

No. N/73/19

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

Dated: 14.01.2020

Present:

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

OP No.25/2019

BETWEEN:

M/s. Emmvee Solar Systems Private Limited,
No.55, 6th Main, 11th Cross,
Lakshmaiah Block,
Ganganagar,
Bengaluru-560 032.
Represented by its authorized signatory
Mr. Mahabaleshwar Bhat.

... **PETITIONER**

(Represented by Smt. Poonam Patil, Advocate)

AND

Bangalore Electricity Supply Company Ltd,
K.R.Circle, Bengaluru- 560 001.
Represented by its Managing Director

... **RESPONDENT**

(Represented by M/s Just Law, Advocates)

ORDER

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 plant as per the approval granted by the Commission dated 13.04.2016 vide Annexure C;

b) consequently hold and declare that the Petitioner is entitled to a tariff of Rs.9.56 per unit as per the terms of the PPA dated 27.02.2016;
and

c) grant such other and further reliefs as this Commission deems fit.

2. The facts stated in the petition are as follows:

a) The Petitioner is a Company registered under the Companies Act, 1956. The Petitioner has installed a Solar Roof Top Photovoltaic (SRTPV) power plant of 1000 kW on the roof top of the premises belonging to Emmvee Solar Systems Private Limited, located at No.66-70/3, Pemmanahalli village, Somapura Hobli, Dabaspeta, Nelamangala, Bengaluru-562 111.

- b) The Petitioner filed an online application dated 09.02.2016 before the Respondent, for installation of 1000 kW SRTPV installation at the above premises. A Power Purchase Agreement (PPA) was signed between the parties on 27.02.2016 for sale of power on net metering basis at the tariff of Rs.9.56 per unit. The PPA was approved by the Commission on 13.04.2016 with a condition that the plant had to be commissioned within 27.02.2017.
- c) The Petitioner set up the plant within the time stipulated by the Commission by availing financial assistance from Indian Renewable Energy Development Agency Limited (IREDA). A copy of the loan sanction letter dated 13.10.2016 is produced as Annexure-D.
- d) The Petitioner submitted the Work Completion Report to the Respondent on 19.12.2016 within the time frame stipulated and requested for synchronizing the plant with the Grid (Annexure E). (We note here that the letter at Annexure-E is dated 12.12.2016/19.01.2017 and not 19.12.2016). The Respondent replied on 21.01.2017 that the petitioner would be entitled to a tariff of Rs.5.20 per unit as there was delay in completion of the plant. The plant was commissioned on 22.02.2017.

- e) As The financial assistance granted to the Petitioner was based on the agreed tariff and any change in the same would seriously affect the economic viability of the plant, the Petitioner addressed letter dated 14.03.2017 to the Respondent requesting to retain the tariff of Rs.9.56 per unit, but to no avail.
- f) The Petitioner approached the Hon'ble High Court of Karnataka challenging the illegal action of the Respondent by filing Writ Petition No.33512/2017. The Petitioner was permitted to withdraw the WP vide order dated 26.02.2019.
- g) Alleging that the action of respondent is arbitrary, this petition is filed.

3. The grounds urged by the Petitioner are:

- a) The Petitioner proceeded with setting up of the project based on the approval granted by this Commission vide letter 13.04.2016 and completed the project on 22.02.2017 within the time stipulated by the Commission i.e., before 27.02.2017. In the absence of any challenge to the approval of PPA by the Commission vide letter dated 13.04.2016, the action of denying and taking away the rights

accrued to the Petitioner under the PPA is arbitrary, capricious and illegal.

- b) The Respondent has allegedly reduced the tariff applicable to the Petitioner based on the Generic Tariff Order dated 02.05.2016 passed by the Commission. The said tariff order is not applicable to the Petitioner, as the PPA was signed before 02.05.2016 and the plant was commissioned within the time stipulated.
- c) In the communication dated 21.01.2017 vide Annexure-F, the Respondent has referred to an order dated 20.10.2016 passed by this Commission according to which the time to complete the SRTPV project allegedly is fixed as six months and further asserts that as the Petitioner did not commission within six months, the reduced tariff of Rs.5.20 per unit as against Rs.9.56 per unit fixed under the PPA would apply.
- d) The approval of the PPA vide letter dated 13.04.2016 by the Commission being prior to the order dated 02.05.2016 and the circular and admittedly the Petitioner having not been informed about any change of time to complete the project or change in

tariff till the plant was completed, the said order and circular are not binding on the Petitioner. The order or circular cannot be made applicable retrospectively.

e) Till the time of completion of the project, the Respondent or their officers never indicated to the Petitioner about either change in time period to complete the project or the reduction of tariff. Therefore, the action of the Respondent is against the principles of 'Legitimate Expectation' by virtue of which the Petitioner has altered its position and the Respondent cannot deny or take away the rights accrued in favour of the petitioner. As the Petitioner had made huge investment and as the Plant was fully ready, it went ahead and commissioned the plant by acknowledging the reduced tariff of Rs.5.20 per unit under protest and subject to the outcome of the challenge made to such unilateral reduction of tariff.

4. After issuance of Notice, the Respondent has entered appearance through its Counsel and filed Objections contending that:

- a) The time prescribed for commissioning of a SRTPV Plant on an existing building is 180 days and by inadvertence, the Commission had communicated that the Petitioner is required to commission the plant within one year from the date of execution of the PPA. The Respondent had brought to the notice of the Commission the error of granting 12 months for commissioning of SRTPV plants, vide letter dated 15.06.2016 (Annexure R-1).
- b) The Commission had issued such letters granting 1 year instead of 6 months to several generators. When the error was brought to the Commission's notice, the Commission issued show cause notice to several generators asking them to show-cause as to why the time allowed for commissioning of the plant should not be revised to 6 months instead of 12 months granted earlier. In those cases, on consideration of the replies of each of the generators, the Commission clarified vide Order No.KERC/S/F.31/Vol.373/16-17 dated 20.10.2016 that the time allowed for commissioning of SRTPV plant on an existing building was 180 days. Insofar as the Petitioner is concerned, by inadvertence, no Show-Cause Notice was issued and no reply elicited.

- c) In RP No.18 of 2017 (H.M. Ramachandra Vs. BESCO) and R.P. No.19 of 2017 (Jaimala Vs. BESCO), the Commission has held that the time frame for setting up a SRTPV plant on an existing building is 180 days and not one year.
- d) On 14.12.2016, the Respondent accorded approval to install the SRTPV plant subject to the Petitioner commissioning the plant within 180 days from the date of execution of the PPA.
- e) The Petitioner's plant was commissioned on 22.02.2017. It was made clear to the Petitioner that the tariff applicable to Petitioner's plant would be Rs.5.20 per unit as there was delay in commissioning the plant.
- f) The time frame fixed and approved by the Commission for commissioning of SRTPV plant on the roof top of an existing building is 6 months from the date of signing of PPA. Even as per guidelines of the Respondent which are produced as Annexure R-4, for SRTPV applicants having existing buildings, the time prescribed is 180 days. The said Guidelines of the Respondent is in public domain and is

available and known to all. In spite of the Petitioner having knowledge about the same, it failed to bring the same to the notice of the Commission. The petitioner is attempting to take advantage of its own wrong. It is settled law that a party ought not to be permitted to take advantage of its own wrong.

- g) As per this generic tariff order dated 02.05.2016, PPAs executed as per the tariff order dated 10.10.2013 are eligible for Rs.9.56 per unit provided the SRTPV plants are commissioned within 6 months.
- h) The Commission in its communication dated 27.09.2016 addressed to all ESCOMs directed: *"to ensure completion and commissioning of SRTPV projects on existing roof within period so as to be eligible for the tariff Rs.9.56 per unit agreed to in the PPA executed. If there is delay in commissioning of the project within six months, the consumer concerned would be eligible for the revised tariff as per Commission's Order dated 02.05.2016"* (Annexure-R5). For the SRTPV plants commissioned beyond six months, the Tariff Order dated 02.05.2016 has been made applicable.

- i) The Hon'ble High Court of Karnataka has in the Order dated 17.07.2017 in Writ Petition No.41854/2016 held that the Commission has the power to regulate PPAs relating to SRTPV projects including aspects relating to time given for completion of projects as per Section 86 (1) (b) of the Electricity Act, 2003 clearly empowers the Commission to do so. The Hon'ble High Court dismissed the Writ Petition and held that the timeframe for commissioning of SRTPV plant on an existing building is 180 days. The said order was challenged in Writ Appeal No.4719/2017 and same was dismissed by the Hon'ble High Court vide order dated 20.02.2019 (Annexure R-6).
- j) The Commission had vide letter dated 13.04.2016 granted the Petitioner time till 27.02.2017 to commission the plant subject to the Petitioner and Respondent incorporating a clause in the PPA stating that the plant had to be commissioned on or before 27.02.2017. However, this additional clause directed to be incorporated by the Commission has never been incorporated till date. Therefore, the Petitioner cannot rely on the communication dated 13.04.2016 for claiming 12 months' time for commissioning the plant when it has

failed to act on the conditional approval of the PPA given by this Commission.

k) The Petitioner has failed to commission the plant within 180 days from signing of the PPA. Therefore, the Petitioner is entitled to tariff of Rs.5.20 per unit as per Generic Tariff order dated 02.05.2016 and not Rs.9.56 per unit.

l) The respondent has prayed for dismissal of the petition.

5. The petitioner has filed Rejoinder reiterating the allegations made in the petition. The petitioner has relied on the decision of the Hon'ble Supreme Court reported in AIR 1966 SC 1631 to state that a litigant should not be made to suffer as a result of the mistake of a Court.

6. We have heard the Counsel for both sides and considered the pleadings and documents produced by the parties. The following Issues arise for consideration:

(1) Whether due to the mistake of the Commission in granting one-year time instead of 6 months to commission the SRTPV project

from the date of the PPA, the petitioner is entitled to the tariff of Rs. 9.56 per unit, as agreed in the PPA?

(2) What Order?

7. After considering the submissions made by the parties and perusing the pleadings and documents placed on record, our findings on the above issues are as follows:

8. ISSUE No.(1): Whether due to the mistake of the Commission in granting one year time instead of 6 months to commission the SRTPV project from the date of the PPA, the petitioner is entitled to the tariff of Rs.9.56 per unit, as agreed in the PPA?

a) It is not in dispute that, the Respondent launched the SRTPV Scheme on 07.11.2014 in conformity with the Solar Policy dated 22.05.2014 issued by the Government of Karnataka, to encourage Grid-connected SRTPV projects. As a part of the State Government's Solar Policy and the Scheme, the Respondent called for applications from its consumers interested in availing the 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 applicants having existing buildings, the time prescribed for commissioning of the SRTPV project is 180 days and this is not denied by the Petitioner. The Commission in the Generic Tariff 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 which would pay the consumers a tariff, for the surplus power, as determined by the Commission.

- b) The procedure prescribed in the Consumer Guidelines issued by the Respondent shows that, a person, desirous of installing a SRTPV system, has to make an application, on payment of the prescribed fee and thereafter, the Revenue verification (Format-3) and Technical Feasibility Report (Format-4) are to be obtained from the respondent. If the Technical Feasibility Report is in the affirmative,

the Approval for the installation of the SRTPV system has to be issued by the respondent, either in Format-5 (for LT consumers) or in Format-6 (for HT consumers), as the case may be. Only after issuance of the approval for installation of the SRTPV system, the applicant can proceed with the installation works. On completion of all the installation works, the Work Completion Report has to be submitted by the applicant to the Respondent, with a request for synchronisation of the plant with the grid. The SRTPV system should have to be inspected by the Chief Electrical Inspector (CEIG) before submitting the Work Completion Report. After obtaining the approval for installation of the SRTPV system from the respondent and before submitting the Work Completion Report, the PPA has to be executed.

- c) The undisputed facts of this case are: One Srinath T., Technical Director of the petitioner company, filed an online application dated 09.02.2016 expressing the intention to install SRTPV plant of 1000 kWp capacity on the roof of the existing building of the petitioner in No.66-70/3, Pemmanahalli village, Dobospet, Somapura Hobli, Nelamangala Taluk, Bengaluru Rural District. The

building had electricity supply connection bearing RR No. RNHT-202 with sanctioned load of 720 kW and contract demand of 800 KVA. The roof area available was 1,08,221 sq. meters, as mentioned in the application. The Respondent agreed to purchase the net energy generated from the SRTPV system. Accordingly, the parties entered into a PPA on 27.02.2016, with the Respondent agreeing to pay for the net metered energy at Rs.9.56 per unit, as per the Generic Tariff Order dated 10.10.2013. The Commission granted approval to the PPA on 13.04.2016, subject to the condition that, a term had to be incorporated in the PPA to the effect that the SRTPV plant should be commissioned and operated within 27.02.2017, i.e., one year from the date of execution of the PPA.

- d) It is the allegation of the petitioner that the Respondent could not have reduced the tariff to Rs.5.20 per unit at the time of synchronization of the project, when the project was completed within the period of one year stipulated by the Commission in the letter dated 13.04.2016, while approving the PPA. It is the contention of the respondent that the petitioner ought to have installed the SRTPV system on the existing roof of the building within 180 days from

the date of the PPA, as per the Consumer Guidelines for installation of SRTPV projects, to be entitled to the tariff of Rs.9.56 per unit.

- e) It is the petitioner's allegation that the action of the respondent in reducing the tariff is against the principles of 'Legitimate expectation' as the modification of the period of completion of the project to 180 days was not informed to the petitioner till the completion of the project.
- f) It is relevant to note that the petitioner filed the online application for installation of SRTPV plant on the existing roof top, being aware of the Consumer Guidelines issued by the Respondent, hosted on the Respondent's web site and available in public domain. The Guidelines prescribed the stage wise events for implementing the SRTPV projects. In the Guidelines, 180 days was the period specified for installing SRTPV project on existing roof. Therefore, when the petitioner applied for the scheme online, he had knowledge that the SRTPV system had to be installed within 180 days. The mistake by the Commission in granting one- year time could have been brought to the notice of the Commission by either parties at the earliest point of time so that the same could have been rectified.

- g) As per the norms applicable, for consumers intending to install the SRTPV plants on the existing rooftops, the time given was 180 days to commission the projects and not twelve months, as allowed to the Petitioner. The Petitioner has not refuted the fact that the SRTPV plant was to be installed on the existing roof top of the building. As per the Circular of the Government of Karnataka dated 10.12.2015, the time specified for installation of SRTPV System on the rooftop of a building under construction was one year. The consumers, who had existing rooftop for installation, were entitled to only 180 days' time for commissioning the plants. If any consumer completed the Project after 180 days, he would be entitled to the tariff of Rs.5.20 per unit determined in the Commission's Order dated 02.05.2016.
- h) 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 the SRTPV plants determined at Rs.9.56 per unit 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 but were not commissioned within the time period stipulated by the distribution licensee concerned or the Commission.

- i) The petitioner claims that the SRTPV system was ready for synchronization by December 2016 and that this aspect was communicated to the Respondent vide letter dated 19.12.2016 produced as Annexure E. We find that Annexure-E, is a letter dated 12.12.2016/19.01.2017 addressed by the petitioner to the concerned Executive Engineer, Nelamangala and received in the office of the Executive Engineer on 19.01.2017. In this letter, the petitioner has mentioned that the installation of the plant was completed within the stipulated time and that the approval of CEIG was awaited. A request was made by the petitioner for synchronization of the plant. We note that the SRTPV system cannot be synchronized without the safety approval of the CEIG. Only after the safety approval of the CEIG, the plant can be stated to be 'ready for synchronisation'. The safety

approval of CEIG should accompany the Work Completion Report. Therefore, in the absence of the safety approval of the CEIG, it cannot be accepted that the SRTPV plant was ready in December 2016.

j. In the Respondent's letter dated 14.12.2016, communicating approval for installation of the SRTPV plant by the Petitioner, it is mentioned that the approval is valid for a period of 6 months from the date of PPA and that the SRTPV system had to be commissioned within the said period, failing which the approval would be treated as cancelled. We note that this letter is issued after lapse of 6 months from the date of PPA. We also note that the petitioner claims that the project was ready in December 2016, within a few days from the date of this letter of approval issued by the respondent. As mentioned earlier, as per the Consumer Guidelines and the Official Memorandum No.BESCOM/BC-51/2015-16/CYS- 53 dated 16.12.2015 of the Respondent the 'Approval for installation' should be issued prior to the execution of the PPA. Hence, its late issuance is not acceptable.

k. It is not the case of the Petitioner that, similarly placed consumers with existing roof tops have been given 12 (twelve) months' time for commissioning their plants. It is also not the case of the petitioner that

he would have completed the project within 180 days had he known that the period of completion was 180 days. Having entered into the PPA on 27.02.2016, the petitioner took effective steps to implement the project after October 2016, after sanction of loan by IREDA. Even assuming that the Petitioner's Project was ready in all aspects on 19.01.2017, as mentioned in Annexure E, it would be beyond 6 (six) months, and during the control period of the Order dated 02.05.2016. It is also noted that before the petitioner entered into the PPA, the Commission had issued a Discussion Paper on 16.11.2015, proposing to reduce the tariff for SRPTV projects, as well as to restrict the capacity of the SRTPV system to the sanctioned load. This Discussion paper was in public domain. Knowing that the tariff would be reduced within a short period of time, the petitioner executed the PPA at Rs.9.56 per unit but did not take immediate steps to implement the project. In the Generic Tariff Order dated 02.05.2016, it is made clear that for the projects not commissioned within the time stipulated, the tariff as per the Order dated 02.05.2016 would apply.

- I. The Commission is of the considered view that it has power to revise or review its earlier approvals given to the PPA in question, for the following reasons:
- (i) The tariff for supply of electricity by generators has to be regulated by the Commission and the Commission has a duty to safeguard the interest of the consumers. The consumer who pays for the electricity would be the affected party, in case of a wrong application of tariff. Section 62 (6) of the Electricity Act, 2003 provides that a Generating Company cannot recover a price exceeding the tariff determined by the Commission;
 - (ii) The Generic Tariff Orders have been passed from time to time laying down the criteria for their applicability to solar energy projects, after following the due procedure and hearing the stakeholders and consumers in the matter;
 - (iii) The Generators and the Distribution Licensees have a duty to find out the appropriate tariff applicable to a particular Power Purchase transaction;

- (iv) In the present case, it appears, while granting the approval, the Commission had not analyzed the relevant parameters as to whether the building was under construction or whether the SRTPV plant had to be installed on an existing roof top. Hence, the Commission misdirected itself in assuming that the building was under construction and granted one year's time for commissioning of the project;
- (v) The approval is in the nature of an *ex-parte* order. Hence, such approval can be reviewed at any time by the Commission, upon noticing the mistake committed in giving the approval;
- (vi) The approvals granted cannot be treated as 'orders attaining finality in an adversarial judicial proceedings' and can be re-opened for valid reasons, as the consumer would be the affected party, if higher tariff than the legally permissible tariff is allowed;
- (vii) The term regarding tariff in a PPA is governed by the statute. Any higher claim for tariff is *void* and can be ignored by the party to the PPA;

(viii) The conditions regarding the applicability of the generic Tariff Order dated 02.05.2016, are not reasonably subject to two different interpretations. The approval of the PPA granting one-year time would not have been communicated but for the erroneous assumption, which in fact, did not exist. In such circumstances, the Commission can rectify its own mistake. The payment of tariff under the PPA is a continuing liability for the term of the PPA and the Commission cannot allow the mistake to be continued.

Hence, the Commission can issue directions to the parties concerned to rectify the mistake, at any time even after communicating the approval of the PPA.

m. We need to examine whether the petitioner would suffer any financial loss due to reduction of tariff to Rs.5.20 per unit. We note that the petitioner was sanctioned a loan of Rs. 485 lakhs by IREDA on 13.10.2016 for implementing the project. It can be said that the major portion of the project cost was incurred during the period between 13.10.2016 and 19.01.2017, on which date the petitioner claims that the project was ready, as per Annexure E. By this time,

the Generic Tariff Order dated 02.05.2016 had come into effect. While determining the tariff in the Generic Tariff Orders dated 10.10.2013 and 02.05.2016, the important parameters considered for SRTPV plants are as follows:

Date of the order	Capital cost	Debt-equity ratio	Debt	Equity	Interest on debt	Debt repayment tenure	Tariff per unit
10.10.2013	Rs.900 lakhs per MW	70:30	Rs.630 lakhs per MW	Rs.270 lakhs per MW	12.50% p.a.	10 years	Rs. 9.56
02.05.2016	Rs.550 lakhs per MW	70:30	Rs.385 lakhs per MW	Rs.165 lakhs per MW	12% p.a.	12 years	Rs. 5.20

In the letter dated 13.10.2016 addressed by IREDA to the petitioner (Annexure D), it is stated that term loan of Rs.485 lakhs is sanctioned for setting up the SRTPV plant and the total project cost is Rs.693 lakhs. The term of debt repayment is 9 years and the interest rate is 10.35% p.a. Although the total project cost is slightly more than the capital cost assumed in the order dated 02.05.2016, it is far less than the capital cost assumed in the order dated 10.10.2013. The term of loan and the interest rate are lesser than the parameters

considered in the orders dated 10.10.2013 and 02.05.2016. Most of the above parameters in the petitioner's case are in great variance with the parameters considered in the tariff order dated 10.10.2013. Hence, if the petitioner is allowed a tariff of Rs.9.56 per unit, it would amount to granting a higher tariff than he would be entitled to. It can be concluded that having incurred the project cost in the control period of the Generic Tariff Order dated 02.05.2016, and the parameters considered in this order being comparable to the petitioner's project with only slight variations as mentioned above, the petitioner is entitled to the tariff fixed therein. If project specific tariff is determined for this project, it might work out to Rs.5.20 per unit or less. Although there is no prayer to fix a project specific tariff by the petitioner, we have analysed the parameters as per material available on record, to see whether the allegation of the petitioner that he has sustained financial loss, is tenable. Considering the above, we hold that the petitioner will not suffer loss due to the reduction of tariff.

- n. The Petitioner has contended that, on the principle of *legitimate expectation*, the period for completing the SRTPV plant could not

have been reduced by the Respondent, resulting in reduction of tariff and putting the petitioner in a disadvantageous position. We may consider the concept of *legitimate expectation* and the nature of relief that could be granted and the *locus standi* for invoking it, as explained in paragraph 15 of the decision reported in **(2006) 8 SCC 381** in the case of *Ram Pravesh Singh and Others –Vs- State of Bihar and others*, as follows:

“15. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term ‘established practice’ refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is

procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a 'legitimate expectation' of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above 'fairness in action' but far below 'promissory estoppel'. It may only entitle an expectant: (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide

reason given by the decision-maker, may be sufficient to negative the 'legitimate expectation'. ..."

- o. On perusal of the pleadings and the material on record, we have held that the petitioner had knowledge that the project had to be completed within 180 days as per the Consumer Guidelines issued by the Respondent for implementing the SRTPV scheme, as the petitioner had applied under the said scheme but did not take immediate steps to implement the project. The Petitioner has stated that due to the reduction in tariff, he will suffer financial loss. We have not accepted this contention also for the reasons mentioned in the preceding paragraphs. Therefore, the allegation of the petitioner that the rights accrued in its favour were taken away due to the action of the respondent, against the principles of 'legitimate expectation' is not acceptable. Hence, we hold that the petitioner is not put to any disadvantageous position due to the mistake of the Commission in granting one-year time, instead of 180 days for completing the project.
- p. It is a settled principle of law that there is no estoppel against a statute. If according to the Guidelines or the prevailing norms, the

petitioner had to be granted 180 days, the fact that the Commission earlier granted one- year time, will not estop it from revising the time.

q. In the Rejoinder and during arguments, the petitioner has relied on the judgment of the Hon'ble Supreme Court reported in *AIR 1966 SC 1631 (Jang Singh Vs. Brijlal and others)* to contend that a litigant should not suffer due to the mistake of the Commission. In the case relied, it was a decree in pre-emption suit where strict compliance of the decree would be required, failing which the suit would be deemed to be dismissed. There was an error by the Court and the clerk of the Court in mentioning the amount to be deposited by the plaintiff in the challan and the plaintiff was affected by such act. Therefore, while noting that the plaintiff was an illiterate person and the lower Court and its officers contributed to the error, the Hon'ble Supreme Court noted that though the litigant should be vigilant and take care but when he approaches the Court for assistance and the Court commits a mistake, the responsibility of the litigant does not cease, but is at least shared by the Court. The Hon'ble Supreme Court had thus held that the litigant should not suffer due to the mistake of the Court. In this case, the Commission granted

one year's time to commission the project instead of 180 days, while approving the PPA, on the administrative side. The mistake of the Commission could have been brought to its notice by either parties, immediately so that the mistake could have been corrected at that point of time itself. In some cases, on noticing the mistake in granting time, the Commission issued Show-Cause Notices to the generators and after considering their replies, has rectified the mistake. The mistake was not noticed in this case. The Respondent has relied on its letter dated 15.06.2016 to state that the mistake was brought to the notice of the Commission. This letter does not mention that the Commission had erroneously granted one year's time for commissioning of the projects on existing buildings in some cases. Therefore, the contention of the respondent that the error in specific cases was brought to the notice of the Commission in this letter cannot be accepted. It is settled law that the Commission is the sole authority to fix the tariff for sale of power by a generating company to a distribution licensee and a generating company cannot charge any higher tariff than what is determined by the Commission for sale of power to the distribution licensee. While determining the tariff, the

Commission has to safeguard the interest of the generating company and the consumers. The consumers ultimately pay for the power supplied by the distribution licensee. In reality, the consumers, who are not parties before the Commission in the disputes, are affected by the mistake of the Commission, if higher tariff is allowed to a generating company. In fact, in such cases the affected party in the dispute is the respondent which represents the consumers. Therefore, the mistake of the Commission in granting one year instated of 180 days for commissioning the plant would affects the rights of the consumers. If because of the mistake of the Commission or the parties, the tariff gets affected and the consumers' interest comes in, the Petitioner is not entitled to contend that, the mistake of the Commission misled him.

- r. We feel it appropriate to refer to the Judgment of the Hon'ble Appellate Tribunal for Electricity dated 07.05.2018 in Appeal No. 221/2016 (Savita Oil Technologies Limited Vs. KERC & others) and connected cases, wherein it is held as follows:

“12 (c) xiii).....The State Commission is empowered to correct its mistake at any time from the

date of the knowledge in the interest of justice and equity and also taking into consideration to safeguard the interest of the consumers as envisaged in the preamble of the Electricity Act, 2003."

For the above reasons, we hold that the tariff determined in the Generic Tariff Order dated 02.05.2016, is applicable to the PPA in question.

s. Thus, we answer Issue No. (1) in the negative.

9) ISSUE No.(2): *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) The Petition is dismissed.
- (b) The Petitioner is entitled to the tariff of Rs.5.20 per unit for the term of the PPA.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER