



2025:DHC:5142-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 23.05.2025
Judgment delivered on: 02.07.2025

+ W.P.(C) 15518/2024 & CM APPLs. 65153-55/2024, CM APPL.66813/2024, CM APPL.73009/2024, CM APPL.73058/2024, CM APPL.4272/2025

PACE DIGITEK PRIVATE LIMITED & ANR. ...Petitioners

versus

BHARAT SANCHAR NIGAM LIMITED & ORS. ...Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Parag Tripathi, Senior Advocate with Mr. Anirudh Wadhwa, Mr. Bhargav Thali, Mr. Vipul Kumar, Mr. Debarshi Chakrobarty and Mr. Abmuj Sachhan, Advocates.

For the Respondents : Mr. Nalin Kohli, Senior Advocate with Ms. Leena Tuteja and Ms. Nimisha Menon, Advocates for R-1.

Mr. Ashish Dholakia, Senior Advocate with Mr. Rohan Chawla, Mr. S. Banerjee and Ms. Ananya Tyagi, Advocates for R-2.

Mr. Mukul Rohatgi and Mr. Vivek Chib, Senior Advocates with Mr. Vikhyat Oberio, Ms. Mansi Gupta, Ms. Nishita Gupta, Mr. Sidharth Sunil Mr. Ravi Sharma and Mr. Shivam Prakash, Advocates for R-3.

Mr. Dayan Krishnan, Senior Advocate with Dr. Amit George, Mr. Rishabh Dheer, Ms. Aishwarya Singh and Mr. Sreedhar Kale, Advocates for R-5.

Mr. Nikhilesh Krishnan and Mr. Siddharth Singh, Advocates for R-7.



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Ms. Shagun Shahi Chugh, SPC with Mr. Varun Chugh and Ms. Nandita Mishra, Advocates for TCFL.

Mr. Tushar Mehta, Solicitor General with Mr. Udit Seth and Mr. Anil Seth, Advocates for RVNL.

Mr. Anil Sethi, Mr. Udit Seth and Mr. Dviyanshu, Advocates for the Impleader.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present petition has been filed under Article 226 of the Constitution of India, 1950 seeking direction to respondent no.1/ Bharat Sanchar Nigam Limited (hereinafter referred to as “BSNL”) to accept and admit the techno-commercial bid of the petitioners in respect of the Tender floated on 15.02.2024 and consequently declare the petitioners eligible for consideration of its financial bid of the said tender. The petition further seeks to quash the rejection of the techno-commercial bid of the petitioners in respect of Package nos. 2-5, and any action that has or may be taken by the BSNL in furtherance thereof. The petition also seeks to restrain BSNL from rejection of any Techno-Commercial Bid of the petitioners in respect of the other packages under the said Tender, i.e. Package nos. 6-16, and or any other action that may have been or may be taken by BSNL in respect of the said packages to the prejudice of the petitioners.

2. As per the petitioners, BSNL issued a tender on 15.02.2024 for



Development (Creation, Upgradation and Operation & Maintenance) of middle mile network of BharatNet on Design, Build, Operate and Maintain (DBOM) Model. The Tender consisted of work in sixteen (16) packages corresponding to different States and Union Territories in the Country. The total contract value of the Tender is approximately Rs.65,000 crores. The Project is of national importance as it envisages laying of the infrastructure for broadband connectivity in the rural areas of the country, including its operations and maintenance for the next ten years.

3. The packages in the Tender are classified into two broad Categories – Category-1 (Package nos. 1 to 8) and Category-2 (Package Nos. 9 to 16). Category-1 was further sub-divided into two sub-categories, that is, Category-1A (Package Nos.1 to 4) and Category 1-B (Package Nos. 5 to 8). The Tender in Clause 5.6 contained a limit on the number of packages a bidder can bid in a particular category as well as overall limit.

4. The petitioners claims to be one of the leading corporates dealing with and servicing various requirements of the telecom sector; and claims to have been recognized/awarded for its excellence, *inter alia*, by various Governments and public entities. The petitioners made its bid towards procuring a contract under the said Tender on 06.08.2024.

5. The petitioners state that as per the requirements of the Tender, the petitioners were required to furnish '*Experience/work completion certificate*' from its previous employers in order to establish its technical eligibility. The petitioners, *inter alia*, submitted the following documents as a part of its techno-commercial bid with the BSNL:-



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(i) A ‘Work Experience Certificate’ (hereinafter referred to as the “WEC”) dated 09.02.2018 issued by Reliance Jio Infocomm Limited (hereinafter referred to as “Reliance”), whereby Reliance certified that the petitioners had undertaken works relevant for the said Tender, from 2014 till 2018 for a length of approximately 31,924 kilometers of optical fibre cables.

(ii) An ‘Experience & Work completion’ certificate issued on e-mail by Tata Communications Transformation Services Ltd. (hereinafter referred to as “Tata”) dated 26.03.2024, whereby Tata approved that the petitioners had undertaken works relevant for the said Tender for Optical Fibre Cable maintenance from 2022 to 2023.

6. It is stated that the last date for submission of the bids was 05.08.2024. A bidder had to submit techno-Commercial bid and financial bid simultaneously. The techno-commercial bid was to be opened on 07.08.2024.

7. It is stated that on 07.09.2024, the BSNL issued post bid queries seeking clarifications with respect to, (i) the non-mention of the Purchase Order number (hereinafter referred to as “PO”) on the WEC issued by Reliance; and (ii) that the second page of the said certificate was neither on a letterhead nor contained any signature of an authorised personnel. BSNL also sought clarification regarding the POs attached with the certificate on the ground that some of them were issued by Reliance Jio Infratel Pvt. Ltd. and others by Reliance Corporate IT Park Ltd. The petitioners claim that it had responded to the clarifications sought by the BSNL *vide* the online



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portal stating that, (i) the WEC issued by Reliance could be verified by BSNL directly from Reliance; and (ii) Tata's email validating the experience of the petitioners was issued in line with the Standard Operating Procedure (hereinafter referred to as "*SOP*"), which could also be verified from Tata.

8. The petitioners stated that the BSNL, *vide* the email dated 16.09.2024, communicated with Reliance seeking, (i) whether the WEC dated 09.02.2018 was indeed issued by Reliance, and if so, then as to why there is no signature of the authorised person on the 2nd page where quantities of length of Optical Fiber Cable (hereinafter referred to as "*OFC*") maintained by M/s Pace Digitek for different States is mentioned; and (ii) the actual quantity for which the WEC was issued.

9. It is stated that on receiving no response from Reliance, *vide* the email dated 20.09.2024, the BSNL communicated with the petitioners asking it to pursue Airtel (Reliance) for the confirmation/clarification of its queries. It is claimed that petitioners, *vide* the email dated 21.09.2024, responded to the email dated 20.09.2024 of BSNL informing that petitioners had been pursuing Reliance for clarification of the queries and also provided contact details of two of the employees of the Reliance requesting BSNL to contact them directly, if required.

10. It is claimed by the petitioners that Reliance had sent an email dated 25.09.2024 regarding the contents of the WEC dated 09.02.2018 directly to the BSNL confirming the contents of the 1st page of the said certificate, however, raised a doubt about the 2nd page as it did not contain either a



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signature of the authorised person or a seal. The petitioners further asserts that *vide* the letter dated 13.10.2024, Reliance had confirmed not only the contents of 1st page of the certificate in question but also the contents of 2nd page by reproducing the same in the said email communication. Thus, the petitioners claimed that Reliance had furnished the necessary clarification of the queries sought by the BSNL.

11. It is stated that despite the aforesaid communication from Reliance, BSNL did not choose to respond at all giving an impression that the techno-commercial bid would be considered as responsive. However, according to the petitioners, to its shock and alacrity, the techno-commercial bid of the bidders was evaluated and its techno-commercial bid was declared as non responsive on 04.11.2024 at 06:44 PM. Petitioners also claim that contrary to and violative of the provisions of clause 19.2 of the Tender Document, which provided that financial bid would not be opened on the same day as the techno-commercial bid and a date for that purpose would be announced through BSNL's portal, the financial bids were opened on 04.11.2024 itself at 06:52 PM.

12. Thus, in substance the present writ petition has been preferred challenging the disqualification of the petitioner's techno-commercial bid by BSNL on the ground of being "*NON-RESPONSIVE*" by ignoring/overlooking the communication dated 13.10.2024 issued by Reliance confirming/validating its WEC.

CONTENTIONS OF THE PETITIONERS:

13. Mr. Parag Tripathi, learned senior counsel appearing for the



petitioners briefly adumbrated the background facts necessary and germane to the dispute in hand. Learned senior counsel, in his usual fairness, asserted that in ordinary situations Courts may not interfere in tender matters, save and except where the tender issuing authority acts in a *malafide*, arbitrary, discriminatory or in a non-transparent and unfair manner. He emphasizes that the present case is one such stark case where BSNL has acted not only arbitrarily but also in a non-transparent and unfair manner while disqualifying the techno-commercial bid of the petitioners.

14. Mr. Tripathi while referring to the technical capability of a bidder as specified in the qualification criteria of the bid document, stated that in case a bidder intends to participate in category 1 and category 2 packages, then such bidder essentially ought to have experience of EPC-OFC Constructions Project consisting of 15,000 KMs of Core Underground OFC. The supporting documents prescribed were Experience/Work Completion Certificate in case of Engineering, Procurement & Constitution Project (hereinafter referred to as “*EPC Projects*”) and satisfactory Operations & Maintenance Completion Certificate (hereinafter referred to as “*O&M Completion Certificate*”), in case of O&M, works issued and signed by the PO Issuing Authority or an authority authorised by the PO Issuing Authority with complete details. In pursuance to such criteria, the petitioners submitted the WEC dated 09.02.2018 issued by Reliance containing two pages.

15. It was submitted that *vide* the e-mail dated 07.09.2024, the BSNL sought clarifications in respect of the following:-



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“From: SANJAY VATSA <sanjay.vatsa@bsnl.co.in> on behalf of SANJAY VATSA
Sent: 07 September 2024 18:50
To: mary.g@pacedigitek.com
Cc: MAHESH SINGH NIKHURPA; MANOJ JAIN; Paritosh Kumar Shah; SANJAY GUPTA
Subject: 1st round of Post bid Clarification required w.r.t Tender Enquiry No: MM/BNO&M/BN- III/T-791/2024 issued on 15.02.2024. – regarding
Attachments: PACE_PBQ_PKG-5_UKND.xlsx

While evaluating your technical bid of Tender for Design, Supply, Construction, Installation, Upgradation, Operation and Maintenance of middle mile network of Bharat Net, in the Packages/ Circles vide Tender Enquiry Number: MM/BNO&M/BN-III/T-791/2024 issued on 15.02.2024, it is observed that some clarifications are required in respect of some para(s) as per enclosed Annexure for getting more clarity on the bids in order to carry out further evaluation. Content of Post bid query is being conveyed through this email instead of CPP Portal due to limitation of uploading of text on CPP Portal. The attached post bid clarifications may not be exhaustive and if required, BSNL may ask further clarifications also.

You are requested to kindly submit your clarifications/Replies para-wise through e-tender portal (<https://etenders.gov.in/eprocure/app>) only latest by 09.09.2024 positively (time as per e-tender portal). Please note that the clarifications/Replies sent by FAX/EMAIL or any other means will not be entertained.

*With regards
Sanjay Vatsa
AGM(MMT-II), MM Cell
BSNL CORPORATE OFFICE
NEW DELHI
Mobile No.9868176305”*

16. Similarly, for other packages as well similar queries were made. It is stated that the petitioners had pursued the Reliance for issuance of clarification as sought by the BSNL. Learned senior counsel submitted that the BSNL vide the e-mail dated 16.09.2024 sought clarification in respect of (i) issue of WEC by Reliance Jio and (ii) the quantity for which experience certificate was issued to the petitioners. Admittedly, this e-mail



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was sent to one Mr. Sunil Saxena of Reliance Industries by Sh. Atul Sharma, Principal General Manager (BN) and the Chairman, Committee for Evaluation of Tender (hereinafter referred to as the “CET”) for UPE. Mr. Tripathi stated that having not received any direct response, BSNL sent an e-mail dated 20.09.2024 to the said Mr. Sunil Saxena of Reliance Industries as also to the petitioners stating “*No Response from Airtel. Kindly pursue*”. He stated that consequent thereto the petitioners immediately responded *vide* the reply e-mail dated 21.09.2024 affirming that the petitioners are pursuing Reliance for clarification/confirmation of the queries raised by BSNL and simultaneously disclosed the contact numbers of the authorized persons who signed the completion certificate i.e., Mr. Sunil Kumar Saxena as also of one Mr. Shailambar, who is stated to be the Reporting Manager of the said Mr. Sunil Saxena so as to enable BSNL to seek clarification from the concerned persons. In response to the aforesaid e-mail of the BSNL dated 20.09.2024, the Reliance, through Mr. Shailambar responded to Mr. Atul Sharma *vide* the e-mail dated 25.09.2024.

17. Mr. Tripathi stoutly emphasized that this e-mail dated 25.09.2024 emanating from Reliance was never communicated to the petitioners. He stated that had the said e-mail been communicated to the petitioners, it would have taken necessary steps immediately to seek clarification in respect of as to how the Reliance has not agreed to the second page containing the quantities appended to the WEC dated 09.02.2018. He also submitted that upon being furnished a copy of the email dated 25.09.2024 for the first time on 07.11.2024, the petitioners had approached Reliance



vide email dated 14.11.2024 attaching therewith copies of the relevant documents. In response, Reliance *vide* email dated 15.11.2024 has verified its records and unequivocally confirmed as follows:

“...as per your request and upon verification of records, we re-confirm the certificate dated 09.02.2018 and the letter dated 13.10.2024. We regret any confusion caused earlier and hope this email will be sufficient for your requirement...”

18. Mr. Tripathi, learned senior counsel stated that notwithstanding the aforesaid e-mail dated 25.09.2024, the Reliance through its Senior Vice President issued a communication dated 13.10.2024 to the General Manager (MM), BSNL, Corporate Office, MM-Cell validating the work done by the petitioners, stating as under:-

Date: 13-Oct-2024

To
The General Manager (MM),
Bharat Sanchar Nigam Limited
Corporate Office, MM-Cell
2nd floor New Delhi- 110001.

Sub: *Validation of Work Done by M/s Pace Digitek (formerly Pace Power Systems Private Limited).*

Further to the experience certificate issued vide dated 9th February 2018, we hereby confirm the following:

1. Details of the Purchase orders issued by our subsidiary companies, namely Reliance Corporate IT Park Ltd & Reliance Jio Infratel Private Limited to M/s Pace Power Systems Private Limited towards OFC maintenance of Intracity and Intercity OFC KMs for UG and Aerial 24F/48F/96F are as below.

2. They have rendered operation and maintenance of Telecom Towers, Medium and Large facilities and FTTx routes under the POs.

Financial Year	Tamil Nadu		Bihar		Karnataka		Andhra Pradesh		Total	
	UG	Aerial	UG	Aerial	UG	Aerial	UG	Aerial	UG	Aerial



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FY 2014-15	1,401	157			1,373	95	857	55	3,331	307
FY 2015-16	2,605	289			765	82	3,920	150	7,290	521
FY 2016-17	4,648	456	2,283	233	910	90	2,945	155	10,786	934
FY 2017-18	5,012	290	2,864	289				7,876		579
Total KMs	13,666	1,192	5,147	522	3,048	267	7,722	360	29,583	2,341
Total KMs for UG & Aerial									31,924	

3. List of Purchase Orders

S.No	State	Purchase Order No.
1	ANDHRA PRADESH	156/111088
		156/121682
		140/550000059
2	BIHAR	142/550000241
		142/550000100
		154/550010521
		142/550000865
3	KARNATAKA	163/111089
		14C/111089
		14C/550000933
4	TAMIL NADU	14M/550000167
		14M/550000756
		171/111087
		14M/550000075
		154/550010746
		P36/550011004
		14M/111087

19. Learned senior counsel stated that it was only when a copy of this letter was received by the petitioners from Reliance *vide* the email dated 15.10.2024, that the petitioners communicated the same to BSNL on the same day. On that basis, he contended that when BSNL received the letter dated 13.10.2024 issued by Reliance and a copy thereof was also forwarded



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to BSNL by the petitioners on 15.10.2024, there was no reason nor any plausible explanation as to why BSNL did not take into consideration the clarification/confirmation issued by Reliance to the queries raised by BSNL. According to learned senior counsel, the same is, *ex facie*, arbitrary, discriminatory and capricious.

20. Learned senior counsel, while heavily relying on the letter dated 13.10.2024, contended that the said letter validated and vindicated the WEC dated 09.02.2018 confirming not only the POs issued by the subsidiary companies, namely Reliance Corporate IT Park Limited and Reliance Jio Infratel Pvt. Ltd towards OFC maintenance of Intra-City and Inter-City OFC, but also simultaneously validated the works which were completed from the financial year 2014-15 till the financial year 2017-18 across four States, i.e., Tamil Nadu, Bihar, Karnataka and Andhra Pradesh totalling 31924 KMs. He laid great emphasis on the fact that the letter dated 13.10.2024 clarified and confirmed the queries of BSNL in no uncertain terms and ought to have been considered by the BSNL before holding petitioners as non-responsive while evaluating its techno-commercial bid. He vehemently argued that the non consideration of letter dated 13.10.2024 is arbitrary and violative of the conditions of the Tender Document.

21. Learned senior counsel submitted that no reasons were provided to the petitioners while rejecting their techno-commercial bid on 04.11.2024. It was only after the petitioners approached this Court by way of the instant writ petition that BSNL, for the first time, provided reasons in its reply. He strongly contends that this itself shows the *malafides* on the part of the



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BSNL. He relies upon the judgement of the Hon'ble Supreme Court in *Star Enterprises vs. C.I.D.C. of Maharashtra Ltd.; (1990) 3 SCC 280* to submit that when highest offers of the type in question are rejected, sufficient reasons to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned party unless there be any specific justification not to do so.

22. Apart from the aforesaid, Mr. Tripathi relied upon certain clauses of the bid document to put forward the argument that BSNL has, by violating such clauses, rendered the tender process liable to be judicially reviewed by this Court. In particular, he relied upon Clauses 19.2.1 and 19.2.2 as also 31.1, 31.2 and 5.4.4 and 5.4.5 of the Tender Document to buttress the aforesaid arguments.

23. Learned senior counsel relied upon Clause 19.2 of the Tender Document to submit that without considering the letter dated 13.10.2024 issued by Reliance, the BSNL held the techno-commercial bid of the petitioners as non-responsive on 04.11.2024 at 06:44 pm, whereas on the very same day at 06:52 pm the financial bids were opened violating Clause 19.2. He vehemently contended that Clause 19.2.1 provided that the bids will be opened in two stages and prohibited opening of financial bid on the date of opening of the techno-commercial bid. He also stated that Clause 19.2.2 specified that the date and time of the opening of financial bid would be intimated through the e-portal. Since the techno-commercial bid of all the bidders was notified on 04.11.2024, the financial bids could not have been opened on the very same day keeping in view the prohibition in



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Clause 19.2.2. He contended that having opened the financial bid on 04.11.2024 and the same being violative of Clause 19.2.2, the opening of financial bids ought to be quashed and set aside. Resultantly, directions may be passed for reconsideration of the financial bids of all the bidders including that of the petitioners.

24. Premised on the aforesaid argument in the context of Clause 19.2.2, learned senior counsel also vehemently contended that the mandatory procedures to be followed by the BSNL while rejecting the techno-commercial bid on 04.11.2024 of the petitioners, was not adhered to by the BSNL violating Clause 31.2 of the Tender Document. Relying on Clause 31.2, learned senior counsel contended that the right to representation against the rejection of the techno-commercial bid was not afforded to the petitioners by the BSNL. It is the contention of the petitioners that had the BSNL followed the procedure laid down in Clause 31.2, the petitioners would have had a fair opportunity to submit its representations clarifying that the queries raised by BSNL could be satisfactorily explained. That having been denied, learned senior counsel contended violation of principles of natural justice and arbitrary and non-transparent manner of tender process conducted by the BSNL. According to learned senior counsel, on account of such violation of the mandatory tender condition, the petitioners were deprived of an opportunity to participate in the tender process fairly. Additionally, he contended that the petitioners would have, in all probability, been declared as L1 bidder in most of the packages since its bid is claimed to be the lowest. He also contended that the public



exchequer would have been benefitted by almost Rs.200-300 crores, which is a substantial amount. This itself ought to propel this Court to judicially review the dispute and if required, pass necessary directions for the re-evaluation of the financial bids of the bidders including that of the petitioners.

25. Additionally, Mr. Tripathi, learned senior counsel also invited attention of this Court to Clauses 5.4.4 and 5.4.5 of the Tender Document, in particular Clause 5.4.5, to submit that in pursuance thereto the BSNL had sought clarifications/confirmation of the WEC dated 09.02.2018 issued by Reliance which was duly responded by Reliance *vide* its letter dated 13.10.2024. Thus, he contends that once Reliance submitted a composite clarification on 13.10.2024 under the provisions of Clauses 5.4.4 and 5.4.5 of the Tender Document, there is no way that BSNL could have avoided considering the said letter. According to him, the rejection simpliciter on the basis of e-mail dated 25.09.2024 without considering letter dated 13.10.2024 of Reliance is, *ex facie* arbitrary, capricious and unfair.

26. Mr. Tripathi, learned senior counsel relies upon the following judgments:-

- a) ***M/s. Star Enterprises & Ors. vs. City and Industrial Development Corporation of Maharashtra & Ors.; (1990) 3 SCC 280.***
- b) ***Ramana Dayaram Shetty vs. International Airport Authority of India & Ors.; (1979) 3 SCC 489.***
- c) ***Banshidhar Construction Pvt. Ltd. vs. Bharat Coking Coal Ltd. & Ors.; (2024) 10 SCC 273.***



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d) *ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd. & Ors.; (2004) 3 SCC 553.*

e) *Subodh Kumar Singh Rathour vs. Chief Executive Officer & Ors.; 2024 SCC OnLine SC 1682.*

CONTENTIONS OF THE RESPONDENT NO.1/BSNL:

27. Mr. Nalin Kohli, learned senior counsel appearing for the BSNL vehemently opposed the submissions addressed on behalf of the petitioners and prayed for dismissal of the present writ petition with exemplary costs, being based on fraud.

28. Mr. Kohli while adumbrating facts on behalf of BSNL and alluding to various documents submitted that (i) as per the tender conditions the bidders are mandated to submit their eligibility documents along with the bid and the terms of the Tender Document also clearly stipulated that no such document could be filed subsequently; (ii) it was on the query of BSNL put to the petitioners in regard to the WEC issued by Reliance that the reply dated 25.09.2024 of Reliance was considered and accordingly a decision was taken; and (iii) the letter dated 13.10.2024 stated to have been issued by Reliance and purported to have been submitted to the BSNL was neither processed through the CET nor received on the CPP Portal and, therefore, not considered being an extrinsic document.

29. Learned senior counsel copiously referred to various clauses of the Tender Document as extracted in the counter affidavit filed on behalf of the BSNL to buttress that the BSNL has not violated even a single tender condition while it was the bid of the petitioners which was in stark violation



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of certain mandatory conditions of the Tender Document. While referring to Section II, which is the General Instructions to Bidders, Mr. Kohli stated that the failure to furnish all information required as per the Tender Document or submission of the bids not substantially responsive to the Tender Document in every respect, would be at the bidder's risk and could have resulted in rejection of the bid. According to him, non-furnishing of the requisite WEC complete in all respects and in compliance of the necessary eligibility conditions set out in the Tender Document itself provides liberty to the BSNL to reject or disqualify any bidder at the outset itself. Though in the present case, an opportunity was undeniably afforded to the petitioners which was availed of and the clarification e-mail dated 25.09.2024 issued by the Reliance denying issuance of the 2nd page of the WEC dated 09.02.2018 was indeed considered and resultantly the techno-commercial bid of the petitioners was declared to be non-responsive. In other words, learned senior counsel contended that petitioners cannot claim violation of principles of natural justice or even not having been provided any opportunity to clarify the doubts which genuinely arose while BSNL undertook evaluation of the techno-commercial bid of the petitioners.

30. So far as the argument premised on violation of Clause 19.2 of the Tender Document is concerned, Mr. Kohli categorically contended that there was no such violation at all. He stoutly contended that contrary to the submission of the petitioners that the financial bid of the bidders was opened on 04.11.2024 immediately after the techno-commercial bid were opened and results declared and thereby violating the provision of Clause



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19.2.2, factually the techno-commercial bids were actually opened on 07.08.2024 and the financial bids were opened on 04.11.2024. Thus, the prohibition in Clause 19.2.2 regarding the bar of not opening the financial bid on the day when techno-commercial bids are opened, has not been violated. He contended that only the result of the evaluation of the techno-commercial bid was declared on 04.11.2024 followed by opening of the financial bids in respect whereof there is no Clause or tender condition prohibiting the same. Thus, the BSNL, according to learned senior counsel, did not violate Clause 19.2 at all and no benefit can be gained by the petitioners on that count. He also emphasized that Clause 20.1 clearly stipulated that no post-bid clarification at the “*initiative of the bidder*” shall be entertained. According to him, the letter dated 13.10.2024 would fall within this prohibition and could not have been considered by BSNL being an extrinsic document as also at the initiative of the petitioners. To buttress this argument, learned senior counsel extensively relied upon Clauses 21.3 and 21.4 of the bid document and also to substantiate that BSNL had a right to declare petitioner’s bid as non-responsive on the basis of the contents of the bid itself without recourse to extrinsic evidence, i.e., letter dated 13.10.2024 of Reliance.

31. He also contended that provisions of Clause 31.1 drew special attention of the bidder to the Clauses of the Tender Document, non-compliance whereof would stipulate in rejection of the bid itself. Relying on sub-clause (b) of Clause 31.1, learned senior counsel contended that if the eligibility conditions as per Clause 2 of Section II are not enclosed, the



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bid was liable to be rejected without further evaluation. Applying the said principle to the present case, Mr. Kohli submitted that a fair opportunity was indeed offered to and availed of by the petitioners and the bid was fairly evaluated, considered and rejected by BSNL. Thus, this rejection or disqualification of the techno-commercial bid was well within the purview and power of the BSNL and cannot be now questioned by the petitioners under Article 226 of the Constitution of India. In any case, he contended that, the non-receipt of letter dated 13.10.2024 through the CPP Portal resulted in non-availability of the same with the CET and the said letter being an extrinsic evidence/document, no grievance on such non-consideration can be raised by the petitioners.

32. Additionally, learned senior counsel relied upon Clause 35.1 to submit that the onus of proving the genuineness of the submitted documents was with the bidder. He contended that it was the duty of the petitioners to have ensured that genuine WEC was uploaded within the stipulated time as provided by BSNL in its query regarding certain clarifications as also to ensure that the CET was furnished with such copies through the e-tender Portal. He stated that petitioner's failure to do so has naturally resulted in declaration of its techno-commercial bid as non-responsive and no blame, worth its name, can at all be placed upon the BSNL.

33. Mr. Kohli also mentioned other relevant clauses which have been extensively extracted and form part of the counter affidavit to contend that the WEC was a relevant and a material document in the absence whereof the bid of any bidder was liable to be rejected as non-responsive.



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34. On facts, Mr. Kohli submitted that the original WEC dated 09.02.2018 lacked genuineness for the reason that the 2nd page which contained the facts and figures in respect of the actual work experience purported to have been gained by the petitioners was neither on a letterhead nor contained any signature of an authorised person or a seal. He submitted that this doubt of the BSNL regarding the genuineness of the WEC was also confirmed by the e-mail dated 25.09.2024 issued by the Reliance which was the certificate issuing authority. Once the said authority itself denied the issuance of 2nd page of the WEC dated 09.02.2018, there was no plausible reason as to why the BSNL would doubt the contents of the e-mail dated 25.09.2024 and consequently, the petitioner's techno-commercial bid was rightly held as non-responsive. He also referred to many documents to indicate that there was a discrepancy between the purchase orders issued by different entities and the entity which issued the said certificate. He emphasized that even this discrepancy was not properly or sufficiently explained by the petitioners. Furthermore, learned senior counsel referred to many e-mails emanating from BSNL from 07.09.2024 onwards seeking clarifications from petitioners to show compliance of Clause 31.1 by the BSNL. He contended that despite a number of such e-mails specifying the deadline of such responses as 09.09.2024, the response, if at all, was received only on 21.09.2024. Drawing attention to the e-mail dated 21.09.2024, learned senior counsel submitted that even in these e-mail petitioners only referred to two persons of Reliance with their contact details asking BSNL to contact them directly without providing any



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clarification at all. He submitted that it was only on 25.09.2024, that by an e-mail Reliance clearly informed that the 1st page of WEC dated 09.02.2018 is genuine and that the 2nd page containing references to the quantity of work done, has not been issued by Reliance. It is in that context, Mr. Kohli submitted that there was neither any reason nor any justification as to why BSNL would consider any document other than the contents of the e-mail dated 25.09.2024. He contended that it is not for the tender issuing authority to follow up with the certificate issuing authorities to seek clarification nor is it an obligation under any condition of the Tender Document. Moreover, he stated that even in the letter dated 13.10.2024, though not admitted, Reliance never disputed the contents of the earlier e-mail dated 25.09.2024. With such background, Mr. Kohli vehemently contended that the petitioner's submissions in this regard do not give the correct factual situation and the same may be rejected. He asserted that BSNL has not considered any document from any bidder which is similar in nature to the one relied upon by the petitioners particularly after the closure of the bid. In such circumstances, he submitted that the writ petition is bereft of any merits and ought to be dismissed with exemplary costs.

35. He relies upon the following judgments:

- a) *Jagdish Mandal vs. State of Orissa; (2007) 14 SCC 517.*
- b) *West Bengal State Electricity Board vs. Patel Engg. Co. Ltd., (2001) 2 SCC 451.*

CONTENTIONS ON BEHALF OF THE RESPONDENT NO.3/HFCL:



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36. Appearing for the respondent no.3/HFCL, Mr. Mukul Rohatgi, learned senior counsel submitted that it is trite that the ambit of Courts exercising the power of judicial review under Article 226 of the Constitution of India are highly circumscribed and restricted so far as matters relating to tenders floated by State or its instrumentalities are concerned. He submitted that the Court would refrain from interfering in tenders relating to large scale infrastructural development particularly those of great magnitude like in the present case, in public interest. He contended that in the present tender, the bidders are entitled to a maximum of four packages though they can bid for all the 16 packages. He submitted that any interference or interdiction even in one of the packages would have a rippling or a domino effect on all the other packages. He forcefully argued that interference by the Court in a matter where the petitioners themselves are alleged to have played fraud, should not, only be not entertained but dismissed with exemplary costs as an example.

37. Mr. Rohatgi, while drawing attention to the WEC dated 09.02.2018 and the e-mail dated 25.09.2024 issued by Reliance, submitted that a perusal of both the documents establishes that the petitioners has actively indulged in forgery and fabrication of documents and is ineligible to participate in the tender process. In fact, according to him, the petitioner's bid should be summarily rejected. He also contended that the discretionary relief under Article 226 of the Constitution of India should not be available to fraudsters such as the petitioners. It is only those who come with clean hands and clear antecedents who may be entitled to invoke such



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discretionary jurisdiction.

38. Learned senior counsel contended that the WEC is indubitably an essential eligibility condition in the absence whereof a bidder would not be eligible to submit its bid. He also vehemently contended that it is not the duty of the BSNL to follow up with the certificate issuing authorities as to whether such documents are genuine or not. Moreover, having regard to the fact that *vide* e-mail dated 25.09.2024, Reliance had categorically denied having issued the 2nd page of the WEC dated 09.02.2018, the declaration of the techno-commercial bid of the petitioners as non-responsive is the only logical conclusion which BSNL could reach.

39. That apart, learned senior counsel also stoutly argued that a number of e-mails emanating from BSNL categorically established that the cut off date for receiving clarification *via* the e-portal was 20.09.2024. Admittedly, no clarification was received by BSNL through the e-portal as on that date. The only clarification that was received was through e-mail dated 25.09.2024 which too denied the 2nd page of the WEC which contains the facts and figures regarding the actual work done by petitioners from the year 2014 till the year 2017-18. According to learned senior counsel, as on 20.09.2024, it was the fraudulent certificate which was on record and the BSNL need not have looked any further before declaring petitioner's techno-commercial bid as non-responsive. Furthermore, he contended that the letter dated 13.10.2024 of the Reliance was sent to the petitioners and not to BSNL through the proper channel. Having regard thereto, he argued that BSNL was under no obligation whatsoever to consider any document



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other than that received through the proper channel i.e. e-portal. He submitted that even otherwise there was no way of ascertaining as to whether BSNL had ever received a letter dated 13.10.2024 either from Reliance directly or from the petitioners. In the absence of such connecting facts, this Court under Article 226 would refrain from examining the disputed questions of facts. He emphasized that this Court is not sitting in appeal but exercising a power of judicial review which is circumscribed and it would be impermissible for the Court to examine disputed questions of facts.

40. Learned senior counsel countered the argument of the petitioners of violation of principles of natural justice on the bedrock of Clause 31.2 of Section II of the Tender Document by arguing that once BSNL had reached the conclusion that the WEC is forged and a fabricated document on the basis of the clarificatory e-mail dated 25.09.2024 issued by Reliance, the BSNL was under no obligation to provide any opportunity to the petitioners in terms of Clause 31.2. He further contended that it is a well-known doctrine that fraud vitiates all. In view of such blatant violation of mandatory eligibility conditions of the Tender Document, the petitioners have no merit in the present writ petition and the same ought to be dismissed.

41. Mr. Mukul Rohatgi had forcefully contended that since this Court had not granted any stay in the present matter, the BSNL has declared a number of respondents as L-1 Bidders including respondent no.3/HFCL in various packages between 04.11.2024 and 09.11.2024. Pursuant thereto, the



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L-1 Bidders have also deposited Performance Bank Guarantee (hereinafter referred to as “PBG”) of substantial amounts up to Rs. 786 crores and the BSNL has also disbursed advance money to the extent of over Rs. 815 crores. He also submitted that work by the respondent no.3 has also commenced with effect from 19.02.2025 and 20.02.2025 in respect of at least three packages in two States. According to him, in view of the large scale investments made by various L-1 Bidders and keeping in view the fact that the BSNL has already disbursed advance money, any interference or interdiction by this Court at this point of time would cause very grave and serious prejudice to not only the L-1 Bidders across the nation but also to BSNL which has disbursed public funds. He submitted that no equities have arisen in favour of the petitioners in any case since *ex facie* the petitioners are ineligible to participate predicated on the forged and fabricated WEC.

42. He relies upon the judgments of the Hon’ble Supreme Court and this Court in:-

- a) *Raunaq International Ltd vs. I.V.R. Construction Ltd.; (1999) 1 SCC 492.*
- b) *Jagdish Mandal vs. State of Orissa & Ors.; (2007) 14 SCC 517.*
- c) *Manjeet Plastic Industries vs. Union of India; 2025 SCC OnLine Del 2989.*

CONTENTIONS OF OTHER RESPONDENTS:

43. Mr. Ashish Dholakia, Mr. Vivek Chib, Mr. Dayan Krishnan, learned



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senior counsel and Mr. L.B.Rai, Mr. Nikhilesh Krishnan and Mr. Shagun Shahi Chugh learned counsel appearing for the respondent no.2, respondent no.3, respondent no.5, respondent no.6, respondent no.7 and TFCL respectively have adopted the arguments of Mr. Kohli as also Mr. Rohatgi, learned senior counsel.

REJOINDER ON BEHALF OF THE PETITIONERS:

44. Mr. Parag Tripathi, learned senior counsel in rejoinder submitted that though the BSNL had given time till 09.09.2024 for submitting clarification to its queries, it was only on 20.09.2024 that for the first time BSNL contacted the petitioners *vide* the e-mail of the same date informing the petitioners that no response was received from Airtel and directed the petitioners to pursue Reliance. He submitted that prior to 20.09.2024, the BSNL had issued an e-mail to Reliance on 16.09.2024 seeking clarification to which Reliance had not responded. He also submitted that if the portal is stated to have been closed on 20.09.2024 it was obviously not possible for the petitioners to submit the requisite document on the CPP Portal or even the e-tender portal.

45. He reiterated that the letter dated 13.10.2024 was indeed furnished by Reliance and received by the BSNL *qua* which there is no specific denial in the counter affidavit filed on behalf of BSNL. That apart, *vide* the e-mail dated 15.10.2024 even the petitioners, by abundant precaution, had sent the clarificatory letter dated 13.10.2024 of the Reliance confirming the contents of the WEC dated 09.02.2018 which too was received by the competent authority of the MM Cell. He clarified that there is no denial of the receipt



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of the e-mail dated 15.10.2024 by BSNL.

46. Learned senior counsel drew attention to a number of final CET Reports dated 03.10.2024, 14.10.2024, 21.10.2024 and 04.11.2024 to submit that the BSNL, contrary to what has been submitted on its behalf, has entertained post-bid clarifications and submission of WEC of many other similar bidders whose techno-commercial bids were initially declared as non-responsive but after receipt of clarifications and appropriate documents, have been held as responsive and some may have also been declared as L-1 Bidders in certain packages. According to him, *ex facie*, these clarifications have been received by BSNL post 20.09.2024 and, therefore, it does not lie in the mouth of the BSNL to contend that the letter dated 13.10.2024 of Reliance cannot be entertained or considered by the CET while evaluating the techno-commercial bid of the petitioners. Thus, learned senior counsel stoutly argued, this act of the BSNL is arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

47. Learned senior counsel drew the attention of this Court to the CET Report dated 02.11.2024 for Package no.5 to submit that the WEC dated 09.02.2018 submitted by the petitioners is declared as “*forged*” on 28.10.2024, without considering the post bid clarifications *viz.* letter dated 13.10.2024 which was submitted on 15.10.2024, i.e. prior to 28.10.2024.

48. Learned senior counsel vehemently opposed the argument of the BSNL regarding the post-bid clarifications provided by the petitioners outside the e-portal purportedly constitutes ‘extrinsic’ evidence. He submitted that the Tender conditions contemplate that the BSNL has the



necessary power to seek clarification in respect of the bids as evident, *inter alia*, from Clause 20(a) which is required to be “*in writing*”. Apparently, BSNL has exercised this power in respect of nearly all bidders as evident from the CET Reports. More importantly, a document/letter issued by a non-bidding party can never be uploaded on the GePS/CPP portal and will always be offline. Therefore, he submitted that the plea of the letter dated 13.10.2024 being ‘extrinsic’ under clause 21.3 is false.

49. Learned senior counsel contended that though the BSNL feigned ignorance of as to who is the competent authority to have received the clarifications, apparently it is the MM Cell which is the nodal authority, competent to receive such clarifications. He asserted that the petitioners as also the Reliance corresponded with the said MM Cell and BSNL cannot take a stand that the petitioners did not submit clarifications through proper channel.

ANALYSIS & CONCLUSIONS:

50. This Court has heard the arguments of Mr. Parag Tripathi, learned senior counsel appearing for the petitioners, Mr. Nalin Kohli for BSNL, Mr. Mukul Rohatgi for respondent no.3/HFCL, Mr. Dayan Krishnan and Mr. Vivek Chib, learned senior counsel appearing for the respondents and with the assistance of the learned senior counsel, this Court has minutely examined the relevant documents on record.

51. Though, a lot of arguments have been addressed by both the parties in respect of various clauses of the Tender Document yet what is required to be examined is:-



- (i) Whether the BSNL was bound to consider the letter dated 13.10.2024 issued by the Reliance;
- (ii) Whether letter dated 13.10.2024 of Reliance was received by BSNL directly from Reliance and also whether the said letter was received *vide* e-mail dated 15.10.2024 sent by the petitioners;
- (iii) Whether the BSNL acted in an arbitrary, discriminatory and non-transparent manner *qua* the petitioners regarding non-consideration of letter dated 13.10.2024 while entertaining similar clarificatory statements, documents submitted by other bidders post 20.09.2024?

52. The aforesaid questions being based on facts emanating in the present case, would be examined by us after appreciating the clauses of the tender as drawn attention to by the parties. On behalf of the petitioners, the first ground of challenge was predicated on the purported violation of Clause 19.2. In order to appreciate the stand it would be apposite to extract Clause 19.2.

“(xix) Opening of Bids by BSNL

19.2. A maximum of two representatives of any bidder shall be authorized and permitted to attend the bids opening.

19.2.1. The bids will be opened in 2 stages i.e. the techno-commercial (Qualification) bid shall be opened on the date of tender opening given in NIT. The financial bid will not be opened on the Date of opening of techno commercial bids.

19.2.2. The financial bids of those bidders who are techno-commercially responsive will be considered for opening, subject to conditions as mentioned in Section IV Part A The Date and Time of opening of financial bid will be intimated through e-portal.”

So far as this Clause is concerned, we do not find any controversy or



violation in regard thereto. This is for the reason that the techno-commercial bids were indeed opened on 07.08.2024 as clarified by the BSNL and notified by the letter dated 31.07.2024 which is placed at page 223 of the paper book. According to the said letter/notification, 05.08.2024 was declared to be the Bid Submission End Date and 07.08.2024 was to be the Bid Opening Date. There is no denial by the petitioners in the rejoinder or in the rejoinder arguments that techno-commercial bids were not opened on 07.08.2024. It is not denied that the financial bids were indeed opened on 04.11.2024 after the publication of list of bidders whose techno-commercial bids are held as responsive or non-responsive. Having regard to two separate dates, i.e. 07.08.2024 and 04.11.2024 for opening of techno-commercial bids and opening of financial bids respectively, we do not find any merit in the argument that the provisions of Clause 19.2 were violated. In this regard, it would be relevant to consider the language employed in Clause 19.2.2. That apart, the petitioner has not drawn attention of this Court to any clause of the Tender Document prohibiting declaration of the results of the evaluation of the techno-commercial bids and opening of the financial bids on the same date. The plain language of Clause 19.2.1 clearly shows that the only bar was in respect of the financial bids not being opened on the date of opening of techno-commercial bids. As indicated above, both the dates being far and apart, *ex facie*, there is no violation of Clause 19.2. Resultantly, the arguments *qua* the said clause are unpersuasive and unmerited.

53. The petitioners had, in conjunction with the argument of violation of



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Clause 19.2, also dove-tailed the violation of the 2nd part of sub clause (a) of Clause 31.1 of the Tender Document. Clause 31.1 provides the manner in which the bidders are entitled to submit a representation in case their bids are rejected outright by the bid opening team for non-compliance of any of the provisions mentioned in Clause 31.1 of Section II. Mr. Tripathi had taken great pains to argue and submit that the disqualification of the techno-commercial bid of the petitioners on 04.11.2024 at 06:44 pm and immediate opening of financial bids of all the bidders except the petitioners on 04.11.2024 itself at 06:54 pm coupled with not affording the right of representation under Clause 31.2 violated the principles of natural justice depriving the petitioners of an indelible opportunity to challenge or question such disqualification. Though the said argument appeared to be attractive at the first blush and induced us into believing that there is apparent violation of principles of natural justice as also the provisions of Clause 31.2, yet, on a deeper examination and understanding of the language of Clause 31.2 read with Clause 31.1 of the tender document, the same is unmerited.

54. In order to appreciate the aforesaid submission, we find it apposite to extract Clause 31.1 (a) and 31.2 hereunder:

“(iv) Rejection of Bids

31.1. While all the conditions specified in the Bid documents are critical and are to be complied, special attention of bidder is invited to following clauses of the bid documents. Non-compliance of any one of which shall result in rejection of the bid.

Clauses 12.1 of Section II: The bids will be rejected at the opening stage if Bid security is not submitted as per Clauses 12.1.



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Clause 2 & 10 of Section II: If the eligibility condition as per clause 2 of section II is not met and/or documents prescribed to establish the eligibility as per clause 10 of section II are not enclosed, the bids will be rejected without further evaluation.

31.2. Before outright rejection of the Bid by bid-opening team for non-compliance of any of the provisions mentioned in clause 31.1 of Section II, the bidder company should be given opportunity to explain their position, however if the person representing the company is not satisfied with the decision of the Bid opening team, he/they can submit the representation to the Bid opening team immediately but in no case after closing of the tender process with full justification quoting specifically the violation of the tender condition if any.”

Sub-clause (a) of Clause 31.1 when read with the language employed in Clause 31.2 clearly brings out a situation where a bidder would be entitled to submit a representation in case its bid was rejected at the initial stage itself on the opening of the techno-commercial bid while evaluating the same for non-compliance of the conditions specified in Clause 31.1. In the present case, undeniably, the techno-commercial bids of the bidders including the petitioners were opened on 07.08.2024. The BSNL had, undoubtedly, exercised the provisions of Clause 5.4.4 and 5.4.5 of the tender document to seek clarifications from all the bidders including the petitioners whose techno-commercial bids required clarification on various aspects including lack of essential documents and details thereto. It is also not denied that in response to such queries raised by the BSNL, in terms of Clause 5.4.4 and 5.4.5 of the tender document, many bidders including the petitioners did indeed submit their respective clarifications. Those clarifications appear to have been considered and acted upon in the manner in which BSNL deemed appropriate, though, for obvious reasons the



petitioners have questioned the same before this Court. Since undeniably the techno-commercial bid of the petitioners was not rejected outrightly on the date of the opening of the techno-commercial bid i.e. 07.08.2024 by the bid opening team for non-compliance of Clause 31.1 (a), the question of right to representation under Clause 31.2, which was subject to outright rejection, does not arise. Moreover, it is not the case of the petitioners that it did submit a representation which was not considered by BSNL. Having regard to the fact that such factual situation did not arise in the present case, we refuse to entertain the submissions in regard to the purported violation of Clause 31.2 of the tender document by the BSNL. Thus, the said submission is untenable and found to be unmerited.

55. We would now examine the controversy revolving around the work experience certificate (WEC) dated 09.02.2018 and the clarificatory replies dated 25.09.2024 and 13.10.2024 issued by the Reliance.

56. At the outset, the petitioners did not dispute the fact that the 2nd page of the WEC dated 09.02.2018 does not contain any signatures of any authorized person of Reliance. As per the material on record, it is clear that the BSNL had sought clarifications in respect of the WEC dated 09.02.2018 particularly in regard to the 2nd page neither being on a letterhead of Reliance nor being signed by any authorized personnel, apart from clarification regarding the quantum of work done by the petitioners. It is also clear from the records that the BSNL had extended time up till 20.09.2024 only. Though a categoric stand has been taken by the BSNL in its counter affidavit that clarification was to be furnished through e-tender



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portal by 20.09.2024, it is on record and not denied by BSNL that it had entertained the e-mail dated 25.09.2024 sent by Reliance denying issuance of the 2nd page of WEC dated 09.02.2018. This admission would demolish the stand taken by BSNL that no document or e-mail could be entertained beyond 20.09.2024 which did not route through the e-tender portal. To understand the controversy it would be germane to reproduce hereunder the relevant e-mail dated 16.09.2024 issued by Mr. Atul Sharma, GM (BN) UPE Telecom Circle, and Chairman Committee for Evaluation of Tender for UPE addressed to Mr. Sunil Saxena of Reliance as also the reply e-mail dated 25.09.2024 issued by Reliance:-

E-mail dated 16.09.2024

"From: ATUL SHARMA <atulsharma@bsil.co.in>

Sent: Monday, September 16, 2024, 5:21 PM

To: Sunil Saxena <Sunil.Saxena@ril.com>

Cc: KARUNRAMAN TIWARI <karuna.raman@bsnl.co.in>; Rajeev Kumar Kaushik <rajeev.kaushik@gov.in>; subodh@nitp.ac.in

Subject: [External] Confirmation regarding experience certificate

Bharat Sanchar Nigam Ltd has floated a tender for Amended Bharat Net on DOBM Model. M/s Pace Digiteck Infra Pvt Ltd is one of the lead bidders (with 2 consortium partners) in the tender. M/s Pace Digiteck Infra Pvt. Ltd has submitted experience certificate from Reliance Jio Infocom Ltd. (copy attached). The experience certificate is not signed or the 2nd page where. quantity of length of OFC maintained by M/s Pace Digiteck for different states is mentioned.

Kindly confirm

1. Issue of experience certificate by. Reliance Jio.

2. The quantity for which experience certificate is issued.

Regards

Atul Sharma,

Principal GM(BN), UPE Telecom Circle .



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Chairman Committee for Evaluation of Tender for UPE”

E-mail dated 25.09.2024

“FW: Confirmation regarding experience certificate

shailamber.bathula@ril.com

Wed, 25 Sep 2024 11:00:37 PM +0530

To "sharma" <sharma@bsnl.co.in>

Cc "KARUNA RAMAN TIWARI" <karuna_raman@bsnl.co.in>, "RajeevKumar

Kaushik" <rajeev.kaushik@gov.in>, "subodh" <subodh@nitp.ac.in>,

"Sunil.Saxena" <Sunil.Saxena@ril.com>, "Pratik.Mehta" <Pratik.Mehta@ril.com>

Tags Not in Contacts

Dear Mr. Atul Sharma,

With reference your below mail dated 16th Sept 2024, we would like to confirm that we have issued one pager experience certificate to Ms/. Pace Power Systems Pvt. Ltd., originally signed by Sh Sunil Saxena without the Jio stamp. However, please note that the other page containing the quantities has not been issued by us and hence we are not in a position to confirm the quantities mentioned.

We would also like to clarify that the Certificate issued by us was for M/S Pace Power System Pvt Ltd and not to Ms Pace Digiteck Infra Pvt. Ltd. as referred by you in your below email body.

Regards:-

Shailamber Bathula

+91-9940350476.”

A plain reading of both the e-mails harmoniously and in conjunction would bring to fore the fact that the BSNL had indeed sought clarification from Reliance directly and Reliance had also responded *vide* the email dated 25.09.2024 partly confirming the issuance of 1st page of the WEC dated 09.02.2018, though denying issuance of 2nd page containing the quantities. Keeping in view the fact that the certificate issuing authority itself had denied the 2nd page of WEC containing the quantities of work



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done, BSNL cannot be faulted in doubting the genuineness of the WEC so far as the 2nd page is concerned. However, this sequence would not be complete unless we also examine the e-mail dated 20.09.2024 issued by BSNL to Reliance as also later on the same day to the petitioners. The e-mail dated 20.09.2024 of the BSNL and the reply e-mail dated 21.09.2024 of the petitioners is extracted hereunder:

E-mails dated 20.09.2024

"From: ATUL SHARMA <atulsharma@bsnl.co.in>
Sent: 20 September 2024 17:10
To: mary.g@pacedigitek.com
Subject: Fwd: Confirmation regarding experience certificate

No response from Airtel. Kindly pursue."

"From: "ATUL SHARMA" <atulsharma@bsnl.co.in>
To: "mary f" <mary.f@pacedigitek.com>
Sent: Friday, September 20, 2024 11:14:41 AM
Subject: Fwd: Confirmation regarding experience certificate

No response from Airtel. Kindly pursue."

"From: "ATUL SHARMA" <atulsharma@bsnl.co.in>
To: "Sunil Saxena" <Sunil.Saxena@ril.com>
Cc: "KARUNA RAMAN TIWARI" <karuna_raman@bsnl.co.in>, "RajeevKumar Kaushik" <rajeev.kaushik@gov.in>, subodh@nitp.ac.in
Sent: Friday, September 20, 2024 10:51:15 AM
Subject: Re: Confirmation regarding experience certificate

Kind Reminder for reply of trailing mail"

E-mail dated 21.09.2024

"From: Mary Gonsalves
Sent: 21 September 2024 11:12
To: 'ATUL SHARMA'
Cc: Rajiv M
Subject: RE: Confirmation regarding experience certificate

*Dear Sir,
Yes we have pursued our client Reliance Jio for confirming.*



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Meantime, you may please feel to call them directly on below Numbers.

Mr. Sunil Kumar Saxena: 7718800573 – person who signed the completion certificate

Mr. Shailembar (Reporting Manager of Mr. Sunil Kumar Saxena)- 9940350476

*Thanks & Best Regards,
Mary Gonsalves*

Pace Digitek Private Limited

V-12, Industrial Estate, Kumbalgodu, Bengaluru 560074, INDIA.

Phone : 80 - 28437792, 28437794. Mobile: +91 99023 11200

Email: mary.g@pacedigitek.com ; Web: www.pacedigitek.com”

It appears that when the BSNL did not get appropriate response from Reliance, the said Mr. Atul Sharma, who was also the Chairman of the CET, corresponded with the petitioners informing it that there was no response from Reliance and asking the petitioners to pursue the matter further. It appears that in furtherance of such pursuance the letter dated 13.10.2024 was issued by Reliance addressed to the GM (MM) BSNL, Corporate Office, MM-Cell. A perusal of the said letter clearly indicates that Reliance validated the WEC dated 09.02.2018 and further clarified the details of purchase orders issued by the subsidiary companies, namely, Reliance Corporate IT Park Ltd. and Reliance Jio Infratel Pvt. Ltd. and simultaneously also declared the work done by the petitioners from the financial year 2014-15 till financial year 2017-18 in respect of underground and aerial operation and maintenance of telecom towers etc., covering a total of 31,924 kms. The letter also clearly disclosed and clarified the State-wise list of POs of four States, namely, Andhra Pradesh, Bihar, Karnataka and Tamil Nadu. In respect of this letter, the BSNL in its counter affidavit



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has stated that the same was not tendered through the e-tender portal by Reliance. It is pertinent to note that the e-tender portal was stated to have been closed on 20.09.2024 and, thus, obviously the said letter could not have been uploaded through the e-tender portal.

Apart from the above, the material on record discloses that the letter dated 13.10.2024 was furnished to the petitioners by Reliance on 15.10.2024 which was further submitted to BSNL by the petitioners *vide* e-mail dated 15.10.2024 particularly to Mr. Sanjay Vatsa who was the AGM (MMT-II), MM Cell, BSNL Corporate Office, New Delhi who had issued the e-mail dated 19.09.2024 seeking clarifications from the petitioners. It would be significant to note that as per the tender document Mr. Sanjay Vatsa along with Mr. Mohammed Faizan were the authorized contact persons of BSNL. Thus, it is apparent that the petitioners, by abundant precaution, had furnished the said certificate to the competent authority *via* the proper channel. So far as this e-mail dated 15.10.2024 sent by petitioners is concerned, the BSNL has not denied the receipt of the said e-mail.

57. From the aforesaid examination of material on record two things clearly emerge, (i) that the letter dated 13.10.2024 of Reliance was addressed to the competent authority and; (ii) that a copy of the letter dated 13.10.2024 of Reliance was furnished by the petitioners to the BSNL *vide* its e-mail dated 15.10.2024 through proper channel. In that view of the analysis, we have no hesitation in arriving at the conclusion that the letter dated 13.10.2024 emanating from Reliance was indeed received by the



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BSNL in its MM Cell and was also received *vide* the e-mail dated 15.10.2024 sent by the petitioners.

58. Having regard to the aforesaid analysis and conclusion, what is now to be examined by this Court is whether BSNL was under any obligation at all to consider the contents of the letter dated 13.10.2024.

59. To examine the aforesaid issue we will have to weigh the scales on the touchstone of violation of the provisions of Article 14 of the Constitution of India. It is to be kept in mind that in exercise of our power of judicial review, (i) its ambit is highly circumscribed; and (ii) it cannot be akin to an examination as if it is an exercise in the Appellate jurisdiction. This law is no more *res integra*. However, it is also true that in certain circumstances, particularly where it appears from the examination of material on record that there has been arbitrariness or discrimination *inter se* the parties by the State or its instrumentalities, the Court can and may interfere and pass necessary directions.

60. Contrary to the submission of BSNL that the documents were to be uploaded on the CPP portal, the e-mails seeking clarification from the petitioners candidly, *inter alia*, admitted that the response to the queries sought may not be conveyed/uploaded through the CPP Portal being limited in terms of uploading of the text. Instead, the parties were directed to submit replies/clarifications through e-tender portal. It is to be also noted, and significantly so, that BSNL in its counter affidavit had categorically taken a stand that the e-tender portal closed on 20.09.2024. In other words, no clarification/response could be submitted *via* the e-tender portal.



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Contrary to the aforesaid stand, the BSNL has admitted having acted upon e-mail dated 25.09.2024 sent by the Reliance to declare the petitioner's techno commercial bid as non responsive on 04.11.2024. Thus, by this act itself, it appears that the stand taken by BSNL is self contradictory.

61. To the controversy as to whether the petitioners or other similarly situated bidders, were or were not able to communicate the clarification/reply to the queries *via* any other mode, the material on record reveals that most of the bidders were able to communicate the clarifications through e-mail to MM-Cell which in turn further processed the same to the CET for further evaluation etc. In that context, we find it important to refer to the relevant portions of the final reports of the CET dated 03.10.2024, 14.10.2024, 21.10.2024 and 04.11.2024 which are extracted hereunder:-

CET REPORT DATED 03.10.2024:-

“No. BSNL/Bihar/ABP BN-III/CET (Package-7)/2024-25 Dated: 03/10/2024

*To,
Chairman
Coordination Committee (T-791)
BSNL CO, New Delhi.*

Sub: Intimation (interim report) regarding responsive bids for package-7 (Bihar).

Ref: (1) BSNL CO letter No. BSNLCO-MM1/14(11)/3/2024-MMT dated 14.08.2024.

(2) Tender Enquiry Number: MM/BNO&M/BN-III/T-791/2024 issued on 15.02.2024

This is in continuation to this office letter of even no. 30.09.2024, intimation (interim report) regarding M/s TCIL as Non-responsive bids for package-7 (Bihar). After receiving the Post Bid Clarification from M/s TCIL, vide letter No. TCIL/BSNL/Bharat Net/Phase-III(DBOM)/Reply/Package 7/1 dated 02.10.2024, M/s TCIL has submitted the experience



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certificate from Telangana Fiber Grid Corporation (T-Fiber Project) vide letter No. T-Fiber/Project/Package-7/2024-25/24 10002 dated 01.10.2024 and other details. Based on the above submission the total Active Node experience counts becomes >2500 which makes M/s TCIL eligible for all the package submitted.

Based on the above observations, CETE is on unanimous opinion that following bids may be treated as responsive based on the details mentioned below:

Name of Lender Bidder	Consortium partner	Observation on evaluation of bid	Reasons of recommending the bid responsive	Remarks
1. M/s TCIL	1. Presto 2. NIPL	Technically qualified	<p>Technical capability:</p> <p>1. Valid EPC experience found: > 15000 Kms (eligibility requirement – 15000 kms)</p> <p>2. Valid O&M experience found > 15000 kms (eligibility requirement – 15000 kms)</p> <p>3. Valid Active nodes experience found > 2500 (eligibility requirement- 2500 active node).</p> <p>The bidder has participated in 07 packages (2,5,6,7,10, 12, 14)</p> <p>As per point 4 of Table A of section IV A a bidder having EPC experience of 15000 kms, O&M experience of 15000 km & 2500 active nodes can participate in all packages.</p> <p>Financial capacity:</p> <p>4. Average annual turn over</p>	CET has gone through all the bid documents and post bid clarifications and found that bid is responsive.



		<p>of last 03 years (in cr.): Total required: 3500 Cr. For participating in all packages & minimum 100 Cr. Required for consortium. Found as per bid documents (in Cr.):</p> <table><tr><td>M/s TCIL</td><td>M/S PREST O</td><td>M/S NIP L</td></tr><tr><td>2066.8 0</td><td>352.86</td><td>251</td></tr></table>	M/s TCIL	M/S PREST O	M/S NIP L	2066.8 0	352.86	251	
M/s TCIL	M/S PREST O	M/S NIP L							
2066.8 0	352.86	251							
		<p>5. Net worth: Total required: 7.50 Cr. For participating in all packages (cumulative for consortium) and positive for each partner of consortium. Found as per bid documents (in Cr.)</p> <table><tr><td>M/s TCIL</td><td>M/S PRESTO</td><td>M/S NIPL</td></tr><tr><td>635.25</td><td>112.33</td><td>35.04</td></tr></table> <p>As per point 2 & 3 of Table A of section IV A, a bidder having at least 750 Cr net worth & 3500 Cr average annual turn over of last 03 financial year can participate in all packages.</p> <p>6. Some post bid clarifications were asked and reply submitted by bidder (already available with MM Cell BSNL HQ) have been considered by</p>	M/s TCIL	M/S PRESTO	M/S NIPL	635.25	112.33	35.04	
M/s TCIL	M/S PRESTO	M/S NIPL							
635.25	112.33	35.04							



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			CET.	
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CET REPORT DATED 21.10.2024:-

“File No: GM/BA/Head/UPW/CET/2024/

Dated 21.10.2024

CET Report for techno commercial evaluation

(Tender for Design, Supply, Construction, Installation, up gradation, Operation and Maintenance of middle mile network of BharatNet, in the Package-6 (UPW) vide Tender Enquiry No: MMIBNO &M/BN-II/IT-791I2024 dated 15.02.2024)

Reference: (1) Your office letter no BSNLCO-MMT/14(11)/3/2024-MMT dated 14.08.2024

(2) Interim TEC report no. GM/BA/Head/UPW/CET/2024/1 dtd 04.09.2024.

Please refer letter & interim CET report dated 04.09.2024 mentioned under reference regarding CET UP (west) for package number six.

Following 14 bidders participated in the package-6, UPW mentioned against each as under:



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Sl No.	Bidders	MSE/
1	DINESH ENGINEERS LIMITED	Non MSE
2	LC Infra Projects Private Limited	Non MSE
3	Vindhya Telelinks Ltd.	Non MSE
4	Dilip Buildcon Ltd.	Non MSE
5	ITI Ltd.	Non MSE
6	Polycab India Ltd.	Non MSE
7	Rail Vikas Nigam ltd.	Non MSE
8	GR Infra Project Ltd.	Non MSE
9	Telecommunication Consultant India Ltd.	Non MSE
10	Pace Digitek Infra Pvt. Ltd.	Non MSE
11	NCC Ltd.	Non MSE
12	Pratap Technocrats Pvt. Ltd.	Non MSE
13	Bharat Electronics Ltd.	Non MSE
14	EMAP Analysis and Planning Software Pvt Ltd.	MSE Bidder. Exemption claimed

As per evaluation of CET, the status of all 14 bids submitted for Package - 6 UPW is as follows:-

Observations:- Detailed observations are attached at Annexure-A (Checklist/ Annexure-111 of Bid Document) and Annexure-B (Evaluation Criteria Sheet). Findings of CET are summarized below:

4) Dilip Buildcon Ltd. (S.no 4): Responsive

The bidder has not submitted the experience certificate for active nodes in the original bid, only PO was found. In post bid clarification, bidder submitted the certificate for the same. Committee has taken reference of Chapter 5 Clause 5.4.5 Clarification of bids/Shortfall Documents" of the Procurement Manual circulated by MM Cell BSNL CO. In view of this, committee declares bid as responsive.

6) TCIL (S.no 20): Responsive

(a)The bidder has not submitted the experience certificate for O&M in original bid. Only PO and letter of commencement of O&M were submitted. In post bid clarification, bidder submitted the certificate for the same further total numbers of nodes of M/s TCIL and presto was not fulfilling the



eligibility criterion so a clarification for 166 nodes of M/s Presto was asked as claimed in excel sheet but completion certificate was not available in the original bid document. After receipt of reply through MM cell corporate office on CBP portal. The Committee has taken reference of Chapter 5 Clause 5.4.5 "Clarification of Bids/Shortfall Documents" of the Procurement Manual circulated by MM Cell BSNL CO. In view of this, committee has accepted the experience certificate and node AT certificates.

(b) In bid, CET found 620 satellite nodes but in tender document active node is not defined as satellite nodes at Section IV A, Para 2.1, Table A, Point No. 4 (iii) (Technical Capability) stated that 'The active nodes to be considered for this criterion can be Routers, Layer-3 Switches, BNGs, PTNs/CPANS, DWDM, OLTs of 16 or more ports, enode-, BTS and OTN'. Total Active Nodes of bidder is 2114 which is lower than required Active Nodes i.e. 2500, but as per Section IV A, Para 2.1, Table A. Point No. 4 (iii) (Technical Capability), which states that '2000 active nodes, if bidding for more than 1 package of Category-1'. If we also consider Para 5.11 which states that - "If a bidder's eligibility credentials fall short of the requirement of the participated packages, it's eligibility for subsequent lower ranked packages shall be decided after reducing the concerned eligibility parameters, by the amounts of bidders aforesaid credentials, already utilized for becoming eligible for such package(s). Here if we consider only for category 1 packages of bidder and left all Category 2 Packages then bidder will fulfill eligibility as per Section IV A, Para 2.1, Table A, Point No. 4 (iii) (Technical Capability). Therefore, CET found bid as Responsive. However, Coordination Committee may take final decision for responsiveness of bid in this regard."

CET REPORT DATED 04.10.2024:-

"4. M/s NCC Limited

I. Bidder has Complied on Financial capacity and Technical Capability based on minimum eligibility required considering the number of packages applied by the bidder.

II. A letter from Dr Amar Patnaik Ex MP (RS) was received in BSNL raising issues in Amended Bharatnet Program RFP. In this connection, Chairman CET package 5, vide letter dt. 30.09.2024 has written to CEO CHIPS to confirm whether consortium of M/s Tata Projects Ltd. M/s Tata Communication Services and M/s Dinesh Engineers Ltd. was declared Non Performer.

Also, confirmation of experience certificates no. 970/CEO/CHiPS/2021-22



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dt. 10-May-2022, no. 2094/CEO/CHIPS/Bharatnet/2022-23 dt. 13.09.2022 and no. 1566/CEO/CHIPS/MS2023 DT. 20-10-2023 was requested vide letters dated 14.10.2024, 16.10.2024 and 18.10.2024 by Chairman CET Package 5.

Chairman CET 5 informed to Corporate Office BSNL vide letter GM/BN/UKND/BN-III CET/20243-25/09 dt. 22.10.2024 that CEO CHiPS has not replied to any letter. Since there was no confirmation on declaring M/s Tata Projects Ltd (a consortium partner of M/s. NCC Ltd in current tender) as Non Performer on or before id opening, the Bid submitted by M/s NCC can be considered responsive.

In light of above, last para of CEO CHIPS LETTER 87/CEO/CHIPS/2024 dt. 07.10.2024, stating “Any work experience related to Chhattisgarh BharatNet Phase-II from either prime bidder or its consortium partner(s) should be disregarded. As a result, the work experience claimed by M/s Tata Project Ltd., M/s. DEL and M/s TCTS should not be considered valid,” Is not considered certificates issued to M/s Tata Projects Ltd are not denied by CEO CHIPS.

III. The documents required as per the Check-list of Annexure-III of Bid document found as per bid conditions.

IV. Status of documents submitted, post bid query sought from the bidder, response by bidder and final remarks of CET against each document as per Annexure III (Checklist) of bid document is attached as Annexure-D.”

CET REPORT DATED 04.11.2024:-

No. BSNL/Haryana/ABP BN-III/CET (Package-10)/2024-25/

Dated:04/11/2024

To,

GM(MM)

Bharat Sanchar Bhawan

BSNL Corporate Office, Janpath, New Delhi-110001

Subject: Final report of TENDER for implementation of Amended Bharat Net Program under Haryana Package-10

Ref:

1. Tender No. MM/BNO/OM/BN-III/T-791/2024 dated 15.02.2024

2. BSNL CO letter No. BSNLCO-MMT/14(11)/3/2024-MMT dated 14.08.2024.



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3. Tender Enquiry Number: MM/BNO&M/BN-III/T- 791/2024 issued on 15.02.202.

4. Our final report dated 04.11.2024.

Please find enclosed herewith CET Final report for Haryana Package-10 which has been signed by three members. Signature of external member is pending as he is at New Delhi however E-Mail consent has been taken which is enclosed here.

The following status of responsiveness of the bidders in package-10(Haryana) may please be treated as final.

Sl No	Lead Bidder	Status for HARYANA
1	Polycab India Limited	Responsive
2	Vindhya Telelinks Limited	Responsive
3	HFCL	Responsive
4	ITI Limited	Responsive
5	TCIL	Responsive
6	GR INFRA	Responsive
7	NCC	Responsive
8	BEL	Non-responsive
9	Pace Digitek Infra Private Limited	Non-responsive
10	Pratap Technocrats Pvt. Ltd	Non-responsive
11	Dinesh Engineering Limited	Non-responsive
12	LC Infra Projects Private Limited	Responsive
13	MI/s Megha Engineering and Infrastructure Limited	Non-responsive
14	Apar Industries Limited	Responsive
15	M/s Sterlite Technology Limited	Responsive

MM cell of corporate Office is requested to proceed with the opening of financial bids based on the final reports dated 04-11-2024 and as per table above for Haryana Package 10. All the previous E-MAIL for the report may be ignored.”

xxx

xxx

xxx

4. M/s G R Infra Projects Limited:

I. Bidder has been complied on Financial capacity based on minimum eligibility required considering the number of packages applied by the bidder.

II. Bidder is not fulfilling the Technical Capability Criteria needed for Telecommunication Equipment (Active Node), According to number of



packages applied by the bidder, experience of installation and commissioning of at-least 2500 telecommunication equipment active nodes is required. But the bidder has attached valid certificates of only 2144 nodes. The following experience (for active nodes) claimed by bidder as per Annexure-IV of bid document does not fulfill the criteria of experience :

- a. The bidder has attached two PO copies issued by Chhattisgarh State Power Distribution Company Ltd. for 219 Active nodes. No Experience/Work completion certificate of the PO has been attached by the bidder. The bidder has attached a project sign off copy but in the annexure which is a part of project sign off copy , there is no mention of active node installation. As per reply in response to query raised regarding this , the bidder has replied that the Quantity can be verified from the PO. But there is no mention of active node installation on sign off copy and PO quantity cannot be taken as the quantity for experience.*
- b. The bidder has attached PO copy issued by Kerala State Electronics Development Corporation Ltd. for 88 Active nodes. No Experience/Work completion certificate of the PO has been attached by the bidder. The bidder has attached multiple Completion sheets signed by end user attached.*
- c. The bidder has attached PO copy issued by M/s Railtel for 160 Active nodes. No Experience/Work completion certificate of the PO has been attached by the bidder. The bidder has attached only inspection certificate for these nodes.*

The matter was discussed by CET Haryana. As sub-groups are formed to look into discrepancies vide EEC Minutes of VC held on dated 01-10.2024 and minutes issued on dated 11-10.2024. Accordingly email was sent to sub ground on 2nd point in r/o Active nodes of M/s GR Infra Projects Limited. The response was received vide email dated 01-11-2024 from Chairman CET UP (E). The active nodes in r/o M/s GR Infra Projects Limited are 2550 which are considered based on the report of subgroup.

CET Recommendation:- The bidder M/s GR Infra Projects Limited is meeting all the eligibility criteria. The bidder is technically responsive for Package (10) Haryana.

(emphasis supplied)

62. In so far as the interim report dated 03.10.2024 is concerned, it is apparent that the same relates to M/s. TCIL and its techno commercial bid being perceived as non-responsive for Package no.7 (Bihar). A reading of



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the said report clearly demonstrates that the CET had received the experience certificate dated 01.10.2024 furnished by Telangana Fibre Grid Corporation to TCIL which further communicated the same to the MM-Cell. Clearly the said document which was submitted on 02.10.2024 was indeed considered by the BSNL and a non responsive bid of TCIL was declared to be responsive. Similarly, in the report dated 14.10.2024 of the CET, one bidder namely NCC Ltd. in respect of Package no.5, a non responsive bid was considered and after examining the document submitted post bid query, was declared as responsive. In this particular report, it is pertinent to note that the Chairman CET Package no.5 had written letters dated 14.10.2024, 16.10.2024 and 18.10.2024 to the WEC issuing authority to confirm the experience certificate of NCC Ltd. These letters suggest that the CET or the BSNL had gone way beyond the purported cut-off date to seek clarifications in respect of such certificates issued to another similar bidder. Likewise, in the CET report dated 21.10.2024, two bidders namely, Dilip Buildcon Ltd and TCIL were declared to be responsive.

A plain reading of the remarks makes it apparent that neither Dilip Buildcon Ltd nor TCIL had submitted the requisite WEC for O&M in the original bid and had only furnished the Purchase Orders alone. Yet, in the post bid clarification, the documents which were furnished through the MM Cell, Corporate Offices were considered and held to be valid, resulting in declaration of their Techno Commercial bid as responsive.

63. Similarly, in the final report dated 04.11.2024 of the CET in respect of Package no.10 (Haryana), the non responsive Techno



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commercial bid of one M/s. GR Infra Projects Ltd, which had admittedly not even submitted the Work Completion Certificate, was declared as responsive by considering certain inspection certificates and the response received *vide* e-mail dated 04.11.2024 from Chairman CET UP (E). This instance is being cited only to indicate that even as on 04.11.2024 when the list of Techno Commercial bids of various bidders was declared as responsive/non responsive, the BSNL had re-considered the non responsive bid of a bidder and post such consideration declared as responsive. Whereas, in case of the petitioners, no such leniency or leverage was offered or provided. *Ex facie*, it appears discriminatory too. It, thus, appears that the petitioners have been singled out and discriminated against in respect of, if not identical, atleast similarly situated bidders in relation to the very same tender process. This, in our considered opinion, could have been avoided.

64. Another argument addressed by the respondents, particularly BSNL, was in respect of non consideration of any document at the instance of a bidder, in this case, the petitioners. It is pertinent to recall that *vide* the email dated 20.09.2024, it was the BSNL itself which had communicated the petitioners about the lack of response from Reliance and requested the petitioners to pursue the matter with Reliance. In all probability, it appears to be a logical flow of events that Reliance by the letter dated 13.10.2024 had sent its clarification/confirmation of the WEC dated 09.02.2018 issued by it in all material particulars to BSNL through the GM (MM) BSNL, Corporate Office, MM Cell. This was followed by the petitioners furnishing



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the same document to the MM Cell *vide* the e-mail dated 15.10.2024, the receipt whereof has not been denied by the BSNL.

65. In view of the above background facts relating to other similarly situated bidders, whose documents were considered by the respective CETs, even post self declared closure of clarification/responses, there appears no reason for the BSNL to not have considered the letter dated 13.10.2024, for whatever it was worth. That apart, the argument of the BSNL that no document at the initiative of the bidder would at all be considered by the BSNL, is of no relevance since it was the BSNL itself which had asked petitioners to pursue Reliance which is clear from the e mail dated 20.09.2024. Moreover, it appears from a perusal of the record that even other bidders appear to have furnished the WEC and other similar clarifications directly without the certificate issuing authority having tendered the same directly to BSNL. In the present instance, the TCIL as an example. Moreover, BSNL has not made any specific denial of the receipt of the letter dated 13.10.2024 except to state that the same was not received through proper channel. Even if this submission is taken at its face value, the email dated 15.10.2024 sent by the petitioners enclosing the letter dated 13.10.2024 of Reliance indeed appears to have been received by the BSNL/CET through proper channel, yet not considered. Thus, this argument too is untenable and unmerited.

66. That apart, the Hon'ble Supreme Court in a catena of judgments has undoubtedly laid down the law that Constitutional Courts in exercise of powers of judicial review under Article 226 of the Constitution may



interfere, even in tender matters, provided that the tender process smacks of malafides, infraction of tender conditions or arbitrariness, discrimination and non transparent manner of conducting the tender process.

67. The parties had relied upon a number of judgments in support of their submissions which we propose to deal with now. The petitioners have relied upon the judgment of the Hon'ble Supreme Court in ***Star Enterprises (supra)*** wherein the Hon'ble Supreme Court had, while examining an issue regarding tender matters, held that as the State has descended into commercial field and giant public sector undertakings have grown up, the stake of public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers.

68. The petitioners also relied on the judgment of the Hon'ble Supreme Court in ***R.D. Shetty (supra)*** wherein the Hon'ble Supreme Court held as follows:

“The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure”. This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or



norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.”

69. Another judgment relied upon by the petitioners was in the case of ***Banshidhar Construction Pvt. Ltd (supra)*** wherein the Hon’ble Supreme Court, while relying upon its own judgment in the case of ***Jagdish Mandal vs. State of Orissa (2007) 14 SCC 517***, has held in para 37 as follows:-

“37. The submissions made by the learned counsel for the respondents that the project in question being infrastructure project and also one of the mega projects, this Court may not interfere more particularly in view of the fact that agreement has already been entered into between the respondent BCCL and the Special Purpose Vehicle of Respondent 8, cannot be accepted, when we have found that the impugned decision of the respondent BCCL was grossly arbitrary, illegal, discriminatory and violative of Article 14 of the Constitution of India. As held earlier, the Government bodies/instrumentalities are expected to act in absolutely fair, reasonable and transparent manner, particularly in the award of contracts for mega projects. Any element of arbitrariness or discrimination may lead to hampering of the entire project which would not be in the public interest.”

70. Apart from these judgments the petitioners have also relied upon the judgment of the Hon’ble Supreme Court in ***ABL International Ltd. (supra)*** and ***Subodh Kumar Singh Rathore (supra)***.

71. The propositions enunciated by the Hon’ble Supreme Court in the aforesaid judgment relied upon by the petitioners need not be over emphasized. It is apparent from the propositions that a Constitutional Court is not to sit as an appellate body over the decision taken by the State or its instrumentality on the Administrative side but is to examine and judicially scrutinize the decision making process, albeit, whether the decision has



been made lawfully and not arbitrarily or in a non transparent manner displaying abject discrimination. In case the Constitutional Court finds such apparent discrimination or arbitrariness or even unfairness in its dealing by a State, judicial review to that extent is permissible. It appears that no straitjacket formula can be laid down and such interference may be warranted on a case to case basis.

72. Contrary to the aforesaid judgments relied upon by the petitioners, the respondents including BSNL, have heavily relied upon the judgment of the Hon'ble Supreme Court in *Jagdish Mandal (supra)*. In *Jagdish Mandal (supra)*, the Hon'ble Supreme Court after having considered the law laid down in *Tata Cellular vs. Union of India; (1994) 6 SCC 651* and *Raunaq International Ltd. (supra)* succinctly formulated two questions which it mandated that every Constitutional Court while exercising the power of judicial review under Article 226 of the Constitution must consider and examine before interfering in a tender dispute. The said questions are extracted hereunder:-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with



a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

(emphasis supplied)

73. We find that **Jagdish Mandal** (*supra*) also refers to another judgment of the Hon’ble Supreme Court in the case of **Air India Ltd vs. Cochin International Airport Ltd.**; (2000) 2 SCC 617 wherein in para 7 it was held that, *“...Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under*



Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene”.

(emphasis supplied)

74. The aforesaid judgments relied upon by the respondents lay down the law that a Constitutional Court may interfere to the extent of examining the decision making process and has complete jurisdiction to interfere provided such decision making process is found to be vitiated by *malafides*, unreasonableness and arbitrariness. It appears that the Hon’ble Supreme Court was anxious to ensure and declare that while a State has complete discretion while entering into contracts through public tenders, it and its instrumentalities have a public duty and responsibility to be fair to all concerned parties to such public tenders. Of course, this is not to disregard that the primary objective of a Court is to be acutely aware of the paramount public interest which may be involved, while proposing to interfere or interdict a tender process.

75. That said, this Court is acutely aware of the fact that no stay or any interim order was passed during the pendency of the present writ petition which resulted in the tender process being proceeded with and declaration of certain bidders as L1 who also furnished PBGs. Further it appears that BSNL has disbursed advance money to certain L1 bidders. Interfering with



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the tender at this stage and that too having wide amplitude and of such huge amount may create a rippling effect across the 16 packages involved in the tender process. Moreover, the tender and the project it implements is greatly significant and of paramount national importance and interference at this stage may not be conducive to the nation itself keeping in view that the whole nation and every village is being united by OFC which would undoubtedly enhance communication and connectivity and cannot be undermined. Furthermore, as enunciated by the Hon'ble Supreme Court in ***Jagdish Mandal (supra)***; ***Tata Cellular (supra)***; and ***Raunaq International (supra)***, the Constitutional Courts ought to consider whether interference in such matters would be in public interest and in the absence whereof, even if there is an element of error, Courts would do well not to interdict tender process. [See para: 72 and 73 above]. The Hon'ble Supreme Court in ***R D Shetty (supra)*** also held that even though there was reason to interfere in the dispute arising in that case, yet, refrained from passing any order in favour of the petitioners. Our interference would surely not serve any public interest since there are a number of bidders who have been declared as successful L-1 Bidders; many of them have already been awarded contracts; furnished their PBGs to the extent of more than Rs.700 crores; and BSNL appears to have disbursed advance money to the extent of more than Rs.800 crores and some respondents also claim to have commenced the works too. In contradistinction, our interdiction would create a rippling effect on all the 16 packages and have a nationwide impact on all those bidders who may be otherwise successful on their own merits. It may



further cause an unending chaos and multiple litigations, burdening the State unnecessarily. We have no doubt that it may further delay and protract the implementation of the tender, unnecessarily enhancing the project cost which is stated to be Rs.65,000 crores as of now.

76. Thus, balancing the controversy, though there has been a display of some error, we do not find any paramount public interest that may impel this Court to interfere or interdict either the tender process or the further award of contracts to the successful L-1 bidders across any of the packages.

77. It is trite that exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and relief may not necessarily be granted in all cases. In particular, where public interest would far outweigh private interests, then, even where there is some infraction by the State, the Constitutional Courts may refuse to grant relief. Even when some defect is found in the decision-making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. [See: *Air India Limited (supra)* and followed in *Tata Motors Ltd. vs. Brihan Mumbai Electric Supply & Transport Undertaking; (2023) 19 SCC 1*]. Applying the said principle in the present case, though we find errors in action of the BSNL, for the reasons and the conclusions drawn above in para 75 and 76, we are unable to grant any discretionary relief as sought in the present writ petition. The petition is thus dismissed. Pending applications, if any, too are disposed of.

78. Notwithstanding the above, the petitioners are at liberty to seek other



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remedies which may be available to them, in accordance with law.

TUSHAR RAO GEDELA, J

DEVENDER KUMAR UPADHYAY, J

JULY 02, 2025*/yrj/aj/rl*