

No.N/411/2017

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

Dated: 26.07.2023

Present

Shri P. Ravi Kumar	.. Chairman
Shri H.M. Manjunatha	.. Member (Legal)
Shri M.D. Ravi	.. Member

OP No.226/2017

BETWEEN:

Mr. Narayanaswamy
Son of Late Narayanappa,
No.104, 2nd Cross, BFW Layout,
Iyyangar Badavane,
Laggere,
Bengaluru-560 058.

...PETITIONER

(Represented by Sri Shridhar Prabhu, Advocate
for Navayana Law Offices)

AND

Bangalore Electricity Supply
Company Limited (BESCOM),
A Company Registered under the
provisions of Companies Act, 1956
having its Registered Office at
KR Circle,
Bengaluru-560 001.
(Represented by its Managing Director)

... RESPONDENT

(Represented by Sri Sriranga, Senior Advocate
for M/s Justlaw Advocates).

ORDERS on REMAND

1. The petitioner had filed this petition under Section 86 (1) (f) of the Electricity Act, 2003, praying for the following reliefs to:

- a) Declare that petitioner has commissioned the SRTPV in accordance with all applicable laws and orders having the force of law;
- b) Set aside the respondent's notice dated 16th October, 2017 at Annexure-P1;
- c) Direct the respondent to make payment @ Rs.9.56 per unit as agreed under the PPA dated 17th March, 2016 at Annexure-P2 for the entire terms of the PPA from the date of commissioning of the SRPTV System; and
- d) Pass such other incidental orders as may be appropriate under the facts and circumstances of the present case.

2. After contest, this Commission by its Orders dated 10.12.2019 had disposed of the petition with the following:

"ORDER

- a) *The petitioner is not entitled to any of the reliefs claimed in his petition.*
- b) *The petitioner is permitted to execute a fresh PPA with the respondent for sale of energy at a tariff of Rs.3.57 per unit for the energy supplied from the date of commissioning of the SRTPV system for a period of 25 years subject to all other usual terms and conditions.*
- c) *The petitioner may exercise his option of executing a fresh PPA within a period of 30 days from the date of this order by filing an affidavit before this Commission and a copy marked to respondent. In the event of executing a fresh PPA, the differential amount paid if any, as per the interim tariff at Rs.5.20 per unit and the tariff now fixed at Rs.3.57 per unit, for the energy supplied, shall be either adjusted or recovered in future bills.*

- d) *In case, the petitioner fails to exercise the option to execute the fresh PPA within the above said period, the energy injected from the date of the synchronization of the SRTPV system shall be compensated @ Rs.3.57/- per unit and the excess amount received, if any by the petitioner, shall be recovered from the petitioner by the respondent.*
- e) *In case, the petitioner fails to exercise the option to execute the fresh PPA within the above said period, the injection of power subsequent to that date into the grid shall not be treated as a sale of energy to the respondent and the petitioner should not be entitled to any compensation for the energy injected, if any."*

3. From the rival contentions and the pleadings of the parties, earlier the following issues were framed for consideration:

Issue No.1: Whether the PPA dated 17.03.2016 executed between the petitioner and the respondent (Annexure P-2) is liable to be terminated?

Issue No.2: If, Issue No.1 is held in affirmative, which of the reliefs can be granted to the petitioner?

Issue No.3: What Order?"

4. After considering the submissions of the parties and the pleadings and the material on records, Issue No.1 was held in affirmative holding that the PPA in question was liable to be terminated. In the concluding paragraph, while deciding the Issue No.1, the findings reached were as follows:

"From the above discussions, it is found that the roof on which the SRTPV system was installed by the petitioner was not in conformity with the SRTPV guidelines, the GoK Order dated 17.08.2016 and also the GoK Circular dated 10.12.2015 and the Solar Policy 2014-21 and that the local officers fraudulently granted approvals for synchronizing the SRTPV system with the grid. Therefore, we hold the Issue No.1 in affirmative."

5. Against the Orders dated 10.12.2019, the petitioner preferred Appeal No.439 of 2019 before the Hon'ble ATE. By Order dated 04.11.2022, the Hon'ble ATE remanded the matter for consideration with the following observations:

"1. The short issue which gives rise to this dispute is as to whether the rooftop solar power plant set up by the appellant is mounted on a shed like structure which can be equated with a building or, to put it more clearly, as to whether the structure on which the said power plant has been mounted qualifies as a building which is "constructed as per building construction acts/norms" within the meaning of the clarification circular issued vide No. EN 70 VSC 2015 on 17.08.2016 by Energy Department of the Government of Karnataka.

2. While rejecting the claim of the appellant that his solar power plant has been set up properly on a building, the State Commission appears to have examined the issue with reference to certain inspection reports and materials submitted by the appellant as well. But we find that the matter requires a further factual inquiry in above light. Therefore, with consent of learned counsel for both sides, we vacate the impugned order and return the dispute to the State Commission for fresh consideration in accordance with law. The Commission shall hear the parties if necessary call for a report from the concerned municipal or State authority dealing with the building bye-laws, and pass a fresh reasoned order on the subject."

6. On receipt of the copy of the Order dated 04.11.2022 passed in the above Appeal, the parties were informed to appear before this Commission. Accordingly, the parties have appeared through their learned counsel. On perusal of the Order in Appeal and hearing the learned counsel for the parties, this Commission directed the jurisdictional Zonal Superintendent Engineer (Elec), Major Works, KPTCL, Tumkur and Deputy Director, Animal Husbandry Department, Tumkur to personally visit the project of the SRTPV Plant of the petitioner and to furnish the detailed report on the technical

aspects such as type/nature of building and its purpose, approval for setting up of poultry farm, connected/sanctioned load, RR No. etc., Accordingly, both the officers furnished their reports. They inspected the spot on 09.02.2023 and filed their reports separately. It was observed in the report of Deputy Director, Animal Husbandry Department that the buildings (sheds) have been constructed for the purpose of poultry farm as per the Departmental norms and on the date of inspection no poultry birds were found in the premises and cleaning of buildings was going on. The Zonal Superintendent Engineer (Elec), KPTCL, Tumkur stated in his report that the SRTPV norms in respect of Net metering have been followed. Further regarding the condition of the buildings, it is stated that: *"The solar photovoltaic panels have been installed on the roof top of six numbers of robust sheds constructed using steel I-sections and steel 'C"-channels. The ground size of each shed found to be of size 40 ft. x 400 ft. The above sheds fitted with the required infrastructure to provide water cooling arrangement viz., water spraying, fans, false sealing etc., and are found to be under usage."* Further it is stated that the said premises were earlier having LT installation bearing RR No. BL-6765 with sanctioned load of 240 W and were serviced on 02.06.2001 and the same was converted to HT installation bearing RR No. SRTPVMGHT-03 and was serviced on 17.03.2017 with a sanctioned load of 25 KVA.

7. This Commission also directed the Tahsildar of Madhugiri Taluk, Executive Officer of Taluk Panchayat and PDO of Kavanadaala Gram Panchayat to furnish the particulars as to whether (i) Gram Panchayat licence is required for construction of Poultry Farm on agricultural land; (ii) conversion of

agricultural land to non-agricultural purpose is required for constructing the poultry sheds; (iii) the procedure to be followed before constructing poultry sheds as per Building Bye-laws, if any and other provisions related to construction of building; and to produce the relevant Building licence, if any obtained by the petitioner for construction of the Poultry Sheds. The Executive Officer, Taluk Panchayat, Madhugiri, has furnished his report on 06.06.2023 stating that for construction of any building within the limits of Gram Panchayat, obtaining of the licence is required as per Section 64 of Karnataka Panchayat Raj Act, 1993 and the relevant Rules framed under it. For construction of poultry farm on agricultural land, No Objection Certificates are to be obtained from Karnataka State Pollution Control Board and concerned Tahsildar, before applying for licence for construction in the prescribed form before the Gram Panchayat. He has produced the relevant provisions of Gram Panchayat Tax Rate and Fees Rules, 2021, which also deals with permission for construction of building, license fee payable etc., He has also produced the copy of the license dated 25.09.2017 issued in favour of the petitioner.

8. The parties have filed their comments on the reports along with certain documents and also made their oral submissions on their respective contentions.

9. The following issues arise for our consideration:

a) Issue No.1: Whether the PPA dated 17.03.2016 executed between the petitioner and the respondent (Annexure P-2) is liable to be terminated?

b) Issue No.2: What Order?

10. After considering the submissions of the parties and the pleadings and records already placed and now produced, our findings on the above issues are as follows:

11. Issue No.1: Whether the PPA dated 17.03.2016 executed between the petitioner and the respondent (Annexure P-2) is liable to be terminated?

a) Article 1.6 of the PPA relating to design and construction of SRTPV, reads as follows:

"1.6 SRTPV 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 Solar Policy 2014-21 issued by GoK, the Government letter dated 17.08.2016 and the GoK Circular dated 10.12.2015, are relevant to consider as to whether the SRTPV System in question was installed on the roof-top of the building as specified.

c) The respondent had relied upon the following three grounds in support of its contention that the PPA in question was liable to be terminated.

(i) The roof on which the SRTPV system installed by the petitioner is/was not in conformity with the SRTPV guidelines, the GoK Order dated 17.08.2016 and also the GoK Circular dated 10.12.2015 and also the Solar Policy 2014-21.

(ii) The SRTPV system in question has been installed without obtaining conversion order of agricultural land as

required under Section 95 of the Karnataka Land Revenue Act, 1964.

(iii) The then local officers of the respondent had fraudulently granted approvals for synchronizing the project with the grid.

d) While passing the earlier Order dated 10.12.2019, regarding the second ground urged by the respondent, this Commission held that the conversion of agricultural land into non-agricultural purpose was not required for construction of poultry farm. However, the first and third grounds were found to be established from the material on record.

e) In Appeal No.439 of 2019 of the Hon'ble ATE, it is directed that after hearing the parties, if necessary a report from the concerned Municipal or State Authority dealing with the building bye-laws can be called for and Commission has to pass a fresh reasoned Order on the controversy.

f) We have already narrated the reports submitted by various Authorities as directed by this Commission. These reports or the further material produced by the petitioner, do not improve the case of the petitioner.

g) The reasons may be stated as follows:

(i) The photographs produced at Annexure-A by the petitioner of the poultry farm sheds are admittedly the recent photographs but not related to the photographs of the sheds at or about the time of commissioning the SRTPV System on 23.02.2017.

(ii) The photographs previously produced by the respondent at Annexure-R3 was shown to be taken on 03.05.2017 during the spot inspection by the Deputy General Manager (Elect), BESCO, Vigilance. This fact is proved by Annexure-R1 now produced by the respondent. The respondent throughout contended that the Solar PV Plants were installed only on the structures using steel/iron supports and such structures could not be construed as Solar Roof-Top PV plants as specified in GOK letter dated 17.08.2016. It may be noted that these GoK in its letter dated 17.08.2016 (Annexure P-3) has clarified that the Solar Panels of Solar Roof Top PV plants must be mandatorily mounted in the space available on the roof of residential, commercial, institutional, industrial and other buildings which are constructed as per the Building Construction Acts/Norms. Further, it is clarified that 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 Solar Roof Top PV plants.

(iii) The petitioner has now produced the licence dated 25.09.2017 Annexure-B for poultry farm issued by the concerned PDO of Gram Panchayat. The application for issue of licence was presented before Gram Panchayat on

22.09.2017. These documents also do not improve the case of the petitioner to establish that poultry farm was functioning before commissioning the SRTPV. The concerned Authorities have reported that erection of any building within the limits of Gram Panchayat requires licence/permission.

(iv) The Executive Officer, Taluk Panchayat, Madhugiri, has stated regarding the NOC to be obtained from Pollution Control Board, before applying for permission to construct poultry farm sheds. The petitioner has not produced any such NOC. The true copy of the NOC dated 25.09.2017 now produced by the petitioner is obviously not obtained at the time of putting up of the sheds in question. The Petitioner has not produced any document to establish that he had applied for construction permission before putting up the poultry sheds. The concerned officer of Gram Panchayat also has not stated anything regarding the petitioner obtaining the licence for construction of sheds at the initial stage. Therefore, the documents produced by the petitioner are not helpful to establish that poultry farm sheds were constructed after obtaining the construction licence issued by Gram Panchayat before the commissioning of SRTPV. Section 64 of The Karnataka Gram Swaraj and Panchayat Raj Act, 1993 prohibits construction of any

building or alter or add to any existing building etc., without written permission of Gram Panchayat.

- (v) The reports now received do not in any way discredit the reasons already we have given in our previous Order dated 10.12.2019. We have gone through the reasons stated in our previous Order with reference to the documents, evidence already existing along with the reports and documents now produced. We find no reason to take a different view than the view earlier taken.
- h) The scrutiny of the documents and evidence clearly points out that the poultry farm was not functioning before installing the SRTPV System and he had installed the SRTPV System on the ground mounted structures which could not have been construed as SRTPV System as per GOK Order dated 17.08.2016.
- i) The inspection report of 03.05.2015 of the Deputy General Manager (Vigilance) of BESCO, clearly shows that the SRTPV has been mounted on steel structural frames. The photographs submitted by the petitioner of the poultry farm (Annexure-A) was not in existence as on the date of commissioning. Further, installing the SRTPV System on the incomplete poultry farm sheds was against the spirit of GOK Circular dated 10.12.2015. It appears that just to meet the commissioning of the SRTPV System within the Scheduled Commissioning Date (SCD), the petitioner had persuaded the officials of the concerned Sub-Division of BESCO to interconnect the SRTPV

System with the Grid. This could not have been done if due procedure was followed as specified in the Guidelines framed by the respondent and the instructions issued by the GOK. It may be noted that the delay in commissioning the SRTPV System, would attract reduced tariff for the supply of solar energy and violation of the norms for construction of the SRTPV System would attract termination of the PPA.

i) For the above reasons, we hold Issue No.1 in affirmative.

12. Issue No.2: What Order?

In view of the findings on Issue No.1, we find no reason to differ from the direction given in the earlier order dated 10.12.2019, holding that the petitioner is not entitled to any of the reliefs claimed in the petition and permitting the petitioner to execute the fresh PPA with respondent for the reduced tariff etc., Hence, the following:

ORDER

The petition is disposed of as per the findings on Issue No.2.

sd/-
(P. RAVIKUMAR)
Chairman

sd/-
(H.M. MANJUNATHA)
Member(Legal)

sd/-
(M.D. RAVI)
Member