

No.N/43/18

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

**Dated: 19.08.2020**

**Present**

**Sri Shambhu Dayal Meena** : Chairman  
**Sri H.M. Manjunatha** : Member

**OP No.25/2018**

**BETWEEN:**

Sri. C. Ravi,  
S/o M. Chinnappa,  
Aged about \_\_\_years  
Residing at:  
Ambedkar Palya, Main Road,  
Srinivasapura Town,  
Kolar-563 135.

M/s Applied Solar Technologies Private Limited,  
A Company incorporated under:  
Companies Act, 1956  
Having its registered office at:  
A5, Saraswati House,  
Nararaina Industrial Area,  
Phase II, New Delhi 110 028.

(Represented by its Director)  
(Represented by Sri H. Srinivas Rao, Advocate)

**... PETITIONER**

**AND:**

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

**... RESPONDENT**

(Represented by its Managing Director)  
(Represented Sri G.S.S. Sriranga, Advocate)

**ORDER**

1. This is a petition filed under section 86 (1)(f) read with Section 86 (1)(k) & Section 94 of the Electricity Act, 2003, praying for the following reliefs:

- a) To direct the Respondent to make payments for the net energy exported from the month of December, 2016 at the rate of Rs.9.56 per unit and pay an amount of Rs.57,91,585 (Rupees Fifty-seven lakhs ninety-one thousand five hundred and eighty-five only).
- b) To declare that the Petitioner is entitled to tariff of Rs.9.56 per unit as per the Order dated 10.10.2015.
- c) To pass such other order as this Hon'ble Commission may deem fit and proper in the interest of justice and equity.

2. The brief facts set-out in the petition are as under:

- a) The Petitioner has installed a Solar Roof-Top Photo Voltaic System (hereinafter referred to as SRTPV System) of 1000 kWh capacity on the Roof-Top of the premises situated at Hogalagare in pursuance of the application dated 13.08.2015 (Annexure-A). The said SRTPV System is connected to electricity service connection bearing RR No. S2P-275 in the same premises under Srinivasapura Sub-Division of the Respondent.
- b) The Petitioner entered into Power Purchase Agreement (PPA) dated 29.09.2015 (Annexure-B) with the Respondent with intention to connect and operate the SRPTV System with Respondent's HT/LT Distribution System for sale of Solar Power to the Respondent at the rate of Rs.9.56 per kWh.

- c) The PPA was approved by the Commission on 30.10.2015 (Annexure-D) and the same was also approved by the Respondent vide letter dated 08.01.2016 (Annexure-E). The said proposal was valid for 180 days from the date of letter and SRTP System was to be commissioned within the stipulated period. As per the Circular dated 17.11.2015 (Annexure-G) issued by the Respondent, the time for the commissioning of SRTPV System was extended by one (1) year from 30.04.2016, by the Respondent vide letter dated 30.04.2016 (Annexure-F).
- d) The Petitioner obtained the Electricity safety approval for Electrical installation from the Chief Electrical Inspector to Government (CEIG) on 06.07.2016 (Annexure-H) and submitted Work Completion Report on 07.07.2016 (Annexure-J). The SRTPV System was successfully synchronized with the Respondent's grid on 23.07.2016 (Annexure-K) and accordingly, the Petitioner started supplying energy to the Respondent at the rate of Rs.9.56 per unit from 23.07.2016. The Respondent generated monthly bills for the same. But the Respondent failed to make any payment from December 2016 till July 2017, as per clause 8.2 of the PPA. The Petitioner requested vide letter dated 29.07.2017 (Annexure-N) Email dated 17.08.2017 (Annexure-P), to the Respondent for settlement of the bills at the earliest and there was no response from the Respondent.

e) The Respondent unilaterally reduced the Tariff to Rs5.20 per unit and made payment from the month December 2016 to July 2017 at Rs.5.20 per unit and Respondent deducted the amount paid for the bills raised for the months of July 2016 to November 2016 in excess of Rs.5.20 per unit. The Respondent has been making payment at the rate of Rs.5.20 per unit from the month August 2017, in spite of Tariff agreed being Rs.9.56 per unit as per the PPA, there by the Respondent violated the terms of a PPA.

3. Apart from the above, the Petitioner urged the following grounds:

a) The actions of Respondent are contrary to clause 6.1 and 8.2 of the PPA and are highly arbitrary and illegal. The Respondent is bound by the terms of the PPA and ought to have adhered to it. However, the Respondent in violation of the terms of the PPA reduced the tariff rate.

b) The Respondent ought to have made the payments within 30 days from the date of issue of the bills, but Respondent failed to clear the bills as per terms of PPA. The Respondent has no authority to revise the tariff as none of the orders/direction issued by the Commission is applicable to the facts and circumstances of the case of the Petitioner. The Respondent illegally without any authority unilaterally revised the tariff from Rs.9.56 per unit to Rs.5.20 per unit without issuing any notice to the Petitioner. The non-payment of agreed rate of Rs.9.56 per unit and delay in making the payment is causing undue hardship to the Petitioner. The Petitioner has

invested huge amount of money for installation of the SRTPV System.

Hence, Petitioner prays to allow the petition.

4. Upon issuance of notice, the Respondent entered appearance through their Counsel and filed the Statement of Objections.

5. The Respondent has admitted the execution of the PPA, rate of tariff mentioned in the PPA and the Respondent reducing the Tariff rate from Rs.9.56 to Rs.5.20 per unit etc., Further the Respondent contented as under:

a) The Petitioner has requested Respondent to grant extension of time for one-year to commission his plant on 18.04.2016 and at his request Respondent has granted extension of one-year time to commission the plant. Thereafter, the extension of time granted was withdrawn as per Official Memorandum dated 18.05.2016 (Annexure-R1). The Divisional Office at Kolar has paid the Petitioner at the rate of Rs.9.56 per unit, inadvertently for energy supplied for the period between July 2016 to November 2016. The Petitioner has not commissioned its plant within 180 days from the date of signing of PPA.

b) The Petitioner as per the terms of PPA is entitled for tariff Rs.9.56 per unit provided the SRTPV plant is commissioned within 180 days. The Commission vide its communication dated 27.09.2016 (Annexure-R3), clearly stated to ensure completion of commissioning of SRTPV Projects on existing roof within in a prescribed period so as to be eligible for the tariff Rs.9.56 per

unit agreed to in the PPA executed. If there is delay in commissioning of the Project within six months, the consumer concerned would be eligible for the revised tariff as per the Commission order dated 02.05.2016.

c) Since the Petitioner has not commissioned the plant within the stipulated time, the Respondent is making payment to the Petitioner at the rate of Rs.5.20 per unit as per Generic Tariff Order dated 02.05.2016. The say of the Petitioner that the Respondent acted contrary to the provisions of clause 6.1 & 8.2 of the PPA is untenable. The say of the Petitioner that he invested huge amount is self-serving in nature. Hence, the Petition may be dismissed.

6. The Petitioner filed the Rejoinder dated 31.01.2019 and additional Rejoinder by way of Affidavit dated 03.03.2020 to the Statement of Objections. The gist of which may be stated as follows:

a) The Petitioner was granted extension of time for the purpose of commissioning its SRTPV Scheme, according to guideline issued by the Respondent vide Circular dated 17.11.2015 (Annexure-G). The extension of time by the Respondent was granted prior to issuance of any direction from the Commission. It is pertinent to note that the Generic Tariff Order stipulating that no extension of time has to be granted to SRTPV Developer, was issued on 02.05.2016 and the direction issued by the Commission was concerning to those SRTPV plants which were not already granted the

extension of time and the said Generic Tariff Order and the direction has to be applied prospectively and not retrospectively. The Respondent has misinterpreted the order passed by the Commission and wrongly applied to the case of the Petitioner.

b) The O.M. dated 18.05.2016 (Annexure-R1) is not tenable in the law for the reason that it is in violation of all established principles of law and legal norms, and that O.M. is not binding on the Petitioner. The initial payment made as per the PPA rate is not a mistake, it is in accordance with the terms of PPA. The unilateral terminations of the Power Purchase Agreement (not correct as there is no termination of PPA) and failing to provide sanctity to the contract entered into between parties would be very much against established principles of law, norms and on the larger context such regulatory turn-around is detrimental to the investment climate.

c) Due to default in payments by the Respondent for several months, arrears amounting to Rs.1,80,32,202 if calculated at the rate Rs.9.56 per unit and Rs.45,40,436 if calculated at the rate of Rs.5.20 per unit till January 2020, are still pending. Therefore, it is prayed that, the Commission may direct the Respondent to immediately release the payment for the period from November 2018, till date.

7. We have heard the Counsels for both the sides and perused the records. The following Issues arise for our consideration:

Issue No.1: Whether, the Petitioner proves that, the Petitioner is entitled to the tariff at Rs.9.56 per unit as on the date of commissioning the Plant?

Issue No.2: What Order?

8. After considering the submission and material on record our findings on the above issues are as follows:

9. Issue No.1: Whether, the Petitioner proves that, the Petitioner is entitled to the tariff at Rs.9.56 per unit as on the date of commissioning the Plant?

10. a) The gist of the Petitioner's case is that the Respondent unilaterally and arbitrarily reduced the tariff from Rs.9.56 to Rs.5.20 per unit, contrary to the terms of the PPA and that the Petitioner is entitled to the tariff mentioned in the PPA, as he has commissioned the plant within the time extended by the Respondent vide letter dated 30.04.2016 (Annexure-F).

b) It is the case of Respondent that, the Petitioner has not commissioned the plant within the stipulated time and hence he is entitled to the varied tariff as per the Generic Tariff Order dated 02.05.2016 and that the extension of time granted by the Respondent was not in consonance with the Consumer Guidelines and beyond the power of the Respondent, as held by the Commission in similar other decided cases.



c) We note that, as per the Guidelines issued relating to the SRTPV Scheme made available to all the SRTPV applicants having existing buildings, the time stipulated for completion of the SRTPV Projects is 180 days from the date of issuance of approval for installation of the SRTPV System in Format-5 or Format-6.

d) Admittedly, the Petitioner had made the application on 13.08.2015 for installation of the SRTPV of the Plant, under the said Scheme. We note that on receipt of the application and conducting feasibility checks, the Respondent was required to issue an approval in Format-6 for installing the SRTPV plant mentioning that the plant had to be commissioned within 180 days from the date of said approval. The approval was issued by the Respondent on 08.01.2016 (Annexure-E). Much earlier to this date, the PPA was entered into on 29.09.2015. Therefore, it can be stated that the procedure contemplated in the Guidelines were not followed.

e) In our considered opinion, the PPA cannot be read in isolation of the guidelines issued for installing the SRTPV System for the following reasons:

(i) The complete set of the Guidelines consists of Formats 1 to 17. The Guidelines relating to the consumers is at Format-16 and Guidelines relating to the Officers of BESCO is at Format-17. The standard Format of the PPA, approved by this Commission, is at Format-12. Formats 1 to 8 relate to the various stages, from filing of the application till

synchronization of the SRTPV Systems. As per the guidelines, a detailed procedure is set out for establishing the SRTPV Systems, which included filing of an application online or Offline, paying the requisite registration fees, scanning of applications, revenue verification & submission of technical feasibility report, obtaining of approval for installing the SRTPV System in Format No.5 for LT installations up to 50 kWp and in Format No.6 for HT installations of above 50 kWp, submission of Work Completion Report in Format No.07, along with all the necessary documents including Electrical Safety Approval of the SRTPV Plant issued by the Assistant Executive Engineer, BESCO or the CEIG, as the case may be. Therefore, it is clear that, after filing the application for installing the SRTPV System by the applicant, a Technical Feasibility has to be conducted by the Respondent. If this report is favourable, the approval for installing the SRTPV System would be issued by the Respondent to the applicant in Format-5 or Format-6, as the case may be. These Formats specifically contain a term that the SRTPV System should be completed within 180 days from the date of issuance of such Format-5 or Format-6, as the case may be, in default, the approval given for installation of the SRTPV System would stand cancelled. The stage of execution of the PPA would arise subsequent to the issuance of the Technical Feasibility Report. If the Project is not technically feasible, there is no question of proceeding further;

(ii)The Respondent (BESCOM) had submitted the draft Guidelines to this Commission, for approval, vide its letter bearing No.BESCOM/BC-51/3584/2013-14/661-65 dated 31.07.2014. The draft standard PPA was one of the Formats included in the draft Guidelines, submitted to the Commission. After scrutiny of the Guidelines, including the draft standard PPA, this Commission, in principle, approved the draft Guidelines with certain modifications and intimated that the draft standard PPA for the installation of the SRTPV systems would be sent, after finalization. The Commission also suggested to incorporate the timelines for grant of different approvals in the Guidelines, so as to ensure the speedy implementation of the SRTPV Systems. The in-principle approval was sent by this Commission, by letter bearing No.S/03/1/892, dated 27.08.2014. Later, the standard format of the PPA was finalized vide order dated 16.09.2014 by the Commission.

(iii)The above facts clearly indicated that, the standard PPA is a part of the Guidelines for installation of the SRTPV Systems and should be read along with the timelines prescribed in the other Formats. The Petitioner, as well as all other applicants who applied for approval for installing the SRTPV Systems, were aware of the existence of the Guidelines and its contents. The Respondent (BESCOM) had published the said Guidelines on its Website, and is still available. Thus, the standard Format of the PPA only

supplements the Guideline, and should be read along with the other terms and conditions contained in the Guidelines.

(iv) This Commission, by the Generic Tariff Order dated 02.05.2016, had determined the generic tariff for the SRTPV Systems. The said Generic Tariff Order makes it clear that, the PPAs entered into with the tariff determined under the Generic Tariff Order dated 10.10.2013, in respect of a SRTPV System, would be governed by the lesser tariff, as determined in the Generic Tariff Order dated 02.05.2016, in case the SRTPV System was not commissioned within the stipulated time, and further that, there should not be any extension of time for commissioning the SRTPV system, 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 System, there cannot be any extension of time, for any reason, for commissioning of the SRTPV System and if there is any delay it should be governed by the lesser tariff.

(v) The Circular dated 17.11.2015, issued by the Respondent (BESCOM), states that, the Corporate Office had received many letters, requesting for extension of the 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, form six months to twelve months, as indicted in the said Circular. The Commission is of the considered view that the Respondent (BESCOM) could not have issued such Circular. The Respondent (BESCOM) has obtained the approval for the Guidelines, from this Commission wherein the timeframe was fixed for installation of the SRTPV Systems, allowing 180 days for commissioning, from the date of the issuance of either Format-5 or Format-6. Therefore, the Respondent (BESCOM) cannot issue the Circular, for extension of time without the approval of this Commission. It can be noted that, any such extension of time for commissioning, would affect the applicability of the tariff, if there was delay in commissioning the SRTPV System, as per the time limit granted earlier. It can also be noted that, the Circular dated 17.11.2015 was withdrawn by the Respondent (BESCOM), as per its OM dated 18.05.2016. The issuance of such Circular is beyond the powers of the BESCOM and cannot be relied upon, for any reason.

11. With regard to the contention of the Petitioner that the Respondent had granted extension of time to commission the project, we have considered this aspect, in our opinion the Respondent had no power to provide for extension of time for commissioning the projects, either as per the Solar Policy of the State or the Guidelines issued by the Respondent; that any such extension of time has a bearing on the tariff, ultimately payable by the

consumer; that even if the extension of time granted is assumed to be valid, the tariff applicable for the delayed commissioning of the project would have to be determined by the Commission. We note that the Solar Policy 2014-21 of the State provides that the tariff orders issued by the Commission from time to time will be applicable to the projects. The time period within which a plant has to be commissioned and the tariff applicable to a project are to be fixed/determined by the Commission alone under the Electricity Act, 2003, as held by the Hon'ble High Court of Karnataka in the Order dated 17.07.2017 in WP No.41854/2016 (S.A. Prasanna Kumar v/s State of Karnataka & others). Therefore, the contention of the Petitioner that he is entitled to a tariff of Rs.9.56 per unit is not acceptable.

12. In the PPA executed in this case, a tariff of Rs.9.56 per unit was agreed to be paid for the power injected by the Petitioner's SRTPV plant on net metering basis in terms of the Commission's Order dated 10.10.2013. This tariff was available to the Petitioner subject to commissioning of the project within 180 days. The Commission in its Generic Tariff Order on 02.05.2016 issued in supersession of the order dated 10.10.2013, after taking into consideration the relevant factors, mainly the declining project cost, revised the tariff applicable to SRTPV plants which get commissioned during the period from 02.05.2016 to 31.03.2018 including all those with PPAs executed prior to 01.05.2016 but not commissioned the Plant on 30.06.2017 i.e., after 02.05.2016

is entitled for a tariff of Rs.5.20 per unit in terms of the Commission's in its Generic Tariff Order dated 02.05.2016.

13. Another contention of the learned Advocate for the Petitioner is that the Respondent unilaterally and arbitrarily reduced the tariff. The Respondent acted as per the guidelines and order of the Commission. He reduced the tariff rate as per the Generic Tariff Order dated 02.05.2016. Hence, it cannot be said that the Respondent unilaterally and arbitrarily reduced the tariff. Therefore, this line of argument of the learned Advocate for the Petitioner holds no water.

14. The learned Advocate for the Petitioner while arguing on delay in commissioning the Plant fairly conceded that, there was 15 days' delay in commissioning the Plant, from the date of issuance of approval letter dated 08.01.2016 (Annexure-E). Therefore, we have no hesitation to hold that Petitioner has not commissioned the project within 180 days either from the date of PPA (Annexure-E) or from the date of approval dated 08.01.2016 (Annexure-E) by the Respondent. The Petitioner has not stated any reasons for the delay in commissioning the Plant. The learned Advocate also not explained the reasons for the same. There are absolutely no grounds to condone the delay in commissioning the plant.

15. Since, the Petitioner has not commissioned the project within stipulated time, the Petitioner is not entitled for the tariff at the rate of Rs.9.56 per unit as per PPA. Hence, we answer this Issue No.1 in negative.

16. Issue No.2: What Order?

From the above discussions and records placed before us, we are of the opinion that Petitioner has failed to demonstrate that he is entitled to a tariff at Rs.9.56 per unit. But, as per KERC's Generic Tariff Order dated 02.05.2016, he is entitled to a tariff at the rate of Rs.5.20 per unit as the Petitioner has not commissioned the Plant within timeframe. Therefore, we proceed to pass the following order:

### **ORDER**

- a) The Petitioner is not entitled for any reliefs sought in the petition.
- b) However, the Petitioner is entitled for a prevailing tariff of Rs.5.20 per unit only as on the date of commissioning of the project as per Generic Tariff Order dated 02.05.2016.

sd/-  
(SHAMBHU DAYAL MEENA)  
Chairman

sd/-  
(H.M. MANJUNATHA)  
Member