

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 5th September, 2019

Present:

Shri Shambhu Dayal Meena	..	Chairman
Shri H.M. Manjunatha	..	Member
Shri M.D. Ravi	..	Member

OP No.64/2018

BETWEEN:

Shri D.V. Harish
S/o Shri Doddappaiah,
Aged about 38 years,
R/at Vadagur Village,
Kembodi Section,
Kolar Taluk and District,
Kolar.

.. **PETITIONER**

[Represented by Dr. S. Iqbal Ahamed, Advocate]

AND:

1) The Managing Director,
Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.

2) Bangalore Electricity Supply Company Limited,
Represented by its
Executive Engineer (Electrical),
BESCOM,
Kolar.

.. **RSPONDENTS**

[Respondents represented by Justlaw, Advocates]

OP No.65/2018**BETWEEN:**

Shri D.V. Harish
S/o Shri Doddappaiah,
Aged about 38 years,
R/at Vadagur Village,
Kembodi Section,
Kolar Taluk and District,
Kolar.

.. **PETITIONER**

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- 1) The Managing Director,
Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 2) Bangalore Electricity Supply Company Limited,
Represented by its
Executive Engineer (Electrical),
BESCOM,
Kolar.

.. **RSPONDENTS**

[Respondents represented by Justlaw, Advocates]

OP No.02/2019**BETWEEN:**

Shri D.V. Harish
S/o Shri Doddappaiah,
Aged about 38 years,
R/at Vadagur Village,
Kembodi Section,
Kolar Taluk and District,
Kolar.

.. **PETITIONER**

[Represented by Dr. S. Iqbal Ahamed, Advocate]

AND:

- 1) The Managing Director,
Bangalore Electricity Supply Company Limited,
K.R. Circle,
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- 2) Bangalore Electricity Supply Company Limited,
Represented by its
Executive Engineer (Electrical),
BESCOM,
Kolar.

.. **RSPONDENTS***[Respondents represented by Justlaw, Advocates]*

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COMMON ORDERS

- 1) In the above Petitions, the parties are the same and the questions of law and facts involved are also the same. Therefore, this Common Order is passed in all the three Petitions. The contents and Exhibit Numbers of different documents, produced by the parties in all these cases, are almost similar.
- 2) OP No.64/2018 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:
 - “(a) Declare that the Petitioner bearing RR No.KBP.108 is entitled to a tariff of Rs.9.56 per unit for the power delivered to the Respondent No.2 as per the Power Purchase Agreement (PPA) dated 02.12.2015, from the Commercial Operation Date of the Project April, 2017, for the entire term of the PPA;
 - (b) Direct the Respondent No.2 to revise the bills and make payment of the tariff of Rs.9.56 per unit for the power delivered from the Petitioner Project bearing RR No.KBP.108 as per the PPA dated 02.12.2015 from April, 2017 along with 18% interest per month as agreed under PPA, from the date of supply upto the date of correct payment;

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- (c) Issue any Order or direction as this Hon'ble Court deems fit in the facts and circumstances."
- 3) OP No.65/2018 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:
- "(a) Declare that the Petitioner bearing RR No.KBP.181 is entitled to a tariff of Rs.9.56 per unit for the power delivered to the Respondent No.2 as per the Power Purchase Agreement (PPA) dated 02.12.2015, from the Commercial Operation Date of the Project April, 2017, for the entire term of the PPA;
- (b) Direct the Respondent No.2 to revise the bills and make payment of the tariff of Rs.9.56 per unit for the power delivered from the Petitioner Project bearing RR No.KBP.181 as per the PPA dated 02.12.2015 from April, 2017 along with 18% interest per month as agreed under PPA, from the date of supply upto the date of correct payment;
- (c) Issue any Order or direction as this Hon'ble Court deems fit in the facts and circumstances."
- 4) OP No.02/2019 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:
- "(a) Declare that the Petitioner bearing RR No.KRP.659 is entitled to a tariff of Rs.9.56 per unit for the power delivered to the Respondent No.2 as per the Power Purchase Agreement (PPA) dated 02.12.2015, from the Commercial Operation Date of the Project April, 2017, for the entire term of the PPA;
- (b) Direct the Respondent No.2 to revise the bills and make payment of the tariff of Rs.9.56 per unit for the power delivered from the Petitioner Project bearing RR No.KRP.659 as per the PPA dated

02.12.2015 from April, 2017 along with 18% interest per month as agreed under PPA, from the date of supply upto the date of correct payment;

(c) Issue any Order or direction as this Hon'ble Court deems fit in the facts and circumstances."

5) The material facts, stated by the Petitioner in the above the Petitions, may be stated as follows:

(a) That, the Respondents (BESCOM) issued the "Consumer Guidelines for availing Grid Connectivity of Solar Roof Top PV systems in BESCOM on Net Metering Basis." As per the said guidelines, the Respondents invited the interested parties to install the Solar Roof Top Photo Voltaic (SRTPV) Systems. The Petitioner applied for approval for installation of three units of SRTPV System of 500 kWp capacity each. The Respondents granted approvals dated 02.12.2015, in format No.6 (ANNEXURE-B), for installation of three units of 500 kWp SRTPV System, connected to RR Nos.KBP-108, KBP-181 and KRP-659. In respect of these three units of SRTPV System, the Petitioner entered into three separate Power Purchase Agreements (PPAs) dated 02.12.2015 (ANNEXURE-A) with the Respondents, for sale of net metered energy, at Rs.9.56 per unit, subject to the terms and condition stated in the PPAs. The claims made in OP Nos.64/2018, 65/2018 and 02/2019, related to these three PPAs concerned with RR Nos.KBP-108, KBP-181 and KRP-659, respectively. *[By mistake, the Petitioner has produced the PPA concerned with RR No.KBP-181 in OP No.64/2018, instead of producing it in OP No.65/2018. Similarly, the Petitioner has produced the*

PPA concerned with RR No.KBP-108 in OP No.65/2018, instead of producing it in OP No.64/2018.]

- (b) That, the approvals dated 02.12.2015, issued by the Respondents for installing the SRTPV Systems, stated that the approvals were valid for 180 days from the date of issuance of the approvals and the SRTPV systems shall be commissioned within this period, failing which the approvals would be treated as cancelled.
- (c) That, the Projects were unique and the execution, procurement and modalities of the Projects took time, thereby, at the Petitioner's request, the 2nd Respondent, vide letters dated 11.05.2016 (ANNEXURE-C), granted extension of one year's time from 11.05.2016, for commissioning the SRTPV Systems.
- (d) That the Petitioner has completed the installation of the SRTPV Systems, well within the extended period and vide the letters dated 18.01.2017 (ANNEXURE-D), has intimated the 2nd Respondent about the completion of the installation of the SRTPV Systems and sought for the Form No.7 approval.
- (e) That, the 2nd Respondent, vide letters dated 08.03.2017 (ANNEXURE-E), has accorded approval for conversion of LT to HT Power Supply Line, to RR Nos.KBP-108, KBP-181 and KRP-659. That, the Petitioner made payments, as advised and obtained Payment Certificates dated 13.03.2017 (ANNEXURE-F) and also obtained the Certificates dated 13.03.2017

- (ANNEXURE-G), according administrative approval for conversion of LT to HT Power Supply, under self-execution.
- (f) That, the Chief Electrical Inspectorate (CEIG) conducted an inspection of the SRTPV Systems of the Petitioner and issued the Electrical Safety Approvals for the SRTPV Systems relating to RR Nos.KBP-108, KBP-181 and KRP-659. The said Approvals (ANNEXURE-H) are dated 24.03.2017, 31.03.2017 and 21.03.2017, respectively. That, the 2nd Respondent also issued instructions to the Executive Engineer (Ele) concerned, to do the pre-commissioning tests of the SRTPV Systems, vide letters dated 25.03.2017, 01.04.2017 and 22.03.2017, respectively (ANNEXURE-J). That, the 2nd Respondent accorded approval for purchase and installation of LT Meters of the SRTPV Systems, vide letters dated 27.03.2017, 31.03.2017 and 27.03.2017, respectively (ANNEXURE-K).
- (g) That, the Petitioner, after obtaining all the clearances, started exporting power to the Grid, from the month of April, 2019 and submitted the Bills for the same in the month of May, 2017 (ANNEXURE-L).
- (h) That, as per the PPAs, the Petitioner was entitled for payment of Rs.9.56 per unit, but, however, the Respondents have arbitrarily reduced the tariff to Rs.5.20 per unit and that, till date, no amount has been paid to the Petitioner. Hence, the Petitioner has filed the present Petitions, viz., OP Nos.64/2018 and 65/2018 on 18.07.2018 and OP No.02/2019 on 09.01.2019.
- 6) After filing the Petitions in OP Nos.64/2018 and 65/2018, the Petitioner has produced the Commissioning Certificates of the SRTPV Systems,

evidencing that the said Systems were commissioned on 31.03.2017 and 03.04.2017, respectively. In OP No.02/2019, it is submitted by the Petitioner that, the SRTPV System involved in this case was also commissioned on 31.03.2017. On the Applications of the Petitioner, filed in OP Nos.64/2018 and 65/2018, requesting for a direction to the Respondents for making interim payments for the energy having been supplied, the Commission, on 25.10.2018, fixed an Interim Tariff of Rs.5.20 per unit.

- 7) Upon Notice, the Respondents appeared through their counsel and filed a common Statement of Objections in each of the Petitions. The defence taken by the Respondents, in all these Petitions, is similar. The defence of the Respondents may be stated as follows:
- (a) That, vide Official Memorandum (OM) dated 30.12.2016 (ANNEXURE-R2), the three PPAs, executed between the parties, were cancelled, as the Petitioner had failed to commission the SRTPV Systems, within 180 days from the date of execution of the PPAs.
 - (b) The Respondents have admitted the issuance of the letters of approval dated 11.05.2016 (ANNEXURE-C), according extension of one year's time from 11.05.2016, for commissioning the SRTPV Systems.
 - (c) That, this Commission, in the Generic Tariff Order dated 02.05.2016, has clearly stated that, no further extension ought to be given to the SRTPV Plant Owners, who have not commissioned their Plants within 180 days and have not executed the PPAs as per the Tariff Order dated 10.10.2013, at the tariff of Rs.9.56 per unit. That, thereafter, the Commission, vide letter

dated 27.09.2016, directed the Respondents, not to grant any extension of time for commissioning of the SRTPV Systems.

- (d) That, vide OM dated 18.05.2016 (ANNEXURE-R1), the Respondents have withdrawn their Circular dated 17.11.2015, which authorized them for granting of extension of time for commissioning the SRTPV Systems. That, the Petitioner is not entitled for extension of time, as per the Generic Tariff Order dated 02.05.2016 and the OM dated 18.05.2016. That, subsequent to the cancellation of the PPAs, vide OM dated 30.12.2016 (ANNEXURE-R2), the Petitioner, vide letters dated 18.01.2017, requested the Respondents to allow the Petitioner to commission the SRTPV Systems. That, in furtherance of the Petitioner's request, the Respondents, vide letters dated 01.02.2017 (ANNEXURE-R3), addressed to the Petitioner, allowed the Petitioner to commission the SRTPV Systems, in terms of the Generic Tariff Order dated 02.05.2016, passed by this Commission.
- (e) Subsequently, the Petitioner obtained the CEIG approvals, for Grid connectivity and accordingly, the SRTPV Systems in OP Nos.64/2018 and 02/2019 were synchronized on 31.03.2017 and the SRTPV System in OP No.65/2018 was synchronized on 03.04.2017.
- (f) That, as per the Guidelines issued by the Respondents for availing the Grid connectivity of the SRTPV System (ANNEXURE-R4), the time allowed for commissioning of a SRTPV System was 180 days from the date of issuance of the approval for installing the SRTPV System. Further that, this Commission, in its letter dated 27.09.2016, addressed to all the Managing

Directors of the Electricity Supply Companies (ESCOMs), had instructed that, if there was any delay in commissioning of the Project, within six months' time specified, the Consumer concerned would be eligible for the revised tariff, as per this Commission's Generic Tariff Order dated 02.05.2016.

- (g) Therefore, the Respondents have contended that, the Petitioner is not entitled to the tariff of Rs.9.56 per unit, as agreed to in the PPAs, but only to the revised tariff of Rs.5.20 per unit, as determined by this Commission in the Generic Tariff Order dated 02.05.2016, for the energy delivered to the Grid.
- 8) We have heard the learned counsel for the parties. The learned counsel for the Petitioner has also filed Written Arguments in all the Petitions.
- (a) The gist of the submissions of the learned counsel for the Petitioner may be stated as follows:
- (i) That, the Executive Engineer (Ele), BESCOM, Kolar Division, had issued the approval letters dated 11.05.2016 (ANNEXURE-C), for installing the SRTPV Systems, in question, granting one year's time for commissioning the said Systems, from the date of issuance of the said approval letters. Further that, admittedly, the SRTPV Systems involved in OP Nos.64/2018 and 02/2019 were commissioned on 31.03.2017 and the SRTPV System involved in OP No.65/2018 was commissioned on 03.04.2017, well within the extended period, under the approval dated 11.05.2016. Further that, the letter dated 27.09.2016 (ANNEXURE-R5) of this Commission, does not

direct to withdraw the extension of time already granted, for commissioning of any SRTPV System and to deny the tariff of Rs.9.56 per unit, granted in the PPAs, in the event the SRTPV Systems are commissioned within the extended time. That, therefore, the Petitioner is entitled to a tariff of Rs.9.56 per unit for the energy supplied. Further that, the act of the Respondents in withdrawing the earlier Circular dated 17.11.2015, by their OM dated 18.05.2016 (ANNEXURE-R1), does not affect the rights of the Petitioner. That, the Respondents cannot unilaterally cancel the PPAs, for the reasons stated in the OM dated 30.12.2016 (ANNEXURE-R2). That, the alleged cancellation of the PPAs is against the agreed terms and conditions of the PPAs, and as such, the said cancellation is illegal and void.

(ii) That, having granted the extension of time for commissioning the Projects, for a period of one year from 11.05.2016, and the Petitioner having incurred huge amounts for installing the SRTPV Systems, on the assurance of extended time, the Respondents are, at this juncture, estopped from denying the extension of time, on any ground.

(iii) That, alternatively, without prejudice to the claim for the tariff of Rs.9.56 per unit, the Petitioner is entitled to the tariff of Rs.5.67 per unit, even as per the Generic Tariff Order dated 02.05.2016, because, the installed capacity of the SRTPV Systems in these Petitions is less than 500 kWp.

(b) The gist of the submissions of the learned counsel for the Respondents, may be stated as follows:

(i) The learned counsel for the Respondents relied upon the view taken by this Commission, in its Order dated 28.05.2019 passed in OP No.08/2018, in the case of *Shri B.N. Chandrappa -Vs- BESCO*, wherein this Commission has held that, the Respondent (BESCO), therein, had no power to issue the Circular dated 17.11.2015. Therefore, the learned counsel contended that, the extension of one year's time, granted under letter dated 11.05.2016 (ANNEXURE-C), relying on the Circular dated 17.11.2015, for commissioning the SRTPV Systems of the Petitioner, is not valid. Therefore, according to the learned counsel for the Respondents, the cancellation of the PPAs was valid and at best, the Petitioner may be allowed the tariff of Rs.5.20 per unit, as per the Generic Tariff Order dated 02.05.2016 of this Commission.

(ii) The learned counsel for the Respondents has opposed all other contentions raised by the learned counsel for the Petitioner.

9) From the pleadings and the rival contentions, the following issues would arise for our consideration, in these Petitions:

(1) Whether the Respondents (BESCO) have power to issue the Circular dated 17.11.2015, authorizing them to grant extension of time, for completion of the installation works of the SRTPV Systems?

(2) Whether the extension of time granted, under the letters dated 11.05.2016 (ANNEXURE-C), subsequent to passing of the Generic Tariff Order dated 02.05.2016 by this Commission, is valid?

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- (3) Whether the Petitioner proves that, the Respondents (BESCOM) are estopped from denying the extension of time to the Petitioner, on any ground?
- (4) Whether the Petitioner, even in the case of delay in commissioning of the SRTPV Systems, is entitled to the tariff of Rs.5.67 per unit, as per the Generic Tariff Order dated 02.05.2016 of this Commission?
- (5) Whether the Petitioner is entitled to interest from April, 2017, for the amounts found due towards payment of energy delivered, till the date of payment of the said amounts?
- (6) What Order?
- 10) After considering the pleadings and the submissions of the parties our findings on the above issues are as follows:
- 11) **ISSUE No.(1)**: *Whether the Respondents (BESCOM) have power to issue the Circular dated 17.11.2015, authorizing them to grant extension of time, for completion of the installation works of the SRTPV Systems?*
- (a) Pursuant to the applications file by the Petitioner, requesting for approval for installing the SRTPV Systems, the Executive Engineer concerned of the O&M Division, BESCOM, Kolar issued approvals dated 02.12.2015 (ANNEURE-B), in Format No.6, granting 180 days for commissioning the SRTPV Systems, failing which the approvals would be treated as cancelled. Subsequently, the said Executive Engineer granted the extension of time of one year, at the request of the Petitioner, as per the letter dated 11.05.2016 (ANNEXURE-C), acting under the Circular dated 17.11.2015, issued by the BESCOM. The parties have not produced the said Circular. The OM dated 18.05.2016 (ANNEXURE-R1), produced by the Respondents

(BESCOM) states that the said Circular dated 17.11.2015 has been withdrawn, with immediate effect. This Circular is on the BESCOM's Website. The said Circular states that, the Corporate Office had received many letters, requesting for extension of time limit, for installation of the SRTPV Systems, since the processing of loans would take much time and the present 180 days' time for completion was not sufficient, thereby the Processing Committee discussed this issue on 16.09.2015 and decided to extend the time limit, after collecting certain re-registration fees, from six months to twelve months, as indicated in the said Circular.

- (b) The Government of Karnataka issued the Solar Policy dated 22.05.2014 and fixed a target for installation of 400 MW capacity grid-connected SRTPV installations. Pursuant to it, the Respondents (BESCOM) launched the Guidelines for installing the grid-connected SRTPV Systems on the Roof Top of the Consumers' Buildings. A complete set of the SRTPV Guidelines are on the BESCOM's Website. This Commission, in its letter dated 27.08.2014, had approved the Guidelines, before it was published by the BESCOM on its Website. While approving the Guidelines, the Commission intimated that the Standard Format of the PPA, to be entered into between the Distribution Licensee and the Consumers, would be finalized and sent to the BESCOM. Accordingly, this Commission, by its Order dated 16.09.2014, approved the PPA Format and sent it to the BESCOM, supplementing the Guidelines. The Guidelines approved by this Commission provided that, after obtaining the Feasibility Report, approval should be issued, either in Format No.5 or Format No.6, for installation of

the SRTPV System, allowing 180 days for commissioning of the SRTPV System. When such a Format was approved by this Commission, thereafter the Respondents (BESCOM) cannot issue a Circular, without the approval of the Commission, for extension of time. Therefore, the Respondents (BESCOM) cannot unilaterally decide to alter such material term in the Guidelines.

(c) For the above reasons, we answer Issue No.(1), in the negative.

12) **ISSUE No.(2):** *Whether the extension of time granted, under the letters dated 11.05.2016 (ANNEXURE-C), subsequent to passing of the Generic Tariff Order dated 02.05.2016 by this Commission, is valid?*

(a) This Commission has periodically determined the generic tariff for supply of energy, from the Renewable Sources, to the Distribution Licensees, based on the relevant financial and technical parameters, of which, the Capital Cost of the Generating Plant being a major component. Because of the advancement in technology and production efficiency, in the case of Solar Power Plants, the tariff is on a downward trend, in recent years. Therefore, the Commission has been revising the tariff, whenever it was found necessary. Accordingly, this Commission, by its Order dated 02.05.2016, has determined the generic tariff for the SRTPV Systems. While stating the applicability of this Order, the Commission has noted as follows:

“5. Applicability of the Order:

The Commission, in supersession of its Order dated 10th October, 2013, decides that the norms and tariff determined in this Order shall be applicable to all new grid connected solar rooftop and small solar photovoltaic power plants, entering into Power Purchase Agreement (PPA) and

commissioned on or after 2nd May, 2016 and upto 31st March, 2018.

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.

The Commission notes that even if it considers a liberal solar power capacity addition target for the State, the investments made in the solar power generation so far indicates that such target is almost achieved and hence it may not be prudent to allow further capacity addition. The Commission deems it necessary to specify that the tariff determined in this order shall be limited only to an aggregate capacity addition of 400 MW by all the ESCOMs in the State for the effective period of this Order. Further out of such 400 MW capacity, 300 MW capacity shall be reserved for domestic, hospital and educational institutions which would be eligible for gross metering, as detailed in the later part of this Order.

The tariff determined and other norms specified in this Order shall be applicable for the term of the PPAs entered into in respect of projects covered by this Order. The Commission would take up review of this Order, if deemed necessary, before the end of the effective period of this Order."

- (b) The above paragraph of the Generic Tariff Order dated 02.05.2016 makes it clear that the PPA entered into, with a tariff determined under the Generic Tariff Order dated 10.10.2013, in respect of the SRTPV Systems, would be governed by the lesser tariff, as determined in the said Order dated 02.05.2016, in case the SRTPV Systems were not commissioned within the stipulated period and further that, there should not be any

extension in time period for commissioning them, after the Effective Date of the said Order. Therefore, subsequent to the Generic Tariff Order dated 02.05.2016, for any delay in commissioning of the SRTPV Systems, there cannot be any extension of time for commissioning the said Systems and they should be governed by the lesser tariff, as determined in the said Order.

- (c) In view of such a provision contained in the Generic Tariff Order dated 02.05.2016, the concerned Officials of the Respondents (BESCOM) could not have granted extension of time, vide letters dated 11.05.2016 (ANNEXURE-C). Any official(s) of the Respondents (BESCOM) could not have relied upon the Circular dated 17.11.2015, for extending the time, as the said Circular stands annulled subsequent to passing of the Generic Tariff Order dated 02.05.2016. This Commission wrote a D.O. letter dated 06.05.2016 to the Energy Department, Government of Karnataka, requesting the Government to instruct the ESCOMs, not to grant the extension of time for commissioning of the SRTPV Systems. In turn, the Energy Department, Government of Karnataka, by its letter dated 13.05.2016, instructed all the ESCOMs, to abide by the instructions issued by this Commission, not to grant the extension of time. Soon, thereafter, the Respondents (BESCOM) issued the Official Memorandum dated 18.05.2016 (ANNEXURE-R1), withdrawing the Circular dated 17.11.2015. It is an established principle that, whenever the extension of time for commissioning the Power Projects affects the tariff, such extension could

be granted only by this Commission or with the approval of this Commission.

- (d) For the above reasons, we hold that, the Executive Engineer concerned of the O&M Division, BESCOM, Kolar, could not have issued the letters dated 11.05.2016 (ANNEXURE-C), granting one year's time from the date of the said letter, for commissioning the SRTPV Systems of the Petitioner.
- (e) Therefore, we answer Issue No.(2), in the negative.

13) **ISSUE No.(3):** *Whether the Petitioner proves that, the Respondents (BESCOM) are estopped from denying the extension of time to the Petitioner, on any ground?*

- (a) It is an established principle that, there cannot be any *estoppel* against a statute. As already noted, the Respondents (BESCOM) could not have extended the time for commissioning the SRTPV Systems, without the approval of this Commission. In such circumstance, the Petitioner cannot plead the principle of *estoppel* against the Respondents (BESCOM).
- (b) Assuming that the Petitioner can take the defence of *estoppel*, he has to prove the same, by producing cogent evidence. The Petitioner has not produced any such evidence to establish that, he was put to a disadvantageous position by the withdrawal of the extension of time granted. Without producing evidence to this effect, the Petitioner cannot make out a case for *estoppel*.
- (c) For the above reasons, we answer Issue No.(3), in the negative.

- 14) **ISSUE No.(4):** *Whether the Petitioner, even in the case of delay in commissioning of the SRTPV Systems, is entitled to the tariff of Rs.5.67 per unit, as per the Generic Tariff Order dated 02.05.2016 of this Commission?*
- (a) The Generic Tariff Order dated 02.05.2016 provides for a tariff of Rs.5.67 per unit, without Capital Subsidy, for the SRTPV Systems, with an installed capacity of above 100 KW and up to 500 KW. We are of the considered opinion that, the Petitioner is entitled to this tariff of Rs.5.67 per unit, in respect of his SRTPV Systems, as the installed capacity of the said SRTPV Systems is not more than 500 KW. The tariff of Rs.5.20 per unit, without Capital Subsidy, is applicable, only to the SRTPV Systems with an installed capacity of above 500 KW and up to 1 MW, as per the said Generic Tariff Order dated 02.05.2016.
- (b) For the above reasons, we answer Issue No.(4), in the affirmative.
- 15) **ISSUE No.(5):** *Whether the Petitioner is entitled to interest from April, 2017, for the amounts found due towards payment of energy delivered, till the date of payment of the said amounts?*
- (a) The Respondents (BESCOM) have cancelled all the three PPAs dated 02.12.2015 (ANNEXURE-A), vide letters dated 30.12.2016 (ANNEXURE-R2). The Petitioner has contended that, the cancellation of the PPAs, vide letters dated 30.12.2016 (ANNEXURE-R2), is illegal and the Respondents have not followed the procedure laid down for the termination of the PPAs. The Petitioner has not challenged the cancellation of the PPAs. The approvals dated 02.12.2015 (ANNEXURE-B), provide for 180 days for commissioning the SRTPV Systems, failing which, the said approvals would

be treated as cancelled. In the absence of the approvals, the PPAs cannot come into existence. Therefore, in the event, the approvals for installation of the SRTPV Systems stood cancelled, for any reason, the PPAs can also be treated as cancelled, for the delay in commissioning of the SRTPV Systems. In such circumstance, the cancellation of the PPAs, vide letters dated 30.12.2016 (ANNEXURE-R2), cannot be said to be a void document. In that event, it was required for the Petitioner to specifically pray for setting aside the cancellation of the PPAs. However, this Commission has passed the Order bearing No.KERC/S/F-31/Vol-382/1285 dated 07.11.2017, "*In the matter of Tariff Order for SRTPV Plants violating the norms specified for implementation of the SRTPV Plants*", giving certain reliefs for the Projects commissioned with certain violations. The relevant part of the relief as applicable to the Petitioner, as per the said Order dated 07.11.2017, is as follows:

"A consumer having executed a PPA with any ESCOM in respect of his/her proposed SRTPV Plant in terms of the Commission's Order dated 10.10.2013 but, having such a PPA cancelled for the delay in commissioning of the Project within the stipulated period, shall be allowed to commission the Project and shall be entitled for the revised tariff, as in the Commission's Order dated 02.05.2016 subject to he/she entering into a fresh PPA and commissioning the Project on or before 31.12.2017."

The Respondents (BESCOM) have demanded the Petitioner to execute fresh PPAs, as required, but the Petitioner has not executed any such fresh PPAs. Therefore, the supply of energy, if any, from the SRTPV Systems of the Petitioner, is not under any Supply Agreements with the Respondents

(BESCOM) or by virtue of any Order passed by this Commission. In that event, the Petitioner cannot claim any interest, for the amounts that may be found due, towards payment for the energy delivered, from April, 2017.

(b) For the above reasons, we answer Issue No.(4), in the negative.

16) **ISSUE No.(6):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) It is declared that, the Petitioner, in all these Petitions, is not entitled for any of the reliefs, sought for, on the grounds urged in the Petitions;
- (b) The Petitioner shall be paid a tariff of Rs.5.67 (Rupees Five and Paise Sixty Seven only) per unit, under net metering, for the electricity generated and injected into the Grid from his SRTPV Systems, for a period of 25 (Twenty Five) years from the date of commissioning of the SRTPV Systems, upon entering into appropriate fresh PPAs with the Respondents (BESCOM), within 4 (four) weeks from the date of this Order;
- (c) In the event of the Petitioner entering into fresh PPAs with the Respondents (BESCOM), as mentioned above, the Respondents (BESCOM) shall pay to the Petitioner, for the energy injected into the Grid, from the dates of commissioning of the SRTPV Systems, till the date of execution of the fresh PPAs, at the tariff of Rs.5.67 (Rupees Five and Paise Sixty Seven only) per unit, after making necessary adjustments of the payments made, if any, within 4 (four) weeks from the date of execution of the fresh PPAs;

- (d) If the Petitioner fails to execute fresh PPAs, as mentioned above, he shall be at liberty to sell the electricity, generated from his SRTPV Systems, to third parties and he shall not be entitled to inject the energy into the Grid, after 4 (four) weeks from the date of this Order, without obtaining approval for open access, for sale of energy to third parties, and any unauthorized injection of energy into the Grid from the SRTPV Systems of the Petitioner, shall not be entitled for any compensation;
- (e) In the event of the Petitioner not entering into the fresh PPAs with the Respondents (BESCOM), as mentioned above, the Respondents (BESCOM) shall pay to the Petitioner, for the energy injected into the Grid, from the dates of commissioning of the SRTPV Systems, till the expiry of 4 (four) weeks from the date of this Order, or such other earlier date(s), as the case may be, at the tariff of Rs.5.20 (Rupees Five and Paise Twenty only) per unit, as per the Interim Order, after making necessary adjustments of the payments made, if any. The amounts, so found due, shall be paid by the Respondents (BESCOM) to the Petitioner within 4 (four) weeks, thereafter; and,
- (f) The original Order shall be kept in OP No.64/2018 and copies, thereof, in OP No.65/2018 and OP No.02/2019.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER