M/s Super Hoze Industries Pvt. Ltd.	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
123. CWP No.13297 of 2024	
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M/s Livguard Energy Technology	.. Petitioner
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HPSEBL and others	.. Respondents
124. CWP No. 13299 of 2024 M/s DP Chocolates Unit-II	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
125. CWP No. 13300 of 2024 M/s JM Enterprises	.. Petitioner
Versus	
HPSEBL and others	.. Respondents

126. CWP No.13301 of 2024
M/s Megha Steel Industry .. Petitioner
Versus
HPSEBL and others .. Respondents
127. CWP No.13302 of 2024
M/s Perfect Packaging .. Petitioner
Versus
HPSEBL and others .. Respondents
128. CWP No.13303 of 2024
M/s Chanan Fabrication Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
129. CWP No. 13304 of 2024
Mehta Bishan Dass and Associates Unit Shivambu International .. Petitioner
Versus
HPSEBL and others .. Respondents
130. CWP No.13306 of 2024
M/s JMD Enterprises .. Petitioner
Versus
HPSEBL and others .. Respondents
131. CWP No.13307 of 2024
M/s Bhawani Polymers .. Petitioner
Versus
HPSEBL and others .. Respondents
132. CWP No. 13308 of 2024
M/s Mahesh Udyog .. Petitioner
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133. CWP No. 13309 of 2024
M/s Tirupati Wellness Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
134. CWP No.13329 of 2024
M/s Metro Decorative Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
135. CWP No.13333 of 2024

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| M/s Vidit Healthcare | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
136. CWP No.13336 of 2024
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| M/s Tirupati Medicare Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
137. CWP No.13341 of 2024
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| M/s Venkateshwara Ferro Alloys Pvt. Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
138. CWP No. 13367 of 2024
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| M/s RR Kabel Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
139. CWP No.13371 of 2024
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| M/s GMH Organics | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
140. CWP No. 13380 of 2024
- | | | |
|---------------------|--------|----------------|
| M/s Amco Industries | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
141. CWP No. 13381 of 2024
- | | | |
|--------------------------|--------|----------------|
| M/s GMH Organics Unit-II | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
142. CWP No. 13385 of 2024
- | | | |
|-------------------------------------------------------|------------------------|----------------|
| M/s Ivpex Parenteral Pvt. Ltd. | | .. Petitioner |
| | Versus | |
| | 16 | 2024:HHC:13629 |
| | CWP No. 12178 of 2024: | |
| M/s Kundlas Loh Udyog v. HPSEBL and connected matters | | |
| | | |
| HPSEBL and others | | .. Respondents |
143. CWP No.13387 of 2024
- | | | |
|---------------------------|--------|----------------|
| M/s Pontika Aerotech Ltd. | | .. Petitioner |
| | Versus | |
| HPSEBL and others | | .. Respondents |
144. CWP No. 13389 of 2024
- | | | |
|-------------------------------------|--------|---------------|
| M/s Tirupati Life Sciences Pvt.Ltd. | | .. Petitioner |
| | Versus | |

HPSEBL and others	.. Respondents
145. CWP No. 13405 of 2024	
M/s Hindustan Polyfab Unit-II	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
146. CWP No. 13415 of 2024	
M/s BRD Medilabs Unit-II	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
147. CWP No. 13421 of 2024	
M/s M.Sea Pharmaceuticals Pvt. Ltd.	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
148. CWP No.13423 of 2024	
M/s Three B Healthcare Ltd.	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
149. CWP No.13428 of 2024	
M/s Mahalakshmi Spintex Pvt. Ltd.	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
150. CWP No.13430 of 2024	
M/s Vetbesta Labs	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
151. CWP No.13432 of 2024	
M/s Zedco Plastico LLP	.. Petitioner
Versus	
HPSEBL and others	.. Respondents
152. CWP No.13434 of 2024	
M/s Relax Pharmaceuticals Pvt. Ltd.	.. Petitioner
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153. CWP No.13436 of 2024	
M/s Ambassador Cements Ltd.	.. Petitioner
Versus	
HPSEBL and others	.. Respondents

154. CWP No. 13439 of 2024
M/s Copmed Pharmaceuticals Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
155. CWP No.13441 of 2024
M/s Amit Print N Pack .. Petitioner
Versus
HPSEBL and others .. Respondents
156. CWP No. 13469 of 2024
M/s Asian Concretes and Cements Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
157. CWP No.13471 of 2024
M/s Ambuja Cements Ltd. (Unit Nalagarh) .. Petitioner
Versus
HPSEBL and others .. Respondents
158. CWP No. 13472 of 2024
M/s Associate Cement Company (ACC) Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
159. CWP No.13473 of 2024
M/s Ambuja Cements Ltd. (Unit Suli & Rauri) .. Petitioner
Versus
HPSEBL and others .. Respondents
160. CWP No.13475 of 2024
M/s Havells India Ltd. and others .. Petitioners
Versus
HPSEBL and others .. Respondents
161. CWP No. 13486 of 2024
M/s Neelam Alloys .. Petitioner
Versus
HPSEBL and others .. Respondents
162. CWP No. 13487 of 2024
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M/s Hi-Mech Industries .. Petitioner
Versus
HPSEBL and others .. Respondents
163. CWP No. 13488 of 2024
M/s Fewa Electrical Corporation .. Petitioner

	Versus	
HPSEBL and others		.. Respondents
164. CWP No.13516 of 2024 M/s Star Thermocol		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
165. CWP No. 13518 of 2024 M/s Advance Valves Pvt. Ltd.		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
166. CWP No.13521 of 2024 M/s Eva Grow Packaging		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
167. CWP No. 13522 of 2024 M/s Eva Grow Medicaps Pvt. Ltd.		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
168. CWP No. 13529 of 2024 M/s Magic Blades Pvt. Ltd.		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
169. CWP No. 13531 of 2024 M/s Jay Tee Manufacturing Co.		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
170. CWP No.13538 of 2024 M/s Advance Valves Solutions		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
171. CWP No.13659 of 2024 M/s Bindal Technopolymer Pvt. Ltd.		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
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	M/s Kundlas Loh Udyog v. HPSEBL and connected matters	
172. CWP No. 13673 of 2024 M/s Aishwarya Lifesciences		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents

173. CWP No. 13674 of 2024
M/s Aishwarya Healthcare .. Petitioner
Versus
HPSEBL and others .. Respondents
174. CWP No. 13675 of 2024
M/s Nove Bain Products .. Petitioner
Versus
HPSEBL and others .. Respondents
175. CWP No. 13679 of 2024
M/s Celebrity Biopharma Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
176. CWP No.13680 of 2024
M/s Continental Engineering Co. .. Petitioner
Versus
HPSEBL and others .. Respondents
177. CWP No.13682 of 2024
M/s OT0 Chucks Industry .. Petitioner
Versus
HPSEBL and others .. Respondents
178. CWP No. 13688 of 2024
M/s Legacy Foods Pvt. Ltd. .. Petitioner
Versus
HPSEBL and others .. Respondents
179. CWP No.13689 of 2024
M/s Radiant Castings Private Limited .. Petitioner
Versus
HPSEBL and others .. Respondents
180. CWP No. 13693 of 2024
M/s DP Cocoa Products LLP .. Petitioner
Versus
HPSEBL and others .. Respondents
181. CWP No.13695 of 2024
M/s MR Enterprises .. Petitioner
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HPSEBL and others .. Respondents
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182. CWP No.13789 of 2024
M/s Shri Ram Print N Pack .. Petitioner

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183. CWP No. 13791 of 2024		
M/s Able Pharma		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
184. CWP No. 13802 of 2024		
M/s Vardhman Polytex Limited		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
185. CWP No.13808 of 2024		
M/s Microtek New Technologies Pvt. Ltd. & others		.. Petitioners
	Versus	
HPSEBL and others		.. Respondents
186. CWP No. 13810 of 2024		
M/s Pace Biotech		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
187. CWP No.13812 of 2024		
M/s Innova Captab Limited		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
188. CWP No.13813 of 2024		
M/s Pharma Force Labs, Unit-II		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
189. CWP No.13814 of 2024		
M/s Pace Biotech Pharma (India) Pvt. Ltd.		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
190. CWP No.13815 of 2024		
M/s Sun Pharmaceuticals Industries Limited		.. Petitioner
	Versus	
HPSEBL and others		.. Respondents
191. CWP No.13816 of 2024		
M/s Frontier Alloy Steels Ltd.		.. Petitioner

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HPSEBL and others

.. Responden

192. CWP No.13941 of 2024
M/s Kiran Industries

Versus

HPSEBL and others

.. Responden

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? 1 Yes.

For the Petitioner(s)

:

Mr. K.D. Shreedhar, Senior Advocate with Mr. Manik Sethi & Ms. Sneh Bhimta, Advocates in CWP Nos. 12273, 12365, 12366, 12369, 12371, 12372 and 12500 of 2024.

Mr. Shrawan Dogra, Senior Advocate with Mr. Manik Sethi, Advocate in CWP Nos. 12274, 12275, 12292, 12293, 12367, 12368, 12413, 12414, 12494, 12497, 12671, 12675 and 12678 of 2024.

Mr. Vishal Mohan, Senior Advocate with Mr. Kulwant Chauhan, Advocate in CWP Nos. 13469, 13471, 13472 and 13473 of 2024.

Mr. V.S. Chauhan, Senior Advocate with Mr. Arsh Chauhan, Advocate in CWP Nos. 12903, 12902 and 12899 of 2024.

Mr. Anshul Bansal, Senior Advocate with Mr. Anshul Attri, Advocate in CWP Nos. 13789 and 13791 of 2024

Mr. Tara Singh Chauhan, Senior Advocate with Mr. Surya Chauhan, Advocate in CWP Nos. 12557, 13216, 13217, 13218 and 12560 of 2024.

Mr. Abhishek Sethi and Ms. Richa Sethi and Mr. Pawan K. Sharma,

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

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters

Advocates, for the petitioner(s) in
CWP No. 13815 of 2024

Mr. Ajay Vaidya and Ms. Narvada,
Advocates in CWP Nos.12565,
12772, 12695, 12692, 12690, 12774,
12775, 13114, 13004, 13139, 12803,
12804, 12805, 12806, 12807, 12808,
12809, 12812, 12813, 13145, 13148,
13203 to 13205,13208, 13329,
13333, 13336, 13273 to 13277,
13389, 13387, 13381, 13371, 13309,
13421, 13423, 13428, 13430, 13432,
13434, 13436, 13439, 13441, 13810,
13812, 13813, 13814, 13816 and
12814 of 2024.

Mr. Aman Parth Sharma, Advocate in
CWP No.13367, 13112, 13126,
13128, 13129, 12911, 13516, 13488,
13487, 13486, 13518, 13271, 13304,
13380, 13308, 13307, 13306, 13303,
13302, 13301, 13300, 13297, 13115,
13529, 13695, 13682, 13680, 13675,
13659, 13538, 13531, 13941 of
2024.

Mr. Amit Kumar Dhumal, Advocate in
CWP No. 13689 of 2024.

Mr. Arvind Sharma, Advocate in
CWP Nos. 12781, 13249 and 13254
of 2024.

Mr. Ganesh Barowalia, Advocate in
CWP No.13688 of 2024.

Mr. Karan Singh Kanwar, Advocate
in CWP Nos. 12898 and 12894 of
2024.

Mr. Manik Sethi, Advocate in CWP
Nos.12397 to 12403, 12545, 12547,
12549, 12632, 12678, 12895, 12893,
12776, 13212, 13219, 13341, 13475,
13802, 13808 and 12683 of 2024.

Mr. O.C. Sharma, Advocate in CWP
Nos. 12665, 12666, 12667, 12669,

M/s Kundlas Loh Udyog v. HPSEBL and connected matters

12833, 12835, 12836, 12838, 12841, 12992, 12988, 12913 and 12777 of 2024.

Mr. Prem Chand Verma, Mr. Manvender Singh, Mr. Varun Thakur, Mr. Aakash Thakur, Advocates in CWP Nos. 12370, 12407, 12486, 12503, 12624, 12631, 12663, 12880, 12877, 12786, 12787, 12788, 12789, 13415, 13385, 13299, 13213, 13521, 13522, 13693 and 13405 of 2024.

Mr. Udit Shaurya Kaushik, Advocate, for the petitioner(s) in CWP No. 13143 of 2024

Mr. Vishal Sharma and Mr. Daleep Chand, Advocates in CWP Nos. 13263, 13268, 13269 and 13270 of 2024.

Mr. Vikas Rathore, Advocate in CWP Nos. 13679, 13674 and 13673 of 2024.

For the Respondents : Mr. Vinay Kuthiala and Ms. Sunita Sharma, Senior Advocate, for the respondent-HPSEBL, in all the petitions.

Mr. N.K. Sood, Senior Advocate with Mr. Vinay Mehta, Advocate, for the respondent-HPERC, in all the petitions.

Mr. Anoop Rattan, Advocate General with Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Additional Advocates General with Mr. Ravi Chauhan, Deputy Advocate General, for the respondent-State, in all the petitions.

Sandeep Sharma, Judge (oral):

Since common questions of facts and law are involved in all the above captioned cases and petitioners therein are aggrieved by energy 24 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters bill issued by respondent No.2 Himachal Pradesh State Electricity Board Limited (hereinafter, 'Board') for the month of October, 2024, without extending benefit of additional subsidy otherwise provided by respondent No.3 Himachal Pradesh Electricity Regulatory Commission (hereinafter, 'Commission') in Tariff Order for Financial Year 2024-25, this court with the consent of parties, clubbed all the cases and now same are being disposed of vide this common order.

2. Though, facts in all the petitions are common, as such, same are not required to be specifically referred from one particular petition, but since, certain documents, pursuant to which change in Tariff Order came to be effected, are required to be taken note, this court for the sake of clarity, shall take note of pleadings as well as documents, adduced on record in the lead case i.e. M/s Kundlas Loh Udyog v.

Himachal Pradesh State Electricity Board Limited and others (CWP No. 12178 of 2024).

3. Primarily, the grouse of the petitioners, as has been highlighted in the petitions at hand and further canvassed by the respective learned senior counsel and learned counsel, appearing for the petitioners, is that the Board could not have withdrawn the benefit of additional subsidy of its own, while issuing energy bills for the month of October, 2024, especially when such benefit stood granted to them by the Commission, while approving Tariff Order for the Financial Year 2024-25 effective from 1.4.2024 till 31.3.2025. Though, the petitioners herein do not deny power of the Commission to amend/modify the Tariff Order, approved by it for a particular Financial Year, but their 25 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters grouse is that the Tariff Order, once approved, cannot be changed/alterd without there being amendment in the Tariff Order, which can only be passed by the Commission, while exercising power under S.62(6) of the Electricity Act, 2003 (hereinafter, 'Act').

4. For having bird's eye view of the matter, facts, which may be relevant for the adjudication of the controversy at hand are that vide order dated 15.3.2024 (Annexure P-6), Commission passed Tariff Order for the Financial Year 2024-25, wherein afore authority while retaining tariff structure of 4th APR (Annual Performance Review) order approved tariff for Financial Year 2024-25,, with and without subsidy. It is not in dispute, rather stands admitted that, after passing of the afore Tariff Order, petitioners herein, which fall under the category of large scale industry, kept on receiving energy bill, as per Tariff Order dated 15.3.2024, approved by the Commission with subsidy.

5. Vide communication dated 18.9.2024, (Annexure P-7), Secretary (Power) to the Government of Himachal Pradesh apprised the Commission that impact of increase in tariff will not be neutralized through additional subsidy as per letter dated 13.3.2024 in respect of large scale power supply with effect from 1.10.2024. While

conveying aforesaid decision, Government also requested Commission to get order dated 15.3.2024 amended suitably at the earliest. After receipt of aforesaid communication, Secretary of the Commission vide communication dated 20.9.2024 apprised Managing Director of the Board with regard to decision of the Government. Commission also directed Board vide aforesaid communication to take necessary action

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters and issue bill to the consumers in line with Tariff Order and Government of Himachal Pradesh letter dated 18.9.2024. Having taken note of the aforesaid communication issued by the Commission, Board issued energy bills for the month of October, 2024 (Annexure P-9), in terms of Tariff Order approved by the Commission but without component of subsidy, which at one point of time was agreed to be paid by the Government of Himachal Pradesh, vide communication dated 13.3.2024. In the aforesaid background, petitioners herein have approached this Court in the instant proceedings filed under Art. 226 of the Constitution of India, praying therein for issuance of writ of mandamus or any other appropriate writ, to set aside action of Board in issuance of energy bill dated 15.10.2024, without deducting the subsidy on energy charges in terms of Tariff Order dated 15.3.2024 for Financial Year 2024-25 and further issue a direction to the Board to allow the subsidy on energy charges in terms of Tariff Order dated 15.3.2024, for Financial Year 2024-25, till the time such Tariff Order is revoked, amended or withdrawn in terms of provisions contained under 64(6) of the Act.

6. Having taken note of the pleadings as well as documents adduced on record, this court vide order dated 29.10.2024 passed in CWPNo. 12178 of 2024, while directing the respondents to file reply, also passed interim directions to the effect that though Board may issue bill to the consumers qua the energy consumed but without deducting additional subsidy already allowed in their favour by State of Himachal Pradesh pursuant to policy decision taken by the

27 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters Government of Himachal Pradesh. Such interim directions were passed in different cases on different dates.

7. Pursuant to afore order, respondents filed reply in CWP No. 12178 of 2024 and prayed that the same may be read as reply in all the connected cases. If the replies filed by the respondents are read in conjunction, there is no denial that vide communication dated 13.3.2024, Government, pursuant to advice given by Commission, exercising power under S.86(2) of the Act, agreed to provide benefit of additional subsidy to neutralize the impact of increase in tariff through additional

subsidy, but it has been further stated in the replies filed by the respondents that the aforesaid decision of providing additional subsidy could be revoked by the Government at any time and, in that eventuality, no amendment was required to be made by the Commission in Tariff Order dated 15.3.2024, which otherwise provides for two tariffs, one with and another without the component of subsidy.

Respondents in their replies have further stated that once respondent State vide communication dated 18.9.2024 had apprised the Commission with regard to its decision not to provide additional subsidy to neutralize impact of increase in tariff, Commission was not required to pass any revised order, thereby amending Tariff Order dated 15.3.2024, wherein, otherwise tariff without the component of additional subsidy stood already provided, for all types of consumers, including large scale industries. While referring to certain provisions of the Act as well as the HPERC (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations (hereinafter, 28 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters 'Regulations'), framed by the Commission, respondents herein have attempted to justify action of the Board inasmuch as it proceeded to issue energy bills without there being benefit of additional subsidy, by stating that power to determine tariff lies exclusively with the Commission, which, having taken note of future contingencies, had passed Tariff Order containing two types of tariffs, one with and another without the component of additional subsidy. While making specific reference to Regulation 40 of the Himachal Pradesh Electricity Regulatory Commission (Multi Year Wheeling Tariff & Retail Supply Tariff) Regulations, 2023 (hereinafter, 'Regulations'), respondents have claimed that afore Regulations permit the Commission to provide for two types of tariffs.

8. In nutshell, it has been claimed on behalf of the respondents, that once, two types of tariffs, one with and another without subsidy stood provided by the Commission and there is specific mention in the Tariff Order that in the event of non-payment of subsidy, licensee shall be entitled to issue energy bills on the basis of tariff approved by the Commission without subsidy, there was no requirement if any, to pass fresh order thereby amending the Tariff Order.

9. Though, all the learned senior counsel/counsel representing the petitioners, made their submissions separately but since recording of same in instant order, would unnecessary burden the judgment, this court, for the sake of brevity and to avoid repetition of recording of separate arguments made on behalf of respective learned senior counsel/counsel, which are more or less, on same lines, deems it fit to

29 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters take note of submissions made by Mr. K.D. Shreedhar, Mr. Shrawan Dogra, Mr. Vishal Mohan, Mr. V.S.

Chauhan, Mr. Mr. Anshul Bansal, Mr. T.S. Chauhan, learned senior counsel appearing for the petitioners, duly assisted by Mr. Manik Sethi, Advocate in majority of cases and Mr. Ajay Vaidya, Mr. Abhishek Sethi, Mr. Aman Parth Sharma, Mr. Arvind Sharma, Mr. Amit Kumar Dhumal, Mr. Ganesh Barowalia, Mr. Karan Singh Kanwar, Mr. O.C. Sharma, Mr. Prem Chand Verma, Mr. Udit Shourya Kaushik, Mr. Vishal Sharma and Mr. Vikas Rathore, Advocates and Mr. Vinay Kuthiala & Ms. Sunita Sharma, learned senior counsel, duly assisted by Mr. Dhananjay Sharma, Advocate appearing for the Board, Mr. N.K. Sood, learned senior counsel duly assisted by Mr. Vinay Mehta, Advocate, appearing for the Commission and Mr. Anoop Rattan, learned Advocate General, appearing for the respondent-State.

10. Learned senior counsel appearing for the petitioners, though fairly admitted that the power to determine tariff lies with the Commission and it also has power to amend/modify the Tariff Order, which is otherwise issued for the particular Financial Year, but they vehemently argued that once specific procedure has been provided under the Act for determination of tariff and draft its Regulations, it cannot be revoked, unless amended. While referring to S.64 of the Act, learned senior counsel for the petitioners attempted to argue that once, there is a provision for making an application by the licensee or generating company to the Commission for determination of tariff under S.62 of the Act, Board, before issuing impugned energy bills, could not

30 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters have itself withdrawn benefit of additional subsidy merely on the letter issued by the Commission, conveying therein that the Government have decided to withdraw benefit of additional subsidy rather, it ought to have made an application in that situation to the Commission, for amendment of the Tariff Order. Learned senior counsel, referred to S. 64(6) of the Act, which provides that, "A Tariff Order shall, unless amended or revoked, continue to be in force for such period as may be specified in the Tariff Order." However, in the instant case, no application, if any, was ever filed by the licensee i.e. the Board, to amend the Tariff Order and as such, action of the Board in issuing energy bills without allowing additional subsidy as provided by the Government, is wholly untenable in law and same deserves to be quashed and set aside. Learned senior counsel representing the petitioners also contended that S.62(4) of the Act, clearly provides that "No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified." They submitted that since decision to provide additional subsidy was taken by the Government pursuant to advice of Commission rendered under S.86 of the Act and thereafter, it was made part of Tariff Order, there was no occasion, if any, for the Government to withdraw it unilaterally, rather, in that circumstance, licensee i.e. Board, ought to have applied to the Commission for amendment of Tariff Order,

which thereafter, would have issued notice to all the stake-holders, including the petitioners.

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters

11. Learned senior counsel for the petitioners further submitted that since on account of withdrawal of additional subsidy, huge financial loss was going to be caused to the petitioners, they were otherwise required to be granted sufficient opportunity by the Commission, which could otherwise be done by the Commission, had it decided to amend Tariff Order pursuant to application, if any, made by Board under S.64(6) of the Act. Learned senior counsel for the petitioners submitted that once, there is a specific procedure provided under the Act to determine or regulate the tariff, Commission, was otherwise not competent to direct the Board to issue energy bill on the basis of Tariff Order, without subsidy, pursuant to decision taken by the Government of Himachal Pradesh, thereby conveying its intention not to provide benefit of additional subsidy, Commission ought to have deliberated upon the issue and in case, it was still convinced, for the reasons to be recorded in detail, that the subsidy could not be provided, it ought to have passed fresh order thereby revising/revoking the Tariff Order passed by it in the past. During submissions, it also came to be argued on behalf of the petitioners that the Regulations of 2023 otherwise could not have been made applicable in the cases at hand, because, same were otherwise made applicable with effect from 1.4.2024 and in case, Regulations of 2007, which were otherwise applicable in the cases at hand, nowhere empower Commission to pass Tariff Order, containing two types of tariffs, one with and another without subsidy.

12. Lastly, learned senior counsel for the petitioners argued that by withdrawing additional subsidy, respondents have attempted to change

32 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters the rules of the game in the middle, which is otherwise not permissible and same is hit by the principle of promissory estoppel. Learned senior counsel for the petitioners placed reliance upon judgment of Hon'ble Apex Court reported in (2014) 16 SCC 212 (para 27). While relying upon judgment rendered by Hon'ble Apex Court in BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission, (2023) 4 SCC 788 (para Nos. 54-58), Mr. Manik Sethi, Advocate argued that a Tariff Order is quasi-judicial in nature, which becomes final upon parties, unless amended, under S.64(6) of the Act.

13. To the contrary, learned counsel for the respondents, as detailed herein above, vehemently argued that since Tariff Order dated 15.3.2024, itself provided for two

tariffs and it is provided in Tariff Order that in case, benefit of additional subsidy is withdrawn, licensee i.e. Board can raise energy bill as per Tariff Order, without subsidy, there was no occasion for the Commission to amend Tariff Order. While referring to provisions of Ss.62 and 64 of the Act, learned counsel for the respondents contended that power to determine the tariff and amend the same, subsequently, if required, squarely lies with the Commission. They submitted that once tariff is determined and Tariff Order is issued for a particular Financial Year, same can be amended/revoked by the Commission and, in that regard, generating company or the distributing licensee or other stake holders cannot dictate terms. While referring to S.64 of Act, learned counsel for the respondents submitted that since there is a mandate in the Act, that Tariff Order once passed should not be frequently amended, coupled

33 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters with the fact that the Regulations framed by Commission empowers it to provide for two types of schedules, Commission, while issuing Tariff Order rightly provided two types of tariffs in Tariff Order dated 15.3.2024, one with and another without the component of subsidy.

Learned counsel for the respondents, while making this court peruse Tariff Order dated 15.3.2024, for the Financial Year 2024-25, vehemently argued that there is a specific provision contained in the Tariff Order itself i.e. Clause 10.9.5, which provides that in case, subsidy is not paid by the State Government, Board shall raise bill on the basis of tariff fixed without subsidy. While referring to the Tariff Order issued by Commission exercising quasi-judicial powers, learned counsel for the respondents submitted that the consequential order, which the Commission may issue to give effect to subsidy, shall not be considered an 'amendment' or 'modification of tariff', rather in the event of withdrawal of subsidy, licensee shall be at liberty to raise bill on the basis of tariff approved without subsidy.

14. Learned senior counsel for the respondents argued that once it is not in dispute that Tariff Order provided for two types of tariffs, one with and another without subsidy and pursuant to such Tariff Order, category of petitioners i.e. large scale industry had been availing benefit of additional subsidy, petitioners are estopped at this stage from claiming that the Commission could not have provided for two sets of tariffs, rather, in that regard, specific amendment was required to be carried out in the Tariff Order approved by the Commission. They further submitted that in case, respondents are/were aggrieved by the 34 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters Tariff Order, they were required to file appeal before appellate authority as provided in terms Section 111 of the Act. Ms. Sunita Sharma, learned senior counsel appearing for the Board vehemently argued that since it is not in dispute that the petitioners fall in the category of 'consumer' as defined under the Act and they are aggrieved on account of

raising energy bill by the Board, disallowing component of subsidy, pursuant to decision of Government, they could not straightway come to this Court, under Art. 226, rather, in that event they were required to file petition under S.11 of the Act, before Appellate Tribunal. In support of aforesaid contention, learned senior counsel for the Board placed reliance upon judgment rendered by Hon'ble Apex Court reported in (2007) 8 SCC 381.

15. Lastly, learned senior counsel for the respondents submitted that the plea raised by learned senior counsel representing the petitioners that by issuing direction to the Board to levy charges on the basis of tariff approved without subsidy, respondents have attempted to change the rules of the game in the middle, deserves to be rejected being totally misconceived and fallacious, for the reason that factum of providing two types of schedules/tariffs, one with and another without subsidy, as well as condition contained in the Tariff Order itself that in the event of non-payment of subsidy by the Government, licensee shall be entitled to raise energy bill on the basis of tariff approved by the Commission without subsidy, was within the knowledge of the petitioners, therefore, the petitioners herein cannot be permitted to argue that the benefit of additional subsidy agreed to be

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters paid by Government at one point of time, cannot be permitted to be revoked at later point of time, rather, in that eventuality, decision of Government inasmuch it decided to withdraw benefit of additional subsidy, ought to have been laid challenge in appropriate proceedings and not in the instant proceedings.

16. I have heard learned counsel for the parties and gone through the pleadings in detail.

17. Before ascertaining the correctness and legality of rival submissions made by learned counsel for the parties, this court finds it necessary to take note of some of relevant provisions of the Act, 2003, which govern tariff, powers and functions of Commission as well as Regulations framed by the Commission for determination of tariff in terms of provisions contained under the Act.

18. Very purpose and object of bringing the Electricity Act, 2003 into operation, which was notified on 26.5.2003, is to consolidate laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate

Tribunal and for matters connected therewith or incidental thereto. Vide afore Act, authorities also came to be prescribed which besides prescribing tariff, of generation,

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters transmission and billing of electricity in the State, may also regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

19. Since, there is no dispute inter se parties, that power to determine tariff for supply, transmission, wheeling and retail sale of electricity within the State lies with the Commission, this court besides making reference to specific provisions of "Tariff" under Act would straightway take note of S.82 and 86 of the Act, which provide for establishment of Commission and its functions. Part VII of Act deals with "Tariff." S. 61 provides for tariff regulations and S.62 for determination of tariff. At first instance, it would be apt to take note of Ss.62 (determination of tariff) 63 (determination of tariff by bidding process) and 64 (procedure for Tariff Order), which provide for determination of tariff by appropriate Commission, i.e. State Commission and determination of tariff by billing process as well as determination of tariff for billing.

"Section 62. (Determination of tariff): --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for -

(a) supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity ;

(c) wheeling of electricity;

(d) retail sale of electricity: Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

Section 63. (Determination of tariff by bidding process):

Notwithstanding anything contained in section 62, the Appropriate

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

Section 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.

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters Section 82. (Constitution of State Commission): ---

(1) Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:

Provided that the State Electricity Regulatory Commission, established by a State Government under section 17 of the Electricity Regulatory Commissions Act, 1998 and the enactments specified in the Schedule, and functioning as such immediately before the appointed date, shall be the State Commission for the purposes of this Act and the Chairperson, Members, Secretary, and other officers and other employees thereof shall continue to hold office, on the same terms and conditions on which they were appointed under those Acts:

Provided further that the Chairperson and other Members of the State Commission appointed, before the commencement of this Act under the Electricity Regulatory Commissions Act, 1998 or under the enactments specified in the Schedule, may on the recommendations of the Selection Committee constituted under sub- section (1)

of Section 85 be allowed to opt for the terms and conditions under this Act by the concerned State Government. (2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification, specify. (4) The State Commission shall consist of not more than three Members, including the Chairperson.

(5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 85.

Section 84. (Qualifications for appointment of Chairperson and Members of State Commission): ---

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters (1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management.

(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court. (3) The Chairperson or any other Member of the State Commission shall not hold any other office. (4) The Chairperson shall be the Chief Executive of the State Commission."

20. Bare perusal of aforesaid provision of law, clearly reveals that the appropriate Commission i.e. Commission herein, as provided under S.82, shall determine the tariff in accordance with the provisions of this Act for supply of electricity by a generating company to a distribution licensee. S. 64 provides procedure for Tariff Order, whereby 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. Generating company and licensee have been defined under S.2(28) and 2(39) of the Act, which read as under:

"Section 2. (Definitions): --- In this Act, unless the context otherwise requires,--

(28) "generating company" means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters (39) "licensee" means a person who has been granted a licence under section 14"

21. As per aforesaid provision of law, 'generating company' would mean any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station and 'licensee' means a person who has been granted a licence under section 14. S. 14 empowers appropriate Commission, which in the case at hand would be Himachal Pradesh Electricity Regulatory Commission, would be empowered to grant a licence to any person -

(a) to transmit electricity as a transmission licensee; or (b) to distribute electricity as a distribution licensee; or (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence. In the case at hand, it is not in dispute that Board has been granted licence for generation of electricity as well its distribution.

Once, application is made by generating company or licensee to the Commission for determination of tariff in such manner as provided in Regulations, Commission shall publish the application in the form and manner as prescribed by Commission. Within 120 days of receipt of application under S.64, Commission, after considering all suggestions and objections received from the public either issue a Tariff Order accepting the application with such modifications or such conditions as may be specified in that order or reject the application for reasons to be recorded in writing if such application is not in accordance with the 42 2024:HHC:13629 CWP No. 12178 of 2024:

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22. S.62(6) further provides that Tariff Order unless amended or revoked shall continue to remain in force, for the period, as may be specified in the Tariff Order. At this stage, it would be necessary to take note of S.65 of Act, which reads as under:

"Section 65. (Provision of subsidy by State Government): If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person

affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard."

23. Aforesaid provision, if read in its entirety, clearly shows that in case, State Government wants to grant subsidy to consumer or a class of consumers, as defined under S.2(15) in tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct. Proviso to said section 43 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters clearly provides that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.

24. Provision of subsidy by Government has been made in S.65, which though, casts duty upon the Commission to take note of additional subsidy, if any, agreed to be paid by the State/Government while issuing Tariff Order, but in case, amount agreed to be paid as subsidy is not paid by Government in advance or subsequently, no direction of State Government with regard to payment of additional subsidy shall be operative, in that event tariff shall be applicable from the date of issue of tariff in that regard, as fixed by the Commission.

25. At this stage, it would be apt to take note of S.86 and 108 of Act, which read as under:

"Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating

companies or licensees or from.

other sources through agreements for purchase of power for distribution and supply within the State;

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(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration; (g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary; and (k) discharge such other functions as may be assigned to it under this Act.

(2) The State Commission shall advise the State Government on all or any of the following matters, namely :-

(i) promotion of competition, efficiency and economy in activities of the electricity industry;

(ii) promotion of investment in electricity industry;

(iii) reorganization and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission , distribution and trading of electricity or any other matter referred to the State Commission by that Government.

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

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Section 108. (Directions by State Government): ---- (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing. (2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final."

26. As has been taken note herein above, S.86 empowers State Commission to determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State. S.86(2) also empowers Commission to advise State Government on matters of promotion of competition, efficiency and economy in activities of the electricity industry; promotion of investment in electricity industry; (iii) reorganization and restructuring of electricity industry in the State; (iv) matters concerning generation, transmission , distribution and trading of electricity or any other matter referred to the State Commission by that Government.

27. It is also apt to take note of Regulations 2023, framed by Commission in exercise of power conferred under Ss.61, 62(1), 86(1)

(a)(b) and (e) and 181(2)(zd) of the Act for discharge of its functions as provided under the Act. At the cost of repetition, it may be stated that though it came to be argued by learned senior counsel for the petitioners that Regulations framed in the year 2003 would be applicable in these cases, but having perused Regulations of 2023 46 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters placed on record, by Board, alongwith CMP No. 21348 of 2024, this Court finds that same came into force from the date of publication in official gazette i.e. 29.11.2023. It is not in dispute that while prayer made on behalf of Board being licensee in terms of S.62 was pending for determination of tariff for Financial Year 2024-25, Regulations of 2023 had come into operation. Though learned senior counsel for the petitioners, while making this court peruse Regulation 2(2) of Regulations, 2023, attempted to argue that such Regulations shall be applicable with effect from 29.11.2023 but such plea being contrary to record, deserves outright rejection. Regulation 2(2) of 2023 Regulations,

provides that "These Regulations shall be applicable for determination of tariff in all cases covered under these Regulations from 1st April, 2024 onwards and up to 31st March, 2029, until extended by the Commission", meaning thereby that Regulations of 2023, would be applicable for determination of tariff in all cases with effect from 1.4.2024 onwards till 31.3.2029

28. Regulation 1(2) suggests that such Regulations shall come into force from the date of publication in official gazette. It is not in dispute that Regulations 2023 came to be published on 29.11.2023 in the official Gazette. Though, while referring to Regulations 2011 placed on record, it came to be vehemently argued on behalf of learned senior counsel for the petitioners that Regulations 2011 would be applicable, but for the reasons, stated herein above, this court is of the definite view that Regulations of the year 2023 would be applicable in the

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters cases at hand and thus, it would proceed to take note of relevant provisions of Regulations 2023.

29. Since, it is not in dispute that pursuant to powers conferred under Ss. 61, 62, 86 and 181 of the Act read with S.21 of the General Clauses Act, Commission is empowered to frame regulations for discharge of its functions, this court finds no necessity to take note of Regulations in their entirety, rather, taking note of dispute of subsidy, this court would only take note of Part VII of Regulations published in Official Gazette on 29.11.2023, which reads as under:

"PART-VII SUBSIDY, CROSS SUBSIDY AND TARIFF DESIGN

40. Subsidy. (a) The Commission shall determine the ARR and Tariff without considering subsidy:

Provided that in case the State Government declares subsidy in advance or during tariff filing proceedings and the licensee incorporates the subsidy in the petition, the Commission shall notify two tariff schedules, one with subsidy and the other without subsidy:

Provided also that the Government's subsidy provided for or declared shall be supported by documentary evidence of time schedule of payment, mode of the payment of the subsidy and categorization of the subsidy amount into subsidized consumer categories;

(b) The Commission may clarify in the Tariff Order, post the declaration from the Government, the quantum of Government's subsidy as applicable to the fuel and power purchase cost adjustment alongwith the range (%) of variable cost up to which

the fuel and power purchase cost adjustment cost shall not be passed to the consumers, category wise classification, mode of payment and schedule of payment etc.;

(c) In case of no disbursement or delayed disbursement of subsidy by the Government, the licensee shall charge consumers as per the tariff schedule which is approved by the Commission, without consideration of subsidy.; and

(d) The distribution licensee(s) shall submit to the Commission on quarterly basis the information on subsidy due, subsidy overdue and subsidy realized based on actual energysupplied to subsidized categories of consumer. The report on subsidy status shall be hosted on the distribution licensee's website.

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41. Cross Subsidy surcharge, Additional Surcharge and Tariff Design.- (1)
Cross-subsidy surcharge and additional surcharge in Open Access,-

(a) The amount received or to be received by the licensee on account of cross-

subsidy surcharge and additional surcharge, as approved by the Commission from time to time in accordance with the Regulations specified by the Commission, shall be shown separately against the consumer category that is permitted open access as per the phasing plan; and

(b) Cross-subsidy surcharge and additional surcharge shall be shown as revenue from the tariff from the consumer categories who have been permitted open access and such amount shall be utilized to meet the cross-subsidy requirements of subsidized categories and fixed costs of the Distribution Licensee arising out of his obligation to supply: Provided that the licensee shall provide such details in its annual filings.

(2) Tariff Design (a) The Commission may categorize consumers on the basis of their Load Factor, Power Factor, Voltage, total consumption of electricity during any specified period, or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required;

(b) The Commission shall be guided by the provisions of National Electricity Policy and national Tariff policy while determining tariff and level of cross subsidy applicable to different categories of consumers:

Provided that the Commission shall progressively and gradually reduce the existing cross subsidies;

(c) The Tariff Policy, 2016 prescribes that for achieving the objective that the tariff progressively reflects the cost of supply of electricity, the appropriate Commission would notify a roadmap such that tariffs are brought down within $\pm 20\%$ of the average cost of supply. In Himachal Pradesh, this target of $\pm 20\%$ of the average cost of supply has already been achieved, barring lifeline consumers who consume below a specified level;

(d) The Commission shall indicate a roadmap for reduction and/or rationalization of cross subsidies in the MYT Orders for the Control Periods starting from 1st April, 2024 and thereafter, the roadmap shall be based on the approach of a gradual reduction/rationalisation in cross subsidy, guided by the principles laid down in the National Tariff Policy with a target that by the end of the Control Period i.e. by 31st March, 2029, the tariffs for the consumer categories, other than the lifeline category, are within $(-)10\%$ to $(+)10\%$ of the average cost of supply;

(e) During the interim periods as mentioned in clause (d), the Commission shall, with an objective of broadly assessing, the trends and levels of category wise cost of

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters supply for indicative purposes also carry out suitable exercise based on the available data, suitable assumptions and the concepts as may be considered appropriate. The Commission shall broadly follow the following methodologies for allocation of costs for the purpose of cost to serve calculations:-

(i) Functionalization and classification of Cost .- Total cost shall be divided on the basis of functions performed such as power purchase, distribution etc. Each of the functionalized cost shall be further classified, based on its intrinsic nature into Demand related cost, Energy related cost and Customer related cost. Demand related costs shall generally be of fixed nature related to capacity creation and shall include interest on capital borrowing, depreciation etc. Energy cost shall be related to quantum of electricity consumption of consumer, such as fuel cost, interest on working capital, etc. Consumer related cost shall include operating expenses associated with meter reading, billing and accounting; (

ii) Allocation of Costs -

(A) Allocation of Demand Costs.- Demand costs various functions shall be allocated among consumer categories on the basis of average estimated demand of the consumer categories during different hours of the day and different seasons of the year;

(B) Allocation of Energy Costs.- Energy related costs of Distribution functions shall be allocated to the consumer categories on the basis of incremental cost of power purchase by following merit order and block approach beyond the minimum common level of load factor:

Provided that the cost of additional 5% power kept as contingent surplus in accordance with these regulations may be allocated to all the consumer categories in proportion to the total electricity consumption of each category:

Provided further that the energy flows from HT system to EHT system during certain situations which are typically prevalent in Himachal Pradesh on account of small hydro projects shall also be duly considered while allocating the distribution losses to various categories of consumers; and (C) Allocation of Customer Costs.- Customer related costs shall be allocated to consumer categories by assigning suitable weights duly taking into account to average consumption per consumer for various categories of consumers. (f) The consumers below poverty line who consume power below a specified level, say 60 units per month, shall receive a special support through cross subsidy."

30. Regulation 40(a) provides that Commission shall determine ARR and Tariff without considering subsidy, meaning thereby that, at 50 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters first instance, Commission would determine tariff without considering subsidy. However, proviso to afore Regulation provides that in case, State Government declares subsidy in advance or during tariff filing proceedings and the licensee incorporates the subsidy in the petition, the Commission shall notify two tariff schedules, one with subsidy and the other without subsidy.

31. Regulation 40 (c) provides that in case of no disbursement or delay in disbursement of subsidy by Government, the licensee shall charge the consumer as per tariff schedule, which is approved by the Commission, without consideration of subsidy.

32. Regulation 40(d) provides that the distribution licensee(s) shall submit to the Commission on quarterly basis the information on subsidy due, subsidy overdue and subsidy realized based on actual energy supplied to subsidized categories of consumer. The report on subsidy status shall be hosted on the distribution licensee's website.

Aforesaid provision seems to have been provided to give complete effect to mandate in S.65 of Act which otherwise, casts duty upon State to deposit component of subsidy in advance, enabling Commission to make the same part of Tariff Order, but in case same is not deposited, Tariff Order, passed by Commission without subsidy as provided in proviso 1 to Regulation 40(a), may permit

licensee to issue energy bills on the basis of tariff schedule approved by Commission without component of subsidy.

33. In the cases at hand, it is not in dispute that Board being a licensee, filed petition under 86(1)(a) of Act, read with Regulation 12 of 51 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters the Regulations 2023 for fixation of tariff for Financial Year 2024-25. After receipt of aforesaid petition from Board/Licensee, Commission vide communication dated 2.1.2024, (Annexure P-2), advised Government to review its decision qua non-allocation of free power to Board for Financial Year 2024-25 and further enhance allocation of GoHP free power be given to the Board, in the interest of all the stakeholders involved and overall sustainability of the Board.

34. Since, no response was received to aforesaid advice by the Commission, Commission sent reminder on 22.2.2024 and 7.3.2024, (Annexures P-3 and P-4) seeking decision upon advice rendered by Commission. Vide communication dated 13.3.2024(Annexure P-5), Government intimated Commission that impact of increase in tariff would be neutralized by State Government though additional subsidy.

35. Pursuant to aforesaid communication, respondent Commission proceeded to pass Tariff Order dated 15.3.2024 (Annexure P-6).

Though, petitioners have placed on record aforesaid Tariff Order, but since same was not complete, rather, excerpt of same was annexed as Annexure P-6, Commission made available copy of complete Tariff Order approved by Commission for the Financial Year, 2024-25, which runs into more than 432 pages.

36. Having perused aforesaid Tariff Order in its entirety, this court finds that vide communication dated 13.3.2024, Government of Himachal Pradesh, clarified to the Commission that Government shall be continuing subsidy provided during Financial Year 2023-24 for various categories of consumers in Financial Year 2024-25, therefore, 52 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters Commission continued subsidy as per Government of Himachal Pradesh letter dated 13.3.2024 and the same also became part of Tariff Order approved by the Commission for Financial Year 2024-25. Since Government of Himachal Pradesh vide communication dated 13.3.2024, committed to provide additional subsidy to neutralize impact of increase, Commission also approved tariff for Financial Year, 2024- 25 with subsidy.

37. At this stage, it would be apt to take note of following clauses of Tariff Order passed by the Commission for the Financial Year 2024-25:

"10.9 Subsidy by Government of Himachal Pradesh 10.9.1 The Commission has determined the tariff for various consumer categories based on the APR approved. The revised tariff without subsidy for FY 2024-25 is as under:

Table 291: Approved Energy Charge (without Subsidy) Particulars Slabs Units/ Month Approved Energy Tariff for FY25 (Rs/ kWh) Domestic Lifeline 0-60 4.72 consumers consumers st 1 slab 0-125 5.60 nd 2 Slab 0-125 5.60 126-300 6.00 rd 3 Slab 0-125 5.60 126-300 6.00 Above 300 6.25# Agricultural 5.12 consumers Non-Domestic 0-20 kVA - 6.42 Non-Commercial Above 20 kVA - 6.16 Commercial 0-20 kVA - 6.52 >20-100 kVA - 6.31 Above 100 kVA - 6.21 Small industrial 0-20 kVA - 5.92 >20 kVA - 5.81 Medium industrial 51-100 kVA - 5.81 Large industry EHT- 200 kV and - 5.66 above EHT-132 kV and - 5.71 above EHT- 66 kV and - 5.76 above HT 1 - 6.06 HT 2 - 5.81

53 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters Irrigation and LT - 6.46 drinking water HT - 6.06 supply EHT - 5.66 Bulk supply LT - 6.26 HT - 5.76 EHT - 5.56 Street lighting - 6.37 Temporary 0-20 kVA - 8.42 lighting >20-200 kVA - 7.76 Railways - 6.16 EV Charging - 6.79 *For consumers governed under 2-part tariff, subsidy will be in Rs./kVAh #Domestic consumers without having NOC/ approval from TCP/ Municipalities/ government authorized agencies/ statutory authorities, shall be required to bear the rate of highest slab under domestic category for the complete consumption in any billing cycle. These Consumers shall also not be eligible for availing the GoHP subsidy as well.

10.9.2 The GoHP in its letter dated 12.03.2024 to HPERC has clarified that the Government shall be continuing with the subsidy declared in FY 2023-24 to the various categories of consumer for the FY 2024-25.

Therefore, the Commission has continued with the subsidy levels as per the letter of the GoHP.

10.9.3 Further, the Govt. of Himachal Pradesh vide letter dated 13.03.2024 has committed to provide additional support to neutralize the impact of increase in electricity tariff through additional subsidy. Accordingly, the existing and additional subsidy requirement is summarized below:

Table 292: Subsidy rate approved by GoHP for FY 2024-25 (Rs.

Per unit)				
Particulars	Slabs	Units/ month	GoHP Subsidy for FY25 (Rs./ kWh)	Additional Govt. Subsidy for FY 25 (Rs./ kWh)*
Domestic	Lifeline	0-60	3.72	1.00

consumers	consumers			
	1st slab	0-125	4.37	1.23
	2nd Slab	0-125	2.30	1.23
		126-300	1.10	.073
	rd			
	3 Slab	0-125	2.30	1.23
		126-300	1.10	0.73
		Above 300#	.65	.38
Agricultural	For the agricultural consumers under			1.00
	54			2024:HHC:13629
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M/s Kundlas Loh Udyog v. HPSEBL and connected matters consumers IDWPS category, the energy charges shall be Rs.0.30 per kWh upto the contract demand for 20 kVA Non- 0-20 kVA - - 1.00 Domestic Above 20 - - 1.00 Non- kVA Commercial Commercial 0-20 kVA - - 1.00 >20-100 - - 1.00 kVA Above 100 - - 1.00 kVA Small 0-20 kVA - - 0.75 Industrial >20 kVA - - 0.75 Medium 51-100 kVA - - 0.75 industrial Large EHT - - 1.00 industry HT 1 - - 1.00 HT 2 - - 1.00 Irrigation and LT - - 1.00 drinking water HT - - 1.00 supply EHT - - 1.00 Bulk supply LT - - 1.00 HT - - 1.00 EHT - - 1.00 Street lighting - - 1.00 Temporary 0-20 kVA - - 1.00 supply >20-200 - - 1.00 kVA Railways - - 1.00 Electric - - 0.97 vehicles *For consumers governed under 2-part tariff, subsidy will be in Rs./kVAh # Domestic consumers without having NOC/ approval from TCP/ Municipalities/ government authorized agencies/ statutory authorities, shall be required to bear the rate of highest slab under domestic category for the complete consumption in any billing cycle. These Consumers shall also not be eligible for availing the GoHP subsidy as well.

10.9.4 In accordance with provisions of Section 65 of the Electricity Act, 2003 and in terms of Sub-regulation (5) of Regulation 42 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for MYT Wheeling Tariff and HPSEBL-D Business Plan and MYT Order for 5th Control Period (FY25-29) Himachal Pradesh Electricity Regulatory Commission Page 339 Retail Supply Tariff) 55 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters Regulations, 2023 in giving effect to the subsidy, the Commission hereby makes the following provisions:
a. The effective energy charges for all consumer categories as proposed by the GoHP after accounting for Government subsidy, shall be as given in the table below:-

table 293: Subsidized Effective Energy Charge Particulars Slabs Units/ Approved Total Effective Month Energy GoHP Energy Tariff for Subsidy Tariff after FY25 for FY25 subsidy (Rs./kWh)* (Rs.kWh)* (Rs/kWh)* Domestic Lifeline 0-60 4.72 4.72 Nil consumers consumers st 1 slab 0-125 5.60 5.60 Nil nd 2 slab 0-125 5.60 3.53 2.07 126-300 6.00 1.83 4.17 3rd Slab 0-125 5.60 3.53 2.07 126-300 6.00 1.83 4.17 Above 6.25# 1.03 5.22 Agricultural 5.12 4.82 0.30 consumers Non- 0-20 kVA - 6.42 1.00 5.42 Domestic Above 20 - 6.16 1.00 5.16 Non- kVA Commercial Commercial 0-20

kVA - 6.52 1.00 5.52 >20-100 - 6.31 1.00 5.31 kVA Above 100 - 6.21 1.00 5.21 kVA Small 0-20 kVA - 5.92 0.75 5.17 Industrial >20 kVA - 5.81 0.75 5.06 Medium 51-100 - 5.81 0.75 5.06 Industrial kVA Large EHT-220 - 5.66 1.00 4.66 industry kV and above EHT-132 - 5.71 1.00 4.71 kV and above EHT-66 kV - 5.76 1.00 4.76 and above HT 1 - 6.06 1.00 5.06 HT 2 - 5.81 1.00 4.81 Irrigation LT - 6.46 1.00 5.46 and HT - 6.06 1.00 5.06 drinking EHT - 5.66 1.00 4.66 water supply Bulk supply LT - 6.26 1.00 5.26 HT - 5.76 1.00 4.76 56 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters EHT - 5.56 1.00 4.56 Street - 6.37 1.00 5.37 lighting Temporary 0-20 kVA - 8.42 1.00 7.42 supply >20-200 - 7.76 1.00 6.76 kVA Railways - 6.16 1.00 5.61 EV 6.79 .097 5.82 Charging *For consumers governed under 2-part tariff, subsidy will be in Rs./kVAh # Domestic consumers without having NOC/ approval from TCP/ Municipalities/ government authorized agencies/ statutory authorities, shall be required to bear the rate of highest slab under domestic category for the complete consumption in any billing cycle. These Consumers shall also not be eligible for availing the GoHP subsidy as well.

b. Further, the GoHP shall provide subsidy against the Fixed Charges for Domestic Consumers as shown below:

Table 294: Subsidized Effective Fixed Charge Particulars Slabs Units/month Approved Fixed Charges for FY25 Particulars Slabs Units/ Approved Fixed GoHP Effective Month Charges for FY Subsidy Fixed 25 for FY 25 Charges (Rs./Conn/month) (Rs./conn./ after month) subsidy (Rs.kWh) Domestic Lifeline 0-60 55 55 Nil consumers consumers st 1 flab 0-125 85 85 Nil nd rd c. With respect to agricultural Consumers under Irrigation and Drinking Water Pumping Supply (IDWPS) category, the Energy Charges shall be Rs 0.30 per kWh to the Consumer category up to Contract Demand up to 20 kVA. These revised Energy Charges on the account of Government subsidy would only be applicable to agricultural and allied activities, and which are paid for by individuals/ user groups but shall not be applicable for government supply.

d. Subsidy in case of Prepaid Consumers shall be applicable as per respective category and slabs.

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the Electricity Act, 2003, and reconciled after every quarter. HPSEBL is directed to submit quarterly report regarding the payment of subsidy as well as the outstanding amount; if any. Further, in case the State Government fails to pay the subsidy, as per the provisions of Section 65 of the Act, the Tariffs in respect of above two categories HPSEBL-

D Business Plan and MYT Order for 5th Control Period (FY25-29) Himachal Pradesh Electricity Regulatory Commission Page 341 shall stand reverted back to the original Tariff, as approved by the Commission in this Tariff Order".

38. Table 291 is the approved energy charge (without subsidy), but if clause 10.9.1 is read with clause 10.9.2, it clearly provides that rates of energy in table 291 came to be approved by Commission taking note of decision of Government of Himachal Pradesh vide communication dated 13.3.2024, whereby Government stated that it shall be continuing with subsidy declared in 2023-24 to the categories of consumers, for the Financial Year 2024-25 also.

39. Table 292 provides for rates of subsidy approved by Government of Himachal Pradesh for Financial Year 2024-25, which are on similar terms as agreed to be paid by Government of Himachal Pradesh for Financial Year 2023-24.

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40. Clause 10.9.4 clearly suggests that, Commission with a view to give effect to subsidy as declared by the State of Himachal Pradesh, also proceeded to approve energy charges with subsidy. Table 293 contains subsidized effective energy charge. Rates in table 291 are without subsidy and table 293 contains rates with subsidy. Table 292, provides subsidized rates approved by Government of Himachal Pradesh for Financial Year, 2024-25 (Rs./kWh).

41. Vide said table, large scale industry came to be granted subsidy of Rs.1/- per kWh for Financial Year 2024-25, as a result thereof, original rate of tariff as prescribed under table 291 for large industry came to be reduced as reflected in Table 293, which is reproduced below:

Particulars	Slabs	Units/	Approved	Total	Effective	Month	Energy	GoHP	Energy	Tariff
for Subsidy Tariff FY25 for FY25 after (Rs./kWh)* (Rs.kWh)* subsidy (Rs/kWh)*										
xxxxx Large EHT-220	-	5.66	1.00	4.66	industry	kV	and above	EHT-132	-	5.71 1.00
4.71 kV and above	EHT-66	kV	-	5.76	1.00	4.76	and above	HT 1	-	6.06 1.00 5.06
HT 2	-	5.81	1.00	4.81						

42. It can be said that by extending benefit of additional subsidy as approved by Government for Financial Year 2024-25, large scale industries of different categories

having different load came to be extended benefit of subsidy of Rs.1/- per kilo watt.

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43. Clause 10.9.5 as taken note above, clearly suggests that in case subsidy required to be paid in advance, is not paid, tariff in respect of aforesaid two categories, shall stand reverted back to original tariff as approved by the Commission.

44. Needless to say, in the cases at hand, original tariff would mean tariff approved by the Commission without subsidy as contained in table 291. Since, in the case at hand, State Government vide communication dated 18.9.2024, conveyed decision not to provide subsidy to neutralize impact of increase in tariff, Board, pursuant to directions issued by the Commission started raising electricity bill on the basis of rates approved by Commission without subsidy as per table 291.

45. Question, which needs to be determined in the case at hand, is "whether Commission without carrying out amendment in Tariff Order could have directed/ permitted Board to issue revised bill on the basis of tariff approved by it, without subsidy?"

46. Before exploring answer to aforesaid question, it would be apt to take note of Regulation 40, Part VII, which deals specifically with subsidy. Said regulation itself provides that tariff would be approved at first instance by Commission without considering subsidy. Proviso to said regulation provides that in case, State Government decides to grant subsidy and in that regard decision is conveyed to the Commission, by licensee, it may proceed to issue Tariff Order containing therein two types of tariffs, one with and another without subsidy. Having perused said regulation, which is statutory in nature,

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47. Next question, which needs determination is, "whether in the event of withdrawal of component of subsidy, if any, by the State of Himachal Pradesh, Tariff Order containing rates without subsidy would become operational itself or in that regard some order is required to be passed by Commission?"

48. Regulation 40 (3) (c) clearly provides that in case of no disbursement or delayed disbursement of subsidy by the Government, the licensee shall charge consumers as

per the tariff schedule which is approved by the Commission, without consideration of subsidy.

49. Though at this stage, learned senior counsel for the petitioners, vehemently argued that aforesaid regulation would not be applicable in the cases at hand, for the reason that it is not the case of 'no disbursement' or 'delayed disbursement', rather State Government, in mid-way has decided not to provide, subsidy which at one point of time, was agreed to be paid and was made part of Tariff Order. However, this court is not impressed with said submission of learned senior counsel for the petitioners for the reason that Regulation 40(c) clearly provides that in case of no disbursement or delayed disbursement, the Board shall be entitled to charge consumer at the rates approved by Commission without subsidy.

50. Since by issuing communication dated 18.9.2024, respondent State has decided not to grant any subsidy, it would definitely fall in the

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51. At this stage, it is necessary to take note of Notification dated 26.7.2023 (Annexure R-2/1 of reply filed by respondent No.2/Commission), issued by Government of India in exercise of power conferred under S.176 of the Act to amend Electricity Rules, 2005.

Vide said Notification, rule 15 of Rules, 2005 came to be amended, wherein rule 15 (4) provides as under:

"15. Subsidy accounting and payment.

(4) In case the subsidy has not been paid in advance, then the State Commission shall issue order for implementation of the tariff without subsidy, in accordance with provisions of the section 65 of the Act"

52. Learned senior counsel for the petitioners, while placing reliance upon aforesaid Notification dated 26.7.2023, issued by Ministry of Power, Government of India, vehemently argued that in case,

subsidy is not paid in advance, Commission, in accordance with S.65 of the Act, shall issue order for implementation of Tariff without subsidy, however, in the instant case, there is no dispute that till the month of 62 2024:HHC:13629 CWP No. 12178 of 2024:

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53. Had State Commission, while issuing Tariff Order dated 15.3.2024, not provided for approved energy charges without subsidy, there could be a requirement for the Commission to issue fresh order for implementation of tariff without subsidy in terms of S.65 of the Act.

Since, in the instant case, there is no dispute that Commission while issuing Tariff Order dated 15.3.2024, approved two types of rates, one with and another without subsidy, in terms of Regulation 40, as detailed herein above, and there is specific provision contained under clause 10.9.5 of Tariff Order that in case, State Government fails to pay subsidy as per provisions of S.65 of Act, tariff in respect thereof shall stand reverted back to original tariff as approved by Commission, there was no requirement for the Commission to pass consequent order. It is not in dispute that original tariff for Financial Year 2024-25 as approved, stands provided under Table 291, i.e. approved energy charge without subsidy. Otherwise also it is not a case, where subsidy was not paid by Government in advance, rather, after extending benefit of subsidy for some time, Government conveyed its decision to the Commission to withdraw such benefit.

54. Had, Commission, while passing Tariff Order approved tariff with subsidy only, it would have been under obligation in terms of S.65 of Act as well as rule 15 (4) of amended Electricity Rules, 2005, as detailed herein above, to pass fresh order for implementation of tariff 63 2024:HHC:13629 CWP No. 12178 of 2024:

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55. At this stage, it would be apt to take note of Tariff Order dated 15.3.2024, issued by the Commission, whereby business Plan for MYT MI for Financial Year 2025-29 came to be approved. In aforesaid order, it came to be specifically provided that consequential order which Commission may issue to give effect to subsidy as provided by State Government shall not be construed to be modification of tariff rather, licensee shall make appropriate adjustment in bills to be raised, in the manner as Commission may direct.

56. Though, there is nothing on record to suggest that pursuant to request, if any made by Board/licensee amendment, if any, came to be made in Tariff Order issued

by Commission for Financial Year, 2024-25 but even if provision of S.64(2) of Act is perused, it empowers Commission to amend the Tariff Order once in a Financial Year.

57. Though, this court is convinced that, on account of there being two sets of rates of energy charge, one with and another without subsidy, coupled with provisions of Ss.62(2) and 64 of the Act and Clauses 10.9.5 and 12.2.9 of Regulations, there was no requirement, if any, for Commission to pass fresh Tariff Order/amend Tariff Order dated 15.3.2024, but yet Commission was well within its right to make amendment, if any required, at least once in a Financial Year in terms of Section 62(4).

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58. No doubt, Section 62(6) provides that a Tariff Order shall remain in force for such period as may be specified in the Tariff Order, unless, amended or revoked, but as has been discussed herein above, there was no occasion for amendment, for the reason that Commission in terms of S.62, while determining tariff had provided for two sets of tariffs, one with and another without subsidy, which it was competent to do. As per Regulation 40, there was no requirement, if any, for the Commission to amend the Tariff Order. Even otherwise, if S.62 is read in its entirety, it shows that power to determine tariff vests with the Commission, which after receipt of application from generating company or licensee may invite objections/suggestions and either accept the application of licensee or reject the same, but once such tariff is determined, it shall remain in force for the period, as may be specified in Tariff Order for the Financial Year.

59. There is nothing in said provision, which may suggest that licensee or other stake holders, after determination of tariff/passing of Tariff Order, can apply for amendment or revision of Tariff Order, rather, S.62(6) appears to have been introduced to meet the contingencies, which may arise on account of non-compliance of S.65 of the Act. In case, in terms of S.65 of Act, respondent State fails to provide subsidy, which it had agreed to provide and same was made part of Tariff Order, licensee can apply for amendment in Tariff Order.

Since, in the case at hand, Commission. while passing Tariff Order, had approved both types of rates with and without subsidy, there was no requirement, if any, for the Board to apply for amendment of Tariff 65 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters Order to the Commission, as such, on the basis of communication dated 20.9.2024, (Annexure P-8) issued by Commission, it rightly proceeded to issue energy bills to the consumers, for the months of September/October, 2024, on the basis of rates already

approved by the Commission, without component of subsidy.

60. Though learned senior counsel for petitioners, while referring to communication dated 20.9.2024, argued that it cannot be said to be issued by Commission, rather same has been issued under the signatures of Secretary, as such could not have been taken into consideration by the Board, for raising energy bills, without there being component of subsidy, but if the said communication is read in its entirety, it clearly reveals that though it is signed by Secretary, but has been written on behalf of the Commission, which, after receipt of communication dated 18.9.2024, from Government, whereby it came to be conveyed that it (Government) shall not neutralize the impact of increase in tariff, called upon Board to take necessary action in the matter and to issue bills to consumer in line with Tariff Order.

61. At the cost of repetition, it is apt to take note of Regulation 40, which clearly provides that Tariff Order shall be passed without subsidy, meaning thereby that at first instance, Commission will pass Tariff Order without subsidy, but proviso to afore regulation empowers Commission to provide two sets of tariffs, one with and another without component of subsidy, so that in the event of non-payment of subsidy by the Government, Board i.e. licensee is not left in lurch, rather, it may

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M/s Kundlas Loh Udyog v. HPSEBL and connected matters raise bills on the basis of rates approved by Commission, without component of subsidy.

62. Though, having taken note of various provisions contained under the Act as well as Regulations, more particularly, S.65 and Regulation 40, this court sees no illegality in the action of Commission, in approving two sets of tariffs, one with and another without subsidy but, even if it is presumed that the Commission could not have approved two sets of tariff and, in the event of withdrawal of subsidy, it was under obligation to issue separate/fresh Tariff Order authorizing the Board to raise energy bills on the basis of approved Tariff Order, this court finds, merit in the contention of learned counsel for the respondents that in that eventuality, present petitions would not be maintainable before this court.

63. Though, having taken note of the fact that the category of petitioners had been availing benefit of Tariff Order dated 15.3.2024, containing subsidized tariff, this court is of the view that the plea sought to be raised by the petitioners qua requirement for the Commission to pass fresh Tariff Order, may not be available to them, but, even if available, appropriate remedy to challenge action of Commission/Board, would be to file an appeal before appellate authority, as provided under S. 111 of the Act.

64. S.111 of the Act clearly provides that any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity.

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65. Reliance in this regard is placed upon PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603, wherein, it has been held that although tariff fixation like price fixation is legislative in character, the same under the Act is made appealable vide Section

111. Relevant para of judgment supra is reproduced herein below:

"26. The term "tariff" is not defined in the 2003 Act. The term "tariff"

includes within its ambit not only the fixation of rates but also the rules and regulations relating to it. If one reads Section 61 with Section 62 of the 2003 Act, it becomes clear that the Appropriate Commission shall determine the actual tariff in accordance with the provisions of the Act, including the terms and conditions which may be specified by the Appropriate Commission under Section 61 of the said Act. Under the 2003 Act, if one reads Section 62 with Section 64, it becomes clear that although tariff fixation like price fixation is legislative in character, the same under the Act is made appealable vide Section

111. These provisions, namely, Sections 61, 62 and 64 indicate the dual nature of functions performed by the Regulatory Commissions, viz, decision-making and specifying terms and conditions for tariff determination.

50. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of Tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act, though Section 61 is an enabling provision for the framing of regulations by CERC. If one takes "Tariff" as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/ fixation of tariff is done by the Appropriate Commission under Section 62 whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the Appropriate Commission has to fix the tariff. This basic scheme equally applies to subject-matter "trading margin" in a different statutory context as will be demonstrated by discussion hereinbelow."

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66. There is another aspect of the matter, petitioners herein are 'consumers' as defined under S.2(15) and admittedly, they are aggrieved by raising of energy bill by Board, wherein component of additional subsidy, agreed to be paid by Government has been denied.

If it is so, appeal would lie to Consumer Grievance Redressal Forum (CGRF) in terms of S.111 of the Act.

67. Reliance in this regard is placed upon judgment of Hon'ble Apex Court in Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd., (2007) 8 SCC 381, relevant para(s), whereof are reproduced herein below:

"33. As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to sub-section (5) every distribution licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as "the 2003 Regulations") and created Consumer Grievance Redressal Forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in Suresh Jindal v. BSES Rajdhani Power Ltd. [(2006) 132 DLT 339 (DB)] and Dheeraj Singh v. BSES Yamuna Power Ltd. [Ed. : (2006) 127 DLT 525 (DB)] and we approve of these decisions. It has been held in these decisions that the forum and ombudsman have power to grant interim 69 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters orders. Thus a complete machinery has been provided in Sections 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a forum/ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under sub-section (5) of Section 42 of the Act. 34. In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1)(f) of the said section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies

and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section 42(5) and thereafter Section 42(6) This is a digitally signed order."

68. At this stage, learned counsel for the petitioner, while relying upon Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8, SCC 1, argued that when an effective remedy is available, High Court may not exercise jurisdiction under Art. 226 of the Constitution of India, barring three contingencies i.e. when a writ petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. Learned senior counsel for the petitioners argued that since there is complete violation of principles of natural justice, on account of non-affording of opportunity of hearing before permitting Board to raise energy bills on the basis of effective charges provided 70 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters vide Tariff Order for the Financial Year, 2024-25, without subsidy, present writ petitions are maintainable. However, question of maintainability does not require adjudication, since present petitions have been decided on merit.

69. Though, as a last attempt, it also came to be argued on behalf of learned counsel for the petitioners that State Government could not withdraw benefit of additional subsidy agreed to be paid by it, vide communication dated 13.3.2024, which was made part of Tariff Order, but this court is of the view that since in the cases at hand, petitioners are aggrieved with the issuance of energy bills thereby disallowing the benefit of additional subsidy, which was otherwise being availed of by the petitioners, in terms of subsidized rates prescribed in table 293 of Tariff Order dated 15.3.2024, this court, otherwise is not required to go into the aforesaid aspect of the matter.

70. Moreover, this court finds force in the argument advanced by Mr. Anoop Rattan, Advocate General that it is the prerogative of the State to pay subsidy and it cannot be claimed as a matter of right, as has been held in Paschihmanchal Vidyut Vitran Nigam Limited v.

Adarsh Textiles and another, (2014) 16 SCC 212.

71. At this stage, it would be apt to deal with judgment pressed into service by the petitioners passed by Hon'ble Apex Court in BSES Rajdhani Power Ltd. supra, wherein it came to be ruled that a tariff order is quasi-judicial in nature which becomes final and binding on the parties unless it is amended or revoked under Section 64(6) or set aside by the Appellate Authority. There cannot be any quarrel with the 71 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters aforesaid proposition of law laid down by Hon'ble Apex Court, rather it is an admitted position of law. In the case at hand, neither any amendment was carried out in Tariff Order, nor such

amendment was required, for the reason that the Commission, while passing Tariff Order dated 15.3.2024 for the Financial Year 2024-25, had already provided two types of tariffs, one with and another without the component of subsidy. Since the Government decided not to neutralize the impact of increase in tariff by granting benefit of additional subsidy, Commission rightly directed the Board to start raising bills on the basis of tariff without subsidy.

72. Had the Commission approved only one set of tariff, i.e. tariff without subsidy, on account of withdrawal of component of additional subsidy by the Government of Himachal Pradesh, it ought to have proceeded to make amendment in the Tariff Order, if any. However, in the case at hand, such situation never arose, as such, law settled in BSES Rajdhani Power Ltd. (supra) is not applicable to the present cases.

73. Consequently, in view of detailed discussion as well as law taken into consideration, this court sees no reason to interfere with the decision of Board in raising energy bills, without allowing component of subsidy, as such, present petitions fail and are dismissed accordingly.

All pending applications stand disposed of, in all the petitions. Interim directions, in all the cases stand vacated. No order as to costs.

CWP Nos. 13310 and 12174 of 2024, are ordered to be delinked. CWP No. 13310 of 2024 stands disposed of hence does not 72 2024:HHC:13629 CWP No. 12178 of 2024:

M/s Kundlas Loh Udyog v. HPSEBL and connected matters require to be listed further. CWP No. 12174 of 2024, be listed in due course.

(Sandeep Sharma) Judge December 3, 2024 (vikrant)