

N/192/2019

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.**

Dated: 13.11.2020

Present

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

OP No. 77/2019

BETWEEN:

Shri S.A. Prasanna Kumar,
S/o Shri S.K. Anke Gowda,
Aged about 39 years,
R/o No.218, Samahalli Village,
Goravale Post, Dudda Hobli,
Mandya Taluk & District-571 402.

... PETITIONER

[Represented by Sri P.L. Rajesh, Advocate]

AND:

1) The Managing Director,
Chamundeshwari Electricity Supply Company Limited,
Corporate Office No.29,
Vijayanagar 2nd Stage,
Mysuru City-570 017.
(Represented by its Managing Director)

2) The Executive Engineer,
Chamundeshwari Electricity Supply Company (O&M),
Mandya Sub-Division,
Mandya City-571 401.

..... RESPONDENTS

[Respondents 1 & 2 represented by
M/s Just Law, Advocates]

ORDER

1. The petitioner has filed the present petition before this Commission on 06.12.2019, under section 86 (1) (f) of the Electricity Act, 2003, praying for the following reliefs to:

- a) Declare that the Letter & Memorandum (both) dated 09.08.2016 issued by 2nd Respondent is null and void and not binding on the Petitioner;
- b) Give statutory approvals to the PPAs dated 19.01.2016 & 09.02.2016; and
- c) Direct the Respondents to pay the Petitioner for the net-metered energy, delivered from the SRTPV Plant at Rs.9.56 per unit to the RR No. R1S1P318 as per the PPAs entered on 19.01.2016 & 09.02.2016 from the date of power supply by the Petitioner;

OR

At any such adequate rate considering the investments made and improvements undertaken by the Petitioner.

- d) Extend the period for installing the 990 kWp Solar SRTPV system by 180 days from the date of final disposal of this petition.
- e) Pass such other order(s), as deems fit, in the interest of justice and equity.

2. The material facts required for the disposal of this case may be stated as follows:

- a) The Petitioner had filed the application dated 12.01.2016 (Annexure-D) to allow him for installing the grid connected Solar Roof-Top Photo-

Voltaic (SPTPV) System before the 2nd Respondent [Executive Engineer, (Ele.), CESC (O&M), Mandya Sub-Division, Mandya]. Pursuant to this application, the Petitioner and the 2nd Respondent entered into Power Purchase Agreement (PPA) dated 09.02.2016 (Annexure-F). The PPA states that the Petitioner intended to install a SRPTV System of 990 kWp capacity on the Roof-Top of the premises at Bevukal village, Kothathi Hobli, Mandya Taluk & District, which was connected to electricity service connection bearing RR No. R1S1P318. Further, it states that the Petitioner would be paid Rs.9.56 per kWh for the net metered energy injected into the grid for the term of the PPA. The PPA also contains the other terms and conditions to be fulfilled by the Petitioner. The Commission approved the said PPA dated 09.02.2016 and communicated its approval dated 12.05.2016 (Annexure-G) subject to the condition that "the SRTPV System should be designed, engineered, constructed, commissioned and operated by the Seller or any other person on his behalf within 08.08.2016."

- b) The Petitioner has also produced another PPA dated 19.01.2016 (Annexure-E) executed between the Petitioner and the 2nd Respondent which provides that the SRTPV System should be completed within one year from the date of PPA and the tariff for the net energy injected into the grid would be paid at Rs.9.56 per unit. Further that if the SRTPV System was not completed within one year, the Generic Tariff prevailing as on the date of commissioning of the SRTPV System would apply. This

PPA was not got approved by the Commission and the existence of this PPA was brought to light for the first time by the Petitioner, while he filing the WP No.41854/2016 on 01.08.2016 on the file of the Hon'ble High Court of Karnataka (Annexure-Q).

- c) The grievance of the Petitioner was that the approval dated 12.05.2016 (Annexure-G) of the PPA was received by him on 20.05.2016 and as per the said approval, the SRTPV System should have been completed within 08.08.2016 and thereby, there remained only 3½ months for completion of the SRTPV System which was a too short period for completion of the SRTPV System. Therefore, he made a request on 23.05.2016 (Annexure-J) to the 2nd Respondent requesting six months' time from the date of receipt of the approval of the PPA from KERC. The Petitioner also stated that in respect of certain other SRTPV developers, one-year time was granted to complete the SRTPV System. He produced four such communications of approval of PPA issued in the names of different persons at Annexure-H.
- d) The Petitioner also made a representation dated 09.06.2016 (Annexure-L) before this Commission, requesting one-year time from the date of PPA dated 09.02.2016 for completion of the SRTPV System. The Commission forwarded this representation vide letter dated 28.06.2016 (Annexure-M) to the 2nd Respondent for being considered as per law and a copy of the said letter was marked to the Petitioner for information.

- e) The Petitioner thereafter made a representation on 30.06.2016 (Annexure-N) to the 1st Respondent (Managing Director, CESC, Mysuru), requesting to extend the time for one year. This request was rejected vide letter dated 29.07.2016 by the 1st Respondent, as can be seen from Reference No.4 mentioned in Annexure-O & P dated 09.08.2016.
- f) The 2nd Respondent terminated the PPA dated 09.02.2016 (Annexure-F) vide Official Memorandum (OM) dated 09.08.2016 (Annexure-P) on the ground that the Petitioner had failed to commission the SRTPV System on or before 08.08.2016 as required. The copy of the said OM dated 09.08.2016 was sent to the Petitioner vide letter dated 09.08.2016 (Annexure-O).
- g) The Petitioner filed WP No.41854/2016 on the file of the Hon'ble High Court of Karnataka and obtained an interim order on 09.11.2016 (Annexure-Q). The relevant portion of it is as follows:

“Heard for interim relief also.

In the facts and circumstances of the case, the operation of the impugned order Annexure-G of KERC dated 12.05.2016 and Annexure-N and N1 dated 09.08.2016 of the Respondent No.4 M/s Chamundeshwari Electricity Supply Company shall remain stayed and the petitioner is permitted to continue with the process of setting up of the Power Generating Unit before the cut-off date as given in the agreement, Annexure-E as 18.01.2017 and report the same to this Court. It is made clear that no extension of time shall be granted by the Court.

The learned counsel for the petitioner upon instruction, undertook before the Court that the petitioner would complete the process of setting up of the Solar Power Generating unit in question before 18.01.2017, the date given in the agreement Annexure-E.

Mr. S.A. Prasanna Kumar, the petitioner is present before the Court. Let his Affidavit to the aforesaid effect be filed in this Court on 10.11.2016. If such undertaking/Affidavit is not filed by tomorrow, the stay application filed by the petitioner shall be treated as dismissed and the writ petition itself may be listed for final hearing in January, 2017 on 25.01.2017.

Put up tomorrow on 10.11.2016."

The Petitioner has produced the copy of the order sheet in WP No.41854/2016 along with interim order dated 09.01.2016 at Annexure-Q.

h) The Petitioner vide letter dated 14.11.2016 (Annexure-R) requested the 2nd Respondent for issuance of "Work Order in Format-6" stating as the same is required to complete the SRTPV System. In response to the letter dated 14.11.2016 (Annexure-R), the 2nd Respondent replied vide letter dated 18.11.2016 (Annexure-S) without stating anything regarding the requirement of issuance of Work Order in Format-6, asked the Petitioner to furnish a copy of the affidavit required to be filed by him as directed in the interim order dated 09.11.2016 passed by the Hon'ble High Court of Karnataka. Such copy of affidavit was asked to be produced as the Petitioner had not mentioned anything about it in his letter dated

14.11.2016 (Annexure-R). The 2nd Respondent has also asked the Petitioner to comply with certain other requirements stated in the said letter. Again the Petitioner wrote letter dated 26.11.2016 (Annexure-T) to the 2nd Respondent requesting to issue Format-6 without specifically stating even in this letter, whether he had complied with the direction of the Hon'ble High Court of Karnataka passed in the interim order regarding filing of the affidavit on 10.11.2016 as directed in the interim order dated 09.11.2016. Here itself, we may note that it was necessary for the Petitioner to say, whether he had filed the affidavit on 10.11.2016 as directed in the interim order. Because in the event of not filing such affidavit on 10.11.2016, the said application filed by the Petitioner for interim relief would stand dismissed as per the direction given in the interim order. The 2nd Respondent intimated vide letter dated 15.12.2016 (Annexure-U) that the CESC has filed Writ Appeal Nos.5000-5001 of 2016 against the interim order dated 09.11.2016 passed in WP No.41854 of 2016 and that the work order in Format-6 could not be issued for the present.

- i) The WA Nos.5000-5001 of 2016 were allowed vide order dated 14.03.2017 setting aside the impugned interim order dated 09.11.2016 passed in WP No.41854 of 2016. The copy of the said order in Writ Appeals is at Annexure-V. Subsequently, after hearing the parties, WP No.41854 of 2016 was also dismissed vide order dated 17.07.2017 (Annexure-W). The Petitioner preferred WA No.4719 of 2017 against the final order dated

17.07.2017 passed in WP No.41854 of 2016. That Writ Appeal was also dismissed vide order dated 20.02.2019 (Annexure-X), with the observation in Paragraph 8 of the said order that "However, as prayed for it is clarified that Petitioner shall be at liberty to approach the 4th Respondent (the 2nd Respondent herein) or any other Power Supply Company to sell power to be produced by him on such mutually agreeable terms".

j) Subsequently, the Petitioner made representation dated 11.03.2019 (Annexure-Y) to the 1st Respondent, requesting for a direction to the 2nd Respondent to allow the Petitioner to install the SRTPV System 990 kWp with a tariff of Rs.5.67 per unit as per order dated 07.11.2017 issued by this Commission and to allow 180 days' time for installation of the SRTPV System. Similar request was also made on 11.03.2019 (Annexure-Z) itself to the 2nd Respondent. The Chief General Manager (Commerce), CESC, Mysuru, wrote letter dated 18.03.2019 (Annexure-AA) to the 2nd Respondent to take suitable action on the representation dated 11.03.2019 of the Petitioner. Thereafter, the 2nd Respondent intimated vide letter dated 27.03.2019 (Annexure-AB) stating that the Petitioner could enter into a PPA for supply of Solar Power as per the prevailing tariff and other terms and conditions specified by the KERC.

k) The Petitioner approached the Hon'ble Supreme Court of India against the order in WA No.4719 of 2017 dated 20.02.2019 (Annexure-X) and that the Special Leave Petition (SLP) No.13111/2019 was withdrawn on 03.07.2019 and the Hon'ble Supreme Court of India held that "SLP is

dismissed as withdrawn with liberty to enable him (the Petitioner) to avail the remedy of Dispute Resolution Mechanism as per agreement which shall be decided according to its own merits". The copy of the order dated 03.07.2019 is at Annexure-AC. Thereafter, the Petitioner made applications for Dispute Resolution Mechanism before the 2nd Respondent as well as this Commission vide Annexure-AD dated 22.07.2019 and Annexure-AE dated 31.07.2019 respectively. This Commission intimated the Petitioner to file a regular petition for redressal of his grievance vide letter dated 07.08.2019 (Annexure-AF). The 2nd Respondent intimated vide letter dated 14.08.2019 (Annexure-AG) that the Petitioner could install the SRTPV System as per the prevailing Generic Tariff and other conditions.

- I) The Petitioner has produced six photographs of the sheds, shown to have been taken on 08.01.2017 at Annexure-AH.

3. The grounds urged by the Petitioner may be stated as follows:

- a) That the Petitioner has spent a sum of Rs.90 lakhs for the extension of the existing building for laying of panels on the roof in a better way. For spending this amount, the Petitioner has spent his own savings over the years and raised hand loans from friends and relatives. The Petitioner further requires Rs.5 crores for the completion of the SRTPV installation and the amount required is to be borrowed from money lenders. The Petitioner has produced Annexure-AH, the six photographs showing the present conditions of the existing and new construction of buildings. The

Petitioner is put to heavy loss and he has no other option but to complete the SRTPV System.

- b) That the Petitioner was initially given the work order in March 2016. The Petitioner was waiting for the approval of the PPA by this Commission. However, the approval of the PPA was given granting time up to 08.08.2016 though, he was entitled to one-year period for completion of the SRTPV System.
- c) The contention of the Petitioner is that the termination of the PPA vide OM dated 09.08.2016 (Annexure-P) was illegal and void.
- d) When the Hon'ble High Court of Karnataka granted time up to 18.01.2017 for completion of the SRTPV System vide interim order dated 09.11.2016 passed in WP No.41854 of 2016, even at that stage, the 2nd Respondent has not issued work order in Format-6, thereby the Petitioner could not proceed with the completion of the SRTPV System.
- e) Therefore, according to the Petitioner due to the acts and omissions of the 2nd Respondent, it could not complete the SRTPV System. Therefore, it is contended that the Petitioner may be allowed to complete the SRTPV System with Generic Tariff of Rs.5.67 per unit as per order dated 07.11.2017 issued by this Commission.
- f) Therefore, the Petitioner has prayed for allowing the petition.

4. The 1st & 2nd Respondents appeared through their Counsel and filed the common Statement of Objections. The material part of the objections of the Respondents may be stated as follows:

a) The Respondents have not denied the execution of PPA dated 19.01.2016 (Annexure-E) and PPA dated 09.02.2016 (Annexure-F). It is contended that the PPA dated 09.02.2016 was executed pursuant to the application dated 12.01.2016 (Annexure-D) filed by the Petitioner praying for installation of SRTPV System on the Roof-Top of the premises having electricity connection bearing RR No.R1S1P318. They contended that the PPA dated 19.01.2016 (Annexure-E) was not sent to the Commission for its approval, thereby the said PPA was not binding on the parties. The Respondents have denied that there was any illegality done by the Respondents particularly, the 2nd Respondent.

b) The Paragraphs 16 to 23 of the Statement of Objections contain the material part of the defence of the Respondents which are as follows:

(i) It is clear that the Petitioner herein had to install SRTPV plant as per the Guidelines framed by the Respondent Company. As per the SRTPV Guidelines, the maximum timeframe fixed for commissioning of SRTPV plants on the existing building was 180 days. The said Policy of the Respondent is in public domain and is available and known to all. Copy of the SRTPV Guidelines is produced herewith as Annexure-R1. Therefore, there is no unilateral reduction in time period by this Hon'ble Commission while approving the PPA dated 09.02.2016. In spite of the Petitioner having knowledge about the same, the

Petitioner herein has failed to commission the plant within the stipulated timeframe.

- (ii) In view of the non-commissioning of the Plant within the stipulated timeframe, the Respondent herein vide Official Memorandum dated 09.08.2016 has rightly terminated the Petitioner's PPA dated 09.02.2016 and same has been affirmed by the Hon'ble High Court in WP No.41854 of 2016 and WA No.4719 of 2017. Such being the case, the Petitioner herein cannot once again question the validity of Official Memorandum dated 09.08.2016 terminating the PPA before this Hon'ble Commission.*
- (iii) As contended by Respondent that this this Hon'ble Commission vide Generic Tariff Order dated 02.05.2016 has clearly stated that all SRTPV plants whose PPA's have been executed as per the tariff order dated 10.10.2013 and whose plants have been commissioned within 180 days, would be eligible for the tariff mentioned in their PPA's. In the present case, the Petitioner has failed to commission its plants within the stipulated timeframe, i.e., 180 days from execution of PPA. Therefore, the Petitioner is not entitled to tariff of Rs.9.56 per unit as per the Generic Tariff Order dated 10.10.2013.*
- (iv) The contention that the Petitioner has executed two PPAs dated 19.01.2016 and 09.02.2016 in respect of its SRTPV plant having RR No. R1S1P318 is a false statement and hereby denied. It is submitted that Respondent herein can execute contract for purchase of power only in a manner approved by this Hon'ble Commission and same is mandated in Section 17 of KER Act, 1999 and Section 86 (1) (b) of the Electricity Act, 2003. It is submitted that this Hon'ble Commission vide order*

dated 16.09.2014 has approved the Standard PPA format for SRTPV plants. Copy of order dated 16.09.2014 is produced herewith as Annexure-R2. However, PPA dated 19.01.2016 is not in the format approved by this Hon'ble Commission and also not approved by this Hon'ble Commission. Therefore, it is submitted that the PPA dated 19.01.2016 is not a valid contract and no reliance can be placed on the same.

(v) Section 86 (1) (b) of the Electricity Act, 2003 empowers the State Commission to regulate the power procurement process of the distribution licensee. The Hon'ble High Court in writ petition bearing WP No.41854 of 2016 filed by the Petitioner against the Respondent, has clearly held that Section 86 (1) (b) empowers this Hon'ble Commission to regulate the timeframe fixed for a power projects to be commissioned as the same will have a bearing on the tariff payable. Therefore, contention of the Petitioner that this Hon'ble Commission by directing the Petitioner to commission by 08.08.2016 (180 days from execution of the PPA) has acted against the promise made in PPA dated 19.01.2016, which provided one-year time to commission the plant is wholly misconceived and bereft of merits.

(vi) The Petitioner has alleged that the Respondent herein has not issued approval despite it making several requests and the same has led to delay in commissioning of the plant. It is to be noted that the Petitioner herein had to execute the project by following the procedure contemplated under SRTPV guidelines. As per the SRTPV Guidelines, the Respondent herein was to issue the approval letter for installation only after the submission of Format-5 providing technical details of invertors and modules installed and technical feasibility report.

However, the Petitioner has not submitted the Format-5 till date. Hence, there is no delay on the part of the Respondent in issuing approval letter for installation. It is submitted that the Petitioner's inability to adhere to the timeframe is due to the Petitioner's laxity and negligence and delay cannot be attributed to the Respondents herein.

(vii) In respect to the Petitioner's prayer for extension of time for commissioning, it is submitted that the Petitioner has not provided any cogent reasons as to why the Petitioner is eligible for any extension of time. It is submitted that this Hon'ble Commission in its letter dated 06.05.2016 has clearly stated that no extension shall be granted for commissioning of the plant in respect to PPAs which were entered prior to 02.05.2016. Copy of the letter dated 06.05.2016 is produced herewith as Annexure-R3. It is submitted that the Petitioner's prayer for extension goes against the dictum of this Hon'ble Commission in various SRTPV cases, wherein this Hon'ble Commission has explicitly held that no extension of time shall be granted for commissioning of the project beyond the stipulated time frame. Thus, the Petitioner's request for extension is without any basis and hence deserves rejection.

(viii) In case the Petitioner intends to execute the project, it would have to make a fresh application for installation of SRTPV plant in view of the termination of PPA dated 09.02.2016. Further, it is submitted that the Petitioner would be eligible for a tariff prevailing at the time of commissioning of the plant. This has been communicated to the petitioner as well vide letter dated 27.03.2019."

c) For the above reasons, the Respondents have prayed for dismissal of the petition.

5. The Petitioner has filed the rejoinder denying the correctness of the defence taken by the Respondents. In the rejoinder, the Petitioner has admitted the existence of a shed which had the electricity connection with RR No. R1S1P318 and further for the first time stated that he intended to construct nine such additional sheds for installing the SRTPV System of 990 kWp as undertaken. Therefore, according to the Petitioner, he should have been given one-year time for completion of the SRTPV System. The other averments in the rejoinder are repetition of the facts already stated in the petition.

6. We have heard the learned counsel for the parties and perused the pleadings and records.

7. From the rival contentions, the following Issues arise for our consideration:

Issue No.1: Whether the Petitioner is barred from rising the issue of invalidity of termination of PPA dated 09.02.2016 vide OM dated 09.08.2016 issued by the 2nd Respondent again in the present proceedings, in view of the decisions in WP No.41854 of 2016 and in WA No.4719 of 2017?

Issue No.2: Whether in the facts and circumstances of the case, can the Petitioner be granted a tariff of Rs.5.67 per unit as per the order dated 07.11.2017 for establishing the SRTPV System of 990 kWp by granting 180 days' period for completion of the SRTPV System?

Issue No.3: What Order?

8. After considering the submission of parties and material records, our findings on the above Issues are as follows;

9. Issue No.1: Whether the Petitioner is barred from rising the issue of invalidity of termination of PPA dated 09.02.2016 vide OM dated 09.08.2016 issued by the 2nd Respondent again in the present proceedings, in view of the decisions in WP No.41854 of 2016 and in WA No.4719 of 2017?

a) The Petitioner has filed WP No.41854 of 2016 challenging the validity of the OM dated 09.08.2016 issued by the 2nd Respondent herein terminating the PPA dated 09.02.2016, among other reliefs prayed in the said Writ Petition. However, the Hon'ble High Court of Karnataka vide Order dated 17.07.2017 dismissed the Writ Petition. The reasons for dismissing the Writ Petition are stated in Paragraphs 11 & 12 of the said order, which are as follows:

“11. Having heard the learned counsels for the parties, this Court is satisfied that there is no merit in the present writ petition and the power of the respondent Electricity Regulatory Commission to regulate the said power purchase agreements including the aspects relating to time given for completion of such projects cannot be questioned. Section 86 (1) (b) of the Act clearly empowers them to do so. The directions of this Court in the order dated 09.11.2016 obviously could not enure to the benefit of the petitioner, as the respondents approached the Division Bench of this Court which was pleased to set aside the said interim direction. Therefore, the said direction could not be construed as extending the time period for the petitioner to complete the said project. Be that as it may, the petitioner

apparently was unable to complete the said project even up to 18.01.2017, what to talk of completion before curtailed period up to 08.08.2016. The reason assigned by the petitioner that the work order in Format-6 was not given by the respondents to them, cannot be a reason to further extend the time for completion of such project.

12. The need to observe the time line and the period within which such project has to be completed to secure the benefit of an agreed tariff from the Distribution Companies, who have agreed to purchase such Solar Energy from the projects like that of the petitioner, cannot be over emphasized. The impugned action of the respondents therefore cannot be successfully assailed by the petitioner and Writ Petition therefore is liable to be dismissed and same is accordingly dismissed. No costs."

b) The Petitioner had contended in the said Writ Petition that the time stipulated by this Commission up to 08.08.2016 for completion of the SRTPV System, was not valid and that the termination of PPA dated 09.02.2016 by the 2nd Respondent vide OM dated 09.08.2016 is void and illegal. Both these contentions are rejected and ultimately the Writ Petition was dismissed. Therefore, we are of the opinion that the Petitioner is not entitled to raise the same question again in the present proceedings. It may be noted that the Petitioner had preferred Writ Appeal No.4719 of 2017 against the order dismissing the Writ Petition No.41854 of 2016. That Writ Appeal was also dismissed. The SLP filed by the Petitioner against the order in the said Writ Appeal was also dismissed. In these orders, there is no observation or any direction to this

Commission to re-consider the validity of termination of PPA vide OM dated 09.08.2016 issued by the 2nd Respondent.

c) Therefore, we hold Issue No.1 in affirmative.

10.Issue No.2: Whether in the facts and circumstances of the case, can the Petitioner be granted a tariff of Rs.5.67 per unit as per the order dated 07.11.2017 for establishing the SRTPV System of 990 kWp by granting 180 days' period for completion of the SRTPV System?

a) The relevant operative portion of the KERC Tariff Order dated 07.11.2017 pertaining to SRTPV plant violating the norms specified for implementation of the SRTPV plants required for the purpose of this case reads 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) On the perusal of relevant records available on file, it is observed that the Petitioner has not yet started the implementation of the SRTPV System. As noted above, the benefit of the KERC Tariff Order dated 07.11.2017 can be extended provided the SRTPV System was commissioned on before 31.12.2017. There are no specific directions in the final orders passed in

Writ Petition No.41854 of 2016 and in Writ Appeal No.4719 of 2017, for extending the benefit of the order dated 07.11.2017 to the Petitioner by providing a certain period for completion of the SRTPV System.

c) In the final order passed in Writ Appeal No.4719 of 2017 in Paragraph 8, it is observed as follows:

"8. However, as prayed for it is clarified that petitioner shall be at liberty to approach Respondent No.4 or any other Power Supply Company to sell power to be produced by him on such mutually agreeable terms.

This appeal is accordingly disposed of.

In view of disposal of the Appeal, I.A. No.1/2017 does not survive for consideration and it is disposed of."

d) Pursuant to it, the Petitioner made the application before the Respondents and finally, the 2nd Respondent issued the reply dated 14.08.2019 (Annexure-AG) stating that the Petitioner can establish the SRTPV System as per the KERC directives and the prevailing rate of tariff. The Petitioner requested for allowing the tariff of Rs.5.67 per unit and to permit establishing the SRTPV System of 990 kWp capacity and to grant 180 days' time for completing the SRTPV System from the date of this order. It is noted that as per KERC Tariff Order dated 01.08.2019 in respect of Solar Roof-Top Photo-Voltaic Projects of 1 kW to 2000 kW, the tariff of Rs.3.07 per unit is fixed where subsidy was not availed by the applicant. Therefore, we are of the considered opinion that the petitioner cannot be allowed tariff of Rs.5.67 per unit for establishing the SRTPV System as requested by him.

e) The Petitioner had contended that he has spent a sum of Rs.90 lakhs for construction of the nine more sheds with intent to laying panels on the roofs of the said sheds. He has produced the photographs at Annexure-AH. Therefore, the Petitioner urged that he would be put to heavy loss and he has no other option but to complete the SRTPV System. In this regard, the Petitioner had relied upon Circular dated 10.12.2015 issued by the Government of Karnataka (Annexure-B). This Circular enables a person constructing a new building to apply for obtaining the consent of the concerned ESCOM for establishing the SRTPV System on the Roof-Top of the new building to be constructed, while applying for a new electricity connection to such building. This Circular does not suggest that for the purpose of installing a SRTPV System, a new building is to be constructed. Therefore, any amount spent by a person for construction of a new building cannot be considered as part of the expenses for installing the SRTPV System. Therefore, the Petitioner cannot claim that the amount spent by him for constructing the sheds are to be recovered from the tariff payable to the energy injected into the grid from the SRTPV System. Therefore, the claim of the Petitioner that he would be put to heavy loss and he has no other option but to complete the SRTPV System has no basis. Admittedly, the Petitioner has not yet spent any amount towards establishing the SRTPV System.

f) The Petitioner has contended that he was entitled to one-year period from the execution of PPA dated 19.01.2016 (Annexure-E), on the ground that he was intending to install the SRTPV System on the Roof-Top of the building to be newly constructed. It may be noted that the existence of the PPA dated 19.01.2016 (Annexure-E) was brought to light only while filing the Writ Petition No.41854 of 2016. Earlier to it, in any of the communications either to Respondents or to this Commission, the Petitioner had not disclosed the existence of this PPA. In the earlier communications, the Petitioner had referred only to PPA dated 09.02.2016 (Annexure-F), while requesting for extension of time beyond 08.08.2016 as specified in the letter dated 12.05.2016 (Annexure-G) issued by this Commission. The Petitioner had not specifically disclosed in his petition that he was intending to install the SRTPV System on the Roof-Top of the building to be constructed. Only in the rejoinder for the first time, the Petitioner has disclosed that he was intending to construct nine more sheds similar to the one already existing. Therefore, the Petitioner cannot blame any other person for not granting one-year time for installing the SRTPV System.

g) For the above reasons, we hold Issue No.2 in negative.

11.Issue No.3: What Order?

a) Considering the facts of the case as a whole, we think it is a fit case to allow the Petitioner to install the SRTPV System of 990 kWp capacity on the roof tops of the existing shed and newly constructed sheds as originally

applied by him. As per the present Regulations, the Petitioner cannot be allowed to construct the SRTPV System not more than the sanctioned load obtained by him. As per the application of the Petitioner dated 12.01.2016 (Annexure-D), the sanctioned load of the existing shed with RR No.R1S1P318 for the present is 16 kWp capacity. Therefore, if the present Regulation is applied, the Petitioner cannot be allowed to install the SRTPV System of more than 16 kWp capacity.

- b) The Petitioner must have spent a huge amount for construction of the new sheds. He claims that he spent about Rs.90 lakhs for construction of the sheds by spending his own funds and borrowing a considerable portion from friends and relatives.
- c) Therefore, we are of the considered view that this case is to be treated as an exceptional case and the Petitioner should be allowed to install the SRTPV System of 990 kWp capacity on the Roof-Tops of the existing shed and the newly constructed sheds with the prevailing tariff of Rs.3.07 per unit for the net-energy injected into the grid.
- d) For the foregoing reasons, we pass the following:

ORDER

- a) The reliefs as prayed in the present petition are rejected;
- b) The Petitioner is at liberty to establish SRTPV System of 990 kWp capacity on the Roof-Tops of the existing shed and the newly constructed sheds by entering into a fresh PPA with

the 2nd Respondent and he shall be allowed six months' time (180 days) to complete the SRTPV System from the date of approval of the PPA. He shall be paid tariff of Rs.3.07 per unit as per the KERC Generic Tariff Order dated 01.08.2019 read with Generic Tariff dated 22.05.2020.

- c) The 2nd Respondent shall enter into a fresh PPA in term of the above order with other usual terms and conditions as per the approved format of the PPA with the Petitioner, in the event of the Petitioner approaching to execute the PPA.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member