

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION**

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

**Dated : 5<sup>th</sup> July, 2018**

**Present:**

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

**OP No. 136 /2017**

**BETWEEN:**

Shri Tata Prasanna Kumar,  
S/o Tata Srinivasa Shetty,  
Jyothi Nilayam,  
Sreenidhi Layout,  
Tumakuru – 572 102

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**PETITIONER**

*[Represented by Law Links, Advocates]*

**AND:**

Bangalore Electricity Supply Company Limited,  
Corporate Office, K.R. Circle,  
Bengaluru – 560 001.

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**RESPONDENT**

*[Represented by Justlaw, Advocates]*

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**ORDERS**

- 1) The Petitioner has filed the Petition under Section 86(1) of the Electricity Act, 2003, in effect, praying to:
  - (a) Confirm that Solar Rooftop installations pertaining to Revenue Register Numbers PP328/ PGHT 8, PP329/PGHT 9 and PP327/PGHT 10 have been commissioned in time and, as per the guidelines issued

by this Commission, the Government of Karnataka and the Respondent;

- (b) Grant tariff, as per the Generic Tariff Order of 10.10.2013, to the said Solar Rooftop installations; and,
  - (c) Direct the Respondent to release pending Solar Power Bill Payments, as per the Order dated 10.10.2013, along with interest calculated as on date.
- 2) The facts of the case and grounds submitted by the Petitioner, in support of the above prayers, may be summed up as follows:
- (a) That, the Petitioner had obtained permission to convert his agricultural land for industrial purposes so as to carry out business in storage of dry husk in 20.04.1994 and after obtaining sanction of plan from the Town Municipal Council, Pavagada, constructed and completed building and industrial sheds on such land on 27.03.2015, as confirmed by the Town Municipal Council on 10.04.2015, which demanded and collected applicable property tax.
  - (b) That, pursuant to the State Government's Solar Policy announced in the GO dated 22.05.2014, the Petitioner proposed to install Solar Roof Top Photovoltaic Plants (SRTPV Plants), under net metering basis, on the large roof area available on these buildings and industrial sheds, and entered into PPAs with the Executive Engineer, Madhugiri Division, BESCO (for short 'EE'), in respect of RR No. PP 327 for 1000 kW capacity on 08.01.2016, RR No.PP328 for 499 kW capacity on 11.02.2016, and RR No.PP329 for

499 kW capacity on 21.03.2016. That, the PPA in respect of RR No. 327 for 1000 kW capacity was approved by the Commission on 10.02.2016 (and the other two with capacities of less than 500 kW, deemed to have been approved by the Commission).

- (c) That, the EE accorded approval for installation of the SRTPV plants, within one-year time line, as per the guidelines and conditions of the Commission's Generic Tariff Order dated 10.10.2013, with tariff at Rs.9.56 per unit, in respect of RR No.327 on 29.04.2016, RR No. 328 on 22.03.2016 and RR No. 339 on 22.03.2016.
- (d) That, the contractor, engaged by the Petitioner for installations and commissioning of the Solar Roof Top project, advised that the rooftop and allied support structure required retrofitting and strengthening to ensure that the structure endures for another 25 years and carried out such works.
- (e) That, the entire cost of the solar roof top installations came to Rs.16.02 Crores, which was fully met by the Petitioner, as the banks refused to finance the project.
- (f) That the installation of the SRTPV plants, in respect of RR Nos.328 and 329, were completed on 10.08.2016 and 12.08.2016, well within the time stipulated by the Respondent and were granted safety approval by the Chief Electrical Inspectorate on 11.08.2016 and 31.08.2016, respectively.

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- (g) That, after successful pre-commissioning tests, the EE issued a 'Synchronization letter and Commissioning Report' of the SRTPV plants, in respect of RR Nos.328 and 329 on 22.12.2016, and also confirmed that the installations adhered to all the prevailing norms of the Commission, the Respondent and the State Government.
- (h) That, the installation of the SRTPV plant, in respect of RR No. 327, was completed on 04.01.2017, within the time stipulated by the Respondent, after grant of the safety approval by the Chief Electrical Inspectorate on 03.01.2017 and was granted the 'Synchronization Letter and Commissioning Report' by the EE on 06.01.2017, after successful pre-commissioning tests.
- (j) That, subsequently, the Petitioner's three LT connections of RR Nos. 327, 328 and 329 were converted to HT connections and since the commissioning of SRTPV plants, in January, 2017, no payments have been received, even after export of electricity to the grid of the Respondent.
- (k) That, the guidelines issued by the State Government and the Commission did not restrict the Petitioner from retrofitting/strengthening the existing buildings and sheds, which were built with necessary statutory approval, without any extension or deviation from the sanctioned plan, and applicable taxes paid. That, the Respondent was unaware of the plan

sanction given to the building contractor and the subsequent extent of the roof, by the statutory authority.

- (l) That, the Respondent has received electricity generated from the Petitioner and perhaps even supplied to other consumers and collected money for the same. Therefore, the Respondent not paying the Petitioner, as agreed under the Power Purchase Agreement, is impermissible in law and would amount to an unjust enrichment.
- 3) After issuance of Notice, the Respondent entered appearance through its learned counsel and filed Objections, contending as follows:
    - (a) That, on 09.08.2016, the Respondent issued the guidelines for grid connected SRTPV plants on Gross and Net Metering basis. That as per Article 2.5 of the PPA, the Petitioner was required to commission the SRTPV plant within 6 months from the date of execution of the PPA and the Scheduled Commissioning Dates of the Petitioner's projects were:
      - (i) 1000 KWH SRTPV Plant with RR. No. PP327-07.07.2016
      - (ii) 499 KWH SRTPV Plant with RR. No. PP328-10.08.2016
      - (iii) 499 KWH SRTPV Plant with RR. No. PP329-20.09.2016.
    - (b) That, on 16.08.2016, the Town Municipal Council, Pavagada, once again demanded that the Petitioner pay property tax, with regard to his newly constructed godown, by using iron pillars and zinc sheets.

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- (c) That, in furtherance to the inspection carried out by the Respondent, the Respondent, vide letter dated 25.07.2017, informed this Commission that the Petitioner has expanded its roof for the sole purpose of installing SRTPV and sought for a direction in that regard and the further course of action to be adopted. That, in response, the Commission, in letter dated 30.08.2017, noting that the Petitioner has violated the SRTPV norms, called upon the Respondent to initiate action for termination of the contracts. In furtherance to such directions, the Respondent issued Default Notices dated 27.11.2017 to the Petitioner, but no replies were received.
- (d) That, the Respondent has acted as per the Orders issued by this Commission, the guidelines issued by the Government and the SRTPV Guidelines of the Respondent. That, as per Article 1.6 of the PPAs executed, the *"SRTPV system shall be designed, engineered and constructed and operated by the seller or on his behalf with reasonable diligence subject to all applicable Indian laws, rules, Regulations as amended from time to time and Order having the force of Law"*.
- (e) That as per the Solar policy 2014-21, the Solar Rooftop PV Plants are required to be mandatorily mounted in the space available on the roof of any residential, commercial, institutional, industrial and other buildings, constructed as per building construction norms and any Solar PV panels installed on the ground or ground mounted structures, using steel/iron/wooden/concrete support, will not be considered as Solar

rooftop PV Plants. The State Government has also clarified this aspect, vide letter dated 17.08.2016.

- (f) That, after inspection in August, 2016, the concerned officer of the BESCOM has certified that, "*Consumer has constructed separate steel structure all around the building*" and also after inspection, carried out on 26.11.2016 stated that, "*Additional supports provided by the sides of the existing walls, all around the building and the roof area extended partially from the existing building approximately 10 to 30%*". That, therefore, the SRTPV plant is not in conformity with the SRTPV Guidelines and the Petitioner has deviated from the approved norms and the same ought not to be permitted.
- (g) That, the Chief Electrical Inspectorate has granted safety approval, subject to condition that, "*This safety approval will be withdrawn on any objections, legal issues regarding the establishment of proposed SRTPV capacity received from any other statutory authority*". That, as the Petitioner has deviated from the approved norms, the safety approvals granted also ought to be cancelled.
- (h) That, as the Petitioner has not adhered to the norms stipulated by the Respondent, the Petitioner is not entitled to the tariff of Rs.9.56/-. That, the Commission has clarified, vide Order dated 7.11.2017, that the tariff payable for the plants, which do not adhere to the prescribed norms,

would be Rs.3.57/- per unit and hence, the question of making payments at the PPA rates would not arise.

- (j) That the concerned officers of the Respondent have granted approval, fraudulently, with the then EE deviating from the procedures set-out by the BESCOM, and the State Government has directed the Respondent to initiate action against the officers, who had given various approvals to the Petitioner's project, contrary to the SRTPV Norms. That, the Chief Engineer, BESCOM, Chitradurga, has stated in his report that, the Petitioner has installed the SRTPV Plant on a newly extended roof of the existing building, using iron pillars. That, subsequently, disciplinary action has been taken against the concerned officer, who had given approval, in deviation of existing norms.
- (k) That, the Notices dated 10.04.2015 and 16.08.2016, issued by the Town Municipal Council, Pavagada, clearly state that, the Petitioner has extended the existing building by using iron pillar and zinc sheets, in the period between 2015 and 2016, during which period the Petitioner has executed the PPAs. That, it is on these additional structures, constructed out of iron pillars and zinc sheets, that the Petitioner has sought to set-up the SRTPV plant, which is opposed to the norms enumerated by the BESCOM, that require establishment of SRTPV plants on the existing roofs and specifically bar the setting up of the plants on the structures, such as this.



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- (l) That, the Petitioner has not commissioned the SRTPV plants within the stipulated time frame of six months and is not entitled to the tariff as per the Order dated 10.10.2013 and the Commission has clarified vide Order dated 07.11.2017 that the tariff payable for such plants would be Rs.3.57/- per unit.
- 4) We have perused the records and heard the learned counsel for both sides. The following issues would arise for consideration:
- (1) Whether the Petitioner has installed the SRTPV plants as per the applicable norms and commissioned them within the time stipulated?
- (2) If the answer to Issue No.(1) is in the negative, whether the Petitioner can be allowed to operate his SRTPV plants under net metering basis and if so, what should be the tariff applicable?
- (3) What Order?
- 5) After considering the submissions made by the parties and perusing the pleadings and documents placed on record, our findings on the above issues are as follows:
- 6) **ISSUE No. (1):** *Whether the Petitioner has installed the SRTPV plants as per the applicable norms and commissioned them within the time stipulated?*
- (a) It is the case of the Petitioner that, there was only retrofitting and strengthening of the existing buildings and industrial sheds that had been

constructed after obtaining statutory approvals, which is not barred under the SRTPV Scheme. That, further there is inconsistency between the Default Notices and the Inspection Report, with regard to the extent of additional roof area created as compared to the original available roof area, and the precise details of the alleged additional area has not been scientifically measured and recorded. That, the Petitioner's SRTPV plants were allowed to be commissioned by the Respondent's officers ,even after inspection, and unsubstantiated allegations are made when the Respondent was approached for realisation of the dues.

- (b) On the other hand, the Respondent contends that, the Petitioner has not adhered to the norms stipulated in respect of SRTPV scheme and even the Town Municipal Council has noticed the extensions made to the original buildings, when the SRTPV plants were being installed. That, certain officers had wrongly facilitated the installation and commissioning of the SRTPV plants and also that the Petitioner has not responded to the Default Notices, which proposed termination of the PPAs.
- (c) We note that, the Petitioner has not denied that the retrofitting and strengthening of his existing buildings and sheds, to make them suitable for safe installation of SRTPV plants, has resulted in creation of additional roof area, as compared to the original roof area. The Petitioner only pleads that the precise extent of the additional area is not measured and indicated. Similarly, the Petitioner has not denied that he has constructed separate steel structure, all-round the building, to facilitate installation of

the SRTPV plants, but pleads that it is permitted by the competent authority. From the photographs of the Petitioner's buildings/sheds, available on record, we found that the SRTPV plants have been installed not on the existing rooftops but on newly constructed rooftops, with areas much larger than the earlier.

- (d) We may note that, installation of the SRTPV plants under net metering was introduced, allowing the consumers installing them to consume the power generated and inject any surplus power generated into the distribution system of the Distribution Licensee concerned, who would pay such consumer, for the surplus power, the tariff as determined by the Commission. It was envisaged that, the consumers would install the SRTPV plants of reasonable capacity on their readily available existing roof top, within a short period and generate power mainly for self-consumption, while injecting a reasonable quantity of surplus power into the distribution system, for consumption in the immediate vicinity. The Respondent had issued the 'Consumer Guidelines' for effective implementation of the SRTPV Scheme, keeping in view the main objectives of the scheme (we may note that the 'Guidelines' produced by the Respondent as Annexure R2 relates to a later period and is not related to the Generic Tariff Order dated 10.10.2013, pursuant to which PPAs were entered into in the present case). The Government's letter dated 17.08.2016 also clarified, accordingly, that the SRTPV plants shall be installed on roofs of buildings and not on other structures. The Petitioner not only sought to install the SRTPV plants of capacities much beyond the nominal sanctioned

capacities (of 27kW each) of his installations and the combined capacity of its three proposed installations on contiguously located buildings exceeded the 1 MW upper limit fixed for the SRTPV plants under the scheme, which was against the spirit of the scheme, though reckoning of the upper limit in respect of a single consumer but with three different installations in adjacent premises, was not specifically barred. Obviously, the Petitioner's project imposed a strain on the distribution network in the vicinity to accommodate evacuation, considering the large quantum of surplus energy generated for which the Distribution Licensee had to incur additional expenditure. The Technical Feasibility Report, required to be drawn before approval of the applications filed for installation, should have taken into account this aspect and sought for appropriate reduction in the installed capacities of the proposed SRTPV plants. Be that as it may, the Petitioner has not only put up super structures over its existing buildings, but also extended the area of the existing roof tops and, thereby, there is non-adherence to the norms and guidelines of the SRTPV scheme. The Petitioner, who had applied for permission to install the SRTPV plants on his existing buildings, by arguing that he has one year to complete commissioning of the projects, as per the State Government's Circular dated 10.12.2015, granting such time to building under construction, can be taken as admitting that there was construction of new structures (whether considered as buildings or otherwise) for installation of the SRTPV plants and that the plants were not installed entirely on the existing buildings. The Certificate of correctness of the extended area of the new construction and the additions made from the municipal authorities is

material, in holding the deviation stated by the Respondent. The Petitioner, as per the PPAs, had undertaken to install the SRTPV plants on the rooftops of the existing buildings, but has committed breach of such term. Therefore, we are of the considered opinion that, the Respondent is right in issuing Notices to the Petitioner proposing to terminate the PPAs, as per Article 9.3.

- (e) The other dispute between the parties is with regard to the time allowed for commissioning of the SRTPV plants by the Petitioner. It is the case of the Petitioner that, the Respondent's officers allowed him one year's time, while granting approvals for installations of the SRTPV plants and such time granted was never sought to be modified, till payments were sought for the energy injected. The Respondent, on the other hand, contends that the Petitioner was wrongly allowed one year's time, to commission his SRTPV plants, by its field officers and that the SRTPV Schemes envisaged a time of only six months (180 days) for installation of the plants on the roof top of the existing buildings.
- (f) It is not in dispute that, as a part of the State Government's Solar Policy, which among other things, proposed to promote grid connected Roof Top Photo Voltaic Generation Projects, the Respondent had called for applications from its consumers, interested in availing the Solar Roof Top Photo Voltaic (SRTPV) Scheme, the details of which were given on its Website. The interested consumers had to download the application from the Respondent's Website and the duly filled in application form had to

be submitted to the Field Officer concerned, with the prescribed fee for further processing. The Respondent has contended that, as per the guidelines, relating to the SRTPV Scheme, made available to all the consumers, for the SRTPV applicants having the existing buildings, the time prescribed for commissioning of the project is 180 days and this is not denied by the Petitioner. We note that, as per the Guidelines/Policy of the Respondent for the SRTPV applicants having the existing buildings, the time prescribed is 180 days, i.e., six months (from the date of execution of the PPA), which is found to be adequate and the said Policy is in public domain. The Petitioner, knowing the same, failed to bring the error of being given one year's time, to the notice of the Respondent and he cannot to be permitted to take advantage of this error. The Petitioner has not produced any material to refute the assertion that, a time of six months (180 days) was given to all the consumers for commissioning the SRTPV plants, intended to be installed on the existing roof tops. The PPA approved by the Commission relating to 1000 kW capacity SRTPV plant and the PPAs deemed to have been approved by the Commission relating to 499 kW capacity SRTPV plants, in the Petitioner's case, do not have any clause specifying that a time of one year is granted to commission the Petitioner's SRTPV plants (as such term is a part of the Scheme under which the Petitioner applied), but it has been wrongly indicated to be so, in the approval letters issued by the EE, contrary the applicable 'Consumers Guidelines'. Such act of the EE of giving one year's time, contrary to the Guidelines, is *ultra vires* and it is not binding on the Respondent and the Petitioner cannot take advantage of it.

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- (g) We, therefore, hold that the Petitioner's SRTPV plants have been commissioned belatedly on 06.01.2017, 22.12.2016 and 22.12.2016, instead of the six months' period, which ended on 07.07.2016, 10.08.2016 and 20.09.2016, respectively.
- (h) Therefore, we answer Issue No.(1), in the negative, on both counts.
- 7) **ISSUE No.(2):** *If the answer to Issue No.(1) is in the negative, whether the Petitioner can be allowed to operate his SRTPV plants under net metering basis and if so, what should be the tariff applicable?*
- (a) We have held that, the Notices issued by the Respondent proposing to terminate the PPAs are valid and thereby, the Petitioner is not entitled to the tariff, as agreed to in the PPAs, which was in terms of the Generic Tariff Orders dated 10.10.2013, and also to continue the PPAs, in question.
- (b) We, however, note that the SRTPV plants installed by the Petitioner, with considerate investment, have already been commissioned and the electricity generated is being injected into the Respondent's distribution network. Thus, it would be in the larger public interest, to allow the Petitioner to operate his solar power plants under net metering ,subject to certain terms for balancing the interest of the Petitioner, as well as the consumers.
- (c) Subsequent to the Generic Tariff Order dated 10.10.2013, the Commission, in its Order dated 02.05.2016, has determined the revised tariff for Solar

Rooftop and Small Photovoltaic Power plants, considering the substantial reduction in the Capital Cost of such projects, and made it applicable to the new projects, entering into PPA and commissioned during the period from 02.05.2016 to 31.03.2018. Admittedly, investment in the Petitioner's project was made after 02.05.2016. Thus, we deem it fit to determine a uniform tariff of Rs.5.20 per unit, under net metering, for all the three Solar Power Plants of the Petitioner, instead of directing the termination of the PPAs.

(d) Therefore, we answer Issue No.(2), as above.

8) **ISSUE No.(3):** *What Order?*

For the foregoing reasons, we pass the following:

### **ORDER**

- (a) It is declared that the Petitioner is not entitled to any of the reliefs sought in his petition;
- (b) The Petitioner shall be paid a tariff of Rs.5.20 (Rupees five and paise twenty) only per unit, under net metering, for the electricity generated and injected from his Solar Power Plants, for a period of twenty-five years from the respective dates of commissioning of the plants, on entering into appropriate fresh PPAs with the Respondent, within four weeks from the date of this Order;



- (c) The Petitioner shall be at liberty to sell the electricity generated from his Solar Power Plants to third parties, if he fails to execute the PPAs, as mentioned above;
- (d) The Payments due, after adjusting the amount paid at Rs.3.57 (Rupees three and paise fifty-seven) only per unit, as directed in the interim order issued in this case, shall be made within eight weeks from the date of this order; and,
- (e) If the Petitioner does not execute the PPAs, as mentioned above, he shall not be entitled to inject energy into the grid, after 4 (four) weeks from the date of this order.

Sd/-  
(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-  
(H.D. ARUN KUMAR)  
MEMBER

Sd/-  
(D.B. MANIVAL RAJU)  
MEMBER