

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL No. 418 of 2023

Dated: 04.12.2025

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Ajay Talegaonkar, Technical Member**

IN THE MATTER OF:

Smt. Sharada Doddi,
W/o Dasharath Doddi,
Resident of LIC-131,
KHB Colony, Bidar,
Karnataka – 585401.

...Appellant(s)

Vs.

(1) Gulbarga Electricity Supply
Company Limited,
Corporate Office, Station Road,
Kalaburagi, Karnataka – 585102.

(2) Karnataka Electricity Regulatory Commission,
No. 16, C-1, Millers Bed Area,
Vasanthnagar, Karnataka – 560002.

...Respondent(s)

Counsel for the Appellant(s) : Mr. S. Suraj Kaushik

Counsel for the Respondent(s) : Mr. Arunav Patnaik
Ms. Bhabna Das for R-1

JUDGEMENT

PER HON'BLE MR. AJAY TALEGAONKAR, TECHNICAL MEMBER

1. The present Appeal has been filed by Smt. Sharada Doddi ("Appellant") under Section 111(1) of the Electricity Act, 2003, challenging the Impugned Order dated 21.02.2019, passed by the Karnataka Electricity Regulatory Commission (in short "KERC" or "Respondent No. 2") under Section 62 of the Electricity Act, 2003 in Original Petition No. 122/2017.

Description of the Parties

2. The Appellant is a land-owning farmer who established a project under the Solar Power Policy, 2014-2021 notified by the Government of Karnataka.

3. The Respondent No. 1, Gulbarga Electricity Supply Company Limited (in short “GESCOM” or “Respondent No. 1”), is one of the distribution licensees in the state of Karnataka.

4. The Respondent No. 2 is KERC, established under Section 82 of the Electricity Act, 2003.

Factual Matrix of the Case

5. Under Segment-1, Category-1 of the Solar Power Policy, 2014-2021 notified by the Government of Karnataka, individual farmers owning land were encouraged to establish solar power generation plants with a minimum capacity of 1 MWp and a maximum capacity of 3 MWp for the purpose of selling electricity to the Electricity Supply Companies (ESCOs) operating within the State.

6. The Appellant applied under this policy for establishment of a solar power project of 1 MW capacity. Pursuant to the Appellant’s participation under the policy, the Karnataka Renewable Energy Development Limited (KREDL), the nodal agency responsible for facilitation of renewable energy projects in the State, issued a Letter of Award (LoA) dated 16.03.2015 bearing No. REG No. 273/807 in favour of the Appellant.

7. By the said LoA, the Appellant was required to complete the formalities necessary for executing a Power Purchase Agreement (PPA) with the Respondent No. 1, within a period of 120 days.

8. A Power Purchase Agreement (PPA) dated 01.07.2015 was executed between the Appellant and Respondent No. 1, thereby formalizing the contractual arrangement for procurement of solar energy from the project to be developed by the Appellant.

9. The Effective Date as per Article 1 of the PPA was defined as the date of signing of the Agreement, i.e. 01.07.2015. The Scheduled Commissioning Date (SCD) was defined as 18 months from the Effective Date which works out to be 01.01.2017.

10. The Solar Power Plant was proposed to be established in the land bearing Sy. No. 97/3, measuring approximately 5 acres and 24 guntas, situated at Hamilapur Village, Bidar Taluk. On 17.07.2015, the Appellant applied before the Deputy Commissioner, Bidar, seeking conversion of the land for non-agricultural use under Section 109 of the Karnataka Land Reforms Act, 1964. However, the Appellant submitted a fresh application under Section 95 of the Karnataka Land Revenue Act on 08.03.2016.

11. The Appellant has submitted several correspondences with Departments of state Government and within Departments of state Government to establish delay in grant of permission for conversion of land.

12. The Appellant was finally granted land conversion by an order dated 01.09.2016. After various procedural formalities on technical aspects, on 27.05.2016, KPTCL accorded tentative evacuation approval and regular approval was granted on 20.10.2016.

13. Upon consideration of the Appellant's representations under Articles 2.5 and 8 of the PPA, GESCOM (Respondent No. 1) granted an extension of six months

for commissioning of the Project by order dated 10.03.2017. A supplemental agreement incorporating the extended timeline was executed on 18.03.2017. The Appellant's financial closure was also achieved around this period and the project loan was sanctioned in March 2017.

14. The Department of Electrical Inspectorate granted safety approval on 27.04.2017. Thereafter, by communication dated 28.04.2017, KPTCL accorded provisional interconnection approval and the Respondent No. 1 granted synchronization approval. The project was finally commissioned on 29.04.2017.

15. Commissioning occurred within the extended period but approximately four months after the original Scheduled Commissioning Date. Meanwhile, the KERC issued directions requiring solar developers to approach the Commission for approval of extensions of time granted by ESCOMs.

16. The Appellant filed O.P No. 122/2017 before KERC, seeking confirmation of the extension granted by the Respondent No. 1. By its order dated 21.02.2019, KERC dismissed the petition and held that the Appellant was not entitled to the reliefs prayed for. KERC further directed the Appellant to pay damages and held that the Appellant was entitled only to a tariff of ₹ 4.36 per unit, being the tariff applicable as per the Commission's Order dated 12.04.2017 on the actual commissioning date of 29.04.2017.

17. The Appellant, being aggrieved by the order dated 21.02.2019 in O.P No. 122/2017 passed by KERC has preferred the present Appeal. The Appellant has prayed for the following relief before us:

“a) Allow the Appeal against the impugned order dated 21.02.2019, passed by the 'Karnataka Electricity Regulatory Commission' in Original Petition No. 122/2017

- b) Call for the entire records of O.P No. 122 of 2017, in the file of the 'Karnataka Electricity Regulatory Commission' (KERC);*
- c) allow the original Petition O.P. No. 122/2017 filed on the file of the Hon'ble KERK as prayed for;*
- d) To grant cost throughout; and*
- e) To grant such other and further reliefs as this Hon'ble Tribunal deems fit to pass under the facts and circumstances of the case, in the interest of justice.”*

Submissions of the Appellant

18. The Appellant submits that she is a farmer and had been selected under the Karnataka Solar Power Policy, 2014-2021 which was formulated to encourage solar projects by farmers. Pursuant to this policy, KREDL issued a Letter of Award on 16.03.2015 directing the Appellant to execute a Power Purchase Agreement (PPA) with GESCOM for establishing a 1 MW solar project within 120 days. The PPA was executed on 01.07.2015, and based on the provisions of this PPA, the Scheduled Commercial Operation Date (SCOD) for the project was 01.01.2017. KERK's approval of the PPA was, however, issued only on 27.08.2015.

19. The project was to be located on 5 acres 24 guntas of land bearing Sy. No. 97/3, Hamilapur Village, Bidar Taluk. The said land was originally granted to the Appellant's father-in-law under the Inams Abolition Act, 1977.

20. The Appellant applied for land conversion under Section 109 of the Karnataka Land Reforms Act on 17.07.2015 in the office of Deputy Commissioner, Bidar. However, the Appellant submits that she was directed to file application under section 95 of the Karnataka Land Revenue Act once again, immediately in pursuance of which she filed another application dated 08.03.2016. The Appellant submits that there existed some confusion regarding the land among the

concerned authorities, the conversion process was getting delayed as the procedure was not clear to any of the Government Officials/Authorities of the concerned department. Meanwhile, the Appellant claims to have approached the Ministry repeatedly seeking solution/help in land conversion.

21. A meeting was convened on 04.11.2015 under the Chairmanship of the then Minister of Power for the state wherein Appellant raised her concern for which she was directed to Principal Secretary, Revenue Department, Govt. of Karnataka. In the aforesaid meeting, it was recorded that several Solar Power Developers had raised grievances regarding the non-grant of deemed conversion orders.

22. The Government issued a Circular dated 01.12.2015 mandating that process of conversion of land was to be completed within 15 days of applying. Thereafter, the Appellant submitted revised application for conversion on 08.03.2016. Justifying the time lag between the aforesaid circular and submission of revised application, the Appellant contends that the procedure generally takes at least 2 months' time for proper compliance for which there exists a checklist wherein the Appellant is required to fulfil all the criteria specified.

23. The Appellant submits that on 21.03.2016, she personally approached and submitted the request letters to Principal Secretary, Revenue Department and Principal Secretary, Industrial and Commerce, to bring it to their attention about the schedule for the commissioning of the project and about the Inami land because of which the Banks were denying her loan proposals, and requested them to speed up the land conversion process.

24. The Deputy Commissioner, Bidar acting on the application of the Appellant addressed a letter dated 28.04.2016 to the Principal Secretary, Government of Karnataka seeking permission for conversion of land under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of

Transfer Certain Lands) Act, 1978 (“PTCL Act”). Referring to the circular, the Deputy Commissioner of Bidar sent both land conversion application files by merging them together to the Ministry for further directions.

25. Appellant mentions that another proposal was submitted for conversion on 03.05.2016. It had been further stated that the Government had allowed the Appellant on 18.01.2016 to withdraw the earlier application for conversion and filing a fresh application.¹

26. On 06.05.2016, the Principal Secretary replied to the letter issued by the Deputy Commissioner, Bidar stating that the application for conversion has to be made under Section 4(2) of the PTCL Act.

27. The Appellant has referred several such correspondences within the Departments of Karnataka Government till August 2016 which ultimately culminated in approval of land conversion by order dated 01.09.2016.

28. Soon after the land conversion was approved, the Appellant claims to have approached the Banks for loan and simultaneously also started the work on the said location and signed an agreement on 25.10.2016 with M/s ADITYA GREEN ENERGY (PVT) LIMITED, a Latur (Maharashtra) based EPC Contractor. The Appellant submits that the EPC contractor had assured her of completing the project before the date of Commissioning i.e. 01.01.2017, subject to the condition of making the payment. However, the Appellant claims that as a consequence of the demonetization on 08.11.2016, the loan procedures of the Appellant came to be further delayed.

¹ Though it is not clear from the submissions of the Appellant as to which application was withdrawn but the Impugned order seems to suggest that an earlier application for sale of land was withdrawn on 18.01.2016.

29. During this period, the Appellant complied with all requirements of KPTCL for evacuation approvals, including the requisite payments. The tentative approval for evacuation scheme was granted on 27.05.2016 and regular approval was granted on 20.10.2016. The Appellant says that in response to a letter dated 14.11.2016 from KPTCL, she paid supervision charges of ₹2,08,136/- despite severe financial constraints caused by nationwide demonetization.

30. Appellant submits that an order was placed for the breaker from M/s Mysore Electrical Industries Ltd. (M/s MEI) on 07.09.2016 which came to be eventually delivered only in March 2017. Based on the aforesaid submissions, the Appellant contends that there was delay of 5 months in the delivery of the breaker.

31. The Government of Karnataka approved the drawings of the electrical installation on 16.12.2016.

32. The Appellant submits that anticipating delays, timely representations were made to GESCOM (Respondent No. 1) seeking extension of SCD vide letters dated 27.06.2016 and 18.07.2016 and Ministry of Power, Government of Karnataka. The Appellant wrote similar letters on 19.12.2016 and 30.01.2017.

33. Through an order dated 10.03.2017, the Respondent No 1 granted an extension up to 30.06.2017 considering Article 2.5 and 8 of the PPA. A Supplemental Agreement extending SCOD was also executed on 18.03.2017.

34. The Appellant submits that the loan was sanctioned in the month of March 2017.

35. Construction was completed on 17.04.2017 and KPTCL confirmed readiness for commissioning. The plant was commissioned on 29.04.2017; well within the extended SCOD of 30.06.2017. Thus, the Appellant submits that even after

extension of 6 months, the delay with respect to the original scheduled date was about 4 months.

36. The Appellant submits that in a meeting among Government officials, the Addl. Chief Secretary of the Government had observed that there were several reasons similar to that of the Appellant in commencing the project. It had been finally directed that extension orders be considered for capacity of 1 MW to 3 MW under land owning farmers category.

37. The State Government vide letter 23.06.2017 requested KERC to consider approval of extension of COD of solar power projects of capacity 1 to 3 MW under land owning farmers category.

38. The Appellant submits that despite having accorded permission for extension of time by Respondent No 1, KERC directed solar power developers to file petitions seeking approval of extension. Accordingly, O.P. No. 122/2017 was filed.

39. By the Impugned Order dated 21.02.2019 in the aforesaid petition, KERC held that the Appellant was not entitled to any of the reliefs sought for and also directed the Appellant to pay damages as provided under Articles 2.2 and 2.5.7 of the PPA for the delay in not complying with the timelines for conditions precedent. It was also held that the Appellant was entitled to a tariff of ₹ 4.36 only per unit for the term of the PPA, which was the varied tariff as applicable on the date of commissioning of the Appellant's plant fixed by the Commission by order dated 12.04.2017.

40. Being aggrieved, the Appellant has filed the present Appeal before this Tribunal.

41. Coming to the grounds of this Appeal, the Appellant submits that the delay in securing the land-use conversion orders cannot be attributed to the Appellant, as the Appellant had duly submitted the initial application on 17.07.2015, immediately upon execution of the PPA.

42. The Appellant further submits that a Progress Review Meeting was convened on 04.11.2015 under the Chairmanship of the then Hon'ble Minister of Energy wherein it was recorded that several Solar Power Developers had raised grievances regarding the non-grant of deemed conversion orders. Consequently, the Minister had directed the Principal Secretary, Revenue Department to issue appropriate guidelines. Pursuant to this direction, the Government issued a Circular dated 01.12.2015 mandating that upon payment of conversion fees, deemed conversion for lands utilized for Solar Power Projects should be granted within 15 days.

43. The Appellant submits that a fresh conversion application was filed on 08.03.2016; however, the conversion order was still not issued within the 15-day timeline prescribed under the Circular dated 01.12.2015. The Appellant submits that the delay was attributable to administrative uncertainty among government authorities regarding the appropriate statutory framework under which the conversion order ought to be processed.

44. Ultimately, the conversion order was issued only on 01.09.2016; nearly 14 months after the Appellant's initial application, and this according to the Appellant, demonstrates that the delay was entirely on account of governmental lapses and not due to any default on the part of the Appellant.

45. The Appellant relies on this Tribunal's judgment dated 14.09.2020 in *Chennamangathihalli Solar Power Project LLP vs. BESCO* (Appeal No.

351/2018), wherein identical delays in land conversion were held to constitute force majeure under Clause 8.3(vi):

“Regarding force majeure evens, Clause 8.3 of PPA, it is noted that under sub-clause (vi), it is provided that “inability despite complying with all legal requirements to obtain, renew or maintain required licenses or legal approvals” will also attribute to force majeure. In view of these provisions under the PPA, we are of the opinion that the delay in receiving various approvals / clearances by the Govt. and its instrumentalities which were beyond the control of the Appellants should also be treated as an event of force majeure under sub-clause (vi) of clause 8.3 which has directly and severely affected the execution of the solar projects. To be more specific, if the approval for land conversion is received on last day of September, 2016, it becomes extremely difficult to achieve COD on 03.01.2017 as envisaged under the PPA. Moreover, the grant of extension of the Scheduled COD was accorded by Cove. of Karnataka and in turn, by first Respondent after complying with due procedures and applying its diligence and prudence under the four corners of the PPA and not beyond.”

46. The Appellant submits that this finding stands affirmed by the Hon’ble Supreme Court in C.A. No. 3958/2020.

47. The Appellant claims that similar principles have been reiterated in *Vcarve Solar LLP vs. KERC* (Appeal No. 128/2018, 24.11.2022) and *Solantra Pvt. Ltd. vs. KERC* (Appeal No. 29/2021, 31.03.2022).

48. Accordingly, the Appellant prays that the Impugned Order be set aside; tariff of ₹8.40/kWh be restored from the commissioning date along with 9% interest; Respondent No. 1 be directed to release differential tariff with LPS and the findings on damages be set aside.

Submissions of the Respondent No. 1

49. Respondent No. 1 submits that the Appellant's 1 MW solar project was governed by a 25-year PPA dated 01.07.2015 under which the Scheduled Commissioning Date (SCD) was fixed as 31.12.2016, i.e., 18 months from the Effective Date². However, the project was commissioned only on 29.04.2017; nearly four months after the SCOD.

50. Respondent No. 1 further submits that the Appellant was not entitled to any extension of time in the present case as the delays in land conversion approval, and delivery of breakers, are attributable to the Appellant, and do not constitute a "GESCOM Event of Default" or "Force Majeure Event" as per Article 2.5.1 read with Article 8.3 of the PPA. Therefore, the KERC has rightly rejected the Appellant's entitlement to any extension of time and held it liable to pay damages under Article 2.5.7 and 2.2 of the PPA.

51. Under Article 5.1 of the PPA, any delay in commissioning mandates the application of the lower tariff prevailing on the actual commissioning date. Pursuant to the Generic Tariff Order dated 12.04.2017, projects that were not commissioned within their SCOD but achieved COD between 01.04.2017 and 31.03.2018 were entitled only to the reduced tariff of ₹4.36/unit. Since the Appellant's project achieved COD on 29.04.2017, Respondent No. 1 is bound to apply the reduced tariff.

52. Clause 18 of the Solar Policy issued by the Government of Karnataka states that "*Conversion of agricultural land for setting up solar projects: **Developers will be allowed to start project execution without waiting for formal approval on***

² We note that the Appellant has rightly claimed SCD to be 01.01.2017, but this difference of one day in the calculation of Appellant and Respondent No. 1 makes no material difference to finding later in this order.

filing application for conversion of agricultural land for setting up of solar power projects on payment of specified fees”

53. Thus, according to Respondent No. 1, as per Clause 18, the Appellant could start execution from the date of filing an application for land conversion. It is not the Appellant's case that Respondent No. 1 or any other authority insisted on land conversion approval while processing the Appellant's applications or other approvals. In fact, KERC, in the Impugned Order has found that *“Admittedly, in pursuance of such provision, the KPTCL or GESCO have not insisted on land conversion approval while processing the Petitioner's applications/ requests for various preliminary/ approvals/ clearances connected to project implementation”* [para 8(c) at page 45 of the Impugned Order]. Therefore, without prejudice, any delay in issuance of the land conversion approval could not have delayed the implementation of the project.

54. Respondent No. 1 further submits that reliance on the judgment of Chennamangathihalli Solar Power Projects LLP vs. BESCO, judgment dated 14.09.2020 in Appeal No. 351/2018 is misplaced.

55. Para 8.12 of the aforesaid judgment holds that *“It is well settled legal principle that a little difference in facts may make a lot of difference in the precedential value of a decision... Therefore, one significant factual difference can change the determination of a legal principle. Further, it is also a well settled legal principle that each case has to be considered and disposed of in the factual matrix of the said case.”* Thus, present case ought to be decided on its own distinguishing facts without being influenced by the observations in the said judgment.

56. The Respondent No. 1 contends that the Appellant initially filed an incorrect application under Section 109 of the Karnataka Land Reforms Act on 17.07.2015 instead of applying for land conversion under Section 95 of the Karnataka Land

Revenue Act. The correct application was filed only on 08.03.2016 which is solely attributable to the Appellant. The Appellant also failed to submit mandatory documents including the NOC under the (SC/ ST Prohibition of Transfer of Certain Lands) Act, 1978 (PTCL Act), thereby delaying the processing of the land conversion request. The Respondent No. 1 submits that the KERC rightly held that no delay by statutory authorities contributed to the project's late commissioning.

57. Respondent No. 1 also points out that under Clause 18 of the Karnataka Solar Policy, developers were permitted to commence project work upon filing the land conversion application and payment of requisite fees without waiting for final approval.

58. Clause 18 of the Solar Policy issued by the Government of Karnataka is as follows:

“Conversion of agricultural land for setting up solar projects: **Developers will be allowed to start project execution without waiting for formal approval on filing application for conversion of agricultural land for setting up of solar power projects on payment of specified fees**”

59. The KERC recorded that neither KPTCL nor GESCOM insisted on land conversion approval for processing preliminary project-related approvals. Moreover, land conversion approval was granted on 01.09.2016 that is four months prior to SCD; giving the Appellant adequate time to complete the project.

60. Respondent No. 1 submits that the delay in project execution was entirely due to the Appellant's own actions. The Appellant placed an order for the breaker necessary for grid connectivity only on 07.09.2016, more than fourteen months after PPA execution; the breaker was delivered only in March 2017. The Appellant's loan was also sanctioned belatedly in March 2017, preventing timely payment to the EPC contractor.

61. The Respondent No. 1 further submits that even as per the Appellant's own pleadings, although the EPC contractor was engaged on 25.10.2016 and assured timely completion, the Appellant could not make payments due to delays in loan processing, partly attributed to demonetization. The project was completed within a month after receiving the breaker and loan, which demonstrates that timely procurement and financial arrangements could have enabled commissioning by the SCD.

62. The Respondent No. 1 points out that the KERC also noted that the Appellant did not furnish details of inspection fee payments relating to breaker testing and certification and held that the time taken for breaker supply was not unreasonable given the stages involved. The KERC also observed that temporary feeder arrangements could have been sought to mitigate equipment-delivery delays.

63. Respondent No. 1 further submits that unlike in case of *Chennamangathihalli Solar Power Projects LLP vs. BESCO*, the Appellant has not produced any evidence of capital expenditure and in fact appears to have incurred substantially lower costs than the normative capital cost assumed in the applicable generic tariff orders. Therefore, the Appellant cannot claim a higher tariff intended for projects with significantly higher cost assumptions.

64. Without prejudice, Respondent No. 1 submits that even if the Appeal is allowed, the Appellant is barred from claiming interest for the period between the Impugned Order dated 21.02.2019 (date of the Impugned judgment) and 27.04.2023 (date when costs for condonation of delay were paid and hence, the present Appeal was entertained).

65. The Appeal was filed with a delay of 534 days and this Tribunal condoned the delay only upon payment of costs of ₹1,00,000 and on the express condition

that the Appellant would not seek interest for the said period. The Appellant filed an Affidavit dated 03.05.2023 confirming acceptance of this condition and the Tribunal has recorded the same vide order dated 26.05.2023 and therefore no interest can be granted for the said period.

Our Observations and Analysis

66. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondent No. 1 at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issues arise for determination in this Appeal:

Issue No. 1: Was KERC justified in not approving extension of time granted by the Respondent No. 1 by an Order dated 10.03.2017? *(If answer to this question is found to be affirmative, then there will be no doubt that KERC will be found justified in applying penalty for delay too)*

Issue No. 2: Was KERC Justified in reducing the tariff from ₹8.40/kWh to ₹4.36/kWh?

67. These issues are dealt with in the succeeding paragraphs on an issue-wise basis.

Issue No. 1: Was KERC justified in not approving extension of time granted by the Respondent No. 1 by an Order dated 10.03.2017?

68. Before proceeding with analysis of this issue, it will be worthwhile to go through the relevant articles of the PPA, which are reproduced below:

“2.5 Extension 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 GESCO Event of Default; or*
- (b) Force Majeure Events affecting GESCO; or*
- (c) Force Majeure Events affecting the SPD.*

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.*

2.5.6 *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.”*

“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)

(ii)

.....

.....

*(vi) **Inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals;** (emphasis supplied)*

.....

.....

69. In simple terms, the case of the Appellant is that delay on the part of the government instrumentality in conversion of land to non-agriculture use would fall under Article 8.3 (a) (vi) extracted above.

70. In the para 8 of the Impugned Order, the KERC has delved on this issue and concluded that answers to issue framed by it “*Whether the Petitioner has made out a case for deferment or extension of the Scheduled Commissioning Date of the Petitioner’s Plant?*”- is in the negative.

71. As may be seen from the para 8 of the Impugned Order, the sum and substance of the KERC’s findings is that the SPD herself was responsible for the delay and therefore cannot be allowed benefit under Force Majeure provision of the PPA. It is intriguing to note that the Respondent No. 1, which itself had granted extension and signed supplemental Agreement for extension of the scheduled commercial Operation date of the project by 6 months, is now taking a contrasting stand.

Our Analysis and findings on the Issue No. 1

72. We would like to go into the rationale given by the KERC for its finding in para 8 of the Impugned Order one by one.

73. KERC in the Impugned Order notes that the para 18 the Solar Policy dated 22.5.2014 specifically mentions that Developers will be allowed to start project execution without waiting for formal approval on filing application for conversion of agricultural land for setting up of solar power projects on payment of specified fees. KERC holds that the delay in land conversion cannot justify time extension because the policy and legal framework enabled deemed conversion. The KERC

notes the Solar Policy allowed developers to begin execution upon filing for conversion with payment of fees, and utilities did not hold up preliminary approvals for want of conversion, so land conversion did not block project progress in practice.

74. We note that though deemed conversion was mentioned in the policy, the same was not incorporated in the PPA, which is contractual document binding the parties. Further, the Appellant has pointed out the banks were not willing to extend loan in the absence of the land conversion. We find that the banks' expectation is reasonable, since they would seek to minimise their risk before extending any loan. We also note from the minutes of the meeting taken by the then Minister of Energy, Government of Karnataka, on 04.11.2015 that issues related to land conversion were faced by many developers. Thus, delay in land conversion was a generic issue and not specific to the Appellant.

75. In our view, the mere formulation of a policy does not by itself lead to the achievement of its objectives. The policy inter-alia included *"To implement the solar projects with a distributed generation approach, spread across taluks of the State to facilitate in off-setting the peak electricity, and stabilize the local grid of the ESCOMs"* as one of the objectives. This would have required all Departments to the State Government to work cohesively and help farmers in guiding through procedural aspects, which evidently was lacking as may be seen from aforesaid minutes of the meeting and some other documents placed on the record by the Appellant. In view of the forgoing, we do not agree with the finding of the KERC that the Appellant could have gone ahead with implementation of the project without waiting for land conversion.

76. The next finding of the KERC is the delay in conversion of land is attributable to the Appellant. The KERC notes that the SPD had applied for the conversion of land on 17.07.2015 and she claims to have been directed to file another application

and that she filed the same on 08.03.2016. KERC notes that it cannot be made out as to which authority directed her to file another application for conversion of land, for what reasons and when she was informed of this aspect. KERC also notes that before the SPD sought for conversion of agricultural land for setting up solar power project, she had sought permission for the sale of such land, but thereafter withdrew rather belatedly her request for permission for sale of land, and such withdrawal of request was accepted by the Principal Secretary to Govt., Revenue Department only on 18.01.2016. Therefore, the date of correct and complete application of the Petitioner for land conversion can be taken as 08.03.2016. In the Impugned Order, the KERC concludes that there was a delay of 8 months after executing the PPA, in making the application and such delay can be solely attributed to the SPD because of her ambiguous action of seeking both permission for sale of land and also conversion of land for non-agricultural purposes.

77. We have noted that the Appellant has not clearly admitted in the Appeal before us that she had applied for permission for sale of land and later withdrew it. Neither the Respondent No. 1 has pointed out this aspect in its submission. We are of the opinion that though the Appellant did not mention this fact clearly, but the omission is not material and does not affect the outcome. We note that there were additional complications in the case of Appellant regarding conversion of land like land being allotted under Inams Abolition Act, 1977 and confusion regarding applicability of the Karnataka Land Revenue Act or PTCL Act. However, as we have noticed that there was generic issue of land conversion in the state and not just limited to the case of Appellant; which is evident from the Minutes of the Meeting (MoM) taken by the then Minister of Energy, Government of Karnataka on 04.11.2015. We particularly note last para of aforesaid MoM reproduced below:

“That, for the establishment of Solar Power Plants/units required deemed conversion amendment has been already given, even though owing to non-availability of correct/proper information in this regard in the Deputy Commissioner’s Office

and for solving/removing these hurdles Hon'ble Minister of Energy has instructed to the Principal Secretary, Revenue Department for issuing suitable guidelines in this regard."

78. It seems that as a consequence to this meeting, the State Government issued a Circular dated 01.12.2015 mandating that process of conversion of land was to be completed within 15 days of applying. Further, as we have opined earlier, it was duty of the various Departments of the Government of Karnataka to guide the farmers in furtherance of its own policy but the uncertainty about land conversion in case of Appellant continued amongst state Government authorities even after submission of her revised application on 08.03.2016, as be noted from the letter dated 28.04.2016 (Annexure A-9 to the Appeal) and subsequent letter dated 20.06.2016 (Annexure A-12 to the Appeal) from Deputy Commissioner, Bidar to the Principal Secretary, Revenue Department.

79. It is seen that there was protracted correspondence between various departments after which the approval for land conversion was granted on 01.09.2016. We note that even after extension of 6 months was granted to the Appellant on 10.03.2017, State Government vide letter 23.06.2017 requested KERC to consider approval of extension of COD of solar power projects of capacity 1 to 3 MW under land owning farmers category. This again confirms that the issues affecting such projects were generic in nature and not specific to the Appellant. In view of the foregoing, we conclude that the initial application for sale of land and withdrawal of an application on 18.01.2016 had no material impact on the delay in approval for land conversion.

80. KERC further holds that the alleged breaker delay does not justify extension. It notes the breaker was custom-made, had to be tested and certified before dispatch, and about three months from 01.12.2016 for supply cannot be called "delay". The SPD did not explain why the purchase order was placed late or when inspection charges demanded on 01.12.2016 were paid, so vendor delay is not

proved. KERC also records that a temporary feeder option was available per Government instructions, which the SPD could have used if breaker delivery was truly holding up commissioning.

81. We tend to agree with KERC on this finding. While, the Appellant had claimed delay on 5 months on this account but KERC opined that considering the various steps involved, the period of about 3 months from 01.12.2016 for supply of breakers, cannot be termed as 'delay'. Thus, it seems that KERC's thinking is that 2 months' time was expected for this purpose and additional 3 months' time is attributable to the Appellant. We note that the Appellant was allocated 18 months to complete the project as stipulated by the PPA. However, a considerable delay occurred in the necessary grant of permission for land conversion. Despite this challenge, the Appellant successfully finished the project in approximately 8 months following the land conversion approval; consequently, we believe that the delay in procuring the breaker would not have mattered had approval for conversion of land been granted in a timely manner.

82. Finally, KERC notes that the *Force Majeure* clause in the PPA has to be strictly interpreted. No notice, as contemplated under the relevant clause of PPA, is stated to have been issued by the Appellant to the Respondent No. 1 describing the particulars of any *Force Majeure* Event, as soon as practicable, after its occurrence. Further, the reasons quoted by the SPD, do not fall under the Events of *Force Majeure* mentioned in the PPA, as held in the preceding paragraphs.

83. We agree that the Article 8.3 (b) (ii) requires written notice to be given of the Force Majeure event as soon as practicable. We do note that the Appellant's submission that anticipating delays, timely representations were made to seeking extension of SCD vide letters dated 27.06.2016 and 18.07.2016 to GESCOM (Respondent No. 1) and Ministry of Power, Government of Karnataka. The Appellant wrote similar letters on 19.12.2016 and 30.01.2017. Although the

Appellant did not expressly use the term 'Force Majeure,' the letters clearly convey events beyond her control. Being a farmer and not a corporate generator, some latitude in the use of legal terminology is appropriate, and the substance of the communication should be given effect. In our view, these letters clearly convey the expected delay in completion of the project due to delay in land conversion and suffice the purpose for which the notice of Force majeure was required to be served.

84. We also do not agree with finding of the KERC that the reasons cited by the Appellant do not fall under the Events of *Force Majeure* mentioned in the PPA. We have already concluded that land conversion would have been considered by the banks as necessary condition for sanctioning the loan. Therefore, delay in conversion of land gets covered in Article 8.3 (a) (vii) namely "*inability despite complying with all legal requirements to obtain, renew or maintain required licenses or legal approvals*". Moreover, Respondent No. 1, which is counterparty to the PPA, itself had granted extension. Even, though Respondent No. 1 should have obtained permission from KERC before granting extension of 6 month's extension, the Appellant being a farmer acted in good faith and appears to have completed the project expeditiously after approval of land conversion. The State Government itself was convinced about complex issues including land conversion and therefore requested KERC vide letter dated 23.06.2017 to grant extension of 6 months of COD to solar power projects of capacity 1 to 3 MW under land owning farmers category (*Annexure A-29 to the Appeal*). This aspect has already been covered in this Tribunal's judgment in **Chennamangathihalli Solar Power Projects LLP vs. BESCO**, Appeal No. 351/2018, dated 14.09.2020. The relevant part of the order is reproduced below:

"8.10 Regarding force majeure events, Clause 8.3 of PPA, it is noted that under sub-clause (vi), it is provided that "inability despite complying with all legal requirements to obtain, renew or maintain required licenses or legal approvals" will also attribute to force

majeure. In view of these provisions under the PPA, we are of the opinion that the delay in receiving various approvals / clearances by the Govt. and its instrumentalities which were beyond the control of the Appellants should also be treated as an event of force majeure under sub-clause (vi) of clause 8.3 which has directly and severely affected the execution of the solar projects. To be more specific, if the approval for land conversion is received on last day of September, 2016, it becomes extremely difficult to achieve COD on 03.01.2017 as envisaged under the PPA. Moreover, the JUDGMENT OF A.No.351 of 2018 Page 81 of 86 grant of extension of the Scheduled COD was accorded by Govt. of Karnataka and in turn, by first Respondent after complying with due procedures and applying its diligence and prudence under the four corners of the PPA and not beyond.”

85. The aforesaid order of the Tribunal was affirmed by the Hon'ble Supreme Court in C.A. No. 3958/2020. Respondent No. 1 contends that the present case ought to be decided on its own distinguishing facts without being influenced by the observations in the said judgment. However, we are convinced that the fundamental issue in the aforesaid judgment, like in the present case, was also the delay in land conversion.

86. **In view of the forgoing analysis on Issue No. 1, we conclude that KERC erred in disallowing the extension of 6 month's in SCD of the project granted by Respondent No. 1 to the Appellant. As a corollary, KERC was also not justified in imposing penalty on the Appellant for delay in commissioning of the project since the Appellant had commissioned the project within the extended timeline.**

Issue No. 2: Was KERC Justified in reducing the tariff from ₹8.40/kWh to ₹4.36/kWh.

87. The relevant provisions of the PPA are reproduced below:

“5.1 Tariff Payable.

The SPD shall be entitled to receive the Tariff of Rs. 8.40 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."*

88. KERC in its Impugned Order has noted that the Article 5.1 of the PPA allows tariff reduction if a solar project is commissioned late. This is because KERC periodically fixes a "generic tariff" based mainly on the prevailing capital cost of plants, applicable for a defined "Control Period." PPAs are signed on this basis, with timelines to ensure distribution companies can plan their supply. Solar plants typically need 12-18 months for completion, and delays can force distribution companies to buy costlier power, risk shortages, face financial loss, or fail to meet Renewable Purchase Obligations. Since solar capital costs have fallen sharply over the years, the Commission has steadily reduced the generic tariff from ₹14.50 per unit in 2010 to ₹3.05 per unit in 2018. KERC further notes that although the SPD argues that GESCOM granted a six-month extension for force majeure and therefore the ₹8.40/unit tariff should remain, GESCOM's extension order clearly stated that tariff would still be governed by Article 5.1 of the PPA and the Commission's orders. Since the project was commissioned on 29.04.2017, the generic tariff order dated 12.04.2017 applies, and under the PPA the applicable tariff is the one in force on the actual commissioning date when the project is delayed. KERC has relied on following two judgements to draw inference that if a project commissions after the scheduled date and tariff has changed by then, the applicable tariff is the lower of the agreed tariff and the tariff prevailing on COD, protecting consumer interest, and preventing time extensions from locking in older, higher tariffs:

(i) The Hon'ble Supreme Court's judgement in Civil Appeal No.1220 of 2015 (*Gujarat Urja Vikas Nigam Limited vs EMCO Limited and another*), and

(ii) This Tribunal's judgement in Appeal No. 221/2016 and others, dated 07.05.2018 (*Savitha Oil Technologies Ltd vs KERC & another*)

Our Analysis and findings on the Issue No. 2

89. We have no doubt about primacy of the contract. However, we are of the opinion that since provision of the contract refer to subsequent generic tariff fixation orders in case of delay, we need to have a holistic view with a harmonious interpretation of the two. In case of Tribunal's judgment in ***Chennamangathihalli Solar Power Projects LLP vs. BESCO***, Appeal No. 351/2018, dated 14.09.2020 such interpretation has already been made, which as mentioned earlier has been confirmed by Hon'ble Supreme Court as well.

90. If we carefully go through the Article 5.1 of the PPA, it emerges that the Appellant was assured of the tariff of ₹ 8.40 per kWh if the projects was to get commissioned till SCD i.e. 01.01.2017. A plain reading of this clause may suggest that since project was commissioned beyond this date in accordance with Article 5.1(ii), the tariff will have to be prevailing generic tariff as per KERC Regulation, which admittedly in this case is ₹ 4.36 per kWh. However, we will have to also keep in mind the fact that capital cost is the single most important factor affecting annual costs such as return on equity, interest on loan, depreciation etc. and hence tariff. This has been forcefully articulated by KERC in its Impugned Order as well. Therefore, a harmonious interpretation would be that if the Appellant had crystalised capital cost before 01.01.2017 in anticipation of timely availability of all the permissions, the tariff of ₹ 8.40 per kWh need to be protected.

91. In fact, in case of ***Chennamangathihalli Solar Power Projects LLP vs. BESCO***, Appeal No. 351/2018 before this Tribunal, the SPD had specifically

submitted that procurement of equipment had taken well before SCD. We quote following extracts from the Tribunals' order dated 14.09.2020 in the aforesaid appeal which record submissions of the SPD in that case:

"4.19 Following is a brief list of dates and events w.r.t to the above requirements that the Appellant had to comply with:

I.

II.

III. Procurement of Equipment

- The Agreement came to be signed after obtaining in principle approval of financial assistance from the Bankers on 29.06.2016*
- An Agreement for Sale and Purchase of Solar Modules was entered into by the Appellant with the Vendor on 09.09.2016"*

"4.33 It could be seen that the Appellant had purchased various equipment and machinery related to the plant between 01.07.2016 and 10.11.2016 immediately after signing and getting of the PPA, within the period of 18 months of signing of the PPA and....."

4.42 "..... In this regard it is humbly submitted that the Appellant has been diligent in implementing the project and has placed all the orders for solar modules, power conditioning units, mounting structures, cable and accessories etc. prior to the scheduled commissioning date (SCOD) of the project as per the PPA....."

92. However, the aspect as to when the orders for the equipment were placed and when crystallisation of capital cost took place, is not clear in the present case. The Appellant has mentioned following facts which may be relevant to the issue:

- (i) An agreement was signed on 25.10.2016 with the EPC Contractor
- (ii) the EPC contractor had assured the Appellant of completing the project before the date of Commissioning i.e. 01.01.2017, subject to the condition of making the payment.
- (iii) The Appellant's loan was also sanctioned belatedly in March 2017, preventing timely payment to the EPC contractor.
- (iv) Although the EPC contractor was engaged on 25.10.2016 and assured timely completion, the Appellant could not make payments due to delays in loan processing, partly attributed to demonetization.

93. From the above-mentioned submissions of the Appellant, it is difficult to conclude as to whether the capital cost got crystallised before SCD i.e. 01.01.2017. **We therefore consider it appropriate to remand the matter to KERC to ascertain this aspect. We make it clear that the only aim of this exercise by KERC shall be to establish if capital cost got crystallised before 01.01.2017. If that turns out to be the case, the tariff shall be fixed at ₹ 8.40 per kWh, else the tariff applicable as per actual date of commissioning will be applicable. We make it clear that if in this process, actual capital cost gets discovered, it will have no bearing on tariff as this is not intended to be an exercise for tariff determination on cost plus basis in a strict sense. The KERC will be free to call for all the necessary documents and this exercise will be done uninfluenced by previous proceedings in the matter and observations, if any of this Tribunal.**

94. We note that the Appeal was filed with a delay of 534 days and this Tribunal condoned the delay only upon payment of costs of ₹1,00,000 and on the express condition that the Appellant would not seek interest for the said period. The

Appellant had filed an Affidavit dated 03.05.2023 stating that they would not claim interest from the date of Impugned Order till present appeal was entertained, even if they finally succeed in their main Appeal.

95. Accordingly, we conclude that if proceedings in KERC lead to a tariff higher than presently allowed ₹ 4.36 per kWh, no carrying cost shall be payable between 21.02.2019 (date of the Impugned judgment) and the date when costs for condonation of delay were paid.

ORDER

For the foregoing reasons as stated above, the Appeal is allowed partially and the Impugned order to the extent of disallowing the extension granted by the Respondent No. 1 and direction on the Appellant to pay damages, is set aside.

On the issue of tariff fixation, we remand the matter to KERC in terms of para 93 of this order.

If in the remanded proceedings before KERC, the tariff gets fixed higher than presently allowed ₹ 4.36 per kWh, no carrying cost shall be payable between 21.02.2019 (date of the Impugned Order) and the date when costs for condonation of delay in filing the captioned Appeal were paid.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 4th DAY OF DECEMBER, 2025.

(Ajay Talegaonkar)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / NON-REPORTABLE

kns/mkj/kks