



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

WRIT PETITION NO. 9 OF 2009

Mahendra s/o. Hiranman Mallav,
Age : 37 years,
Occupation : Business,
R/o. at post Shirur,
Taluka : Shirur,
District : Pune.

.. Petitioner

versus

1. The State of Maharashtra,
Through its Principal Secretary,
Government of Maharashtra,
Animal Husbandry, Dairy Development
And Fisheries Department,
Mantralaya,
Mumbai - 32.
2. The Commissioner for Fisheries,
Maharashtra State,
Taraporewala Aquarium,
Netaji Subhash Road,
Mumbai.
3. The Assistant Commissioner
for Fisheries or Member-
Secretary, Purchase Committee
Of Marathwada Package,
Department of Fisheries,
Taraporewala Aquarium,
Netaji Subhash Road,
Mumbai.
4. M/s. Kishanlal Gahiram & Company,
Through its Proprietor,
Kishanlal s/o. Gahiram Lalwani,
Dana Bazar, Yeotmal,
Taluka and District : Yeotmal.
5. M/s. Sun Enterprises,
Through its Proprietor,
Suresh s/o. Madhav Samag,
S.B. Colony, Aurangpura,
Aurangabad,

Taluka and District : Aurangabad.

6. Raviseth Dagadu Patil,
Honourable Minister for Animal
Husbandry And Dairy Development
Department, 4th Floor,
Mantralaya, Mumbai - 32. .. Respondent
no.6 deleted.
7. Gorekh Govind Megh,
Yeshodhan Building,
2nd Floor, Opp : ICC Club House,
Near Mantralaya,
Mumbai - 32. .. Respondents.

Mr. A.N. Kakade, Advocate, for the
petitioner.

Mr. R.N. Dhorde, Special Counsel,
with Mrs. R.D. Reddy, Assistant
Government Pleader, for
respondent nos.1, 2 and 3.

Mr. Rajendra Deshmukh, Advocate, for
respondent nos.4 and 5.

Mr. V.D. Hon, Advocate, for respondent
no.6 (Respondent no.6 is deleted)

Mr. P.M. Shah, Senior Advocate, with
Mr. Swapnil Joshi, Advocate, for
respondent no.7.

W I T H

WRIT PETITION NO. 450 OF 2009

M/s. Sahyadri Outdoors,
Through its Partner,
Yeshwant s/o. Baburao Nikam,
Age : 48 years,
Occupation : Business,
R/o. 3, Gangadhar Apartment,
586, Narayan Peth, Pune,
District : Pune. .. Petitioner.

versus

1. The State of Maharashtra,
Through its Principal Secretary,
Government of Maharashtra,
Animal Husbandry, Dairy Development
And Fisheries Department,
Mantralaya,
Mumbai - 32.
2. The Commissioner for Fisheries,
Maharashtra State,
Taraporewala Aquarium,
Netaji Subhash Road,
Mumbai.
3. The Assistant Commissioner
for Fisheries or Member-
Secretary, Purchase Committee
of Marathwada Package,
Department of Fisheries
Taraporewala Aquarium,
Netaji Subhash Road,
Mumbai.
4. M/s. Kishanlal Gahiram & Company,
Through its Proprietor,
Kishanlal Gahiram Lalwani,
Dana Bazar,
Taluka and District : Yeotmal.
5. M/s. Sun Enterprises,
Through its Proprietor,
Suresh Madhav Samag,
S.B. Colony, Aurangpura,
District : Aurangabad.
6. Raviseth Dagadu Patil,
Honourable Minister for
Animal Husbandry and
Dairy Development Department,
4th Floor, Mantralaya,
Mumbai - 32. .. Respondent
no.6 deleted.
7. Gorekh Govind Megh,
Yeshodhan Building,
2nd Floor, Opp : ICC Club House,
Near Mantralaya,
Mumbai - 32. .. Respondents.

Mr. A.N. Kakade, Advocate, for the petitioner.

Mr. R.N. Dhorde, Special Counsel,
with Mrs. R.D. Reddy, Assistant Government
Pleader, for respondent nos.1, 2 and 3.

Mr. Rajendra Deshmukh, Advocate, for
respondent nos.4 and 5.

Mr. V.D. Hon, Advocate, for respondent
no.6 (Respondent no.6 is deleted).

Mr. P.M. Shah, Senior Advocate, with
Mr. Swapnil Joshi, Advocate, for
respondent no.7.

W I T H

WRIT PETITION NO. 1058 OF 2009

M/s. Deshmukh Fish-Feed Agency,
Ambhai, Taluka : Sillod,
District : Aurangabad, through
Its Proprietor Ejaj Asmat Deshmukh,
Age : 48 years,
Occupation : Business,
R/o. Ambhai, Taluka : Sillod,
District : Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Principal Secretary,
Government of Maharashtra,
Animal Husbandry, Dairy Development
and Fisheries Department,
Mantralaya,
Mumbai - 32.
2. The Commissioner for Fisheries,
Maharashtra State, Taraporewala
Aquarium, Netaji Subhash Road,
Mumbai.
3. The Assistant Commissioner

for Fisheries or Member-
Secretary, Purchase Committee
of Marathwada Package,
Department of Fisheries,
Taraporewala Aquarium,
Netaji Subhash Road,
Mumbai.

4. The Regional Deputy Commissioner,
Fisheries, Aurangabad Division,
Aurangabad.
5. M/s. Maniram Enterprises,
Row Houses No. B-66,
Sector No.4, Airoli,
Navi Mumbai - 400 708,
Through its sole proprietor,
Dinesh s/o. Bapurao Deshmukh,
Age : 42 years,
Occupation : Business,
R/o. 1004, Nilambari Cooperative
Housing Society Ltd.,
Plot No.1, Sector-19,
Airoli, New Mumbai - 78.
6. Raviseth Dagadu Patil, .. Respondent
Honourable Minister for Animal no.6 deleted.
Husbandry and Dairy Development
Department, 4th Floor,
Mantralaya, Mumbai - 32.
7. Gorekh Megh, .. Respondents.
Yeshodhan Building,
2nd Floor, Opp : ICC Club House,
Near Mantralaya, Mumbai - 32.

Mr. A.N. Kakade, Advocate, for the
petitioner.

Mr. R.N. Dhorde, Special Counsel,
with Mrs. R.D. Reddy, Assistant Government
Pleader, for respondent nos.1 to 4.

Mr. Rajendra Deshmukh, Advocate, for
respondent no.5.

Mr. V.D. Hon, Advocate, for respondent
no.6 (Respondent no.6 is deleted).

Mr. P.M. Shah, Senior Advocate, with
Mr. Swapnil Joshi, Advocate, for

CORAM : Smt. NISHITA MHATRE
&
B.R. GAVAI, JJ.

DATE : 5TH MARCH 2009

JUDGMENT (Per B.R. GAVAI, J.) :

1. Rule. Rule made returnable forthwith, by consent.

2. On an application made by the learned Advocate for the petitioners, he is permitted to delete respondent no.6 in all the three petitions, from the array of the respondents.

3. All these three petitions have been filed by the petitioners, thereby challenging the action on the part of the respondent, State of Maharashtra, in cancelling the allotment of work of supply of prawn seeds and fish fingerlings, which was allotted to them by the Assistant Commissioner of Fisheries, Mumbai, vide letter dated 11th November 2008, and the letter dated 3rd December 2008 vide which the respondent no.1 i.e. Principal Secretary, Government of Maharashtra, Animal Husbandry, Dairy

Development & Fisheries Department, Mumbai, directed the respondent no.2 i.e. Commissioner of Fisheries, Mumbai, to allot the said work to respondent no.4 in Writ Petition No. 9/2009, respondent nos.4 and 5 in Writ Petition No. 450/2009 and respondent no.5 in Writ Petition No. 1058/2009.

4. Since the factual position as well as the legal position is identical in all the three petitions, the said petitions were heard together and are being decided by the common judgment and order.

5. The facts, in nutshell, giving rise to the present petitions are as under :-

(a) The respondents authorities are hereinafter referred to as they are arrayed in Writ Petition No. 9/2009.

(b) The respondent no.2, Commissioner of Fisheries, Maharashtra State, had issued a tender notice wherein tenders were invited for the work of supply of procurement of prawn seeds, hatcheries prawn seeds and fish fingerlings. The tender notice was issued on 8th October 2008. In response to the tender notice, in all, 18 persons including the petitioners and the respondents who have been allotted the work, by the impugned order, had submitted their bids.

(c) The tenders were opened before the Committee which consisted of various experts under the Chairmanship of respondent no.2 Commissioner of Fisheries, on 10th November 2008. Since the bids of the petitioners were found to be lowest, the respondent no.3 i.e. Assistant Commissioner of Fisheries, Mumbai, vide communication dated 11th November 2008, informed the petitioners that since their offer was lowest, the same was accepted. However, thereafter the respondent no.1 had stayed the process of allotment of work to the petitioners and subsequently issued an order dated 3rd December 2008, thereby awarding the aforesaid work to various respondents mentioned herein above. Being aggrieved by the said action on the part of the respondent no.1, the petitioners have filed the present petitions.

6. We have heard the learned Counsel appearing for the petitioners, as well as, the learned Assistant Government Pleader and learned Counsel appearing for the respective respondents. We have also perused the original record of the respondent no.1 State and of the Purchase Committee.

7. Mr. N.K. Kakade, learned Counsel appearing for the petitioners, submits that as per the Government Resolution dated 15th September 2008, it is

the Committee under the chairmanship of the Commissioner of Fisheries, which was constituted as per the resolution, which is entrusted with the work of allotment of work for procurement of prawn seeds and fish fingerlings. He submits that in accordance with the said resolution, the Committee consisting of seven senior officers having expertise in the field, had completed the process for selection of successful bidders. It is submitted that the Committee after finding the petitioners to be eligible and lowest, had decided to allot the said work to the petitioners. He submits that the the respondent, State of Maharashtra, had no business to interfere with the decision taken by the Committee.

8. The learned Counsel appearing for the petitioners further submits that the respondent no.7 in Writ Petition No. 9/2009, who at the relevant time was Principal Secretary of Fisheries Department, with an ulterior motive, had interfered in the said work and had cancelled the orders passed by the Committee and allotted the said work to the aforesaid respondents. It is submitted that the said respondent was at the verge of retirement and with a mala fide intention had allotted the work to the aforesaid respondents at much higher rates. He submits that due to the said act of respondent no.7, a huge loss is being caused to the public exchequer.

9. Mr. R.N. Dhorde, learned Special Counsel appearing for the respondents viz. State and its authorities, on the contrary, submits that the earlier allotment of work in favour of the petitioners by the respondent no.2 Commissioner of Fisheries, was done in a hasty manner without following the prescribed procedure. He submits that the respondent no.2 Commissioner of Fisheries had allotted the work to the petitioners even though they were not qualified. He submits that when the work of allotment of tender to the petitioners was done in a hasty manner by the respondent no.2 Commissioner of Fisheries, the other bidders approached the State Government. The State Government after finding that serious irregularities were committed by the Commissioner of Fisheries, in the matter of allotment of tender to the petitioners, had initially stayed the matter.

10. The learned Special Counsel, appearing for the respondent State and its authorities, further submits that after re-verification, it was found that only few persons were qualified and it was also found that the petitioners were not qualified. He submits that it was found that some of the petitioners were not having necessary experience and they were allotted work without they having any experience in the field.

It was further found in case of some of the petitioners, that the requisite documents like the balance sheet, etc. were not supplied. He, therefore, submits that the State Government had rightly decided to cancel the decision of the Committee. He further submits that in order to safeguard the public interest, only the lowest bidders, who were qualified, were called for negotiation and the respondents to whom the work is allotted, had agreed for lesser rates than the one quoted by them and as such, it was decided to allot the tenders to them.

11. The learned Special Counsel, appearing for the respondent State and its authorities, relies on the judgment of the Apex Court in the case of **M/s. G.J. Fernandez Vs. State of Karnataka and others (AIR 1990 SC 958)**, and in the case of **West Bengal Electricity Board Vs. Patel Engineering Co. Ltd. and others (AIR 2001 SC 682)**.

12. Mr. P.M. Shah, learned Senior Counsel, Mr. Deshmukh and Mr. Hon, the learned Counsel appearing for respondents, who have been allotted the work, support the submissions made by the learned Special Counsel appearing for the State and its authorities.

13. From the perusal of the Government Resolution dated 15th September 2008, vide which the Government has decided to implement certain schemes for development of fisheries under the Marathwada Development Plan, and specifically paragraph 5(1), it can be seen that the Committee consisting of seven senior officers has been entrusted with the work of purchasing the required items. The Committee consists of following seven members :

- 1) Commissioner of Fisheries,
Maharashtra State, Mumbai. - Chairman.
- 2) Deputy Secretary (Fisheries),
Agriculture Department,
Mantralaya. - Member
- 3) Deputy Director of Fisheries
(Groundwater),
Commissioner's Office. - Member
- 4) Regional Deputy Commissioner
of Fisheries, Aurangabad. - Member
- 5) Assistant Commissioner of
Fisheries, Aurangabad. - Member
- 6) Accounts Officer,
Commissioner's Office. - Member
- 7) Assistant Commissioner of
Fisheries - Member Secretary

. It can be seen from the record, that the said Committee in its meeting dated 11th November 2008, after opening the tenders of all the persons, had decided to allot the work to the petitioners finding their bids to be lowest. From the perusal of the

proceedings of the meeting, it would reveal that the Committee had also unanimously decided to relax certain minor conditions in respect of all the tenderers. It may be emphasised that the decision to relax the conditions was not in case of particular tenderers but in case of all tenderers. It can further be seen that the decision of the Committee to relax the conditions was with respect to non-essential conditions and not regarding essential conditions.

. From the record, it would reveal that after decision of the Committee was taken on 11th November 2008, the Honourable Minister for Fisheries Development granted stay. It appears that this was on the basis of certain complaints made by the persons who were not allotted the contract. It appears that thereafter the Principal Secretary of Fisheries Development directed the respondent no.2 Commissioner of Fisheries to allot the work to the respondents mentioned herein above, at the rate of Rs. 690/- per thousand for hatchery prawn seeds and at the rate of Rs. 590/- per thousand for natural prawn seeds, vide communication dated 3rd December 2008. It further appears that in so far as fish fingerlings are concerned, it was directed to award the contract at the rate of Rs. 525/- per thousand. After receipt of the aforesaid communication from the Principal Secretary, the members of the aforesaid Committee

again met on 16th December 2008. The members of the Committee unanimously found that the decision of the State Government to allot the work to the respondents aforesaid, is totally contrary to public interest inasmuch as, huge loss to the public exchequer would be caused if the tenders were awarded to the aforesaid respondents instead of the petitioners. The comparative chart of the rates quoted by the petitioners and the respondents is as under :-

1) Prawn Seeds

Petitioner in
W.P. No.9/2009,
Mahendra. Rs.410/-
(Per thousand)

Respondents,
M/s. Kishanlal Gahiram &
Company, and M/s. Sun
Enterprises, Aurangabad. Rs. 690/-
(Per thousand)

2) Hatcheries Prawn Seeds

Petitioner in
W.P. 450/2009,
M/s. Sahyadri Outdoors,
Pune. Rs. 410/-
(Per thousand)

Respondents,
M/s. Kishanlal Gahiram &
Company, and M/s. Sun
Enterprises, Aurangabad. Rs. 590/-
(Per thousand)

3) Fish fingerlings

Petitioner in
W.P. No. 1058/2009,
M/s. Deshmukh Fish-Feed
Agency, Ambhai. Rs. 330/-
(Per thousand)

Respondent,
M/s. Maniram Enterprises,
Navi Mumbai.

Rs. 650/-
(Per thousand)

14. The Committee has found that if the work was allotted as per the directions of the Government, loss would be caused to the public exchequer to the tune of Rs. 112 Lacs, in so far as hatcheries prawn seeds are concerned, Rs. 72 Lacs, in so far as natural prawn seeds are concerned, and Rs. 40 Lacs, in so far as fish fingerlings are concerned. However, it appears that in spite of aforesaid decision of the Committee, which was forwarded to the State Government, the State Government stood by its decision to allot the work at higher rates.

15. From the perusal of the record, it would reveal that since the respondent no.2 Commissioner of Fisheries, did not enter into the contract with the respondents who were directed to be awarded the tender by the State Government, the respondent no.7 has himself executed agreements with the aforesaid respondents. It can be seen from the letter which is at page 119/P in the record, that the respondent no.7 has entered into the contract with the respondent M/s. Maniram Enterprises on 27th December 2008, though the said respondent had not submitted bank guarantee to the tune of 10 % of contract value. The respondent no.7 has stated in the said letter, that he was

entering into an agreement on the same date on 100 Rupees stamp paper. The said respondent was directed to bring bank guarantee of 10 % of contract value and submit the same subsequently. It further appears that the respondent no.7 has addressed a letter to the Regional Deputy Commissioner of Fisheries, Aurangabad, directing him to place the order for calling of fish fingerlings of 50 mm size. It further appears from the record, that in so far as prawn seeds are concerned, the respondent no.7 has entered into agreement with M/s. Kishanlal Gahiram & Company, Yeotmal and M/s. Sun Enterprises, Aurangabad, on 24th December 2008 and 26th December 2008, respectively. It is pertinent to note that all these agreements have been entered into at Nagpur.

16. One more thing that needs to be noted from the file is that there is a noting by the respondent no.7 to the effect that a letter dated 27th December 2008 is issued today instructing the Commissioner of Fisheries not to give reply to court matter to avoid complications. It appears that the letter to the said effect is also addressed to the respondent no.2 by the respondent no.1 on the same date. It is clear from the record, that the respondent no.7 with keen interest has moved the file and also got the contracts executed in favour of the aforesaid respondents on 24th, 26th and 27th December

2008 at Nagpur, though the seat of his office is at Mumbai. It cannot, therefore, be said that the allegations of the petitioners, that the respondent no.7 in a hasty manner, had got the contracts executed at Nagpur, where the legislative assembly was in session, are without substance.

17. It could also be seen that the Government had also dissolved the said Purchase Committee since the Commissioner of Fisheries had refused to abide by the orders passed by the Government.

18. Now, let us examine the correctness of the reasons given by the State Government for upsetting the decision of the Purchase Committee. The reasons given in the affidavit, in so far as the petitioner in Writ Petition No. 9/2009 is concerned, are that the experience certificates which were given by the petitioner, appear to be fictitious, that the documents submitted by the petitioner were not countersigned by him, that his financial condition was not sound. However, from the perusal of the notice inviting tender it would reveal that the tender notice does not require that the person participating in the bid should have experience. The only requirement is that if he has experience in the field, he should submit documents in support thereof.

19. In so far as the petitioner in Writ Petition No. 1058/2009 is concerned, the reason given is that the income of the petitioner was around Rs. 1,00,000/- per annum and, therefore, he was not in a position to do the work. The other reason given was that the figures regarding experience given by the petitioner were fictitious and imaginary. The other reason given was that the petitioner had not signed copies of certain documents. As stated herein above, the tender notice did not require any of the compliances on which rejection was sought to be made by the respondents.

20. In so far as the petitioner in Writ Petition No. 450/2009 is concerned, the reason given is that the petitioner had not enclosed the experience certificate of supply of prawn seeds or fish seeds to the Government of Maharashtra, that his total turnover was Rs. 5,57,197/- and that the loan taken by him from Pune People's Cooperative Bank was Rs. 9,70,595/-. It was further the reason that the certificate dated 3-11-2008 from M/s. Priya Prawn Hatchery, Ratnagiri, that the petitioners supplied prawn seeds to M/s. Sahyadri Outdoors for two years, was a false statement. As stated herein above, from the perusal of the notice inviting tenders, it can be seen that there is no mention in the notice inviting

tenders, that it is necessary for a bidder to have previous experience. The only requirement is that if a bidder has participated in similar types of bids earlier, the details thereof and details regarding his past experience should be given. It can further be seen that in so far as the financial status of the bidder is concerned, there is no minimum requirement stipulated in the notice inviting tenders. The only requirement is that the bidder should give certificate of his worthiness or the audited accounts for the last three years.

21. From the perusal of the tender documents, it would reveal that all the petitioners had submitted either their experience certificates or the certificates from the suppliers of fish seeds certifying the earlier transactions entered into by such suppliers with the petitioners. The petitioners had also submitted their income tax returns certified by the Chartered Accountants. In any event, as noted herein above, there is no requirement that a bidder should have a previous experience. So also, there is no requirement which provides any minimum amount in so far as financial status of the bidder is concerned. We are, therefore, of the considered view that the reasoning given by the State for setting aside the decision of the Purchase Committee are totally extraneous, irrational and arbitrary.

22. In so far as the contention regarding relaxation of condition, to the effect that the Committee had opened second envelope of even unqualified bidders is concerned, we find that the said reason is without substance. From the perusal of the minutes of the meeting of the Purchase Committee dated 10th November 2008, it can be seen that the Committee had found that almost all the bidders had not complied with some of the requirements. The Committee had, therefore, unanimously resolved to formulate the policy as to the conditions for which, relaxation should be granted and envelope "B" of such bidder should be opened. It can thus be seen that the Purchase Committee had adopted a uniform policy regarding relaxation of certain conditions which was made applicable to all bidders. It is not the case of any of the parties, that the conditions were only relaxed in favour of some of the persons so as to favour them. It can thus be seen that the power of relaxation which was exercised by the Committee was fair, reasonable and bona fide. The Apex Court in the case of **M/s. B.S.N. Joshi & Sons Ltd. Vs. Nair Coal Services Ltd. & others (AIR 2007 SC 437)**, in paragraph 71 of the judgment, has observed thus :

" Whether an employer has power of relaxation must be found out not only from the terms of the

notice inviting tender but also the general practice prevailing in India. For the said purpose, the court may consider the practice prevailing in the past. Keeping in view a particular object, if in effect and substance it is found that the offer made by one of the bidders substantially satisfies the requirements of the conditions of notice inviting tender, the employer may be said to have a general power of relaxation in that behalf. Once such a power is exercised, one of the questions which would arise for consideration by the superior courts would be as to whether exercise of such power was fair, reasonable and bona fide. If the answer thereto is not in the negative, save and except for sufficient and cogent reasons, the writ courts would be well advised to refrain themselves in exercise of their discretionary jurisdiction."

23. We find that there was no occasion for

the State Government to have interfered in the well deliberated and reasoned decision of the Purchase Committee. After the decision of the State Government to award contract to aforesaid respondents, the Purchase Committee again in its meeting dated 16th December 2008, reiterated its decision and has also given reasons as to how a great loss would be caused to the public exchequer, if the decision of the Government to award the contract to the aforesaid respondents was to be implemented. However, it appears that the respondent no.7 was bent upon awarding the contract to the aforesaid respondents even at the cost of causing a loss to the public exchequer. The Purchase Committee which was consisting of seven senior officers of the Fisheries Department having expertise in the field, after due deliberations, had taken a considered decision. However, the same was upset on flimsy reasons. One reason which was given was that the petitioners were not possessing necessary experience. As already discussed herein above, the said reasons are irrelevant and irrational, inasmuch as, in the notice inviting tenders, there was no condition stipulated regarding experience qualification.

24. In so far as the other reason given regarding non-supply of documents is concerned, it can be seen that the relaxation with respect to some of

the documents was granted by the Committee by a uniform policy decision applicable to all the tenderers. As already held by the Apex Court in the case of **M/s. B.S.N. Joshi & Sons Ltd. (supra)**, this is permissible in law. As such, the reason for upsetting the decision of the Purchase Committee is also not in accordance with law.

25. From the perusal of the file, it appears that the Deputy Secretary of the concerned Department had initially put up a note pointing out that the rates offered by the complaint tenderers were almost twice than the one quoted by the petitioners. He has also noted that the complainants had lodged the complaints due to frustration as the contract was not awarded in their favour. However, it appears that the said Deputy Secretary was made to write another note on 3rd December 2008. The respondent no.7 on 3rd December 2008 has put up a noting in the file recommending the award of contract to the aforesaid respondents. It appears that after said decision was communicated to the respondent no.2, Commissioner of Fisheries, the Committee again met and discussed about the loss that will be caused to the public exchequer if the decision of the State Government was implemented.

26. It further appears from the record, that

the respondent no.7 addressed a communication to the respondent no.2, dated 24th December 2008, thereby dissolving the Purchase Committee. It further appears that since the Commissioner did not execute the agreement with the aforesaid respondents, the respondent no.7 himself executed the agreements with the aforesaid respondents on 24th, 26th and 27th December 2008. It appears that the respondent no.7 was showing undue haste in getting the contracts executed in favour of the aforesaid respondents. It appears that the respondent no.7, though has upset the well reasoned decision of the Committee on the ground of non-compliances of certain conditions, was in hurry to enter into the agreement with the aforesaid respondents even without the requisite bank guarantee being furnished by some of the respondents. A letter addressed to M/s. Maniram Enterprises, Navi Mumbai, by respondent no.7, reads thus :

(P.T.O.)

GOVERNMENT OF
MAHARASHTRA

Gorekh Megh,
I.A.S.,
Principal

J.No.MATSYAVI-1008/CR-274/
I/ADF-13,
Agriculture, Animal
Husbandry, Dairy Development
and Fisheries Department,
Mantralaya Annexe,
Mumbai 400 032.

Camp : Nagpur

Secretary (ADF)

Date : December 27, 2008

To,

M/s. Maniram Enterprises,
Row House No. B-66, Sector-4,
Airoli, Navi Mumbai 400 709.

Sub : Your request for waiving
of Bank guarantee.

Dear Sirs,

. As per the tender document your are supposed to give Bank guarantee of 10 % of contract value as well as Demand Draft of 3 % of contract value as security deposit.

. You have given Demand Draft of 3 % of the contract value. However, you have not yet submitted Bank Guarantee of 10 % of contract value to implement Marathwada Development package as early as possible. We are entering into an agreement today with you on 100 rupees stamp paper. However, you are requested to bring Bank Guarantee of 10 % of contract value and submit the same to the Regional Deputy Commissioner of Fisheries, Aurangabad.

. Thanking you,

Yours faithfully,

Sd/-
(Gorekh Megh)
Principal Secretary

. It is thus amply clear that the respondent no.7 was showing undue interest and haste in awarding contract to the aforesaid respondents and entered into contract with them.

. Not only this, but the respondent no.7 has also

made an endorsement in the file to the following effect :-

" A letter dated 27-12-2008 is issued today instructing the Commissioner of Fisheries not to give reply to court matter to avoid complications."

. A letter to that effect was also addressed to the Commissioner of Fisheries by the respondent no.7. As a matter of fact, such an endorsement and such a communication amounts to interference in the administration of justice.

27. No doubt, that scope of judicial review in contractual matters is limited, in exercise of our jurisdiction under Article 226. It is also equally true that the court is required to examine the correctness or otherwise of decision making process and not the actual decision. In the present case, we find that the decision making process by the State Government suffers from illegality, irrationality, unreasonableness, arbitrariness, unfairness and procedural impropriety. Not only this, but the said process also appears to be guided by keen and personal interest shown by respondent no.7, who has also in a hasty manner entered into contract with the aforesaid respondents. The petitioners have specifically

alleged that the respondent no.7 was to retire on 31st of December 2008. The agreements have been executed by respondent no.7 himself with the respondents to whom contract is awarded on 24th, 26th and 27th of December 2008 at Nagpur, and also without the said respondent furnishing requisite bank guarantee. Due to the decision of the State to award contract to the aforesaid respondents, at the rates almost twice than the ones quoted by the petitioners, huge loss of crores of rupees would be caused to the State exchequer. We are, therefore, of the considered view that the respondent State was not justified in interfering with the well reasoned decision of the Purchase Committee. In any case, if the respondent State was of the view that the decision taken by the respondent Committee was not proper, it could have very well directed re-issuance of tenders. The action of the respondent State in directly awarding contract to the aforesaid respondents is also not sustainable in law.

28. It can further be seen that the action of the respondent State in cancelling award of contract to the petitioners, which was awarded to them in accordance with letter dated 11th November 2008, without affording an opportunity of hearing to the petitioners, is also not sustainable in law. The contract which was awarded in favour of the

petitioners, without being cancelled, was awarded in favour of the aforesaid respondents, without giving any notice or hearing to the petitioners. Had the petitioners been given notice with regard to the material that was sought to be used against them they could have very well represented to the State regarding relevancy or otherwise of the material and/or reasons which were sought to be used against them. The said action, in our considered view, is also violative of principles of natural justice.

29. In so far as the reliance placed by the learned Special Counsel appearing for the respondent State, on the judgment of the Apex Court, in the case of **West Bengal Electricity Board Vs. Patel Engineering Company Ltd. and others (supra)**, is concerned, there can be no dispute with the proposition that conditions are to be strictly complied with and that when the lowest bidder fails to satisfy the conditions, subject to which bids are invited, is not entitled to award the contract. However, in the present case, it can be seen that the Purchase Committee had by a uniform policy decided to relax some of the conditions in favour of all tenderers. In that view of the matter, we find that the said judgment would not be applicable to the facts of the present case. As already held by the Apex Court, in the case of **B.S.N. Joshi & Sons Ltd. Vs.**

Nair Coal Services Ltd. and others (supra), if the conditions are relaxed in favour of all the tenderers, the same would be permissible in law.

30. In so far as the reliance placed by the learned Special Counsel appearing for the respondent State, on the judgment of the Apex Court in the case of **M/s. G.J. Fernandez Vs. State of Karnataka and others (supra)**, is concerned, the said judgment would also not support the case of the respondent State. But as a matter of fact, it supports the decision of the Purchase Committee. In the aforesaid judgment, the Apex Court has held that the relaxation of the conditions in the notice inviting tenders is permissible. However, such relaxation should not be arbitrary. As already held herein above, we find that the decision to relax certain conditions was taken as a uniform policy applicable to all the bidders.

31. Before we part with the judgment, we find that it would be appropriate to place on record our appreciation, for the courage shown and the bold stand taken by the Committee consisting of seven senior officers of the Fisheries Department under the chairmanship of the Commissioner of Fisheries. Though the respondent no.1 and, particularly the respondent no.7, were bent upon to award the contract at the cost of huge loss to the public exchequer, they unanimously

re-affirmed their stand in the meeting of the Purchase Committee on 16th December 2008, which necessitated the respondent nos.1 and 7 to dissolve the Committee itself. Not only this, but the authorities did not comply with the directions of the respondent nos.1 and 7 to execute the agreements in favour of the respondents aforesaid, which necessitated respondent no.7 to himself enter the agreements with the aforesaid respondents.

32. In the light of the reasoning given herein above, the petitions deserve to be allowed.

33. Hence, the petitions are allowed.

. The letter dated 3rd December 2008, issued by respondent no.1 is quashed and set aside. The work orders issued pursuant to that letter are also set aside. As a consequence, the selection process for procurement of prawn seeds and fish fingerlings is set aside. The Government may, if it so desires, issue fresh tenders for issuing work orders for the supply of prawn seeds and fish fingerlings.

34. Rule is made absolute in the above terms. There shall be no order as to costs.

35. Mr. Rajendra Deshmukh, learned Counsel

for respondent nos.4 and 5, in Writ Petition Nos. 9/2009 and 450/2009 and for respondent no.5 in Writ Petition No. 1058/2009, to whom the contract is awarded, prays for a stay of this order. We have considered his submission and we do not think that there is any need to grant stay to this order.

(B.R. Gavai)
JUDGE

(Smt. Nishita Mhatre)
JUDGE

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