

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 25th September, 2018

Present:

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

OP No.98/2016

BETWEEN:

Shri S. Basavarajappa,
S/o Sanna Hanumappa,
Thurchgatta Village,
Belavonur Post,
Davanagere Taluk and District.

.. **PETITIONER**

[Represented by Shri Nagaraju, Advocate]

AND:

- 1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 2) Shri C. Nataraja,
General Manager (Ele.),
DSM, Corporate Office,
Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 3) Sri. P. Krishna Murthy,
General Manager (Ele.),
DSM, Corporate Office,
Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.

- 4) The Executive Engineer (Ele),
O&M Division Office, BESCO, Davanagere.
- 5) The Assistant Executive Engineer (Ele),
Rural Sub-Division-1, BESCO, Davanagere.
- 6) The Asst. Engineer (Ele),
Rural Sub division – 1, BESCO, Davanagere.

.. **RESPONDENTS**

[Respondents represented by Justlaw, Advocates]

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ORDERS

- 1) This is a Petition filed by the Petitioner, under Section 86(1)(f) of the Electricity Act 2003, read with Regulations 31 and 34 of the Karnataka Electricity Regulatory Commission (Licensing) Regulations, 2004. The Petitioner has prayed:
 - a) To declare that, the letter dated 16.11.2016, issued by Respondent No.3 to the Petitioner, is null and void;
 - b) To give statutory approval to the Power Purchase Agreement, executed between the Petitioner and Respondent No.4, on 09.12.2015;
 - c) To appoint a Commissioner, to investigate the monetary loss incurred by the Petitioner, due to the letter dated 16.11.2016 and award the amount to the Petitioner;
 - d) To extend the period, for installing the 1000 kWP Solar STPV System, by Eighteen months, from the date of final disposal of this Petition; and,
 - e) to pass any other Order, as deemed fit.

- 2) The facts of the case, as submitted in the Petition, may be summed up, as follows:
- (a) The Petitioner intended to install a SRTPV System of 1000 kW Capacity on the Roof Top of the premises, situated at Thurchgatta Village, connected to electricity service connection, bearing No. RR No.TGP656 and entered into a PPA on 09.12.2015 with the Respondents. The Petitioner received a letter from the Commission dated 01.01.2016, stating that the approval of the PPA was subject to furnishing the proof of the existing roof of 12,082 Sq.Mtrs to the Commission, within 15 days. This is despite, the existing roof top in the warehouse being 1,00,000 Sq.Feet and larger than the area prescribed by the Commission and the Petitioner, having already submitted documents to Respondent Nos. 4, 5 and 6, with regard to the proof of the existing roof of 12,082 Sq.Mtrs, prior to receipt of the letter dated 01.01.2016.
- (b) As per the BESCO's website, the time limit for the installation work of the SRTPV is a period of one year from the date of PPA dated 09.12.2015. Hence, the Plant had to be commissioned, within 09.12.2016.
- (c) The Respondent No.3, vide Order / Letter dated 16.11.2016, informed the Petitioner that the PPA is 'non-enforceable' or 'non-exist', as the Commission's approval had lapsed.

- 3) The grounds urged by the Petitioner, in support of his prayers, may be summarized, as follows:
- (a) As per the terms of the PPA, the PPA will be in force for a period of 25 years from the date of commissioning of the SRTPV System, unless terminated by the Respondents by serving a written Notice, specifying the breach and calling upon the Petitioner to remedy / rectify the same, within 30 days after the delivery of Notice. Hence, the letter dated 16.11.2016, is a breach of Article-9 of the PPA, by the Respondents and is against the principles of natural justice.
- (b) It is the duty and obligation of the Respondents to submit relevant documents to the Commission, which were already submitted by the Petitioner to Respondent Nos. 4 to 6 prior to the letter dated 01.01.2016 issued by the Commission. Owing to negligence and dereliction of duty by the Respondents, the Petitioner is forced to suffer huge monetary loss and mental torture, for which the Respondents are liable to pay damages.
- 4) On issuance of Notice, the Respondents appeared through the counsel and the Statement of Objections, filed by Respondent No.4 and Respondent No.6, may be stated, as follows:
- (a) On 21.12.2015, the Respondents addressed a communication to the Commission seeking approval of PPA dated 09.12.2015. On 01.01.2016, the Commission accorded approval to the PPA, subject to furnishing of

proof of the existing roof of 12,082 Sq.Mtrs to the Commission, within 15 days. However, the Petitioner failed to furnish the said information to the Commission.

- (b) On 16.11.2016, the Respondents addressed a letter to the Petitioner, informing that, as per the Commission's directions, for the SRTPV units having a capacity of 500 kWp and above, the approval of the Commission for the PPA is mandatory and only on receipt of such approval, the applicant should commence the installation work for establishing the SRTPV unit. However, as the Petitioner had not furnished the information, sought for, by the Commission, the Petitioner was informed that the PPA dated 09.12.2015 is not enforceable.
- (c) The communication dated 01.01.2016 of the Commission has also been furnished to the Petitioner. Nothing prevented the Petitioner from furnishing the information, sought for, by the Commission and admittedly, the Petitioner has not furnished such information.
- (d) There is no negligence or dereliction of duty, on the part of the Respondents, as alleged. The Petitioner has not suffered any monetary loss or damage, as alleged. Without obtaining the approval of the Commission to the PPA, the Petitioner has allegedly proceeded to commence work, for establishment of the SRTPV plant at his risk. The Respondents cannot be made liable to defray the cost of the same. In any event, except for making bald statements with regard to the alleged

monetary loss, no material has been placed to substantiate the same. Hence, the claim made for damages or appointment of a Commissioner to assess the damages, is not maintainable.

- (e) In the communication dated 16.11.2016, the Respondent has only communicated to the Petitioner the contents of the letter dated 02.11.2016 of the Commission. There is no infirmity in the same.
- (f) For the existing buildings, the Commission has fixed the time period for commissioning as 180 days. For the buildings under construction, one year from the date of PPA has been permitted.
- (g) The Commission, in its Order dated 02.05.2016, has clearly stated that, no extension is to be given for the PPAs, entered into, at the tariff of Rs.9.56/unit.
- (h) When the PPA has not been approved, the question of granting the extension does not arise. In the absence of approval of the PPA, the same does not constitute a binding contract between the parties. The Commission has specified the conditions, subject to which the approval has been granted and the Petitioner has not satisfied the said condition of furnishing the roof space available. Hence, there is no contract between the parties and the question of applicability of Clause 9 of the PPA would not arise. There has been no violation of the principles of natural justice, as alleged.

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- 5) The learned counsel for the Petitioner, who was present and sought for time for making his oral submissions on six occasions when the case was posted, remained absent, subsequently, on all the dates from 26.10.2107, when the case was listed. The learned counsel for the Respondents submitted that there were no additional arguments, apart from the written objections filed. Hence, the pleadings and arguments were taken as concluded.
- 6) We have perused the averments made in the Petition, the Respondents' objections and the material placed on record. The following issues would arise for our consideration:
- (1) Whether the PPA dated 09.12.2015 has lapsed, due to non-production of proof of adequate roof area by the Petitioner to the Commission, within the time stipulated or within a reasonable time thereafter?
 - (2) Whether the Petitioner is entitled to any of the reliefs claimed?
 - (3) What Order?
- 7) After considering the material placed on record, our findings on the above issues are as follows:
- 8) **ISSUE No. (1):** *Whether PPA dated 9.12.2015 has lapsed, due to non-production of proof of adequate roof area by the Petitioner to the Commission, within the time stipulated or within a reasonable time thereafter?*
- (a) Admittedly, the parties entered into a PPA dated 09.12.2015 for sale of power from the SRTPV Plant, to be installed on the existing roof top of the

premises of the Petitioner, pursuant to an application made by the Petitioner and the Respondent No.1 sought approval of the Commission for such PPA. The Commission, vide letter dated 01.01.2016, to the Respondent No.1, conveyed approval, subject to production of proof of adequate the existing roof, within 15 days. Admittedly, a copy of the said letter was sent to the Petitioner, by the Commission and also forwarded to the Petitioner, by the second Respondent, in its letter dated 16.01.2016.

- (b) It is the case of the Petitioner that, he had produced the required documents to the Respondents, even before the Commission's letter dated 01.01.2016 and the Respondents ought to have produced the same to the Commission. It is not his case, however, that he had produced the documents to the Commission, in response to its letter dated 01.01.2016, within the stipulated time of fifteen days or some reasonable time, thereafter. It is also not his case that, pursuant to receipt of the letter dated 01.01.2016, he had immediately written to the Respondents or the Commission, informing that he had already produced the documents to the Respondents. Admittedly, only on 20.09.2016 (as per pages 26-27 of the Petition), the Petitioner requested the Respondent No.5 to forward the copies of the documents, already furnished by him and seek final approval for the PPA. The Petitioner has not disputed the fact that, the Respondents also have not produced to the Commission, the proof required to comply with the conditional approval granted, within fifteen days of the Commission's letter dated 01.01.2016 or some reasonable time thereafter.

- (c) The Respondents have produced a copy of the letter dated 02.11.2016 (ANNEXURE R-1), addressed by the Commission to Respondent No.1, the relevant portion of which reads, as follows:

“...I am directed to inform that, in respect of the PPAs entered into between BESCO and the above applicants for SRTPV projects, the Commission had communicated its approval to the PPAs vide letter dated 01.01.2016 subject to furnishing the proof of existing roof area to the Commission within 15 days. So far, the Commission has not received any document in support of the proof of existing roof area in respect of these SRTPV projects either from your office or from the PPA applicants. That for the failure to furnishing the required proof within 15 days, the approval accorded by the Commission to the PPAs has lapsed.”

- (d) Based on the above letter, the Respondent No.2 has issued the impugned letter dated 16.11.2016, informing that, the approval accorded to the PPA has lapsed and hence, the PPA is 'non-enforceable or non-exist'. We find force in the Respondents' contention that, in the absence of an approved PPA, the Respondents were not required to seek its termination, by issuance of Default Notice, under Article 9 of the PPA. The Petitioner has not denied the contention of the Respondents that, no approval for the installation of the SRTPV Plant was granted by the Respondents and also that, no time extension for commissioning the Plant, was granted by the Respondents. Other than producing a copy of a print-out, purportedly from the website of the Respondents, which is claimed by the Petitioner to have shown time extension of one year, for commissioning the Petitioner's Plant, no verifiable documentary proof has been produced by the Petitioner, to refute the contentions of the Respondents. We are,

therefore, of the considered opinion that, when the condition imposed for the grant of approval of the PPA in the case has not been complied with, either within the specified time or some reasonable time thereafter, the conditional approval granted has lapsed and is no longer valid.

(e) We, therefore, answer Issue No. (1), in the affirmative.

9) **ISSUE No.(2)**: *Whether the Petitioner is entitled to any of the reliefs claimed?*

(a) The Petitioner, contending that he has taken steps to install the project, has produced the copy of the Estimate No.154/23-11-15 ,prepared by the Respondents 5 & 6, in respect of the SRTPV Plant and the photographs of the godown. However, no material is produced to show the actual implementation and the investment made, in the proposed Project. Mere production of estimate, does not imply that investment is actually made on the Project. Admittedly, the Petitioner, on 20.09.2016 (as per pages 26 - 27 of the Petition) had requested for final approval of the PPA and also for the installation of the SRTPV Plant. It is, therefore, safe to infer that, the Plant is not commissioned, till date. While determining generic tariff for the electricity generated from Renewable Energy Sources, the Commission, considers among other parameters, the Capital Cost, which is the main component. The period, during which the investment is made on the Project, is one of the relevant factors to decide whether a Project is entitled to a particular tariff. The tariff for Solar Power Plants is declining sharply, in recent years, due to fall in the cost of panels and related equipment, coupled with the increase in efficiency. The Commission,

therefore, has been periodically reviewing the applicable tariff. While in its Order dated 10.10.2013 the Commission had determined tariff at Rs.9.56 per unit for the SRTPV Plants upto 1MW, in its subsequent Order dated 02.05.2016, the tariff determined is in the range of Rs.5.20 to Rs.7.08 per unit, depending on the capacity of the Plant. In the recent Order dated 18.5.2018, the tariff determined is Rs.3.56 per unit.

- (b) We have repeatedly observed while dealing with similar Petitions filed, on disputes involving the time to be allowed, for the installation of the SRTPV Plants, that a consumer intending to install a SRTPV Plant on the existing roof, could be allowed, only six months' time, for commissioning the Project, which is adequate and reasonable and that any delay in commissioning the Project, within the specified time would disrupt the operations of the Distribution Licensee, leading to revenue loss and possible imposition of penalty for not meeting the RPO and would also impact the consumer-tariff. The delay in commissioning of the Project would also mean, the Capital Cost becoming lower than what was reckoned for the tariff determination, at the relevant point of time, making the developer of the Project eligible, only for the tariff applicable, at the time of commissioning of the Project. Accordingly, the Commission, vide letter dated 27.09.2016, issued a direction to the Electricity Supply Companies (ESCOMs), to ensure completion and commissioning of the SRTPV Projects on the existing roofs, within the reasonably allowable period of six months, so as to be eligible for the tariff agreed to, in the PPA, in terms of the generic Tariff Order dated 10.10.2013, and also informed that, if there is any delay in commissioning of the Projects, the consumers

installing them, would be entitled for the revised tariff, as per the generic Tariff Order dated 02.05.2016.

- (c) We may point out that the above direction is in line with the following decision of the Commission, in its generic tariff Order dated 02.05.2016:

"The Commission, in supersession of its Order dated 10th October, 2013, decides that the norms and tariff determined in this Order shall be applicable to all new grid connected solar rooftop and small solar photovoltaic power plants, entering into Power Purchase Agreement (PPA) and commissioned on or after 2nd May, 2016 and upto 31st March, 2018.

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."

- (d) Admittedly, the Petitioner has not commissioned the Plant within the stipulated time of six months, so as to be eligible for the tariff determined in the Commission's Order dated 10.10.2013, which was mentioned in the PPA dated 09.12.2015, that has now lapsed. We also note that, admittedly, the Plant is not commissioned even within one year, from the date of PPA. The Petitioner would, therefore, be eligible for the tariff, as on the date of commissioning of the Plant, if he decides to implement the Project. We, therefore, hold that, approval cannot be granted to the PPA dated 09.12.2015 now, as prayed for by the Petitioner, and that any fresh

PPA entered into by the Petitioner, should be in terms of the Tariff Order prevalent as on the date of commissioning of the Plant.

- (e) We note that, the Petitioner has not produced any material to show the actual loss suffered, to substantiate the claim for damages for the alleged inaction / negligence, by the Respondents, in not producing the required information/documents, to the Commission. As noted by us earlier, the Petitioner has not denied, with any documentary proof, the assertion of the Respondents that, no approval for installation of the SRTPV Plant or extension of time for commissioning of the Plant was granted. Thus, we are unable to accede to the Petitioner's claim for damages.
- (f) Thus, we do not find any merit in the Petitioner's plea, made in support of the reliefs, sought for. Accordingly, we answer Issue No. (2) in the negative.

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

For the foregoing reasons, we pass the following:

ORDER

The Petition is dismissed.

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

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

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