

No.N 387/2017

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,

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

Dated: 27.02.2020

Present:

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

OP No.211/2017

BETWEEN:

Messrs Adani Green Energy (UP) Limited,
A Company registered under
the Companies Act, 1956
Adani House, Near Mithakhali Six Roads,
Navrangapura,
Ahmedabad-380 009.
(Represented by its Authorised Signatory)

... PETITIONER

[Represented by Smt. Poonam Patil,
Advocate, Bengaluru]

AND:

- 1) Bangalore Electricity Supply Company Limited,
A Company registered under the provisions
of the Companies Act, 1956
having its Registered Office at
K.R. Circle,
Bengaluru-560 001.
(Represented by its Managing Director)

- 2) Karnataka Renewable Energy Development Limited,
A Company registered under the provisions
of the Companies Act, 1956
having its Registered Office at
No.39, 'Shanthi Gruha',
Bharat Scouts and Guides Building,
Palace Road,
Bengaluru-560 001.
(Represented by its Managing Director)
- 3) Karnataka Power Transmission Corporation Limited,
A Company registered under the provisions
of the Companies Act, 1956
having its Registered Corporate Office
Kaveri Bhavan, K.G. Road,
Bengaluru-560 009.
(Represented by its Managing Director)
- 4) State of Karnataka,
Department of Energy,
Room No.236, 2nd Floor,
Vikasa Soudha,
Dr. Ambedkar Veedhi,
Bengaluru-560 001.
(Represented by its Additional Chief Secretary) ... **RESPONDENTS**

[Respondents-1, 3 & 4 are represented by
M/s JUSTLAW and Respondent-2 represented by
G.S. Kannur, Senior Advocate, Bengaluru.]

ORDERS

The petitioner has filed the present petition under Section 86 (1) (f) of the
Electricity Act, 2003, praying for the following reliefs:

- a) To call for records;

- b) To declare that the petitioner was prevented from performing the obligation under the Power Purchase Agreement (PPA) due to above referred 'Force Majeure' events affecting it;
- c) To grant concurrence to the Supplemental Power Purchase Agreement (SPPA) dated 17.12.2016; and
- d) To declare that 'Effective Date' under Article 3.1 of the PPA is the date on which the SPPA receives its concurrence from this Commission.

Alternatively:

- e) To declare that the 'Effective Date' under Article 3.1 of the PPA is the date on which the SPPA signed by the Petitioner and Respondent No.1 on 17.12.2016.

Alternatively:

- f) To declare that the 'Effective Date' under Article 3.1 of the PPA is the date on which the PPA approval letter of the Commission received by the Petitioner on 26.10.2016.
- g) If the Commission were to consider that there is a delay in fulfilment of the Conditions Precedent, the Commission may be pleased to condone the inadvertent delay caused for the reasons beyond the control of the Petitioner due to 'Force

Majeure' events affecting it in fulfilment of the Conditions Precedent.

h) To pass such other order/s including an order as to costs, to meet the ends of justice and equity.

2. The material facts stated by the petitioner for the disposal of the present petition may be stated as follows:

a) The 2nd Respondent Karnataka Renewable Energy Development Limited (KREDL) being the Nodal Agency of the 4th Respondent/ State of Karnataka (GoK), for facilitating the development of the renewable energy, had called for the Request for Proposal (RfP) for the development of 290 MW Solar Power Projects to be implemented in 17 taluks vide Notification dated 12.02.2016. Messrs Adani Green Energy Limited, a Company registered under the Companies Act, 1956 was the selected bidder for development of 20 MW Solar Photo-Voltaic Project in Holenarasipura taluk of Hassan district. The tariff discovered was Rs.4.79/- per unit for the energy to be delivered. KREDL issued Letter of Award and Allotment Letter dated 30.05.2016 as per Annexure-P1 to Messrs Adani Green Energy Limited, with other terms and conditions to be fulfilled by the said selected bidder. Pursuant to Letter of Award (Annexure-P1), the petitioner a Special Purpose Vehicle (SPV) was incorporated for the

development of Solar project and to execute the PPA with the 1st Respondent Bangalore Electricity Supply Company Limited (BESCOM). Accordingly, the petitioner and BESCOM entered into PPA dated 29.06.2016 (Annexure-P3) with all terms and conditions and the said PPA was approved by this Commission and the same approval was communicated through letter dated 14.10.2016 (Annexure-P4). The approval of the PPA was subject to certain corrections/modifications to be incorporated in the PPA by entering into a suitable SPPA between parties as narrated in the said approval letter.

- b) The PPA provides that 'Effective Date' is the date of approval of the PPA. The timeline fixed for achieving the Conditions Precedent is 8 months and for achieving the commissioning of the project is 12 months, from the 'Effective Date'. Therefore, the Conditions Precedent is required to be achieved on or before 13.06.2017 and the project is to be commissioned on or before 13.10.2017. Admittedly, the project in question was commissioned on 13.10.2017. However, the petitioner could not achieve the timeline fixed for fulfilling one of the Conditions Precedent namely; the production of documents evidencing clear title and the possession of the extent of land required for the project in the name of the petitioner as stated in Article 4.2 (e) of the PPA.

c) The Petitioner wrote letter dated 30.05.2017 (Annexure-P8) to the then Additional Chief Secretary to Government, Energy Department, stating the reasons for non-production of documents evidencing clear title and possession of the extent of lands required for the project. Therefore, it was requested to direct the 1st Respondent to waive the conditions of producing the required documents. The petitioner also wrote letters dated 10.06.2017 (Annexure-P9) dated 14.06.2017 (Annexure-P7) to the General Manager (Ele.) – Power Purchase, Corporate Office, Bengaluru, of 1st Respondent. In the letter dated 10.06.2017 (Annexue-P9), it is requested by the petitioner to accept the documents that would be submitted to KREDL for obtaining sanctions/approvals under Section 95 of the Karnataka Land Revenue (Amendment) Act, 2015 [for short KLR (Amendment) Act, 2015 and under Section 109 of the Karnataka Land Reforms Act, 1961 (for short KLR Act, 1961), as sufficient compliance of production of documents regarding clear title of the lands required for the Solar Power Project in the name of the Developer. The letter dated 14.06.2017 (Annexure-P7) narrates the documents produced before KREDL and application having been filed under Section 95 of the KLR (Amendment) Act, 2015. These, documents were said to be; (i) Consent letters from land owners to lease their lands for Solar projects; and (ii) Sworn Affidavit evidencing possession of lands by the petitioner.

- d) The 1st Respondent/BESCOM in response to the letter dated 14.06.2017 (Annexure-P7) of the petitioner replied as per letter dated 28.06.2017 (Annexure-P10) and acknowledged the receipt of the documents produced under Annexure-P7 and further stated that the land acquisition and the land conversion details had not furnished, thereby in this regard, penalty would be levied as per PPA terms and conditions.
- e) When the matter stood thus; the petitioner wrote letter dated 06.07.2017 (Annexure-P12) explaining the reasons for the delay in getting the documents of titles of the lands required for the project and contending that these reasons amounted to 'Force Majeure' event as per Article 14 of the PPA and that the petitioner was entitled to condonation of the delay in procuring the valid documents of title and thereby stating that the 1st Respondent was not entitled to impose penalty as per the terms of PPA for non-fulfilment of one of the Conditions Precedent of producing documents of title regarding lands. Again the petitioner in another letter dated 31.07.2017 produced along with Annexure-P12 requested not to proceed to levy penalty as suggested in the letter dated 28.06.2017 (Annexure-P10).
- f) In substance, the petitioner has stated the following grounds to claim extension of time or condonation of delay in producing the

documents of title relating to lands required for establishing the Solar project:

- i) delay in getting tentative evacuation approval from the 3rd Respondent KPTCL;
- ii) that there was delay in granting permission/approval under Section 95 of the KLR (Amendment) Act, 2015 and under Section 109 of the KLR Act, 1961; and
- iii) that the 'Effective Date' of the PPA should be considered as the date on which SPPA was signed by the Petitioner and Respondent-1 on 17.12.2016 or the date on which the approval letter of the Commission was received by the petitioner on 26.10.2016 and the date on which the SPPA should have been approved by the Commission.

g) Therefore, the petitioner had filed the present petition on 30.10.2017 praying for the reliefs as noted above:

3. Upon notice, the respondents appeared through Counsel and they filed separate statement of objections. We briefly state the material part of objection statements of each of the respondents as follows:

a) Statement of Objections of 1st Respondent/BESCOM:

That the petitioner had not produced any documents evidencing the clear title and possession of the lands required for the establishment of the Solar Project in the name of the petitioner, thereby this respondent had issued the reply letter dated 28.06.2017 (Annexure-P10), stating that the petitioner would be liable to pay penalty as per the terms of the PPA. This respondent has denied the grounds urged by the petitioner in support of his contention to claim the existence of 'Force Majeure' events.

b) Statement of Objections by 2nd Respondent/KREDL:

That on 05.10.2016, a Government Order was issued whereby this Respondent was directed to enter into a lease agreement with the land owners and, in turn, to sub-let the lands to Solar Project Developers after obtaining the necessary approvals. That the applications presented by the petitioner to this respondent were duly processed and forwarded to the Deputy Commissioner, Hassan district. However, there was no response from the Office of the Deputy Commissioner for a considerable period, thereby for the delay if any, this respondent could not be blamed.

c) Statement of Objections by 3rd Respondent/KPTCL:

The allegations made against this respondent are denied. This respondent stated its version of the events in Paras 6, 7, 9 & 10 of its objections. The gist of which is that this respondent was not at all responsible for the delay in acquiring the land by the petitioner for establishing the Solar project. It is contended that the petitioner itself was responsible for the delay in getting the Tentative evacuation approval dated 21.06.2017 as well as the Regular evacuation scheme dated 07.07.2017 produced collectively as per Annexure-P11. This respondent was relied upon Annexure-R3 & R6, different letters of petitioner addressed to this respondent, in support of this contentions. This respondent denied the averments of the petitioner that it had kept on hold the connectivity approval for want of approval of PPA by the Commission. That on 31.08.2016 (Annexure-R5), the petitioner requested this respondent not to process the Evacuation application dated 22.07.2016 (Annexure-R3), because of the decision for change in location of the project. Subsequently, on 04.05.2017 (Annexure-R6), the petitioner notified the change in location of the proposed Solar project from Adahalli village of Holenarasipura taluk to Galipura Kaval village of the said taluka and requested to process Evacuation scheme approval. Therefore, this respondent had contended that there was no fault on its part.

d) Statement of Objections filed by 4th Respondent/GoK:

That the procurement of land required for the project shall be the responsibility of the petitioner as per RfP condition. That as per the request of the petitioner, the GoK has issued Notification dated 05.10.2016 (Annexure-R1) permitting the KREDL to enter into lease with the land owners and subsequently sub-lease the same to Developer in order to facilitate the development of Solar project. The relevant portion of RfP dated 12.02.2016 is produced at Annexure-R2. This respondent has also produced Annexure-R3 dated 06.04.2018 and Annexure-R4 dated 23.12.2017, the two letters addressed by the petitioner to the MD, KREDL. It has also produced letters dated 20.04.2018 (Annexure-R5) addressed by KREDL to Additional Chief Secretary to Government, Energy Department and the Notification dated 22.05.2018 (Annexure-R6) permitting the MD, KREDL to sub-lease the lands to the petitioner. It has also produced Annexure-R7 letter dated 21.06.2018 addressed by KREDL to the Deputy Commissioner, Hassan, requesting to fix the rent for the lands taken by the KREDL on lease for land owners. Therefore, this respondent denied any lapse on its part.

4. The petitioner filed separate Rejoinders to the Statement of Objections filed by Respondent-3 & 4, denying the grounds raised by the said respondents. The petitioner has filed further documents along with the Rejoinder filed to

the Statement of Objections of Respondent-4 and has also filed some more documents on 28.11.2019 as per the Memos.

5. We have heard the learned counsel for the parties. The petitioner has also filed the written arguments.

6. From the pleadings and the rival contentions raised by the parties, the following issues arise for our consideration:

Issue No.1: Whether 'Effective Date' can either be considered as 26.10.2016, the date on which the petitioner claims to have received the letter intimating the approval of PPA or 17.12.2016, the date on which the SPPA is signed by the petitioner and respondent-1 and whether SPPA requires any approval by the Commission and such date should be considered as the 'Effective Date.'

Issue No.2: Whether the petitioner was unable to produce the documentary evidence within the timeframe of having the clear title and possession of the lands in the name of the petitioner, required for the establishment of Solar project, due to any 'Force Majeure' event/events alleged by it?

Issue No.3: Whether the petitioner is liable to pay damages for non-fulfilment of the Conditions Precedent, of producing the documentary evidence of clear title and possession of the land required for the establishment of Solar project?

Issue No.4: To which relief the petitioner is entitled to?

Issue No.5: What Order?

7. After considering the pleadings and documents of the parties and the submissions made by the learned counsel for parties our findings on the above Issues are as follows.

8. Issue No.1: Whether 'Effective Date' can either be considered as 26.10.2016, the date on which the petitioner claims to have received the letter intimating the approval of PPA or 17.12.2016, the date on which the SPPA is signed by the petitioner and respondent-1 and whether SPPA requires any approval by the Commission and such date should be considered as the 'Effective Date.'

a) 'Effective Date' is defined as the date of the approval of PPA by the KERC. Such definition can be seen in Article 21.1 of the PPA. Article 3.1 of the PPA also explains the Effective Date with reference to the PPA as *'this agreement shall come into effect from the date of getting concurrence from KERC on the PPA and such date shall be referred to as the Effective Date'*. In the present case as per Annexure-P4 letter dated 14.10.2016, the petitioner and the 1st Respondent were informed the approval of the Commission to the PPA dated 29.06.2016 (Annexure-P3). Therefore, the date 14.10.2016 is to be considered as the Effective Date for the purpose of interpreting the relevant different clauses in the PPA. The PPA does not provide that the date of receipt of such intimation regarding approval of the Commission to the PPA or the date on which the SPPA is signed by the petitioner and the

Respondent No.1 in case the execution of such SPPA is needed, could be considered as the Effective Date.

b) The petitioner has contended that as the letter dated 14.10.2016 (Annexure-P4) communicating approval of Commission for the PPA in question directed to incorporate certain corrections/modifications in the said PPA by entering into a suitable SPPA, thereby execution of SPPA and also the approval of such SPPA is essential. Further, it is contended that when the execution of such SPPA and its approval by the Commission is required those dates could also be considered as the Effective Date in view of the definition of Effective Date stated in the PPA.

c) The letter dated 14.10.2016 (Annexure-P4) signed by the Secretary of this Commission states that "I am directed to communicate approval of the Commission to the PPA dated 29.06.2016 executed between BESCO and the Adani Green Energy (UP) Limited in respect of development of 20 MW (AC) Solar Power Project in Holenarasipura taluk, Hassan district, subject to the following corrections/modifications being incorporated in the said PPA by entering into a suitable SPPA". Therefore, it can be said that the approval of PPA dated 29.06.2016 is absolute subject to incorporating the corrections/modifications. For the purpose of incorporating the corrections/modifications the execution of an SPPA is required. There is no direction given to the parties that after entering into this SPPA, the same should be again got

approved by the Commission. It cannot be said that the approval of the Commission takes effect only after effecting the corrections/modifications suggested. It can be seen that the corrections/modifications suggested to be carried are not materially altering the rights and liabilities of the parties. The contention of the petitioner that the SPPA requires approval cannot be accepted.

d) For the above reasons, we hold Issue No.1 in negative.

9. Issue No.2: Whether the petitioner was unable to produce the documentary evidence of having the timeframe of having the clear title and possession of the lands in the name of the petitioner, required for the establishment of Solar project, due to any 'Force Majeure' event/events alleged by it?

a) It is not in dispute that for fulfilling one of the Conditions Precedent, the petitioner was required to produce within the stipulated time the documentary evidence of having the clear title of possession of the lands required for the establishment of the project in its name. The exceptions to comply the said Conditions Precedent are: (i) any 'Force Majeure' event affecting the production of such documents; and (ii) the 1st Respondent/BESCOM has specifically waiving in writing the production of such documents. It may be noted that BESCOM has not waived the production of such documents.

b) The petitioner had undertaken to develop 20 MW Solar Power Project in Holenarasipura taluk of Hassan district. The LoA was issued on

30.05.2016 and the petitioner acknowledged the acceptance of the terms and conditions of the LoA through letter dated 08.06.2016 (Anexure-P2). The petitioner was required to search for the lands required for establishment of the Solar Power Project after examining the availability of evacuation approval to transmit the power from the Solar Power Project to the KPTCL Sub-station. Therefore, for establishing a Solar Power Project, there should be availability of required extent of land as well as there should be a possibility of evacuating the power from the project to the nearest Sub-station. For this purpose, a Developer has to search for the suitable place. The land can be either purchased or taken on lease for the required period. In the present case, after preliminary assessment, the petitioner has made application dated 22.07.2016 to 3rd Respondent/KPTCL for grant of Tentative Evacuation Scheme to 220/66 kV 11 Kadavinakote Sub-station of KPTCL of Holenarasipura taluk, Hassan district. It is stated in the said application that the petitioner had identified 100 acres of land in Chikknalli village and has signed an MoU with the land aggregator for procurement of the land. Therefore, it was requested to carry out a load flow studies to grant power evacuation permission. These facts can be seen from Annexure-R3 produced by 3rd Respondent/KPTCL. On the next day, the petitioner furnished certain documents in support of the application dated 22.07.2016. Nearly, after a month on 31.08.2016, the petitioner communicated to the 3rd Respondent/KPTCL not to process the application dated 22.07.2016 as the petitioner was

intending a change in the location of the project. A copy of the said letter dated 31.08.2016 is produced as Annexure-R5 by the 3rd Respondent/KPTCL. The petitioner did not intimate the change of location nearly for 8 months and only on 04.05.2017 (Annexure-R6) notified by the 3rd Respondent regarding the change in location of the proposed Solar Power Project 66/11 kV Kadvaninakote Sub-station to Bandishettyhalli Sub-station which is located in Holenarasipura taluk. Therefore, the 3rd Respondent was requested to carry out load flow studies and grant of power evacuation scheme. In this application the petitioner has stated that it has identified about 100 acres of land in Galipura Kaval village near Bandishettyhalli Sub-station and has signed Memorandum of Understanding (MoU) with the land aggregator for procurement of the land. Thereafter, the 3rd Respondent has approved Tentative Evacuation Scheme on 21.06.2017 and subsequently, on acceptance of the terms and conditions of the Tentative Evacuation Scheme, granted Regular Evacuation Scheme on 07.07.2017 both approvals collectively (Annexure-P11).

- c) The petitioner has alleged that though it had approached for issuance of the evacuation approval on 22.07.2016 itself, the KPTCL did not proceed with its application insisting to produce order regarding approval of PPA, stating that the PPAs were returned to ESCOMs. Further that even after approval of the PPA, there was delay in issuance of the Tentative Evacuation Scheme approval as well as the Regular

Evacuation Scheme approval has caused delay in identifying and acquiring the lands required for the project. The petitioner has further alleged that it was finally able to identify the lands required and to obtain consent of the owners for lease of the said lands in favour of the petitioner and even obtained possession of the same and thereafter on 12.06.2017 it approached KREDL with a request to obtain an order under Section 95 of the KLR (Amendment) Act, 2015 for conversion of 97 acres 4 guntas of land for non-agricultural purpose and to sub-let the same in its favour. Therefore, it has contended by the petitioner that it has sufficient compliance of production of documents evidencing the clear title and possession of the lands required for the project. Therefore, it has contended that the Conditions Precedent even regarding production of documents evidencing clear title and possession of the lands has been fulfilled.

d) Now, we shall consider the ground urged regarding delay in processing the Evacuation Approval – The KPTCL in its Statement of Objections has stated that on 27.02.2016 it had furnished Feasibility Study Report as per Sub-station wise to KREDL. This created ambiguity in processing the application for Evacuation of power to different Sub-stations. Therefore, vide letter dated 22.07.2016 for want of clarification, this Commission returned all the PPAs to ESCOMs vide letter dated 22.07.2016 (Anexure-R1 produced by KPTCL). That on 29.08.2016, this Commission accorded in principle, approval to all the PPAs and clarified that KREDL would

coordinate with KPTCL and ESCOMs for efficient power evacuation scheme from the Solar Power Projects. This Commission also directed that all the PPAs must be re-submitted for obtaining approval. The copy of the letter dated 29.08.2016 issued by this Commission is produced as Annexure-R2 by KPTCL. It can be seen that on 22.07.2016, the petitioner had made an application to KPTCL seeking Evacuation approval, and on the next day, the petitioner clarified that though the LoA was issued in favour of Adani Green Energy Limited, the petitioner was the SPV of Adani Green Energy Limited and the Evacuation approval could be issued in its name. These facts are evidenced by Annexure-R3 & R4 produced by KPTCL. The petitioner had not paid the processing fees as required to proceed with the application filed by it seeking Evacuation approval. In the meanwhile, on 31.08.2016, the petitioner requested not to proceed with its application for grant of Evacuation approval as it was intending to change the location of the project. Thereafter only on 04.05.2017 vide Annexue-R6, the petitioner intimated to process its request for Evacuation approval to 66/11 kV Bandishettyhalli Sub-station and paid the processing fee. The KPTCL has denied that it had not processed the application for Evacuation approval for want of approval of PPA by the Commission. The petitioner requested only on 04.05.2017(Annexue-R6) to carry out the load flow study and to grant of evacuation approvals to 66/11 kV Bandishettyhalli Sub-station. The Tentative Evacuation Scheme was approved on 21.06.2017 and the Regular Evacuation Scheme was approved on 07.07.2017. From the

above facts one can say that the KPTCL has proceeded to grant the Tentative Evacuation Scheme as well as Regular Evacuation Scheme approvals at the earliest possible dates. Therefore, this ground stated by the petitioner is untenable.

- e) Now, we may consider the other ground urged by the petitioner that it had sufficiently complied with the conditions of producing the documents of title evidencing clear title and possession of the land required.
- f) The petitioner has contended that it was finally able to approach KREDL on 12.06.2017 for taking further action by the KREDL to obtain an order under Section 95 of the KLR (Amendment) Act, 2015 for conversion of 97 acres 4 guntas of land and to sub-lease the same to it. The petitioner has further contended that on 14.06.2017 (Annexure-P7) it has submitted land related documents to 1st Respondent/BESCOM namely; (i) acknowledgement of Section 95 application submitted to KREDL; (ii) consent letters from land owners to lease their land for Solar Project; and (iii) sworn affidavit for possession of lands, apart from producing the other documents to evidence the fulfilment of Conditions Precedent as per PPA.
- g) Therefore, the real question is whether filing an application before KREDL on 12.06.2017 for taking further action by KREDL to obtain an

order under Section 95 of the KLR (Amendment) Act, 2015 for conversion of lands as a sufficient compliance of Conditions Precedent regarding production of documentary evidence of clear title and the possession of lands required for the project in the name of the petitioner. In our considered opinion, it is not possible to hold that the petitioner approaching KREDL on 12.06.2017 for getting conversion of land etc., is sufficient fulfilment of the Conditions Precedent relating to production of documentary evidence of the title and possession of the lands required. Though, the LoA was issued on 30.05.2016, the petitioner could finally locate the lands near Bandishettyhalli Sub-station on 04.05.2017. As already noted, Conditions Precedent was required to be complied with on or before 13.06.2017. The petitioner has not at all explained this delay in identifying the lands. We note that the petitioner could not bring the event of delay in identifying the lands under any of the provisions of 'Force Majeure' events under Article 14 of PPA. The lands required could be either purchased or taken on lease by the petitioner. For purchase of lands, the petitioner has to obtain permission under Section 109 of the KLR Act, 1961. The GoK has issued a Circular bearing No.RD 01 LRM 2016 dated 22.02.2016 facilitating grant of permission under Section 109 of the KLR Act, 1961 and to obtain conversion of such lands for non-agricultural purpose within a timeframe. The petitioner has not made up its mind for purchase of agricultural land but intended to take the land on lease. The GoK has issued Notification dated 05.10.2016 (Annexure-R1 produced by the 4th

Respondent) permitting KREDL to enter into lease of lands with the owners and to obtain conversion of such agricultural land for non-agricultural purpose and to sub-lease the same to the Developer in order to facilitate development of Solar Project. The petitioner might have thought that obtaining the land on sub-lease would be cheaper than purchasing the lands from the owners. Sub-para (D) of the Circular No.RD 01 LRM 2016 dated 22.02.2016 issued by the Principal Secretary to Government, Revenue Department, reads as follows:

“D – The permission under Section 109 of the Karnataka Land Reforms Act, 1961 shall be brought under SAKALA with time prescribed for its delivery being within 60 days.”

Under the Notification dated 05.10.2016 (Annexure-R1 produced by 4th Respondent) KREDL has to follow the procedure stated in Circular No.RD 01 LRM 2016 dated 22.02.2016 for obtaining an order under Section 109 of the KLR Act, 1961 for purchase of agricultural land and its conversion and thereafter it has to sub-lease the land to Developer for establishing the Solar Project. Therefore, one can say that a definite timeline of 60 days is prescribed for obtaining an order under Section 109 of the KLR Act, 1961 and such date can at best be considered as the date of fulfilment of the production of the documentary evidence of having clear title of possession of the lands required for the project. Hence, in the present case, had the petitioner obtained an order under

Section 109 of the KLR Act, 1961 on or before 13.06.2017, the date on which the Conditions Precedent should have been fulfilled, one could have considered the fulfilment of the same within the stipulated time.

- h) The petitioner has contended that though the petitioner has moved the KREDL on 12.06.2017, the conversion order or the sub-lease was not granted till the filing of the petition. As already noted, the timeline within which such officers are required to pass appropriate order regarding conversion of land could be taken as the date on which the Conditions Precedent regarding production of documents evidencing title and possession. The petitioner could not expect that when he moved the KREDL on 12.06.2017, there could have been an order for conversion of land and in turn, there could have been a lease in his favour on or before 13.06.2017, the last date provided for fulfilment of the Conditions Precedent. Therefore, one can say that the petitioner approaching KREDL on 12.06.2017 with the application for obtaining necessary orders and the sub-lease of lands could be considered as the sufficient compliance of Conditions Precedent regarding production of documentary evidence showing clear title and possession of land required for establishing of the project.
- i) The petitioner has not produced the copy of the application dated 12.06.2017 filed before the KREDL and also the copies of the consent

letters, said to have been obtained from the land owners to lease their lands for Solar Project of the petitioner. The petitioner is required to establish with the very same lands in respect of which consent letters were issued, were finally converted and sub-let to it. The petitioner has produced certain documents at the later stage of the proceedings evidencing the lease of certain lands and conversion of certain lands and also purchase of certain lands and the sale deed. However, it cannot be ascertained that these documents relate to the lands in respect of each consent letters were said to have been obtained from the land owners, while filing the application dated 12.06.2017 before the KREDL. The document No.3 produced by the petitioner on 28.11.2019 before this Commission, shows that the petitioner had again made an application dated 23.12.2017 before KREDL requesting to obtain the orders under Section 109 of the KLR Act, 1961 and under Section 95 of the KLR (Amendment) Act, 2015, by producing the required particulars like; details of the lands and consent letters of the owners, etc., For the above reasons, we are of the opinion that the petitioner has failed to establish that it could produce the acceptable documentary evidence establishing the title and possession of the lands required within the period prescribed for fulfilling the Conditions Precedent in this regard. Hence, Issue No.2 is held in negative.

10. Issue No.3: Whether the petitioner is liable to pay damages for non-fulfilment of the Conditions Precedent, of producing the documentary evidence of clear title and possession of the land required for the establishment of Solar project?

As Issue No.1 & 2 are held in negative Issue No.3 is to be held in affirmative. Accordingly, the petitioner is liable to pay damages as provided in Article 4.3 of the PPA.

11. Issue No.4: To which relief the petitioner is entitled to?

For the foregoing reasons, the petitioner is not entitled to any of the reliefs claimed in the petition.

12. Issue No.5: What Order?

For the above reasons, we pass the following:

ORDER

- a) The petition is dismissed holding that the petitioner is not entitled to any of the reliefs claimed in the petition; and
- b) The petitioner is liable to pay damages as provided in Article 4.3 of the PPA.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER