

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

**Dated : 5<sup>th</sup> December, 2017**

**Present:**

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

**OP No. 45/2017**

**BETWEEN :**

Mahur Foods and Beverages,  
889/12A, L. B. Shantinagar,  
Jewargi Road,  
Kalaburagi-585 104

..

**PETITIONER**

*[Represented by Navayana Law Offices, Advocates]*

**AND:**

Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi-585 102

..

**RESPONDENT**

*[Represented by Shri M. Raghavendraachar, Advocate]*

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**ORDERS**

- 1) The Petitioner has filed the Petition under Section 86 (l) (f) of the Electricity Act, 2003 praying to:

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- (a) set aside the letter dated 13.02.2016 issued by the Respondent; and,
  - (b) direct the Respondent to pay the tariff of Rs.9.56 per kWh as agreed in the Power Purchase Agreement (PPA).
- 2) The material facts urged by the Petitioner in support of its prayers may be summed up as follows:
- (a) The Petitioner which owns 5000 Sq. meter roof top area on the premises at 889/12A, L.B. Shantinagar, Jewargi Road, Kalaburagi, after submitting an application on 04.08.2015 to the Respondent requesting for installation of a 495 kWp Solar Roof Top PV (SRTPV) power plant on net metering basis, in response to a scheme announced by the Respondent, entered into Power Purchase Agreement (PPA) on 26.08.2015 with the Respondent.
  - (b) The Respondent in its letter dated 16.02.2016 informing the Petitioner that the time for completion of the installation work of the SRTPV system has expired, requested the Petitioner to renew the PPA and get the period for completion of the project extended. Upon payment of the renewal fee by the Petitioner, the Respondent in its letter dated 19.02.2016 gave approval for extension of 12 months' time for completion of installation. The Respondent in its letter dated 16.03.2016 requested the Petitioner

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to select a reputed system installer and furnish the details of the equipment installed.

- (c) After obtaining required approvals to the plant, the Petitioner submitted the work completion report in Format-7, dated 14.09.2016 and requested the Respondent to inspect the premises and commission the project. However, the Respondent failed to synchronise the project with the grid.
- (d) Subsequently, the Respondent in its letter dated 13.02.2017 while granting provisional interconnection approval, informed that the revised tariff of Rs 5.67 per unit was applicable due to delay in commissioning the project as per the Commission's Order dated 02.05.2016 and requested the Petitioner to enter into a Supplemental Power Purchase Agreement to effect the revised tariff. Here itself we note that the Petitioner in his prayer has wrongly mentioned this letter as being dated 13.02.2016.
- (e) In response, the Petitioner while pointing out that the Commission's Order dated 02.05.2016 is not applicable to its project and that the said Order is applicable to the PPAs signed after 01.05.2016, had again requested for grant of synchronization approval for commissioning its project.

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- (f) The PPA dated 26.08.2015 does not require the Petitioner to commission the project within 180 days and the Petitioner is entitled for the tariff of Rs.9.56 per kWh as agreed in the PPA as there is no provision for substitution of such tariff by any other tariff. The Respondent cannot force the Petitioner to enter into a Supplemental PPA at the reduced tariff of Rs.5.67 per kWh.
- 3) After issuance of notice, the Respondent entered appearance through its counsel and filed objections contending that:
- (a) The Commission in Order dated 02.05.2016 has declared that the SRTPV projects entering into PPA under the Commission's Order dated 10.10.2013 are eligible for the tariff [Rs.9.56 per unit] as per the said Order dated 10.10.2013, provided that they are commissioned within the stipulated time and those commissioned after the stipulated time are entitled only for the revised tariff as per the Order dated 02.05.2016. That the Petitioner has commissioned the plant after the expiry of 180 days and therefore, the Respondent is justified in calling upon the Petitioner to execute a fresh PPA at the applicable tariff of Rs.5.67(per unit). That the Petitioner is not entitled to the benefit of 1(one) year extension granted relying on the Circular dated 17.11.2015 in view of the Commission's Order dated 02.05.2016 as the Commission alone can determine the tariff.

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- (b) The Petitioner submitted the Work Completion Certificate on 14.09.2016 requesting the Respondent to commission the SRTPV Project. That on the same day, the Respondent issued directions to the concerned officers to synchronize the Petitioner's Project. That, as on the date of the Order dated 02.05.2016 there was no synchronization of the Petitioner's plant.
- (c) As per clause 10 of the PPA, the Petitioner has not exhausted the option of mutual negotiation and has directly approached the Commission by way of a petition, which is not maintainable.
- 4) We have heard the counsel for both sides and perused the material placed on record:
- 5) The following issues would arise for our consideration:

  - (1) Whether in the absence of a clause in the PPA specifying the date of commissioning of the project, along with consequence of its non-performance, such date can be specified in the guidelines relating to the SRTPV Scheme of the Respondent?
  - (2) Whether the Respondent can extend the date of commissioning of the Petitioner's project beyond what is provided under the Scheme?
  - (3) Whether the Petitioner, has made out a case for extension of the time stipulated for the commissioning of its project and thus eligible for the tariff agreed in the PPA?

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- (4) What Order?
- 6) After considering the submissions made by the counsel for the parties and their pleadings and other material placed on record, our findings on the above issues are as follows:

7) **ISSUE No.(1)**: *Whether in the absence of a clause in the PPA specifying the date of commissioning of the project, along with consequence of its non-performance, such date can be specified in the guidelines relating to the SRTPV Scheme of the Respondent?*

(a) The Petitioner contends that, the date of commissioning of its plant has not been specified in the PPA and the tariff agreed cannot be revised as sought by the Respondent, irrespective of the date of the commissioning of the plant. Further that even if the validity period as given in the Respondent's approval letter has expired, there cannot be a revision of tariff. The Respondent, however, has relied on the Commission's Order in RP Nos.18 and 19/2016 to refute the Petitioner's contention.

(b) In the Order cited by the Respondent, the relevant portion dealing with this issue reads thus:

"9(a) .....

.....

(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 the generation plant being the major component. With advancement in technology and production efficiency, the capital cost of 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 SRTPV plants determined at ₹9.56 per unit determined 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 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 its further supply to its consumers. The time stipulated for completion of the projects 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.

- (i) *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 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."*

- (c) In view of the excerpts of above Order which explain the rationale / justification behind the condition requiring commissioning of any solar

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power plant referred to in a PPA within a time limit, we do not find any merit in the Petitioner's contention that there was no requirement of commissioning its SRTPV plants within a specified time. When the PPA has been entered into under a particular scheme at the option of the Petitioner, all the terms and conditions of such Scheme shall apply to the installation and commissioning of the SRTPV plant under the scheme even when the period for commissioning is not specifically mentioned in the PPA.

- (d) The Petitioner applied to the Respondent for installation of the SRTPV plant on 04.08.2015 and entered into the PPA on 26.08.2015. The Petitioner has not disclosed whether the 'Scheme' announced by the Respondent, in response to which it approached the Respondent requesting for installation of SRTPV plant, has specified that the consumers intending to install SRTPV plants on existing buildings had to commission them within 180 days, as was the case in RP Nos. 18 and 19/2017. We note that as per the guidelines relating to the SRTPV Scheme made available to all the consumers, for the SRTPV applicants having existing buildings, the time prescribed for commissioning the project is 180 days. Admittedly the Respondent on 16.02.2016 informed the Petitioner that the time for completion of the installation work of the SRTPV system had expired and therefore the Petitioner may seek its renewal, which the Petitioner has done without any demur by paying the

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necessary fee on 17.02.2016. The validity of such extension is dealt under Issue No. (2).

(e) Thus, we answer the Issue No. (1) in the affirmative.

8) **ISSUE No.(2):** *Whether the Respondent can extend the date of commissioning of the Petitioner's project beyond what is provided under the Scheme?*

**ISSUE No. (3):** *Whether the Petitioner, has made out a case for extension of the time stipulated for the commissioning of its project and thus eligible for the tariff agreed in the PPA?*

(a) As the Issues No. (2) and (3) are interconnected, we proceed to deal with them together.

(b) 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 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. As per the guidelines relating to the SRTPV Scheme made available to all the consumers, for the SRTPV applicants having existing buildings, the time prescribed for commissioning the

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project is 180 days and there was no provision for extending such time prescribed. We may note here that the Commission in its Order dated 10.10.2013 introduced net metering facility to the SRTPV plants, allowing the consumers installing them to consume the power generated and 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 SRTPV plants of reasonable capacity on their readily available existing rooftop 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.

- (c) As elaborated by us earlier, in respect of a SRTPV plant there would be a reduction of tariff as a consequence of delay in the commissioning of the plant beyond the stipulated time, if in the meanwhile there is a revision of generic tariff by the Commission, Admittedly, in the present case, the generic tariff fixed for SRTPV plants that was agreed in the PPA, was revised by the time the plant was ready for commissioning.
- (d) In its letter dated 16.02.2016, the Respondent informed the Petitioner that the period available to the Petitioner for completion of installation of its SRTPV system had expired. Admittedly, the time for completion or commissioning of the SRTPV plant was reckoned as 180 days from a date

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later than the date of the Petitioner's application seeking approval for installation of such plant (i.e. 04.08.2015) and before the date of execution of the PPA (i.e. 26.08.2015). We note that the Petitioner did not dispute this fact of not commissioning the SRTPV plant within the stipulated time of 180 days and sought for twelve months' extension by paying certain fee. Neither the Respondent nor the Petitioner has indicated the grounds for such time extension. In the Circular dated 17.11.2015 of BESCO (part of Annexure – P3), based on which the Respondent is stated to have granted time extension, such time extension has been justified on the ground that the process of availing loan takes time, making 180 days' time provided for completion of the project insufficient. We note that no case has been made out to say that the delay in project completion by the Petitioner was for similar reason.

- (e) We also note that the Respondent which informed the Petitioner that it has approved twelve months' time extension in its letter dated 19.02.2016, however, in its subsequent letter (Format 6) dated 18.03.2016 has informed that 180 days is available to the Petitioner for installation of the plant. It is the case of the Petitioner that whereas installation work was completed on 14.09.2016 and the Respondent was also informed by its field officer about the plant being completed and ready for commissioning, the Respondent failed to permit synchronisation of the plant and on 13.02.2017 stated that the Petitioner shall enter into a

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Supplemental PPA with a revised tariff of Rs.5.67 per unit as per the Commission's Order dated 02.05.2016 as there was delay in completion of the plant.

- (f) We have held in the earlier part of this Order that the Petitioner's contention that it was not obligated to commission the SRTPV plant within a specified time in the absence of such clause in the PPA has no merit. We have also held that the Petitioner was required to commission the SRTPV plant within 180 days, which expired sometime around 19.02.2016 as understood by both the parties. We note that both the parties have not provided any reasons or grounds for extension of time for commissioning of the Petitioner's plant beyond the originally stipulated 180 days' time. Admittedly neither the PPA nor the Respondent's Scheme under which the Petitioner undertook installation of the SRTPV plant provides for time extension for commissioning the plant beyond 180 days. A Circular stated to have been issued by another distribution Licensee, BESCO, could not have been relied upon by the Respondent, which has now contended that the Petitioner is not entitled to time extension in view of the Commission's Order dated 02.05.2016. We note that as per the 'Consumer Guidelines', issued by the Respondent, approval for installation in Format 6(i) should have been issued before the start of installation work and prior to the execution of the PPA. If for some reason such Format 6 (i) is not issued and the installation work has progressed, thereafter Format 6 (i) cannot be issued

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so as to enlarge the time limit for installation. Hence, its issuance on 18.03.2016 in the present case much after the execution of the PPA on 26.08.2015 is irregular and not valid. We also note that the Petitioner has not given any explanation or reasons for delay in commissioning the plant after 19.02.2016. Whenever an event affects the quantum of tariff applicable for supply of energy to the Distribution Licensees, we are of the considered opinion that the same should be scrutinized and approved by the Commission. It is now a settled law that this Commission has the exclusive jurisdiction to determine the tariff for supply of electricity by a Generating Company to a Distribution Licensee and it has to regulate the electricity purchase and the procurement process of the Distribution Licensees, including the price at which electricity shall be procured from different agencies through PPAs. Thus, we are of the considered opinion that the Petitioner has not made out a case for extension of the time stipulated for commissioning of its project and that the Respondent is not justified in granting time beyond the stipulated time of 1980 days for commissioning of the Petitioner's plant.

- (g) The Petitioner contends that even if the plant is not commissioned beyond 180 days there can be no revision of tariff agreed in the PPA which was determined in the Commission's Order dated 10.10.2013. The Petitioner also contends that the Commission's Order dated 05.02.2016 is not applicable to the Petitioner's plant because the Commission has made such Order applicable to all new grid connected Solar Rooftop

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and small Solar Photovoltaic Power Plants, entering into PPAs and commissioned on or after 02.05.2016 and upto 31.03.2018 as per para 5 of the said Order, whereas the Petitioner has entered into PPA on 26.08.2015. We note that Petitioner has failed to mention the later part of para 5 of the said Order which reads thus:

*"In respect of plants for which PPAs that have been entered into prior to 1<sup>st</sup> May, 2016 and are commissioned within the period of time as stipulated by the ESCOMs concerned or the Commission prior to the date of issue of this Order the tariff as per the Commission's Order dated 10<sup>th</sup> October, 2013 shall be applicable. Such plants shall be eligible for the revised tariff as per this Order if they are not commissioned within the stipulated time period and there shall be no extension in time period for commissioning them after the effective date of this Order"*

Thus, Petitioner's plant, which is not commissioned within the stipulated time, is eligible only for the revised tariff as per the Commission's Order dated 02.05.2016, if commissioned before 31.03.2018 and not for the tariff as per the Commission's Order dated 10.10.2013 as agreed in the PPA.

- (g) The Petitioner has taken the alternative argument that any delay in commissioning of the project leading to reduction of tariff payable by the Respondent is because of the wrongful act of the Respondent and that therefore the Respondent cannot be allowed to take advantage of it. Admittedly the Petitioner's plant was not completed within the stipulated time of 180 days and the Petitioner has also not justified the

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subsequent delay in commissioning the plant and we found that the Respondent is not justified in granting further extension of time without there being any valid reasons or provisions for it. That being the case, the Petitioner cannot also claim advantage of any subsequent delay by the Respondent in taking action to get the Petitioner's plant commissioned which appears to be partly because of the dispute over the tariff applicable. We note that in any case, consumer interest and thereby public interest cannot be allowed to be affected by payment of a tariff higher than what is due to the generator because of any action or inaction of the distribution licensee in disregard of the relevant principles/norms.

(h) We, therefore, answer Issue Nos.(2) and (3) in the negative.

9) **ISSUE No.(4):** *What Order?*

For the foregoing reasons, we pass the following:

**ORDER**

- (a) The Petition is dismissed;
- (b) The grant of time extension by the Respondent in its letter dated 19.02.2016 for commissioning of the Petitioner's SRTPV plant beyond the original stipulated time, is set aside;
- (c) The Respondent shall take immediate action for synchronization of the Petitioner's plant with the grid to enable it to be commissioned; and

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- (d) The Petitioner shall be entitled to the revised tariff of Rs.5.67 (Rupees Five and Paise Sixty Seven) only per unit on entering into a suitable Supplemental PPA with the Respondent for a term of 25 (Twenty Five) years.

Sd/-  
(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-  
(H.D. ARUN KUMAR)  
MEMBER

Sd/-  
(D.B. MANIVAL RAJU)  
MEMBER