HIGH COURT OF GUJARAT (*D.B.*)

ESSAR BULK TERMINAL LIMITED & 1
Versus
STATE OF GUJARAT & 3

Date of Decision: 25 April 2017

Citation: 2017 LawSuit(Guj) 519

Hon'ble Judges: R Subhash Reddy, Vipul M Pancholi

Case Type: Special Civil Application; Civil Application

Case No: 8356 of 2016; 5491 of 2016

Subject: Constitution

Acts Referred:
Constitution Of India Art 226, Art 14
Gujarat Maritime Board Act, 1981 Sec 95, Sec 35(2), Sec 2(r), Sec 35(1)
Ports Act, 1908 Sec 3(9), Sec 9, Sec 10, Sec 2(j), Sec 7, Sec 5, Sec 5(1), Sec 8, Sec 4, Sec 6(1)(p)
Gujarat Infrastructure Development Act, 1999 Sec 9, Sec 10, Sec 8

Advocates: Mihir Joshi, Keyur Gandhi, Payal Parikh, Nanavati Associates, Kamal Trivedi, Sangeeta Vishen, S N Shelat, P R Nanavati, S N Soparkar, Rasesh H Parikh, Hemang H Parikh, Mihir Thakore, Sandeep Singhi, Ishan Joshi, Rishabh Bordia, Singhi & Co

Cases Referred in (+): 31

R. Subhash Reddy, J.

[1] This Special Civil Application is filed by the petitioners under Article 226 of the Constitution of India, seeking the prayers which read as under:

> "(A) Your Lordships may be pleased to issue writ of mandamus, order or direction or a writ in the nature of mandamus any other writ, order, or direction quashing and setting aside the impugned notification dated 18.01.2016 and any actions pursuant thereto;(sic)

(A)(1) Your Lordships may be pleased to issue writ of mandamus, order or direction or a writ in the nature of mandamus any other writ, order or direction quashing and setting aside Resolution No. 3157 dated 31.05.2016 passed by the Gujarat Maritime Board recommending inprinciple approval to the DPR of AHPPL for outer harbor development in the area being reclaimed by the Petitioner.

(A)(2) Pending the hearing and final disposal of the petition, Your Lordships may be pleased to stay the operation of the Resolution No. 3157 passed by the Gujarat Maritime Board in its Board Meeting dated 31.05.2016 and restrain the Respondents herein from undertaking any further action for giving effect to the said Resolution.

(B) Your Lordships may be pleased to direct the Respondent State Authorities grant necessary approvals in relation to the applications made by the Petitioner for allotment of 3700 mts waterfront and land admeasuring 567 Hectares (233 Ha + 334 Ha) reclaimed and sought to be reclaimed by the Petitioners as well as the application made by the Petitioner for allotment of land and waterfront LNG facilities;(sic)

(B) Pending the hearing and final disposal of the petition, Your Lordships may be pleased to stay the operation and implementation of the impugned notification dated 18.01.2016 and any actions pursuant thereto.

(C) Pending the hearing and final disposal of the petition, Your Lordships may be pleased to restrain the Respondents herein from giving effect to any resolutions passed in any forthcoming Board meeting of the GMB approving any extension of activities/facilities by Respondent Nos. 3 and 4 in the area being reclaimed by the Petitioner;

(D) Ex-parte ad-interim relief in relation to prayers (B) and (C) above.

(E) Grant such other and further relief(s) as may be deemed fit in the interest of justice."

[2] By the impugned Notification dated 18th January 2016, issued by the 1st respondent-Government of Gujarat, in exercise of power under section 5 of the Indian Ports Act, 1908 ("the Act" for short), the Government of Gujarat has altered the existing limits of Hazira Port. By Resolution No. 3157 dated 31.5.2016, issued by the 2nd respondent-Gujarat Maritime Board, which is the subject-matter of challenge in this petition, the 2nd respondent-Gujarat Maritime Board has recommended the proposal of the 4th respondent to the 1st respondent, approving in-principle, approval

to the master plan of the 4th respondent for Outer Harbor Development. The said Resolution No. 3157, dated 31.5.2016, passed by the 2nd respondent reads as under:-

"Resolution No. 3157

Resolved to recommend the proposal of AHPPL to GOG to grant an in-Principle approval to the Master Plan of AHPPL for outer harbour development subject to the outcome of the petition filed by EBTL in Gujarat High Court and compliance of the following conditions:

i. The in-Principle approval is subject to final approval of the DPR to be submitted covering required studies and investigations. AHPPL shall approach GMB for the final approval of the DPR for the Outer Harbor Development at Hazira Port.

ii. AHPPL shall have to obtain all necessary statutory clearances including Environment and CRZ from the concerned Government Authorities as may be required and submit to GMB.

iii. AHPPL shall obtain other approval viz. NSPC, ISPS etc as may be required.

iv. AHPPL shall submit copies of all detailed designs and engineering drawings to GMB.

v. AHPPL shall have to seek consent to construct under Section 35(1) of the GMB Act prior to undertaking any development work for the identified project.

vi. AHPPL shall have to adhere to all decisions and conditions of GMB/GOG with respect to allotment of land including reclaimed and charges thereof, payment of Waterfront Royalty, Lease Rent, compensation etc.

vii. AHPPL shall have to submit a construction guarantee prior to commencement of any construction as deemed fit by GMB and keep it valid till completion of construction.

viii. AHPPL shall submit detailed implementation plan, studies, and costing prior to commencement of construction.

ix. AHPPL shall provide periodical progress report quarterly to GMB.

x. All construction shall be strictly in accordance with the DPR approved by GMB and any change or deviation from the approved DPR shall be subject to prior approval of GMB.

xi. AHPPL shall strictly observe the Environmental Conditions referred to GOI/GOG during and after construction.

Sd/-

General Manager (HR)"

[3] Necessary facts for the purpose of disposal of this petition are as under:-

3.1. Petitioner no.1 Company is a Special Purpose Vehicle (SPV), floated for the purpose of development of Deep Water Bulk Terminal Facility at Magdalla with equity contribution from Essar Steel India Limited and Essar Ports Limited. Petitioner no.2 is a citizen of India and a shareholder of the Essar Ports Limited, which holds 74% of equity issued by the 1st petitioner Company. 2nd respondentGujarat Maritime Board is a statutory Board constituted under the Gujarat Maritime Board Act, 1981. 3rd respondent Hazira Port Private Limited is a Public Limited Company incorporated under the Companies Act, 1956 and is a subsidiary of Shell BV, Netherlands, which is engaged in the business of developing, constructing, financing and maintaining the ports. It is the allottee of Hazira Port for the purpose of development pursuant to the global tender notice floated by the 2nd respondent-Board. 4th respondent -Adani Hazira Port Private Limited is a Company, which is a subconcessionaire of the 3rd respondent Company and is engaged in the development of non-LNG facilities within the limits of Hazira Port.

3.2. Hazira Port and Magdalla Port are situated adjacent to each other in the western coast of India in the gulf of Khambhat and southern coast of State of Gujarat. It appears that by Notification dated 23.6.2004, limits of Hazira Port were defined. It appears that by Notification dated 19th March, 2010, Government of Gujarat declared the limits of Hazira Port, as mentioned therein. Subsequently, by Notification dated 20th December, 2012, the Government of Gujarat declared limits of Magdalla (Surat) Port, as specified in the Schedule therein. Latest Notification is dated 18.1.2016, by which the 1st respondent invoked its power under section 5(1) of the Indian Ports Act, 1908, altering the limits of Hazira Port. The petitioners, aggrieved by such alteration of the port limits, have filed the writ-petition.

3.3. In the year 1990, Essar Steel India Limited ("the said Company") set up a gas based sponge iron plant at village Hazira within the limits of Magdalla Port. In order to meet with the raw material requirements of the plant, the Company set up a captive jetty admeasuring approximately 456 meters in length in the year 2000. The length of the jetty was subsequently increased by further 592 meters in the year 2009. These jetties were shallow draft, i.e. for the movement of barges and mini bulk carriers. In the year 2005, as there was no facility for direct berthing of

vessel, the said Company decided to undertake dredging of the channel so as to enable the direct berthing for larger vessels, leading to larger inflow of ships and raw materials. To develop the new port facility, including construction of deep draft jetty of 550 mts, dredging of new approach channel, storage and handling facilities etc., the Company set up a new organization/SPV by the name of Essar Bulk Terminal Limited ("EBTL" for short), i.e. the 1st petitioner herein, and the said organization/SPV was incorporated on 21.11.2006.

3.4. To develop Hazira Port, the Department of Ports and Fisheries, Government of Gujarat, announced a Build-OwnOperate-Transfer ("BOOT") Policy in the year 1997 by inviting private sector participation in the development of the State ports. Pursuant to such Policy, the 2nd respondent issued a Global Notice for Expression of Interest for Development of Green Field Site Port Facilities in the State of Gujarat, through the process of competitive bidding. In the said process of competitive bidding, it has selected a consortium led by Shell Gas BV to develop, operate and maintain the port on a Boot basis, and a letter of intent dated 12.11.1999 was issued in favour of Shell Gas BV. Shell Gas BV formed two subsidiary companies in Gujarat, namely, Hazira Port Private Limited ("HPPL") and Hazira LNG Private Limited for the aforesaid purpose. Subsequently, a Concession Agreement dated 22.4.2002 was entered into between the 1st, 2nd and the 3rd respondents, for the purpose of development, construction, financing, ownership, operation and maintenance of certain facilities by the HPPL in Hazira Port. Subsequently, an addendum to the said Concession Agreement was made on 22.6.2004, wherein, it was agreed that the State Government would issue a notification defining the limits of Hazira Port under the provisions of the Indian Ports Act, 1908. Pursuant to such Concession Agreement, the 3rd respondent Company, along with Sub Concessionaire, i.e. the 4th respondent company, has been developing various facilities in the area given to them in the limits of Hazira Port. It is the case of the petitioner that the operations of the 3rd respondent company for Bulk Cargo are fully functional from the year 2012.

3.5. After the formation of the 1st petitioner company as Special Purpose Vehicle for the purpose of Essar Steel and after its decision to construct deep draft captive jetty of 550 meters and the dredging of new approach channel, etc., an application dated 11.7.2005 was made by the 1st petitioner Company to the 2nd respondent-Board for extending the jetty by 400 meters for direct berthing of deep draft vessels along with allotment of backup land. By further letter dated 26.5.2006, the 1st petitioner company sought an extension of 550 meters of waterfront instead of 400 meters. Pursuant to such request, the State of Gujarat, by letter dated 11.10.2006, addressed to the 2nd respondent-Gujarat Maritime Board, granted

approval for allotment of 400 meters of waterfront and 28 Hectares of backup land in favour of the 1st petitioner company. Further, by letter dated 13.10.2006, the 1st petitioner reiterated its request for 550 meters of waterfront instead of 400 meters as sought earlier. Further, a request was made for allotment of 400 Hectares of mudflat/contiguous area for cargo handling facilities. Pursuant to the allotment of 400 meters of waterfront and 28 Hectares of land by the Government vide letter dated 11.10.2006, the 2nd respondent granted inprinciple approval to the 1st petitioner-EBTL for development of 400 meters of waterfront vide letter dated 30.12.2006. It appears that there was also a Memorandum of Understanding executed on 12.1.2007 during the Vibrant Gujarat Summit, between the 1st petitioner and the State Government for the development of deep water port and allied activities. The request of the 1st petitioner-EBTL for additional 150 meters of waterfront in addition to 400 meters already allotted, was approved by the State Government vide letter 24.7.2007 which was addressed to the 2nd respondent-Board. Accordingly, the 2nd respondent-Board informed the 1st petitioner company about the allotment vide letter dated 6.9.2007. On 11.10.2007, the State Government further sanctioned the allotment of 10 Hectares of backup land behind 150 meters of waterfront already allotted to EBTL, the 1st respondent. After obtaining the in-principle approval for 550 meters of waterfront, the 1st petitioner company-EBTL also obtained necessary environmental clearance from the Ministry of Environment and Forests for reclamation of 350 Hectares of area as part of establishing a captive jetty. Thereafter, the 1st petitioner-EBTL, vide letter dated 24.4.2008, requested the 2nd respondent-Board for final approval, which was granted for construction of 550 meters captive jetty by the 2nd respondent-Board vide letter dated 2.8.2008. On 11.2.2010, the construction of 550 meters captive jetty was completed and the 1st petitioner-EBTL intimated the Port Officer about the completion of the construction work. Thereafter, a completion certificate was also issued, pursuant to which, the captive jetty agreement was entered into between the 1st petitioner-EBTL and the 2nd respondent-Board on 25.3.2010.

3.6. On 29.8.2007, the promoter of the Essar Group wrote to the 2nd respondent-Board for allotment of 1800 meters of waterfront and 350 Hectares of backup area for extension of captive jetty. It was their case that out of 1800 meters waterfront as proposed, 700 meters area was to be utilized for development of 350 meters of common user dry cargo port and 350 meters of Ro-Ro jetty to be created through a Joint Venture between the EBTL and the 2nd respondentBoard. It appears that on 26.2.2008, the petitioners wrote another letter to the 2nd respondent, requesting to grant inprinciple approval for allotment of 1100 meters of waterfront for extension of captive jetty. It also appears that there was also a Memorandum of Understanding entered into between the petitioners and the Government of Gujarat

during the Vibrant Gujarat Summit, 2011. The said request dated 26.2.2008 was also considered and finally, the 2nd respondent granted in-principle approval to the 1st petitioner for construction of 1100 meters of waterfront. The final approval for construction of 1100 meters of waterfront was also granted by the 2nd respondent to the 1st petitioner on 30.9.2015.

3.7. On 15.11.2012, the 1st petitioner-EBTL sought permission from the 2nd respondent for further allotment of 3700 meters of waterfront, reclamation of 334 Hectares and dredging of channel to 16 meters' depth. There was also another MOU during the Vibrant Gujarat Summit on 11th January 2013 executed between the EBTL and the State Government for development of a waterfront of 3000 meters. On 2.3.2007, the EBTL wrote a letter to the 2nd respondent-Board, seeking No Objection Certificate for dumping dredged material in 350 hectares of mudflat area. The said No Objection Certificate was granted by the 2nd respondent to the EBTL vide letter dated 14.6.2007.

3.8. Thereafter, the 1st petitioner company also seems to have addressed a letter to the Collector, Surat, to permit it to dump the dredged material in the mudflat area of 350 Hectares. It is the case of the petitioners that they could reclaim only 186 Hectares of land out of the area of 350 Hectares for which No Objection Certificate was granted by the 2nd respondent, as the other area was allotted to the 3rd respondent which was not available for reclamation. On 15.10.2008, a further permission was sought for allotment of additional area of 316 Hectares (in addition to 350 Hectares for which NOC was obtained) in order to provide dumping space for enhanced generation of the dredged material which would accumulate as a consequence of increase in the channel depth from 8 meters to 10 meters and width from 180-230 meters to 300-350 meters so as to accommodate the cape size vessels of 550 meters berth.

3.9. It appears that pursuant to No Objection Certificate dated 14.6.2007 issued by the 2nd respondent, a letter dated 2.7.2007 was addressed by the Essar Group for allotment of 350 Hectares (186 + 164 Hectares) of mudflat land in favour of the petitioners. It further appears that on 10.11.2009, a meeting was held under the Chairmanship of the Chief Secretary to the State Government and the Government has approved the allotment of 170 Hectares of backup land in favour of the 1st petitioner company. Further, on 25.2.2010, Essar Group wrote a letter to the 2nd respondent, seeking allotment of 186 Hectares of land already reclaimed by the EBTL pursuant to No Objection Certificate issued by the 2nd respondent. Letter dated 5.5.2010 was also addressed by the 1st petitioner company to the 2nd respondent Board to allot 319 Hectares of reclaimed land on a token lease rent basis, since the 1st petitioner company had undertaken to invest a colossal sum of

Rs. 1500 Crores. It is the case of the petitioners that in spite of the repeated letters and reminders for allotment of additional land for dredging and reclamation, the State Government has not allotted the land till date without any justification for delay. Though several meetings took place between the authorities of the 2nd respondent and the State Government, the petitioners' proposal for allotment of 3700 meters of waterfront together with corresponding backup area of 567 Hectares (233 Hectares + 334 Hectares) has remained pending. Precisely, it is the case of the petitioners that though there were requests for allotment of 3700 meters of waterfront and backup area of 567 Hectares, the same have remained pending for the last several years though various assurances were given by the authorities of the State Government and the 2nd respondent, and the Memorandums of Understanding were entered into by the petitioners with the State Government, and in spite of making investment of about Rs. 1500 Crores by the petitioners, no steps were taken by the respondents. It is the further case of the petitioners that the 3rd respondent-HPPL, vide letter dated 21.7.2014, by citing navigational issues, requested for amendment/extension of the limits of Hazira Port. It was stated therein that such proposal did not encroach upon the areas where the petitioners were reclaiming the land and developing the waterfront in the limits of the Magdalla Port. On 14.3.2015, another letter was written to the 2nd respondent by the 3rd respondent-HPPL, revising the request for amending the port limits by citing the need for additional backup area for meeting with the additional cargo arrival at the port on account of extension of berthing facilities. Such revised request dated 14.3.2015 was completely encroaching upon the limits of the Magdalla Port, including the areas where the petitioners were reclaiming the land and developing the waterfront. It is the grievance of the petitioners that though the request of the petitioners for extension of the waterfront and reclaiming the land was pending, the 2nd respondent has passed a Resolution dated 19.3.2005, approving the proposal for extension of Hazira Port limits. It is the further grievance of the petitioners that though the application of the petitioners for extension of the waterfront and reclamation of land was pending for the last several years, which are earlier in point of time to that of 3rd respondent, in utter disregard to the request of the petitioners and in arbitrary and illegal manner, the proposal of the 3rd respondent-HPPL was approved. Immediately after the approval was granted by the 2nd respondent in favour of the HPPL, the Essar Group wrote two letters dated 7.4.2015 and 23.4.2015, to the 2nd respondent expressing its objection to extension of the port limits on the ground that the proposed extension would encroach upon the limits of Magdalla Port as well as the lands reclaimed and the waterfront which was sought to be developed by the petitioners in Magdalla Port. The 1st petitioner-EBTL also made a representation dated 7.5.2015 to the 1st respondent, reiterating its grievance in relation to the proposed extension of the

port limits. It was the grievance of the petitioners in the representation dated 7.5.2015, that new proposal for extension of the port limits would encroach upon the entire waterfront and the backup land for which the petitioners were patiently waiting for the approvals and had invested more than Rs. 1500 crores, based on the assurances given by the State Government and the 2nd respondent. It is the case of the petitioners that vide Resolution No. 3091 dated 28.9.2015, the earlier Resolution was amended and it was resolved to send a proposal to the Government to extend the port limits, and in spite of the same, based on a convoluted note circulated by the higher authorities of the State Government on the proposal dated 14.3.2015, the State Government has issued the impugned Notification, extending the port limits of the HPPL, 3rd respondent, in a manner infringing upon the Magdalla Port limits and encroaching upon the land reclaimed and the waterfront created by the 1st petitionerEBTL company.

3.10. According to the petitioners, the impugned Notification, extending the limits of Hazira Port, infringing upon the Magdalla Port limits, has encroached upon the land reclaimed and the waterfront created by the 1st petitionerEBTL. By virtue of the said impugned Notification, the 4th respondent would get undue and unfair advantage of developments made on the land reclaimed by the petitioners at Magdalla Port by investing substantial time and resources, which includes colossal investment of more than Rs. 1500 Crores. Such investment was made by the 1st petitioner-EBTL on the basis of various assurances given by the State Government/2nd respondent-Gujarat Maritime Board from time to time, which led the EBTL to believe that necessary approvals of allotment would be sanctioned in its favour sooner or later. It is the case of the petitioners that the impugned Notification, if it is allowed to stand, would amount to usurping the development made by the 1st petitioner-EBTL with regard to the reclamation of land and development of the waterfront. It is the further case of the petitioners that the impugned Notification for extension of the port limits of Hazira would result in indirectly allowing the HPPL to extend its activities in the extended port area without bidding and therefore, the State cannot distribute public largess as it amounts to unduly favouring 3rd and 4th respondents. According to the petitioners, the impugned Notification amounts to allowing 3rd and 4th respondents to enjoy all infrastructure created and developed by the petitioners thereon, contrary to the assurances given by the State Government and the 2nd respondent for extension of the waterfront of the petitioners, and also the land for reclamation. Such impugned Notification was issued arbitrarily and in violation of principles of natural justice, as the same is not based on any notice of opportunity of hearing to the petitioners or the stakeholders in Magdalla Port, who will be gravely prejudiced by the extension of the port limits under the impugned Notification. It is also the case

of the petitioners that the impugned Notification was issued in gross violation of statutory powers, inasmuch as there is no power under the Act to amend the port limits in a manner which encroaches upon the limits of another Port. In the instant case, the amended limits of Hazira Port coincide with the limits of the Magdalla Port. It is also the case of the petitioners that the proposal made by the 3rd and the 4th respondents was approved in a short span of time and in undue haste. As stated in the petition, though the Government has got statutory powers to alter the port limits, the same cannot be done in utter disregard to the principles of fairness, reasonableness and transparency. It is the case of the petitioners that in view of the No Objection Certificate issued by the 2nd respondent for reclaiming and dumping the dredged material in 319 Hectares of land, and in view of the necessary clearances of the CRZ authority as well as Ministry of Environment and Forests, for dredging of around 334 Hectares of land, which includes the area now covered by Hazira Port limits, if the impugned Notification is allowed to stand, it will cause irreparable loss to the petitioners. Finally, it is averred that the 2nd respondent has passed the impugned Resolution No. 3157 dated 31.5.2016, approving the DPR, in spite of pendency of this petition before this Court and therefore, the same is illegal.

[4] On behalf of the 1st respondent-State of Gujarat, affidavit in reply is filed by the Under Secretary, Ports and Transport Department. Before adverting to the allegations made by the petitioners in the petition, the objects of the Port Policy of 1995 formulated by the State are highlight1ed by the deponent.

4.1. It is stated that the State Government has proposed the private investment in the existing minor and intermediate ports, including the Port at Hazira. As stated in the reply, it was envisaged that Hazira Port would be privatized through a global tendering process and the 2nd respondent-Board was interested in doing a preliminary techno-economic feasibility report of all the locations, including Hazira Port.

The Port Policy also provides that to ensure that the new port projects are financially viable, permissions for captive jetties would be given only in exceptional cases, looking to the quantum of investment and the need for specialized facilities. Reference is also made to the BOOT Policy (BuildOwn-Operate-Transfer Policy) of the Government of Gujarat.

It is stated that the said Policy provides that the Government is vested with the sovereign rights as owner, overseer and conservator of the waterfront and the licensor to the contract. The BOOT Policy provides for expansion of the facilities and it also provides that the developers would be encouraged to add capacity

contracted in the Concession Agreement. The BOOT Policy also provides that at the time of signing of the Concession Agreement, the developer will submit and get approved by the 2nd respondent, a broad perspective plan for the development of the port in the next 15 to 20 years. It further provides that the State Government will not place restrictions on any expansion and further development of the port, within the envisaged perspective plan, subject to statutory clearances and the expansion outside the scope of the plan would be subject to the approval of the 2nd respondent-Board. This Policy further provides that permission to set up captive jetties would not be granted, save in exceptional circumstances.

4.2. Pursuant to such Policy, in August 1997, the 2nd respondent-Board issued Global Notice for Expression of Intention of Interest for Development of Green-Field Site Port Facilities, which, inter alia, includes the development of Hazira Port. Pursuant to a consortium led by M/s. Shell Gas BV, 3rd respondent-HPPL was elected as a successful bidder and a Concession Agreement was signed between the State of Gujarat, the 2nd respondent-Board and Hazira Port Private Limited on 22.4.2002, and the said Concession Agreement provides for development of port facilities in the initial Phase 1A i.e LNG terminal and Phase 1B for non-LNG Cargo meant for Bulk General Cargo Terminal and also in the subsequent phases, as may be approved in the detailed Project Report by the 2nd respondent-Board. Under the provisions of the Indian Ports Act, 1908, the Government is vested with the powers to define and/or alter the port limits within its jurisdiction. It is stated that when the tender was floated by the 2nd respondent-Board, or at the time of signing of the Concession Agreement on 22.4.2002, the limits of Hazira Port were not notified and the area was part of the adjoining Magdalla Port limits. In October, 2004, the State Government carved out from Magdalla Port, the limits of Hazira Port and issued a Notification, notifying the limits of Hazira Port. Thereafter, the limits of Hazira Port were revised in March, 2010 and the request of 3rd respondent, to have the 4th respondent, i.e. Adani Hazira Port Private Limited as a Concessionaire for non-LNG cargo, came to be accepted. Subsequently, the 3rd respondent vide its letter dated 21.7.2014 requested for extension of the limits of Hazira Port only on seaward side, and the said proposal was revised by the letter dated 14.3.2015, inter alia, requesting for extension of the port limits for backup area also, while stating that the issues pertaining to navigational requirements would still continue, besides other issues being faced by the sub-concessionaire, i.e. the 4th respondent. It was stated in the said letter that the 4th respondent had commissioned 5 berths of the Bulk General Cargo Terminal (BGCT) at Hazira Port and the current capacity of the Port stood at 35 MMTPA with a backup area of approximately 250 Hectares of reclaimed land. It was also declared that presently, the Port is receiving about 55 vessels a month and the number of vessels calling

are increasing at a rapid rate. It is stated that in view of the advantages of navigational safety and security, and taking into account the change for business need and additional scope of development for the 4th respondent, the 3rd respondent requested for revision in limits of Hazira Port as proposed on 14.3.2015. It is stated that the said revised proposal dated 14.3.2015 by the 3rd respondent was considered by the 2nd respondent-Board in its 240th meeting held on 19.3.2015 and the 2nd respondent-Board accorded approval for amendment of Hazira Port limits. The decision taken by the 2nd respondent-Board, approving the revised proposal of the 3rd respondent as tendered on 14.3.2015, was submitted to the Ports and Transport Department of the Government of Gujarat by letter dated 9.4.2015. In the meantime, vide letter dated 7.4.2015, the 1st petitioner represented that the proposed revision of the limits of Hazira Port would infringe and overlap with Magdalla Port limits and the area reclaimed by the 1st petitioner.

4.3. In view of the letter dated 7.4.2015 addressed by the 1st petitioner, vide letter dated 21.4.2015, the Ports and Transport Department of the State of Gujarat requested the 2nd respondent Board to comply with certain points as mentioned therein and requested the 2nd respondent-Board to examine the representation of the 1st petitioner regarding the alleged discrepancies and apprehensions about overlapping with another Port. It is stated in the affidavit in reply that the 2nd respondent-Board, vide letter dated 16.7.2015, reported compliance of the letter dated 21.4.2015 of the Ports and Transport Department. In the said letter, the 2nd respondent gave detailed submissions qua the issues raised by the 1st petitioner in the letter dated 7.4.2015. By referring to the letter dated 16.7.2015, addressed by the 2nd respondent-Board, it is stated that there is no port limit for any captive jetty in case of 1st petitioner at Hazira or any other captive jetty in the Gujarat and hence, there is no infringement based on it. The affidavit in reply refers to the letter of the 2nd respondent, wherein the 2nd respondent has referred to various proposals submitted by the 1st petitioner for development of the waterfront and backup area from time to time. It is stated in the affidavit in reply that the 2nd respondent, being a regulatory authority, scrutinizes every proposal and presents the same to the State Government for necessary approvals. It is specifically pleaded in the reply that the 2nd respondent Board, vide letter dated 14.6.2007, had granted No Objection Certificate to the 1st petitioner for dumping the dredged material in the mudflat area at Magdalla Port with a condition that the ownership of the reclaimed land shall vest with the Gujarat Maritime Board/Government of Gujarat, and the 1st petitioner shall not claim reimbursement for any expenditure incurred for such reclamation. By referring to the letter of the 2nd respondent in the affidavit in reply, it is further stated that the 2nd respondent-Board has not granted approval/allotment of the reclaimed land to the 1st petitioner and it is

stated that alteration of port limits by the Gujarat Maritime Board/Government of Gujarat was done on number of times and there are enough instances where such port limits were altered. It is stated that even thereafter, apropos the meeting of the officers of the 1st petitioner, reiterating the grievance raised in the representation dated 7.4.2015, the 1st respondent State, vide its letter dated 26.8,2015, addressed to the 2nd respondent, once again directed to take up the matter relating to extension of the limits of Hazira Port in the Board meeting of the 2nd respondent, and after discussing the same, to send its opinion to the State government and again the proposal for extension of port limits was placed in 243rd Board meeting held on 28.9.2015. Referring to the Agenda Item of 243rd meeting, it is stated that a Resolution came to be passed in the said meeting something different from the Agenda, i.e. the approval of earlier proposal dated 21.7.2014 for extension of the port limits only for seaward side, though the 2nd respondent-Board already approved the revised proposal dated 14.3.2015 of 3rd respondent in its 240th meeting held on 19.3.2015. After considering the said Resolution, the 1st respondent-State, vide letter dated 11.12.2015, addressed to the 2nd respondent-Board, conveyed that it has been decided to approve the extension of the limits of Hazira Port. It is further stated in the affidavit in reply that decision was taken to approve the extension of limits of Hazira Port in such a manner that it does not impact the waterfront area of 1100 meters and the land admeasuring 140 Hectares came to be resolved to be allotted to the 1st petitioner. It is stated that if the aforesaid two elements are excluded from the revision in the port limits proposed by the 3rd respondent in the proposal dated 14.3.2015, there would not be any encroachment or overlapping over the area proposed to be allotted to the 1st petitioner. At the same time, it is pleaded that it is not out of place to mention that the State Government is empowered under the provisions of the Indian Ports Act, 1908, to take a decision notifying/altering the limits of any Port within the State of Gujarat. Further, referring to the Port Policy of 1995, the BOOT Policy of 1997, the Concession Agreement and all agreements executed thereunder, it is pleaded that the 3rd and 4th respondents are entitled to seek expansion of the Port facilities.

4.4. Without prejudice to the aforesaid contentions as pleaded in the affidavit in reply, it is the case of the 1st respondent that there was no private commercial port near Hazira in Surat, and the limits of Magdalla Port was notified, which, inter alia, included a port run by the 2nd respondent-Board at Magdalla and the captive jetties in the surrounding area. The State Government is well within its power to alter the port limits and is statutorily empowered to extend the limits of Hazira Port, and to reduce the limits of Magdalla Port accordingly. So far as the 1st petitioner is concerned, it was permitted to set up a captive jetty, which is a part of larger limits of Magdalla Port. The captive jetty, developed and operated by the 1st

petitioner is not a commercial port set up pursuant to competitive bidding and the 1st petitioner has no right to question the action of the 1st respondent-State as none of the rights of the petitioners is violated. It is stated that the petitioners have no vested right in the limits of Magdalla Port and they are concerned with their captive jetty only. The 1st petitioner is not running a private commercial multi-user port, set up pursuant to the competitive bidding and no separate port limits are even notified for this purpose and, therefore, it is pleaded that the petitioners have no right to question the power of the State Government of altering the limits of Hazira and Magdalla ports.

4.5. The petitioners have claimed that the 1st petitioner was allocated 3700 meters of waterfront additionally for setting up various captive and commercial cargo terminals, including the containers. With reference to the same, it is stated that pursuant to international competitive bidding, the 2nd respondent-Board, 3rd respondent-Hazira Port Private Limited and the 1st respondent-State of Gujarat entered into an agreement on 22.4.2002, for development of LNG terminal and Bulk General Cargo facilities at Hazira, and such agreement prohibits the construction of captive jetty for LNG or container handling or related activities along 150 kms coast along Hazira Port. Therefore, the application of the 1st petitioner, requesting for 3700 meters of waterfront and the land for the purpose of LNG terminal has no merit and cannot be entertained.

4.6. It is stated that the petitioners are trying to create confusion by mixing up their application for 3700 meters of waterfront for development of other facilities with their requirement of captive jetty as originally granted. By referring to such condition in the Port Policy of 1995, it is categorically stated that permission for setting up of captive jetty or expansion thereof cannot be granted as a matter of course. The 1st petitioner has been granted permission to set up a captive jetty for extension thereof from time to time for exclusive use by the 1st petitioner. Reference is made to the provision under section 8 of the Gujarat Infrastructure Development Act, 1999, which provides that a Concession Agreement can be entered into with a person who is selected through a competitive bidding as provided under section 9 of the Act, or by negotiations as provided under section 10 thereof. As the 1st petitioner is not a competitive bidder, it is not entitled for 3700 meters of waterfront and adjacent land as claimed by it. Therefore, it is stated that the 1st petitioner cannot seek extension of captive jetty for third party use beyond the petitioners' own cargo, and therefore, the request of the petitioners for allotment of 3700 meters of waterfront cannot be accepted.

4.7. The petitioners have based their case entirely on the assumption that by permitting the 1st petitioner to dump the dredged material on 319 Hectares of land

except 67 Hectares of land allotted to 3rd respondent and pursuant to deepening of the channel, a right is created in favour of the 1st petitioner and therefore, no one can be allotted such land. With reference to the said allegation, it is submitted by the 1st respondent that the 2nd respondent-Board, in its letter dated 14.6.2007, has categorically stated that, "the ownership of reclaimed land shall vest with the Government of Gujarat/Gujarat Maritime Board". Thus, the 1st petitioner cannot claim any right over the said land.

4.8. Though the 1st petitioner was given No Objection Certificate to reclaim 319.86 Hectares of land at a particular location except 67 Hectares of land allotted to 3rd respondent, the 1st petitioner actually reclaimed only 195 Hectares of land pursuant to No Objection Certificate issued by the 2nd respondent-Board on 14.6.2007. Any reclamation carried out by the 1st petitioner at any location other than 195 Hectares of land was not permitted by the 2nd respondent-Board at any time. Even otherwise, the petitioners cannot assume any right in respect of the land reclaimed by the 1st petitioner, other than 195 Hectares of land. In respect of 195 Hectares of land, the 2nd respondentBoard has resolved to allot about 140 Hectares of land to the 1st petitioner and reserve about 55 Hectares of land for the 2nd respondent-Board for future projects and, therefore, out of 195 Hectares of land, 140 Hectares of land was already allotted to the 1st petitioner and about 55 Hectares of land was reserved for the 2nd respondent for future projects.

Therefore, the claim of the petitioners that, the land reclaimed by the 1st petitioner is allotted to someone else is frivolous and without any basis. With the aforesaid pleas, it is prayed that in the absence of any right in favour of the petitioners, the petition may be dismissed.

[5] Separate affidavit in reply is filed on behalf of the 2nd respondent-Gujarat Maritime Board. In the affidavit in reply, the case as pleaded by the 2nd respondent is as under:

5.1. In the affidavit in reply filed on behalf of the 2nd respondent-Board, preliminary objection is raised with regard to the maintainability of the petition itself. What is challenged in the petition is the Notification dated 18th January 2016 issued by the State Government, by which the limits of Hazira Port were altered, which has nothing to do with the approval granted by the State Government authorities to the request of the petitioners to consider and grant necessary approval for allotment of 3700 meters of waterfront and the land admeasuring 567 Hectares reclaimed and sought to be reclaimed by the petitioners for allotment of the land and the waterfront for LNG facilities. The application of the 1st petitioner, which is filed under the Captive Jetty Policy, and the one submitted by 3rd and 4th

respondents under the Port Policy, operate in different realm and in the absence of any merits, the petition is not maintainable. As per section 2(r) of the Gujarat Maritime Board Act, 1981, "port" means any minor port to which the Act applies within such limits as may from time to time be defined by the State Government under the Indian Ports Act, 1908. The petitioners are operating captive jetty, which is not a commercial port and the captive jetty of the petitioners is a part of Magdalla Port, which is not owned or operated by the petitioners. Referring to the Port Policy of 1995 and the BOOT Policy of 1997 of the Government, various provisions of the Indian Ports Act and the Gujarat Maritime Board Act, 1981, it is stated that the limits of Ports are changed at different times, and therefore, it is not necessary to refer in detail such contention which relates to BOOT Policy, Port Policy and the rights given to the petitioners under the captive jetty for the purpose of starting captive jetty. It is averred that both the applications, one for expansion of captive jetty and the other of the 3rd and the 4th respondents for the port development plan, operate in different realm and they are not comparable. What is granted to the petitioners is a captive jetty for handling of their raw material for captive consumption for their steel plant under the captive jetty policy; whereas the project of development of the port granted to 3rd respondent is pertaining to the Port Policy announced by the Government of Gujarat in the year 1995 and the BOOT Policy announced in the year 1997 to develop the Greenfield Port through private participation of the private entrepreneurs in the State of Gujarat. In the circumstances, the whole foundation sought to be laid by the petitioners is absolutely without any substance and there is no comparison between the two applications. By referring to the global tender floated by the 2nd respondent, it is stated that pursuant to such tender notice, 3rd respondent became successful bidder at the end of the tender procedure and a Concession Agreement for Port was executed by and between the parties for a period of 30 years wherein it is specifically provided that there would be amendments to the port limits as and when the need arises and thus, the contract executed by and between the parties, cannot be said to be violative of the rights of the petitioners under Article 14 of the Constitution of India. It is stated that any successful bidder could have got the contract on the same terms on which 3rd respondent was granted at the relevant time.

5.2. The 1st petitioner company was granted permission for the construction of captive jetty for its steel plant and for dumping the dredged material in the nearby area only with a view that it will have the dual benefits, i.e. the Essar may save its costs to dump the dredged material at a distant place and consequently, the waterfront over which the material is allowed to be dumped will be incidentally reclaimed, and thus, keeping this dual benefits in mind, the 2nd respondent having

found the request of the petitioners in mutual benefit, granted such permission and the present extended port limits include a portion thereof. When such permission was granted, it was specifically provided in the permission letter itself that the area where the dredged material is dumped would always remain with the Government, and taking disadvantage of this situation, the petitioner company is now trying to claim a right over the said reclaimed area which was granted for the benefit of the petitioners to save their costs.

5.3. With reference to the plea of the petitioners that it ought to have been heard before issuance of the impugned Notification and passing of the Resolution by the Board, it is averred that the 1st petitioner has no locus and therefore, it cannot be termed as a stakeholder by any stretch of imagination, and no right is created in favour of the petitioners and, therefore, it cannot be termed as an aggrieved party so as to pray for grant of opportunity. With reference to the allegation of the petitioners that the impugned Notification was issued without conducting any inquiry and giving an opportunity of hearing, it is stated that the documents produced by the petitioners themselves clearly demonstrate that the Government has considered the aspects related to extension vis-a-vis the interest of the petitioners who are already having captive jetty in Magdalla Port area and the balance has been struck by providing ample backup land to the petitioners to cater to their own requirements to run the captive jetty, and the Government has also considered the development of Hazira Port for which Concession Agreement has been executed by and between the parties. The 1st petitioner company herein is operating its captive jetty in Magdalla Port and the said captive jetty and its cargo are not commercial in nature and the 1st petitioner (EBTL) has been awarded the construction of 1100 meters of berth on 23.9.2015 and 140 Hectares of reclaimed land out of 195 Hectares of the land. The 2nd respondent never permitted the petitioners to reclaim any area on the southern side of the existing mangroves. The area, which is reclaimed by the petitioners, is contrary to the No Objection Certificate dated 14.6.2007. Therefore, the 1st petitioner has encroached upon the area of the 2nd respondent-Board without any permission, and the status of the petitioners is nothing more than a trespasser. The 1st petitioner company is handling the cargo at 30% of total capacity of the cargo sought to be projected since the year 2011-12 and the same is mentioned in a tabular form in the affidavit.

5.4. By referring to the said figures, it is averred that the 1st petitioner could not run the captive jetty at its full capacity on one hand and at the same time, the 1st petitioner wants to come up with an expansion plan without any basis. It is averred

that the Government is suffering revenue loss since the plant is not running at its full capacity. With the aforesaid pleas, it is prayed for dismissal of the petition.

[6] Affidavit in reply is filed on behalf of the 3rd respondent. The 3rd respondent is a company which has entered into a Concession Agreement with the 1st and the 2nd respondents pursuant to tender floated by the 2nd respondent for development of Hazira Port. While denying the various allegations made by the petitioners in the petition, the case of 3rd respondent is as under:

6.1. The petitioners own a captive jetty at Magdalla Port. Apart from the petitioners, 9 other industrial units are having captive jetties at Magdalla Port. The said captive jetty is established by industrial undertakings to import raw material and export finished products. The petitioner company is catering to the needs of its parent company that owns sponge iron plant at Hazira, i.e. captive jetty owned by the petitioners is used to import raw materials for sponge iron ore, and the finished goods of the said plant are exported by using the said jetty. The 3rd respondent has entered into a Concession Agreement with the 1st and 2nd respondents for development of the port at Hazira. Development of the port with respect to the LNG terminal and other facilities were carried out by the 3rd respondent, whereas the development of the port with respect to nonLNG cargo is looked after by the 4th respondent, who has entered into a Bulk and General Cargo Agreement, i.e. SubConcession Agreement with the 2nd and 3rd respondents.

Therefore, the activities of the petitioners at Magdalla Port and the activities of the 3rd and 4th respondents at the port of Hazira are completely different with respect to the objectives and the scope. While the use of captive jetty by the 1st petitioner is for its own requirements and limited for importing and exporting products for sponge iron plant, the activities of the 3rd respondent and the 4th respondent are with respect to the development of the port that are wider in scale and scope, and also for the public purpose as against the use of captive jetty for private purpose of the petitioners.

6.2. The petitioners have made allegations in the petition and created an impression that it is developing the port facilities at Magdalla Port which is incorrect, inasmuch as the expansion of its captive jetty is different from developing the port facilities.

6.3. By referring to the prayers in paras-20A and 20B of the petition, challenging the Notification dated 18th January 2016 issued by the 1st respondent, it is stated that the said aspect is nowhere connected with the claim of the petitioners for allotment of 3700 meters of waterfront and the backup land admeasuring 567

Hectares (233 Hectares reclaimed and 334 Hectares sought to be reclaimed) respectively, for its captive jetty. It is stated that having regard to the claim of the petitioners, it is nowhere affected by the impugned Notification and therefore, the petitioners have no locus to file the petition challenging the impugned Notification dated 18th January 2016 as unreasonable and arbitrary. The impugned Notification was issued under the sovereign powers of the 1st respondent and the statutory powers conferred under the provisions of the Indian Ports Act, 1908. Thus, it is pleaded that unless it is demonstrated that the exercise of powers is in colourable exercise of powers, ultra vires to the parent statute and ultra vires to the provisions of the Constitution of India, the challenge to the Notification shall fail. The petitioners have failed to point out as to how the impugned Notification is beyond the powers conferred on the 1st respondent under section 5 of the Act. Perusal of section 5 reveals that subject to private property, the Government is empowered to alter the limits of any port. As the petitioners have not set out in the petition that the impugned Notification prejudicially affects the private property of anybody, including that of the petitioners, there is no case made out by the petitioners to challenge the impugned Notification.

6.4. Without prejudice to the above contentions as referred above, it is the case of the 3rd respondent that extension of the Port of Hazira does not prejudice any pre-existing interest of the petitioners with respect to its captive jetty at Magdalla Port. It is stated that due to the extension of limits of Hazira Port, there is going to be no prejudice whatsoever to the interests of the petitioners, as claimed in the petition and therefore, the petition is required to be dismissed on the ground that it is lacking specificity with respect to the moot question involved in the petition with regard to the manner and the quantum of prejudice suffered by the petitioners due to extension of the limits of Hazira Port.

6.5. It is the case of the 3rd respondent that the present petition is an abuse of process of law, inasmuch as it is an arm twisting device with an aim to exert pressure on the 1st and the 2nd respondents so that they come to terms with the petitioners. While denying the allegation of the petitioners that the 3rd respondent is a public limited company, it is stated that the 3rd respondent is a Private Limited Company. It is denied by the 3rd respondent that the Notification issued for extension of the limits of Hazira Port would confer undue benefit to the 3rd and the 4th respondents. It is also denied that the 1st petitioner company was incorporated to develop new port facilities.

6.6. With reference to the allegation of the petitioners that the petitioners have undertaken large-scale development in the port of Magdalla, it is stated that the development work done by the petitioners is on its captive jetty and not on the Port

of Magdalla. It is the specific say of the 3rd respondent that the reclamation of land, if any, by the petitioners is due to the permission granted by the 2nd respondent to allow it to dump the dredged material while constructing/operating its captive jetty. By referring to the reply of the 2nd respondent, it is stated that the petitioners have no right either to reclaim the land, if any, and unless the petitioners demonstrate their legal title over the alleged reclaimed land, they cannot seek invalidation of the impugned Notification.

6.7. With respect to the alleged investment of Rs.1500 Crores by the petitioners, it is stated that the same pertains to the development of waterfront of 550 meters. Therefore, it is incorrect to say that based on the assurances and the MOUs executed with the State Government, investment of Rs.1500 Crores was made by the petitioners for any development. It is stated that the alteration of the port limits of the 3rd respondent company cannot be termed as encroachment upon the limits of Magdalla Port, inasmuch as, altering the port limits is a separate function of the 1st and the 2nd respondents, circumscribed by the provisions of the Act. With reference to the allegation of the petitioners that since the executives of the 3rd respondents are conservatory body of Hazira Port, they are likely to favour the 4th respondent over the 1st petitioner in relation to grant of various permissions and approval, it is stated that such averments are out of place and not germane to lis involved in the petition. The conservatory body at the Port of Hazira is constituted and governed under section 7 of the Act. The powers of the conservatory body pertain to safety and navigation of the port as prescribed under Chapter III of the Indian Ports Act. The powers of the conservatory body are subject to the overall control of the 2nd respondent. In view of the statutory powers conferred on the conservatory body, its decisions are subject to the provisions of the Act. Therefore, it is impermissible for a conservatory body to exercise the powers arbitrarily and illegally. Therefore, the allegations made by the petitioners are without any basis.

[7] Sub-Concessionaire, i.e Adani Hazira Port Private Limited, the 4th respondent herein, has filed separate affidavit in reply to the petition filed by the petitioners. While denying the various allegations made in the petition, the case of the 4th respondent in the affidavit in reply is as under:

7.1. It is stated that the petition be dismissed in limine on the ground that the petitioners have not come out with clean hands before the Court, have suppressed material facts and have violated the provisions of law in order to create illegal rights in their favour. The petitioners have failed to show any vested right in respect of the allegations made in the petition. It is pleaded that the modus operandi of the petitioners is to create the entire stretch of channel by making

claims at different times for the waterfront area on one pretext or the other. To demonstrate the same, the 4th respondent pleaded in the counter as follows:

"a) It is the claim of the petitioner that in respect of waterfront development of 550 mts. along with dredging, it required 319.86 ha (or 350 ha) for dumping of the dredged material towards the north of the mangrove area. It is the further case of the petitioner that in respect of the aforesaid, it could reclaim only 186 ha (or 195 ha) out of the total area of 319.86 ha for which NOC (dated 14.6.2007) was granted by the Respondent No.2 (hereinafter referred to as 'GMB'). The reason that the petitioner could reclaim only 186 ha (or 195 ha) is that the area (319.86 ha) for which permission was granted by GMB to dump the dredged material in fact turned out to be 186 ha (or 195 ha) and not 319.86 ha. It is also the claim of the petitioner that construction of 550 mts. waterfront was completed on 11.2.2010. I state and submit that if the petitioner required 319.86 ha for dumping of the dredged material to develop the waterfront of 550 mts., it is not known as to how the petitioner completed the waterfront of 550 mts along with dredging, when as per the petitioner it could dump the dredged material only on 186 ha (or 195 ha) area and no other area was available to it for dumping the dredged material. From the aforesaid, it is evident that the claim made by the petitioner for 319.86 ha area was merely an eyewash and the objective was to grab more area under the garb of so called reclamation.

b) In paragraph 7.5(gg) of the petition, it is the case of the petitioner that it required 350 ha for development of waterfront of 550 mts. and dredging. However, the petitioner could reclaim only 186 ha and therefore the petitioner started reclamation for the remaining 164 ha from the southern reclamation area. I state and submit that no NOC has been granted by GMB vide its letter dated 14.6.2007 or thereafter to dump the dredged material on the southern reclamation area. Further, the petitioner has also failed to show as to which environment clearance (EC)/coastal regulation zone (CRZ) clearance for waterfront development of 550 mts. and dredging, permits the petitioner to dump the dredged material on the southern side of the mangrove area. In the circumstances, I submit that the petitioner has clearly violated the provisions of law by dumping the dredged material on the southern side of the mangrove area. It also becomes clear that the petitioner carried out the said exercise only to create illegal rights in its favour.

(c) In addition to the development of the waterfront area of 550 mts. and the dredging of the channel, it is stated by the petitioner that it also made an application to GMB to permit the petitioner to further deepen (DWT) from the existing 75,000 DWT. By the said application, the petitioner sought permission of GMB to increase the channel depth from 8 mts. (permission in respect of which was

granted vide NOC dated 14.6.2007) to 10 mts. and increase the width of the channel from 180-230 mts. to 300-350 mis. The same would be evident from letters dated 15.10.2008 (pages 203-204 of the petition) and 25.5.2009 (pages 205-206 of the petition) addressed by the petitioner to GMB. 0n perusal of the petition, nowhere it is shown by the petitioner that GMB granted the permission to the petitioner to further deepen and widen the channel. No such permission is placed on record. Further, the Ministry of Environment & Forest (MoEF) granted its EC and CRZ clearance for the aforesaid further deepening of the channel only vide letter dated 6.5.2014 (pages 251-254 of the petition). I state and submit that without there being any permission obtained from GMB and even before the permission granted by MoEF, the petitioner started further deepening of the channel and reclamation of the area which is on the southern side of the Mangrove area. The same would be evident from the Terminal Information Guide of the petitioner which is available on the website of Essar Ports at www .essarports.com. From the aforesaid, it is clear that the petitioner has violated the provisions of law and is one of the further attempts on the part of the petitioner to create illegal rights in its favour.

(d) Based on the facts and figures provided by the petitioner, MoEF vide its letter dated 6.9.2007 (page 133-136 of the petition) granted EC/CRZ clearance to the petitioner in respect of establishment of 550 mts. jetty project will cater to steel plant expansion project of Essar Steel Limited, which is being expanded to 10 million tonnes from the existing 4.5 million tonnes. It is further noted that the cargo handling facility for the said project is estimated to be 22 million tonnes by 2010. Further, in the Consent to Establish dated 23.1.2013 (pages 172-175 of the petition) granted by Gujarat Pollution Control Board (GPCB). it is noted that the existing cargo handling capacity of the petitioner at its aforesaid captive jetty is of 30 million tonnes per annum.

For the financial year 2014-15, the petitioner handled cargo of 10.6 million tonnes at its captive jetty. For the financial year 2015-16, the petitioner projected that it would be handling the cargo in the region of 17 million tonnes. The same would be evident from the letter dated 29.5.2015 (pages 270-271 of the petition) addressed by the petitioner to the Government of Gujarat. GMB, in the aforesaid petition, filed its affidavit in reply dated 8.6.2016. At page 361 of the petition, GMB has provided the details of the actual cargo handled by the petitioner from the financial year 2011-12 to 2015-16. On perusal of the said details, it is evident that the actual cargo handled by the petitioner is much below its existing handling capacity at 550 mts. captive jetty project. Further, the Terminal Information Guide of the petitioner, which is available on the website of Essar Ports at www .essarports.com also

provides the details about the cargo handled by the petitioner at its existing jetty at Hazira for the financial year 2011- 12, 2012-13 and financial year 2013-14. As per the figures mentioned therein, the actual cargo handled by the petitioner is much below its existing handling capacity at 550 mts. Captive jetty project. Nothing is placed on record by the petitioner to show that the plant capacity of Essar Steel Limited at its Hazira plant, which was projected In the year 2007 to be of 10 million tonnes, has increased to more than 10 million tonnes thereafter or even till date.

In light of the aforesaid, I state and submit that there was no valid or justifiable reasons to seek increase in the waterfront area by further 1100 mts. or 3700 mts. Even otherwise, the waterfront development area of 3700 mts. was essentially for commercial operations. From the aforesaid, it also becomes evident that the whole exercise carried out by the petitioner to increase the waterfront area was to grab the entire channel so as to strangulate the future growth of the multi-user port at Hazira and in the process enable the petitioner to handle commercial cargo by way of back door entry, though the petitioner is not entitled to carry out the commercial operations in light of the Port Policy, December 1995, and the BOOT Principles dated 29.7.1997 of the Government of Gujarat."

7.2. While stating as referred above, with regard to the allegations made by the petitioners in respect of the challenge to the Notification dated 18th January 2016, it is pleaded that the Government of Gujarat has announced the Port Policy in December 1995. Under the said Policy, one of the ports identified for exclusive investment of private sector was Hazira. The port identified for exclusive investment by private sector was to be carried out through a global tender under the said Policy. It was envisaged in the said Policy that to ensure that new projects are financially viable, permission for captive jetty would be given only in exceptional cases, looking to the quantum of investment and the need for specialized facilities. It was further envisaged that all the industrial units will be encouraged to make use of the new Port facilities, being set up there. Subsequently, the Government of Gujarat has issued a Resolution dated 29.7.1997, announcing Build-Own-Operate-Transfer (BOOT) principles under the Port Policy-1995. As per the BOOT Policy notified by the Government, the new ports be operated at international standard of performance and efficiency and that the waterfront is optimally utilized. To facilitate this, the developer would be provided with a high degree of operational freedom. One of the options in the BOOT Policy is that the Government will not allow any development on the land in the vicinity of the land earmarked for development of the port (say, within 500 mts distance of the port limits), and the developer would be encouraged to add capacity over and

above the capacity contracted in the Concession Agreement. As per the terms of the Policy, at the time of signing of the Concession Agreement, the developer will submit and get approved by the Gujarat Maritime Board, a broad perspective plan for the development of the port in the next fifteen to twenty years, and the Government will not place restrictions on any expansion and further development of the port, which is within the envisaged perspective plan, subject to the statutory clearances.

7.3. Pursuant to such BOOT Policy notified by the Government of Gujarat in the year 1997, a Global Notice for Expression of Intention of Interest for Development of Green Field Site Port Facilities in Gujarat State, came to be issued. Under the said global notice, for Hazira, the total berth requirement in 2001 was estimated to be 11 and in 2011 for 16 berths. In the said global notice, it was clearly noted that there remained several perceived risks in the eyes of the potential investors and the Government would be in a position to mitigate the same in the Concession Agreement or other legal documentations associated with the port's development. It is stated that through the process of competitive bidding, the Gujarat Maritime Board selected the consortium led by Shell Gas BV to develop, operate and maintain a port of Hazira and the 3rd respondent also believed that one of the consortium members along with Shell Gas BV was Essar Steel Limited. It is stated that if such information is true, then in that case, the petitioners have suppressed the material fact before this Court. Certain relevant conditions of the Concession Agreement dated 22.4.2002 executed between the Gujarat Maritime Board, the respondent no.3 and the Government are mentioned in the affidavit in reply, which are as under:

"(a) One of the conditions precedent as envisaged in the said Concession Agreement was that the declaration by the Government of Gujarat of the Hazira Port (separate from Magdalla Port) as a port under the provisions of the Indian Ports Act.

(b) The Respondent No.3 had a right to construct and operate the project by granting sub-concessions to third parties.

(c) Prior approval of GMB was required to be obtained for any expansion outside the scope of the approved Detailed Project Report (DPR).

(d) GMB shall for the period till 2013 not allow the development of any captive jetties within 150 kms along the coast in either direction from the Hazira Port without the express consent of the Respondent No. 3 (at its discretion). Provided always, however, that the Government of Gujarat in its discretion may permit the

development of a captive jetty for a specific economic activity in the region. However, no such captive jetty will include LNG or container handling or related activities.

(e) After 22.4.2002, it has been undertaken by GMB and the Government of Gujarat that no further expansions will be allowed to any existing captive jetty except for captive purposes.

(f) Any captive jetty located within 150 kms along the coast in either direction from the Hazira Port shall not be allowed to handle any commercial cargo and shall not be allowed to be converted into a commercial terminal or port."

7.4. It is further stated that after the Concession Agreement, as envisaged in it, the Government of Gujarat, by two notifications, both dated 23.6.2004, notified the port limits of Hazira and reduced/redefined the port limits of Magdalla in a manner so as to exclude the limits of Hazira Port. Thereafter, the Government of Gujarat issued a notification dated 19.3.2010, extending the limits of Hazira Port. On 25.11.2010, a further addendum to the Concession Agreement was executed between the 3rd respondent-Board and the Government, and as per the said addendum, it was noted that the Gujarat Maritime Board had conveyed its approval for the 4th respondent to be appointed as the Bulk/General Cargo Operator as a sub-concessionaire, in accordance with the provisions of the Concession Agreement. On the same day, a Bulk/General Cargo Terminal Agreement was executed between the 2nd respondent-Board, the 3rd respondent and the 4th respondent. By the aforesaid agreement, the 3rd and the 4th respondents agreed on the terms and the manner in which the 4th respondent will design, build, own, operate and maintain the Bulk/General Cargo Terminal. Pursuant to execution of the aforesaid Bulk/General Cargo Terminal Agreement, the 4th respondent submitted DPR in respect of development of 3 berths at Hazira Port in its first phase. Such DPR included a master plan which was in respect of the development of total 13 berths, in a phased manner, which would require about 1000 Hectares of area as backup. Based on the DPR submitted by the 4th respondent, the 2nd respondent-Gujarat Maritime Board, vide letter dated 11.2.2011, approved the DPR for Bulk/General Cargo Terminal. It is stated that as on the date, the 4th respondent is already operating 5 berths at Hazira Port in addition to the LNG terminal being operated by the 3rd respondent.

Referring to the BOOT Policy, it is stated that the Government desired that the new ports be operated at the international standards of performance and efficiency and that the waterfront is optimally utilized and in this regard, the developer was required to be provided with a high degree of operational freedom. During the

operation of the terminals by the 3rd respondent and the 4th respondent respectively, it was experienced that number of vessels calling at Hazira Port was gradually increasing. Further, the existing port limits of Hazira was working out insufficient to provide anchorage to the increased number of vessels at the Hazira Port. It is a fact that Hazira Port limits have been carved out from Magdalla Port limits. If the vessels are anchored at Magdalla Port, the said vessels would be required to pay anchorage charges to Magdalla Port and once the said vessels are brought within Hazira Port, the said vessels once again would be required to pay anchorage charges at Hazira port. To avoid such double payments, the said vessels used to anchor outside the Magdalla Port limits. When the vessels were to be called for to Hazira Port, lot of time was being wasted and that Hazira Port was not able to work optimally. To arrest such problem, the 3rd respondent, vide letter dated 21.7.2014 requested for amendment to the port limits of Hazira. Subsequent to the aforesaid letter dated 21.7.2014, the 3rd and the 4th respondents experienced further increase in number of vessels. As per the master plan submitted to the Gujarat Maritime Board, as part of DPR, it was clearly envisaged development of total 13 berths. The development of additional berths would require the backup area of 680 Hectares. It is further stated that the 4th respondent, somewhere in the year 2011, submitted its proposal for allotment of forest land (situated to the north of Bulk/General Cargo Terminal of the 4th respondent) from the Forest Department, to meet with the requirement of backup area partially. No permission till date has been given by the Forest Department for allotment of the forest land. In the absence of availability of the land and to meet with the development of total 13 berths as envisaged under the master plan amongst others, options were being looked towards the south of the Bulk/General Cargo Terminal for backup area as that was the only viable solution on the various grounds as envisaged while addressing the letter dated 14.3.2015 to the Gujarat Maritime Board. It is pleaded that in the aforesaid circumstances, the 3rd and the 4th respondents requested the Gujarat Maritime Board to consider the revised proposal for the change of the Hazira Port limits as contained in the letter dated 14.3.2015 in place of the earlier proposal dated 21.7.2014.

7.5. Further referring to the Notification dated 18th January 2016, issued by the Government, extending the limits of Hazira Port, it is stated that the 4th respondent submitted the DPR to the 2nd respondent to grant it in-principle approval in respect of the proposed expansion in the form of outer harbor development, and accordingly, the 2nd respondentBoard in its meeting held on 31.5.2016, granted its inprinciple approval to the DPR/master plan of the 4th respondent for outer harbor development. It is stated that such Resolution is also annexed along with the affidavit in reply filed by the 2nd respondent.

7.6. It is stated that when the revised proposal dated 14.3.2015 was already approved by the 2nd respondent, it is not known how once again the same was placed in the meeting of the 2nd respondent-Board on 28.9.2015. No reasons are discernible from the Resolution dated 28.9.2015. After granting of the approval of the proposal by the 2nd respondent on 19.3.2015 and after the representation was made by the 1st petitioner to the 1st respondent, the 2nd respondent allotted 140 Hectares of the reclaimed land on the northern side of the mangroves, to the 1st petitioner as backup area and the 2nd respondent also granted permission to the 1st petitioner to construct 1100 meters of captive jetty. The said permissions were granted on 23.9.2015 and 30.9.2015. On perusal of the note dated 5.12.2015 annexed with the petition, it becomes clear that the State authorities had considered all the aspects in respect of the revised proposal dated 14.3.2015 and after due deliberations, rightly came to the conclusion that the decision taken by the 2nd respondent-Board in its meeting held on 19.3.2015 was a conscious decision, after excluding the area proposed to be allotted to the 1st petitioner. The petitioners had in their possession the decision taken by the State authorities on 5.12.2015. It is stated that the petitioners have left no stone unturned to halt the development of Hazira Port till the time the State authorities succumbed to the illegal demands of the 1st petitioner. In the absence of any approval from the 2nd respondent-Board, permitting to reclaim the land on the southern side of the mangrove area or any approval for further deepening or widening of the channel, the petitioners are not entitled to any relief.

7.7. While referring to the contents of para-14.19 of the petition, it is stated that the petitioners, vide letter dated 19.4.2016 had submitted a drawing of the proposed waterfront for its LNG facility. As per the said drawing, the proposed LNG facility was adjacent to 1100 meters of waterfront allotted by the 2nd respondent-Board. The said proposed LNG facility was almost towards the north of the mangrove area, and after submitting the drawing, the petitioner company realized that it had been throughout illegally claiming the development of the reclaimed area towards the south of the mangrove area in order to illegally grab the entire channel, and to achieve the same, the petitioner company had also proposed the waterfront of 3700 meters. Realizing that the petitioner company would stand exposed, the same was corrected by the Essar Group vide letter dated 13.5.2016 by proposing the LNG facility towards the south of the mangrove area so as to continue to stake its claim over the entire channel. While referring to the Concession Agreement, Bulk/General Cargo Terminal Agreement and BOOT Policy, which permit the expansion of port facilities, the 4th respondent has denied the allegation of the petitioners that it amounts to a change in the alteration in the terms and conditions of the bid or global tender notice, pursuant to which the

Concession Agreement was entered into with the 3rd respondent. It is the further case of the 4th respondent that the environment clearance obtained by the petitioner company would not vest any right in its favour to claim the reclamation of 334 Hectares of backup area. Thus, in view of the affidavit in reply, the 4th respondent has prayed for dismissal of the petition.

[8] Separate affidavits in rejoinder are filed by the petitioners to the separate affidavits in reply filed on behalf the respondent nos. 1 to 4. The sum and substance of such rejoinders can be summarized as under.

[9] In the affidavit in rejoinder filed by the petitioners to the affidavit in reply filed on behalf of the 1st respondent, while denying the averments made in the affidavit in reply, the case pleaded by the petitioners is as under:

9.1. The Port Policy provides that permission for approval of captive jetties is not completely barred and the existing captive jetties already constructed or under construction can continue to operate. The petitioner company had sought approvals for its captive jetty soon after setting up the steel plant in the year 1990 before the formulation of the Port Policy. It is pleaded that the parent company of the petitioner company had already entered into an agreement for usage of the captive jetty in the year 1994, before the formulation of the Port Policy and therefore, no exclusionary provisions in the Port Policy can prejudice the petitioners in any manner whatsoever. Further, it is pleaded that the distinction which is sought to be created is an artificial one. Essar Steel operates one of the largest single location integrated Steel Plants in India at Hazira. It is stated that the very object of the Port Policy is to encourage the industries and export-oriented units and failure to approve the captive jetty will threaten the very existence of the petitioners' steel plant at Hazira. It is the case of the petitioners in the rejoinder that the Policy nowhere provides that Concessionaire under a Concession Agreement can add to its contracted capacity by extending its operations in the areas beyond the port limits as originally envisaged. The only reason for the 3rd and 4th respondents in changing the perspective plan of Hazira was to usurp and annex the waterfront and the reclaimed land created by Essar at significant expense. It is further pleaded in the rejoinder that the 1st petitioner company has created the enabling infrastructure at great expense, effort, and after considerable innovation. The 7 kilometers long navigation channel created by the 1st petitioner company after dredging it from an initial depth of -3 meters to the existing -12 meters was created at the significant expense. Furthermore, reclamation of the land had posed its own challenges which were overcome over a period of time. It is pleaded that at present, the petitioner company incurs an expense of approximately Rs.100 crores per annum to maintain the channel depth and thus, it would be completely unjust

and unreasonable if the 3rd and 4th respondents are allowed to take advantage of the facilities and developments made by the petitioner company in the Port.

9.2. Referring to the provisions of the Indian Ports Act, it is pleaded that the powers conferred on the State Government for altering the Port limits are not unfettered, and the State Government had exercised such power with fairness and reasonableness. It is pleaded that the Indian Ports Act does not give powers to the Government to bifurcate the ports, as was sought to be done vide notification dated 20.10.2004. Referring to various notifications issued by the State Government, it is pleaded that the State Government had exercised the powers under sections 4 and 5 of the Indian Ports Act in a completely ad hoc and arbitrary manner, without having any regard for the due process of law. Further, it is pleaded that Essar Ports Limited, Adani Ports and Special Economic Zone Ltd had entered into an MOU on 27.2.2015 for the purpose of exploring business opportunities and technical collaboration opportunities in various ports. The said MOU had envisaged sharing of certain confidential information. The 3rd and 4th respondents had illegally utilized the confidential information obtained by them pursuant to the aforesaid MOU by seeking to usurp the developments undertaken by the petitioners after making substantial investments for the same. It is pleaded that the request of the 4th respondent for additional space for berthing its vessels cannot be met by depriving the petitioner company of its rights in the land reclaimed and developed by it. It is stated that presently, the petitioner company receives approximately 30 vessels per month at its captive jetty and, therefore, birthing space is necessary for the petitioner company as well. It is pleaded that while applications of the petitioner company for allotment of land and waterfront remained pending before the authorities for years together, the application of the 3rd respondent for extension of the port limits was considered in a short span of time. It is the case of the petitioners in the rejoinder that the letter dated 16.7.2015, written by the Board to the State Government, does not set out the facts accurately and seeks to prejudice and victimize the petitioners by doing undue favour to the 3rd and 4th respondents. It is stated that the said letter brushes aside the MOUs executed by the petitioners with the 2nd respondent for development of 3700 meters of waterfront and the assurances given for allotment of the land, pursuant thereto. It is stated in the rejoinder that in the formal meetings with the State authorities, the petitioner company had been assured of the allotment of land being reclaimed by it. Thus, the respondent State authorities are discriminating between the petitioners and the 3rd and 4th respondents.

9.3. It is the case of the petitioners, as stated in the rejoinder, that the State Government, while issuing the impugned Notification had selectively chosen to rely

on the letter of the 2nd respondent dated 16.7.2015, by completely ignoring the subsequent Resolution dated 28.9.2015. It is pleaded that the State Government had deliberately suppressed the material facts.

9.4. It is further pleaded that the State Government cannot exercise power of alteration of port limits under the Indian Ports Act, 1908 arbitrarily and illegally in unfettered terms, without regard to the impact it has upon the stakeholders in the port. It is pleaded that the petitioners are not claiming any rights over the entire Magdalla Port, but only the area reclaimed by them pursuant to the assurances and promises of the allotment given by the State authorities. The petitioners' rights do not become subservient to the alleged rights of the 3rd and 4th respondents, merely because the petitioner company operates a captive jetty as opposed to a commercial multi-user port. In any case, the 1st petitioner company, not being a party to Hazira Concession Agreement, is not bound by the terms of the same in any manner whatsoever, and the captive jetty agreement dated 25.3.2010 between the 1st petitioner company and the 2nd respondent does not impose any restrictions upon the construction of LNG or cargo handling facilities for the captive use of the petitioners. The alleged commercial operations sought to be undertaken by the 1st petitioner company were to be carried out after setting up a Special Purpose Vehicle in Joint Venture with the 2nd respondentBoard and therefore, it is denied that the 1st petitioner is not entitled to allotment of 3700 meters of waterfront on the ground that the procedure contemplated under sections 8 and 9 of the Gujarat Infrastructure Development Act, 1999 is not followed.

9.5. It is the further case of the petitioners in the rejoinder that the 1st petitioner company was granted permission for dumping the dredged material in 319.86 Hectares of land in the mud-flat area, and the area of mud-flat was only an estimate, as it was not possible to precisely identify how much of the submerged area could be reclaimed. It is further pleaded that it was not possible to identify precisely the area of the land available to the north of the mangroves and the one which is available on the south of the mangroves, and subsequently after undertaking the reclamation, the petitioners could only reclaim 186 Hectares of land from the area towards the north of the mangroves, and for the balance area for which the NOC was granted, the 1st petitioner company sought to reclaim the same from the area on the south of the mangroves. As regards the permissions granted to the 1st petitioner company by the Gujarat Pollution Control Board, other regulatory authorities, and the Ministry of Environment & Forests for dredging and reclamation of the land to the south of the mangroves, the petitioners denied the allegation of the 1st respondent that the petitioners' claim for its right to reclaim

was restricted only to 195 Hectares reclaimed by it in the area on the north of the mangroves.

[10] Separate affidavit in rejoinder is filed on behalf of the petitioners, in response to the affidavit in reply filed on behalf of the 2nd respondent herein. The case as pleaded in the affidavit in rejoinder by the petitioners is as under:

10.1. The impugned Notification is not maintainable in law, as the same was issued arbitrarily and hastily without regard to the stakeholders, inasmuch as the interest of the 1st petitioner company is severely prejudiced on account of the issuance of the impugned Notification. The executive powers cannot be exercised arbitrarily in violation of the principles of natural justice and if the power is exercised in such a manner, the same is amenable to judicial review. The expansion of the port limits was the first step towards usurping the waterfront and the reclaimed land created by the petitioners, which is evident from the fact that the application of the 4th respondent for approval of its revised DPR for the activities in the area reclaimed by the 1st petitioner company was made on 19.1.2016, immediately after the impugned Notification. The State Government has no power to alter the port limits arbitrarily and illegally under section 5 of the Indian Ports Act, 1908. Hydrographic chart relied on by the 2nd respondent does not reflect the correct position of the port area as on date, and if the port limits are to be altered, it is obligatory on the part of the 2nd respondent to give an opportunity to the stakeholders who are affected by such alteration of port limits. In the instant case, without hearing the petitioners, the impugned Notification is issued, which has severely prejudiced the case of the petitioners.

10.2. There is no delay on the part of the petitioners in approaching this Court, as pleaded. The 2nd respondent was time and again assuring that the port limits would not be altered in a manner which would affect the petitioners' right. However, after issuance of the impugned Notification, a protest letter dated 29th January 2016 was addressed by the 1st petitioner company to the State Government, objecting against the impugned Notification and thereafter, the 1st petitioner company was under genuine belief that the matter would be sorted out at the administrative level.

10.3. The 2nd respondent is trying to misguide the Court by contending that the applications of the 1st petitioner company and that of the 3rd and 4th respondents operate in different realm and the same cannot be compared. Both the applications, i.e., the application of the 1st petitioner company and that of the 3rd and 4th respondents require prior approval of the 2nd respondent-Board and merely because the application of the petitioner company is for expansion of

captive jetty, as opposed to development of the port, the petitioner company's application cannot be treated as inferior with the application of the 3rd and the 4th respondents. Though both the applications are pending before the 2nd respondent-Board, the said authority has considered and granted in-principle approval to the 4th respondent without even considering the petitioner company's application. The said action on the part of the 2nd respondent-Board is vindictive and malafide, and the said application was approved only to favour the 3rd and 4th respondents. By referring to the provisions under sections 8 and 9 of the Gujarat Infrastructure Development Act, 1999 read with Entry 3 of Schedule I, it is stated that a person may be selected for development of a port on the basis of the competitive bidding and a Concession Agreement can be entered into with such selected person. Thus, the Concession Agreement forms the basis of a selected bidder's right to develop a port. The said bidder cannot seek to develop the areas beyond those which are earmarked under the Concession Agreement. Thus, it is pleaded that the 3rd and 4th respondents are entitled to undertake the activities only in the specified areas as earmarked in the Concession Agreement, and the 2nd respondent-Board has no right to arbitrarily allot the concerned areas to the 4th respondent in complete contravention of the Concession and Sub-Concession Agreements as well as the provisions of the Gujarat Infrastructure Development Act, 1999. The 1st petitioner company is not undertaking the dredging activity free of cost but is paying significant scooping charges to the 2nd respondent-Board for the same. The 1st petitioner company is reclaiming the land for its use and the State Government had granted in-principle approval for allotment of 170 Hectares of land to the 1st petitioner company in the year 2009, and ultimately, final approval for allotment of 140 Hectares was granted on 11.5.2016, i.e. more than 7 years after the in-principle approval, and the application of the 1st petitioner company for allotment of 334 Hectares of land on the south of the mangroves, is pending since the year 2012. As the 1st petitioner company has already spent over Rs.1500 Crores for reclaiming the land and in view of the pendency of the application of the 1st petitioner company, the approval granted to the 4th respondent is illegal and arbitrary. The petitioners have denied the allegation of the 2nd respondent that the applications of the 1st petitioner company for allotment of land are contrary to the provisions of the Gujarat Infrastructure Development Act, 1999.

10.4. The 1st petitioner company has established a steel plant and captive jetty facilities in the vicinity of the area extended under the impugned Notification, and the Essar Group has invested more than Rs. 40000 Crores in Hazira complex. The entire Essar industrial complex at Hazira is dependent on the port facilities which need to be extended at any time with increasing production in the steel plant. In view of the same, the 1st petitioner company has developed around 550 meters of

waterfront and commenced the construction on 1100 meters of waterfront. Further, the 1st petitioner company has also reclaimed 186 Hectares of land to the area on the north of the mangroves. The 1st petitioner company also proposes to develop further 3700 meters of waterfront and is presently reclaiming around 337 Hectares of land in the area on the south of the mangroves to cater to the increasing raw material requirements of its steel plant and the respondent State authorities are aware of the same. The 1st petitioner company had entered into the MOUs with the State Government for development of 3700 meters of waterfront, out of which, 700 meters were to be utilized for public purpose.

10.5. While the State Government has right to define the port limits, the same cannot be done in arbitrary manner without following the due process. When the respondents were proposing to extend the port limits, the petitioner company made several representations, stating that it will severely prejudice the rights of the 1st petitioner company in Magdalla Port. In view of the said representations, the 2nd respondent-Board, by Resolution dated 28.9.2015 resolved to expand the limits of Hazira Port in a manner which would not affect the rights of the 1st petitioner company in Magdalla Port. However, the State Government, without any cogent reasons and without conducting any physical/hydrographic survey of the area, had conveniently brushed aside the said Resolution dated 28.9.2015 and passed the impugned Notification in accordance with the previous Resolution dated 19.3.2015 of the 2nd respondent-Board. In view of the same, it is alleged that the State Government had acted arbitrarily, which shows non-application of mind. The 2nd respondent-Board had completely ignored the MOUs entered into between the 1st petitioner company and the State Government for development of 3700 meters of waterfront, and the environmental clearance granted for 334 Hectares of backup land in the south reclamation area. Therefore, there is no question of violation of the provisions of the Gujarat Infrastructure Development Act, 1999. The 2nd respondent-Board had granted approval for 319.86 Hectares area of the reclaimed land, by virtue of No Objection Certificate dated 14.6.2007. However, after the completion of the reclamation of approximately 186 Hectares, a mangrove patch was found to obstruct the further reclamation. Therefore, the Ministry of Environment & Forests was of the opinion that the mangrove patch needs to be preserved and the 1st petitioner company initiated the reclamation of the balance area in the south reclamation area. Further, by letter dated 15.11.2012, the 1st petitioner company had applied for reclamation of additional 334 Hectares reclaimed land in the south reclamation area, wherein it was clearly stated that since there was no possibility of further reclamation in the area on the north of the mangroves, the 1st petitioner company was reclaiming the land from the south reclamation area. The proposal of the 1st petitioner company for 334 Hectares in

south reclamation area was recommended by the coastal regulatory authority, and permission was granted by the Ministry of Environment & Forests as well as by the Gujarat Pollution Control Board. The respondent State authorities, though were fully aware of the area being reclaimed and developed by the 1st petitioner company in the south reclamation area, did not raise any objection at any point of time. The 1st petitioner company had procured the Note dated 5.12.2015, circulated by the Chief Principal Secretary to the Hon'ble Chief Minister, under the Right to Information Act.

10.6. As the State Government has supervisory control over the 2nd respondent-Board, it can completely bypass the resolutions passed by the 2nd respondent-Board and issue orders for extension of port limits. The table of contribution as shown in the rejoinder, made by the 1st petitioner company to the respondent authorities towards various port charges at respective levels of steel production, would clearly show that at the production levels of less than 4 Million Tonnes per annum of steel, the petitioner company is contributing up to Rs. 45 Crores per annum towards various port charges to the State Government. The steel industry has been passing through a recessionary phase which has resulted in lesser cargo handling at the captive port. The petitioner company is taking steps for revival, which will result in enhanced cargo handling, which in turn, will result in increased contribution of revenue to the State Government as well as the 2nd respondent-Board. As the proposal of the 1st petitioner company for grant of waterfront and reclamation area is earlier in point of time to the proposal of the 3rd and 4th respondents, the 2nd respondent-Board ought to have considered the application of the 1st petitioner company before issuing the impugned Notification. The proposal of the 3rd respondent was approved in haste without application of mind, arbitrarily and illegally. The allotment of 1100 meters did not restrict the 1st petitioner company from applying for any further extension or for handling of commercial cargo. In any case, the proposed extension of 3700 meters sought for by the 1st petitioner company includes 700 meters for Ro-Ro jetty and common user dry cargo facility, to be developed in joint venture with the 2nd respondent-Board. The request of the 1st petitioner company for allotment of 700 meters of waterfront for public facilities does not, by itself make its activities akin to those of a commercial port. Therefore, the request for allotment of 3700 meters of waterfront and the backup land of 334 Hectares, is not violative of any statutory provision, and the 2nd respondent has no legal basis whatsoever to contend that the applications of the 1st petitioner company are not capable of being granted.

[11] Separate affidavit in rejoinder is filed on behalf of the petitioner company, in response to the affidavit in reply filed by the 3rd respondent. While denying the various

averments in the affidavit in reply, the case as pleaded in the rejoinder is as under:

11.1. The 3rd respondent is seeking to create an artificial distinction between the private port and the captive jetty. The captive jetty operated by the petitioner company is a massive concrete structure where vessels up to 1,00,000 tonnes capacity could directly berth and the 1st petitioner has installed a very modern bulk cargo handling equipment.

The respondent State authorities are seeking to confer undue favours upon the 3rd and 4th respondents, by aiding and abetting their efforts to monopolize the Port Sector in Gujarat at the cost of other GMB port operators such as the petitioners. The development of a private port cannot occur at the detriment of an existing Government port and its constituents such as the 1st petitioner company. Expansion of the captive jetty of the 1st petitioner company would substantially increase the revenues of the State exchequer. Moreover, 700 meters out of 3700 meters of waterfront sought for by the petitioner company are to be utilized for setting up Ro-Ro jetty and common user dry cargo facility for public purposes at the cost of the 1st petitioner company. Therefore, the expansion of the captive jetty of the 1st petitioner company will not only benefit it but also the State exchequer as well as the public at large. The 1st petitioner company, being an important stakeholder, was never heard prior to issuance of the impugned Notification. The Notification extending the port limits of Hazira, without any corresponding change in the port limits of Magdalla, leads to anomalous situation, where the port limits of Magdalla and Hazira are overlapping each other. The request of the 1st petitioner company for 3700 meters of waterfront is pending since 2012, in spite of several parameters and follow-ups made by the 1st petitioner company. Moreover, the 1st petitioner company had also executed an MOU dated 11.1.2013 with the 2nd respondent-Board for the said 3700 meters of waterfront, wherein it was assured of due assistance by the respondent State authorities for obtaining necessary permissions and approvals to develop the same.

11.2. The 1st petitioner company is gravely prejudiced on account of the extension of the port limits by the impugned Notification. Since 1989, the Essar Group has been operating in Hazira region and has invested more than Rs. 40,000 Crores for development of Hazira Complex. The EBTL (the 1st petitioner company) has developed the navigation channel from negligible depths to 14 meters draft to cater to deep draft ships and invested more than Rs. 2500 Crores for development of the port facilities to service the captive requirements of the Hazira Complex. Essar Steel Limited had set up gas based iron making units at Hazira in early 90s due to availability of natural gas (NG) in the region. With the increase in the demand of gas and reduction in domestic gas production, the Essar Steel Ltd. is not getting

sufficient domestic gas for operation of its gas based units, which has resulted into operation of gas based iron making units at 20- 30% of its capacity and overall capacity utilization of the steel plant to only 50%. The 1st petitioner company has been operating the Deep Draft Terminal at Hazira under Magdalla Port of the Gujarat Maritime Board since May 2010. The EBTL provides port related services to Essar Steel Limited for handling dry bulk and break bulk cargo like iron ore, coal, limestone, dolomite, finished steel etc. With the increased capacity utilization of the steel plant, the cargo handling requirement is expected to increase by four times from the existing traffic i.e. in excess of 40 MMT cargo encompassing variety of cargo like dry bulk (iron ore, coal, coke, limestone, dolomite, flux), LNG, General Cargo & Finished cargo (Coils, Pipes, Plates, Containers, Project Cargo etc.). To support these dedicated facilities, the 1st petitioner company has been repeatedly requesting for allotment of 3700 meters of waterfront and backup area of 567 Hectares being reclaimed by it, the portion of it is now proposed to be allotted in favour of the 4th respondent.

11.3. It is not denied that the State Government has powers under section 5 of the Indian Ports Act to amend and alter the port limits. But such power has to be exercised fairly and reasonably with due consideration of all the relevant factors. In the instant case, the State has failed to exercise its powers under the Indian Ports Act, 1908 in fair and reasonable manner.

[12] Affidavit in rejoinder is filed on behalf of the petitioners, in response to the affidavit in reply filed on behalf of the 4th respondent. While denying the various allegations made in the affidavit in reply of the 4th respondent, the case of the petitioners, as stated in the affidavit in rejoinder, is as under:

12.1. It is an admitted fact that the petitioners were granted permission by the 2nd respondent-Board for dumping the dredged material in 319.86 Hectares of land, as well as environmental clearance from the Ministry of Environment & Forests for dredging and reclamation of 350 Hectares of land. No Objection Certificate dated 14.6.2007 granted by the 2nd respondent-Board permitted the petitioners to reclaim 319.86 Hectares of land in the mudflat area. The area of mudflat was only an estimate, as it was not possible to precisely identify how much of the submerged area could be reclaimed. After undertaking the reclamation, the petitioners could only reclaim 186 Hectares of land from the area towards the north of the mangroves and the petitioners sought to reclaim the balance area, for which the NOC was granted, from the area south of the mangroves, since the petitioners were required to ensure that the mangroves were protected in terms of the MoEF permission of the Ministry of Environment & Forests dated 20.12.2007. The 2nd respondent-Board has, from time to time, notified the increase in the depth of the

draft/depth of the channel from 8.5 meters to 10 meters to 12 meters, vide letters dated 31.5.2010, 15.6.2010 and 30.6.2010 respectively. Thus, the petitioners have commenced the work of deepening and widening of the channel only after receiving necessary approvals.

12.2. Steel industry has been passing through a recessionary phase, which has resulted in lesser cargo handling at the captive port. Furthermore, due to unavailability of gas, 1015 MW power plant supplying power predominantly to Essar Steel had to shut down the operations since the last 2 years, which in turn, has further affected the productivity of the steel plant. Even at the production level of less than 4 Million Tonnes per annum of steel, the petitioners are contributing upto Rs. 45 Crores per annum towards various port charges to the State Government. The Central Government has recently declared a Minimum Import Price (MIP) on the imported steel so as to protect the domestic steel industry from the recession in the industry. The cargo projections of the Company before commissioning of the port were based on certain assumptions which have changed as follows:

a) The cargo mix has changed on account of the need to handle coal, other light cargo (high volume less tonnage cargo), various by-products and higher quantity of finished goods resulting in slower discharge rates.

b) The channel and current dynamics of Hazira channel require continuous maintenance dredging which hampers vessel movement and at times necessitates simultaneous operation of lighterage and direct berthing operations resulting in lesser discharge rate of cargo.

c) The reasons for less than projected utilization of the captive port were brought to the notice of GMB vide letters dated 17.04.2015 and 23.04.2015.

12.3. Mere fact that the petitioner company is not able to utilize its plant capacity to the optimum at present, does not disentitle the 1st petitioner company of its right to have the waterfront and backup area allotted to it in accordance with the assurances given by the Government. The 1st petitioner company made applications for allotment of waterfront and backup land, based on its foresight regarding the requirement of additional cargo handling capacity. With the increased capacity utilization of Steel Plant, the cargo handling requirement is expected to increase by four times from the existing traffic, i.e. in excess of 40 MMT cargo encompassing variety of cargo like dry bulk (iron ore, coal, coke, limestone, dolomite, flux). To support these dedicated facilities, 370 meters waterfront and backup area sought for will be a necessity. The letter dated 18.1.2016 written by the petitioner company to the Gujarat Maritime Board clearly sets out the reasons

and the purpose behind the 1st petitioner company's need for approval for expansion of its captive jetty facilities and establishment of the LNG terminal. Moreover, neither the State government nor the 2nd respondent-Board has ever raised any objection against the petitioners' proposal for extension of its captive jetty and allotment of backup area on the ground that the petitioners' plant is not operating at its optimum capacity.

12.4. Steel plant of the petitioner company at Hazira is completely dependent on the captive jetty facilities for sourcing of raw material necessary for production and for movement of the finished goods, and the by-product either for export or domestic movement through coastal shipping. It is pertinent to note that the answering respondent has wrongly sought to highlight1 the fact that the Government will not allow any development on the land in the vicinity of the land earmarked for development of the port. It is stated by the answering respondent that the said condition is not absolute and unqualified and is subject to exceptions, including a limited time period of exclusivity of 10 years, which is conferred upon under a Concession Agreement to the qualified bidder.

12.5. It is pertinent to mention that out of 13 berths proposed to be developed by the answering respondent in terms of the approval granted to it on 11.2.2011, it has managed to commission only 5 berths till date. Therefore, there is no basis for the answering respondent to seek extension of the port limits for additional space for development of new berths. By virtue of extension of the port limits in terms of the impugned Notification, a majority of the area in the extended portion is covered with the land and not sea.

Therefore, the purpose of anchorage of vessels is not served at all, which clearly goes to show that the extension of port limits has been done without any rationale or application of mind whatsoever. Notwithstanding the same, it is a known fact that not all the vessels calling on the ports can be accommodated immediately at the berths and they are required to wait at the anchorage area. Even the vessels calling at the petitioners' jetty have to wait at the anchorage and a lot of time is wasted as a consequence of the same. It is reiterated by the petitioners that the 1st petitioner company has no objection against the alteration of the limits of Hazira Port so long as such extension does not overlap the area being reclaimed and developed by the 1st petitioner company.

12.6. It is wrongly averred that the area towards the south of the Bulk Cargo Terminal (i.e. the same area to the south of mangroves) of the answering respondent, where the 1st petitioner company is reclaiming the land of about 334 Hectares, was only viable solution for the respondents to meet with the availability

of land for development of the berths. For the forest land referred to by the answering respondent in its reply, there were overlapping demands on the said land from both the 1st petitioner company and the 4th respondent. Subsequently, by joint representation dated 4.5.2015, the parties came to a consensus regarding distribution of the said land and it was agreed that 210 Hectares of forest land may be allotted in favour of the AHPPL. The 3rd respondent herein, had sought for extension of the port limits on the seaward side, which would not have infringed upon the land being reclaimed by the petitioners.

12.7. The 3rd and 4th respondents are conferred the right to develop Hazira Port and the same was restricted to the area as contemplated under the two agreements. The answering respondent had no right to seek extension of the port, more particularly their activities to areas not envisaged under the Concession Agreement by constantly revising the DPR time and again.

12.8. It is denied that the 1st petitioner company is seeking to develop a commercial port. The 1st petitioner company is only developing a captive jetty so as to meet with the requirements of its steel and power plants at Hazira complex. Non-filing of the objections by other captive jetties in Magdalla Port does not, by itself, validate the arbitrary actions of the respondents in issuing the impugned Notification. It is averred that the petitioners' captive jetty extension plans are being affected on account of the impugned Notification.

12.9. Vide letter dated 15.1.2016, the petitioners sought allotment of the land and the waterfront for the purpose of developing an FSRU based LNG facility. Availability of gas in quantities as required by the petitioners' steel plant in Hazira at competitive prices, is critical for revival of the steel plant and 1015 MW gas based power plants supplying power predominantly to steel plant, and setting up of a captive FSRU based LNG facility is the only alternative for the petitioners to obtain sufficient quantity of gas at competitive prices. In view of the same, it is denied that the letter dated 15th January 2016 was an afterthought.

12.10. The MOUs entered into between the petitioners and the respondent authorities led the petitioners to legitimately expect that the respondent authorities would stand by the promises they made to the petitioners during the course of execution of the MOUs for allotment of land and waterfront. The 1st petitioner company is only seeking to expand its captive jetty facilities to cater to the raw material requirements of its steel plant and is not seeking to develop a commercial port as alleged. In any case, as per the terms of the captive jetty agreement, the 2nd respondent-Board can allow handling the commercial cargo considering its impact on various stakeholders. Further, the 2nd respondent-Board has never

raised an objection against the application made by the petitioners for allotment of 3700 meters waterfront.

12.11. The 2nd respondent, in its Board meeting dated 28.9.2015, has resolved to approve the extension of the port limits in terms of the proposal dated 21.7.2014, as opposed to the one dated 14.3.2015, on the basis of various representations made by the 1st petitioner company from time to time indicating as to how it will affect the rights of the petitioners. The 1st petitioner company is not staking its claim for any illegal or non-existent rights as alleged. By issuing the impugned Notification, the 1st petitioner company's application for development of 3700 meters of waterfront and 334 Hectares of backup land is rendered completely redundant. Therefore, under no circumstances, can it be said that the 1st petitioner company is not the stakeholder or has no locus standi on the issue pertaining to extension of Hazira port limits as the respondent State authorities had given the assurances for facilitating the permits for 3700 meters waterfront and backup land.

12.12. The doctrine of estoppel and legitimate expectation are clearly attracted in the present case as the State authorities have failed to act upon the assurances given to the petitioners. There is no provision under the law barring the petitioners from setting up the LNG terminal facility for their own captive use. The very purpose of investing such a significant amount of time and money for development of the captive jetty was to ensure that the steel plant is selfsufficient in meeting with its raw material requirements with full logistics and quality control for production of world class steel products, and it does not have to rely on any third party. The MOU dated 11.1.2013 executed by the petitioners with the respondent State authorities clearly envisaged that the State government was required to assist the EBTL in obtaining necessary permission and approval for allotment of 3700 meters waterfront for the petitioners. Therefore, the State Government cannot renege on its promise.

[13] Pursuant to the amendment permitted by this Court on 17.6.2016 and after filing the affidavit in rejoinder on behalf of the petitioners on 21.6.2016, further affidavit in reply is filed on behalf of the 1st respondent. While denying the various allegations made by the petitioners in the affidavit in rejoinder and in the amendment which is permitted on 17.6.2016, the 1st respondent has further stated in the further affidavit as under:

13.1. The 2nd respondent-Board has granted in-principle approval to the master plan of the 4th respondent for outer harbour development project, subject to the outcome of the petition. Therefore, none of the legal rights of the petitioners is violated, and the said in-principle approval of the master plan has no bearing on

the claim made by the petitioners. The proposal of the 3rd respondent for extension of the limits of Hazira Port, as revised, was granted in March 2015, which was approved and notified on 18th January 2016. The application of the 4th respondent for approval of the master plan for outer harbour development project is consequential to the extension of the limits of Hazira Port. Therefore, it is not correct as pleaded by the petitioners that though the application for LNG Terminal of the 1st petitioner was pending, the 2nd respondent-Board granted in-principle approval to the master plan of the 4th respondent for outer harbour development project, subject to the outcome of the petition. The 2nd respondent-Board has not granted any approval for reclamation in the area of 334 Hectares of area on the south of the mangroves at any point of time. The 2nd respondent-Board has not granted any approval to the reclamation of 350 Hectares of land by letter dated 14.6.2007 and the approval was granted only to reclaim the area of about 252 Hectares. The petitioners were well aware that there was no measurement of the land while granting the approval and there was no assurance to provide additional area for such purpose. Therefore, such unauthorized reclamation made by the petitioners cannot create any vested right in favour of the petitioners. Grant of approval by other authorities does not, by itself, entitles the 1st petitioner for allotment of 3700 meters of waterfront and 334 Hectares of backup land, and the same is not of any consequence so far as the State authorities are concerned, for the purpose of allotment of the waterfront and any area alongside the waterfront.

13.2. The 1st respondent has denied the allegation that inprinciple approval granted in favour of the 4th respondent amounts to colourable exercise of power by the State authorities, and it frustrates the application of the 1st petitioner for allotment of 3700 meters of waterfront and 334 Hectares of backup land, as alleged. The allegation of the 1st petitioner company that allotment of 3700 meters of waterfront is necessary to cater to its increasing raw material requirements and the requirement of cargo handling facilities etc., is not supported by any valid documents. The 1st petitioner company is having license for captive jetty and not for commercial port.

13.3. The MOUs executed with the State Government for development of 3000 meters of waterfront for its captive jetty and 700 meters for common user dry cargo facility and Ro-Ro facility for public utility in joint venture with the Government, do not create any right in favour of the parties. Additionally, the said MOUs have expired and not renewed thereafter. In the MOUs itself, it is clearly stated that such MOUs shall not be construed as a permission to allot and use the waterfront. Therefore, the petitioners cannot base their case only on the MOUs.

13.4. With reference to the allegation of the petitioners that, inprinciple approval granted in favour of the 4th respondent would entitle it to undertake the activities in the areas not conferred upon the 4th respondent under the Concession Agreement executed with the State authorities, it is stated that as per the terms of the Concession Agreements, the 3rd and 4th respondents are entitled to seek expansion of the port facilities as envisaged in the BOOT Policy. The project awarded to the 3rd respondent is for the development of the port and not restricted to any number of berths and the area for backup. It is up to the 3rd and 4th respondents to expand their port facilities within the framework of the BOOT Policy, Concession Agreement and the agreements executed thereafter. The 2nd respondent is not obliged to consider any and every request made by the petitioners, unless the same is in accordance with the Port Policy, BOOT Policy and the provisions of the Gujarat Infrastructure Development Act, 1999.

13.5. The 2nd respondent-Board has referred to the channel of about 6.5 kms and dredging up to 8 meters in its letter dated 14.6.2007 and has stated that beyond this, no approval is produced by the petitioners. The 1st petitioner has not produced any letter permitting the petitioners to deepen the channel for the reclaimed area of 334 Hectares on the south of the mangroves. Therefore, the petitioners cannot compel the authorities to allot the waterfront and/or any area under the garb of the alleged scheme for development of the waterfront and reclamation of backup land.

13.6. The 1st respondent has denied the allegation of the petitioners that the 1st respondent has ignored the Resolution No. 3091 passed by the 2nd respondent-Board in its 243rd meeting held on 28.9.2015, and with reference to the note dated 5.12.2015 submitted by the Chief Principal Secretary to the Hon'ble Chief Minister, it rectifies the interest of the 1st petitioner to the extent of 140 Hectares of the reclaimed land along with 1100 meters of waterfront as demanded by the 1st petitioner vide its letter dated 8.2.2013. Therefore, it is neither fair nor proper on the part of the petitioners to allege that the 1st respondent-State has completely ignored the Resolution No. 3091 passed by the 2nd respondent-Board on 28.9.2015. It is stated that the petitioners are trying to achieve something indirectly, which they are not entitled to get directly. It is stated that there is no policy as on date which allows the captive jetty to become a commercial multi-user port. The prayers made by the petitioners clearly amount to converting the captive jetty into a commercial port.

13.7. In respect of the captive jetty of the 1st petitioner, it had entered into an agreement with the 2nd respondent-Board in the year 2000, and therefore, it is not correct on the part of the 1st petitioner to claim that its captive jetty is of the year

1994, and therefore, the provisions of the Port Policy of 1995 and the BOOT Policy of 1997 are not applicable to the captive jetty of the petitioners. All the provisions of the Port Policy, 1995 and the BOOT Policy 1997 are applicable to the captive jetty of the petitioners. The Government has, time and again, granted extension to the captive jetty of the petitioners. However, the same cannot, by itself, become a right of the petitioners to seek indefinite extension of their captive jetty. It is stated that the 1st petitioner company is viewing the cooperation of the Government as a matter of right by seeking the directions in the present petition. The Concession Agreement entered into by the 2nd respondent is the result of the implementation of the Port Policy and the BOOT Policy, and the same are guiding documents, governing the principles in question. The said Policies envisage the development of ports and the same are never restricted to any area identified for initial development. The limits of any port cannot remain static and require modification from time to time. In any case, alteration of the port limits is the prerogative of the State Government and in the absence of any legal right to any area, the petitioners have no basis to question the right of the Government in this regard.

13.8. The petitioners have not challenged the Notification of 2004 bifurcating the limits of Magdalla and Hazira ports and therefore, it is now not open for them to question the same.

The conduct of the petitioners shows that the petitioners will make wild and bald allegations against the Government whenever their demands for extension of their captive jetty are not accepted by the Government, irrespective of the fact that the same deserve consideration or not.

13.9. The proposal dated 21.7.2014 of the 3rd respondent was revised vide proposal dated 14.3.2015. Therefore, technically the proposal dated 21.7.2014 was no longer pending for consideration as the same was modified by 3rd respondent on 14.3.2015. It is stated that in the fitness of things and after duly considering the case of the petitioners, and the explanation given by the 2nd respondent-Board vide letter dated 16.7.2015, the Government had decided to accord the approval to the revised proposal dated 14.3.2015. While doing so, the Government has also taken care of the interest of the 1st petitioner that its demand for 1100 meters was approved in principle and would require backup area for the same. The MOU entered into by the 1st petitioner with the 4th respondent is not germane to the facts of the present case.

13.10. With reference to the allegation made by the petitioners in para-17 of the rejoinder affidavit, it is stated that it is not open to the petitioners to bind the parties to the Concession Agreement in one way or the other. It is for the parties to

the Concession Agreement to decide and agree on the terms and conditions thereof. The petitioners cannot rewrite the Concession agreement if it does not suit to their desire to set up an LNG terminal at Hazira. There is an absolute restriction on setting up captive LNG or container terminal in 150 kms area on either side from Hazira port during the term of the Concession Agreement.

The agreements cannot be rewritten, much less, at the instance of the petitioners. The petitioners cannot shield their unauthorized act of deepening and reclamation under the garb of environment approvals. In the absence of any approval by the competent authorities, the work done by the petitioners is clearly unauthorized and illegal. It is stated that in view of the in-principle approval by the 2nd respondent on the proposal of the 4th respondent, the 1st respondent, by order dated 22nd June, 2016 has also granted in-principle approval to the outer harbour development project, subject to its terms and conditions. In view of the above, the petitioners have no legal right for grant of the reliefs as prayed for.

[14] Further affidavit in reply is filed on behalf of the 2nd respondent, in response to the amendment granted vide order dated 17.6.2016. In the reply, while denying various allegations made by the petitioners, the case of the 2nd respondent is as under:

14.1. It is stated that while issuing notice, this Court has not passed any prohibitory order. When the proposal of the petitioners was not found to be in consonance with the Port Policy and the BOOT Policy, and the proposal of the 3rd and 4th respondents was found to be in conformity with the Port Policy, the said proposals were placed for consideration after deliberations in the Board meeting held on 19.5.2016. However, the same could not be taken up, because, there were so many agenda items in the meeting of the said date. Thereafter, the proposal of the 3rd and 4th respondents was considered in the meeting of the Board on 31.5.2016, and it was decided to recommend to the Government to grant-in-principle approval to the master plan of the AHPPL-4th respondent for outer harbour development, subject to the outcome of the petition pending before this Court. Though it is true that during pendency of the petition, the Resolution dated 31.5.2016 was passed, it is denied that such Resolution was passed in hasty manner in favour of the 4th respondent-AHPPL. Even prior to the same, several correspondences had taken place by and between the parties and the answering respondent as well as the State Government, and ultimately the Government of Gujarat published the impugned Notification dated 18th January 2016 in the Official Gazette, altering the limits of Hazira Port.

Thereafter, the proposal of the 3rd and 4th respondents came up for extension of their activities in Hazira area, which to some extent overlapped with those in the proposal of the petitioners in its application dated 15.1.2016, and therefore, considering the Port Policy, both the proposals were scrutinized and after due deliberations, it was found proper and in consonance with the Port Policy that a private port is established by the 3rd respondent which has been allotted to it in a public auction, and also as per the Concession Agreement executed with the 3rd respondent. The expansion proposed by the 3rd respondent pursuant to the Concession Agreement was considered in priority over the so-called expansion project proposed by the 1st petitioner company for its captive jetty and ultimately the 2nd respondent had decided to place the proposal of the 3rd and 4th respondents for approval in its meeting on 19.5.2016. As there were 53 Agenda items in the meeting of 19.5.2016, the proposal of the 3rd respondent was not taken into consideration.

Therefore, had the intention of the 2nd respondent Board been to extend undue favour to the proposal of the 3rd and 4th respondents, it would have considered the same in the meeting dated 19.5.2016 itself. In view of such factual scenario, the allegation of the 1st petitioner company of favouritism and undue haste, is absolutely far from truth and there is no substance in such allegation. At the same time, the 2nd respondent has denied the allegation of the 1st petitioner company that the Resolution dated 31.5.2016, passed by the 2nd respondent-Board is unfair, improper and unreasonable.

14.2. It is true that the Ministry of Environment & Forests has granted clearance to the 1st petitioner company, to undertake the reclamation work and create storage facilities in the area of 334 Hectares of land to the south of the mangroves, and this aspect was well within the knowledge of the 2nd respondent, since the representatives of the 2nd respondent-Board are on the Board of GCZMA, and therefore, there is no question of granting approval to any third party, including that of the 4th respondent-AHPPL for development work in the said area, as alleged or otherwise.

In fact, originally, No Objection Certificate was issued for reclamation in respect of 319 Hectares in the north of the mangrove area and while issuing the said No Objection Certificate, it was clearly mentioned that by grant of such permission, the petitioners would not get any right over the said area. Condition No. 7 of the said No Objection Certificate specifically states as under:

"The ownership of the reclaimed land shall vest with the Government of Gujarat/Gujarat Maritime Board".

14.3. In the said No Objection Certificate, it is made clear that the 1st petitioner company will not get any right of reimbursement towards such reclamation and such No Objection Certificate was issued purely by keeping in mind the dual benefits to both, the 1st petitioner company as well as the 2nd respondent-Board. However, that by itself would not create any right in favour of the 1st petitioner company.

14.4. The 1st petitioner company has repeatedly re-agitated the contention that since No Objection Certificate was issued for reclamation by the Gujarat Maritime Board, and the Ministry of Environment & Forests has granted environment clearance, it is the right of the 1st petitioner company and not of any other party to make any proposal in respect of the land reclaimed by the 1st petitioner company under the permission. In fact, No Objection Certificate was granted to reclaim 319 Hectares of land on the north of the mangroves, but subsequently, having found that 186 Hectares of land could be reclaimed on the north of the mangrove area, a letter was written to the 2nd respondent to permit the remaining 164 Hectares of land for reclamation to the south of the mangrove area to which no specific clearance was granted by the 2nd respondent. On the basis of No Objection Certificate issued in respect of 319 Hectares, the 1st petitioner company obtained environmental clearance from the Ministry of Environment & Forests and started reclamation, and thereafter, now, it is claiming right over the said land. Thus, this act of the 1st petitioner company is without any permission from the respondent authority. Therefore, the ground raised by the 1st petitioner company has no substance either in law or on facts.

14.5. As already stated, the claims of the 1st petitioner company as well as those of the 3rd and 4th respondents, were considered in their proper perspective, and as required by the petitioners looking to its overall performance and the documents executed for its captive jetty, additional area of 1100 meters jetty was approved and backup land of 140 Hectares was granted in-principle to the 1st petitioner company. On the other hand, in-principle approval was granted to the 3rd and 4th respondents vide Resolution dated 31.5.2016 to the extent of their claims. The said proposals were approved, having been found that the demand of the 1st petitioner company for 3700 meters of additional land for waterfront and 334 Hectares of backup area, was not in consonance with the Port Policy as well as the BOOT Policy.

14.6. The allegation of the petitioners that the approval granted in favour of the 4th respondent-AHPPL amounts to colourable exercise of power by the State authorities and would adversely affect the public at large, is denied. It is stated that on the contrary, looking to the performance of the 1st petitioner company, it has not handled the cargo as per the target given in its initial proposal for handling

the captive cargo at the waterfront for captive jetty granted to it and has handled only 30% of the target at cargo. Moreover, the so-called 3700 meters additional waterfront demanded by the 1st petitioner company is also absolutely against the Port Policy and the BOOT Policy, and it is absolutely vague and unreasonable. If the breakup of the proposal of additional requirement of 3700 meters is carefully perused, several irrelevant demands have been made, which prima facie and clearly indicate that on the contrary, the said demands are malicious and are made to create monopoly in the area. It is stated that out of 37 meters waterfront demanded by the 1st petitioner company, 700 meters have been sought to be claimed towards Ro-Ro berth; 500 meters have been claimed towards bulk cargo (for blast furnace); 600 meters have been claimed towards trestle berth for parking tug etc; 1000 meters have been claimed towards container berth for non-captive cargo and towards dry dock; 400 meters have been claimed towards oil business and 500 meters have been claimed towards liquid berth for handling oil cargo for its Essar Oil Refinery, which is situated at a distant place at Vadinar Port. Thus, on overall evaluation of the proposal of the 1st petitioner company, it was found that the demand of the 1st petitioner company was not genuine and not in consonance with the Port Policy, and the said claim of the 1st petitioner company cannot be considered, and therefore, the same was not granted though on objective analysis of the same having been found that granting of additional 1100 meters waterfront would be more than sufficient to meet with the so-called expansion sought by the petitioners. Accordingly, the same was granted by taking overall view of the matter.

14.7. With reference to the MOU entered into with the Government, it is stated that if the same is carefully perused, it does not create any right by itself in favour of the 1st petitioner company and that the same was valid for a period of one year from the date of its execution, which had expired way back in the year 2014. Therefore, the contention of legitimate expectation and promissory estoppal etc, has no force in law, and the same deserves to be rejected.

14.8. The allegation of the 1st petitioner company that, development activities at Hazira port are restricted to the area solely earmarked for it in the Concession Agreement, is denied by the 2nd respondent. The allegation of the 1st petitioner company that, in-principle approval granted in favour of the 4th respondent by the 2nd respondent-Board subverts the Concession Agreement by conferring upon AHPPL the right to expand the activities in the area not covered, is denied. In fact, the Concession Agreement itself provides and enables the concessionaire to expand its activities in future depending on the requirement, and in fact, such enabling provisions are already provided in the Port/BOOT Policy. While extracting the relevant portion of Clause-6 of the BOOT Policy, it is stated that from such provision

in the Policy, it is clear that expansion is inherent in the Policy and part of the Concession Agreement, and therefore, it cannot be said by any stretch of imagination that the same is improper in law, as sought to be alleged.

14.9. While denying the allegation made in ground (S7), it is the case of the 2nd respondent that, while it is true that allotment of waterfront is to be upgraded on allotment of backup area, however, converse is not true as sought to be contended by the 1st petitioner company and thus, because No Objection Certificate for reclamation of land was issued, corresponding length of waterfront should be granted, is nothing but an imagination of the 1st petitioner company, and is absolutely ill-founded. No Objection Certificate relied on by the 1st petitioner company was issued with clear understanding that it will create no right in favour of the petitioners and the same was issued only for dual benefits, where the petitioners can save huge land; otherwise in the ordinary course, as per the applicable norms, the 1st petitioner company has to dump the dredged material at a distant site in the mid-sea. Instead, the 2nd respondent, considering that dual benefits of the 1st petitioner company can save transportation cost to carry the dredged material at a distant place, and if the same is allowed at nearby place, it would incidentally reclaim the land falling within the jurisdiction of the 2nd respondent which could be better utilized for such port development purpose by the 2nd respondent, had granted No Objection Certificate. However, that by itself, would not create any right in favour of the 1st petitioner company.

[15] After the draft amendment, further affidavit is filed on behalf of the 2nd respondent on 30th June 2016. In the said affidavit, it is stated that after the Resolution dated 31.5.2016 was passed by the 2nd respondent-Board, granting in-principle approval, the same was forwarded to the Government with its recommendation to grant its approval. Further it is stated that accordingly, the 1st respondent-Gujarat State has, vide communication dated 22.6.2016, accorded its approval and remitted back the same for further consideration with a direction to communicate to the 4th respondent. However, the same has been granted with a specific condition that such approval is granted subject to the order that may be passed by this Court in the Special Civil Application which is pending before this Court.

[16] Separate further affidavit in reply on behalf of the 3rd respondent is filed subsequent to the draft amendment permitted vide order dated 17.6.2016. While denying the allegations in the draft amendment, the case of the 3rd respondent is as under:

16.1. Resolution No. 3157 dated 31.5.2016 clearly reveals that in-principle approval granted by the 2nd respondent is subject to the outcome of this petition.

With respect to the alleged MOU dated 27.2.2015 entered into between Essar Ports Limited, Adani Ports and Special Economic Zone Limited, it is stated that the petitioners have not placed such MOU nor described the confidential information allegedly used by the 3rd and 4th respondents, pursuant to the said MOU. Such averments are vague and hence they are denied by the 3rd respondent. It is further stated that the allegations made by the petitioners are an afterthought and have been made to malign the reputation of the respondent no.3. It is stated that in any event, the respondent no.3 is not a party to the alleged MOU. The Resolution No. 3157 was passed by the 2nd respondent in view of the fact that there is no interim relief granted by this Court on 24.5.2016. The permission accorded by the 2nd respondent-Board, Gujarat Coastal Zone Management Authority as well as the Ministry of Environment & Forests with respect to the reclamation work, does not create any right, title or interest in favour of the petitioners. The claim of the 1st petitioner company with respect to the LNG facility is devoid of merit, inasmuch as it is a captive jetty and permission of developing the LNG facilities to the 1st petitioner per se against the policy of the respondent no.1 is incomprehensible. As stated in the reply to the petition already filed, the captive jetty can only be used for importing raw material and exporting finished goods. The LNG facilities are distinct and different from use of captive jetty by the 1st petitioner company for its sponge iron plant.

The 1st petitioner company has deliberately made vague averments about the alleged MOU entered into between the Essar Ports Limited, Adani Ports and Special Economic Zone Limited. From such averments, it is clear that the 1st petitioner company has made such allegations without any basis only to re-agitate its claim against the respondent nos. 3 and 4.

[17] Separate affidavit in reply on behalf of the 4rd respondent is filed subsequent to the draft amendment permitted vide order dated 17.6.2016, wherein the 4th respondent has denied the averments made by the petitioners in the draft amendment.

[18] Separate affidavit in rejoinder on behalf of the petitioners is filed, in response to the reply of the 2nd respondent to the amendment. While denying the allegations of the 2nd respondent in their reply to the amendment, the case of the petitioners is as under:

18.1. The application of the petitioners for allotment of land for waterfront was prior in point of time to the application of the 3rd and 4th respondents. The respondent no.2 has merely stated that the petitioners' applications were pending since the year 2012. To the best of the knowledge of the 1st petitioner company, as per the policy of the Gujarat Maritime Board, the procedure for reclamation and

allotment of reclaimed land is a two-stage process, where permission for reclamation under section 35(1) of the Gujarat Maritime Board Act is preceded by necessary GPCB NOC, CRZ Clearance and environmental clearance. In the instant case, the petitioner company has already obtained necessary GPCB NOC, CRZ clearance and environmental clearance for the backup area of 334 Hectares of land towards the south of mangroves in the year 2013-14 itself, and in-principle approval was granted on 31.5.2016 for the DPR submitted by the respondent no.4 for the same area, notwithstanding the clearance already in favour of the petitioners. Therefore, it is clear that the petitioners' application for allotment of the said land was prior in point of time to that of the 3rd respondent. Group companies of Essar have been utilizing the captive jetty facilities in Magdalla port since 1994, even prior to the Port Policy and the BOOT Policy. Therefore, no provisions of the said policies can prejudice the rights of the 1st petitioner company in relation to the construction and operation of the captive jetty. In any case, the 2nd respondent has its representative in the GCZMA, who has recommended the 1st petitioner's proposal for allotment of 3700 meters of land and backup area of 334 Hectares. Till the date of filing of the petition, the 2nd respondent has never raised any objection to the proposal made by the 1st petitioner company for allotment of 3700 meters of land and backup area of 334 Hectares. Therefore, the respondent no.2 has no right to subsequently change the stand and indulge in favouritism and nepotism with respect to allotment of the said land. The map which was based on the hydrographic survey of the area carried out in the year 2001, does not reflect the correct geographical position. Expansion of the captive jetty facilities and backup area is not only necessary for catering to the expansion plans of the 1st petitioner company, but even at the present level of production of the steel plant, the captive jetty facilities are insufficient to cater to the plant's raw material requirements and therefore, the 1st petitioner company has been seeking the extension of the same time and again. The petitioners are denying the allegation of the 2nd respondent that dumping of the dredged material in the deep sea would have been more expensive for the petitioners. Moreover, the Gujarat Maritime Board should acknowledge that the land reclaimed by the petitioners serves as a protection to the navigation channel on one side. The 1st petitioner company is only seeking to expand its captive jetty facilities and reclaim the backup area for the purpose of catering to the requirements of its own steel plant and power plant. The approach of the 2nd respondent is casual and the 2nd respondent-Board has wrongly informed the State Government that there would be no revenue loss to Magdalla Port, inasmuch as it is obvious that by virtue of extension of Hazira Port limits, the vessels anchoring in the area previously earmarked within the limits of Magdalla Port, would now have to pay the port dues

to the Hazira Port on account of the fact that they would now be anchoring within the Hazira Port by virtue of extension of the limits of Hazira Port.

[19] Separate affidavit in sur rejoinder is filed on behalf of the 4th respondent-AHPPL, to the affidavit in rejoinder dated 21.6.2016 filed by the petitioners. In the said affidavit, while denying the allegations made by the petitioners in the rejoinder dated 21.6.2016, the case of the 4th respondent is as under:

19.1. The petitioners are having the copies of all the documents and that the petitioners have selectively placed the documents in their petition. Various averments made by the petitioners in their petition will clearly show that the petitioners are having complete records of the State files.

The petitioners' modus operandi is to grab the entire stretch of channel by illegitimate means, based on unrealistic demands. In the NOC dated 14.6.2007, there is no reference to any permission being granted to the petitioners to reclaim any portion of the area towards the south of the mangroves.

The petitioners have no permission to reclaim any area towards the south of the mangroves out of 350 Hectares. If any reclamation is carried out towards the south of mangroves by the petitioners, it is illegal and is in violation of the NOC dated 14.6.2007 granted by the Gujarat Maritime Board. For reclamation of 350 Hectares of land towards the south of the mangroves, no permission has been granted by the Ministry of Environment & Forests. The petitioners have not placed on record any document either from the GPCB or from the GCZMA, granting permission to the petitioners to reclaim any land out of the alleged 350 Hectares for which NOC was issued by the Gujarat Maritime Board on the south of the mangroves. The claim made by the petitioners for 319.86 Hectares was merely an eyewash and the objective was to grab more area under the garb of the so-called reclamation. The permission granted by the GPCB or GCZMA for 1100 meters and/or 3700 meters waterfront would not make any reclamation towards the south of the mangroves legal or in compliance with the provisions of law. The petitioners have violated the provisions of law by dumping the dredged material in the area towards the south of the mangroves. The letters annexed at RD-1 (Colly) to the affidavit in rejoinder are not permissions for deepening or widening of the channel as sought to be claimed by the petitioners. The said letters are in respect of the navigational safety and piloting capability of the pilots. No letters addressed by the 1st respondent or 2nd respondent, giving alleged assurances to the petitioners, are placed on record by the petitioners. The MOUs entered into by the petitioners would not create any right in support of their claim. The proposal for 3700 meters of waterfront is essentially for commercial purposes. The letter dated 18.1.2016 addressed by the

petitioners is an afterthought. Even otherwise, the claim made by the petitioners vide their letter dated 18.1.2016 is for commercial purposes. Respondent no.4 has denied the allegation of the petitioners that parent company of the petitioners had entered into an agreement for usage of the captive jetty in the year 1994 itself. The petitioners are well aware that, during the period of the Concession Agreement, no captive jetty will be permitted to carry out the activities of LNG or container handling or related activities. The petitioners are further aware that the period of 10 years does not apply in respect of the aforesaid. Neither the Concession Agreement nor the Sub-Concession Agreement is under challenge before this Court. The petitioners, by the present petition, cannot carry out fishing and roving inquiry. The petitioners have failed completely to show any vested right and therefore, the petition is liable to be rejected on this ground alone. It is the say of the petitioners that they have no objection to the alteration of the limits of Hazira Port so long as such extension does not overlap the area being claimed to be reclaimed and developed by the petitioners. Therefore, it is the claim of the petitioners that they have a right over the areas reclaimed and/or developed by them. In this regard, it is stated that no permission has been obtained by the petitioners from the Gujarat Maritime Board for reclamation of the area towards the south of the mangroves, and the petitioners have illegally reclaimed the area towards the south of the mangroves. The petitioners, in their proposal for further deepening and widening of the channel, had declared before the Gujarat Maritime Board that the area which is being reclaimed towards the south of the mangroves pursuant to further deepening and widening of the channel would be available to the Board for whatever purpose as it may like. It is stated that deepening and widening of the channel including the reclamation made by the petitioners had been made illegally and wrongfully. Assuming that such permissions are granted by the Gujarat Maritime Board, the petitioners cannot claim any right over the reclaimed land and therefore, the petitioners have no right over the illegally reclaimed land.

19.2. With reference to the allegations made by the petitioners in para-17 of the affidavit in rejoinder, the said allegations are denied by the 4th respondent. It is further stated that irrespective of their joint representation to the forest authorities, the fact remains that no permission has been granted by the forest department till date for allotment of the forest land. The 4th respondent requires the backup area of 680 Hectares for development of additional berths as envisaged in the master plan. In the absence of availability of the land and to meet with the development of total 13 berths as envisaged under the master plan, the options were being looked towards the south of the Bulk/General Cargo Terminal for

backup area, as that was the only viable solution on various grounds as envisaged while addressing the letter dated 14.3.2015 to the Gujarat Maritime Board.

The extension of the port limits was requested for, to achieve the objectives as mentioned in the BOOT Policy, Concession Agreement and Sub-Concession Agreement (Bulk/General Cargo Terminal Agreement). While denying the allegation of the petitioners that the petitioners are entitled for any extension plans or that they have suffered loss on account of the Notification dated 18.1.2016, it is stated that no other owners of the captive jetty in the Magdalla Port have been treated in the manner in which the petitioners are treated. It is stated that no other owners of the Magdalla Port have raised any illegal, false, exaggerated demands, claims or rights as raised by the petitioners. The present petition is filed by the petitioners by adopting arm-twisting tactic to agree to its unrealistic demands, claims and rights.

19.3. There is no justification for development of the LNG facilities, as claimed by the petitioners. The application dated 15.1.2016 given by the petitioners is only to keep alive its wrongful claim over the entire channel. Even otherwise, the proposed LNG facility is not only for captive purpose, as sought to be claimed by the petitioners.

19.4. With reference to the contents of para-30 of the rejoinder, it is stated that no legitimate expectation is created by execution of the MOUs or any promises have been made by the State Government under the said MOUs. The said MOUs were entered into by the 1st respondent, only to facilitate necessary approvals/permissions in accordance with law, in particular industries, which are set up in the State of Gujarat. The MOUs entered into between the 1st petitioner company and the Government of Gujarat do not entitle the 1st petitioner company to make any wrongful/illegal claim or permit any activity in violation of the provisions of law. The application of the 1st petitioner company for allotment of 3700 meters of waterfront is essentially for commercial purpose and the same is evident from the correspondences that have taken place between the 1st petitioner company and the 2nd respondent. The 4th respondent has denied the allegation of the petitioners that the 2nd respondent-Board has acted in haste and that the revised proposal dated 14.3.2015 is in violation of the terms of the Concession Agreement or statutory provisions.

19.5. With reference to the contents of para-45 of the rejoinder, it is stated that the 1st petitioner company is reclaiming or has reclaimed the land including deepening and widening of the channel illegally, without seeking any prior permission of the 2nd respondent Board. Though there is no vested right created in favour of the petitioners, the petitioners have challenged the Notification dated 18th January

2016 on the ground that the said Notification encroaches upon the land reclaimed by the petitioners. In such circumstances, the 4th respondent is justified in bringing it to the notice of this Court that no permission is obtained by the 1st petitioner company for deepening and widening of the channel and it has also not obtained any permission for reclamation area towards the south of the mangroves. The reclamation carried out by the petitioners is illegal and in violation of the statutory provisions. The petitioners have not claimed any right over the illegally reclaimed area and the said illegal reclamation made by the petitioners will not confer any right upon the petitioners and in the absence of the said right, the petitioners have no locus standi to challenge the Notification dated 18th January 2016. The outer harbour development proposed by the 4th respondent is based on the rights available under the BOOT Policy, Concession Agreement and Bulk/General Cargo Terminal Agreement. The petitioners have not placed any details on record to show as to how the map submitted by the 4th respondent vide letter dated 14.3.2015 is not accurate. The story put up by the petitioners on the alleged assurances is not reflected in any of the letters addressed by the 2nd respondent-Board and/or the 1st respondent to the petitioners. The petitioners are not entitled to take any commercial operation in their captive jetty. The order passed by the National Green Tribunal is neither germane nor relevant to the issues raised in the petition. If the order passed by the National Green Tribunal is the relevant consideration as sought to be alleged by the petitioners, then, in that case, the petition filed by the petitioners would not be maintainable in view of several orders passed by different forums against the Essar Group of Companies.

19.6. With reference to the contents in para-52 of the rejoinder, while denying the statements made therein, which are contrary to the case of the 4th respondent, it is stated that the said averments are false and completely an afterthought. In the letter dated 19.4.2016, addressed by the 1st petitioner to the 2nd respondent Board, it is, inter alia, stated that based on the review by the technology providers of the 1st petitioner, it was found that the proposed FSRU facility of the 1st petitioner could be most rapidly implemented in the vicinity of the north reclamation area where both, the navigational channel and reclamation are well stabilized and therefore, geared up for commissioning of the FSRU based LNG facility towards the north reclamation area on the advice of technical consultants. However, in the letter dated 13.5.2016 addressed by the Essar Group to the 1st respondent, it was proposed that the LNG facility would be located at the southern reclamation. In the said letter, there is no reference to the letter dated 19.4.2016 addressed by the 1st petitioner to the 2nd respondent-Board. Further, there is no reference in the letter dated 13.5.2016 that the location is changed based on any advice of the technical consultants. In the circumstances, the averments made in

the said paragraph are false and completely an afterthought. Even otherwise, the alleged report annexed with the affidavit in rejoinder is dated 19.5.2016, that is, much after the aforesaid letter dated 13.5.2016. From the correspondence annexed with the petition, it is clear that the proposed LNG terminal is also for commercial purpose. The petitioners are very well aware that they cannot set up any LNG terminal facility during the term of the Concession Agreement.

[20] We have heard Shri Mihir Joshi, learned Senior Advocate, assisted by Shri Keyur Gandhi with Ms Payal Parikh for Nanavati Associates, learned counsel for the petitioners; Shri Kamal B. Trivedi, learned Advocate General assisted by Ms. Sangeeta K. Vishen, learned Assistant Government Pleader for 1st respondent; Shri S.N. Shelat, learned Senior Advocate, assisted by Shri P.R. Nanavati, learned advocate for the 2nd respondent; Shri S.N. Soparkar, learned Senior Advocate, assisted by Shri Rasesh H. Parikh, learned counsel for the 3rd respondent and Shri Mihir Thakore, learned Senior Advocate, assisted by Shri Sandeep Singhi and Shri Ishan Joshi for Singhi & Co., learned counsel for the 4th respondent.

[21] The petitioners in the original petition had filed Civil Application No. 11501 of 2016 praying this Court to give due consideration to the in-principle approval granted by the State Authorities for allotment of 210+90 Hectares of forest land in favour of Respondent No.4, while determining the validity of the impugned Notification dated 18.1.2016 and the in-principle approval granted by the 2nd respondent-Gujarat Maritime Board and the 1st respondent-State to the 4th respondent on 31.5.2016 and 22.6.2016 respectively, for outer harbour development of Adani Port.

21.1. In view of the submissions made by learned counsel for the parties, the said Civil Application was disposed of by order dated 23.11.2016.

[22] Learned Senior Advocate Shri Mihir Joshi, by taking us to the pleadings on record and the other material, submitted that the impugned Notification for extending the limits of Hazira Port, was issued by the 1st respondent illegally, arbitrarily, contrary to the legal provisions and in violation of the rights conferred on the petitioners by way of assurances given to the petitioners, through various promises/MOUs entered into by the 1st and 2nd respondent with the petitioners. It is the case of the petitioners that having regard to the MOUs entered into and the NOC issued by the 2nd respondent, the petitioners have made huge investment and the respondents cannot resile from the promise, and therefore, the petitioners are entitled to the benefit of doctrine of legitimate expectation and the respondents are estopped from issuing the impugned Notification. It is submitted that the impugned Notification is issued in violation of fundamental rights of the petitioners guaranteed under Article 14 of the Constitution of India by extending the limits of Hazira Port, which would give the 3rd and 4th

respondents additional waterfront and backup area, which is developed by the petitioners.

22.1. It is submitted that increase in the allotment of waterfront and the backup area allotted under the original Concession Agreement after the bidding process, in fact, constitutes changing/altering the terms and conditions of the bid. Therefore, extension of the limits of Hazira Port would result in indirectly granting the HPPL to expand its activities in the extended port area without bidding. It is submitted that it is settled law that the State cannot seek to do indirectly what it cannot do directly and the State property cannot be handed over to a private party without due process of law and without going through the process of competitive bidding. It is further contended that pursuant to various permissions and the MOUs entered into between the petitioners and the respondent authorities, the 1st petitioner company is permitted to deepen and widen the channel and large area is reclaimed on the mudflat area. Though the 1st petitioner company is entitled for allotment of additional waterfront and the reclaimed area, which caused huge expenditure to the petitioners running into more than Rs.1500 Crores, the respondents have illegally and arbitrarily issued the impugned order altering the limits of Hazira Port, which infringes the rights of the petitioners with regard to their claim for allotment of additional waterfront and the reclaimed area.

22.2. Based on the promises given and the understanding arrived at, the 1st petitioner company had changed its position by spending huge amounts, and it was legitimately expecting the allotment of such area in its favour. But abruptly and illegally, the impugned Notification was issued altering the limits of Hazira Port. It is submitted that though the application of the 1st petitioner company for allotment of additional waterfront area of 3700 meters and allotment of the reclaimed area was earlier in point of time, without conducting any inquiry and without giving an opportunity of hearing, the application of the 3rd and 4th respondents was considered in haste and the impugned Notification was issued. Though the rights of the petitioners company are seriously affected by the impugned Notification, the 1st petitioner company was not given any opportunity of hearing before such decision was taken by the respondents.

22.3. It is further contended that the proposal, at the first instance, submitted by the 3rd respondent on 21.7.2014 to the 2nd respondent for extension of limits of Hazira port due to the navigation reasons on the seaward side, did not in any manner affect the rights of the 1st petitioner company as there was no overlapping of the area. But subsequently, the 3rd respondent had revised its request for extension of port limits on 14.3.2015 and such proposal completely overlapped the area developed by the 1st petitioner company. After submission of the application

of the 3rd respondent for revision of port limits, the 2nd respondent has readily approved the revised proposal of the 3rd respondent on 19.3.2015. On coming to know of the approval granted by the Gujarat Maritime Board as per the revised proposal submitted by the 3rd respondent on 14.3.2015, the petitioners have submitted detailed representation to the State. Thereafter, the State Government called upon the Gujarat Maritime Board by letter dated 21.6.15 to respond to the objections of the petitioners. However, the 2nd respondent, vide letter dated 16.7.2015, indicated that none of the concerns/objections raised by the petitioners were valid. However, based on the further representation made by the 1st petitioner company to the State, the State Government requested the Gujarat Maritime Board vide letter dated 26th August 2015 to consider the issue of extension of the port limits of Hazira in its Board meeting and send the same to the Government. It is submitted that after the letter dated 26th August 2015, addressed by the 1st respondent State to the 2nd respondent, the 2nd respondent approved the original proposal dated 21.7.2014, which did not overlap the area developed by the petitioners and such Resolution passed on 28.9.2015 was forwarded to the State Government. Surprisingly, on 5th December 2015, the Chief Principal Secretary prepared a Note ignoring the Resolution passed by the 2nd respondent on 28.9.2015 and based on such Note, the 1st respondent-State, contrary to the Resolution of the 2nd respondent, issued the impugned Notification illegally and arbitrarily. It is submitted that such impugned Notification was issued only to favour the 3rd and 4th respondents under the garb of extension of port limits, which is nothing but colourable exercise of power. It is therefore, submitted that for the aforesaid reasons, the impugned Notification is fit to be quashed and set aside.

22.4. In support of his contentions and submissions, learned Senior Advocate Shri Mihir Joshi has relied on the following citations:

a) Food Corporation of India vs. M/s. Kamdhenu Cattle Feed Industries, 1993 1 SCC 71.

b) Bannari Amman Sugars Ltd vs. Commercial Tax Officer and others, 2005 1 SCC 625.

c) Natural Resources Allocation,In Re, Special Reference No. 1 of 2012, 2012 10 SCC 1.

d) Zenith Mataplast Private Limited vs. State of Maharashtra and others, 2009 10 SCC 388.

e) Collector (District Magistrate) Allahabad and another vs. Raja Ram Jaiswal, 1985 3 SCC 1.

f) Global Energy Limited and another vs. Central Electricity Regulatory Commission, 2009 15 SCC 570.

g) City Industrial Development Corporation vs. Platinum Entertainment and others, 2015 1 SCC 558.

[23] On the other hand, Shri Kamal B. Trivedi, learned Advocate General, assisted by Ms. Sangeeta K. Vishen, learned Assistant Government Pleader, appearing for the 1st respondent, submitted that under the Port Policy notified by the State of Gujarat, the State Government invited private investments in existing minor and intermediate ports, and in the new port locations, which also included the Port of Hazira. It was envisaged that the Port of Hazira would be privatized through global tendering process and ultimately, it was allotted to the 3rd respondent for development. The 2nd respondent-Board had conducted techno-economic feasibility report of all the locations, including Hazira. Under the Port Policy, it is provided that to ensure that the new port projects are financially viable, permissions for captive jetties would be given only in exceptional cases, looking to the quantum of investment and the need for specialized facilities. As per the Policy, all the industrial units would be encouraged to make use of new port facilities.

23.1. On 29th July 1997, the Government of Gujarat also announced Build, Own, Operate & Transfer (BOOT) Policy, which provides a framework for involvement of private sector in the construction and operation of new ports. BOOT Policy also provides for expansion of facilities. Pursuant to a global tender, a Concession Agreement was entered into with the 3rd respondent, and the 4th respondent is Sub-Concessionaire.

It is contended by the learned Advocate General that at the time of signing of the Concession Agreement, the developer will submit, and get approved by the 2nd respondent-Board, a broad perspective plan for the development of the port in the next fifteen to twenty years. It further provides that the State Government will not place restrictions on any expansion and further development of the port, which is within the envisaged perspective plan, subject to statutory clearances. The BOOT Policy also provides that expansion outside the scope of this plan would be subject to the approval of the 2nd respondent-Gujarat Maritime Board.

23.2. It is further contended that as per the provisions of the Indian Ports Act, 1908, read with the Port Policy and the BOOT Policy notified by the State of Gujarat, powers for extension of port limits are statutorily conferred upon the 1st

respondent-Government. The 1st petitioner company, which is permitted to construct captive jetty for transportation of raw materials to the Steel Plants set up by the Essar Group and to export the finished products, cannot be compared with the 3rd respondent, which is a concessionaire and which entered into the Concession Agreement, pursuant to the global tender floated by the respondents. It is submitted that the power to extend the limits of port is within the domain of the 1st respondent and the 1st respondent exercised the said power by extending the limits by the impugned Notification for valid reasons, in view of the proposal made by the 3rd respondent initially on 21.7.2014, as revised on 14.3.2015. It is further submitted by the learned Advocate General that there was never clear and unequivocal promise either by the State Government or by the 2nd respondent-Board for allotting 3700 meters of waterfront and 334 Hectares of backup area claimed to have been reclaimed or sought to be reclaimed by the petitioners, in addition to 2698 meters of waterfront and 178 Hectares of reclaimed land, which is already allotted in favour of the petitioners. The right/promise as claimed by the petitioners, cannot be inferred either from the No Objection Certificate issued by the 2nd respondent-Board on 14.6.2007, or from the MOUs dated 30.9.2007, 13.1.2011 and 11.1.2013. In spite of the same, the petitioners, in the absence of any right conferred upon them, are claiming right contrary to the conditions mentioned in the NOC dated 14.6.2007, which is issued by the 2nd respondent-Board and also the terms of the MOU, and are thus illegally and unauthorizedly trying to convert the captive jetty for commercial purpose. There is absolutely no basis for extension of waterfront or additional area and under the guise of claiming rights under the so-called MOU, without any right, the petitioners have filed this petition. The plea of development of the waterfront and reclaimed area at huge cost is without any basis for claiming the waterfront and reclaimed area, as a matter of right. Such rights are sovereign rights, which are conferred by the State for valid reasons. In the absence of any legal right accrued to the petitioners, this petition is filed challenging the validity of the impugned Notification dated 18.1.2016, which is in accordance with the terms of the Port Policy and BOOT Policy of the Government. Even assuming that the application of the 1st petitioner company was earlier in point of time, that by itself would not confer any right on the petitioners. In any event, having regard to the claim of the petitioners, out of the reclaimed area, the area to the extent of 140 Hectares was already allotted in favour of the petitioners, in addition to 38 Hectares which was earlier allotted. In the absence of any legal right or claim, merely on the ground that its application was earlier in point of time, the 1st petitioner company cannot seek any relief contrary to the statutory provisions and the Policies of the Government. As no rights of the petitioners are affected, the petitioners are not entitled for hearing before the decision was taken by the respondent authorities. The allegation of the

petitioners that decision taken by the 1st respondent is contrary to the proposal approved by the 2nd respondent-Board is also without any basis. In any event, the 1st respondent-Government is the authority to consider the proposal of the 3rd and 4th respondents, and the note prepared by the Chief Principal Secretary also cannot be said to be contrary to the proposals approved by the 2nd respondent-Board. In absence of any right conferred on the petitioners, it is not open to the petitioners to challenge the impugned Notification on the ground that the altered limits are overlapping the area developed by them. In fact, the 2nd respondent-Board had granted No Objection Certificate for deepening and widening of the channel and dredging of the channel for dumping the dredged material in the mudflat area, which would cut the cost of transportation of the petitioners. In spite of the same, by making false plea of huge expenditure, the petitioners are trying to lay claim, to which the petitioners, otherwise, are not entitled to. In any event, the petitioners' private interest has always to remain subservient to the interest of public at large involved in commercial port of Hazira.

23.3. In support of his submissions, the learned Advocate General has placed reliance on the following judgments:

a) Rameshchandra Kachardas Porwal and others vs. State of Maharashtra and others, 1981 2 SCC 722.

b) P.T.R. Exports (Madras) Pvt. Ltd and others vs. Union of India and others, 1996 5 SCC 268.

c) Union of India and others vs. Indian Charge Chrome and another, 1999 7 SCC 314.

d) Director of Settlements, A.P. and others vs. M. R. Apparao and another, 2002 4 SCC 628.

e) Howrah Municipal Corpn. and others vs. Ganges Rope Co.Ltd and others, 2004 1 SCC 663.

f) M. P. Mathur and others vs. DTC and others, 2006 13 SCC 706.

g) K. T. Plantation Private Limited and another vs. State of Karnataka, 2011 9 SCC 1.

h) Monnet Ispat and Energy Limited vs. Union of India and others, 2012 11 SCC 1.

i) Census Commissioner and others vs. R. Krishnamurthy, 2015 2 SCC 796.

[24] Shri Suresh N.Shelat, learned Senior Advocate, assisted by learned advocate Shri P.R.Nanavati, appearing for the 2nd respondent-Gujarat Maritime Board, has submitted that the impugned Notification issued by the 1st respondent is in exercise of statutory power conferred on it under sections 4 and 5 of the Indian Ports Act, 1908. While exercising the powers under sections 4 and 5 of the Indian Ports Act, the Government is required to consider as to whether any right to property is acquired by the statutory order for alteration of port limits. The petitioners have not claimed any right to property, so as to challenge the validity of the impugned Notification. It is submitted that the waterfront is sovereign right of the Government and ownership of captive jetty vests with the Gujarat Maritime Board. The petitioners have no right, title or interest or other property right in respect of the structure of captive jetty. The petitioners have only right to use the captive jetty, which is permitted to be constructed by the 2nd respondent-Board and no other right flows therefrom.

24.1. While granting No Objection Certificate dated 14.6.2007, it is clearly mentioned that the ownership of the reclaimed land vests with the 2nd respondent - Gujarat Maritime Board, and the Essar shall not claim any reimbursement of any expenditure incurred by it for reclamation. It is further contended that the request of the petitioners for expansion of the waterfront and reclaimed area for captive use, pursuant to letter dated 15.11.2012, was not acceded to and the impugned Notification is issued for alteration of port limits, and therefore, the petitioners have not acquired any right to seek validation of the impugned Notification by way of writ of mandamus. It is submitted that the Memoranda of Understanding (MOUs) are non-committal documents and they will not confer any right on the petitioners to claim either by legitimate expectation or promissory estoppal. At no point of time, any promise or assurance was given by the State of Gujarat or by the 2nd respondent-Board and the entire claim of the petitioners is on the basis that the petitioners have gone ahead on the basis of the MOUs, reclaiming the land and by seeking environmental clearance. The same is no ground to interdict exercise of power under sections 4 and 5 of the Indian Ports Act. Further, it is submitted that development and alteration of port is for public purpose and the port, which is allotted to the 3rd respondent is multi user port, which provides common user port facility and makes optimum use of industrial resources. The petitioners were permitted to construct the captive jetty at the port of Magdalla and it is specific industry based. The captive jetty was permitted to handle commercial cargo of non-captive on exceptional basis, subject to maximum of 50% of captive cargo out of total cargo. The petitioners were granted one-time permission to handle 15 million tonnes of third party commercial cargo, subject to minimum of 50% of the captive cargo out of the total cargo. It is further submitted that the application of the petitioners for 3700 meters of waterfront and the backup area is for

commercial purpose. It is submitted that the very fact that the petitioners have prayed for extension of LNG terminal by further applications dated 15.1.2016, 19.4.2016 and 31.5.2016, is indicative of the fact that the petitioners want to expand for their commercial purpose, which is contrary to the policy of the Government. As the petitioners have not used the waterfront and the backup area at optimum level, which were already allotted to them, they are not entitled for any further extension either of waterfront or the backup area. In the absence of any port limit for captive jetty, the question of infringement of the claim of the petitioners is without any basis.

24.2. In support of his arguments, learned Senior Advocate Shri Shelat has placed reliance on the following judgments:

a) State of Bihar etc. etc., vs Kripalu Shankar etc. etc., 1987 AIR(SC) 1554.

b) Post Graduate Institute and others vs. Dr. J.B.Dilwari and others, 1988 Supp1 SCC 355.

c) G.B.Mahajan and others vs. The Jalgaon Municipal Council and others, 1991 AIR(SC) 1153.

d) Madras City Wine Merchants Association and another vs. State of T.N. and another, 1994 5 SCC 509.

e) Federation of Railway Officers Association and others v. Union of India, 2003 AIR(SC) 1344.

f) Indian Railway Construction Co.Ltd., v Ajay Kumar, 2003 AIR(SC) 1843.

g) Union of India and another v. International Trading Co. and another, 2003 AIR(SC) 3983.

h) Speech and Software Technologies (India) Pvt. Limited v. Neos Interactive Ltd., 2009 1 SCC 475.

i) M/s. Shree Sidhbali Steels Ltd & Ors vs. State of U. P. & Ors, 2011 AIR(SC) 1175.

[25] Shri S.N.Soparkar, learned Senior Advocate, assisted by Shri Rasesh H. Parikh, learned counsel for the 3rd respondent, has submitted that the impugned Notification was issued by the 1st respondent, in exercise of statutory powers conferred on it under section 5 of the Indian Ports Act, and the petitioners, being not the owners of any property, have no right whatsoever to challenge the impugned Notification. It is further contended that as the impugned Notification is in conformity with the policy notified by

the Government, the same is not amenable to judicial review in this petition under Article 226 of the Constitution of India.

25.1. In support of his submission, learned Senior Advocate has placed reliance on the following judgments:

a) Indian Express Newspapers (Bombay) Private Ltd., and others etc. etc., vs. Union of India and others, 1986 AIR(SC) 515.

b) M/s. Shri Sitaram Sugar Co.Ltd and another vs. Union of India and other, 1990 AIR(SC) 1277.

c) Bajaj Hindustan Limited vs. Sir Shadi Lal Enterprises Limited and Another, 2011 1 SCC 640

[26] Shri Mihir Thakore, learned Senior Advocate, assisted by Shri Sandeep Singhi and Mr. Ishan Joshi for Singhi & Co., Advocates, for the 4th respondent, has submitted that to create port facilities, the State of Gujarat has notified the Policy to have the participation of private sector in the development of port infrastructure. Hazira Port is one of the ports notified for such development, through global tender. As per the Port Policy, to ensure that the new port projects are financially viable, permission for captive jetties is restricted to exceptional circumstances, looking to the quantum of investment and the need for specialized facilities. The Policy provides that all industrial units would be encouraged to make use of new port facilities being set up. Because of high capital cost of constructing a port, various facilities are provided in the Policy and the Concession Agreements were entered into, in line with the provisions of the Port Policy and the BOOT Policy. The master plan approved for Phase 1B of the 4th respondent envisaged development of 13 berths but only 5 berths were developed. Development of further berths requires further land.

The 3rd and the 4th respondents requested for expansion of port limits to the south of the Hazira Port to create more berths. The area to the south of Hazira Port was vacant and the same was not part of the backup or storage for Magdalla Port and, therefore, there is no encroachment over the area of Magdalla Port. The petitioners, by entering into an agreement had constructed captive jetty, wherein, it is stipulated that Essar shall abide by all Rules, Regulations and Notifications framed under the Gujarat Maritime Board Act, 1981 and the Indian Ports Act, as may be in force from time to time. Therefore, the petitioners are bound by the impugned Notification dated 18th January 2016. It is submitted that having regard to the nature of construction permitted to the petitioners for captive jetty, which is an industry based, there are no competing claims between the petitioners and the 3rd and the 4th respondents. When the claim of the 3rd and the 4th respondents is

within the framework of the Port Policy, BOOT Policy and the provisions of the Indian Ports Act, the petitioners have no legal right to seek repeated extensions to convert the captive jetty into a commercial port. The claim of the petitioners is also in violation of the provisions of the Gujarat Infrastructure Development Act, 1999. It is submitted that no rights are created in favour of the petitioners of whatsoever nature and the claim of the petitioners is not comparable with that of the 3rd and the 4th respondents, who have entered into the Concession Agreement to develop the port through global bid, and under the guise of extension of waterfront or backup land, the petitioners are not entitled for a writ of mandamus, as prayed for.

[27] Before we proceed to deal with the arguments made by the learned counsel for the parties, we deem it appropriate to refer to certain relevant statutes and provisions having bearing on the issues, which fall for consideration in this petition.

27.1. Indian Ports Act, 1908 is the central piece of legislation consolidating enactment relating to ports and port charges. Sections 3(9), 4 and 5 of the Indian Ports Act read as under: "3(9). "Government", as respects major ports, for all purposes, and, as respects other ports for the purposes of making rules under clause (p) of section 6(1) and of the appointment and control of port health officers under section 17, means the Central Government, and save as aforesaid, means the State Government."

4. Power to extend or withdraw the Act or certain portions thereof

(1) Government may, by notification in the Official Gazette.-

(a) extend this Act to any port in which this Act is not in force or to any part of any navigable river or channel which leads to a port and in which this Act is not in force;

(b) specially extend the provisions of section 31 or section 32 to any port to which they have not been so extended;

(c) withdraw this Act or section 31 or section 32 from any part thereof in which it is for the time being in force.

(2) A notification under clause (a) or clause (b) of sub-section (1) shall define the limits of the area to which it refers.

(3) Limits defined under sub-section (2) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels or for the improvement, maintenance or good government of the port and its approaches whether within or without

highwater-mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of higher-water-mark.

(4) In sub-section (3) the expression "high-watermark" means the highest point reached by ordinary tides at any season of the year.

5. Alteration of limits of ports

(1) The Government may, subject to any rights of private property, after the limits of any port in which this Act is in force.

Explanation.- For the removal of doubts, it is hereby declared that the power conferred on the Government by this sub-section includes the power to alter the limits of any port by uniting with that port any other port or any part of any other port.

(2) When the Government alters the limits of a port under sub-section (1), it shall declare or describe, by notification in the Official Gazette, and by such other means, if any, as it thinks fit, the precise extend of such limits."

27.2. Gujarat Maritime Board Act, 1981 is the State Act under which Maritime Board is constituted to vest the administration, control and management of ports in that Board and for matters connected therewith. Sections 35(1) and (2) of the Gujarat maritime Board Act, 1981 read as under:

"35. (1) No person shall make, erect or fix within the limits of a port or port approaches any wharf, dock, quay, stage, jetty, pier, place of anchorage, erection or mooring or undertake any reclamation of foreshore within the said limits except with the previous permission in writing of the Board and subject to such conditions, if any, as the Board may specify.

(2) If any person makes erects or fixes any wharf, dock, quay, stage, jetty, pier, place of anchorage, erection or mooring or undertakes reclamation of foreshore in contravention of sub-section (1), the Board may, by notice require such person to remove it within such time as may be specified in the notice and if the person fails so to remove it, the Board may cause it to be removed at the expense of that person."

27.3. Under section 95 of the Act, the State is empowered to give directions to the Board on Policy matters.

27.4. Gujarat Infrastructure Development Act, 1999 is an Act of the State of Gujarat, which is enacted to provide for a framework for participation by persons

other than the State Government and Government agencies in financing, construction, maintenance and operation of infrastructure projects and to establish a Board and to provide for the matters connected therewith. The term "Project" is defined under section 2(j) of the Act to mean a project specified in Schedule I of the Act. Ports (other than major ports) and harbours thereof are stated within Schedule I of the Act. Under section 7 of the Act, no concession agreement for undertaking a project shall be entered into with any person unless the procedure specified in sections 8 and 9 has been followed. As per section 8 of the Act, a Concession Agreement for undertaking a project can be entered into with a person who is selected through a competitive public bidding as provided in section 9 or by direct negotiation as provided in section 10. Section 9 provides for selection of a person by competitive public bidding in the manner provided thereunder. Section 10 of the Act provides for selection by direct negotiations and section 10A is brought in by Amending Act i.e. Gujarat Act No. 18 of 2006, which empowers the Government for selection by direct negotiations with regard to projects contained in Schedule III, namely, innovative projects, projects wherein competitive public bidding as provided in section 9 has failed to select a developer, project to provide social services to the people, including community services and public utilities and an infrastructure project which is an essential link for another bigger infrastructure project owned or operated by the same person. Various provisions of the above Act make it clear that a project can be given to a developer through public bidding under section 9 of the Act or by negotiations as contemplated by following the procedure under section 10 of the Act or by direct negotiations with regard to the projects under Schedule III of the Act, by the Government.

27.5. In the year 1995, the State of Gujarat had notified Port Policy, wherein it is stated that 50% of the total industrial investment coming to Gujarat will be Port based. The said Port Policy is notified to attract private sector investment in the existing minor and intermediary ports. The strategy as mentioned in the Policy reads as under:

"Gujarat envisages an integrated port development strategy, consisting of creation of port facilities, industrialization and

development of infrastructure facilities like roads and railways in the hinterland. It is estimated that around 3 billion Dollars (Rs. 10,000 crores) would be required to create new port facilities along with necessary infrastructure in the coming 5 years. In view of the fact that ships of large sizes are used in the transportation, the economies of scale in international trade, ports would be developed with direct berthing facilities and speedy mechanical handling facilities, so as to reduce waiting period of the ships and saving in the cargo expenses. To expedite creation of port

facilities by 2000 AD, it is proposed to have the participation of private enterprise in the development of port infrastructure.

xxx xxx xxx"

27.6. Under clause-3 of the Port Policy, the 2nd respondentBoard had identified 10 green field sites for development as direct berthing deep water ports. One of the green field sites selected was Hazira Port. Development proposal with regard to Hazira Port is shown in the said Policy. The relevant part of the Port Policy, which is identified for exclusive investment of private sector reads as under:

"The following ports are identified for exclusive investment by private sector:

1.	Simar	Power port
2.	Mithiwirdi	Steel and Automobile port
3.	Dholera	General Cargo port
4.	Hazira	Industrial port
5.	Vansi-Borsi	Petroleum & liquid chemical port
6.	Maroli	Industrial port

These ports will be privatised through a global tender bid. Gujarat Maritime Board will do a preliminary techno-economic feasibility report of all these five locations except Dholera, through a global bid to facilitate prospective bidders. Dholera, being an ancient port and privatisation bids were invited in the past, no techno-economic feasibility will be done for this location. Dholera port will be the first port to be opened up for privatisation by global tendering. For remaining locations based on the preliminary techno-economic study, global tenders will be invited for privatisation. General guidelines are given below.

These port locations are to be given on BOMT (Built, Operate, Maintain and Transfer) basis. The investment in infrastructure projects like ports being capital intensive, with higher gestation period compared to other sectors of investment, Government of Gujarat is very particular that the port projects taken up by private entrepreneurs should be a profitable proposition to them. The viability of port project depends upon the location, the maritime conditions, scale of investment and the kind of cargo to be handled. The port project has to be assured at a

reasonable rate of return after accounting for capital recovery and interest repayment. Hence, it is essential that each port project is evaluated based on an investment analysis; consisting of a capital cost, revenue receipts, revenue expenditure and capital recovery. Gujarat Maritime Board will study the financing pattern adopted by the World Bank and the Asian Development Bank and other Financial Institutions to evolve a comprehensive package.

Only the wharfage charges/waterfront charges will be as per the schedule decided by Gujarat Maritime Board. The promoters will be free to charge any other service charges with the prior approval of the Gujarat Maritime Board. After BOMT period, the ownership of the port and its assets will get transferred to Gujarat Maritime Board and they will examine to give it further on lease basis to the same promoter. The terms and conditions will be finalised at that time. The general guidelines for investment analysis and capital recovery for the port projects to determine BOMT period will be announced within 2 months.

CAPTIVE JETTIES FOR INDUSTRIES

To ensure that the new port projects are financially viable, permissions for captive jetties would be given only in exceptional cases, looking to the quantum of investment and the need for specialised facilities. All industrial units would be encouraged to make use of new port facilities being set up.

To take care of the increasing traffic untill the completion of the new port projects, it is decided to make use of the existing captive jetties already constructed or under construction, for which the permission has already been given, to be utilized for specific commercial cargoes with the prior approval of the Gujarat Maritime Board.

(1) This facility would be available for a reasonable period till new ports become operative. GMB will review the policy taking into account the progress made in the new ports.

(2) Gujarat Maritime Board would be entitled to collect full wharfage charges on the cargoes handled, which are not captive to the industrial units.

Looking to the huge amount of cargo handled in a short period, captive Single Point Mooring (SPM) facilities of industries located in Gujarat will be charged at concessional rate of wharfage for their captive consumption. Nevertheless, for captive cargo for industries located outside Gujarat and non captive commercial and industrial cargo, will be charged full wharfage by Gujarat Maritime Board."

27.7. The BOOT Policy was notified under the Port Policy of 1995, by Resolution dated 29th July 1997. As per the BOOT Principles, the definition of "developer" reads as under:

"Developer"- The word "Developer" has been used in this documents to convey the various roles played by private parties at different stages of the development of the port."

27.8. Relevant clauses of the BOOT Policy read as under:

(III) OWNERSHIP RIGHTS OF DIFFERENT PARTIES

1. Ownership rights of the Government	The Government is vested with sovereign rights as owner, overseer and conservator of the waterfront and licensor to the Contract.
2. Ownership Rights and responsibilities of the Developer	The Ownership rights of the Developer would include * The right to mortgage, hypothecate or to execute such covenants as may be required for effectively vesting a charge on the port assets in favour of a lender to the project. * The right to sell, convey or transfer to another entity, the right title and interest and concession vested in the Developer, on the request of a lender to the project, subject to contractual documents. The new Developer will be selected by the lender in consultation with the GMB, and if necessary, the terms and conditions of the concession Agreement may be renegotiated.

XXX XXX XXX

6. Expansion of facilities and Competition between	(a) Expansion of facilities The developers would be

ports	encouraged to add capacity over and above the capacity contracted in the concession agreement. Such expansions will be eligible for incentives by the Government, such as land acquisition, extension of royalty holidays etc. At the time of the signing of the Concession Agreement, the Developer will submit, and get approved by GMB, a broad perspective plan for the development of the port in the next fifteen to twenty years. The Government will not place restrictions on any expansion and further development of the port which is within the envisaged perspective plan, subject to statutory clearances. Expansions outside the scope of this plan would be subject to the approval of the GMB. (b) Competition between ports The Government would encourage competition between ports. The following, however, would be ensured. *The development of the ten ports would be appropriately phased over a period. *Permission to set up captive jetties would not be granted, save in exceptional circumstances

27.9. BOOT Principles shown in Annexure-B read as under:

"ANNEXURE - B

BOOT Principles under Port Policy, 1995

BOOT PRINCIPLES

The BOOT Principles, evolved on the basis of guiding principles referred to in ANNEXURE - A, are as under.

(I) DEFINITIONS

"Developer"- The word "Developer" has been used in this documents to convey the various roles played by private parties at different stages of the development of the port.

Prior to the selection of a private party for the development of the port, "Developer" indicates a company or a consortium of companies that are interested in or have bid for developing the port, After the government has selected the private party responsible for the development of the port. "Developer"indicates the party selected by the Government for developing the proposed site. During construction, operation and transfer of the port, "Developer" implies the project company that has been constituted by various private interests for implementing the port project, with whom the Government will sign a Concession Agreement.

(ii) THE BCIILD STAGE OF THE BOOT PACKAGE

1. Land Location	The GMB will identify the port location and delineate the area of waterfront and back-up land. In the event that the Developer proposes an alternative site in the vicinity of the specified area, the Government may consider the same.
2. Land Acquisition responsibility	Acquisition of land for the project will be the responsibility of the Government/GMB.
3. Terms of lease for land	Land will be allotted on lease to the Developer for a term concurrent with the term of the concession agreement The Lease rental will be charged for the land by way of a structured lease rental payment mechanism. The determination of lease rentals would be based on the cost of

	acquisition of land incurred by the Government.
4. Land for expansion	The Government will facilitate future expansion of port related activity, and the setting of industrial parks, commercial ventures, roads and railways etc. in the vicinity of the port. To accomplish this, the Government will adopt one of the following options: Options 1 : The Government will acquire, and keep in reserve for later use, land in the vicinity of the land earmarked for development of the port. Options 2 : The Government will not allow any development on the land in the vicinity of the land earmarked for development of the port (Say, within 500m distance of the port limit)"

27.10. In the same manner, in the Principles governing the BOOT Principles under the Port Policy, the Government is vested with statutory rights of owner, overseer and conservator of the waterfront and licensor to the Contract.

[28] It is the case of the petitioners that the impugned Notification, which was issued by the 1st respondent, constitutes changing/altering conditions of the bid, earlier issued by way of global tender for development of Hazira Port. It is the contention of the learned Senior Advocate Shri Mihir Joshi that extending the limits at Hazira Port would result in indirectly sanctioning the HPPL to extend its activities in the extended area without any bidding. It is to be noted that the 1st petitioner company is granted area to construct jetty for captive purpose so as to support the steel industry set up by the Essar Group. The main thrust of the petitioners in support of their claim is No Objection Certificate dated 14.6.2007 issued by the 2nd respondent Board, and the MOUs entered into by it with the 1st and the 2nd respondents. For dumping the dredged material in the mudflat area of Hazira and for reclaiming approximately 319.86 Hectares of area, the petitioners had entered into a Licence Agreement for

construction and use of 550 meters deep water captive jetty (second phase expansion of existing captive jetty for Essar Steel Limited) at Hazira in Port of Magdalla. Under Clause 1(c) of the License Agreement entered into by the petitioners with the 2nd respondent-Gujarat Maritime Board, deep water captive jetty would mean, 550 meters deep water berth developed by the licensee as second phase expansion of existing captive jetty (456 meters plus its first phase expansion completed in length of 592 meters) of ESTL at Hazira for landing and shipping of captive industrial raw materials of the Company for manufacturing or finished product that are manufactured by the said port based industry, namely, the Company to be/being handled by the Licensee. Clause-15 of the Agreement dated 25th March 2010 provides that the ownership of the jetty forming part of the deep water captive jetty facility, so constructed on the land of Board, vests in the Board and neither the Licensee nor the Company shall have any right, title, interest or other proprietary right in respect of such structure or in respect of the land on which the said structure is built. Further, it was specifically understood that waterfront is sovereign right of the Government. As the petitioners are basing their right pursuant to NOC dated 14.6.2007 granted by the 2nd respondent-Board, for dumping the dredged material at the mudflat area at Magdalla Port, it is necessary to refer to the said NOC and the conditions attached to such NOC. The relevant part of the letter dated 14th June 2007 issued by the 2nd respondent-Gujarat Maritime Board, granting NOC claimed by the petitioners, and the conditions attached thereto read as under:

"xxx xxx xxx

Sub: NOC for dumping dredged material in mudflat area at Magdalla

Sir,

This has reference to your letter dated 2nd March 2007 and 4th April 2007 requesting GMB to issue NOC for dredging in channel and dumping dredged material in mudflat area at Magdalla (Hazira) port. Your proposal was put up before the Board in it's meeting held on 3rd May 2007. Looking to GOG has granted in-principle approval for the allotment of 400 m waterfront with back up area to create direct berthing port facilities in 8 m draft as captive jetty extension and this NOC of GMB will enable Essar to obtain Environment Clearance for dumping dredged material and channel dredging. I am directed to convey the NOC for dumping of dredged material and to reclaim inter-tidal area/mudflats by Essar as resolved by the Board, subject to following conditions.

1. Essar shall have to obtain all required permissions/clearances including Environment & CRZ clearances for the proposed dredging in channel and for

turning circle and dumping of dredged material on mudflat area before commencement of dredging at the site in accordance with applicable laws.

2. For the land to be created by reclamation, the necessary permissions from the Collector, Surat/Revenue department has to be obtained.

3. The New channel to be created by Essar will be common user channel and will be allowed to use by all other port users, if they use the new channel.

4. Essar shall submit periodically/quarterly compliance report of all the conditions whatever to be composed by the Environment Clearance of Ministry of Environment and Forest, to Environment Cell, GMB and other statutory Board/Corporation of Government of Gujarat.

5. Essar shall take all navigational safety measures and it shall not effect adversely to the present operation at various captive and GMB jetties at Magdalla and Hazira.

6. Essar shall take all the safety measures and it shall not effect adversely to the present operation at various captive and GMB jetties at Magdalla and Hazira.

7. The ownership of reclaimed land shall vest with dredging and dumping of dredged materials at the proposed location.

8. Essar shall not claim for reimbursement of any expenditure incurred for this reclamation.

9. Regarding charges of scooping of sand as per the provision in Schedule of Port Charges, GMB/GoG will decide and Essar has to submit an Undertaking of the payment for the same, within one month from the issue of this letter.

10. Essar has to reclaim 319.86 hectares area of inter tidal/mud flats except 67 hectares allotted to M/s. HPPL and the portion of the area in front of 67 hectares towards sea.

11. The other terms and conditions incorporated in the GMB letter dated 30th December 2006 shall be applicable and binding to the company.

12. Details of pre-dredging and post dredging of channel be submitted to GMB within three months of starting and completing the same.

13. Survey/dredging/reclamation be done as per guidelines of GOI/NHO etc.

xxx xxx xxx"

28.1. From the conditions attached to the NOC dated 14.6.2007, it is clear that new channel to be created by Essar will be common user channel and allowed to be used by all other port users. The Essar is not entitled to recover any charges from the other users, if they use the new channel. From condition nos. 7 and 8 of the said NOC, it is clear that the ownership of the reclaimed land shall vest with the Government of Gujarat/Gujarat Maritime Board, and the Essar shall not make claim for reimbursement of any expenditure incurred for its reclamation. From time to time, waterfront area is extended on the applications of the petitioners, and now, the petitioners are having 2698 meters of waterfront and 178 Hectares of reclaimed land, which was already allotted in their favour (38 +140 Hectares). Apart from the NOC dated 14.6.2007, which is referred above, for claiming right for further waterfront area of 3700 meters and the reclaimed area of 334 Hectares, strong reliance is placed by the petitioners on the MOU dated 30th September 2007, entered into by them with the State authorities. The said MOU dated 30th September 2007 was entered into between Essar Group and the 2nd respondent-Board, in which Essar Group expressed desire to establish a project, that is, development of Ro-Ro Terminal and common user dry cargo jetty in joint venture with the Gujarat Maritime Board, with proposed investment of Rs. 750 crores. As per the said MOU, the 2nd respondent-Board has come to an understanding with the petitioners to facilitate Essar Group to obtain necessary permissions/clearances from the concerned department of the State/Central Government to enable the developer to make the aforesaid investment in the project. Clauses 4,5,8 and 9 of the said MOU read as under:

"4. Essar shall follow all the instructions/directives of the GMB and shall abide by the all prevailing Acts, Rules and regulations etc.

5. It is hereby explicitly made clear to and understood by ESSAR that this MOU does not assign any rights to ESSAR to start any development activities, which shall subject to observe all procedural formalities. ESSAR shall have to approach GMB and all other concerned authorities to obtain necessary formal approval for the project under the relevant Act, Rules.

xxx xxx xxx

8. The MOU shall remain valid for a period of 12 (twelve) months from the date of its signing and will get automatically terminated unless GMB extend it on merit basis at its sole discretion. Decision of the GMB in this regard shall be final and binding to ESSAR.

9. ESSAR shall incur all expenditure including survey and investigation, consultancy etc towards preparation of Pre-feasibility report (PFR)/Techno-Commercial report (TCR), Environmental Impact Assessment study report (EIA), detailed Project Report (DPR) or any other document/report required for the project. Such studies however, shall not establish right of ESSAR to undertake the project unless all the competent authorities approve/clear the same."

28.2. The above clauses make it clear that no rights are conferred on ESSAR Group and the said MOU was to remain in force for a period of 12 months. It is expressly understood in the said MOU that the MOU does not confer any right to Essar to start any development activities.

[29] There was yet another MOU dated 13th January 2011 under which rights are claimed by the petitioners. The said MOU was entered into by the 1st petitioner company with the Government during the Vibrant Gujarat Summit, 2011. There was an understanding arrived at under the said MOU between the 1st petitioner company and the Government, indicating that the 1st petitioner has expressed an intention to expand the port facilities at the existing port location and for extension of existing 550 meters deep water terminal by further 1100 meters including reclamation of about 1051 Hectares area with dredged material. Conditions 3,4 and 5 of the said MOU read as under:-

"3) This MoU does not assign any rights to EBTL either to conduct any studies or surveys or to start any development activities. EBTL shall approach GMB to take formal approval of the Project under the Gujarat Maritime Board Act, 1981.

4) The permission will be granted to implement the project subject to Gujarat Maritime Board Act 1981, Indian Ports Act 1908, Gujarat Infrastructure Development Act 1999, Port Policy 1995, BOOT Policy 1997, Shipbuilding Policy 2010 and all other applicable laws, rules, regulations and policies and subsequent amendments therein.

5) This MoU shall not be construed as a permission to allot and use the waterfront."

29.1. From the above-said clauses also, it is clear that no rights were assigned to the petitioners under the MOU and the permission was agreed to be given by the 2nd respondent to implement the project, subject to the provisions of the Gujarat Maritime Board Act 1981, Indian Ports Act 1908, Gujarat Infrastructure Development Act 1999, Port Policy 1995, BOOT Policy 1997 and Ship Building Policy 2010. It is specifically understood that the MOU shall not be construed as a permission to allow and use the waterfront.

[30] There was one more MOU dated 11th January 2013, which was also entered into by the petitioners with the Government of Gujarat, during the Vibrant Gujarat Summit, 2013, wherein the petitioners have shown interest to develop the port facilities and had signed the MOU for development of waterfront of 3000 meters for various cargo jetties, ship repair facilities along with dredging and reclamation at Hazira, Surat, with the proposed investment of Rs. 7630 crores. Clauses- 1 to 5 of the said MOU read as under:

"1) EBTL proposes to set up project in Gujarat involving an investment of approximately Rs. 7,630 crores.

2) Government of Gujarat would facilitate EBTL to obtain necessary permissions / registrations / approvals / clearances etc. from the concerned departments of the State, as per the existing policies/rules and regulations of the State Government.

3) This MoU does not assign any rights to EBTL either to conduct any studies or surveys or to start any development activities. EBTL shall approach GMB to take formal approval of the Project under the Gujarat Maritime Board Act 1981.

4) The permission will be granted to implement the project subject to Gujarat Maritime Board Act 1981, Indian Ports Act 1908, Gujarat Infrastructure Development Act, 1999, Port Policy 1995, BOOT Policy 1997, Ship building Policy 2010 and other applicable laws, rules, regulations and policies and subsequent amendments therein.

5) This MoU shall not be construed as a permission to allot and use the waterfront."

30.1. A perusal of the above-said clauses in the MOU also makes it clear that no rights are assigned to the petitioners on the proposed project and it is expressly understood therein that permission would be granted by the 2nd respondent, subject to the Gujarat Maritime Board Act 1981, Indian Ports Act 1908, Gujarat Infrastructure Development Act 1999, Port Policy 1995, BOOT Policy 1997 and Ship Building Policy 2010.

30.2. Apart from the aforesaid MOUs, the petitioners are also relying on the clearances granted by the Gujarat Pollution Control Board, Gujarat Coastal Zone Management Authority and Ministry of Environment & Forests. However, in the absence of any permission or grant by the competent authority under the provisions of the Gujarat Maritime Board Act, no right can be claimed by the petitioners under the guise of the clearances from the Gujarat Pollution Control Board, Gujarat Coastal Zone Management Authority, Ministry of Environment & Forests, etc.

30.3. A perusal of the above MOUs, which are referred above, makes it clear that the said MOUs are non-committal written statements dealing with the broad understanding of the parties, who intend to enter into a contract on future date, by making investment.

30.4. Earlier a Division Bench of this Court in Special Civil Application No. 5824 of 2008, in the case of Chhatral India Hotel Group and another v. State of Gujarat, has held that an MOU is only an understanding between the parties, which cannot be enforced by a writ of mandamus under Article 226 of the Constitution of India. Further, perusing various clauses which are mentioned in the above-referred MOUs, relied on by the petitioners, it is clear that no rights are granted to the petitioners under the said MOUs and the said MOUs are entered into with a broad-based understanding by the petitioners for future projects. In that view of the matter and having considered the conditions/clauses contained in the said MOUs, it is abundantly clear that no rights are assigned to the petitioners by the said MOUs and the petitioners are not entitled to claim any right under the said MOUs or NOC granted by the 2nd respondent on 14.6.2007, nor any right will flow from the said MOUs and the NOC granted by the 2nd respondent in favour of the petitioners. In any event, having obtained the NOC dated 14.6.2007, subject to certain conditions, the petitioners cannot claim any reimbursement of the expenditure incurred by them for deepening of the channel, and the reclaimed area will be at the disposal of the 2nd respondent-Board. The petitioners cannot turn around and plead that they are entitled for waterfront and reclaimed area, on the ground of doctrine of legitimate expectation or under the guise of promissory estoppel.

[31] Doctrine of legitimate expectation has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. Policy statements cannot be disregarded unfairly or applied selectively. The said doctrine can be applied in cases where a person had been given a permit by the decision-maker and subsequent change in the policy contrary to the expectation in furtherance of such permit is either express or implied.

31.1. In the instant case, at no point of time, any right was conferred or any promise was given to the petitioners so as to accept the claim of the petitioners on the ground of principle of legitimate expectation. Equally, theory of promissory estoppel put forth by the petitioners also cannot be accepted. The principle of promissory estoppel provides that if a promise is made in an expectation that it would be acted upon, and it was in fact acted upon by the promisee, who alters his position in reliance of the promise. In such cases, the promisor will not be allowed

to back out of it when it would be inequitable to do so. In the instant case, no material is placed by the petitioners to show that at any point of time the 1st and the 2nd respondents had given any promise to accept the claim of the petitioners that in expectation of permission for extension of waterfront and backup area, huge investment was made by the petitioners, based on the above-referred MOUs and the NOC granted by the 2nd respondent Board. On the other hand, the MOUs and the NOC dated 14.6.2007 expressly make it clear that the petitioners are not entitled to claim any reimbursement for the reclaimed area that will be with the 2nd respondent-Board.

[32] Learned Senior Advocate Shri Mihir Joshi has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Food Corporation of India vs. M/s. Kamdhenu Cattle Feed Industries, 1993 1 SCC 71, in support of his argument of legitimate expectation. In the aforesaid judgment, while considering the scope of legitimate expectation, the Hon'ble Supreme Court in paras-7 and 8 has held as under:

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is 'fair play in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a Legitimate expectation forms part of the principle of non arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the

context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

32.1. Similarly, reliance is placed by the learned counsel for the petitioners on the judgment of the Hon'ble Supreme Court in the case of Bannari Amman Sugars Ltd vs. Commercial Tax Officer and others, 2005 1 SCC 625, contending that having permitted the petitioners to dredge the channel and to dump the dredged material on the mudflat and for allotment of reclamation, the respondents cannot resile from the promise and they have infringed the right of the petitioners by changing the limits of Hazira Port. In the aforesaid judgment, the Hon'ble Supreme Court was considering the scope of doctrine of legitimate expectation. The Hon'ble Supreme Court, in para- 8 of its judgment held as under:

"8. A person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. It is generally agreed that 'legitimate expectation' gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right to a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then decision maker should justify the denial of such expectation by showing some overriding public interest. (See Union of India and Others. v. Hindustan Development Corporation and Others, 1994 AIR(SC) 988)."

[33] There cannot be any dispute on the above proposition of law, but to extend the principle of legitimate expectation and promissory estoppel, it depends on the facts and circumstances of each case, i.e. the nature of claim, assurances and the policies of the Government, etc. When the petitioners themselves were made known at the very inception that no rights are assigned to them for claiming the benefits as claimed by the petitioners for extension of waterfront or backup area, they cannot claim contrary to the terms and conditions of the NOC granted by the 2nd respondent as well as the clauses contained in the various MOUs. It is to be noticed that what is granted to the petitioners is the permission for captive jetty, which itself is industry based one, for which facility is provided for transportation of raw materials and finished products.

Without satisfying the authorities of their claim for requirement of additional area of waterfront or backup land, by merely asking by way of representation, the petitioners cannot expect that such extension should be granted and complain about the impugned Notification, which is issued by the 1st respondent in exercise of statutory power under section 5(1) of the Indian Ports Act. The claim of the petitioners by way of representation has absolutely no relevance and is not comparable to the application of the 3rd respondent for extending the port limits for the reasons mentioned in the application. Consideration of such application is exclusively within the domain of the Government and when the same is considered as per the Port Policy and the BOOT Policy, it cannot be said that extension of port limits on the application of 3rd respondent is made in violation of the provisions under the Infrastructure Development Act, 1999, without inviting the bidding process.

[34] The 3rd respondent is already selected, pursuant to the global tender floated by the 2nd respondent, and having regard to huge task of development of ports, it appears that liberal clauses are incorporated to encourage the private developers for developing the ports for expansion etc. When such expansion is permissible as per the Policy notified by the respondents, which is in conformity with the provisions under the Indian Ports Act, 1908, it is not open for the petitioners to plead that the impugned Notification, altering the port limits, will confer undue benefits on the 3rd and the 4th respondents without inviting the global bid. On the other hand, by obtaining jetty license for captive purpose, the petitioners cannot make the port as commercial port. The right which is conferred on the petitioners is the right limited for operating the jetty, which is owned by the 2nd respondent-Board, for the purpose of transportation of raw material and finished products. As a one time facility, commercial cargo is also permitted, but subject to the condition of 50% cargo for captive purpose. By claiming repeated extensions for the purpose of captive jetty, in fact, the petitioners seek to convert the captive jetty into commercial port. Such claim of the petitioners cannot be

granted in view of the provisions under the Gujarat Infrastructure Development Act, 1999 and the same would be in violation of the provisions under sections 8,9 and 10 of the Gujarat Infrastructure Development Act, 1999.

[35] On the other hand, learned Advocate General Shri Kamal B.Trivedi, appearing on behalf of the 1st respondent-State of Gujarat has relied on the judgment of the Hon'ble Supreme Court in the case of Director of Settlements, A.P. and others vs. M.R. Apparao and another,2002 4 SCC 638, in support of the argument that the petitioners are not entitled to any writ of mandamus in the absence of satisfying the Court that they have any legal right. The Hon'ble Supreme Court, in para-17 of the said judgment has held as under:

> "17. Coming to the third question, which is more important from the point of consideration of High Court's power for issuance of mandamus, it appears that the constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression 'for any other purpose'. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, it must be exercised along recognized lines and subject to certain self-imposed limitations. The expression 'for any other purpose' in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Court must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior Courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the

applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. {Kalyan Singh vs. State of U. P., 1962 AIR(SC) 1183}. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law. When the aforesaid principle are applied to the case in hand, the so-called right of the respondents, depending upon the conclusion that the amendment Act is constitutionally invalid and, therefore, the right to get interim payment will continue till the final decision of the Board of Revenue cannot be sustained when the Supreme Court itself has upheld the constitutional validity of the amendment Act in Venkatagiri's case on 4th of February, 1986 in Civil Appeal No. 398 & 1385 of 1972 and further declared in the said appeal that interim payments are payable till determination is made by the Director under Section 39(1). The High Court in exercise of power of issuance of mandamus could not have said anything contrary to that on the ground that the earlier judgment in favour of the respondents became final, not being challenged. The impugned mandamus issued by the Division Bench of the Andhra Pradesh High Court in the teeth of the declaration made by the Supreme Court as to the constitutionality of the amendment Act would be an exercise of power and jurisdiction when the respondents did not have the subsisting legally enforceable right under the very Act itself. In the aforesaid circumstances, we have no hesitation to come to the conclusion that the High Court committed serious error in issuing the mandamus in question for enforcement of the so-called right which never subsisted on the date, the Court issued the mandamus in view of the decision of this Court in Venkatagiri's case. In our view, therefore, the said conclusion of the High Court must be held to be erroneous."

[36] Further reliance is also placed by the learned Advocate General in the case of P.T.R. Exports (Madras) Pvt. Ltd and others vs. Union of India and others, 1996 5 SCC 268, wherein, the Hon'ble Supreme Court has held that the doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by executive policy or under the law. Paras 3, 4 and 5 of the said judgment read as under:

"3. In the light of the above policy question emerges whether the Government is bound by the previous policy or whether it can revise its policy in view of the changed potential foreign markets and the need for earning foreign exchange? It is true that in a given set of facts, the Government may in the appropriate case be bound by the doctrine of promissory estoppel evolved in Union of India Vs. Indo-Afghan Agencies, 1968 2 SCR 366. But the question revolves upon the validity of the withdrawal of the previous policy and introduction of the new policy. The

doctrine of legitimate expectations again requires to be angulated thus: whether it was revised by a policy in the public interest or the decision is based upon any abuse of the power? The power to lay policy by executive decision or by legislation includes power to withdraw the same unless in the former case, it is by malafide exercise of power or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the Court gives the large leeway to the executive and the legislature. Granting licences for import or export is by executive or legislative policy. Government would take diverse factors for formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest of the economy of the country. It is, therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to evolve such policies.

4. An applicant has no vested right to have export or import licences in terms of the policies in force at the date of his making application. For obvious reasons, granting of licences depends upon the policy prevailing on the date of the grant of the licence or permit. The authority concerned may be in a better position to have the overall picture of diverse factors to grant permit or refuse to grant permission to import or export goods. The decision, therefore, would be taken from diverse economic perspectives which the executive is in a better informed position unless, as we have stated earlier, the refusal is mala fide or is an abuse of the power in which event it is for the applicant to plead and prove to the satisfaction of the Court that the refusal was vitiated by the above factors.

5. It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The Court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government are satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The Court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the MEE

or NQE, nor the Government is bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, therefore, was right in its conclusion that the Government are not barred by the promises or legitimate expectations from evolving new policy in the impugned notification."

[37] Further, in the judgment in the case of Union of India and others v. Indian Charge Chrome and another, 1999 7 SCC 314, when the classification was based on captive plants and power projects, differently, the same was approved by the Hon'ble Supreme Court by observing that captive units are only for their own purposes. Whereas power plants serve larger public purpose, in such event, individual interest must yield in favour of societal interest.

[38] In the judgment in the case of Howrah Municipal Corpn and Others vs. Ganges Rope Co.Ltd. and others, 2004 1 SCC 663, the Hon'ble Supreme Court has held that claim based on alleged vested right or legitimate expectation cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules.

[39] In the case of M.P. Mathur and others vs. DTC and others, 2006 13 SCC 706, a distinction is drawn with regard to individual rights and the larger public interest. In the aforesaid judgment, it is held by the Hon'ble Supreme Court that promissory estoppel is based on equity or obligations and it is not based on vested rights. In the said judgment, it is held that in equity, the Court has to strike a balance between the individual rights on one hand and larger public interest on the other hand. The aforesaid case supports the case of the respondents in support of their plea that in the absence of any legal right, no mandamus would lie and further, when there is clash between individual rights and the rights of public at large, the rights of public at large have precedence over the individual rights, considering the public interest. As the 1st petitioner is a captive jetty only and the impugned Notification altering the port limits is for development of the port, which is multi user port, it will serve larger public interest. In that view of the matter, the aforesaid judgment also supports the case of the respondents.

[40] Further, the learned Advocate General argued that the MOUs do not confer any right on the petitioners and therefore, they cannot claim relief on the ground of promissory estoppel or legitimate expectation. In support of this submission, the learned Advocate General has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Monnet Ispat and Energy Limited vs. Union of India,

2012 11 SCC 1. In the aforesaid judgment, it is held in clear terms that to invoke the principle of promissory estoppel, there has to be a promise. In the said case, it was further held that a proposal cannot be construed as promise. In the absence of any promise, the claim of promissory estoppel cannot be made and the Notifications are issued under the relevant statutory power. The aforesaid judgment strongly supports the case of the respondents. The Hon'ble Supreme Court, in paras 188.4, 188.5, 289 and 290 of the said judgment has observed as under:

> "188.4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertible expectation. Such expectation should be justifiable, legitimate and protectable.
>
> 188.5. The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit.
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> xxxx xxxx xxx
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> 289. As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification.
>
> 290. What the appellants are seeking is in a way some kind of a specific performance when there is no concluded contract between the parties. An MOU is not a contract, and not in any case within the meaning of Article 299 of the Constitution of India. Barring one party (Adhunik) other parties do not appear to have taken further steps. In any case, in the absence of any promise, the appellants including Aadhunik cannot claim promissory estoppel in the teeth of the notifications issued under the relevant statutory powers. Alternatively, the appellants are trying to make a case under the doctrine of legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision of the public authority is founded in a provision of law, and is in consonance with public interest. As recently reiterated by this Court in the context of MMDR Act, in Para 83 of Sandur Manganese 'it is a well settled principle that equity stands excluded when a matter if governed by statute'. We cannot entertain the submission of unjustified discrimination in favour of Bihar

Sponge and Iron Ltd. As well for the reason that it was not pressed before the High Court nor was any material placed before this Court to point out as to how the grant in its favour was unjustified."

[41] In the judgment in the case of Speech and Software Technologies (India) Pvt Limited v. Neos Interactive Ltd, 2009 1 SCC 475, relied on by the learned Senior Advocate Shri S.N.Shelat, it was clearly held by the Hon'ble Supreme Court that agreement to enter into an agreement is not enforceable nor does it confer any right upon the parties. In view of the said judgment, no rights claimed under the MOUs can be recognized for the purpose of reliefs claimed by the petitioners from the 2nd respondent-Board.

[42] In the case of Madras City Wine Merchants Association and Another vs. State of T. N. and Another, 1994 5 SCC 509, relied on by the learned Senior Advocate Shri Shelat, the Hon'ble Supreme Court has held that legitimate expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. It is further observed in the said judgment that if there is any change in the policy or the position is altered by a rule or legislation in public interest, no question of legitimate expectation would arise.

[43] In the judgment in the case of M/s. Shree Sidhbali Steels Ltd & Ors vs. State of U. P. & Ors, 2011 AIR(SC) 1175, the Hon'ble Supreme Court has held that rule of promissory estoppel being equitable doctrine, it has to be moulded to suit the particular situation. It is held that where public interest warrants, the principle of promissory estoppel, cannot be invoked.

[44] By applying the above principles enunciated in the judgments referred above, which are relied on by the learned counsel for the respondents, we are of the considered view that in the absence of any rights assigned to the petitioners either under the NOC dated 14.6.2007 issued by the 2nd respondentBoard or by the MOUs entered into by the petitioners with the respondent State and its authorities, and the clearances granted by the Gujarat Pollution Control Board, Ministry of Environment & Forests and Gujarat Coastal Zone Management Authority, the petitioners are not entitled to invoke either the doctrine of legitimate expectation or challenge the impugned Notification on the ground of promissory estoppel. What is granted to the petitioners is permission to dump the dredged material in the mudflat area. In the NOC dated 14.6.2007 itself, it is made clear that the petitioners will not have any claim over the reclaimed area. In view of such condition in the NOC dated 14.6.2007, by merely relying on the MOUs in which also there are clear conditions that such MOUs will not confer any rights on the petitioners, the petitioners are not entitled to any relief by way

of mandamus seeking invalidation of the impugned Notification, which is issued by the 2nd respondent in exercise of statutory power under section 5(1) of the Indian Ports Act, 1908. Similarly, we reject the contention of the petitioners that, by extending the limits of Hazira by the impugned Notification, the 1st respondent is conferring the rights for the additional area in favour of the 3rd and the 4th respondents without inviting the bids and it amounts to distribution of public largess by violating the equality clause guaranteed under Article 14 of the Constitution of India. Having regard to various affidavits in reply and further affidavits in reply filed on behalf of the respondents, coupled with the provisions under sections 4 and 5 of the Indian Ports Act, 1908, and the various clauses of the Port Policy of 1995 and BOOT Policy of 1997, it is clear that extension of port limits is permissible. It is evident from the affidavits in reply filed on behalf of the respondents that a Concession Agreement was entered into by the 2nd respondent with the 3rd respondent, pursuant to acceptance of the bid after issuance of a global tender and at that time, broad perspective for development of port was prepared. It was also agreed in the said Concession Agreement that the State Government will not place any restriction on any expansion and any further development of port, which is within the envisaged perspective plan, subject to statutory clearances. It was also made clear that expansion within the scope of the plan would be subject to approval by the 2nd respondent-Board. It is also the case of the 2nd respondent in the affidavit in reply that when the global tender was floated by it or at the time of signing of the Concession Agreement dated 22.4.2002, the port limits of Hazira were not notified and the area was part of adjoining Magdalla Port. In October 2004 only, the State Government carved out of Magdalla Port, the limits of Hazira Port and had issued the Notification, notifying the limits of Hazira Port. Thereafter, the port limits of Hazira were revised in March 2010 and thereafter, the request of the 3rd respondent to have the 4th respondent as sub-concessionaire for non-LNG cargo, came to be accepted. In that view of the matter, it is clear that even the Concession Agreement contains such provision of extension of port limits, which is in conformity with the Policy notified by the Government. Having regard to the plea taken by the 1st respondent as referred above, coupled with the Port Policy and the statutory power conferred under section 5 (1) of the Indian Ports Act, 1908, it cannot be said that alteration of port limits by the impugned Notification, amounts to distributing public largess without inviting the bids. In fact, the Concession Agreement entered into with the 3rd respondent is pursuant to the global tender, which itself is in accordance with the Port Policy and the BOOT Policy. When the Concession Agreement was entered into with the 3rd respondent by the 1st and the 2nd respondents, based on such notified clause, pursuant to global tender and when the Concession Agreement has become final, the plea of the petitioners that the impugned Notification amounts to distribution of public largess without inviting bids, must fail and the same cannot be accepted.

[45] Further, it is the case of the petitioners that the application of the petitioners was earlier in point of time and the same was kept pending for several years, on the other hand, when the 3rd respondent submitted the proposal on 14.3.2015, the same was readily approved by the 2nd respondent-Board on 19.3.2015 within a few days. It is submitted that the said action of the 2nd respondent in considering the proposal submitted by the 3rd respondent in haste, is nothing but colourable exercise of power in favour of the 3rd and the 4th respondents, without considering the application of the petitioners which was earlier in point of time for allotment of 3700 meters of waterfront and 334 Hectares of backup area. In support of the said contention, Shri Mihir Joshi, learned Senior Advocate, appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of Global Energy Limited and another vs. Central Electricity Regulatory Commission, 2009 15 SCC 570, the judgment in the case of Collector (District Magistrate) Allahabad and another vs. Raja Ram Jaiswal, 1985 3 SCC 1 and the judgment in the case of Zenith Mataplast Private Limited vs. State of Maharashtra and others, 2009 10 SCC 388. In the judgment in the case of Global Energy Ltd. while considering the scope of Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading Licence and Other Related Matters) Regulations, 2004, the Hon'ble Supreme Court held that by merely filing an application, one cannot acquire any vested right. The said case relates to an application for license under the Regulations framed under the Electricity Act, 2003. In the said judgment, it was held by the Hon'ble Supreme Court that consideration of such grant must be based on a legal and valid statute. When the application is made for grant of a license under a particular regulation, which empowers the licensing authority to consider such application, the licensing authority is obliged to consider the same, and it is held to be so by the Hon'ble Supreme Court. When the application of the 1st petitioner company is not traceable to any Statute, Policy or Regulation, merely because the 1st petitioner had made claim by filing an application, that by itself is no ground to consider its claim in the present case.

[46] In the case of Collector, (District Magistrate) Allahabad and Another vs. Raja Ram Jaiswal, 1985 3 SCC 1, the Hon'ble Supreme Court has held that where power is conferred to achieve a purpose, it has been repeatedly reiterated that power must be exercised reasonably and in good faith to effectuate the purpose. Further, it is held that where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power.

[47] In the case of Zenith Mataplast Private Limited vs. State of Maharashtra and others, 2009 10 SCC 388, relied on by the learned counsel for the petitioners, the application was processed in haste on the direction of authorities and the Hon'ble

Supreme Court has held that such course adopted is violative of Article 14 of the Constitution of India.

[48] Again, whether the application is considered in haste or not and whether the power is exercised by the authority is colourable exercise or not, are matters which are to be considered with reference to the pleadings and material on record of each case. It is the case of the petitioners that the 3rd and the 4th respondents had submitted revised proposal for extension of port limits on 14.3.2015 and the same was approved in haste on 19.3.2015. Therefore, the petitioners are contending that decision was taken in haste and without considering the pending application of the 1st petitioner, which was earlier in point of time. It is true that the application of the 1st petitioner was earlier in point of time, claiming 3700 meters of waterfront and additional backup area of 334 Hectares. It is to be noted that the 1st petitioner company is a licensee of a captive jetty only and such jetty is permitted for the purpose of transportation of raw materials of Essar Group of companies' steel industry and for finished products. After initial grant, the 1st petitioner company went on applying from time to time for extending the waterfront and backup area. Several times, the said application was considered for extending of waterfront. However, merely because an application is filed, it is not obligatory on the part of the respondents to consider the same for extension of waterfront and backup area whenever it was asked for. From the various applications filed by the 1st petitioner company, which are placed on record, it is clear that the very claim of the 1st petitioner company for extending waterfront and backup area is for commercial operations, and the 1st petitioner has not justified the need for requirement of its captive purpose. In the absence of any justification and the material placed on record, the petitioners cannot make claim as a matter of right. Further, the claim of the petitioners is not comparable with the application of the 3rd and the 4th respondents, which is for the purpose of altering the port limits to have additional berths. In the absence of any basis for the claim of the petitioners, only because application of the petitioners was prior in point of time, is no ground for seeking invalidation of the impugned Notification, which was issued by the 1st respondent in exercise of its statutory power under Section 5(1) of the Indian Ports Act, 1908. At the same time, it also cannot be said that the application of the 3rd and the 4th respondent was considered in haste. The proposal of respondents dated 14.3.2015 was revised proposal in continuation of the earlier proposal of the 3rd respondent submitted on 21.7.2014, wherein, the 3rd respondent sought extension of limits of Hazira Port due to navigation reasons on the seaward. In that view of the matter, it cannot be said that the 2nd respondent had considered the proposal of the 3rd and the 4th respondents in haste. There is no legal basis for the petitioners to claim consideration of their application as a matter of right, inasmuch as the application of the 3rd respondent dated 14.3.2015 was in continuation of the original proposal dated

21.7.2014. The judgment relied upon by the learned counsel for the petitioners would not support their case, having regard to the facts and circumstances of the case on hand. Accordingly, we reject the contention of the petitioners that the application of the 3rd and the 4th respondents was considered in haste and the said decision is a colourable exercise of power to favour the 4th respondent.

[49] At this stage, it is also relevant to note that after the approval of the revised proposals by the 2nd respondent-Board on 19.3.2015, the petitioners approached the 1st respondent by way of representation raising objections and upon raising of objections in the said representation, the 1st respondent -State had called for the remarks from the 2nd respondent and had requested the 2nd respondent-Board to send the remarks only after considering the objections raised by the petitioners in their representation. It appears that the 2nd respondent-Board, vide letter dated 16.7.2015 sent the remarks, communicating that the objections raised by the petitioners were not valid. Further representation was also filed by the petitioners to the 1st respondent and the 1st respondent requested the 2nd respondent-Board vide letter dated 26th August 2015 to consider the issue of extension of limits of Hazira Port in its Board meeting and then to send the remarks to the Government. Thereafter, the 2nd respondent-Board had taken a decision in its Board meeting and passed a resolution on 28.9.2015, which was forwarded by it to the 1st respondentState. Thereafter, the same was considered by the Government and the Government had approved the Resolution passed by the 2nd respondent-Board, whereby it has approved the revised proposal dated 15.3.2015 submitted by the 3rd respondent. In that view of the matter, it cannot be said that the 1st respondent has taken steps in issuing the impugned Notification in haste and therefore, the impugned Notification suffers from colourable exercise of power. Even with reference to the allegation of the petitioners that the Principal Chief Secretary had prepared a Note contrary to the Resolution passed by the 2nd respondent-Board, the same also cannot be accepted as explained in the affidavit in reply and additional affidavit in reply filed by the 1st respondent. In any event, the notes put up by various authorities at various stages are their opinions and ultimately it is for the Government, which is the authority empowered under the Statute, to exercise its power on the proposal of the 3rd and the 4th respondents. In this regard, it is profitable to quote the observations made by the Hon'ble Supreme Court in the case of State of Bihar vs. Kripalu Shankar etc. etc., 1987 AIR(SC) 1554, wherein, in para-12, the Hon'ble Supreme Court has held as under:

> "It cannot be disputed that the appeal raises an important question of law bearing upon the proper functioning of a democratic Government. A Government functions by taking decisions on the strength of views and suggestions expressed by the various officers at different levels, ultimately getting finality at the hands of the

Minister concerned. Till then, conflicting opinions, views and suggestions would have emanated from various officers at the lower level. There should not be any fetter on the fearless and independent expression of opinions by officers on matters coming before them through the files. This is so even when they consider orders of courts. Officers of the Government are often times confronted with orders of courts, impossible of immediate compliance for various reasons. They may find it difficult to meekly submit to such orders. On such occasions they will necessarily have to note in the files, the reasons why the orders cannot be complied with and also indicate that the courts would not have passed these orders if full facts were placed before them. The expression of opinion by the officers in the internal files are for the use of the department and not for outside exposure or for publicity. To find the officers guilty for expressing their independent opinion, even against orders of courts in deserving cases, would cause impediments in the smooth working and functioning of the Government. These internal notings, in fact, are privileged documents. Notings made by the officers in the files cannot, in our view, be made the basis of contempt action against each such officer who makes the notings. If the ultimate action does not constitute contempt, the intermediary suggestions and views expressed in the notings, which may sometimes even amount ex-facie disobedience of the courts orders, will nor amount to contempt of court. These notings are not meant for publication."

49.1. Thus, in the above judgment, the Hon'ble Supreme Court held that expression of opinions by the officers on the office files are for the use of the departments and not for outside exposure. The said judgment relied on by the 2nd respondent also supports the case of the respondents. In view of the above observations of the Hon'ble Supreme Court referred above and having regard to the fact that power to extend the port limits is expressly conferred only on the 1st respondent-Government, the 1st respondent has rightly exercised its statutory power. However, the plea of the petitioners that, in view of the subsequent Resolution dated 28.9.2015, the 1st respondent ought not to have considered the approval granted by the 2nd respondent on the earlier Resolution, cannot be accepted.

[50] We have considered the documents produced along with Civil Application No. 11501 of 2016 which was allowed vide order dated 23.11.2016. However, having regard to various findings recorded by us on various issues as referred hereinabove in this judgment and as the Notification dated 18th January 2016 was issued in statutory exercise of power under section 5(1) of the Indian Ports Act, 1908, we are of the view that the approvals granted and placed on record vide Civil Application No. 11501 of 2016 will not have any effect on the impugned Notification.

[51] In view of the aforesaid reasons, by taking the holistic view of the matter and considering the impugned proceedings which are issued in exercise of statutory power under the Indian Ports Act, 1908, as we find the same is in conformity with the Port Policy and the BOOT Policy notified by the Government and in absence of establishing any legal right by the petitioners, there is no merit in the petition to invalidate the impugned Notification by judicial review in this petition filed under Article 226 of the Constitution of India.

[52] For the aforesaid reasons, this petition is devoid of merit and the same is accordingly dismissed. Notice is discharged. There shall be no order as to costs.

[53] Since the main petition is dismissed, the connected Civil Application No. 5491 of 2016 for direction to the respondents to produce the documents as stated in the said application, does not survive and the same is disposed of.