

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

**IA NO. 921 OF 2019 IN
APPEAL NO. 331 OF 2018 & IA NO. 1564 OF 2018**

Dated : 25th July, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of:

**Solar Energy Corporation of India Ltd.
First Floor, A – Wing
D-3, District Centre
Saket, New Delhi – 110 017**

...Appellant(s)

Versus

- 1. Karnataka Electricity Regulatory
Commission
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru, Karnataka – 560052** **...Respondent No.1**
- 2. Bangalore Electricity Supply Company
Limited
Krishna Rajendra Circle
Bangalore – 560001** **...Respondent No.2**
- 3. Mangalore Electricity Supply Company
Limited
Paradigm Plaa, A.B. Shetty Circle
Pandeshwar, Mangalore – 575001** **...Respondent No.3**
- 4. Chamundeshwari Electricity Supply
Corporation Limited
No. 29, CESC Corporate Office**

- Hinkal, Vijayanagar 2nd Stage,
Mysuru – 570017 ...Respondent No.4
5. **Gulbarga Electricity Supply Company
Limited
Main Road, Gulbarga
Gulbarga – 585102** ...Respondent No.5
6. **Hubli Electricity Supply Company Limited
Corporate Office, P.B. Road
Navanagar, Hubli – 580025** ...Respondent No.6
7. **Karnataka Renewable Energy Development
Limited
Bharath Scouts & Guides Building
Palace Road, Bengaluru – 560 001** ...Respondent No.7
8. **Government of Karnataka
Energy Department
Room No. 236, 2nd Floor, Vikasa Soudha
Dr. Ambedkar Veedhi
Bangalore – 560 001** ...Respondent No.8
9. **Wardha Solar (Maharashtra) Pvt. Ltd.
Adani House, Near Mithakhali Six Roads
Navrangpura, Ahmedabad
Gujarat – 380009** ...Respondent No.9
10. **Parampujya Solar Energy Pvt. Ltd.
Adani House, Near Mithakhali Six Roads
Navrangpura, Ahmedabad
Gujarat – 380009** ...Respondent No.10

Counsel for the Appellant(s) : Mr. M. G. Ramachandran, Sr. Adv.
Mr. Shubham Arya
Mr. Pulkit Agarwal
Ms. Tanya Sareen

Counsel for the Respondent(s) : Mr. Balaji Srinivasan
Mr. Mayank Ksrisagar

Ms. Pallavi Sengupta for R-2 & 3

Mr. Amit Kapur

Ms. Abiha Zaidi

Ms. Aparajita Upadhyay for R-9 & 10

ORDER

PER HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

1. The present IA No. 921 of 2019 in Appeal No.331 of 2019 is filed by the Appellant i.e. Solar Energy Corporation of India Limited against the impugned order passed by the Respondent No.1/Karnataka Electricity Regulatory Commission dated 20.09.2018 seeking following reliefs:
 - (a) Take action against Respondent No.2 to 6 for not complying the orders dated 02.11.2018, 20.12.2018, 05.03.2019 passed by this Tribunal
 - (b) Direct Respondent no. 2 to 6 to forthwith pay the amount outstanding as on 31.03.2019 within such time as may specified by this Tribunal
 - (c) Pass such further order or orders as this Tribunal may deem just and proper in the circumstances of the case.

Submissions of the Appellant

2. In August, 2015, the Central Government formulated the Jawaharlal Nehru National Solar Mission for promotion of the solar energy inter-alia Phase II, Batch-III, Tranche – V. The

Appellant is the nodal agency of the Government of India for purchase and sale of solar power under Phase II Batch III, Tranche – V of the JNNSM.

3. The Appellant initiated a Competitive Bid Process for selection of the solar power developers to establish solar power projects to generate and supply electricity to the Appellant. The Competitive Bid Process was on the basis of reverse bidding with the maximum tariff of Rs. 4.43 per kWh for 25 years payable to the Solar Power Project developers selected and an addition of Rs. 0.07 as trading margin to the Appellant. The selection of the Solar Power was to be made based on the bid submitted by the solar power developers in the reverse bidding of the lower Viability Gap Fund with the quantum of viability Gap Fund to be paid to such Solar Power Developer.
4. The tariff discovered through the competitive bid process was to be the tariff payable by the Appellant to the Solar Power Developer under the PPA to be entered into between the Appellant and the selected solar power developer. A standard PPA to be signed between the said parties was provided as a part of the bidding documents.
- 5.. The sale of electricity procured by the Appellant from the solar power developers to the distribution licensees is on a back to

back basis except that the tariff payable by the distribution licensees to the Appellant includes a trading margin of Rs. 0.07 per kWh in addition to the amount payable as tariff by the Appellant to the solar power developer.

6. The Government of Karnataka as well as Respondent No. 2 to 6 have been participating in the steps taken by the Appellant under JNNSM scheme including and in regard to the decision of the tariff being Rs. 4.50 per kWh. Further, the Respondent No. 2 to 7 have never raised any objection to the tariff being at Rs. 4.50 per kWh while raising some vague issues on the terms of the PPA.
7. On 29.06.2016, the Appellant entered into a PSA with Respondent No. 2 to 6 for resale of electricity procured by the Appellant from the Solar Power Developers to the Respondent No.2 to 6 on the terms and conditions contained in the said PSA.
8. Respondent No. 2 to 6 approached the Karnataka Electricity Regulatory Commission for approval of the State Commission for adoption of tariff in respect of PSA executed with SECI for procurement of solar power under JNNSM at a tariff of Rs. 4.50 per unit. Respondents in their letter very clearly stated that the tariff has been discovered under the bidding process carried out by SECI as per the guidelines issued by MNRE. However, the State Commission did not approved the PPA and allowed

provisional tariff of Rs. 4.36 per unit as payable to SECI by the ESCOMS for the energy supplied.

9. Aggrieved by the Impugned Order passed by the Karnataka Electricity Regulatory commission, the appellant has presented the present Appeal. The Appellant has also filed interim Application being IA No. 1564 of 2018 for stay and interim orders praying for the following reliefs:-

- (a) Stay the operation of the order dated 20.09.2018 passed by the Karnataka Electricity Regulatory Commission (State Commission) in File No. KERC/F-31/Vol-1283/939 during the pendency of the appeal before this Tribunal;
- (b) Direct that the Respondent No.2 to 6 shall pay the tariff of Rs. 4.50 per Kwh for the quantum of electricity supplied to them from the solar power projects without default and without any reduction in the said tariff;
- (c) Pass ad-interim ex-parte Orders in terms of prayer (a) above and confirm the same after notice to the Respondents; and
- (d) Pass such further order or orders as this Tribunal may deem just proper in the circumstances of the case.

10. After hearing the parties, this Tribunal passed Order dated 02.11.2018 on IA No. 1564 of 2018 and granted stay, as sought for, till the next date of hearing.

In subsequent hearings also, held on 20.12.2018 and on 05.03.2018, this Tribunal ordered continuation of the interim directions for staying the operation of the Impugned Order till next date of hearing.

11. Accordingly, the Appellant had written letters dated 19.11.2018, 02.01.2019 and 08.03.2019 to Respondent No. 2 to 6 regarding the requirement to pay SECI the tariff of Rs. 4.50 per unit for the energy supplied by the Appellant to the Respondent No. 2 to 6 as per the invoices raised.
12. The Appellant has not received any response to the aforesaid letters except from Mangalore Electricity Supply Company Limited, the Respondent No. 3 herein. The Respondent NO.3 in its letter dated 01.02.2019 to the Appellant, has stated as;

“MESCOM has received your letter cited reference (2), (3) & (4) wherein SECI have observed some points regarding power supply bills. In this regard, I am directed to clarify that,

MESCOM has admitted the energy bills, duly considering the provisional tariff of Rs. 4.36 per unit as per directions of KERC

vide letter dated 20.09.2018 (Copy of the letter enclosed). Difference amount payable towards the power supply for the period from Feb-18 to July-2018, @ rate of Rs. 436/- total amounting to Rs. 1,92,40,424/- has been transferred to A/c. No. 510131000003335 at Corporation bank on 16.10.2018 in DFR No. 3976 of 2018 for disposal regarding the disputed amount, action will be taken as per the final order.”

13. The Appellant has submitted that as per the interim orders passed by this Tribunal staying the Impugned Order, the Respondent Nos. 2 to 6 were required to pay tariff of Rs. 4.50 per unit as per PSA. However, the Respondent Nos. 2 to 6 have not complied with the interim orders passed by this Tribunal and are making payments at the rate of Rs. 4.36 per unit.

Aggrieved by such action of the Respondent Nos. 2 to 6 the Appellant has filed this IA No. 921 of 2019.

Submissions of the Respondent No.2 & 3

14. **Per contra**, the learned counsel appearing for the Respondent Nos. 2 and 3 submitted that Appropriate Commission under Section 63 of the Electricity Act, 2003 is required to adopt the tariff discovered through bidding, if the bidding is in accordance with guidelines issued by Central Government. Accordingly, the Respondent No.2 vide letters dated 21.08.2018 and 17.09.2018

sought approval of the State Commission for adoption of tariff agreed in PSA with the Appellant.

15. The State Commission vide impugned order dated 20.09.2018 has not approved PSA executed between the Appellants and Respondent No. 2 to 6. Further, the State Commission directed the parties to file the petition to redress their grievance and fixed Rs.4.36 per unit as provisional tariff. The approval of the PPA/PSA by the State Commission is mandatory under the Electricity Act, 2003 and Karnataka Electricity Reforms Act, 1999. In view of the non approval of the PSA by the State Commission, the Respondent No. 2 to 6 is not liable to make any payments to the Appellant/Applicant.
16. It is submitted that this Tribunal was pleased to stay the impugned order vide orders dated 02.11.2018, 20.12.2018 and 05.03.2019. Averment that the Applicant/Appellants entitled to tariff of Rs. 4.50/kWh in view of the stay of the impugned order is untenable and devoid of merits. In the facts of the present case, the Respondent have continued to pay at the Generic Tariff for the relevant period for the energy supplied pending consideration of the Appeal herein, no question of paying a higher amount.
17. The Applicant/Appellant's prayer for direction to make payments at the tariff of Rs. 4.50/- per kWh is identical to the main prayer

sought for in the appeal itself. Considering and allowing the same would be tantamount to allowing the main appeal itself. It is settled law that the main prayer cannot be granted by way of an interim relief. Therefore, consideration of the same at this juncture would not arise. For this reason also the present application deserves rejection.

18. It is settled law that private interest ought to yield to public interest. In the present case, grant of direction to pay tariff of Rs. 4.50/kWh would have large financial ramifications on the Respondent. The additional burden of cost would ultimately be borne by the consumers of the Respondent No. 2 to 6 herein. In any event, it ought to be noted that the Applicants herein are being paid at the tariff of Rs. 4.36/- in terms of the order of the State Commission and in the prevailing generic tariff. Therefore, absolutely no prejudice will be caused to the Applicants herein if the interim direction to pay at Rs. 4.50/kWh is not allowed.

19. We have heard the learned counsel appearing for the parties and gone through the written arguments as well as the Impugned Order passed by the State Commission, our observations are as under:
 - i) The procurement of solar power by Respondent No.2 to 6 is as per Jawaharlal Nehru National Solar Mission (“JNNSM”), a

scheme of Government of India to promote the solar power in the country.

- ii) The tariff of Rs. 4.5 per unit under the scheme was based on competitive bidding process as per the guidelines issued by the Government of India. Government of Karnataka as well as the Respondent No. 2 to 6 participated in the scheme and signed a Power Supply Agreement for procurement of power at Rs. 4.5 per unit. The ESCOMS of Karnataka mentioned this fact that the tariff is based on the bidding process carried out by SECI as per the guidelines issued by MNRE while seeking approval of the State Commission.

- iii) From the letter/order of the State Commission which has been issued by the Secretary of the State Commission it appears that no hearing was carried out while deciding on the matter. From the reading of the order passed by the Secretary, Karnataka Electricity regulatory Commission it is clear that there is no explanation as to why the State Commission has come to the decision that the tariff is not based on bidding process. The State Commission in their order have stated that “the PSA do not reflect the tariff as discovered in the transparent bidding process with the terms and conditions as enunciated in the Guidelines and the corresponding PPAs.”

However, there is no discussion, no reasoning, no explanation in the order/letter by the State Commission while arriving at a decision and not approving PSA by the Respondents.

- iv) The State Commission has decided to allow provisional tariff of Rs. 4.36 per unit as against Rs. 4.5 per unit sought by the ESCOMS. Here again the State Commission has not given any reasoning for allowing the provisional tariff of Rs. 4.36 per unit. There is no discussion, no reasoning whatsoever to this decision. From the reading of the Impugned Order it appears that the State Commission has completely ignored the fact that procurement of such solar power by Respondent Nos. 2 to 6 is under JNNSM, the Central Scheme and the tariff discovered is based on the competitive bidding process as per the guidelines issued by the Government of India.
- v) In view of the reasons explained above the appellant prayed in IA No. 1564 of 2018 to stay the operation of the Impugned Order dated 20.09.2018 passed by the State Commission during the pendency of this appeal before this Tribunal. After hearing the parties this Tribunal passed order dated 02.11.2018 and granted stay, as sought for, till the next date of hearing. In subsequent hearings on 20.12.2018 and on

05.03.2018 this Tribunal ordered continuation of the interim orders till next date of hearing by staying the operation of the Impugned Order.

Prior to the Impugned Order passed by the State Commission, the ESCOMs were making payment to SECI at Rs. 4.50 per unit and it is only after the order passed by the State Commission they reduced the tariff and started making payment to the Appellant at the rate of Rs. 4.36 per unit. By staying the operation of the Impugned Order means that the arrangement would be restored back to the earlier arrangement which existed before the passing of the Impugned Order by the State Commission. In other words, the Appellant should not be paid at Rs. 4.36 per unit but should be paid at Rs. 4.50 per unit as was being paid earlier before passing the Impugned Order by the State Commission.

We have also noted that ESCOMs are procuring solar power from SECI under Jawaharlal Nehru National Solar Mission ("JNNSM"), a scheme of Government of India at agreed tariff of Rs. 4.50 per unit and therefore there seems to be no reason for making payment at Rs. 4.36 per unit. As such the ESCOMs have not complied with the order passed by this Tribunal.

ORDER

In view of the above, the operation of the Impugned Order dated 20.09.2018 passed by the State Commission shall continue to be stayed and the Respondent Nos. 2 to 6 shall pay the tariff of Rs.4.50 per kWh with immediate effect for the quantum of electricity supplied to them from the solar power projects without default and without any reduction in the said tariff till the final disposal of the main appeal.

- vi) With above directions IA Nos. 921 of 2019 and IA No. 1564 of 2018 are disposed of.

List the main appeal for hearing on **26.09.2019.**

Pronounced in the Open Court on this **25th day of July, 2019.**

(Ravindra Kumar Verma)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Justice Manjula Chellur)
Chairperson