Gujarat High Court
Gujarat High Court
Pathan Mohammed Suleman ... vs By This Writ on 4 October, 2013
Bench: Mr. Bhaskar J.B.Pardiwala, J.B.Pardiwala
PATHAN MOHAMMED SULEMAN REHMATKHAN....Applicant(s)V/SSTATE OF GUJARAT - THROUGH PRINCIPAL SECRETARY <!--

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C/WPPIL/97/2013

CAV JUDGEMNT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION

(PIL) NO. 97 of 2013

FOR

APPROVAL AND SIGNATURE:

HONOURABLE

THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA

and

HONOURABLE

MR.JUSTICE J.B.PARDIWALA

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1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

Yes

2

To

be referred to the Reporter or not ?

Yes

3

Whether

their Lordships wish to see the fair copy of the judgment ?

No

4

Whether

this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

No

5

Whether

it is to be circulated to the civil judge ?

No

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PATHAN MOHAMMED

SULEMAN REHMATKHAN....Applicant(s)

Versus

STATE OF GUJARAT -

THROUGH PRINCIPAL SECRETARY & 4....Opponent(s)

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Appearance:

MR

YATIN OZA, Senior Advocate with MS SRUSHTI A THULA, ADVOCATE for the Applicant(s) No. 1

MR

KAMAL TRIVEDI, ADVOCATE GENERAL with MR PK JANI, GOVERNMENT PLEADER with MR PARTH BHATT, AGP for the Opponent(s) No. 1

MR

MIHIR JOSHI, Senior Advocate with MR ABHISHEK M MEHTA, ADVOCATE for the Opponent(s) No. 4

MR

MIHIR THAKORE, Senior Advocate with MR DIPEN DESAI, ADVOCATE for the Opponent(s) No. 3

MR

KUNAN B NAIK, ADVOCATE for the Opponent(s) No. 2

NOTICE

SERVED for the Opponent(s) No. 3

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CORAM:

HONOURABLE

THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA

and

HONOURABLE

MR.JUSTICE J.B.PARDIWALA

Date :

04/10/2013

CAV JUDGEMENT

(PER :

HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. By this writ

application under Article 226 of the Constitution of India in the nature of a public interest litigation, the petitioner, a businessman has brought to our notice the report of the Comptroller and Auditor General of India (for short, CAG) of 2011-12 regarding the State Government's decision to allot land admeasuring 26,77,814 sq.mtrs. in favour of the respondent no.4 i.e. the Gujarat International Financial Tech City Limited (for short, GIFT Company Limited) and GIFT SEZ Limited (for short, GIFT SEZ Limited) for the development of a project called GIFT City. According to the petitioner, such decision of the State Government is against public interest. According to the petitioner, natural resources belong to the people but the State legally owns them on

behalf of its people and, from that point of view, the natural resources are considered as national assets, more so because the State benefits immensely from their value. It is alleged that in taking the decision to allot government land in favour of the respondent no.4 for the project called GIFT City' the Government has failed to act in consonance with the principles of equality and public trust.

2. Since the entire

petition is based on the report of CAG, we deem fit to quote the relevant portion of the report as under:

3.5.13 Inconsistent

decision to allot land at token amount

Gujarat

Urban Development Company Limited (GUDC), a Government Company was authorised by Government in May 2007 to undertake the Gujarat International Finance City project (GIFT city) in a joint venture with Infrastructure Leasing & Financial Services Ltd. (IL&FS) for setting up an International Finance City. Subsequently, a Company called GIFT Company Ltd, (the Company) was formed by IL&FS and GUDC as a joint venture.

As per the direction of the

Government in Revenue Department, Collector, Gandhinagar handed over advance possession of Government land admeasuring 26,77,814 sq.mt. valued by the DLVC/SLVC during September 2007 to December 2008 at Rs.500 crore situated at fourteen survey numbers of four Talukas of Gandhinagar district to GUDC for setting up the GIFT city. The GUDC proposed (June 2007) to Government for relaxation in payment of occupancy price for the land. Chief Secretary, Principal Secretaries of Revenue Department, Finance Department and UDUHD opined that the land shall be allotted at market value as per the extant policy on valuation of Government land. However, moratorium period of two years shall be allowed for payment of 50 per cent of the value of land and remaining 50 per cent payable as a soft loan. Meanwhile, Ministry of Commerce and Industry, Govt. of India accorded a formal approval in January 2008 to GIFT Company Ltd., for the proposed Multi Services SEZ covering an area of 10,11,750 sq.mt. (250 acres).

As per GR dated 22.11.2004,

if the allotment could not be made within completion of two years from the date of DLVC's valuation, it was to be refixed afresh. The land was allotted in April/June 2011 by Government to the Company after expiry of two years from the date of valuation of DLVC, though fresh valuation was not done. Scrutiny of Cabinet note indicated that Collector, Gandhinagar had stated that the value of the allotted land was approximately Rs.2,760 Crore. However, Cabinet allotted 10,11,744 sq.mt. of land to GIFT SEZ Ltd., and 16,66,070 sq.mt. to GIFT Company Ltd., for a nominal price of rupee one with the condition that during the first phase of the project, the surplus amount received by the developers shall be divided between Government and the two Companies in 50:50 ratio. During the execution of subsequent phases, the surplus amount, which may be received over and above the base cost of the project shall be divided between Government and the GIFT Company Ltd., in 80:20 ratio.

We noticed that land was

allotted without ascertaining its value as on the date of allotment. Advance possession of land was given to an organisation other than Boards/ Corporations/ SEZ in contravention of the Government policy. Land was allotted negating the views of Finance Department, Revenue Department and UDUHD without collecting

occupancy price to a minimum extent of Rs.500 crore as on the dates of advance possession of land.

After this was pointed out,

the Government stated (July 2012) that it was a Public Private Partnership (PPP) project and development rights were only given and ownership rights vested with the Government. The reply is not acceptable as the Government land is allotted at new and restricted tenure wherein the allottee is not entitled to sell, transfer or mortgage the land without the permission of the Collector. However, in this case, the Government authorised the allottee to mortgage/lease the land without seeking permission from the Collector/Government. Further, the State Government has produced no records to indicate that allotment for the GIFT city was on the basis of PPP. The State Government despite repeated requests did not produce to audit the Joint Venture Agreement signed between Government/GUDC and IL&FS. Non production of the records to audit has the consequential effect of limiting the scope of audit.

3.5.14 Conclusion

The performance audit

revealed a number of system and compliance deficiencies. Government did not adopt a uniform policy in alienation and allotment of land. Delay in finalisation of valuation also resulted in blocking up of revenue of the Government. There was no mechanism for review and revision of incorrect orders issued by the subordinate officers to safeguard Government revenue. No proper monitoring system exists in the Department to ascertain and vacate encroachment cases.

2.1 In such

circumstances, referred to above, the petitioner has prayed for an appropriate writ, order or direction to declare the action of the State Government of allotting the land in favour of the respondent company at a throwaway price as void. It is also prayed that the action of the State Government in allotting the land be revoked and the Central Bureau of Investigation be directed to investigate into the manner and method in which such allotment of land was made in favour of the respondent company.

3. Stance

of the Respondent No.1-State Government:-

3.1 In the year 2005,

the State Government conceived an idea of developing an international financial services city, as a sustainable township in itself. The project as conceived by the State Government is first of its kind in the country to be designed at or above par with the globally benchmark financial centers such as Sinjuku-Tokyo, Lujiazui-Sanghai, La Defense-Paris, London Dockyard operating in the world which would have an offshore banking facility available in the city.

3.2 Such offshore

banking facility would be made available for the first time in India and for such a purpose the State Government studied through its wholly owned company called the Gujarat State Financial Services Limited, the feasibility aspect of the project. The study report prepared in February 2006 strongly recommended for execution of the project after undertaking the study of feasibility for the financial park in Gujarat.

3.3 Since the project is

first of its kind in the country and involves a commercial risk, the State Government thought fit to have a partner, who could share the responsibility with equal commitment. In view of that, the State approached the potential joint venture partners, who could execute the project of such a magnitude.

3.4 The respondent

no.3-Infrastructure Leasing and Financial Services Limited (IL&FS for short) made a detailed representation before the State Government and showed its intention to develop the international finance service center.

3.5 In view of the

nature of the project and the technical expertise needed for the same, the respondent no.3 was selected as a partner in the joint venture.

3.6 Accordingly,

a joint venture agreement dated 15.5.2007 was signed between the State Government represented by its wholly owned company called the Gujarat Urban Development Company Limited (GUDC for short) on one hand and the respondent no.3 IL&FS on the other for developing an integrated township comprising commercial and business units as well as residential units in the State.

3.7 The respondent

no.3-IL&FS is an organization of repute and has been promoted by the public sector financial institutions and banks including Central Bank of India, Housing Development Financial Corporation and Unit Trust of India. It is engaged in providing services in developing core infrastructure areas suitably complimented with an array of financial services. On the other hand, the GUDC is a wholly owned government company positioned to facilitate urban development by assisting the State Government and existing agencies in formation of policy, institutional capacity building, project implementation, raising funds from multilateral agencies for various projects.

3.8 In the month of June

2007, there was a formation of joint venture company in the name of GIFT Company Limited promoted by the Government of Gujarat through GUDC on one hand and the respondent no.3, IL&FS on the other, having 12 directors in all, comprising four directors including Chairman to be appointed by the State Government, who are the senior most officers of the rank of Chief Secretary, Additional Chief Secretary/Principal Secretary from the State Finance Department and Urban Development and Urban Housing Department, four directors to be appointed by IL&FS and the remaining four directors to be appointed according to mutual agreement between the State Government and the promoter with an equal shareholding in the ratio of 50:50 for designing, developing and implementing the Gujarat International Finance Tech City, popularly called as GIFT City over approximately 500 to 700 Acres of land in Ahmedabad-Gandhinagar region.

3.9 According to the

terms of the joint venture agreement, an empowered committee headed by the Chief Secretary is functioning as a single point policy decision making body through which the State Government exercises due diligence over the project.

3.10 A detailed study

for ascertaining the demand of the whole project was carried out by a globally renowned consultant, M/s. MeKinsey and Company which submitted its report in September 2007 emphasizing to conceptualize GIFT City as a global financial and IT Services Hub.

3.11 As a step in the

direction of development of the project of GIFT City, the State Government gave advance possession of land admeasuring 662 acres to GUDC vide orders dated 27.6.2007, 4.3.2008, 12.3.2008, 4.7.2008 and 5.9.2008 respectively passed by the Collector, Gandhinagar.

3.12 On 9.9.2008, a

subsidiary of GIFT Company Limited called GIFT SEZ Limited came to be incorporated with one of the main objects of developing a multi-services Special Economic Zone, a concept introduced for the first time in the country to create an international financial services center. Two government resolutions dated 22.3.2011 and 7.6.2011 respectively were issued by the State Government in its Revenue Department allotting 250 Acres of land to GIFT SEZ Limited and 412 Acres of land to GIFT Company Limited on certain terms and conditions.

3.13 The State

Government has also formed the GIFT Urban Development Authority for the area of the project of GIFT City under the provisions of the Gujarat Town Planning and Urban Development Act, 1976.

3.14 The project aims

at creating 5 Lac direct and an equal number of indirect employment opportunities. The project in question does not involve the sale of the land or the grant of largesse but the same involves a well-determined and well-defined action of the State Government in sponsoring a project on the basis of a public private partnership model with a social objective and not with any profit making motive and it is only with a view to making the whole project viable that the land in question has been allotted on payment of a token amount of Re.1/- while retaining the ownership right thereof with the State Government along with its very dominant role and presence in the entire project.

3.15 The project would

generate immense socio-economic benefit to the State besides huge employment opportunity of about 1 million jobs in the next 10 to 12 years.

3.16 The study by M/s.

McKinsey and Company has estimated that the annual value addition to GDP by GIFT project by the year 2020 would be of the order of US$ 20 to 30 billion in a conservative scenario. The total investment for the development of various infrastructure in the entire project is estimated at Rs.9700 Crore out of which the investment for Phase-1 would be Rs.1,818 Crore. Till April 2013, an amount of Rs.450 Crore has already been incurred by the GIFT Company Limited towards the project development expenses in creating infrastructure in the project area of GIFT City. The total estimated built up area which would be constructed by various developers would be about 62 million sq.ft., to be developed in three phases over a period of 15 years.

4. Stance

of the Respondent No.3-IL&FS Finance Center:-

4.1 According to the

respondent no.3 a petition which is based solely on the contents of a report of CAG ought not to be entertained and should be summarily dismissed.

4.2 The petition does

not seek to espouse any genuine public cause and is a gross abuse of the process of public interest litigation. There is nothing illegal, improper or irregular in the allotment of the land by the State Government to an entity which has been incorporated as a special purpose vehicle for implementation of a project based on the Public Private Partnership model, more so, when the said entity is substantially owned (to the extent of 50%) by the State itself. The Respondent no.3 has extensive experience in executing the joint venture projects with the Government.

5. Stance

of the Respondent No.4-Gujarat International Finance Tech City Company Limited:-

5.1 According to the

respondent no.4, the petition deserves to be dismissed solely on the ground of delay and laches.

5.2 It has been allotted

around 412 Acres of land and its wholly owned subsidiary GIFT City SEZ Limited has been allotted 250 Acres of land in March 2011 by the State Government.

5.3 The land allotted is

a waste land and the value of the land in the year 2006-07 was around Rs.80 per sq.mtr. Even according to the jantri value, the price of the land is around Rs.21 Crore and not Rs.2,760 Crore as reflected from the report of the CAG.

5.4 After taking over

the possession of the land in April 2011, it has started the development work of the project. In a short period of two years, it has completed various infrastructure works for Phase-1 and some of the works are in the advanced stage of completion. It has constructed around 12.8 kms. of roads in the township. It has also started construction of water treatment plant and sewage treatment plant having a capacity of 3 MLD and 2.2 MLD respectively including the District Cooling System, power substation for 66/33 KV, utility tunnel of around 2.2 kms. and automated waste collection system for a load of around 5 TPD. It has designed an artificial water body named Samriddhi Sarovar having a circumference of 1.5 kms. It has already set up a water pumping station at Nabhoi and a pipeline of almost 12 kms. has been laid to provide water from the Narmada Canal to the township during its first phase.

6. Submissions

on behalf of the petitioner

6.1 Mr.Y.N.Oza, the

learned Senior Advocate appearing for the petitioner vehemently submitted that the report of the CAG highlighting the irregularities at the end of the State Government in the allotment of land for setting up an international finance city at a token price of Re.1/- should be viewed very seriously. Mr.Oza submitted that the allotment of land in the name of the project called GIFT City is nothing but a fraud on the people and, therefore, the allotment should be cancelled and the State Government should be directed to resume the land.

6.2 Relying on the

decision of the Supreme Court in the case of Centre for Public Interest Litigation and Others v. Union of India and Others reported in (2012)

3 SCC 1,

Mr.Oza submitted that the natural resources belong to the people and the State legally owns them on behalf of its people and, therefore, while distributing the natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to the public interest. According to Mr.Oza, although the State Government has tried to justify the allotment of the land in the name of Public Private Partnership Project, it has entered into a lease for a period of 99 years and, therefore, such a transaction could be termed as good as an outright sale. According to Mr.Oza, the decision of the State Government to go for such a project is not in public interest and would benefit only the private respondents.

6.3 In

such circumstances, referred to above, Mr.Oza prays that this petition deserves to be allowed and the entire action of the State Government of allotting the land be declared as null and void and against the public interest.

7. Submissions on behalf

of the State Government:-

7.1 Mr.Kamal Trivedi,

the learned Advocate General appearing for the State opposed this petition submitting that this Court should not entertain a petition which is substantially based on the report of the CAG, and more particularly, when the said report is not final and yet to be examined and scrutinized by the Public Accounts Committee (PAC for short).

7.2 Mr.Trivedi submitted

that the project of developing International Financial Services Center (IFSC) in the State is an innovative and a unique project being the first of its kind in the country which does not involve either grant of largesse or the sale of land or undertaking an commercial venture but it is the State's own project, conceived with a socio-economic objective for the empowerment of the State in terms of creation of jobs, development of the infrastructure, integrated township, quality of the life standard and generation of revenue, based on a detailed study and reports of experts.

7.3 Mr.Trivedi submitted

that the project is not one where any uniform eligibility criteria could have been fixed for the purpose of selecting an appropriate joint venture partner for execution of such a project. Despite such being the position,

the process undertaken by the State for the selection of the respondent no.3, namely, IL&FS was absolutely fair and transparent and so far nobody has come forward with any complaint of discrimination in the form of loss of opportunity to compete for the project.

7.4 Mr.Trivedi submitted

that the project in question is not governed by the State's scheme relating to the Public Private Partnership or by the provisions of the Gujarat Infrastructure Act, 1999 but the same is based on a public private partnership model with the object of achieving the socio-economic benefits.

7.5 Mr.Trivedi also

submitted that in the entire project the joint venture partner, namely, IL&FS (the respondent no.3) is not to get the land and, therefore, the allegation that the respondent no.3 has been allotted land worth Rs.2760 Crore without any public auction, is totally devoid of any substance and the principles and decisions relied upon by the petitioner in case of grant of largesse by the State would not be applicable to the present case.

7.6 Mr.Trivedi last

submitted that there has been a substantial development so far as the project is concerned in a span of almost four years. A sum of Rs.450 Crore has already been invested by the respondent no.3 i.e. IL&FS.

7.7 In such

circumstances, referred to above, Mr.Trivedi prays that this petition deserves to be rejected with costs.

8. Submissions

on behalf of the Respondent No.4:-

8.1 Mr.Mihir

Joshi, the learned Senior Advocate appearing for the respondent no.4 submitted that the petition could not be termed as a genuine public interest litigation. According to Mr.Joshi, this petition is a gross abuse of the process of public interest litigation and deserves to be dismissed with costs. Mr.Joshi submitted that the respondent no.3 was incorporated in 1987 and was promoted by the Central Bank of India, Housing Development Finance Corporation Limited and Unit Trust of India. Over the years, the respondent no.3 has broad based its shareholding and inducted institutional shareholders such as LIC, State Bank of India, Orics Corporation Limited, Japan etc.

8.2 Mr.Joshi

submitted that the respondent no.3 has performed the vital task of structuring many infrastructural projects on PPP framework and has completed them successfully.

8.3 Mr.Joshi submitted

that the respondent no.3 has extensive experience in executing joint venture projects with the Government. To illustrate a few (i) Tamil Nadu Road Development Corporation (TNRDC) (ii) Road Infrastructure Development Company of Rajasthan (RIDCOR) (iii) New Tirupur Area Development Company Limited and (iv) Gujarat Toll Road Investment Company Limited.

8.4 Mr.Joshi submitted

that the respondent no.3 has already invested almost a sum of Rs.850 Crore in the project and its total committed investment is estimated to be Rs.3500 Crore.

8.5 Mr.Joshi last

submitted that one very peculiar feature of this litigation is that the challenge is only to the grant of land by the Government but not the project. The petitioner has not said a word so far as the project is concerned.

8.6 In such

circumstances, referred to above, Mr.Joshi submits that there being no merit in this petition, the same may be rejected with costs.

- : A N A L Y S I S : -

9. Having heard the

learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our determination in this Public Interest Litigation.

(i) Whether the report of the CAG by itself can legally be made the basis for the reliefs claimed in the petition?

(ii) Whether the decision of the State Government to develop an international finance service city on the basis of a public private partnership model with a social objective could be termed as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the sole object of equality clause embodied in Article 14 of the Constitution of India?

(iii) Whether this petition

deserves to be dismissed on the ground of delay and laches?

QUESTION-1

10. Article

148 of the Constitution of India reads as under:

148.

Comptroller and Auditor General of India-(1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in, like manner and on the like grounds as a Judge of the Supreme Court.

Every person

appointed to be Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The

salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule:

Provided that

neither the salary of a Comptroller and Auditor- General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

The

Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

Subject to the

provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

The

administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office shall be charged upon the Consolidated Fund of India.

10.1

Article 151 of the Constitution of India reads as under:

151.

Audit reports: - (1) The reports of the Comptroller and Auditor- General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports

of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

10.2

Section 16 of the The Comptroller and Auditor General's (Duties, Power And Conditions of Service) Act, 1971.

16. Audit

of receipts of Union of States.--It shall be the duty of the Comptroller and Auditor-General to audit all receipts which are payable into the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed and to make for this purpose such examination of the accounts as he thinks fit and report thereon.

10.3 Rules

196 and 197 of the Gujarat Legislative Assembly Rules.

196(1).

As soon as may be, after the commencement of the first session of the Assembly in every year, a Committee on Public Accounts shall be constituted.

(2) The

Committee on Public Accounts shall consist of not more 15 members, who shall be elected by the Assembly from amongst its members according to the principle of proportional representation by means of the single transferable vote.

Provided that a

Minister shall not be a member of the committee, and that if a member, after his election to the committee, is appointed a Minister, he shall cease to be member of the committee from the date of such appointment.

(3) The member

of the committee shall hold office until a new committee is elected. They shall be eligible for re-election.

197. (1) The

committee shall consider the Appropriation Accounts and the Finance Accounts of the State and the Reports of the Comptroller and Auditor General of India thereon 1[x x x x]. The committee may also consider-

(i) such other

Accounts laid before the House as the committee may think fit;

(ii) such

matter as is specially referred to it by the House or the Speaker.

(2) In

considering the Appropriation Accounts of the State and the Report of the Comptroller and Auditor General thereon, it shall be the duty of the Public Accounts Committee to satisfy itself:-

(a) that the

moneys shown in the accounts as having been disbursed were legally available for and applicable to the service, or purpose to which they have been applied or charged,

(b) that the

expenditure conforms to the authority which governs it, and

(c) that every

re-appropriation has been made in accordance with such rules as have been prescribed by the competent authority.

[(3) It shall

also be the duty of the Public Accounts Committee-

(a) to examine

the statements of accounts showing the income and expenditure of State Corporations, trading and manufacturing schemes, concerns and projects together with the balance sheet and statement of profit and loss accounts which the Governor may have required to be prepared or are prepared under the provisions of the statutory rules regulating the financing of a particular Corporation, trading scheme, concern or project and the Report of the Comptroller and Auditor General of India thereon;

(b) to examine

the Statement of accounts showing the income and expenditure of such bodies the audit of which may be conducted by the Comptroller and Auditor General of India under any statute or under the directions of the Governor.

(c) to consider

the report of the Comptroller and Auditor General of India in cases where the Governor may have required him to conduct an audit of any receipts or to examine the accounts of stores and stocks.

Provided that

the committee shall not exercise its functions in relation to such public undertaking as are assigned to the Committee on Public Undertakings by these rules or by the Speaker.

(4) If any

money has been spent on any service during a financial year in excess of the amount granted by the House for that purpose, the committee shall examine with reference to the facts of each case the circumstances leading to such an excess and make such recommendation as it may deem fit.]

(5) [Deleted]

11. Undoubtedly, the CAG

is a key figure in a system of parliamentary control of finance. The CAG is empowered to carry out examination (known as value for money audit) into the economy, efficiency and effectiveness with which the departmental authorities or other bodies had used their resources in discharging their functions. There is no dispute that CAG is the final audit authority and is a part of the machinery through which the legislator enforces regularity and economy in the administration of public finance. However, in our opinion, having

regard to the powers conferred on CAG, he is not entitled to question the merit of the policy objectives of the State Government.

12. The reports of the

CAG are subject to annual debate in the Legislative Assembly. The report of the CAG would be submitted to the Governor of the State. Article 151, Clause (2) of the Constitution of India requires the Governor to cause the report to be laid down before the Legislature of the State. According to the Rules of procedure and conduct of business of Gujarat Legislative Assembly, afore-noted report submitted by the CAG is to be placed before the Public Accounts Committee. Such Committee would scrutinize the report of the CAG as it deems necessary and then present its report to the Legislative Assembly. The Assembly would then discuss the report and the Minister concerned would explain the Government's point of view as well as action which the Government may propose to take under the Rules.

13. The procedure

afore-noted is yet to be undertaken and, therefore, in such circumstances, Mr.Trivedi, the learned Advocate General appearing for the State is justified in submitting that this petition should not be entertained which is based solely on the report of the CAG, which has commented upon the policy decision taken by the State Government in formulating the project of GIFT City. We are, therefore, of the opinion that we should not refer to the findings and conclusions contained in the report of CAG or express any opinion on the same [See Centre for Public Interest Litigation and Others v. Union of India (AIR 2012 SC 3725) para 61], and make it the sole basis for grant of reliefs as prayed for by the petitioner in this petition.

14. We may profitably

refer to a decision of the Supreme Court in the case of Arun Kumar Agrawal v. Union of India and Others reported in 2013

(7) SCALE 333.

The petition before the Supreme Court was in the nature of a public interest litigation challenging the approval granted by the Government of India for the acquisition of majority stake in Cairn India Limited (CIL) for US $8.48 billion and also for a direction to the Oil and Natural Gas Corporation of India to exercise

its right of pre-emption over sale of shares of CIL on the same terms without causing loss or profit to the Cairn Energy and also for a direction to CBI to investigate the reasons for ONGC, a Government of India undertaking, in not exercising their legal rights under the right of first refusal and giving clearance to CAIRN-Vedanta deal on the basis of the existing right to share the royalty and cess on pro-rata basis. The petitioner had placed considerable reliance on the report of the CAG. It was submitted before the Supreme Court relying on the report of the CAG that the declaration of fresh discoveries during appraisal/development phases within de-alienated discovery development areas amounted to irregular expansion of exploration activities, which was not in consonance with the terms of PSC.

14.1 The Supreme Court

made the following observations in paragraph nos.46 and 47.

46. CAG

may be right in pointing out that public monies are to be applied for the purposes prescribed by Parliament and that extravagance and waste are minimized and that sound financial practices are encouraged in

estimating and contracting, and in administration generally.

47. We have

come across several instances where considerable reliance has been placed on the CAG Report and projecting it as gospel truth. Let us examine the role of the CAG under our Constitutional scheme.

14.2 After examining the

role of the CAG under the constitutional scheme, the Supreme Court made the following observations in para 50, which are quoted hereunder:

50. The

Reports of the CAG are required to be submitted to the President, who shall cause them to be laid before each House of Parliament, as provided under Article 151(1). In relation to the States, reports are submitted to the Governor, who shall cause them to be laid before the Legislature of the State, as per Article 151(2) of the Constitution. When reports are received in the Parliament, they are scrutinized by the Public Accounts Committee (PAC). The PAC is established in accordance with Rule 308 of the Rules of Procedure and Conduct of Business in Lok Sabha. The function of the PAC is to examine the accounts of the Union and the report of the CAG. The PAC shall be principally concerned whether the policy is carried out efficiently, effectively and economically, rather than with the merits of government policy. Its main functions are to see that public monies are applied for the purposes prescribed by the Parliament, that extravagance and waste are minimized and that sound financial practices are encouraged in estimating and contracting, and in administration generally. The PAC also has the power to receive evidence, the power to send for persons, papers and record and can receive oral evidence on solemn affirmation. Once the report is prepared, the report of the PAC is presented to the House.

14.3 The Supreme Court,

thereafter, proceeded to observe in paragraph 54 that it referred to the report of the CAG, the role of the PAC and the procedure followed in the House, only to indicate that the CAG report is always subject to scrutiny by the Parliament and the Government can always offer its views on the report of the CAG.

14.4 The Supreme Court

thereafter posed a question whether it could grant reliefs merely placing reliance on the CAG's report. The following observations of the Supreme Court made in paragraph nos.55 and 56 clinches the issue so far as the present petition is concerned.

55. The

question that is germane for consideration in this case is whether this Court can grant reliefs merely placing reliance on the CAGs report. The CAGs report is always subject to parliamentary debates and it is possible that PAC can accept the ministrys objection to the CAG report or reject the report of the CAG. The CAG, indisputably is an independent constitutional functionary, however, it is for the Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAGs report.

56. We may,

however, point out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective ministries have

to offer on the CAGs report. The ministry can always point out, if there is any mistake in the CAGs report or the CAG has inappropriately appreciated the various issues. For instance, we cannot as such accept the CAG report in the instance case.

QUESTION-2

15. Having answered the

question no.1 framed by us accordingly, we could have refrained from answering the question no.2 but since we have heard the respective parties at length we deem fit to look into the project only with a view to satisfy ourselves whether it is in the larger public interest.

16. Although a lot of

hue and cry has been raised on behalf of the petitioner that the State Government has parted with the possession of the land admeasuring around 700 Acres in favour of the respondent no.3 at the token rate of Re.1/-, we do not find anything illegal or shocking in the same after taking note of the few salient features of the project surfacing from the materials on record.

(i) While effecting the said allotment in favour of the aforesaid two companies i.e. GIFT SEZ and GIFT Company Ltd., wherein the State Government is the promoter, the ownership of the land in question is to remain forever with the State Government.

(ii) The developers, who will be permitted to develop the land in question will not be entitled to any ownership right qua the said land which will be made available to them on a leasehold basis, where the period of lease will be for the maximum period of 99 years.

(iii) As a result of the

revenue generation pursuant to the development work of the first Phase of the project GIFT CITY, the GIFT SEZ Ltd. and GIFT Company Ltd. shall be bound to pay 50% of the surplus amount earned by them to the State Government.

(iv) Thereafter, during all the subsequent Phases, 80% of the surplus amount will have to be paid by the said two companies to the State Government.

(v) With a view to recover the total land cost of the project of GIFT CITY for various uses in terms of the development rights, the Board of the GIFT Co. Ltd. will determine the base price, which will be updated every year after obtaining the prior approval of the State Government and will be implemented accordingly.

(vi) Thus, as aforesaid, the State Government will always exercise its control and will thereby ensure that its interest is always safeguarded.

(vii) Further, the said

decision of allotment has been arrived at with the concurrence of the Finance Department after considering the final implications involved in the matter.

(viii) Development of core site of the project as well as residential area will be done simultaneously and the residential units will be used for providing residential accommodation to employees/officers of the companies which would take the commercial site on sale in the CITY and would be allowed to use the said facilities.

(ix) Both the abovementioned companies have been made responsible for recovering the premium, stamp duty according to the prevailing rules and registration fees on behalf of the government and deposit the same with the Government, as and when the developers would transfer their development rights to the other company or individual, failing which the said two companies shall have to pay delayed interest at the rate of 12% to the State Government.

(x) In the event of there being breach of any of the conditions of the allotment, the State Government has retained the power to resume the land along with the structures without awarding any compensation.

17. We have also taken

note of the terms and conditions on which the land has been allotted.

(a) The Respondent No.4 may

give the land on lease to the developers for the development of the Project. However, the same can only be for a maximum period of 99 years;

(b) The Developer shall have development rights on the leased land and no ownership rights whatsoever could be created thereon. The limited exemption that has been given to the developer/allottee is for raising the financial assistance from the land by mortgaging or leasing the same without seeking permission from the Government;

(c) The Respondent No.4 shall be responsible for recovering the premium as prescribed, stamp duty according to the prevailing rules and the registration fees on behalf of the government and must deposit the same with the Government, as and when the developers transfer their development rights. Such amount shall be deposited with the government every three months without fail;

(d) During the first phase of the Project, any surplus amount received by both the companies shall be distributed equally between the government and both the companies (50-50%) respectively. For each phase thereafter, over and above the original cost, the surplus amount to be received from the development rights shall be distributed between Respondent No.1 and Respondent No.4 respectively in the ratio of 80-20. Only the Respondent No.1 may devise the formula for calculating such surplus amount separately;

(e) For the purpose of

recovering the project landed costs, the Respondent No.4's board (to be comprised of 6 nominees each of Respondents No.1 and 3) will decide the base price/floor price which will be revised every year and shall put into effect, only after seeking the sanction of the State Government;

(f) The conversion tax and non agricultural assessment tax shall be paid according to the prevailing guidelines of the Government;

(g) The land shall be utilized only for the purpose for which it has been allotted. It shall not be utilized for any other purpose.

(h) For any employment

opportunities generated in course of the activity carried out by the Respondent No.4 on the said land, the company shall absorb qualified & eligible human resources from amongst the local inhabitants, according to the prevailing rules and regulations of employment issued from time to time; and

(i) On breach of any of the

above conditions or any of the provisions of the Land Revenue Act or Rules including the inability to fulfill/implement any conditions laid down in future by the government or any competent authority, the land granted would stand confiscated without any notice or compensation, along with the entire construction/ building raised on it, and such construction/building shall be taken under possession of the government without any compensation of any kind.

18. Thus, from the

above, it is clear that this is not a case where it could be said that the State Government has given largesse to an individual according to its sweet will and whims. It is also not the case that the respondent no.3 had filed an application and, based on one simple application, the Government has thought fit to enter into an agreement with the respondent no.3. It appears from the materials on record that the State Government had made efforts to approach the potential joint venture partners such as Kotak Bank, Infrastructure Development Finance Company as is evident from the letters which are at pages 229 to 231 of the paper book. Finally, it was the respondent no.3, who came forward with a concrete proposal and signed the Memorandum of Understanding dated 16.2.2007 during Vibrant Gujarat Urban Summit 2007 and after considering the proposal of the respondent no.3 at the highest level decided to enter into a joint venture agreement.

19. Mr.Joshi, the

learned Senior Advocate appearing for the respondent no.4 is right in submitting that in a case of integrated and indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It should not be split into different components and to consider whether each and every component will serve public good. The holistic approach should be adopted in such matters. If the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the State and the public at large, it will serve public purpose.

20. We do not find any

merit in the contention of Mr.Oza, the learned Senior Advocate appearing for the petitioner that the respondent no.3 was selected by the State Government only with a view to favour the respondent no.3. We have considered the credentials of the respondent no.3 and its potential to go ahead with the project. Simply because a company has been chosen for fulfillment of such public purpose by the State Government does not mean that the larger public interest has been sacrificed, ignored or disregarded. It will also not make exercise of power bad, mala fide or for a collateral purpose vitiating the proceedings. [See Sooraram Pratap Reddy and Others v. District Collector, Ranga Reddy District and Others reported in (2008)

9 SCC 552].

In

Narmada Bachao Andolan v. Union of India reported in 2000

(10) SCC 664,

the Supreme Court held that when two or more options are possible and the Government takes a policy decision it is then not a function of the Court to re-examine the matter by way of appeal.

22. Following

the decision of Narmada Bachao Andolan (supra), the Supreme Court in N.D.Jayal and Another v. Union of India and Others

reported in (2004)

9 SCC 362,

made the following observations in paragraph 10:

10. Once

such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of the project and such a system cannot be said to be arbitrary, then the only role which the Court has to play is to ensure that the system works in the manner it was envisaged. It is made clear in that decision that the questions whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the Courts are ill-equipped to adjudicate on a policy decision so undertaken. However, a note of caution was struck that the Courts have a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights as guaranteed under the Constitution are not transgressed upon except to the extent permissible under the Constitution. When a law has been enacted in relation to the protection of environment and such law is being given effect to and there is no challenge to such law, the duty of the Courts would be to see that the Government and other respondents act in accordance with law and there is no other obligation for the Court to examine further in the matter. We respectfully agree with the view expressed in the Sardar Sarovar project's case and apply the same to the facts arising in this case.

23. This

very Bench had the occasion to consider the concept of public private partnership in the case of Adam B. Chaki v. Union of India in Writ Petition (PIL) No.76 of 2011 decided on 30.1.2012. In the said case, the decision of the State Government to hand over the control and management of Civil Hospital at Bhuj, District-Kutch in favour of Gujarat Adani Institute of Medical Sciences on a lease of 99 years for the purpose of developing a hospital as a teaching hospital including Civil Hospital and establishment of medical college on a public private partnership model subject to terms and conditions was the subject matter of challenge. In the said case, the Government was of the opinion that if a super-speciality teaching hospital is developed with

a public private partnership it could create excellent facility for medical tourism. By conversion of the hospital into a teaching hospital, the doctors would be available in adequate numbers and excellent quality of medical services would become available at reasonable

charges in the region of Kutch, more particularly, for the poor and the needy patients. This Bench made the following observations which we would like to refer and rely upon in the present case.

Keeping

this object in mind, the Government took up into consideration the matter of Public Private Partnership for managing the operations of the Sheth G.K.General Hospital, Bhuj and establishing a new medical college at Bhuj. It is also clear from the records that the Government received proposals from two very well reputed institutions, namely, Narayan Hrudayalaya Institute of Cardiac Sciences, Bangalore and Manipal University, Manglore. However, while considering their proposals the Government felt that the terms and conditions were unreasonable and such terms and conditions could never be accepted. The terms and conditions which were put forward by Narayan Hrudayalaya Institute of Cardiac Sciences, Bangalore, Manipal University,

Mangalore and Adani Education and Research

Foundation, Ahmedabad have been exhaustively considered by us in paragraph 7 of our judgment. The Government, thereafter, took into consideration the proposal of the Gujarat Adani Institute of Medical Sciences who expressed their interest for undertaking the management of Sheth G.K.General Hospital, Bhuj and for the establishment of a new medical college on Public Private Partnership model. It is in this background that a Memorandum of Understanding was entered into for this purpose.

Recently,

there has been shift towards encouraging private bodies in the Government works and promoting the concept of Public Private Partnership. In the words of the Supreme Court, if India has to develop and grow fast and become strong to take its rightful place in the comity of nations, then the imperialist's formula of philanthropy plus five per cent is the accepted norm. Public Private Partnership is the latest mantra. It would be appropriate to quote the following observations of the Supreme Court made in the case of Mahanadi Coalfields Limited and another v/s. Mathias Oram and others, reported in (2010)11 SCC 269. Relevant paragraphs 5 and 6 read as under :-

5.

Development is reckoned in terms of investments in urban infrastructure, roads and highways, communication, technology, extraction and commercial exploitation of minerals, generation of power, production of steel and other essential metals and alloys. Creation of wealth is of utmost importance. Redemption lies in GDP (gross domestic product).

6.

India does not lack material resources required for development. There are vast treasures of minerals lying buried deep inside its earth. But excavation of minerals from the bosom of the earth and putting them to good industrial and commercial use require lots of initial investment and highly advanced technology. Those too are now available as blessings of globalisation. The imperialist's formula of philanthropy plus five per cent is the accepted norm. Public-private partnership is the latest mantra. For some reasonable profits, companies and corporations, both Indian and multinational are willing and ready not only to do the mining for us but also to undertake the development of the region by providing schools, hospitals, and many similar amenities and facilities to the local population. Even the public sector undertakings are not lagging far behind in the race.

24. We

may also profitably refer to one more decision of the Supreme Court in the case of M&T Consultants, Secunderabad v. S.Y.Nawab and Another

reported in (2003)

8 SCC 100.

In the said case, the municipal corporation of Hyderabad conceived an idea of erecting for the use and benefit of the public, road direction board on various thoroughfares of the twin cities of Hyderabad and Secundarabad. The appellant, M&T Consultants approached the Corporation with a proposal formulated by it on an in-depth study in the form of a scheme and project for rationalization of house numbering in twin cities. After examining various designs and revised designs and inspecting and re-inspecting samples of the appellant's work, the Corporation authorities were satisfied therewith and decided to go ahead with the project in collaboration with the appellant. The same was challenged before the High Court of Andhra Pradesh. The

learned Single Judge of the High Court dismissed the writ petition on the ground that the petitioner was not able to establish any illegality as alleged in the transaction. The matter ultimately reached to the Supreme Court. The Supreme Court made the following observations, which

we propose to refer and rely in support of the view we have taken in this matter.

16.

..... As rightly observed by the learned Single Judge the venture cannot be considered to be the grant of a largesse or lease or contract in the conventional sense. The provisions in the Municipal Corporation Act cannot be said to envisage situations of the nature, when enacted. This appears to be a project more akin to the one considered by this Court in G.B. Mahajan's case (supra). The fact that no other private advertising agencies, including the writ petitioner could offer to undertake such a venture in the other available areas when their participation was sought for belies the tall claims of the writ petitioner now made, after finding the project to have become successful and apparently fruitful more perhaps then it could have been thought of, initially by everyone. Perhaps irked by this only the interest of the writ petitioner seem to have gained momentum, to try in desperateness for the 'Shylocks' pound of flesh', to ruin the very project, unmindful of any concern for the Corporation, public good and the appellant.

17. A careful

and dispassionate assessment and consideration of the materials placed on record does not leave any reasonable impression, on the peculiar facts and circumstances of this case, that anything obnoxious which require either public criticism or condemnation by courts of law had taken place. It is by now well settled that non-floating of tenders or absence of public auction or invitation alone is no sufficient reason to castigate the move or an action of a public authority as either arbitrary or unreasonable or amounted to malafide or improper exercise or improper abuse of power by the authority concerned. Courts have always leaned in favour of sufficient latitude being left with the authorities to adopt its own techniques of management of projects with concomitant economic expediencies depending upon the exigencies of a situation guided by appropriate financial policy in the best interests of the authority motivated by public interest, as well as undertaking such ventures. Though now, an attempt is sought to made by the writ petitioner and surprisingly even by the Corporation too, attempting a somersault and claiming non- compliance with certain statutory formalities, we find that such a move is not only a pure after thought, but really unwarranted and not based upon a firm or sufficient ground or basis. The very applicability of the regulations contained in Sections 126, 129A, 148, 420 or 421 of the Act to the case on hand would itself be seriously doubtful. On the face of it they involve transactions envisaged therein, when granted in favour of third parties, to be executed with the Corp 'ration funds and involving financial commitments or parting with the property or rights and privileges of the Corporation for value/consideration, and not to a self-financing scheme to be implemented and maintained without any financial commitments or expenditure to the Corporation. .....

25. Since we are

answering the question no.2, we would like to now deal with the decisions on which strong reliance has been placed by Mr.Oza in support of his case.

26. In

Centre for Public Interest Litigation and Others v. Union of India and Others reported in (2012)

3 SCC 1, the

issue before the Supreme Court was whether the Government had the right to alienate, transfer or distribute natural resources/national assets otherwise than by following a fair and transparent method consistent with the fundamentals of the equity clause enshrined in the Constitution. The Supreme Court observed that the natural resources belong to the people but the State legally owns them on behalf of its people and from that point of view natural resources are considered as national assets, more so because the State benefits immensely from their value. The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to the public interest. The Court also observed that like any other State action, constitutionalism must be reflected at every stage of distribution of the natural resources. In the facts of that case, the Court also observed that a duly publicized auction conducted fairly and impartially was perhaps the best method for discharging such burden and the methods like first come first serve when used for alienation of natural resources/public property were likely to be misused by unscrupulous people who may only be interested in garnering maximum financial benefits and may have no respect for constitutional ethos and values.

27. There

cannot be any quarrel with the proposition laid down by the Supreme Court in the aforesaid decision but we fail to see how it helps the petitioner in any manner. The question before the Supreme Court was altogether different and on the basis of the materials on record, the Supreme Court found that the manner and method in which the licenses were issued smacked of favouritism and the procedure adopted for grant of license was arbitrary and not in public interest. In such circumstances, the Supreme Court directed for fresh recommendations for grant of license and allocation of spectrum of 2G band in 22 service areas by auction. In the present case, having considered the entire materials on record, we do not find anything suspicious or contrary to the public interest so far as the decision of the State Government to go ahead with the project in collaboration with the respondent no.3 is concerned. The terms and conditions which we have afore-noted makes it plain and simple that the Government has taken all precautions to protect its own interest including public interest.

28. In

Akhil Bharatiya Upbhokta Congress v. State of Madhya Pradesh and Others

reported in (2011)

5 SCC 29,

the issue before the Supreme Court was whether the decision of the Government of Madhya Pradesh to allot 30 acres of land of Khasra, District Bhopal, to late Shri Khushabhau Thakre Memorial Trust without any advertisement and without inviting other similarly situated organizations/institutions to participate in the process of allotment was contrary to Article 14 of the Constitution and the provisions of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam or not. Having regard to the facts of that case, the Supreme Court took the view that the State cannot give largesse to any person according to sweet will and

whims of the political entities and or officers of the State. The Supreme Court deprecated the policy of allotting land on the basis of the applications made by individuals/bodies, organizations or institutions

de

hors an

invitation or advertisement by the State or its agency/instrumentality. The Court took the view that by entertaining the applications made by individuals, organizations or institutions for allotment of land or for grant of any other type of largess the State cannot exclude other eligible persons from lodging/competing the claim.

29. This decision also

in no way helps the petitioner because in the present case the land has not been allotted in favour of the respondent no.3 for its private gain or business. For more than once, we have stated that it is a project of the State Government and the respondent no.3 has been selected for implementation of the project subject to certain terms and conditions, considering the fact that the respondent no.3 is country's leading infrastructure development company and has conceptualize development and managed projects across a variety of sectors like roads, ports, water, area development, tourism, power, telecom and environmental as well as social infrastructure projects in the areas of education, sanitation, urban amenities etc.

Mr.Oza, the learned Senior

Advocate appearing for the petitioner also relied on a Division Bench decision of the Bombay High Court in the case of Abdul Hamid Patel and Another v. State of Maharashtra and Others delivered in Writ Petition No.1826 of 2003 decided on 9.2.2012. In the said case before the Bombay High Court two writ petitions were filed as public interest litigation challenging the action of the Maharashtra Film, Stage and Cultural Development Corporation (MFSCDC), a solely owned and controlled Corporation of the Government of Maharashtra, of entering into a contract with the Mukta Arts Limited whereby a huge tract of land admeasuring 20 Acres,

which is equivalent to 8,71,200 sq.ft. situated at Goregaon in Greater Bombay was agreed to be given to and transferred in favour of a joint venture in which the Corporation was to hold only 15% shares. The

basis for filing such a petition in public interest was that the transfer of land had been done without inviting any advertisement of tenders and the land admeasuring 20 Acres had been valued only at Rs.3 Crore.

30.1 The

Division Bench took notice of the fact that except the two Government Resolutions dated 30.5.2000 and 29.8.2000, the managing committee of MFSCDC Corporation had not passed any resolution either accepting the proposal of Mukta Arts or accepting that the valuation of the land admeasuring 20 Acres should be made at Rs.3 Crore and, on that basis, the Corporation should be given equity participation of only 15% on the basis of assumption that the entire project cost would be Rs.20 Crore. The Court also took notice of the fact that the various policy decisions of the Government of Maharashtra provided for grant of land at a concessional rate only to educational institutions and one of the essential precondition was that such educational institution should be a trust duly registered under the Bombay Public Trusts Act, 1950 or a society duly registered under the Societies Act, 1862. The Court took notice of the fact that Mukta Arts was not fulfilling any of the criteria fixed by the State of Maharashtra. The Court further took into consideration that without any approval either from the Cultural Affairs Department or from the Revenue Department of the Government of Maharashtra, the then Managing Director of MFSCDC had proceeded to execute the joint venture agreement and the then Chief Minister had signed the said joint venture agreement dated 24.10.2000 only at the request of the Managing Director of MFSCDC allegedly as a token of his good wishes to the said project. The Chief Minister's stance before the Court was that he had signed the agreement on the spur of the moment as requested by the parties to the agreement. The Court observed that the

then Chief Minister signed an agreement which had no value in law and no resolution of the managing committee had been passed to enter into such an agreement.

30.2 In the aforesaid

background of the entire matter, the Division Bench posed two questions for its consideration. They are as under:

Can the highest

functionary of the State Executive being the Chief Minister of the State sign an agreement between the Maharashtra Film Stage and Cultural Development Corporation (MFSCDC), a wholly owned and controlled Corporation of the Government of Maharashtra and a private entity named Mukta Arts Ltd., as a witness purportedly at the spur of the moment in a transaction which the State Government has stated on oath to be a transaction contrary to the provisions of law?

Can the head of the

Executive in the State shirk his responsibility by claiming that he was not aware about the details of the transaction between the Corporation owned by State and a private entity and should Court accept his explanation that he remained present for the ceremony of the signing of the agreement only as a good gesture, particularly when on the face of it the agreement in question is mired in illegality and when the State is also not in a position even to remotely support the legality of the entire transaction?

30.3 While answering the

afore-noted two questions, the Bench observed as under:

The State Government has

already filed its affidavit in which it has clearly stated that even without a formal resolution of the Board of Director of the Corporation, the then Managing Director had proceeded to execute he Joint Venture Agreement. The affidavit filed on behalf of the Government by Smt.Swati Mhase Patel, which is extracted hereinabove clearly shows that even the State Government is not supporting the decision of the Managing Director. In fact from the said affidavit it is clear that neither the Government nor the Corporation had ever taken a decision either to allot the land in question to the Joint Venture Company or to permit the utilisation of the said land by the Joint Venture Company. There was no authorisation given by the State Government for use of said land for the purpose of the Joint Venture. Thus, here is the case where all norms of transparency and reasonableness have been given complete go bye. The present case is a classic example of arbitrary, unreasonable and illegal decision of permitting use of available land owned by the Government without any authority of law. We have already indicated that there is absolutely no basis for coming to the conclusion that the value of the land admeasuring 20 acres would be only Rs.3 Crores. Since entire Joint Venture Agreement is based on such fallacious foundation that the value of the land should be taken as Rs.3 Crores, the entire edifice of the case of the Respondent Nos.3 and 4 to the effect that a conscious decision for entering into a Joint Venture was taken must fall to the ground. In the first place there is no conscious decision taken either by the Government or by the Respondent No.1 Corporation for resolving to set up a Film and T.V.School. In the absence of any such decision, no further steps could have been taken by the Managing Director. It however appears that the Managing Director of Respondent No.1 Corporation and Respondent No.4 Mukta Arts were emboldened by the fact that their action had the blessings of the Highest functionary of the executive arm of the State namely the Chief Minister. In view of such a patronage from the highest functionary, without even a formal resolution of Board of Directors or any order of the Government, the Joint Venture Agreement in question has been executed. It is this illegal agreement which is ex-facie unsustainable which is countersigned by the then Chief Minister allegedly at the spur of the moment.

30.4 Thus, it is very

clear that the facts before the Division Bench of the Bombay High Court were very glaring and the State Government of Maharashtra itself did not support the decision of the Corporation to part with the 20 Acres of land. We fail to see how this decision of the Bombay High Court helps Mr.Oza in making good his case. The facts of the present case are very eloquent and we have discussed the entire policy and the project at length. In the present case, there is nothing to indicate that the procedure adopted by the State Government was not transparent or was illegal. In any view of the matter, this decision of the Bombay High Court is of no consequence so far as the present case is concerned.

QUESTION 3

31. It is well-settled

that this sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of a vigilant litigant. The power of the High Court to be exercised under Article 226 of the Constitution, being discretionary, its exercise must be judicious and reasonable. The persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief, obtainable thereunder unless they fully satisfy the Court that the facts and circumstances of the case clearly justify the laches or undue delay on their part in approaching the Court for grant of such discretionary relief.

32. Where the High Court

grants relief to a citizen or any other person under Article 226 of the Constitution of India against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief, so granted, becomes unsustainable, even if, the relief was granted in support of the alleged deprivation of his legitimate right by the State. Delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution, and the third party interest created on account of delay, should not be disturbed.

33. Reference

could also be made to the observations passed by the Supreme Court in the case of Delhi Development Authority Vs. Rajendra Singh and others, (2009) 8 SCC 582, made in para Nos.52 and 53, which are as under:

52. In

Narmada Bachao Andolan v. Union of India, SCC para 229, this Court has held that PIL should be thrown out at the threshold if it is challenged after the commencement of execution of the project. It was also held that no relief should be given to persons who approach the Court without reasonable explanation under Articles 226 and 32 after inordinate delay.

53. We

reiterate that the delay rules apply to PILs also and if there is no proper explanation for the delay, PILs are liable to be summarily dismissed on account of delay. In the case on hand, it is not in dispute that both the petitioners though claiming that they are very much conversant with environment and ecology, approached the High Court only in the middle of 2007, hence on the ground of delay and laches, the writ petitions were liable to be dismissed.

34. Bearing the

aforesaid principles in mind, we have no doubt in our mind that this petition also deserves to be dismissed also on the ground of delay. We have taken note of the developments which have taken place so far as the

project is concerned. The following aspects need to be considered.

(1) The project was conceived by the State Government in the year 2005.

(2) In the year 2006, the

feasibility aspect of the project was studied through experts in the field appointed by the Gujarat State Financial Services Limited, a wholly owned company of the respondent-State, who recommended for the execution of the project.

(3) On 16.2.2007, the

respondent no.3 came forward during the course of the Vibrant Gujarat Urban Summit, 2007 showing its commitment to the development of the international financial services center and Memorandum of Understanding was signed with the State Government.

(4) On 15.5.2007, a joint

venture agreement was executed between the respondent-State represented by Gujarat Urban Development Corporation Limited on one hand and the respondent no.3 on the other for forming a 50:50 joint venture company in the name of Gujarat International Finance Tech City Limited, i.e. Gift Company Limited.

(5) On 22.3.2011 and 7.6.2011, the State Government issued resolutions and allotted 412 acres of land to the respondent no.4 i.e. the GIFT Company Limited and 250 acres of the land to its wholly owned subsidiary i.e. GIFT Sez Limited with a right to mortgage, while retaining ownership thereof with the State Government.

(6) On 18.8.2011, the

respondent no.5 Government of India issued a Notification under the Special Economic Zones Act, 2005 for the area of 261 acres of land, referred to above, for development, operation and maintenance of the project.

(7) On 27.12.2011, the

Government of India accorded approval to GIFT SEZ Limited for setting up of International Financial Services Center.

(8) By April 2013, out of the estimated investment of Rs.9,700/- Crore for the entire proposed project an amount of Rs.450 Crore has already been incurred by the respondent no.4 i.e. the GIFT Company Limited towards development expenses in creating infrastructure.

(9) The respondent no.4 has

constructed around 12.8 kms. of roads in the township.

(10) The respondent no.4 has also constructed a water treatment plant and sewerage treatment plant having respective capacity of 3 MLD and 2.2 MLD and district cooling system, including power substation for 66 KV, utility tunnel of around 2.2 kms. and automated waste collection system for load of around 5 TPD.

(11) The respondent no.4 has also constructed an artificial water body known as Samriddhi Sarovar having circumference of 1.5 kms.

(12) The respondent no.4 has already set up a water pumping station at Nabhoi and a pipeline of almost 12 kms. has been laid to provide water from Narmada Canal to the township during its first phase.

(13) The respondent no.4 has also set up street lights, cabin wall etc.

35. It is very clear

that the project has proceeded substantially and, therefore, even considering the same no interference is warranted in the present case.

36. We are of the

opinion that we should not interfere with the project conceived by the State Government and should allow the State Government to go ahead with the same.

37. Before parting, we

deem fit to observe that a petition in public interest should be filed with all seriousness and after doing the necessary homework and inquiry. A public interest petition should not be filed solely on the basis of the report of the CAG without anything more. It is a different thing if report of the CAG is placed in support of other materials relied upon by the petitioner in support of his case. In the present case except one document i.e. the report of the CAG on the subject nothing has been placed on record. In such circumstances, any counsel appearing in a public interest litigation being a member of a noble profession owes a duty to draw the attention of the petitioner filing a public interest litigation to the issues where controversy itself is no longer res integra. A public interest litigation is not in the nature of an adversarial litigation but is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of the Constitution. In the matters of public interest, we feel that the counsel appearing for the petitioner owes a higher degree of responsibility before accepting the matters relating to an issue, which requires no adjudication. It not only wastes precious time of the Court but thereby prevents the Court from deciding other deserving cases.

38. For the foregoing

reasons, we do not find any merit in this petition and the same is rejected. However, in the facts and circumstances of the case, there shall be no order as to costs.

(BHASKAR

BHATTACHARYA, CJ.)

(J.B.PARDIWALA,

J.)

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