



AIR 1993 GUJARAT 61
GUJARAT HIGH COURT
M. B. SHAH , J. and B. S. KAPADIA , J.

Spl. Civil Appln. Nos. 736, 2290, 2859, 2909
and etc. of 1990, 8879 and 9072 of 1991, 1597
and 1598 of 1992, D/- 22 - 10 - 1992

Baldev Ship Breakers and other etc Petitioners
v. Jt. Chief Controller of Imports and Exports,
Bombay and others etc. etc Respondents

(A)Gujarat Maritime Board Act (30 of 1981), S.37, S.38, S.41 - Shipbreaking - Allotment of Plot - Guidelines or conditions - Cannot be framed by Chief Executive Officer - Allotment of Plots by implementing conditions framed by him even without publishing the same - Arbitrary and illegal. Constitution of India, Art.14, Art.226 -

The Board alone would frame rules or guidelines for fixing scale of rates on payment of which any property belonging to the Board can be let out or for permitting its use. The Board alone can lay down the conditions under which such property can be let out or permitted to be used. Section 41 further provides that, after framing scale of rates and statement of conditions, it is required to be submitted to the State Government for sanction. The scale of rates and statement of conditions shall have effect only after (a) they are sanctioned by the State Government and (b) published by the Board in the Official Gazette. Thus in view of the provisions under Sections 37, 38, 41 the guidelines or conditions

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framed by the Chief Executive Officer for letting out the plots at Ship-breaking Yard are on the face of them illegal and/or without authority of law. The Chief Executive Officer has no such jurisdiction. The Board alone can prescribe the conditions under which plots can be let out to the owners of the goods imported. The

said conditions can be implemented only after obtaining sanction from the State Government and after publishing them in the Official Gazette.
(Paras31 32 60)

Even assuming that the Chief Executive Officer had an authority to frame guidelines or lay down the conditions for letting out plots for ship-breaking, yet implementation of the same without publishing in the Official Gazette or without publicity by any other mode is on the face of it arbitrary.

(Para35)

The main purpose of allotment of plots is to encourage ship-breaking activities. Admittedly, plots are less and number of applicants for getting plot allotted to them is more. In such a situation, without publishing any guidelines, without informing the public at large that 16 more plots are available for ship-breaking and without informing the concerned parties about the availability of the guidelines framed by the Chief Executive Officer, the plots are allotted in hot haste. This action is arbitrary and in violation of Art. 14 of the Constitution of India. The public property cannot be disposed of in this manner. The transaction of allotment of plots is done surreptitiously and in hanky panky manner.

(Para42)

In the instant case despite non-publication of the so-called guidelines prepared by the Chief Executive Officer for allotment of plots, 85 applications were received by him. Out of 85 applicants, 16 applicants were preferred and for rejecting the remaining applications, it is only stated that some formalities as per the new guidelines framed by the Chief Executive Officer were not complete. This would hardly be a justifiable ground for rejecting applications of the persons for the allotment of plots for ship-breaking. In this view of the matter, the allotment of plots in favour of the 16 persons who are



respondent before the Court is on the face of it illegal, arbitrary and, liable to be quashed.

(Paras 45 43 60)

(B) Constitution of India, Art.162 - Administrative instructions or circulars issued by State Government - Cannot add to or modify Statutory provisions of Act.

(Para 33)

Cases Referred

Chronological Paras

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AIR 1991 SC 1153	43
AIR 1989 SC 1673	38
AIR 1987 SC 1109	36
AIR 1986 SC 1158	36
AIR 1985 SC 1147	37

S. I. Nanavati, K. S. Nanavati, S. N. Soparkar, M. J. Thakore, Kirit Patel and J. R. Nanavati, for Petitioners; P. M. Raval, Addl. AGP, with Mohit S. Shah, S. B. Vakil, R. J. Das and J. D. Ajmera, for Respondents.

Judgement

1. M. B. SHAH, J. :-This group of petitions pertains to allotment of 16 plots at Alang Ship-breaking Yard by the Chief Executive Officer/Vice-Chairman of the Gujarat Maritime Board in a most unusual, illegal and arbitrary manner. From the record, it is apparent that valuable plots from which the allottees of the plots can earn crores of rupees are allotted without following any known or justifiable procedure. At Alang Ship-breaking Yard prior to 1989 in all there were 64 plots which could be allotted for breaking ships. Prior to October 1989 plots for ship-breaking were to be allotted on the basis of allotment of ship by the Metal Scrap Trading Corporation ('the M.S.T.C.' for short). After October 1989, because of change of the Government Import Policy as announced on 23-10-1989 there was demand from various parties for allotment of a plot at the Alang Ship-breaking Yard. Special

Civil Application No. 736/90 was filed before this Court. It is the say of the Gujarat Maritime Board that in February, 1990 it was decided to develop 16 more plots for ship-breaking. On 18th February, 1990 the Chief Executive/Vice-Chairman of the Gujarat Maritime Board framed certain guidelines and allotted those plots to 16 parties. It is an admitted fact that prior to allotment of the 16 plots, guidelines

framed by the Chief Executive Officer were not published. No public notice was issued. The Gujarat Maritime Board had not announced in February, 1990 that 16 plots were available for allotment. Nor any one was informed about the decision taken by the Chief Executive Officer that there were 16 plots available for allotment it is a matter of conjecture as to how the so-called guidelines were known to the parties to whom the plots are allotted. It is also admitted that the Gujarat Maritime Board had not approved the said policy decision taken by the Chief Executive Officer prior to allotment of plots by him. It is only mentioned in the affidavit-in-reply that the policy decision taken by the Chief Executive Officer was placed in the Meeting of the Gujarat Maritime Board held on 13th March, 1990. It is undisputed that prior to 13th March 1990 plots are allotted to 16 different parties.

2. Therefore, the questions in these petitions are whether the action of the Chief Executive Officer of the Gujarat Maritime Board in allotting 16 plots to 16 parties is arbitrary, mala fide and illegal or can it be justified on any count ? and

(ii) whether from the record it would be possible to arrive at the conclusion that there is total mismanagement on the part of the Gujarat Maritime Board in dealing with 16 plots as well as 64 plots which are available with the Board for allotment for ship-breaking ?

3. For appreciating the aforesaid questions, we would first refer to certain facts and various orders passed in these petitions. In Special Civil Application No. 2290/90 it is stated that the Gujarat Maritime Board is in charge of development of Ports in Gujarat State and has been allotting plots to intending ship-breakers in accordance with the guidelines issued by the Metal Scrap Trading Corporation, which is also an undertaking of the Government of India; such plots are always to be allotted to the applicants strictly as per serial number in waiting list; during the year 1983 the State Government decided to develop Alang Port Yard near Bhavnagar Port for the purpose of encouraging ship-breaking activities since sea-shore near Alang is a natural spot; at the relevant time MSTC which is a Government of India Undertaking, was working as a canalising agency for import of non-use foreign flag vessels for the purpose of scrapping and none except the MSTC was entitled either to import such foreign flag vessel for the purpose of scrapping or undertaking any ship-breaking activities in India without first registering oneself with the MSTC; it was the MSTC which used to procure ship from foreign countries and allot the same subject to certain conditions and subject to guidelines issued by the Central Government and strictly according to the serial number of the applicants in the waiting list. It is the say of the petitioner that as per the guidelines issued by the MSTC, the MSTC used to register the ship-breaking unit as a registered ship-breaker if the applicant complied with the following conditions, inter alia;

(i) The intending ship-breaking unit had to obtain the required "No Objection Certificate" from the agency in charge of the Port for allotment of plot for the purpose of ship-breaking activities in the respective State (for Gujarat, the Gujarat Maritime Board).

(ii) Furnishing of the requisite Bank guarantee for a sum of Rs. 50,000/- by way of security deposit;

(iii) Sending demand draft of Rs. 5 lacs for registering the demand of foreign flag non-use vessel.

4. In most of the petitions it is averred that the petitioners have registered themselves in the year 1983-84 with the MSTC after obtaining "No Objection Certificate" from the Gujarat Maritime Board. It is submitted that without considering the priority of the petitioners the Gujarat Maritime Board had allotted 16 plots arbitrarily without following or framing any guidelines for allotment of the plots for ship-breaking at Alang. It is submitted that the entire action of the respondent-Board is mala fide, arbitrary and for some extraneous reasons.

5. In the affidavit-reply dated 20th February, 1990 filed by Shri J. R. Pathak, Traffic Manager of the Gujarat Maritime Board, it has been pointed out that reliance placed on the 'No Objection Certificate'

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dated 4th January, 1983 issued by the respondent-Board is misconceived and misleading because the said 'No Objection Certificate' was issued to enable the petitioner to register its demand with the MSTC; (1) in the year 1983 two hundred No Objection Certificate were issued by the Board; between 1983 and 1989 the import of ships for breaking was canalised through MSTC, registration was also being done by MSTC and for the purpose of such registration MSTC used to require No Objection Certificate from the Gujarat Maritime Board as far as ship-breaking in Gujarat was concerned; the number of applicants was more than the number of ships to be allotted; (2) the Gujarat Maritime Board had, therefore, followed

the policy of allotting plots in consultation with the State of Gujarat; (3) there was litigation before this Court as certain applicants who were not allotted any ship or plot had filed Special Civil Application No. 4080/84 and others. Against the decision in those petitions the Letter Patent Appeals No. 478/85 and others were filed before this Court. It is further pointed out that the Government of India has amended its import policy on 23rd October, 1989. That Import and Export policy is produced along with the affidavit-in-reply at page 38. As per the said policy old ships were included in the list of items permissible for import in terms of sub-paras 177(A) and 215(4A) of the Import and Export Policy 1988-91 (Vol. I). Sub-paras 177(A) and 215(4A) provide for Replenishment Export Permissible (REP) Licence and Additional Licence issued to Export Houses/Trading Houses. In these petitions, we are not concerned with the said policy, but because of the change in the import policy persons having REP licence or additional licence are permitted to import old ships for breaking. It is pointed out that because of the said change of import policy on 23rd October, 1989 various parties approached the Gujarat Maritime Board for allotment of plots for ship breaking; Board proposed to develop 16 additional plots at Alang Ship-breaking Yard for persons importing ships under such REP-Additional Licences. It is also stated that 16 applicants who had first approached the Gujarat Maritime Board and who completed the formalities such as obtaining SSI Registration Import Licence under REP-Additional Licence Scheme, deposited Rs. One lakh and completed all the relevant formalities have been granted "No Objection Certificate" and were allotted plots. It is stated that 16 applicants who had first completed the formalities by 26th February, 1990 have been granted "No Objection Certificate" for allotment of plots and 3 of them have been handed over possession of the plots after they have produced the Memorandum of Agreement and had opened

the Letters of Credit for the respective value of the ships; over 70 applications for allotment of plots for ship-breaking were not considered as there were only 16 plots.

6. Further affidavit-in-reply is also filed by Shri V. H. Parekh, Assistant Port Officer and Traffic Officer, Gujarat Maritime Board. In that affidavit-in-reply, it is stated that once the plots were allotted at Alang Ship-breaking Yard in 1983-84 (reference to which is already made in the judgment dated 24th October, 1986 of a Division Bench of this Court in Letter Patent Appeals) there was no question of maintaining any waiting list with the respondent-Board; the Gujarat Maritime Board was allotting plots as per the list sent by the MSTC. It is further stated that neither the MSTC nor the State of Gujarat had sent any waiting list to the Gujarat Maritime Board; once the allotment of the aforesaid 60 plots was completed, 3 plots were allotted as per the list dated 31st March, 1987 and there was no other list prepared by the Gujarat Maritime Board; one plot was given to a Non-Resident Indian under the NRI Scheme of the Government. It is further pointed out that previously there were no guidelines for allotment of plots as the Gujarat Maritime Board was making allotment of plots according to the allotment of the ships by the MSTC. It is pointed out that the Gujarat Maritime Board had issued No Objection Certificate to about 200 parties in the year 1983 but it had never held out any assurance or representation that the plot would be allotted to a party holding No Objection Certificate; No Objection Certificates were issued to enable the

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parties to register themselves with the MSTC. It was submitted that as the petitioners never applied for allotment of plot after the amended import policy dated 23rd October, 1989, the petitioners were not entitled to file the petition.

In the affidavit-in-reply it is also stated that there was no subsisting seniority list or waiting list prior to 23rd October, 1989. It is also stated that as per the direction given by this court in Special Civil Application No. 111/87 on 8th July, 1987 the respondent has framed appropriate guidelines and rules and regulations for allotment of plots for ship-breaking; the said guidelines were sent for approval to the State Government; till 1989 approval from the State Government was not received; thereafter, because of the change of import policy new guidelines for issue of No Objection Certificates for the allotment of plot for ship-breaking under the Actual Users Breaking Ship Additional Licence were framed (these guidelines are at Annexure "VIII" to the affidavit-in-reply).

7. In the further affidavit-in-reply dated 4th July, 1990, it is pointed out that the aforesaid guidelines at Annexure VIII to the affidavit-in-reply were framed by the Chief Executive Officer/Vice-Chairman in February, 1990. The conditions mentioned in Annexure 'VIII' were placed for perusal of the Gujarat Maritime Board at its meeting held on 13th March, 1990 which was presided over by the Secretary to the Government of Gujarat, Port and Fisheries Department, acting as Chairman of the Gujarat Maritime Board. The Board perused the same and no objection was raised by any Board Member or Chairman to the said conditions or guidelines. It is further pointed out that the Chief Executive Officer/Vice-Chairman has issued 'No Objection Certificate' to the 16 parties who first applied complying with all the conditions mentioned in Annexure 'VIII'. Up to 5th March, 1990 only 16 out of 86 parties complied with all the conditions and, therefore, 16 parties have been given 'No Objection Certificates' for allotment of the plots.

8. It is further stated that, in view of the change in the Import Policy from 23rd October, 1989, the MSTC ceased to be canalising agency

and a party can purchase REP licence for the import of the ship from the open market. In January, 1990 the Authorised Officer of the MSTC has clarified that the MSTC has ceased to be canalising agency and it would no longer be in the picture for allotment of old ships or for allotment of plot for ship-breaking. Hence, the earlier policy referred to above of following the MSTC guidelines was required to be revised. In the meantime, M/s. Baldev Ship-breakers, which had submitted an application for allotment of a plot, filed Special Civil Application No. 736/90 before this Court by stating that it had already purchased an additional licence for import of ship and had entered into a Memorandum of Agreement for purchasing the ship worth U.S. Dollars 395140. The Division Bench of this Court issued a notice. The Court inquired from the respondent-Board as to why the petitioner firm was not allotted a plot. At that stage, the respondent-Board pointed out that all 64 plots at Alang Ship-breaking Yard were previously allotted between 1983 and 1986. At that time, an inquiry was made as to whether other plots at Alang Ship-breaking Yard can be developed. Thereafter, it was found that 16 more plots could be developed at Alang. This took place in February, 1990.

LITIGATION PRIOR TO 1989

9. It is an admitted fact that in the year 1984. Special Civil Application No. 4080/84 was filed before this Court. Against the judgment and order passed in that Special Civil Application, Letters Patent Appeals Nos. 478 to 485 of 1985 and 276 of 1986 were filed before this Court. The judgment and order dated 24th October, 1986 passed in the aforesaid Letters Patent Appeals is produced at Annexure 'IV' to the affidavit-in-reply filed in Special Civil Application No. 2290 of 1990. It would be worthwhile to refer to the following observations made in the judgment and order dated 24th October, 1986 passed in the aforesaid Letters Patent Appeals.

"There was a great influence of applicants who intended to break ships at Alang. Alang, we are told, is one of the finest sites in the world for carrying on activities of ship-breaking. There were 60 developed plots at Alang.

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These plots were developed by GMB. Out of these 60 plots, 46 plots were allotted on 'first come first served' basis to the applicants, whose demands for allotment of ships were duly registered and accepted by MSTC. It is not in dispute that all these 46 ship breakers whom applications were cleared by the MSTC were allotted plots by GMB at Alang. These applicants had applied prior to July 31, 1983. After allotment of 46 plots aforesaid, 14 plots still remained with the GMB. There were 41 applicants in the field for these 14 plots. Obviously, therefore, the question arose as to who should be given priority amongst these 41 applicants. As laid down in the guidelines, the MSTC was required to make allotment of vessels for breaking at Alang on 'first come first served' basis."

10. The contention which was raised before the Court was whether MSTC was required to prepare seniority list in accordance with the guidelines and was required to comply with the same strictly. The Court held as under :

"The guidelines issued by the MSTC are a representation made by it to ship breakers or intending ship breakers. These guidelines, in our opinion, are binding both on MSTC and ship breakers or intending ship breakers. In our opinion, principle of law laid down in Airport Authority case must apply to these guidelines and the MSTC must be held to be bound by them and any action by it in disregard thereof can be held to be arbitrary."

Thereafter, the Court dealt with the list prepared by the MSTC. After considering the said list the Court observed that the petitioners of those cases were not entitled to claim priority to any other persons whose names were entered in the list by the MSTC. In that case also, the Court had observed :

"We cannot refrain ourselves from commenting upon the manner in which MSTC had maintained its records. MSTC had not maintained registers in regard to the applications for initial registration and for demand registration. Such registers with every detail were necessary to avoid any malpractice or allegation of malpractice."

In that view of the matter, learned Counsel appearing for the MSTC stated that appropriate instructions were given to the concerned parties to maintain proper records.

VARIOUS INTERIM ORDERS PASSED IN THIS GROUP OF PETITIONS :

11. Now we would refer to various in-terim orders passed by this Court. When the matter was first placed before this Court for admission hearing on 15th March, 1990 the learned single Judge had issued notice re-turnable on 22nd March, 1990. The respondent-Board was directed to disclose the names and addresses of the persons in whose favour decision to allot plots at Alang Ship-breaking. Yard was taken. On 27th March, 1990 the matter was placed for admission before A. P. Ravani, J. and the Court had passed the following order :

"Rule. Having regard to the facts and circumstances of the case the matter is required to be referred to D. B. Hence referred to D.B. ad interim relief granted earlier to continue till 31-3-1990. The petitioner is directed to complete the office formalities latest by 28-3-1990 and thereafter move the appropriate Division Bench

for further orders. It is further stated that if ship of respondent-Laxmi Steel Rolling Mills Unit-2 is already arrived at Alang it may be permitted to be beached at the plot allotted to respondent Laxmi Steel Rolling Mills Unit-2 subject to the further orders and directions that may be given by this Court and subject to the clarification that the respondent Laxmi Steel Rolling Unit-2 shall not deem to be entitled to claim any right whatsoever on account of the permission as aforesaid being granted."

In view of the aforesaid order the matters were placed before the Division Bench consisting of S. B. Majmudar and B. S. Kapadia, JJ. The matter was heard at length and the Division Bench has passed the interim order, after considering various contentions raised by the parties on 26th April, 1990. The operative part of the aforesaid order reads as under :

"(1) Each of the 13 respondent-claimants

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who have been allotted plots in Alang Ship-breaking Yard and possession of which is not still given to the concerned respondents pursuant to the ad interim injunction of this Court will be entitled to be put in possession of the concerned allotted plots by GMB on each of these respondents filing written undertaking to this Court to the effect that the plot will be utilised for the purpose of breaking only one ship awaiting further orders of this Court and after breaking of one ship is completed, possession of the plot will be restored to the GMB by the concerned respondents. They will also undertake that the concerned claimants will not insist on enforcement of clause 11 of the conditions of NOC and consequent allotment of plot till further orders of this Court. It may be stated in the undertakings that such undertakings are given without prejudice to the rights and contentions of the concerned respondents in these proceedings.

It is made clear that these undertakings will also be subject to the further interim or final orders which this Court may pass in this group of petitions. Moment such undertakings are filed and copies thereof are served on the learned advocates of the petitioners and learned advocate of GMB, possession of the concerned allotted plots will be handed over to the respondents-claimants.

(2) For fresh allotment of the 13 plots and any other plots that may be falling vacant at Alang Ship Yard, GMB will issue a public advertisement once in Gujarat Samachar and once in Times of India to the effect that such number of plots are likely to be available for allotment to the prospective ship breakers subject to further interim or final orders which this Court may pass in the present proceedings. Such advertisement must mention that the concerned applicants who want to get their names placed in the waiting list of claimants for that purpose should satisfy the following three basic requirements for the purpose of being treated as eligible for No Objection Certificates from GMB :

- (i) Concerned applicants must represent a registered SSI unit.
- (ii) he must have got additional licence for importing ship/s for breaking, and
- (iii) concerned applicant must furnish security deposit of Rs. 1,00,000/-.

Such advertisement must invite applications from willing and eligible prospective ship breakers at Alang Ship Yard so as to reach GMB on or before 31st May, 1990. In that advertisement, appropriate number of plots which may be available for allotment must be stated. These plots will include disputed 13 plots and in addition, any other plots that may be available out of other existing plots.

(3) So far as petitioners are concerned, they will be deemed to have applied for such NOCs on the dates on which they filed their respective petitions in this Court. Concerned 16 respondents-claimants will also be treated to have applied for such allotment and no objection certificates, on the dates on which they had applied to GMB. If the petitioners satisfy all the aforesaid three basic requirements for the purpose of grant of NOC by 31-5-1990, they will also be considered to be eligible for consideration for allotment of plots. The said advertisement should be issued by the 10th of May, 1990.

(4) On and from 1-6-1990, those applications which are received from members of public in response to the advertisement and the applications of the petitioners and the contesting respondents-claimants as well as other applicants received by the GMB till date will be scrutinised by GMB. One general list showing the names of all such applicants will be prepared by the GMB wherein names of applicants will be arranged chronologically as per dates of respective applications. Another list of those applicants-claimants including the petitioners and 16 contesting respondents who satisfy the above three basic requirements for eligibility as on 1-6-1990 will be prepared. It will be captioned list of eligible claimants entitled to NOC and whose claims for being allotted plots for ship breaking at Alang Ship Yard are duly registered. This list also will be arranged chronologically according to the dates of applications of the concerned eligible applicants. So far as petitioners

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and 16 contesting respondents-claimants are concerned, they need not apply afresh pursuant to the advertisement to be issued by GMB as per the present order. This will also apply to other claimants who might have also applied up-till

now for allotment of plots. Such applicants are about 80 as in-formed to us by learned advocates for GMB. In short, advertisement to be issued by GMB will be for the benefit of any other members of public who may be interested in getting their names included in the prospective ship breakers and for allotment of plots at Alang Ship Breaking Yard and who might not have up-till now made such applications to GMB. The aforesaid two lists will also include all other claimants who are not before the Court but who might have applied for such plots after the contesting respondents but whose claims have up-till now not been accepted by GMB but who might get due eligibility by 31-5-1990. In short, all these applicants if they satisfy the aforesaid basic requirements for eligibility for grant of NOC and for allotment of plots will be included in the aforesaid lists which may be prepared as on 1-6-1990. These two lists along with the information about number of allottable plots for ship breaking will be furnished to this Court by GMB on 15-6-1990. On that date, the Court, after hearing the concerned parties, will issue further suitable directions for allotment of these plots to eligible applicants by adopting suitable modalities. For that purpose, the matters will stand adjourned to 15-6-1990.

Main special civil applications shall be fixed for final hearing on 3rd September, 1990.

We make it clear that the aforesaid order has been passed in lieu of the ad interim relief granted earlier, on the principle of live and let live and, therefore, at this stage, we have granted permission to concerned respondents to break only one ship and further order will be passed by us later on in the light of the situation then existing. Hence, there would arise no occasion for modification of the present order till we pass further appropriate orders on 15-6-1990."

12. Thereafter, various Civil Applications were filed before this Court. In Civil Application No.

1804/91 Special Civil Application No. 3058/90, the Division Bench of this Court on 9th October, 1991 passed a detailed order whereby the Court permitted the applicant to retain the plot allotted to the applicant for the purpose of breaking one more ship on conditions mentioned therein.

13. Thereafter, Civil Application No. 2507/91 was also filed in Special Civil Application No. 2290/ 90. Again, the Division Bench consisting of S. B. Majmudar and N. J. Pandya, JJ. passed an interim order on 26th December, 1991. In the said order it is mentioned that as per the direction given by the Court in April, 1990 a waiting list of eligible claimants was prepared by the GMB. As per the said waiting list there were about 77 applicants out of which 3 applicants were not interested and, therefore, there remained 74 of such claimants. After considering the facts and circumstances of the case the Court directed GMB to permit the applicants to break one more ship in the plots allotted to them namely 24-S and 24-T and also to allot plots for breaking first ship to each of the petitioners in Special Civil Applications Nos. 8879/91, 2989/90, 2986/90 and 2983/90 on the terms and conditions mentioned therein. The Court specifically directed that, if the conditions mentioned in the order were not satisfied by the allotments, it will be open to the Board to take over possession without approaching this Court. The Court further directed the Board to send due intimation to all the eligible applicants whose names are listed at List No. 2 which was prepared after the advertisement in the light of the earlier order dated 26th April, 1990 and to find out whether the applicants were interested in allotment of plots in ship-breaking yard. With regard to 64 plots the Court directed the Maritime Board to furnish details about the latest position about allotment of earlier 64 plots and to intimate the Court as to whether any plots out of 64 plots are lying vacant and are not actually used for breaking ships and what steps have been taken by the Board for taking possession of these plots.

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14. Thereafter, Civil Application No. 29/92 was filed also filed in Special Civil Application No. 2290/90. That Civil Application was disposed of by the order dated and January, 1992. On that day the Court issued the following directions :

"In the meantime, board is directed to prepare a complete statement regarding 74 claimants who are listed at list B in the light of our order dated 22-4-1990 and furnish the same to this Court on 4-2-1992. This will show as to how many out of them are willing to be considered for allotment of plots for breaking ships. The board is also directed to produce before this Court another statement on 4-2-1992 showing the exact position regarding earlier allotment of 64 plots and how many ships have been broken by the concerned allottees and how many plots are lying vacant and unutilised at present and since how many months or years these plots have remained unutilised."

15. Subsequently, Civil Application No. 20/92 and other Civil Applications were filed before this Court. Again detailed arguments were heard by the Division Bench consisting of. S. B. Majmudar, Actg. C. J. and S. D. Shah, J. The Court passed a detailed order on 20th March, 1992. In the said order the Court has inter alia observed as under :

"A conjoint reading of the order dated 26-4-1990 shows that the main grievance of the petitioners in the group of petitions in which the said order was passed, was to the effect that allotment of 16 plots was done by the GMB in an arbitrary manner without following proper procedure and without apprising the general public about availability of these plots at Alang Ship Yard. The Court called upon the Board to advertise availability of these plots and other available plots by May, 1990 and on the basis of the eligibility laid down in the advertisement, lists

were to be prepared of the eligible claimants showing position as on 1-6-1990. These lists were to be placed before this Court on 15-6-1990 on which date, the Court was to pass further interim order about allotment of these plots at Alang Yard by the GMB by following suitable modalities which this Court was to fix and the main petitions were ordered to be placed for final hearing on 3-9-1990. In the meantime, with a view to seeing that the allottees-respondents whose allotments were impugned in the petitions do not suffer because they had sunk huge amount of money and their ships were in the offing, by way of giving them one opportunity only one ad hoc interim arrangement was made permitting them to import ships and break them on the allotted plots only once and they were to give a clear undertaking to this Court that they will not claim to break additional ships on these plots and would return the plots after breaking one ship only to the GMB so that all available plots can be processed for the purposes of allotment by the GMB by adopting rational modalities in the light of total eligible claimants who can be decided upon in the light of lists to be prepared as on 1-6-1990. The principle of 'live and let live' was, therefore, pressed in service."

The Court also took into consideration the previous order passed by the Division Bench with regard to granting of permission to import one more ship to the concerned applicants and observed that those orders were passed in the peculiar facts of the case. The Court after discussing the rival contentions further observed :

"Hence, time is ripe for the court to remove all these cobwebs and to clear the decks and to pass appropriate orders for allotment of plots at Alang Ship Yard by evolving suitable modalities as contemplated by order dated 26-4-1990 itself. We fully concur with Mr. Mohit Shah. In our view, it is high time that this ad hoc interim arrangements are put to an end and the court

evolves suitable formula after hearing all concerned which can stand the test of Art. 14 of Constitution and on the basis of which, all eligible claimants can get fair chance to compete for available number of plots at Alang Ship Yard so that all of them can be treated alike, instead of only a chosen few continuing or getting plots on special or privileged basis."

After considering the rival claims the Court rejected all the four Civil Applications with certain observations.

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16. Thereafter, the Court passed a further detailed order on Civil Application No. 388/90 in Special Civil Application No. 2290/90 on 4th May, 1992 after hearing the learned advocate for the parties. The operative part of the aforesaid order reads as under :

"We accordingly held, in continuation of the earlier order dated 26-4-1990, that GMB deserves to be directed to allot available plots to eligible claimants from list III subject to the terms and conditions laid down herein-below :-

1. Allotment shall be made by draw of lots. For that purpose, a court officer, not below the rank of Deputy Registrar, shall be named by the Registrar. Such court officer shall proceed with drawing of lots. He shall be entitled to take assistance of one clerk and one peon for that purpose. Lots shall be drawn at a convenient time in the presence of learned advocates of parties at a convenient place in the premises of this court to be fixed by the court officer in consultation with the learned advocates of parties. The remuneration of the court officer and the staff assisting him shall be fixed by the court hereinafter on receipt of report of their working. In the first instance, the petitioners shall deposit within one week Rs. 500/- in the office

of this Court for meeting incidental expenses for drawing of lots.

II. The lots shall be drawn by the Court officer from out of eligible claimants listed at list III.

III. As many lots will be drawn as are number of eligible claimants listed at list III. For example, if there are 70 such eligible claimants in list III, 70 lots will be drawn from amongst the names of all of them. The first name which emerges at the first draw will be put at Sr. No. 1. Second name which emerges at second draw of lots will be placed at Sr. No. 2 and so on, till all 70 serial numbers are made up. Those listed successful claimants as per their serial numbers in the select-cum-priority list will be allotted plots strictly according to their serial numbers i.e. if 5 plots are available, they will go to first five at Sr. No. 1 to 5 and so on and so forth. This priority list shall be treated as list No. IV. However, allotments to claimants emerging successful at the draw of lots and who will be listed priority-wise in the said list shall be granted allotment of plots subject to the following terms and conditions :-

At present in this order, we are not referring to the conditions prescribed in the said order.

17. It should be noted that against most of the interim orders the aggrieved parties have approached the Supreme Court. Against the orders dated 20th March, 1992 and 4th March, 1992 Special Leave Petitions No. 4419/92 and others were filed before the Supreme Court. The Supreme Court modified the direction issued by this Court to some extent and observed that the High Court will find time to dispose of the writ petitions by December, 1992.

18. Thereafter, the Gujarat Maritime Board filed Civil Application No. 1992/92 praying that the Registrar or his nominee be directed to make allotment of plots as per the order dated 4th May, 1992 and as per the order dated 21st

September, 1992 passed by the Supreme Court. When that application came up for hearing, the learned advocates for the parties requested that, instead of hearing these matters piecemeal, these Special Civil Applications may be heard finally. They also submitted that the hearing of the Civil Applications would also take considerable time of the Court because of the various claims made by the petitioner or the respondents. In this view of the matter, these Special Civil Applications were fixed for final hearing.

CONTENTIONS RAISED BY THE LEARNED ADVOCATES FOR THE PARTIES

19. Mr. K. S. Nanavati, learned advocate appearing on behalf of some of the petitioners, has raised the following contentions :

(i) The Board has not prepared any guidelines for allotment of plots.

(ii) The only guidelines which are prepared are for issuance of 'No Objection Certificate'

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for allotment of plot. This 'No Objection Certificate' is issued only by the Head Office at Ahmedabad and the plots are allotted by the Port Officer at Bhavnagar.

(iii) Even these guidelines for issuance of 'No Objection Certificate' are not published or made known to anyone.

(iv) The Board has never announced that 16 additional plots are available so that intending ship-breakers can apply for the same.

20. Mr. Soparkar, learned advocate appearing on behalf of the petitioners in Special Civil Application No. 2589/90 and others submitted that the petitioner in Special Civil Application No. 2859/90 had applied for allotment of plots to GMB in 1983. The GMB has informed

that they have no objection for permitting ship-breaking by the petitioner provided the petitioners pay necessary port charges like port dues, wharfage, beach fees, etc. Pursuant to the letter, the petitioners have deposited a sum of Rs. 200/- each with the GMB towards plot deposit. Thereafter, the petitioners have obtained provisional registration certificate as small scale industries from the office of District Industries Centre, Bhavnagar and the Manager, District Industries Centre, Bhavnagar. However, when the petitioners again approached the GMB in the middle of March, 1990 they were shocked to find that the GMB has already allotted plots to 15 different ship breakers. On making inquiries the petitioners found that :

(a) none of these parties (to whom plots were allotted) were registered with the GMB in the year 1983-84;

(b) those parties were not on the waiting list of GMB;

(c) before allotting the plots to any party the GMB had not advertised in any news-paper nor had it placed any notice expressing its intention to allot plots on its Notice Board at Ahmedabad or at Bhavnagar;

(d) no information was given to the Gujarat Ship-breakers' Association or any other persons expressing its intention to allot plots;

(e) apparently it decided to allot plots by the end of February, 1990 though policy for allotment of plots has been finalised on or around 12-3-1990;

(f) the GMB had totally discarded the waiting list prepared by it and had not even written a letter to any other person on the waiting list to find out as to whether he is willing to accept the plot.

The other learned advocates for the petitioners have adopted the aforesaid contentions.

21. Mr. S. I. Nanavati, learned advocate appearing on behalf of the petitioners in Special Civil Application No. 736/90 additionally submitted that -

(i) the plot allotted to the petitioners is out of old 64 plots; he, therefore, submitted that conditions which are attached to the allotment of newly developed 16 plots would not be applicable to the petitioners;

(ii) this plot is allotted to the petitioners on the basis of NOC which was granted to the petitioners on 7th July, 1983;

(iii) the guidelines which are framed on 16th February, 1990 are not applicable to the petitioners;

(iv) the petitioners are allotted the plot only on the conditions which are mentioned in the letter dated 16th February, 1990 (Annexure "III" to the affidavit-in-reply), he, therefore, submitted that before disposal of the said plot there is no question of following any procedure.

22. As against this, Mr. Raval, learned Additional Advocate General, submitted that at Alang in all there are 80 plots. There are 40 plots admeasuring 50 mtrs. x 45 mtrs., 25 plots admeasuring 80 mtrs. x 30 mtrs., 15 plots admeasuring 50 mtrs x 30 mtrs and at Sachana in Jamnagar District there are 13 to 14 plots. It is the say of the learned Additional Advocate General that these plots are allotted for ship-breaking on temporary basis. Previously, rent was charged on six-monthly basis and at present it is charged on yearly basis in view of the statutory notification. He submitted that prior to 23rd October, 1989

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the GMB was allotting the plots to the parties to whom MSTC allotted ships. Because of the change of the policy of the Central Government MSTC ceased to be a canalising agency for

import of ships for breaking. Therefore, on 16th February, 1990 the Chief Executive Officer/Vice Chairman of the GMB framed guidelines for allotment of plots. This was done after having correspondence with the Authorised Officer of MSTC and after verifying the fact that MSTC has ceased to be the canalising agency for allotment of a ship or for allotment of a plot. After framing the guidelines the Chief Executive Officer allotted plots to 16 parties as stated in the statement Annexure 'V' to the affidavit-in-reply dated 20th March, 1990. As per the said statement possession of the plot to M/s. Baldev Shipbreakers was handed over on 2nd March, 1990, to M/s. Saurashtra Industries Corporation and to M/s. Softouch Cosmetics (Marketing) Pvt. Ltd. possession of the plots was handed over on 14th March, 1990. To other persons before possession of the plots could be handed over, ad interim injunction was granted by this Court. He submitted that the applications were considered serialwise on the basis of the dates of the receipt and, therefore, it cannot be said that the allotment of the plots is in any way arbitrary, illegal or the allotment of plots for ship-breaking violates Article 14 of the Constitution. He submitted that the Chief Executive (Officer) has followed the principle of 'first come first served'. Previously also the MSTC was following the policy of 'first come first served' and the MSTC was also not issuing any advertisement. It is submitted that the allotment of plots cannot be said to be mala fide or arbitrary and that the present petitions have been filed at the instigation of some existing allottees from amongst the allottees of 64 plots who do not seem to possess the means of purchasing a ship on their own and who merely want to make premium by coercing the genuine ship-breakers. For this reliance is placed on the affidavit-in-reply dated 4th April, 1990 wherein it is stated as under :

"On the contrary, the bona fides of the petitioner himself seem to be doubtful. While challenging the issuance of 'No Objection Certificates', the

petitioner has confined the challenge only to respondents Nos. 2 to 15 i.e. only against 14 allottees, out of the total 16 parties to whom 'No Objection Certificates' are issued. It appears that the present petition has been instigated by some existing allottees from amongst allottees of 64 plots who do not seem to possess the means of purchasing a ship on their own and who merely want to make premium by coercing the genuine ship breakers into anchoring their ships on the concerned plot occupied by the concerned instigator."

He further submitted that even though at the relevant time 85 parties had applied for grant of 'No Objection Certificates' only 16 parties were found eligible and, therefore, to them the plots were allotted.

23. It should be noted that the learned advocates Mr. Oza and Mr. S. I. Nanavati appearing for the respondents submitted that the allotment of plots in favour of the respondents cannot be said to be arbitrary but the action of the GMB in dealing with the plots on various occasions is illegal and arbitrary and that the GMB is not laying down any clear guidelines for allotment of plots. Learned advocate Mr. Ajmera has supported the stand taken by the GMB.

24. At the outset, we may mention that, from the various affidavits filed on behalf of the Gujarat Maritime Board, the following facts emerge :

- (1) "No Objection Certificates" to about 200 parties were issued in the year 1983 by the GMB.
- (2) "No Objection Certificates" were issued to enable the parties to register themselves with the MSTC.
- (3) The GMB was following the policy of allotting the plots in consultation with the MSTC and, in case of difference of opinion, the consultation with the State of Gujarat.

(4) On the basis of that 'No Objection Certificate' the MSTC was allotting ships strictly as per the seniority in the waiting list which was required to be prepared as per the

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guidelines issued by the Central Government.

(5) There was litigation before the Court in year 1984 (sic) as certain applicants were not allotted any plot for ship-breaking. In Letters Patent Appeal, this Court made observation. that the MSTC had not maintained registers in regard to the applications for initial registration and for demand registration.

(6) It is the say of the GMB that to a party holding 'No Objection Certificate' no assurance or representation was made that the plot would be allotted for ship-breaking.

(7) In Special Civil Application No. 111/87 this Court had given direction to GMB to frame appropriate guidelines and rules and regulations for allotment of plots for ship-breaking. After framing the guidelines for allotment of plots, the GMB had sent the guidelines for approval to the State Government. Till the year 1989, approval from the State Government was not received.

(8) From 23rd October, 1989 the Central Government has liberalised the Import Policy. As per the said Import Policy, it is open to a party to import vessel or ship for breaking on REP Licence or Additional Licence.

(9) In view of the change of the Import Policy, the MSTC ceased to be canalising agency for import of ships for breaking.

(10) Therefore, rules or regulations for dealing with and allotment of plots for ship-breaking were required to be framed. On 16th February, 1990 the Chief Executive Officer of the GMB

had framed new guidelines for grant of 'No Objection Certificate' for allotment of plots.

(11) The aforesaid guidelines were placed for perusal of the GMB at its meeting held on 13th March, 1990.

(12) The GMB was having 64 plots prior to February, 1990 at Alang Ship-breaking Yard. It was decided to develop 16 more plots in or about February, 1990.

25. From the aforesaid facts and contentions raised by the parties, one thing is apparent that (sic) breaking. The MSTC was allotting ships for breaking on the basis of 'No Objection Certificates' obtained from the respective Port Authorities in the country and on the basis of the list prepared by it as per the guidelines issued by the Central Government.

26. After the change of import policy by the Central Government, as announced on 23rd October, 1989, the ship-breaking can be carried on the basis of REP/Additional licences. The REP licences may also be utilised by the actual users up to the full value or on the basis of the additional licences as provided in paragraph 215(4A) of the Import Policy. These licences are admittedly transferable. In view of the aforesaid policy of the Central Government, it is open to anyone to import ship for breaking even by purchasing the REP licence or additional licence from the open market. The result is that the MSTC has ceased to have any control on the import of ships for breaking. The guidelines, which were framed by the Central Government and which were required to be followed by the MSTC, had become otiose and had no relevance or bearing in the allotment of plots for ship-breaking by the Gujarat Maritime Board.

27. It is the say of the Gujarat Maritime Board that the Chief Executive Officer of the Board had framed the following guidelines for 'issue of



'No Objection Certificate' (NOC) for allotment of plots for ship-breaking under the actual users breaking ship under additional licence'. The said guidelines are as under :

"NoObjection Certificate shall be given only to those :-

(1) who produce a copy of partnership deed/copy of Articles of Association along with names and addresses of partners/Directors;

(2) who produce a clear undertaking to abide by all rules and regulations now framed by competent authority under Gujarat Maritime Board Act and to comply with the instructions issued by Port Authority from time to time;

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(3) who have SSI Registration as ship-breaker;

(4) who deposit Rs. 1 lakh by draft with GMB. This deposit shall be forfeited if Letter of Credit (LC) for the purchase of ship is not produced within six months' time;

(5) who produce additional licence for the purchase of ship. This additional licence shall not be transferred or sold to anybody without the permission of GMB. If the additional licence produced is required to be transferred or sold for any reasons, then the new additional licence equivalent to the previous one shall be produced and, then only the permission for transferring or selling the original additional licence produced will be given by GMB. If additional licence originally produced is transferred or sold without permission and if that is noticed at the time of their producing LC, the plot shall be allotted against such LC;

(6) no construction temporary or permanent, shall be allowed on the plot as the allotment of plot is temporary. However, pucca godown

and the office on the plot may be given for the standard rent to be fixed for the GMB;

(7) the NOC issued shall be valid for six months period within which the LC for the purchase of ship must be obtained. If the LC is not opened, but at least MOA for the purchase of ship is produced within six months, then extension for further three months in the "NOC" shall be given. But for these 3 months, the plot rent shall be recovered at the penal rise of 100% extra;

(8) If the NOC given is not used within stipulated time mentioned above, it shall be cancelled and the deposit of Rs. 1 lakh shall be forfeited;

(9) the plot shall be issued for a period of 3 months for breaking of ship of size up to 2000 LTD from the beaching of the ship. For every 1000 T or part thereof, the lease period shall be increased by one month, i.e. for ships of up to 500 Ts, the lease shall be given for a period of six months, and accordingly for a longer period for a bigger size of ship;

(10) if the plot is occupied for the period more than the above prescribed time for breaking by not completing the breaking of the ship completely and vacating the plot and godown then the lease rent for the plot and godown shall be recovered at the penal rate of 5 times and for the first six months or part thereof and for delay beyond six months the penal rate shall be 10 times;

(11) the temporary allotment of the plot shall be given for the next ship under the same scheme, if the LC for the 2nd ship is produced or second vessel produced by the party before the first ship is completed within the stipulated time prescribed for the breaking in above paras;

(12) the cutting and breaking of the ship shall be entirely at the risk and cost of the owner of the ship who may be breaking at the plot;



(13) ship having permissible draft, LDT and beam at Alang shall only be allowed to be imported;

(14) the grant of this NOC does not confer any right on the unit for allotment of a plot by GMB. The GMB reserves its right not to allot a plot to the unit, if so required by administrative exigencies in public interest as may be determined by the Chief Executive Officer and Vice Chairman of Gujarat Maritime Board;

(15) the security deposit shall not carry any interest. The said deposit will be refunded to the unit only upon fulfilment of all the terms and conditions herein mentioned and after the unit surrenders the plot/godown building to the Gujarat Maritime Board."

In the affidavit-in-reply filed on 19th October, 1992 by the Chief Executive Officer of the Gujarat Maritime Board, it is stated that the said guidelines were framed by the Chief Executive Officer/Vice Chairman of the Gujarat Maritime Board only on 16th February, 1990. The said guidelines were placed before the Board at its meeting held on 13th March, 1990 for perusal along with the note prepared by the Chief Executive Officer, which is at Annexure I to the affidavit-in-reply. In the note, it is inter alia stated that the

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officers of the MSTC were contacted and on discussion with them, it emerged that the MSTC does not come into picture in the allotment of plots after the new import policy of the Central Government. It is inter alia stated in the note as under :

"As the ship-breaking activity is a good revenue earning source for GMB it is in the interest of the GMB to allot as many ships as possible to come to our yards. So far, keeping in view the

limited Foreign Exchange available with MSTC for the purchase of ships, and the understanding reached between GMB and MSTC only a limited number of plots could be developed. Now, as the purchase of ships is open to Actual Users under the Additional Licence Scheme, GMB can encourage the ship-breaking activities by developing more plots within landing area at Alang declared for the ship-breaking by the Customs Authority."

It further states as under :

"While framing these rules, care has been taken to discourage the holding of plots unnecessarily for long time. For this, provision is made for allotting plot temporarily for a fixed period for particular size of ship. Heavy penal rate for the plot is prescribed for holding the plot under-utilized or without use. The basic idea in framing these rules is to get maximum income from a plot by breaking maximum number of ships in the plot, by way of port wharfage charges and not by levy of heavy rent for the plot.

It is therefore decided that 16 new plots may be developed by levelling the plots to make the plot suitable for beaching of ships, providing good approach road and also by providing necessary water and power supply to these plots.

Also as the allotment of plot is temporary, no construction of any godown or office is to be permitted to the plot holders of these plots as per these rules. However, the small godown of about 300 sq. ft. and office about 300 sq ft. may be constructed on each plot. For this godown and office rent of Rs. 2,000/- per month may also be prescribed.

The applicants, who apply for plot for undertaking ship-breaking under this new scheme, may be entertained to the extent of available likely new plots as per site conditions."

28. As per the Minutes of the Meeting of the Gujarat Maritime Board held on 13th March, 1990, the aforesaid guidelines submitted by the Chief Executive Officer were perused.

29. The learned Additional Advocate General submitted that the aforesaid guidelines were prepared by the Chief Executive Officer on the basis of the Sections 37 and 38 of the Gujarat Maritime Board Act, 1981 ('the Act' for short) and that it cannot be said that the said guidelines are in any way without authority of law or illegal.

LEGALITY OF THE GUIDELINES FRAMED BY THE CHIEF EXECUTIVE OFFICER AND THEIR IMPLEMENTATION :

30. Considering the provisions of Section 37 or 38 of the Gujarat Maritime Board Act, 1981, it is difficult for us to agree with the learned Additional Advocate General that the Chief Executive Officer has framed the guidelines or the rules for allotment of the plot at Alang Ship-breaking Yard for breaking ship under the said provisions. Neither Section 37 nor Section 38 empowers the Chief Executive Officer to frame such guidelines or rules. It is the function of the GMB and the GMB alone can frame such rules or guidelines. Further, the said guidelines and rules can be implemented only after obtaining sanction from the State Government. Not only this, but after obtaining such sanction the said guidelines or rules are required to be published by the Board in the Official Gazette. This would be clear from Ss. 37, 38 and 41 of the Act which are as under :

"37. (1) The Board shall from time to time frame a scale of rates at which and a statement of the conditions under which any of the services specified hereunder shall be performed itself or any person authorised under Section 32 at or in relation to the port or port approaches

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(a) transshipping of passengers or goods between vessels in the port or port approaches;

(b) stevedoring, landing and shipping of passengers or goods from or to such vessels, to or from any wharf, quay, jetty, pier, dock, berth, mooring stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;

(c) cranaage or portorage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(e) any other service in respect of vessels, passengers or goods excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act.

(2) Different scales of rates and conditions may be framed for different classes of goods and vessels and for different ports.

38.(1) The Board shall, from time to time also frame a scale of rates on payment of which and a statement of conditions under which any property belonging to, or the possession or occupation of, the Board or any place within the limits of the port or port approaches may be used for the purposes specified hereunder :-

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge, approach or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.

(2) Different scales of rates and conditions may be framed for different classes of goods and vessels and for different ports.

41. Every scale of rates and every statement of conditions framed by the Board under the foregoing provisions of this Chapter shall be submitted to the State Government for sanction and shall have effect when so sanctioned and published by the Board in the Official Gazette."

31. Powers under Section 37 are with regard to limited services which are mentioned in clauses (a) to (e) of the said Section. It empowers the Board to prescribe the scale of rates at which and a statement of conditions under which any of the services specified in clauses (a) to (e) shall be performed by itself or any person authorised under Section 32 at or in relation to the port or port approaches. In the present case, we are not concerned with Section 37. We are mainly concerned with Section 38. Section 38 provides that the Board shall frame a scale of rates on payment of which and a statement of conditions under which any property belonging to or the possession or occupation of the Board can be permitted to be used for the purposes specified in clauses (a) to (d) of Sub-Section (1). Clause (c) specifically provides for leasing of land or sheds by owners of goods imported. Clause (d) also provides for granting permission for any other use of the land, building belonging to or provided by the Board. This would mean that the Board alone would frame rules or guidelines for fixing scale of rates on payment of which any property belonging to the Board can be let out or for permitting its use. The Board alone can lay down the conditions under which such property can be let out or permitted to be used Section 41 further provides that, after framing scale of rates and statement of conditions, it is

required to be submitted to the State Government for sanction. The scale of rates and statement of conditions shall have effect only after (a) they are sanctioned by the State Government, and (b) published by the Board in the Official Gazette. From the aforesaid provisions of law it is apparent that the guidelines or conditions framed by the Chief Executive Officer for letting out the plots at Alang Ship-breaking Yard are on the face of

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them illegal and/or without authority of law. The Chief Executive Officer has no such jurisdiction. The Board alone can prescribe the conditions under which plots can be let out to the (sic) of the goods imported. The said conditions can be implemented only after obtaining sanction from the State Government and after publishing them in the Official Gazette.

32. In view of the aforesaid discussion, the contention of the learned Additional Advocate General that the guidelines prepared by the Chief Executive Officer are under S. 37 or 38 of the Act is without any substance. Further, it would be difficult to hold that the Chief Executive Officer misconstrued the provisions of S. 37 or 38 and purported to act by laying down the conditions for letting out the plots. It was known to the Chief Executive Officer that he had no authority to lay down such conditions. This would be clear from the fact that in Special Civil Application No. 111 of 1987 the Court has directed the Board to frame appropriate guidelines or rules for allotment of plots for ship-breaking. There was further direction that the Authority should see that the plots may not be allotted to the firms having common partners. In this connection, in the affidavit-in-reply dated 26th March 1990 in paragraph 14 it is stated that the Board had framed guidelines in pursuance of the direction given by this Court in September 1988. The

relevant part of paragraph 14 of the affidavit-in-reply is as under :

"I say that by the order dated 8-7-1987, this Hon'ble Court had directed the respondent to frame appropriate Guidelines or Rules and Regulations for allotment of plots for ship-breaking. The time limit of three months specified in the said order was extended from time to time till 30-9-1988. The respondent had accordingly framed the guidelines for allotment of plots before 30-9-1988 and the same were immediately sent to the State Government for approval. No communication was received from the State Government approving the said guidelines but in the meantime, the Import Policy has been amended by a Notification dated 23-10-1989 as stated above and, therefore, new guidelines were framed for issuing 'No Objection Certificate' for the allotment of plot for ship-breaking under the Additional Licence."

Similar statements are made in the further affidavit-in-reply dated 19th October 1992. In view of these affidavits, it is apparent that the Chief Executive Officer was very well knowing that the Board was required to frame guidelines or rules for letting out plots for ship-breaking. He was also knowing that the guidelines or the rules framed by the Board cannot be implemented without sanction by the State Government. In this view of the matter, it is apparent that the guidelines framed by the Chief Executive Officer and his action of implementing them even before placing the same before the Board and without obtaining sanction from the State Government are on the face of it illegal and arbitrary.

33. Now we will deal with the additional contentions raised in support of the action taken by the Chief Executive Officer. In the affidavit-in-reply, which is tendered on 19th October 1992, it has been stated that, prior to establishment of the Board, the powers of leasing plot were delegated to the Director of Ports;

thereafter, the Gujarat Maritime Board was constituted on 5th April 1982 and Government has issued order dated 8th April 1982 ordering that the Chief Executive Officer of the Gujarat Maritime Board shall be the Head of the Department for the purposes of the said Act; the Government also issued circular dated 16th April 1982 laying down that the Board should continue to follow the existing rules, regulations, circulars, instructions, etc. It is, therefore, submitted that in view of the said Circular the Chief Executive Officer was entitled to frame the guidelines. In our view, the aforesaid submission is totally misconceived because the administrative instructions or circulars issued by the State Government cannot add to or modify the statutory provisions of the Act. Even the said circular nowhere provides to that effect. On the contrary, in the said circular, it is specifically provided that it shall be subject to the provisions of the Gujarat

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Maritime Board Act, 1981. The relevant part of the said Circular reads as under :

"It will take some time to sanction and frame the Rules/Regulations. Hence, for administrative convenience of the Board, Government has decided that the Board should (sic) to follow from the date of formation of the Board, the existing rules, regulations/circulars, instructions and all schemes and sanctions, subject to provisions of the Gujarat Maritime Board Act, 1981. This procedure should be continued till the Government frame necessary rules/regulations in respect of administrative/financial matters under the provisions of the Gujarat Maritime Board Act, 1981."

The aforesaid Circular specifically provides that the procedure, rules/regulations or instructions issued by the Government would be subject to the provisions of the Gujarat Maritime



Board Act, 1981. Hence, it is apparent that the guidelines framed by the Chief Executive Officer of letting out 16 plots for ship-breaking even for temporary period are without authority of law. Under S. 38 of the Act, only the Board is entitled to frame guidelines for letting out the plots for ship-breaking.

WHETHER THE ACTION OF THE CHIEF EXECUTIVE OFFICER IS ARBITRARY AND/OR MALA FIDE :

34. The action of the Chief Executive Officer of the Board of letting out 16 plots to 16 parties on the basis of their applications cannot be justified and is without following any known procedure, because -

(i) for the first time in February 1990 it was decided that 16 more plots be developed for allotment for ship-breaking; no public notice was issued by the Board informing that 16 additional plots were available with the Board for allotment for ship-breaking;

(ii) the guidelines framed by the Chief Executive Officer on 16th February 1990 were not published nor were they circulated to all the concerned parties;

(iii) how the so-called guidelines came to be known to the 16 parties to whom the plots were allotted is a matter of conjecture or imagination; and

(v) the action of the Chief Executive Officer in considering the applications of the applicants and in granting 'No Objection Certificate' to 16 parties and allotting the plots prior to 18th March 1990, reveals that the Gujarat Maritime Board was not consulted before letting out the plots.

35. Here, a note should be taken of the lame excuse mentioned in the affidavit-in-reply dated 19th October 1992. In paragraph 6, it is stated as under :

"It is further respectfully submitted that the guidelines for allotment of plots under the new import policy were framed on 16-2-1990. Thereafter all the parties whose applications for allotment of plots (for carrying out ship-breaking activities under the new import policy) made after 23rd October 1989 were pending, were informed about the new guidelines. For instance, letter dated 21st February 1990 was written to M/s. Lucky Steel Industries who had made their application on 30-12-1990 for a ship-breaking plot at Alang."

In our view, this excuse reveals how arbitrarily the Chief Executive Officer had dealt with the valuable plots which are public properties involving crores of rupees. The market value of the old ships for breaking, as stated by the learned advocates for the parties, varies from Rs. 2 crores to Rs. 7 crores depending upon its tonnage. It is also stated by them that almost in all cases the scrap would fetch minimum 20% more than the value of the ship. Hence, it is a lucrative business in a short span of about six months. Further, it seems that the Chief Executive Officer was under the impression that all the concerned parties should come to his office for verifying as to whether any plots are available for ship-breaking and for inquiring as to what is the policy of the Gujarat Maritime Board for letting out the plots. Therefore, even assuming that the Chief Executive Officer had an authority to frame guidelines or lay down the conditions for letting out plots for ship-breaking, yet implementation of the same without publishing in

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the Official Gazette or without giving publicity by any other mode is on the face of it arbitrary.

36. Mr. K. S. Nanavati, learned advocate for the petitioners, relied upon the following observations made by the Supreme Court in the

case of Sachidanand Pandey v. State of W.B., AIR 1987 SC 1109.

"39. On a consideration of the relevant cases sited at the bar the following propositions may be taken as well established : State- owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain percepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

The learned advocate submitted that from the conduct of the Chief Executive Officer, nothing but nepotism appears in dealing with the allotment of the 16 plots. In our view, the aforesaid submission has some force because no information was given to the concerned parties nor public notice was issued to the effect that 16 more plots were available for ship-breaking and without publishing it the plots were allotted on the basis of the applications received by the Chief Executive Officer. It is not the case of the respondents that there was any compelling situation under which the Chief Executive Officer had to allot the plots without getting approval of the guidelines from the Board. In the aforesaid case, the Court has relied upon the decision in the case of Chenchu Rami Reddy v. Govt. of Andhra Pradesh, AIR 1986 SC 1158, wherein it is observed that public officials entrusted with the care of 'public property' were required to show exemplary vigilance.

37. The Supreme Court has further relied upon its earlier decision in the case of Ram and Shyam Co. v. State of Haryana, AIR 1985 SC 1147, and referred to the following paragraph (at p. 1152 of AIR) :

"Let us put into focus the clearly demarcated approach that distinguishes the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose, viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State

exists for the largest good of the largest number more so when it proclaims to

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be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which Constitution envisages the setting up of a welfare State." (Emphasis supplied)

From the facts stated above, it is clear that the GMB had forgotten that the plots owned by it at Alang Ship-breaking Yard are public properties. Its management by the GMB is similar in nature to that of a trustee managing public trust properties. It should be dealt with for the public purpose and in public interest. In its disposal there should be nothing hanky panky. All attempts ought to have been made to obtain best available price for the same either by public auction or by inviting tenders or by any other mode.

38. The learned advocate for the petitioners has further relied upon the decision of the Supreme Court in the case of Sriniketan Cooperative Group Housing Society Ltd. v. Vikas Vihar Cooperative Group Housing Society Ltd., AIR 1989 SC 1673. In that case, the Supreme Court was required to consider the general order of allotment dated 31st March 1986 issued by the Ministry of Urban Development allotting 27 acres of nazul land to nine cooperative group housing societies and the individual order of allotment dated 2nd April 1986 pursuant thereto issued to the nine societies regarding the allotment of specified extents of land in their favour for construction of apartments for their

members. A contention was raised to the effect that the allotment of plots is made on the basis of 'first come first served'. The Court dealt with the said contention and held that there was no merit in this contention on two grounds viz., (i) non-disclosure of the rule 'first come first served' to all the societies, and (ii) non-application of the rule of 'first come first served' to all the societies. The Court observed that even if it is held that the rule of 'first come first served' had been observed in the case of some of the societies, the non-disclosure of the rule to all the societies is a vitiating factor which cannot be overcome. In that case also, a contention was raised by the allottees to the effect that D.D.A. was following the said principle of 'first come first served' and, therefore, if the Government has followed the said principle for allotment of plots, then it cannot be said that concerned persons were made known about it. The Court negated the said contention by holding that the allotment of land was not done by the D.D.A. but by the Ministry of Urban Development. It cannot therefore be said that the formula contained in the rules pertaining to allotment of land by D.D.A. should have put the societies on notice that the same rule would be followed by the Ministry of Urban Development also in selecting societies for allotment of land. In the present case also, it is sought to be contended on behalf of the Gujarat Maritime Board that the MSTC was following the principle of 'first come first served' and, therefore, the Chief Executive Officer had followed the said principle. It is an admitted fact on record that the Gujarat Maritime Board had never announced its decision nor made it known to the public at large nor to the concerned parties that the Board is going to adopt the principle adopted by the MSTC in the matter of allotment of the newly developed plots for ship-breaking. It is, therefore, apparent that the allotment of the 16 plots is made without putting the concerned parties on notice as to what would be the basis on which their applications would be considered.

39. Further, in paragraph 27 of the said judgment, the Court observed as under :

"The necessary inference therefore is that those societies which had directly applied to the Ministry had been told that their applications made earlier to the Ministry would be considered as valid applications and that there was no need for them to apply afresh through the Registrar of cooperative Societies in response to the public notice given by him in the newspapers. In that situation, the criticism levelled by the non-allottee societies that societies having influential member like

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Members of Parliament, Ex-Members of Parliament and Legislatures, high placed officials etc. who had access to the Ministry had approached it directly and had been favoured with allotments to the detriment of other societies acquires significance and relevance."

In our view, in the present case also, similar inference can be drawn because it is not known how the 16 allottees came to know about the guidelines issued by the Chief Executive and on what basis they may have approached him for allotment of plots which were not developed till February 1990.

40. At this stage, one should take note of the contention raised in the affidavit-in-reply dated 4th April 1990 filed by the Board to the effect that in the matter of allotment of plots rent is not of much importance. In paragraph 5, it is stated as under :

"It is reiterated that the purpose of giving plots for ship-breaking is not merely to earn rental charges for the use of the plot but to see that plots are allotted to genuine ship-breakers and the same are not allotted to parties who can monopolise to taking allotment of plots by

bidding highest price and then make business out of it."

It is further stated that the charges for the use of ship-breaking plots and other services are prescribed by the statutory notification.

41. It is stated in the affidavit-in-reply that, for the proposition that rental charges for the use and occupation of the plots for ship-breaking, its charges may not be of much importance, Still, however, if there are few plots and there are large number of applicants for the said plots, the material question would be as to whether it is open to the concerned authority to dispose of the said plots by picking or choosing. The answer to the question would obviously be - no. May be that the charges for the plot not be of much significance. Still, however, it is desirable that the plots are allotted to the genuine ship-breakers. It is stated in the aforesaid affidavit- reply that the purpose of the Board is to see that the plots are not allotted to the parties who can monopolise to taking allotment of plots by bidding highest price and then making business out of it. In our view, this purpose is a laudable one but at the same time the Gujarat Maritime Board and its officer; have seen it that the said purpose is frustrated in every possible way. This would be clear when we discuss the management of 64 plots which are available with the Board for allotment since 1983.

42. At this stage, we further refer to the affidavit-in-reply filed on 19th October, 1992 along with the note (Annexure-1) prepared by the Chief Executive Officer on 16th February 1990. In the said note, it is mentioned that as the ship-breaking activity is a good revenue earning source for the GMB, it is in the interest of the GMB to allow as many ships as possible to come to its yards. Hence, in order to encourage ship-breaking activities, it was considered necessary to develop more plots within the landing area at Alang. It is also mentioned that the prime

concern of the Board should be to see that whoever had been allotted the plots should bring the ship positively and no sooner does he stop importing the ship for breaking he should vacate the plot. From this, it is apparent that the main purpose of allotment of plots is to encourage ship-breaking activities. Admittedly, plots are less and number of applicants for getting plot allotted to them is more. In such a situation, without publishing any guidelines, without informing the public at large that 16 more plots are available for ship-breaking and without informing the concerned parties about the availability of the guidelines framed by the Chief Executive Officer, the plots are allotted in hot haste. This action is arbitrary and in violation of Article 14 of the Constitution of India. The public property cannot be disposed of in this manner. The transaction of allotment of plots is done surreptitiously and in hanky panky manner.

In the affidavit-reply dated 26th March, 1990, it is stated that in pursuance of the direction given by the Court, the Board has framed the draft guidelines in September 1989. Same thing is reiterated in the affidavit-in-reply dated 19th October, 1992. It is stated that the

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draft guidelines framed by the Board in September, 1988 were never implemented as the (sic). The aforesaid action of the respondents would also indicate that even though the guidelines for allotment of plots have been framed by the Board, they have not been implemented under the pretext that the Government has not approved them. The height of the matter is that, without getting approval from the Board, the Chief Executive Officer of the Board implemented the so-called guidelines framed by him on 16th February, 1990 and allotted plots before 13th March, 1990 in favour of 16 parties whose names are mentioned in Annexure 'V' to the affidavit-in-reply dated 30th

March, 1990 is on the face of it illegal, arbitrary and smacked of mala fides or in any case it is mala fide in law.

43. Learned Additional Advocate General Mr. Raval has relied upon the decision of the Supreme Court in the case of G. B. Mahajan v. Jalgaon Municipal Council, AIR 1991 SC 1153. He submitted that this Court while exercising jurisdiction under Art. 226 would have no power to review the order passed by the Gujarat Maritime Board or its Chief Executive Officer on the ground of so-called unreasonableness. He submitted that the purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the Court. For this purpose, he relied upon paragraph 19 of the judgment and particularly the quotation from the Administrative Law : H.W.R. Wade, Sixth Edn. In our view, this submission is totally misconceived. It is true that under administrative law the individual is entitled to receive fair treatment and that if the order passed by the authority is not unreasonable or perverse, the Court under Art. 226 of the Constitution would have no jurisdiction to interfere with it. The Court under Art. 226 is not sitting in appeal on the correctness of the decision taken by the authority. But if the said order is on the face of it illegal or erroneous, then this Court would have ample jurisdiction under Art. 226. In paragraph 19, it is specifically stated as under (at p. 1165 of AIR) :

"Unreasonableness has thus become a generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motive and purposes, a wide category of errors commonly described as 'irrelevant considerations', and mistake and misunderstandings which can be classed as self-

miscirection, or addressing oneself to the wrong question."

With regard to the framing of the guidelines, the observations are as under (at p. 1165 of AIR) :

"unless and until a statute provides otherwise, or it is established that the Secretary of State has abused his power, these are matters of political judgment for him and for the House of Commons. They are not for the judges in their judicial capacity."

On this principle also the guidelines or statutory rules are to be framed by the authority and unless powers are abused or rules or guidelines are framed de hors the statutory provision, the Court in its judicial capacity does not interfere with the same. The question before this Court would be as to whether the decision taken by the Chief Executive Officer of allotting plots on the basis of the so-called guidelines framed by him on 16th February, 1990 can be said to be reasonable by any standard. If the decision is unreasonable and it is de hors the statutory provisions, then it cannot be said that this Court has no jurisdiction to interfere with it under Art. 226 of the Constitution. Further, it can be said in the present case that the parties, who are waiting for allotment of plots, are not treated fairly. In this view of the matter, the quotation of Administrative Law, which is referred to by the Supreme Court in the judgment in the case of G. B. Mahajan (AIR 1991 SC 1153) (supra) will not support the contentions raised on behalf of the Gujarat Maritime Board.

44. As discussed above, the so-called principle of 'first come first served' adopted by the Board is merely a pretext of covering its arbitrary action of allotment of plots to 16 chosen parties, even though 85 applications

were admittedly received by the Board for allotment of plot. In the meeting held on 13th March, 1990, the Chief Executive Officer has conveyed to the Board as under :

"It was further conveyed by CEO and VC that there are large number of applications (about 85) for allotment of new plots for breaking ships brought under the New Policy of 23-10-1989 by using additional licences available in open market. As there is no restriction from Government of India or MSTC, GMB may develop about 50 to 70 more plots for encouraging the labour intensive industry of ship-breaking and also to get more traffic for GMB."

In the Minutes of the Meeting held on 13th March, 1990. It is nowhere stated by the Chief Executive Officer that the applications filed by the remaining 85 persons were not complete. Further, in the affidavit-in-reply dated 26th March, 1990 in paragraph 14 it is stated as under :

"It is submitted that the 'No Objection Certificates' for the additional 16 plots have been issued to those 16 applicants who first completed all the formalities prescribed in the above new guidelines, such as, production of Additional Licence for import of ship, valid Small-Scale Industry Registration as Ship-breaker, deposit of Rs. 1.00 lac etc."

From these facts, it is apparent that despite non-publication of the so-called guidelines prepared by the Chief Executive Officer for allotment of plots, 85 applications were received by him. Out of 85 applicants, 16 applicants were preferred and for rejecting the remaining applications, it is only stated that some formalities as per the new guidelines framed by the Chief Executive Officer were not complete. This would hardly be a justifiable ground for rejecting applications of the persons for the allotment of plots for ship-breaking.

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45. In this view of the matter, in our view, the allotment of plots in favour of the 16 persons whose names are mentioned in Annexure V to the affidavit-in-reply and who are respondents before this court is on the face of it illegal, arbitrary and, therefore, the order passed by the Chief Executive officer allotting the plots in their favour requires to be quashed and set aside.

46. It is the contention of the learned advocate for the petitioners that the petitioners should be treated on par with the allottees of 64 plots which were developed prior to 1989 and the petitioners should not be evicted after breaking of one ship. Special Civil Application No. 736/90 was placed for admission on 5th February, 1990. On that day, the Court had issued notice to respondent No. 2 i.e. Gujarat Maritime Board. On 19th February, 1990 the matter came up for further hearing before the Division Bench of this Court. At that stage, as the petitioners had received a letter dated 16th February, 1990 from the Gujarat Maritime Board allotting plot to them, the petitioners had not pressed for any interim relief. Subsequently on 16th November, 1990 the Division Bench of this Court admitted the matter with the direction that it should be heard along with Special Civil Application No. 2290/90.

47. Learned advocate Mr. S. I. Nanavati has vehemently submitted that the petitioners are allotted a plot out of 64 plots which were developed prior to 1989. He, therefore, submitted that the petitioners would not be governed by the conditions which are attached to the allotment of the newly developed 16 plots and that the petitioners should not be evicted from the plot as soon as the petitioners complete breaking of one ship. He submitted that with regard 64 plots it is the policy of the Board to continue the allottee in possession of the plot permanently or till the allottee desires to continue in possession of the plot.

48. In our view, this submission of the learned advocate cannot be accepted because -

(1) it is nobody's case that at any time the Board has allotted a plot on a permanent basis;

(2) alleged wrong policy of the Board of continuing the allottee in possession for years

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together would hardly be a ground for granting relief as prayed for; and

(3) the petitioners are allotted a plot with a specific condition as mentioned in the allotment letter dated 16th February, 1990.

49. For dealing with this contention, now we would refer to the earlier orders passed by this Court and the affidavit-in-reply filed by the GMB. We may mention that learned advocates Mr. Oza and Mr. S. I. Nanabati for the respondents also contend that the Board or in some cases the State Government is dealing with the plots as if it is the private property and not the State property.

50. As stated earlier, on 26th February, 1991 the Division Bench of this Court (Coram : S. B. Majmudar (as he then was) and N. J. Pandya, JJ.) had directed that the Gujarat Maritime Board shall furnish details regarding the latest position about the allotment of earlier 64 plots and to intimate to this Court as to whether any plots are lying vacant and not in actual use for breaking ships and what steps have been taken by the Board for recovering possession of these plots. Pursuant to the said direction, on behalf of the Board, along with the affidavit-in-reply dated 5th February, 1992, a statement Annexure IV is produced revealing information regarding number of ships brought for breaking by 64 allottees. As per the said statement, in 1986-87, 10 allottees have not brought ships for breaking, 1987-88, 36 allottees, and in 1989-90,



17 allottees have not brought ships for breaking. The allottee of plot No. 24 had (sic) allottee of plot No. 24 had imported one ship during the period from 1986-87 to 1990-91. The allottee of plot No. 24K - one ship; plot No. 11 - one ship; plot No. 24-P - one ship; plot No. 28 - one ship, plot No. 33 - one ship; plot No. 36 - one ship; plot No. 44 - one ship during the period from 1986-87 to 1990-91. Details with regard to other plots are not narrated in the judgment but the statement Annexure 'IV' reveals that other allottees have also not utilised the plot for ship-breaking for number of years. Admittedly, the aforesaid plots were allotted for ship-breaking activities as per the MSTC direction for one ship-breaking. Further, it is also admitted that the said plots are not permanently allotted to any one. In the affidavit-in-reply dated 19th October, 1992, a specimen allotment letter is produced on record. As per the said allotment letter, the plot is allotted for a period of six months i.e. from 29th July, 1987 to 28th January, 1988. It specifically mentions that any party continuing in possession after the specified period would be considered to be unauthorised occupant and that without obtaining permission it would not be entitled to make any construction. In spite of the aforesaid fact the condition that the allotment of plot is for a limited period, yet no action is taken by the Gujarat Maritime Board for recovering the possession of the said plots from the said allottees. This attitude of the Board would reveal that the Board has permitted certain persons to continue the possession of the plots allotted to them for a number of years for one reason or the other, which cannot be legally justified. Why it is done and for what motives it is done cannot be investigated into in this group of the petitions. In the affidavit-in-reply, it is stated that in past the Gujarat Maritime Board had no choice but to continue the possession of the plots with the persons who were allotted plots by the MSTC. This again, in our view, is a lame excuse because the MSTC was allotting the ship for ship-breaking on the basis of the waiting list. The

allotment of plots for ship-breaking is admittedly only for a limited period, during which, the ship is broken. It would not mean that once the plot is allotted to a particular party, it is entitled to retain it for years together. In the affidavit-in-reply, it is stated that the Gujarat Ship Breakers Association comprising all the parties who were allotted 64 plots also represented before the Honourable Minister for Ports on 17th April, 1990 and on the basis of the discussion which took place at the meeting between the members of the ship-breaking association and the Honourable Minister for Ports, the Government took a decision and issued

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instruction to the Chief Executive Officer and the Vice-Chairman of the Gujarat Maritime Board on 5th May, 1990 that the parties who had not brought any ship for one year may be given renewal of allotment of plots till 15th August, 1990. It seems that the renewal is granted as if the plots are to be allotted only to the same 64 persons to whom previously plots for ship-breaking were allotted. This renewal prima facie seems to be unreasonable because if this is permitted to be continued, it is likely to lead to all sorts of malpractices apart from the fact that it would monopolise the business in the hands of a few persons. Once it is accepted that the plots were allotted only for one ship-breaking as soon as the ship is brought at the Port, and the time period is six months, then there is no question of permitting the party to whom the plot is allotted to continue to be in possession from year to year without any hindrance. Therefore, in our view, the allegation made by the some of the learned advocates for the petitioners as well as respondents that there is mismanagement of 64 plots by the Gujarat Maritime Board appears to be well founded. The say of the Gujarat Maritime Board as stated in the affidavit-in-reply dated 19th October, 1992 that the Gujarat Maritime Board has been doing its best to develop the

Alang Ship-breaking yard and the apprehension of the petitioners regarding the management of all 64 plots is not well founded and baseless, requires to be rejected. If this was so, it would have laid down some policy for dealing with the plots and would not have left everything in drak or in vacuum.

51. Further, it is sought to be contended that even though the question for 64 plots is not before this Court in this group of petitions therefore it is not required to be discussed in detail. As stated earlier, this Court on 26th December, 1991 has specifically directed the Board to produce the statement of allottees of 64 plots and how the said plots were utilised by the respective parties. The same Division Bench in Civil Application No. 29 of 1990 also directed the Board to produce before the Court another statement showing the exact position regarding earlier allotment of 64 plots and how many ships have been broken by the concerned allottees and how many plots are lying vacant and not utilised at present. Therefore, it cannot be said that for the first time the petitioners or some of the respondents to whom the plots are allotted after 1990 are unnecessarily raising the aforesaid contention. Not only this, we are also required to deal with the contention of the learned advocates for the petitioners in Special Civil Application No. 736/90 that the petitioners should be treated on par with the allottees of 64 plots and they should not be evicted after breaking of one ship.

52. In the affidavit-in-reply dated 19th October, 1992, it is submitted that, as per the Statement published by the Lloyds Register from London in year 1990, out of total ship-breaking activities in the world, 60.42% of ship-breaking activities were carried out in India in year 1990. It is further stated that 90% of the ship-breaking activities in India are being carried out at Alang Ship-breaking Ltd. As stated earlier, for ship-breaking the plot (sic) be valuable property to whomsoever it is allotted. Because of the

allotment of a plot, the party can do business worth crores of rupees within a few months. If that is so, is it permissible to the Board which is a statutory authority to permit the previous allottees to whom the plots were allotted for a temporary period to continue the possession without interruption even though they have not utilised the said plots for ship-breaking activities ? Would it be in the interest of the State ? What inference can be drawn would again be a matter of conjecture. However, this stand is sought to be justified in the affidavit-in-reply dated 19th October, 1992 in paragraphs 11 and 12 wherein it is pointed out that in year 1990-91 there was a credit squeeze and on account of the restrictions in the nature of heavy margins by the Reserve Bank of India for issuing Letters of Credit a large number of ship-breakers could not bring any ship in most part of the year. In our view, this would hardly be a ground for permitting the parties to remain in possession of the plots allotted to

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them. Further, in paragraph 12 it is stated that the Reserve Bank of India considerably relaxed conditions for granting Letters of Credit with the result that the 64 plot holders could bring 44 ships in the 10 months period between February, 1992 and October, 1992. The action is further sought to be justified on the ground that volume of ship-breaking industry at Alang is depending upon various market forces and, therefore, it is bound to fluctuate depending on the policies of the Government of India/Reserve Bank of India, availability of ships, etc. For this there cannot be any dispute but at the same time it would not mean that 64 chosen parties can be permitted to continue utilising the plots for ever when other persons are waiting in queue for getting plots. The plot is allotted to them for breaking one ship and that too within the maximum period of six months.

53. Mr. Oza learned advocate for some of the respondent pointed out that A. A. Upletawala is the proprietor of the petitioner-company in Special Civil Application No. 4290 of 1990. He pointed out that plot No. 24A is allotted to M/s. Abidan Company which is a partnership firm, wherein Mrs. Ashman A. Upletawala is a partner. Other partners are Abbasbhai Akbar Ali, minor Mumdad S. Sakarwala, Miss. Jenefa A. Upletawala, Mrs. Shahibha A. Upletawala. He also stated that these persons are family members of Abbasbhai Akbar Ali Upletawala. He wanted to point out such other examples to show the plots are allotted to the connected firms. But at this stage, in the present petition, in our view, this question cannot be investigated.

54. It is apparent that as the Gujarat Maritime Board has not framed rules or regulations for dealing with and allotting of plots and evicting the persons therefrom, this type of difficulty has arisen. But this would hardly be a ground for holding that the petitioners of Special Civil Application No. 781/91 are entitled to continue in possession of the plot allotted to them on 16th February, 1990 for ever or that the Gujarat Maritime Board should be restrained from evicting them.

55. Further, in our view, the contention raised by learned advocate, Mr. S. I. Nana-vati for the petitioners that the petitioners should be treated as if they are allotted plot on the same terms and conditions on which prior to 23rd October, 1989 the Gujarat Maritime Board was allotting the plot, requires to be rejected. It is the say of the Gujarat Maritime Board that, after 23rd October, 1989 the policy of allotment of the plots was required to be changed because prior to 23rd October, 1989 plots were allotted on the recommendation to the MSTC. The MSTC was required to follow the guidelines framed by the Central Government. After the liberalised Import Policy any party was entitled to import the ships on the basis of REP or Additional Licence.

Therefore, the so-called old policy adopted by the Gujarat Maritime Board would have no bearing after October, 1989.

56. Not only this, but to the petitioners the plot is allotted on 16th February 1990 admittedly with the following specific conditions :

"It is informed that plot No. 24 at Alang is hereby allotted to you with the following stated conditions :-

(1) No construction, temporary or permanent shall be allowed on the plot as the allotment of plot is temporary. However, pucca godown and the office on the plot may be given for the temporary use at the standard rent to be fixed by the GMB.

(2) The plot is leased for a period of 3 months for breaking of ship of size up to 2000 LDT from the breaking of the ship. For every additional 1000 T or part thereof, the lease period shall be increased by one month i.e. for ship of 5000 Ts., the lease shall be give for a period of six months, and accordingly for a longer period for a bigger size of ship.

(3) If the plot is occupied for the period more than the above prescribed time for breaking by not completing the breaking of the ship completely and vacating the plot and godown then the lease rent for the plot and godown shall be recovered at the penal rate of

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5 times for the first six months or part thereof, and for delay beyond six months the penal rate shall be 10 times. The temporary allotment of the ship shall be given for the next ship under the same scheme, if the L.C. or M.C.A. for purchase is for the second ship is produced by you before this ship is completely broken within stipulated time prescribed for the breaking in above paras.

(4) Cutting and breaking of the ship shall be entirely at the risk and cost of the owner of the ship, who may be breaking at the plot.

All plot charges as well as godown and building charges payable by you, shall be paid in advance. You shall also be liable to pay all other port charges such as (i) Port dues, (ii) Anchorage (iii) Pillotage, (iv) Beaching charges, (v) wharfage, (vi) plot charges and penal charges if leviabale. You have agreed to abide by above stated conditions and in light of your letter withdrawing Special Civil Application No. 736/90 from High Court of Gujarat, Ahmedabad temporary allotment of this plot No. 24L is made to you."

57. It should be noted that on 16th February, 1990 the Chief Executive Officer of the Gujarat Maritime Board had framed the guidelines which we have already discussed above. It is, therefore, apparent that the petitioners are allotted a plot on the similar terms and conditions which are mentioned in the guidelines. May be, for some reasons the Chief Executive Officer might not have insisted on further conditions to be complied with by the petitioners. But that would hardly be a ground for accepting the contention of the petitioners that the petitioners were allotted the plot on the basis of so-called old guidelines. As such, the Gujarat Maritime Board has not produced on record any other guidelines framed by it except the draft guidelines which we have referred to earlier which were not implemented at any point of time on the ground that the Government had not sanctioned the same. The petitioners are allotted the plot on the specific condition that it was let out to them for a period of three months for breaking of one ship of size up to 2000 LDT and that for every additional 1000 tonnage or part thereof, the lease period was to be extended by one month up to 5000 tonnage of the ship. The maximum of six months was fixed. Condition No. (3), ac stated above, specifically provides that, if the plot is occupied for more than six months, the petitioners were

required to pay penal rate of rent as prescribed in condition No. (3) i.e. from 5 times to 10 times depending upon the period. Further, if we accept the contention of the petitioners that the petitioners were allotted the plot prior to the framing of the guidelines dated 16th February, 1990 by the Chief Executive Officer, then, in our view, the petitioners would not be entitled to have the benefit of clause 11 which provides for allotment of a plot for the next ship-breaking (second ship-breaking).

58. In view of the aforesaid facts, the petitioners are not entitled to have any relief in this petition and it, therefore, requires to be rejected.

59. The learned advocates for the respondents to whom the plots were allotted further contended that the respondents are entitled to continue in possession of the said plots if they bring the next ship for breaking. For this purpose, they relied upon clause 11 of the guidelines framed by the Chief Executive Officer. In our view, this contention cannot be accepted because if allottees are permitted to continue in possession of the plots continuously for ship-breaking, then it would result in permanent lease in their favour. Admittedly, the plot is let out to party only for one ship-breaking. Clause 9 specifically provides that the plot shall be allotted for a period of three months for breaking of ship of size up to 2000 LDT from the date of beaching of the ship. For every 1000 tonnes or part thereof, the lease period shall be increased by one month i.e. for ships up to 5000 tonnes, the lease shall be given for a period of six months and accordingly for a longer period for a bigger size of ship. Clause 10 specifically provides that if the plot is occupied for the period more than the prescribed time for breaking by not completing the breaking of the ship completely and vacating the plot and godown then the lease rent for the plot and the godown shall be recovered at the penal rate

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of 5 times and for the first six months or part thereof and for delay beyond six months the penal rate shall be 10 times. The purpose of incorporating this condition would indicate that the plot is allotted for a temporary period for breaking one ship and that the allottee does not continue in possession of the said plot for a longer period. Clause 6 also specifically provides that the allottee would not be permitted to make any construction, temporary or permanent, on the plot allotted as the allotment of the plot is for a temporary period. In the contest of these clauses, if we read clause 11, it only means that the Gujarat Maritime Board will give permission for the second ship-breaking if the condition mentioned therein is satisfied. It only provides that temporary allotment for the plot shall be given for the next ship under the same scheme if the L.C. for the second ship is produced by the party before the first ship is completely broken. The phrase "next ship" would not mean that a party is entitled to remain in possession of the plot for breaking third or fourth ship. This clause only provides that for second ship-breaking the party to whom the plot is allotted can be permitted to continue in possession of the plot. In this view of the matter, there is no substance in the contention of the learned advocates for the respondents as well as learned advocate Mr. S. I. Nanavati appearing for the petitioners in Special Civil Application No. 736/90 that the parties to whom the plots are allotted are entitled to continue in possession of the plots till they continue their next (second, third, fourth and so on) ship-breaking activities and it requires to be rejected. It is unfortunate to note that the Gujarat Maritime Board has not framed any rules or regulations for this purpose even though various litigations took place in the year 1984 i.e. immediately after the development of Alang Ship-breaking Yard. In the earlier paragraphs we have noted that Special Civil Application No. 4080/84 and others were filed before this Court. Against the judgment and order passed in these Special Civil Applications, Letters Patent

Appeal No. 874/85 and others were filed before this Court wherein the Court has specifically observed that there was a great influence of the applicants who wanted to break ship at Alang and that the MSTC was required to make allotment of vessels for ship-breaking at Alang as per the guidelines. The Court had also observed that proper record was not maintained by the MSTC. Against that judgment and order, Special Leave Petition was filed before the Supreme Court. After considering the contentions the Supreme Court has directed the GMB to grant an individual plot to the parties whose names are mentioned in the said order. Thereafter, Special Civil Application No. 111/87 was filed before this Court and this Court has directed the GMB to frame appropriate guidelines for allotment of the plot. If there are rules or guidelines for allotment of plot or for eviction of a party after the lease period is over, then this type of contention could have easily been avoided.

60. From the aforesaid discussion, it can be held that the action of the Chief Executive Officer in framing guidelines for allotment of plot is without any authority of law and their implementation by him is illegal because- -

(a) under S. 38 only the Board can lay down the conditions under which any property belonging to the Board can be let out;

(b) the condition laid down by the Board are further required to be sanctioned by the State Government as provided under S. 41;

(c) after sanction from the State Government the Board is required to publish them in the Official Gazette;

II. the action of the Chief Executive Officer is arbitrary because- -

(a) at no point of time the concerned parties or public at large were informed that 16 more plots

are developed for ship-breaking and are available for allotment;

(b) the guidelines framed by him are not published, nor the concerned parties are informed about the same;

(c) 16 parties are preferred for allotment of plots in hot haste without any justifiable reasons. It was known to the Gujarat Maritime Board that there was a long

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waiting list for allotment of plot since years;

III. The Gujarat Maritime Board is dealing with and allotting valuable plots without any guidelines, rules or regulations for allotment and eviction because-

(a) Alang Ship-breaking Yard is developed since 1983; various litigations took place before this Court, yet rules or regulations are not framed by the Gujarat Maritime Board for allotment and eviction of the party after lease period;

(b) even though the plot is allotted for a limited period of six months, no allottee is evicted from the plot since years for the reasons best known to the Gujarat Maritime Board.

61. Lastly, it should be noted that this Court has granted interim relief by various orders as stated above. By virtue of the interim orders possession of the plots was handed over to the parties in whose favour the Chief Executive Officer had passed the orders of allotment. This type of interim relief was granted for the detailed reasons stated in the said orders. On some occasions the parties were permitted to remain in possession for carrying out their second ship-breaking activities. However, they were directed to give an undertaking before the Court to hand over back the possession of the plot. In our view, as per the terms and conditions as discussed

above, the allottee is not entitled to remain in possession of the plot after breaking one ship or second ship as provided in clause 11 of the said guidelines. Therefore, it can be said that the allotments orders made by the Chief Executive Officer in February or March, 1990 are already implemented and nothing more is required to be done.

62. In the result, these petitions are allowed to the extent that the order passed by the Chief Executive Officer of the Gujarat Maritime Board in allotting 16 plots at Alang Ship-breaking Yard in favour of the parties whose names are mentioned in Annexure 'V' to the affidavit-in-reply dated 20th March, 1990 i.e. including the plots allotted to M/s. Baldev Ship Breakers, Saurashtra Industries and Softtouch Cosmetic (Marketing) is quashed and set aside.

63. Prayer of the petitioners to allot them the plot for ship-breaking is rejected. It is for the Gujarat Maritime Board to pass appropriate order of allotment after framing proper rules and regulations.

64. The prayer to treat the petitioners of Special Civil Application No. 736/90 differently than the allottees of 16 newly developed plots is rejected. There cannot be any discrimination between the allottees of 64 plots who are allotted plots prior to 1990 or thereafter and the allottees of the 16 plots which are developed after 1990. Hence, Special Civil Application No. 736/90 is rejected. Rule discharged with no order as to costs.

65. Special Civil Applications Nos. 2859/90, 2909/90, 2983/90, 2984/90, 2985/90, 2986/90, 3057/90, 3063/90, 3131/90, 3132/90, 5545/90, 5550/90, 8879/91, 9072/91, 1597/92, 1598/92 are partly allowed. Allotment of plots in favour of 16 parties, whose names are mentioned in Annexure 'V' to the affidavit-in-reply dated 20th March, 1990, at Alang Ship-breaking Yard is quashed and set aside. Prayer of the petitioners



to allot them the plots is rejected. Rule made absolute to the aforesaid extent with no order as to costs.

14th October, 1992 i.e. from the date when we started hearing the matters.

Order Accordingly .

SPECIAL CIVIL APPLICATIONS

Nos. 2290/90 and 5886/90

66. Prayer of the petitioners to allot to them plot is (sic). Rule discharged with no order as to costs.

67. The Gujarat Maritime Board is directed to recover the possession of the said plots from the concerned parties on 31st December 1992. As regards possession of plots given to the parties on the basis of the interim direction given by this Court, the Gujarat Maritime Board is directed to recover the possession from them. The parties have filed an undertaking before this Court to hand over the possession of the plot as soon as breaking of one ship is over. Liberty to the concerned parties for obtaining further appropriate orders regarding extension of time for handing over possession of the plots in case of necessity.

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68. At such stage, the learned Additional Advocate-General fairly states that, with regard to the future allotment of the plots available for allotment, proper guidelines would be framed by the Gujarat Maritime Board on or before 13th November, 1992. He further states that the said guidelines would be placed before this Court for perusal.

69. With regard to the Civil Applications which are filed by different parties, we make it clear that appropriate orders would be passed on 13th November, 1992.

70. It is clarified that no parties to these petitions would be permitted to raise any contention based upon the so-called equities created by them after