

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

**Dated : 17<sup>th</sup> December, 2018**

**Present:**

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

**OP No. 235 /2017**

**BETWEEN :**

Smt. Shashikala,  
W/o G.R.Ramesh,  
No.3279, P.C. Extension,  
Kolar.

.. **PETITIONER**

*[Represented by Shri M. Shivaprakash, Advocate]*

**AND :**

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

.. **RESPONDENT**

*[Represented by Justlaw, Advocates]*

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**ORDERS**

- 1) This Petition is filed, under section 86(1) (f) of the Electricity Act, 2003, in effect, praying to:

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- (a) Call for the entire records, bearing No.EEE/AWE(O)/AET/15-16/5310 dated 09.11.2015, from the Office of the Respondent, in respect of the PPA with the Petitioner;
    - (b) To pass appropriate Order and revise / review the reduction of tariff, from Rs.9.56 to Rs.5.20 per unit, and declare that the Petitioner is entitled to Rs.9.56 per unit, under net-metering of energy; and,
    - (c) Pass such other Order / reliefs, as deemed fit and proper in the circumstances of the case, in the interest of equity and justice.
  - 2) The facts submitted by the Petitioner and the grounds urged, in support of her prayers, may be summed up, as follows:
    - (a) The Petitioner entered into a Power Purchase Agreement (PPA) dated 06.11.2015 with the Respondent, for establishing a 600 kW capacity Solar Roof Top PV (SRTPV) Plant on the existing Poultry Sheds of 6,000 sq. metres, with electricity supply connection, RR No. KBP.581 (with the tariff of Rs.9.56 per unit, under net-metering). The PPA was approved by the Commission on 01.01.2016.
    - (b) Upon physical verification, inspection and taking actual measurement, the Respondent issued feasibility certificate. The Petitioner had, in the year 2014, developed the poultry industry, with modern construction, by making huge investment. The activities of poultry production started in 2015.

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- (c) In the communications and reports, submitted in the process of obtaining the Commission's approval for the PPA, the officers of the BESCO committed an inadvertent mistake, in indicating the actual measurement of the roof top area. Instead of 6,000 sq.metres, the Respondent had shown the same as 6,000 sq.feet. It is admitted in the letter of the Respondent dated 21.12.2015 (Page No.28 of the Petition) that. the shadow-free roof area of the premises is 6,000 sq.metres, but wrongly mentioned as 6,000 Sq.feet. Despite the best efforts made by the Petitioner, the mistake was not rectified by the Respondent.
- (d) The Petitioner's husband suffered ill-health and underwent major surgery in the same period. Despite serious issues in the family and personal life, the Petitioner submitted, in time, all the relevant documents to the Respondent. For the inadvertent mistake done by the local BESCO officials, in wrongly mentioning the roof area of the premises, the Petitioner suffered and is being made a scapegoat. To escape from the blunder, the Respondent has compelled the Petitioner, to sign a Supplementary Agreement. The Petitioner without prejudice to the PPA, already executed on 06.11.2015, subscribed her signature to the Supplementary Agreement dated 04.09.2017 (with a revised tariff of Rs.5.20 per unit).
- (e) The PPA, dated 06.11.2015, is lawful, valid and a concluded contract. The Petitioner has discharged her obligations, as agreed to, but the Respondent failed to discharge its obligation, and committed breach of the contract.

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- 3) Upon issuance of Notice, the Respondent entered appearance through its counsel and filed Objections, which may be stated, as follows:
- (a) On 15.10.2015 (*wrongly mentioned in the Petition as 15.5.2015*), the Petitioner submitted an application for installation of 600 kwp SRTPV Plant on the roof top of her premises, having supply connection with RR No.KBP581. Thereafter, on 06.11.2015 the Petitioner has executed a PPA, with the Respondent.
- (b) The Respondent vide letter dated 20.11.2015, submitted the PPA to the Commission for approval, along with the application. The Respondent had, in the said letter, mentioned that the shadow-free area of the Petitioner's premises was 1500 sq.metres. The Commission, vide letter dated 03.12.2015, communicated to the Respondent and the Petitioner that, the shadowfree roof area, indicated in the Petitioner's application and Respondent's letter, was inadequate, for the installation of the SRTPV Plant of 600 kW capacity. Therefore, the Commission directed the Petitioner and the Respondent, to clarify on adequacy of shadow free roof area.
- (c) The Respondent, vide letter dated 10.12.2015, requested the Petitioner to furnish documents, with regard to adequacy of the roof area, as directed by the Commission. On 10.12.2015, the Petitioner clarified that, the shadow-free area was 6,000 sq.metres and that it was wrongly mentioned in her application as 6,000 sq. feet. Thereafter, the

Respondent clarified the same to the Commission, vide letter dated 21.12.2015.

- (d) On 01.01.2016, the Commission communicated approval to the PPA, subject to furnishing of proof of the existing roof area of 6,000 sq.metres, within 15 days. On 13.01.2016, the Petitioner addressed a letter to the Commission, stating that the shadow-free area was 64,800 sq.ft and submitted photographs of four sheds of the Poultry Farm. On 20.01.2016, the Commission directed the Respondent to confirm the existence of the sheds, as per the details provided by the Petitioner. The Respondent inspected the Petitioner's premises and clarified to the Commission on 14.06.2016 that, the Petitioner's Poultry Farm had roof area of 69,120 sq.ft.
- (e) The Respondent, vide letter dated 70.10.2016, sought for clarification from the Commission, with regard to the status of approval of the PPA. On 28.10.2016, the Commission communicated to the Respondent that, in view of the submission of proof of the roof area, by the Petitioner, within 15 days, the PPA stands approved, on 01.01.2016 itself.
- (f) The Petitioner had to install and commission her SRTPV Plant, within 180 days, as per the SRTPV Guidelines and the Generic Tariff Order of the Commission. However, the Petitioner has failed to commission the Plant, within the stipulated timeframe. Therefore, on 30.12.2016, the Respondent terminated the Petitioner's PPA. However, the Petitioner was given liberty

to execute the PPA, as per the Generic Tariff Order dated 02.05.2016, after obtaining approval from the Commission.

- (g) The Commission, vide letter dated 27.09.2016, had communicated to the Electricity Supply Companies (ESCOMs) of Karnataka, that consumers who have not commissioned their SRTPV Plants, within 180 days, will be eligible for the revised tariff, as per the Generic Tariff Order dated 02.05.2016. On 27.06.2017, the Supplementary PPA (SPPA) was executed between the Petitioner and Respondent, at a revised tariff of Rs.5.20 per unit, as the Petitioner had failed to commission the SRTPV Plant, within the stipulated timeframe.
- (h) On 04.08.2017, the Respondent submitted the SPPA to the Commission, for its approval. The Commission, vide letter dated 24.8.2017 accorded approval to the SPPA, subject to certain modifications. On 11.10.2017, the SRTPV Plant was synchronised with the grid.
- (j) The timeframe, approved by the Commission for the SRTPV Projects, to be installed on existing buildings, is 180 days from the date of signing of the PPA. Even, as per the Guidelines of the Respondent, the time limit to commission the SRTPV Plant is 180 days. The said Guidelines of the Respondent is in public domain and is available and known to all. In spite of the Petitioner having knowledge about the same, she has failed to commission the Plant, within the stipulated timeframe.

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- (k) The Commission has clearly specified that, the PPAs executed, as per the Tariff Order dated 10.10.2013, are eligible for the tariff of Rs.9.56 per unit, provided that the Plants are commissioned within 180 days. In the present case, the Petitioner cannot be permitted to avail of the benefit of higher tariff, even though she has not adhered to the prescribed time frame, for commissioning the Plant.
- (l) For all the SRTPV Plants 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, the tariff mentioned in their PPAs would be applicable. For the SRTPV Plants, which are commissioned beyond 180 days, the Tariff Order dated 02.05.2016 has been made applicable. Hence, there is no ambiguity in the policy of the Respondent. The Petitioner is attempting to take advantage of a mistake, by seeking higher tariff. Unless a uniform policy is enforced for the generators, who have commissioned their units after six months, it would lead to a situation, wherein there is disparity between the STRPV Plants. The same ought not to be permitted.
- (m) In the present case, the Petitioner has failed to commission the Plant, within the stipulated timeframe. Therefore, the SPPA was executed, in terms of the Generic Tariff Order dated 02.05.2016 and the directions of this Commission. The Petitioner having voluntarily executed the SPPA, cannot now wriggle out of the same, by alleging that she was compelled to execute the same.

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- (n) The main objective of the SRTPV Policy is not to help farmers, as stated by the Petitioner. The main objective of SRTPV Policy is that, consumers have to meet their power requirement, from self-generation and any surplus power generated shall be sold to ESCOMs.
- (p) It is the Petitioner, who had wrongly indicated, in the application, that the shadow-free roof area is 6,000 sq.feet, instead of 6,000 sq.metres. The same is admitted by the Petitioner, in her letter dated 10.12.2015, which is produced with the petition.
- (q) The Respondent has denied the allegations, made by the Petitioner and prayed for dismissal of the Petition.
- 4) The Petitioner, in the written submissions filed, has stated that, the Respondent did not process the application of the Petitioner and issue the Work Order, after approval of the PPA on 01.01.2016, despite repeated requests, on the premise that there was no regular Executive Engineer; that the Petitioner has invested Rs.3.6 crores, availing loans and the tariff of Rs.5.20 per unit is not viable; that the cancellation of the PPA dated 06.11.2015, by the Respondent on 30.12.2016, is invalid, as there was no breach by the Petitioner; that the Respondent offered to issue the Work Order to synchronise the Project, and called upon the Petitioner to execute the SPPA, at Rs.5.20 per unit; that the Project was not synchronised, even after completion and hence, she agreed to execute the SPPA, at the reduced tariff, under protest and that the Work Order

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was issued by the Respondent on 17.04.2017 and the SPPA was executed on 27.06.2017 and modified on 04.09.2017.

5) The Respondent has produced the safety approval, granted by CEIG on 31.07.2017.

6) We have heard the learned counsel for both the sides and considered the respective pleadings and documents produced by the parties. The following issues would arise, for consideration:

(1) Whether the Petitioner was required to commission the SRTPV Plant, in accordance with the SRTPV Guidelines, issued by the Respondent?

(2) If yes, whether the Petitioner and the Respondent have acted, as per the said Guidelines?

(3) Whether the Petitioner has made out a case for the Petitioner's Plant to be eligible for the tariff, agreed to in the PPA dated 06.11.2015?

(4) What Order?

7) After considering the submissions made by the parties and perusing the pleadings and documents on record, our findings, on the above Issues are, as follows:

8) **ISSUE No.(1):** *Whether the Petitioner was required to commission the SRTPV Plant, in accordance with the SRTPV Guidelines, issued by the Respondent?*

**ISSUE No.(2):** *If yes, whether the Petitioner and the Respondent have acted, as per the said Guidelines?*

As the above two issues are interconnected, we proceed to deal with them together:

- (a) The Petitioner's case is that, the Respondent has not discharged the contractual obligations, under the PPA dated 06.11.2015; that the mistake in indicating the roof top area as 6,000 sq.feet, instead of 6,000 sq.metres, was committed by the Respondent, which led to delay in implementation of the Project; that the Petitioner is not bound by the subsequent circulars, etc., of the Respondent, regarding timeline, etc., as they were not stipulated in the PPA; and that, in order to cover up its blunder, the Respondent has terminated the PPA and compelled the Petitioner to sign the SPPA, at a lower tariff.
- (b) The Respondent has contended that, the SRTPV Plant had to be commissioned, within 180 days from the date of PPA and had to be completed, within 5.5.2016, as per its Guidelines for the SRTPV Scheme; that the Petitioner had indicated the shadow free roof top area as 6,000 sq.feet, in the application dated 06.11.2015 and admitted her mistake in the letter dated 10.12.2015 and hence, the Respondent cannot be held to be liable, for the said mistake.

- (c) The SRTPV Guidelines of the Respondent, provide certain timelines, for every activity to be carried out, in the implementation of the SRTPV Projects. The Respondent has produced the Consumer Guidelines, issued by the Respondent (BESCOM), as ANNEXURE R-1. However, we note that these Guidelines, dated 09.08.2016, are not relevant to this case, as the application was made on 15.10.2015. The Consumer Guidelines, issued in 2014, based on the Generic Tariff Order dated 10.10.2013, are applicable (the procedure laid down, for commissioning the SRTPV Plants, in these Guidelines are repeated, without much change in the later Guidelines). The Respondent (BESCOM) had also issued Guidelines for the BESCOM's officials. We need to examine, if the parties have adhered to the timelines, mentioned in the said Guidelines.
- (d) The undisputed facts in the present case are that, the Petitioner submitted an application dated 15.10.2015, for installation of SRTPV Plant of 600 kW capacity, on the existing roof top of her Poultry Farm. In the application, the Petitioner had mentioned the shadow-free area of the roof top, in sq.metres, as 6,000. The PPA was entered into, on 06.11.2015, between the parties. When the PPA was sent to the Commission for approval, it was noticed that, different areas of the rooftop were mentioned in the application and the letter of the Respondent dated 20.11.2015, and a clarification was sought, in this regard. On 10.12.2015, the Petitioner clarified to the Respondent that, the area was wrongly mentioned as 6,000 sq.feet, instead of 6000 sq.metres. The Respondent informed the Commission about the clarification, given by the Petitioner on 21.12.2015

and the Commission approved the PPA on 01.01.2016, subject to furnishing proof of the existing roof of 6,000 sq.metres, to the Commission within 15 days. A copy of this letter was sent to the Petitioner. The Petitioner, addressed a letter on 13.01.2016 to the Commission, marking a copy to the Respondent, stating that, the shadow-free roof area is 64,800 sq ft. and also enclosed photographs of four sheds. On 16.01.2016, the Respondent informed the Petitioner about the approval of the PPA. On 20.1.2016, the Commission, directed the Respondent to confirm existence of the sheds, as per the details furnished by the Petitioner, in her letter dated 13.01.2016. The Petitioner has produced a letter dated 14.06.2016, addressed by the Respondent to the Commission, but the same is not available in the records of the Commission. A copy of the said letter was sent on 23.08.2016 to the Commission, by the Respondent. On 07.10.2016, the Respondent addressed a letter to the Commission, to know the status of the PPA. The Commission, addressed a letter dated 28.10.2016, to the Respondent stating, as follows:

*"Please refer your letter dated 07.10.2016 cited under reference (1). I am directed to inform that, the Commission has communicated approval to the said Power Purchase Agreement vide Commission's letter dated 01.01.2016, cited under reference (2), subject to furnishing the proof of the existence of the roof of 6000 square Meters in respect of the proposed 600 KW SRTPV installation, located at Kattur Village, Kolar Taluk and District. Thereafter, Smt.M.Shashikala vide her letter dated 13.01.2016, had furnished to the Commission, the photographs of such shed. Though the Commission vide its letter dated 20.01.2016, cited under reference (3), had requested BESCO to confirm the existence of the roof as per the proof furnished by Smt.M.Shashikala, as per records of the Commission BESCO*

*had not confirmed it. However, considering that, BESCO has satisfied itself about the existence of the roof as per the annexure to its letter cited under reference (4) the approval of the PPA shall be taken as validated on 01.01.2016 itself."*

Therefore, as the PPA was granted approval by the Commission on 01.01.2016, subject to production of proof of the existence of the roof top area of 6,000 sq.metres, within 15 days and the Petitioner had produced the proof within 15 days, the approval of PPA dates back to 01.01.2016. If there was any ambiguity, the Respondent could have, immediately, sought clarification from the Commission and need not have waited till 07.10.2016. The Respondent has also not taken immediate action, on the letter of the Commission dated 20.01.2016, and the delay in confirming about the roof top area, is not explained.

- (e) On a conjoint reading of the Consumer Guidelines and the Guidelines issued by the Respondent (BESCO) to its officials, the following Time Schedule has to be adhered to, in the installation and commissioning of a SRTPV Plant, on an existing roof top:
- (i) Within 7 working days from the date of Registration of the application, after ascertaining the technical feasibility, Format 5 for LT installations or Format 6 for HT installations, has to be issued to the applicant by the Respondent.
  - (ii) Within 180 days, from the date of issuance of approval in Format 5 or Format 6, the SRTPV system has to be commissioned, failing which

the approval will be treated as cancelled. After completion of installation work of the SRTPV system, the Work Completion Report has to be given by the applicant in Format 7, with a request to the Respondent to commission the plant. The Format-7 has to be accompanied by a copy of the PPA, safety approval and other documents mentioned in the Guidelines. The PPA has to be executed during the intervening period between the issuance of Format 5 /Format 6 and Format 7.

- (iii) After inspecting the modules, earthing, metres, inverters, and satisfying about all relevant technical parameters, the synchronisation has to be carried out by the Respondent within 3 working days from the date of request by the applicant in Format 7.
  
- (f) As per the above Time Schedule, in the present case, the Format-5 or Format-6 had to be issued by the Respondent on or before 29.10.2015, considering the intervening holidays from 15.10.2015, the date of application. Therefore, 180 days to complete the Project would begin from 30.10.2015 and end on 29.4.2016. Before this date, the Petitioner had to submit the Work Completion Report, in Format-7 along with the Safety Approval of the CEIG and other relevant documents. The PPA should have been executed, after the issuance of Format-5 or Format-6, the letter of approval. Apparently, the whole procedure is not followed in the present case.

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- (g) It appears that, after carrying out the installation work of the SRTPV Plant, the Petitioner has approached the Respondent, and the Respondent has addressed correspondences, pursuant to the same. As per the Guidelines, the Petitioner could not have commenced the work without any approval, in Format 5 or Format 6.
- (h) We note that, as per the Guidelines relating to the SRTPV Scheme, made available to all the consumers, for the SRTPV applicants having existing buildings, the time stipulated for completion of the Projects is, 180 days, which would also be intimated to the applicants in Format 5 or Format 6. Admittedly, the Petitioner had made the application for installation of a SRTPV Plant, under the said Scheme, but the Guidelines and the timelines mentioned therein, were not followed.
- (j) As per the Guidelines issued by the Respondent, approval for the installation in Format 5 or Format 6, should have been issued before the start of the installation work and prior to the execution of the PPA. In the present case, Format 6 is issued by the Respondent on 17.04.2017, granting 180 days to commission the plant from the said date. Therefore, it can be inferred that, the Format-6 is issued on 17.04.2017, to enlarge the time limit for completion of the Project, contrary to the Guidelines. This is not proper.
- (k) The Safety Report of the CEIG was obtained on 31.07.2017 and the Plant was commissioned on 11.10.2017.

- (l) Every PPA or other documents, like guidelines applicable to the PPA, specify the time limit, within which a Solar Power Project, in respect of which the PPA is executed, shall be completed and commissioned. Such a time limit in respect of the SRTPV Plants, proposed to be installed on the existing buildings, is 180 days. This is in view of the fact that, this Commission periodically determines generic tariff, for supply of electricity generated from various sources, to the Distribution Licensees, based on, among other parameters, mainly Capital Cost of the Generating Plant. Such generic tariff is made available for a period, normally longer than a year, called as 'Control Period', during which the Generating Plants get implemented and commissioned, at the normative Capital Cost, adopted in the Generic Tariff Order, generally after the execution of a PPA with Distribution Licensee. The Capital Cost of the Solar Power Plants has been coming down, rapidly in the recent years, because of the advancement in the technology and production efficiency, as well as economies of scale, in the backdrop of largescale Solar capacity additions, across the globe. Thus, generic tariff for SRTPV Plants, which was fixed at Rs.14.50 per unit in the Commission's Order dated 13.07.2010, has been successively reduced to Rs.9.56 per unit in the Order dated 10.10.2013, Rs.5.20 to 7.08 per unit (depending on the installed capacity) as per Order dated 02.05.2016 and Rs.3.56 per unit in the Order dated 18.05.2018.
- (m) Any extension of time by mistake or otherwise, by a Distribution Licensee, to commission a Power Project, has a bearing on the tariff payable. The tariff determination / fixation of price for electricity, is not an adversarial

proceedings. The consumer, though not a formal party, ultimately pays for the supply of electricity and is the most affected party. The Commission is required to safeguard such consumers' interest, as held by the Hon'ble Supreme Court, in the case of *All India Power Engineers Federation Ltd v. Sasan Power Ltd.*, reported in (2017) 1 SCC 487.

- (n) Thus, we hold that, the Petitioner cannot be permitted to claim that the terms of the PPA dated 06.11.2015, particularly in respect of the tariff, would apply to her Project, irrespective of the date of its commissioning.
- (p) For the above reasons, Thus, we answer Issue Nos.(1) and (2), in the negative.
- 9) **ISSUE No.(3):** *Whether the Petitioner has made out a case for the Petitioner's Plant to be eligible for the tariff, agreed to in the PPA dated 06.11.2015?*
- (a) It is the case of the Petitioner that the tariff, as agreed to in the PPA dated 06.11.2015, is applicable to the Petitioner's Plant, as there was no time limit for commissioning the Plant and the delay in commissioning the Plant was on account of the Respondent's mistakes.
- (b) It is not in dispute that, as a part of the State Government's Solar Policy dated 22.05.2014, which among other things, proposed to promote grid connected Roof Top Photo Voltaic Generation Projects, the Respondent had called for applications from 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 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 existing buildings, the time prescribed for commissioning the project is 180 days and there was no provision for extending the time prescribed. The Commission in its Order dated 10.10.2013 introduced net-metering facility to SRTPV plants, allowing the consumers, installing such plants to consume the power generated and inject any surplus power, into the distribution system of the Distribution Licensee concerned, who would pay such consumers tariff, for such surplus power injected, as determined by the Commission. It was envisaged that the consumers would install 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.

- (c) In respect of a SRTPV Plant, there would be a reduction of tariff, as a consequence of delay, in the commissioning of the Plant beyond the stipulated time, if in the meanwhile, there is a downward revision of generic tariff by the Commission. Admittedly, in the present case, the generic tariff fixed for SRTPV Plants, that was agreed to in the PPA, was downwardly 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 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 / Guidelines, 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 her 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 BESCO's HT/LT distribution system for sale of Solar Power to BESCO 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) It is stated that, the PPA was cancelled, by its Official Memorandum (OM) dated 30.12.2016, by the Respondent, on the ground that the Project was not completed within 180 days, as per the spot inspection report of the concerned officer. It is also mentioned in the said OM that a new PPA may be entered into, as per the Generic Tariff Order dated 02.05.2016. The Petitioner has replied to the said OM on 07.04.2017, stating that, the issuance of Format 6 was delayed, by the Respondent and that the Order terminating the PPA was issued, without hearing the Petitioner. We note

that, the Petitioner had addressed letter to the Respondent on 26.12.2016 to issue work order in Format 6. It appears that the Respondent has terminated the PPA immediately after this letter. There is a gap of more than three months, by the Petitioner, in replying to the OM dated 30.12.2016, for which there is no explanation. It is stated, in the reply dated 07.04.2017 that an advance of Rs.2 Crores was paid to the Contractor and the panels and equipment have been purchased. The letter dated 08.03.2016 of the Canara Bank reveals that, loan was sanctioned on 08.03.2016 to Mahalakshmi Poultry farm. The Statement of Account, issued by the Bank, reveals that on 04.04.2016, the amount of Rs.2 Crores has been transferred to Ampolt Electronics India Pvt. Ltd., from the Account of one Siri Mahalakshmi. It is not known, when the purchases of panels and equipment were made. Even assuming that, the Petitioner went ahead with the Project implementation, without Format-6 and the Project was ready with panels and other equipment as on 27.12.2016, when the Petitioner made a request for Format 6, the tariff prevalent was Rs.5.20 per unit, as per the Generic Tariff Order dated 02.05.2016. By this time, the generic tariff, fixed for 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 of setting up SRTPV Plants.

(e) The Generic tariff Order dated 02.05.2016, reads thus:

*"In respect of plants for which PPAs that have been entered into prior to 1<sup>st</sup> 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 10<sup>th</sup> 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."*

Thus, Petitioner's Plant, which is not commissioned within the stipulated time, is not eligible for the tariff as per the Commission's Order dated 10.10.2013, as agreed to in the PPA, and is eligible only for the revised tariff, as per the Commission's Order dated 02.05.2016. The restriction of installed capacity, mentioned in the Generic Tariff Order dated 02.05.2016 will not be applicable to the Petitioner's Plant. This concession is given, on the facts of this case, considering that the investment made on the Project should be protected. We make it clear that, this concession is granted on the facts and in the circumstances of this case, and will not be set as a precedent.

(f) We, therefore, answer Issue No.(3), in the negative.

10) **ISSUE No. (4):** *What Order?*

For the foregoing reasons, we pass the following:

**ORDER**

The Petition is dismissed.

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

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

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