



2024:KER:69161

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 13TH DAY OF SEPTEMBER 2024/22ND BHADRA, 1946

W.P(C).NO.1479 OF 2024

PETITIONER(S) :

V.D. SATHEESAN M.L.A,
AGED 59 YEARS
S/O.DAMODARAMENON, LEADER OF OPPOSITION, MEMBER,
KERALA LEGISLATIVE ASSEMBLY, RESIDING AT DEVARAGAM,
KESARI JUNCTION, PERUVARAM WEST, NORTH PARAVUR P.O.,
PARAVUR, ERNAKULAM DISTRICT, PIN - 683513

BY ADV.SRI.GEORGE POONTHOTTAM (SR.)
BY ADV.SMT.NISHA GEORGE
BY ADV.SRI.A.L.NAVANEETH KRISHNAN
BY ADV.SRI.J.VISHNU
BY ADV.SMT.KAVYA VARMA M. M.
BY ADV.SRI.ANSHIN K.K
BY ADV.SRI.SIDHARTH.R.WARIYAR

RESPONDENT(S) :

- 1 THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001
- 2 THE ELECTRONICS AND INFORMATION TECHNOLOGY DEPARTMENT,
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM,
REPRESENTED BY THE SECRETARY, PIN - 695001
- 3 THE DEPARTMENT OF FINANCE,
GOVERNMENT OF KERALA, REPRESENTED BY THE ADDITIONAL
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,



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THIRUVANANTHAPURAM, PIN - 695001

- 4 KERALA STATE ELECTRONICS DEVELOPMENT CORPORATION LTD.
(DELETED),
[KELTRON], KELTRON HOUSE, VELLAYAMBALAM P.O.,
THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGING
DIRECTOR. E-MAIL : KELTRON @ KELTRON.ORG.
PIN - 695033
[R4 IS DELETED FROM THE PARTY ARRAY AS PER ORDER DATED
05/08/2024 IN WP(C)].
- 5 KERALA STATE INFORMATION TECHNOLOGY INFRASTRUCTURE LTD.,
1ST FLOOR, SANKETHIKA, PF ROAD, VRINDAVAN GARDENS,
PATTOM P.O, THIRUVANANTHAPURAM, REPRESENTED BY ITS
MANAGING DIRECTOR, PIN - 695004
- 6 THE KERALA STATE ELECTRICITY BOARD LIMITED,
VYDYUTHIBHAVAN, PATTOM PALACE POST,
THIRUVANANTHAPURAM, REPRESENTED BY ITS CHAIRMAN,
PIN - 695004
- 7 BHARAT ELECTRONICS LIMITED (BEL),
MEDICAL COLLEGE - NAD ROAD, KINFRAHITECH PARK,
HMT COLONY, KALAMASSERY, KOCHI, REPRESENTED
BY ITS DIRECTOR, PIN - 683503.
- 8 M/S.SRIT INDIA PVT. LTD,
SRIT HOUSE, #113/1B,ITPL MAIN ROAD, KUNDALAHALLI,
BANGALORE, KARNATAKA STATE, REPRESENTED BY ITS
MANAGING DIRECTOR, E-MAIL:HARISHKUMAR@RENAISSANCE-IT.COM,
PIN - 560037
- 9 M/S.ASHOKA BUILDCON LTD,
S.NO - 861, ASHOKA HOUSE, ASHOKAMARG,ASHOKA NAGAR,
13B, GULSHAN COLONY, NASHIK, MAHARASHTRA, REPRESENTED
BY ITS MANAGING DIRECTOR, PIN - 422011
- 10 PRESADIO TECHNOLOGIES PRIVATE LIMITED,
2ND FLOOR, 2/2525-B8, OLIVE ARCADE, MALAPARAMBA
JUNCTION, KOZHICKODE, REPRESENTED BY ITS MANAGING
DIRECTOR., EMAIL:ADMIN@PRESADIOTECHNOLOGIES.COM,
PIN - 673009
- 11 RAILTEL CORPORATION OF INDIA LTD.,
PLATE-A, 6TH FLOOR, OFFICE BLOCK TOWER-2,
EAST KIDWAI NAGAR, NEW DELHI, REPRESENTED
BY ITS DIRECTOR, PIN - 110023



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- 12 M/S CUBE FIBERNET PRIVATE LIMITED,
D.NO-6-3-645/2/A/5, FLAT NO-103, ROAD NO-1, BANJARA
HILLS, HYDERABAD,TELENGANA,REPRESENTED BY THE MANAGING
DIRECTOR. E-MAIL:SHIVA.RAILWIRE@GMAIL.COM, PIN - 500034
- 13 M/S LIGHT WAVE TECHNOLOGIES PRIVATE LIMITED,
FLAT NO-A-205,SUBHADRAAPPARTMENTPATIA, CHANDRASEKHAR
PUR, BHUBANESWAR, ORISSA, REPRESENTED BY THE MANAGING
DIRECTOR., E-MAIL: LWDN@LIGHTWAVEINDIA.IN,
PIN - 751030
- 14 M/S. AKSHARA ENTERPRISES INDIA PRIVATE LIMITED,
3-6-182/1&2, STREET NO-17, URDU HALL LANE, TS STATE,
AP STATE HOUSING BOARD, HIMAYATNAGAR, HYDERABAD,
TELANGANA,REPRESENTED BY ITS MANAGING DIRECTOR.
E-MAIL: SREEDHAR@AKSHARAGS.COM, PIN - 500029
- 15 CITSA TECHNOLOGIES PVT LTD,
GOTHURUTH BRIDGE ROAD, KOOTTUKADU, MADAPLATHURUTH,
MALIYANKARA, ERNAKULAM DISTRICT, REPRESENTED BY ITS
MANAGING DIRECTOR, PIN - 683516
- 16 THE CENTRAL BUREAU OF INVESTIGATION,
6TH FLOOR, LODHI ROAD, PLOT NO.5-B, JAWAHARLAL NEHRU
STADIUM MARG, CGO COMPLEX, NEW DELHI, DELHI,
REPRESENTED BY ITS DIRECTOR, PIN - 110003
- 17 CENTRAL BUREAU OF INVESTIGATION,
COCHIN UNIT, CBI ROAD, KATHRIKADAVU, KALOOR,
ERNAKULAM, REPRESENTED BY THE SUPERINTENDENT,
PIN - 682017

BY SRI.K.GOPALAKRISHNA KURUP (SR.), ADVOCATE GENERAL
BY SRI.N.MANOJ KUMAR, STATE ATTORNEY
BY SRI.V.MANU, SENIOR GOVERNMENT PLEADER
BY SRI.K.A.ABDUL SALAM, SC, KERALA STATE IT INFRASTRUCTURE
LTD. KSITIL
BY ADV.SRI.ANTONY MUKKATH
BY ADV.SRI.REGI MATHEW
BY SRI.B.PRAMOD, SC, KSEB
BY SRI.SREELAL N.WARRIER, SPL. PUBLIC PROSECUTOR CBI
BY SMT.M.A.ZOHRA, SC, KELTRON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09.09.2024, THE COURT ON 13.09.2024 DELIVERED THE
FOLLOWING:



'C.R.'

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

This writ petition is styled as a Public Interest Litigation and has been instituted by the petitioner who is the Leader of the Opposition of the Kerala Legislative Assembly. The petitioner essentially challenges the award of the contract for implementation of the Kerala Fibre Optic Network [KFON] project to the consortium comprising of Bharat Electronics Limited, RailTel Corporation of India Limited, Sobha Renaissance Information Technology Pvt. Ltd and LS Cable India Private Limited [hereinafter referred to as the “BEL Consortium”] for an amount of Rs.1628.35 Crores, after finding their quote to be the lowest among the three qualified consortium bidders that had participated in the tender process. It might be relevant to observe at the outset that none of the unsuccessful tenderers have challenged the award of the contract to the BEL Consortium.

2. The prayers in the writ petition are essentially to call for the records leading to Ex.P7 sanction order and to quash the same, as also to quash all the consequential orders and decisions taken following Ext.P7 order. There is a further prayer for a writ of mandamus to direct the Central Bureau of Investigation [CBI] to initiate an enquiry into the KFON project, including the Project Monitoring Agency tender and the tenders for selecting the Managed



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Service Provider [MSP] and the Internet Service Provider [ISP] for KFON. The writ petition was filed on 11.01.2024 when the KFON project was well underway in terms of implementation. The project had received the necessary administrative sanction from the State Government as early as on 18.05.2017. The tender process for the project was initiated by Kerala Fibre Optic Network Limited on 14.06.2018 when a Request for Proposals [RFP] was published for selection of a Project Monitoring Agency. The technical evaluation of the received tenders commenced on 21.12.2018 and the Financial bids were opened on 26.12.2018. As already noticed, the BEL Consortium was identified as the lowest bidder, and after negotiating with them they were appointed as the Project Monitoring Agency by accepting their offer of Rs.1628.35 Crores. Shortly thereafter, Ext.P6 Master Service Agreement was entered into on 09.03.2019 between Kerala State Information Technology Infrastructure Limited [KSITIL] on behalf of Kerala Fibre Optic Network Limited and BEL. The formal approval of the State Government to the selection of BEL Consortium was obtained through Ext.P7 G.O. dated 15.07.2019. It is clear, therefore, that the writ petition was filed more than four years after work had started on the KFON project.

3. The provocation for filing the writ petition appears to have been the remarks made by the Comptroller & Auditor General [CAG] casting doubts on the legality/propriety of the award of the contract to the BEL Consortium. The audit queries posed by the CAG in 2023 form the basis of the allegations and grounds in the writ petition, to seek the prayers aforementioned. The main allegations raised in the writ petition, as re-iterated and urged by the learned



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Senior Counsel Sri.George Poonthottam, on behalf of the petitioner, can be summarised as follows:

- There was gross irregularity in awarding the contract to the BEL Consortium at Rs.1628.35 Crores which was more than 10% in excess of the figure of Rs.1028 Crores for which administrative sanction was granted by the State Government in May 2017. Placing reliance on Ext.P4 G.O. dated 06.02.2017 that dealt with delegation of powers to departmental officers for sanctioning of tender excess/below estimate rates, it is pointed out that the award of the contract to BEL Consortium was at a rate that was far in excess of what was permissible. Referring to Ext.P5 note dated 16.02.2019 issued from the IT Secretary of the State Government to KSITIL, it is further suggested that the contract was awarded to the BEL Consortium solely at the instance of the IT Secretary and after by-passing the established procedure.

- The KFON project was conceived with the twin goals of (i) setting up a State-wide core optical fibre network that would provide connectivity to 30,000 + Government institutions and (ii) providing free internet to 20 Lakh economically backward families and subsidised internet for others by leveraging the KFON infrastructure. The project, however, has suffered serious setbacks and is now lagging behind in implementation and is not expected to complete the work undertaken under the contract within a reasonable time. This is largely on account of the delays



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occasioned by the Consortium partners in meeting deadlines for the supplies/deliverables envisaged under the contract.

- As per the tender conditions, the company supplying Optical Ground Wires [OPGW] should have manufactured them in India, in keeping with the 'Make in India' initiative of the Central Government and, further, has to have facilities to test the manufactured cables in India. It has also to satisfy the requirement of having manufactured and laid a minimum of 250 KM of cable in India in the past five years. In the instant case, the remarks made by the CAG suggest that LS Cable India Private Limited imported the optical unit of the OPGW from China and effected minimal value addition thereto in India. It is also suggested that they do not have the required testing and service facilities in India.

- The CAG has also pointed out that an interest free mobilisation advance was granted to BEL Consortium without there being any provision for granting the same under the contract entered into with them. This has resulted in the BEL Consortium securing a financial advantage through the award of the contract through terms that were not envisaged in the tender process and were not made known to the other bidders at the time of considering their bids.

4. Through counter affidavits filed on behalf of respondent Nos.1, 2 and 5, and documents produced at the time of hearing by the learned Advocate General Sri. Gopalakrishna Kurup, appearing on behalf of the respondents, the



allegations above have been answered as follows:

- The alleged irregularities in the matter of award of the contract to the BEL Consortium cannot be gone into at this belated stage of implementation of the project. It is pointed out that none of the other bidders had any grievance with regard to the award of the contract, and further, no such irregularity has been occasioned by the respondents while finalising the tender process. It is further pointed out that the lead partner in the BEL Consortium is a Navaratna PSU under the Ministry of Defence and has executed a number of high profile projects in defence communication in India. That M/s RailTel, the other Consortium partner, is a Miniratna PSU under the Ministry of Railways, that is one of the largest telecom infrastructure providers in the country owning a pan India optical fibre network on exclusive right to way along railway tracks. The third Consortium partner, M/s LS Cable is one of the leaders in OPGW market across the globe. There was therefore no reason to doubt the credentials of the BEL Consortium, or their ability to perform their obligations under the contract, at the time of award of the contract to them.

- In the initial Administrative Sanction [AS] issued in 2017, the recurring Operational Charges of Rs.104.40 Crore for one year alone was [for core and access network] reckoned instead of seven years and thus the total AS amount was limited to Rs.1028.20 Crore. The amount of



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Rs.1028.20 Crore mentioned in the petition is the first administrative sanction [AS] issued by the Government. This includes the implementation cost and one year Operation & Maintenance cost only. However, the tender was floated for the implementation and seven years Operation and Maintenance of the project as O&M [Operation & Maintenance] is an integral part of the project. The bid amount for KFON project after a discount of Rs.17 Crores offered by M/s BEL was Rs.1531.68 Crore (excluding taxes). This bid amount was arrived at by considering the operations and maintenance period of the project as seven years, resulting in variation from the amount for which initial Administrative Sanction was accorded. The Departmental Purchase Committee, constituted as per the Stores Purchase Manual, which was chaired by the Additional Chief Secretary, Finance Department approved the selection of Consortium of M/s Bharat Electronics Limited, the LI bidder, as the agency for implementation of KFON project. In the initial Administrative Sanction an amount of Rs.16.40 Crores was allotted for the cost of establishment to Special Purpose Vehicle [SPV] and operations. Therefore, in addition to the tendered value [Rs.1531.68 Crore], Rs.16.40 Crore was also required for meeting the expenses in connection with the operations and establishment of the SPV. Hence, revised Administrative Sanction was accorded for the KFON project at a total cost of Rs.1548.08 Crore + Taxes as applicable. The allegation raised that the tender value is 58.5% higher than the estimated value is not true and without understanding the facts and figures. The tender for the selection of agency for the implementation of Kerala Fiber Optic



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Network & Reliable Communication and Data Acquisition Network was floated without an estimate value because the KFON was a first of its kind project implemented in the State by the Government of Kerala. Therefore, through competitive bidding process a price was discovered. Tender was awarded based on the discovered price for implementing the project in the entire State of Kerala. Further, at the time of issuance of AS, what was contemplated was only one year's operation and maintenance expenditure, whereas, Exhibit P3 Request for Proposal was floated for 7 year's Operation and Maintenance expenditure. In these circumstances, Exhibit P4 Government Order does not have any application in the facts and circumstances of the case.

- As regards the alleged delay in implementation of the project, it is argued that the project timeline was extended due to the following reasons:-

COVID-19 and Flood Disruptions

Since March 2020, the construction work had faced disruptions due to the impacts of both COVID-19 and floods, leading to a discontinuity in the construction process for several months. Consequently, the completion period for the construction project had to be extended.

Right-of-Way (RoW)

Delays are being encountered in the process of obtaining permissions for the installation of fiber at railway crossings and bridges. Much time was required for obtaining the required clearances for installing and maintaining fiber on bridges and their surroundings from the Railways.

Impact of Road Widening

The process of widening highways frequently necessitates the suspension or diversion of our fiber installation, resulting in a direct delay in project progress. After the installation of fiber and the establishment of the Point of Presence (POP), the ongoing road widening leads to damages at sites where construction works have been completed.

KSEBL Shutdown Permissions



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The fiber network in KFON is established using KSEI3L's transmission and distribution lines. Construction work involves suspending the distribution of electricity in these areas. However, during emergencies, pre-scheduled tasks have to be rescheduled due to the discontinuation of electricity distribution, which depends on various factors. This poses challenges to the timely completion of construction work.

- As regards the alleged breach of tender conditions regarding adherence to the Make in India concept, the following submissions are made:

As regards the averments and allegations with regard to the Optical Ground Wire [OPGW] cables have been supplied to KFON from L.S Cables, an Indian firm which is a member of the consortium led by Bharat Electronics Limited. The Galvanized Iron wire presently used by KSEBL in the existing transmitter lines is only for the earthing and protection of lines from lightning. It is made up of aluminium conductor with steel reinforcement at the centre. But in the case of OPGW the conductor can be used for protection as well as for the communication. It is made up of 4 tubes of aluminium with 12 fibres in each tube by replacing the steel wire. The dimension of the OPGW will also be in higher size. So definitely the cost of OPGW will be higher than that of GI wire because of this additional 4 Aluminium tubes with 48 fibres. At the time of tender, no specification was prescribed for categorizing OPGW as a "Make in India" product. However, the notification issued by Department of Telecommunication (DOT), Government of India dated 29.08.20 18 contained "Make in India" stipulations for Optical Fiber Cable (OFC). Therefore, the specification given for Optical Fiber Cable was considered as a benchmark for categorizing the product as "Make in India" whereby the local content should be a minimum of 55%. In this regard, the System Integrator (BEL) produced a certificate from the Chartered Accountant certifying that the local content used for manufacturing of OPGW in terms of cost of production is 58%. Meeting of the Technical Committee of KFON held on 19.12.2019 examined the CA certificate and found the product satisfying the condition of Make in India and LS Cables India Pvt Ltd satisfies the RFP condition of 'the product shall be from an Indian manufacturer'. LS Cable India Private Limited has submitted a performance warranty certificate of OPGW for 25 years. 2600 Km OPGW has been supplied under KFON in 6 lots. For each lot, Factory Acceptance Test (FAT) of the OPGW has been conducted in the factory of LS Cable India Pvt Ltd, I3awal, Haryana and witnessed by KSEBL/ KSITIL officials. The equipment required for conducting the FAT of OPGW are available in the factory. Most of the type test of OPGW and fibre was conducted in India and only a few tests, for which facilities were not available in India, was conducted in China. Hence no tender condition was violated.



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- Regarding the allegation that interest free mobilisation advance had been given to the BEL Consortium, it is submitted that the Master Service Agreement entered into with BEL envisaged that payments to BEL were to be in accordance with the schedule to the RFP. Annexure IV to the RFP was modified to incorporate a clause sanctioning a mobilisation advance against BEL furnishing a Bank Guarantee for a like amount, over and above the Performance Bank Guarantee already furnished as per the RFP. It was also envisaged there under that payments to BEL would be required to be made only to the extent of 40% of the material cost on delivery. The balance payment of material delivery cost was to be only in stages till the commissioning of the work. It is contended therefore that there was no undue material advantage that was obtained by the BEL Consortium in view of the mobilisation advance that was sanctioned to them in terms of the contract.
- Lastly, it is submitted that merely because there was an audit observation by the CAG, that by itself cannot form the basis for seeking a CBI enquiry into the allegations raised against the respondents. In support of the said contention, reliance is placed on the judgments in **All India Institute of Medical Sciences Employees' Union v. Union of India - [1996 KH 3671]**, **State of W.B. And Others v. Committee for Protection of Democratic Rights West Bengal and Others - [2010 (1) KHC 841]**, **Kunga Nima Lepcha and Others v. State of Sikkim and Others - 2010 KHC 4202**, **Secretary, Minor Irrigation and Rural Engineering Services, U.P. v. Sahngoo Ram Arya - [2002**



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KHC 1280]; M/s. Karnataka EMTA Coal Mines Limited and Another v. Central Bureau of Investigation - [2024 INSC 623]; Arun Kumar Agrawal v. Union of India and Others - [(2013) 7 SCC 1]; Sakiri Vasu v. State of U.P. And Others - [2008 (2) KHC 13] and Sathyan Naravoor v. Union of India and Others - [2017 KHC 162].

5. We have also heard the learned State Attorney Sri.N.Manoj Kumar on behalf of the respondents.

6. On a consideration of the rival submissions, we are of the view that the central issue to be considered in these cases is whether or not the petitioner has made out a *prima facie* case warranting an interference by us with the decision taken by the State Government to award the contract in question to the BEL Consortium and/or, whether there is any material brought to our notice in these proceedings that would warrant a direction to the CBI to enquire into the matter to see whether there is any substance in the allegations raised by the petitioner in the matter of implementation of the KFON project by the respondents?

7. While considering the said issue we have to remind ourselves of the nature of the jurisdiction that we exercise under Article 226 of the Constitution of India, even in writ petitions that are in the nature of Public Interest Litigations. It is trite that the nature of the exercise undertaken by the High Court under Article 226 of the Constitution is one of judicial review. Under ordinary circumstances, the review contemplated is a secondary review



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where the court considers the legality, rationality or procedural propriety of a decision already taken by a primary decision maker. In such an event, the reviewing court looks merely at whether or not the decision taken by the primary decision maker is one that he was empowered to take in terms of the statutory provisions or executive orders having the force of law, and further whether the decision taken by him is one of many possible views that he can legally take. If not, the reviewing court would set aside the decision of the primary authority, after stating the reasons for the same, and require the said authority to take a fresh decision in the matter. In exceptional cases, where the decision taken by the primary decision maker is one that infringes a constitutional right of a citizen, whether fundamental or otherwise, or is one that fails the test of proportionality in law, the reviewing court can resort to a primary review and substitute its views for that of the primary authority.

8. Public Interest Litigations have been filed before our courts to invoke the court's power of primary review especially when the factual situation, that affects the public at large, calls for emergent action or is such that an adjudication of the matter before another authority would entail financial or temporal challenges for the particular litigant espousing a cause on behalf of the general public. In many such cases, the intervention by our courts has ensured a safeguarding and preservation of our environment, and the securing of justice to the many who cannot approach any legal forum for a redressal of their grievances. Over the years, however, the jurisdiction has also been invoked by a concerned citizenry to halt erring state action during its initial stages so that a continuation of such action may not lead to irreparable harm,



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or cause irretrievable damage or pecuniary loss to the public at large. In the present case, for instance, it is the perception of an unwise or irregular award of a contract, maybe one that has the propensity to cause financial stress to an already beleaguered state exchequer, that has spurred the petitioner to move this court. In our view, what is required of the court in such instances is to look at the materials produced before it and determine whether there is sufficient cause to interfere with the action taken by the State or not? If the answer to that question is in the negative, then prudence demands that we permit the state action to continue till fruition of its stated objective. The scheme of separation of powers that is ingrained in our Constitution requires us to accord such deference to actions of the State Executive.

9. In the instant case, the allegations raised in the writ petition stem from the observations made by an audit party that had enquired into the matter at the instance of the CAG. We are told that, to the many observations made by the audit party, the respondents have preferred detailed replies that would possibly allay the doubts and suspicions entertained by the audit party. At any rate, the findings of the CAG on the issues raised by the audit party, if adverse to the respondents herein, would be placed before the legislative assembly for its scrutiny and comment. The petitioner being the Leader of the Opposition of the Kerala Legislative Assembly would then have sufficient opportunity to seek explanations from the State Executive for such actions as are flagged as irregular or improper by the CAG. As was observed by the Supreme Court in the recent decision in **M/s. Karnataka EMTA Coal Mines Limited and Another v. Central Bureau of Investigation - Neutral**



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Citation - [2024 INSC 623], following the decision in **Arun Kumar Agrawal v. Union of India and Others - [(2013) 7 SCC 1]**, the CAG report is subject to scrutiny by the Legislature concerned and the Government can always offer its views on the said report. Merely because the CAG is an independent constitutional functionary does not mean that after receiving a report from it, and on the Public Accounts Committee [PAC] scrutinising the same and submitting its report, the legislature concerned will automatically accept the said report. The legislature may agree or disagree with the report, or it may accept it as it is or in part. In either event, the views taken by the CAG as regards any loss caused to the exchequer remains only a viewpoint and cannot be accepted as decisive. In the present case, there is no report drawn up by the CAG as yet. Under the circumstances, we are of the view that the writ petition itself, to the extent it raises allegations regarding the manner in which the KFON project is being implemented, is premature. This is aside from the fact that the writ petition, in its challenge to the award of the contract to the BEL consortium, is hopelessly belated.

10. What remains to be considered is whether the petitioner has produced any material that would persuade us to direct a CBI enquiry into the issues flagged by the CAG and forming the basis of the allegations raised in the writ petition regarding the manner of implementation of the KFON project. It is by now well settled through a catena of decisions of the Supreme Court that the High Court cannot mechanically direct a CBI investigation based on allegations made in a writ petition. Rather, the court has to record a *prima facie* case, based on the material on record, against the person against whom



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such CBI enquiry is ordered **[Secretary Minor Irrigation and Rural Engineering Services U.P. v. Sahngoo Ram Arya - [(2002) 5 SCC 521]; State of W.B and Ors. v. Committee for Protection of Democratic Rights West Bengal and Ors. - [(2010) 3 SCC 571]]**. The material available before us does not persuade us to arrive at a *prima facie* finding regarding any illegality or irregularity on the part of the respondents in the matter of implementation of the KFON project. On the contrary, the *prima facie* view that emerges, after considering the explanation offered by the learned Advocate General on behalf of the respondents, is that the KFON project appears to be well on course towards realisation of its stated objectives of (i) setting up a State-wide core optical fibre network that would provide connectivity to 30,000 + Government institutions and (ii) providing free internet to 20 Lakh economically backward families and subsidised internet for others by leveraging the KFON infrastructure. This is more so because we are told that as of now connectivity through the optical fibre network already laid under the project, has been provided to 20,336 Government offices and free internet has been provided to 5484 economically backward families till date. Thus, we see no reason to interfere with the decisions taken by the respondents that are impugned in this writ petition or to interdict the respondents from implementing the project. We also do not see it necessary to entrust an investigation into the allegations raised by the petitioner to the CBI at this stage. As already noticed above, the report of the CAG, as and when made available, can certainly be scrutinized by the Legislature/PAC and appropriate action taken based on their comments thereon. At this stage of the proceedings, we find that no grounds have been made out warranting an



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interference with the KFON project by this court in exercise of its powers under Article 226 of the Constitution of India. The writ petition fails and is accordingly dismissed.

**Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
SYAM KUMAR V.M.
JUDGE**

prp/



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APPENDIX OF W.P(C).NO.1479/2024PETITIONER EXHIBITS:

- Exhibit P1 TRUE COPY OF THE RELEVANT PORTION OF THE BUDGET SPEECH OF THE MINISTER FOR FINANCE DATED 03.03.2017.
- Exhibit P2 TRUE COPY OF G.O.(MS) NO.10/2017/ITD DATED 18.05.2017.
- Exhibit P3 TRUE COPY OF G.O.(MS)NO.10/2018/ITD DATED 10.05.2018 ISSUED BY THE ELECTRONICS AND INFORMATION TECHNOLOGY DEPARTMENT.
- Exhibit P3(a) TRUE COPY OF THE REQUEST FOR PROPOSAL FOR SELECTION OF PROJECT MONITORING AGENCY (PMA) OF KERALA FIBRE OPTIC NETWORK (KFON) AND RELIABLE COMMUNICATION AND DATA ACQUISITION NETWORK DATED JULY 2019, BY KSITIL FOR THE KFON PROJECT AS AVAILABLE IN KFON WEBSITE ([HTTPS://KFON.KERALA.GOV.IN/WP-CONTENT/UPLOADS/2021/02/KFON-PMA-RFPV314.PDF](https://kfon.kerala.gov.in/wp-content/uploads/2021/02/kfon-pma-rfpv314.pdf)).
- Exhibit P4 TRUE COPY OF G.O.(P) NO.16/2017/FIN DATED 06.02.2017 ISSUED BY THE FINANCE (INDUSTRIES & PUBLIC WORKS) DEPARTMENT.
- Exhibit P5 TRUE COPY OF THE LETTER ISSUED BY THE IT SECRETARY TO THE M.D, KSITIL, DATED 16.02.2019.
- Exhibit P6 TRUE COPY OF THE MASTER SERVICE AGREEMENT BETWEEN BEL AND KSITIL DATED 09.03.2019.
- Exhibit P7 TRUE COPY OF THE SANCTION ORDER G.O.(MS)NO.14/2019/ITD DATED 15.07.2019, ISSUED BY THE ELECTRONICS AND IT DEPT.
- Exhibit P7(a) TRUE COPY OF THE ANSWER GIVEN BY THE MINISTER TO UNSTARRED LEGISLATIVE QUESTION NO.48 DATED 08-08-2023 IN THE KERALA LEGISLATIVE ASSEMBLY.
- Exhibit P8 TRUE COPY OF ACKNOWLEDGEMENT RECEIPT DATED 09.10.2019 FROM ASHOKA BUILDCON FOR RECEIPT OF ORDER FROM SRIT.
- Exhibit P9 TRUE COPY OF THE PURCHASE ORDER NO.11055449 DATED 13.11.2019, ISSUED BY ASHOKA BUILDCON TO PRESADIO.



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- Exhibit P10 TRUE COPY OF THE RELEVANT PAGES OF THE 22ND ANNUAL REPORT 2021-22 OF RAILTEL EVIDENCING ITS RELATIONSHIP WITH SRIT IN KSWAN.
- Exhibit P10(a) TRUE COPY OF THE DOCUMENT DOWNLOADED FROM RAILTEL WEBSITE SHOWING THEIR MSPS IN VARIOUS CIRCLES.
- Exhibit-P11 TRUE COPY OF THE CAG'S OBSERVATIONS PERTAINING TO PROCUREMENT OF OPGW FROM CHINA IN VIOLATION OF TENDER CONDITIONS DATED 16.05.2023 WITH ITS TYPED LEGIBLE COPY.
- Exhibit P12 TRUE COPY OF THE REQUEST FOR PROPOSAL FOR THE SELECTION OF MANAGED SERVICE PROVIDER FOR KFON PROJECT BEARING TENDER REF NO: KSITIL/KFON/2022-23/7184 DATED JANUARY, 2023.
- Exhibit P13 TRUE COPY OF THE TENDER SUMMARY REPORT WITH REGARD TO SELECTION OF MANAGED SERVICE PROVIDER FOR KFON PROJECT DATED 02.05.2023.
- Exhibit P14 TRUE COPY OF THE DOCUMENT DOWNLOADED FROM RAILTEL WEBSITE SHOWING M/S CUBE FIBERNET PRIVATE LIMITED AS THE MSP OF RAILTEL IN ANDHRAPRADESH.
- Exhibit-P15 A TRUE COPY OF THE DOCUMENT DOWNLOADED FROM RAILTEL WEBSITE SHOWING M/S LIGHTWAVE TECHNOLOGIES PRIVATE LIMITED AS THE MSP OF RAILTEL IN ODISHA
- Exhibit -P16 A TRUE COPY OF THE WORK ORDER ISSUED BY KSITIL TO SRIT AS MSP DATED 24.03.2023 WITH ANNEXURES.
- Exhibit-P17 A TRUE COPY OF THE REQUEST FOR PROPOSAL OF SUPPLY, INSTALLATION, TESTING & COMMISSIONING OF ISP HARDWARE AND SOFTWARE FOR KERALA FIBRE OPTIC NETWORK BEARING TENDER REF NO: KSITIL/KFON/2022-23/18 DATED JANUARY, 2023, PUBLISHED BY KERALA STATE INFORMATION TECHNOLOGY INFRASTRUCTURE LIMITED
- Exhibit-P18 A TRUE COPY OF THE OFFICE MEMORANDUM DATED 25.07.2016 ISSUED BY THE MINISTRY OF FINANCE, DEPARTMENT OF EXPENDITURE GIVING RELAXATION TO START-UP COMPANIES
- Exhibit-P19 A TRUE COPY OF THE E-MAIL LETTER SENT BY AKSHARA ENTERPRISES TO KSITIL DATED 09.03.2023



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- Exhibit-P20 A TRUE COPY OF LETTER ISSUED BY RAILTEL TO KSITIL DATED 10.03.2023
- Exhibit-P20 (a) TRUE COPY OF LETTER ISSUED BY RAILTEL TO KSITIL DATED 11.03.2023
- Exhibit-P21 A TRUE COPY OF THE REPLY COMMUNICATION DATED 15.03.2023 SENT BY KFON LTD TO M/S. AKSHARA ENTERPRISES PVT. LTD.
- Exhibit-P21 (a) A TRUE COPY OF THE REPLY COMMUNICATION DATED 15.03.2023 SENT BY KFON LTD TO RAILTEL CORPORATION OF INDIA
- Exhibit-P22 A TRUE COPY OF THE REQUEST FOR PROPOSAL OF SUPPLY, INSTALLATION, TESTING & COMMISSIONING OF ISP HARDWARE AND SOFTWARE FOR KERALA FIBRE OPTIC NETWORK BEARING TENDER REF NO: KSITIL/KFON/2023-24/7608 DATED MAY, 2023,
- Exhibit-P22 (a) A TRUE COPY OF THE REPORT DATED 12.07.2023 SUBMITTED BY THE PRINCIPAL ACCOUNTANT GENERAL AUDIT-II WITH ITS TYPED LEGIBLE COPY
- Exhibit-P22 (b) A TRUE COPY OF THE REPORT OF CAG DATED 13.06.2023 ALONG WITH ITS TYPED LEGIBLE COPY
- Exhibit-P22 (c) A TRUE COPY OF THE CAG REPORT DATED 08.06.2023
- Exhibit P23 A TRUE COPY OF THE ANSWER GIVEN BY THE HON'BLE CHIEF MINISTER IN THE LEGISLATIVE ASSEMBLY ON 08.08.2023, WITH ITS ENGLISH TRANSLATION

RESPONDENT EXHIBITS

- Exhibit R5 (a) A true photocopy of the Make in India (MII) notifications. As per Public Procurement (Preference to Make in India) Order 2017 dated 15.06.2017 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India
- Exhibit R5 (b) A true photocopy of the Public Procurement (Preference to Make in India), Order 2017 dated 28.05.2018 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India
- Exhibit R5 (c) A true photocopy of the Public Procurement (Preference to Make in India), Order 2017-Notification of Telecom Products, Services or



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Works dated 29.08.2018 issued by the Department of Telecommunications, Ministry of Communication, Government of India

- Exhibit R5(d) A true photocopy of the Company Incorporation Certificate issued by the Registrar of Companies, Government of India
- Exhibit R5(e) A true photocopy of the Factory License issued by the Chief Inspector of Factories, Haryana
- Exhibit R5(f) A true photocopy of the Certificate No. 5157/ETDC/5/TD/405/LS dated 10.10.2018 issued by the Superintending Engineer of the Uttar Pradesh Power Transmission Corporation Limited, an Uttar Pradesh Government undertaking, proving the experience of LS cable
- Exhibit R5(g) Operational acceptance certificate dated 10.03.2015 issued by the Chief Manager, Power Grid Corporation of India to LS Cable
- Exhibit R5(h) A true photocopy of the Supply, Installation and Commissioning Certificate dated 07.12.2015 issued by the Managing Director, Jaiprakash Power Ventures Ltd proving the experience of LS cable in OPGW
- Exhibit R5(i) A true photocopy of the Minutes of the 9th Meeting of KFON Technical Committee held on 19th December 2019
- Exhibit R5(j) A true photocopy of the letter dated 03.01.2020 from the Chief Engineer (Trans-SO), KSEBL to the Chief Engineer (IT, CR and CAPs), KSEBL (who is the member of the KFON Technical Committee)
- Exhibit R5(k) A true photocopy of the Corrigendum No. KSITIL/MD/KFON/18/CRM-12(1)/2014 with regards to payment terms mentioning the mobilization advance.

//TRUE COPY//

P.S. TO JUDGE