

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated : 30th October, 2018

Present:

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

OP No.225/2017

BETWEEN:

Smt. Uma S.A.,
W/o Sri Anjaneya,
No.1114, S.H. Layout,
Malebennur,
Harihara Taluk,
Davangere District – 577 530.

.. **PETITIONER**

[Represented by Shri I. Gopalakrishna, Advocate]

AND:

1) Bangalore Electricity Supply Company Limited,
Represented by its Managing Director,
Corporate Office, K.R. Circle,
Bengaluru – 560 001.

2) Bangalore Electricity Supply Company Limited,
Represented by its Executive Engineer, (Ele),
O&M, Harihara Division,
Davangere.

.. **RESPONDENTS**

[Respondent-1 represented by Justlaw, Advocates]

ORDERS

- 1) This Petition is filed under Section 86(1(f) of the Electricity Act, 2003, in effect praying to:
 - (a) direct the Respondents to pay the Petitioner for the net-metered energy, delivered from the SRTPV Plant, at Rs.9.56 per unit, as per clause 6.1(a) of the PPA dated 31.12.2015, from the date of power supply by the Petitioner;
 - (b) declare that the Power Purchase Agreement (PPA) dated 14.12.2016, is contrary to law and unenforceable; and,
 - (c) pass such other order(s), as deemed fit, in the interest of justice and equity.

- 2) The facts of the case, as submitted by the Petitioner, may be summed up, as follows:
 - (a) The Respondent accorded approval for installing 100 KW SRTPV system, on the rooftop of the building belonging to the Petitioner, as per its letter dated 07.10.2015 and entered into a PPA with net metering arrangement dated 31.12.2015 with the Petitioner. On the basis of the said approval and the PPA, the Karnataka Bank Ltd., sanctioned Rs.50 lakhs term loan to the Petitioner for the said Plant, as per the credit sanction intimation letter dated 11.01.2016. The Additional Chief Electrical Inspector approved the drawings pertaining to the electrical installation of the 100 kW SRTPV Plant, as per letter dated 15.06.2016 and issued the approval to commission the Plant, as

per the Official Memorandum dated 05.08.2016. A Work Completion Report of the Plant dated 20.08.2016 was given by the Petitioner. The safety approval was given by the CEIG on 28.09.2016. The project was commissioned on 26.12.2016.

- (b) After the Petitioner started supply of power, the Respondents made the Petitioner to sign another PPA for the Plant with net metering arrangement dated 14.12.2016 without cancelling the previous PPA dated 31.12.2015. As per the PPA dated 31.12.2015, the Respondent had to pay at Rs.9.56 per unit, whereas as per the PPA dated 14.12.2016 the tariff was Rs.6.14 per unit.
 - (c) Being aggrieved by the action of the Respondents in reducing the agreed price, this Petition is filed.
- 3) The grounds urged by the Petitioner, in support of her prayers, may be stated, as follows:
- (a) As per the PPA dated 31.12.2015, the Respondents had agreed to pay for the net metered energy at Rs.9.56 per unit and by reduction of the tariff, the Petitioner is unable to pay the EMIs to her Banker.
 - (b) The Respondents do not have any power to enter into a new PPA dated 14.12.2016, without cancelling the earlier Agreement dated 31.12.2015, and the PPA dated 14.12.2016 is illegal and unenforceable.

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- (c) The reduction of the tariff is contrary to law and in violation of the principle of legitimate expectation. The Respondent also did not give an opportunity of hearing to the Petitioner, before reducing the agreed price. The action of the Respondents is against the principles of natural justice.
- (d) Upon issuance of Notice, the 1st Respondent appeared through its counsel and filed statement of objections. The 2nd Respondent remained unrepresented. The objections of the 1st Respondent may be stated, as follows:
- (e) The reliance of the Petitioner on the provisions of the PPA dated 31.12.2015, is not proper. The PPA cannot be enforced, as there is novation of the said PPA and the parties have voluntarily executed the PPA dated 14.12.2016. Therefore, the Petition is baseless and is liable to be dismissed, on this ground alone.
- (f) The Petitioner was required to commission the Plant, within 180 days from the date the Respondent accorded approval to install SRTPV Plant i.e., on or before 06.04.2016. However, the Plant was not ready to be commissioned, within the stipulated timeframe, as is evident from the fact that, the Petitioner was granted the safety approval by the CEIG to commission the Plant, only on 28.09.2016. Therefore, the PPA dated 14.12.2016 was executed between the parties incorporating the tariff, as per the Generic Tariff Order dated 02.05.2016. Thereafter, on 26.12.2016, the Plant was commissioned.

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- (g) The time-frame approved by the Commission, 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. Therefore, the Petitioner herein was required to commission the Project on or before 06.04.2016, to be entitled to the tariff agreed to in the PPA dated 31.12.2015.
- (h) For the SRTPV Plants on the existing buildings, whose PPAs were executed as per the Tariff Order dated 10.10.2013 and which were commissioned within 180 days, the tariff of Rs.9.56 per unit mentioned in the PPAs would be applicable. For the SRTPV Plants, which have been commissioned beyond 180 days, the Tariff Order dated 02.05.2016 has been made applicable. The Petitioner's Plant is entitled to the tariff, as per the Tariff Order dated 02.05.2016, as the same was not commissioned, within the stipulated timeframe.
- (j) The averment that the Petitioner was not given an opportunity of being heard, before reducing the agreed price is untenable, as it was done as per the agreed terms of the contract and the question of hearing does not arise. Also, as there has been novation of the contract, the question of hearing does not arise.
- (k) The Respondent has prayed for dismissal of the Petition.

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- 4) The Petitioner submitted her written arguments, urging that, the PPA dated 31.12.2015 subsists; no documents have been produced by the Respondents to show cancellation of the same; the Petitioner was threatened of non-payment for the energy, if she did not agree to sign the PPA dated 14.12.2016 and the same was signed by misrepresentation; even the PPA dated 14.12.2016 does not disclose the cancellation of the PPA dated 31.12.2015; the PPA dated 31.12.2015 did not mention that the period for commissioning the Plant was 180 days; and the Guidelines relied on by the Respondent was issued on 09.08.2016, subsequent to the PPA dated 31.12.2015, and cannot be applied to the Petitioner.
- 5) We have heard the learned counsel for the parties and perused the material placed on record. The following Issues would arise for our consideration:
- (1) Whether the Petitioner was required to commission the SRTPV Project within a stipulated time frame?
 - (2) Whether the Petitioner has made out a case for its Plant being entitled to the tariff agreed to, in the PPA dated 31.12.2015?
 - (3) What Order?
- 6) After considering the submissions made by the learned counsel for the parties and the material on record, our findings, on the above issues are, as follows:

7) **ISSUE No.(1):** *Whether the Petitioner was required to commission the SRTPV Project within a stipulated time frame?*

ISSUE No.(2): *Whether the Petitioner has made out a case for its Plant being entitled to the tariff agreed to in the PPA dated 31.12.2015?*

As Issue Nos. 1 & 2 are interconnected, we deal with them together.

(a) It is not in dispute that, as a part of the State Government's Solar Policy dated 22.05.2014, which proposed to promote grid connected Roof Top Photo Voltaic Generation Projects, the 1st Respondent had called for applications from the consumers interested in availing the Solar Roof Top Photo Voltaic (SRTPV) Scheme, the details of which were given on its website. The interested consumers had to download the application form from the Respondent's website and the duly filled in application form had to be submitted to the field Officer concerned, with the prescribed fee for processing. As per the Guidelines relating to the SRTPV Scheme, made available to all the consumers for the SRTPV applicants having the existing buildings, the time prescribed for commissioning the Project is 180 days and there was no provision for extending such time prescribed. The Commission, in its Order dated 10.10.2013, introduced the net-metering facility to the SRTPV Plants, allowing the consumers installing such Plants, to consume the power generated and inject the surplus power into the distribution system of the Distribution Licensee concerned, who would pay tariff to such consumers, for such surplus power injected, as determined by this Commission. It was envisaged that, the consumers would install the SRTPV Plants of reasonable capacity, on their readily available existing rooftop,

within a short period and generate power mainly for self-consumption, while injecting a reasonable quantity of surplus power into the distribution system, for consumption in the immediate vicinity.

- (b) We note that, as per the Guidelines relating to the SRTPV Scheme, made available to all the consumers, for the applicants having existing buildings (roof top area), the time stipulated for commissioning of the SRTPV Projects is 180 days, which would also be intimated to the applicants in Format-5 (for LT installations) or Format 6 (for HT installations). Admittedly, the Petitioner had made application for installation of the SRTPV Plant under the said Scheme. We note that, the Respondent has produced a copy of the Official Memorandum dated 09.08.2016, along with the Objections, issued pursuant to the Tariff Order dated 02.50.2016, whose contents are almost similar to the Guidelines issued by the Respondent in 2014, pursuant to the Generic Tariff Order dated 10.10.2013 and that, it also provided for a time line of 180 days, for installation of the SRTPV Plant. Therefore, we hold that, when the PPA has been entered into, under a particular Scheme, at the option of the Petitioner, all the terms and conditions of such Scheme shall apply to the installation and commissioning of the SRTPV Plant by the Petitioner. The Petitioner's contention to the contrary is not tenable.

- (c) In respect of a SRTPV Plant there would be a reduction of tariff, as a consequence of the delay in the commissioning of the Plant beyond the stipulated time, if in the meanwhile, there is a revision of generic tariff by the Commission. Admittedly, in the present case, the generic tariff fixed for the

SRTPV plants that was agreed to in the PPA, was revised much before the Plant was ready for commissioning. The Solar Policy dated 22.05.2014, provides that the Government of Karnataka shall promote grid connected Solar Roof Top Projects, based on the Tariff Orders issued by this Commission, from time to time. The Preamble of the PPA dated 31.12.2015 mentions that, 'the SRTPV Plant will be operated in terms of the KERC Order No. S/03/01/2013 dated 10.10.2013 or as amended from time to time. As the Petitioner has failed to install the SRTPV Plant, as per the terms of the Respondent's SRTPV Scheme, which was governed by the tariff and other norms of the Commission's Order dated 10.10.2013, the amended or later Order governing the implementation and operation, including the tariff of the SRTPV Plants, would be applicable to the Petitioner's Plant, as specified in the preamble of the PPA, which reads, as follows:

*"a. The Seller intends to connect and operate the Solar Roof Top Photo Voltaic (SRTPV) system with GESCOM's HT distribution system for sale of Solar Power to GESCOM in terms of the Karnataka Electricity Regulatory Commission (KERC) Order No. S/03/01/2013 dated:10.10.2013 **or as amended from time to time.**" [emphasis supplied]*

- (d) We also note that, as per the 'Consumer Guidelines' issued by the 1st Respondent, approval for installation in Format-5 or Format-6 should be issued, before the commencement of the installation work and prior to the execution of the PPA. It is not in dispute that, the SRTPV Plant had to be installed by the Petitioner on an existing building. The 2nd Respondent, however, has granted 365 days' time to commission the Project, in the approval dated 07.10.2015. This is not in consonance with the Guidelines.

Therefore, we hold that, the 2nd Respondent is not justified in issuing the approval dated 07.10.2015, granting 365 days' time for commissioning of the Plant on an existing building. We further note that, the Plant was not commissioned even within this time of 365 days. The Plant was commissioned on 26.12.2016. The generic tariff fixed for the SRTPV Plants, in the Commission's Order dated 10.10.2013 was revised by the Commission's Order dated 02.05.2016, considering the substantial reduction in the Capital Cost for setting up of the SRTPV Plants. Whenever an event/action affects the quantum of tariff applicable for supply of energy to the Distribution Licensees, we are of the considered opinion that, the same should be scrutinized and approved by the Commission, as it is the consumer who ultimately pays for the energy. It is a settled law that, this Commission has the exclusive jurisdiction to determine the tariff for supply of electricity by a Generating Company to a Distribution Licensee and the Commission has to regulate the electricity purchase and the procurement process of the Distribution Licensees, including the price, at which electricity shall be procured from different agencies through PPAs. The irregular act of the 2nd Respondent, in violation of the terms of its own Scheme, cannot be allowed, as it would adversely affect the interest of consumers and thereby, the public interest.

- (e) The Petitioner has contended that, the entire Project work was completed on 20.08.2016. We note that, the Safety approval was given by the CEIG only on 28.09.2016. This is a pre-requisite for commissioning the Plant, without which, the Plant cannot be stated to be ready or the work (relating to the Project implementation) cannot be stated to be completed. We also note

that, it is not the case of the Petitioner that the commissioning of the Plant was delayed, because of any default of the Respondents.

- (f) The Respondent has contended that, the Plant was not commissioned within 180 days and, therefore, the Petitioner is entitled only to the revised tariff, as per the Commission's Order dated 02.05.2016. The Petitioner has contended that, the PPA did not contain any time limit to commission the Plant, and we have found such contention is untenable. The Commission has passed the Generic Tariff Order dated 02.05.2016, in supersession of the Tariff Order dated 10.10.2013. The said Order dated 02.05.2016, reads thus:

*"In respect of plants for which PPAs that have been entered into prior to 1st May, 2016 and are commissioned within the period of time as stipulated by the ESCOMs concerned or the Commission prior to the date of issue of this Order, the tariff as per the Commission's Order dated 10th October, 2013 shall be applicable. **Such plants shall be eligible for the revised tariff as per this Order if they are not commissioned within the stipulated time period and there shall be no extension in time period for commissioning them after the effective date of this Order.**" (Emphasis supplied by us)*

Thus, the Petitioner's Plant, which is not commissioned within the time stipulated is not eligible for the tariff as per the Commission's Order dated 10.10.2013 as agreed to in the PPA dated 31.12.2015, and as it is commissioned on 26.12.2016, it is entitled only for the revised tariff, as per the Commission's Order dated 02.05.2016.

- (g) The Petitioner has contended that, the PPA dated 31.12.2015 was not terminated by the Respondent and hence, the execution of the second PPA

dated 14.12.2016 is not proper. The Respondent has contended that the principles of 'Novation of Contract' would apply and has relied on the decision of the Hon'ble Supreme Court of India, in the case of *Lata Construction and others vs Dr. Rameshchandra Ramniklal Shah*, reported in (2000) 1 SCC 586. The Petitioner, in her written arguments, has stated that, she was forced to enter into the PPA dated 14.12.2016, by the Respondent, by misrepresentation / misleading her. The allegation of misrepresentation and misguidance is not proved. We have held that, the Petitioner has not commissioned the Plant, within the time-line fixed and hence, the tariff, agreed to in the PPA dated 31.12.2015 will not be applicable to the Plant and that she is entitled to the tariff fixed in the Order dated 02.05.2016. Therefore, even if the contract dated 31.12.2015 was not terminated by the Respondent, the Petitioner would not have been entitled to the tariff agreed to, therein, but to the revised tariff, as per the Generic Tariff Order dated 02.05.2016.

- (h) For the aforesaid reasons, we hold that, the Petitioner's Plant is entitled to the tariff applicable, as per the Generic Tariff Order dated 02.05.2016 and that, the PPA dated 14.12.2016, reflecting the applicable tariff, is valid.
- (j) We, therefore, answer Issue Nos.(1) and (2), as above.
- 8) **ISSUE No.(3):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) It is hereby declared that the Petitioner is not entitled to any of the reliefs, sought for, in the Petition; and,
- (b) The Petitioner is entitled to the tariff of Rs.6.14 (Rupees Six and Paise Fourteen) only per unit, as per the PPA dated 14.12.2016.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER