

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

**APPEAL No. 223 of 2020**

Dated : 8th April, 2024

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

**In the matter of:**

**APPEAL No. 223 OF 2020**

**Shri. B. N. Chandrappa**

S/o P. Narasimhaiah

Aged about 61 years

Bhaktharahalli Village,

Hosur Post, Gauribidanur Taluk,

Chikkaballapur District

... Appellant(s)

*Versus*

**1. Bangalore Electricity Supply Company Limited,**

K. R. Circle,

Bengaluru – 560001

Represented by its

Managing Director

**2. Karnataka Electricity Regulatory Commission,**

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

Bengaluru – 560052, Karnataka, India

Represented by its Chairperson

... Respondent (s)

Counsel for the Appellant(s)

:

Shailesh Madiyal

Sudhanshu Prakash for App. 1

Counsel for the Respondent(s) : S. Sriranga Sr. Counsel  
Sumana Naganand  
Medha M Puranik  
Gayathri Sriram  
Abhijeet Kumar Pandey  
Garima Jain for Res. 1

## **JUDGEMENT**

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

1. The Appellant has assailed the Order dated 28<sup>th</sup> May, 2019 of the 2<sup>nd</sup> Respondent, Karnataka Electricity Regulatory Commission (KERC) vide which his petition bearing OP No. 08 of 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 per KWH for the energy supplied by him from his solar roof top plant to the 1<sup>st</sup> Respondent – Bangalore Electricity Supply Company Limited (BESCOM) as per Clause 6.1 (a) of the Power Purchase Agreement (PPA) dated 23<sup>rd</sup> September, 2015 executed between the parties, which has been rejected by the Commission.

2. Fact & circumstances leading to the filing of instant appeal can be summarized as under:-

(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 2<sup>nd</sup> Respondent – Commission issued order dated 10<sup>th</sup> October, 2013

determining tariff of Rs.9.56 per unit for rooftop solar projected 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 1<sup>st</sup> Respondent – BESCOM, 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 establishment of 1MW Solar Roof Top Photo Voltaic (SRTPV), power plant in pursuance to the solar policy notified by the Government of Karnataka on 22<sup>nd</sup> May, 2014.

(iii) Accordingly, the Appellant applied for installation of 1MW SRTPV power plant on the roof top of his poultry farm at Sy. No. 119 of Bhaktharahalli Village, Hosur Hubli, Gowribidanur Taluk in Chikkaballapur District, Karnataka on 29<sup>th</sup> August, 2015. Vide letter dated 18<sup>th</sup> September, 2015 issued by Executive Engineer, BESCOM, approval was accorded to the Appellant for installation of said SRTPV power plant. Thereafter, a power purchase agreement dated 23<sup>rd</sup> September, 2015 was executed between the Appellant and the 1<sup>st</sup>

Respondent wherein the tariff was fixed at Rs.9.56 per KWH in accordance with the tariff order dated 10<sup>th</sup> October, 2013. The PPA was approved by the 2<sup>nd</sup> Respondent-Commission on 17<sup>th</sup> December, 2015 and the approval was communicated to the Appellant vide communication dated 2<sup>nd</sup> January, 2016.

(iv) Upon getting approval for installation of the SRTPV system on the roof top of his poultry farm, the Appellant approached Corporation Bank, Bengaluru on 8<sup>th</sup> February, 2016, for sanction of loan to fund the project. However, several queries were raised by the Bank vide its letter dated 24<sup>th</sup> February, 2016 with regard to the Appellant's request for loan.

(v) Here it is to be noted that a circular dated 17<sup>th</sup> November, 2015 was issued by 1<sup>st</sup> Respondent -BESCOM providing for extension of time to all the developers for installation of SRTPV plant upon payment of registration fee. In view of the said circular, the Appellant became entitled to extension of time for installation of SRTPV system by 12 months upon payment of Rs.2000/- as registration fee. Accordingly, vide letter dated 18<sup>th</sup> March, 2016 addressed to 1<sup>st</sup> Respondent- BESCOM, the Appellant sought extension of time for installation of SRTPV system in terms of the said circular dated 17<sup>th</sup> November, 2015. The

Respondent-BESCOM vide its letter dated 23<sup>rd</sup> March, 2016 approved extension for further 12 months from the date of that letter for installation of the SRTPV system by the Appellant.

(vi) However, the said circular dated 17<sup>th</sup> November, 2015 came to be withdrawn by the BESCOM on 18<sup>th</sup> May, 2016 with immediate effect.

(vii) It appears that the Corporation Bank did not process the request for the loan of the Appellant for more than six months and accordingly, the Appellant approached Canara Bank, Bengaluru for financial assistance which sanctioned a loan of a sum of Rs.526 lakhs to him on 16<sup>th</sup> August, 2016. Thereafter, the Appellant proceeded to procure the solar PV panels and completed the installation of SRTPV plant in the first week of September, 2016. Vide letter dated 19<sup>th</sup> December, 2016, the Appellant requested 1<sup>st</sup> Respondent-BESCOM to issue the work order for HT line connection and to commission his SRTPV plant but did not get any response from it. Accordingly, the Appellant approached the Hon'ble High Court of Karnataka by way of a Writ Petition No. 3244 of 2017 seeking direction to 1<sup>st</sup> Respondent-BESCOM to issue the work order. The Writ Petition was disposed off by the Hon'ble High Court vide Order dated 8<sup>th</sup> June, 2017 with liberty to the Appellant to give a fresh representation to the Respondent-BESCOM and directed the BESCOM

to consider the same within four weeks. Hence, the Appellant submitted a fresh representation to the Respondent-BESCOM on 15<sup>th</sup> June, 2017 enclosing along with it all the requisite documents. Vide communication dated 7<sup>th</sup> July, 2017, the Respondent-BESCOM apprised the appellant that extension of time for installation of SRTPV plant granted to him vide letter dated 23<sup>rd</sup> March, 2016 was invalid and on account of delay in commissioning the plant, he was entitled to reduced tariff of Rs.5.20 per unit as against Rs.9.56 per unit as provided in the PPA.

(viii) Vide letter dated 12<sup>th</sup> June, 2017 addressed to the Respondent - BESCOM, the Appellant agreed for execution of a supplementary PPA at a reduced tariff of Rs.5.20 per unit while reserving his right to approach the Commission in respect of the applicability of the appropriate tariff for his SRTPV plant. Accordingly, a supplementary PPA dated 25<sup>th</sup> November, 2017 came to be executed between the Appellant and the Respondent-BESCOM. Thereafter, the Appellant's SRTPV plant was commissioned on 20<sup>th</sup> December, 2017 and a certificate of synchronization dated 6<sup>th</sup> January, 2018 was duly issued to it.

(ix) It is in these facts and circumstances of the case that the Appellant had approached the 2<sup>nd</sup> Respondent Commission by way of

the petition bearing OP No. 08 of 2018 seeking entitlement to a tariff of Rs.9.56 per KWH as per initial PPA dated 23<sup>rd</sup> September, 2015 executed between the parties, which has been rejected by the Commission vide impugned order dated 28<sup>th</sup> May, 2019.

(x) Vide the impugned order, the Commission held that achieving time limit was an essential factor with regards to the completion of SRTPV systems even though such a term was not provided specifically for the PPA. It has been further held that Format-5 as per the guidelines dated 7<sup>th</sup> November, 2014 framed by Respondent-BESCOM regarding setting up of Solar Roof Top Photo Voltaic system, which was made available to all the consumers desirous of installing of SRTPV plant, specifically prescribes time limit of 180 days for commissioning of the plants. It is stated that the approval in Format-5 for installing SRTPV plant was given to Appellant on 18<sup>th</sup> September, 2015, and therefore, he ought to have completed and commissioned the plant before 17<sup>th</sup> March, 2016, but failed to do so and thus he having commissioned the plant on 13<sup>th</sup> December, 2017 during the control period of subsequent tariff order dated 2<sup>nd</sup> May, 2016, he is entitled to the tariff of Rs.5.20/- per unit only in terms of the said tariff order.

3. We have heard the Learned Counsels for the parties and have perused the record.

4. On behalf of the Appellant, it was argued that since no time period has been stipulated in the PPA for installation and commissioning of SRTPV system, time was not essence of the contract and hence no time frame can be applied. It is further contended that, at best, the period of 180 days mentioned in Clause 8 (vii) of the guidelines dated 7<sup>th</sup> November, 2014 shall have to be reckoned from the date of the approval of the PPA i.e. 23<sup>rd</sup> September, 2015. It is further argued that there has been no delay on the part of the Appellant in keeping the plant ready for commissioning within the stipulated period and the delay has occurred only due to inaction/failure on the part of the Respondent-BESCOM in commissioning the project. It is further argued that once the Respondent-BESCOM had extended the time period for completion of the project by the Appellant by further twelve months vide letter dated 23<sup>rd</sup> March, 2016 in terms of the circular dated 17<sup>th</sup> November, 2015, the Respondent-BESCOM was precluded from withdrawing the said circular as well as the extension granted to the Appellant unilaterally and all of a sudden without any prior intimation to the Appellant. According to the Learned Counsel for the Appellant, the Appellant acted upon the said time extension in the bonafide



hope that the time for installation of the SRTPV system has been extended by further twelve months and, therefore, he cannot be held responsible for delay on account of such event. The Learned Counsel also argued that some part of delay was caused by the indifferent attitude of the Corporation Bank officials who kept the loan application pending for above six months due to which the Appellant had to approach Canara Bank which ultimately sanctioned the loan to the Appellant and the Appellant was able to procure the machinery. It is argued that the Commission has erred in not considering these facts and circumstances which had contributed to it in completing as well as commissioning of the project for which the Appellant was not responsible at all, and therefore, the impugned order cannot be sustained.

5. On behalf of the Respondent-BESCOM, it was argued that as per SRTPV guidelines dated 7<sup>th</sup> November, 2014 framed by the company in view of the solar policy of Government of Karnataka, the maximum time frame fixed for commissioning of SRTPV plant on the existing roof tops is 180 days and the Commission has rightly held in the impugned order that these guidelines are to be read along with PPA. It is submitted that considering these guidelines and the date of execution of the PPA i.e. 23<sup>rd</sup> September, 2015, the scheduled date of commissioning of the SRTPV

plant for the Appellant was 22<sup>nd</sup> March, 2016 and he has admittedly failed to achieve the same. It is argued that the Appellant cannot take any benefit of the circular dated 17<sup>th</sup> November, 2015 for the reason that the said circular has since been withdrawn by the Respondent-BESCOM vide OM dated 18<sup>th</sup> May, 2017 in pursuance to the order of the 2<sup>nd</sup> Respondent-Commission dated 2<sup>nd</sup> May, 2016 holding that BESCOM was not competent or authorized to issue such circular regarding extension of time for completion of the SRTPV projects. So far as tariff is concerned, it is argued that since the Appellant completed and commissioned its solar project during the control period of generic tariff order dated 2<sup>nd</sup> May, 2016, he is entitled the tariff of Rs.5.20 per unit as per the said tariff order and cannot claim the preferential tariff prescribed in the order dated 10<sup>th</sup> October, 2013.

### **Our View**

6. For the sake of convenience, we find it necessary to put the relevant dates and events of this case in a tabular form as under :-

<b>Date</b>	<b>Event</b>
<b>10.10.2013</b>	KERC issued an order determining the tariff of interactive solar power plants including roof tops and Small Photo Voltaic Power Plants
<b>29.08.2015</b>	Applications by Appellant to R1 for installation of 1MW Solar Roof Top Photo Voltaic (SRTPV) Power Plant
<b>18.09.2015</b>	Installation of 1000kWp Solar Roof Top Photo Voltaic Power Plant on the rooftop of Appellant
<b>23.09.2015</b>	PPA between Appellant and R1 @ Rs. 9.56/kWh

17.11.2015	Circular issued by R1 for granting time extension to all the developers to install the SRTPV plants by payment of re-registration fee
17.12.2015	Commission approved PPA
02.01.2015	Communication of approved PPA by R1 to Appellant
08.02.2016	Appellant approached Corporation Bank for sanction of loan to fund the project
20.02.2016	Queries raised by Corporation Bank for sanctioning of loan
24.02.2016	Addressal of abovementioned queries by Appellant
18.03.2016	Time extension sought by Appellant from R1 w.r.t. circular dated 17.11.2015
23.03.2016	R1 provided time extension to Appellant for 12 months
02.05.2016	Revised KERC Order on Tariff
18.05.2016	Withdrawal of R1's 17.11.2015 Circular
16.08.2016	Appellant's loan from Canara Bank sanctioned after failed negotiations from Corporation Bank
01.07.2016	Procurement of Solar PV Panels amounting Rs.3,80,02,280
09.08.2016	Communication of R1 to Canara Bank on the information on the validity of the Power Purchase Agreement
06.09.2016	Work Completion Certificate by the Appellant communicating the installation of SRTPV plant
19.12.2016	Appellant's letter to R1 requesting R1 to issue the work order for HT Line connection and to commission the SRTPV
24.01.2017	Appellant moved a writ petition in High Court of Karnataka seeking a direction to R1 to issue the Work Order
08.06.2017	High Court's order permitting the Appellant to give a fresh representation to R1
15.06.2017	Appellant sent a fresh representation to R1
07.07.2017	R1's communication to Appellant regarding the invalidity of circular dated 23.03.2016 and confirmation of applicable tariff of Rs.5.20/unit
12.07.2017	Appellant's letter to R1 confirming that they would sign the Supplementary PPA and approach the Commission in respect of the applicable tariff
25.11.2017	Appellant and R1 signed the Supplementary PPA
30.12.2017	Commission of SRTPV Plant
06.01.2018	Letter of Synchronisation issued by R1 to Appellant
03.04.2017	Date of demand notice issued by Canara Bank to Appellant
25.10.2018	Petition filed in the KERC by Appellant
28.05.2019	<b>Impugned Order</b> dismissing Appellant's petition and entitled the Appellant for a tariff of Rs. 5.20/unit according to the Supplementary PPA.

7. It is evident from the perusal of the PPA dated 23<sup>rd</sup> September, 2015 executed between the Appellant and the 1<sup>st</sup> Respondent – BESCO that it

does not provide any specific timeline for installation and commissioning of the SRTPV plant by the Appellant. On this aspect, the emphasis is placed on behalf of the Respondent-BESCOM on the guidelines dated 7<sup>th</sup> November, 2014 framed by it regarding setting up of solar roof top photo voltaic system to contend that maximum time frame fixed for SRTPV plants on the existing roof top has been fixed as 180 days to be reckoned from the date of execution of the PPA. We have minutely perused these guidelines and find it pertinent to reproduce Clauses 1 to 12 of these guidelines hereunder with the heading “Procedure for Availing SRTPV Connection” :-

**“ 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, BESCOM 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, BESCOM 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 BESCOM approved vendors only*
6. *The Assistant Executive Engineer, C, O&M, BESCOM, 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.bescom.org](http://www.bescom.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."*

8. 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.

9. 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 Clauses 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.

10. In the instant case, the Executive Engineer, BESCO accords approval to the Appellant for installation of SRTPV power plant vide letter dated 18<sup>th</sup> September, 2015. Therefore, in view of Clause 8(vii) of the guidelines dated 7<sup>th</sup> November, 2014, period of 180 days available to the Appellant for completion of installation work of the SRTPV plant commenced w.e.f. said date i.e. 18<sup>th</sup> September, 2015 and expired on 17<sup>th</sup> March, 2016. Admittedly, the Appellant was yet to start the work of installation of the plant by this date. Despite having got such approval on 18<sup>th</sup> September, 2015 coupled with the approval of the PPA by the Respondent –Commission on 17<sup>th</sup> December, 2015 (approval of PPA having been communicated to him vide letter dated 2<sup>nd</sup> January, 2016), the Appellant remained in slumber till 8<sup>th</sup> February, 2016 when he approached the Corporation Bank for sanction of loan to fund the project. This speaks volumes about the negligent and careless attitude of the Appellant towards the project.

11. Coming to the circular dated 17<sup>th</sup> November, 2015 issued by the 1<sup>st</sup> Respondent – BESCO where by a window was created for all the developers who had delayed the installation of SRTPV plants, for extension of time for installation of such plants upon payment of registration fee. No doubt, the Appellant had applied for extension of time for installation of SRTPV system by 12 months in view of the said circular and vide letter dated 23<sup>rd</sup> March, 2016, the 1<sup>st</sup> Respondent-BESCO approved extension of further 12 months period from the date of that letter to the Appellant for installation of SRTPV system by him. Thus, the time limit for the Appellant for installation of SRTPV system stood extended till 22<sup>nd</sup> March, 2017. Meanwhile, the Appellant completed the installation of SRTPV plant in the first week of September, 2016 and vide letter dated 19<sup>th</sup> December, 2016 requested 1<sup>st</sup> Respondent-BESCO to issue the work order for HT line connection and to commission his SRTPV plants. Since he did not get any response from BESCO, he approached the Hon'ble High Court of Karnataka by way of Writ Petition No. 3244 of 2017 in this regard and the Hon'ble High Court disposed off the petition vide order dated 8<sup>th</sup> June, 2017 with liberty to give him fresh representation to the BESCO and with the direction to the BESCO to consider the same within four weeks. The Appellant submitted a fresh representation to the BESCO on 15<sup>th</sup> June, 2017 and enclosing therewith all the requisite documents. Thereafter, vide communication dated 27<sup>th</sup> July, 2017, the Respondent BESCO apprised the Appellant that extension for installation of SRTPV plant granted to him on 23<sup>rd</sup> March, 2016 was invalid and on account of delay in commissioning the plant he was entitled to reduce tariff of Rs.5.20 per unit only in terms of the generic tariff order dated 2<sup>nd</sup> May, 2016 as against the tariff of Rs.9.56 per unit as provided in the PPA.



12. Now the issue for consideration would be whether the benefit of extension of time for completion of the work for installation of SRTPV system granted to the Appellant in pursuance to the circular dated 17<sup>th</sup> November, 2015 vide letter dated 23<sup>rd</sup> March, 2016 could be taken away by the Respondent-BESCOM by withdrawal of the said circular vide OM dated 18<sup>th</sup> May, 2017.

13. It is argued that the said circular was withdrawn by the Respondent/BESCOM in pursuance to the order dated 2<sup>nd</sup> May, 2016 of the 2<sup>nd</sup> Respondent-Commission holding that BESCOM was not competent or authorized to issue such circular regarding extension of time for completion of SRTPV projects and, therefore, since the circular had been issued by an authority not competent or authorized to issue, no person or entity can be permitted to rely upon any benefits flowing from it.

14. We may note that even after getting further extension for installation of SRTPV plant vide letter dated 23<sup>rd</sup> March, 2016 from the Respondent-BESCOM in pursuance to the circular dated 17<sup>th</sup> November, 2015, the Appellant admittedly had not commenced the installation work and had not made any investment till the date, the circular was withdrawn by the Respondent-BESCOM vide OM dated 18<sup>th</sup> May, 2016. Neither had he been successful in obtaining loan from any Bank till that date for funding the project nor had he proceeded to procure the solar PV panels. As per the contentions of the Appellant himself, when he was unable to get loan from the Corporation Bank, he approached Canara Bank which sanctioned loan

for a sum of Rs.526 lakhs to him to fund the project and accordingly he procured the solar PV panels on 1<sup>st</sup> July, 2016.

15. Therefore, it is evident that on the date when the Appellant obtained loan from Canara Bank and proceeded to procure the solar PV Panels, the circular dated 17<sup>th</sup> November, 2015 was not in operation as the same had already been withdrawn by the Respondent-BESCOM on 18<sup>th</sup> May, 2016. This is indicative of the fact that the Appellant had not acted upon in pursuance to the Circular dated 17<sup>th</sup> November, 2015 before it was withdrawn and whatever he had done was after the date of withdrawal of the said circular. It is not the case of the Appellant that when he had approached Canara Bank on 16<sup>th</sup> August, 2016 for sanction of loan and when he proceeded to procure solar PV panels, he was not aware about the fact that the circular dated 17<sup>th</sup> November, 2015 in pursuance to which further extension of time period by 12 months had been granted to him for installation of SRTPV plant, already stood withdrawn on 18<sup>th</sup> May, 2016. In these facts and circumstances of the case, the Appellant cannot claim that he was misled by the letter dated 23<sup>rd</sup> March, 2016 of the Respondent-BESCOM issued in pursuance to the Circular dated 17<sup>th</sup> November, 2015 and therefore, the time period available to him for installation of the SRTPV system was till 22<sup>nd</sup> March, 2016. That would have been the case if the Appellant had acted upon and made investment towards installation of the SRTPV plant before the date of withdrawal of the circular dated 17<sup>th</sup> November, 2015. We are saying so without commenting upon the correctness or otherwise of the circular dated 17<sup>th</sup> November, 2015, which issue does not arise in this appeal in view of the facts and circumstances narrated hereinabove.

16. Thus, the extension of time period granted to the Appellant for installation of SRTPV system vide letter dated 23<sup>rd</sup> March, 2016 ceased automatically on 18<sup>th</sup> May, 2016 when the circular dated 17<sup>th</sup> November, 2015 was withdrawn by the Respondent-BESCOM. Consequently, the completion of the installation work of SRTPV systems by the Appellant on 6<sup>th</sup> September, 2016 cannot be held to be within the stipulated time period.

17. We are unable to countenance the submissions on behalf of the Appellant that the delay has occurred due to non-disbursement of the loan by Corporation Bank due to which he had to approach Canara Bank in the month of August, 2016 which ultimately sanction loan to it. In this regard, it may be noted that the PPA dated 23<sup>rd</sup> September, 2015 executed between the Appellant and Respondent-BESCOM was approved by the 2<sup>nd</sup> Respondent-Commission on 17<sup>th</sup> December, 2015. Even if it is accepted that the approval of PPA was communicated to the Appellant on 2<sup>nd</sup> January, 2016 as contended by him, still there is no explanation as to why he approached the Corporation Bank for grant of loan on 8<sup>th</sup> February, 2016 that is more than one month after getting knowledge about the approval of the PPA. That apart, there seems to be no follow up from the Appellant with the Corporation Bank on the loan application after 24<sup>th</sup> February, 2016. As per the Appellant's case himself, he had replied the queries of the bank on 24<sup>th</sup> February, 2016 and what happened thereafter is not discernible from the record. There is no explanation from the Appellant as to why did he slept over the matter for about six months and approached Canara Bank in the month of August, 2016. The Appellant himself appears to be responsible for delay in obtaining the loan to fund the project as he did not

take immediate steps/follow up action with the Corporation Bank in order to get the funds released at the earliest.

18. Further, the Appellant had admittedly procured the solar PV panels on 1<sup>st</sup> July, 2016 for Rs.3,80,02,280/- i.e. much before the loan was sanctioned by Canara Bank to him on 16<sup>th</sup> August, 2016. Therefore, it is manifest that funds were available with the Appellant for purchase/procurement of the solar PV panels and he did not depend for it upon the loan amount but there is nothing on record on his part to show what prevented him from purchasing/procuring solar PV panels for installation of SRTPV system in the month of January, 2016 after the PPA was approved by the Commission or immediately upon receipt of letter dated 23<sup>rd</sup> March, 2016 from the Respondent-BESCOM vide which the time held for installation of SRTPV system was extended further.

19. Having regard to the above discussion, we have no hesitation in holding that the Appellant is guilty of deliberate and contumacious delay in completion of the installation work of the SRTPV system despite the extension granted to him vide letter dated 23<sup>rd</sup> March, 2016 in terms of circular dated 17<sup>th</sup> November, 2015. It is clear that the Appellant had failed to meet the target in terms of the guidelines for completion of SRTPV project even after the extension granted to him vide the above referred letter of the Respondent-BESCOM.

20. It has been further argued on behalf of the Appellant that even after there has been delay in installing the SRTPV system, then also the Appellant is entitled to tariff @9.26 per unit in terms of the order dated 10<sup>th</sup>

October, 2013 for the reason that the PPA was executed between the Appellant and Respondent-BESCOM during the control period of the said tariff order on 23<sup>rd</sup> September, 2015. On first brush, we found some force in these submissions of the Appellant's counsel. However, on further scrutiny of the facts on records, we find that the Appellant cannot claim any benefit of the higher tariff in terms of the order dated 10<sup>th</sup> October, 2013. In our opinion, the tariff fixed under the order dated 10<sup>th</sup> October, 2013 does not apply automatically to all the PPAs executed during its control period but it is to be seen whether the generator has taken any significant steps in making investment upon the project and towards installation of the solar power panels soon after the execution of the PPA without committing any contumacious delay. A developer, who though has executed PPA with Respondent-BESCOM within the control period of the tariff order dated 10<sup>th</sup> October, 2013 but thereafter remains in deep slumber and does not take any significant as well as meaningful step towards installation of the SRTPV system cannot claim benefit of the higher tariff under this order. To hold contrary would mean giving benefit to the defaulting generators of their own laxity and deliberate inaction. In the instant case, we have already held hereinabove that the Appellant has committed deliberate and inordinate delay in completion of the installation work of the SRTPV system despite an extension having been granted to him vide letter dated 23<sup>rd</sup> March, 2016 of the Respondent-BESCOM and, therefore, he is not found entitled to higher tariff in terms of the order dated 10<sup>th</sup> October, 2013 even though he had executed PPA with the Respondent-BESCOM during the control period of the said tariff order. As per the case of the Appellant himself, he procured the solar PV panels on 1<sup>st</sup> July, 2016 and, thereafter, loan was granted to him by Canara Bank on 16<sup>th</sup> August, 2016. Ultimately, the Appellant

completed the installation of solar power project on 6<sup>th</sup> September, 2016. Therefore, whatever was required to be done by the Appellant in pursuance to the PPA dated 23<sup>rd</sup> September, 2015 was actually commenced and completed by him in the months of July/August,/September, 2016 and by that time the generic tariff order dated 2<sup>nd</sup> May, 2016 had already been issued by the Respondent-BESCOM fixing the tariff @Rs.5.20 per unit. Therefore, we find ourselves in agreement with the findings of the Commission that the Appellant is entitled to tariff @Rs.5.20 per unit in terms of the generic tariff order dated 2<sup>nd</sup> May, 2016 and not @Rs.9.56 per unit in terms of the tariff order 10<sup>th</sup> October, 2013.

21. In view of the above discussion, we find no merit in the Appeal. The same is hereby dismissed.

Pronounced in the open court on this 8<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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