

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

**OP No. 1 of 2018**

Dated : 16<sup>th</sup> February, 2026

Present: Hon'ble Ms. Seema Gupta, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

1. **Mr. Vikram Bhatnagar**  
S/o. Late Shri Virendra Kumar Bhatnagar,  
R/o. E-1/5, Vasant Vihar, New Delhi – 110057
  
2. **Subbareddy**  
S/o. Sh. Chikkanarayanappa  
R/o. Kaiwara, Village, Kaiwara Post,  
Chintamani Talu, Chikkaballapur District,  
Karnataka - 562101 ... Petitioner

*Versus*

1. **Karnataka Electricity Regulatory Commission**  
Through its Secretary  
No. 16, C-1, Millers Tank Bed Area,  
Vasanthanagara, Bengaluru, Karnataka-560052  
Email: [kerc-ka@nic.in](mailto:kerc-ka@nic.in)
  
2. **Bangalore Electricity Supply Company Ltd.**  
Through its Managing Director  
BESCOM K.R. Circle, Bangalore, Karnataka-560001  
Email: [md@bescom.co.in](mailto:md@bescom.co.in) ... Respondent (s)

Counsel for the Petitioner(s) : Shri Venkatesh  
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Shivam Kumar  
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for Res. 1

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Nidhi Gupta  
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Arnav Khanna  
for Res. 2

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

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

1. In this Original Petition, the petitioners have sought orders or instructions or directions against the Karnataka Electricity Regulatory Commission (hereinafter referred to as "the Commission") under Section 121 of the Electricity Act, 2003 which, according to the petitioners, has issued letter dated 27<sup>th</sup> September, 2016 in defiance of specific mandate

under the Act, and in circumvention of its own tariff orders issued previously for development of Solar Roof Top Photovoltaic (SRTP) projects in the State of Karnataka.

2. The Petitioner No. 1 is the legal representative of deceased Dr. Virendra Kumar Bhatnagar (the original Petitioner) who intended to set up four SRTP projects at Village Kaiwara, Kaiwara Hobli, Chintamani Taluk, District Chikkaballapur, Karnataka which were divided into two groups i.e. Group A and Group B. Petitioner No. 2 is the owner of the rooftop upon which the power projects were proposed to be installed.

3. Facts in brief leading with filing of this Petitioner are narrated hereinbelow.

4. With a view to encourage solar power projects in the State of Karnataka and to provide enabling mechanism including tariff for such projects, the 1<sup>st</sup> Respondent i.e. the Commission issued the tariff order dated 10<sup>th</sup> October, 2013 determining tariff of Rs.9.56 per unit for roof top solar projects to be established in the State of Karnataka. Thereafter, the Government of Karnataka also framed solar policy which was notified on 22<sup>nd</sup> May, 2014 and which envisaged establishing of roof top solar plants with total capacity of 400 MW during the period 2014 to 2021 in the State. In pursuance to the same, 2<sup>nd</sup> Respondent - Bangalore Electricity Supply Company Ltd. ( in short BESCO), the licensee, framed a scheme for

solar roof top projects to be established in the State of Karnataka and notified the same on 7<sup>th</sup> November, 2014.

5. On the basis of the tariff order dated 10<sup>th</sup> October, 2013, 2<sup>nd</sup> Respondent accorded approval to the Petitioners for Group A projects i.e. 200 kWP project at Kalwara and 500 kWP at Bettiganhalli. Accordingly, the Petitioner No. 2 entered into Power Purchase Agreement with BESCO on 31<sup>st</sup> January, 2015 in respect of these projects. The terms and conditions of the tariff order dated 10<sup>th</sup> October, 2013 were incorporated in the PPAs and the tariff for the projects was agreed to be Rs.9.56 per unit.

6. The Petitioners submitted application for setting up of Group B projects on 12<sup>th</sup> August, 2015. Vide letter dated 18<sup>th</sup> August, 2015, BESCO accorded approval for installing these projects i.e. 300kWP project near Exchange Office Road and 500 kWP project at Bettiganhalli. PPA dated 20<sup>th</sup> August, 2015 was entered into between Petitioner No. 2 and BESCO with regard to these Group B projects. These PPAs also mentioned tariff at Rs.9.56/- per unit based upon the tariff order dated 10<sup>th</sup> October, 2013.

7. It appears that BESCO had received requests from various solar power developers for extension of time period for installation of SRTP projects on the ground that they were facing multiple problems.

Accordingly, BESCOM issued circular dated 17<sup>th</sup> November, 2015 specifically permitting the extension of time limit for completing the power projects subject to condition that the power developers paid re-registration fees as stipulated therein. As per this circular, extension of further one year after completion of the original 180 days period was granted to the solar power projects above 50 kWA capacity.

8. In pursuance to the said circular dated 17<sup>th</sup> November, 2015, BESCOM issued letter dated 29<sup>th</sup> December, 2015 to the Petitioners for extension of the time limit for installation of Group A projects after duly paying re-registration fees. Letter specifically mentioned that the time extension is valid for 12 months i.e. 30<sup>th</sup> July, 2015 to 29<sup>th</sup> July, 2016.

9. On 3<sup>rd</sup> February, 2016, tripartite agreement setting out the duties and obligations of the utility/licensee, power developer and roof top owner inter se for the purpose of implementation of roof top installations for group A projects was executed between the BESCOM, Dr. Virendra Kumar Bhatnagar (Solar Roof Top Developer) and Petitioner No. 2 Shri Subba Reddy (Roof Top Owner).

10. Vide letter dated 18<sup>th</sup> February, 2016, BESCOM granted extension of time period of further 12 months from the date of expiry of PPAs for installation of Group B projects. Accordingly, another tripartite agreement

dated 28<sup>th</sup> March, 2016 was executed between the BESCOM and the Petitioners for the purpose of implementation of the projects.

11. A fresh tariff order seeking to re-determine the tariff norms for SRTP project was issued by the Commission on 2<sup>nd</sup> May, 2016 in supersession of the earlier tariff order dated 10<sup>th</sup> October, 2013. This was applicable to all new Grid connected solar roof top and solar photovoltaic power plants entering into power purchase agreements and commissioned on or after 2<sup>nd</sup> May, 2016 upto 31<sup>st</sup> March, 2017.

12. An advisory dated 6<sup>th</sup> May, 2016 was issued by the Commission to the Government of Karnataka stating that no time extension shall be granted for commissioning of the power plants in respect of which the PPAs have already been executed at the tariff fixed in the previous tariff order dated 10<sup>th</sup> October, 2013. On the basis of the said advisory, BESCOM issued a circular dated 18<sup>th</sup> May, 2016 to the effect that no time extension shall be granted for commissioning of the power plants in respect of which the PPAs have already been executed at tariff fixed in the previous tariff order dated 10<sup>th</sup> October, 2013.

13. On 31<sup>st</sup> August, 2016, BESCOM terminated the PPAs executed between it and the Petitioners in respect of Group A projects on the ground that the Petitioners have failed to commission the projects within 180 days as per the Letter of Approval (LoA).

14. On 21<sup>st</sup> September, 2016, Petitioners issued letter to the Hon'ble Minister of Power, Government of Karnataka about the delay in grant of connectivity to the power projects as per the scheduled date i.e. 29<sup>th</sup> July, 2016.

15. However, the Commission issued a letter dated 27<sup>th</sup> September, 2016 to all Distribution Licensees stating that no extension of time is to be given to the SRTP developers for completion of their power project. It is this letter of the Commission which is the basis of the instant petition filed by the petitioners.

16. It is the contention of the petitioners that the said letter dated 27<sup>th</sup> September, 2016 was never made available in public domain by the Commission and only finds mention in the subsequent order dated 7<sup>th</sup> November, 2017 issued by the Commission. It may be noted here that vide the said subsequent order dated 7<sup>th</sup> November, 2017, the Commission provided some relief to the individuals who proposed to install STRP projects in terms of previous tariff orders dated 10<sup>th</sup> October, 2013 and 2<sup>nd</sup> May, 2016 whose Power Purchase Agreements (PPAs) with the Distribution Licensees were either cancelled or were in the process of being cancelled on account of non-commissioning of the power projects within the stipulated time. It would also not be out of place to mention that the said order dated 7<sup>th</sup> November, 2017 of the Commission has been

challenged by the petitioners by way of separate appeal No. 104 of 2018 which is being disposed off by way of a separate judgement.

17. The Respondent No. 2 has objected to the maintainability of this original petition under Section 121 of the Electricity Act, 2003 besides contending that the letter dated 21<sup>st</sup> September, 2016 does not suffer from any illegality.

18. We heard the learned counsels for the parties and have gone through the record.

19. Learned Counsel for the Petitioners argued that the instant original petition is maintainable under Section 121 of the Act as it concerns a clear failure on the part of the Commission to perform its statutory functions under the Act. He has submitted that the impugned letter dated 27<sup>th</sup> September, 2016 has been issued by the Commission without placing it in public domain and without following the mandatory tariff determination procedure envisaged under Section 64(3) of the Act. According to the Learned Counsel, failure on the part of the Commission to disclose the said letter to the public at large amounts to direct violation of Section 86(3) of the Act which mandates the Commission to ensure transparency while exercising its power and discharging its functions. It is further argued by the Learned Counsel that in directing by way of the said letter that no time extension be granted to roof top solar power developer, the Commission

effectively has deprived such powers projects including that of the petitioners of the benefit of the control period in which they were allotted/approved thereby materially affecting the tariff framework for such projects which could have been done only by following statutory tariff determination process. He would submit that the said letter does not disclose any tariff analysis or the basis for substituting tariff of Rs.9.56/- per unit under 2013 tariff order with APPC rates of Rs.3.57 per unit, which amounts to improper and defective performance of statutory functions.

20. According to the Learned Counsels, this is a classic case of regulatory failure both in terms of non-performance of statutory duties by the Commission as well as improper performance of tariff related functions. Relying on the judgement of the Hon'ble Supreme Court in PTC India Ltd. Vs. CERC, 2010 4 SCC 603, Learned Counsel submitted as under:-

- (a) *The powers under Section 121 of the Act are in addition to and not residuary powers excluding appellate power under Section 111(1) and revisional power under Section 111(6) of the Act;*
- (b) *Section 121 of the Act vests a supervisory statutory power with this Tribunal to issue appropriate orders, instructions or directions as it may deem fit to an appropriate Commission after hearing such Commission to ensure*

*due performance of statutory functions by the said appropriate Commission;*

*(c) The power under Section 121 of the Act may be exercised to remedy any failure by the Commission to perform its statutory functions as deemed fit by this Hon'ble Tribunal. Once, this Tribunal finds that there is a cause for it to issue appropriate directions to the Commission, the nature of directions or orders are qualified only by the objective of securing performance of statutory functions by the Commission; and*

*(d) The term "performance" has been defined in Legal dictionary to cover diverse facets of performance including:-*

*(i) Complete or partial performance as also non-performance.*

*(ii) Proper or defective performance/mis-performance."*

21. Learned Counsel further argued that in view of the interpretation of Section 121 of the Act by the Apex Court in the above judgement, the jurisdiction under Section 121 of the Act becomes operational not merely when a Regulatory Commission altogether fails to act but equally when the Commission performs its functions improperly, defectively and non-transparently as has been done by the Commission in the present case. He also argued that this Tribunal in BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. vs. DERC, OP Nos. 1 & 2 of 2012 has held that power

under Section 121 of the Act vested in this Tribunal extends to cases of non-performance/partial performance or defective performance of statutory functions.

22. Per contra, Learned Senior Counsel appearing for Respondent No. 2 argued that Section 121 of the Act merely calls for an enquiry as to whether the statutory functions have been performed or not by the Regulatory Commission. He submitted that it is only when there has been an omission on the part of the Regulatory Commission to perform its statutory duty, this Tribunal would step in under Section 121 to issue directions to the Commission to address such omission. He pointed out that in the instant case, admittedly, the Commission has already passed various tariff orders in respect of SRTP projects and it is nowhere the case of the petitioners that there has been any omission in this regard on the part of the Commission and therefore, the instant petition is not maintainable at all.

23. It is further argued by Learned Senior Counsel that under Section 121 of the Act, this Tribunal does not have this power to exercise judicial review as held by the Hon'ble Supreme Court in the PTC judgement (supra). He pointed out that the prayer of the petitioners in the instant petition is for setting aside of the impugned letter dated 27<sup>th</sup> September, 2016 issued by the Commission which cannot be done under Section 121

of the Act as there is no scope for judicial review under the said provision of law.

24. Learned Senior Counsel further explained that the said letter dated 27<sup>th</sup> September, 2016 was issued to the Escoms within the State of Karnataka on account of indiscriminate blanket extensions which were being granted across the State for 12 months whereas the original approvals were valid only for 6 months and such indiscriminate extensions were rendering the entire purpose of having timelines provided in the tariff orders dated 10<sup>th</sup> October, 2013 and 2<sup>nd</sup> May, 2016 otiose. He submitted that in doing so the Distribution Licensees unjustly brought parity within diligent generators and such generators who did not adhere to the timelines, which was a reason for the Commission to intervene and issue directions vide letter dated 27<sup>th</sup> September, 2016.

25. According to the Learned Senior Counsel the instant petition seeking to set aside the letter dated 27<sup>th</sup> September, 2016 issued by the Commission is clearly not maintainable under Section 121 of the Act and, therefore, the petition deserves to be dismissed out-rightly on this score.

26. We have considered the rival submissions of the Learned Counsels and have perused the record.

27. Section 121 of the Electricity Act, 2003 is extracted hereunder :-

***[Section 121. (Power of Appellate Tribunal):***

*The Appellate Tribunal may, after hearing the Appropriate Commission or other interested party, if any, from time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory functions under this Act.]*

28. Perusal of Section 121 would reveal that it empowers this Tribunal to issue orders, instructions or directions to any Regulatory Commission where the Commission has failed/neglected to perform its statutory functions under the Act. Thus, there must be a failure on the part of the Commission to perform its statutory function in which case this Tribunal would step in under Section 121 to issue orders, instructions/directions to the Commission to perform its statutory functions.

29. The scope and applicability of the said Section 121 of the Act had come up for discussion before the apex court in the PTC case (supra) and it has been held as under :-

*“80. Before concluding on this topic, we still need to examine the scope of Section 121 of the 2003 Act. In this case, the appellant(s) have relied on Section 121 to locate the power of judicial review in the Tribunal. For that purpose, we must notice the salient features of Section 121. Under Section 121, there must be a failure by a Commission to perform its statutory*

*function in which event the Tribunal is given authority to issue orders, instructions or directions to the Commission to perform its statutory functions. Under Section 121 the Commission has to be heard before such orders, instructions or directions can be issued. The main issue which we have to decide is the nature of the power under Section 121.*

*81. In Raman and Raman Ltd. v. State of Madras Section 43-A of the Motor Vehicles Act, 1939 (the 1939 Act), as amended by Madras Act 20 of 1948, came for consideration before the Supreme Court. Section 43-A conferred power on the State Government to issue "orders" and "directions", as it may consider necessary in respect of any matter relating to road transport to the State Transport Authority or a Regional Transport Authority. The meaning of the words "orders" and "directions" came for interpretation before the Supreme Court in the said case. It was held, on examination of the scheme of the Act, that Section 43-A was placed by the legislature before the sections conferring quasi-judicial powers on tribunals which clearly indicated that the authority conferred under Section 43-A was confined to administrative functions of the Government and the tribunals rather than to their judicial functions.*

*82. It was further held in Raman and Raman Ltd. that the legislature had used two words in the section: (i) orders; and (ii) directions. This Court further noticed that under the 1939 Act there was a separate Chapter which dealt with making of "rules" which indicated that the words "orders" and "directions" in*

*Section 43-A were meant to clothe the Government with the authority to issue directions of administrative character. It was held that the source of power did not affect the character of acts done in exercise of that power. Whether it is a law or an administrative direction depends upon the character or nature of the orders or directions authorised to be issued in exercise of the power conferred. It was, therefore, held that the words "orders" and "directions" were not laws. They were binding only on the authorities under the Act. Such orders and directions were not required to be published. They were not kept for scrutiny by legislature. It was further held that such orders and directions did not override the discretionary powers conferred on an authority under Section 60 of the 1939 Act. It was observed that non-compliance with such orders, instructions and directions may result in taking disciplinary action but they cannot affect a finding given by the quasi-judicial authority nor can they impinge upon the rules enacted by the rule-making authority. It was held that such orders and directions would cover only an administrative field of the officers concerned and therefore such orders and directions do not regulate the rights of the parties. Such orders and directions cannot add to the considerations/topics prescribed under Section 47 of the 1939 Act on the basis of which an adjudicating authority is empowered to issue or refuse permits, as the case may be.*

*83. Applying the tests laid down in the above judgment to the present case, we are of the view that, the words "orders",*

*"instructions" or "directions" in Section 121 do not confer power of judicial review in the Tribunal. It is not possible to lay down any exhaustive list of cases in which there is failure in performance of statutory functions by the appropriate Commission. However, by way of illustrations, we may state that, under Section 79(1)(h) CERC is required to specify the Grid Code having regard to the Grid Standards. Section 79 comes in Part X. Section 79 deals with functions of CERC. The word "grid" is defined in Section 2(32) to mean high voltage backbone system of interconnected transmission lines, sub-stations and generating plants. Basically, a grid is a network. Section 2(33) defines "Grid Code" to mean a code specified by CERC under Section 79(1)(h). Section 2(34) defines "Grid Standards" to mean standards specified under Section 73(d) by the Authority.*

*84. Grid Code is a set of rules which governs the maintenance of the network. This maintenance is vital. In summer months grids tend to trip. In the absence of the making of the Grid Code in accordance with the Grid Standards, it is open to the Tribunal to direct CERC to perform its statutory functions of specifying the Grid Code having regard to the Grid Standards prescribed by the Authority under Section 73. One can multiply these illustrations which exercise we do not wish to undertake, Suffice it to state that, in the light of our analysis of the 2003 Act, hereinabove, the words "orders, instructions or directions" in Section 121 of the 2003 Act cannot confer power of judicial*

*review under Section 121 to the Tribunal, which, therefore, cannot go into the validity of the impugned 2006 Regulations, as rightly held in the impugned judgment.*

30. It has been specifically held by the Apex Court that the words “Orders”, “Instructions” or “Directions” used in Section 121 do not confer power of judicial review in the Tribunal. In paragraph 83 of the judgement, the Court has given illustrations with regards to the situation in which this Tribunal can issue directions to the Regulatory Commission to perform its statutory function under Section 121. It has been stated that this Tribunal can issue directions to the Regulatory Commissions to specify the Grid Code in case the same has not been notified by the Regulatory Commission.

31. Coming to the impugned letter dated 27<sup>th</sup> September, 2016 issued by the Commission on which the instant petition is founded. The contents of the same are reproduced herein below:-

*“Sub: Commissioning of SRTPV projects beyond the time allowed.*

*Your attention is drawn to the SRTPV PPAs signed by the ESCOMs. These SRTPV projects the existing rooftops are required to be completed and commissioned within the agreed time of six months. The Commission, after considering the request of some of the SRTPV PPA holders with existing*

*rooftops for extending the time limit for completion of the projects beyond six months, has decided that there would be no revision in the time limit of six months allowed for commissioning of such projects.*

*Hence, the ESCOMs are directed to ensure completion and commissioning of the SRTPV projects on existing roofs within period so as to be eligible for the tariff Rs 9.56 per unit agreed to in the PPA executed. If there is delay in commissioning of the project within six months, the consumers concerned would be eligible for the revised tariff as per the Commission's Order dated 2<sup>nd</sup> May, 2016."*

32. The letter merely directs the ESComs to ensure completion and commissioning of SRTP projects within the stipulate period as mentioned in the approval letters in order to be eligible for the preferential tariff of Rs.9.56/- per unit as agreed in the PPAs executed between the project developers and the discoms. Manifestly, the letter nowhere reflects to be an exercise in the process of tariff determination. The tariff for SRTP projects to be installed in the state of Karnataka has been determined by the Commission vide orders dated 10<sup>th</sup> October, 2013 and 2<sup>nd</sup> May, 2016, which had been passed after duly following the procedure laid down in Section 64 of the Act. It appears that the Commission was constrained to issue the letter dated 27<sup>th</sup> September, 2016 upon noting that indiscriminate blanket extensions of time period were being granted for completion of

SRTP projects across the State which rendered the time lines provided under the approval letters, otiose thereby rewarding the project developers, who failed to install their power projects within the stipulated time, for their in-action and bringing parity between such generators and diligent generators who installed their power projects within the stipulate time.

33. We may also note that subsequently, the Commission issue order dated 7<sup>th</sup> November, 2017 whereby some relief was given to the individuals who had been unable to commission SRTP projects within stipulated time and, their PPAs having been cancelled or in the process of being cancelled.

34. This is certainly not a case where it can be said that the Commission has failed or neglected to perform its statutory functions under the Act or is guilty of partial performance/defective performance of its statutory functions. In fact, in the present case, the Commission has proceeded to perform its statutory functions i.e. to regulate the process of power purchase by the distribution companies as well as to regulate the tariff at which the power is to be purchased by the Distribution Licensees, by issuing the impugned letter dated 27<sup>th</sup> September, 2016. Vide the said letter, the Commission has sought to inculcate some discipline in the solar power developers so that they strive to adhere to the timelines given in the

approval letters as well as PPAs for completion of their solar power projects to be eligible for higher tariff fixed in their PPAs. It is absolutely absurd to contend that the said letter reflects failure/neglect on the part of the Commission in performance of its statutory functions or partial/defective performance of statutory functions by the Commission.

35. We are unable to countenance the submission on behalf of the petitioners that before issuing the letter dated 27<sup>th</sup> September, 2016 the Commission ought to have placed it in public domain in order to invite objections from the concerned individuals. As already noted hereinabove, vide the said letter, the Commission did not proceed to determine the tariff for SRTP projects de novo. It only took note of indiscriminate extension of time period for installing SRTP projects being given to the project developers and thus directed that no such extension shall be given. Therefore, there was no requirement for the Commission to put it in the public domain before sending it to the Escoms. In case the petitioners are aggrieved by the directions issued by the Commission in the said letter, proper remedy for them was to assail the same before this Tribunal by way of statutory appeal under Section 111 of the Act. The instant petition under Section 121 of the Act certainly is not maintainable.

36. In the light of the above discussion, we are of the firm opinion that the instant petition is not maintainable under Section 121 of the Electricity Act, 2003. The same is hereby dismissed as not maintainable.

Pronounced in the open court on this the 16<sup>th</sup> day of February, 2026.

(Virender Bhat)  
Judicial Member

(Seema Gupta)  
Technical Member (Electricity)

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*REPORTABLE / NON-REPORTABLE*

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