

Nos.: N/181/16 and N/182/16

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**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BENGALURU**

**Dated : 24<sup>th</sup> August, 2017**

**Present:**

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

**RP No.18/2016**

**BETWEEN :**

H.M. Ramachandra,  
S/o Mahabaleshwara Bhat,  
496, 6<sup>th</sup> Main, Dollars Colony,  
RMV 2<sup>nd</sup> Stage,  
Bangalore – 560 094.

.. **PETITIONER**

*[Petitioner is represented by Shri H.M. Manjesh, Advocate]*

**AND:**

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

.. **RESPONDENT**

*[Respondent is represented by Justlaw, Advocates]*

RP Nos.18/2016 and 19/2016.

**RP No.19/2016**

**BETWEEN :**

Smt. Jaimala,  
W/o Ramachandra. H. M.,  
496, 6<sup>th</sup> Main, Dollars Colony,  
RMV 2<sup>nd</sup> stage,  
Bangalore – 560 094.

..

**PETITIONER**

*[Petitioner is represented by Shri H.M. Manjesh, Advocate]*

**AND:**

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..

**RESPONDENT**

*[Respondent is represented by Justlaw, Advocates]*

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**COMMON ORDER**

- 1) This common Order is being passed in the above mentioned Review Petitions, as they involve common questions of law and facts.
- 2) The Petitioners have filed these Review Petitions under Order 47 Rule 1 of the Civil Procedure Code read with Section 94 of the Electricity Act, 2003 praying for, recall of the Commission's Order dated 20.10.2016 and permitting the Petitioners to commission the project within the time stipulated in the approved power purchase agreements; and, grant of tariff as agreed and approved in the power purchase agreements.

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3) The submission of the Petitioners in support of their prayers may be summed up as follows:

(a) That the first Petitioner on 15.12.2015 and the second Petitioner on 16.12.2015 submitted off-line applications to the Respondent for installation of solar power plant of 1000 kWp each on the rooftop of Warehouses at Survey Nos.3/6, 3/7, 3/8 and 3/9, Narayanappanapalya, Dasanapura Hobli, Ravuthanahalli Road, Bengaluru - 562123 and Survey No.3/3, Narayanappanapalya, Dasanapura Hobli, Ravuthanahalli Road, Bengaluru-562123, respectively and entered into Power Purchase Agreements (PPAs) on 31.12.2015 for such rooftop solar P.V. Plants with net metering arrangement, with the Respondent.

(b) That the Respondent had sought for approval of the Commission for the PPAs and that the Petitioners, as sought by the Commission, gave all the particulars along with photographs of the roofs, on which the plants were to be installed, to the Respondent for submission to the Commission.

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- (c) The Commission, in its letter dated 28.04.2016, approved the PPAs dated 31.12.2015, subject to insertion of an additional term in the PPAs which read thus: *"The SRTPV system shall be designed, engineered, constructed, commissioned and operated by the seller or any other person on his behalf, within 31.12.2016"*.
- (d) That the Respondent, in its letter dated 19.08.2016, informed the Petitioners of the approval, requested the Petitioners to submit certain documents and stated that installation/commissioning is to be completed within 30.12.2016 failing which, the approval shall be treated as cancelled.
- (e) That the Petitioners, after raising Bank loans, took steps to install and commission the plants within 31.12.2016.
- (f) That the Commission, on 29.08.2016, issued Notices to the Petitioners stating that, twelve months' time was given for commissioning of the rooftop plant, whereas they were to be given only 6 (six) months' time and calling upon the Petitioners to show-cause against the revision of the time to six months. That the Petitioners, in their letters dated 01.09.2016, had highlighted that, as per the approval, the Petitioners were granted time to commission the projects within 31.12.2016. That

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pursuant to the same, the Petitioners have arranged for Bank financing with first fund release being made on 22.07.2016 and the plants were on the verge of completion and ready for installation in a few weeks. That no time extension was sought for and the approved time was requested to be retained.

- (g) That the Commission, without issuing any Notice of hearing, unilaterally passed the Orders dated 20.10.2016, confirming the action as proposed in the notices dated 29.08.2016 and also stating that, if the Petitioners complete the projects after 6 months, they would be entitled to the tariff as determined in the Commission's Order dated 02.05.2016.
- (h) That the Petitioners having received the impugned Order of the Commission on 30.10.2016 requested for personal hearing and were informed that, a personal hearing in the matter, on which the Commission has passed an Order, cannot be granted, but the Petitioners could file a Review Petition.
- (j) That the Commission, while approving the PPAs, had granted time of one year for commissioning the Projects, but after a period of eight

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months, the Petitioners were asked to complete the Projects within six months. That the time for completion cannot be altered unilaterally.

4) After issuance of Notice, the Respondent has entered its appearance through its counsel and filed objections contending that:

(a) The timeframe ordinarily approved by the Commission for SRTPV project is six months from the date of signing of PPA. Even as per the guidelines / Policy of the Respondent for SRTPV applicants having existing buildings, the time prescribed is 180 days i.e., six months, which is found to be adequate and the said Policy is in public domain. The Petitioners knowing the same, failed to bring the error of they being given twelve months to the notice of the Commission and ought not to be permitted to take advantage of this error.

(b) The Commission's Order dated 10.10.2013 has clearly specified that PPAs executed as per such Order are eligible for ₹9.56 per unit, provided that the SRTPV Plants are commissioned within six months. The Petitioners cannot be permitted to avail the benefit of higher tariff, when the plants are not commissioned within the prescribed timeframe. The Commission, in its communication dated 27.09.2016 addressed to the Respondent, among others, has clearly stated that,

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if there is a delay in commissioning of the SRTPV Projects on the existing roofs within 6 (six) months, the consumer concerned would be eligible for the revised tariff as per the Commission's Order dated 02.05.2016 and not ₹9.56 per unit agreed to in the PPA executed.

- (c) All the SRTPV plants with the existing buildings, whose PPAs have been executed as per the Tariff Order dated 10.10.2013 and which have been commissioned within 6 (six) months would be eligible for the tariff mentioned in their PPAs. For those SRTPV plants which have been commissioned beyond 6 (six) months, the Tariff Order dated 02.05.2016 has been made applicable.
- (d) The Petitioners are attempting to take advantage of a mistake and seek higher tariff. If a uniform policy is not enforced for all generators who have commissioned their plants after 6 (six) months, it will lead to disparity between SRTPV plants and it ought not to be permitted.
- (e) The Petitioners have replied to the Notices issued by the Commission and hence, the Petitioners' contention that a unilateral decision was taken by the Commission, is untenable.

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- 5) The Petitioners in their identical Rejoinders to the Respondent's Objections have contended that:
- (a) The PPA is a contract, binding on both the parties to the contract. The time for completion was in pursuance to the said contract and cannot be now termed as a typographical error. The Commission had directed that, an additional clause has to be inserted in the PPA and intimated the Petitioners to commission the projects within 31.12.2016, which cannot now be termed as an error.
  - (b) The Respondent should have brought the error to the notice of the Commission, at the earliest point of time. If the Respondent had intimated the Petitioners the time for commissioning of the projects to be 6 (six) months at the time of the agreement, the Petitioners could have completed the projects within such time.
  - (c) Parties to the PPAs are bound by them and the Petitioners are entitled for the tariff fixed as per the PPA.
  - (d) The contention of the typographical mistake is liable to be overruled, inasmuch as, in all correspondences the Respondent has mentioned the date of commissioning the projects as 30.12.2016.

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- 6) We have heard the counsel for both sides and considered the respective pleadings and documents produced by the parties.
  
- 7) The following issues arise for consideration:
  - (1) Whether the Petitioners have placed any new material, which they were unable to produce at the time of issuance of the impugned Order?
  - (2) Whether the Commission's Order dated 20.10.2016 suffers from an error on the face of the record, necessitating a review?
  - (3) What Order?
  
- 8) After considering the submissions made by the parties and perusing the pleadings and documents placed on record, our findings on the above issues are as follows:
  
- 9) **ISSUE No.(1):** *Whether the Petitioners have placed any new material, which they were unable to produce at the time of issuance of the impugned Order?*  
  
**ISSUE No.(2):** *Whether the Commission's Order dated 20.10.2016 suffers from an error on the face of the record, necessitating a review?*

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- (a) We proceed to deal with Issue Nos.(1) and (2) together, as they are interconnected.
- (b) The first Petitioner filed an application dated 15.12.2015 and the second Petitioner filed an application dated 16.12.2015, expressing their intention to install SRTPV plants of 1000 kWp capacity each on the roof of the existing Warehouse belonging to the Petitioners, and the Respondent agreed to purchase the net energy generated from such SRTPV systems. Accordingly, they entered into PPA on 31.12.2015, with the Respondent being liable to pay for the net metered energy at ₹9.56 per unit which was the tariff determined by the Commission for a term of 25 (twenty-five) years. After ascertaining the nature and extent of the roof on which the plant was intended to be installed, the Commission granted approval to the PPAs on 28.04.2016, subject to the condition that, the plants should be commissioned within 31.12.2016, i.e., one year from the date of execution of the PPA.
- (c) However, as per the existing norms, as applicable to the SRTPV plants proposed to be installed on the existing rooftops that would be eligible for the tariff of ₹9.56 per unit for the net energy generated in terms of the Commission's Tariff Order dated 10.10.2013, the consumers intending to install such plants were to be given six months' time and not twelve months,

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as allowed to the Petitioners. The Commission, therefore, in order to rectify this, proposed to revise the time allowed for commissioning the Petitioners' plants to 6 (six) months and issued Notices on 29.08.2016 to the Petitioners and the Respondent, asking them to show cause against such revision.

- (d) The Petitioners, in their almost identical replies dated 01.09.2016, stating that pursuant to the approval of the PPA, bank loans have been raised for financing the projects with first disbursement being made on 22.07.2016 and plant installations are in an advanced stage, had requested that, the commissioning date should not be revised to six months.
- (e) The Commission noted that, the Petitioners did not refute the fact that the SRTPV plants were to be installed on the existing roofs and found that the consumers, who had existing rooftops for installation, were entitled to only six months' time for commissioning the plants. Accordingly, the impugned Order dated 20.10.2016 were passed confirming the proposed revision and also specifying that, if the consumers complete the Project after six months, they would be entitled to the tariff as determined in the Commission's Order dated 02.05.2016.
- (f) After receipt of the impugned Orders, the Petitioners had in their letters dated 02.11.2016 requested that, the impugned Orders be set aside and a

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personal hearing be given to substantiate their request. The Commission informed the Petitioners that they could take recourse to review as provided under the provisions of the Electricity Act, 2003, leading to filing of these Review Petitions.

- (g) At this juncture, we deem it relevant to briefly note the link between the commissioning date of a plant and the applicable tariff. This Commission periodically determines generic tariff for supply of electricity, generated from various sources, to the Distribution Licensees based on several parameters, with capital cost of generation plant being the major component. With the advancement in technology and production efficiency, the capital cost of the power plants varies quite frequently, especially in solar power plants. Among various sources of renewable energy, the tariff for solar power is on a downward trend in the recent years owing to rapid decline in its cost of generation and consequently, the Commission has been revising the tariff, whenever found necessary. Thus, the generic tariff of the SRTPV plants determined at ₹9.56 per unit in the Commission's Order dated 10.10.2013 has been revised in the Commission's Order dated 02.05.2016, which is applicable to all new SRTPV plants entering into PPA and commissioned during the period from 02.05.2016 to 31.03.2018 and also to such plants for which PPAs were entered into at the tariff specified in the Commission's Order dated 10.10.2013 that are not

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commissioned within the time period stipulated by the distribution licensee concerned or the Commission.

- (h) We may point out that, any agreement for power procurement from a new Project has a clause, either in the PPA or in other relevant document, stipulating the time within which the power supply should commence so that the distribution licensee can plan further supply to its consumers. The time stipulated for completion of the Project takes into account the time ordinarily required to complete various pre-commissioning activities, which vary depending on the type and capacity of the power plant. Any delay or failure in commencement of power supply within the agreed date would disrupt the operations of the distribution licensees like that of the Respondent, which could result in their power procurement from alternative expensive source, translating into higher retail tariff to the consumers or short supply leading to revenue loss to them or imposition of penalties on them for not meeting the Renewable Purchase Obligation (RPO) fixed by the Commission, if the source is a renewable energy.
- (j) It is not in dispute that, as a part of the State Government's Solar Policy, which among other things proposed to promote grid connected Roof Top Photo Voltaic Generation Projects, the Respondent had called for applications from its consumers interested in availing the Solar Roof Top

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Photo Voltaic (SRTPV) scheme, the details of which were given on its website. The interested consumers had to download the application form from the Respondent's Website and the duly filled application form had to be submitted to the Field Officer concerned, with the prescribed fee for further processing. The Respondent has contended that, as per guidelines, relating to the SRTPV scheme made available to all the consumers, for the SRTPV applicants having existing buildings, the time prescribed for commissioning of the project is 180 days and this is not denied by the Petitioners. We may note here that, the Commission in its Order dated 10.10.2013, introduced net metering facility to SRTPV plants, allowing the consumers installing them to consume the power generated and to inject any surplus power generated into the distribution system of the Distribution Licensee concerned who would pay such consumers tariff, for the surplus power, as determined by the Commission. It was envisaged that, the consumers would install the SRTPV plants of reasonable capacity on their readily available existing rooftops within a short period and generate power mainly for self-consumption, while injecting a reasonable quantity of surplus power into the distribution system, for consumption in the immediate vicinity.

- (k) The Petitioners, in response to the Commission's Notices asking them to show cause against its proposed revision of time granted for commissioning their plant to 6 (six) months from twelve months so as to rectify the mistake, in the

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letter of approval for the PPA, had not produced any material either to refute the assertion that a time of 6 (six) months was given to all consumers for commissioning the SRTPV plants, intended to be installed on the existing roof tops or to substantiate that, there existed some valid reasons for the Petitioners to be given twelve months for commissioning their plants. We find that, even now the Petitioners have not produced any such material.

- (l) It is not in dispute that, the Commission's letter dated 28.04.2016, produced as ANNEXURE - F, communicated approval to the PPAs executed between the Petitioners and the Respondent on 31.12.2015, subject to incorporation of the following term in the PPAs:

*"The SRTPV system shall be designed, engineered, contracted, commissioned and operated by the seller or any other person on his behalf, within 31.12.2016"*

No material has been produced by either parties to say that, the above term has been incorporated in the PPAs through an appropriate Supplemental PPA or other agreement, as directed by the Commission. The Petitioners cannot rely on the Commission's approval dated 28.04.2016 for claiming 12 (twelve) months' time for commissioning their plants, when they failed to act on such conditional approval and never took any steps to amend their PPAs, so as to be given such time even when granted

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erroneously. If the Petitioners had moved for an amendment to the PPAs for incorporation of '12 (twelve) months' for commissioning their plants, it can be safely assumed that the mistake of giving them 12 (twelve) months instead of 6 (six) months would have come to light much earlier than 29.08.2016, when the Commission sought to rectify the mistake. Thus the claim of the Petitioners that, they have acted as per the Commission's approval dated 28.04.2016 and therefore, the time for commissioning of their plants could not have been revised by the impugned Order, is not tenable. The PPAs without being amended to incorporate an additional term as directed by the Commission, do not have any clause stipulating the time for commissioning of the plants and such time would be as per the Respondent's 'Consumer Guidelines' that are applicable to all similarly placed applicants, including the Petitioners. This position has been only reiterated in the impugned Orders of the Commission.

- (m) The Respondent's letter dated 19.08.2016, produced as ANNEXURE - G, by the Petitioners, communicating its approval for installation of the SRTPV plants by the Petitioners, cannot be taken as having permitted the Petitioners to commission their plants within 12 (twelve) months. We note that, as per the 'Consumer Guidelines', issued by the Respondent produced by it as ANNEXURE - R1, 'approval for installation' should have been issued prior to the execution of the PPAs and its late issuance is irregular.

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Admittedly, the Petitioners had not waited for issuance of such approval before taking steps for installation of the SRTPV plants by them. In any case, after issuance of the impugned Orders, the time for commissioning indicated in the Respondent's Approval Letters is not valid.

- (n) It is not the case of the Petitioners that, similarly placed consumers have been given 12 (twelve) months' time for commissioning their plants. Thus, we are in agreement with the Respondent's contention that, the Petitioners' claim for longer time for commissioning their plants would lead to disparity on this issue between similarly placed consumers. The Petitioners admittedly having commissioned their Projects on 29.12.2016 i.e., beyond 6 (six) months, would be entitled to the tariff fixed in the Commission's Order dated 02.05.2016.
  
- (p) We note that, it is a well-established principle that, a party cannot be allowed to take advantage through the mistake of the Court. Further, because of the mistake of the Commission, the tariff gets affected and the consumers' interest comes in and public interest gets affected. In such cases, the Petitioners are not entitled to contend that, the mistake of the Commission misled them and that, otherwise they would have commissioned the Projects within 6 (six) months.

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(q) Consequently, we do not find any error in the impugned Orders. We also find that, no new material is produced by the Petitioners, necessitating review of the Order.

(r) Thus, we answer the Issue Nos.(1) and (2) in the negative.

10) **ISSUE No.(3):** *What Order?*

For the foregoing reasons, we pass the following:

**ORDER**

(a) The Review Petitions are rejected.

(b) The original Order be kept in RP No.18/2016 and copy, thereof, be kept in RP No.19/2016.

Sd/-

(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)  
MEMBER

Sd/-

(D.B. MANIVAL RAJU)  
MEMBER