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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
B.R. GAVAI; J., C.T. RAVIKUMAR; J.
OCTOBER 13, 2022
CIVIL APPEAL NOS. OF 2022 (Arising out of SLP(C) Nos. 15548-49 of 2021)

CENTRAL WAREHOUSING CORPORATION *versus* **ADANI PORTS SPECIAL ECONOMIC ZONE LIMITED (APSEZL) AND OTHERS**

Practice and Procedure - It does not augur well for the Union of India to speak in two contradictory voices. The two departments of the Union of India cannot be permitted to take stands which are diagonally opposite - Union of India to evolve a mechanism to ensure that whenever such conflicting stands are taken by different departments, they should be resolved at the governmental level itself. *(Para 52-53)*

Summary: Appeal against Gujarat HC order in a dispute between Adani Ports Special Economic Zone Ltd (APSEZL) and Central Warehousing Corporation - Allowed - When an issue involved the balancing of interests of a statutory Corporation and a private company, the approach of the High Court ought to have been a balanced one. The High Court ought to have taken into consideration that, unless all the three conditions were complied with, the interest of the appellant-CWC, which is a statutory Corporation, could not have been safeguarded. If a settlement was to be arrived at, unless the same was found to be in the interest of both the parties, it could not have been thrust upon a statutory Corporation to its detriment and to the advantage of a private entity.

(Arising out of impugned final judgment and order dated 30-06-2021 in LPA No. 22/2017 26-08-2021 in MCA No. 1/2021 passed by the High Court of Gujarat at Ahmedabad)

For Petitioner(s) Mr. Amarjeet Singh, AOR

For Respondent(s) Mr. E. C. Agrawala, AOR Mr. Vikramjit Banerjee, ASG Ms. Alka Agrawal, Adv. Mr. Raj Bahadur Yadav, AOR

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. The appeals challenge the judgment and order dated 30th June 2021 passed by the High Court of Gujarat at Ahmedabad in Letters Patent Appeal (LPA) No. 22 of 2017 in Special Civil Application (SCA) No. 184 of 2017 with SCA No. 5816 of 2017, and Miscellaneous Civil Application No. 1 of 2021 in the above LPA, vide which the Division Bench of the High Court has issued the following directions:

"(i) That Appellant – CWC is allowed three months time from today either:-

(a) to seek and obtain approval as a SEZ compliant Unit from the competent authority under the SEZ Act in respect of its Warehouse facility situated in 34 acres of land in question within SEZ Area developed by Respondent – APSEZL;

or

(b) to obtain a waiver of the conditions to comply with the provisions of SEZ Act as a SEZ Unit and the Competent Authority while considering any such application of CWC, if any filed by it, will provide opportunity of hearing to both the parties;

(ii) If CWC fails to get such approval as a SEZ compliant Unit or waiver as aforesaid within aforesaid period of three months, the Respondent - APSEZL may acquire the land of the same size

of approximately 34 Acres outside SEZ area as already identified and selected by CWC, for the construction of a Warehouse facility for the Appellant – CWC of approximately same size as agreed between the parties under Proposal Nos.1 and 2 in the letter dated 9.3.2019 and affirmed by subsequent correspondence and Board Resolution dated 12.6.2019 of CWC and the Affidavits of the parties filed in this Court. Such acquisition of land and construction of warehouse by the Respondent - APSEZL may be completed within a period of one year after the expiry of aforesaid period of three months in Clause (i) above and same may be offered to CWC to be occupied by the Appellant - CWC on such terms and conditions in consonance with the previous Agreement between the parties vide Lease Agreement dated 2.6.2004 or under such mutually agreed terms as may be agreed afresh between the parties.

(iii) Once the completed construction on the land outside the SEZ Area, already identified and selected by CWC, is offered to the Appellant - CWC, the Appellant - CWC shall vacate the existing premises of the warehousing facility on the said 34 acres of land situated within SEZ area within three months of such communication of the Respondent - APSEZL and the Appellant - CWC shall be bound to hand over the peaceful and vacant possession of existing warehousing facility and land of 34 Acres in question to the Respondent - APSEZL within such period of three months of the communication of the Respondent - APSEZL that new warehousing facility on the land situated outside the SEZ area is ready to be taken in possession and occupied by CWC.

(iv) If the Appellant – CWC fails to hand over the vacant and peaceful possession to the Respondent, even thereafter, the Respondent - APSEZL shall be free to approach this Court or the concerned Development Commissioner or the learned Single Judge or other authorities of the State for appropriate execution of these directions of this Court.

(v) That regarding Proposal No.3 about underwriting of the future business loss of CWC on the basis of published tariffs or market tariffs or otherwise, the parties are left free to make efforts for amicable settlement of this issue between themselves with the help of Development Commissioner or the Mediation process under Section 89 of Civil Procedure Code in the High Court annexed Mediation Centre, where services of Senior Trained Mediators can be made available to the parties at the appropriate point of time.

(vi) For the aforesaid period of 18 months of timeline involved in the aforesaid directions namely, three months under Clause (i) and one year or 12 months under Clause (ii) and three months for handing over the vacant possession under Clause (iii) aforesaid, the interim order granted by the coordinate bench of this Court on 11.1.2017 shall continue to operate between both the parties.

(vii) That if the extension of the aforesaid time period(s) becomes very necessary for compelling reasons, both the parties shall be at liberty to apply to the learned Single Judge in the pending Writ Petition; being Special Civil Application No.184 of 2017 and the learned Single Judge keeping in view the conduct of the applicant-party may grant such further time as may be considered expedient and necessary by the learned Single Judge."

3. By an order dated 26th August 2021, the impugned judgment and order came to be modified as under:

"3. In place of the words "already identified and selected by CWC", the following words will be substituted in paragraph 33(ii) & (iii) of the Judgment dated 30.06.2021:

"identified and proposed by the Respondent APSEZL and finally selected by CWC subject to the timeframe prescribed in the present Judgment.""

4. Being aggrieved by the aforesaid directions, the appellantCentral Warehousing Corporation (for short, "CWC") has approached this Court.

5. The facts in brief giving rise to the present appeals are as under:

The appellant-CWC was set up by the Government of India in the year 1957 to provide support to the agricultural sector by operating warehouses and Container Freight Stations

across the country. In the year 1962, the Warehousing Corporation Act, 1962 (for short, "1962 Act") came to be enacted. As such, the appellant-CWC became a statutory Corporation under the 1962 Act. In the year 2000-2001, the Gujarat Maritime Board (for short, "GMB") executed a Lease and Possession Agreement, thereby granting lease of an undeveloped land within New Mundra Port Limits to Gujarat Adani Port Limited (for short, "GAPL"). The said lease was granted for a period of 30 years. Vide the said agreement, GMB also granted development rights under a Concession Agreement dated 17th February 2001 to GAPL to develop the port and other facilities.

6. By an agreement dated 2nd June 2004, GAPL sub-leased a plot of land admeasuring about 34 acres to the appellant-CWC for the purpose of setting up a warehouse to be used for storage and handling of foodgrains, notified commodities and related activities. The lease of the land was for a term up to 16th February 2031. After the said agreement was executed and the possession of the said land was handed over to the appellantCWC on 1st October 2004, the appellant-CWC set up two Godowns each with a capacity of 33,000 MT. The appellantCWC also made payments at the rate of Rs.603 per sq. metre, i.e., about Rs.8.29 crores for the development of infrastructure in the year 2005.

7. The Special Economic Zones Act, 2005 (for short, "SEZ Act") came into force on 23rd June 2005. The Special Economic Zones Rules, 2006 (for short, "SEZ Rules") were also notified on 10th February 2006. Vide notification dated 23rd June 2006 issued by the Ministry of Commerce and Industry, Government of India (for short, "Ministry of C & I), a vast area came to be notified as a Special Economic Zone (for short, "SEZ"). The appellant-CWC made a representation dated 10th April 2015 to the Ministry of C & I for delineation/denotification of the said 34 acres of land from the SEZ. Till the year 2017, there was no obstruction to the appellant-CWC in utilizing the said area.

8. A communication came to be addressed on 5th January 2017 by the respondent No.1-Adani Ports Special Economic Zone Limited (hereinafter referred to as "APSEZL") to the appellant-CWC stating therein that, the appellant-CWC had violated Clause 4.2.3 of the agreement dated 2nd June 2004, which required the appellant-CWC to obtain and comply with all approvals, consent and permits under the applicable law pertaining to the sub-leased premises and activities proposed to be carried out by the appellant-CWC. Vide the said communication, the appellant-CWC was informed that APSEZL has taken a decision of discontinuing the issuance of gatepasses, and further that it would not permit the appellant-CWC to continue the warehousing activities.

9. Being aggrieved by the communication dated 5th January 2017 and alleging that the same was causing obstruction in free movement of vehicles and transportation of foodgrains etc. to be stored at the warehousing facility, the appellant-CWC filed the first writ petition being SCA No. 184 of 2017 before the High Court. Since the learned Single Judge of the High Court did not grant an interim relief while issuing notice, the appellant-CWC filed LPA No. 22 of 2017. In the said LPA, vide order dated 11th January 2017, the Division Bench of the High Court had granted an ad-interim relief and directed the respondents to allow the appellant-CWC to carry out the activities of storing and transportation of its commodities to and from the warehouse. The respondents were also directed to issue gate passes for transportation till the next date of hearing.

10. It further appears from the record that, in the meantime, the request of the appellant-CWC for delineation/denotification of the 34 acres of land in its possession from the SEZ area, which was pending consideration, was considered by the Ministry of C & I in its meeting held on 17th January 2017, wherein it was decided to reject the said request of the appellant-CWC to delineate/denotify the said land. The said communication was communicated to the

appellant-CWC on 25th January 2017. Being aggrieved thereby, the appellant-CWC filed the second writ petition being SCA No. 5816 of 2017 before the High Court.

11. It appears that thereafter, the said LPA came up for hearing before the Division Bench on various occasions. It further appears that there were also attempts to settle the issues amicably. A perusal of the order dated 26th April 2019 passed by the Division Bench would reveal that an offer was made by APSEZL that an equivalent plot of land outside the limit of SEZ would be earmarked, whereupon a Godown of similar size would be constructed at the expense of APSEZL within a period of twelve months from the said date. Till then, the appellant-CWC was to be permitted to carry on its activities as per the terms and conditions of the agreement dated 2nd June 2004. The said proposal of APSEZL was placed before the Board of Directors of the appellant-CWC (hereinafter referred to as the "BoD") on 12th June 2019. The BoD accepted the said proposal in principle.

12. Thereafter, the matter was again listed before the Division Bench on certain dates. On 28th January 2021, an adjournment was again sought on behalf of the appellant-CWC to take instructions from the Managing Director (for short, "MD") of the appellant-CWC. Vide order of the said date, the Division Bench granted time as a last chance and the matter was directed to be posted on 9th February 2021. On 9th February 2021, the matter was adjourned for 18th February 2021. Since both the parties informed the High Court that the settlement is not possible, the High Court directed the matter to be kept on 17th March 2021. Thereafter, due to COVID, the matter could not be listed and finally, it was listed on 30th June 2021, on which date the impugned judgment and order was passed.

13. We have heard Shri Maninder Singh, learned Senior Counsel appearing on behalf of the appellant-CWC and Shri Shyam Divan, learned Senior Counsel appearing on behalf of the respondents.

14. Shri Maninder Singh submitted that the Division Bench has failed to take into consideration that the area admeasuring 34 acres in possession of the appellant-CWC could not have been included in the SEZ areas. He submitted that as per Rule 7 of the SEZ Rules, the developer is required to furnish to the Central Government, particulars required under sub-section (1) of Section 4 with regard to the area referred to in sub-section (2) or sub-section (4) of Section 3 of the SEZ Act. He submitted that, along with the said information, the developer is also required to submit a proof of legal right and possession and a certificate from the State Government or the authorized agency that the said area is free from all encumbrances. It is submitted that, as per sub-rule (2) of Rule 7 of the SEZ Rules, the identified area is required to be contiguous and vacant. He submitted that APSEZL has suppressed the material fact that the possession of the said area of 34 acres was not with it but with the appellant-CWC. He submitted that, had this fact been brought to the notice of the authorities, the area in possession of the appellant-CWC could not have been included in the SEZ areas.

15. Shri Maninder Singh submitted that from Clause 2.1 of the agreement dated 2nd June 2004 itself, it is clear that the warehousing infrastructure and the leased premises was required to be set up by the appellant-CWC in accordance with the plan as approved by APSEZL (then GAPL). It is submitted that, in accordance with the said clause, the appellant-CWC had submitted plans on 25th July 2006. The said plans were duly approved by the then GAPL. It is submitted that, in addition to the aforesaid, the then GAPL has itself been using the warehousing facilities provided by the appellant-CWC from the year 2006 onwards.

16. Shri Singh further submitted that the Ministry of Consumer Affairs, Food and Public Distribution, Government of India (hereinafter referred to as the "Ministry of CAF&PD"),

which is the controlling Ministry of the appellant-CWC, has also been supporting the stand of the appellant-CWC. It is submitted that however, the Ministry of C&I has been, on an untenable ground, refusing the request of the appellant-CWC for delineation/denotification of the land occupied by it. It is submitted that, though the Ministry of C&I has taken a stand in case of the appellant-CWC that there is no provision in the SEZ Act and Rules which empowers the authorities to grant a waiver as requested, the Ministry of CAF&PD, vide communication dated 13th September 2013, has informed the Chief Secretaries of all the States that in certain cases, such request could be accepted. It is submitted that, not only this, but vide notifications dated 31st May 2013 and 4th July 2019, certain areas have been delineated/denotified from the said SEZ areas at the request of APSEZL. It is submitted that when such a request could be allowed at the behest of APSEZL, there is no rhyme or reason as to why the request of the appellantCWC could not be considered by the Ministry of C&I.

17. Shri Singh further submitted that the High Court has totally erred in castigating the appellant-CWC. It is submitted that the observations of the High Court that the appellant-CWC was having an ego in the matter and was not reasonable are totally unwarranted. He submitted that the impugned judgment and order of the High Court is almost thrusting a part of the settlement on the appellant-CWC. He submitted that the relocation of the warehouse to a new location on rent as per the published tariff of the appellant-CWC is not the solitary decision of an individual. It is submitted that the BoD has accepted the proposal for settlement on three conditions. As a matter of fact, APSEZL itself had agreed on all the three conditions vide its communication dated 9th March 2017. However, it unilaterally, vide communication dated 10th June 2019, resiled from the 3rd condition. Though the High Court has directed the appellant-CWC to abide by the first two conditions, it has failed to direct APSEZL to abide by the 3rd condition.

18. Shri Singh submitted that the conduct of the Ministry of C&I in rejecting the proposal of the appellant-CWC for delineation/denotification of the said land from SEZ areas vide its order dated 17th January 2017 is itself under a cloud of doubt. He submitted that, in SCA No. 184 of 2017, the notice was issued on 10th January 2017 returnable on 17th January 2017. However, by the Minutes of the Meeting of the Ministry of C&I passed on the very same day, the said proposal was rejected. It is seen that the conduct of the Ministry of C&I in deciding the matter on the very same day on which notice was made returnable, speaks volumes of its conduct.

19. Shri Divan, on the contrary, submitted that insofar as the writ petition being SCA No. 184 of 2017 is concerned, the same is not at all tenable. He submitted that APSEZL is not a public body and as such, a writ against it would not be tenable. It is submitted that insofar as the second writ petition being SCA No. 5816 of 2017 is concerned, no effective hearing has taken place in the said proceedings. Shri Divan further submitted that there is no challenge made by the appellant-CWC to the notification dated 23rd June 2006. The said notification has been issued in accordance with the provisions of the SEZ Act. He submitted that the appellant-CWC, having not challenged the validity of the said notification dated 23rd June 2006, no relief could be granted in the said writ petition filed by it, contrary to the statutory provisions.

20. Shri Divan submitted that, as early as on 26th March 2007, APSEZL had given the proposal to the appellant-CWC to allot an equivalent plot at an alternative location. The said proposal was further reiterated by APSEZL on 23rd May 2007. Vide another communication dated 31st August 2007, APSEZL has proposed to utilize the warehousing facility to be constructed on the sub-leased area for a minimum period of three years. However, the same was not positively responded to by the appellant-CWC. As such, APSEZL was required to

issue a communication dated 5th January 2017 inasmuch as the continuation of the warehousing facility was in contravention of the SEZ Act.

21. Shri Divan submitted that a perusal of Rule 17 of the SEZ Rules would reveal that a proposal has to be submitted for approval to the Development Commissioner for setting up of a Unit in SEZ. Under Rule 18 (2)(i) of the SEZ Rules, it is required that the proposal meets with the positive net foreign exchange earning requirement. Under Rule 19 of the SEZ Rules, unless the proposal is approved by the Approval Committee and unless the Development Commissioner issues a letter of approval in Form G, no Unit can be established. Shri Divan has submitted that sub-rule (v) of Rule 11 would make the position clear. Shri Divan has further submitted that the communication dated 13th September 2013 issued by the Ministry of C&I clearly provides that a proposal for seeking delineation/denotification cannot be considered unless such a proposal has an unambiguous 'No Objection Certificate' from the State Government concerned.

22. Shri Divan further submitted that in view of the provisions of Section 51 of the SEZ Act, the provisions of the said Act will have an overriding effect. He has further submitted that various documents have been placed on record by the appellant-CWC which were not placed before the High Court and as such, the same cannot be taken into consideration.

23. Shri Divan further submitted that, as a matter of fact, after the order was passed by the High Court, the appellantCWC had made a representation to the Development Commissioner on 17th August 2021 requesting for delineation/denotification of the plot in question. The same has already been rejected by the Development Commissioner by its order dated 7th September 2021. He therefore submitted that, as a matter of fact, nothing survives in the present proceedings.

24. Insofar as the contention of the appellant-CWC with regard to non-compliance with the provisions of Rule 7 of the SEZ Rules, it is submitted that the application was made by the then GAPL under the old regime on 9th January 2004. The same was approved on 12th February 2004. The notification was issued on 5th July 2004. As such, the SEZ Act, which has come into effect in the year 2005 and the SEZ Rules in the year 2006, would not be applicable. It is therefore submitted that the arguments advanced on that behalf are without substance.

25. Shri Divan submitted that, though APSEZL was not duty bound to provide an alternate site to the appellant-CWC, it gratuitously agreed to give to the appellant-CWC an alternate site of the same size. Not only that, it also agreed to construct the Godowns of the same size as were in existence. As such, the directions, which were issued are, in fact, for the benefit of the appellant-CWC and there is no reason as to why the appellant-CWC should have challenged the same. Shri Divan relies on the judgments of this Court in the cases of ***Krishnadevi Malchand Kamathia and Others v. Bombay Environmental Action Group and Others***[1] and ***Ratnagiri Nagar Parishad v. Gangaram Narayan Ambekar and Others***[2] in support of the proposition that the appellant-CWC, having not challenged the notification dated 5th July 2004, is estopped from arguing contrary thereto.

26. In our considered view, the present case, rather than being decided on law, requires to be decided on the factual position as emerges from the record. It is not in dispute that, after the land was leased to the then GAPL by the GMB in the year 2000-2001, it entered into an agreement with the appellant-CWC on 2nd June 2004 with regard to the area

[1] (2011) 3 SCC 363

[2] (2020) 7 SCC 275

admeasuring 34 acres. It is also not in dispute that the appellant-CWC was put in possession of the said plot and has constructed the warehouse on the same. It is also not in dispute that after the construction of the warehouse, the storage facilities were being utilized by the then GAPL. However, it appears that in the year 2007, for the first time, the then GAPL made a proposal for swapping the land and construction of the warehouse on the swapped land. It further appears that, though certain communications were addressed, there was no hindrance on the operations of the appellant-CWC till 5th January 2017. From a perusal of the communication dated 5th January 2017, it is seen that the appellant-CWC was restrained from continuing with the activities in the said premises. It further states that the appellant-CWC would not be able to get gate passes for the SEZ until the appellant-CWC either (a) obtains a Letter of Approval (LOA) from Development Commissioner (DC) as a SEZ Unit in compliance with the provisions of SEZ Act/Rules; or, (b) obtains specific permission from DC to carry out the activities of warehousing & stuffing etc. in the said premises in the SEZ by waiving the requirement of being approved as an SEZ-compliant Unit.

27. A perusal of the record would reveal that, immediately after the said communication dated 5th January 2017 was passed, the appellant-CWC filed SCA No. 184 of 2017. In the said writ petition, vide order dated 10th January 2017, notice was issued returnable on 17th January 2017. Since the interim relief was not granted in the said writ petition, the appellantCWC preferred LPA No. 22 of 2017, wherein the Division Bench has passed the order dated 11th January 2017, which reads thus:

"4. In the communication dated 5th January 2007, reference is made to Rule 11(5) and Rule 11(7) of the SEZ Rules, applicability or otherwise of the said Rules is a matter which is required to be considered in the petition pending before the learned single Judge. As it is the case of the appellant that since 2005, the appellantCorporation is using the leased area after making constructions for storage and for transportation of food grains, if abruptly they are stopped from using the same, public interest will suffer. In view of the same, by way of ad-interim relief, the respondents are directed to allow the appellant-Corporation to carry out the activity of storing and transportation of their commodities in and from the warehouse. The respondents are further directed to issue necessary gate passes for transportation till the next date of hearing."

28. It appears that after the notice was issued in SCA No. 184 of 2017 which was returnable on 17th January 2017, a meeting was held between the Development Commissioner, MD of the appellant-CWC and the President of APSEZL. It will be relevant to refer to the Minutes of the said Meeting dated 17th January 2017, which read thus:

"2. Explaining the background, DC, APSEZ informed that in Dec 2002, CWC has entered into MoU with APSEZ for two plots in the SEZ measuring 40 acres and 34 acres. Lease agreement for the plot for 34 acres, which is now in dispute, was signed in June 2004. CWC took possession of the same but did not get the agreement registered with the Revenue authorities. He informed that subsequently, on 23.06.2006, Mundra SEZL, now APSEZL, was notified which included the 34 acres with CWC. CWC constructed its warehouse on the piece of land. In September 2008, DC, APSEZ issued notice to CWC for non-compliance of provisions of SEZ Act and Rules and requested APSEZL to initiate action to exclude the plots with CWC from SEZ limits. CWC, on 14.10.2008, requested APSEZ Ltd. to initiate action to exclude its both plots from the SEZ limits. Although EGoM, in Oct 2008, had decided to delineate pre-existing structures in the port area built prior to the notification of 23.06.2006, the plot with CWC were not delineated as perhaps the CWC Godown had come up after 23.06.2006. He mentioned that CWC is carrying out container stuffing in its Godown which was against the provision of SEZ Act and Rules. The developer, on 19.03.2015, asked CWC to discontinue all activities from the Godown. Thereafter, on 10.04.2015, CWC approached DoC for delineating the warehouse from the SEZ. In Oct 2015, the developer offered an alternative site to CWC, which was rejected by CWC. It was also stated that on 05.01.2017, the developer wrote to

CWC to stop its operation and that CWC obtained a stay against this letter from the Hon'ble High Court of Gujarat.

3. The representatives from CWC informed that they have entered into the agreement with APSEZL in 2004 for a period of 30 years. APSEZ had not informed CWC that the land in question was included in the proposed SEZ which was notified in June, 2006. It was also stated that since CWC had made investment of Rs. 60 crores in construction of the warehouse, the CVC had advised it that it should not move out without proper arrangement. It was also stated that presently MMTC was storing 26,000 tonnes of imported pulses as buffer stock for the GoI. Since APSEZL had arbitrarily stopped this storage and therefore CWC had to approach Hon'ble High Court for stay. CWC representatives therefore reiterated that since they are having an agreement of 30 years lease from APSEZ, they are a Central Government PSU, they have already invested more than Rs. 60 cr. in warehouse and they are operating peacefully, they should be allowed to do business from the warehouse within the SEZ.

4. The representatives of APSEZL informed that as per the agreement entered with the CWC, 30 year agreement had to be registered within four months without penalty and within 8 months with penalty. CWC had not taken any action for getting the agreement registered within the said period and therefore the agreement had become null and void. It was stated that APSEZ was willing to give alternative plot to CWC for creating a new warehouse and also that it had explored the possibility of delineation and de-notification of the area in possession with CWC. However the same was not feasible.

5. It was made clear that there was no possibility of any delineation as there was no provision in the SEZ Act or SEZ Rules for such delineation. It was, therefore, advised representatives of CWC to amicably sort out the issue with APSEZL by either becoming a SEZ Unit in the SEZ or become a dodeveloper in the SEZ after ascertaining the provisions and requirements under SEZ Unit Act, 2005 and SEZ Rules, 2006. If required, the matter may be put up before the BoA for its consideration."

29. It is to be noted that the appellant-CWC is a statutory corporation. It cannot act as per the independent decisions of any officer and has to act in accordance with the resolution of the BoD.

30. In this background, it will be relevant to note that, as early as in the year 2010, there was a complaint against one of the Directors of the appellant-CWC before the Central Vigilance Commission (for short, "CVC"). The CVC issued an office memorandum on 12th January 2010. The relevant part of the said office memorandum reads thus:

"2……

(i)…….

(ii) Further, it is observed that due to the presence of CWC warehouse (a Central Govt. PSU), various kinds of developmental activities has been undertaken by the other related Govt. undertaking like Railway etc. and due to which the importance/value of the land/area has now been greatly increased. By shifting this warehouse to another place, M/s GAPL will be unduly benefited and at the same time CWC will not only loose business but also have to struggle a fresh in creating the same kind of infrastructure in the new location with the help of other govt. agencies. In case in the vicinity of the area presently occupied by CWC, liquid cargo will be stored than even CWC can possibly think of developing liquid cargo storage facilities in the area presently occupied which can be used by M/s GAPL and others. Secondly, for the bulk cargo another location as offered by M/s GAPL can be freshly acquired by negotiating fresh terms & conditions.

(iii) It is also requested to keep the Commission posted regarding the future developments in this regard.

3. Commission has further observed that there may be vested interest in shifting of CWC warehouse-apart from the cost involved and possibility of loosing business by CWC, hence, it will be desirable to have a close check on the issue and monitor its progress/developments."

31. The CVC has clearly observed that due to the presence of CWC warehouse, various kinds of developmental activities have been undertaken by other related government undertakings like Railway etc. It has further been observed that by shifting the warehouse to another place, GAPL will be unduly benefited and at the same time, the appellant-CWC will not only lose business but will also have to struggle afresh in creating the same kind of infrastructure at the new location. The CVC further observed that there could be a vested interest in shifting of the CWC warehouse.

32. It is further to be noted that, though the Ministry of C&I has been taking a stand that the delineation/denotification was not permissible, another Ministry of the Union of India has been taking a contrary stand. It will be relevant to refer to the communication addressed by the Ministry of CAF&PD dated 31st July 2017, thereby specifying the stand to be taken on its behalf, as thus:

"(i) With regard to non registration of the agreement dated 02.06.2004 between GAPL and CWC, it has been informed by CWC that the land was physically banded over by GAPL to CWC on 01.10.2004 and thereafter, CWC started construction of warehouse on the land. CWC has been paying lease rent and GAPL has been accepting the same. Even GAPL has stored its cargo in the godowns of CWC on the same plot of land. Thus the lease has existed by virtue of the actions taken by both the parties. Moreover, GAPL has not denied signing the agreement Hence, the agreement cannot be treated as illegal.

(ii) With regard to obligations of CWC to obtain and comply with all approvals, consents and permits under the applicable law pertaining to the sub-leased premises and activities and the contention of APSEZL that CWC has failed to obtain necessary approvals under SEZ Act, it is informed that CWC has fulfilled its obligations as per the agreement dated 02.06.2004 for warehousing activities. CWC was not required to take any approval under SEZ Act since the area became SEZ later and CWC has no intention of becoming part of SEZ and also since APSEZL has included the subleased premises of CWC in the SEZ area by suppressing the facts. APSEZL should have included only those areas which it owned/ possessed at the time of submitting proposal for notification of SEZ. APSEZL should not have included the sub-leased premises of CWC for notification of SEZ without the consent of CWC, since CWC had already taken possession of the plot on l.l0.2004 i.e. much before the date of SEZ notification (23.06.2006). As per SEZ rules (Annexure-6) having a contiguous parcel of land is a primary requirement for the developer to apply for notification of any area as SEZ. It appears that APSEZL (formerly, GAPL) have suppressed information regarding the sub-leased premises, otherwise it would have not got the approval for declaring the area as SEZ. Thus, the whole contention of APSEZL is based on suppression of facts.

(iii) With regard to the contention of APSEZL that CWC has failed to obtain necessary approvals under SEZ Act, it is further intimated that it is the obligation of APSEZL as the developer to de-lineate and de-notify the sub-leased premises of CWC from SEZ area. Since APSEZL did not take any action in this regard, CWC took up the matter with Ministry of Commerce on 10.04.2015 for de-lineation and de-notification of its plots. The Department of Food and Public Distribution also took up this matter on behalf of CWC before the Department of Commerce vide letters dated 17.07.2015 and 17.06.2016. (Annexure-2)

(iv) With regard to minutes of meeting held on 17.01.2017 in Department of Commerce, wherein it has been stated that there was no possibility of de-lineation as there was no provision in SEZ Act and SEZ rules for such de-lineation, the Department of Food and PD is of the view that the stand of Department of Commerce is not correct. In fact, there are provisions for de-lineation/partial denotification of areas within SEZ which have been circulated by Department of Commerce vide letter No. D.J2/4S/2009-SEZ dated 13.09.2013 (Annexure-3). However, as per these provisions, it

is the responsibility of the developer i.e. APSEZL to take action for such de-lineation or partial de-notification. There is precedent for such partial de-notification, which has taken place in the SEZ at Jamnagar on the initiative of the Developer (M/s Reliance Industries) at that SEZ, as per newspaper report in The Hindu Business Line published on 18.01.2013(Annexure-4). Thus, it is apparent that APSEZL first included the subleased premises of CWC in SEZ by suppressing the facts and now it is not taking action for denotification of the same premises.

Additional Point

APSEZL has not only suppressing the facts by including CWC's premises in the SEZ Area, but also has attempted several times to take possession of CWC's plot by offering CWC alternate land far away from Mundra port. The value of CWC's plot has appreciated several times due to development around it and the alternate land is not only of low value but also less suitable from business point of view for CWC. CWC has not agreed to this proposal for alternate land due to serious financial implications. When the proposal of exchange of land was being examined by the management of CWC, a complaint was made against the then Director (Finance) of CWC before the Central Vigilance Commission (CVC). While disposing of this complaint, CVC observed vide OM No. 008/FUD/017170378 dated 12.01.2010 (Annexure-S) that "by shifting CWC warehouses to another place, M/s GAPL will be unduly benefited and at the same time CWC will not only loose business but also have to struggle a fresh in creating the same kind of infrastructure in the new location with the help of other govt. agencies". CVC has further observed that "there may be vested interest in shifting of CWC warehouse apart from the cost involved and possibility of losing business by CWC, hence, it will be desirable to have a close check on the issue and monitor its progress/developments". CVC has also requested the Department of Food and PD to keep the Commission posted regarding the future developments in this regard. In view of these observations of CVC, since CVC's instructions are applicable to all Departments of Govt. of India, it is responsibility of Department of Commerce to accept the request of CWC for de-notification of its premises."

33. A perusal of the said communication dated 31st July 2017 would reveal that, as per the Ministry of CAF&PD, the appellant-CWC has fulfilled its obligations as per the agreement dated 2nd June 2004 for warehousing activities. It is also the stand of the said Ministry that APSEZL has included the subleased premises of the appellant-CWC in the SEZ areas by suppressing the facts. It is stated that, since the appellantCWC has already taken possession of the plot on 1st August 2004, i.e., much before the date of SEZ notification dated 23rd June 2006, the said area could not have been included in the SEZ areas. It is stated that, since it was the obligation of APSEZL to take action to delineate/denotify the sub-leased area, and since it has taken no such steps, the appellant-CWC was required to take up the matter with the Ministry of C&I. The said communication clearly states that the view of the Ministry of C&I that there was no possibility of delineation/denotification was not a correct stand. It is also stated that there are also precedents of such partial denotifications taking place. It has been stated that the value of the plot of the appellant-CWC has appreciated several times due to development around it and the alternate land is not only of low value but also less suitable from a business point of view. It is stated that the appellant-CWC has also not agreed to this proposal for alternate land due to serious financial implications. A reference has also been made to the office memorandum of the CVC dated 12th January 2010 referred to hereinabove.

34. It is further pertinent to note that, in the meantime, being aggrieved by the Minutes of the Meeting dated 17th January 2017, the appellant-CWC had preferred the second writ petition being SCA No. 5816 of 2017 before the High Court. The prayers of the said writ petition read thus:

"(a) To issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing and setting aside the decision taken by the Ministry of Commerce in a meeting held on 17.01.2017, as

communicated to the petitioner Corporation under letter dated 25.01.2017, as being illegal, arbitrary and bad in law;

(b) To issue a writ of mandamus, or a writ, order or direction in the nature of mandamus directing the Ministry of Commerce, Government of India to consider the request of the Corporation for denotifying the area of land leased to it in the year 2004 and over which it has constructed a warehouse in light of the report of the Central Vigilance Commission, correspondence exchanged between the Corporation, Ministry of Consumer Affairs, Food and Public Distribution and the Developer, and in accordance with law;"

35. Vide order dated 26th April 2019 in SCA No. 5816 of 2017, the same was directed to be placed along with LPA No. 22 of 2017.

36. It appears that during the pendency of the said LPA, there were proposals and counter proposals. It is relevant to note that a proposal was submitted by APSEZL on 9th March 2019. The salient features of the said proposal read thus:

- "APSEZ to offer alternate location in NonSEZ area of Mundra Industrial Estate is of the same size i.e. approx. 34 acres.
- APSEZ will construct the warehouse as per the existing dimensions of the existing warehouse after discussing the same with you.
- To give comfort to CWC, APSEZ is willing to underwrite the revenue risk for CWC by taking the warehouse at new location on rent as per your published tariff for the balance period of lease."

37. The said proposal was put up for consideration before the BoD. The BoD, in principle, accepted the said proposal on the following conditions:

"(i) M/s. APSEZ may **provide a suitable alternative land** of the same size as the existing one as selected by CWC **outside the SEZ area at Mundra Port.**

(ii) **A godown of 66000 MT** (as per existing) may be **created by M/s. APSEZ** as per the specification of CWC, within the period of **twelve (12) months**.

(iii) M/s. APSEZ shall take the whole covered space so created along with remaining open area at CWC's existing **public tariff with 6% annual escalation (compoundable)** on dedicated warehousing basis for entire period of lease **i.e. till 16.2.2031, underwriting the business and other risks of the Corporation and shall sign an agreement**, giving **suitable amount of bank guarantee to this effect**."

38. It could thus be clear that APSEZL, in its proposal dated 9th March 2019, had agreed to underwrite the revenue risk of the appellant-CWC by taking the warehouse to a new location on rent as per the published tariff of the appellant-CWC for the balance period of lease, and the same was accepted by the appellant-CWC only with a rider that APSEZL shall sign an agreement giving a suitable amount of bank guarantee to the said effect.

39. However, after a period of almost three months, APSEZL retracted from its proposal dated 9th March 2019 vide its communication dated 10th June 2019, which reads thus:

"Dear Sir,

This has reference to our letter dated March 9, 2019 and your reply dated April 4, 2019, subsequently our teams have been working together for last 3 months in order to arrive at a mutually beneficial solution.

With reference to our letter dated March 9,2019 wherein, along with offering an alternate location for relocation of your existing facility **we had suggested to underwrite the revenue risk for CWC for the warehouse at new location on rent. We would like to clarify that such underwriting of**

revenue risk should be done based on Market rates which can be mutually worked out as the existing published tariff is too high when compared to the market rates of similar type of warehouses.

Further as discussed during the meeting with your Director (M&CP), CWC **we would like to work out a One Time Settlement (OTS),** which we believe would be the most efficient and quick resolution of this issue and we are awaiting your proposal and response in this regard."

40. It could thus be seen that, though all the three conditions as stated in the proposal of APSEZL dated 9th March 2019 were accepted by the BoD in its meeting dated 12th June 2019, in the meantime, APSEZL unilaterally retracted from the 3rd condition.

41. Vide the impugned judgment and order, the High Court has, in fact, held that though the appellant-CWC was bound by the first two conditions as agreed between the parties, the second respondent was not bound by the 3rd condition as was offered by APSEZL on 9th March 2019 and subsequently retracted on 10th June 2019.

42. The Division Bench goes on to hold that, since there was a consensus on the first two conditions and no consensus on the 3rd condition, the appellant-CWC was bound by the first two conditions and insofar as the 3rd condition is concerned, it was open for the parties to settle the same amicably between themselves or through mediation. The Division Bench further observed that though APSEZL had initially proposed the 3rd condition, it had immediately explained and clarified the same in its next letter dated 10th June 2019. In the view of the High Court, a period of three months is 'immediate'.

43. We find the said approach of the Division Bench wholly untenable. We are of the view that the approach adopted by the Division Bench was, in fact, forcing the appellant-CWC, which is a statutory body, to accept the settlement. Vide order dated 28th January 2021, the Division Bench goes on to observe that they were *prima facie* of the opinion that, while the first two conditions taken by the appellant-CWC in its meeting dated 12th June 2019 appeared to be fair and reasonable, the 3rd condition which also takes into account the future working escalation, costs etc. does not appear to be fair and may unnecessarily make the dispute linger on. After observing this and granting a short accommodation to the counsel for the appellant-CWC to take instructions from the MD of the appellant-CWC, the Division Bench observed thus:

"9. We make it clear that any further delay in their decision-making will not be allowed and if the said settlement is not agreeable to the appellant – Central Warehousing Corporation, an Affidavit of the Managing Director of the appellant – Central Warehousing Corporation disclosing the reasons for the same may be submitted, on which, appropriate orders may be passed by this Court on next date."

44. The High Court, in effect, forces the MD of the appellantCWC, which is a statutory body, to accept the first two conditions and leave the 3rd condition to be settled mutually through mediation. The offer given by APSEZL on 9th March 2019 was a composite one so also the acceptance thereof by the appellant-CWC was a composite one. The acceptance of the first two conditions was also dependent upon the 3rd condition. If the High Court was so concerned about settlement of the dispute, then, while compelling the appellant-CWC to accept the first two conditions, it also ought to have compelled APSEZL to accept the 3rd condition.

45. The Division Bench of the High Court, in paragraph (24), observed thus:

"24. We are little surprised and also pained at the reticent attitude of the Appellant - CWC, a Central Government Undertaking to have an insistent and persistent approach to remain non-compliant with law and trying to exert pressure on the private Respondent because of its own status. We fail to

understand how a body corporate of the stature of CWC can have any 'Ego' which is a vice of a human being and a juristic person, of course managed by human beings, can definitely have a better democratic and consensual decision making process at its top level. The CWC in the present case, is not only in this spree of litigation against the private Respondent - APSEZL but also against its own parent, namely, the Central Government challenging its action of not agreeing with the CWC to exclude its existing area of Warehouse from the SEZ Area, which was allotted to the private Respondent - APSEZL and is being developed by them in accordance with the provisions of SEZ Act, 2005 and Rules made thereunder just because under a sub-lease given by APSEZL to CWC, it had already constructed a Warehouse there, before a much larger area of more than 5000 Acres including that warehouse area of 34 Acres was declared as a SEZ area under the special and overriding law."

46. We find the said observations of the Division Bench totally unwarranted. The High Court ought to have taken into consideration that the appellant-CWC was a statutory body. There are already observations made by the CVC as early as in the year 2010 that the swapping of the warehousing facility from the present site to a changed site would cause serious financial implications and also that there could be various vested interests involved. The CVC had also observed that there was also a possibility of losing business. Further, the Division Bench totally ignored the stand taken by the Ministry of CAF&PD, which too had opposed such a swapping. Rather than the High Court being surprised with the conduct of the appellant-CWC, it is we who are surprised with the observations made by the High Court. When an issue involved the balancing of interests of a statutory Corporation and a private company, the approach of the High Court ought to have been a balanced one. The High Court ought to have taken into consideration that, unless all the three conditions were complied with, the interest of the appellant-CWC, which is a statutory Corporation, could not have been safeguarded. If a settlement was to be arrived at, unless the same was found to be in the interest of both the parties, it could not have been thrust upon a statutory Corporation to its detriment and to the advantage of a private entity.

47. In any event, the writ petitions before the learned Single Judge are very much pending. If the impugned order of the High Court remains in force, there remains nothing to be decided in the said writ petitions. The question as to whether the first writ petition is tenable or not will be a question that will have to be decided by the learned Single Judge. Undisputedly, the second writ petition which seeks a relief against the statutory authorities is very much tenable in law. We are of the considered view that the best course available with the Division Bench was to direct the learned Single Judge to decide the petition on its merits.

48. We are therefore of the considered view that the impugned judgment and order of the High Court dated 30th June 2021 is not sustainable in law.

49. Before we part with the judgment, an important issue has invited our concern. The stands taken by two ministries of the Union of India are diagonally opposite to each other. On one hand, the Ministry of C&I has held that the delineation/denotification as sought by the appellant-CWC is not permissible in law as could be seen from the Minutes of the Meeting dated 17th January 2017. Not only that, after the order passed by the High Court, the appellant-CWC had again applied on 17th August 2021 for either delineating the area from APSEZL or, in the alternate, to grant waiver/exemption to it from complying with the conditions/obligations applicable to SEZ Units. However, the specified officer of APSEZL, vide communication dated 7th September 2021, has rejected the said prayer on the ground that there is no provision in the SEZ Act and Rules which empowers the authority to grant such a waiver.

50. On the other hand, the Ministry of CAF&PD has taken a stand that such a delineation/denotification is permissible in law and has also stated that there are precedents for doing so. The learned Senior Counsel for the appellant-CWC has also placed on record certain notifications vide which certain areas have been denotified at the instance of APSEZL. We do not wish to dwell into that area inasmuch as it will have a direct bearing on the second writ petition filed by the appellant-CWC. We do not propose to prejudice the rights of either of the parties by observing anything with regard to this. It is also a stand of the Ministry of CAF&PD that shifting of the warehouses to the alternate locations would be against the interest of the appellant-CWC as well as public revenue.

51. We are of the considered view that it does not augur well for the Union of India to speak in two contradictory voices. The two departments of the Union of India cannot be permitted to take stands which are diagonally opposite. We may gainfully refer to the following observations made by a three-Judges Bench of this Court in the case of ***Lloyd Electric and Engineering Limited v. State of Himachal Pradesh and Others***[3]:

"**14.** The State Government cannot speak in two voices. Once the Cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31-3-2009, up to 31-3-2013, and the Notification dated 29-5-2009, accordingly, having been issued by the Department concerned viz. Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one voice. It has only one policy. The departments are to implement the government policy and not their own policy……"

53. We, therefore, impress upon the Union of India to evolve a mechanism to ensure that whenever such conflicting stands are taken by different departments, they should be resolved at the governmental level itself.

54. We, therefore, direct the Registry to furnish a copy of this judgment to the learned Attorney General for India to use his good offices and do the needful.

55. In the result, we pass the following order:

(i) The appeals are allowed;

(ii) The judgment and order dated 30th June 2021 passed by the Division Bench of the High Court in LPA No. 22 of 2017 in SCA No. 184 of 2017 with SCA No. 5816 of 2017 is quashed and set aside;

(iii) The SCA Nos. 184 and 5816 of 2017 are remitted back to the learned Single Judge of the High Court for consideration afresh, to be decided as expeditiously as possible and preferably within a period of six months from the date of this judgment.

56. Until further orders are passed by the learned Single Judge, the interim order dated 26th April 2019 passed by the Division Bench in LPA No. 22 of 2017 shall continue to operate.

57. We clarify that our order would not come in the way of the parties in arriving at a settlement which would be acceptable to both the parties.

58. Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

[3] (2016) 1 SCC 560