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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Judgment pronounced on: 04.09.2025**+ **W.P.(C) 17199/2024, CM APPLs.73129/2024, 73131/2024, 5706/2025**

PMI ELECTRO MOBILITY SOLUTIONS PVT LTDPetitioner
Through: Mr. Rajiv Nayar (Sr. Adv.),
Mr. Ashish Dholakia (Sr. Adv.) along
with Mr. Manu Nair, Mr. Saurabh
Seth, Mr. Sumant Narang, Mr. Aditya
Singh, Mr. Neelabh Shreesh,
Mr. Rahul Kumar, Mr. Aryan Roy,
Mr. Sourabh Gupta, Ms. Ananya
Narain, Advocates.

versus

CONVERGENCE ENERGY SERVICES LIMITED & ANR.

.....Respondents

Through: Mr. Chetan Sharma (ASG) along with
Mr. Samdarshi Sanjay, Ms. Monika
Sharma, Mr. Ashish Kumar Sharma,
Mr. Amit Gupta, Mr. R.V. Prabhat,
Mr. Vinay Yadav, Mr. Shubham
Sharma, Mr. Vikramaditya Singh, and
Mr. Naman, Advocates.
Mr. Vikram Jetly (CGSC),
Mr. Hussain Taqvi (GP) along with
Ms. Shreya Jain, Advocates.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition has been filed by the petitioner praying as under:

“A. Issue an order, direction or writ in the nature of certiorari or mandamus or such other writ as may be considered appropriate for quashing, setting-aside and declaring invalid the impugned



communication Ref No. CO-contracts/ CESL /PM 26.11.2024.

B. Issue an order, direction or writ in the nature of mandamus or such other writ as may be considered appropriate restraining Respondent No. 1 from acting on Impugned Order bearing Ref. No. CO-Contracts/ CESL/PM e-Bus Sewa/1001 dated 26.11.2024 in any manner whatsoever, whether by non consideration of its bid, invocation of the Earnest Money Deposit submitted by the Petitioner, or by issuance of letters to the guarantor banks for the encashment of the performance bank guarantees furnished by the Petitioner and its consortium members, or by taking any other precipitative action;

C. Allow the Petitioner to participate in the tender for procurement, supply, operation and maintenance of 3,600 e-Buses and development of allied electric and civil infrastructure on Gross Cost Contracting under PM eBus Sewa de hors the Impugned Order, from the stage it was pending prior to the issuance of the Impugned Order”

2. The background of the matter is that on 17.11.2023, respondent no. 1 issued a Request for Proposal (RfP) for selection of operators for the procurement, supply, operation and maintenance of 3,600 electric buses (subsequently revised to 3,825 pursuant to Amendment No. 6 dated 25.01.2024), and for development of allied electric and civil infrastructure on a Gross Cost Contracting (GCC) basis under the PM-eBus Sewa. It is submitted that the tender underwent multiple amendments, with the final amendment being issued on 30.01.2024.

3. In a parallel development, on 05.12.2023, the petitioner received a Show Cause Notice from respondent no. 2, alleging violation of the FAME-II Scheme and the Phased Manufacturing Program (PMP) Guidelines. The notice cited complaints dated 04.11.2022 and 15.06.2023 alleging use of imported components in the petitioner's e-buses and relied upon a site inspection conducted, and report dated 08.11.2023 prepared by the Automotive Research Association of India (ARAI), which allegedly found



the petitioner non-compliant. The petitioner was asked to deposit the entire subsidy amount received and to show cause why it should not be debarred from the FAME-II Scheme. The said show cause notice is reproduced as under –

*“F.No. 12(62)/2023-AEI/PMIElectroMobilitySolutionLimited/Violation
(26248)*

*Government of India Ministry of Heavy Industries
AEI Section
Udyog Bhawan, New Delhi-11*

Dated: 05/12/2023

To,

*M/S PMI Electro Mobility Solutions Private Limited, At-BB-11, Greater
Kailash Enclave II, New Delhi-110048, Delhi*

Subject: Non-compliance of PMP Guidelines of FAME-II Scheme.

Sir,

I am directed to refer to the Phased Manufacturing Programme (PMP) dated 29th March 2019 and the FAME-II guidelines as amended from time to time, issued by MHI for xEV parts under FAME India Scheme Phase II (here-in referred to as FAME-II). Please find attached complaint dated November 04, 2022 and June 15, 2023 ('Annexure-1') received at MHI alleging that M/s. PMI Electro Mobility Solutions Private Limited (PMI) has been using imported critical parts for manufacturing their e-Buses for supplying to various STU/s/local bodies under FAME-II in violation of the PMP and wrongfully claiming government subsidy under FAME-II.

2 ARAI vide their report dated November 08, 2023 ('Annexure-2') has reported that, a team of ARAI officials visited your plant located at Dharuhera, Rewari, Haryana and M/s Aranath Enterprises Private Limited (Major supplier of PMI) on November 02, 2023 to November 03, 2023. They have since submitted the plant visit report, with final conclusions and recommendations. As per examination report submitted by ARAI:

“1. From the manufacturing plant visit report, it is amply evident that, as alleged by the complainant, M/s PMI are using imported PMP components such as Traction Motor, Traction Battery Modules, Power



and Control wiring harness along with connectors, DC Charging inlet, Vehicle Control Unit (VCU), Electric Compressor, Front axle and Rear axle, Multiplexing unit (slave), Ignition Switch, and some Interior Covers in the manufacturing of their electric buses.

2. Records of revalidation approvals of FAME-II approved Electric bus models of M/s PMI are not evident."

3. In terms of the findings about violations and non-compliance with PMP/ FAME guidelines, the amount paid to M/s PMI towards claims submitted for e-Buses, since FY 2019-20 to date of this notice, is recoverable. Further all claims submitted by you stand cancelled.

4. In view of foregoing, why should M/s PMI not be debarred from FAME-II scheme immediately, for furnishing false undertaking of adhering to PMP/FAME-II guidelines issued by MHI and for misrepresenting facts to claim incentives?

5. The incentives disbursed to you are as follows:

	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	Total
Payment made	47,42,80,000	30,07,20,000	65,87,13,780	137,21,86,907	-	280,59,00,687

6. MHI hereby issues notice to M/s PMI to deposit within 21 days from the date of this notice, all incentive received by M/s PMI, through STU/s since 2019 to 2023 with interest calculated at 3 years' marginal cost of funds based lending rate (MCLR rates) of State Bank of India prevailing as on the date of respective disbursement. Interest shall be calculated from the date of disbursement of incentives till the date of refund by M/s PMI, compounded annually. Date wise disbursement made to STU/s for further disbursement to M/s PMI is attached as Annexure-3.

7. Any representation in this regard may be filed by M/s PMI within 7 days from the date of issue of this letter, failing which further action as per law will be taken.

8. This issues with approval of competent authority."

4. The petitioner responded on 07.12.2023 with a preliminary reply, seeking additional time to file a detailed response, which was subsequently



granted by respondent no. 2 *vide* communication dated 15.12.2023. *Vide* the said communication respondent no. 2 also informed the petitioner that the operation of the show cause notice be kept in abeyance till further decision. Communication dated 15.12.2023 is reproduced as under –

*“F.No. 12(62)/2023-AEI/PMIElectroMobilitySolutionLimited/Violation
(26248)*

*Government of India
Ministry of Heavy Industries AEI Section
Udyog Bhawan, New Delhi-11*

Dated: 15/12/2023

To,

*M/S PMI Electro Mobility Solutions Private Limited,
At-BB-11, Greater Kailash Enclave II,
New Delhi-110048, Delhi*

*Also at-205, 206 & 207A, Second Floor,
Vipul Plaza, Suncity, Sector 54,
Gurgaon, Haryana.*

Subject: Non-compliance of PMP Guidelines of FAME-II Scheme.

Sir,

I am directed to refer to MHI's letter F.No. 12(62)/2023-AEI/PMIElectroMobilitySolutionLimited/Violation (26248), dated 05/12/2023 on the subject.

2. In view of PMI's letter dated 07/12/2023, seeking 15 days time for submission of reply in respect of MHI's above mentioned letter, PMI is advised to submit its reply by 22/12/2023. In the meantime, operation of MHI's above-mentioned letter shall be kept in abeyance till further decision in this regard.

3. This issues with approval of competent authority.”

5. Subsequently, the petitioner submitted its detailed response on 22.12.2023.

6. Meanwhile, on 06.02.2024 the petitioner submitted its bid for Lot



Nos. 7 and 8 for the State of Jammu & Kashmir, Lot No. 4 for the Union Territory of Chandigarh, Lot Nos. 12 and 13 for the State of Odisha, and Lot No. 6 for the State of Haryana, along with its Affidavit of Disclosure dated 05.02.2024 as per Annexure 11 of Section 6 of the RfP. The affidavit affirmed that no investigation was pending against the petitioner or its associates at the time of bid submission. The said affidavit is reproduced as under –

“ANNEXURE 11-FORMAT FOR AFFIDAVIT

We M/s PMI Electro Mobility Solutions Private Limited, hereby declare that as on Bid Due Date:

a. the Bidder & any of its Associate including any Consortium Member, their directors or key personnel have not been barred or included in the blacklist by any government agency or authority in India, the government of the jurisdiction of the Bidder or Members where they are incorporated or the jurisdiction of their principal place of business, or by any international financial institution such as the World Bank Group, Asian Development Bank, African Development Bank, Inter- American Development Bank, Asian Infrastructure Investment Bank etc. or the United Nations or any of its agencies.

b. the Bidder & any of its Associate including any Consortium Member & any of its Associate or their directors have not been convicted of any offence in India or abroad.

c-We further declare that following investigations are pending/no investigation is pending against us [including any of our Consortium Member or Associate or Parent] or CEO or any of our directors/ manager/key managerial personnel of the Applicant/ consortium Member

d-We further undertake to inform the CESL of any such matter as mentioned above on its occurrence after the date of this affidavit till the Effective Date.

e. We undertake that, in case any information provided in relation to this affidavit is found incorrect at any time hereafter, our Bid/LoCQ/concession agreement (if executed) would stand rejected/recalled/terminated, as the case may be.



For PMI Electro Mobility Solution Private Limited”

7. On 06.02.2024, the petitioner also received an email from ARAI seeking a detailed questionnaire. The petitioner, responded on 14.02.2024, highlighting its compliance with PMP Guidelines and indigenization requirements.
8. Email dated 06.02.2024 was sent by ARAI to petitioner, which is reproduced as under –

Dear Sir(s),

We are in receipt of complaint/ allegation from one Mr. Akash Sharma (CA, CFA) regarding violation of FAME-2 PMP localisation norms by your company in the manufacturing and sale of your company FAME-2 approved eBus models.

The complainant has sent details of your company battery pack import data (copies attached) from April 2021 onwards. From the attachments, it is primarily seen that your company is importing 6000 numbers of battery packs for your eBus models in the FY 2021-22. You will appreciate that as per PMP norms of FAME-2, battery pack localisation is mandatory for ebuses with effect from 1st April 2021. Only import of battery cells and BMS is allowed but battery pack manufacturing is required to be localised.

However it is observed from attached import data (Excel Sheet) that your company has been importing complete battery packs, modules thus apparently violating FAME-2 PMP norms.

You are requested to furnish clarification/ explanation on the above alleged violation as per attached questionnaire within a week's time but not later than 16th Feb 2024. In case your company fails to provide any satisfactory explanation in the stipulated period then we will be constrained to report to MHI accordingly.

06th February 2024

Questionnaire to PMI Electro Mobility Solution

Please provide information as per below questionnaire:



- Q1: The authenticity of the data (attached Excel file)*
- Q2: How many eBus models manufactured by PMI Electro mobility solution are covered under FAME-II?*
- Q3: For how many eBus models manufactured by PMI Electro mobility solution, FAME-II incentive is claimed (Month and Year Wise)?*
- Q4: When did PMI Electro mobility solution achieved localization requirements as per PMP for these FAME-II covered eBus models?*
- Q5: When did PMI Electro mobility solution achieved Traction Battery localization requirements as per PMP for these FAME-II covered eBus models?*
- Q6: After Achieving localization as per PMP, how many eBuses are sold by PMI Electro mobility solution (Month and Year wise)?*
- Q7: After Achieving localization as per PMP, for how many eBuses FAME-II incentive is claimed by PMI Electro mobility solution (Month and Year wise)?*
- Q8: Provide invoices of domestic material/child parts purchased for Traction Battery Assembly.*
- Q9: Provide invoices of import material/child parts purchased for Traction Battery Assembly.*
- Q10: Bill of Entry for imports of Li-ion Cells of Traction Battery Pack.*
- Q11: Bill of Entry for imports of Traction Battery Packs.*
- Q12: ICE GATE data and duty paid for imports of Traction Battery Packs.*
- Q13: Provide invoices of import and bill of entry for equipment purchased for Traction Battery Assembly at your plant.*
- Q14: When was local assembly of Traction battery pack from imported Li-ion Cells and BMS started at your plant?*
- Q15: Provide Manufacturing Process Flow Diagram for local assembly of Traction battery pack at your plant.*
- Q16: Provide CMVR Type Approval Test Report and Type Approval Certificate for Traction Battery Pack after Localization and 1st April 2021.*

The petitioner's reply dated 14.02.2024 to the aforementioned E-mail is reproduced as under –

“Dear Sir,

We write to you in response to your below email dated 6 February 2024, where you have sought our clarification/ explanation as per an attached questionnaire. It appears from your email that you have received a complain allegation from one Mr. Akash Sharma regarding alleged



violation of localisation norms under FAME-2 by PMI. In this regard, please see below our response:

1 . We understand that Mr. Akash Sharma has previously raised certain vague complaints on 4 October 2022 and 15 June 2023 with the MHI on the same subject matter as your email. We also understand that by way of IFCI letter dated 23 September 2023, the MHI had purportedly directed you to conduct an inquiry and submit a report in relation to those complaints. Following this, your representatives visited our plant on 2 and 3 November 2023 and conducted an inspection. It appears that the inquiry/ inspection conducted by you on these dates was sufficiently thorough in your view, given that you promptly submitted your 'final conclusions and recommendations' to the MHI in a report dated 8 November 2023 (Report).

2. We subsequently received a letter from the MHI on 5 December 2023 alleging that we were in violation of the PMP and FAME-II guidelines(Guidelines), a conclusion that they purportedly drew basis your Report. This letter from the MHI was the first time we learnt that a Report had been prepared and submitted by you. This was also the first time we had an opportunity to look at the complaints submitted by Mr. Akash Sharma.

3. In our view, not only was the process leading up to submission of the Report rife with procedural improprieties, but the contents of the Report were also blatantly incorrect. Among other things, we had been given no information regarding the reason for or the scope of the inspection to which we were being subjected. Even the Report itself lends no clarity on these matters. In our view, the Report is inaccurate and misrepresents our compliance status. We were thus constrained to immediately issue a brief initial response dated 7 December 2023 to the MHI, highlighting some of the inconsistencies and flaws in your Report and seeking additional time to send a detailed response. In view of the credible objections we raised, the MHI granted further time for PMI to submit a reply and importantly, kept its letter dated 5 December 2023 in abeyance till a further decision is rendered by them. This was communicated to us by way of a letter dated 18 December 2023. Upon analysing the Report in detail, we have submitted a comprehensive reply on 22 December 2023 (Reply) with the MHI, identifying the errors and lapses.

4. In this background, we are surprised to receive your below email, which does not set out the purpose of such a roving inquiry. Given that you have already submitted your Report and the MHI is presently seized of the matter, it is not clear why you are separately enquiring with us on the very same subject matter once again. We are also of the view that it



would not be proper and correct for us to independently communicate with you on this while our Reply is pending consideration of the MHI.

5. We are also surprised to see that you are again misreading and misapplying the indigenization requirements prescribed under the Guidelines by alleging that the company is violating the requirements by 'importing complete battery packs'. We may once again clarify that the company imports components of the battery packs in CKD (complete knock down) form and thereafter assembles and tests the same at the company's plant at Rewari, Haryana. This is permitted under the Guidelines as it meets the stipulated indigenization requirement. As such, our consistent position on this matter (as is also detailed in our Reply) remains unchanged and we are unable to understand the basis of your allegation.

6. Please rest assured that PMI has always been compliant with the Guidelines and requirements issued by the MHI from time to time and remains equally committed to assist the MHI in its inquiry. However, it is important to us that procedural sanctity and transparency is maintained given the manner in which you conducted the earlier inspection and hastily submitted the Report without granting us an opportunity to be heard. This email is being issued without prejudice to our rights and contentions, all of which remain expressly reserved. Please note that all allegations levelled in the email are expressly denied.”

9. Subsequently, on 09.02.2024, respondent no. 1 sought clarifications from the petitioner on certain deficiencies in its bid, which were addressed by the petitioner through email on 13.02.2024.

10. Following the opening of price bids on 16.02.2024, the petitioner emerged as the lowest (L-1) bidder. It was then invited for price negotiations for J&K Lots, post which the petitioner submitted revised quotes on 29.02.2024.

11. However, it is submitted that, unknown to the petitioner, on 08.03.2024, respondent no. 2 informed respondent no. 1 of a joint inquiry by Automotive Research Association of India (ARAI) and International Centre for Automotive Technology (ICAT), stating that the petitioner was found



non-compliant and advising respondent no. 1 to take “necessary action”. It is submitted that this communication was not shared with the petitioner. E-mail dated 08.03.2024 is reproduced as under –

*“From: Dr Hanif Qureshi <hanif.qureshi@gov.in>
Sent: Friday, March 8, 2024 2:10:03 PM
To: Vishal Kapoor <vishal.kapoor@eesl.co.in>
Cc: Sumit Kumar <sumit.kr88@gov.in>; munna prasad <m.prasad@nic.in>
Subject: FAME guidelines violation by PMI*

Dear Vishal,

In view of the demand aggregation being done by CESL for e-buses, the following is brought to your attention for adequate action as deemed fit.

FAME II eligibility certificates were issued to M/S PMI by iCAT for various models of their e-buses on 8/10/2021 and 26/3/2021. Subsequently, MHI received complaints of violation of PMP guidelines by PMI and therefore a preliminary enquiry was ordered to be conducted by ARAI.

ARAI vide its report dated 8th Nov 2023 has reported that PMI has used imported PMP components and has thus violated PMP guidelines. Now a joint enquiry by iCAT and ARAI is underway in the matter.

The above facts are informed to CESL to take further n/a.

Regards

Hanif

Dr. Hanif Qureshi, IPS

Additional Secretary (Automobiles Division)

Ministry of Heavy Industries”

12. It is submitted that on 19.03.2024, while the petitioner requested issuance of a Letter of Confirmation of Quantity, respondent no. 1 issued the Letter of Confirmation of Quantity to a competing bidder JBM Ecolife Mobility Pvt. Ltd., who was also discovered as L-1 in other Lots.

13. Thereafter, on 22.03.2024, respondent no. 1 issued a Show Cause Notice to the petitioner questioning why the ongoing “investigation” was not



disclosed in its bid affidavit and why the techno-commercial validity should not be questioned. The said show cause notice is reproduced as under -

“Ref. No.: CO-Contracts/CESL/PM e-Bus Sewa-Notice/03/1187

Date 22.03.2024

*M/s PMI Electro Mobility Solutions Pvt Ltd Kind Attention: Mr. Sanjay Nagpal (VP-Sales)
BB-11, EP Railway Colony, GK Enclave II,
New Delhi-110048*

Subject: Non-declaration of information: Selection of Bus Operator for Procurement, Supply, Operation and Maintenance of 3,825 Electric Buses and development of allied electric and civil infrastructure on Gross Cost Contracting (GCC) under PM-eBus Sewa.

Ref:

- i. IFB No. CESL/06/2023-24/PM-eBusSewa/23241106 (E-tender id: 1919) Dated 17-11-2023*
- ii. Corrigendum No. 1 Dated: 24.11.2023*
- iii. Pre-bid meeting held on 01.12.2023.*
- iv. Amendment No. 1 Dated: 14-12-2023; Amendment No. 2 Dated: 28-12-2023;
Amendment No. 3 Dated: 29-12-2023; Amendment No. 4 Dated: 15-01-2024;
Amendment No. 5 Dated 17-01-2024; Amendment No. 6 Dated 24-01-2024;
Amendment No. 7 Dated 30-01-2024; Amendment No. 8 Dated 06-02-2024;
Amendment No. 9 Dated 06-02-2024; Amendment No. 10 Dated 06-02-2024;*
- v. Your Bid (Nos. 4830,4836) submitted against the subject tender dated 07.02.2024;*
- vi. Price bid opening dated 16.02.2024;*

Sir,

Ministry of Heavy Industries (MHI), vide their communication dated 08 March 2024, have intimated CESL that M/s PMI is under enquiry for violating PMP guidelines of the Govt of India due to use of Imported PMP components. MHI have accordingly directed CESL to take further necessary action in this regard.



As the lead bidder of your consortium, which had bid for Lot Nos. 7, 8 & 18 (J&K) and Lot No. 4 (Chandigarh), you had declared vide Para(c) of Annexure-11 of your techno-commercial bid, that no investigation is pending against you. Further, the matter of violation of PMP guidelines also impinges upon the validity of the Certificate of Declaration of Indigenization rendered by your consortium vide Annexure-19 of your techno-commercial bid.

In view of the materiality of the matter mentioned above in relation to your techno-commercial validity in the subject bid, you are requested to respond as to:

- (i) Why an important matter of an ongoing investigation on M/s PMI was not disclosed in your bid as per terms and conditions of the subject RfP?*
- (ii) why your techno-commercial validity should not be under question in the subject bid due to the ibid non-disclosure?"*

14. It is submitted that on the same date, the International Centre for Automotive Technology (ICAT) granted a FAME-II Compliance Certificate to the petitioner, reaffirming its eligibility. ICAT had also previously issued similar certificates in 2021, which formed the basis of subsidy claims under FAME-II.

15. Thereafter, the petitioner replied to respondent no. 1's Show Cause Notice on 02.04.2024, denied the allegations of non-disclosure, especially in view of the 18.12.2023 communication placing the show cause notice dated 05.12.2023 in abeyance. It further mentioned that the petitioner was not undergoing any investigation or material litigation which would require a disclosure. The petitioner also requested a copy of the communication from respondent no. 2 to respondent no. 1.

16. Subsequently, on 03.05.2024, ICAT sent another communication wherein ICAT referred to a joint evaluation by ICAT and ARAI and sought clarification on assembly/manufacturing of the battery pack. The petitioner



responded on 17.05.2024, wherein it informed ICAT that it had already provided all the documentation before it certified the petitioner with the FAME-II Compliance Certificate dated 22.03.2024. It is submitted that the petitioner nonetheless provided the information requisitioned and sought clarity regarding the scope/mandate of the joint evaluation against the petitioner. It is submitted that the petitioner has till date not received any response from ICAT.

17. It is submitted that subsequently, the petitioner sought legal opinion, was shared with the respondent no. 1 on 15.05.2024. It is further submitted that as per the said opinion, the petitioner was not required to disclose the communication dated 05.12.2023 and the said communication was also unsustainable in law.

18. Subsequently, through an email dated 19.05.2024, the petitioner informed the respondent no. 2 that it was in receipt of a Show Cause Notice from the respondent no. 1 stating that the respondent no. 1 had been informed *vide* communication dated 08.03.2024 by respondent no. 2 that the petitioner was under inquiry. The petitioner brought to the respondent no. 2's notice that neither was it marked on the email dated 08.03.2024 (and was hence unaware of the same), nor was it informed on the status of the letter dated 05.12.2023 issued by respondent no. 2 and had not received any communication from the respondent no. 2 post the letter dated 18.12.2024 (by which its letter dated 05.12.2024 had been kept in abeyance). It is submitted that the petitioner has till date not received any response.

19. It is submitted that the petitioner again wrote to respondent no. 2 on 06.06.2024 and 07.06.2024 reiterating its stand and requesting a clarification. However, it never received any response from the respondent



no. 2.

20. Owing to the absence of a clear response the petitioner filed W.P.(C) No. 8677/2024 before this Court challenging respondent no. 2's letter dated 05.12.2023. *Vide* order dated 21.06.2024, this Court observed that “*In the meantime, no action shall be taken against the petitioner in pursuance of communication dated 05.12.2023 detrimental to the petitioner. However, as stated by Mr. Rakesh Kumar, the respondent may continue with inquiry, if any, in pursuance of communication dated 05.12.2023 subject to outcome of the petition.*”

21. It is submitted that petitioner became aware of the inquiry only during the hearing dated 21.06.2024 when the counsel for the respondent no. 2 made a statement regarding the same.

22. Thereafter, it is submitted that on 03.07.2024 the petitioner filed a fresh writ petition (W.P.(C) No. 9061/2024) challenging the Show Cause Notice dated 22.03.2024 issued by the respondent no. 1 and all consequential proceedings emanating therefrom.

23. It is submitted that after advance service of the writ petition was affected upon the respondent no.1, the respondent no. 1 issued a letter dated 05.07.2024 informing the petitioner that having taken into consideration the petitioner's reply dated 02.04.2024 to the Show Cause Notice, it was concluded that the petitioner had misrepresented and failed to disclose critical investigation. Letter dated 05.07.2024 is reproduced as under –

*To,
Chief Executive Officer,
M/s PMI Electro Mobility Solutions Pvt. Ltd.,
BB-11, EP Railway Colony,
GK Enclave II, New Delhi-110048.*



*Subject: Intimation of Action taken in Response of your letter no.:
PMI/PM EBUS SEWA/2024-25/03 dated: 02.04.2024*

Reference:

- 1. Our letter dated: 22.03.2024 ref. no.: CO-Contracts/CESL/PM e-Bus Sewa-Notice/02.*
- 2. Tender Name: Selection of Bus Operator for Procurement, Supply, Operation and Maintenance of 3,825 Electric Buses and development of allied electric and civil infrastructure on Gross Cost Contracting (GCC) under PM-eBus Sewa dated: 17.11.2023.*

Dear Sir/Madam,

It is to inform you that your letter dated: 02.04.2024 was carefully examined at our end and it is established that non-disclosure of an important and critical investigation by MHI for violation of PMP guidelines against your company amounts to material misrepresentation as per Clause 16.2 of Vol I Section IV of the ibid tender.

In view of the above, CESL is proceeding with cancellation of the bids and invocation of EMDS submitted by you/ your consortium partners for Lots in respect of Chandigarh and J&K.

This is for your information please.”

24. The petitioner being aggrieved by same amended W.P. (C) No. 9061/2024 by way of an application dated 05.07.2024 and prayed to quash the aforementioned letter dated 05.07.2024.

25. Petitioner also submitted its reply to the aforementioned letter dated 05.07.2024.

26. It is submitted that when W.P. (C) No. 9061 of 2024 was heard for the first time on 05.07.2024, the petitioner and respondent no. 1 had agreed that the Earnest Money Deposits (EMDs) would not be invoked during the pendency of the matter. It is further submitted that, however, respondent no. 1 on the very same day wrote to the petitioner's banks directing them either to hold or to give effect to invocation of the bank guarantees submitted by



the petitioner till 08.07.2024. Further, respondent no. 1 separately addressed a communication to HDFC Bank invoking its guarantee of INR 3.31 crores on the ground that the petitioner had violated the tender conditions. HDFC Bank, through an email on 05.07.2024, confirmed that the guarantee had been invoked.

27. Thereafter, this Court in W.P. (C) No. 9061/2024, vide its judgment dated 24.07.2024 set aside the impugned communication dated 05.07.2024 and directed respondent no. 1 to pass a fresh reasoned order in pursuance of the show cause notice dated 22.03.2024 after giving fresh opportunity of being heard to the petitioner. The relevant portion of the order is reproduced as under -

“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.”

28. Pursuant to the Court’s order, respondent no. 1 by letter dated



02.08.2024 called upon the petitioner to submit its fresh representation to the show cause notice. The petitioner submitted its detailed representation on 09.08.2024, explaining that it could not be expected to disclose facts that were not within its knowledge and that the affidavit of disclosure required under the RfP only mandated disclosure of criminal investigations or convictions. Since no criminal investigation was pending against the petitioner, its affidavit was accurate and truthful. The petitioner further sought a personal hearing to explain its position.

29. It is submitted that to secure clarity, the petitioner also filed two RTI applications on 06.08.2024 against both respondents, seeking communication/information received by respondent no. 2 pertaining to the petitioner's participation in respondent no. 1's bid and, all communication between the respondents pursuant to the email dated 08.03.2024. Both the respondents rejected these RTI applications citing exemption under Section 8(1) of the RTI Act.

30. Subsequently, on 06.09.2024 in response to the petitioner's representation dated 09.08.2024 respondent no. 1 passed an adverse order against the petitioner, finding that the affidavit of disclosure amounted to a material misrepresentation on account of non-disclosure of the alleged ongoing inquiry. On this basis, respondent no. 1 ordered, *inter-alia*, cancellation of the petitioner's bids. Relevant portion of the order dated 06.09.2024 is reproduced as under –

“Final Decision:

After careful consideration of the findings of the case stated above, representations provided by M/s PMI so far and the directions of the Hon'ble High Court, CESL has reached the following decision:

a) Misrepresentation and non-disclosure



The affidavit submitted by M/s PMI dated February 6, 2024, contained material misrepresentation regarding the non-disclosure of the ongoing investigation conducted by ARAI.

Despite the responses and representations received from M/s PMI so far, CESL finds that the information regarding the ongoing enquiry by ARAI and iCAT was significant and should have been disclosed in the bid.

b) Cancellation of Bids and Invocation of EMDs

Due to the material misrepresentation and non-disclosure of critical information, CESL has decided to cancel the bids submitted by PMI. The Earnest Money Deposits (EMDs) submitted by M/s PMI and its consortium parties will be invoked.

c) Bank Guarantees

The letters sent to the banks for encashment of the Bank Guarantees (BGs) will be reissued after fifteen working days, except for the one bank where the process had already been initiated.

In pursuance of the Hon'ble High Court Order dated: July 24, 2024, these actions will be effective fifteen working days from the date of issuance of this reasoned order and it shall be the duty of M/s PMI to keep the BGs alive till then.

While it is unfortunate that the circumstances have necessitated the application of these punitive actions, they are essential to uphold the integrity of the procurement process and ensure compliance with the tender's ethical and transparency requirements. M/s PMI is requested to reconcile and comply with this order promptly.

This is however without prejudice to CESL's rights to invoke other mechanisms and provisions as per the RfP, Public Procurement guidelines and any other claim or right available as per extant laws. CESL also reserves its right to claim damages on account of the losses incurred by it in cancelling the Bid in question due to M/s PMI's non-disclosure and suppression of material facts.

This issues with the approval of Competent Authority.

Yours sincerely,"

31. Aggrieved by the said order the petitioner approached this Court once



again in W.P. (C) No. 13381 of 2024. *Vide* order dated 23.09.2024, the Court set aside the order dated 06.09.2024, holding that the petitioner had not been afforded a personal hearing. The Court directed respondent no. 1 to grant hearing opportunity in pursuance of the petitioner's representation dated 09.08.2024, and only thereafter to pass a reasoned order. the relevant portion of the order dated 23.09.2024 is reproduced as under –

“5. In light of the above statement, the present petition is disposed of with following directions:

5.1. The impugned order dated 6th September, 2024 is set aside.

5.2. Respondent No. 1 shall reconsider the representation submitted by the Petitioner on 9th August, 2024. Prior to passing any order, Respondent No. 1 shall afford the Petitioner a personal hearing. For this purpose, Respondent No. 1 shall intimate the date of personal hearing to the Petitioner.

5.3. Thereafter, Respondent No. 1 shall pass a reasoned order pursuant to show cause notice dated 22nd March, 2024.

5.4. 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 Respondent No.1. This liberty shall be subject to the Petitioner keeping the bank guarantee alive during this period, which shall not be encashed by Respondent No. 1 during this period.

6. It is clarified that decision of this Court to set aside the impugned order is purely for ensuring compliance of the principles of natural justice and the previous directions issued by this Court, and the same shall not construed as an expression of any opinion on the merits of the case. All rights and contentions of the parties are left open.

7. With the above directions, the present petition is disposed of, along with pending application.”

32. Respondent no. 1 thereafter issued a notice dated 09.10.2024 scheduling a personal hearing on 24.10.2024. The petitioner attended the hearing along with consortium members.

33. The petitioner simultaneously pursued appeals under the RTI Act against the rejection of its applications. These appeals too were dismissed by the respective first appellate authorities on 28.10.2024 and 30.10.2024,



reiterating that the information was exempt from disclosure. The petitioner has also appealed the decision of the respondents in the RTI First appeal before the CIC.

34. Ultimately, on 26.11.2024, respondent no. 1 passed the impugned order cancelling the petitioner's bids and ordering invocation of its EMDs. Impugned order dated 26.11.2024 is reproduced as under –

“Findings:

Consequent upon a thorough review of all pertinent facts/ communications/ documents of the matter, including the representations vide letter dated August 09, 2024, and all the earlier communications submitted by your good office so far, along with the discussions held during the personal hearing on October 24, 2024, and in terms of the Tender Conditions, CESL has arrived at the following findings:

1. PMI has, in their communications on the subject of the extant bid, referred to the merits of the case or the process followed regarding the alleged violation of PMP guidelines initiated by MHI. The issue at hand is not about whether PMI believes the investigation by MHI has merit, but rather their clear obligation to disclose the existence of any ongoing investigation or enquiry, as required by the bid terms. The obligation to disclose exists regardless of the outcome or the validity of the investigation. As such, the merits of the alleged violation or compliance with PMP guidelines, or the process followed in the subject case of violation of PMP guidelines, are not part of the decision-making process in this case.

2. On the matter of PMI not being informed by MHI of an enquiry/ investigation (which ought to have been disclosed in the bid), it is stated that PMI had itself requested MHI for a joint investigation in para 38 of their letter dated December 22, 2023 and therefore, it is highly improbable that PMI wasn't aware of the ongoing enquiry. On February 06, 2024, when PMI submitted affidavit as Annexure 11 of the bid document, they had also received an email from ARAI to furnish clarification/explanation on the above alleged violation in form of a questionnaire. Furthermore, two key Inferences have been drawn from the averments made in PMI's response dated December 22, 2023, against the letter from MHI dated December 5, 2024, reproduced as under:

"Para 11: We note that sometime in August 2023, basis a complaint against the Company for violation of PMP Compliances under FAME India Scheme



II, a separate investigation and examination was conducted by ICAT at your behest"

In the letter dated December 22, 2023, PMI, apart from admitting a separate investigation by ICAT, as also requested MHI for a joint inspection of their plant by ICAT and ARAI. Despite this, PMI chose not to disclose this material information in the Annexure-11 of the Bid."

PMI's reply to MHI confirms that PMI was aware of the fact that an investigation/enquiry against an alleged wrongdoing with regard to non-adherence to PMP guidelines was ongoing. Therefore, PMI's repeated contention as set out in the correspondences to CESL dated 02.04.2024, 23.06.2024 and 09.08.2024 that they were not aware of the ongoing enquiry is inconsistent/contrary to the available facts. Furthermore, without a clear confirmation that the enquiry/Investigation is over, and confirmation received that PMI is in the clear in the said enquiry, not disclosing this important matter that has a material effect on the bid runs counter to the system of putting in place appropriate disclosures in a public procurement bid.

Notwithstanding the above, this issue must also be considered from the standpoint of public Interest, which requires transparency, accountability, fairness, and equal opportunity and treatment for all participants. MHI's communication dated 05.12.2023, even though its operation may have been put on hold (a letter that CESL is in possession of, yet the same does not imply the matter has been resolved in favour of Ms PMI), had prima facie identified a violation of PMP Guidelines under the FAME-II Scheme, leading to the potential recovery of approximately Rs. 280 Crores (approx..) in Incentives disbursed to PMI. This clearly demonstrates that PMI was aware of a significant issue related to the violation of PMP guidelines, which was communicated to them as a result of a "plant visit." Furthermore, an email dated February 6th, 2024 from ARAI to PMI also makes it clear that the process of investigation is ongoing. However, PMI failed to disclose this in the affidavit submitted to CESL as part of the bidding process. CESL finds no reason to downplay the seriousness of this non-disclosure by focusing on the semantics of terms like "investigation," "enquiry," "plant visits," or "examination", as this undermines the essential requirement for transparency in public procurement. Such an omission amounts to misrepresentation of facts In the public procurement process.

3. In response to the PMI's contention stated in the Para 7 (p) & E (II) of its representation dated August 09, 2024, it may be noted that prior to the understanding arrived at between the parties that CESL shall not encash the Bank Guarantees (BG), letters of invocation were already issued to the banks for encashment of the four (04) BGs and in compliance of the



understanding arrived later that day, CESL Immediately sent letters/emails to the banks for keeping the encashment procedure on hold. However, by that time, one (1) of the four (4) banks had already initiated the process of encashment of the BG. Be as it may, encashment of BGs is well within the rights of CESL, hence there is no illegality. Furthermore, it is a settled law that Invocation can be stayed on grounds of fraud of egregious nature and irretrievable loss, which is not the case herein. It must also be noted that pursuant to the order passed by Hon'ble court dated July 24, 2024, PMI was Instructed to keep BGs alive & despite the best efforts of CESL, one BG was encashed. Considering that the same was Invoked in terms of the tender conditions, the status of the rest of the BGs shall be kept alive.

4. PMI in their representation has also extensively discussed the issue of which investigations needed to be disclosed in the bid. PMI's argument that only investigations related to criminal matters require disclosure is fundamentally flawed. A plain reading of the entire Annexure-11 clearly shows that It applies to any kind of blacklisting, offence (not limited to criminal offences). Investigations, etc. The term "investigation" used in the Annexure is not restricted to criminal Inquiries and encompasses all types of investigations. It is both a moral responsibility and in the public interest to disclose information regarding any ongoing investigations or inquiries. Failing to do so not only undermine transparency but also raises concerns about an intent to avoid accountability in the bid process. It is worth noting that upfront disclosure in Annexure-11 of the RfP is critical, contrary to PMIs repeated assertions of its non-materiality. The affidavit explicitly states that any findings revealed later would render the firm liable for termination, even after a contract has been signed, thereby establishing the materiality involved in the case.

In this regard, it would be important to delve upon the concept of materiality as a concept. Materiality in a contract refers to the significance of a breach of term that affects the core of the agreement, potentially influencing the decision to enter or continue the contract. It can be adjudged based on the impact on the contract's overall purpose, financial implications, and whether a reasonable party would consider it important. As described above, if a non-disclosure may lead to termination of the contract even at a later stage (after signing the Concession Agreement) as per the Affidavit given as per Annexure 11, and this would deny the public of suitable public transport (alluding to the "purpose" of the contract), the materiality of disclosing such investigations becomes extremely salient.

The seriousness of non-disclosure also gets established through other clauses in the RFP. PMI had knowledge of the ongoing enquiry and still chose not to acknowledge it in the affidavit submitted to CESL as part of the bidding documents. This also amounts to misrepresentation of facts. In fact,



the matter of non-disclosure becomes particularly noticeable as a misrepresentation under the definition of mischief under Clause 5.7 of the RFP document, which defines Fraudulent practice as misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of CESL, and to deprive CESL of the benefits of free and open competition.

Clause 5.7 a(ii) (b) & (c) is reproduced as under:

"Clause 5.7: Corrupt or Fraudulent Practice:

CESL Requires that bidders observe the highest standard of ethics during the procurement and execution of such contracts. In Pursuance of this policy, CESL defines for the purposes of this provision, the terms set forth below as follows:

a(ii) "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of CESL, and includes collusive practice amongst bidders (prior to or after bid submission) designed to stabilize bid prices at artificial non competitive levels and to deprive CESL of the benefits of free and open competition/b) Will reject a proposal for award if it determines that the bidder recommended for award is engaged in corrupt or fraudulent practices in competing for the contract in question;

c) Will declare a firm ineligible either indefinitely or for a stated period. To be awarded a contract If it at any time determines that the form has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract of the CESL."

Further relevant Clauses of the RFP documents (Clause No. 16.2 of Vol I of Section IV of the Rfp) are reproduced hereunder, which have been violated by PMI.

"CESL reserves the right to reject any Bid or take other administrative action if:

(i) At any time, a material misrepresentation is made or uncovered, or

(ii) The Bidder does not provide, within the time specified by CESL, the supplemental Information sought by the Authority for evaluation of the Bid.

(iii) Such misrepresentation/ Improper response shall lead to the disqualification of the Selected Bidder. If the Selected Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If



such disqualification/ rejection occurs after the Bids have been opened and the lowest Bidder gets disqualified/rejected, then CESL reserves the right to annul the Bidding Process and invite fresh Bids."

Besides non-disclosure about the pending enquiry/investigation, PMI is also in violation of the "Clause 7.9 (e) of Instructions to Bidders, which states that

The EMD of a Bidder shall be forfeited in the following events:

(e) Bidders submitting any wrong information or making any misrepresentation in their Bid as per the RFP terms.

A straightforward reading of the above highlights that CESL mandates bidders to maintain the highest ethical standards during the procurement and execution of contracts. Given the multiple clauses that address the issue of non-disclosure within the bid, it would be inappropriate for any agency Involved in the public procurement process to ignore the material non-disclosure which also amounts to misrepresentation in this case.

5. In response to PMIs contention stated in the Para C (III) of your representation dated August 09, 2024, it is important to note that a matter as Important and material as "an investigation into violation of PMP guidelines" ought to have been disclosed.

6. PMI has stated that they possess a certificate from ICAT dated March 22, 2024, confirming their compliance with the FAME-II scheme and PMP guidelines. Without delving into the validity of that claim, it is important to reiterate that the issue at hand is not about whether a recent certification on PMP guidelines or FAME-II exists. The issue is whether the ongoing investigation concerning violations of previous certifications under PMP guidelines was properly disclosed in the bid. It bears out that it wasn't.

7. Considering the magnitude of the tender, and the fact that its purpose was to serve the public, It was the obligation of PMI to disclose the complete knowledge of this fact. PMI participated in the tender after fully examining the terms thereof and hence the contention of PMI that it cannot be disqualified on the grounds of suppression and such act would be arbitrary is contrary to the terms of the RfP, which states that cancellation can be done at any time a misrepresentation/ suppression is found out.

8. Further, in response to the requests made by PMI in the Personal Hearing held on October 24, 2024, the following is stated:

PMI Request 01: Additional time of 30 days for coalition and submission of documents and seeking further clarification from MHI in the matter.



CESL Response: PMI has been afforded multiple opportunities over the past several months, including a personal hearing where they again requested an additional 30 days to gather documents and seek clarifications from the Ministry of Heavy Industries. This timeline has expired, yet no further representation or inputs have been submitted since then. The absence of any additional submission further suggests that PMI has no new information or arguments to present on the matter. Repeated extensions under such circumstances result in unwarranted delays, which adversely affect public interest.

PMI Request 02: Response to the RTI appeal from CESL and DHI/MHI.

CESL Response: Detailed reasoning has been provided already to Ms PMI on the matter even otherwise. The RTI appeal under question was duly responded to by First Appellate Authority of CESL within the stipulated timeline and reasons for non-disclosure of the information sought has been duly explained by the Appellate Authority in its Order dated 28.10.2024 being consonance with the Right to Information Act, 2005.

PMI Request 03: IF CESL could ask MHI to confirm whether or not PMI was made aware of the ongoing investigation initiated by MHI.

CESL Response: Records suggest that PMI was fully aware of the ongoing Inquiry, a fact they themselves acknowledged in their letter dated December 22, 2023, addressed to the Ministry of Heavy Industries (MHI). In this communication, PMI explicitly also sought a joint investigation with MHI, as detailed in paragraph 38. Revisiting and raising repeated queries on a matter that has already been settled and acknowledged by PMI in their written correspondence serves only to delay resolution and hinder effective progress and is not in public interest.

Final Decision:

After careful consideration of the findings of the case stated above, representations provided by PMI so far, the directions of the Hon'ble High Court, Personal Hearing afforded to PMI, CESL has reached the following decision:

a) Misrepresentation and non-disclosure

The affidavit submitted by PMI dated February 6, 2024, contained material misrepresentation regarding the non-disclosure of the ongoing investigation conducted by ARAI.



After careful consideration of the responses and representations received from PMI so far, CESL finds that the information regarding the ongoing enquiry by ARAI and ICAT was significant and should have been disclosed in the bid. It is submitted that heavy reliance is placed on the Clause 5.7 of the RFP terms dealing with "fraudulent Practise", and the omission of a material fact, which has ramifications on the execution of the scope of work, i.e., supplies of the E-Buses for larger public good and environmental concern, not being disclosed by PMI, would be fatal under the fraudulent clause also.

The cancellation of a bid, including evoking penal provisions, is a well-recognized and appropriate measure to address and rectify instances of non-compliance or significant lapses, including acts of omission, misrepresentation, or the withholding of critical information. In this case, the failure to disclose an ongoing Inquiry or investigation, along with the omission of the Ministry of Heavy Industries communication dated December 5, 2023-wherein it was stated that PMI had availed Incentives amounting to approximately 280.59 crores based on an undertaking under the PMP/FAME II Scheme which was found non-compliant later, and the Ministry had accordingly sought recovery of the said amount [even if the operation of the letter was kept in abeyance (not cancelled)]-represents a material omission. Such lapses provide sufficient grounds for the cancellation of the bid.

b) Cancellation of Bids and Invocation of EMDs

Due to the material misrepresentation and non-disclosure of critical information, CESL has decided to cancel the bids submitted by PMI. The Earnest Money Deposits (EMDs) submitted by PMI and its consortium parties will be invoked.

c) Bank Guarantees

The letter sent to the banks for encashment of the Bank Guarantees (BGs) will be reissued after fifteen working days, except for the one bank where the process had already been initiated earlier.

In pursuance of the Hon'ble High Court Dated September 23, 2024, these actions will be effective fifteen working days from the date of issuance of this reasoned order and it shall be the obligation of PMI to keep the BGs alive till then.

While it is unfortunate that the circumstances have necessitated the application of these punitive actions, they are essential to uphold the integrity of the procurement process and ensure compliance with the tender's ethical and transparency requirements. PMI is requested to



reconcile and comply with this order promptly.

CESL reserves Its rights to invoke other mechanisms and provisions under the RFP, Public Procurement guidelines, and applicable laws to ensure appropriate action is taken. Additionally, CESI reserves the right to seek damages for the losses Incurred due to the bid's cancellation, which resulted from PMI's non-disclosure and suppression of material information. The delays in the procurement of E-Buses and their timely operation for public service under the tender are a direct consequence of PMI's actions, including their omission of critical facts and misrepresentation. These actions have disrupted the timely execution of the project and undermined the principles of accountability expected in such transactions. This order addresses these concerns while preserving CESU's rights to pursue further remedies as necessary.

This issues with the approval of Competent Authority.”

35. Being aggrieved of the same the petitioner has filed the present petition.

36. It is the case of the petitioner that the format of the Affidavit of Disclosure, as prescribed by respondent no. 1, did not mandate disclosure of a joint inquiry conducted by testing agencies. It is submitted that a sensible reading of the format of the Affidavit makes it clear that only criminal convictions or investigations were to be disclosed, which is also evident from the appended note requiring disclosure of the “charge/offence for which the investigation has been launched.” It is submitted that the testing agencies are not investigative authorities, and therefore no disclosure obligation could arise. Reliance is placed on *Caretel Infotech Ltd. v. Hindustan Petroleum Corporation Limited and Ors.*, (2019) 14 SCC 81.

37. It is further submitted that as the author of the tender documents, respondent no. 1 must also bear the consequences of any ambiguity under the doctrine of *Contra Proferentem*.

38. It is also submitted that the petitioner never had knowledge of any



such inquiry prior to the submission of its bid on 06.02.2024. It is submitted that the respondents' claim that the petitioner had knowledge since it requested an inquiry on 22.12.2023 is unfounded, as no communication was ever issued confirming initiation of an inquiry. It is averred that the petitioner only became aware of the inquiry on 21.06.2024, when it was disclosed by counsel for respondent no. 2 during court proceedings in WP(C) 8677/2024. While submitting that the adverse findings cannot rest on conjecture or assumption, reliance has been placed on *Avtar Singh v. Union of India*, (2016) 8 SCC 471.

39. It is further pointed out that respondent no. 2 has, by its letter dated 13.01.2025, conclusively closed the inquiry, confirming that all complaints against the petitioner were unsubstantiated.

40. It is also highlighted that respondent no. 2 has admitted that the inquiry was initiated by a letter dated 04.01.2024, which was never communicated to the petitioner or filed on record.

41. Additionally, it is submitted that the Impugned Communication goes beyond the scope of the SCN dated 22.03.2024. While the SCN accused the petitioner only of non-disclosure, the Impugned Communication introduced fresh allegations of fraudulent conduct and unethical bidding practices, without giving the petitioner any opportunity to respond. Reliance has been placed on *Gorkha Security Services v. Govt. of NCT of Delhi*, (2014) 9 SCC 105.

42. It is submitted that the perfunctory hearing granted to the petitioner was only a formality, as the findings in the Impugned Communication were virtually identical to respondent no. 1's earlier cancelled orders.

43. The respondent no. 1 while countering the contentions of the



petitioner has submitted as under –

- i. On 16.02.2024, when the price bids of technically qualified bidders were opened, the petitioner emerged as the lowest (L1) bidder for 765 buses.
- ii. However, on 08.03.2024, respondent no. 2 addressed a communication to respondent no. 1 highlighting serious issues regarding the petitioner.
- iii. It is submitted that even prior to the said communication, the respondent no. 2 had issued a detailed notice on 05.12.2023 to the petitioner, explicitly recording ARAI's findings and directing the petitioner to show cause why it should not be debarred from the FAME-II scheme. It is submitted that the notice was thus a clear indicator of the seriousness of the allegations and the pendency of an enquiry into the petitioner's conduct.
- iv. In order to substantiate its contention that the petitioner was fully aware that an investigation/enquiry against it was in progress at the time it submitted its bid, emphasis has been placed on the petitioner's response dated 22.12.2023 to the show cause notice issued by the respondent no. 2. Specific emphasis has been placed on paragraph 11 and 38 of the reply dated 22.12.2023, the same are reproduced as under –

“11. We note that sometime in August 2023, basis a complaint against the Company for violation of PMP compliances under FAME India Scheme II, a separate investigation and examination was conducted by ICAT at your behest. During this inspection, ICAT sought various documents and information from PMI vide emails dated 23 August 2023, 25 August 2023, and 28 August 2023. We duly co-operated and submitted the



necessary documents to facilitate a smooth examination by ICAT. Consequently, a detailed examination was conducted by ICAT on 28 and 29 August 2023, the details of which were duly captured in the minutes of meeting dated 29 August 2023 issued by ICAT to PMI on 01 September 2023.....

.....38. Considering the facts and circumstances stated above, we most respectfully request your good office to:

*a) reject the ARAI Report dated 08 November 2023 and recall your letter dated 05 December 2023 issued to the Company; and
b) provide us with a reasonable opportunity to participate in a thorough and impartial review of the alleged violations. In that, your good office may consider directing a joint inspection by the officials of ICAT and ARAI in the presence of the Company officials and after giving the Company a reasonable and fair opportunity to be heard.”*

- v. Thus it is submitted that (i) the petitioner has himself admitted that a separate investigation was conducted by ICAT, and (ii) a joint enquiry was proposed.
- vi. It is submitted that despite the above, while submitting its bid, the petitioner filed an affidavit dated 05.02.2024 (submitted on 06.02.2024), categorically declaring that no investigation was pending against it. It is submitted that the statement was materially false because the enquiry initiated by respondent no. 2 was ongoing.
- vii. In light of the respondent no. 2's communication and the ongoing enquiry, respondent no.1 put on hold the award of 765 buses to the petitioner. On 22.03.2024, respondent no. 1 issued a Show Cause Notice to the petitioner and its consortium partners, highlighting the non-disclosure of the pending enquiry and seeking an explanation as to why the techno-commercial bid should not be cancelled. The petitioner, in its reply dated 02.04.2024, denied the



existence of any ongoing investigation and attempted to interpret the word “investigation” narrowly.

- viii. It is submitted that ARAI on 06.02.2024 stated to have sent questionnaires to the petitioner to furnish clarification/explanation on the violations of PMP guidelines. It is submitted that the same has also been recorded in the Order dated 21.06.2024 of this Court in Writ Petition (C) No. 8677 of 2024. The relevant portion is reproduced as under -

“5. Mr Rakesh Kumar, the Central Government standing Counsel for respondent/UOI stated that the petitioner was asked to furnish further documents by sending emails dated 06.02.2024 and 3.5.2024 but the requisite documents have not been submitted by the petitioner.

xxx

9. In the meantime, no actions will be taken against the petitioner in pursuance of communication dated 5.12.2023 detrimental to the petitioner, however, as stated by Mr Rakesh Kumar the respondent may continue with inquiry, if any, in pursuance of communication dated 5.12.2023 subject to outcome of the petition.”

- ix. It is submitted that the Court has recorded in its order dated 21.06.2024 that while no coercive action would be taken against the petitioner under the notice dated 05.12.2023, the respondent no. 2 was free to continue with the enquiry.
- x. It is further submitted that the matter of allegation of PMP Violation does not ceased to exist even though the notice dated 05.12.2023 was kept in abeyance by the respondent no. 2.
- xi. It is submitted even though specific words such as “plant visit” etc. have been used in the letter of the respondent no.2, the crux of the



correspondence clearly points out that there is an investigation and enquiry.

- xii. It is submitted that the petitioner's conduct constituted a material misrepresentation. Under Clauses 5.7, 7.9(e), and 16.2 of the RfP, respondent no. 1 was entitled to reject the bid and forfeit the Earnest Money Deposit (EMD), and even blacklist the bidder. Accordingly, on 05.07.2024, the respondent no.1 cancelled the petitioner's bids, invoked the Bank Guarantees, and communicated the decision to the concerned banks. Although the respondent no. 1 subsequently asked banks to keep invocation in abeyance, HDFC Bank had already processed the claim.
- xiii. It is submitted that Tender Document has to be taken as a whole and cannot be given a very restrictive meaning and as such the interpretation by petitioner that Annexure-11 does not require them to disclose anything else except criminal investigation goes into the teeth of Clauses 5.7 & 16.2 of Request for Proposal ("RfP") and 7.9 (e) of the Instructions to Bidders ("ITB"). It is submitted that the compliances under the Affidavit in question are mutually exclusive and a very narrow meaning has been given by the petitioner to the word "investigation" as set out in the note to the Format of the Affidavit. The "Note" clearly mentions of investigation being carried out by any agency and not necessarily in parlance with Criminal act, such a restricted meaning being given without advertent to other Clauses of the Tender is fundamentally flawed. It is submitted that given the gravity of the situation, it is imperative to enforce stringent measures to maintain



the credibility of the bidding process and uphold public service in its most transparent and ethical form.

- xiv. Reliance has been placed on the State of Madhya Pradesh & Anr. Versus U. P. State Bridge Corporation Ltd. & Anr., Civil Appeal No. 4002 of 2020, Patel Engineering Versus Union of India & Ors., (2012) 11 SCC 257 and Uflex Limited Versus Government of Tamil Nadu & Ors., MANU/SC/0654/2021
- xv. It is further highlighted that by violating the FAME II norms the petitioner had allegedly availed incentives amounting to ₹280.59 crore.

44. Both parties have been heard at length. Before delving into the central controversy, this Court deems it apposite to first delineate the scope and contours of its jurisdiction under Article 226 of the Constitution of India, particularly insofar as it relates to disputes of the present nature. This exercise becomes necessary in view of the preliminary objection raised on behalf of respondent no. 1, contending that the scope of judicial review by a writ court in contractual or tender-related matters is inherently limited.

45. The exercise of writ jurisdiction in contractual matters has been a subject of consistent judicial scrutiny, and it is well-settled that a writ court would interfere where the tender process is imbued with procedural impropriety and/or arbitrariness.

46. In ***Subodh Kumar Singh Rathour v. Chief Executive Officer and Others***, 2024 SCC OnLine SC 1682 the Court has observed as under –

“55. Thereafter, this Court in its decision in M.P. Power Management Co. Ltd., Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd. reported in (2023) 2 SCC 703 exhaustively delineated the scope of judicial review



of the courts in contractual disputes concerning public authorities. The aforesaid decision is in the following parts:—

[...](i) Scope of Judicial Review in matters pertaining to Contractual Disputes:—

This Court held that the earlier position of law that all rights against any action of the State in a non-statutory contract would be governed by the contract alone and thus not amenable to the writ jurisdiction of the courts is no longer a good law in view of the subsequent rulings. Although writ jurisdiction is a public law remedy, yet a relief would still lie under it if it is sought against an arbitrary action or inaction of the State, even if they arise from a non-statutory contract. The relevant observations read as under:—

“53. [...] when the offending party is the State. In other words, the contention is that the law in this field has witnessed an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true ambit of Article 14 of the Constitution of India. The State, he points out, cannot play the Dr. Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the mandate of Article 14 to act fairly. There has been a stunning expansion of the frontiers of the Court's jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, per se, arbitrary.

i. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

ii. The principle laid down in Bareilly Development Authority (supra) that in the case of a non statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal (supra), may not continue to hold good, in the light of what has been laid down in ABL (supra) and as followed in the recent judgment in Sudhir Kumar Singh (supra).

iii. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.

(Emphasis supplied)



(ii) Exercise of Writ Jurisdiction in disputes at the stage prior to the Award of Contract:—

An action under a writ will lie even at the stage prior to the award of a contract by the State wherever such award of contract is imbued with procedural impropriety, arbitrariness, favouritism or without any application of mind. In doing so, the courts may set-aside the decision which is found to be vitiated for the reasons stated above but cannot substitute the same with its own decision. The relevant observations read as under:—

iv. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into [See R.D. Shetty (supra)]. This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India.”

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(v) Other relevant considerations for Exercise of Writ Jurisdiction:—

Lastly, this Court held that the courts may entertain a contractual dispute under its writ jurisdiction where (I) there is any violation of natural justice or (II) where doing so would serve the public interest or (III) where though the facts are convoluted or disputed, but the courts have already undertaken an in-depth scrutiny of the same provided that the it was pursuant to a sound exercise of its writ jurisdiction. The relevant observations read as under:—

xiii. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate Forum.

xiv. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the Writ Petition itself.

xv. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. [See Sudhir Kumar Singh (supra)].”

56. *What can be discerned from the above is that there has been a considerable shift in the scope of judicial review of the court when it comes to contractual disputes where one of the parties is the State or its*



instrumentalities. In view of the law laid down by this Court in >ABL (supra), Joshi Technologies (supra) and in M.P. Power (supra), it is difficult to accept the contention of the respondent that the writ petition filed by the appellant before the High Court was not maintainable and the relief prayed for was rightly declined by the High Court in exercise of its Writ jurisdiction. Where State action is challenged on the ground of being arbitrary, unfair or unreasonable, the State would be under an obligation to comply with the basic requirements of Article 14 of the Constitution and not act in an arbitrary, unfair and unreasonable manner. This is the constitutional limit of their authority. There is a jural postulate of good faith in business relations and undertakings which is given effect to by preventing arbitrary exercise of powers by the public functionaries in contractual matters with private individuals. With the rise of the Social Service State more and more public-private partnerships continue to emerge, which makes it all the more imperative for the courts to protect the sanctity of such relations.

47. The above exposition makes it abundantly clear that the jurisdiction of this Court under Article 226 is not ousted merely because the lis arises in the backdrop of a tender/contractual matter. Where the impugned action of the State or its instrumentalities is alleged to be arbitrary, irrational, or violative of Article 14, the writ court is empowered to step in and scrutinize the decision-making process.

48. In ***Tata Cellular v. Union of India, (1994) 6 SCC 651***, the Court has observed as under –

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case.



Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

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94. *The principles deducible from the above are:*

(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 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 principle of reasonableness (including its other facts pointed out above) but must be free from 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.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.

49. Thus, writ jurisdiction can be exercised in contractual or tender-related disputes where constitutional mandates are infringed, natural justice



is denied, or arbitrariness permeates the decision-making process. The enquiry of this Court is not directed at whether the impugned decision is correct on merits, but whether the process by which it has been arrived at conforms to the standards of fairness, legality and reasonableness demanded by Article 14.

50. In the present case, the grievance of the petitioner is twofold, first, that there was no obligation under the tender to disclose the internal “joint inquiry” undertaken by ARAI and ICAT, since the Affidavit format only required disclosure of criminal proceedings; and second, that in any event, the petitioner had no knowledge whatsoever of the alleged initiation of the inquiry prior to submission of the bid.

51. Thus, the first issue that falls for consideration is whether the Affidavit of Disclosure prescribed under the RFP obligated the petitioner to disclose the joint inquiry conducted against the petitioner by ARAI and ICAT.

52. The format of the affidavit required to be submitted by all bidders, including the petitioner, is reproduced as under :-

“ANNEXURE 11 – FORMAT FOR AFFIDAVIT

(To be on non-judicial stamp paper of appropriate value as per Stamp Act)

We [including any of our Parent company, Associate and Consortium Member], hereby declare that as on Bid Due Date:

a. the Bidder & any of its Associate including any Consortium Member, their directors or key personnel have not been barred or included in the blacklist by any government agency or authority in India, the government of the jurisdiction of the Bidder or Members where they are incorporated or the jurisdiction of their principal place of business, or by any international financial institution such as the World Bank Group, Asian Development Bank, African



Development Bank, Inter- American Development Bank, Asian Infrastructure Investment Bank etc. or the United Nations or any of its agencies.

b. the Bidder & any of its Associate including any Consortium Member & any of its Associate or their directors have not been convicted of any offence in India or abroad.

c. We further declare that following investigations are pending / no investigation is pending [strike off whichever is not applicable] against us [including any of our Consortium Member or Associate or Parent] or CEO or any of our directors/ manager/key managerial personnel of the Applicant /Consortium Member or their Associate.

d. We further undertake to inform the CESL of any such matter as mentioned above on its occurrence after the date of this affidavit till the Effective Date.

e. We undertake that, in case, any information provided in relation to this affidavit is found incorrect at any time hereafter, our Bid / LoCQ / concession agreement (if executed) would stand rejected / recalled / terminated, as the case may be.

.....
Signature and Name of the authorized signatory of the Bidder / Lead Member of the Bidding Consortium

.....(Signature of Notary Public)

Place:

Date:

Note: In case any investigation is pending against the Applicant, including any Consortium Member or Associate, or CEO or any of the directors/manager/key managerial personnel of the Applicant /Consortium/Member or their Associate, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed under this affidavit.”

53. A plain reading of the above makes it evident that Clause (b) requires the bidder or any of the associate including consortium member or a director, to make a disclosure of conviction of any offence in India or abroad, while Clause (c) requires disclosure of “investigations pending” against them. The explanatory note further defines the scope of such “investigation” by mandating disclosure of: (i) the name of the investigating



agency; (ii) the “charge/offence” for which the investigation has been launched; (iii) name and designation of persons against whom the “investigation” has been launched; and (iv) other relevant information.

54. Having perused the format of the affidavit this Court is of the view that the language used therein points towards criminal investigation by a law enforcement agency. The use of the terms “*investigating agency*” and “*charge/offence*” cannot be stretched to cover technical inspections or internal departmental inquiries, which neither carry penal consequences nor emanate from statutory investigative powers.

Section 2(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 defines the term “investigation” as under –

“(1) “investigation” includes all the proceedings under this Sanhita for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.”

55. By statutory definition, an “investigation” necessarily relates to criminal proceedings.

56. The respondents nevertheless contend that Clause (c) ought to be interpreted expansively to include all forms of regulatory scrutiny, including administrative or departmental inquiries. This contention, however, runs contrary to settled principles of law.

57. In *Caretel Infotech Ltd. v. HPCL*, (2019) 14 SCC 81, the Supreme Court held that where the tender provides a specific format, the disclosure obligation is confined to the matters stipulated therein. The Court held that the prescribed declaration format required disclosure only of completed



blacklisting/holiday listing, not pending show cause proceedings. It was observed that if HPCL intended disclosure of pending proceedings, the same ought to have been expressly incorporated in the format. The relevant portion of the judgment is reproduced as under –

“22. It is no doubt true that Clause 20 does provide for four eventualities, as submitted by the learned counsel for Respondent 3. The present case is not one where on the date of submission of the tender the appellant had been banned, blacklisted or put on holiday list. The question before us, thus, would be the effect of an action for blacklisting and holiday listing being initiated. The declaration to be given by the bidder is specified in Clause 20(ii), which deals with the first three aspects. The format enclosed with the tender documents also refers only to these three eventualities. It is not a case where no specific format is provided, where possibly it could have been contended that the disclosure has to be in respect of all the four aspects. The format having been provided, if initiation of blacklisting was to be specified, then that ought to have been included in the format. It cannot be said that the undertaking by the appellant made it the bounden duty of the appellant to disclose the aspect of a show-cause notice for blacklisting. We say so as there is a specific clause with the specific format provided for, requiring disclosures, as per the same.

23. It may be possible to contend that the format is not correctly made. But then, that is the problem of the framing of the format by Respondent 1. It appears that Respondent 1 also, faced with the factual situation, took a considered view that since Clause 20(i) provided for the four eventualities, while the format did not provide for it, the appellant could not be penalised. May be, for future the format would require an appropriate modification!”

58. Thus, this Court is of the opinion that if disclosure of departmental or regulatory proceedings was intended, the same ought to have been expressly incorporated. Absent such stipulation, no bidder can be penalised for adhering to the precise format prescribed by the tendering authority.

59. Similarly, in ***State of M.P. v. U.P. State Bridge Corporation Ltd.*** (C.A. No. 9486/2019, decided on 08.12.2020), the Supreme Court has acknowledged that bidders are entitled to rely on the literal terms of



disclosure prescribed in the tender. The relevant portion of the judgment is reproduced as under –

“10. Annexure I, entitled "Details of bidder", contains, in Clause 7, the following:

“7. (a) I/We further certify that no investigation by a regulatory authority is pending either against us/any member of joint venture or our sister concern or against our CEO or any of our Directors/managers/ employees.

(b) I/We further certify that no investigation by any investigating agency in India or outside is pending either against us/any member of joint venture or our sister or against our CEO concern or any of our Directors/ managers/employees.

A statement by the bidder and each of the members of its joint venture (where applicable) disclosing material non-performance or contractual non-compliance in current projects, as on bid due date is given below (attach extra sheets, if necessary) w.r.t. Para 2.1.14.”

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18. Shri Dhruv Mehta, learned Senior Advocate, appearing on behalf of UPSBC, relied heavily on the judgment in Caretel Infotech Lid. v. Hindustan Petroleum Corpn. Ltd. (“Caretel Infotech”), for the proposition that where a tender was in a particular format, nothing beyond the information that is required by that format need be given, and since no investigation was in fact pending against his client, Clause 7(b) of Annexure I could not have been invoked to non-suit his client. He also relied upon the judgment in State of A.P. v. B. Chinnam Naidu, in which case the petitioner concerned had to fill up a recruitment form in which previous convictions had to be stated. Since merely being arrested would not amount to a previous conviction, it was held that the petitioner could not be said to have suppressed the fact of his being convicted. He then argued that in any case if there is any ambiguity in the clause the rule of contra proferentem applies, as a result of which the literal interpretation, which is a possible interpretation, ought to prevail, and for this he cited Bank of India v. K. Mohandas. He was at pains to point out that no ground other than Clause 7(b) of Annexure I could now be taken, as the ground of fraudulent practice, which was sought to be argued by the State of Madhya Pradesh in this Court, was not a ground on which UPSBC's bid was rejected. He also pointed out that public interest would require that the financial bid be accepted, being Rs 9 crore less than that of Rajkamal.



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26. Judged by these parameters, it is clear that this Court must defer to the understanding of clauses in tender documents by the author thereof unless, pithily put, there is perversity in the author's construction of the documents or mala fides. As against this, Shri Dhruv Mehta is also correct in drawing our attention to Caretel Infotech, and in particular, to paras 4, 9, 22 and 23, which are set out hereinbelow: (SCC pp. 85-87 & 89-90)

“4. The appellant submitted the bid in respect of the e-tender on 19-12-2017. In terms of Clause 20 extracted aforesaid, a format had been provided for the declaration to be made, which is as under:

***‘DECLARATION NON BLACKLISTED/NON
BANNED/NON HOLIDAY LISTED PARTY***

We confirm that we have not been banned or blacklisted or delisted or holiday listed by any government or quasi-government agencies or public sector undertakings

Date: _____

Name of Tenderer: _____

Place: _____

Signature & Seal of Tenderer: _____

Note: If a bidder has been banned by any government or quasi-government agencies or public sector undertakings, this fact must be clearly stated with details. If this declaration is not given along with the UNPRICED bid, the tender will be rejected as non-responsive.’

The appellant submitted the declaration in terms aforesaid ie. stating that the appellant had not been blacklisted by any government or quasi-government agency or public sector undertakings.

** * **

9. The decision of the High Court is predicated on two facts-firstly the non-disclosure of the factum of the show-cause notice issued to the appellant amounted to violation of the undertaking. Linked to this issue is that Clause 20(777) of the tender provided for an integrity pact "ensuring transparency and fair dealing" and that integrity pact had been duly signed and submitted by the appellant. Secondly, the Division Bench doubted the



compliance, by the appellant, of Clause 8 read with Clause 10(g) of Section 4 of the tender. This controversy pertains to the clause dealing with the business continuity and the requirement of submitting a valid ISO certificate for the purpose of securing the tender. The relevant clauses read as under:

'8. Business continuity

OMCs currently have an agreement for inbound calls with a service provider based in different regions. The successful bidder has to submit the transition plan to migrate to new platform and facility with "ZERO" disruption of services with respect to the following areas:

(a) Toll-free services.

(b) IVRS based call handling.

(c) Diversion of call traffic at the successful bidder's premises.

(d) Trained operators at the time of go-live date.

** * **

10. Other mandatory requirements:

(g) Valid ISO Certification 27001 for security and ISO 2301 for business continuity.'

** * **

22. It is no doubt true that Clause 20 does provide for four eventualities, as submitted by the learned counsel for Respondent 3. The present case is not one where on the date of submission of the tender the appellant had been banned, blacklisted or put on holiday list. The question before us, thus, would be the effect of an action for blacklisting and holiday listing being initiated. The declaration to be given by the bidder is specified in Clause 20(if), which deals with the first three aspects. The format enclosed with the tender documents also refers only to these three eventualities. It is not a case where no specific format is provided, where possibly it could have been contended that the disclosure has to be in respect of all the four aspects. The format having been provided, if initiation of blacklisting was to be specified, then that ought to have been included in the format. It cannot be said that the undertaking by the appellant made it the bounden duty of the appellant to disclose the aspect of a show-cause notice for blacklisting. We say so as there is a specific clause with the specific format provided for, requiring disclosures, as per the same.



23. *It may be possible to contend that the format is not correctly made. But then, that is the problem of the framing of the format by Respondent 1. It appears that Respondent 1 also, faced with the factual situation, took a considered view that since Clause 200(1) provided for the four eventualities, while the format did not provide for it, the appellant could not be penalised. May be, for future the format would require an appropriate modification!”*

27. It is clear that Shri Dhruv Mehta is right when he refers to and relies upon the aforesaid judgment in Caratel Infotech for the proposition that where there is a format which had to be strictly complied with, his client was justified in going by the literal reading of the aforesaid format, which only required a disclosure of pending investigations under Clause 7(6) of Annexure 1 of NIT. However, as has correctly been pointed out by Shri Saurbh Mishra and Shri Puneet Jain, Clause 7(b) of Annexure 1, which is in terms similar to Para 13 of Appendix I-A. must be read together with Para 11 thereof, which, as has been pointed out hereinabove, requires the bidder to certify that in regard to matters other than security and integrity of the country, the bidder has not been convicted by a court of law or indicted. Clearly in the facts of the present case, though the investigation is no longer pending and though there is no conviction by a court of law, UPSBC has certainly been “indicted”, in that, a charge-sheet has been filed against it relating to the FIR dated 15-5-2018 in which a trial is pending, though stayed by the High Court. Also, Shri Saurabh Mishra is correct in stating that “fraudulent practice”, as defined in Clause 4.3(b) of NIT, would include an omission of facts or disclosure of incomplete facts in order to influence the bidding process. In the facts of the present case, there is clearly an omission of a most relevant fact and suppression of the same fact, namely, that an FIR had been lodged against UPSBC in respect of the construction of a bridge by it, which had collapsed, and in which a charge-sheet had been lodged.

28. *This being the case, State of A.P. v. B. Chinnam Naidu is clearly distinguishable, as in the facts of that case, the expression “convicted” could not have possibly included the factum of arrest which was pre-conviction. On the facts of the present case, we have seen as to how UPSBC has indulged in a fraudulent practice and has suppressed the fact that it was indicted for offences relating to the construction of a bridge by it, which had collapsed. Equally, paras 12 to 18 of the judgment in Vinubhai Haribhai Malaviya v. State of Gujarat¹⁷, which distinguish between investigation, inquiry and trial in a criminal case, are also of no avail to UPSBC in view of the*



finding hereinabove. Equally, the well-known rule of contra proferentem as expounded in Bank of India v. K. Mohandas (at para 32) is also of no avail, given the fact that there is no ambiguity whatsoever insofar as the fraudulent practice clause and Para 11 of Appendix I-A are concerned.

29. Adverting to Shri Dhruv Mehta's argument that his client has been non-suited only on application of Clause 7(b) of Annexure I, a reference to the technical evaluation committee's order dated 13-3-2020 declaring UPSBC's bid non-responsive shows that it also refers to Appendix I-A comprising the technical bid and Para 13 thereof, in particular. We have already held that Para 13 has to be read along with Para 11, which clearly states that a person who is "indicted" for a criminal offence has to disclose the factum of indictment. A technical objection based on the rejection order cannot be allowed to prevail in the face of the suppression of a most material fact, that is of an FIR pertaining to the construction of a bridge by UPSBC, which has collapsed."

60. While some deference is due to the authority's interpretation, bidders cannot be faulted for not volunteering information beyond the four corners of the prescribed format (of the affidavit).

61. It is also pertinent to note that the terminology used in the format is "investigating agency" and "charge/offence", the omission of departmental inquiries or internal reviews is conspicuous. If respondent no. 1 intended to extend the scope to such departmental or technical inquiries, it should have said so explicitly.

62. This Court therefore finds merit in the petitioner's contention that the affidavit obligated disclosure only of criminal convictions or investigations. The "joint inquiry" relied upon by the respondents falls outside that scope. The cancellation of the petitioner's bid on the ground of non-disclosure of such inquiry cannot be sustained.

63. Even assuming *arguendo* that the affidavit did mandate disclosure of the joint inquiry, this Court finds strength in the petitioner's stand that it was



never made aware of the same. It is an admitted position that respondent No. 2, vide letter dated 04.01.2024, directed ARAI and ICAT to constitute a Joint Committee to examine complaints against the petitioner. This Court, vide order dated 10.03.2025, directed respondent no. 2 to place the said letter on record and to state on affidavit whether it had ever been communicated to the petitioner. The said order is reproduced as under –

“At request of learned senior counsel for the petitioner, the respondent no.2 is directed to place on record a copy of a letter bearing MHI letter No.12(62)/2023-AEI dated 04.01.2024, on affidavit. Let the affidavit also state whether the aforesaid letter was sent to the petitioner or not. Let the same be filed before the next date of hearing.”

64. In compliance, an affidavit dated 19.03.2025 was filed, reproducing the letter of initiation dated 04.01.2024. It was also unequivocally stated that the same was never served upon the petitioner. The affidavit further clarified that the petitioner was only informed much later, vide letter dated 13.01.2025, when the Joint Committee concluded that the complaints were unsubstantiated. Relevant portion of the affidavit dated 19.03.2025 is reproduced as under –

“9. I say that thereafter, MHI's vide letter dated 04.01.2024 directed both the testing agencies (ARAI and ICAT) for constituting Joint Committee of Directors of ARAI and ICAT for a fresh examination of the Complaints received against the petitioner and the FAME compliance thereof. Joint Committee of Directors concluded that complaints have not been substantiated. The same was also informed to the petitioner vide MHI's letter dated 13.01.2025. A copy of letter dated 13.01.2025 is annexed herewith as Annexure R-9.

10. I say that the said letter No.12(62)/2023-AEI dated 04.01.2024 (Annexure R-1 Supra) was not served and/or shared with the Petitioner (PMI Electro Mobility Solutions Pvt Ltd.) by Respondent No.2 until 13.01.2025. However, testing agencies (ARAI and ICAT) were communicating and conducting joint enquiry as requested by PMI in its letter dated 22.12.2023 to MI-II's and as per directions of MHI's Letter No. 12(62)/2023-AEI dated 04.01.2024. A copy of communication dated



06.02.2024 and 03.05.2024 are annexed herewith as Annexure R-10 and Annexure R-11.”

65. Letter dated 04.01.2024 is reproduced as under –

“Subject: Violation of Phased Manufacturing Programme (PMP) compliance under FAME-II scheme by PMI Electro Mobility Solution Limited (PMI)-reg.

*Reference: 1. Complaint dated 04/11/2022 and 15/06/2023,
2. FAME certificate dated 26/03/2021 and 08/10/2021.*

I am directed to refer to the above subject matter and to convey that a joint committee of Director, ARAI and Director, ICAT be constituted to conduct a fresh examination of the complaints received as referred above.

2. Accordingly, it is directed to constitute a joint committee of Director, ARAI and Director, ICAT to examine the complaints received against PMI, under intimation to MHI latest by 05.01.2024. Post examination, the report will be jointly signed by Director, ARAI and Director, ICAT respectively.

3. This issues with approval of the competent authority.”

66. Thus, it is evident that the initiation letter dated 04.01.2024 was never shared with the petitioner. At the time of submission of its bid, the petitioner could not have been aware of any such inquiry.

67. In order to establish that the petitioner had prior knowledge of the alleged joint inquiry, respondent no. 1 relies on the petitioner’s reply dated 22.12.2023 to the show cause notice dated 05.12.2023. The relevant portions of the reply read as follows -

“11. We note that sometime in August 2023, basis a complaint against the Company for violation of PMP compliances under FAME India Scheme II, a separate investigation and examination was conducted by ICAT at your behest. During this inspection, ICAT sought various documents and information from PMI vide emails dated 23 August 2023, 25 August 2023, and 28 August 2023. We duly co-operated and submitted the necessary documents to facilitate a smooth examination by ICA T. Consequently, a detailed examination was conducted by ICAT on 28 and



29 August 2023, the details of which were duly captured in the minutes of meeting dated 29 August 2023 issued by ICA T to PMI on 01 September 2023.....

.....38. Considering the facts and circumstances stated above, we most respectfully request your good office to:

a) reject the ARAI Report dated 08 November 2023 and recall your letter dated 05 December 2023 issued to the Company; and

b) provide us with a reasonable opportunity to participate in a thorough and impartial review of the alleged violations. In that, your good office may consider directing a joint inspection by the officials of ICAT and ARAI in the presence of the Company officials and after giving the Company a reasonable and fair opportunity to be heard.”

68. It is correct that the petitioner, in its reply dated 22.12.2023, had suggested a joint inquiry by ICAT and ARAI. However, it has already been noted that the petitioner was never formally informed of the initiation of any such inquiry.

69. Further, emphasis has been placed on order dated 21.06.2024 passed in W.P.(C) No. 8677/2024 (whereby the communication dated 05.12.2023 was being challenged). The relevant extracts are reproduced below:

“5. Mr. Rakesh Kumar, learned Central Government Standing Counsel for the respondent/UOI stated that the petitioner was asked to furnish further documents by sending e-mails dated 06.02.2024 and 03.05.2024 but the requisite documents have not been submitted by the petitioner.

6. The Central Government Standing Counsel for the respondent/UOI, on being specifically asked whether the replies dated 07.12.2023 and 22.12.2023 have been decided or not, sought time to seek instructions. However, he stated that an inquiry has already started against the petitioner in pursuance of communication dated 05.12.2023.

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9. In the meantime, no action shall be taken against the petitioner in pursuance of communication dated 05.12.2023 detrimental to the petitioner. However, as stated by Mr. Rakesh Kumar, the respondent may continue with the inquiry, if any, subject to the outcome of the petition.”

70. Having perused the order, this Court finds force in the petitioner’s



submission that it was only during those proceedings that the petitioner came to know of any ongoing inquiry against it. Although paragraph 5 records that further documents were sought by emails dated 06.02.2024 and 03.05.2024, this by itself does not conclusively establish that the petitioner was aware of a pending inquiry at the relevant time, particularly when no prior intimation had been furnished to it.

71. It is also true that while the Court did not stay the inquiry, this does not imply that the petitioner was aware of its existence at the time of bidding. The fact that the original show cause notice itself was placed in abeyance vide letter dated 15.12.2023 further strengthens the case of the petitioner.

72. What is of greater significance is that by letter dated 13.01.2025, respondent no. 2 conclusively closed the inquiry, recording that all complaints against the petitioner were unsubstantiated. The very foundation of the impugned communication (non-disclosure of a joint inquiry) thus collapses, as the inquiry itself stood closed without adverse findings.

73. Accordingly, this Court holds that the petitioner cannot be faulted for non-disclosure of an inquiry of which it had no formal notice at the time of bidding.

74. Further the respondent no. 1 has relied upon the following clause –

“5.7. Corrupt or Fraudulent practices:

CESL requires that bidders observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, CESL: defines, for the purposes of this provision, the terms set forth below as follows:

a. i) “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and



ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of CESL, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial noncompetitive levels and to deprive CESL of the benefits of free and open competition;

b) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract of the CESL.

Section 16.2 of Vol I of Section IV of the RfP reads as follows:

“CESI reserves the right to reject any Bid or take other administrative action if

(i) At any time, a material misrepresentation is made or uncovered, or

(ii) The Bidder does not provide, within the time specified by CESI, the supplemental Information sought by the Authority for evaluation of the Bid.

(iii) Such misrepresentation/ improper response shall lead to the disqualification of the Selected Bidder. If the Selected Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the lowest Bidder gets disqualified/rejected, then CESL reserves the right to annul the Bidding Process and invite fresh Bids*”

Section 7.9(e) of Instructions to Bidders, reads as follows:

“ The EMD of a Bidder shall be forfeited in the following events:

(e) Bidders submitting any wrong information or making any misrepresentation in their Bid as per the RfP terms.”

75. It is undisputable that the aforesaid clauses vest powers in the respondent No. 1 to act in the event of material breaches or misrepresentations by a bidder. However, the invocation of these provisions



must be strictly in conformity with the bid conditions and supported by concrete material. In the present case, since it has already been held that there was no non-disclosure on the part of the petitioner within the meaning of the bid documents, the reliance on these clauses by respondent no. 1 is wholly misplaced and untenable.

76. This Court also finds merit in the petitioner's contention that while the show cause notice dated 22.03.2024 alleged only non-disclosure, the impugned communication went further to label the petitioner's conduct as fraudulent, citing violations of Clause 5.7 of Section II and Clauses 7.9 and 16.2 of Volume I of Section IV of the RFP. These allegations were never contained in the show cause notice and thus deprived the petitioner of an opportunity to respond.

77. Such action is directly contrary to the law laid down by the Supreme Court in *Gorkha Security Services v. Government of NCT of Delhi*, which categorically held that final orders cannot introduce new charges beyond those in the show cause notice.

78. In view of the above, the impugned order/communication dated 26.11.2024 is quashed.

79. It is noticed that the petitioner emerged as the lowest bidder as far back as in 2024. The Letter of Confirmation never came to be issued and Contract Agreement never came to be executed in view of the aforementioned intervening developments.

80. Given that the impugned order has been quashed, it shall be open for the respondent to proceed with the issuance of the Letter of Confirmation and execution of the Contract Agreement with the petitioner (unless the same has become unviable or untenable and / or due to any other



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extenuating circumstance/s or subsequent development/s).

81. In any event, the right of the petitioner to claim damages / monetary relief on account of any loss that may have been occasioned on account of cancellation of the bid vide impugned order dated 26.11.2024, shall remain expressly reserved.

82. The petition is disposed of in the above terms. Pending applications also stand disposed of.

SACHIN DATTA, J

SEPTEMBER 04, 2025/sv