

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

APPEAL NO. 48 OF 2022

Dated: **07.07.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

BALAJI NAIK A.

S/o Gopal Nayak

R/o Sy. No. 134A/1, Kudalagi Road, Mariyammanhalli

Hospet Taluk

Bellary District – 583222

..... Appellant(s)

Versus

1. GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED

(Govt of Karnataka Undertaking)

Station Road, Kalaburgi – 585 102

Karnataka

2. THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

Through Its Secretary

No. 16, C-1, Millers Tank Bed Area,

Vasant Nagar

Bengaluru – 560 052

.... Respondents

Counsel for the Appellant (s) : Ms. Purna Priyadarshini
Ms. Priyashree Sharma

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

J U D G M E N T (Oral)

PER HON'BLE MR. R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant had established a 499 KW Solar Roof Top Power Project (SRTPV) on the roof top of his poultry farm at Sy. No.134 A/1, Kudligi Road, Mariyammanahalli, Hosapete Taluk, Ballari District, in terms of SRTPV Scheme that had been floated by the Government of Karnataka, it being governed, *inter alia*, by the guidelines issued there under. The

appellant (developer) had availed of loan from Karnataka State Financial Corporation Limited in terms of the said scheme. It is stated the project was ready and commissioned on 20.01.2017. The appellant had entered into a Power Purchase Agreement (PPA) with respondent Gulbarga Electricity Supply Company Limited (GESCOM), the distribution company operating in the region where the project is located, on 16.12.2015. The contractual arrangement was that the appellant would consume the electricity generated by the project to the extent required for own purposes and inject the excess into the distribution network of the first respondent, the tariff applicable for such purposes being the tariff determined by the second respondent i.e. Karnataka Electricity Regulatory Commission (hereinafter referred to as the 'State Commission') by its Order no. S/03/01/2013 dated 10.10.2013 "or as amended from time to time". Admittedly, the tariff of Rs. 9.56/kWh as fixed by the Order dated 10.10.2013 stood revised to Rs. 5.67/kWh by subsequent tariff order issued by the State Commission on 02.05.2016.

2. The PPA admittedly did not contain any express provision specifying timelines for completion of the project. After the project had been commissioned and the appellant started injecting excess energy into the distribution network of the first respondent, it raised certain bills computed at the tariff determined by Order dated 10.10.2013. A dispute arose as the first respondent would insist on payment at the revised tariff in terms of

subsequent Order dated 02.05.2016. The dispute was taken to the State Commission by the appellant by Original Petition no.116 of 2017. The said petition was dismissed by Order dated 08.02.2018. It having been held by the State Commission that the appellant is entitled to the tariff of Rs. 5.67/unit only on entering into a suitable supplemental PPA with the respondent for a term of 25 years. Feeling aggrieved, the appellant has approached this Tribunal by the appeal at hand.

3. Having heard the learned counsel on both sides and having given our anxious consideration to the contentions urged, we find the contention of the appellant that the time of 180 days for completion of the project could not have been read into the PPA unacceptable. The guidelines under the scheme in terms of which the project was developed specifying the period of 180 days for completion of the installation work of the project cannot be ignored. Such stipulation has to be read as part of the contractual terms binding the parties.

4. The appellant had agreed by the PPA to accept and receive tariff in terms of the Tariff Order dated 10.10.2013 or *as amended from time to time*. In these circumstances, the effect of subsequent revised Tariff Order dated 02.05.2016 cannot be wished away. Para 5 of the Tariff Order dated 02.05.2016 is relevant and may be extracted as under:

“In respect of plants for which PPAs that have been entered into prior to 1st May, 2016 and are commissioned within the period of time as stipulated by the ESCOMs

concerned or the Commission prior to the date of issue of this Order, the tariff as per the Commission's Order dated 10th October, 2013 shall be applicable. Such plants shall be eligible for the revised tariff as per this Order if they are not commissioned within the stipulated time period and there shall be no extension in time period for commissioning them after the effective date of this Order."

5. The best argument advanced by the appellant is on the strength of a letter bearing reference no. 3791 of 26.07.2016 issued by the Executive Engineer of the first respondent whereby approval was accorded after verifying technical details for installing the SRTPV system of 499 KW on the roof top indicating in the concluding part that such approval was valid for 180 days from the date of issue of the said letter, it being obligatory for the SRTPV system to be commissioned within the said period of 180 days, which would expire on 25.01.2017. It is the case of the appellant that since the project was commissioned on 20.01.2017, it had achieved the target and, therefore, was entitled to the tariff in terms of the 2013 Tariff Order.

6. On first blush, we found some merit in the aforementioned submission of the counsel for the appellant but on closer scrutiny, we are of the view that no benefit of higher tariff of 2013 can be availed by the appellant on the basis of the said communication dated 26.07.2016.

7. We have been taken through the relevant parts of the scheme under which the project was developed and the guidelines containing general instructions and procedures issued there under. The letter dated

26.07.2016 was what is described in the scheme and the guidelines as Format-6 which was to be issued after the project developer had submitted, in Format-5, the requisite information regarding technical details of PV modules, inverters and other equipments of the SRTPV system. The letter dated 26.07.2016 itself shows that such details, in prescribed Format-5, were submitted by the appellant only on 26.07.2016, the same very date on which the approval was given. By the time such compliances have been made by the appellant, the new tariff order promulgated on 02.05.2016 by the State Commission had already kicked in.

8. From the above facts and circumstances, it is clear that the appellant had failed to meet the target in terms of the guidelines for completion of the project within 180 days of the PPA being executed and, therefore, under the contractual terms the revised tariff of 02.05.2016 would only apply and not the earlier Order dated 10.10.2013.

9. We find no error in the impugned order. There is no merit in the appeal. It is dismissed.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson