

(2019) 06 GUJ CK 0070

In the Gujarat High Court

Case No : R/Special Civil Application No. 9865 Of 2019

M/S. GSEC Limited Through Its Authorized Representative
Shri Rakesh Ramanlal Shah

APPELLANT

Vs

AAI Cargo Logistics And Allied Services Company Limited

RESPONDENT

Date of Decision : 26-06-2019

Acts Referred:

Indian Easements Act, 1882 — Section 60, 60(b), 62, 63

Citation : (2019) 06 GUJ CK 0070

Hon'ble Judges : K.M.Thaker, J;V. P. Patel,J

Bench : Division Bench

Advocate : Mihir Joshi, Dipen Desai, S.V.Raju, S Raju

Final Decision : Allowed

Judgement

'''

K.M.Thaker, J",,,,

1. This petition (1) challenges action of Respondent whereby the respondent discontinued the practice of renewing agreement-allotment without tender,,,

process and the action (2) of inviting-initiating competitive bidding for awarding work for operation and maintenance of international Air Cargo,,,

Terminal.,,,,

1.1 The petitioner opposes said action of Respondents and it seeks renewal for 10 years without tender process.,,,,

2. By submitting (on 28.5.2019) present petition, the petitioner has prayed that this Court should quash and set aside Tender (Notice Inviting Tender,",,,

NIT for short) which came to be issued on 1.5.2019.,,,,

2.1 By means of said NIT present respondent No.1, which is 100% owned

subsidiary of Airport Authority of India (second respondent), has invited",,,
bids for "Operation and Maintenance of International Air Cargo Terminal" at
Ahmedabad Airport.,,,

2.2 Under arrangement / agreement with present respondent Nos. 1 and 2 the
petitioner has been operating International Air Cargo Terminal at,,
Ahmedabad Airport.,,,

2.3 The period of said arrangement " agreement between the petitioner and
the respondents has expired on and from 31.5.2019.,,,

3. In present petition the petitioner has prayed, inter alia, that:-",,,

"25(A) The Hon'ble Court may be pleased to issue writ of mandamus and / or
any other appropriate writ, direction and order to quash and set",,,

aside tender dated 1.5.2019 for operation and maintenance of the International
Air Cargo Terminal at Ahmedabad Airport for a term of 5 years.,,,

(B) The Hon'ble Court may be pleased to issue writ of prohibition and / or any
other appropriate writ, direction and order restraining the respondents",,,

from issuing process of tender issued on 1.5.2019 for operation and maintenance
of the International Air Cargo Terminal Ahmedabad Airport for a,,,

term of 5 years.,,,

(C) The Hon'ble Court may be pleased to issue a writ of mandamus or writ in the
nature of mandamus or any other appropriate writ, order or direction",,,

directing the respondent no. 1 to extend / renew the allotment to the petitioning
company for further period of 10 years or for appropriate term as that,,,

may be deemed fit by this Hon'ble Court.,,,

(D) Pending hearing and final disposal of the petition, Your Lordships be pleased
to restrain the respondents from proceeding further with the process",,,

of tender issued on 1.5.2019 for operation and maintenance of the International
Air Cargo Terminal at Ahmedabad Airport for a term of 5 years",,,

3.1 It is pertinent that (a) neither the right of the respondents to invite bids for
the said purpose (b) nor any terms of the NIT / tender document are,,,

challenged by the petitioner.,,,

4. The petitioner is a limited company which initially came to be incorporated in
the name and style of Gujarat State Export Corporation Limited,,,

wherein the State of Gujarat held 56.6% equity.,,,

4.1 Subsequently the said share i.e. 56.6% of equity came to be transferred

from one hand to another and w.e.f. 8.3.2004, the said holding of 56.6%","
came to be transferred in favour of the management of present petitioner,"

4.2 The petitioner has claimed that to setup the Air Cargo Terminal erstwhile National Airport Authority / present respondent No.2 has allotted about,"

5,000/- sq. mtr. land at the International Airport at Ahmedabad where it has constructed building/s and installed machineries."

4.3 It is also claimed that the arrangement of agreement with erstwhile Gujarat State Export Corporation was, initially entered into and brought into,"

existence in 1979 and since then the arrangement of agreement has been continued by renewing the agreement of allotment,"

4.4 Having regard to the fact that the arrangement of agreement would expire and come to end on 31.5.2019, the respondent Nos. 1 and 2, on,"

1.5.2019, issued Notice Inviting Tender for operation and maintenance of Airport. The last date (according to original schedule) for submissions of,"

bids was 7.6.2019 (which was extended till 17.6.2019 and then till 24.6.2019)."

4.5. In paragraph No. 5 of the petition the petitioner has averred and stated that:-"

5. Under the cover letter dated 3.7.1991, the National Airport Authority had extended the license to the petitioning company for a term of three years"

w.e.f. 1.5.1990 for the land admeasuring 2000 sq mtr inter alia, providing,"

"The licensee shall give vacant possession of the land to the National Airports Authority as and when required. The N.A.A shall however, has the,"

first right to take over structure and other assets on the land licensed and no demolition shall therefore, be carried out without prior written permission"

of the NAA."

....."

Pursuant to the said letter, agreement dated 27.9.1991 was executed inter alia, providing,"

"5. The said plot shall be used by the licensee solely for the purpose of constructing the buildings, structures installations specified in this clause"

namely; For Air Cargo Complex or And the buildings, structures or installations shall be used by the licensee solely for the purpose of specified above."

18. On the termination of the license, all buildings, structures and the installations thereon shall be removed by the licensee and the subject plot shall be"

delivered upto the Chairman or his authorized representative in a clean and level state without claiming of compensation whatsoever. Provided that the,,,

grantor shall have the first Option of purchasing the buildings, structures or installations on the subject plot or any part of them at a valuation to be",,,

agreed to between the grantor and the licensee and in case of disagreement to be fixed by the Arbitration as provided in the next clause.,,,

.....â??,,,

4.6 In paragraph No. 6 of the petition the petitioner has clarified the details with regard to the arrangement / agreement, more particularly with regard",,,

to the land and the superstructure on their own. The said paragraph No. 6 reads thus:-,,,

6. The petitioning company was additionally allotted 1000 sq mtr of land on 1.7.1994 abutting to already allotted 2000 sq. mtr of land. Vide agreement,,,

dated 27.1.1999, the petitioning company was granted authorization to occupy in all 3000 sq mtr of land upto 31. 5.1999 commencing from 1.5.1993 in",,,

case of 2000 sq mtr of space and from 1.7.1994 in case of additional 1000 sq mtr of space. The said agreement inter alia providing the following,,,

apposite terms;,,,

â??5. The said plot shall be used by the licensee solely for the purpose of constructing the building, structures or installations specified in this clause",,,

namely; constructing godown facility and allied infrastructure considered essential for the purpose of promoting export / import business from,,,

Ahmedabad Airport by the said licensee and all buildings / structures or installations created on the leased land shall be used by the licensee or his duly,,,

appointed agent / agents only for the purpose as specified herein above and any contrary use of the premises shall be continued as departure from the,,,

agreed terms of lease.,,,

The licensee shall not sub-lease / sublet the premises or any part thereof or shall not create any rights direct or indirect in favour of any other party,,,

which may or is likely to be construed as contrary to the covenants of this agreement except with prior permission in writing from the Airports,,,

Authority of India.,,,

16. On the termination or expiry of the license, all buildings, structures and installations thereon shall be removed by the licensee and the subject plot",,,

shall be delivered unto the Chairman or his authorized representative in a clean

and level state without claiming any compensation whatsoever.,,,

Provided that grantor shall have the first option for purchasing the building, structures or installations on the said plot or any part of them at a valuation",,,

to be agreed to between the grantor and the licensee and in case of disagreement to be fixed by arbitration as provided in the next level.â??,,,

4.7 From the details mentioned by the petitioner it has emerged that the respondents have, under the arrangement â?" agreement, licensed about 5,000",,,

Sq. Meters land for the purpose of Air Cargo Terminal and other related facilities / infrastructure.,,,

4.8 The relevant clause in the agreement between the parties provide inter alia, that:-",,,

â??21. On the termination or expiry of the license, the Authority will be deciding the fate of the building, structure and installation erected on the",,,

defined premise. In the event it is so decided by the Authority that the existing building, structures and installations are required for future pu1pose of",,,

the Authority, the licensee will be paid the cost of the building, structures and installations on the basis of Government Approved Valuerâ??s Report",,,

got conducted within three months from the dete11n1nation of the license.,,,

In the event, the Authority decides the, building, structures and installations are not required for future purpose of the Authority, the licensee will be",,,

bound to remove the said building, structures and installations so e1ected by him and handover the clear site without having any encumbrance at his",,,

cost after having received the decision in this regard from the Authority.â??,,,

4.9 Other relevant provision in the agreement between the parties provide, inter alia, that:-",,,

â?? 1. That the license for the said facility shall be valid for the period of 10 years from",,,

01.06.2009 to 31.05.2019, unless terminated earlier on account of following:",,,

(a) By giving 180 days notice in writing from either side vital assigning any reason.,,,

(b) Terminated by AAI on as short notice on account of unsatisfactory performance. The term â??short noticeâ?? denote a period of clear 30 days.,,,

(c) Termination on expiry of specified time period allotted for unresolved internal dispute resolution.â??,,,

22. The period of license Shall be for a period of 10 years with the condition that in case of privatization/leasing out of the airport under reference,",,

the unexpired period of license of the said agreement shall be honoured by the prospective lessee/operators of such Airport instead of termination by a,,,

short notice.,,,

23.The license hereby granted shall not be construed in any way as giving or creating any right or interest in the said land and premises to or in favour,,,

of the licensee but shall be construed to be only as a license on the terms and conditions herein contained.,,,

24. In the event of any default, failure, negligence or breach, in the opinion of the Authority on the part of the Licensee in complying with all or any of",,,

the conditions of the license agreement, the Authority will be entitled and be at liberty to determine the license forthwith and resume possession of the",,,

premises without payment of any compensation or damages and also forfeit in full or in part the amount deposited by the Licensee for due,,,

performance of Agreement.,,,

26. On expiry of the license period or on termination of the licence by the authority on account of any breach on the part of the licensee, the licensee",,,

shall deliver the possession of premises in good condition in peaceful manner along with furniture, fittings, equipments and installations, if any, provided",,,

by the authority. Further, licensee shall remove his / their goods and other materials from the premises immediately, failing which authority reserves its",,,

right to remove such goods / materials at the cost and risk of the licensee and demand payment for such removal.,,,

33. The provisions of the Public Premises (eviction of Unauthorized occupants) Act, 1971 and the rules framed there under which are now in force or",,,

which may hereafter come into force shall be applicable for all matters provided in the said Actâ?,,,

4.10 Some of the relevant clauses from the NIT â?" Tender document read thus:-,,,

â?3.1.1 On behalf of Chairman, AAICLAS, Digitally signed bids are invited on-line from eligible parties to Operate and Maintain (the",,,

â?O&M") existing international Air Cargo Facility at Ahmedabad on Space/land lease rentals plus revenue sharing from Gross Turn over",,,

(GTO) must include all type revenue generated from â? core activities /

servicesâ? mentioned at clause 3.1.2 at this facility excluding GST,,,
(the â??revenueâ??),,,

Name of the Facility,"Earnest Money & Tender

Fee","Minimum Monthly License

Fee",Period of License

Operate & Manage Existing

International Cargo Facility

presently being run by M/s

GSEC Ltd.", "Rs.1500000.00 [Rupees

fifteen Lacs only). Tender

Fee Rs.50000/- +18%

GST=Rs.59000/-", "Land / Space Lease Rentals

+ 30% (Thirty percent)

Royalty on GTO+GST", "5 years or the date

AAICLAS starts its new

cargo terminals whichever is

earlier

4.14 According to the petitioner, in this background, the respondent No.1 issued impugned NIT dated 1.5.2019. The petitioner has also averred and",,,

alleged that after the respondent No. 1 issued NIT it (i.e. the petitioner) submitted a representation dated 7.5.2019 and requested for â??right for first,,, refusalâ??.,,,

4.15 At this stage it is relevant to note that in reply to the Court's query (with reference to said letter dated 7.5.2009 and claim for â??first refusalâ?"),,,

the learned Counsel for the petitioner conceded and admitted that there is no provision in the agreement â?" contract to confer â?" grant such right or,,,

even opportunity to the petitioner. Undisputedly, neither by virtue of by means of the agreement (any provision under the agreement) nor on strength",,,

of any provision in law, such opportunity â?" much less such right â?" is available to the petitioner and the respondents are â?" in any manner obliged",,,

to give such opportunity to the petitioner. According to the petitioner the respondents have not accepted the said request whereas the process pursuant,,,

to the NIT (issued on 1.5.2019) has commenced.,,,

4.16 Since the respondent did not renew the agreement- allotment without inviting bids/ without competitive bidding and the respondent initiated tender,, process, the petitioner lodged present petition." ,,,

5. Having emphasised the factual background and the facts which led to submission of present petition, Mr.Joshi, learned senior counsel for the" ,,,

petitioner turned to paragraph No.17 of the petition and he reiterated the submission that 'the company had legitimately expected that the respondent,,

No.1 will renew the lease'. According to the petitioner long and consistent conduct is one of the pillars for legitimate expectation. Learned senior,,

counsel for the petitioner emphasised that in light of (i) the long period for which the arrangement â?" agreement remained in operation; and (ii) in,,

view of satisfactory execution of the agreement â?" contract by the petitioner; and (iii) in light of the fact that there is no complaint against the,,

petitioner about any defect or shortfall in its performance or any instance of breach of any of the terms of the agreement â?" arrangement the,,

petitioner 'legitimately expected that the agreement â?" allotment will be renewed and extended'. Mr.Joshi, learned senior counsel for the petitioner" ,,,

also emphasised that the petitioner has invested substantial amount in construction (of building) and installation (of machinery). He further submitted,,

that the petitioner was actually invited for discussion for renewal/ extension of lease (i.e. arrangement â?" agreement between the parties) and the,,

petitioner believes that said aspect was alive and under consideration with the respondent when the respondent issued NIT. He would submit that,,

cumulatively the said factors and elements justify petitioner's expectation that the respondent ought to have renewed and extended the agreement-,,

allotment. However, the respondent suddenly issued NIT about which intimation was given to the petitioner on the next day. He submitted that the" ,,,

respondent has not informed to the petitioner any reason as to why the renewal / extension is not granted.,,,

5.1 According to the petitioner, the action or the conduct of the respondent of not informing any reason for non-renewal amounts to unfair and" ,,,

unreasonable conduct. According to learned senior counsel for the petitioner, the reasonableness of the respondent's action of issuing NIT and not" ,,,

granting renewal â?" extension deserves to be considered in light of the factual

background including the fact that the arrangement has remained in,,,
operation for almost 25 years and that vide communication dated 30.11.2018,
the petitioner was called for discussion for extension of the agreement",,,,
â?" arrangement. Learned senior counsel for the petitioner, besides the said
contention, made reference of the letter dated 7.5.2019 whereby the",,,,
petitioner requested that it may be granted opportunity of first refusal (matching
the bid of H1 bidder). He submitted that if the principal contention,,,
against respondent's action of not granting renewal and issuing NIT is not
accepted then petitioner's request for right of first refusal deserves to be,,,
granted. Mr.Joshi, learned senior counsel for the petitioner, relied on the decision
of Apex Court in case of Monnet Ispat and Energy Ltd. vs. Union of",,,,
India [(2012) 11 SCC 1]. He also relied on the decision in case of Lalaram and
Ors. vs. Jaipur Development Authority and Anr.[(2016) 11 SCC 31],,,,
5.2 At this stage, it is necessary to take note of the submission by the petitioner
that according to the NIT (issued / published on 1.5.2019) the last date",,,,
for submission of the bids was 7.6.2019 which was extended to 17.6.2019 and
thereafter the said limit came to be further extended to,,,
24.6.2019. Learned counsel for the petitioner submitted that until the date when
the petitioner submitted present petition in the Registry (28.5.2019) it,,,
had not submitted its bid in response to the NIT (issued on 1.5.2019) however
subsequently (during pendency of present petitioner) the petitioner,,,
submitted its bid on 22.6.2019 (i.e. before expiry of the extended period),,,,
6. Per contra, Mr.Raju, learned senior counsel for the respondent submitted that
after the period of agreement â?" arrangement expired, the petitioner",,,,
does not have any right or locus to claim any right whatsoever, much less right
or opportunity of first refusal. He further submitted that in light of the",,,,
fact that the agreement does not contain such provision and since the agreement
does not confer right of 'first refusal' to the petitioner, even",,,,
otherwise, such opportunity cannot be claimed and cannot be granted to the
petitioner, much less as a matter of right. On this count Mr.Raju, learned",,,,
senior counsel also emphasised that such relief is not prayed for and therefore it
cannot be granted.,,,,
Mr.Raju, learned senior counsel for the respondent further submitted that in light
of the terms of the agreement â?" contract, it is the right of the",,,,
respondent to invite fresh tenders and the petitioner has neither any right nor

any locus to claim that the respondent should not and cannot invite fresh,,
tenders and/or that the respondent should renew â?" extend the period of
arrangement â?" agreement.,,,

Mr.Raju, learned senior counsel for the respondent submitted that the respondent
has initiated the tender process in public interest viz. for competitive",,,

(higher and better) rates / revenue and competitive service.,,,

According to the respondent mechanism for resolution of valuation dispute is
specifically provided for under the agreement and that writ petition is not,,,

proper remedy and writ court is not proper forum to raise dispute regarding
valuation of building and machinery. Mr. Raju, learned Sr. Counsel also",,,

submitted that having availed the arrangement and having derived the benefits
of the agreement for long time, the petitioner, now cannot claim that it is",,,

not bound by other terms of the agreement or that its case should be considered
in light of the facts which are pleaded and emphasized in the petition.,,,

It is also claimed that the petitioner cannot claim any right except the right
available/ provided for under the agreement.,,,

In response to petitioner's contention raised in the petition in light of Section 60
of Easement Act, Mr. Raju, learned Sr. Counsel submitted, without",,,

prejudice to the contention that during the hearing the petitioner has not pressed
in service said contention, that in light of the nature of the agreement",,,

and specific terms and conditions in the agreement, the said contention of the
petitioner is mis-conceived and not tenable because the agreement is",,,

revocable and it is of limited tenure. So as to oppose the petitioner's submission
on strength of Section 60 of the Easement Act and to support his,,,

objection, learned Sr. Counsel for the respondent relied on the decision in case of
Mumbai International Airport Private Limited v. Golden Chariot",,,

Airport and Another, (2010) 10 SCC 422.",,,

Learned Sr. Counsel for the respondent also submitted that the petitioner was
very much aware of the specific provision in the agreement and the fact,,,

that in light of express term in the agreement, the need or question of separate
or special intimation and conveying reasons did not arise. Mr. Raju",,,

learned Sr. Counsel for the respondent relied on the following decisions:,,,

1. National Highways Authority of India v. Gwalior Jhansi Expressway Limited,
(2018) 8 SCC 243;,,,

2. Ram Sarup Gupta v. Bishun Narain Inter College and Ors, (1987) 2 SCC

555;" ,,,

3. Himachal Pradesh Housing and Urban Development Authority v. Universal Estate and Another,(2010) 14 SCC 253;" ,,,

4. Rishi Kiran Logistics Private Limited v. Board of Trustees of Kandla Port Trust and Others, (2015) 13 SCC 233;" ,,,

5. Michigan Rubber (India) Limited v. State of Karnataka and others, (2012) 8 SCC 216." ,,,

6. M/s. McDowell and Co. Ltd. v. District Registrar, 2000 AIR (a.p) 374." ,,,

7. Sethi Auto Service Station and Ors v. Delhi Development Authority and Ors. (2019) 1 SCC 180; and ,,,

8. State of W.B and Others v. Niranjan Singha, (2001) 2 SCC 326." ,,,

7. We have considered rival submissions and the material available on record as well as the decisions on which the Senior Counsel for the petitioner ,,,

and respondent relied. ,,,

8. Before proceeding further it would be appropriate to take note of certain undisputed facts: ,,,

(a) the agreement between the petitioner and respondent expired on and from 31.5.2019; ,,,

(b) since the period of the agreement were to expire on 31.5.2019 the respondent issued the NIT (to invite bids) on 1.5.2019. ,,,

(c) Any of the terms and conditions of the NIT or the document is not challenged by the petitioner; ,,,

(d) the relation between the petitioner and the respondent is not created and/ or governed by law or under a statute. The relations between the ,,,

petitioner and the respondent is purely contractual and their relationship as well as the agreement are governed by the terms and conditions in the ,,,

agreement. ,,,

(e) either before submitting the petition or at the time of submitting petition, the petitioner had not submitted its bid in response to the NIT and it did not" ,,,

participate in the tender process. ,,,

However before expiry of final extension (of the last date for submission of bids)the petitioner submitted its bid (on 22.6.2019) and thereby it has ,,,

participated in the tender process; ,,,

(f) the agreement (general terms and condition) specifically provides that "on

expiry of period or termination of the licence.... licensee shall deliver,,,

the possession of premise in good condition in peaceful manner....â??,,,

(g) The agreement also specifically provides that â??on termination or expiry of the licence the authority will decide the fate of the building, structure",,,

and installation erect on the defined premise.... the licensee will be paid the cost of the building, structure and installation on the basis of the",,,

government approved valuer's report...â??,,,

(h) the obligation to vacate the premises and to hand over possession is not dependant on and/ or subject to determination of the cost of building,",,

structure and installation.,,,

(i) The agreement also provides that â??...the event the authority decides that the building, structure and installation are not required....licensee will be",,,

bound to remove the said building, structure and installation so erected by him and handover the clear site without having any encumbrance....â??",,,

(j) Undisputedly, the agreement does not contain any provision which confer any right of â??first refusalâ? to the petitioner. There is no provision in",,,

the agreement or even in any other covenant between the parties which oblige the respondent to give such opportunity to the petitioner. Such right,,,

does not exist in favour of the petitioner in any form i.e. by virtue of any terms and the conditions of the contract or by law.,,,

(k) Since, the petitioner, during hearing and during his submissions claimed that the petitioner should be given opportunity of first refusal, it is also",,,

necessary to note that the petitioner has not prayed for such relief/ direction.,,,

(l) In present case, the agreement came to an end with efflux of time and on operation of specific provision in the agreement and it is not terminated",,,

by the respondent by invoking any provision in the agreement (e.g. Clause-24) and/ or in exercise of its authority under the agreement.,,,

(m) there is no provision under the agreement which imposes prohibition or even any restriction against the respondent restraining it from inviting bids,,,

upon or on account of expiry of the period of agreement (or upon termination of the agreement).,,,

9. From the facts of present case, it has emerged that under the agreement, the Respondent allotted certain land to the petitioner, whereon the",,,

petitioner, has put up construction and installed machinery and at the said premises the petitioner undertakes the work of operation and maintenance of",,,

international air cargo terminal. The arrangement â?" agreement between the petitioner and the respondent expired on 31. 5.2019.,,,

10. Since the agreement was to come to an end, the respondent issued (on 1.5.2019)notice inviting tenders so as to award work order for operation",,,

and maintenance of international air cargo terminal at Ahmedabad Airport.,,,

11. With reference to relief prayed for vide Para 25(A) & 25(B) it is relevant to note that (a) in absence of any grievance against any of the terms of,,,

NIT/ Tender Document NIT/ Tender document (any provision therein) the petitioner seeks that the NIT should be quashed and that the respondent,,,

should be directed to renew the agreement-allotment for further period of 10 years; and that (b) the respondent has not terminated the agreement with,,,

the petitioner by invoking any provision in the agreement / in exercise of authority available to it under the agreement and/ or before the expiry of last,,,

date; but (c) the said arrangement â?" agreement lived its full life and came to end with efflux of time and on account of specific term in the contract,,,

(which provide that the agreement would expire on 31.5.2019); and that (d) it is not the case even of the petitioner that the respondent illegally and / or,,,

arbitrarily and / or in violation of terms of agreement, terminated the agreement; (e) it is also not the case of the petitioner that any of the terms of",,,

NIT or Tender Document is unreasonable or tainted with malafides or designed to favour someone or to cause prejudice to the petitioner or to,,,

eliminate competition.,,,

12. The premise on which the relief prayed for in Para-25(A) and 25(B) are based is the allegation and submission that (i) the respondent's action (not,,,

renewing the allotment -agreement) is unfair and unreasonable; and (ii) petitioner has â??legitimate expectationâ?? for renewal of agreement.,,,

13. The question which, then, arise is: on what basis the petitioner alleges that the said action of the respondent is unreasonable.".,,,

14 The factors and elements which the learned Senior Counsel for the petitioner mentioned to support the allegation and submission respondent's,,,

action is unreasonable are:-,,,

(i) investment made by the petitioner inasmuch as petitioner has put up construction (buildings/ structures) and installed machinery;,,,

(ii) long and consistent conduct and performance without any defect or shortfall or violation of terms of agreement;,,,

(iii) after inviting the petitioner for discussion the respondent initiated the tender process without any justification;,,,

(iv) absence of reasons by the respondent for not extending/ renewing the allotment-agreement.,,,

15. The issue as to whether in view of or on the basis of said factors and elements the respondent's action can be considered unfair or unreasonable,,,

needs to be examined and determined in light of the facts of the case and in light of terms â?" provision in the agreement.,,,

15.1 The Clause 1 of the agreement expressly provides that the life (of the Agreement) will expire on 31.5.2019 and Clause 21 of the agreements,,,

provides the mechanism for valuation of building, structure etc and for payment of cost (of building etc) to the petitioner. The Clause 24 confers power",,,

to the respondent to determine -terminate the agreement. The clause 26 of the agreement (under the general terms and conditions) specifically,,,

provides that on expiry of the license period (or termination of the license), the licensee shall deliver possession of the premises in good condition and",,,

in peaceful manner.,,,

15.2 Along with said provision it is also appropriate to keep in focus the provision which are not contained in and not provided for in the agreement or,,,

under applicable law. It is relevant to note that:-,,,

(a) there is no provision in the agreement which imposes obligation on the respondent to grant renewal of the agreement and/ or to inform reasons for,,,

not renewing-extending the agreement/ allotment; (b) there is also no provision in the agreement which permits the petitioner to demand that the period,,,

should be automatically or mechanically renewed/ extended without tender process; (c) the said agreement or any other provision does not prescribe,,,

minimum period (number of years) for which renewal must be granted (that too without following tender process); (d) there is no provision which,,,

imposes obligation on respondent to mechanically renew and extend the agreement; (e) there is no provision in the agreement or in law which prohibits,,,

or restrains the employer/ owner (respondent in present case) from issuing NIT/ initiating tender process or from inviting competitive bids; (f) there is,,,

no provision in the agreement which creates any right for a mechanical and multiple renewal- extension of the agreement in favour of one party viz.,,,

the petitioner, that too without tender process; (g) there is no provision in the

agreement which obliges the respondent to grant opportunity of "first refusal", to the petitioner and/ or which creates such right (i.e. to claim "right of first refusal") in favour of the petitioner or which confers such privilege to the petitioner.,,,

16. In the backdrop of above mentioned facts and provision and with reference to the relief prayed for in paragraph number 25(A) it is necessary to note that after expiry of the period of agreement with the petitioner, initiation of process for awarding work order is an inevitable necessity.",,,

16.1 Further, impugned tender (NIT) does not oust or prohibit or eliminate or disentitle or restrain the petitioner from participating in the tender process/ competitive bidding and the respondent the petitioner has equal opportunity to participate in the competitive bidding. (Actually, the petitioner has even entered the process).,,,

16.2 The action of initiating process of competitive bidding cannot be categorised or declared unreasonable on the ground that the respondent did not consider it proper to not award the contract mechanically or automatically and without tender process, and the respondent, instead, initiated tender process for competitive bidding.,,,

17. The petitioner tried to claim that the respondent's action is unreasonable because the respondent has not taken into account the long and consistent conduct of the petitioner, (absence of any complaint and absence of any shortfall or defect in its performance).,,,

17.1 On this count it should also be mentioned that in the matter of execution of any work/ contract, be it of short duration or spread over long span",,,

and be it first award or first renewal-extension or second renewal/ repetition, certain requirements and obligations on part the contractor are, always",,,

and invariably, inherent in any contract. One of them is obligation to execute the work-contract satisfactorily. A defect-free execution of work-",,,

contract, absence of complaint about performance, satisfactory and efficient performance, not committing breach of terms of agreement/ work order",,,

are sine qua non. Therefore, on the ground that the petitioner fulfilled its obligation (as contractor) the petitioner cannot claim that in view of its",,,

conduct and performance the renewal should have been granted and initiation of tender process without considering this factor is unreasonable.,,,

17.2 Thus, on the ground that it has performed its obligation to the satisfaction

of respondent and without giving cause of complaint, the petitioner",,,
cannot demand and/ or expect special privilege (by way of exemption from tender process),,,

17.3 Further, even if it is assumed that there has never been any complaint or defect in performance of the obligation and / or that the petitioner never",,,
committed any breach of any of the terms and conditions of the agreement and the conduct of the petitioner has been consistent and in consonance,,,
with the agreement and to the satisfaction of the respondent, then also, merely on that ground, the petitioner cannot acquire and / or cannot expect",,,
privileged position to secure or even seek mechanical extension / renewal of allotment without participating in competitive bidding process or merely,,,
by inter se negotiation (about the terms and conditions for renewal / extension of allotment).,,,

17.4 When, in light of the provision in the agreement, the respondent, has adopted a well recognised mode (for awarding work order) then the",,,
respondent's action of not renewing- extending the agreement-allotment and, instead, issuing NIT to invite bids for competitive bidding cannot be",,,
faulted or declared unreasonable on the ground that the petitioner has been sole operator for about 20 years or on the ground that its past record of,,,
performance is, as claimed by the petitioner, blotless." ,,,

17.5 In absence of any provision in the agreement, past performance, past conduct and past record does not create any right for the petitioner to claim",,,
that even after the expiry of the period of agreement, renewal / extension should be mechanically granted to it without process of competitive bidding." ,,,

17.6 The facts and circumstances discussed above have brought out that by any yardstick the decision of the respondent to initiate the tender process,,,
by issuing NIT dated 1.5.2019 and thereby to initiate competitive bidding for awarding operation and maintenance of International Air Cargo Terminal,,,
at Ahmedabad cannot be said to be unreasonable.,,,

18. So far as the submission on ground of investment is concerned it is relevant to note that investment (in buildings, structure, installation) for",,,
executing the agreement (i.e. executing the work awarded by agreement) was envisaged for and expressly provided for as part of petitioner's,,,
obligation.,,,

18.1 Besides this the agreement also provide for method of valuation of building

etc. on expiry or termination of contract and the provision obliges the,,,
respondent to pay the cost in accordance with said provision. Both sides
accepted said provision in the agreement. Further, the respondent's obligation",,,,
under said Clause 21 would come in operation after expiry/ termination of
agreement. Thereafter, the parties have to undergo the process of valuation",,,,
in accordance with Clause 21 of the agreement. The respondent's action to
initiate Tender process is not in breach of said or any provision. Thus, on",,,,
the premise that petitioner has invested amount, neither the action of not
mechanically renewing the agreement without tender process nor the",,,,
initiation of Tender process can be considered unreasonable.,,,,

19. It is also claimed that in the event the agreement is not renewed â?"
extended, then the respondent is obliged to pay to the petitioner the cost of
the",,,,

building, structure and installations on the basis of government approved
valuerâ?"s report, however the respondent discontinued the arrangement-",,,,

agreement and issued notice inviting bids without determining the cost of
building and installation, and even without inviting report of government",,,,

approved valuer and without payment of cost of building etc. In this context it is
pertinent to note that in light of conjoint reading of specific provision",,,,

under the agreement viz. Clause 1, Clause 21, Clause 24 and Clause 26 the
contention is not tenable and cannot be sustained. The agreement provides",,,,

mutually agreed procedure for valuation of buildings etc. The procedure has to
be undertaken in accordance with the provision in the agreement. On",,,,

proper valuation by Government Approved Valuer the cost will be paid to the
Petitioner or the petitioner will be obliged to comply its obligation",,,,

prescribed by second part of Clause-21. It is also relevant to note that under
Clause",,,,

(21) the obligation would arise only after expiry of the period of agreement and
not before. Under the circumstances the action of issuing",,,,

NIT/initiation of Tender process cannot be faulted and quashed on this ground.
The said contention must fail.,,,,

20. The petitioner has invoked one more ground or contention to assail the
action of the respondent. It is claimed that the respondent's action is",,,,

unreasonable because the respondent has not assigned any reasons as to why
the arrangement is not renewed.,,,,

20.1 On this count it is relevant that specific provision under the agreement make it clear that the agreement is for fixed or limited tenure and that the,,, terms and conditions of the agreement were mutually discussed, settled, finalised and accepted by both sides. From the date of agreement until the",,,, date on which the period of agreement came to end (as per the specific provision in the agreement) the petitioner was aware about all provisions in,,, the agreement including the Clause which provides the period for agreement (when the agreement would come to end) and the Clause which oblige,,, the petitioner to hand over the possession to the respondent. The said Clause speak for themselves and give out that (a) period of agreement will,,, expire automatically on specific date and with efflux of time and on account of operation of term in the agreement; and (b) the petitioner had,,, knowledge about said provision (c) the respondent did not terminate the agreement.,,,

20.2 In that view of the matter, there would not be any obligation on the part of the principal/ employer to separately inform the lessee/ licensee that",,,, the agreement-arrangement has, with efflux of time and on account of specific provisions, come to end. When (a)there is no provision in the",,,, agreement which imposes obligation on the respondent to grant renewal/ extension of the arrangement; (b) there is also no provision in the agreement,,, which permits the petitioner to demand that the period should be renewed/ extended then in absence of such provision we cannot read into the,,, agreement such obligation (on the part of respondent) and we cannot impose such obligation on the respondent.,,,

We cannot hold that the failure to inform reason for not granting renewal vitiates the action of the respondent and / or that the respondent's action of,,, not granting renewal/ extension (without process of competitive bidding) is unfair.,,,

20.3 If the respondent had terminated the agreement- arrangement before the period of agreement expired in light of agreed provision in the,,, agreement then perhaps the petitioner (lessee/ licensee) might be justified in claiming that principal ought to have informed it about the termination of,,, the agreement and reason for termination however when the agreement is allowed to operate until its last date and until it expired on the day agreed,,, by the parties, the contention that the respondent should have informed reasons for not granting renewal cannot be sustained, more particularly when",,,,

the agreement does not oblige the respondent to renew the agreement.,,,

21. Similarly on the ground that before impugned instance/ NIT the respondent used to renew/ extend the arrangement-agreement without following,,,

the procedure of competitive bidding, the action now initiated by the respondent cannot be considered unfair or unreasonable. Some past instance",,,

when the respondent did not follow said procedure cannot act as hurdle or obstacle in the way of adopting a transparent and preferable procedure for,,,

awarding a contract. Actually, the process of competitive bidding is a preferably, fair and transparent mode and method for awarding contract. There",,,

cannot be an estoppel against following fair and proper procedure. The respondent is not estopped- by law or by any provision in the agreement- from,,,

adopting tender process for awarding contract.,,,

21.1 Further, the conditions of the tender document / NIT are not challenged by the petitioner and the petitioner has failed to point out any statutory",,,

provision or any terms or conditions from the agreement which prohibit or even restrain the respondent from initiating tender process for awarding,,,

work order.,,,

21.2 Thus, when the respondent adopted a recognised procedure of competitive bidding, the said decision and action cannot be termed unuust and",,,

unreasonable and does not deserve to be interfered and quashed on the grounds urged by the petitioner. The factors and elements mentioned by the,,,

petitioner do not render respondent's action unfair or unreasonable, more so when it is not even petitioner's case that initiation of tender process is",,,

contrary to any statutory provision or any provision in the agreement or that any of the terms and conditions of the NIT/ tender documents are,,,

unreasonable or tainted with malafide or designed in such a manner that petitioner would be deprived of participating in the process. In this view of the,,,

matter, the relief prayed for by the petitioner in paragraph number 25(A) [i.e. to quash and set aside the tender dated 1.5.2019] does not deserve to be",,,

and cannot be granted.,,,

22. The petitioner has, thereafter, in paragraph 25(B), prayed for direction to restrain the respondents from issuing process of tender issued on",,,

1.5.2019 for operation and maintenance of international air cargo terminal at Ahmedabad Airport for term of five years. With reference to the said,,,

request the learned Advocate for the petitioner clarified that actually what the

petitioner has prayed for is that the respondent may be restrained from,,,
proceeding with the tender process issued on 1.5.2019.,,,

22.1 It is pertinent that from the terms of the agreement, it clearly emerges that right from inception, the petitioner was aware about the specific terms",,,

under the agreement which informed the petitioner that the period of agreement will expire on 31.5.2019; and that on expiry of the period of,,,

agreement or on termination of agreement, the petitioner is obliged to hand over possession of land, building, structures, premises, etc.",,,

22.2 In absence of any provision (in the agreement or in law), which prohibits or restrains the respondent from initiating and proceeding with the",,,

tender process and / or which obliges the respondent to renew / extend the agreement â?" allotment in favour of the petitioner, that too automatically",,,

or mechanically and without tender process and / or which confers any right or privilege to the petitioner for such automatic or mechanical renewal of,,,

agreement / extension of allotment and when, more importantly, the period of agreement with the petitioner has expired with efflux of time and on",,,

operation of provision in the agreement (and not on account of any overt action of respondent in breach of the agreement); and in absence of any,,,

allegation about malafides in initiating the tender process; coupled with absence of any material to demonstrate that the respondentâ??s action is,,,

tainted by mala fides and that the respondent has committed breach of agreement and/ or the terms of tender are arbitrary or tainted with malafides or,,,

unless the petitioner could establish that the action of the respondent is contrary to the terms and conditions of the agreement, the respondent cannot",,,

be directed to halt the process and cannot be restrained from conducting and proceeding with the tender process, more so, when the petitioner has",,,

failed to establish that the action of issuance of NIT for inviting bids is unauthorized or incompetent in light of any statutory provision or in view of any,,,

provision in the agreement between the parties and when it is open to the petitioner also to participate in the tender process and when any terms or,,,

conditions of NIT/ Tender document is not challenged on any ground whatsoever. It is also pertinent to note, that it is not the case of the petitioner that",,,

the respondent has framed the NIT (terms and conditions in the NIT / tender document) so as to eliminate the petitioner from participating in the,,,

tender process or to keep the petitioner outside the tender process or that the

terms and conditions in the NIT / tender document are designed in such,,,
a manner that the petitioner would be disqualified / would not be considered
eligible or that the respondent is not competent to invite bids.,,,

22.3 Further, when it is pertinent that it is not the case even of the Petitioner
that (a) respondent has committed breach of any term(s) of the",,,

agreement (b) the respondent has conducted itself in accordance with the terms
of the agreement and the NIT / tender process is not initiated in,,,

breach of any term in the agreement, the Court would be loath to interfere with
the tender process or to quash the notice inviting bids for awarding",,,

work order.,,,

22.4 In this view of the matter and also for the reasons recorded with reference
to the relief prayed for in Para 25(A) this relief also [Para 25(B)],,,

does not deserve to be and cannot be granted.,,,

23. So far as the relief prayed for by the petitioner in paragraph number 25(C) is
concerned the said request amounts to seeking a direction that the,,,

respondent should award the work to the petitioner without initiating tender
process and without inviting bids. The relief prayed for by the petitioner by,,,

means of Para-25(C) also translates into the claim that the contract should be
granted to the petitioner, without granting opportunity to other interested",,,

and prospective bidders (public at large) to participate in competitive bidding and
thereby to sacrifice or ignore fundamental tenet of public,,,

administration and public good. The petitioner desires to secure the contract
(renewal of agreement) without participating in the competitive bidding,,,

process.,,,

23.1 The respondent's decision and action are in consonance with the public
policy and in public interest and does not warrant any interference.,,,

Actually the respondent would not be justified in awarding the work entering into
an agreement with any party without inviting bids for competitive,,,

bidding.,,,

23.2 Indoor or private negotiation for such purpose are not preferable over mode
of competitive bidding and cannot be permitted or facilitated in,,,

preference over tender process. For protecting private or personal right against
public interest, Court would not exercise prerogative and discretionary",,,

writ jurisdiction and Court would not permit or approve much less facilitate such
practice or procedure viz. practice or procedure wherein recognized,,,

and accepted mode and procedure for awarding work order by State or Public Body are given go-bye.,,,

23.3 Under the circumstances and as well as in light of the discussion with regard to relief prayed for by the petitioner in Para 25(A) and 25(B) and,,,

for the reasons in light of which the said request of the petitioner are not found justified, sustainable and acceptable, the relief prayed for in Para 25(C)",,,

also does not deserve to be granted and cannot be granted.,,,

24. Now so far as the petitioner's contention raised on the basis of Section 60(b) of the Easement Act is concerned, it is relevant to take into account",,,

clause 1 of the agreement which prescribes, inter alia, that 'â?| â?| licence for the said facility shall be valid for period of 10 years from 1.6.2009 to 31.",,,

5.2019 unless terminated earlier. â?|'.,,,

24.1 The said clause (1) makes it clear that the agreement is of limited / fixed tenure. The said clause further clarifies that the agreement is revocable,,,

and can be terminated even prior to expiry of the period of the agreement specified thereunder. Further, clause (26) of the General Terms and",,,

Conditions under agreement obliges the lessee / licensee to deliver the possession of premises in good condition and peaceful manner, on expiry of the",,,

licence period or on termination of the licence. The said clause also gives out that the respondent can terminate the agreement and in such event, the",,,

licensee / lessee shall have to hand over the possession of the premises. The agreement imposes similar obligation on the licensee / lessee by means of,,,

clause (21) of the agreement. The said clause also provides for and contemplates termination or expiry of the licence and further provides that in such,,,

event, the fate of the building, structure and installation will be decided by the authority. Furthermore, clause 15(h) makes provision for determination /",,,

termination of licence / lease in the event of default, failure, negligence or breach of agreement by lessee / licensee.",,,

24.2 A conjoint reading of the said provision establishes that the agreement is a fixed period / limited 'tenure agreement' and that it is also revocable.,,,

Further, in present case lease/ licence does not provide for and is not coupled with transfer of property.",,,

24.3 While keeping in focus said aspect of the agreement, it is relevant to also take into account the observations by Hon'ble Apex Court in para 9 of",,,

the decision in case of Ramswaroop Gupta (supra), which reads thus:-",,,

â??9. Licence as defined by S. 52 of the Act means grant of permission by a person to the other, a right to do or continue to do, in or upon, the",,,

immovable property of the grantor, something which would, in the absence of such right, be unlawful. Such right does not amount to an easement or",,,

any interest in the property. The rights so conferred is license. The grant of license may be express or implied which can be inferred from the conduct",,,

of the grantor. Section 60 provides that a license may be revoked by the grantor unless; (a) it is coupled with a transfer of property and such transfer",,,

is in force; (b) the licensee, acting upon the license, has executed a work of permanent character and incurred expenses in the execution. Revocation",,,

of license may be express or implied. Section 62 enumerates circumstances on the existence of which the license is deemed to be revoked. One of",,,

such conditions contemplates that where license is granted for a specific purpose and the purpose is attained, or abandoned, or if it becomes",,,

impracticable, the license shall be deemed to be revoked. Sections 63 and 64 deal with licensee's right on revocation of the license to have a",,,

reasonable time to leave the property and remove the goods which he may have placed on the property and the licensee is further entitled to",,,

compensation if the license was granted for consideration and the license was terminated without any fault of his own. These provisions indicate that a",,,

license is revocable at the will of the grantor and the revocation may be express or implied. Section 60 enumerates the conditions under which a",,,

license is irrevocable. Firstly, the license is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee",,,

acting upon the license executes work of permanent character and incurs expenses in execution. Section 60 is not exhaustive. There may be a case",,,

where the grantor of the license may enter into agreement with the licensee making the license irrevocable, even though, none of the two clauses as",,,

specified under S. 60 are fulfilled. Similarly, even if the two clauses of S. 60 are fulfilled to render the license irrevocable yet it may not be so if the",,,

parties agree to the contrary. In Muhammad Ziaul Haque v. Standard Vacuum Oil Company, (1951) 55 Cal WN 232 ,the Calcutta High Court held",,,

that where a license is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee erected the work of",,,

permanent nature there is nothing to prevent the parties from agreeing expressly or by necessary implication that license nevertheless shall be,,,

revocable. On the same reasoning there is nothing to prevent the parties agreeing expressly or impliedly that the license which may not prima facie fall,,,

within either of the two categories of license (as contemplated by S. 60) should nevertheless be irrevocable. The same view was taken by Das, J. (as",,,

he then was) in Dominion of India v. Sohan Lal, AIR 1950 East Punjab 40. Bombay High Court has also taken the same view inM .F. De Souza v.",,,

Childrens Education Uplift Society, AIR 1959 Bom 533. The parties may agree expressly or impliedly that a license which is prima facie revocable not",,,

falling within either of the two categories of license as contemplated by S. 60 of the Act shall be irrevocable. Such agreement may be in writing or,,,

otherwise and its terms or conditions may be express or implied. A license may be oral also in that case, terms, conditions and the nature of the",,,

license, can be gathered from the purpose for which the license is granted coupled with the conduct of the parties and the circumstances which may",,,

have led to the grant of the licenseâ??,,,

24.4 In the said decision, Hon'ble Apex Court, while dealing with Section 60 of the Easement, clarified and explained that 'there is nothing to prevent",,,

the parties agreeing expressly or impliedly that the licence which may not prima facie fall within either two categories of the licence' and that the,,,

parties may 'agree expressly or impliedly' that licence which is prima facie irrevocable may not fall within either of the two categories....â? as,,,

contemplated under Section 60 of the Act shall be irrevocable. From said observation by Apex Court it comes out that despite two Clauses of Section,,,

60 the parties may, expressly or impliedly, agree to the contrary.",,,

24.5 In present case the terms of agreement make it clear that the agreement is revocable and it is of limited/ fixed tenure and the parties expressly,,,

agreed for such terms.,,,,

24.6 In light of specific and express provision in the agreement the said observation by Hon'ble Apex Court, the petitioner's contention raised on the",,,

basis of Section 60 of the Easement Act is not tenable.,,,,

25. So as to claim that the petitioner has â??legitimate expectationâ? for renewal of agreement and extension of allotment, learned Senior Counsel for",,,

petitioner emphasized that (a) petitioner has been executing the work of

maintenance and operation of international air cargo terminal since about 25,,, years; and that (b) during said period, there has not been any defect or shortfall in the performance; and / or any complaint with regard to its",,,, performance and that (c) petitioner has invested about Rs.30 to 35 Crores in construction of building and installing machinery; and that (d) during past,,, period the respondent has renewed the agreement (e) the petitioner was invited for discussion for renewal of agreement. According to the petitioner,",,, having regard to said facts and consistent conduct of the petitioner, the agreement â?" arrangement should have been renewed.",,,

25.1 While considering and while dealing with the relief prayed for in Para 25A and 25B as well as the claim for â?"right for first refusalâ?" we have,,, addressed and dealt with above mentioned elements which the petitioner has invoked and relied on. Therefore we adopt and reiterate, without",,,, repetition, the same discussion, reasons and conclusion to answer aforesaid contention of the petitioner.",,,

25.2 In light of the facts of this case the expectation of the petitioner cannot be considered â?"legitimate expectationâ?", more particularly because the",,,, expectation not only flies in the face of specific provision under the agreement but also militates against recognized transparent mode and fair,,, procedure for awarding contract and also militates against public interest. Further, on examination of the petitioner's submission it has emerged that",,,, there is nothing in the facts of the case or in the agreement which can give rise to or provide platform for such expectation and that the plea on the,,, ground of legitimate expectation is not sustainable.,,,,

26. When the provision under the agreement are examined and read conjointly it becomes crystal clear that the provision in the agreement do not,,, envisage such situation and do not warrant such expectation. In light of the discussion with reference to the relief prayed for in Para 25(A) of the,,, petition it has emerged that there is no basis for petitioner's expectation that the respondent should have renewed/ extended the agreement- allotment,,, without initiating tender process.,,,,

27. From conjoint reading of the provision under the agreement coupled with the fact of present case it has emerged that there is no base or,,, justification for the petitioner to harbour or nurture the expectation for automatic or mechanical renewal of agreement and extension of period of,,,

allotment without following the procedure of competitive bidding. There is no room or justification for such expectation and in light of the provision,,,

under the agreement and facts of present case the petitioner's expectation does not fall within the purview of and does not qualify to be "legitimate,,,

expectation." It is nothing but plain "anticipation" (as explained by Apex Court in the decision in case of Monnet Ispat) or mere wishful thinking,,,

or cherished desire. The petitioner's expectation is not "assertible expectation". It is not justifiable and/ or protectable and is not enough or capable,,,

to give rise to and to maintain action in law.,,,

27.1 The petitioner, being aware and conscious of this fact, has tried to rely on the past instance when the respondent, without following the procedure",,,,

of competitive bidding, renewed the agreement and extended allotment.",,,

27.2 However, relevant provision and factual backdrop expose the fallacy in petitioner's attempt to glorify its expectation and to put it in category of",,,,

"legitimate expectation". It is pertinent that the Clause-1 of the agreement expressly provides that the life (of the agreement) will expire on,,,

31.5.2019 and Clause 26 of the General Terms and conditions expressly imposes obligation on the petitioner that on termination or expiry of the,,,

licence, the licensee (present petitioner) shall deliver possession of the premises in good condition and peaceful manner. Clause 21 provides that on",,,,

expiry of the agreement the fate of building etc. will be decided by respondent authority.,,,

27.3 A conjoint reading of the said provision bring out that from inception the petitioner was aware and conscious of the fact that (a) agreement is of,,,

limited / fixed tenure and that (b) upon expiry of prescribed period, the agreement- arrangement will cease to operate and will automatically come to",,,,

end and (c) upon expiry of the said period (which was mutually agreed by the parties) it will have to vacate the land and premises and handover the,,,

possession to the respondent; and (d) there is no provision in agreement on strength of which the respondent can mechanically renew/ extend the,,,

agreement without tender process; and (e) there is no provision which imposes obligation on the respondent to renew (mechanically and/ or,,,

repeatedly) the agreement without inviting tender and without competitive bidding (f) there is no provision in the agreement which creates any right in,,,

favour of the petitioner to demand that the period of agreement should be renewed and extended without following tender process; and that (g) there,,, is no provision in the agreement which creates any right for a mechanical or automatic and repeated-multiple renewal of the arrangement in favour of,,, the petitioner and that (h) there is also no provision in the agreement which confers any right to the petitioner for minimum period of,,, extension/renewal; and that (i) there is also no provision in the agreement which restrains or prohibits the respondent from initiating tender process and,,, inviting bids for competitive bidding.,,,

27.4 Along with the said aspect it is also relevant to keep in focus that the arrangement between the petitioner and the respondent came to end (1) on,,, account of efflux of time; and (2) on account of operation of one of the specific and agreed provisions in the contract viz. provision with regard to the,,, period (of operation of the agreement) and not on account of any overt action by respondent; and (3) the respondent has not terminated the agreement,,, before the date of expiry of the agreement and in present case the respondent has explained that the process of competitive bidding is initiated in,,, public interest.,,,

The aim and object viz. to secure higher rates and thereby higher revenue, can be achieved by inviting other bids and by means of competitive bidding.".,,,

27.5 In this view of the matter there is no room or foundation for such expectation (which the petitioner claims). From the said provision and facts it,,, also comes out that they do not give rise to the expectation which the petitioner now pleads or claims.,,,

28. So as to support his submission and so as to invoke legitimate expectation doctrine, learned Senior Counsel for the petitioner relied on below quoted",,,, observation (in Para 188 to 188.5) by Hon'ble Apex Court in case of Monnet Ispat (supra). In paragraph Nos. 188.1 to 188.5 of the said decision,,, Hon'ble Apex Court has observed that:-,,,

188.1 The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.,,,

188. 2 The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural,,, justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.,,,

188.3 Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such",,,

decision by invoking doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy,,,

if it is in the public interest to do so.,,,

188.4 The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertible expectation. Such expectation should,,,

be justifiable, legitimate and protectable.",,,

188.5 The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires,,,

otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which",,,

could block public interest for private benefit.â??,,,

28.1 While considering the said observation, it is necessary to keep in focus what the petitioner actually seeks by means of present petition. The",,,

petitioner actually â?" in effect and in substance - seeks that the respondent should extend the allotment to the petitioner and renew the agreement for,,,

period of 10 years, without inviting bids for the work in question.",,,

29. So as to appreciate that the petitioner's expectation is unjustified and unwarranted, it is profitable to take into account the observation in para",,,

No.188.4 which reads thus:-,,,

â??188.4 The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertible expectation. Such expectation,,,

should be justifiable, legitimate and protectable.â?? (emphasis supplied)",,,

29.1 The petitioner seems to have lost sight of the distinction emphasized by Apex Court or it has conveniently ignored it. From the observation by,,,

Hon'ble Apex Court â?" which are relied on by learned Senior Counsel for the Petitioner - it emerges that while emphasizing that the doctrine can be,,,

invoked as substantive and enforceable right, Hon'ble Apex Court, in the said decision, has also clarified that",,,

(a) legitimate expectation is different from anticipation and that (b) â??personal benefit must give way to public interest and,,,

(c) the doctrine of â??legitimate expectation would not be invoked which could

block public interest for private benefit? while considering,,,

petitioner's claim the said clarification needs to be kept in focus.,,,

29.2 In para No.188.5 of the said decision, Hon'ble Apex Court has explained and clarified that the protection of legitimate expectation does not",,,

require fulfillment of the expectation where overriding public interest requires otherwise and personal benefits must give way to public interest and that,,,

doctrine of legitimate expectation is founded on the principle of reasonableness and fairness.,,,

29.3 Further, Court will not allow or approve any action or decision whereby private interest may triumph over public interest.",,,

30. The question which, therefore, arises is as to whether, in light of the provision in the agreement and in light of the facts of present case, there is",,,

any warrant for petitioner's legitimate expectation? and whether the petitioner is justified in harbouring or nurturing expectation for automatic or,,,

mechanical renewal of agreement without competitive bidding process.,,,

30.1 It is pertinent that public policy as well as public interest and principles of good governance and public administration as well as paramount need,,,

of transparency make it imperative that unless a very strong case for digression is made out, the mode and procedure of competitive bidding must be",,,

followed and should not be sacrificed or ignored and should not be given go by or diluted.,,,

31. In this view of the matter, even if petitioner's expectation can be characterized as legitimate expectation, then also, the Court would lean in favour",,,

of transparency and larger interest of public. The Court's duty is to protect public interest over personal or private interest.,,,

32. Even if we were to consider the petitioner's such expectation as justified and even if we were to treat such expectation of the petitioner as legitimate",,,

expectation?, then also we, by drawing profitable guidance from observation by Apex Court that legitimate expectation does not require",,,

the fulfillment of the expectation where an overriding public interest requires otherwise? would prefer to lean in favour of larger public interest than,,,

personal or private interest. In light of facts of present case we hold that the petitioner's claim is not justified and it is not protectable. Such expectation,,,

of the petitioner must yield to public interest. As observed by Hon'ble Apex Court

private interest cannot prevail over public interest and the Court will,,,
not allow private interest to triumph over public interest.,,,

33. It appears that the petitioner is emboldened in its said submission on account of respondent's letter dated 13.11.2018 whereby the respondent had,,, invited the petitioner for discussion. The said letter is one of the basis for invoking Legitimate Expectation doctrine. It is, however, relevant to note a",,,, pertinent fact viz. that the said letter also raised issue about increase/ upward revision of the rates (Rentals lease amount and revenue sharing). It is,,, not even the case of the petitioner that any agreement (between petitioner and respondent) on that count (i.e. in respect of revision of rates) was,,, arrived at during or after meeting pursuant to the letter dated 13.11.2018. Further, the said letter dated 13.11.2018 does not constitute promise or does",,,, not amount to representation and cannot be treated as promise (or even representation) by respondent to automatically renew the agreement and,,, extend the allotment without tender process. Thus, heavy reliance placed on said letter is of no avail.",,,,

33.1 Neither the respondent's letter dated 13.11.2018 nor the petitioner's performance during the period of operation of the agreement nor the period,,, during which the arrangement continued without following the procedure of competitive bidding nor past renewal and extension granted by the,,, respondent without inviting tender, can confer status or character of â?? legitimate expectationâ?? to the petitioner's wishful-thinking or its earnest",,,, desire and anticipation that renewal/ extension of the agreement-arrangement will be granted in routine manner.,,,

33.2 In our view, there is nothing in the agreement which permits the petitioner to nurture or harbour such expectation. Any provision in the agreement",,,, does not warrant or justify such expectation for mechanical and/ or automatic renewal /extension of the agreement. The agreement or any other,,, provision does not mandate automatic renewal / extension of agreement or extension / renewal of the allotment to the petitioner.,,,

In absence of such provision coupled with specific clause which provides a particular date for expiry of the agreement there is nothing which would,,, give rise to such expectation. In light of the fact that the petitioner consciously accepted all terms and conditions including the provision with regard to,,, the period and expiry of the agreement and in light of specific and express

provision in the agreement there is no justification to invoke doctrine of,,,
legitimate expectation. The demand raised on such premise is unjustified and untenable.,,,

34. Thus, when it has emerged that the respondent did not consider it appropriate to mechanically renew the allotment without tender and instead it",,,, chose to follow proper procedure, then it cannot be said that the respondent has defeated petitioner's legitimate expectation and/ or the respondent did",,,, not act in fair and reasonable manner (while initiating the tender process by issuing NIT dated 1.5.2019).,,,

35. So as to support his submission that in view of its long and consistent conduct (while performing its obligations under the agreement) and in view of,,, past instance of renewal of agreement without tender process the petitioner legitimately expects that the period of allotment should be renewed /,,,

extended and that the petitioner has locus to seek review of respondent's action, Mr. Joshi, learned Senior Counsel relied on para No.135 of the",,,,

decision in case of Lalaram & Ors. v. Jaipur Development Authority & Anr. [(2016) 11 SCC 31] where Apex Court made reference of a paragraph,,,

from Halsbury's Law of England. The relevant paragraph (quoted in the judgment) reads thus:-,,,

â??135. A parallel doctrine founded on the doctrine of fairness and natural justice baptised as â??legitimate expectationâ? has grown as well in the,,,

firmament of administrative law to ensure the predication of fairness in State action. The concept of â??legitimate expectationâ? is elaborated in,,,

Halsburyâ??s Laws of England, Fourth Edition, Volume 1(1) 151 as hereunder:",,,,

â??81. Legitimate expectations.â?" A person may have a legitimate expectation of being treated in a certain way by an administrative authority even,,,

though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the,,,

authority, including an implied representation, or from consistent past practice.",,,

The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial,,,

review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its,,,

doing so; or it may mean that, if the authority proposes to defeat a personâ??s legitimate expectation, it must afford him an opportunity to make",,,,

representations on the matter. The courts also distinguish, for example in licensing cases, between original applications, applications to renew and",,,

revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to",,,

do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant.â?? (emphasis supplied)",,,

35.1 It emerges therefrom that legitimate expectation may arise either from representation â?" including implied representation- or promise made by",,,

the authority or from consistent past practise. However, in light of the facts of present case and the provision in the agreement as well as in light of",,,

the respondent's action which is assailed in present petition, the said decision and the observation by Hon'ble Apex Court in the said decision does not",,,

help the petitioner in carrying its case forward.,,,

35.2 In present case, the respondent did not promise the petitioner to always and for unlimited period renew the agreement and to extend the",,,

allotment. There is no basis and justification to claim that since on previous occasion extension â?" renewal was granted the petitioner can legitimately",,,

expect further renewal. Such â??expectationâ? by the petitioner is nothing but â??wishful thinkingâ? or â??anticipationâ?. Beside this the protection",,,

of even legitimate expectation also, as explained by Apex Court, need not always and necessarily culminate into fulfillment. It can be denied when",,,

public interest requires otherwise and/ or when Court finds that personal benefit must yield to public interest.,,,

35.3 Since the agreement between the parties does not contain such provision, either express or implied the petitioner would emphasize the expression",,,

(from the quotation in the judgment by Apex Court) â??representation or implied representation and consistent past practiseâ?. So as to demonstrate",,,

that the respondent made (to the petitioner) such representation or that in present case, there is implied representation by the respondent, the petitioner",,,

relied on the communication dated 13.1.2018.,,,

35.4 However, further explanation or the rider in the same para (which is quoted in the decision by Apex Court) viz. â??without some overriding",,,

reason of public policy to justify its doing soâ??. is relevant and cannot be overlooked by the petitioner or the Court.",,,

36. In present case, what the petitioner expects and seeks is contrary to and

militates against public policy, inasmuch as under the umbrella of" ,,,
 â??legitimate expectationâ?, the petitioner desires, rather insists/demands that the respondent should ignore and sacrifice the preferable mode and" ,,,
 procedure for awarding work order or for disturbing State largesse and it seeks that without following process of competitive bidding by inviting bids ,,,
 the respondent should renew the agreement and so that the allotment would stand extended. The tender process/ competitive bidding is part of public ,,,
 policy and / or good governance and public administration. The petitioner's demand translates into the claim that the respondent should ignore and ,,,
 sacrifice the said procedure and award the work order (extend the allotment) to the petitioner by renewing the agreement for further period of 10 ,,,
 years without inviting bids and without following procedure of competitive bidding. ,,,

37. With the aid of above quoted observation and while laying emphasize on the expression â??consistent practiseâ?, the petitioner cites the fact that" ,,,
 the respondent has, in past, renewed the agreement without tender process." ,,,

38. Actually, such practise or repeated extensions (renewal) of allotment / agreement in favour of only one party without process of competitive" ,,,
 bidding, amounts to creating sort of monopoly." ,,,

38.1 Such practise may sow the seeds of or lead to or give birth to and generate malpractise, corruption, nepotism and such other evil practise." ,,,

38.2 The temptation of state or public bodies to forgo or ignore fair and transparent mode and procedure for awarding work contract (namely tender ,,,
 process and competitive bid) cannot be encouraged. The Court would not allow any authority to resort to such practice or procedure or allow such ,,,
 practice to continue much less repeated or facilitate such actions or practise by state or public body or any other limb of the state. Rather such ,,,
 practise should be discouraged and nipped in the bud. ,,,

38.3 The expectation for repetition of improper and undesirable or unjust and irregular procedure cannot be put on pedestal of â??legitimate ,,,
 expectationâ?. Even if the respondent followed such procedure at any time in past it would not give birth to legitimate expectation and will not create ,,,
 any right which can be enforced. There is no sound or legally tenable foundation for such â??desireâ?? or expectation. ,,,

38.4 Any expectation or desire or anticipation which is not supported by but runs

opposite and contrary to specific provision in the agreement or public,,,
policy or principles of good governance and transparent administration, cannot
be treated as "legitimate expectation". In our view doctrine of "legitimate
expectation cannot be stretched to the extent whereby the State or its
agency or limb of State would be obliged to forgo the process of
competitive bidding and award the work contract to a party who has been
executing the work for long time.,,,

39. In present case, foregoing discussion has brought out that the respondent's
action is in public interest and it protects larger interest of the public and",,,

it will also avoid creation or vesting of interest in one party.,,,

40. In light of the provision in the agreement and in light of the facts of the case
and in view of the fact that respondent has chosen to adopt the mode,,,

of competitive bidding by inviting bids from public at large (which also extends
and affords the same opportunity to the petitioner as well), we are",,,

neither convinced nor inclined to prefer present petitioner's so called "legitimate
expectation" over or in preference to the mode (for awarding the,,,

work order) which the respondent has preferred and adopted (namely
competitive bidding by inviting bids).,,,

40.1 Therefore, in present case, having regard to the facts of the case and
observation by Apex Court in the decision relied on by learned Senior",,,

Advocates for both sides we are of the view that the petitioner's expectation
must yield to a better, desirable and transparent mode of awarding work",,,

order than the process of mechanical renewal (without competitive bidding) of
the agreement (extension of allotment) by private negotiation between,,,

two parties.,,,

41. Under the circumstances, the petitioner's claim or plea on the ground of
legitimate expectation cannot be sustained and accepted and the",,,

respondent's action to initiate competitive bidding for awarding work order does
not deserve and cannot be interfered with. The contention based on,,,

doctrine of legitimate expectation should, therefore, fail.",,,

42. Our view and decision is also supported and fortified by the observation by
Hon'ble Apex Court in Para 21 in the case of [a] Sethi Auto Service,,,

Station & Ors. v. Delhi Development Authority & Ors. [(2009) 1 SCC 180], and
para 23, 25 and 35 in the case of [b] Michigan Rubber (India) Ltd. v.",,,

State of Karnataka & Ors., [(2012) 8 SCC 216] and the observation in Para 21 in

the case of Rishi Kiran Logistics Pvt. Ltd. v. Board of Trustees of",,,,
Kandla Port Trust & Ors. [(2015) 13 SCC 233, and Para 23 and 24 in the case of
Himachal Pradesh Housing & Urban Development Authority v.",,,,
Universal Estate & Anr. [(2010) 14 SCC 253] and the observation in Para 41 in
the case ofMumbai International Airport Pvt. Ltd. v. Golden Chariot,,,,
Airport & Anr. [(2010) 10 SCC 422] as well as the observation in the case of
National Highways Authority of India v. Gwalior Jhansi Expressway,,,,
Ltd. [(2018) 8 SCC 243],,,,,

43. This leaves behind the petitioner's claim for first refusal.,,,,

43.1 So far as the said contention is concerned it is necessary and appropriate to
recall that there is no provision in the agreement which obliges the,,,

respondent to grant such opportunity to the petitioner and/ or which creates
such right in favour of the petitioner or which confers such privilege to the,,,

petitioner.,,,,

43.2 Thus, if we accept the petitioner's contention and if we grant such request
or if we were to direct the respondent to grant such opportunity to the",,,,

petitioner then it will amount to re-writing the agreement or adding a provision
in the agreement.,,,,

44. Finalisation of the terms and conditions of agreement is a subject between
and in the realm of the parties to the Contract and Court, in absence of",,,,

mandate by law or public policy, cannot impose any provision or cannot compel
the respondent to accept some condition and grant such opportunity to",,,,

the petitioner when neither any provision in the agreement nor any provision in
law provide for such opportunity.,,,,

45. There is another facet to this claim of the petitioner. It is necessary to
examine the issue: on what basis the petitioner demands such opportunity,,,

and claims that such right should be granted to it or is available to it, more so
when such right does not flow from the agreement.",,,,

45.1 The submission by the learned Senior Counsel for the petitioner bring out
that the said claim is based on the premise that over a period (during the,,,

operation of agreement) the petitioner has invested its money in putting up
construction and on installation of machinery.,,,,

45.2 Needless to say that the petitioner invested such amount to discharge its
obligation under the agreement. Further, there is an in-built mechanism in",,,,

the agreement which makes provision as to how the issue related to building,

structure and installation shall be addressed. A composite and detailed",,,
procedure is provided in Clause-21 and in the agreement and the agreement further provides that if the licensee/ lessee is not satisfied with the,,
valuation by the government approved valuer or by the amount determined towards cost of building, structure and installation then the petitioner can",,,
avail remedy of arbitration.,,,

45.3 The said specific provision in the agreement on one hand and absence of provision of conferring such right (of first refusal) or privilege or,,
opportunity to the petitioner bring out that there is no legal basis for petitioner to demand such opportunity or right.,,,

45.4 Besides this, now the petitioner is one of the participants in the tender process/ one of the bidders. Therefore, even otherwise, this aspect would",,,
be governed by the provision in the NIT/ tender documents and all bidders including the petitioner will get such opportunity and rights as are provided,,
for and available in terms of the provisions in the NIT/ tender documents.,,,

45.5 In this view of the matter, we cannot accept the petitioner's demand that it should be granted opportunity of first refusal.",,,

45.6 Further more, we also cannot overlook that though the petitioner appears to have addressed letter to the respondent seeking such opportunity",,,
(letter dated 7.5.2019) the petitioner has not prayed for such relief in the petition.,,,

46. The petitioner has failed to make out any ground to convince us to set-aside the Notice dated 7.5.2019 which the respondent has issued for,,
initiating tender process and inviting competitive bidding by inviting bids from interested bidders.,,,

46.1 Any case to restrain the respondent from proceeding further with the tender process is not made out. In absence of any provision in the,,
agreement and for reasons mentioned above, the direction to the respondent to renew the agreement and extend the allotment to the petitioner for",,,
further period of 10 years also cannot be granted.,,,

In light of the foregoing discussion and for the reasons mentioned above, the petition is not accepted. Notice is discharged. Orders accordingly.",,,