RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

(1) S. B. Civil Writ Petition No. 16017/2026

CNR: RJHC020795102026 | URN: CW / 34026U / 2026

Rajasthan High Court
सत्यमेव जयते
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MIPHI Semicon India Private Limited, (A Subsidiary/Special Purpose Vehicle of Micromax Informatics Limited) is a Company incorporated and registered under the provisions of Companies Act having its registered office at 21/14, Block-A, PH-2, Naraina Industrial Area, Naraina Industrial Estate, New Delhi, South West Delhi- 110028, Delhi through its authorized signatory Mr. Narendra Kumar.

----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur-302005, Rajasthan.
2. Union of India, Ministry of Power (NRE Section) through its Director, Shram Shakti Bhawan, Rafi Marg, New Delhi 110001.
3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), through its Chairman, having its office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur -302005, Rajasthan.
4. Rajasthan Electricity Regulatory Commission (RERC), through its Secretary, Vidhyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur 302001, Rajasthan.
5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.
6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its Office at E-166, Yudhister Marg, C-Scheme, Jaipur-302005, Rajasthan.
7. Rajasthan Urja Vikas and IT Services Limited (RUVITL), Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

----Respondents

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RAJASTHAN HIGH COURT

(2) S. B. Civil Writ Petition No. 7761/2026

CNR: RJHC020391942026 | URN: CW / 17003U / 2026

Ultravibrant Integrated Energy Limited, (formerly known as Ultravibrant Solar Energy Limited, prior to that Ultravibrant Solar Energy Private Limited) is a company incorporated and registered under the provisions of Companies Act having its registered office at Plot No. F-20A, Malviya Industrial Area, Malviya Nagar, Near Hotel Hill View, Jaipur-302017, Rajasthan through its authorized signatory Mr. Nitesh Kumar Jangir S/o Nandlal Jangir, aged about 28 years.

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----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur-302005, Rajasthan.
2. Union of India, Ministry of Power (NRE Section) through Its Director, Shram Shakti Bhawan, Rafi Marg, New Delhi - 110001.
3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), through its Chairman, having its office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur -302005, Rajasthan.
4. Rajasthan Electricity Regulatory Commission (RERC), through its Secretary, Vidhyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur - 302001, Rajasthan.
5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.
6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its office At E-166, Yudhister Marg, C-Scheme, Jaipur-302005, Rajasthan.
7. Rajasthan Urja Vikas and IT Services Limited (RUVITL), Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

----Respondents

(3) S. B. Civil Writ Petition No. 7901/2026

CNR: RJHC020392032026 | URN: CW / 17310U / 2026

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RAJASTHAN HIGH COURT

Diwakar Renewable and Indra Private Limited, is a company incorporated and registered under the provisions of Companies Act having its registered office at 18, Deepak Vatika, Badarwas Gopalpura Bypass, Mansarovar , Jaipur, Rajasthan and Corporate Office at Office No.31 and 31A, 5Th Floor, Mahima Trinity Mall, Swej Farm, Jaipur through its Authorized Signatory Mr. Robin Kumar Goyal S/o. Mr. Rajesh Kumar Goyal, Aged About 33 years.

----Petitioner

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Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur-302005, Rajasthan.
2. Union of India, Ministry of Power (NRE Section) through its Director, Shram Shakti Bhawan, Rafi Marg, New Delhi - 110001.
3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RUVNL), through its Chairman, having its Office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur -302005, Rajasthan.
4. Rajasthan Electricity Regulatory Commission (RERC), through its Secretary, Vidhyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur - 302001, Rajasthan.
5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.
6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its Office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.
7. Rajasthan Urja Vikas and IT Services Limited (RUVITL), Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

----Respondents

(4) S. B. Civil Writ Petition No. 11026/2026

CNR: RJHC020599522026 | URN: CW / 24500U / 2026

Bhagwati Industrial Group Limited, (formerly known as Bhagwati Lacto Vegetarian Exports Private Limited) is a company incorporated and Registered under the provisions of Companies Act having its registered office at 18-1/2, Old Anaj Mandi, Ferozepur Cantt.-152001, Punjab, India through its Authorized

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Signatory Mr. Munish Goyal.

----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur-302005, Rajasthan.
2. Union of India, Ministry of Power (NRE Section) through its Director, Shram Shakti Bhawan, Rafi Marg, New Delhi - 110001.
3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), through its Chairman, having its office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur -302005, Rajasthan.
4. Rajasthan Electricity Regulatory Commission (RERC), through its Secretary, Vidhyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur - 302001, Rajasthan.
5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.
6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its office at E-166, Yudhister Marg, C-Scheme, Jaipur-302005, Rajasthan.
7. Rajasthan Urja Vikas and IT Services Limited (RUVITL), Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

----Respondents

(5) S. B. Civil Writ Petition No. 13197/2026

CNR: RJHC020686562026 | URN: CW / 28934U / 2026

M/s Stockwell Solar Services Private Limited, through its Authorized Signatory, Mr. Bhawani Singh Gaur, having its registered office at Office No. A-303, 304, III Floor, A Block, KGK Lehariya, Sanganer, Jaipur, Rajasthan- 302029.

----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur, Rajasthan- 302005.

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2. Union of India, Ministry of Power (NRE Section) through its Director, Shram Shakti Bhawa, Rafi Marg, New Delhi-110001.

3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), through its Chairman, having its office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur, Rajasthan- 302005.

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4. Rajasthan Electricity Regulatory Commission (RERC), Through its Secretary, Vidyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur, Rajasthan- 302001.

5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur, Rajasthan- 302005.

6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its office at D-166, Ydhister Marg, C-Scheme, Jaipur, Rajasthan-302005.

7. Rajasthan Urja Vikas and IT Services Limited (RUVTL), Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur, Rajasthan- 302005

----Respondents

(6) S. B. Civil Writ Petition No. 18594/2026

CNR: RJHC020882272026 | URN: CW / 38571U / 2026

RRI BESS Charge Private Limited, (a Subsidiary/Special Purpose Vehicle of Rama Reflection India Private Limited) is a company incorporated and registered under the provisions of Companies Act having its registered office at 203, 2Nd Floor, Blue City Mall, Ratanada, Jodhpur, Jodhpur- 342011, Rajasthan through its authorized signatory Mr. Ram Bharosh.

----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur-302005, Rajasthan.

2. Union of India, Ministry of Power (NRE Section) through its Director, Shram Shakti Bhawan, Rafi Marg, New Delhi – 110001.

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3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), through its Chairman, having its office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur -302005, Rajasthan.

4. Rajasthan Electricity Regulatory Commission (RERC), through its Secretary, Vidhyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur - 302001, Rajasthan.

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5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its office at E-166, Yudhister Marg, C-Scheme, Jaipur-302005, Rajasthan.

7. Rajasthan Urja Vikas and IT Services Limited (RUVITL), Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

----Respondents

(7) S. B. Civil Writ Petition No. 20210/2026

CNR: RJHC020961402026 | URN: CW / 42149U / 2026

Vrindavan Solar Private Limited, (a Special Purpose Vehicle of Onward Solar Power Private Limited) is a company incorporated and registered under the provisions of Companies Act having its registered office at 904, Krishna Apra, NSP, Pitampura, Shakurpur I Block, Delhi, North West Delhi- 110034, Delhi through its authorized signatory Mr. Durgesh Kumar Gupta.

----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur-302005, Rajasthan.

2. Union of India, Ministry of Power (NRE Section) through its Director, Shram Shakti Bhawan, Rafi Marg, New Delhi - 110001.

3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), through its Chairman, having its office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur -302005, Rajasthan.

4. Rajasthan Electricity Regulatory Commission (RERC),

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RAJASTHAN HIGH COURT

through its Secretary, Vidhyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur - 302001, Rajasthan.

5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

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6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its office at E-166, Yudhister Marg, C-Scheme, Jaipur-302005, Rajasthan.

7. Rajasthan Urja Vikas and IT Services Limited (RUVITL), Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

----Respondents

(8) S.B. Civil Writ Petition No. 20211/2026

CNR: RJHC020961462026 | URN: CW / 42150U / 2026

MSL Solar Projects-3 Private Limited, (a Special Purpose Vehicle of Mecpower Solutions Limited) a company incorporated and registered under the provisions of Companies Act having its registered office at 4Th Floor, Office No. 02/03, Landmark, Nr Priya Cinema, Sevasi, Vadodara, Vadodara- 391101, Gujarat through its Director Mr. Setul Shah.

----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur-302005, Rajasthan.

2. Union of India, Ministry of Power (NRE Section) through its Director, Shram Shakti Bhawan, Rafi Marg, New Delhi - 110001.

3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), through its Chairman, having its office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur -302005, Rajasthan.

4. Rajasthan Electricity Regulatory Commission (RERC), through its Secretary, Vidhyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur - 302001, Rajasthan.

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RAJASTHAN HIGH COURT

5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its Office at E-166, Yudhister Marg, C-Scheme, Jaipur-302005, Rajasthan.

7. Rajasthan Urja Vikas and IT Services Limited (RUVITL), Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

----Respondents

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(9) S. B. Civil Writ Petition No. 20322/2026

CNR: RJHC020971412026 | URN: CW / 42338U / 2026

Kalka Green Energy Private Limited, (A Special Purpose Vehicle of Mineralia Impex Private Limited) is a Company incorporated and registered under the provisions of Companies Act having its registered office at 109 F R9 Rajnagar, Ghaziabad, Uttar Pradesh, 201002 through its Director and Authorized Signatory Mr. Prashant Pareek.

----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur-302005, Rajasthan.

2. Union of India, Ministry of Power (NRE Section) through its Director, Shram Shakti Bhawan, Rafi Marg, New Delhi - 110001.

3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), through its Chairman, having its office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur -302005, Rajasthan.

4. Rajasthan Electricity Regulatory Commission (RERC), through its Secretary, Vidhyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur - 302001, Rajasthan.

5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

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6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its office at E-166, Yudhister Marg, C-Scheme, Jaipur-302005, Rajasthan.

7. Rajasthan Urja Vikas and IT Services Limited (RUVTIL), Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

----Respondents

(10) S. B. Civil Writ Petition No. 21905/2026

CNR: RJHC021045822026 | URN: CW / 46031U / 2026

RCRS SPV BESS One Private Limited, (a Special Purpose Vehicle of RCRS Innovations Limited) is a company incorporated and registered under the provisions of Companies Act having its registered office at Building No.13, Office No.403, Veer Savarkar Block, Shakarpur, East Delhi - 110092, Delhi, through its Director and Authorized Signatory Mr. Aayush Goyal.

----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur-302005, Rajasthan.

2. Union of India, Ministry of Power (NRE Section) through its Director, Shram Shakti Bhawan, Rafi Marg, New Delhi - 110001.

3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), through its Chairman, having its office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur -302005, Rajasthan.

4. Rajasthan Electricity Regulatory Commission (RERC), through its Secretary, Vidhyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur - 302001, Rajasthan.

5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its office at E-166, Yudhister Marg, C-Scheme, Jaipur-302005, Rajasthan.

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7. Rajasthan Urja Vikas and IT Services Limited (RUVITL), Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

----Respondents

(11) S. B. Civil Writ Petition No. 22046/2026

CNR: RJHC021049372026 | URN: CW / 46424U / 2026

Galaxy V&Y Energies Private Limited, (a Subsidiary/ Special Purpose Vehicle of Galaxy Mining and Royalties Private Limited) having its registered office at SB 113 SB 114, 10Th Floor, Galaxy Avenue, Bapu Nagar, Tonk Road Jaipur-302015 through its Director Sh. Ishan Chaturvedi.

----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Energy Department, Government of Rajasthan, Main Building Government Secretariat Jaipur-302005, Rajasthan.
2. Union of India, Ministry of Power (NRE Section) through its Director, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
3. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), through its Chairman, having its office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur-302005, Rajasthan.
4. Rajasthan Electricity Regulatory Commission (RERC), through its Secretary, Vidhyut Viniyamak Bhawan, Sahakar Marg, Near State Motor Garage, Jaipur -302001, Rajasthan.
5. Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN), through its Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.
6. Rajasthan Renewable Energy Corporation Limited (RRECL), through its Managing Director, having its office at E-166, Yudhister Marg, C-Scheme, Jaipur-302005, Rajasthan.
7. Rajasthan Urja Vikas and IT Services Limited (RUVITL), through its Chairman and Managing Director, having its office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005, Rajasthan.

----Respondents

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For Petitioners : Mr. Vikas Baliya Senior Advocate through Video Conferencing assisted by Mr. Manish Priyadarshi Advocate,
Mr. G.S. Bapna, Senior Advocate assisted by Ms. Mansi Jain Advocate & Ms. Vidhi Jain Advocate.
Mr. Kamlendra Sihag Advocate.
Mr. Pradeep Kumar Advocate.
Mr. Waseem Ahmed Qureshi Advocate.
Mr. Parth Singh Dhakad Advocate.
Mr. Gaurav Choudhary Advocate.
Mr. Kamlendra Singh Rathore Advocate.
Mr. Ranjan Mehta Advocate.
Mr. Keshav Khandelwal Advocate.

For Respondents : Mr. Rajendra Prasad Advocate General assisted by Mr. Sheetanshu Sharma Advocate,
Ms. Harshita Thakral Advocate,
Mr. V.P. Mathur Advocate,
Mr. Kartik Bhatnagar Advocate,
Mr. Naval K. Mali Advocate,
Ms. Astha Sharma Advocate,
Ms. Mudita Sharma Advocate,
Ms. Pragya Sethia Advocate,
Mr. Samit Bishnoi Advocate,
Mr. Lalit Bhardwaj Advocate,
Mr. Sandeep Pathak Advocate,
Mr. Shashwat Purohit Advocate.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

REPORTABLE

Date of conclusion of arguments	**::**	**03.11.2026**
Date on which judgment was reserved	**::**	**03.11.2026**
Whether the full judgment or only the operative part is pronounced	**::**	**Full Judgment**
Date of pronouncement	**::**	**18.11.2026**

1. Since all the above writ petitions have arisen out of the same cause of action and questions for consideration in all the above petitions are also similar, therefore, with the consent of learned counsel for both the sides, they were heard analogously

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and are being decided by this common judgment. For the sake of convenience and ease of understanding, the facts narrated in S.B. Civil Writ Petition No. 7761/2026 (Ultravibriant Integrated Energy Limited vs. State of Rajasthan & Others) are being taken into consideration, unless the context otherwise requires.

2. Facts, in brief, as pleaded by the petitioners are that:

2.1. The petitioner-companies are engaged in the renewable energy sector, including Battery Energy Storage Systems (BESS) and solar EPC services. The Ministry of Power, Government of India, issued Guidelines dated 10.03.2022 for procurement and utilisation of Battery Energy Storage Systems under Section 63 of the Electricity Act, 2003 (hereinafter to be referred as 'the Act of 2003'). Subsequently, the Ministry introduced a Viability Gap Funding (VGF) Scheme, supported through the Power System Development Fund (PSDF), vide communication dated 09.06.2025, providing financial assistance up to Rs.18 lakh per MWh for development of BESS projects. The scheme contemplated implementation through tariff-based competitive bidding under the Build-Own-Operate model (BOO model) and prescribed the execution of the Battery Energy Storage Purchase Agreement (BESPA) within the stipulated period.

2.2. The Government of Rajasthan nominated Rajasthan Rajya Vidyut Utpadan Nigam Limited (for short 'RVUNL'), (Respondent No. 3) as the Battery Energy Storage System Implementing Agency and Intermediary Procurer. Accordingly, Respondent No.3, in consultation with the concerned State agencies, finalised the Request for Selection (RfS) along with the draft Battery Energy Storage Purchase Agreement (BESPA) and

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Battery Energy Storage Sale Agreement (BESSA), for establishment of 500 MW/2000 MWh standalone BESS projects in the State of Rajasthan.

2.3. Respondent No.3 issued the RfS dated 08.08.2025, inviting bids for establishment of the aforesaid BESS projects through tariff-based global competitive bidding, with VGF support under the BOO model. The petitioners participated in the bidding process after examining the terms and conditions of the RfS and furnished bid security as prescribed. Thereafter, The technical bids were opened on 04.11.2025, wherein 27 bidders, including the petitioner, were found technically qualified. Thereafter, the financial bids were opened on 18.11.2025, and 25 bidders were found eligible to participate in the e-reverse auction. In the ensuing auction, six bidders, including the petitioner, emerged successful by quoting an identical lowest tariff of Rs.2,85,000/- per MW per month.

2.4. Pursuant thereto, Respondent No.3 issued Letters of Intent dated 03.12.2025 to the successful bidders. The petitioner accepted the Letter of Intent on 05.12.2025. Thereafter, Respondent No.3 issued the Letter of Award dated 19.12.2025, which was duly accepted by the petitioner on 23.12.2025. Similar process also took place in the cases of other petitioners. So far as Petitioners in S.B. Civil Writ Petition No. 16017/2026 and S.B. Civil Writ Petition No. 13197/2026 are concerned, they have also executed BESPA pursuant to aforesaid process and also submitted performance guarantee.

2.5. Thus, according to the petitioner, upon issuance and acceptance of the Letter of Award, the competitive bidding process

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stood concluded and the contractual relationship between the parties stood crystallised on the basis of the terms and conditions of the RfS and the Letter of Award, including the discovered tariff and the corresponding obligations of the parties.

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2.6. As per the petitioners, on the date of issuance as well as acceptance of the Letter of Award, no condition prescribing minimum 20% local content, including the requirement of indigenously developed EMS software, formed part of the RfS, the bidding conditions or the Letter of Award.

2.7. However, immediately thereafter, the Ministry of Power, Government of India, vide communication dated 24.12.2025, issued certain directions concerning implementation of BESS projects under the VGF Scheme. The said communication clarified that BESS was not included in the list of items notified for exclusive procurement from Class-I local suppliers under the Public Procurement (Preference to Make in India) framework. The aforesaid communication also stipulated that procuring entities should ensure minimum local content of 20% of the total project cost, including indigenously developed EMS software.

2.8. The petitioners have emphasised upon Clause 6 of the aforesaid communication, which dealt with cases where tenders had already been invited without any specific stipulation regarding local content. According to the petitioners, the said clause merely permitted the procuring entities to obtain an undertaking from the bidders and proceed with the award of contracts accordingly. It did not authorise the retrospective imposition of a fresh substantive condition upon contracts which had already been awarded and accepted.

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2.9. Thereafter, Respondent No.3 issued communication dated 07.01.2026, relying upon the Ministry's letter dated 24.12.2025, requiring the successful bidders to comply with the minimum 20% local content requirement and furnish an undertaking within seven days. The petitioners contended that the said direction amounted to the introduction of an additional substantive obligation after conclusion of the bidding process and acceptance of the Letter of Award, or execution of BESPA, as the case may be.

2.10. The petitioners in all the above writ petitions, except in S.B. Civil Writ Petition No. 20211/2026 (MSL Solar Projects Private Ltd. Vs. State of Rajasthan & Others), furnished an undertaking dated 10.01.2026, stating that they would ensure minimum 20% local content in the project, including indigenously developed EMS software. The petitioners subsequently contended that the undertaking was furnished in response to the insistence of Respondent No.3 which is also affected by the misleading facts stated in communication dated 07.01.2026 and could not be construed as a voluntary renegotiation or consensual alteration of the concluded contractual arrangement.

2.11. Meanwhile, Respondent No.3 extended the timeline for execution of BESPA vide office order dated 19.01.2026. Thereafter, vide communication dated 02.02.2026, the successful bidders were called upon to furnish Performance Bank Guarantees (PBG)/Insurance Surety Bonds and proceed with execution of BESPA.

2.12. The petitioner sought extensions vide letters dated 10.02.2026, 19.02.2026, 20.02.2026 and 02.03.2026, stating that

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the project involved a relatively new category of infrastructure, therefore, the banking institutions required additional time for internal risk assessment and credit appraisal for issuance of the requisite performance security.

2.13. In the meantime, Respondent No.3 filed petition before the Rajasthan Electricity Regulatory Commission (RERC) under Section 63 of the Act of 2003, seeking adoption of the tariff discovered through the competitive bidding process. The RERC vide order dated 06.03.2026 adopted the discovered tariff.

2.14. The petitioner has further contended that the Ministry's communication dated 24.12.2025, which introduced the aforesaid local content requirement, was not placed before the Commission in the tariff adoption proceedings, despite having a bearing upon the project structure, procurement strategy and commercial obligations of the successful bidders.

2.15. Respondent No.3 thereafter extended the time for furnishing PBG and execution of BESPA up to 24.03.2026 vide communication dated 10.03.2026. Respondent No.3, vide communication dated 24.03.2026, pointed out that the petitioner had failed to furnish PBG within the stipulated period and granted time up to 03.04.2026, while indicating that failure to comply could result in cancellation of the allotted BESS capacity. The petitioner, vide communication dated 03.04.2026, informed Respondent No.3 that it had initiated the process for issuance of performance security and expected to furnish the same by 08.04.2026.

2.16. Thereafter, Respondent No.3 issued notice dated 10.04.2026, calling upon the petitioner to furnish the requisite

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performance security by 22.04.2026 and show cause regarding forfeiture of bid security. The petitioner submitted a detailed reply/representation dated 15.04.2026, explaining the circumstances responsible for the delay and raising objections concerning the post-award imposition of the local content requirement, its impact upon project economics and the consequential difficulties in arranging financial security.

2.17. The petitioners thereafter approached this Court challenging the communication dated 07.01.2026 and notice dated 10.04.2026, principally on the ground that the respondents could not have introduced or enforced a fresh substantive contractual obligation after issuance and acceptance of the Letter of Award dated 19.12.2025, or execution of BESPA, as the case may be.

3. Respondent No.3 has opposed the writ petition by way of filing reply to the writ petition, contending therein that:

3.1. The dispute arises out of a purely commercial contractual arrangement, therefore, the petitioner having voluntarily participated in the tender process and accepted the Letter of Award without protest cannot invoke the extraordinary jurisdiction of this Court to avoid its contractual obligations.The petitioner was fully aware of the terms of the RfS, the Letter of Intent and the Letter of Award and was specifically obligated to furnish PBG/Insurance Surety Bond and execute BESPA within the prescribed timelines. The respondent has relied upon Clauses 1.12, 1.13 and 1.23 of the Letter of Award, contending that Clause 1.23 expressly incorporated compliance with the Public Procurement (Preference to Make in India) Order, 2017, and subsequent notifications of the 2021 issued by the Government of

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India from time to time.The Ministry's communication dated 24.12.2025 did not introduce any new contractual obligation but merely clarified the existing policy framework. It is contended that the communication was issued under the PSDF-supported VGF Scheme and was binding upon all implementing agencies and successful bidders.

3.2. Clause 6 of the Ministry's communication dated 24.12.2025 permitted the procuring entities, in cases where tenders had already been invited without specific local content stipulations, to obtain undertakings from the bidders and proceed with the award of contracts. It is contended that the communication dated 07.01.2026 was issued uniformly to all successful bidders in exercise of the aforesaid permission and did not alter the bidding methodology, discovered tariff or capacity allocation.

3.3. The petitioners in almost all the petitions,(except in S.B. Civil Writ Petition No. 13197/2026), voluntarily submitted an undertaking dated 10.01.2026, without any protest, reservation or qualification, agreeing to comply with the minimum 20% local content requirement, including deployment of indigenously developed EMS software. Having furnished such undertaking, the petitioners are estopped from challenging the applicability of the requirement or characterising the same as an additional contractual burden.

3.4. In the Minutes of Meeting dated 16.04.2026 of the Ministry of Power, it has been clarified therein that no amendment had been made to the parent guidelines and the communication

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dated 24.12.2025 was merely a clarification of the existing policy framework.

3.5. The petitioners in above writ petitions repeatedly sought extensions for submission of PBG and execution of BESPA (except the petitioners in S.B. Civil Writ Petition No. 16017/2026 and S.B. Civil Writ Petition No. 13197/2026) on the ground of internal banking, administrative and financial difficulties. Such circumstances are commercial risks attributable to the petitioner and cannot constitute force majeure or a valid justification for failure to perform contractual obligations.

3.6. The petitioners initially sought time to furnish performance security without raising any objection, therefore, the subsequent objection raised by the petitioners against the local content requirement is nothing but an afterthought.

3.7. Vide email dated 30.01.2026 addressed to the Rajasthan Electricity Regulatory Commission, the petitioner stated that it had no objection to the petition filed by Respondent No.3 seeking adoption of tariff. Hence, having expressed no objection to the tariff adoption proceedings, the petitioner cannot subsequently question the bidding framework or the tariff adopted by the Commission.

3.8. The petitioners are seeking to avoid their own contractual defaults and frustrate implementation of an important public infrastructure project.

4. No reply to the writ petition was filed on behalf of the Union of India.

5. Mr. G. S. Bapna, learned Senior Advocate, Mr. Vikas Balia, learned Senior Advocate and Mr. Pradeep Choudhary,

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learned counsel appearing for the petitioners vehemently argued that:

5.1. The controversy in the present case is not relating to any ordinary breach of contractual obligation but relates to the arbitrary action of a State instrumentality in introducing a fresh and substantive condition after the bidding process had attained finality and the Letter of Award had already been issued and accepted, or BESPA has been executed.

5.2. The petitioners submitted their respective bids after calculating the cost and other financial aspects strictly in accordance with the RfS dated 08.08.2025 and the conditions disclosed therein. The financial bids were opened on 18.11.2025, thereafter, the Letter of Intent was issued on 03.12.2025 and later on the Letter of Award was issued on 19.12.2025, which was accepted on 23.12.2025. Thus, the contractual relationship between the parties stood concluded before the Ministry issued its communication dated 24.12.2025. Moreso, in S.B. Civil Writ Petition No. 16017/2026 and S.B. Civil Writ Petition No. 13197/2026, even BESPA has already been executed.

5.3. The requirement of minimum 20% local content, including the stipulation concerning indigenously developed EMS software, was neither disclosed in the tender documents nor incorporated in the Letter of Award. The requirement has a direct bearing upon the technical specifications, sourcing arrangements, project cost, financial modelling and commercial viability of the project. Its subsequent introduction, therefore, cannot be regarded as a mere administrative clarification.

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5.4. Clause 6 of the Ministry's communication dated 24.12.2025 has been completely misconstrued by Respondent No.3. The said clause contemplated obtaining undertakings in cases where tenders had already been invited without any local content stipulation so that the procuring entities could proceed with the award of contracts. It did not authorise the reopening or modification of contracts which had already been awarded by issuing letter of award or by executing BESPA.

5.5. The said communication dated 24.12.2025 was meant for Class-I local suppliers, whereas the petitioners are non-local suppliers, hence, the respondents cannot apply the said communication upon the petitioners.

5.6. Clause 1.23 of the Letter of Award cannot be interpreted as conferring an unrestricted power upon Respondent No.3 to introduce any additional commercial obligation at any stage after award. Such a clause could only incorporate those subsequent governmental directions which were legally applicable to the contract and could not be employed to retrospectively alter the essential commercial terms of an already concluded arrangement.

5.7. The undertaking dated 10.01.2026 was furnished on account of distorted and misleading facts presented and due to the insistence of Respondent No.3 on the basis of misrepresented facts and could not be treated as a mutually negotiated amendment of the concluded contract. In S.B. Civil Writ Petition No. 13197/2026, no such undertaking has been submitted by the petitioner.

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5.8. No novation of contract or alteration in terms of Section 62 of the Indian Contract Act, 1872, could be brought about unilaterally by the procuring agency. Even clause 7 of Public Procurement (Preference to Make in India) Order, 2017 also make it clear that purchase preference of Make in India shall be specified in terms of Notice inviting Tender or other forms of procurement solicitation and shall not be varied during a particular procurement transaction.

5.9. The respondents, being State instrumentalities, were bound to act fairly, reasonably and consistently with their own representations. The petitioner had participated in the bidding process on the legitimate expectation that the contractual obligations would remain governed by the disclosed tender conditions and the Letter of Award. The subsequent imposition of a fresh obligation defeated such legitimate expectation and violated Article 14 of the Constitution of India.

5.10. With regard to the objection of maintainability, it was argued that the petitioner was not seeking adjudication of an ordinary monetary claim or enforcement of a disputed contractual entitlement. Rather, it was challenging an arbitrary executive action of a State instrumentality which sought to impose an obligation dehors the concluded contractual framework. The existence of a contractual relationship, therefore, could not oust the constitutional jurisdiction of this Court.

5.11. In support of aforesaid submissions, learned counsels for the Petitioners relied upon the judgments rendered by the Hon'ble Supreme Court in the cases of **ABL International Ltd. & Another vs. Export Credit Guarantee Corporation of India**

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Ltd. & Others, (2004) 3 SCC 553, Joshi Technologies International Inc. vs. Union of India & Others, (2015) 7 SCC 728, Unitech Limited & Others Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) & Others, (2021) 16 SCC 35, Uttar Pradesh Power Transmission Corporation Limited & Another vs. CG Power & Industrial Solutions Limited & Another, (2021) 6 SCC 15, Padia Timber Company Private Limited vs. Board of Trustees of Visakhapatnam Port Trust through its Secretary, (2021) 3 SCC 24, Dresser Rand S.A. vs. Bindal Agro Chem Ltd., (2006) 1 SCC 751, Mihan India Limited vs. GMR Airports Limited & Others, 2022 SCC OnLine SC 574, Reliance Energy Ltd. & Another vs. Maharashtra State Road Development Corpn. Ltd. & Others, (2007) 8 SCC 1, W. B. State Electricity Board vs. Patel Engineering Co. Ltd. & Others, (2001) 2 SCC 451, Surguja Bricks Industries Company vs. State of Chhattisgarh & Others, 2025 SCC OnLine SC 2916, Prakash Asphaltings & Toll Highways (India) Limited vs. Mandeepa Enterprises & Others (2026) 4 SCC 310, Citi Bank N.A. vs. Standard Chartered Bank & Others, (2004) 1 SCC 12, Suresh Kumar Wadhwa vs. State of Madhya Pradesh & Others, (2017) 16 SCC 757, Bharat Sanchar Nigam Limited & Another vs BPL Mobile Cellular Limited & Others, (2008) 13 SCC 597, Delhi Development Authority & Another vs. Joint Action Committee, Allottee of SFS Flats & Others, (2008) 2 SCC 672, Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh & Others, (1979) 2 SCC 409, IFGL Refractories Ltd. Vs. Orissa State Financial Corporation and

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Others, 2026 SCC OnLine SC 28, Union of India & Others vs. Hindustan Development Corporation & Others, (1993) 3 SCC 499, **Food Corporation of India vs. M/s Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71**, **Kumari Shrilekha Vidyarthi & Others vs. State of U.P. & Others, (1991) 1 SCC 212** and decision of Bombay High Court in **GMR Airports Limited & Another vs. Mihan India Limited & Another, (2021) SCC OnLine Bom 2132**.

6. Per contra, Mr. Rajendra Prasad, learned Advocate General appearing on behalf of the State of Rajasthan, ably assisted by Mr. Shashwat Purohit and Mr. Sandeep Pathak, learned counsel for Respondent No.3 and Mr. Samit Bishnoi, learned counsel for Union of India while opposing the writ petition strenuously argued that:

6.1. The Letter of Award was expressly subject to compliance with the Public Procurement (Preference to Make in India) Order, 2017, and subsequent governmental notifications issued in the year 2021. The petitioners were, therefore, bound by the Ministry's communication dated 24.12.2025, which merely clarified the existing policy position and did not introduce any fresh condition.

6.2. The requirement of procuring local content was already embedded in the prevailing policy framework of the Government of India much prior thereto. In this regard, reference was made to Clause 1.23 of the LoA, which specifically mandates compliance with the Public Procurement (Preference to Make in India) Order, 2017, issued by the Ministry of Commerce and Industry with the objective of promoting domestic manufacturing and production of

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goods and services in India, thereby enhancing income and employment opportunities. The aforesaid Order defines Class-I and Class-II Local Suppliers as well as Non-Local Suppliers, prescribes their respective eligibility criteria and provides for purchase preference to promote local content. In particular, Clause 5 prescribes the minimum local content requirements, Clause 9 provides for verification thereof, and Clause 10 mandates specification of local content requirements and eligibility conditions in every tender and other procurement solicitation. It was further submitted that the aforesaid policy was supplemented by the Order dated 16.11.2021 issued by the Ministry of Power, Government of India, which contains, in its Annexure-I, a detailed list of goods and services in respect of which sufficient local capacity is available. Admittedly, BESS finds specific mention in the aforesaid policy framework. Thus, according to learned Advocate General, the requirement relating to local content was already in existence and within the contemplation of the parties much before issuance of the RfS and the LoA and its subsequent enforcement cannot be characterised as introduction of an entirely new or unforeseen condition.

6.3. The communication dated 07.01.2026 was issued uniformly to all successful bidders and was only intended to secure compliance with the Central Government's directions. The petitioners, in most of the writ petitions, themselves accepted the requirement by furnishing undertaking dated 10.01.2026, hence, they cannot now be permitted to resile from their own respective undertaking.

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6.4. The petitioners failed to furnish PBG and execute BESPA (except in S.B. Civil Writ Petition No. 16017/2026 and S.B. Civil Writ Petition No. 13197/2026) despite repeated extensions. Their inability to arrange performance security was attributable to their own internal financial and banking arrangements. Such commercial difficulties cannot be treated as lawful justification for non-performance.

6.5. The petitioners had expressly conveyed their no-objection to the tariff adoption proceedings before the RERC and cannot now question the bidding process or its commercial consequences. The respondents have acted in furtherance of a time-bound public infrastructure project and any interference by this Court would adversely affect the implementation of the VGF Scheme.

6.6. While demonstrating the importance and urgency of installation of BESS, learned Advocate General sought to explain that BESS is a technology designed to store electricity generated from sources such as solar power, wind power or the electricity grid and supply the stored energy whenever required. It operates on the principle of rechargeable batteries, wherein electrical energy is stored in the form of chemical energy and subsequently converted back into electrical energy for use. A BESS generally comprises battery cells, an inverter, a Battery Management System and an Energy Management System, which collectively regulate the storage, conversion, safety and supply of electricity. The principal function of BESS is to store surplus electricity during periods of excess generation or low demand and release it during

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periods of high demand or reduced power generation. For instance, electricity generated through solar power during the daytime can be stored in BESS and supplied during evening or night hours when solar generation is unavailable. The system also facilitates efficient utilisation of renewable energy, helps maintain grid stability, manages peak-hour demand and reduces dependence on conventional sources of electricity. It was also stated that in Rajasthan, excess electricity is being generated through wind mill and solar panel system, but on account of paucity of energy storage facility, enabling electricity generated at one point of time to be utilised at a later stage, the excess electricity generated in the State goes waste. Hence, RfS was issued for expediting the installation of BESS, which would be in the larger interest of citizens of the State. However, stay orders operating in these cases have virtually stalled the entire project.

6.7. While explaining Viability Gap Funding (VGF) scheme for development of BESS supported through PSDF issued by Ministry of Power, Government of India, learned Advocate General vehemently argued that as per guidelines, for getting the funding under the above scheme, project of BESS is required to be commissioned with a period of 18 months from the date of execution of BESPA and the eligible entity shall also be responsible for compliance with the provisions of General Financial Rules, 2017 and VGF amount (Grant-in-aid) shall be subject to chapter 9 of the GFR, 2017 read with Government of India’s decisions from time to time. Thus, as per learned Advocate General, where GFR, 2017 and guidelines of central government provide for

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procurement of minimum local content and when such VGF scheme was also part of RfS in question, the petitioners cannot raise an argument that new conditions have been imposed upon them subsequent to letter of Award/ execution of BESA, as the case may be, in the form of communication dated 24.12.2025 of the Ministry followed by letter/communication dated 07.01.2026 requiring the petitioners to give undertaking in respect of the provisions already prescribed in VGF scheme appended to the RfS.

6.8. In support of the aforesaid submissions, reliance has been placed by learned counsels for the respondents upon the judgments of the Hon'ble Supreme Court in **Radhakrishna Agarwal & Others vs. State of Bihar & Others, (1977) 3 SCC 457, State of Punjab & Another vs. Devans Modern Breweries Ltd. & Another, (2004) 11 SCC 26, Energy Watchdog vs. Central Electricity Regulatory Commission & Others, (2017) 14 SCC 80, National High Speed Rail Corporation Limited vs. Montecarlo Limited & Another, (2022) 6 SCC 401, N.G. Projects Limited vs. Vinod Kumar Jain & Others, (2022) 6 SCC 127** and **Jaipur Vidyut Vitran Nigam Limited & Others vs. MB Power (Madhya Pradesh) Limited & Others, (2024) 8 SCC 513.**

7. I have considered the rival submissions advanced by learned counsel for the parties, examined the pleadings and material placed on record as also considered the legal position.

8. At the outset, it is necessary to delineate the controversy. The petitioners are not challenging the authority of the Central Government to formulate a policy for promotion of

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indigenous manufacturing or to prescribe local content requirements in public procurement. Nor are the petitioners seeking any exemption from a statutory requirement which was applicable to the subject transaction from its inception. The limited controversy is whether the particular requirement communicated by the Ministry on 24.12.2025 could be imposed upon the petitioner after issuance and acceptance of the Letter of Award dated 19.12.2025 (or execution of BESPA in two writ petitions), when the original bidding documents did not contain such a substantive stipulation.

9. It is equally necessary to observe that the respondent's objection that the dispute involved in these writ petitions being purely of contractual nature cannot be accepted as a ground to deny consideration to the petitioners in the present writ petitions. The existence of a contractual relationship with the State does not confer immunity upon the State or its instrumentalities from the constitutional obligation to act fairly, reasonably and without arbitrariness.

10. In **ABL International Ltd. (supra),** the Hon'ble Supreme Court recognised that a writ petition arising out of a contractual obligation is maintainable where the action of a State instrumentality involves violation of Article 14 of the Constitution of India. Guidelines laid down by the Hon’ble Supreme Court in this regard are as under:

> *"**27.** From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:*
>
> *(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*

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(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

***28.** However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] .) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.*

11. The position was subsequently explained in **Joshi Technologies International Inc. (supra),** wherein it was held that although the writ jurisdiction is not ordinarily exercised for adjudication of purely private contractual disputes, the High Court can intervene where the action of the State has a public law element and is arbitrary, unreasonable or unfair.

12. Judgment delivered in the case of **ABL International Ltd.(supra)** was subsequently followed by the Hon'ble Supreme Court in **Unitech Limited & Others (supra),** wherein it was held as under:

*"**39.** A two-Judge Bench of this Court in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. [ABL International], (2004) 3 SCC 553 analysed a long line of precedent of this Court[15] to conclude that writs under Article 226 are maintainable for asserting contractual rights against the State, or its instrumentalities, as defined under Article 12 of the Indian Constitution.*

***39.1.** Speaking through N. Santosh Hegde, J. the Court held : (ABL International case [ABL International Ltd. v. Export*

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Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , SCC p. 572, para 27)

> *"27. … the following legal principles emerge as to the maintainability of a writ petition:*
>
> *(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*
>
> *(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.*
>
> *(c) A writ petition involving a consequential relief of monetary claim is also maintainable."*

This exposition has been followed by this Court, and has been adopted by the three-Judge Bench decisions of this Court in State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 and Popatrao Vyankatrao Patil v. State of Maharashtra, (2020) 19 SCC 241.

39.2. *The decision in ABL International, cautions that the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters.*

39.3. *Article 23.1 of the development agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a State instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226[18].*

39.4. *If the State instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of Article 226 of the Constitution would lie. This principle was recognised in ABL International: (ABL International case, SCC p. 572, para 28)*

> *"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] .) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."*
>
> *(emphasis supplied)*

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39.5. *Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of State power or a misuse of authority.*

39.6. *In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does (sic not) oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.*

39.7. *The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh High Court in this case, when the foundational representation of the contract has failed. TSIIC, a State instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal."*

13. Similar view has also been taken by the Hon'ble Supreme Court in the case of **Uttar Pradesh Power Transmission Corporation Limited & Another (supra),** wherein the Hon'ble Supreme Court reiterated the following principles:

> *"**66.** Even though there is an arbitration clause, the petitioner herein has not opposed the writ petition on the ground of existence of an arbitration clause. There is no whisper of any arbitration agreement in the counter-affidavit filed by UPPTCL to the writ petition in the High Court. In any case, the existence of an arbitration clause does not debar the court from entertaining a writ petition.*
>
> ***67.** It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly : (i) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii)*

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where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge. Reference may be made to Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1 and Pimpri Chinchwad Municipal Corpn. v. Gayatri Construction Co., (2008) 8 SCC 172, cited on behalf of Respondent 1.

68. *In Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107, this Court allowed the appeal from an order of the High Court dismissing a writ petition and set aside the impugned judgment of the High Court as also the impugned order of the Indian Oil Corporation terminating the dealership of the appellants notwithstanding the fact that the dealership agreement contained an arbitration clause.*

69. *It is now well settled by a plethora of decisions of this Court that relief under Article 226 of the Constitution of India may be granted in a case arising out of contract. However, the writ jurisdiction under Article 226, being discretionary, the High Courts usually refrain from entertaining a writ petition which involves adjudication of disputed questions of fact which may require analysis of evidence of witnesses. Monetary relief can also be granted in a writ petition."*

14. The principle emerging from the aforesaid judgments is that the nature of the action complained of, rather than merely the existence of a contract, determines the availability of judicial review. In the present case, the challenge is directed against the action of a State instrumentality seeking to impose a fresh obligation upon a successful bidder after conclusion of a public competitive bidding process. Such action has an evident public law element, particularly because it affects transparency, equality of opportunity and the sanctity of public procurement.

15. The judgments relied upon by Respondent No.3, including **Radhakrishna Agarwal & Others (supra), Energy Watchdog (supra), Jaipur Vidyut Vitran Nigam Limited & Others vs. MB Power (Madhya Pradesh) Limited & Others (supra),** and **Joshi Technologies International Inc. (supra)**, do not lay down an absolute prohibition against exercise of writ jurisdiction in contractual matters. They caution against using

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Article 226 of the Constitution of India as a substitute for ordinary contractual remedies or for avoiding voluntarily undertaken obligations. They do not authorise a State instrumentality to act arbitrarily or unilaterally rewrite the terms of an existing contract. Thus, the preliminary objection raised by the respondents relating to maintainability of the writ petitions is hereby rejected.

16. The chronology of events is quite significant and not seriously disputed. The petitioners participated in the tender process under the RfS dated 08.08.2025. Their respective bids were evaluated, the financial bids were opened and the e-reverse auction was also conducted. Thereafter, the Letter of Intent was issued on 03.12.2025 and the Letter of Award was issued on 19.12.2025. The petitioners accepted the Letter of Award on 23.12.2025. In two writ petitions, i.e., in S.B. Civil Writ Petition No. 16017/2026 and S.B. Civil Writ Petition No. 13197/2026, even BESPA was executed between the contracting parties.

17. It is also not under dispute that the Ministry's communication dated 24.12.2025, which is the foundation of the subsequent local content requirement, came into existence only after issuance as well as acceptance of the Letter of Award.

18. Upon consideration of the pleadings, documents and correspondence on record, this Court is satisfied that prior to above communication dated 24.12.2025, the parties had reached consensus on all essential terms of the transaction. The offer made by the petitioners in the form of bids was accepted by the respondents and accordingly letter of Award was issued in favour of the petitioners, which was again accepted by the petitioners

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unqualifiedly and without any further condition, as required by Section 7 of the Indian Contract Act, 1872 (for short 'the Act of 1872'). The material terms, including the subject matter, consideration, and respective obligations of the parties were apparently definite and agreed. The proceedings till the date of issuance of award satisfy the requirements of Section 10 of the Act of 1872, namely free consent, competency of parties, lawful consideration, and lawful object. The subsequent conduct of the parties, including letter of award further corroborates the existence of a binding agreement. In terms of Section 2(h) of the Act of 1872, such agreement is enforceable by law and, therefore, constitutes a valid contract binding both the parties. In the case of **Padia Timber Company Private Limited (supra)**, the Hon'ble Supreme Court held that for constituting a concluded contract acceptance must be absolute and unqualified, which is admittedly in existence in the present cases.

19. In the case of **Dresser Rand S.A. (supra),** even a letter of intent with further stipulation that formal contract shall be executed later on, was considered by the Hon'ble Supreme Court as concluded contract. The Hon'ble Supreme Court held as under:

> *"**40.** It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether it is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. Chitty on Contracts (para 2.115 in Vol. 1, 28th Edn.) observes that where parties to a transaction exchanged*

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letters of intent, the terms of such letters may, of course, negative contractual intention; but, on the other hand, where the language does not negative contractual intention, it is open to the courts to hold that the parties are bound by the document; and the courts will, in particular, be inclined to do so where the parties have acted on the document for a long period of time or have expended considerable sums of money in reliance on it. Be that as it may."

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20. In the case of **GMR Airports Limited & Another vs. Mihan India Limited & Another (supra)**, the Bombay High Court has considered the letter of award as a concluded contract by observing as under:

*"**50.** Apart from what is stated above, letter dated 7-3-2019 leaves no choice with Petitioner 1 to reject it without suffering the consequence of forfeiture and appropriation of the bid security amount furnished by Petitioner 1 with no claim available against Respondent 1 as regards such forfeiture. This is really a Hobson's choice; a choice to show on face but a compulsion beneath the face. This condition of letter dated 7-3-2019 was in accordance of Clause 3.3.5, and it being what it was, Petitioner 1 accepted as it was. Now, can Respondent 1 justifiably say that letter dated 7-3-2019 was a harmless communication only informing Petitioner 1 that its bid was accepted and nothing more? The answer is no, given the consequences that are threatened to visit Petitioner 1, if it rejected the acceptance. It, therefore, does not matter that the letter dated 7-3-2019 does not contain the sentence "letter of award is issued to you". It is the intention of the parties which, together with spirit and substance of an act, decides the nature of an act. The forfeiture clause together with the contents of the said letter and attending circumstances clearly points out that the intention of the parties was to treat the said letter as letter of award and they proceeded further considering it to be so, irrespective of its nomenclature and some play of words in it.*

***51.** We, therefore, find that the letter of acceptance dated 7-3-2019 is indeed a letter of award and not a letter merely communicating that the bid is accepted and this letter of award has resulted into a concluded contract between the parties."*

21. Aforesaid judgment rendered by the Bombay High Court was put to challenge before the Hon'ble Supreme Court and after meticulous examination, the judgment was affirmed by the Hon'ble Supreme Court in the case of **Mihan India Limited vs.**

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GMR Airports Limited & Others (supra), by giving following observations:

> *"**18.1.** (i) Whether the letter dated 7-3-2019 endorsing GAL as a selected bidder and on communication by GAL on a duplicate copy to MIL on 12-3-2019 would amount to LoA in terms of Clause 3.3.5 of RFP and, would it be treated as a concluded contract?*
>
> ***35.** As per the above discussion, we do not have any hesitation to hold that letter dated 7-3-2019 is an LoA after selecting GAL as the highest bidder and it acquired the status of concessionaire. It was only the concession agreement required to be executed and there was no fault on the part of GAL in complying with the provisions of RFP. The conduct of the appellant MIL also indicates that concession agreement is required to be executed by concessionaire (GAL). Thus, after proposal of the highest revenue share on issuing the letter of acceptance and also as reflected by conduct, it has become a concluded contract.*
>
> ***72.** In view of the discussion made hereinabove, we are of the considered opinion that the findings recorded by the High Court allowing the writ petition are in accordance with law. Those findings do not suffer from any illegality, warranting interference by this Court in exercise of the power under Article 136 of the Constitution. All these appeals are hereby dismissed. The parties to bear their own costs."*

22. It is a settled principle of contract law that a concluded contract comes into existence when there is an offer and an unconditional acceptance thereof, provided the parties intended to create legal relations and the essential terms of the transaction stand settled. The nomenclature of the document or the subsequent execution of a formal agreement is not, by itself, decisive. The intention of the parties has to be gathered from the tender documents, the Letter of Award and the surrounding circumstances. In the present case, the Letter of Award identified the successful bidder, the awarded capacity, the discovered tariff and the governing terms and conditions. The petitioner accepted the same without any reservation. Thus, the essential commercial elements of the transaction had been determined and accepted.

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23. The contention that PBG was required to be furnished and BESPA was required to be executed subsequently does not, by itself, establish that no contractual relationship had come into existence. The performance security and execution of BESPA were subsequent contractual obligations and implementation milestones. The subsequent execution of BESPA was intended to give effect to the awarded project in accordance with the terms already settled.

24. Consequently, the communication dated 24.12.2025 cannot be treated as a condition existing at the time of submission of bids or acceptance of the Letter of Award. Its applicability to the concluded arrangement must be independently examined in the light of its language, purpose and the terms of the existing contract.

25. The most important document for deciding the controversy is the Ministry of Power's communication dated 24.12.2025, particularly Clause 6 thereof. The interpretation of the said clause must be undertaken by reading the communication as a whole and keeping in view the stage at which the bidding process had reached on the date of its issuance. Clauses 3 to 6 of Communication dated 24.12.2025 is being reproduced hereunder:

> *"3. As per the Public Procurement (Preference to Make in India) Orders issued by DPIIT and the Ministry of Power Order No. A-1/2021-FSC-Part (5) dated 16.11.2021, certain power sector items with adequate domestic manufacturing capacity and competition have been notified for procurement exclusively from Class-I local suppliers. Battery Energy Storage System (BESS) is presently not included in the notified list. However, where an item has not been notified by the nodal Ministry/Department, both Class-I and Class-II local suppliers are eligible to participate in the procurement process.*

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> *4. Further, as per the amendment to the VGF Guidelines issued on 04.08.2025, the Ministry of Power has mandated indigenous development of the Energy Management System (EMS) application software for all BESS capacity Implemented under the Scheme.*
>
> *5. In view of the above, for the purpose of disbursement of funds under the Power System Development Fund (PSDF) Guidelines. States and procuring entities shall ensure a minimum local content of 20% of the total project cost in BESS procurements under the VGF Scheme. This minimum local content requirement shall include, inter-alia, the indigenously developed EMS application software.*
>
> *6. In cases where tenders have already been invited without specific mention of local content, States may obtain an undertaking from the bidders to meet the aforementioned local content requirement and proceed with the award of contract accordingly."*

26. A plain reading of the aforesaid clause-6 indicates that the Ministry intended to provide a transitional arrangement for those procurement processes which had commenced without incorporating the local content requirement, but where the award of contracts was yet to take place. The expression permitting the procuring entities to obtain undertakings and proceed with the award of contracts is significant. It contemplates obtaining such undertakings as a step preceding the award, rather than as a means of reopening an award which had already been made and accepted.

27. Had the Ministry intended that the local content requirement would also be imposed retrospectively upon contracts already awarded and accepted, it could have expressly provided so. In the absence of any such clear stipulation, the communication cannot be interpreted to confer an unrestricted power upon implementing agencies to introduce additional substantive obligations into concluded contractual arrangements.

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28. The respondent's interpretation would effectively render the distinction between tenders already invited and contracts already awarded meaningless. The transitional provision cannot be interpreted in a manner which defeats the very distinction arising from the different stages of procurement.

29. The position is further strengthened by the fact that the Ministry's communication itself was issued on 24.12.2025, whereas the Letter of Award had already been accepted by the petitioner on 23.12.2025. Therefore, even assuming that the communication was binding upon the implementing agency for future procurement or pending award processes, its application to the present petitioners required consideration of the already concluded contractual arrangement.

30. The respondents have placed considerable reliance upon Clause 1.23 of the Letter of Award, which, according to it, required the petitioner to comply with the Public Procurement (Preference to Make in India) Order, 2017 and subsequent notifications issued by the Government of India from time to time. Clauses 1.4 and 1.23 of the letter of award are being reproduced as under:

> *"1.4 The award of the above Project is subject to the Guidelines including amendments/clarifications issued by Government of India & Govt. of Rajasthan and terms and conditions of the RfS document including its clarifications/amendments/ elaborations/notifications issued by RVUNL.*
>
> *1.23 "The Developer shall take due cognizance of the provisions of the Public Procurement (Preference to Make in India) Order, 2017 and subsequent amendments or notifications issued thereunder by the Government of India. The Ministry of Power, under the said Order, has notified an itemized list (Annexure-1) specifying Minimum Local Content (MLC) requirements for various equipment categories in the power sector. Accordingly, the Developer shall ensure adherence to these provisions, to the extent applicable,*

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during installation, commissioning, and operation of the Battery Energy Storage System (BESS) project being implemented under the Power System Development Fund (PSDF) Scheme. Compliance or exemption, as may be directed by the Ministry of Power in this regard, shall be duly observed as a part of the project implementation obligations.""

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31. However, the existence of a general provision requiring compliance with governmental procurement policies cannot be construed as conferring unlimited authority upon the respondents to introduce new commercial or technical obligations at any stage of a concluded contract. Clause 1.23 of the Letter of Award must be read harmoniously with its other terms and the applicable policy framework and cannot be interpreted to mean that every subsequent administrative communication automatically becomes an additional contractual covenant binding upon the successful bidder.

32. The Public Procurement (Preference to Make in India) Order, 2017, issued by the Ministry of Commerce and Industry to promote domestic manufacturing and production, defines Class-I and Class-II Local Suppliers and Non-Local Suppliers, prescribes their eligibility and purchase preferences, and provides for minimum local content requirements under Clause 5, requirement for specification in advance under clause 7, verification thereof under Clause 9 and specification of such requirements in every tender and procurement solicitation under Clause 10. It would be relevant to refer clause 7 of the aforesaid Order of 2017, which lays down as under:

*"7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of*

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procurement solicitation and shall not be varied during a particular procurement transaction."

33. Bare reading of aforesaid Clause 7 of the Public Procurement (Preference to Make in India) Order, 2017 would make it clear that the specifications of purchase preference, local contents or other requirements as per Make in India policy are also required to be given in advance by the procuring agency in NIT or any other procurement process and such specifications given in advance shall not be changed during a particular procurement transaction.

34. The subsequent Order dated 16.11.2021 issued by the Ministry of Power also specified, in its Annexure-I, goods, services and works for which sufficient local capacity was available. However, BESS was included in the relevant list only subsequently, on 04.08.2025. In any event, the mere existence of the aforesaid policy framework does not establish that the petitioner was contractually bound to procure a prescribed percentage of local content or comply with a particular technical requirement which was neither specified in the original RfS nor demonstrated to be applicable to the subject project under any binding notification at the time of issuance and acceptance of the Letter of Award. There is a clear distinction between a general policy favouring indigenous procurement and a specific, enforceable contractual obligation.

35. In this backdrop, the Ministry's communication dated 24.12.2025 cannot be treated as a mere administrative clarification. It stipulated a minimum local content requirement of 20% of the total project cost and additionally mandated the use of

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indigenously developed EMS software. Such requirements have a direct bearing upon the procurement and sourcing strategy, technical specifications, selection of equipment and software, project cost, financial modelling and commercial calculations of the developer. The original RfS did not prescribe either the aforesaid 20% local content requirement or the specific condition relating to indigenously developed EMS software. Further, the fact that BESS was not included in the list of items notified for exclusive procurement from Class-I, local suppliers, as acknowledged in the Ministry's communication itself, necessitated a clear examination of the source, scope and time frame applicability of the subsequently imposed requirement. The same could not have been dispensed with merely by describing the communication as a clarification.

36. The distinction between clarification of an existing obligation and introduction of a new substantive obligation cannot be overlooked. A clarification may explain or give effect to an obligation already forming part of the contract or applicable law, but it cannot be employed to enlarge its scope or impose an additional financial or technical burden not contemplated at the time of bidding. Clause 1.23 of the Letter of Award, therefore, cannot be construed as authorising Respondent No.3 to retrospectively incorporate the specific 20% local content requirement and the condition concerning indigenously developed EMS software into an already concluded contractual arrangement. Significantly, Clause 6 of the very same communication dated 24.12.2025 contemplates obtaining undertakings and proceeding

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with awards in cases where tenders had already been invited without such stipulation, which itself lends support to the distinction between prospective applicability and its imposition upon concluded procurement arrangements.

37. The principles governing public procurement require transparency, fairness, predictability and non-discrimination. Tender conditions constitute the foundation upon which bidders assess their eligibility, technical capabilities, financial exposure and commercial viability. Competitive bidding is a structured exercise in which all participants formulate their offers on the basis of a common set of disclosed conditions. Its sanctity depends upon the assurance that the governing terms shall not be altered to the prejudice of successful bidders after the bidding process has attained finality. Consequently, the general policy framework relied upon by the State cannot furnish authority to unilaterally introduce additional substantive obligations so as to alter the commercial and technical basis of an already concluded procurement process. The stand of the respondents, therefore, cannot be sustained.

38. In **Reliance Energy Ltd. & Another (supra)**, the Hon'ble Supreme Court emphasised the importance of the level playing field in tender matters and held that vagueness or subjectivity in tender conditions may result in discriminatory treatment, hence, tender conditions must prescribe clear norms and benchmarks to ensure legal certainty.

39. Similarly, in **W. B. State Electricity Board (supra)**, the Hon'ble Supreme Court recognised the necessity of

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maintaining the sanctity of tender conditions and cautioned against permitting departures from the prescribed tender requirements and held that substantive changes after opening of the bid cannot be permitted in a manner which would undermine fairness and equality in the bidding process.

40. After considering the above judgment in the case of **W. B. State Electricity Board (supra),** the Hon'ble supreme Court in the case of **Surguja Bricks Industries Company (supra)**, has observed as under:

> *"**24.** We are of the unhesitant view that an eligibility criteria should be clear and unambiguous. Otherwise, it may lead to arbitrary exercise of power by the State disqualifying a tenderer who would otherwise meet the eligibility criteria. In West Bengal State Electricity Board v. Patel Engineering[8], this Court declared that to hold that a State or its agencies can reject a tender for breach of a term or condition in the tender document which is not explicit in the tender documents is to give room to the State or its agencies to arbitrarily reject tenders even when clear terms or conditions of tender documents are complied with. Therefore, it is the responsibility of the tendering authority to issue clear and unambiguous instructions in a NIT. As pointed out by this Court in Patel Engineering (supra), when there is vagueness or subjectivity in the norms, it may result in an unequal and discriminatory treatment and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts.*
>
> ***25.** In Reliance Energy Ltd., this Court was examining the conditions in the global tender floated by the State of Maharashtra through the Maharashtra State Road Development Corporation Limited for completing the Mumbai Trans Harbour Link between Mumbai and Navi Mumbai on a BOT basis. In the aforesaid tender process, the tendering authority decided to exclude the appellants. Without entering into the details of the judgment in Reliance Energy Ltd., we can gainfully extract the below mentioned portion from the said decision:*
>
> > *38. When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This "legal certainty" is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of "level playing field".*
>
> ***27.** There is no dispute to the proposition that the tender inviting authority is the best judge to understand and appreciate its requirements and interpret its documents. In Afcons Infrastructure Ltd. and in Bharat Coking Coal Ltd. as well as in subsequent decisions, this Court has upheld this principle observing that*

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> *ordinarily constitutional courts should defer to the understanding of the tender inviting authority of the tender documents. However, this principle has its own limitations. If the interpretation of the tender inviting authority or its understanding of the tender conditions is vitiated by mala fides or perversity, there is no question of a constitutional court showing deference to such understanding. Likewise, if the interpretation of the tender inviting authority of a particular condition of tender, such as, an eligibility criteria as in the present case is irrational or absurd leading to arbitrary consequences, it would be the duty of a constitutional court to interdict such a decision making process. To hold otherwise would render the very object of judicial review otiose."*

41. The aforesaid principles have got vital significance after completion of the bidding process and issuance of the Letter of Award. Before finalisation of the bids, a procuring authority may, subject to the applicable rules and principles of fairness, amend the tender conditions and provide equal opportunity to all prospective bidders. However, once the process has culminated in an award and the successful bidder has accepted the same, a substantive alteration of the commercial framework cannot ordinarily be introduced unilaterally.

42. The requirement of minimum 20% local content was not a mere procedural formality. It was capable of influencing the commercial calculations of every prospective bidder. A bidder aware of such a requirement at the inception of the process might have adopted a different sourcing arrangement, selected different technology, made different financial projections or even quoted a different tariff. The fact that the tariff quoted by the petitioner has not been altered does not answer the petitioner's grievance. The financial viability of a project is determined not merely by the revenue side represented by the discovered tariff, but also by the cost and technical obligations which the developer is required to undertake. An additional obligation affecting procurement and

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project cost may materially alter the economic balance of the contract even where the tariff remains unchanged.

43. The respondents' contention that the local content requirement was uniformly imposed upon all successful bidders also does not cure the fundamental defect. Even uniform application of a condition after completion of the bidding process cannot, by itself, validate its retrospective imposition. The relevant question is not merely whether all successful bidders were treated alike after the award, but whether all participants competed on the basis of the same disclosed conditions at the stage when their bids were formulated and evaluated.

44. As regards the submission of the learned Advocate General, based upon the VGF scheme appended to RfS and applicability of General Finance Rules, 2017, this Court finds that there can be no quarrel with the proposition that the beneficiary of financial assistance under the VGF Scheme is required to comply with the applicable guidelines and the provisions of the GFR, 2017. However, the general obligation to comply with such guidelines cannot be construed as an authority to introduce a fresh substantive contractual obligation which was neither specifically stipulated in the RfS, nor made an essential condition of the bidding process. The stipulation regarding commissioning of the BESS project within 18 months from execution of BESPA relates to the timeline for implementation of the project, while the provisions of the GFR, 2017 regulate the disbursement and accounting of grant-in-aid and the same neither, by itself, prescribes a minimum 20% local content requirement or imposes a corresponding

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obligation upon the successful bidders. Further, the Public Procurement (Preference to Make in India) Order, 2017, read with Rule 153(iii) of the GFR, 2017, contemplates specification of the minimum local content and related conditions in the notice inviting tenders or procurement documents so as to ensure transparency, certainty and a level playing field amongst bidders. The requirement of minimum local content, has significant financial and technical implications and may materially affect the choice of technology, procurement arrangements, project cost and tariff quoted by the bidders. Therefore, it cannot be treated as a mere procedural formality or an inconsequential clarification. The fact that the communications dated 24.12.2025 and 07.01.2026 permit obtaining an undertaking even in respect of tenders already invited without such stipulation does not, by itself, confer authority upon the procuring agency to impose a fresh substantive obligation after issuance and acceptance of the Letter of Award or execution of BESPA, unless such power is demonstrably reserved under the bidding documents or otherwise available in law. Moreover, the obligation of the eligible entity to comply with the conditions governing VGF cannot automatically be transposed into an additional contractual obligation upon the BESS developer without an express stipulation or clear incorporation thereof in the contractual documents. The legitimate object of promoting indigenous manufacturing and domestic value addition cannot be disputed, nevertheless, such policy objectives must be pursued consistently with the settled principles of transparency, fairness and contractual certainty governing public procurement. Thus, the

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general reference to the VGF Scheme and the GFR, 2017 cannot be treated as sufficient authority to impose the subsequently prescribed minimum local content requirement upon the petitioners in respect of an already concluded contractual arrangement.

45. It is equally important to reiterate that the petitioners are not claiming that the respondents were prohibited from adopting a new procurement policy. The grievance is that the respondents sought to apply a subsequently communicated substantive requirement to an already concluded contractual arrangement without demonstrating any lawful basis for such retrospective application.

46. While narrating the importance of the project sought to be implemented, learned Advocate General also emphasised upon the public interest in implementing "the make in India" policy of the Government of India. While dealing the question of public interest in tender matters, the Hon'ble Supreme Court in the case of **Prakash Asphaltings & Toll Highways (India) Limited (supra)**, has observed as under:

> *"**45.** The above proposition has been followed by another three-Judge Bench of this Court in Subodh Kumar Singh Rathour v. Chief Executive Officer, (2024) 15 SCC 461, when it examined the concept of public interest in administrative decisions relating to the award of contracts. This Court held that even assuming for a moment that there was a technical fault in the tender, which if rectified had the possibility of generating more revenue, the same by no stretch could be said to be a cogent reason for concealing an already existing tender. This Court highlighted the importance of maintaining the sanctity of tenders in governmental procurement processes. Public tenders are the cornerstone of governmental procurement processes, being competitive and ensuring fairness and transparency in the allocation of public resources. Public tenders are designed to provide a level playing field for all potential bidders, fostering an environment where competition thrives. The integrity of this process ensures that public projects and*

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resources are delivered efficiently and effectively, benefitting the society at large. Therefore, the sanctity of public tenders and contract is a fundamental principle that underpins the stability and predictability of legal and commercial relationships. In fact this Court put in a word of caution that considerations of public interest should not be narrowly confined to the financial aspect only.

46. *Applying the above legal principles to the facts of the present case, we are of the view that the Division Bench of the High Court clearly fell in error in directing Respondents 2 to 4 to allow rectification of the financial bid of Respondent 1 by treating the amount offered by it as the per day figure and on that basis to compute the total amount for the entire contractual period of 1095 days. Such an exercise is clearly impermissible, having regard to the terms and conditions of the contract which are required to be understood on the anvil of this Court's judgments. The authority granted to the tendering authority by Clause 5-B(v) of the Instruction to Bidders cannot be stretched to construe the price bid of Respondent 1 as the per day offer, contrary to the bid declaration of Respondent 1 itself, and thereafter, on that basis to work out a new bid amount for the entire contractual period making it the highest. In the present case, Respondent 1 was not at all vigilant; rather, it displayed a very casual approach. In such circumstances, Clause 5-B(v) cannot be invoked to resurrect the bid of Respondent 1 to make it H1. Clause 5-B(v) of the Instruction to Bidders has to be read conjointly with Clause 4(g) of the notice inviting electronic bid.*

47. *While judicial review is not excluded to assail administrative decisions even in matters of tenders and contract, the long line of consistent judicial pronouncements tells us that the Constitutional Courts should exercise utmost restraint in interfering with a tender process unless the threshold of judicial review are met, as explained in Jagdish Mandal (supra) and in Afcons Infrastructure Limited (supra).*

49. *The expression "public interest" in the arena of commercial transactions cannot and should not be confined to any straitjacket definition. While benefit or accrual of more revenue to the public exchequer is certainly an important aspect, equally important, if not more, is adherence to the rules and conditions of tender; sanctity of the tender process being paramount and should be maintained at all cost."*

47. The public interest in promoting indigenous technology and local manufacturing is undoubtedly a legitimate governmental objective. However, the means adopted to achieve such objective must also conform to the requirements of fairness and legality. A legitimate policy objective cannot, by itself, justify an otherwise impermissible alteration of an existing contractual arrangement.

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48. Consequently, the action of Respondent No.3 in seeking to impose the specific local content requirement upon the petitioner after issuance and acceptance of the Letter of Award is contrary to the principles governing fair public procurement and cannot be sustained merely on the ground that the requirement was communicated by the Ministry of Power after completion of the bidding process.

49. Once the contractual relationship between the parties stood crystallised upon acceptance of the Letter of Award or even on execution of contract (BESPA in the present cases), any subsequent alteration of its substantive terms was required to conform to the principles governing alteration and novation of contracts.

50. Section 62 of the Act of 1872 provides that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. The statutory provision thus proceeds on the fundamental requirement of an agreement between the parties. Novation or alteration of a contract is not a unilateral exercise of power available to one contracting party.

51. In **Citi Bank N.A. (supra)**, the Hon'ble Supreme Court explained that novation, rescission or alteration of a contract under Section 62 of the Act of 1872 requires the agreement of the parties and cannot be brought about unilaterally.

52. In **Suresh Kumar Wadhwa (supra)**, the Hon’ble Supreme Court has held that a party to the contract has no right to unilaterally alther the terms and conditions of the contract, nor

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have they any right to add any additional term. It would be relevant to refer following relevant part of the above judgment:

> *"**26.** Equally well-settled principle of law relating to contract is that a party to the contract can insist for performance of only those terms/conditions, which are part of the contract. Likewise, a party to the contract has no right to unilaterally "alter" the terms and conditions of the contract and nor they have a right to "add" any additional terms/conditions in the contract unless both the parties agree to add/alter any such terms/conditions in the contract.*
>
> ***27.** Similarly, it is also a settled law that if any party adds any additional terms/conditions in the contract without the consent of the other contracting party then such addition is not binding on the other party. Similarly, a party, which adds any such term/condition, has no right to insist on the other party to comply with such additional terms/conditions and nor such party has a right to cancel the contract on the ground that the other party has failed to comply with such additional terms/conditions.*
>
> ***40.** In the light of the foregoing discussion, we are of the considered opinion that the appellant did not commit any breach of the term(s) and condition(s) of the notice inviting bids and on the other hand, it was the respondents who committed breaches. In these circumstances, the State had no right to forfeit the security amount and instead it should have been returned when demanded by the appellant."*

53. In the case of **Bharat Sanchar Nigam Limited & Another vs BPL Mobile Cellular Limited & Others (supra)**, the Hon'ble Supreme Court observed that any novation in the contract was required to be done on the same terms as are required for entering into a concluded contract. The Hon'ble Supreme Court laid down as under:

> *"**44.** If the parties were ad idem as regards terms of the contract, any change in the tariff could not have been made unilaterally. Any novation in the contract was required to be done on the same terms as are required for entering into a valid and concluded contract. Such an exercise having not been resorted to, we are of the opinion that no interference with the impugned judgment is called for.*
>
> ***51.** In the instant case, the resources to be leased out were subject to agreement. The terms were to be mutually agreed upon. The terms of contract, in terms of Section 8 of the Contract Act, fructified into a concluded contract. Once a concluded contract was arrived at, the parties were bound thereby. If they were to alter or modify the terms thereof, it was required to be done either by express agreement or by necessary implication which would negate the application of*

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the doctrine of "acceptance sub silentio". But, there is nothing on record to show that such a course of action was taken. The respondents at no point of time were made known either about the internal circulars or about the letters issued from time to time not only changing the tariff but also the basis thereof."

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54. The same principle was reiterated in **Delhi Development Authority & Another vs. Joint Action Committee, Allottee of SFS Flats & Others (supra)**, wherein the Hon'ble Supreme Court observed that a party to a contract cannot, at a later stage, impose terms and conditions which were not part of the original offer by issuing unilateral office orders.

55. Applying the aforesaid principles, Respondent No.3 could not, merely by issuing the communication dated 07.01.2026, incorporate a new substantive obligation into the contractual arrangement already concluded on 23.12.2025. The authority of Respondent No.3 to administer and implement the contract was necessarily subject to the terms of the contract and the applicable law.

56. The contention of Respondent No.3 that the petitioners furnished undertaking dated 10.01.2026 and, therefore, voluntarily agreed to the additional condition also requires consideration. It is not disputed that the petitioners, except the petitioner in S. B. Civil Writ Petition No. 13197/2026, furnished the undertaking without recording any express reservation therein. Such conduct cannot be ignored and the undertaking cannot simply be treated as non-existent. Nevertheless, the legal effect of the said document has to be examined in the background in which it was furnished. The undertaking was submitted within a

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few days of the communication dated 07.01.2026, which itself required compliance within seven days and was issued by the very authority controlling the award and implementation of the project. The petitioners were already the successful bidders and had letters of Award in their favour. The undertaking was thus furnished in response to a direction of the procuring agency in the course of implementation of the awarded project. The mere submission of such an undertaking, without anything more, cannot be treated as a negotiated substitution or consensual alteration of the essential terms of the Letter of Award. The respondents have not demonstrated that the parties entered into any bilateral arrangement expressly modifying the original contractual framework or that the petitioner was afforded an informed choice to accept or reject a fresh contractual proposal without jeopardising the already awarded project.

57. More importantly, an undertaking furnished in response to an administrative direction cannot confer upon the authority a power which it did not otherwise possess. If the direction itself was beyond the permissible scope of the existing contract and contrary to the applicable transitional provision of the Ministry's communication, the subsequent undertaking cannot validate the exercise of such power. The doctrine of estoppel cannot be invoked to compel a party to submit to an action which is otherwise contrary to law or to permit a State instrumentality to exercise a power beyond its lawful authority. Nor can an undertaking be construed as an unconditional waiver of the constitutional right to challenge arbitrary State action.

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58. Even otherwise, a bare perusal of the communication dated 07.01.2026 reveals that, while requiring the petitioners to furnish an undertaking regarding procurement of the prescribed local content, Respondent No.3 conveyed the requirement in a manner suggesting that the earlier communication issued by the Ministry of Power was equally applicable to cases where the tenders/ Awards had already been issued. Such an impression is, however, not borne out by the language of the Ministry's communication dated 24.12.2025. A mere reference to the said communication of the Ministry could not absolve Respondent No.3 of its obligation to clearly and unambiguously apprise the petitioners of the actual position, particularly when the communication was likely to have a material bearing upon their contractual rights and obligations. The petitioners could not have been expected to independently scrutinise the Ministry's communication and to clarify the correct legal position and, on that basis, decide whether or not to furnish the undertaking. It was incumbent upon the respondents themselves to communicate the requirement accurately, transparently and without creating any misleading impression, rather than leaving the petitioners to ascertain the true intent and applicability of the Ministry's communication at their own risk.

59. This Court is, therefore, of the considered opinion that the undertaking dated 10.01.2026 does not, in the peculiar facts and circumstances of the present case, establish a mutually

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agreed novation of the original contractual arrangement within the meaning of Section 62 of the Act of 1872.

60. It is accordingly held that the communication dated 07.01.2026, insofar as it seeks to impose the specific minimum 20% local content requirement, including indigenously developed EMS software, upon the petitioner under the concluded Letter of Award, amounts to an impermissible unilateral alteration of the contractual framework.

61. The petitioner has also invoked the doctrines of promissory estoppel and legitimate expectation. Both doctrines, though related in their underlying concern for fairness and consistency in State action, operate in distinct fields and require separate consideration.

62. The doctrine of promissory estoppel is founded upon the principle that where one party, by a clear and unequivocal representation, intentionally creates an expectation that a particular state of affairs would continue and the other party acts upon such representation and alters its position, the maker of the representation may be precluded from going back upon it where it would be inequitable to permit such departure.

63. In **Motilal Padampat Sugar Mills Co. Ltd. (supra),** the Hon'ble Supreme Court recognised that the doctrine of promissory estoppel can operate against the Government and the Government cannot ordinarily be permitted to resile from a representation upon which a party has acted to its detriment, subject to the established limitations of the doctrine.

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64. It would be relevant to refer recent judgment of the Hon'ble Supreme Court in the case of **IFGL Refractories Ltd. (supra),** wherein after meticulously discussing the principles of promissory estoppel and legitimate expectation and after lucidly analysing the earlier judgments in paragraph 100 to 113 and by mainly relying upon the judgment in the case of **Motilal Padampat Sugar Mills Co. Ltd. (supra),** the Hon'ble Supreme Court has observed as under:

> *"**114.** As briefly discussed above, the operation of doctrine of promissory estoppel against government instrumentalities finds its reference in a pivotal decision of this Court in the case of Motilal Padampat (supra). In this case, the State Government of UP in 1968 had taken a policy decision to grant the incentive of exemption from sales tax for a period of three years to all new industrial units being established within the State. Pursuant to this policy, the appellant addressed a communication to the Director of Industries, stating that, in view of the sales-tax exemption announced by the Government, it intended to set up a plant unit for the manufacture of vanaspati and sought confirmation regarding the availability of the exemption. The Director of Industries affirmed the position, and the assurance was further endorsed and confirmed by the Chief Secretary to the State Government. Acting on the strength of these assurances, the appellant proceeded to establish the plant unit. In and around 1969, the State Government expressed reservations regarding the grant of exemption and requested the appellant to attend a meeting, during which the appellant reiterated that the government had already granted sales-tax exemption and that it had proceeded with the establishment of the plant unit on the strength of that assurance. Subsequently, in 1970, the State Government adopted a revised policy decision whereby new vanaspati units in the State that commenced commercial production by 30.09.1970 would be entitled only to a partial concession in sales tax. Although the appellant's unit went into commercial production on 02.07.1970, the State Government once again altered its policy and, on 12.08.1970, communicated its decision to rescind the concession earlier granted in favour of the appellant. On this note, this Court thoroughly examined the doctrine of promissory estoppel and observed that it is a principle evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel.*
>
> ***115.** According to this Court, the true principle of promissory estoppel seemed to be that where one party has, by his words or conduct, made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the*

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other party to whom the promise is made. Where it is in fact so acted upon by the other party, the promise would be binding on the party making it, and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. This would be so irrespective of whether there is any pre-existing relationship between the parties or not.

116. *It was further observed that it is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. This Court was of the view that the doctrine of promissory estoppel is also applicable against the government, where the government makes a promise knowing or intending that it would be acted upon by the promisee. Where, in fact, the promisee, acting on it, alters his position, the government would be held bound by the promise. The promise would be enforceable against the government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract.*

123. *The High court, while relying on Motilal Padampat (supra) and applying the doctrine of promissory estoppel as explained therein, observed that although the scheme itself stated that the State Government might, from time to time, review the list of industries excluded from its purview and may remove, amend, or add any item to that list, yet such a stipulation did not render the assurance held out by the State Government a conditional one. By incorporating such a statement in the resolution, the State Government merely indicated the power it already possessed i.e., it made explicit what was otherwise implicit. The court was of the opinion that on the strength of this clause, it could not have been inferred that the assurance extended under the scheme was that a new industrial unit would continue to receive benefits only so long as its industry was not included in the list of excluded industries. The assurance was not a limited or qualified one. It was not intended to mean that the benefit would be available only until the industry came to be excluded from the scheme. Where a new industrial unit had set up an industry not excluded from the purview of the scheme and had commenced commercial production before that industry was subsequently included in the exclusion list, it would be unreasonable and unjust to deprive such an industrial unit of the benefit of the scheme, especially when it had already become eligible and had started receiving the incentives. In other words, the Government may withdraw an exemption previously granted, but only if such withdrawal does not offend the doctrine of promissory estoppel or deprive an industrial unit of an exemption which it is otherwise entitled to claim by virtue of that doctrine. Where the Government has offered an incentive of exemption to a new industry, and where an industry has been established in reliance on such representation in order to avail the benefit, that new industry may legitimately contend that the exemption*

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cannot thereafter be withdrawn. The relevant observation is as under:

> *"Though it is true that in the scheme itself it is declared that the Government might review the list of industries excluded from the purview of the scheme from time to time and remove, amend or add any item from and to the said list, it cannot be said that the assurance which the Government held out under the scheme was a conditional one. As rightly pointed out by the learned counsel for the petitioner, by stating such a thing in the resolution what the Government had done was merely to indicate the power which it possesses. Thus, by stating like that in the resolution, what the Government did was to make explicit what was implicit. On the basis of such a statement in the scheme, it is not possible to hold that the assurance which the Government held out was that the new industrial unit will continue to get the benefit under the scheme so long as it is an industry not included in the list of industries excluded from the purview of the scheme. The assurance held out by the Government was not a limited one in the sense that the benefit under the scheme was to be available to the new units so long as that industry was not excluded from the purview of the scheme. If a new unit had set up an industry which was not excluded from the purview of the scheme and had started commercial production before it came to be included in that list, it would be unreasonable and unjust to deprive that new industrial unit of the benefit of the scheme even though it had become eligible under the scheme and had started receiving benefits under the scheme […]*
>
> *[…] In other words, the Government can withdraw an exemption granted by it earlier if such withdrawal can be done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said rule. If the Government grants exemption to a new industry and if on the basis of the representation made by the Government an industry is established in order to avail of the benefit of exemption, the new industry can legitimately raise a grievance that the exemption cannot be withdrawn except by means of legislation.*
>
> *In our opinion, on true interpretation of the resolution of 1980, it will have to be held that the Government did give a promise to the entrepreneurs that if a new unit or project was set up on the basis of the assurance held out under the scheme, and that the new industrial project was commissioned on or after 1st June, 1980, then it was entitled to the benefits available under that scheme, if by the time it was commissioned, i.e., by the time it commenced commercial production, the said industry was not included in the list of excluded industries. As the scheme was operative for a period of five years only from 1st June, 1980, it will have to be further held that the assurance of benefits was available to those new industrial units or projects which had started commercial production on or after 1st June, 1980, but before 31st May, 1985, and which were not excluded earlier from the benefits of the scheme. So far as the petitioner is concerned, the petitioner had started*

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> *commercial production on 31st March, 1982. The industry in which it was engaged came to be included in the list of excluded industries on 15th September, 1982, that is after it started commercial production, and as we are not called upon to decide in this case whether it stood excluded by the resolution dated 7th January, 1982, it will have to be held that the petitioner was entitled and continued to remain entitled to the sales tax deferment benefit under the scheme for the full period, if other conditions were satisfied by it […]"*
>
> *(Emphasis Supplied)"*

65. In the present case, the petitioner participated in the competitive bidding process on the basis of the conditions contained in the RfS dated 08.08.2025. The petitioner formulated its technical and financial bid, participated in the e-reverse auction and emerged as a successful bidder. The respondents thereafter issued the Letter of Award dated 19.12.2025, which was accepted by the petitioner on 23.12.2025. The representation flowing from the aforesaid process was not merely an expectation that the petitioner would be selected. It was a representation that the project would be awarded and implemented in accordance with the disclosed tender conditions, the discovered tariff and the contractual terms incorporated in the Letter of Award. The petitioner altered its commercial position by participating in the process, furnishing bid security and accepting the Letter of Award. The respondent, in turn, proceeded on the basis of the petitioner's successful bid and concluded the competitive procurement process. The parties thus acted upon the contractual framework which had been disclosed and accepted. The subsequent insistence upon an additional technical and financial obligation, which had not formed part of the original bidding conditions and was not incorporated in the Letter of Award, defeats the legitimate expectation arising from the concluded procurement process.

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66. The doctrine of legitimate expectation is particularly relevant where a public authority, having adopted a particular course of action and induced persons to arrange their affairs on that basis, seeks to depart from the same without adequate justification or adherence to the requirements of fairness.

67. In **Union of India & Others vs. Hindustan Development Corporation & Others (supra)**, the Hon'ble Supreme Court explained that legitimate expectation is founded upon the requirement of fairness in administrative action and that its denial may, in appropriate circumstances, attract judicial review.

68. Further, in **Food Corporation of India vs. M/s Kamdhenu Cattle Feed Industries, (supra)**, the Hon'ble Supreme Court recognised that public authorities are required to act fairly and reasonably and that legitimate expectations must receive due consideration in administrative decision-making. In the present case, the legitimate expectation of the petitioner was founded upon an identifiable and concluded procurement process, rather than a mere hope or anticipation of receiving a contract. The petitioner had already emerged successful and accepted the Letter of Award before the Ministry's communication dated 24.12.2025 came into existence.

69. The respondents have not demonstrated any overriding public interest requiring retrospective application of the additional requirement to the already awarded contract, particularly when the Ministry's own communication contemplated a transitional mechanism for tenders already invited without local content stipulations.

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70. Thus, the action of Respondent No.3 has not only defeated the petitioner's legitimate expectation but has also failed the test of fairness and reasonableness mandated under Article 14 of the Constitution of India.

71. Further, the petitioner's acceptance of the discovered tariff in the proceedings before the RERC does not operate as a waiver of its right to question the subsequent imposition of an additional contractual condition. The tariff adoption proceedings under Section 63 of the Act of 2003, were concerned with adoption of the tariff discovered through competitive bidding. The present controversy concerns the applicability of a subsequent local content requirement to an already awarded project. The petitioner's email dated 30.01.2026, stating that it had no objection to the tariff adoption petition, therefore, cannot be construed as an unconditional acceptance of every subsequent implementation direction or as a waiver of its right to challenge the legality of the communication dated 07.01.2026. Equally, the order of the RERC adopting the discovered tariff does not adjudicate the legality of the subsequent local content requirement. This Court is not called upon in the present proceedings to set aside the tariff adopted by the Commission. The validity of that tariff order and the legality of the subsequent administrative direction are distinct issues.

72. The State and its instrumentalities do not shed their constitutional obligations when they enter into contractual relationships with private entities. Their actions, even in the contractual field, must conform to the requirements of fairness,

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reasonableness, transparency and non-arbitrariness. In **Kumari Shrilekha Vidyarthi & Others (supra)**, the Hon'ble Supreme Court held that the State is required to act fairly and reasonably even in contractual matters and that the nature of the State as a public authority continues to characterise its actions notwithstanding the contractual nature of relationship.

73. In the present case, the respondents were required to examine whether the Ministry's communication dated 24.12.2025 could lawfully be applied to the Letter of Award already issued and accepted. It was equally required to consider the specific transitional provision contained in Clause 6 and the effect of the completed bidding process. Instead, Respondent No.3 proceeded to issue the communication dated 07.01.2026, directing compliance with the minimum local content requirement within seven days, without adequately addressing the legal distinction between an invited tender and an already awarded contract.

74. This Court, therefore, finds that the impugned communication dated 07.01.2026, insofar as it seeks to impose the minimum 20% local content requirement upon the petitioner under the concluded Letter of Award, suffers from non-application of mind, an erroneous interpretation of the Ministry's communication and arbitrariness within the meaning of Article 14 of the Constitution of India.

75. However, the respondents' contention that the petitioners were in default cannot be examined in complete isolation from the circumstances arising after the Letter of Award. The respondents introduced an additional local content

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requirement after the award and insisted upon an undertaking within seven days. The petitioners thereafter continued to correspond with the respondents and sought time for completion of the contractual formalities.

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76. At the same time, the petitioner cannot use the present judgment as a blanket protection against the independent consequences of failure to furnish PBG or execute BESPA under the original terms of the RfS and Letter of Award.

77. The notice dated 10.04.2026, however, cannot be sustained to the extent it proceeds upon the assumption that non-compliance with the subsequently imposed local content requirement constitutes a valid ground for initiating coercive action against the petitioner. Respondent No.3 cannot disregard the aforesaid circumstances and proceed mechanically towards cancellation of the awarded capacity or forfeiture of bid security without first determining the petitioner's obligations under the original contractual framework, excluding the additional condition which this Court has found impermissible.

78. Respondent No.3 has also relied upon the Minutes of Meeting dated 16.04.2026 of the Ministry of Power, contending that the Ministry clarified that no amendment had been made to the parent guidelines and that its communication dated 24.12.2025 was merely a clarification under the existing VGF Scheme. The aforesaid submission does not materially alter the above conclusion reached by this Court. Even if the communication dated 24.12.2025 is treated as a clarification of the existing policy framework and not as an amendment to the

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parent guidelines, the question which remains to be answered is whether the particular requirement could be enforced against a contract which had already been awarded and accepted before issuance of the communication.

79. It is, therefore, appropriate to grant the petitioner a reasonable and final opportunity to complete the remaining contractual formalities under the original RfS and Letter of Award, without making compliance with the subsequently introduced local content requirement a condition precedent.

80. This Court is conscious of the settled principle that judicial interference in matters concerning public infrastructure projects and commercial tender processes must be exercised with restraint. The judgments in **N.G. Projects Limited vs. Vinod Kumar Jain & Others (supra), National High Speed Rail Corporation Limited vs. Montecarlo Limited & Another, (supra)** and emphasise the necessity of respecting the commercial wisdom of procuring agencies and avoiding unnecessary judicial interference which may impede public projects.

81. However, judicial restraint does not mean judicial abdication. The discretion of a public authority in contractual matters is subject to the constitutional limitations under Article 14 of the Constitution of India. Where the authority acts contrary to the disclosed tender conditions, misconstrues the applicable policy and seeks to impose an additional substantive obligation after conclusion of the contract, judicial intervention becomes necessary to preserve the fairness and legality of public procurement. The

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present case does not require this Court to substitute its commercial assessment for that of the procuring agency, interfere with the discovered tariff or prescribe any technical specification for the BESS project. The limited interference is directed only against an additional condition which, in the facts of the present case, was sought to be introduced after issuance and acceptance of the Letter of Award without any demonstrated legal authority for its retrospective application.

82. Such interference would rather uphold the sanctity of the competitive bidding process and reinforce the principle that State instrumentalities are equally bound by the terms upon which they invite bids and make contractual awards.

83. The respondents cannot be permitted to insist that the petitioner must strictly comply with the original tender conditions while simultaneously claiming an unrestricted right to introduce additional substantive obligations after the petitioner has accepted the award. Fairness in public procurement demands reciprocal adherence to the disclosed contractual framework.

84. In the considered opinion of this Court, the impugned action cannot be sustained on the grounds of administrative convenience, public interest or the general objective of promoting indigenous manufacturing, particularly when the specific transitional arrangement contained in the Ministry's own communication has not been adhered to.

85. The communication dated 07.01.2026, insofar as it sought to impose the specific minimum 20% local content requirement upon the petitioner under the already accepted Letter

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of Award, therefore, amounts to an impermissible unilateral alteration of the contractual arrangement. Such alteration is inconsistent with the principles underlying Section 62 of the Act of 1872 and the settled law governing concluded contracts.

86. Consequently, the impugned communication dated 07.01.2026, to the extent it seeks to impose and enforce the aforesaid minimum 20% local content requirement, including the requirement of indigenously developed EMS software, upon the petitioner under the Letter of Award dated 19.12.2025, is quashed and set aside.

87. However, the petitioners remain bound by the original terms and conditions of the RfS and the Letter of Award, including the obligation to furnish PBG/Insurance Surety Bond and execute BESPA, as the case may be.

88. In view of the foregoing discussion, all the writ petitions are allowed in the following terms:

(i) The communication dated 07.01.2026 issued by Respondent No.3 is quashed and set aside insofar as it seeks to impose and enforce the minimum 20% local content requirement, upon the petitioners under the concluded contractual arrangement arising out of the Letter of Award/ BESPA, as the case may be.

(ii) It is declared that the aforesaid local content requirement, as communicated vide Ministry of Power's letter dated 24.12.2025, cannot be retrospectively imposed upon the petitioners under the already awarded and accepted Letter of Award dated 19.12.2025 and under the BESA, as the case may be, in the facts and circumstances of the present case.

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(iii) The notice dated 10.04.2026 is quashed to the extent it seeks to initiate coercive action against the petitioners on account of non-compliance with the aforesaid subsequently imposed local content requirement.

(iv) Respondent No.3 is directed not to cancel the BESS capacity allotted to the petitioners or forfeit bid security solely on account of failure to furnish an undertaking or comply with the additional local content requirement sought to be imposed vide communication dated 07.01.2026.

(v) The petitioners shall, however, remain bound by the original terms and conditions of the RfS and Letter of Award, including the obligation to furnish the requisite PBG/Insurance Surety Bond and execute BESPA. Respondent No.3 shall grant the petitioners a period of 15 days from the date of receipt of a certified copy of this judgment to complete the aforesaid contractual formalities, subject to the original contractual conditions and applicable law.

(vi) In the event, the petitioners fail to comply with the aforesaid directions within the stipulated period, Respondent No.3 shall be at liberty to proceed in accordance with the original RfS and Letter of Award/ BESPA, after considering the petitioners' representations and passing an appropriate reasoned order in accordance with law. The respondents shall not treat non-compliance with the subsequently introduced local content requirement as an independent ground of default.

(viii) It is clarified that the tariff adoption orders passed by the Rajasthan Electricity Regulatory Commission have not been disturbed by this judgment.

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89. Pending application (s), if any, shall also stand disposed of.

90. Office is directed to place copy of this judgment on record of each connected writ petition.

(ANAND SHARMA),J

MANOJ NARWANI

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