

No.N/367/2017

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

Dated: 19.08.2020

Present:

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

OP No.193/2017

BETWEEN:

Sri B.M. Ramachandraiah,
S/o B.L. Mallappa,
Aged about 72 years,
Residing at M.G. Road, Kollur New Badavane,
Near Venkateshwara Kalyana Mantapa,
Srinivasapura,
Kolar District-563 138.

...PETITIONER

(Represented by Sri Zulfikir Kumar Shafi &
Sri S. Lakshiminarayana Reddy, Advocates)

AND:

- 1) Bangalore Electricity Supplies Company Limited (BESCOM),
having its Registered Office at K.R. Circle,
Bengaluru-560 001.
(Represented by its Managing Director)
- 2) The Executive Engineer (Ele) C, O & M Division,
BESCOM,
Kolar-563138.
- 3) The General Manager (Ele),
DSM Corporate Office,
BESCOM, K.R. Circle,
Bengaluru-560 001.

- 4) The Assistant Executive Engineer,
BESCOM, Rural Sub-division,
Srinivasapura Division,
Kolar District.

..RESPONDENTS

(Respondents 1-4 represented by
M/s Justlaw, Advocates)

ORDERS

1. This is a petition filed under Section 86 (1) (f) of the Electricity Act, 2003, praying for the following reliefs to:

- a) Set-aside the Official Memorandum/Order dated 29.12.2016 bearing Ref. No.KaNiEe(vi)/ SaKaNiEe(Ka)/ BESOM/SaEe(Tha)/16-17/3861-65 passed by the 2nd Respondent vide Annexure-H, wherein the Power Purchase Agreement (PPA) dated 30.09.2015 entered into between the 1st Respondent (BESCOM) vide Annexure-E and the Petitioner is cancelled in the interest of justice and equity;
- b) Restore the PPA dated 30.09.2015 entered into between the 1st Respondent (BESCOM) represented by the 2nd Respondent and the Petitioner herein and apply the tariff determined under the said PPA, in the interest of justice and equity;
- c) Direct the Respondents to issue approval for evacuation of Power of SRTPV installed by the Petitioner in the subject land, in the interest of justice and equity; and
- d) Pass such other order or direction as this Commission deems fit on the facts and circumstance of the case, in the interest of justice and equity.

2. The material facts required for the disposal of the controversies involved in this case, as narrated in the petition may be stated as follows:

- a) The Petitioner is the owner of land bearing Sy. No. 13/2 measuring 6 acres at K.G. Lingarajapura village, Kasaba Hobli, Srinivasapura taluk, Kolar district. The Petitioner in the year 2000, after taking all necessary permissions and approvals had established a Poultry Farm in the above said land.
- b) The 1st Respondent invited applications for availing Grid Connectivity of Solar Rooftop PV Systems (SRTPV) to be established by a consumer on the existing Rooftop of his building. The 1st Respondent (BESCOM) issued Format -16 'Consumer Guidelines' for availing Grid Connectivity of SRTPV Systems (Annexure-C). The Petitioner submitted an Application (Annexure-D) with necessary fee for installation of 1000 kWp SRTPV System on the Rooftop of the Poultry Farm situated in the above said Sy. No.13/2 measuring 6 acres, on Net Metering Basis. The Poultry Farm was given electricity service connection bearing RR No.YP81 under Srinivasapura Sub-Division of BESCOM.
- c) Pursuant to the Application filed by the Petitioner, the 2nd Respondent and the Petitioner entered into the Power Purchase Agreement (PPA) dated 30.09.2015 (Annexure-E). As per Clause 6.1 (a) of the PPA, the tariff agreed was Rs.9.56 per kWh for the net energy injected into the grid. The said Tariff was fixed in terms of the Generic Tariff Order dated 10.10.2013.
- d) The Petitioner was required to complete installation of SRTPV System within 180 days from the date of the PPA. The Petitioner was not able to

complete the installation of SRTPV System due to a short delay in arranging the funds, material and other equipment for the said project. The Petitioner was able to complete 50% of the work and as there was a delay in completion of the work, the Petitioner addressed a letter dated 18.04.2016 (Annexure-F), seeking extension of one year time for installation of the SRTPV System. The 2nd Respondent vide its letter dated 30.04.2016 (Annexure-G) in Format-6 accorded extension of time by one year for installing the SRTPV System, from the date of said letter.

- e) The Petitioner almost completed the installation of SRTPV System with financial assistance from Banks and private financiers. When the work was in its final stage, the 2nd Respondent issued an Official Memorandum (OM) dated 29.12.2016 (Annexure-H), by which the 2nd Respondent withdrew the extension of one year time granted earlier and cancelled the PPA dated 30.09.2015 (Annexure-E) on the ground that the SRTPV System was not established within the time. Reference was made to the orders of the Commission dated 02.05.2016 and 27.09.2016 as the grounds for termination of the PPA. In the said OM, it was made clear that the Petitioner was open to revive the PPA, if he agreed for the new tariff as per the Commission's order dated 02.05.2016. As on the date of the OM dated 29.12.2016, the Petitioner had completed 90% of the installation of SRTPV System and all steps and commitments, both at site and towards all vendors had already been fully met. Hence, the Petitioner could not have abandoned the SRTPV System.

- f) The Petitioner contended that the withdrawal of extension of time of one year as well as the cancellation of the PPA are illegal and arbitrary and against the terms of the PPA.
- g) That the Petitioner after completion of the installation of SRTPV System in all aspects, submitted a letter dated Nil (Annexure-L) along with the Format-7 dated 09.03.2017 (Annexure-J) to the 2nd Respondent requesting to commission and synchronize the SRTPV System under protest. The 2nd Respondent based on the request made by the Petitioner in the above said letter, wrote the letter dated 16.03.2017 (Annexure-M) to the General Manager (DSM), Corporate Office, BSECOM, Bangalore (3rd Respondent). In the said letter, the 2nd Respondent brought to the notice of the General Manager (DSM) [3rd Respondent], the events leading to cancellation of the PPA and the request made by the Petitioner for commissioning of the SRTPV System under protest and sought the direction of the 3rd Respondent to further process for commissioning and synchronizing of the Petitioner's SRTPV System. Further, the 2nd Respondent wrote letter dated 26.04.2017 (Annexure-P) to the Executive Engineer, El., MRT Division, BSECOM, Crescent Road, Near Mallige Hospital, Bengaluru, requesting to depute the staff for Pre-commissioning Test before commissioning the SRTPV System. Pursuant to it, the Assistant Executive Engineer (Ele.), HT Rating Sub-Division, BRAZ, BSECOM, Bengaluru, visited the spot and issued reports dated 27.04.2017 (Annexure-Q) relating to main meter and the check meter. In the meanwhile, the Petitioner obtained Electrical Safety

Approval dated 25.04.2017 (Annexure-N) issued by the Chief Electrical Inspector to Government (CEIG), Bengaluru, pertaining to the SRTPV System of the Petitioner.

- h) The Petitioner having completed the entire project in compliance of all technical requirements, requested the 2nd Respondent to commission and synchronize the SRTPV System, however, the Respondents have not synchronized the SRTPV System. Therefore, the Petitioner had filed the present petition on 12.10.2017.
- i) After admission of the petition, at the request of the learned Counsel for the Petitioner, this Commission on 19.12.2017 directed the 1st Respondent (BSECOM) to evacuate power on the undertaking by the Petitioner that he would accept an interim tariff of Rs.3.57 per unit for the energy injected. Accordingly, the concerned officials have commissioned the SRTPV System of the Petitioner with the Grid on 19.01.2018 as per Commissioning Certificate dated 19.01.2018 issued by the 2nd Respondent (The Commissioning Certificate is produced by the Petitioner at Sl. No.5 of the documents produced on 17.12.2019).
- j) The Grounds urged by the Petitioner may be stated as follows:
- (i) The Respondents failed to consider that the Petitioner had executed the SRTPV System during the extended period of completion granted by the 2nd Respondent vide letter dated 30.04.2016 under Annexure-G. No deficiencies or issues of non-compliance were

- brought to the notice of the Petitioner during the entire period of execution of the SRTPV System. Hence, a right having accrued in favour of the Petitioner to get the SRTPV System connected to the Grid, the Respondents, ought not to have cancelled the original PPA, at such a belated stage.
- (ii) The Respondents under the guise of the Commission's orders dated 02.05.2016 and 27.09.2016 erred in cancelling the PPA. The order of the Commission dated 27.09.2016 (Annexure-R3), makes it clear that the intention was not to authorize the Respondents to arbitrarily cancel the PPA without following due process, but to bring in a revised tariff and other norms for SRTPV System and not to deprive the consumers of any accrued rights under the PPA.
- (iii) The Respondents held out a promise to the Petitioner under the PPA dated 30.09.2015 signed by the parties. The Petitioner having acted upon it by incurring expenses of more than Rs.7.50 crores, the Respondents could not have arbitrarily in an unreasonable manner cancelled the PPA, in the light of the principles of promissory estoppel.
- (iv) The Respondents erred in issuing the cancellation letter in violation of the terms and conditions of the Clause 9.3 of the PPA dated 30.09.2015, without first issuing any notice calling upon the Petitioner to remedy or rectify any breach. Hence, the letter of cancellation is illegal and void.

3. Upon issuance of notice, the Respondents entered appearance through their Counsel and filed common Statement of Objections as follows:

a) The several correspondences that had taken between the parties are not denied by the Respondents. The execution of the PPA and the extension of time granted for one year from 30.04.2016 for commissioning the SRTPV System are not disputed.

b) The extension of time to commission the SRTPV System was based on the Circular dated 17.11.2015 issued by the General Manager, DSM, BESCOM. Thereafter, the 1st Respondent (BESCOM) withdrew the said Circular on 18.05.2016 as per Official Memorandum Annexure-R1. That the Generic Tariff Order dated 02.05.2016 has clearly stated that SRTPV System which is not commissioned within the time allowed, cannot be entitled to a tariff of Rs.9.56 per unit. This Commission has also directed vide letter dated 27.09.2016 (Annexure-R3) that if there was delay in commissioning of the SRTPV System within six months, the consumer concerned would be eligible only for the revised tariff as per the Commission's Generic Tariff Order dated 02.05.2016. The spot inspection also disclosed that the Petitioner had not completed the SRTPV System within six months from the date of the execution of the PPA. Thereafter, the PPA was cancelled as per OM dated 29.12.2016 (Annexure-H).

c) On 25.05.2017 the Superintending Engineer, BESCOM, Kolar Circle, Kolar, had inspected the Petitioner's SRTPV System and it was found that the Petitioner had erected his SRTPV System on the fabricated steel structure

and there was no evidence with regard to the existence of Poultry Farm in the Petitioner's premises. The copy of the Inspection Report dated 25.05.2017 (Annexue-R2) is produced by the Respondents.

d) As per the Solar Policy 2014-21, SRTPV System is to be mandatorily mounted in the space available on the roof of the any existing residential, commercial, institutional, industrial and other buildings constructed as per building construction norms. The Government has issued clarification vide letter dated 17.08.2016 (Annexure-R4) that the Solar PV plants with Solar panels installed on the ground or ground mounted by constructing structures using steel/iron/wooden/concrete supports are not to be construed as SRTPV Plants. The SRTPV System in question of the Petitioner, which has been erected on the fabricated steel structures, cannot be treated as SRTPV System as per the above said Government letter. The CEIG has also noted in his Safety Approval Letter dated 25.04.2017 (Annexure-N), that the Petitioner's SRTPV System is not in accordance with the Government letter No.EN 70 VSC 2015 dated 17.08.2016 (Annexure-R4). Therefore, it is contended that the cancellation of PPA is proper and valid.

e) That the SRTPV System of the Petitioner has not been constructed on the existing rooftop of the Poultry Farm premises of the Petitioner and such SRTPV System is in violation of the terms of PPA and also the above noted Government letter No.EN 70 VSC 2015 dated 17.08.2016 (Annexure-R4). Therefore, it is contended that as per order dated 07.11.2017

(Annexure-R5) passed by this Commission "In the matter of Tariff Order for SRTPV plants violating the norms specified for Implementation of the SRTPV Plants", the SRTPV System of the Petitioner is entitled to tariff of Rs.3.57 per unit for the term of the PPA.

- f) It is denied that the Petitioner has completed all the works related to installation of the SRTPV System by 09.03.2017 while submitting the Work Completion Report in Format-7 (Annexure-J). Before submitting the work completion report, the Petitioner should have obtained Electrical Safety Approval from the CEIG and Reports regarding Bi-directional Meter testing. The Petitioner has obtained these Approval/Report subsequent to filing of the Work Completion Report in Format-7.
- g) The Respondents have denied all other adverse averments made against them in the petition. They also denied that the Petitioner spent Rs.7.50 crores for establishing the SRTPV System. They denied that the principles of promissory estoppel would apply in the present case.
- h) Therefore, the Respondents have prayed for dismissal of the petition.

4. The Petitioner has filed certain documents with Memo on 04.12.2018 and 17.12.2019.

5. We have heard the learned Counsel for both sides and perused the records.

From the rival contentions, the following Issues arise for our consideration:

Issue No.1: Whether the Circular dated 17.11.2015 issued by the 1st Respondent (BESCOM) authorizing the extension of time for commissioning the SRTPV System is valid and legal?

Issue No.2: Whether the Petitioner has proved that the Respondents are estopped from denying the validity of Circular dated 17.11.2015 on the principles of promissory estoppel?

Issue No.3: Whether the cancellation of the PPA dated 30.09.2015 is valid and legal?

Issue No.4: Is there any delay in commissioning the SRTPV System and is there any violation of the norms specified for establishing the SRTPV System? If so, to which tariff the Petitioner is entitled to?

Issue No.5: What Order?

6. After considering the records and the documents and the submissions of the parties, our findings on the above Issues are as follows:

7. Issue No.1: Whether the Circular dated 17.11.2015 issued by the 1st Respondent (BESCOM) authorizing the extension of time for commissioning the SRTPV System is valid and legal?

a) In the present case, the Circular dated 17.11.2015 issued by the BESCOM, though relied upon by the parties is not produced by any of them. This Circular is referred by the Petitioner in its letter dated 18.04.2016 (Annexure-F) while requesting for extension of one year time for installation of his SRTPV System. On the basis of this request, the 2nd Respondent has issued letter dated 30.04.2016 (Annexure-G), extending the time for one year from the date of the said letter for establishing the SRTPV System, after collecting the fee of Rs.2,000/- vide Receipt dated 20.04.2016. The OM dated 18.05.2016 (Annexure-R1) produced by the Respondents states that the said Circular dated 17.11.2015 has been withdrawn with immediate

effect. This Circular is on the BESCO'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 to six months or twelve months, as indicated in the said Circular.

- b) The Government of Karnataka issued the Solar Policy 2014-21 dated 22.05.2014 and fixed initially a target for installation of 400 MW capacity grid-connected SRTPV installations. Pursuant to it, the 1st Respondent (BESCO) 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 BESCO's Website. This Commission, in its letter dated 27.08.2014, had approved the Guidelines, before it was published by the BESCO 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 BESCO. Accordingly, this Commission by its Order dated 16.09.2014, approved the PPA Format and sent it to the BESCO, 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 1st Respondent (BESCOM) cannot issue a Circular, without the approval of the Commission, for extension of time. Therefore, the 1st Respondent (BESCOM) cannot unilaterally decide to alter such material term in the Guidelines.

c) 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.

d) It is a known fact that the investment required for establishing the SRTPV Projects has been declining considerably from year to year, therefore, the tariff payable to such Projects established during different periods would also be in decreasing trend. Therefore, any extension of time for establishing the SRTPV Projects would materially affect the tariff payable by the distribution licensees. Ultimately, the consumers are the sufferers. Hence, the Circular dated 17.11.2015 issued by the BESCOM authorizing

extension of time for establishing the Project for years together on collecting certain fees, is to be held without any jurisdiction.

e) For the above reasons, we hold Issue No.1 in negative.

8. Issue No.2: Whether the Petitioner has proved that the Respondents are estopped from denying the validity of Circular dated 17.11.2015 on the principles of promissory estoppel?

a) As already noted in Issue No.1, that the Circular dated 17.11.2015 issued by the BESCO authorizing extension of time for establishing the SRTPV System is not valid and legal. In that event the Petitioner cannot rely upon such invalid Circular issued by BESCO, for claiming the relief on the basis of the promissory estoppel. It is an established principle that there can be no promissory estoppel against law. The principle of promissory estoppel cannot be used to compel the BESCO to carry out its promise which is contrary to law or which is outside its power.

b) Even on facts, the Petitioner has failed to establish that he altered his position to his disadvantage believing on the extension of time granted by the 2nd Respondent. The PPA dated 30.09.2015 was cancelled as per OM dated 29.12.2016 (Annexure-H). The Petitioner has not placed any material worth to believe that on or before 29.12.2016 he had almost completed the Project by spending substantial amount. The Petitioner claims that he had borrowed the major portion of the amount from the bank and private parties for establishing the SRTPV System. There is no evidence that he withdrew substantial amount from the bank before 29.12.2016 for spending

the same towards the establishment of the SRTPV System or he borrowed it from private lenders. The Petitioner has produced copy of the Loan Sanction Memorandum dated 17.08.2016 issued by the Canara Bank allowing credit facility to the extent of Rs.550 lakhs for installation of Solar Rooftop. However, it appears this Loan Sanction Memorandum does not relate to the SRTPV System concerned in the present petition. This Loan Sanction Memorandum dated 17.08.2016 is addressed to Smt. Sharadamma & Sri Ramachandraiah. The properties mortgaged as security for loan are Sy. Nos.251 & 252 of Hebbatta village, Srinivasapura taluk, belonging to Smt. Sharadamma & Sri Ramachandraiah, respectively. The Petitioner had also entered into another PPA dated 30.09.2015 for establishing the SRTPV System on the Poultry Farm situated in these Sy. Nos.251 & 252. In respect of the said PPA, the Petitioner had filed OP No.23/2019 before this Commission which has been disposed of on 29.05.2020. In this OP No.23/2019, the Petitioner had produced the Loan Sanction Memorandum dated 17.08.2016, claiming that he had obtained the loan for establishing the SRTPV System involved in that case. The Petitioner has produced in the present case, the same photo copy of Loan Sanction Memorandum dated 17.08.2016 which was already produced in the other OP No.23/2019. Therefore, it is not known whether the Loan Sanction Memorandum dated 17.08.2016 produced on 17.12.2019 by the Petitioner, relates to the present case or not. The term regarding disbursement and utilization of loan stipulates that loan would be disbursed in stages in tune with the progress of the work and on submission of

Bills/Receipts/PIPR/Completion Certificate. The Petitioner could have easily established the quantum of work completed and the amount spent for the same as on 29.12.2016, the date on which the PPA was cancelled, by producing the required documents. Had the Petitioner spent any amount subsequent to the cancellation of the PPA, he could not have claimed that he spent the amount believing on the validity of the extension of time for establishing the SRTPV System, without challenging the cancellation of the PPA.

- c) One can infer that the investment for establishment of the SRTPV System has taken place subsequent to the sanction of loan from the bank in August, 2016. This Commission has reduced considerably the tariff in its Generic Tariff Order dated 02.05.2016 considering the reduction in the capital cost required. The tariff was reduced from Rs.9.56 per unit as determined in the Generic Tariff Order dated 10.10.2013 to Rs.5.20 per unit for the SRTPV System with capacity of 501 kWp to 1000 kWp. Therefore, on equity also the Petitioner could not be granted the tariff of Rs.9.56 per unit for the SRTPV System, established subsequent to August, 2016.
- d) The cancellation of PPA vide OM dated 29.12.2016 (Annexure-H) was preceded by a spot inspection on 24.08.2016 by the Assistant General Manager, Corporate Office, BESCOM, Bengaluru and other local officers of BESCOM in Kolar Division. It is noted in the Inspection Report Format that a building with RCC Roof measuring around 1800 sq. ft. was in existence and the poultry farm where the SRTPV System was to be installed was under

construction removing the existing roofs and the construction of new roofs with iron support achieved 2% progress only. The Petitioner himself has produced this document at Sl. No.4 in the Memo of documents filed on 04.12.2018. As already noted the Loan Sanction Memorandum was issued on 17.08.2016. Therefore, one can say that as on the date of inspection on 24.08.2016, the construction of the new Roofs of Poultry Farm had not yet begun.

- e) The Petitioner has also not come with clean hands. He claims that the work of SRPTV System was completed while filing Format-7 Work Completion Report dated 09.03.2017 (Annexure-J). This Format-7 as well as the request letter dated Nil (Annexure-L) for commissioning the SRTPV System under protest, were presented in the office of the 2nd Respondent on 10.03.2017. As contended by the Respondents, this Work Completion Report in Format-7 could be furnished only after obtaining the Electrical Safety Approval for the SRTPV System issued by the CEIG and Test Report of Bi-directional, Main Meter and Check Meter issued by Meter Testing Division of BESCOM. The Petitioner has omitted the required column in Format-7 (Annexure-J) relating to filling of the particulars regarding CEIG approval of the SRTPV System. The approved Format-7 published on the Website of the BESCOM contains a column regarding requirement of inspection of installation by CEIG in case of SRTPV System of above 10 kWp capacity. Further, in the relevant column regarding Test Report of Bi-directional Meters, it is stated that Test Report dated 10.01.2017 was enclosed. According to the Petitioner himself, the Electrical Safety Approval issued

by the CEIG and Meter Test Reports issued by MT Division were bearing the dates 25.04.2017 and 27.04.2017 respectively. Therefore, he must have received these documents on or after the said dates of issuing the above documents. Therefore, the Petitioner could not have filed Format-7 Work Completion Report on 09.03.2017 stating that the work of the SRTPV System was completed and the required documents were produced as on that date. As noted above, some of the contents of Format-7 were not true and correct. It can also be seen that the Petitioner did not disclose before CEIG that the PPA was cancelled as per OM dated 29.12.2016. The CEIG report dated 25.04.2017 (Annexure-N) shows that PPA has not been cancelled by the Competent Authority and was in force till 30.04.2017 as per the records furnished to him. The Petitioner has produced the time extension letter dated 30.04.2017 (Annexure-G) before the CEIG as per Reference (2) shown in Electrical Safety Approval dated 25.04.2107, but it does not refer to the production of any document regarding cancellation of the PPA. This has led the CEIG to observe in his Certificate that the PPA was not cancelled and it was still in force. As per the practice, the CEIG would not inspect the installation in case the PPA was not in force as on the date of his inspection. Therefore, it can be inferred that the Petitioner has misled the CEIG while issuing the Electrical Safety Approval relating to the SRTPV System.

- f) For the above reasons, we are of the considered opinion that the Petitioner has failed to establish that he had invested substantial amount on or before 29.12.2016, the date on which the PPA was cancelled.
- g) In view of the above findings on the question of law and facts, we answer Issue No.2 in negative.
9. Issue No.3: Whether the cancellation of the PPA dated 30.09.2015 is valid and legal?

a) The Petitioner has contended that the PPA dated 30.09.2015 was cancelled on 29.12.2016 (Annexure-H), without following the procedure for termination stated in the PPA. Though the said contention of the Petitioner appears to be acceptable, the cancellation of PPA in the present case as on 29.12.2016 is to be upheld, in the facts and circumstances of the present case. The reasons may be stated thus: the Petitioner had undertaken to install the SRTPV System on the existing Rooftop of the Poultry Farm situated on the land bearing Sy. No.13 of K.G. Lingarajapura village. Admittedly, the Petitioner has demolished the existing poultry farm and has put up the new construction with structures using steel/iron supports. Therefore, one can say that the Petitioner was not at all in a position to establish the SRTPV System on the existing Rooftop of the poultry farm as agreed in the PPA, after demolition of the existing roofs of poultry farm. Hence, the contract has become impossible to perform as agreed in PPA. In that event, the cancellation of the PPA dated 30.09.2015 can be upheld, though no notice was served prior to the cancellation of the PPA. The Commission

notes that even if the PPA had not been cancelled, but there was delay in commissioning the SRTPV System or there was violation of the norms specified for establishing the SRTPV System, the Petitioner would be liable for reduced tariff as per the Generic Tariff Order dated 02.05.2016 or the Order dated 07.11.2017 (Annexure-R5), as the case may be. Therefore, the cancellation of the PPA or otherwise is immaterial.

b) For the above reasons, we hold Issue No.3 in affirmative.

10. Issue No.4: Is there any delay in commissioning the SRTPV System and is there any violation of the norms specified for establishing the SRTPV System? If so, to which tariff the Petitioner is entitled to?

a) As already noted, the Petitioner should have commissioned the SRTPV System within six months from 30.09.2015, the date of execution of PPA. One can say that the establishment of SRTPV System was completed as on 27.04.2017, the date on which the Test Reports of Meters were obtained from MT Division. Subsequently, the SRTPV System was commissioned on 19.01.2018 as per the direction issued by this Commission. It appears that as the 2nd Respondent had not received any reply to his letter dated 16.03.2017 (Annexure-M) addressed to the 3rd Respondent, the 2nd Respondent had not finally taken steps to commission the SRTPV System of the Petitioner. The above facts make it clear that there was long delay in commissioning the SRTPV System of the Petitioner.

b) As already noted, while discussing Issue Nos.2 & 3, the Petitioner has demolished the existing roofs of the poultry farm and constructed with

structures using steel/iron supports. The photographs of new structures are produced in the Joint Inspection Report dated 25.05.2017 (Annexure-R2). This fact is also not denied by the Petitioner and on the other hand in his petition, he alleged that new structures were constructed and he has also produced the photographs of new structures at Annexure-K & K1. This Commission is of the considered opinion that SRTPV System installed on new steel structures with steel/iron supports cannot be treated as SRTPV System installed on the rooftop of the existing building.

- c) This Commission has come across number of instances where PPAs were terminated for the reasons that there was delay in commissioning the SRTPV Systems and there was violation of terms of PPA in establishing the SRTPV System. Therefore, the Commission with a view to mitigate the hardship to the investors of SRTPV System passed order dated 07.11.2017 (Annexure-R5). As per this order in the event the PPA is cancelled for violation of the terms of the PPA in establishing the SRTPV System, the tariff payable would be Rs.3.57 per unit for the term of the PPA, subject to the concerned consumer entering into a fresh PPA and commissioning the project on or before 31.12.2017. As already noted, the SRTPV System of the Petitioner was ready for commissioning on 27.04.2017, the date on which the Petitioner obtained test reports of meters from MT Division. Therefore, we are of the opinion that the benefit of the order dated 07.11.2017 may be extended to the Petitioner, though the actual commissioning of the

SRTPV System had taken place on 19.01.2018 as per the direction issued by the Commission.

d) In view of the above findings, we hold that the Petitioner is entitled to a tariff of Rs.3.57 per unit for the energy injected into the grid from his SRTPV System, on his executing a fresh PPA with the above terms.

e) For the above reasons, Issue No.4 is held accordingly.

11. Issue No.5: What Order?

For the foregoing reasons, we pass the following.

ORDER

a) The Petitioner is entitled to a tariff of Rs.3.57 per unit only for the net energy injected into the grid for a period of twenty-five (25) years, from the date of commissioning of the SRTPV System, on executing a fresh PPA within two months from the date of this order.

b) The Petitioner is not entitled to any of the reliefs claimed in the petition except to the extent stated above.

sd/-

(SHAMBHU DAYAL MEENA)
Chairman

sd/-

(H.M. MANJUNATHA)
Member