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

Date of Decision: 13th August, 2018

\+   WP(C) 8448/2018 & CM No.32491/2018

TELECOM WATCHDOG ..... Petitioner
Through: Mr. Pranav Sachdeva, Advocate

versus

UNION OF INDIA & ANR. ..... Respondents
Through: Mr. Kirtiman Singh, CGSC for Respondent No.1/UOI
Mr.Dinesh Agnani, Sr. Advocate with Ms.Leena Tuteja, Adv. for R2/BSNL

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T

RAJENDRA MENON, CJ (ORAL):

This petition in public interest is filed by the petitioner claiming to be a society registered under the Societies Registration Act, 21 of 1860. The grievance of the petitioner is to the effect that the Department of Telecom (**'DoT'**) and the Bharat Sanchar Nigam Limited (**'BSNL'**) have entered into an agreement on 16th January, 2018 for providing 2G technology in the State of Arunachal Pradesh and two Districts in the State of Assam, namely, Karbi Anglong and Dima Hasao Districts. It is alleged in the writ petition that the 2G technology is outdated. By the impugned agreement, it is sought to be purchased at a huge cost of more than Rs.2,258 Crores from two private companies under mysterious circumstances despite the fact that the Telecom Commission had, on 21st December, 2017, decided to procure 2G + 4G technology for all future projects. Inter alia contending that inspite of this decision of the Telecom Commission, an outdated technology is being procured for these areas at an exorbitant price and various complaints made to the competent authorities have not been addressed, this petition has been filed in public interest and the prayer made is that the agreement in question be quashed or in the alternate, it be amended for including 4G technology in the agreement.

2. Having considered the contentions advanced, we are of the considered view that except for making allegations to the effect that under mysterious circumstances, an outdated technology is being procured at an exorbitant rate, no statutory rule, regulation or constitutional provision is shown to be violated in the matter.

3. The learned counsel representing the respondents, on advance notice, contends that it is a policy matter of the Government and in a public interest litigation, in the manner filed, such policy matters of the Government need not be interfered with. In the petition, reference has been made to the meeting of the Chief Ministers of the ten Left Wing Extremism (**'LWE'**) areas dated 8th May, 2017 to contend that the demands of the States were for 4G technology for all future projects but inspite thereof and the decision of the Telecom Commission, an outdated technology is being implemented in one

State and two Districts of another State. It was submitted that the Telecom Commission has recommended for procuring 2G + 4G technology for all future projects.

3. We have considered the submissions made and we are of the considered view that merely because a particular technology is being applied in a particular area in the absence of there being any *mala fides* or arbitrariness alleged or prima facie established from the pleadings on record, indulgence into the matter need not be made in a public interest litigation challenging a policy decision of the Government. Except for making vague and unspecified allegation that under mysterious circumstances, huge funds from the public exchequer are being wasted for an outdated technology, there is no material available on record to show, *prima facie,* that the decision is arbitrary in nature or it is tainted with *mala fides* or is contrary to a statutory rule or regulation.

4. In the case of ***Balco Employees Union (Regd.) vs. Union of India & Ors.***, (2002) 2 SCC 333, the Hon'ble Supreme Court had considered the question of judicial review with regard to the policy decision and interference into such policy matters by a Court of Law exercising jurisdiction in a public interest litigation and the conclusion drawn by the Hon'ble Supreme Court from paragraph 92 onwards clearly indicates that every elected Government in a democracy has the prerogative to follow its own policy. Unless an illegality is committed in the execution of the policy or the same is found to be contrary to law or *mala fide*, a decision with regard to the policy

matters should not be interfered with. In paragraph 93, the scope of judicial review in such matters has been laid down by the Hon'ble Apex Court in the following manner:

> ***"93.*** *Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001."*

Thereafter, in paragraphs 97 and 98, the scope of judicial interference by way of public interest litigation in cases of policy matters and economic issues have been crystallized by the Hon'ble Supreme Court in the following manner:

> *"97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject-matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties. None of these contingencies arise in this present case.*

98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

5. Keeping in view the grievances canvassed before us in the present writ petition and the fact that except for contending that the decision and the agreement is not in public interest, we find that there is nothing on record to show as to how the decision is vitiated on account of any statutory violation or the policy is arbitrary in nature being contrary to constitutional provisions.

6. Accordingly, keeping in view the facts and circumstances of the case, the manner the petition has been presented before us, we are not inclined to interfere into the matter. However, the petitioner shall be at liberty to take up the matter with the competent authority of the Union of India or the department concerned and it would be for the department to consider the grievance of the petitioner.

7. With the aforesaid observations and liberties to the petitioner, the writ petition stands dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 13, 2018
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