

APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

(APPELLATE JURISDICTION)

**APPEAL NO. 279 OF 2018 &
IA NO. 880 OF 2018**

Dated : 12th August, 2021

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

IN THE MATTER OF :

M/s Panchakshari Power Projects LLP

1B, 12/5 Lalitha Mannor, 14th Cross,
AECS Layout, Sanjay Nagar,
Bengaluru – 560 094

Represented by
Smt. Prameelamma,
Wife of Late Sri. Panchaksharaiah,
Residing at Kolgunsi Village, Bilvani Post,
Soraba Taluk, Shimoga District – 577429,
Karnataka

....

APPELLANT

Versus

1. **Karnataka Electricity Regulatory Commission**

37, MG Road, Yellappa Garden,
Yellappa Chetty Layout,
Ulsoor, Bengaluru, Karnataka 560001

Represented by its Secretary.

2. **Bangalore Electricity Supply Company Limited**

Having its Corporate Office at
K. R. Circle, BESCOM,
Bangalore – 560 001

Represented by
General Manager (Elec),
PP, NESCOM.

3. **The General manager,
KREDL,**

Shanthi Gruha,
No. 39, Bharath Scouts and Guides Building
Opposite the Chief Post Master General Office,
Palace Road,
Bengaluru – 560 001

4. **The DGM (F & C) Power Purchase,
BESCOM**

Corporate Office,
K. R. Circle,
Bengaluru – 560 001

.... **RESPONDENTS**

Counsel for the Appellant(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Jaspreet Sareen
Ms. Vimla Pinto
Mr. Chirag Kher
Ms. Sradhananda Mohapatra
Mr. Arsheya Mithal

Counsel for the Respondent(s) : Mr. Balaji Srinivasan
Ms. Medha M. Puranik **for R-2**

Mr. Nithin Saravanan
Mr. G. S. Kannur
Mr. M. V. Charati **for R-4**

J U D G M E N T

PER MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON

1. This Appeal is filed by the Appellant aggrieved by the impugned order dated 30.01.2018 in Original Petition No. 87 of 2017 by the Respondent Commission - **KERC** wherein the Respondent Commission dismissed the OP and opined that since there is three months delay for commissioning of the project, hence the Appellant is entitled to a tariff of Rs. 6.51 per unit in terms of PPA dated 01.07.2015 instead of INR 8.40 per unit.
2. This solar project of the Appellant also falls under the Farmers' Scheme envisaged by Government of Karnataka promoting small solar plants between 1 MW to 3 MW in order to encourage small farmers in the State of Karnataka to develop solar plants
3. Karnataka Renewable Energy Development Limited (**KREDL**) was established as nodal agency for implementation of the solar policy of the State Government. The parties entered into Power Purchase Agreement (**PPA**) on 01.07.2015 which came to be approved by KERC only on

26.08.2015. This was followed by Supplementary Power Purchase Agreement (**SPPA**) dated 14.06.2016 between the parties. This SPPA was approved by KERC on 11.07.2016. However, in the impugned order since KERC opined that there is delay in commissioning of the solar plant of the Appellant, the Appellant was directed to pay Liquidated Damages to BESCO in accordance with the terms of PPA.

4. According to Appellant, the power evacuation application was submitted on 04.11.2015 by SPD and the same was forwarded to KPTCL for processing. But in spite of several requests, there was inordinate delay in evacuation of power because there was some delay in the approval by KPTCL pertaining to its nearest receiving station.

5. According to Appellant, the delay if at all was caused not on account of the Appellant, but on account of KPTCL almost for a period of six months in granting power evacuation permission. Though the permission of evacuation was granted, on 25.04.2016 by sending the intimation to the appropriate office, the concerned office granted such permission only on 05.08.2016 thereby causing three more months additional delay.

6. According to Appellant, the Appellant approached BESCO for extension of time in terms of Article 2.5.1 of PPA on the ground of force majeure event affecting the SPD. Though BESCO approved the extension of time on the ground of force majeure, KERC totally ignored this fact in the impugned order.

7. According to Appellant, in terms of direction of KERC to all the ESCOMs in the State, ESCOMs advised the Solar Developer to approach KERC for extension of SCOD. Though there was no dispute between the parties, it is the case of the Appellant that in terms of such direction alone the Appellant had to approach the KERC for extension of time. As per the records placed before the Respondent Commission, BESCO in the minutes of the meeting of 23.01.2017 indicated that the delay in commissioning the project was on account of delay in issuance of evacuation approval by KPTCL. Therefore, it was considered as event of default, since KPTCL is a governmental entity. Since the Respondent Commission approved the PPA having a clause in PPA between the parties that in case of force majeure event, there can be extension of time for COD by GESCO.

8. According to Appellant, MNRE by its letter dated 28.07.2017 clearly opined that if there was any delay on the part of the State Government authorities/PSUs in providing necessary permission/approval to the SPD, the concerned authority must provide extension of time in terms of PPA, but this was ignored by the Respondent Commission in the impugned order.

9. It is stated that though application for conversion of land was filed on 30.12.2015, on account of death of SPD, Mr. Panchakhshariah in a motor accident on 15.02.2016, the legal representative i.e., wife of Mr. Panchakhshariah, on 12.04.2016 had to submit a fresh application and ultimately the conversion order was given on 21.05.2016. It is further contended that Mr. Panchakhshariah, the SPD was the one who approached several authorities for permissions like Transmission Corporation, revenue authorities etc. But on account of death of Mr. Panchakhshariah on 15.02.2016, there was delay in approaching these authorities. Ultimately, there was SPPA between Smt. Prameelamma, wife of Mr. Panchakhshariah and the BESCO. The SPPA was approved on 11.07.2016. Since wife of Late Panchakhshariah had to approach several authorities subsequent to death of Mr. Panchakhshariah to pursue

the authorities to grant necessary permissions/sanctions/ approvals, there was some delay.

10. Provisional power evacuation was granted on 06.06.2016 and final evacuation permission was granted on 05.08.2016. Therefore, according to Appellant, apart from the death of the Solar Plant Developer, Mr. Panchakhshariah, the project has to face severe difficulties on account of the legal representatives running from office to office in securing the necessary consent or approval.

11. It is further contended that on account of these delays at various levels, the project could be completed on 18.01.2017 and the same was informed to BESCO. The Appellant sought extension of time for COD. The original SCOD was 31.12.2016 and BESCO on 03.02.2017 informed that the time for SCOD has been extended by three months from 31.12.2016 which would be 31.03.2016. The Appellant ultimately commissioned the project and started supplying power to BESCO after Synchronization Certificate from 15.02.2017 onwards. Subsequent to this date, at the instance of the Respondent BESCO, the Appellant had approached the Respondent Commission for approval of extension of time

for SCOD. Apparently, BESCO seems to have placed on record its objection that it has decided to grant extension of time.

12. According to Appellant, there was nine months delay in issuing evacuation approval and initially there was delay in approval of the PPA. According to Appellant, until and unless signed approved PPA copy is furnished, they would not be able to move further to secure various permissions that were necessary for establishing the solar plant and commissioning the same. So also, they contend that unless approved PPA is in possession of the Appellant, they will not get financial assistance from the banks and other financial institutions. Therefore, they contend that the impugned order passed on 30.01.2018 dismissing the Original Petition and opining that the Appellant is entitled only for Rs. 6.51 per unit and so also imposing Liquidated Damages on the Appellant is not justified and the same deserves to be set aside.

13. With these averments, the Appellant sought the following reliefs:

- (a)** That this Tribunal may be pleased to set aside the Impugned Order dated 30.01.2018 passed by the KERC in OP No. 87/2017.

(b) That this Tribunal may uphold the extension of SCOD as per BESCOM's letter dated 03.02.2017 in compliance with the terms of the PPA.

(c) That this Tribunal may direct BESCOM to apply the tariff of Rs. 8.40 per kWh as per Article 5.1 of the PPA, to the power purchased from the Appellant's Project;

(d) That this Tribunal may direct BESCOM to refund the liquidated damages deducted by it from the bill of the Appellant;

(e) That this Tribunal may direct BESCOM to calculate and pay the Appellant the difference payable upon applying the tariff of Rs. 8.40 per kWh to the power purchased from the Project till date of disposal of this Appeal.

14. As against this, the Respondent No. 2 and 4 i.e., BESCOM and DGM, BESCOM have placed on record common statement of objections. They admit that the Solar Developer is a farmer owning land at Kolgunsi Village, Kasaba Hobli, Soraba Taluk, Shimoga District. The PPA between the parties came to be executed on 01.07.2015 and the SPD was to commission the plant within 18 months which would be 31.12.2016. The Respondents also admit that the PPA was approved on 26.08.2015, and

they also accept that the Original SPD Mr. Panchaksharaiah died on 15.02.2016. With the consent of children of Sri Panchaksharaiah, the PPA was transferred in the name of Smt. Prameelamma, wife of Mr. Panchaksharaiah. Thereafter, the SPV was established and the PPA was assigned to SPV followed by SPPA.

15. Respondent No. 2 & 4 also place on record that on 24.11.2016, Government of Karnataka passed an order directing all the ESCOMs to constitute three member Committee to consider and decide requests of the SPDs if they seek extension of time, since the scheme envisaged encouragement of land owning farmers category. After holding a meeting and considering the causes for delay, a decision was taken to extend six months' time to achieve Scheduled Commissioning Date. But in pursuance of direction of the State Commission to all ESCOMs, the BESCO had to direct the SPDs to approach the Commission with application for approval of extension of time.

16. According to these Respondents, the reasons assigned by the Appellant for the delay cannot be attributed to the Respondent BESCO, since onus of obtaining all the necessary approvals was on the Appellant in terms of Article 2.1.1 of PPA. It was for the Appellant to secure such

approvals within reasonable time so as to complete the project within the scheduled time. The terms of Article 2.5 and 8 of the PPA which were referred to by the Appellant pertaining to force majeure, according to Respondents 2 & 4, the delays if any, caused by government agencies cannot be terms as events of force majeure.

17. According to Respondents 2 & 4, since the Appellant was well aware of the time frame involved in getting these approvals, the Appellant ought to have acted with much diligence. Therefore, if at all delay occurred, it was totally attributable to the Appellant and not the Respondents.

18. They further contend that in terms of Article 5.1 of PPA, if the project is delayed beyond the Scheduled Commissioning Date, there will be variance in the agreed tariff of Rs. 8.40 per unit, since the variation in KERC's tariff which would be applicable at that point of time and whichever is lower would be applicable. Therefore, as per the Tariff Order, the Appellant is entitled for Rs.6.51 per unit. Hence the Respondent Commission was justified in granting such tariff by reducing Rs. 8.40 to Rs. 6.51 per unit.

19. The Respondents 2 & 4 also admit that three months' extension of time to commission the project was granted. Refuting reasons given by the Appellant for the delay and attributing the delay to the conduct of the Appellant, the Respondents have sought for dismissal of the Appeal and to uphold the impugned order.

20. Respondent No. 3 KREDL which has also placed on record its objection statement. According to KREDL, it was established as nodal agency for development of renewable energy sources in the State of Karnataka. The duty of this Respondent was to implement solar policy of the Government of Karnataka. In terms of the guidelines, applications were called for and guidelines were issued from time to time. So far as facts and dates of events brought on record by the Appellant and so also other Respondents, there is no denial on the part of this Respondent. Similarly, inheritance of the solar plant by Smt. Prameelamma is also not in dispute.

21. According to KREDL, the tariff payable would be in accordance with Article 5.1 of the PPA, since there was delay on account of negligence on the part of the Appellant in commissioning the project within the scheduled time. They also contend that the Appellant was not entitled for extension

of time as stated. Since the Appellant failed to achieve conditions precedent and commission the project on time, they are also liable to pay Liquidated Damages apart from reduction in tariff rate.

22. They also contend that since the commissioning of the project was on 15.02.2017, the tariff of Rs. 6.51 per unit is applicable as it was in terms of Tariff Order which was effective from 01.09.2015 to 31.03.2017.

23. With these averments, KREDL sought for dismissal of the Appeal upholding the impugned order.

ANALYSIS AND DECISION:

24. We have seen the pleadings, written submissions and heard both counsel. Based on the above pleadings and arguments, the point that would arise for our consideration is –

“Whether the impugned order warrants any interference? If so, what order?”

25. The following Clauses of the PPA are relevant for the purpose of considering the above Appeal on merits:

- (vii) **“Commercial Operation Date”** with respect to the Project shall mean the date on which the Project is available for commercial operation as certified by BESCO/KPTCL as the case may be:
- (xxviii) **“Scheduled Commissioning Date”** shall mean 18 (Eighteen) months from the Effective Date.

CONDITIONS PRECEDENT

2.1 Conditions Precedent:

The obligations of BESCO and the SPD under this Agreement are conditional upon the occurrence of the following in full within 365 days from the effective date.

2.1.1

- (i) The SPD shall obtain all permits, clearances and approvals (whether statutory or otherwise) as required to execute and operate the Project (hereinafter referred to as “Approvals”):
- (ii) The Conditions Precedent required to be satisfied by the SPD shall be deemed to have been fulfilled when the SPD shall submit:
 - (a) The DPR to BESCO and achieve financial closure and provide a certificate to BESCO from the lead banker to this effect;
 - (b) All Consents, Clearances and Permits required for supply of power to BESCO as per the terms of this Agreement; and
 - (c) Power evacuation approval from Karnataka Power Transmission Company Limited or BESCO, as the case may be.

2.1.2 SPD shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and BESCO shall provide to the SPD all the reasonable cooperation as may be required to the SPD for satisfying the Conditions Precedent.

2.1.3 The SPD shall notify BESCO in writing at least once a month on the progress made in satisfying the Conditions Precedent. The date, on which the SPD fulfills any of the Conditions Precedent pursuant to Clause 2.1.1, it shall promptly notify BESCO of the same.

2.2 Damages for delay by the SPD

2.2.1 In the event that the SPD does not fulfill any or all of the Conditions Precedent set forth in Clause 2.1 within the period of

365 days and the delay has not occurred for any reasons attributable to BESCO or due to Force Majeure, the SPD shall pay to BESCO damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum period of 60 (Sixty) days. On expiry of the said 60 (Sixty) days, BESCO at its discretion may terminate this Agreement.

2.3 Performance Security

2.3.1 For due and punctual performance of its obligations relating to the Project Under this Agreement, the SPD has delivered to BESCO, simultaneously with the execution of this Agreement, on irrevocable and revolving bank guarantee from a scheduled bank acceptance to BESCO for an amount of Rs. 10,00,000/- per MW (Rupees Ten Lakhs per Mega Watt only) ("Performance Security"). The Performance Security is furnished to BESCO in the form of bank guarantees in favour Managing Director of the BESCO as per the format provided in Schedule 2 and having validity up to 24 months from the date of signing of this agreement. The details of the bank guarantee furnished towards the Performance Security is given below:

Bank Guarantee No. PBG 2015/4 dated 19.06.2015 for an amount of Rs. 30,00,000/- (Rupees Thirty Lakhs only).

2.3.2 Appropriation of Performance Security

Upon occurrence of delay in commencement of supply of power to BESCO as provided in clause 2.5.7, or failure to meet the Conditions Precedent by the SPD, BESCO shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages. Upon such encashment and appropriation from the Performance Security, the SPD shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the SPD shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which BESCO shall be

entitled to terminate this Agreement in accordance with Article 9.”

2.4 Release of Performance Security

2.4.1 *Subject to other provisions of this Agreement, BESCOM shall release the Performance Security, if any after scheduled commissioning of the project;*

2.4.2 *The release of the Performance Security shall be without prejudice to other rights of BESCOM under this Agreement.*

“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 HESOM; 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 (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.

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.”*

2.5.7 **Liquidated damages for delay in commencement of supply of power to BESCOs.**

Subject to the other provisions of this agreement, if the SPD is unable to commence supply of power to BESCO by the scheduled commissioning date, the SPD shall pay to BESCO, liquidated damages for the delay in such commencement of supply of power as follows:

- (a) For the delay up to one month- amount equivalent to 20 % of the performance security.*
- (b) For the delay of more than one month up to three months - amount equivalent to 40 % of the performance security.*
- (c) For the delay of more than three months up to six months - amount equivalent to 100 % of the performance security.*

For avoidance of doubt, in the event of failure to pay the above mentioned damages by the SPD, the BESCO entitled to encash the performance security.”

4.1 **Obligations of the SPD:**

- (a) The SPD shall construct the Project including the pooling station, the interconnection facilities and metering arrangements at the point of delivery of power as approved by STU /BESCO.*
- (b) The SPD shall undertake by itself or by any other person acting on its behalf, at its own cost, construction/up-gradation of (a) the interconnection Facilities, (b) the transmission lines; and (c) metering arrangements with protective gear as per the specifications and requirements of STU/BESCO, as notified to the SPD.*
- (c) The SPD shall achieve scheduled date of completion and the commercial operation within 18 months from the effective date.*

- (d) *The SPD shall by itself or by any other person acting on its behalf undertake at its own cost maintenance of the interconnection facilities and the metering arrangements, including the dedicated transmission line up to the delivery point as per the specifications and requirements of STU/BESCOM, as notified to the SPD, in accordance with Prudent Utility Practices. The transmission / distribution line so constructed shall remain as dedicated transmission / distribution line without provision for any tapping.*
- (e) *The SPD shall operate and maintain the Project in accordance with Prudent Utility Practices, for the entire term of this agreement.*
- (f) *The SPD shall be responsible for all payments on account of any taxes, cesses, duties or levies imposed by the GoK or its competent statutory authority on the land, equipment, material or works of the Project or on the Electricity generated or consumed by the Project or by itself or on the income or assets owned by it.*
- (g) *The benefits accruing on account of carbon credit shall be shared between the SPD and the BESCOM as per Clause 5.2.*

4.2 Obligations of BESCOM:

BESCOM agrees:

- (a) *To allow SPD to the extent possible to operate the Project as a must run generating station subject to system constraints.*
- (b) *Subject to system constraints to off-take and purchase the Electricity generated by the SPD at the Delivery Point as per Clause 3.4 and Clause 3.5 of this agreement.*
- (c) *To make tariff payments to the SPD as set out in Clause 5.1.*
- (d) *BESCOM agrees to provide support to the SPD and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:*
 - (i) *support, cooperate with and facilitate the SPD in the implementation and operation of the Project in accordance with the provisions of this Agreement;*

(ii) not do or omit to do any act, deed or thing which may in any manner be volatile of any of the provisions of this Agreement;

(iii) act reasonably, while exercising its discretionary power under this Agreement;

.....”

6.4 Late Payment surcharge:

“In the event of payment of the monthly bill being made by BESCO after the due date, a late payment surcharge shall be payable to the SPD at the rate of 1.0% per month on the bill amount (being “Late Payment Surcharge”), computed on a pro rata basis on the number of days of the delay in payment. The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill.”

8.1 Definitions:

In this Article, the following terms shall have the following meanings:

8.2 Affected Party:

An Affected Party means BESCO or the SPD whose performance has been affected by an event of Force Majeure.

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;*
 - (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.”

“10.3 Dispute Resolution

10.3.1 : If any dispute is not settled amicably under clause 10.2 the same shall be referred by any of the parties to the KERC for dispute resolution in accordance with the provisions of the Electricity Act, 2003.”

26. It is not in dispute that in order to harness the solar energy sources in the State of Karnataka, this Farmers’ Scheme, to benefit the land owning farmers to establish solar plants between 1 MW to 3 MW, came to be promoted. KREDL was the nodal agency who had to look after implementation of this scheme mooted by the Government of Karnataka to harness the solar energy sources in the State of Karnataka. It is not in dispute that one Mr. Panchakhshariah was the Solar Developer who unfortunately died on 15.02.2016 in an accident.

27. It is seen that the PPA between Mr. Panchakhshariah the SPD and BESCOM came to be signed/executed on 01.07.2015. It is not in dispute that if 18 months’ time is calculated from 01.07.2015, the scheduled time for commissioning the project would be 31.12.2016. In almost all the Appeals pertaining to these Farmers Solar Power Plants between 1 MW to 3 MW, the question came up for our consideration is what would be the

effective date for implementation of the PPA? In terms of PPA, the effective date is the day on which the parties execute PPA agreeing to the terms and conditions mentioned thereunder. It is an admitted fact that mere execution of PPA between the parties, the Developer cannot establish the power plant, unless it has to pass through process ultimately resulting in approval or rejection of PPA.

28. Therefore, the first and primary requirement is to have approval of the PPA. Approval of PPA is required in order to approach several authorities to secure permission/consent/ approval from the concerned authorities for the purpose of establishing solar power plant and commissioning the solar power plant. Even to secure finances for development of solar plant either from the banks or from any financial institutions, the Solar Plant Developer must have in his hand copy of the approved and signed PPA, since based on such approval, these banks/financial institutions can decide to sanction/give financial assistance to the Developer.

29. Therefore, the date of execution of PPA, though envisaged in terms of PPA as effective date, in effect the date on which the PPA is implementable is the effective date which come to the aid of the Appellant

as held by this Tribunal in several matters including **SEI Aditi Power Private Limited** in Appeal No. 360 of 2019 dated 14.07.2021 and so also in **SEI Diamond Private Limited** in Appeal No. 374 of 2019.

30. If the effective date is the date of approval of PPA by the KERC on 26.08.2015, COD would be on or before 26.02.2017. BESCO submitted PPA for approval on 09.07.2015 (8 days after extension of PPA). KERC approved PPA on 26.08.2015. Totally 55 days of delay for process of approval was taken.

31. After this approval of PPA, only the SPD could file for evacuation of power, conversion of land and application to secure loans. On 04.11.2016, Mr. Panchakhshariah filed application for power evacuation. Unfortunately, he died on 15.02.2016 in a road accident. Prior to that, he had applied for conversion of land on 30.12.2015. Meanwhile the PPA had to be changed to the name of Smt. Prameelamma as SPD. This must have taken some time. This delay was not on account of negligence on the part of the legal representatives. Mr. Panchakhshariah could do what he could do prior to his death subsequent to approval of the PPA by the Respondent Commission.

32. SPPA was approved by KERC only on 11.07.2016, thereafter only they could pursue the application for power evacuation etc., since the initial SPD was no more and SPPA was to be transferred to wife of the original SPD. Similarly, land conversion application filed by Mr. Panchakhshariah was lapsed on account of his untimely death, therefore a fresh application for conversion of land came to be filed within two months from the date of death of Mr. Panchakhshariah by his wife Smt. Prameelamma. The conversion order was given on 21.05.2016. Temporary power evacuation was on 06.06.2016 and final evacuation was approved on 05.08.2016.

33. As already stated above, the solar power project initially in terms of PPA was to be completed by 31.12.2016. However, the commission of the project was achieved on 15.02.2017, which is evidenced by Synchronization Certificate dated 17.02.2017. The initial SCOD was 31.12.2016. The power was injected into the Grid on 15.02.2017. The effective date has to be the date on which the PPA was approved, therefore if 55 days added to 31.12.2016, the project had to be commenced on or before 26.02.2017, but the solar plant of the Appellant was commissioned on 15.02.2017 within 18 months' time from the

effective date as stated above. Even if we consider 48 days taken for approval of PPA still the COD was achieved within the SCOD of 26.02.2017.

34. So far as the contention of Appellant that the Respondent Commission had no jurisdiction to consider the matter, we are of the opinion that this challenge is also no more *res integra* as we have already opined in that the Regulatory Commissions is the only statutory authority which is empowered to regulate the tariff matter and has authority to look into determination of tariff. Therefore, we are of the opinion that the Respondent Commission had authority and jurisdiction to entertain the Original Petition. . In this regard, we rely upon the Judgment in ***All India Power Engineer Federation*** in Civil Appeal No. 5881-5882 dated 08.12.2016 which was followed by this Tribunal in Appeal No. 351 of 2018 in ***Chennamangathihalli***'s case.

35. We tend to add that it is the policy of Government of India that as much as possible, renewable energy sources must be tapped and must be encouraged since the usage of coal in thermal plants in the long run would leave an impact on the environment which would not be congenial atmosphere for the future generation. Therefore, though the cost of

energy from renewable sources is much higher than thermal plants, the policy of the Government in the larger interest of health of the public is to safeguard the environment and create a proper environment. Hence, renewable energy sources as much as possible must be encouraged. In fact, the promotion of renewable energy very much indicated in the Statute itself i.e., Section 86 (1) (e) where the obligation is placed on the concerned authorities that is the Commission and all the stakeholders to promote renewable energy sources.

36. Therefore, we are of the opinion that the Respondent Commission, while discharging its functions vested in it to regulate the tariff is required to act and discharge its functions as a neutral authority. While discharging its functions, it must be conscious that it has to discharge its functions judiciously. What we note from the impugned order is that it totally disregarded the cause/ reasons for delay in commissioning the project. It has overlooked the fact that the original SPD died in a road accident and the Project Development had to be undertaken by the legal representatives. To come out of the shock of the death of the Original Solar Developer, it must have taken some time and then to understand the process and proceed with the matter, it must have taken some more time.

Even otherwise, since the effective date has to be the date on which the PPA could be implemented i.e., approval of PPA, one has to consider the date on which the Appellant got a copy of the approved and signed PPA in its hand to proceed would be the effective date. Therefore, the delay of 55 days in approval of the PPA comes to the aid of the Appellant because from the original SCOD of 31.12.2016, the project was commissioned on 15.02.2017 i.e., within the extended date of SCOD. Hence, we are of the opinion that the Appeal deserves to be allowed setting aside the impugned order. Accordingly, we pass the following order:

ORDER

- (a) The Appeal is allowed and the impugned order is set aside.**
- (b) The Appellant is entitled for Rs.8.40 per unit in terms of PPA.**
- (c) The Respondent BESCO is directed to pay the difference of the tariff paid per unit from the date of commission of the plant along with late payment surcharge in terms of PPA within one month from today.**

(d) The Appellants are not liable to pay any damages and so also liquidated damages.

37. Pending IAs if any, shall stand disposed of.

38. No order as to costs

Pronounced in the Virtual Court through video conferencing on this the **12th day of August, 2021.**

(Ravindra Kumar Verma)
Technical Member

(Justice Manjula Chellur)
Chairperson

✓
REPORTABLE / NON-REPORTABLE

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