

**OP No.39/2019**

No.N/106/2019

---

**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 No.39/2019**

**BETWEEN:**

Mr. Erappa Reddy,  
Hoskote Village,  
Srinivaspura Taluk,  
Kolar –563 135.

*[Represented by Navayana Law Offices, Advocates]*

.. **PETITIONER**

**AND:**

The Managing Director  
Bangalore Electricity Supply Company Limited,  
K. R. Circle,  
Bangalore – 560 001.

*[Respondents represented by Just Law, Advocates]*

.. **RESPONDENTS**

**ORDERS**

1. This Petition is filed under Section 86(1)(f) read with Section 9 and 42 of the Electricity Act, 2003, praying to:
  - i. Declare that the Power Purchase Agreement dated 30<sup>th</sup> September, 2015 (Annexure-P1) executed by the Petitioner with the Respondent is valid and subsisting;
  - ii. Declare that the Supplemental Agreement dated 24<sup>th</sup> September, 2018 (Annexure-P19) executed by the Petitioner under duress and compulsion and in violation of tariff order dated 02<sup>nd</sup> May, 2016 is illegal, void ab-initio and not binding on the Petitioner.
  - iii. Pass such other incidental orders including an order as to costs, as may be appropriate under the facts and circumstances of the present case.
2. The facts submitted by the petitioner are:
  - a. The Petitioner is a Farmer by profession. The Petitioner is also a registered Consumer of the Respondent Company serviced by installation bearing Revenue Register (RR) No. SIP-113 serviced by the Kolar Division.
  - b. The Petitioner executed a Power Purchase Agreement (PPA) dated 30.09.2015 at the tariff of Rs.9.56/- per unit for installing

Roof Top Solar Photo Voltaic system (SRTPV) of 1000 kWh capacity on the Roof Top of the premises and connected to the Electricity Service Connection of the Petitioner under Sreenivasapura Sub-Division of Kolar Division (Annexure-P1).

- c. As per the PPA, the Respondent agreed to a tariff of Rs.9.56 per unit, from the date of commissioning of the plant for the term of the PPA. The PPA was approved by the Commission by its letter dated 06<sup>th</sup> November, 2015 (Annexure-P3).
- d. The Respondent by its letter dated 08<sup>th</sup> January, 2016 directed the Petitioner to commission the project within 180 days (Annexure-P4).
- e. The Petitioner by letter dated 16<sup>th</sup> April, 2016 requested the Respondent to provide extension of one year to commission the project (Annexure-P5). The Respondent by its letter dated 30<sup>th</sup> April, 2016 granted approval for extension of PPA period for one year to installing the project. In the said approval the Respondent has not stated anything with respect to change of tariff (Annexure-P6).
- f. The Petitioner completed the installation of the project and submitted the Work Completion Report in the prescribed format to the Respondent on 31.12.2016 (Annexure-P7).

- g. On 30<sup>th</sup> December, 2016 Chief Electrical Inspector to Government granted a Statutory Approval to the installation of the Petitioner's plant (Annexure-P8).
- h. However, the Respondent, unilaterally, issued an Official Memorandum dated 30<sup>th</sup> December, 2016 stating that PPA executed with the Petitioner has been terminated with immediate effect (Annexure-P9).
- i. The Respondent issued an internal communication dated 19.01.2017 (Annexure-P10) to the concerned Meter Testing Division to conduct the Meter testing and depute its staff on urgent basis enabling service of the installation. Based on this internal communication, the Respondent accorded permission to the Petitioner on 20.01.2017 purchase the Meter (Annexure-P11).
- j. After due compliance of all internal technical and statutory formalities, the Respondent accorded the Commissioning Report on 02<sup>nd</sup> February, 2017 stating that the Petitioner's project is synchronized with the Respondent's grid (Annexure-P12).
- k. The Respondent by its Official Memorandum dated 02<sup>nd</sup> February, 2017 (Annexure-P13) revoked the termination of the PPA (made vide Official Memorandum dated 30<sup>th</sup> December, 2016) and issued a fresh Order applying the new tariff rate

as per the generic tariff Order dated 02<sup>nd</sup> May, 2016 (Annexure-P14). This communication was sent to the KERC and therefore, the KERC, as on 02<sup>nd</sup> February, 2017 was aware of the revocation of the termination of the PPA and subsequent application of the tariff as per the KERC Order dated 02<sup>nd</sup> May, 2016.

- l. The Petitioner aggrieved by the application of tariff order dated 02<sup>nd</sup> May, 2016 by its letter dated 01<sup>st</sup> February, 2017 (Annexure-P15) requested the Energy Minister to give direction to the respective authority to apply tariff as per the PPA dated 30<sup>th</sup> September 2015.
- m. The concerned Executive Engineer of the Respondent, in the light of the direction of the Energy Minister by letter dated 29<sup>th</sup> December, 2017 (Annexure-P16) requested the General Manager (DSM) of the Respondent to provide clarification with respect to payment to the Petitioner's project.
- n. The Respondent by its letter dated 22<sup>nd</sup> March, 2018 (Annexure-P17) directed the Petitioner to enter into Supplemental PPA for tariff of Rs.5.20 per unit. Though the Petitioner was entitled to a tariff of Rs.9.56 per unit under the subsisting PPA, under duress and having no other alternative, gave an undertaking letter dated 11<sup>th</sup> June, 2018 (Annexure-P18) agreeing to receive

Rs.5.20 per unit subject to the orders to be passed by KERC. The Respondent never released any payment and forced the Petitioner to execute a Supplemental Agreement in terms of the Undertaking. The Petitioner signed the Supplemental PPA dated 24.09.2018 (Annexure-P19) agreeing to receive a payment of Rs.5.20 per unit.

- o. The Respondent by its letter dated 22<sup>nd</sup> October, 2018 (Annexure-P21) suppressing the extension of time granted by its letter dated 30<sup>th</sup> April, 2016 (Annexure-P6) and Official Memorandum dated 02<sup>nd</sup> February, 2017 (Annexure-P12) requested the Commission to give approval to the Supplemental PPA.
- p. The Commission by its letter dated 31<sup>st</sup> October, 2018 (Annexure-P22) has asked the Respondent to explain why the Petitioner's project has not been cancelled so far. The Commission by letter dated 27<sup>th</sup> December, 2018 (Annexure-P24) declined to grant approval to the Supplemental PPA signed between the Petitioner and the Respondent and without giving an opportunity to the Petitioner, cancelled the PPA dated 30<sup>th</sup> September, 2015 and further directed the Respondent to enter fresh PPA with the Petitioner for a reduced tariff of Rs.3.56 per unit.

**OP No.39/2019**

---

- q. Consequently, Respondent by its letter dated 03<sup>rd</sup> January, 2018 (Annexure-P25) has directed the Petitioner to comply with the KERC letter dated 27<sup>th</sup> December, 2018 within seven days from the date of the letter.
- r. Aggrieved by the unilateral decision taken by the KERC, the Petitioner filed WP No. 6033/2019 (Annexure-P26). After hearing all the parties, the Hon'ble High Court of Karnataka has disposed of the petition by passing the order dated on 20<sup>th</sup> March, 2019 with a direction to approach KERC by filing a petition. Hence, this petition.
3. The grounds urged by the petitioner are:
- a. The PPA dated 30<sup>th</sup> September, 2015 executed by the Petitioner with the Respondent still subsists. Even though the PPA was initially terminated, unilaterally by the Respondent vide Official Memorandum dated 30<sup>th</sup> December, 2016, the same has been revoked by the Respondent vide its order dated 02<sup>nd</sup> February, 2017. Further to this order the Respondent has executed Supplemental PPA dated 24<sup>th</sup> September 2018. This Supplemental PPA was submitted to the KERC for approval which was within the knowledge of the KERC. Even then the KERC refused to recognize the same without assigning any reason or rationale. The Respondent is bound by the terms of

the PPA while effecting termination. The procedure for termination of PPA is mentioned in the PPA. No such procedure was followed while issuing the termination letter vide O M dated 30<sup>th</sup> December, 2016. Hence, the Respondent has not only revoked the unilateral termination made earlier but has also executed a supplemental PPA recognizing the subsistence of the PPA dated 30<sup>th</sup> September, 2015. There is no need for any specific approval from the KERC to the SPPA. The KERC in several cases has specifically stated so and issued a generic letter to all Distribution Licensees not to send any Supplemental PPAs for approvals. However, in this specific case, the KERC has not only summoned Supplemental PPA for approval but also refused to accord its approval, which is hostile discrimination.

- b. The KERC in its letter dated 27<sup>th</sup> December, 2018 has directed the Respondent to pay a tariff at variance with the subsisting PPA. This amounts to a new tariff determination which is not permitted to be done by way of a letter. The KERC never accorded an opportunity of hearing to the Petitioner before declining to grant of approval to the Supplemental PPA. KERC has never accorded an opportunity of hearing before reducing the tariff substantially.



- c. A Regulator, in the name of regulating cannot compel or prohibit execution of contract by its Licensee. Once a concluded contract is approved by the Regulator, the same cannot be revisited to alter the price. The PPA approved by the KERC does not contain any stipulation as to the time period within which the project has to be completed. Even though the Petitioner was not bound to complete the project within the stipulated time period, the Respondent by issuing letter dated 30<sup>th</sup> April, 2016 compelled the Petitioner to complete the project within 30<sup>th</sup> April, 2017 i.e., one year from the date of issuance of the letter dated 30<sup>th</sup> April, 2016. Though not bound under the contract, the Petitioner completed the project well within one-year time prescribed as is evident from the Work Completion Report dated 31<sup>st</sup> December, 2016. Therefore, the contention that there was a delay in commissioning the project and consequently the tariff has to be reduced is baseless and illegal. The project was completed in December, 2016 as is evident from the competition certificate and CEIG's approval but the Respondent chooses to certify synchronised the project with the Grid on 02<sup>nd</sup> February, 2017.
- d. The KERC, while approving the PPA vide its letter dated 06<sup>th</sup> November, 2015, did not impose any condition that the project

has to be completed within any stipulated time. As the PPA as approved by KERC's letter dated 06<sup>th</sup> November, 2015, did not contain any time stipulation, it was illegal on the part of the Respondent to prescribe any new condition vide its letter dated 30<sup>th</sup> April, 2016. Therefore, Respondent is bound to honour the PPA and the tariff at Rs.9.56 per unit.

- e. When the Respondent revoked the termination of PPA vide its order dated 02<sup>nd</sup> February, 2017, it has applied the new tariff of KERC as per the Order dated 02<sup>nd</sup> May, 2016. BESCOM had no authority to apply any particular tariff order of KERC to a PPA where the price has been approved by KERC. KERC in its order dated 02<sup>nd</sup> May, 2016 has amply clarified in paragraph 5 as follows:

*"In respect of plants for which PPAs that have been entered into prior to 01<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".*

- f. The Respondent had stipulated time up to 30<sup>th</sup> April, 2017 vide its letter dated 30<sup>th</sup> April, 2016. Therefore, even as per KERC's Order

**OP No.39/2019**

---

dated 02<sup>nd</sup> May, 2016, the Petitioner is entitled to the tariff as per KERC's Order dated 10<sup>th</sup> October, 2013 i.e. Rs.9.56 per unit.

4. Upon issuance of Notice, the Respondent entered appearance through its Counsel and filed Statement of Objections as follows:

a. As per the SRTPV guidelines of the Respondent, the Petitioner had to commission the plant within 180 days from execution of the PPA. Therefore, the Petitioner had to commission the plant on or before 29.03.2016. However, the Petitioner has failed to commission the plant within the stipulated timeframe and requested the Respondent to grant extension of time to commission the plant. In furtherance to the request of the Petitioner, the Respondent vide letter dated 30.04.2016 extended the time for commission the Petitioner's plant by 12 months i.e. upto 29.04.2017.

b. The Commission issued the Generic Tariff order dated 02.05.2016 wherein it stated that no further extension ought to be given for SRTPV Plant owners who have not commissioned their plant within 180 days and have executed the PPA as per the tariff order dated 10.10.2013 at the tariff of Rs. 9.56 per unit. In view of the same, on 18.05.2016 (Annexure-R1) the Respondent withdrew its circular dated 17.11.2015 granting extension of time to commission the plants.

**OP No.39/2019**

---

- c. The Commission vide letter dated 27.09.2016 directed the Respondent not to grant any extension of time for commissioning of the STRPV plant. In view of the non-completion of the Petitioner's plant within the stipulated timeframe, the Respondent vide letter dated 30.12.2016 terminated the PPA. The said termination was not challenged by the Petitioner before any fora.
- d. The Respondent vide letter dated 02.02.2017 allowed the Petitioner to commission the plant as per Generic Tariff order of the Commission dated 02.05.2016 and the plant was commissioned on 02.02.2017.
- e. The Petitioner executed a Supplemental PPA on 24.09.2018 incorporating the tariff of Rs. 5.20 per unit as per Generic Tariff Order dated 02.05.2016. The Respondent vide letter dated 22.10.2018 submitted the Petitioner's Supplemental PPA to the Commission for approval. In response to the same, the Commission vide letter dated 31.10.2018 directed the Respondent to submit a report with reasons for not terminating the Petitioner's PPA despite there being delay in commissioning of the plant and delay in executing the Supplemental PPA. The Respondent vide letter dated 01.12.2018 communicated to the Commission that the Petitioner's PPA was

**OP No.39/2019**

---

terminated on 30.12.2016. The Commission vide letter dated 27.12.2018 declined the request to approve the Supplemental PPA in view of termination of the PPA and also directed the Respondent to execute a fresh PPA with the Petitioner at the tariff of Rs.3.56 per unit. Thereafter, the Respondent vide letter dated 03.01.2019 called upon the Petitioner to execute a fresh PPA incorporating the tariff of Rs.3.56 per unit.

- f. The Petitioner has filed this petition contending that it is entitled to tariff of Rs.9.56 per unit as per the PPA dated 30.09.2015 and that it had executed Supplementary PPA dated 24.09.2018 under duress. The Petitioner has not challenged the termination Notice by the Respondent. Therefore, the question of declaring that the PPA dated 30.09.2015 is valid would not arise.
- g. The time frame ordinarily approved by the Commission for installing SRTPV project on an existing building is 180 days from the date of PPA. As per the Solar Policy/guidelines, the Petitioner had to install the plant in accordance with guidelines issued by the concerned ESCOM. In furtherance to the Solar Policy, the Respondent has issued Guidelines for establishment of Solar Roof Top Projects. Even as per the Guidelines of the Respondent (Annexure R-2), for SRTPV applicants having existing buildings, the time prescribed is 180 days

i.e., 6 months. The said Policy of the Respondent is in public domain and known to all. In spite of the Petitioner having knowledge about the same, he has failed to commission the plant within the stipulated timeframe.

- h. The Commission has clearly directed that PPAs executed as per the tariff order dated 10.10.2013 are eligible to the tariff of Rs. 9.56 per unit, provided they commission the SRTPV plants within 180 days. In the present case, the Petitioner has failed to commission the plant within 180 days from the date of execution of the PPA. Therefore, the Petitioner cannot be permitted to avail the benefit of higher tariff.
- i. The Commission vide letter dated 27.12.2018 has clarified that parties cannot execute Supplementary PPA in view of the termination of PPA on 30.12.2016. Further, the Commission noted that the Petitioner has commissioned the plant with capacity of 1000 kW in violation of load restriction imposed by the Commission. Therefore, the Commission directed the parties to execute a fresh PPA at tariff of Rs.3.56 per unit.
- j. No reasoning has been offered by the Petitioner indicating the cause for delay in commissioning of the plant. Therefore, the

Petitioner is not entitled to any extension of time and ought pay the revised tariff of Rs.3.56 per unit for the energy, subject to the Petitioner executing a fresh PPA. The tariff of Rs.3.56 per unit is the tariff that is prevailing as on date, in terms of the generic tariff order dated 18.05.2018. The Respondent is bound by the said order. Therefore, any PPA executed during the control period of the Order dated 18.05.2018 would have to be executed at the tariff prevalent. Therefore, the question of executing a PPA at a higher tariff would not arise.

- k. With regard to the allegation of the petitioner that the Supplemental PPA dated 24.09.2018 was executed under duress is concerned, the Petitioner has executed the Supplementary PPA voluntarily. However, the said PPA has never been given effect to due to non-approval of the same by the Commission. Therefore, the said prayer is unsustainable and cannot be granted. It is settled law, that academic questions will not be decided. Therefore, question of considering this prayer would not arise.
- l. The averment that the Respondent has unilaterally terminated the PPA is untenable and denied. The petitioner has failed to commission the plant within the stipulated timeframe. Therefore, the Respondent has rightly terminated the PPA.

**OP No.39/2019**

---

- m. The averment that Respondent vide letter dated 02.02.2017 has revoked termination of PPA is untenable and denied. There has been no revocation as alleged. Permitting the Petitioner to commission the plant cannot be construed to be revocation of the terminated PPA.
- n. The averment that the Commission refused to approve the PPA without assigning any reason or rationale is untenable and denied. The process of approval or otherwise of a PPA does not involve consideration of views of either party to the contract. The Commission was of the opinion that in view of termination of original PPA on 30.12.2016, question of execution of Supplementary PPA does not arise.
- o. The averment that no approval of supplementary PPA is required by the Commission is untenable and denied. It is submitted that as per Electricity Act, 2003, and KER Act, 1999 approval of the PPA by the Commission is mandatory.
- p. The Petitioner is being paid at Rs.3.57 per unit as per the order of Hon'ble High Court dated 20.03.2019.
- q. The averment that the Commission cannot alter the price stipulated in concluded contract is untenable and denied. The power of the State Commission to alter the terms of a concluded contract has been examined in several cases and it is settled law that a



concluded contract can be altered when the same is permitted by the provisions of the Act and Regulations and if there is any change in circumstances or if public interest warrants the same. Under the Act, the Commission is the ultimate tariff fixing authority in the State. The Respondent has prayed for dismissal of the Petition.

- 5) We have heard the learned counsel for the parties. The following issues are raised for our consideration:-
- (1) Whether time was not the essential factor for completion of the works of the SRTPV System, as claimed by the Petitioner?
  - (2) Whether the works of the SRTPV System were completed, within the stipulated period, for commissioning of the said System?
  - (3) Whether the Respondent has made out sufficient grounds for cancellation of the PPA dated 30.9.2015?
  - (4) Whether the Petitioners are entitled for any relief(s)? If so, to what relief(s)?
  - (5) What Order?
- 6) After considering the submissions of the parties and the material on record, our findings on the above issues are as follows:

**OP No.39/2019**

---

- 7) ISSUE No.(1): Whether time was not the essential factor for completion of the works of the SRTPV System, 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 System as the PPA does not contain any specific clause stipulating the time, within which the SRTPV System has to be completed. Therefore, imposition of any time limit, by way of any letter or direction by the Respondent (BESCOM) is not valid and not binding on the Petitioner. The petitioner has also relied upon the Respondent (BESCOM)'s letter dated 30.4.2016, which allowed extension of time from 180 days upto one year, for completion of the works of the SRTPV System, on payment of certain charges.
- (b) Though the above contention of the Petitioner appears to be attractive, the same is not acceptable, 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, BESCOM 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 (BESCOM) had submitted the draft Guidelines to this Commission, for approval, vide its letter bearing No.BESCOM/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 BESCOM 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 Petitioner, 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 (BESCOM) 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.

(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 any 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 System, 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 Respondent had issued a Circular dated 17.11.2015 providing for extension of time to install the SRTPV system. The Circular dated 17.11.2015 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 from six months to twelve months, after collecting certain re-registration fees 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 of the Commission 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 Format-6. Therefore, the Respondent (BESCOM) cannot issue the Circular, without the approval of this Commission, for extension of time. It is 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 is 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 System, though such a term was not contained specifically in the PPA. Therefore, we answer Issue No.(1), in the negative.

8) ISSUE No.(2): *Whether the works of the SRTPV System were completed, within the stipulated period, for commissioning of the said System?*

(a) The Petitioner has contended that, the installation works of the SRTPV System, was completed within one year from 30.4.2016, the date on which the approval for installing the SRTPV Systems was extended by the EE, BESCOM, Kolar. The Respondent (BESCOM) has contended that the Petitioner had not completed the installation works of the SRTPV System, within 180 days from 30.9.2015, the date of execution of the PPA.

(b) We note that as per the Guidelines, the Format-6, i.e., approval for installation of the SRTPV System, should be issued, soon after the receipt of the Technical Feasibility Report and before executing the PPA. Therefore, issuance of the approval dated 8.1.2016 (ANNEXURE-P-4), for installing the SRTPV System, was improper and it should have been earlier to the date of execution of the PPA, i.e., before 30.9.2015. Therefore, as per the Guidelines, the installation works of the SRTPV Systems should have been completed within 180 days, from the date of the PPA. The submission of the learned counsel for the Respondents (BESCOM) to this effect appears to be correct. The issuance of the approval dated 8.1.2016 (ANNEXURE-P-4) appears to have been created just to help the Petitioner, because there was no reason for the EE, BESCOM, not to issue approval for installing the SRTPV System, 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 PPA. The Petitioner could not have completed the works of the SRTPV System, within 180 days from the date of the PPA i.e., before 29.3.2016, as can be seen from the pleadings.



**OP No.39/2019**

---

- (c) Even assuming that, the Petitioner was entitled to 180 days from the date of approval issued by the EE of Kolar i.e., from 8.1.2016 (ANNEXURE-P-4), it is noted that the Petitioner had not completed the installation works of the SRTPV System, within 8.7.2016. This can be made out from the Work Completion report dated 31.12.2016 (Annexure P-7), which shows the date of installation of solar PV modules as 17.10.2016 and date of installation of inverter as 25.10.2016. It is mentioned in the OM dated 30.12.2016 issued by the Respondent (Annexure P-9), that as on 6.12.2016, the date of inspection by the Respondent's officials, the installation works of the SRTPV System were not completed and hence, the PPA was cancelled.
- (d) We have held in the preceding paragraphs that the issuance of circular dated 17.11.2015 providing for extension of time to complete the SRTPV projects is beyond the power of the Respondent and, therefore, the extension of time granted on 30.4.2016 for a period of one year for completion of the project, is not valid and the petitioner cannot rely on such extension of time.

(e) 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 System. Therefore, we answer Issue No.(2), in the negative.

9) **ISSUE No.(3):** *Whether the Respondents have made out sufficient grounds for cancellation of the PPA dated 30.9.2015, executed by the Petitioner?*

(a) The Solar Policy of the State, 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. The Capital Cost for installation of the SRTPV System was reducing considerably, from 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 there was 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 the capacity of the SRTPV Systems which could be installed, was limited 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.

- (b) In the present case, the extension of time in Format-6 was granted on 30.4.2016 (Annexure P-6), subsequent to the issuance of the 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. 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 and the restriction on installed capacity of the SRTPV System.

(c) The creation of any document, with an intent to defeat the rights of the Respondent (BESCOM) during the course of installing the SRTPV System, can also be treated as a ground for cancellation of the PPA. In the present case, the Format-6 must have been issued prior to the execution of the PPA, as noted above. The Petitioner has requested for extension of time for installation of the SRPTV system vide letter dated 16.4.2016 (Annexure P-5). It is stated in this letter by the petitioner that he is unable to complete the work within 180 days as he could not arrange the funds. As can be seen from the Work Completion Report dated 31.12.2016, the petitioner started the installation work only subsequent to 16.4.2016. In other words, there was no significant progress in the works of installation of the SRTPV System, till 16.4.2016. By this time, the eligible period of six months, for installing the SRTPV System, had lapsed. This must be the reason for the Petitioner to obtain the approval dated 30.04.2016, for installing the SRTPV systems, by illegal means. Such an illegal act of an official of the Respondent (BESCOM), is not binding on the BESCOM.

(d) 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 PPA executed by the Petitioner is 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 PPA executed by the Petitioner, is liable for cancellation.

(e) For the above reasons, we answer Issue No.(3), in the affirmative.

10) **ISSUE No.(4)**:Whether the Petitioners are entitled for any relief(s)? If so, to what relief(s)?

(a) The petitioner has contended that the SPPA dated 24.09.2018 executed at the tariff of Rs.5.20 per unit, need not have been approved by the Commission. Therefore, he further contended that while scrutinising the SPPA, the Commission could not have made the observations stated in its communication dated 27.12.2018 (Annexure P-24) and could not have directed the parties to enter into fresh PPA at Rs.3.56 per unit. The Respondent has contended that the approval of PPA is mandatory under the provisions of the Electricity Act, 2003 and KER Act, 1999. The perusal of the provisions in Section 11 (1) (a) of the KER Act, 1999 and Section 86 (1) (b) of the Electricity Act, 2003, makes it clear that all power purchases made by distribution licensees have to be regulated and approved by the Commission.

(b) In this case, it was found that, the PPA was cancelled, for the delay in commissioning of the SRTPV system. However, even after cancellation of the PPA, the project was commissioned on 02.02.2017 after one year five months from the date of execution of the PPA. The SPPA was executed on 24.09.2018 to incorporate the change in the tariff prevalent on the date of commissioning of the

**OP No.39/2019**

---

project (Rs.5.20 per unit, as per the generic tariff order dated 2.5.2016). The delay in execution of the SPPA at the tariff of Rs.5.20 per unit, is not explained by either parties. The Respondent sent the SPPA for approval of the Commission. The Commission observed the following aspects: On 02.02.2017 BESCO had issued an OM stating that, the project is commissioned on 02.02.2017 with the revised tariff of 5.20 per unit, as per the generic tariff order dated 02.05.2016. Keeping in view the load restrictions with reference to the sanctioned load; that allowing 1000 kW installed capacity, as per the PPA cannot be allowed as the same is more than sanctioned load of 30 kW. For these reasons, the Commission noted that the SPPA submitted by the BESCO would not qualify for approval. As on the date of execution of SPPA dated 24.09.2018, the tariff prevalent was Rs.3.56 per unit. Considering the facts that BESCO had allowed commissioning of the project of 1000 kW capacity without load restrictions and that the consumer had already made investments on 1000 kW project, and the project was commissioned on 2.2.2017, the Commission addressed a letter dated 27.12.2018, informing BESCO to enter into a fresh PPA at the tariff of Rs.3.56 per unit. However, noting that the officer concerned had allowed commissioning of the project with the load of 1000 kW, the

Commission permitted the same, considering that the consumer had already made investments on the project. Therefore, the Commission directed BESCO to pay for any surplus energy injected to the grid, till 17.05.2018, a tariff of Rs.3.57 per unit (APPC rate as on 02.02.2017), and from 18.05.2018 onwards, Rs .3.56 per unit (generic tariff as per the Order dated 18.5.2018) could be offered.

c. The petitioner challenged the letter dated 27.12.2018 of the Commission before the Hon'ble High Court in WP No. 6033/2019 which was disposed of on 20.3.2019, directing BESCO to make payment in terms of the letter dated 27.12.2018 and directing the petitioner to approach the Commission for adjudication of the dispute. Thereafter, this petition is filed.

d. We note that the KERC (Implementation of SRTPV plants) Regulations, 2016 had come into effect from 15.12.2016, before the commissioning of the petitioner's project. Clause 4 of the said Regulations and the generic tariff order dated 2.5.2016 specify restriction of installed capacity to the sanctioned load of the premises. In this case, the sanctioned load was 30 kW but the SRTPV plant was of 1000 kW, which amounts to violation of the Regulations and the generic tariff order dated 2.5.2016.



e. The PPA was cancelled on 30.12.2016 but the same was not challenged. The Petitioner had come forward to commission the SRTPV System, at the rate specified in the Order dated 2.5.2016. In pursuance of the same, the SRTPV System was commissioned. It is found that, the restriction of capacity as noted above was not followed. Therefore, the Petitioner is entitled to a tariff of Rs.3.56 per unit only. Therefore, the Petitioner is not entitled to any of the reliefs, sought for.

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

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

For the foregoing reasons, we pass the following:

**ORDER**

- (a) It is declared that, the Petitioner is not entitled to any of the reliefs, sought for, on the grounds urged in the Petition;
- (b) The Petitioner shall be paid a tariff of Rs.3.56 (Rupees Three and Paise Fifty Six only) per unit under net metering, for the electricity generated and injected from his Solar Power Plant of 1000 kW capacity, for a period of 25 (twenty five) years, from the date of commissioning of the Plant, upon entering

**OP No.39/2019**

---

into an appropriate fresh PPA with the 1<sup>st</sup> Respondent (BESCOM), within 4 (four) weeks from the date of this Order;

- (c) The Petitioner shall be at liberty to sell the electricity, generated from his Solar Power Project, to third parties, if he fails to execute a fresh PPA, as mentioned above;
- (d) If the Petitioner chooses not to execute a fresh PPA, as mentioned above, then he shall not be entitled to inject the energy into the Grid, after 4 (four) weeks from the date of this Order, without obtaining approval for open access, for sale of energy to third parties; and,
- (e) Any unauthorized injection of energy into the Grid from the Solar Power Project of the Petitioner, shall not be entitled for any compensation.

Sd/-  
(SHAMBHU DAYAL MEENA)  
CHAIRMAN

Sd/-  
(H.M. MANJUNATHA)  
MEMBER

Sd/-  
(M.D. RAVI)  
MEMBER