

No.: N/56/17

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

Dated : 10th October, 2017

Present:

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

OP No. 29/2017

BETWEEN:

Sri. M.R. Shivaswamy,
129, Anchechomanahalli,
Singatagere Hobli,
Keresanthe Post, Kadur Taluk,
Chikkamagaluru District

.. **PETITIONER**

[Represented by S A Partners, Advocates]

AND:

- 1) The State of Karnataka
By its Chief Secretary to Government,
Vidhana Soudha, Vidhana Veedhi,
Bengaluru-560 001.
- 2) The State of Karnataka
By its Additional Chief Secretary to Government,
Dept. of Energy, MS Buildings, Dr.Amedkar Veedhi.
Bengaluru-560 001.
- 3) Mangalore Electricity Supply Company Ltd.,
Corporate Office, MESCOM Bhavana,
Kavoor Cross Road, Bejai,
Mangaluru – 575 004.

... **RESPONDENTS**

[Respondent No.3 represented by Just Law, Advocates]

ORDERS

- 1) This Petition is filed under Section 86(1)(f) of the Electricity Act, 2003, praying mainly to set aside the communication dated 11.01.2017 passed by Respondent No.3 and to fix the tariff for the Petitioner's Solar Roof Top Photo Voltaic (SRTPV) Plant as per the Power Purchase Agreement (PPA) dated 10.12.2015.

- 2) The grounds raised by the Petitioner, in support of his prayer, are as follows:
 - (a) The Petitioner who owns a Brick manufacturing unit at Anchechomanahalli, Kadur Taluk, Chikkamagaluru District, vide application dated 03.12.2015, applied to the Respondent No.3 for establishment of a Solar Roof Top Photo Voltaic plant (SRTPV plant) of a generating capacity of 490 kWp on the roof top of the said premises. The Petitioner entered into Power Purchase Agreement (PPA) on 10.12.2015 with the Respondent No.3 for sale of power from the plant at Rs.9.56 per kWh on net metering basis. As per the said agreement, the Petitioner had to complete the project on or before 10.06.2016.

 - (b) Subsequent to completion of the Project on 01.06.2016, the Petitioner intimated the concerned authority (Electrical Inspectorate) that the project has been completed and requested him to inspect the site and grant approval. As there was no response from the authority, the Petitioner vide e-mail sent on 11.06.2016 intimated the Respondent No.3 about the completion of work along with certain documents, but there was no response from the Respondent No.3.

OP No.29/2017

- (c) However, the Petitioner received a letter dated 11.01.2017 from Respondent No.3, wherein he was informed that the tariff has been revised to Rs.5.67 per unit due to delay in completing the plant by the Petitioner.
 - (d) It is the case of the Petitioner that, the *bonafide* request for inspection was not considered by the Respondent No.3 and the delay occurred on account of inaction by Respondent No.3 has been wrongly attributed to the Petitioner, denying the tariff agreed in the PPA.
- 3) Upon issuance of Notice to the Respondents No. 2 and 3 (Respondent No.1 is not a necessary party), the Respondent No.3 appeared through its Counsel and filed Statement of Objections in which it is contended that:
- a) The SRPTV guidelines of the Respondent No.3 clearly sets out the procedure to be followed for establishing SRTPV plant (Annexure R-1). That as per such guidelines, the consumer is required to first submit an application for establishment of plant which is processed and a PPA is executed in Format 5. That thereafter the Respondent No.3 issues an approval letter for installation work to commence, in Form-6/6A, and that on completion of the works, the applicant is required to submit a completion report in Format-8 seven days prior to the last date approved for commissioning. That such completion report can be submitted only after inspection by the Office of the Chief Electrical Inspectorate (CEI), who is the Inspecting Authority for ensuring safety standards in SRTPV systems above 10 kWp. That the CEI, appointed under Section 162 of the Electricity Act, 2003, is not part of Respondent No.3.

- b) The Petitioner having failed to obtain the Inspection Report from the CEI is trying to blame Respondent No.3 for the same, even though there is no delay by the Respondent No.3. That the Respondent No.3 has issued the impugned communication in line with the directions of the Commission in its Order dated 02.05.2016.
 - c) Clause 5.1 of the PPA dated 10.12.2015 clearly states that the seller has to obtain all statutory approvals and clearances as intimated at the time of according approval for installation of SRTPV Plant, before connecting the same to the distribution system. That the Petitioner was to complete and commission the Plant by 10.06.2016. That the Petitioner failed to submit the completion report by 03.06.2016 as required under the guidelines. That the Petitioner has only paid the inspection fees to the CEI on 07.06.2016 indicating that the delay in completing the plant is wholly attributable to the Petitioner.
 - d) The Commission has clearly stated in its Order dated 02.05.2016 that, the plants, which are not commissioned within one hundred and eighty (180) days, are not entitled to the tariff of Rs.9.56 per unit and are entitled only to the revised tariff.
 - e) The Commission clarified in its letter dated 14.09.2016 that the provisions of the PPA executed in the case do not envisage any extension of commissioning date of SRTPV power plant and that as per its Order dated 02.05.2016, the Petitioner's plant is entitled to revised tariff. That, accordingly, the Respondent No.3 had issued the impugned communication dated 11.01.2017 to the Petitioner.
- 4) We have heard the Counsel for both sides and perused the records.

- 5) The following Issues arise for our consideration:
- (1) Whether the Petitioner is entitled to the tariff, mentioned in the PPA dated 10.12.2015, despite commissioning the SRTPV system beyond the agreed period of six months?
 - (2) What Order?
- 6) **ISSUE No.(1):** *Whether the Petitioner is entitled to the tariff, mentioned in the PPA dated 10.12.2015, despite commissioning the SRTPV system beyond the agreed period of six months?*
- (a) We note that while the Petitioner has contended that inaction of the CEI has caused delay in completion of the project, the CEI is not arraigned as a Respondent despite being pointed out during the course of proceedings.
 - (b) It is the case of the Petitioner that the Plant was completed and ready for commissioning on 01.06.2016 and that even the Respondent No.3 admitted this fact. That the delay, thereafter, in actual commissioning of the Plant was because of Respondent No.3 not inspecting and granting safety approval. However, we note that as correctly contended by the Respondent No.3, the onus of getting safety clearance for the plant from an authority, i.e., CEI, who is not a functionary of the Respondent No.3, is on the Petitioner. The relevant portion of the PPA reads thus:

"5. Clearances and Approvals

5.1 The Seller hereby agrees to obtain all the statutory approvals and clearances as intimated at the time of according approval for installation of SRTPV before connecting the photovoltaic system to the distribution system."

- (c) We further note that contrary to the Petitioner's claim that the Plant was ready for commissioning on 01.06.2016, the application for grant of safety approval, produced as ANNEXURE - R4 by the Respondent No.3, was made to the CEI by the Petitioner on 07.06.2016 and this is not denied by the Petitioner. The letter dated 01.06.2016, statedly written to the CEI intimating completion of the Petitioner's plant and requesting for inspection and grant of approval, produced as Annexure-E to the Petition, does not bear an acknowledgement of receipt of such letter by the CEI and therefore cannot be relied upon by us to reject the contentions of Respondent No.3. Thereafter, the CEI approved the drawings pertaining to the installation on 20.06.2016 after obtaining certain clarifications from the Petitioner and subsequently on 23.07.2016, the CEI granted safety approval subject to certain conditions, pursuant to which the plant has been commissioned on 24.05.2017.
- (d) Admittedly, the Petitioner was aware that the plant had to be commissioned within six months from the date of execution of the PPA and also that the inspection of the plant for being declared as having

met the safety standards was to be carried out by the CEI, as could be seen from page 3 of Annexure–A to the Petition. It is not the case of the Petitioner that, the PPA provided for grant of extension of time to the Petitioner for commissioning the Project for any delay in obtaining safety approval from the CEI. We found that the Petitioner had made an application for grant of Safety approval to the CEI on 07.06.2016, i.e., just two days before the scheduled commissioning date. We note that in the letter, produced as ANNEXURE-H to the Petition, relied on by the Petitioner to contend that the Respondent No.3 admitted the fact that the Petitioner's Plant was complete and ready for commissioning on 01.06.2016, it is reported that even as on 03.06.2016, the approval of safety standards of the plant was not obtained from the CEI. As rightly pointed out by the Respondent No.3, the Work Completion Certificate should have been submitted to it seven days prior to the end of one hundred and eighty days and such work completion would include even obtaining approval of safety standards of the plant from the CEI. We note that, the Petitioner cannot reasonably expect the CEI to complete the formalities relating to grant of safety approval within a matter of two days and we are of the considered opinion that the Respondent No.3 let alone the CEI cannot be held responsible for the consequent delay in commissioning of the Petitioner's project. Thus, we do not find any merit in the Petitioner's contention that the plant was ready to be commissioned within the scheduled time, but could not do so because of the fault of the Respondent No.3. We therefore, hold

that the Petitioner having breached the terms of the PPA would have to bear the consequences of such breach.

- (e) 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. Such tariff was available to the Petitioner subject to commissioning of the project within six months. In the meanwhile, the Commission in its Order dated 02.05.2016 issued in supersession of its Order dated 10.10.2013, taking into consideration the relevant factors, 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 which could not be commissioned within the stipulated time period. The Petitioner having commissioned his Plant on 24.05.2017, i.e., after 02.05.2016 is entitled for a tariff of Rs.5.67 per unit in terms of the Commission's Order dated 02.05.2016. The Respondent No.3 having had obtained clarification from the Commission on the applicable tariff for the Petitioner's plant has rightly communicated that the Petitioner is entitled only for the revised tariff and not as agreed in the PPA.
- (f) Therefore, we answer Issue No. 1 in the negative.

7) **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 `5.67 (Rupees Five and paise Sixty Seven) only per unit.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER