

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

**APPEAL No.136 OF 2021**

Dated: 08.04.2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**Sri. Govindappa**

S/o Venkatappa

Aged about 77 years

Chikkadibburahalli Village,

Dibburahalli Post,

Sidlaghatta Taluk,

Chikkaballapur District – 562101

Email: [prernapriyadarshini20@gmail.com](mailto:prernapriyadarshini20@gmail.com)

... Appellant(s)

*Versus*

- 1. Bangalore Electricity Supply Company Limited**  
C.O. & M Division, BESCOM, Chintamani.  
*Represented by its Executive Engineer (Ele).*  
Email: [helpline@bescom.co.in](mailto:helpline@bescom.co.in); [helplinebescom@gmail.com](mailto:helplinebescom@gmail.com)
- 2. Bangalore Electricity Supply Company Limited**  
C.O. & M Division, BESCOM, Chintamani.  
*Represented by its Assistant Executive Engineer (Ele).*  
Email: [helpline@bescom.co.in](mailto:helpline@bescom.co.in); [helplinebescom@gmail.com](mailto:helplinebescom@gmail.com)
- 3. Bangalore Electricity Supply Company Limited**  
Corporate Office, Room No.1,  
Ground Floor Block-2,  
K.R. Circle, Bengaluru-560001.  
*Represented by its General Manager, DSM.*  
Email: [helpline@bescom.co.in](mailto:helpline@bescom.co.in); [helplinebescom@gmail.com](mailto:helplinebescom@gmail.com)

**4. The Bangalore Electricity Supply Company Limited**

Corporate Office, Room No. 1,  
Ground Floor Block-2,  
K.R. Circle, Bengaluru-560001.

*Represented by its Managing Director (MD).*

*Email: [helpline@bescom.co.in](mailto:helpline@bescom.co.in); [helplinebescom@gmail.com](mailto:helplinebescom@gmail.com)*

**5. The Karnataka Electricity Regulatory Commission**

*Through its Secretary*

No.16, C-1, Millers Tank Bed Area,  
Vasant Nagar,  
Bengaluru-560052

*Email: [kerc-ka@nic.in](mailto:kerc-ka@nic.in)*

... Respondent(s)

Counsel on record for the Appellant(s) : Prerna Priyadarshini  
Kush Chaturvedi  
Priyashree Sharma PH  
Ashish Yadav  
Aditi Agarwal for App. 1

Counsel on record for the Respondent(s) : S. Sriranga Subbanna, Sr. Adv.  
Balaji Srinivasan  
Sumana Naganand  
Medha M Puranik  
Garima Jain for Res.1

**J U D G M E N T**

**PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. The appellant has assailed the order dated 07.01.2020 of the 5<sup>th</sup> Respondent Karnataka Electricity Regulatory Commission (hereinafter referred to as "KERC" or "the Commission") vide which the petition bearing OP No.45/2018 under Section 86(1)(f) of the Electricity Act, 2003, has been dismissed. The appellant had claimed entitlement to tariff of Rs.9.56/kWh for the energy supplied by him from his Solar Roof Top Plant to Bangalore Electricity Supply Company Limited (BESCOM) (impleaded as respondent

Nos.1 to 4 in this appeal), as per the generic tariff order dated 10.10.2013, which has been rejected by the Commission.

2. The facts and circumstances leading to the filing of the instant appeal can be summarized as below: -

- (i) With a view to encourage solar projects in the State of Karnataka and to provide an enabling mechanism including tariff for such projects, the 5<sup>th</sup> Respondent – Commission issued order dated 10<sup>th</sup> October, 2013, determining tariff of Rs.9.56 per unit for rooftop solar project to be established in the State. Thereafter, the Government of Karnataka also framed solar policy which was notified on 22<sup>nd</sup> May, 2014 and which envisaged establishing of roof top solar plants with total capacity of 400MW during the period 2014-2021 in the State. In pursuance to the same, the Respondent – BESCO, the Distribution Licensee, framed a scheme for solar roof top projects to be established in the State of Karnataka and notified the same on 7<sup>th</sup> November, 2014.
- (ii) The appellant, a private individual was desirous of establishing 500 kW Solar Roof Top Photo Voltaic (SRTPV) power plant, in pursuance to the said solar policy notified by the Government of Karnataka on 22.05.2014.
- (iii) Accordingly, the appellant applied for installation of 500kW SRTPV power plant on the rooftop of his poultry farm at Hireyelachenahalli village, Chikkaballapura District, Karnataka,

on 09.12.2014. The respondent BESCOCOM accorded approval to the appellant for installation of the said power plant on 30.01.2015 and a Power Purchase Agreement (PPA) dated 31.01.2015 came to be signed between the parties, wherein the tariff was fixed at Rs.9.56 per kWh in accordance with the tariff order dated 10.10.2013.

- (iv) Thereafter, the appellant sought extension of time for commissioning of the power plant on two occasions i.e. 01.07.2015 and 21.10.2015. On both occasions, the time for commissioning of the power plant was extended by 90 days each.
  
- (v) Here, it is to be noted that a circular dated 17.11.2015 was issued by respondent BESCOCOM providing for extension of time to all the developers for installation of SRTPV plant on payment of registration fee. In view of the said circular, the appellant became entitled to further extension of time for installation of SRTPV system by 12 months upon payment of Rs.2,000/- as registration fee. Accordingly, upon a request in this behalf from the appellant and after collecting the registration fee from him, the respondent BESCOCOM granted further extension to him vide letter dated 18.02.2016 for a further period of one year i.e. from 01.08.2015 to 30.07.2016 for commissioning of the SRTPV plant.

- (vi) However, the said circular dated 17.11.2015 came to be withdrawn by the BESCO on 18.05.2016 with immediate effect.
- (vii) Upon getting further extension of one year for setting up of SRTPV plant vide letter dated 18.02.2016 of the BESCO, the appellant entered into a Project Collaboration Agreement with M/s Pramatha Power (P) Limited, a LLP, on 13.10.2015 thereby leasing out the rooftop of his poultry farm in favor of the said LLP which had undertaken to develop the project.
- (viii) Vide letter dated 05.01.2016, the appellant sought enhancement capacity of his SRTPV plant from 500 kW to 1MW which was acceded to by the respondent BESCO. Accordingly, the PPA dated 31.01.2015 executed between the parties was modified by mentioning the capacity of power plant intended to be set up by the appellant as 1000 kWp in place of 500kWp, as initially mentioned therein, and the same was sent to the 5<sup>th</sup> respondent Commission for approval on 25.01.2016. On 24.02.2016, the Commission appears to have sought certain clarifications from the respondent on the aspect of delay in seeking approval of the PPA. Ultimately, the modified PPA was approved by the Commission on 03.05.2016, even though, the respondent BESCO had submitted clarifications on 18.04.2016. Thereafter, the respondent BESCO also accorded approval as on 18.05.2016 and ultimately the appellant's SRTPV plant was commissioned on 22.07.2016.

- (ix) The respondent BESCO started paying tariff to the appellant at the rate of Rs.9.56 per unit from the date of commissioning of the SRTPV plant and did so till 01.01.2017, but thereafter stopped making any payment to the appellant for the power supplied by him. Upon enquiries by the appellant, he was informed by the respondent BESCO that he is entitled to tariff of Rs.5.20 per unit only and not Rs.9.56 per unit for the reason that the tariff prevailing as on the date of commissioning of his plant was Rs.5.20 per unit as per the generic tariff order dated 02.05.2016.
- (x) It is in these facts and circumstances of the case that the appellant had approached the 5<sup>th</sup> respondent Commission by way of petition bearing OP No.45/2018 seeking entitlement to tariff of Rs.9.56 per kWh as per PPA dated 31.01.2015 executed between the parties, which has been rejected by the Commission vide impugned order dated 07.01.2020.
- (xi) According to the Commission, since the appellant was aware that installation of SRTPV system with enhanced capacity of 1MW was permitted to him on 05.01.2016, he should have started the installation work at least from that date and was required to commission the plant within 180 days from that date i.e. before 04.07.2016. It, thus, held the appellant not entitled to tariff at the rate of Rs.9.56 per unit as per the generic tariff order dated 10.10.2013. It relied upon clause 5 of the generic tariff order dated 02.05.2016 in holding the appellant entitled to tariff at the rate of Rs.5.20 per unit as per the said tariff order.

3. We have heard the learned counsels for the parties. We have also perused material on record as well as the written submissions filed on behalf of the parties.

4. On behalf of the appellant, it is argued that the Commission has applied a flawed criterion by holding that the appellant should have commissioned the SRTPV plant within 180 days from the date it sought enhancement of capacity of the power plant from 500 kW to 1MW i.e. 05.01.2016. It is submitted that the completion of the installation work was done by the appellant much before the criterion of 180 days from 05.01.2016 and it is the commissioning of the plant which got delayed due to subsequent steps to be taken in this regard i.e. CEIG approval, inspection by meter testing etc. which took almost a month and ultimately the project could be commissioned on 22.07.2016. It is argued that these subsequent steps after the submission of work completion report by the appellant were not in his control and therefore, the delay in commissioning of the project cannot be attributed to him. It is further argued that even otherwise also the timeline for appellant to commission the project had been extended by the respondent BESCO itself till 30.07.2016 vide letter dated 18.02.2016 which was issued in terms of the circular dated 17.11.2015 of the respondent BESCO itself, and therefore, the commissioning of the plant on 22.07.2016 was well within the extended period of time. It is submitted that the benefits so granted to the appellant vide said letter dated 18.02.2016 could not have been taken away or discounted merely for the reasons that the circular dated 17.11.2015 was subsequently withdrawn by the BESCO on 18.05.2016. The learned

counsel further argued that since the initial PPA was executed between the parties on 31.01.2015 i.e. during the control period of the generic tariff order dated 10.10.2013 and the project had been commissioned within the extended time period granted by the BESCO itself, the subsequent generic tariff order dated 02.05.2016 is not applicable to the appellant's power plant.

5. Per contra, it was argued on behalf of the respondent BESCO that as per the SRTPV guidelines dated 07.11.2014 framed by the company in view of solar policy of the Government of Karnataka, the maximum timeframe fixed for commissioning of SRTPV plants on an existing building is 180 days and the Commission has rightly held that this period of 180 days should be reckoned from 05.01.2016 i.e. the date when the appellant sought enhancement of capacity from 500 kW to 1MW. It is further argued that no reliance at all can be placed on the letter dated 18.02.2016 for the reason that same has been issued by the concerned officer without any authority and the same is based upon a circular which also was without any authority and was subsequently withdrawn. On this aspect, reliance is placed by the learned counsel upon judgment dated 07.07.2022 of this Tribunal in appeal No.48/2022 titled *Balaji Naik A. v. Gulbarga Electricity Supply Company Limited & Anr.*

6. Having heard the learned counsels and having perused the record, we feel unable to accept the reasoning of the Commission that the period of 180 days for commissioning of the solar power plant by the appellant should be reckoned from 05.01.2016 i.e. the date when he sought enhancement of capacity of the plant from 500 kW to 1 MW. It is for the



reason that the appellant could not have proceeded with the assumption that the request would be acceded to in all circumstances and there is no scope of its being rejected on any ground whatsoever. It was logical and practical for the appellant to await the decision of the respondents i.e. BESCO and the Commission on his such request before proceeding further with the installation work. As would be seen, the modified PPA with the enhanced capacity of 1 MW executed between the parties was sent to the 5<sup>th</sup> respondent Commission for approval on 25.01.2016 and after seeking certain clarifications, the Commission approved the PPA on 03.05.2016. Therefore, the period of 180 days stipulated for commissioning of solar power plant deserves to be reckoned in case of the appellant from 03.05.2016 i.e. the date when the modified PPA got approval of the Commission thereby giving green signal to the appellant to proceed further with the installation work. In view of the same, it cannot be said that the commissioning of the power plant by appellant on 22.07.2016 was not within the stipulated time.

7. So far as the tariff applicable to the appellant's power plant is concerned, we find that the same has been fixed by the Commission in the impugned order as Rs.5.20 per unit as provided in the generic tariff order dated 02.05.2016. While fixing the tariff for the appellant's power plant, the Commission has placed reliance upon clause 5 of the said tariff order which is quoted herein below: -

*“5. Applicability of the Order:*

*“In respect to plants for which PPAs that have been entered into prior to 1<sup>st</sup> 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 10<sup>th</sup> 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."*

8. This clause of the tariff order dated 02.05.2016 envisaged that only those power plants regarding which PPAs have been executed prior to 01.05.2016 and which are commissioned within the stipulated time period prior to the issuance of the said tariff order, the tariff as per the Commission's generic tariff order dated 10.10.2013 shall apply. It is further provided that in case, such plants are not commissioned within the stipulated time period, they shall be eligible for the revised lesser tariff as per the said order dated 02.05.2016 and there shall be no extension in the time period for commissioning of such plants.

9. In the instant case, even though the initial PPA was executed between the parties on 31.01.2015, the same stood amended / modified in January, 2016. The modified PPA was approved by the Commission on 03.05.2016 i.e. after the issuance of generic tariff order dated 02.05.2016. The PPA provides for the tariff applicable to appellant's power plant in clause 6.1 (a) which is reproduced herein below:-

*"The BESCO shall pay for the net metered energy at Rs.9.56 per unit/kWh as determined by the KERC for the term of the agreement."*

10. We find it difficult to understand as to what led the Commission to approve the PPA dated 31.01.2015 on 03.05.2016 with the clear stipulation as to the tariff payable to the appellant at Rs.9.56 per unit, in case the tariff applicable to appellant's power plant was to be determined as per the generic tariff order dated 02.05.2016 which had been issued by the Commission itself just one day prior to the approval of the PPA. In case, in the opinion of the respondent BESCO or the Commission, the appellant was not entitled to higher tariff as per the generic tariff order dated 10.10.2013, the BESCO should have objected to approval of the PPA and the Commission should have refused to approve the same. Admittedly, the modified PPA had been sent for approval to the Commission with the consent of BESCO. It neither objected to any term of the PPA including tariff clause 6.1(a) nor its approval by the Commission.

11. It is an established principle of law that a PPA executed between a generator and a Discom, when approved by the concerned Commission, becomes binding upon the parties to the agreement and none of the parties can deviate from its terms without seeking to modify/amend the same or to rescind the same.

12. In the instant case, the respondent BESCO paid tariff to the appellant at the rate of Rs.9.56 per unit from the date of commissioning of his SRTPV plant till 01.01.2017, in terms of the PPA executed between the parties and thereafter stopped paying the same by saying that the appellant is entitled to tariff at the rate of Rs.5.20 per unit only as per the subsequent generic tariff order dated 02.05.2016. By paying tariff to the appellant at the rate of Rs.9.56 per unit till 01.01.2017, it is manifest that the respondent

BESCOM was conscious about the tariff clause contained in the PPA executed between the parties. However, the sudden changed of mind on the part of the BESCOM in January, 2017 is not explicable.

13. We have already held that the appellant has commissioned his solar power plant within the stipulated time after the approval of the modified PPA by the State Commission on 03.05.2016. The PPA had been executed between the parties on 31.01.2015 i.e. within the control period of the generic tariff order dated 10.10.2013. We also find that considerable portion of installation work of the SRTPV system had been done by the appellant prior to 02.05.2016 when the subsequent generic tariff order was issued by the Commission. This has been noted by the Commission itself in Para No.8(e) of the impugned order. The relevant portion of the said Paragraph is reproduced hereunder: -

*“... The records placed by the petitioner along with the written arguments submitted on 13.01.2019, would show that much earlier to issuance of Annexure-C dated 18.05.2016, considerable portion of installation work of SRTPV System had taken place. This is evidenced by the report dated 04.04.2016 submitted by the Executive Engineer addressed to the General Manager (Ele.), DSM, Corporate office, BESCOM, Bengaluru, reporting that the installation works of the Solar Panels were completed and other works like, erection of breakers, transformers were under progress. Along with the said report, the photos evidencing the progress in works were also enclosed. ...”*

14. Therefore, since the PPA had been executed much prior to 01.05.2016 and the SRTPV plant was commissioned within the stipulated period, the tariff as per the Commission's order dated 10.10.2013 is applicable to the appellant's power plant also, as envisaged in clause 5 of the generic tariff order dated 02.05.2016 upon which Commission itself has placed reliance.

15. In view of the above discussion, we are unable to sustain the impugned order of the Commission as the same is found to be absolutely perverse. The same is hereby set aside.

16. The appeal is hereby allowed and it is held that the appellant is entitled to tariff at the rate of Rs.9.56 per unit for the energy injected into the grid from his SRTPV plant from the date of its commissioning, in terms of the generic tariff order dated 10.10.2013 coupled with the relevant provisions of the PPA dated 31.01.2015 executed between the parties.

**Pronounced in the open court on this 08<sup>th</sup> day of April, 2024.**

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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