

(2014) 04 GUJ CK 0050
In the Gujarat High Court
Case No : Writ Petition (Pil) No. 96 of 2013

Himanshu V. Patel

APPELLANT

Vs

State of Gujarat and 2 Ors.

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 23

Citation : (2014) 2 GLH 312

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Yatin Oza, Sr. Counsel, Mr. Jit P. Patel, Advocate for Applicant(s) No. 1, Advocate for the Appellant; P.K. Jani, Government Pleader and Ms. Vacha Desai, AGP for Opponent(s) No. 1, Mr. Mihir Thakore, Sr. Counsel and Mr. Sandeep Singhi for Singhi and Co, Advocate for Opponent(s) No. 3, Advocate for the Respondent

Judgement

J.B. Pardiwala, J.—By this writ-application in the nature of a public interest litigation, the petitioner, a practicing Advocate in the District Court at Gandhinagar, has brought to our notice that the State Government has issued a Government Resolution dated 1st January, 2009, providing for a loan to be paid to the respondent No. 3, equal to the gross value of the Value Added Tax (for short "VAT") and Central Sales Tax payable to the State Government, which tantamountly amounts to the refund of VAT. The petitioner has brought to our notice that such Resolution has been passed by the State Government only with a view to favour the respondent No. 3, Tata Motors Limited.

2. The case made out by the petitioner in this petition may be summarized as under:-

2.1. The petitioner is a local resident of village Adalaj, situated at the outskirts of the city of Ahmedabad. The petitioner is a practicing Advocate in the District Court at Gandhinagar and is also a Member of the Syndicate of the Gujarat

University.

2.2. It is his case that the State Government has, in violation and contravention of its policy decisions, been providing fiscal incentives to the Tata Motors Limited, in the form of a loan to the Tata Motors Limited at 0.1% simple interest per annum for the amounts equal to the gross Value Added Tax and Central Sales Tax payable to the State Government, on the sale of the Nano Car and it's parts and components from the date of commencement of the sale of the Nano car.

2.3. According to the petitioner, in the year 2008, the newly introduced project of the Tata Motors Limited, viz. "Nano project" had to be shifted from Singur, West Bengal to the State of Gujarat. It is his case that only with a view to show the development by way of investment of mega projects by the multinational companies in the various sectors, the Government decided to give a loan against the same amount which would be paid by the Tata Motors Limited by way of VAT payable to the State Government on sales of Nano car manufactured at the plant in the State of Gujarat.

2.4. According to the petitioner, such a policy decision on the part of the State Government could be termed as per se illegal and against the public interest, as it amounts to refund of tax.

2.5. It is also the case of the petitioner that the State Government entered into an agreement with the company and on the basis thereof, a Government Resolution dated 1st January, 2009 was issued. It is also his case that the State Government has already issued a cheque to the tune of Rs. 1,67,20,00,000.00 (Rupees one hundred sixty seven crore and twenty lac only) in favour of the respondent No. 3, Tata Motors Limited. Such disbursement was made in March, 2013.

2.6. It is also the case of the petitioner that thereafter, a further disbursement by way of loan to the tune of Rs. 156 crore against the VAT paid by the Tata Motors Limited has been made. According to the petitioner, he has learnt through the reliable sources that the Government is on the verge of disbursing Rs. 500 crore once again by way of a loan in favour of the Tata Motors Limited.

2.7. According to the petitioner, in the Executive Meeting convened on 30th March, 2013, while discussing such issue of loan against VAT, the Chief Secretary of the State Government Mr. D. Rajagopalan had strongly objected to the same, as the same is in violation and contravention of the Government Resolutions and Policies framed from time to time. It is also the case of the petitioner that for the purpose of making the most of such arrangement with the State Government, the respondent No. 3, Tata Motors Limited has been misusing the same by showing the total sales of the Nano cars, to have been made to a wholly owned subsidiary company of the respondent No. 3 in the State of Gujarat and after such sale being shown to the wholly owned subsidiary company, the cars are indirectly sold in the different parts of the country by such wholly owned subsidiary company. It is alleged that in such a manner, a larger amount of loan

is being availed of from the State Government by showing fictitious sale in the State, which in fact, could not be said to be the true figures of the sale of the Nano cars all over the country.

3. In such circumstances referred to above, the petitioner has prayed for the following reliefs:-

(A). Be pleased to admit and allow the present petition.

(B). Be pleased to issue a writ of Mandamus or a writ in nature of Mandamus and/or any other appropriate writ/s, order/s, and/or direction/s and thereby quashing and setting aside Government Resolution dated 01/01/2009 at ANNEXURE-C and further be pleased to quash and set aside the agreement made between State Government and the respondent no. 3 pursuant to the impugned government resolution and further be pleased to declare the sanctioned and disbursed loan bad and void in nature and also direct the State government authority to recover the same from the respondent no. 3.

(C). Be pleased to issue a writ of Mandamus or a writ in nature of Mandamus and/or any other appropriate writ/s, order/s, and/or direction/s and thereby declare no exemption, concession or any kind of benefit or relief on and against the collection of VAT and further be pleased to declare the sales of NANO car as a Depot Transfer instead of sale.

(D). Pending hearing and final disposal of this petition, be pleased to stay and suspend implementation, execution and operation of the sanctioned and disbursed loan amount granted by State government towards respondent no. 3 and further be pleased to stay and suspend implementation, execution and operation of future disbursements in favour of the respondent no. 3 in light of Government Resolution dated 01/01/2009 as well as agreement dated 31/03/2012.

(E). Such other and further relief/s as may be deem just and proper in the facts and circumstances of the case may please be granted in favour of the petitioner in the interest of justice.

4. Stance of the respondent No. 1, State of Gujarat:

An affidavit-in-reply has been filed by the Deputy Secretary, Industries and Mines Department, inter alia stating as under:-

That the loan of Rs. 273.50 crore is disbursed to the company as per the G.R. dated 01/01/2009.

That the white paper was published by the Central Government. Government of Gujarat had issued resolution dated 29/04/2000 and decided that the State Government will not offer any incentive to attract industries. However, other States have continued the VAT incentives for the development of Industries in their States. The details are as under:-

1. Orissa State-Industrial Policy 2007
2. Bihar State-Industrial Policy 2006
3. Maharashtra State-Industrial Policy 2006
4. Haryana State Policy 2007
5. Tamilnadu State Policy 2007

It is pertinent to note that these State governments and other State governments have continued the incentives even after the white paper published by the Central Government. After the earthquake of 26th January, 2001, the Gujarat State Government has also granted the VAT Incentive for rehabilitation of Kutchh District. The State Government has truly implemented the decision of the GOI in its true spirit, in spite of the facts that other States were providing VAT incentives for the development of Industries. In the year 2008, the State Government has initiated to formulate the New Industrial Policy to attract investment in the State. It was recommended under the proposed new industrial policy to offer need based assistance to certain sectors under Mega and Innovative projects. Under the Mega Project scheme, the department has proposed to give assistance to the projects generating sizable employment and new technology adopted for the first time. To qualify for a Mega project, the minimum investment is Rs. 1000 crore and employment generation to 2000 persons is proposed by the department. The Quantum of incentive and type of incentives are also not specifically proposed. It was proposed to give need based assistance to Mega project which have a spin off effect on the employment and industrial development in the State.

The sectors of Mega projects proposed are as under:-

1. Auto and auto components
2. Ship building and ship repair
3. Semi conductor fabrication
4. Industries having a Nano technology application
5. Maintenance, repair and overhaul (MRO) hub for air craft

The proposed evaluation criteria of Mega projects are as under:-

1. It should be a manufacturing unit.
2. The project should envisage the use of high-end State-of-the art/cutting edge technology.
3. It should meet the criteria of capital investment of Rs. 1000 crore and employment generation of 2000 persons.
4. It should have a proven multiplier effect.

5. It should add to skill formation and capacity building.

It is a fact that Gujarat has a strong engineering base and number of engineering units, mainly in Micro Small and Medium Enterprise (MSME) sector are supplier of auto components as Original Equipment Manufacturer (OEM) to auto manufacturers. Though large number of manufacturing units were in the State since long, State lacked major automobile/vehicle manufacturing company. In this scenario the State Government found a good opportunity to invite Tata Nano Project in the State, as TATA group had decided to close down NANO project from Singur and announced to shift the same to other State having amicable environment. The State government was of the opinion that if this project comes to Gujarat, it would facilitate and give opportunity to second and third tire vendors to supply their products and services to the Nano project. The project has good potential for development of new engineering industries and service sectors and will also generate employment in the Auto sector. Soon after the signing an Agreement with TATA group for Nano project, the project was shifted at Sanand, Dist. Ahmedabad from Singur (West Bengal). After signing Agreement with TATA Motors Ltd., number of petitions including PIL were filed in the High Court in order to delay the said project, on various ground like allotment of land, compensation of land, concessions given to the projects etc. The Hon''ble Court has ordered as under:-

(1). SCA No. 14257 of 2008 and 14639 of 2008, para 25:-

.....We impose cost of Rs. 10,000/- on each of these writ petitions, to be paid to the Gujarat High Court Mediation Centre within one month from today. Special Civil Applications stand dismissed.

The Hon''ble Supreme Court also dismissed Special Leave Appeal (civil) 35999 CC 19879/2009 from the judgment and order dated 29/04/2009 in SCA No. 14639/2008 on dated 14/12/2009.

(2). (PIL) SCA No. 12570 of 2008:-

We are, therefore, of the view that petitioner has not succeeded in establishing that the decision taken by the Government in allotting the land to 2nd respondent has in any way violates any statutory provision or statutory rules or regulations. General allegation that if the lands are allotted, it will adversely affect the agriculture, power supply, etc. cannot be countenanced by a writ court. Petitioner has not succeeded in showing that the transaction entered into between the State Government and 2nd respondent is a malafide exercise of power. Under the circumstances, we find no reason to entertain this Public Interest Litigation, which is not in public interest and intended only for media attention and publicity. Consequently, Special Civil Application is dismissed. However, in the facts of the case, we are not awarding any costs.

(3). SCA No. 15993 of 2008:-

6. Even so, having regard to the fact that the petitioners have been residing on

the land in question for quite some time and that the petitioners' children are studying in the primary school at Northkotpura which primary school is being run by the State Government and the Collector, Ahmedabad, we are inclined to direct the State authorities to continue to run the primary school at Northkotpura till the end of the current academic year and to permit the petitioners to occupy their residential accommodation on the land in question till the end of the current academic year. However, these benefits shall be extended to only those petitioners who file an undertaking before this Court by 30/11/2009 stating that they will handover vacant and peaceful possession of the land in question at the end of the academic year 2009-10, that is, 30th April, 2010 and that they will not induct any other persons in the temporary accommodation being occupied by them.

In case of only those petitioners who file such undertakings before this Court, in respect of the accommodation in the occupation of those petitioners, the respondents shall restore electricity supply within one week from the date of filing the undertaking subject to the concerned petitioners paying the necessary amounts for restoration of electricity supply and consumption of electricity and to permit them to occupy the present accommodation.

7. The petition as well as the Civil Applications are disposed of in terms of the aforesaid directions.

(4). SCA NO. 10380 of 2012:-

In the above circumstances, learned Civil Judge (S.D.), Ahmedabad (Rural), is directed to decide Exh. 5 application in Special Civil Suit No. 794 of 2010 as expeditiously as possible, preferably on or before 30/10/2012 in accordance with law.

With the aforesaid direction, this petition is disposed of. Notice is discharged with no order as to costs. It is made clear that this Court has not entered into merits of the case. Direct Service is permitted.

(5). Appeal From Order No. 492 of 2012:-

ORAL ORDER

Learned Advocate Mr. A.M. Hava makes statement at the bar that he has instruction to appear on behalf of the respondent no. 8 and he will file his appearance within two days from today. S.O. to 29/07/2013.

Mr. Justice M.B. Shah Commission is also inquiring the similar type of allegation put before them in this regard. The final report is still awaited.

After Nano Project coming to Gujarat, leading national and international automobile companies have also started showing interest to set up their project in the State. The names of such companies are as under:-

1. Ford Motors India Pvt. Ltd. at Sanand

2. Maruti Suzuki India Ltd. at Mandal

3. Hero Motocorp Ltd. at Halol

Thus, the intention of the Government, to give thrust to the MSMEs engineering industries, as envisaged while granting incentives, to Tata Motors Ltd. is fulfilled. The State would be automobile manufacturing hub in the nation, when all the above mentioned projects will be commissioned in future (i.e. within 2 to 3 years). Though Tata Nano Project, was a pioneer Mega Project, the State Government offered some less concessions, compared to the concessions already agreed to them at Singur. It is also pertinent to note that projects coming after Nano will get even less incentives, compared to TATA Nano Project. These companies were offered remission of VAT+ CST to the amount equal to the 100% of fixed capital investment made by the company or 15 years whichever is earlier. Tata Nano Project being the first large automobile project in the State, more incentives were offered compared to other Automobile projects. Automobile industries are non polluting industry.

After the publication of white paper by GOI in 2000, the Government of India has published a report on Automotive Mission 2006-2016 for the development of Indian Automotive Industries. The Government of India, Ministry of Heavy Industries and public enterprise had prepared the report on automotive mission 2006-2016 for the development of Indian Automotive Industries, in which various interventions from States were recommended by the Ministry in its report. Under the said intervention, the Ministry has suggested that the manufactures of automobile company shall be supported by Tax Holiday, one-stop-clearance, Tax deduction of 100% of export profit etc. The copy of the chapter 5 (Page 32) of report in which various interventions recommended, is annexed herewith (Annexure-R1). Thus, Government of India has also favored incentives for the development of automobile industries in the States. As mentioned earlier, the exercise of finalization of New Industrial policy was over by December 2008. After taking the approval from the State cabinet, Government has formerly announced New Industrial Policy in January, 2009.

After completing all the required procedures, as per the Rules of business, department issued a Government Resolution No. TML/10/2008/54/I dated 01/01/2009, to sanction loan to M/s. Tata Motors Ltd. for Nano Car Project. Therefore, there is no violation of any rules or policy.

As per the constitution of India Industries is a State subject and therefore, the State government is empowered to provide VAT incentives or any other kind of support for the industrial development in the State.

It was the policy of State Government since 1980 to grant deferment of amount to the New Industrial unit to the extent of the sales Tax collected on their sales. The sales tax collected by the company would be retained by the company and this amount is deferred for 15 to 127 years depending upon the amount invested/ area/schemes. This deferment in sales tax were granted without interest. After

the completion of deferment period, the unit shall have to repay the entire amount in yearly installment as per the provision in the relevant scheme. The longest period of deferment granted by the State Government in earlier scheme 1995-2000 scheme is for 17 years to premier units having an investment of more than Rs. 1000 Crore. These schemes were in operation before the introduction VAT, now the eligible units are getting remission of VAT and deferment/loan on the amount of VAT collected on sales. The State Government has provided the loan to TATA Motors Ltd. on the basis of Gross Value Added Tax (VAT) plus central sales tax payable by the company to State Government. Thus, the scheme sanctioned to the Tata Motors Ltd. is almost similar to the earlier scheme of deferment introduced since 1980.

There is Industrial Development in the State. The New Industrial Projects are continuously being set up in the State. Due to proactive administration and support provided by the State Government, 424 large scale projects having a cost of Plant and Machinery above Rs. 10 Crore is set up in the State and these projects have made the investment of Rs. 41257 Crore since January, 2009 i.e. after the coming of Nano project in Sanand. At the same time, the Government has also promoted the Micro, Small and Medium Enterprise (MSME) Industrial units. The year wise data are given as under:-

The Tata Nano Project at Sanand, Dist. Ahmedabad started production in April, 2010. Thereafter, MSME units registered only in Ahmedabad District are as under:-

This shows sharp rise during two years.

After the year 2010, the State government had discontinued to give VAT incentives to the large Industrial Unit (Having investment of Rs. 10 Crore or more in Plant and Machinery) but continued to support micro small and medium industries by way of 5% interest subsidy for five years with a ceiling of Rs. 25 Lac per annum. Due to support of State Government, the New MSMEs units are established in the State and have taken the advantages of scheme/the details are as under:-

Thus, the State Government has taken due care of Micro, Small and Medium Industries of the State. Apart from the development of MSMEs sectors in the State, the large and medium industries have shown interest in and around the Nano Project.

Before the establishment of Nano Project, there was a GIDC estate having an area of only 2 hectares since 1983 having 23 units and providing employment to approximate 70 persons. After the establishment of Nano Car Project and looking to the demand of the industries, the GIDC has planned another estate of 1997.37 hectares and allotted 488.95 hectares land to 423 industrial units. This will generate the employment for 58000 persons and investment of approximate Rs. 7000 Crore is in pipe line (Annexure-R2).

It is also pertinent to note that there is a spurt in economic activities in and around Sanand. At present 42 nationalized and private banks are working in Sanand block. Before the establishment of Nano Project, only 11 banks were functioning. (Annexure-R3). Thus, Nano Project has huge positive and multiplier impact on the economic/industrial/development activities in the Sanand area.

The Government did not overrule the decision of Central Government (white paper). In Para 2.15 of the white paper, related to State incentives says that the existing incentive schemes may be continued in the manner deemed appropriate by the States, after ensuring that VAT chain is not affected. In TATA Nano Project case, the company has already started depositing the VAT since April-2010. Thus, VAT chain is not broken. Against the VAT paid by the company, till now, the State Government has not released proportionate loan as per G.R. dated 01/01/2009.

The loan is to be disbursed to the company as per the Government Resolution dated 01/01/2009 to the extent of Gross Value Added Tax paid by the Company. As per the record of commercial Tax Commissioner Office, the company has paid Rs. 382.00 Crore VAT up to 31/03/2013. Industries Commissionerate has paid Rs. 273.45 Crore of loans paid to the company as per para 1 of the G.R. dated 01/01/2009.

The meeting of Executive Committee was held on 30/03/2013, is as per para 8 of the G.R. dated 01/01/2009. Industries Commissioner is a Chairman of the said committee and chief secretary is not a member of the committee. The loan is paid to the company as per the para 1 of the Government Resolution dated 01/01/2009. Therefore, there is no violation of the contravention of the policy. The company has sold car to its distribution company in Gujarat and company has paid the amount of Rs. 382.00 crore VAT to the State Government.

As stated earlier, the loan given to the company for amount equal to the gross value added tax paid (VAT) and Central Sales Tax (CST) payable to Government of Gujarat is as per para 1 of the resolution. The scheme of loan is based on VAT plus CST payable by the company on Sales of Nano Car. If the Tata Motors sells car to distribution company or any other dealers in the State, then Tata Motors has to pay VAT on sells of such cars. Subsequently, these cars are sold outside the Gujarat by the marketing company or dealers, the VAT paid is refunded to them is as per the VAT law. Not only TATA, this refund provision is applicable to all the dealers across the State. Sales of goods through distribution company, is a general practice adopted all over the world and in the nation.

That because of such policies of the State Government the industrialization in the State of Gujarat has achieved high rate of growth. That simultaneously the State has given equal importance to the agricultural growth. The State of Gujarat ranks amongst top States even in agricultural sector.

That along with the establishment of a major industry, other medium and small scale industries also get a boost and fillip. That before 10 years there were

hardly and significant industries in and around Sanand where Tata's Nano Plant is located. That with the entry of Nano Project the entire area has become an industrial hub. This has resulted in to providing employment to the youths of the area. It has resulted into providing rich dividends to the farmers who own the lands in surrounding areas.

That with the entry of Tata's Nano Motor Car the industrial activities in the area has got the boost. In addition there to the infrastructure has developed. There is corresponding increase in service industries like hotel industries and other industries. Therefore, the incentive granted has the effect of giving return in manifold ways. Therefore, the allegations and averments made by the petitioner are without any basis.

That the entire area in and around Sanand Taluka has got completely changed.

That the State has come out with this initiative with the object of not giving advantage to a particular group but the same is with the object of providing overall growth to industrial activities. That it is a fact acknowledged by all the economists that no country in the world or no society has sustained progress without developing industries and without becoming leader in industrial segment.

That the development of the industry brings capital investment which results into generation of employment and results into development of incidental industrial activities in small scale and medium scale industries. It also results into further development of service industries like banking, hospitality and such other industries. This development overall contributes to the growth of society, State and nation.

It is for these reasons that the State of Gujarat is a leading contributor to the Central Government in terms of direct and indirect tax of nation. Considering all these aspects it is respectfully submitted that the petition is devoid of any substance and merits.

5. Stance of the respondent No. 3, Tata Motors Limited:

An affidavit in reply has been filed by one Hemant Vasudev Kulkarni, Plant Head, Ahmedabad, on behalf of the respondent No. 3, Tata Motors Limited. The stance of the respondent No. 3 may be summarized thus:

? The petitioner has no locus standi to file the present petition under Article 226 of the Constitution of India behind the veil of public interest litigation. No real and genuine public interest is espoused in the petition and in such circumstances, the petition is required to be dismissed with exemplary costs.

? The petition suffers from gross delay and laches. By way of the present petition, the petitioner seeks to challenge the resolution dated 01/01/2009 issued by the respondent no. 1. Passing of the aforesaid resolution is within the personal knowledge of the petitioner, as claimed by him in the petition. Further, based on the resolution passed by the respondent no. 1, the respondent no. 3

has invested huge sum of money for its project in the State of Gujarat and has started its commercial activities with effect from April, 2010, a fact which is within the public domain. The present petition is filed in April, 2013 i.e. after more than 4 years from the dates of passing of the aforesaid resolution, and that too after the commencement of the commercial business activities by the respondent no. 3 in the State of Gujarat. Since no explanation is given by the petitioner in respect of such gross delay and laches, the petition is required to be dismissed.

? The respondent no. 1 has already announced its Industrial Policy-2009. The said policy is within public domain. In the said policy it is categorically stated that for financial benefits to the mega projects, like that of the respondent no. 3, the respondent no. 1 would decide the same on the merits of each case. Prior to 2009, when the Tata Nano Project of the respondent no. 3 was under consideration during the 2009 policy framing stage, the respondent no. 1 adopted the same process of deciding on the financial benefits to be extended to mega projects in the State of Gujarat by taking specific approvals of the cabinet on a case to case basis and enshrining the principles of industrial promotion assistance through appropriate Government Resolution, as is evident from the resolution dated 01/01/2009 annexed to the petition. Further, several States in India have also announced their policies from time to time, either offering tailor made benefits to suit to a particular investment requirement on case to case basis and/or financial support/industrial promotion assistance and/or financial support equivalent to the Value Added Tax (VAT) paid/to be paid by an industrial unit and/or equivalent to certain percentage of VAT. The VAT refund or loan equivalent to VAT actually paid is only a mechanism to ensure that the benefit extended to is in line with the actual production at the plant. Such policies announced by several States are within public domain. The petitioner has claimed himself to be a practicing advocate and a syndicate member of the Gujarat University. In such circumstances, it was incumbent and mandatory on the part of the petitioner in a public interest litigation to conduct due and proper inquiry and place before the Court all the relevant facts, documents and information. Had this disclosure been made, there would have been no cause of action available to the petitioner.

? That the petitioner, by alleging that the respondent no. 1 is disbursing the amounts by way of loan against the payment of VAT, is seeking to give an impression as if the respondent no. 1 is giving any deferment of VAT payment or any VAT incentives or concessions to the respondent no. 3. The said averments/allegations are wrong and incorrect. In fact, the respondent no. 1 by its resolution dated 01/01/2009 has agreed to provide industrial promotion assistance in the form of repayable loan which would be equivalent to the gross VAT paid on the sale of Nano Cars and its parts and components from the date of the commencement of the sale of Nano Cars by the respondent no. 3. The terms and conditions for providing such industrial promotion assistance to the respondent no. 3 is already mentioned in the resolution dated 01/01/2009 and

such industrial promotion assistance in the form of loan is neither new nor uncommon. VAT is only a measure applied by the State to ensure that the financial assistance disbursed is in line with the production achieved and not more. That many States, under their respective policies, have announced industrial promotion assistance including the quantum which is equivalent to VAT paid/to be paid. Merely that the State of Gujarat-respondent no. 1 has disbursed loan to the respondent no. 3, as part of the objectives sought to be achieved by the respondent no. 1 under its policy, would not make the huge investment and development of the project in the State of Gujarat made/done by the respondent no. 3, "so called", as alleged or as sought to be alleged or in the manner alleged or at all.

? The allegation that the respondent no. 3 is misusing or abusing any of the conditions issued by the respondent no. 1 vide its resolution dated 01/01/2009 is baseless. The allegation that selling of the Nano Cars by the respondent no. 3 to its wholly owned subsidiary company is done with a view to misuse or abuse any of the conditions of the respondent no. 1 is false. In respect of all the Nano Cars manufactured by the respondent no. 3 at its Sanand plant in the State of Gujarat and sold by it to its wholly owned subsidiary, the respondent no. 3 makes proper and adequate payment of VAT to the State of Gujarat. The wholly owned subsidiary is not established, as sought to be made out by the petitioner, to fetch any larger amount of loan or by showcasing any fictitious sales figure as alleged or in the manner alleged or at all. That globally several automobile manufacturers have set up such centralized distribution models which have enabled them to achieve significant improvements in service levels as well as reduction in supply chain costs in the long run. With geographically spread out manufacturing base, deep and wide network reach and with ever expanding product portfolio of diverse products, a need was felt much earlier by the respondent no. 3 to have an exclusive distribution and logistics entity to meet domestic and international customers expectations by providing high service levels with cost effective solutions. Following the global trend, TML Distribution Company Limited was established, much earlier, in March, 2008 as a wholly owned subsidiary of the respondent no. 3 to look after the outbound logistics needs of the respondent no. 3 at various locations around the country and for various kinds of vehicles including commercial vehicles and provide sales and finance support to its dealers and sales team and it was but natural for respondent no. 3 to entrust the distribution of vehicles manufactured at Sanand as well to TML Distribution Company Limited. That the wholly owned subsidiary of the respondent no. 3 was established to accomplish the aforesaid objectives. The Gujarat VAT Act prescribes the circumstances under which a sale can be made on which VAT can be charged. All sales made and VAT charged for the cars produced at Sanand have been in clear compliance with the provisions of the Gujarat VAT Act and tax has been deposited as per the provisions of the said Act. To term such sales as fictitious or as a misuse or abuse is wholly incorrect. Sale of cars made within the State of Gujarat and then dispatched as per the

provisions of the Gujarat VAT Act and/or Central Sales Tax Act is well recognized and in line with the widely accepted trade practices in this regard. The respondent no. 3 has in fact paid VAT and CST amounting to over Rs. 380 crore to the State Government on such sales of cars to the TML Distribution Company Limited. The respondent no. 1 is aware about the aforesaid wholly owned subsidiary of the respondent no. 3 including the sale of the Nano Cars from the Sanand plant to the wholly owned subsidiary of the respondent no. 3.

? That as on 31/12/2012, the respondent no. 3 has already invested a sum of about Rs. 3,891 crore, for Phase-I of the Tata Nano Car Project at the aforesaid plant at Sanand. The investment amount could increase further as the investment period available to the respondent no. 3, for making the Phase I investment, is yet to get over.

? The respondent no. 3 has undertaken various Corporate Social Responsibility initiatives in the areas of health, education, employability and environment. The vision is to improve the quality of the life of people living in and around the aforesaid plant. In last three years the work has expanded to about 32 villages and certain works have also been taken up at the Taluka level of Sanand. The programs implemented include low cost sanitation, safe drinking water, eye checkup camps, skill building training for women, dairy development, solid waste management, water harvesting, alternative source of cooking, comprehensive health care, tree plantation, malnutrition prevention, primary teachers' training, alternative school program for drop-out students, health awareness on malaria prevention/HIV-AIDS amongst others.

6. Submissions on behalf of the petitioner:

Mr. Yatin Oza, the learned Senior Advocate appearing for the petitioner vehemently submitted that the Government Resolution providing for a loan equal to the gross value of VAT and Central Sales Tax payable to the State Government is illegal as it tantamounts to refund of VAT. In support of such principal argument of Mr. Oza, strong reliance has been placed on the decision of the Supreme Court in the case of Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another, .

Mr. Oza submitted that the incentive policy of the State Government is being thoroughly misused by the respondent No. 3 at the cost of public exchequer, by first showing the sales on paper to its wholly owned subsidiary company in the State of Gujarat and thereafter, the cars are indirectly sold all over the country by such wholly owned subsidiary company. According to Mr. Oza, such modus operandi is with a view to claim larger amount of loan from the State Government by showing fictitious sales figure within the State of Gujarat, which in fact, should be the sales figure of the car sold at different places all over the country. Mr. Oza submitted that the special favour shown to the respondent No. 3 by the State Government smacks of lack of bonafide and by providing such incentive, the State Government is not gaining anything out of the same.

Mr. Oza prays that there being merit in this petition, the same deserves consideration and the reliefs prayed for in this petition may be granted.

7. Submissions on behalf of the respondent No. 1, State of Gujarat:

Mr. P.K. Jani, the learned Government Pleader vehemently opposes this petition and submits that the petition is lacking in bonafide and deserves to be rejected solely on such ground. Mr. Jani submitted that in the past also, many petitions in public interest were filed to stall the project of the respondent No. 3, and all those petitions were rejected with costs. Mr. Jani submitted that the details of the petitions filed in the past have been provided in the affidavit in reply filed on behalf of the State.

Mr. Jani submitted that the Government Resolution, which is the subject matter of challenge, in no manner could be termed as unconstitutional or illegal, warranting any interference by this Court in exercise of the public interest jurisdiction. Mr. Jani submitted that after the establishment of the project by the respondent No. 3, Tata Motors Limited, there has been a phenomenal progress so far as the revenue and employment is concerned. Mr. Jani submitted that because of such policies of the State Government, the industrialization in the State has achieved high rate of growth. Mr. Jani also submitted that with the Nano project, the entire area has become an industrial hub. The project has resulted in providing employment to the youths of the area.

Mr. Jani submitted that all the allegations levelled by the petitioner against the Government are absolutely frivolous and vexatious. According to Mr. Jani, the State Government took the initiative with the object of not showing any undue favour or showering any advantage to a particular industrial group, but the same is with the object of providing overall growth to the industrial activities.

Mr. Jani prays that there being no merit in this petition, the same deserves to be rejected with costs.

8. Submissions on behalf of the respondent No. 3, Tata Motors Limited:

Mr. Mihir Thakore, the learned Senior Advocate has vehemently opposed this petition submitting that the petition deserves to be rejected solely on the ground of delay and laches. Mr. Thakore submitted that the petitioner seeks to challenge the Resolution dated 1st January, 2009, issued by the State Government. He submitted that based on the Resolution passed by the State Government, his client has invested a huge sum of money for its prestigious project of manufacturing of Nano car in the State of Gujarat. Mr. Thakore submitted that the commercial activities have started from April, 2010, which is known to one and all. The petition has been filed almost after a period of four years from the date of passing of the impugned Resolution and that too, after the commencement of the business activities.

Mr. Thakore submitted that the State Government has announced it's Industrial Policy, 2009, and such policy is within the public domain. The Government

Resolution, which has been challenged, is a part of the Industrial Policy, 2009.

Mr. Thakore submitted that the principal contention canvassed on behalf of the petitioner that the Government is disbursing the loan amount in favour of his client against the payment of VAT, which amounts to refund of tax, is devoid of any merit. According to Mr. Thakore, the Government, vide its Resolution dated 1st January, 2009, has agreed to provide industrial promotional assistance in the form of a repayable loan, which would be equivalent to the gross VAT paid on the sale of the Nano cars and its parts and components from the date of the commencement of the sale of Nano cars by his client. Mr. Thakore submitted that VAT is only a measure applied by the State to ensure that the financial assistance disbursed is in line with the production achieved and nothing more than that. Mr. Thakore also refuted the allegations levelled by the petitioner that his client has floated its own subsidiary in Gujarat and is effecting sales to its subsidiary, which is impermissible under the Motor Vehicles Act, 1988, and also amounts to paying VAT in the State of Gujarat, resulting in higher entitlement of loan. Mr. Thakore prays that there being no merit in this petition, the same be rejected with costs.

9. Having heard the learned counsel appearing for the parties, and having gone through the materials on record, the only question that falls for our consideration in this petition is, whether the Government Resolution dated 1st January, 2009, providing for a loan equal to the gross value of VAT and Central Sales Tax payable to the State Government, amounts to refund of tax, which could be termed as contrary to law or against the public interest.

10. Ordinarily, the court would allow a litigation in public interest if it is found:

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busy body or a meddlesome interloper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the

judiciary and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

(x) That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

11. In the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, , the Supreme Court observed as follows:-

Today public spirited litigants rush to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. They must be above suspicion. Public Interest Litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is therefore necessary to lay down, clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of Public Interest Litigation, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves Administrative and executive functions. This does not mean that traditional litigation should stay out. They have to be tackled by other effective methods, like decentralizing the judicial system and entrusting majority of traditional litigation to Village Courts and Lok Adalats without the usual populist stance and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases....

It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially the Supreme court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. It is necessary to have some self-imposed restraint on Public Interest Litigants.

12. In a recent pronouncement of the Hon''ble Supreme Court in the case of State of Uttaranchal Vs. Balwant Singh Chauhan and Others, , the Supreme Court

laid down the following guidelines relating to Public Interest Litigation:-

178. We must abundantly make it clear that we are not discouraging the Public Interest Litigation in any manner, what we are trying to curb is its misuse and abuse. According to us, this is a very important branch and, in a large number of PIL petitions, significant directions have been given by the Courts for improving ecology and environment, and the directions helped in preservation of forests, wildlife, marine life etc. It is the bounden duty and obligation of the Courts to encourage genuine bonafide PIL petitions and pass directions and orders in the public interest which are in consonance with the Constitution and the laws.

179. The Public Interest Litigation, which has been in existence in our country for more than four decades, has a glorious record. This Court and the High Courts by their judicial creativity and craftsmanship have passed a number of directions in the larger public interest in consonance with the inherent spirits of the Constitution. The conditions of marginalized and vulnerable section of society have significantly improved on account of Court's directions in PIL.

180. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other Courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

- (1) The Court must encourage genuine and bonafide PIL and effectively discourage and curb the PIL filed for extraneous consideration.
- (2) Instead of every individual judge devising his own procedure for dealing with the Public Interest Litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to the Secretary General of this Court immediately thereafter.
- (3) The Courts should prima-facie verify the credentials of the petitioner before entertaining a PIL.
- (4) The Courts should be prima-facie satisfied regarding the correctness of the contents of the petition before entertaining petition.
- (5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.
- (6) The Court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.
- (7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the Public Interest Litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

13. In a very recent pronouncement of the Hon'ble Supreme Court in the case of P. Seshadri Vs. S. Mangati Gopal Reddy and Others, , has observed that:-

Public Interest Litigation can only be entertained at the instance of bonafide litigants. It cannot be permitted to be used by unscrupulous litigants to disguise personal or individual grievances as Public Interest Litigations. The Supreme Court does not approve of an approach that would encourage petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals i.e. busybodies, having little or not interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently aboveboard. Otherwise the petition is liable to be dismissed at threshold.

14. It appears from the materials on record that the Government of Gujarat has introduced its Industrial Policy, 2009, by which it seeks to transform into a global investment destination. Under the Industrial Policy, 2009, it is the endeavour on the part of the State Government to promote mega projects in focus sectors, which includes auto and auto components and which would have the multiplier effect and would be integral to the employment generation activity. Such mega project would also promote ancillary and auxiliary industries. It appears that with such objects in mind, the Government issued the Resolution dated 1st January, 2009. Since the Government Resolution dated 1st January, 2009, which provides for sanction of loan to the Tata Motors Limited for the Nano car project is the subject matter of this petition, we deem it necessary to look into the resolution in details.

The preamble of the Resolution reads as under:-

Preamble:-

For more than three decades, Gujarat is the preferred destination for investment in almost all industrial sectors, barring a few. As a result of the proactive role of the State Government to attract investments, number of entrepreneurs/industrial houses are selecting the State as a destination of choice for investments in the sectors of Textile, Gems and Jewellery, Chemicals and Petrochemicals, Pharmaceuticals and Drugs, Steel, Cement, Engineering among others. However, the State is yet to attract good investment in the Automobile and Auto ancillary sector. The auto sector has strong presence in other States like Maharashtra, Tamil Nadu and outskirts of Delhi State, where as Gujarat has only one car project. Though Gujarat has a strong engineering base, and number of engineering units, mainly in the MSME Sector, are engaged in the supply of auto components as OEMs to auto manufacturers, no major player has set up any unit in the State during recent past.

Tata Group is one of India's leading industrial houses and enjoys a reputation as a responsible corporate citizen even prior to independence. Tata Motors Limited (TML), which is a part of the Tata Group, is seeking to relocate some of its operations related to manufacturing plant for automobile products and components for the manufacture of the small car "Nano" from Singur in West Bengal.....

In addition to the Phase I Investment, subject to market response and conditions, TML may make such additional increase to its investment in the Project to increase the capacity of the Plant as mentioned above, from 2,50,000 Nano cars per annum or 3,50,000 Nano cars per annum as the case may be, to 5,00,000 Nano cars per annum ("TML Phase II Investment") with an additional investment of about Rs. 1100 Crore.

The above investments would provide the State of Gujarat with opportunities for infrastructure development, growth of allied industries and development of the local economy, by creating employment opportunities for skilled and unskilled workers.

15. A bare perusal of the preamble would indicate the object and the intention behind passing of such resolution. The Government of Gujarat took notice of the fact that the auto sector in the States like Maharashtra, Tamil Nadu and at the outskirts of the State of Delhi has been doing very well over a period of time and all the three States have been dominating in the auto sector. On the other hand, the State of Gujarat has only one such project. Although the State of Gujarat has a strong engineering base and there are number of engineering units in the MSME sector, yet the same are engaged in the supply of auto components as OEMs to the auto manufacturers. The Government of Gujarat noticed that no major industry had been set up in the State during the recent past. As the respondent No. 3, Tata Motors Limited is a leading vehicle manufacturing company and has extensive sales network through out the territory of India, the Government of Gujarat found that the investment by the respondent No. 3, Tata Motors Limited would provide the State with opportunities for infrastructure development, growth of allied industries and development of the local economy, by providing employment opportunities for skilled and unskilled workers. This appears to be the main objective behind the issuance of the Resolution dated 1st January, 2009.

16. We shall now look into the few salient features of the Resolution dated 1st January, 2009.

1. Type of Loan

Government of Gujarat (GoG) will provide fiscal incentives to TML in the form of a loan to TML at 0.1% simple interest per annum for amounts equal to the gross Value Added Tax (VAT) and Central Sales Tax (CST) payable to the GoG (or an equivalent Goods and Services Tax (GST) or any other similar law for the levy of tax in Gujarat, on sale and purchase of goods, as and when introduced), on the

sale of the Nano car and its parts and components from the date of commencement of the sale of the Nano car.

2. Quantum of Loan:

i. The maximum loan amount will be equal to: (a) 330% of the "TML Phase I Investment" or (b) such amount as has been disbursed to TML by the Govt. till the 20th year from the date of commencement of the sale of the "Nano"; whichever is lower. However overall amount of loan shall in no case exceed the gross amount of tax paid to the GoG in the 20 year period under above mentioned laws.

"TML Phase I Investment" means an amount based on fixed Capital Investment as set out in Schedule I attached hereto. As at present it is an estimate and may vary based on the actual TML Phase I Investment/expenditure incurred in relation thereto.

ii. For the avoidance of doubt, it is made absolutely clear that the TML Phase I Investment shall be related only to the development, manufacture and sale of the Nano car, its components and related activities including the items set out in Schedule I.

iii. It will include the expenditure towards power supply i.e. 220 KV connection (having double circuit-feeding from two sources) up to the Project's receiving station, as well as final power requirement of the Project in the range of 40-50 MVA. The project would require a separate 66/11 KV sub-station (having double circuit-feeding). All above requirement will be made at the expense of TML which would constitute a part of the TML Phase I Investment.

iv. It will include the expenditure made by TML towards water supply, i.e. water up to 14000 Cum/day up to a point, as mutually agreed to by GoG and TML, required for TML Phase I Project.

v. The actual TML Phase I Investment shall be certified by a reputed chartered accountant firm which shall be mutually agreed upon by the GoG and TML.

4. Project Period:

The project period to implement the Phase I Project will be five years from the date of allotment of the land to TML.

5. Procedure:

i. The High Level Committee shall approve provisionally the Investment of Phase I Project on the basis of a Detailed Project Report (DPR) to be submitted by TML within three months from the date of issue of this Resolution.

ii. For final eligibility certificate, TML shall submit the details of investment made in the Phase I Project duly certified by a statutory Auditor of the Company and a reputed chartered accountant firm as referred to in Para 2(v) above, to the Industries Commissioner within 6 months after completion of Phase I Investment

or after 5 years from the date of signing the agreement whichever is earlier.

iii. Industries commissioner's office, upon receipt of the said details, will verify the investment details and submit its report to the High Level Committee for its approval on final Investment. The HLC will decide the final amount of Loan on the basis of report and other relevant details.

6. Loan Disbursement

On each month, loan disbursement to TML will be made by IC, in accordance with the Loan Agreement to be signed between GoG and TML, on the basis of approval of an Executive Committee.

Separate account will be maintained by IC office for loan amount released to TML. A copy of the order releasing the loan amount will be sent to CCT, IMD and FD in addition to AG and other relevant offices.

7. High Level Committee:

The High Level Committee means the committee constituted under Govt. Resolution No. MIS-102008-55-I dated 01/01/2009 of Industries and Mines Dept. Govt. of Gujarat.

9. Repayment

This loan will be repayable in monthly installments stating from the First month of 21st Year (from the date of drawdown of such loan amount) of the commencement of first sale of the "Nano". The loan amount availed in the first month of the first year will be repaid in the first month of the 21st year along with interest and the loan amount availed in the second month of the first year will be repaid in the second month of the 21st year along with interest and so on. The repayment will be along with the interest amount for that amount of principal.

12. Other Conditions:-

i. TML will set up a Plant with the capacity to manufacture approximately 2,50,000 Nano cars per annum pursuant to TML Phase I Investment, which could be expanded to 3,50,000 Nano cars per annum. Incentives outlined above would be limited to TML Phase-I Investment only.

ii. Subsequently, subject to market response and conditions, TML may make such additional increase to its investment in the Project to increase the capacity of the Plant as mentioned above, from 2,50,000 Nano cars per annum or 3,50,000 Nano cars per annum, as the case may be, upto 5,00,000 Nano cars per annum in Phase II.

iii. Incidental to the establishment of the Project, TML will establish an Institution/Academy for Technical Education and aiding development of technical skill sets. The purpose of this Institution/Academy would be to impart Technical Training primarily to local persons so as to enhance their Employability.

iv. TML will undertake steps for the development of the general society in and around the project in a manner consistent with TML's existing corporate society responsibility practices.

v. TML will establish a driving training school for the purposes of enhancing skill sets and employability of local persons on mutually acceptable terms that will be agreed to between GoG and TML.

vi. The TML will provide extension services to Vendors for establishment of ancillary units for the supply of products in relation to the Project, and other service providers, and will ensure that its actions shall generate significant direct and indirect employment opportunities.

vii. TML shall provide an appropriate subservient charge over its Project assets, in favour of the GoG in respect of the loan amounts disbursed under this GR. For the avoidance of doubt, this will not in any way restrict TML's right or ability to secure third party financing for the Project and create any number of superior charges in favour of such third party lenders in respect of the Project assets, which rank higher than any charge that may be created in favour of such lenders.

17. It appears from the materials on record that the respondent No. 3, in the year 2006, decided to set-up the manufacturing unit of Nano car at Singur, situated in West Bengal. The Government of West Bengal, after several rounds of discussion, granted formal approval of the project and the same was set up and commissioned at Singur. According to the respondent No. 3, the trial production had also commenced. However, on account of agitations at the end of the farmers whose lands were acquired by the Government for the project, and due to political unrest, the respondent No. 3 had to wind up the project at Singur. Later on, they started negotiations with the Government of Gujarat and ultimately, the State Government allotted land in favour of the respondent No. 3 at Sanand, Dist. Ahmedabad, for the project of manufacturing of Nano car.

18. It also appears from the materials on record that no sooner had the Government of Gujarat decided to allot the land in favour of the respondent No. 3, than various public interest litigations were filed before this Court on the premise that the Government should not allot such a huge parcel of land in favour of the respondent No. 3, as it would amount to distributing the natural resources, which belongs to the people. However, it appears that all those petitions filed in the public interest were rejected with costs. Thus, so far as the issue with regard to the allotment of land and the set-up of the project at Sanand is concerned, was set at rest by this Court with the dismissal of all petitions filed in the public interest. Long thereafter, i.e. almost after a period of four years, the present petition has been filed with altogether a new issue as discussed above.

19. We are not impressed by the submission of Mr. Oza that the Government Resolution providing for a loan equal to the gross value of VAT and Central Sales Tax payable to the State of Gujarat amounts to refund of tax.

20. Having given our anxious thoughts and consideration to the issue in question, we are of the opinion that the loan advanced in the instant case by the Government in favour of the respondent No. 3 is with a view to encourage the establishment of the automobile industries in the State as a part of its industrialization policy and the establishment of the project in question has encouraged establishment of other industries like Ford India Private Limited and Maruti Suzuki India Limited.

21. The quantum of VAT and Central Sales Tax recovered is only a measure for determining the quantum of loan to be advanced. We have noticed that the maximum amount of loan, which can be advanced on an year to year basis is made dependent on the sales effected by the respondent No. 3. The respondent No. 1 State of Gujarat instead of giving a lump-sum loan, has made the entitlement of loan dependent upon the performance of the respondent No. 3.

22. We are also not impressed by the submission of Mr. Oza that a huge amount of loan to the tune of approximately Rs. 9,000 crore would be granted by the Government in favour of the respondent No. 3 as indicated in Clause 2.1 of the Resolution dated 1st January, 2009. It is true that the maximum amount of loan will be equal to 330% of the Phase-I investment by the respondent No. 3. However, we have noticed that there is an additional condition that the loan amount shall be equal to the gross VAT and Central Sales Tax payable to the respondent No. 1 on the sale of Nano cars and its parts and components from the date of commencement of sale of Nano cars. Therefore, while the total loan amount cannot exceed 330%, the actual loan would depend on the quantum of sale of Nano cars and its components.

23. Indisputably, such amount is a loan and not refund of tax. We have also noticed that the respondent No. 3 is obliged to also provide prior subservient charge over its project assets in favour of the respondent No. 1 in respect of the loan amounts disbursed and the loan amount will have to be returned back with 0.1% simple interest on the expiry of 20 years. This is evident from Clause 2(vii) of the Resolution dated 1st January, 2009 referred to above.

24. It has also been brought to our notice that such a provision of loan dependent upon the recovery of VAT is found in various other incentive policies of different States. We have been taken through the Government of Haryana Industrial Policy, 2005; Orissa Industrial Policy, 2007; State of Tamil Nadu Ultra Mega Integrated Automobile Project Policy; State of Andhra Pradesh Industrial Investment Promotion Policy, 2010-15; Bihar Industrial Incentive Policy, 2011 and the West Bengal State Support for Industries Scheme, 2008. In all the above referred policies of the different State Governments, we found such incentive being provided to the industries.

25. We are also not impressed by the submission of Mr. Oza that the incentive policy of the State Government is being misused by the respondent No. 3 by showing the sales first to its wholly owned subsidiary company in Gujarat and

thereafter, the subsidiary company effecting the sales to the different dealers of the respondent No. 3 all over the country. According to Mr. Oza, this is impermissible under the Motor Vehicles Act, 1988 and amounts to paying VAT in the State of Gujarat with the intention to procure higher amount of loan.

26. We find absolutely no legal bar under any of the provisions of the Motor Vehicles Act, 1988, in transferring a vehicle to a distribution and logistic company so that such a company can in turn transfer the vehicle to the dealers in other parts of the country. We are of the view that this itself would not make the vehicle a secondhand vehicle in the hands of the ultimate purchaser.

27. From the materials on record, it appears that the TML Distribution Company Limited was incorporated in March, 2008 as a wholly owned subsidiary with a view to look after the outbound logistic needs of the respondent No. 3. It is evident that the said distribution and logistic company was established even before the impugned Resolution dated 1st January, 2009 was passed. The object, according to the respondent No. 3 of establishing such a distribution company, is to improve the service levels in respect of logistics and distribution and reduction in chain costs in the longer run. It has been brought to our notice that not only the respondent No. 3, but various other companies have also such distribution companies.

28. We are also not impressed by the submission of Mr. Oza that there is total absence of exchange of consideration during the sale of Nano cars from the respondent No. 3 to the aforesaid distribution company. Our attention has been drawn to the fact that the sale of Nano cars from the respondent No. 3 to the distribution company are supported by invoices and the necessary taxes in respect of the same are also paid.

29. Mr. Thakore, the learned Senior Advocate appearing for the respondent No. 3 as well as Mr. P.K. Jani, the learned Government Pleader appearing for the State of Gujarat are right in submitting that the project has to be taken as a whole and must be adjudged whether it is in the larger public interest. It should not be split into different components and to consider whether each and every component will serve the public good. The holistic approach should be adopted in such matters. If the project taken as a whole is an attempt in the direction of enhancing the revenue for the State Government, generating employment opportunities and securing other economic benefits to the State and the public at large, it will serve the public purpose.

30. In this context, we may quote with profit the decision of the Supreme Court in N.D. Jayal and Another Vs. Union of India (UOI) and Others, , wherein the Supreme Court made the following observations, which are worth noting:-

10. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of the project and such a system cannot be said to be arbitrary, then the only role which the Court

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

31. In *Pathan Mohammed Suleman Rahematkhan Moh. Suleman* [Special Leave Petition (C) No. 32507 of 2013, decided on 22nd November, 2013], the Supreme Court made the following observations in para 8 of its judgment, which are worth noting:-

But we cannot lose sight of the fact that it is the Government which administers and runs the State, which is accountable to the people. State's welfare, progress, requirements and needs of the people are better answered by the State, also as to how the resources are to be utilized for achieving various objectives. If every decision taken by the State is tested by a microscopic and a suspicious eye, the administration will come to standstill and the decision makers will lose all their initiative and enthusiasm. At hindsight, it is easy to comment upon or criticize the action of the decision maker. Sometimes, decisions taken by the State or its administrative authorities may go wrong and sometimes it may achieve the desired results. Criticisms are always welcome in a Parliamentary democracy, but a decision taken in good faith, with good intentions, without any extraneous considerations, cannot be belittled, even if that decision was ultimately proved to be wrong.

32. We shall now deal with the decision of the Supreme Court on which strong reliance has been placed by Mr. Oza, in support of his vociferous submission that the policy of the Government to provide loan to the respondent No. 3 amounts to refund of tax, which is impermissible in law.

33. In *Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another*, a brochure was issued by the Government of Punjab, enhancing its new policy declaring that the incentive and concession, one of those being refund of Sales-tax, would be available to those persons who would set up selective large-scale industries in the focal point. Acting on such declaration of the policy by the State Government, the appellant company approached the Government and expressed its interest in setting up Vanaspati manufacturing unit in the State. The appellant

purchased the land and various other material at a cost of Rs. 15 lac and had also placed an order for purchase of plant and machinery of value of Rs. 35 lac. Even rules were framed by sanctioning of the President of India, which provided for refund of sales and purchase tax to new and expanding industries. Thereafter, the Government, all of a sudden, changed its policy, much to the prejudice of the appellant. The sudden change of the policy declared by the Government was challenged before the High Court. The learned Single Judge of the High Court directed the State Government to refund the sales-tax and interstate Sales-tax. The Government challenged the order passed by the learned Single Judge before the Division Bench, by way of a Letters Patent Appeal, and the Division Bench of the High Court, exercising jurisdiction under Letters Patent, set aside the order passed by the learned Single Judge, directing refund of sales-tax. The matter was carried by the company before the Supreme Court. Before the Supreme Court, the principal argument was the principle of promissory estoppel. It was argued before the Supreme Court that the representation made by the State Government resulted in a binding agreement and therefore, the Government could not have resiled from its promise. On the point of promissory estoppel, the Supreme Court, on the basis of the materials on record, took the view that the rights of the parties were governed by the old and not the new policy. The Court also observed that the appellant was never intimated that the Government had changed its policy in respect of refund of Sales-tax. However, the Supreme Court took the view that the promissory estoppel being an extension of principle of equity, the basic purpose of which is to promote justice founded on fairness and relieve a promise of any injustice, perpetuated due to promoter's going back on its promise, is incapable of being enforced in a Court of law if the promise which furnishes the cause of action or the agreement, express or implied, giving rise to a binding contract is statutorily prohibited or is against public policy.

34. Thus, it appears that although the Supreme Court observed that the Government was bound by the principle of promissory estoppel, yet if the promise by the Government regarding an incentive was otherwise statutorily prohibited or was against the public policy, then the same would not be enforceable in the Court of law.

35. Mr. Oza seeks to rely on the following observation made by the Supreme Court in *Amrit Banaspati Co. Ltd.* (supra) which we quote as under:-

10..... What then was the nature of refund which was promised by the government? Was such promise contrary to law and against public policy? Could it be enforced in a court of law? Taxation is a sovereign power exercised by the State to realise revenue to enable it to discharge its obligations. Power to do so is derived from entries in Lists I, II and III of the Seventh Schedule of the Constitution. Sales tax or purchase tax is levied in exercise of power derived from an Act passed by a State under Entry 54 of List II of VIIth Schedule. It is an indirect tax as even though it is collected by a dealer the law normally permits it to be passed on and the ultimate burden is borne by the consumer. But "the fact

that the burden of a tax may have been passed on to the consumer does not alter the legal nature of the tax" (Halsbury's Laws of England, Vol. 52, paragraph 20.04). Therefore even a legislature, much less government, cannot enact a law or issue an order or agree to refund the tax realised by it from people in exercise of its sovereign powers, except when the levy or realisation is contrary to a law validly enacted. A promise or agreement to refund tax which is due under the Act and realised in accordance with law would be a fraud on the Constitution and breach of faith of the people. Taxes like sales tax are paid even by a poor man irrespective of his savings with a sense of participation in growth of national economy and development of the State. Its utilization by way of refund not to the payer but to a private person, a manufacturer, as an inducement to set up its unit in the State would be breach of trust of the people amounting to deception under law.

11. Exemption from tax to encourage industrialization should not be confused with refund of tax. They are two different legal and distinct concepts. An exemption is a concession allowed to a class or individual from general burden for valid and justifiable reason. For instance tax holiday or concession to new or expanding industries is well known to be one of the methods to grant incentive to encourage industrialisation. Avowed objective is to enable the industry to stand up and compete in the market. Sales tax is an indirect tax which is ultimately passed on to the consumer. If an industry is exempt from tax the ultimate beneficiary is the consumer. The industry is allowed to overcome its teething period by selling its products at comparatively cheaper rate as compared to others. Therefore, both the manufacturer and consumer gain, one by concession of non-levy and other by non-payment. Such provisions in an Act or Notification or orders issued by Government are neither illegal nor against public policy.

12. But refund of tax is made in consequence of excess payment of it or its realisation illegally or contrary to the provisions of law. A provision or agreement to refund tax due or realised in accordance with law cannot be comprehended. No law can be made to refund tax to a manufacturer realised under a statute. It would be invalid and ultra vires. The Punjab Sales Tax Act provided for refund of sales tax and grant of exemption in circumstances specified in Sections 12 and 30 respectively. Neither empowered the Government to refund sales tax realised by a manufacturer on sales of its finished product. Refund could be allowed if tax paid was in excess of amount due. An agreement or even a notification or order permitting refund of sales tax which was due shall be contrary to the statute. To illustrate it the appellant claimed refund of sales tax paid by it to the State Government on sale made by it of its finished products. But the tax paid is not an amount spent by the appellant but realised on sale by it. What is deposited under this head is tax which is otherwise due under provisions of the Act. Return of refund of it or its equivalent, irrespective of from is repayment or refund of sales tax. This would be contrary to Constitution. Any agreement for such refund being contrary to public policy was void u/s 23 of Contract Act. The constitutional requirements of levy of tax being for the welfare of the society and not for a

specific individual the agreement or promise made by the government was in contravention of public purpose thus violative of public policy. No legal relationship could have arisen by operation of promissory estoppel as it was contrary both to the Constitution and the law. Realisation of tax through State mechanism for sake of paying it to a private person directly or indirectly is impermissible under Constitutional scheme. The law does not permit it nor equity can countenance it. The scheme of refund of sales tax was thus incapable of being enforced in a court of law.

13. Fallacy of such constitutionally inhibited policy, sacrificing public interest resulting in illegal private enrichment is exposed by claim of refund for nearly Rs. 2 crore, for a period of three years, only, when total investment in establishing the unit was Rs. 1.5 crore, Levy of tax to raise revenue for promoting economic growth of the State reduced itself in enhancing (sic to) the profit margin of the manufacturer and the sales tax stood converted into income of the appellant. Such contrivance of law even though bona fide is legally unenforceable.

36. In our opinion, the decision of the Supreme Court in *Amrit Banaspati Co. Ltd.* (supra) has no application worth the name, so far as the case at hand is concerned. In the said case before the Supreme Court, the policy of the State Government was to refund the sales-tax which would be paid by the industries to the State Government on sale made by it of its finished products. The Court took the view that the same was not permissible, being contrary to the Constitution.

37. In the present case, as discussed above, the amount of loan paid by the Government to the respondent No. 3 does not amount to refund of tax. As observed by the Supreme Court itself in *Amrit Banaspati Co. Ltd.* (supra), that exemption from tax to encourage industrialization should not be confused with refund of tax. In the same manner, deferment of tax to encourage industrialization should not be confused with refund of tax. The amount in the present case paid by the Government to the respondent No. 3 is a loan and not refund of tax. There is a fine distinction between the two. We have discussed this aspect at length in our earlier part of the judgment and we need not reiterate the same.

38. Thus, to our mind, the decision of the Supreme Court referred to above does not help the petitioner in any manner in making good his case that the impugned Resolution of the Government amounts to refund of tax, which is impermissible in law and contrary to the provisions of the Constitution of India.

39. In the overall view of the matter, we are not at all convinced with the issue raised by the petitioner in public interest and that too after a period of almost four years from the date of passing of such Resolution. It has been brought to our notice that pursuant to the Resolution dated 1st January, 2009, passed by the State Government, the respondent No. 3 has already set up a plant to manufacture 2,50,000 cars on two shifts basis and 3,50,000 cars on three shifts basis at Sanand. The plant was successfully commissioned in Gujarat and Tata

Nano cars rolled out of the Sanand plant in April, 2010. The Government of Gujarat, Industries and Mines Department has also constituted a high level committee for monitoring of the implementation of the Nano project. As on 31st December, 2012, the respondent No. 3 had already invested a sum of Rs. 3,891 crore for phase-I of the Tata Nano car project at the plant at Sanand. The investment amount would increase further as the investment period available to the respondent No. 3 for making the phase-I investment is yet to expire.

40. For the foregoing reasons, we do not find any merit in this public interest litigation and the same deserves to be rejected.

41. The petition fails and is rejected. However, in the facts and circumstances of the case, there shall be no order as to costs.