IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 10634 OF 2021 (GM-KEB)

BETWEEN:

SOLVIS ENERGIE INDIA PRIVATE LIMITED
A COMPANY REGISTERED UNDER THE
PROVISIONS OF THE COMPANIES ACT 2013
HAVING ITS REGISTERED OFFICE AT
NO.13/14, VENKATESHWARA BUILDING
RESERVOIR STREET, KUMARA PARK (WEST)
BENGALURU - 560 020
REPRESENTED BY ITS DIRECTOR
MR. ASHOK KUMAR M.S.

... PETITIONER

(BY SRI. SHRIDHAR PRABHU., ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY
2ND FLOOR, VIKASA SOUDHA
DR B R AMBEDKAR VEEDHI
BENGALURU - 560 001
(REPRESENTED BY ITS
ADDITIONAL CHIEF SECRETARY)

2. KARNATAKA POWER
TRANSMISSION CORPORATION LIMITED
A COMPANY REGISTERED UNDER
THE PROVISIONS OF THE COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
2ND FLOOR, KPTCL, KAVERI BHAVAN
BENGALURU - 560 009
(REPRESENTED BY ITS MANAGING DIRECTOR)

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

... RESPONDENTS

(BY SRI. S. SRIRANGA., SENIOR COUNSEL FOR
SMT. SUMANA NAGANAND., ADVOCATE FOR R2 & R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, THEREBY SETTING ASIDE THE ORDER DATED 3RD DECEMBER 2019 IN OP NO. 73 OF 2018 PASSED BY THE KARNATAKA ELECTRICITY REGULATORY COMMISSION PRODUCED HEREIN A ANNEXURE-A AND ETC..

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 15.02.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this court seeking for the following reliefs:

i. Issue a Writ of Certiorari or in the nature of Certiorari or any other appropriate writ, order or direction thereby setting aside the order dated 3rd December, 2019 in OP No.73 of 2018 passed by the Karnataka Electricity Regulatory Commission produced herein as Annexure-A;

ii. *Issue a writ of Mandamus or in the nature of Mandamus or any other appropriate writ, order or direction thereby directing the 3rd Respondent to pay tariff to the petitioner at the rate of Rs.6.51 paise per unit for the energy delivered from the date of Commissioning of the Petitioner's project;*

iii. *Issue a writ of Mandamus or in the nature of Mandamus or any other appropriate writ, order or direction thereby directing Mandamus to quash the Invoice dated 23rd February, 2018 consequently to refund the penalty charges of INR 2,40,000/- (Rupees Two Lakh Forty Thousand only) illegally collected from the petitioner produced herein as Annexure-B;*

iv. *Pass such other and incidental Orders as may be appropriate under the facts and circumstances of the case in the interest of justice and equity.*

2. The Government of Karnataka vide notification dated 22.05.2014 had issued a notice inviting tender inviting private participation for the generation of solar power through Karnataka Renewable Energy Limited [`KREDL']. The petitioner applied vide online application for the establishment of 2 MW capacity plant. After evaluation of the application, the same was accepted and a letter dated 17.03.2015 was issued to set up Solar Power Plant [SPP] at Harallu village, Kasaba Hobli, Kanakapura Taluk, Ramanagara District under 1-3 MW Farmers Scheme.

3. The petitioner executed a Power Purchase Agreement [PPA] on 2.07.2015 with the 3rd respondent. As per the said PPA, the effective date of the agreement is stated to be the signing of the agreement. The scheduled commissioning date [SCD] is stated to be 18 months from the effective date. Thus, the petitioner being the project proponent was required to commission the project by 1.01.2017, the agreement having been executed on 2.07.2015.

4. On a technological audit being done, the land at Kanakapura was found to be technically unsuitable for establishing the Solar Power Plant (SPP) due to the solar radiation being on a lower end and the topography not being suited for the establishment of a SPP. The petitioner, therefore, purchased an alternate land at Challakere, Chitradurga district and approached the 2nd respondent-KPTCL vide a representation dated 2.09.2015 seeking permission to shift the project site from Kanakapura to Challakere, Chitradurga District.

5. The Government of Karnataka vide a cabinet decision 18.01.2017 considered the representation of the petitioner and other similarly situated farmers for shifting of project location and vide G.O. dated 21.1.2017, the Government of Karnataka revised the applicable tariff from Rs.8.40/- to Rs.6.51 per unit and accorded six months time to complete the project, as also permitted shifting of the project. Subsequent thereto, the petitioner took steps to secure necessary permission, but, however, on 4.02.2017, KREDL informed the petitioner that Challakere taluk had crossed 200 M.V. capacity and that no new permission would be granted to the petitioner. The petitioner approached the State Government explaining the difficulty, as also the fact that she had invested huge amounts of money in Challakere and requested for permission in respect of the said land.

6. On 17.4.2017, the State government accorded permission to the petitioner and thereafter, KREDL

on 19.04.2017, accorded permission to the petitioner to go ahead with the project at Challakere taluk. A Supplementary Power Purchase Agreement [SPPA] was executed on 28.04.2017, modifying the original PPA to indicate the formation of SPV viz., the petitioner. Though six months extension had been given by the State government under the SPPA dated 28.4.2017, the petitioner was only given time till 1.07.2017 to implement the project. Acting on the same, the petitioner established the project, and a certificate of commissioning was issued on 1.07.2017, which is well within the time prescribed under the SPPA.

7. Despite the commissioning certificate having been issued, the respondent contended that there was no such commissioning since there was no flow of electricity in the lines, the commissioning would be said to be complete only on flow of electricity and as such, contended that the flow of electricity having occurred only on 7.7.2017, the tariff rate as on that

date would be Rs.4.36, the petitioner would be entitled to such revised generic tariff and not the earlier tariff of Rs.6.15 per Unit.

8. The KERC vide its communication dated 4.10.2017 was of the opinion that the commissioning had not occurred on 1.07.2017 since there was no injection of electricity into the grid by the petitioner. The KERC further observed that BESCOM while forwarding the application, forwarded the same without data and information and many a time without scrutiny or validation of the authenticity of the data. In that background, the KERC had further observed that since BESCOM was not furnishing its views and recommendation on the proposal, the commission was finding it difficult to either accept or reject the proposal and directed BESCOM to henceforth submit proposals with verification and authentication of the data and returned the SPPA submitted for approval under cover of its letter dated 4.10.2017.

9. It is thereafter that the BESCOM vide its letter 7.12.2018 called upon the project proponent to submit various documents. Then it was contended that the log extract of KPTCL Station pertaining to injected power to the KPTCL grid was without attestation by the concerned officials and called upon the petitioner to furnish proper documents.

10. Aggrieved by the same, the petitioner had approached the KERC in O.P. No.73/2018 which came to be disposed on 3.12.2019 in terms whereof the KERC dismissed the claim of the petitioner and held that the petitioner would be entitled to revised tariff of Rs.4.36 only per unit under PPA and rejected all other contentions. It is aggrieved by the same that the petitioner is before this Court challenging the said order.

11. The submission of Sri.Shridhar Prabhu, learned counsel for the petitioner is that,

11.1. Commercial operation date under Article 1.1(vii) means the date on which the project is

available for commercial operation as certified by BESCOM/KPTCL. There is no particular requirement of injection of power in terms of Article 1.1(vii). The meaning given by the KERC is artificial in nature inasmuch as KERC could not have travelled beyond the terms of the agreement by imposing a new condition after implementation of the project.

11.2. Once the commissioning certificate is issued by the BESCOM and KPTCL, the plant can be said to be available for commercial operation which is what is required under 1.1(vii). This requirement having been satisfied by the petitioner, the respondents are only seeking to cause harm and injury to the petitioner. He submits that even otherwise in terms of clause 2.5 of the PPA if the petitioner and or its predecessor was prevented from performing its obligations under clause 4.1 by the due date on account of any BESCOM event of default or

Force Majeure Events affecting the BESCOM or Force Majeure Events affecting the SPD, the time for performance would stand extended.

11.3. In the present case, there being a requirement to shift the solar plant from Kanakapura to Challakere and in Challakere there being delay in grant of permission by the authorities contending that the solar plant capacity of Challakere having crossed 200 MV, permission to the petitioner cannot be granted, would amount to a force meajure event in terms of clause 2.5.1 thereof.

11.4. The commissioning certificate having been issued on 1.7.2017, as per the necessary interconnection accorded by the Chief Engineer (Elec), KPTCL, Tumkur dated 1.7.2017 and the commissioning approval accorded by the Chief Electrical Inspectorate, Government of Karnataka, Bangalore dated 1.07.2017 was

issued and in the minutes of meeting of the same date, there is a recordal made of the equipment being connected and working. This fact being recorded, the representatives of both the KPTCL and BESCOM being present, he submits would amount to a certificate of commissioning which ought to have taken into note of by both KPTCL and BESCOM.

11.5. He relies on the data sheets of KPTCL to contend that the plant being commissioned in the evening of 1.7.2017, there is no power which could be injected into the system. However, immediately thereafter power has been injected into the system which is to the notice of one and all. On this basis, he submits that the order passed by the KERC is required to be set aside.

11.6. He relies on the following decisions in support of his submissions:

11.7. In the case of **Madhya Pradesh Power Management Co. Ltd., and Ors vs. Dhar Wind Power Projects Pvt. Ltd. and Ors,**[1] more particularly para No.26 to 29 thereof, which are reproduced hereunder for easy reference:

> *26. In line with the above provisions, the guidelines that were issued by the first appellant on 18 March 2016 provided a format for the issuance of commissioning certificates. The format required readings of: (i) WTG meters; (ii) main billing meters; and (iii) check billing meters. The format required the submission of this data in order to establish the date on which a particular project had been commissioned. The actual date of commissioning would determine the applicable tariff; the tariff of Rs 5.92 per unit would apply to projects which were commissioned on or before 31 March 2016, while the new rate of Rs 4.78 per unit would apply to projects which were commissioned on or after 1 April 2016. Requiring the SLDC to submit data of the actual injection of power into the grid was with the objective of establishing the actual commissioning of the project.*
>
> *27. In the present case, the principal submission of the appellants is that the data which was furnished by the SLDC indicates that the actual injection of power into the grid by the first respondent took place on 1 April 2016. It is on that basis that the first appellant has submitted that the commissioning certificate was not in accordance with the prescribed format and had*

[1] Civil Appeal Nos.9218-9219, 9220-9221,9222 and 9223 of 2018 Decided on 25.07.2019

to be revoked. Before this Court, the data which has been furnished by the SLDC is not in dispute. Indeed, that is the basis on which Mr Vivek K Tankha, learned senior counsel urged his alternative submission that in any event, even going by the SLDC data, it is evident that the power was injected into the grid on and from 1 April 2016.

28. On reviewing the documentary material on the record, we are not prepared to accept the view which has weighed with the High Court, namely, that the commissioning of the project was completed by 31 March 2016. The certificate of commissioning which has been issued by the Superintending Engineer is belied by the objective factual data available from the SLDC which is a statutory body constituted under Section 31 of the Act. The objective data on the record indicates that the injection of power into the grid took place on 1 April 2016. Hence, we are of the view that this should be the basis on which the claim for the entering into a PPA should be founded.

29. Since the factual data has been placed before this Court, we are of the view that the project of the first respondent was commissioned on 1 April 2016 since the SLDC data indicates the injection of power into the grid with effect from that date. On the basis of the commissioning of the project on 1 April 2016, we find merit in the alternative submission which has been urged on behalf of the first respondent in the appeals that the Tariff Order that must apply is the Tariff Order dated 17 March 2016. The first respondent was before the Madhya Pradesh High Court in writ proceedings espousing its claim to the benefit of a higher rate of Rs 5.92 per unit on the basis of the earlier Tariff Order and on the basis that the commissioning of its project had taken place on 31 March 2016. The first respondent was bona fide pursuing its claim in that regard which found acceptance in the impugned judgment and order of the High Court. Though we have

> *differed with the view which has been taken by the High Court, we are of the view that it would be unfair to deny to the first respondent the benefit of the rate which came to be prescribed by the Tariff Order of 17 March 2016. The rate which was prescribed by that Tariff Order of Rs 4.78 per unit was to apply during the control period beginning from 1 April 2016 and ending on 31 March 2019 and that rate would continue to govern the life cycle of 25 years, as prescribed by Para 5 of the Tariff Order. The first respondent cannot be denied a parity of treatment, as has been allowed to other projects of a similar nature which would be governed by the control period stipulated in Para 5 of the Tariff Order dated 17 March 2016.*

11.8. Relying on the above, he submits that the commissioning certificate having been issued would have to be taken into consideration to determine the date of commissioning.

11.9. In the case of **Eswari Green Energy LLP vs. KERC & Connected Matters**[2]**,** more particularly para No.51, 60 and 61 thereof, which are reproduced hereunder for easy reference:

> *51. As noticed earlier, the Commissioning Certificate issued by HESCOM clearly records that the plants of the appellants were commissioned on 31.03.2017, the same having been granted on the basis of the inter-connection approval*

[2] Aptel in APL No. 180-184 of 2018

from the Chief Engineer. This implies that the plants were fully ready and commissioned before the cut-off date.

60. The definition of "Commercial Operation Date" as used in PPAs has been noted earlier. As per the said definition, the commercial operation date is not contingent on injection of electricity into the grid but it signifies the date on which availability of the plant for commercial operation is attained. In the case of WPPs of the appellants, the availability had been achieved on 31.03.2017, as affirmed by the Commissioning Certificate authenticated by the respondent HESCOM itself. The reference made by HESCOM and the State Commission to the actual energy injection and the log book data to argue that the appellants' plants were not commissioned is contrary to the definition of Commercial Operation Date in the PPA.

61. We, thus, reject the theory as above propounded by the respondent HESCOM vis-à-vis the Commissioning Certificates while noting that injection of electricity into the grid from 31.03.2017 onwards was not even necessary for COD to be achieved since that depended on availability regarding which there is no doubt.

11.10. Relying on the above he reiterates that the commissioning certificate authenticated by the HESCOM would have to be taken into consideration to determine the commercial date of operation.

11.11. In the case of **ES Solar Private Limited & Anr. vs. Bangalore Electricity Supply Company Limited (BESCOM) & Ors[3]**., more particularly para No.26 thereof, which is reproduced hereunder for easy reference:

> *26. It is also argued that the very fact that the projects were commissioned on 16.10.2017, it automatically goes to show that synchronisation was achieved earlier. They also relied upon Certificate dated 25.10.2017, which also records that the project was commissioned on 16.10.2017. According to the Appellants' counsel commissioning certificate records the details as to when the plants were synchronised and power was generated and supplied to the Grid line, which is conclusive proof of commencement of the project. The said certificate belongs to KPTCL, an independent authority, which has no stakes in the matter, therefore, has to be relied upon, which confirms the fact that the power was generated and supplied to the Grid on 16.10.2017 itself. When the bills for the months of October 2017 to February 2018 were raised calculating the tariff on contractual rate of Rs.6.10/kWh, Respondent No.1 sent payment vouchers back indicating that the tariff was reduced to Rs.4.36/kWh as against Rs.6.10/kWh. Apart from this Rs. 20 lakhs was deducted towards damages on the ground that there was delay in achieving COD. According to the Appellants' counsel this was uncalled for since there was no delay on the part of the Appellants in achieving COD in terms of the PPA. This reduction in tariff was due to Respondent No.1's opinion that COD was not achieved on 16.10.2017. According to the Appellants this action of Respondent No.1*

[3] Aptel in APL No. 332 of 2018 & 333 of 2018, Decided on 08.05.2019

was uncalled for, since the terms of PPA i.e., Article 13.7 clearly indicates that if there is any dispute with regard to bills/invoices raised by the Appellants, 95% of the amount claimed has to be deposited and then dispute has to be resolved. Therefore, learned counsel for the Appellants contend that contrary to the said terms of contract, Respondent unilaterally without complying with terms of Article 13.7 of the PPA not only reduced the tariff per kilowatt hour but also imposed Rs.20 lakhs towards so called liquidated damages so far as Bidar and Rs.40 lakhs so far as Bagepalli projects are concerned. Appellants further argued that this action of Respondent No.1 has left the Appellants high and dry in the matter of recovering their investment, leave alone return on investment, therefore, the Appellants contend that they are prejudiced with the illegal action of Respondent No.1, which resulted in the whole project being unviable.

11.12. Relying on the above, he submits that for the plant to be operational and commissioned, the petitioner is required to carry out several activities, it is only after the said plant was completely ready that it could be put on to the grid which has been certified by the officials of the respondents. Once such certification is done, the generation of the reports would take place. Assuming but not conceding that there is any delay, he submits that the plant having

been commissioned, the delay in injection cannot deprive the petitioner of the rate of power as on the date of commissioning.

11.13. In the case of **Bangalore Electricity Supply Limited vs. E.S. Solar Power Pvt Ltd and Ors[4],** more particularly para No.21 thereof, which is reproduced hereunder for easy reference:

> *21. The next contention of the Appellant is that actual injection of power into the Grid was on 17.10.2017 and as the Scheduled is 16.10.2017, the reduction of the tariff in view of the delay of 1 day in commissioning is justified. The alternate submission that is made by the Respondents that even assuming that the Scheduled Commissioning Date is 16.10.2017 and not 17.10.2017, the Respondents commissioned the Solar Plants on 16.10.2017 itself. According to the Respondents, the Appellant committed an error in penalizing the Respondents on a wrong premise that the actual injection of power is required to show that the Solar Plants were commissioned. The Commission answered the point in favour of the Appellants by holding that actual injection of power is necessary to determine the date of commissioning of the Plant. The Appellate Tribunal reversed the findings recorded by the Commission on this aspect by relying upon the Commissioning certificate issued by the KPTCL which is to the effect that the Solar*

[4] Civil Appeal Nos.9273-74 of 2019
Decided On. 03.05.2021

> *Plants were commissioned on 16.10.2017 itself. There is no dispute that the power was injected from the solar plants on 17.10.2017. In view of the conclusion reached by us on the issue relating to the Scheduled Commissioning Date being 17.10.2017, it is not necessary to adjudicate the point relating to the requirement of actual injection of power into the Grid to decide the date of commissioning. At the request of Mr. Balaji Srinivasan, learned counsel for the Appellant, four weeks time is granted to implement the judgment of the Appellate Tribunal.*

11.14. By relying on the above decisions, he submits that there is no requirement of injection of power in the grid to contend that the plant has been commissioned.

11.15. He relies on the Judgment of this Court in **Aadyaarush Power Projects Pvt. Ltd. -v- State of Karnataka and others**[5], more particularly para 30, which is reproduced hereunder for easy reference:

> *30. The very agreement also stipulates the scheduled commissioning date and the effective date. The effective date would mean signing of the agreement by the parties and the scheduled commission date would be 18 months from such*

[5] W.P. No.52028/2018 dt. 20.09.2021

> *effective date. With the action of the petitioners submitting representations to BESCOM 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.*

11.16. By relying on the above, he submits that action on part of KERC being vitiated this court ought to have exercised powers to set-aside an order passed by the KERC which has not considered the true facts and circumstances.

11.17. He relies on the Judgment in **MEPGEN Solar Private Limited -v- Bangalore electricity supply Company Limited and another**[6], more particularly para 4, 5 and 6 thereof, which are reproduced hereunder for easy reference:

> ***4.*** *In the matter of M/s Panchakshari Power Projects LLP V. Karnataka Electricity Regulatory Commission & Ors. (Appeal no. 279 of 2018) decided on 12.08.2021, this tribunal has held, inter alia, that it is the bounden duty of all stakeholders*

[6] Appeal No.244/2021 dt. 24.11.2022

to promote the growth and sustenance of renewable energy:

"... 35. We tend to add that it is the policy of Government of India that as much as possible, renewable energy sources must be tapped and must be encouraged since the usage of coal in thermal plants in the long run would leave an impact on the environment which would not be congenial atmosphere for the future generation. Therefore, though the cost of energy from renewable sources is much higher than thermal plants, the policy of the Government in the larger interest of health of the public is to safeguard the environment and create a proper environment. Hence, renewable energy sources as much as possible must be encouraged. In fact, the promotion of renewable energy very much indicated in the Statute itself i.e., Section 86(1)(e) where the obligation is placed on the concerned authorities that is the Commission and all the stakeholders to promote renewable energy sources.

5. *In Bangalore Electricity Supply Company Limited v. M/s Panchakshari Power Projects LLP (Civil Appeal no. 897 of 2022), the Hon'ble Supreme Court was, inter alia, pleased to uphold the aforesaid Judgment of this Tribunal.*

6. *In Chennamangathihalli Solar Power Project LL.P. v. Bangalore Electricity Supply Company Limited (Appeal no. 351 of 2018) decided on 14.09.2020, this Tribunal took the view, inter alia, that (i) delays due to the approval process on account of the Government or Governmental departments would constitute force majeure under the PPA's; (ii) the Discoms had agreed to and/or*

granted extension of time and (iii) there could not have been any reduction in the bid tariff, inter alia, in the following words:

"..7.10 ...However, what thus transpires that there has been considerable delays on the part of the Respondents/Govt. agencies in processing of applications and granting the respective approvals. Thus, Respondents cannot absolve itself from the burden of such delays in execution/completion of the solar projects of the Appellants. In fact, it is pertinent to note that the Govt. as well as State/Discom considering above eventualities granted an extension of six months in COD. Contrary to this, the State Commission rejected the extension with imposition of liquidated damages to corresponding period only on the premise that it is a matter of dispute between the Appellants and the first Respondent. (Pg 69-70)

...

8.9 In view of these facts and anticipated slippage in the COD, the Appellants apprised the first Respondent of the same and requested for extension of COD by six months as admissible under the PPA. It is not in dispute that the total completion period of 18 months from the effective date was provided considering all the activities including various approvals, procurement of equipment, installation and commissioning and final safety clearance from Chief Electrical Inspector for charging the line etc. However, in receiving approvals from Govt. instrumentalities for land conversion, evacuation arrangement, safety clearances etc., the Appellants not only faced severe difficulties but also considerable delay of 7-8 months. The Appellants accordingly put forward the case to Govt. of Karnataka as well as first Respondent for COD extension by six months which

after due diligence and prudence, the Govt./first Respondent acceded to. Before further evaluation of the rival contentions of the parties regarding the extension of time, we take note of various clauses of PPA specially Clause 2.5 which is reproduced below:—

"2.5 Extensions of Time

2.5.1 In the event that the SPD is prevented from performing
obligations under Clause 4.1 by the Scheduled Commissioning Date due to:

(a) Any BESCOM Event of Default; or

(b) Force Majeure Events affecting BESCOM; or

(c) Force Majeure Events affecting the SPD.

2.5.3 In case of extension occurring due to reasons specified in clause 2.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than 6 (six) months.

2.5.6 As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement."

It is evident from the above that due to reasons specified in Clause 2.5.1(a), Scheduled

Commissioning Date could be extended up to six months and as a result of such extension, the newly determined COD and expiry date shall be deemed to be the scheduled COD and the expiry date for the purpose of this agreement. (78-80)

8.10 Regarding force majeure events, Clause 8.3 of PPA, it is noted that under sub-clause (vi), it is provided that "inability despite complying with all legal requirements to obtain, renew or maintain required licenses or legal approvals" will also attribute to force majeure. In view of these provisions under the PPA, we are of the opinion that the delay in receiving various approvals/clearances by the Govt. and its instrumentalities which were beyond the control of the Appellants should also be treated as an event of force majeure under sub-clause (vi) of clause 8.3 which has directly and severely affected the execution of the solar projects. To be more specific, if the approval for land conversion is received on last day of September, 2016, it becomes extremely difficult to achieve COD on 03.01.2017 as envisaged under the PPA. Moreover, the grant of extension of the Scheduled COD was accorded by Govt. of Karnataka and in turn, by first Respondent after complying with due procedures and applying its diligence and prudence under the four corners of the PPA and not beyond. (Pg 80)

8.11 We have also taken note of various judgments of Hon'ble Supreme Court relied upon by the Appellants as well as Respondents and opine that these judgments have been passed considering the matters on case to case basis and may not be quite relevant in the facts and circumstances of case in hand. For example, in the case of All India Power Engineers Federation vs. Sasan Power Ltd., the Apex Court does not lay down any proposition that

even in cases wherein there is no enhancement of tariff and the parties exercise powers under the PPA, even then the Commission had any inherent power. In the present case, neither has there been any increase in the tariff nor was there any exercise of power outside the PPA and hence the said judgment relied upon by the Respondents is clearly distinguishable. (Pg 81) ...

8.14 We, now consider the other issue viz. of reduced tariff as now granted by the State Commission based on Article 5 of the PPA of which sub-clause 5.1 stipulates that the SPD shall be entitled to receive the tariff of Rs. 8.40 per unit based on KERC tariff order dated 10.10.2013. However, if there is a delay in scheduled commissioning and during such period, there is a variation in the KERC tariff then the applicable tariff shall be lower of the following:—

i) Rs. 8.40 per unit;

ii) Varied tariff applicable as on the date of commissioning tariff.

While referring the above Article of the PPA, it is significant to note that the applicability of the varied tariff is subject to the Clause 2.5 of the PPA which provides for extension up to six months in case of various events of default affecting SPD in completion of the project. (Pg 82-83)...

9.1 ... However, as the COD extension was granted under the signed PPA between the parties and after applying, due diligence in the matter considering all prevailing facts and matrix of events, the State Commission ought to have considered the same

and approved so as to meet the ends of justice. Needless to mention that the PPA' Terms & Conditions were duly approved by the State Commission which crystallised the rights of the parties. (Pg 84-85)

9.2 The findings of the State Commission in the impugned order clearly reflect that it has ignored the vital material placed before it such as statement of objections filed by first Respondent, recommendations of State Govt. dated 23.06.2017 and communication of MNRE, Govt. of India dated 28.07.2017 regarding grant of COD extension to the solar power developers. Further, it is mandate upon the State Commission to promote co-generation and generation of power from renewable sources of energy, however, in the present case, the State Commission has suo motto interfered for the ultimate loss to RE developers who are land owning farmers and had participated in the programme of the Govt. for solar power development. In fact, the entire solar project is structured on the basis of assured tariff as per Article 5.1 of the PPA being an incentivised tariff and financial institutions have advanced loans on the basis of the assured tariff as per PPA...."

11.18. Based on the above, he submits that the above petition requires to be allowed.

12. Sri.S.Sriranga, learned Senior counsel for respondents No.2 and 3 submits that,

12.1. The petitioner did not inject electricity on 1.7.2017 and that the injection took place on 10.7.2017. It is for this reason that the tariff as applicable as on 10.07.2017 is made available to the petitioner, the petitioner cannot have any grievance in relation thereto. If at all the petitioner intends to avail tariff agreed under the SPPA, the project ought to have been commissioned and power injected from the plant by 1.7.2017. Not having done so, the reliefs sought for by the petitioner cannot be granted.

12.2. The petitioner has an alternative and efficacious remedy in terms of Section 111 of the Electricity Act, 2003 wherein the petitioner can approach APTEL as against any order of the KERC. Whenever any statutory appeal is provided it is required for the parties to avail that remedy instead of Constitutional Court. The order being appealable, the only remedy

available to the petitioner is to file such an appeal. In this regard, he relies on the decision in **Vatsala Bellary -v- KERC & Others[7],** more appropriately para 2 which is reproduced hereunder for easy reference:

> *"The order impugned herein at Annexure-A is an appealable order. It is well settled that no writ petition is maintainable more particularly when the factual aspects are involved, circumventing the alternative and efficacious remedy of appeal available under the statute. Hence, this Court deems it appropriate to relegate the petitioner to avail the statutory remedy of appeal available for redressal of grievance. If such an appeal is preferred by the petitioner within a period of four weeks from the date of receipt of certified copy of the order, the same shall be considered by the Appellate Authority on merits without objecting to the aspect of limitation. All rights and contentions of the parties are left open".*

12.3. Relying on the above decision, he submits that this Court ought not to exercise jurisdiction in the matter and relegate the petitioner to appellate Tribunal.

[7] [W.P. No.355569/2018]

12.4. **Graphite India -vs- KERC & Others**[8], more particularly para 35 thereof, which is reproduced hereunder for easy reference:

> *"35. In view of the aforesaid reasons, the writ petitions are dismissed as not maintainable with liberty to the petitioners to avail an alternative remedy of preferring an appeal as contemplated under the provisions of Section 111 of the Kamataka Electricity Act within three weeks from the date of the receipt of a copy of this order."*

12.5. Relying on the above, he submits that there is an alternative and efficacious remedy in terms of Section 111 which requires an appeal to be filed before the State Commission and the present petition is not maintainable.

12.6. He relies upon the decision in **KPTCL -v- Hassan Thermal Power Pvt. Limited**[9] 3893/2019, more particularly para 48 and 49 thereof, which are reproduced hereunder for easy reference:

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[8] [W.P. No. 12576/2018 dt. 21.06.2018]
[9] WA 3783.2019

48. Section 111 of the Electricity Act, 2003 reads as under: "Section 111. (Appeal to Appellate Tribunal): -(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity: Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal , deposit the amount of such penalty: Provided further that wherein any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty. (2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period. (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders 48 thereon as it thinks fit, confirming, modifying or setting aside the order appealed against. (4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be. (5) The appeal filed before the Appellate

Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal: Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period. (6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit."

49. The aforesaid statutory provision of law makes it very clear that against the order passed by KERC there is an alternative remedy and the parties should have been relegated to approach the Appellate Tribunal. A similar view has been taken by this Court in the case of Graphite India Ltd., (supra)."

12.7. Relying on the above he reiterates that alternative remedy is available by way of an appeal.

12.8. Injection of power is an essential pre-requisite for commissioning inasmuch as without power

flowing through the Grid of KPTCL, it cannot be said that the plant has been commissioned. It is only upon power being injected that a plant could be said to be commercially in operation. He reiterates the definition of COD as extracted hereinabove from the above PPA, but submits that commercial operation would include injection of power.

12.9. Though there is a certificate of commission issued on 1.07.2017 what was required to be done by the petitioner was to show injection of power. The power not having been injected until 1.07.2017, the plant cannot be said to be commissioned or the commercial operation thereby achieved.

12.10. The obligation on part of 3rd respondent to make payment commencing only from the date of injection of power into the Grid, the PPA would come into operation only on that date and as such, the injection of power ought to

have been made prior to or on 1.07.2017. In this regard he relies on the decision in **M.P. Power Management Co. Ltd. v. Dhar Wind Power Projects (P) Ltd.**[10], more particularly para 26 and 27 which are reproduced hereunder for easy reference:

> **26. On reviewing the documentary material on the record, we are not prepared to accept the view which has weighed with the High Court, namely, that the commissioning of the project was completed by 31.3.2016. The certificate of commissioning which has been issued by the Superintending Engineer is belied by the objective factual data available from the SLDC which is a statutory body constituted under Section 31 of the Act. The objective data on the record indicates that the injection of power into the grid took place on 1-4-2016. Hence, we are of the view that this should be the basis on which the claim for the entering into a PPA should be founded.*
>
> *27. Since the factual data has been placed before this Court, we are of the view that the project of the first Respondent was commissioned on 1-4-2016 since the SLDC data indicates the injection of power into the grid with effect from that date. On the basis of the commissioning of the project on 1-4-2016, we find merit in the alternative submission which has been urged on behalf of the first respondent in the appeals that the Tariff Order that must apply is the Tariff Order dated 17-3- 2016.*

[10] [(2020)18 SCC 657]

The first respondent was before the Madhya Pradesh High Court in writ proceedings espousing its claim to the benefit of a higher rate of Rs 5.92 per unit on the basis of the earlier Tariff order and on the basis that the commissioning of its project had taken place on 31- 3-2016. The first respondent was bona fide perusing its claim in that regard which found acceptance in the impugned judgement and the order of the High Court. Though we have differed with the view which has been taken by the High Court, we are of the view that it would be unfair to deny to the first respondent the benefit of the rate which came to be prescribed by the Tariff order of 17-3-2016, The rate which was prescribed by that Tariff Order of Rs 4.78/- per unit was to apply during the control period beginning from 1-4-2016 and ending on 31- 3-2019 and that the rate would continue to govern the life cycle of 25 years, as prescribed in Para 5 of the Tariff Order. The first Respondent cannot be denied a parity of treatment, as has been allowed to other projects of a similar nature which would be governed by the control period stipulated in Para 5 of the Tariff order dated 17-3-2016."

12.11. Relying on the above, he submits that it is not the date of commissioning which is relevant but it is the date of injection of electricity into the grid that is important. The same having been taken into account in the present matter, no fault could be found therewith.

12.12. There being a delay in commissioning of the project which is attributable to the petitioner, the respondent would not be bound to make payment of the tariff rates as per the PPA but would only be liable to make payment of the tariff rates as prevalent on the date of commissioning which would include date of injection of power. In this regard, he relied on the decision in **Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd.**[11]**,** more particularly para 39 which is reproduced hereunder for easy reference:

> *"39. Apart from that both Respondent 2 and the Appellate Tribunal failed to notice and the first respondent conveniently ignored one crucial condition of the PPA contained in the last sentence of Para 5.2 of the PPA:*
>
> *"In case, commissioning of solar power project is delayed beyond 31- 12-2011, GUVNL shall pay the tariff as determined by the Hon'ble GERC for solar projects effective on the date of commissioning of solar power project or abovementioned tariff, whichever is lower.*
>
> *(emphasis supplied)*

[11] [(2016)11 SCC 182]

The said stipulation clearly envisaged a situation where notwithstanding the contract between the parties (the PPA), there is a possibility of the first respondent not being able to commence the generation of electricity within the "control period" stipulated in the First Tariff Order. It also visualised that for the subsequent control period, the tariffs payable to a Projects/power producers (similarly situated as the first respondent) could be different. In recognition of the said two factors, the PPA clearly stipulated that in such a situation, the first respondent would be entitled only for lower of the two tariffs. Unfortunately, the said stipulation is totally overlooked by the second respondent and the Appellate Tribunal. There is no whisper about the said stipulation in either of the orders."

12.13. Relying on the above, he submits that the project having been commissioned during the subsequent control period, it is the tariff as applicable in that period which would govern the matter and not the tariff in the earlier control period.

12.14. The decision of **APTEL** in **Appeal No. 169/2015 Earth Solar Private Limited v. Punjab State Electricity Regulatory**

Commission[12]**,** at para 10.6 which is reproduced hereunder for easy reference:

> *"We have carefully considered the submissions of the counsel appearing for both the parties and also gone through the findings of the State Commission in the impugned order. What thus emerges therefrom that in the order dated 14.11.2013, it had been clearly stipulated that the tariff so agreed would be applicable only when the projects are commissioned before 31.03.2015. It is also relevant to note that the Appellant has miserably failed in notifying the force majeure event particularly as per procedures laid down in the IA read with PPA and rather adopted a very liberal approach in pursuing statutory approvals as well as soliciting the intervention of the Respondents in resolving the issues pending with various Govt agencies. The active construction period has actually been to the tune of 4 months whereas the time provided for commissioning of the project was 13 + 1 ½ months. We have also taken note from the documents placed before us that it was a clear indication to all the project developers that in case their projects are not commissioned within the control period ending 31.03.2015, the tariff shall be re- determined by the State Commission in line with the terms and conditions of the IA/PPA. It is not a dispute that the tariff for the subsequent control period of Rs 7.19 has been considered by the State Commission based on the prevailing tariff discovered through competitive bidding process. We are of the considered opinion that having regard to its own order dated 14.11.2013 and terms and conditions provided in the IA/PPA, the State Commission has passed the impugned order in accordance with law and considering all*

[12] [2019 SCC OnLine APTEL 41 dt. 11.01.2019]

the aspects associated therein. We this, do not find any error, much less material irregularity or any legal infirmity in the impugned order. Hence, interference of this Tribunal is not called for."

12.15. Relying on the above he submits that there being no force majeure event, any delay cannot be condoned. The injection of power on a particular date would indicate that the equipment was ready to produce power on that date and not earlier.

12.16. The order of the KERC being a factual finding of KERC cannot be interfered with by this Court. The KERC having formulated several issues having appreciated all the facts on record in relation thereto and KERC having come to a categorical finding that there was no injection of power in the said Grid from the solar plant of the petitioner, it cannot be said that there is any commissioning and this finding of fact cannot be interfered with by this Court. It is on

that basis that the KERC has come to a conclusion that the tariff as on the date on which the injection of power had been made would be applicable.

12.17. The present matter relating to electricity tariff, he submits that judicial review in relation thereto is not applicable. The fixation of tariff is a statutory function of KERC being an expert body and as such, it is KERC alone who is competent to consider and adjudicate the issues relating to tariff. In this regard, reliance is placed upon the decision of the Hon'ble Apex Court dated 21.01.2019 in **Reliance Infrastructure Ltd. v. State of Maharashtra[13], (2019) 3 SCC 352**, more particularly para 31 thereof which is reproduced hereunder for easy reference:

> "31. As part of the process, the delegate has to bear in mind the interests of diverse stakeholders including consumers and producers. The process of

[13] Civil Appeal No.879/2019 dated 21.1.2019

framing tanffs is of equal significance, for it is through the procedural framework that norms of consistency, transparency and predictability can be enforced. Competition, efficiency and quality of supply are key components of the policy framework in designing tariffs. Clause 5.31) of the Tariff Policy speaks of the need to evolve performance norms which incorporate incentives and disincentives and provide an appropriate arrangement that fosters the sharing of gains of efficiency in operations with consumers. Operating parameters in tariffs are required to be pegged only on a "normative level and not at the lower of normative and actuals", save and except in those cases referred to in para 5.3/h)(2). Para 5.3(h)(2) deals with those cases where operations have been much below the norm for several previous years. In those cases, the initial starting point in determining the revenue requirement and the trajectories are fixed at a relaxed level and not at desired levels. Under clause 5.3), the operating norms must fulfil several parameters. They must be (i) efficient; (ii) relatable to past performance; (iii) capable of achievement; and must progressively reflect increased efficiencies. They may also take into consideration latest technological advances, fuel, vintage of equipment, nature of operations, level of service to be provided to consumers, among other factors. Continuous and proven inefficiency has to be controlled and penalised. The operating norms must be designed to promote efficiency and to ensure that the gains which accrue on account of efficient operations are shared with the consumers of electricity. The operating norms will, therefore, have due regard to the performance in the past as well as capacities for future achievement. These must be dovetailed with all relevant considerations, bearing on the requirements of the policy."

12.18. Relying on the above, he submits that there being a date fixed for the purpose of applicability of a particular tariff, the benefit of the tariff would be available to the petitioner only if commissioning was made on or before that date.

12.19. He also relies on the decision of the Apex Court in **A.P. TRANSCO v. Sai Renewable Power (P) Ltd**[14]**.,** more particularly para 38, 39 and 40 which are reproduced hereunder for easy reference:

> *"38. The functions assigned to the Regulatory Commission are wide enough to specifically impose an obligation on the Regulatory Commission to determine the tariff. The specialised performance of functions that are assigned to the Regulatory Commission can hardly be assumed by any other authority and particularly, the courts in exercise of their judicial discretion. The Tribunal constituted under the provisions of the Electricity Act, 2003, again being a specialised body, is expected to examine such issues, but this Court in exercise of its powers under Article 136 of the Constitution would not sit as an appellate authority over the*

[14] [(2011) SCC 34]

formation of opinion and determination of tariff by the specialised bodies. We would prefer to leave this question open to be considered by the appropriate authority at the appropriate stage.

39. We do not consider it appropriate to go into the merit or demerit of determination of tariff rates in the appeals. Determination of tariff is a function assigned legislatively to a competent forum/authority. Whether it is by exercise of legislative or subordinate legislative power or a policy decision, if the Act so requires, but it generally falls in the domain of legislative activity and the courts refrain from adverting into this arena.

40. We have to further examine the legality of this issue in the light of the findings that we have recorded on the issues in relation to jurisdiction of the Regulatory Commission to determine/review the tariff. The jurisdiction of this Court is limited in this aspect. This Court has consistently taken the view that it would not be proper for the Court to examine the fixation of tariff rates or its revision as these matters are policy matters outside the preview of judicial intervention. The only explanation for judicial intervention in tariff fixation/revision is where the person aggrieved can show that the tariff fixation was illegal, arbitrary or ultra vires the Act. It would be termed as illegal if statutorily prescribed procedure is not followed or it is so perverse and arbitrary that it hurts the judicial conscience of the court making it necessary for the court to intervene. Even in these cases the scope of jurisdiction is a very limited one.

12.20. Placing reliance on the above he submits that function of determining tariff is on the regulatory Commission. This court would not have power to do so. What the petitioner is seeking for fixing the tariff, as such the petition is liable to be dismissed.

12.21. The petitioner is essentially seeking for rewriting of the terms of the contract inasmuch as the petitioner is seeking to contend that without injection of energy, the plant to be considered to be commissioned which is impermissible. In this regard, he relies upon the decision of the Hon'ble Apex Court in **Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission**[15], more particularly

[15] (2022)4 SCC 657

para 178 thereof which is reproduced hereunder for easy reference:

> *"178. The proposition that courts cannot rewrite a contract mutually executed between the parties, is well settled. The Court cannot, through its interpretative process, rewrite or create a new contract between the parties. The Court has to simply apply the terms and conditions of the agreement as agreed between the parties, as observed by this Court in Shree Ambica Medical Stores v. Surat People's Coop. Bank [Shree Ambica Medical Stores v. Surat People's Coop. Bank Ltd., (2020) 13 SCC 564, para 20), cited by Ms Divya Anand. This appeal is an attempt to renegotiate the terms of the PPA as argued by Ms Divya Anand as also other counsel. It is well settled that courts cannot substitute their own view of the presumed understanding of commercial terms by the parties, if the terms are explicitly expressed. The explicit terms of a contract are always the final word with regard to the intention of the parties, as held by this Court in Nabha Power Ltd. v. Punjab SPCL [Nabha Power Ltd. v. Punjab SPCL, (2018) 11 SCC 508, paras 45 and 72: (2018) 5 SCC (Civ) 1), cited by Ms Anand."*

12.22. Relying on the above, he submits that once a contract specifies a particular date, the parties are bound by that date. The court cannot change the date for any reason.

12.23. The PPA, which had been executed on 2.07.2015, came to be superseded by SPPA dated 28.04.2017, wherein the tariff, which had

earlier been fixed at Rs.8.40, was refixed at Rs.6.51. The said SPPA never received the permission and sanction of the KERC. Therefore, the petitioner cannot even rely upon the SPPA dated 28.04.2017 to claim a tariff amount to Rs.6.51. As a corollary, he submits that it is the tariff on the date on which a PPA is entered into with the permission of the KERC that the tariff would be fixed and be applicable. In this regard, reliance is placed upon (***Tata Power Co. Ltd. v. Reliance Energy Ltd***[16]**.)**, more particularly para 108 and 111 thereof which are reproduced hereunder for easy reference:

> *"108. A generating company, if the liberalisation and privatisation policy is to be given effect to, must be held to be free to enter into an agreement and in particular long-term agreement with the distribution agency; terms and conditions of such an agreement, however, are not unregulated. Such an agreement is subject to grant of approval by the Commission. The Commission has a duty to check if the allocation of power is reasonable. If the terms and conditions relating to quantity, price, mode of*

[16] (2019) 16 SCC 659

supply, the need of the distributing agency vis-à-vis the consumer, keeping in view its long-term need are not found to be reasonable, approval may not be granted.

111. Section 86(1)(b) provides for regulation of electricity purchase and procurement process of distribution licensees. In respect of generation its function is to determine the tariff for generation as also in relation to supply, transmission and wheeling of electricity, Clause (b) of sub-section (1) of Section 86 provides to regulate electricity purchase and procurement process of distribution licensees including the price at which the electricity shall be procured from the generating companies or licensees or from other sources through agreements. As a part of the regulation it can also adjudicate upon disputes between the licensees and generating companies in regard to the implementation, application or interpretation of the provisions of the said agreement."

12.24. Placing reliance on the above, he submits that it is the Commission which can adjudicate the dispute between the licensee and the related companies and not this Court.

12.25. The decision of this Court in ***Surya Energy Photo Voltaic India Pvt. Ltd. Vs. State of***

Karnataka[17] dated para 14 and 20 thereof, which are reproduced hereunder for easy reference:

> *14. It is thus clear that fixation of tariff is a statutory function and it is the sole prerogative of the Commission. The approval by Commission to PPA is sine quo non for coming into force as a concluded contract which otherwise is not enforceable in the eye of law. The Regulation 3 of the KERC [Procurement of Energy from Renewable Sources] Regulations 2011 provides that the said Regulation shall apply to distribution licensees operating in the State of Karnataka. Regulation 4 deals with the quantum of purchase in the electricity from renewable sources of energy. Regulation 9 deals with the determination of tariff for electricity from renewable sources of energy which makes it clear that the Commission may determine at any time the tariff for purchase of electricity from renewable sources of energy by distribution licensees either suo motu or an application either by generator or by Distribution Licensee. Second proviso thereof provides that the Commission shall adopt the tariff which has been arrived at to a transparent process of bidding in accordance with the guidelines issued by the Central Government under Section 63 of the Act. Based on these Regulations as well as the discussion paper "Revision of Generic Tariff for wind power project for mandatory procurement of wind power through competitive bidding" and the Tariff Policy 2016, the exact wind power generating capacity created in the State and the contracted quantum of wind power by the distribution licensees to meet their Renewable*

[17] W.P. No.13866/2018[17] dated 23/07/2019

> *Power Purchase Obligations [RPOs] vis-à-vis the general demand, the Mandatory procurement of wind power through competitive bidding is ordered by the Commission by its order dated 08.02.2018.*
>
> *20. The PPA necessarily requires approval by the Commission in terms of Section 86[1][b] of the Act read with Regulation 21 of the Regulation 2004 and Article 2.1 of PPA. Approval by the Commission shall be granted upon examining the process of procurement having regard to the said Regulation.*

12.26. Relying on the above, he submits that fixation of tariff being a statutory function, it is for the Authorities concerned to fix the same on the basis of demand and supply, as also take into account various factors and this Court ought not to intercede in the matter.

12.27. As regards alternate remedy, he further submits that non-availability of a circuit Bench of APTEL would not ensue to the benefit of the petitioner inasmuch as the Principal Bench at New Delhi would have jurisdiction to all matters arising from southern region. Therefore, the

petitioner always had an option to approach the Principal Bench at New Delhi. In this regard, he relies upon the decision of a Coordinate Bench of this Court in **W.P. No.56027-30/2016 dated 17/01/2017**, more particularly para 7 and 8 thereof, which are reproduced hereunder for easy reference:

"7. From the above it is clear, that the location of the case may be from any place of the High Court's jurisdiction, it shall be dealt by the Principal Bench or the Circuit Bench of the particular High Court. Therefore, in the instant case, there is no obligation as such to deal the case of the Circuit Bench in the Principal Bench at Bengaluru. However, the point of jurisdiction to file a case is irrelevant.

8. With the above observations, I am inclined to dispose of the writ petitions. Writ petitions are accordingly disposed of, directing the fourth respondent to pass appropriate orders keeping in mind the communication made by the Government of Karnataka in DET/TRG/TTC/CTS-1/CR-Misc/2014-15 dated 27.06.2016, within a period of three months from today.

It is needless to state that, since the aforesaid communication of the Government of Karnataka is sent six months ago, no action is taken. Hence, under the circumstance, fourth respondent is

directed to expedite the process and pass appropriate orders within the above said time limit.

Respondent Nos. 3 and 4 are directed to communicate the output to the petitioners within the stipulated time."

12.28. He relies on the decision in State of **Maharashtra v. Narayan Shamrao Puranik**[18], more particularly para 25, which is reproduced hereunder for easy reference:

> *"25. It is clear upon the terms of Section 51 of the Act that undoubtedly the President has the power under sub-section (1) to appoint the principal seat of the High Court for a new State. Likewise, the power of the President under sub-section (2) thereof, "after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, pertains to the establishment of a permanent Bench or Benches of that High Court of a new State at one or more places within the State other than the place where the principal seat of the High Court is located and for any matters. connected therewith clearly confer power on the President to define the territorial jurisdiction of the permanent Bench in relation to the principal seat as also for the conferment of exclusive jurisdiction to such permanent Bench to hear cases arising in districts falling within its jurisdiction. The creation of a permanent Bench under sub-section (2) of*

[18] [(1982)3 SCC 519]

Section 51 of the Act must therefore bring about a territorial bifurcation of the High Court. Under sub-section (1) and sub-section (2) of Section 51 of the Act the President has to act on the advice of the Council of Ministers as ordained by Article 7411) of the Constitution. In both the matters the decision lies with the Central Government In contrast, the power of the Chief Justice to appoint under sub-section (3) of Section 51 of the Act the sittings of the Judges and Division Courts of the High Court for a new State at places other than the place of the principal seat or the permanent Bench is in the unquestioned domain of the Chief Justice, the only condition being that he must act with the approval of the Governor. It is basically an internal matter pertaining to the High Court. He has full-power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provision contained in sub-section (3) of Section 51 of the Act but inheres in him in the very nature of things. The opinion of the Chief Justice to appoint the seat of the High Court for a new State at a place other than the principal seat under sub- section (3) of Section 51 of the Act must therefore normally prevail because it is for the more convenient transaction of judicial business. The non obstante clause contained in sub-section (3) of Section 51 gives an overriding effect to the power of the Chief Justice. There is no territorial bifurcation of the High Court merely because the Chief Justice directs under sub-section (3) of Section 51 of the Act that the Judges and Division Courts shall also sit at such other places as he may, with the approval of the Governor, appoint. It must accordingly be held that there was no territorial bifurcation of the Bombay High Court merely because the Chief Justice by the impugned notification issued under sub-section (3) of Section 51 of the Act directed that the Judges and Division

> *Courts shall also sit at Aurangabad. The Judges and Division Courts at Aurangabad are part of the same High Court as those at the principal seat at Bombay and they exercise jurisdiction as Judges of the High Court of Bombay at Aurangabad. The Chief Justice acted within the scope of his powers. We see no substance in the charge that the impugned notification issued by the Chief Justice under sub-section (3) of Section 51 of the Act was a colourable exercise of power."*

12.29. Relying on the above, he submits that once jurisdiction has been determined to be that of a particular court or tribunal, any person aggrieved ought to approach such court or tribunal. There is no provision for a particular litigant to approach a particular court merely on account of the location of the litigant or a court.

12.30. He relies on the decision in **Balachandra Vigneshwara Dixit v. H.S. Srikanta Babu**[19], more particularly para 40 thereof, which is reproduced hereunder for easy reference:

> *"40. Therefore, it is clear, the residence or location of a person affected by an order cannot be the only criterion to determine the jurisdiction of the High*

[19] [ILR 2010 KAR 2344]

Court. That jurisdiction depends on the person or authority passing the order being within those territories, and the residence/location of the person affected in such cases would have no relevance on the question of the High Court's jurisdiction. It may be that the original order was in favour of the person applying for writ; in such cases an adverse appellate order might be the cause of action. If the cause of action arises wholly or in part at a place within the specified areas, then such Bench would have jurisdiction. If the cause of action arises partly within the specified areas, it would be open to the litigant who is the dominus litis, to choose the forum according to his convenience. A litigant has the right to go to Court where a part of the cause of action arises. As rightly held in the judgment in the case of E. Rammohan Chowdry, after all, Courts are for the benefits of the litigant public, and hence their convenience should be of paramount importance. The impugned Notification is a positive and concrete step to achieve the goal of easy and less expensive access to justice. If a litigant from Dharwad/Gulbarga chooses to approach the Principal Bench as according to him it is convenient, convenience being of paramount consideration, the principal Bench at Bangalore cannot ask him to go to the Circuit Benches either at Dharwad or Gulbarga, as the jurisdiction to decide any matter arising within the jurisdiction of the State of Karnataka lies with the Principal Bench at Bangalore, notwithstanding the constitution of the Circuit Benches at Dharwad and Gulbarga. It is for the litigant to decide the convenience. Others have no say in the matter including the Chief Justice."

12.31. Relying on the above, he submits that the residence or location of the party cannot determine the jurisdiction of a particular court, the same would have to be made in accordance with law.

12.32. Based on the above, he submits that the petition requires to be dismissed.

13. In rejoinder, Sri.Sridhar Prabhu, learned counsel for the petitioner would submit that,

13.1. There may be an alternate remedy as contended by Sri.Sriranga, learned Senior counsel for the respondent, but it is not efficacious inasmuch as the petitioner would require to go to Delhi, engage an advocate and conduct the matter there, which would be very expensive, a citizen who is aggrieved by a decision ought to be made available an inexpensive remedy. In this regard, he relies on the decision in **Rojer Mathew v. South Indian Bank Ltd., [(2020) 6 SCC 1],** more

particularly para 391 and 392 thereof, which are reproduced hereunder for easy reference:

> *391. Having tribunals without Benches in at least the capitals of States and Union Territories amounts to denial of justice to citizens of those States and Union Territories. It also makes the justice delivery system very metropolis centric. This has many adverse effects. The Bench and the Bar in smaller district towns and capitals of smaller States which were handling these matters in a competent manner are deprived of handling these types of cases. This also makes access to justice expensive for the litigants. It also leads to a situation where the Bench and the Bar in these areas would not have any experience of handling matters relating to jurisdictions transferred to tribunals which they used to handle earlier. Therefore, the local Bench and Bar will never develop and the entire bulk of work will be captured by those practising in Delhi or in those State capitals where Benches of the tribunals are set up. Instead of taking justice to the common man, we are forcing the common man to spend more money, spend more time and travel long distances in his quest for justice, which is his fundamental right.*

> *392. The litigants cannot wait for judicial impact assessment and action by the Government which may or may not take place. Experience has shown that the judgments right from L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] to Madras Bar Assn., 2010 [Union of India v. Madras Bar Assn., (2010) 11 SCC 1] have not been complied with by the Union in letter and spirit. Citizens of this country cannot be denied justice which is the first*

> *promise made in the Preamble. Therefore, I am of the view that in whichever State/Union Territory the Bench of a particular tribunal is not established or functioning, the litigants of that State will have a right to invoke the extraordinary writ jurisdiction of the jurisdictional High Court under Article 226 of the Constitution for redressal of their grievances. They cannot be expected to go to far off distant places and spend huge amounts of money, much beyond their means to ventilate their grievances. The alternative remedy of approaching a tribunal is an illusory remedy and not an efficacious alternative remedy. The self-imposed bar or restraint of an alternative efficacious remedy would not apply. Such litigants are entitled to file petitions under Article 226 of the Constitution of India before the jurisdictional High Court. In L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] it was clearly held that the right of judicial review is a part of the basic structure of the Constitution and this right must be interpreted in a manner that it is truly available to the litigants and should not be an illusory right.*

13.2. On the basis of the above, he submits that the court ought not to reject the petition on technical grounds and afford substantial justice to the parties who have approached this Court.

14. Heard Sri.Shridhar Prabhu, learned counsel for the petitioner and Sri.S.Sriranga, learned Senior counsel

for respondents No.2 and 3 and Sri.G.M.Chandrashekar, learned AGA for respondent No.1. Perused papers.

15. On the basis of the submissions of the counsel for the parties, the points that would arise for consideration are:

i. Whether this Court could take up the matters in view of the submissions made by the counsel for the respondent that there is alternative efficacious remedy to the APTEL?

ii. Whether commissioning in the present matter would require injection of electricity into grid?

iii. Whether the commissioning certificate issued by the BESCOM and KPTCL authorities in favour of the petitioner be deemed to be sufficient to comply with the commercial operation date in terms of Article 1.1.(vii) of the Power Purchase Agreement?

iv. Whether the Supplementary Power Purchase Agreement would require permission and sanction of the KERC even if Power Purchase Agreement had already received such sanction?

v. Whether the order passed by the KERC suffers any illegality requiring interference at the hands of this Court?

vi. What order?

16. I answer the above points as under

17. **ANSWER TO POINT NO.1 & 2: Whether this Court could take up the matters in view of the submissions made by the counsel for the respondent that there is alternative efficacious remedy to the APTEL?**

And

Whether commissioning in the present matter would require injection of electricity into grid?

17.1. The contention of Sri.Sriranga, learned Senior counsel is that there is an alternate and efficacious remedy which is available to the petitioners. In this regard, he relies upon the decisions in **Vatsala Bellary[7]**, **Graphite India[8]**, **Hassan Thermal Power Pvt. Limited[9]**, **Reliance Infrastructure Ltd[13]**,

A.P.Transco[14] (referred to supra) The submission is that the order under challenge being an appealable order in terms of Section 111 of the Electricity Act, this Court ought not to entertain the matter.

17.2. The other limb of the argument in this regard is based on the competence of the appellate Authority to consider the matter inasmuch as it is contended that fixation of tariff being a statutory function, the same can only be considered and determined by the Appellate Authority. In that regard the decision in **Tata Power co.Ltd.[16], Surya Energy Photo Voltaic India Pvt. Ltd.[17]** are relied upon.

17.3. Lastly it is contended that whenever an appellate remedy is provided whether the petitioner is residing in the said location or not, any person who wants to approach the court would have to come to that location and file necessary proceedings.

17.4. Insofar as the authority being vested with the KERC to determine and fix the tariff is concerned, there cannot be any dispute. The issue in the present case is not as much as fixation of tariff but is as relating to whether the plant had been commercially commissioned or not. The date on which the commissioning happens would determine the tariff applicable, the verification of the said date or otherwise would not require fixation of tariff by this Court as sought to be contended by Sri.Sriranga, learned Senior counsel.

17.5. The tariff has already been fixed, it is only the applicability thereof which is under question. Therefore, the decisions cited by Sri.Sriranga, learned Senior counsel in **Tata Power co.Ltd.[16], Surya Energy Photo Voltaic India Pvt. Ltd.[17]** are not applicable.

17.6. As regards the appellate remedy, the contention of Sri.Shridhar Prabhu, learned

counsel for the petitioner is that the above petition is filed during COVID-19 when the appellate tribunal was not working. Apart therefrom, it is submitted that the appellate tribunal does not provide e-filing of cases and or appearance through virtual conferencing mode. Hence, the decisions in **Vatsala Bellary[7], Graphite India[8], Hassan Thermal Power Pvt. Limited[9], Reliance Infrastructure Ltd[13], A.P.Transco[14] (referred to supra)** would also not be applicable to the present case since the exceptional situation of COVID-19 has been taken into consideration while registering the above case. At this length of time, it could not now be proper for this court to relegate the petitioner to the appellate remedy, as such I am of the considered opinion that this Court having heard the parties at great length would have to pass necessary orders on the merits of

the matter and at this stage, on technicalities not to relegate the petitioner to an appellate authority, more so as indicated earlier, filing of the above petition was during COVID-19 pandemic.

17.7. Hence, I answer Point No.1 by holding that for the reason mentioned above, this Court could take up the matters, the availability of an alternative and efficacious remedy by filing an appeal would not come in the way for this court to exercise its jurisdiction.

18. **ANSWER TO POINT NO.3: Whether the commissioning certificate issued by the BESCOM and KPTCL authorities in favour of the petitioner be deemed to be sufficient to comply with the commercial operation date in terms of Article 1.1.(vii) of the Power Purchase Agreement?**

18.1. The submission of Sri.Shridhar Prabhu, learned counsel for the petitioner is that the project is completed and the officers viz., Chief Engineer (Electrical), KPTCL, representatives of BESCOM

and the Electrical Inspectorate have confirmed the commissioning of the plant and issued the commissioning certificate on 1.07.2017. Therefore, he submits that this commissioning certificate would amount to commissioning in terms of the agreement entered into between the parties which would have to be taken into consideration.

18.2. Contra submission of Sri.Sriranga, learned Senior counsel is that mere completion of the plant and interconnection would not amount to commissioning unless there is injection of live power into the grid i.e. to say that the plant has to produce electricity and the electricity has to be through the equipment injected into the grid, only thereafter it can be said that the plant has been commissioned.

18.3. Commercial operation date is defined under clause (vii) of Article 1.1 which is reproduced hereunder for easy reference:

> *(vii) "**commercial Operation Date"** with respect to the Project shall mean the date on which the Project is available for commercial operation as certified by BESCOM/.KPTCL as the case may be.*

18.4. Reading of the above would indicate that the commercial operation date shall mean that the date on which the project is available for commercial operation as certified by KPTCL/BESCOM. Thus, the certifying authority is KPTCL/BESCOM, and it is those authorities who have issued the commissioning certificate in the present case.

18.5. Interconnection facility is defined under clause (xxi) of Article 1.1 which is reproduced hereunder for easy reference:

> *(xxi) **"Interconnection Facilities"** in respect of the SPD shall mean all the facilities installed by the SPD or by any other person acting on its behalf to enable BESCOM to receive the Delivered Energy from the Project at the Delivery Point, including transformers, and associated equipments, relay and switching*

equipment, protective devices and safely equipments and transmission lines from the Project to Corporations/BESCOM's nearest sub-station;

18.6. Reading of the above would indicate that interconnection facility would mean and include all facilities to enable the BESCOM to receive delivered energy from the project at the delivery point including transformers, associate equipment, relay and switching equipment, protective devices and safety equipment and transmission lines, etc.

18.7. Delivery point or inter connection point is defined under clause (x) of Article 1.1 which is reproduced hereunder for easy reference:

> ***(x) "Delivery Point"*** *or* ***"Interconnection Point"*** *shall be the point at which the power is injected into the substation bus of the BESCOM/Corporation."*

18.8. The 'delivery point' therefore, is a point at which the power is injected into the substation.

A reading of all the three provisions above would indicate that the certifying authorities viz., BESCOM/KPTCL have taken into consideration the establishment of interconnection facility at the delivery point and have certified the plant to have been commissioned.

18.9. None of the above clauses refer to the requirement of injection of power to be a condition precedent for commissioning. There is no other clause in the agreement which has been brought to my notice by Sri.Sriranga Learned Senior counsel which would indicate otherwise. Even the Supplementary PPA dated 28.04.2017 does not include any such condition precedent of injection for the purpose of commissioning.

18.10. The commissioning certificate reads as under:

COMMISSIONING CERTIFICATE

This is to certify that the 02MW Solar Power plant of Smt R. Gaythri to 66/11KV Dyavaranahally substation sanctioned under the land owner scheme with metering arrangement bearing R.R.NO: DHR6128... and associated ectrical equipments interconnecting the solar power project ((66/11kv switch ard 1 X 8 MVA) along with PV models (02MW), 2 X 1000 KW, 400V inverters, IX 2500 KVA 11KV/400V Inverter Transformers)) with KPTCL grid has been commissioned on 01.07.2017.

This certificate is issued as per the interconnection approval accorded by Chief engineer (Elect.), Transmission zone, KPTCL, Tumakur vide letter no: CEE/TKRTZ/SEE(O)/AEE-2/F30/3422-3435, Dated: 01.07.2017 and commissioning approval accorded by Chief electrical inspectorate to Govt. of Kamataka, Bangalore vide letter no: CEIG/TEC/BN-246/12671-76/17-18, Dated: 01.07.2017

Executive Engineer (Ele)
220KV Receiving Station
KPTCL, Hiriyur.

18.11. The minutes of the meeting read as under:

MINUTES OF THE MEETING

Minutes of the meeting held between representatives of Smt. R. Gayathri, M/s Solvis Energie India Pvt.Ltd. "Janaki Nilaya", # 429/21

6th Cross, 5th stage, 1st phase BEM layout Raja Rajeshwari Nagar Bengaluru, M/s KPTCL and BESCOM officer's 01.07.2017 for on commissioning of 01 No of 11KV equipment metering CT's, metering PT's and metering cubical at 66/11KV MUSS Dyavaranahally along with the synchronization of 11KV line in presence of the following officer's as per the provisional interconnection approval by the Chief Engineer Electrical Transmission Zone, KPTCL, Tumkur vide approval letter CEE/TKRTZ/SEE(O)/AEE-2/F-30/3422-3435, dated: 01.07.2017 for evacuation no: of 02MW solar energy at Channammanagathihalli kaval village of site Sy No: 9 & 41, in the name of Smt. Smt R. Gayathri and the RR-No. of the installation: DHRG-128

18.12. A perusal of the commissioning certificate would indicate that the Executive Engineer-Electrical, KPTCL has certified that 2 MW solar power project with metering arrangement bearing RR No. **DHRG-128** associated electrical equipment inter connecting the solar power project with KPTCL grid has been commissioned on 1.07.2017 and the certificate is issued as per the interconnection approval accorded by the Chief Engineer-Electrical, Transmission

zone, KPTCL, Tumkur vide letter dated 1.07.2017 and commissioning approval accorded by the Chief Electrical Inspectorate, Government of Karnataka vide letter dated 1.07.2017.

18.13. Thus, it is clear that the interconnection of the solar project with KPTCL grid has been completed on 1.07.2017 and this is not only certified by Chief Engineer-Electrical, KPTCL, but also by Chief Electrical Inspectorate.

18.14. A reading of the minutes of the meeting indicates that a meeting took place for commissioning of plant of the petitioner for evacuation of 2 MW solar energy. In the said meeting Executive Engineer-Electrical TL & SS, KPTCL, Hiriyur, Executive Engineer-electrical, RT Division, KPTCL, Chitradurga, Executive Engineer-Electrical, O&M, BESCOM, Hiriyur, Executive Engineer-Electrical MT Division, BESCOM, Chitradurga, Asst. Engineer-Electrical,

RT division, KPTCL, Hiriyur, Asst. Executive 220KV R/S, KPTCL, Thallak and Smt.R.Gayathri, M/s solvis Energie India Pvt. Ltd., Bangalore were all present and they have all certified about the commissioning.

18.15. When all the officers have so certified the commissioning, it is rather strange that BESCOM/KPTCL have contended otherwise before the KERC and have taken up a contention that without injection of power or electricity into the grid there cannot be commissioning.

18.16. Despite repeated request made, learned counsel for the respondent No.2 and 3 is unable to point out any clause which requires injection of electricity but he relies upon the decisions in **Dhar Wind Power, Projects (P) Ltd.[10], EMCO Ltd.[11], Earth Solar Private Limited[12].** By relying on the above decisions, a submission is made that unless there is injection of

electricity into the grid, commissioning cannot be said to have been completed.

18.17. In my considered opinion, the said decisions do not deal with the situation where a commissioning certificate has been issued by the KPTCL/BESCOM officials, it does not deal with a situation where in the agreement there is no requirement for injection of electricity for commissioning. The clause in the agreement requiring commissioning to be certified by KPTCL/BESCOM, the same having been done, those decisions would not in my considered opinion apply to the present fact situation.

18.18. At no point of time there is any correspondence issued by respondents No.2 and 3 to the petitioner indicating that commissioning can only happen upon injection of electricity into the grid. Thus, the aspect of commissioning can only be gathered from the contents of the agreement which have been reproduced

hereinabove and from the contents of the commissioning certificate which have been reproduced above.

18.19. Neither the clause nor the certificate requiring injection of electricity, the contention now raised by Sri.Sriranga, learned Senior counsel for respondents No.2 and 3 cannot be accepted, more so when it is when the officials of respondents No.2 and 3 who have issued commissioning certificate. If at all the requirement of injection of electricity was of paramount importance, those senior officials would not have issued such a certificate. It is not the case of respondents NO.2 and 3 that there is any collusion between the petitioner and those officials and or that the commissioning certificate which has been issued is improper. A vague denial of the certificate and or contending that the requirement of commissioning have not been

satisfied, without impugning the said commissioning certificate and or taking any action against the persons who have signed the commissioning certificate as also minutes of the meeting, in my considered opinion, cannot give rise to a situation where respondents No.2 and 3 can contend that commissioning is not complete despite a certificate to that effect has been issued.

18.20. Hence, I answer Point No.3 by holding that in the present matter there is no requirement of injection of electricity into the grid to denote commissioning of the plant. The commissioning certificate issued by officers of KPTCL/BESCOM, respondents No.2 and 3 is self-sufficient.

18.21. It is also to be noted that the petitioner has spent huge amounts of money and despite several obstacles has completed erection and commissioning of the plant. There is no dispute as regards inter connection. The plant being a

solar power plant, as and when the sunlight is available the plant would generate electricity for consumption.

18.22. Thus, in my considered opinion, in terms of clause (vii) of Article 1.1., the requirement only being of a certification by KPTCL/BESCOM, the same has been complied, resulting in commissioning of the plant within the timeframe.

19. **ANSWER TO POINT NO.4:Whether the Supplementary Power Purchase Agreement would require permission and sanction of the KERC even if Power Purchase Agreement had already received such sanction?**

19.1. The contention of Sri.Sriranga, learned Senior counsel for respondents No.2 and 3 is that the supplementary PPA has not been approved by the KERC and therefore, the same cannot be acted upon. Such a submission in my considered opinion cannot be countenanced either in law or facts. Such a stand is not taken

at the time when commissioning the plant. The only contention taken then was electricity was not injected. The manner in which the present matter is addressed and argued before this Court leads only to a singular conclusion, in that KPTCL/BESCOM, respondents No.2 and 3 are seeking to deny the just payments to the petitioner for one reason or the other or by hook or crook, which is not acceptable. Statutory authorities like KPTCL/BESCOM cannot indulge in such kind of activities to deprive a bonafide investor in a power producing project of the due amounts. PPA having received sanction, the supplementary PPA only seeking of extension of time, in my considered opinion would not require any such sanction as alleged or otherwise. Be that as it may, this was not a ground raised at the earliest point of time and has only been raised as an after thought.

19.2. Thus, I answer Point No.4 by holding the Supplementary PPA does not require permission or sanction of KERC.

20. **ANSWER TO POINT NO.5: Whether the order passed by the KERC suffers any illegality requiring interference at the hands of this Court?**

20.1. The KERC in its Judgment has completely misdirected itself by framing an issue as to whether injection of power into State grid is essential in order to declare that the project is commissioned. The KERC finds faults with the issuance of the commissioning certificate by holding that without confirmation of injection of power into the grid, the commissioning certificate ought not to have been issued.

20.2. In the reasoning portion, the KERC has first come to a conclusion that there is injection of electricity into the grid which is required to be made and thereafter has examined whether

there is such injection or not. Para 11(b) of the order dealing with the same does not speak of or appreciate requirement of such injection except to come to a conclusion that injection is necessary.

20.3. As observed in answer to Point No.1 above, there is no clause in the agreement which requires injection. This concept of injection, in my considered opinion, has been brought about only to deny the additional amounts which would be required to be paid to the petitioner if the commissioning had happened on 1.07.2017.

20.4. It is by denying the said commission, that instead of making payment of tariff of Rs.6.51/KW, what is sought to be paid is a tariff of Rs.4.36/KW.

20.5. Thus, the beneficiary of this reduction of tariff would be both respondents No.2 and 3 and it is with the intention of being such a beneficiary

wanting to pay lesser tariff to the petitioner than what the petitioner is entitled to that such a stand has been taken by respondents No.2 and 3, which in my considered opinion is a dishonest stand. The statutory authorities like respondents No.2 and 3, in my considered opinion cannot indulge in such kind of practices and it is these kind of practices which have resulted in unnecessary litigation between the power producers and these statutory authorities. This aspect has also not been appreciated by the KERC and as such, there being no particular reasoning in coming to a conclusion that injection of electricity was required for commissioning the order of the KERC required interference at the hands of this Court.

21. **ANSWER TO POINT NO.6: What Order?**

21.1. The petition is allowed. A certiorari is issued. The order/direction dated 3.12.2019 passed by

the KERC in OP No.73/2018 at Annexure-A is quashed.

21.2. A mandamus is issued directing respondent No.3 to pay the tariff at the rate of Rs.6.51 per unit for the energy delivered from 1.07.2017. If payments have been made at the rate of Rs.4.36 per unit, the differential to be paid within eight weeks from the date of receipt of copy of this order.

21.3. A certiorari is issued, the invoice dated 23.02.2018 levying penalty charges of Rs.2,40,000/- at Annexure-B is hereby quashed. If any amounts are adjusted by respondents No.2 and 3 on the said account, respondents No.2 and 3 are directed to refund the said amounts to the petitioner.

21.4. The Concerned authorities are directed t comply with the directions issued by the Hon'ble Supreme Court of Inida in **Rojer Mathew v.**

South Indian Bank Ltd., [(2020) 6 SCC 1], more particularly para 391 and 392 thereof.

21.5. It would be required that e-filing, e-appearance and other e-services are made available by all national tribunals at the earliest at any rate within 6 months from the date of receipt of this order. The Additional Government Advocate is directed to bring the above order to the notice of the learned Deputy Solicitor General of India.

Sd/-
JUDGE

LN/-
List No.: 19 Sl No.: 3