

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

Reserved on: 11.07.2017
Pronounced on: 31.07.2017

+ **W.P.(C) 4393/2017, C.M. APPL.19189-90/2017**

M/S. TOSHNIWAL ENTERPRISES CONTROLS LIMITED

..... Petitioner

Through: Sh. Arvind Nigam, Sr. Advocate with Sh. Gaurav Kejriwal, Sh. Sujit Keshri, Sh. Mikhil Sharda and Sh. Akshay Bhandari, Advocates.

Versus

UNION OF INDIA AND OTHERS

..... Respondents

Through : Sh. Sarfaraz Ahmad, Advocate with Sh. Birbal Prasad, Director, USOF, for Respondent Nos. 1 and 2.

Sh. Dinesh Agnani, Sr. Advocate with Ms. Leena Tuteja and Sh. Ishaan Chawla, Advocates, for Respondent No.3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S. RAVINDRA BHAT

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Facts

1. The present Writ Petitioner challenges the declaration of its bid as non-responsive by Bharat Sanchar Nigam Limited (hereafter “BSNL” or “Respondent No. 3”) in these proceedings, under Article 226 of the Constitution of India.

2. The facts are that BSNL on 08.04.2016 issued a Notice Inviting e-Tender (“NIT”) calling for sealed online bids (tenders) for survey, planning,

supply, installation, testing, commissioning, integration with existing core network and operations and maintenance for five years of 2G GSM BSS network along with VSAT, HUB and radio backhaul to provide coverage in uncovered villages of Arunachal Pradesh and Karbi Anglong and Dima Haso Districts of Assam. The eligibility criteria for participation was laid down in the NIT and the entire tender document could be obtained on payment of ₹10,000.

3. The petitioner, an Indian Company, is engaged *inter alia* in the business of manufacturing, sale and supply of 2G BSS compliant equipment along with other allied products. The petitioner paid the requisite amount of ₹10,000 and obtained the complete set of tender documents. Clause 11 of Section 4B of the said Tender stipulated that the bidder should clearly specify ownership, IPRs and certain other rights with respect to Technology/Design(s) of GSM BSS and if such technology/design was not developed by the bidder, the bidder was required to submit MOU Agreement with the technology provider as per the pro-forma in Section 7G and Board Resolution of the Technology Providing Company as per the pro-forma in Section 7H notarized or attested by the Indian Embassy/High Commission in the country where such foreign origin company is situated. The Petitioner wrote to BSNL seeking certain clarifications regarding this Clause, which among other queries, were answered by BSNL by letter, dated 25.07.2016.

4. In terms of the said Tender documents, the bidder had to submit its techno-commercial bid along with the documents regarding its complying with the eligibility- i.e. technical and commercial conditions, and a financial bid in two separate envelopes within 150 days from the tender opening date. The Petitioner submitted its bid on 10.08.2016 and also submitted a Bank

Guarantee for ₹2,00,00,000/- paid as security deposit. A Committee for Evaluating the Techno-Commercial bids (“CET”) was formed by BSNL to evaluate the bids and the Petitioner along with four others (namely M/s ITI, M/s VNL, M/s HFCL and M/s Fibcom) were invited to offer their equipments for field-testing in Arunachal Pradesh. Of the five, M/s Fibcom did not submit its equipment for the field test. The Petitioner received a test schedule for conducting the field test of its equipment, from BSNL, dated 27.08.2016. Accordingly, field tests were conducted for the Petitioner and three others, after which the equipments of two bidders- M/s VNL and M/s HFCL were considered to have qualified. The equipments of the other two, which included the Petitioner, were considered by BSNL to have failed the test.

5. Thereafter, a number of representations were made by the Petitioner and the other unsuccessful bidders regarding the method of field testing of the equipment as well as the subsequent evaluation of the bids. Considering these representations, BSNL at its meeting dated 16.01.2017 decided to give another opportunity to all the bidders to re-submit their tenders and furnish their equipment for re-testing, and decided that it would call for clarifications from the bidders who had submitted incomplete/not submitted required documents as per the terms and conditions of the tender documents. Thereafter, BSNL retested the equipment of the four bidders who offered their equipment for testing and concluded that all four had passed in the re-test conducted in Arunachal Pradesh. After retests were conducted, BSNL (through the CET) requested clarifications from all the bidders and re-evaluated their bids. The bids of M/s HFCL and M/s VNL were considered

techno-commercially responsive, while the rest of the bids, including that of the Petitioner, were considered to be non-responsive.

6. Several complaints were received by BSNL regarding the retesting and the subsequent re-evaluation of the bids. BSNL, therefore, decided to obtain legal opinion from the Attorney General for India on the correctness of the process followed in the tender. By letter dated 20.04.2017, the Attorney General opined that the process followed by BSNL was without flaw. Thereafter, the financial bids of the two tenderers whose bids were found techno-commercially responsive, i.e. M/s. HFCL and M/s. VNL were opened online on 25.04.2017.

7. The petitioner complains that the declaration of its bid as non-responsive by BSNL was illegal, arbitrary and reeks of its *mala fides*. It was submitted that the rejection of the bid for not having submitted the required documentation was clearly an afterthought, designed to frustrate the petitioner's bid. The learned counsel for the petitioner submitted, that once the petitioner was invited to offer its equipment for field-testing, and it tested successfully, its bid could not then be rejected for failure to submit required documentation. It was argued that the terms of the tender made it clear that only those bidders would be called upon to offer their equipment for field testing, whose bids were found otherwise complete with respect to documentation and other eligibility conditions. Therefore, the fact that the petitioner was asked to offer its equipment for field testing, that too twice, *ipso facto* meant that it had satisfied the other eligibility requirements with respect to documentation. Specifically, with respect to clause 11.1(a) of Section 4 Part B of the Tender document, the petitioner contended that it had sought clarifications from BSNL and subsequent to the replies received,

it had submitted all relevant documents in accordance with the latter's replies. The petitioner further argued that having offered its equipment for field testing twice, and the same having passed the test (as declared by BSNL itself in the second round), and having regard to the fact that it had already incurred expenditure of nearly ₹1 crore, it had a legitimate expectation that its bid would be opened.

8. The petitioner also alleged that BSNL had an inherent and evident bias against it and proceeded in a manner that demonstrated this bias. BSNL did not provide the petitioner with a hearing nor did it specify the reasons for declaring the petitioner's bid as non-responsive. Rather, BSNL proceeded with haste in opening the financial bids of the rest of the tenderers. On the other hand, in relation to M/s. HFCL, although it had not submitted the Consolidated Unpriced Bill of Material (BOM) according to clause 12 of the Tender document, its bid was declared by BSNL to be techno-commercially responsive. This differentiation of treatment, urged the petitioner, was manifestly unreasonable and evidenced the discriminatory intent of BSNL.

9. It is argued by Mr. Nigam, learned senior counsel, that the ground which BSNL stresses in these proceedings, i.e the IPRs for the technology provided or used under the tender conditions, had not been obtained, is without foundation. It is submitted that M/S TECL was owner of the technology that was to be used, under the contract. M/s Altobridge had entered into an agreement to provide all necessary technical information/know-how (hardware and software of GSM BSS) as to enable the petitioner to manufacture the GSM BSS solutions with TEC specification. Later, Altobridge went into liquidation and its successor, VT-iDirect bought the technology through the receiver. It was submitted that VT

iDirect's affidavit in this regard was furnished to BSNL; furthermore, the technology was transferred from "source code" level from VTiDirect to TECL. It was submitted that each of these facts were supported by documentary material and evidence. Despite these, BSNL, in an arbitrary manner has proceeded to say that the IPR ownership was not established. Counsel relied upon the petitioner's letters dated 17.02.2017 and 21.04.2017 to BSNL, to say that there was sufficient clarification to the queries made and that there was no *rationale* for concluding that the eligibility terms Clause 11 (1) (a) and 11 (2) of Section 4B had not been complied with. It was argued that the petitioner had clarified that in fact it had ownership of the Intellectual Property rights in respect of the technology associated with the subject matter of the tender.

10. Mr. Nigam also submitted that the so-called non-compliance for reason of not furnishing an undertaking in format 7H is not correct. He said that the forms, including Form 7H were in order. It was also argued that the format of 7G/7H given in the tender document software does not envisage a situation where it involves complete technology transfer. Therefore, it had to be modified suitably to meet the situation where only transfer of technology with respect to IPR is involved.

11. Learned senior counsel argued that the grounds taken by BSNL to reject the petitioner's bid were specious. It was submitted that BSNL has favored another bidder, HFCL, though its tender had deficiencies. It was submitted that in the name of seeking clarifications, BSNL allowed changes in the documents submitted by HFCL, which was arbitrary as well as discriminatory.

12. BSNL urges, and its senior counsel, Mr. Dinesh Agnani, submits that all due procedures and processes in evaluating the bids of the tenderers were followed. It was urged that BSNL fairly conducted the entire process by first inviting all the bidders to submit their equipment for field testing, in which the petitioner's equipment failed to clear the test. Nonetheless, in view of the representations received from the unsuccessful bidders, BSNL in its meeting decided to offer another chance to all the bidders to submit their equipment for re-testing, along with deciding to call for clarifications from bidders who had submitted incomplete documents or not submitted relevant documents. Retests were conducted by BSNL thereafter and it was found that all four bidders who had offered their equipment for field-testing had passed. However, in terms of what was decided in its meeting on 11.01.2017, BSNL also decided to call for clarifications from bidders who had not submitted the entire documentation required. Accordingly, the CET called for clarifications from the bidders, including the petitioner and thereafter, after receiving responses to these clarifications, the CET evaluated all the bids.

13. Reliance is placed upon the fact that BSNL had also sought legal opinion from the Attorney General as to the effect of the process followed by it and the legal opinion given was that the process followed by BSNL in evaluating the tenders could not be faulted. It is urged that despite the petitioner admittedly not having furnished the required documentation as per Clause 11 of the Tender document, instead of rejecting the bid outright, the CET asked for clarifications from the petitioner. It is only after receiving responses from the petitioner, that the CET proceeded to evaluate its bid and found the same to be techno-commercially non-responsive. In such

circumstances, the Court should be loath and circumspect in exercising its power of judicial review under Article 226 of the Constitution.

14. Mr. Agnani points out that the issue of IPR ownership is not as clear or unambiguous as the petitioner makes it to be. It is submitted that the agreement evidencing that technology was transferred from "source code" level from VT iDirect to TECL and that Altobridge had no right or interest in the IPR rights was unclear. Moreover, the agreement and other documents relied on by the petitioner showed that the conditions therein had not been performed, which meant that there was no transfer of technology. Furthermore, the petitioner could not argue that any change in the prescribed format, was inconsequential. Indeed, if it felt any difficulty in complying with any prescribed condition because of peculiar circumstances, it could not have unilaterally altered the format; rather it should have sought specific clarifications or made queries at the pre-tender stage. Not having done so, on the one hand, and in proceeding to furnish its bid, on the basis of altered formats, including alteration in the undertaking, the petitioner's bid was rendered non-compliant. This led to BSNL rejecting the bid. Lastly, it was argued that after tests were carried out, the battery capacity for C-2 sites was determined to be 414H. However, the petitioner's bid offered only 400AH batteries. This clearly disentitled it to award of the contract in question. The stipulations clearly stated that the battery capacity had to be 414 H.

Decision and Reasoning

15. The petitioner here calls into question the decision of the CET to declare its bid as techno-commercially non-responsive. Before proceeding to consider the merits of the rival contentions, it would be pertinent to revisit

the established principles in relation to judicial review in matters concerning tender invitations by public authorities. In *Michigan Rubber (India) Ltd. v. State of Karnataka*, (2012) 8 SCC 216, after reviewing a number of its previous decisions, the Supreme Court noted:

“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”; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226.”

16. In the seminal case of *Tata Cellular v. Union of India*, (1994) 6 SCC 651, the law on this point was exhaustively reviewed and the Supreme Court noted that in relation to public contracts and tenders, the following principles are discernible from the plethora of decisions:

1) “The modern trend points to judicial restraint in administrative action.

2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative

decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

4) *The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*

5) **The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free arbitrariness not affected by bias or actuated by mala fides.**

6) *Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”*

17. In *Air India Ltd. v. Cochin International Airport*, (2000) 2 SCC 617, the Supreme Court held:

“The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the

highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. 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.”

18. In *Master Marine Services (P) Ltd v Metcalfe Hodgkinson (P) Ltd & Anr* (2005) 6 SCC 138 the position was reiterated in the following words:

"12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

*The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. **The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or***

actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

19. In *Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Anr.* 2016 SCC Online SC 940 the Supreme Court held as follows:-

"14.....a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision."

20. The above decisions are clear authority for the proposition that ordinarily, the Court should not interfere with the decision making process for award of tenders. The Government and the public authorities should have freedom of contract and even if the Court finds some infirmity in the decision making process, unless there is patent arbitrariness, unreasonableness or established *mala fides* from the record, the Court should in the larger public interest, not interfere with the process. Moreover, it is open to the tenderer to grant relaxation for *bona fide* purposes, or to insist on strict compliance of certain tender conditions, as long as the same is not done with a *mala fide* or discriminatory intent. Therefore, it is the decision making process, and not the decision itself that can be looked into by the courts in exercise of their power of judicial review.

21. Keeping the above principles in mind, this court now proceeds to examine the tender process conducted by BSNL in the present case. It would

be relevant, at this stage to reproduce the material terms of the tender document:

“Section 4-Part A

14.0 Format and Signing of Bid

14.1 The bidder shall submit his bid, online (in case of e-tendering) & through sealed envelopes physically (in case of tenders with manual bidding process), complying all eligibility conditions, other terms and conditions of tender document to be read along with the clarifications and amendments issued in this respect. All the documents must be authenticated, using Digital Signature (in case of e-tendering) & by hand signatures (for manual bidding process), by the authorized person. The letter of authorization shall be indicated by written power-of-attorney accompanying the bid.

Section 4- Part B

1. Eligibility Conditions-

(e) Vendor quoting 20/30 Meter Guyed, Wired Mast as per design approved from Structural Engineering Research Centre (SERC)/ IITs, is required to submit design approval of 20/30Meter Guyed Wired Mast from SERC/IIT within five weeks of Opening of Techno Commercial Bid. If bidder fails to submit these documents within the specified time, such bid shall be treated as substantially non and shall be rejected without detailed evaluation pursuant to Clause 22, Section 4A.

11.1 The bidder shall furnish, as part of the bid documents establishing the bidder's eligibility, the following documents or whichever is required as per terms and conditions of the Bid Documents:

(a) The vendor should clearly specify ownership, IPRs and certain other rights with respect to Technology/ Design(s) of

GSM BSS. If offered technology/design of BSS is not developed by the vendor, the vendor is required to submit MOU Agreement with the technology provider as per Performa given in Section 7G and Board Resolution of the Technology providing company as per Performa given in Section 7H . These documents are required to be duly notarized. In case the company is of foreign origin, the notary has to be from the country from where technology provider is, alternatively, it should be attested by the Indian Embassy/ High Commission in that country.

(b) The bidder should clearly specify OEM/Principal Manufacturer of Satellite HUB & VSAT equipments. If bidder is not OEM/Principal Manufacturer of Satellite HUB & VSAT equipments, it should have a back-to-back support agreement with OEM/Principal Manufacturer for support of offered product for tendered period duly approved by Board as per Performa given in Section 7I.

22. It is contended by BSNL that the petitioner did not fulfill the above mentioned eligibility conditions and hence its bid was declared non-responsive. However, instead of rejecting the petitioner's bid outright, BSNL sought clarifications from it. Both in the written pleadings as well as in the hearing before the Court, the parties placed significant emphasis on Clause 11 of Section 4B, and raised arguments regarding the petitioner's compliance or otherwise with this Clause of the tender document. Admittedly, in terms of Clause 11.1 (a) of Section 4B, the petitioner had not submitted an undertaking in the form of the pro-forma format 7G and 7H that was specified in the tender document. In the petitioner's case, the technology it offered was not owned by it but was transferred to it by an agreement signed with M/s Altobridge. It seems that sometime thereafter, M/s. Altobridge went into liquidation and was acquired by VT-iDirect. In

this case, an undertaking from the service provider (VT-iDirect) was admittedly not provided to BSNL in terms of the format prescribed in the tender document. Moreover, the MoU provided initially was neither notarized nor attested by the Indian Embassy/High Commission as per the tender requirements. Subsequently, BSNL sought for clarifications with respect to the petitioner's non-compliance with Clause 11.1 as well as other clauses. BSNL states that in the clarification submitted, the petitioner merely reiterated its previous position and as such, the clarification provided did not constitute compliance with Clause 11 of the tender document.

23. The Court considers that it is undisputed that the petitioner did not submit an undertaking in the required format in terms of Clause 11 in the first instance and even the agreement submitted was not duly notarized or stamped. It is important to note that instead of summarily rejecting the petitioner's bid, BSNL asked for clarifications from it, offering it a chance to remedy its non-compliance. While the petitioner contends that seeking such clarifications was belated and *mala fide*, the Court notices that in its meeting of 11.01.2017 while deciding to conduct re-tests of the equipment of all the tenderers, BSNL also decided to call for clarifications from the bidders who had not submitted the required documents as per the conditions of the tender. Thereafter, clarifications were sought by the CET from all the bidders, including the petitioner. In the petitioner's case, the CET was of the view, that the clarifications provided by the petitioner were not sufficient to remedy its non-compliance with the tender conditions. What emerges from the CET's 3rd Report (Technical Evaluation), is that the clarifications provided by the petitioner were considered by the CET in detail and it concluded that despite the clarifications provided, the required

documentation was incomplete and the bid was, therefore, found to be techno-commercially non-responsive.

24. The petitioner, no doubt, contends that it had substantially and sufficiently complied with Clause 11; however, this Court considers that it would be the discretion of the public authority which issues the tender to evaluate the bid and the level of compliance it expects with particular conditions of the tender document. In fact, the CET's insistence of requiring strict compliance with Clause 11 also seems to be based on reason; this would be essential to ensure that subsequent to the grant of the tender, there arise no issues with respect to IPR and other rights relating to the technology of the service provider, especially in cases where the technology is not owned by the tenderer.

25. In the circumstances, the Court considers that the decision-making process of the CET cannot be faulted. Concededly too, in terms of Clause 1(e) of Section 4B, the approved design was not submitted within the prescribed time. The Court, taking into account the entirety of the factual matrix, cannot discern any irregularity in the process adopted by the CET, or find evidence of any *mala fide* on its part.

26. The petitioner also alleges that BSNL has treated it in a discriminatory manner by insisting on strict compliance with Clause 11, whereas in the case of M/s. HFCL it had relaxed compliance with Clause 12 of Section 5B, which requires the tenderer to submit a detailed unpriced Bill of Material. Clause 12 reads:

“12. Detailed Unpriced BoM:

a. DTR provides a detailed requirement of the Purchaser. The Bidders shall provide along with the techno-commercial Bid,

detailed Un-priced BoM as per the SoR line item indicating break up for each of the SOR line item with their quantity required to meet the performance requirement sought for in the GR and DTR. A detailed specification of generic items such as laptop and desktop computers, Printers, inverters etc shall form part of the technical Bid and shall be of latest versions in the market.

b. The price of each of the discrete items in Detailed BOM should also be quoted upto two decimal point as a percentage of the Quoted Price of concerned SoR line item in financial bid. While apportioning the percentage price of a main item for which price has been explicitly quoted in the financial Bid, care should be exercised to ensure that the total of all the sub-items forming part of the main item shall be equal to 100 %. Care should be taken that absolute price value of the SOR line item or subitems should not be mentioned in Detailed Unpriced BOM, Make and model of each of the discrete should also be mentioned in Detailed Unpriced BOM,

c. A Bid without the detailed BoM/BoQ may be rejected as substantively non responsive.

27. In M/s. HFCL's case, the CET was of the view that the information required in the unpriced BOM was available in other documents submitted by the tenderer and since the bidder had submitted all the information and documents pertaining to the unpriced BOM, hence Clause 12 was deemed to have been complied with. The Court does not find any irregularity in the CET's actions on this count. Since the CET was of the opinion that the information required in the unpriced BOM was satisfactorily found in the other documents submitted by M/s. HFCL, it was open to it to find the bid as techno-commercially responsive. The Court further discerns no discriminatory intent on the part of BSNL, having regard to the fact that the

two clauses in question are different-in the petitioner's case, compliance with Clause 11 of Section 4B was in issue and in case of M/s. HFCL it was Clause 12 of Section 5B. It would tantamount to either comparing apples and oranges, or stepping into the shoes of the public authority to determine whether the requirements imposed by these two clauses are to be given equal weight, if the Court were to find discriminatory intent on the part of BSNL in such a situation. As noted in a number of decisions, including *Michigan Rubber (supra)*, *Afcons (supra)*, etc., the public authority issuing the tender has the discretion in deciding whether certain conditions of the tender document need to be strictly enforced and whether relaxation can be granted with respect to certain other requirements. The Court has neither the expertise nor the competence to undertake such an analysis-as to whether the public authority must insist on the same level of compliance for different conditions of the tender. In the circumstances, the Court does not find that the actions of BSNL are either procedurally irregular, arbitrary or *mala fide*. In fact, BSNL's *bona fides* and anxiousness to preserve the fairness of the tender process is also made out from the fact that it sought legal opinion, as to the justification and fairness of the entire process. The opinion, dated 20.04.2017 expressed that the entire process was conducted fairly and was without flaw.

28. This court is unable to agree with the petitioner that the objection as to IPR was fully or satisfactorily explained. It was submitted that the documents furnished by the petitioner on the issue, clearly showed that IPRs and the technology were not licensed or assigned to the petitioner. Rather, the document clearly envisioned ownership of the IPRs would continue with Altobridge. Now, those documents (i.e. *inter se* the petitioner and

Altobridge) have not been brought on record. They were considered by the public agency, i.e. BSNL. Furthermore, the inability to match the prescribed criteria in respect of batteries, also furnishes adequate reason to BSNL to have found the petitioner's bid non-compliant. Given these facts as well as the narrow scope of judicial review in such matters, this Court is of the view that there is no reason to interfere with the tender process. It is only if the decision of the CET is so unreasonable that no reasonable man would have reached such a conclusion, can the decision be struck down; in the present case, the decision arrived at by the CET seems not only perfectly reasonable, but also procedurally regular and *bona fide*.

29. In the circumstances, the Court is of the view that the writ petition is unmerited. It deserves to fail. The writ petition is accordingly dismissed along with the pending applications. There shall be no order as to costs.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JULY 31, 2017