

(2003) 12 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 23777, 23940 and 23944 of 2003

Godavari Polymers Pvt. Ltd.

APPELLANT

Vs

Agricultural Products Commissioner and Principal Secretary,
Agriculture and Co-operation (Horti) Department, Govt. of
A.P. and Another

RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 15(1), 226, 298, 299

Citation : (2004) 1 ALD 783 : (2004) 5 ALT 599 : (2005) 1 CTLJ 535

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : V. Krishna Mohan, in WP No. 23777 of 2003 and Nooty Ramamohan Rao, in WP Nos. 23940 and 23944 of 2003, for the Appellant; Government Pleader for Agriculture and Co-operation and Additional Advocate-General for Respondent Nos. 1 to 6, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.

Prologue

1. The Government of Andhra Pradesh (GoAP), so as to increase irrigation efficiency with available water has mooted A.P. Micro Irrigation Project (APMIP). The project envisages to bring a huge extent of agricultural land under micro irrigation. So as to encourage the farmers to shift from surface method of irrigation to micro irrigation, GoAP took a policy decision to give fifty per cent subsidy to farmers who invest in micro irrigation equipment by taking a bank loan arranged by the Department of Horticulture. Identification of the land to be brought under particular technology of micro irrigation and modus operandi were worked out. As a first step, the Government identified seven manufacturers and suppliers willing to supply micro irrigation system (MIS) with performance guarantee and agronomic extension service to the farmers. The petitioners also

expressed interest to participate in APMIP. The petitioners were not included in the panel of shortlisted manufacturers. Inclusion of seven companies/concerns is not challenged, but non-inclusion in the list of participants is made the issue in these proceedings. As the background facts and submissions to assail the decision of GoAP are same, it is expedient to dispose of the writ petitions by a common order.

Introduction

Task Force on Micro Irrigation System

2. After instituting green revolution by Integrated Seed Water Irrigation Fertilizer Technology, irrigation percentage in India increased from less than 20% in 1950-51 to about 40% in 2002 bringing 82 million hectares under irrigation. The irrigated area, however, deteriorated due to exhaustion of irrigable area and depletion of water sources. It is estimated that by 2025, due to increased demand of water by different sectors, the share of water for agriculture is expected to get reduced from 84% to 69% though demand for water for agricultural purposes is likely to increase by two-fold.

3. At present, canal irrigation and tube-well irrigation are predominant irrigation systems. This has led to indiscriminate use of water and lack of appropriate technology and technology transfer mechanism resulting in agro-ecological and sustainability problems. The receding water table along with underground water pollution posed problems in tube-well irrigation areas. The water use efficiency in India is lowest in the world. It appears that water use efficiency in Indian agriculture is about 30% to 40% whereas it is 55% in China. Development of water resources and the management of developed water sources are constant problems in managing agriculture.

4. In comparison to canal/tube-well irrigation system, micro-irrigation allows the application of water to the root zone of the crops through specially designed equipment known as emitters. This technology is said to be more efficient method of irrigation and was introduced in India on a commercial scale during Eighth Five Year Plan. During the last ten years, 0.5 million hectares was brought under micro-irrigation. Surveys revealed that an extent of 69 million hectares would be covered through improved technology of micro irrigation system (MIS) so that inefficient water use in agriculture would be curbed and water is reserved substantially to meet the future needs and aspirations of the people. There is a paradigm shift in the policy. In February 2003, Government of India (GOI) decided to go into various aspects of water management in irrigation by constituting a task force headed by Chief Minister of Andhra Pradesh to recommend measures needed to expand the coverage by micro irrigation. This task force on micro irrigation (TFM) visited various States in India as well as Israil which made progress in micro irrigation. The TFM felt that micro irrigation system should be addressed to poverty alleviation by increase in income, to bring vast rain-fed areas in irrigated areas to greater productivity and stability

and by creation of additional employment opportunities through involvement of private sector. It also felt that MIS is also addressed to horticulture-led diversification of agriculture, (enhanced productivity through increase in the yield resulting in greater competitiveness in the world market by adopting the motto "more crop per drop". Environmental protection and ecological security and promotion of equity be considered while reviewing MIS in a holistic manner.

5. The TFM also noticed that lack of credit, human resources, availability of appropriate material and technical know how and financial incapacity of farmers to invest in MIS are some of the constraints in pushing MIS ahead. Therefore, TFM while suggesting important considerations for successful adoption of MIS made recommendation regarding fiscal incentives, tax incentives and credit support. It also recommend that flow of benefits either by financial assistance or subsidy would be routed through National Bank for Agriculture and Rural Development (NABARD). It was further suggested that Rural Infrastructure Development Fund (RIDF) can also be availed in the form of loan from NABARD. The TFM also suggested to use appropriate technology of MIS in either drip irrigation or lift irrigation depending on area and crop pattern.

Salient features of MIS Technology

6. Agricultural and Horticultural experts and scientists perceive MIS Technology as consisting of Drip Irrigation which again has two systems known as Online Drip System and Inline Drip System. They also perceive MIS Technology as consistent of Sprinkler Irrigation System and Rain Guns. The use of particular technology depends on the crop pattern, soil chemistry and crop spacing. For instance, Sprinkler system is employed where the crops like groundnut, sugarcane, millets, pulses and vegetables are raised using irrigation source of a pumpset of moderate capacity. Sprinkler system can be employed covering about double the area than the area covered by conventional method of open rain farming. The technology used is simple and user friendly. The rain gun technology would replace the Sprinkler Irrigation System if a large area of the farm is to be covered. This requires better high capacity pumping for maintaining sufficient pressure to enable the rain gun to carry the water to desired distance.

7. Drip Irrigation System is altogether different from Sprinkler Irrigation System. Online drip system consists of HDPE semi-hard pipe which is made of emitters and plain lateral. That is to say, that the fanner can make water allotting facility online as per need by pumping plain lateral. Inline drip irrigation system consists of emitting pipe with fixed holes and the system laid in such a manner that water is released either through pumping or gravitation so as to enable plants to absorb water at the root level without wastage. Either under online or inline systems, water is directly carried to the root without large surface evaporation losses. Inline drip system is relatively new technology with self cleaning, low clogging problem and stronger seamless lateral tubes. Both drip systems have their own advantages and disadvantages. Inline Drip Irrigation System is predominantly used in close growing crops like Sugarcane, Malbari, Cotton and

Spices. Online Drip Irrigation system is used in wider row orchard and plantation crops, Cashewnut and Coconut. All the systems can be used simultaneously in the same form and there is no hard and fast rule that a farmer should use only one technology even if he is raising different crops.

8. There is a difference of opinion as to which Drip system is cost effective. The amount of money for laying drip system in one hectare of land is treated as a "unit cost". Unit cost may not be an important factor when one decides upon appropriate drip system for a particular agricultural land. Be that as it is, Andhra Pradesh Micro Irrigation Project, as we see presently, envisages adoption of Sprinkler Irrigation System and Drip Irrigation System (both Online and Inline)

A.P. Micro Irrigation Project (APMIP)

9. A.P. Micro Irrigation Project was taken up with plan for installation of MIS in 2.5 lakhs hectares covering fruits, vegetables, flowers, Rice and Sugarcane, Malbari, Cotton, Tobacco, Groundnut, Pulses etc. The project seeks to implement the scheme in 18 to 24 months in a phased manner in 901 Mandals giving priority to drought prone areas of Rayalaseema and Telangana regions as well as water-scarce Mandals of Coastal Districts of Andhra Pradesh. All the owners in specified mandals cultivating the crops which are amenable for installation of MIS are eligible to get financial assistance under the scheme. The particulars of the scheme are given in G.O. Ms. No. 62, Agriculture and Co-operation (Hort.) Department, dated 5-3-2002. As per the scheme, the Government would provide 50% subsidy for MIS with a ceiling of Rs. 50,000/- for each individual farmer. Each farmer has to participate with 50% contribution either directly or through the bank duly paying 5% margin money to the bank. The scheme envisages the funding of subsidy under RIDF by NABARD to the tune of Rs. 560 crores. At the State level, District level and Mandal level, institutional machinery was constituted. The Director of Horticulture (one of the respondents in these writ petitions) was designated as Project Director of APMIP at the State level and the scheme has to be implemented under the overall control and supervision of the District Collector.

10. As per the orders in G.O. Ms. No. 62, the Director of Horticulture was asked to get a panel of vendors/suppliers prepared by advertising in the newspapers. The vendors/suppliers who qualified to be included in the panel will have to meet all the requirements and standards of BIS certification to ensure quality of material. Such suppliers should also be willing to participate, if necessary in deferred subsidy scheme covered under the APMIP besides offering performance guarantee. The project envisaged modalities of working as under:

- (i) Each vendor would be allotted a compact area for convenience of operation.
- (ii) The manufacturers and suppliers will be required to do maintenance contract and the guarantee period upto a period of five years as part of supply.
- (iii) The manufacturers and suppliers would also extend extension facility for a

period of five years to farmers in the designated area by appointing qualified Agricultural/Horticultural Officers at their own cost.

Background of Writ Petitions

11. The APMIP Cell in Department of Horticulture issued an advertisement in the newspaper dated 19.4.2003 inviting reputed Drip/Sprinkler Irrigation System manufacturers with comprehensive facilities, a good track record and who are willing to provide performance guarantee and high-class agronomic extension services to farmers to register their names with the Department of Horticulture for being considered to be empanelled for the project. The manufacturers were advised to procure Expression of Interest (EOI) documents from the department and submit them before 3 p.m. on 12.5.2003.

12. The document of request for EOI for APMIP (EOI document for brevity) is a comprehensive document giving background of MIP, its objectives, its rationale, modus-operandi and scope of the work of suppliers. It also contains instructions for preparation of EOI and criteria for short-listing. Every manufacturer/ supplier requesting for EOI is required to give the particulars of technical and agronomic support, company's experience, major works during the last five years and qualifications and curriculum-vitae of personnel in-charge of manufacturing and maintenance services. It is necessary to read instructions for preparation of EOI and also criteria for short-listing.

13. Paragraph 7 of EOI document gives some criteria as instructions for preparation of EOI thus:

Instructions for preparation of expression on interest

1. The Supplier should have manufacturing facility and proven experience in producing online emitters, drip laterals and inline/integral emitting pipe as per the BIS in India; supplying, surveying, designing, installation and management of Micro Irrigation Schemes in farmers fields during past five years in any three states of India as one of the essential qualification criteria.

2. The Supplier should have a sound knowledge and clear perception of Indian agriculture as well as competence regarding field applicability, technical feasibility and economic viability of drip/ sprinkler technology in fruits, vegetables commercial crops like sugarcane, cotton, mulberry etc., medicinal and aromatic plants, spices and condiments, silviculture plantations etc.

3. The Expression of Interest should contain the following :

(a) Introduction of company with details as per Annexure-II.

(b) Experience of the firm in similar schemes/projects, size of the project, the level of responsibility and the extent of experience are to be furnished in the format (Annexure-III). One sheet for each scheme/project undertaken in last three years to be enclosed.

- (c) Manufacturing facilities - Present Production and utilization level of the factory.
- (d) Financial status of the firm. The audited balance sheets of the firm for past three years are to be furnished.
- (e) Key personnel - The C.V. of key personnel of the company are to be furnished in the format given in Annexure-IV.
- (f) Dealer and Field Extension Service Team network.

14. The other criteria for short-listing has been given in Paragraph 10 of the EOI documents.

Criteria for Shortlisting:

The Expression of Interest received by C & DOH will be evaluated and eligible and capable firms will be short-listed. The shortlisting of the firms will be based on the following considerations;

1. Company experience.
2. Extensive experience in similar schemes/ projects, size of the project, services (technical and agronomic) provided particularly in the most demanding features of the project.
3. Exposure at national and international level.
4. Manufacturing facilities - Present Production and utilization level. This will be verified by physical inspection of the factory site.
5. Capacity to deliver viz. Dealer and Field Extension Service Team network.

Request for negotiations will be sent to only short-listed firms.

15. In response to advertisement, thirty seven companies submitted EOI to participate in APMIP. The GoAP issued G.O. Rt. No. 444 dated 17.5.2003 constituting Technical Evaluation Expert Team (hereinafter called as "Technical Committee") for evaluation and scrutiny of EOI documents. By subsequent revised orders dated 26.5.2003, the Technical Committee was also authorized to inspect the companies who gave EOI documents. The Technical Committee consisted of Secretary to Government, Professors from Indian Institute of Technology and Agriculture University, General Manager of NABARD and Additional Directors of Agriculture and Horticulture Departments. The said committee scrutinized the EOI documents as per the criteria for preparation of EOI and criteria for short-listing of various parameters. The following criteria for short-listing was statedly followed by the Technical Committee.

Criteria for Shortlisting :

1. Manufacturing facility and proven experience in producing online emitters, drip laterals and inline/integral emitting pipe as per the BIS in India as an essential qualification criteria.

2. Company experience in supplying, surveying, designing, installation and management of micro irrigation schemes in farmers fields during past five years in any three states of India as an essential qualification criteria.

3. Financial capability of the company.

4. Extensive experience in similar schemes/ projects, size of the project, services (Technical and Agronomic) provided particularly in the most demanding features of the project.

5. Exposure at national and international level.

6. Capacity to deliver viz., Dealer and Field Extension Service Team network.

7. Professional expertise.

16. The Technical Committee evolved a standard format to scrutinize and tabulate the data presented by thirty seven (37) Micro Irrigation Companies who gave EOI for participation in APMIP. This format included the details like year of establishment, area of operation, financial capability, production capability (online, inline sprinkler systems), projects executed, dealer network, professional experts in the company, Bureau of Indian Standards (BIS) licence/ certification, and the remarks of the Technical Committee which included final conclusion of the committee. The Technical Committee also evolved guidelines for reaching various parameters like manufacturing facilities for inline emitters and plain laterals (online irrigation system) and emitting pipe (inline drip system), BIS licence for online and inline, national and international exposure, financial capability, project experience in terms of network, dealer net work in Andhra Pradesh and Profession experts in the company.

17. The Technical Committee scrutinized thirty seven (37) EOI applications between 17.5.2003 and 30.5.2003. Seven companies satisfied the criteria for shortlisting and the Technical Committee undertook physical inspection of factories of these companies. The infrastructure facilities and technical data pertaining to different micro irrigation companies was also tabulated in various tables and the summary of observation of the Technical Committee during inspection was consolidated in a tabular form. The standard formats in respect of thirty seven (37) companies who submitted EOI documents, the particulars of infrastructure facilities and technical data obtained after inspection of seven short listed companies and the summary of observations of the committee were included and submitted as a "Report of the Technical Committee to the Chairman of State High Level Committee (SHLC). Be it noted, that the said SHLC was constituted vide orders of the Government in G.O. Ms. No. 80 dated 31.1.2003 for overseeing APMIP.

18. The SHLC met on 12th and 13th of June, 2003 and made recommendations to the GoAP. The Government considered the EOI documents, recommendations of Technical Committee and initially approved five companies namely ; Jain Irrigation System Ltd., Jalgoan, Maharashtra, Netafim Irrigation India (P) Ltd.,

Baroda, Gujarat, Parixit Industries Ltd., Ahmedabad, Gujarat, Plastro Plasson Industries (India) Ltd., Pune, Maharashtra, Premier Irrigation Equipment Ltd., Nagpur, Maharashtra for short-listing under APMIP. By another order in G.O. Rt. No. 627 dated 18.7.2003, Government also approved EPC Industries Limited, Maharashtra and Nagarjuna Palma India Limited, Hyderabad for short-listing under APMIP. These companies were advised to sign the Memorandum of Understanding (MOU) with authorized agencies of the Government for implementation of the project. Petitioners in these three writ petitions, as noticed hereinabove, were not approved for short-listing for participation in APMIP.

Case of the Petitioners

(i) WP No. 23777 of 2003

19. Godavari Polymers Private Limited is the petitioner. It is a company registered under the Companies Act. They manufacture Poly Ethylene (PE) Pipes, Sprinkler Irrigation Systems and other analogous products at its factory at Hyderabad. According to the Petitioner, these PE pipes are widely used by consumers all over the State of A.P. and elsewhere for irrigation purpose, supply of potable water for human consumption. It is also alleged that the petitioner's products are approved by the Governments of Gujarat, Karnataka, Maharashtra and Tamilnadu. Pursuant to the advertisement dated 19.4.2003 in Economic Times soliciting EOI, petitioner submitted its EOI documents allegedly complying with all formalities and requirements, but they did not hear any response from the respondents for three months inspite of the petitioner addressing letters on 7.7.2003, 10.9.2003 and 25.9.2003 seeking the status of petitioner's EOI documents. On 20.6.2003, the Principal Secretary to GoAP in Agriculture and Co-operation Department sent a communication to the effect that out of thirty seven applicants, seven have been short-listed after inspecting them. The petitioner alleges that the respondents adopted pick and choose method for conducting inspection of seven units elsewhere in other States, but failed to inspect the factory of the petitioner which is 20 kms. away from Hyderabad. It is also the case of the petitioner that on 2.7.2003, the Commissioner of Industries recommended to the Director of Horticulture for giving preference to Small Scale Industries (SSI) units, but there was no proper response from the respondents. It is also alleged that inviting EOI, conducting inspection and short-listing of seven units is only an empty formality as the names of short-listed companies appeared on 23.4.2003 in Economic Times newspaper.

20. It is their further case that the petitioner is a very popular manufacturer and supplier of Sprinkler Irrigation System in the State since 1995 through the Department of Agriculture and other Departments. The Government also gave subsidy facilities for the irrigation systems purchased from the petitioner. The petitioner has market share of 40% in sprinkler systems. During 2002-2003 and 2003-04, Government also placed orders. Three out of seven short-listed manufacturers of Irrigation Systems do not have manufacturing facilities for Sprinkler Irrigation Systems. The selection of seven manufacturers is arbitrary

and mala fide being violative of letter and spirit of Constitution of India.

21. The petitioner challenges G.O. Rt. No. 529 dated 20.6.2003 and G.O. Rt.627 dated 18.7.2003 wherein the GoAP shortlisted seven companies for participation in APMIP as violative of Articles 14, 19 and 21 of the Constitution of India. A consequential direction is also sought directing the Respondents to consider the application of the petitioner by inspecting its factory premises and evaluating the facilities for supply of Sprinkler Irrigation Systems.

(ii) WP No. 23940 of 2003

22. The first petitioner is a company incorporated under the Companies Act, 1956. The second petitioner is a Partnership firm. They filed the writ petition seeking a declaration that the action of GoAP in not registering EOI by the petitioners to participate in APMIP as arbitrary, unjust, unfair and violative of Article 14 of Constitution of India and for a consequential direction to GoAP to register EOI of the petitioners and on that basis to identify compact area where sprinklers/rain guns/ online drip irrigation systems are to be supplied by petitioners. The case of these petitioners in brief is as follows.

23. The State Government with a view to improve the quality of utilization of water resources with the assistance of GOI implemented pilot projects switching over from conventional irrigation system by replacing them with advanced technologies. Sprinkler Irrigation System was adopted for various crops viz. groundnut, sugarcane etc., whereas rain guns have been adopted when farming area is large with better pumping facilities. Yet another technology innovation is Drip Irrigation System in which water is carried through water pipes intended to deliver required quantity of water at the required root point especially in selected Horticulture farms. The Government also mooted APMIP and invited EOI by publishing advertisement in Economic Times.

24. The petitioners have comprehensive manufacturing facilities for making Sprinkler Irrigation System/Online Drip Irrigation System. They sent their EOI documents. The EOI documents of the petitioners and other 35 manufacturers were evaluated by a committee constituted as per the orders of GoAP in G.O. Rt. No. 444 dated 25.6.2003. This committee short-listed seven micro irrigation companies for the purpose of inspection. The other thirty companies were not identified for inspection without any reason. Even before short-listing of seven companies, these companies advertised that they have already been short-listed for participation in APMIP. The appointment of a committee for inspection, the procedure adopted for short-listing is only make believe, and arbitrary exercise.

25. The Government issued G.O. Rt. No. 529 dated 20.6.2003 initially approving short-listing five companies and subsequently GoAP added two more companies by issuing another Government order. The Government issued orders in G.O. Rt. No. 931 dated 28.10.2003 according administrative sanction to APMIP, by reason of which the period of two years time Government is pumping Rs. 560 crores as subsidy component which also have loan component in equal amount by

nationalised banks. Thus, the Government has created a monopoly situation in favour of seven preferred suppliers with an assured market of Rs. 1000 crores. Though it is open to the State to choose any agency to execute its projects. State has to consider all applicants fairly and equally on a level playing field. When all the parameters are equal, the respondents ought not to have rejected the EOI of the petitioners though in the year 2003 the Commissionerate of Agriculture engaged the petitioners for their pilot projects of Micro Irrigation System in five Mandals of Ranga Reddy District. The petitioners also contend that the online drip irrigation system is the best suited technology for the State of A. P. where water is not totally free from salts and minerals and therefore the petitioners ought to have been preferred to Inline drip irrigation system manufacturers. The seven short-listed companies do not manufacture all three types of Micro Irrigation Systems. The action of the State in not registering the petitioners EOI for participation in APMIP is arbitrary and the same cannot be sustained.

iii. WP No. 23944 of 2003

26. Two petitioners in this writ petition are companies registered under the Companies Act. The prayer sought in this writ petition is also similar to the prayer made in W.P. No. 23940 of 2003. The first petitioner is manufacturer of Sprinkler Irrigation Systems, whereas the second petitioner is the manufacturer of Sprinkler Irrigation System and Online Drip Irrigation Systems. They also submitted EOI in response to the advertisement issued by the Director of Horticulture and their EOI was not registered for participation in APMIP. Therefore they filed the present writ petition raising contentions which are similar to those raised in W.P. No. 23940 of 2003.

Case of the Respondents

27. The Commissioner and Director of Horticulture filed a common counter-affidavit in all the three writ petitions denying all material averments made by the petitioners. While tracing the various stages taken by the respondents for short-listing seven micro irrigation manufacturers, it is stated that all the thirty seven EOI documents were scrutinized by a Technical Committee as well as SHLC. The Government accepted recommendation of the Technical Committee and SHLC and approved short-listing of seven manufacturers who fulfilled all the criteria. An applicant company should have in-house manufacturing facility for three drip components, namely, lateral, online emitter and emitting pipe as per BIS specifications and five years experience in micro irrigation schemes in any three States in India. All the seven short-listed companies have in-house manufacturing facility for online and inline drip systems which is an essential criteria for short-listing. Out of seven companies, two companies i.e. M/s Premier Irrigation Equipment Ltd., Nagpur, Maharashtra and EPC Industries Limited, Maharashtra have also got in-house facility for manufacturing of sprinklers and other five companies have outsourcing arrangement for sprinklers like the petitioner companies. Petitioners have not fulfilled the essential criteria of

manufacturing online and inline drip irrigation systems.

28. It is also stated that petitioners in W.P. No. 23940 of 2003 and the second petitioner in W.P. No. 23944 of 2003 have not satisfied the essential criteria of having in-house manufacturing facility of emitting pipe (inline drip system) and are only online drip system manufacturers operating in one State. Though the petitioners in W.P. No. 23940 of 2003 have mentioned that they have supplied sprinklers and rain guns in various schemes of concerned departments of State Government, the same is not correct. The petitioners in W.P. No. 23944 of 2003 have sold sprinklers as per EOI documents and both the petitioners are only online drip system manufacturers and they do not have manufacturing facility for emitting pipe which is an essential criteria as indicated in the EOI documents. It is also stated that as per the data available with the Agriculture Department, petitioner in W.P. No. 23777 of 2003 supplied 469 sets of sprinklers during 2000 to 2003 and the first petitioner in W.P. No. 23944 of 2003 supplied 195 sets during 2000 to 2003.

29. The allegation made by the petitioners in W.P. Nos. 23940 of 2003 and 23944 of 2003 that short-listed companies failed to accomplish the task of covering more than 700 acres to be covered under the drip system in five Mandals of Ranga Reddy District is denied. It is stated that two micro irrigation projects namely Integrated Agricultural Development Project (IADP) and Integrated Vegetable Development Project (IVDP) are in operation in Ranga Reddy District. An extent of 1000 acres in Kandukur and Maheshwaram Mandals is proposed to be covered under IADP and 600 acres in six Mandals (100 acres each) is proposed to be covered under IVDP. In IADP, none of the seven short-listed companies are participating. But six companies including Netafim Irrigation India (P) Ltd., Baroda, Gujarat, Nagarjuna Palma India Limited, Hyderabad, Plastro Plasson Industries (India) Ltd., Pune, Maharashtra, Premier Irrigation Equipment Ltd., Nagpur, Maharashtra and Jain Irrigation System Ltd., Jalgoan, Maharashtra participated in 249.95 acres of IVDP. The funds were provided by DPAP towards subsidy. Due to paucity of funds, DPAP could mobilize only Rs. 28.01 lakhs against Rs. 74.98 lakhs. As the balance amount was not released by DPAP, further installations could not be continued under IVDP.

30. The allegation that 50% of the identified 2.48 lakhs hectares of land to be covered under APMIP under Sprinkler system is denied. It is stated that as per the project report, an extent of 1,08,221 hectares (43.65%) is to be covered under online drip system and 1,02,587 hectares (41.37%) is to be covered under inline drip system. The area to be covered under sprinkler system of irrigation is 37,139 hectares which is 1.4.98% of the total area. The counter-affidavit also adverts to the advantages of inline drip system stating that the manufacturing cost is lower in inline system, that there will be no loss of emitters in the field and that inline system has many inherent user friendly features such as self-cleaning, low clogging and low discharge variation across the field. Practically it is not feasible for any farmer to clean thousands of emitters manually in the field

since all water for irrigation is not free from salts. Further in online drip system, relocation of emitters by punching the lateral repeatedly reduces the life of the system and also causes variation in water distribution uniformity across the field. In inline system due to turbulent mechanism, inline emitters are less susceptible to clogging problem. The cost of inline drip system for a given length of lateral and number of emitters is relatively cheap as compared to online drip system. The inline drip system facilitates continuous wet moisture band along the lateral and hence it is more flexible for planning the crop at desired spacing.

31. The Director of Horticulture further states that micro irrigation project involves both supply of micro irrigation equipment, provision of services for maintenance, guidance and training to the beneficiary farmer for a period of five years as well as Agri extension services. This is specifically mentioned as criteria for shortlisting micro-irrigation companies irrespective of their location in the country. The shortlisted seven companies are doing business in the State of A.P. for the past five to ten years.

Gist of submissions by the Petitioners

32. Learned Senior Counsel for the petitioner in W.P. No. 23777 of 2003, Sri K. Pratap Reddy, made submissions to the following effect. Transparency in the decision making process is part of principle of fairness. Decision making by the respondents lacks transparency as hidden criteria was followed. The aspirant companies were not informed of the correct criteria to be satisfied at the stage of going in for EOI by publishing advertisement in newspapers or in the EOI document supplied to the petitioner. When the Government prescribed five criteria in EOI document, the technical committee, which evaluated EOI submitted by participating companies, added its own criterion in addition to five criterion. For instance, there was no specific condition that a company expressing EOI should have BIS specifications for its products or there was no condition regarding financial position of the company. The petitioner's claim was rejected on the ground that it has no BIS specifications for its sprinklers. Secondly, he would urge that the criterion for short-listing a participating company was evaluated after rejecting the claim of the petitioner and without inspecting petitioner's factory. The petitioner's claim has not been evaluated with reference to the criterion laid down in the EOI document. The petitioner's EOI was rejected on the ground that it has no BIS specification for sprinklers and on the ground that it has inadequate dealer net work in Andhra Pradesh. He also submits that the criteria laid down for assessing the financial capability is arbitrary. The rejection on these two grounds amounts to misdirection in law as respondents have not applied their mind properly to EOI document submitted by the petitioner and the criterion evolved by the Government. The decision of the technical committee to inspect only short-listed companies is deviation from EOI document itself. This amounts to applying criteria which is not specified in the EOI document. He further submits that as per the APMIP, 15% of the targeted agricultural land is to be brought under sprinkler system of irrigation. None of the

short-listed companies have manufacturing facilities for sprinklers. They were permitted to resort to outsourcing for sprinklers. When the petitioner is manufacturer of sprinklers, the respondents ought to have preferred a manufacturer to a company which outsources for sprinklers. The decision making process is vitiated by irrationality and arbitrariness. The criteria applicable for drip irrigation system has no application for sprinkler irrigation system. The Government took a decision to approve the short-listed seven companies based on the report of the technical committee. As the petitioner is entitled to know the reasons for rejecting its claim to meet the case of rejection, it is incumbent on the part of the respondents to supply the report of the technical committee. Non-supply of the report which is the basis for rejection vitiates the decision making process. The action of the respondents in short-listing seven companies is arbitrary and illegal. Learned Senior Counsel placed reliance on the decisions of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*, *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, and *V.C. Mohan Vs. Union of India and Others*, .

33. Learned Counsel for the petitioners in W.P. Nos. 23940 and 23944 of 2003, Sri N. Rama Mohan Rao, while adopting the submissions made by the learned Senior Counsel, made additional submissions as follows. The petitioners" are manufacturers of either sprinklers or online drip system. The TFM as well as EOI documents envisage use of sprinkler system as well as online drip system in APMIP depending on the crop pattern, soil nature and inter-spacing of the crops. Hence, the exclusion of sprinkler manufacturers or manufacturers of sprinklers and online drip systems is against the project objectives. The unit cost of online drip system is less than inline drip system and it has more advantages on the filed than inline drip system. Therefore, while interpreting the conditions for short-listing, one needs to give a broad meaning in such a manner that sprinkler manufacturers and manufacturers of online drip system are not excluded. If these two manufacturers, which are direct source of supply, are excluded, cost restriction imposed by APMIP cannot be adhered to. The entire micro irrigation project is intended to achieve maximum utility of available irrigable water with least expenditure. The project is of colossal cost in which the State funding by way of subsidy is 50%. By excluding the petitioners", the Government, in effect, created a monopoly in favour of seven chosen micro irrigation companies though they do not have the manufacturing facility for all systems.

34. The learned Counsel further submits that the decision making process suffers from the vice of unfairness. The State is required to adhere to principle of equality in distributing largesse and conferring privileges. After the area is allocated to a manufacturer and supplier, farmers in the locality are necessarily required to buy micro irrigation system only from the short-listed companies. The action result is depriving the petitioners" of their fundamental right to carry on business under Article 19(1)(g) of the Constitution, though some of the

petitioners" were asked to implement pilot projects in Ranga Reddy District.

35. Learned Counsel also pointed out the lacunae in EOI documents as analysed by the technical committee in the standard format in support of the contention that respondents applied different standards and treated equals as unequal violating the principle of equality in Article 14 of the Constitution. These lacunae are: (i) The BIS specifications annexed by Jain Irrigation Systems ("Jains" for brevity) do not relate to any micro irrigation equipment. BIS specifications produced by Jains have long expired and as on the relevant date i.e., 12-5-2003, which is the last date for submission of EOI, Jains have no BIS specifications. As per the advertisement and EOI document, participants is APMIP should have manufacturing facilities for sprinklers as well. Though Jains do not have manufacturing facility for sprinklers and rain-guns, they were permitted to outsource, which is illegal; (ii) Though the vision and preparedness of Nagarjuna Palma and Parixit Industries was assessed by the technical committee as poor, they were short-listed. All the short-listed companies do not have manufacturing facilities of all systems of micro irrigation; (iii) Some of the shortlisted companies do not have five years experience. Therefore, the action of the respondents in excluding the petitioners" and shortlisting the companies which failed to comply with the conditions is illegal and arbitrary. Learned Counsel, however, does not deny that it is open to the State to choose agencies through which they can execute its project and that petitioners" have no right much less enforceable right to seek a mandamus for inclusion in the list of participating micro irrigation companies. The petitioners", it is urged, have a limited right that their EOI shall be considered in the background of criterion laid down by the Government. It is also submitted that the petitioners being small scale units, the respondents ought to have given preference to the petitioners. It is also submitted that the petitioners being small scale units, the respondents ought to have given preference to the petitioners.

Gist of submissions by the Respondents

36. Learned Additional Advocate General, Sri D. Prakash Reddy, has placed before the Court the report of the technical committee and the EOI documents submitted by the seven short-listed companies. The EOI document of the petitioner in W.P. No. 23777 of 2003 was also placed before this Court. Learned Additional Advocate General submits that the criteria evolved by the technical committee is strictly in accordance with the criteria prescribed in EOI document in Paragraphs 7 and 10 thereof. The criteria for shortlisting and instructions for preparation of EOI (in "Paragraphs 10 and 7 of EOI respectively) have to be read together. The petitioners" reliance only on Paragraph 10 is misconceived. The criterion of having manufacturing facility for emitters and plain lateral (online drip system) and manufacturing facility for emitting pipe (inline drip system) was also treated as essential criterion. Likewise, BIS licence for online and inline drip system was treated as essential criterion. Insofar as other criteria, the technical committee did not treat them as essential. He would urge that manufacturing

facilities for online and inline drip systems with BIS specifications is the criterion which requires strict compliance whereas others need substantial compliance.

37. Micro irrigation companies manufacturing online and inline drip irrigation systems with or without manufacturing facilities for sprinklers form a different class. The companies which manufacture only sprinklers or sprinklers and online drip system cannot be equated with the first category. As per the EOI document, that class of companies who manufacture online and inline drip system are alone eligible to be shortlisted for participation in APMIP. Equality clause in Article 14 of the Constitution of India does not prohibit classification and that the classification of these companies is valid and rationale having nexus with the object sought to be achieved. He would submit that the intention and object of APMIP is to provide one stop marketing facility for the farmers opting for micro irrigation in their farm land. If a farmer is required to shop for sprinklers with one manufacturer, for online drip system with another and for inline drip system with yet another manufacturer, the whole scheme under APMIP would get impeded.

38. It is nextly contended by the learned Additional Advocate-General that the requirement of manufacturing facilities with sprinklers is not an essential criterion. Even a company which substantially complies with this by outsourcing supply of sprinklers, it is treated as substantial compliance with the conditions. The same is strictly in accordance with the criteria and the Technical Committee has not deviated from the path. The said Committee, according to the learned Additional Advocate-General, has proceeded with the evaluation of EOI documents strictly in accordance with Paragraphs 7 and 10 of the said document.

39. Learned Additional Advocate-General seriously refutes all the allegations made by Sri N. Rama Mohana Rao regarding alleged disqualifications and lacunae in seven recipient short-listed companies. He would urge that when there is no challenge to the two Government Orders and when the seven shortlisted micro irrigation companies are not arrayed as respondents, he would urge, it would be improper to decide the alleged disqualification, if any, incurred by these selected companies. When the State has excluded the petitioner companies/concerns applying valid classification, the non-inclusion of petitioners cannot be rectified by issuing a mandamus. Learned Additional Advocate General also submits that the petitioners cannot be accorded any preferential treatment merely because they are small scale industrial units. The petitioners have not challenged the conditions/criteria and, therefore, they cannot be heard to say anything regarding rationality in the criteria laid down.

Points and Questions for Consideration

The following points need to be considered in these writ petitions.

- (1) What are the principles of judicial review to be followed with special reference to judicial review of exercise of contractual powers of the Government?
- (2) What is the criteria to be followed for shortlisting micro irrigation companies

for participation in A.P. Micro Irrigation System? Whether the conditions require strict compliance or substantial compliance?

(3) Whether the inclusion of seven shortlisted companies is not proper and whether such inclusion is not legal?

(4) Whether non-inclusion of petitioners is arbitrary, illegal and violative of Articles 14 and 19(1)(g) of the Constitution of India?

Question No. 1

What are the principles of judicial review to be followed with special reference to judicial review of exercise of contractual powers of the Government?

40. The extraordinary power of judicial review vested in this Court is intended to review an administrative decision at the instance of an aggrieved person to see whether such person has been treated fairly by the public authority. The power of judicial review in India is also available to test the administrative, quasi-judicial as well as legislation of Parliament or of State Legislature. However, the power of judicial review conferred on this Court does not empower the Court to act as an appellate Court. The power is concerned with the process of making a decision and not the merit of decision. If the decision made by public authority is in accordance with law and even if such decision is not correct as perceived by the Court, still such case does not warrant interference in exercise of power of judicial review. "Illegality" "irrationality" and "impropriety" of the decision are only some of the grounds on which a decision of a public authority can be invalidated if the same has resulted in arbitrary exercise of power and unfairness. If any authority is required, a reference may be made to the decision of the Supreme Court in *H. B. Gandhi v. Gopi Nath and Sons* wherein the Supreme Court explained the extent and scope of judicial review as under.

..... Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

41. In *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, , the Supreme Court referred to the relevant case law and observed that in exercise of power of judicial review, the Court will be slow to interfere in matters relating to administrative function unless the decision is tainted by any vulnerability. Whether a decision is tainted with illegality, irrationality or impropriety has to be established and mere assertion in that regard would not be sufficient. Dealing

with judicial review of administrative decision, the Apex Court observed as under:

..... Administrative action is stated to be referable to the broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See *State of U.P. and Others Vs. Renusagar Power Co. and Others*, . At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work *Judicial Review of Administrative Action*, 4th Edn., at pp.285-87 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case.....

42. Judicial review of contractual power of the Government is also subject to same legal principles. The various contentions raised by the learned Counsel for the petitioners would necessitate recapitulation of settled principles of judicial review vis-a-vis contractual power of the State. In matters of State contracts, distribution of largesse, conferment of privileges, engagement of services for material and consultation, the State has absolute discretion. In exercising this, larger public interest cannot be ignored and deriving utmost benefit to the State and adhering to principles of equality and fairness are sine qua non for exercise of such administrative power.

43. In *Rashbihari Panda etc. Vs. State of Orissa*, , *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI)* and Another, , *Radha Krishna Agarwal v. State of Bihar*, AIR 1977 SC 1496, *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , *Fertiliser Corporation Kamagar Union v: Union of India* AIR 1981 SC 344, *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, , *Ram and Shyam Company Vs. State of Haryana and Others*, , *Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others*, , *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, , *Harmander Singh Arora Vs. Union of India (UOI) and Others*, , *Sri Sachidanand Pande v. State of West Bengal*, AIR 1987 SC 1109, *Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation*, , *Ram Gajadhar Nishad v. State of U.P.*, (1990) 2 SCC 486 , *M/s. G. J. Fernandez Vs. State of Karnataka and others*, , *M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others*, , *Kumari*

Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, , Union of India and others Vs. Hindustan Development Corpn. and others, , Tata Cellular Vs. Union of India, , New Horizons Limited and Another Vs. Union of India (UOI) and Others, , State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc., , Delhi Science Forum and others Vs. Union of India and another, , Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, , Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, , M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, , Duncans Industries Ltd. Vs. State of U.P. and Others, , center For Public Interest Litigation and Another Vs. Union of India and Others, , West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and Others, , and BALCO Employees Union (Regd.) Vs. Union of India and Others, , the Hon'ble Supreme Court laid down various principles in this branch of administrative law. It is not necessary to extract passages from the precedents. Suffice to summarise principles of law that flow from these precedents. A brief reference may, however, be made to the decisions of the Supreme Court in Tata Cellular v. Union of India (supra) and Centre for Public Interest Litigation v. Union of India (supra).

44. In Tata Cellular v. Union of India (supra), Department of Telecommunications invited tenders from Indian companies for giving licence for operation of cellular mobile telephone services in four metropolitan cities namely, Bombay, Calcutta, Delhi and Madras. Thirty bidders participated at the first stage. The first tender evaluation committee shortlisted twelve companies and also recommended four other companies on condonation of certain defects. The Telecom Commission accepted the recommendations of the technical committee and financial bids were directed to be submitted to the selection/high-power committee. On the recommendations of the said committee, the Minister issued approval for issue of financial bids with modification to short-listed companies and financial tenders were issued containing seven criteria. Fourteen companies have submitted their bids. These bids were evaluated by another tender evaluation committee by dividing some parameters and making system which was not done by the selection committee. After the committee submitted its report, Telecom Department recommended only four operators based on the evaluation and financial bids. The first choice for Delhi and Bombay was in favour of BPL Ltd. and Tata Cellular as second choice for Calcutta and Madras. Other six short-listed companies were rejected. Companies whose tenders were rejected, filed writ petitions before Delhi High Court on the ground that the decision is vitiated with bias, that including certain hidden criteria is illegal, that the decision is based on irrelevant considerations etc. It was also alleged that criteria was evolved to knock out the petitioners. The Delhi High Court allowed the writ petitions filed by India Telecom and another company by issuing a mandamus to consider their case for grant of licence and dismissed the writ petitions filed by other companies. Against the judgment of Delhi High Court, civil appeals and special

leave petitions were filed before the Supreme Court. It was contended that the decision of the technical evaluation committee is biased and that the decision is illegal and irrational.

45. The Supreme Court exhaustively discussed the scope of judicial review in matters of granting licence for providing services. After referring to American and English decisions as well as its earlier judgments, the Apex Court laid down as under:

It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down..... Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

46. In *Centre for Public Interest Litigation v. Union of India* (supra), the Court after referring to *Tata Cellular v. Union of India* (supra) and *Kasturi Lal v. State of J&K* (supra) explained the approach of the Court of judicial review in matters involving commercial or technical aspects. It was laid down as under:

It is clear from the above observations of this Court that it will be very difficult for the Courts to visualize the various factors like commercial/ technical aspects of the contract, prevailing market conditions, both national and international and immediate needs of the country etc., which will have to be taken note of while accepting the bid offer. In such a case, unless the Court is satisfied that the allegations leveled are unassailable and there could be no doubt as to the unreasonableness, mala fide, collateral considerations alleged, it will not be possible for the Courts to come to the conclusion that such a contract can be prima facie or otherwise held to be vitiated so as to call for an independent investigation, as prayed for by the appellants.....

47. The principles that emerge from above referred decisions are as under:

(i) There is no mandatory principle of law, convention, custom, or administrative precedent requiring the Government or public authority to call for tenders while undertaking various governmental activities.

(ii) The Government is free to enter into contract with citizens either for the sale of immovable property like land/ buildings or movable property, sell industrial units or its shares and stocks in public limited companies or in the companies of Government participation.

(iii) The Government's exercise of contractual powers must adhere to principles of equality before law and equal protection of laws keeping in view Articles 14, 15(1), 298 and 299.

(iv) All the eligible, qualified and suitable persons are entitled to claim right to be treated equally in the matter of awarding contract by the Government and public authorities.

(v) No citizen however can have an enforceable right to compel the State to enter into contract with him or her. The Court of judicial review cannot either declare or enforce such a nebulous right.

(vi) The Court of Judicial review cannot interfere with the Government's absolute right to enter into contract with citizens unless such action is contrary to public interest, arbitrary and/or discriminatory.

(vii) When the award of contract by a public authority or State is challenged before the Court, ordinarily the decision cannot be interfered with, unless the Court is satisfied that there is some element of public interest involved in entertaining such writ petition. By award of the contract, if the best price or best service is procured the same generally would subserve public interest and mere price difference between two tenderers may or may not be decisive in deciding whether any public interest is involved.

(viii) State owned/public owned property cannot be dealt with at absolute discretion of the executive. Public interest is a paramount consideration and one of the methods of securing public interest when it is considered necessary to dispose of the property is to sell property by public auction or by inviting tenders. This rule of disposing of property by public auction or by inviting tenders can only be relaxed in a situation intended to achieve goals set out in Part-IV of-the Constitution.

(ix) When the property is disposed of by public auction or by public tender the standards and guidelines set out in the invitation to tender or tender document must be scrupulously adhered to and the method private negotiations is not ordinarily permissible unless there is sufficient indication in notice inviting tenders for such negotiations.

(x) Tender conditions are in the nature of administrative guidelines or instruction, Thus, the principle in *Vitarelli v. Seaton*, 359 US 535 = 3 L Ed. 2nd 1012 (1959), that an executive agency must be rigorously held to the standards by which it professes its actions to be judged and if the tender conditions require strict compliance there can be no relaxation of tender conditions. This, however, is not the case if the tender document or tender conditions require only substantial

compliance with the tender conditions. This point is further discussed infra.

(xi) When the offers/proposals by bidding parties are evaluated by committee of experts with special knowledge, the decision plays an important role and price offered is only one of the criteria. The past record of the tenderers, quality of goods or services which are offered, its market reputation etc., play important role in deciding to whom the contract should be awarded.

(xii) The decision of public authority or the State especially when it is founded on the decision of experts committee cannot be subjected to appeal before the Court and ordinarily the decision of experts committee should receive approval of the Court unless it is grossly arbitrary and discriminatory.

(xiii) So as to get the best price, best goods or best services, even if the Government enters into negotiations with all the eligible tenderers, there should be equality in the process, in that all the tenderers should be given an opportunity to participate in the negotiations. If the process is fair and not arbitrary, the absence of power to negotiate would not vitiate the decision-making by the public authority.

(xiv) Each and every lapse, breach or contravention, unless contrary to public interest, would not give rise to a ground for interference in a petition for judicial review. Administrative Law recognizes that fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere while making decisions in the tender process.

48. The questions of fact and law raised in these petitions need to be resolved keeping in view the above principles and scope of judicial review as laid down above by the Supreme Court.

Question No. 2

What is the criteria to be followed for shortlisting micro irrigation companies for participation in A.P. Micro Irrigation System? Whether the conditions require strict compliance or substantial compliance?

49. It is strenuously argued that the respondents applied hidden criteria in rejecting the claim of the petitioners for participation in APMIP. It is pointed out that BIS licence/specification is not one of the criteria, but still it was applied to the petitioners while evaluating EOI. This is refuted by the learned Additional Advocate General. He would urge the Court to read Paragraphs 7 and 10 together to arrive at a criteria to be applied. He would also urge that the criteria evolved by the technical committee is strictly in accordance with Paragraphs 7 and 10 of the EOI document.

50. Paragraphs 7 and 10 as well as the criteria evolved by the technical committee are already extracted supra. The submission that the criteria for short-listing as envisaged in Paragraph 10 should be adopted is wholly misconceived. The EOI document consists of 10 paragraphs and four annexures. All the Micro

Irrigation Companies desirous of participating in the project are required to keep in view the instructions while preparing EOT document. Sub-para (1) of Paragraph 7 gives essential qualification/criteria. The supplier should have manufacturing facility and proven experience in producing online and inline drip system as per BIS specifications. As per sub-para (2), a supplier should have sound knowledge of drip/sprinkler technology in horticulture, vegetable growing, medicinal herbs. Sub-para (3) gives details which should be given in EOI document. Coming to paragraph 10, it stipulates that the EOI document received by the Director of Horticulture will be evaluated so as to find out the eligible and capable firms. This eligibility and capability necessarily must be with reference to Paragraph 7 which contains the essential qualifications and other qualification. If Paragraph 10 is given too much importance ignoring instructions in Paragraph 7, that would render evaluation to find out eligible and capable firms an empty formality.

51. The whole endeavour is to make available to the farmer the best quality online and inline drip systems with BIS specifications. Therefore when a technical committee evolved seven criteria for shortlisting, it is in tune with Paragraphs 7 and 10 together. This Court is really surprised to hear that the petitioners were not aware that they should satisfy the requirements of having BIS specifications. In a colossal project involving billions of rupees, every intending participant is expected to know the criteria minutely. If anybody had any doubt, nothing prevented to seek clarifications. I therefore hold that the criteria evolved by the technical committee does not in any manner deviate from criteria laid down by the Government. It is also not possible to accept the submission that the respondents applied some hidden criteria which was not informed to the petitioners.

52. The submission made by the learned Counsel for petitioners is also belied by two representations dated 1.5.2003 and 2.5.2003 made by the Irrigation Association of India, Pune to the Hon"ble Chief Minister of Andhra Pradesh (See Paragraphs 41 and 44 of paper book filed in W.P. No. 23777 of 2003). Though the Association expressed difficulty in so far as fixation of Rs. 1.00 lakh as registration fees and compulsory condition of manufacturing facility for inline drip system, no objection was raised regarding BIS licence/specifications. The representation made by the Association would clearly indicate mat nobody was in any doubt. Indeed in the representation made to the Hon"ble Chief Minister on 2.5.2003, the Association itself requested to prescribe BIS specifications-IS 14151 Part-I & II for sprinkler irrigation companies.

53. Having held that manufacturing facility with experience in producing online and inline drip systems with BIS specifications is an essential qualification criteria and also other conditions required to be fulfilled, it is to be seen whether these conditions require strict compliance. When strict compliance of conditions or qualifications is required, essential conditions of eligibility are required to be enforced strictly. It is not open to the tenderer or requisitioning authority to relax

these conditions. The second category of conditions or criteria is substantial compliance. Under this category, the ancillary or subsidiary conditions are required to be followed for achieving the main object of the conditions. Conditions of technical nature regarding the procedure may be condoned or relaxed and rigid compliance is not required. If strict compliance test is applied in accordance with tender/EOI document, the law treats all the conditions as mandatory and if substantial compliance test is applied, all other conditions are to be treated as valid leaving it to the decision maker to decide whether the contesting participants have substantially complied with the non-essential conditions. Some of the decided cases in this regard would lend support to this.

54. In *R.D. Shetty v. International Airport Authority (supra)*, it was observed that rules of interpretation applicable to statutes are equally applicable to documents, save for compelling necessity. The Court should not be prompt to ascribe superfluity to the language of a document and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use. To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by others should be presumed to use words without a meaning. The Court must avoid construction which render words used by the author of the conditions applicable, meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable.

55. In *Ram Gajadhar Nishad v. State of Uttar Pradesh (supra)*, the tender conditions required the tenderer to submit solvency certificate to the Collector. The Supreme Court interpreted the condition as requiring strict compliance and that non-compliance with the condition would lead to non-acceptance of the tender. In *G.J. Fernandez v. State of Karnataka (supra)*, the Supreme Court considered a case where the notification inviting tenders by Karnataka Power Corporation Ltd., was in XII paragraphs, and the question was whether the conditions in Parts-I and V are mandatory. Paragraph I laid down preconditions of eligibility for submitting a tender. Para-V requires the tenderers to supply the details called for. The Supreme Court held that the pre-conditions of eligibility for submitting tender must be considered as mandatory, and that omission to supply every small detail referred to in Paragraph-V will not affect the eligibility under Paragraph I and disqualify the tenderer. It was also indicated that the various conditions should be considered in a harmonious and practical manner. Be it noted that Paragraph-I laid down the preconditions of eligibility and Paragraph-V required supplying of details for assessing the fulfilment of conditions in Paragraph-I. The following observations are apt.

..... It is true that the relaxation of the time schedule in the case of one party does affect even such a person in the sense that he would otherwise have had one competitor less. But, we are inclined to agree with the respondent's contention that while the rule in *Ramana* case will be readily applied by Courts to a case where a person complains that a departure from the qualifications has

kept him out of the race, injustice is less apparent where the attempt of the applicant before Court is only to gain immunity from competition. Assuming for purposes of argument that there has been a slight deviation from the terms of the NIT, it has not deprived the applicant of its right to be considered for the contract; on the other hand, its tender has received due and full consideration. If, save for the delay in filing one of the relevant documents, MCC is also found to be qualified to tender for the contract, no injustice can be said to have been done to the appellant by the consideration of its tender side by side with that of the MCC and in the KPC going in for a choice of the better on the merits.

56. G.J. Fernandez v. State of Karnataka (supra) is an authority for the proposition that pre-conditions of eligibility cannot be deviated from and strict compliance test should be applied, whereas the conditions requiring formalities in relation to the pre-conditions can be deviated from without causing prejudice to the rival competitors as they require a substantial compliance only. GJ. Fernandez v. State of Karnataka (supra) was followed in Poddar Steel Corporation v. Ganesh Engg. Works (supra), and it was held thus:

... As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories - those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case, the authority issuing the tender may be required to enforce them rigidly. In the other cases, it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases...

57. In West Bengal Electricity Board v. Patel Engg. Corporation (supra), the respondent requested permission to correct a "repetitive systematic computer typographical transmission error" in their tender submitted by it pursuant to the tender notification issued by the West Bengal Electricity Board. The appellant evaluated the bid and pointed out a number of arithmetical errors. Challenging the same, a writ petition was filed in the High Court at Calcutta. A learned single Judge of the High Court directed the West Bengal Electricity Board to reconsider the representation and pass reasoned order, A Division Bench of the High Court in writ appeal agreed with the learned Single Judge and further directed the West Bengal Electricity Board to correct the errors in the tender documents. In appeal by the West Bengal Electricity Board, the Supreme Court reversed the judgment of the High Court at Calcutta holding that the instructions to bidders have to be strictly complied with, and there can be no departure therefrom. It is apposite to quote the following:

... The degree of the care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/ bid and also award of a contract. The appellant-respondent

Nos. 1 to 4 and respondent Nos. 10 and 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfill prequalification alone are invited to bid, adherence to the instructions cannot be given a go-bye by branding it as a pedantic approach otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the Rule of law and our constitutional values. The very purpose of issuing rules/instructions is to ensure their enforcement lest the Rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubt in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the Rules. We have, therefore, no hesitation in concluding that adherence to ITB or Rules is the best principle to be followed, which is also in the best public interest.

58. The Micro Irrigation Companies are required to strictly comply with the essential conditions, but insofar as other conditions are concerned, discretion is left to the respondents. As presently seen, Technical Committee adopted the method by treating availability of manufacturing facility with BIS experience and proven experience as essential criteria requiring strict compliance and all other conditions requires substantial compliance. To the mind of the Court, the method adopted cannot be called incorrect. Having regard to the project objectives and purposes as indicated hereinabove, a reference to Paragraph 7 and 8 of the report submitted by the Technical Committee would show that manufacturing facility for online drip systems and inline drip systems as well as BIS licence for fees is treated as essential criteria. All the companies, as stated in the counter-affidavit which do not comply these two conditions strictly were not short-listed. The Technical Committee examined all the EOI documents not only with reference to these essential criteria, but also other parameters by duly awarding rating for the purpose of short-listing. Therefore, it must be held that the Technical Committee, SHLC and the GoAP have followed a rationale and reasonable method having regard to the EOI documents and there is no deviation of the same.

Question Nos. 3 and 4

(3) Whether the inclusion of seven short-listed companies is not proper and whether such inclusion is not legal?

(4) Whether non-inclusion of petitioners is arbitrary, illegal and violative of Articles (1) and 19(1)(g) of the Constitution of India?

59. It is better to deal with both these questions together. Learned Counsel for

petitioners in W.P. Nos. 23940 and 23944 of 2003 Sri N. Ram Mohan Rao, has raised number of grounds challenging the inclusion of seven short-listed companies. If this Court is sitting in appeal over the decision of the respondents, it would have been proper to deal with these questions in detail. It is axiomatic that this Court while exercising power under Article 226 of the Constitution does not sit in appeal over the decision of the public authorities. The whole exercise of power is aimed at examining the question whether the petitioners were given fair deal by the decision making authority.

60. Secondly, the challenge to the inclusion of seven companies as well as the challenge to G.O.Ms.No. 529 dated 20.6.2003 and G.O.Rt.No. 627 dated 8.7.2003 (challenge in W.P.No. 23777 of 2003) must fail for yet another ground. It is too well settled that the power under Article 226 should not be exercised if the decision of the Court is likely to affect the rights and interests of those persons who are not arrayed as respondents in a petition for judicial review. A reference may be made to the decisions of the Supreme Court in Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, , Ishwar Singh v. Kuldeep Singh; J. Jose Dhanapaul Vs. S. Thomas and Others, , Arun Tewari v. Zila Mansavi Shikshah Sangh AIR 1998 SC 331, and All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc., .

61. In Arun Tewari v. Zila Mansavi Shikshah Sangh (supra), Madhya Pradesh Class III Education Service Rules, 1973 were challenged before M.P. Administrative Tribunal, Jabalpur. The applicants were those candidates who were not selected in the recruitment pursuant to a notification. The Administrative Tribunal struck down the amendment to the rules and the circulars issued by the Government of M.P. Before the Tribunal, selected/appointed candidates who were directly appointed by the outcome of original applications, were not made as party respondents. When the matter was brought before the Supreme Court by way of Special Leave Petitions, the Apex Court observed that the entire exercise by the Tribunal is seriously distorted because of the omission. After referring to the cases of Prabodh Verma v. State of U.P. (supra), Ishwar Singh v. Kuldeep Singh (supra), J. Jose Dhanapaul v. S. Thomas (supra), it was observed that:

The employees who were directly concerned were not made parties - not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. This Court observed that High Court ought not have decided a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them before it as respondents in a representative capacity. These observations apply with equal force here. The same view has been reiterated by this Court in Ishwar Singh v. Kuldeep Singh where the Court said that a writ petition challenging selection and appointments without impleading the selected candidates was not maintainable (Vide also J. Jose Dhanapaul Vs. S. Thomas and Others, . On this ground alone the decision of the Tribunal is vitiated.

62. In *All India SC & ST Employees' Association and Anr. v. A. Arthur Jeen and Ors.* (supra), the Supreme Court laid down as under:

Although the candidates included in the panel showing their provisional selection do not get vested right to appointment, they will be surely interested in protecting and defending the select list. It is an admitted position that before the Tribunal the successful candidates whose names were included in the panel of selection were not made parties. The argument of the learned Counsel that since the names and particulars of the successful candidates included in the panel were not given, they could not be made parties, has no force. The applicants before the Tribunal could have made efforts to get the particulars at least they ought to have impleaded some of the successful candidates, may be, in a representative capacity; if the large number of candidates were there and if there was any difficulty in service of notices on them, they could have taken appropriate steps to serve them by any one of the modes permissible in law with the leave of the Tribunal. This Court in *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, has held that in writ petitions filed against the State questioning the validity of recruitment of a large number of persons in service could not be proceeded with to hear and take decision adverse to those affected persons without getting them or their representatives impleaded as parties. In Para 50 of the said judgment, summarizing the conclusions this Court in regard to impleaded of the respondents has stated that : (SCC pp.288-299)

"A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties".

63. The petitioner in W.P. No. 23777 of 2003 indeed challenges two Government orders whereby seven Micro Irrigation Companies were short-listed. The effect of declaring these two Government Orders would be denying the accrued benefit of predication in APMIP to the seven Micro Irrigation Companies without hearing them. That would be distortion of justice. Therefore the challenge cannot be accepted. Further, as rightly pointed out by the learned Additional Advocate General, instructions for preparation of EOI and/or the criteria for short-listing as notified to all concerned in EOI document have not been specifically challenged. The learned Senior Counsel for the petitioner in W.P. No. 23777 of 2003, no doubt made submissions challenging the criteria laid down to assess financial net-worth as arbitrary. He also challenged the criteria requiring all participants to manufacture all three Micro Irrigation systems as arbitrary. In the absence of proper pleading and substantiation thereof, an argument of arbitrariness cannot be entertained as held by the Supreme Court in various judgments. A person seeking invalidation of an administrative decision on the ground of irrationality and arbitrariness has to properly raise grounds and substantiate them with

proper supporting material. Both these are conspicuous by their absence in the pleadings. Therefore these submissions cannot be countenanced.

64. As held by the Supreme Court in *Prabodh Verma v. State of U.P.* (supra), the High Court ought not to hear and dispose of the writ petition under Article 226 of the Constitution without the person who would be vitally affected by the judgment being before it as a respondent. This Court also examined the merit of the various contentions expressed by the learned Counsel for petitioners Sri N. Rammohan Rao, who spent considerable time for pointing out the so-called lacunae in the EOI submitted by the short-listed companies.

Transparency in governance

65. As noticed supra, an elaborate exercise was undertaken before short-listing all the companies. The project/scheme of APMIP was made known in a transparent manner to one and all. Field level surveys were conducted on the land under different suitable systems of Micro Irrigation were identified district wise. The Director of Horticulture was asked to get Micro Irrigation Companies empanelled for participation in the project. A Technical Committee was appointed to evaluate all the EOI documents and submitted its recommendations and a State High Level Committee was also appointed to finally look into the recommendations of the Technical Committee. Thereafter the Government after verifying all EOI documents, recommendations of the Technical Committee as well as SHLC, issued two Government Orders. The entire exercise was taken up in a transparent manner and no hidden criteria was applied in choosing the seven companies as alleged. Here this Court may refer to the principle of transparency vis-a-vis governance by rule of law.

66. Principle of Transparency is an adjunct to Doctrine of fairness. Fairness requires proper treatment of the individual by public authority by known principles of law. Every person who approaches public authorities must know by what rules, regulations, provisions of law or instructions, he would be governed. In a way transparency in the governance and fairness in Government dealings are essential to democracy to curb nepotism, corruption and parochialism. It does not however mean that the Government at all times and in all situations must go on advertising what they are going to do. In the very nature of State Administration, it is conceded by all thinkers, the political, executive and bureaucracy should have sufficient discretion in dealing with men and material to subserve public interest. In matters relating to economic issues, Government has a right to "trial and error" as long as both are bonafide and within the authority.

67. In *Balco Employees Union v. Union of India* (supra), decision of the Government of India to disinvest and transfer 51% shares of M/s Bharat Aluminium Company Limited (BALCO) was challenged inter alia on the ground that the decision lacked transparency. The Supreme Court rejected the submission observing thus:

It was contended by the learned Advocate-General that the whole process lacked

transparency. We are not able to appreciate this contention. The disinvestments of BALCO commenced with the recommendation by the Disinvestment Committee in its second report suggesting that the Government may disinvest BALCO. It is by global advertisement that the Global Advisor and the strategic partner were chosen. At every stage, the matter was looked into by the IMG and ultimately by the Cabinet Committee on Disinvestment. The system which was evolved was completely transparent. It was made known. Transparency does not mean the conducting of the Government business while silting on the crossroads in public. Transparency would require that the manner in which decision is taken is made known. Persons who are to decide are not arbitrarily selected or appointed. Here we have the selection of the Global Advisor and the strategic partner through the process of issuance of global advertisement. It is the Global Advisor who selected the valuer who was already on the list of valuers maintained by the Government. Whatever material was received was examined by high power Committee known as the IMG and the ultimate decision was taken by the Cabinet Committee on Disinvestment. To say that there has been lack of transparency, under these circumstances, is uncharitable and without any basis.

After going through all the EOI documents of the short-listed Micro Irrigation Companies as well as those of petitioners and examining them in the light of executive summary of TFM, the project profile of APMIP and the EOI documents, I must hold that the argument of lack of transparency is wholly misconceived and cannot be countenanced.

68. Reverting back to the qualifications of the selected companies and disqualification of the petitioners, the following Table encapsulates actual status and position of each of the petitioners and seven short-listed MIS companies.

Statement showing the availability/non-availability of manufacturing facilities for Online drip system, Inline drip system and sprinklers

Sl. No.	Name of the Company/ Concern	Mfg. faciti. for Online Drip System	Mfg. facilities for Inline Drip System	Mfg. facilities for Sprinklers	Rainguns	BIS specification for Online	Inline	Sprinklers	Remarks of the Technical Committee
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1.	Godavari Polymers (petitioner in W.P. No.23777 of 2003)	Not available	Not available	Available	Has no BIS licence	Not fulfilled	essential	Criterion.	Hence, not Recommended for shortlisting.
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2. i)	Haritha Irrigation Products Ltd. (Ptr. No.1 in WP.23940 of 2003)	Available	Not Available	Not Available	BIS licence for Online drip System	-do-			
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ii)	Kumar Enterprises IPtr. No.2 in WP.23940 of 2003	Available	Not available	Not available	Has no BIS licence	-do-			
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3. i)	Satyasai Polymers (Ptr. fvo.I in W.P. 23944 of 2003)	Not available	Not available	Available.	(Mfd. By Tools Engg. with Brand neme of petitioner)	Has no BIS licence	-do-		
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ii) Kushal Polymers IPtr. No,2 in WP No.23944 of 20031 Available Not Available Available BIS licence for Online dripsystem only. -do-

4. EPC Industries Ltd. Available Available Available BIS licence for all. Fulfilled many of the essential criterion. Hence, recommended for shortlisting.

5. Jain Irrigation Systems Available Available Available, Mfd. By Tools Inline Engg. With Jain Brand. BIS licence for Online and the essential Drip system. Not fulfilled many of the criterion. Hence, not recommended for shortlisting.

6. Nagarjuna Raima Available Available Not available. Has BIS licence for Online and Inline. Fulfilled many of the essential criterion. Hence, recommended for shortlisting.

7. Netafim ACS & India Ltd. Available Available. Available. Sprinklers heads available from Netafim, Israel. BIS for Online and Inline drip systems. -do-

8. Parixit Industries Ltd. Available Available Available BIS licence for Online & Inline drip systems only. -do-

9. Palstro Plasson Ind. Available Available Not available Has BIS lic. for Online & Inline drip systems only. -do-

10. Premier Irrigation Available Available. Available. BIS licence for all. -do-

69. The above table reflects the actual position as obtaining in the report of the Technical Committee and as verified from EOI document submitted by the petitioners and seven short-listed companies. The above table would show that none of the petitioners complied with essential criterion of having online and inline drip manufacturing facilities. As held by me, as per Paragraph 7(1) of the EOI document, the availability of manufacturing facilities with online and inline drip system with BIS licence is essential criterion. The petitioners have not fulfilled this criteria. Therefore, the respondents are justified in not including the petitioners in the panel of shortlisted micro irrigation companies for participation in the APMIP. As the petitioners do not have manufacturing facilities for online and inline drip system, whether or not the petitioners have BIS licence for sprinklers, is not of much relevance.

70. Of the seven shortlisted micro irrigation companies, Epic Industries Ltd., Netafim India Ltd., Parixit Industries Ltd., and Premier Irrigation Equipment Ltd., have manufacturing facilities for all the three systems of micro irrigation systems namely, online, inline and sprinklers. Out of these, EPC Industries and Premier Irrigation Equipment Ltd., have BIS licence for all the three systems whereas Jain Irrigation Systems, Netafim India Ltd., and Parixit Industries Ltd., have BIS licence for online and inline drip system, Jain Irrigation Systems, Nagarjuna Palma and Parixit Industries have manufacturing facilities for online and inline drip system with BIS licence. The Technical Committee rightly treated the availability of manufacturing facilities of sprinklers as a non-essential criteria

and, therefore, these three concerns were permitted to procure sprinklers by outsourcing. The same does not in any way fall outside the scope of the EOI document. After evaluating the documents, the Technical Committee came to a conclusion that the companies either fulfilled many of the essential criterion or not fulfilled many of the essential criterion, probably to indicate that a short-listed company has facilities for manufacturing online and inline drip system with BIS licence. The method adopted in the background of the criteria does not suffer from any arbitrariness or illegality.

71. Basing on the remarks made in the standard format in relation to Jain Irrigation Systems, learned Counsel for the petitioners Sri N.Rama Mohana Rao contends that the decision of the Technical Committee suffers from non-application of mind. After verifying the EOI document of Jain Irrigation Systems, the Technical Committee, at the end of the remarks column in the standard format observed that, "Jain Irrigation Systems has not fulfilled the essential criterions for selection and hence the same is not recommended for shortlisting." This is obviously a mistake as rightly contended by the learned Additional Advocate General. At page 9 of the report of the Technical Committee, it is mentioned that after scrutiny of the thirty seven applications, the committee satisfied that seven companies including Jain Irrigation Systems fulfilled the criteria for shortlisting. Further, a perusal of the standard format in relation to Jain Irrigation Systems would show that it has satisfied all the criterion and obviously the technical committee by inadvertence observed that Jain Irrigation Systems has not fulfilled the essential criterion. Having regard to the EOI document and the entire report of the technical committee, I am convinced that the mistake that occurred does not in any way dilute the ultimate decision of Government in shortlisting Jain Irrigation Systems.

72. After shortlisting the seven companies which fulfilled the essential criterion of having manufacturing facilities with BIS licence, the Technical Committee conducted stock inspection of the shortlisted companies between 31-5-2003 to 6-7-2003 and verified various parameters. As noticed hereinabove, separate inspection reports in a tabular form were prepared and then only, a report was sent to the Government. A contention is raised by both the learned Counsel for the petitioners that before taking a decision against the petitioners, the respondents ought to have inspected the manufacturing facilities at their respective factories. Not doing this, it is urged, is illegal and contrary to the binding instructions. Reliance is placed on Paragraph 10(4) of the EOI document which stipulates that the present production and utilization level would be decided after physically inspecting manufacturing facilities at the manufacturing site. The Technical Committee first evaluated all the EOI documents with reference to essential criterion which fulfilled all the essential qualifications. Physical Inspection was undertaken only with regard to those seven companies as other thirty companies did not fulfil the essential criterion. When admittedly the petitioners do not have manufacturing facilities for both online and inline drip systems and have such facilities only for online or sprinklers, there was no

necessity for the Technical Committee to inspect the factory premises for assessing production and utilization level. The decision making process by the Government does not in any manner affect by the non-inspection of the petitioners' factories by the technical committee, especially when the petitioners did not fulfil the essential criterion. Physical inspection would be necessary only to verify the manufacturing facilities at the premises only when such facilities are available. Therefore, the submission made by the learned Counsel for the petitioners is devoid of any merit.

73. Yet another submission is made by the learned Senior Counsel Sri K. Pratap Reddy to the effect that the Government issued orders approving short-listing of seven companies based on the report of the Technical Committee; as report of the Technical Committee formed the basis, any adverse decision against the petitioners without supplying a copy of the technical report, is violative of principles of fairness and natural justice. Strong reliance is placed on the decision of Supreme Court in *M.D., E.C.I.L. v. Kanmakar* (supra). This submission is wholly misconceived and cannot be countenanced. It must be reiterated that no person has right to compel the State to deal with him in the matter of providing services and goods. The claim of a person to be considered along with others for such a privilege is not even an inchoate right. Amorphous expectation if any is only to the extent that the State must treat all the persons equally before giving contracts, licences, largesse and privileges.

74. In *Kanmakar's* case, a Constitution Bench of the Supreme Court considered the question whether the report of the Enquiry Officer in departmental enquiry against public servant is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives its own finding with regard to guilt or otherwise of the employee and punishment if any to be awarded to him. The question arose in the background of Article 311(2) of the Constitution. The right to an opportunity before a Public Servant removed/ dismissed or reduced to lower rank is itself a Constitutional right. The decision if any by the disciplinary authority imposing any of the punishments without any opportunity therefore would be impermissible. In the same tone, if the report which is the basis for the disciplinary authority to arrive at a decision is not supplied, it would amount to denying the right to opportunity of meeting the case. Therefore the Supreme Court having regard to the case law under Article 311(2) of the Constitution held that the Enquiry report must be furnished to the delinquent employee and disciplinary authority should pass necessary orders after considering explanation of the employee. This Court is not able to comprehend the applicability of ratio in *Kanmakar's* case to the facts of the present case. In this case the petitioners have no right muchless enforceable right to compel the State to include the petitioners in the list of companies to participate in APMIP. Further, the Technical Committee examined the EOI documents and prepared Standard Format having regard to essential criteria. When the report was submitted to SHLC, the said committee made recommendations. The Government not only relied on the report of the Technical

Committee and the recommendations of SHLC, but also considered all the EOI documents and passed orders approving short-listing of seven companies. The dynamics of decision making at different committee levels was only resorted to make a decision broad-based. It does not mean that the Government has not taken a decision independently though the matter was examined at two lower levels before a final decision was taken. In the opinion of this Court, non-furnishing of the report of the Technical Committee or SHLC to the petitioners does not vitiate the decision making process and Doctrine of fairness has not been breached.

75. One more submission strenuously pressed into service by the learned Counsel for petitioners is that the decision of the Government is arbitrary and violative of Articles (1) and 19 of the Constitution of India. It is not necessary to refer to the decisions cited by Sri K. Pratap Reddy in this regard as they have no application to this case. This Court may however, refer to the decision of the Supreme Court in *Krishnan Kakkanth Vs. Government of Kerala and others*, , (not cited either by the learned Counsel for petitioners or the learned Additional Advocate General) in which facts are somewhat similar.

76. In *Krishnan Kakkanth v. Government of Kerala*, (supra), Government of Kerala issued a circular that under Comprehensive Coconut Development Programme under which pumpsets and other agro-machines under the financial scheme have to be purchased from Kerala Agro Industries Corporation (KAICO) and Regional Agro Industries Development Corporation (RAIDCO). The said circular was challenged and upheld by the Kerala High Court. It was contended before the Supreme Court, on behalf of the private dealers, that the Government circular amounts to unreasonable restriction on the fundamental right under Article 19(1)(g) of the Constitution to trade in the agro machinery as the farmers were compelled to buy pumpsets from KAICO and RAIDCO only. The Apex Court found that in the past, under the same programme, notices had been issued by the dealers, who without effecting actual sales had drawn loans, subsidies and other financial benefits from the Government and that there were widespread manipulation and irregularities in the activities of various dealers in the pumpsets. This prompted to issue the circular compelling the farmers to buy agro machines with the financial assistance from KAICO and RAIDCO only. The Supreme Court held that the impugned circular did not impose any restriction on the trading activity of the dealers of pumpsets in the State of Kerala and no trader can claim that the Government should also accept him as an approved dealer of the Government. The following observations are relevant.

..... No restriction has been imposed on the trading activity of dealers in pumpsets in the State of Kerala including northern region comprising eight districts. Even in such an area, a dealer is free to carry on his business. Such dealer, even in the absence of the said circular, cannot claim as a matter of fundamental right guaranteed under Article 19(1)(g) that a farmer or agriculturist must enter into a business deal with such trader in the matter of

purchase of pumpsets. Similarly, such trader also cannot claim that the Government should also accept him as an approved dealer of the Government. The trading activity in dealership of pumpsets has not been stopped or even controlled or regulated generally. The dealer can deal with purchasers of pumpsets without any control imposed on him to carry on such business. The obligation to purchase from approved dealer has been fastened only to such farmer or agriculturist who has volunteered to accept financial assistance under the scheme on various terms and conditions.

77. It was further held that the impugned circular does not offend Article (1) of the Constitution and that the directions contained in the circular cannot be held to be vitiated being arbitrary, capricious and unreasonable. The Supreme Court opined that if the State Government on consideration of the facts and circumstances and to ensure genuine sale of pumpsets at proper price with effective after-sales service has felt that farmers covered by financial assistance scheme should purchase pumpsets only from approved dealers, it cannot be said that such action of the State Government lies in its ipse dixit without being informed by any reason. The Supreme Court further observed:

To ascertain unreasonableness and arbitrariness in the context of Article (1) of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken, It Is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality. Courts should avoid "embarking on uncharted ocean of public policy",

78. The submission of the learned Counsel for petitioners Sri N. Rammohan Rao that petitioners being small scale units, ought to have been preferred is baseless. I have perused the relevant Government Order which stipulates guidelines to be followed by all the Government Departments while procuring stationery items and other items for public procurement. The Government Order also contains annexure of items manufactured by the small scale units which are to be purchased by the Government Departments. Micro Irrigation systems Sprinklers do not find place in the list. Therefore the decision of the Government on this score cannot be faulted.

79. The half-hearted submission that the criteria is arbitrary, cannot be countenanced. Para 5 of the EOI document gives modus-operandi of execution of APMIP. The relevant rules are as under:

Modus Operandi

The agencies to be involved in this project are :

1. Government of Andhra Pradesh.
2. Drip system manufacturer/supplier.
3. Banker who advances loan to the beneficiary farmer.
4. Beneficiary farmer.

The Project is funded by the Government of Andhra Pradesh and the Department of Horticulture is the principal project coordinating and implementing agency. The appointment of the Drip system Supplier will be done by the State Level Committee, APMIP and a tri-partite agreement will be made between GoAP, supplier and banker. The Drip Supplier and Local Bank Representatives will select the beneficiary farmers jointly with the assistance of the GoAP representative in the allotted project area considering all relevant revenue, technical, capital and management factors. After selection, the Drip Supplier will install the irrigation system in the beneficiary farmer's field. The technical and agronomic support to the beneficiary farmer will be the responsibility of the Drip Supplier at his own cost for a period of five years. While the project monitoring and quality control will be the responsibility of the District Collector and he will organize, supervise and co-ordinate the completion of the project on or before the specified project period or such other period/date as may be fixed under the conditions, subject to the release of funds by GoAP and Bankers; the supplier and the Beneficiary Farmer and their obligations in terms of tripartite agreement.

80. The endeavour is to involve GoAP, the supplier and the banker in a co-ordinated effort in which revenue, technical, capital and management factors are the essential inputs. The supplier has to install the drip system and is held responsible at its own cost for a period of five years. The District Collector is empowered to monitor and ensure quality. The selection of drip system/ micro irrigation system, installation, maintenance, providing finance etc., are sought to be made available at single window. The APMIP seeks to ensure "one stop facility" to the farmer. If a farmer requires online drip system, inline drip system and also sprinkler system (assuming he has different crops requiring different MIS) the farmer cannot be asked to buy one system from one manufacturer and other system from another manufacturer. It would be difficult to monitor for the District Collector as well. If all these three systems are made available with one manufacturer and after installation, maintenance services, the same would ensure success of APMIP. Viewed in this background, the submission that the criteria evolved is arbitrary is to be stated for the purpose of rejection.

Conclusion

81. In view of the findings and conclusion on the above questions framed, it must be held that inclusion of seven micro irrigation manufacturing companies

does not suffer from any vice. It must also held that non-inclusion of petitioners in the panel of short-listed companies for participation in A.P. Micro Irrigation Project also does not suffer from any arbitrariness and unreasonableness. The decision of GoAP is justified as the petitioners did not fulfill and complied with the essential criteria laid down in EOI document.

82. The writ petitions are devoid of merit and are accordingly dismissed with costs.