

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

Appeal No. 211 of 2018 & IA No. 995 of 2018

Dated: 14th July, 2021

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

In the matter of:

**Tata Prasanna Kumar
S/o Tata Srinivasa Shetty,
Jyothi Nilayam, Sreenidhi Layout,
Tumakuru – 572 102
Karnataka**

.... Appellant(s)

Versus

**1. Karnataka Electricity Regulatory
Commission
No. 16 C-1, Miller Tank Bed Area,
Vasanth Nagar, Bengaluru- 560 052
Karnataka**

.... Respondent No.1

**2. Bangalore Electricity Supply Company
Ltd.
Corporate Office, K.R. Circle,
Bengaluru – 560 001
Karnataka**

.... Respondent No.2

**Counsel for the Appellant (s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Ms. Neha Garg**

**Counsel for the Respondent (s) : Mr. Balaji Srinivasan, Sr. Adv.
Mr. H Shanti Bhushan, Sr. Adv.
Mr. Vibhav Kumar Srivastava For R-2**

JUDGMENT

PER HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

1. This Appeal is filed against the order dated 05/07/2018 passed by the Karnataka Electricity Regulatory Commission (hereinafter referred to as “**State Commission**”) in O.P No. 136 of 2017 whereby the State Commission has reduced the tariff of the Solar Rooftop Plants installed by the Appellant from Rs. 9.56/unit to Rs. 5.20/unit for the life of the PPA i.e 25 years.
2. Tata Prasanna Kumar, the Appellant through his proprietor concerns i.e Jyothi Enterprises and Jyothi Bio-Fuels, is engaged in the business of storage of dry husk and preparation of briquettes for supply to various industries.
3. The first Respondent i.e. Karnataka Electricity Regulatory Commission for the State of Karnataka exercising powers and discharging functions under the provisions of the Electricity Act, 2003.
4. The Respondent No. 2 – Bangalore Electricity Supply Company Limited (hereinafter referred to as “**BESCOM**”) is one of the distribution companies in the State of Karnataka.
5. **Prayer of the Appellant**

- (a) Allow the appeal and set aside the order dated 05/07/2018 passed by the State Commission to the extent challenged in the present appeal;
- (b) Direct BESCO to pay the arrears of electricity charges at the agreed rate in PPA of Rs. 9.56/unit from the date of supply along with the agreed upon interest for the belated period;
- (c) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

Facts of the case:

- 6. The Appellant had obtained permission to convert his agricultural land for industrial purposes so as to carry out business in storage of dry husk in 20.04.1994 and after obtaining sanction of plan from the Town Municipal Council, Pavagada, (PMC) constructed and completed building and industrial sheds on such land on 27.03.2015, as confirmed by the Town Municipal Council on 10.04.2015, which demanded and collected applicable property tax.
- 7. The construction of the industrial shed in the property of the Appellant was completed as per the approved sanction plan by PMC.
- 8. The State Commission, Respondent No. 1, is the Regulatory Commission for the State of Karnataka, exercises powers and discharges functions under the provisions of the Electricity Act, 2003.

9. The Respondent No. 2 – Bangalore Electricity Supply Company Limited (*BESCOM*) is one of the distribution companies in the State of Karnataka.

10. On 10.10.2013, the State Commission passed a Tariff Order (*2013 Tariff Order*) wherein the State Commission determined Tariff for various kinds of Solar Power Projects including SRTP Projects in the State of Karnataka. The Tariff Order was made applicable for projects entering into PPA's on or after 01.04.2013 and commissioning upto 31.03.2018. KERC in the Tariff Order specifically recorded that while the construction period for these projects is close to six months but substantial time is required to get Financial Closure, therefore, KERC determined/ prescribed a total control period of 5 years. Under the said tariff order, KERC had determined the tariff for SRTP Projects as Rs. 9.56 /unit. It is also pertinent to mention herein that in terms of the Order dated 10.10.2013 connectivity to the SRTP Project was the sole obligation of Respondent No.2.

11. On 22.05.2014, Government of Karnataka (*GoK*) notified the Karnataka Solar Policy 2014 which envisaged achieving of a minimum of 400 MW of grid connected SRTP Projects and 1600 MW of grid connected utility scale solar projects in the State of Karnataka by 2018. The policy also emphasized on the promotion of grid connected solar rooftop projects on public buildings, domestic, commercial and industrial establishments through net metering and

gross metering methods etc. It made all individuals owning residential or commercial premises, eligible to set up solar projects.

12. It is pertinent to mention that it was clearly envisaged in the Solar Policy 2014 that ESCOMs will define specific guidelines on the standards for connectivity to the network and that the scheme shall be administered by respective ESCOMs (including registration, approval, metering, protocols, safety protocol and standards). The Policy itself did not specify any timelines or the construction guidelines.
13. Pursuant to the said policy, the Appellant proposed to install Solar Roof Top Photovoltaic Plants (SRTPV Plants), under net metering basis, on the large roof area available on these buildings and industrial sheds.
14. The Appellant entered into PPAs with BESCO, to connect and operate Solar Roof Top Photo Voltaic (SRTPV) system for sale of solar power to BESCO in respect of Revenue Record No. PP 327 for 1000 kWp capacity on 08.01.2016, RR No. PP 328 for 499 kWp capacity on 11.02.2016, and RR No. PP329 for 499 kWp capacity on 21.03.2016.
15. The PPA in respect of RR No. 327 for 1000 kWp capacity was approved by the Commission on 10.02.2016 (and the other two with capacities of less than 500 kWp were deemed to have been approved by the State Commission as approval was required only for more than 1 MW capacity).

16. It is relevant to note that under all the three PPAs, the terms and conditions of Tariff Order dated 10.10.2013 were duly incorporated as the tariff for the Project was agreed to be Rs. 9.56/unit and the said Tariff Order provided for 5 years control period and was applicable on all projects which had entered into a PPA on or after 01.04.2013 and before 31.03.2018. Therefore, the Tariff Order dated 10.10.2013 is applicable on the plants of the Appellant and the Appellant is entitled to a tariff of Rs. 9.56/unit for the period of 25 years.

17. Subsequently, the Appellant engaged Solar Rooftop Implementation Agencies, Solar Contractor for installing and commissioning of the solar rooftop project. The Solar Contractor vide its letter dated 13.05.2016 had advised the Appellant that the rooftop and allied support structures would require retrofitting and strengthening to ensure that the structure would endure another 25 years and carried out certain reinforcement and strengthening on the existing structures for commissioning of the solar rooftop project.

18. The Appellant was required to commission its plant in terms of the Tariff Order dated 10.10.2013. It is pertinent to mention herein that the neither the Order dated 10.10.2013 nor the PPA provided for any date of Commissioning, however, the BESCO approval letters allowed a period of 1 year to the Appellant to commission their plants.

19. At the time of the signing of the PPAs, BESCO was represented by the Executive Engineer, Madhugiri Division (EE). The EE had accorded approval to the Appellant for installations of the respective solar roof top plants within one year timeline vide approval letter dated 29.04.2016 for RR No. PP 327 for 1000 kWp plant, 20.02.2016 for RR No. PP 328 for 499 kWp and 22.03.2016 for RR No. PP 329 for 499 kWp.
20. On 02.05.2016, another Tariff Order was passed by the State Commission for determination of tariff and other norms for Solar Rooftop and Small Photovoltaic Power Plants. A midcourse revision of tariff was made due to decline in prices of solar panels. However, the applicability of the Order dated 10.10.2013 was clearly saved by the following provision:

“The Commission, in supersession of its Order dated 10th October, 2013, decides that the norms and tariff determined in this Order shall be applicable to all new grid connected solar rooftop and small solar photovoltaic power plants, entering into Power Purchase Agreement (PPA) and commissioned on or after 2nd May, 2016 and upto 31st March, 2018.

In respect of plants for which PPAs that have been entered into prior to 1st May, 2016 and are commissioned within the period of time as stipulated by the ESCOMs concerned or the Commission prior to the date of issue of this Order, the tariff as per the Commission’s Order dated 10th October, 2013 shall be applicable. Such plants shall be eligible for the revised tariff as per this Order if they are not commissioned within the stipulated time period and there shall be no extension in time period for commissioning them after the effective date of this Order.”

Therefore, it is amply clear that the Tariff Order dated 10.10.2013 is to be made applicable on the plants of the Appellant as the PPAs were entered into prior to 01.05.2016. It may also be noted that the plants were to be commissioned within the period stipulated by the ESCOMs. The timeline was not specified by the State Commission.

21. The two 499 kWp plants (RR No. PP 328 and 329) were completed on 10.08.2016, i.e within 6 months itself. The Appellant had submitted the Inspection Request dated 10.08.2016 and 12.08.2016 for RR No. PP 328 and 329 respectively and the Work Completion Report dated 10.08.2016 and 12.08.2016 to BESCO.
22. Vide letter dated 11.08.2016 and 31.08.2016, Electricity safety approval was granted to the RR No. PP 328 and 329 respectively.
23. After receiving the Work Completion Report from the Appellant, vide letters dated 17.08.2016 and 06.09.2016, the EE wrote to the corporate office, BESCO for the approval for commissioning for RR No 328 & RR No 329 respectively.
24. It is significant that vide letter dated 19.12.2016, the EE had written to the Executive Engineer, MT Division, Chitradurga that the installation work of 499 kWp SRTPV plant of the Appellant is complete and that adhering to all prevailing GOK & BESCO

norms. The relevant part of the letter dated 19.12.2016 reads as follows:

“The installation work of the same is completed in all respects. The work is completed and is adhering to all the prevailing GOK & BESCOM norms. Hence kindly arrange for conducting the Pre-Commissioning Test at the earliest.”

Therefore, it is amply clear that BESCOM had approved the installation of work as being in confirmation with the prevailing norms.

25. However, BESCOM delayed the grant of commissioning by around 4 months and both the plants were synchronized and commissioned on 22.12.2016 vide letter dated 28.12.2016 wherein it is clearly written that the SRTPV system was found satisfactory and successfully synchronized with the BESCOM grid.
26. Thereafter, the Chief Electrical Inspectorate of Karnataka approved safety approval of the Solar Installation related to RR No. PP 327 on 03.01.2017. The installation was complete on 04.01.2017 and the Completion report was submitted. The synchronization and commissioning report was issued on 09.01.2017.
27. It is pertinent to mention that the EE had written a letter dated 04.01.2017 to the Executive Engineer, MT Division, BESCOM, Chitradurga stating that the installation of the SRTPV plant of the Appellant is adhering to all the applicable norms and can be

successfully commissioned. However, the EE, on 09.01.2017, wrote a letter to the Appellant wherein it was mentioned that the SRTPV system has been found satisfactory and successfully synchronized with the grid and that the same is being submitted 'under protest' regarding Tariff Order dated 02.05.2016.

28. It is submitted that the faulty conduct of BESCO is evident from the aforementioned communications sent by EE internally and to the Appellant within a span of five days. It is submitted that the EE was pressurized by its officials to not accord unconditional approval to the 3rd plant of 1000 kWp capacity of the Appellant as the same would have held them liable for payment of the dues to the Appellant thereafter.
29. It is further pertinent to mention that the PMC had, vide letter dated 05.12.2017, certified that no additional extension in the area of roof is made in any manner. There had also been earlier correspondence from PMC wherein it was observed that industrial sheds, duly approved by the prescribed norms, have been constructed by the Appellant with iron pillars, to store the industrial goods.
30. The cause of action for filing the petition before the State Commission arose on 25.07.2017, when BESCO wrote a letter to the State Commission seeking clarification of the status of the PPA entered into with the consumers. In the said letter, reference was made to a letter dated 17.08.2016 and was alleged that the roof

structure has been expanded in violation of the GoK building norms dated 17.08.2016.

31. It is submitted that the said letter was silent about the safety approvals, time approvals and synchronization provided by BESCO itself to the Appellant over a period of more than one year without any dispute. It was also admitted in the letter that the PPA does not specify the date of completion of the project. However, merely to avoid the payment of invoices to the Appellant, BESCO wrote the said letter to the State Commission based on a letter dated 17.08.2016 which was not even applicable to the projects of the Appellant and was misinterpreted by the BESCO.
32. It is pertinent to mention that the letter dated 17.08.2016 emphasizes on the difference between rooftop mounted and ground mounted solar panels. It does not even deal with the additional structures on the rooftop and has been grossly misinterpreted by BESCO to its own advantage. Moreover, it is the fault of BESCO to take note and retrospectively apply the said letter after a substantial time had elapsed from successful commissioning of 499 kWp, 499 kWp & 1000 kWp plants of the Appellant.
33. Aggrieved by the letter dated 25.07.2017, which was being made a basis for non -payment of bills of the Appellant, the Appellant filed a Petition being O. P. No 136/2017 on 21.08.2017 before the State Commission praying for confirmation of installation as per norms, granting them the applicable tariff of Rs. 9.56/unit as per 10.10.2013

Order and directions to BESCO to clear the bills along with interest.

34. The State Commission replied to the letter dated 25.07.2017 by letter dated 30.08.2017 wherein the Secretary of the State Commission observed as follows:

“The Commission has observed that the SRTPV consumer has constructed separate steel structure all around the building for the sole purpose for installation of SRTPV plant in violation of the GoK norms dated 17.08.2016 and also the undertaking given by the said SRTPV consumer.

The Commission has also noted that, BESCO has allowed commissioning of all the three projects even after observing violation of the undertaking.

I am directed to inform you to submit your views on the above observations of the Commission and also to intimate the proceedings initiated to terminate the PPA as the SRTPV plant has not been installed on the existing roof in violation of the Government norms and the undertaking given by the said SRTPV consumer.”

35. It is submitted that it is outside the purview of the Secretary of the State Commission to make an observation about the termination of the PPAs. This depicts the already biased approach of the State Commission without going into the merits filed by the Appellant herein. Moreover, the Secretary has itself observed in the letter dated 30.08.2017 that BESCO has allowed the commissioning of

all three projects after violation of the undertaking. Therefore, even assuming but not admitting, that there was some violation, it was the fault of BESCOM to approve the huge investments of Appellant at each stage and even receive power from its SRTPV plants, and that the Appellant should not be made to suffer because of the same.

36. The Hon'ble Supreme Court has, in the case of GUVNL v. Gujarat Solar Semiconductor India P. Ltd., 2017 (16) SCC 498 restricted the powers of the State Commission itself to amend or alter the terms of PPA, and therefore, it is totally impermissible and arbitrary for such exercise to take place by an administrative order of the Secretary.
37. Pursuant to the letter dated 30.08.2017, BESCOM had issued a default notice dated 27.11.2017 to the Appellant wherein it was communicated to the Appellant that the installation does not comply with the SRTPV norms and that the defaults be remedied within 30 days failing which the PPA will be terminated.
38. It is submitted that the said default notice is perverse on the face of it. BESCOM has omitted to mention about all the safety approvals, technical feasibility reports, commissioning reports, approval for 1 year timeline, letters certifying the adherence to all norms, etc. in its default notice. They have only made allegations against the Appellant by disowning all their actions and erroneously applying the letter dated 17.08.2016 retrospectively. It is amply clear that the

said conduct is an afterthought to wriggle out of its obligations of making payments to the Appellant.

39. The said default notices had been stayed by the State Commission during the pendency of the O.P No. 136/2017 vide Interim Order dated 08.12.2017.
40. BESCO had filed its statement of objections to O.P No. 136/2017 before the State Commission.
41. Thereafter, the Appellant had filed rejoinder and written arguments before the State Commission.
42. The Appellant has been raising invoices on BESCO since January 2017. The power is still being supplied to BESCO at the interim rate of Rs. 3.57/unit, thereby causing huge financial losses to the Appellant as the remaining payment and balance dues need to be released by BESCO as per the agreed PPA rate of Rs. 9.56/unit.
43. It is pertinent to mention that in a similar writ petition being W.P No. 55490/2016 titled 'Ratnakar V. Nayak v. BESCO & Ors.', wherein the solar rooftop plants of the Petitioner were duly approved by the ESCOM, but later challenged due to alleged extended structures, the Hon'ble High Court had allowed the payment of 90% metered charges as the Interim Order. Therefore, it is prayed that the tariff of Rs. 9.56/unit pertaining to the undisputed area of the roof may kindly be paid to the Appellant during the pendency of the instant appeal.

44. It is submitted that BESCO had received the electricity generated from the Appellant and perhaps even supplied to other consumers and collected money for the same. But when the Appellant raised bills for the same, BESCO has come up with all sorts of excuses including questioning the credibility of its own officials, to avoid making the payments to the Appellant. Therefore, the Appellant was constrained to approach the State Commission.
45. However, vide the Impugned Order, the State Commission has erroneously reduced the tariff of the SRTPV plants of the Appellant from Rs. 9.56/unit to Rs. 5.20/unit and has directed the Appellant to enter into fresh PPAs with BESCO within 4 weeks, failing which the Appellant will not even be entitled to inject electricity into the grid.
46. It is submitted that the Impugned order is perverse because it has caused severe financial prejudice to the Appellant due to the fault and unjust conduct of BESCO. The State Commission has erred in appreciating and interpreting the documents on record and holding the Appellants liable for a lower tariff in contravention to the earlier PPAs and applicable Tariff Orders of the State Commission itself.
47. It is submitted that the Solar Rooftop Installations were completed and commissioned well within the allocated time given by BESCO and the Appellant should have therefore, received the full

consideration of tariff at the rate of Rs. 9.56/unit in terms of the applicable Tariff Order dated 10.10.2013.

48. The Appellant has commissioned the project well within time and has not delayed the commissioning of the project. Further, the Appellant has infused total funds into the project in terms of equity to ensure timely completion of the project. It is pertinent to mention that the banks had refused to grant loans to the Appellant and other similarly situated developers by orally informing that BESCO and Government of Karnataka officials had advised the bank to not finance the solar rooftop projects.
49. The other issue pertains to the alleged extensions to the roof made by the Appellant not being in accordance with the prescribed norms. In this regard, it is reiterated that the strengthening structures were duly approved by PMC and BESCO at all stages till the commissioning report and even thereafter until invoices were raised by the Appellant. It is highly unreasonable of BESCO to raise these contentions for the first time after invoices were raised by Appellant. The State Commission failed to understand the same and misinterpreted the documents on record.
50. Aggrieved by the Impugned Order dated 05/07/2018, the Appellant has presented the instant appeal.

Submissions of the Appellant

51. The Appellant has submitted that the following issues arise in the present appeal for consideration of this Tribunal:

A. Timeline for commissioning of the project allowed by BESCO to the Appellant.

B. Alleged violation of govt. letter dated 17.8.2016 and retrospective application of the same to the appellant's project.

A. Timeline for commissioning of the project allowed by BESCO to the Appellant.

52. It is the case of the Appellant that this issue is the core issue arising for consideration for this Tribunal. The impugned order reduced the tariff of the projects from Rs. 9.56/unit to Rs. 5.20/unit by rendering a finding against the appellant on this issue by holding that the appellant was required to commission the project within 6 months and not 12 months. Therefore, in the event the appellant succeeds before this Tribunal on this issue, the appellant shall consequently be entitled to tariff of Rs. 9.56/unit.

53. Neither the Tariff Order dated 10.10.2013 nor the Solar Policy, 2014 provides for a timeline for the commissioning of the project. It is specified therein that the ESCOMs will specify the timelines and guidelines.

54. The timeline for commissioning was not a part of the PPAs. However, it is pertinent to clarify that the effective date of the PPA is the date of signing of the respective PPAs since it has not been specified in the PPAs.

55. BESCO had clearly and unequivocally allowed the timeline of 1 year to the Appellant for the completion of Projects vide letters dated 20.02.2016, 22.03.2016 and 29.04.2016.

The timeline for the commissioning of the project was not mentioned in PPAs and was later assigned as '1 year' by the Executive Engineer and has been officially accepted by BESCO. Further, it is noted that BESCO had never issued notice to the Appellant to modify the timelines from 1 year to 6 months at any point in time, nor the said letter has ever been revoked. It is pertinent to state that though the said letter provides for various technical aspects regarding grid connectivity, metering etc, the BESCO, for the first time, in their objections before the state commission, took a stand that the portion of the letter which provides 1 year for commissioning was incorrectly included by its official. Pertinently, the BESCO has not disputed other contents of these letters, nor has the BESCO disputed that the said letter was issued by the Executive engineer in its official capacity. It is submitted that, except the letter from EE BESCO, there was no instruction/direction/guideline as on the date of PPAs which governed technical standards to be met and the timelines to be observed for commissioning the projects. Thus, the only instructions applicable were the conditions obtained in EE BESCO's letter. Even assuming, that the EE has incorrectly mentioned 1 year timeline for commissioning the project, the appellant cannot be put to fault for the same especially in the absence of any other guidelines issued by the ESCOMS as on the date of PPAs.

56. However, six months after the successful commissioning of the projects of the Appellant, BESCOB wrote to the State Commission vide letter dated 25.07.2017 intimating that the projects have been commissioned and seeking clarification as to whether to consider the solar panels installed on the projected/extended area and raised structures.
57. It is pertinent to mention that in the said communication, there was no whisper by BESCOB about the allegation that the Appellant had delayed commissioning of the plant. It may kindly be noted that the cause of action only arose when the said letter dated 25.07.2017 was sent by BESCOB to the State Commission.
58. However, during the hearing of petition filed by Appellant before the State Commission, BESCOB for the first time raised the objection of delay in commissioning and that too, on the basis of completely incorrect and perverse facts. BESCOB stated therein that the PPAs specify the timeline of 6 months which is completely incorrect since the PPAs do not provide for any timeline for commissioning.
59. Further, it was unjust of BESCOB to disown the action of EE, Madhugiri of allowing one year timeline stating that action has been taken against the said official. Firstly, the State Commission failed to consider that the Appellant cannot be put to prejudice by this irresponsibility on the part of BESCOB being a government Organization. Secondly, in the entire course of proceedings, there has been no whisper about the actions of the Engineers/Officials who duly allowed the commissioning after 1 year with the remarks that the commissioning is in adherence to all the prescribed norms.

60. The State Commission failed to consider that the commissioning of the project within one year was duly validated by all the concerned officials at all levels and no such objection was ever taken by BESCO even after six months of injection into the grid until 25.07.2017.

61. It is grossly unjust on the part of BESCO to wriggle out of the PPA and avoiding the due payments to the Appellant by sending the letter dated 25.07.2017 in which the issue of timeline of commissioning is not even mentioned. The said mala-fide conduct of BESCO has left the Appellant's plants to suffer with heavy financial losses.

62. It may kindly be appreciated by the Tribunal that the Appellants cannot be made to suffer such huge financial consequences because of the letter dated 25.07.2017 written by BESCO which was clearly an afterthought to avoid making payments to the Appellant.

63. BESCO has relied on the Karnataka Solar Policy which itself states that:

“ESCOMs will define specific guidelines on the standards for connectivity to the network. The scheme shall be administered by respective ESCOMs (including registration, approval, metering, protocol, safety protocol and standards).”

Therefore, even according to the Solar Policy, the developer was bound to follow the approvals given by the concerned ESCOM. The same was done by the Appellant in the present case by duly

following the timeline approved by EE Madhugiri being the authorized representative of BESCO. The Appellant has not pleaded ignorance of the said policy. It is BESCO which is making allegations contrary to the intent of the said policy.

64. BESCO has further contended that the SRTPV guidelines specify that the commissioning is to be done within 180 days. Even though the said specification is irrelevant to the Appellant's case, it is pertinent to mention that the guidelines annexed by BESCO itself do not specify the commissioning timeline. It specified 180 days for completion of installation work.
65. It is further pertinent to point that even the said time period seems out of place in the guidelines and seems to be inserted later on. Without prejudice, it is the observation of the Appellant that the said condition is merely inserted randomly before Point 9 at page 54 and is not authentically a part of the document.
66. It may also be noted that in BESCO's objections filed before the State Commission, it was mentioned that the SRTPV guidelines are dated 09.08.2016 (i.e. much later in time than the PPAs) and in the Guidelines annexed herewith to the reply to the Appeal, there is no date mentioned to the guidelines. So not only is the clause regarding timeline seems to be an insertion, but there is also complete discrepancy and ambiguity regarding the exact guidelines which are being referred to by BESCO to support their contention.
67. It is submitted that the alleged guidelines, assuming it to be authentic, is stated to be dated 9.8.2016 by the BESCO before the

State Commission. The said guidelines cannot be applied to the PPAs of the appellants retrospectively.

68. Further, as regards allowing the tariff in terms of PPA, the Hon'ble Supreme Court has clearly held in a recent Judgment titled 'Gujarat Urja Vikas Nigam Limited v. Gujarat Solar Semiconductor India P. Ltd. 2017 (16) SCC 498, that the State Commission does not have the power to alter the terms of the PPA entered into between the consumer and licensee or to extend or change the control period. The relevant extract of the said Judgment reads as follows:

“37. This Court should be specially careful in dealing with matters of exercise of inherent powers when the interest of consumers is at stake. The interest of consumers, as an objective, can be clearly ascertained from the Act. The Preamble of the Act mentions “protecting interest of consumers” and Section 61(d) requires that the interests of the consumers are to be safeguarded when the appropriate Commission specifies the terms and conditions for determination of tariff. Under Section 64 read with Section 62, determination of tariff is to be made only after considering all suggestions and objections received from the public. Hence, the generic tariff once determined under the statute with notice to the public can be amended only by following the same procedure. Therefore, the approach of this Court ought to be cautious and guarded when the decision has its bearing on the consumers.

38. Regulation 85 provides for extension of time. It may be seen that the same is available only in two specified situations — (i) for extension of time prescribed by the Regulations, and (ii) extension of time prescribed by the Commission in its order for doing any act. The control period is not something prescribed by the Commission under the Conduct of Business Regulations. The control period is also not an order

by the Commission for doing any act. Commissioning of a project is the act to be performed in terms of the obligation under the PPA and that is between the producer and the purchaser viz. Respondent 1 and appellant. Hence, the Commission cannot extend the time stipulated under the PPA for doing any act contemplated under the agreement in exercise of its powers under Regulation 85. Therefore, there cannot be an extension of the control period under the inherent powers of the Commission.

60. In the case at hand, rights and obligations of the parties flow from the terms and conditions of the Power Purchase Agreement (PPA). PPA is a contract entered between Guvnl and the first respondent with clear understanding of the terms of the contract. A contract, being a creation of both the parties, is to be interpreted by having due regard to the actual terms settled between the parties. As per the terms and conditions of the PPA, to have the benefit of the tariff rate at Rs 15 per unit for twelve years, the first respondent should commission the solar PV power project before 31-12-2011. It is a complex fiscal decision consciously taken by the parties. In the contract involving rights of Guvnl and ultimately the rights of the consumers to whom the electricity is supplied, the Commission cannot invoke its inherent jurisdiction to substantially alter the terms of the contract between the parties so as to prejudice the interest of Guvnl and ultimately the consumers.

61. As pointed out earlier, the Appellate Tribunal has taken the view that the control period of the Tariff Order was fixed by the State Commission itself and hence the State Commission has inherent power to extend the control period of the Tariff Order. It may be that the tariff rate as per Tariff Order, 2010 as determined by the Committee has been incorporated in Clause 5.2 of the PPA. But that does not in any manner confer power upon the State Commission to exercise its inherent jurisdiction to extend the control period

to the advantage of the project proponent, first respondent and to the disadvantage of Guvnl who are governed by the terms and conditions of the contract. It is not within the powers of the Commission to exercise its inherent jurisdiction to extend the control period to the advantage of any party and to the disadvantage of the other would amount to varying the terms of the contract between the parties.

65. It is contended that Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees and the terms and conditions of the PPA cannot be set to be inviolable. Merely because in PPA, tariff rate as per Tariff Order, 2010 is incorporated that does not empower the Commission to vary the terms of the contract to the disadvantage of the consumers whose interest the Commission is bound to safeguard. Sanctity of PPA entered into between the parties by mutual consent cannot be allowed to be breached by a decision of the State Commission to extend the earlier control period beyond its expiry date, to the advantage of the generating company, Respondent 1 and disadvantage of the appellant. Terms of PPA are binding on both the parties equally.”

(emphasis supplied)

The above-mentioned judgment is very clear on the proposition that the State Commission cannot alter the terms of the PPA and cannot extend the control period of a tariff order. As far as the present case is concerned, the State Commission could not alter the applicability of the Tariff Order dated 10.10.2013 on the plants of the Appellant when it was unequivocally conferred on the Appellant by way of the PPA and the said applicability was even saved by the tariff order dated 02.05.2016.

69. The Respondent No. 2 has incorrectly averred that the applicability of the Tariff Order dated 02.05.2016 was saved only for plants which were commissioned within 6 months. It may kindly be noted by this Tribunal that in the Tariff Order dated 02.05.2016, the applicability of Tariff Order of 10.10.2013 and consequently, the Tariff of Rs. 9.56/unit was saved for the plants which were commissioned before 01.05.2016 and were commissioned within “the period of time as stipulated by ESCOMs concerned or the Commission prior to the date of issue of this Order”. And since BESCO had allowed 1 year as the time for commissioning, the tariff Order dated 10.10.2013 and tariff of Rs. 9.56/unit ought to be allowed to the Appellant in accordance with the PPA.
70. The State Commission has failed to appreciate that as a quasi-judicial body, it is required to follow the basic principles of natural justice and also the due process of law. In view of the judgment of the Hon’ble Supreme Court mentioned hereinabove, the State Commission should not alter the terms of the PPA and change the applicable tariff in the middle of the Control period because of the fault on the part of the officials of the licensee.
71. The State Commission ought not to have left the Appellant under a severe financial crunch in the middle of the control period by reducing the tariff substantially for no fault on the part of the Appellant. The State Commission has failed to appreciate that regulatory certainty is very important for the projects to be established and supply power to the State.

72. Even assuming, but not admitting the fact that there was a delay in commissioning of 1000 kWp plant, the State Commission has erred in reducing the tariff of two 499 kWp plants also which had been commissioned within 6 months i.e minimum time as contended by BESCO.
73. Without prejudice to the submissions made hereinabove, the guidelines annexed by BESCO in its reply herein states that the installation work should get completed within 180 days. The Appellant had submitted the Work Completion Report on 10.08.2016 and 12.08.2016 for RR No. PP 328 and 329 respectively i.e within 6 months of signing of their respective PPAs.
74. It is pertinent to mention that after submission of work completion report within 6 months by the Appellant, the delay in allowing the commissioning was on the part of BESCO because of their internal process and approvals from their Corporate Office. However, the Executive Engineer Madhugiri delayed the commissioning of the plant through seeking clarification on the Solar Rooftop Installation from the relevant authorities in the BESCO Corporate office.

Further, on 19.12.2016 the Executive Engineer, Madhugiri, after holding the approval for commissioning the Solar Rooftop Installation for 4 months, allowed for the commissioning of the project. The delay was without cause and was done solely to delay the commissioning of the Project of the Appellant to inflict material adverse effect on the Appellant through reducing the applicable

tariff due to not completing the project within the stipulated time, i.e. 1 year.

75. Therefore, it is completely unjustified on the part of BESCO and the State Commission to have disallowed the tariff of Rs. 9.56/unit with respect to the two plants of 499 kWp each since the work with respect to those two projects were completed even before 6 months.

76. In view of the submissions made hereinabove, it is amply clear that the argument of delay in commissioning has been raised by BESCO in a completely mala-fide manner to avoid making payments to the Appellant. On this ground alone, the Impugned Order is liable to be set aside by this Hon'ble Court.

B. Alleged violation of Govt. letter dated 17.8.2016 and retrospective application of the same to the Appellant's project.

77. At the outset it is submitted that though the State Commission rendered a finding against the appellant on this issue, it did not attach any consequence to it since the project was already commissioned and had been supplying power. Be that as it may, the appellant has questioned the finding of the State commission on this score also as being unsustainable and contrary to facts on record.

78. This issue pertains to the alleged extensions to the roof made by the Appellant not being in accordance with the prescribed norms. To

clarify further, it is submitted that it is nobody's case that the appellant's project was built on ground mounted structure. It is also not the BESCO's case that the appellant has not built the solar project on the roof. Per contra, it is BESCO's case that the area on the roof as existing as on the date of PPA was extended by 10-20% in order to construct the solar project. To clarify it further, it is BESCO's case that the solar project ought to have been installed only on the area of roof 'as existing' on the date of PPAs. It is submitted that the contention of BESCO that the solar project ought to be constructed only on the area as existing as on the date of PPAs is absolutely erroneous on the following broad contentions as elaborated below:

- A. Contrary to BESCO'S own conduct in certifying commissioning of the project and issued letters clearly stating that the project is in adherence to all BESCO/GOK norms.
- B. Contrary to the intent and purpose of solar policy.
- C. Contrary to the intent and purpose of letter dated 17.8.2016 issued by GOK.
- D. Contrary to settled position of law as laid down by the division bench of Karnataka High Court in Writ Appeal no. 200557/2018 and batch, dated 12.12.2018, which has been confirmed by the Hon'ble Supreme Court by dismissing SLP against the aforesaid order on 23.8.2019 in SLP (civil) no. 13062/2019.

79. Primarily it is submitted that the purpose of coming out with solar roof top projects is to enable entities to utilise space on the roof and to utilize vast solar capacity which the state of Karnataka is blessed with. It serves dual purpose of providing optimum utilisation of building and also to enable the entities/people to make use of

renewable power. This enables the developers to consume the power produced captively and the balance power would be injected into the grid.

80. It is alleged by BESCO that the area of the rooftop has been extended by the Appellant. However, the said allegation has no merit to it. The rooftop was merely strengthened to set up the solar plants in view of the report of the Solar EPC Contractor dated 13.05.2016 which clearly stated that the existing structures are not strong enough to sustain the installation of solar panels. Therefore, if at all there was some minor extension, it was only because of the space taken by the strengthening structures. In any case, the entire building, even after installation of additional strengthening/retrofitting was still within the norms of the building plan. It is nobody's case that the appellant had violated the building plan in any manner.

81. It is submitted that the strengthening structures to the roof were duly approved by BESCO at all stages till the commissioning report and there was no objection regarding the same raised at the time of inspection by BESCO. This allegation of the BESCO is a mere afterthought to deny benefit of agreed tariff under the PPAs. Notably, the BESCO alleged extension of rooftop only vide its letter dated 25.7.2017, which was issued about 6-7 months after commissioning of respective projects.

82. It is reiterated that vide letter dated 19.12.2016, the EE had written to the Executive Engineer, MT Division, Chitradurga that the installation work of 499 kWp SRTPV plant of the Appellant is

complete and that adhering to all prevailing GOK & BESCO norms. The relevant part of the letter dated 19.12.2016 reads as follows:

“The installation work of the same is completed in all respects. The work is completed and is adhering to all the prevailing GOK & BESCO norms. Hence kindly arrange for conducting the Pre-Commissioning Test at the earliest.”

There was not even a whisper of objection about the structure of rooftop plants or the completion timelines even after the plant was successfully commissioned and 6 months thereafter till 25.07.2017.

83. It is further pertinent to mention that the construction of the building is in accordance with the norms of the Town Municipal Council, Pavagada and it has been duly certified by the TMC, Pavagada. The Appellant has also paid all the due as well as additional property tax for the same. The said fact of approval of building plan by TMC, Pavagada has even been acknowledged by BESCO in their written arguments at Para 4.
84. It is also pertinent to highlight that the BESCO is not the appropriate authority to comment on the extension of the building. It is to be noted that the Town Municipal Council, Pavagada having been delegated powers and functions to grant license for construction of buildings as per submitted building plan, certify the completion of said building as per approved building plan, levy property tax as per said building plan on completed building and issue show cause notice for deviation/modification/alteration of the building for carrying out structural modification or extension which are not part of the approved building plan. In this case the Town

Municipal Council of Pavagada has certified and confirmed that there is no extension of roof top beyond the permissible limits of the building plan approved by it (at Pg. 185-186). At the cost of repetition, it is again reiterated that it is not BESCO's case that the appellant has violated building norms but it is BESCO's case that the appellant could not have extended the roof area at all after entering into the PPA, even when such extension was for retrofitting and strengthening and confirming to the building plan.

85. BESCO had relied on a letter dated 17.08.2016 while seeking clarification from the State Commission vide letter dated 25.07.2017 about the alleged extension of rooftops. According to the said letter, solar plants had to be mounted on buildings which are constructed according to building construction/norms. And as stated above, the building of the Appellant was duly constructed according to the norms of Town Municipal Council, Pavagada and therefore the GOK's letter dated 17.8.2016 is misread by BESCO to argue that the said letter does not even permit extension of roof due to retrofitting and strengthening even when such extension is within the building norms.
86. Moreover, it is pertinent to mention that the letter dated 17.08.2016 emphasizes on the difference between rooftop mounted and ground mounted solar panels. It does not even deal with the additional structures on the rooftop and has been grossly misinterpreted by BESCO to its own advantage.
87. Further, without prejudice to the above submission, it is submitted that BESCO was unjust in retrospectively applying the said letter

dated 17.08.2016. The PPAs were signed in the month of January-March, 2016 and this letter was issued later in time by GoK. So, it could not have been applied retrospectively by BESCO causing grave prejudice to the Appellant, that too after successfully allowing the commissioning of plants in January, 2017 and then raising this issue on 25.07.2017 to avoid making payments to the Appellant.

88. The said issue of retrospective application has been settled by the Hon'ble High Court of Karnataka at Kalaburgi in Writ Appeal No. 200557/2018 titled *N Amman Raju & Ors. V. State of Karnataka & Ors.* vide Order dated 12.12.2018. The facts in that case were that the appellant was permitted to build solar roof top project. The entity constructed the building within prescribed period of 1 year and installed the solar rooftop project on the building. The BESCO sought to cancel the PPA by applying letter dated 17.8.2016 issued by GOK by arguing that the appellant could not have constructed the building and that the solar project ought to have been installed only on the building existing as on the date of PPA. This contention was negated by the High Court. The High Court held that firstly letter dated 17.8.2016 could not have been applied retrospectively and secondly that circular dated 10.12.2015 permits construction of building and completion of projects within 1 year. The relevant extract of the said Judgment is reproduced herein below:

“9. First respondent as per the extant Solar Policy 2014 had issued a circular on 10.12.2015 specifying the mode method in which the PPAs are to be operated by GESCO. One of the conditions stipulated under said Circular which has a direct bearing and impact in the instant case would be Clause 5 which would indicate that on execution of the agreement i.e PPAs, within one year construction of the buildings should be completed and electricity connection is to

be obtained as otherwise the electricity charges for the such building would be fixed as per the existing tariff prescribed by the Karnataka Electricity Regulatory Commission. Clause 5 reads as under:

(AS TRANSLATED) “The period mentioned in the PPAs is for one year; within the prescribe time, the construction work and the electricity connection has to be completed. For the connections which are done after the prescribed time, the tariff per unit will be determined by KERC”.

10. As could be seen from the Impugned order of cancelling the PPAs namely Order dated 29.05.2017 Annexure-F series, the thrust or the emphasis laid cancellation of PPAs was on the ground that buildings are not in existence; petitioners are attempting to put up SRTPV in open land and the extant Solar Policy 2014-20 would stipulate setting up of SRTPV only on the roof top of the buildings; said policy provides for twin utility namely captive consumption and exchange of power with the user which would be decided based on the total energy requirement of the premises; and usable area available for installation of rooftop of SRTPV and this being the tenor of the policy had been given a go-bye and PPAs holders who have proposed to set up SRTPV in the open land are trying to sell the maximum or whole of the quantum of power so generated with a sole intention to make undue profits. In sum and subsistence, it came to be held under the impugned orders that there is no roof top existing for installation of SRTPV.

11. When the circular dated 10.12.2015 enables the PPAs holders namely petitioners herein to put up construction within one year from the date on which they have entered into agreements, it cannot be again said by the respondents that for want of roof tops or in other words there being no constructed building in existence to install SRTPV and as such PPAs are to be cancelled, that too, by relying on the circular dated 28.03.2016 – Annexure R 5 which has come into existence subsequent to PPAs entered into between petitioners and 2nd respondents and also relying upon circular dated

28.03.2016 Annexure R4 where under circular dated 10.12.2015 Annexure-H came to be withdrawn.

12. There cannot be any dispute with regard to the power available to first respondent or respondents Nos.2 and 3 to amend review or relax or interpret any of the provisions under the policy as and when it is required. However, when a contract is entered into between the parties and existing circular, notification having been made applicable or acted upon, it cannot be gain said by any party to such agreement that on account of further change in the policy the acts done up to the said date would be wiped out or the respondents would be entitled to seek for all such acts being done under the agreements are requested to be overlooked.

First respondent as well as respondent Nos.2 and 3 being an instrumentality of State are required to act in just and fair manner and after having commenced the play, they would not be entitled to change the goal post or alter the rules of the game. Even assuming such power to change or modify is available it can be made applicable only prospectively and not retrospectively particularly when the rights of the parties have got crystallized by virtue of contract having been entered into which was based on existing circulars or notifications.”

(emphasis supplied)

89. In view of the clear findings of the Hon'ble High Court, it is amply clear that the relied upon letter dated 17.08.2016 cannot be applied retrospectively after the Appellants had invested huge amount of equity in setting up the projects and the same have been allowed to be successfully commissioned by BESCO.
90. It is pertinent to mention that the SLP filed by GESCOM against the abovementioned Order passed by the Hon'ble High Court stands

dismissed vide Order dated 23.08.2019 passed in SLP (civil) No. 13062/2019.

91. The State Commission has erred in not observing that BESCOM is trying to wriggle out of its obligations to pay the due tariff of Rs. 9.56/unit to the Appellant by finding defaults in timelines as an afterthought and applying letters retrospectively; thereby causing huge financial losses to the Appellant.

Submissions of BESCOM/Respondent No.2

- 92.. The Government of Karnataka vide notification dated 22.05.2014 issued the Government Policy for Solar Development in the State of Karnataka for the period 2014-2021. In furtherance to the same, the Respondent herein issued Guidelines for establishment of Solar Roof Top Projects (*SRTPV*). In furtherance to the same, several applications for establishment of SRTPV plants was received by the Respondent.
93. It is submitted that on -27.03.2015, the Appellant completed the construction of Industrial sheds. On 10.04.2015, the Town Municipal Council, Pavagada confirmed that the Appellant had completed the construction as per the plan and made demand for payment of property tax with regard its old as well as newly constructed building using iron pillars & zinc sheets for the year 2015-2016
94. The Appellant herein owns 3 SRTPV plants.

- I) On 08.01.2016, a PPA was executed between the Appellant and Respondent herein with respect to the Appellant's 1000 kWp capacity SRTPV plant bearing R.R. No.PP327.
- II) On 11.02.2016, a PPA was executed between the Appellant and the Respondent with respect to the Appellant's 499 kWp capacity SRTPV plant bearing RR.No: PP 328 .
- III) Similarly, on 21.03.2016, a PPA was executed between the Appellant and the Respondent with respect to the Appellant's 499 kWp capacity SRTPV plant bearing RR.No.329.

95. The State Commission vide letter dated 10.2.2016 approved the Appellant's PPA dated 08.01.2016 pertaining to SRTPV plant having R.R No. PP327.

96. In furtherance to the same, the office of the Executive Engineer, BESCOM, C, O & M division, Madhugiri vide letter dated 20.02.2016 has accorded approval to the Appellant, to install 499 kWp SRTPV plant bearing RR No.PP 328. The Office of the Executive Engineer, BESCOM, C, O& M, Division vide letter dated 22.03.2016 has accorded approval to the Appellant to install 499 kWp SRTPV plant bearing R.RNo PP 329. The Office of the Executive Engineer, BESCOM, C,O & M vide letter dated 29.04.2016 has accorded approval to the Appellant to install 1000 kWp STTPV plant at its rooftop at Pavagada. The Appellant was also informed by the Office of the Executive Engineer, BESCOM, C, O & M vide letters dated 22.02.2016, 22.03.2016 and 29.04.2016 that if it fails to commission the project within one year

from the date of execution of the PPA, the approval for installing the SRTPV plants will stand cancelled.

97. It is submitted that the said approval was given by the officer of the Respondent was erroneous. It is submitted that directions of the Office of the Executive Engineer, BESCO, C, O 86 M to complete the installation of SRTPV plants within one year is contrary to the SRTPV Guidelines issued by the Respondent. Therefore, the Respondent Company has already initiated disciplinary action against the concerned officer.
98. It is submitted that, the State Commission vide order dated 10.10.2013 had determined the tariff for grid connected SRTPV Plants for the period from 2013 to 2018. However, during FY 1486 FY15, the State Commission noticed that there was a substantial decline in the prices of solar panels and allied equipment resulting in considerable reduction in cost of solar power generation leading to investors/developers offering to supply power from solar plants at rapidly declining rates. In view of these developments, the State Commission, in order to protect the interest of the consumers and also to ensure financial stability of ESCOMs, considered it necessary to take up amid-course revision of the tariff and curtail the control period as determined under Tariff order dated 10.10.2013 in respect of SRTPV Plants. Therefore, the State Commission vide Generic Tariff Order dated 2.05.2016 determined the tariff for SRTPV plants to be Rs. 5.20/- considering the capital cost of the plant (i.e. market rates of Solar panels, inverters 86 other equipments), life of the Solar plant, debt to equity ratio, Debt repayment tenure, Capacity utilization factor, working capital etc.

99. It is submitted that upon inspection of the Appellant's SRTPV plants was carried out by the concerned officer of the Respondent during the month of August-2016. An inspection report was drawn up wherein it was noticed that the "Consumer has constructed separate steel structure all around the building". Further, inspection report dated 26.11.2016 states that "Additional supports provided by the sides of the existing walls, all around the building and the roof area extended partially from the existing building approximately 10 to 30%.

100. It is submitted that the Appellant herein was required to install the SRTPV plant as per the SRTPV Guidelines issued by the Respondent Company. As per the SRTPV Guidelines, the Appellant herein was required to commission its plant within 180 days from the date of execution of the PPA. However, the Appellant has failed to do the same. The Scheduled Commissioning Dates of the Appellant's projects are following:

1. 1000 kWp SRTPV Plant with RR:No:PP327- 7.7.2016
2. 499 kWp SRTPV Plant with RR:No:PP328- 10.08.2016
3. 499 kWp SRTPV Plant with RR:No:PP329- 20.09.2016

111. It is submitted that on 10.08.20.16, the Appellant requested the General Manager (DSM), BESCO to inspect its 499 kWp SRTPV Plant with RR. No. PP328.

112. It is submitted that on 12.08.2016, the Appellant requested the General Manager (DSM), BESCO to inspect its 499 kWp SRPV Plant bearing RR. No. PP329.

113. It is submitted that on 11.08.2016, the Chief Electrical Inspector accorded the Appellant with Electrical Safety subject to certain conditions with respect to 499 kWp capacity SRTPV plant bearing R.R.No.:PP328

114. It is submitted that on 16.08.2016, Town Municipal Council, Pavagada once again demanded that the Appellant to pay property tax with regard to new construction.

115. It is submitted that on 31.08.2016, the Chief Electrical Inspector accorded the Appellant with Electrical Safety Approval subject to certain conditions with respect to its 499 kWp SRTPV plant with R.R.No.PP329.

116. It is submitted that on 31.08.2016, the Chief Electrical Inspector accorded the Appellant with Electrical Safety Approval subject to certain conditions with respect to its 499 kWp SRTPV plant with R.R.No: PP329.

117. It is submitted that on 17.08.2016, the Executive Engineer sought guidance from the General Manager (DSM), BESCO with regard to commissioning of Appellant's two 499 kWp capacity SRTPV plants with R.R.NO:PP328 and R.R.NO:PP329 as he had installed SRTPV Plants on newly extended roof of existing building.

118.It is submitted that on 19.12.2016, the Executive Engineer, Madhugiri requested the Executive Engineer, MT Division to conduct Pre-Commissioning Test for Appellant's 499 kWp SRTPV Solar Power Plant with R.R. NO:PP328 and R.R.NO:PP329. On 28.12.2016, office of the Executive Engineer, Madhugiri issued Certificate of Synchronization certifying that Appellant's 499 kWp SRTPV Plants with R.R.No.PP328 and RR.No.PP329 has been synchronized with BESCO grid on 22.12.2016.

119.It is submitted that on 3.1.2017, the Office of the chief Electrical Inspector accorded Electrical Safety Approval to Appellant's 1000 kWp SRTPV Plant. On 04.01.2107, the Executive Engineer, Madhugiri requested the Executive Engineer, MT Division to conduct Pre-Commissioning Test for Appellant's 1000 SRTPV Solar Power Plant. On 9.01.2017, office of the Executive Engineer, Madhugiri issued Certificate of Synchronization certifying that Appellant's 1000 kWp SRTPV Plants with RR.No.PP327 is synchronized to BESCO grid on 6.1.2017.

120.It is submitted that, the Appellant converted his LT connection into HT connection and was given following RR Number: PGHT 8, PGHT9 and PGHT 10. Ever since, the Respondent has been raising invoices for the energy supplied by it to the Respondent.

121.It is submitted that, inspection carried out by the Respondent herein, the Respondent vide letter dated 25.07.2017 informed the State Commission that the Appellant has expanded its roof for the sole purpose of installing the SRTPV plants and sought for suitable

directions to be issued with regard to the further course of action to be taken in that regard. .

122. It is submitted that, on 18.07.2017, the Town Municipal Council, Pavagada issued the certificate that the Appellant has constructed the industrial building as per the approved plan dated 06.02.1998 and also has paid industrial taxes for the year 2012-13, 2013-14 and 2014-15.

123. It is submitted that, in response to the communication addressed by the Respondent herein to the State Commission, the Commission was pleased to address letter dated 30.08.2017 noting that the Appellant had violated the SRTPV norms and calling upon the Respondent herein to initiate action for termination of the contracts.

124. It is submitted that in furtherance to the directions of the State Commission, the Respondent herein has issued default notices dated 27.11.2017 to the Appellant however there was no reply.

125. It is submitted that aggrieved by the non-payment for the energy supplied to the Respondent, the Appellant filed an original petition before the State Commission seeking for a declaration that its Solar Rooftop Installations pertaining to Revenue Record Numbers PP328/PGHT 8, PP329/PGHT 9 and PP327/PGHT 10 have been commissioned in time and as per guidelines issued by the Government of Karnataka and the Respondent herein, for grant of tariff as per the generic Tariff Order dated 10/10/2013 for Solar Rooftop Installations and for a direction to the Respondent to

release pending Solar Power bill payments along with interest as per the tariff order of the State Commission dated 10/10/2013.

126. It is submitted that, it was the case of the Appellant before the State Commission that it has installed SRTPV Plants on the existing roof of a building in accordance with guidelines issued by the Respondent with respect to SRTPV installations. Further, the Appellant had contended that he had extended the roof for retrofitting/strengthening existing buildings and same is not prohibited under the existing Guidelines. It was also submitted by the Appellant that he had constructed buildings and industrial sheds as per the sanction plan dated 6.02.1998 issued by the Town Municipal Council, Pavagada and there has been no violation by the Appellant from the norms. Further, it was submitted by the Appellant that he was entitled for tariff as per the Tariff Order dated 10.10.2013 as he had commissioned his projects within the stipulated time period, namely, one year from the execution of the PPA.

127. It is submitted that, in response to the contentions urged by the Appellant, it was submitted by the Respondent before the State Commission that it has acted in keeping with the orders issued by the State Commission, the guidelines issued by the Government and the SRTPV Guidelines of the Respondent. It was submitted that as per the Solar Policy 2014-21, Solar rooftop PV Plants are required to be mandatorily mounted in space available on the roof of any residential, commercial, institutional, industrial and other building constructed as per building construction norms and Solar PV panels installed on the ground or ground mounted structures

using steel/iron/wooden/ concrete support will not be considered as Solar rooftop PV Plants and same has been clarified by the Government of Karnataka vide letter dated 17.08.2016. It was brought to the attention of the State Commission that Appellant herein had installed the SRTPV plant on roof built on steel structure which fact has been confirmed in the inspection reports. Therefore, it was submitted that the SRTPV plants of the Appellant are not in conformity with the Solar Policy and SRTPV Guidelines.

128. It is submitted that Appellant has not commissioned the plants within the prescribed timeframe under SRTPV Guidelines i.e. 180 days. Based on the same, it was submitted that the Appellant installations do not conform with the SRTPV Norms and conditions enumerated by the Government of Karnataka in their letter dated 17.08.2016 and specifically Article 1.1 and 1.6 of the PPA, which specifically require that all standards and conditions are complied with in accordance with the applicable Rules/Regulations/Law in force.

129. It is submitted that attention of the State Commission was also drawn to the approval given by the Chief Electrical Inspectorate (CEI), GoK which is subject to the condition that the safety approval will be withdrawn on any objections, legal issues regarding the establishment of proposed SRTPV capacity received from any other statutory authority. Hence, it was submitted that in the light of the fact that the Appellant had deviated from the approved norms, the approvals granted by the CEI also ought to be cancelled.

130.It is submitted that the State Commission after hearing the both parties was pleased to formulate three issues for consideration;

1. Whether the Petitioner has installed the SRTPV plants as per the applicable norms and commissioned them within the time stipulated?
2. If the answer to Issue No.(1) is in the negative, whether the Appellant can be allowed to operate his SRTPV plants under net metering basis and if so, what should be the tariff applicable?
3. What Order?

131.It is submitted that, the commission while dealing with the issue No.1, State Commission after considering the photographs of the Appellant's SRTPV installation has come to the conclusion that the Appellant herein has not installed the SRTPV plant on the existing rooftop but on the newly constructed rooftop and has violated the norms and guidelines of the SRTPV Scheme. Further, the State Commission has held that time prescribed in SRTPV Scheme for commissioning of SRTPV plant on the existing building is 180 days and same is in public domain, further, State Commission has held that act of Executive Engineer, Madhugiri, giving one year time to commission is contrary to the Guidelines, is ultra vires and is not binding on the Appellant. Therefore, the State Commission has held that the Appellant herein has not commissioned his SRTPV plants within stipulated timeframe.

132. It is submitted that, the commission while answering issue No.2, the State Commission has held that the Appellant is not entitled to tariff fixed in the PPA as per the Tariff order dated 10.10.2013 as the Appellant has installed its plant violating the SRTPV norms and guidelines and has commissioned the plant belatedly. Further, the State Commission has held that the Respondent herein has rightly taken steps towards termination of the PPA. However, the State Commission has allowed the Appellant to continue under the net metering basis instead of issuing a direction to terminate the PPAs only in the interest of the Appellant's investment, subject to certain terms for balancing the interest of the Appellant and consumer. The State Commission had held the Appellant can supply electricity to the Respondent as per the tariff fixed under the Generic Tariff Order dated 2.05.2016 as the Appellant has undertaken majority of its investment in the control period of the Generic Tariff Order applicable.

133. It is submitted that, after consideration of the same, the State Commission has proceeded to pass the impugned order revising the tariff payable to the Appellant herein from Rs. 9.56/- to Rs. 5.20/- without considering the request of the Respondent for payment of tariff of Rs. 3.57. The same was based on the finding of the State Commission that the Appellant have violated the norms and would therefore only be entitled to tariff of Rs. 5.20/- in keeping with the order dated 2.5.2016. The said order dated 2.5.2016 has been made applicable as the Appellant investments took place during the control period of the 2.5.2016 order and also because the Appellant failed to commission the plant within 180 days, as it was

required to do. Aggrieved by the reduction in the tariff payable to it, the Appellant has assailed the impugned order before this Tribunal.

134. It is submitted that it is the case of the Appellant before this Tribunal that the State Commission has reduced the tariff that is applicable to the Appellant projects in violation of the Generic Tariff Order dated 10.10.2013. Further, it is submitted by the Appellant that Tariff Order, SRTPV Scheme and PPA did not specify time for commissioning of SRTPV plant and the Appellant herein has commissioned the plants within one year from the execution of the PPA as stated in the letter of Executive Engineer, Madhugiri. Further, it submitted that the Appellant cannot be made to suffer due to change in the stand of the Respondent on timeline for completion of the project. Further it is contended that the State Commission has interpreted the clarificatory letter of the Government of Karnataka, dated 17.08.2016 with regard to SRTPV Projects wrongly. Based on the same, the Appellant herein has filed present Appeal seeking setting aside of the impugned order.

135. It is submitted that the SRTPV Guidelines clearly specify the time period for commissioning the plant to be 180 days. It is submitted that the Appellant herein has installed its projects in furtherance to the Government of Karnataka's Solar Policy 2014-2015. The Appellant cannot plead ignorance of the said policy and the stipulations contained therein.

136. It is submitted that certain conditions for installing the SRTPV plant stipulated in Solar Policy as under;

NET METERING: Net metering arrangements are proposed (at multiple voltage levels) to focus on self-consumption of energy generated from roof top PV. The concept is a combination of captive consumption and exchange of power with the utility.

In case of solar rooftop PV systems connected to the grid of a distribution company on a net basis, the surplus energy injected shall be paid by the ESCOMs at a tariff determined by KERC from time to time.

Metering shall be in compliance with the CEA (installations and operation of meters) Regulations 2006, the Grid Code, the metering Code and other relevant regulations issued by KERC/CERC from time to time.

ESCOMs will define specific guidelines on the standards for connectivity to the network. The scheme shall be administered by respective ESCOM's (including registration, approval, metering, protocols, safety protocol and standards).

It is submitted that from the perusal of the Solar Policy, it is clear that the Appellant herein has to install SRTPV plant as per the Guidelines framed by the Respondent Company. As per the SRTPV Guidelines, the maximum timeframe fixed for commission of SRTPV plants on the existing building is 180 days. The said Policy of the Respondent is in public domain and is available and

known to all. In spite of the Appellant having knowledge about the same, the Appellant herein has failed to commission the plant within the stipulated timeframe. Therefore, the contention of the Appellant that timeframe for commissioning of the SRTPV plant was not prescribed is untenable and denied.

137. It is submitted that with regard to the contentions urged by the Appellant pertaining to the time frame of one year for commissioning granted by the Office of Executive Engineer, Madhugiri, it is submitted that concerned officer of BESCO had fraudulently granted the Appellant one year time to commission the plant and same is contrary to the SRTPV Guidelines, which stipulate timeframe to be 180 days. Therefore, the approval given by the errant officer, namely, Executive Engineer, Madhugiri being illegal cannot be relied on. It is submitted that the Respondent herein has taken disciplinary action against the said officer. The Appellant having knowledge of the SRTPV Guidelines and time stipulated therein has failed to bring the such error to the knowledge of the Respondent. It is submitted that the Appellant cannot be permitted to take advantage of this error. Unless a uniform policy is enforced for generators who have commissioned their units after 180 days, it will lead to a situation where there is disparity between promoters of SRTPV plants. The same ought not to be permitted.

138. It is submitted that, in the present case, the Appellant has failed to commission its plants within the stipulated timeframe, i.e. 180 days from execution of PPA. The Scheduled Commissioning date and commissioning date of the Appellant's SRTPV plants are given below;

SRTPV PLANT (CAPACITY AND R R NUMBER	PPA DATE	SCHEDULED COMMISSIONING DATE	COMMISSIONING DATE
1000 kWp RR:No:PP 327	08.01.2016	07.07.2016	06.01.2017
499 kWp RR:No:PP 328	11.02.2016	10.08.2016	22.12.2016
499 kWp RR:No:PP329	21.03.2016	20.09.2016	22.12.2016

139. It is submitted that from a perusal of above table, it is clear that the Appellant herein has not commissioned its plant within the stipulated timeframe. It is submitted that Generic Tariff Order dated 02.05.2016 clearly states that all SRTPV plants whose PPA's have been executed as per the tariff order dated 10.10.2013 and whose plants have been commissioned within 180 days, would be eligible for the tariff mentioned in their PPA's. For those SRTPV plants who have commissioned their units beyond six months, the tariff order dated 2.5.2016 has been made applicable. In the present case, the Appellant herein has not commissioned its plant within the stipulated timeframe. Therefore, is not entitled for tariff determined in Generic Tariff Order dated 10.10.2013.

140. It is submitted that the Appellant herein has undertaken major investment in the control period of Tariff Order dated 2.05.2016. Therefore, the Appellant herein is not entitled to higher tariff as determined in the Generic Tariff Order dated 10.10.2013.

141. It is submitted that as per the Solar Policy, the Appellant herein is required to install the SRTPV plant on the roof of existing building

and Solar rooftop PV Plants are required to be mandatorily mounted in space available on the roof of any residential, commercial institutional, industrial and other building constructed as per building construction norms and Solar PV panels installed on the ground or ground mounted structures using steel/iron/wooden/concrete support will not be considered as Solar rooftop PV Plants. The Government of Karnataka has also clarified this aspect vide their letter dated 17.08.2016. The said clarification is issued by the Government of Karnataka by virtue of its power under Clause 20 of the Solar Policy 2014-2021 dated 22.05.2014. The same ought to be followed.

142. It is submitted that the SRTPV Project under net metering arrangement was introduced by the State Government with the main objective that the consumer meets its power requirement for self-consumption from its SRTPV plant and injects surplus energy into the grid of distribution companies. The objective behind insisting on the SRTPV plant to be installed on the existing roof and not on the newly constructed roof is to prevent the conversion of SRTPV. Project under net metering basis into the primary business. If the consumers are allowed to install the SRTPV plant on the newly constructed roof or roof extended with sole purpose to install SRTPV plant, then main objective of the scheme which is to make the units self-sufficient and to consume most of the energy generated locally is lost. The ESCOMs will be burdened with payment a huge tariff for the power being generated. The same therefore ought not to be permitted.

143. It is submitted that, in the present case, the Appellant herein has installed the SRTPV plant on super structures over its existing building and has extended the roof using steel structures. It is pertinent to note that the inspection was carried out by the concerned BESCOM officer during the month of August-2016, who has certified in his inspection report, that the "Consumer has constructed separate steel structure all around the building" and also during inspection carried-out on 26.11.2016 for all the above said 3 nos. of Installation's has stated that "Additional supports provided by the sides of the existing walls, all around the building and the roof area extended partially from the existing building approximately 10 to 30%. Therefore, the SRTPV plant is not in conformity with the SRTPV Guidelines. It is submitted that the Appellant herein has deviated from the approved norms and the same ought not to be permitted. In fact, during the pendency, of the present proceedings, the authorities have yet again conducted a survey on 28.01.2019. The report along with the photographs reveals that the Appellant has violated the norms and policy. The detail report is annexed to the objections.

144. It is submitted that the Appellant herein has installed the SRTPV plant by not adhering to the SRTPV Norms and Guidelines and has not commissioned the plant within the stipulated timeframe. Therefore, the Respondent herein has rightly taken steps towards terminating the Appellant's PPA and same has been affirmed in the order of State Commission. Such being the case, the Appellant herein is not entitled to tariff of Rs. 9.56-f- as per the Tariff order dated 10.10.2013.

145. It is submitted with regard to the tariff payable by the Respondent herein that as the Appellant herein has not adhered to the norms stipulated by the Respondent. Therefore, the Appellant is not entitled to the tariff of Rs. 9.56/- as per the Generic Tariff Order dated 10.10.2013. The State Commission vide order dated 7.11.2017 has held that the tariff payable for plants which do not adhere to the prescribed norms would be Rs. 3.57/-. Hence, the question of making payments at the PPA rates would not arise.

146. It is submitted that the State Commission in its earlier order dated 07-11-2017 with regard to the issue pertaining to the tariff applicable in case of SRTPV plants set up in violation of the policy and norms had applied the tariff of Rs. 3.57. The State Commission was bound by the same while determining the tariff payable in the present case. However, in the case on hand, the State Commission has fixed the tariff payable as Rs. 5.20. Therefore, the tariff payable out to be reduced to Rs. 3.57 as has been applied to other plants.

147. It is submitted that letter dated 17.08.2016 issued by the Government of Karnataka clarifying that norms for installation of SRTPV plants has been correctly interpreted by the State Commission. It is submitted that Government of Karnataka is empowered to issue the said clarification under clause 20 of the Solar Policy. As per clause 20, Government of Karnataka is empowered to amend/review/relax/interpret any of the provisions under the policy. It is submitted that from a perusal of the letter dated 17.08.2016, it is clear that it gives clarification with regard to roof on which SRTPV plant can be installed. The said letter clarifies that SRTPV plant installed on structures using

steel/iron/wooden/concrete support cannot be construed as SRTPV plant. It is submitted that the said letter dated 17.08.2016 has to be read as a part of the Guidelines of the Respondent and the Solar Policy. As such, clarification letter relates back to the date of the instrument is sought to be clarified and same has been affirmed by the Hon'ble Supreme Court in catena of judgments. Also, according to the principles of statutory construction, a statute which is explanatory or clarificatory of the earlier enactment is usually held to be retrospective. Therefore, the clarificatory letter dated 17.08.2016 is legally binding.

148. It is submitted that the contentions that Solar Policy did not specify the construction guidelines and time lines for completion of the project is untenable.

149. It is submitted that recitals of the PPA clearly state that the Appellant herein is required to sell power to Respondent No.2 in terms of the order of, Respondent No.1 dated 10.10.2013 or any other orders passed thereafter. Therefore, it is submitted that the Appellant herein is to abide by all the orders passed by Respondent No.1 and not limited to the generic Tariff Order dated 10.10.2013 as contended by the Appellant.

150. It is submitted that Appellant engaging the service of Solar Rooftop Implementing agencies was not within the knowledge of the answering Respondent. The submission that the Solar Contractor advised the Appellant to retrofit and strengthen the existing the roof and allied structures of the Appellant is unacceptable and untenable.

151. It is submitted the submission of the Appellant that neither the PPA nor Generic Tariff order dated 10.10.2013 stipulated the timeframe to commission the plant is untenable. It is submitted with regard to granting one year time to commission the Appellant's plant, it is submitted the concerned officer of the BESCO has fraudulently granted the Appellant one year to commission the plant. Subsequently, disciplinary action has taken against such officer. It is settled law that fraud unravels everything. The time of one year obtained by the Appellant is the result of a fraud and same cannot endure to the benefit of the Appellant. It is pertinent to note that the Appellant herein had to install the SRTPV Plants as per the conditions and standard stipulated in the Solar Policy and Respondent's SRTPV Guidelines. Even as per the SRTPV Guidelines of the Respondent, the Appellant herein was required to commission the plants within 180 days. The said Policy and Guidelines of the Respondent is in public domain and is available and known to all. In spite of the Appellant having knowledge about the same, the Appellant herein has failed to commission the plant within the stipulated timeframe.

152. It is submitted that the contentions of the Appellant PPA executed prior to 1.05.2016 are not governed by the Generic Tariff Order dated 2.05.2016 is wholly untenable. It is submitted that Generic Tariff Order dated 2.05.2016 clearly states that SRTPV Owners who have executed the PPA as per tariff Order dated 10.10.2013 and have not commissioned within 180 days, are governed by the Generic Tariff Order dated 2.05.2016. Averment that no timeline was specified by the State Commission is untenable.

153. It is submitted the contentions of the Appellant that Appellant had completed work related to installation of SRTPV plants bearing RR No. 328 and 329 within 6 months i.e. 10.08.2016 is untenable. It is submitted that the Appellant herein had to commission its plants with capacity of 499 kWp with RR No. 328 on 10.08.2016 and RR. No.329 on 20.09.2016. It is submitted that Chief Electrical Inspector granted electrical safety approval to the electrical installation of the SRTPV plants bearing R.R. No. 328 and 329 on 11.08.2016 and 31.08.2016. Thereafter, the Appellant has commissioned its plant only on 22.12.2016, from the perusal of the dates on which the Appellant was granted Chief Electrical Inspector Approval and synchronized his plants to the grid, it is very clear that Appellant had not completed its scope of work related to the installation of SRTPV plants by the Schedule Commission Date. It is submitted that work completion dated 10.08.2016 and 12.08.2016 cannot be construed to be valid as it did not enclose Chief Electrical Inspector approval as required under the Regulation.

154. It is submitted that it has to be noted that in letters dated 17.08.2016 and 6.09.2016, concerned officer of the BESCO has stated that he has inspected the premise of the Appellant and has found that Appellant had installed his SRTPV plants on roof extended by the iron pillars. It is submitted that Appellant has violated the SRTPV norms by installing the SRTPV Plant on the roof extended by the iron pillars.

155. It is submitted that the contentions of the appellant that the letter dated 25.07.2017 was silent about the approval and synchronization

allowed by the BESCO is untenable, further that the PPA did not specify the date of completion of the project is untenable. It is further submitted that the letter dated 17.08.2016 does not deal with additional structures on the rooftop is untenable and that the Respondent has misinterpreted the letter dated 17.08.2016 to its own advantage is also untenable.

156. It is submitted that the contentions of the appellant that it is the outside the purview of the Secretary of the State Commission to direct the Respondent to initiate PPA termination proceedings is untenable, further contentions of the appellant that said letter depicts the biased approach of the State Commission is untenable. It is submitted that as per Clause 7 of KERC (General Conduct of Proceedings) Regulation, 2000 the Secretary, who is the Principal Officer of the Commission, exercises his powers and perform his duties under the control of the Chairman of the state Commission and assists the Commission in performing its duties. Therefore, it is submitted that Secretary has issued above mentioned letter in exercise of his powers prescribed under the Regulation and law. From the perusal of the letter, it is clear that Secretary vide said letter has only communicated the decision of the State Commission. It is submitted that Secretary vide said letter only directed the Respondent to act as per the terms of PPA.

157. It is submitted that the contentions of the appellant that the Respondent herein has to pay the remaining bills of the Appellant at Rs. 9.56 per unit is untenable and cannot be accepted. It is submitted that the Appellant has installed plant on the additional structures constructed out of iron pillars and zinc sheets. The same

is opposed to the norms enumerated by BESCO which require establishment of SRTPV plants on existing roofs and specifically bar the setting up of plants on structures such as this. Also, the Appellant herein has not installed the plant within stipulated time frame i.e. 180 days. Therefore, it is submitted that the Appellant is not entitled for Tariff of Rs. 9.56/- per unit as per Generic Tariff Order dated 10.10.2013.

158. It is submitted that the Appellant herein has installed the SRTPV plant by wholly deviating from the guidelines stipulated in the Solar Policy and Respondent's SRTPV Guidelines. Therefore, the Appellant herein is entitled for tariff of Rs. 3.57 per unit as determined in the order of State Commission dated 7.11.2017.

159. It is submitted that the appellant has not installed its plant within 180 days from the execution of the PPA. It is also submitted that the Appellant has not duly complied with timelines and the norms in accordance with the approval of BESCO.

160. It is submitted that the Appellant herein had to install the SRTPV Plant as per the SRTPV Guidelines of the Respondent. SRTPV Guidelines of the Respondent clearly states that the Appellant herein has to install the SRTPV plant within 180 days. The SRTPV Guidelines of the Respondent is in public domain and the Appellant cannot plead ignorance of the same. The Appellant herein has failed to commission the plant within the stipulated timeframe.

161. It is submitted that as per the SRTPV Guidelines, the Appellant herein had to commission its plant within 180 days from the

execution of the PPA. Therefore, the Appellant had to commission its SRTPV plant having R.R.No. 328 by 10.08.2016 and R.R.No. 329 by 20.09.2016. The appellant has not commissioned the plant within the stipulated timeframe and has commissioned it only on 22.12.2016.

162. It is submitted that in the present case, the State Commission has not altered the terms of the PPA nor has it extended the control period of a tariff order by exercising its inherent power. It is submitted that State Commission in circumvention of Tariff Order dated 10.10.2013 as passed Generic Tariff Order dated 2.05.2016. In the Generic Tariff Order dated 2.05.2016, the State Commission has clearly stated that SRTPV plant owners who have failed to commission their plant within the stipulated timeframe are not entitled to tariff stipulated in Generic Tariff Order dated 10.10.2013. In the present case, the Appellant has failed to commission the plant within 180 days from execution of the PPA as required under SRTPV Guidelines. Therefore, the Appellant is not entitled for a tariff as fixed in Generic Tariff order dated 10.10.2013.

163. It is submitted that the State Commission has erred in holding that Appellant is eligible for a tariff of Rs. 5.20/- despite coming to the conclusion that the Appellant has installed its plant in violation of SRTPV norms. The State Commission in the impugned order has held that the Appellant has commissioned his plant belatedly and has installed plant on super structures over its existing building and on extended roof and thereby, it has violated SRTPV norms and guidelines. In view of the violation of SRTPV norms and

guidelines, the Appellant is only entitled to tariff of Rs. 3.57 as clarified by the State Commission in its Tariff Order dated 7.11.2017.

Impugned Order dated 05.07.2018

The Petitioner (Appellant in this appeal) filed the Petition (O.P. No. 136/2017) under Section 86(1) of the Electricity Act, 2003, in effect, praying to:

- (a) Confirm that Solar Rooftop installations pertaining to Revenue Register Numbers PP328/ PGHT 8, PP329/PGHT 9 and PP327/PGHT 10 have been commissioned in time and, as per the guidelines issued by this Commission, the Government of Karnataka and the Respondent;
- (b) Grant tariff, as per the Generic Tariff Order of 10.10.2013, to the said Solar Rooftop installations; and,
- (c) Direct the Respondent to release pending Solar Power Bill Payments, as per the Order dated 10.10.2013, along with interest calculated as on date

The State Commission framed three issues for adjudication in the O.P. no. 136 of 2017 filed by the Appellant and have decided as under:

Issue No.1: Whether the petitioner has installed the SRTPV plants as per the applicable norms and commissioned them within the time stipulated?

The State Commission has upheld the termination of the PPAs by the respondent. The relevant extract of the impugned order reads as under:

“That the certificate of correctness of the extended area of the new constructions and additions made from the municipal authorities is material in holding the deviation stated by the Respondent. The petitioner, as termed the PPAs, had undertaken to install the SRPPV plants on the roof top of the existing buildings, but has committed breach of such term. Therefore, we are of the considered opinion that respondent is right in issuing notice to the petitioner proposing to terminate the PPAs as per Article 9.3.”

The State Commission has noted that, as per the guidelines/policy of the respondent for the SRTPV applicants having the existing buildings, the time prescribed is 180 days, i.e. six months (from the date of execution of the PPA), which is found to be adequate and the said policy is in public domain. The State Commission has further stated that the PPA approved by the Commission relating to 100 kWp capacity SRTPV plant and the PPAs deemed to have been approved by the Commission relating to 499 kWp capacity SRTPV plants, in the petitioner’s case do not have any clauses specifying that a time of one year is granted to commission the petitioner’s SRTPV plant (as such term is a part of the scheme, under which the petitioner applied), but it has been wrongly

indicated to be so, in the approved letters issued by EE, contrary to the applicable 'consumer guidelines'. Such act of the EE of giving one years time, contrary to the Guidelines, is *ultra vires* and it is not binding on the respondent and the petitioner cannot take advantage of it.

The State Commission therefore, has held that the petitioner's SRTPV plants have been commissioned belatedly on 06.01.2017, 22.12.2016 and 22.12.2016, instead of the six months period, which ended on 07.07.2016, 10.08.2016 and 20.09.2016, respectively. The State Commission has therefore answered the issue no.1, in the negative, on both counts.

Issue No.2: If the answer to issue No.1 is in negative, whether the petitioner can be allowed to operate his SRTPV plants under net metering basis and if so, what should be the tariff applicable?

The State Commission has noted that the SRTPV plants installed by the Petitioner, with considerable investment, have already been commissioned and the electricity generated is being injected into the respondent's distribution network. The State Commission has, therefore, in the larger public interest, allowed the petitioner to operate his solar power plants under net metering subject to certain terms for balancing the interest of the petitioner, as well as the consumers. The State Commission has allowed a tariff of Rs. 5.20 per unit, as per the Generic Tariff Order dated 10.10.2013, to the Appellant.

Issue No.3: What order?

The State Commission has ordered as under:

- (a) It is declared that the Petitioner is not entitled to any of the reliefs sought in his petition;
- (b) The Petitioner shall be paid a tariff of Rs.5.20 (Rupees five and paise twenty) only per unit, under net metering, for the electricity generated and injected from his Solar Power Plants, for a period of twenty-five years from the respective dates of commissioning of the plants, on entering into appropriate fresh PPAs with the Respondent, within four weeks from the date of this Order;
- (c) The Petitioner shall be at liberty to sell the electricity generated from his Solar Power Plants to third parties, if he fails to execute the PPAs, as mentioned above;
- (d) The Payments due, after adjusting the amount paid at Rs.3.57 (Rupees three and paise fifty-seven) only per unit, as directed in the interim order issued in this case, shall be made within eight weeks from the date of this order; and,
- (e) If the Petitioner does not execute the PPAs, as mentioned above, he shall not be entitled to inject energy into the grid, after 4 (four) weeks from the date of this order.

Finding and analysis

We have heard the Appellant, Respondent, having gone through the written submissions filed by them and the impugned order dated 05.07.2018 passed by the State Commission and we are of the opinion that following issue arise for our consideration:

Issue: Whether the decision of the State Commission to terminate the PPA on the following grounds is correct as per PPA?

- a) That the Appellant violated the terms and conditions of the PPA / the approval granted by the Respondent DISCOM and also the Karnataka Solar Policy dated 22.05.2014.**

- b) That the State Commission has delayed the commission of the solar rooftop plants beyond the scheduled date of commissioning.**

164. The State Commission in their impugned order has upheld the termination of PPA by the Respondent DISCOM on the ground that the Petitioner (Appellant in this appeal) has committed breach of PPA. The State Commission has noted that the Petitioner (Appellant in this appeal) has not denied that, the retrofitting and strengthening of his existing buildings and sheds, to make them suitable for safe installation of SRTPV plants, has resulted in creation of additional roof area, as compared to the original roof area. The Petitioner (Appellant in this appeal) only pleads that the precise extent of the additional area is not measured and indicated.

Similarly, the Petitioner has not denied that he has constructed separate steel structure all-round the building, to facilitate installation of SRTPV plant but pleads that it is permitted by the competent authority. From the photographs of the Petitioner's building/shed, available on record, the State Commission has found that the SRTPV plants have been installed not on existing rooftops but on newly constructed rooftop, with areas much larger than the earlier.

165. We have noted the submission made by the Appellant that there was only a retrofitting and strengthening of the existing buildings and industrial sheds that have been constructed after obtaining statutory approvals, which is not barred under the SRTPV scheme. We have also noted the submission that the construction of the building is in accordance with the norms of the Town Municipal Council, Pavagada and it has been duly certified by the TMC, Pavagada. The Appellant has also submitted that the strengthening structures to the roof were duly approved by BESCO at all stages till the commissioning report and there was no objection regarding the same raised at the time of inspection by BESCO.

166. There are three relevant documents which have been referred to in this appeal i.e. the Tariff Order dated 10.10.2013 passed by the State Commission, Karnataka Solar Policy notified by the Government of Karnataka on 22.03.2014 and the Power Purchase Agreements signed by the Appellant with Respondent DISCOMs. The PPA for 1000 kWp was approved by the State Commission whereas the other two PPAs for capacities of 499 kWp were

deemed to have been approved by the State Commission as approval was required only for more than 1 MW capacity.

167. The State Commission determined tariff for various kinds of solar power projects including SRTPV projects through the Tariff Order dated 10.10.2013. This Tariff Order was made applicable for projects entering into PPAs on or after 01.04.2013 and commissioning upto 31.03.2018. The KERC/State Commission in the tariff order specifically recorded that while the construction period for these projects is close to six months but substantial time is required to get financial closure, therefore, KERC determined / prescribed a total control period of five years. Under the said tariff order KERC had determined the tariff for SRTPV projects as Rs. 9.56 per unit. The Tariff Order talks about the determination of tariff for solar projects installed on rooftops. It does not say anything whether these solar plants cannot be installed on the existing rooftops by undertaking a retrofitting and strengthening of the existing rooftops.

168. As per the Karnataka Solar Policy, 2014 all individual residential/commercial/institutional/government building owners, industrial units are eligible to set up solar power plant within the prescribed capacity limit. The policy also provides that in addition interested firms/registered companies including public utilities shall be eligible to set up rooftop projects on third party roofs. However, there is no mention that the solar plants cannot be installed by retrofitting or strengthening of the existing roofs. There is also no mention regarding the commissioning period of the solar rooftop plants.

169. The Power Purchase Agreement only talks about setting up of solar plants on the rooftops. There is no mention that the solar plants cannot be installed by retrofitting or strengthening of the existing roofs. There is also no mention about the commissioning time allowed to install solar plants on the rooftops. There is no scheduled commissioning date given in the Power Purchase Agreement for the commissioning of solar plants.

170. We have noted that the Executive Engineer (Elec.), BESCOM, C, O & M Division, Madhugiri vide letters dated 20.02.2016, 22.03.2016 and 29.04.2016 informed the Appellant with copy to Assistant Executive Engineer (Elec.), Pavagada Sub division and JET-3 conveyed the approval for installing solar RTPV systems of 499 kWp, 499 kWp and 1000 kWp respectively on the rooftops. The letter also mentions the terms and conditions for installation. We note that the letters clearly specify time period of one year for completion of the project. The relevant extract of the letter reads as under:

“This approval is valid for one year from the date of PPA and the SRTPV system is to be commissioned within this period, failing which the approval will be treated as cancelled.”

171. We note that these three documents, i.e. Tariff Order dated 10.10.2013, Karnataka Solar Policy 2014 and the Power Purchase Agreements do not give any commissioning nor any commissioning date for installation of solar rooftop plants of the Appellant. Besides

these documents no other document/guidelines has been placed before us substantiating the submission that the commissioning period for solar plants on the rooftop was six months and the Appellant was given a scheduled commissioning date.

172. We have noted that on 02.05.2016, another Tariff Order was passed by the State Commission for determination of tariff and other norms for Solar Rooftop and Small Photovoltaic Power Plants. A midcourse revision of tariff was made due to decline in prices of solar panels. However, the applicability of the Order dated 10.10.2013 was clearly saved by the following provision:

“The Commission, in supersession of its Order dated 10th October, 2013, decides that the norms and tariff determined in this Order shall be applicable to all new grid connected solar rooftop and small solar photovoltaic power plants, entering into Power Purchase Agreement (PPA) and commissioned on or after 2nd May, 2016 and upto 31st March, 2018.

In respect of plants for which PPAs that have been entered into prior to 1st May, 2016 and are commissioned within the period of time as stipulated by the ESCOMs concerned or the Commission prior to the date of issue of this Order, the tariff as per the Commission’s Order dated 10th October, 2013 shall be applicable. Such plants shall be eligible for the revised tariff as per this Order if they are not commissioned within the stipulated time period and there shall be no extension in time period for commissioning them after the effective date of this Order.”

Therefore, it is amply clear that the Tariff Order dated 10.10.2013 is to be made applicable on the plants of the Appellant as the PPAs

were entered into prior to 01.05.2016. It may also be noted that the plants were to be commissioned within the period stipulated by the ESCOMs. The timeline was not specified by the State Commission.

173. The State Commission in its impugned order has recorded that the act of the Executive Engineer of the Respondent DISCOM of giving one year's time, for completion of the solar plants on the rooftops, contrary to the guidelines, is *ultra virus* and it is not binding on the Respondent and the Petitioner cannot take advantage of it.

174. We have noted that the letters were issued by the Executive Engineer on 20.02.2016, 22.03.2016 and 29.04.2016 and through these letters the Respondent DISCOM through his authorized officer conveyed the approval for setting up of solar rooftop plants along with terms and conditions and the completion period. This is a serious matter and has its own kind of commercial implications. Given the fact that the completion period/the scheduled commissioning date has not been given anywhere else either in the PPA nor in the Policy or Tariff Order, the commissioning period as given in the approval letter is the only document on the aspect of commissioning period. The Appellant has proceeded for setting up of the solar rooftop plants on the basis of this approval letter and has made investments for the same. We have also noted that the copies of the letter have also been marked to other officers of the respondent DISCOM. We note that even if it is a mistake on the part of authorized officer of the Respondent DISCOM to give one years' time for completion of the solar rooftops plants, the Respondent

DISCOM cannot disown the contents/commitment made in the approval letter. Respondent DISCOM cannot obviate from the liability and responsibility arising out of issuance of this approval letter and cannot shirk its responsibility at this stage when the Appellant has already made huge investment in setting up the solar rooftop plants. We also note that these plants have been synchronized after taking approval from the Respondent DISCOM and are supplying power to the Respondent DISCOM. In view of this, we are of the considered opinion that the decision of the State Commission to declare the act of EE of giving one years' time, contrary to the guidelines, as *ultra virus* and deciding that it is not binding on the Respondent DISCOM and the Petitioner cannot take advantage of it, is bad in law.

175. We note that the State Government notified the Karnataka Solar Policy 2014 with an aim to promote the development of solar plants including solar rooftop plants. It is also noted that the policy provides that interested firms/registered companies including public utilities shall be eligible to set up rooftop projects on third party roofs. As such, the objective and aim of the Policy is to utilise the rooftops for setting up the solar rooftop plants.

176. The initiative of the Appellant to set up solar plants on the rooftops of his buildings and industrial sheds cannot be termed as a violation of the PPA or the terms and conditions given in the approval letter or the Karnataka Solar Policy 2014. The finding of the State Commission that in the process of retrofitting and strengthening of

the rooftops the area of the rooftop has increased does not mean that the Appellant has not set up the solar plants on the rooftop. On the contrary, the initiative taken by the Appellant by making investments in retrofitting and strengthening of rooftop to install solar rooftop plants is in fact a welcome step and is helping to promote the cause of development of solar power in the state which is the mandate of the Karnataka Solar Policy 2014. We are not really impressed by the observation of the State Commission in taking a narrow view on the subject.

177. In view of the above, we are of the considered opinion that the decision of the State Commission to uphold the termination of PPA by the Respondent DISCOM is against the Karnataka Solar Policy and the spirit of Electricity Act, 2003 to promote the renewable energy sources and is therefore bad in law.

178. We note that the Appellant completed the installation of the solar rooftop plants, within the allowed time i.e. one year after the signing of PPA, as given in the table below:

S RTPV PLANT (CAPACITY AND R R NUMBER	PPA DATE	SCHEDULED COMMISSIONING DATE	COMMISSIONING DATE
1000 kWp RR:No:PP 327	08.01.2016	07.01.2017	06.01.2017
499kWp RR:No.PP 328	11.02.2016	10.02.2017	22.12.2016
499 kWp RR:No:PP329	21.03.2016	20.03.2017	22.12.2016

179. In view of above, the impugned order dated 05.07.2018 is hereby set aside and remitted back to the State Commission with the direction to consider the matter afresh keeping in view the opinion expressed in this judgment. The State Commission shall pass the consequential order within three months from the date of pronouncement of this judgment.

180. The appeal and pending application are disposed of in above terms.
No order as to costs.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERRING ON THIS 14th DAY OF JULY, 2021.**

(Ravindra Kumar Verma)
Technical Member

(Justice Smt. Manjula Chellur)
Chairperson

√
REPORTABLE/NON-REPORTABLE
mk