

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

Dated : 21st December, 2017

Present:

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

OP No. 108/2017

BETWEEN :

Sri M R C Chouhan,
439/1, Sri Sai Nivas,
12th Cross, Bhuvaneshwarinagar,
Hebbal, Kempapura,
Bengaluru- 560 024

..

PETITIONER

[Represented by Navayana Law Offices, Advocates]

O P No.109/2017

Smt. Jyothi Chouhan,
439/1, Sri Sai Nivas,
12th Cross, Bhuvaneshwarinagar,
Hebbal, Kempapura,
Bengaluru- 560 024

..

PETITIONER

[Represented by Navayana Law Offices, Advocates]

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AND:

- 1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 2) Karnataka Renewable Energy Development Limited,
39, Shanthi Gruha,
Bharat Scouts and Guides Building,
Palace Road,
Bengaluru- 560 001.
- 3) The Government of Karnataka,
Department of Energy,
Vikasa Soudha,
Bengaluru- 560 001.
Represented by:
The Additional Chief Secretary ..

COMMON RESPONDENTS

*[Respondent-1 represented by Justlaw, Advocates,
Respondent-2 represented by Sri G S Kannur, Advocate
Respondent-3 remained absent.]*

COMMON ORDER

- 1) a) These Petitions are filed under Section 62 read with Sections 64 and 86 (1) of the Electricity Act, 2003, praying for grant of extension of six months' time from the date of final Orders to be passed in these cases to commission the Solar Power Plants with the tariff of Rs.8.40 per unit as per the Power Purchase Agreements (PPAs) dated 26.06.2015 and 14.07.2015. While Respondent No.1 was the lone Respondent in the Petitions originally filed, subsequently the Petitioners were allowed to implead Respondents 2 and 3.
- b) The facts of the cases are identical and hence the Petitions are taken up together for disposal.

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- 2) The facts of the cases necessary for disposal of the Petitions may be stated as follows:
- (a) The Government of Karnataka, in furtherance of its notification bearing No.EM 21 VSC 2014 dated 22.05.2014 notifying the Solar Policy 2014-21, issued certain guidelines for development of Solar Power Projects under Farmers' Category across the State. Pursuant to this, the Petitioners approached the Karnataka Renewable Energy Development Limited (KREDL), with a request to develop Solar Power Projects of 2 MW each in Sy.Nos.27/2, 28/2, 28/8,33/2, 36/3 and 1/3 and in Sy.No.23/1 of Mussenalu Village, Honnali Taluk, Davangere District, respectively. Considering the proposal of the Petitioners, KREDL issued letters of award dated 17.03.2015 directing the Petitioners to comply with certain terms and conditions including the condition that the power plant should be completed within 18 months of signing of the PPA.
- (b) Subsequently, Power Purchase Agreements (PPAs) dated 26.06.2015 in OP No. 108/2017 and dated 14.07.2015 in OP No 109/2017 were executed between the respective Petitioners and Respondent No.1, in which the Tariff agreed was Rs.8.40 per unit or the reduced tariff, in case if there was delay in the commissioning of the Projects beyond the Scheduled Commercial Operation Date (SCOD) and if in the meantime there was a downward revision of the tariff.

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- (c) Since the Petitioners found more suitable land for execution of the Projects [with a better Plant Load Factor (PLF) and suitable evacuation infrastructure], they proposed to shift the Projects to Pavagada Taluk in Tumakuru District and purchased the land for the projects vide Sale Deeds dated 30.03.2016.
- (d) After procuring the said land, the Petitioners made representations dated 15.4.2016 to the Government of Karnataka, explaining the difficulty in executing the Projects in the original location at Honnali Taluk, Davanagere District and sought for change of location to Pavagada Taluk, Tumakuru District.
- (e) Considering the representations dated 15.04.2016 of the Petitioners and other similarly situated Project Proponents, the Government of Karnataka issued an Order dated 21.01.2017 providing for consideration of the requests for change of location and grant of six (6) months' extension of time from SCOD for commissioning of the Projects with the then prevailing tariff of Rs.6.51 per unit to such persons to whom change of location was permitted. Thereafter, Respondent No.2 (KREDL), vide letter dated 04.02.2017 informed the Petitioners, who had made a request for change of location, that though the State Government has permitted change of location of Solar Power Projects by land owning farmers with an extension of six (6) months' time at the prevalent tariff of Rs.6.51 per unit, the change of location of the Petitioners' Plants to Pavagada Taluk could not be permitted, since the total capacity of Solar Power Plants under all

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categories in Pavagada Taluk had crossed the 200 MW limit fixed by the State Government. Hence, the Petitioners were directed to change the location within fifteen days to a Taluk, where the capacity of Solar Power Plants had not exceeded 200 MW. The Petitioners tried to procure new land for change of location, but were not successful to procure suitable land within fifteen days. Hence, the Petitioners were constrained to go back to the original locations at Honnalli Taluk and start the Projects, by cutting the arecanut trees grown there. Thereafter, the Petitioners applied for necessary approvals, and the permission for conversion of land was granted by the Deputy Commissioner, Davanagere vide letters dated 20.03.2017.

- (f) The Petitioners applied for loan from Karnataka State Financial Corporation (KSFC) as acknowledged in the letter of KSFC dated 15.3.2017. The Petitioners invested around three crore rupees each for purchase of inverters and constructed 16 KMs of dedicated transmission line in Honnalli taluk.
- (g) In the meanwhile, on 19.04. 2017, KREDL issued a letter to the Petitioners stating that the restriction / cap of 200 MW per taluk imposed earlier has been relaxed in respect of solar projects of Farmers' Scheme and informed the Petitioners to apply for change of location, if so desired by them, to Pavagada Taluk with required documents. By this time the Petitioners had already invested crores of rupees at the original location and cleared areca nut plantation worth more than six crore rupees.

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- (h) The Petitioners made representations dated 11.05.2017 to the State Government, requesting for extension of time by 75 days, in addition to the six months' time already granted for commissioning of the Projects at the tariff of Rs.8.40 per unit as per the PPAs, alleging delay of 75 days by KREDL in not taking a proper and timely decision. The Government, by its letter dated 17.05.2017, directed Respondent No.2 to furnish its remarks. The KREDL replied, vide its letter dated 06.06.2017, that there was no delay or fault on its part.
- (j) Considering the requests of the Petitioners dated 10.03.2017 for extension of time, for commissioning of the Projects, Respondent No.1, by its letter dated 16.06.2017, accorded approval to the Petitioners to commission the Projects within 26.06.2017 and 13.07.2017, respectively, subject to the condition that, the tariff applicable and the liquidated damages to be paid, if any, should be subject to KERC/GoK approval. The Petitioners could not commission the Projects within such date.
- (k) Therefore, the Petitioners have prayed for allowing the Petitions.
- 3) Upon issuance of Notice, Respondent Nos.1 and 2 have appeared through their learned counsel and filed their Statements of Objections, which are similar in both cases. Respondent No.3 remained absent,

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4) The objections filed by Respondent No.1 (BESCOM) may be summarised as follows:

(a) As the Petitioners were unable to execute the Projects in a timely manner, a letter was addressed by the Petitioners to Respondent No.1 seeking extension of 6 months' time for commissioning the Projects under *force majeure* conditions.

(b) In the meanwhile, considering requests of several solar project developers for extension of scheduled commissioning date, the Government of Karnataka vide Order dated 24.11.2016 directed all the Electricity Supply Companies (ESCOMs) to constitute a three-member Committee to consider and dispose of their requests. Pursuant to the same, a Committee was constituted which, in its meeting held on 25.03.2017, considered the request of nine generators, including the Petitioners. As per the documents furnished to the Committee by the Petitioners, the various reasons assigned for the delayed execution of the Projects were:

- (i) Land Conversion:
Date of submission of application by the petitioners: 11.11.2016
Date of Conversion Order: 31.12.2016/20.3.2017
Delay in getting approval : 1 month 20 days/ 4 months 9 days.
- (ii) KPTCL Evacuation Approval:
Date of Submission of application : 07.09.2016
Date of Approval : 16.09.2016
- (iii) KERC Approval Delay: 2 months.

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- (c) The Committee, on 25.03.2017 itself, after detailed discussions and scrutiny of all the documents produced by various Solar Project Developers, accorded approval, in respect of all such Developers, for extension of SCOD upto 6 months, relying on Article 2.5 of PPA as there was a delay in issuance of the approvals by various Government entities. The said approval was subject to ratification by KERC/GoK, in respect of tariff applicable and payment of Liquidated Damages.

- (d) In the meanwhile, on 16.03.2017, this Commission addressed a letter to all the ESCOMs of the State, informing them not to allow any extension of time beyond the scheduled commissioning date to the Solar Generators, without obtaining prior opinion of the Commission. Further, vide letter 05.04.2017, the ESCOMs were directed by the Commission to advise all land owner solar developers / SPVs to approach this Commission and seek approval for the extension of time.

- (e) The Government, vide letter No. EN67 VSC 2017 dated 25.04.2017 addressed to the Commission, has stated that the extension of time of six months granted by the BESCO for commissioning of the Projects, was acceptable to it and requested this Commission to ratify the approval of extension of time granted by the BESCO.

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- (f) The Board of Directors of the BESCO (Respondent 1), in its meeting held on 11.05.2017, discussed the subject of evaluation / disposal of the requests of land owning farmers / SPVs for Extension of time for COD and ratified the extensions issued by the BESCO, subject to approval of the Commission.
- (g) On 16.06.2017, Respondent No.1 addressed a letter to the Petitioners informing about the extension of time by six months, for achieving the commercial operation.
- (h) In respect of extension of the Project duration of already awarded solar Power Projects, the Ministry of New and Renewable Energy has addressed letter dated 28.07.2017 to the Principal Secretaries (Power/ Energy), State Government which reads thus:

"Ministry had requested not to give time extension if all the obligations are fulfilled by the concerned State Government Authorities / PSUs etc in a project. However, if there are delays of any kind on the part of State Government Authorities / PSUs like land allotment, transmission / evacuation facilities, connectivity permission or force majeure, the competent authority in the State / SECI / NTPC etc. may consider providing extension of the time duration strictly as per the Contractual Agreement.

It is also to be clarified that if in a project equipment / materials have been purchased / ordered and substantial advances paid as per original completion date, and there is a delay on part of the state organizations regarding land, transmission or any such reasons, the extension of the project may be allowed".

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- (j) Therefore, Respondent No.1 has prayed that the Commission may issue appropriate directions, as deemed fit, in the present Petitions.
- 5) The Objections of Respondent No.2 (KREDL) may be summarised as follows:
- (a) The Petitioners are neither entitled to extension of time nor the tariff of Rs.8.40 per unit as the Petitioners are responsible for the delay in implementation of the Projects.
- (b) Though the change of location as per the original contract was not allowed, the Government, considering the Petitioners' request allowed change of location, subject to the tariff of Rs.6.51 per unit and maximum time extension of 6 months.
- (c) The Petitioners were aware that in Pavagada, the total Solar Power Project capacity allotment had crossed 200 MW and hence, the change of location was not permissible.
- (d) The State Government, vide letter No. EN 27 VSC 2017, Bengaluru, dated 17.04.2017, has clarified that the cap of 200 MW, mentioned in the amendment dated 12.01.2017 issued to the Solar Policy, will not be applicable to the already allotted 306 MW Projects under the land owing farmers category Scheme. The Petitioners cannot blame Respondent

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No.2 for the delay, as their requests were being considered to benefit them.

- (e) The Petitioners had filed Writ Petition Nos.41840-41841/2016 praying for a direction to the Respondents to grant permission for change in location, but later withdrew the same.
- (f) Pursuant to the Government permitting the change in location, as requested by the Petitioners, Respondent No.2 informed the Petitioners that the change of location is permitted, subject to the condition that the changed location should not have crossed the total Solar Power Project allotment of 200 MW. Since the changed location (Pavagada taluk), sought by the Petitioners, had already crossed such capacity, Respondent No.2, vide letter dated 19.04.2017, requested the Petitioners to choose a different location, to which the Petitioner did not respond.
- (g) On Respondent No.2 seeking clarification from the State Government with regard to the cap of 200 MW for the Taluk, it was clarified, vide Government letter dated 17.04.2017, that the cap of 200 MW would not be applicable to the land owing farmers and hence, the Petitioners were eligible to commence the Projects in the location sought by them at Pavagada. Pursuant to the same, Respondent No.2 informed the Petitioners by letter dated 19.04.2017, accordingly.

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- (h) The Petitioners had commenced work at the originally allotted place (Honnalli taluk). The State Government, while considering the request of the Petitioners for change of location, had made it clear that they would be entitled to Rs.6.51 per unit with an extension of 6 months' time from the date of expiry of the SCOD, as in the original PPAs. The Petitioners did not respond to the letters issued by Respondent No.1 or Respondent No.3.
- (j) The Petitioners, vide letters dated 17.05.2017 and 15.07.2017, requested Respondent No.2 for time extension of 75 days from the expiry of six months that was granted by Respondent No.3.
- (k) As held by this Commission in OP No 25/2016 compliance of time limit fixed in a Generic Tariff Order for doing a thing is mandatory.
- (l) Therefore, Respondent No.2 has prayed for dismissal of the Petitions.
- 6) We may note here that, in the Petitions, the Petitioners have prayed for extension of six months' time to commission the Projects, from the date of final Order to be passed in the Petitions. The Petitions were filed on 29.06.2017. On 06.07.2017, the Petitioners filed I.As., praying for an interim tariff of Rs.6.51 per unit, to enable them to get the loan released from KSFC. On these I.As., the Commission passed an Order, indicating the interim tariff of Rs.4.36 per unit. However, the Petitioners being not content with the tariff indicated, submitted through their counsel, that they would not press for an interim relief. Subsequently, on 21.9.2017, the Petitioners

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again made a request for an interim relief, by filing documents to show the urgency in release of loan, so as to get the imported equipment released from the Port authorities. The Commission indicated an interim tariff of Rs.4.36 per unit.

7) On considering the pleadings on record and hearing the submissions by the parties, the following issues would arise for our consideration:

- (1) Whether the Petitioners have made out a case for extension of time to commission their Projects from the date Order of this Commission?
- (2) Whether the Petitioners are entitled for the tariff of Rs.8.40 per unit, agreed in the PPAs?
- (3) Whether the grant of extension of six months' time by Respondent No.1 can be subjected to legal scrutiny by this Commission?
- (4) What Order?

8) We have heard the Counsel for the parties and perused the documents on record. Our findings on the above issues are as follows:

9) **Issue No.(1):** *Whether the Petitioners have made out a case for extension of time to commission their Projects, from the date Order of this Commission?*

Issue No.(2): *Whether the Petitioners are entitled for the tariff of Rs.8.40 per unit, agreed in the PPAs?*

Issue No.3: *Whether the grant of extension of 6 months' time by Respondent No.1 can be subjected to legal scrutiny by this Commission?*

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As issue Nos.(1) to (3) are interconnected we decide to deal with them together.

- (a) Article 2.5 of the PPA provides for 'Extension of time', which reads thus:

"2.5 Extensions of Time

2.5.1 *In the event that the SPD is prevented from performing its obligations under Clause 4.1 by the Scheduled Commissioning Date due to:*

- (a) Any BESCOM Event of Default; or*
- (b) Force Majeure Events affecting BESCOM; or*
- (c) Force Majeure Events affecting the SPD,*

2.5.2 *The Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the reasons and limits prescribed in Clause 2.5.1 and Clause 2.5.3 for a reasonable period but not less than 'day for day' basis, to permit the SPD or BESCOM through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or BESCOM, or till such time such Event of Default is rectified by BESCOM.*

2.5.3 *In case of extension occurring due to reasons specified in clause 2.5.1 (a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than 6(six) months.*

2.5.4 *In case of extension due to reasons specified in Article 2.5.1 (b) and (c), and if such Force Majeure Event continues even after a maximum period of 3(three) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 9.*

2.5.5 *If the Parties have not agreed, within 30 (thirty) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 10.*

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2.5.6 *As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement."*

(b) Article 8.3 of the PPA defines 'Force Majeure Events', which reads thus:

"8.3 Force Majeure Events:

(a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party affected by such delay or failure, including the occurrence of any of the following:

- (i) Acts of God;*
- (ii) Typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities;*
- (iii) Strikes, work stoppages, work slowdowns or other labour dispute which affects a Party's ability to perform under this Agreement;*
- (iv) Acts of war (whether declared or undeclared), invasion or civil unrest;*
- (v) Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the SPD or BESCO of any Law or any of their respective obligations under this Agreement);*
- (vi) Inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals;*
- (vii) Fire, Earthquakes, explosions, accidents, landslides;*

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- (viii) *Expropriation and/or compulsory acquisition of the Project in whole or in part;*
- (ix) *Chemical or radioactive contamination or ionizing radiation; or*
- (x) *Damage to or breakdown of transmission facilities of either Party;*

(b) The availability of the above item (a) to excuse a Party's obligations under this Agreement due to a Force Majeure Event shall be subject to the following limitations and restrictions:

- (i) *The non-performing Party gives the other Party written notice describing the particulars of the Force Majeure Event as soon as practicable after its occurrence;*
- (ii) *The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event.*
- (iii) *The non-performing Party is able to resume performance of its obligations under this Agreement, it shall give the other Party written notice to that effect;*
- (iv) *The Force Majeure Event was not caused by the non-performing Party's negligent or intentional acts, errors or omissions, or by its negligence/failure to comply with any material Law, or by any material breach or default under this Agreement;*
- (v) *In no event shall a Force Majeure Event excuse the obligations of a Party that are required to be completely performed prior to the occurrence of a Force Majeure Event."*

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(c) Article 5.1 of the PPA relating to tariff reads thus:

"5.1 Tariff Payable:

The SPD shall be entitled to receive the tariff of Rs.8.40 (Rs.Six Paise Fifty One Only) per kWh based on the KERC tariff order S/03/1 dated 10.10.2013 in respect of SPD's solar PV projects in terms of this agreement for the period between COD and the expiry date. However, subject to clause 2.5, if there is a delay in commissioning of the project beyond the Scheduled Commissioning Date and during such period there is a variation in the KERC Tariff, then the applicable Tariff for the projects shall be the lower of the following:

- (i) Rs.8.40/- per kWh*
- (ii) Varied tariff applicable as on the date of commercial operation."*

(d) From the above clauses of the PPAs, it is clear that the Petitioners are entitled to the tariff of Rs.8.40 per unit, if they commission the Plants within 18 months from the effective date or if the extension of scheduled commissioning date is granted due to delay in commissioning of the Projects by virtue of *force majeure* events specified in the PPAs.

(e) It is the case of the Petitioners that, due to the abrupt change of policy of the Government, the Petitioners were inconvenienced to decide on the location for execution of the Projects. That initially, the Government rejected the Petitioners' request for a change of location, but later permitted the change of location and due to this, the Petitioners lost valuable time in executing the Projects. That, had the Petitioners been permitted to execute the Projects in the changed location as on April,

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2016, the Petitioners would have commissioned the Projects within the stipulated time. That, however, by letter dated 24.08.2016, the Government ruled out the request for change of location. That, the Petitioners were constrained to go back to the original location, cut their valuable arecanut plantation n, apply for sanctions and approvals from the Government. That, further confusion was caused by the letter dated 19th April, 2017, wherein the change of location earlier sought was permitted for the execution of the Projects.

- (f) The Petitioners plead that, the Government Order mentioning the tariff of Rs.6.51 per unit is erroneous, because the said tariff could not be made applicable to the Petitioners, whose PPAs were signed before 01.09.2015. That, the Government wrongly interpreted the tariff Order of the Commission and without authority of jurisdiction fixed the tariff of Rs.6.51 per unit. That, on the date of the Government Order dated 21.01.2017 and KREDL's letter dated 04.02.2017, the tariff applicable for the Petitioners Projects was Rs.8.40 per unit, as agreed in the PPAs. That, since the Petitioners would have commissioned the Projects within 31st March, 2017, there was no question of any varied tariff applicable as on the date of COD. That, the Petitioners had requested for extension of time on 15.04.2017, but Respondent No.1 granted extension of time for commissioning of the Projects on 16.6.2017, granting time upto 25.6.2017/13.7.2017, respectively, which was not adequate.

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- (g) The Petitioners also contend that, the Commission's Order dated 30.7.2015, reducing the tariff of the Solar Power Projects to Rs.6.51 per unit, is not applicable to the Petitioners, as the Order is applicable to Projects which have entered into PPAs on or after 01.09.2015. That, since the Petitioners had signed PPAs on 26.06.2015/14.07.2015, the Petitioners are entitled for tariff of Rs.8.40 per unit as per the PPAs. That, the Government and Respondent No.1, considering the request of the Petitioners and accepting the factors for the delay, had granted extension of time by six months, by invoking Articles 2.5 and 8 of the PPA and clearly mentioning that all other terms and conditions shall remain unaltered. That, the Government had also requested the Commission, by its letter dated 25.04.2017, to consider approval of extension of COD given by Respondent No.1 in respect of certain Solar projects under the farmers' category. That, once the Government accepts the delay in execution of the Solar Projects under the Farmers' Scheme and directs the Commission to accept the extension of time under Section 108 of the Electricity Act, 2003, the Commission is liable to follow such directions, in the interest of public at large.
- (h) The Petitioners further contend that, the Commission's Order dated 12.04.2017, reducing the Tariff applicable to Solar projects, is also not applicable to the Petitioners, as their PPAs were signed much earlier, on 26.06.2015 and 14.07.2015.

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- (j) Respondent No. 1 pleads that, the delay was on account of *force majeure* conditions and hence, the extension of time sought by the Petitioners was granted. Respondent No.2, on the other hand, states that, the delay was attributable solely to the Petitioners and hence, the petitions are liable to be dismissed. We note that the extension of time granted by Respondent No.1 is subject to scrutiny of the Commission.
- (k) Admittedly, the Solar Policy and its guidelines, issued for allotment of Solar Power Projects to the land owning farmers, do not provide for change of the location of the Projects from the land mentioned in the applications submitted for allotment. It was also declared that, the Solar Power Projects would be entitled for the tariff determined by the Commission and that the Orders and Regulations of the Commission would take precedence over any of the conflicting provisions of the Policy.
- (l) We note that, contrary to the guidelines of the land owning farmers Solar Project Scheme, the Petitioners, without intimation to or approval of the Respondents, proceeded to change the location of their Projects. Such a decision of the Petitioners was unilateral and was not at the instance of any of the Respondents. Admittedly, only after purchasing the alternative lands at Pavagada on 30.03.2016, the Petitioners applied for change in location on 15.04.2016 and by this time, 9 to10 months had elapsed from the date of signing the PPAs. One of the reasons cited by the Petitioners to seek change of location of the Projects is that, the original location is an arecanut plantation producing good yield and that their new location

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is barren land, which could be utilised for setting up Solar Power Plants, as per the Central Government's Solar Mission guidelines. The Petitioners, who voluntarily chose to set-up Solar Power Projects in their fertile lands by successfully participating in first-come-first-served basis and thus denying other eligible farmers possibly owning lands, which were not fertile, from being allotted the solar projects, could not have reasonably expected to be permitted to change the location of their plants. Admittedly, their request was rejected by the Government on 24.08.2016. It can be seen that, the Petitioners, realising the futility of their ill-advised move, belatedly initiated steps to implement their Projects at the original locations. The Petitioners applied for Evacuation Scheme approval to KPTCL on 07.09.2016, which approved the Tentative Evacuation on 16.09.2016. Permission for conversion of land was applied for on 11.11.2016, which was granted by the Deputy Commissioner, Davangere, vide Orders dated 31.12.2016. Thus, we do not find any merit in the Petitioners' contention that, they had sought to take advantage of the Government's Order dated 21.01.2017 pertaining to change of location of Solar Projects of similarly placed land owning farmers. Not only they could not avail it because of lack of clarity on the capacity restriction on the newly selected Taluk, but they were also prevented from commissioning their Plants at the original location within the stipulated time. The Petitioners are solely responsible for the distress caused by their own indecisiveness on the location of their Plants and failure to implement the Projects by taking prompt effective steps. We may not go into the correctness of the

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Government's decision to reduce the tariff to Rs.6.51 while permitting change of location, as such option was not availed by the Petitioners.

- (m) The guidelines dated 26.08.2014, issued by the Government for implementation of the land owning farmers Solar Plant Scheme, specified that the allottee has to complete the Project within 18 months from the date of allotment, failing which, the allotment will be cancelled and the performance guarantee will be forfeited. The Letters of Award dated 17.03.2015 (Annexure P-1) of Respondent No.2 (KREDL) also specified that, the Petitioners have to complete the Plants within 18 months from the date of signing of the PPAs. The PPAs also contain similar clauses. This apart, Article 5.1 of the PPA, extracted earlier, provides for reduction of tariff as a consequence of delay in commissioning of the Solar Power Project beyond the Scheduled Commissioning Date, subject to certain terms and conditions stated therein. This is in view of the fact that, this Commission periodically determines generic tariff for supply of electricity, generated from various sources, to the Distribution Licensees (as adopted to the Petitioners' Solar power projects) based, among other parameters, mainly on the Capital Cost of the generating plant. Such a generic tariff is made available for a period normally longer than a year, called as 'Control Period', during which the generating plants get implemented and commissioned at the normative Capital Cost adopted in the Generic Tariff Order, generally after execution of a PPA with a Distribution Licensee. The PPA also has a clause, stipulating the time within which the power supply should commence, so that the Distribution Licensee can plan further

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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 in respect of megawatt scale Solar Power Plants is taken as, between 12 months to 18 months. Any delay or failure in commencement of power supply within the agreed date would disrupt the operation of the Distribution Licensees, like the Respondent, which could also result in their power procurement from alternative expensive sources, leading to higher retail tariff to the consumers or short supply leading to revenue loss to them and even to imposition of penalties for not meeting the Renewable Purchase Obligation fixed by this Commission. The Capital Cost of Solar Power Plants has been coming down very rapidly in the recent years because of advancement in the technology and the production efficiency, as well as the economies of scale in the backdrop largescale solar capacity addition across the globe. Thus, the generic tariff for megawatt scale Solar Power Plants, which was fixed at Rs.14.50 per unit in the Commission's Order dated 13.07.2010, has been successively reduced to Rs.8.40 per unit in the Commission's Order dated 10.10.2013, Rs.6.51 per unit in the Commission's Order dated 30.07.2015 and Rs.4.36 per unit in the Commission's Order dated 12.04.2017.

- (n) The Committee constituted by Respondent No.1 has approved extension of time, although there was absolutely no delay in granting conversion of the land or in granting evacuation approval and these were granted within a fairly reasonable time of 2 to 3 months from the date of

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applications. Admittedly, the Petitioners applied for land conversion and evacuation approval after more than a year from the date of signing of the PPAs. We note that, neither the Petitioners nor the Committee have explained the adverse impact, if any, of the time taken by the Commission in approval of the PPA, on project implementation. The PPA provides for 365 days for the SPD to fulfil the Conditions Precedent, which includes obtaining all necessary approvals. Admittedly, the Petitioners never sought extension of time for achieving Conditions Precedent as required under the PPA. There were no valid reasons and grounds for the Committee to grant extension of time of six months under Clause 2.5 and Article 8, as the grounds cited for such extension cannot be considered as *force majeure* events. The extension of time for commissioning the Projects has an impact on the tariff applicable to those Projects. 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 supply of electricity by a Generating Company to a Distribution Licensee and it has to regulate the electricity purchase and the procurement process of the Distribution Licensees, including the price at which electricity shall be procured from different agencies through PPAs. We also note that, the Petitioners have not commissioned their Projects even within the extended time.

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(p) The Petitioners have not produced any proof or documents to show that, they had taken prompt and timely steps to procure equipment necessary for setting up the Solar Power Plants after the rejection of their request to change the location of their Projects. Admittedly, Purchase Orders for equipment were placed only in April, 2017 after the issuance of the Commission's generic tariff Order dated 12.04.2017. We note that, the Petitioners took effective steps for implementation of the Projects, after almost two years after execution of the PPA. We are of the considered opinion that, the reasons and events cited by the Petitioners for not being able to commission their Projects do not fall under the *Force Majeure* clause in the PPA, that could have entitled the Petitioners to seek extension of the commissioning date agreed to in the PPA. It is safe to infer that, the normative Capital Cost of the Solar Plants, when the Petitioner took effective steps to procure capital equipment for its Projects, was lower than the normative cost of the Solar Plants assumed in the Generic Tariff Orders dated 10.10.2013 and 30.07.2015. Thus, the Petitioners are not entitled to the tariff, originally agreed in the PPAs, at Rs.8.40 per unit or at Rs.6.51 per unit, as per the Commission's Order dated 30.07.2015, when admittedly the Plants are yet to be commissioned.

(q) We therefore answer Issue Nos.1, 2 and 3 accordingly.

10) **Issue No.(4):** *What Order?*

For the foregoing reasons, we pass the following:

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ORDER

- (a) The Petitioners are not entitled to extension of six months' time from the date of this Order, for commissioning of the Projects at the tariff of Rs.8.40 (Rupees Eight and Paise Forty) only per unit as per the PPAs dated 26.06.2015 and 14.07.2015; and,
- (b) The Petitioners are at liberty to commission the Projects, subject to the entitlement of tariff prevalent on the date of commissioning of the Projects, as per Article 5.1 of the PPAs.

The Original of this Order be kept in OP No.108/2017 and copy, thereof, in the connected OP No.109/2017.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER