

No.N/106/2018

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052.

Dated: 07.01.2020

Present:

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

OP No.45/2018

BETWEEN:

Sri Govindappa,
S/o Venkatappa,
Aged about 55 years,
Chikkadibburahalli Village,
Dibburahalli Post,
Sidlaghatta Taluk,
Chikkaballapur District.

[Represented by A.V. Narasimha Reddy and
Annappa K.R. Advocates, Bengaluru]

... **PETITIONER**

AND:

1) Bangalore Electricity Supply Company Limited,
C.O. & M Division, BESCO,
Chintamani.
Represented by its Executive Engineer (Ele).

2) Bangalore Electricity Supply Company Limited,
C.O. & M Division, BESCO,
Chintamani.
Represented by its Assistant Executive Engineer (Ele).

3) Bangalore Electricity Supply Company Limited,
Corporate Office,
Room No.1, Ground Floor Block-2,
K.R. Circle,
Bengaluru-560 001.
Represented by its General Manager, DSM.

4) Bangalore Electricity Supply Company Limited,
Corporate Office,
Room No.1, Ground Floor Block-2,
K.R. Circle,
Bengaluru-560 001.
Represented by its Managing Director (MD).

Respondents 1 to 4 are Represented by JUSTLAW,
Advocates, Bengaluru.

... **RESPONDENTS**

ORDERS

The petitioner has filed the present petition under Section 86 (1) (f) of the Electricity Act, 2003, praying to direct the respondents to pay the arrears towards supply of Solar Power to BESCO @ Rs.9.56 per unit in terms of the Power Purchase Agreement (PPA) dated 31.01.2015 with interest.

2. The material facts alleged by the petitioner in support of the relief claimed, may be stated as follows:-

a) The petitioner entered into PPA in respect of SRTPV plant agreed to be installed on the roof top of his poultry farm, as per Annexure-A dated 31.01.2015 with the terms and conditions noted therein under this PPA. The petitioner had agreed to install 500 kWp capacity SRTPV system with a tariff payable at Rs.9.56 per unit for the energy supplied. For one or

the other reason, the petitioner could not install the 500 kWp Solar Roof Top. Thereafter, the petitioner requested on 05.01.2016 to enhance the capacity of SRTPV System from 500 kWp to 1000 kWp. Accepting the request, the concerned Executive Engineer (Ele.) altered the installed capacity of SRTPV system from 500 kWp to 1000 kWp in the PPA dated 31.01.2015. Thereafter, as required under the guidelines, the PPA dated 31.01.2015 was sent to this Commission on 25.01.2016 for approval. The Commission then raised a question as to why there was such a delay in submitting the PPA for approval. Thereafter, the reason for delay was explained and this Commission has approved the PPA and communicated the approval as per letter dated 03.05.2016 (Annexure-B).

b) The Executive Engineer (Ele.), BESCOM, Chintamani Division, Chintamani, issued approval dated 18.05.2016 (Annexure-C) for installing 1000 kWp SRTPV System in question. The said approval contained a term that *"this approval is valid for 180 days from the date of this letter and SRTPV is to be commissioned within this period, failing which the approval will be treated as cancelled"*. The SRTPV System was synchronized with the BESCOM Grid on 22.07.2016 as per Certificate of Synchronization dated 22.07.2016 (Annexure-D) issued by the Executive Engineer (Ele.), BESCOM, Chintamani Division. Therefore, it is the case of the petitioner that the SRTPV System was commissioned within 180 days from 18.05.2016 as stated in Annexure-C.

c) The Respondent BESCO settled the energy bills submitted by the petitioner from August 2016 to January 2017 @ Rs.9.56 per unit for the energy supplied. Subsequent to January 2017, the Respondent BESCO has not released any amount to the petitioner for the energy supplied in spite of the repeated requests. Therefore, the petitioner has filed the present petition before this Commission on 08.05.2018.

3. Respondents 1 to 4 are represented through M/s JUSTLAW, Advocates, Bengaluru. The gist of the statement of objections filed on behalf of the respondents may be stated as follows:

a) The averments made by the petitioner regarding the execution of the PPA dated 31.01.2015, initially for the capacity of 500 kWp and subsequently enhancing the capacity to 1000 kWp as per the request of the petitioner and the issuance of approval given by the KERC and the approval dated 18.05.2016 for installation of SRTPV System (Annexure-D) and the SRTPV system being commissioned on 22.07.2016 and the payment of tariff invoices from August 2016 to December 2016, are not disputed.

b) It is stated that the tariff invoices from August 2016 to December 2016 were being processed at Siddlaghatta office of the Respondent-1 and the payments were being made at the tariff of Rs.9.56 per unit as agreed in the PPA. Thereafter, Centralized Billing Centre (CBC) was created at the Corporate office of the BESCO, Bengaluru. On

scrutiny of the file relating to the petitioner in CBC, it was found that the petitioner had not commissioned its plant within 180 days as required and thereby, the petitioner was liable for reduced revised tariff of Rs.5.20 per unit, as per the KERC tariff order dated 02.05.2016. Therefore, the issue pertaining to the rate of tariff was placed before the higher authority of the BESCOM for clarification.

- c) In furtherance of the same, the General Manager (Ele.), DSM, BESCOM, Bengaluru, wrote letter dated 11.01.2018 (Annexure R-6) to this Commission seeking clarification, placing the relevant facts.
- d) This Commission vide letter dated 14.02.2018 (Annexure R-7) clarified that the tariff applicable for the SRTPV System of the petitioner was Rs.5.20 per unit from the date of commissioning the said system, as per the Commission's order dated 02.05.2016.
- e) Thereafter, the EE (Ele.) BESCOM, Chintamani Division wrote letter dated 13.03.2018 (Annexure R-8), letter dated 04.05.2018 (Annexure R-9) and letter dated 14.09.2018 (Annexure R-10) asking the petitioner to execute a fresh PPA incorporating the tariff of Rs.5.20 per unit instead of Rs.9.56 per unit, as per the intimation sent by the Commission. It is stated by the respondents that the petitioner has not come forward to execute the fresh PPA as required.

f) It is stated by the respondents that the time frame for completion of the SRTPV System is 180 days from the date of the signing of the PPA. Even as per the SRTPV guidelines (Annexure R-11) issued by the BESCO, the time prescribed is 180 days and the said guidelines are in the public domain/website of the BESCO and the petitioner was having the knowledge of the same. Further, it is stated by the respondents that for the PPAs that have been executed as per the Generic Tariff Order dated 10.10.2013 and which could not have been commissioned within 180 days from the date of the PPA, the eligible tariff would be Rs.5.20 per unit as per the tariff order dated 02.05.2016. The petitioner was being paid by mistake, the higher tariff of Rs.9.56 per unit, though his project was commissioned beyond 180 days or 6 months from the date of PPA and that the petitioner cannot take advantage of such a mistake to claim the higher tariff. Therefore, the respondents have prayed for dismissal of the petition.

4) The petitioner has filed the Rejoinder to the Statement of Objections raised by the respondents, denying the legality and correctness of the contentions raised by the respondents.

5) We have heard the learned counsel for the parties. The petitioner has also filed the written arguments. The learned counsel for the petitioner submitted that the SRTPV System was commissioned on 22.07.2016, well within the period allowed for commissioning the SRTPV System as per the approval for installation dated 18.05.2016 (Annexure-C) issued by the

Respondent-1. On the other hand, the learned counsel for the respondents submitted that as per the guidelines issued by BESCO for installation of SRTPV System (Annexure R-11), the SRTPV System should be completed within 180 days from the date of issue of approval for installing the SRTPV system in Form 5 or Form 6 as the case may be and that such approval for installation should be issued prior to the execution of the PPA. Therefore, it is submitted that the SRTPV System should be commissioned at least within 180 days from the date of PPA and thereby the SRTPV System of the petitioner was commissioned beyond 180 days from the date of PPA. Therefore, it is contended by the learned counsel for the respondents that the petitioner was entitled to only the reduced tariff of Rs.5.20 per unit only as per the tariff order dated 02.05.2016.

6) From the pleadings and documents and the rival contentions of the parties, the following issues arise for our consideration:

ISSUE No.1: Whether the petitioner has commissioned the SRTPV system within the specified period to claim the tariff of Rs.9.56 per unit?

ISSUE No.2: To which relief the petitioner is entitled to?

ISSUE No.3: What Order?

7) After considering the submissions of the parties and the records, our findings on the above issues are as follows:

8) ISSUE No.1: Whether the petitioner has commissioned the SRTPV System within the specified period to claim the tariff of Rs.9.56 per unit?

- a) It is not in dispute that the SRTPV system of the petitioner was commissioned on 22.07.2016. The petitioner has relied upon the approval for installation dated 18.05.2016 (Annexure-C) issued by the Respondent-1, which provided 180 days from the date of the said approval for commissioning the SRTPV System. Therefore, the petitioner contended that the SRTPV System was commissioned well within the time. The learned counsel for the respondents contended that as per the guidelines issued by the BESCO for installation of SRTPV System, the period allowed for commissioning the SRTPV System is 180 days from the date of issue of approval for installation of SRTPV System and such approval for installation should be issued prior to execution of the PPA, therefore, it is submitted that the SRTPV System should have been at least commissioned within 180 days from the date of the PPA.
- b) In the present case, initially the PPA dated 31.01.2015 was executed for installation of 500 kWp capacity of SRTPV System. Subsequently, on the request of the petitioner, the installed capacity was enhanced from 500 kWp to 1000 kWp on 05.01.2016 (Annexure R-3). Before making this request dated 05.01.2016, the petitioner had not shown any progress in installing 500 kWp capacity SRTPV System. Therefore, we are of the opinion that the date of PPA for all practical purposes, with regard to the installation of 1000 kWp capacity SRTPV System, can be taken as

05.01.2016, the date on which the capacity of the SRTPV System was enhanced from 500 kWp to 1000 kWp. This fact cannot be disputed by both the sides.

- c) The main controversy is as to whether approval for installation dated 18.05.2016 (Annexure-C) issued by the Respondent-1 is in violation of the guidelines issued by the BESCO and thereby it cannot be relied upon. For considering this controversy, we have to go through the relevant portion of the guidelines and its binding effect. The respondents have produced a portion of guidelines - Format 16 - Consumer guidelines for availing Grid connectivity of SRTPV System in BESCO (Annexure R-11). In the said guidelines, the paras relating to "*Procedure for availing SRTPV connection*", narrate the detailed steps from the stage of filing the application for grant of SRTPV Connection till the completion of installation work of the SRTPV System. A complete set of SRTPV guidelines including Annexure R-11 is on the BESCO's website. The said complete set of guidelines were submitted to the Commission for approval, along with a draft PPA to be entered into between BESCO and the applicant of SRTPV System. This Commission, after examining the guidelines, suggesting certain modifications to it, communicated its approval through letter dated 27.08.2014 and also intimated that the Standard Format of the PPA to be entered into between the Distribution Licensee and the Applicant of the SRTPV System would be finalised and sent to the BESCO. Accordingly, this Commission by its order dated

16.09.2014 approved the PPA format and sent it to BESCO supplementing the guidelines. The guidelines approved by this Commission provided for issuance of approval for installation of SRTPV System in Format 5 or Format 6 as the case may be allowing 180 days for commissioning of the SRTPV System from the date of issuance of the said approval for installation. Further, the said guidelines provide that the PPA should be executed subsequent to issue of Format 5 or Format 6 and before the completion of the SRTPV System. When such formats were approved by the Commission, the officials of the BESCO are bound to follow the said guidelines and they cannot deviate from it.

- d) The approval in Format 5 is to be issued for installation of SRTPV System up to a capacity of 50 kWp. The approval in Format 6 is to be issued for installation of SRTPV System of 50 kWp capacity and above. In the present case, the capacity of the SRTPV System initially was 500 kWp and subsequently it was enhanced to 1000 kWp. The petitioner had filed online application dated 09.12.2014 requesting the grid connectivity of proposed SRTPV System of 500 kWp capacity. After preliminary verifications, the Executive Engineer (Ele), BESCO, Chintamani Division, had issued approval dated 30.01.2015 in Format 6 for installing 500 kWp capacity of SRTPV System. In this approval, the petitioner was allowed 180 days from the date of approval for commissioning of SRTPV System. Thereafter, on the next day, i.e., on 31.01.2015, the petitioner had executed the PPA with BESCO for installing the SRTPV System of 500

kWp capacity. This PPA is at Annexure R-2. As already noted, for one or the other reasons, the petitioner could not install the SRTPV System of 500 kWp capacity even after lapse of one year and thereafter, he made a request on 05.01.2016 (Annexure R-3) to enhance the capacity of SRTPV System to 1000 kWp instead of 500 kWp. The said request was allowed on 05.01.2016 and the consequential change in the PPA already executed has been effected. Before effecting the consequential changes in the PPA, the approval for installation of SRTPV System of 1000 kWp capacity, should have been also issued, as required under the guidelines. It appears no such approval for installation of SRTPV System was issued before effecting the consequential changes in the PPA. Therefore, we note that the SRTPV System of 1000 kWp should have been commissioned at least within 180 days from 05.01.2016. Admittedly, the petitioner has commissioned the SRTPV System on 22.07.2016, beyond 180 days from 05.01.2016.

- e) The petitioner has relied upon the approval dated 18.05.2016 (Annexure-C) for installation of SRTPV System of 1000 kWp capacity, which allowed 180 days for commissioning the System from the date of the said approval. The approval for installation in Form 6 is to be issued before commencing the installation work. Therefore, issue of Form 6 authorises the petitioner to start the installation work of the SRTPV System. The petitioner was aware that installation of 1000 kWp of SRTPV System was permitted on 05.01.2016. Earlier to it, the petitioner had failed to

commence the work of 500 kWp capacity of SRTPV System. Therefore, in all probability, he must have started the work at least from 05.01.2016. The records placed by the petitioner along with the written arguments submitted on 13.01.2019, would show that much earlier to issuance of Annexure-C dated 18.05.2016, considerable portion of installation work of SRTPV System had taken place. This is evidenced by the report dated 04.04.2016 submitted by the Executive Engineer addressed to the General Manager (Ele.), DSM, Corporate office, BESCO, Bengaluru, reporting that the installation works of the Solar Panels were completed and other works like, erection of breakers, transformers were under progress. Along with the said report, the photos evidencing the progress in works were also enclosed. This report dated 04.04.2016 is produced by the petitioner himself. The same Executive Engineer (EE) who issued Annexure-C dated 18.05.2016 had given this report. This report dated 04.04.2016 would clearly disclose that sufficient progress had taken place in the installation of work of the SRTPV System. Therefore, the same EE could not have accorded the approval for installation as per Annexure-C dated 18.05.2016 allowing 180 days from the date of the said letter. From this, one can infer that issuance of such approval for installation was issued with a view to help the petitioner, though it was contrary to the guidelines issued by BESCO. The issuance of such approval subsequent to execution of the PPA amounts to extending the time period for commissioning the SRTPV System, which would ultimately affect the rate of tariff. The Generic Tariff Order dated 02.05.2016

specifically directs that in the event the SRTPV System is not commissioned within the stipulated period, no extension of time period shall be given for commissioning the SRTPV System and such project shall be liable for reduced tariff as determined in the said Order. The petitioner cannot rely upon issuance of such unauthorised approval for installation to contend that the SRTPV System was commissioned within the specified time and he was entitled to tariff of Rs.9.56 per unit.

f) Therefore, for the foregoing reasons, we hold Issue No.1 in negative.

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

a) As the petitioner has failed to commission the SRTPV System within the specified period, he is entitled to a reduced tariff of R.5.20 per unit from the date of commissioning of the project, as ordered in Generic Tariff Order dated 02.05.2016. While stating the applicability of this Order so far it relates to the projects commissioned beyond the stipulated time period, the Commission has noted as follows:

“5. Applicability of the Order:

.....

“In respect of plants for which PPAs that have been entered into prior to 1st May, 2016 and are commissioned within the period of time as stipulated by the ESCOMs concerned or the Commission prior to the date of issue of this Order, the tariff as per the Commission’s Order dated 10th October, 2013 shall be applicable. Such plants shall be eligible for the revised tariff as per this Order if they are not commissioned within the stipulated time period and there shall be no

extension in time period for commissioning them after the effective date of this Order.”

.....

b) The above paragraph of the Generic Tariff Order dated 02.05.2016 makes it clear that the PPA entered into, with a tariff determined under the Generic Tariff Order dated 10.10.2013, would be governed by the lesser tariff, as determined in the Generic Tariff Order dated 02.05.2016, in case the SRTPV System was not commissioned within the stipulated period and further that, there should not be any extension of time period for commissioning it after the Effective Date of the said Order. Therefore, subsequent to the Generic Tariff Order dated 02.05.2016, for any delay in commissioning of the SRTPV Systems, there cannot be any extension of time for commissioning the said Systems and they should be governed by the lesser tariff, as determined in the said Order.

c) Therefore, on Issue No.2, we hold that the petitioner is entitled to reduced tariff of Rs.5.20 per unit for the energy supplied but not for the tariff of Rs.9.56 per unit.

10) Issue No.3: What Order?

For the foregoing reasons, we pass the following:

ORDER

- a) The petitioner is entitled to reduced tariff of Rs.5.20 per unit for the energy injected into the grid from the date of the commissioning of the project for the term of the PPA dated 31.01.2015 marked at Annexure-A to the petition; and
- b) The Bangalore Electricity Supply Company (BESCOM) shall pay to the petitioner for the energy injected into the grid from the date of the commissioning of the project, at the tariff of Rs.5.20 per unit, after adjusting the excess payment made if any, for the any prior period.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER

