
**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 12th December, 2017

Present:

| | | |
|-------------------------------|----|----------|
| Shri M.K. Shankaralinge Gowda | .. | Chairman |
| Shri H.D. Arun Kumar | .. | Member |
| Shri D.B. Manival Raju | .. | Member |

OP No. 28/2017

BETWEEN:

Bhagyodaya Motors Pvt. Ltd.,
No.1, 74/1, Ballari Road,
Hosapete - 583 201.

..

PETITIONER

[Represented by Navayana Law Offices, Advocates]

AND:

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

..

RESPONDENT

[Represented by Shri Raghavendraachar, Advocate]

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ORDERS

- 1) The Petitioner has filed the Petition under Section 86(l)(f) of the Electricity Act, 2003 praying mainly to:
 - (a) Set-aside the letter dated 29.12.2016 issued by the Respondent; and,
 - (b) Direct the Respondent to pay the tariff of Rs.9.56 / kWh as agreed in the Power Purchase Agreement (PPA).

OP No.28/2017

2) The submissions made in the Petition by the Petitioner, in support of its prayers, may be summed up as follows:

(a) The Petitioner, which owns 4550 Sq.metres roof top area on the premises at 174/1, Opp. KOF, Sanikiapur Village , Ballari Road, Hospet Taluk , Ballari District, after submitting an application on 06.11.2015 to the Respondent requesting for installation of a 499 kWp Solar Rooftop PV (SRTPV) power plant on net metering basis, in response to a scheme announced by the Respondent, entered into a Power Purchase Agreement (PPA) on 14.12.2015 with the Respondent which had found the project technically feasible.

(b) The Respondent in its letter dated 26.04.2016 informed the Petitioner to select a reputed system installer and to furnish the technical details of all equipment proposed to be used in the SRTPV system. The Respondent by another letter (date of which is not decipherable) accorded approval for evacuation of power from the plant. Thereafter, the Respondent by its letter (in Format 6) 04.05.2016 granted approval with a validity of 180 days for installation of 499 kWp SRTPV system, though the PPA does not contemplate any such period. The Petitioner, by its letter dated 09.06.2016 ,requested the Respondent to provide the technical specifications of the transformer to be installed.

- (c) The Chief Electrical Inspector, by his letter dated 31.08.2016, accorded approval for the electrical installation of the plant. After obtaining required approvals, the Petitioner submitted Work Completion Report in Format-6A to the Respondent, by its letter dated 31.08.2016, and requested the Respondent to arrange to inspect and commission the project. However, the Respondent failed to synchronise the project with the grid, even though the lower authorities of the Respondent communicated on 19.09.2016 the completion of pre-commissioning tests.
- (d) The Respondent in its letter dated 21.12. 2016 while according provisional interconnection approval informed the Petitioner to enter into a Supplemental PPA at the revised tariff of Rs.5.67 per unit due to delay in commissioning of the project, as per the Commission's Order dated 02.05.2016. The plant was finally synchronized on 23.12.2016.
- (e) The PPA dated 14.12.2015 does not require the Petitioner to commission the project within 180 days and therefore the Petitioner having commissioned the project, in accordance with the PPA, is entitled for the tariff of Rs.9.56 per kWh, as agreed in the PPA.

OP No.28/2017

3) After issuance of notice, the Respondent entered appearance through its counsel and filed objections contending that:

(a) The Commission, in Order dated 02.05.2016, has declared that the SRTPV projects entering into PPA under the Commission's Order dated 10.10.2013 are eligible for the tariff [Rs.9.56 per unit] as per the said Order dated 10.10.2013, provided that they are commissioned within the stipulated time and those commissioned after the stipulated time are entitled only for the revised tariff as per the Order dated 02.05.2016. That Petitioner has commissioned the plant after the expiry of 180 days and, therefore, the Respondent is justified in calling upon the Petitioner to execute a fresh PPA at the applicable tariff of Rs.5.67(per unit). That the Petitioner is not entitled to the benefit of 1(one) year extension granted relying on the Circular dated 17.11.2015, in view of the Commission's Order dated 02.05.2016, as the Commission alone can determine the tariff. Here itself, we may note that no such extension of time is granted in the present case.

(b) The Petitioner submitted the Work Completion Certificate with detailed inspection only on 22.12.2016, requesting the Respondent for commissioning of the SRTPV Project. That on the same day, the Respondent had issued directions to the concerned officers to synchronize the Petitioner's Project. That, as on the date of the

OP No.28/2017

Order dated 02.05.2016 there was no synchronization of the Petitioner's plant.

- (c) As per clause 10 of the PPA, the Petitioner has not exhausted the option of mutual negotiation and has directly approached the Commission by way of a petition which is not maintainable.

- 4) We have heard the counsel for both sides and considered the respective pleadings and documents produced by the parties.

- 5) The following issues arise for consideration:
 - (1) Whether in the absence of a clause in the PPA specifying the date of commissioning of the project, such date can be specified in the guidelines relating to the SRTPV scheme of the Respondent and the Petitioner is bound by it?

 - (2) Whether the Respondent is correct in granting 180 days' time to Petitioner, for commissioning the project in Format-6 [6(i)] dated 04.05.2016 after execution of the PPA?

 - (3) Whether the Petitioner, has made out a case for its plant being eligible for the tariff agreed to in the PPA?

 - (4) What Order?

OP No.28/2017

6) 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:

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 and the Petitioner is bound by it?*

(a) The Petitioner contends that, as the date of commissioning of its plant has not been specified in the PPA, the Respondent cannot later specify it and also that 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. The Respondent, however has relied on the Commission's Order in RP Nos.18 and 19/2016 to refute the Petitioner's contention.

(b) 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 stipulated for commissioning of the Projects is 180 days, which would also be intimated to the applicants in Format 6(i). Admittedly, the Petitioner had made application for installation of a SRTPV plant under the said Scheme.

OP No.28/2017

- (c) In the Commission's Order in RP Nos.18 and 19/2016 cited by the Respondent, the relevant portion dealing with this issue reads thus:

"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 generation plant being the major component. With the advancement in technology and production efficiency, the capital cost of the 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 the SRTPV plants determined at ₹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 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 further supply to its consumers. The time stipulated for completion of the Project 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.

(j) 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."

OP No.28/2017

(d) In view of the excerpts of the above Order, which explain the rationale / justification behind the condition requiring the commissioning of any solar power plant referred to in a PPA, we do not find any merit in the Petitioner's contention that there was no requirement of commissioning of 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, even when not specifically mentioned in the PPA.

(e) Thus, we answer the Issue No. (1) in the affirmative.

8) **ISSUE No. (2):** *Whether the Respondent is correct in granting 180 days' time to Petitioner for commissioning the project in Format- 6 [6(i)] dated 04.05.2016 after execution of the PPA?*

ISSUE No.(3): *Whether the Petitioner, has made out a case for its plant being eligible for the tariff agreed to in the PPA?*

We proceed to deal with Issue Nos.(2) and (3) together, as they are interconnected.

(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 consumers interested in availing the Solar Roof Top Photo Voltaic (SRTPV) Scheme, the details of which were given on its

OP No.28/2017

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 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. As noted earlier, 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 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.

- (b) 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 much before the plant was ready for commissioning.

OP No.28/2017

(c) We note that as per the 'Consumer Guidelines' issued by the Respondent, approval for installation in Format 6(i) should have been issued before the start of installation work and prior to the execution of the PPA. If for some reason such a Format 6(i) is not issued and the installation work has progressed, thereafter the Format 6(i) cannot be issued so as to enlarge the time limit for installation. The issuance of Format 6(i) at a later date would lead to suspicion against the conduct of both parties. Admittedly, in the present case, the Petitioner's project was reported, technically feasible on 26.11.2015, prior to execution of the PPA with tariff at Rs.9.56 per unit as fixed in the Commission's Order dated 10.10.2013. We hold that the Respondent is not justified in issuing the Format 6(i) dated 04.05.2016 granting 180 days' time for commissioning of the plant much after the date of execution of the PPA, especially, by which time, the generic tariff fixed for SRTPV plants in the Commission's Order dated 10.10.2013 was revised in the Commission's Order dated 02.05.2016, considering the substantial reduction in the Capital cost of setting up SRTPV plants. Hence, the issuance of the Format 6(i) on 04.05.2016, in the present case, is irregular and not valid. The Petitioner was entitled for 180 days' time to commission the plant at best from the date of the PPA. Whenever an event/action 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

OP No.28/2017

supply of electricity by a Generating Company to a Distribution Licensee and the Commission 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.

- (d) It is the case of the Petitioner that even if the validity period for the commissioning of the SRTPV plant was 180 days as given in the Respondent's approval letter dated 04.05.2016 has expired, there cannot be any revision in the tariff agreed in the PPA when the plant is commissioned after such period. The Petitioner further contends that the plant was ready for commissioning on 19.09.2016 itself and that its request for commissioning of the plant, by its letter dated 22.12.2016 in response to the Respondent's letter dated 21.01.2016, cannot be taken as admitting to revision of the tariff. The Respondent, in its letter dated 21.12.2016, has informed the Petitioner that, due to delay in completion of the SRTPV plant, the revised tariff of Rs.5.67 per unit was applicable, as per the Commission's Order dated 02.05.2016, and hence, the Petitioner should enter into a Supplemental PPA to give effect to such revised tariff.
- (e) The Respondent has contended that the PPA was executed on 14.12.2015 and the Petitioner's plant was not commissioned within 180 days from the date of execution of the PPA. That, therefore, the Petitioner is entitled for the revised tariff, as per the Commission's Order dated 02.05.2016. The Respondent relies on the Commission's Order, in RP Nos.18 and 19 of 2019, in support of its contention.

OP No.28/2017

- (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.
- (g) The Petitioner contends that, even if the plant is 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 05.02.2016 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 up to 31.03.2018, as per paragraph-5 of the said Order, whereas, the Petitioner has entered into PPA on 26.08.2015. We note that Petitioner has failed to mention the later part of paragraph-5 of the said Order, which reads thus:

"In respect of plants for which PPAs that have been entered into prior to 1st 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 10th 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."

OP No.28/2017

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, as it is commissioned on 23.12.2016 and is not eligible for the tariff, as per the Commission's Order dated 10.10.2013 as agreed to in the PPA.

- (h) 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 not given any valid explanation or reasons for the delay. That being the case, the Petitioner cannot also claim advantage of any subsequent delay by the Respondent in taking action to get the Petitioner's plant commissioned which appears to be partly because of the dispute over the tariff applicable. We note that, in any case, consumers' 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.
- (j) We, therefore, answer Issues Nos.(2) and (3) in the negative.

OP No.28/2017

9) **ISSUE No.(4):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) The Petition is dismissed; and,
- (b) The Petitioner shall be entitled to the revised tariff of Rs.5.67 (Rupees Five and Paise Sixty Seven) only per unit on entering into a suitable Supplemental PPA with the Respondent for a term of 25 (Twenty Five) years.

Sd/-
(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER