

कार्यालय विद्युत लोकपाल
(गोवा राज्य और संघ राज्य क्षेत्र)
Office of the Electricity Ombudsman
(For the State of Goa and Union Territories)
विद्युत अधिनियम, 2003 की धारा 42(6) के तहत
Under Section 42 (6) of the Electricity Act, 2003

Appeal No.130 of 2020

Date of Video Conferencing : 10.12.2020

Date of Order: 14.12.2020

Shri Newton Fernandes,
Goa .

....Appellant

Versus

The Chief Electrical Engineer,
Electricity Department,
Goa and others.

....Respondents

Parties present:

Appellant

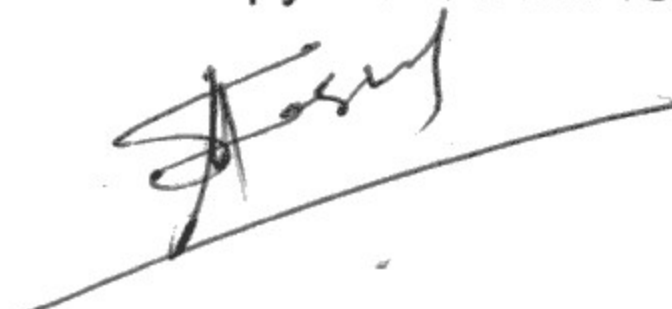
1. Shri Newton Fernandes

Respondent(s)

1. Shri Rajiv R. Samant
Chief Electrical Engineer

Date of Order: 14.12.2020

The Appellant has preferred an Appeal because CGRF-Goa has not disposed of the same in the required time. The matter regarding non-functioning of CGRF/non-passing of order was taken up with Hon'ble Commission and it has been directed vide email/letter dated-15.10.2020 to admit the Appeal. Accordingly the Appeal was admitted on 16.10.2020 as appeal No.130 of 2020. Copy of the same as received was forwarded to the respondent with a direction to submit their remarks/ counter reply on each of the points. A copy of counter reply/Rejoinder was supplied to the Appellant/Respondents as required.



Settlement by Agreement

Both the parties appeared before the Electricity Ombudsman through Video Conferencing as scheduled on 10.12.2020 and were heard. Efforts were made to reach a settlement between the parties through the process of conciliation and mediation. However, no settlement mutually agreeable could be reached. The hearing therefore, continued to provide reasonable opportunity to both the parties to put forth their pleading on the matter.

(A) Submissions by the Appellant:

Appellant submitted the brief facts as under:-

1. **FACTS OF THE CASE**

(a). Submissions before the CGRF-Goa:-

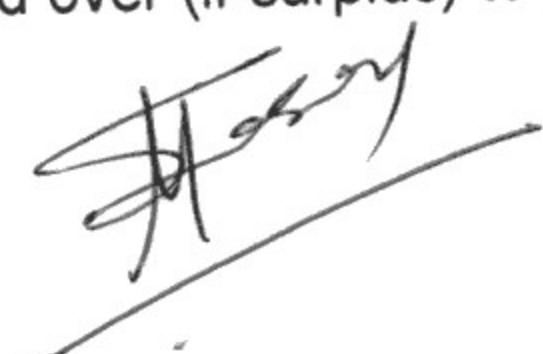
As per the Ombudsman order dated 04.02.2020, the case has been remanded back to CGRF and w.r.t. same order I am putting forth again my grievance to the CGRF (Attached as Annex – 1). The JERC's Solar Regulations 2015 were notified and came into force from 15.05.15 the Regulation was in force for 3 years until revived/ revised earlier or extended by commission. The commission decided to extend the control period of solar regulation 2015 from 15.05.18 to 14.05.19 (attached as annex 2). The first approval to connect roof top solar plant was given on 25th September, 2018 and the date of grid connectivity was done on 15.10.18. My roof top solar plant was very well done in the control period of the JERC's solar regulation.

In September 2017 they signed a P.P.A. , as per JERC's solar regulation with a solar tariff of Rs 8.54 .That same P.P.A. should have been applicable to me as the extension of control period was up to 14.05.19. Instead they took an undertaking from me that I agree to do the grid connectivity as the P.P.A. is pending which was taken wrongfully.

W.r.t. billing

As per the JERC's solar regulation for each billing period the distribution licensee shall show separately.

- a. The quantum of electricity units exported by the eligible consumer.
- b. The quantum of electricity units imported by the eligible consumer.
- c. The net quantum of electricity units billed for payment by the eligible consumer.
- d. The net quantum of electricity units carried over (if surplus) to the next billing period.



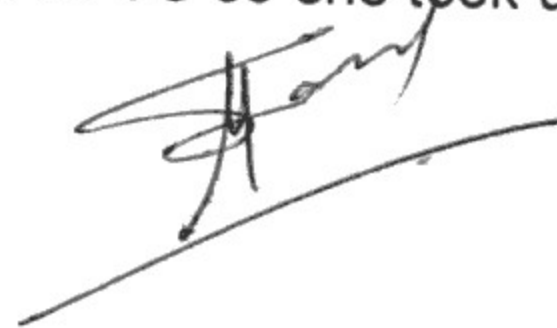
The bills that I have received, the surplus units are not carried forward (copies of bills attached as annex 3). As per RTI letter (attached as annex 4) the surplus units that need to be carried forward do not tally. A payment of solar surplus units of grid connected solar roof top for the year ending 31/3/20, this is the first payment done to me since installation (attached as annex 5) which is for 2494 solar surplus units. As per 1/4/20 (attached as annex 4) since it was the first payment my total solar surplus units should have 11422 from which they have only paid for 2494 units. 8928 surplus units have just been swallowed by the dept.

W.r.t electricity bill (attached as annex 6) dated-7/5/20 where the billing is carelessly done. Energy charges and FPPA charges were added, whereas these charges are never included for solar bills. When spoken to AE commercial regarding this, he quoted that it was an error and the bill is not to be paid in the next bill (attached as annex 7) dated 30.06.2020 a delay payment charge of Rs 140 was added to the bill when I was told not to pay. Also in the same bill under previous arrears / advance a sum amounting to Rs 4347 just occurs without explanation. When I again spoke to the AE commercial I did not get a favorable response. I have made the payment so as to not get a delay payment charge in my next bill and seeking following reliefs:-

1. PPA as per the regulations that was in force when my roof top solar plant was installed
2. The solar tariff period and the P.P.A. is to be for 25 years as per JERC's notification 2015 clause 8 and clause 7C.
3. As per clause 8 of the JERC's notification 2015 the date of signing of P.P.A. should be taken into consideration (as mentioned whichever is later)
4. The surplus solar units to be corrected and properly carried over and a proper bill with import and export of units from the date of installation to be issued.
5. Payment of unaccounted arrears and delay payment charges reverted back to account.

(b) **Submissions before the Ombudsman :-**

As per the appeal no-121 of 2020 order of the Ombudsman dated-4/2/2020 (attached as annex 1) a review petition was filed to the CGRF on 7/7/2020 (attached as annex 2). The said review application was scheduled on 18.08.2020 for arguments (attached as annex 3) On 14.08.2020 the CGRF called me to tell that the hearing will be done on Video Conference (VC) to which I did not agree. On going for the hearing on 18.08.2020 to my surprise Mr. Sandra Vaz was not present at the hearing as her hand was fractured a week back and I got to know this only after my arrival to their office. I had two cases to be heard (2nd case which I will be applying separately to the Ombudsman, case no. 16/2016) w.r.t case no. 01/2020 I said it cannot be done on VC so she took up the second case



(case no. 16/2020) on VC to which I agreed to hear on humanity grounds as her hand was fractured. She then decided to hear both the cases on 07.09.2020. On 07.09.2020 her behaviour was very different, she seemed to be upset since the case was remanded back to the CGRF. Before the hearing could start I sipped water from my bottle to which she replied "don't drink water here, have respect for me and the court". She heard the case and told me to give in writing that I will agree to whatever order she passes and only then she can hear and pass the order, to which I did not agree so she said she requires two members to hear the case. Before finishing of, she requested the nodal officer and me to meet the Chief Engineer and take it up as a special case and solve the case myself. She also said to update her with the meeting with the Chief Engineer which I did so (attached as annex 4)

The JERC's solar regulations 2015 were notified and came into force from 15.05.15 the regulation was in force for 3 years until revived, revised earlier or extended by commission. The commission decided to extend the control period of solar regulation 2015 from 15.05.18 to 14.05.19 (attached as annex 5). The first approval to connect roof top solar plant was given on 25th September, 2018 and the date of grid connectivity was done on 15.10.18. My roof top solar plant was very well done in the control period of the JERC's solar regulation.

In September 2017 they signed a P.P.A. with Goa Energy Development Agency (GEDA) as per JERC's solar regulation with a solar tariff of Rs 8.54 (attached as annex 6) That same P.P.A. should have been applicable to me as the extension of control period was up to 14.05.19 Instead they took an undertaking from me that I agree to do the grid connectivity as the P..A. is pending which was taken wrongfully as I was not aware that there was an agreement in force. In the hearing on 07.09.20 the nodal officer submitted his submissions on the day of hearing (attached as annex 7) in which is stated that the dept. Was unaware of the JERC order in petition no. 200/2016 dated 29.12.16 and no actual billing has been done for the solar generation under net metering and the said installation is disconnected on 28.06.19 hence the agreement does not exist anymore. The above mentioned agreement (attached as annex 6) was received by me under RTI on 04.12.19 but I have not received any termination letter of the same agreement.

w.r.t. billing

As per the JERC's solar regulation for each billing period the distribution licensee shall show separately:-

- a. The quantum of electricity units exported by the eligible consumer.
- b. The quantum of electricity units imported by the eligible consumer.
- c. The net quantum of electricity units billed for payment by the eligible consumer.

- d. The net quantum of electricity units carried over (if surplus) to the next billing period.

The bills that I have provided to the CGRF which was attached as annex 3 in my application to CGRF. The updated bills were given to me only after asking under RTI as the arrears that occurred in the bill were not shown properly (attached as annex 8). Even though my export units is more than my import units energy charges have been charged in those bills.

As per my RTI letter of the import an export of units taken monthly (attached as annex 9) the surplus units that need to be carried forward do not tally. As on 31.03.19 a surplus units of 4861 is not paid to me and is not showing in the billing as they have done normal billing and not done a solar billing i.e. export units and import units were not shown. When asked they said they have adjusted the same. But my RTI letter on imports and exports proves that I have surplus units of 4861.

The nodal officer's submission (attached as annex 7) in para 2 is not as per the regulations of JERC. Also the billing, annexure A in his submission is not understandable at all. He sought following reliefs:-

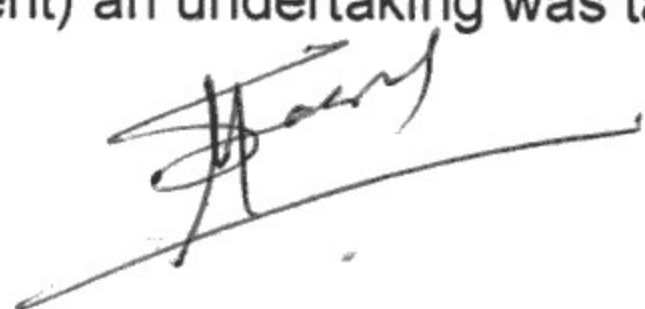
1. PPA as per the regulations (2015) that was in force when my roof top solar plant was installed .At solar tariff at the rate of Rs.8.57.
2. The solar tariff period and the P.P.A. is to be for 25 years as per JERC's notification 2015 clause 8 and clause 7C.
3. As per clause 8 of the JERC's notification 2015 the date of signing of P.P.A. should be taken into consideration (as mentioned whichever is later)
4. The surplus solar units to be corrected and properly carried over and a proper bill with import and export of units from the dale of installation to be issued.
5. Payment of unaccounted arrears and delay payment charges reverted back to account.

(c) Appellant further filed the Rejoinder as under :-

W.r.t para 1 the respondent speaks of the JERC order in petition no. 200/2016 dated 29/12/2016 that APPC charges are applicable for that FY. Nine months later on 13/9/2017 ED had signed an agreement with a rate of Rs. 8.57/KWH. A copy of the same agreement was attached as annex 6 in my complaint earlier.

The solar policy 2015 was extended upto 14/5/2019 and since my installation was within the control period the solar rate of Rs. 8.57/KWH is very much applicable to me.

It is to note that even though there was a PPA in force (I wasn't aware that there was already a signed agreement at that time and came to know only in Nov 2019 and that is when I asked under RTI the copy of the agreement) an undertaking was taken from me.

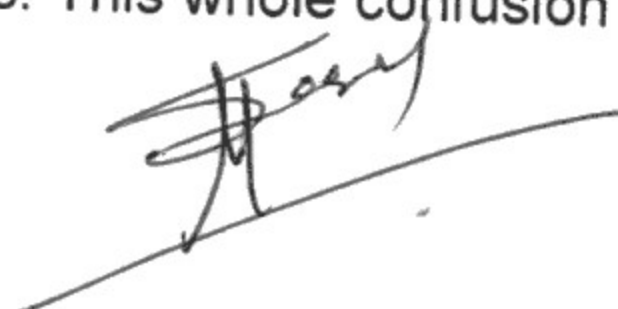


W.r.t the billing done and Annex A and B submitted by the respondent is very confusing. However as said by the respondent that no consumer had signed an agreement, whatever surplus units which needed to be carried over should have been shown in the bill. As of 1/4/2019 a surplus units of 4861 should have been carried over either in the billing or a statement should have been given to me that 4861 units are surplus and they will be paid once the agreement is signed. Whereas in the CGRF the respondent has said as per a letter by the chief electrical engg. they will not pay any consumer prior to 1/4/2019. My concern to the above is if a consumer consumes 4000 units and doesn't pay the EDG, will they just let go that consumer?

In the respondents submission in para 1 point 7, the clause of 8.10 of PPA that states that the prosumer shall be billed on net metering upto sanctioned load/ contract demand such that the anticipated generation in the year is not more than 100% of electricity consumption in previous 12 months has appeared in the agreement of 2019 which is again after my installation. However it was never mentioned in the solar policy of 2017. When questioned them about the static limit they told me of a clause 4.4 of net metering regulation of 2019 and were confusing me about the same. That is when I pointed out to them that the same above clause 4.4 comes under the eligibility criteria and not under clause 11 of billing energy accounting and settlement and that is when they sent it to the Govt. for consideration. So as per the govt. approval the static limit will be removed from 1/10/2019 i.e. after one year of my solar generation. I don't understand why the EDG has failed to read the clause 11 of billing energy accounting and settlement. Their failure and mistakes has caused problems, confusions and losses to the consumers.

W.r.t para 2 where the respondent says "however in no case rate of Rs. 8.57/KWH can be given under net metering as it is generic tariff and not APPC" let the respondent explain how they have signed the agreement in 2017 with a rate of Rs. 8.57/KWH, (attached as annex 6 in our complaint). The respondent doesn't want the said rate to be given. I say so because when we had a meeting with the previous Chief Engineer. as per the CGRF hearing (8/9/2020) along with the respondent who was a nodal officer at that time, the then Chief Engineer. had said that there is merit in the case and it is not the consumers fault that the agreement went for venting with the law dept. and he said that they shall put the matter with the govt. which I feel is not being done.

On 7/5/2020 I was issued a bill having previous arrears of Rs.4347 which was never shown in my previous bills. When inquired with the ED I was told that I haven't paid my previous bills to which I confirm that my previous bills were having arrears amounting only to Rs.265. even at this point I was not told that the bills were revised hence I had to ask under RTI how the arrears in my billing have accumulated to which the AE commercial gave me a statement (attached copy for ref.). I brought it to their notice that the bill nos. shown in the statement were not matching to the bills issued to me. I told the AE commercial that I would bring the above billing matter to the CGRF i.e. on 18/8/2020 (day of hearing). On 17/8/2020, evening I was sent the revised bills where in those bills, energy charges were charged and hence the arrears had occurred. Even though my exported units were more than my imported units. This whole confusion is all because of



this static limit that was introduced from nowhere. I had to pay all this amount in the pandemic which was difficult. If not, then the DCP charges would be added to my next bill. Now the same amount is being adjusted in the monthly bills which I totally disagree. I want the payment to be paid in cash back and not adjusted in the billing. I fail to understand why ED has complicated the solar policy when the JERC's regulations are very clear and understandable. With all this confusions created by the ED, they are sending a negative vibe and not promoting green energy as I am forced to tell other consumers who inquire with me w.r.t my solar plant.

Also my humble request to direct the ED to issue us actual bills for every month showing the exported units previous balance, carried over units in each and every bill as I have received bills from June 2020 to September 2020 without the carried over units, previous balance exported units. The consumers have to sit to calculate if the units have been carried over correctly. If the ED is having problems to fill in these details every month they could issue us only two bills yearly.

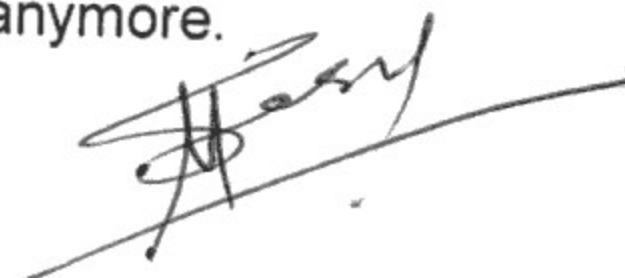
(B) **Submissions by the Respondents :**

Shri Rajiv R. Samant, Chief Electrical Engineer on behalf of Respondent submitted the para wise counter reply as under -

Para 1: The consumer has applied 8 KW Rooftop Solar PV Grid Connectivity on 20/01/2018 and availed Grid Connectivity on 15/10/2018 pending signing of Power Purchase Agreement. The generic levelized generation Tariff for rooftop solar PV plant for the year 2017-18 was Rs. 8.57 with 0% subsidy and without A.D. for the plant of 1 KW to 10 KW. However, as per the Joint Electricity Regulatory Commission (JERC) order in petition No. 200/2016 dated 29/12/2016 for Net Metering Agreement, the Average Power Purchase Cost (APPC) applicable during the Financial Year will be prior to the Financial Year in which the Solar Plants started feeding the Grid. The Grid connectivity to the said Solar plant was given on 15/10/2018. Hence, APPC rate of Rs. 2.65 (for the FY 2017-18) as defined by JERC is to be made applicable to the said installation in 2018-19.

However, Electricity Department Goa (EDG) has taken the APPC rate of Rs. 3.33/Kwh considering the Tariff Order 2018 – 19 at Goa periphery.

In regards to the 1st Power Purchase Agreement (PPA) signed by EDG with Goa Energy Development Agency (GEDA) (Government organization) for their pilot project of 3 KW plant in September, 2017, the Department was unaware of the Joint Electricity Regulatory Commission (JERC) order in petition 200/2016 dated 29/12/2016 and no actual billing has been done for Solar generation under Net Metering and the said installation is disconnected on 28/06/2019 and agreement terminated w.e.f. 28/01/2020. Hence that agreement does not exist anymore.



Since the Power Purchase Agreement was pending for approval from the Government and vetting by the Law Department, the Grid Connectivity was given pending signing of PPA on obtaining undertaking from the consumer and same was mentioned in Provisional Approval dated 03/05/2018.

It is to note that the Consumer viz. Newton Fernandes has not yet signed the Power Purchase Agreement. The rate of Rs.8.57/kwh cannot be implemented for solar surplus under net metering as same is generic tariff and not APPC.

With respect to billing of this installation, the statement of billing done from 15/10/2018 to till August 2020 is enclosed as Annexure 'A'.

The billing program in SAP software was under development stage and has gone live from September, 2019. Subsequently, the bills were issued to consumer w.e.f. 01/04/2019.

The EDG has given credit of solar generation units to monthly consumption upto 31/03/2019 as per statement enclosed as Annexure 'B'. The monthly solar units are adjusted.

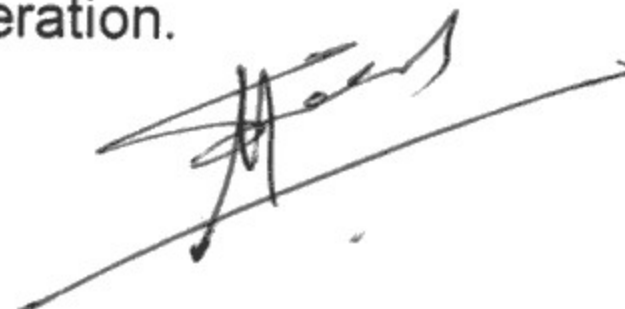
However the surplus solar unit at the end of settlement period as on 31/03/2020 was not paid as no consumer has signed Agreement and it was decided that same shall be paid for the year 2019-20 on signing the agreement.

As per Clause 26 of Grid connected Solar PV Regulations 2015 and Clause 4.4 of Net Metering Regulations 2019 the maximum Solar power generation capacity to be installed at any eligible consumer premises shall not exceed his Contract Demand or Sanction Load. Also as per Solar Policy 2017 and Clause 8.10 of PPA the prosumer shall be billed on Net Metering upto Sanction Load/ Contract Demand such that anticipated generation in the year is not more than 100% of electricity consumption in previous 12 months. Therefore, a Solar limit of 4710 units has been put as Static Limit in the software For this consumer.

The EDG has already paid an amount of Rs. 8,305/- towards solar surplus of 2494 units as on 31/03/2020 at the rate of Rs. 3.33/Kwh under Net Metering Even without signing Agreement.

The bill generated in SAP displays quantum of Electricity exported, imported and units billed. The carried over units will also be shown on the bills.

As per verbal direction from CGRF and discussion held between Chief Electrical Engineer and Newton Fernandes the proposal of surplus units and static limits of solar installations was send to Government for consideration.



Now it has been decided as per Government approval that all Solar export at each month will be adjusted against imported energy and balance solar surplus units at end of each settlement period will be paid to consumer and static limit will be removed. Accordingly the solar bill of Newton Fernandes will be revised with removal of static limit w.e.f 1/10/2019 within month.

Para 2: Tariff rate and for 25 years from date of signing is noted as below:-

- a) Tariff applicable 2017-18 is Rs. 2.65/- arrived as per order JERC 200/2016 dated 29/12/2016.
- b) Tariff applicable 2018-19 is Rs. 3.33/- as APPC rate at Goa periphery effective upto 31/05/2019.
- c) Tariff applicable 2019-20 is Rs. 2.93/- APP rate as per Tariff Order w.e.f. 01/06/2019

Connection was given on 15/10/2018. It is decided by Government to sign a agreement w.e.f. 01/04/2019 with Tariff of Rs. 3.33/kWh for which consumer has to agree. However in no case rate of Rs. 8.57/kWh can be given under net metering as it generic Tariff and not APPC.

Para 3: At present Net Metering regulations 2019 is prevailing.

Para 4: The instruction is issued to concern Executive Engineer and same will be done shortly within month.

Para 5: The revision of bill the DPC and arrears will be revised and necessary credit will be given to consumer.

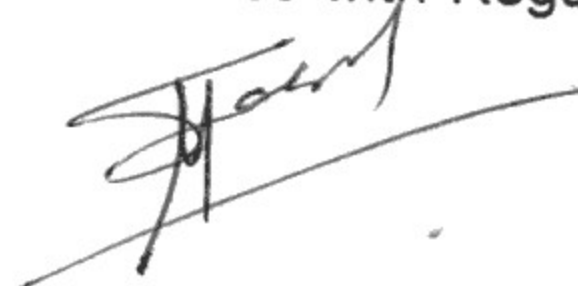
The mail sent by Ombudsman was not read by oversight by this Office which has resulted in delay in submission of same.

However the same will not be repeated in future. Kindly condone the delay in submission.

It is further prayed that hearing fixed on 3rd December 2020 may deferred as it is a Public Holiday in Goa on account of Old Goa St. Xavier Feast.

(C) Submission by CGRF-Goa for non-passing of order within prescribed timelines :

A report was called from Hon'ble CGRF-Goa to ascertain why the complaint could not be decided within the prescribed timelines in accordance with Regulation-12(2) of the



Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.

Hon'ble Nominated Member, CGRF Goa, vide email dated-28.10.2020 has informed that the posts of Chairperson and Member of CGRF Goa are vacant. As such, the required quorum is not available since February 2020.

Regulation 11 requires two members to form the quorum for the Forum's meeting and proceedings. It is respectfully submitted that Regulation 12 (2) may have to be construed with reference to other provisions that have to be read as a whole to understand its correct meaning and scope.

In these circumstances, learned Ombudsman may kindly guide whether nominated member sitting alone is empowered to hear and decide complaints under the CGRF & Ombudsman Regulations 2019.

This Forum has been routinely hearing cases via video-conferencing due to COVID-19 pandemic restrictions. Consent of the parties for a single member to decide is being sought as abundant caution.

In case of the complainant Newton Fernandes, the application was received on 07.07.2020; accordingly, notice dated 28.07.2020 was issued to the parties fixing VC hearing on 18.08.2020. At the VC hearing, the appellant insisted on a physical/offline hearing. As a special case, a hearing was fixed at the Forum's office on 07.09.2020 at 10 am. In course of the proceeding, the appellant was asked to convey his consent to the undersigned to decide the matter alone to which he refused. After hearing the matters for about 75 minutes, and in view of lack of quorum and the complainant's refusal supra, the matter was adjourned sine die. Copy of proceedings sheet, notices, etc are attached herewith.

In the interregnum and to explore the possibility of an amicable settlement, Departmental representative was requested to facilitate a meeting between the complainant and CEE, ED Goa. Pursuant to this, the complainant has communicated to this office that he discussed the matter with CEE on 08.09.2020 who assured to put up the case to the Government.

(D) Deliberations during Video hearing on 10.12.2020 :

1. Appellant submission:

The Appellant reiterated his version as submitted in appeal, and requested that he be also paid @8.57 per unit of solar exported to Grid without any static limit as was allowed to Goa Energy Development Authority.

A handwritten signature in black ink, appearing to be 'H. S. S.', is written over a horizontal line that extends to the right.

2. Respondent Submission:

The respondents reiterated their version as submitted in reply to the appeal and requested to dismiss the appeal.

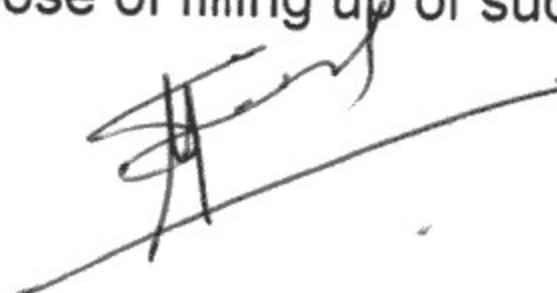
(E) Findings & Analysis:-

1. I have perused the documents on record and pleadings of the parties.
2. **Following provisions have been provided in the Joint Electricity Regulatory Commission,(Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019, notified by the Hon'ble Commission:-**

“ 7. Constitution of Forum and Appointments of its Members. –

- 7(1). The Forum shall consist of not less than three members including the Chairperson. Out of the three Members, not more than two members shall be appointed by the Commission out of the panel recommended by the licensee and at least one member shall be independent member to be appointed purely by the Commission. The Distribution licensee shall submit a panel of at least 2 persons for each post to the Commission, who are eligible according to the qualifications hereinafter prescribed.
- 7(2). The Licensee shall, for the purpose of appointment of Chairperson and Member of the Forum, other than the Independent member invite applications through public advertisement at least six months prior to accrual of the vacancy, The licensee shall submit for appointment by the Commission, a panel of at least two names against each post two month in advance from accrual of the vacancy. Thereafter, the candidate appointed by the Commission shall join the forum under intimation to the Licensee and the Commission.
11. **Voting and consensus .-** Two Members shall form the quorum for the Forum's meeting and proceedings before the Forum and each Member shall have one vote. In case of equality of votes on any issue, the Chairperson or in his absence the person presiding shall have the second or casting vote.
12. **Vacancies .-** (1) The licensee shall ensure that the post of a Member is not kept vacant for the period of more than 30 days.

Provided that in case the licensee is unable to fill the vacant post in terms of Regulation 7(2) above the Commission shall initiate the process of appointment from its end for the purpose of filling up of such vacancy.



(2) No act or proceedings of the Forum shall be deemed to be invalid by reason of any defect in the constitution of the Forum or by reason of the existence of a vacancy amongst its Members. "

3. Following provisions have been provided in the Joint Electricity Regulatory Commission (Solar Power-Grid Connected Ground Mounted and Solar Rooftop and Metering) Regulations-2015, notified by the Hon'ble Commission:-

" General Principles of Solar Power Projects

7. Control Period

- a. These Regulations shall remain in force for 3 (three years) unless reviewed /revised earlier or extended by the Commission.
- b. The tariff fixation parameters may be reviewed for each financial year (called the Review Period), to account for the effect of market dynamics which include, but not limited to:

The ceiling limit in respect of the Capital cost, the interest rate and other market related parameters for Solar Tariff determination.

- c. The solar Tariff determined under these Regulations, for the projects commissioned during the control period, shall continue to be applicable for the entire duration of the Power Purchase Agreement Period as specified in these Regulations.
- d. Notwithstanding anything contained in these Regulations , the parameters fixed for Solar Tariff determination in respect of grid connected Solar Power Projects that have started generating solar power prior to notification of these Regulations for which approval of the Distribution Licensee was taken or where the project specific solar tariff was determined by the Commission remain unchanged. The provisions of these Regulations having any impact on previously approved tariff shall not be considered.

8. Tariff Period

The Tariff period for grid connected Solar Plants shall be 25 (Twenty five) years that shall be reckoned from the date of commercial operation of the Solar Power Projects or signing the PPA whichever is later.

- I. Provided that Power Purchase Agreement (PPA) is signed between the Solar Project Developer and the Distribution Licensee mandated to buy the Solar Power.
- II. Provided that the full capacity of the Solar Project as approved, gets commissioned with the time line specified by the Commission, after signing of the PPA. If only a part of Plant capacity is commissioned within the specified time, the solar tariff applicable will be for that plant capacity that is commissioned. The Tariff for the balance part of un commissioned project will be dealt on its commissioning as per the solar tariff applicable for that part, if there is a change announced in Solar Tariff by the Commission.
- III. Provided also that the Solar Power Project planned to be developed comes within the Commission's approved total Solar Capacity for respective Distribution Licensee.

52. Applicable Tariff

The Tariff applicable for each project at the time of signing the PPA shall be as approved by the Commission for each year.

- I. Provided that the Power Purchase Agreement is signed between the Solar Power Project Developer and the Distribution license in the Specific Year of the Control Period.
 - II. Provided that the Solar Project is commissioned within the time indicated in these regulations
 - III. Provided that the Solar Project envisaged is not the commissioned in the time schedule specified above, the Tariff applicable for the project will be lesser of the two tariffs i.e of the previous year then PPA was signed and the next year tariff during which the Project gets commissioned."
4. Following provisions have been provided by the Joint Electricity Regulatory Commission, in Petition No-200/2016 decided on 29/12/2016 , while approving the Model Solar Net Metering Agreement:-

" Model Solar Net Metering Agreement

6. Energy Metering ,Accounting and Settlement :



6.7. The settlement of overall net export energy surplus during a financial year may be done as per one of the following options as may be mutually agreed between the Parties.

6.7.1. Twice a year i.e. by 30th September and 31st March and respective payments released not later than 31st October and 30th April.

6.7.2. Once a year i.e. by 31st March (if opted by the Prosumer), and payments released not later than 30th April.

The mode of payment can be a cheque or bank transfer.

6.7.3. Rate Payable for Net Energy Export: The payments for net Solar energy exported in excess of the imported energy to be made by the Distribution Licensee shall remain fixed for the life of the Plant as follows:

6.7.3.1. Rate per kilowatt-hour: Rs. [•number•] [as per APPC applicable during the financial year prior to the Financial year in which the Solar Plant started feeding to the grid]. This rate per kWh shall be applicable to all the territories under the jurisdiction of the Commission except for UTs of Lakshadweep and Andaman & Nicobar Islands.

6.7.3.2. Rate per Kilowatt- hour Rs. [•number•] [as per the applicable generic tariff determined by the Commission for the financial year when the plant starts feeding the Solar Power to the Grid]. This rate per kWh shall be applicable to the UTs Lakshadweep and Andaman & Nicobar Islands.

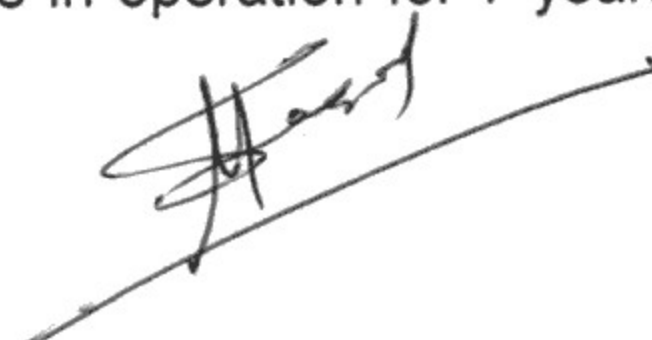
8. Term and Termination of the Agreement :

8.1 This agreement shall be in force for Twenty Five years from the Commissioning Date.”

5. **Following provisions have been provided by the Goa State Solar Policy of 2017 and 2019 :-**

“ Goa State Solar Policy-2017

4. Operative period:— This policy shall come into effect from the date of notification in the Official Gazette in the State of Goa and shall remain in operation up to 7 (seven) years. However, this is subject to modifications as may be made by Government of Goa from time to time, without jeopardizing the already signed Agreement or MOU. Even though, the policy will be in operation for 7 years, all



Agreements and PPAs signed under this policy shall be valid for the period of Agreement/PPA.

5. Category for generating solar power:—

(5.1) Category I: Prosumer— “Prosumer” is a Consumer having an already connected load with the Goa Electricity Department (GED) and is also a Producer of Solar Power. Prosumer is categorised into two types namely Small and Large.

(a) Small Prosumer is a person already having an LT connection i.e. connected load upto 100kW with GED. It will include Residential, Commercial, Institutional or Industrial consumers. They are allowed to go for Gross metering upto 100kW or the connected load, whichever is lower. The feed in tariff will be as per the Joint Electricity Regulatory Commission (JERC) approved solar tariff rates for that year. The solar power plant can be installed on rooftop or ground based within the same premises. The area/boundary of the premises will be as existing on date of Notification of this policy. However, the Small Prosumer is also allowed to opt for Net metering, if he chooses so.

14. Role of Department of Electricity, Goa:—

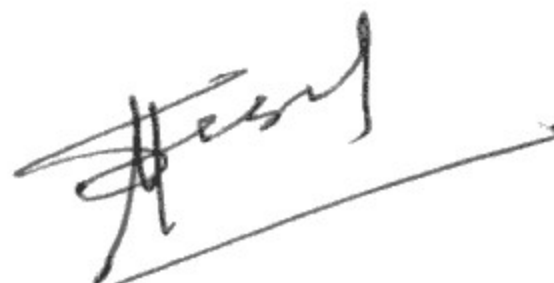
The Department of Electricity, Goa State also referred as GED shall extend their support and guidance to the eligible entities installing solar power plant and their connectivity with their electricity system.

The Department shall comply with the regulatory framework specified by JERC and provisions contained in this policy only if they are not contradicting the JERC regulations.”

“ Goa State Solar Policy-2019

4. Operative period.— This policy shall come into effect from the date of notification in the Official Gazette in the State of Goa and shall remain in operation up to 7 (seven) years. However, this is subject to modifications as may be made by Government of Goa from time to time, without jeopardizing the already signed Agreement or MOU. Even though, the policy will be in operation for 7 years, all Agreements and PPAs signed under this policy shall be valid for the period of Agreement/PPA.

5. Category for generating solar power. —



5.1 Category I: Prosumer- "Prosumer" is a Consumer having an already connected load with the Electricity Department, Government of Goa (EDG) and is also Producer of Solar Power. Prosumer is categorised into two types namely Small and Large.

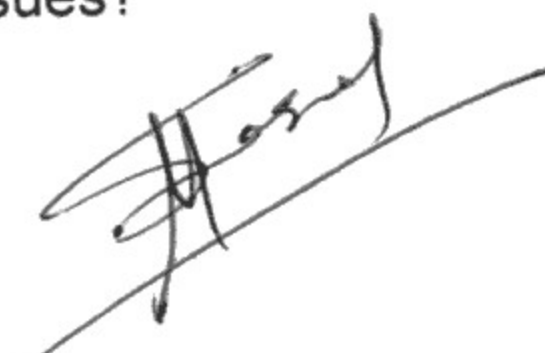
5.1.1 Small Prosumer is a consumer already having an LT connection i.e. Sanction load/Contract Demand upto 90KW with EDG. This shall include all Individuals /Residential /Commercial/Industrial firm/Society/Institute/Government building/registered company including public utilities. The Small Prosumer will be billed on NET Metering upto Sanction load/Contract demand upto 90KW such that anticipated generation in the year is not more than 100% of the electricity consumption in the previous (12) months. The feed in tariff for the settlement of net surplus energy credits outstanding at the end of the settlement period will be as per the Joint Electricity Regulatory Commission (JERC) approved solar tariff rates for that year or Average Power Purchase Cost (APPC) as per current year Tariff Order of JERC whichever is lower.

14. Role of Department of Electricity (EDG),Goa.—

The EDG shall extend their support and guidance to the eligible entities desired to install solar power plant and their connectivity with their electricity system .The EDG shall comply with the regulatory framework specified by JERC and provisions contained in this policy only if they are not contradicting the JERC regulations."

6. **From the above facts, following issues have arisen for consideration in this Appeal;-**

- a) Whether the Distribution Licensee is negligent in not appointing the Chairman and Licensee Member of the CGRF-Goa in time?
- b) Whether CGRF was right in not passing the order for want of quorum?
- c) Whether the Appellant is entitled for solar tariff at the rate of Rs.8.57 per unit of energy exported to Grid as allowed to Goa Energy Development Agency (GEDA) and without any static limit and signing of Power Purchase Agreement (PPA) for 25 years as per JERC's notification 2015 clause 8 and clause 7C ?
- d) Whether the Appellant is entitled for Payment of unaccounted arrears and delay payment charges and other billing issues?



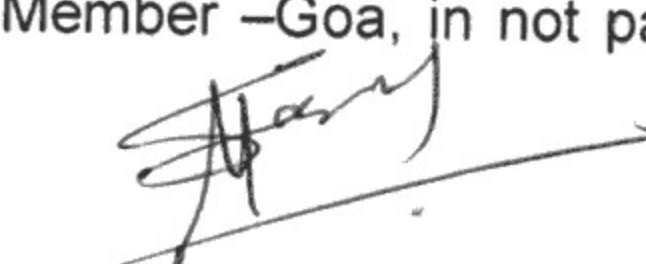
7. **My findings on each issue is as under :-**

- 7(a) The Joint Electricity Regulatory Commission has notified the ,Consumer Grievances Redressal Forum and Ombudsman , Regulations- 2019 and as per Section 7(2) of these Regulations Distribution Licensee should invite applications through public advertisement at least six months prior to accrual of the vacancy. It is informed by CGRF that these vacancy are lying vacant since February, 2020.

The Electricity Act, 2003 is a consumer-friendly statute to protect the interests of consumers. Non appointment of Chairman and Member to CGRF under section 42(5) of the said Electricity Act, in time, amounts to depriving the consumers of their right to get their "Grievance" redressed. For the last 15 months (i.e. six months before the vacancies and nine months after the vacancies till November,2020, the Distribution Licensee has failed to fill up the vacancies which cannot be appreciated by any means even considering the effect due to COVID-9 pandemic.

- 7(b). As explained in para-2 above , section 7(1) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019 provides that the Forum shall consist of not less than three members including the Chairperson. Section-11 provides that Two Members shall form the quorum for the Forum's meeting. These provisions are applicable when the Forum has 2 or 3 Members; so that business of the Forum (CGRF) is conducted smoothly .However section-12(2) is an exception to section 7(1) and section-11. The provisions of section-12(2) are specifically provided to cover such circumstances when there is absence of Two Members, due to leave, illness or retirement/vacancy or for any such reason. Section-12(2) explicitly provides that "No act or proceedings of the Forum shall be deemed to be invalid by reason of any defect in the constitution of the Forum or by reason of the existence of a vacancy amongst its Members ".Therefore there is no bar that a single Member cannot preside over the Forum (CGRF) meeting to decide consumer complaints independently. The Electricity Act, 2003 is a consumer-friendly statute for protection of Consumer. The non passing of order in consumer complaints by single Independent/Nominated Member is violative of section-12(2) and depriving the Consumers of their legitimate right under the Act to get speedy redressal of their "Grievance" .

At present the Hon'ble Joint Electricity Regulatory Commission, (which is a Two Member Commission) is working with a single Member due to a vacancy. The office of Ombudsman is also a single Member authority for the State of Goa and all UTs. Therefore there is no logic that a single member of CGRF of the State of Goa or any other UT cannot pass order in the absence of other Two members. The action of Independent/ Nominated Member -Goa, in not passing the order



on the plea of quorum, is neither in order nor in the interest of consumer protection.

- 7(c). As explained in para- 3,4 and 5 , it has been clearly provided in Solar Regulations-2015 that period of PPA will be for 25 years and Generic Levelised tariff for Solar plant under Net Metering upto 500 KW shall be Rs.8.51 per unit without AD, for Goa and some other UTs and valid upto 31.3.2016 . Thereafter vide Petition No-200/2016 dated-29/12/2016, Hon'ble Commission has approved a Model Net Metering Agreement in which it is provided that the PPA shall be signed for 25 years from date of commercial operation. It has been also made clear that Rate per kilowatt-hour Rs.[number] as per APPC will be applicable during the Financial year prior to the Financial year in which the Solar Plant started feeding to the grid .

The Goa Solar Policy of 2017 and 2019 also clearly stipulate that even though, the policy will be in operation for 7 years, all Agreements and PPAs signed under this policy shall be valid for the period of Agreement/PPA.

Further it was also made clear that Net surplus energy exported to grid outstanding at the end of the settlement period will be as per the Joint Electricity Regulatory Commission (JERC) approved solar tariff rates for that year or Average Power Purchase Cost (APPC) as per current year Tariff Order of JERC .

Further it has been made clear in Goa Solar Policy that Electricity Department-Goa shall comply with the regulatory framework specified by JERC and provisions of Solar Policy will be applicable only if they are not contradicting the JERC regulations.

Therefore in all above provisions it is explicitly clear that Appellant is entitled to sign PPA which will be valid for 25 years from the date of commercial operation of plant and surplus export solar power will be paid at APPC rate notified by the Hon'ble Commission and not on the Levelised/Generic Tariff rate as claimed by Appellant .Also there is no static limit on the export of surplus solar unit to the Grid .

It has been made clear by respondents that they has mistakenly signed the PPA with GEDA and anyhow no payment has been made @8.57 per unit and solar connection has been disconnected and such PPA is not valid now .

Therefore the apprehension of Appellant regarding period of Agreement, rate for surplus unit and static limit are just misconception and the same has been also clarified by the respondents in their counter reply in para- (B) above. The plea of the appellant that in the past Respondent has signed a PPA with GEDA for purchase of Solar power @Rs.8,57 per unit cannot be countenanced by any



court of Law. It has been held by Hon'ble Supreme Court in number of cases, one of which is Chandigarh Administration vs Jagjit Singh and others-AIR, 1995 SC705 that merely because an illegal or unwarranted order has been passed by an authority in favour of similarly situated person, such action on the part of the authority can never be a ground for issuance of a writ in favour of the petitioner on the plea of discrimination. The courts cannot be a party to such directions which have the effect of compelling the authorities to repeat such illegality or to pass illegal and unwarranted orders. In the case of M/s Faridabad C.T. ScanCentre vs D.G.Health Services and others-JT 1997(8) SC 171, same view was taken.

7(d). Since the Appellant has not signed the PPA with the Electricity Department for sale of Solar power till date, he has no locus standi to raise any dispute regarding the billing of Solar units generated under Net Metering. Accordingly no order is being passed on the plea of Appellant in this regard.

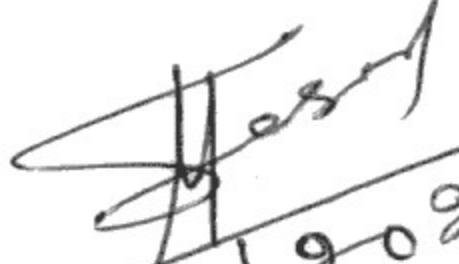
(F) DECISION

- (i). For the reasons discussed above, the appeal of the Appellant is partially allowed with no order as to costs.
- (ii). The Electricity Department/Licensee is directed to fill up the vacancies of Chairperson and Member of CGRF -Goa within a period of **Two months** from the date of the issue of this order by email.
- (iii) Hon'ble Independent/Nominated Member of CGRF-Goa is directed to dispose of all pending complaints, independently to avoid further harassment to consumers till the other Members/Member is appointed.
- (iv) The Electricity Department/Licensee is directed that if the Appellant sign the PPA (if he so wishes) , it should be valid for 25 years from the date of commercial operation of solar plant and surplus export of solar power will be paid at APPC rate as notified by the Hon'ble Commission. Also there should not be any static limit on the export of surplus solar units to the Grid.
- (v) In case, the Appellant or the Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.
- (vi) The Electricity Department/Licensee should submit a compliance report to the office of Ombudsman on the action taken in this regard within **Two months** from the date of issue of this order by email.



- (vii) Non-compliance of the orders of the Ombudsman by the Electricity Department/Licensee shall be deemed to be a violation of Regulations and shall be liable for appropriate action by the Hon'ble Commission under the provisions of the Electricity Act, 2003.

The appeal is disposed of accordingly.


14/12/2020
(M.P. Singh Wasal)
Electricity Ombudsman
For Goa & UTs (except Delhi)

Dated 14.12.2020