

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION**

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

**Dated : 30<sup>th</sup> July, 2019**

**Present:**

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

**OP No.171/2017**

**BETWEEN:**

Shri Abhinay, V  
S/o Venkateshivareddy, V,  
Residing at G. Kothur Hobli,  
Gowribidanur Taluk,  
Chikkaballapur District.

..

**PETITIONER**

*[Represented by Southern Law Associates & Advocates, Advocates]*

**AND:**

- 1) Bangalore Electricity Supply Company Limited,  
K.R. Circle,  
Bengaluru – 560 001.
- 2) The Executive Engineer (Ele),  
C, O & M Division,  
Bangalore Electricity Supply Company Limited,  
Chikkaballapur District.
- 3) The General Manager (Ele),  
DSM, Corporate Office,  
Bangalore Electricity Supply Company Limited,  
K.R. Circle,  
Bengaluru – 560 001.

- 4) The Assistant Executive Engineer,  
Rural Sub-Division,  
Vatada Hosahalli Division,  
Chikkaballaur District.

.. **RESPONDENTS**

*[Respondents represented by Just Law, Advocates]*

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### **ORDERS**

- 1) This Petition is filed under Sections 61, 62, 64 and 86(1)(f) of the Electricity Act, 2003, in substance praying to:
- (a) set aside the communication dated 15.06.2017, issued by the 2<sup>nd</sup> Respondent Executive Engineer (Ele), C,O & M Division, Bangalore Electricity Supply Company Limited (BESCOM), Chikkaballapur District (vide ANNEXURTE-X), terminating the Power Purchase Agreement (PPA) dated 14.03.2016, entered into between the 1<sup>st</sup> Respondent (BESCOM) and the Petitioner (vide ANNEXURE-C);
  - (b) restore the Power Purchase Agreement dated 14.03.2016 entered into between the First Respondent – BESCOM, represented by the Second Respondent and the Petitioner herein and apply the tariff determined under the said PPA, in the interest of justice and equity;
  - (c) direct the Respondent to issue approval for evacuation of Power of SRTPV installed by the Petitioner in the subject land, in the interest of justice and equity; and,
  - (d) pass such other Orders, as this Commission deems fit, in the facts and circumstances of the case.
- 2) The material facts, leading to filing of the present Petition, may be stated as follows:

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- (a) That, the Petitioner has entered into a PPA dated 14.03.2016 (ANNEXURE-C) with the 1<sup>st</sup> Respondent (BESCOM), for sale of Solar energy from the SRTPV system intended to be installed, as per the prevailing Guidelines and terms and conditions, for establishing a SRTPV system. That, the SRTPV system, intended to be installed, was on the roof top of a building under construction, as was allowed. That, the Petitioner was in the process of setting up that structure, for the purpose of Farming Button Mushrooms.
- (b) That, the Petitioner has produced the "*Consumer Guidelines for availing Grid Connectivity of Solar Rooftop PV System in BESCOM (On Net Metering basis)*" at ANNEURE-A. That, the Petitioner has produced the application dated nil, filed by him, expressing his intention to install the Grid-connected SRTPV system on Net Metering basis, as per ANNEXURE-B. That, on the basis of it, the 2<sup>nd</sup> Respondent issued the approval for installing a 500 kWp SRTPV system, vide letter dated 19.03.2016, as per ANNEXURE-D, with the terms and conditions stated therein. That, one of the terms was, this approval would be valid for 180 days from the date of approval and the SRTPV system was to be commissioned within this period, failing which the approval would be treated as cancelled.
- (c) That, throughout the period of execution and installation of the SRTPV system, the Respondents visited and inspected the site on numerous occasions and found that the SRTPV system and the structure were in compliance with the existing Guidelines and the Government Circular dated 28.03.2016. The Petitioner claims that, the said Government Circular

dated 28.03.2016 is at ANNEURE-E. (But, ANNEXURE-E is a Circular issued by the 1<sup>st</sup> Respondent (BESCOM) and not the Government Circular referred to by the Petitioner.) It is stated by the Petitioner that, as he had complied with all the technical and interconnection requirements, the Respondents expressed their satisfaction on every date of inspection and the 2<sup>nd</sup> Respondent issued the letter dated 08.08.2016 (ANNEXURE-F), addressed to the chief Electrical Inspector. In furtherance of the said letter (ANNEXURE-F), the Chief Electrical Inspector issued letter of approval of the drawings dated 18.08.2016 (ANNEXURE-G), pertaining to the electrical installation of the SRTPV and other equipment.

- (d) That, the Petitioner, having completed the SRTPV system in accordance with all the technical and interconnection requirements and not having received any Notice of deficiency or non-compliance, submitted the Work Completion Report dated 22.08.2016 (ANNEXURE-H), in Format No.7, to the 2<sup>nd</sup> Respondent. That, within three working days from the date of receipt of the Work Completion Report, the SRTPV system should have been synchronized with the Grid by the concerned Sub-divisional / divisional Engineers, along with the MT (Metering Department) staff, as stated in Clause 33 of the Guidelines (ANNEXURE-A).
- (e) That, the Petitioner constructed / renovated the permanent structures at the site, to suit the requirements for installation of the SRTPV system and spent a sum of Rs.3,50,00,000/-. The Petitioner has produced the Photographs indicating the completion of the structure and the SRTPV system, as ANNEXURES – J, J1, J2 and J3.

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- (f) That, pursuant to the submission of the Work Completion Report, under Format No.7, the Chief Electrical Inspector conducted the final inspection on 30.08.2016. The Petitioner was awaiting the final clearance for commissioning the SRTPV system with the State Grid, however, to the shock and surprise of the Petitioner, he received a letter dated 02.09.2016 (ANNEXURE-K), cancelling the PPA dated 14.03.2016. That, this cancellation letter stated that, as per the observations made during the spot inspections by the 1<sup>st</sup> Respondent (BESCOM) officials, the structure was found to be not in compliance with the Government Circular dated 10.12.2015 and Government Order dated 17.08.2016. (The Petitioner has not produced the Government Circular dated 10.12.2015, but has produced the Government Order dated 17.08.2016, at ANNEXURE-L.)
- (g) Thereafter, the Petitioner has filed W.P.No.56961/2016 (ANNEXURE-P) on 03.11.2016, before the Hon'ble High Court of Karnataka. The Hon'ble High Court passed an Order dated 16.03.2017 (ANNEXURE-R) in a Group of Writ Petitions, viz., W.P.No.51001/2016 and other connected cases, including W.P.No.56961/2016 filed by the Petitioner, setting aside the termination of the PPAs and directing the Respondents to issue a Show Cause Notice and to receive the explanation of the Petitioners and thereafter to pass appropriate Orders. Thereafter, the 1<sup>st</sup> Respondent (BESCOM) issued a Show Cause Notice dated 13.04,2017 (ANNEXURE-S) and received a reply dated 06.05.2017 (ANNEXURE-T) from the Petitioner and issued an official Memorandum dated 15.06.2017 (ANNEXURTE-X) rejecting the explanations

given in the reply of the Petitioner and terminating the PPA with immediate effect. Thereafter, the Petitioner has filed the present Petition.

3) Upon issuance of Notice to the Respondents, Justlaw, Advocates, filed Vakalath of the General Manager, DSM, BESCO, on behalf of the Respondents. The 1<sup>st</sup> Respondent (BESCO) filed its Statement of Objections on 12.12.2017. The following is the gist of the objections raised by the Respondents:

(a) That, the Petitioner has failed to comply with the requirements of the Guidelines laid down by the 1<sup>st</sup> Respondent (BESCO) in "Consumer Guidelines for availing Grid connectivity of Solar Roof Top PV System in BESCO (on Net-metering basis)". That, the signing of the PPA is contemplated under the said Guidelines, only after the completion of certain formalities set out in the Guidelines, which the Petitioner has failed to follow. That, in fact, based on the communication issued by the then Executive Engineer, it was found, upon investigation within the Respondent-Company, that the then Executive Engineer had deviated from following certain procedures set out by the Company. That, this clearly indicates that the Petitioner has entered into the PPA in question, by illegal actions and mechanization, which were fraudulent in nature, with a clear intent to rig the procedure contemplated under the Guidelines.

(b) That, the Respondents launched the SRTPV Scheme on 07.11.2014 and the same was in conformity with the Solar Policy dated 22.05.2014, to

encourage the Grid-connected SRTPV system. The object of encouraging the installation of the SRTPV system on roof-tops of the consumers, was to utilize the power generated locally by the power producer and the surplus power being fed into the Grid. The Respondents have produced the complete set of Guidelines for availing the Grid connectivity, with all the relevant Formats, as ANNEXURE – R1. As per these guidelines, a detailed procedure was set out for establishing the SRTPV connections, 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 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, for inspection of safety procedure by the Assistant Executive Engineer, BESCO or the Chief Electrical Inspector, as the case may be. Only thereafter, the step for execution of a PPA has been contemplated under Cluse-10 of the Guidelines.

- (c) That, the Petitioner filed, off line, application for Grid connectivity of the SRTPV system on 19.03.2016. However, prior to filing of the application itself, the Petitioner had entered into the PPA dated 14.03.2016 with the 1<sup>st</sup> Respondent (BESCO), represented by Shri H.G. Ramesh, the then Executive Engineer (Ele), C,O & M Division, BESCO, Chikkaballapur (2<sup>nd</sup> Respondent). On 19.03.2016, the said 2<sup>nd</sup> Respondent issued the approval in Format No.5 (ANNEXURE-D), for installation of 500 kWp SRTPV system,

without obtaining the Technical Feasibility Report. The Section officer concerned in the C, O & M Division, BESCO, had issued a Technical Feasibility Report dated 23.03.2016 (ANNEXURE-R6) in Format No.4, reporting that the proposed SRTPV installation of the Petitioner was not technically feasible.

- (d) That, subsequently, on 18.08.2016, the Chief Electrical Inspector issued a communication (ANNEXURE-G) to the Petitioner, approving the drawing submitted by the Petitioner for the SRTPV system. That, the communication merely approved the drawings submitted by the Petitioner and intimated the Petitioner to furnish certain additional particulars, after which the inspection would be arranged. Thereafter, the Petitioner addressed a letter dated 22.08.2016 (ANNEXURE-H) to the Executive Engineer (Ele), BESCO, Chikkaballapur, enclosing Format No.7, with incomplete particulars.
- (e) That, the Government of Karnataka, vide circular dated 10.12.2015, allowed the execution of the PPA in respect of roofs under construction, which are nearing completion, in order to provide an opportunity to buildings under construction, to design roofs, conducive for installation of Solar Panels. *[It may be noted that the said Circular dated 10.12.2015 was withdrawn by the Government of Karnataka, vide Notification dated 22.03.2016.]* On 17.08.2016, the Government of Karnataka was pleased to issue a communication addressed to all the Electricity Supply Companies (ESCOs), clarifying the requirements of a roof top, qualifying to install a SRTPV system. That the said communication dated 17.08.2016 made it



clear that the Solar Panels must be mandatorily mounted in the space available on the roof top of the residential, commercial, institutional, industrial and other buildings, but the Solar Panels installed on the ground or ground mounted structures using steel, wood or concrete supports would not qualify for installation of the SRTPV system. Thereafter, on 30.08.2016, an inspection of the Petitioner's Plant was conducted by the Joint Inspection Team, deputed by the Corporate Office of the 1<sup>st</sup> Respondent (BESCOM) and it was found that the said Plant was not in conformity with the requirements for installation of the SRTPV system on a roof top. On 02.09.2016, a communication was issued to the Petitioner, informing him that, as per the Report of the joint Inspection Team, the Petitioner's structure was not feasible and it was in violation of the Orders of the Government of Karnataka. The Chief Electrical Inspector also intimated the said fact to the Petitioner, by his letter dated 15.09.2016 (ANNEXURE-R3).

- (f) That, signing of the PPA is contemplated only after completion of certain formalities set out in the Guidelines, which the Petitioner has failed to follow. That, in fact, based on the communication issued by the then Executive Engineer, it is found on the investigation within the Respondent-Company, that the then Executive Engineer had deviated from following certain procedures set out by the Company. That, therefore, on 06.07.2016 Notice was issued to the errant Officer and Charge Sheet was filed on 26.09.2016. Copies of the Notice dated 06.07.2016 and the Charge sheet dated 26.09.2016 are produced as ANNEXURES – R4 and R5, respectively.

That, this clearly indicates that the Petitioner has entered into a PPA by illegal actions and machinations, which are fraudulent in nature and with the clear intent to rig the procedure contemplated under the Guidelines.

- (g) That, attention of this Commission is also drawn to Clause 38 of the Consumer Guidelines for availing Grid connectivity issued by BESCO, which clearly states that, the technical specification stated in the Guidelines are subject to change, without Notice. That, the Petitioner is well aware of the same. That, such being the case, the Order dated 17.08.2016 is one that is perfectly legal, as it only seeks to clarify the technical requirements of Solar Roof Top PV Power Plants.
- (h) That, however, the present capacity of the Transformer from where the power of the Petitioner's Unit will be evacuated, is only of 63 kVA capacity, hence it would not be possible to off-take the power proposed to be injected by the Petitioner at its Project site. That, this is also being clarified in the Feasibility Report dated 23.03.2016, copy of which is produced as ANNEXURE – R6.
- (i) That, it is also relevant to note that, unless the approval of the CEIG is obtained, the Respondent herein will not be able to synchronize the Petitioner's Unit in the Grid. That, for all Generating Plants above 10 KW, approval of CEIG is mandatory as per the Guidelines of the BESCO and the Indian Electricity Rules, 1956. Copy of the Official Memorandum of BESCO dated 28.10.2014 in this regard is produced as ANNEXURE – R7.

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- (j) That attention of this Commission is also drawn to the letter addressed by the CEIG to the Petitioner dated 15.09.2016 wherein the Petitioner has been informed that this Plant does not conform to the safety requirement set out.
- (k) That, therefore, keeping it in mind, this Commission was pleased to fix a tariff of Rs.9.56 per unit for such Roof Top Plants, as opposed to fixing the tariff of Rs.6.51 per unit for generators having the main activity of generating Solar energy. That, the rationale behind fixing a higher tariff for SRTPV systems was to encourage the consumers of the utility to utilize their roof tops to generate power for self-consumption and thereby reduce the load on the utility. That, in the present case, perusal of the application furnished by the Petitioner would indicate that, the Petitioner has declared that the installation is a residential installation. That, the Gram Panchayat of G. Kottur has issued an Endorsement on 18.02.2016 indicating that the Petitioner is involved in horticulture / sheep rearing. That, however, on inspection by the concerned Officers of the Respondent on 25.08.2016, it was found that the said PV Panels are fixed on newly constructed steel structures and not on existing residential or other structures. That, the Inspection Report along with photographs clearly indicate that the Petitioner is neither involved in horticulture / sheep rearing nor has he installed the Panels on the residential premises, for which application is made. Copies of the Inspection Report with Photographs are produced as ANNEXURE – R8.

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- (l) That, in the present case, the Petitioner has clearly violated the norms and has not complied with the requirements set out in the letter dated 17.08.2016. That, the allegation that the Respondents are raising hyper technical objections, is also untenable. That the Respondent has, therefore, issued the Notice dated 15.06.2017 bringing to the notice of the Petitioner all the violations. That the Petitioner has failed to set right the violations, and therefore, the Petitioner is not entitled to the tariff determined in the PPA, but, at best, the tariff determined by the Order of this Commission dated 07.11.2017. Copy of the said Order is produced as ANNEXURE – R9.
- (m) The Respondents have not denied the Petitioner approaching the Hon'ble High Court of Karnataka and the subsequent Orders passed in the Writ Petitions. Subsequent to the Orders of the Hon'ble High Court, the Respondents issued a Show Cause Notice dated 13.04.2017 to the Petitioner and received the reply dated 03.05.2017 of the Petitioner. On consideration of the same, the Respondents have issued a communication dated 15.06.2017 (ANNEXURE-X), terminating the PPA dated 14.03.2016. Aggrieved by the same the Petitioner, once again, filed a Writ Petition in W.P.No.37504/2017, before the Hon'ble High Court, which came to be dismissed as withdrawn, vide Order dated 22.09.2017. Thereafter, the Petitioner has filed the present Petition before this Commission.

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- 4) Subsequent to filing of the objections by the Respondents, the Petitioner was given an opportunity to reply to the objections, but the Petitioner has not chosen to file any such reply.
- 5) During the course of the proceedings of the case, the Petitioner prayed for evacuation of the power from the SRTPV system, in question by the 1<sup>st</sup> Respondent (BESCOM), for which the Respondents had agreed to arrange for evacuation by 15.02.2018. Subsequently the Petitioner filed an Application, requesting to fix an interim tariff for the power evacuated. Accordingly, on 24.04.2018, this Commission fixed an interim tariff of Rs.3.57 per unit. In the Affidavit dated 20.03.2018, filed by the Petitioner in support of his Application for fixing the interim tariff, it is stated that, the Respondents have started evacuation of power from the SRTPV system installed by the Petitioner.
- 6) We have heard the learned counsel for the parties. From the pleadings on record and the rival contentions, the following issues would arise, for our consideration:
- (1) Whether the PPA dated 14.03.2016 (ANNEXURE-C) is the outcome of the fraudulent acts of the Petitioner and Shri H.G. Ramesh, the then Executive Engineer(Elc), C,O&M Division, BESCOM, Chikkaballapur?
- (2) Whether the communication dated 15.06.2017 (ANNEXURE-X), terminating the PPA dated 14.03.2016 (ANNEXURE-C) is valid?

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- (3) If Issue Nos.(1) and/or (2) are/is answered in the affirmative, whether the Petitioner could be allowed to operate his Solar Power Plant under net metering basis or otherwise, and if so, what should be the tariff and other terms applicable?
- (4) What Order?
- 7) After considering the submissions of the learned counsel for the parties and the pleadings and material on record, our findings on the above issues are as follows:
- 8) **ISSUE No.(1):** *Whether the PPA dated 14.03.2016 (ANNEXURE-C) is the outcome of the fraudulent acts of the Petitioner and Shri H.G. Ramesh, the then Executive Engineer (Ele), C,O&M Division, BESCOM, Chikkaballapur?*
- (a) Before proceeding to consider the facts and the circumstances made out, for the consideration of Issue No.(1), we may note the important features of the SRTPV scheme and other relevant Circulars and Orders, prevalent during the relevant period, as follows:
- (i) This Commission, by its Order dated 10.10.2013, determined the tariff at Rs.9.56 per unit for the Grid-connected Solar Power Projects, including the SRTPV Projects. In this Order, the SRTPV installation up to one MW was allowed. The State Government issued the Solar Policy dated 22.05.2014 and fixed a target for installation of 2400 MW capacity Grid-connected SRTPV installations. Pursuant to it, the Respondents launched the SRTPV Scheme on 07.11.2014, to encourage the Grid-connected SRTPV system

on the roof tops of the consumers' buildings. A complete set of the SRTPV format is at ANNEXURE-R1. This Commission also approved a Standard Format of the PPA to be entered into between the Distribution Licensee and the consumer, vide Order dated 16.09.2014, supplementing the Guidelines. This Standard Format of PPA would make it clear that, the installation of the SRTPV system should be on the existing roof tops of the consumers.

(ii) The State Government issued a Circular dated 10.12.2015, relaxing to some extent, the Guidelines issued for installation of the SRTPV system on the existing roof tops alone, by allowing the owner of the building, nearing completion, to file an application, seeking permission for installation of the SRTPV system on the roof top, at the same time while applying for electricity supply connection to the new building. The PPA to be executed, pursuant to it, would be governed by the tariff prevalent at that point of time, and within one year from the date of the PPA, the construction of the building and obtaining of power supply to that building, including the installation of the SRTPV system, must have been completed. In default, the subsequent tariff, in force, would be applicable.

(iii) This Circular dated 10.12.2015 of the State Government, was withdrawn by the Government, vide Government Order dated 22.03.2016.

(iv) The Government of Karnataka issued a Government Order bearing No.EN 70 VSC 2015, dated 28.03.2016, reminding that the SRTPV system should be allowed to be installed on the existing building and directing

that the height of the roof should not be less than ten feet from the ground and that the capacity of the SRTPV system, under net metering, should not exceed the sanctioned load of the consumer's installation. On the same day, i.e., on 28.03.2016, the 1<sup>st</sup> Respondent (BESCOM) has issued a Circular to all its Executive Engineers, to adhere to the guidelines given in the Government Order dated 28.03.2016.

- (b) The Consumer Guidelines are subject to the Orders issued by this Commission and also the Circulars and Orders issued by the Government of Karnataka. From the Consumer Guidelines, and the Orders of this Commission as well as the Circulars and Orders of the Government of Karnataka, the important features for installation of the SRTPV system, prevalent during the relevant point of time, may be summed up as follows:

The SRTPV system should be installed on the existing roof top. The area required for the installation of 1 kWp capacity SRTPV system was approximately 100 Sq.Feet. Therefore, if the area of the roof top was vast, the installation of the SRTPV system could have been up to 1 MW. The Government of Karnataka Circular dated 10.12.2015 allowed to apply for installation of the SRTPV system on the roof top of new buildings, under construction, while applying for electricity supply connection to the new buildings. This relaxation, allowed to the buildings under construction, was withdrawn by the Government, vide Government Order dated 22.03.2016. Therefore, subsequent to 22.03.2016, the application for installation of the SRTPV system should be made only in respect of the existing roof tops of a consumer, who has already obtained the electricity supply. The



Government Order dated 28.03.2016, restricted the capacity of the SRTPV system to the sanctioned load of the installation of the consumer. This Commission, by the Genetic Tariff Order dated 02.05.2016, reduced the tariff and also restricted the capacity of the SRTPV installation, as noted above.

- (c) Now, we will proceed to discuss the evidence and material on record, for consideration of Issue No.(1).
- (d) The PPA (ANNEURE-C) has come into existence on 14.03.2016. As on this day, there was no application filed by the Petitioner, requesting for permission to install the SRTPV system. The procedure prescribed shows that, a person, desirous of installing a SRTPV system, shall make an application, on payment of the prescribed fee and thereafter, the Revenue verification (Format-3) and Technical Feasibility Report (Format-4) are to be obtained. If the Technical Feasibility Report is in the affirmative, then only approval for the installation of the SRTPV system is to be issued, either in Format-5 (for LT consumers) or in Format-6 (for HT consumers), as the case may be. Only after issuance of the approval for installation of the SRTPV system, the applicant could proceed with the installation works. Before submitting the Work Completion Report and after obtaining the approval for installation of the SRTPV system, the PPA is to be executed. It is evident from the above facts that, the PPA (ANNEXURE-C) was executed, in violation of the procedure prescribed for executing the PPA.

(e) The Petitioner has filed the application, requesting for permission for installation of the SRTPV system (ANNEXURE-B), without mentioning the date of application. The Respondent has stated that, it was received on 19.03.2016. The application does not show that the request for installation of the SRTPV system was on the existing roof. The PPA shows that, the installation of the SRTPV system, would be on the roof of an under construction building. The Respondent has produced the Feasibility Report dated 23.03.2016 (ANNEXURE-R6), issued by the Section Officer concerned, disclosing that the proposed SRTPV installation of the Petitioner was not technically feasible. The Executive Engineer (Ele), C,O&M Division, BESCOM, Chikkaballapur has issued the approval letter dated 19.03.2016 (ANNEXURE-D), for installation of 500 kWp capacity SRTPV system. The Respondent has stated that, this approval letter (ANNEXURE-D) was issued before obtaining the Feasibility Report from the Section Officer concerned. The Petitioner has not denied this fact or has not given any explanation for it, by way of filing a Rejoinder. The Petitioner has filed a Receipt dated 19.03.2016, for having paid a sum of Rs.5,000/- towards the SRTPV fees. In Format-7, produced along with ANNEXURE-H dated 22.08.2016, the Petitioner states that this amount of Rs.5,000/-, which was paid on 19.03.2016, relates to facilitation fee, to be paid towards inspection of the installation of the SRTPV system. Therefore, one can infer that, the Petitioner has not produced any evidence to show the date on which he paid the registration fee for having filed the application. From the above facts, it is clear that, the execution of the PPA on 14.03.2016 was in contravention of

the Consumer Guidelines. One can also infer that, this was not due to a *bonafide* mistake.

- (f) Clause b. of the Preamble of the PPA states that, it relates to the roof of a building under construction. As already noted, for such roof top of a building under construction, the application for installing the SRTPV system could be made, while applying for power connection to the newly constructed building. It may be noted that, an application for power supply to the newly constructed building could be made, only after the structure of the building is completed. After filing the application, the Technical Feasibility Report is to be obtained and if the installation of the SRTPV system is feasible, then approval for installation of the SRTPV system is to be issued and only thereafter, the PPA is to be executed. In the present case, the building plan was prepared on 09.03.2016 and it was submitted to the Panchayath Development Officer (PDO) of the Panchayath Office, for approval. It is not the case of the Petitioner that, the structure was ready on or before 22.03.2016, the date on which the Government, by its Government Order dated 22.03.2016, withdrew the earlier Circular dated 10.12.2015. We are of the considered opinion that, the Petitioner could not have completed the structure on or before 22.03.2016, which would have enabled him to file the application for grant of power supply to that newly constructed building. It can also be noted that, on 28.03.2016, the Government of Karnataka issued a Government Order restricting the capacity of the SRTPV system installation to the sanctioned load of the consumer's installation.

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- (g) In case, the PPA of the Petitioner could not have been executed, legally, before 28.03.2016, the capacity of the SRTPV system of the Petitioner would have been restricted to the sanctioned load of that building of the Petitioner. It was in the public domain that, this Commission had issued a Discussion Paper on 16.11.2015, proposing to reduce the tariff, as well as to restrict the capacity of the SRTPV system installation to the sanctioned load.
- (h) The above facts and circumstances of the case would lead to an inference that, the PPA dated 14.03.2016 is the outcome of the fraudulent acts of the Petitioner and the then Executive Engineer (Ele) concerned, created in violation of the procedure prescribed.
- (i) The 1<sup>st</sup> Respondent (BESCOM) is a legal person, functioning through its officials, under the delegated powers. The Executive Engineers (Ele), C,O&M Division of the 1<sup>st</sup> Respondent (BESCOM) were authorized to sign the PPA, on behalf of the BESCOM, in respect of the SRTPV system installations of 50 kWp and above, and they had to issue the approval for installation of the SRTPV system, after following the procedure set in the Guidelines and the instructions issued by the Government as well as this Commission. The then Executive engineer (Ele) concerned has contravened the Guidelines issued and has illegally executed the PPA in question. It is not shown by the Petitioner that, the PPA could have been executed before 28.03.2016. Such PPA is not binding on the 1<sup>st</sup> Respondent (BESCOM)
- (j) Therefore, we answer Issue No.(1), in the affirmative.

- 9) **ISSUE No.(2):** *Whether the communication dated 15.06.2017 (ANNEXURE-X), terminating the PPA dated 14.03.2016 (ANNEXURE-C) is valid?*
- (a) The communication dated 15.06.2017 (ANNEXURE-X) has terminated the PPA dated 14.03.2016. This communication, terminating the PPA, was preceded by the issuance of a Show Cause Notice dated 13.04.2017 (ANNEXURE-S) and consideration of the reply dated 06.05.2017 (ANNEXURE-T) of the Petitioner.
- (b) The 1<sup>st</sup> Respondent (BESCOM) is entitled to establish the invalidity of the PPA in question, for the reasons stated while discussing Issue No.(1) above, apart from the grounds stated in the Show Cause Notice dated 13.04.2017. Therefore, it may not be necessary to consider the validity of the communication dated 15.06.2017 (ANNEXURE-X), terminating the PPA, as the same was not found to be not binding on the 1<sup>st</sup> Respondent (BESCOM).
- (c) We have gone through the Show Cause Notice and the replies furnished by the Petitioner to the said Show Cause Notice. It appears to us that, the replies furnished by the Petitioner, in response to the grounds urged at Sl.Nos.3, 5 and 8 of the Show Cause Notice dated 13.04.2017, are not acceptable.
- (d) In Ground No.3 of the Show Cause Notice, it is stated that the SRTPV system was not commissioned within 180 days, as stipulated, from 19.03.2016, i.e., the date of approval for installing the SRTPV system (ANNEXURE-D). The

Petitioner has contended that, he had submitted the Work Completion Report in Format-7 dated 22.08.2016 (ANNEXURE-H), and within three days from the date of submission of the Work Completion Report, the Project should have been synchronized as per the Guideline. The approval letter dated 19.03.2016 (ANNEXURE-D) stipulates that the Project should have been completed within 180 days from the date of the aforesaid approval letter, which would end on 15.09.2016. It can be seen that, the SRTPV system installation should have been inspected by the Chief Electrical Inspector before submitting the Work Completion Report. Admittedly, the installation of the Petitioner was not inspected by the Chief Electrical Inspector on or before 22.08.2016. In the Work Completion Report, the Petitioner has left blank, the relevant column relating to the inspection and approval of the Chief Electrical Inspector. It can be seen that, the Chief Electrical inspector had approved the drawings pertaining to the SRTPV system on 18.08.2016. Under this letter, it was instructed to complete the installation of the SRTPV system as per the approved drawings and thereafter, to apply for inspection by the Chief Electrical Inspector. The Petitioner has not produced any such Inspection Report of the Chief Electrical Inspector, on or before 15.09.2016, the deadline prescribed for commissioning the SRTPV system.

- (e) In Ground No.5 of the Show Cause Notice, it is alleged that the Petitioner had taken more number of PPAs of the capacity of 500 kWp, in respect of Sy.No.192/2, splitting the capacity at the same location. The 1<sup>st</sup> Respondent (BESCOM) has stated that, the Petitioner had filed as many as

five applications, seeking permission for installation of the SRTPV systems and five PPAs had been executed. The reply furnished by the Petitioner does not disclose any satisfactory answer for it. The Petitioner has stated that, Sy.No.192/2 was a joint family land and one RR No.VHP-196 was in the name of the Petitioner and he had applied for additional power supply, to get the additional meters. As already noted while discussing Issue No.(1) above, before construction of the building or the structure is completed, the application for power supply could not have been made and application for permission, to install the SRTPV system, could not have been made. Therefore, one can infer that, execution of so many PPAs, by the Petitioner, was done with an ulterior motive.

- (f) In Ground No.8 of the Show Cause Notice, it is stated that, the structure put up by the Petitioner was not a roof top, on which the SRTPV system could not have been allowed, as per the Guidelines. It is found from the Joint Inspection Report dated 31.05.2017 that, it was only a ground mounted structure, there being no horticulture or sheep rearing activities, beneath the roof top. Therefore, the structure in question cannot be treated as 'roof top', but should be treated only as a ground mounted structure.
- (g) Therefore, we are of the considered opinion that, the communication dated 15.06.2017, terminating the PPA dated 14.03.2016, is valid.
- (h) For the above reasons, we answer Issue No.(2), in the affirmative.

- 10) **ISSUE No.(3):** *If Issue Nos.(1) and/or (2) are/is answered in the affirmative, whether the Petitioner could be allowed to operate his Solar Power Plant under net metering basis or otherwise, and if so, what should be the tariff and other terms applicable?*
- (a) We have held Issue Nos.(1) and (2) above, in the affirmative. Therefore, the Petitioner is not entitled to inject energy into the Grid under the PPA dated 14.03.2016 (ANNEXURE-C), nor for the tariff agreed to under the said PPA.
- (b) This Commission has passed the Order dated 07.11.2017 – *In the matter of: Tariff Order for SRTPV Plants violating the norms specified for implementation of the SRTPV Plants*, for giving relief to the consumers, who install the SRTPV systems, in violation of the specified norms. Before passing the said Order, it was brought to the notice of the Commission that, a large number of PPAs, executed in respect of the SRTPV Projects have been terminated or in the process of being terminated for reasons like, not commissioned within stipulated time, extension of the roof area of the existing building in violation of the terms of the PPA/sanction order or the roof on which the SRTPV Plant is installed is not a building, as specified by the State Government, etc. It was also brought to the notice of the Commission that, such consumers have come forward to commission the SRTPV Plants at rates different from that agreed in the PPAs. The Commission noted that, the synchronization of such SRTPV Plants, involving large investments would be in the larger public interest. For the said reasons, the Order dated 07.11.2017 was passed. The 1<sup>st</sup> Respondent (BESCOM) has produced the said Order at ANNEXTE-R9. The learned counsel for the 1<sup>st</sup> Respondent (BESCOM) submitted that, as per the said



letter, the tariff of Rs.3.57 per unit, being the notified APPC for FY18, may be allowed for the term of the PPA, subject to the Petitioner entering into a fresh PPA. As per the Order passed by this Commission, during the pendency of this proceedings, the SRTPV system has been commissioned and the energy is being injected into the Grid by the Petitioner, at the interim tariff of Rs.3.57 per unit.

(c) Therefore, we answer Issue No.(3), as per the final Order below.

11) **ISSUE No.(4):** *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.3.57 (Rupees Three and Paise Fifty Seven only) per unit under net metering, for the electricity generated and injected from his Solar Power Plant, for a period of 25 (twenty five) years, from the date of commissioning of the Plant, upon entering 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