

No./N/122 of 2020

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

Dated: 18.08.2021

Present

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

RP No.07 of 2020

(In OP No.77 of 2019)

BETWEEN:

Shri. S.A. Prasanna Kumar,
S/o Shri. S.K. Anke Gowda,
Aged about 39 years,
R/o No.218, Samahalli Village,
Goravale Post, Dudda Hobli,
Mandya Taluk & District – 571 402

.... PETITIONER

(Represented by Smt. Poonam Patil, Advocate)

AND:

1. The Managing Director,
Chamundeshwari Electricity Supply Company,
Corporate Office No.29,
Vijayanagar 2nd Stage,
Hinkal, Mysuru City – 570 017.
2. The Executive Engineer (Ele),
Chamundeshwari Electricity Supply Company (O & M)
Mandya Sub-Division,
Mandya City – 571 401.

.... RESPONDENT

(Respondent by Sri. Sriranga S. Advocate
for JustLaw)

ORDER

1. This is a review petition filed under section 94 (1) (f) of the Electricity Act 2003, read with Order 47 Rule 1 of C.P.C., praying for review of the order dated 13.11.2020 passed in OP No. 77/2019, (herein after referred as Impugned order) as prayed for in the prayer column of the Review Petition.
2. The reliefs prayed for in the Review Petition are as follows:

“Wherefore the petitioner most respectfully prays that the Hon’ble Commission may kindly receive this Review Petition, the records of the OP No.77/ 2019 may kindly be called for and the documents produced by the Review Petitioner may kindly be appreciated, and allow this Review Petition whereby the Order dated 13.11.2020 in OP No.77/ 2019 passed by the Hon’ble KERC at Bengaluru be modified as hereunder:

- a) Declare that the Letter & Memorandum (both) dated 09.08.2016 issued by respondent No.2 is null and void and not binding on the petitioner.
- b) To give statutory approvals to the PPAs dated 19.01.2016 & 09.02.2016.
- c) Direct the respondents to pay the petitioner for the net-metered energy, delivered from the SRTPV Plant, at Rs.9.56 per unit to the RR No. R1S1P318 as per the PPAs entered on 19.01.2016 & 09.02.2016 from the date of power supply by the petitioner.

OR

At any such adequate rate considering the investments made & improvements undertaken by the petitioner.

- a) To extend the period, for installing the 990 kW Solar SRTPV System by 180 days from the date of final disposal of this Review Petition.
 - b) Pass such other order(s), as deems fit, in the interest of justice and equity."
3. The facts in brief leading to filing of OP No.77/2019 and the order passed in the said case may be stated as follows:
- a) The petitioner had executed the PPA dated 09.02.2016 with 2nd respondent (herein after referred as CESC) for sale of solar energy on net metering basis from the SRPTV system of 990 kWp capacity to be installed on the Roof-Top of the premises at Bevukal village, in Mandya Taluk, which was connected with RR No. R1S1P318. The PPA was approved by the Commission subject to the condition that the SRTPV Project was to be Commissioned within six months from the date of PPA. The petitioner failed to Commission the project within time prescribed. Therefore, the PPA was terminated vide Official Memorandum (OM) dated 09.08.2016, by CESC.
 - b) Thereafter the petitioner filed OP No.77/2019 praying to set aside the OM dated 09.08.2016 and to grant consequential reliefs. The grievance put-forth by the petitioner was that he should have been allowed one-year time for establishing the SRTPV System.
 - c) Earlier the petitioner had moved the Hon'ble High Court of Karnataka by filing Writ Petition No.41854/ 2016 and obtained an interim order on

09.11.2016 to the effect that the OM dated 09.08.2016 should remain stayed and the petitioner was permitted to continue with the process of setting up of the SRTPV System on or before 18.01.2017 as agreed in an another PPA dated 19.01.2016 produced before the Hon'ble High Court an Annexure-E.

- d) The respondent-CESC preferred Writ Appeal No.4719 of 2017 against the Interim Order passed in WP No.41854 of 2016 and succeeded in getting set aside the Interim Order dated 09.11.2016. Ultimately the Writ Petition No.41854/ 2016 was also dismissed.
- e) The reliefs prayed for in OP No.77/ 2019 were rejected by this Commission. However, considering that the petitioner had spent substantial amount of Rs.90 lakhs as claimed by him for constructing nine more sheds, he was allowed to establish SRTPV System of 990 kWp capacity on the Roof-Tops of the sheds with the then prevailing tariff of Rs.3.07 per unit on executing a fresh PPA with CESC, by relaxing the restriction limiting the capacity of the installation of SRTPV System to the sanctioned load of the premises.
4. In the present review petition alleging the facts of the case in paras 1 to 11, the so called grounds urged for review of the impugned order are stated in paras 13 and 14 which are as follows:

“13. The Order dated 13.11.2020 in OP No.77/2019 is on a mistake as well as error apparent on the record. Moreover, there are sufficient reasons for filing this Review Petition.

14. The discrimination is not considered by the Hon'ble KERC, wherein the petitioner has been singled out. The same was specifically taken up once the respondents filed their reply in the OP No.77/2019. The petitioner is a victim at the hands of the respondents."
5. The above grounds urged for review of the impugned order, being prima facie insufficient, the petitioner in his rejoinder dated 06.07.2021 filed seven months from the date of filing the Review Petition, has taken certain grounds in support of his case, the gist of which may be stated as follows:
- a) The finding of fact at para 10(b) of impugned order to the effect that the petitioner has not yet started implementation of the SRTPV System, is contrary to the finding of the Commission at par 11(b) & 11 (c) of the impugned order wherein the Commission accepted the fact of erection the new sheds in the following words:
- “(b)The petitioner must have spent a huge amount for construction of the new sheds. He claims that he spent about Rs.90 lakhs for construction of the sheds by spending his own funds and borrowing a considerable portion from friends and relatives.
- (c) Therefore, we are of the considered view that this case is to be treated as an exceptional case and the petitioner should be allowed to install the SRTPV System of 990 kWp capacity on the Roof-Tops of the existing shed and the newly constructed sheds with the prevailing tariff of Rs.3.07 per unit for the net-energy injected into the grid.”

Therefore, it is contended that the petitioner having already spent about Rs.90 lakhs for construction of new sheds, before filing the petition, it is deemed that the petitioner had already taken up the construction work of the SRTPV System, thereby he was entitled to the then prevailing tariff of Rs.9.56 per unit but not the present prevailing tariff of Rs.3.07 per unit at the time of passing the impugned order. In other words, it is contended that the amount spent towards construction of the sheds were factored in the tariff fixed under the PPA and that would be a part of the Capital Cost for construction of SRTPV System, thereby the tariff cannot be reduced.

- b) The finding at para 10(f) of the impugned order to the effect that the petitioner had brought to light the existence of the PPA dated 19.01.2016 only while filing Writ Petition No.41854/2016 and that the petitioner had not specifically disclosed in his petition that he was intending to install the SRPVT System on the Roof Top of the building to be constructed, also needs to be reviewed as the said finding is an error apparent on the face of the record. In support of it, it is contended that the petitioner had produced the photographs while filing the petition itself, which showed the status of project.
- c) It is urged that the respondent-CESC should have acted upon the PPA dated 19.01.2016 the execution of which was not denied by the respondent-CESC. It is pointed out that the PPA dated 19.01.2016 itself provided one-year time for construction of the SRTPV System.

- d) The officials of the respondent-CESC had visited the spot and had noted the progress of the construction work of the sheds. Therefore, in the petitioner was entitled to one-year time for completing the SRTPV System but not six months from the date of the PPA.
- e) In the impugned order, the petitioner should have been granted at least generic tariff of Rs.5.67 per unit while allowing to execute fresh PPA. The subject property is now in possession of HDFC Bank who had initiated recovery proceedings in the Debts Recovery Tribunal against the petitioner, in respect of the loan of Rs.1.1 crores borrowed in the year 2011 to set up poultry farm. Utilising the loan, the petitioner had constructed the poultry farm and had given it on rent of Rs.2.5 lakhs per month to a private firm and the rent was sufficient to service the debt and also to meet the expenses of the petitioner to the extent of 50,000-00 per month. The petitioner applied for installation of the SRTPV plant with the tariff of Rs.9.56 per unit with the respondent. However, the officials of the respondent visited the spot and advised that SRTPV panels could not be set up on the existing poultry structures which were made of wood and tiles. On their advice the petitioner demolished the old structures and laid the foundation with the steel structures as per the requirement for SRTPV plant by spending about Rs.90 lakhs after raising loan from friends and family members.

6. The respondent-CESC appeared through counsel and filed statement of objections to the review petition as well as the rejoinder in which new facts were stated.

7. We have heard the learned counsel for the parties and perused the records including records in OP No.77/2019.

8. The following points arise for our consideration.

Point No.1: Whether the petitioner has made out any grounds for allowing the review of the impugned order dated 13.11.2020?

Point No.2: What Order?

9. After considering the submissions of the parties and perusal of the records our findings on the above points are as follows.

10. Point No.1: Whether the petitioner has made out any grounds for allowing the review of the impugned order dated 13.11.2020?

a) As already noted the grounds urged in the support of Review Petition are prima facie not tenable. No fact or any relevant reason are stated in support of the allegation that there was error apparent on the face of the record in the impugned order. This fact cannot be disputed by the learned counsel who appeared for the petitioner for the present. Therefore, the review petition as originally filed is to be rejected, as no acceptable ground is made out.

b) The grounds alleged in the rejoinder were pleaded nearly seven months from the date of Review Petition. In a rejoinder these

grounds could not have been urged, that too after the lapse of limitation period for filing a Review Petition from the date of impugned order. Therefore, on this ground alone the facts stated in the rejoinder are to be rejected.

- c) Even on merit, the grounds urged in the rejoinder are insufficient to make out a case for review of impugned order. The grounds urged in the rejoinder are stated in brief in para 5 (a) to (e) of this Order.
- d) Regarding the ground urged in para 5 (a): It is stated that the finding of fact at para 10 (b) of the impugned order to the effect that petitioner has not yet started the implementation of SRTPV System is contrary to the findings of the Commission at para 11 (b) & 11 (c) of the impugned order. This contention is incorrect. The commencement of construction of sheds cannot be considered as the commencement of implementation of SRTPV System. The commencement SRTPV System, can begin after completion of the construction of sheds. Therefore, it cannot be contended that the construction of SRTPV System began with the construction of new sheds. For this reason, the petitioner cannot be allowed the tariff prevailing at the commencement of the construction work of the new sheds. The Commission rightly observed in the impugned order that the work of SRTPV System had not yet commenced on the date of passing the impugned order. In OP 77/2019 and as well as in the present

Review Petition the petitioner has requested for grant of 180 days for installing the SRTPV System from the date of Orders.

- e) Regarding the ground urged in para 5(b): It is stated that the finding at para 10 (f) of the impugned order to the effect that petitioner had brought to light the existence of the PPA dated 19.01.2016 only while filing Writ Petition No.41854/ 2016 etc. is incorrect and is an error apparent on the face of the record. This contention is also incorrect. The conclusion reached in this para (f) of the impugned order is quite correct and is based on facts produced in that case. The petitioner had not stated in any of the communication addressed to the Commission regarding the existence of the PPA dated 19.01.2016. The reasons mentioned in para 10(f) of the impugned order are supported by the facts on record of that case. In that para the Commission had observed that the petitioner had not specifically disclosed in his petition that he was intending to install the SRTPV System on the Roof-Top of the building to be constructed. It may be true that the petitioner might have produced certain photographs disclosing the progress in the construction of the sheds. The production of photographs does not amount to a pleading in the petition. That is why the Commission observed that the petitioner had not specifically pleaded that fact.
- f) Regarding the ground urged in para 5(c): It is stated that the respondent-CESC should have acted upon the PPA dated 19.01.2016 etc. which provided one-year time for construction of the SRTPV

System, thereby the Commission was required to consider one-year time for construction of the SRTPV System. This ground is also not well founded. The PPA dated 19.01.2016 was not produced before the Commission for its approval. The petitioner had not put forth this grievance for extension of time on the basis of PPA dated 19.01.2016. This PPA was not in the approved PPA format. It is not known, which fact persuaded the then executive engineer to sign the PPA dated 19.01.2016, with the terms and conditions stated therein. It can be seen that the petitioner was allowed by the Hon'ble High Court to complete the SRPTV System within 18.01.2017 by granting time up to one-year from PPA dated 19.01.2016 as per the contention of the petitioner. In spite of it the petitioner had not commenced the work of SRTPV System. The excuse set up by the petitioner was not accepted by the Hon'ble High Court while dismissing the W.P. No.41854/ 2016 on merit of the facts. Therefore, the CESC acting upon the PPA dated 19.01.2016 does not arise.

- g) Regarding the ground urged in para 5(d): It is contended that the officials of CESC had visited the spot and they were aware of the progress of the construction work of the sheds. Therefore, it is contended that the petitioner should have been given one-year time for completing the SRTPV System but not six-months from the date of the PPA. It may be noted that the Commission had granted six-months' time for completion of the SRTPV System, based on the documents

produced at the time of approval of the PPA dated 09.02.2016. This PPA or the application dated 12.01.2016 filed by the petitioner for approval of SRTPV System on net-metering basis (Annexure-D) before CESC were not disclosing that the roof was under construction. This application (Annexure-D) was disclosing that approximate shadow free area of Roof-Top available was thousand square meters. At the time of approval of the PPA dated 09.02.2016, there was no material placed before the Commission that the Roof was under construction. Therefore, the claim of the petitioner that one-year time should have been granted for completion of the SRTPV System but not six months from the date of PPA cannot be accepted. The petitioner has not explained for which reason he has filed the application (Annexure-D) claiming that approximate shadow free area of Roof-Top was thousand square meters. Therefore, this ground urged by the petitioner cannot be accepted.

- h) Regarding the ground urged in para 5(e): In this ground the petitioner stated that due to the wrong advice of officials of the respondent-CESC, the existing sheds were demolished and the construction of new sheds with steel structures was commenced suitable to install SRTPV plant. It is also stated that out of the rent of Rs.2.5 lakhs per month, fetching from the old sheds, he used to service the debt obtained from bank and also meeting his expenses to the extent of Rs. 50,000 per month. The respondent denied these facts and contended that the

officials had not given such advice to the petitioner and that this new fact cannot be admitted in the review proceedings. The Commission notes that the petitioner himself is to be blamed for demolishing the old sheds, when he was getting Rs.50,000 per month for his expenses apart from servicing the instalments of the debt, out of the rent amount he was getting. In the present proceedings the petitioner cannot be granted any relief even if the allegations made by him are true. It may be noted that these new facts cannot be admitted in a review proceeding, unless it is shown that these facts were earlier not known to the petitioner and he could discover it only subsequent to passing of the order dated 13.11.2020 in OP No.77/2019. However, the petitioner is not in a position to plead these facts. For the above reasons the petitioner cannot be allowed tariff of Rs.9.56 per unit or Rs.5.67 per unit as claimed by him.

- i) For the above reasons, we hold that the petitioner has failed to make out any grounds for allowing the review of the impugned order dated 13.11.2020. Accordingly, point No.1 is held in negative.

11. Point No.2: What Order?

As point No.1 is held in negative, the Review Petition is to be dismissed.

Hence, the following:

ORDER

The Review Petition is dismissed, holding that no ground is made out for review of the order dated 13.11.2020 passed in OP.No.77/2019.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member