

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION**

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

**Dated : 28<sup>th</sup> May, 2019**

**Present:**

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

**OP No.236/2017**

**BETWEEN :**

M/s. Mahur Warehouse,  
889/12A, L. B. Shantinagar,  
Jewargi Road,  
Kalaburagi-585 104

..

**PETITIONER**

*[Represented by Navayana Law Offices, Advocates]*

**AND:**

Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi-585 102

..

**RESPONDENT**

*[Represented by Shri G. S Kannur, Advocate]*

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**ORDERS**

- 1) The Petitioner has filed the Petition under Section 86(l)(f) of the Electricity Act, 2003, praying to:
  - (a) set aside the letter dated 04.12.2016 issued by the Respondent;  
and,

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- (b) direct the Respondent to synchronise the Solar Project to the grid and pay the tariff of Rs.9.56 per kWh as agreed in the Power Purchase Agreement (PPA).
- 2) The material facts urged by the Petitioner in support of its prayers may be summed up as follows:
- (a) The Petitioner which owns 5000 Sq.meter roof top area on the premises at 889/12A, L.B. Shantinagar, Jewargi Road, Kalaburagi, after submitting an application on 13.11.2015 to the Respondent requesting for installation of a 495 kWp Solar Roof Top PV (SRTPV) power plant on net metering basis, in response to a scheme announced by the Respondent, entered into Power Purchase Agreement (PPA) on 17.12.2015 with the Respondent, at the tariff of Rs. 9.56 per unit.
- (b) The Respondent in its letter dated 18.03.2016 requested the Petitioner to select a reputed system installer and furnish the details of the equipment installed. The Respondent by its letter dated 19.03.2016 accorded approval for the Project and directed to commission the Project within 180 days, failing which the approval would be treated as cancelled. The Petitioner was required to commission the Project within 18.09.2016.
- (c) After obtaining required approvals to the plant, the Petitioner submitted the work completion report in Format-7, dated 14.09.2016 and requested the Respondent to inspect the premises

and commission the Project. However, the Respondent failed to synchronise the Project with the grid.

On 12.06.2017, the Respondent directed the Petitioner to convert the installation from LT to HT. The Petitioner carried out the necessary works and informed the Respondent on 02.08.2017 about the conversion from LT to HT. The Petitioner vide letter dated 22.11.2017 requested the Respondent to commission the Project.

- (e) The Respondent, in its letter dated 14.12.2017 while granting provisional interconnection approval, informed that the revised tariff of Rs.5.67 per unit was applicable to the Project due to delay in commissioning the Project, as per the Commission's Order dated 02.05.2016 and requested the Petitioner to enter into a Supplemental PPA to effect the revised tariff.
  - (f) It is alleged by the Petitioner that the PPA does not require the Petitioner to commission the Project within 180 days and the Petitioner is entitled for the tariff of Rs.9.56 per kWh as agreed in the PPA as there is no provision for substitution of such tariff by any other tariff. The Respondent cannot force the Petitioner to enter into a Supplemental PPA at the reduced tariff of Rs.5.67 per kWh.
- 3) After issuance of Notice, the Respondent entered appearance through its counsel and filed objections contending that:

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- (a) The Petitioner was required to commission the Project within 180 days from the date of approval, i.e., before 18.09.2016. The existing installation of the petitioner was on LT supply and hence, the respondent requested to convert the installation to HT for connecting the solar Project on net metering basis to the grid on 11 kV side. The Respondent informed the petitioner on 04.12.2017 that due to delay in completion of the Project, the tariff applicable would be Rs.5.67 per unit as per the Generic tariff order dated 02.05.2016 and requested to enter into a SPPA. The SRTPV plant was commissioned on 30.12.2017.
- (b) The Respondent has prayed for dismissal of the Petition.
- 4) The Petitioner has filed a Rejoinder stating as follows:
- (a) The Petitioner has signed the PPA dated 17.12.2015, wherein the Respondent has agreed to pay a tariff of Rs.9.56 per unit. There is no stipulation in the PPA that the tariff will vary from time to time based on any subsequent amendment effected to the order dated 10.10.2013.
- (b) The tariff determined in the Order dated 2.5.2016 cannot be applied to the Petitioner for the reason that the Hon'ble Supreme Court of India in the case of *Gujarat Urja Vikas Nigam Limited V/s Solar Semi-Conductor Power Company (India) Private Limited and others*, reported in AIR 2017 SC 5372 has emphatically held that a Regulatory Commission being a

creature of statute cannot alter the control period exercising its inherent power.

- (c) The KERC Order dated 2.5.2016 for determination of tariff for Solar Rooftop applies to all new grid connected Solar Rooftop and small Solar Photovoltaic Power Plants, entering into PPA and commissioned on or after 2<sup>nd</sup> May, 2016 and up to 31<sup>st</sup> March, 2018. It is mentioned in the Order:

*“In respect of plants for which PPAs have been entered into prior to 1<sup>st</sup> May, 2016 and are commissioned within the period of time as stipulated by the ESCOMs concerned or the Commission the Order dated 10<sup>th</sup> October, 2013 shall be applicable. Such plants shall be eligible for the revised tariff as per this Order if they are not commissioned within the stipulated time period and there shall be no extension in time period for commissioning them after the effective date of this Order”.*

When the PPA does not prescribe any time period, no other document, unilaterally issued by the Respondent, can be the basis for determining the tariff or the terms of completion of the Project.

- (d) The Petitioner has submitted the work Completion Report on 14.09.2016. The Assistant Executive Engineer and Executive Engineer have issued internal correspondence requesting the Chief Engineer to accord commissioning approval in pursuance of the Work Completion Report. The Respondent wanted to delay the commissioning of the Project as evidenced from the letter dated 12<sup>th</sup> June, 2017, which mentions that the Clause 3.02 of the Conditions of Supply of Electricity of the Distribution

Licensee in the State of Karnataka (CoS) has to be complied with. The CoS stipulates the supply voltage for various contact demands but does not codify the interconnection parameters. However, Respondents have used this to delay the commissioning. It is a settled principle of law that a party cannot take advantage of its own wrong. When the Respondent delayed the commissioning of the Project despite completion report, it cannot contend that the Project was not completed within the stipulated time. Even presuming that the Project had to be completed within 180 days from 19<sup>th</sup> March, 2016 i.e. on or before 18<sup>th</sup> September, 2016, the Petitioner has given the work Completion Report as on 14<sup>th</sup> September, 2016.

- (e) The Petitioner filed the case on 21<sup>st</sup> December, 2017 challenging the Respondent's letter dated 04<sup>th</sup> December, 2017. However, the interim prayer of the Petitioner could not be considered by Commission for want of quorum. Under coercion, the Respondent has got a Supplemental PPA signed from the Petitioner. In the objection statement, the Respondent has agreed that the execution of SPPA was a precondition for getting the provisional interconnection approval. This means that Respondent was never ready to synchronize the Project without Petitioner signing the Supplemental PPA. In the Supplemental PPA it is mentioned that it is signed because of the letter dated 27<sup>th</sup> September, 2016, wherein the Commission is said to have applied tariff, as per its Order dated 02<sup>nd</sup> May, 2016, for the Projects that are commissioned beyond six months. There is no such Order of the Commission dated 02<sup>nd</sup> May, 2016 or a letter dated

27<sup>th</sup> September, 2016. All this was a ploy of the Respondent to coerce the Petitioner to agree to a lower tariff. When the Petitioner protested to accept the same and issued a protest letter dated 30<sup>th</sup> December, 2017, the same was not even acknowledged and the Petitioner was forced to give another letter on the same date, as a pre-condition for issuing the Commissioning Certificate. The Respondent-GESCOM could not have insisted upon the change of installation from LT to HT, because there is no such legal or technical requirement. The Chief Electrical Inspectorate to the Government (CEIG), the statutory authority competent to certify the technical parameters of the installation had already issued a certificate, pursuant to the completion of the installation in all respects.

- 5) We have heard the counsel for both sides and perused the material placed on record. The following issues would arise for our consideration:
- (1) Whether in the absence of a clause in the PPA specifying the date of commissioning of the Project, along with consequence of its non-performance, such date can be specified in the guidelines relating to the SRTPV Scheme of the Respondent?
  - (2) Whether the Petitioner, has made out a case for extension of the time stipulated for the commissioning of its Project and thus eligible for the tariff agreed in the PPA?
  - (3) What Order?

6) After considering the submissions made by the counsel for the parties and their pleadings and other material placed on record, our findings on the above issues are as follows:

7) **ISSUE No.(1):** *Whether in the absence of a clause in the PPA specifying the date of commissioning of the Project, along with consequence of its non-performance, such date can be specified in the guidelines relating to the SRTPV Scheme of the Respondent?*

(a) The Petitioner contends that, the date of commissioning of its plant has not been specified in the PPA and the tariff agreed cannot be revised as sought by the Respondent, irrespective of the date of the commissioning of the plant. Further that, even if the validity period as given in the Respondent's approval letter has expired, there cannot be a revision of tariff.

(b) In RP Nos.18 and 19/2016, the Commission had passed an order as follows:

“9(a) .....

.....

*(g) At this juncture we deem it relevant to briefly note the link between the commissioning date of a plant and the applicable tariff. This Commission periodically determines generic tariff for supply of electricity, generated from various sources to the Distribution Licensees based on several parameters, with capital cost of the generation plant being the major component. With advancement in technology and production efficiency, the capital cost of power plants varies quite frequently, especially in solar power plants. Among various sources of renewable energy, the tariff for solar power is on a downward trend in the recent*

years owing to rapid decline in its cost of generation and consequently, the Commission has been revising the tariff whenever found necessary. Thus, the generic tariff of SRTPV plants determined at Rs.9.56 per unit determined in the Commission's Order dated 10.10.2013 has been revised in the Commission's Order dated 02.05.2016, which is applicable to all new SRTPV plants entering into PPA and commissioned during the period from 02.05.2016 to 31.03.2018 and also to such plants for which PPAs were entered into at the tariff specified in the Commission's Order dated 10.10.2013 that are not commissioned within the time period stipulated by the distribution licensee concerned or the Commission.

- (h) We may point out that, any agreement for power procurement from a new Project has a clause either, in the PPA or in other relevant document, stipulating the time within which the power supply should commence so that the distribution licensee can plan its further supply to its consumers. The time stipulated for completion of the Projects takes into account the time ordinarily required to complete various pre-commissioning activities, which vary depending on the type and capacity of the power plant. Any delay or failure in commencement of power supply within the agreed date would disrupt the operations of the distribution licensees like that of the Respondent, which could result in their power procurement from alternative expensive source, translating into higher retail tariff to the consumers or short supply leading to revenue loss to them or imposition of penalties on them for not meeting the Renewable Purchase Obligation (RPO) fixed by the Commission, if the source is a renewable energy.
- (i) It is not in dispute that, as a part of the State Government's Solar Policy, which among other things proposed to promote grid connected Roof Top Photo Voltaic Generation Projects, the Respondent had called for applications from its consumers interested in availing the Solar Roof Top Photo Voltaic (SRTPV) scheme, the details of which were given on its website.

*The interested consumers had to download the application form from the Respondent's Website and the duly filled application form had to be submitted to the Field Officer concerned, with the prescribed fee for further processing. The Respondent has contended that, as per guidelines, relating to the SRTPV scheme made available to all the consumers, for the SRTPV applicants having existing buildings, the time prescribed for commissioning of the Project is 180 days and this is not denied by the Petitioners. We may note here that, the Commission in its Order dated 10.10.2013, introduced net metering facility to SRTPV plants, allowing the consumers installing them to consume the power generated and to inject any surplus power generated into the distribution system of the Distribution Licensee concerned who would pay such consumers tariff, for the surplus power, as determined by the Commission. It was envisaged that, the consumers would install the SRTPV plants of reasonable capacity on their readily available existing rooftops within a short period and generate power mainly for self-consumption, while injecting a reasonable quantity of surplus power into the distribution system, for consumption in the immediate vicinity."*

- (c) In view of the excerpts of above Order which explain the rationale / justification behind the condition requiring commissioning of any solar power plant referred to in a PPA within a time limit, we do not find any merit in the Petitioner's contention that there was no requirement of commissioning its SRTPV plant within a specified time. When the PPA has been entered into under a particular scheme at the option of the Petitioner, all the terms and conditions of such Scheme shall apply to the installation and commissioning of the SRTPV plant under the scheme, even when the period for commissioning is not specifically mentioned in the PPA.

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- (d) We note that, as per the guidelines relating to the SRTPV Scheme made available to all the consumers, for the SRTPV applicants having existing buildings, the time prescribed for commissioning the Project is 180 days.
- (e) Thus, we answer the Issue No.(1), in the affirmative.
- 8) **ISSUE No. (2):** *Whether the Petitioner, has made out a case for extension of the time stipulated for the commissioning of its Project and thus eligible for the tariff agreed in the PPA?*
- (a) It is not in dispute that as a part of the State Government's Solar Policy, which among other things, proposed to promote grid connected Roof Top Photo Voltaic Generation Projects, the Respondent had called for applications from its consumers interested in availing the Solar Roof Top Photo Voltaic (SRTPV) Scheme, the details of which were given on its website. The interested consumers had to download the application form from the Respondent's website and the duly filled application form had to be submitted to the field officer concerned, with the prescribed fee for further processing. As per the guidelines relating to the SRTPV Scheme made available to all the consumers, for the SRTPV applicants having existing buildings, the time prescribed for commissioning the Project is 180 days and there was no provision for extending such time prescribed. We may note here that, the Commission in its Order dated 10.10.2013 introduced the net metering facility to the SRTPV plants, allowing the consumers installing them to consume the power generated and inject any surplus power generated into the distribution system of the Distribution

Licensee concerned, who would pay such consumers tariff, for the surplus power, as determined by the Commission. It was envisaged that the consumers would install SRTPV plants of reasonable capacity on their readily available existing rooftop within a short period and generate power mainly for self-consumption while injecting a reasonable quantity of surplus power into the distribution system for consumption in the immediate vicinity.

- (c) As elaborated by us earlier, in respect of a SRTPV plant, there would be a reduction of tariff, as a consequence of delay in the commissioning of the plant beyond the stipulated time, if in the meanwhile, there is a revision of generic tariff by the Commission. Admittedly, in the present case, the generic tariff fixed for SRTPV plants that was agreed in the PPA, was revised by the time the plant was ready for commissioning.
- (d) The Solar Policy 2014-2021 of the State provides that the tariff orders issued by the Commission from time to time will be applicable to the Projects. So also, the PPA provides that the tariff as per the Order dated 10.10.2013, or as amended from time to time, will be applicable to the Project.
- (e) It is the case of the Petitioner that, whereas installation work was completed on 14.09.2016 and the Respondent was also informed by its field officer about the plant being completed and ready for commissioning, the Respondent, in order to delay synchronisation of the plant, on 12.06.2017 stated that, the service of installation has to be changed to HT to enable synchronisation of the plant. It is the allegation

of the petitioner that, CoS does not apply to interconnection of the plant with the grid. We note that Article 1 of the PPA provides for technical and interconnection requirements. This provides that the requirements of Grid Code and Distribution Code have to be met with and that the SRTPV system has to be connected to GESCO's HT distribution system. Hence, the interconnection has to be carried out as per the terms of the PPA and the generic Orders of the Commission.

- (f) We have held in the earlier part of this Order that, the Petitioner's contention that it was not obligated to commission the SRTPV plant within a specified time in the absence of such clause in the PPA, has no merit. We have also held that, the Petitioner was required to commission the SRTPV plant within 180 days. Admittedly, neither the PPA nor the Respondent's Scheme, under which the Petitioner undertook installation of the SRTPV plant, provides for time extension for commissioning the plant beyond 180 days. We note that, as per the 'Consumer Guidelines', issued by the Respondent, approval for installation, in Format 6, should have been issued before the start of installation work and prior to the execution of the PPA. If for some reason, such Format 6 is not issued and the installation work has progressed, thereafter Format 6 cannot be issued so as to enlarge the time limit for installation. Hence, its issuance on 19.03.2016 in the present case, much after the execution of the PPA on 17.12.2015, is irregular and not valid. Whenever an event affects the quantum of tariff applicable for supply of energy to the Distribution Licensees, we are of the considered opinion that, the same should be

scrutinized and approved by the Commission. It is now a settled law that this Commission has the exclusive jurisdiction to determine the tariff for supply of electricity by a Generating Company to a Distribution Licensee and it has to regulate the electricity purchase and the procurement process of the Distribution Licensees, including the price at which electricity shall be procured from different agencies through PPAs. Thus, we are of the considered opinion that the Petitioner has not made out a case for extension of the time stipulated for commissioning of its Project and that the Respondent is not justified in granting time beyond the stipulated time of 180 days for commissioning of the Petitioner's plant.

- (g) The Petitioner contends that, even if the plant is not commissioned beyond 180 days there can be no revision of tariff agreed in the PPA which was determined in the Commission's Order dated 10.10.2013. The Petitioner also contends that, the Commission's Order dated 02.05.2016 is not applicable to the Petitioner's plant, because the Commission has made such Order applicable to all new grid connected Solar Rooftop and small Solar Photovoltaic Power Plants, entering into PPAs and commissioned on or after 02.05.2016 and upto 31.03.2018, as per para 5 of the said Order, whereas the Petitioner has entered into PPA on 17.12.2015. We note that Petitioner has failed to mention the later part of para 5 of the said Order dated 02.05.2016, which reads thus:

*"In respect of plants for which PPAs that have been entered into prior to 1<sup>st</sup> May, 2016 and are commissioned within the period of time as stipulated by the ESCOMs concerned or the Commission prior to the date of issue of this Order the*

*tariff as per the Commission's Order dated 10<sup>th</sup> October, 2013 shall be applicable. **Such plants shall be eligible for the revised tariff as per this Order if they are not commissioned within the stipulated time period and there shall be no extension in time period for commissioning them after the effective date of this Order**" [Emphasis supplied]*

Thus, Petitioner's plant, which is not commissioned within the stipulated time, is eligible only for the revised tariff as per the Commission's Order dated 02.05.2016, and not for the tariff as per the Commission's Order dated 10.10.2013 as agreed in the PPA.

- (g) The Petitioner has taken the alternative argument that, any delay in commissioning of the Project leading to reduction of tariff payable by the Respondent is because of the wrongful act of the Respondent and that, therefore, the Respondent cannot be allowed to take advantage of it. Admittedly, the Petitioner's plant was not completed within the stipulated time of 180 days and the Petitioner has also not justified the subsequent delay in commissioning the plant. We note that, in any case, consumer interest, and thereby public interest, cannot be allowed to be affected by payment of a tariff higher than what is due to the generator, because of any action or inaction of the distribution licensee, in disregard of the relevant principles/norms/guidelines.

- (h) We, therefore, answer Issue No.(2) in the negative.

- 9) **ISSUE No.(3):** *What Order?*

For the foregoing reasons, we pass the following:

**ORDER**

- (a) The Petition is dismissed;
- (b) The Petitioner shall be entitled to the revised tariff of Rs.5.67 (Rupees Five and Paise Sixty Seven) only per unit as per the Supplemental PPA dated 30.12.2017.

Sd/-  
(SHAMBHU DAYAL MEENA)  
CHAIRMAN

Sd/-  
(H.M. MANJUNATHA)  
MEMBER

Sd/-  
(M.D. RAVI)  
MEMBER