
(2011) 02 GUJ CK 0072

In the Gujarat High Court

Case No : Special Civil Application No. 286 of 2011

Nikhil Adhesives Limited

APPELLANT

Vs

Kandla Port Trust

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 298
State Financial Corporations Act, 1951 — Section 3

Citation : (2011) 2 GLH 283

Hon'ble Judges : K.A. Puj, J;D.H. Waghela, J

Bench : Division Bench

Advocate : Mihir Thakore, Kashyap K. Pujara and Vishal T. Patel, for the Appellant; Dhaval D. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The Petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the Resolution No. 108 dated 22.11.2010 passed by the Respondent, Kandla Port Trust. The Petitioner has also prayed for stalling the proceedings of fresh tenders in respect of construction of liquid storage tanks issued by the Respondent. The Petitioner further prayed for the direction to the Respondent to issue formal letter of allotment to the Petitioner.

2. The brief facts giving rise to the present petition are that the Respondent invited tenders on 12.03.2005 for allotment of 17 plots for construction of liquid storage tanks at Kandla by issuing a public notice. The Petitioner submitted its price bid in August 2005 for allotment of Plot No. 8 for construction of liquid storage tanks at Kandla. The Petitioner was declared the highest bidder for Plot No. 8 by the Respondent on 12.01.2006 on the basis of the recommendation of the Tender Committee constituted in the matter of tender for allotment of plot for construction of liquid storage tanks at Kandla. Allotment of 17 plots to the respective highest bidder for 30 years lease is subject to receipt of CRZ

Clearance. The Petitioner thereafter entered into further correspondence with the Respondent between the period from 2006 to 2010. The Petitioner thereafter addressed a letter dated 18.01.2010 informing the Respondent about their subsidiary Company M/s. Sanghavi Logistics Private Limited, incorporated for construction, maintenance and operation of liquid storage tanks at Kandla and asking permission to carry out construction, maintenance and operation of storage tank at Plot No. 8 in the name of M/s. Sanghavi Logistics Private Limited, instead of M/s. Nikhil Adhesives Limited, the Petitioner herein. In response to the said letter, the Petitioner received a reply dated 18.03.2010 from the Respondent stating that the matter of allotment is still not finalized. The Petitioner, therefore, approached the Respondent and met Respondent's Estate Manager who assured the Petitioner that things will work out. The Petitioner waited in anticipation that things would work out and the Respondent being Govt. Organization would take its own time to take decision.

3. To the shock and surprise of the Petitioner, a Resolution No. 108 was passed by the Respondent on 22.11.2010 terminating the contract entered into with the Petitioner. The Respondent vide its letter dated 09.12.2010 informed the Petitioner that the Board of Trustees of the Port of Kandla vide Resolution No. 108 in its meeting held on 22.11.2010 has decided to cancel the tender process started in the year 2005 for allotment of 17 plots for construction of liquid storage tanks at Kandla. Despite the fact that CRZ Clearance was granted by the Ministry of Forest and Environment on 02.02.2010, the Respondent has cancelled the allotment and started fresh tender process by issuing fresh public notice on the website of Kandla Port Trust. The Petitioner apprehended that if such tender process is allowed to be completed, in that case, the Petitioner would suffer huge losses and all the efforts, time, money, labour invested by the Petitioner in furtherance of the said contract would go in vain. The Petitioner was, therefore, constrained to file the present petition before this Court.

3. Mr. Mihir Thakore, learned Senior Advocate appearing with Mr. Kashyap Pujara for the Petitioner submitted that the impugned Resolution No. 108 is absolutely illegal, arbitrary, unjust, unfair and is passed high-handedly and, therefore, deserves to be quashed and set aside. He further submitted that the impugned Resolution was passed without giving any opportunity of hearing to the Petitioner and hence, it is violative of the principles of natural justice. He further submitted that the tender process was complete in 2006, when the Petitioner received the letter of intent dated 12.01.2006 informing that the Petitioner is the highest bidder, which amounts to a concluded contract. He further submitted that the doctrine of promissory estoppel is where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it. He has, therefore, submitted that the principle of promissory estoppel would

certainly estop the Respondent from backing out of its obligation arising from a solemn promise made by it to the Petitioner. In support of this submission, Mr. Thakore relied on the decision of the Apex Court in the case of Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., wherein it is held that it is too late in the day to contend that the instrumentality of the State which would be "other authority" under Article 12 of the Constitution can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. It was not disputed that the Gujarat State Financial Corporation which is set up u/s 3 of the State Financial Corporations Act, is an instrumentality of the State and would be "other authority" under Article 12 of the Constitution. By its letter of offer and the subsequent agreement the Appellant Corporation entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs. 30 Lacs to the Respondent Company. Acting on the solemn undertaking, the Respondent proceeded to undertake and execute the project of setting up a 4 Star Hotel. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the afore-mentioned two documents, the Respondent incurred expenses, suffered liabilities to set up a Hotel. Presumably, if the loan was not forthcoming, the Respondent may not have undertaken such a huge project. Acting on the promise of the Appellant evidenced by documents, the Respondent proceeded to suffer further liabilities to implement and execute the project. In that backdrop of this incontrovertible fact situation, the principle of promissory estoppel would come into play. Thus, the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation arising from a solemn promise made by it to the Respondent. The Respondent acting upon the solemn promise made by the Appellant incurred huge expenditure and if the Appellant is held to its promise, the Respondent would be put in a very disadvantageous position and therefore also the principle of promissory estoppel can be invoked in this case.

4. Mr. Thakore further submitted that the Petitioner suffered loss of opportunity from the year 2005, as there were such other projects amongst various ports across the country of which tenders were floated. The Petitioner never took part in other tender process in the country as the Petitioner was declared highest bidder and was allotted Plot No. 8 subject to the observance of the formality of CRZ Clearance. He further submitted that in order to meet with the bid amount quoted by the Petitioner other than the amount invested towards technical and other purpose, the Petitioner always had to keep provision for a sum of Rs. 23,74,00,442.64 ps. and as a result, he could not utilize the said amount for any other purpose and thereby suffered loss of opportunity. He further submitted that the Respondent being a Government Undertaking cannot be allowed to function in such an arbitrary manner as State action must not be arbitrary, must be based on some rational and relevant principle and dealing with the public, whether by

giving of jobs or entering into contracts or otherwise, it cannot act arbitrarily and enter into relationship with any person it likes as its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance. He has, therefore, submitted that the petition deserves to be admitted and the interim relief as prayed for is required to be granted. In support of this submission, Mr. Thakore relied on the decision of the Apex Court in the case of State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc., wherein it is held that the rule of promissory estoppel being an equitable doctrine, has to be moulded to suit the particular situation. It is not a hard and fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. The doctrine of promissory estoppel was evolved to protect a promisee who acts on the faith of a promise / representation made by promisor and alters his position even though there is no consideration for the promise and even though the promise is not recorded in the form of a formal contract. Anything and everything done by the promisee on the faith of the representation does not necessarily amount to altering his position so as to preclude the promisor from resiling from his representation. Altering his position should mean such alteration in the position of the promisee as it makes it appear to the Court that holding the promisor to his representation is necessary to do justice between the parties. The doctrine should not be reduced to a rule of thumb. If the equity demands that the promisor is allowed to resile and the promisee is compensated appropriately, that ought to be done. If, however, equity demands, in the light of the things done by the promisee on the faith of the representation, that the promisor should be precluded from resiling and that he should be held fast to his representation, that should be done. This is the proper way of understanding the words "promisee altering his position".

5. Mr. Thakore further relied on the decision of the Apex Court in the case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, wherein it is held that the State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercise of power. Therefore, the action of State organ can be checked under Article 14. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14 of the Constitution. If a Government action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination.

6. Mr. Thakore further relied on the decision of the Apex Court in the case of State of Maharashtra and Others Vs. Atur India Pvt. Ltd., wherein the Apex Court was concerned with the leviability of stamp duty under the Bombay Stamp Act on agreement to lease. While pointing out the distinction between the agreement to lease and agreement of lease, the Court has referred to Woodfall on law of Landlord and Tenant wherein it is observed that a contract for lease is an agreement enforceable in law whereby one party agrees to grant and another to take a lease. The expressions "contract for lease" and "agreement for lease" is to be preferred as being more definite, agreement frequently means one of many situations in a contract. A contract for a lease is to be distinguished from a lease, because a lease is actually a conveyance of an estate in land, whereas a contract for a lease is merely an agreement that such a conveyance shall be entered into at a future date. In contradistinction to this, in the case of a lease, there must be words of demise. The usual words by which a lease is made are "demise" and "let"; but any words which amount to a grant are sufficient to make a lease. Whatever words are sufficient to explain the intent of the parties, that the one shall divest himself of the possession and the other come into it, for any determinate time, whether they run in the form of a license, covenant or agreement, are sufficient, and will in construction of law amount to a lease for years as effectually as if the most proper and pertinent words had been used for that purpose; for if the words used are sufficient to prove a lease of land, in whatsoever form they are introduced, the law calls in the intent of the parties, and moulds and governs the words accordingly.

7. Based on the facts and circumstances of the case and decided case law on the subject, Mr. Thakore strongly urged that the impugned Resolution deserves to be quashed and set aside and the Petitioner is entitled to the letter of allotment and contract in its favour.

8. Mr. Dhaval D. Vyas, learned advocate appearing for the Respondent on caveat, on the other hand, has invited the Court's attention to the affidavit-in-reply filed on behalf of the Respondent. He submitted that the offers were invited for leasing 23 plots of land of various sizes of Kandla Port Trust to be utilized for construction of liquid storage tanks. The offers were invited for a minimum basic premium fixed at Rs. 612/- per Sq. Mtr. The annual lease rent was fixed at nominal rate of Rs. 1 per plot. The bidders would have to submit an EMD of Rs. 3 Lacs, along with the offer. He has, therefore, submitted that the revenue to be received for parting of the subject plots would only be the amount of upfront premium and not thereafter. The minimum premium to be offered in the present tender was Rs. 612/- per Sq. Mtr. The minimum premium to be offered for qualifying bid in the subsequent tender dated 03.01.2011 would be Rs. 8358 per Sq. Mtr. He has, therefore, submitted that apparently, there would be considerable amount of escalation, which would be a relevant consideration. The Respondent being a Public authority, the decision, action and resolution are to be guided by the public interest. Public interest requires Kandla Port Trust to fetch maximum price. He further submitted that there is a specific term in the tender

document that the validity of any bid, would be for a period of six months from the date of opening of tenders, unless the extension is sought for by Kandla Port and is agreed by the bidders. On lapse of six months, there would be no valid bid or offer for which enforcement could be sought.

9. Mr. Vyas further submitted that in a pre-bid meeting, the prospective bidders were persuaded and queried on mandatory government clearances to be taken, including CRZ Clearance. The Respondent by communication dated 25.05.2005 informed the prospective bidders that the Respondent would obtain general clearance for the area for tank farms. However, further clearances were to be obtained by the individual lessee. Since the bid of the Petitioner was highest, the Tender Committee recommended the Board of Trustees for approval, which was approved by the Resolution dated 08.12.2005. In view of prior mandatory clearances required for the Project, it was communicated to the Petitioner vide letter dated 12.01.2006 that it is only after the receipt of CRZ Clearance, the formal letter of allotment will be issued to the Petitioner. He further submitted that the communication dated 12.01.2006 would, at best, be pitched to be a letter of intent. The said letter would be an expression of intention to acceptance of the offer of the Petitioner for being allotted the plot in question. The offer of the Petitioner would be finally accepted by a further act of allotment, which would obviously be as per the terms of the tender.

10. Mr. Vyas has invited the Court's attention to certain terms and conditions of the tender document, more particularly, Clause 11 regarding validity of Bids, Clause 12 regarding right of acceptance or rejection of any Bid, Clause 16 regarding allotment, Annexure II, Clause 1 regarding lease execution and Clause 2 regarding payment period. Based on these provisions contained in the tender document, Mr. Vyas has submitted that the Petitioner would not have any vested right or interest for allotment. Unless the possession of land is offered upon receipt of all payments, there would be no right, interest or otherwise in favour of bidder for allotment of land. The Petitioner is at present at the stage of submission of bid and payment of EMD only, without there being any offer by the Petitioner for payment of premium amount. He further submitted that there was no promise of whatsoever nature, which was offered by the Respondent. In fact, the ingredients of promise under law, are not met with. Even if it is considered that there were any promise which have been given that would estop the Respondent to cancel the tender process, it would be highly inequitable in set of present circumstance to direct the Respondent to grant the prayers made in this petition. The decision has been taken considering the public interest which is involved, for allotment of Government lands. The public interest would entitle the Respondent to change its stand and the same would give power to withdraw the representation made by it, if at all. The public interest would have to be accepted as equity, which can override the individual equity.

11. Mr. Vyas has further submitted that there is no iota of evidence and details worth credence, which confirms the Petitioner to have altered its position. Vague

averments are made in the petition without any support or evidence. Even these averments are not satisfying that the Petitioner has altered its position to its detriment.

12. Mr. Vyas further submitted that during the last five years, there was no communication or representation by the Petitioner confirming any urgency or desire to have the proposal of the allotment made by it being accepted by the Respondent. He further submitted that for application for CRZ Clearance, the consultants, namely, National Institute of Ocean Technology, New Delhi was appointed by the Respondent who had called for material particulars which were in turn requested to be supplied by the Petitioner and all other bidders. Vide communication dated 15.02.2006, the Petitioner was called upon to submit the relevant particulars. In absence of details supplied by the Petitioner and other bidders, the same could not be sent for the CRZ Clearance. If details were available and they were sent to the Consultant, he would have in term submitted his advise there upon. It is only after that the CRZ Clearance would be applied to much later. The Respondent had thereafter made repeated reminders to the Ministry of Environment and Forest requesting early clearance for Project. The said permission came to be received by the Trust as late as in February, 2010.

13. Mr. Vyas further submitted that it is a specific term that the allotment would commence from the actual date of handing over the possession to the allottee upon issuance of letter of allotment. Therefore, the allotment and possession would apply prospectively.

14. While dealing with the specific issue raised by Mr. Thakore with regard to concluded contract, Mr. Vyas submitted that there is no contract, much less, concluded contract between the Petitioner and the Respondent and, therefore, there is no question for the Petitioner to be entitled for the reliefs prayed for. He further submitted that the ingredients for a concluded contract are not satisfied in the present case since there is no acceptance much less final acceptance to the proposal of the Petitioner for being allotted Plot No. 8. In absence of there being any final acceptance, there would be no promise and thereby there would be no agreement to enforce at law. He has, therefore, submitted that the petition deserves to be dismissed with cost.

15. In support of his submissions, Mr. Vyas relied on the following decisions:

In *Siemons Public Communication Private Limited and Anr. v. Union of India and Ors.* AIR 2009 SCW 470, the Apex Court held that when the power of judicial review is invoked in the matters relating to tenders or award of contracts, certain special features have to be considered. A contract is a commercial transaction and evaluating tenders and awarding contracts are essentially commercial functions. In such cases, principles of equity and natural justice stay at distance. If the decision relating to award of contract is bonafide and is in public interest, Courts will not exercise the power of judicial review and interfere even if it is accepted for the sake of argument that there is a procedural lacuna.

In *Madhya Pradesh Mathur and Ors. v. DTC and Ors.* (2006) 13 SCC 706, the Apex Court held that once the public interest is accepted as the superior equity which can override individual equity, the principle would be applicable. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of doctrine acted on the basis of a notification, it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest.

In *Dresser Rand S.A. Vs. BINDAL Agro Chem Ltd. and K.G. Khosla Compressors Ltd.*, the Apex Court held that it is now well settled that a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that a detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether there is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter.

In *Speech and Software Technologies (India) Pvt. Ltd. Vs. Neos Interactive Ltd.*, the Apex Court held that it is well settled legal position that an agreement to enter into an agreement is not enforceable nor does it confer any right upon the parties. As the agreement contemplated by the letter of intent was never executed, it cannot be said that the agreement contemplated by the said letter of intent had novated, rescinded or superseded the Tripartite Share Purchase Agreement.

16. Based on the aforesaid decisions of the Apex Court and considering the provisions contained in the tender document and further considering the aspect of public interest, Mr. Vyas has strongly urged that the Petitioner is not entitled to any relief prayed for in this petition and hence, it deserves to be summarily dismissed.

17. Having heard learned Counsel appearing for the parties and having considered their rival submissions, in light of the statutory provisions contained in the Indian Contract Act as well as the decided case law on the subject, the

Court is of the view that the Petitioner cannot succeed merely on the basis of the letter of intent issued by the Respondent Port Trust on 12.01.2006 informing the Petitioner that the Petitioner had been declared highest bidder for the plot that has been applied by it for construction of liquid storage tank at Kandla and further informing that formal allotment letter shall be issued to the Petitioner after the receipt of the CRZ clearance in general by the Kandla Port Trust for tank farms for handling of hazardous and non-hazardous cargo and further informing that further CRZ clearance if required for installation, safety, pollution control etc. has to be obtained by the Petitioner from time to time at its cost and the payment shall have to be made by the Petitioner after obtaining the CRZ clearance for the individual premises allotted to the Petitioner or within three months of issue of allotment letter, whichever was earlier. Between the period from 12.01.2006 to the passing of another Resolution No. 108 of 22.11.2010, no effective steps were taken by the Petitioner despite the fact that the Petitioner was informed by the Respondent Kandla Port Trust on 15.02.2006 that the work of preparation of EIA studies in respect of allotment of 17 plots for construction of Liquid Storage Tanks for obtaining CRZ clearance from the Govt. of India, Ministry of Environment has already been entrusted to M/s. NIOT, Chennai along with other project works and the said institute has already completed site survey work for the purpose. The Petitioner was also informed that the said M/s. NIOT, Chennai has suggested to provide following information for incorporation of the same in EIA studies:

- (i) Approximate estimation for the activity
- (ii) Proposed activity (type of Cargos to be stored)
- (iii) Proposed storage capacity (approximate quantum of the liquid commodity, size etc.).

18. The Petitioner was specifically informed that the said information was urgently required to be furnished to the NIOT so that the same would enable the said institute to submit the report as early as possible for obtaining CRZ clearance in the matter. Since these informations were not supplied by the Petitioner, another letter was issued by the Respondent Trust on 13.05.2008 reiterating the same request to provide the said information. Instead of furnishing these details, the Petitioner sought appointment of the Deputy Secretary (Estate) of the Respondent Port Trust vide letters dated 27.05.2008, 18.07.2008 and 13.11.2008. The Petitioner thereafter vide its letter dated 18.01.2010 giving reference of the Respondent's letter dated 12.01.2006, informed the Respondent that for construction, maintenance and operation of Liquid Storage Tank, it had incorporated a wholly owned subsidiary Company, namely, M/s. Sanghvi Logistics Private Limited, which is fully owned by them and the said Company would carry out the construction, operation and maintenance of Storage Tanks on the said plot. The Petitioner has also sought the permission to carry out construction, operation and maintenance of Storage Tank on the said plot in the name of M/s. Sanghvi Logistics Private Limited instead of M/s. Nikhil

Adhesives Limited. This request was turned down by the Respondent vide its letter dated 20.03.2010 informing that the matter of allotment was not finalized and hence, the request could not be considered. The Respondent thereafter vide letter dated 10.12.2010 informed the Petitioner that the Board of Trustees of the Port of Kandla vide Resolution No. 108 at its meeting held on 22.11.2010 has decided to cancel the tender process, started in the year 2005 of allotment of 17 numbers of Plots for construction of Liquid Storage Tanks at Kandla. In this view of the matter, it cannot be said that there was any concluded contract between the Petitioner and the Respondent Port Trust nor any promise was given by the Respondent Port Trust to allot Plot No. 8 to the Petitioner. The letter of intent issued by the Respondent was merely an expression of intention and imparting an information that the Petitioner stood highest bidder and on receipt of CRZ clearance, the formal letter of allotment would be issued. However, the Petitioner had not cooperated in the meantime for obtaining CRZ clearance and before any formal letter of allotment is issued, the earlier tender process stood cancelled. Even while canceling the earlier tender process, the Respondent Port Trust neither acted arbitrarily nor it would amount to any malafide exercise of discretionary powers. Before taking this decision at its Board meeting held on 22.11.2010, the Respondent Port Trust sought an opinion of the Additional Solicitor General who opined that it would be prudent to cancel 2005 tender process and start fresh process so as to fetch the realistic market price in accordance with the present market value of the land. He further opined that there is no legal impediment in cancellation of the tender process of the year 2005 since there is no concluded contract which is in existence.

19. The Respondent is well within its rights to take such a decision in the year 2010 keeping in mind the larger public interest. The figures itself would indicate that the original tender premium was of Rs. 612/- per Sq. Mtr. whereas fresh tender premium is Rs. 8358/- per Sq. Mtr. Thus, the premium amount to be received by the Respondent Port Trust by issuance of fresh tender would come to more than 10 times than the original premium amount. Moreover, the Petitioner had paid only Rs. 3 Lacs by way of earnest money. The total premium amount is of Rs. 23,74,00,442.64 ps. This amount was to be paid by the Petitioner only after receipt of the CRZ clearance in general and after issuance of allotment letter, receipt of individual CRZ clearance and on execution of lease document. None of these events took place and hence, it cannot be said that any vested right or interest is created in favour of the Petitioner. The judgments relied upon by Mr. Thakore in support of his contentions are not of much assistance to the Petitioner. In Gujarat State Financial Corporation v. Lotus Hotels Private Limited (Supra), not only an agreement was executed, but the Respondent on the basis of the said agreement incurred further liabilities to implement and execute the Project. There is nothing on record of the present case to show that except making payment of Rs. 3 Lacs by way of earnest money, the Petitioner had incurred any other expenses or suffered liabilities to implement the project of construction and maintenance of the Tank. Even if it is assumed that the

issuance of letter dated 12.01.2006 tantamounts to a promise given by the Respondent Port Trust, the Petitioner has not altered his position to such an extent which inspires the Court to take the decision that holding the promisor to his representation is necessary to do justice between the parties. The equity demands that the Respondent Port Trust is allowed to resile looking to the facts and circumstances. Thus, the decision of Himachal Pradesh and Ors. v. Ganesh Wood Products and Ors. (Supra) helps the Respondent rather than it helps the Petitioner.

20. There is no dispute about the proposition laid down by the Apex Court in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, However, looking to the facts of the present case, it cannot be said that the action of the Respondent Port Trust of not issuing allotment letter or of cancelling the tender process fails to satisfy the test of reasonableness. It would neither amount to an arbitrary action nor give rise to any discrimination. The Court does not see any justification in interfering with the said action on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination.

21. The letter of intent issued by the Respondent Port Trust on 12.01.2006, at best, can be said to be an agreement to issue the allotment letter and to execute the lease document in favour of the Petitioner subject to fulfillment of certain conditions. However, in absence of issuance of allotment letter, the said letter of intent cannot be enforced in the Court of law. The Apex Court in Dresser Rand S.A. v. Bindal Agro Chem Limited and Ors. (Supra) clearly stated that a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. Such a letter of intent is not intended to bind either party ultimately to enter into any contract. Even in Speech and Software Technologies (India) Private Limited v. Neos Interactive Limited (Supra), the Apex Court clearly held that an agreement to enter into an agreement is not enforceable nor does it confer any right upon the parties.

22. Taking any view of the matter, the Petitioner is not entitled to any relief prayed for in this petition. The petition is, therefore, dismissed at the threshold without any order as to costs.