

OP No.97/2018

No.N/244/2018

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,

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

Dated : 19.11.2019

Present:

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

OP No.97/2018

BETWEEN:

Sri S. Sukumar,
Residing at No.606, 100 Feet Road,
J.P. Nagar, 6th Phase,
Bengaluru-560 078.
[Represented by Sri Shivaprasad
Shantanagoudar, Advocate, Bengaluru.]

.. **PETITIONER**

AND:

- 1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru-560 001.
Represented by its Managing Director.
- 2) Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan, K.G. Road,
Bengaluru-560 009.
Represented by its Managing Director.
[R1 & 2 are represented by JUSTLAW,
Advocates, Bengaluru.]

... **RESPONDENTS**

ORDERS

1) This Petition is filed under Section 86(1)(f) of the Electricity Act, 2003, praying:

- a) To hold and declare that the Power Purchase Agreement (hereinafter called as PPA) dated 31.03.2018 (Annexure E) entered by BSECOM with the petitioner is valid and consequently to hold that the tariff rate as agreed under the said PPA is valid.
- b) To restrain BSECOM from imposing any penalty/damages under the PPA.
- c) To pass any such further orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case as stated above.
- d) Alternatively, if the Commission holds that the present installation of the petitioner is against the existing KERC guidelines to direct the respondent to enter into fresh PPA with the petitioner at the tariff of Rs.6.14/unit as agreed under the PPA (Annexure E).

2) The material facts of the petitioner's case may be stated as follows:

- a) The petitioner is a consumer of BESCOM and intends to connect and operate Solar Roof Top Photo Voltaic (SRTPV) system and intends to sell the energy generated from the SRTPV system to BESCOM.
- b) In order to harness the potential of Solar resources in the State, the State of Karnataka published Solar Policy vide GO No.EN 21 VSC 2014 date 22.05.2014 and the petitioner has installed SRTPV system in accordance with the said policy.
- c) The Assistant Executive Engineer, BESCOM issued a communication on 27.11.2017 (Annexure A) to the petitioner informing about the arrangement of High Tension Power Supply to an extent of 100 KVA under the Tariff HT 4.
- d) On 02.01.2018 Self Execution Work Agreement entered into between the petitioner and the Respondent No.1 (Annexure B). Subsequently on the request of the petitioner, the 1st Respondent reduced the HT Power supply from 100 KVA to 75 KVA on 25.01.2018.
- e) The petitioner filed an application on 21.03.2018 (Annexure C) to the 1st Respondent for installation of 55 KW SRTPV System.

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- f) The 1st Respondent after visiting the premises of the petitioner issued a Technical Feasibility Report (TFR) dated Nil (Annexure D) stating that the SRTPV installation undertaken by the petitioner is technically feasible.
- g) The 1st Respondent visited the site of the petitioner and on physical verification and on verification of documents, entered to PPA dated 31.03.2018 (Annexure E) with the petitioner.
- h) After the issuance of the TFR and signing of the PPA, the petitioner commenced and completed the installation of SRTPV on the green house structure on 22.04.2018, i.e., well within the period of 180 days as per KERC regulations.
- i) The 1st Respondent on 27.04.2018 issued a communication (Annexure F) stating that the construction of SRTPV plant on Greenhouse with steel structure is against the KERC guidelines.
- j) The 1st Respondent has issued a communication on 01.06.2018 (Annexure G) to the petitioner stating that the proposal is rejected as the SRTPV plant on Greenhouse with steel structure is against the KERC regulations.
- k) The petitioner states that the Commission has issued a clarification on 22.03.2016 (Annexure J) stating that the

Greenhouse plantations can be considered for installation of SRTPV plants subject to issuance of TFR.

- l) Further, the petitioner states that he has already incurred costs in setting up of the SRTPV plant as detailed below:

Work Undertaken	Costs Incurred (Rs.)
75 KVA Power sanction and Transformer	14,83,998
Solar Structure	12,02,383
55 kWp Solar plant	44,34,500
Total	71,20,881

- m) The petitioner states that he has already spent more than Rs.71,00,000/- towards the SRTPV project, in view of the same, cancelling the PPA has caused severe financial loss to him.

- 3) The grounds urged by the petitioner are as follows:

a) The petitioner undertook the construction of the SRTPV on the Green house structure only after the issuance of Technical Feasibility Report and after the signing of the PPA. The BESCOM officials after the site visit have stated that the project is feasible and after being satisfied have entered into PPA with the petitioner.

b) The BESCOM officials ought to have informed the petitioner at the first instance, so as to enable the petitioner to make amends to the said installation to make the same in compliance with the KERC guidelines. The petitioner should

not be made to suffer due to the ignorance of BESCO. It is only after the permission granted by BESCO, the installation of SRTPV was commenced. Therefore, the officials are estopped from cancelling the PPA. Further, the respondents have taken the clarification at a belated stage from this Commission i.e., after the signing of the PPA. The same cannot be made applicable retrospectively to affect the petitioner.

- c) On account of the above bona-fide reasons which are beyond the control of the petitioner, the petitioner could not achieve the scheduled commissioning of the SRTPV System.
- d) The respondents have not provided opportunity to the petitioner, thereby violated the principles of natural justice.
- e) Section 13 of the KERC (Implementation of SRTPV Power Plant) Regulation, 2016 provides for removing difficulties in implementing the Regulation and also relaxing of any condition in the regulation.
- f) Section 2 (15) of the said Regulation states that SRTPV means the Solar Photo Voltaic plant installed on the existing roof of the consumer's premises that uses sunlight for direct

conversion into electricity through Photo Voltaic technology with the solar panels of the SRTPV plant 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 laws/norms and such other Solar Photo Voltaic plants as may be included by the Commission in its orders issued from time to time.

g) The installation of SRTPV plant on Greenhouse can be considered for roof top installation, since PPA was signed after the technical feasibility report and after the respondents' satisfaction of the structural stability of the plant.

4) Accordingly, the petitioner has prayed for allowing the petition.

5) Upon notice, both the respondents appeared through their counsels. The 1st Respondent has filed the Statement of Objections. The gist of which may be stated as follows:

a) As per the SRTPV guidelines, the petitioner herein was required to commission the plant within 180 days from the date of execution of the PPA. Therefore, the petitioner herein was required to commission the plant on or before 30.08.2018.

- b) On inspection by the 1st Respondent Company, it was discovered that the petitioner had installed the SRTPV plant on Greenhouse using steel structures. It is submitted that the Solar Policy, SRTPV Regulation and Guidelines envisage setting up of solar power plant on a permanent roof. However, the petitioner herein has installed the SRTPV plant on roof of Greenhouse built using temporary steel structures. Therefore, the Assistant Executive Engineer, Nelamangala vide letter dated 01.06.2018 has rejected the petitioner's proposal for installation of SRTPV plant. In this regard, the 1st Respondent vide letter dated 30.07.2018 sought clarification from this Commission as to whether the petitioner could be allowed to install the SRTPV plant on Greenhouse constructed with fabricated structures. Copy of the letter dated 31.07.2018 is produced at (Annexure R1). However, it can be seen that Annexure R-1 is the letter dated 31.03.2018 addressed to the GM (DSM), BESCOM from EE, BESCOM, Nelamangala. The Commission vide letter dated 05.09.2018 (Annexure R-2) clarified that SRTPV plant cannot be installed on roof of Greenhouse and directed the Respondent to terminate the petitioner's PPA.
- c) On 19.09.2018 (Annexure R3), the petitioner's PPA was terminated by the respondent.

- d) As per Article 1.6 of the PPA executed between BESCO and Respondent “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) As per the Solar Policy 2014-21, SRTPV 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 that Solar PV panels installed on the ground or ground mounted structures using steel/iron/wooden/concrete support will not be considered as SRTPV plants. The GoK has also clarified this aspect vide its letter dated 17.08.2016.
- f) On inspection of the petitioner's premises, it came to the light of the officers of the respondent company that the petitioner's installation is not in accordance with the standards stipulated in the aforesaid clarification dated 17.08.2016. The petitioner has installed SRTPV plant on roof of Greenhouse built using temporary steel structures. The petitioner had put up his SRTPV plant in direct contravention

of aforesaid notification and hence, illegal. The inspection report along with photo is produced (Annexure R4).

- g) The petitioner's installation does not conform with the SRTPV norms and conditions enumerated by the GoK in its letter dated 17.08.2016 and specifically Article 1.1 and 16 of the PPA, which specifically require that all standards and conditions are complied with in accordance with the applicable rules/regulations/law in force.
- h) The timeframe ordinarily approved by this Commission for SRTPV project is 180 days from the date of signing of PPA. Even, as per guidelines of the respondent which are produced (Annexure R5) and Article 1.6 of the PPA, the time prescribed for commissioning of SRTPV plant is 180 days i.e., 6 months. The said Policy of the respondent is in public domain and is available and known to all. In spite of the petitioner having knowledge about the same, the petitioner herein has failed to commission the plant within the stipulated timeframe.
- i) The petitioner herein has installed the plant in violation of SRTPV norms. Therefore, the respondent herein has rightly terminated the petitioner's PPA.

- j) The averment that the communication of the BESCOM vide Annexure F and G is in violation of earlier permission granted by the BESCOM is untenable and denied. Averment that the BESCOM ought to have informed the petitioner beforehand that his installation would be in violation of the existing guidelines is untenable and denied. It is submitted that the petitioner was required to install the SRTPV plant as per the SRTPV guidelines, policy and regulation and same are in public domain. It is submitted that the petitioner cannot feign ignorance to SRTPV guidelines, policy and regulation which require the petitioner to install SRTPV plant on permanent roof structures.
- k) The petitioner has installed the SRTPV plant in violation of the SRTPV norms. Therefore, the petitioner is not entitled for any exemption or relief under Rule 2 (15) of the Regulations.
- l) All other averments are denied by the 1st Respondent. The 1st Respondent has prayed to dismiss the present petition.
- 6) The petitioner has filed Rejoinder to the Statement of Objections filed by the 1st Respondent, the gist of which may be as follows:

- a) As per the preamble to KERC (Implementation of SRTPV Plants) Regulations, 2016, the said Regulations have been framed to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity. Regulation 2 (k) of the said Regulations, prescribing the installation of SRTPV on the rooftop is only for the purpose of capturing the solar energy by the photovoltaic system and it does not prescribe the method of net metering or promoting solar power generation. Even under the said Regulation 2 (k) the Commission is empowered to include such other solar photovoltaic plants in its orders issued from time to time.
- b) It is contended by the 1st Respondent that the petitioner has installed the SRTPV plant on roof of Greenhouse built using temporary steel structures and that the petitioner has put up his SRTPV plant in direct contravention of notification dated 17.08.2016 and that as per the inspection report dated 24.05.2018 (Annexure R4) it was noticed that the petitioner erected solar panel on Greenhouse structure in spite of the availability of a building with built up area of around 1,200 sq. ft. However, even after inspecting the site and noticing

the concrete building on 24.05.2018, the 1st Respondent did not instruct the petitioner at any time to install the SRTPV plant on the roof of the concrete house, when actually four months' time was still available to the petitioner for such installation as per the timeframe of six months under the PPA dated 31.03.2018. However, it can be seen that inspection report Annexure R-4 is dated 24.05.2019 but not dated 24.05.2018 as stated in rejoinder.

- c) The 1st Respondent instead of giving proper guidance to the petitioner, has rejected the proposal of the petitioner for installation of SRTPV plant on 27.04.2018 and communicated to the petitioner on 01.06.2018 within one week from his inspection report dated 24.05.2018.
- d) After issuance of TFR and after signing of the PPA, the petitioner commenced and completed the installation of the SRTPV on the Greenhouse structure on 22.05.2018 well within the 180 days period as per the KERC Regulations and PPA.
- e) Installation of SRTPV plant on Greenhouse can be considered for rooftop installation, as per the clarification issued by the Commission on 22.03.2016, since the PPA was

signed after the TFR and after the 1st Respondent was satisfied about the structural stability of the plant.

- f) The petitioner has prayed to pass an order under Regulation 13 of the KERC (Implementation of SRTPV Plants) Regulations, 2016 to remove difficulties in implementing the Regulation or for relaxing any condition in the regulation, as deemed appropriate in the present petition.

7) We have heard the learned counsel for the parties.

- a) The learned counsel for the petitioner mainly submitted that the officials of the respondent allowed him to install the SRTPV system on his Greenhouse and that on such representation, the petitioner had spent more than Rs.70 lakhs for installation of SRTPV system. Further, he submitted that after completion of the installation work the respondent by letter dated 27.04.2018 (Annexure F) intimated that the SRTPV system was not allowed of Greenhouse and rejected the claim of the petitioner for installation of SRTPV system on the Greenhouse. Therefore, he submitted that the respondent is estopped from contending that a SRTPV system cannot be allowed on the rooftop of a Greenhouse. He also submitted that the PPA was

terminated in violation of the principles of natural justice and the respondent is bound to synchronize the SRTPV system with the Grid.

- b) The learned counsel for the respondent submitted that the SRTPV system could be allowed to be installed only on the roof of the permanent structure but not on the structure like Greenhouse. Further, he submitted that allowing of SRTPV system on the roof of a Greenhouse would be contrary to the Solar Policy as well as The KERC (Implementation of Solar Roof Top Photovoltaic Power Plants) Regulations, 2016 (hereinafter called as Regulations, 2016). Therefore, he submitted that the principle of estoppel does not apply and the petitioner cannot be allowed to synchronise the SRTPV system installed on the roof of the Greenhouse with the Grid.

8) From the rival contentions, the following points arise for our consideration:

i) Issue No.1: Whether SRTPV system could be allowed to be installed on the roof of the Greenhouse.

ii) Issue No.2: Whether the petitioner can be allowed to synchronize the SRTPV system installed on the roof of his Greenhouse with the Grid? If so, what should be the terms and conditions for synchronization of the SRTPV system with the Grid.

iii) Issue No.3: What Order?

9) After considering the submissions by the parties and the pleadings and documents produced by them our findings of the above issues are as follows for the following reasons:

10) Issue No.1: Whether SRTPV system could be allowed to be installed on the roof of the Greenhouse.

a) Regulation 2 (1) (k) of the KERC (Implementation of SRTPV Power Plant) Regulations, 2016 defines Solar Roof Top Photovoltaic Power Plant as follows:

“ Solar Rooftop Photovoltaic Power Plant” (SRTPV Plant) means the solar photovoltaic plant installed on the existing roof of the consumer’s premises that uses sunlight for direct conversion into electricity through photovoltaic technology with the solar panels of SRTPV Plant 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 laws/ norms and such other Solar Photovoltaic plants as may be included by the Commission in its Orders issued from time to time.”

- b) The respondent contended that as per Solar Policy 2014-21, the SRTPV system is required to be mandatorily mounted in place available on the roof of non-residential, commercial, institutional, industrial and other building constructed as per building construction norms and further that the SRTPV system installed on the ground or ground mounted structures using steel/iron/ wooden/concrete support will not be considered as SRTPV system and to this effect the GoK has clarified this aspect vide letter dated 17.08.2016. This fact is not denied by the petitioner.
- c) The officials of the respondent had visited the spot on 23.03.2019 as per the direction of the General Manager (DSCM), BESCO, Corporate Office, Bengaluru. The result of the spot inspection was intimated to the General Manager (DSM) vide letter dated 24.05.2019 (Annexure R-4). The said report discloses that the power sanction of 75 KVA was given to the Greenhouse structure and also a building erected measuring about 1,200 sq. ft. situated in Survey Nos 176, 177 and 109/1 of Alur village, Opposite to KSCA Stadium, Madanayakanahalli O&M Unit, Nelamangala Sub-Division. It also discloses that the Green- house structure is constructed with fabricated steel structures and it is not a permanent

structure. It also discloses that the RR No. assigned for power connection is RNHT-472 with a sanction load of 75 KVA. It is stated that the petitioner has already installed the solar panels on the roof of the Greenhouse structure. The photo of the Greenhouse where SRTPV system is installed and as well as photo of the roof top of the building built on an area of 1,200 sq. ft. are produced along with Annexure R-4. The petitioner has also produced photos of the Greenhouse structure and the installation of the SRTPV on the roof of the Greenhouse vide Memo dated 13.12.2018.

- d) This Commission has also issued a clarification dated 05.09.2018 stating that Commission's clarification dated 22.03.2016 in respect of SRTPV installation on Greenhouse is no longer effective subsequent to the issue of Regulations, 2016 which came into force with effect from 15.12.2016. This Commission had earlier issued clarification dated 22.03.2016 (Annexure J) stating that the Greenhouse having green cloth roofs could be considered for installation of SRTPV systems subject to TFR issued by the Field Officer.
- e) The photo of the Greenhouse structure produced by the petitioner clearly shows that the Greenhouse was erected with steel poles and with fabricated steel structures. Therefore, it

cannot be considered as permanent structure on which the SRTPV system could be installed. The definition of the SRTPV plant stated in the Regulations, 2016 and also the GoK letter dated 17.08.2016 would point out that the SRTPV system cannot be allowed on roof top of the Greenhouse. Hence, Issue No.1 is held in negative.

11) Issue No.2: Whether the petitioner can be allowed to synchronize the SRTPV system installed on the roof of his Greenhouse with the Grid? If so, what should be the terms and conditions for synchronization of the SRTPV system with the Grid?.

a) It appears the petitioner has newly constructed a Greenhouse and also a RCC building in the premises of his Survey Nos.176, 177 and 109/1 at Alur village, near KSCA Stadium, Dasanapura hobli, Bengaluru North taluk. He applied for power sanction of 100 KVA to the Greenhouse and the RCC building and accordingly power sanctioned vide letter dated 27.11.2017 (Annexure A) was issued on certain terms and conditions stated in it. At the request of the petitioner, the load was reduced to 75 KVA. On compliance of the terms and conditions stated in Annexure A, power services were given on 13.03.2018. Thereafter, the petitioner filed application on 21.03.2018 (Annexure C) praying permission to install SRTPV system

of 55 kWp on the rooftop of Greenhouse measuring of about 512 sq. mtrs. Revenue report in Format-3 was issued on 27.03.2018 and TFR dated Nil (Annexure D) in Format-4 issued certifying that the said SRTPV system was technically feasible. The PPA dated 31.03.2018 (Annexure E) was executed between the petitioner and the EE (Ele.), C, O&M Division, BESCOM, Nelamangala [hereinafter called as EE, BESCOM, Nelamangala]. The petitioner claims in his petition that he completed the installation of SRTPV system on the rooftop of the Greenhouse by 22.04.2018.

b) By letter dated 27.04.2018 (Annexure F), the EE, BESCOM, Nelamangala, returned the SRTPV system file of the petitioner to the Assistant Executive Engineer (Ele.), C, O&M, Nelamangala Sub-Division, Nelamangala [hereinafter called as AEE (Ele.) BESCOM, Nelamangala] stating that SRTPV system on Greenhouse with the steel structure is not allowed as per Regulations, 2016, thereby the proposal submitted from the Office of the AEE (Ele.), BESCOM, Nelamangala rejected and further instructing the AEE (Ele.), BESCOM, Nelamangala not to submit such proposals in future. The parties have not explained how the PPA dated 31.03.2018 (Annexure E) executed between the petitioner and the EE (Ele.), BESCOM, Nelamangala, came into existence and for which reason the AEE (Ele.), BESCOM, Nelamangala, submitted the SRTPV

system of the petitioner to EE (Ele.), BESCOM, Nelamangala for approval and how the same EE (Ele.), BESCOM, Nelamangala who executed the PPA on 31.03.2018 itself rejected the proposal for installation of the SSRTPV system of the petitioner. Subsequently the AEE (Ele.), BESCOM, Nelamangala, as per his letter dated 01.06.2018 (Annexure G) intimated the petitioner regarding the rejection of the proposal to install the SRTPV system on the Greenhouse.

- c) The petitioner made a representation to the Managing Director, BESOM, K.R. Circle, Bengaluru (hereinafter called as MD, BESCOM), vide letter dated 21.06.2018 (Annexure H) representing that rejection of his proposal was illegal and to direct the concerned EE (Ele.), BESCOM, Nelamangala, to proceed with the synchronisation of the SRTPV system.
- d) It appears subsequent to the representation dated 21.06.2018 of the petitioner (Annexure H), the EE (Ele.), BESCOM, Nelamangala, visited the spot on 23.05.2019 and submitted his report dated 24.05.3019 (Annexure R-4) to the General Manager (DSCM), BESCOM, Corporate Office, K.R. Circle, Bengaluru. In this report, he stated that the SRTPV system is installed on the roof of the Greenhouse constructed with fabricated steel structures and it

was not a permanent structure and that in the same Sy. Nos. there is another building with built up area of 1,200 sq.ft.

- e) The MD, BESCO, addressed a letter dated 30.07.2018 to the Commission wherein the BESCO had sought Commission's directions for considering to install the 55 kWp capacity SRTPV system on the Greenhouse structure of the petitioner. This Commission replied by letter dated 05.09.2018 (Annexure R-2) intimating that its earlier letter dated 22.03.2016 informing that the Greenhouse with green cloth roofs could be considered for installation of SRTPV system subject to TFR issued by the Field Officer could not be considered in view of the Circular dated 17.08.2016 of the GoK for implementation of the SRTPV system and passing of the Regulations, 2016. It was informed that the earlier clarification dated 22.03.2016 was no longer effective and directed to terminate the PPA by providing an opportunity to the petitioner. Thereafter, the PPA was terminated by letter dated 19.09.2018 (Annexure R-3) issued by EE, BESCO, Nelamangala.
- f) The petitioner has stated in para 15 of his petition that he has spent totally Rs.71,20,881/- towards the total cost of the SRTPV system. He stated that out of this amount, a sum of Rs.14,83,998/- was spent towards construction of evacuation lines and other allied equipment. In the Generic Tariff orders dated 18.05.2018 and

01.08.2019, this Commission has estimated the capital cost for installation of 1 KW capacity of SRTPV system at Rs.40,000/- and Rs.32,800/- respectively. Therefore, one cannot deny the fact that the petitioner had incurred at least Rs.40-45 lakhs towards installation of the SRTPV system on his Greenhouse.

- 12) a) As already mentioned the main contention of the petitioner is that the respondent is estopped from contending that an SRTPV system cannot be allowed to be installed on the roof top of the Greenhouse. The respondent has contended that there cannot be estoppel, against the statute and the petitioner cannot be allowed to synchronise the SRTPV system installed on Greenhouse, which is against the Regulations, 2016 as well as the Government letter dated 17.08.2016. In addition to it, it may be noted that law does not recognise the estoppel as between parties in *pari delicto*.
- b) On-going through the entire record particularly Annexure R2 dated 05.09.2018 produced by the respondent, the Commission made up its mind to verify the previous correspondences leading to issue of letter as per Annexure R2 dated 05.09.2018 by this Commission addressed to the MD, BESCOM in response to his letter date 30.07.2018. On perusal of these records it can be said that the GM

(DSM), BESCOM, in his letter dated 30.07.2018 sought clarification regarding SRTPV system of the petitioner and submitted the copies of the relevant documents relating to the said SRTPV system. On consideration of the contents of the said letter dated 30.07.2018 of the GM (DSM), BESCOM and the other enclosures sent along with the said letter, this Commission issued clarification dated 05.09.2018 (Annexure R2) regarding the SRTPV system of the petitioner, directing that the SRTPV system installed on the Greenhouse was not as per the required guidelines and Regulations, 2016 and instructed to take action for termination of the PPA.

- c) The petitioner has contended that he had made up his mind to install the SRTPV system as the concerned officials of the respondent had allowed his request and issued TFR and even executed the PPA and they had inspected the spot and had never informed the petitioner that the installation of the SRTPV system was not allowed on roof top of the Greenhouse. The consideration of the enclosures sent along with the letter dated 30.07.2018 of GM (DSM), BESCOM, would show that the petitioner was not so innocent as claimed by him. In this respect, one may consider the reply dated 06.07.2018 sent by the EE, BESCOM, Nelamangala to the GM (DSM), BESCOM. It appears after receipt

of the representation dated 21.06.2018 (Annexure H) sent by the petitioner, the GM (DSM), BESCOM, sought reply of the EE, BESCOM, Nelamangala. This letter dated 06.07.2018 is the reply regarding the averments made in the representation dated 21.06.2018 (Annexure H) of the petitioner. Para 7 of the representation of the petitioner dated 21.06.2018 (Annexure H) reads thus:

“ Para 7: I have produced the relevant documents pertaining to the solar plant before the Executive Engineer (Ele.) C, O&M, Nelamangala Sub-Division, Nelamangala. Further there was a site visit by the Executive Engineer and his staff and after verification of all the documents he has approved the proposal on 31.03.2018 and on the same day he has entered into Power Purchase Agreement (PPA). Copy of the PPA dated 31.03.2018 is enclosed herewith as Document No.6.”

In reply to the above said Para 7, the EE, BESCOM, Nelamangala has reported to the General Manager (DSM), BESCOM vide letter dated 06.07.2018, which is reproduced as follows:

Para 7 "Yes, I visited a spot and found that consumer has intended to fix solar panels partly on the existing building and partly greenhouse structure work is under construction. They submitted KERC approval letter No.KERC/S/F-50 Volu-8[c]/15-16/2524/22.3.16. I acknowledge the 3 sets of PPA's in this office and the consumer argued to sign PPA as per KERC letter No.S/03/1 dated 15th December, cited above (enclosed). And I informed the consumer representative on that day itself that clarification to provide SRTPV panels to be mounted on the steel structure house will be obtained from corporate office. On the same day I sent a letter to GM [DSM] vide TO letter No.11839 dated 31.03.2018 for clarification to accept the KERC letter to have the PPA with the consumer for the green house area. The detailed letter here with enclosed. I received the clarification GM [DSM] on 26.06.2018 at 1.30 pm over Email, the screen short of received email enclosed. Therein, it is clearly mentioned that SRTPV consumer shall erect the panels only on the roof of the permanent building as per the KERC regulation No.S/03/1 dated 15.12.2016."

- d) The grievances made in Para 7 of the representation dated 21.06.2018 (Annexure H) of the petitioner and the reply by EE, BESCOM, Nelamangala would make it clear that the PPA was signed by the EE, BESCOM, Nelamangala as the petitioner insisted to sign it by producing the clarification issued by this Commission dated 22.03.2016 and in spite of it the EE, BESCOM, Nelamangala, told that he would get the clarification from the Corporate Office in this regard. The EE, BESCOM, Nelamangala, has promptly addressed the letter dated 31.03.2018 to the GM (DSM), BESCOM, for clarification whether to accept the clarification dated 22.03.2016 of the Commission, in view of the Regulations, 2016. The Corporate Office sent reply to act according to the Regulations, 2016 wherein the definition of the SRTPV system was defined. Thereafter, the petitioner was informed that his request for installation of SRTPV system on Greenhouse could not be allowed. It appears that the explanation in Para 7 of his reply dated 06.07.2018 submitted by the EE, BESCOM, Nelamangala, may be accepted.
- e) The petitioner was having a Greenhouse measuring about 550 sq. meters area and another RCC building measuring about 1,200 sq.ft. But the petitioner requested for arranging 100 KVA HT power supply. The AEE, BESCOM, Nelamangala, sanctioned power

supply of 100 KVA HT power under tariff HT4 vide letter dated 27.11.2017 (Annexure A) with certain conditions. Subsequently, the Contract Demand was reduced to 75 KVA at the request of the petitioner. The Contract Demand of 75 KVA power supply was given to both Greenhouse as well as the other building. It appears the petitioner obtained 75 KVA sanctioned load with a view to install an SRTPV system of the same capacity, though he was not in need of so much quantum of power for his use. On enquiry, we found that the maximum demand of the petitioner had not exceeded 15 KVA capacity in any of the previous months and the maximum power consumption had not exceeded 1,500 units per month. The average consumption per month for the previous months was in between 600 to 800 units. Therefore, it can be inferred that the petitioner had unduly hiked the sanctioned load only with a view to install the higher capacity of SRTPV system. It may be noted that as per Generic Tariff order dated 02.05.2016, the consumer was allowed to install the SRTPV system only up to the limit of the sanctioned load. It can also be noted that the tariff for an SRTPV system of the capacity between 51-100 kWp was Rs.6.14 per unit. The Generic Tariff order dated 02.05.2016 was made applicable only up to 31.03.2018. The Commission had issued Discussion Paper dated 06.02.2018 for fixing the Generic Tariff for SRTPV system for the subsequent period from 01.04.2018.

The Discussion Paper had made it clear that the capital cost for installation of SRTPV system was fast decreasing, therefore, there would be reduction in the Generic Tariff for the subsequent period. In this background, one can say that the petitioner was bent upon to take the PPA by any means on the last day of the Tariff period i.e., on 31.03.2018. It can be seen that this Commission has passed Generic Tariff order dated 18.05.2018 fixing the Generic Tariff at Rs.3.56 per unit for the period from 01.04.2018 to 31.03.2019.

- f) It can also be noted that HT 4 Tariff applies for a residential apartment, but not to Greenhouse or a residential building. The Tariff applicable for Greenhouse is under HT 2 (a). It can also be noted that the Demand charge for HT 4 is Rs.120/- per KVA and on the other hand, the Demand Charge for HT 2 (a) is Rs.210/- per KVA. The petitioner should have been sanctioned the power supply under HT 2 (a) Tariff but not under HT 4 as per the classification made under Retail Tariff order for the year 2018. It is not known how such mistake had taken place while arranging power supply. It can also be noted that the Greenhouse and the other RCC building are at different places and both cannot be treated as one premises for arranging power supply. However, the records show that a common power supply was given to the

Greenhouse as well as the other RCC building which is not allowed under the Conditions of Supply.

- g) The guidelines for availing for Grid connectivity of SRTPV systems in BESCO were available in the official Website of BESCO and one can infer that the petitioner was well aware of the guidelines. As per the said guidelines the petitioner was not supposed to commence the installation work of the SRTPV system without obtaining the approval for installation of SRTPV system issued in Form No.6 by the EE, BESCO, Nelamangala. The petitioner in his affidavit dated 18.12.2018 stated that the EE, BESCO, Nelamangala had signed the approval letter for installation of SRTPV system in Form No.6, but the copy of the approval letter was not supplied to him, but the petitioner does not say the date on which this Form No.6 was prepared or signed by the EE, BESCO, Nelamangala. On the other hand, in his reply dated 06.07.2018 addressed to the GM (DSM), BESCO, the EE, BESCO, Nelamangala, stated that he had not issued Form No.6 to the petitioner till date and the petitioner could not have erected the solar panel without such approval. The PPA should be executed after issue of the approval for the installation work in Form No.6. As already noted, the EE, BESCO, Nelamangala, had sought clarification from the Corporate Office through his letter dated

31.03.2018 as to whether SRTPV system could be allowed on the roof of the Greenhouse. Therefore, the say of the EE, BESCO, Nelamanala, that he had not issued approval in Form No.6 can be accepted. Though the petitioner claims that he completed the installation work on 22.04.2018 itself, he has not produced any other convincing evidence in this regard.

- h) The facts and circumstances would clearly indicate that the bona-fides of the petitioner cannot be accepted on its face value. The above facts make it clear that the petitioner intended to take undue advantage of the higher tariff and the higher capacity of the SRTPV system though he was not entitled to it. Therefore, we hold that the petitioner was also equally at fault and he made attempts to contravene the guidelines as well as the Regulations, 2016 while installing SRTPV system on his roof top of the Greenhouse. He also attempted to get the higher tariff by manipulating certain facts as noted above. In such circumstances, the petitioner cannot claim the benefit of principle of estoppel.
- i) It is also well established that a party cannot claim the benefit of estoppel against the statute or law. Acceptance of the contention of the petitioner would amount to allowing the contravention of the guidelines for installation of SRTPV system as

well as the Regulations, 2016. Therefore, for this reason also the petitioner cannot urge the principle of estoppel against the respondent, to claim synchronization of his SRTPV system with the Grid.

- 13) a) The Commission notes that previously where the SRTPV systems were installed in violation of the terms of the PPA or other relevant provisions and where PPAs were cancelled for such violation, the consumers were given an option to synchronize the SRTPV system with the Grid at a reduced tariff in the larger public interest. A tariff of Rs.3.56/unit was fixed for SRTPV systems commissioned between 01.04.2018 and 31.03.2019 as per the Generic Tariff Order dated 18.05.2018. Similarly, a tariff of Rs.3.07/unit was fixed for SRTPV systems commissioned between 01.04.2019 and 31.03.2020 as per Generic Tariff Order dated 01.08.2019. The investment for the installation of SRTPV system by the petitioner could be taken as made during FY-2019. He could not be allowed the Generic Tariff of Rs.3.56/unit for his SRTPV system as he had contravened the Guidelines/Regulations, 2016 while installing the SRTPV system. Therefore, the Commission is of the considered view that the petitioner can be allowed at best, the Generic Tariff of Rs.3.07/unit for his SRTPV system applicable for the FY-2020.

- b) Before synchronization of the SRTPV system of the petitioner, all the technical and operational conditions/specifications shall be made applicable and observed as per the relevant Orders, Regulations and the Code.
- c) For the above reasons, on Issue No.2, we hold that the petitioner can be allowed to synchronize his SRTPV system with the Grid, subject to payment of tariff @ Rs.3.07/unit for the energy supplied with other conditions as noted above.

14) Issue No.3: What Order?

For the above reasons we pass the following order.

ORDER

- a) The petitioner is given an option to get his SRTPV system (installed on the Greenhouse) synchronized with grid on "Net Metering" basis, subject to receiving a tariff of Rs.3.07/unit (without capital subsidy) and at Rs.2.32/unit (with capital subsidy) as per the Generic Tariff Order dated 01.08.2019 for the energy supplied to the Grid and further complying of technical and operational conditions/specifications as per the relevant Orders, Regulations and the Code;

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- b) In case, the petitioner intends to exercise his option for synchronizing his SRTPV system with the Grid, he shall file an affidavit before this Commission to that effect within 15 days from the date of this order, with copy marked to Respondent No.1. Thereafter, steps shall be taken by the concerned officers for synchronisation of the SRTPV system with the Grid as early as possible;
- c) In case, the SRTPV system is synchronized, the petitioner shall execute a fresh PPA with the Respondent No.1, with relevant terms & conditions; and
- d) The Respondent No.1 shall take action in case the power sanction is against the provisions of Conditions of Supply as observed in Para 12 (f) of the Order.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER