

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

Dated : 14th December, 2018

Present:

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

O P No. 215 / 2017

BETWEEN:

Sri. G.N. Nanjundaswamy,
"Divyashree", DFO Office Road,
Kollegala,
Chamrajanagara District – 571 440.

.. **PETITIONER**

[Represented by Shri M.S. Raghavendra Prasad, Advocate]

AND:

Chamundeshwari Electricity Supply Corporation Limited (CESC),
By its Managing Director,
Corporate Office,
#29, 80 Feet Road,
Vijayanagara 2nd Stage,
Hinakal,
Mysuru – 570 017.

.. **RESPONDENT**

[Represented by Justlaw, Advocates]

ORDERS

- 1) This Petition is filed, under Section 86 read with Section 129 of the Electricity Act, 2003, praying to:

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- a) Pass an Order, directing the Respondent, to commission the SRTPV installation bearing RR No.K6P5800, without insisting on a Supplementary Power Purchase Agreement;
 - b) Pass an Order, holding that, the Petitioner is entitled to a tariff of Rs.9.56/- per kWh, in respect of the SRTPV installation, bearing RR No.K6P5800 and consequently, direct the Respondent, to pay accordingly;
 - c) Award costs of this Petition, to the Petitioner; and,
 - d) Pass such other Order/directions/ guidelines, in the circumstances of the case.
- 2) The facts of the case, as submitted in the Petition, may be summed up, as follows:
- (a) The Petitioner, who owns a poultry farm, intended to develop a Solar Rooftop Project of 495 kWp capacity on the rooftop of the premises, on his lands in Sy.Nos.712/3 and 712/4, Kunagahalli Village, Kasaba Hobli, Kollegala Taluk, Chamarajanagara District.
 - (b) The Petitioner's premises is serviced by the Respondent and bears R.R.No.K6P5800. The Petitioner entered into a Power Purchase Agreement (PPA) dated 17.02.2016 with the Respondent, for supply of energy from the 495 kWp capacity SRTPV Project, for a period of 25 years from the date of Commissioning, with the agreed tariff at Rs.9.56 per unit. The PPA did not stipulate any cut-off date, within which, the Petitioner's SRTPV Plant

had to be commissioned. *(In the synopsis to the Petition, the Petitioner has mentioned that on 16.5.2016, the PPA was approved by the Commission and the date for commissioning was fixed as 10.3.2017. We wish to clarify that, this is incorrect, as the PPAs pertaining to capacity of less than 500 Kw, are not sent to the Commission for approval and this PPA was not sent to the Commission for approval.)*

- (c) The Respondent, in its letter dated 09.06.2016 (in Format-5) to the Petitioner, specified certain particulars. Thereafter, in its letter in Format-6 dated 09.06.2016, the Respondent issued approval for installing the SRTPV Plant, which stated that, the approval is valid for 180 days from 09.06.2010 and the SRTPV system had to be commissioned within this period i.e., 09.12.2010, failing which the approval would be treated as cancelled.
- (d) After completion of the SRTPV Project, the Petitioner in his letter dated 01.08.2016, addressed to the concerned Executive Engineer of the Respondent, stated that the Project was completed and requested permission for further process. The Petitioner addressed another letter dated 05.08.2016 to the Executive Engineer, requesting for meter testing, which was acknowledged on 10.08.2016.
- (d) The Additional Chief Electrical Inspector, Mysuru, vide letter dated 11.08.2016, had written to the CEIG, Bengaluru, stating that, the pre-commissioning inspection of the Petitioner's installation was done and

sought for approval to commission the Project. On 17.08.2016, the CEIG issued the Electrical Safety approval.

- (e) During a follow-up visit to the local Office of the Respondent on 13.08.2016, the Petitioner was orally informed that, the PPA had been cancelled, but no reasons were given. The Petitioner had not violated any condition and had also invested a sum of Rs.3.60 Crores in the SRTPV Project. Hence, the Petitioner wrote a letter dated 19.08.2016 to the Managing Director of the Respondent-Company, informing him about the sequence of events, the measures taken by the Petitioner pursuant to the execution of the PPA, the approvals and that, after successfully completing his Project, he had visited the local office (Kollegala Taluk) on 30.07.2016, for commissioning of the Project and as there was no response, he had written to the senior officials of the Respondent and only on 13.08.2016, he was informed that the PPA was cancelled. The Petitioner requested for commissioning of the SRTPV Project.
- (f) The Petitioner learnt that, the Respondent had approached the Commission, seeking clarification about the tariff applicable to the Petitioner's SRTPV Project and that, the Commission, on analysing the documents, was of the opinion that the Respondent should allow commissioning of the SRTPV Project of the Petitioner, at a reduced tariff of Rs.5.67 per unit. This opinion was given, without hearing the Petitioner. By letter dated 13.06.2017, the Respondent had sought a clarification from the Commission, regarding the status of the Petitioner's SRTPV Project, as

the PPA was allegedly terminated. The Commission had considered all the documents and had come to the conclusion that, the Project of the Petitioner was ready for commissioning and the termination of the PPA was not valid, and had informed the Respondent, vide letter dated 21.06.2017 to allow commissioning of the SRTPV Plant, on execution of a Supplemental PPA (SPPA) at the tariff of Rs.5.67 per unit.

- (g) The Respondent, vide letter dated 28.06.2017, requested the Petitioner to visit the Office of the EE, Kollegala, for execution of a SPPA, at Rs.5.67 per unit. This Petition is filed, challenging the said letter of the Respondent.
- 3) The grounds urged by the Petitioner, in support of his prayers, may be summarised, as follows:
- (a) In spite of completing the SRTPV Project by 30.07.2016, due to the illegal actions of the Respondent, the Project could not be commissioned, even by 09.12.2016, which was the cut-off date stipulated by the Respondent. The Respondent, with an intention to pay the Petitioner a tariff of Rs.5.67 per unit, has informed the Petitioner to enter into a SPPA at the said tariff, which is improper.
- (b) The Petitioner had adhered to the timelines and put in tremendous efforts, to complete the SRTPV Project, within the specified time. However, due to the illegal and erroneous actions of the Respondent, the Petitioner's Plant has not been commissioned, within the specified time frame.

- (c) The Commission has observed that, the termination of the PPA by the Respondent, was not valid, in the letter dated 21.06.2017.
- (d) The Petitioner never agreed for a lesser tariff of Rs.5.67 per unit, and consequently, he ought not to be coerced or pressurised into agreeing for the same.
- (d) It is a well settled principle of law that, a party cannot take advantage of its own wrong. The Respondent has erred all along, and if a lesser tariff is made applicable, it will benefit the Respondent, whilst would impact the finances of the Petitioner, gravely.
- (e) It needs to be seen, whether the Plant was completed, within the specified date and any delay, on the part of the Electricity Supply Company (ESCOM) ought to be viewed, seriously.
- (f) The principles of *promissory estoppel* and *legitimate expectation of substantive benefit*, need to be applied to the Petitioner's case. The Petitioner was neither heard nor afforded an opportunity, before reducing the tariff from Rs.9.56 to Rs.5.67 per unit.
- 4) Upon issuance of Notice, the Respondent appeared through the counsel and filed the Statement of Objections, which may be stated, as follows:

- (a) As per the SRTPV norms / guidelines, issued the Respondent, the Petitioner was required to complete and commission the Project, within 180 days from the date of signing the PPA. The PPA is signed on 17.02.2016 and the Project was required to be completed by 15.08.2016. The Respondent, vide letter dated 09.06.2016, directed the Petitioner to furnish certain technical details of the equipment, proposed to be used and on the same day accorded approval to the Petitioner, to install the SRTPV Plant. However, in this letter, the Petitioner was erroneously informed that 180 days' time was given, from the date of approval, to complete the Project. On 11.07.2016, the EE, Kollegala, sought to terminate the PPA, as the SRTPV norms were violated. The Petitioner, vide letters dated 01.08.2016, 05.08.2016 and 10.08.2016, requested the Respondent to take action to commission the Project, as the installation of the SRTPV Plant was completed. On 10.08.2016, the EE, Kollegala sought for a direction from the Managing Director, CESC, about commissioning the Plant.
- (b) As per the guidelines of the Respondent, which are in public domain, for SRTPV applicants having existing buildings, the time prescribed for commissioning the Project is 180 days. Therefore, the Petitioner was required to commission the Project, on or before 15.08.2016. The Commission, in the Generic Tariff Orders dated 10.10.2013 and 02.05.2016, has clearly stated that, for PPAs executed, at the tariff of Rs.9.56/- per unit, no further extension, beyond 180 days, ought to be given. The prayer of the Petitioner for payment, at the tariff of Rs.9.56 per unit is untenable, as the Project was not commissioned, within 180 days. Article 3 of the PPA

clearly states that, the Petitioner has to obtain all statutory approvals and clearances before connecting the SRTPV Plant to the distribution system. Hence, the onus was on the Petitioner to obtain approval from the CEIG, within the time-frame set-out in the contract. The said safety approval was obtained on 17.08.2016 from the CEIG. Failure of the Petitioner, in this regard, cannot be attributed to the Respondent.

- (c) As per the guidelines of the Respondent, the Petitioner was required to submit Work Completion Report, along with approval of Chief Electrical Inspector and other documents, before the Plant could be synchronised. The Petitioner's Plant can be commissioned, only after the CEIG gives the Safety Approval. The Petitioner was required to commission the Plant, on or before 15.08.2016. The Petitioner received the approval of the Chief Electrical Inspector, only on 17.08.2016. Therefore, the contention of the Petitioner that, the Petitioner's Plant was ready for commissioning within the stipulated time, is untenable.
- (d) The Commission has passed the Generic Tariff Order dated 10.10.2013, after considering several parameters, including the cost of the Projects. However, during Financial Year 2014-15, the Commission noticed substantial decline in the price of Solar Panels and allied equipment, resulting in considerable reduction in the cost of Solar generation, leading to generators offering to supply power from Solar Plants, at rapidly declining rates. Therefore, the Commission, by exercising power under Section 62(1)(a), read with Sections 64 and 86(1) (e) of the Electricity Act,

2003, and Clause 9 of the KERC (Procurement of Energy from Renewable Sources) Regulations, 2011, passed the Generic Tariff Order dated 02.05.2016, revising the tariff determined in the Tariff Order dated 10.10.2013. The Commission held that, the Projects, for which PPAs were entered into prior to 1st May, 2016 and are commissioned, within the period of time, as stipulated by the concerned ESCOM or the Commission, the tariff, as per the Order dated 10.10.2013, shall be applicable. It further held that, such Projects would be eligible for the revised tariff, as per the later Order dated 02.05.2016, if they are not commissioned, within the stipulated time period and there shall be no extension in time period, for commissioning the same. Therefore, the Petitioner is entitled the tariff, as per the Tariff Order dated 02.05.2016.

- (e) Therefore, the Respondent has prayed for dismissal of the Petition.
- 5) We have heard the learned counsel for both the parties and considered the respective pleadings and documents produced by the parties. The following issues would arise, for consideration:
- (1) Whether the SRTPV plant of the Petitioner was completed within the 180 days' period, in consonance with the SRTPV Guidelines, issued by the Respondent?
 - (2) Whether the Petitioner has made out a case, for its Plant to be eligible for the tariff, agreed to in the PPA dated 17.02.2016?
 - (3) What Order?

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- 6) 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:
- 7) **ISSUE No. (1):** *Whether the SRTPV plant of the Petitioner was completed within the 180 days' period, in consonance with the SRTPV Guidelines, issued by the Respondent?*
- (a) The Petitioner submits that, the timeline for the implementation of the Project, was not stipulated in the PPA dated 17.02.2016. However, in the Approval in Format-6 dated 09.06.2016, issued by the Respondent, it was mentioned that, the approval was valid for 180 days and that, the SRTPV system had to be commissioned within this period, failing which the approval will be treated as cancelled; that the Petitioner's Plant was ready as on 01.08.2016, well within the period mentioned in the Format-6 and hence, eligible for the tariff of Rs.9.56 per unit, agreed to in the PPA.
- (b) The Respondent has submitted that, the SRTPV Plant had to be commissioned within 180 days, from the date of PPA and had to be completed within 15.08.2016, to be eligible for the tariff of Rs.9.56 per unit and that the Respondent had erroneously informed on 09.06.2016, in Format-6, that the Petitioner had 180 days to complete the Project from the said date; that the CEIG granted the Safety Approval to the Plant, on 17.08.2016 and the Plant could not have been ready without the safety approval, as the Guidelines provide that, the Petitioner has to submit the Work Completion Report, along with the Safety Approval of the CEIG, to

enable commissioning the Plant. It is also the contention of the Respondent that, as the Plant was completed beyond the period of 180 days from the date of the PPA, the Petitioner is entitled to the tariff of Rs.5.67 per unit, as per the Generic Tariff Order dated 02.05.2016.

- (c) The SRTPV Guidelines of the Respondent, provide certain timelines for every activity, to be carried out in the implementation of the SRTPV Projects. The Respondent has produced the Consumer Guidelines, issued by the CESC, as ANNEXURE R-1. The CESC had also issued the Guidelines for the CESC officials. We need to examine, if the parties have adhered to the timelines, mentioned in the said Guidelines. The relevant extract of the Guidelines, issued by the CESC to its officials is, as follows:

"2. Procedure for installation and commissioning the SRTPV system:

- a. Registration of Application*
- b. Processing of Application*
- c. Approval letter for submission of Technical details of proposed SRTPV system (Pre-installation)
(To be intimated within 7 working days from the date of registration)*
- d. Approval for installation
(To be intimated within 3 working days from the date of submission of technical details)*
- e. General guidelines*
- f. Signing of Power Purchase Agreement*
- g. Submission of work completion report along with necessary approvals (Approvals from Chief Electrical Inspectorate, GoK are to be given within 7 working days from the date of submission (for 10 kWp and above capacity installations)*
- h. Communication of Approval for testing, commissioning and synchronizing (On receipt of documents, approval shall be given as per Format-7 within 3 working days from the date of receipt of documents)*

i. Commissioning and synchronizing of SRTPV system installation
(To be achieved within 3 working days from the date of approval)

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b. Application Processing:

1. After registration, application will be forwarded to Revenue Section for verification of Name, RR No., sanctioned load, tariff, arrears if any, etc. Verification shall be completed within 2 working days (Format-3).

2. After verification by Revenue section, the application will be sent to concerned Section Officer for spot inspection and submission of technical feasibility report. The report shall be submitted within 3 working days from the date of receipt of SRTPV application (Format - 4).

3. If installation is technically feasible, letter to be addressed to the applicant to submit the technical information of all the equipments proposed to be used for SRTPV systems (Format - 5).

4. Checks before issuing the Technical feasibility of proposed interconnection:

i. The Transformer shall be loaded (proposed SRTPV system load) upto 80% of capacity of Distribution Transformer.

ii. To check whether the proposed interconnection will require upgrading the capacity of existing distribution network.

iii. Phase balancing has to be checked to avoid unbalancing of load in the secondary circuit of distribution line.

c. Approval letter for submission of technical details of proposed SRTPV system to be issued within 7 working days from the date of registration of application.

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d. Approval for installation:

1. All the technical information like Make, Type, etc., of the SRTPV equipments are to be checked and the test reports and certificates are to be verified in detail.

2. If Technical information furnished comply with the condition stated in the Format - 5, approval letter for installation of SRTPV system will be issued by the competent authority (AEE/EE) within 3 working days from the date of submission of technical report (Format - 6).

e. General guidelines:

1. The applicant is required to install the SRTPV system through system installer who have experience in design, supply and installation of SRTPV system.
2. The agency shall assist in obtaining approval from Chief Electrical Inspectorate, Government of Karnataka to meet safety standards and to procure net meter as per CEA guidelines from CESC, MYSORE approved vendors.
3. Inverters of MNRE approved manufacturers shall be used. The list of MNRE approved inverter manufacturers is available at the CESC, MYSORE/MNRE website. Only those inverters which meet all required IS/IEC standards shall be eligible for installation.
4. Data monitoring: Online monitoring will be compulsory for all the systems of more than 50kWp capacity. The SRTPV plant parameters are measured and transmitted to ALDC, CESC, MYSORE using SCADA system.
5. The Applicant/System installer shall obtain approval of drawing from Chief Electrical Inspectorate (CEI) of Government of Karnataka (GoK) before commencing installation work for installations above 10kWp.
6. The SRTPV system should comply the relevant (BIS/IEC) technical standards.
7. The installation work has to be carried as per the approved drawing and as per standards.
8. In case the installed (also read proposed) capacity of the SRTPV system is higher than the sanctioned load of the consumer, which consequently requires an upgradation in the infrastructure (service line, meter with CT (if required), transformer upgrading (if required)), the consumer will have to upgrade at his/her/ its own cost.
9. Work completion report along with required documents to be submitted within 180 days from the date of issue of approval letter for installation to the concerned AEE,,O&M sub-division, CESC, MYSORE along with receipts of facilitation fee
10. The existing metering wiring shall be changed to solar power generation side in presence of AEE/EE, MT, CESC, MYSORE to measure solar generation.
11. The Applicant has to procure bi-directional meter from any of the approved vendors of CESC, MYSORE and the meter has to be tested by MT division, CESC, MYSORE and the same shall be fixed at interconnection point.

12. The Applicant shall provide check meters when the SRTPV system is more than 20kWp.

f. Signing of Power Purchase Agreement:

1. After completion of SRTPV installation work, the consumer has to enter into a Power Purchase agreement with CESC, MYSORE on Rs.200/- stamped paper.
2. The AEE, O&M sub-division is the signing authority for PPA upto sanctioning load of 49kWp and EE, O&M division is the signing authority for PPA of sanctioning load of above 50kWp.
3. Copy of the PP agreement shall be submitted to the Superintending Engineer Commercial, Corporate Office, CESC, MYSORE.

g. Submission of work completion report:

The Applicant/System installer of SRTPV system shall submit the following documents along with work completion report as per Format - 6A to the approving authority (O&M, AEE/EE of CESC, MYSORE):

- a. Approved drawing and approval letter for commissioning the SRTPV system by CEI of GoK.
- b. Specification sheets of all equipments and manufacturer's test reports and test certificate of modules and inverters.
- c. Test certificates of bi-directional meter from MT division, CESC, MYSORE.
- d. Undertaking for obtaining MNRE subsidy from KREDL or self-declaration for not obtaining the MNRE subsidy (Format-1C).
- e. Details of facilitation fee paid.
- f. Power Purchase Agreement on Rs. 200/- stamp paper.

h. Communication of approval for commissioning and synchronizing:

1. All the documents (a-g) in the above para are to be verified in detail by the competent authority (O&M, AEE/EE).
2. After verification of above documents, the sanctioning authority has to issue approval letter for commissioning and synchronizing the SRTPV system with CESC, MYSORE grid within 3 working days from date of receipt of all documents (Format-7).

i. Commissioning and synchronizing of SRTPV system installation:

1. O&M, AEE/EE has to inspect the PV modules connections, earthing, isolating switches, functions of inverter, sealing of the energy meters, meter boxes, recording of readings, preparation of testing and commissioning reports.

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The synchronization of the SRTPV system shall be carried out by the concerned Sub-divisional/ Divisional Engineer along with MT staff within 3 working days from the issue of approval for synchronizing and commissioning....."

- (b) The undisputed facts in the present case are: the Petitioner submitted an application dated 31.12.2015, for installation of SRTPV Plant, on the existing roof top of his poultry farm; a PPA was entered into on 17.02.2016 between the parties. Formats 5 and 6 were issued on 09.06.2016; on 01.08.2016, the Petitioner informed that the work was completed; on 05.08.2016, the Petitioner requested the Respondent for meter testing; and, on 17.08.2016, the Safety Approval was received from the CEIG.
- (c) A conjoint reading of the Consumer Guidelines and the Guidelines issued by the CESC to its Officials, would indicate that the following time schedule has to be adhered to:
- (i) Within 7 working days from the date of application, after ascertaining the technical feasibility, Format 5 has to be issued to the applicant by the Respondent.
- (ii) Thereafter, within 30 days, the applicant has to select a reputed system installer and provide the technical details of the project to the concerned O & M sub-divisional office, for technical screening.

On clearance of the technical screening, the approval letter for installation of the SRTPV system has to be issued to the applicant by the concerned Engineer of the Respondent. This approval letter in Format-6 has to be issued within 3 days from the date of submission of technical report.

- (iii) On completion of the installation work by the applicant, the work completion report has to be given by the applicant in Format 6 A, within 180 days from the date of approval in Format 6, along with a copy of the PPA, safety approval of the CEIG and other documents. After verifying the documents, the Format-7, has to be issued by the Respondent within 3 working days approving the commissioning /synchronising the Project.
 - (iv) After inspecting the modules, earthing, meters, inverters, and satisfying about all relevant technical parameters, the synchronisation has to be carried out within 3 working days from the issue of approval for commissioning /synchronisation.
- (d) As per the above time schedule, in the present case, the Format-5 had to be issued by the Respondent on or before 08.01.2016. The 30 days' period for the applicant, to provide technical details of the equipment, ends on 06.02.2016. Thereafter, Format 6 had to be issued within 3 days i.e., before 09.02.2016. Therefore, 180 days to complete the Project would end on 08.08.2016. Before this date, the Petitioner had to be submit the Work Completion Report, in Format-6A, along with the Safety Approval of the CEIG and other relevant documents. The Safety Approval of the CEIG is issued on 17.08.2016. It is not known, when the Format 6A was given by the Petitioner. In fact, the Format 6 A contains a statement, to be authenticated by the applicant that, the SRTPV system has been installed

and inspected by the CEIG, on the date mentioned. Therefore, Format 6A can be given by the applicant, only after the inspection by the CEIG. The Petitioner has stated that, the Additional Chief Electrical Inspector, Mysuru, inspected the Plant on 11.08.2016 and addressed a letter dated 11.08.2016 to the CEIG, Bengaluru, stating that the Plant could be accorded approval for commissioning. On 17.08.2016, the CEIG, Bengaluru, issued the Safety Approval. Therefore, even if 11.08.2016 is considered to be the date of inspection, the same is beyond the 180 days' period. Hence, the statement of the Petitioner that, the Plant was ready only on 01.08.2016, cannot be accepted.

- (e) We note that, the Formats 5 and 6 are issued by the Respondent on 09.06.2016, which is not in conformity with the Guidelines. 180 days, from 09.06.2016, could not have been granted to complete the Project, in view of the timelines mentioned in the Guidelines. Therefore, it can be inferred that, the said Formats are issued on 09.06.2016, to enlarge the time limit for completion of the Project, contrary to the Guidelines.
- (f) 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 stipulated for completion of the Projects is 180 days, which would also be intimated to the applicants in Format 6. Admittedly, the Petitioner had made application for installation of a SRTPV Plant under the said Scheme, but the Guidelines and the timelines, mentioned therein

were not followed. The Petitioner has not denied the existence and applicability of the guidelines.

(g) We have not gone into the issue of termination of the PPA, by the Respondent, as it is not relevant to decide this case.

(h) For the above reasons, we answer Issue No.(1), in the negative.

8) **ISSUE No.(2):** *Whether the Petitioner has made out a case, for its Plant to be eligible for the tariff, agreed to in the PPA dated 17.02.2016?*

(a) It is not in dispute that, as a part of the State Government's Solar Policy dated 22.05.2014 which among other things proposed to promote grid connected Roof Top Photo Voltaic Generation Projects, the Respondent had called for applications from 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 in application form had to be submitted to the field officer concerned, with the prescribed fee for 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 Project is 180 days and there was no provision for extending such time prescribed. The Commission, in its Order dated 10.10.2013, has introduced net metering facility to the SRTPV Plants, allowing the consumers, installing such plants,

to consume the power generated and inject any surplus power into the distribution system of the Distribution Licensee concerned, who would pay such consumers, the tariff for such surplus power injected, as determined by the Commission. It was envisaged that, the consumers would install the 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.

- (b) 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 the SRTPV Plants that was agreed to in the PPA, was revised much before the Plant was ready for commissioning. The Solar Policy dated 22.05.2014, provides that, the Government of Karnataka shall promote the grid connected Solar Roof Top Projects, based on the Tariff Orders, issued by this Commission, from time to time. The Preamble of the PPA mentions that, the SRTPV Plant will be operated in terms of this Commission's Order No.S/03/01/2013 dated 10.10.2013 or as amended from time to time. As the Petitioner has failed to install the SRTPV Plant, as per the terms of the Respondent's SRTPV Scheme/ Guidelines, which was governed by the tariff and other norms of the Commission's Order dated 10.10.2013, the amended or later Order, governing the implementation and operation, including the tariff of the SRTPV Plants, would be applicable to the

Petitioner's Plant, as specified in the preamble of the PPA, which reads, as follows:

*"a. The Seller intends to connect and operate the Solar Roof Top Photo Voltaic (SRTPV) system with GESCOM's HT distribution system for sale of Solar Power to GESCOM in terms of the Karnataka Electricity Regulatory Commission (KERC) Order No. S/03/01/2013 dated:10.10.2013 **or as amended from time to time.**"(emphasis supplied)*

- (c) We also note that, as per the Guidelines issued by the Respondent, approval for installation in Format 6, should have been issued before the start of installation work and prior to the execution of the PPA. If, for some reason, Format 6 is not issued before the start of work and the installation work has progressed, thereafter, the Format 6 cannot be issued, so as to enlarge the time limit for installation of the Project. The issuance of Format 6, at a later date, would lead to a suspicion against the conduct of both the parties. We hold that, the Respondent is not justified, in issuing the Format 6 dated 9.6.2016, granting 180 days' time for commissioning of the Plant, much after the date of execution of the PPA, especially, by which time, the generic tariff, fixed for the SRTPV Plants, in the Commission's Order dated 10.10.2013, was revised by the Commission's Order dated 02.05.2016, considering the substantial reduction in the Capital Cost for setting up of the SRTPV Plants. Hence, the issuance of the Format 6 on 09.06.2016, in the present case, is irregular and not valid. Whenever an event / action 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 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 the Commission 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. The irregular act of the Respondent in the present case, in violation of its own Scheme / Guidelines, cannot be allowed to the benefit of the Petitioner, as it adversely affects the interest of consumers and, thereby, the public interest.

- (d) The Petitioner has stated that the entire Project work was completed on 01.08.2016 and the Safety Approval was received from the CEIG on 17.08.2016. The Plant is not yet commissioned. The Respondent, in its letter dated 28.06.2017, has informed the Petitioner that, the revised tariff of Rs.5.67 per unit was applicable, as per the Commission's Order dated 02.05.2016.
- (e) The Respondent has contended that the PPA was executed on 17.02.2016 and the Plant was not commissioned, within 180 days, from the date of execution of the PPA and, therefore, the Petitioner is entitled for the revised tariff, as per the Commission's Order dated 02.05.2016.
- (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.

- (g) The relevant portion, regarding its applicability in the Generic Tariff Order dated 02.05.2016, reads thus:

"In respect of plants for which PPAs that have been entered into prior to 1st 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 10th 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, the Petitioner's Plant, which is not commissioned within the stipulated time, is not eligible for the tariff, as per the Commission's Order dated 10.10.2013, as agreed to in the PPA, and is eligible only for the revised tariff, as per the Commission's Order dated 02.05.2016. However, the restriction of the installed capacity, mentioned in the Generic Tariff Order dated 02.05.2016, will not be applicable to the Petitioner's Plant. This concession is given on the facts of this case, considering that, the investment made on the Project should be protected. We would make it clear that, this concession is granted, on the facts and in the circumstances of this case, and will not be set, as a precedent.

- (h) We, therefore, answer Issue No.(2), in the negative.

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

For the foregoing reasons, we pass the following:

ORDER

- (a) The Petitioner is entitled to the 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, within 4 (four) weeks from the date of this Order; and,
- (b) The Petitioner's SRTPV Plant shall be synchronised, if the Petitioner agrees to sell power to the Respondent, at the above tariff.

The Petition is disposed of accordingly.

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

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

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