
BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,

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

Dated : 05.11.2019

Present:

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

O.P.No.23 of 2018

BETWEEN

Sri Anand Kumar K.M.
S/o Munishamappa,
Aged about 57 years
Residing at Kallikuppa Village,
Bethmangala Hobli,
Bangarpet Taluk, Kolar District,
Karnataka-563 135.
Represented by his GPA Holder

- PETITIONER

Applied Solar Power Management Private Limited,
A Company incorporated under:
Companies Act, 1956
Having its registered office at:
A5, Saraswati House,
Nararaina Industrial Area, Phase-II,
New Delhi-110 028.
[Represented by M/s Srinivas & Badri, Counsels]

- PETITIONER

AND

Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bangalore-560 001.
Represented by its Director
[Represented by JUSTLAW Advocates, Bengaluru.]

- RESPONDENT

O.P.No.24 of 2018**BETWEEN**

Sri Munishamappa
S/o Muniswami, Major,
Residing at Kallikuppa Village,
Bethmangala Hobli,
Bangarpet Taluk, Kolar District,
Karnataka-563 135.
Represented by his GPA Holder

Applied Solar Power Management Private Limited,
A Company incorporated under Companies Act, 1956
Having its registered office at:
A5, Saraswati House,
Nararaina Industrial Area, Phase-II,
New Delhi-110 028.
[Represented by M/s Srinivas & Badri, Counsels]

- PETITIONER

AND

Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bangalore-560 001.
Represented by its Managing Director
[Represented by JUSTLAW Advocates, Bengaluru.]

- RESPONDENT

COMMON ORDERS

In the above petitions, the question of law and the facts involved for our considerations are almost similar. Therefore, this Common Order is being

passed in the above two cases. The contents and exhibit numbers of different documents produced by the parties in both the cases are almost similar.

2) The **O.P. 23 of 2018** is filed by the petitioner under Section 86 (1) (f) of the Electricity Act, 2003 praying for the following reliefs:

a) to declare that the termination of the PPA dated 21.12.2015 by the Respondent vide its letter dated 14.11.2016 (Annexure-G) is premature, arbitrary, illegal, without notice and not binding on the Petitioner.

b) To declare that the PPA dated 21.12.2015 at (Annexure-B) is valid, subsisting and binding on the Respondent and that the Petitioner is entitled to tariff of Rs.9.56/unit as per the PPA dated 21.12.2015.

c) Alternatively, quash the order bearing No.KERC/S/F-31/Vol-309/1418 dated 27.11.2017 at (Annexure V) and declare that the Petitioner is entitled to tariff of Rs.5.20/unit as per Order dated 07.11.2017.

d) To pass such other order as this Hon'ble Commission may deem fit and proper in the interest of justice and equity.

3) The **O.P. 24 of 2018** is filed by the petitioner under Section 86 (1) (f) of the Electricity Act, 2003 praying for the following reliefs:

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- a) To declare that the termination of the PPA dated 21.12.2015 by the Respondent vide its letter dated 14.11.2016 at (Annexure G) is illegal, arbitrary, without notice and not binding on the Petitioner.
- b) To declare that PPA dated 21.12.2015 at (Annexure B) is valid, subsisting and binding on the Respondent and that the Petitioner is entitled to tariff of Rs.9.56/unit as per PPA dated 21.12.2015.
- c) To pass such other order as this Hon'ble Commission may deem fit and proper in the interest of justice and equity.
- 4) Some of the relevant preliminary facts required to be noted are as follows:
- a) This Commission has determined the tariff of Rs.9.56/unit by its order dated 10.10.2013 for the grid connected MW Scale Solar Power Projects and also applied the same tariff to the Solar Roof Top of Photo Voltaic (SRTPV) systems. However, the capacity of SRTPV Systems was limited to a maximum of 1 MW. The Government of Karnataka issued Solar Policy on 22.05.2014 for the period from 2014-2021 and fixed initially a target of 400 MW capacity grid connected SRTPV Systems, apart from fixing different targets for the achievement under different schemes for development of the Solar Power Projects. Pursuant to it, Bangalore Electricity Supply Company Limited (BESCOM) (the

Respondent herein) launched the SRTPV scheme on 07.11.2014 to encourage the grid connected SRTPV systems on the roofs of the consumers' existing buildings.

b) For the purpose of brevity and clarity, the relevant facts and events of the petitioners SRTPV systems may be stated as follows:

| Sl. No. | Description of Events/Facts | OP No. 23/2018 | OP No. 24/2018 |
|---------|--|---|--------------------------|
| 1 | Date of SRTPV Application (Annexure A) | 17.12.2015 | 17.12.2015 |
| 2 | Date of PPA (Annexure B) | 21.12.2015 | 21.12.2015 |
| 3 | Date of approval of PPA by the Commission (Annexure D) | 16.03.2016 | 16.03.2016 |
| 4 | R.R. No. & Place | P-789 | P-564 |
| | | Kallikuppa village, Bethamangala Hobli, Bangarpet Taluk, (Bethamangala Section in Bangarpet Sub-Division of BESCOM) | |
| 5 | Nature of the existing building | Poultry farm | Poultry farm |
| 6 | Capacity of SRTPV system | 995 kWp | 995 kWp |
| 7 | Approval for installing SRTPV system issued by Executive Engineer (Elec), BESCOM, KGF-563 117. | 29.04.2016 Annexure E | 29.04.2016 Annexure E |
| 8 | Cancellation of PPA by EE (Elec), BESCOM, KGF Division, KGF-563 117. | 14.11.2016 Annexure G | 14.11.2016 Annexure G |
| 9 | Submission of work completion report to AEE | 05.12.2016 Annexure H | 05.12.2016 Annexure K |
| 10 | Approval of Drawings for electrical installations by CEIG | 17.12.2016 Annexure J | 17.12.2016 Annexure L |
| 11 | Electrical Safety approval of SRTPV system issued by CEIG | 18.03.2017 Annexure K | 18.03.2017 Annexure M |

c) The petitioners in above cases, claiming to be eligible for installation of the SRTPV systems entered into Power Purchase Agreements (PPAs) dated 21.12.2015 for installation of 995 kWp capacity SRTPV systems on their existing poultry farms. The tariff agreed under the PPAs was Rs.9.56 per unit for the energy delivered to the grid. The Commission intimated the approval of PPAs under letters dated 16.03.2016. The Executive Engineer (Ele), BESCOM, KGF Division, KGF (hereinafter referred as the Executive Engineer, BESCOM, KGF Division) issued the approval for installing the SRTPV system vide letter dated 29.04.2016 (Annexure E) allowing one-year time for commissioning of the SRTPV systems from the date of PPAs. The petitioners contended that during the process of installation of SRTPV systems, the Executive Engineer, BESCOM, KGF, issued the Official Memorandums dated 14.11.2016 cancelling both the PPAs of the petitioners for the reasons that the SRTPV systems were not completed within the time allowed. Further, it is contented by the petitioners that the time granted for installing the SRTPV system was one year from the date of PPAs as per Annexure E, i.e., within 17.12.2016, however, the PPAs were cancelled without any valid ground on 14.11.2016 itself. They contended that work completion reports dated 05.12.2016 were

submitted to the Assistant Executive Engineer, BESCO, Bangarpet Sub-Division, KGF. The petitioners got the approvals of the drawings for electrical installations of SRTPV systems on 17.12.2016 and electrical safety approval of SRTPV systems on 18.03.2017 from the Chief Electrical Inspector to Government (CEIG), Bengaluru.

d) The Respondents did not come forward to synchronise the SRTPV systems though the petitioners had completed the works of the installations of the SRTPV systems and that the respondents were wrongly claiming that the SRTPV systems of the petitioners were liable to reduced tariff as determined in the generic tariff dated 02.05.2016. The petitioners addressed letters dated 25.03.2017 to the Director (Technical), BESCO, Corporate Office, K.R. Circle, Bengaluru, to direct the concerned officials to synchronise the SRTPV systems even at the reduced tariff as per the generic tariff order dated 02.05.2016 without prejudice to their right to contest the same before the proper authority.

e) In OP No.23/2018, the petitioner wrote letter dated 12.06.2017 (Annexure M) to the Executive Engineer, BESCO, KGF Division and letter dated 27.06.2017 (Annexure N) to the Managing Director, BESCO, Corporate Office, K.R. Circle, Bengaluru, requesting to synchronise his SRTPV system in question. Thereafter,

on 12.07.2017, the petitioner executed the Supplemental PPA (SPPA) dated 12.07.2017 (Annexure P) for the reduced tariff of Rs.5.20/unit and for the revised capacity of 693 kWp instead of the capacity of 995 kWp originally agreed. This SPPA was submitted for approval as per letter dated 20.07.2017 (Annexure Q) to this Commission by the General Manager (Ele), DSCM, BESCOM, Corporate Office, K.R. Circle, Bengaluru. However, this Commission approved the SPPA vide letter dated 27.11.2017 (Annexure V) subject to the condition that the petitioners should execute a fresh PPA for the tariff of Rs.3.57/unit for the capacity of 693 kWp as per the Commission's order dated 07.11.2017, if the petitioner so opted. In the meanwhile, the petitioner filed the WP No.56396/2017 (GM-RES) before the Hon'ble High Court of Karnataka and the said WP was disposed of as withdrawn with liberty to approach this Commission vide order dated 06.02.2018 (Annexure X). The present OP No.23/2018 is filed before this Commission on 13.03.2018. During the pendency of this case, the petitioners filed letter dated Nil issued by the Executive Engineer, BESCOM, KGF Division, certifying that the SRTPV system of this petitioner was synchronised on 29.12.2017.

f) The petitioner in OP No.24/2018 has executed the SPPA dated

23.03.2017 (Annexure P) for the revised tariff of Rs.5.20/unit. Thereafter, the petitioner requested to synchronise the SRTPV system vide his letter dated 06.04.2017 (Annexure Q) addressed to the Executive Engineer, BESCO, KGF Division. The petitioner also made a request vide letter dated 02.05.2017 (Annexure S) to this Commission requesting to direct the concerned officials to synchronise the SRTPV system. This Commission vide letter dated 22.05.2017 (Annexure T) communicated the approval of SPPA dated 23.03.2017 subject to certain corrections in the said SPPA. Thereafter, the petitioner in OP No. 24/2018 executed the SPPA dated 02.06.2017 (Annexure V) incorporating the corrections suggested by the Commission. Thereafter, the SRTPV system of this petitioner was synchronised on 08.06.2017 (Annexure W) as evidenced by the letter dated 17.06.2017 (Annexure W) issued by the Executive Engineer, BESCO, KGF Division.

- 5) The petitioners have urged the following grounds in support of their cases:
- a) The cancellation of the PPAs, was in violation of the principles of natural justice, without following the procedures stated in the PPAs for termination and was premature.

b) Since the cancellation of the PPAs, is invalid, the petitioners are entitled to the tariff of Rs.9.56/unit as agreed in the PPAs dated 21.12.2015 for the following reasons:

i) that the tariff in the generic tariff order dated 02.05.2016 ought to be applicable prospectively.

ii) the said order does not specifically made applicable retrospectively for the existing PPAs.

iii) the petitioners have installed the SRTPV systems within the time allowed, thereby they are entitled to tariff of Rs.9.56/unit as per the terms of the PPAs dated 21.12.2015.

iv) that the respondents refused to synchronise the SRTPV systems though these were ready for synchronisation on 05.12.2016 and the petitioners were forced to enter into the SPPAs and accordingly, the petitioners in OP 23/2018 has executed in SPPA dated 12.07.2017 (Annexure P) and the petitioner in OP No.24/2018 has executed SPPA dated 22.03.2017 (Annexure P) for sale of energy at the tariff of Rs.5.20/unit. Therefore, these SPPAs are not valid in law and not binding on the petitioners.

v) The petitioner in OP No.23/2018 has further urged that the

communication sent by this Commission vide letter dated 27.11.2017 (Annexure V), further reducing the tariff to Rs.3.57 per unit while approving the SPPA dated 12.07.2017 (Annexure P), is invalid and not binding. It is urged that even assuming that the order dated 07.11.2017 is applicable to the case of this petitioner, he was entitled to the tariff of Rs.5.20 per unit as per Clause (a) of the operative portion of the said order dated 07.11.2017. Therefore, alternatively it is urged that this petitioner is at least entitled to a tariff of Rs.5.20/unit and not a tariff of Rs.3.57/unit as per the communication vide letter dated 27.11.2017 of this Commission (Annexure V).

c) Therefore, the petitioners have prayed for allowing the petitions.

6) Upon notice, the respondent appeared through counsel and filed its written objections in both cases. The defence taken in both the cases is almost similar, the gist of which is may be stated as follows:

a) That the time frame stipulated for completion of work of the SRTPV system is 180 days from the date of execution of the PPA. Even as per the guidelines prescribed for installation of the SRTPV systems, the applicant having the existing building should complete the work of installation of SRTPV system within 180 days.

The said guidelines are in public domain and are available in the website of BESCO and known to all. Therefore, the petitioners were required to commission the STRPV systems on or before 20.06.2016. The copy of SRTPV guidelines is produced by the respondent as Annexure R2 in OP No.23/2018 and as Annexure R1 in OP No. 24/2018. That both the petitioners have failed to commission the SRTPV systems within 180 days as stated above. Further, it is contended in OP No.23/2018 that the concerned EE, BESCO, KGF Division, has fraudulently granted one-year time to commission the plant from the date of PPA which is contrary to the SRTPV guidelines, therefore, the act of the concerned officer is ultra-virus and not binding on the respondent. Therefore, it is contended that the cancellation of PPAs vide OMs dated 14.11.2016 (Annexure G) are valid and legal.

b) That the contention of the petitioners, that they completed the works of installation of SRTPV systems on 05.12.2016 as per Work Completion Reports Annexure H in OP No.23/2018 and Annexure K in OP No.24/2018, is wrong and incorrect and that the petitioners on 17.12.2016 had obtained the approval of drawings for electrical installations by CEIG and subsequently they obtained electrical safety approvals of SRTPV systems issued by CEIG on 18.03.2017, which would clearly point out that

as on 05.12.2016, the work of installation of the SRTPV systems was incomplete. Therefore, the respondent has contended that the work completion reports submitted by the petitioners are not acceptable.

c) That the petitioners themselves have executed the SPPA dated 12.07.2017 (Annexure P) and SPPA dated 23.03.2017 (Annexure P) for the reduced tariff of Rs.5.20/unit, as there was delay in commissioning the SRTPV systems.

d) That this Commission while considering the approval of SPPA dated 12.07.2017 executed by the petitioner in OP No.23/2018 has noted that the installed capacity of SRTPV systems was only 693 kWp out of the agreed installed capacity of 995 kWp as per PPA and that in view of the reduction in the capacity of SRTPV system this Commission vide letter dated 27.11.2017 directed this respondent to commission the STRPV system of the petitioner provided he executed a fresh PPA at the tariff of Rs.3.57/unit in terms of the order dated 07.11.2017 passed by this Commission. Thereafter, on 08.12.2017 this petitioner has executed the SPPA at the revised tariff of Rs.3.57/unit, the copy of which is as per Annexure R1.

e) That in view of the terms contained in the generic tariff order

dated 02.05.2016, the petitioners were liable to reduced tariff and the generic tariff order dated 02.05.2016, directs for reducing the tariff for the delay in commissioning of the SRTPV system for which PPA has been executed at the tariff of Rs.9.56/unit in terms of generic tariff order dated 10.10.2013. It is denied that the generic tariff order dated 02.05.2016 cannot be made applicable for the PPAs dated 21.12.2015 executed by the petitioners. All other contentions raised by the petitioners are denied by the respondent.

g) For the above reasons they prayed for the dismissal of the petitions.

7) The petitioners have filed the Rejoinders to the objections statements filed by the respondents, denying the veracity of the defence urged by the respondent.

8) We have heard the learned counsels for the parties. The petitioners have also filed written arguments.

9) From the rival contentions made out in the pleadings and the submissions of the parties, the following issues arise for our consideration:

1. Issue No.1: Whether the cancellations of the PPAs on 14.11.2016 at Annexure G in the petitions is illegal?

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2. Issue No.2: Whether the petitioners have completed works of the installations of the SRTPV Systems within the time allowed?
 3. Issue No.3: Whether the tariff determined in the Generic Tariff Order dated 02.05.2016 is not applicable to the SRTPV system for which PPA has been entered into prior to 02.05.2016, though there is delay in commissioning such SRTPV system?
 4. Issue No.4: Whether the reduction in installed capacity of SRTPV system in OP No.23/2018 could amount to violation of the term of PPA, attracting cancellation of PPA as envisaged in the order dated 07.11.2017?
 5. Issue No.5: What Order?
- 10) After considering the submissions of the parties and the pleadings and documents produced by the parties, our findings of the above issues are as follows:
- 11) Issue No.1: Whether the cancellations of the PPAs on 14.11.2016 at Annexure G in the petitions is illegal?
- a) In both the cases, the PPAs dated 21.12.2015 were cancelled as per Annexure G dated 14.11.2016. The Annexure G states that the time prescribed as per work approval dated 29.04.2016 had expired, thereby the PPAs have been cancelled. Such work approvals were issued as per Annexure E dated 29.04.2016. This Annexure E states that this

approval was valid for one year from the dated of PPA i.e., 21.12.2015 and the SRTPV system was to be commissioned within 20.12.2016 failing which the approval will be treated as cancelled.

b) The learned counsel for the petitioners submitted that the approval for installation of SRTPV system was valid up to 20.12.2016 in both the cases and there could not have been cancellation of PPAs before the expiry of one year from the date of PPA and admittedly, the cancellation letters were issued on 14.11.2016, thereby the cancellation of the PPAs is illegal. It is also contended that the procedure for termination as prescribed in the PPA has not been followed. On the other hand, the learned counsel for the respondent submitted that Annexure E dated 29.04.2016, approval for installation of the SRTPV systems were fabricated documents created in violation by the then Executive Engineer, BESCO, KGF Division and the grant of one-year time from the date of PPA is contrary to the guidelines prescribed. Further, he submitted that the time is essence of the contract and the time allowed was only 180 days from the date of issue of approval for installation of SRTPV system and thereby the cancellation of PPAs was valid.

c) Therefore, we have to examine:

i) whether the time was essence of the contract for completion of the SRTPV system; and

ii) whether approval for installation of SRTPV system (Annexure E dated 29.04.2016) has been fraudulently created?

d) We will first examine whether the time was essence of the contract for completion of the SRTPV system. The guidelines relating to the installation of SRTPV systems has been issued by the respondent (BESCOM) and it is published in the website.

i) As per these guidelines, a detailed procedure was set out for establishing the SRTPV Systems, which included filing of an application – on line or off line, paying the requisite registration fees, scanning of applications, revenue verification and submission of technical feasibility report, obtaining of approval for installing the SRTPV System in Format No.5 for LT installations up to 50 kWp and in Format No.6 for HT installations of above 50 kWp, submission of Work Completion Report in Format No.7, along with all the necessary documents and thereafter, the inspection of safety procedure by the Assistant Executive Engineer, BESCOM or the Chief Electrical Inspector, as the case may be. Therefore, it is clear that, after filing the application for installing the SRTPV System, a Technical Feasibility Report is essential and thereafter, approval for installing the SRTPV System would be issued in Format-5 or Format-6, as the case may be. These Formats specifically contain a term that the SRTPV System should be completed within 180 days from the date of issuance of such

Format-5 or Format-6, as the case may be, in default, the approval given for installation of the SRTPV System would stand cancelled. The stage of execution of the PPA would arise subsequent to the issuance of the Technical Feasibility Report. If the Project is not technically feasible, there is no question of proceeding further.

(ii) The Respondent (BESCOM) had submitted the draft Guidelines to this Commission, for approval, vide its letter bearing No.BESCOM/BC-51/3584/2013-14/661-65 dated 31.07.2014. The draft standard PPA was one of the Formats included in the draft Guidelines, submitted to the Commission. After scrutiny of the Guidelines, including the draft standard PPA, this Commission, in principle, approved the draft Guidelines with certain modifications and intimated that the draft standard PPA for the installation of the SRTPV systems would be sent, after finalization. The Commission also suggested to incorporate the timelines for grant of different approvals in the Guidelines, so as to ensure the speedy implementation of the SRTPV Systems. The in-principle approval was sent by this Commission, by letter bearing No.S/03/1/892, dated 27.08.2014. Later, the draft standard PPA was finalized and sent to the BESCOM by the Commission.

(iii) The above facts would clearly indicate that, the standard PPA is a part of the Guidelines for installation of the SRTPV Systems and it should be

read along with the timelines prescribed in the other Formats. The Petitioner, as well as all other applicants who applied for approval for installing the SRTPV Systems, were aware of the existence of the Guidelines and its contents. The Respondent (BESCOM) had published the said Guidelines on its Website, which is still available there. The above facts would clearly indicate that, the standard format of the PPA only supplements the Guidelines, therefore, it should be read along with the other terms and conditions contained in the Guidelines.

- (iv) This Commission, by its Order dated 02.05.2016, had determined the generic tariff for the SRTPV Systems. The said Generic Tariff Order makes it clear that, the PPA entered into with a tariff determined under the Generic Tariff Order dated 10.10.2013, in respect of any SRTPV System, 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 time, and further that, there should not be any extension of time for commissioning the same, 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 System, there cannot be any extension of time, for any reason, for commissioning of the said System and it should be governed by the lesser tariff.

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- (v) For the above reasons, we are of the considered opinion that, achieving the time limit was an essential factor, with regard to the completion of the works of the SRTPV System.
- e) Now, we shall consider as to whether the approval for installation of SRTPV system Annexure E dated 29.04.2016 has been fraudulently created.
- i) As already noted the guidelines prescribed only 180 days for completion of the works of SRTPV system and the approval for installing the SRTPV system in Format 6 should contain time limit of 180 days for commissioning of the SRTPV system. It is not known for which reason, the then EE, BESCOM, KGF Division had issued one-year time from the date of PPA for commissioning of the SRTPV system. It can also be seen that the Format 6 should have been issued subsequent to issue of feasibility report and earlier to execution of PPA. Therefore, one can say that at best the SRTPV systems of the petitioners should have been commissioned within 180 days from the date of PPA. In the present cases the then EE, BESCOM, KGF Division issued approval for installation of SRTPV system on 29.04.2016 long after the execution of the PPA dated 21.12.2015. The respondent has also stated that the disciplinary action was taken against the concerned EE, BESCOM, KGF Division. We are of the considered opinion that the petitioners were also the parties for creation of such false document.

g) The Commission notes that even in the absence of a pleading by the respondents in this regard, the Commission is entitled to rely on the above stated taint of illegality to hold that the PPA executed by the Petitioner is liable for cancellation. The Hon'ble Supreme Court of India in the case of Smt. Surasaibalini Debi vs Phanindra Mohan Majumdar decided on 27.10.1964 [1965 AIR 1364, 1965 SCR (1) 861] while dealing with the similar question has held as follows:

“Where a contract or transaction ex facie is illegal there need be no pleading of the parties raising the issue of illegality and the Court is bound to take judicial notice of the nature of the contract or transaction and mould its relief according to the circumstances. Even where the contract is not ex facie legal “if the facts given in evidence clearly disclose the illegality the Court is bound to take notice of this fact even if not pleaded by the defendant” [Per Lindley L.J. in Scott v. Brown [1892] 2 Q.B. 724 at 729”.

For this reason alone, the PPA executed by the Petitioner, is liable for cancellation.

h) In view of the above facts, the contention raised by the learned counsel for the petitioners that the termination of the PPA was premature and the procedure prescribed in PPA was not followed for termination of PPA and that the respondent is estopped from reducing the period from one year to 180 days for commissioning the SRTPV system do not arise. The respondent has made out a case for cancellation of the PPAs on the

grounds that the time was the essence of the contract for installation of SRTPV system and that there was fraudulent act on the part of the petitioners in creating false documents during the course of installing the SRTPV system.

i) The learned counsel for the petitioners further contended that the period of 180 days stipulated in the consumer guidelines is only directory but not mandatory. He submitted that the violation of guidelines cannot be a ground for cancellation of the PPA. He relied upon the decisions cited in “1990 (SUPP) Supreme Court Cases 440 between Narendrakumar Maheshwari Vs. Union of India and others.” We are of the opinion that in the facts of the present case, the principles stated in the above said Supreme Court Case does not support the contention of the learned counsel for the petitioner. The relevant portion of the said decision in para 107 of the judgement reads thus:

“A court, however, would be reluctant to interfere simply because one or more of the guidelines have not been adhered to even where there are substantial deviations, unless such deviations are, by nature and extent such as to prejudice the interests of the public which it is their avowed object to protect. Per contra, the court would be inclined to perhaps overlook or ignore such deviations, if the object of the statute or public

interest warrant, justify or necessitate such deviations in a particular case. This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine basic public purpose which the guidelines and the statute under which they are issued are intended to achieve”

- j) The above said para makes it clear that the strict adherence to guidelines becomes necessary where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose for which the guidelines are issued. In the present cases, achievement of time limit for commissioning the SRTPV system was essential. In default of it the SRTPV systems were liable for reduced tariff. Therefore, adhering to time limit as prescribed in guidelines is mandatory.
- k) For the above reasons, we hold the Issue No.1 in affirmative.
- 12) Issue No.2: Whether the petitioners have completed works of the installations of the SRTPV Systems within the time allowed?

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- a) The works of SRTPV system should have been completed within 180 days from the date of PPA i.e., on or before 20.06.2016. Admittedly within this period, the works of SRTPV systems were not completed. Even assuming that the petitioners were granted one-year time for completion of the works of SRTPV systems as per Annexure E dated 29.04.2016, the SRTPV system should have been commissioned on before 20.12.2016. The petitioners have claimed that they have submitted work completion reports dated 05.12.2016 (Annexure-H in OP No.23/2018 and Annexure-K in OP No.24/2018), therefore, they could have commissioned the SRTPV systems within 20.12.2016, had the officials of the respondents cooperated to commission the said systems. They contended that the officials of the respondent had not come forward for commissioning the SRTPV systems though the installation works had been completed on or before 05.12.2016.
- b) On a close scrutiny of the work completion reports dated 05.12.2016 produced in both cases, it can be seen that these reports were not at all produced on 05.12.2016 as claimed by the petitioners. These documents are dated 05.12.2016. In the concerned office of the EE, BESCO, KGF Division, these documents were shown to have been received on 14.12.2016. These documents contain the recitals that facilitation fee of Rs.5,000/- were paid on 23.12.2016 and the bi-directions meters were tested by MT Division of BESCO on

26.12.2016. If really, these documents were submitted on 05.12.2016, these subsequent events that had taken place on 23.12.2016 and 26.12.2016 could not have been mentioned in these documents. The prescribed Format-7, the Work Completion Report contains a column regarding the date of inspection by the CEIG for having certified the electrical safety approval of the electrical installations of the SRTPV systems. However, the present Work Completion Report produced by the petitioners do not contain such column in the said documents. As contended by the respondent, it appears that unless electrical safety approval was issued by CEIG, one cannot say that the installation works of SRTPV system has been completed. Admittedly, the drawings for the electrical installations was approved on 17.12.2016 (As per Annexure-J in OP No.23/2018 and Annexure-L in OP No.24/2018). Further, the electrical safety approval was issued by CEIG on 18.03.2017 (Annexure-K in OP No.23/2018 and Annexure-M in OP No.24/2018). Therefore, it is clear that the SRTPV system could have been commissioned only subsequent to 18.03.2017.

c) From the above facts, it is evident that work completion reports could not have been submitted or were not submitted on or before 20.12.2016, the last date provided for commissioning of the SRTPV systems as per approvals dated 29.04.2016 for installing the SRTPV systems.

d) Hence Issue No.2 is held in negative.

13) Issue No.3: Whether the tariff determined in the Generic Tariff Order dated 02.05.2016 is not applicable to the SRTPV system for which PPA has been entered into prior to 02.05.2016, though there is delay in commissioning such SRTPV system?

a) The learned counsel for the petitioners has submitted that the tariff determined in the generic tariff order dated 02.05.2016 cannot be made applicable to the SRTPV system for which PPA has been entered into prior to that date, though there is delay in commissioning such SRTPV system. He has submitted that the PPA was executed on 21.12.2015 incorporating the tariff of RS9.56/unit as per the generic tariff order dated 10.10.2013. This order is made applicable to PPA executed on or after 01.04.2013 till 31.03.2015. Further he submitted that the generic tariff order dated 02.05.2016 has only the prospective effect and it has no retrospective effect, thereby the tariff determined in this order cannot be made applicable to PPA executed earlier to 02.05.2016. The learned counsel for the respondent refuted the above submissions.

b) In para 5 of the generic tariff order dated 02.05.2016, it is made clear that this order has been passed in supersession of the earlier generic tariff order dated 10.10.2013 and this order shall be applicable to all new grid connect solar roof top and small solar voltaic power plants

entering into PPAs and commissioned on or after 02.05.2016 and up to 31.03.2018. Further, it is made clear that in respect of SRTPV systems, that have entered into PPAs prior to 01.05.2016 and if they were not commissioned within the stipulated time period there shall be no extension of time for commissioning of such projects and such projects shall be eligible for the revised tariff as per this order. Admittedly, under this order for SRTPV systems with the installed capacity of 500 KW to one MW, the applicable tariff is Rs.5.20/unit.

c) For the above reasons, we hold the Issue No.3 in negative.

14) Issue No.4: Whether the reduction in installed capacity of SRTPV system in OP No.23/2018 could amount to violation of the term of PPA, attracting cancellation of PPA as envisaged in the order dated 07.11.2017?

a) It is admitted that in OP No.23/2018, the petitioner had undertaken to install SRTPV system of 995 kWp capacity on his roof top. However, the petitioner had installed only SRTPV system of 693 kWp instead of 995 kWp as undertaken. This Commission while approving the SPPA dated 12.07.2017 (Annexure-P) noted the reduction in the installed capacity and reduced the tariff to Rs.3.57/unit as per Para-C of the Commission's order dated 07.11.2017. The Para-C of the order dated 07.11.2017 reads thus:

“ c. A consumer having executed PPA with any ESCOM in respect of his/her proposed SRTPV plant in terms of the Commission's Order dated 10.10.2013 or 02.05.2016 but having such a PPA cancelled for reasons other than non-commissioning of the plant within the stipulated period shall have the option to commission the SRTPV plant with the capacity as in the original PPA and shall be entitled to a tariff of Rs.3.57 per unit being the notified APPC for FY18 for the term of the PPA subject to he/she entering into a fresh PPA and commissioning the project on or before 31.12.2017.”

- b) We have found that the petitioner in OP No.23/2018 has failed to install the SRTPV system as agreed in the PPA and we have also found that his PPA was liable for cancellation on the ground of fraud and also delay in commissioning the said SRTPV system. Therefore, we think Clause-C of the above said order dated 07.11.2017 should apply to the SRTPV system of the petitioner in OP No.23/2018. The petitioner has produced Annexure-Q dated 20.07.2017 to show that in a similar instance, where there was reduction in the installed capacity of the SRTPV system, this Commission had allowed reduced tariff of Rs.5.20/unit in respect of PPA executed as per the generic tariff order dated 10.10.2013. It can be seen that while taking such decision, the Commission's order dated 07.11.2017 was

not in existence. Therefore, the Commission as per the generic tariff order dated 02.05.2016 had reduced the tariff to Rs.5.20/unit instead of the tariff of Rs.9.56/unit for the delay in commissioning the SRTPV system. Therefore, one can say that the petitioner cannot rely on the Annexure-Q dated 20.07.2017, to claim tariff of Rs.5.20/unit.

c) For the above reasons, we hold Issue No.4 in affirmative.

15) Issue No.5: What Order?

For the foregoing reasons, we pass the following:

ORDER

Both petitions are dismissed, holding that the petitioners are not entitled any of the reliefs claimed in the petitions.

The original Order shall be kept in OP No.23/2018 and copy thereof is kept in OP No.24/2018.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER