

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 137 OF 2022 & IA No. 2604 of 2023
APPEAL No. 138 OF 2022
APPEAL No. 139 OF 2022
APPEAL No. 140 OF 2022
APPEAL No. 141 OF 2022
APPEAL No. 142 OF 2022
APPEAL No. 143 OF 2022
APPEAL No. 144 OF 2022
AND
APPEAL No. 145 OF 2022

Dated: 20.03.2024

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

In the matter of:

APPEAL No. 137 OF 2022

SMT. A. JAYAMMA, W/O T. PRAKASH MURTHY

Aged about 47 years,
Mogalahalli Village, Kondlahally Post,
Molakalmuru Taluk, Chitradurga District-577529
Email ID:- office@msapartners.in

... Appellant(s)

Versus

- 1. STATE OF KARNATAKA, DEPARTMENT OF ENERGY,**
Represented by its Secretary
2nd Floor, Vikasa Saudha, Bengaluru-560001
Email ID:- prs-energy@karnataka.gov.in
- 2. BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED**
Represented by Executive Engineer

C.O&M Division, Hiriyr, Chitradurga-577598
Email ID:- eeetumkur@bescom.co.in

3. BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

Represented by General Manager (DSM)
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Email ID:- gmdsm@bescom.co.in

4. BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

Represented by Managing Director
Corporate Office, K.R. Circle, Bengaluru-560001
Email ID:- md@bescom.co.in

5. OFFICE OF THE CHIEF ELECTRICAL INSPECTOR,

Government of Karnataka,
Represented by Chief Electrical Inspector
P.B.No.5148, Dr. Rajkumar Road, Rajajinagar,
Bengaluru-560001
Email ID:- ceig.blr@gmail.com

6. KARNATAKA ELECTRICITY REGULATORY COMMISSION

Represented by its Secretary
No. 16, C-1, Millers Tank Bund Road,
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Bengaluru-560052
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... Respondent (s)

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Shiva Krishna M
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Prateek Yadav

Garima Jain for Res. 2

Sumana Naganand
Medha M Puranik
Gayathri Sriram
Abhijeet Kumar Pandey
Garima Jain for Res. 3

APPEAL No. 138 OF 2022

T. NAGARAJA

S/o K.R. Thipperudrappa,
Aged about 51 years,
Kondalahalli Village, Molakalmur Taluk,
Chitradurga District – 577529.
Email ID:- office@msapartners.in

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... Respondent (s)

APPEAL No. 139 OF 2022

Mr. T. NAGARAJA

S/o K.R. Thipperudrappa,
Aged about 51 years,
Kondalahalli Village, Molakalmur Taluk,
Chitradurga District – 577529
Email ID:- office@msapartners.in

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APPEAL No. 140 OF 2022

- SHRI N. BHEEMA REDDY, S/O NAGA REDDY,**
Aged about 45 years,
R/o Kodihalli, Challekere Taluk,
Chitradurga District – 577543.
Email ID:- office@msapartners.in ... Appellant(s)

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... Respondent (s)

APPEAL No. 141 OF 2022

T. SHARANAPPA

S/o Tippeswamy, Aged about 50 years,
Mogalahalli Village, Kondlahally Post,
Molakalmuru Taluk, Chitradurga District-577529
Email ID:- office@msapartners.in

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... Respondent (s)

APPEAL No. 142 OF 2022

T. NAGARAJA

S/o K.R. Thipperudrappa,
Aged about 51 years,
Kondalahalli Village, Molakalmur Taluk,
Chitradurga District-577529
Email ID:- office@msapartners.in

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APPEAL No. 143 OF 2022

- Mr. B. NAGARAJ**
S/o B.G. Basavarajappa,
Bukkambudhi Village,
Devareddy Halli Village, Challakere Taluk,
Chitradurga District-577001
Email ID:- office@msapartners.in ... Appellant(s)

Versus

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... Respondent (s)

APPEAL No. 144 OF 2022

S. RAVIKUMAR

S/o T. Sharanappa, Aged about 40 years,
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... Appellant(s)

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... Respondent (s)

APPEAL No. 145 OF 2022

MRS. THIPPERAMMA

W/o B. H. Thippeswamy,
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... Respondent (s)

Counsel for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Ritu Apurva for App. 1

Counsel for the Respondent(s) : S. Sriranga Subbanna, Sr. Counsel
Sumana Naganand
Medha M Puranik
Gayathri Sriram
Abhijeet Kumar Pandey
Garima Jain for Res. 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. All the above captioned appeals arise out of identical fact situations and pose identical issues for determination by this Tribunal. Therefore, these appeals are hereby disposed off by this common order.
2. We shall first advert to the brief conspectus of the facts giving rise to these appeals.
3. The appellants are private individuals who were desirous of establishing 1 MW Solar Roof Top Photo Voltaic (SRTPV) system in pursuance to the solar policy notified by the Government of Karnataka on 22.05.2014.

4. With a view to encourage solar projects in the State of Karnataka and to provide an enabling mechanism including tariff for such projects, Karnataka Electricity Regulatory Commission (KERC) (impleaded as 6th respondent in Appeal No.137/2022, and 5th respondent in other captioned appeals), issued order dated 10.10.2013 determining tariff of Rs.9.56 per unit for rooftop solar projects to be established in the State. Thereafter, the Government of Karnataka also framed solar policy which was notified on 22.05.2014 and which envisaged establishing of rooftop solar plants with total capacity of 400MW during the period 2014-2021 in the State. In pursuance to the same, respondent Nos.2 to 4 i.e. Bangalore Electricity Supply Company Limited (BESCOM), the licensee, framed a scheme for solar rooftop projects to be established in the State of Karnataka and notified the same on 07.11.2014. The appellants' claimed to be eligible for installation of the SRTPV system on their respective individual buildings in terms of the said solar policy and accordingly entered into a Power Purchase Agreement (PPA), for installation of 1 MW capacity SRTPV system on their existing buildings, with the respondent BESCOM. The tariff mentioned in these PPAs was Rs.9.56 per unit to be paid by the respondent BESCOM to the appellants for the electricity generated and supplied by the appellants. The PPAs were duly approved by the Commission i.e. KERC on 10.02.2016. A letter dated 15.04.2016 is stated to have been issued to the appellants by the Executive Engineer, BESCOM, thereby according approval for installation of the SRTPV system of 1 MW on the rooftops of their buildings. Thereafter, the appellants entered into a Memorandum of Understanding (MoU) with the project developer M/s TECSO Private Limited in the month of May, 2016 and construction work was stated in the month of July, 2016.

However, the PPAs came to be cancelled by the respondent BESCO vide O.M. dated 08.09.2016 on the basis of the report submitted by the Assistant Executive Engineer and the survey report submitted by inspecting authorities stating therein that various violations have been committed by the appellants.

5. The appellants assailed the O.M. dated 08.09.2016 in the Hon'ble High Court of Karnataka by way of separate writ petitions. Interim orders dated 27.09.2016 were passed by the Hon'ble High Court in these writ petitions, thereby staying the operation of the O.M. dated 08.09.2016 and further directing the respondent BESCO to continue the PPAs dated 17.12.2015. Ultimately, the writ petitions were allowed vide order dated 16.03.2017, setting aside the O.M. dated 08.09.2016 and directing the respondent BESCO to issue show cause notices to the appellants in respect of the alleged contraventions / violations and to pass orders upon considering the replies of the appellants. Accordingly, fresh show cause notices dated 13.04.2017 were issued to the appellants and upon considering their replies, the cancellation of the PPAs was reiterated vide their order dated 29.05.2017.

6. It appears that the Respondent KERC issued an order dated 17.11.2017 in respect of SRTPV plants violating the norms specified for implementation of such plants, thereby granting certain reliefs to the consumers of these SRTPV system who had entered into the PPAs under the generic tariff orders dated 10.10.2013 and 02.05.2016, and whose PPAs had been cancelled due to delay in commissioning of the projects. Subsequent to the issuance of said order dated 07.09.2017, the appellants

approached the respondent BESCO in the last week of November, 2017 requesting for revival of PPAs and synchronization of SRTPV systems. In pursuance to such requests of the appellants, their SRTPV systems (except in case of appellant in Appeal No.137/2022) were synchronized after executing fresh PPAs dated 15.12.2017 at the tariff of Rs.5.20 per unit in terms of tariff order dated 02.05.2016. When these fresh PPAs were submitted to the Respondent Commission for approval, the Commission approved the same with a modification as regards the tariff which was fixed at Rs.3.57 per unit and directed execution of modified PPAs. Accordingly modified PPAs dated 30.12.2017 were executed by the appellants with the respondent BESCO thereby agreeing to supply solar energy at the tariff of Rs.3.57 per unit. Thereafter, the SRTPV systems of the appellants except that of appellant in Appeal No.137/2022 were commissioned on 21.12.2017 / 30.12.2017 / 18.01.2018.

7. Thereafter, the appellants approached the Respondent Commission with separate petitions under Section 86(1)(f) of the Electricity Act, 2003, with the following prayers:

- a) Setting aside of PPA termination notices dated 08.09.2016 and 29.05.2017;
- b) To declare the action of respondent Discom in terminating the PPAs dated 17.12.2015 as illegal; and
- c) Directing the respondent Discom to procure energy from the appellants SRTPV systems as per PPA dated 17.12.2015.

8. The appellants had urged following grounds before the Commission in support of the above reliefs claimed by them:-

- (a) Time was not the essential factor for completing the installation of STRPV systems as the PPA does not contain any term fixing the time within which installation of the works of the SRTPV systems were to be completed. Even imposition of 180 days' time for completion of works as per the approval dated 15.04.2016 issued by Executive Engineer, BESCO, is invalid. The BESCO circular dated 17.11.2015 allowing the extension of time for commissioning of SRTPV systems on payment of certain amounts would show that the time was not of essence for commissioning the SRTPV systems.
- (b) The appellants have completed the works of the SRTPV systems within the stipulated time as per the approval granted vide letter dated 15.04.2016, and the respondent BESCO has canceled the PPAs even before the expiry of time granted vide said letter dated 15.04.2016.
- (c) The cancelation of PPAs is illegal as well as arbitrary as none of the officials of respondent BESCO has actually visited the spot and inspected the SRTPV systems. The officials of the respondent BESCO themselves had given the feasibility report and found the space on the rooftops of the appellant's premises sufficient for setting up of SRTPV systems and there has been no extensions of existing buildings or construction of new buildings for installation of the said systems.

9. Following issues had been framed by the commission for its consideration:

- (i) Whether time was not the essential factor for completion of the works of the SRTPV systems in these cases as claimed by the appellants?
- (ii) Whether the works of the SRTPV systems were completed or could have been completed within the stipulated period for commissioning of the systems?
- (iii) Whether the respondents have made out sufficient grounds for cancelation of PPAs dated 17.12.2015 executed between the parties?
- (iv) Whether the petitioners are entitled to any relief(s), if so, to what relief(s)?
- (v) What order?

10. Vide the impugned order, the Commission held that achieving time limit was an essential factor with regards to the completion of the SRTPV systems even though such a term was not provided specifically in the PPAs. It further came to the conclusion that the appellant had not completed the installation of works of the SRTPV systems within the stipulated period and that the respondent BESCO has made out sufficient ground for cancelation of PPAs dated 17.12.2015. Accordingly, it held appellants not entitled to the relief as claimed by them and dismissed the petitions. The respondent BESCO was also directed to synchronize/commission the SRTPV system of the appellant in appeal no.137/2022 after complying with all the technical

and operational conditions / specifications as applicable for commissioning of 1 MW SRTPV system subject to the appellant executing a fresh PPA for supply of power at the tariff of Rs.3.57 per unit.

11. It was argued on behalf of the appellants that based on the approval for installation of SRTPV systems vide letter dated 15.04.2016 of the Executive Engineer, BESCOM, the appellants executed project development agreements with the project developer M/s TECSO Private Limited on 07.05.2016 and Memorandums of Understanding were entered with the project developer on 11.05.2016, but before the deadline specified in the said letter could expire, the PPAs were canceled by the respondent BESCOM vide notice dated 08.09.2016, which action is absolutely arbitrary, baseless and unjustified. It is submitted that cancellation of the PPAs on the sole ground of alleged non-compliance with SRTPV norms, namely, retrofitting of rooftops for installation of SRTPV systems is contrary to the judgment of this Tribunal in *Tata Prasanna Kumar v. Karnataka Electricity Regulatory Commission and Ors.* in Appeal No.211/2018 decided on 14.07.2021, wherein the said contention of the respondent BESCOM was rejected by the Tribunal. It is submitted that but for such illegal termination of the PPAs the appellants would have established their respective SRTPV plants within the period of 180 days as specified in the approval letter dated 15.04.2016. It is further argued that since the PPAs were entered into between the appellants and the respondent BESCOM prior to 01.05.2016, the tariff order dated 10.10.2013 is applicable and they are entitled to tariff @ Rs.9.56 per unit.

12. 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 the solar policy of the Government of Karnataka, the maximum time frame fixed for commissioning of SRTPV plants on an existing building is 180 days and the Commission has rightly held in the impugned order that these guidelines are to be read along with the PPAs. It is submitted that considering these guidelines and the date of execution of the PPAs i.e. 17.12. 2015, the scheduled date of commissioning of SRTPV plants for the appellants was 16.06.2016, and they have admittedly failed to achieve the said SCOD. It is pointed out that appellant's failure to achieve SCOD is evidenced by the inspection report dated 24.08.2016, prepared upon the inspection of the respective premises of the appellants, during which it was found that the appellants had not even commenced the works related installation of the projects. It is further submitted that the project development agreements and Memorandums of Understanding entered into by the appellants with M/s TECSO Private Limited on 07.05.2016 and 11.05.2016 i.e. only about a month prior to SCOD, clearly demonstrate that the delay in commissioning of the SRTPV plants was attributable to the appellants. It is further argued that no reliance can be placed on the letter dated 15.04.2016 for the reason that the same had been issued by an errant officer of the respondent BESCO fraudulently, and disciplinary action has been taken against the said officer. It is stated that the timeline given in the said letter is contrary to SRTPV guidelines which makes the same totally illegal. On this aspect, reliance is placed by the Learned Counsel upon judgment dated 07.07.2022 of the Tribunal in appeal No.48/2022 *Balaji Naik A v. GERC & Anr.*

13. Learned Counsel for the respondent BESCO further argued that the appellants had to install the SRTPV plants on the existing buildings but they intended to install the solar panels on newly constructed steel structures, which is manifest from the inspection report dated 24.08.2016, and therefore, they have not adhered to SRTPV norms / guidelines, which justifies the action of the respondent in terminating their PPAs. It is submitted that the reasons behind necessity of Installation of SRTPV plants on the existing rooftops, and not on the newly constructed / extended roofs, is to prevent conversion of SRTPV projects under net metering basis into the primary business of the consumer. It was argued that the judgement of this Tribunal in Tata Prashanna case (supra) cannot be relied upon for the reason that the appeal filed against the same in the Hon'ble Supreme Court as civil appeal No.5699/2022 is still pending disposal. It is further argued that the granting of promotional tariff of Rs.9.56 per unit to the appellants who have delayed the commissioning of their respective SRTPV plants is not in the interest of ultimate consumers who will bear the cost of the same and will lead to a situation wherein the appellants will be making super profit as they have not incurred any cost upon the construction of the rooftop plants in the control period of general tariff order dated 10.10.2013.

14. We gave our thoughtful consideration to the rival submissions made by the Learned Counsels on behalf of the parties. We have also perused the impugned order as well as written submissions filed on behalf of the parties.

15. At the outset, we may note that we are conscious about the fact that we have not mentioned all the material dates in Paragraph Nos. 4 to 6 hereinabove. It is for the reason that some of the dates do not match in all the appeals. Therefore, before proceeding to analyze the submissions on behalf of the parties, we find it appropriate to give a brief list of important dates under two heads herein below:

List of Dates

(A) Before the filing of writ petition in the Hon'ble High Court :

Sl. No.	Description / Event	Appeal No. 137/2022	Appeal No. 144/2022	Appeal No. 145/2022	Appeal No. 140/2022	Appeal No. 141/2022	Appeal No. 143/2022	Appeal No. 142/2022	Appeal No. 139/2022	Appeal No. 138/2022
	Name of the Appellant	A. Jayamma	S. Ravikumar	Mrs. Thippamma	N. Bheema Reddy	T. Sharappa	B. Nagaraja	T. Nagaraj	T. Nagaraj	T. Nagaraj
1	Date of SRTPV application	31.10.2015	31.10.2015	31.10.2015	31.10.2015	31.10.2015	31.10.2015	31.10.2015	31.10.2015	31.10.2015
2	Time extension for SRTPV-BESCOM Circular of 1 year	17.11.2015 (Annex Q)	17.11.2015	17.11.2015	17.11.2015	17.11.2015	17.11.2015	17.11.2015	17.11.2015	17.11.2015
3	Date of PPA	17.12.2015 (Annex. E)	17.12.2015 (Annex. E)	17.12.2015 (Annex. E)	17.12.2015 (Annex. E)	17.12.2015 (Annex. E)	17.12.2015 (Annex. E)	17.12.2015 (Annex. E)	17.12.2015 (Annex. E)	17.12.2015 (Annex. E)
4	Date of approval of PPA by the Commission	10.02.2016	10.02.2016	10.02.2016	10.02.2016	10.02.2016	12.02.2016	10.02.2016	10.02.2016	10.02.2016
5	Approval for installing SRTPV System, issued by BESCOM	15.04.2016 (Annex. F)	15.04.2016 (Annex. F)	15.04.2016 (Annex. F)	15.04.2016 (Annex. F)	15.04.2016 (Annex.)	15.04.2016 (Annex. F)	15.04.2016 (Annex. F)	15.04.2016 (Annex. F)	15.04.2016 (Annex. F)

6.	New tariff order of the State Commission providing tariff for new projects	02.05.2016	02.05.2016	02.05.2016	02.05.2016	02.05.2016	02.05.2016	02.05.2016	02.05.2016	02.05.2016
7	Project Development Agreement with Project Developer	07.05.2016	07.05.2016	07.05.2016	07.05.2016	07.05.2016	07.05.2016	07.05.2016	07.05.2016	07.05.2016
8	MoU entered into with Project Developer	11.05.2016	11.05.2016	11.05.2016	11.05.2016	11.05.2016	11.05.2016	11.05.2016	11.05.2016	11.05.2016
9	Date of cancellation of PPA	08.09.2016 (Annex. I)	08.09.2016 (Annex. I)	08.09.2016 (Annex. I)	08.09.2016 (Annex. I)	08.09.2016 (Annex. I)	08.09.2016 (Annex. I)	08.09.2016 (Annex. I)	08.09.2016 (Annex. I)	08.09.2016 (Annex. I)

(B) Subsequent to filing of the writ petition in the Hon'ble High Court:

Sl. No.	Description / Event	Appeal No. 137/2022	Appeal No. 144/2022	Appeal No. 145/2022	Appeal No. 140/2022	Appeal No. 141/2022	Appeal No. 143/2022	Appeal No. 142/2022	Appeal No. 139/2022	Appeal No. 138/2022
	Name of the Appellant	A. Jayamma	S. Ravikumar	Mrs. Thippamma	N. Bheema Reddy	T. Sharanappa	B. Nagaraja	T.Nagaraj	T.Nagaraj	T.Nagaraj
1.	WP filed by the Appellant	51497/2016	51459/2016	51001/2016	51458/2016	51495/2016	51457/2016	51460/2016	51460/2016	51460/2016
2.	Date of Interim Order of Karnataka High Court	27.09.2016	27.09.2016	22.09.2016	27.09.2016	27.09.2016	27.09.2016	27.09.2016	27.09.2016	27.09.2016
3.	Date of remand by the	16.03.2017	16.03.2017	16.03.2017	16.03.2017	16.03.2017	16.03.2017	16.03.2017	16.03.2017	16.03.2017

	High Court									
4.	Show cause notice	13.04.2017	13.04.2017	13.04.2017	13.04.2017	13.04.2017	13.04.2017	13.04.2017	13.04.2017	13.04.2017
5.	Reiteration of termination	29.05.2017	29.05.2017	29.05.2017	29.05.2017	29.05.2017	29.05.2017	29.05.2017	29.05.2017	29.05.2017
6.	Date when the projects were allowed Commissioning by BESCOM at lower tariff	Not allowed commissioning till date by BESCOM	18.01.2018	18.01.2018	30.12.2017	30.12.2017	18.01.2018	21.12.2017	21.12.2017	21.12.2017
7.	Impugned Order	15.10.2019	15.10.2019	15.10.2019	15.10.2019	15.10.2019	12.11.2019	22.10.2019	22.10.2019	22.10.2019

16. The main issue which arises for determination in this appeal is whether the termination of PPAs of the Appellants by the Respondent Commission is legal, valid and justified.

17. The Respondent BESCOM terminated the PPAs of the Appellants on following two main grounds :-

- (a) There has been delay in commissioning of the SRTPV plants on the part of the Appellants as the same have not been commissioned within the stipulated period of 180 days;
- (b) The Appellants have unauthorizedly extended the existing structures to install the SRTPV panels as the existing roof was not sufficient for the same, which is in violation of the circulars in this regards.

(a) Delay in Commissioning of the SRTPV plants :

18. On behalf of the appellants, it was argued that since no time period has been stipulated in the PPAs for installation and commissioning of the SRTPV systems, time was not essence of contract and hence no time frame can be applied. They further contend that at best, the period of 180 days mentioned in Clause 8(vii) of the Guidelines dated 7th November, 2014 shall have to be reckoned from the date of approval letter i.e. 15th April, 2016 vide which the concerned Executive Engineer approved the installation of SRTPV systems by them. On this aspect much emphasis have been laid on behalf of the Respondent BESCO also on the guidelines dated 7th November, 2014 framed by the company in view of the solar policy notified on 22nd May, 2014 by the Govt. of Karnataka to canvass that maximum time frame fixed for commissioning of SRTPV plants on the existing roof top has been fixed as 180 days to be reckoned from the date of PPAs. It is argued that PPAs were executed between the Appellants and Respondent BESCO on 17th December, 2015 and therefore considering the time limit laid in the guidelines, the scheduled date of commissioning of SRTPV plants for the Appellants was 16th June, 2016 which they have failed to achieve.

19. We have minutely perused these guidelines dated 7th November, 2014 framed by the Respondent BESCO regarding setting up of Solar Roof Top Photo Voltaic systems, a copy of which has been filed by Respondent BESCO itself along with its statement of objections to the Appeal. We find it pertinent to reproduce clauses 1 to 12 of these guidelines here under the heading notified "Procedure for Availing SRTPV Connections" :-

“ Procedure for Availing SRTPV Connection

1. *The Applicant shall submit the filled-in Application along with the necessary documents either Online/Offline to jurisdictional O&M, Sub-division office, BESCO and pay required registration fee.*
2. *If Offline application (In-person) is received, the AEE shall assist applying it Online.*
3. *On submission of Application form to concerned AEE, Sub-divisional office, will perform general screening and register the application with acknowledgment to the Applicant.*
4. *After revenue verification, the Application shall be sent to concerned Section officer/Executive Engineer, C, O&M, BESCO as per delegation of powers for Technical feasibility report.*
5. *In case of L.T. Power Installations, if the proposed capacity of the SRTPV system is higher than 50kWp, then, as per KERC tariff Order, the Applicant/Developer shall provide evacuation facility upto the interconnection point by extending 11KV line and providing the Distribution transformer & protection equipment. The applicant shall use equipment such as Transformer, Conductor etc, from BESCO approved vendors only*
6. *The Assistant Executive Engineer, C, O&M, BESCO, as per delegation of powers, shall accord Approval to all the L.T. Installations up to a capacity of 50kWp as per Format-5.*
7. *The Executive Engineer, C, O&M, Division BESCO as per delegation of powers shall accord Approval to all the H.T. Installations of 50kWp and above the capacity as per Format-6.*
8. *After completion of installation work of SRTPV system, the work completion report Format-6C is to be submitted by Applicant to AEE/EE, C, O&M, BESCO along with the following documents:*
 - i. *Facilitation fee of Rs.1000/- upto 5kWp, Rs.2000/- for above 5.0 kWp and upto 50kWp and Rs.5000/- for above 50 kWp and upto 1MWp shall be paid and enclose the copy of receipt.*
 - ii. *Copy of the Single Line Drawing of the SRTPV System indicating all the Safety aspects of Grid Connectivity.*
 - iii. *Approved drawings and approval for Commissioning from Chief Electrical Inspectorate (CEI), GoK (for capacity above 10kWp).*
 - iv. *Test Certificate of bi-directional meter from MT division, BESCO.*
 - v. *Test reports for the tests conducted as per IS/IEC standards and Technical specifications of SPV system shall be submitted along with Work Completion certificate as per Format-7 before Commissioning.*

- vi. Copy of Power Purchase Agreement on Rs.200/- Non judicial stamp paper with BESCO.
- vii. Facing sheet of Bank pass book containing details of Name of the Bank, Type of account, Account No, Name of the Branch, IFSC code etc.,
The maximum time frame for completion of installation work in all respect by the applicant is 180 days.
9. AEE, O&M, BESCO is the Inspecting authority of Safety procedures upto 10 kWp and for applied loads above 10 kWp, Chief Electrical Inspectorate, Department of Electrical Inspectorate, GoK is the Inspecting authority to meet safety standards.
10. **Singing of Power Purchase Agreement:**
- After completion of SRTPV installation work, the consumer has to enter into a Power Purchase agreement with BESCO on Rs.200/- Non judicial stamped paper. Format of PP Agreement can be downloaded from BESCO website www.besco.org
 - The PP agreement shall be signed before Commissioning and Synchronizing.
 - As per delegation of powers, the AEE of C, O&M sub-divisions are authorised to sign PPA upto 50kWp.
 - As per delegation of powers, EE of C, O&M divisions are authorised to sign PPA of 50kWp and above.
 - PP Agreements of more than 500kWp, individual approvals have to be obtained from KERC through GM (DSM), Corporate Office, BESCO.
11. **Submission of work completion report:**
The Applicant/System installer of SRTPV system shall submit the following documents along with work completion report as per Format-7 to the approving authority (C, O&M, and AEE/EE of BESCO):
- a. Approved drawing and approval letter for commissioning the SRTPV system by CEI of DEI, GoK.
 - b. Specification sheets of all equipments and manufacturer's test reports and test certificate of modules and inverters.
 - c. Test certificates of bi-directional meter from MT division, BESCO.
 - d. Undertaking of MNRE subsidy Sanction letter or self-declaration Certificate for not availing MNRE subsidy (Format-1C).
 - e. Details of facilitation fee paid.
 - f. Power Purchase Agreement on Rs.200/- Non judicial stamp paper.

12. *After verification of all documents and completion reports submitted by the Applicant, AEE/EE will issue sanction letter for testing and commissioning of SRTPV system.”*

20. These guidelines provide that upon screening and registration of the application for installing SRTPV plant, it had to be sent to the concerned Section Officer/Executive Engineer, C, O&M, BESCO for technical feasibility report. Thereafter, approval for installation of the unit had to be accorded by Assistant Executive Engineer in case of LT installations upto a capacity of 50 KWP as per Format-5 and by the Executive Engineer in case of HT installations of 50 KWP and above as per Format-6. After completion of the installation work of the SRTPV unit, the applicant had to submit work completion report in Format 6 (C) to the AEE or EE, as the case may be, along with requisite facilitation fees and single line drawing of the system. Clause 8(vii) indicates that the maximum time frame for completion of installation of work in all respect by the applicant is 180 days.

21. As would be seen, clauses 1 to 9 of these guidelines nowhere talk about the power purchase agreement. The stipulation of 180 days is found in clause 8(vii). Even though the said clause does not specify the date from which period of 180 days is to be reckoned it can be easily construed from the scheme envisaged under Clause 1 to 9 of these guidelines that the said period shall have to be reckoned from the date of approval for the installation to be accorded by the concerned Assistant Executive Engineer, as per the Format-5 or the Executive engineer as per the Format-6, as the case may be.

22. Clause 10 of these guidelines provides for execution of the power purchase agreement between the applicant and the BESCO after the completion of SRTPV installation work. Clause 11 requires the applicant to submit certain requisite documents including the power purchase agreement along with the work completion report as per the Format-7 to the approving authority who, after verification of the documents, would issue sanction letter for testing and commissioning of SRTPV system.

23. It is, therefore, manifest that these guidelines envisage signing of the power purchase agreement between the application and the BESCO after the completion of SRTPV installation work by the applicant. However, the facts of these appeals would indicate that the power purchase agreements were executed between the Appellants and Respondent BESCO even before the approval for installation of the SRTPV system was accorded by the concerned AEE or EE, leaving aside the completion of the installation of the system. Thus, the Respondent BESCO is itself guilty of flouting the guidelines dated 7th November, 2014 framed by it regarding installation of SRTPV system. It cannot be heard to say that the Appellants have committed violation of these guidelines by not commissioning their SRTPV plants within the stipulated period of 180 days.

24. We have already noted hereinabove that as per Clause 8(vii) of these guidelines, the Appellants were required to complete installation work of SRTPV systems within 180 days from the date of approval of the installations by the AEE or EE. The Respondent BESCO has maintained mischievous silence about the date on which the approval for installation was accorded

by the AEE or EE in the case of Appellants. According to the Appellant, the approval for installation of 1000 KWP SRTPV systems in their case was accorded by Executive Engineer, C, O&M, region, BESCO vide communications dated 15th April, 2016, and, therefore the time period available for them to complete the installation of systems was upto 14th October, 2016 but the Respondent BESCO cancelled the PPAs much before the expiry of the said stipulated time period. On behalf of the Respondent BESCO, it has been argued that no reliance can be placed upon the approval letter dated 15th April, 2016 for the reason that the same had been issued by an errant officer of the company fraudulently against whom disciplinary action has been taken. However, no material has been produced before us on behalf of the Respondent BESCO, to show that the concerned Executive Engineer, which has issued the approval letter dated 15th April, 2016 to the Appellants, was not competent or authorized to issue the same and that he had issued the same fraudulently.

25. In view of clauses 1 to 9 of the guidelines, already quoted hereinabove, the installation work for SRTPV system could not have been commenced by the Appellant unless the concerned AEE or EE accorded approval for the same as per Format-5 or 6 as the case may be. Since the Appellants had applied for installation of 1000 KWP SRTPV system, the approval for the installation of the system was to be accorded by the Executive Engineer, C, O&M, Division, BESCO as per clause 7 of the guidelines. Therefore, it cannot be said that the Executive Engineer who has issued the approval letter dated 15th April, 2016 to the Appellants was not competent or authorized to issue the same. How and on what basis is it contended on

behalf of the Respondent BESCOM that the said Executive Engineer has issued the said letter fraudulently, is not discernible from the perusal of the record or from written submission filed on behalf of Respondent BESCOM. We are even doubtful as to whether the disciplinary action has actually been initiated against the said Executive Engineer as canvassed on behalf of the Respondent BESCOM, for the reason that nothing in this regard has been produced before us. Even if we accept the submissions of the BESCOM on this aspect and dis-believe the approval letter dated 15th April, 2016, in that case it was for the BESCOM to show when was the approval for installation of SRTPV systems accorded to the Appellants in Format-6 as per clause 7 of the guidelines and by whom? Ironically, nothing has been produced before us on behalf of the Respondent BESCOM in this regard. Therefore, we have no hesitation in holding that the approval letter dated 15th April, 2016 was issued by a competent and authorized officer of the BESCOM as per Clause 7 of the guidelines dated 7th November, 2014.

26. We may also note that upon receipt of the said approval letter dated 5th April, 2016, the Appellants proceeded for installation of the SRTPV system and entered into Memorandums of understanding with a project developer M/s TESCO Pvt. Ltd. on 11th May, 2016 in pursuance to which construction work was started in July, 2016. Since the Appellants had no reason to doubt the authority or competence of the officer issuing the approval letter dated 15th April, 2016, they proceeded to act upon the same. Therefore, the Respondent BESCOM cannot be permitted now to disown the said approval letter to the disadvantage of the Appellants for the reason that the Appellants have made huge investment in setting up of the SRTPV

plant on basis of the said approval letter. We are fortified in our observations in this regard by a previous judgement of this Tribunal in Tata Prasanna Kumar Vs. KERC & Anr., Appeal No. 211 of 2018 decided on 14th July, 2021.

27. Therefore, we are of the considered opinion that the time period of 180 days available for the Appellants to complete the installation work of the SRTPV system, commenced on 15th April, 2016 and expired on 14th October, 2016. The termination letters dated 8th September, 2016 and 29th May, 2017 vide which the Respondent BESCO has cancelled PPAs of the Appellants have been issued on the basis of inspection stated to have been conducted by a team constituted by BESCO on 24th August, 2016 and 25th August, 2016. We are unable to comprehend any sound reason or object of conducting such an inspection on the premises of the Appellants on these two days when the time period available to them for completion of installation work was till 14th October, 2016. The inspection should have been conducted after 14th October, 2016 to assess the stage of the installation work. It would be pre-posterous to say on the basis of the said inspection dated 24th August, 2016 that the Appellants have delayed in completion of the installation work and did not complete it within the stipulated period of 180 days. The action the Respondent BESCO in holding the Appellants guilty of delay in completing the installation of SRTPV system on the basis of said inspection dated 24th/25th August, 2016 is absolutely un-conscionable and arbitrary. The BESCO should have waited till 14th October, 2016 for conducting such an inspection to see whether or not had the Appellants completed the installation work. The tearing hurry shown by the Respondent BESCO in conducting such inspection is not discernible when there was no provision

either in the guidelines or in the PPA for such an inspection. It was for the Appellants to submit the work completion report along with other requisite documents to the BESCO under clause 11 of the guidelines, upon verification of which, sanction letter for testing and commissioning of the system was to be issued under clause 12 of the guidelines. It is manifest that the Respondent BESCO has flouted these guidelines dated 17th November, 2016 with impunity at every step.

28. Considering the above discussion, we are of the view that the Appellants cannot be held guilty of delaying the work of installation of SRTPV systems. We hereby set aside the findings of the Commission on this aspect.

(b) Whether installation of the solar panels on newly constructed/extended roof top is not permissible.

29. It is argued on behalf of the Respondent BESCO that the Appellants had to install the SRTPV systems on the existing building roof tops but they have installed the solar panels on the extended/retro-fitted roof tops and, therefore, have violated the SRTPV norms/guidelines which justifies the action of the Respondent in terminating the PPAs. We are unable to accept the submissions of the Respondent BESCO on this aspect. Three main documents viz. tariff order dated 10th October, 2013, guidelines dated 7th November, 2014 framed by BESCO regarding installation of SRTPV systems and power purchase agreements executed between the parties need to be scrutinized in this regard. In the tariff order dated 10th October, 2013, the terms “Solar Photo Voltaic Plants”, “Solar Thermal Power Plants”

and “Small Roof Top Solar Systems” have been used. There is nothing in the entire tariff order to suggest that these solar plants should be installed only on the existing roof tops without extending or retro-fitting them. Similarly, neither guidelines dated 7th November, 2014 nor the power purchase agreements executed between the parties provide that SRTPV systems should be installed on the existing roof tops alone in whatever condition these are. There is nothing in these two documents also to show that solar plants cannot be installed after extending/retro-fitting the existing roof tops. Even the Karnataka Solar Policy, 2014 framed by the Govt. of Karnataka with an aim to permit the development of solar plants including solar roof top plants goes further to provide that interested firms/registered companies including public utilities shall be eligible to set up roof top projects on 3rd party roofs. It is, therefore, clear that the objective of the policy is to utilize the roof tops for setting up of solar roof top plants even on the roof top that may not belong to the applicant and may even require extension/strengthening/retro-fitting.

30. We find that the observation of the Commission that the SRTPV system should be installed on the existing roof tops of the building alone, is not founded upon any document on record and appears to be absolutely superfluous. It is not the case of Respondent BESCO that no roof top at all was available with the Appellants for installation of SRTPV systems. It may be that the Appellants realized insufficiency of proper space for installation of SRTPV system on their respective roof tops or found those to be weak to bear the weight of the solar panels and, therefore, thought it prudent to extend/retrofit/strengthen the roof tops in order to avoid any mishap in future.

Such steps taken by the Appellants deserve to be encouraged in order to promote and achieve the object of the Karnataka Solar Policy, 2014. Hence, we are constrained to set aside the observations of the Commission on this aspect also.

Conclusion :-

31. In the light of the above discussion, we hold the action of the Respondent – BESCO in cancelling the PPAs of the Appellants absolutely illegal, arbitrary, unjustified as well as contrary to the guidelines dated 7th November, 2014 and the terms of the PPAs executed by it with the Appellants. Accordingly, the termination letters dated 29th May, 2017 hereby stands quashed. As a sequitur the respective PPAs executed between the Appellants and the Respondent BESCO stand revived.

32. Since we have directed revival of the PPAs dated 17th December, 2015 executed between the Appellants and the Respondent BESCO, all further consequences shall follow according to the terms and conditions of those PPAs.

33. We may note that the issue of tariff applicable to the Appellants was also raised during the course of arguments. It was argued on behalf of the Respondent BESCO that since the Appellants (except the Appellant in Appeal No. 137 of 2022) have executed fresh PPAs dated 15th December, 2017 at a tariff of Rs.5.20 per unit with the Respondent BESCO in terms of the subsequent tariff order dated 2nd May 2016, which PPAs have been approved by the Commission with the modification as regards the tariff fixing it @Rs.3.57 per unit, the Appellants shall be entitled to tariff @Rs.3.57 per

unit only. We are unable to accept these submissions on behalf of the Respondent BESCO for various reasons. Firstly, since we have set aside the impugned order of the Commission thereby holding the termination of PPAs dated 17/12/2015 invalid as well as arbitrary and have directed revival of those PPAs, the subsequent PPAs dated 15/12/2017 on the basis of which tariff has been fixed @Rs.3.57 per unit by the Commission become void. It may also be noted that the Appellants were constrained to execute these fresh PPA dated 15th December, 2017 for the reason that their PPAs had been cancelled by the Respondent BESCO vide notices dated 29th May, 2017 and, therefore, they were unable to get their SRTPV systems commissioned/connecting to the grid, as a result of which their huge investment in installing of these systems was not yielding any income. Now that, we have quashed the termination notices dated 29th May, 2017 and have directed revival of the PPAs dated 17th December, 2015 executed between the parties, subsequent PPAs dated 15th December, 2017 have become void and cannot be allowed to stand as there cannot be two PPAs for the same project. It hardly needs any reiteration that upon revival of original PPAs dated 17th December, 2015 executed between the parties, they continue to be bound by the terms and conditions of PPAs including the tariff which has been fixed therein @Rs.9.56. Secondly, we may further note that tariff @Rs.9.56 per unit has been fixed in those PPAs in view of the tariff order dated 10th October, 2013. Clause 2 of the said tariff order provides that the tariff determined therein is applicable to all grid connected Solar Panels/ Solar Thermal Power Generators/Roof Top Solar Photo Voltaic Generators in respect of which PPA has been executed on or before 15th April, 2013 and during the control period of that order. In clause 6 of the order, the control

period has been fixed as five years beginning from 1st April, 2013 ending on 31st March, 2018. Therefore, in case of Appellants, the tariff has to be applied @Rs.9.26 per unit in terms of the said tariff order dated 10th October, 2013 for the reason that they executed the PPAs with the Respondent BESCO during the control period of that order. Whether or not had the SRTPV plants of the Appellants installed or commissioned during the control period of the said tariff order is not relevant at all. What alone is relevant for the applicability of the said tariff @Rs.9.26 per unit is that the PPAs should have been executed during the control period of the said period. Hence, we hold the tariff applicable to the SRTPV systems of the Appellants shall be Rs.9.26 per unit in terms of tariff order dated 10th October, 2013.

34. Accordingly, the impugned order in all the appeals are set aside and all the appeals stand allowed in above terms. All the pending IAs also stand disposed off.

35. It is also clarified that the respondent BESCO shall synchronize / commission the SRTPV system of appellant in Appeal No.137/2022 after complying with all the technical and operational requirements/specification on the terms/conditions contained in the PPA dated 17.12.2015 without insisting upon execution of a fresh PPA.

Pronounced in the open court on this 20th day of March, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

√
REPORTABLE / ~~NON-REPORTABLE~~
js/tp

COURT-2

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 137 OF 2022 & IA No. 648 OF 2024

Dated: 22nd April, 2024

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

In the matter of:

A. Jayamma Appellant(s)

Versus

State of Karnataka, Department of Energy & Ors. Respondent(s)

Counsel on record for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Ritu Apurva for App. 1

Counsel on record for the Respondent(s) : for Res. 1

Sumana Naganand
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Samiksha Jain
Garima Jain
Prateek Yadav for Res. 2

Sumana Naganand
Medha M Puranik
Gayathri Sriram
Abhijeet Kumar Pandey
Garima Jain for Res. 3

ORDER

IA No.648/2024 in Appeal no.137/2022
(For modification)

The appellant/applicant has moved this application for correction of typographic mistake in Para 33 of the judgment passed by this Tribunal on 20.03.2024 in appeal no.137/2022. The Paragraph No.33 of the said judgment has incorrectly recorded the tariff to be applied “@Rs.9.26 per unit”, which is corrected to be read as “@Rs.9.56 per unit”. The modified Paragraph No.33 shall now read as under:

“33. We may note that the issue of tariff applicable to the Appellants was also raised during the course of arguments. It was argued on behalf of the Respondent BESCO that since the Appellants (except the Appellant in Appeal No. 137 of 2022) have executed fresh PPAs dated 15th December, 2017 at a tariff of Rs.5.20 per unit with the Respondent BESCO in terms of the subsequent tariff order dated 2nd May 2016, which PPAs have been approved by the Commission with the modification as regards the tariff fixing it @Rs.3.57 per unit, the Appellants shall be entitled to tariff @Rs.3.57 per unit only. We are unable to accept these submissions on behalf of the Respondent BESCO for various reasons. Firstly, since we have set aside the impugned order of the Commission thereby holding the termination of PPAs dated 17/12/2015 invalid as well as arbitrary and have directed revival of those PPAs, the subsequent PPAs dated 15/12/2017 on the basis of which tariff has been fixed @Rs.3.57 per unit

by the Commission become void. It may also be noted that the Appellants were constrained to execute these fresh PPA dated 15th December, 2017 for the reason that there PPA had been cancelled by the Respondent BESCO vide notices dated 29th May, 2017 and, therefore, they were unable to get their SRTPV systems commissioned/connecting to the grid, as a result of which their huge investment in installing of these systems was not yielding any income. Now that, we have quashed the termination notices dated 29th May, 2017 and have directed revival of the PPAs dated 17th December, 2015 executed between the parties, subsequent PPAs dated 15th December, 2017 have become void and cannot be allowed to stand as there cannot be two PPAs for the same project. It hardly needs any reiteration that upon revival of original PPAs dated 17th December, 2015 executed between the parties, they continue to be bound by the terms and conditions of PPAs including the tariff which has been fixed therein @Rs.9.56. Secondly, we may further note that tariff @Rs.9.56 per unit has been fixed in those PPAs in view of the tariff order dated 10th October, 2013. Clause 2 of the said tariff order provides that the tariff determined therein is applicable to all grid connected Solar Panels/ Solar Thermal Power Generators/Roof Top Solar Photo Voltaic Generators in respect of which PPA has been executed on or before 15th April, 2013 and during the control period of that order. In clause 6 of the order, the

*control period has been fixed as five years beginning from 1st April, 2013 ending on 31st March, 2018. Therefore, in case of Appellants, the tariff has to be applied @Rs.9.56 per unit in terms of the said tariff order dated 10th October, 2013 for the reason that they executed the PPAs with the Respondent BESCO during the control period of that order. Whether or not had the SRTPV plants of the Appellants installed or commissioned during the control period of the said tariff order is not relevant at all. What alone is relevant for the applicability of the said tariff @Rs.9.56 per unit is that the PPAs should have been executed during the control period of the said period. Hence, we hold the tariff applicable to the SRTPV systems of the Appellants shall be **Rs.9.56** per unit in terms of tariff order dated 10th October, 2013.”*

Remaining part of the judgment shall remain unchanged.

The application is allowed and the above modification shall be uploaded on the Appellate Tribunal's website.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

pr/tp