

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

Dated : 10th July, 2018

Present:

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

OP No.168/2017

BETWEEN:

Shri G.N. Narayanaswamy,
S/o Nanjundappa,
Nandas Poultry Breeding Farm,
Maralakunta Village & Post,
Chikkaballapur District.

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PETITIONER

[Represented by Smt. Poonam Patil, Advocate]

AND:

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

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RESPONDENT

[Represented by Justlaw, Advocates]

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ORDERS

- 1) This petition is filed under Section 86(1 (f) of the Electricity Act, 2003 praying to direct the Respondent to pay the Petitioner for the energy supplied at Rs.9.56/kWh, the tariff fixed under the PPA dated 24.11.2015, with interest

towards delated payment and grant such other and further reliefs as deemed fit on the facts and in the circumstances of the case, in the interest of justice.

- 2) The facts of the case, as stated by the Petitioner, may be summed up, as follows:
 - (a) The Petitioner, an agriculturist by profession, has installed a Solar Roof Top Photo Voltaic (SRTPV) power plant of 500 kW on the roof top of the premises of his poultry farm, after filing an application dated 17.08.2015 before the Respondent, who granted approval on 21.08.2015 for the installation. The approval provided that the SRTPV plant had to be commissioned within 180 days.
 - a) Pursuant to the approval granted by the Respondent for installation of the SRTPV plant, a Power Purchase Agreement (PPA) was signed between the parties on 24.11.2015. The Petitioner completed the installation work of the plant and submitted the Work Completion Report to the Respondent on 02.02.2016 much within the time frame stipulated by the Respondent. The Petitioner further sought for the Chief Electrical Inspector to Government (CEIG)'s Safety Approval for the plant on 10.2.2016 and the same came was granted on 16.02.2016.
 - (b) The Petitioner's plant was synchronized and commissioned on 17.02.2016 on net metering basis. The Respondent made payment to the Petitioner for the energy, as per the bills, at the tariff of Rs.9.56/kWh promptly for

the months from March, 2016 to December, 2016. The Respondent stopped making payments from the month of January, 2017. Despite several requests regarding payment, there was no response from the Respondent. The Petitioner was orally informed that, since the plant was not commissioned within 180 days, the Petitioner was denied the payment. Being aggrieved, the Petitioner has filed this petition.

- 3) The grounds urged by the Petitioner, in support of his prayers, may be stated, as follows:
 - (a) Under Clause 8 of the PPA, the Respondent is bound to make payment as per the bills within thirty days of issue of the bills. Clause 8.4 imposes payment of interest towards late payment, in case of delay in payment beyond thirty days from the date of issue of bill.
 - (b) The Respondent has withheld the payment of monthly bills, on an erroneous assumption that, the Petitioner's plant was commissioned belatedly. The information posted on the website of the Respondent clearly shows that, the Petitioner's plant was ready for commissioning on 07.02.2016 and the Petitioner had submitted Work Completion Report on 02.02.2016, itself. The plant was synchronized and commissioned on 17.02.2016 within the time schedule of 180 days as per the approval letter. The official internal communication in the Respondent's office also states that, there is no delay on the part of the Petitioner to commission the plant. Yet, the Respondent, in utter disregard to these

vital materials has, on whimsical grounds, withheld the payment for the past eight months.

- (c) The Respondent, on its website, had posted a detailed procedure for commissioning the SRTPV system according to which, from the date of issuance of approval letter for installation of the power plant, the Work Completion Report ought to be submitted within 180 days and thereafter, the plant had to be commissioned within 7 days, meaning that within a time period of 187 days from the date of issue of approval letter, the commissioning of the plant has to be achieved. Therefore, going by the procedure contemplated by the Respondent, as is reflected on its website, the Petitioner has commissioned the plant, well in advance, entitling him for the tariff of Rs.9.56/kWh as per the terms of the PPA.
- (d) The Respondent is guilty of violation of the principles of natural justice, inasmuch as, the Petitioner was not even heard or informed about taking away of the rights accrued to him under a valid legal contract, viz., the PPA. No notice was issued giving him an opportunity to explain, before the drastic measure of complete non-payment was adopted by the Respondent.
- (e) The action of the Respondent amounts to an unjust enrichment, which is impermissible under law. The Respondent is under a legal obligation to

make the payment for the energy admittedly received under the terms of the PPA and Section 70 of the Contract Act.

- 4) Upon issuance of Notice, the Respondent appeared through its learned counsel and filed the Statement of objections, which may be summarized as follows:
- (a) On 29.02.2016, the Respondent issued the Commissioning Certificate certifying that, the Petitioner has commissioned his plant on 17.02.2016. The Respondent's Division Office, at Chikkaballapur, has paid the Petitioner at Rs.9.56 per unit, for the energy supplied from March, 2016 to December, 2016. Thereafter, a Centralized Billing Centre was created at the Respondent's Corporate Office, at Bengaluru. On scrutiny of Petitioner's file by the Respondent, it was found that the Petitioner had not commissioned its plant within 180 days. Therefore, the Respondent stopped the payments for the energy supplied by the Petitioner.
- (b) The time-frame approved for establishment of the SRTPV projects on the existing buildings, is 180 days. Even as per the Guidelines of the Respondent for the SRTPV applicants having the existing buildings, the time prescribed is 180 days. The said Guidelines of the Respondent is on public domain. Therefore, the Petitioner was required to commission the project on or before 16.02.2016.

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- (c) Article 3 of the PPA clearly states that, the Petitioner has to obtain all statutory approvals and clearances, before connecting the project to the distribution system. As per the Guidelines of the Respondent, the Petitioner was required to obtain the CEIG approval, before the synchronization of the plant. The Petitioner was granted approval on 16.02.2016. The Petitioner, herein, was required to commission the plant on or before 16.02.2016, but was commissioned it on 17.02.2016. Therefore, the Petitioner's plant was not ready to be commissioned within the stipulated timeframe.
- (d) The SRTPV plants installed on the existing buildings, whose PPAs have been executed as per the Tariff Order dated 10.10.2013 and whose plants have been commissioned within 180 days, would be eligible for the tariff mentioned in the PPAs. For the SRTPV plants, which have been commissioned beyond 180 days, the Tariff Order dated 02.05.2016 has been made applicable. Therefore, the Petitioner's plant is only entitled for the tariff, as per the Tariff Order dated 02.05.2016, as it has been commissioned with a delay of one day.
- (e) The recital of the PPA states that, the Petitioner shall be governed by Tariff Order dated 10.10.2013 or any other Order, as amended by this Commission. Therefore, the contention of the Petitioner that, he is entitled for the tariff of Rs.9.56 per unit, as per the tariff order dated 10.10.2013, is untenable.

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- (f) As per the Guidelines issued by the Respondent, the Work Completion Report in Format-7, is required to contain the details pertaining to the inspection of the installation by the CEIG. The Petitioner has obtained the approval of the CEIG only on 16.02.2016. Without the same, the Work Completion Report, dated 02.02.2016, cannot be construed to be valid. As per the SRTPV guidelines, the Work Completion Report, along with the CEIG approval, has to be submitted by the Petitioner at least 7 days prior to the Scheduled Commissioning Date. The averment that, the Petitioner has 187 days from date of letter of approval to commission the plant, is untenable. The Petitioner has to commission the plant within 180 days from the date of letter of approval, i.e., on or before 16.02.2016. Therefore, the Respondent has prayed for dismissal of the Petition.
- 5) We have heard the learned counsel for both parties and perused the records. The following Issues would arise for our consideration:
- (1) Whether the Petitioner has commissioned the SRTPV plant, within 180 days from the date of approval given by the Respondent in Format-5?
- (2) What Order?
- 6) After considering the oral submissions of the parties and perusing the evidence on record, our findings on the above issues are as follows:

7) **ISSUE No.(1)**: *Whether the Petitioner has commissioned the SRTPV plant, within 180 days from the date of approval given by the Respondent in Format-5?*

(a) It is the case of the Petitioner that, the SRTPV plant was commissioned on 17.2.2016 within 180 days, from the date of approval given by the Respondent in Format-5 dated 21.08.2015. The said approval letter reads thus:

"This approval is valid for 180 days from the date of this letter and the SRTPV system is to be commissioned within this period, failing which the approval will be treated as cancelled."

According to the Petitioner, the said period of 180 days ends on 17.02.2016 and the plant has been commissioned within time. It is the contention of the Respondent that, the plant had to be commissioned on or before 16.02.2016.

(b) The question before us is, whether the 180 days' period ends on 16.02.2016 or on 17.02.2016. Generally, while computing the time period for doing a specific act, the day, from which such period is to be reckoned, is excluded. This is analogous to the principles enunciated in Section 12 of the Limitation Act, 1963 and Section 9 of the Karnataka General Clauses Act, 1899. Therefore, in the present case, the day on which the approval was granted by the Respondent (21.08.2015) has to be excluded, while computing the 180 days' period, and the period of 180 days has to be computed, as follows:

Sl. No.	Month	No. of days
1	August, 2015	10 days (from 22.08.2015 to 31.08.2015)
2	September, 2015	30 days
3	October, 2015	31 days
4	November, 2015	30 days
5	December, 2015	31 days
6	January, 2016	31 days
7	February, 2016	17 days (up to 17.02.2016)
Total Number of days		180 days

- (c) Admittedly, the Petitioner's plant was commissioned on 17.02.2016. This is the 180th day, and thus, we find that the Petitioner's plant has been commissioned well within the time. Therefore, there is no delay, as contended by the Respondent.
- (d) We also find that, there is no breach of any of the other terms of the PPA and the Respondent is not right in withholding payment towards the surplus energy supplied from the Petitioner's plant.
- (e) Therefore, we answer Issue No.(1), in the affirmative.
- 8) **ISSUE No. (2):** *What order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) The petition is allowed. The Petitioner is entitled to the tariff of Rs.9.56 (Rupees Nine and Paise Fifty Six) only per unit, as agreed in the PPA, for the term of the PPA;

- (b) The payments due, after adjusting the amounts paid at Rs.5.67 (Rupees Five and Paise Sixty Seven) only per unit, as directed in the Interim Order issued in the case, shall be made within 2 (two) months from the date of this Order; and,
- (c) The Respondent shall also be liable to pay interest, as per the terms of the PPA.

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

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

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