

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated : 25th September, 2018

Present:

Shri M.K. Shankaralinge Gowda ..	Chairman
Shri H.D. Arun Kumar ..	Member
Shri D.B. Manival Raju ..	Member

OP No.169/2017

BETWEEN:

Shri Chandranandan N,
S/o G.N. Narayanaswamy,
Kamala Poultry Breeding Farm,
Maralakunta Village & Post,
Chikkaballapur District- 562 101.

.. **PETITIONER**

[Represented by Smt. Poonam Patil, Advocate]

AND:

Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.

.. **RESPONDENT**

[Represented by Justlaw, Advocates]

ORDERS

- 1) This petition is filed under section 86(1(f) of the Electricity Act, 2003, praying to direct the Respondent, to pay the Petitioner for the energy supplied at

Rs.9.56 per kWh, the tariff fixed under the Power Purchase Agreement (PPA) dated 31.12.2015 and grant such other and further reliefs, as deemed fit, on the facts and in the circumstances of the case, in the interest of justice.

- 2) The facts stated by the Petitioner, may be summed up, as follows:
 - a) The Petitioner, an agriculturist by profession, has installed a Solar Roof Top Photo Voltaic (SRTPV) Power Plant of 500 Kw, on the roof top of the premises of the Petitioner's poultry farm. In this regard, the Petitioner had filed an application 28.12.2015, before the Respondent and approval was granted by the Respondent on 31.12.2015, for installation of the SRTPV plant. The approval provided that, the SRTPV plant had to be commissioned, within 180 days.
 - b) Pursuant to the approval granted by the Respondent, for installation of the SRTPV plant, a PPA was signed between the parties on 31.12.2015. The Petitioner completed the installation work of the Plant and submitted the Work Completion Report to the Respondent on 25.06.2016, much within the time frame, stipulated by the Respondent. The Petitioner further sought for Chief Electrical Inspector to Government (CEIG)'s safety approval, for the Plant on 27.06.2016 and the same was granted on 27.06.2016.

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- c) The Petitioner's Plant was synchronized and commissioned on 28.06.2016, on net-metering basis. The Respondent made payment to the Petitioner for the energy as per the bills, at a tariff of Rs.9.56 per kWh, promptly, for the months from July, 2016 to February, 2017. However, the Respondent stopped making payments from the month of March, 2017. Despite several requests regarding payments, there was no response from the Respondent. The Petitioner was orally informed that, as the plant was not commissioned, within 180 days, the Petitioner was denied payment. Being aggrieved, the Petitioner has filed this Petition.
- 3) The grounds urged by the Petitioner, in support of his prayer, may be summarized, as follows:
- (a) As per Article 8 of the PPA, the Respondent is bound to make payment, in accordance with the bills, within thirty days of issue of the bills. Article 8.4 imposes payment of interest towards late payment, in case of delay in payment, beyond thirty days, from the date of issue of bill.
- (b) The Respondent has withheld payment of the monthly bills, on an erroneous assumption that, the Petitioner's Plant was commissioned belatedly. The information posted on the website of the Respondent clearly shows that, the Petitioner's Plant was ready for commissioning on 28.06.2016 and the Petitioner had submitted the Work Completion Report on 25.06.2016 itself. The plant was synchronized and commissioned on 28.06.2016, within the time

schedule of 180 days, as per the approval letter. The official internal communication in the Respondent's office also states that, there is no delay on the part of the Petitioner, to commission the Plant. Yet, the Respondent, in utter disregard to these vital materials, has on whimsical grounds, withheld the payment, for the past eight months.

- (c) The Respondent, in its website, had posted the detailed procedure for commissioning the SRTPV system, according to which, from the date of issue of the approval letter for installation of the Power Plant, the Work Completion Report ought to be submitted, by 180 days and thereafter, the Plant had to be commissioned, by 7 days, meaning that, within a time period of 187 days, from the date of issue of approval letter, the commissioning has to be achieved. Therefore, going by the procedure contemplated by the Respondent, as is reflected from its website, the Petitioner has commissioned the Plant, well in advance, entitling him for the tariff of Rs.9.56 per kWh, as per the terms of the PPA.
- (d) The Respondent is guilty of violation of the principles of natural justice, inasmuch as, the Petitioner was not even heard or informed about taking away of the rights, accrued to him under a valid, legal contract, the PPA. No Notice was issued, giving him an opportunity to explain, before the drastic measure of complete non-payment, was adopted by the Respondent.

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- (e) The action of the Respondent amounts to an unjust enrichment, which is impermissible under law. The Respondent is under a legal obligation to make the payment for the energy, admittedly received under the terms of the PPA and Section 70 of the Contract Act.
- 4) Upon issuance of Notice, the Respondent appeared through the counsel and filed the Statement of objections, the gist of which may be stated, as follows:
- (a) On 04.07.2016, the Respondent issued the Commissioning Certificate, certifying that the Petitioner has commissioned his Plant on 28.06.2016. The Respondent's Division Office at Chikkaballapura has paid the Petitioner at Rs.9.56 per unit, for the energy supplied, till February, 2017. Thereafter, a Centralized Billing Centre was created at the Respondent's Corporate Office, Bengaluru. On scrutiny of the Petitioner's file by the Respondent, it was found that the Petitioner had not commissioned his Plant, within 180 days. Therefore, the Respondent stopped the payments, for the energy supplied by the Petitioner.
- (b) The time frame approved for establishment of the SRTPV Projects, on the existing buildings is 180 days. Even as per the Guidelines of the Respondent for the SRTPV applicants, having the existing buildings, the time prescribed is 180 days. The said Guidelines of the Respondent, is in public domain.

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- (c) Article 3 of the PPA clearly states that, the Petitioner has to obtain, all statutory approvals and clearances, before connecting the same to the distribution system. As per the Guidelines of the Respondent, the Petitioner was required to obtain the CEIG approval, before the synchronization of the Plant. The Petitioner was granted approval by the CEIG on 27.06.2016. The Petitioner herein was required to commission the Plant on or before 27.06.2016. Therefore, the Petitioner's Plant was not ready to be commissioned, within the stipulated timeframe.
- (d) The SRTPV Plants installed on the existing buildings, whose PPAs have been executed, as per the Tariff Order dated 10.10.2013 and whose Plants have been commissioned, within 180 days, would be eligible for the tariff mentioned in the PPAs. For the SRTPV plants which have been commissioned beyond 180 days, the Tariff Order dated 02.05.2016, has been made applicable. Therefore, the Petitioner's Plant is only entitled for the tariff, as per the Tariff Order dated 02.05.2016, as it has been commissioned, with a delay of one day.
- (e) The recital of the PPA states that, the Petitioner shall be governed by the Tariff Order dated 10.10.2013 or any other Order, as amended by this Commission. Therefore, the contention of the Petitioner that he is entitled for tariff of Rs.9.56 per unit, as per the Tariff Order dated 10.10.2013, is untenable.

(f) As per the Guidelines issued by the Respondent, the Work Completion Report, in Format-7, is required to contain the details pertaining to inspection of the installation by the CEIG. The Petitioner obtained the approval of the CEIG only on 27.06.2016. Without the same, the Work Completion Report dated 25.06.2016 cannot be construed to be valid. As per the SRTPV Guidelines, the Work Completion Report, along with the CEIG approval, has to be submitted by the Petitioner, at least 7 days prior to the Scheduled Commissioning Date. The averment that the Petitioner has 187 days, from date of letter of approval to commission the plant, is untenable. The Petitioner has to commission the Plant within 180 days, from the date of letter of approval i.e., on or before 27.06.2016. The Respondent has prayed for dismissal of the Petition.

5) We have heard the learned counsel for both parties and perused the records. The following Issues would arise, for our consideration:

(1) Whether the Petitioner has commissioned the SRTPV Plant, within 180 days, from the date of approval given by the Respondent in Format-5?

(2) What Order?

6) After considering the submissions of the parties and their pleadings and other material placed on record, our findings on the above issues are, as follows:

7) **ISSUE No.(1):** *Whether the Petitioner has commissioned the SRTPV Plant, within 180 days, from the date of approval given by the Respondent in Format-5?*

(a) It is the case of the Petitioner that, the SRTPV Plant was commissioned on 28.06.2016, within 180 days, from the date of approval given by the Respondent, in Format-5 dated 31.12.2015. The said approval letter reads thus:

“This approval is valid for 180 days from the date of this letter and the SRTPV system is to be commissioned within this period, failing which the approval will be treated as cancelled.”

According to the Petitioner, the said period of 180 days, ends on 28.06.2016 and the Plant has been commissioned within time. It is the contention of the Respondent that, the Plant had to be commissioned on or before 27.06.2016 and there is a delay of one day.

(b) The question before us is, whether the 180 days' period ends on 27.06.2016 or on 28.06.2016. Usually, while computing the time period for doing a specific act, the day from which such period is to be reckoned is excluded. This is analogous to the principles, enunciated in Section 12 of the Limitation Act, 1963 and Section 9 of the Karnataka General Clauses Act, 1899. Therefore,

in the present case, the first day on which the approval was granted by the Respondent (31.12.2015) has to be excluded, while computing the 180 days' period. Therefore, the period of 180 days has to be computed, as follows:

Sl. No.	Month	No. of days
1	December, 2015	Nil
2	January, 2016	31 days
3	February, 2016	29 days
4	March, 2016	31 days
5	April, 2016	30 days
6	May, 2016	31 days
7	June, 2016	28 days (upto 28.06.2016)
Total Number of days		180 days

- (c) Admittedly, the Petitioner's Plant was commissioned on 28.06.2016. This is the 180th day. Thus, the Petitioner's Plant was commissioned within the stipulated time. Therefore, there is no violation, as contended by the Respondent.
- (d) We also find that, there is no breach of any of the other terms of the PPA and the Respondent is not right in withholding the payment for the energy supplied.
- (e) Therefore, we answer Issue No.(1), in the affirmative.

8) **ISSUE No. (2):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) The Petition is allowed. The Petitioner is entitled to the tariff of Rs.9.56 (Rupees Nine and Paise Fifty Six) only per unit, as agreed to in the PPA, for the term of the PPA;
- (b) The payments, after adjusting the interim tariff of Rs.5.67 (Rupees Five and Paise Sixty Seven) only per unit, shall be made within 2 (two) months, from the date of this Order; and,
- a) The Respondent shall also be liable to pay interest, as per the terms of the PPA.

Sd/-
(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER