

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 15.10.2019

Present:

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

OP No.47/2018

BETWEEN:

Smt. A. Jayamma,
W/o T. Prakash Murthy,
Aged about 45 years,
Mogalahalli Village,
Kondlahally Post,
Molakalmuru Taluk,
Chitradurga District – 577 529.

.. **PETITIONER**

[Represented by Shri A.V. Narasimha Reddy, Advocate]

AND:

- 1) State of Karnataka,
Department of Energy,
2nd Floor, Vikasa Saudha,
Bengaluru -560 001
Represented by its Secretary.
- 2) Bangalore Electricity Supply Company Limited,
C.O&M Division, Hiriyur,
Chitradurga – 577 598
Represented by Executive Engineer.
- 3) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
Represented by General Manager (DSM).

- 4) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
Represented by Managing Director.
- 5) Office of the Chief Electrical Inspector,
Government of Karnataka,
P.B.No.5148, Dr. Rajkumar Road,
Rajajinagar,
Bengaluru – 560 001
Represented by Chief Electrical Inspector.

.. **RESPONDENTS**

*[Respondent-1 represented by Sri G.S. Kannur, Advocate,
Respondents-2,3 & 4 represented by Justlaw, Advocates,
Respondent-5 represented in person]*

OP No.48/2018**BETWEEN:**

Shri S. Ravikumar
S/o T. Sharanappa,
Aged about 38 years,
Mogalahalli Village,
Kondlahally Post,
Molakalmuru Taluk,
Chitradurga District – 577 529.

.. **PETITIONER**

[Represented by Shri A.V. Narasimha Reddy, Advocate]

AND:

- 1) State of Karnataka,
Department of Energy,
2nd Floor, Vikasa Saudha,
Bengaluru -560 001
Represented by its Secretary.
- 2) Bangalore Electricity Supply Company Limited,
C.O&M Division, Hiriyur,
Chitradurga – 577 598
Represented by Executive Engineer.
- 3) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
Represented by General Manager (DSM).

- 4) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
Represented by Managing Director.

.. **RESPONDENTS**

*[Respondent-1 represented by Sri G.S. Kannur, Advocate,
Respondents-2,3 & 4 represented by Justlaw, Advocates]*

OP No.49/2018

BETWEEN:

Shri T. Sharanappa
S/o Thippeswamy,
Aged about 50 years,
Mogalahalli Village,
Kondlahally Post,
Molakalmuru Taluk,
Chitradurga District – 577 529.

.. **PETITIONER**

[Represented by Shri A.V. Narasimha Reddy, Advocate]

AND:

- 1) State of Karnataka,
Department of Energy,
2nd Floor, Vikasa Saudha,
Bengaluru -560 001
Represented by its Secretary.
- 2) Bangalore Electricity Supply Company Limited,
C.O&M Division, Hiriyur,
Chitradurga – 577 598
Represented by Executive Engineer.
- 3) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
Represented by General Manager (DSM).
- 4) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
Represented by Managing Director.

.. **RESPONDENTS**

*[Respondent-1 represented by Sri G.S. Kannur, Advocate,
Respondents-2,3 & 4 represented by Justlaw, Advocates]*

OP No.66/2018**BETWEEN:**

Shri N. Bheema Reddy
S/o Naga Reddy,
Aged about 45 years,
R/o Kodihalli,
Challekere Taluk,
Chitradurga District – 577 543.

.. **PETITIONER**

[Represented by Shri A.V. Narasimha Reddy, Advocate]

AND:

- 1) State of Karnataka,
Department of Energy,
2nd Floor, Vikasa Saudha,
Bengaluru -560 001
Represented by its Secretary.
- 2) Bangalore Electricity Supply Company Limited,
C.O&M Division, Hiriyur,
Chitradurga – 577 598
Represented by Executive Engineer.
- 3) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
Represented by General Manager (DSM).
- 4) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
Represented by Managing Director.

.. **RESPONDENTS**

*[Respondent-1 represented by Sri G.S. Kannur, Advocate,
Respondents-2,3 & 4 represented by Justlaw, Advocates]*

OP No.67/2018**BETWEEN:**

Smt. Thipperamma,
W/o B.H. Thippeswamy,
Aged about 52 years,
Raghavendra Poultry Farm,
Kodihalli, Challakere Taluk,
Chitradurga District – 577 552.

.. **PETITIONER**

[Represented by Shri A.V. Narasimha Reddy, Advocate]

AND:

- 1) State of Karnataka,
Department of Energy,
2nd Floor, Vikasa Saudha,
Bengaluru -560 001
Represented by its Secretary.
- 2) Bangalore Electricity Supply Company Limited,
C.O&M Division, Hiriyur,
Chitradurga – 577 598
Represented by Executive Engineer.
- 3) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
Represented by General Manager (DSM).
- 4) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
Represented by Managing Director.

.. **RESPONDENTS**

*[Respondent-1 represented by Sri G.S. Kannur, Advocate,
Respondents-2,3 & 4 represented by Justlaw, Advocates]*

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COMMON ORDERS

- 1) In the above Petitions, the questions of law and facts involved for our consideration are almost similar. Therefore, this Common Order is passed in all the five Petitions. The contents and Exhibit Numbers of different

documents, produced by the parties in all these cases, are also almost similar.

2) OP No.47/2018 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:

- “(a) Declare that the action of Respondent No.2 Company in terminating the PPA dated 17.12.2015 is illegal;
- (b) Set-aside the termination notice dated 08.09.2016 and 29.05.2017 at Annexure – H & O respectively;
- (c) Issue of direction to the Respondents to procure supply from the Petitioner’s plant as per PPA dated 17.12.2015;
- (d) Direct Respondent No.4 to evacuate power from the Petitioner plant and conduct the inspection of the SRTPV system and submit the report;
- (e) Pass any other Order/s deem fit in the facts and circumstances of this Petition.”

3) OP No.48/2018 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:

- “(a) Declare that the action of the Respondents in terminating the PPA dated 17.12.2015 is illegal;
- (b) Set-aside the termination notice dated 08.09.2016 and 29.05.2017 at Annexure – H & O respectively;
- (c) Issue the directions to the Respondent to procure supply from the Petitioner’s SRTPV as per PPA dated 17.12.2015;
- (d) Pass any other Order/s deem fit in the facts and circumstances of this Petition.”

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- 4) OP No.49/2018 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:
- “(a) Declare that the action of the Respondents in terminating the PPA dated 17.12.2015 is illegal;
 - (b) Set-aside the termination notice dated 08.09.2016 and 29.05.2017 at Annexure – H & O respectively;
 - (c) Issue the directions to the Respondent to procure supply from the Petitioner’s SRTPV as per PPA dated 17.12.2015;
 - (d) Pass any other Order/s deem fit in the facts and circumstances of this Petition.”
- 5) OP No.66/2018 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:
- “(a) Declare that the action of the Respondents Company in terminating the PPA dated 17.12.2015 is illegal;
 - (b) Set-aside the termination notice dated 08.09.2016 and 29.05.2017 at Annexure – A19 & A26 respectively;
 - (c) Issue the directions to the Respondents to procure supply from the Petitioner’s SRTPV plant as per PPA dated 17.12.2015;
 - (d) Pass any other Order/s deem fit in the facts and circumstances of this Petition.”
- 6) OP No.67/2018 is filed by the Petitioner under Sections 86(1)(f) of the Electricity Act, 2003, praying to:
- “(a) Declare that the action of the Respondents Company in terminating the PPA dated 17.12.2015 is illegal;
 - (b) Set-aside the termination notice dated 08.09.2016 and 29.05.2017 at Annexure – A19 & A26 respectively;

- (c) Issue the directions to the Respondents to procure supply from the Petitioner's SRTPV plant as per PPA dated 17.12.2015;
 - (d) Pass any other Order/s deem fit in the facts and circumstances of this Petition."
- 7) (a) Some of the common material facts / events, stated by the Petitioners, may be stated as follows:

This Commission has determined the tariff of Rs.9.56 per unit, by its Order dated 10.10.2013, for the grid connected Megawatt Solar Power Projects and also applied the same tariff to the Solar Roof Top Photo Voltaic (SRTPV) Projects, however, the capacity of the SRTPTV Systems was limited to a maximum of one MW. Subsequently, the Government of Karnataka issued the Solar Policy dated 22.05.2014 for the period, from 2014 to 2021 and fixed a target for achieving the installation of 400 MW capacity grid connected SRTPV Systems during the said period, apart from fixing different targets for achievement under different Schemes for the development of the Solar Power Projects. Pursuant to it, the 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 roof tops of the consumers' existing buildings.

- (b) For the purpose of clarity and ready reference, the other common material facts / events, stated by the Petitioners, are detailed below:

Sl. No.	Description / Event	OP No. 47/2018	OP No. 48/2018	OP No. 49/2018	OP No. 66/2018	OP No. 67/2018
1	Date of SRTPV application	31.10.2015	31.10.2015	31.10.2015	31.10.2015	31.10.2015
2	Date of PPA	17.12.2015 (Annex. B)	17.12.2015 (Annex. B)	17.12.2015 (Annex. B)	17.12.2015 (Annex. A1)	17.12.2015 (ANNEX. A1)
3	Date of approval of PPA by the Commission	10.02.2016	10.02.2016	10.02.2016	10.02.2016	10.02.2016
4	RR No. and Place	MGP-278	MHP-24	MHP-377	KDP-261	KDP-12
		Mogatihalli Village, Molakalmuru Sub-Division			Kodihalli Village Molakalmuru Sub-Division	
5	Nature of the existing building	Brick Industry	Decadicator Factory	Feeding Unit	Poultry Farm	Poultry Farm
6	Approval for installing SRTPV System, issued by EE, BESCO, Hiriyur	15.04.2016 (Annex.D)	15.04.2016 (Annex.D)	15.04.2016 (Annex.D)	15.04.2016 (Annex.A18)	15.04.2016 (Annex.A18)
7	Project Development Agreement with Project Developer	07.05.2016	07.05.2016	07.05.2016	07.05.2016	07.05.2016
8	MoU entered into with Project Developer	11.05.2016	11.05.2016	11.05.2016	11.05.2016	11.05.2016
9	Date of cancellation of PPA	08.09.2016 (Annex.H)	08.09.2016 (Annex.H)	08.09.2016 (Annex.H)	08.09.2016 (Annex.A19)	20.08.2016 (Annex.A19)
10	WP filed by the Petitioners	51497/ 2016	51459/ 2016	51001/ 2016	51458/ 2016	51495/ 2016
11	Date of Interim Order in the WP.	27.09.2016	27.09.2016	22.09.2016	27.09.2016	27.09.2016

(c) The Petitioner in the above cases, claiming to be eligible for installation of the SRTPV Systems on their existing buildings, entered into Power Purchase Agreements (PPAs), for installation of one MW capacity SRTPV Systems on their existing buildings. The Petitioners entered into the Project Development Agreements dated 07.05.2016 with the Developer, viz., M/s. TECSO Pvt. Ltd., Vadodara – 391110 Gujarat, for establishment of the SRTPV Systems. They also entered into MoUs dated 11.05.2016 with the Project Developer. Further, the Petitioners applied for construction of the 11 kV Line for evacuation of power from their SRTPV Systems to the Sub-

Stations. Accordingly, in OP Nos.47, 48 and 49 of 2018, a common Evacuation Approval dated 22.06.2016 was granted by the EE, BESCOM, Hiriyur (ANNEXURE-R). Likewise, in OP Nos.66 and 67 of 2018, another common Evacuation Approval dated 27.06.2016 was granted by the EE, BESCOM, Hiriyur (ANNEXURE-A29 produced in OP No.66/2018). However, it appears, for some reason, the Petitioner in OP No.67/2018 was granted approval dated 29.12.2017 (ANNEXURE-A29), for evacuation of power through a different Line. The Petitioners contended that, during the progress of installation of the SRTPV Systems, the Executive Engineer (Ele), C, O&M Division, BECOM, Hiriyur (hereinafter referred to as the EE, BESCOM, Hiriyur), issued the Official Memoranda (OMs) dated 08.09.2016, cancelling all the PPAs, without any valid ground and without issuing any prior Notice.

- (d) As against the OMs dated 08.09.2016 cancelling the PPAs, the Petitioners preferred Writ Petitions (WPs) before the Hon'ble High Court of Karnataka at Bengaluru. The Petitioner in OP No.49/2018, Shri T. Sharanappa, had obtained an Interim Order on 22.09.2016 and all other Petitioners obtained the Interim Orders on 27.09.2016, staying the operation of the OMs dated 08.09.2016 and further directing the Respondents to continue the PPAs dated 17.12.2015.
- (e) The WPs were allowed on 16.03.2017, setting aside the OMs dated 08.09.2016 and directing the concerned Officer of the Respondent (BESCOM) to issue Show Cause Notices to the Petitioners, for the alleged contravention and to pass Orders after obtaining replies of the Petitioners.

Accordingly, Show Cause Notices dated 13.04.2017 were issued. After receipt of the replies from the Petitioners, the EE, BESCOM, Hiriya, issued separate Order dated 29.05.2017, holding that their replies were not acceptable and the PPAs dated 17.12.2015, executed by the Petitioners, stood cancelled.

- (f) After obtaining the Interim Orders of Stay, staying the operation of the OMs dated 08.09.2016 and directing to continue the PPAs dated 17.12.2015, the Petitioners approached the Chief Electrical Inspector to Government (CEIG), for obtaining approvals of the drawings. The CEIG, under letter dated 15.05.2017 (ANNEXURE-S), in respect of the SRTPV Systems of the Petitioners in OP Nos.47, 48 and 49 of 2018 and under letter dated 16.05.2017 (ANNEXURE-A31), in respect of the SRTPV Systems of the Petitioners in OP Nos.66 and 67 of 2018, asked further clarification from the EE, BESCOM, Hiriya, regarding the action taken on the directions issued in the Writ Petitions. As already noted, the EE, BESCOM, Hiriya, had cancelled the PPAs, again, on 29.05.2017.
- (g) Though the Petitioners have not specifically stated regarding the Order dated 07.11.2017, passed by this Commission "*in the matter of: Tariff Order for SRTPV Plants violating the norms specified for implementation of the SRTPV Plants*", we may take note of it, for understanding the further events stated by the Petitioners. Under this Order, the Commission had granted certain reliefs to the consumers of SRTPV Systems, who had entered into PPAs under the Generic Tariff Orders dated 10.10.2013 and 02.05.2016,

and in which the PPAs had been cancelled due to delay in commissioning of the Projects and for other reasons.

- (h) Subsequent to passing of the above-said Order dated 07.11.2017, the Petitioners approached the Managing Director of the Respondent (BESCOM), with their letters, during the last week of November, 2017, requesting for synchronization of their SRTPV Systems and also to take suitable steps for the revival of the PPAs. In pursuance of such requests, the SRTPV Systems of the Petitioners, except in the case of Smt.A.Jayamma, the Petitioner in OP No.47/2018, were synchronized, after entering into fresh PPAs dated 15.12.2017, at the tariff of Rs.5.20 per unit. In OP No.48 and 49 of 2018, the Petitioners have obtained the approval of electrical installations pertaining to their SRTPV Systems from the CEIG, under letters dated 28.12.2017 (ANNEXURE-Z1) and dated 22.12.2017 (ANNEXURE-Z1), respectively. In the same manner, in OP Nos.66 and 67 of 2018, the Petitioners have obtained approval of electrical installations pertaining to their SRTPV Systems from the CEIG, under letters dated 28.12.2017 (both marked as ANNEXURE-A40).
- (i) These fresh PPAs, with the tariff of Rs.5.20 per unit, were submitted before this Commission for approval. This Commission approved these PPAs, subject to modification of the tariff, at the rate of Rs.3.57 per unit and directed to enter into the modified PPAs. Accordingly, the Petitioners in OP Nos.66 and 67 of 2018 have entered into the modified PPAs dated 30.12.2017, agreeing to supply the Solar energy at the tariff of Rs.3.57 per unit. Likewise, the Petitioners in OP Nos.48 and 49 of 2018 have also

entered into the modified PPAs dated 28.01.2018, agreeing to supply the Solar energy, at the rate of Rs.3.57 per unit.

- (j) The SRTPV Systems of the Petitioners in OP Nos.66 and 67 of 2018 were commissioned on 30.12.2017. Likewise, the SRTPV Systems of the Petitioners in OP Nos.48 and 49 of 2018 were commissioned on 18.01.2018.
- (k) The Petitioners in OP Nos.47, 48, 49, 66 and 67 of 2018 have filed the present Petitions, before this Commission, on 21.05.2018, 21.05.2018, 25.05.2018, 24.07.2018 and 24.07.2018, respectively.
- 8) The Petitioners have urged the following grounds in support of the reliefs sought for by them:
 - (a) Time was not the essential factor for completing the installation of the SRTPV System. The PPA does not contain any term, fixing the time, within which the installation works of the SRTPV System were to be completed. Even imposition of 180 days' time for completion of the works, as per the approval dated 15.04.2016, issued by the EE, BESCOM, Hiriyur, is invalid. The BESCOM's Circular dated 17.11.2015, allowing the extension of time for commissioning of the SRTPV System, on payment of certain amounts, would show that time was not essence for commissioning the SRTPV System.
 - (b) The Petitioners have completed the works of the SRTPV Systems and there was no delay in completing the works within the time stipulated, as per the approval for installation, dated 15.04.2016. The EE, BESCOM, Hiriyur,

has cancelled the PPAs, as per the OM dated 08.09.2016 in OP Nos.47, 48, 49 & 66/2018 and OM dated 20.08.2016 in OP No.67/2018 (Annexure A-19), much earlier to the time allowed for completion of the works of the SRTPV Systems.

- (c) The cancellation of the PPAs is illegal and arbitrary. None of the officials of the Respondent (BESCOM) had actually visited the spot and inspected the SRTPV Systems. The officials of the Respondent (BESCOM) themselves had given the Feasibility Report and had found that the space on the roof top was sufficient. There was no extension of the existing buildings or construction of new buildings, for installation of the SRTPV Systems.
 - (d) The grounds stated in the Show Cause Notices dated 13.04.2017, for cancellation of the PPAs, were baseless.
 - (e) Therefore, the Petitioners have prayed for allowing the Petitions.
- 9) Upon Notice, the Respondents have appeared through their counsel. The 1st Respondent-State of Karnataka has not filed any written objections. The Respondents 2 to 4 (BESCOM and its officials) have filed a common Statement of Objections in all the five Petitions. The execution of the PPAs, the exchange of several correspondences between the parties and filing of the Writ Petitions by the Petitioners and the subsequent events, are not disputed by the Respondents 2 to 4. The defence taken in all the five cases is almost similar, the gist of which may be stated as follows:

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- (a) That, on 24.08.2016. the officials of the BESCO conducted an inspection of the proposed SRTPV Systems of the Petitioners and it was observed during inspection that there were several violations, viz.:
- (i) That, the SRTPV Systems, or a part thereof, were intended to be installed on the roof tops of the buildings under construction or on the newly extended portion of the existing buildings;
 - (ii) That, the work of installation of the SRTPV Systems had not yet commenced, as on the date of inspection;
 - (iii) That, the Licences obtained in respect of certain buildings were limited to the approved activities only, but they were not holding good for installation of the SRTPV Systems; and,
- (b) That, as per the Order dated 07.11.2017, passed by this Commission (produced as ANNEXURES - R5, R6 and R4 in OP Nos.48, 49, 66 and 67 of 2018, respectively), these Petitioners are entitled to Rs.3.57 per unit for the energy supplied, but not for any other higher tariff.
- (c) They have denied the adverse allegations made against them. They have contended that, the SETPV Systems should have been completed and synchronized, within 180 days from the date of execution of the PPAs.
- (d) For the above reasons, the Respondents have prayed for dismissal of the Petitions.

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- 10) The Petitioners have filed Rejoinders in all these Petitions, denying the contraventions, alleged against them, by the Respondents.
- 11) We have heard the learned counsel for the parties. The following issues would arise for our consideration:
- (1) Whether time was not the essential factor for completion of the works of the SRTPV Systems, in these cases, as claimed by the Petitioners?
 - (2) Whether the works of the SRTPV Systems were completed, or could have been completed, within the stipulated period, for commissioning of the said Systems?
 - (3) Whether the Respondents have made out sufficient grounds for cancellation of the PPAs dated 17.12.2015, executed by the Petitioners?
 - (4) Whether the Petitioners are entitled for any relief(s)? If so, to what relief(s)?
 - (5) What Order?
- 12) After considering the submissions of the parties and the material on record, our findings on the above issues are as follows:
- 13) **ISSUE No.(1):** *Whether time was not the essential factor for completion of the works of the SRTPV Systems, in these cases, as claimed by the Petitioners?*
- (a) The Petitioners have contended that, time was not the essential factor for completion of the works of the SRTPV Systems. They have relied upon the fact that, the PPAs do not contain any specific clause stipulating the time, within which the SRTPV Systems are to be completed. Therefore, they

have further contended that, imposition of any time limit, by way of any letter or direction by the Respondent (BESCOM) alone, would not be valid and not binding on the Petitioners. They have also relied upon the Respondent (BESCOM)'s Circular dated 17.11.2015, which allowed for extension of time, upto a maximum of twelve months, after the expiry of the initial 180 days, for completion of the works of the SRTPV Systems, on payment of certain charges.

(b) Though the above contention of the Petitioners appears to be attractive, the same is not acceptable and correct, for the reasons narrated below:

(i) The PPA cannot be read in isolation of the Guidelines issued for installing the SRTPV Systems. Both parties have not produced a complete set of the Guidelines issued by the Respondent (BESCOM) regarding installation of the SRTPV Systems. The complete set of the Guidelines consists of Formats 1 to 17. The Guidelines relating to the consumers is at Format-16 and Guidelines relating to the BESCOM Officers is at Format-17. The standard Format of the PPA, approved by this Commission, is at Format-12. Formats 1 to 8 relate to the various stages, from filing of the application till synchronization of the SRTPV Systems. 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, BESCO 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 (BESCO) had submitted the draft Guidelines to this Commission, for approval, vide its letter bearing No.BESCO/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 BESCO 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 Petitioners, 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 (BESCO) 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, elsewhere.

(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 the 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 Systems, 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.

(v) The Circular dated 17.11.2015, issued by the Respondent (BESCOM), states that, the Corporate Office had received many letters, requesting for extension of the time limit, for installation of the SRTPV Systems, since the processing of loans would take much time and the present 180 days' time for completion was not sufficient, thereby, the Processing Committee discussed this issue on 16.09.2015 and decided to extend the time limit after collecting certain re-registration fees, from six months to twelve months, as indicted in the said Circular. The Commission is of the considered view that the Respondent (BESCOM) could not have issued such Circular. The Respondent (BESCOM) has obtained the approval for the Guidelines, wherein the timeframe was fixed for installation of the SRTPV Systems, allowing 180 days for commissioning, from the date of the issuance of either Format-5 or Formt-6. Therefore, the Respondent (BESCOM) cannot issue the Circular, without the approval of this Commission, for extension of time. It can be noted that, any such extension of time for commissioning, was affecting the applicability of the tariff, in case there was delay in commissioning the SRTPV Systems, as per the time limit granted earlier. It can also be noted that, the said Circular dated 17.11.2015 was withdrawn by the Respondent (BESCOM), as per its OM dated 18.05.2016. The issuance of such Circular is beyond the powers of the BESCOM and no one can rely upon it, for any reason.

- (c) 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 Systems, though such a term was not contained specifically in the PPAs. Therefore, we answer Issue No.(1), in the negative.
- 14) **ISSUE No.(2):** *Whether the works of the SRTPV Systems were completed, or could have been completed, within the stipulated period, for commissioning of the said Systems?*
- (a) The Petitioners have contended that, they have completed the installation works of the SRTPV Systems, well within 180 days from 15.04.2016, the date on which the approval for installing the SRTPV Systems was issued by the EE, BESCOM, Hiriyur. The Respondents (BESCOM) have denied that the Petitioners completed the installation works of the SRTPV Systems, as contended by the Petitioners. Further, they have contended that, the installation works of the SRTPV Systems should have been completed within 180 days from 17.12.2015, the date of execution of the PPAs. The learned counsel for the Respondents (BESCOM) submitted that the issuance of Format-6, i.e., approval for installation of the SRTPV Systems, should be issued, soon after the receipt of the Technical Feasibility Report and before executing the PPA, as stipulated in the Guidelines. Therefore, it is submitted that, issuance of the approval dated 15.04.2016 (ANNEXURE-D), for installing the SRTPV Systems, was improper and it should have been earlier to the date of execution of the PPA, i.e., 17.12.2015. Therefore, it is submitted that, as per the Guidelines, the installation works of the SRTPV Systems should have been completed within 180 days, at least, from the date of the PPAs. The submission of the

learned counsel for the Respondents (BESCOM) appears to be correct. The issuance of the approval dated 15.04.2016 (ANNEXURE-D) appears to have been created just to help the Petitioners, because there was no reason for the EE, BESCOM, Hiriyyur, not to issue approval for installing the SRTPV Systems, soon after obtaining the Technical Feasibility Report, as provided under the Guidelines. Therefore, works of the SRTPV System should have been completed within 180 days from the date of execution of the PPAs. The Petitioners could not have completed the works of the SRTPV Systems, within 180 days from the date of the PPAs, as can be seen from their pleadings.

- (b) Even assuming that, the Petitioners were entitled to 180 days from the date of approval, i.e., from 15.04.2016 (ANNEXURE-D), one can say that the Petitioners had not completed the major portion of the installation works of the SRTPV Systems, within that timeframe. They have entered into the Project Development Agreements on 07.05.2016 and the MoUs with the Project Developer on 11.05.2016. The said Project Development Agreements (EPC agreement) entered between Petitioners and TECSO Private Limited, Vadodara-391 110, Gujarat, contains a term in Clause 11.2 which envisages that the Commercial Operation Date (COD) shall not be later than 15th October 2016. This shows that the petitioners were well aware about the project completion period was 180 days. The Petitioners have stated in the Petitions that, subsequent to the Project Development Agreements, the Project Developer raised the Invoices dated 13.05.2016, 12.06.2016, 30.06.2016, 21.07.2016, 06.08.2016 and 09.10.2016. The Petitioners have produced copies of the said Invoices along with the

Petitions. It is not clarified by the Petitioners, as to on what dates the items indicted in the Invoices were actually delivered at the work spot, and as to when they were installed. As on the date of inspection by the Respondent (BESCOM)'s officials on 24.08.2016, the installation works of the SRTPV Systems had not yet commenced. In the Rejoinders filed by the Petitioners, they have stated that, as on the date of inspection, the work of Engineering, Procurement and Construction was in progress and there was still about 40 days' time left for completion of the works of the SRTPV Systems. The reply in the Rejoinders does not quantify the works already carried out, or the works to be carried out, as on the date of inspection, in regard to the installation of the SRTPV Systems.

- (c) The Format-6, viz., approval for installing the SRTPV System, narrates the different items of works to be carried out by the Applicant. The Format-7, viz., Work Completion Report, requires the mentioning of the actual completion of the different items of works. The final step, after the Work Completion Report, is the inspection of the SRTV System by the AEE of the Respondent (BESCOM) or the Electrical Inspectorate, as the case may be. In the present cases, though the PPAs were cancelled on 08.09.2016, the Petitioners obtained Interim Orders of Stay in the Writ Petitions on 22.09.2016 / 27.09.2016, as noted earlier, staying the operation of the cancellation of the PPAs and directing the continuation of the PPAs. Subsequently, again, the PPAs were cancelled on 29.05.2017. Therefore, one can say that, except for nearly three weeks, the PPAs were in force, from 17.12.2015 to 22.09.2016/27.09.2016, but the Petitioners had not

completed the installation works of the SRTPV Systems and had not filed the Work Completion Reports, during this period. Considerable portions of the works towards commissioning of the SRTPV Systems were taken up in the months of November and December, 2017, to take shelter under the Order dated 07.11.2017, passed by this Commission.

(d) For the above reasons, we hold that, the Petitioners had not completed the installation works of the SRTPV Systems, within the stipulated period, for commissioning of the said Systems. Therefore, we answer Issue No.(2), in the negative.

15) **ISSUE No.(3):** *Whether the Respondents have made out sufficient grounds for cancellation of the PPAs dated 17.12.2015, executed by the Petitioners?*

(a) The Solar Policy, as well as the Guidelines issued, would make it compulsory that the SRTPV Systems should be installed on the roof tops of the existing buildings only. Therefore, if an applicant falsely represents the deficiency of the roof top area for installing any particular capacity of the SRTPV System, the PPA of such applicant can be cancelled, for such fraudulent misrepresentation. The reasons may be stated thus: The Capital Cost for installation of the SRTPV System was reducing considerably, form year-to-year. Subsequent to passing of the Generic Tariff Order dated 10.10.2013, determining the tariff of Rs.9.56 per unit, this Commission issued a Discussion Paper on 16.11.2015, proposing reduction of the tariff of the SRTPV Systems and also limiting the capacity of the SRTPV System to the sanctioned load of the consumer concerned. In the earlier Order dated

10.10.2013, a consumer was allowed to install the SRTPV System upto one MW capacity, irrespective of the sanctioned load, provided he had got sufficient area of the existing roof top. The Government of Karnataka had also issued the Government Order bearing No.EN70 VSC 2015, dated 28.03.2016, directing the Electricity Supply Companies (ESCOMs) to enter into PPAs, henceforth, in regard to the SRTPV Systems, limiting the capacity of the System to the sanctioned load of the consumer. As already noted, under the Generic Tariff Order dated 02.05.2016, the tariff was reduced to Rs.5.20 per unit, for the SRTPV Systems with capacity between 500 KW and one MW, and allowed the capacity of the SRTPV Systems, limiting to the sanctioned load of the consumer. In the subsequent Generic Tariff Order dated 18.05.2018, which came into force from 01.04.2018, the generic tariff was reduced to Rs.3.56 per unit. Therefore, if an applicant had falsely represented the area of an existing roof top, while entering into a PPA, as per the tariff determined under the Generic Tariff Order dated 10.10;2013, his representation amounted to a fraudulent representation, which could lead to cancellation of the PPA. In the present cases, the PPAs were entered into, subsequent to the issuance of the Discussion Paper on 16.11.2015. Therefore, one can infer that the PPA holder would be aware of the fact that, in the coming days, there would be reduction of tariff as well as the installed capacity of the SRTPV System.

- (b) The creation of any false document, with an intent to defeat the rights of the Respondents (BESCOM) during the course of installing the SRTPV System, can also be treated as a ground for cancellation of the PPA. In

the present cases, the Format-6 must have been issued prior to the execution of the PPAs. It may be noted that, the Petitioners have entered into the Project Development Agreements on 06.05.2016 and the MoUs with the Developer on 11.05.2016. Admittedly, there was no progress in the works of installation of the SRTPV Systems, till the MoUs were entered into. By this time, almost five months had elapsed, out of the eligible period of six months, for installing the SRTPV Systems, and in the remaining one month, the Petitioners could not have completed the works of the SRTPV Systems. This must be the reason for the Petitioners to fraudulently obtain the approval dated 15.04.2016, for installing the SRTPV systems, by illegal means. Such an illegal act of an official of the Respondents (BESCOM), is not binding on the BESCOM.

- (c) 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 PPAs executed by the Petitioners are 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 PPAs, executed by the Petitioners, are liable for cancellation.

(d) Now, we shall consider below, whether in the present cases, the Petitioners had misrepresented the area of the roof top available for installing the one MW capacity SRTPV Systems:

(i) *In OP No.47/2018:*

The Respondent (BESCOM) has contended that, a major portion of the building was being constructed, for the first time. The summary of the Inspection Report is produced at ANNEXURE-R2. It has also produced copies of the Photographs of the buildings under construction. In the Rejoinder, the Petitioner has not denied the veracity of the Photographs produced by the Respondent (BESCOM). It is shown in ANNEXURE-R2 that the installation works had not yet started, as on the date of inspection. This fact was also not denied by the Petitioner in the Rejoinder. Therefore, one has to come to the conclusion that, a considerable portion the roof top was under construction. Therefore, we hold that, sufficient grounds are made out for cancellation of the PPA, in OP No.47/2018.

(ii) *In OP No.48/2018:*

The Respondent (BESCOM) has produced the summary of the Inspection Report at ANNEXURE-R2, which shows that, the intended roof top was under construction and the installation works of the SRTPV System had not

yet started. It is also stated in the Statement of Objections that, the building was not as per the standards stipulated in the Clarification dated 17.08.2016, issued by the Government of Karnataka. In the Rejoinder, the Petitioner has stated that the work of Engineering, Procurement and Construction was under progress, on the date of inspection. In the Order dated 29.05.2017, passed by the EE, BESCOM, Hiriyur, after considering the reply of the Petitioner, it is noted that, there was extension of the ground work for fixing the Solar Panels, without obtaining proper approval from any competent authority, which clearly showed that the applicant extended the area for fixing the Solar Panels. Therefore, we are of the considered opinion that, there is no reason to disbelieve the version of the EE, BESCOM, Hiriyur. Therefore, we hold that, sufficient grounds are made out for cancellation of the PPA, in OP No.48/2018.

(iii) *In OP No.49/2018:*

In the Order dated 29.05.2017, passed by the EE, BESCOM, Hiriyur, after considering the reply of the Petitioner, it is noted that, at the time of inspection, it was found that the roof was extended for fixing the Solar Panels, without obtaining proper approval from any competent authority. The summary of the Inspection Report is at ANNEXURE-R3. The Petitioner has not produced any document to show that he had sufficient area of roof top, for installation of one MW SRTPV System. Therefore, we hold that, sufficient grounds are made out for cancellation of the PPA, in OP No.49/2018.

(iv) *In OP No.66/2018:*

In the Order dated 29.05.2017, passed by the EE, BESCO, Hiriyur, after considering the reply of the Petitioner, it is noted that the roof area has been extended for fixing the Solar Panels, without obtaining proper approval from the competent authority. The summary of the Inspection Report is produced at ANNEXURE-R2 by the Respondents (BESCO). The Respondents (BESCO) have produced a Sketch, at ANNEXURE-R3, showing the single diagram of the Petitioner's Poultry Farm, while sanctioning the electricity supply to the said premises. The Respondents (BESCO) have contended that, the roof, upon which the Petitioner intended to set up the Solar Panels, was not in accordance with the standards stipulated in the Clarifications dated 17.08.2016, issued by the Government of Karnataka. The Petitioner has not produced proper evidence to show that, he had sufficient area on the roof top, for the installation of one MW SRTPV System, at the time of filing the application. Therefore, we hold that, sufficient grounds are made out for the cancellation of the PPA in OP No.66/2018.

(v) *In OP No.67/2018:*

In the Order dated 29.05.2017, passed by the EE, BESCO, Hiriyur, after considering the reply of the Petitioner, it is noted that, the roof was extended for fixing the Solar Panels, without obtaining proper approval from any competent authority. The Respondents (BESCO), in their Statement of Objections, have stated that, the Petitioner intended to

install the SRTPV System on the extended roof, without obtaining prior approval from the competent authority and in violation of the terms stipulated in the Clarifications dated 17.08.2016, issued by the Government of Karnataka. The Respondents (BESCOM) have produced a Sketch, showing the extended portion of the roof top, by building additional Sheds of the Poultry Farm. The Respondents (BESCOM) have relied upon the Wiring Diagram, submitted by the Petitioner, at the time of sanctioning of the electricity connection to the Poultry Farm, on 31.10.1998, which showed the existence of three Sheds and one Feeding Unit. The Respondents (BESCOM) have contended that, for the present, there are eight Sheds, apart from a Feeding Unit. Therefore, we hold that, sufficient grounds are made out for the cancellation of the PPA in OP No.67/2018.

(e) For the above reasons, we answer Issue No.(3), in the affirmative.

16) **ISSUE No.(4):** Whether the Petitioners are entitled for any relief(s)? If so, to what relief(s)?

(a) This Commission has passed the Order bearing No.KERC/S/F-31/Vol-382/1285, dated 07.11.2017, "*In the matter of: Tariff Order for SRTPV Plants violating the norms specified for implementation of the SRTPV Plants.*" The reasons for passing this Order are stated in Paragraphs-5 and 6 of the recitals of the said Order, as follows:

"5. In the meanwhile, it was brought to the notice of the Commission that a huge number of PPAs, execute in respect of the SRTPV Projects have been terminated or in the process of being terminated for reasons like not commissioned within

stipulate time, extension of the roof area of the existing building in violation of the terms of the PPA/sanction order or the roof on which the SRTPV plant is installed is not a building, as specified by the State Government, etc. It was also brought to the notice of the Commission that such consumers have come forward to commission the SRTPV plants at the rates different from that agreed in the PPAs.

6. The Commission notes that the commissioning of the affected SRTPV plants, involving large investments by respective consumers would be in the larger public interest. These SRTPV plants not being commissioned within the stipulated time cannot, however, now be made eligible for the tariff fixed under the relevant Order of the Commission, though the limit on installed capacity could be made as applicable under the relevant Order."

- (b) The relevant operative portions of the said Order, stated at Paragraphs-
a. to d. thereof, are as follows:

"a. A consumer having executed a PPA with any ESCOM in respect of his/her proposed SRTPV plant in terms of the Commission's Order dated 10.10.2013 but, having such a PPA cancelled for the delay in commissioning of the Project within the stipulated period, shall be allowed to commission the Project and shall be entitled for the revised tariff, as in the Commission's Order dated 02.05.2016 subject to he/she entering into a fresh PPA and commissioning the Project on or before 31.12.2017.

b. A consumer having executed a PPA with any ESCOM, in respect of his/her proposed SRTPV plant in terms of the Commission's Order dated 02.05.2016, but having such PPA cancelled for delay in commissioning of the Project within the stipulated time period, shall be allowed to commission the Project at the tariff of Rs.3.57 per unit being the notified APPC 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.

- 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.*
- d. *In respect of the plants, in all above cases, all the technical and operational conditions/specifications shall be applicable, as per the relevant Orders, Regulations and the Code."*

- (c) In all the above Petitions, it was found that, the PPAs were cancelled, not merely for the delay in commissioning of the SRTPV systems, but also for the violations, such as, extension of the roof area of the existing building in violation of the terms of the PPA/sanction Order, or the roof on which the SRTPV Systems were installed, was not a building, as specified by the Government of Karnataka, etc. These Petitioners had come forward to commission their SRTPV Systems, at the rates as specified in the said Order. In pursuance of the same, the SRTPV Systems in OP Nos.48, 49, 66 and 67 of 2018 were commissioned. It is found that, these SRTPV Systems had violated the terms of the PPAs, such as extension of the roof area of the existing building, etc., as noted above. Therefore, in all these four Petitions, the Petitioners are entitled to a tariff of Rs.3.57 per unit only. As already noted, these Petitioners had already executed the PPAs, afresh, agreeing to supply energy at the tariff of Rs.3.57 per unit, for the Delivered Energy.

Therefore, in these four Petitions, the Petitioners are not entitled to any of the reliefs, sought for, in the Petitions.

(d) In OP No.47/2018, for one or the other reason, the SRTPV System had not been commissioned on or before 31.12.2017. The Petitioner in this Petition has stated that, she had informed about the completion of the Project on 24.11.2017 to the Respondents 2 and 3 herein, and requested them to commission the SRTPV System, however, these Respondents never came forward for commissioning the SRTPV System, for reasons best known to them. The learned counsel for the Respondents (BESCOM) submitted that, the SRTPV System of the Petitioner may be allowed to be commissioned, subject to the Petitioner executing the PPA, afresh, at the rate of Rs.3.57 per unit, as in other cases. The facts would reveal that, this Petitioner was also ready for commissioning her SRTPV System on or before 31.12.2017. Therefore, for the reasons stated in the above-said Order dated 07.11.2017, there can be a direction for commissioning the SRTPV System of the Petitioner in OP No.47/2017.

(e) For the above reasons, we answer Issue No.(4), accordingly.

17) **ISSUE No.(5):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

(a) The Respondents (BESCOM) shall synchronize / commission the SRTPV Systems of the Petitioner in OP No.47/2018, after complying with all the technical and operational conditions / specifications,

as applicable for commissioning of one MW SRTPV System, subject to the Petitioner executing a PPA, afresh, for supply of power, at the tariff of Rs.3.57 (Rupees Three and Paise Fifty Seven only) per unit;

- (b) The Petitions, viz., OP Nos.48/2018, 49/2018, 66/2018 and 67/2018, are hereby dismissed; and,
- (c) The original Order shall be kept in OP No.47/2018 and copies, thereof, in OP Nos.48/2018, 49/2018, 66/2018 and 67/2018.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER