

**Aadyaarush Power Projects Pvt Ltd Vs. State Of Karnataka**

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**SooperKanoon Citation :** [sooperkanoon.com/1233656](http://sooperkanoon.com/1233656)

**Court :** Karnataka

**Decided On :** Sep-20-2021

**Judge :** M.Nagaprasanna

**Appeal No. :** WP 52028/2018

**Appellant :** Aadyaarush Power Projects Pvt Ltd

**Respondent :** State Of Karnataka

**Judgement :**

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE20H DAY OF SEPTEMBER, 2021 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA WRIT PETITION No.52028/2018 (GM-KEB) C/W WRIT PETITION No.57898/2017 (GM-KEB) WRIT PETITION No.30716/2018 (GM-KEB) WRIT PETITION No.7358/2020 (GM-KEB) WRIT PETITION No.7675/2020 (GM-KEB) WRIT PETITION No.7698/2020 (GM-KEB) WRIT PETITION No.7724/2020 (GM-KEB) WRIT PETITION No.7782/2020 (GM-KEB) WRIT PETITION No.7930/2020 (GM-KEB) WRIT PETITION No.12611/2020 (GM-KEB) WRIT PETITION No.12637/2020 (GM-KEB) WRIT PETITION No.12644/2020 (GM-KEB) IN WRIT PETITION No.52028/2018 BETWEEN: AADYAARUSH POWER PROJECTS PVT. LTD., A COMPANY REGISTERED UNDER COMPANIES ACT,2013, HAVING ITS REGISTERED OFFICE AT13912, 5TH MAIN ROAD, CHAMRAJPET, BENGALURU 560 018 REPRESENTED BY ITS DIRECTOR, MR. AMARTHYA RAJASHEKARAPPA. ... PETITIONER (BY SRI MANMOHAN P.N.,

ADVOCATE ) AND:

1. STATE OF KARNATAKA DEPARTMENT OF ENERGY, 2 VIKASA SOUDHA, DR.B.R.AMBEDKAR STREET, BENGALURU 560 001 REPRESENTED BY ITS CHIEF SECRETARY.

2. BANGALORE ELECTRICITY SUPPLY COMPANY LTD., A COMPANY REGISTERED UNDER COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT K.R.ROAD, BENGALURU 560 001 REPRESENTED BY ITS MANAGING DIRECTOR.

3. KARNATAKA RENEWABLE ENERGY DEVELOPMENT LTD., A COMPANY REGISTERED UNDER COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT NO.39, SHANTHIGRUHA, BHARATH SCOUTS & GUIDES BUILDING, PALACE ROAD, GANDHI NAGAR, BENGALURU 560 001 REPRESENTED BY ITS MANAGING DIRECTOR.

4. KARNATAKA POWER TRANSMISSION CORPORATION LTD., A COMPANY REGISTERED UNDER COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT KAVERI BHAVAN, K.G.ROAD, BENGALURU 560 009 REPRESENTED BY ITS MANAGING DIRECTOR.

5. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLERS TANK BED AREA, 3 VASANTH NAGAR, BENGALURU 560 052 REPRESENTED BY ITS SECRETARY. ... RESPONDENTS (BY SMT.M.C.NAGASHREE, AGA FOR R1; SRI S.SRIRANGA, ADVOCATE FOR R2; SRI B.N.PRAKASH, ADVOCATE FOR R5; NOTICE TO R3 & 4 DISPENSED WITH VIDE

ORDER

DATED0612/2018) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARY AND QUASH THE COMMUNICATION DATED163.2017 ISSUED BY R-5 AT ANNEX-S; ISSUE A WRIT OF CERTIORARY AND QUASH THE COMMUNICATION DATED0504.2017 ISSUED

BY R-5 AT ANNEX-T; IN WRIT PETITION No.57898/2017 BETWEEN:

1. SRI H.V.THIMMAIAH S/O LATE VEERAPPA AGED ABOUT 72 YEARS NO.76, HARIABBE, HIRIYUR TALUK, CHITRADURGA DISTRICT 577 598.

2. M/S B.G.SUN SOLAR HIRIYUR PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT NO.368, 2ND MAIN, BEML LAYOUT 1T STAGE, BASAVESHWARANAGAR BENGALURU 560 079 REPRESENTED BY ITS DIRECTOR MR.V.G.ANGADI. ... PETITIONERS (BY SRI SUNIL P.P., ADVOCATE) 4 AND:

1. THE STATE OF KARNATAKA, REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY ENERGY DEPARTMENT VIKASASOUDHA, BENGALURU 560 001.

2. KARNATAKA ELECTRICITY REGULATORY COMMISSION 6H & 7TH FLOOR, MAHALAKSHMI CHAMBERS NO.9/2. M.G.ROAD BENGALURU 560 001 REPRESENTED BY ITS SECRETARY.

3. THE KARNATAKA RENEWABLE ENERGY DEPARTMENT LTD., NO.39, SHANTHIGRUHA BHARATH SCOUTS & GUIDES BUILDING OPP.: THE CHIEF POST MASTER GENERAL OFFICE PALACE ROAD, BENGALURU 560 001 REPRESENTED BY THIS MANAGING DIRECTOR.

4. BENGALURU ELECTRICITY SUPPLY COMPANY LIMITED, A COMPANY REGISTERED UNDER THE PROVISIONS OF COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT K.R.CIRCLE , BENGALURU 560 001 REPRESENTED BY ITS MANAGING DIRECTOR.

5. THE GENERAL MANAGER (ELE) POWER PURCHASE, BESCOM 5K.R.CIRCLE BENGALURU 560 001.

6. THE CHIEF ENGINEER ELECTY. TRANSMISSION ZONE, KPTCL SIDDAGANGA COMPLEX , BH ROAD TUMAKURU 527 107.

7. THE EXECUTIVE ENGINEER 220KV SRS, KPTCL, HIRIYUR 577 598. ... RESPONDENTS (BY SMT.M.C.NAGASHREE, AGA FOR R1; SRI

B.N.PRAKASH, ADVOCATE FOR R2; SRI MURUGESH V.CHARATI, ADVOCATE FOR R3; SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R4, R6 & 7; R-5 SERVED) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE COMMUNICATION/LETTER DTD 0707.2017 AT ANNEX-Z, ISSUED BY THE R-2; QUASH THE COMMUNICATION/LETTER DTD 0108.2017, ISSUED BY THE R-1 VIDE ANNEXURE-Z1. IN WRIT PETITION No.30716/2018 BETWEEN: M/S S.G.ARAKERI SOLAR POWER PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT:NO.658/8, 2ND FLOOR, 1ST "C" MAIN ROAD, 40TH CROSS, 8TH BLOCK, JAYANAGARA, BENGALURU 560 082 REPRESENTED BY ITS DIRECTOR SRI ISHWAR HEGDE. ... PETITIONER 6 (BY SRI GANAPATI BHAT VAJRALLI, ADVOCATE) AND:

1. THE STATE OF KARNATAKA REPRESENTED BY ITS CHIEF SECRETARY, ROOM NO.320, 3RD FLOOR, VIDHANA SOUDHA, DR AMBEDKAR VEEDI, BENGALURU-560 001 2. THE ADDITIONAL CHIEF SECRETARY GOVERNMENT OF KARNATAKA, ENERGY DEPARTMENT, ROOM NO.236, 2ND FLOOR, VIKASA SOUDHA, DR AMBEDKAR VEEDI BENGALURU 560 001.

3. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLERS BED AREA, VASANTH NAGAR, BENGALURU 560 052 REPRESENTED BY ITS CHAIRMAN.

4. M/S HUBLI ELECTRICITY SUPPLY COMPANY LIMITED (HESCOM) OFFICE AT:NAVANAGAR, P.B.ROAD, HUBBALLI 580 025 REPRESENTED BY ITS MANAGING DIRECTOR.

5. M/S KARNATAKA RENEWABLE ENERGY DEVELOPMENT LIMITED, NO.39, "SHANTHIGRUHA" BHARATH SCOUTS AND GUIDES BUILDING, PALACE ROAD, BENGALURU 560 003. ... RESPONDENTS 7 (BY SMT.M.C.NAGASHREE, AGA FOR R1 AND R2; SRI B.N.PRAKASH, ADVOCATE FOR R3; SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R4; SRI MURUGESH V.CHARATI, ADVOCATE FOR R5) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED DIRECTION DATED 0504.2017, ISSUED BY

THE3D RESPONDENT, AS PER ANNEXURE-Q AND LETTER DATED0707.2017, ISSUED BY THE3D RESPONDENT AS PER ANNEXURE-T AND ETC., IN WRIT PETITION No.7358/2020 BETWEEN: M/S SAAKESHA SOLAR ENERGY PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT NO.658/8, 2ND FLOOR, F, 1ST C MAIN ROAD, 40TH CROSS, 8TH BLOCK, JAYANAGAR, BENGALURU 560 082, REPRESENTED BY ITS DIRECTOR, SRI ISHWAR HEGDE. ... PETITIONER (BY SRI GANAPATI BHAT VAJRALLI, ADVOCATE) AND:

1. M/S BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (BESCOM) OFFICE AT K.R.CIRCLE, BENGALURU 560 001, REPRESENTED BY ITS MANAGING DIRECTOR.

2. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED CAVERI BHAVAN, BENGALURU 560 001, 8 REPRESENTED BY ITS MANAGING DIRECTOR.

3. THE KREDL SHANTHI GRUHA, NO.39, BHARATH SCOUTS AND GUIDES BUILDING, OPPOSITE THE CHIEF POST MASTER GENERAL OFFICE, PALACE ROAD, BENGALURU 560 001.

4. THE DEPUTY COMMISSIONER DISTRICT ADMINISTRATIVE BHAVAN, SHIDLAGATTA ROAD, CHIKKABALLAPUR 562 101.

5. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLARS BED AREA, VASANTHNAGAR, BENGALURU 560 052, REPRESENTED BY ITS CHAIRMAN. ... RESPONDENTS (BY SRI S.SRIRANGA, ADVOCATE FOR R1 AND R2; SRI MURUGESH V.CHARATI, ADVOCATE FOR R3; SMT.M.C.NAGASHREE, AGA FOR R4; SRI B.N.PRAKASH, ADVOCATE FOR R5) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

DATED3008.2018 IN O.P.NO.161/2017 PASSED BY THE R-5 AS PER ANNEXURE-H AND ALLOW THE O.P.NO.161/2017 BY GRANTING AN

AMOUNT OF RS.8.40/- PER UNIT AS PER THE PPA AND ETC., 9 IN WRIT PETITION No.7675/2020 BETWEEN: M/S GAVI RANGA SOLARS PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT NO.658/8, 2ND FLOOR, F, 2ND C MAIN ROAD, 40TH CROSS, 8TH BLOCK, JAYANAGAR, BENGALURU 560 082, REPRESENTED BY ITS DIRECTOR, SRI ISHWAR HEGDE. ... PETITIONER (BY SRI GANAPATHY BHAT VAJRALLI, ADVOCATE (PHYSICAL HEARING)) AND:

1. M/S CHAMUNDESHWARI ELECTRICITY SUPPLY CORPORATION LIMITED (CESC, MYSORE), NO.29, VIJAYANAGAR 2D STAGE, HINKAL, MYSURU 570 017 REPRESENTED BY ITS GENERAL MANAGER (COMMERCIAL) 2. M/S BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (BESCOM), OFFICE AT: K.R.CIRCLE, BENGALURU 560 001, REPRESENTED BY ITS MANAGING DIRECTOR.

3. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED CAVERI BHAVAN, BENGALURU 560 001, REPRESENTED BY ITS MANAGING DIRECTOR. 10

4. THE KREDL SHANTHI GRUHA, NO.39, BHARATH SCOUTS AND GUIDES BUILDING, OPPOSITE THE CHIEF POST MASTER GENERAL OFFICE, PALACE ROAD, BENGALURU 560 001 REPRESENTED BY ITS MANAGING DIRECTOR.

5. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLERS BED AREA, VASANTH NAGAR, BENGALURU-560 052, REPRESENTED BY ITS CHAIRMAN.

6. THE DEPUTY COMMISSIONER DISTRICT ADMINISTRATIVE BHAVAN, SHIDLAGATTA ROAD, CHIKKABALLAPUR-562101. ... RESPONDENTS (BY SRI S.SRIRANGA, ADVOCATE FOR R1. R2 & R3 ARE SERVED SRI.MURUGESH V.CHARATI, ADVOCATE FOR R4; SRI B.N.PRAKASH, ADVOCATE FOR R5; SMT.M.C.NAGASHREE, AGA FOR R6 (PHYSICAL HEARING)) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

DTD.28.8.2018 IN O.P.NO.163/2017 PASSED BY THE R-5 AS PER ANENXURE-H AND ALLOW THE O.P.NO.163/2017 BY GRANTING AN AMOUNT OF RS.8.40/- PER UNIT AS PER THE PPA AND ETC., 11 IN WRIT PETITION No.7698/2020 BETWEEN: M/S LRK SOLAR POWER PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT NO.658/8, 2ND FLOOR, F, 1ST C MAIN ROAD, 40TH CROSS, 8TH BLOCK, JAYANAGAR, BENGALURU 560 082 REPRESENTED BY ITS DIRECTOR SRI ISHWAR HEGDE. ... PETITIONER (BY SRI GANAPATHI BHAT VAJRALLI, ADVOCATE) AND:

1. M/S. BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (BESCOM) OFFICE AT K.R.CIRCLE, BENGALURU 560 001. REPRESENTED BY ITS MANAGIR DIRECTOR2 KARNATAKA POWER TRANSMISSION CORPORATION LIMITED CAVERI BHAVAN, BENGALURU 560 001 REPRESENTED BY ITS MANAGING DIRECTOR.

3. THE KREDL SHANTHI GRUHA, NO.39, BHARATH SCOUTS AND GUIDES BUILDING, OPPOSITE THE CHIEF POST MASTER GENERAL OFFICE, PALACE ROAD, BENGALURU 560 001.

4. THE DEPUTY COMMISSIONER DISTRICT ADMINISTRATIVE BHAVAN, SHIDLAGATTA ROAD, CHIKKABALLAPUR 562 101. 12

5. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLERS BED AREA, VASANTHNAGAR, BENGALURU 560 052 REPRESENTED BY ITS CHAIRMAN. ... RESPONDENTS (BY SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R1 & R2; SRI MURUGESH V.CHARATI, ADVOCATE FOR R3; SMT.M.C.NAGASHREE, AGA FOR R4; SRI B.N.PRAKSH, ADVOCATE FOR R5) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

DATED2709.2018 IN O.P.NO.165/2017 PASSED BY THE R-5 AS PER ANNEXURE-H AND ALLOW THE O.P.NO.165/2017 BY GRANTING AN

AMOUNT OF RS.8.40/- PER UNIT AS PER THE PPA AND ETC., IN WRIT PETITION No.7724/2020 BETWEEN: M/S MNR SOLAR ENERGY PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT NO.658/8, 2ND FLOOR, F, 1ST C MAIN ROAD, 40TH CROSS, 8TH BLOCK, JAYANAGAR, BENGALURU 560 082, REPRESENTED BY ITS DIRECTOR, SRI.ISHWAR HEGDE. ... PETITIONER (BY SRI GANAPATI BHAT VAJRALLI, ADVOCATE) AND:

1. M/S BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (BESCOM) 13 OFFICE AT: K.R.CIRCLE, BENGALURU 560 001, REPRESENTED BY ITS MANAGING DIRECTOR.

2. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED CAVERI BHAVAN, BENGALURU 560 001, REPRESENTED BY ITS MANAGING DIRECTOR.

3. THE KREDL SHANTHI GRUHA, NO.39, BHARATH SCOUTS AND GUIDES BUILDING, OPPOSITE THE CHIEF POST MASTER GENERAL OFFICE, PALACE ROAD, BENGALURU 560 001.

4. THE DEPUTY COMMISSIONER DISTRICT ADMINISTRATIVE BHAVAN, SHIDLAGATTA ROAD, CHIKKABALLAPUR 562 101.

5. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLERS BED AREA, VASANTHNAGAR, BENGALURU-560 052, REPRESENTED BY ITS CHAIRMAN. ... RESPONDENTS (BY SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R1 AND R2; SRI MURUGESH V.CHARATI, ADVOCATE FOR R3 SMT.M.C.NAGASHREE, AGA FOR R4; SRI B.N.PRAKASH, ADVOCATE FOR R5) 14 THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

DATED 21.08.2018 IN O.P.NO.158/2017 PASSED BY THE R-5 AS PER ANNEXURE-H AND ALLOW THE OP NO.158/2017 BY GRANTING AN AMOUNT OF RS.8.40/- PER UNIT AS PER THE PPA AND ETC., IN WRIT PETITION

No.7782/2020 BETWEEN: M/S NADAGOUDA ENERGIES PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT NO.658/8, 2ND FLOOR, F, 1ST C MAIN ROAD, 40TH CROSS, 8TH BLOCK, JAYANAGAR, BENGALURU 560 082 REPRESENTED BY DIRECTOR SRI ISHWAR HEGDE. ... PETITIONER (BY SRI GANAPATI BHAT VAJRALLI, ADVOCATE) AND:

1. M/S. HUBLI ELECTRICITY SUPPLY COMPANY LIMITED (HESCOM) OFFICE AT NAVANAGAR, HUBLI 580 025 REPRESENTED BY ITS MANAGING DIRECTOR.

2. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED CAVERI BHAVAN, BENGALURU 560 001 REP BY ITS MANAGING DIRECTOR3 THE KREDL SHANTHI GRUHA NO.39, BHARATH SCOUTS AND GUIDES BUILDING, OPPOSITE THE CHIEF POST MASTER GENERAL OFFICE, 15 PALACE ROAD, BENGALURU 560 001.

4. THE DEPUTY COMMISSIONER DISTRICT ADMINISTRATIVE BHAVAN, SHIDLAGATTA ROAD, CHIKABALLAPUR-562 101 5. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLERS BED AREA, VASANTHAGAR, BENGALURU-560 052 REPRESENTED BY ITS CHAIRMAN. ... RESPONDENTS (BY SRI HOMESH KIRAN N., ADVOCATE FOR R1 AND R2; SRI MURUGESH V.CHARATI, ADVOCATE FOR R3; SMT.M.C.NAGASHREE, AGA FOR R4; R5 SERVED)) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

DTD.25.9.2018 IN O.P.NO.155/2017 PASSED BY THE R-5 AS PER ANNEXURE-H AND ALLOW THE O.P.NO.155/2017 BY GRANTING AN AMOUNT OF RS.8.40/- PER UNIT AS PER THE PPA AND ETC., IN WRIT PETITION No.7930/2020 BETWEEN: M/S CHOWDESHWARI SOLAR ENERGY PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT NO.658/8, 2ND FLOOR, F, 1ST C MAIN ROAD, 40TH CROSS, 8TH BLOCK, JAYANAGAR, BENGALURU 560 082, 16 REPRESENTED BY ITS DIRECTOR, SRI.ISHWAR HEGDE. ... PETITIONER (BY SRI GANAPATHI BHAT VAJRALLI, ADVOCATE) AND:

1. M/S BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (BESCOM) OFFICE AT: K.R.CIRCLE, BENGALURU 560 001, REPRESENTED BY ITS MANAGING DIRECTOR.

2. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED CAVERI BHAVAN, BENGALURU 560 001, REPRESENTED BY ITS MANAGING DIRECTOR.

3. THE KREDL SHANTHI GRUHA, NO.39, BHARATH SCOUTS AND GUIDES BUILDING, OPPOSITE THE CHIEF POST MASTER GENERAL OFFICE, PALACE ROAD, BENGALURU 560 001. REPRESENTED BY ITS MANAGING DIRECTOR.

4. THE DEPUTY COMMISSIONER DISTRICT ADMINISTRATIVE BHAVAN, SHIDLAGATTA ROAD, CHIKKABALLAPUR 562 101 5. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLAES BED AREA, VASANTHNAGAR, BENGALURU-560 052, REPRESENTED BY ITS CHAIRMAN ... RESPONDENTS17(BY SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R1 AND R2; SRI MURUGESH V.CHARATI, ADVOCATE FOR R3; SMT.M.C.NAGASHREE, AGA FOR R4; SRI B.N.PRAKASH, ADVOCATE FOR R5) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

DATED2808.2018 IN O.P.NO.164/2017 PASSED BY THE R-5 AS PER ANNEXURE-H AND ALLOW THE OP.NO.164/2017 BY GRANTING AN AMOUNT OF RS.8.40/- PER UNIT AS PER THE PPA AND ETC., IN WRIT PETITION No.12611/2020 BETWEEN: M/S. LPD SOLAR POWER PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT NO.658/8, 2ND FLOOR, F, 1ST C MAIN ROAD, 40TH CROSS, 8TH BLOCK, JAYANAGAR, BENGALURU 560 082 REPRESENTED BY ITS DIRECTOR SRI.ISHWAR HEGDE. ... PETITIONER (BY SRI GANAPATHI BHAT VAJRALLI, ADVOCATE) AND:

1. M/S BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (BESCOM) OFFICE AT K.R.CIRCLE, BENGALURU 560 001 REPRESENTED BY ITS

MANAGIANG DIRECTOR.

2. KARNATAKA POWER TRANSMISSION CORPORATION LTD., CAVERI BHAVAN, BENGALURU 560 001 18 REPRESENTED BY ITS MANAGING DIRECTOR.

3. THE KREDL SHANTHI GRUHA, NO.39, BHARATH SCOUTS AND GUIDES BUILDING, OPPOSITE THE CHIEF POST MASTER GENERAL OFFICE, PALACE ROAD, BENGALURU 560 001.

4. THE DEPUTY COMMISSIONER DISTRICT ADMINISTRATIVE BHAVAN, SHIDLAGATTA ROAD, CHIKKABALLAPUR 562 101.

5. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLERS BED AREA, VASANTHAGAR, BENGALURU 560 052 REPRESENTED BY ITS CHAIRMAN. ... RESPONDENTS (BY SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R1 AND R2; SRI MURUGESH V.CHARATI, ADVOCATE FOR R3; SMT.M.C.NAGASHREE, AGA FOR R4; SRI B.N.PRAKASH, ADVOCATE FOR R5) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

DATED 27.09.2018 IN O.P.NO.166/2017 PASSED BY THE R-5 AS PER ANNEXURE-H AND ALLOW THE O.P.NO.166/2017 BY GRANTING AN AMOUNT OF RS.8.40/- PER UNIT AS PER THE PPA AND ETC., 19 IN WRIT PETITION No.12637/2020 BETWEEN: M/S SRI UGRAPPA SOLAR PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT NO.658/8, 2ND FLOOR, F, 1ST C MAIN ROAD, 40TH CROSS, 8TH BLOCK, JAYANAGAR, BENGALURU 560 082, REPRESENTED BY ITS DIRECTOR, SRI ISHWAR HEGDE. ... PETITIONER (BY SRI GANAPATHI BHAT VAJRALLI, ADVOCATE) AND:

1. M/S BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (BESCOM) OFFICE AT: K.R.CIRCLE, BENGALURU 560 001, REPRESENTED BY ITS MANAGING DIRECTOR.

2. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED CAVERI BHAVAN, BENGALURU 560 009, REPRESENTED BY ITS MANAGING DIRECTOR.

3. THE KREDL SHANTHI GRUHA, NO.39, BHARATH SCOUTS AND GUIDES BUILDING, OPPOSITE THE CHIEF POST MASTER GENERAL OFFICE, PALACE ROAD, BENGALURU 560 001. 20

4. DEPUTY COMMISSIONER DISTRICT ADMINISTRATIVE BHAVAN, SHIDLAGATTA ROAD, CHIKKABALLAPUR 562 101.

5. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLERS BED AREA, VASANTHNAGAR, BENGALURU 560 052, REPRESENTED BY ITS CHAIRMAN. ... RESPONDENTS (BY SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R1 & R2; SRIMURUGESH V.CHARATI, ADVOCATE FOR R3; SMT.M.C.NAGASHREE, AGA FOR R4 SRI B.N.PRAKASH, ADVOCATE FOR R5) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

DATED 29.05.2018 IN O.P.NO.148/2017 PASSED BY THE R-5, AS PER ANNEXURE-H AND ALLOW THE O.P. No.148/2017 BY GRANTING AN AMOUNT OF RS840/- PER UNIT AS PER THE PPA AND ETC., IN WRIT PETITION No.12644/2020 BETWEEN: M/S POORVAJ SOLAR ENERGY PRIVATE LIMITED HAVING ITS REGISTERED OFFICE AT: NO.658/8, 2ND FLOOR, F, 1ST C MAIN ROAD, 40TH CROSS, 8TH BLOCK, JAYANAGAR, BENGALURU 560 082 REPRESENTED BY ITS DIRECTOR SRI ISHWAR HEGDE. ... PETITIONER (BY SRI GANAPATHY BHAT VAJRALLI, ADVOCATE) 21 AND:

1. M/S. BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (BESCOM) OFFICE AT: K.R.CIRCLE, BENGALURU 560 001 REPRESENTED BY MANAGING DIRECTOR.

2. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED CAVERI BHAVAN, BENGALURU 560 009 REPRESENTED BY MANAGING DIRECTOR.

3. THE KREDL SHANTHI GRUHA, NO.39, BHARATH SCOUTS AND GUIDES BUILDING, OPPOSITE THE CHIEF POST MASTER GENERAL OFFICE, PALACE ROAD, BENGALURU 560 001 REPRESENTED BY ITS MANAGING DIRECTOR.

4. THE DEPUTY COMMISSIONER DISTRICT ADMINISTRATIVE BHAVAN, SHIDLAGATTA ROAD, CHIKKABALLAPUR 562 101.

5. KARNATAKA ELECTRICITY REGULATORY COMMISSION NO.16, C-1, MILLERS BED AREA, VASANTHAGAR, BENGALURU 560 052 REPRESENTED BY CHAIRMAN. ... RESPONDENTS (BY SRI SHAHBAAZ HUSAIN, ADVOCATE R1 AND R2 SRI MURUGESH V.CHARATI, ADVOCATE FOR R3; 22 SMT.M.C.NAGASHREE, AGA FOR R4; SRI B.N.PRAKASH, ADVOCATE FOR R5) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED

ORDER

DATED 28.08.2018 IN O.P.NO.167/2017 PASSED BY THE R-5, AS PER ANNEXURE-H AND ALLOW THE O.P. NP. 167/2017 BY GRANTING AN AMOUNT OF RS840/- PER UNIT AS PER THE PPA AND ETC., THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR

ORDER

ON 24.06.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER

Assemblage of these petitions raise a challenge to the order passed by the Karnataka Electricity Regulatory Commission<sup>1</sup> in rejecting Original Petition No.214 of 2017 filed before it by the petitioners and directing that the petitioners shall be entitled to a particular tariff. Since facts are common in all these petitions, facts

obtaining in Writ Petition No.52028 of 2018 are referred to in this order for the sake of convenience. 1 Commission for short 23 2. Succinctly stated, the facts germane for consideration of the lis are as follows:- Government of Karnataka on 22-05-2014 introduced a solar policy to be availed between 2014 and 2021 with the object of harnessing the potential of solar resources in the State. In furtherance of the policy of the State, Karnataka Renewable Energy Development Limited<sup>2</sup> issued a notification inviting online applications for facilitating development of renewable energy on 09.10.2014. The petitioners, in all these cases, applied pursuant to the notification issued by KREDL. In Writ Petition No.52028 of 2018, a letter of award was issued in favour of one Sri Bommappa Kenchikoppa for development of two megawatts (mw) solar power plant by a letter of award dated 16.03.2015. Before the plant could be commissioned and even the process of harnessing solar resources to begin, the 2 KREDL for short 24 holder of award died bequeathing his entire property in favour of his grandson, the petitioner herein.

3. On 26.08.2015, a power purchase agreement was entered into between the petitioner and the Bangalore Electric Supply Company Limited<sup>3</sup> (BESCOM for short). The power purchase agreement so entered into between the petitioner and BESCOM was approved by the Commission on 01.09.2015 pursuant to which, the petitioner applied to KPTCL for evacuation approval on 05.08.2016. Pending such approval, the petitioner also applied before the Deputy Commissioner, Davangere for conversion of land in Sy.No.67 measuring 10 acres for the purpose. After submission of such application for conversion KPTCL issued an order of approval of temporary evacuation on payment of process fee and payment for evacuation on 19.09.2016. This resulted in supplemental power purchase agreement between the petitioner and the 2nd 3 BESCOM for short 25 respondent on 28.09.2016. After the supplemental power purchase agreement, the petitioner applied for a no objection from Soratur Grama Panchayat, Honnali Taluk, Davangere.

4. On 19.10.2016 the Deputy Commissioner before whom the conversion application was pending accorded conversion after obtaining NOC from Soratur Grama Panchayat. Thereafter the 1st respondent/ Government directed all ESCOMS to form a three member committee to consider extension requests of

farmers holding lands for a period of 3 months. The communication was sent to all ESCOMS on 24.11.2016. On 06.01.2017 the petitioner requested BESCO to grant extension of scheduled date of commissioning of the project by 6 months on account of force majeure. The BESCO on receipt of such request from the petitioner and the like, directed the petitioner to submit 26 documents in support of the claim for extension of the project.

5. On 27.02.2017 the petitioner again requested along with all the documents extension of scheduled date of commissioning of the project by six months. Pending all such applications for extension - one from the farmers and the other from the petitioner and the like, KREDL informed all ESCOMS by its communication dated 16.03.2017 that requests for extension of time should not be considered as a routine exercise except under extraordinary conditions to be proved by the project developer within the scope of the power purchase agreement. The Commission issued another letter/direction directing BESCOs to advise the petitioner and all those who were in possession of such power purchase agreements to file a petition before it with all necessary documents seeking approval for 27 extension of time. This direction of the Commission was issued on 05.04.2017.

6. On 16.06.2017 BESCO approved the request of the petitioner for scheduled date of commissioning of the solar power project by 6 months on account of force majeure reasons subject to any damages to be payable and the tariff to be approved by the Commission. The Government on 23.06.2017 addressed a communication to KREDL observing that Government has accepted the plea of ESCOMS in the matter of extension of time to achieve commissioning of solar project under farmers scheme invoking force majeure conditions of the power purchase agreement and also requested the Commission to approve such extension of time.

7. On 07.07.2017 the Commission again issued directives to ESCOMS directing them not to grant extension of time without the prior approval of the Commission. On 09.08.2017 BESCO in terms of the 28 direction issued by the Commission directed the petitioner and the like to seek approval from the Commission for

extension of scheduled date of commissioning. Pending such approval, a provisional interconnection approval was accorded by BESCOM and commissioning certificate was also issued confirming that solar power plant of the petitioner was commissioned. After all the aforesaid proceedings, the petitioner filed original petition as was directed by BESCOM before the Commission in O.P.No.214 of 2017 seeking approval of scheduled date of commissioning. The Commission by its order dated 09.10.2018 dismissed original petition and directed to pay damages and liquidated damages as per clauses of the power purchase agreement and also directed that the tariff applicable to the petitioner would be Rs.4.36 per unit as opposed to Rs.8.40 per unit and agreed to by the parties under the power purchase agreement. It is this order dated 09.10.2018 and the like, even or odd, that is 29 called in question by all the petitioners in these petitions.

8. Heard Sri Manmohan P.N. learned counsel appearing for the petitioners in most of the petitions, Sri Ganapathi Bhat Vajralli, learned counsel appearing for few of the petitioners, Sri S.Sriranga, learned counsel appearing for KPTCL, Sri Shahbaaz Husain, learned counsel appearing for BESCOM and KPTCL, Smt. M.C. Nagashree, learned High Court Government Pleader for the State, Sri B.N.Prakash, learned counsel for the Commission and Sri Muruges.V.Charati, learned counsel for KREDL.

9. The learned counsel Sri Manmohan P.N who has led the arguments in the case would urge the following contentions, that the Commission had no jurisdiction to intervene in the matter in exercise its inherent power under Regulations 11 and 14 of the Karnataka Electricity Regulatory Commission (General 30 and Conduct of Proceedings) Regulations, 2000; that inherent powers of the Commission would not enable it to determine the tariff once an agreement has been signed between the petitioners and BESCOM; that power of the Commission is restricted to the period prior to execution of the power purchase agreement and not after that; that the Commission had no jurisdiction to alter or modify terms of the agreement; that letters issued by the Commission directing cases to be filed before it for extension would amount to being a Judge in its own cause; that the parties having appeared before the Commission cannot confer jurisdiction upon the Commission to decide the issue after it had no jurisdiction under the Act; that the Commission has not

proceeded with an open mind as the Commission had pre-judged the issue by directing ESCOMS not to grant extension of scheduled date of commissioning the project. 31

9.1. The learned counsel would place reliance upon the following judgments: (i) GUJARAT URJA VIKAS NIGAM LIMITED v. SOLAR SEMICONDUCTOR POWER COMPANY (INDIA) PRIVATE LIMITED AND ANOTHER (2017) 16 SCC498 (ii) BESCOM v. KONARK POWER PROJECTS LIMITED AND ANOTHER - (2016) 13 SCC515 (iii) RAGHU INFRA PRIVATE LIMITED AND ANOTHER v. C.E.S.C. AND ANOTHER (W.P.No.51518-51519/2016 decided on 27-08-2019 by this Court); (iv) ASIAN FAB TECH LIMITED v. CESC AND ANOTHER (W.P.No.51365 of 2016 decided on 27-08-2019 by this Court); (v) CHENNAMANGATHIHALLI SOLAR POWER PROJECT LLP AND ANOTEHR v. BESCOM AND ANOTHER<sup>32</sup>(Appeal No.351 of 2018 decided on 14-09-2020 by the APTEL); (vi) A.U.KURESHI v. HIGH COURT OF GUJARAT AND ANOTHER - (2009) 11 SCC84 (vii) MOHD. YUNUS KHAN v. STATE OF UTTAR PRADESH AND OTHERS (2010) 10 SCC539 (viii) SIEMENS LIMITED v. STATE OF MAHARASHTRA AND OTHERS - (2006) 12 SCC33 and (ix) COMMITTEE OF MANAGEMENT AND ANOTHER v. VICE CHANCELLOR AND OTEHRS (2009) 2 SCC630 10. The other learned counsel has toed the lines of argument of Sri Manmohan P.N., learned counsel.

11. On the other hand, learned counsel Sri S.Sriranga, appearing for the respondent KPTCL and BESCOM would at the outset submit that petitioners have an alternative and efficacious remedy of filing an 33 appeal before the Appellate Tribunal for Electricity constituted under Section 111 of the Electricity Act, 2003 and the impugned order passed by the Commission cannot be questioned before this Court. Without prejudice to the issue of maintainability, the learned counsel would also submit that the Commission had jurisdiction to direct what it has done and the order passed by the Commission is unassailable and would place reliance upon judgments in cases of: (i) ALL INDIA POWER ENGINEERS FEDERATION LIMITED v. SASAN POWER LIMITED (2017) 1 SCC487 (ii) TATA POWER COMPANY LIMITED v. RELIANCE ENERGY LIMITED (2009) 16 SCC659 (iii) GUJARAT URJA VIKAS NIGAM LIMITED v. TARINI INFRASTRUCTURE AND OTHERS (2016) 8 SCC743 (iv) P.SINGARAVLEAN AND OTHERS v. DISTRICT

COLLECTOR, TIRUPUR AND OTHERS 34 (2020) 3 SCC133 (v) GUJARAT URJA VIKAS NIGAM LIMITED v. EMCO LIMITED AND ANOTHER (2016) 11 SCC182 (vi) EARTH SOLAR PRIVATE LIMIED v. PUNJAB STATE ELECTRICITY REGULARTORY COMMISSION AND ANOTEHR (Appeal No.169 of 2015 decided on 11-01-2019); (vii) RELIANCE INFRASTRUCTURE LIMITED v. STATE OF MAHARASHTRA (Civil Appeal No.879 of 2019 decided on 21-01-2019); (viii) A.P. TRANSCO v. SAI RENEWABLE POWER (P) LIMITED (2011) 11 SCC34 (ix) VATSALA BELLARY v. KREC AND OTHERS (W.P.No.35569 of 2018); and (x) GRAPHITE INDIA v. KERC AND OTHERS (W.P.No.12576 of 2018 decided on 21-06-2018). 35

12. I have given my anxious consideration to the rival submissions made across the bar and have perused the material on record.

13. The facts narrated hereinabove would not need reiteration as they are not in dispute. To consider the contentions advanced by respective parties as aforesaid, the prayers in the writ petition that is taken for reference are to be noticed. The prayers that are sought in Writ Petition No.52028 of 2018 read as follows: (i) Issue a writ of certiorari and quash the communication dated 16-03-2017 bearing No.KERC/ S/F-31/VOL- ALL/16-17/2763 issued by the 5th respondent (Produced as Annexure-S); and (ii) Issue a writ of certiorari and quash the communication dated 5-04-2017 bearing No.KERC/ S/F-31/VOL- ALL/16-17/55 issued by the 5th respondent (Produced as Annexure-T); and (iii) Issue a writ of certiorari and quash the communication dated 07-07-2017 bearing No.KERC/ S/F-31/VOL- ALL/17-18/541 issued by the 5th 36 respondent (Produced as Annexure-V); and (iv) Issue a writ of certiorari and quash the communication dated 16-06-2017 bearing No.CM(Ele.)/PP/BESCOM /DGM-1/AGM-1/BC-39/F-/17-18/3627 -33 issued by the 2nd respondent insofar as subjects the extension of SCOD to the condition that the tariff applicable and the liquidated damages to be paid if any is subject to Honble KERC/GOK approval (Produced as Annexure-F); and (v) Issue a writ of certiorari and quash the communication dated 09-08-2017 bearing No.GM (Ele)/PP/BESCOM/ DGM-1/AGM-1/BC-39/F-17-18/ 6810 issued by the 2nd respondent (Produced as Annexure-X); and (vi) Issue a writ of certiorari and quash the order dated 9-10-2018 passed in O.P.No.214 of 2017 passed by the 5th

respondent (Produced as Annexure-AB); and (vii) Issue a writ of mandamus directing the 2nd respondent to pay the tariff of Rs.8.40 kwh to the petitioner as per the Power Purchase Agreement dated 26- 08-2015 (Produced as Annexure-C; and (viii) Pass such other orders as deemed fit in the facts and circumstances of the case, in the interest of justice and equity. 37 In furtherance of the solar policy of the State notification was issued by KREDL and the petitioner was issued a letter of award for development of MW solar power plant. Certain clauses of the power purchase agreement dated 26-08-2015 entered into between the petitioner and BESCOM are germane to be noticed and are accordingly extracted herein for the purpose of ready reference: Article-I: Definitions 1.1 For all purposes of this Agreement, unless the context otherwise requires the following words and expressions shall have the respective meanings set forth below: (xii) Effective Date shall mean date of signing of this Agreement by the parties: (xxviii) Scheduled Commissioning Date shall mean 18 (eighteen) months from the Effective Date. (xxix) State load dispatch Centre means the State Load Despatch Centre established as per the Act; (xxx) State transmission Utility or STU shall mean Karnataka Power 38 Transmission Corporation Limited or KPTCL. (xxxi) Tariff Payment shall mean the payments to be made under Monthly Bills as referred to in Clause 6.3 and the relevant Supplementary Bills. 5.1 Tariff payable: The SPD shall be entitled to receive the Tariff of Rs.8.40 per KWH based on the KERC tariff order S/03/1 dated 10-10-2013 in respect of SPDs Solar PV projects in terms of his agreement for the period between COD and the Expiry Date. However, subject to Clause 2.5, if there is a delay in commissioning of the Project beyond the Scheduled Commissioning Date and during such period there is a variation in the KERC Tariff, then the applicable Tariff for the projects shall be the lower of the following: (i) Rs.8.40 per kwh. (ii) Varied tariff applicable as on the date of Commercial Operation. Article-8 FORCE MAJEURE<sup>81</sup> Definitions: In this Article, the following terms shall have the following meanings:

## 8. 2 Affected Party:

39. An affected party means BESCOM or the SPD whose performance has been affected by an event of Force Majeure. 8.3 Force Majeure Events: a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay

or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a Force Majeure Event) beyond the reasonable control of the Party affected by such delay or failure, including the occurrence of any of the following: i. Acts of God; ii. Typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities; iii. Strikes, work stoppages, work slowdowns or other labour dispute which affects a Party's ability to perform under this Agreement; iv. Acts of war (whether declared or undeclared), invasion or civil unrest; 40 v. Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the SPD or BESCO, of any law or any of their respective obligations under this Agreement); vi. Inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals; vii. Fire, Earthquakes, explosions, accidents, landslides; viii. Expropriation and/or compulsory acquisition of the Project in whole or in part; ix. Chemical or radioactive contamination or ionizing radiation; or x. Damage to or breakdown of transmission facilities of either Party; b) The availability of the above item (a) to excuse a Party's obligations under this Agreement due to a Force Majeure Event shall be subject to the following limitations and restrictions:

41. i. The non-performing Party gives the other Party written notice describing the particulars of the Force Majeure Event as soon as practicable after its occurrence; ii. The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event. iii. The non-performing Party is able to resume performance of its obligations under this Agreement, it shall give the other Party written notice to that effect; iv. The Force Majeure Event was not caused by the non-performing Party's negligent or intentional acts, errors or omissions, or by its negligence/failure to comply with any material law, or by any material breach or default under this Agreement; v. In no event shall a Force Majeure Event excuse the obligations of a Party that are required to be completely performed prior to the occurrence of a Force Majeure Event. 12.10 Amendments:

42. This Agreement shall not be amended, changed, altered or modified except by a written instrument duly executed by an authorized representative of both Parties. However, BESCO may consider any amendment or change that the Lenders may require to be made to this Agreement subject to the approval of the Commission.

(Emphasis added)

Clause (xxviii) of the definitions would define Scheduled Commissioning Date to be 18 months from the effective date. Clause (xii) thereof defines Effective Date would mean the date of signing of the agreement between the parties. The Conditions Precedent are dealt with under Article-2. Damages for delay to be paid by the Developer are dealt with under Clause 2.2. Extensions of time are depicted in Clause 2.5. In terms of Clause 2.5.6 the result of extensions would be the scheduled commissioning date and expiry date would be determined afresh which shall be the scheduled commissioning date and the expiry date for the purposes of the agreement. Tariff payable in terms of 43 the agreement is dealt with under Clause 5.1 which determines agreed tariff to be Rs.8.40 per kWh. Force Majeure is dealt with under Article 8. One such clause depicts inability despite complying with all legal requirements to obtain, renew or maintain required licenses. It is in terms of the aforesaid agreement that the entire issue now springs and is to be considered.

14. In terms of the agreement, the petitioner applied for evacuation approval from the hands of KPTCL and conversion from the hands of Deputy Commissioner and no objection from the hands of Soratur Gram Panchayat. The approval was granted on different dates and a supplemental power purchase agreement was also entered into between the parties. Since the issue now is with regard to delay in scheduled date of commissioning, the reasons behind the delay is required to be noticed. 44

15. The petitioners in all these cases requested BESCO for extension of scheduled commissioning date enclosing the dates on which steps have been taken by the petitioners seeking several statutory approvals which were held at the hands of Government. First representation of the kind was given on 1st February

2017 and the second representation of the kind was given on 27th February 2017. In reply, what the 1st petitioner got was a communication dated 15-04-2017 from BESCO which reads as follows:- Sir, Sub: Power Purchase Agreement of 2 MW Tuggalahalli village, Honnali Taluk, Davangere District, Karnataka State of Sri AmarthyaRajashekarappa reg Extension of Scheduled Commissioning date. Ref:

1. PPA executed with BESCO on 26.08.2015.

2. Your letter dated 06-01-2017, 1.2.2017 & 27.2.2017 3. KERC letter No.KERC/S/F- 31/Vol-1II/16-17/55 dated 05-04- 2017.-.- 45 Honble KERC vide letter cited under ref.(3), have informed that , the Commission has the jurisdiction of legal scrutiny of validity of the extension of time granted in any case by an ESCOM. Such proceedings being a part of judicial functions of the Commission require reasonable opportunity to be given to both parties of the PPA to present their case. In this regard, Honble Commission directs all the ESCOMs to advice the concerned SPD/SPVs under Land Owners/ Farmers Scheme to file a petition before the Commission with all relevant grounds/documents for seeking approval for any extension of the Commissioning date. (copy of the letter is enclosed). I am directed to request you, to file a petition before the Honble Commission forth, with all relevant grounds/ documents for seeking approval for any extension of the Commissioning date.

(Emphasis added)

46 The communication furnished by BESCO was based upon the letter issued by the Commission on 16-03-2017 which reads as follows: No.KERC/S/F-31/Vol-All/16-17/ Dated:16- 03-2017 The Managing Director, BESCO/MESCO/ESCO/HESCO/ GESCOM. Sir, Sub: Extension of time to achieve COD of the Solar Projects reg. Ref. 1.BESCO letter NO.GM(Ele)/PP/ BESCO/DGM-1/AGM-1/BC-39/F.. dated 9thJanuary, 2007. 2.KERC letter No.KERC/S/F-31/Vol- 41/15-16/148 dated 04-05-2015.-.- It has come to the notice of the Commission that the BESCO in its letter cited under reference, has granted extension of time of six months to achieve COD for the 10 MW Solar Project, beyond the time allowed in the PPA without altering the terms of the original PPA. The PPA was approved by the Commission vide its letter cited under

47 Ref.2 above. The Commission has noted that BESCO has not obtained prior approval of the Commission regarding the extension of time. The reasons and justification for the extension of time are not forthcoming from the letter of BESCO. The Commission has also observed that in certain instances, ESCOMs have granted extension of time to achieve commercial operation of the solar projects from the originally agreed scheduled commissioning date, without altering the terms and conditions of the PPA. Since the extension of time by ESCOMs without altering the terms of the original PPA will have impact on the Tariff payable by the ESCOMs, the Commission has the jurisdiction of legal scrutiny of validity of the extension of time granted. The Solar Projects are expected to be completed in the time bound manner in order to ensure that not only the anticipated solar 48 power generation accrues to the grid to meet the planned demand but also to ensure that the capital cost of the developer is as per assumption mode for calculating the Tariff offer and any extension of time will have far reaching tariff implications affecting the end consumers. In view of rapid changes in the market conditions of photovoltaic plants, resulting in sustained reduction in their cost. Extension of time should not be considered as a routine exercise except under extra-ordinary conditions to be proved by the project developer, within the scope of the original PPA. I am directed to inform all ESCOMs to not to allow any extension of time beyond the Scheduled Commissioning date (COD) if any, as per the original PPA without obtaining prior opinion of this Commission.

(Emphasis added)

The Commission clearly directed ESCOMs not to allow any extension of time beyond the scheduled commissioning date without obtaining prior approval of 49 the Commission. The Commission again communicates on 05.04.2017 with regard to extension of time for scheduled commissioning of the project. The letter dated 05.04.2017 reads as follows: No.KERC/S/F-31/Vol-All/16-17/55 Date:5-04-2017 The Managing Director, BESCO/MESCO/CESC/HESCO/GESCO Sir, Sub: Request for Commission approval for Supplementary PPAs executed to incorporate extension of time to achieve COD at the Solar Projects under landowners/farmers scheme Reg. Ref: KERC letter No.KERC/S/F-31/Vol- All/16-17/2763 dated 17-03-2017.-.- The Commission is receiving for approval several Supplementary PPAs executed in respect of Solar Projects under Land

Owners/Farmers Scheme. Such supplemental PPAs mainly seek to extend time to the developers to achieve CoD beyond 50 the date specified in the original PPAs. The ESCOM concerned has stated that a Committee formed with its Director Technical as Chairman, as directed by the Government in Energy Department to resolve the issue of granting extension of CoD by considering Article 2.5 and 8 of the PPA, has decided to grant extension of time for achieving scheduled commissioning of the project as requested by the developer.

2. The Commission has noted that, the grounds cited to grant extension of time and the duration of such extension vary from case to case. However, the proceedings of the said Committee and the proposal of the ESCOMs which are not supported by any documents and independent findings, are inadequate to enable the Commission to take a decision in the matter.

3. As already clarified in the Commissions letter dated 17-03-2017 cited under reference the Commission has the jurisdiction of legal scrutiny of the extension of time granted in any case by an ESCOM. Such proceedings 51 being a part of judicial functions of the Commission require reasonable opportunity to be given to both parties of the PPA to present their case.

4. Hence, I am desired by the Commission to inform that the Commission directs all the ESCOMs to advice the concerned SPD/SPVs under Land Owners/Farmers Scheme to file a petition before the Commission with all relevant grounds/documents for seeking approval for any extension of the commissioning date. It may also be noted, this direction of the Commission applies to even such cases where the ESCOMs have not entered into Supplementary PPAs following the decision of the Committee to grant extension of commissioning date.

(Emphasis added)

It is here that the marrow of the lis lies. In paragraph 4 of the communication the Commission directs all ESCOMs to advice the petitioner and the like to file a 52 petition before it with all relevant grounds and documents seeking approval of any extension of commissioning date. It further directs that this direction of the Commission would apply even to such cases where ESCOMs have not entered into supplementary power purchase agreement. The Commission again on

07.07.2017 directed all ESCOMs not to send any proposal for approval of the Commission till petitions are filed by the petitioners and like before the Commission. The said communication dated 07.07.2017 reads as follows: No.KERC/S/F-31/Vol-All/17-187/541 Date:07.07.2017 The Managing Director, BESCOM/MESCOM/CESC/HESCOM/GESCOM Sir, Sub: Extension of time for SCOD in respect of 1 to 3 MWs Solar Power Plants in Karnataka, under Farmers category. Reg. Ref: i) Govt.letter No.EN67VSC2017dated 23.06.2017 53 ii) KERC letter No.KERC/S/F- 31/Vol.All/17-18/212 dated 09-05- 2017. iii) Govt. letter No: EN67VSC2017dated 25.04.2017. (iv) KERC letter No.KERC/S/F-31/Vo- All/16-17/65 dated 05-04-2017. (v) KERC letter No.KERC/S/F-31/Vol- All/16-17/2763 dated 17-03-2017. (vi) Govt.letter No.EN75VSC2016date 24.11.2016 -- Please refer to the letter dated 23-06-2017 cited under reference (1) RECEIVED FROM THE Energy Department, GoK, wherein the Government has stated that, it has accepted the views of the ESCOMs, in the matter of extension of time to achieve CoD of the Solar Projects under farmers scheme invoking Force Majeure conditions of the PPA and hence has requested the Commission to approve such extension of time for achieving CoD. I am directed to inform you that, the action of the ESCOMs to permit the developers to commission the projects beyond the original scheduled CoD as per PPA, has been approved by the Commission, which however, has noted that the tariff applicable in each case needs to be examined on merits of each individual case. I am also directed to inform you that, the ESCOMs may advise the concerned SPD/SPVs under Land Owners/ Farmers scheme to file a petition, each before the Commission with all the relevant grounds/documents for justifying their claims for extension of time under Force majeure conditions of the PPA. Further, the ESCOMs are hereby directed not to send any SPPA in respect of these cases for approval of the Commission, till the petition(s) filed by the SPDs/SPVs before the Commission, is/are disposed of.

(Emphasis added)

From the correspondences between BESCOMs and the Commission, Government of Karnataka also requested the Commission to extend time for the reasons communicated in the letter dated 23.06.2017. The letter of the Government to the Commission dated 23.06.2017 reads as follows:- 55 From: The Additional Chief Secretary to Government, Energy Department, Bangalore. To: The Secretary,

Karnataka Electricity Regulatory Commission, 6th& 7th Floor, Mahalakshmi Chambers, No.9/2, M.G.Road, Bengaluru-560 001. Sir, Sub: Extension of time for SCOD in respect of 1 to 3 MWs Solar Power Plants in Karnataka under Farmers Category reg. Ref:

1. Government same file No.Letter dated 23.04.2017.
2. Your letter No.KERC/S/F- 31/Vol.A11/17-18/ 212 D:09-05-2017.
3. MD, CESC DO.letterNo.CESC/MD/GM (coml.) RA217-18/DO-63 D:11-05- 2017
4. MD, HESCOM letter No.HESCOM/GM(T)/EE/ (RA)/AEE/17- 18/3624 D:  
15. 05-2017.
5. MD, GESCOM letter NO.GESCOM/CEE(CP)/EE/ AEE (PTC)2016-17/7945  
D:16-05-2017
6. MD, MESCOM Letter No.MESCOM/MD/PS/99 D. 17-05- 2017.-.- In inviting kind reference to the above, for the Government proposal under ref

(1) regarding 56 considering approval to the extension of COD of Solar Power Projects of capacity 1 to 3 MW under land owning farmers category in BESCO, the Honble Commission vide reference (2), has requested the Government to furnish the details of similarly placed cases in the other ESCOMs, in order to take view in the matter. In this regard, other ESCOMs have also submitted their request on the subject matter. The ESCOM wise details of the projects under land owner Farmers is as below: . As per the above table, out of 304 MW PPA signed, 131 MW projects have been commissioned within SCOD. Extension of time has been issued by ESCOMs for 129 MW capacity. Proposals to an extent of 31 MW capacity is pending at ESCOMs level, since the Honble Commission has directed all ESCOMs not to allow any extension of time beyond the schedule COD, without obtaining prior opinion of the Commission. From the proposals submitted by all ESCOMs it is clear that the reasons for delay in execution of the project are common and 57 the main reasons for considering the extension of SCOD are as below: a. Delay in getting land conversions. b. Delay in getting evacuation approval, Bay extension approval, CEIG approval etc. c. Delay in financial closure

due to delay in the above mentioned permits. d. Delay due to demonetization of the Indian Currency. e. Delay in getting Railway Crossing approval f. Delay in getting MEI switchgears. The Managing Directors of CESC, HESCOM, GESCOM and MESCOM vide letters under ref (3),

(4)

(5) &

(6) have explained the reasons for giving extension of SCOD and summed up saying that this scheme under farmers category is brought into effect with the approval of the Solar Policy by the Cabinet. Government considers it as a preferred and prestigious one. Further, it is standalone scheme in the energy sector not only in Karanata but also in the entire country. 58 Particularly the following are brought to the notice of the Honble Commission:

1. The ESCOMs have constituted Committees under the Chairmanship of the respective Directors (Technical) to scrutinize and recommend the eligible cases for giving extensions of SCOD and based on the scrutiny and recommendations of the Commission the respective ESCOMs have given extensions as required under Clause 8.3 (b) of the PPA.

2. The extensions are given under Force Majeure as per 8.3 (a) (vi) of the PPA which read as:Inability despite complying with all legal requirements to obtain renew and maintain required licenses or Legal Approvals. Hence ESCOMs have given extensions of COD on identical reasons under PPA clause 2.5 (Extension of time) and Article 8 (Force Majeure). In all these cases extensions of COD is given by ESCOMs upto 6 (six) months from the date of SCOD as per PPA Clause 2.5 and Article 8 clearly mentioning that all other terms and conditions shall remain unaltered at the KERC approved rate of unit as laid down in 59 the terms and conditions of PPA in consideration of the investment made by the farmer. Accordingly, the reasons given by and the opinion of MDs of CESC, HESCOM, GESCOM and MESCOM are acceptable to the Government (Copies enclosed). In view of the above, I am directed to request the Honble Commission to consider approval to the extension of COD of Solar Power Projects of capacity 1 to 3 MW

under land owning farmers category. (Approved by Honble Energy Minister).

(Emphasis added)

BESCOM communicates to the petitioner on 09.08.2017 that the petitioner will become liable for difference in tariff and liquidity damages pertaining to delayed commissioning of the project. Here, the BESCOM directs the petitioner to file cases before the Commission forthwith justifying the claim for extension of time under force majeure conditions. The Government of India also noticed that not only in 60 Karnataka but in several places due to factors beyond control of the developers the project could not be commissioned and, therefore, directed Energy Department of Government of Karnataka to grant six months extension of time to solar projects. The communication dated 09.04.2018 from the Ministry of New and Renewable Energy, Government of India to the Government of Karnataka reads as follows: To The Additional Chief Secretary, Energy Department, Govt. of Karnataka, Room NO.236, 2nd Floor, Vikas Soudha, Dr. B.R.Ambedkar Street, Bangalore, Karnataka E-mail: prs-energy@karnataka.gov.in Subject: Request to restore the original tariff of Rs.8.40 per unit for 1-3 MW solar power plants commissioned under the Land Owned farmers Scheme of Karnataka.-.- Sir, This Ministry has received a letter from Association for Land Owned Farmers Solar Power Plants, Karnataka on above subjects. Letter is enclosed for reference.

2. Points highlighted in letter are given below as:

61. a. Govt. of Karnataka has implemented a Land Owned Farmers Scheme with 1-3 MW solar plants. Under this scheme, PPA of 304 MW was signed. Out of 304 MW, PPA for 283 MW was signed with Rs.8.4 per unit tariff. Out of 283 MW, only 131 MW were commissioned within schemed commissioning date (SCOD). b. However, ESCOMs have granted 6 months extension for 162 MW solar projects for commissioning of these capacities under Force Majeure Article 8a(vi) of the PPA. These extensions were given due to many reasons beyond the solar power developers control viz., Demonetisation, Cyclone effect, inordinate delay in NA conversion, power evacuation approvals, safety approval by CEIG and other required statutory approvals. c. KERC has taken a different stand. The commission has asked all farmers/PPA holders to file petition explaining the

reasons for extension. The final judgment on few petitions clearly indicates that the commission has taken the unilateral decision to lower the tariff from Rs.8.40 to Rs.6.51 or Rs.4.36. Due to this, over 57% of the commissioned capacities are facing a threat of survival of bankruptcy.

3. As you are aware that the Government of India has set a target of setting up 100 GW solar capacities by 2022. While all efforts are being made to achieve this target through its various Schemes, 62 the solar power developers need to be given adequate confidence to maximize development of solar power capacity in the State. The stand taken by KERC on above matters would create an uncertainty for the investors and demotivate the investors from investing in solar sector.

4. In view of above, it is requested that Government of Karnataka may take up the above matter with KERC under Section 108 of the Electricity Act, 2003.

(Emphasis added)

16. With all the aforesaid correspondences, communications, approvals and extension of time, the petitioner, as was directed, approached the Commission for extension of time in O.P.No.214 of 2017. Prayer that was sought by the petitioner before the Commission reads as follows: A) Approve the extension granted by the respondent to new scheduled commissioning date viz., 25th August, 2017 accorded by the 1st respondent vide its letter dated 6th June, 2017 produced as Annexure-P12. B) Direct the respondent to make payment for the delivered energy under the PPA dated 26th August, 2015 produced as Annexure- P2 and the supplemental agreement dated 28th September, 2016 produced as 63 Annexure-P5, at the rate of Rs.8.40 per unit from the Commercial Operation Date of the petitioners product for the entire term of the PPA. C) Pass such other and incidental orders, including an order as to costs as may be deemed appropriate under the facts and circumstances of the present case. The Commission claiming to be considering the case of the petitioner observed that there was no force majeure event for the petitioner to contend that they could not commission the project and rejected the claim of the petitioner for extension of scheduled date of commissioning by the following order: (a) It is declared that the petitioner is not

entitled to any of the reliefs, sought for in the petition. (b) The petitioner is entitled to a tariff of Rs.4.36 (Rupees four and paise thirty-six) only per unit, the varied tariff, as applicable on the date of commissioning of the petitioners plant, as fixed by the Commission in the order dated 12-04-2017 for the term of the PPA, as per Article 5.1 of the PPA; and (c) The petitioner is also liable to p[ay damages, as provided under Articles 2.2 and 2.5.7 of the PPA. 64 Identical orders are passed in all these cases.

17. The issue now remains for consideration is, whether the Commission could have directed BESCO to direct the petitioners and the like to approach the Commission for extension of time. Having solicited petitions being filed before the Commission, whether the Commission has acted as a Judge in its own cause. One acting as a Judge in his own cause is a hue of bias as bias has manifold hues and shades, one of which is no man can be a judge of its own cause. To consider whether the Commission has acted as a Judge in its own cause, it is germane to notice the judgments of the Constitutional Courts on the issue of bias, its forms and hues.

18. One of the cardinal principles of natural justice is *nemo debet esse iudex in propria causa* (no man shall be a judge in his own cause). The deciding authority must be impartial and without bias. The Rule 65 that bias vitiates any findings is a rule of natural justice. It is trite law that official bias or bias of the subject matter is one of the limbs of bias. To appreciate the said principle on the touchstone of official bias or bias to the subject-matter, the test is whether there was a real likelihood of a bias even though such bias has not in fact taken place. It is apposite to refer DE SMITH IN HIS JUDICIAL REVIEW OF ADMINISTRATIVE ACTION<sup>4</sup>, wherein the author observes that a real likelihood of bias means at least substantial possibility of bias.

19. In HALSBURYS LAWS OF ENGLAND<sup>5</sup>, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. 4 (1980 Edn.) at page 262 5 4thEdn., Vol.2 para 551 66 20. The Divisional Court of the Kings Bench, in R.V. SUNDERLAND JUSTICES<sup>6</sup>, has held that the Court will have to judge the

matter as a reasonable man would judge of any matter in the conduct of his own business.

21. Later, Divisional Court of the Kings Bench, in R.V. SUNDERLAND JUSTICES<sup>7</sup>, has again held in answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done.

22. The aforesaid principle is reiterated in acceptance by the Apex Court in MANAK LAL v. DR.PREM CHAND<sup>8</sup> wherein the Honble Apex Court has held that the test is not whether in fact, bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a 6 (1901) 2 KB357 373, 7 1923 All ER233 8 AIR 1957 SC42567 bias attributable to a Member of the Tribunal must have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

23. The aforesaid principles with regard to bias are considered, iterated and elaborated by the Honble Apex Court in the subsequent judgment in the case of K. PARTHASARATHI VS. STATE OF ANDHRA PRADESH<sup>9</sup> wherein the Apex Court in paragraphs 14, 15 and 16 has held as follows: 14. The test of likelihood of bias which has been applied in a number of cases is based on the reasonable apprehension of a reasonable man fully cognizant of the facts. The courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed (see R. v. Huggins [(1895) 1 QB563 ;R. v. Sussex, JJ., ex. p. 9 (1974) 3 SCC45968 McCarthy [(1924) 1 KB256 ; Cottle v. Cottle [(1939) 2 All ER535 ; R. v. Abingdon, JJ.

ex. p. Cousins [(1964) 108 SJ840 .) But in R. v. Camborne, JJ.

ex. p Pearce [(1955) 1 QB41at 51]. the Court, after a review of the relevant cases held that real likelihood of bias was the proper test and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained

and easily verified in the course of his inquiries.

15. The question then is: whether a real likelihood of bias existed is to be determined on the probabilities to be inferred from the circumstances by court objectively, or, upon the basis of the impressions that might reasonably be left on the minds of the party aggrieved or the public at large.

16. The tests of real likelihood and reasonable suspicion are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is a real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is a real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon [(1968) 3 WLR 694 at 707]]. We should not, however, be understood to deny that the Court might with greater propriety apply the reasonable suspicion test in criminal or in proceedings analogous to criminal proceedings. (Emphasis supplied) 70 The case at hand will have to be judged on the touchstone of law with regard to bias as laid down by the Apex Court in the afore-extracted judgment.

24. It is also germane to notice the decisions of the Apex Court in the case of A.U. KURESHI v. HIGH COURT OF GUJARAT<sup>10</sup> and MOHD. YUNUS KHAN v. STATE OF U.P.<sup>11</sup>. In the case of A.U. KURESHI the Apex Court has held as follows:

10. It is an accepted principle of natural justice that a person should not be a judge in his or her own cause. In common law, this principle has been derived from the Latin maxim *nemo debet esse iudex in propria sua causa*. A reasonable

permutation of this principle is that no Judge should adjudicate a dispute which he or she has dealt with in any capacity, other than a purely judicial one. The failure to adhere to this principle creates an apprehension of bias on the part of the said Judge. 10 (2009) 11 SCC8411 (2010) 10 SCC53971 11. It would be useful to refer to the observations of P.N. Bhagwati, J.

in *Ashok Kumar Yadav v. State of Haryana* [(1985) 4 SCC417:

1986. SCC (L&S) 88]. : (SCC p.

418) One of the fundamental principles of our jurisprudence is that no man can be a judge in his own cause. The question is not whether the Judge is actually biased or [has]. in fact [decided]. partially but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. If there is a reasonable likelihood of bias it is in accordance with natural justice and common sense that the [Judge]. likely to be so biased should be incapacitated from sitting. The basic principle underlying this rule is that justice must not only be done but must also appear to be done. In the case of *MOHD. YUNUS KHAN* the Apex Court has held as follows:

72. 25. The legal maxim *nemo debet esse judex in propria causa* (no man shall be a judge in his own cause) is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice. (Vide *Secy. to Govt., Transport Deptt. v. MunuswamyMudaliar* [1988 Supp SCC651 AIR 1988 SC2232, *Meenglas Tea Estate v. Workmen* [AIR 1963 SC1719 and *Mineral Development Ltd. v. State of Bihar* [AIR 1960 SC468.) 26. This Court in *A.U. Kureshi v. High Court of Gujarat* [(2009) 11 SCC84 (2009) 2 SCC (L&S) 567]. placed reliance upon the judgment in *Ashok Kumar Yadav v. State of Haryana* [(1985) 4 SCC417 1986 SCC (L&S) 88]. and held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased but whether the 73 circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias

affecting the decision.

27. The existence of an element of bias renders the entire disciplinary proceedings void. Such a defect cannot be cured at the appellate stage even if the fairness of the appellate authority is beyond dispute. (Vide S. Parthasarathi v. State of A.P. [(1974) 3 SCC459 1973 SCC (L&S) 580: AIR 1973 SC2701 and Tilak Chand MagatramObhan v. Kamala Prasad Shukla [1995 Supp (1) SCC21 1995 SCC (L&S) 251].) (Emphasis supplied) 25. In the light of the law laid down by the Apex Court in the afore-extracted judgments if the orders/communications of the Commission is noticed, it would without doubt get vitiated on account of Commission soliciting and directing BESCOB not to issue any extension orders and to direct all the petitioners to approach the Commission. It is coercing 74 the petitioners to come before the Commission as it has already looked into the file and decided to direct that BESCOB should not issue any orders and that it would decide the case if it is brought before it.

26. In my considered view, there cannot be a better example of bias of the subject matter or official bias on the part of the Commission, to have already pre-judged the issue, directing the parties to come before it and decide the issue re-affirming what it had already decided on hand. It is like saying you come before me; Ill adjudicate, else wither none shall adjudicate

27. The contentions of the learned counsel appearing for the respondent/BESCOB and the Commission are unacceptable, as it is a clear case of official bias or bias of the subject matter on the part of the Commission. The contention with regard to judgments concerning bias, quoted (supra), that, they 75 are all of service jurisprudence and would not be applicable to the facts of the case at hand is also rejected, for the reason that bias is that principle of natural justice which permeates into every sphere of law, be it any kind of jurisprudence. Therefore, the first leg of proceedings before the Commission gets vitiated. It is, thus, the Commission did not proceed with an open mind to consider the case of the petitioners as the Commission had issued plethora of directions/ letters to act in a particular manner. Jurisdiction of the Commission:

28. The contention of the learned counsel for the petitioners is that the Commission has no jurisdiction to determine tariff and once an agreement is signed between the parties, the power of the Commission is restricted to the period prior to execution of PPA and once PPA has been signed, the Commission cannot invoke its inherent jurisdiction to issue and modify the 76 terms and conditions of the Agreement or intervene with regard to the obligations to be discharged by the parties. 28.1. It is also his contention that there is no dispute between the petitioners and the BESCO. The Commission has no jurisdiction to decide the case where there is no dispute under Section 86 of the Act.

29. These submissions are unacceptable for the reason that the agreement entered into between the parties clearly indicates the role of the Commission particularly with regard to amendments. Article 12.10 of the Agreement extracted (supra) directs that the agreement would not be amended and if amended by way of changes being made in the agreement, they would be subject to approval of the Commission.

30. The very agreement also stipulates the scheduled commissioning date and the effective date. The effective date would mean signing of the agreement 77 by the parties and the scheduled commission date would be 18 months from such effective date. With the action of the petitioners submitting representations to BESCO and the Government of Karnataka or the Government directing extension to be made on several factors would without doubt result in change of scheduled commissioning date, which would be an amendment to the PPA arrived at between the parties.

31. Tariff was also determined by the Commission in the cases at hand. In terms of the agreement Article 5.1 (supra) deals with a particular tariff which also depicts that if there is a delay in commissioning of the project beyond the scheduled commissioning date, the tariff would vary. The varied tariff has a direct link with the scheduled commissioning date. If the scheduled commissioning date would vary, resulting in variance of tariff this would again become subject matter of approval by the Commission. On a plain reading of the 78 said clauses of the PPA, the jurisdiction of the Commission cannot be taken away. But, the act of the

Commission in directing or soliciting cases to be filed before it and deciding the cases are such acts of the Commission which cannot be countenanced.

32. I therefore, decline to accept the contention of the petitioners that there is no dispute arisen for the Commission to intervene or the petitioners to approach the Commission. The dispute is not with regard to interpretation of the agreement insofar as it concerns to the parties of the agreement but, it is the events that would lead to an amendment to the agreement that confers jurisdiction on the Commission, not to solicit, but to the petitioners or the parties to the PPA to approach the Commission in terms of Section 86 of the Act, which deals with functions of the Commission. Section 86 of the Act reads as follows:

79. 86. Functions of State Commission:- (1) The State Commission shall discharge the following functions, namely:- (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers; (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State; (c) facilitate intra-State transmission and wheeling of electricity; (d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State; 80 (e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee; (f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration; (g) levy fee for the purposes of this Act; (h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79; (i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary; and (k) discharge such other functions as may be assigned to it under this Act. (2) The State Commission shall advise the State Government on all or any of the following matters, namely :- 81 (i) promotion of competition, efficiency and economy in activities of the electricity industry; (ii) promotion of investment in electricity industry; (iii) reorganization and restructuring of electricity industry in the State; (iv) matters concerning generation, transmission , distribution and trading of electricity or any other matter referred to the State Commission by that Government. (3) The State Commission shall ensure transparency while exercising its powers and discharging its functions. (4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under Section 3. (Emphasis supplied) Functions of the Commission as depicted under Section 86 of the Act confer manifold jurisdiction on it and one of which, undoubtedly is the controversy in the case at hand. 82

33. On a plain reading of Section 86 of the Act, action of the Commission was without jurisdiction to have solicited cases. But, the obligation of the parties to the PPA is to approach the Commission for redressal of the controversy. Though it is not a dispute as defined under Section 86(1)(b) of the Act, it is the power of the Commission to regulate the price of sale and purchase of electricity under Section 86(1)(b) of the Act from generating company and distribution of licensees through agreements i.e, PPA.

34. It is apposite to notice the judgment of the Apex Court in the case of ALL INDIA POWER ENGINEER FEDERATION AN OTHERS v. SASAN POWER LIMITED<sup>12</sup> wherein the Apex Court holds as follows: 25. It is thus clear that if there is any element of public interest involved, the court 12 (2017) 1 SCC48783 steps in to thwart any waiver which may be contrary to such public interest.

26. On the facts of this case, it is clear that the moment electricity tariff gets affected, the consumer interest comes in and public interest gets affected. This is in fact statutorily recognised by the Electricity Act in Sections 61 to 63 thereof. Under Section 61, the appropriate Commission, when it specifies terms and

conditions for determination of tariff, is to be guided inter alia by the safeguarding of the consumer interest and the recovery of the cost of electricity in a reasonable manner. For this purpose, factors that encourage competition, efficiency and good performance are also to be heeded. Under Section 62 of the Act, the appropriate Commission is to determine such tariff in accordance with the principles contained in Section 61. The present case, however, is covered by Section 63, which begins with a non obstante clause stating that notwithstanding anything contained in Section 62, the appropriate Commission shall adopt the tariff if such tariff has been 84 determined through a transparent process of bidding in accordance with the Guidelines issued by the Central Government. The Guidelines dated 19-1-2005 issued by the Central Government under Section 63 make it clear that such Guidelines are framed with the following objectives in mind: These Guidelines have been framed under the above provisions of Section 63 of the Act. The specific objectives of these Guidelines are as follows: (1) Promote competitive procurement of electricity by distribution licensees; (2) Facilitate transparency and fairness in procurement processes; (3) Facilitate reduction of information asymmetries for various bidders; (4) Protect consumer interests by facilitating competitive conditions in procurement of electricity; 85 (5) Enhance standardisation and reduce ambiguity and hence time for materialisation of projects; (6) Provide flexibility to suppliers on internal operations while ensuring certainty on availability of power and tariffs for buyers. xx xx xx xx 31. All this would make it clear that even if a waiver is claimed of some of the provisions of the PPA, such waiver, if it affects tariffs that are ultimately payable by the consumer, would necessarily affect public interest and would have to pass muster of the Commission under Sections 61 to 63 of the Electricity Act. This is for the reason that what is adopted by the Commission under Section 63 is only a tariff obtained by competitive bidding in conformity with Guidelines issued. If at any subsequent point of time such tariff is increased, which increase is outside the four corners of the PPA, even in cases covered by Section 63, the legislative intent and the language of Sections 61 and 62 86 make it clear that the Commission alone can accept such amended tariff as it would impact consumer interest and therefore public interest. (Emphasis supplied) The Apex Court in the afore-extracted judgment considered power of the regulatory commission and the change in the

agreements which cannot pass muster without the Commission being privy to such change.

35. The Apex Court, little earlier to the afore- extracted judgment, in the case of GUJARAT URJA VIKAS NIGAM LIMITED v. TARINI INFRASTRUCTURE LIMITED<sup>13</sup> has held as follows: 17. As already noticed, 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 through agreements for power produced for distribution and supply. As 13 (2016) 8 SCC74387 held by this Court in V.S. Rice & Oil Mills v. State of A.P. [V.S. Rice & Oil Mills v. State of A.P., AIR 1964 SC1781, K. Ramanathan v. State of T.N. [K. Ramanathan v. State of T.N., (1985) 2 SCC116 1985 SCC (Cri) 162]. and D.K. Trivedi & Sons v. State of Gujarat [D.K. Trivedi & Sons v. State of Gujarat, 1986 Supp SCC20 the power of regulation is indeed of wide import. The following extracts from the reports in the above cases would illuminate the issue:

17. 1.V.S. Rice & Oil Mills v. State of A.P. [V.S. Rice & Oil Mills v. State of A.P., AIR 1964 SC1781: (AIR p. 1787, para

20) 20. Then it was faintly argued by Mr Setalvad that the power to regulate conferred on the respondent by Section 3(1) cannot include the power to increase the tariff rate; it would include the power to reduce the rates. This argument is entirely misconceived. The word regulate is wide enough to confer power on the respondent to regulate either by increasing the rate, or decreasing the rate, the test being what is it that is necessary or 88 expedient to be done to maintain, increase, or secure supply of the essential articles in question and to arrange for its equitable distribution and its availability at fair prices.

17.2.K. Ramanathan v. State of T.N. [K. Ramanathan v. State of T.N., (1985) 2 SCC116:

1985. SCC (Cri) 162]. : (SCC pp. 130-31, paras 18-19) 18. The word regulation cannot have any rigid or inflexible meaning as to exclude prohibition. The word regulate is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. There is a

diversity of opinion as to its meaning and its application to a particular state of facts, some courts giving to the term a somewhat restricted, and others giving to it a liberal, construction. The different shades of meaning are brought out in *Corpus Juris Secundum*, Vol. 76 at p. 611:

89. Regulate is variously defined as meaning to adjust; to adjust, order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules or restrictions; to govern or direct according to rule; to control, govern, or direct by rule or regulations. Regulate is also defined as meaning to direct; to direct by rule or restriction; to direct or manage according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict. See also: *Webster's Third New International Dictionary*, Vol. II, p. 1913 and *Shorter Oxford Dictionary*, Vol. II, 3rd Edn., p. 1784.

19. It has often been said that the power to regulate does not necessarily include the power to prohibit, and ordinarily the word regulate is not synonymous with the word prohibit. This is true in a general sense and in the sense that mere regulation is not the same as absolute prohibition. At the same time, the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would therefore appear that the word regulation cannot have any inflexible meaning as to exclude prohibition. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy. (Emphasis supplied) The role of the Commission and its power to regulate is delineated in the aforementioned judgments. In the light of the judgments of the Apex Court, the Commission cannot be kept in the dark when the effect is amendment to the PPA. Therefore, I decline to accept the contention

of the learned counsel for the petitioners that the Commission has no jurisdiction to entertain the dispute.

36. Insofar as the contention that alternative remedy of appeal is to be filed by the petitioners in terms of Section 111 of the Act is concerned, the issue need not merit any consideration, in the light of preceding analysis with regard to action of the Commission being vitiated and the jurisdiction of the Commission being upheld. The contention of filing an 92 appeal before the Appellate Authority in terms of Section 111 of the Act is not gone into.

37. For the foregoing reasons, I hold that the action of the Commission in soliciting petitions to be filed before it after having pre-judged the issue is in violation of every known canon of principles of natural justice and is vitiated by bias; the jurisdiction of the Commission cannot be taken away on the plea of the petitioners that parties cannot confer jurisdiction; parties have not conferred jurisdiction, the jurisdiction is conferred by the Act and the PPA between the parties.

38. In the result, I pass the following:

## ORDER

(a) All the writ petitions are allowed, the impugned orders passed by the Commission in all these cases stand quashed. (b) These matters are remitted back to the hands of the Commission for appropriate resolution of the dispute bearing in mind the observations made in the course of the order 93 with regard to the controversy brought before it. (c) The Commission shall also consider all subsequent events that have taken place after passage of the impugned orders, while passing orders afresh, in the case now remitted. (d) Parties to the lis are at liberty to place on record all such documents that would advance their cause. (e) The Commission shall consider the claims of the petitioners and pass appropriate orders within six months from the date of receipt of a copy of this order. (f) Interim orders granted and subsisting, if any, in all these cases shall continue to operate till the Commission takes up the case for consideration of an interim prayer, if sought for by the petitioners. (g) All the contentions, except the ones decided in this order, of both the parties are kept open. Sd/- JUDGE bkp CT:MJ

