

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 15th February, 2018

Present:

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

OP No.60/2017

BETWEEN:

Sri Venkatasami Reddy,
Dibburahalli Village,
Sadali Hobli,
Siddlaghatta Taluk,
Chikkaballapur District.

..

PETITIONER

[Represented by Tapasya Law Chambers, Advocates]

AND:

- 1) Bangalore Electricity Supply Company Limited,
K. R. Circle,
Bangalore – 560 001.
- 2) The Executive Engineer (Ele),
C.O. & Division, BESCOM,
Chintamani, Chikkaballapur District.
- 3) The General Manager (Ele),
DSM, Corporate Office,
BESCOM,
K. R. Circle,
Bengaluru – 560 001.

OP No.60/2017

- 4) The Assistant Executive Engineer,
BESCOM,
Rural Sub-division,
Sidlaghatta,
Chikkaballapur District.

..

RESPONDENTS

[Respondents represented by Juslaw, Advocates]

ORDERS

- 1) This Petition is filed under Section 86(1)(f) of the Electricity Act, 2003 praying, in effect, to set aside the Official Memorandum dated 19.01.2017, issued by the 2nd Respondent, terminating the Power Purchase Agreement (PPA) dated 28.12.2015 between the Petitioner and the 1st Respondent and to restore the said PPA and apply the tariff, agreed under the PPA.
- 2) The facts of the case, necessary for the disposal of the Petition, may be summed up as follows:
- (a) On 10.12.2015, the Petitioner made an application to the 2nd Respondent, seeking permission to establish a 1000 KWP SRTPV plant, on the roof top of the premises at Dibburahalli Village, Sadali Hobli, Siddagatta Taluk Chikkaballapur District under the State Government's Solar Policy. On 28.12.2015, the Petitioner entered into a PPA with the 2nd Respondent for supply of electricity at the rate of Rs. 9.56 per KWh, on net metering basis. The PPA was approved by the Commission on 06.05.2016.

OP No.60/2017

- (b) On 28.05.2016, the 2nd Respondent issued Approval / Commencement Certificate for establishing the SRTPV plant, informing that the approval was valid up to 27.12.2016 and that the plant had to be commissioned within the said period. On 24.12.2016, the Petitioner submitted the Work Completion Report in Format 6A and requested for the grant of evacuation approval. On 27.12.2016, the Chief Electrical Inspectorate (CEIG) issued Safety Approval for the said SRTPV plant. On 07.01.2017, the Petitioner addressed a letter to the 3rd Respondent requesting for the evacuation of power from the SRTPV Plant. On 19.01.2017, the 2nd Respondent issued an Official Memorandum, communicating to the Petitioner that the PPA dated 28.12.2015 is terminated pursuant to the Order of the Commission dated 27.09.2016, as the Petitioner had failed to complete the SRTPV Plant within 180 days. It was also mentioned that a Supplemental PPA (SPPA) may be entered into at the tariff fixed, as per the Generic Tariff Order dated 02.05.2016. The Respondent issued another communication dated 08.02.2017 stating that the PPA had been withdrawn on 19.01.2017 for not completing the installation work within 180 days. It was also requested to enter into a new SPPA, at the tariff determined vide Commission's Order dated 02.05.2016.
- (c) The Petitioner replied, vide letter dated 09.02.2017, stating that the work was completed before the expiry of 180 days, and hence, the Petitioner was entitled to the tariff of Rs.9.56 per unit as specified in the PPA. Aggrieved by the action of the Respondents, the Petitioner has filed this Petition. Here itself, we may note that, as per the 2nd Respondent's letter

OP No.60/2017

dated 28.05.2016, the Petitioner was given time of seven months (214 days), and not 180 days, for commissioning his plant.

(d) It is the case of the Petitioner that he had completed the work related to the commissioning of the Project on 24.12.2016 and on the same day submitted the Work Completion Report to the 4th Respondent, well within the time period communicated by the 2nd Respondent. That, the Respondents did not provide him evacuation approval without any reason and that the Commission's Order dated 02.05.2016 would not be applicable to his case, as it is mentioned in the Order that, if the work pertaining to the Project was completed within the stipulated time, the tariff as per the Order dated 10.10.2013 would be applicable. That, the cancellation of PPA dated 28.12.2015 is illegal, as the same was done after completion of the work and that no opportunity of hearing was given to the Petitioner, prior to cancellation of the PPA.

2) Upon issuance of Notice, the Respondents appeared through their Counsel and filed a common Statement of Objections. The contentions of the Respondents may be summed up as follows:

(a) The Respondents have acted in accordance with the Orders issued by the Commission from time to time. The Commission, in its Order dated 02.05.2016 and communications issued thereafter, has directed the Respondents to ensure that the Projects, for which PPAs are executed at the tariff fixed in the Order dated 10.10.2013, are commissioned within

OP No.60/2017

180 days. It has been further clarified that, no extension of time can be given to the generators who are unable to commission their plants within 180 days. It has directed that, if the generators are not able to commission their plants within 180 days, they would be entitled to the tariff as determined in the Order dated 02.05.2016. In the present case, the Petitioner claims to have submitted the Work Completion Report on 24.12.2016. As per the SRTPV Guidelines issued by the Respondents, the Work Completion Report in Format 7 is required to contain the details pertaining to inspection of the installation by the CEIG.

- (b) The CEIG has granted his approval on 27.12.2016; without the same, the Work Completion Report dated 24.12.2016 cannot be construed to be valid and hence, the submission of the Work Completion Report dated 24.12.2016 would be false. The Petitioner has obtained the approval of the CEIG on 28.12.2016. The Petitioner having failed to commission his plant, before 27.12.2016, is not entitled to the tariff determined in the Order dated 10.10.2013, but to the tariff determined in the Order dated 02.05.2016.
- (c) There is no requirement of affording an opportunity of a personal hearing prior to issuing the impugned communication. It is a settled law that, even the concept of natural justice does not require granting of a personal hearing. It is not even the case of the Petitioner that the Petitioner sought for a personal hearing.

OP No.60/2017

- (d) Based on the above submissions, the Respondents have prayed for the dismissal of the Petition.
- 3) We have heard the counsel for both sides and considered the respective pleadings and documents produced by the parties. The following issues would arise for our consideration:
- (1) Whether the 2nd Respondent is correct in granting 214 days' time to the Petitioner, for commissioning the Project from 28.05.2016 after execution of the PPA?
- (2) Whether the Petitioner has made out a case for its plant being eligible to the tariff agreed to in the PPA?
- (3) What Order?
- 4) After considering the submissions made by the parties and perusing the pleadings and documents placed on record, our findings on the above issues are as follows:
- 5) As the following issues are interconnected, we deal with them together.

ISSUE No.(1): *Whether the 2nd Respondent is correct in granting 214 days' time to the Petitioner, for commissioning the Project from 28.05.2016 after execution of the PPA?*

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

OP No.60/2017

- (a) 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 1st 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 such a time. The Commission in its Order dated 10.10.2013 introduced net metering facility to the 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 for such surplus power injected, the tariff 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.

OP No.60/2017

- (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 a SRTPV plant under the said Scheme. Therefore, 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.
- (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 revision of generic tariff by the Commission. Admittedly, in the present case, the generic tariff fixed for SRTPV plants that was agreed 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 the grid connected Solar Roof Top projects based on tariff Orders issued by the KERC 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 1st Respondent's SRTPV Scheme, which was governed by the tariff and other norms of the Commission's Order dated 10.10.2013, the amended

OP No.60/2017

or later Order, governing the implementation and operation including the tariff of the SRTPV plants, would be applicable to his plant as specified in the preamble of the PPA, which reads thus:

*“a. The Seller intends to connect and operate the Solar Roof Top Photo Voltaic (SRTPV) system with BESCO’s HT 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) We also note that, as per the ‘Consumer Guidelines’ issued by the 1st Respondent, approval for installation in Format 5 or 6 should have been issued before the start of installation work and prior to the execution of the PPA. If, for some reason, such a format is not issued before the start of work and the installation work has progressed, thereafter the Format 5 or 6 cannot be issued, so as to enlarge the time limit for installation of the project. The issuance of a letter (without being titled as Format 6) [Annexure-C] at a later date would lead to suspicion against the conduct of both parties. We hold that, the 2nd Respondent is not justified in issuing the letter dated 28.05.2016 (Format 6), granting time till 28-12-2016 (i.e., 214 days) for commissioning of the plant, much after the date of execution of the PPA, especially, by which time, 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 of setting up of the SRTPV plants. Hence, the issuance of the Format 6 on 28.05.2016, in

OP No.60/2017

the present case, that too giving time beyond the prescribed 180 days' time for commissioning of the Petitioner's plant, is irregular and, therefore, not valid. The Guidelines provide that, after completion of the works relating to the plant, a PPA has to be entered into at the prevailing tariff. In this case, the PPA was entered into much earlier. Hence, the Petitioner was entitled for 180 days' time to commission the plant from the date of the PPA. 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. It is 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 the present case, making the Petitioner to claim a higher tariff in violation of the terms of its own scheme cannot be allowed, as it adversely affects the interest of consumers and thereby public interest.

- (e) The Petitioner has contended that, the entire Project work was completed on 24.12.2016 and after receipt of the Safety Approval from the CEIG on 27.12.2016, the plant could not be commissioned on 27.12.2016, as the 2nd Respondent was not available. We further note that the Guidelines require that the Work Completion Report should be

OP No.60/2017

given by the SRTPV applicant in Format 7, at least 7 (seven) days prior to the last date approved for commissioning with all the necessary documents and approvals. The Work Completion Report in Format 7 dated 24.12.2016 (Annexure G) mentions that, the safety approval letter of the CEIG will be submitted (after inspection) on 27.12.2016. Without the Safety Approval from the CEIG, the plant could not have been commissioned. Further, the conversion of the Petitioner's LT installation to HT was a pre-requisite for commissioning the plant, without which, the plant cannot be stated to be ready or the work cannot be stated to be completed. We note that, the Petitioner addressed a letter dated 07.01.2017 to the 3rd Respondent requesting for evacuation of power from the plant and that the plant was commissioned on 11.08.2017. We note that, in the meanwhile, the 2nd Respondent, in his letter dated 19.01.2017 (Annexure-Q), informed the Petitioner that the PPA dated 28.12.2015 was withdrawn and that on Petitioner's consent for the new (revised) tariff a fresh PPA could be executed. The resolution of this development and conversion of the Petitioner's installation from LT to HT, as intimated by the 2nd Respondent to the Petitioner on 06.07.2017, which is a requirement as per the Guidelines and the Generic Tariff Orders, issued by the Commission, has taken some time. In any case, even without reckoning the time taken in the approval of evacuation of power, the commissioning of the Petitioner's plant cannot be taken as being achieved within 180 days or 214 days from 28.05.2016, as the Petitioner sought approval of evacuation of power from the 3rd Respondent only on 07.01.2017. It would not be reasonable to expect

OP No.60/2017

the 2nd Respondent to act on the CEIG's Safety Approval on the day of its issue itself.

- (f) The 2nd Respondent, in its letter dated 08.02.2017, has informed the Petitioner that, due to delay in completion of the SRTPV plant, the revised tariff of Rs.5.20 per unit was applicable, as per the Commission's Order dated 02.05.2016. The Respondents have contended that the PPA was executed on 28.12.2015 and the plant was not commissioned within 180 days from the date of execution of the PPA and therefore, the Petitioner is entitled for the revised tariff, as per the Commission's Order dated 02.05.2016. The Petitioner has contended that, the Commission's Order dated 02.05.2016 is not applicable to the Petitioner's plant, as the work was completed, within the time stipulated in the letter of approval of the 2nd Respondent dated 28.05.2016. We note that, the relevant portion relating to applicability of 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, Petitioner's plant, which is not commissioned within stipulated period of 180 days as per the 1st Respondent's SRTPV Scheme, is not

OP No.60/2017

eligible for the tariff as per the Commission's Order dated 10.10.2013 as agreed to in the PPA and, as it is commissioned on 11.8.2017, it is eligible only for the revised tariff, as per the Commission's Order dated 02.05.2016.

- (g) The Petitioner has contended that the termination of the PPA by the 2nd Respondent on 19.1.2017 is not proper, as no notice of termination was issued. We do not wish to go into this aspect, as we have held that in any case the tariff agreed in the PPA will not be applicable to the Petitioner's plant.
- (h) For the aforesaid reasons, the tariff applicable would be as per the Generic Tariff Order dated 02.05.2016.
- (j) We, therefore, answer Issue Nos.(1) and (2) in the negative.
- 6) **ISSUE No.(3):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) The Petition is dismissed and the Petitioner is not entitled to any of the reliefs sought for; and,
- (b) The Petitioner is entitled to the tariff of Rs.5.20 (Rupees Five and Paise twenty) only per unit on entering into a suitable

OP No.60/2017

Supplemental PPA with the Respondent, for a term of 25 (Twenty five) years.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER