

Nos. N/60/2019

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

Dated: 29.05.2020

Present:

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

OP No. 23/2019

BETWEEN:

Sri B.M. Ramachandraiah,
S/o B.L. Mallappa,
Aged about 72 years,
M.G. Road, Kollur New Badavane,
Near Venkateshwara Kalyana Mantapa,
Srinivasapura,
Kolar District-563138.
(Represented by Sri Zulfikar Kumar Shafi &
Sri S. Lakshiminarayana Reddy, Advocates)

...PETITIONER

AND:

- 1) Bangalore Electricity Supplies Company Limited (BESCOM),
having its Registered Office at K.R. Circle,
Bengaluru-560 001.
(Represented by its Managing Director)
- 2) The Executive Engineer (Ele) C, O & M Division,
BESCOM,
Kolar- 563138.
- 3) The General Manager (Ele),
DSM Corporate Office, BESCOM,
K.R. Circle,
Bengaluru - 560 001.

4) The Assistant Executive Engineer,
BESCOM, Rural Sub-division,
Srinivasapura Division,
Kolar District.
(Respondent-3 represented by
Dua Associates, Advocates)

..RESPONDENTS

ORDER

1. This is a petition filed under Sections 61, 62, 64 & 86 (1) (f) of the Electricity Act, 2003, praying for the following reliefs:

- a. To restore the Power Purchase Agreement dated 30.09.2015 and apply the tariff determined under the said PPA;
- b. To enhance the tariff to the rate of Rs.9.56 as against present tariff of Rs.5.20 as agreed by the respondents under the original PPA dated 30.9.2015;
- c. To issue necessary directions, directing the Respondents to evacuate power from the SRTPV installed by the Petitioner uninterruptedly during day time from 10.00 AM to 3.00 PM;
- d. To pass such other order or direction as deemed fit in the facts and circumstance of the case, in the interest of justice and equity.

2. The brief facts of the case are:

- a. The Petitioner is the owner of land bearing Sy. No. 251 measuring 4 acres at Hebbata Village, Kasaba Hobli, Srinivasapura Taluk, Kolar District. The Petitioner's wife Smt. Shivamma uraf Sharada is the owner of another

adjacent land in Sy. No.252 measuring 4 acres at Hebbata Village, Kasaba Hobli, Srinivasapura Taluk, Kolar District. The Petitioner, in the year 2006, after taking all necessary permissions and approvals had established a Poultry Farm in the above said lands.

- b. Though the above said lands of the Petitioner and his wife are situated in Hebbata Village, at the time of entering into PPA between the Petitioner and the Second Respondent, by oversight, the name of the village was shown as Arikere Village. The said villages are adjacent to each other. But, the RR No. YP128 is correctly mentioned in all the documents.
- c. The First Respondent invited applications for availing Grid Connectivity of Solar Rooftop PV Systems (in short 'SRTPV') for the Solar Rooftop facility owned, operated and maintained by the consumers. The Second Respondent issued "Consumer Guidelines" for availing Grid Connectivity of SRTPV systems (Annexure-B). The Petitioner submitted an application with necessary fee for installation of SRTPV system in the land bearing Sy. No. 251 and 252 measuring 8 acres situated at Hebbata Village, Kasaba Hobli, Srinivasapura Taluk, Kolar District (Annexure-C). (We note here that Annexure C is not the copy of the application but a letter requesting conversion of LT to HT). The Petitioner intended to install the SRTPV system of 1000 kWp over the roof top of the existing Poultry farm situated at the subject land.

- d. The Respondent No.2 entered into a Power Purchase Agreement (in short 'PPA') with the Petitioner dated 30.09.2015 for installation of SRTPV System of 1000 kWp capacity on the roof top of the premises connected to electricity service connection bearing RR. No.YP 128 under Srinivasapura Sub-Division of BESCO (Annexure-D). As per Clause 6.1 (a) of the PPA, Rs.9.56 per kWh was the agreed tariff for the term of the PPA. The said Tariff was fixed in terms of the Generic Tariff Order dated 10.10.2013.
- e. After entering into PPA dated 30.09.2015, the petitioner was required to complete installation of SRTPV System within 180 days from the date of the PPA. The Petitioner was not able to complete the installation of SRTPV System due to a short delay in arranging the funds, material and other equipment for the said project. The Petitioner was able to complete 50% of the work and as there was a delay in completion of the work, the petitioner addressed a letter dated 18.04.2016, seeking extension of time for installation of the SRTPV System. (Annexure-E). The Second Respondent vide its Letter dated 30.04.2016 in Format-6 accorded extension of time by one (1) year for installing the SRTPV system (Annexure-F).
- f. The Petitioner completed the installation of SRTPV System with financial assistance from Banks and private financiers. When the work was in its final leg, the Second Respondent issued an Official Memorandum dated

29.12.2016, by which the Second Respondent withdrew the extension of 1 year time granted earlier and cancelled the PPA dated 30.09.2015 (Annexure-G). Reference was made to the orders of the Commission dated 02.05.2016 and 27.09.2016 as the ground for termination of the PPA. In the OM, it was made clear that the Respondent was open to revive the PPA if the Petitioner agreed for the new tariff as per the Commission's order dated 02.05.2016. As on the date of the OM dated 29.12.2016, the Petitioner had completed 90% of the installation of SRTPV System and all steps and commitments, both at site and towards all vendors had already been fully met. Hence stopping or stalling the final leg of installation was not an option to the petitioner. The order of the Commission dated 27.09.2016 does not provide any authority to the respondent to unilaterally cancel or terminate the PPA without due process. On the other hand, the order entitles the consumers for a revised tariff in terms of the Commission's order dated 02.05.2016.

- g. The Petitioner having completed the entire project in satisfaction of all technical and inter-connection requirements, requested the Second Respondent to commission and synchronize the SRTPV System as per PPA dated 30.09.2015, under protest against any tariff change.
- h. On the Petitioner's request for synchronization of the SRTPV system under protest, the Second Respondent wrote a letter dated 16.03.2017 to the General Manager DSM i.e., the Third Respondent, seeking necessary

directions to consider the request of the Petitioner (Annexure-H). The Third Respondent vide his letter dated 09.05.2017 informed the Second Respondent, to enter into Supplementary PPA with the Petitioner at the tariff of Rs.5.20 instead of Rs.9.56 per unit (Annexure-J).

- i. The petitioner had invested a sum of Rs.7,50,00,000 (Rupees Seven Crores Fifty Lakhs Only), towards the setting up the SRTPV System.
 - j. The Commission vide its order dated 06.05.2017 accorded the permission for installation of SRTPV System at the revised tariff of Rs.5.20 per unit under a Supplementary PPA. The Petitioner was left with no other option but to agree to sign the Supplementary PPA dated 28.06.2017 (Annexure-K). The Respondents on 30.06.2017 commissioned the SRTPV System and issued Format-9- Certificate of Synchronization.
 - k. After the commissioning of the SRTPV System the Respondents were not drawing power uninterrupted during peak production hours i.e., between 9:00 AM to 6:00 PM due to load shedding during the day time. The petitioner requested to evacuate power uninterruptedly so that it would translate to better financial standing for the Petitioner who was in tremendous financial stress due to the reduced tariff.
3. The Grounds urged by the Petitioner are:
- a. The respondent under the guise of the Commission's order dated 02.05.2016 and 27.09.2016 erred in cancelling the PPA. The order of the

Commission dated 27.09.2016 makes it clear that the intention was not to authorize the respondent to arbitrarily cancel the PPA without following due process, but to bring in a revised tariff and other norms for SRTPV plants and not to deprive the consumers of any accrued rights under the PPA.

- b. The respondent held out a promise to the Petitioner under the PPA dated 30.09.2015 signed by the parties. The petitioner having acted upon it by incurring expenses, the respondent cannot arbitrarily in an unreasonable manner back out of its obligations arising from the Solemn Promise made to the petitioner under the PPA. In the light of the principles of Promissory Estoppel, the impugned order is illegal.
- c. The respondent erred in issuing the cancellation letter in violation of the terms and conditions of the Clause-9.3 of the PPA dated 30.09.2015. The respondent failed to issue any notice calling upon the petitioner to remedy or rectify any breach, as contemplated under the Clause-9.3 of the PPA thereby violating the terms and conditions of the PPA. Hence, the letter of cancellation is illegal and void.
- d. The second respondent erred in not considering the fact that the PPA is signed for a period of 25 years and that the petitioner has invested substantial capital on such terms. The premature and unilateral cancellation of the original PPA and executing the Supplementary PPA is without any authority or justification. Saddling the petitioner with a

reduced tariff and not drawing power during peak hours amounts to colourable exercise of power with a mala fide intention to cause loss and damage to the Petitioner. This amounts to arbitrary exercise and abuse of authority.

- e. The respondents failed to consider that the petitioner had executed the project during the extended period of completion. No deficiencies or issues of non-compliance were brought to the notice of the petitioner during the entire period of execution. Hence, a right having accrued in favour of the petitioner to get the SRTPV system connected to the Grid, the respondent ought not to have cancelled the original PPA, at such a belated stage. The arbitrary and unilateral cancellation of the PPA and coerced execution of the Supplementary PPA is contradictory to the approvals and permissions accorded by the respondents themselves and further in the absence of non-establishment of any breach by the petitioner, the actions of the respondent are a clear breach of trust.
- f. The omissions of the respondents are in violation of the Karnataka Power Policy-2014-2021. The Power Policy envisages a liberal approach to amend/review/relax/interpret any of the provisions under the Policy and to remove all difficulties, so as to attain the goals under the Policy. The objects of the Power Policy lay importance on Public Private Partnership in investment in the SRTPV Systems. All investors are enticed with promises of profitability both in terms of revenue under the PPA as well as benefit of depreciation under Section 32 of Income Tax Act.

These projects being highly capital intensive seek to set off the same by way of availing the benefits of depreciation. The failure on the part of respondents in honoring the original PPA has denied the petitioner benefit of depreciation under Section 32 of Income Tax Act. The petitioner completed the installation well within the extended time with an intention to avail full benefits under depreciation. However, the arbitrary approach of the respondents has put the petitioner's investment in stress and jeopardy.

g. Having suffered a reduced revised tariff under the Supplementary PPA, the action of the Respondent in not evacuating power uninterruptedly during peak hours from 10.00 AM to 3.00 PM has caused substantial financial loss to the Petitioner. For these reasons, the petitioner has prayed to allow the petition.

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

a. In terms of the Consumer Guidelines for Availing Grid Connectivity on Solar Rooftop PV Systems ("Guidelines") issued on 07.11.2014 the maximum time frame for completion of installation work in all respects by an applicant is 180 days. The Guidelines do not provide for any extension of time. Further, the Guidelines provide that the tariff will be as per prevailing tariff determined by KERC from time to time.

- b. The Solar Policy, Consumer Guidelines and PPA dated 30.09.2015 clearly mention that the tariff was subject to the KERC Order dated 10.10.2013 or as amended from time to time.
- c. Even though BESCO cancelled the PPA on 29.12.2016, the Petitioner has filed the present Petition on 11.3.2019 i.e., nearly 2 years and 3 months after the cancellation of PPA and almost two years after signing the Supplemental PPA.
- d. As accepted by the Petitioner, he was expected to complete the installation within 180 days from the date of the PPA. The Petitioner has acknowledged that the delay was due to delay in arranging funds, material and other equipment. The Consumer Guidelines for installation of SRTPV units do not provide for extension of time. While BESCO upon request of the Petitioner extended the time frame by 1 year by its communication dated 30.04.2016, KERC by its D.O. letter dated 13.05.2016 advised and the Government of Karnataka issued a letter dated 13.05.2016, pursuant to which BESCO issued Office Memorandum dated 18.05.2016 to the effect that extension of time for completion of SRTPV system was withdrawn with immediate effect. The Petitioner avers that as on the date of his requisition letter dated 18.04.2016, the installation was completed to the extent of 50%, whereas in the synopsis it is mentioned that work was completed to the extent of 90%.

- e. The Petitioner requested the 2nd Respondent to commission and synchronize his SRTPV system, but the requisite Work Completion Report was submitted only much later i.e., on 25.04.2017. Further in his undated letter, the Petitioner has asked for commissioning and synchronization "under protest" without any reference to tariff change.
- f. In view of the KERC's letter dated 13.05.2016 and the Government of Karnataka's communication dated 13.05.2016 the extension of time for the implementation of the project was withdrawn. This was keeping in view the fact that the tariff of Rs. 9.56 per unit was fixed as the project was to be implemented within the time frame stipulated. Despite failure of the Petitioner to complete the Project within the stipulated time frame, he was provided with an option by the third Respondent to execute a Supplementary PPA with the then applicable tariff of Rs.5.20 per kWh, which he did. It is only on 11.03.2019 that the present petition has been filed challenging the actions of the Respondents.
- g. The decision to set up an SRTPV plant was a decision of the Petitioner and the economies of cost and its viability is a business decision of the Petitioner.
- h. The PPA clearly provides at Clause 6.1 (c) that the Seller shall not have any claim to compensation if the solar power generated by his SRTPV system could not be absorbed by the distribution system due to failure of power supply in the grid/distribution system inter alia for reasons such

as load shedding. This is an accepted risk of the Petitioner when he executed the PPA. Load shedding is not a unilateral decision of BESCOM and is carried out as per directions of the KPTCL.

- i. The Solar Policy of the Government of Karnataka dated 22.05.2014 and the Preamble of the PPA mention that the SRTPV Plant will be operated in terms of the KERC Order No.S/03/01/2013 dated 10.10.2013 as amended from time to time. The Petitioner having failed to execute the SRTPV plant within the terms of the Scheme which was governed by the Tariff Order dated 10.10.2013, the tariff as per the later Order dated 02.05.2016 would be applicable.
- j. The fixation of tariff by the KERC is a comprehensive process and prior to issuance of the order dated 02.05.2016 reducing the tariff applicable to SRTPV plants, the KERC had issued a discussion paper on 16th November, 2015 inviting comments from stake holders on or before 16th December, 2015. Further, the KERC has also held a public hearing on 20th April, 2016 for stakeholders to make their submissions. The law favours the vigilant and it was for the Petitioner to have submitted his objections to the proposal of reduction in the tariff which would be applicable to his SRTPV system instead of awakening almost three years after the order and claiming the same to be arbitrary.

- k. As stated by the Petitioner, upon submitting the Work Completion Report on 25.04.2017, the BESCO gave the option of a Supplementary PPA at the then prevalent tariff of Rs.5.20 per KWP.
- l. The principle of promissory estoppel does not apply since, (a) the Petitioner failed to comply with its obligations in terms of the PPA dated 30.09.2015; (b) While the BESCO had given an extension of time, the same was ultra vires its power. This issue that was addressed by the KERC in its advise dated 13.05.2016 and followed by the Government of Karnataka in its communication dated 13.05.2016. Therefore, all extensions of time granted by BESCO stood withdrawn. To claim that the Petitioner had already acted on the representation of the Respondent and put itself to a disadvantageous position is a false statement, since it is clear from the petition itself that the Petitioner had not completed even 50% of the project within the stipulated time frame of 180 days.
- m. The domain of tariff fixation vests with the KERC. This is a fact in the knowledge of the Petitioner since the same is mentioned in the PPA dated 30.09.2015. The action of the BESCO in withdrawing the extension was on account of the fact that the guidelines did not provide for the same. The plant was not commissioned within 180 days. Considering that the project proponents had approached the Respondent for extension of time the Respondent did grant an extension. However, the Guidelines relating to the SRTPV Scheme

provide for commissioning in 180 days and there was no provision for extension of time. Hence, the extension of time was withdrawn by the BESCOM and the PPA was cancelled. The Petitioner is claiming to be aggrieved by the acts of the Respondent more than 2 years after the actions complained of. The Petitioner being aware of his own delay and lapses chose not to challenge the acts of the Respondent.

n. The Petitioner on the one hand, executed the Supplementary PPA and now is turning volte face and challenging the cancellation of extension of time. The Petitioner has failed to appreciate that generation of energy is not a mere business for profit but is a regulated sector keeping in view the fact that the cost towards energy is paid by the ultimate customer. Since over the years, the cost of inputs in this sector have drastically reduced, the cost of energy has also been reduced.

o. Another grievance of the Petitioner is the load shedding and resultant reduced evacuation of power. The Respondent has no intention of not evacuating power since power is a necessity and there was deficit of power in the State. However, evacuation is subject to factors such as grid failure, load shedding and line faults. Further, load shedding is done as mandated by the KPTCL and is not an arbitrary decision of the BESCOM at the ground level, as is attempted to be made out.

For the above reasons, the Respondents have prayed for dismissal of the petition in the interest of justice.

5. The Respondents have filed written arguments as follows:

a) The commissioning of the SRTPV System was to be completed within 180 days from the date of the PPA as provided in point 8(vii) of the Consumer Guidelines, which reads thus:

"The maximum time frame for completion of installation work in all respects by the Applicant is 180 days."

b) This Commission has in the order passed in OP No.116/2017 (Balaji Naik K. Vs. GESCOM), held that the time for completion of the SRTPV System must be considered as 180 days even though there is no mention of the same in the PPA since the Consumer Guidelines clearly provide for such period. Further, this Commission has held that the date for commissioning the SRTPV System must be calculated from the date of the PPA and not from the date of the Approval Letter, when the approval letter is issued after the execution of the PPA.

c) The date of the PPA being 30.09.2015, 180 days expires on 28.03.2016. In para 7 at page 10 of the petition, the Petitioner admits that the installation was to be completed within 180 days of the PPA and that he was unable to complete the same. The Petitioner had applied to BESCOM for extension of time for completion of the SRTPV System on 18.04.2016 i.e., after expiry of the 180 days.

- d) The Petitioner claims that the extension of time provided to him by BESCOM vide letter dated 30.04.2016 is valid. The said letter was issued pursuant to the internal circular issued by BESCOM dated 17.11.2015. The said circular was ultra vires the powers of BESCOM as it had no authority to issue any extensions which have a direct bearing on tariff, as held by the KERC in OP No.8/2018, Shri B.N. Chandrappa Vs. BESCOM. Therefore, Circular dated 17.11.2015 being illegal and ultra vires the power of BESCOM, the extension of one year provided vide letter dated 30.04.2016 (Annexure-F) is a non-est and nullity in law. The exclusive powers of the KERC in deciding tariff was upheld by the Hon'ble High Court of Karnataka in S.A.Prasanna Kumar Vs. Government of Karnataka and others in WP. No.41854/2016. Even for the sake of argument, if the said circular is considered valid, the KERC is still empowered to determine the tariff applicable.
- e) The Petitioner has claimed in its synopsis that it had completed 90% of the work on 18.04.2016 itself i.e., the date on which it sought the extension of time from BESCOM. In para 7 on page 10 of the Petition, the Petitioner claims that he had completed 50% of the work. These are clear contradictions in the statements of the Petitioner. In the List of Dates to the petition, the Petitioner again claims that he had submitted the work completion report sometime in December 2016 when he had apparently completed 90% work of the installation. The Petitioner further claims that the SRTPV System was ready for commissioning on 16.03.2017

which would be three months after submitting the work completion report. However, the work completion report was actually submitted by the Petitioner only on 25.04.2017 (Annexure-E of the documents submitted by Respondent). Therefore, a clearly false statement is made by the Petitioner with respect to the completion of the work. In other words, if 90% of the work was complete in December, 2016 it implies that the petitioner took 4 (four) months to apparently complete balance 10% of the work. The contradictory statements made by the Petitioner creates doubt in the veracity of the facts put forth by him and the genuineness of his claims.

- f) The original PPA was cancelled on 29.12.2016. The present petition has been filed on 12.03.2019 i.e., almost 2 years and 2 months after the cancellation of the PPA. The dispute resolution clause provided in the PPA states that parties were free to approach the concerned legal forum for resolution of disputes. The Petitioner did not choose to do so. Having executed the SPPA dated 28.06.2017 and having agreed to the revised tariff, the Petitioner cannot now revert to claim a higher tariff. The Petitioner cannot approbate and reprobate at the same time.
- g) The original PPA executed with the Petitioner clearly provides in RECITAL a) that the seller intends to connect and operate the SRTPV as per the KERC Order No.S/03/01/2013 dated 10.10.2013 or as amended from time to time. Therefore, the Petitioner is well aware that the entire PPA is

subject to the future amendments of the tariff order. The Revised Tariff order dated 02.05.2016 is applicable to the Petitioner since it has been agreed to in the PPA.

- h) The Tariff Order was amended by the KERC on 02.05.2016 wherein it was provided that SRTPV Systems commissioned as per PPAs entered prior to 1st May, 2016 and completed within the time agreed, the tariff applicable would be Rs.9.56 per unit i.e., as per the Tariff Order dated 10.10.2013. If the said SRTPV Systems were not commissioned within the agreed period, no extension would be provided and the new tariff of Rs.5.20 per unit would be applicable to such SRTPV Systems. The revision of the Tariff Order is an entire process in itself where stakeholders including the Petitioner are allowed to make representations. The Petitioner has not done so at any point of time and therefore, it is not open to the Petitioner to question the tariff being applied to him as per the tariff order dated 02.05.2016.
- i) The Petitioner cannot claim promissory estoppel since the same does not operate against a statute as observed by the KERC in OP No. 64/2018, D.V. Harish Vs. MD, BESCO and others. In any case, the action of BESCO in extending the time for commissioning the SRTPV System being ultra vires its authority, the doctrine of promissory estoppel has no application. Even otherwise, the PPA clearly provides that the tariff is subject to future amendments to the Tariff Order. Contractually it has

been agreed that the future tariffs will be as per the amended tariff orders, hence, there is no scope for operation of promissory estoppel. The Petitioner is entitled to the reduced tariff of Rs.5.20 per unit as per the Tariff Order dated 02.05.2016.

- j) In the Synopsis, the Petitioner claims that power is not being evacuated from 9:00 AM to 6:00 PM while in the letter dated 15.12.2017 at Annexure-L, he states that power is not being evacuated from 10:00 AM to 3:00 PM. Except for making a bald statement regarding load shedding, no documents have been presented to show that there was actual load shedding or the extent of the same. Even if load shedding has taken place, it is decided as per the provisions of the Grid Code and it is not just BESCO that is involved. As per the PPA executed with BESCO at Clause 6.1(c), BESCO cannot be blamed for non-evacuation of power due to load shedding, line clear or line faults. In other words, these are accepted risks that are agreed to by the Petitioner.

6. We have heard the Counsel for both sides and perused the records. The following Issues arise for our consideration:

- (1) Whether the Petitioner is entitled to the tariff, mentioned in the PPA dated 30.9.2015, despite commissioning the SRTPV plant beyond the period of 180 days?

(2) What Order?

7. Issue No.(1): Whether the Petitioner is entitled to the tariff, mentioned in the PPA dated 30.9.2015, despite commissioning the SRTPV plant beyond the period of 180 days?

(a) The gist of the petitioner's case is that the SRTPV plant could not be commissioned within 180 days from the date of PPA (30.09.2015) due to delay in sanction of loan and procurement of equipment and a request was made to the Respondent on 18.04.2016 seeking extension of time; that as per the Format-6 issued by the respondent on 30.04.2016, extension of time of 12 months was granted for commissioning the plant and as the plant was commissioned within the extended period, the tariff cannot be reduced.

(b) It is the case of the Respondents that the SRTPV plant had to be commissioned within 180 days as per the Consumer Guidelines to be entitled to the agreed tariff of Rs.9.56 per unit, and as it was completed and ready for commissioning on 25.04.2017, after much delay, as per the Work Completion Report given by the petitioner in Format-7, the petitioner is entitled to the reduced tariff, as per the Generic Tariff Order dated 02.05.2016 and that the extension of time granted by the Respondent were not in consonance with the Consumer Guidelines and hence, beyond the

powers of the Respondent, as held by the Commission in the decided cases.

- (c) We note that, as per the Guidelines relating to the SRTPV Scheme made available to all the consumers, for the SRTPV applicants having existing buildings, the time stipulated for completion of the SRTPV Projects is 180 days, which would be intimated to the applicants in Format-5 or Format-6 [Approval]. Admittedly, the Petitioner had made the application on 08.09.2015 for installation of the SRTPV Plant, under the said Scheme.
- (d) We note that on receipt of the application and conducting feasibility checks, the Respondent was required to issue an approval in Format-6 for installing the SRTPV plant mentioning that the plant had to be commissioned within 180 days. The approval was issued on 27.01.2016 (Annexure-A to the Memo filed by the Respondents on 16.01.2020). Much earlier to this date, the PPA was entered into on 30.09.2015. Therefore, it can be stated that the procedure contemplated in the Guidelines were not followed. Hence, the time mentioned in the approval in Format-6 cannot be the basis for completion of the project. Thus, the petitioner ought to have completed the SRTPV system within 180 days from the date of PPA, i.e., on or before 29.03.2016. It is admitted by the petitioner in para 7 of the petition that the installation of the SRTPV system had to be completed within 180 days from the date of the PPA. The petitioner has stated that work in all respects was completed in December 2016 and that work completion report was

given in Format-7 on 10.03.2017. The petitioner has not produced the same. The work completion report in Format-7 is dated 25.04.2017 (Annexure-E to the Memo filed by the Respondents on 16.01.2020). This is not denied by the Petitioner. Therefore, we conclude that the work was completed on 25.04.2017.

(e) With regard to the contention of the petitioner that the respondent had granted extension of time to commission the project, we have considered this aspect in detail in the Order dated 28.05.2019 in OP No.8/2018 and held that the respondent had no power to provide for extension of time for commissioning the projects, either as per the Solar Policy of the State or the Guidelines issued by the Respondent; that any such extension of time has a bearing on the tariff, ultimately payable by the consumers; that even if the extension of time granted is assumed to be valid, the tariff applicable for the delayed commissioning of the project would have to be determined by the Commission. We note that the Solar Policy 2014-2021 of the State provides that the tariff orders issued by the Commission from time to time will be applicable to the projects. So also, the PPA dated 30.09.2015 provides that the tariff as per the order dated 10.10.2013 as amended from time to time will be applicable to the project. The time period within which a plant has to be commissioned and the tariff applicable to a project are to be fixed/determined by the Commission alone under the Electricity Act, 2003, as held by the Hon'ble High Court of Karnataka in the Order dated 17.07.2017 in WP No.41854/2016 (S.A.

Prasanna Kumar Vs. Government of Karnataka & others). Therefore, the contention of the petitioner that it is entitled to tariff of Rs.9.56 per unit is not acceptable.

- (f) In the PPA executed in this case, a tariff of Rs.9.56 per unit was agreed to be paid for the power injected by the Petitioner's SRTPV plant on net metering basis in terms of the Commission's Order dated 10.10.2013. This tariff was available to the Petitioner subject to commissioning of the project within 180 days. The Commission in its Order dated 02.05.2016 issued in supersession of the Order dated 10.10.2013, after taking into consideration the relevant factors, mainly the declining project cost, revised the tariff applicable to SRTPV plants which get commissioned during the period from 02.05.2016 to 31.03.2018 including all those with PPAs executed prior to 01.05.2016 but not commissioned within the stipulated period. The Petitioner having commissioned the Plant on 30.6.2017, i.e., after 02.05.2016 is entitled for a tariff of Rs.5.20 per unit in terms of the Commission's Order dated 02.05.2016. The SPPA dated 28.06.2017 rightly mentions the tariff of Rs.5.20 per unit.
- (g) The petitioner has alleged that there is no evacuation of power from its SRTPV system due to load shedding. It is stated by the respondent that due to grid constraints, there may be power cuts or load shedding but the same is not intentional. It is also stated by the respondent that the PPA contains a clause which deals with such a situation. If there are constraints in off taking the power generated, the respondents may look into the matter and rectify

the defects, if any, in the system so that load shedding/power cut is not a regular phenomenon.

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

8. Issue No.2: What Order?

For the foregoing reasons, we pass the following.

ORDER

The Petition is dismissed. The Petitioner is entitled for a tariff of Rs.5.20 only per unit, as per SPPA dated 28.06.2017.

sd/-

(SHAMBHU DAYAL MEENA)
Chairman

sd/-

(H.M. MANJUNATHA)
Member

sd/-

(M.D. RAVI)
Member