IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2758/2017

1] Gaurang Engineering,
Through its Proprietor
Santosh s/o Udhavrao Kulkarni,
age 46 yrs., occu.business,
r/o Plot No.W-5, MIDC,
Chikalthana, Aurangabad.

2] Akash Engineering Works,
Through its Proprietor
Shaikh Asim Shaikh Rauf,
age 26 yrs., occu.business,
1-6-1522, Opp.Anvita Hotel,
Jalna Road, Beed.

3] The Maharashtra State Small Scale
Industries Development Corporation,
Aurangabad. Through its
Divisional Manager.
...Petitioners..

Versus

1] The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.

2] The Director of Primary Education,
Maharashtra State,
17, Dr.Ambedkar Road,
Opp.Red Temple, Pune-1.
...Respondents...

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Shri V.J. Dixit, Senior Advocate with Shri A.G. Talhar, Advocate for petitioners.
Shri P.K. Dhakephalkar, Senior Advocate with Shri S.S. Thombre, Advocate for respondent nos.1 & 2.
Shri Subodh P. Shah, Advocate for applicant in CA 4545/2017.
Shri P.S. Chavan, Advocate for applicant in CA 8648/2017.

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WRIT PETITION NO.8643/2017

Shree Ganesh Press N Coat Ind.Pvt.Ltd.,
Through its Director
Ravindra s/o Dattatraya Vaidya,
age 58 yrs., occu.business,
Regd.Off & Work Plot No.M-151/152,
MIDC Area, Waluj, Aurangabad.
...Petitioner..

Versus

1] The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.

2] The Director of Primary Education,
Maharashtra State,
17, Dr.Ambedkar Road,
Opp.Red Temple, Pune-1.

3] The State Level Purchase Committee
Constituted by the Director of Primary
Education, Maharashtra State, Pune,
at Pune.

4] The Maharashtra State Small Scale
Industries Development Corporation,
Aurangabad. Through its
Divisional Manager.

5] Shalaka Infra-Tech (I) Pvt.Ltd.,
Through its Director
Shalaka House Plot No.22,
Gajanan Housing Society,
Next to LIC Housing Finance,
Ganeshkhind Road,
Shivaji Nagar, Pune 411016.

6] Sai Trading Company,
Through its Director,
Old Mondha Road,
Vitthal Mandir Chowk, Peth Beed
Tq. & Dist.Beed 431 122.

7] Krish Intratrade Pvt.Ltd.,
Through its Director,
Plot No.25, Flat No.5 Saisakha Apartment,
Shardashram Colony, Nirala Bazar Road,
Aurangabad (CB) 431001, Aurangabad.
...Respondents..

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Shri P.M. Shah, Senior Advocate with Shri A.G. Talhar, Advocate for petitioner.
Shri P.K. Dhakephalkar, Senior Advocate with Shri S.S. Thombre, Advocate for respondent nos.1 & 2.

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CORAM: S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.

JUDGMENT RESERVED ON 17.7.2017
JUDGMENT PRONOUNCED ON 03.08.2017

JUDGMENT (Per S.C. Dharmadhikari, J.) :

1] Heard learned counsel appearing for the parties. Rule. Respondent nos.1 and 2 waive service. By consent, Rule is made returnable forthwith.

2] Both these petitions were heard together. During the arguments, a request was made that even the second petition, which was argued by Shri P.M. Shah, Senior Advocate, contains more or less same materials and espouses the cause of the MSSIDC, a common judgment can be delivered to dispose them of. That is how, this judgment will dispose of both the petitions.

3] This Court had made several orders, to which we shall make reference a little later.

4] By these petitions under Article 226 of the Constitution of India, the petitioners are seeking a writ of mandamus or any other appropriate writ, order or direction directing the respondent no.2 to allow not only the petitioner nos.1 & 2 but the added petitioner no.3, to participate in the further tender process for supply of Airtight Container for storage of food grains under

Mid Day Meal Scheme in rural area of Maharashtra State. The added petitioner no.3 is the Maharashtra State Small Scale Industries Development Corporation, Aurangabad, through its Divisional Manager (for short, the MSSIDC). It was originally impleaded as respondent no.3.

5] Alternatively, the relief claimed is that 30% of the total work be awarded to the MSSIDC. The relief claimed is that there was a tender process initiated by the Director of Primary Education, Maharashtra State, for supply of Airtight Container for storage of food grains under Mid Day Meal Scheme in rural areas of Maharashtra State dated 9.1.2017.

6] After seeking the above reliefs, it is prayed that the order dated 20.2.2017 passed by the respondent no.2 may be quashed and set aside. The respondent no.2 be directed to open the technical bid of the MSSIDC. It is stated that the petitioner no.1 is a proprietary concern and equally the petitioner no.2. The petitioner no.3, as already stated, is the Maharashtra State Small Scale Industries Development Corporation, Aurangabad

Division, through its Divisional Manager. It is claimed that the petitioners have set up the units in the year 2006. They are in the business of manufacturing S.S., M.S. furniture and all types of fabrication works. The petitioners are also registered as a small scale industrial unit. They are also registered under the Ministry of Micro Small and Medium Enterprise. Annexure 'A' is a copy of the certificate of registration as SSI unit.

7] The MSSIDC was set up in the State of Maharashtra for aiding, assisting, financing, protecting and promoting the interest of small scale industries. This Corporation plays a vital role in revival, development and growth of traditional handicrafts of Maharashtra by responding to the diversified needs of the rural artisans and marketing their products. The petitioners also enrolled themselves as member units. They were, therefore, registered as such by the MSSIDC on 22.9.2016. It is common ground that there are several materials, articles and goods required by the Government offices and departments. The Government of Maharashtra decided to reserve certain items for the MSSIDC. A Government resolution came to be issued to that effect on 1.12.2016, copy of which is at Annexure 'C'.

8] The petitioners submit that the respondent no.2 floated a tender on 9.1.2017 for supply of Airtight Containers for storage of food grains under the Mid Day Meal Scheme in the rural area of the State of Maharashtra. The total estimated cost of the tender is shown at Rs.91.36 crores and the time limit for supply is 90 days. The earnest money deposit (for short, the EMD) for the said tender is fixed at Rs.182.72 crores. As per the said tender, the pre-bid meeting is to be held on 19.1.2017, the period for submission of e-tender is from 2.2.2017 to 6.2.2017. The blank tender form was not supplied free of charge, but a fee was determined for the same at Rs.50,000/-. There was a date stipulated for submission of sample, sample testing fees and unit verification fees of Rs.50,000/- each. Opening of the technical bid is on 7.2.2017 and on-line opening of the commercial bid is stated to be on 15.2.2017. Lateron, the date of opening for commercial bid was extended upto

1.3.2017 by a corrigendum of the respondent no.2. A copy of the tender document and the corrigendum issued by the respondent no.2 are annexed and marked as Annexure 'D'.

9] It is the claim of the petitioner nos.1 and 2 that alongwith other 40 small entrepreneurs, they approached the MSSIDC. They expressed their willingness to perform the work under the tender. A meeting of the petitioners and other entrepreneurs was held with the respondent no.3 on 30.1.2017. It was decided that the MSSIDC would apply for the work order by placing a bid on behalf of the petitioner nos.1 & 2 and other 41 small entrepreneurs. That is how the MSSIDC applied for the tender and submitted the form with the respondent no.2 – authority. It is claimed that the petitioners attended as per the corrigendum in the office and forwarded their sample and demand draft of Rs.50,000/-. This is done within the prescribed period. However, the respondent no.2 refused to accept the same and also refused to give an acknowledgement to that effect. However, the samples have been retained with the respondent no.2. The petitioners requested to accept the sample and give an acknowledgement, but the respondent no.2 refused to do so. Thereupon, a *panchanama* was drawn up and it was forwarded by the MSSIDC to the higher officials of the respondent no.2.

10] Thereafter, the petitioners also approached the respondent no.2 and requested him to allow the MSSIDC to participate in the commercial / price bid scheduled on 1.3.2017. As per the information given by the MSSIDC, it is claimed that the price bid / technical bid of the MSSIDC is pending. The results of the technical bid disclosed that as far as the petitioners are concerned, it is canceled or rejected.

11] The petitioners also made an application dated 26.2.2017, copy of which is at Annexure 'G', highlighting the above facts and claiming that the MSSIDC could not have been excluded from the process and in a wrongful manner; all the more, when the Government has given the MSSIDC a prominent place. It is common ground that certain percentage of the materials have to be procured from the MSSIDC. It is in these circumstances and making allegations of illegalities and arbitrariness, the pleadings in paragraph nos.12 to 15 would read.

12] It is common ground that this petition was placed before a Division Bench of this Court on 1.3.2017 because of the urgency. After haring both the sides, this Court passed the following order :-

> "1. Learned Counsel for petitioner submits that petitioner has served Respondent No.2 by private notice. Learned Counsel for petitioner submits that technical bid of the petitioner has not been rejected and the status of the technical bid is being shown as pending. Today is the date fixed for opening the commercial bid. It is submitted that Respondent No.3 has deposited E.M.T. of Rs. 1,83,00,000/. According to the learned Counsel for petitioner, as per policy, 30% of the work is to be allotted to the small scale industry through Respondent No.3. Learned Counsel for petitioner submits that even samples were given to Respondent No.2 in presence of Respondent No.3. However, acknowledgement was not given.
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> 2. Learned Counsel for Respondent No.3 submits that the samples were given by petitioner in presence of officers of Respondent No.3 and panchanama to that effect has also been made.

3. Learned A.G.P. waives notice for Respondent Nos.1 and 2. Mr. Borulkar, learned Counsel wives notice for Respondent No.3. Place the matter on 07th March, 2017. In the meantime, if there is no other impediment, the commercial bid of Respondent No.3 may be opened but same will be without prejudice to the rights of Respondent No.2 and subject to further orders to be passed by this Court. The petitioners and/or Respondent No.3 would not be entitled to claim any equity only because their commercial bids are directed to be opened.

4. Authenticated copy be given. The said order be communicated to Respondent No.2 by learned A.G.P."

13] Thereafter, the petition was placed on several occasions and on 30.3.2017, leave was granted to transpose the respondent no.3 – MSSIDC as the petitioner no.3.

14] Thereafter, the scenario changed and essentially cause of the petitioner nos.1 and 2 and the other SSI units, as claimed, was espoused solely by the MSSIDC. On 6.4.2017, therefore, this Court passed the following order:-

"1. This Court, by an order dated 01.03.2017, while directing issuance of notice to the respondents, directed them that if there is no other impediment, commercial bid of Respondent No.3 (transposed as petitioner No.3) may be opened but the same will be without prejudice to the rights of respondent no.2 and subject to further orders to be passed by this Court. Respondents have expressed difficulties for complying with the interim directions issued by this Court on 01.03.2017. It is the contentions of the respondents that the order is passed without their being any return by respondent Nos. 1 and 2, placed on record. The respondents reiterated that sample testing fees of Rs.50,000/- and unit verification fees of Rs.50,000/- in the form of Demand Draft, in favour of Accounts Officer, Directorate of Primary Education, Maharashtra State, Pune was payable upto 15.02.2017, 11.00 a.m., the same was not tendered within specified time limit, however was submitted late by 20 minutes. The petitioner has invited our attention to the demand drafts dated 15.02.2017 and contended that in fact, an attempt was made to submit the same before the prescribed time but the same was not accepted.

2. Even otherwise, in order to have open, fair competition, we direct the respondents to consider the Bid of respondent No.3, considering the directions / communication issued by the

Directorate of Education (Primary) dated 05.04.2017 which is placed on record. The same is marked 'X' for identification. It is stated in the said communication that respondents will accept the demand drafts towards sample testing fees and Unit Verification fees and would proceed to test the samples and would conduct unit verification. The petitioner undertakes to tender demand drafts by 10.04.2017, which shall be accepted by the respondents. The respondents shall proceed to conduct sample testing and unit verification as prescribed under Clause 17 of the notice inviting tender. It is recorded in Clause 17 that -

> "Verification of manufacturing Unit: The Director of Primary Education Maharashtra State Pune will verify the manufacturing units of manufacturer whose technical bid satisfies the qualification criteria. This shall be a part of technical qualification of the bidder. The bidder shall submit demand draft of Rs.50,000/- alongwith details of manufacturing unit, availability of carious machines as specified in the tender documents, inhouse testing laboratory etc. with details of contact in prescribed format given up to 04.02.2017 at 4.00 p.m. at DEPMS, in favour of Accounts Officer, Directorate of Primary Education, Maharashtra State, Pune payable at Pune

towards the expenses for inspection of manufacturing unit. Failing this will cause a rejection of bid as non responsive”.

3. The learned counsel appearing for the respondents / State informs that the Committee of seven members is constituted for examining the samples and for unit verification. It is expected of the Committee to conduct unit verification/testing within two weeks.

4. Learned counsel for the respondents shall place on record the result of unit verification / testing relating to all the bidders including petitioner No.3 on the adjourned date.

5. The counsel appearing for the petitioner placed reliance on the Government resolution dated 01.12.2014 Item 215 mentioned in the Schedule 17 annexed to the Resolution is reserved for purchase from the Small Scale Industries and it would be obligatory on the part of the respondents to make purchase from Small Scale Industry, according to petitioner.

6. The counsel appearing for the respondents states that Item which is scheduled to be purchased i.e. Air Tight Container is different than the Item mentioned at Serial No.215 (Schedule 17). The contentions raised by the petitioner shall be considered at an appropriate stage if occasion arises. It would also be necessary for the respondents to clarify

technical specification and place on record the details of product and design thereof to demonstrate differentiation between item proposed to be purchased and item specified in Schedule 17 at Sr. No.215, together with opinion of the expert.

7. Stand over to 20.04.2017."

15] The writ petition was amended, by which paragraph no.15-A came to be introduced and inserted. The argument was that the respondent no.2 from time to time changed various dates regarding the said tender thereby issuing corrigendum. It was urged that as per the original tender, the date for submission of sample, sample testing fees and unit verification fees was fixed as 4.2.2017 at 4-00 p.m. Then, by an undated corrigendum, the respondent no.2 postponed the date for submission of the sample, sample testing fees and unit verification fees upto 17.2.2017 at 11-00 a.m. Then, again, this date was pre-poned by an undated corrigendum to 15.2.2017 at 11-00 a.m. These chronology of events, according to the petitioners, demonstrate the *mala-fides* on the part of the respondent no.2. It is alleged that they are upholding the interest of the heavy and big industries. There is a lobby, which prevailed upon the Department, to eliminate the units represented by the MSSIDC. In that process, it is alleged that the policies and rules of the Government of Maharashtra have been violated. It is then alleged that the respondent no.2, while issuing the tender in respect of the said Airtight Container, had not provided / supplied the technical specifications regarding the manufacturing of the said container. The petitioners, through the MSSIDC, made an application to the respondent no.2 on 8.2.2017 and it was submitted that certain details be provided.

16] The request was made so as to enable the petitioners to manufacture the sample as per the specifications. This e-mail dated 8.2.2017 of the MSSIDC was not responded to and hence the Divisional Manager of the MSSIDC addressed another e-mail dated 15.2.2017. It was stated that though the representative of the respondent no.2 was present and the samples were accepted, no acknowledgement has been given. This was done purposefully to eliminate the MSSIDC from the process.

17] There are other allegations made on this point and non-acceptance of the technical bid of the petitioners. It is claimed that the bid was received in time, the samples were also forwarded and the demand draft was furnished after slight delay, which was not fatal. Secondly, the MSSIDC was representing the SSI units, which are manufacturing the tin containers. A harsh condition was imposed for procurement of machinery, which was expensive and beyond the reach of the small scale manufacturers. It is in these circumstances, the order of the respondent no.2 dated 20.2.2017 has been challenged.

18] The precise argument on this point is based on paragraph nos.15-F and 15-G, which read as under:-

> "15-F] That, the petitioners say and submit that, the impugned order passed by the respondent no.2 is not legal not proper and bad in law as such the respondent no.2 had shown that the impugned order was passed on 20.02.2017, however, it is part of record that the same was not served on the respondent no.3

up to 06.03.2017. That, during the period 15.02.2017 to 06.03.2017 the officers of the respondent no.3 time to time visited the office of the respondent no.2 and also send various letter communications, however the respondent no.2 had neither replied the same nor served the impugned order to the respondent no.3. That, this Hon'ble Court on 01.03.2017 was pleased to pass the interim order and the same was served to the respondent no.2 on the same day i.e. on 01.03.2017 and thereafter i.e. on 06.03.2017 the impugned order dated 20.02.2017 was served on the respondent no.3. All these sequence of event creates doubt about the impugned order as such if the said order was passed on 20.02.2017 then why the same was not served on the respondent no.3 immediately. Therefore, on this count alone the impugned order passed by the respondent no.2 is requires to be quashed and set aside.

15-G] That, the petitioners state that, the respondent no.3 had participated on behalf of the 41 small scale industrial units as such the respondent no.3 corporation was formed the upliftment of the small scale industrial units in the State of Maharashtra. The action of the respondent no.2 in treating the respondent no.3 so casually is not in accordance with the government policy and the revised rules framed by the government. That, if the said work is allotted to the respondent no.3 then it will give the employment to various small scale industrial units and the labours working with them, however, by not allowing the respondent no.3 to participate in the tender the respondent no.2 had virtually acted against the rules and regulations framed by the State of Maharashtra, therefore, the impugned order is thus bad in law and liable to be quashed and set aside."

19] The affidavit in reply of the respondent nos.1 and 2, filed initially on 18.3.2017, deals with the unamended petition. The admitted facts are that such a tender was floated, that there was a two envelope process. Firstly, the technical bid, and subsequently, the price bid was to be opened. That, the goods to be supplied were Airtight Containers for storage of food grains. However, it is denied that the petitions involve a disputed question of fact. It is then claimed that the petitioners have not even filled in a tender. The tender was submitted by the original respondent no.3, now the petitioner no.3 – the MSSIDC. It has accepted the decision of the State. This position has undergone a slight change and now it is admitted that even the MSSIDC is in the fray and has challenged the order of the respondent no.2. It is claimed in this affidavit, in paragraph nos.9 and 10, that there were pre-bid meetings and one of the pre-bid meetings was held on 23.1.2017 in the office of the respondent no.2. There were bidders present, who raised certain queries, and the same were satisfactorily replied with. Neither the petitioner nos.1 and 2 nor any representative nor officials of the MSSIDC were present in the pre-bid meeting. Total 16 prospective bidders were present in the pre-bid meeting.

20] The petitioners were aware that the date for submission of sample, sample testing fees and unit verification fees, is 4.2.2017 and outer limit is 4-00 p.m. However, since the pre-bid queries were raised, they were replied and the bidders required some time to prepare themselves, that a corrigendum was published on the website on 30.1.2017. The date was extended upto 15.2.2017 at 11-00 a.m. This corrigendum is updated by correcting a mistake, which is purely typographical. In that regard, reliance is placed on page no.232 of the paper book.

21] It is alleged that the MSSIDC ought to have submitted the sample, sample testing fees and unit verification fees in the form of demand draft drawn in favour of Accounts Officer, Directorate of Primary Education, Pune. This condition was not complied with by the petitioners. This is clear from letter of the MSSIDC dated 16.2.2017. It was specifically stated that the demand draft, towards the inspection charges of the samples, was tried to be submitted in the office of the respondent no.2 by 11-20 a.m., but that was not accepted. It is pertinent to note that copy of this letter was received on 16.2.2017, which is much after the stipulated date and time. Hence, it is alleged that the petitioners have not approached this Court with clean hands. As an afterthought, the letter dated 16.2.2017 was addressed.

22] Thereafter, there is a reference to the e-mail, in which there is an assertion that the samples have been submitted. There was assertion that the demand draft and the fees have been forwarded and received. Therefore, the *panchanama* drawn is of no assistance and at the best, it is a one-sided version.

23] It is in these circumstances that it was alleged that four bidders could meet the dead-line and participate in the process. They did not face any difficulty in forwarding the samples and fees by demand draft. It is alleged that because the MSSIDC did not submit the demand draft in time, its technical bid was not opened and was shown as rejected. Thus, all the statements to the contrary are incorrect. It is claimed that nine bidders have purchased the tender form. Out of nine, five have deposited their EMD including the MSSIDC, but the further fees was not deposited by the MSSIDC in time, which resulted in rejection of their technical bid.

24] In paragraph no.16 of the affidavit, reference is made to several corrigenda and how their issuance was necessary is justified.

25] Thereafter, this affidavit deals with the assertion that certain items are reserved for the Government undertakings. It is claimed that the said resolution is mis-read and mis-interpreted. It is claimed that items, which are to be procured from the MSSIDC alone do not include the Airtight Container for storage of food grains. The list appended at Schedule 20 to concerned Government resolution, therefore, cannot be relied upon. That does not confer any right in the MSSIDC nor can it derive any benefit in terms thereof as far as the subject tender is concerned. There is no reservation in the sense that the subject item does not fall in reserved items reserved for purchase from small scale industries. The Airtight Container is not included in the list.

26] With all these assertions, it is stated that even technical acceptance of the MSSIDC raises a question mark. The technical bid has to include a report from an expert. The samples are to be of the quality and as per the norms specified in the tender notice. Once the samples with the requisite testing fees and unit verification fees were not submitted, then the first requirement of clearance of the technical bid is not satisfied. Consequently, there was no obligation to open the financial bid.

27] When this affidavit was filed, the petitioners naturally sought the above relief of amendment etc.

28] This petition was then supposed to come before our Division Bench on 30.6.2017. After hearing both the sides, we passed the following order :-

> "1] After this matter was briefly heard and Mr. Talhar tendered a report, copy of which is now going to be provided to all parties, we take that on record. Mr. Talhar says that the earlier orders of this Court are complied with.
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> 2] We would be happy if the Managing Director of Maharashtra Small Scale Industries Corporation which is now the petitioner no.3 and prosecuting the petition and challenging the tender process is invited to a meeting by the tendering authority viz. the Director of Primary Education, Government of Maharashtra and at this high level meeting a informed and fair decision is taken, which will be in the larger interest of the State. We are disturbed by the fact that the Maharashtra State Small Scale Development Corporation has now joined the fray as a petitioner. It is challenging the action of the State. Thus it is one arm or organ of the State or department of the State against another. It

is not a happy situation at all. This must be resolved by these high level officials so as to protect not only commercial interest of the industries sponsored by the M.S.S.R.D.C. but the image and reputation of the State. S.O. to 06/07/2017."

29] The matter was adjourned to 6.7.2017, on which date, an additional affidavit was tendered in the Court. It was reported that an amicable solution could not be found, though as per the suggestion of this Court, a joint meeting was convened and attended by all concerned. That is how the matter stood over to 17.7.2017.

30] Before that, we took on record an additional affidavit of the petitioners. Pertinently, the additional affidavit has been filed by the MSSIDC and it proceeds to allege that the Department of Primary Education and particularly its Director acted arbitrarily. There is a gross discrimination in the sense, though qualified, the MSSIDC is excluded from the tender process. This was with an intention to procure the tender items from heavy and big industries.

31] In this additional affidavit in paragraph no.2, a technical evaluation sheet, as placed before this Court, is challenged. Paragraph no.2 at page nos.262, 263 and 264 purports to give a point-wise clarification. It was once again reiterated that if the MSSIDC is set up for promoting and developing small scale industries, then to insist that only a manufacturer can be in the fray, is incorrect and misleading. The respondent no.2 and all officers working in the Directorate of Primary Education were aware that the MSSIDC by itself is not a manufacturer, but a facilitator. The small scale industries are not capable to bid individually. That is how to assist all of them, the MSSSIDC has stepped in. It caters to number of industries. In its duty and function to promote small scale industries, the MSSIDC has taken keen interest in the present endeavour. It has never claimed that it was in any manner independently seeking the contract. Once it represented all the member industries, then there is no occasion to exclude it. It is alleged that Airtight Container is equivalent to “धान्याची कोठी”. It is, therefore, unfortunate, according to the petitioners, that a distinction is made, which is artificial. It is only because the cartel of industries and particularly the manufacturing industries, has to succeed, that the impugned action has been taken. The petitioners rely upon the clarification by the Divisional Manager of the MSSIDC in writing dated 15.6.2017. After this affidavit was filed on 3.7.2017, there was another affidavit filed so as to record the events in the meeting convened pursuant to this Court's order dated 30.6.2017. There are allegations made in this affidavit by the Divisional Manager. It was brought to the notice, according to him, that the MSSIDC is a facilitator. It has also entered into agreement with the Marathwada Auto Cluster and is backed by 41 small scale industries. Therefore, it would be able to supply the goods in time and as per the standard quota. If the subject item was reserved for the jail authority (Karagraha), then, the terms and conditions incorporated in the tender and particularly insisting on turn over and machineries, is an eye-wash and to protect other bidders. That is how, the Divisional Manager claims that he sought answers to his repeated queries, but the officers in the Directorate were speechless. This affidavit was filed on 6.7.2017.

32] There is an affidavit in reply of respondent nos.1 and 2 to all the earlier allegations and the amended memo of the writ petition. Further, the respondent nos.1 and 2 purported to meet the statements in the additional affidavits of the petitioners. In this affidavit, the specific factual assertion ought to be reproduced in the words of the deponent himself. We, therefore, reproduce paragraph nos.3,4,5 and 6 of this affidavit as under:-

> "3. I say and submit that detailed reply was filed by the present Respondent on 18.03.2017. I reiterate the submission and averments made in the said affidavit-in-reply. I say and submit that the Petitioner has raised a ground in respect of 30% of total supply to be reserved for Government undertaking and has relied on Government Resolution dated 01.12.2016. I say and submit that as mentioned in the earlier affidavit, the said stand of the Petitioner No.3 is incorrect. It is clear that from clause No. 5.17 of G.R. Which deals with the supply from Government Undertaking as per Schedule 20 the list of items which is to be purchased from the Petitioner No.3 are mentioned. Those items are polythene bags, RCC pipes, Air Coolers etc. I

say and submit that the supply of Airtight Containers for storage of food grains is not mentioned in the list at Schedule 20 therefore, there is no question of supply of reserved 30% to the Petitioner No.3.

4. I say and submit that Airtight Containers for food grains (Kothi) is not reserved for purchase from Small Scale Industries. It is very clear in schedule 17 of GR dated 01.12.2016; the list of items reserved for purchase from Small Scale Industries is given. The Airtight Containers for storage of food grains (kothi) is not mentioned in the said list at all. I say and submit that the Petitioner No.3 who was earlier Respondent No.3 in the aforesaid matter had filed a reply thereby, contending that the kothi/Airtight Containers for storage of food grains would find place at Serial No.100 and 215 in the chronology of the Appended Rules. I say and submit that I deny the said statement and from bare perusal of the Annexure-17 to the said Rules make it abundantly clear that the Airtight Containers for storage of food grains is not included in the said Annexure-17. The said Kothi would find its place in Annexure-14 where the purchasers are to be made from the jail. The Annexures appended to the said Rules make it abundantly clear that the Airtight Containers fro storage of food grains are not included to be purchased from MSSIDC. I say and submit that the Annexure-17 Serial Nos.

100 to 215 do not mention the Airtight Containers for storage of food grains.

5. I say and submit that even the Director of Industries has also issued a letter based on old GR that the Airtight Containers for storage of food grains (Kothi) is nor reserved for Small Scale Industries. Copy of the letter dated 11.11.2016 is annexed herewith and marked as **Exhibit"A-1".**

6. I say and submit that pursuant to the orders passed by this Hon'ble Court, the expert committee from college of Engineering Pune has examined the issue and has submitted a detailed report on 14.04.2017 thereby clearly distinguishing between the Tin Container and the specialized Airtight Container made from Galvanized Steel Sheet for storage of food grains. The expert committee clearly recommended that due to high cost of metal it is unviable to use Tin metal. It was also recommended that to use Airtight Containers made from Galvanized Steel-Sheet having zinc coating for storage of food grains. Copy of report dated 14.04.2017 is annexed herewith and marked as **Exhibit "A-2".**

33] These paragraphs of the additional affidavit in reply, reproduced above, would indicate as to how it is asserted by the authorities that the MSSIDC was not qualified or eligible for award of the contract. Its tender was not compliant. The various requirements, mentioned in the technical evaluation sheet, were not complied with by the MSSIDC. The tenders have been evaluated and assessed by experts and they have no personal grudge or animus against the petitioners, including the MSSIDC. For illustration, copy of valid ISO 14001 certificate was not submitted by the MSSIDC. This certificate is necessary for the purpose of Environmental Management System. It assures commitment to managing environmental impacts. It is a legal requirement, which provides a frame-work for identifying, monitoring and complying with various environmental stipulations, which apply to processes of the product manufactured. Then, OHSAS–18001 is an Occupational Health and Safety Management Systems Specification. That is a must, for, it promotes safe and healthy working environment. That helps the organizations to identify and control health and safety risks, reduce the potential for accidents, aid legal compliance and improve overall performance. These certificates were not submitted by the MSSIDC.

34] Further, there is a requirement of a BIS certificate. The BIS certificate for IS 277:2003 and Test Certificate for GI sheet have not been submitted by the MSSIDC. Copy of a Chartered Accountant certificate for positive network and liquid assets for 5% is not filed. This non-compliance must be due to non-finalization of accounts and balance-sheet for the last three years as well as the complete audited and CA certified balance-sheet and statement of accounts for financial years 2014-15 and 2016-17 are not filed by the MSSIDC. Another vital condition, which is not complied with, is that the bidder should have own minimum machines installed in working conditions. The submitted list does not contain all the required machineries and the same is not certified by a Chartered Engineer, as insisted in the tender. Further, in unit verification, it was found that some of the required machines and dies are not available. Some of the measuring instruments are not available in the house lab as per the requirement of the tender document. Thus, based on the criteria involved, evaluation of all bidders was carried out and transparently the petitioners did not qualify. It is stated that all endeavours were made to settle the dispute amicably, but the MSSIDC insisted that a tender item was reserved for small scale industries. Apart therefrom, it is unfair to allege anything against the Directorate, for, it allowed the MSSIDC to participate in the tender bid process, though it is not a manufacturer or a unit by itself, but a mere facilitator. It is in these circumstances and reiterating all the earlier statements, it is prayed that the writ petitions be dismissed.

35] The final affidavit was filed on 14.7.2017.

36] It is on the above materials that we have heard the learned counsel appearing for the parties.

37] Shri V.J. Dixit, learned Senior Advocate appearing for the petitioners in Writ Petition No.2758/2017, would contend that we must peruse the tender conditions carefully. He submitted that at page no.181 is the tender document. However, that document and the conditions therein overlook the fact that the Government of Maharashtra has on 1.12.2016, through the Department of Industries, Energy and Labour, issued a Government resolution on the subject of purchases by the Departments. In fact, this Government resolution is a revised procedural norm / Rule Book. Shri Dixit would rely upon Clauses 3, 8 and 15 at page nos.41, 42, 43 and 44 of the paper book to submit that certain items were reserved for small scale industries and when the procurement, admittedly in this case, is by a Government Department namely Directorate of Primary Education. Shri Dixit would then invite our attention to page no.136 of the paper book, which according to Shri Dixit, is a part and parcel of the same document. Shri Dixit relies upon Clauses 5.14 and 5.17 to urge that these Clauses enlist the items set out in Schedules 17 and 20. Shri Dixit would submit that there are in all 241 items, which are reserved in terms of Schedule 17 for registered Micro and Small Scale Industries. Then, Clause 5.17 would indicate that 30% of the items have to be procured from the Government of Maharashtra enterprises / undertakings inasmuch as the items manufactured by them have to be procured necessarily to the extent of 30% at L-1 rate. The list of such Maharashtra Government enterprises and undertakings together with items manufactured by them, are set out in Schedule 20. Shri Dixit would emphasize that Airtight Container is at 215 at page no.173 of the paper book. Shri Dixit would submit that the item described is misleading. An Airtight Container is equivalent to "“धान्याची कोठी”. In the tender, though a “धान्याची कोठी” is deliberately described as an Airtight Container, it is so done to keep out the SSI industries. Inviting our attention to page no.236 of the paper book, Shri Dixit would submit that the communication dated 20.2.2017 describes the item as “धान्य साठविण्यासाठी कोठीची खरेदी”. If this is the item to be procured, then the same has always been procured and supplied by the MSSIDC registered units. In any event, some of them are manufacturing Airtight Containers.

38] Shri Dixit would then submit that a perusal of the MSSIDC's tender would indicate that the MSSIDC has stepped in because the EMD could not have been arranged by small scale industries. Shri Dixit submits that at page no.71 of the paper book, is a stipulation pertaining to the committee. It is stated in Clause 2.9.1 of the Government resolution dated 1.12.2016 that for purchasing the items in terms of this Government resolution, a High Level Committee is constituted and established. It is the Additional Chief Secretary / Principal Secretary / Secretary of the Procuring Department, the Additional Chief Secretary / Principal Secretary / Secretary of the Finance and the Commissioner of Industries, who are members of this committee. This committee has a power to procure any time on emergent basis of worth more than rupees one crore. It has also powers to invite limited tenders, restricted tenders and swiss challenge. This committee would grant the approvals for these processes. It is only after this committee grants the approval, that the Department concerned can obtain administrative and financial approvals for operating the process of procurement. Shri Dixit, therefore, submits that it is the committee, which should have taken the decision for purchasing of the items for the Directorate of Primary Education. It is the Department of Primary Education and its personnel, who should have been there even in the evaluation process and in that regard, our attention is invited to page no.72 of the paper book. It is claimed that Clause [c] of the limited tender at page no.94 and Clause 2.9.1 at page no.71, provide for the appropriate committees. Then, Shri Dixit invites our attention to page nos.184 and 185 of the paper book to submit that the tender document, *vide* Clause 17, has provided for verification of the manufacturing units. That stage is to be reached after the technical bid is opened. Prior thereto, on-line submission limited bid is contemplated and earlier to the same, there is submission of samples *vide* Clause 14. Shri Dixit would submit that if the report of evaluation of the bids is called for, it would be evident that there is no report about verification of manufacturing units. Shri Dixit invites our attention to Clause 19 and page nos.187 and 188 of the paper book, to urge that only evaluation sheet has been submitted. Thus, there is a compliance of the terms and conditions by the MSSIDC, whereas others have not complied with the same. They have been seller, though their bids are falling short of the eligibility criteria and norms. It is in these circumstances that Shri Dixit would submit that in powers of judicial review, this Court can set aside the decision of the respondent no.2. Judicial review enables a scrutiny and verification of the decision making process, but may not allow the quashing of the decision itself. Shri Dixit raises a serious complaint that all those, who have been considered, are mere traders and no manufacturer has participated, as falsely asserted. In these circumstances, Shri Dixit relies upon the judgment of the Hon'ble Supreme Court in the case of *Reliance Energy Limited and another v. Maharashtra State Road Development Corporation Ltd. & others* **(2007) 8 SCC 1.**

39] On the other hand, Shri Dhakephalkar, learned Senior Advocate appearing for the respondent nos.1 and 2, submits that there is no merit in these petitions and they must be dismissed. Shri Dhakephalkar heavily relied upon the statements in the affidavit in reply and additional reply. Shri Dhakephalkar would submit that a complete misleading picture has been presented by the petitioners. There is no violation of the Government resolution dated 1.12.2016. The item to be procured is not reserved for the SSI. There has been no erroneous description, much less deliberately, of the item to be procured. It is not so described only to keep out small scale industries or the MSSIDC. It is submitted that even suppliers are eligible to participate. If suppliers arrange to supply the goods through manufacturers, then details of such manufacturers have to be furnished and with supporting materials. There would be verification of the manufacturing units in order to arrive at an informal decision. There is, therefore, no attempt to keep out anybody, as falsely alleged. There is no violation of the Constitutional mandate either.

40] Shri Dhakephalkar has brought to our notice the tender conditions. He would submit that the law is that one who participates in the process and submits his bid, cannot turn around and question the terms and conditions of the tender notice. He would submit that there is no procurement of any items reserved for the MSSIDC.

41] In that regard, he invites our attention to the Government resolution dated 1.12.2016 (Annexure 'C') to submit that the Preamble to the same would indicate as to how the policy has been undergoing a rapid change. It is referred in the Preamble of this Government resolution that after several suggestions were received, a comprehensive policy was under contemplation for procurement or purchase of the items. Now, the Government has decided that the procurement or purchase would be on the lines indicated in this Government resolution. Shri Dhakephalkar would submit that this is a Government resolution outlining the procedure for procurement and purchase of goods and articles by various Government departments. To be precise, this is a revised Manual or Rule Book. This is not a Government resolution, which is for the MSSIDC specific. Therefore, no assistance can be derived from this Government resolution. While outlining the policy of procurement and purchase, the Government invites attention of the departments concerned to the order passed on 23.3.2012 by the Department of Micro and Small Industries, Government of India. The Government of India reserves 241 items for purchase through registered micro and small industries. The purchase or procurement has to be by tender system.

In this procurement, only these micro and small industries can participate. It is in this regard, Schedule 17 is referred in Clause 15 of this Government resolution. That pertains to the items, which cannot be procured from these micro and small industries as they cannot participate. However, in this very Schedule, there are some reserved items and for that, as per requirement and by making groups, separate tenders can be invited. It is in these circumstances that 241 items, which are reserved for micro and small industries are concerned, in procuring them through such industries, the big industrial houses cannot participate in the tender process. It is in these circumstances that Schedule 8 is also referred, which grants an exemption to register micro, small and medium industries from payment of tender fees and earnest money deposit (EMD).

42] Then, Shri Dhakephalkar invites our attention to the Rule Book itself and submits that the Chapters thereof and the Schedule would indicate that in Clause 5.14, there are some items reserved for micro and small industries and they have been given certain facilities.

Shri Dhakephalkar submitted that this Clause cannot be read in isolation. It will have to be read together with the other Clauses. Shri Dhakephalkar, therefore, justifies the action of the authorities. He also brought to our notice Clause 5.17 and then heavily relied upon the Schedules. Shri Dhakephalkar invited our attention to Schedule 14, which is Clause 6.14, but referable to Clause 5.11. This Schedule makes a list of items, which are produced in prisons. In that, Item No.63 is styled as Kothi "धान्य किंवा इतर वस्तू साठविण्यासाठी". Shri Dhakephalkar highlights the difference in the heading of the Schedules to submit that when it comes to a micro and small industries, and the items reserved for them in Schedule 17 referable to Clause 5.14, it would be apparent that Sr.No.215 is titled as tin container, tin tray, tin mess. Shri Dhakephalkar submits that these are tin items. If these are the items, which are to be procured, then it is evident that the requirement of the respondent no.2 of airtight containers is distinct. There is absolutely no confusion. Thus, the item to be procured, and which is subject matter of the present tender, is not reserved for the MSSIDC alone. Shri Dhakephalkar submits that while malnutrition was rightly prevalent in India amongst growing children, nutritional deficiencies amongst school going age group cannot be neglected. Malnutrition not only gives rise to morbidity and mortality, but also prevents a child from developing in a fully functional atmosphere. It adversely affects his education. Programme of providing mid-day meal in schools is designed to assist the child in several ways. It is a part and parcel of national programme of nutritional support to primary education commonly known as "Mid-day Meal Scheme". That improves the attendance in the school. A centrally sponsored scheme, namely, 'Mid-Day Meal Scheme' is being implemented in the State since a decade. The scheme is popular in rural as well as urban areas in the State. The food grain items are supplied to the schools and cooked meal is provided to the students. It is found that there is a necessity of storage containers, which will be provided to the schools in rural areas. Accordingly, it was decided by the Government of Maharashtra, with the concurrence of Central Government, to provide airtight containers for storage of food grains to the schools of local self-

Governments as well as aided private schools wherein Mid-Day Meal Scheme is being implemented. Hence, it is a misnomer to turn the item 'Airtight Container' as an equivalent to "धान्याची कोठी". It is an item known to the trade and commercial world by itself independently of a storage container for a tin container. It is a container, which ought to be airtight, not allowing moisture to shift through and spoil the food grains. That, such food grains have to be stored so as to enable a mid-day meal to be prepared and served in time. Therefore, the stock has to be maintained. For maintenance of the stock, quality material, which will not spoil or destroy the food grains inside it, was required. Hence, the trade and the market understood these items distinctly. There is no confusion, much less any attempt to side-track the MSSIDC. The whole argument of Shri Dixit is mis-conceived.

43] Then Shri Dhakephalkar relies upon the notice inviting tenders and Clause 14 thereof to indicate that submission of samples is envisaged so as to test food. Since the scheme has to be implemented in all the primary schools across the State, which are about 86,000 approximately in number, then, it is evident that all care and caution has to be taken. The manufacturing site would have to be inspected, that is taken care of by Clause 17. The expenses for sample testing, verification of manufacturing unit have to be provided by the bidder. Else, the bid can be rejected as non-responsive.

44] We have then been taken to the qualifications of the bidder as prescribed by Clause 3 of Section 1. Shri Dhakephalkar submits that the argument, that is built, that the MSSIDC sponsoring manufacturing units and in small scale sector have been ignored in preference to traders and suppliers, but without a manufacturing back up, is erroneous. Notice inviting tender is to invite offers and bids for supply of airtight containers for storage of food grains for schools under Mid-Day Meal Scheme in rural area of the State of Maharashtra. So long as it is a supply of airtight container, then for its durability, quality etc., the samples have to be tested. Since a huge number of containers will be required regularly, it is necessary to inspect the manufacturing units and satisfy oneself about the capacity of the units to manufacture this item on a large scale. Therefore, this is not a bid, as argued by Shri Dixit, reserved for only top class and high end manufacturers or suppliers. Further, there is no erroneous or wrong description of the item. Whether the traders or manufacturers, the concept is that they should be able to supply quality material. It is in these circumstances that Shri Dhakephalkar would rely upon the order dated 20.2.2017 and the affidavit of the Statistical Officer of the Directorate of Primary Education filed on behalf of respondent nos.1 and 2. In this reply affidavit, Shri Dhakephalkar would rely on the contents of paragraph nos.9 and 10. It is submitted that there is no truth or substance in the allegation that the corrigendum was not known to most of the bidders. Shri Dhakephalkar submits that the date for submission of samples, sample testing fees and unit verification fees was 4.2.2017 at 4-00 p.m. However, considering the pre-bid queries raised by the prospective bidders in writing and orally to prepare themselves accordingly to participate in the tender, corrigendum was issued. This corrigendum was known to the participants because it appeared on the Website on 30.1.2017. The date was postponed to 15.2.2017. In the circumstances, the second corrigendum was only to correct the typographical error. Even that was given wide publicity. To urge that something has been done secretly or clandestinely, is incorrect and rather irresponsible allegation. Shri Dhakephalkar would, therefore, submit that there is complete transparency.

45] Finally, Shri Dhakephalkar would contend that the Divisional Manager of the MSSIDC has unnecessarily jumped in the arena and it is not a healthy sign that he accuses the Department of Primary Education of the Government of Maharashtra of favoritism and nepotism. There is no deliberate or intentional exclusion of the MSSIDC. The MSSIDC could not have urged that the item to be procured was reserved for it. Even when the MSSIDC was sponsoring a unit, not only the samples were tested, but the unit verification was undertaken. The unit verification revealed that the set up does not match the demanded standards. Enquiry of facility of utilization of Marathwada Auto Cluster was undertaken. A letter dated 31.1.2017 is a letter on the letter-head of Marathwada Auto Cluster addressed to Divisional Manager, MSSIDC, Aurangabad. This letter itself clarifies that this is a common facility centre having facilities as enlisted and set out therein. These facilities are available to all industrial establishments on use and pay basis. The facilities mentioned in the letter are available and can be used for manufacturing any product. Thus, a cluster and providing services is not an independent manufacturing unit of a specific small scale industry. It is a service or a facility provided in common and available to all industrial establishments on use and pay basis. How that was inadequate and found to be such, is duly explained in the affidavits and, therefore, Shri Dhakephalkar would submit that the allegations made against the respondent nos.1 and 2 be rejected.

46] The allegations, made in the affidavit of Shri Pramod Naik, have also been met and specifically denied. The affidavit of the Statistical Officer, pursuant to the order dated 30.6.2017, reveals as to how there is no substance in the allegation that 30% items are reserved as per Government resolution dated 1.12.2016 for medium and small scale industries. Our attention is invited to paragraph nos.4 and 5 of this affidavit to submit that the MSSIDC is falling short of various requirements. The technical evaluation sheet was not complied with by the MSSIDC. Shri Dhakephalkar then relied heavily on paragraph no.9 onwards of this affidavit to submit that the petitioner no.3 is neither the manufacturer nor having any infrastructure to produce from the unit, which is referred by them for verification. In the unit verification, the petitioner no.3 – MSSIDC has provided a list of two units and those units did not have the facilities. It is in these circumstances that the affidavit dated 14.7.2017 and its annexures are relied upon. The College of Engineering, Pune, addressed a letter dated 14.4.2017 to the Director of Primary Education. It is a third party technical expert. The technical evaluation sheet would indicate as to how the MSSIDC's bid is not compliant.

47] Shri Dhakephalkar handed over this sheet with the remarks and signatures of the officers.

48] With the assistance of Shri V.J. Dixit and P.K. Dhakephalkar, we have perused the petitions and all the annexures thereto. We have also perused the affidavits placed on record with their annexures.

49] At the outset, we must clear the ground for powers of judicial review conferred on this Court, particularly in relation to tender matters, which enable it to scrutinize the decision making process. The Court cannot question the decision itself, for, the Court is not possessing the expertise and the experience in such matters. Secondly, in judicial review, this Court will not interfere with the version or interpretation of the terms and conditions of the NIT by the tendering authority, unless that interpretation results in patent arbitrariness, discrimination and absurdity. So long as those in-charge of the tender process deem it fit and proper to insert conditions and frame them in a particular manner so as to suit the object and purpose of the procurement or purchase, then, the Court will give unto their wisdom and merely because another view is possible, will not force its interpretation on the tendering authority. The High Court does not sit as a Court of Appeal. These principles are too well settled to require reference to any judgment.

50] It is unfortunate that both these petitions are filed by such persons claiming to be fully eligible and qualified to participate in the tender process, but whose technical bids were rejected as non-compliant or non-responsive. Both the petitions are seeking relief so as to direct the Director of Primary Education to award the contract to the MSSIDC. The basis or foundation of the petitioners' claim is that they are sponsored by the MSSIDC. They have certain credibility and standing in the market, else the MSSIDC would not have taken their cause. The first two petitioners in the first petition have already been referred by us. As far as Writ Petition No.8643/2017 is concerned, it is conceded that this petition is also seeking the relief in identical terms to the earlier writ petition. It is also a petition for and on behalf of the MSSIDC, but by one Shree Ganesh Press N Coat Ind.Pvt.Ltd. It is claimed that this entity is a private limited company dealing with manufacture and supply of pressed, surface equipped components and fabricated assemblies. The registration certificate of this company is at Annexure 'A' to the memo of Writ Petition No.8643/2017. It is stated that this petitioner is supplying goods to various companies and presently the annual turnover is more than rupees hundred crores. It is also registered as a small scale industrial unit. It is also registered under the Ministry of Micro, Small and Medium Enterprises. There are near about 100 employees and more than 20 ancillary units dependent on this petitioner – company. With such a backing and credibility, it is claimed that it participated in the tender. Pertinently, the petitioner in this petition takes up the cause of the MSSIDC. But in the memo of this petition, it is claimed that this petitioner independently applied for the contract by submitting its bid. It is claimed that the same fulfills the requisite criteria and is eligible for the contract being awarded. The petitioner – company, along with consortium company dealing with the same business, had submitted the tender as per the tender notice alongwith all necessary documents and accordingly the respondent no.2 issued the acknowledgment to that effect. On specifically questioning Shri Dixit as to how, when there is an independent participation of the petitioner in this petition so also as a part, can it be said that it is not interested in procuring the contract itself, but supports the cause of the MSSIDC. Shri Dixit, on specific instructions, states that though the petition is filed by one such bidder, eventually at some time or the other, they have been assisted by the MSSIDC and all of them thought that their cause would be prominently and properly presented by the MSSIDC alone. The petitioner in this petition urges that it was informed that as per the terms and conditions of the tender, unit verification and machinery verification will take place on 5.3.2017. It is stated that the unit was inspected. The unit verification report, copy of which was forwarded, indicates that the facilities were found lacking. There was an objection raised to the documents of the petitioner – company by one Sai Trading Company. It is alleged that the petitioner has not submitted the notarized registration, documents at Annexure 'D' are not original, BSI certificate is not submitted and there is no stamp on the test report. When such objections were raised, the petitioner promptly complied with them by uploading the certificate / documents and also pointing out that even the BSI certificates uploaded by Krishi Intratrade, Shalaka Infratech and Sai Trading are not valid as per tender condition. It is, therefore, evident that by Annexure 'J' to Writ Petition No.8643/2017, the petitioner therein tries to justify the acts performed, namely, compliance with the terms and conditions of the tender. It is emphasized that this unit is fully eligible for award of the contract. This unit makes a reference to the MSSIDC's petition. This is an obvious attempt because this petitioner was informed by the respondent no.2 in writing on 13.6.2017 that the committee noticed that there were several deficiencies in the documents supplied and forwarded. When such a communication was received and the petitioner responded to it, it realized that if not in the petition of the MSSIDC, atleast by an independent petition, it can obtain a relief through the MSSIDC for itself.

51] Yet, it goes on making these allegations and which are to be found from paragraph no.2 of memo of Writ Petition No.8643/2017 against several bidders and particularly the respondent nos.5 and 7 to that petition.

52] It is common ground that the Writ Petition No.8643/2017 was filed only to strengthen the case of the MSSIDC, we do not think that we should assign separate reasons.

53] Suffice it to note that the evaluation by the committee, which is an expert body, is not required to be interfered with in our limited jurisdiction. The composition of the tender evaluation committee indicates that it is not only the Director of Primary Education Shri Sunil Chavan, the Deputy Director of Education Shri Temkar, but one Deputy Secretary in the Department of Finance, Government of Maharashtra, is the Member, together with one Shri Pramod Patil, who is Joint Secretary in the Department of School Education and

Sports, Shri Sharad Gosavi, Deputy Director of Primary Education, Pune, as Member and Accounts Officer, Directorate of Primary Education, Pune, and there is the Head of the Department, Metallurgy, Government Engineering College, Pune, another Professor, several third party experts and several others. The comments and remarks with regard to each of the units / participants would indicate that the bids have been evaluated impartially and transparently. There is an expert opinion of the College of Engineering as well. In the circumstances, we do not think that in a writ jurisdiction, we can sit in judgment over the conclusions of this committee. Apart from this, about technical evaluation sheet, what we find is that the remarks indicate the efforts taken by the committee and its members. The MSSIDC could not comply with several vital terms and conditions. It failed to submit some important certificates. The requirement of GI sheet manufacturers, assistance letter be provided alongwith material test certificate of GI sheet, the MSSIDC did not submit the test report. A copy of the Chartered Accountant certificate for unit worth was also not submitted *qua* individual units sponsored by the MSSIDC. The MSSIDC was not placing a bid for itself, but for its member units. It was, therefore, expected that atleast about some members, data and information, as demanded in the NIT, would be submitted. An undated balance-sheet was submitted for financial years 2014-15 and 2015-16, when the requirement was that it was for three years, namely, 2013-14, 2014-15 and 2015-16. An adverse opinion was also given by the Accountant General (Audit-III). There were several documents, such as registration certificate, excise registration, ESI certificate and a declaration that the facility of separate inhouse laboratory for inspection and quality control within the factory premises, were not filed because no declaration was submitted. The unit, which was inspected, did not have the machinery. The list of machineries was also not certified by the Chief Engineer. The laboratory sample may have been submitted, but unit verification report of the Technical Committee was adverse and in the negative.

53] It is in these circumstances that we are of the opinion that in a matter of this nature, the MSSIDC should have remained neutral. It should not have in its enthusiasm made allegations, and which could safely be termed as vague, wild and irresponsible. They were not supported by any materials. Merely because the MSSIDC was sponsoring some units, which were not selected, to go ahead for opening of their financial bids, does not mean that the entire process is arbitrary, discriminatory, much less *mala-fide*. The allegations that the tender conditions are worded in a particular manner only to keep out the MSSIDC is, to say the least, without any substance. We have clarified and we agree with Shri Dhakephalkar, that there is a difference between a mere container or Kothi for storage of food grains, a tin container and the airtight container. The last one in this order was the requirement of the respondent nos.1 and 2. They had specifically worded their item as Airtight Container and did not provide any leaving so as to pass off any other item as an Airtight Container. If the requirement was specific, then, bearing in mind the laudable object and purpose, we do not expect the respondent nos.1 and 2 to compromise in any manner on the quality of the product. It must be the exact item and as demanded. The supply should be of this very item and not any other, much less a substitute. In the circumstances, we do not think that the MSSIDC can derive any advantage from the Government resolution dated 1.12.2016 and particularly the Schedule 17 thereto. That item, which is reserved for the MSSIDC, is distinct than the one for which a tender was floated. The MSSIDC also cannot derive any mileage because it sponsors units in the small scale sector. There was no intention to keep it out. Merely because the MSSIDC is set up by the Government with the object of encouraging micro, small and medium scale enterprises, the assistance by the MSSIDC was expected. The participation is also understood. However, going beyond that, and out of frustration and desperation, making allegations merely because it is excluded, is not befitting an organization and set up like the MSSIDC. It should have been cautious in the language it used in the pleadings. For instance, in the affidavit of the Divisional Manager, the MSSIDC admits that the small scale industries are not having capacity to bid individually. So far so good. However, it accuses the respondent no.2 of favouring other bidders who are traders and not manufacturers. We do not want any substantiation or proof for such allegations. Then, we have another allegation of a cartel bing formed by some of the bidders in respect of supply of what is styled as 'Kothi' or container and which the MSSIDC understands as an Airtight Container. Then, what we have is an affidavit of one Nitin Ganeshrao Gangakhedkar, Divisional Manager of the MSSIDC, Aurangabad, and though the MSSIDC participates in the joint meeting held on 5.7.2017, it goes ahead and terms the tender notice and the conditions therein as an eye-wash. He says that when he accused the respondent no.2 of protecting other bidders, he was speechless. It is then stated in this affidavit that the petitioners have drawn a video shooting of the inspection by the committee and the same was shown to the respondent no.2 in the meeting. After looking at the said video shooting, he was speechless. Then, it is claimed that the petitioners demanded inspection of technical verification report in terms of the order dated 6.4.2017, but that was denied. We do not expect affidavits employing and using such language by public officials, not in the least, of the MSSIDC. It has not in any manner assisted its member units by accusing another Department of the Government. This, to our mind, hardly serves the cause of 41 entrepreneurs represented by the MSSIDC. We are, therefore, surprised by such a response from the MSSIDC and that its officials have taken the matter personally.

54] Having found from perusal of all the relevant papers and documents that there is no substance in any of the allegations made by the MSSIDC, the writ petitions must fail. They are accordingly dismissed, but without any order as to costs. Rule is discharged.

(MANGESH S. PATIL, J.) **(S.C. DHARMADHIKARI, J.)**