

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.12863 OF 2018

Shri Balaji Trading Company,
Through its Proprietor,
Shri Rameshwar Sonwane,
Age-Major, Occu:Business,
R/o-H.No.4/6/116, Mill Colony,
Kotwalpura, Aurangabad

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Education and Sports Department,
Mantralaya, Mumbai-2,
- 2) The Directorate of Education (Primary),
Maharashtra State,
Dr. Babasaheb Ambedkar Road,
Pune

...RESPONDENTS

...

Mr. V.D. Sapkal Advocate for Petitioner.
Mr. S.S. Thombre, Special Counsel for
Respondent Nos. 1 and 2.

...

**CORAM: S.S. SHINDE AND
SUNIL K. KOTWAL, JJ.**

DATE OF RESERVING JUDGMENT : 13TH DECEMBER, 2018

DATE OF PRONOUNCING JUDGMENT: 04TH JANUARY, 2019

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition under Article 226 of the Constitution of India, has been filed with following substantive prayer:

“B] To quash and set aside E-tender notice dated 03-11-2018 issued by respondent No.2 inviting tenders for supply (Exhibit C) by issuing appropriate writ or order or direction in the nature of writ or as the case may be.”

3. It is the case of the Petitioner that Petitioner is a proprietary firm, doing business

in essential commodities, and mainly supplying the commodities under Mid-Day-Meal Scheme as sub-contractor of Maharashtra State Co-operative Consumer Federation Ltd., and Maharashtra State Co-operative Marketing Federation Ltd. The Petitioner has supplied commodities under Mid-Day-Meal Scheme since 2010-2011 under Maharashtra State Co-operative Federation Ltd.

4. It is the case of the Petitioner that Mid-Day-Meal Scheme was introduced by the Central Government since 22nd November, 1995, and for effective implementation of the scheme, the Government of Maharashtra has issued Resolution dated 18th June, 2009. Further, on 26th February, 2010, the Government of Maharashtra issued another Resolution for issuing guidelines for transportation of rice supply and other food-grain ingredients under the said scheme. In the said Government Resolution dated 26th February, 2010,

procedure for checking other food-grain items is prescribed as per clause (D). Clause (D-1) of the said Resolution provides that, when the supplier effected delivery of good, the Block Education Inspector/ Superintendent of Mid Day Meal shall take 250 gram sample from each supplies and with forwarding letter, shall sent it to Government Laboratory. It further provides that, the sample verification charges shall be borne by supplier and on receipt of Laboratory Report, the concerned supplier shall submit it before the Block Education Inspector/ Superintendent of Mid Day Meal. On receipt of Laboratory Report, bills shall be paid and if there is complaint regarding quality of other food-grain items, such items/ material shall be replaced by supplier. Thus, entire procedure is prescribed in the Government Resolution itself.

5. It is further the case of the Petitioner

that there is no provision in the said Resolution that before allotment of tender, the samples should be sent to the Government Laboratory for testing. By giving complete go-bye to the Government Policy of 2010, some of the contractors approached to the Government and Directorate, and got inserted some clauses in the tender notices, which are in existence since long. It is the case of the Petitioner that for present tender, notice was issued on 3rd November, 2018, by the Directorate of Education, inviting tenders from the bidders, the copy of which is placed on record at Exhibit C to the compilation of the Petition.

6. In Para-6 of the Petition, the Petitioner has given date-wise schedule of the tender process. Further, the Petitioner has challenged Clauses 2.2 (i), 5.1 (VIII) and 7.1 (2) of the tender notice dated 3rd November, 2018, which read as under:

"Clause 2.2 Submission of Samples:- The prospective Bidder is required to submit their samples of Moog dal, Masoor dal, Gram, Chavali, Matki, Whole Moog, Peas, Chilly Powder mixed with Onion and garlic, Cumin, Mustard, Garam Masala as per the Specifications mentioned in Annexure-A to the Director of Education Primary, Maharashtra State Pune (DEPMS) along with Demand Draft of Rs.20,000/- (Rs. Twenty Thousand only) (Non Refundable) in the Name of "RAJAYA SAMANVAY ADHIKARI, SHALEY POSHAN AHAR KAKSH PRATHMIK SHIKSHAN SANCHALLNALAY MAHARASHTRA RAJAYA PUNE" towards expenses for testing of samples in the Government laboratories or laboratories authorized by Government and for other expenses.

Bidder can submit bids for any number of districts. But the bidder should submit samples in two sets only. One set of sample will be sent to laboratory for testing. In case of failure to submit samples and receipt of deposit as mentioned above, the bid uploaded by Bidder will be treated as non-responsive and will not be opened. If the samples submitted by Bidder fails/ does

not confirm to the specification of the department in Laboratory testing, the bid submitted by Bidder will be rejected as non-responsive. If the bidder bids for more than one district, he is free to submit either separate sample sets for each district, or a common sample set for all district bid for, at his own risk.

Clause 5.1 Qualification Criteria

(VIII) Bidder should submit samples along with tender as below.

- A) 2 nos of each items with more than 500 grams quantity of samples duly sealed.
- B) 2 pcs of each items packed in transparent poly bag.

Clause 7.1 Bid Opening

(2) The DPEMS shall obtain the report of samples provided by the Bidder from the Government Laboratories or the Laboratories authorized by the Government."

7. It is the case of the Petitioner that all the above referred clauses are introduced by Respondent No.2 with the help of few contractors who has capacity to manipulate Laboratory Reports,

for getting rejected the samples of other proposed bidders. Clause 2.2 of the tender notice provides that even if one of the sample of one commodity of the total tender item is rejected by the Laboratory, entire bid will be rejected.

8. It is the case of the Petitioner that since 2010, some persons are selected as contractors and only their samples were approved by the Government Laboratories. There is a group of contractors with three leading persons from Mumbai, Beed and Jalgaon, who are leading the coordination and implementation of the Scheme since its inception, with the help of other Government Officials working in Education Department of Mantralaya and Directorate of Primary Education Office. The Petitioner has placed on record list of the Contractors at Exhibit 'D' to the compilation of the Petition.

9. It is the case of the Petitioner that in the proposed tender process also the similar conditions for sending samples to the laboratory for testing during the tender process, are mentioned, and in view of the said conditions, the respective bidders have to submit samples prior to the technical and commercial bids. These conditions are inserted in the tender notice so as to facilitate some contractors to get the sample rejected of the other bidders, with the help of Government Officers and Laboratory Officers. In fact sample collection and testing should be only after the technical and commercial bid is finalized, of the bidders who have quoted lowest price.

10. It is the case of the Petitioner that, although Maharashtra State Co-operative Consumer Federation Ltd. and Maharashtra State Co-operative Marketing Federation Ltd. have never undertaken

the activities of supply and transportation of the items by themselves, still they are accepted as bidder for the tender and contracts are allotted to them. Once the contracts are issued to them, they again sub-let these contracts to the same group of contractors who has captured these Departments and its operation since 2010, of the Mid-Day-Meal Scheme. It is also seen that from 2010, the costs of supply of these items are higher than any other Government Scheme carried out by other departments. The rates quoted in tender are of a supreme quality, whereas inferior quality products are being supplied and huge margin is gained. Referring to the chart given on Page No.12 of the Petition, it is the case of the Petitioner that, it is also a practice that same contractor furnishes different rates for different districts. Since 2010, there is no change in the contractors and the districts of their supply is the same except some districts, where changes were made in

2017-2018. Some of the contractors are misusing the scheme for their personal gains. In order to make the tender procedure transparent and stop the losses to the Government, the nexus between the group of contractors and Government Authorities needs to break by deleting the said conditions from the tender notice.

11. It is further the case of the Petitioner that on 28th October, 2017, when Petitioner had participated in the tender process in respect of Sindhudurg and Wardha Districts, he found some manipulation and therefore submitted detail appeal to the Directorate of Education, but no action was taken. Now, for this year the Petitioner had got the sample tested on 23rd March, 2018 and 7th July, 2018 from the Government of Maharashtra, Regional Public Health Laboratory and they confirmed the norms, whereas the same sample which was submitted along with the tender, were rejected by the

Government Laboratory. This shows that there is collusion between the office of Government Laboratory and the contractors. Thus a systematic attempt is being made by few contractors with the help of the Government agencies and huge amount is siphoned. Therefore the Petitioner has prayed that both the conditions mentioned above, providing samples along with the tenders, should be struck down from the tender notice. The Petitioner has also prayed to conduct an enquiry through the Government agencies like C.B.I. in respect of implementation of the scheme, manipulations and corruptions involved in the scheme since 2010. It is the case of the Petitioner that under the garb of transparency, the above referred clauses are introduced with an intention to select favourite contractors and reject the other contractors though they are eligible. The samples are tested only at the time of tender procedure as technical qualification, for rejecting eligible bidders.

12. The Petitioner has submitted that till this date, he has neither submitted tender nor samples because of his past experience, as some samples are rejected deliberately three times by the Government Laboratory. When the samples are tendered with identical specifications to the different Government Laboratories by the Petitioner on his own, those are accepted showing the confirmation of norms. Hence this Petition is filed by the Petitioner challenging the above said clauses mentioned in the tender notice.

13. Learned counsel appearing for the Petitioner submits that some of the contractors have formed a group and with the help of certain Government officials and the officials from the Government Laboratories, the said contractors are managing that the contracts should be allotted to them only. Learned counsel submits that Clauses

2.2 (I), 5.1(VIII) and 7.1(2), referred herein above, are introduced in the tender notice dated 3rd November, 2018, only with a view to facilitate the few contractors who are in the good books of the officials in the Department, and therefore they are getting contracts since the year 2010. Learned counsel submit that the above said conditions are contrary to the provisions of Government Resolution dated 26th February, 2010. It is submitted that the said Government Resolution provides that, after issuance of tender when supplier effects actual delivery of goods, then samples should be sent for testing in Government Laboratory. Whereas the above said conditions in the tender notice provides that, before issuance of tender, the samples should be sent for checking to the Government Laboratory. The condition in the tender also provides that even if one of the sample of one commodity of the total tender item is not confirmed by the Government Laboratory,

entire bid is liable to be rejected. According to the counsel, these conditions are harsh, not in conformity of the said Government Resolution and therefore the same are liable to be struck down.

14. Learned counsel further submits that there is no any condition in the tender notice stipulating that, after issuance of tender when supplier would effect actual delivery of goods, then again samples would be sent for testing in Government Laboratory. According to the counsel, if such conditions are allowed to be there in the tender, then the contractors would supply good quality of food-grain items for testing before issuance of tender only, and thereafter the contractor would continue to supply inferior quality of food-grain items, as there is no provision to check the said items after issuance of contract.

15. Referring to the list of contractors annexed at Exhibit D to the compilation of the Petition, learned counsel submits that since the year 2010, contracts of Mid-Day-Meal Scheme are being awarded to the same contractors, whose names are listed in Exhibit D. Learned counsel prayed that necessary directions may be given for conducting an enquiry in respect of total implementation of the scheme, manipulations and corruptions involved in the scheme since the year 2010. Learned counsel further submits that as the above referred conditions in the tender notice are contrary to the Government Resolution, the tender notice dated 3rd November, 2018 may be quashed and set aside.

16. On the other hand, learned counsel appearing for the Respondents, referring to the reply filed on behalf of the Respondents, submits that in the year 1995-96 the Central Government

has started Mid-Day-meal Scheme throughout India including State of Maharashtra, which is in fact as National Programme of Nutrition Support to Primary education, and the same is Central Sponsored scheme. Initially, as per the said scheme, students were to be given 3 Kg. Rice per month. Thereafter State Government took a decision to provide cooked meal (ready to eat) instead of providing dry rations in schools for students from 1st to 8th standard. It is submitted that in the rural areas meals are being provided through Self Help Groups/ Mahila Mandals etc., who do the cooking in the school premises itself. In so far as the Schools in urban areas are concerned, they have no space to cook food within the school premises. Thus, in such cases, meal is cooked in the kitchen of contractors who are appointed for this purpose. The said contractors are from Self Help Groups/ Mahila Mandals/ Voluntary Organizations. Even as the above scheme was in

vogue, 'study group committee' was appointed by the Government for effective implementation of the said scheme. The said study group committee given some recommendations which were accepted by the State Government and accordingly changes were made in the implementation of the Mid-Day-Meal scheme. Thus, Government Resolution dated 18th June, 2009 came to be issued for effective implementation of the said scheme. Accordingly, Project Implementation Committee was set up vide Government Resolution dated 7th November, 2012, to finalize tender document. The said committee has been restructured by Government Resolution dated 24th March, 2017. This committee comprising the Secretaries of various Administrative Departments such as School Education and Sports Department, Finance Department, Transport Department, etc. Commissioner of Food and Drug Administration, and Joint Director, Industrial Directorate Department of Industry, Maharashtra State are members of said

committee.

17. Learned counsel further submits that Department of Industry, Energy and Labour of State Government issued a Government Resolution on 30th October, 2015 regarding procedure to be followed by various departments while purchasing. According to para 2.9.2 of the said Resolution, School Education and Sports Department formed a State level purchase committee under Chairmanship of Director of Primary Education vide Government Resolution dated 27th August, 2018. It is submitted that this committee carried out district wise tender for selecting suppliers to transport rice from FCI godown to school and to supply condiments in school in rural area. Accordingly the changes as suggested in the tender documents were incorporated and same was put up for approval before the State Level Project Implementation Committee on 30th October, 2018. Thereafter, the

State Level Purchase Committee published the said tender on 3rd November, 2018. As per the programme published in tender form, the pre-bid meeting was held on 12th November, 2018 and 28 prospective tenderers were present for the said meeting. Different aspect of the tenders were discussed with the prospective bidders and difficulties faced by those prospective bidders were also considered to see that the process of tendering should be done with proper consensus of all. Those difficulties which were found proper and genuine as submitted by the prospective tenderers, suitable changes were made in the tender conditions.

18. Learned counsel further submits that in view of clause No.3.1.1.2 of the Policy for Purchase of food items laid down by the Government on 1st December, 2016, there is provision of calling of food item samples from the tenderer,

which are not ISI/ AGMARK marked, for verifying/testing the quality of those goods. It is submitted that under the Mid Day Meal Scheme, tenderer is asked to supply total 16 other food items. However, four items, such as salt, oil, turmeric and chilly are compulsorily required to have ISI/ AGMARK approved standards/ marked. Therefore, a condition has been imposed in tender that before submitting final tender, the tenderers shall supply samples of remaining 12 items for laboratory testing. It is also mentioned in the condition that, those samples shall be sent to laboratory for testing and if any of the samples out of above 12 items submitted by tenderer does not confirm with the specifications prescribed by the Respondent in Annexure-A of tender document, the tender of such tenderer shall be summarily rejected and his commercial bid shall not be opened. It is submitted that the Petitioner has taken exception to the above condition being

unreasonable. According to the counsel appearing for Respondent, the above condition has been incorporated specifically to see that good quality of items are supplied by the contractor. As per the Mid Day Meal Scheme, the students from 1st to 8th standard are to be provided fresh hot meal in afternoon regularly. Hence the items supplied by the contractor must match with the specifications given in the Food Safety and Standards (Food Product Standards and Food Additives Regulation) 2011. As the meal is to be served to students, extra care is taken that the other food grain items other than rice must satisfy the required norms before they are supplied finally to the school. Hence, it is decided to send those samples to the Government/ Government approved food testing laboratories for testing and if any of the sample is not found as per the specification, the tenderer shall be barred from further process. The above yard stick has been made applicable to each

and every tenderer to have good contractors who are supplying items as per the prescribed norms only. It is submitted that if tenderer whose sample is not satisfying the norms is permitted to participate in further tender process, then possibility of supply of similar items in future cannot be ruled out. It is submitted that as per Government Resolution dated 16th May, 2002, under the Mid Day Meal Scheme, it is categorically provided that prescribed number of calories should be received by each student from such meal.

19. Learned counsel further submits that as per the terms and conditions, the tenderer has to submit sample of 12 items in two transparent plastic bags weighing 500 gram each. That sample should not depict the brand or firm or manufacturers name, however the tenderer should put name of item on those bags. Thereafter bidder has to seal those transparent plastic bags and

those plastic bags are to submitted in one box. On the said box the tender shall writ his name. After getting all these boxes from the prospective bidders, the Respondents shall be removing the names of the bidders/ firms and independent code shall be given to each box. These codes are kept secrete and then the boxes having codes shall be sent to the laboratories in random manner for testing purposes. The above procedure and precaution is taken for fair and proper testing at laboratories and for maintaining secrecy of identity of the tenderer. It is submitted that above condition is incorporated for removing malpractices and having transparency in the process of tendering.

20. Learned counsel further submitted that as per the tender conditions, the pre-bid meeting was held on 12th November, 2018. Neither the Petitioner nor his representative was present nor any

objection was raised. Learned counsel further submits that identical issue was raised before the High Court, Bench at Nagpur in Writ Petition No.3647 of 2017 and this Court vide its order dated 18th July, 2017, negatived the challenge as regards taking of the samples in tender process. It is submitted that, entire tender process is being undertaken in transparent and fair manner. Since Mid-Day-Mill (ready to eat) is required to be provided in the schools to 1,10,00,000 children/students throughout the State, the State is taking every care by sending the samples of food-grains in the Laboratory for checking, even during the process of tender. It is submitted that Respondent is undertaking the tender process as per the Government policy and therefore, learned counsel prays that the Writ Petition is liable to be dismissed.

21. We have carefully considered the

submissions of learned counsel appearing for the Petitioner and learned counsel appearing for the Respondent. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, relevant Government Resolutions, and the affidavit in reply filed on behalf of the Respondent, along with annexures thereto.

22. Precise contention of the Petitioner is that the the conditions in the tender notice dated 3rd November, 2018 issued by Respondent No.2, being Clause Nos. 2.2(i), 5.1(VIII) and 7.1(2), reproduced herein above, are contrary/ not in keeping in view Clause (D.1) and (D.2) of the Government Resolution dated 26th February, 2010. According to the Petitioner, the said Government Resolution provides that food-grain items should be sent for checking when the supplier has actually effected the delivery of good, however

the above referred clauses of the tender notice stipulates that before issuance of tender to the contractor, the food-grain items be got checked from Government Laboratory, which is not in conformity with the provisions of the said Government Resolution. In this respect, learned counsel appearing for the Respondent has referred to "Revised Policy for Purchase of Official Items by Departments of Government, the copy of which is placed on record at Exhibit R-4 with the reply filed by Respondent. Learned counsel appearing for Respondent has specifically referred to Clause No.3.1.1.2 of the said revised policy, which reads as under:

“ ३.१.१.२ चिन्हाकित नसलेल्या वस्तुंची खरेदी करताना उत्पादनाचा दर्जा तपासणी

निविदा प्रक्रिया राबविताना चिन्हाकित (आयएसआय मार्क) नसलेल्या उत्पादनाचा दर्जा तपासण्यासाठी मान्यता प्राप्त प्रयोगशाळांची यादी नियमपुस्तिकेच्या परिशिष्ट १२ मध्ये देण्यात आली आहे. सदर

प्रयोगशाळांच्या यादीमध्ये National Accreditation Board for Testing and Calibration laboratories (Website-www.nabl-india.org) यांच्याकडील [नोंदणीकृत / प्रमाणित](http://www.nabl-india.org) असलेल्या संस्थांचा समावेश आहे. तसेच महाराष्ट्रातील शासकीय अभियांत्रिकी महाविद्यालयाकडून देखील वस्तुंची तपासणी करून घेता येईल.

त्याशिवाय जिल्ह्यांच्या ठिकाणी आयएसआय चिन्हांकित नसलेल्या वस्तुंची तपासणी करण्यासाठी तेथील खाजगी अभियांत्रिकी/[इतर](http://www.nabl-india.org) महाविद्यालयाने तपासणी संस्थेचा दर्जा देण्याचा प्रस्ताव विकास आयुक्त (उद्योग) यांना सादर केल्यास तो प्रस्ताव तपासून गुणवत्तेनुसार त्या अभियांत्रिकी/[इतर](http://www.nabl-india.org) महाविद्यालयास तपासणी संस्थेचा दर्जा देण्याचा उचित निर्णय घेण्यात येईल. आयएसआय मार्क नसलेल्या उत्पादनाची नमुना तपासणी करण्याकरिता येणारा खर्च संबंधित निविदाधारकाकडून घेण्यात यावा. ”

23. Therefore, provision in aforesaid Clause of the Revised Guidelines, referred above, makes it abundantly clear that the sample of food-grains/ items for which tender has been floated,

can be sent for testing to the Government Laboratory during the tender process. Therefore, the said clauses i.e. Clause No. 2.2(i) and Clause No.5.1 (VIII) of the tender notice dated 3rd November, 2018, by no stretch of imagination can be construed or considered as contrary to the Government policy reflected in earlier Government Resolutions, and in particular Clause (D.1) and (D.2) of the Government Resolution dated 26th February, 2010.

24. It appears from reading Clauses of the Government Resolution dated 26th February, 2010, that the contractor is expected to supply the materials for one year on two months basis, for which supply order will be issued from time to time. We do not wish to enter into aforesaid aspect that how many times the contractor has to supply the material. However, on each occasion of such supply the Respondent authorities can send

the sample for testing, as the authorities have to issue supply order on each occasion. Merely because the samples are send during the tender process, it would not bar the Respondent authorities to send the samples for testing even after contract is awarded in favour of particular contractor. Therefore, we do not find any substance in the contentions of the counsel appearing for the Petitioner that condition Nos. 2.2(i) and 5.1 (VIII) of the tender notice dated 3rd November, 2018, are contrary to the provisions of the Government Resolutions dated 18th June, 2009 and 26th February, 2010.

25. It is pertinent to note that, already the conditions which are similar to the conditions of the tender notice dated 3rd November, 2018, which are under challenge in this Petition, have been considered by the Division Bench of the Bombay High Court, Bench at Nagpur (CORAM: B.P.

DHARMADHIKARI AND R.B. DEO, JJ.) in Writ Petition No.3647 of 2017 (Mayur Packaging Works vs. State of Maharashtra and another), and on 18th July, 2017, following order is passed:

"1. Heard. Petitioner a supplier of food articles and tenderer in process floated by respondents challenges two condition in NIT. First condition is contained in clause 5.2.2. That clause reads as under:

"In case of failure to submit samples and receipt of amount as mentioned above, the bid uploaded by Bidder will be treated as non-responsive and will not be opened. If the samples submitted by Bidder fails in Laboratory testing, the bid submitted by Bidder will be rejected as non responsive. Even if a single sample fails / does not confirm to the Specification of the department the bid submitted by the Bidder will be rejected as non responsive."

Part which is assailed is underline by us.

2. The other challenge is to modification of clause-B in tender condition no.5.2.4. It reads as under:

"Bidder should submit samples along with tender as per follow.

A) 2 nos of each items with more than 500 gms quantity of samples duly sealed.

B) 2 pcs of each items packed in transparent poly bag duly labeled."

The Corrigendum is,

"(c) if bidder submits any branded item then packet showing name of brand must be removed and item must be given in plane poly bag;

(d) Bidder must not mention firm name on any poly bag. Bidders name will be only on the box containing this poly bags."

3. After hearing respective counsel, we find that the respondents in their

wisdom find it not safe to deal with any supplier whose specimen even in respect of single food item is found below standard. The approach can not be treated as arbitrary and condition therefore, is not irrational.

4. By substituting clause B Supra respondents have ascertained that while undertaking test on the samples, the authorities are not influenced by brand name or any other identification mark upon it. Examination is carried in neutral atmosphere and therefore, impartial or real results come before the respondents. They have explained this logic on affidavit. Submission is, it introduces more transparency in the matter.

The efforts definitely introduce transparency as in absence of any name, the tests are carried neutrally and impartially by experts.

5. Thus both conditions modification in NIT can not be viewed as arbitrary. The conditions definitely have nexus with the object sought to be achieved

and bearing on the process.

We, therefore, find challenge misconceived.

6. Last contention of petitioner is though tender should have been finalized before January, 2017, respondents have been taking time and extensions have been given to the earlier contractor. We find that in present matter, this Court has granted interim order and it is in force since last about 9 days. In absence of that order perhaps the respondent could have finalized the tender by today.

7. In this situation, we direct respondents to complete the tender process as per law in next two weeks.

Accordingly, with these directions, we dispose of writ petition. No cost."

26. Thus, the Division Bench of the Bombay High Court, Bench at Nagpur has held that, the approach of respondents can not be treated as

arbitrary and condition therefore, is not irrational. In this respect, learned counsel appearing for the Petitioner has submitted that Government Resolution dated 26th February, 2010 was not brought to the notice of the Division Bench of the Bombay High Court, Bench at Nagpur before passing order in said Writ Petition No.3647 of 2017. In the light of discussion in foregoing paragraphs, we do not find substance in the said submissions advanced by learned counsel appearing for the Petitioner.

27. Though, we are not inclined to entertain the challenge of the Petitioner to the conditions laid down in the tender notice, however, we find substance in the contention of the Petitioner that persons/contractors whose names have been mentioned on Page Nos.116 and 117 of the compilation of the Petition (Exhibit-D), for so many years i.e. from 2010 onwards, contracts have

been awarded to them. In that respect, we direct Respondent No.1 to cause enquiry about the said grievance raised by the Petitioner, how the said persons are getting contracts for years together. However, such enquiry should be conducted by the Officer not below the rank of Joint Secretary, Department of Education and Sports, Government of Maharashtra, Mantralaya, Mumbai, and after adhering to the proper procedure and following the principles of natural justice, as expeditiously as possible, however, in any case, within three months from the date of receipt of copy of this order, and submit report to this Court.

28. As on the date when the Petition was heard, Respondents have submitted that the Petitioner has not participated in the tender process. Even there is no denial on the part of the Petitioner that he has not participated in the tender process. Even, in the Petition itself, the

Petitioner has contended that he has not participated in the tender process.

29. For the reasons stated herein above except in Para 27, we do not find any substance in the Petition. The Petition is devoid of any merit. Hence the Writ Petition stands rejected. Rule stands discharged.

. List on 8th April, 2019, under caption "For compliance" of the directions contained in Para 27 herein above.

[SUNIL K. KOTWAL, J.]

asb/DEC18

[S.S. SHINDE, J.]