

No.N/57/2018

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

Dated: 12.01.2021

Present

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

OP No. 21/2018

BETWEEN:

Sri V.K. Govindan Nair,
S/o Late V.K. Kelappan Nair,
Aged about 73 years,
R/o 'Srinikethan', Kuvempu Road,
5th Cross, 1st Lane left, Sharavathingar,
Shimoga-577 201.

... PETITIONER.

[Represented by Sri M.S. Harish Kumar, Advocate]

AND:

1) The State of Karnataka
By its Additional Chief Secretary to Government,
Department of Energy,
M.S. Building,
Dr.B.R. Ambedkar Veedhi,
Bengaluru-560 001.

[Respondent No.1 represented by Sri G.S. Kannur,
Senior Advocate & Smt. S.S. Latha, Advocate]

2) Mangalore Electricity Supply Company Limited,
Represented by its Managing Director,
Corporate Office, MESCOM Bhavana,
Kavoor Cross Road, Bejai,
Mangaluru-575 004.

3) The Executive Engineer (E.E.),
Operation and Maintenance
Mangalore Electricity Supply Company Limited,
Shimoga-577 201.

... RESPONDENTS.

[Respondents 2 & 3 represented by Smt. Sumana
Naganand, M/s Just Law, Advocates]

ORDERS

1. The above petition is filed under Section 86 (1) (f) of the Electricity Act, 2003 by the Petitioner praying for the following relief:

“That this Commission be pleased to set aside the communication dated 21.04.2017 passed by the Respondent No.2 and to fix the tariff for the Petitioner's Solar Roof Top Photo Voltaic (SRPV) plant as per the Power Purchase Agreement (PPA) dated 20.03.2016 in the interest of justice and equity.”

The communication dated 21.04.2017 (Annexure-H) referred above directs the Petitioner to execute the Supplementary Power Purchase Agreement (SPPA) at the prevailing tariff (i.e., Rs.5.67 per unit) for delay in synchronizing the SRTPV System in question with the grid.

2. The material facts stated by the Petitioner, required for the disposal of the controversies involved in the above case may be stated as follows:
 - a) The Petitioner is a resident of Shivamogga City. He owns a residential house at the address shown in the Cause Title and also owns an industrial shed by name Malabar Tyres at No.11, Industrial Area, Sagar Road, Shivamogga City. He filed two applications dated 23.02.2016 and 16.03.2016 for installation of the STRPV Systems; one on the roof-top of the industrial sheds; and the other one on the roof-top of the residential premises respectively. The above case OP No.21/2018 is filed in respect of the SRTPV System installed on the roof-top of the industrial

sheds and OP No.22/2018 is filed in respect of the SRTPV System installed on the roof-top of the residential premises.

- b) The application dated 23.02.2016 (Annexure-A) sought approval to install of 300 kWp capacity of SRTPV System on the roof-top of the industrial sheds. The industrial sheds were having electricity connection with RR No.P1394 with a sanctioned load of 39 kW of LT-5 tariff. Pursuant to the application, the Petitioner executed the Power Purchase Agreement (PPA) dated 20.03.2016 (Annexure-B) with the 3rd Respondent. The tariff agreed to be paid in the PPA was Rs.9.56 per unit for the energy supplied to the grid on Net Metering basis.
- c) The 3rd Respondent issued approval letter dated 24.03.2016 (Annexure-C) for installation of SRTPV System of 300 kWp capacity on the roof-top of the industrial sheds. This approval was issued with a validity period of 180 days from the date of the said approval within which time the SRTPV System should be commissioned, failing which the approval would be treated as cancelled. The Petitioner submitted the Work Completion Report dated 17.09.2016 (Annexure-D) to the 3rd Respondent.
- d) In Para 4.8 of the petition, the Petitioner claims that he had given the letter of completion to Chief Electrical Inspector to Government (CEIG) on 12.09.2016 i.e., 8 days before the last date for commissioning the SRTPV System and had sought for issue of CEIG approval/certificate, but the CEIG delayed in issuing the approval/certificate.

- e) Further stated that on 28.09.2016, the Petitioner received the CEIG approval/certificate dated 20.09.2016 (Annexure-F) after a delay of 8 days from the date of the said approval/certificate. Immediately after receipt of the CEIG approval/certificate (Annexure-F), the Petitioner approached the 2nd Respondent and sought for synchronization. But very strangely, the 2nd Respondent did not agree to synchronize the SRTPV System of the Petitioner with the grid on the ground that the Petitioner would be entitled to only the tariff of Rs.5.67 per unit instead of the tariff agreed in the PPA as the SRTPV System of the Petitioner was not completed within 180 days, as per the direction of this Commission.
- f) The Petitioner contended that though he had submitted Work Completion Report well within the time, the CEIG had delayed by eight days for issue of the approval and thereafter again there was another eight days' delay in communicating the said approval to the Petitioner. Therefore, it is contended that there is no fault on the part of the Petitioner and the Petitioner had completed the project within the stipulated time and sought for approval from CEIG well within the time, but the CEIG had delayed in issuing the approval. Therefore, the Petitioner contended that he cannot be blamed for the delay, if any in synchronizing the SRTPV System with the grid.
- g) Subsequently, the Petitioner made a representation dated 21.04.2017 (Annexure-G) to the 3rd Respondent requesting for synchronization of the SRTPV System, agreeing to execute the Supplementary Power

Purchase Agreement (SPPA) subject to the orders from KERC/Hon'ble Minister for Energy, Government of Karnataka/MD, BESCOM. It appears that the 3rd Respondent forwarded the said representation dated 21.04.2017 (Annexure-G) to the 2nd Respondent on 21.04.2017 itself. Thereafter, the 2nd Respondent wrote a letter dated 21.04.2017 (Annexure-H) itself to the 3rd Respondent directing to synchronize the SRTPV System of the Petitioner as per his request at the prevailing tariff on executing a SPPA. Thereafter, the 3rd Respondent wrote letter dated 26.04.2017 (Annexure-K) to the Petitioner to execute the SPPA. The Petitioner sent letter dated 28.04.2017 (Annexure-L) to the 3rd Respondent stating that he would enter a SPPA as required without prejudice to his right. Subsequently, the SPPA dated 25.05.2017 (Annexure-J) was executed between the Petitioner and the 3rd Respondent agreeing to pay the tariff of Rs.5.67 per unit for the energy delivered to the grid. On the same day i.e., 26.05.2017, the SRTPV System of the Petitioner was synchronized with the grid. In reply to the representation of the Petitioner, this Commission by letter dated 06.07.2017 (Annexure-M) intimated the Petitioner that he would be entitled to the revised tariff of Rs.5.67 per unit as per the Commission's Order dated 02.05.2016, as there was a delay of over eight months in commissioning the said project. Thereafter, the Petitioner filed the present petition on 14.03.2018.

3. The Respondents appeared through Counsel. The 2nd & 3rd Respondents filed their Statement of Objections denying the claim of the Petitioner and the gist of which may be stated as follows:

- a) It is admitted that the Petitioner made an application for establishing the SRTPV System on the roof-top of his industrial sheds and that the 3rd Respondent issued approval dated 24.03.2016 (Annexure-C) for installation of the SRTPV System subject to the Petitioner commissioning his SRTPV System within 180 days. The execution of the PPA dated 20.03.2016 (Annexure-B) is also admitted.
- b) It is contended that the Petitioner had failed to commission the SRTPV System within 180 days as required under the SRTPV Guidelines issued by these Respondents, thereby the Petitioner was not entitled for a tariff of Rs.9.56 per unit. That the Work Completion Report dated 17.09.2016 (Annexure-D) cannot be construed to be valid as the Petitioner did not enclose the CEIG approval along with the Work Completion Report.
- c) With regard to the alleged delay in issuing the CEIG approval, it is contended that the same are not within the knowledge of these Respondents and the Petitioner is put to strict proof of the same. It is contended that the CEIG was a necessary party to these proceedings to answer the allegations made against him.
- d) The Petitioner has voluntarily executed the SPPA at the prevailing tariff as per the applicable order of this Commission, due to delay in commissioning of the SRTPV System.

- e) The copy of the Guidelines for grid connected SRTPV System issued by the 2nd Respondent is produced at Annexure-R1. The letter dated 17.08.2016 issued by the GoK addressed to the Managing Directors of ESCOMs is produced at Annexure-R2. This letter clarifies that the "Solar Panels of Solar Roof-Top PV Plants must be mandatorily mounted in the space available on the roof of any residential, commercial, institutional, industrial and other buildings which are constructed as per the building construction/norms. Solar PV Plant with Solar panels installed on the ground or ground mounted structures using steel/iron/wooden/concrete supports are not being construed as Solar Roof-Top PV Plants."
- f) That vide letter dated 02.09.2016 (Annexure-R3), the 3rd Respondent communicated to the Superintending Engineer at Corporate Office of the 2nd Respondent regarding the violation of the above said Government clarification in respect of structures put up by the Petitioner to install the SRTPV System involved in this case and sought for further direction in the matter. In reply to it, the 2nd Respondent Corporate office intimated vide letter dated 17.09.2016 (Annexure-R4) to the 3rd Respondent clarifying the relevant guidelines to be followed before synchronizing the SRTPV System.
- g) That this Commission by letter dated 24.08.2017 (Annexure-R5) clarified that *"if effective steps have been taken i.e., substantial investments have been made by the SRTPV consumer to install SRTPV plant within the period allowed for commissioning of the project but, could not*

commission the project within the time allowed then the consumer is entitled to revised tariff without any capacity restriction.” Further this Commission in its letter dated 27.09.2016 (Annexure-R6) instructed that if there was delay in commissioning of the SRTPV System within six months, the consumers concerned would be eligible for the revised tariff as per the Commission's Order dated 02.05.2016.

- h) As per the Solar Policy 2014-21, Solar Roof-Top PV Plants are required to be mandatorily mounted in space available on the roof of any residential, commercial, institutional, industrial and other building constructed as per Building Construction Norms and Solar PV panels installed on the ground or ground mounted structures using steel/iron/wooden/concrete support would not be considered as Solar Roof-Top PV Plants. The GoK has clarified the same vide their letter dated 17.08.2016 (Annexure-R2).
- i) Therefore, the 2nd & 3rd Respondents have requested to dismiss the petition.
4. The 1st Respondent has not filed any Statement of Objection. We may note that the 1st Respondent is not a necessary or a formal party.
5. We have heard the learned counsel for the parties.
6. From the pleadings and the documents produced by the parties and the submissions made by them, the following Issues arise for our consideration:

Issue No.1: Whether the Petitioner proves that he had completed the construction of the SRTPV System well within 20.09.2016, the last date for commissioning the SRTPV System and that the synchronization of the SRTPV System was delayed by the 3rd Respondent without any just cause?

Issue No.2: To which relief the Petitioner is entitled to?

Issue No.3: What Order?

7. After considering the submissions of the learned counsels for the parties and the pleadings and records produced by the parties, our findings on the above Issues are as follows:

8. Issue No.1: Whether the Petitioner proves that he had completed the construction of the SRTPV System well within 20.09.2016, the last date for commissioning the SRTPV System and that the synchronization of the SRTPV System was delayed by the 3rd Respondent without any just cause?

a) The Petitioner claims that he submitted the Work Completion Report dated 17.09.2016 (Annexure-D) to the 3rd Respondent. The 2nd & 3rd Respondents have contended in Paragraph 17 of their Statement of Objections that the Work Completion Report dated 17.09.2016 cannot be construed to be valid as the Petitioner did not enclose the CEIG approval/certificate along with the Work Completion Report. This contention of the 2nd & 3rd Respondents appears to be correct. These Respondents have produced only part of the Guidelines issued for Grid connected SRTPV System (Annexure-R1). In the website, the 2nd Respondent has published the remaining part of the Guidelines which

includes Format-7 to be filed by the applicant showing the details of the work completion. In the said Format at the end, there is a column describing the "Installation Inspection Date". Under this column, the details regarding Electrical Inspectorate approval letter should be submitted showing the date of inspection by the said Authority in case of SRTPV System being 10 kW and above capacity. The Annexure-D Work Completion Report does not contain a column regarding the "Installation of Inspection Date" by CEIG. As already noted, the Format-7 published in the website of MESCOM contains a column regarding the insertion of the details of CEIG Report. In the present case the CEIG Report was issued on 20.09.2016. Therefore, on 17.09.2016 when Format-7 was filed by the Petitioner, he could not have mentioned the particulars regarding the CEIG Report. Therefore, it appears the Petitioner has omitted the said column in Format-7 and filed the Work Completion Report. It can also be noted that the approval issued for installation of SRTPV System dated 24.03.2016 (Annexure-C), requires the Petitioner to submit CEIG Report as well as Work Completion Report apart from other documents stated therein after completion of the SRTPV System. The Guidelines issued regarding the SRTPV System provide that within three days from the date of Work Completion Report, the SRTPV System is to be synchronized.

- b) The Petitioner claims that on 12.09.2016 i.e., eight days before the last date prescribed for commissioning the SRTPV System, he had applied

before the CEIG for issue of Safety approval as required. However, there is no reliable evidence to show that a request was made by the Petitioner on 12.09.2016 before the CEIG. On the other hand, the CEIG approval dated 20.09.2016 (Annexure-F) shows that the Petitioner had submitted letter dated 19.09.2016 with the Work Completion Report before it. Further, it shows on 19.09.2016 installation drawings were approved and on the next day, i.e., 20.09.2016, the Electrical Inspector, Shivamogga, inspected the SRTPV System and sent the recommendation. Thereafter, on the same day i.e., 20.09.2016 itself, the CEIG has issued the Safety approval for the SRTPV System of the Petitioner as per Annexure-F. Therefore, one can say that the CEIG approval dated 20.09.2016 was issued without any loss of time with utmost speed. Therefore, one can say that the Petitioner must have received the copy of the CEIG Report on the same day or at least on the subsequent day, but not after eight days. In this context, the say of the Petitioner that he got the CEIG Report after eight days on 28.09.2016 appears to be not acceptable. The Petitioner further claims that subsequent to 28.09.2016 on receipt of CEIG Report, he approached the 2nd Respondent and sought for synchronization. The Petitioner does not say the date on which he approached the 2nd Respondent seeking for synchronization. However, the records show that the Petitioner wrote letter dated 21.04.2017 (Annexure-G) to the Executive Engineer (Ele.), Shivamogga, requesting for synchronization of his SRTPV System. This request was made nearly after 6-7 months from

the Completion Report dated 17.09.2016 submitted by the Petitioner in Format-7 (Annexure-D).

- c) The Petitioner claims that the Corporate Office of MESCOM had issued letter dated 17.09.2016 (Annexure-E) directing the 3rd Respondent to synchronize the SRTPV System of the Petitioner to the grid. This averment is made in the end of Paragraph 4.5 of the petition. The 2nd & 3rd Respondents have denied that this letter dated 17.09.2016 directed the 3rd Respondent to synchronize the SRTPV System of the Petitioner and on the other hand have contended that this letter clarified the definition of Roof-Top where the SRTPV System is to be installed and reiterated the clarification stated in Government letter dated 17.08.2016 (Annexure-R2). They have also produced the copy of the said letter dated 17.09.2016 as Annexure-R4 which corresponds to Annexure-E produced by the Petitioner. The contents of the said letter dated 17.09.2016 shows that the say of the 2nd & 3rd Respondents are to be accepted.
- d) The 2nd & 3rd Respondents have contended in their Statement of Objections that certain violations were observed while inspecting the SRTPV System and the 3rd Respondent on 02.09.2016 (Annexure-R3) wrote letter to the 2nd Respondent Corporate Office, MESCOM seeking further instructions. These Respondents have further contended that the letter dated 17.09.2016 (Annexure-R4) was issued by the Corporate Office MESCOM, in reply to the letter dated 02.09.2016 (Annexure-R3).

This submission of the 2nd & 3rd Respondents appears to be correct, in view of the contents of the letter dated 17.09.2016 (Annexure-R4). There is no clear evidence on record produced either by the Petitioner or the Respondents as to whether the violations noted in letter dated 02.09.2016 (Annexure-R3) was subsequently rectified or not before synchronization of the SRTPV System.

e) The letter dated 02.09.2016 (Annexure-R3) discloses that the solar panels were also installed over the vacant space available in between the three industrial sheds by constructing the structures using steel rods, apart from installing the solar panels on the roof-top of these industrial sheds. Therefore, it is stated in the said letter that the installation of solar panels over the vacant space is in contravention of the clarification issued in the Government letter dated 17.08.2016 (Annexure-R2). It appears the above violation in installing the Solar panels had also led to delay in synchronization of the SRTPV System. For the above reasons one can conclude that the SRTPV System of the Petitioner was not completed in all respects on or before 20.09.2016 as claimed by the Petitioner and the delay in synchronization of the SRTPV System was not due to any of the faults on the part of the 3rd Respondent. Accordingly, Issue No.1 is held in negative.

9. Issue No.2: To which relief the Petitioner is entitled to?

I It is admitted by the Petitioner in Paragraph 4.11 of the petition that if there was delay in implementing the SRTPV System within the time

line the specified tariff agreed in the PPA was not applicable. As noted in Issue No.1, there was delay in commissioning the SRTPV System not due to any fault on the part of the Respondents. Therefore, the tariff applicable for the present SRTPV System was Rs.5.67 per unit. Hence, the tariff agreed in the SPPA dated 25.05.2017 (Annexure-J) is proper and legal. Therefore, Issue No.2 is held accordingly.

10. Issue No.3: What Order?

For the above reasons, we proceed to pass the following:

ORDER

The Petitioner is not entitled to any relief as sought for in the petition. Accordingly, the petition is dismissed.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member