

(2010) 11 BOM CK 0106
In the Bombay High Court
Case No : Writ Petition No. 349 of 2008

K. Raheja Corporation Private Limited and Ramesh Valecha, APPELLANT
Shareholder, K. Raheja Corp. Pvt. Ltd.

Vs

The State of Goa and Others RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Constitution of India, 1950 — Article 14, 151, 162, 166, 299
Goa, Daman and Diu Industrial Development Act, 1965 — Section 14, 16, 2, 27, 28
Land Acquisition Act, 1894 — Section 4
Special Economic Zones Act, 2005 — Section 1, 10, 11, 12, 13
Special Economic Zones Rules, 2006 — Rule 1, 10, 2, 3(1), 3(A)

Citation : (2011) 2 ALLMR 128 : (2010) 112 BOMLR 4729

Hon'ble Judges : F.M. Reis, J;A.S. Oka, J

Bench : Division Bench

Advocate : Ravi Kadam, Suresh Gupte, Hemlata Jain, Birendra Saraf, R.G. Ramani, Ranjit Shetty and Luckyraj Indorkar, in WP No. 349 of 2008, F.E. D'vitre, Suresh Gupte, Hemlata Jain, Birendra Saraf, R.G. Ramani, Ranjit Shetty and Luckyraj Indorkar, in WP No. 501 of 2008, S.G. Dessai, A. Sharma and Shirin Naik, in WP No. 507 of 2008, Soli Cooper and Nitin Sardessai, in WP No. 380 of 2008, Mihir Desai, Krishnandu Mukherji and Ajeetsingh Rane Sardessai, in WP No. 314 of 2008, S.G. Bhobe, Shailesh Shukla and Ninotska Pimenta, in WP No. 436 of 2008, S.G. Dessai, A. Sharma and Shirin Naik, in Misc. Civil application No. 391 of 2009 and F.E. Noronha, in WP No. 263 of 2008 and MISC. Civil application No. 391 of 2009 in WP No. 263 of 2008, Mihir Desai, Krishnandu Mukherji and Ajeetsingh Rane Sardessai, in WP No. 310 of 2008 and Mihir Desai, Krishnandu Mukherji and Ajeetsingh Rane Sardessai, in WP No. 316 of 2008, for the Appellant; S.S. Kantak, General and Abhijeet Kamat, A.G.A. for Respondent Nos.1, 4 and 5, Bomi Zaiwalla and A.D. Bhobe, for Respondent Nos. 2 and 3 and C.A. Ferreira, Assistant Solicitor General for Respondent No. 6. in WP No. 349 of 2008, S.S. Kantak, General and Abhijeet Kamat, AGA for Respondent Nos.1, 4 and 5, Bomi Zaiwalla and A.D. Bhobe, for Respondent Nos. 2 and 3 and C.A. Ferreira, Assistant Solicitor General for Respondent No. 6. in WP No. 501 of 2008, S.S. Kantak, General and A. Kamat, AGA for Respondent No. 1, Bomi Zaiwalla and A.D. Bhobe and C.A. Ferreira, A.S.G. for Respondent No. 3 in WP No. 507 of 2008, S.S. Kantak, General and Abhijeet Kamat, AGA for Respondent No. 1, Bomi Zaiwalla and A.D. Bhobe, for Respondent No. 2. and C.A. Ferreira,

Assistant Solicitor General for Respondent No. 3 in WP No. 380 of 2008 Bomi Zaiwalla and A.D. Bhobe, for Respondent No. 1, C.A. Ferreira, Assistant Solicitor General for Respondent No. 2 and S.S. Kantak, General and Abhijeet Kamat, AGA for Respondent No. 5 in WP No. 436 of 2008, S.S. Kantak, General and A. Kamat, AGA for Respondent No. 1, Aspi Chinoy and A.D. Bhobe, for Respondent No. 2, Ravi Kadam Suresh Gupte, Hemlata Jain, Birendra Saraf, R.G. Ramani, Ranjit Shetty and Luckyraj Indorkar for Respondent Nos. 3 and 4, S.G. Bhobe, Shailesh Shukla and Ninotska Pimenta for Respondent Nos. 5 and 6 and S.G. Dessai A. Sharma and Shirin Naik for Respondent No. 7 in Misc. Civil Application No. 391 of 2009 in WP No. 263 of 2008 and MISC. Civil Application No. 391 of 2009 in WP No. 263 of 2008, S.S. Kantak, General and A. Kamat, AGA for Respondent No. 1, Bomi Zaiwalla and A.D. Bhobe, for Respondent No. 2, S.G. Bhobe, Shailesh Shukla and Ninotska Pimenta and C.A. Ferreira, Assistant Solicitor General for Respondent No. 4 in WP No. 310 of 2008, S.S. Kantak, General and A. Kamat, AGA for Respondent No. 1, Bomi Zaiwalla and A.D. Bhobe, for Respondent No. 2, Soli Cooper and Nalin Sardesai, for the Respondent No. 3 and C.A. Ferreira, Assistant Solicitor General for Respondent No. 4 in WP No. 314 of 2008 and S.S. Kantak, General and A. Kamat, AGA for Respondent No. 1, Aspi Chinoy and A.D. Bhobe, for Respondent No. 2, F.E. D'vitre Suresh Gupte, Hemlata Jain, Birendra Saraf, R.G. Ramani, Ranjit Shetty and Luckyraj Indorkar for Respondent Nos. 3 and 4, S.G. Bhobe, Shailesh Shukla and Ninotska Pimenta for Respondent Nos. 5 and 6 and S.G. Dessai, in WP No. 316 of 2008, for the Respondent

Final Decision : Allowed

Judgement

A.S. Oka, J.—These Writ Petitions can be disposed of by a common judgment. The issues involved in these Petitions relate to setting up of Special Economic Zones in the State of Goa. A decision was taken by the Government of Goa to set up the Special Economic Zones (for short "SEZs") in the State of Goa. Allotment of lands for setting up of SEZs in the State of Goa was made by the Goa Industrial Development Corporation (for short "GIDC") established under the Goa Industrial Development Act, 1965 (for short "GIDC Act"). On the basis of the provisions of the Special Economic Zones Act, 2005 (for short "SEZ Act"), the Central Government granted approvals in certain cases. In three cases, SEZs were notified. Later on, the Government of Goa cancelled the policy of setting up of SEZs in the State of Goa. On the basis of the withdrawal of the policy, the State of Goa cancelled the recommendations made under the SEZ Act. The Government of Goa issued certain directions on the basis of the cancellation of recommendations. On the basis of the said Directions, the GIDC issued show cause notices to the companies/developers who were allotted lands on lease for setting up of SEZs. There were show cause notices issued by the GIDC calling upon the companies/developers to show cause as to why leases should not be cancelled. Writ Petition Nos. 349 of 2008, 380 of 2008, 436 of 2008, 437 of 2008, 438 of 2008, 501 of 2008 and 507 of 2008 have been filed by the companies/developers. The Petitioners in these Petitions have been referred as "Companies" in some parts of this Judgment. Writ Petition Nos. 263 of 2008, 310

of 2008, 314 of 2008 and 316 of 2008 have been purportedly filed in public interest for challenging the allotment of the lands to the companies for setting up of the SEZs. In some of these Petitions, the challenge is to the approvals granted/ notifications issued by the Central Government under the SEZ Act.

2. Most of the facts are common to all the Writ Petitions. Sometime prior to the year 1997, Verna Area in Goa was notified by the GIDC for the purposes of setting up industries. The industrial area was set up in Phases - I, II, III and IV. In the year 2000-2001, u/s 4 of the Land Acquisition Act, 1894, notifications were issued for acquisition of various lands for the purpose of the expansion of Verna Industrial Estate. In the year 2000-2001, the policy of the Union of India for establishments of SEZs came into existence as a part of import and export policy of the year 2000-2001. In the year 2002, the Customs Act was amended by the Union of India by incorporating Chapter XA under the title "Special Provisions relating to the Special Economic Zones". Under the provisions of the said Chapter, the Central Government was empowered to make a suitable provision for establishment of and control of levies and exemptions in SEZs. The Central Government was also empowered to grant exemption in the SEZs. In the year 2003, the acquisition of the lands for Verna Industrial Estate was completed by declaration of awards. In the year 2003, the Goa Industrial Policy was announced. The policy provided for Information Technology and Information Technology enabled services as thrust areas for promotion of industries and development of Goa as an Export and Import Hub. The policy provided for setting up of Software Technology Parks/SEZs. In the year 2005, the Information Technology & Information Technology enabled services Policy of Goa (IT & ITES Policy) was notified by the Government of Goa which, inter alia, envisaged setting up of SEZs with special emphasis on Information Technology Sector. On 23rd June, 2005, the SEZ Act was enacted. Sections 1 - 19, 25 - 30 and 42 - 58 came into force on 10th February 2006. Sections 31 - 41 came into force on 1st October 2008. In June 2006, the Government of Goa formulated its own SEZ policy which was duly notified.

3. According to the case of the companies, some of them and other well known developers were invited to the State of Goa for their participation in SEZs at Goa. In the year 2006, applications were made by the companies to the GIDC for grant of leases of lands. Accordingly, the allotment of the lands were made by the GIDC from March 2006 onwards. In the meanwhile, on 5th June, 2006, a Cabinet decision was taken by the Government of Goa formerly laying down the SEZ Policy which was notified on 26th July, 2006. The policy was in accordance with the SEZ Act and the Rules framed thereunder. The proposals of the companies for setting up of SEZs were recommended by the Government of Goa to the Central Government. Various steps were taken by the Central Government on the said proposals and in case of three Companies even the notifications establishing of SEZs were issued by the Central Government.

4. On 20th December, 2007, the Chief Secretary of the Government of Goa

published a White Paper on SEZs in Goa. A Task Force for Regional Plan-2021 appointed by the Government of Goa passed a resolution on 22nd December, 2007 recommending revocation of the policy decision to set up the SEZs in Goa. On 31st December, 2007, the Cabinet Committee on infrastructure passed a resolution recommending that the SEZs should be done away with in the State of Goa. The Committee recommended that the Central Government should be requested not to process eight cases where the approvals were not granted. Thereafter, the Government of Goa took purported decision of withdrawal of policy of SEZ. In those cases where approvals were granted by the Government of Goa, a request was made by the State Government to the Central Government not to notify the SEZs. In three cases where the SEZs were already notified, the Central Government was requested to de-notify the said SEZs. On 7th January, 2008, the Government of Goa addressed a letter to the Central Government by which the recommendations of the State Government for establishment of the SEZs were withdrawn. In January, 2008, the Government of Goa issued communications to the companies not to take further steps. On 12th May, 2008, the Government of India communicated its decision to the Government of Goa on the representation dated 7th January, 2008. The Central Government informed that in case of those recommendations where approvals have not been granted, the cases will be treated as withdrawn in view of the withdrawal of the State Government's recommendations. In the cases of formally approved SEZ, show cause notices were issued on 31st March, 2008 to the developers calling upon them to show cause as to why the approvals granted should not be cancelled. In case of three notified SEZs, the Central Government decided that it would not be possible to withdraw the notifications and the Government of Goa was advised to hold discussions with the developers and come to an amicable settlement of the issue. Thereafter, the show cause notices were issued by the GIDC calling upon the companies to show cause as to why the leases should not be revoked.

5. FACTS OF WRIT PETITION No. 349 OF 2008 FILED BY K. RAHEJA CORPORATION PRIVATE LIMITED:

(a) The case of the Petitioners is that the officials of Government of Goa visited the projects of the Petitioners at Mumbai and Hyderabad and were impressed with the said project. According to the Petitioners, the Government of Goa invited the Petitioners to apply for grant of lease of lands. Accordingly, an application was made by the Petitioners on 12th April, 2006. A letter of allotment dated 20th April, 2006 was issued to the Petitioners by GIDC by which the Petitioners were informed that the Board of GIDC has approved allotment of lands admeasuring 7,91,732 sq. meters at Verna Industrial Estate, Phase -IV at the rate of Rs. 600/- per sq. meters for establishing Multi-product industrial and service park in Phase - IV of Verna Industrial Estate. Rs. 600/- per sq. meters was the lease premium and annual lease rent was fixed at Rs. 23,75,196/-. It is alleged that The Petitioners were put in possession of the lands on 10th May 2006. On 25th July, 2006, a Lease Deed was executed by the GIDC. The lease was granted for establishing services park under the SEZ policy of both Central and State

Governments. Recitals in the Lease Deed made a reference to the application made by the Petitioners for allotment of lands under the SEZ policy of the Government of India and Government of Goa. A Deed of Rectification of the Lease Deed was executed on 19th July, 2007.

(b) The Petitioners made an application u/s 3(2) of the SEZ Act on 28th July, 2006 for setting up IT & ITES SEZ on the said land. On 4th August, 2006, the Government of Goa recommended to the Government of India the proposal of the Petitioners to set up SEZ in accordance with Section 3(6) of the SEZ Act and Rule 4 of the Special Economic Zone Rules, 2006 (for short "the SEZ Rules"). The recommendation noted that the requirements of Rule 5 of the said SEZ Rules were satisfied in the case. By a communication dated 25th October, 2006, approval u/s 3(10) of the SEZ Act was communicated to the Petitioners. On 22nd February, 2007, the Government of India clarified that the developer may carry out construction activities inside the SEZ pending the notification subject to making available tax benefits only for authorized activities undertaken after the notification of SEZ.

(c) On 11th April, 2007, the GIDC issued a certificate confirming allotment of the land and delivery of legal possession along with irrevocable lease-hold rights to develop the lands as SEZ. It was certified that the said land was free from encumbrances as required by the SEZ Rules. In exercise of powers under Sub-section (1) of Section 4 of the SEZ Act read with Rule 8 of the SEZ Rules, the Government of India on 6th November 2007 notified the lands allotted to the Petitioners as a SEZ.

(d) By a letter dated 22 February 2007, Central Government permitted the Petitioner to carry out construction activity inside the SEZ pending notification as SEZ. However, it was stated in the said letter that the tax benefits will be available only for the authorised activities undertaken after the notification of the SEZ. According to the Petitioners, they have taken several steps from February, 2007 onwards. According to them, they have appointed local and international Architects and that their local and international Architects had prepared drawings for construction on the property. They have completed the fencing on the property and commenced construction of internal roads and infrastructure. Master planning was completed with the help of the international consultants. The Petitioners constructed the plinth, lower ground plus first floor of one building and carried out construction of footings and columns upto plinth level of the second building. In case of third building, construction of footings and columns was carried out which has reached up to the plinth level. A godown was constructed for storage of construction material. Electricity sub-station was set up. According to the case of the Petitioners, they have spent approximately Rs. 148 crores on such development. Apart from the said amount, premium and annual lease rent of Rs. 48 crores has been paid to the GIDC. The claim of the Petitioners is that their total investment is approximately Rs. 234 crores. According to the case of the Petitioners, they have entered into commitments

with the third parties. On the basis of the decision of the Government of Goa of the withdrawal of SEZ policy, an order dated 10th January, 2008 issued by the Government of Goa was served to the Petitioners recording therein that a policy decision was taken in public interest to do away with the SEZs in the present form and the Government of Goa has taken up the matter with the Government of India for cancellation of approvals under the SEZ Act. The Petitioners were directed not to take up further work in pursuance of the approval accorded by the Board of Approval of Government of India and the notification issued by the Government of India till the matter is finally resolved in consultation with the Government of India. The Petitioners replied to the said letter. Ultimately, on 12th May, 2008, the decision was taken by the Government of India. As far as the Petitioners are concerned, the decision was that it was not possible for the Government of India to withdraw the notification but the State Government was advised to hold discussions with the Petitioners and come to an amicable settlement. Thereafter, the GIDC issued show cause notice dated 13th June, 2008 to the Petitioners calling upon the Petitioners to show cause as to why the Lease Deed and Deed of Rectification should not be revoked and the land reverted back to the GIDC by refunding the security amount deposited, premium, interest and lease rent paid by the Petitioners to the GIDC. By the said notice, the Petitioners were also called upon not to carry out any construction work of whatsoever nature on the lands subject matter of lease. The prayers made in the petition are for questioning the show cause notice issued by the GIDC and the purported action of withdrawal of SEZ policy by the Government of Goa. Consequential reliefs are also prayed for

6. FACTS OF WRIT PETITION No. 501 OF 2008 FILED BY PARADGIM LOGISTIC & DISTRIBUTION PRIVATE LIMITED & ANOTHER.

(a) In this Petition, the case made out is that the Petitioners were invited by the Government of Goa to set up SEZ. An application was made by the Petitioners on 12th April, 2006 to the GIDC for grant of lease of land in Phase-IV of Verna Industrial Estate admeasuring 2,64,419 sq. meters to establish IT/ITES Park under the SEZ policy of the Governments of India and Goa. On 20th April, 2006, the GIDC communicated to the Petitioners a decision of the Board to allot land admeasuring 2,64,419 sq. meters in the Verna Industrial Estate Phase -IV at the premium of Rs. 600/- per sq. meters and at the annual lease rent of Rs. 7,93,257/-. According to the Petitioners, on the same day, the possession of the land was handed over. The Lease Deed was executed by the GIDC in favour of the Petitioners on 25th July, 2006. On 11th April, 2007, a certificate was issued by the GIDC certifying that the Petitioners have been placed in legal possession of the land under the Lease Deed with irrevocable rights to develop the land for SEZ and the said land was free of encumbrances as per the SEZ Rules. On 19th July, 2007, a Deed of Rectification of Lease was executed. In the meanwhile, by a letter dated 4th August, 2006, the Government of Goa recommended proposal of the Petitioners for setting up of SEZ. It was recorded in the recommendation that the requirements of Rule 5 of the SEZ Rules have been satisfied by the

Petitioners. On 25th October, 2006, the Government of India issued a communication recording that a formal approval was granted to the proposal of the Petitioners for development, operation and maintenance of the Sector specified SEZ for IT & ITES Sector at Phase-IV of Verna Industrial Estate. The Government of India issued a show cause notice to the Petitioners. In the said show cause notice, it was mentioned that the Government of Goa has withdrawn its recommendations vide letter dated 7th January, 2008 and the Board of Approval in its meeting held on 4th April, 2008 decided to issue a show cause notice to the Petitioners for cancellation of formal approval in the light of withdrawal of recommendations by the Government of Goa. The Petitioners were called upon to show cause within a period of two weeks as to why formal approval granted should not be cancelled/revoked. By a communication dated 7th May, 2008, the Petitioners were called for personal hearing.

(b) According to the case of the Petitioners, they engaged local and international architects for the project. It is the case of the Petitioners that drawings for construction were made and were got approved. It is their case that Master planning was completed in consultation with international consultants. The Petitioners stated that they commenced the work of fencing and initiated the work of internal roads. They have expended an amount of Rs. 25.55 crores and more towards the steps taken for setting up SEZ. On 13th June, 2008, the GIDC issued a show cause notice to the Petitioners requiring them to show cause as to why the Lease granted to them should not be revoked. A direction was issued not to carry out any further work on the land. The GIDC informed the Petitioners that the Government of Goa has issued a direction in purported exercise of powers u/s 16 of GIDC Act to cancel/revoke allotments made for the purposes of SEZs. The challenge in the Petition is to the aforesaid show cause notices. The challenge is also to the withdrawal of the SEZ policy by the Government of Goa and withdrawal of the recommendations.

7. FACTS OF WRIT PETITION No. 507 OF 2008 FILED BY M/S. MAXGROW FINLEASE PRIVATE LIMITED AND ANOTHER:

(a) On 25th May, 2006, an application for allotment of the land was made by the Petitioners to the GIDC. On 9th August, 2006, an allotment order was issued by the GIDC by which the Petitioners were allotted land admeasuring 2,03,445 sq. meters at Verna Industrial Estate, Phase-IV at a premium of Rs. 600/- per sq. meters and annual lease rent of Rs. 6,10,335/-. On 30th August, 2006, the Petitioners were placed in possession of the said land. A deed of Lease was also subsequently executed. According to the case of the Petitioners, on 31st August, 2006, a proposal was submitted by them in terms of Section 3(2) of the SEZ Act to the State Government for approval of SEZ. On 5th January, 2007, the application made by the Petitioners was recommended by the Government of Goa to the Board of Approval of Government of India. By another communication dated 10th May, 2007, the Government of Goa communicated to the Government of India that the State Government had recommended the case of the Petitioners

and others for grant of approval.

(b) Before approval could be granted by the Board of Approval, on 7th January, 2008, the Government of Goa submitted a letter to the Board of Approval of Government of India informing the Government of India of the decision taken by the Government of Goa to do away with the SEZ. The Government of Goa pointed out that the recommendations made in case of the Petitioners and others may be treated as withdrawn. In this case, admittedly, the approval was not granted by the Board of Approval of the Government of India. On 12th May, 2008, the decision of the Government of India was communicated to the Government of Goa by which the Government of Goa was informed that in case of proposed SEZs where no approvals have been granted, the proposals will be treated as withdrawn. On 13th June, 2008, the GIDC issued show cause notice to the Petitioners calling upon them to show cause as to why the Lease should not be revoked. A reply was submitted by the Petitioners to the said show cause notice. The challenge in the Petition is to the decision of the Government of Goa of withdrawal of the SEZ policy and withdrawal of the recommendations. The challenge is also to the decision of the Government of India dated 12th May, 2008. Lastly, the Petitioners have also challenged the show cause notice issued by the GIDC.

8. FACTS OF WRIT PETITION No. 380 OF 2008 FILED BY MEDITAB SPECIALITIES PRIVATE LIMITED & ANOTHER:

(a) On the basis of the applications made by the Petitioners on 13th March, 2006 and 27th March, 2006, allotment letter dated 28th April, 2006 was issued by the GIDC by which a land admeasuring 12,32,000 sq. meters situated at Kerim in Ponda Taluka was allotted to the Petitioners at the premium of Rs. 80/- per sq. meters and the annual lease rent at Rs. 4,92,800/-. On 13th June, 2006, the Government of Goa recommended the proposal of the Petitioners for setting up SEZ for pharmaceuticals and chemicals on the aforesaid land. On 23rd August, 2006, the Government of India communicated formal approval to the proposal of the Petitioners for development, operation and maintenance of sector specific SEZ pharmaceuticals and chemicals product at Keri in Taluka Ponda. On 3rd November 2006, a Deed of Lease was executed by the GIDC in respect of the said land. On 10th April, 2007, the Government of India, in exercise of powers conferred by Sub-section (1) of Section 4 of the said SEZ Act and in pursuance of Rule 8 of the said SEZ Rules notified the area of land allotted to the Petitioners as a SEZ.

(b) According to the case of the Petitioners, they commenced development activities in May 2007. According to the Petitioners, they were in the process of building roads, water lines, sewage treatment plants and various other infrastructural work including the work of laying power lines. According to the case of the Petitioners, they allotted two plots to Cipla Ltd which Company received permissions from the Goa Pollution Control Board.

(c) On 7th December 2007, a mob entered SEZ area and vandalized property. In letter dated 8th December, 2007 addressed by the Petitioners to the Chief Minister of Government of Goa, it was informed that agitation against SEZ has been instigated by some persons. Protection was sought from the Chief Minister of Government of Goa to the activities of SEZ. By a letter dated 7th January, 2008, the Government of Goa requested the Government of India to de-notify the SEZ as far as the Petitioners are concerned. There was an order passed on 10th January 2008 by the Government of Goa directing the Petitioners not to take up further work in pursuance of the notification. The said order was issued in view of a decision taken of withdrawal of SEZ policy by the Government of Goa. By a communication dated 4th April, 2008, the Government of India informed the decision of the Board of Approval taken on 25th February, 2008 to the Petitioners. It was stated that it was recommended by the Board of Approval that the Chairman of the Board of Approval should initiate a dialogue with the State Government and developers with a view to resolve the issue and thereafter bring the matter to the Board of Approval. It was stated that the Board of Approval noted that the State Government may have to compensate the developers whose SEZs have been already notified. Moreover, the question of refund of duties/exemption already availed of will arise and therefore, a recommendation was made to initiate a dialogue. On the basis of the decision of the Government of Goa, on 13th June, 2007, a show cause notice was issued by the GIDC to the Petitioners calling upon them to show cause as to why the Lease Deed dated 3rd November, 2006 should not be revoked and the land reverted back to the GIDC by refunding the premium amount, interest and lease rent paid by the Petitioners to the GIDC. The Petitioners replied to the show cause notice raising various contentions. There are various challenges in the Petition including the challenge to the decision of the Government of Goa to do away with the SEZ. There is also a challenge to the show cause notice issued by the GIDC.

9. FACTS OF WRIT PETITION No. 436 OF 2008 FILED BY PENINSULA PHARMA RESEARCH CENTRE PRIVATE LIMITED:

(a) On 2nd April, 2006, the Petitioners made an application to the GIDC for grant of land. On 5th April, 2006, an order of allotment was made by the GIDC in favour of the Petitioners by which the GIDC communicated its decision of allotment of lands admeasuring 2,03,650 sq. meters at Sancoale in Mormugao Taluka to the Petitioners at the premium of Rs. 270/- per sq. meter and annual lease rent of Rs. 2,74,928/-. The allotment was for setting up of Research and Development Centre, Bio-technology Park/SEZ. On the basis of the allotment letter, a Deed of Lease was executed on 2nd August, 2006 by which the GIDC in favour of the Petitioners. The Government of Goa recommended the proposal of the Petitioners to the Government of India for grant of approval for setting up SEZ. On 25th October, 2006, the Government of India communicated to the Petitioners the approval granted by the Board of Approval for development, operation and maintenance of SEZ for Research and Development Centre, Bio-technology Park/SEZ at Sancoale, Goa. A Notification dated 10th July, 2007 was

issued by the Government of India in exercise of powers conferred by Sub-section (1) of Section 4 of the said SEZ Act and in pursuance of Rule 8 of the said SEZ Rules notifying the land allotted to the Petitioners as SEZ.

(b) It is alleged that when the Petitioners were in the process of proceeding with establishment of SEZ, on 10th January, 2008, the Government of Goa issued an order directing the Petitioners to stop the work at the SEZ site. On the basis of the decision of the Government of India to withdraw the recommendations for SEZ, a direction was issued u/s 16 of the GIDC Act by the Government of Goa on 12th June, 2008 directing the GIDC to cancel the allotment made in favour of the Petitioners of the land for setting up of SEZ. On 13th June, 2008, a show cause notice was issued to the Petitioners by the GIDC calling upon them to show cause as to why the lease granted to the Petitioners should not be revoked. In the Petition, there is a challenge to the action of the Government of Goa of withdrawing the SEZ policy. There is also a challenge to the show cause notice.

10. FACTS OF WRIT PETITION No. 437 OF 2008 FILED BY PLANETVIEW MERCANTILE COMPANY PRIVATE LIMITED:

(a) An application for allotment of land was made by the Petitioners to the GIDC on 12th April, 2006. An order of allotment was issued by the GIDC on 5th/8th May, 2006 by which the land admeasuring 1,32,000 sq. meters in Phase-IV of Verna Industrial Estate was allotted to the Petitioners for establishing Gem & Jewellery Park. The premium was fixed at the rate of Rs. 600/- per sq. meter and annual lease rent was fixed at Rs. 3,96,000/-. On 2nd August, 2006, a Lease Deed was executed by the GIDC in favour of the Petitioners. Thereafter, on 27th September, 2006, a Deed of Addendum was executed by and between the GIDC and the Petitioners. On 21st December, 2006, the Petitioners applied to the Government of Goa for recommending the project for setting up SEZ. The said proposal was recommended by the Government of Goa. On 27th June, 2007, the Government of India communicated to the Petitioners a formal approval for development, operation and maintenance of SEZ of Gem and Jewellery at Verna Industrial Estate. Thereafter, on the basis of the withdrawal of the recommendations by the Government of Goa, on 31st March, 2008, a show cause notice was issued by the Government of India to the Petitioners calling upon them to show cause as to why formal approval granted on 27th June, 2007 should not be cancelled. The Petitioners replied to the said show cause notice. Another show cause notice dated 13th June, 2008 was issued by the GIDC to the Petitioners on the basis of the directives issued by the Government of Goa. By the said show cause notice, the Petitioners were called upon to show cause as to why the lease granted to them should not be revoked. In the Petition, there are various challenges including the challenge to the show cause notice and the decision of the Government of Goa of withdrawing the SEZ policy.

11. FACTS OF WRIT PETITION No. 438 OF 2008 FILED BY INOX MERCANTILE COMPANY PRIVATE LIMITED:

(a) The Petitioners made an application on 12th April, 2006 for allotment of land. The GIDC issued an order of allotment dated 8th/9th May, 2006 to the Petitioners by which the land admeasuring 4,84,832 sq. meters in Phase -IV of Verna Industrial Estate was allotted to the Petitioners to establish Biotech Park at the premium of Rs. 600/- per sq. meter. The annual lease rent was fixed at Rs. 14,54,496/-. The Government of Goa recommended the proposal of the Petitioners to set up SEZ. By a communication dated 19th June, 2007, the Government of India communicated to the Petitioner grant of formal approval to the proposal for development, operation and maintenance of the Sectors/SEZ for Biotech Park at Verna Industrial Estate, Goa. On the basis of the withdrawal of the recommendations by the Government of Goa, on 31st March, 2008, a show cause notice was issued by the Government of India to the Petitioners calling upon the Petitioners to show cause as to why the formal approval granted to them on 19th June, 2007 should not be revoked. The Petitioners replied to the said show cause notice. On the basis of the direction issued by the Government of Goa, on 13th June, 2008, a show cause notice was issued by the GIDC to the Petitioners to show cause as to why the allotment/lease of the land in favour of the Petitioners should not be revoked. The said show cause notice was issued on the basis of the directives dated 12th June, 2008 issued by the Government of Goa in exercise of powers u/s 16 of the GIDC Act. The challenge in this Petition is to the decision of the Government of Goa to do away with the SEZs and to the show cause notices.

12. FACTS OF WRIT PETITION No. 314 OF 2008 FILED BY MISS SWATI SHRIDHAR KERKAR and Ors.:

(a) The Petitioners in this Writ Petition claim to be the citizens of India and residents of Goa. The 1st to 4th Petitioners claim that they are the residents of Kerim in Ponda Taluka and the 5th Petitioner claims to be the resident of Devote, Loutolim, Goa. The challenge in this Writ Petition is to the allotment of the land by the GIDC to M/s. Meditap Specialities Private Limited (the Petitioners in Writ Petition No. 380 of 2008). There are various prayers made in the Petition including the prayer for issuing mandamus directing the Government of Goa and the to take back the possession of the land and to revert the same to the owners from whom the said lands have been acquired. A prayer is made for setting aside the approval granted by the Government of India and for setting aside the Notification issued by the Government of India notifying the SEZ. The challenge in the Petition is on many grounds including a ground that the allotment of the land in favour of the said Company has been made in arbitrary and illegal manner by the GIDC. It is contended that even without verifying the credentials of the Company, on the basis of a single page application, the allotment of land was illegally made without following the procedure. It is contended that even project report was not before the GIDC. Their challenge is to the decision making process by which the allotment has been made. There are various other challenges to the very action of Government of Goa of setting up SEZs in the State of Goa.

13. FACTS OF WRIT PETITION No. 263 OF 2008 FILED BY JOHN PHILIP PEREIRA & ANOTHER:

(a) This Writ Petition has been filed allegedly in public interest by the Petitioners who claim that they are public spirited individuals. The 1st Petitioner is a resident of village Nagoa Verna and the 2nd Petitioner is the resident of village Loutolim. In this Writ Petition, the challenge is to the allotment of lands to Respondent Nos. 3 to 7 - Companies who are the Petitioners in Writ Petition Nos. 349 of 2008, 501 of 2008, 438 of 2008, 437 of 2008 and 507 of 2008. The challenge is to the decision making process of the GIDC of allotting the lands to the said Companies. The challenge is on the ground that the allotment is arbitrary and illegal and is liable to be set aside. The prayers are for cancellation of the allotment of lands and Lease Deed and for a Writ directing the said Companies to return the possession of the said lands. The challenge is to the decision of setting up of SEZ at Verna. The challenge is to the proceedings of meetings of the GIDC.

14. FACTS OF WRIT PETITION No. 316 OF 2008 FILED BY FRANKY MONTEIRO and Ors.:

(a) The said Writ Petition has been filed by the Petitioners, who are claiming to be public spirited citizens residing in Goa, who believe in good governance and transparency as well as fair-play in administrative action. They claim to be villagers and components of the comunidade of villages of Verna and Loutolim. The challenge in the Writ Petition is to the allotment of lands by the GIDC to Respondent Nos. 3 to 7 - Companies who are the Petitioners in Writ Petition Nos. 349 of 2008, 501 of 2008, 438 of 2008, 437 of 2008 and 507 of 2008. Various prayers have been made including a Writ of Mandamus or certiorari for quashing the allotment in favour of the said Companies and for directing the State Government and GIDC to take over the possession of the said lands from the said Companies and for returning the lands to the persons from whom the said lands were acquired. A prayer is made for an inquiry by an independent body like CBI or a Commission of Inquiry headed by a retired Judge of the High Court or Hon"ble the Supreme Court to look into the irregularities in the allotment of the said lands to the said Companies. There is also a specific challenge to the approvals granted and notifications issued under the SEZ Act and Rules. The challenge is based on the similar contentions which are raised in the Writ Petition Nos. 263 of 2008 and Writ Petition No. 314 of 2008.

15. FACTS OF WRIT PETITION No. 310 OF 2008 FILED BY LAWRENCE FERNANDES & OTHERS

(a) The Petitioners in this petition are claiming to be the residents of Goa. They claim to be public spirited citizens. They claim to be the residents of Sancoale and neighbouring villages. The challenge in this Petition is to the allotment of lands to M/s. Peninsula Pharma Research Center Private Limited (the Petitioners in Writ Petition No. 436 of 2008). The prayer in the said Writ Petition is for cancellation of allotment of lands granted to the said Company and for a

direction to the State Government and the GIDC to take over the possession of the said lands from the said Company and revert the lands to the original owners from whom the same were acquired. A prayer is also made for quashing the grant of approval and notification issued in that respect by the Government of India under SEZ Act and the SEZ Rules. A prayer is also made for holding an inquiry by an independent body like CBI or a Commission of Inquiry headed by a Retired Judge of the High Court or Hon'ble the Supreme Court to look into the irregularities in the allotment of the said lands to the said Companies. The challenge in the Petition is also on the ground that the allotment of land is arbitrary and illegal.

16. Affidavits-in-reply, Rejoinders and further affidavits have been placed on record. On behalf of the said Companies who have been allotted the lands for setting up of SEZs, the main submissions have been made in Writ Petition No. 349 of 2008 by Shri Ravi Kadam, the learned Senior Counsel. Further submissions have been made by Shri F. D'Vitre, Senior Counsel in Writ Petition No. 501 of 2008. Shri S.G. Dessai, the learned Senior Advocate has made submissions in support of Writ Petition No. 507 of 2008. Shri Soli Cooper, learned Counsel has made submissions in support of Writ Petition No. 380 of 2008. Shri D'Vitre, Shri Dessai and Shri Cooper, while adopting the submissions made by Shri Ravi Kadam, have made additional submissions. The submissions made in the aforesaid Petitions have been adopted by learned Counsel appearing for the Petitioners in Writ Petition Nos. 436 of 2008, 437 of 2008 and 438 of 2008. Shri F. E. Naronha, learned Counsel has made submissions in support of Writ Petition Nos. 263 of 2008, Shri Mihir Desai, the learned Counsel has made submission in support of Writ Petition Nos. 310 of 2008, 314 of 2008 and 316 of 2008. Shri Ravi Kadam, learned Senior Counsel, Shri D'Vitre, learned Senior Counsel, Shri Cooper, learned Counsel appearing for the SEZ Companies have opposed the said Petitions. We have heard the submissions of Shri S.S. Kantak, the learned Advocate General of the State of Goa in all the Petitions. Shri Bomi Zaiwalla, Senior Advocate on behalf of the GIDC has opposed the Writ Petitions filed by the Companies. He has also made submissions in Writ Petition Nos. 310 of 2008 and 314 of 2008. Shri Aspi Chinoy, learned Senior Counsel has made submissions on behalf of the GIDC in Writ Petition Nos. 263 of 2008 and 316 of 2008. The Applicant in Misc. Civil Application No. 391 of 2009 in Writ Petition No. 263 of 2008s appeared in person and has made his submissions. At the outset, we must record our appreciation for co-operation rendered by counsel appearing for all the parties. An order was passed in these Writ Petitions way back on 8th September, 2008 directing disposal of the Petitions at an admission stage. Though the submissions have been made exhaustively, the learned Counsel appearing for the parties have ensured that the hearing of the Petitions was concluded before the present roster come to an end. We had permitted the parties to file written submissions by granting them time after completion of oral submissions. By 27th August, 2010, the parties were permitted to file their respective written submissions. The written submissions in Writ Petition Nos.

316, 310 and 314 of 2008 were received by one of us in Mumbai on 1st September 2010.

SUBMISSIONS MADE BY SHRI RAVI KADAM, SENIOR COUNSEL APPEARING IN WRIT PETITION No. 349 OF 2008.

17. The learned senior counsel referred to the factual background of the cases and the facts leading to the legislation of the SEZ Act. He has addressed the Court on the concept of SEZ. He has invited the attention of the Court to the relevant provisions of the SEZ Act and Customs Act. He has also invited our attention to the Goa Industrial Policy of 2003. He has relied upon the IT & ITES Policy of Goa of the year 2005 which contemplated setting up of SEZ which special emphasis on Information Technology. He has invited our attention to the various provisions of SEZ Act and SEZ Rules. He has made extensive references to the documents placed on record of the Writ Petitions by the Petitioners and contesting parties. He pointed out that under the SEZ Act, the SEZ may be established either jointly or severally by the Central Government, State Government or any person for manufacturing of goods or rendering services or for both or as a free trade and warehousing zone. He pointed out that the SEZ can be set up in different ways. A person may make a proposal to the State Government in accordance with Section 3(2) of the SEZ Act. u/s 3(3), a person after identifying the area can make a proposal directly to the Board constituted under the SEZ Act and the Board may consider the proposal for grant of approval. In the first category, the State Government can recommend the proposal to the Board. In the second category, after approval is granted by the Board, the person concerned is required to obtain concurrence of the State Government within the prescribed period. He pointed out that under the SEZ Act, the State Government may also set up SEZ by identifying an area and forward its proposal directly to the Board in accordance with Section 3(4) of the SEZ Act. He stated that in addition, the Central Government has a power after identifying an area to set up and notify the SEZ. However, the Central Government has to consult the State Government. He pointed out that the Central Government may set up SEZ without referring to the proposal to the Board.

18. He pointed out that under the Scheme of SEZ Act, if an application is made by any person to the State Government, the State Government may forward the same together with its recommendations to the Board within the prescribed period. After receiving such application, the Board may either approve the same or reject or modify the same. In case the proposal is approved, the Board is required to communicate the same to the Central Government. On receipt of the communication, the Central Government has to grant a letter of approval to the developer or to the State Government. He pointed out that after the grant of Letter of Approval (for short "LOA"), the developer may be allot space or built up area or provide infrastructure services within the SEZ to the approved units in accordance with the agreement entered into by him with the entrepreneurs of such units. He submitted that immediately upon grant of LOA, the developer can

create third party rights in favour of the various entrepreneurs/third parties. After the LOA is granted, the Central Government after satisfying itself that the requirements of Section 3(8) of the said SEZ Act are fulfilled, is empowered to notify specifically identified areas in the State as SEZ by exercising the power under Sub-section (1) of Section 4 of the said SEZ Act. He pointed out that while notifying a specific area as the SEZ, the Central Government has to be guided by various factors set out in Section 5 of the SEZ Act. He pointed out the power of the State Government of granting exemption from the state taxes, levies and dues to the developers. He pointed out that the provisions of SEZ Act have been giving over-riding effect on the other laws.

19. He invited our attention to the SEZ Rules framed in exercise of powers u/s 55 of the SEZ Act. On the basis of the various provisions of the said SEZ Act and the SEZ Rules, he submitted that the scheme is that once the Board decides to grant approval on the basis of a recommendation of the State Government, the role of the State Government comes to an end and it cannot play any further role. He submitted that once approval is granted, the State Government has no power whatsoever to interfere with or to obstruct the establishment of an approved SEZ. He submitted that in any event after the SEZ is notified by the Central Government, the State Government has no power to prevent the establishment of SEZ. He submitted that after the recommendation was made by the State Government, there was no power vesting in the State Government to withdraw the recommendation. He submitted that in any case, after such approval by the Board, the State Government has no power to withdraw the recommendation which is already acted upon by the Board under the SEZ Act. He submitted that even in a case where the developer has defaulted or is not in a position to perform its/his function, in view of the provisions of various Sub-sections of Section 10 of the said SEZ Act, the Board can only substitute a developer but in no case, the SEZ can be cancelled.

20. Turning to the facts of the case, he submitted that on the basis of the recommendation of the Government of Goa, an approval was granted by the Board and the Central Government and in fact, pending formal notification, the Petitioners were expressly granted permission to commence construction activities at the SEZ sites. He pointed out that on 6th November, 2007, a notification u/s 4(1) of the SEZ Act was issued by the Government of India which was published in the Official Gazette. He submitted that after publication of the notification, the State Government had no power to interfere with the SEZ of the Petitioners in any manner whatsoever.

21. He invited our attention to the fact that the Government of Goa had adopted the policy of setting up SEZs which was gazetted. He pointed out that the reliance has been placed by the State Government only on the recommendations of the Cabinet Committee and there is no decision of the Cabinet to that effect relied upon by the State Government in its affidavit. He pointed out that the White Paper issued by the Chief Secretary to the Government of Goa itself

records several advantages of setting up of SEZs. He submitted that in case of the companies where the SEZ was notified or where the LOA have been granted, during the pendency of the petitions, the Government of India continued to extend the validity period of the approvals. He submitted that under the SEZ Act, there is no power vesting in the Government of India to cancel or revoke the notification issued u/s 4(1) of the SEZ Act. He submitted that the Petitioners were invited by the State Government after the officials of the State Government were satisfied and impressed by the projects of the Petitioners at Mumbai and Hyderabad. He submitted that on the basis of unequivocal representation made to the Petitioners by the Government of Goa, the applications were made by the Petitioners which were recommended by the Government of Goa. He pointed out that on the basis of the representations repeatedly made by the Government of Goa, the Petitioners have altered their position. He pointed out that the Petitioners have invested a sum of Rs. 238 crores and more on the project and have taken substantial steps. He pointed out that the Petitioners have relied upon a report of Chartered Accountants which proves extent of investment made by the Petitioners. He submitted that after the Petitioners have acted upon the promise held by the State Government, the promise would be enforceable against the State Government as it is bound by its own promise. He submitted that it is not enough to the State to merely plead that the public interest would be prejudiced if the promise was required to be carried out. He submitted that to claim exemption from the liability of carrying out promise, the State Government is required to show reasons and justification and the State Government cannot rely upon the some indefinite and undisclosed ground of necessity and expediency. He submitted that mere public outcry is no ground to back out from the promise. He placed reliance on the decisions of the Apex Court in the case of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, *State of Punjab Vs. Nestle India Ltd. and Another*, and *State of Bihar and Others Vs. Kalyanpur Cements Ltd.*, in support of his plea based on doctrine of promissory estoppel. He submitted that it is enough for the promisee to show that he has acted on the basis of the promise and altered his position. He submitted that the State Government has not produced any material whatsoever to justify the claim on the basis of the alleged public interest. He submitted that all that the Cabinet Committee has considered is the White Paper prepared by the Chief Secretary to the Government of Goa, report of the Task Force on the Regional Plan for Goa 2021 and the report of SEZ Study Committee of GPGC dated 31st December, 2007. He submitted that the White Paper in fact answers apprehensions expressed against the SEZs and ultimately comes to the conclusion that the SEZ would sub serve the public interest. He submitted that the White Paper is a detailed and reasoned document. He pointed out that there is no report of the Task Force as such but only the recommendations appear to be there. He submitted that the report of the SEZ Study Committee of GPGC is motivated by the political considerations and the same cannot be the basis for taking any rational decision.

22. He submitted that the decision of the Cabinet Special Committee cannot be treated as a policy decision of the State Government as the earlier policy decision of the State Government was by the Cabinet. He submitted that even assuming that the policy of the Government of Goa on SEZ was withdrawn, the said policy recorded the grant of exemption from the State taxes and delegation of powers conferred on the authorities under the various State Acts to the Development Commissioner. He submitted that by withdrawing the said SEZ policy, the SEZs cannot be done away with in the State of Goa. He submitted that even Goa Industrial Policy and IT & ITES policy provided for setting up of SEZs and the said policies have not been revoked. He submitted that the SEZ Act is applicable to the State of Goa and the legislation being in the exclusive field of the Government of India, the State cannot formulate policy of not permitting SEZs. On this aspect, he submitted that the subsequent decision of the Government is arbitrary and irrational. He placed reliance on various decisions of the Apex Court including the decision in the case of A.S. Sangwan v. Union of India and Ors. 1980 Supp. SCC 559 and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, . On this aspect, he lastly submitted that in any case, the decision of withdrawal of SEZ policy of the Government of Goa can operate only prospectively and the said decision will not govern the SEZ which was approved before the said decision of the Government.

23. The learned Senior Counsel Shri Kadam also made a detailed submissions on the direction issued by the State Government in exercise of powers u/s 16 of the GIDC Act. He submitted that the lease already granted to the Petitioners can be terminated only in the event of any breach committed by the Petitioners and that too after issuing notice in terms of the lease. He submitted that even the GIDC can terminate the lease only in case of breach of terms and conditions of lease. He submitted that the power of the State Government u/s 16 to issue direction is confined to issuing general or specific directions as to the policy and that too also for carrying out the purposes of the Act. He submitted that the direction cannot be issued to take action which is contrary to the provisions of the GIDC Act or in derogation of the said provisions. He placed reliance on the decision of the Apex Court in the case of State of U.P. Vs. Neeraj Awasthi and Others, , Bangalore Development Authority and Others Vs. R. Hanumaiah and Others, and various other decisions. He submitted that the direction issue u/s 16 of the GIDC Act is ultra vires the Act. He submitted that assuming that there is a decision of the Government of Goa to issue direction u/s 16 of the GIDC Act, the same must be taken only upon compliance with the requirement of Article 162 read with Article 166 of the Constitution of India. He submitted that in view of Rules 9 and 10 of the Rules of Business of the Government of Goa, 1991 made by the Cabinet in exercise of powers conferred by the Clauses (2) and (3) of Article 166 of the Constitution of India read with Item 9 of the Schedule provide that the proposals for important change in the policy have to be brought before the Council of Ministers. He submitted that there is nothing on record to show that the decision to issue direction u/s 16 of the GIDC Act or a decision to do away with the SEZ

policy in the State of Goa is by the Cabinet.

24. The learned Senior Counsel submitted that the show cause notice issued by the GIDC is premeditated which is based on the so called direction issued u/s 16 of the GIDC Act, and therefore, it is in effect an order of cancellation of the lease. He submitted that the State Government has come out with a case that a direction has been issued to terminate and cancel the lease. The learned Senior Counsel also dealt with the legal submissions made by the learned Advocate General and the learned Senior Counsel appearing for GIDC. He submitted that the show cause notice issued by the GIDC is completely illegal. He submitted that there is no power vesting in the Government of Goa to cancel the SEZ which is already notified and in any even the Government of India has declined to accept the request of the Government of Goa to cancel the SEZ of the Petitioners. He submitted that considering the huge investment already made by the Petitioners and considering the fact that the decisions of the Government of Goa and GIDC are patently illegal and arbitrary and the Petition must succeeds.

SUBMISSIONS OF THE PARADGIM LOGISTIC & DISTRIBUTION PRIVATE LIMITED and Ors. IN WRIT PETITION No. 501 OF 2008.

25. While adopting the submissions of the learned Senior Counsel appearing for the Petitioners in Writ Petition No. 349 of 2008, the learned Senior Counsel appearing for the Petitioner has made additional submissions. He submitted that there is no power vesting in the Central Government to cancel the letter of approval once granted. He pointed out the proposed amendments to the SEZ Rules by which the power is sought to be incorporated to cancel the letter of approval in a limited circumstances. He submitted that under the SEZ Act and the Rules, the Central Government can only change developer u/s 10. He submitted that in the present case, recommendation made by the Government of Goa has merged with the letter of approval granted by the Central Government, and therefore, now the Government of Goa has no power to withdraw its recommendations. He submitted that after the letter of approval, only certain procedural formalities such as submission of exact area to the Central Government and compliance of the requirements u/s 3(8) are required to be complied with before the Central Government issues notification u/s 4(1) of the SEZ Act. He submitted that the averments made in the Petition disclose that some steps have already been taken. He submitted that once the letter of approval is granted by the Central Government in accordance with Section 3(10) of the SEZ Act, the State Government has no role to play. He submitted that there is no difference between a case where only the letter of approval is issued and a case where a notification is issued u/s 4(1) of the SEZ Act. He submitted that after the recommendation, the State Government becomes functus officio and, therefore, a letter dated 7th January, 2008 of the State Government purporting to withdraw its recommendation and seek cancellation of the letter of approval is illegal. He submitted that the Petitioners are going to set up their own power plant. It is stated that daily requirement of water in the SEZ set up by the

Petitioners will be very meager and the Petitioners will use water bodies, sewage treatment plants, rainwater harvesting facilities, recycling and reuse facilities etc. at their own costs. He submitted that the land allotted to the Petitioners falls within an industrial area already notified by the Government of Goa. He pointed out that the area of the land about 39 Hectares is non-agricultural and rocky land. He submitted that the SEZ will generate employment in the IT & ITES industries from a cross-section of educational backgrounds and skill sets largely available locally. He submitted that on account of a Pan India Development, the phenomenon of concentration and exodus of personnel was going to be drastically reduced.

26. Learned Senior Counsel submitted that the IT and ITES policy notified by the Government of Goa in the year 2005 was in use and operational. He pointed out that as per the said policy, the GIDC granted the land on the long terms for 30 years which is extendable for 90 years for development of IT and ITES SEZ. He submitted that the show cause notice dated 13th June, 2008 is, therefore, illegal. In the alternative, he submitted that the allotment of land in the case of the Petitioners is also for setting up of an IT/ITES Park and in the even the Petitioners being unable to set up SEZ, the IT/ITES Park is expressly permitted under the IT/ITES Policy of the Government of Goa. He submitted that as there is no impediment for establishment of an IT/ITES Park in the identified lands by the Petitioners. He submitted that in the circumstances, neither the Government of Goa nor the GIDC has power or authority to cancel the allotment of land in favour of the Petitioners.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL APPEARING FOR THE PETITIONERS IN WRIT PETITION No. 507 OF 2008.

27. The learned Senior Counsel appearing for the Petitioners has made supplementary submissions. He submitted that there is no decision of the State Government by which the SEZ policy has been withdrawn or cancelled. He submitted that the policy of SEZ is as a result of exercise of legislative function and there is no decision of the legislature of the Government of Goa cancelling its earlier SEZ policy.

SUBMISSIONS OF THE LEARNED COUNSEL APPEARING FOR THE PETITIONERS IN WRIT PETITION No. 380 OF 2008.

28. The learned Counsel reiterated the submissions made by the counsel appearing for the Petitioners in other cases. He submitted that the industrial policy adopted by the Government of Goa has not been withdrawn. He submitted that the Petitioners in the said Writ Petition intend to set up a research and development centre. He pointed out that there is no challenge to the credential of the Petitioners in the said Writ Petition.

29. Before adverting to the submissions made by the learned Advocate General for the State Government and the learned Senior Counsel appearing for the GIDC, it will be necessary to make a reference to the submissions made by the

learned Counsel appearing for the Petitioners in the Public Interest Writ Petitions.

SUBMISSIONS OF THE LEARNED COUNSEL APPEARING FOR THE PETITIONERS
IN WRIT PETITION No. 263 OF 2008.

30. The basic submission of the learned Counsel appearing for the Petitioners is that the allotment made in bulk of plots of land in Phase-IV of Verna Industrial Estate by the GIDC is arbitrary, illegal and violative of Article 14 of the Constitution of India as well as the provisions of the GIDC Act. He pointed out that on 13th April, 2006, M/s. Raheja Corporation Private Limited, M/s. Paradigm Logistics & Distribution Private Limited, M/s. Inox Mercantile Company Private Limited and M/s. Planetview Mercantile Company Private Limited made applications for allotment of plots of land. He pointed out that the applications do not have any inward date or stamp. He pointed out that one Shri Jaswinder Singh has signed the applications for M/s. K. Raheja Corporation Private Limited and M/s. Paradigm Logistics & Distribution Private Limited. He pointed out that some of the Directors of the two Companies are common. He stated that the applications are hand-written and there is no seal of the Company affixed. He submitted that the handwritten applications which are most probably signed by one Shri Jaswinder Singh are made in a most casual way. He pointed out that the project reports were not submitted along with the applications and even resolution passed has not been annexed. As far as M/s. Planetview Mercantile Company Private Limited (6th Respondent) is concerned, he pointed out that when the application for allotment of land was made to the GIDC and when allotment by the GIDC was made, the said Company was not even registered. He pointed out that there is no dispute that the Company was registered on 26th April, 2006. He submitted that the allotment made to a non-existing Company which was not even registered is illegal.

31. Learned Counsel further submitted that the allotments were hurriedly made within a span of 7 days from the dates on which the applications were made. He submitted that in the meeting of GIDC on 19th April, 2006, the allotments were purportedly made and in fact there was no proper service of the notice of the meeting to the members. He submitted that most of the applications made by the concerned Respondents have been forwarded by the Ministry of Industries and the concerned Respondents were supported by the Minister of Industries and the Chief Minister of State of Goa. He stated that then the Chief Minister of Goa has endorsed the application made by M/s. K. Raheja Corporation Private Limited by making a note "Please help these people".

32. He submitted that the object of GIDC Act is to promote industries in its traditional form and GIDC has been allotting plots for industries in its industrial estates. He submitted that the lands could not have been allotted for the purposes of setting up SEZ unless there was a direction issued u/s 16 of the GIDC Act and in case of the Respondents to the Petitions, no such direction was issued.

33. He submitted that in any case, on 19th April, 2006 in the meeting of the GIDC there was no sufficient quorum as the only four Directors out of nine were present. He submitted that the so called resolutions passed by the GIDC of allotment of lands are illegal as the proceedings of the meeting are illegal being held in absence of the sufficient quorum.

34. Various submissions have been made by the learned Counsel appearing for the Petitioners on the rate of lease rent and the amounts charged by the GIDC to the contesting Respondents. He submitted that the lands acquired for setting up industrial estate have been illegally allotted to the aforesaid Companies for the purposes of setting up SEZs and, therefore, the said lands ought to be returned to the original owners.

35. The learned Counsel appearing for the Petitioners relied upon the report of the Comptroller and Auditor General of India for the year 2008-09. He highlighted what is set out in Chapter VII of the said Report. He pointed out that the Auditor General of India has found several illegalities and irregularities in the allotment of lands by the GIDC to the contesting Respondents. He pointed out that the report indicates that due to illegalities and irregularities committed by the GIDC, a huge monetary loss has been suffered by the GIDC.

36. The learned Counsel appearing for the Petitioners relied upon several decisions of the Apex Court in support of his submission that the public property cannot be transferred without inviting bids or quotations.

SUBMISSIONS MADE BY THE LEARNED COUNSEL APPEARING FOR THE PETITIONERS IN WRIT PETITION Nos. 310 OF 2008, 314 OF 2008 AND 316 OF 2008

37. The learned Counsel appearing for the Petitioners submitted that under the GIDC Act, there is no power to allot lands for setting up SEZs. Inviting attention of the Court to Section 14 of the GIDC Act, he submitted that the lands could have been allotted only for setting up industries and for setting up housing colonies of the employees of those industries. He submitted that u/s 6 of the SEZ Act, even non processing activities are permitted to set up in the area of SEZ. He submitted that the Respondents- Companies have applied for allotment of lands for setting up SEZs which will include non-processing units such as Shopping Malls, Offices, Residential Complexes, Hotels and Recreational facilities. He submitted that the allotment of lands for non-processing units cannot be an allotment for industrial purposes or for any purposes ancillary to industrial purposes. He submitted that the GIDC has no power to allot lands to developers for any purpose other than industrial. He submitted that under the GIDC Act either the GIDC can develop the lands by providing the necessary infrastructure or build factories or buildings. He submitted that the lands cannot be allotted to the developers to develop the same.

38. The learned Counsel relied upon several provisions of GIDC Act and submitted that the lands acquired by the GIDC and in particular for setting up

Verna Industrial Estate, Phase-IV, can be used only for the purposes of setting up an industrial estate. He submitted that either the GIDC can allot plots having all the facilities for the industrial use and build factories and buildings and then make the same available to the industries.

39. He submitted without prejudice to the contention that under the GIDC Act, there was no power vesting to allot a land for setting up of a SEZ, he submitted that unless there was a direction issued u/s 16 of the GIDC Act by the State Government, the land could not have been allotted for setting up a SEZ. Inviting our attention to the affidavit of the GIDC in Writ Petitioner No. 316 of 2008, he submitted that the GIDC has proceeded on assumption that a direction was issued by the State Government vide Note dated 13th March, 2006 for allotting the lands for SEZ. He submitted that the Note is made by the Ministry of Industries on 13th March, 2006 which is endorsed to the Chief Minister. He pointed out that the Note only says that "we may direct Goa IDC u/s 16 read with Section 28 of the GIDC Act, 1965 to allot 250 acres of land at Kerim to M/s. Meditab Specialities Private Limited to set up a SEZ". He submitted that actual direction issued, if any, u/s 16 of the GIDC Act, has not been placed on record.

40. He submitted that the applications for allotment of lands made by the Respondents-Companies were not at all scrutinized and there was no application of mind by the GIDC. He submitted that the allotment of lands admeasuring 38,447,98 sq. meters is virtually an allotment of three industrial estates. He submitted that before taking such a decision, the GIDC was under obligation to consider the cumulative effect of allotment and use of such large lands on the environment, availability of water supply, availability of power supply, roads and demands caused by the migration. He submitted that the financial capacity of the Companies to carry out activities as well their background and experience has not at all been considered. He submitted that there is no application of mind as to whether there will be any export revenue generation from the SEZ. He submitted that a close scrutiny of the applications was necessary when for the first time in a small State like State of Goa, SEZ was being set up. He submitted that the State of Goa is a State having limited resources. He submitted that there is not even a pretence of an application of mind. He submitted that merely because industrial policy of 2003 permitted setting up of a SEZ, without application of mind, allotments could not have been made mechanically. He submitted that the SEZ contemplated under the policy of 2003 are completely different from the SEZ which were being set up after SEZ Act, 2005 came into force. He submitted that there was no policy formulated by the State Government for setting up of a SEZ in a specified areas or specified localities. He submitted that there was no decision taken that the SEZ shall be set up in the area acquired at the instance of GIDC for setting up industrial estates. He submitted that the Respondents -Companies directly approached the Ministry of Industries and/or the Chief Minister and submitted applications for allotment of lands. He submitted that apart from the fact that the allotment of the lands is arbitrary, unreasonable and irrelevant, the lands could have been allotted only by

a public auction as a transparent method of disposal of the public property. He submitted that the whole process of allotment was hastily done without application of mind and discarding all procedural norms.

41. The learned Counsel commented upon as to how four applications made on 12th April, 2006 were appear to be in the handwriting of the same person. He submitted that all the said four applications bear consecutive numbers. He submitted that the material on record shows that the applications were in fact made on 17th April, 2006 only 2 days before the meeting held on 19th April, 2006. He pointed out that in the application made by the Peninsula Pharma Research Centre Private Limited it is not even mentioned that the same was for allotment of the land for SEZ. He submitted that the company was under the process of formation when the application was made. He submitted that on 9th June, 2006, the said Company wrote a letter to the Hon"ble Chief Minister for allotment of land and for grant of status as an export processing zone. He stated that the letter does not bear inward stamp of the Chief Minister's office or the office of the GIDC and in fact on the very day, the Managing Director of the SEZ wrote a Note to the Hon"ble Chief Minister stating that application for allotment of land near Sancoale be considered for allotment. The Chief Secretary made a remark on the said note that no export processing zone was allowed and only SEZ was allowed. The note records that if the Company desires to set up SEZ, an application in form "A" has to be made to the State Government. He pointed out that identical application was made by the said Company on 13th June, 2006 to the Minister of Industries. The Minister of Industries made a handwritten note on the same that "in principle approval may be given". He submitted that in the application for grant of permission to set up SEZ made on 3rd August, 2006, the Company stated that it was proposing to set up a Bio-technology Park/SEZ. Thus, the allotment was sought by the Company without even referring to SEZ. He submitted that when the allotment of land was made, it was a non-existing Company,

42. In case of Meditab Specialities Private Limited, the said Company wrote a letter to the Minister of Industries on 7th march, 2006 asking for a Letter of Intent for allotment of 150 acres of land at Keri to be developed by the said Company as a developer. On 10th June, 2006, a reminder was sent to the Minister of Industries by the said Company for allotment of 150 acres of land at Keri. However, immediately on the next date i.e. 11th June, 2006, the said Company addressed a letter to the Industries Minister stating that now the requirement of land is of 250 acres. On 21st March, 2006, the Meditab Specialities Private Limited wrote a letter to the Minister for Industries requesting the GIDC to issue a letter of intent for allotment of 250 acres of land. The said letter was endorsed by the Secretary of Industries by noting that there was no proposal in Form "A" under Rule 3A of the SEZ Rules. Learned Counsel pointed out that on 28th March, 2006, the land admeasuring 12,32,000 lakhs sq. meters was allotted to the said Company. He pointed out that the letter of allotment makes a reference to a direction from the State Government. He submitted that

the Note made on 13th March, 2006 by the Industries Minister was being erroneously considered as a direction.

43. Learned Counsel appearing for the Petitioners pointed out that the lands have been allotted to SEZ at a reduced price. He submitted that even sub-lease fees, charges and assignment charges have been waived. He submitted that the two Companies i.e. Planetview Mercantile Company Private Limited and Peninsula Pharma Research Centre Private Limited were not even incorporated on the date of allotment and they were incorporated subsequently. He submitted that the application of K. Raheja which was directly entertained by the Hon'ble Chief Minister. He went to the extent of endorsing that the GIDC should help the Company. He submitted that the applications for allotment were made in a most casual manner and the same were hurriedly granted.

44. He submitted that information obtained under the Right to Information Act shows that as per the record available with Employment Exchanges in Goa, about 80,000 persons in the State of Goa were unemployed. He submitted that the project report submitted by the 7 companies suggest that 3,05,000 jobs will be generated by the SEZs. He submitted that setting up of SEZs will invite large scale migration. He invited our attention to the fact that there is no environmental impact assessment made and no such report has been placed before the Court. He submitted that in absence of the environmental impact assessment study, no approval could have been granted.

45. He submitted that there is a complete failure to consider overall impact of setting up of a SEZ. He submitted that in the letter sent by the Government of Goa to the Ministry of Commerce of the Central Government, it is stated that setting up of a SEZ shall put undue strain on the resources of the state such as water and powers. He pointed out that the said letter notes that setting up of SEZ will lead to a large scale migration and in a small State like Goa making available huge lands for SEZs would adversely affect future development plan.

46. Lastly, he submitted that there is a challenge to the approvals and Notifications issued under the SEZ Act. He submitted that even there is a complete non-application of mind by the Central Government and by the Board.

THE SUBMISSIONS OF THE LEARNED SENIOR COUNSEL OF THE GIDC

47. Learned Senior Counsel appearing for the GIDC replied to the submissions. Shri Chinoy, the learned Senior Counsel submitted that in April 2006, the Board was to consider and grant approval to around 100 SEZs in the country and to ensure that Goa get at least few SEZs, allotment of lands was required to be made hurriedly. He submitted that from the day the GIDC was set up, there is not even a single instance where the allotment was made by inviting bids or by a public auction. He denied the allegation that there was no application of mind by the GIDC. He submitted that directions were issued u/s 16 of the GIDC Act by the State Government to allot plots as the State Government wanted to ensure that the State of Goa must get sufficient number of SEZs. He submitted that this

is not a case where there is any other rival party who has made an application for allotment of lands for the purposes of setting up of SEZ. He submitted that the GIDC has acted in terms of the directions of the State Government. He submitted that the allegation that there was no quorum at the meeting of the GIDC is completely false. He submitted that the GIDC after considering all the aspects decided to allot lands. Shri Zaiwala, the learned senior counsel appearing for the GIDC in public interest Petitions adopted the said submissions and submitted that there is a gross delay in approaching this Court.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENTS-COMPANIES IN WRIT PETITION Nos. 268 OF 2008, 316 OF 2008, 310 OF 2008 AND 314 OF 2008.

48. Submissions have been made by Shri Ravi Kadam, the learned Senior Counsel, Shri F.D''vitre, learned Senior Counsel, Shri Soli Cooper, learned Senior Counsel and Shri S.G. Dessai, the learned Senior Counsel opposing the submissions of the Petitioners. The main submission is that there is a gross delay and laches in filing the Petitions in the year 2008 when allotment of lands was made in April, 2006 and approvals were granted in 2006 under the SEZ Act. The submission is that the Respondents-Companies have made large investment on the projects. It is submitted that the allotment made by the GIDC was consistent with the SEZ Policy adopted by the State of Goa. It is submitted that there were no competitors who have made applications for allotment of the said lands to the GIDC. It is submitted that the Petitioners have no locus to challenge the action of allotment. In Writ Petition No. 314 of 2008 Shri Cooper, learned Counsel appearing for the 3rd Respondent (Meditab Specialities private Limited) has made detailed submissions. He submitted that admittedly Goa Industrial Policy of 2003 was still in force. He invited attention of the Court to relevant clauses of the said policy. He submitted that there was nothing wrong if before allotment of lands, an application was made by the Company demanding area of 250 acres instead of 150 acres which was initially demanded. He pointed out that the letter dated 26th March, 2006 by the Company clearly records that the Ministry of Commerce of the Central Government was likely to meet in April, 2006 for taking a decision for setting up of SEZs. He submitted that the GIDC held discussions with the company when it was revealed that total land available for allotment at Keri was 300 acres and after allotment of 250 acres of the land to the said Company, the balance area of 50 acres may not be of any use and that is how the company agreed to take the balance area of 50 acres. He pointed out that on 28th March, 2006, the GIDC approved the proposal of the Company for grant of an area of 300 acres. He submitted that 90% of the land is to be used for manufacturing purposes. He also pointed out that the Petitioners have come out with a false case that the GIDC had offered the said land to the Education Department at the rate of Rs. 100/- per square meter. He stated that the land was offered to be transferred to the Education Department on token payment of Rs. 100/-. He also justified the rate at which the land was allotted to the said Company. He submitted that the environment impact assessment was not at all necessary as each Pharma Unit in SEZ is required to take no objection certificate

from the Pollution Control Board. He submitted that credentials of the Company are not disputed by the Petitioners and it is not the case of the Petitioners that any other Company was interested in taking over the said land. He submitted that the Petitioners have no locus. He relied upon certain decisions of the Apex Court in support of the said contention. He submitted that there was no irregularity in allotment of the land and even assuming that the best practice of auction is not followed, there is no ground for judicial review. He submitted that the decision to allot the land to the said Company was a bona fide decision taken in public interest and therefore, no interference is called for. He submitted that the Petitioners are politically motivated and they are not entitled to prosecute a public interest litigation. He submitted that there are no allegations of corruption made by the Petitioners.

SUBMISSIONS OF THE LEARNED ASSISTANT SOLICITOR GENERAL OF GOA FOR THE UNION OF INDIA

49. The learned Assistant Solicitor General of India submitted that the Board has power to cancel SEZ even in a case where notification has been issued. He submitted that as the Petitions are pending, in case of SEZs to which formal approval was granted though the show cause notices were issued, no decision was taken on the show cause notices. In view of the pendency of the Petitions, the formal approvals have been extended from time to time subject to final outcome of the Petitions. He submitted that though there is a power vesting to cancel notified SEZ, in the present case, in case of 3 SEZs, the Government of India has taken a decision not to cancel the Notifications and the Government of Goa was advised to negotiate with the developments.

SUBMISSIONS OF THE LEARNED ADVOCATE GENERAL OF GOA ON BEHALF OF THE STATE OF GOA

50. Learned Advocate General submitted that the policy decision of the Government of Goa of withdrawal of the SEZ policy of 2006 is based on consideration of various aspects. He pointed out the entire decision-making processes. Before the conclusion of submissions, he produced before the Court the file containing the proceedings in respect of the decision of the Cabinet by which the policy decision taken to withdraw the SEZ policy of 2006 was formally approved. The inspection of the file was given to the counsel appearing for the parties and photocopies of the relevant documents in the file have been placed on record. He submitted that before taking the decision, the State Government considered the White Paper prepared by the Chief Secretary, the Recommendations of the Task Force for the Regional Plan 2021 appointed by the State Government and other relevant material. He submitted that the Task Force which consisted of experts had given opportunity of being heard to all concerned parties including the companies or developers, representative of people non-government organisations and others. He pointed out that the Cabinet committee on infrastructure has considered the aforesaid documents and all relevant material. He submitted that the members of the committee had interaction with

various parties and members of the public. He submitted that the policy decision was based on considerations of public interest. He submitted that the decision was taken after the State Government was satisfied that the SEZs will adversely affect the state. He invited the attention of the Court to the aforesaid documents. He placed reliance on certain decisions laying down limitations on the power of the Court to interfere with policy decisions. He submitted that the State Government has power to withdraw the recommendations made u/s 3(6) of the SEZ Act. He submitted that the Board of Approval and the Central Government has power under the said Act to withdraw the approvals or notifications under the said Act by acting upon the withdrawal of recommendations by the state government. He submitted that except for bald averments, there is no material placed on record by the companies to show that substantial expenditure has been incurred by them. He submitted that there are hardly any steps taken by the companies on the basis of approvals or notifications. He urged that this Court cannot interfere with the policy decision of the State Government.

50A. Considering the submissions made, the following main questions arise for consideration of this Court:

- (a) Whether the State Government has an authority to withdraw its recommendations made in accordance with Sub-Section 6 of Section 3 of the SEZ Act, after approval is granted under Sub-section (10) of Section 3 or after a notification is issued u/s 4(1) of SEZ Act ?
- (b) Whether the decision of grant of approval in accordance with Sub-sections (9) and (10) of Section 3 of the SEZ Act can be revoked by the Board or the Central Government?
- (c) Whether the decision of establishment of a SEZ notified in accordance with Sub-section (1) of Section 4 can be revoked by the Central Government on the basis of the withdrawal of the recommendations by the State Government ?
- (d) Whether the alleged Policy decision of the State Government of withdrawal of the SEZ Policy of 2006 is legal?
- (e) Whether the allotment of lands made by the GIDC to the Companies is legal and valid?
- (f) Whether the direction issued by the State Government u/s 16 of the GIDC Act to cancel the allotments is legal ?
- (g) Whether the Companies can invoke principles of Promissory Estoppel ?
- (h) Whether there is a delay and laches on the part of the Petitioners in the public interest Writ petitions ?

CONSIDERATION OF QUESTIONS (a) (b) and (c):

51. For considering these questions, it will be necessary to consider the provisions of the SEZ Act. The material Sections are the Sections 3 and 4 which

read thus:

3. Procedure for making proposal to establish Special Economic Zone.-

(1) A Special Economic Zone may be established under this Act, either jointly or severally by the Central Government, State Government, or any person for manufacture of goods or rendering services or for both or as a Free Trade and Warehousing Zone.

(2) Any person, who intends to set up a Special Economic Zone, may, after identifying the area, make a proposal to the State Government concerned for the purpose of setting up the Special Economic Zone.

(3) Notwithstanding anything contained in Sub-section (2), any person, who intends to set up a Special Economic Zone, may, after identifying the area, at his option, make a proposal directly to the Board for the purpose of setting up the Special Economic Zone:

Provided that where such a proposal has been received directly from a person under this Sub-section, the Board may grant approval and after receipt of such approval, the person concerned shall obtain the concurrence of the State Government within the period, as may be prescribed.

(4) In case a State Government intends to set up a Special Economic Zone, it may after identifying the area, forward the proposal directly to the Board for the purpose of setting up the Special Economic Zone:

Provided that the Central Government may, -

(a) after consulting the State Government concerned;

(b) without referring the proposal for setting up the Special Economic Zone to the Board; and

(c) after identifying the area, suo motu set up and notify the Special Economic Zone.

(5) Every proposal under Sub-sections (2) to (4) shall be made in such form, and, manner, containing such particulars as may be prescribed.

(6) The State Government may, on receipt of the proposal made under Sub-section (2), forward the same together with its recommendations to the Board within such period as may be prescribed.

(7) Without prejudice to the provisions contained in Sub-section (8), the Board may, after receipt of the proposal under Sub-sections (2) to (4), approve the proposal subject to such terms and conditions as it may deem fit to impose, or modify or reject the proposal.

(8) The Central Government may prescribe the following requirements for establishment of a Special Economic Zone, namely:

(a) the minimum area of land and other terms and conditions subject to which the Board shall approve, modify or reject any proposal received by it under sub-sections (2) to (4); and

(b) the terms and conditions, subject to which the Developer shall undertake the authorised operations and his obligations and entitlements;

Provided that different minimum area of land and other terms and conditions referred to in Clause (a) may be prescribed by the Central Government for a class or classes of Special Economic Zones.

(9) If the Board, -

(a) approves without any modification the proposal received under Sub-sections (2) to (4), it shall communicate the same to the Central Government.

(b) approves with modifications the proposal received under Sub-sections (2) to (4), it shall, communicate such modifications to the person or the State Government concerned and if such modifications have been accepted by such person or State Government, the Board shall communicate the approval to the Central Government.

(10) The Central Government shall, on receipt of communication under Clause (a) or Clause (b) of Sub-section (9), grant, within such time as may be prescribed, a letter of approval on such terms and conditions and obligations and entitlements as may be approved by the Board, to the Developer, being the person or the State Government concerned:

Provided that the Central Government may, on the basis of approval of the Board, approve more than one Developer in a Special Economic Zone in cases where one Developer does not have in his possession the minimum area of contiguous land, as may be prescribed, for setting up a Special Economic Zone and in such cases, each Developer shall be considered as a Developer in respect of the land in his possession.

(11) Any person who, or a State Government which, intends to provide any infrastructure facilities in the identified area referred to in Sub-sections (2) to (4), or undertake any authorised operation may, after entering into an agreement with the Developer referred to in sub-section (10), make a proposal for the same to the Board for its approval and the provisions of Sub-section (5) and Sub-sections (7) to (10) shall, as far as may be, apply to the said proposal made by such person or the State Government.

(12) Every person or the State Government referred to in Sub-section (11), whose proposal has been approved by the Board and who, or which, has been granted letter of approval by the Central Government, shall be considered as a Co-Developer of the Special Economic Zone.

(13) Subject to the provisions of this section and the letter of approval granted to a Developer, the Developer may allocate space or built up area or provide

infrastructure services to the approved Units in accordance with the agreement entered into by him with the entrepreneurs of such Units.

4. Establishment of Special Economic Zone and approval and authorisation to operate it to, Developer.-(1) The Developer shall, after the grant of letter of approval under sub-section (10) of Section 3, submit the exact particulars of the identified area referred to in subsections (2) to (4) of that section, to the Central Government and thereupon that Government may, after satisfying that the requirements, under Sub-section (8) of Section 3 and other requirements, as may be prescribed, are fulfilled, notify the specifically identified area in the State as a Special Economic Zone:

Provided that an existing Special Economic Zone shall be deemed to have been notified and established in accordance with the provisions of this Act and the provisions of this Act shall, as far as may be, apply to such Zone accordingly:

Provided further that the Central Government may, after notifying the Special Economic Zone, if it considers appropriate, notify subsequently any additional area to be included as a part of that Special Economic Zone.

(2) After the appointed day, the Board may, authorise the Developer to undertake in a Special Economic Zone, such operations which the Central Government may authorise.

52. From Section 3, it appears that the proposal for setting up of a SEZ can be initiated by three modes. The first mode is under Sub-section (2) of Section 3 which empowers any person intending to set up a SEZ to make a proposal to the State Government concerned for the purposes of setting up the SEZ. The said proposal is to be made after identifying the area. The second mode is under Sub-section (3) of Section 3. Any person who intends to set up a SEZ may after identifying the area has an option to make a proposal directly to the Board of Approval constituted u/s 8(1) of the SEZ Act. The third mode is where a State government intends to set up a Special Economic Zone. Under Sub-section (4) of Section 3, after identifying the area, the State Government can forward the proposal directly to the Board for the purposes of setting up of a SEZ. Apart from these three modes by which a proposal can be initiated, under the proviso to Sub-section (4) of Section 3, a power has been conferred on the Central Government to suo moto set up and notify SEZ after consulting the State Government concerned but without referring to the proposal to the Board. However, before notifying the SEZ, the area has to be identified by the Central Government. Proviso to Sub-section (3) of Section 3 lays down that where a person intending to set up a SEZ directly submits a proposal to the Board, the Board may grant approval under Sub-section (9) of Section 3 but after receipt of such approval, it is mandatory for the person to obtain concurrence of the State Government within the period as may be prescribed. The Rule 4 of the SEZ Rules prescribes a period of six months from the date of approval for obtaining concurrence of the State Government. Thus, when a person adopts first mode

contemplated under Sub-section (2) of Section 3, the State Government has to be recommend the proposal to the Board. In case of second mode, after approval is granted by the Board, it is mandatory for the person to obtain concurrence of the State government. Without such concurrence, no further steps can be taken on the proposal. In case of third mode, it is the State Government which applies to the Board for approval. Even if the Central Government exercises its of suo moto power of setting up SEZ, prior consultation with the State Government is required. Thus, in case of first mode, recommendation of the State Government is mandatory, in case of second mode, the concurrence of the State Government is required and in case of third mode, only the State Government can apply for grant of approval. Thus, broadly stated, in case of all the three modes, consent or concurrence, as the case may be, of the State Government concerned for setting up of a SEZ is mandatory. In case of the first and the third modes even approval cannot be granted by the Board of Approval unless there is either a recommendation or proposal of the state government. In case of second mode, no further steps can be taken after grant of approval by the Board of Approval unless concurrence of the State Government is obtained by the person concerned within a period of six months from the date of approval. Thus in case of first three modes, the State Government has a major role to play.

53. Under Sub-Section 9 of Section 3 of SEZ Act, if a proposal received under Sub-sections (2) to (4) is approved by the Board without any modification, the same is required to be communicated to the Central Government. In case a proposal received under Sub-sections (2) to (4) of Section 3 is approved with modification, the same is required to be communicated to the person or to the State Government, as the case may be, and only after the said modifications are approved by such person or the State Government, the Board can communicate an approval to the Central Government. On receiving communication of approval from the Board, under Sub-Section 10 of Section 3, the Central Government is required to issue a letter of approval on such terms and conditions and obligations, as may be approved by the Board to the developer being the person who intends to set up a SEZ or to the State Government, as the case may be. Rule 6 of the SEZ Rules provides that the letter of approval has to be issued under Sub-section (10) of Section 3 by the Central Government within a period of 30 days of the communication received from the Board of granting approval. Sub-section (13) of Section 3 provides that subject to provisions of Section 3 and Letter of Approval, the developer may allocate space or built up area or provide infrastructure services to the approved units in accordance with the agreement entered into by the developer with the entrepreneur of such units.

54. Under Sub-section (1) of Section 4, after grant of Letter of Approval under Sub-section (10) of Section 3, the developer is required to submit the exact particulars of the identified area referred to in the proposals under Sub-sections (2) (3) or (4) of Section 3, as the case may be. The particulars are required to be submitted to the Central Government. After the Central Government is satisfied that the requirements regarding minimum area and other terms and conditions

are fulfilled, the Central Government may notify the specifically identified area in the State as a SEZ. Under Clause (a) of Section 2 of the SEZ Act, the appointed day with reference to a SEZ means the date on which SEZ is notified by the Central Government under Sub-section (1) of Section 4. Under Sub-section (2) of Section 4, after the appointed day, the Board may authorize the developer to undertake in a notified SEZ such operations which the Central Government may authorize.

55. As pointed out earlier, under Sub-section (8) of Section 3, the Central Government is empowered to prescribe requirements of minimum area of the land and other terms and conditions subject to which the Board shall approve the proposal. Under Sub-section (8) of Section 3, the Central Government is also entitled to prescribe the terms and conditions subject to which the developer shall undertake authorized operations. Accordingly, in Rule 5 of the SEZ Rules, the requirements for establishments of a SEZ including the requirement of minimum area for various categories of SEZs have been prescribed.

56. As far as letter of approval under Sub-section (10) of Section 3 is concerned, the Rule 6 of the said SEZ Rules is relevant, which reads thus:

6. Letter of Approval to the Developer.-

(1) The Central Government shall, within a period of thirty days of the communication received by it under Clause (a) or Clause (b) of Sub-section (9) of Section 3 of the Act grant following approvals:

(a) formal approval in the cases where land is in possession of the developer in Form B to the person or the State Government concerned or in Form C, if the approval is for providing infrastructural facilities in the Special Economic Zone, incorporating additional conditions, if any, specified by the Board while approving the proposal;

(b) in principle approval in other cases in Form B1 to the person or the State Government concerned, incorporating additional conditions, if any specified by the Board while approving the proposal.

(2) (a) The letter of approval of a Developer granted under Clause (a) of Sub-rule (1) shall be valid for a period of three years within which time, effective steps shall be taken by the Developer to implement the approved proposal:

Provided that the Board may, on an application by the Developer or co-developer, for reasons to be recorded in writing, extend the validity period for a further period not exceeding two years.

(b) The letter of approval of a Developer granted under Clause (b) of Sub-rule (1) shall be valid for a period of one year within which time, the Developer shall submit suitable proposal for formal approval in Form "A" as prescribed under the provisions of Rule 3:

Provided that the Board may, on an application by the Developer or Co-developer

for reasons to be recorded in writing, extend the validity period for a further period, not exceeding two years, upon a request made in writing by the Developer or Co-developer.

57. In case of proposals under Sub-section (2) or Sub-section (4) of Section 3 of the SEZ Act, where the land is in possession of the developer or the State Government concerned, the Central Government is required to issue approval in Form "B". In other cases, where the land is not in possession of the developer or the State Government, the Central Government is required to issue in principle approval and within one year thereof, the Developer is required to submit a suitable proposal for formal approval in Form "A".

58. As provided in Sub-section (1) of Section 4, after receiving a Letter of Approval, the developer is required to furnish to the Central Government the exact particulars of the identified area referred to in Sub-section (2) of Section 3. Rule 7 of the said SEZ Rules provides for details to be furnished by the developer in accordance with Sub-section (1) of Section 4 of the SEZ Act. One of the requirements prescribed by Sub-rule (1) of Rule 7 is that a certificate from the concerned State government or its authorized agency is required to be produced stating that the developers have legal possession and irrevocable rights to develop the said area as SEZ and that the said area is free from all encumbrances. Only after the submission of details as required by Sub-section (1) of Section 4 read with Rule 7 and on acceptance of the conditions specified in the Letter of Approval, the Central Government can notify the identified area as a SEZ under Sub-section (1) of Section 4 of the SEZ Act.

59. Therefore, in case of a person other than the State Government intending to set up a SEZ, two modes are available for moving the proposal. One is by making an application to the State Government after identifying the area and second is making an application directly to the Board. In case of the first mode, it is obvious that the Board cannot process the application and grant approval unless the State government makes recommendation in accordance with Sub-section (6) of Section 3 read with Rule 4. Under Sub-rule (1) of Rule 4, time of 45 days is granted to the State Government to submit recommendation. Sub-rule (2) of Rule 4 requires that while forwarding the proposals, the State Government shall ensure that the requirements under Rule 5 have been complied with. While forwarding the proposal, the State government is required to attach the copies of the relevant notifications issued by it in this regard. Thus, unless recommendation of the State Government in accordance with Sub-section (6) of Section 3 read with Rule 4 is received by the Board, an approval cannot be granted by the Board. In case of the second mode, where an application is directly made by the person to the Board, though the board can grant approval, without the concurrence of the State Government, the SEZ cannot be notified under Sub-section (1) of Section 4. The power to grant recommendation will include power to withdraw the Recommendation. Thus, after recommending a proposal of a person, for the reasons recorded, the State Government can always

withdraw its recommendation before the Board grants approval under Sub-section (9) of Section 3. After recommendation is withdrawn, approval under Sub-Section 9 of Section 3 cannot be granted by the Board on the basis of the proposal under Sub-Section 2 of Section 3. Even if the recommendation is withdrawn, the person may make an application in accordance with Sub-section (3) of Section 2 or even the Central Government can exercise power under the proviso to Sub-section (4) of Section 3 of the SEZ Act.

60. Even after the approval is granted under Sub-section (9) of Section 3, under Sub-section (1) of Section 4 the developer after receiving the Letter of Approval has to submit exact particulars of the identified area to the Central Government. Rule 7(1) of the SEZ Rules requires not only the particulars but a certificate from the State Government or its authorized agency that the developers have legal possession and irrevocable rights to develop the said area as SEZ and that the said area is free from all encumbrances. Thus, without such certificate from the State Government or its authorized agency, a notification under Sub-section (1) of Section 4 cannot be issued even in case where the second mode has been adopted by the persons concerned. Thus, even after approval is granted, without certification by the State Government or its authorized agency, the Notification u/s 4(1) cannot be issued.

61. Even after grant of approval by the Board, if the State Government or its authorized agency does not issue a certificate as contemplated by Sub-rule (1) of Rule 7, the Notification issued under Sub-section (1) of Section 4 cannot be issued. The power to withdraw the approval is implicit in the power conferred to grant approval. However, it is obvious that the approval can be withdrawn provided the same is not acted upon by issuing the notification u/s 4(1). In a given case, on the basis of the withdrawal of the recommendation by the concerned State Government after the grant of approval, the Board or the Central Government has a power to withdraw the approval. However, after approval is granted, a right is accrued to the applicant to apply for a notification under Sub-Section 1 of Section 4. As the rights of the person concerned may be affected, the Board will have to comply with the principles of natural justice before withdrawing the approval. In the present case, the decision of the Central Government is that in case of 8 Special Economic Zones for which the approval is granted but no Notification has been issued, the persons concerned will be heard. In fact show cause notices have been issued to such 8 companies, but in view of pendency of the petitions, no decision has been taken on the show cause notices. In fact, the Board of Approval had fixed the date of hearing. The hearing could not proceed in view of filing of the petitions. The question whether in the facts of the case, the approval should be withdrawn or not will have to be decided by the Board after hearing the concerned parties. The steps taken by the companies on the basis of the approval will be certainly a relevant consideration when the Board considers the question of withdrawing approval.

62. Based on Sub-section (13) of Section 3 of the SEZ Act, a submission was

sought to be canvassed by the petitioners in Writ Petition No. 349 of 2008 that after receiving the Letter of Approval from the Central Government, without waiting for the Notification under Sub-section (1) of Section 4, the developer may allocate spaces or built up areas or provide infrastructure services to the approved units. Clause z(c) of Section 2 defines "unit". The "unit" means a unit set up by an entrepreneur in a SEZ. It must be noted here that under Sub-section (1) of Section 15, any person who intends to set up a unit for carrying on the authorized operations in a SEZ is required to submit a proposal to the Development Commissioner concerned in a prescribed form. After receiving the proposal, the Development Commissioner has to submit the proposal to the Approval Committee constituted under Sub-section (1) of Section 13 and the Approval Committee is empowered to approve the proposal submitted by a person who intends to set up a unit. Section 15 of the SEZ Act reads thus:

15. Setting up of Unit.-(1) Any person, who intends to set up a Unit for carrying on the authorised operations in a Special Economic Zone, may submit a proposal to the Development Commissioner concerned in such form and manner containing such particulars as may be prescribed:

Provided that an existing Unit shall be deemed to have been set up in accordance with the provisions of this Act and such Units shall not require approval under this Act.

(2) On receipt of the proposal under sub-section (1), the Development Commissioner shall submit the same to the Approval Committee for its approval.

(3) The Approval Committee may, either approve the proposal without modification, or approve the proposal with modifications subject to such terms and conditions as it may deem fit to impose, or reject the proposal in accordance with the provisions of Sub-section (8):

Provided that in case of modification or rejection of a proposal, the Approval Committee shall afford a reasonable opportunity of being heard to the person concerned and after recording the reasons, either modify or reject the proposal.

(4) Any person aggrieved by an order of the Approval Committee, made under Sub-section (3), may prefer an appeal to the Board within such time as may be prescribed.

63. The Section 13 of the SEZ Act reads thus:

13. Constitution of Approval Committee.-(1) The Central Government shall, -

(a) in the case of existing Special Economic Zones, within six months from the date of commencement of this Act;

(b) in case of other Special Economic Zones established after the commencement of this Act, within six months from the date of establishment of such Special Economic Zone, by notification, constitute a Committee for every Special Economic Zone, to be called the Approval Committee to exercise the powers and

perform the functions specified in Section 14.

(2) Every Approval Committee shall consist of -

(a) the Development Commissioner-Chairperson, ex officio;

(b) two officers of the Central Government to be nominated by that Government - Members, ex officio;

(c) two officers of the Central Government to be nominated by that Government to represent the Ministry or Department dealing with revenue - Members, ex officio;

(d) one officer of the Central Government to be nominated by that Government to represent the Ministry or Department dealing with economic affairs (financial services) - Member, ex officio;

(e) two officers of the State Government concerned to be nominated by that State Government - Members, ex officio;

(f) a representative of the Developer concerned - Special invitee.

(3) For the purpose of exercising its powers and performing its functions, the Approval Committee may invite to its meetings, such persons as the Committee deems fit, whose assistance or advice it may consider necessary.

(4) Every Approval Committee shall meet at such times and places as it considers necessary and shall have the power to regulate its own procedure.

(5) One-half of the total Members of the Approval Committee shall form a quorum, and all the acts of the Approval Committee shall be decided by a general consensus of the Members present:

Provided that in case the Approval Committee is unable to decide any matter by a general consensus, such matter shall stand referred to the Board of Approval for its decision.

(6) No act of the Approval Committee shall be called in question on the ground merely of existence of any vacancy in, or any defect in the constitution of, the Approval Committee.

(7) All orders and decisions of the Approval Committee and all other communications issued by it shall be authenticated by the signature of the Chairperson or any other member as may be authorised by the Approval Committee in this behalf.

(8) The term of office of an ex officio Member shall come to an end as soon as he ceases to hold office by virtue of which he was so nominated.

Therefore, in case of a SEZ established after commencement of the Act, the Approval Committee has to be constituted for such SEZ within a period of six months from the date of establishment. The SEZ is established only after

notification under Sub-section (1) of Section 4 is issued. Thus, unless the notification u/s 4(1) is issued, the Approval Committee cannot be constituted. The approval for setting up of a unit for carrying on the authorized operations in SEZ can be granted only by the Approval Committee in accordance with Section 15. Thus, the question of granting approval for setting up units for carrying on the authorized operations in the SEZ does not arise unless the notification under Sub-section (1) of Section 4 is issued. The Approval Committee can be set up only after such notification is issued. Sub-section (13) of Section 3 refers to the allocation of space or built up area or providing infrastructure services to the approved units. The approved units come into existence only after the approval is granted in accordance with Section 15 and, therefore, before publication of the notification under Sub-section (1) of Section 4, no approved unit in the SEZ can be in existence. Therefore, the submission made that under Sub-section (13) of Section 3, a developer can allocate space or built up area to the entrepreneur even before the Notification under Sub-section (1) of Section 4 is issued cannot be accepted. It must be also stated that a developer cannot undertake authorized operations only on the basis of the Letter of Approval inasmuch as Sub-section (2) of Section 4 provides that only after the appointed day (i.e. the date of notification u/s 4(1)), the Board can authorize a developer to undertake authorized operations. In Writ Petition No. 349 of 2008, the Petitioners have claimed that they have "entered into commitments the 3rd parties". In the written submissions, the said Petitioners had relied upon only the "letters of interest". No specific agreements executed in favour of any third parties have been relied upon. Moreover, it is not the case of the Petitioners that the said third parties are the approved units in accordance with Section 15. Therefore, the alleged commitments cannot be pressed into service by the Petitioners. Sub-Section 13 of Section 3 permits a developer to allocate or built up area or provide infrastructure services to the approved units in accordance with the agreement entered into by him with the entrepreneurs of such approved units. As stated earlier, there are no approved units. In Writ Petition No. 380 of 2008, the Petitioners have claimed that they have entered into agreements with Cipla limited for setting up their manufacturing units in the area of the notified SEZ. However, copies of the agreements are not placed on record. Even in this petition, there is no pleading that approval has been granted u/s 15 to the units proposed to be set up by the Cipla limited.

64. Sub-section (13) of Section 3 refers to the agreement entered into by the developer with the entrepreneur of such units. Reference to such units is to the approved units in accordance with Section 15. The units can be approved only by the Approval Committee which can be set up only after a Notification under Sub-section (1) of Section 4 is issued. This legal aspect is material for considering the question whether the Board or the Central Government, as the case may be can cancel the approval under Sub-Section 9 and 10 of Section 3 or a Notification issued under Sub-section (1) of Section 4 for establishing a SEZ.

65. The stand taken by the Assistant Solicitor General of India is that the Central

Government has power to effect cancellation of the notification u/s 4(1), but in the present case, in respect of three notified SEZs, it has been decided not to exercise the said powers. In fact, he has placed on record extracts of minutes of 41st meeting of the Board of Approval resolving to de-notify a particular SEZ at a particular place. Whether the Central Government can de-notify a notified SEZ without the consent of the developer is a question which need not be decided in the present Petitions inasmuch as the action of the Central Government of declining to de-notify the SEZ in three cases has not been specifically challenged before us in any of the Petitions. Thus, on the basis of the consideration of the provisions of SEZ Act and the SEZ Rules, we hold that before the Board of Approval approves the proposal and before the Letter of Approval is issued by the Central Government, the State Government can always withdraw its recommendation in case the proposal is initiated under Sub-section (2) of Section 3 of the SEZ Act. In such a case, Approval cannot be granted on the basis of the recommendation which is withdrawn. Even after a Letter of Approval is issued, but before the notification u/s 4(1) is issued, the board and/or the Central Government has a power to withdraw the approval on the basis of withdrawal of the recommendations by the State Government. However, the approval can be cancelled or withdrawn in such a case only after following the principles of natural justice. The fact that several steps have been taken by the developer on the basis of approval will certainly be a relevant consideration which will have to be taken into account by the board.

CONSIDERATION OF QUESTION (d)

66. That takes us for consideration of the next question (d) regarding the legality of the decision of the State Government of withdrawing the SEZ Policy. The Goa Industrial Policy published in the year 2003 envisages providing of Information Technology and Information Technology Enabled Services for promotion of industries and development of Goa as an Export and Import Hub. It also provides for establishing Software Technology Parks/SEZ. In the year 2005, the Information Technology and Information Technology Enabled Services Policy of Goa was notified by the Government of Goa which envisages setting up of SEZs with special emphasis on Information Technology Sector. The third policy document is special economic zone policy notified by the Government of Goa on 13th July, 2006. The said Policy was notified after the SEZ Act came into force with effect from 10th February, 2006. The policy in short provides for setting up of SEZs in the State of Goa subject to framework determined by the Government of India in accordance with SEZ Act.

67. Admittedly ,there was some sort of a public out-cry against the establishments of SEZs in the State of Goa. On 20th December, 2007, the Chief Secretary of Government of Goa issued a White Paper on Special Economic Zone. According to the Companies, the said White Paper itself sets out several benefits of SEZ which will benefit of the State of Goa The second document relating to withdrawal of the policy is the resolution passed by the Task Force appointed by

the State Government under the Regional Plan 2021. The third document in this behalf is the decision taken by the Cabinet Committee on infrastructure to do away with the SEZ in the present form.

68. There is some controversy as to whether the proposal of the Cabinet Committee was approved by the Cabinet. In fact, the learned Counsel appearing for the Companies made extensive submissions on the basis of the provisions of the Rules of Business of Government of Goa contending that the decision of the Cabinet of Sub-Committee can become the decision of the Government provided there is a cabinet approval. The learned Advocate General of Goa produced a file containing decisions of the cabinet. In the file, there is a detailed note dated 3rd June 2008 prepared by the Honourable Chief Minister reiterating that the State Government was firm on its decision to do away with the SEZs in the State as pointed out in its letter dated 7th January 2008 addressed to the Central Government. The Note reiterates the decision of the State Government of withdrawal of SEZ policy which is communicated by the said letter. The said note makes reference to several decisions taken thereafter including a decision that the matter should be placed before the Cabinet on priority. The file contains a detailed note prepared by the Secretary (Industries) dated 10th June, 2009 for the purposes of placing before the Cabinet a resolution proposing that the Cabinet may approve the proposal of withdrawal of Goa SEZ Policy of 2006 with immediate effect. The said note also records that the proposal has been approved by the Hon'ble Chief Minister and the Minister for Industries. It appears that item No. 2 in the meeting of the Cabinet held on 15th June, 2009 was of withdrawal of Goa SEZ Policy of 2006. The proposal for withdrawal of the policy was formally approved by the Cabinet on the said date. Thus, the Cabinet of the State Government has formally approved and ratified the earlier decision taken to withdraw the policy. Order of this Court passed on 16th June 2009 in these petitions takes a note of the said decision.

69. The Council of Ministers passed a Resolution on 5th June, 2006 formulating SEZ policy. The decision of the Cabinet was published in the Government Gazette dated 13th July, 2006. In the Government Resolution, it is stated that the SEZ Authority shall ensure the provisions of adequate water supply within the SEZs for SEZ units. There is a similar provision as regards the power supply. The Policy also resolves that the exemption shall be granted to the developers of SEZ and industrial units and other establishments from all states and local taxes as well as the exemption from payment of stamp duty and registration fees for a period of five years.

70. The white paper on SEZ in the State of Goa was published on 20th December, 2007. All details such as applications received for grant of recommendation and steps taken by the Government of Goa for operation of SEZ policy have been set out. It also deals with the implications of the approvals already given. He has recorded that SEZs of 7 approved applicants will require 250 MW of electricity which cannot be provided by the State Government. He

recorded that total requirement of water of only 7 applicants will be 16 MLD out of which requirement of 10 MLD is of Pharma SEZ at Keri. He is noted that in fact said pharma unit was proposing to take raw water from the downstream of a river. It also notes the decisions taken by the empowered group of Ministers in the Government of India as a result of public out-cry against SEZs in the entire country and especially in West Bengal. Thereafter, in Paragraph 24, the white paper deals with the issues raised against the promotion of SEZ by various organizations. The comments of the Chief Secretary on every issue have been recorded.

71. The Task Force appointed by the State Government for Regional Plan of 2021 held a special meeting on 23rd December, 2007 in which the representatives of SEZs in Goa including some of the Companies which are parties to the present Petitions were heard by the Task Force. The Task Force also met officers of the GIDC, elected representatives, officers from the Government Departments, NG Os and individuals. The Task Force consisted of Shri Charles Correa, eminent architect as the Vice Chairman, Shri Edgar Ribeiro, Advisor to Government of Goa, Dr. S.P. Deshpande and Shri Datta Naik, representatives of Goa Chamber of Housing Industry, Shri Blaise Costa Bir, representative of Goa Chamber of Commerce & Industry, Shri Dean D'cruz, the Chairman of Indian Institute of Architects, Goa and Shri Rahul Deshpande. The conclusion recorded in the Resolution is that the SEZs are detrimental to the overall interest of Goa. The seven points which are enumerated therein read thus: -

1. It is perceived that Goa will not have a substantial revenue benefit by means of direct and indirect taxes through SEZs.
2. The State will have to incur expenditure to provide for infrastructure outside the SEZ area such as roads and other services. Also the State will be liable to provide for services such as water and power within the SEZ in case the Developer fails to do so. This would be an additional burden on the State exchequer.
3. The employment benefit derived through SEZs will not accrue largely to locals and it will lead to large scale migration of people thereby causing pressure on land and resources.
4. A huge amount of land has been blocked for product specific SEZs who seem to have invested on seemingly speculative grounds without specific data and analysis, for a large period of time, without any Government control. This will deprive genuine entrepreneurs and companies which require land for setting up industrial units which are not product specific and not dependent on Government incentives.
5. The entire process of land allotment to SEZs has also to be seen in light of government's role in land acquisition for government projects of "public purpose" vis-a-vis allotment of Government acquired land to private developers.

6. The process of permitting SEZs in Goa is in conflict with the letter and spirit of the 73rd Amendment to the Constitution of India.

7. The intention of permitting SEZs which is that of industrialization and consequent employment generation can be served without SEZs if incentives are extended to incoming industries. The required industrial development can be achieved if government focuses on providing excellent infrastructure in terms of roads, water and power to incoming industrial units.

72. This report of the Task Force was considered by the Cabinet Committee on infrastructure which met on 31st December, 2007. The minutes of the meeting placed on record show that the Cabinet Committee considered the white paper prepared by the Chief Secretary and the Resolution dated 27th December, 2007 of the Task Force on Regional Plan of 2021. The decision taken by the Cabinet Sub-Committee reads thus:

The Committee observed that there was considerable agitation among the people of Goa about the approval given for setting up various SEZs in our small State. In deference to the wishes of the people as well as the Report of the GPCC Sub-Committee and the resolution adopted by the R.P. Task Force, the Committee took the following decisions:

(a) In view of the serious concern regarding strain on the State's resources and infrastructure without commensurate benefits, expected large scale migration of people, resultant social tensions and overall shortage of land, it was decided to do away with the SEZ's in the present form.

(b) Out of the 15 SEZ applications recommended to the Govt. of India for approval by the State government, no decision has been taken in respect of 8 cases which were kept on hold by the present Government pending a final decision in the matter. These cases are:

Sr. No.

NAME OF THE UNIT

LOCATION

1

Info Tech Corporation of Goa Ltd., Porvorim Goa
Rajiv Gandhi IT Habitat at Taleigao

2

Info Tech Corporation of Goa Ltd., Porvorim Goa
Soccor Bardez Taluka North Goa

3

Shirdi Infrastructure & Developers Pvt. Ltd., Margao

Colvale Village Bardez Taluka North Goa

4

Reteline Exports Pvt. Ltd., New Delhi.

Betul South Goa

5.

Maxgrow Finlease Pvt. Ltd., New Delhi.

Phase IV, Verna Industrial Estate

6.

Goa Agri Commerz Ltd.

Ambelim Guleli Sattari

7.

Skill Infrastructure Limited, Mumbai

Loliem, Taluka Canacona, Dist. South Goa.

8.

M/s. Swan Mills Ltd., 6, Feltgm House, 2nd Floor, J.N. Heredia Marg, Ballard Estate, Mumbai - 400 001.

Pernem, Goa

It was decided to request the GOI not to process these cases any further and consider them as closed.

(c) Out of the 15 cases recommended by the State Government, 7 SEZ's have been approved by the Board of Approvals, GOI. Out of these 7 cases, in 4 cases formal approval has been given but these have not yet been notified under the relevant rules. These cases are:

Sr.No .

NAME OF THE UNIT

LOCATION

1

Paradigm Logistics & Distribution Private Limited, Mumbai.

Phase IV, Verna Industrial Estate.

2

Inox Mercantile Co. Pvt. Ltd., Mumbai.

Phase IV, Verna Industrial Estate.

3

Planetview Mercantile Company Private Limited, Mumbai.

Phase IV, Verna Industrial Estate.

4.

Panchbhoomi Infrastructure Pvt. Ltd., Vasco Goa.

Soccor Bardez Taluka North Goa.

It was decided to write to GOI that the recommendations made by the State Government may be treated as withdrawn and GOI asked not to notify these cases under the relevant SEZ Act & Rules.

(d) In 3 cases, the GOI has not only approved the SEZ applications but also notified the SEZ's under the relevant Act and Rules. These are:

Sr. No.

Name of the Unit

Location

1.

Meditab Specialities Pvt. Ltd.

Kundaim, Ponda - Goa.

2.

Peninsula Pharma Research Centre Pvt. Ltd.,

Panaji - Goa

3.

K. Raheja Corporation Pvt. Ltd.

Mumbai.

Since under the relevant Act and Rules, only the GOI is empowered to approve and notify the SEZs, it was decided to take up the matter with the GOI and recommend that the approvals/notifications in these 3 cases may be withdrawn and the cases denotified.

(e) Pending a final decision from the GOI and in view of the social tensions in the area, it was decided to direct the concerned parties not to take up further work on the ground in pursuance of the approval given till the matter is finally resolved in consultation with the GOI.

73. The submission of the learned Senior Counsel appearing for the Petitioners in the Petitions filed by the Companies was that the Cabinet Sub-Committee was influenced by only the public out-cry and the report of the Sub-Committee appointed by the Ruling Congress Party. Another criticism was that what is placed on record was the Resolution passed by the Task Force which records the recommendation but not the reasons. It must be stated here that the Task Force consisted of eminent Architects and the representatives of the Goa Chamber of Housing Industries as well as Goa Chamber and Commerce Industry. The Task Force does not appear to be influenced by the public out-cry. One of the major considerations by the Task Force is that the State of Goa will not have substantial benefit by setting up of a SEZ. It is observed that the State would be liable to provide for services such as water and electricity supply in case developers fail to do so which will be additional burden on the State exchequer. Another important aspect considered by the Task Force is that the huge amount of land has been blocked for product specified SEZs who seem to have invested on speculative grounds without specific data and analysis. This will deprive genuine entrepreneurs and the Companies which require lands for setting up industrial units. As pointed out earlier, the substantial parts of the lands acquired for setting up industrial estates by the GIDC have been allotted to the Respondents-Companies for developing SEZs. Another aspect considered is that the employment benefits which will be derived through SEZs will not accrue largely to locals and it will lead to a large scale migration of people thereby causing pressure on land and resources. It was be noted here that in a public interest Writ Petition, information obtained from the employment exchange has been placed on record which shows that there were about 80,000 unemployed persons in the State and whereas the companies projected that more than 3,00,000 jobs will be created by the SEZs. All this has to be appreciated in the light of the fact that Goa is a very small State having limited resources. The Cabinet Committee on infrastructure noted the serious concern regarding strain on State's resources and infrastructure without commensurate benefits. The Committee also considered overall shortage of land and accepted the possibility of a large scale migration of the people to the small State like Goa and resultant social tensions. The minutes of the Cabinet Committee also record that the members of the Committee included the Hon''ble Chief Minister, Home Minister, Ministers of Public Works Department, Revenue and Health. The minutes also record that the said Ministers also shared the details of their interaction with the various stake holders including the NGO's Civil Action Groups, etc.

74. The Committee has also noted what is set out in the white paper. It was contended that the decision of the Cabinet Committee is based only on the recommendation of a Study Committee of the Ruling Congress Party. The Cabinet Committee has considered the report of the Task Force which consisted of experts. The members of the committee had interaction with various stakeholders. The report of the Cabinet Committee consisting of Senior Ministers including the Hon''ble Chief Minister has been ratified by the Cabinet. Thus, it

cannot be said that the policy decision is based only on the irrelevant considerations. The decision is based on consideration of public interest.

75. It cannot be held that the State Government is not competent to take a policy decision that there should be no SEZ in the state. Even if the Central Government decides to suo moto set up SEZ, the proviso to Sub-section (3) of Section 3 of the SEZ Act requires the Central Government to consult the State Government. In case an application is made by any person intending to set up SEZ under Sub-section (2) of Section 3, the proposal requires recommendation of the State Government. Even if such application is directly made to the Board, even after grant of approval, without concurrence of the State Government, Notification establishing SEZ cannot be issued. Thus, the State Government certainly has a role to play and can always take a policy decision on the issue whether SEZs can be set up in the State.

76. The limitations of power of this Court exercising writ jurisdiction while dealing with the policy matters are well settled. In the present case, it cannot be said that only on the ground of public out-cry, the policy decision has been taken. The policy decision is based on consideration of various factors including the report of the Task Force which comprised of the well-known experts. The Task Forces, before taking decision, had given hearing to all the companies and all concerned persons. The Cabinet Committee on infrastructure consisted of senior ministers including the Honourable Chief Minister. The ministers concerned were members of the Cabinet Committee had interaction with all the stakeholders before the decision was taken. Apart from the report of GPCC, the Committee has considered the White Paper prepared by the Chief Secretary. In the circumstances, it is not possible to hold that the decision of the State Government to withdraw from SEZ Policy is arbitrary and that it is based only on public outcry. An argument has been canvassed across the bar that the industrial policy adopted by the Government of Goa for the year 2003 makes a reference to the establishment of setting up of SEZs. It must be stated here that the said industrial policy was formulated prior to coming into force of the SEZ Act and the Policy of 2006 is a policy regarding setting up of SEZ in terms of the SEZ Act. After the SEZ Act came into force, the SEZs can be established only under the said Act. The Policy formulated in the year 2006 has been withdrawn by a subsequent policy decision approved by the Council of Ministers.

77. The limitations on the power of the Court to interfere in policy matters are well known. In the case of Federation of Railway Officers Association and Others Vs. Union of India (UOI), , the Apex Court, in paragraph 12 held thus:

12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or

action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters.

(Emphasis added)

In the case of Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others, , the Apex Court observed in paragraph 64 thus:

64. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

65. Broadly, a policy decision is subject to judicial review on the following grounds:

- (a) if it is unconstitutional;
- (b) if it is de hors the provisions of the Act and the regulations;
- (c) if the delegatee has acted beyond its power of delegation;
- (d) if the executive policy is contrary to the statutory or a larger policy.

In the decision by the Apex Court in the Case of M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, , in paragraph 18, it was observed as under:

18. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

(Emphasis added)

In the present cases, the companies have not shown any breach of the constitutional provisions. The role played by a State Government under the scheme of SEZ Act is already discussed in detail. It is for the state to decide whether a recommendation can be made or consent can be given for setting up

SEZ in the state and therefore, the state has power to formulate policy in that behalf. There are no malafides alleged or shown. The policy decision is stated to be taken in public interest. It is based on consideration of reports and relevant factors. It is impossible to hold that the said policy decision of withdrawing the earlier policy is either arbitrary or illegal. Another question is whether the doctrine of promissory estoppel will prevent the State Government from applying the said decision to the said companies. The said aspect is discussed separately.

CONSIDERATION OF QUESTION (e)

78. The next question is regarding the legality of allotments made by the GIDC to various Companies for setting up of a SEZ. The basic contention raised is that without inviting offers, the GIDC could not have allotted valuable lands to the Companies. The main contention is that without making scrutiny of the applications made by the companies, allotment of very large lands was made by the GIDC in arbitrary manner. It is contended that even the project reports are not filed by the companies along with their applications. It is alleged that allotment has been hurriedly made due to intervention of the then the Chief Minister and the then the Minister of industries of the government of Goa. When the application is made and considered by the GIDC, two companies were not even formed and registered. The contention is that there is a complete non application of mind by the GIDC and the allotments lack transparency. The other contention is that the GIDC had no power to grant lands acquired for industrial purposes for the purposes of setting up of SEZs and in any event, there was no direction issued by the State Government directing the GIDC to allot lands for setting up SEZs and the last contention on this aspect is that there are gross procedural irregularities and illegalities committed while hurriedly making allotments of the lands to the Companies.

79. On this issue, one factual aspect which is required to be noted is that the lands which have been allotted to the Companies have been admittedly acquired by exercising the powers under the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act of 1894") for setting up industrial area or industrial estate. It will be necessary to consider the relevant provisions of the GIDC Act. The preamble of the Act provides for securing the orderly establishment in industrial areas and industrial estates of industries in the State of Goa and to assist generally in the organisation therefore. Sub-section (1) of Section 3 which deals with the incorporation of the GIDC which also provides that the GIDC shall be established for the purposes of securing and assisting in the rapid and orderly establishment and organisation of industries in industrial areas and industrial estates in Goa. Sections 13 and 14 are very relevant which read thus:

13: Functions. The functions of the Corporation shall be-

(i) Generally to promote and assist in the rapid and orderly establishment, growth and development of industries in the (State of Goa),

(ii) in particular, and without prejudice to the generality of Clause (i) to -

(a) establish and manage industrial estates at places selected by the State Government;

(b) develop industrial areas selected by the State Government for the purpose and make them available for undertakings to establish themselves;

(Deleted)

(d) Undertake schemes or works either jointly or on agency basis with other corporate bodies or institutions, or with Government in furtherance of the purposes for which the Corporation is established and all matter connected therewith.

14. General powers of the Corporation. Subject to the provisions of this Act, the Corporation shall have power -

(a) to acquire and hold such property, both movable and immovable as the Corporation may deem necessary for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Corporation;

(b) to provide or cause to be provided amenities and common facilities in industrial estates and industrial areas and construct and maintain or cause to be maintained works and buildings therefor;

(c) to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings;

(d) to construct buildings for the housing of the employees;

(e) to allot factory sheds or such buildings or parts of buildings, including residential tenements to suitable persons in the industrial estates established or developed by the Corporation;

(ii) to modify or rescind such allotments, including the right and power to evict the allottees concerned on breach of any of the terms or conditions of their allotment;

(f) to constitute advisory committee to advise the Corporation.

(h) to engage suitable consultants or persons having special knowledge or skill to assist the Corporation in the performance of its functions;

(f) subject to the previous permission of the State Government, to delegate any of its powers generally or specially to any its committees or officers, and to permit them to re-delegate specific powers to their subordinates; to enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of its functions, and

(k) to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its functions and the carrying into effect the

purposes of this Act.

80. One of the important functions of the GIDC is to promote rapid and orderly establishment, growth and development of the industries in the State of Goa. The Act contemplates setting up of an industrial area as well as setting up of an industrial estate. Section 37-A of the GIDC Act empowers the State Government to declare by a notification in the official gazette an industrial area. Sub-clause (1) of Clause (a) of Sub-Section 1 thereof provides that an area earmarked as an industrial estate can be declared as an industrial area subject to satisfaction of the other conditions incorporated in the section. An "industrial estate" is defined by Clause (h) of Section 2 which means any site selected by the State Government where the Corporation builds factories and other buildings and makes them available for any industries or class of industries.

81. Clause (a) of Section 14 of the GIDC Act empowers the GIDC to lease, sell, exchange or otherwise transfer any property held by it. Under Clause (d) thereof, the GIDC has power to construct buildings for the housing of the employees and to allot residential tenements to suitable persons in the industrial estate established or developed by the Corporation. Another relevant section is Section 16 which reads thus:

16. Directions by the State Government.- The State Government may issue to the Corporation such general or special directions as to policy as it may think necessary or expedient for the purpose of carrying out the purposes of this Act, and the Corporation shall be bound to follow and act upon such directions.

Section 28 will have to be considered in this context which reads thus:

28. Disposal of land by the Corporation.-(1) Subject to any directions given by the State Government under this Act, the Corporation may dispose of -

(a) any land acquired by the State Government and transferred to it, without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out development as it thinks fit, to such persons in such manner and subject to such terms and conditions, as it considers expedient for securing the purposes of this Act.

(2) The powers of the Corporation with respect to the disposal of land under Sub-section (1) shall be so exercised as to secure so far as practicable, that -

(a) where the Corporation proposes to dispose of by sale any such land without any development having been undertaken or carried out thereon, the Corporation shall offer the land in the first instance to the person from whom it was acquired, if they desire to purchase it, subject to such requirements as to its development and use as the Corporation may think fit to impose;

(b) persons who are residing or carrying on business or other activities on any such land shall, if they desire to obtain accommodation on land belonging to the Corporation and are willing to comply with any requirements of the Corporation

as to its development and use, have as opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

(3) Nothing in this Act shall be construed as enabling the Corporation without the approval of the State Government to dispose of land by way of gift, mortgage or charge, but subject as aforesaid any reference in this Act to the disposal of land shall be construed as a reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement, right or privilege or otherwise.

82. Under Clause (a) of Sub-section (1) of Section 28 of the GIDC Act, any land acquired by the State Government and transferred to it, without undertaking or carrying out any development thereon can be disposed of by the GIDC. Under Clause (b), the lands can be disposed of after carrying out development thereon. Under Clause (a) of Sub-section (2) of Section 28, it is provided that where the GIDC proposes to dispose of by sale any such land without any development thereon, the same has to be offered in the first instance to the person from whom it was acquired.

83. Under the GIDC Act, no specific mode or method of disposal of lands has been prescribed. u/s 51 of the GIDC Act, there is a power to make regulations. It is not in dispute that there are no regulations made laying down the mode or method for disposal of lands by the GIDC. The GIDC can acquire the lands in accordance with Section 27 of the GIDC Act. u/s 29 of the GIDC Act, the State Government is empowered to place at the disposal of the Corporation any lands vesting in the Government upon such conditions as may be agreed upon between the Government and the GIDC. Thus, the GIDC can hold lands which are either acquired under the said Act of 1894 or which are vested in it by the State Government. In the present case, we are concerned with the lands acquired under the said Act of 1984. Therefore, the lands which are available at the disposal of the GIDC are public properties and, therefore, the GIDC is under an obligation to sell or transfer the lands by acting fairly.

In the case of *Meerut Development Authority v. Assn. of Management Studies* (2009) 6 SCC 17 in paragraph 28 the Apex Court has observed thus:

28. It is so well settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for disposal of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process.

(Emphasis added)

The Apex Court in the case of *Sachidanand Pandey v. State of W.B.* (1987) 2 SCC 29, held thus:

40. On a consideration of the relevant cases cited 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 precepts 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.

(Emphasis added)

In the very well known decision of the Apex Court in the case of *Ram & Shyam Co. v. State of Haryana* (1985) 3 SCC 26 laid down that:

12. 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 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 the Constitution envisages the setting up of a welfare State. In this connection we may profitably refer to *Ramana Dayaram Shetty v. International Airport Authority of India* in which Bhagwati, J. speaking for the Court observed: (SCC p. 506, para 12)

It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory

At another place it was observed that the Government must act in public interest, it cannot act arbitrarily or without reason and if it does so, its action would be liable to be invalidated. It was further observed that the object of holding the auction is generally to raise the highest revenue. The Government is entitled to reject the highest bid if it thought that the price offered was inadequate. But after rejecting the offer, it is obligatory upon the Government to act fairly and at any rate it cannot act arbitrarily.

(Emphasis added)

Another landmark decision of the Apex Court which is material on this aspect is in the case of *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, . In paragraph 11, the Apex Court held thus:

11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public

element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

In paragraphs 14 and 15 of its judgment, the Apex Court proceeded to observe thus:

14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental

action. This is one of the most important functions of the court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every Government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides.

15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in *Ramana D. Shetty v. International Airport Authority of India* that the Government is not free, like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well-established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the court as a rule of administrative law and it was also validated by the court as an emanation flowing directly from the doctrine of equality embodied in Article 14.

(Emphasis added)

In view of the law laid down by the Apex Court, the GIDC cannot arbitrarily allot lands vested in it and the alienations made by the GIDC must stand the test of reasonableness. The allotment of the public properties vested in the GIDC can be made only in a fair and transparent manner and that also in public interest. Therefore, the action of allotment of large tracts of lands to the companies will have to be tested on the touchstone of reasonableness.

84. For testing the reasonableness of the action, certain factual aspects will to be considered. Before turning to the factual aspects, an argument made on behalf of GIDC will have to be considered. There is an argument canvassed that there was a direction issued u/s 16 of the GIDC Act by the State Government under which the GIDC was obliged to allot the lands for setting up SEZs. It must be stated

here that no such specific direction u/s 16 of the GIDC Act is placed on record of any of the Petitions. In case of allotment of land at Keri to the Meditab Specialities Private Limited (the Petitioners in Writ Petition No. 380 of 2008), there is a Note dated 13th March, 2006 signed by the Minister of Industries which merely records that "we may direct Goa IDC u/s 16 read with Section 28 of the GIDC Act, 1965 to allot 250 acres of the land at Keri to the said Company". However, there is nothing on record to show that the state Government had taken any such decision to issue a direction. Moreover, no such direction is produced on record. What is stated in the Note dated 13th March, 2006 is merely a proposal to issue a direction in case of one company. On this aspect, it will be material to note the stand taken by the GIDC in their affidavit in reply in Writ Petition No. 314 of 2008. The GIDC has relied upon several letters and note dated 13th March, 2006 to which reference is made earlier. The affidavit refers to applications forwarded from the office of the Chief Minister or the Industries Minister. Even in the said affidavit in reply, there is no reference to any specific direction issued u/s 16 of the GIDC Act. Therefore, it can be safely concluded that there was no direction issued by the State Government in exercise of powers u/s 16 of the GIDC Act to allot any land for the purposes of setting up SEZs.

85. A contention was raised in the Public Interest Petitions that the GIDC has no power to allot lands vesting in it for the purposes of setting up SEZs. Under the SEZ Act, the SEZ is defined to mean the one which is notified under Sub-section (1) of Section 4. u/s 6 of the SEZ Act, it is provided that the areas falling within the SEZs may be demarcated as processing area for setting up units for activities being the manufacture of goods, or rendering services, or exclusively for trading or warehousing purposes, or as non-processing areas for activities other than those specified earlier. Section 6 indicates that in SEZ, there may be an area which is for rendering services or which is exclusively used for trading or warehousing purposes. Clause (c) of Section 6 contemplates that there can be non-processing areas which are not used for manufacture of goods. There can be areas for rendering services for trading or warehousing purposes. In SEZ Act, a "Unit" has been defined under Clause z(c) of Section 2 to mean and include an Offshore Banking Unit and a Unit in an International Financial Services Centre. Under the SEZ Rules, the term "infrastructure" which is to be provided for SEZ is defined under Clause (s) of Rule 2 which includes warehouses, airports, railways, hospitals, hotels, educational institutions, leisure, recreational and entertainment facilities, residential and business complex, etc. Coming back to the provisions of the GIDC Act, the basic function of GIDC is to promote and assist establishment, growth and development of industries. The general power to sell or transfer under Clause (a) to Section 14 can be exercised for discharging the functions incorporated u/s 13. As pointed out earlier, in view of Section 6 of the SEZ Act, there can be a SEZ which may not have processing area for activities of manufacture of goods. In a given case, the SEZ may consist of area for rendering services, area exclusively used for trading or warehousing or a non-

processing area, or for other activities, such as hospitals, hotels, educational institutions, recreational and entertainment facilities, residential and business complexes etc. In a given case, area of SEZ may be used predominantly for industrial use or for the use of manufacture of goods. The power under Clause (a) of Section 14 of the Transfer of Lands vesting in GIDC can be exercised only with a view to ensure establishment, growth and development of industries. Therefore, the exercise of power u/s 14 for grant of land for setting up SEZs will depend on the factual situation such as the purpose for which it is going to be used by the SEZ. If the land is to be allotted or transferred to SEZ predominantly for promoting or establishing or developing industries, then the power to allot can be lawfully exercised.

86. Now coming to the factual details of allotment of the lands, on 12th April, 2006, there were four applications made to the GIDC. The said four applications were made by M/s. K. Raheja Corporation Private Limited (Petitioners in W.P. No. 349 of 2008) for allotment of area of 7,91,732 sq. meters, M/s. Paradigm Logistics Distributions Private Limited (Petitioners in W.P. No. 501 of 2008) for allotment of area of 2,64,419 sq. meters, M/s. Inox Mercantile Co. Pvt. Ltd. (Petitioners in W.P. No. 438 of 2008) for allotment of land of an area of 4,84,832 sq. meters, and M/s. Plannet View Mercantile Company Private Limited (Petitioners in W.P. No. 438 of 2008) for allotment of an area of 1,32,000 sq. meters. Much is said about the fact that in the applications some portion is handwritten and two applications are signed by the same person Shri Jawinder Singh. It is stated that the applications do not bear the seals of the respective Companies. It is pointed out that the applications were made for specific plots. The applications along with forwarding letters have been produced by the GIDC. It is pointed out that all the four covering letters bear consecutive inward numbers of GIDC. It is alleged that the covering letters are fabricated. A letter dated 11th April, 2006 written by Shri Neel Raheja is placed on record on which an endorsement of the Hon"ble Chief Minister of Goa is "please help these people". On 17th April, 2006, certain amounts were deposited by all the four applicants by way of security deposits. It is pointed out that 287th Board meeting of the GIDC was scheduled to be held on 19th April, 2006 of which a notice was issued on 12th April, 2006. It is mentioned in the notice that the agenda was to follow shortly. It is pointed out that the draft agenda of the meeting was kept for approval of the Managing Director on 18th April, 2006 which is reflected from the Page No. 1095 of Writ Petition No. 316 of 2008. In the meeting held on 19th April, 2006, all the four applications were approved. Approval was granted to allotment of an area of 5,52,089 to M/s. Inox Mercantile Company Private Limited when in the original application dated 12th April, 2006 a request was made for allotment of area of 4,84,089.

87. What is material to note is that the applications dated 12th April 2006 were for allotment of a large area of more than 16,50,000 square meters made together by four Companies and the same were hurriedly approved in the meeting held on 19th April, 2006. In the said applications which were made in

the same format, some portions are handwritten which appear to be in the same handwriting. Nothing is placed on record to show whether any project reports were submitted by the said Companies, whether any scrutiny of the said applications was made and whether credentials of the Companies were examined. It is not known in what manner scrutiny of the applications seeking allotment of 16,50,000 square meters of public property was made by a statutory authority like GIDC. In fact a copy of lease deed of the land allotted to the Planet View Mercantile Company Private Limited shows that the date of incorporation of the said company is 26th April 2006. Hence when a decision to allot a land admeasuring 1,32,000 square meters was taken, the company was not even registered. Thus, a decision was taken to allot a large public land out of an industrial estate to a company which was not even registered. Learned Counsel appearing for the Companies tried to submit that though there is material to show that there was a scrutiny, the said material is not at all placed on record as the State Government and the GIDC are now against the Companies. However, the Companies have not placed on record any material on record to show that apart from simple applications dated 12th April 2006 any other documents were placed on record of GIDC. Copies of noting sheets of the files of the GIDC obtained under the Right to Information Act placed on record of W.P No. 316 of 2008 show that files on the basis of the said applications were opened by GIDC on 17th April 2006. The agenda of meeting of 19th April 2006 was submitted for approval of the Managing director on 18th April 2006 and was forwarded to the members on the same day. One important aspect which cannot be ignored is that within a span of 7 days from the date of the applications, the allotment of lands admeasuring about 17,00,000 sq. meters was made by the GIDC. On the face of it, there is arbitrariness in the action of the GIDC.

88. Now turning to the allotment made to M/s. Meditab Specialities Private Limited (Petitioners in W.P. No. 380 of 2008), as stated earlier, the allotment was made in respect of the land admeasuring 12,32,000 sq. meters at Keri which was acquired for setting up an industrial estate. The allotment was of the entire land acquired for the industrial area. On 7th March, 2006, the said company wrote a letter to the Minister for Industries of the Government of Goa requesting for grant of minimum of 150 acres of land at Keri in order to set up pharmaceuticals and chemical SEZ. An endorsement is made by the Minister on the said application to the Managing Director of the GIDC informing him to take action in the matter. There is a reminder dated 10th March, 2006 sent by M/s. Meditab Specialties Private Limited to the Minister. On the next day i.e. 11th March, 2006, M/s. Meditab Specialties Private Limited wrote a letter to the Minister that an area of 250 acres should be allotted instead of 150 acres. On 13th March, 2006, there was a note issued signed by the Minister of Industries in which he has stated "we may direct the Goa IDC u/s 16 to allot 250 acres of land to M/s. Meditab Specialties Private Limited". It is already held that what is mentioned in the Note is a mere recommendation and not a direction u/s 16 which is required to be issued by the State Government. Again on 13th March, 2006, the Meditab

Specialties Private Limited wrote another letter to the Minister for allotment of land which is again endorsed to the Managing Director of GIDC. On 20th March, 2006, the Ministry forwarded letters dated 7th March, 2006, 10th March, 2006 and 13th March, 2006 to the GIDC. On 24th March, 2006, there is a letter by the Meditab Specialties Private Limited addressed to the Industries Minister with a copy to the GIDC that the Government of India will be meeting somewhere in April, 2006 to consider the proposals received by Ministry of Commerce for setting up of a SEZ. It must be noted that the letter of allotment dated 29th March 2006 addressed to Meditab Specialties Private Limited by the GIDC makes a reference to the direction of the State Government. The letter dated 27th March 2006 sent by the said company to GIDC makes a reference to the discussion with the Managing Director of the GIDC on the subject and the offer given by the Meditab Specialties Private Limited to take up the entire 300 acres of the land for setting up SEZ. On 28th March, 2006, the GIDC resolved to allot the entire land admeasuring 12,32,000 sq. meters to Meditab Specialties Private Limited. Thus, Meditab Specialties Private Limited on 7th March, 2006 started with an application for allotment of land admeasuring about 150 acres and on 28th March 2006, the said Company successfully secured an allotment of land admeasuring approximately 300 Acres which constitutes the entire acquired land for setting up of an industrial estate at Keri. The letter dated 29th March, 2006 sent by the Managing Director of GIDC to M/s. Meditab Specialties Private Limited refers to a direction from the State Government. In Writ Petition No. 314 of 2008 on page 657, there is a file noting dated 28th April, 2006 which refers to a direction of the Hon"ble Chief Minister to issue land allotment order to M/s. Meditab Specialties Private Limited and to report compliance. Accordingly, on the same day allotment order was issued to M/s. Meditab Specialties Private Limited. As held earlier, the Government of Goa never issued any direction u/s 16 of the GIDC as Act regards the allotment of lands for SEZ. It must be also noted that all applications starting from 10th March 2006 were addressed to The Minister of Industries and not to the GIDC. Even in this case there is nothing on record to show that even a project report was submitted to GIDC and that any kind of scrutiny was made by The GIDC to examine the credentials, financial status and the experience of the company.

89. The Pennisula Research Centre Private Limited (Petitioners in W.P. No. 436 of 2008) made an application to GIDC on 2nd March 2006 for allotment of a land admeasuring about 2,00,000 square meters at Sancoale. The application was made for allotment of land for establishment of research and development centre for drugs and pharmaceutical industries including biotechnology centre. When the application was made, the said company was not even admittedly formed. The application specifically records that the said company was "under formation". Moreover the said application does not record that the land is required for setting up SEZ. There is another letter dated 9th March 2006 addressed by the said company to the Hon"ble Chief Minister requesting for grant of land for an export processing zone. There is not even a reference in the said letter to a proposal for

setting up of SEZ. This letter is an Annexure to the affidavit in reply of GIDC which does not bear any inward entry or rubber stamp either of the office of the Chief Minister or the GIDC. Though said letter was not sent to the GIDC, there is a note sent by its Managing Director on the same day suggesting that the application could be considered for the allotment of land at Sancoale industrial estate for the said project. There is a noting made thereon by the Chief Secretary of the Government of Goa recording that EPZ is not allowed and SEZs are allowed for which an application was required to be made under SEZ Act and Rules. Another letter was addressed by the said company on 13th March 2006 to the Minister for Industries of the Government of Goa for grant of approval for setting up "Export Processing Zone for research and development centre /Bio - Technology Park" on the land acquired by the GIDC. On the said, letter, there is a note made by the Minister "in principle approval may be given". There is not even a reference in the said letter to a proposal for setting up SEZ. It is pertinent to note that approval was granted to the allotment of land in the meeting of the Board of the GIDC held on 28th March 2006. The agenda item number 5 is regarding the request received by the Government of Goa from the said company for setting up Export Processing Zone for research and development centre and biotechnology Park. The resolution No. 30 passed in the meeting records that it was resolved to grant land admeasuring 2,03,650 square meters at the negotiated rate of not less than Rs. 250 per square meter to the said company for setting up research and development centre/bio technology park/SEZ. Thus it is clear that none of the 3 applications made by the said company which were on record contained a request for grant of land for the purpose of setting up SEZ. It is not the case made out that any other application apart from the said 3 applications was made by the said company. Moreover, the board of the GIDC did not consider the application made by the said company on 2nd March 2006. From the resolution passed by the board it appears that what was considered by the board was a request made by the said company to the State Government to allot the land. There is no communication in writing by the state government in that behalf except for the noting made by the Industries Minister "in principle approval be given". There is a note of the Chief Secretary which records that the managing director should advise the said company to apply under the SEZ Act. There is no request either by the said company or by the State Government to allot the land for setting up a Special Economic Zone though the Resolution passed by the Board makes a reference to it. Even in this Case, there is nothing placed on record to show that any scrutiny of the application of the said Company was made. In fact the decision of the Board shows that the Application made by the said company to GIDC was not considered by the board and what was considered was the "request" of the government.

90. Now turning to the allotment of land made to the Maxgrow Finlease Pvt. Ltd (the Petitioners in Writ Petition No. 507 of 2008), the application dated 2nd may 2006 was not made by the said company, but by another company the JMD Promoters Ltd for allotment of the land admeasuring 2,00,000 square metres in

Verna industrial estate. The same company made another application on 25th of May 2006 to the Managing Director of the GIDC requesting that the allotment be made in favour of Maxgrow Finlease Pvt. Ltd. On the same day, the JMD Promoters Ltd wrote a letter to the Minister of Industries of the State Government requesting for allotment of a land for setting up a SEZ. It is pertinent to note that the said application does not disclose the name of the company Maxgrow Finlease Pvt. Ltd. On 5th June 2006 the said letter was forwarded by the secretary of the Minister to the Managing Director of the GIDC. A remark "for necessary action" was made by the Minister on the said letter addressed to him while forwarding the same to the managing Director of GIDC. On 6th July 2006 ,the Board of the GIDC decided to allot land admeasuring 2,00,000 square metres to Maxgrow Finlease Pvt. Ltd. The letter of allotment issued shows that the allotment was made on the basis of applications dated 2nd May 2006 and 25th May 2006 made by the JMD Promoters Ltd. None of the applications give any particulars or details about the said Petitioner. Thus, the allotment made to the Petitioners is without any application of mind. There is obviously no scrutiny of the credentials of said Petitioners.

90A. To summarise, the four companies who made applications allegedly on 12th of April 2006 succeeded in getting allotment of lands admeasuring more than 16.5 lakh square metres within a span of 7 days. As far as the Pennisula Research Centre Private Limited is concerned, the application made by the company to the GIDC on 2nd March 2006 which did not contain any reference to setting up of SEZ. As stated earlier, the said application was not considered by the board and what was considered by the board was a request made by the State Government. The said company made an application to the Chief Minister on 13th March 2006. The resolution of the board allotting such a large land admeasuring 2,00,000 square meters was passed on 28th March 2006. It is already pointed out that the company Meditab Specialties Private Limited made an application on 7th March 2006 for grant of land admeasuring 150 acres and within a short time, on 28th March 2006 succeeded in getting allotment of the entire industrial area admeasuring 300 acres. In case of two companies, when applications were made and when the resolutions of allotments were passed, even the companies were not incorporated. There is nothing on record to show that project reports were filed by the companies. There is nothing on record to show that any further documents showing their experience and financial capacity were placed before the GIDC. There is no application of mind by the GIDC. Before allotment of such large lands there was absolutely no scrutiny of the applications and the applicants with reference to their experience in the field and financial capacity. For the grant of very large lands which were acquired for public purpose, the applications were made by the companies were cryptic and the same were hurriedly considered and granted within few days without any scrutiny. The total area of lands allotted in this fashion exceeds 30,00,000 sq. meters The action of allotment suffers from lack of fairness and transparency. It is true that the allotment of public property need not be made by holding a public

auction as a matter of rule. However, the State or public authorities cannot act like private persons while disposing of the public properties. A public authority can allot lands only to deserving and eligible persons after satisfying itself about the credibility and capacity of the person. The procedure adopted while allotting public properties must be fair and transparent and the action has to be in the public interest. Before the concerned authority comes to the conclusion and records subjective satisfaction that the proposed allotment is in public interest, at least some kind of scrutiny of the credentials of the applicants is mandatory. In these cases allotment of large lands having area of more than 30,00,000 square meters was made to few companies within a span of few days or a few weeks. Moreover, the action of allotment shows lack of application of mind. Such huge lands which are public properties were allotted for the asking to the said companies in a manner not known to Law. The action of allotment of lands is illegal being arbitrary and unreasonable.

91. It was sought to be argued on behalf of the Companies that there were no other takers for the lands allotted to the aforesaid companies. As stated earlier, allotment of land to four companies has taken place within a span of 7 days and in the case of M/s. Meditab Specialties Private Limited within a span of 21 days, the entire area of industrial estate at Keri was allotted. There is nothing on record to show that other industries or entrepreneurs were made aware about the availability of such large lands. The resolutions passed by the GIDC do not record that there were no other takers for the said lands. Even assuming that on the date when applications were made by the said companies, there were no applications made by any third parties for the allotment of the said lands, there was no reason to make allotments in a great deal of haste and without any scrutiny of the applications. It was sought to be contended that in the 1st week of April 2006, the Board of Approval under the SEZ Act was to meet and to take a decision to grant approval to certain number of SEZs throughout the country and therefore there was a great urgency. This argument shows that the allotment was made hastily. Thus, there is a complete arbitrariness in the allotment of lands by GIDC. The allotment is not in respect of small plots of land but allotment is in respect of the lands which exceed an area of 30,00,000 sq. meter to selected few companies. Assuming that in April, 2006, the Board was to hold a meeting and grant permission for setting up 100 SEZs, such huge public property could not have been allotted by the GIDC in such arbitrary and irrational manner. We are not even going to the controversy about the rates at which the lands were allotted. There is no transparency in the procedure for allotment of lands by the GIDC. The action was sought to be supported by contending that right from the date of incorporation of the GIDC, the lands were allotted without inviting offers. In the present case, the question was of allotting very vast lands and in one case, the land constitutes the entire industrial estate. Inference which can be drawn is that on the basis of the applications made by the Companies which were recommended either by the Minister Industries or by the Hon'ble Chief Minister, the allotments were made for asking without bothering to examine

the credentials of the Applicants and without making proper scrutiny. The main function of the GIDC is to promote and assist orderly establishment, growth and development of industries in the State of Goa. The exercise of powers u/s 14(a) of the GIDC Act must be aimed at achieving the said object. Therefore, before making orders for allotment, examination and consideration of the basic issue as to whether allotment of such vast lands to the selected Companies will really promote and assist orderly establishment, growth and development of industries in the State of Goa was necessary. When the allotment was sought to be made for SEZs, it was obvious that a large area could be used for non-processing projects or for the purposes of constructing shopping complexes, hotels, hospitals, residential complexes. The question is without examining the project reports, could the GIDC allot such a vast lands to the Companies ? Even assuming that the GIDC could have done it without inviting offers from competitors, surely the GIDC without satisfying itself that the allotment was being made to deserving companies having good experience in the field with a view to promote orderly establishment, growth and development of industries in the State of Goa, could not have allotted such vast lands. For recording such satisfaction, a scrutiny of financial status and capacity of the companies was mandatory especially when two of the companies were under formation. In the circumstances, a finding will have to be recorded that the allotment of lands to the said Companies was not legal.

92. There were extensive submissions made in the public interest litigation based on the report of the Comptroller and Auditor General of India. It is pointed out that serious irregularities and illegalities in the allotment of lands in favour of the Companies have been recorded in said report (hereinafter referred to as "the CAG Report.") Reliance is placed on Chapter VII of the said CAG Report and it was contended that to the several irregularities and illegalities pointed out in the report, there is no answer by the GIDC. It must be noted at this stage that in view of Article 151 of the Constitution of India and in particular Clause (2) thereof, the report will have to be placed by the Honourable Governor before the Legislature of the State and it is for the Legislature for the State to take further steps in that behalf. The report is recommendatory in nature and as of today, the same is not placed before the Legislature. Therefore, the argument based on the CAG report cannot be taken into consideration.

CONSIDERATION OF QUESTION "g"

93. Another important issue which will have to be dealt with is based on the submissions made on the basis of doctrine of promissory estoppel. We have already made a reference to the said submissions in some detail. In the case of the Petitioners in writ petition No. 349 of 2008, a case is made out that construction of buildings was started and that third party rights have been created. The Petitioners in writ petition No. 380 of 2008 contended that they have allotted a portion of the land to the Cipla limited. We have already noted earlier that the Petitioners have not placed on record any documentary evidence

in the form of agreements executed in favour of the third parties. Moreover, we have already pointed out that there are no approved units in the Special Economic Zones to be set up by the said two companies. The argument which is common in the petitions of the companies is that a large amount has been spent towards payment of lease premium, lease rent, on planning and on the work of erection of fencing. Thus the submission in short is that acting upon the recommendations of the State Government and the approvals/ notifications under the SEZ Act, the companies have altered their respective positions.

94. Reliance has been placed by the parties on various wellknown decisions of the Apex Court on the doctrine of promissory estoppel.

In the case of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , the Apex Court observed that:

The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter.

(Emphasis added)

The Apex Court further held thus:

But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the

Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisal of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmanuel Avodeji Ajaye v. Briscoe.

In the case of State of Punjab Vs. Nestle India Ltd. and Another, , the Apex Court in paragraphs 43 onwards considered a conflicting decision and reaffirmed its earlier decision in the case of Motilal (supra) and held thus:

43. It would appear that these observations are in conflict with the earlier and subsequent pronouncements of the law on promissory estoppel. Chandrasekhara Aiyar, J. had held that the representation was enforceable despite the "accident" that the grant was invalid inasmuch as it was contrary to statute. Motilal Padampat Sugar Mills³ had said that the promise was enforceable against the Government despite the requirement of Article 299 of the Constitution. Similarly, Century Spg.⁴ held that despite the requirement of the statute prescribing the

manner and form to grant exemption from payment of octroi, a promise not made in that manner or form could be enforced in equity. Then again in *Godfrey Philips*⁶ the Court directed an exemption to be granted on the basis of the principles of promissory estoppel even though Rule 8 of the Central Excise Rules, 1944 required exemption to be granted by notification.

44. Of course, the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute, but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Such a proposition would not "fall foul of our constitutional scheme and public interest". On the other hand, as was observed in *Motilal Padampat Sugar Mills* case³ and approved in the subsequent decisions: (SCC p. 442, para 24) "It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel.

45. None of these decisions has been considered in *I.T.C. Bhadrachalam Paperboards v. Mandal Revenue Officer*, A.P. except for a brief reference to *Chandrasekhara Aiyar, J.*'s judgment which was explained away as not being an authority for the proposition that even where the Government has to and can act only under and in accordance with a statute - an act done by the Government in violation thereof can be treated as a presentation to found a plea of promissory estoppel. But that is exactly what the learned Judge had said.

In the case of *Kasinka Trading and another, etc. etc. Vs. Union of India and another, ,* the Apex Court held thus:

12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the

court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

(Emphasis added)

We have already held for the reasons recorded that the decision of the Government of Goa of the withdrawal of its Special Economic Zones policy is legal and valid. The said decision is guided by considerations of larger public interest. The State Government found that setting up of Special Economic Zones will not be in larger public interest. Various aspects including its effect on resources of the State and possibility of large scale migrations have been considered by the State Government. Therefore, in the present case, considering the decision of the Government of Goa of withdrawal of SEZ policy which is based on consideration of public interest, it will be inequitable to hold the State Government or the GIDC to be bound by its alleged promise and representation. Though the allotments made to the companies is illegal, their Applications can be considered afresh by the GIDC for allotment of the same lands for any lawful purpose except for setting up of special economic zones. If fresh allotment cannot be made, the GIDC will have to refund the amounts received towards deposit, lease premium, interest and rent as per notice dated 13th June 2008 at the time of the companies handing over the possession of lands.

CONSIDERATION OF QUESTION "h"

95. Now, the issue which remains to be considered is as regards the alleged delay and latches on the part of the Petitioners in filing the Public Interest Litigation Petitions. The Public Interest Litigation Petitions have been filed in April 2008 and therefore, it was contended that there is a gross delay in challenging the allotments made in the year 2006. It was contended by the Companies that merely because certain representations were made earlier, the delay cannot be justified. The basic argument is that as a result of delay, the Companies have changed their positions by taking several steps on the basis of allotments made by the GIDC. Perusal of the record of the Writ Petition No. 316 of 2008 shows that on 16th June, 2005, a Comunidade of Verna had written a letter to the Minister of Industries in which a reference to the newspaper report is made that the State Government was planning to acquire area for setting up SEZs in Verna Industrial Estate. An objection was raised to the said proposal by the Comunidade to which a reply was received on 20th July, 2005 from the Under Secretary of Industries Minister on which the State Government has not taken any decision for setting up SEZ in Verna Industrial Estate. Reliance has been placed on the views expressed by the local villagers that the proposed SEZ in Verna by the State Government on the land belonging to Verna Comunidade should be dropped immediately. There were resolutions passed by villagers on 22nd July, 2007 recording strong protest for allotting 1,91,200 sq. meters of land acquired for industrial purposes for SEZ project. Nothing is brought on record to

show that any publicity was given by the State Government or by the GIDC to the allotment of lands for SEZ project. Therefore, applications were made under the Right to Information Act, 2005 for obtaining information. The details of the applications have been placed on record of Writ Petition No. 316 of 2008 on page 1429. Total 9 applications were made under the said Act from 11th April 2007 onwards till 8th April 2008. The information was lastly provided in March 2008 before the filing of the petitions.

96. Reliance is placed on a complaint dated 19 th October, 2007 filed by the Peoples" Movement against the SEZ making allegations of corruption as regards allotment of lands to the said Companies for SEZ. There is a reply dated 10th December, 2007 issued by the Directorate of Vigilance, Anti Corruption Bureau of Government of Goa stating that the matter was under consideration of the State Government. It will be necessary to make a reference to Memorandum dated 20th October, 2007 sent by the Peoples" Movement against the SEZ to the Chief Minister requesting for withdrawal of SEZ policy. There is another representation made by citizens on 3rd March, 2008 to the Chief Minister complaining of the effect of setting up SEZs in the State. It must be stated that in case of three SEZs which were notified, the notification was issued on 6th November, 2007. As pointed out in the earlier part of the judgment, till the notification was published, the developers were not entitled to commence any work for authorized operations. Moreover, nothing is brought on record to show that that on the basis of the notification, approval to the units u/s 15 of the SEZ Act was granted. It must be stated that within two months i.e. on 11th January, 2008, a communication was received by a companies to stop further work on the allotted lands. In Writ Petition No. 263 of 2008, in paragraph Nos. 56 and 57 the Petitioners have explained as to why they could not approach the Court till 2nd April 2008. It is stated that a sum of Rs. 20,000/- was demanded only for grant of copies of lease deeds. The Petitioners have set out the manner in which they could get copies of the relevant documents only in December 2007. There is sufficient explanation for the delay.

97. By carrying out amendment to the Writ Petitions Nos. 310,314 and 316 of 2008, a challenge was also made to the grant of approvals and notifications under the SEZ Act. The Writ Petitions were filed in April, 2008 and therefore, it cannot be said that due to the alleged delay and latches on the part of the Petitioners in PIL Writ Petitions, the companies have materially changed their position. The Petitioners in the said three petitions filed the Petitions after securing copies of relevant documents by making applications under the Right to information Act. Therefore, there is no undue delay in filing these petitions. Considering the averments in the Petitions and material on record, the Petitioners have approached the Court expeditiously.

OTHER ISSUES

98. In the Writ Petitions filed by the companies, it was contended that though the GIDC issued show cause notices, no purpose will be served by directing the GIDC

to consider the reply given by the Petitioners and decide the show cause notices inasmuch as direction u/s 16 of the GIDC Act has been issued by the State Government under which the GIDC will have no choice but to cancel the allotments. However, we need not go into this aspect as we have found the orders of allotment of lands made by the GIDC to be arbitrary and illegal. Therefore, we are not going into the legality and validity of the direction under However, this will not preclude the GIDC from re-considering the applications for allotment made by the companies in accordance with law.

99. In those cases, where approvals were granted under the SEZ Act but the SEZs were not notified, the show cause notices have been issued by the Central Government. We have already held that the Central Government has power to withdraw the approvals. It is for the concerned Companies to give reply to the show cause notices. The show cause notices will have to be decided by taking into consideration the fact that the allotment of lands by the GIDC is held to be illegal. In those cases where approvals are not granted under the SEZ Act, it is obvious that the applications/proposals cannot be processed further as the Government of Goa has withdrawn the recommendation. Therefore, no fault can be found with the decision of the Central Government holding that such proposals shall be treated as dropped in as much as the recommendation of the State Government is necessary for grant of approval. As far as three notified SEZs are concerned, the stand of the Central Government is that the Government of Goa should negotiate with the developers. The notifications have been issued on the basis of the allotment of lands by the GIDC. As the allotments of lands are held to be illegal, notifications cannot be acted upon now. In the petitions filed by the companies, there is a challenge to the direction issued by the Government of Goa to the GIDC to revoke the leases. There is also a challenge to the show cause notices issued by the GIDC on the basis of the said direction. As we have held that the allotments made to the said companies is illegal, it is not necessary to deal with the said challenges. In view of the finding recorded by us that the allotment of lands made to the companies is illegal, the possession of the lands will have to be restored to the GIDC. The original owners of the lands have not challenged the acquisition of the said lands. Hence, the player made in the Public Interest Writ Petitions for return of the lands to the original owners cannot be granted. As we have held that the applications for allotment of lands made by the said companies can be considered afresh in accordance with law, we are directing that the parties shall maintain status quo as of today in respect of the said lands for a period of 4 months from today. If the said companies are interested in fresh consideration of their applications for allotment, they are entitled to apply to the GIDC in that behalf. In such event, the applications of the companies shall be considered afresh by the GIDC in accordance with law notwithstanding the direction issued to maintain status quo as of today in respect of the said lands.

SUMMARY OF FINDINGS

100. The main findings recorded by us can be summarized as under:

(i) On the basis of the consideration of the provisions of SEZ Act and the SEZ Rules, we hold that before the Board of Approval approves the proposal and before the Letter of Approval is issued by the Central Government, the State Government can always withdraw its recommendation in case the proposal is initiated under Sub-section (2) of Section 3 of the SEZ Act. In such a case, Approval cannot be granted on the basis of the recommendation which is withdrawn. Even after a Letter of Approval is issued, but before the notification u/s 4(1) is issued, the Board of approval and/or the Central Government has a power to withdraw the approval on the basis of withdrawal of the recommendations by the State Government. However, the approval can be cancelled/withdrawn in such a case only after following the principles of natural justice. The fact that several steps have been taken by the developers on the basis of approval will certainly be a relevant consideration which will have to be taken into account by the board.

(ii) Whether the Central Government can de-notify a notified SEZ without the consent of the developer is a question which need not be decided in the present Petitions inasmuch as the action of the Central Government of declining to de-notify the SEZ in three cases has not been specifically challenged before us in any of the Petitions.

(iii) It is not possible to hold that the said policy decision of withdrawing the earlier SEZ policy is either arbitrary or illegal. The decision is legal which based on consideration of public interest.

(iv) There was no direction issued by the State Government in exercise of powers u/s 16 of the GIDC Act to allot any land for the purposes of setting up SEZs.

(v) The power under Clause (a) of Section 14 of the transfer of lands vesting in GIDC can be exercised only with a view to ensure establishment, growth and development of industries. Therefore, the exercise of power u/s 14 for grant of land for setting up SEZs will depend on the factual situation such as the purpose for which it is going to be used by the SEZ. If the land is to be allotted or transferred to SEZ predominantly for promoting or establishing or developing industries, then the power to allot can be lawfully exercised.

(vi) The allotment of lands to the companies has been made in undue haste without proper scrutiny of their applications. The allotment of lands has been made arbitrarily. Procedure adopted in the allotment is not fair and transparent. The allotments made by the GIDC do not stand the test of reasonableness.

(vii) In the present case, considering the decision of the Government of Goa of withdrawal of SEZ policy which based on consideration of public interest, it will be inequitable to hold the State Government or the GIDC to be bound by its alleged promise and representation.

(viii) The Writ Petitions filed in public interest are no liable to be dismissed on the

ground of delay and latches.

101. In Misc Civil Application No. 391 of 2009 in W.P. No. 263 of 2008, a direction is sought for initiating action against an Advocate. The prayer made in the application is beyond the scope of the petition. Therefore, the Applicants will have to adopt appropriate remedy.

101A. As one of us (A.S. Oka,J) is not sitting at Panaji ,this judgment is being pronounced by the other member of the Bench (Reis, J) in accordance with Rule 1 of Chapter XI of the Appellate Side Rules.

102. In the circumstances, we pass the following order:

(i) The allotment of lands made By the GIDC to the said companies (the Petitioners in Writ Petition Nos. 349 of 2008, 380 of 2008, 436 of 2008, 437 of 2008, 438 of 2008 and 501 of 2008 and 507 of 2008) is illegal. The allotments as well as the Lease Deeds executed on the basis of the orders of allotment are quashed and set aside.

(ii) Accordingly ,rule issued in Writ Petition Nos. 310 of 2008,314 of 2008 and 316 of 2008 is made absolute in terms of prayers (a) thereof.

(iii) In case of the Petitioners in Writ Petition Nos. 501 of 2008, 437 of 2008 and 438 of 2008, the show cause notices issued for cancellation/withdrawal of the approvals granted under the SEZ Act shall be decided in accordance with law. The said Petitioners shall be given an opportunity to file reply or additional reply to the show cause notices and shall be given an opportunity of being heard. Subject to the finding recorded that there is a power vesting in the authorities to cancel or to withdraw the approval, all questions on merits of the show cause notices are kept open.

(iv) It will be open for the Petitioners in Writ Petition Nos. 349 of 2008, 380 of 2008, 436 of 2008, 437 of 2008, 438 of 2008, 501 of 2008 and 507 of 2008 to apply to the GIDC for fresh consideration of their earlier Applications for allotment of lands. If the Petitioners apply within six weeks from today, the said Applications shall be considered afresh by the GIDC in the light of the observations made in this Judgment.

(v) The Petitioners in the aforesaid Writ Petitions as well as the GIDC shall maintain status quo as of today in respect of the Lands for a period of four months from today. The order of status quo is clarified to mean that the said Petitioners shall not carry on any further construction on the said lands and shall not hereafter create any third party rights in respect of the said lands for a period of four months. The GIDC shall not dispossess the Petitioners for a period of four months, and shall not make allotment of the said lands to any third parties during the said period. If within a period of four months from today, fresh allotment is not made by the GIDC, on expiry of said period of four months, it will be open for the GIDC to take steps in accordance with law for taking over possession of the lands.

(v) The Miscellaneous Civil Application Number 391 of 2009 is disposed of by keeping open the remedy of the Applicants.

(vi) The Writ Petition Nos. 310 of 2008, 314 of 2008 and 316 of 2008 are partly allowed in the above terms with no orders as to costs.

(vii) In view of the order in the said three Petition, the Writ Petition No. 263 of 2008 is disposed of without granting any separate relief with no orders as to costs.

(viii) Subject to what is observed in this judgment, Writ Petition Nos. 349 of 2008, 380 of 2008, 436 of 2008, 437 of 2008, 438 of 2008 and 501 of 2008 and 507 of 2008 are dismissed with no order as to costs.