



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.15778 of 2011
and MP Nos.1 and 2 of 2011
and MP Nos.1 and 2 of 2012

M.V.Sekar

... Petitioner

Vs.

1.Bharat Sanchar Nigam Limited
rep by its Chief Engineer (E),
No.60, Ethiraj Salai, Chennai-600 008.

2. The Executive Engineer (Electrical),
Bharat Sanchar Nigam Limited,
Electrical Division-II,
Aarthi Chambers, No.189, Anna Salai,
Chennai - 600 006.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ in the nature of writ of Certiorarified Mandamus to call for the records relating to order No.23(96) EEE/EDII/2011/624 dated 16.06.2011 issued by the 2nd respondent and quash the same as being illegal arbitrary, unconstitutional and contrary to the natural justice and consequently forbear the respondents from altering the terms of the contract dated 30.06.2009 entered into between the petitioner and the 2nd respondent without obtaining the prior written consent of the petitioner.

For Petitioner : Mr.C.K.Chandrasekaran

For Respondents : M/s.R.Priya Kumar

ORDER

The petitioner is a contractor under the respondent BSNL. He submitted a tender dated 09.01.2009 for handling the operation and maintenance of 88 Universal Service Obligation Fund sites at the rate of Rs.8,42,786/- per site for five years in the BSNL, Electrical Division-II, Chennai. The tender was accepted by the respondents and based on the selection, the



petitioner entered into an agreement dated 30.06.2009 with regard to maintenance of Universal Service Obligation Fund sites as per the stipulated conditions laid down in the contract. The schedule of work was to provide round the clock site care taking, operation and comprehensive maintenance of electro mechanical services of the universal service providers, maintenance of diesel generator sets, including supply of lube oil, filters, coolant, transportation and filling of diesel, making arrangement of storage of diesel etc., and after every 7000 hours there should be top haul and after 10000 hours there should be major overhaul of the diesel generator sets and the batteries were to be replaced after two years and the cost of batteries were to be reimbursed by BSNL. Clause-6 of the Work schedule specified as follows:-

No.of USPs at site	Total maximum load	CPH of DG set (litres per hour)
1	Upto 5 KW	2.7 litres
2	More than 5 KW and upto 7 KW	3,1
3	More than 7 KW and upto 9 KW	3.6
3	More than 9 KW and upto 11 KW	4.5
3	More than 11 KW and upto 13 KW	5.5

2. As per clause-6, the respondents have specified that the total maximum load of the site shall be reviewed based on actual measurement and they have laid down procedure for conducting measurement and also the consumption of fuel of the DG set. In case, if there is excess consumption, the same will be refunded by the respondents. Other than that, the filling up of fuel from the petrol bunks by using the card issued by respondents BSNL and payment of money to the petrol bunks etc., were also specified in the contract.

3. It appears that the respondents conducted a review in the year 2010 and after summerising the testing report, the Chief Engineer of BSNL issued an order. Pursuant to the order, the first respondent directed the second respondent to issue revised schedule on 16.06.2011. The revised schedule which is impugned in the writ petition is as under:

1	1 USP	2.3 litres/hour	2.7 ltr/hr
2	2 USPs	2.6 litres/hour	3,1 ltr/hr
3	3 USPs	3.1 litres/hour	5.5 ltr/hr



4. The respondent in the impugned communication has stated that the revised payment schedule will take effect from 13.09.2010 and the excess diesel drawn on account of the changed levels of diesel will be recovered from the ensuing bills. This portion of the order is under challenge.

5. According to the learned counsel for the petitioner, he entered into a contract as per the work schedule specified by the respondents in the year 2009 and that part of the schedule remains intact till date. The agreement of contract was not varied or modified by the respondents BSNL. By virtue of administrative letter the respondents seek to vary the work schedule with retrospective effect and also attempt to recover money from the ensuing bills. If at all one of the parties to the contract wants to modify the agreement, it shall be done after putting him on notice and after permitting him to exercise the option whether to continue or not to continue. This unilateral reduction of rate contrary to the terms of contract and that too without notice is bad.

6. Learned counsel for the respondents would contend that as per clause-6 of the agreement, it is specifically provided that review will be conducted on quarterly basis and on the basis of review report, the consumption of fuel and payment will be decided. Therefore, the contractor is bound by the clause and the respondents are entitled to review the rates and refix it.

7. It is true to state that the service provider is entitled to modify the contract and revise the rates as the circumstances may warrant. When it is a bipartite contract, both the parties should mutually agree for the modification or variation of the contract. As per Clause-6, if the respondents want to conduct review, they shall put the other parties on notice, conduct the review and call for remarks on the test report. Thereafter, they can mutually modify the rates. Even assuming that the contractor does not agree for the modified rate, option should be given either to continue the contract or to quit the contract. In such circumstances, the service provider has the option to engage somebody else within the period specified for the said purpose. Without giving any notice, the respondents cannot unilaterally revise and reduce the rates, that too, with retrospective effect. Such a course adopted by the respondents is not sustainable in law and it offends mutuality as well as principles of natural justice.

8. In view of the same, the impugned order of unilateral reduction of rate with retrospective effect does not stand the test of scrutiny of law. The impugned order revising the rate with retrospective effect stands set aside. In the result, the



writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

sr

To

1. Bharat Sanchar Nigam Limited
rep by its Chief Engineer (E),
No.60, Ethiraj Salai, Chennai-600 008.
2. The Executive Engineer (Electrical),
Bharat Sanchar Nigam Limited,
Electrical Division-II,
Aarthi Chambers, No.189, Anna Salai,
Chennai - 600 006.

+1cc to Mr.C.K.Chandrasekhar, Advocate SR.No.27680

W.P.No.15778 of 2011

NR(CO)
GMY(27/05/2022)