

No.N/411/2017

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,

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

Dated : 10.12.2019

Present:

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

OP No.226/2017

BETWEEN:

Sri Narayanaswamy,
S/o Late Narayanappa,
No.104, 2nd Cross, BFW Layout,
Iyyangar Badavane, Laggere,
Bengaluru-5600 058.

[Represented by Navayana Law Offices,
Bengaluru.]

... **PETITIONER**

AND:

Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru-560 001.

Represented by its Managing Director.

[Represented by JUSTLAW, Advocates, Bengaluru.]

... **RESPONDENT**

ORDERS

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

a) Declare that the petitioner has commissioned the Solar Roof Top Photo-Voltaic system in accordance with all applicable laws and orders having the force of law;

b) Set aside the respondent's noticed dated 16.10.2017 [Annexure P-1].

c) Direct the respondent to make payment @ Rs.9.56/unit as agreed under the Power Purchase Agreement (hereinafter called as PPA) dated 17.03.2016 [Annexure P-2] for the entire term of the PPA from the date of commissioning of the SRTPV system.

d) Pass such other incidental orders as may be appropriate under the facts and circumstances of the present case.

2) The material facts in brief are that:

a) The petitioner is a farmer having agricultural land in Kavanadala Grama, Chikkathimmanahalli, Dodderi Hobli, Madhugiri taluk, Tumkur district.

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- b) The petitioner proposed to install and operate the Solar Roof Top Photo Voltaic system [hereinafter called as SRTPV system] for sale of solar power to the Respondent at the land situated in Survey No.121/1, 121/2, 121/3, 121/4, 121/5, 121/6 of Kavanadala Grama, Chikkathimmanahalli Madhugiri taluk, Tumkur district.
- c) The petitioner and respondent entered into a PPA on 17.03.2016, which was approved by the Commission vide letter dated 10.05.2016 (Annexure P-5).
- d) That for the entire term of the PPA, the respondent has agreed to pay Rs.9.56/unit. As per the approval letter of the Commission, the project has to be commissioned within 17.03.2017.
- e) The petitioner by spending around seven and half crore has developed the SRTPV system in the above mentioned land and during the month of September 2016, the vigilance team of the respondent visited the site of the project and directed to go ahead and complete the project within the agreed time. After completion of the work, the petitioner by his letter dated 22.12.2016 communicated to respondent that the petitioner's project was ready for commissioning.

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- f) The Chief Electrical Inspector to the Government of Karnataka (hereinafter called as the CEIG), inspected the project of the petitioner and granted its approval on 17.01.2017 [Annexure P-6].
- g) The respondent by its letter on 16.02.2017 [Annexure P-7] acknowledged that the petitioner has completed the installation work in all respects adhering to all the prevailing norms and directed the Executive Engineer, MT Division, to arrange for conducting pre-commissioning test.
- h) The plant was commissioned on 23.02.2017 [Annexure P-8].
- i) The respondent, instead of honouring the PPA, chose to issue a Show-Cause Notice on 17.06.2017 [Annexure P-9] alleging violation of certain norms.
- j) The Show-Cause Notice dated 17.06.2017 issued to the petitioner stated that the petitioner had violated the terms of Solar Policy 2014-21 and the Government of Karnataka (GoK) letter dated 17.08.2016 therefore, why the PPA dated 17.03.2016 was not to be terminated. The petitioner by his letter dated 24.06.2017 has given necessary reply in detail as to how the petitioner has neither violated the Solar Policy 2014-21 nor GoK letter dated 17.08.2016 [Annexure P-10].

k) The respondent by its unilateral actions misled the Commission and made the Commission to write letter dated 16.08.2017 stating that:

“...one year's time was given to commission the plant considering the new building would be constructed along with erection of the plant in terms of GoK Circular dated 10.12.2015 and the structure on which the plant is installed is not a building and thereby there is violation of the undertaking given by the said SRTPV consumer”.

Due to misunderstanding caused by the Respondent's actions this Commission directed the respondent to initiate the proceedings for termination of PPA vide letter dated 16.08.2017 (Annexure P-11).

l) Thereafter, the respondent has issued the Show-Cause Notice to the petitioner on 16.10.2017 [Annexure P-1].

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

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- a) The Commission vide approval letter on 10.05.2016, had stated that the system should be designed, engineered, constructed, commissioned and operated by the petitioner or any other person on his behalf within 17.03.2017. The petitioner has successfully commissioned the project on 23.02.2017 as certified by the respondent vide its communication on 23.02.2017 in Format-9. Therefore, the petitioner is entitled to the tariff as per the PPA dated 17.03.2016.
- b) The petitioner has fully complied with all the terms of PPA, particularly clause 1.6 of the PPA and the system has been designed, engineered and constructed and operated by the petitioner with reasonable diligence subject to all applicable Indian Laws, rules and regulations as amended from time to time and orders having the force of law.
- c) The allegation of the respondent regarding violation of Section 95 of the Karnataka Land Revenue Act, 1964 (hereinafter called as the KLR Act, 1964) is baseless and untenable. Section 95 (10) of KLR Act, 1964 specifically states that if an occupant of any agricultural land assessed or held for the purpose of agriculture, wishes to divert such land or part thereof for set up of Solar Generation in accordance

with the Karnataka Solar Policy 2014-21 issued in Government Order No.EN 21 VSC 2014 dated 22.05.2014, which has been approved by the State or Central Government and by the competent authority, the permission applied for the conversion of such land shall be deemed to have been granted for that purpose so long as they use for that purpose, subject to payment of the conversion fine and such other fee payable if any, in this regard. The petitioner has ensured the necessary compliances.

- d) Clause 18 of the Solar Policy 2014-21, specifically provides that, Developers will be allowed to start project execution without waiting for formal approval on filing applications for conversion of agricultural land for setting up of solar power projects on payment of specified fee. The petitioner has paid the specified fees and submitted the necessary documentations. Therefore, the petitioner is not in violation of Section 95 of KLR Act, 1964.
- e) The allegations of the respondent that the petitioner has violated the Solar Policy is baseless and is intended to only avoid payment under the PPA. The petitioner has not violated any of the terms of the Solar Policy.

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- f) The so-called inspection conducted by the respondent on 26.07.2016 and 27.07.2016 is not within the knowledge of the petitioner.
- g) The CEIG as well as the respondent have wrongly noted that the petitioner has violated the terms of the GoK letter dated 17.08.2016. The petitioner's building is proposed to be used for the allied agricultural activities. It was originally intended to be used for animal husbandry and was later intended to set up a poultry farm. The petitioner proposes to develop the building for the purpose of running allied agricultural activities. Therefore, there is no violation of any of the norms or conditions.
- h) The Show-Cause Notice dated 17.06.2017 has been suitably replied to by the petitioner. The respondent was fully satisfied with the reply submitted by the petitioner. Thereafter, the respondent has issued a similar Show-Cause Notice on 16.10.2017, without disputing any of the explanations offered by the petitioner. This goes to show that the notices issued by the respondent are only a ploy to avoid making payment.
- 4) The petitioner has prayed to pass an order or direction for allowing the petition as prayed for.

5. Upon notice, the respondent appeared through its counsel and has filed the Statement of Objections. The gist of which may be stated as follows:

a) The respondent states that it has executed the PPA with the petitioner on 17.03.2016.

b) The respondent mentions that the Commission vide letter dated 10.05.2016 was pleased to approve the PPA subject to incorporation of the clause as follows:

“Clause 1(1.6): The SRTPV system shall be designed engineered, constructed, commissioned and operated by the seller or any other person on his behalf, within 17.03.2017.”

c) The respondent on 24.08.2016 has inspected the progress of the installation work of the SRTPV system and during inspection, it was found that 40% of the petitioner's SRTPV structures were ground mounted and the petitioner was constructing steel structures for the purpose of installation of SRTPV system. The inspection report (Annexure R-1) is produced by respondent.

- d) On 17.01.2017, Office of the CEIG accorded approval to the petitioner's electrical installation and, thereafter, the petitioner has synchronized its plant to the Grid on 23.02.2017.
- e) On 17.06.2017, the respondent issued a show-cause notice to the petitioner informing him that he had installed his SRTPV system in an agricultural land in violation of SRTPV norms and applicable laws, rules and regulations and directed the petitioner to reply to the said notice within seven days from the date of receipt of its notice as to why his PPA should not be terminated.
- f) On 24.06.2017 the petitioner replied stating that his SRTPV installation is not in violation of any norms and conversion of his agricultural land is in process and also the petitioner stated that there is no requirement in law that he should have installed his SRTPV system only after the conversion of land.
- g) The respondent vide its letter dated 24.07.2017 sought clarification from the Commission with regard to the petitioner commissioning the SRTPV system in an agricultural land and applicability of Section 95 of the Karnataka Land Revenue Act, 1964. On 16.08.2017, the Commission directed

the respondent to initiate the termination of the PPA proceedings after giving reasonable opportunity to the petitioner as he had installed his SRTPV system in violation of Circular issued by the GoK dated 10.12.2015.

- h) The respondent herein has issued default notice dated 16.10.2017 to the petitioner in terms of Article 9.3 of the PPA, for which the petitioner has not replied.
- i) Aggrieved by the issuance of default notice, the petitioner herein has filed the present petition. It is the case of the petitioner that he is entitled for tariff as per PPA dated 17.03.2016 as he had commissioned the project on 23.02.2017 and the same is within the stipulated timeframe.
- j) As per Article 1.6 of the PPA executed between Respondent and the petitioner the *“SRTPV system shall be designed, engineered and constructed and operated by the seller or on his behalf with reasonable diligence subject to all applicable Indian laws, rules, Regulations as amended from time to time and order having the force of Law”*.
- k) As per the Solar Policy 2014-21, SRTPV systems 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 SRTPV systems installed on the ground or ground mounted structures using steel/iron/wooden/concrete support will not be considered as SRTPV systems.

l) During the inspection carried out by the respondent, it was found that 40% of the petitioner's SRTPV structures were ground mounted and the petitioner was constructing Steel structures for the purpose of installation of SRTPV system deviating from the approved norms by installing ground mounted structures and steel structures. The photographs of the petitioner's installation showing his installation is in violation of SRTPV norms are produced (Annexure R-3).

m) The CEIG has noted in his approval letter dated 17.01.2017 that the petitioner's SRTPV system is in violation of Government letter dated 17.08.2016. It ought to be noted that the CEIG has issued safety approval letter subject to conditions that *"This safety approval will be withdrawn on any objections, legal issues regarding the establishment of proposed SRTPV capacity received from any other statutory authority"* In the light of the fact that the petitioner has deviated from the approved norms, the approval granted by the CEIG also ought to be cancelled.

n) The SRTPV system under net metering arrangement was introduced by the GoK with the main objective that the consumer meets his power requirement for self-consumption from his SRTPV system and injects surplus energy into the grid of distribution Companies. However, in the present case, the petitioner has installed the SRTPV system with no intention of using power for self-consumption and installed the SRTPV system with only business intention. The same is evident from the fact that the petitioner has nowhere stated clearly to what purpose, he intends to use the power generated from his SRTPV system and installed structures using steel structures. Even till date, no business activities has commenced in his premises where the petitioner has installed the SRPV system. The petitioner has wholly deviated from the object of the SRTPV scheme and the same defeats the entire purpose of the Policy.

o) As the petitioner herein has not adhered to the norms stipulated by the respondent the petitioner is not entitled to the tariff of Rs.956/unit. The petitioner will be entitled to tariff of Rs.3.57/unit alone, as per Order dated 07.11.2017.

p) With regard to the averment that the respondent and various other authorities have granted various approval to

the petitioner stating that the petitioner has complied with all the norms is untenable. It is submitted that the concerned officers of the respondent have granted approval fraudulently. In fact, it is found on the investigation within the respondent company, that the then officer of Madhugiri Division has commissioned the petitioner's SRTPV system by deviating from certain procedures set out by the company. Subsequently, disciplinary action was also taken against the concerned officers of the respondent who have given approval and commissioned the SRTPV system by deviating such exiting norms.

- q) The averments with regard to investment made by the petitioner is self-serving in nature and need not be specifically traversed. Averment that in September 2016, the respondent directed the petitioner to go ahead with the project and complete the project within the stipulated timeframe is untenable and denied.
- r) The averment that the respondent issued a show cause notice only when it had to start making payments is untenable and denied. The respondent issued show cause notice as the petitioner had installed his SRTPV system in violation of the norms and guidelines.

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- s) Averment that the petitioner had adhered to all applicable laws and orders having the force of law is untenable and denied. It ought to be noted that the petitioner's 40% of the SRTPV structures are ground mounted and the same is in violation of the norms.
- t) The petitioner by installing ground mounted steel structures in agricultural land has violated the norms. Therefore, the respondent herein has rightly issued a Show-cause notice and default notice as per the terms of PPA.
- u) The petitioner has installed the SRTPV system in violation of norms and guidelines. Therefore, he is not entitled for tariff of Rs.9.56/unit.
- v) As per Section 95 of the KLR Act, 1964, it is mandatory to obtain conversion of land certificate before diverting the agricultural land for any other use. The petitioner has not obtained conversion of land certificate till date as per Clause 1.6 of the PPA, the petitioner has to install and operate his SRTPV system by adhering to all applicable laws and policy. Therefore, the petitioner by installing the SRTPV system in an agricultural land has violated the KLR Act, 1964.

w) The averment that the petitioner has not violated any terms of PPA and is entitled for tariff at Rs.9.56/unit is untenable and denied. Averment that the petitioner is not paid single penny till date is untenable and denied. It is submitted that the payment is made to the petitioner as per the interim order passed by this Commission.

x) Therefore, the respondent prayed for dismissal of the petition.

6) Subsequent to filing of the present petition on 07.12.2017 by the petitioner before this Commission, the petitioner requested on 01.02.2018 to pass interim order directing the respondent to pay the tariff for the energy supplied. Accordingly, this Commission passed interim order directing the respondent to pay tariff of Rs.5.20 per unit pending disposal of the case.

7) During the proceedings of this case while hearing the arguments, this Commission felt it necessary to have a spot inspection by a third party and to obtain the report regarding the following points:-

(a) Whether the SRTPV project is in the Sy. Nos. mentioned in the PPA dated 17.03.2016 (copy enclosed) and has been completed as shown in the enclosed photographs.

(b) Whether the SRTPV project is in consonance with the SRTPV guidelines issued by BESCO.

(c) Whether the roof on which the SRTPV project is put up, satisfies the conditions in the Government of Karnataka's letter dated 17.08.2016.

(d) The nature of activity being carried out in the premises below the roof on which the SRTPV project is stated to have been put up.

(e) Whether the concept of net metering is complied with by the petitioner.

Accordingly, as agreed by both the parties, CEIG was directed to conduct the spot inspection in the presence of the parties. Pursuant to it, the CEIG filed his report dated 30.08.2019 before the Commission. Copies of the said report were supplied to both the parties.

8) We have heard the learned counsels for the parties.

9) From the rival contentions and the pleadings of the parties, the following points arise for our consideration:-

Issue No.1: Whether the PPA dated 17.03.2016 executed between the petitioner and the respondent (Annexure P-2) is liable to be terminated?

Issue No.2: If, Issue No.1 is held in affirmative, which of the reliefs can be granted to the petitioner?

Issue No.3: What Order?

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

11) Issue No.1: Whether the PPA dated 17.03.2016 executed between the petitioner and the respondent (Annexure P-2) is liable to be terminated?

The respondent has relied upon the following three grounds in support of its contention that the PPA in question was liable to be terminated.

- (i) The roof on which the SRTPV system installed by the petitioner is/was not in conformity with the SRTPV guidelines, the GoK Order dated 17.08.2016 and also the GoK Circular dated 10.12.2015 and also the Solar Policy 2014-21.
- (ii) The SRTPV system in question has been installed without obtaining conversion order of agricultural land as required under Section 95 of the KLR Act, 1964.
- (iii) The then local officers of the respondent had fraudulently granted approvals for synchronizing the project with the grid.

12) Regarding the Ground No.1:

a) The Solar Policy 2014-21 issued by GoK vide its Notification No.EN 21 VSC 2014 dated 22.05.2014 in respect of grid connected Solar Roof Top Projects states as follows:

"The GoK shall promote grid connected Solar Roof Top Projects on public buildings, domestic, commercial and industrial establishments through net metering and gross metering methods based on tariff orders issued by KERC from time to time."

b) The GoK in its letter dated 17.08.2016 (Annexure P-3) has clarified that the Solar Panels of Solar Roof Top PV plants must be mandatorily mounted in the space available on the roof of residential, commercial, institutional, industrial and other buildings which are constructed as per the Building Construction Acts/Norms. Further, it is clarified that Solar PV plants with Solar Panels installed on the ground or ground mounted by constructing structures using steel/ iron/wooden/concrete supports are not to be construed as Solar Roof Top PV plants.

c) The GoK in its Circular dated 10.12.2015 allowed the execution of the PPA in respect of roofs under construction which are nearing completion, in order to provide an opportunity to buildings and

construction, to design roofs, conducive for installation of Solar Panels.

This Circular has also refer the roof top of a building under construction.

- d) The above noted material would clearly indicate that the SRTPV system is to be installed on the roof top of building and the Solar PV plants with Solar Panels installed on the ground or ground mounted by constructing structures using steel/iron/wooden/concrete supports are not to be construed as Solar Roof Top PV Plants.
- e) The respondent has contended that on 24.08.2016, there was an inspection of the spot of the petitioner by its officials and that the inspection disclosed that the structure on which the SRTPV system was proposed to be installed, was found to be ground mounted and the structure was being constructed using steel/iron rods. The copy of the inspection report is produced at Annexure R-1. This document shows that one Sri Subramanyam Desai, DGM (A/cs) of the Corporate Office along with local officers had visited the spot on 24.08.2016 and found that the structure which was intended to be used for SRTPV system was under construction and it could be termed as ground mounted structure with steel support. The respondent also stated in its Show-Cause Notice dated 16.10.2017 (Annexure P-1), that on 26.07.2016 and 27.07.2016 inspection was carried out by the concerned officers and it was found that the structure erected by the petitioner was not in conformity with the SRTPV guidelines. The respondents have also filed

seven photographs of the spot at Annexure R-3. These photographs would clearly indicate that the structure on which SRTPV system was installed could be classified as ground mounted Solar PV Plants but not Solar Roof Top PV Plants.

f) The CEIG in its Electrical Safety Approval dated 17.01.2017 (Annexure P-4) has noted that "this installation is not in accordance with the Government letter No.EN 70 VSC 2015 dated 17.08.2016, however, PPA has not been cancelled by the competent authority and is in force till 17.03.2017 as per the records furnished. Therefore, the Electrical Safety Approval for said electrical installations is issued". Therefore, this document also shows that when the petitioner claimed that the installations work of the SRTPV system was completed, the structure was not complying with the GoK clarification dated 17.08.2016 Annexure P-3).

g) As noted above, this Commission had directed the CEIG to conduct the spot inspection. Accordingly, the CEIG submitted his report on 30.08.2019. In respect of 2nd and 3rd points, the CEIG has reported as follows:

"Point No.2: Whether the SRTPV project is in consonance with the SRTPV guidelines issued by BESCO?"

The Executive Engineer (Ele.) BESCO, Madhugiri, has stated that the SRTPV project is not in consonance with the prevailing SRTPV guidelines.

However, the applicant has stated that the only condition imposed in the PPA approval is that he should commission the project within 17th March 2017. However, the project has been commissioned on 23rd February 2017 as per the submission made by the applicant.

Point No.3: Whether the roof on which the SRTPV project is put up, satisfies the conditions in the Government of Karnataka's letter dated 17.08.2016?

The Government of Karnataka's letter dated 17.08.2016 states that 'Solar PV panels installed on the ground or ground mounted by constructing structures using steel/iron/wooden/concrete supports are not be construed as Solar Roof Top PV plants.

However, at the time of inspection it is found that the Solar panels were not mounted on the ground instead they were mounted on the roof top of a shed like structure which is completely covered on all sides as shown in the enclosed photographs with appropriate entrances."

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- h) The petitioner has also produced eight photographs (Annexure P-12) on 25.06.2019 and made a request to appoint a Court Commissioner to inspect the site in question. These photos were also sent to the CEIG who conducted the spot inspection. On the perusal of the photos produced by respondent (Annexure R-3) and photos produced by the petitioner (Annexure P-12) one can say that all these photos refer to the structure in question of the petitioner. By the time, the photos were taken by the petitioner, he had enclosed all the sides of the structure with tin sheets. Whereas, in the photos produced by the respondent there were only steel pillars on which roof was installed using steel/iron angles and the solar panels were installed on such roof.
- i) From the above material, we are of the opinion that at or before the time of synchronizing the SRTPV system one could say that the Solar PV plants with Solar panels were installed on the ground mounted structure using steel/iron supports, therefore, it could not have been construed as Solar Roof Top PV system. Even, after covering all the sides with zinc sheets with appropriate entrances as shown in the photos produced by the petitioner, the roof in question could not be termed as roof of any residential, commercial, institutional, industrial and other buildings. The inference of the CEIG after spot inspection is also to the same effect.

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- j) The GoK in its Circular dated 10.12.2015 allowing the SRTPV system on the roof top of the new building under construction speaks of "building" and not any structure with iron poles and angles. The Solar Policy also speaks that the SRTPV system is to be permitted on the public buildings, domestic, commercial and industrial establishments. The petitioner's structure cannot be brought within the ambit of "roof top" as envisaged in the Solar Policy.
- k) The CEIG in his inspection report dated 30.08.2019, in respect of 4th and 5th points has reported as follows:

Point No.4: The nature of activity being carried out in the premises below the roof on which the SRTPV project is stated to have been put up?

At the time of inspection, it is found that there were no activities inside the sheds on which SRTPV panels were mounted.

However, the owner of the installation Sri N. Narayanaswamy has stated that he intends to undertake cattle farming and poultry farming. He has furnished a general license dated 21.11.2016 for Animal Husbandry centre and general license dated 25.09.107 for

poultry farming purpose in the said Sy. Nos:121/1, 2, 3, 4, 5 and 6 both issued by Kavanadala Grama Panchayath."

Point No.5: Whether the concept of net metering is complied with by the petitioner?

As per the net metering concept the applicant has to consume the energy generated for his own use and supply the remaining energy to the BESCO. The Executive Engineer (Ele.) BESCO, Madhugiri, has stated that since there are no activities in the premises, the applicant is supplying the entire generated energy to BESCO."

- l) The above observations of the CEIG clearly establishes that even till date, no business activities has commenced in the premises of the petitioner where he has installed the SRTPV system. Therefore, the objective of net metering that the consumer meets his power requirement for self-consumption from his SRTPV system and injects surplus energy into the grid of the distribution licensee has been defeated.
- m) For the above reasons, the 1st respondent has proved the 1st ground.

12) Regarding Ground No.2:

The petitioner contended that he was intending to undertake cattle farming and poultry farming in the structure constructed by him and for such activity, the conversion of agricultural land into non-agricultural purpose is not required. In support of it, the petitioner is relied upon the decisions cited in the case of "E.Bhaskar Rao Vs.State of Karnataka and Others decided on 12.01.2000 on the file of the Hon'ble High Court of Karnataka [equivalent citation ILR 2000 KAR 4718, 2000 (6) Kar LJ 435".] This decision supports the contention of the petitioner. Therefore, we hold that the obtaining conversion order of agricultural land into non-agricultural use as required under Section 95 of the KLR Act, 1964 is not necessary before putting up the structure for the purpose of carrying out the cattle farming or poultry farming.

13) Regarding Ground No.3:

There was an inspection on 26.07.2016 and 27.07.2016 by the concerned officer from the Corporate Office of the Respondent and it was found that the SRTPV plant was not in conformity with the SRTPV guidelines. This fact is stated in (Annexure P-1) Show-Cause Notice dated 16.10.2017 issued to the respondent. Subsequently, there was another spot inspection on 24.08.2016 by the DGM (A/cs) of the

Corporate Office of the Respondent wherein again it was noticed that the structure was ground mounted structure with steel support which was under construction. The approval for installation of SRTPV system was granted on 16.06.2016. The petitioner intimated the completion of the SRTPV system vide letter dated 22.12.2016. Before reporting the completion of the project, the two inspections had taken place as noted above and during both inspections, it was found that the structure in progress was not in accordance with the SRTPV guidelines as well as GoK clarification dated 17.08.2016. The CEIG while issuing the Electrical Safety Approval noted that the installation was not in accordance with the Government Circular dated 17.08.2016. In spite of these observations by different authorities, the EE (Ele.) BESCOM, Madhurigi by name TV Lokeshwar addressed a letter dated 16.12.2017 to the EE (Ele.), MT Division, BESCOM, Chitradurga (Annexure P-7) stating that the installation of SRTPV system work were completed and was adhering to all the prevailing GoK and BESCOM/KERC norms and requested to arrange for conducting pre-commissioning test at the earliest. The office of the EE (Ele.), BESCOM, Madhugiri, was the competent authority to supervise the SRTPV system from 50 KW to 1000 KW capacity. It cannot be assumed that the inspection reports and the observations made by the CEIG in his Electrical Safety approval, had not come to the knowledge of the competent officer who was the EE (Ele.),

BESCOM, Madhugiri. Subsequently, on 23.02.2017, the then in-charge EE (Ele.), BESCOM, Madhugiri states in his certificate of synchronization (Annexure P-8) that the synchronization test of SRTPV system of the petitioner was conducted and successfully synchronized with the BESCOM grid on 23.02.2017. Another EE (Ele.) BESCOM, Madhugiri issues Show-cause notice dated 17.06.2017 (Annexure P-9) stating that the GoK clarification dated 17.08.2016 and the Solar Policy dated 22.05.2014 were violated by the petitioner while putting up the SRTPV system. These facts would show that the local officers of the respondent had fraudulently granted approvals for synchronizing the project with the grid.

For the above reasons, we hold that the respondent has proved the 3rd ground urged by it.

- 14) From the above discussions, it is found that the roof on which the SRTPV system was installed by the petitioner was not in conformity with the SRTPV guidelines, the GoK Order dated 17.08.2016 and also the GoK Circular dated 10.12.2015 and the Solar Policy 2014-21 and that the local officers fraudulently granted approvals for synchronizing the SRTPV system with the grid. Therefore, we hold the Issue No.1 in affirmative.

15) Issue No.2: If, Issue No.1 is held in affirmative, which of the reliefs can be granted to the petitioner?

The respondent has contended that the petitioner may be given an option to continue the sale of power from his SRTPV system to the grid at a tariff of Rs.3.57 per unit as provided in order dated 07.11.2017 (Annexure R-4) on executing a fresh PPA, as the PPA dated 17.03.2016 (Annexure P-2) is liable to be terminated and as the petitioner has installed the SRTPV system in violation of the existing norms thereof. Therefore, Issue No.2 is held accordingly.

16) Issue No.3: What Order?

For the foregoing reasons, we pass the following:

ORDER

- a) The petitioner is not entitled to any of the reliefs claimed in his petition.
- b) The petitioner is permitted to execute a fresh PPA with the respondent for sale of energy at a tariff of Rs.3.57 per unit for the energy supplied from the date of commissioning of the SRTPV system for a period of 25 years subject to all other usual terms and conditions.

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- c) The petitioner may exercise his option of executing a fresh PPA within a period of 30 days from the date of this order by filing an affidavit before this Commission and a copy marked to respondent. In the event of executing a fresh PPA, the differential amount paid if any, as per the interim tariff at Rs.5.20 per unit and the tariff now fixed at Rs.3.57 per unit, for the energy supplied, shall be either adjusted or recovered in future bills.
- d) In case, the petitioner fails to exercise the option to execute the fresh PPA within the above said period, the energy injected from the date of the synchronization of the SRTPV system shall be compensated @ Rs.3.57/- per unit and the excess amount received, if any by the petitioner, shall be recovered from the petitioner by the respondent.
- e) In case, the petitioner fails to exercise the option to execute the fresh PPA within the above said period, the injection of power subsequent to that date into the grid shall not be treated as a sale of energy to the respondent and the petitioner should not be entitled to any compensation for the energy injected, if any.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER