

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION**

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

**Dated : 22.10.2019**

**Present:**

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

**OP Nos.75/2018, 76/2018 and 77/2018**

**BETWEEN:**

Shri T. Nagaraja,  
S/o K.R. Thipperudrappa,  
Aged about 50 years,  
Kondalahalli Village,  
Molakalmuru Taluk,  
Chitradurga District – 577 529.

.. **PETITIONER**

*[Represented by Shri A.V. Narasimha Reddy, Advocate]*

***[Petitioner common in all the three Petitions]***

**AND:**

- 1) State of Karnataka,  
Department of Energy,  
No.235, 2<sup>nd</sup> Floor,  
Vikasa Sudha,  
Bengaluru -560 001  
Represented by its Secretary.
- 2) Bangalore Electricity Supply Company Limited,  
C.O&M Division, Hiriya,  
Chitradurga – 577 598  
Represented by Executive Engineer.
- 3) Bangalore Electricity Supply Company Limited,  
Corporate Office,  
K.R. Circle,  
Bengaluru – 560 001.  
Represented by General Manager (DSM).

- 4) Bangalore Electricity Supply Company Limited,  
Corporate Office,  
K.R. Circle,  
Bengaluru – 560 001.  
Represented by Managing Director.

.. **RESPONDENTS**

*[Respondent-1 – unrepresented,  
Respondents-2,3 & 4 represented by Just Law, Advocates]*

***[Respondents common in all the three Petitions]***

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### **COMMON ORDERS**

- 1) In the above Petitions, the questions of law and facts involved for our consideration are almost similar. Therefore, this Common Order is passed in all the three Petitions. The contents and Exhibit Numbers of different documents, produced by the parties in all these cases, are also almost similar.
- 2) OP No.75/2018 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:
- “(a) Declare that the action of Respondent No.2 Company in terminating the PPA dated 17.12.2015 is illegal;
- (b) Set-aside the termination notice dated 08.09.2016 and 29.05.2017 at Annexure – A-11 & A-17 respectively;
- (c) Issue of direction to the Respondents to procure supply from the Petitioner’s plant as per PPA dated 17.12.2015;
- (d) Pass any other Order/s deem fit in the facts and circumstances of this Petition.”
- 3) OP No.76/2018 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:

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- “(a) Declare that the action of the Respondents in terminating the PPA dated 17.12.2015 is illegal;
- (b) Set-aside the termination notice dated 08.09.2016 and 29.05.2017 at Annexure – A-11 & A-17 respectively;
- (c) Issue the directions to the Respondent to procure supply from the Petitioner’s SRTPV plant as per PPA dated 17.12.2015;
- (d) Pass any other Order/s deem fit in the facts and circumstances of this Petition.”
- 4) OP No.77/2018 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:
- “(a) Declare that the action of the Respondents in terminating the PPA dated 17.12.2015 is illegal;
- (b) Set-aside the termination notice dated 08.09.2016 and 29.05.2017 at Annexure – A-11 & A-17 respectively;
- (c) Issue the directions to the Respondent to procure supply from the Petitioner’s SRTPV as per PPA dated 17.12.2015;
- (d) Pass any other Order/s deem fit in the facts and circumstances of this Petition.”
- 5) (a) Some of the common material facts / events, stated by the Petitioners, may be stated as follows:

This Commission has determined the tariff of Rs.9.56 per unit, by its Order dated 10.10.2013, for the grid connected Megawatt Solar Power Projects and also applied the same tariff to the Solar Roof Top Photo Voltaic (SRTPV) Projects, however, the capacity of the SRTPTV Systems was limited to a maximum of one MW. Subsequently, the Government of Karnataka issued the Solar Policy dated 22.05.2014 for the period, from 2014 to 2021

and fixed a target for achieving the installation of 400 MW capacity grid connected SRTPV Systems during the said period, apart from fixing different targets for achievement under different Schemes for the development of the Solar Power Projects. Pursuant to it, the Bangalore Electricity Supply Company Limited (BESCOM) (the Respondent herein) launched the SRTPV Scheme on 07.11.2014, to encourage the grid connected SRTPV Systems on the roof tops of the consumers' existing buildings.

(b) For the purpose of clarity and ready reference, the other common material facts / events, stated by the Petitioners, are detailed below:

Sl. No.	Description / Event	OP No. 75/2018	OP No. 76/2018	OP No. 77/2018
1	Date of SRTPV application	31.10.2015	31.10.2015	31.10.2015
2	Date of PPA	17.12.2015	17.12.2015	17.12.2015
3	Date of approval of PPA by the Commission	10.02.2016	10.02.2016	10.02.2016
4	RR No. and Place	KLP 363	KL 1224	KP 82
		Kondlahalli Village, Molakalmuru Sub-Division		
5	Nature of the existing building	Poultry farm	Poultry farm	Poultry farm
6	Approval for installing SRTPV System, issued by EE, BESCOM, Hiriyyur	15.04.2016	15.04.2016	15.04.2016
7	Project Development Agreement with Project Developer	07.05.2016	07.05.2016	07.05.2016
8	MoU entered into with Project Developer	11.05.2016	11.05.2016	11.05.2016
9	Date of cancellation of PPA	08.09.2016	08.09.2016	08.09.2016
10	WP filed by the Petitioner	51460/2016	51460/2016	51460/2016
11	Date of Interim Order in the WP.	27.09.2016	27.09.2016	27.09.2016

(c) The Petitioner in the above cases, claiming to be eligible for installation of the SRTPV Systems on their existing buildings, entered into Power Purchase

Agreements (PPAs), for installation of one MW capacity SRTPV Systems on their existing buildings. The Petitioner entered into the Project Development Agreements dated 07.05.2016 with the Developer, viz., M/s. TECSO Pvt. Ltd., Vadodara – 391110 Gujarat, for establishment of the SRTPV Systems. He also entered into MoUs dated 11.05.2016 with the Project Developer. Further, the Petitioner applied for construction of the 11 kV Line for evacuation of power from the SRTPV Systems to the Sub-Station. The Petitioner contended that, although he had completed the installation of the SRTPV Systems, the Executive Engineer (Ele), C, O&M Division, BECOM, Hiriya (hereinafter referred to as the EE, BECOM, Hiriya), issued the Official Memoranda (OMs) dated 08.09.2016, cancelling all the PPAs, without any valid ground and without issuing any prior Notice.

- (d) As against the OMs dated 08.09.2016 cancelling the PPAs, the Petitioner preferred Writ Petitions (WPs) before the Hon'ble High Court of Karnataka at Bengaluru. The Petitioner obtained the Interim Order on 27.09.2016, staying the operation of the OMs dated 08.09.2016 and further directing the Respondents to continue the PPAs dated 17.12.2015.
- (e) The WP was allowed on 16.03.2017, setting aside the OMs dated 08.09.2016 and directing the concerned Officer of the Respondent (BESCOM) to issue Show Cause Notices to the Petitioner, for the alleged contravention and to pass Orders after obtaining replies of the Petitioner. Accordingly, Show Cause Notices dated 13.04.2017 were issued. After receipt of the replies from the Petitioner, the EE, BECOM, Hiriya, issued separate Order dated 29.05.2017, holding that the replies were not

acceptable and the PPAs dated 17.12.2015, executed by the Petitioner, stood cancelled.

- (f) After obtaining the Interim Orders of Stay, staying the operation of the OMs dated 08.09.2016 and directing to continue the PPAs dated 17.12.2015, the Petitioner approached the Chief Electrical Inspector to Government (CEIG), for obtaining approvals of the drawings. The CEIG, under letter dated 15.05.2017 (ANNEXURE- A-20), in respect of the SRTPV Systems of the Petitioner. The CEIG asked further clarification from the EE, BESCOM, Hiriyur, regarding the action taken on the directions issued in the Writ Petition. As already noted, the EE, BESCOM, Hiriyur, had cancelled the PPAs, again, on 29.05.2017.
- (g) Though the Petitioners have not specifically stated regarding the Order dated 07.11.2017, passed by this Commission "*in the matter of: Tariff Order for SRTPV Plants violating the norms specified for implementation of the SRTPV Plants*", we may take note of it, for understanding the further events stated by the Petitioner. Under this Order, the Commission had granted certain reliefs to the consumers of SRTPV Systems, who had entered into PPAs under the Generic Tariff Orders dated 10.10.2013 and 02.05.2016, and in which the PPAs had been cancelled due to delay in commissioning of the Projects and for other reasons.
- (h) Subsequent to passing of the above-said Order dated 07.11.2017, the Petitioner approached the Managing Director of the Respondent (BESCOM), with the letters, during the last week of November, 2017, requesting for synchronization of the SRTPV Systems and also to take

suitable steps for the revival of the PPAs. In pursuance of such requests, the SRTPV Systems of the Petitioner were synchronized, after entering into fresh PPAs dated 15.12.2017, at the tariff of Rs.5.20 per unit. The Petitioner obtained the approval of electrical installations pertaining to the SRTPV Systems from the CEIG, under letters dated 28.12.2017 (ANNEXURE-A-29).

- (i) These fresh PPAs, with the tariff of Rs.5.20 per unit, were submitted before this Commission for approval. This Commission approved these PPAs, subject to modification of the tariff, at the rate of Rs.3.57 per unit and directed to enter into the modified PPAs. Accordingly, the Petitioner has entered into the modified PPAs dated 30.12.2017, agreeing to supply the Solar energy at the tariff of Rs.3.57 per unit.
  - (j) The SRTPV Systems of the Petitioner were commissioned on 30.12.2017.
  - (k) The Petitioner has filed the present Petitions, before this Commission on 29.8.2018.
- 8) The Petitioners have urged the following grounds in support of the reliefs sought for by them:
- (a) Time was not the essential factor for completing the installation of the SRTPV System. The PPA does not contain any term, fixing the time, within which the installation works of the SRTPV System were to be completed. Even imposition of 180 days' time for completion of the works, as per the approval dated 15.04.2016, issued by the EE, BESCO, Hiriyur, is invalid. The BESCO's Circular dated 17.11.2015, allowing the extension of time for commissioning of the SRTPV System, on payment of certain amount,

would show that time was not essence for commissioning the SRTPV System.

- (b) The Petitioner has completed the works of the SRTPV Systems within the time stipulated and there was no delay in completing the works, as per the approval for installation, dated 15.04.2016. The EE, BESCO, Hiriyur, has cancelled the PPAs, as per the OM dated 08.09.2016 much earlier to the time allowed for completion of the works of the SRTPV Systems.
  - (c) The cancellation of the PPAs is illegal and arbitrary. None of the officials of the Respondent (BESCO) had actually visited the spot and inspected the SRTPV Systems. The officials of the Respondent (BESCO) themselves had given the Feasibility Report and had found that the space on the roof top was sufficient. There was no extension of the existing buildings or construction of new buildings, for installation of the SRTPV Systems.
  - (d) The grounds stated in the Show Cause Notices dated 13.04.2017, for cancellation of the PPAs, were baseless.
  - (e) Therefore, the Petitioner has prayed for allowing the Petitions.
- 9) Upon Notice, the Respondents have appeared through their counsel. The 1<sup>st</sup> Respondent-State of Karnataka has not filed any written objections. The Respondents 2 to 4 (BESCO and its officials) have filed a common Statement of Objections in all the three Petitions. The execution of the PPAs, the exchange of several correspondences between the parties and filing of the Writ Petitions by the Petitioner and the subsequent events, are



not disputed by the Respondents 2 to 4. The defence taken in all the cases is almost similar, the gist of which may be stated as follows:

- (a) That, on 24.08.2016 and 25.8.2016, the officials of the BESCO conducted an inspection of the proposed SRTPV Systems of the Petitioner and it was observed during inspection that there were several violations, viz.:
- (i) That, the SRTPV Systems, or a part thereof, were intended to be installed on the roof tops of the buildings under construction or on the newly extended portion of the existing buildings;
  - (ii) That, the work of installation of the SRTPV Systems had not yet commenced, as on the date of inspection;
  - (iii) That, the Licences obtained in respect of certain buildings were limited to the approved activities only, but they were not holding good for installation of the SRTPV Systems; and,
- (b) That, as per the Order dated 07.11.2017, passed by this Commission, the Petitioner is entitled to Rs.3.57 per unit for the energy supplied, but not for any other higher tariff.
- (c) They have denied the adverse allegations made against them. They have contended that, the SRTPV Systems should have been completed and synchronized, within 180 days from the date of execution of the PPAs.
- (d) For the above reasons, the Respondents have prayed for dismissal of the Petitions.

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- 10) The Petitioner has filed Rejoinders in all these Petitions, denying the contraventions, alleged against him, by the Respondents.
- 11) We have heard the learned counsel for the parties. The following issues would arise for our consideration:
- (1) Whether time was not the essential factor for completion of the works of the SRTPV Systems, in these cases, as claimed by the Petitioner?
  - (2) Whether the works of the SRTPV Systems were completed, or could have been completed, within the stipulated period, for commissioning of the said Systems?
  - (3) Whether the Respondents have made out sufficient grounds for cancellation of the PPAs dated 17.12.2015, executed by the Petitioner?
  - (4) Whether the Petitioner is entitled for any relief(s)? If so, to what relief(s)?
  - (5) What Order?
- 12) After considering the submissions of the parties and the material on record, our findings on the above issues are as follows:
- 13) **ISSUE No.(1)**: *Whether time was not the essential factor for completion of the works of the SRTPV Systems, in these cases, as claimed by the Petitioner?*
- (a) The Petitioner has contended that, time was not the essential factor for completion of the works of the SRTPV Systems. He has relied upon the fact that, the PPAs do not contain any specific clause stipulating the time,

within which the SRTPV Systems are to be completed. Therefore, he has further contended that, imposition of any time limit, by way of any letter or direction by the Respondent (BESCOM) alone, would not be valid and not binding on the Petitioner. He has also relied upon the Respondent (BESCOM)'s Circular dated 17.11.2015, which allowed for extension of time, upto a maximum of twelve months, after the expiry of the initial 180 days, for completion of the works of the SRTPV Systems, on payment of certain charges.

(b) Though the above contention of the Petitioner appears to be attractive, the same is not acceptable and correct, for the reasons narrated below:

(i) The PPA cannot be read in isolation of the Guidelines issued for installing the SRTPV Systems. Both parties have not produced a complete set of the Guidelines issued by the Respondent (BESCOM) regarding installation of the SRTPV Systems. The complete set of the Guidelines consists of Formats 1 to 17. The Guidelines relating to the consumers is at Format-16 and Guidelines relating to the BESCOM Officers is at Format-17. The standard Format of the PPA, approved by this Commission, is at Format-12. Formats 1 to 8 relate to the various stages, from filing of the application till synchronization of the SRTPV Systems. As per these guidelines, a detailed procedure was set out for establishing the SRTPV Systems, which included filing of an application - on line or off line, paying the requisite registration fees, scanning of applications, revenue verification and submission of technical feasibility report, obtaining of approval for installing the SRTPV System in Format No.5 for LT installations

up to 50 kWp and in Format No.6 for HT installations of above 50 kWp, submission of Work Completion Report in Format No.7, along with all the necessary documents and thereafter, the inspection of safety procedure by the Assistant Executive Engineer, BESCO or the Chief Electrical Inspector, as the case may be. Therefore, it is clear that, after filing the application for installing the SRTPV System, a Technical Feasibility Report is essential and thereafter, approval for installing the SRTPV System would be issued in Format-5 or Format-6, as the case may be. These Formats specifically contain a term that the SRTPV System should be completed within 180 days from the date of issuance of such Format-5 or Format-6, as the case may be, in default, the approval given for installation of the SRTPV System would stand cancelled. The stage of execution of the PPA would arise subsequent to the issuance of the Technical Feasibility Report. If the Project is not technically feasible, there is no question of proceeding further;

(ii) The Respondent (BESCO) had submitted the draft Guidelines to this Commission, for approval, vide its letter bearing No.BESCO/BC-51/3584/2013-14/661-65, dated 31.07.2014. The draft standard PPA was one of the Formats included in the draft Guidelines, submitted to the Commission. After scrutiny of the Guidelines, including the draft standard PPA, this Commission, in principle, approved the draft Guidelines with certain modifications and intimated that the draft standard PPA for the installation of the SRTPV systems would be sent, after finalization. The Commission also suggested to incorporate the timelines for grant of

different approvals in the Guidelines, so as to ensure the speedy implementation of the SRTPV Systems. The in-principle approval was sent by this Commission, by letter bearing No.S/03/1/892, dated 27.08.2014. Later, the draft standard PPA was finalized and sent to the BESCO by the Commission.

(iii) The above facts would clearly indicate that, the standard PPA is a part of the Guidelines for installation of the SRTPV Systems and it should be read along with the timelines prescribed in the other Formats. The Petitioners, as well as all other applicants who applied for approval for installing the SRTPV Systems, were aware of the existence of the Guidelines and its contents. The Respondent (BESCO) had published the said Guidelines on its Website, which is still available there. The above facts would clearly indicate that, the standard format of the PPA only supplements the Guidelines, therefore, it should be read along with the other terms and conditions contained in the Guidelines, elsewhere.

(iv) This Commission, by its Order dated 02.05.2016, had determined the generic tariff for the SRTPV Systems. The said Generic Tariff Order makes it clear that, the PPA entered into with a tariff determined under the Generic Tariff Order dated 10.10.2013, in respect of the SRTPV System, would be governed by the lesser tariff, as determined in the Generic Tariff Order dated 02.05.2016, in case the SRTPV System was not commissioned within the stipulated time, and further that, there should not be any extension of time for commissioning the same, after the Effective Date of the said Order. Therefore, subsequent to the generic Tariff Order dated 02.05.2016,

for any delay in commissioning of the SRTPV Systems, there cannot be any extension of time, for any reason, for commissioning of the said System and it should be governed by the lesser tariff.

(v) The Circular dated 17.11.2015, issued by the Respondent (BESCOM), states that, the Corporate Office had received many letters, requesting for extension of the time limit, for installation of the SRTPV Systems, since the processing of loans would take much time and the present 180 days' time for completion was not sufficient, thereby, the Processing Committee discussed this issue on 16.09.2015 and decided to extend the time limit after collecting certain re-registration fees, from six months to twelve months, as indicted in the said Circular. The Commission is of the considered view that the Respondent (BESCOM) could not have issued such Circular. The Respondent (BESCOM) has obtained the approval for the Guidelines, wherein the timeframe was fixed for installation of the SRTPV Systems, allowing 180 days for commissioning, from the date of the issuance of either Format-5 or Formt-6. Therefore, the Respondent (BESCOM) cannot issue the Circular, without the approval of this Commission, for extension of time. It can be noted that, any such extension of time for commissioning, was affecting the applicability of the tariff, in case there was delay in commissioning the SRTPV Systems, as per the time limit granted earlier. It can also be noted that, the said Circular dated 17.11.2015 was withdrawn by the Respondent (BESCOM), as per its OM dated 18.05.2016. The issuance of such Circular is beyond the powers of the BESCOM and no one can rely upon it, for any reason.

- (c) For the above reasons, we are of the considered opinion that, achieving the time limit was an essential factor, with regard to the completion of the works of the SRTPV Systems, though such a term was not contained specifically in the PPAs. Therefore, we answer Issue No.(1), in the negative.
- 14) **ISSUE No.(2):** *Whether the works of the SRTPV Systems were completed, or could have been completed, within the stipulated period, for commissioning of the said Systems?*
- (a) The Petitioner has contended that, he has completed the installation works of the SRTPV Systems, well within 180 days from 15.04.2016, the date on which the approval for installing the SRTPV Systems was issued by the EE, BESCO, Hiriya. The Respondents (BESCO) have denied that the Petitioner completed the installation works of the SRTPV Systems, as contended by the Petitioner. Further, they have contended that, the installation works of the SRTPV Systems should have been completed within 180 days from 17.12.2015, the date of execution of the PPAs. The learned counsel for the Respondents (BESCO) submitted that the issuance of Format-6, i.e., approval for installation of the SRTPV Systems, should be issued, soon after the receipt of the Technical Feasibility Report and before executing the PPA, as stipulated in the Guidelines. Therefore, it is submitted that, issuance of the approval dated 15.04.2016 (ANNEXURE-A-3), for installing the SRTPV Systems, was improper and it should have been earlier to the date of execution of the PPA, i.e., 17.12.2015. Therefore, it is submitted that, as per the Guidelines, the installation works of the SRTPV Systems should have been completed within 180 days, at least, from the date of the PPAs. The submission of the learned counsel for the

Respondents (BESCOM) appears to be correct. The issuance of the approval dated 15.04.2016 (ANNEXURE-A-3) appears to have been created just to help the Petitioner, because there was no reason for the EE, BESCOM, Hiriyur, not to issue approval for installing the SRTPV Systems, soon after obtaining the Technical Feasibility Report, as provided under the Guidelines. Therefore, works of the SRTPV System should have been completed within 180 days from the date of execution of the PPAs. The Petitioner could not have completed the works of the SRTPV Systems, within 180 days from the date of the PPAs, as can be seen from the pleadings.

- (b) Even assuming that, the Petitioner was entitled to 180 days from the date of approval, i.e., from 15.04.2016 (ANNEXURE-A-3), one can say that the Petitioner had not completed the major portion of the installation works of the SRTPV Systems, within that timeframe. He has entered into the Project Development Agreements on 07.05.2016 and the MoUs with the Project Developer TECSO Private Limited, Vadodara-391 110, Gujarat, on 11.05.2016. The Petitioner has stated in the Petitions that, subsequent to the Project Development Agreements, the Project Developer raised the Invoices. The Petitioner has produced copies of the said Invoices along with the Petitions. It is not clarified by the Petitioner, as to on what dates the items indicated in the Invoices were actually delivered at the work spot, and as to when they were installed. As on the date of inspection by the Respondent (BESCOM)'s officials on 24.08.2016, 25.08.2016 & 28.05.2017, the installation works of the SRTPV Systems had not yet commenced. In the Rejoinders filed by the Petitioner, he has stated that,



as on the date of inspection, the work of Engineering, Procurement and Construction was in progress and there was still about 40 days' time left for completion of the works of the SRTPV Systems. The reply in the Rejoinders does not quantify the works already carried out, or the works to be carried out, as on the date of inspection, in regard to the installation of the SRTPV Systems.

- (c) The Format-6, viz., approval for installing the SRTPV System, narrates the different items of works to be carried out by the Applicant. The Format-7, viz., Work Completion Report, requires the mentioning of the actual completion of the different items of works. The final step, after the Work Completion Report, is the inspection of the SRTPV System by the AEE of the Respondent (BESCOM) or the Electrical Inspectorate, as the case may be. In the present cases, though the PPAs were cancelled on 08.09.2016, the Petitioner obtained Interim Orders of Stay in the Writ Petition on 27.09.2016, as noted earlier, staying the operation of the cancellation of the PPAs and directing the continuation of the PPAs. Subsequently, again, the PPAs were cancelled on 29.05.2017. Therefore, one can say that, except for nearly three weeks, the PPAs were in force, from 17.12.2015 to 29.05.2017, but the Petitioner had not completed the installation works of the SRTPV Systems and had not filed the Work Completion Reports, during this period. Considerable portion of the works towards commissioning of the SRTPV Systems were taken up in the months of November and December, 2017, to take shelter under the Order dated 07.11.2017, passed by this Commission.

- (d) For the above reasons, we hold that, the Petitioner had not completed the installation works of the SRTPV Systems, within the stipulated period, for commissioning of the said Systems. Therefore, we answer Issue No.(2), in the negative.
- 15) **ISSUE No.(3):** *Whether the Respondents have made out sufficient grounds for cancellation of the PPAs dated 17.12.2015, executed by the Petitioner?*
- (a) The Solar Policy, as well as the Guidelines issued, would make it compulsory that the SRTPV Systems should be installed on the roof tops of the existing buildings only. Therefore, if an applicant falsely represents the sufficiency of the roof top area for installing any particular capacity of the SRTPV System, the PPA of such applicant can be cancelled, for such fraudulent misrepresentation. The reasons may be stated thus: The Capital Cost for installation of the SRTPV System was reducing considerably, form year-to-year. Subsequent to passing of the Generic Tariff Order dated 10.10.2013, determining the tariff of Rs.9.56 per unit, this Commission issued a Discussion Paper on 16.11.2015, proposing reduction of the tariff of the SRTPV Systems and also limiting the capacity of the SRTPV System to the sanctioned load of the consumer concerned. In the earlier Order dated 10.10.2013, a consumer was allowed to install the SRTPV System upto one MW capacity, irrespective of the sanctioned load, provided he had got sufficient area of the existing roof top. The Government of Karnataka had also issued the Government Order bearing No.EN70 VSC 2015, dated 28.03.2016, directing the Electricity Supply Companies (ESCOMs) to enter into PPAs, henceforth, in regard to the SRTPV Systems, limiting the capacity

of the System to the sanctioned load of the consumer. As already noted, under the Generic Tariff Order dated 02.05.2016, the tariff was reduced to Rs.5.20 per unit, for the SRTPV Systems with capacity between 500 KW and one MW, and allowed the capacity of the SRTPV Systems, limiting to the sanctioned load of the consumer. In the subsequent Generic Tariff Order dated 18.05.2018, which came into force from 01.04.2018, the generic tariff was reduced to Rs.3.56 per unit. Therefore, if an applicant had falsely represented the area of an existing roof top, while entering into a PPA, as per the tariff determined under the Generic Tariff Order dated 10.10.2013, his representation amounted to a fraudulent representation, which could lead to cancellation of the PPA. In the present cases, the PPAs were entered into, subsequent to the issuance of the Discussion Paper on 16.11.2015. Therefore, one can infer that the PPA holder would be aware of the fact that, in the coming days, there would be reduction of tariff as well as the installed capacity of the SRTPV System.

- (b) The creation of any false document, with an intent to defeat the rights of the Respondents (BESCOM) during the course of installing the SRTPV System, can also be treated as a ground for cancellation of the PPA. In the present cases, the Format-6 must have been issued prior to the execution of the PPAs. It may be noted that, the Petitioner has entered into the Project Development Agreements on 07.05.2016 and the MoUs with the Developer on 11.05.2016. Admittedly, there was no progress in the works of installation of the SRTPV Systems, till the MoUs were entered into. By this time, almost five months had elapsed, out of the eligible

period of six months, for installing the SRTPV Systems, and in the remaining one month, the Petitioner could not have completed the works of the SRTPV Systems. This must be the reason for the Petitioner to fraudulently obtain the approval dated 15.04.2016, for installing the SRTPV systems, by illegal means. Such an illegal act of an official of the Respondents (BESCOM), is not binding on the BESCOM.

- (c) The Commission notes that even in the absence of a pleading by the respondents in this regard, the Commission is entitled to rely on the above stated, taint of illegality to hold that the PPAs executed by the Petitioners are liable for cancellation. The Hon'ble Supreme Court of India in the case of Smt. Surasaibalini Debi vs Phanindra Mohan Majumdar decided on 27.10.1964 [1965 AIR 1364, 1965 SCR (1) 861] while dealing with the similar question has held as follows:

*"Where a contract or transaction ex facie is illegal there need be no pleading of the parties raising the issue of illegality and the Court is bound to take judicial notice of the nature of the contract or transaction and mould its relief according to the circumstances. .... Even where the contract is not ex facie legal "if the facts given in evidence clearly disclose the illegality the Court is bound to take notice of this fact even if not pleaded by the defendant" [Per Lindley L.J. in Scott v. Brown [1892] 2 Q.B. 724 at 729".*

For this reason alone, the PPAs, executed by the Petitioners, are liable for cancellation.

- (d) Now, we shall consider below, whether in the present cases, the Petitioner had misrepresented the area of the roof top available for installing the one MW capacity SRTPV Systems:

The Respondent (BESCOM) has contended in all the three cases that, large portions of the structures were constructed, for the first time for installing the solar panels. It is also contended that the petitioner in all the three cases has violated the norms stipulated in the clarification/letter dated 17.08.2016 issued by the Government, explaining the requirement of the existing roof tops for installing SRTPV systems. The summary of the Inspection Report is produced by the Respondent at ANNEXURE-R2 in all cases. Copies of the Sketches and Photographs (Annexure R-5) of the pole mounted structures newly constructed, are also produced by the Respondent. In the Rejoinder, the Petitioner has not denied the veracity of the Photographs produced by the Respondent (BESCOM), though he has contended that he did not construct any new structure in addition to his existing poultry farms. The petitioner has produced copy of the sketch of the premises at Annexure A-12 in all the cases. He has also produced the photographs of the premises alongwith Memo filed on 27.11.2018. As can be seen from the sketches and photographs produced by the Respondent (Annexure R-5), it can be easily identified that new pole mounted structures were put up and such new structures formed a considerable portion of the premises on which SRTPV systems, were intended to be installed. Some of the photographs produced by the petitioner also suggest that certain pole mounted structures were newly put up. It was for the petitioner to produce cogent evidence to establish that sufficient space of existing roof tops was available for installing SRTPV systems as claimed by him. He has not produced the proper evidence to

establish that sufficient area of roof tops was available at the time of making the application for installing the SRTPV systems. The petitioner has not challenged the cancellation of the PPAs as per Order dated 29.5.2017 passed by EE, BESCO, Hiriya and on the other hand, requested for synchronizing the projects in his letter dated 22.11.2017 (Annexure A-21) and other letters. This would show that the petitioner has accepted the cancellation of PPAs as per the Order dated 29.5.2017 of EE, BESCO, Hiriya. This would also suggest that there was newly constructed pole mounted structures which must have compelled the petitioner to accept the cancellation of PPAs.

- (e) From the above facts, it is made out that sufficient area of roof tops was not available at the time of filing the applications requesting for installation of SRTPV systems but the petitioner had misrepresented the available area of roof tops. Hence, sufficient grounds are made out for cancellation of the PPAs.
- (f) For the above reasons, we answer Issue No.(3), in the affirmative.
- 16) **ISSUE No.(4)**: Whether the Petitioners are entitled for any relief(s)? If so, to what relief(s)?
- (a) This Commission has passed the Order bearing No.KERC/S/F-31/Vol-382/1285, dated 07.11.2017, "*In the matter of: Tariff Order for SRTPV Plants violating the norms specified for implementation of the SRTPV Plants.*" The reasons for passing this Order are stated in Paragraphs-5 and 6 of the recitals of the said Order, as follows:

*"5. In the meanwhile, it was brought to the notice of the Commission that a huge number of PPAs, execute in respect of the SRTPV Projects have been terminated or in the process of being terminated for reasons like not commissioned within stipulate time, extension of the roof area of the existing building in violation of the terms of the PPA/sanction order or the roof on which the SRTPV plant is installed is not a building, as specified by the State Government, etc. It was also brought to the notice of the Commission that such consumers have come forward to commission the SRTPV plants at the rates different from that agreed in the PPAs.*

*6. The Commission notes that the commissioning of the affected SRTPV plants, involving large investments by respective consumers would be in the larger public interest. These SRTPV plants not being commissioned within the stipulated time cannot, however, now be made eligible for the tariff fixed under the relevant Order of the Commission, though the limit on installed capacity could be made as applicable under the relevant Order."*

(b) The relevant operative portions of the said Order, stated at Paragraphs-

a. to d. thereof, are as follows:

*"a. A consumer having executed a PPA with any ESCOM in respect of his/her proposed SRTPV plant in terms of the Commission's Order dated 10.10.2013 but, having such a PPA cancelled for the delay in commissioning of the Project within the stipulated period, shall be allowed to commission the Project and shall be entitled for the revised tariff, as in the Commission's Order dated 02.05.2016 subject to he/she entering into a fresh PPA and commissioning the Project on or before 31.12.2017.*

*b. A consumer having executed a PPA with any ESCOM, in respect of his/her proposed SRTPV plant in terms of the Commission's Order dated 02.05.2016, but having such PPA cancelled for delay in commissioning of the Project within the stipulated time period, shall be allowed to commission the Project at the tariff of Rs.3.57 per unit being the notified APPC FY18 for the*

*term of the PPA, subject to he/she entering into a fresh PPA and commissioning the Project on or before 31.12.2017.*

- c. *A consumer having executed PPA with any ESCOM in respect of his/her proposed SRTPV plant in terms of the Commission's Order dated 10.10.2013 or 02.05.2016 but, having such a PPA cancelled for reasons other than non-commissioning of the plant within the stipulated period shall have the option to commission the SRTPV plant with the capacity as in the original PPA and shall be entitled to a tariff of Rs.3.57 per unit, being the notified APPC for FY18 for the term of the PPA, subject to he/she entering into a fresh PPA and commissioning the Project on or before 31.12.2017.*
  
- d. *In respect of the plants, in all above cases, all the technical and operational conditions/specifications shall be applicable, as per the relevant Orders, Regulations and the Code."*

- (c) In all the above Petitions, it was found that, the PPAs were cancelled, not merely for the delay in commissioning of the SRTPV systems, but also for the violations, such as, extension of the structures subsequent to filing of the applications for installing SRTPV systems, in violation of the terms of the PPA/sanction Order, or the roof on which the SRTPV Systems were installed, was not a building, as specified by the Government of Karnataka, etc. These Petitioners had come forward to commission their SRTPV Systems, at the rates as specified in the said Order dated 7.11.2017. In pursuance of the same, the SRTPV Systems were commissioned. It is found that, these SRTPV Systems had violated the terms of the PPAs, as noted above. Therefore, in all these three Petitions, the Petitioner is entitled to a tariff of Rs.3.57 per unit only. As already noted, the Petitioner had already



executed the PPAs, afresh, agreeing to supply energy at the tariff of Rs.3.57 per unit, for the Delivered Energy. Therefore, in these Petitions, the Petitioner is not entitled to any of the reliefs, sought for.

(d) For the above reasons, we answer Issue No.(4), accordingly.

17) **ISSUE No.(5):** *What Order?*

For the foregoing reasons, we pass the following:

**ORDER**

- (a) The Petitions, viz., OP Nos. 75/2018, 76/2018 and 77/2018, are hereby dismissed; and,
- (b) The original Order shall be kept in OP No.75/2018 and copies, thereof, in OP Nos.76/2018 and 77/2018.

Sd/-  
(SHAMBHU DAYAL MEENA)  
CHAIRMAN

Sd/-  
(H.M. MANJUNATHA)  
MEMBER

Sd/-  
(M.D. RAVI)  
MEMBER