

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

**Dated : 21<sup>st</sup> September, 2017**

**Present:**

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

**OP No. 94/2016**

**BETWEEN:**

Smt. L. Nagarathna,  
W/o D.A. Chavan,  
Aged about 51 years,  
R/at Doddabathi Village,  
Davanagere Taluk  
Davanagere District.

..

**PETITIONER**

*[Represented by Shri Nagaraja, Advocate]*

**AND:**

- 1) Bangalore Electricity Supply Company Limited,  
Corporate Office,  
K.R. Circle,  
Bengaluru – 560 001  
By its Managing Director
- 2) Shri C. Nataraja,  
General Manager (Ele),  
DSM Corporate Office,  
Bangalore Electricity Supply Company Limited,  
K.R. Circle ,  
Bengaluru – 560 001.
- 3) Shri P. Krishna Murthy,  
General Manager (Ele),  
DSM Corporate Office,  
Bangalore Electricity Supply Company Limited,  
K.R. Circle,  
Bengaluru – 560 001.

- 4) The Executive Engineer,  
O&M Division Office,  
Bangalore Electricity Supply Company Limited,  
Davanagere.
- 5) The Assistant Executive Engineer,  
Rural Sub Division-1,  
Bangalore Electricity Supply Company Limited,  
Davanagere.
- 6) The Assistant Engineer (Ele),  
Rural Sub Division-1,  
Bangalore Electricity Supply Company Limited,  
Davanagere.
- 7) The Section Officer,  
O&M Unit, 1<sup>st</sup> Section,  
O&M Rural Sub Division-1,  
Bangalore Electricity Supply Company Limited,  
Davanagere.

.. **RESPONDENTS***[Respondents represented by Justlaw, Advocates]*

-----

**ORDERS**

- 1) The Petitioner, has filed this Petition under section 86(1)(f) of the Electricity Act, 2003, praying for the following reliefs (stated in brief):
  - (a) To declare that the letter dated 16.11.2016 issued by the Respondent No.3 to the petitioner is null and void;
  - (b) To give statutory approval to the PPA dated 11.12.2015 executed between Petitioner and Respondent No.4;
  - (c) To appoint a Commissioner to investigate the monetary loss incurred by the Petitioner and award the amount to the Petitioner;
  - (d) To extend the time for commissioning the Plant by 18 months from the date of final disposal of this Petition.

**OP No.94/2016**

2) The brief facts necessary for the disposal of the Petition, as made out by the Petitioner, may be stated as follows:

(a) The Petitioner, a consumer of the Respondent No.1, made an application intending to set up a Solar Roof Top Photo Voltaic Plant (SRTPV Plant) of 1000 kWp on the roof of the Warehouse premises situated at Doddabathi Village, Davanagere. On 11.12.2015, the Petitioner entered into a Power Purchase Agreement (PPA) with Bangalore Electricity Supply Company Limited (BESCOM) for sale of electricity generated from its SRTPV Plant at Rs.9.56 per unit on net-metering basis. On 01.01.2016, the Commission approved the said Power Purchase Agreement (PPA) subject to furnishing of proof of the existing roof of 9700 sq. mtrs to the Commission, within 15 days.

(b) In its letter dated 16.11.2016, the 3<sup>rd</sup> Respondent had informed the Petitioner that, for PPAs of SRTPV units having a capacity of 500 kWp and above, approval of this Commission is mandatory and that an applicant can commence installation work only after approval of the PPA. However, as the Petitioner had not furnished the information sought by the Commission, the PPA dated 11.12.2015 had lapsed.

(c) It is the case of the Petitioner that, the existing roof top of the Petitioner's Warehouse is larger than the area prescribed by the Commission and that the Petitioner had submitted to the Respondents, the proof of area of the existing roof even before the

Commission's letter dated 01.01.2016. That, therefore the question of resubmitting the same to the Commission would not arise. That, the Respondents have failed to respond to the letter of the Commission, despite the Petitioner having furnished the data to them and therefore the Petitioner cannot be penalized. That, as per the website of the Respondent No.1, the time limit for installation work of SRTPV units has been extended for a period of one year from the date of the PPA and therefore, the Respondent could not have issued the letter dated 16.11.2016, as the Petitioner had time upto 11.12.2016 to commission the Plant. That, the Petitioner on 26.05.2016 had requested for extension of time to commission the Plant by paying the necessary fee, but no response was received from the Respondents. That, as per Article 9 of the PPA, the Respondents have been empowered to terminate the Agreement only after issuing a Default Notice to the Petitioner.

- 3) The first Respondent is a Distribution Licensee and the other Respondents are its functionaries at different levels. Upon issuance of Notice, the Respondents appeared through their Counsel and filed a common Statement of Objections. The contentions of the Respondents, in brief, are that,
  - (a) The communication dated 01.01.2016 of the Commission was also marked to the Petitioner and nothing prevented the Petitioner from

furnishing the information sought by the Commission within the time prescribed. Admittedly, the Petitioner has not furnished the same to the Commission and is now attempting to take advantage of her own wrong by contending that the onus was on the Respondents to furnish the information as it was readily available with them.

- (b) The Commission, in its order dated 02.05.2016, has directed that, no extension shall be granted to generators having PPAs for sale of power at Rs.9.56 per unit and hence the question of granting any extension would not arise.
- (c) The Commission approved the PPA subject to certain conditions and unless the said conditions are satisfied, the question of the PPA being approved would not arise. When there is no PPA in existence, the question of granting extension for commissioning or adhering to Article 9 of the PPA for termination of the same would not arise.
- (d) There has been no negligence or dereliction of duty on the part of the Respondents. That, the Petitioner has not suffered any monetary loss or damage. That, without obtaining the approval of the Commission to the PPA, the Petitioner has proceeded to commence work for establishment of SRTPV plant, at her own risk and the Respondents cannot be made liable to defray the cost of the same.

- (e) The Commission has not approved the PPA and the Respondents have also not issued any approval for the installation work of the SRTPV plant. That, the Petitioner has mischievously paid the amount of Rs.2000/- and also stated that the time extension has been granted for commissioning. That, in the absence of approval of the PPA, the same does not constitute a binding contract between the parties.
- (f) Based on the above, the Respondents have prayed for dismissal of the Petition.
- 4) We have heard the Counsel for both parties and perused the records.
- 5) The following issues would arise for our consideration:
- (1) Whether the PPA dated 11.12.2015 has lapsed due to non-production of proof of roof area to the Commission within the time stipulated or within a reasonable time thereafter?
- (2) Whether the Petitioner is entitled to any of the reliefs claimed?
- (3) What Order?
- 6) After considering the material placed on record, our findings on the above issues are as follows:

- 7) **ISSUE No.(1)** : *Whether PPA dated 11.12.2015 has lapsed due to non-production of proof of roof area to the Commission within the time stipulated or within a reasonable time thereafter?*
- (a) Admittedly, the parties entered into a PPA dated 11.12.2015 for sale of power from the SRTPV Plant, to be installed on the existing roof top of the premises of the Petitioner pursuant to an application made by the Petitioner and that the Respondent No.1 sought approval of the Commission for such PPA. The Commission, vide letter dated 01.01.2016, to the Respondent No.1, conveyed approval subject to production of proof of adequate existing roof within 15 days. Admittedly, a copy of the said letter was sent to the Petitioner by the Commission and also forwarded to the Petitioner by the second Respondent in its letter dated 16.01.2016.
- (b) It is the case of the Petitioner that, she had produced the required documents to the Respondents, even before the Commission's letter dated 01.01.2016 and the Respondents ought to have produced the same to the Commission. It is not her case, however, that she had produced the documents to the Commission within the stipulated time of fifteen (15) days or some reasonable time thereafter. It is also not her case that, pursuant to receipt of the letter dated 01.01.2016, she had immediately written to the Respondents or the Commission informing that she had produced the documents to the Respondents earlier. The Petitioner has not disputed the

fact that, the Respondents also have not produced to the Commission, the proof required to comply with the conditional approval granted.

- (c) The Respondents have produced a copy of the letter dated 02.11.2016 (ANNEXURE R-1) addressed by the Commission to Respondent No.1, the relevant portion of which reads as follows:

*"...I am directed to inform that, in respect of the PPAs entered into between BESCO and the above applicants for SRTPV projects, the Commission had communicated its approval to the PPAs vide letter dated 01.01.2016 subject to furnishing the proof of existing roof area to the Commission within 15 days. So far, the Commission has not received any document in support of the proof of existing roof area in respect of these SRTPV projects either from your office or from the PPA applicants. That for the failure to furnishing the required proof within 15 days, the approval accorded by the Commission to the PPAs has lapsed."*

- (d) Based on the above letter, the Respondent No.2 has issued the impugned letter dated 16.11.2016, informing that, the approval accorded to the PPA has lapsed and hence, the PPA is 'non-enforceable or non-exist'. We find force in the Respondents' contention that, in the absence of an approved PPA, the Respondents were not required to seek its termination by issue of a default notice under Article 9 of the PPA. The Petitioner has not denied the contention of the Respondents that no approval for installation of the SRTPV Plant was granted by the Respondents and also that no time extension for commissioning the plant was granted by the Respondents. Other than



producing a copy of print out, purportedly from the website of the Respondents, which is claimed by the Petitioner to have shown time extension of one year for commissioning the Petitioner's Plant, no verifiable documentary proof has been produced by the Petitioner to refute the contentions of the Respondents. We are therefore of the considered opinion that, when the condition imposed for grant of approval of the PPA in the case has not been complied with, either within the specified time or any reasonable time thereafter, the conditional approval granted has lapsed and is no longer valid. We also note that, while the Petitioner has contended that there was adequate existing roof top area for installation of the proposed 1000 kWp SRTPV plant, the documents produced by the Petitioner at Pages 34A, 51 and 52 of the Petition and Pages 21 & 23 of the 'Second List of Documents' filed on 28.03.2017, would show that the Petitioner planned to erect a separate steel structure for installation of the SRTPV plant.

(e) We therefore answer Issue No.(1) in the affirmative.

8) **ISSUE No.(2):** *Whether the Petitioner is entitled to any of the reliefs claimed?*

(a) The Petitioner, contending that she has taken steps to install the project, has produced the copies of the Detailed Project Report (DPR) prepared by a Consultant and also the Quotation dated 15.4.2016. The Petitioner has also produced the Estimate prepared by the Respondents for HT connection of the proposed Plant and certain photographs statedly showing the progress

of the Plant installation. However, no material is produced to show the actual investment made in the proposed Project. Mere production of Quotation/ Estimate does not imply that investment is actually made on the project. Admittedly, the Project is not commissioned till date. While determining generic tariff for the electricity generated from Renewable Energy Sources, the Commission, considers among other parameters, the capital cost which is the main component. The period during which investment is made on the project is one of the relevant factors to decide whether a Project is entitled to a particular tariff. The tariff for solar power plants is declining very sharply in recent years due to fall in the cost of panels and related equipment coupled with increase in efficiency. The Commission, therefore, has been periodically reviewing the applicable tariff. While in its Order dated 10.10.2013, the Commission had determined tariff at Rs.9.56 per unit for SRTPV Plants upto 1MW, in its subsequent Order dated 02.05.2016, the tariff determined is in the range of Rs.5.20 to Rs.7.08 per unit, depending on the capacity of the Plant.

- (b) We have observed while dealing with the Petitions filed, on disputes involving the time to be allowed for installation of SRTPV Plants, that a consumer intending to install SRTPV Plant on the existing roof could be allowed only six months' time for commissioning the Project, which was adequate and reasonable and that any delay in commissioning the Project within the specified time would disrupt the operations of the Distribution Licensee, leading to revenue loss and possible imposition of penalty for not

meeting the RPO and would also impact the consumer tariff. Delay in commissioning of the Project would also mean capital cost becoming lower than what was reckoned for tariff determination at the relevant point of time, making the developer of the Project eligible only for the tariff applicable at the time of commissioning of the Project. Accordingly, the Commission, vide letter dated 27.9.2016 (produced by the Respondents at Annexure R1) issued a direction to the Electricity Supply Companies (ESCOMs) to ensure completion and commissioning of the SRTPV Projects on the existing roofs within the reasonably allowable period of six months, so as to be eligible for the tariff agreed in the PPA in terms of the generic Tariff Order dated 10.10.2013, and also informed that, if there is any delay in commissioning of the Projects, the consumers installing them would be entitled for the revised tariff, as per the generic Tariff Order dated 02.05.2016.

- (c) We may point out that the above direction is in line with the following decision of the Commission in its generic tariff Order dated 02.05.2016:

*“The Commission, in supersession of its Order dated 10<sup>th</sup> October, 2013, decides that the norms and tariff determined in this Order shall be applicable to all new grid connected solar rooftop and small solar photovoltaic power plants, entering into Power Purchase Agreement (PPA) and commissioned on or after 2<sup>nd</sup> May, 2016 and upto 31<sup>st</sup> March, 2018.*

*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."*

- (d) Admittedly, the Petitioner has not commissioned the Plant within the stipulated time of six months, so as to be eligible for the tariff determined in the Commission's Order dated 10.10.2013. We also note that, admittedly, the Plant is not commissioned even within one year from the date of PPA. The Petitioner would be eligible for the tariff determined in the Commission's Order dated 02.05.2016, if she commissions the Project within 31<sup>st</sup> March, 2018, subject to the other terms and conditions of the said Order, provided that the tariff is not revised in the meanwhile. We therefore hold that, approval cannot be granted to the PPA dated 11.12.2015, as prayed for by the Petitioner, and that any fresh PPA entered into by the Petitioner should be in terms of the generic Tariff Order dated 02.05.2016.
- (e) We note that, the Petitioner has not produced any material to show the actual loss suffered to substantiate the claim for damages for the alleged inaction / negligence by the Respondents in not producing the required data to the Commission. As noted by us earlier, the Petitioner has not denied, with any documentary proof, the assertion of the Respondents that no approval for installation of the SRTPV Plant or extension of time for commissioning of the Plant was granted. The Petitioner's own contention

OP No.94/2016

that, extension of time for commissioning the Plant was sought from the Respondents would disprove the assertion of the Petitioner that, prompt steps had been initiated to install and commission the Plant. Thus, we are unable to accede to the Petitioner's claim for damages.

(f) Thus, we do not find any merit in the Petitioner's plea made in support of the reliefs sought. Accordingly, we answer Issue No.(2) in the negative.

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

For the foregoing reasons, we pass the following:

**ORDER**

The Petition is dismissed.

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

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

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