

N/289/2017

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

Dated: 30.09.2021

Present

Shri Shambhu Dayal Meena	: Chairman
Shri H.M. Manjunatha	: Member
Shri M.D. Ravi	: Member

OP No.136/2017

BETWEEN:

Shri Tata Prasanna Kumar,
S/o Tata Srinivasa Shetty,
Jyothi Nilayam,
Sreenidhi Layout,
Tumakuru-572 102.

.... PETITIONER

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

AND:

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

.... RESPONDENT

(Represented by M/s Just Law Advocates)

**FURTHER ORDERS PURSUANT TO THE DIRECTIONS DATED 14.07.2021
ISSUED IN APPEAL No.211 OF 2018 ON THE FILE OF THE HON'BLE ATE.**

1. By judgment dated 14.07.2021 in Appeal No.211 of 2018, the Hon'ble ATE

in the concluding para 179 of the judgment directed as follows:

*"179. In view of above, the impugned order dated 05.07.2018
is hereby set aside and remitted back to the State
Commission with the direction to consider the matter
afresh keeping in view the opinion expressed in this*

judgment. The State Commission shall pass the consequential order within three months from the date of pronouncement of this judgment."

2. On getting the copy of the judgment from the official web-site of the Hon'ble ATE, the notices were issued to parties to participate in the proceedings on 23.07.2021 through video-conferencing. The counsel for both sides participated in the virtual-hearing on 23.07.2021 and on subsequent adjourned dates. The learned counsel for the petitioner orally submitted that the necessary consequential orders flowing from the judgment of the Hon'ble ATE may be passed. The learned counsel for the respondent (BESCOM) went on praying time on the ground that the respondent (BESCOM) has arranged to file appeal before the Hon'ble Supreme Court of India, against the judgment dated 14.07.2021 of the Hon'ble ATE and also submitted on subsequent dates that Civil Appeal has been filed before the Hon'ble Supreme Court of India, and the said Appeal has been assigned Provisional Application No.13585 of 2021. Therefore, it is requested on 17.08.2021 that the hearing of this case may be deferred until the matter is heard by the Hon'ble Supreme Court of India. Subsequently, on 16.09.2021 the learned counsel for the respondent (BESCOM) again prayed for time stating that a request has been moved before the Hon'ble Supreme Court of India for listing the case on priority and in spite of best efforts the case was not listed, therefore, requested this Commission to adjourn the hearing of the case. The learned counsel for the petitioner opposed any adjournment. It was noted that the Hon'ble ATE has fixed a time frame to pass consequential

orders within three months from the date of order of the ATE. In view of this, the further time requested by the learned counsel for the respondent (BESCOM) is refused and the case is reserved for orders.

However, the Commission has orally intimated the learned counsel for the respondent (BESCOM) to file an application within one or two days with supporting documents for having presented the appeal before the Hon'ble Supreme Court. It is found that no such application is filed till date. Therefore, we proceeded to pass consequential order as directed by the Hon'ble ATE.

3. The petitioner (Appellant in the above Appeal No.211 of 2018) had filed the petition before this Commission in OP No.136/2017 under Section 86 (1) (f) of the Electricity Act, 2003, against Bangalore Electricity Supply Company Limited (BESCOM) (respondent in the above appeal) in effect praying to:

- a) Confirm that Solar Rooftop installations pertaining to Revenue Register Numbers PP328/PGHT 8, PP329/PGHT 9 and PP327/PGHT 10 have been commissioned in time and, as per the guidelines issued by this Commission, the Government of Karnataka and the Respondent;
- b) Grant tariff, as per the Generic Tariff Order of 10.10.2013, to the said Solar Rooftop installations; and
- c) Direct the Respondent to release pending Solar Power Bill Payments, as per the Order dated 10.10.2013, along with interest calculated as on date.

4. After contest this Commission in the above case by Orders dated 05.07.2018 had passed the following order:

- a) It is declared that the petitioner is not entitled to any of the reliefs sought in his petition;
- b) The petitioner shall be paid a tariff of Rs.5.20 (Rupees five and paise twenty) only per unit, under net metering, for the electricity generated and injected from his Solar Power Plants, for a period of twenty-five years from the respective dates of commissioning of the plants, on entering into appropriate fresh PPAs with the respondent, within four weeks from the date of this order;
- c) The petitioner shall be at liberty to sell the electricity generated from his Solar Power Plants to third parties, if he fails to execute the PPAs, as mentioned above;
- d) The payments due, after adjusting the amount paid at Rs.3.57 (Rupees three and paise fifty-seven) only per unit, as directed in the interim order issued in this case, shall be made within eight weeks from the date of this order; and,
- e) If the petitioner does not execute the PPAs, as mentioned above, he shall not be entitled to inject energy into the grid, after 4 (four) weeks from the date of this order.

5. The Hon'ble ATE in para 177 & 178 has concluded its findings as follows:

"177. In view of the above, we are of the considered opinion that the decision of the State Commission to uphold the termination of PPA by the Respondent DISCOM is against the Karnataka Solar Policy and the spirit of Electricity Act, 2003 to promote the renewable energy sources and is therefore bad in law.

178. We note that the Appellant completed the installation of the Solar rooftop plants, i.e., one year after the signing of PPA, as given in the table below:

<i>SRTPV Plant (Capacity and RR Number)</i>	<i>PPA Date</i>	<i>Scheduled Commissioning Date</i>	<i>Commissioning Date</i>
<i>1000 kWp RR No.PP 327</i>	<i>08.01.2016</i>	<i>07.01.2017</i>	<i>06.01.2017</i>
<i>499 kWp RR No.PP 328</i>	<i>11.02.2016</i>	<i>10.02.2017</i>	<i>22.12.2016</i>
<i>499 kWp RR No.PP 329</i>	<i>21.03.2016</i>	<i>20.03.2017</i>	<i>22.12.2016</i>

”

6. In all the three PPAs the terms contained are similar. The material terms of the PPAs required for our purpose may be stated as follows:

- a) In respect of payment of tariff, it is stated that BESCO shall pay for the net-metered energy at Rs.9.56 per kWh for a period of 25 years from the date of commissioning of the SRTPV System unless terminated otherwise as provided in it.
- b) So far as the Billing & Payment is concerned in Article 8 of the PPA, it is stated as follows:

“8. Billing and Payment:

- 8.1 *BESCO shall issue monthly electricity bill for the net metered energy on the scheduled date of meter reading.*
- 8.2 *In case, the exported energy is more than the imported energy, BESCO shall pay for the net energy exported as per Tariff agreed in this agreement within 30 days of issue of bills duly adjusting the fixed charges and electricity duty if any.*
- 8.3 *In case, the exported energy is less than the imported energy, the seller shall pay BESCO for the net imported energy as per the prevailing retail supply tariff determined by the Commission from time to time.*

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 the net energy exported beyond 30 (thirty) days period from the date of issue of bill.

Explanation: Net metered energy means the difference of meter readings of energy injected by the SRTPV system into the grid (export) and the energy drawn from the grid for use by the seller (import) recorded in the bi-directional meter."

7. As already noted the learned counsel for the petitioner submitted that the consequential reliefs flowing from the judgment of the Hon'ble ATE may be passed. The learned counsel for the respondent (BESCO) has not submitted anything on the merit. Here itself, we may note that in view of the judgment passed by the Hon'ble ATE, the petitioner is entitled to tariff of Rs.9.56 per kWh as originally agreed in all the three PPAs.
8. After careful perusal of the judgment of the Hon'ble ATE and also the records including the terms of the PPA, we think the consequential order to be passed mainly relates to the following points:
- (i) the directions to be given to respondent (BESCO) for payment of the differential tariff; and
 - (ii) as to whether interest is to be awarded on payment of arrears if any, and if so at what rate.
9. After considering the records and the submission of learned counsel for the petitioner our answer to the above points are as follows:
10. Point (i): The directions to be given to respondent (BESCO) for payment of the differential tariff.

a) The terms of the PPA clearly provide for arriving at net-metered energy either exported or imported. On the basis of it, the respondent (BESCOM) has to issue monthly electricity bills for the net-metered energy on the scheduled date of meter reading as provided in Article 8 of the PPA as noted above. Accordingly, the respondent (BESCOM) has to prepare revised monthly bills and has to pay for the net energy exported at the tariff of Rs.9.56 per kWh to the petitioner and for the net imported energy, it has to recover energy charges as per the prevailing retail supply tariff applicable to the petitioner's consumption from time to time.

b) The respondent (BESCOM) is to be directed accordingly.

11. Point (ii) As to whether interest is to be awarded on payment of arrears if any, and if so at what rate.

a) The learned counsel for the petitioner has not specifically mentioned regarding award of interest. This Commission in the previous order dated 05.07.2018 had not allowed interest on the arrears payable to the petitioner. The Hon'ble ATE has not given any finding regarding the interest payable on the belated payments. The award of interest is within the discretion of the Court or the Adjudicating Authority. The petitioner had prayed for award of interest on the belated payments becoming due in the petition filed before this Commission and as well as in the appeal filed before the Hon'ble ATE. Therefore, it can be said that the claim for payment of interest is deemed to have been denied. We are of the considered opinion that award of interest on the arrears payable

to the petitioner in the above facts and circumstances of the case is not acceptable.

b) For the above reasons, Point (ii) is held in negative.

12. In view of the above findings, we pass the following further:

ORDER

- (a) The respondent (BESCOM) shall re-do the monthly electricity bills relating to the installations of the petitioner bearing RR No.PP 327, RR No.PP 328 & RR No.PP329 for the net energy exported at the tariff of Rs.9.56 per kWh adjusting the fixed charges and electricity duty as per terms of PPAs.
- (b) The respondent (BESCOM) shall arrive at the arrears of total amount payable to the petitioner as per the re-doing of the monthly electricity bills as directed in sub-para (a) above, after deducting the amount already paid towards such monthly electricity bills within eight weeks from the date of this order.
- (c) The total arrears of amount so found shall be paid to the petitioner in a lump-sum within twelve weeks from the date of this order.
- (d) In default of payment of the total arrears payable as directed above, the respondent (BESCOM) shall pay the interest at the rate of 8% per annum from the date of default till the date of payment.
- (e) The billing & payment for the period subsequent to the immediate next scheduled dates of meter reading of these installations, shall be governed by the terms of PPAs.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member