

YAZDANI INTERNATIONAL P. LTD.

v.

AUROGLOBAL COMTRADE P. LTD. & ORS.

(Civil Appeal No. 11229 of 2013)

DECEMBER 17, 2013.

[H. L. GOKHALE AND J. CHELAMESWAR, JJ.]

MAJOR PORT TRUSTS ACT, 1963:

s. 49 r/w s.111 – Conditions for use of land belonging to Board – Held: Board is bound by policy directions given by Government of India from time to time u/s 111 – Land Policy guidelines, 2004 forbid sale or lease of land and enable the Board only to grant or renew a licence — The 2010 policy guidelines restrict the authority of the Board to renew the licences for only two terms – The tenure of any licence is stipulated to be for a maximum period of 11 months – Thus, the policy only enables the Board to renew licences granted but does not create any vested right in favour of licensor – Therefore, allotment of plots in dispute is only by way of a licence, as defined u/s 52 of Easements Act, 1882 — Land Policy for Major Ports, 2004— Land Policy for Major Ports, 2010 – Easements Act, 1882—s. 52.

s.49(3) – Discretion of Board to permit use of its properties – Held: Sub-s. (3) of s. 49 authorises the Board to lease its properties either by auction or by inviting tenders — The expression ‘the Board may’ occurring in the sub-section indicates that lease is the highest of rights that may be created on the properties — It does not eliminate the discretion of Board to permit use of its properties by any arrangement which transfers a lesser or no interest (such as a licence) in the property – Leave and licence.

Easements Act, 1882:

- A ss.52 and 60 – Licence – Held: A licence is revocable at the will of grantor which is the essence of a licence – The Act categorically declares that a licence can be revoked by grantor except in the contingencies specified u/s 60(a) and (b) – In the instant case, none of the appellants have any
- B indefeasible right of renewal either under Easements Act or under Land Policy guidelines – Appellants failed to establish that decision of Board to terminate their licences is otherwise violative of any of substantive right – Decision of the Board needs no interference.
- C Renewal of licence in respect of land belonging to Board – Held: A public body like the respondent Board cannot arbitrarily decline to renew a licence – If it decides not to renew any licence either with respect to a class of licences or with reference to a specific area of the land, normally such a
- D decision cannot be said to be either irrational or arbitrary unless there are other compelling reasons to indicate that the decision has no rational purpose to be achieved – In the instant case, entire parcel of land which was allotted to the various licensees of manually operated plots is proposed to
- E be utilised by the Board for creating modern operational facilities in connection with activities of the Port and termination of licences of mechanically operated plots would save the Board from huge financial loss – Such a decision cannot be said to be arbitrary or irrational exercise of authority
- F of a public body, having regard to the object sought to be achieved by Board – Therefore, proposed course of action by Board neither infringes any legal right of appellants nor does it amount to an arbitrary exercise of authority by Board – Constitution of India, 1950 — Arts. 12 and 14 – Appropriate and reprobate.
- G

Constitution of India, 1950:

Art.136 – Jurisdiction under – Preliminary objection as regards new grounds raised – Held: Jurisdiction under Art. 136

H

YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 803  
COMTRADE P. LTD.

*is discretionary only to be exercised in order to ensure that injustice is not perpetuated — One of the important attributes of discretionary jurisdiction is that such jurisdiction is not exercised where it is likely to be a futile exercise — Therefore, accepting preliminary objection and refusing to consider the ground newly raised by the Board would only “drive parties to fresh litigation” rendering present adjudication a futile exercise of the jurisdiction of the Court — Issue can be decided by Supreme Court to prevent a possible damage to the programme proposed to be undertaken by Board and its “speedy accomplishment”- Subsequent events.*

*Arts. 32, 136 and 226 – Notices of termination of licences based on a decision of High Court in a case in which appellant-noticees were not parties – Held: Interfering with the notices of termination of licences on the ground that the notices were initially based on a decision of High Court to which appellants were not parties, would not be in the larger public interest — Even otherwise, Court proposed to deal with the matters as if they were petitions under Art. 32 and permitted the appellants to place all the material which would be available to them in law in defence even if the impugned termination orders were not to be based on the decision of the High Court – Appellants failed to place before the Court any material to establish that the decision of Board to terminate their licences is otherwise violative of any of the substantive right – Practice and Procedure.*

**By notice dated 2-6-2011, Paradeep Port Trust (the ‘Board’) invited applications for allotment of 20 manual iron ore plots of different sizes. Respondent no. 1 in C.A. No. 112329 of 2013 (Auroglobal) was declared to be one of the successful bidders and was allotted one manual iron ore storage plot subject to various terms and conditions. After utilising the same for about a year, respondent no.1 approached the High Court by way of a writ petition, inter alia, to seek declarations that it had a**

- A right of renewal of the allotment of the plot; that the pricing modality arrived at through the tender was contrary to the tender conditions and the conditions for renewal in the tender were violative of Arts. 14, 16 and 19 of the Constitution of India. The High Court by an interim order dated 2.8.2012, held that the Board did not follow a uniform and consistent procedure in making allotment of various plots of lands, and that plots could be allotted only on the basis of an auction to the highest bidders. It also found fault with the Board for having renewed certain licences granted earlier. Pursuant to the said order, the Board cancelled licences of 48 manually operated iron ore storage plots and 11 mechanically operated storage plots. Licensees of 38 manually operated plots category and 7 of the mechanically operated plots category filed the appeals. Respondent D No. 1 also filed C.A. No. 11273 of 2013, but on different grounds.

- During the pendency of the instant appeals, the Board altered the basis of its decision and decided to rest on the need of (i) the land in the dispute (covered by the manually operated plots) for providing better facilities and (ii) mechanically operated plots for securing better/higher revenue. A preliminary objection was raised by the appellants that neither of the two grounds, relied upon by the respondent Board in the instant proceedings were the grounds on which either the High Court directed the eviction of the appellants or the quit notices issued by the respondent Board were founded and, therefore, the Supreme Court may not embark upon an examination of those questions as a court of first instance.

The following questions arose for consideration of the Court:

- (1) Whether there was any indefeasible legal right in favour of any one of the appellants for renewal of the

**YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 805  
COMTRADE P. LTD.**

**licence granted or continued use of plots allotted to them?** A

**(2) Irrespective of the answer to the above question, whether the Board was justified to terminate the allotments on the ground that it proposed to utilise the land in dispute for providing better amenities in connection with the obligations imposed upon the Board by law?** B

**(3) Whether the Court would be justified in law to decline granting relief in exercise of its jurisdiction under Art. 136 of the Constitution of India either on the ground that the appellants had no indefeasible right of renewal or on the ground that irrespective of the rights of the appellants, the purpose sought to be achieved by the Board in proposing to resume the disputed lands was a public purpose which should override the interest of any of the appellants?** C D

**Disposing of the appeals, the Court**

**HELD: 1.1. The jurisdiction under Art. 136 of the Constitution of India, 1950 is discretionary only to be exercised in order to ensure that injustice is not perpetuated. One of the important attributes of discretionary jurisdiction is that such jurisdiction is not exercised where it is likely to be a futile exercise i.e. where the relief might be of no use to the applicant because it would still be open to the competent authority to achieve the result sought to be achieved by the disputed action leaving the defeat i.e. by following the proper procedure etc. In the instant case, nothing in law prevents the Board from calling upon the appellants to desist from use of the land in dispute. Such a course of action is the declared intention of the Board. [para 35] [829-B-C; 830-A-B]** E F G

**1.2. Therefore, accepting the preliminary objection and refusing to consider the ground newly raised by the Board would only "drive the parties to fresh litigation"** H

- A rendering the present adjudication a futile exercise of the jurisdiction of this Court. The issue can be decided by this Court to prevent a possible damage to the programme proposed to be undertaken by the Board and its "speedy accomplishment". Besides, this Court in
- B either granting or declining to grant a relief in exercise of its jurisdiction under Art. 136 can take note of the developments either of fact or law which leave an impact on the rights and obligations of parties before the Court. Even otherwise, this Court proposed to deal with the
- C matters as if they were petitions under Art. 32 and permitted the appellants to place all the material which would be available to them in law in defence even if the impugned termination orders were not to be based on the decision of the High Court. [paras 36 and 59] [830-C-F, 842-D]
- D

*Pasupuleti Venkateswarlu vs. The Motor & General Traders* 1975 (3) SCR 958 = (1975) 1 SCC 770 and *Rameshwar and Others vs. Jot Ram and Another etc.* 1976 (1) SCR 847 = (1976) 1 SCC 194 – relied on.

- E 2.1. In view of the fact that most of the licences in favour of the appellants came to be granted pursuant to a process of either an auction or tender, those allotments cannot be said to be inconsistent with the principles of law laid down by this Court in 2G case in the absence of
- F any other circumstance vitiating the allotment. [para 27] [825-G-H]

- G *Centre for Public Interest Litigation and others v. Union of India and others* 2012 (3) SCR 147 = (2012) 3 SCC 1 – referred to.

- H 2.2. Insofar as the allotment of plots made on application (prior to 2005), the Board came out with a clear explanation that there was hardly any competition at that point of time for the allotment of plots. Therefore,

there is no reason to find any fault with such allotment on the ground that the allotment was made without following the procedure of auction or tender. More particularly, in the absence of any dispute regarding the correctness of the assertion of the Board that there was hardly any demand at that point of time for allotment of plots. [para 27] [825-H; 826-A-B]

3.1. The plots in dispute are property vested in a public body (statutory corporation) performing important public functions. In the matter of creating rights and/or conferring privileges such a body is required to act in public interest under some rational policy. The Board is bound by the policy directions given by the Government of India from time to time u/s 111 of the Major Port Trusts Act, 1963. [para 39] [831-D-E]

3.2. The Land Policy guidelines, 2004 forbid sale or lease of land and enable the Board only to grant or renew a licence without any limitation on the number of renewals. The 2010 policy guidelines clearly restrict the authority of the Board to renew the licences for only two terms. The tenure of any licence is stipulated to be for a maximum period of 11 months. In either case, from the language of the policy guidelines it is clear that the policy only enables the Board to renew the licences granted but does not create any vested right in favour of the licensor. Even the letter of allotment makes it clear that what is granted is only a licence. (See Footnote 6) Therefore, the allotment of plots in dispute is only by way of a licence, as defined u/s 52 of the Easements Act, 1882. [para 41] [832-B-D]

3.3. Licence by definition does not create any interest in the property. A licence only gives a right to the grantee to use the immovable property of the grantor. There is no transfer of any interest in such property in favour of the grantee. Under s. 60, a licence is revocable at the will of

A the grantor which is the essence of a licence. The  
 Easements Act categorically declares that a licence can  
 be revoked by the grantor except in the two  
 contingencies specified u/s 60(a) and (b). No such  
 exceptions are pleaded or demonstrated by the  
 B appellants. Therefore, it must be held that none of the  
 appellants have any indefeasible right of renewal either  
 under the Easements Act or under the said Land Policy  
 guidelines. [para 42] [832-E; 833-A; 834-A-B]

C 3.4. However, a public body like the respondent  
 Board cannot arbitrarily decline to renew a licence. No  
 public body under our Constitutional system is vested  
 with such arbitrary powers. If the Board decides not to  
 renew any licence either with respect to a class of  
 licences or with reference to a specific area of the land,  
 D normally such a decision cannot be said to be either  
 irrational or arbitrary unless there are other compelling  
 reasons to indicate that the decision has no rational  
 purpose to be achieved. [para 43] [834-B-D]

E *R.D. Shetty vs. Airport Authorities*, 1979 (3) SCR 1014 =  
 (1979) 3 SCC 489 – relied on.

F 3.5. In the counter filed by the respondent Board  
 before this Court, it is stated that the entire parcel of land  
 which was allotted to the various licensees of the  
 manually operated plots from time to time by the Board  
 in favour of iron ore exporters, (except a small portion of  
 the land allotted in favour of the Odisha Mining  
 Development Corporation), is proposed to be utilised by  
 the Board after terminating the licences of the appellants  
 G for creating certain modern operational facilities in  
 connection with the activities of the Port. Such a decision  
 cannot be said to be arbitrary or an irrational exercise of  
 authority of a public body, having regard to the object  
 sought to be achieved by the Board of creating modern  
 H amenities. The exception in favour of the Odisha Mining



Development Corporation cannot amount to discriminatory treatment of the appellants, since that Corporation is admittedly a State owned Corporation and forms a class by itself. Therefore, the proposed course of action by the Board to terminate the licences neither infringes any legal right of the appellants nor does it amount to an arbitrary exercise of the authority by the Board. [para 44] [834-E; 835-A-D]

3.6. The Board desires to utilise the parcel of land in dispute for a purpose which is authorised by law and serves better the larger interests of nation – including the interests of the exporters and importers such as the appellants. Setting aside the order under appeal on the ground of breach of natural justice would be a futile exercise. The respondent Board/licensor can always terminate/revoke the licences. The proposed revocation of licences would not amount to an irrational or arbitrary decision, rejecting the new plea of the Board or any ground would only lead to protracted litigation consuming considerable time and delay in execution of the project, by the Board. Such a delay would not subserve public interest. The appellants were given a wholesome opportunity by this Court to establish their legal right, to prevent the Board from terminating their licences. [para 47] [835-G-H; 836-A-D]

4.1. The appellant in C.A. 11273 of 2013 (respondent no. 1 in C.A. No. 11229 of 2013) acquired the licence knowing fully well the terms and conditions subject to which the licence is offered by the Board. So they cannot take the benefit of the offer and renounce the corresponding obligation (approve and reprobate). Further, the appellant cannot be said to have discriminated against, since the other licencees who are paying a lower 'licence fee' had secured the licenses at a point of time when there was no competition and the market conditions were different. [para 51] [837-G-H; 838-A]

A *Hari Shankar & Ors. Vs. Dy. Excise & Taxation Commissioner & Ors.* 1975 (3) SCR 254 = (1975) 1 SCC 737, *Shyam Lal & Ors. Vs. State of Punjab*, (1977) 1 SCC 336 and *State Bank of Haryana & Ors. Vs. Jage Ram & Ors.* 1980 (3) SCR 746 = (1980) 3 SCC 599 – referred to.

B 4.2. Section 49(3) authorises the Board to allot plots  
either by following the procedure of auction or inviting  
tenders and demand amounts higher than those  
contemplated under sub-s (1). It cannot be said that once  
C the Board resorts to the process of auction or inviting  
tenders, the Board can only allot a plot on lease but not  
a licence. Sub-s. (3) of s. 49 authorises the Board to lease  
its properties either by auction or by inviting tenders.  
There is no warrant to read into the language of said sub-  
section a legislative intention that in every case where the  
D Board undertakes the process of auction or inviting  
tenders, it is bound/obliged to grant a lease of its  
properties. The expression ‘the Board may’ occurring in  
the said sub-section indicates that the lease is the highest  
of rights that may be created on the properties, by the  
E Board under the said provision. It does not eliminate the  
discretion of the Board to permit use of its properties by  
any arrangement which transfers a lesser or no interest  
(such as a licence) in the property. [paras 52 and 54] [838-  
F-G; 839-A-D]

F 4.3. C. A. 11267 of 2013 filed by Odisha Mining  
Corporation Ltd., one of the licensees of the respondent  
Board, stands disposed of in view of a specific statement  
made at the bar on behalf of the Board that it does not  
propose to terminate the licence of the appellant as the  
G plot of land allotted to the appellant is not required for the  
purpose of its proposed developmental project. [para 56]  
[839-F-G]

H 4.4. As regards the civil appeals filed by licensees of  
the 7 mechanically operated iron ore plots, each one of

them enjoyed the benefit of the allotment of plot by virtue of successive renewals. There is no reason to interfere with the decision of the Board to terminate the licences for the reasons: Firstly, a licence does not create any indefeasible legal right. Secondly, there is no irrationality in the decision of the Board, even from the point of view of the fact that the Board is a public body (the State within the meaning of Art. 12) and, therefore, obliged to act rationally. The Board's decision to terminate the licences is consistent with the policy guidelines of 2010. Thirdly, the Board in its additional affidavit dated 25.11. 2013 has stated to the effect that keeping in view the growth rate of iron ore traffic, non- availability of mechanically operated plots to the Port Trust will entail huge financial loss to the Port, and there is no reason to doubt the said assertion. [para 57] [839-H; 841-C-G; 842-B]

5.1. Interfering with the notices of termination of licences in each one of these cases on the ground that the notices were initially based on a decision of the Orissa High Court to which the appellants were not parties, would not be in the larger public interest. [para 58] [842-B-C]

5.2. The appellants failed to place before this Court any material to establish that the decision of the Board to terminate their licences is otherwise violative of any of the substantive right. In the circumstances, this Court declines to interfere with the decision of the Board. [para 60] [842-E-F]

*Natural Resources Allocation, In Re, Special Reference No.1 of 2012* 2012 (9) SCR 311 = (2012) 10 SCC 1 – cited.

Case Law Reference :

2012 (3) SCR 147                      referred to                      para 20

- A      2012 (9) SCR 311                      cited                      para 21  
           1975 (3) SCR 958                      relied on                para 34  
           1976 (1) SCR 847                      relied on                para 34
- B      1979 (3) SCR 1014                      relied on                para 43  
           1975 (3) SCR 254                      referred to              para 50  
           (1977) 1 SCC 336                      referred to              para 50
- C      1980 (3) SCR 746                      referred to              para 50

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11229 of 2013.

- D      From the Judgment and Order dated 02.08.2012 of the High Court of Orissa at Cuttack in WPC No. 11785 of 2012.

WITH

- E      C.A. No. 11230, 11231, 11232, 11232-11234, 11235, 11236, 11237, 11238, 11239, 11240, 11241, 11242, 11243, 11244, 11245, 11246, 11247, 11248, 11249, 11250, 11251, 11252, 11253, 11254, 11255, 11256, 11257, 11258-11259, 11260, 11261, 11262, 11263, 11264-11265, 11273, 11266, 11267, 11268, 11269, 11270-11271, 11272, 11278, 11274, 11275, 11276-11277, 11279, 11280, 11281, 11282, 11283 of 2013.

- F      Kedar Nath Tripathy, Khaitan & Co., L.R. Singh, Milind Kumar, Jyoti Mendiratta, Parmanand Gaur, Rakesh K. Sharma, Raj Kumar Mehta, Siddhartha Chowdhury, A. Venayagam Balan, Mukul Kumar, Vinodh Kanna B for the Appellant.

- G      Sharmila Upadhyay, Mukul Kumar for the Respondents.

The Judgment of the Court was delivered by

**CHELAMESWAR, J.** 1. Leave granted in all the SLPs.

H

YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 813  
COMTRADE P. LTD. [CHELAMESWAR, J.]

2. All these SLPs arise out of an order of the Orissa High Court made in Miscellaneous Case No. 11005 of 2012 in Writ Petition (Civil) No. 11785 of 2012 on 2nd August, 2012. The said writ petition was filed by the appellant in the appeal arising out of Special Leave Petition (C) No. 38013 of 2012 i.e. M/s. Auroglobal Comtrade Pvt. Ltd. (hereinafter referred to as Auroglobal).

3. Since the appeals at hand require examination of the rights and obligations arising under the Major Port Trusts Act, 1963, we deem it appropriate to examine the scheme of the said Act, insofar as it is irrelevant.

Paradeep Port is a major port as defined under Section 3 sub-Section (8)<sup>1</sup> of the Indian Ports Act, 1908. The activities of all major ports including the Paradeep Port are regulated by various enactments such as the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 (hereinafter referred to as "the Act") etc. The Act stipulates under Section 3 that the Central Government shall cause to be constituted a Board of Trustees with respect to each of the major ports. Such Boards are declared to be bodies corporate. The second respondent in the appeal arising out of SLP(C) No.26321 of 2012 (also a respondent in all the appeals), described (wrongly) as Paradeep Port Trust is one such Board of Trustees constituted under Section 3 of the Act. But for the sake of convenience hereinafter will be referred to as the 'Board'. Each such Board is authorised under Section 37 to compel any sea-going vessel within the port or "port approaches"<sup>2</sup> to use the various facilities provided by the Board. Section 35 enumerates the various facilities and services at the port which can be undertaken by

- 
1. 3(8) "major port" means any port which the Central Government may by notification in the Official Gazette declare, or may under any law for the time being in force have declared, to be a major port.
  2. Section 2(r) of Major Port Trusts Act, 1963 - 2(r) " port approaches", in relation to a port, means those parts of the navigable rivers and channels leading to the port, in which the Indian Ports Act is in force;

A the Boards. Section 48 of the Act authorises the framing of a "scale of rates" for any one of the services rendered by a Board. Such a scale of rate is required to be notified in the official gazette. The scale of rates is required to be framed by the Tariff Authority for Major Ports constituted under Section 47A<sup>3</sup>.

B 4. Section 49 of the Act, 1963, as it stands today reads as follows:-

C ***"49. Scale of rates and statement of conditions for use of property belonging to Board - (1) The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder –***

---

E 3. 47A. Constitution and incorporation of Tariff Authority for Major Ports. - (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint there shall be constituted for the purposes of this Act an Authority to be called the Tariff Authority for Major Ports.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall by the said name sue and be sued.

F 3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.

(4) The Authority shall consist of the following Members to be appointed by the Central Government, namely:-

G (a) A Chairperson from amongst persons who is or who has been a Secretary to the Government of India or has held any equivalent post in the Central Government and who has experience in the management and knowledge of the functioning of the ports;

(b) A Member from amongst economists having experience of not less than fifteen years in the field of transport or foreign trade;

H (c) a Member from amongst persons having experience of not less than fifteen years in the field of finance with special reference to investment or cost analysis in the Government or in any financial institution or industrial or

YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 815  
COMTRADE P. LTD. [CHELAMESWAR, J.]

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

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

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

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

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

(3) *Notwithstanding anything contained in sub-section (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub-section (1)."* E

5. It is necessary to notice here that sub-Section (3) was inserted by Act 17 of 1982 with effect from 31.5.1982. For the present, it is sufficient to note that Section 49 also authorises the authority constituted under Section 47A to frame a "scale of rates" for using any property either belonging to or in the possession or occupation of the Board. The distinction between Sections 48 and 49 is that while Section 48 deals with the scale of rates for the services to be rendered by the Board, Section 49 deals with the scale of rates for the utilisation of the property (both moveable and immovable) of the Board. F G

6. However, sub-Section (3) authorises the Board to collect amounts higher than those prescribed under the scale of rates H

A contemplated under sub-Section (1) either by resorting to a process of auction or inviting tenders in the context of the use of the property belonging to the Board. The relevance of the said sub-Section will be discussed later.

B 7. Chapter IX of the Act contains provisions which authorise the Government of India to exercise supervisory control as specified in the various provisions of the said Chapter over the activities of the boards constituted under the Act. Relevant in the context of the present litigation is Section 111<sup>4</sup> of the Act which declares that both, the authority  
C constituted under Section 47A and the Boards constituted under the Act are bound "by such directions on questions of policy" as the Central Government may give in writing from time to time.

D 8. In exercise of the authority under Section 111, it appears that the Central Government issued certain directions to all the major ports except Kolkata and Mumbai styled as Land Policy for Major Ports initially in the year 2004 which was modified in the year 2011.

E 9. In the first of the above-mentioned policies, the Government took note of the fact that under Section 34 of the Act, the Board of a major port can lease out 'its immovable property'. However, under the policy, the Central Government  
F directed that "no lease or sale of land inside the custom bound area should be permitted", but should be given on licence basis only.

---

G 111. Power of Central Government to issue directions to Board - (1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

H Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this sub-section.



YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 817  
COMTRADE P. LTD. [CHELAMESWAR, J.]

10. In the policy directions issued under the Land Policy for Major Ports, 2010, there is a slight shift in the policy regarding the land inside the custom bound area. Under the 2010 Policy, it is stated that "*normally land inside custom bound area should be given on licence basis only*". Thus, it can be seen that while the 2004 Policy prohibited giving out of the land inside the custom bound area by any mode other than licence, the 2010 Policy stipulated licensing is the normal rule, implying there could be exceptions to the rule.

**Facts leading to the Litigation**

11. Pursuant to the order dated 2nd August, 2012 of the Orissa High Court, the Board cancelled the licences of 48 manually operated iron ore storage plots and 11 mechanically operated storage plots. It appears from the additional affidavit filed by the Board on 25th November, 2013, of the 59 licences purported to have been cancelled by the Board, only 38 licences of the manually operated plots category and 7 of the mechanical category are before us.

12. It appears from the material on record<sup>5</sup> that there are

5. Page 9 of the counter affidavit filed on behalf of Paradeep Port in SLP(C) No.26321/2012

2.13 Prior to cancellation of licence in respect of iron plots w.e.f. 21.08.2012, there were three types of manual iron ore plot holders in Paradeep Port Trust namely:

Sl. No.	Type of plot	No. of Allottees	Allotted During
1	Non-auction plot	15	2003 to May 2005
2	Auction plot	52	June, 2005 to May, 2011
3.	Plots allotted through tender	13	June 2011 onwards

It is relevant to state that during the initial period, the iron ore plots were allotted on payment of normal licence fees as per Port Scale of Rates (SOR). Due to surge in demand for iron ore in the international market, demands for the plots also increased in Paradeep Port. Accordingly Paradeep Port Trust vide resolution no. 31/2005-06 dated 28.05.2005 decided to introduce auction for allotment of manual iron ore plots for export of iron ore. Subsequently since there were lot of interested parties, Paradeep Port Trust decided to introduce the system of allotment of plots

- A three classes of plot holders who manually handle iron ore exports in the Paradeep Port; (i) 15 plot holders who were allotted plots prior to May, 2005, (ii) 52 plot holders who were allotted plots from June, 2005 to May, 2011 on the basis of auction; and (iii) 13 plot holders who acquired plots under the system of tendering process subsequent to June, 2011.

13. By notice dated 2nd June, 2011, the Paradeep Board invited applications from interested iron ore exporters, traders etc. for allotment of 20 manual iron ore plots of different sizes. Auroglobal was one of the parties who responded to the said tender notice and eventually became the successful bidder for one of the plots [plot no. I-5 (C group) admeasuring 5,500 sq. mtrs.]

14. By letter dated 1st August, 2011<sup>6</sup>, the Paradeep Board informed Auroglobal that it had been declared to be one of the successful bidders for the allotment of one manual iron ore storage plot subject to various terms and conditions. Relevant for our purpose are conditions Nos. 1, 2 and 4.

15. After securing allotment of the plot, Auroglobal utilised the same for about a year and eventually approached the Orissa

- 
- through tender w.e.f. June-July 2011. In all the cases the respective plot holders are required to pay licence fees as per the Scale of Rate (SOR) i.e. Rs. 9/- per sq. mtr per month, whereas the plot holders in the second category as mentioned above, the allottees are required to pay one time premium amount over and above the licence fees and for the third category, the tender value is required to be paid every eleven month towards licence fees apart from the licence fees as per the Scale of Rate (SOR) i.e. Rs. 9/- per sqmtr per month subject to fulfillment of other conditions. A statement containing the details of auction price and licence fee paid by these parties are placed as Annexure-R/2 which runs from page 228 to 230."

Relevant portion of the allotment letter issued to the petitioner in SLP(C) No.26321/2012

1. You are allotted plot No. I-5(C group) measuring 5,500 Sq. mtr. for a period of 11 (eleven) months from 01.08.2011 to 30.06.2012.

YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 819  
COMTRADE P. LTD. [CHELAMESWAR, J.]

High Court by way of Writ Petition No. 11785 of 2012, some A  
time in July, 2012 with prayers as follows:-

- I. To hold and declare that the petitioner has a right of renewal of the allotment with respect to plot NO. 1-5 inside the Port area; B
- II. Holding and declaring that the pricing modality arrived at through the tender is contrary to the tender conditions and the conditions for renewal in the tender are violative of Articles 14, 16 and 19 of the Constitution of India; C
- III. set aside imposing/demanding of licence fee by the opp. Parties for renewal under the tender conditions, D
- IV. direct the opposite parties to renew and extend the allotment of the plot without demanding additional licence fee under Annexure-5; E
- V. to quash the letter dated 05.07.2012 under Annexure-9 E

16. Along with the said writ petition, M.C. No. 11005 of 2012 came to be filed for certain interim relief. It is in the said M.C., the order under appeal came to be passed. By the said order, the High Court opined that the Paradeep Board did not follow a uniform and consistent procedure in making allotment of various plots of lands to various parties and that plots could be allotted only on the basis of an auction to the highest bidders. It also found fault with the Paradeep Board for having renewed certain licences granted earlier<sup>7</sup>. F  
G

- 
5. Therefore, from the aforesaid decision, it is clear that in respect of the property which is owned by the Paradeep Port Trust, licence cannot be granted in favour of persons after expiry of licence period by way of renewal. Uniform and consistent procedure must be followed to auction the plots inviting tenders from general public fixing certain terms and conditions. H

- A 17. Pursuant to the above-mentioned order of the High Court, notices were issued by the Board (at least to some of

---

B The plots may be required to be allowed in favour of eligible persons who offer the highest licence fee in respect of the plots as the same being the public property. If that price is not given the tender Accepting Authority need not accept it and can re-tender it. The aforesaid procedure will fetch more revenue to the State Exchequer to protect the public interest. The statement in the additional affidavit filed by the Chairman of the Trust today disclose the number of plots allotted in favour of certain licencees by way of renewal. The same is not permissible in law as laid down by the apex Court in catena of cases referred to above. The petitioners in these cases are discriminated by the Port Trust as it has granted licences to the similarly placed persons by way of renewal whereas these petitioners have participated in the public auction got licence to their plots on the bid amount offered by them which amount is much more than the scale of rates fixed in favour of the other licencees. Their only grievance is regarding the condition incorporated by the traffic manager, apart from the auction price, the rates which are fixed by the Tariff Authority of Major Ports. In addition to the auction mentioned in the financial bid by the petitioners that portion according to them is arbitrary and it is a discrimination between the petitioners and the licencees who have got the benefit of renewal. There is no auction price. They are only paying the rates fixed by the TAMP. Therefore, at this stage we have passed this order to see that the public property is protected for which the Port Trust is required to look after its affairs properly and fix the correct revenue to its property for having granted licensing right in favour of the eligible persons. It is brought to the notice of this Court that largesse are conferred on the basis of the policy of TAMP without auctioning the property of the Port Trust by granting licence by way of renewal which is contrary to the law laid down by the apex Court in the aforesaid cases. That apart in a substantial number of cases interim orders passed by this Court where the licence period is expired long back and the licencees are continuing in the Port Trust property, is the submission of Mr. S.K. Padhi, Learned senior counsel which shocks the conscience of this Court. For implementation of our direction, Mr. Padhi learned senior counsel appearing for the opposite parties seeks three weeks time. The same is granted.

- G The amount that may be collected on the basis of the condition of the tender call notice, as mentioned above, will be subject to the final decision that may be rendered by this Court in these cases. Public auction price may be given the Port to collect the rates fixed by the TAMP.

List this matter along with W.P.(C) Nos. 10339, 12295, 12296, 11783 in three weeks

H

YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 821  
COMTRADE P. LTD. [CHELAMESWAR, J.]

the appellants herein)<sup>8</sup>, the substance of which is that the allotment order made earlier was cancelled and called upon the allottee to hand over vacant possession of the plot within 15 days from the date of the letter. A

18. Hence, this batch of SLPs by the various allottees. B

19. Auroglobal also preferred an SLP on slightly different grounds. We propose to deal with the case of Auroglobal separately. We first deal with the cases of appellants other than Auroglobal.

20. It is argued on behalf of the appellants that the High Court grossly erred in coming to the conclusion that the allotments made in favour of various appellants are in violation of the law declared by this Court in various decisions relied C

---

Urgent certified copy of this order be granted on proper application."

8,. Relevant portion of the notice issued to M/s Yazdani International (P) Ltd., the petitioner in SLP(C) No.26321/2012

PARADEEP PORT TRUST

TRAFFIC DEPARTMENT E

NO. TD/TM/GEN-01(Pt.1)/2012/3344

Dated: the 21st Aug., 2012

To

M/s. Yazdani International (P) Ltd.

N-4/135 IRC Village Nayapalli,

Bhubaneswar - 751 015. F

Sub.: Cancellation of Manual Iron Ore Storage Plot No. G-8 in Compliance to order of the Hon'ble High Court of Orissa.

Dear Sir(s),

In obedience to order dtd. 02.08.2012 passed by the Hon'ble High Court of Orissa in Misc. Case No. 110005 of 2012 arising out of W.P.(C) No.11785 of 2012 (copy enclosed), the manual iron ore storage plot No. G-8 measuring 3000 sq. mts. Which was allotted by auction June 2010 and again renewed in your favour upto 28.02.2013 is hereby cancelled with immediate effect. G

Further ..... hand over the vacant possession of plot within 15 (fifteen) days ..... H

- A upon by the High Court in its order including *Centre for Public Interest Litigation and others v. Union of India and others* (2012) 3 SCC 1 [also known as 2G case]. Most of the appellants (details of which are available on record and not in dispute) came to be allotted with plots of land either pursuant
- B to a process of auction or tender where each of the appellant had to pay substantial amounts to the Board for securing the allotment of the plots, apart from agreeing to pay the amounts stipulated by the scale of rates prescribed by the Tariff Authority. Therefore, the assumption of the High Court that the principles
- C of law laid down by this Court in the various judgments referred to by the High Court starting from *Dayaram Shetty* to '**2G case**' is without any factual basis. The allotments made in favour of the appellants are in consonance with the law laid down in 2G's case.

- D 21. It is also argued on behalf of the appellants that in the subsequent judgment of the Supreme Court in *Natural Resources Allocation*, In Re, Special Reference No.1 of 2012, (2012) 10 SCC 1, the Constitution Bench of this Court clearly held that in the matter of alienation of the property by the State
- E or conferment of largesse, auction is a preferred mode of securing compliance with the commands of the Constitution under Article 14 of the Constitution but-not the only mode. It is argued that even if auction is the only mode of distributing State largesse or alienating property of the State which passes the
- F test of Article,14, most of the appellants, as already indicated, have secured allotment of plots either through the process of auction or of tenders which is nothing but a variant of the system of auction. Therefore, allotments made in their favour could not be faulted. It is further submitted that the conclusion of the High
- G Court that the "licence cannot be granted in favour of persons after expiry of the licence period by way of renewal"<sup>9</sup> is without any basis in law. Renewal of licence is a matter of contract between the parties. If the initial allotment of a plot on licence

---

H 9. See Footnote 7 (supra)

basis is otherwise in accordance with law, renewal of such arrangement is a matter which ought to be governed by the terms of the agreement between the parties. There is nothing in law or in any of the decisions of this Court relied upon by the High Court which requires the State or its instrumentalities not to enter into any contract or arrangement which is renewable periodically. Learned counsel also submitted that each of the appellants have a right to renewal of the allotment made to them and there is nothing in any one of the judgments of this Court relied upon in the order under appeal which militates against such right of renewal of the allotment which is otherwise validly obtained. It is submitted that any view of law to the contrary would not only be impracticable but also detrimental to the larger public interest as such short term arrangements would not be conducive to the overall economic growth of the country. It is further submitted by the appellants that none of the appellants were parties before the High Court and the order of the High Court is in flagrant violation of the *audi alteram partem* rule. If only the appellants had an opportunity to present their cases before the High Court, the appellants would have placed on record all relevant facts to substantiate their arguments mentioned earlier. Therefore, on this ground alone the order under appeal is required to be set aside. Lastly they submitted that the order is neither sought by Auroglobal, who was the petitioner before the High Court, nor is within the scope of the final relief sought by Auroglobal in the writ petition.

22. With regard to the limited number of plots allotted without following either the auction route or the tender route it is submitted that such allotments were made prior to 2005 at which point of time there was not much demand for allotment of plots by the Board, therefore, the allotments were on application basis. Hence, such allotments cannot be faulted.

23. Mr. Rohinton Nariman, learned senior counsel appearing for the Board argued that (i) none of the appellants have a 'right of renewal' as their possession is only a permissive

- A possession (a licence) which does not create any interest in the property to enable them to claim a "right" of renewal. (ii) As on today the Board needs the entire area of land (occupied, by these various appellants by virtue of the allotment orders given in their favour earlier) for the purpose of developing the port for the creation of modern Deep Draught Coal and Iron Ore berths with 10 millions capacity each. The submission is based on the pleadings before this Court.<sup>10</sup> The Board therefore, does not propose to continue or renew the licences of the appellants irrespective of the fact whether the order under appeal is

C \_\_\_\_\_  
10. Counter filed by the Port Trust in SLP(C) No.26321/2012

- D ".....It is also a matter of fact, that the Port has signed Concession Agreements with M/s. Essar Paradeep Terminals Ltd. and M/s Blue Water Iron Ore Terminal Pvt. Ltd. for development of Deep Draught Coal and Iron Ore Berth respectively with 10 Million tons capacity each. After completion of the project, the Port would be able to handle cape size vessels of 1.25 lakh DWT as against present vessel size of maximum 70,000 DWT. Since both the berths will be fully mechanized with draught of 16.1 mtrs. berth-day output will be much more than the existing facilities and will result in faster turn round of vessels. However, for the purpose of development of these two facilities, the entire area of about 2.32 lakh sq.mtr. allotted to the manual iron ore exporters is required to be vacated for handing over the project site to the BOT operators. Vacating the iron ore plots have become essential in view of Environmental Clearance granted by MOEF for the BOT projects. Since this is a developmental activity of the Port to meet the future traffic requirement, the Port can ill afford to delay in vacating the land allotted to the iron ore exporters. ...."

Para 6 of I.A. No.4 filed by the Port Trust in SLP(C) No.26321/2012

- F "6. That it is to state that since the Paradeep Port Trust has desired to retain the plot in question for its own use and purpose i.e. for construction of Iron Ore Berth and Coal Berth respectively, the port trust had entered into an Concession Agreement dated 01.07.2009 with respect to Iron Berth and dated 10.11.2009 with respect to Coal Berth, with M/s. Blue Water Iron Ore Terminal Private Limited and with Essar Paradeep Terminal Limited respectively on BOT basis. The Paradeep Port Trust was awaiting the clearance from the Ministry of Environment and Forest (MOEF), which was granted on 02.07.2012 a copy of MOEF clearance dated 02.07.2012 is annexed herewith and marked as Annexure-A/4 which runs from page 15 to page 18. The Paradeep Port Trust was accordingly to take over the plots and handover the possession to the above two BOT operators, when the present order dated 31.08.2012 was passed directing the parties to maintain status quo."
- H



tenable or not, this Court may not exercise its extraordinary discretion under Article 136 to enable the appellants to cling on to the property over which they have no substantive right.

24. The first question which is to be examined is whether this Court is required to set aside the order under appeal and also the consequential notices issued by the respondent/Board to the various appellants on the ground that the order under appeal is made in breach of the rule of *audi alteram partem*.

25. None of the appellants herein (except Auroglobal) was a party to the proceedings before the High Court. Therefore, there was no occasion for the High Court to examine the twin questions whether the respective allotments made in favour of each of the appellants herein are in accordance with law and whether the appellants have any legally indefeasible right of renewal of such allotments or to continue use of the respective plots allotted to them. In the normal course, the order under appeal is required to be set aside on the simple ground that the same is in breach of principles of natural justice. But we do not propose to do so for reasons to follow.

26. The undisputed facts in these batch of matters are that most of the appellants were allotted plots either pursuant to an auction or through the process of tender system, the details of which are already taken note of (See footnote 5). It is also not in dispute that each of the plots, which are the subject matter of these appeals was allotted on a licence.

27. Before we deal with the new ground urged by the Board, we would like to deal with the question of the legality of the initial allotment in favour of each of these appellants. In view of the fact that most of the licences in favour of the appellants herein came to be granted pursuant to a process of either an auction or tender, those allotments, in our view, cannot be said to be inconsistent with the principles of law laid down by this Court in 2G case in the absence of any other circumstance vitiating the allotment. Insofar as the allotment of plots made on

A application (prior to 2005), the Paradip Port Trust came out with a clear explanation that there was hardly any competition at that point of time for the allotment of plots. Therefore, we do not see any reason to find any fault with such allotment on the ground that the allotment was made without following the procedure of auction or tender. More particularly, in the absence of any dispute regarding the correctness of the assertion of the Board that there was hardly any demand at that point of time for allotment of plots.

C 28. The opinion of the High Court - that a renewal of the licence in dispute without following the procedure of auction is inconsistent with the principles laid down in the 2G case – as an absolute proposition of law could be examined in appropriate case. Such a scrutiny is not required for the present as the Board does not propose to renew the licences.

D 29. However, it is the submission of the Board that this Court need not examine the legality of the order under appeal for two reasons – (1) none of the appellants have either any indefeasible right of renewal or to continue the use of the respective plots allotted to them and the Board is entitled in law to revoke the licences at any time and debar the appellants from entering and using the plots in dispute (2) The Board proposes to revoke the licences and resume possession of the land (manually operated iron ore plots) in dispute for the purpose of developing the same and providing better facilities connected with the operations of the Board.

30. To examine the tenability of the above submissions, the following questions are required to be examined.

G (1) Whether there is any indefeasible legal right in favour of any one of the appellants for renewal of the licence granted or continued use of plots allotted to them?

H (2) Irrespective of the answer to the above question,

YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 827  
COMTRADE P. LTD. [CHELAMESWAR, J.]

whether the Board is justified to terminate the allotments on the ground that it proposes to utilise the land in dispute for providing better amenities in connection with the obligations imposed upon the Board by law?

A

- (3) Whether this Court would be justified in law to decline granting relief in exercise of its jurisdiction under Article 136 of the Constitution of India either on the ground that the appellants have no indefeasible right of renewal or on the ground that irrespective of the rights of the appellants, the purpose sought to be achieved by the Board in proposing to resume the disputed lands is a public purpose which should override the interest of any of the appellants?

B

C

D

31. We therefore, called upon the appellants to address us on the above questions.

32. We made it clear to the appellants that this Court will consider the defence, if any, of each of the appellants to the proposed termination of their licences on a new ground now set up by the respondent Board and invited them to make their submissions in that regard. Such suggestion was made in view of the possibility that if the appellants did not have any substantive defence against the proposed termination of the licences, interference with the order under appeal on the ground that there is a procedural lapse would only have the effect of protracting the litigation thereby enabling the appellants to continue occupation of public property and deprive the Board of higher revenue.

E

F

G

33. A preliminary objection is raised by the appellants for examination of the above-mentioned questions. The appellants argued that neither of the two grounds, now relied upon by the respondent Board, are the grounds on which either the High Court directed the eviction of the appellants nor the quit notices

H

- A issued by the respondent Board are founded. Therefore, this Court may not embark upon an examination of those questions as a Court of 1st instance. According to the appellants, such an examination would take the appellants by surprise. Without prejudice to the preliminary objection, the learned counsel for the appellants also argued that they have a right of renewal of the licences and/or to continue in possession of the land in dispute.

- C 34. In response to the preliminary objection, it is argued on behalf of the Board that this Court in exercise of its jurisdiction under Article 142 can undertake such an examination in an appropriate case to render complete justice in these batch of matters. Shri Nariman relied upon *Pasupuleti Venkateswarlu Vs. The Motor & General Traders* [(1975) 1 SCC 770]<sup>11a</sup> and *Rameshwar and Others Vs. Jot Ram and Another etc.* [(1976) 1 SCC 194]<sup>12b</sup>, in support of this submission.

- E 11 a. *Rameshwar and Others Vs. Jot Ram and Another etc.* [(1976) 1 SCC 194] - para (7) The realism of our processual justice bends our jurisprudence to mould, negate or regulate reliefs in the light of exceptional developments having a material and equitable import, occurring during the pendency of the litigation so that the Court may not stultify itself by granting what has become meaningless or does not, by a myopic view, miss decisive alterations in fact-situations or legal positions and drive parties to fresh litigation whereas relief can be given right here. The broad principle, so stated, strikes a chord of sympathy in a court of good conscience. But a seeming virtue may prove a treacherous vice unless judicial perspicacity, founded on well-grounded rules, studies the plan of the statute, its provisions regarding subsequent changes and the possible damage to the social programme of the measure if later events are allowed to unsettle speedy accomplishment of a restructuring of the land system which is the soul of the whole enactment. No processual equity can be permitted to sabotage a cherished reform, nor individual hardship thwart social justice. This wider perspective explains the rulings cited on both sides and the law of subsequent events on pending actions.

- F 1b *Pasupuleti Venkateswarlu Vs. The Motor & General Traders* (1975) 1 SCC 770 - para (4) - We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the

35. We reject the preliminary objection for the following reason:-

The jurisdiction under Article 136 is discretionary. It is settled by catena of decisions of this Court that the jurisdiction under Article 136 is purely discretionary only to be exercised in order to ensure that injustice is not perpetuated. One of the important attributes of discretionary jurisdiction is that such jurisdiction is not exercised where it is likely to be a futile exercise i.e. where the relief might be of no use to the applicant because it would still be open to the competent authority to achieve the result sought to be achieved by the disputed action leaving the defeat i.e. by following the proper procedure etc.<sup>12a</sup> Though the statement of the principle in the references in the

---

principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed..

12a In some cases the courts have refused applications for mandamus to restore to office persons who have been irregularly removed, on the ground that the remedy might be of no use to the applicant, because it would still be open to the competent authority to remove him by the proper procedure. There are also decisions in licensing cases to like effect (de Smith's Judicial Review of Administrative Action, Fourth Edition Pg. 561.)

12b. Seervai H.M., Constitutional Law of India [Bombay: N.M. Tripathi Pvt. Ltd., 3rd Edn. Vol.2 (1984) para 16.279 page 1367].

- A footnote are made in the context of the jurisdiction of the Court to issue mandamus, the principle applies *proprio vigore* to the discretionary jurisdiction under Article 136 of the Constitution. Such being the principle of law, even if the present batch of appeals are to be allowed, as prayed for, on the ground that the order under challenge is made in breach of the rule of *audi alteram partem*, nothing in law prevents the Board from calling upon the appellants to desist from use of the land in dispute. Such a course of action is the declared intention of the Board. In such an event, once again the High Court and this Court would have to examine the questions framed above.

36. Therefore, accepting the preliminary objection and refusing to consider the ground newly raised by the Board would only “drive the parties to fresh litigation” rendering the present adjudication a futile exercise of the jurisdiction of this Court. The issue can be decided here and now to prevent a possible damage to the programme proposed to be undertaken by the Board and its “speedy accomplishment”.

- The two decisions (See Footnote 11) relied upon by the Board are a clear authority for the proposition that this Court in either granting or declining to grant a relief in exercise of its jurisdiction under Article 136 can take note of developments either of fact or law which leave an impact on the rights and obligations of parties before the Court.

37. We shall first deal with the question of element of surprise as it is the duty of this Court to scrupulously ensure the “rules of fairness to both sides”, in every case. Such duty is more rigorous in the instant case because of the fact that the respondent Board has come out with a new ground for denying the relief to the appellants - the legality of which we will have to consider as the court of first instance.

38. The Board seeks to debar the appellants from using the land in dispute. Such a decision of the Board rested on the

order of the High Court under challenge. But during the pendency of the present proceedings the Board altered the basis of its decision and decided to rest on the need of (i) the land in the dispute (covered by the manually operated plots) for providing better facilities and (ii) mechanically operated plots for securing better/higher revenue. The legality of such proposed action of the Board would depend on (a) the true character of the legal relationship between the appellants and the Board; (b) whether such relationship confers a right on the appellants to continue use of the disputed property either for eternity or for a definite period; (c) the legal authority of the Board to terminate such relationship; and (d) the procedure required to be followed for such termination.

39. To answer the above question we examine the nature of the legal rights flowing from such allotments. The plots in dispute are property vested in a public body (statutory corporation) performing important public functions. In the matter of creating rights and/or conferring privileges such a body is required to act in public interest under some rational policy. We have already noticed that the Board is bound by the policy directions given by the Government of India under Section 111 of the Act, and that the Government of India from time to time issued policy guidelines. In the policy guidelines issued in 2004, the following were the directives:

“(b) No sale or lease should be permitted. Land should be given on licence basis only. The licence may be up to a maximum period of 11 months and shall normally be in accordance with the Schedule of Rates (SoR)/rates approved by the competent authority. At the discretion of the Chairman, such licence may also be given by inviting tenders. The licence can be renewed at the expiry of the previous licence period. Each renewal of licence shall be treated as fresh licence.”

40. When it came to 2010, it is specifically laid down that

- A the "licence can be renewed by the Chairman twice"<sup>13</sup> subject to either the prior approval or subsequent ratification of the board.

B 41. It can be seen from the policy guidelines that while the 2004 policy forbids sale or lease of land, the 2010 policy makes it the normal rule subject to exceptions. The 2004 Land Policy guidelines enable the Board only to grant or renew a licence without any limitation on the number of renewals. The 2010 policy guidelines clearly restrict the authority of the Board to renew the licences for only two terms. The tenure of any licence is stipulated to be for a maximum period of 11 months. In either case, from the language of the policy guidelines it is clear that the policy only enables the Board to renew the licences granted but does not create any vested right in favour of the licensor. Even the letter of allotment makes it clear that what is granted is only a licence. (See Footnote 6) Therefore, we are of the opinion that the allotment of plots in dispute is only by way of a licence, as defined under Section 52 of the Easements Act, 1882<sup>14</sup>.

- E 42. As rightly pointed out by Shri Nariman, licence by definition does not create any interest in the property<sup>15</sup>. A

F 13. Normally, land inside custom bound area shall be given on licence basis only. The licence may be granted by the Chairman. It may be granted up to a maximum period of 11 months and shall normally be in accordance with the Scale of Rates (SoR)/ rates approved by the competent authority. Any concession shall be given only with the approval of the Board. At the discretion of the Chairman, such licencee may also be given by inviting tenders. The licence can be renewed by the Chairman twice. Further renewal shall be with the approval of the Board or by the Chairman, subject to ratification by the Boards. Each renewal of licence shall be treated as a fresh licence.

G 14. "52. "Licence" defined - Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."

H 15. Associated Hotels of India Ltd., Vs. R.N. Kapoor [AIR 1959 SC 1262] - (27) [There is a marked distinction between a lease and a licence. S. 105 of



YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 833  
COMTRADE P. LTD. [CHELAMESWAR, J.]

licence only gives a right to use the immovable property of the grantor, to the grantee. There is no transfer of any interest in such property in favour of the grantee. On the other hand, under the Transfer of Property Act, an interest either limited or unlimited is created in favour of the transferee depending upon the nature of the transfer (sale, mortgage or lease etc.). Under Section 60<sup>16</sup>, a licence is revocable at the will of the grantor which is the essence of a licence<sup>17</sup>. The Easements Act

the Transfer of Property Act defines a lease out of immoveable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under S. 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor. Whereas S. 52 of the Indian Easements Act defines a licence thus:

"Where one person grants to another, or to a definite number of other persons, 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, and such right does not amount to an easement or an interest in the property, the right is called a licence."

Under the aforesaid section,] if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred.....

16. "60. Licence when revocable - A licence 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 a permanent character and incurred expenses in the execution."

17. Mrs. M.N. Clubwala and another vs. Fida Hussain Saheb and others [AIR 1965 SC 610] - (12) While it is true that the essence of a licence is that it is revocable at the will of the grantor the provision in the licence that the licensee would be entitled to a notice before being required to vacate is

- A categorically declares that a licence can be revoked by the grantor except in the two contingencies specified under Section 60(a) & (b). No such exceptions are pleaded or demonstrated by the appellants. Therefore, it must be held that none of the appellants have any indefeasible right of renewal either under
- B the Easements Act or under the above mentioned policy.

43. However, that does not mean that a public body like the respondent Board can arbitrarily decline to renew a licence. It is well settled by a catena of decisions of this Court that no public body under our Constitutional system is vested with such
- C arbitrary powers, as was pointed out by this Court in *R.D. Shetty Vs. Airport Authorities*, (1979) 3 SCC 489<sup>18</sup>. If the Board decides not to renew any licence either with respect to a class of licences or with reference to a specific area of the land, normally such a decision cannot be said to be either irrational
- D or arbitrary unless there are other compelling reasons to indicate that the decision has no rational purpose to be achieved.

44. In the counter filed by the respondent Board (in this
- E batch of appeals), it is stated that the entire parcel of land which

- not inconsistent with a licence. [In England it has been held that a contractual licence may be revocable or irrevocable according to the express or implied terms of the contract between the parties. It has further been held that if the licensee under a revocable licence has brought property on to the land, he is entitled to notice of revocation and to a reasonable time for removing his property, and in which to make arrangements to carry on his business elsewhere. (see Halsbury's Laws of England, 3rd edn. Vol. 23, p. 431). Thus the mere necessity of giving a notice to a licensee requiring him to vacate the licenced premises would not indicate that the transaction was a lease....."]
- F

18. Para 10 - "..... It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege."
- G
- H

was allotted to the various appellants who are licencees of the manually operated plots (and others, who are not before us), from time to time by the Board in favour of iron ore exporters, (except a small portion of the land allotted in favour of the Odisha Mining Development Corporation), is proposed to be utilised by the Board after terminating the licences of the appellants herein for creating certain modern operational facilities in connection with the activities of the Port. Such a decision cannot be said to be arbitrary or an irrational exercise of authority of a public body, having regard to the object sought to be achieved by the Board of creating modern amenities. The exception in favour of the Odisha Mining Development Corporation cannot, in our opinion, amount to discriminatory treatment of the appellants, since that Corporation is admittedly a State owned Corporation and forms a class by itself. Therefore, the proposed course of action by the Board to terminate neither infringes any legal right of the appellants nor amounts to an arbitrary exercise of the authority by the Board.

A

B

C

D

45. We also place on record that the appellants submitted that the concession agreements on BOT basis dated 01.07.2009 ended in litigation and therefore the proposed project of the Board is not likely to materialise. In response it is submitted by the Board that even if the parties with whom the BOT arrangement was entered into eventually default in their obligation, the Board would explore alternatives to proceed with the project but will not abandon the same.

E

F

46. We are left with the question whether this Court would be justified in the above mentioned circumstances in declining to interfere with the order under appeal and deny relief to the appellants.

G

47. The Board desires to utilise the parcel of land in dispute (in this batch of cases) for a purpose which is authorised by law and serves better the larger interests of nation

- A – including the interests of the exporters and importers such as the appellants. Setting aside the order under appeal on the ground of breach of natural justice would be a futile exercise as explained earlier. The respondent Board/licensor can always terminate/revoke the licences. In view of our conclusion
- B that the proposed revocation of licences would not amount to an irrational or arbitrary decision, rejecting the new plea of the Board or any ground would only lead to protracted litigation consuming considerable time and delay in execution of the project, by the Board. Such a delay would not subserve public
- C interest. This Court shall not contribute to such delay on the ground of some perceived procedural irregularity, particularly when the appellants have no substantive right. The appellants were given a wholesome opportunity by this Court to establish their legal right, to prevent the Board from terminating their
- D licences.

48. Civil Appeal arising out of SLP(C) No.38013 of 2012 is filed by Auroglobal Comtrade Pvt. Ltd, which was the petitioner in W.P. (C) No.11785/2012 in the High Court of Orissa. The appellant was allotted a plot by the Board pursuant
- E to a process of tender in which the appellant became the successful bidder quoting an amount of Rs.3,06,29,759/-. A licence for the use of the plot for 11 months was granted by the respondent Board under a letter dated 1st August, 2011, after collecting the abovementioned amount. The appellant
- F made two representations in the months of April and June 2012 to the Board seeking a renewal of the licence. The Board again called upon the appellant to deposit Rs.3,06,29,759/- for renewing the licence. Challenging the demand, the appellant approached the High Court seeking reliefs already noted earlier
- G in the judgment (see para 14).

49. The writ petition was filed essentially on the ground that one of the tender conditions contained in para 5 of the tender notice dated 2.6.2011 is violative of Articles 14 and 19 of the Constitution of India, therefore *void ab initio*. Consequently,
- H

YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 837  
COMTRADE P. LTD. [CHELAMESWAR, J.]

demand of the bid amount afresh for renewal of the licence is also illegal. Though it is not clearly spelt out in the writ petition, the legal basis of attack on para 5 of the tender notice is that while the licencees, who secured allotments prior to 2005, continued to pay a fixed licence fee of Rs.9/- per sq. ft per month under the 'scale of Rates' fixed by the Tariff Authority created under Section 47A of the Act, the appellant is compelled to pay substantially higher amount, apart from the amount fixed by the Tariff Authority. The size and use of the plot allotted to the appellant is similar to that of the allottees prior to 2005.

50. The above submission of the appellant is sought to be repelled by the Board on the principle that the appellant secured the licence pursuant to tender notice with eyes wide open and in full knowledge of the terms and conditions under which licences are offered. The petitioner enjoyed the benefit of the licence for a year (and still continues in occupation of the property pursuant to the interim orders of this Court, for about a year); and now the appellant cannot turn back and challenge the conditions subject to which the licence was granted to it. In support of the said submission, the Board relied upon the following judgments. *Hari Shankar & Ors. Vs. Dy. Excise & Taxation Commissioner & Ors.*, (1975) 1 SCC 737, *Shyam Lal & Ors. Vs. State of Punjab*, (1977) 1 SCC 336 and *State Bank of Haryana & Ors. Vs. Jage Ram & Ors.*, (1980) 3 SCC 599.

51. We reject the submission of the appellant for two reasons. Firstly, the appellant acquired the licence knowing fully well the terms and conditions subject to which the licence is offered by the Board. So they cannot take the benefit of the offer and renounce the corresponding obligation (approbate and reprobate). Secondly, the claim of the appellant that they are being discriminated against is required to be rejected since those licencees who are paying a lower 'licence fee' had secured those licenses at a point of time when there was no

A competition. The market conditions were different. Things or events seemingly similar and at par need not always be so. There can be facets which distinguish. The present situation is one of them..

B 52. One of the grounds pleaded in the appeal and argued before us by Shri C.A. Sundaram, learned senior counsel appearing for the appellant that –

C “..... there is distinction between lease and license and both are dealt with separately. License comes under Section 49(1)(d) i.e. any other use. Section 49(3) of the Major Port Trust Act says that the board may lease any land at a rate higher than that provided under Section 49(1). Thus, only in respect of lease the port trust can change a rate higher than the scale of rates approved by D TAMP. Clause 6.1.1(a) of the Land Policy 2010 clearly states that license can be granted by inviting tender but renewal will have to be under the scale of rates approved by TAMP.”

E It is submitted by learned counsel for the appellant that: Section 49(1) authorises the collection of licence fees in accordance with the scale of rates framed by the Tariff Authority for the various uses (of the property of the Board) specified under Clauses (a) to (d) of Section 49 sub-section(1). Section F 49, sub-section (3) authorises the Board to allot plots either by following the procedure of auction or inviting tenders and demand amounts higher than those contemplated under sub-section (1). The learned counsel argued that having regard to the language of sub-section (3), once the Board resorts to the process of auction or inviting tenders, the Board can only allot G a plot on lease but not a licence.

53. Though, the Port Trust sought to repel the submission on various grounds, we do not propose to examine those defences in extenso.

H

54. We reject the submission since we do not see any warrant for placing such restriction on the authority of the Board, from the language of Section 49 sub-section (3). The opening clause of sub-section (3)–

“Notwithstanding anything contained in sub-section (1), the Board may, by auction or by inviting tenders, lease .....”

authorises the Board to lease its properties either by auction or by inviting tenders. There is no warrant to read into the language of said sub-section a legislative intention that in every case where the Board undertakes the process of auction or inviting tenders, it is bound/obliged to grant a lease of its properties. The expression ‘the Board may’ occurring in the said sub-section, to our mind indicates that the lease is the highest of rights that may be created on the properties, by the Board under the said provision. It does not eliminate the discretion of the Board to permit use of its properties by any arrangement which transfers a lesser or no interest (such as a licence) in the property.

55. On the above analysis, we see no merits in the claim of the appellant. For the same reason as given for dismissing the appeals, the appeal of the Auroglobal is also dismissed, as the plot allotted to this appellant is also required for the developmental project proposed to be undertaken by the respondent Board.

56. Civil Appeal arising out of SLP(C) No.28841/2012 is filed by Odisha Mining Corporation Ltd., one of the licensees of the respondent Board. This matter can be disposed of in view of a specific statement made at the bar on behalf of the Board that the Board does not propose to terminate the licence of the appellant as the plot of land allotted to the appellant is not required for the purpose of its proposed developmental project. Accordingly, this appeal stands disposed of.

57. Coming to the 7 mechanically operated iron ore plots, they were allotted on different dates the details of which are as follows:

A	<b>S. No.</b>	<b>Plot Holder &amp; SLP No.</b>	<b>Initial Allotment</b>	<b>Renewals</b>
B	1.	Bagadiya Brothers	01.08.2011	Last renewal upto 28.02.2013
C		SLP No. 28842/2012 (Manual Iron Ore plot holder)		
D	2.	Rungta Mines Ltd.	04.06.2011 and 25.07.2005	Last renewed on 01.04.2012 upto 28.02.2013
		SLP No.27512/2012		
E	3.	M/s Core Minerals	2001 and 2004	Last renewal granted in July 2012 upto 30.09.2012
		SLP No.27511/2012		
F	4.	Essel Mining and Industries Ltd.	Allotment by various allotment orders from June 2001 to July 2005	Last renewal upto 30.09.2012
		SLP No.27516/2012		
G	5.	JSW Ispat Steel Ltd.	13.02.2012	Last renewed upto 30.09.2012
		SLP No. 26922/2012		

H



YAZDANI INTERNATIONAL P. LTD. v. AUROGLOBAL 841  
COMTRADE P. LTD. [CHELAMÉSWAR, J.]

6.	Orissa Mining Corporation Ltd. SLP No.28841/2012	16.05.1996 04.04.1997, 20.08.1997	
7.	Taurian Iron & Steel Ltd.  SLP No.32005/2012	2003	Last renewed upto 30.09.2012

Each one of them enjoyed the benefit of the allotment of plot by virtue of successive renewals. We have already taken note of the fact that under the 2004 policy guidelines the licences granted by the Port Trust could be renewed without any limitation on the number of renewals that could be granted. However, under the 2010 policy, the number of renewals was restricted to two. From the material on record, it appears that each one of these appellants (mechanically operated plot licencees) enjoyed a number of renewals. We see no reason to interfere with the decision of the Board to terminate the licences for the following reasons - Firstly, a licence does not create any indefeasible legal right. Secondly, we do not see any irrationality in the decision of the Board, even from the point of view of the fact that the Board is a public body (the State within the meaning of Article 12) and therefore, obliged to act rationally. The Board's decision to terminate the licences is consistent with the policy guidelines of 2010. Thirdly, in view of the assertion of the Board in its additional affidavit dated 25th November, 2013, "..... the existing iron ore traffic which is showing a growth rate of 159.56% during current financial year (upto October 2013) in comparison to the iron ore traffic handled during the same period of the previous financial year, it is submitted that non-availability of mechanical plots to the Paradip Port Trust will entail huge financial loss to the port which is a major port under Government of India. This will also result in idling of the existing iron ore handling plant for which significant money has been spent and dedicated facilities have been created for efficient and effective handling of iron ore

A traffic. This will also result in diversion of iron ore traffic to nearby private Ports which is already happening due to non availability of Mechanical plots to Paradip Port Trust", we do not see any reason to doubt the said assertion.

B 58. Interfering with the notices of termination of licences in each one of these cases on the ground that the notices were initially based on a decision of the Orissa High Court to which these appellants were not parties, would not be in the larger public interest.

C 59. We have already made it clear earlier in this judgment that we propose to deal with these petitions as if they were petitions under Article 32 and permitted the appellants to place all the material which would be available to them in law in defence even if the impugned termination orders were not to be based on the decision of the High Court.

E 60. Except arguing that the decision of the Orissa High Court is in violation of principles of natural justice, the appellants failed to place before this Court any material to establish that the decision of the Board to terminate their licences is otherwise violative of any of the substantive right. In the circumstances, we decline to interfere with the decision of the Board. All the appeals are, accordingly, dismissed.

Rajendra Prasad

Appeals disposed.