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

% ***Date of decision: July 24, 2024***

+ **W.P.(C) 9061/2024, CM APPL. 37032-37033/2024**

**PMI ELECTRO MOBILITY
SOLUTIONS PVT.LTD**

.....Petitioner

Through: Mr. Sunil Dalal, Sr. Advocate
with Ms. Ahsish Dholakia, Sr.
Advocate with Mr. Aditya
Singh, Mr. Sumant Narang,
Mr. Nikhil Beniwal, Mr. N.
Bhati, Ms. Ananya Narain
Tyagi, Advocates

versus

**CONVERGENCE ENERGY
SERVICES LIMITED & ANR.**

.....Respondents

Through: Mr. Samdarshi Sanjay and Mr.
Ashish Kr. Sharma, Advocates
for R-1 with Mr. Abhishek
Srivastava, Authorised
Signatory

Mr. Rakesh Kumar, CGSC
with Mr. Yash Tyagi, Mr.
Sunil, Advocates with Mr.
Amrendra Kishore Singh,
Deputy Secretary, MHI for
UOI

**CORAM:
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN
J U D G M E N T (oral)**



1. The present petition is filed under Article 226 of the Constitution for issuance of the direction to set aside the communication bearing Ref No. Co-Contracts/CESL/PM E-BUS SEWA-NOTICE/03/1187 dated 22.03.2024 and impugned communication Letter no. PMI/PM EBUS SEWA/2024-25/03 dated 05.07.2024.

2. The respondent no.1 is stated to be a green energy focused venture of EESL Group owned by central public sector undertakings under the Ministry of Power, New and Renewable Energy. The respondent no.1 on 17.11.2023 had floated a tender for bus operator for Procurement, Supply, Operation and Maintenance of 3,600 Electric Buses and development of allied electric and civil infrastructure on Gross Cost Contracting (GCC) under PM-eBus Sewa in Tier 2 and Tier 3 cities in India based on aggregation of demand. The said tender is stated to be amended from time to time and lastly it was amended on 06.02.2024.

3. The counsel for the petitioner submitted that the bids for the lot no.7 and 8 is for the State of Jammu & Kashmir and lot no.4 is for the Union Territory of Chandigarh has lead member consortium on 06.02.2024. The petitioner also participated in other consortium. The respondent no.1 on 09.02.2024 had sought clarification and removal of deficiency in the bid documents.

4. The respondent no.1 vide letter dated 22.03.2024 addressed to the petitioner intimated that earlier the petitioner had informed that no investigation is pending against the petitioner but in fact an investigation undertaken by the respondent no.2 was pending against



the petitioner and due to this non-disclosure was considered to be the violation of PMP Guidelines and the petitioner was directed to respond to the issue within 07 days. Thereafter, the petitioner replied to the letter dated 22.03.2024 vide reply dated 02.04.2024 wherein refuted the allegation as contained in the notice dated 22.03.2024.

5. The respondent no.1 vide communication dated 05.07.2024 addressed to the Chief Executive Officer of the petitioner has proceeded with the cancellation of the bids and invocation of the EMD's submitted by the petitioner/consortium partners for lots in respect of Chandigarh and Jammu & Kashmir. The petitioner being aggrieved filed the present petition.

6. Mr. Sunil Dalal, learned Senior Counsel for the petitioner stated that the communication dated 05.07.2024 was passed without giving appropriate opportunity to the petitioner to present its case and is without any reason and is also in violation of the Principle of Natural Justice besides other grounds.

7. Mr. Samdarshi Sanjay, Advocate for the respondent no.1 stated that the respondent no.1 is ready to withdraw the communication dated 05.07.2024 and the respondent no.1 shall pass appropriate reasoned order after giving proper opportunity of being heard and also after considering the reply dated 02.04.2024.

8. The principles of natural justice involve a procedural requirement of fairness and have become an essential part of any system of administrative justice. Natural Justice is considered to be part of rule of law. The Supreme Court in **Sangram Singh V Election Tribunal Kotah**, AIR 1955 SC 425 observed that one



should not be condemned unheard and decision should not be reached behind the back. The Supreme Court in **Maneka Gandhi V Union of India**, AIR 1978 SC 597 emphasized that natural justice is an essential element of procedure established by law and state action must be right, just and fair and not arbitrary, fanciful and oppressive. It was held that Article 14 of the Constitution strikes at arbitrariness of state action and ensures fairness and equality of treatment. It was also observed in **Union of India V Tulsi Ram Patel**, AIR 1985 SC 1416 that Article 14 is not creator of principles of natural justice but it is constitutional guardian of Article 14. The Supreme Court in **Mohinder Singh V Chief Election Commissioner**, AIR 1978 SC 851 observed that the principles of natural justice are bones of healthy government.

8.1 The Supreme Court in **Indian Oil Corporation Limited and others V Shashi Prabha Shukla and Another**, (2018) 12 SCC 85 observed as under:-

33. (a) public authority in its dealings has to be fair, objective, non arbitrary, transparent and non discriminatory. The discretion vested in such an authority, which is a concomitant of its power is coupled with duty and can never be unregulated or unbridled. Any decision or action contrary to these functional precepts would be at the pain of invalidation thereof. The State and its instrumentalities, be it a public authority, either as an individual or a collective has to essentially abide by this inalienable and non negotiable prescriptions and cannot act in breach of the trust reposed by the polity and on extraneous considerations. In exercise of uncontrolled



discretion and power, it cannot resort to any act to fritter, squander and emasculate any public property, be it by way of State largesse or contracts, etc. Such outrages would clearly be unconstitutional and extinctive of the rule of law which forms the bedrock of the constitutional order.

8.2 The Supreme Court in **Southern Power Distribution Company Limited of Andhra Pradesh (APSPDCL) & Another V M/s Hinduja National Power Corporation Limited & Another**, 2022 Livelaw (SC) 117 and also cited by the counsel for the petitioners observed as under:-

Every action of a State is required to be guided by the touchstone of non arbitrariness, reasonableness and rationality. Every action of a State is equally required to be guided by public interest. Every holder of a public office is a trustee, whose highest duty is to the people of the country. The Public Authority is therefore required to exercise the powers only for the public good.

8.3 The principles of natural justice are equally applied in purely administrative functions. The Supreme Court in **A.K. Kraipak V Union of India**, AIR 1970 SC 150 observed that the principles of natural justice are applicable to administrative inquiries and established that observance of principles of natural justice in decision making process of the administrative body having civil consequences. The Supreme Court again in **Neelam Mishra V Harinder Kumar Paintal**, AIR 1990 SC 1137 observed that administrative order involving civil consequences must be passed in accordance with notions of fairness.



8.4 The purpose of the principles of natural justice is to prevent miscarriage of justice. The expression *audi alteram partam* implies that a person must be given an opportunity to defend himself and ensures that no one should be condemned unheard. *Audi alteram partam* makes it obligatory for an authority that a party should not suffer in person or in purse without an opportunity of being heard and implies that before an order is passed against any person real, reasonable and effective opportunity of being heard must be given to him. The rule of fair hearing is consisting of two components which are notice and hearing. It is basic principle of natural justice that the authority should give to the affected party a notice of the case against him so that he may defend himself adequately. Notice is starting point of any hearing and *sine qua non* of fair hearing. The administrative authority is also required to afford reasonable opportunity to the party to present his case. A real, rationale and effective hearing includes disclosure of all relevant material or information which the authority wishes to use against the individual in arriving of its decision. The administrative authority cannot take a decision on the basis of any material unless the person against whom it is sought to be utilised is given an opportunity to rebut or explain the same.

9. It is suitably established in India that an adjudicatory authority is **Engineer and Manufacturing Co. V Union of India**, AIR 1976 SC 1785 reiterated the principle with an emphasis that the rule requiring reasons to be given in support of an order is a basic



principle of natural justice, which must inform the quasi-judicial process. It should be observed in its proper spirit and "mere pretence of compliance with it would not satisfy the requirement of law". It was observed in **Maneka Gandhi V Union of India**, AIR 1990 SC 1984 that giving of reasons is a healthy check against abuse or misuse of power. The requirement of duty to give reasons was further crystallized in **S.N. Mukherjee V Union of India**, AIR 1990 SC 1984 and reasons due to which a reasoned decision must be passed were discussed. It was observed that reasoned decision: (i) guarantee consideration by the authority; (ii) introduce clarity in decisions; and (iii) minimize chances of arbitrariness in decision-making thereby ensuring fairness in the process. It was observed as under:

In our opinion, therefore, the requirement that reason must be recorded must be recorded should govern the decisions of govern the an administrative authority exercising quasi judicial functions irrespective of fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clean and explicit so as to indicate that the authority has given due consideration to the points in controversy.

9.1 The Supreme Court in **Rani Lakshmi Bai Kshetriya Gramin Bank V Jagdish Sharan Varshney & others**, (2009) 4SCC496 held that the purpose of disclosure of reasons is that people should have



confidence in judicial and quasi-judicial authorities and minimize chances of arbitrariness. It was held as under:-

The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N. Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

9.2 The Supreme Court in the case of **Namit Sharma V Union of India**, (2013) (1) SCC 745 regarding duty to give reasons held as under:-

It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required



to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of **Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr.** [(1976) 2 SCC 981]; and **Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers** [(2010) 4 SCC 785].

9.3 Any authority when conferred with a discretionary power must exercise that power after applying its mind to the facts and circumstances of the case. The authority should not act mechanically in exercise of discretion. The Supreme Court in **East Coast Railway V Mahadev Appa Rao**, (2010) 7 SCC 2794 observed that every order passed by a public authority must disclose due and proper application of mind by the person making the order.

10. The impugned communication dated 05.07.2024 is appearing to be issued without assigning any reason and is in violation of the Principles of Natural Justice. The counsel for the respondent no.1 also stated that the respondent no. 1 is ready to withdraw the communication dated 05.07.2024 and the respondent no.1 shall pass appropriate reasoned order after giving proper opportunity of being heard and also after considering the reply dated 02.04.2024.

11. Accordingly, the impugned communication dated 05.07.2024 is set aside and the respondent no.1 is directed to pass a reasoned order in pursuance of the show cause notice dated 22.03.2024 after giving fresh opportunity of being heard to the petitioner which may also include the personal hearing and thereafter to pass a reasoned



order.

12. The petitioner shall be at liberty to file the fresh representation which shall be accordingly considered by the respondent no.1. The petitioner is directed to do the needful within 02 weeks from today. Thereafter, the respondent no.1 is directed to pass the reasoned order in pursuance of the show cause notice dated 22.03.2024 preferably within a period of 04 weeks with an intimation to the petitioner.

13. The present petition along with pending applications stand disposed of.

14. The petitioner shall be at liberty to initiate appropriate legal proceedings in case of altered circumstances within 15 working days in case of any adverse order passed by the respondent no.1 subject to the condition that the petitioner shall keep the bank guarantee alive during this period which shall not be encashed by the respondent no.1 during this period.

DR. SUDHIR KUMAR JAIN
(JUDGE)

JULY 24, 2024
j/abk/ak