

No.: N/81/15

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 28th July, 2016

Present:

- | | |
|----------------------------------|----------|
| 1) Shri M.K. Shankaralinge Gowda | Chairman |
| 2) Shri H.D. Arun Kumar | Member |
| 3) Shri D.B. Manival Raju | Member |

OP No.42 / 2015

BETWEEN:

Shri Balasimha Rao,
No.274, 1st Main Road,
Kamalanagar,
Bengaluru- 560 079

..

PETITIONER

[Petitioner represented by Shri Shashikanth, Advocate]

AND:

- 1) The Karnataka Renewable Energy Development Limited,
No.39, "Shanthi Gruha",
Bharath Scouts & Guides Building,
Opp.: The Chief Post Master General Office,
Palace Road,
Bengaluru - 560 001

- 2) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru -560 001

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RESPONDENTS

*[Respondent No.1 represented by Shri G.S. Kannur, Advocate
Respondent No.2 represented by Just Law, Advocates]*

ORDERS

- 1) In this Petition, the Petitioner has requested this Commission for a direction against the Respondents to execute a Power Purchase Agreement (PPA) with a tariff of ₹8.40 per Unit, as determined by this Commission in its Generic Tariff Order dated 10.10.2013 relating to Solar Photo Voltaic MW Scale Power Plants, in respect of a 3 Mega Watts (MW) Solar Photo Voltaic Power Plant allotted to him under the Letter of Award dated 28.8.2015 issued by the 1st Respondent-Karnataka Renewable Energy Development Limited (KREDL),

- 2) The facts relevant for the disposal of this case may be stated as follows :
 - (a) The Petitioner is a farmer having a land bearing Survey No.296 of Kamanadurga Village, Pavagada Taluk, Tumkur District.

 - (b) Under the Solar Policy 2014-21 of the Government of Karnataka, Guidelines were issued vide Notification No.EN VSC 2014, Bangalore, dated 26.8.2014 to invite applications from the eligible land owners for awarding establishment of 1 – 3 MW capacity Solar Photo Voltaic Power MW Scale Plants and to enter into PPAs with the concerned Electricity Supply Company (ESCOM). The 1st Respondent (KREDL) was the Nodal Agency for facilitating the implementation of the said Guidelines.

- (c) As per the said Guidelines, the 1st Respondent (KREDL) issued newspaper publications on 19.9.2014 inviting applications from the eligible land owners to submit their online applications on 9.10.2014 at 11 A.M. As per the said Guidelines, allotments were to be done on seniority of date and time of receipt of applications, i.e., on 'first come first served' basis.
- (d) The Petitioner submitted the online application by filling up the required particulars therein.
- (e) A Committee was formed for evaluation of the online applications, under the Chairmanship of the Managing Director of the 1st Respondent (KREDL). The Committee with due diligence evaluated the applications and issued Letters of Award to the qualified applicants on 17.3.2015, with a request to enter into PPAs with the concerned ESCOMs, by duly following the procedure, within sixty days from the date of the Letters of Award. The concerned ESCOMs were also requested to enter into PPAs with the Awardees.
- (f) The Petitioner and four other applicants were found to have uploaded wrong details in the application regarding the Demand Drafts obtained by them. Subsequently, they made a representation that the Demand Drafts were drawn on the correct name, but while uploading, wrong details were entered by them by oversight and their cases should be considered.

- (g) The 1st Respondent (KREDL) submitted the requests of the Petitioner and four others to the Additional Chief Secretary to Government, Energy Department (ED), Government of Karnataka on 25.8.2015. Thereafter, a clarification was issued by the Government of Karnataka on 28.8.2015 that, if these applicants had furnished the documents and the Demand Drafts to their respective ESCOMs within eight days from the date of submission of the online applications, their applications could be considered. Thereafter, the Letters of Awards were issued to the Petitioner and four other applicants on 28.8.2015 itself. The Petitioner claims that the Letter of Award issued to him was received by him on 31.8.2015.
- (h) The Petitioner has contended that, immediately thereafter, on 1.9.2015, he approached the 2nd Respondent-Bangalore Electricity Supply Company Limited (BESCOM) with a request to execute the PPA with a tariff at the rate of ₹8.40 per unit. However, the 2nd Respondent (BESCOM) refused to mention the tariff of ₹8.40 per unit in the PPA and informed that the Petitioner was entitled to a tariff at the rate of ₹6.51 per unit with effect from 1.9.2015, as per the Generic Tariff Order dated 30.7.2015 passed by this Commission for Solar Photo Voltaic MW Scale Power Plants.

- (j) The Petitioner has contended that, the other successful allottees were intimated well in advance and they had enough time to enter into PPAs prior to 1.9.2015, while he was deprived of the same. The Petitioner has further contended that he was never at fault for the delay in the execution of the PPA beyond 31.8.2015. Therefore, the Petitioner has prayed for a direction, as noted above.
- (k) The 1st Respondent (KREDL) has contended that the generic tariffs determined by this Commission from time-to-time are applicable for different periods as stated in the said Orders. Further that, when the PPAs were signed by the other eligible persons, the tariff of ₹8.40 per unit was applicable and the same was revised to ₹6.51 per unit with effect from 1.9.2015. Therefore, the Petitioner was entitled to the tariff of ₹6.51 per unit. The 2nd Respondent (BESCOM) has also taken the same contention as that of the 1st Respondent.
- 3) This Commission has determined the generic tariff in respect of the Solar Power Photo Voltaic MW Scale Plants from time-to-time. The applicability of any such Generic Tariff Order is also stated in the Orders itself.
- 4) The tariff at ₹8.40 per unit had been fixed under the Generic Tariff Order dated 10.10.2013 (hereinafter referred to as the Solar Tariff Order, 2013) relating to the Solar Photo Voltaic MW Scale Power Plants. In

paragraph-2 of the said order, under the heading, "Scope of the present Tariff determination", it is stated thus :

"The Tariff determined in this Order is applicable to all grid connected Solar PV generators, Solar Thermal power generators and Rooftop Solar Photovoltaic generators entering into power purchase agreements (PPA) on or after 01.04.2013 and during the control period as specified in this Order. ..."

- 5) The tariff of ₹6.51 per unit has been fixed under the Generic Tariff Order dated 30.7.2015 (hereinafter referred to as the Solar Tariff Order, 2015) relating to Solar Photo Voltaic Power Plants in MW scale. In paragraph-3 of the said order, under the heading, "Applicability of the Order", it is stated thus :

"In view of the above, the Commission, in modification of its Order dated 10th October, 2013, decides that the norms and tariff determined in this Order shall be applicable to new grid connected MW scale Solar PV and Solar Thermal Power Plants, entering into Power Purchase Agreement (PPA) on or after 1st September, 2015 and getting commissioned during the period from 1st September, 2015 to 31st March, 2018 for which PPAs have not been entered into, prior to 1st September, 2015.

In respect of projects that are commissioned during the period from 1st September, 2015 to 31st March, 2018 for which PPAs have been entered into and submitted to the Commission prior to 1st September, 2015 for approval, the tariff as per the said agreement shall be applicable.

The tariff determined in this Order shall be applicable for the term of the PPAs entered into in respect of projects covered by this Order. ..."

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- 6) The combined reading of the above two Generic Tariff Orders would show that the tariff of ₹8.40 per unit in respect of the Solar Photo Voltaic MW Scale Power Plants in MW scale determined in the Generic Tariff Order date 10.10.2013 was applicable for the PPAs executed between 1.4.2013 and 31.8.2015 and that the tariff of ₹6.51 per unit in respect of Solar Power Plants in MW scale, as determined in the Generic Tariff Order dated 30.7.2015 is applicable for the PPAs executed on or after 1.9.2015.
- 7) We have heard the learned counsel for the parties.
- 8) The following issues would arise for our consideration :
 - (1) Whether the Petitioner is entitled to the tariff of ₹8.40 per unit for the PPA to be executed on or after 1.9.2015, as he received the Letter of Award dated 28.8.2015 only on 31.8.2015?
 - (2) What Order?
- 9) After considering the respective pleadings and the submission of the parties, our findings on the above issues are as follows :
- 10) **ISSUE No.(1)** : *Whether the Petitioner is entitled to the tariff of ₹8.40 per unit for the PPA to be executed on or after 1.9.2015, as he received the Letter of Award dated 28.8.2015 only on 31.8.2015?*
 - (a) The Petitioner has submitted that the Letter of Award dated 28.8.2015 was received by him on 31.8.2015, therefore, it was impossible for him to

have executed the PPA after complying with the requirements of furnishing the Performance Security of Rs.30 Lakhs on 31.8.2015 itself. Further, he has submitted that he had approached the 2nd Respondent (BESCOM) with all the necessary documents and requirements on 1.9.2015 itself for the execution of the PPA. Therefore, it is contended that, as the Petitioner was not at fault, this Commission has to direct the 2nd Respondent (BESCOM) to execute the PPA with the tariff of ₹8.40 per unit. In other words, the contention of the Petitioner is to the effect that, the deadline for executing the PPA on or before 31.8.2015, for getting the tariff of ₹8.40 per unit, is not a mandatory provision and the Commission can relax it on a case-to-case basis. The Respondents have opposed the said submission of the Petitioner.

- (b) This Commission has exclusive jurisdiction to determine the tariff for supply of electricity by a Generating Company to a Distribution Licensee, subject to the provisions of the Electricity Act, 2003 (hereinafter referred to as the 'Act') and the relevant Regulations framed thereunder. Regulation 9 of the KERC (Procurement of Electricity from Renewable Sources) Regulations, 2011 (hereinafter referred to as the 'Regulations, 2011') specifically empowers this Commission to determine the tariff for the supply of electricity from renewable sources of energy. Solar Power is within the meaning of 'Renewable Sources of Energy'. In exercise of its powers, this Commission has passed the Generic Tariff Orders dated 10.10.2013 and 30.7.2015 in respect of Solar Photo Voltaic MW Scale

Power Plants selling power to a Distribution Licensee. Such Tariff Orders are passed after hearing the stakeholders, including the consumers of electricity.

(c) The Solar Tariff Order, 2013 was made applicable for Solar Power generators entering into PPAs on or after 1.4.2013, till the expiry of the Control Period specified in the said Order, i.e., till 31.3.2018. This Commission, however, noted that there were substantive mid-course improvement in technology and considerable reduction in Capital Cost relating to Solar Photo Voltaic MW Scale Power Plants, and thereby there was a reduction in the cost of Solar Power generation, and therefore there arose a necessity for passing a revised Tariff Order for Solar Photo Voltaic Power Plants, curtailing the Control Period. Subsequently, after following the due procedure, the Solar Tariff Order, 2015 was passed determining the tariff for Solar Photo Voltaic MW Scale Power Plants at ₹6.51 per unit and making it applicable to all new grid connected Solar Photo Voltaic MW scale Power Plants entering into PPAs on or after 1.9.2015. It is also made clear in the said Order that the earlier tariff of ₹8.40 per unit was applicable to the Solar Photo Voltaic MW Scale Power Plants, having entered into PPAs prior to 1.9.2015.

(d) The reasons stated by the Petitioner cannot be a ground for review of the Solar Tariff Order 2015. We are of the considered view that, exceptions cannot be made for the applicability of the Solar Tariff Orders

of 2013 and 2015 on the grounds stated by the Petitioner. These orders do not provide for making out such exceptions, for any reason whatsoever.

- (e) We are of the view that the tariff fixation exercise is legislative in character [(2010) 4 SCC 603, PTC India Limited–Vs- CERC, Paragraph-26]. The rules of interpretation applicable to a statute are also applicable to the interpretation of the Tariff Orders.
- (f) Now, we have to examine, whether the time limit for execution of the PPA for getting the tariff of ₹8.40 per unit is a mandatory provision or a directory provision. If it is mandatory to execute the PPA on or before 31.8.2015 for getting the tariff of ₹8.40 per unit, the Commission cannot relax the time limit for any reason. It is not in dispute in the present case that, as on 31.8.2015, the Petitioner was not in a position to execute the PPA. In order to ascertain, whether compliance of the time limit fixed for doing a thing is mandatory or not, the following principle laid down may be noted :

“..It is a well-settled principle that if a thing is required to be done by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In Sutherland's Statutory Construction, 3rd Edn., Vo.3, at p.107, it is pointed

out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p.109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. At p.111 it is stated as follows :

'As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards directory construction. But this is only an element to be considered, and is by no means conclusive.' ..."

[(2003) 3 SCC, at Page-436, Para-7, Balwant Singh and others –Vs- Ananda Kumar Sharma and others.]

- (g) We are of the considered opinion that the above principle applies to the present case and it should be held that the execution of the PPA within a specified time-frame, for getting a specified tariff, is mandatory and this Commission has no discretion to relax the time limit to enable the Petitioner to seek the tariff of ₹8.40 per unit, for a PPA to be executed on or after 1.9.2015, for any reason whatsoever.

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(h) In view of the above principles of law, it is not necessary for this Commission to decide as to who was at fault for the delay in issuing the letter of Award to the Petitioner. For the above reasons, we answer Issue No.(1) in the negative.

11) **ISSUE No.(2)** : *What Order?*

As Issue No.(1) above is answered in the negative, we pass the following:

ORDER

The Petition is dismissed.

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

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

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