Supreme Court of India
Rishi Kiran Logistics P.Ltd vs Board Of Trus. Of Kandla Port ... on 21 April, 1947
Author: A Sikri
Bench: Surinder Singh Nijjar, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4655/2014
[Arising out of Special Leave Petition (Civil) No. 7301 of 2011]

Rishi Kiran Logistics Pvt. Ltd. ….....
Appellant (s)

Versus

Board of Trustees of Kandla Port Trust & Ors. ….....
Respondent (s)

J U D G M E N T

A.K. SIKRI, J.

1. Leave granted.

2. The factual matrix which needs to be taken note of, for the purpose of deciding the present appeal, unfolds as under:-

Respondent No. 2 herein, viz., the Board of Trustees of Kandla Port Trust (hereinafter referred to as the 'Port Trust') has number of plots, in and around Kandla Port, which are of different sizes. The Port Trust took a decision, sometime in the year 2005, to allot these plots on leasehold basis for a period of 30 years for the purpose of enabling the allottees thereof to put up the construction of liquid storage tanks. For this purpose the Kandla Port Trust issued notice inviting tenders dated 12.3.2005. The annual rent in respect of these plots was fixed at a nominal rate of Re. 1/- per plot. However, the bidders were required to submit the price bid in the form of premium in respect of the concerned plots for which they intended to bid. The basic value of this premium was fixed at Rs. 612/- per sq. mtr. The bids were to accompany the earnest money deposit of Rs. 3 lakhs per plot. As per the prescribed procedure in such matters, the Port Trust held pre-bid meeting on 21.4.2005 wherein the terms of NIT of the bidders were explained and querries answered. The bidders were also informed that since these plots fall under Coastal Regulatory Zone (CRZ), requisite permission from the competent authority under CRZ was required which would be obtained by the Kandla Port

Trust. However, at the same time it was also made clear that any specific clearance like safety, pollution control etc. was to be obtained by the individual lessee (s). This was also reiterated vide communication dated 25.5.2005. In this letter it was also stated that the successful bidder was required to pay the premium within a period of 3 months from the issuance of formal letter of allotment or CRZ clearance whichever was earlier. One more pre-bid meeting was held on 20.6.2005 and, thereafter the last date of submitting the tender was also postponed and subsequently fixed as 11.8.2005.

3. The appellant submitted its bid in respect of Plot Nos. 14, 15 and 17. The technical bids of the bidders, including that of the appellant, were opened on 11.8.2005. Bid of the appellant was found to be technically qualified. Thereafter, price bids were opened on 30.8.2005. These bids were scrutinised by the Tender Committee of the Port Trust. Recommendations were placed before the Board of Trustees in its meeting held on 8.12.2005. It was followed by communication dated 7.1.2006 to the appellant in the form of Letter of Intent (LOI), inter alia stating that the leasehold rights in respect of Plot Nos. 14, 15 and 17 were given for a premium of Rs. 3,200/- per sq. mtrs., 3,150/- per sq. mtr. and 3,120 per sq. mtr. respectively. This communication further mentioned that the formal letter will be issued to the appellant after the receipt of CRZ clearance in general.

4. The letter of allotment to the various successful bidders went into limbo thereafter, presumably awaiting CRZ clearance. The Gandhidham Chamber of Commerce and Industry was informed about this road block by the Port Trust in response to its representation, wherein the Port Trust also requested the said Chamber of Commerce and Industry to use its good office with the Ministry of Environment and Forest, Union of India for early clearance of CRZ permission.

5. It appears that CRZ clearance was ultimately received on 16.8.2010. However, this occurred more than 5 years after the NIT dated 12.3.2005 was floated. This prolonged time lag resulted in taking decision by the Board of Trustees on 9.12.2010, in the form of Resolution No. 108, deciding to cancel the tender process started in the year 2005. This decision of the Port Trust was conveyed to the appellant vide letter dated 9.12.2010. Similar letters were written to other tenderers as well who were issued similar LOI's.

6. All these affected persons challenged the validity of Resolution No. 108 of the Port Trust by preferring Writ Petitions under Article 226 of the Constitution of India in the High Court of Gujarat. One such Writ Petition being Special Civil Application No. 286 of 2011 filed by M/s. Nikhil Adhesives Ltd. was dismissed by the High Court vide detailed reasoned judgment dated 4.2.2011. Another SCA NO. 1328 of 2011 filed by IMC Limited was also dismissed by detailed reasoned order on 7.2.2011. When the petition of the appellant herein i.e. SCA No. 1877 of 2011 came up before the same Bench of the High Court on 10.2.2011, following the decision in the said two Writ Petitions the Court dismissed the petition of the appellant as well with one paragraph order, which reads as follows:-

> “Identical petitions for the same purpose and with the same prayer being Special Civil Application Nos. 286 of 2011 and 1328 of 2011 have been decided by this Court by CAV judgment dated 4.2.2011 and order dated 7.2.2011 respectively. Since no new

> issue is raised and the factual matrix admittedly remains the same, present petition is summarily dismissed for the reasons discussed in detail in CAV judgment dated 4.2.2011 in Special Civil Application No. 286 of 2011."

7. Appellant has challenged the aforesaid order in the present appeal.

8. We may also record at this stage that IMC limited, M/s. Nikhil Adhesive Ltd. as well as one more similarly situated person had also filed Special Leave Petitions. All these four petitions were listed and were taken together for hearing from time to time. When these matters came up for hearing 14.3.2014 other three petitioners sought permission to withdraw their Special Leave Petitions which were accordingly dismissed as withdrawn on 14.3.2014. Case of the appellant herein only remain in which we have heard the arguments in detail.

9. Before we proceed to take note of the submissions of the learned Counsel for the parties on either side, it would be better to glance through the two reasoned judgments rendered by the High Court which have been followed in the case of the appellant herein.

10. In M/s. Nikhil Adhesive Limited, after taking note of the factual background starting from the issuance of tender and culminating in cancellation of said tender process by the impugned Resolution No. 108, the High Court found that the challenge to the said resolution was predicated on the following premise:-

> I. With the issuance of LOI to the successful highest bidder, a concluded contract was arrived at between the parties and, therefore, it was not permissible for the Port Trust to terminate the tender process thereafter.
>
> II. Doctrine of promissory estoppel was applicable in as much as by its actions and conduct, the Port Trust had given a clear and unequivocal promise, with intention to create legal relation to arise in future and the Port Trust i.e. the promissory was bound by the said promise and to honour its commitment and not to back out of its obligation.
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> III. The action of the Port Trust, which was an instrumentality of the state being "other authority" under Article 12 of the Constitution, was arbitrary as it was not based on any rational or relevant principle. There amounted to infraction of Article 14 of the Constitution.

11. The High Court negated all the aforesaid propositions. Answering the first argument, the High Court concluded that the LOI issued by the Port Trust was just an information that the addressee (the petitioner therein) had been declared highest bidder for the plot for which it had submitted its tender. This letter further informed that formal allotment letter shall be issued after the receipt of CRZ clearance in general by Port Trust for tank forms for handling all hazardous and non-hazardous and also informing that additional CRZ clearance if required for installation, safety, pollution control etc. had to be obtained by the said petitioner, from time to time at its cost. This

letter also mentioned that payment will be made by the said petitioner after obtaining CRZ clearance for the individual premises allotted to it or within 3 months of issuance of allotment letter whichever was earlier. In the opinion of the High Court it did not result in any concluded contract.

In the process, the High Court also noted that after the issuance of LOI on 12.1.2006 till the passing of Resolution No. 108 dated 22.11.2010, no effective steps were taken by the said petitioner despite the fact that it was informed by the Port Trust on 15.2.2006 that the work of preparation of EIA studies in respect to allotment of 17 plots for construction of Liquid Storage Tanks for obtaining CRZ clearance from the Government of India, Ministry of Environment has already been entrusted to M/s. NIOT, Chennai along with other project works and the said institute had already completed site survey work for the purpose. The petitioner was also informed that the said M/s. NIOT, Chennai had suggested to provide following information for incorporation of the same in EIA Studies:- (I) Approximate estimation for the activity. (ii) Proposed activity (type of Cargos to be stored)

(iii) Proposed storage capacity (approximate quantum of the liquid commodity, size etc.) The petitioner was specifically informed that the said information was urgently required to be furnished to the NIOT so that the same would enable the said Institute to submit the report as early as possible for obtaining CRZ clearance in the matter. Since these informations were not supplied by the petitioner, another letter was issued by the respondent Trust on 13.5.2008 reiterating the same request to provide the said information.

However, instead of doing the needful by furnishing the details it only indulged in worthless correspondence and ultimately vide letter dated 18.1.2010 sought permission to carry out construction portion and maintenance of storage tanks in the name of one M/s Sanghvi Logistics Pvt. Ltd. instead o its own name which request was turned down vide letter dated 20.3.2010. Thereafter impugned resolution came to be passed. This showed that delay was entirely attributed to the said petitioner. Taking note of aforesaid contracts, the position is summed up by the High Court in the following words:-

> "In view of the matter, it cannot be said that there was any concluded contract between the petitioner and the respondent Port Trust nor any promise was given by the respondent Port Trust to allot Plot No. 8 to the petitioner. The letter of intent issued by the respondent was merely an expression of intention and imparting an information that the petitioner stood highest bidder and on receipt of CRZ clearance, the formal letter of allotment would be issued. However, the petitioner had not cooperated in the meantime for obtaining CRZ clearance and before any formal letter of allotment is issued, the earlier tender process stood cancelled.."

12. In so far as argument based on Article 14 is concerned, the High Court found that the action on the part of the Port Trust was neither arbitrary nor malafide. Before taking the decision, the Board had sought the opinion of the Additional Solicitor General. Further, the Port Trust was within its right to take such a decision in the year 2010 keeping in mind the larger public interest. The court noted that the original tender premium in the year 2005 was fixed on Rs. 612/- per sq. mtr. whereas fresh tender premium, after the cancellation of the earlier tender process was fixed at Rs. 8358 per

sq. mtrs.

13. In so far as argument of promissory estoppel is concerned the same was rejected on the ground that the LOI did not amount to any promise. Further, the petitioner had paid only Rs. 3 lakhs by way of earnest money as against the total premium amount which was 23.74 crores and was to be paid only after receipt of the said CRZ clearance, which amount was never paid.

14. The reading of the judgment in IMC Limited case would reveal that the Counsel for the petitioner in that case had argued that their case was distinguishable from the case of Nikhil Adhesives Limited on facts. Endeavour was made to demonstrate that in so far as the petitioner in IMC is concerned, it had supplied all the requisite details promptly and because of this reason the Port Trust had not issued any letters to them alleging default on their part in furnishing the details. Therefore, it could not be held responsible for delaying the tender process. It was, thus, argued that there was a concluded contract in their case and not a contingent one. Further, in any case the only contingency at the time of issuing LOI was the clearance of CRZ authorities which also was granted subsequently. In view of aforesaid argument, the court went into the specific question as to whether there was already a concluded contract between the parties. This issue has been answered against the petitioner in the said case holding that merely a Letter of Intent was issued and this expressed an intention of the parties to enter into a contract but no concluded contract ultimately fructified nor there was any promise given by the Port Trust. The Court reproduced the following discussion from its earlier judgment in Nikhil Adhesives Limited:

> "The letter of intent issued by the respondent Port Trust on 12.1.2006, at best, can be said to be an agreement to issue the allotment letter and to execute the lease document in favour of the petitioner subject to fulfilment of certain conditions. However, in absence of issuance of allotment letter, the said letter of intent cannot be enforced in the court of law. The Apex Court in Dresser Rand S.A. v. Bindal Agro Chem Limited and others (supra) clearly stated that a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. Such a letter of intent is not intended to bind either party ultimately to enter into any contract. Even in Speech & Software Technologies (India) Pvt. Ltd. v. Neos Interactive Limited (Supra), the Apex Court clearly held that an agreement to enter into an agreement is not enforceable nor does it confer any right upon the parties."

15. Before us as well, edifice of the case was sought to be erected on the same three pillars by Mr. Vikas Singh, learned Senior Counsel for the appellant. Therefore, we propose to straightaway go into these three aspects of the case and while discussing the same, we would take note of the arguments which were advanced by both the sides on these propositions.

I WHETHER DECISION CONTAINED IN RESOLUTION NO. 108 DATED 9.12.2010 IS ARBITRARY AND MALAFIDE.

16. Few facts, leading to this impugned Resolution, which need to be recapitulated are the following:-

> Tenders for allotment of plots on leasehold basis were floated on 12.3.2005. After receiving bids and evaluating technical as well as price bids respectively, the Tender Committee had recommended the cases for allotment of plots. In so far as the appellant is concerned in respect of all the three plots bearing No. 14, 15 and 17, LOI was issued after the Board agreed to accept the recommendations of the Tender Committee in its meeting held on 8.12.2005. However, in the LOI it was made clear that formal letter of allotment will be issued after receiving the CRZ clearance in general and if any further CRZ clearance was required for installation, safety, pollution etc. the same was to be obtained by the appellant. The Port Trust applied to the Ministry of Environment, Government of India for such permission. However, for one reason or the other, this permission/ clearance was not forthcoming. Even when Ghandhidham Chamber of Commerce and Industry wrote to the Port Trust, on behalf of these allottees who were issued LOI's and were waiting for formal letter of allotment, in reply the Port Trust had requested the said Chamber of Commerce and Industry to also use its good offices with the Ministry of Environment and Forests for early clearance of CRZ permission. It is a matter of record that for more than 5 years the clearance had not been granted and came to be granted only on 16.8.2010. By that time significant change had occurred from the date of the issuance of the NIT in March, 2005. The prices of the property had taken quantum jump. Though in the NIT premium was fixed on Rs. 612/- per sq. mtr., it was more than Rs. 8,000/- per sq. mtr. in 2010. In this backdrop the Port Trust wanted to take a decision as to whether it could go for fresh tenders. It is more than obvious that larger public interest demanded fresh tender process in order to receive maximum amount as the premium of Rs. 612/- per sq. mtr originally fixed and even the quotation of Rs. 3,000/- and odd of the appellant which were found to be highest, was far below the marked rate. Further, even when total premium amount to be paid by the appellant was to the tune of several crores for each plot at which LOI was issued in the year 2006, the appellant had paid only Rs. 3 lakhs by way of EMD in each case. No further amount was paid for want of final allotment letter. However before taking a final decision in the matter, the Port Trust sought legal opinion specifically on the point as to whether it would be prudent to cancel 2005 tender process and start fresh process so as to fetch the realistic marked price in accordance with present market value of the land. Based upon the expert legal opinion i.e. there was no legal impediment in cancellation of the tender process, the decision was taken by the Port Trust to cancel the earlier tender process and to start fresh process.

17. On the aforesaid facts there is hardly any scope for argument that the decision of the Port Trust is arbitrary. It is based on valid considerations. We have to keep in mind that while examining this aspect we are in the realm of administrative law. The contractual aspect of the matter has to be kept aside which would be examined separately while dealing with the issue as to whether there was a concluded contract between the parties. This distinction is lucidly explained in Kisan Sehkari Chini

Mills & Ors. v. Vardan Linkers & Ors.; (2008) 12 SCC 500. Keeping in mind this distinction between the two, we are not required to bring in the contractual elements of the case while dealing with the administrative law aspects.

18. When competing claims are private interest v. public interest, then in the case of disposal of public property the question would be whether the right of the person, who has earned the right to the public property in a public auction, is to be preferred over the right of the public in ensuring that valuable public assets were not disposed of except for a fair price and in a fair and transparent manner. Whether this court should, in judicial review, sit in judgment over the decision of a public body which is of the view that it need not go further ahead with the tender process. It is true if such a decision is taken without any reasons to support it or mere ipsi dixit it would be arbitrary. In this case there are reasons. The High Court analysed the reasons and has taken the view that those reasons are valid. In our view in matters particularly to the disposal of valuable assets by the State when the State seeks to explore the possibility of getting higher price.

19. The guiding principles in such cases can be noted from the judgments discussed hereinafter.

In Meerut Development Authority v. Assn. of Management Studies; (2009) 6 SCC 171, the decision related to disposal of public property by an instrumentality of the State. In the said context, the Court inter alia held as follows:

> "26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor made to suit the convenience of any particular person with a view to eliminate all others from participating in the biding process.
>
> The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.
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> It is so well settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partake the character of a trust. The methods to be adopted for disposal of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process.

> The authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reason, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrarinesses or favouritism."

20. Lucid enunciation on the scope of judicial review of administrative action, that too in tender matters can be found in Tata Cellular v. Union of India (1994 (6) SCC 651), where following discussion is worthy of extraction:

> "70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the state. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tneder is always available to the Government. But the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.
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> Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, bu the decision making process itself. The duty of the court is to confine itself to the question of legality. Its concern should be:
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> (i) Whether a decision making authority exceeded its powers?
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> (ii) Committed an error of law,
>
> (iii) Committed a breach of rules of natural justice,
>
> (iv) reached a decision which no reasonable tribunal would have reached or,
>
> (v) Abused its powers.
>
> Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.

(ii) Irrationally, namely Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact in R.V. Secretary of State for the Home Department, ex Brind Lord Diplock (1991) 1 AC 694, Lord Diplock refers specifically to one development namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should "consider whether something has gone wrong of a nature and degree which requires its intervention." Two other facets of irrationality may be mentioned.

i) It is open to the court to review the decision maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way cannot be upheld. Thus, in Emma Hotels Ltd. v. Secretary of State for Environment (1980) 41 P&* CR 255; the Secretary of State referred to a number of factors which led him to the conclusion that a non resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The divisional court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. Said that he could not see on what basis the Secretary of State had reached his conclusion.

ii) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in R.V. Barnet London Borough Council, ex. P. Johnson 35 (1989) 88 LGR 73 the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down."

21. In Tejas Constructions and Infrastructure (P) Ltd. v. Municipal Council, Sendhwa & Anr.; 2012 (6) SCC 464, the Court was dealing with the case of challenge to the awarding of contract to the 2nd respondent in the writ petition on the ground that he had not complied with eligibility requirements in NIT. Paragraph 17 of that case reads as follows:

"In Raunaq International Ltd. v. IV.R. Construction Ltd. (1999) 1 SCC 492, this Court reiterated the principle governing the process of judicial review and held that the writ court would not be justified in interfering with commercial transaction in which the State is one of the parties to the same except where there is substantial public interest involved and in cases where the transaction is mala fide."

22. In so far as argument of malafides is concerned, apart from bald averment, there are no pleadings and there is not even a suggestion as to how the aforesaid decision was actuated with malafides and on whose part. Even at the time of arguments Mr. Vikas Singh did not even advert to this aspect. In fact, the entire emphasis of Mr. Vikas Singh was that since there was a concluded contract between the parties, cancellation of such a contract amounted to arbitrariness. As already pointed out above that can hardly be a ground to test the validity of a decision in administrative law. For the sake of argument, even if you presume that there a concluded contract, mere termination thereof cannot be dubbed as arbitrary. A concluded contract if terminated in a bonafide manner, that may amount to breach of contract and certain consequences may follow thereupon under the law of contract. However, on the touch stone of parameters laid down in the administrative law to adjudge a decision as are arbitrary or not, when such a decision is found to be bonafide and not actuated with arbitrariness, such a contention in administrative law is not admissible namely how and why a concluded contract is terminated.

23. We, therefore, reject this contention of the appellant.

II WHETHER DOCTRINE OF PROMISSORY ESTOPPEL APPLIES.

24. Again, we clarify at the outset that even the principle of PROMISSORY estoppel is in the field of administrative law and while entertaining the arguments and discussion on this issue, the question Has to whether there was a concluded contract or not as to be kept aside. Precisely this was done in Kisan Sehkari Chini Mills Case (Supra). The Court dealt with the issue of legitimate expectation etc. separating it from the issue pertaining to conclude contract and made following pertinent observation in the process:

> "23. If the dispute was considered as purely one relating to existence of an agreement, that is whether there was a concluded contract and whether the cancellation and consequential non- supply amounted to breach of such contract, the first respondent ought to have approached the civil court for damages. On the other hand, when a writ petition was filed in regard to the said contractual dispute, the issue was whether the Secretary (Sugar), had acted arbitrarily or unreasonably in stying the operation of the allotment letter dated 26.3.2004 or subsequently cancelling the allotment letter. In a civil suit, the emphasis is on the contractual right. In a writ petition, the focus shifts to the exercise of power by the authority, that is, whether the order of cancellation dated 24.4.2004 passed by the Secretary (Sugar), was arbitrary or unreasonable. The issue whether there was a concluded contract and breach thereof becomes secondary. In exercising writ jurisdiction, if the High Court found that the exercise of power in passing an order of cancellation was not arbitrary and unreasonable, it should normally desist from giving any finding on disputed or complicated questions of fact as to whether there was a contract, and relegate the petitioner to the remedy of a civil suit. Even in cases where the High Court finds that there is a valid contract, if the impugned administrative action by which the contract is cancelled, is not unreasonable or arbitrary, it should still refuse to interfere with the same, leaving the aggrieved party to work out his remedies in a civil court. In other words, when there

is a contractual dispute with a public law element, and a party chooses the public law remedy by way of a writ petition instead of a private law remedy of a suit, he will not get a full fledged adjudication of his contractual rights, but only a judicial review of the administrative action. The requisition whether there was a contract and whether there was a breach may, however, be examined incidentally while considering the reasonableness of the administrative action. But where the question whether there was a contract, is seriously disputed, the High Court cannot assume that there was a valid contract and on that basis, examine the validity of the administrative action.

In this case, the question that arose for consideration in the writ petition was whether the order dated 24.4.2004 passed by the Secretary (Sugar), cancelling the allotment letter dated 26.3.2004 was arbitrary and irrational or violative of any administrative law principles. The question whether there was a concluded contract or not, was only incidental to the question as to whether cancellation order dated 24.4.2004 by the Secretary (Sugar), was justified. As the case involved several disputed questions in regard to the existence of the contract itself, the High Court ought to have referred the first respondent to a civil court. But the High Court in exercise of its writ jurisdiction, proceeded as if it was dealing with a pure and simple civil suit relating to breach of contract."

25. Having noted the conceptual aspect of the doctrine of promissory estoppel, let us consider as to whether the appellant can successfully invoke this principle in the present case? For this, let us recapitulate the salient features of this case having bearing on this issue. Apart from paying EMD of Rs. 3 lakhs alongwith tender documents, the appellant did nothing more and in fact, no occasion for the same even occurred in the present case. As stated above LOI was issued but it clearly mentioned that the total premium amount in respect of each of the three plots (which runs into several crores in each case) was not to be paid on the issuance of said LOIs. Reason for this was that formal LOI or leased documents were to be executed only after the CRZ clearance. For this reason it was specifically mentioned in the LOI itself that the premium amounts were to be paid by the appellant only after the receipt of CRZ clearance in general and after issuance of allotment letter as well as individual CRZ clearance and on execution of these documents. Before these events could happen, the Port Trust decided to cancel the entire process. Thus, except making payment of Rs. 3 lakhs by way of earnest money the appellants did not incur any other expenses or suffered any liabilities or took any steps to implement the project of construction and maintenance of the tanks. The High Court has, therefore, rightly remarked that even if it is assumed that issuance of LOI tantamounted to a promise given by the Port Trust, the appellants did not alter its position to its prejudice pursuant thereto to such an extent which could inspire the court to take the decision that holding the promisor to its representation is necessary to do justice between the parties.

26. In MP Mathur & Ors. v. OIC & Ors.; 2006 (13) SCC 706 it is held that once the public interest is accepted as the superior equity which can override individual equity, the principle would be applicable. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such

withdrawal. Merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of doctrine acted on the basis of a notification, it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest. This contention of the appellant, therefore, is equally devoid of any merits.

III WHETHER THERE WAS CONCLUDED CONTRACT BETWEEN THE PARTIES:-

27. We have already indicated above that the of the doctrine of fairness as well as promissory estoppel are in the realm of administrative law, whereas the issue as to whether a concluded contract was entered into between the parties and if so, the question of enforcement of such a contract would be in the field of law of contract. Bearing in mind this distinction becomes more important as the High Court was dealing with the petition filed by the appellant under Article 226 of the Constitution.

28. Before proceeding further in the matter we would again like to discuss the judgment of this court in Kisan Sahkari Chini Mills Ltd. & Ors. (Supra) which has been earlier referred to. This case unambiguously explains the approach which the High Court will have in such a petition filed under Article 226 of the Constitution, dealing with the arguments predicated on contractual aspects.

In that case there were six State controlled sugar mills in Uttaranchal State which produced molasses. Sale of molasses by them was controlled by the Molasses Sale Committee (MSC) constituted by the State Government.

A tender notice was published by the appellant sugar mill inviting offers from bona fide consumers for purchase of molasses from the other five sugar mills. The tenders were to be submitted to the ACC in accordance with the conditions specified in the tender notice. The proceedings in regard to the tenders received culminated in an order from the ACC permitting the respondent to lift 85,000 quintals of molasses from the five sugar mills at a price of Rs. 127 per quintal. Around that time, the State Government received several reports that the prevailing price of molasses was much higher. The Secretary, Cane Development and Sugar Industries (Secretary (Sugar)) therefore, stayed the operation of ACC's order.

The respondent then approached the High Court by a writ petition seeking a direction for continuance of supply of the entire quantity of 85,000 quintals of molasses to it. By an interim order, the High Court directed the State Government to decide the respondent's claim after hearing the respondent. Pending such decision, the High Court permitted the respondent to lift up to 20,000 quintals of molasses. After hearing the respondent, the Secretary (Sugar) held that there was no valid contract for supply of molasses to the first respondent and that, therefore, the allotment letter issued by the ACC was without any authority. Consequently he cancelled the same.

Aggrieved by the interim order of the High Court to supply 20,000 quintals of molasses to the respondent, the appellants approached the Supreme Court which in turn, set aside that interim

order and permitted the respondent to amend the writ petition to challenge the order of the Secretary (Sugar).

The respondent amended its writ petition accordingly. During the hearing, certain disputed facts cropped up. The High Court called the managers of two of the sugar mills and put some questions to them and recorded their statements. The High Court reached the conclusion that there was a concluded contract between the five sugar mills and the respondent for sale of 85,000 quintals of molasses at a price of Rs. 127 per quintal. Thereafter, it held that having regard to the doctrines of part performance, legitimate expectation, estoppel and acquiescence, the cancellation of the allotment letter issued by ACC was unsustainable. Therefore, the High Court quashed the order of the Secretary (Sugar) and directed that the respondent should be allowed to lift 85,000 quintals of molasses less the quantity already lifted. The said judgment of the High Court was challenged in these appeals.

The question before the Supreme Court were: (I) Whether the High Court was right in concluding/ assuming that there was a valid contract? And (ii) Whether the High Court was justified in quashing the order of the Secretary (Sugar)?

This court answered the aforesaid questions in the negative and set aside the judgment of the High Court holding that ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He would be entitled to the relief of specific performance, if the contract was capable of being specifically enforced in law. The remedies for a breach of contract being purely in the realm of contract are dealt with by civil courts. The public law remedy, by way of a writ petition under Article 226 of the Constitution, is not available to seek damages for breach of contract or specific performance of contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 may be invoked.

It is clear that the aforesaid case is closest to the facts of the present case.

29. It thus stands crystalised that by way of writ petition under Article 226 of the Constitution, only public law remedy can be invoked. As far as contractual dispute is concerned that is outside the power of judicial review under Article 226 with the sole exception in those cases where such a contractual dispute has a public law element.

30. We have already held that the impugned decision of the Port Trust was not arbitrary, unreasonable or malafide and further that the doctrine of promissory estoppel has no application in the present fact situation.

31. In so far as the issue regarding concluded contract in the present case is concerned, this falls squarely in the realm of the contract law, without any hue or shade of any public law. In fact, that is not even pleaded or argued. At the same time, whether there was a concluded contract or not is seriously disputed by the respondents and, therefore, in the first instance it was not even necessary for the High Court to go into this issue and could have relegated the appellant to ordinary civil remedy. We are conscious of the position that merely because one of the authorities raises a dispute

in regard to the facts, it may not be always necessary to relegate the parties to a suit. This was so stated in ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors.; JT 2013 (10) SC 300 in the following manner:-

> "37. In our opinion, this limited areas of dispute can be settled by looking into the terms of the contract of insurance as well as the export contract, and the same does not require consideration of any oral evidence or any other documentary evidence other than what is already on record. The claim of the contesting parties will stand or fall on the terms of the contracts, interpretation of which, as stated above, does not require any external aid."

32. At the same time, as already noted in Kisan Sahkari (Supra) this court had taken a view that where the question whether there was a contract or not is seriously disputed, the court is not to assume that there was a valid contract and on that basis examined the validity of the administrative action. Therefore, keeping in view the aforesaid understanding of the law, a very limited inquiry on this aspect is permissible.

33. Having considered the matter from this limited angle in exercise of powers of judicial review, we are of the view that on the facts of this case, no interference is required. Case of the appellant is that with the issuance of LOI a concluded contract was entered into. He had submitted that only CRZ clearance was required and even if LOI, which amounted to acceptance of the author given by the appellant in his bid was contingent based on CRZ clearance, even that clearance was granted by the competent authority ultimately. However, what is lost sight, in the entire process is that the said clearance was delayed by a period of 5 years. Because of that neither any final LOI could be issued, nor possession of the plots given or the payments received. It is also to be borne in mind that apart from general CRZ clearance, specific clearances on individual basis in this behalf were also to be obtained.

34. At this juncture, while keeping the aforesaid pertinent features of the case in mind, we would take note of the 'Rules and Procedure for Allotment of Plots' in question issued by Kandla Port Trust. As per clause 12 thereof the Port Trust had reserved with itself right of acceptance or rejection of any bid with, specific stipulation that mere payment of EMD and offering of premium will not confer any right or interest in favour of the bidder for allotment of land. Such a right to reject the bid could be exercised 'at any time without assigning any reasons thereto'. Clause 13 relates to 'approvals from statutory authorities', with unequivocal assertion therein that the allottees will have to obtain all approvals from different authorities and these included approvals from CRZ as well. As per clause 16, the allotment was to be made subject to the approval of Kandla Port Trust Board/ Competent Authority. In view of this material on record and factual position noted in earlier paras we are of the opinion that observations in the case of Dresser Rand S. A. v. M/s. Bindal Agro Chem. Ltd. & Anr.; AIR 2006 SC 871, would be squarely available in the present case, wherein the court held that a letter of intent merely indicates a parties intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in

order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that a detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether there is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. When the LOI is itself hedged with the condition that the final allotment would be made later after obtaining CRZ and other clearances, it may depict an intention to enter into contract at a later stage. Thus, we find that on the facts of this case it appears that a letter with intention to enter into a contract which could take place after all other formalities are completed. However, when the completion of these formalities had taken undue long time and the prices of land, in the interregnum, shot up sharply, the respondent had a right to cancel the process which had not resulted in a concluded contract.

35. We would also like to record here that Mr. Salve, learned Senior Counsel appearing for the respondent had submitted with vehemence that the case of the appellant herein was same as that of Nikhil Adhesives Ltd. in as much as even the appellant was responsible for contributing to the delay in obtaining the permission. Mr. Vikas Singh had attempted to refute this submission. However, we find that even when the High Court in the impugned order specifically referred to the decision in the case of Nikhil Adhesives Limited and observed that factual matrix remains the same, there is no pleading or ground in the SLP to the effect that the said judgment is not applicable to the case of the appellant as the appellant had submitted all requisite documents or obtaining the CRZ clearance and there was no delay on his part. However, since we are dismissing the appeal on merits, it is not necessary to dwell on this aspect any further.

36. We again emphasise that the issue of the argument of their being a concluded contract is raised in a petition filed under Article 226 of the Constitution and not by way of suit. The issue whether there was a concluded contract and breach thereof become secondary and is examined by us with that limited scope in mind. In such proceedings main aspect which has to be is as to whether impugned decision of the Port Trust was arbitrary or unreasonable. It is also important to remark that in a given case even if it is held that there was a concluded contract, whether specific performance can be ordered or not would be a moot question in writ proceedings. The appellant took the calculated risk in not going to the civil court and choosing to invoke extraordinary jurisdiction of the High Court, which is also discretionary in nature.

37. The outcome of the aforesaid discussion would be to hold that there is no merit in this appeal which is accordingly dismissed with costs.

.....J.

[Surinder Singh Nijjar] .....J.

[A.K. Sikri] New Delhi April 21, 2014