

No. N/29/2021

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

Dated: 20.01.2022

Shri H.M. Manjunatha : Officiating Chairperson

Shri M.D. Ravi : Member

O.P. No.19/2020

BETWEEN:

L. Lakshmipathy,
#17, "Sandhya", 32nd Cross, 1st Stage,
Behind Double Water Tank,
Kumaraswamy Layout,
Bangalore-560078.

....PETITIONER.

(Represented by Sri Prashanth S Shivadass,
Sri Rishab J,
Miss Rachana P Pise,
Miss Sharadha Rajgiri,
Miss Sneha Mary Philip,
Miss Putrevu Pooja Rao,
Sri Venkata Surya Sriharsha Palanki for
M/s Shivadass and Shivadass Law Chambers, Bangalore)

AND

- 1) Bangalore Electricity Supply Company Ltd.
A Company incorporated
Under the Companies Act, 1956,
Having its corporate office at,
Corporate Offices, K.R. Circle,
Bangalore -586 001.
(Represented by its Managing Director)
- 2) Assistant Executive Engineer (Ele),
S-5 Sub Division, BESCO,
ISRO Layout,
Bangalore-560011.

- 3) Executive Engineer (Ele)
Jayanagara Division,
Banashankari,
Bengaluru.

... **RESPONDENTS.**

(R1 to R3 represented by Sri Sriranga S, Advocate
for JustLaw Advocates)

ORDERS

1. This Petition is filed under Section 86(1)(b) and 86(1)(f) of the Electricity Act, 2003 by the Petitioner praying for the following reliefs to;

- a) Acknowledge and approve that the Petitioner has commissioned the project well within the time frame prescribed by the Respondents and hold that there is no delay on part of the Petitioner to complete the commissioning.
- b) Direct Respondent No. 1 to make good the amounts withheld since January 2018 till March 2021 amounting to Rs. 2,69,458,428/- as per the tariff rate agreed under the PPA entered dated 27.07.2017.
- c) Direct Respondent No. 1 to make payments under prayer (2) above along with interest at 1% as per Clause 8.4 of the PPA (Rs. 2,69,458,428/- as under Prayer 2 + interest at 1% Rs. 59,931.58/- = Total amount Rs. 3,29,390.01/-)
- d) Set aside the instructions by Respondent No. 2 to execute a supplementary PPA as it is unwarranted and against the terms of PPA existing between the Petitioner and Respondent No. 1.
- e) Direct the Respondents to reimburse the legal and

administrative costs incurred by the Petitioner in pursuing the instant Petition.

- f) Pass such other orders as the Commission deems fit in this case.
2. The brief facts set out in this petition are as under:
- a) The Petitioner is a prosumer (producer and consumer) of BESCO. The Respondent is a Government of Karnataka undertaking, a Company formed and incorporated in India, under the Companies Act, 1956.
- b) The Government of Karnataka has notified the solar policy 2014-21 on 22.05.2014 to harness, the solar energy in the State of Karnataka. In this regard, BESCO invited applications from all its consumers for installing grid connected SRTPV systems under Net-metering and Gross metering arrangement and to set the PPA to be executed for a term of 25 years at the tariff rates determined by the KERC from time to time.
- c) The KERC has passed an order (Annexure-A) dated 02.05.2016 in order No. S/03/1/2016 for determination of tariff and other norms for Solar Rooftop and Small Photovoltaic Power Plants and issued various parameters and tariff rates applicable for various capacity SRTPV systems. In pursuant to the order, the Petitioner, applied for installation (Annexure-B) of grid connectivity SRTPV generation system on Gross/Net metering basis on 18.07.2017.
- d) It is stated that, on the basis of the application made by the Petitioner, the Respondent entered into a PPA (Annexure-C) on 27.07.2017 for connecting and operating the SRTPV system with ESCOM HT/LT Distribution system for sale of Solar Power in terms of the order dated 02.05.2016. The

PPA entered into by the Petitioner and the Respondent, is in compliance with order dated 02.05.2016, the format of which has been pre-approved by the Commission.

e) Some of the important provisions of the PPA are as under: -

“Clause 1.6

(a) SPTPV system shall be designed, engineered and constructed and operated by the seller or on his behalf with reasonable diligence subject to all applicable Indian laws, rules, Regulations as amended from time to time and orders having the force of law.

(b) the seller shall commission the SRTPV system within 6 months from the date of approval of PPA.

Clause 6.1 Tariff

(a) The BESCO shall pay the gross energy at Rs. 7.08 per KWh as determined by the KERC in the order dated 02.05.2016 for the term of agreement.

(b) If any reason the date of commission is delayed beyond the date of commissioning agreed the Tariff payable by the BESCO shall be lower than the

i. Tariff agreed in this agreement.

Or.

ii. Tariff as per the average pooler power purchase cost notified by the commission prevailing on the date of commissioning.

Clause 8. Billing and payment

8.1. BESCO shall raise the monthly electricity bill for the gross energy on the scheduled date of meter reading.

8.2. BESCO shall pay the gross energy exported as per the Tariff agreed in the agreement within 30 days of the issue of the bills.

8.3 in case of any import energy recorded in the bi-directional meter during the billing period, such energy shall be billed as per clause 6.1 of this agreement.

8.4 BESCO shall pay interest at the same rates as is being levied on the consumers for late payment charges in case of any delay in payment for net energy exported beyond 30 (thirty) days period from the date of issue of bill.

Clause 9. Term and Termination of the Agreement

9.1 This agreement shall be in force for a period of 25 years from the date of commissioning of the SRTPV system unless terminated otherwise as provided here under

9.2 If the ESCOM commits any breach of the terms of the Agreement, seller shall serve a written notice specifying the breach and calling upon the seller to remedy/rectify the same within 30(thirty) days or at such other period and at the expiry of 30(Thirty) days or such other period from the delivery of the notice, may terminate the agreement by delivering the termination notice, if the seller fails to remedy/rectify the same.

9.3 If the Seller commits any breach of the terms of the Agreement, shall serve a written notice specifying the breach and calling upon the seller to remedy/rectify the same within 30(thirty) days or at such other period and at the expiry of 30(Thirty) days or such other period from the delivery of the notice, may terminate the agreement by delivering the termination notice, if the seller fails to remedy/rectify the same"

- f) It is stated that, on 28.07.2017 the Petitioner received the approval (Annexure-D) for installing the 10 KWp SRTPV system under gross metering from the Respondents. Some of the important conditions in Annexure-D are as hereunder: -
- i. The work of grid connectivity shall be carried out in accordance with the gross metering schematic diagram available in BESCO website.
 - ii. The SRPTV installation, work shall be completed on or before 27/01/2018.

- iii. *After completion of the work in all respects, a completion report must be submitted in Format-7 along with following documents:*
 - a. *Test report of PV modules and other equipment's (except Grid tied inverter and bi-directional meter) as per IS/IEC standards;*
 - b. *Test certificate of bi-directional meter issued by MT division, BESCOM;*
 - c. *First sheet of bank pass book containing details of name of the Bank, Type of account, Account No., Name of Branch, IFSC code, etc.,*
 - d. *Receipt of facilitation fee of Rs. 2000/-*
- iv. *As per Clause 6.1 of the PPA if for any reason the date of commissioning is delayed beyond the date of commissioning agreed, the tariff payable by the BESCOM shall be lower of the*
 - a. *Tariff agreed to in the PPA*
OR.
 - b. *Tariff as per the agreed pooled power purchase cost notified by the Commission prevailing on the date of commissioning.*
- g) The Petitioner for this purpose and for fulfilling his obligations towards the PPA, installed the SRTPV system of 10 KWp capacity on the rooftop of his residential address and connected to electricity service connection bearing RR No. S5EH-30515 and unique ID No. 1623062000 under Tariff LT-2A 1-N with sanctioned load of 10 KVA in the same premises under S5, O & M, ISRO Layout Sub-division.
- h) Further it is stated, the Petitioner submitted the work completion report (Annexure-E) on 22.01.2018 under Format-7 within 6 months from the date of approval of the PPA i.e., from 28.07.2017 till 22.01.2018, in complete compliance of the PPA. The Petitioner also requested the AEE (Ele) to arrange a visit from a staff member of the Respondents Department for

conducting the inspection and service of the said installation on or before 25.01.2018.

- i) It is stated that, apropos to the report submitted by the Petitioner, the AEE (Ele) forwarded the Petitioner's request through a letter (Annexure-F) to the Executive Engineer (Ele), MT Division, BESCO on 24.01.2016 to depute a staff member for conducting precommining and synchronization. Subsequently, on 25.01.2018 and 26.01.2018 respectively, the Petitioner submitted the commissioning report (Annexure-G) under Fromat-8 which was duly acknowledge by the EE (Ele) on 25.01.2018 and by the AEE (Ele) on 26.01.2018. It is stated that, a certificate of synchronization (Annexure-H) for the SRTPV systems dated 27.01.2018 was issued by the Respondent for successful synchronization with the Respondent's grid at 400/230 voltage level. All these documents were sent to the revenue section for billing purpose.
- j) It is stated that, at this juncture, it is pertinent to state that the Petitioner has been and continuous to be in complete compliance of the PPA and the approval letter dated 28.01.2017 wherein the AEE (Ele) had given a time frame till 27.01.2018 to commission the project, after approvals and inspections. The process of generating electricity had also been initiated. It is also pertinent to note that at no point, was there an objection to any of the documents/formats submitted by the Petitioner to the Respondent in so far as this project is concerned.
- k) The Petitioner further places reliance on Clause 8 of the PPA, relating to billing and payments. The said Clause mandates that the Respondent is

required to make payments as per the agreed Tariff rate i.e., Rs. 7.08 per KWh within 30 days of raising the monthly electricity bill. However, the Respondent have miserably failed to honor and discharge their obligations under the PPA. In this regard, the Petitioner issued a letter to the AEE (Ele) (Annexure-I) and EE (Ele) (Annexure-J) on 03.08.2018, seeking the release of amounts due with effect from January 2018 till the date of letter.

- l) The Petitioner thereafter received a letter (Annexure-K) dated 19.12.2018, (received by the Petitioner on 16.01.2019), marked in copy to the letter submitted to Commission seeking clarity on the following: -

“As per the KERC regulations (implementation of Solar Rooftop Photovoltaic Power Plants), 2016 the SRTPV plant should be commissioned within 180 days from the date of approval of PPA whereas in the standard PPA format for net/gross metering, as per the clause 1.6 states that SRTPV plant shall be commissioned within 6 months from the date of approval of PPA.”

‘In the present case, as per power purchase condition the plant is commissioned within 6 months but if we consider the SRTPV Regulations, 2016, the plant is commissioned on 182nd day (excluding the day on which the PPA approval letter). Hence, Commission’s kind clarification is solicited, whether to consider 6 months or 180 days for commissioning of the SRTPV plant and the tariff applicability in the above said case.’

- m) The Petitioner was shocked to receive said letter (Annexure-K) potentially stating that there has been some kind of a delay in the commissioning of the project. In turn the Petitioner, issued a letter to the KERC (Annexure-L) dated 17.01.2019 explaining the events and grievances in the matter and

requested that the payments withheld be released with immediate effect. But the Petitioner received no response to the letter (Annexure-L). Therefore, he once again issued a letter (Annexure-M) dated 23.01.2019 reiterating the controversy and Petitioner's grievances in the matter. The Petitioner also placed on record certified copy of the work completion report under Format-7 and the certificate of synchronization and installation.

- n) The Petitioner once again did not receive any communication or reply from the Respondent to any of the aforesaid letter. Despite repeated physical reminders and after having made the Petitioner run pillar to post, the Petitioner was once again constrained to issue a letter (Annexure-N) dated 16.08.2019, in the said letter, the Petitioner sought clarification regarding the alleged dispute raised by the Respondent with respect to Clause 1.6 (b) of the PPA i.e., "whether the seller shall commission the SRTPV system within 6 months from the date of the approval of the PPA or 180 days from the date of the signing of the PPA". In this regard the Petitioner submits that there has been no delay in submitting the work completion report and it is well within the time frame of either 6 months or 180 days". Despite all of the aforementioned letters, the Petitioner did not receive any response from the Respondent, therefore, the Petitioner yet again issued a letter (Annexure-O) dated 13.11.2019, this time to the Managing Director of the BESCO, reiterating the controversy with a request to release the amounts due and payable by the BESCO to the Petitioner.

- o) It is further stated that, on 29.11.2019, the AEE (Ele) issued a letter (Annexure-P) to the General Manager, BESCO placing reliance on the synchronization of the SRTPV system report submitted by the Petitioner. In this regard the AEE (Ele) made reference to the work completion report submitted on 22.01.2018 'being well within the specified time limit' specified and also stated that the synchronization report is as per norms. However, to the utter dismay of the Petitioner, despite the letter of the AEE (Ele) the Respondent failed to make good the payments due to the Petitioner. Instead, the Respondent made the Petitioner to run from pillar to post under the guise that the Respondent is seeking clarification (Annexure-N).
- p) The Petitioner once again issued letters (Annexure-Q & R) dated 27.10.2020 and 05.11.2020 respectively to the Managing Director of the BESCO reminding the Respondent about the grievances in the matter and for release of all withheld payments. Thereafter, the Petitioner received a letter (Annexure-S) dated 22.12.2020 from the Respondent instructing the Petitioner to take necessary action for executing a supplementary PPA at a rate of INR 3.57 per unit, as per the directions of General Manager, DSM, BESCO in order the release all the earlier payments. Flummoxed by the letter of the Respondent (Annexure-S), the Petitioner issued a letter to the AEE (Ele) on 13.01.2021 in which he requested to process payments for the pending bills along with interest at the rate of 1% per month as per Article 8.4 of PPA. The Respondent once

again issued a letter (Annexure-T) dated 13.01.2021 reiterating the position taken in the earlier letter.

- q) It is stated that aggrieved by the breach of contractual obligations and the gruesome treatment meted out to the Petitioner by the Respondent, the Petitioner has issued a notice under Clause 9.2 of the PPA (Annexure-U) to AEE (Ele) dated 15.01.2021 and sought for recovery of the amounts due to the Petitioner. In turn the Respondent issued a response (Annexure-V) dated 04.02.2021 stating that: -

“as per KERC guidelines Annexure E it is mentioned that, the applicant should submit the work completion with necessary documents and approvals in the Format -7 completion report within 7 days prior to the last date approved for commissioning. Therefore, as the commissioning of the installation has not taken place within the stipulated time there is a need for entering into an SPPA.”

- r) The Respondent has not conveyed to the Petitioner any such KERC guideline or Annexure-E of the alleged guideline, no such guideline also existed at the time of execution of the PPA. Aggrieved by the said response and breach of contractual obligations under the PPA, the Petitioner is bereft of any other options has approached the Commission under the following grounds: -

GROUND

A. NO DELAY IN COMMISSIONING THE SRTPV SYSTEM INSTALLATION

- A.1. That the SRTPV system has been commissioned well within the time frame prescribed under the PPA dated 27.07.2017 and the approval letter dated 28.07.2017. Reliance is placed on Clause 1.6(b) of the PPA which

provides for “the seller shall commission the SRTPV system within 6 months from the date of approval of PPA.”

A.2. Additionally, para 12 of the approval letter dated 28.07.2017, categorically states that the SRTPV installation work must be complete on or before 27.01.2018.

A.3. after receiving the approval on 28.07.2017, the Petitioner submitted the work completion report under Format – 7 on 22.01.2018. Therefore, the time period between July 28, 2017 and 22.01.2018 is 178 days (well within the time frame specified under the PPA or the alleged KERC (Implementation of Solar Rooftop Photovoltaic Power Plans) Regulations, 2016.

A.4. The PPA only specifies 6 months as the time frame for completion of the project. The approval letter, however, specifies that the installation must be completed on or before 27.01.2018. In terms of number of days from the date of approval of the PPA, this will amount to 183 days. Therefore, the Respondents themselves have provided the benefit to the Petitioner in so far as excess number of days are concerned.

A.5. The Petitioner has not delayed the installation/commissioning of the project from his end. While the Petitioner submitted his work completion report on 22.01.2018, he had also requested the Respondents to depute staff and carry out inspections for the purposes of commissioning. It was the Respondents who delayed such inspection (by deputing personnel only on 24.01.2018). Despite such delay, the project was commissioned

on 26.01.2018, as per the certificate issued on 27.01.2018, the date as per the approval letter.

A.6. The Petitioner at this juncture, also places reliance on the letter dated 29.11.2019 where the AEE has acknowledged the timely submission of the work completion report by the Petitioner. It is also submitted by the Petitioner that at no point did the Respondent even point out discrepancies in the formats submitted by the Petitioner.

A.7. That the letter dated 19.12.2018, issued by the office of Respondent No 1 to this Hon'ble Commission, seeking clarity with respect to the KERC (Implementation of Solar Rooftop Photovoltaic Power Plants) Regulations, 2016, is to be taken into consideration, it is submitted that Clause 5(3) of the Regulations provide for commissioning the SRTPV system within 180 days from the date of approval of PPA. In this regard the Petitioner further places reliance on the Frequently Asked Questions (FAQs) mentioned under the column pertaining to solar rooftops on the website of BESCOM available at <https://bescom.karnataka.gov.in/new-page/FAQ/en>, which clarifies that all SRTPV systems must be completed within 180 days. An SPPA with revised tariff can be contracted only when there is any delay beyond 180 days in installing the SRTPV systems.

B. LOWER TARIFF RATE AS PER CLAUSE 6 OF THE PPA IS NOT APPLICABLE

B.1. That lower rate Tariff as per Clause 6.1 (b) shall be applicable only when the date of commissioning is delayed beyond the date of commissioning agreed under the PPA.

Clause 6.1 (b) provides as under:

"If any reason the date of commission is delayed beyond the date of commissioning agreed the Tariff payable by the BESCO shall be lower than the (i) Tariff agreed in this agreement. OR. (ii) Tariff as per the average pooler power purchase cost notified by the commission prevailing on the date of commissioning."

B.2. In the present case the installation work was commissioned on 26.01.2018 which is well before the scheduled date 27.01.2018 therefore, the Petitioner has not delayed the installation and commissioning the project.

B.3. The tariff rates can only be reduced or altered when there is any delay in commissioning of the project. But the Respondents has overlooked the Clause and are now pursuing an illegal claim against the Petitioner.

B.4. That over the course of 3 years i.e., from January 2018 till 04.02.2021, the Respondent had not raised any objections to the formats submitted by the Petitioner including on any site installation deficiencies in the matter. The Petitioner is therefore, taken aback at this sudden instruction to enter in to a SPPA with a lower tariff rate due to no breach of obligation or terms of PPA / approval letter by the Petitioner. On the other hand, it is the Respondents who are reneging from their obligations and have to performed the terms of PPA and the approval letter, therefore, it is submitted that the proposal of entering into a SPPA is unwarranted and incorrect.

C. NO SUPPLEMENTAL PPA IS WARRANTED

C.1. That SPPA must be entered into only when there is a delay in commissioning the project, which is not the case of the Petitioner. It is

pertinent to mention that the validity of the PPA is 25 years and any breach of contractual obligation will result in damages and interest along with any dues in payments.

C.2. The Respondent has not provided any substantial grounds/reasons/or to made out any case to prove that the Petitioner is obligated to enter into an SPPA even the most recent letter of the Respondent dated 04.02.2021 only places the reliance on Annexure-E of the KERC guidelines.

“As per KERC guidelines Annexure E it is mentioned that, the applicant should submit the work completion with necessary documents and approvals in Fomat-7 completion report should be submitted within 7 days prior to the last date approved for commissioning.”

C.3. The Petitioner has complied strictly with not only the PPA and the approval letter but also the guidelines for grid connectivity of Solar Rooftop Photovoltaic systems installed as per KERC (Implementation of Solar Rooftop Photovoltaic Power Plants) Regulations, 2016. As per the procedure and timelines for grid connected SRTPV plants ranging from 1k Wp to upto 500k Wp, the Petitioner is required to submit various documents as per formats mentioned therein. The Petitioner has been in strict compliance of the guidelines issued by the Respondent themselves and have submitted all documents in the formats prescribed.

C.4. The Respondents are simply witch-hunting the Petitioner and refusing to pay the dues to the Petitioner and they are whimsically refusing to

perform their obligations under the PPA. Therefore, having no any alterative remedy to the Petitioner has approached with this Petition.

3) Upon notice, the Respondents appeared through their Learned counsel, and filed statement of objections as follows: -

- a) The Respondent No. 1, in accordance with the Government of Karnataka's Solar Policy 2014-21 dated 22.05.2014 invited proposals for the installation of grid connected Solar Roof top Photovoltaic (SRTPV) systems through Net metering and Gross metering arrangement in furtherance of the same PPA was executed with the Petitioner.
- b) On 02.05.2016, the Commission vide Order No. S/03/01/2016, determined the terms and conditions for determination of tariff and other subsequent norms for regulating the SRTPV systems. On 27.07.2017, the Petitioner and Respondents entered into a PPA for installation of a 10kWp SRTPV system in accordance with the pre-approved format prescribed by the Commission.
- c) The Petitioner submitted the work completion report Respondent No.2 on 22.01.2018 and request for conducting the inspection and service of the SRTPV plant on or before 25.01.2018. In furtherance, the inspection and service of the SRTPV plant was conducted on 24.01.2018, and subsequently, the Petitioner commissioned the plant on 26.08.2018.
- d) At this juncture, the Petitioner addressed letters to Respondent No.2 and Respondent No.3 on 03.08.2018 seeking for release of amounts due to him from January 2018. In response to the same, Respondent No.1 vide letter dated 16.01.2019 clarified that a letter bearing No. BESCO/BC-

51/218-19/1424-27 is issued to the Commission seeking clarity regarding the time frame for commissioning the power plant from the date of approval of the PPA and that the Petitioner has delayed commissioning the plant, as the plant was commissioned on the 182nd date from the approval of the PPA i.e., 28.07.2017.

- e) Subsequently, the Petitioner issued letters to Respondent No. 1 and to the Secretary, KERC reiterating his stand as to there was no delay. In furtherance to the same, Respondent No. 2 vide letters dated 22.12.2020 and 13.01.2021 instructed the Petitioner to execute a Supplementary PPA as per the directions of the Commission.
- f) On 15.01.2021, the Petitioner approached Respondent No. 2 and sought for recovery of amount towards bills. Respondent No. 2, in response issued notice dated 04.02.2021, stated that the Petitioner has delayed in commissioning of the installation within the stipulated time, therefore there is a need for the Petitioner to execute a Supplementary PPA incorporating lower tariff as stipulated in Article 6.1 of the PPA.
- g) In furtherance to this notice issued by the Respondent No.2, the Petitioner has approached this Commission by way of the present petition seeking for a declaration that the Petitioner has commissioned the project well within the time frame prescribed by the Respondent, to hold that there is no apparent delay and to direct the Respondent to make payments to the Petitioner for the energy injected by it.
- h) In response to the contentions urged by the Petitioner, it is at the very outset submitted that the Petitioner herein has failed to commission the

SRTPV plant within the prescribed time frame. It is submitted that the grievance of the Petitioner is based on facts and circumstances that could have easily been avoided by the Petitioner.

- i) It is stated that the PPA entered between the Petitioner and the Respondent No. 1 was approved on 28.07.2017. Clause 1.6 (b) of the PPA requires the Petitioner to commission the plant within a period of six months (180 days) from the date of execution of the PPA. Therefore, the Petitioner ought to have commissioned his plant no later than 24.01.2018. It is stated that the duration of the term "six months" must be construed vide Clause 5(3) of the KERC (Implementation of Solar Rooftop Photovoltaic Plants) Regulation, 2016, which clearly specifies that the SRTPV plant on an existing roof is required to be installed within a period of 180 days only.
- j) It is stated that the Petitioner has erred and mis-interpreted the last date for commissioning of the plant as 27.01.2018 and has miserably failed to honour the timeline prescribed. Therefore, the question of declaring that the Petitioner has commissioned its plant within time would not arise.
- k) It is stated that the Petitioner is required to commission the SRTPV plant on or before 180 days i.e., by 24.01.2018, in accordance to the KERC Regulation. It is further stated that the letter issued by Respondent No.2 on 28.07.2017, directing the SRTPV work to be completed on or before 27.01.2018 was issued erroneously and the same being contrary to the Regulations issued by this Commission, ought not to be taken into

consideration. The said error is inadvertent in view of which the time frame mentioned therein ought not to be taken into reckoning.

- l) It is stated that the Petitioner is required to take necessary actions to execute the Supplemental PPA at a lower tariff rate than the initially agreed tariff payable by Respondent No. 1 owing to the Petitioner's delay in commissioning of the SRTPV plant. It is stated that, upon the perusal of Clause 5(3) of the KERC (Implementation of Solar Rooftop Photovoltaic Plants) Regulation, 2016 along with Clause 1.6(b) and Clause 6.1(b) of the PPA, it is evident that the Petitioner has not complied with his duty to commission the plant within the last date of commission i.e., 24.01.2018, and therefore is bound to execute the Supplementary PPA and accept the lower tariff.
- m) It is stated that the Petitioner has erred in stating that he has strictly complied with the KERC (Implementation of Solar Rooftop Photovoltaic Plants) Regulation, 2016. The Petitioner has failed to comply with Clause 5(3) of the Regulation which requires commissioning of the SRTPV within a period of 180 days from the date of approval of the PPA. In addition, Article 1.6 of the PPA clearly states that the plant has to be commissioned within 6 months i.e., 180 days. Therefore, the Petitioner has not complied with the Regulation or the terms of the PPA as he has commissioned the plant only on 26.01.2018 i.e., 2 days after the expiry of the prescribed time period the approval of the PPA. It is therefore stated that the Petitioner has delayed in commissioning the SRTPV plant and is therefore bound to execute the Supplementary PPA and accept

the lower tariff prevailing on the date of commissioning of the plant, as is provided in the PPA itself. Therefore, the contention that the Petitioner is eligible to tariff of Rs. 7.06/- per unit is untenable and the Petitioner is only entitled to Rs 3.57/- in terms of this Commission's order. Therefore, he prays to dismiss the Petition in the interest of justice and equity.

- 4) It is found from the records, while filing original Petition the Petitioner has made a prayer directing the Respondent No. 1 to make good the amounts withheld since January 2018 till March 2021 amounting to Rs. 2,69,458/- (Two Lakhs Sixty Nine Thousand Four Hundred and Fifty Eight Rupees Only) as per Tariff rate agreed under PPA and also claimed interest at the rate of 1% as per Clause 8.4 of the PPA to the tune of Rs. 59,931/- (Fifty Nine thousand Nine Hundred and Thirty One Rupees Only). During the course of proceedings, he has filed a memo dated 23.06.2021 before the Commission with a prayer to delete the Respondent No. 4 from the Cause title, since inadvertently Respondent No. 4 was made as a party to the Petition. This Commission has allowed the memo on 15.07.2021 and permitted to carry out the amendment and also to file amended Petition. Accordingly, Respondent No. 4 stood deleted from the original Petition and on 28.06.2021 Amended Petition was filed. In the said amended Petition the Petitioner has claimed payment of Rs. 2,69,458.428/- along with interest as per Clause 8.4 of the PPA in total for a sum of Rs. 3,29,390.01/-. There is some difference in the amount shown by the Petitioner in the original Petition and in amended Petition. None of the parties have made any submissions in this regard even during the course of arguments. However, it is not in dispute that the 1st Respondent

is in due of some amount towards the Petitioner from January 2018 to March 2021.

- 5) At this stage the below mentioned issues arise for our consideration.
- 1) **Issue No. 1:** Whether the Petitioner proves that he has commissioned the project well within the time frame prescribed by the Respondents and there is no delay on the part of the Petitioner to complete the commissioning?
 - 2) **Issue No. 2:** Whether the Petitioner further proves that he is entitled for amount withheld since January 2018 till March 2021 from the Respondent No. 1?
 - 3) **Issue No. 3:** Whether the Petitioner further proves that he is entitled for interest at the rate of 1% as per Clause 8.4 of the PPA on the amount due by the 1st Respondent?
 - 4) **Issue No. 4:** Whether the 1st Respondent proves that the Petitioner has to execute Supplementary PPA as stated in the objections?
 - 5) **Issue No. 5:** For what relief the Petitioner is entitled to?
 - 6) **Issue No. 6:** What Order?
- 6) **Issue No. 1:** Whether the Petitioner proves that he has commissioned the project well within the time frame prescribed by the Respondents and there is no delay on the part of the Petitioner to complete the commissioning?

AND

Issue No. 2: Whether the Petitioner further proves that he is entitled for

amount withheld since January 2018 till March 2021 from the Respondent No. 1?

AND

Issue No. 3: Whether the Petitioner further proves that he is entitled for interest at the rate of 1% as per Clause 8.4 of the PPA on the amount due by the 1st Respondent?

- 7) Since, Issue No. 1 & 2 are interconnected, hence taken up for common discussion in order to avoid repetition of facts.
- 8) During the course of arguments, the Learned Counsel for the Petitioner has submitted that, the Petitioner is a prosumer. The Respondent is a Government of Karnataka undertaking a Company formed under the Company's Act. The Government of Karnataka has notified on 22.05.2014, the solar policy 2014-21 harness the Solar energy in the State of Karnataka, hence BESCO invited for applications from all its consumers for installing grid connected SRTPV systems under net-metering and gross-metering arrangement and also to set the PPA to be executed. The Petitioner pursuant to the order, applied for installation of grid connectivity SRTPV generation system on gross/net-metering basis on 18.07.2017 in compliance of the order passed by the KERC dated 02.05.2016. The Petitioner and Respondent have entered into PPA on 27.07.2017 for connecting and operating the SRTPV system with ESCOMS HT/LT Distribution System for the sale of Solar power in terms of the order passed by the KERC in order No. S/03/01/2016 dated 02.05.2016. According to terms and conditions of PPA the seller shall commission the SRTPV system within 6 months from the date of approval of PPA. Further as per Clause 8.2 of the PPA, BESCO shall

pay for the gross energy exported as per the tariff agreed in the agreement within 30 days of the issue of the bills. As per Clause 8.4, BESCO shall pay interest at the same rates as is being levied on the consumers for the late payment charges in case of any delay in payment for net energy exported beyond 30 days period from the date of issue of bill.

- 9) Further the Learned Counsel for the Petitioner submitted that, on 28.07.2017 the Petitioner received the approval for installing the 10 KWP SRTPV system under gross-metering by the Respondents. In the said approval, there was a condition among with other conditions that, the SRTPV installation work shall be completed on or before 27.01.2018. The Petitioner for this purpose and for fulfilling the obligations towards the PPA installed the SRTPV system of 10 KWP capacity on the rooftop of his residential address and connected to electricity service connection bearing RR No. S5EH-30515 and unique ID No. 1623062000 under Tariff LT2A 1-N with sanctioned load of 10 KVA in the same premises under S5 O & M, Isro Layout Sub division. Subsequently the Petitioner submitted the work completion report on 22.01.2018 under Format-7 within 6 months (178 days) from the date of approval of the PPA. The Petitioner also requested AEE (Ele) to arrange visit from a staff member of the Respondent's department for conducting the inspection and service of the said installation on or before 25.01.2018. The AEE forwarded the Petitioner's request to the Executive Engineer (Ele), MT Division, BESCO on 24.01.2018 to depute a staff member for conducting pre-commining and synchronization. On 25.01.2018 and 26.01.2018 respectively the Petitioner submitted the commissioning report under Format-8 which was duly acknowledge by the Executive Engineer (Ele) on 25.01.2018

and by the AEE (Ele) on 26.01.2018. The Respondent has issued a certificate of successful synchronization with the Respondents grid at 400/230 voltage level on 27.01.2018.

- 10) Further the Learned Counsel for the Petitioner has submitted that, the Petitioner has been and continues to be in complete compliance of the PPA and the approval letter dated 28.01.2017 wherein, the AEE (Ele) had given a time frame till 27.01.2018 to commission the project, after approvals and inspections. The process of generating electricity had also been initiated. There was at no point of time any objections to the any of the documents or formats submitted by the Petitioner to the Respondents so far as this project is concerned. As per Clause 8 of the PPA, the Respondent is required to make payments as per the agreed tariff rate i.e., Rs. 7.08 per KWh within 30 days of raising the monthly electricity bill. But the Respondent miserably failed to honor and discharge their obligations under the PPA. The Petitioner has also issued a letter on 03.08.2018 to the AEE (Ele) and EE (Ele) seeking the release of amounts due with effect from January 2018 till the date of letter. But to the shock of the Petitioner, he has received a copy of the letter from the Respondent seeking clarification from the KERC regarding the period i.e., "whether the seller shall commission the SRTPV system within 6 months from the date of approval of PPA or within 180 days from the date of signing of PPA". Immediately the Petitioner issued a letter to the Secretary, KERC dated 17.01.2019 explaining the event and grievances in the matter and requested that the payments withheld be released with immediate effect, but the Petitioner has not received any response to his letter. Once again, the Petitioner issued another letter dated

23.01.2019 reiterating the controversy and the Petitioner's grievances. Along with that letter he also placed a copy of work competition report under Format-7 and the certificate of synchronization and installation, but the Petitioner has not received any communication or reply to his letter.

- 11) It is further submitted that, despite repeated physical reminders and after having made the Petitioner run pillar to post, the Petitioner was once again constrained to issue a letter dated 16.08.2019. Despite of all the aforesaid letters, the Petitioner did not received any response, therefore the Petitioner again issued a letter dated 13.11.2019 to the MD of BESCOM reiterating the controversy with a request to release the amounts due and payable by the BESCOM. Thereafter, on 29.11.2019 the Respondent issued a letter to the General Manager, BESCOM placing reliance on the report of synchronization of the SRTPV system. In this regard, the AEE (Ele) made reference to the work completion report submitted on 22.01.2018 and also synchronization report as per Norms. In spite of that the Respondent has not made any payments to the Petitioner.
- 12) Further the Learned Counsel for the Petitioner has submitted that, the Petitioner has complied strictly with not only the PPA and also the approval letter and also the guidelines of grid connectivity of solar SRTPV systems installed as per KERC implementation of solar SRTPV Power plants Regulations, 2016. Thereby, he is entitled for the relief as claimed in the Petition, with this he prays to allow the Petition in the interest of justice and equity.
- 13) The Learned Counsel for the Respondents during the arguments has submitted that the PPA entered between the Petitioner and the Respondent No. 1 was

approved on 28.07.2017. As per Clause 1.6 (b) of the PPA the Petitioner to commission the plant within a period of 6 months i.e., within 180 days from the date of execution of PPA. Thereby the Petitioner ought to have commissioned the plant no later than 24.01.2018. The duration of the term 6 months must be construed vide Clause 5 (3) of the KERC (implementation of SRTPV Plants) Regulations 2016, which clearly specifies that SRTPV plant on an existing roof is required to be installed within a period of 180 days only. Therefore, the final date for the Petitioner to commission the plant was 24.01.2018, but he commissioned the plant on 26.01.2018. The Petitioner has erred and misinterpreted the last date of commissioning of the plant as 27.01.2018. He has miserably failed to honour the timeline prescribed, therefore, the question of declaring that the Petitioner has commissioned the plant within time would not arise at all.

- 14) Further he submitted that, the Petitioner is required to take necessary actions to execute the supplemental PPA at a lower tariff rate than the initially agreed tariff payable to him. Further he submitted that, the approval granted by the Respondent No. 2 dated 28.07.2017 was issued erroneously by the Officer. The other allegations made by the Petitioner are all untenable. The date mentioned in Annexure-D as 27.01.2018 is erroneous and by inadvertently the then officer concerned has mentioned the same. Thereby, that date cannot be taken into consideration.
- 15) In this regard, the Learned Counsel for the Respondent has relied upon the decisions (1) State of Bihar V/s Kripalu Shankar and Others (1987) 3 SCC 34. (2) Union of India V/s Kartick Chandra Mondal and Others (2010) 2 SCC 422. (3)

Kamal Parshar V/s Airport Authority of India (2015) 17 SCC 519. (4) PTC India Limited V/s CERC (2010) 4 SCC 603. (5) G.N. Narayanaswamy V/s BESCOM OP 168/2017 and finally submitted that the relief sought by the Petitioner is not maintainable, hence he prays to dismiss the Petition in the interest of justice and equity.

- 16) We have perused the documents relied by the parties. Annexure-C is the Power Purchase Agreement entered between the Petitioner and the 1st Respondent on 27.07.2017 in which it is agreed as per Clause 1.6 (b) that "the seller shall commission the SRTPV system within 6 months from the date of approval of PPA". Further as per Clause 6.1 (a) "the BESCOM shall pay the gross energy at 7.08 per KWh as determined by the KERC in the order dated 02.05.2016 for the term of the agreement" and as per Clause 8.2 "the BESCOM shall pay gross energy exported as per the Tariff agreed in this agreement within 30 days of issue of bills". As per Clause 8.4 "BESCOM shall pay interest at the same rates as is being levied on the consumers for late payment charges in case of any delay in payment for the net energy exported beyond 30 days period from the date of issue of bill".
- 17) Annexure-D is the letter of approval given by Assistant Executive Engineer (Ele), S-5 O & M Sub Division, BESCOM, Bengaluru dated 28.07.2017 to the Petitioner. On perusal of this document, it appears that as per Para 12, the Petitioner should complete the SRTPV installation work before 27.01.2018. And as per Para 13, it is intimated to the Petitioner that after completion of the work in all respects, the Petitioner has to submit the work completion report in Format-7 along with documents as shown in (a) to (d) in Annexure-D. Annexure-E is the

work completion report dated 22.01.2018 in Format-7 submitted by the Petitioner to the Assistant Executive Engineer (Ele), S-5 O & M Sub Division, BESCOM, ISRO Layout, Bengaluru. In this letter the Petitioner has given reference of Annexure-D and submitted SRTPV installation work completion report of RR No. BS5EH-30515. Further it is requested that to arrange for inspection and service of the installation on or before 25.01.2017. As per Annexure-F dated 24.01.2018, the Assistant Executive Engineer (Ele), S-5 O & M Sub Division, BESCOM, ISRO Layout, Bengaluru has written a letter to the Assistant Executive Engineer (Ele), MT Division, BESCOM, Bengaluru with a request to depute MT staff for conducting pre-commissioning and synchronization as per Format-7 and 8 submitted by the Applicant (Petitioner) against RR No. BS5EH-30515, as the installation is ready for commissioning. Annexure-G is Commissioning report of SRTPV system in Format-8 dated 26.01.2018 issued by BESCOM. Annexure-H is the letter written by the Assistant Executive Engineer (Ele), S-5 O & M Sub Division, BESCOM, ISRO Layout, Bengaluru dated 27.01.2018 to the Petitioner stating that the SRTPV system successfully synchronize with the BESCOM grid at 400/23 voltage level on 26.01.2018. Annexure-P is a letter written by Assistant Executive Engineer (Ele), S-5 O & M Sub Division, BESCOM, ISRO Layout, Bengaluru to the General Manager (DSM), BESCOM, Corporate Office, Bengaluru dated 29.11.2019 shows that the 2nd Respondent has stated that as the Consumer submitted the work completion report on 22.01.2018 well within the specified time limit, therefore, the SRTPV installation synchronized as per norms.

- 18) All these documents clearly establish that the Petitioner has to commission the SRTPV system within 6 months from the date of approval of PPA. Further, it is made clear from Annexure-D that the Petitioner should complete the SRTPV installation work before 27.01.2018 and Annexure-H & P clearly states that the Petitioner has submitted work completion report on 22.01.2018, well within specified time limit and SRTPV system of the Petitioner successfully synchronized with BESCO grid on 26.01.2018. Therefore, we are of the opinion that, the Petitioner has commissioned the plant within prescribed time as per PPA and letter of approval.
- 19) During the course of arguments, the Learned Counsel of the Respondents has submitted that, the then Officers of BESCO by mistake, inadvertently and erroneously issued Annexure-D stating that as 'the SRTPV installation should be completed before 27.01.2018'. But as per the KERC Regulations (Implementation of Solar Rooftop Photovoltaic Power Plants), 2016 the SRTPV plant should be commissioned within 180 days from the date of approval of PPA. In the case on hand the Petitioner has commissioned the plant on 182nd day. Thereby, he is not entitled for agreed tariff as show in the PPA. But this contention cannot be accepted because Annexure-D the letter of approval is issued by the then responsible Officer of BESCO. If, this contention of the Respondents was true they would have made it clear to the Petitioner at early stage by issuing one more rectification letter, but it is not done so, the Respondents kept silent all these days till completion of the plant now have come up with this contention.

20) We have gone through the provisions laid down under Clause 5 (3) of KERC (Implementation of SRTPV Power Plants) Regulations 2016 which reads as follows: -

- “5. Procedure for Implementation & Reporting:
(3) The eligible consumer shall commission the SRTPV plant within six months from the date of approval of the PPA. In case, the eligible consumer fails to commission the SRTPV plant within such six months, the applicable tariff for the electricity supplied from the SRTPV plant shall be the agreed tariff or any revised tariff determined by the Commission or the average pooled power purchase cost as notified by the Commission prevailing on the date of commissioning, whichever is lower.”*

This provision also speaks that the eligible consumer shall commission the SRTPV plant within 6 months from the date of approval of the PPA. Accordingly, the letter of approval (Annexure-D) issued by the 1st Respondent stating that the plant shall be completed by the Petitioner before 27.01.2018 is in accordance with the terms and conditions of PPA (Annexure-C) as well as Clause 5 (3) of the above referred regulation. Thereby, the contention taken by the Respondents that the Petitioner has not commissioned the SRTPV system within time schedule cannot be accepted, accordingly rejected.

21) The another contention of the Petitioner that the 1st Respondent has not made payment of bills due to the Petitioner i.e., from January 2018 to March 2021, this is not controverted by the Respondents.

22) On perusal of Annexures-I & J, the letters written by the Petitioner dated 03.08.2018 to the 2nd & 3rd Respondents show that, the Petitioner had made a request with the 2nd & 3rd Respondent for arranging to send monthly bills from

26.01.2018 till the date. Annexure-L, M & N are the letters written by the Petitioner to the Secretary, KERC dated 17.01.2019, 23.01.2019 and 16.08.2019 respectively show that he has given clarification with regard to the time framed for synchronization of RR No. S5EH-305151 and also submission of certified copies of work completion report with a request to instruct BESCO to honour its obligation in paying the bills along with interest. Annexure-O, Q & R are the letters written by the Petitioner dated 13.11.2019, 27.10.2020 and 05.11.2020 to the Managing Director, BESCO with a request for arranging payment of bills. All these documents are not disputed by the Respondents hence, it is clear that the Respondents have not made arrangements in making payment towards bills issued by the Petitioner for the period from January 2018 to March 2021. As already discussed above since the Petitioner has commissioned the plant as per the terms and conditions of PPA and within stipulated time as stated by the 2nd Respondent in approval letter Annexure-D, he is entitled for the amount withheld by the Respondents for a period from January 2018 to March 2021 for a sum of Rs. 2,69,458/- as per the tariff rate agreed under PPA dated 27.07.2017.

- 23) As per Clause 8.4 of PPA (Annexure-C), BESCO shall pay interest at the same rates as is being levied on the consumers for late payment charges in case of any delay in payment for the net energy exported beyond 30 days period from the date of issue of bill. In the case on hand, as already observed in above paragraphs, the Respondents have not made payments towards bills due to the Petitioner from January 2018 to March 2021.

- 24) We have perused the citations relied by the Learned Counsel for the Respondents which are not relevant to the facts and circumstances for the case.
- 25) Hence, the Petitioner is entitled for interest on the amount due by the Respondents as per Clause 8.4 of PPA. With this we answered Issue No. 1 to 3 in affirmative.
- 26) **Issue No. 4:** Whether the 1st Respondent proves that the Petitioner has to execute Supplementary PPA as stated in the objections?
- 27) It is the contention of the Respondent that, since the Petitioner has not commissioned the plant within prescribed time as stated in PPA, he is not eligible for PPA tariff rate and it has to be modified as per the orders of the Commission. Thereby the Petitioner is required to take necessary actions to execute the Supplemental PPA at a lower tariff rate than the initially agreed tariff payable by the 1st Respondent owing to the Petitioner's delay in commissioning of the SRTPV plant. In this regard, 2nd Respondent has written letters to the Petitioner as per Annexure-S & T. Except these letters the Respondent have not placed any acceptable evidence to show that the Petitioner is required to execute SPPA, because it is burden on the Respondents to prove the same. But as per discussions made herein above paragraphs it is already decided that the Petitioner has commissioned the plant within scheduled date. Hence, there is no necessity to execute Supplemental PPA as contended by the Respondents. Hence the Issue No. 4 is answered in Negative.
- 28) **Issue No. 5:** For what relief the Petitioner is entitled to?

- 29) As per discussions made herein above paragraphs, and also answering issue No. 1 to 3 in affirmative by holding that the Petitioner has commissioned the project well within time framed and he is entitled for payment due by the Respondent No. 1 since January 2018 till March 2021, according to the tariff rate agreed under the PPA. Accordingly, this Issue No. 5 is answered accordingly.
- 30) **Issue No. 6:** What Order?
- 31) In view of the foregoing reasons, we pass the following: -

ORDER

- a) The Petition is allowed with costs.
- b) It is held that the Petitioner has commissioned the project well within the time frame prescribed by the Respondents and the Petitioner is entitled for PPA approved tariff of Rs. 7.08/KWh.
- c) The Respondent No. 1 is directed to calculate and make good the amounts withheld since January 2018 till March 2021 as per the tariff rate agreed under PPA within 2 months from this order, in default the Petitioner is entitled for interest as per Article 8.4 of PPA.

Sd/-
(H.M. MANJUNATHA)
Officiating Chairperson

Sd/-
(M.D. RAVI)
Member