

No.N/56/2018

**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. 22/2018

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 Assistant Executive Engineer (A.E.E.),
CSD-3 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 14.09.2017 in No.AA(VAA)Sa.Kaa.Ni.A (Vaa) 17-18/4627-631 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 22.03.2016 in the interest of justice and equity.”

The communication dated 14.09.2017 (Annexure-P) referred above directs that the Petitioner’s SRTPV System be synchronized with the grid at the revised tariff (i.e., Rs.6.61 per unit) without any capacity restriction, for the delay in synchronization.

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 16.03.2016 and 23.02.2016 for installation of the STRPV Systems; one on the roof-top of the residential house; and the other one on the roof-top of the industrial sheds respectively. The present case is filed in respect of the SRTPV System installed on the roof-top of the residential house and OP

No.21/2018 is filed in respect of the SRTPV System installed on the roof-top of the industrial sheds.

- b) The application dated 16.03.2016 (Annexure-A) sought for approval to install of 25 kWp capacity of SRTPV System on the roof-top of the residential house. The residential house was having electricity connection with RR No.AEH 10378 with a sanctioned load of 3 kWp of LT-2 a (i) tariff. Pursuant to the application, the Petitioner executed the Power Purchase Agreement (PPA) dated 22.03.2016 (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 30.04.2016 (Annexure-C) for installation of SRTPV System of 25 kWp capacity on the roof-top of the residential house. This approval was issued with a validity period of 180 days from the date of the said approval within which the SRTPV System should be commissioned, failing which the approval would be treated as cancelled. The Petitioner submitted the Work Completion Report dated Nil (Annexure-D) to the 3rd Respondent. However, the Petitioner stated in his petition that the Work Completion Report (Annexure-D) was submitted on 16.08.2016.
- d) Immediately thereafter, the Additional Chief Electrical Inspector (ACEI), Mangaluru, has given the electrical safety approval dated 18.08.2016 (Annexure-E) of the SRTPV System of the Petitioner. Thereafter, the Petitioner requested vide letter dated 20.08.2016 (Annexure-F)

addressed to the 3rd Respondent to synchronize the SRTPV System with the grid.

- e) In Paragraph 4.7 of the petition, the Petitioner has stated that such being the position, very strangely the Executive Engineer (Ele.) O&M Division, Shivamogga, unnecessarily raised certain issues in his letter dated 02.09.2016 (Annexure-G) addressed to the concerned Superintending Engineer, Corporate Office, MESCOM, Mangaluru, alleging that the Petitioner had not only installed the solar panels on the roof-top of the residential house, but also over the open space available in the residential premises by putting ground mounted steel structures.
- f) In paragraph 4.8 of the petition, the Petitioner has stated that on 05.09.2016 again the Executive Engineer (Ele.), O&M Division, Shivamogga, after getting the confirmation from him that he had removed the solar panel from the open space and had sought synchronization only for the solar panels installed on the roof top of the residential house, wrote letter dated 05.09.2016 (Annexure-H) to the Superintending Engineer, Corporate Office, MESCOM, Mangaluru, seeking further clarification. (It may be noted that Annexure-H appears to have been dated 05.09.2017, but not 05.09.2016).
- g) The Petitioner also made a representation dated 07.09.2016 (Annexure-J) to the Corporate Office, MESCOM, Mangaluru, requesting to synchronize the SRTPV System as per the then existing norms and

guidelines, but not applying the subsequent revised norms and guidelines.

- h) The Corporate Office by its letter dated 17.09.2016 (Annexure-K) has clarified certain queries raised by the Executive Engineer (Ele.), Shivamogga and directed him to proceed to synchronize the SRTPV System as per the clarification. The 3rd Respondent addressed letter dated 17.10.2016 (Annexure-L) to the Petitioner to remove the solar panels installed on the structure put up over the open space. The Petitioner in his letter dated 28.10.2016 (Annexure-M) addressed to the 3rd Respondent stated that he had installed the SRTPV System only on the roof-top of the residential house and requested to synchronize the same with the grid. In paragraph 4.13 of the petition, it is stated that the Petitioner had already removed the solar panels installed in the open space and accordingly requested vide letter dated 28.10.2016 (Annexure-M) to synchronize the SRTPV System with the grid. The Petitioner has stated that in spite of these developments his SRTPV System was not synchronized with the grid stating that 180 days had been lapsed and the Petitioner could not seek the agreed tariff.
- i) Nearly after ten months from the date of his last letter dated 28.10.2016 (Annexure-M), the Petitioner again made a request dated 30.08.2017 (Annexure-N), to the Executive Engineer, MESCOM, Shivamogga, asserting that he had fabricated the roof-top structure somewhere in February, before getting the approval for installation of the SRTPV System and he had installed the SRTPV System only within the boundary

of his constructed house. Therefore, he requested to synchronize the SRTPV System and to pay the tariff of Rs.9.56 per unit as agreed in the PPA.

j) The Corporate Office, MESCOM, in its letter dated 14.09.2017 (Annexure-P) addressed to the Executive Engineer (Ele.) Shivamogga, intimated to synchronize the SRTPV System of the Petitioner with the revised tariff as explained/clarified by KERC in its earlier communications. The Executive Engineer (Ele.), Shivamogga, in turn, vide letter dated 03.10.2017 (Annexure-Q) addressed to the 3rd Respondent instructed to synchronize the Petitioner's SRTPV System with revised tariff, but without any capacity restriction. Accordingly, the 3rd Respondent vide letter dated 16.10.2017 (Annexure-R) addressed to the Petitioner intimated to execute the PPA with the revised tariff for getting the SRTPV System synchronized with the grid. Then the Petitioner executed the SPPA dated 19.10.2017 (Annexure-T) and on the same day, the SRTPV System was synchronized with the grid. The SPPA was executed agreeing for the tariff of Rs.6.61 per unit for the energy supplied. Thereafter, the Petitioner has 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, 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 residential house and that the 3rd Respondent issued approval for installation of the SRTPV System dated 30.04.2016 (Annexure-C) subject to the Petitioner commissioning his SRTPV System within 180 days. (However, in paragraph 3 of the Statement of Objections, it is wrongly stated that the approval for installation of the SRTPV System was dated 24.03.2016. In support of it, the 2nd & 3rd Respondents have not placed any material. On the other hand, while traversing the averments made in the petition, the date of issue of approval for installation of the SRTPV System as stated by the Petitioner i.e., 30.04.2016 is not denied. Therefore, one can assume that the 2nd & 3rd Respondents have wrongly mentioned the said date as 24.03.2016 instead of 30.04.2016). The execution of the PPA dated 22.03.2016 (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. These Respondents have not denied the averment made by the Petitioner that the Work Completion Report (Annexure-D) was submitted on 16.08.2016. It is also admitted that the Petitioner has obtained Electrical Safety approval dated 18.08.2016 (Annexure-E) from the ACIE, Mangaluru. It is also not denied that the Petitioner vide his

letter dated 20.08.2016 (Annexure-F) requested to synchronize the SRTPV System with the grid.

- c) That vide letter dated 02.09.2016 (Annexure-R3), the Executive Engineer (Ele.), Shivamogga, communicated to the Superintending Engineer at Corporate Office of the 2nd Respondent, regarding the violation of the prescribed Government norms for installing SRTPV System by the Petitioner 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 Executive Engineer (Ele.), Shivamogga, clarifying the relevant guidelines to be followed before synchronizing the SRTPV System.
- d) The Executive Engineer (Ele.), Shivamogga, in turn, has written letter dated 04.10.2016 (Annexure-R5) to the 3rd Respondent reiterating relevant guidelines to be followed before synchronizing the SRTPV System as explained by the Corporate office in its letter dated 17.09.2016 (Annexure-R4) and directing the 3rd Respondent to take proper step for synchronizing the SRTPV System of the Petitioner.
- e) The 3rd Respondent wrote a letter dated 18.11.2016 (Annexure-R7) to the Petitioner directing to remove the solar panels installed on the open space in the residential premises and to install the solar panels only on the roof-top of the residential house. These Respondents have also produced photographs showing the structure put up by the Petitioner at Annexure-R6.

- f) That this Commission by letter dated 24.08.2017 (Annexure-R8) 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.”* These Respondents have produced the letter dated 27.09.2016 (Annexure-R9) issued by this Commission wherein it was clarified 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.
- g) In the letter dated 14.09.2017, the Superintending Engineer, Corporate office instructed the Executive Engineer (Ele.), Shivamogga, to synchronize the SRTPV System as per the order of this commission dated 24.08.2017 (Annexure-R8). Further, the Executive Engineer (Ele.), Shivamogga, vide letter dated 03.10.2017 directed the 3rd Respondent to synchronize the SRTPV System as per the clarification issued by this Commission on 24.08.2017.
- h) On 16.10.2017, the Petitioner was granted approval to synchronize the SRTPV System and was directed to execute a SPPA due to the delay in commission of the same. The Petitioner on 02.11.2017 requested for signing of a SPPA. Accordingly, the SPPA was signed with the Petitioner at a revised tariff of Rs.6.61 per kWh.

- i) 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 the 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 by constructing structures using steel/iron/wooden/concrete supports are not being construed as Solar Roof-Top PV Plant."
 - j) As per the Solar Policy 2014-21, Solar Roof-Top PV Plant 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).
 - k) 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 produced by the parties and the submissions made by them, the following Issues arise for our consideration:

Issue No.1: Whether the SRTPV System installed by the Petitioner was in compliance with the prescribed Guidelines?

Issue No.2: If Issue No.1 is held in negative, whether there was any delay on the part of the 2nd & 3rd Respondents in commissioning the SRTPV System?

Issue No.3: To which relief the Petitioner is entitled to?

Issue No.4: 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 SRTPV System installed by the Petitioner was in compliance with the prescribed Guidelines?

a) It is not in dispute that as per the prescribed norms, solar panels of SRTPV System should be mandatorily mounted in the space available on the roof of any buildings and the solar panels installed on the ground or ground mounted structures using steel/iron/wooden/concrete supports are not to be construed as SRTPV Systems.

b) The pleadings of the Petitioner do not clearly disclose as to whether the solar panels were installed within the space available on the roof-top of the residential house alone or even it extended on the open space

available in the premises. In his letter dated 28.10.2016 (Annexure-M) addressed to the 3rd Respondent, the Petitioner asserts that he had installed the solar panels only on the area available over the roof-top as per the prevailing norms. In the same way, in the letter dated 30.08.2017 (Annexure-N) written by the Petitioner to the Executive Engineer (Ele.), MESCOM, Shivamogga, he asserted that *"We had fabricated the roof-top before getting into SRTPV approval i.e., somewhere on February and also we had installed SRTPV only within the boundary of House Construction. We are also hereby enclosing Photos of the Installation for your reference."* The Petitioner or the Respondents have not produced before this Commission, the photographs said to have been enclosed along with this letter dated 30.08.2017 (Annexure-N). The letter is disclosing that the Petitioner had not extended the structure for installing the solar panels beyond the actual area available on the roof-top of the residential house.

- c) The letter dated 02.09.2016 (Annexure-G) written by the Executive Engineer (Ele.), MESCOM, Shivamogga to the Corporate Office would show that as per the result of the spot inspection conducted by the 3rd Respondent, the Petitioner had installed the solar panels over the vacant space by putting steel structures, in violation of the prescribed norms.
- d) The Petitioner has not specifically denied the alleged installation of the solar panels over the open space stated in the letter dated 02.09.2016

(Annexure-G). On the other hand, in paragraph 4.8 of his petition he stated that on 05.09.2016, the Executive Engineer (Ele.), Shivamogga, after getting confirmation from the Petitioner that he had removed the solar panels from the open space intimated the same to the Corporate office seeking further direction. However, it is found that Annexure-H is dated 05.09.2017 but not 05.09.2016 as claimed by the Petitioner. In paragraph 4.13 of the petition, the Petitioner has stated that he wrote a reply dated 28.10.2016 (Annexure-M) clarifying the query raised by the Executive Engineer (Ele.), Shivamogga, stating that the Petitioner had already removed the solar panels installed over the open space.

e) In view of the above conflicting versions stated by the Petitioner himself, one has to hold that the Petitioner had installed the solar panels even beyond the roof-top of the residential building extending over the open space. Hence, Issue No.1 is held in negative.

9. Issue No.2: If Issue No.1 is held in negative, whether there was any delay on the part of the 2nd & 3rd Respondents in commissioning the SRTPV System?

There is no specific evidence produced by either of the parties as to when the solar panels installed over the open space were removed before synchronizing the SRTPV System. It is not in dispute that the synchronization of the SRTPV System has taken place on 19.10.2017 after a delay of nearly a year from the last date for commissioning of the SRTPV System. Considering the facts of the case, we are of the opinion that as the SRTPV System was not in compliance with the prescribed

guidelines, there was delay in commissioning the SRTPV System. This delay cannot be attributed to the 2nd or 3rd Respondent. Hence, Issue No.2 is held in negative.

10. Issue No.3: To which relief the Petitioner is entitled to?

Because of the delay in commissioning of the SRTPV System at the fault of the Petitioner, he would be entitled to a reduced tariff of Rs.6.61 per unit for the energy delivered, but not tariff of Rs.9.56 as agreed in the PPA. Therefore, Issue No.3 is held accordingly.

11. Issue No.4: What Order?

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

ORDER

The Petitioner is not entitled to the 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