



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 11th November, 2024
Pronounced on: 19th November, 2024

+ **W.P.(C) 12451/2024 & CM APPLs. 51824/2024, 57197/2024**
MILLENNIUM AUTOMATION PRIVATE LIMITEDPetitioner
Through: Mr. Jayant Mehta, Senior Advocate
with Mr. Siddharth Sharma, Mr.
Dorab Sabarwal, Ms. Ishika Chauhan
and Ms. Tina Aneja, Advocates.

versus

BHARAT SANCHAR NIGAM LIMITEDRespondent
Through: Mr. Nalin Kohli, Senior Advocate
with Ms. Leena Tuteja, Ms. Nimisha
and Ms. Ishita Kadyan, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. The Petitioner, Millennium Automation Private Limited, is a company engaged in the field of integrated IT solutions in India. The Respondent, Bharat Sanchar Nigam Limited,¹ is a central public sector undertaking, primarily engaged in the business of providing telecommunication services to the public at large. The dispute in the present case pertains to the rescission of a Purchase Order dated 19th July, 2024,² at the verge of commencement of supplies. This Purchase Order also termed as the “contract” was issued by BSNL in favour of the Petitioner for ‘Supply, Installation, Testing, Commissioning and Annual Maintenance of IT hardware and related software for BSNL’s centralized Mobile Billing System and Probe based IPDR Management Solution’, following a public

¹ “BSNL”



tendering process. The Petitioner asserts that they have already incurred substantial costs in the procurement of supplies and that the recission of the contract without any reasonable basis, renders the action of BSNL, a PSU, amenable to writ jurisdiction on the grounds of fair play in light of the judgement of the Supreme Court in *Subodh Kumar Singh Rathour v. Chief Executive Officer*.³

Factual Background

2. The factual background leading to the initiation of the present proceedings as narrated in the petition, is as follows:

2.1 BSNL, on 20th July, 2023, issued a tender enquiry for supply, installation, testing, commissioning and annual maintenance of IT hardware and related software for their centralised mobile billing system and probe based IPDR management solution.

2.2 The Petitioner participated in the aforementioned tender, and emerged as the L-1 bidder. Thereafter, BSNL issued Advance Purchase Order dated 11th June, 2024,⁴ expressing their intent to consider the Petitioner for the final contract.

2.3 Upon issuance of the APO, the Petitioner duly complied with the terms and conditions stipulated therein, and also submitted a Performance Bank Guarantee acknowledging the APO.

2.4 Subsequently, on 19th July, 2024, BSNL issued Purchase Order bearing No. 4201417271, requiring the Petitioner to (i) supply the required equipment within 150 days from the date of the Purchase Order; and (ii) to install and commission the equipment within 270 days from the said date.

2.5 The Petitioner, acknowledging the receipt of the Purchase Order,

² “impugned Purchase Order”

³ 2024 SCC OnLine SC 1682.

⁴ “APO”



placed orders with its vendors for equipment worth more than 100 crores, and intimated BSNL that they would tentatively start delivering certain equipment from 30th July, 2024.

2.6 Subsequently, the Petitioner, *vide* email dated 05th August, 2024, submitted the list of its equipment suppliers as well as the status of their clearance from Trusted Telecom Portal of National Security Council Secretariat.⁵ However, the very next day, BSNL issued the impugned communication dated 06th August, 2024,⁶ rescinding the impugned Purchase Order, on account of alleged default of Clauses 32 and 33 of the APO.

2.7 The Petitioner engaged in correspondence with BSNL to discuss the issue, seeking to address the concerns and facilitate a resolution. Additionally, the Petitioner also reached out to the Minister of Communication, informing them of the developments and seeking their intervention. The Petitioner pointed out that certain equipment under the tender had been sourced from overseas suppliers, who had already delivered the equipment to various sites/warehouses in India. The Petitioner further highlighted that the items had been procured on a non-cancellable and non-refundable basis, and accordingly, sought recall of the impugned communication. Since these efforts proved unsuccessful, the Petitioner is constrained to approach this Court through the instant petition.

2.8 On 05th September, 2024, when the matter was listed for hearing, finding a *prima facie* case in favour of the Petitioner, an interim order was passed and directions were issued, encouraging the parties to resolve the matter amicably, to the following effect:

“1. The Petitioner emerged as the successful bidder in Tender Enquiry No. MM/NWP-GSM/CBS-IPDR/T-768/2023 dated 20th July, 2023 for supply installation, testing, commissioning and annual maintenance of

⁵ “NSCS”

⁶ “impugned communication”



IT hardware and related software for BSNL's Centralized Mobile Billing System and Probe based IPDR Management Solution. Following the evaluation, an Advance Purchase Order bearing No. MM-CM/APO/APO/003/2024-25 was issued to the Petitioner on 11th June, 2024.

2. Petitioner's grievance has arisen from the impugned communication dated 26th August, 2024 whereby the Respondents have rescinded the purchase order. The said communication reads as follows:

"Sub: Rescinding of the Purchase Order (PO) for Supply, Installation, Testing, Commissioning and Annual Maintenance of IT hardware and related software for BSNL's Centralized Mobile Billing System and Draha heart IPDR Management Solution Ref:

TEL No. MM/NWP-GSM/CBS-IFOR/T-768/2023 dated 20.07.2023 and subsequent pre-bid clarifications

2. BSNL's APO no. MM-CM/APO/APC/003/2024-25 dated 11.06.2024

3. BSNL's Purchase Order (PO) ro. 4201417271 dated 19.07.2024 issued against above cred APO

This is in reference to Purchase Order under reference (3), which was placed on you for Supply, Installation, Testing. Commissioning and Annual Maintenance of IT hardware and related software for BSNL's Centralized Mobile Billing System and Probe based IPDR Management Solution.

As per clause 32 of the APC, cited at reference 2 above the equipment shall be supplied only after clearance from Trusted Telecom Portal of NSCS. You have not submitted complete details required for initiating the process of clearance from NSCS.

Further, as per clause 33 of the APO you were required to submit signed Security Agreement as per the format provided in the referred Tender Enquiry document, along with your acceptance of the APO. The same has not been submitted by you

Accordingly, it is hereby intimated that the Purchase Order (PO) at reference 3 above, is hereby rescinded and no supplies should be made by you against the said PO.

This letter is issued with the approval of the competent authority."

3. The Respondents' decision to rescind the Purchase Order is premised on an alleged violation of Clauses 32 and 33 of the impugned order. Clause 32 requires that the equipment be cleared by the Trusted



Telecom Portal of the National Security Council Secretariat⁷ before supply. In this regard, Mr. Jayant Mehta, learned Senior Counsel for the Petitioner, has placed reliance on Annexure P-24, an email communication sent to BSNL, enclosing the requisite clearances from the Trusted Telecom Portal. Mr. Mehta contends that this evidence demonstrates compliance with Clause 32, and there is no basis for alleging a failure to submit the necessary documents for clearance from the NSCS.

4. *Concerning the alleged contravention of Clause 33 of the APO, which mandates the submission of a signed Security Agreement as per the prescribed format in the Tender Enquiry document, Mr. Mehta has directed the Court's attention to Annexure P-20. This document is a copy of the Security Agreement dated 27th October, 2023, which was furnished by the Petitioner along with the tender submission. He argues that the Petitioner duly complied with this requirement by submitting the signed Security Agreement in the format specified by BSNL. Therefore, the ground cited by the Respondents for rescinding the Purchase Order under Clause 33 is equally unfounded.*

5. *Mr. Mehta further asserts that the Respondents' decision to rescind the Purchase Order lacks merit and has been made without proper consideration of the documentary evidence submitted by the Petitioner. He argues that the Respondents, being a public sector entity, are bound by principles of fairness and reasonableness, and any arbitrary action on their part violates the principles of natural justice and the sanctity of the contractual terms.*

6. *Based on the foregoing facts, the Petitioner has established a prima facie case. The pertinent question now is what relief, if any, can be granted to the Petitioner in light of the impugned communication dated 6th August, 2024, which rescinds the Purchase Order. At this interim stage, Mr. Mehta, Senior Counsel for the Petitioner, requests that the Petitioner be permitted to continue making supplies to the Respondents without prejudice to their rights. However, the Court is of the view that such a direction would not be appropriate as an interim measure as it would amount to allowing the petition. However, considering that there appears to be merit in the Petitioner's contentions, the Court deems it necessary to expedite the proceedings. The Respondents are directed to file their response within a strict timeline to ensure that the matter is resolved expeditiously. To safeguard the Petitioner's interests during this period, the Court orders that the parties maintain the status quo regarding the rescission of the Purchase Order until the next date of hearing.*

7. *Reply, if any, be filed within a period of three weeks from today. Rejoinder thereto, if any, be filed within a period of three days thereafter.*

8. *Considering the facts outlined above, the Court is of the opinion that since the two stated reasons for rescinding the contract appear to*

⁷ "NSCS"



have been prima facie addressed by the Petitioner, this matter may be more appropriately resolved through negotiations. To facilitate this, the Court directs that the Managing Director of the Petitioner meet with the C.M.D. of the Respondent on 9th September, 2024, at 11:00 a.m.

9. Re-notify on 27th September, 2024.”

2.9 Pursuant to the aforementioned directions, the parties had a meeting, however could not reach a settlement. In fact, the Respondents, on their own, constituted a committee comprising of various officers of BSNL,⁸ to review and analyse the documents submitted by the Petitioner pertaining to supply of the equipment. The Review Committee, while recording certain findings and recommendations, concluded that the Petitioner’s request to rescind the impugned rescission letter, was without merit, and noted that the *“evidence on record indicated that the contract was obtained through fraudulent means and an inappropriate association with BSNL employees, influenced by different actors”*.

2.10 Pertinently, BSNL has also filed their counter affidavit, strongly opposing the petition, suggesting collusion and *mala fide* on part of the Petitioner in securing the impugned Purchase Order.

Analysis

3. Mr. Jayant Mehta, Senior Counsel for the Petitioner as well as Mr. Nalin Kohli, Senior Counsel for BSNL have been heard extensively. In light of their submissions, the Court proceeds to analyse the grounds urged by BSNL for rescinding the contract, including the question of maintainability of the petition.

Maintainability of the present petition

4.1 Mr. Nalin Kohli, Senior Counsel for the Respondent, has strongly objected to the maintainability of the petition on the ground that the dispute is governed by an arbitration agreement and therefore, the petition cannot be



entertained. He has urged that the Court should exercise restraint while exercising power of judicial review in contractual and commercial matters.

4.2 Indeed, the power of judicial review under Article 226 of the Constitution of India is generally limited in contractual and commercial matters. However, there is ample case law of this Court as well as the Supreme Court affirming that the jurisdiction of this Court under Article 226 is not inherently barred in matters involving contractual and commercial disputes, particularly when the issues concern principles of natural justice, jurisdictional errors, violation of fundamental rights, questions of public interest, or instances of gross arbitrariness. Therefore, when a State or public authority acts in an arbitrary, capricious or discriminatory manner, such actions shall be challenged under Article 226 of the Constitution of India. For instance, if a State entity cancels or rescinds a contract without a valid basis, the writ petition can be entertained to examine the reasonableness of the decision.

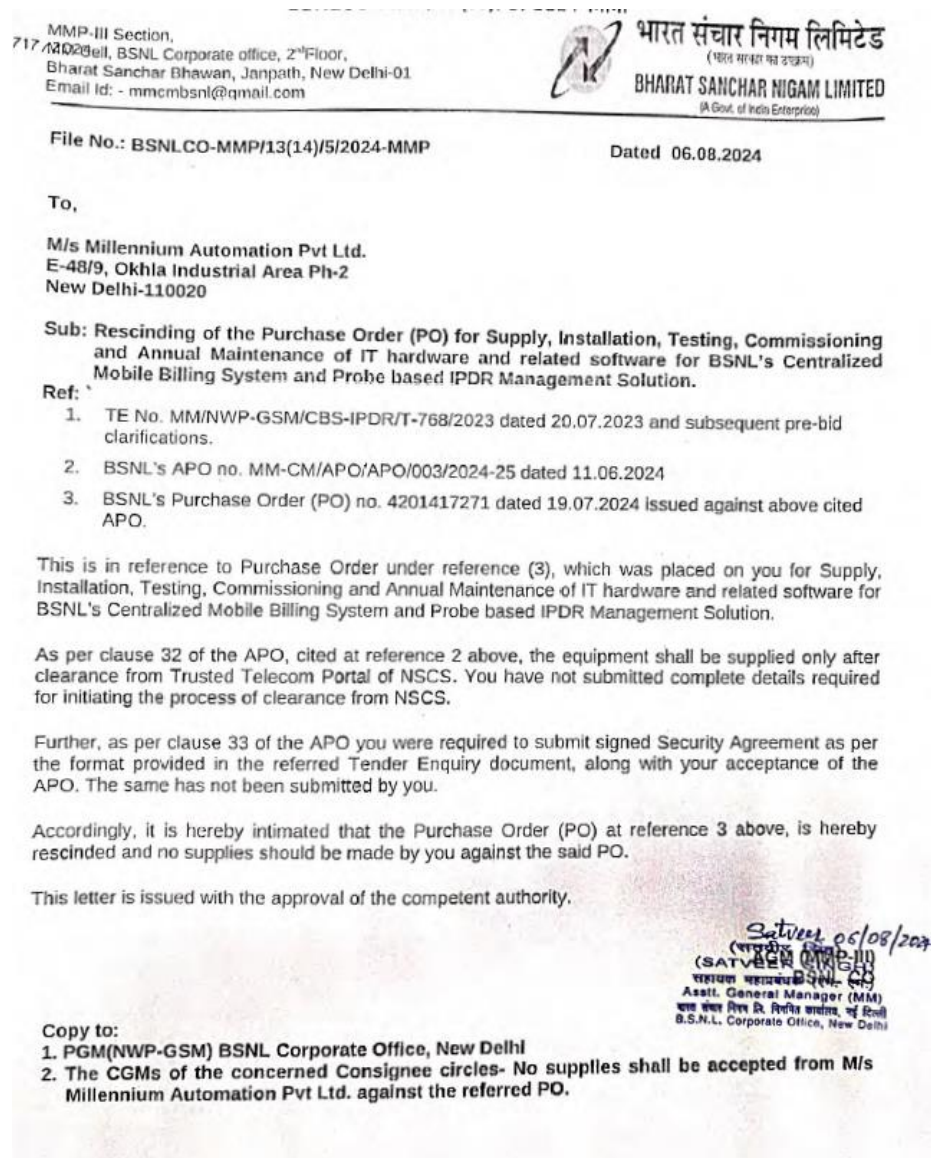
4.3 The present case pertains to cancellation of a purchase order issued in a public tender, where the Petitioner has raised allegations regarding the arbitrary and unjustifiable conduct of BSNL, which falls within the ambit of State as per Article 12 of the Constitution of India. Indeed, BSNL, as will be demonstrated in the succeeding paragraphs, has failed to establish any reasonable basis for the impugned rescission. Furthermore, the material presented in support of their decision is primarily speculative, relying on conjectures and surmises, rather than substantiated facts. Such a course of action does not meet the threshold of reasonableness expected from a State, thereby rendering the decision susceptible to judicial scrutiny. Thus, the Court considers it appropriate to entertain the present petition.

⁸ “Review Committee”



5. *Grounds for the impugned rescission*

5.1 BSNL, in the impugned communication, has alleged that the Petitioner has contravened Clauses 32 and 33 of the APO. Accordingly, they have proceeded to rescind the purchase order issued in favour of the Petitioner, directing them not to make the supplies. The impugned letter is reproduced as under:



For ease of reference, Clauses 32 and 33 of the APO are extracted hereunder:

“32. *Amendments/Guidelines relating to procurement Telecommunication equipment in respect of Unified License*



Agreement and ISP License Agreement issued by DoT vide No. 20-271/2010 AS-I (Vol-III) dated 10.03.2021 and No. 820-01/2006-LR(Vol-11) (Pt-3) dated 12.03.2021, along with latest amendments, if any, shall be applicable to this tender. Equipment shall be supplied only after clearance from Trusted Telecom Portal of NSCS.

33. Purchase Orders will be placed only on successful verification of documents apart from fulfilment of other APO conditions. You are therefore requested to submit unconditional/ unequivocal acceptance of this APO along with requisite PBG (As per Annexure-A), signed security agreement and also arrange to show original documents of eligibility criteria (which you have submitted in online bid) for verification as per clause 1 of this APO within the prescribed period of fourteen (14) days from the date of issue of this APO.”

6. ***Non-compliance of Clause 32***

6.1 The impugned communication alleges that the Petitioner did not submit the complete details required for initiating the process of clearance from NSCS, which was found to be violative of Clause 32 of the APO. The Petitioner, on the other hand, has *ex facie* disclosed that they had fully complied with Clause 32 by providing the certification status of the OEM vendors on the Trusted Telecom Portal of NSCS vide email dated 05th August, 2024, which is reproduced as under:

This is in reference to Purchase order no-4201417271 for Supply, Installation, Testing, Commissioning and Annual Maintenance of IT hardware and Mobile Billing System and Probe based IPDR Management Solution.

Refer to our Today discussion please find below status of product certification on Trusted Portal.

LIST OF MAKE & MODEL				
S.No	item	Make	Model	Trusted Certificate
1	Server	DELL	PowerEdge R650	Already Registered in Trusted portal
2	Storage	DELL	PowerStore 5200T	Already Registered in Trusted portal
3	Backup	Dell	Controller DD9900 NFS CIFS	Already Registered in Trusted portal
4	Storage IPDR	DELL	PowerVault ME5012	Already Registered in Trusted portal
5	SAN SW	DELL	ED-DCX7-4B	Already Registered in Trusted portal
6	SAN SW	DELL	CTX MDS-9132T	Already Registered in Trusted portal
7	Network Sw-1	DELL	PowerSwitch S5448F-ON	Already Registered in Trusted portal
8	Network Sw-2	DELL	PowerSwitch Z9432F-ON	Already Registered in Trusted portal
9	Network Sw-3	DELL	N3248TE	Already Registered in Trusted portal
10	Router	ARISTA	7280R3	Certificate attach
11	Firewall	FORTINET	FG-400F	Already Registered in Trusted portal
12	Taps	CUBRO	CBR.OPTO-1-3-SM-33-R3	Certificate attach
13	Load balancer-1	CUBRO	CUB.SM-EXA32100A	Certificate attach
14	Load balancer-2	RADWARE	Alteon D-5208S	As per OEM i.e RADWARE, Not Required to registered on Trust Portal
15	Persol	Persol	iSecureHL	Certificate attach



TRUSTED SOURCE PERFORMA CERTIFICATE

1	Project Name	:	BSNL's Centralized Mobile Billing System and Probe based IPDR Management Solution		
2	Type of Project	:	1. New Roll Out ✓ 2. Expansion 3. Upgrade		
3	Are your procurements from India registered vendor only for this project?	:	<input type="radio"/> Yes ✓ <input type="radio"/> No		
4	Do you intend to procure from Non India registered vendor for this project?	:	<input type="radio"/> Yes <input type="radio"/> No ✓		
5	Remarks on the Project Criticality, if any,				
6	Details of Equipment:				
	Asset (one to be selected)	Equipment Name	Company Name/Vendor	Product Name	Model Name
	1	iSecureHL Base Software iSecureHL Correlation Engine iSecureHL Data Warehousing Package	PertSol	iSecureHL	4.5

6.2 Furthermore, Clause 32 of the APO does not explicitly stipulate any specific deadline for the submission of clearance from NSCS. It only provides for furnishing of the clearance as a prerequisite for delivery of equipment. The Petitioner had submitted the clearance well before the issuance of the impugned communication. Therefore, BSNL's claim of incomplete submission as a basis for rescission of the impugned Purchase Order is factually incorrect, and suffers from complete non-application of mind, and is thus, found to be arbitrary and unreasonable.

7. *Non-compliance of Clause 33*

7.1 The second ground for rescinding the impugned Purchase Order, as



per the impugned communication, is the Petitioner's alleged failure in submitting a fresh signed security agreement subsequent to the issuance of the APO, as per Clause 33 of the APO. In response to the said averment, the Petitioner has explained that they had submitted the security agreement on 27th October, 2023 as part of their bid, thereby ensuring compliance with Clause 33.

7.2 Nonetheless, as a precautionary measure, the Petitioner resubmitted the security agreement on 07th August, 2024, along with stamp paper following receipt of the impugned communication. Therefore, BSNL was in receipt of the security agreement furnished by the Petitioner, not just once, but twice. The same has not been denied by BSNL, and thus, their claim for non-submission of the said document as a ground for rescinding the Purchase Order is both factually incorrect and arbitrary.

8. ***Additional reasoning for rescission supplied in the counter affidavit***

8.1 A perusal of the counter affidavit filed by BSNL reveals certain additional grounds for rescission of the impugned Purchase Order, which have also been pressed by Mr. Kohli in the course of arguments. On this issue, Mr. Jayant Mehta has argued that introduction of fresh reasons in the counter affidavit cannot justify the rescission of the Purchase Order. He argues that in terms of the principles laid down by the Supreme Court in ***Mohinder Singh Gill v. Chief Election Commr.***,⁹ the impugned communication issued by BSNL must be assessed solely based on the reasons originally provided, and the legitimacy of the rescission cannot be judged based on supplementary reasons, which were not borne out when the decision was originally taken.

8.2 Evidently, the impugned communication raises only two grounds for

⁹ (1978) 1 SCC 405.



rescission of the purchase order, which have already been discussed above. However, BSNL has sought to introduce new grounds for rescission of the impugned Purchase Order, insinuating that the Petitioner may have secured the impugned Purchase Order through fraudulent or improper means, possibly involving BSNL's employees. Considering the nature of the additional allegations, the Court has examined them as well.

9. ***Revision of the Local Content Declaration***

9.1 Mr. Kohli has argued that the actions of the Petitioner demonstrate breach of integrity and *mala fide* conduct in securing the Purchase Order. He argues that the tender required the bidders to submit a local content declaration along with a CA certificate certifying the declaration. To elaborate, he has apprised the Court that under the Make in India Policy, preference is given to bidders who have a higher percentage of local content, categorising them as either Class-I or Class-II. Class-I local suppliers are those whose percentage of local content to be supplied is more than 50% of the total supply under the tender, while Class-II local suppliers are those who are less than 50%, but more than 20%.

9.2 Mr. Kohli has submitted that the Petitioner originally claimed his status as Class-II Local Supplier at the time of the submission of his bid, and submitted the CA Certificate dated 15th January, 2024,¹⁰ certifying the percentage of local content as 21% confirming his status as Class-II Local Supplier. However, for unexplainable and unknown reasons, the Petitioner on their own, on 01st February, 2024, submitted another certificate from the same CA, claiming a revised status as Class-I Local Supplier based on an older Notification.¹¹ Thereafter, when all the bidders were once again requested to submit the CA certificate, the Petitioner submitted yet another

¹⁰ "1st CA Certificate"

¹¹ "2nd CA Certificate"



certificate dated 29th February, 2024, claiming the status of Class-II Local Supplier.¹² In light of the foregoing, Mr. Kohli has argued that the Petitioner, despite originally presenting his bid as Class-II Local Supplier, unilaterally changed it to Class-I, with an objective to circumvent the recommendations of the Committee for Tender Evaluation, which had recommended to counter offer the price of L-1 to the L-2 bidder, who had submitted the bid as a Class-I Local Supplier.

9.3 The Petitioner has explained the reasons for issuance of the revised CA certificates. They have elaborated that subsequent to their submission of the 1st CA Certificate, they were informed that they had used the incorrect mathematical formula for calculating the local content value. Noticing that most bidders, as an industrial practice, had used a different formula, the Petitioner revised their calculation as per the said formula, and issued the 2nd CA Certificate, which increased their local content to 52%, thereby upgrading them to a Class-I Local Supplier. However, subsequent to the issuance of the 2nd CA certificate, BSNL held a meeting with the bidders and OEM vendors on 20th February, 2024, clarifying the correct mathematical formula to determine the local content percentage. It was only subsequent to the said clarification that the Petitioner re-revised their local content calculation and accordingly, furnished the 3rd CA Certificate in the capacity of a Class-II supplier.

9.4 In the opinion of the Court, the explanations furnished by the Petitioner make it abundantly clear that the CA certificates were reissued due to a change in the mathematical formula used to determine the local content percentage. It is pertinent to note that the classification of the Petitioner as Class-II Local Supplier is not disputed. Further, BSNL has clarified that all the bidders who had submitted their bid as Class-I Local

¹² “3rd CA Certificate”



Suppliers reverted as Class-II Local Supplier subsequent to the issuance of the clarification by BSNL. Therefore, at the time of final consideration of proposals, there were no Class-I bidders, who could have potentially matched the price offered by the Petitioner, thereby reducing their chance of securing the Purchase Order. Therefore, the objection raised by BSNL is completely extraneous. Moreover, BSNL, in their counter affidavit, has also admitted that it was only after BSNL had requested the bidders to submit the CA certificates again, that the Petitioner submitted the 3rd CA certificate. In view of the foregoing, it clearly emerges that the additional ground of local content declaration raised by BSNL, is unsustainable and completely unreasonable and arbitrary, in as much as it does not demonstrate any mischief or *mala fide* on part of the Petitioner.

10. *Delay in furnishing Performance Bank Guarantee and Automatic Withdrawal of APO*

10.1 BSNL, in their counter affidavit, has contended that as per Clauses 33 and 34 of the APO, the Petitioner had to submit unequivocal acceptance to the APO within a period of 14 days, along with submission of Performance Bank Guarantee,¹³ signed security certificate and verification of original documents of eligibility criteria, and failure to do so would amount to deemed withdrawal of the APO. The Petitioner submitted the PBG on 8th July, 2024, much beyond the prescribed timeline of 14 days, which ended on 25th June 2024. In the foregoing background, BSNL has urged that the APO was automatically withdrawn due to the Petitioner's failure in submitting the PBG within the stipulated timeline. They have further contended that the concerned officer from BSNL did not take into account the delay and defaults on part of the Petitioner in furnishing the PBG, suggesting that the

¹³ "PBG"



Petitioner was acting in collusion with BSNL's officers.

10.2 In response to the aforesaid averment, the Petitioner has submitted that the APO issued by BSNL did not align with the financial proposal as submitted by the Petitioner, as it incorrectly stated the rate of a certain equipment, which rate was quoted by the Petitioner after factoring the discount of 19 Crores already offered by them pursuant to their meeting with BSNL's Price Negotiating Committee. Consequently, the Petitioner sent communication dated 13th June, 2024 to BSNL, requesting for issuance of amended APO. This was followed by several follow-up communications, including e-mail dated 25th June, 2024, whereby the Petitioner explained BSNL that they would be unable to furnish the PBG in absence of the amended APO. However, BSNL, in a meeting dated 04th July, 2024, rejected the Petitioner's request for amendment of APO due to some billing related difficulties, advising them to submit the PBG as per the APO. Nonetheless, in this meeting, the Petitioner communicated its unconditional acceptance of the APO. Owing to the delay in the issuance of clarification with respect to the PBG, the Petitioner *vide* e-mail dated 05th July, 2024 requested BSNL to consider the date of the APO as 04th July, 2024. Thereafter, on 08th July, 2024, the Petitioner submitted the PBG in favour of BSNL.

10.3 While Mr. Kohli has emphasised that the APO was automatically withdrawn due to the Petitioner's failure to submit the PBG within the stipulated 14 days, however, in the opinion of the Court, this is only an attempt on the part of BSNL to avoid the contract without any reasonable basis. As explained by Mr. Mehta, the delay was due to BSNL's error in pricing line item 2.2, for which the Petitioner had sought clarification multiple times. The APO was finally accepted in the meeting held on 04th July, 2024. Further, in the email dated 05th July, 2024, the Petitioner accepted the APO, and sought 14 days' time to submit the PBG, which was



also duly accepted by BSNL. As per this stipulation, the PBG was submitted on 08th July, 2024. This was subsequently followed by BSNL issuing the impugned Purchase Order in favour of the Petitioner, and thus, the ground of automatic withdrawal of the APO, in the opinion of the Court could not have been invoked. This plea has been raised by BSNL ostensibly to avoid the contract.

11. Allegations of foul play based on the timeline of issuance of purchase orders on the vendors

11.1 Mr. Kohli has also argued that there is unexplainable conduct on part of the Petitioner with respect to the issuance of purchase orders on their vendors. He has contended that the timing of the submission of the said purchase orders, raises concerns of unethical conduct and possible collusion as also *mala fide* intent, severely compromising the sanctity of the bid process. Referencing the report of the Review Committee, Mr. Kohli has pointed out that upon reviewing the copies of the purchase orders submitted by the Petitioner to its vendors, the Review Committee noted that the Petitioner had placed these purchase orders much before BSNL had accepted their proposal. The details of such vendors are as follows:



Sl No	Name of OEM/Distributor	APO / PO No	Details of POs placed by MAPL			Value of the material (in Rs)
			Before BSNL's APO (i.e. before 11.06.2024)	After BSNL's APO, but before BSNL's PO	After BSNL's PO (i.e. after 19.07.2024)	
1	Uniline	MAPL/24-25/PO/38	04.05.2024	-	-	9,71,77,032
2	Arista- Echeleon	MAPL/24-25/PO/62	22.05.2024	-	-	4,18,05,816
	Radware- Echeleon	MAPL/24-25/PO/61				1,46,91,600
3	Fastech for IPDR	MAPL/24-25/PO/55	17.05.2024	-	-	6,76,73,296
4	Nepatech- Rahi	MAPL/24-25/PO/46	09.05.2024	-	-	Factored in DELL equipment
5	Techspire- Rack	MAPL/24-25/PO/52	16.05.2024	-	-	50,49,000
6	DELL- Redington Limited documents	MAPL/24-25/PO/106 & 107	-	09.07.2024	-	87,90,29,845
7	Redhat- Ingram documents	MAPL/24-25/PO/92	-	24.06.2024	-	36,69,49,570
8	Fortinet- Ingram documents	MAPL/24-25/PO/81	08.06.2024	-	-	2,77,48,202
9	Vmware- Tech Data Advanced Solutions (India) Private Limited	MAPL/24-25/PO/138	-	-	26.07.2024	13,36,31,588
Total Order Value						163,37,55,949

11.2 On the basis of the aforementioned tabulation, Mr. Kohli has argued that as many as 6 purchase orders were placed by the Petitioner prior to the issuance of the APO from BSNL; one purchase order was placed after the issuance of the APO, but prior to its acceptance by the Petitioner; and one purchase order was placed on the date of the submission of the PBG, after acceptance of the APO. Only one purchase order was placed subsequent to the receipt of the impugned Purchase Order from BSNL.

11.3 Mr. Kohli has further contended that the Review Committee noted that the Petitioner had ordered certain items in quantities exceeding those specified in the Schedule of Rates,¹⁴ particularly where purchase orders were placed with vendors before BSNL's decision. He further argued that the Review Committee was unable to identify a clear correlation between the items stipulated in the SOR, and those ordered by the Petitioner in some instances. The Committee also observed certain discrepancies, which raised concerns about potential favouritism towards the Petitioner. These concerns



were compounded by procedural lapses and deviations aligning in favour of the Petitioner.

11.4 In the opinion of the Court, the findings of the Review Committee and aforementioned additional grounds, remain unsubstantiated by sufficient evidence. Mr. Jayant Mehta has explained that the Petitioner had placed these purchase orders on its vendors in order to freeze prices and secure a discount of INR 19 crore, in furtherance of their negotiations with the BSNL Price Negotiation Committee. He has elaborated that the Petitioner thoroughly discussed the complete details of the quantities, including additional requirements, with their vendors, a practice that is consistent with price negotiations typically conducted in regular trade and commerce. Mr. Mehta has also clarified that the purchase orders were in the nature of quotations, and nonetheless, were only accepted by the OEMs after the issuance of the APO.

11.5 The Court finds that the Petitioner's decision to issue purchase orders to its vendors, prior to securing a firm contract from BSNL, is hardly an unusual occurrence in commercial dealings. Businesses often employ such pre-emptive measures to lock in favourable terms or to ensure a seamless supply chain. While this approach may, on the surface, appear to reflect a measure of confidence in securing the bid, this alone does not equate to collusion or impropriety. Moreover, the Petitioner is well within its rights to devise and execute strategies aimed at ensuring the timely procurement of equipment necessary to meet the requirements of BSNL's project—a venture they understandably view as a prestigious opportunity with the potential to propel their business to greater heights. The Respondent's theory that this indicates undue influence or a compromised process rests entirely on conjecture. In the absence of any credible evidence to support such

¹⁴ "SOR"



allegations, the suggestion amounts to little more than a shot in the dark. It is well-recognized that in the competitive world of commerce, when prices are heavily discounted, businesses must occasionally bet on their instincts, take calculated risk, and adopt strategies that minimize risk and maximize efficiency. While such measures may display a degree of confidence in emerging as the successful bidder, yet this fact, in absence of any other corroborative evidence suggesting malpractice or breach of integrity, cannot solely be the ground to implicate the Petitioner. BSNL's averments hinting towards collusion merely based on the Petitioner's overconfidence in securing the contract are therefore, purely speculative.

12. *Security Agreement being back-dated*

12.1 BSNL has also alleged that the Petitioner had filed a back-dated security agreement on 07th August, 2024, however, the error in the execution date was inadvertent as is clearly evident from the covering letter, which reads as follows:

"I am writing in reference to the matter above. We wish to formally submit the Security Agreement, which was originally provided to BSNL at the time of MAPL's bid submission.

As you are aware, the Purchase Order (PO) dated 19.07.2024 was issued to MAPL after fulfilling all conditions specified in the APO, including the submission of the PBG. However, we have recently been informed of an issue concerning the Security Agreement through your dated 06.08.2024. To address this, we are formally submitting the Security Agreement for your records through this correspondence, as required.

We kindly request that you acknowledge receipt of the Agreement and continue to support us in the ongoing execution of the PO issued on 19.07.2024."

12.2 Furthermore, as already clarified, the Petitioner had already submitted Security Agreement dated 27th October, 2023 along with their bid, the receipt of which was not denied by BSNL. The Security Agreement dated 07th August, 2024 was only issued as a matter of caution, in pursuance of the impugned communication rescinding the Purchase Order issued in



Petitioner's favour. In light of the foregoing facts, no *mala fide* intent can be attributed to the Petitioner for issuing the aforesaid Security Agreement

13. ***BSNL is barred from pleading that the issuance of PO is without proper authorization***

13.1 BSNL has claimed that the impugned Purchase Order was issued to the Petitioner without proper authorization from the Director CM. However, the Petitioner has clarified that Agenda Point 4.8 of the 'Memorandum for Consideration of Management Committee of Board' dated 9th May, 2024 issued by BSNL shows that the Director CM was authorised to place the impugned Purchase Order. The Petitioner has also placed reliance on the doctrine of indoor management, as explained in the judgement of the Supreme Court in ***MRF Ltd. v. Manohar Parrikar***,¹⁵ in the following terms:

"According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in memorandum and articles have been properly observed. Therefore doctrine of indoor management protects outsiders dealing or contracting with a company."

13.2 In light of the aforesaid doctrine, it is clear that the Petitioner cannot be presumed to have been aware of the internal conflict or irregularities prevailing within the management of BSNL, and as such, no liability should be attached to them arising from such conflicts. Furthermore, interestingly, the APO, the impugned Purchase Order as well as the impugned communication rescinding the Purchase Order have all been executed by one Sh. Satyaveer Singh, AGM, MMP-III, on behalf of BSNL as its authorised signatory. Therefore, if it is BSNL's case that the Purchase Order was issued without any authority, the same rationale should extend to the impugned communication, which would also be liable to be set aside.

¹⁵ (2010) 11 SCC 374.



Conclusion

14. At this juncture, it would be apposite to refer to the recent judgement of the Supreme Court in ***Subodh Kumar Singh Rathour v. Chief Executive Officer***,¹⁶ whereby the Court has observed as under:

“126. The sanctity of public tenders lies in their role in upholding the principles of equal opportunity and fairness. Once a contract has come into existence through a valid tendering process, its termination must adhere strictly to the terms of the contract with the executive powers to be exercised only in exceptional cases by the public authorities and that too in loathe. The courts are duty bound to zealously protect the sanctity of any tender that has been duly conducted and concluded by ensuring that the larger public interest of upholding bindingness of contracts are not sidelined by a capricious or arbitrary exercise of power by the State. It is the duty of the courts to interfere in contractual matters that have fallen prey to an arbitrary action of the authorities in the guise of technical faults, policy change or public interest etc.

127. The sanctity of contracts is a fundamental principle that underpins the stability and predictability of legal and commercial relationships. When public authorities enter into contracts, they create legitimate expectations that the State will honour its obligations. Arbitrary or unreasonable terminations undermine these expectations and erode the trust of private players from the public procurement processes and tenders. Once a contract is entered, there is a legitimate expectation, that the obligations arising from the contract will be honoured and that the rights arising from it will not be arbitrarily divested except for a breach or non-compliance of the terms agreed thereunder. In this regard we may make a reference to the decision of this Court in Sivanandan C.T. V. High Court of Kerala reported in (2024) 3 SCC 799 wherein it was held that a promise made by a public authority will give rise to a legitimate expectation that it will adhere to its assurances. The relevant portion reads as under:-

“18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority’s promise or past conduct will give rise to a legitimate expectation, The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure

XXX XXX XXX

45. The underlying basis for the application of the doctrine

¹⁶ 2024 SCC OnLine SC 1682.



of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.”

(Emphasis supplied)

128. Cancellation of a contract deprives a person of his very valuable rights and is a very drastic step, often due to significant investments having already been made by the parties involved during the subsistence of the contract. Failure on the part of the courts to zealously protect the binding nature of a lawful and valid tender, would erode public faith in contracts and tenders. Arbitrary terminations of contract create uncertainty and unpredictability, thereby discouraging public participation in the tendering process. When private parties perceive that their contractual rights can be easily trampled by the State, they would be dissuaded from participating in public procurement processes which may have a negative impact on such other public-private partnership ventures and ultimately it is the public who would have to bear the brunt thereby frustrating the very object of public interest.

129. We caution the public authorities to be circumspect in disturbing or wriggling out of its contractual obligations through means beyond the terms of the contract in exercise of their executive powers. We do not say for a moment that the State has no power to alter or cancel a contract that it has entered into. However, if the State deems it necessary to alter or cancel a contract on the ground of public interest or change in policy then such considerations must be bona-fide and should be earnestly reflected in the decision-making process and also in the final decision itself. We say so because otherwise, it would have a very chilling effect as participating and winning a tender would tend to be viewed as a situation worse than losing one at the threshold.”

15. In the opinion of the Court, the aforementioned observations of the Supreme Court squarely apply to the facts of the present case. Upon evaluating BSNL’s actions and averments on the touchstone of reasonableness and fairness, it becomes amply clear that BSNL, being State within the meaning of Article 12 of the Constitution of India, has failed to fulfill its responsibility of acting fairly in rescinding the impugned Purchase Order. While BSNL has sought to bolster their decision by presenting



justifications, including additional reasons introduced during the present proceedings, none of these are sustainable on the ground of reasonableness.

16. Before parting, it must be emphasised that the Court is not, for a moment, suggesting that integrity in public procurement can or should be compromised. The sanctity of the tendering process must be zealously guarded, and any deviation must be met with appropriate consequences. However, allegations as serious as collusion or malpractice cannot rest on conjecture or the mere perception of overconfidence. There must be tangible evidence to substantiate such charges, especially when they serve as the basis for rescinding a Purchase Order. In the absence of any concrete material to support BSNL's claims, the argument of compromised integrity lacks merit, and cannot be sustained. The impugned communication, along with the new grounds introduced to support the impugned rescission, are unreasonable, arbitrary and unsustainable.

17. Accordingly, the instant petition is allowed and the impugned communication dated 06th August, 2024 is set aside.

18. In light of the above, the petition is disposed of, along with pending applications.

SANJEEV NARULA, J

NOVEMBER 19, 2024/ab