2013 (3) G.L.H. 448
BHASKAR BHATTACARYA, C.J.,
AND J. B. PARDIWALA, J.

Biomedical Lifescience Pvt. Ltd. and Anr. ....Petitioners

Versus

Union of India through Secretary-Ministry of Commerce and Ors.....Respondents

Special Civil Application No. 963 of 2013.

D/- 03,417.2013.

[A] ECONOMIC LAWS - Special Economic Zones Act, 2005 - S. 13 and S. 16 - Special Economic Zones Rules, 2006 - R. 19(4) and R. 19 (5) - Cancellation of Letter of Approval to entrepreneur - The expression "persistently contravened any of the terms and conditions or its obligations" - Scope and ambit of -The word "persistent" denotes making default obstinately and persevering in its default - The expression "persistently makes default" assumes the attitude of defiance, an element of obduracy and of a consistent course of conduct inspite of opposition, remonstrance, direction, guidance to the contrary - Section 16 therefore would apply only in cases where the Company has been able to implement the project and has commenced the production and thereafter if there is any persistent contravention or default on the part of the Company of the terms and conditions contained in the Later of Approval, the Authority would be justified in cancelling the Letter of Approval after giving opportunity of hearing - On the facts of the case Section 16 of the Act would not apply as the petitioner Company has not been able to implement the project and commence the production - Even the land allotted to the petitioner Company remained open plot - Held, opportunity of hearing is not required to be given to petitioner Company as provided under Sec.16 nf the Act.

In the present case, it is not in dispute that till this date the Company has not been able to implement the project and commence the production. The land which was allotted by the respondent No. 4 in favour of the petitioner still remains an open plot of land. It is also not in dispute that in terms of Rule 19(4) of the Special Economic Zones Rules, 2006. the respondent No. 2. vide order dated 1st October 2009, had extended the validity of the Letter of Approval for a further period of about one year and nine months i.e. upto 31st March 2011, but even during that extended time period, the petitioner failed to implement the project and commence the production. In such circumstances, by a deeming fiction as provided in Rule 19(5), the Letter of Approval is deemed

to have been lapsed. Therefore, the first question which we need to answer is, whether Section 16 of the Act on which strong reliance has been placed by the petitioner will apply so as to contend that before cancellation of the Letter of Approval the Authority ought to have afforded a reasonable opportunity to the petitioner of being heard. (Para 29)

In Section 16 of the Act 2005, the phrase "'persistently contravened any of the terms and conditions or its obligations" is a phrase of wide import. The intention of the Legislature is very clear that if there is a persistent default of any of the terms and conditions as laid in the Letter of Approval, then the Letter of Approval could be liable to be cancelled, but before cancelling the same, the entrepreneur must be afforded a reasonable opportunity of being heard. (Para 30)

The word "persistent" denotes making default obstinately and persevering in its default. The Chambers Dictionary (Twentieth Century) gives meaning of the word persistent as to continue steadfastly or obstinately especially against opposition (often within) : to persevere; to insist. Stroud's Judicial Dictionary, (third edition) states that the epithet persistent necessarily implies some degree of repetition. The word persistent would, therefore, imply to continue in the default obstinately against opposition. Persistent default must mean contumacious continuance in some course and neglect or breach of duty against opposition or remonstrance. The expression "persistently makes default" assumes the attitude of defiance, an element of obduracy and of a consistent course of conduct in spite of opposition, remonstrance, direction, guidance to the contrary. (Para 31)

In our opinion Section 16 would apply only in cases where the Company has been able to implement the project and has commenced production and thereafter if there is any persistent contravention or default on the part of the Company of the terms and conditions as contained in the Letter of Approval, then perhaps the Authority would be justified in cancelling the Letter of Approval after giving opportunity of hearing. (Para 35)

In taking this view, we derive support from sub-clause (3) of Section 1 3. which provides that without prejudice to the provisions of the Act, the entrepreneur whose Letter of Approval is cancelled under Sub-Section (1), then in such circumstances, the entrepreneur shall remit, the exemption, concession, drawback and any other benefit availed by him in respect of the capital goods, finished goods lying in stock and unutilized raw-material relatable to his unit in such a manner as it may have been prescribed. This is possible only if the entire project is implemented and the Company has started production. Here, in the present case, there is nothing except an open plot of land. In such circumstances, we find it very difficult to accept the submission of Mr. Nanavati that Section 16 provides for a reasonable opportunity of hearing which, in the present case, has not been provided to his client. (Para 36)

[B] ECONOMIC LAWS - Special Economic Zones Act, 2005 - S. 13, S.16 and S. 55 - Special Economic Zones Rules, 2006 - R. 19(4) and R. 19 (5) -Power to make rules by the Central Government - Extent of delegation -Framing of the rule in respect of grant of Letter of Approval and its lapse - Whether ultra vires the parent Act - The expression "any other matter which is to be prescribed" must mean any other matter which has to be prescribed under the Act -Any rule if it could be shown to have been made "to carry into effect the purpose of the Act", would be within the rule making power - Held, Rule 9(5) in respect of lapsing of the Letter of Approval on account of the unit not commencing the production or service activity within the validity period or extended validity period is within the rule making of the Central Government under Sec. 55 of the Act and therefore it is not ultra vires the Parent Act - The scope and ambit of challenge to the delegated legislation on the ground of being ultra vires to the Parent Act discussed. can be challenged before the Courts on the ground of being ultra vires the parent Act. The Courts can adjudge the legality and validity of delegated legislation by applying the doctrine of ultra vires. The doctrine of ultra vires has two aspects : substantive and procedural. When delegated legislation goes beyond the scope of the Authority conferred by, or it is in conflict with, the parent statute it is invalid and this is known as substantive ultra vires. When the rulemaking Authority deviates from the procedure, if any, prescribed by the parent statute for making rules, it is known as procedural ultra vires. In these writ petitions, what is urged is the substantive ultra vires only and not procedural ultra vires. Whenever any person or body of persons, exercising statutory Authority acts beyond the powers conferred upon him or them by statute, such acts become ultra vires and, accordingly, void. In other words, substantive ultra vires means the delegated legislation goes beyond the scope of the Authority conferred on it by the parent statute. It is a fundamental principle of law that a public Authority cannot act outside the powers i.e., ultra vires, and it has been rightly described us the central principle and foundation of large part of administrative law by Prof. Wade in his Treatise on Administrative Law. (Para 54)

In the same case, the Court also opined that the power delegated by the statute to the delegate is limited by its terms and subordinate to its objects. The delegate must act in good faith. reasonably, intra vires the power granted and on relevant consideration of material facts. It has also stated that all his decisions must be in harmony with the Constitution and other laws of the land; if they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, Court might well say, Parliament never intended to give Authority to make such rules, they are unreasonable and ultra vires. Thus, delegated legislation or subordinate legislation can be held valid only if it conforms exactly to the power granted. Rules, whether made under the Constitution or a statute, must be intra vires the parent law under which

power has been delegated. If the rule-making power is conferred and the rules made are in excess of that power the rule would be void even if the Act provided that they shall have effect as if enacted in the Act. The validity of the rule is always open to challenge on the ground that it is unauthorised. The validity of the delegated legislation is a question of vires, that is, whether or not the power has been exceeded or otherwise wrongfully exercised or is inconsistent with the parent Act. (Para 55)

Thus, it is clear that if power is conferred to legislate only with respect to certain topics or for certain purposes or in certain circumstances, the limits of the power must not be crossed. For this purpose, the phraseology of the delegating provision becomes relevant. In applying the doctrine, the Court has a three-fold task : first, to determine the meaning of the words used in the Act itself to describe the delegated legislation which the delegate is authorised to make; secondly, to determine the meaning of the subordinate legislation itself, and, finally, to decide whether the subordinate legislation complies with that description. (Para 57)

It also needs to be emphasised before proceeding further to deal with the contention of the learned Counsel for the petitioner, that in evaluating the vires of the delegated legislation, the Courts start with the presumption of constitutionality, competence and reasonableness of the delegated legislation impugned before it just as the Courts do in respect of primary legislation by the legislature. As a general proposition. delegated legislation is regarded as validly made, and part of the law of the land, until a Court decides otherwise. (Para 58)

"Any other matter which is to be prescribed" must mean, any other matter which has to be prescribed under the Act, and "any other matter which may be prescribed" must mean, any other matter regarding which there is a discretion to prescribe or not to prescribe under the Act. (Para 61)

Section 9 of the Act provides for the duties, powers and functions of the Board. Under Section 9(2). the powers and functions of the Board shall include the grant of the Letter of Approval. It is only after the Letter of Approval is issued that the unit desirous of obtaining benefits under the Act 2005 will be entitled to start with the project. (Para 62)

In such circumstances, we are not impressed with the submission of Mr.Nanavati that Rule 19(5) travels beyond the rule making power. Section 55 of the Act 2005 did not require that the enumerated rules would be exhaustive. Any rule, if it could be shown to have been made "to carry into effect the purpose of the Act", would be within the rule making power. (Para 63)

Rule 19(5) being statutory, is entitled to the insignia of all the presumptions available to a statutory provision. (Para 64)

[C] INTERPRETATION OF STATUTE - Primary rule of construction - Intention of the legislature has to be gathered primarily from the language used in the statute - In construing the statute, any word used in the statute should generally be given its plain and ordinary meaning unless any contrary intention appears.

We cannot ignore or overlook the language employed in the Section. The principles of construction require that the true legislative intent has to be determined. The intention of the Legislature has. however, to be gathered primarily from the language used in the statute. In construing any statute, any word used in the statute should generally be given its plain and ordinary meaning unless any contrary intention appears expressly or by necessary implications. In appropriate cases, true interpretation may require giving any particular word a special meaning for ascertainment of the true intention of the Legislature. (Para 34)

[D] CONSTITUTIONAL LAWS -Constitution of India, 1950 - Art. 226 - Writ - Scope and ambit of the High Court to issue - The remedy under Art. 226 is discretionary in nature - In a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court, while exercising its extraordinary jurisdiction may refuse to upset with a view to do substantial justice between the parties. (See: Para 70)

Cases Referred :

1. Consolidated Coffee Ltd. v. Coffee Board, Bangalore, AIR 1980 SC 1468, (Para 39)
2. State of Tamil Nadu v. M/s. Arooran Sugars Ltd., AIR 1997 SC 1815 (Para 40)
3. East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109, (Para 40)
4. Chief Inspector of Mines v. Karam Chand Thapar, AIR 1961 SC 838, (Para 40)
5. J. K. Cotton Spinning and Weaving Mills Ltd. v. Union of India, AIR 1988 SC 191, (Para 40)
6. M.Venugopal v. Divisional Manager, Life Insurance Corporation of India, AIR 1994 SC 1343 (Para 40)
7. Harish Tandon v. Addl. District Magistrate, Allahabad, AIR 1995 SC 676, (Para 40)
8. Andaleeb Sehgal v. Union of India and another, AIR 2011 Delhi 29 (FB)) (Para 41)
9. Lt. Col. Prithi Pal Singh Bedi v. Union of India and Ors., AIR 1982 SC 1413, (Para 43)
10. Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others AIR 1987 SC 1023 (Para 44)
11. Maneka Gandhi v. Union of India and another, AIR 1978 SC 597 (Para 47)

12. Tucker, L.J., emphasised in Russel v. Duke of Norfolk [1949] 1 All Eng. Reports 109 (Para 47)
13. Swadeshi Cotton Mills v. Union of India, AIR 1981 SC 818 (Para 49)
14. State of Orissa v. Dr. Bina Pani Dei, AIR 1967 SC 1269 (Para 49)
15. A.K.Kraipak v. Union of India, AIR 1970 SC 150 (Para 49)
16. Aligarh Muslim University and others v. Mansoor Ali Khan, AIR 2000 SC 2783 (Para 51) Relied on.
17. Indian Express Newspapers v. Union of India, AIR 1986 SC 515, (Para 54)
18. State of Karnataka v. H. Ganesh Kamath, AIR 1983 SC 550, (Para 56)
19. State of U. P. v. Renusagar Power Co., AIR 1988 SC 173 (Para 56)
20. State of U. P. v. Baburam, AIR 1961 SC 751 (Para 59)
21. J. K. Cotton Spinning and Weaving Mills v. State of Uttar Pradesh, AIR 1961 SC 1170 (Para 65)

Appearances :

Mr. K. S. Nanavati, Sr. Advocate for Nanavati Associates, Advocate for the Petitioners No. 1 -2,
Mr. P. S. Champaneri, Asstt.Solicitor General of India for the Respondent No. 1,
Mr. Kamal B.Trivedi, Advocate General with Ms. S. K.Vishen, AGP for the Respondent No. 4, Notice Served for the Respondents No. 2-3.

(As the paragraph numbers are not given in the copy of the judgment issued by the Registry of the High Court of Gujarat, the same are given in the journal as a part of process of editing for the sake of convenience of the Readers.)

PER : MR. J. B. PARDIWALA, J. :-

1. By this application under Article 226 of the Constitution of India, the petitioner No. 1, a Company registered under the Companies Act, 1956, and the petitioner No. 2, Chairman and Director of the Company, have prayed for the following reliefs :-

"(A) Your Lordships may be pleased to hold and declare Rule 19(5) of Special Economic Zones Rules, 2006 as ultra NOVEMBER 2013 vires the parent Act viz. The Special Economic Zones Act, 2005 and thus, Constitution of India;

(B) Your Lordships may be pleased to issue a writ of mandamus/certiorari or writ in the nature of mandamus/certiorari or any other writ, order or direction quashing and setting aside the impugned order dated 02.04.2012 issued by the Respondent No.3 - the Joint Development Commissioner. Pharmez SEZ, at Annexure A hereto and further be pleased to issue a writ of mandamus on the Respondent No.2 directing the said Authority to grant extension in the validity

of the Letter of Approval dated 06.08.2008 granted to the Petitioner No.1 Company, w.e.f. 31.03.2011 for a further period of five years;

(C) Pending the admission and final hearing of the present petition, Your Lordships may be pleased to suspend the operation and implementation of impugned order dated 02.04.2012 at Annexure A hereto and be further pleased to direct the Respondent No.2 Authority to grant extension in the validity of the Letter of Approval dated 06.08.2008 granted to the Petitioner No. 1 Company, w.e.f. 3 1.03.201 1 for a further period ot 5 years and be pleased to restrain the Respondents from granting Letter of Approval for Plot No.4 of Pharmez SEZ to any other person/Company, etc. other than the Petitioner No.l;

(D) An ex-parte ad-interim relief in terms of para (C) herein above may be granted in the interest of justice;

(E) Such other and further rclief(s) as may be deemed fit and proper in the facts of the case may be granted."

2. The case set up by the petitioners in this petition may be summarised as under :-

2.1 The petitioner No.1 is a Company incorporated under the provisions of the Companies Act,1956. The petitioner No. 2 is one of the Directors of the petitioner No.1 Company. The petitioner Company is engaged in the business of manufacture of intra ocular lenses and opthalmic products.

2.2 The respondent Nos. 2 and 3 are statutory Authorities appointed under the Special Economic Zones Act. 2005. The respondent No. 4 is a Company registered under the Companies Act, 1956 and has been granted approval by the Government of India, Ministry of Commerce and Industry, Department of Commerce (EPZ Section) to develop and operate Special Economic Zone for pharmaceuticals sectors at village Chacharvadi-Vasna and village Sari, Taluka Sanand, District Ahmedabad.

2.3 The Special Economic Zone project of the respondent No. 4 is known as "Pharmez SEZ".

2.4 It is the case of the petitioner that the respondent No. 4 has been granted various permissions and approvals by the Central/State Government Authorities for establishment of the SEZ at the locations referred to above in the preceding paragraph.

2.5 The object behind setting up of the SEZ schemes is to attract manufacturing and ancillary units of a particular field and/or various fields/sectors, as the case may be, at a particular location in order to generate

employment in as much as, create an atmosphere favourable to such units which contains organized and the state-of-the-art infrastructural facilities.

2.6 On the other hand, the Government gives various incentives and benefits including exemption from taxes, cess, duties, fees and other levies for the units which arc set up in the SEZ.

2.7 Under the Special Economic-Zones Act, 2005. the approval for setting up of the SEZ and permission to induct a unit is done by a Board of Approval under Section 8 of the Act 2005. In order to supervise and monitor the development of the SEZ, a Development Commissioner is appointed by the Central Government under Section 11 of the Act 2005. In the instant case, the Development Commissioner of Kandla Special Economic Zone came to be appointed as the Development Commissioner of Pharmez SEZ also.

2.8 The units desirous of participating in the SEZ are given various benefits of tax incentives The petitioner was also desirous of participating in the SEZ scheme of the developer i.e.the respondent No. 4 herein.

2.9 In response to the, application dated 3rd December 2007 of the petitioner for allotment of unit in the SEZ, the developer informed vide letter dated 11th December 2007 that it had reserved plot No. 4 admeasuring 11,679 sq.meters in the Pharmez SEZ for the petitioner and further informed that the said plot would be leased to the petitioner upon the petitioner getting a Letter of Approval from the Development Commissioner.

2.10 It was also confirmed that the petitioner had agreed to pay the development charges at the rate of Rs.2,220=00 per sq.meter aggregating to Rs.2,59,67,340=00 being a one-time non-refundable and non-interest bearing payment for plot No. 4. The petitioner was called upon to make 50% payment of the said amount i.e. Rs.1,29.83,670=00 within two days of receipt of the said letter and the balance amount within thirty days from the date of the Letter of Approval. The petitioner was also informed that it would have to obtain a No Objection Certificate (NOC) and a Consolidated Concern and Authorization (CCA) from the Gujarat Pollution Control Board (GPCB).

2.11 It is the case of the petitioner it started the process for obtaining various permissions and approvals in order to become eligible for allotment of plot in the SEZ.

2.12 The petitioner obtained consent from the GPCB on 28th August 2008 and various other permissions from the concerned Authorities for setting up of its unit in the SEZ. The petitioner also paid an amount of Rs.1 crore to the developer on 12th December 2007.

2.13 In order to facilitate obtaining of the approval for setting up of the unit by the petitioner, the developer addressed a letter dated 17th March 2008 to the Development Commissioner intimating that it had issued a letter to the petitioner regarding availability of the space and allotment of plot No. 4 in the SEZ.

2.14 Ultimately, the respondent No.1 - Government of India issued a Letter of Approval to the petitioner on 6th June 2008. The said Letter of Approval accorded permission to the petitioner to set up its unit for manufacture of foldable intraocular lenses and lenses kits. The Letter of Approval was valid for a period of one year within which the petitioner was obliged to implement the project and commence the production within the said period or within the period, as the case may be, extended by the Authority. The Letter of Approval was valid for a period of five years from the date of commencement of the production.

2.15 The petitioner, in compliance of the letter referred to above, informed the Development Commissioner on 12th July 2008 that it had accepted the terms and conditions of the Letter of Approval.

2.16 By letter dated 2nd March 2009, the petitioner had requested the Development Commissioner to issue the eligibility certificate for tax benefits/exemptions. A bond-cum-legal undertaking as required was also submitted by the petitioner to the said Authority. Upon being satisfied with the compliance of the petitioner, the Development Commissioner ultimately granted the eligibility certificate dated 31st March 2009 in favour of the petitioner.

2.17 The developer thereafter executed a lease-deed for ninety-nine years in favour of the petitioner on 1st May 2009 and the petitioner was put to physical possession of the subject plot on the date of the execution of the lease-deed.

2.18 The Clause 14 of the lease-deedprovided that the terms and conditions of the Letter of Approval shall have to be strictly followed by the petitioner. Clause 2.2 in the said lease-deedprovided a termination clause, which reads as follows :

"2.2 Period of Lease : The lease shall be for the Term. This Deed and the Lease hereunder shall stand terminated automatically, at the expiry of 99 years or upon the expiry or the cancellation of the Letter of Approval, whichever is earlier."

2.19 Under the Letter of Approval dated 6th June 2008, the petitioner was required to commence the production within one year i.e. on or before 5th June 2009 or within such period, as the case may be, extended by the Authority.

According to the petitioner, for the reasons beyond their control, the petitioner was not able to meet with the deadline set-out in the Letter of Approval.

2.20 As there was delay in implementation of the project, the petitioner, vide letter dated 7th September 2009, requested the Development Commissioner for extension of the validity of the Letter of Approval. Considering the circumstances, the Development Commissioner, vide letter dated 1st October 2009. extended the validity of the Letter of Approval up to 31st March 2011 as provided under Rule 19(4) of the Rules 2006. However, even thereafter, the petitioner failed to commence the construction activity, as a result of which, the respondent No.2 Development Commissioner, vide order dated 2nd April 2012, cancelled the Letter of Approval. According to the petitioner, such a fact of cancellation of Letter of Approval by the Development Commissioner was not brought to their notice at the relevant point of time but, for the first time, they learnt about the same on receiving an e-mail dated 4th October 2012 from the developer altogether with an attachment containing its letter dated 3rd October 2012.

2.21 According to the petitioner, the Authority took a very harsh action solely on the ground that the petitioner Company could not commence the commercial production within the time stipulated and/or within the extended period of the validity of Letter of Approval. The grievance of the petitioner is that before passing the impugned order, the Development Commissioner had neither given any show-cause notice nor had afforded any opportunity of hearing to the petitioners. According to the petitioners, the impugned order cancelling the Letter of Approval was in clear breach of the principles of natural justice.

2.22 It is the case of the petitioner that the impugned order has been passed under Rule 19(5) of the Special Economic Zones Rules, 2006, which are framed in exercise of power to make rules as provided in Section 55 of the Act. According to the petitioner, the Rule 19(5) travels beyond the provisions of the parent Act i.e.Section 16(1) of the Act. which provides that before: cancelling the Letter of Approval, a reasonable opportunity of hearing should be granted to the entrepreneur.

2.23 In such circumstances, the petitioners were left with no other option but to prefer the present application seeking appropriate reliefs as prayed for in this petition.

3. I. Stance of the Respondent No.2 - Development Commissioner, Kandla Special Economic Zone, Gandhidham :

3.1 The Special Economic Zone has been one of the latest measures adopted by the Government of India to promote exports from India and accordingly an announcement of Special Economic Zone in India came to be made through the

Annual Export - Import Policy of March, 2000 and accordingly at the first instance Chapter X-A in the Customs Act, 1962 was inserted by Section 126 of the Finance Act No.20/2002. Thereafter, the Act known as "the Special Economic Zones Act. 2005" came to be enacted by the Parliament which received the Presidential assent in June 2005 and became effective from 10.02.2006. The Preamble of the Act clearly states that, an Act to provide for establishment, development and management of the SEZs for the promotion of exports and for matters connected thereof or incidental thereto".

3.2 To instill confidence in investors and signal the Government's commitment to a stable SEZ policy regime and with a view to impart stability to the SEZ regime, thereby generating greater economic activity and employment through the establishment of SEZs, the policy was basically prepared after extensive discussions with the stakeholders. The main objectives of the SEZ Act are :-

(a) generation of additional economic activity;

(b) promotion of exports of goods and services;

(c) promotion of investment from domestic and foreign sources;

(d) creation of employment opportunities;

(e) development of infrastructure facilities;

3.3 The policy was framed with the expectations that it would trigger a large flow of foreign and domestic investment in SEZs, in infrastructure and productive capacity, leading to generation of additional economic-activity and creation of employment opportunities.

3.4 Section 16 of the Act 2005 would not apply in the present case as what has been complained against the petitioner is the violation of the terms and conditions of the lease-deed dated 1st May 2009. According to the respondents, the land/plot allotted to the petitioner by the developer as of date is an open piece of land and, therefore Section 16 will have no application as it speaks about persistent contravention of any of the terms and conditions or obligations as imposed in the Letter of Approval.

3.5 To put it in other words, since there is no activity worth the name, it could not be said that Section 16 will apply so as to afford a reasonable opportunity of being heard before the Letter of Approval is cancelled.

3.6 It is denied that Rule 19(5) of the Rules 2006 travels beyond the rule making power under Section 55 of the Act.

3.7 In such circumstances, it has been prayed that there being no merit in the petition, the same may be rejected.

4. II. Stance of the Respondent No.4- Developer :-

4.1 The respondent No. 4 is a developer of a Sector-Specific Pharmaceuticals Special Economic Zone being developed at village Matoda, Sari and Chancharvadi Vasna in Taluka Sanand, District Ahmedabad. The respondent No. 4 has been granted the requisite approval by the Government of India in its Ministry of Commerce and Industry, Department of Commerce, vide letter dated 21st June 2006, on certain terms and conditions under the provisions of the Special Economic Zones Act, 2005 and the Special Economic Zones Rules, 2006.

4.2 The petitioner No. 1 intended to set up a unit for manufacturing - (i) Foldable Intra Ocular Lens, and (ii) Folded Lenses Kits, and for that purpose, had approached the respondent No. 4 for setting up a unit in the said respondent No. 4 and has been granted a Letter of Approval, bearing No.DCO/PHARMEZ/B/04/2007-08/009, dated 6.6.2008 by the Government of India, Ministry of Commerce and Industry, Office of the Development Commissioner, on certain terms and conditions. It was a prime obligation of the petitioner No. 1 to strictly abide by the terms and conditions prescribed in the Letter of Approval and one of the important terms and conditions was the validity of the Letter of Approval which was for a period of one year from the date of issue thereof and the petitioner No.1 was to implement the project and commence the production within the said period of one year or within such period as may be extended. The relevant clause (vi) of the said Letter of Approval dated 6.6.2008 is reproduced hereunder for ready reference :

"(vi) The Letter of Approval is valid for a period of one year from its date of issue. You shall implement the project and commence production within one year period or within such period as may be extended."

4.3 The petitioner No. 1 was obliged to implement the project and commence the production within a period of one year or within such period as may be extended Unfortunately, the petitioner No.1 for the reasons best known to it, chose to ignore the terms and conditions of the Letter of Approval and has made no efforts towards the implementation of the project and commencement of the production within the stipulated period as prescribed.

4.4 The petitioner No.1, vide a letter dated 12th July 2008, conveyed its acceptance to all the terms and conditions incorporated in the Letter of Approval dated 6th June 2008. The Clause 14 of the said Bond-cum-Legal Undertaking, categorically provides that the obligors shall intimate any change in the Board of Directors/Partners, telephone number, e-mail address, website, passport number, Bank address and factory address forthwith to the

Development Commissioner and the Specified Officer. Pertinently, in the present case, the petitioner No. 1 having changed his address, had not taken care to convey about the same either to the respondent Nos. 1 to 3 or to the respondent No. 4 in compliance thereof for necessary action.

4.5 According to one of the conditions of the Letter of Approval, the petitioner No. 1 was to execute a Bond-cum-Legal undertaking as prescribed under the Rules which came to be executed by the petitioner No.1 on 23rd March 2009. Though the petitioner No.1 was duty bound to execute a Bond-cum-Legal undertaking immediately after the issuance of the Letter of Approval dated 6th June 2008, the petitioner No. 1 as aforesaid, chose to execute the same after a delay of almost 9 months i.e. 23rd March 2009. Since the petitioner No. 1 wanted to avail of the benefit of exemption from the payment of stamp duty and registration fee, made an application almost after a period of more than 9 months i.e. on 2nd March 2009 to the respondent No. 2, by which time, according to the condition No. (vi) of the Letter of Approval, the petitioner No. 1 was obliged to implement the project and commence the production within that period. The respondent No.3, immediately vide its letter dated 31st March 2009 granted the exemption certificate to the petitioner No.1 exempting the petitioner No.1 from making the payment of stamp duty and registration fee. It is only after obtaining the aforesaid exemption certificate that the lease-deed dated 1st May 2009 came to be executed between the respondent No. 4 on one hand and the petitioner No.1 on the other. The lease-deed could have been executed immediately after the issuance of Letter of Approval dated 6th June 2008, but as the petitioner No.1was desirous of availing of the benefit of exemption from the payment of stamp duty, waited for almost 9 months, when the validity period of one year as stipulated in the Letter of Approval was about to expire and thereafter, submitted an application dated 2nd March 2009 for exemption. It was only after availing of the benefit of exemption, the petitioner No. 1 executed a lease-deed on 1st May 2009. Besides the same, there was a delay on the part of the petitioner No.1 even in executing the Bond-cum-Legal undertaking as prescribed under the Letter of Approval, almost by a period of 9 months.

4. 6 The Sub-rule (5) of Rule 11 of the Rules stipulates that the land/unit etc. shall be given on lease-basis to the entrepreneurs holding a Letter of Approval issued under Rule 19 of the Rules. Accordingly, a lease-deed dated 1st May 2009 was executed by the respondent No. 4 in favour of the petitioner No. 1. According to clause 1.11 of the lease-deed, the rights in favour of the lessee would cease to exist automatically in case of the expiry or cancellation of the Letter of Approval.

4.7 By letter dated 2nd April 2012, the Ministry of Commerce and Industry, Office of the Development Commissioner cancelled the Letter of Approval dated 6th June 2008. The Sub-rule (5) of Rule 19 contains a deeming provision and it stipulates that if a unit has not commenced production or service activity within the validity period (in the present case it was extended upto 31st March 2011), the Letter of Approval shall be deemed to have been lapsed with effect from the date on which its validity expired.

4.8 The petitioner No. 1, vide letter dated 7th September 2009, requested the Development Commissioner, Office of the Development Commissioner, for extension of the time limit for implementation of the project till 31st March 2011.

Apropos the said request, the Ministry of Commerce and Industry, Government of India, vide letter dated 1st October 2009, in exercise of the powers conferred under sub-rule (4) of Rule 19 of the Rules, extended the validity of the Letter of Approval No.KASEZ/DCO/PH ARMEZ/B/04/07-08/09 dated 6th June 2008 upto 31st March 2011. Unfortunately, the petitioner No. 1. for the reasons best known to it. failed to put any efforts to implement the project and/or commencement of the production for manufacturing the aforesaid two products, viz. Foldable Intra Ocular Lens and Foldable Lenses Kits.

4.9 Almost a period of five years has lapsed and there is no semblance of any activity having started on the Plot No.4 admeasuring about 11697 sq.meters in the processing areas of the respondent No. 4 being developed by the respondent No. 4 near village Matoda, Taluka Sanand. The said fact is substantiated by the recent photographs placed on record. In view of the aforesaid background, it is discernible that the petitioner No.1 was not at all inclined to establish any manufacturing unit on the plot allotted to it apropos the Letter

of Approval dated 6th June 2008, inasmuch as the petitioner No. 1 has not put any efforts except executing the Bond-cum-Legal undertaking and the lease-deed. Not only this, no reasons are coming forth on behalf of the petitioner No. 1 as to under what circumstances, the petitioner No1 was unable to implement the project and commence the production. It is more than apparent that the petitioner No.1 has purposefully failed to abide by the terms and conditions of the Letter of Approval issued way back in the year 2008 and extended in the year 2010 upto 31st March 2011:

4.10 The underlined object of the policy is to make the SEZs an engine for economic growth supported by quality infrastructure complimented by an attractive fiscal package both at the Centre and State level with the minimum possible regulations. The policy has been framed with the expectation that it would trigger a large flow of foreign and domestic investment in the SEZs in infrastructure and productive capacity, leading to generation of additional economic activity and criterion of employment opportunities. It is discernible from the object of the Act that the policy is an engine for the economic growth supported by quality infrastructure. Keeping in view the said objective, an inbuilt machinery has been provided in the Act and the Rules to establish, implement and commence the operations within a stipulated timeframe, failing which, according to the deeming clause, the approval lapses. The underlined object is that without there being any delay, the unit concerned should implement the project and commence the operation. The same would generate economic activities and employment at the earliest. In the aforesaid background, it is clear that the petitioner No. 1 has utterly failed to implement the project without there being any justifiable reasons supporting the delay in implementing the project and thereby, frustrated the avowed object of the enactment of the Act as well as the policy framed by the Central Government in that behalf. The provisions of the Act are to be strictly construed inasmuch as, the Preamble of the Act clearly stipulates that the Act is to provide for establishment, development and management of the SEZ for the promotion of exports and matters connected thereof or incidental thereto. If the lapses on the part of the petitioners are condoned, the same would tantamount to frustrate the effective implementation of the provisions of the Act read with the Rules. III. Submissions on behalf of the Petitioner :-

5. Mr. K. S. Nanavati, the learned senior Advocate appearing on behalf of the petitioners vehemently submitted that the Rule 19(5) of the Special Economic Zones Rules, 2006 is in direct conflict with and is ultra vires the provisions of the parent statute and particularly Section 16 of the Special Economic Zones Act, 2005.

6. According to Mr. Nanavati, the provision in the parent statute expressly provides for conferring an opportunity of hearing fo an entrepreneur before its Letter of Approval is cancelled. However, the Rule 19(5) framed under the statute which is a subordinate piece of legislation nullifies the object and reason of providing opportunity of hearing, which is otherwise provided in the parent Act.

7. Mr. Nanavati submitted that Rule 19(5) confers uncontrolled and unbridled powers on the Authorities even without following the principles of natural justice.

8. Mr. Nanavati submitted that the condition imposed under Rule 4 of the Rules with regard to completion of the construction/commencement of commercial production within the stipulated time period is extendable on various grounds and/or practical difficulties and such condition must be construed as directory and not mandatory.

9. Mr. Nanavati submitted that his client has invested a sum of more than Rs.2 crore. Such amount is nonrefundable and non-interest bearing. In such circumstances, if some further period is not granted to commence with the activity, the entire amount of Rs.2,59,67,340=00 would stand forfeited.

10. According to Mr. Nanavati, if the order of cancellation of Letter of Approval is allowed to operate, the same would result in a situation whereby the respondent No. 2 would re-allot the Plot No. 4 to some other unit, thereby causing irreparable loss and injury to his client.

11. In such circumstances, Mr.Nanavati prays that the application merits consideration and the reliefs as prayed for may be granted.

IV. Submissions on behalf of the Respondent No.2 :-

12. Mr. Pankaj Champaneri, the learned Assistant Solicitor General of India appearing for the Development Commissioner, submitted that the Court should consider the objects and reasons in enacting the Special Economic Zones Act, 2005. Mr. Champaneri submitted that the principal contention on behalf of the petitioner as regards the violation of the principles of natural justice should also be appreciated in light of the objects and reasons.

13. According to Mr. Champaneri, if time is extended in the manner as suggested by the petitioner, then the entire object of the Act would be frustrated and such a construction should not be placed of a provision of law which would frustrate the very objects and reasons for which a piece of legislation is enacted.

14. Mr. Champaneri submitted that in the facts of the present case, Section 16 of the Act 2005 would have no application at all because it speaks of persistent contravention of any of the terms or conditions of the Letter of Approval In the present case, the plot is an open plot of land and there is no activity worth the name. In such circumstances Section 16 Will have no application. Mr. Champaneri submitted that under Rule 19(4), the Letter of Approval shall be valid for one year within which period the unit shall commence production and upon a request by the entrepreneur further extension may be granted by the Development Commissioner for valid reasons to be recorded in writing, for a further period not exceeding two years.

15. According to Mr. Champaneri, there is a second proviso in Rule 19(4) which provides that the Development Commissioner may grant further extension of one year from the date of second extension subject to the conditions that 2/3rd of activities including construction relating to the setting up of the unit is complete, which is missing in the present case. Therefore, according to Mr. Champaneri, clause (5) of Rule 19 has provided for a deeming fiction that the Letter of Approval would lapse with effect from the date on which its validity expires. Mr. Champaneri submitted that subclause (5) of Rule 19 is in no manner ultra vires the rule making power under Section 55 of the Act.

16. According to Mr. Champaneri, Section 55(2) makes it clear that the rules provided are for ail or any of the matters as contained from (a) to (zl) in particular, and without prejudice to the generality of the power as provided under Section 55(1) of the Act.

17. In such circumstances, Mr.Champaneri prays that there being no merit in this petition, the same may be rejected.

V. Submissions on behalf of the Respondent No.4 :-

18. Mr. Kamal B.Trivedi, the learned Advocate General appearing for the developer, vehemently submitted that no case has been made out by the petitioner for grant of any of the reliefs as prayed for in this petition.

19. According to Mr. Trivedi, even if it is assumed for the sake of argument that Section 16 is applicable in the present case and before cancelling the Letter of Approval the entrepreneur ought to have been afforded a reasonable opportunity of being heard, the same would have been an empty formality as it is undisputed that as on today, the land allotted in favour of the petitioner is an open plot of land and, therefore, in such circumstances, the hearing would have been just a formality. By merely pleading hardship or other difficulties in commencing with the project, the petitioner should not be permitted to frustrate the very object for which the Act 2005 came to be enacted. In other words, according to Mr. Trivedi, if no other conclusion was possible on admitted or indisputable facts, then the Court may not quash the order which could be termed as passed in violation of natural justice, in such circumstances, Mr. Trivedi prays that there being no merit in.this petition, the same may be rejected.

20. Having heard the learned Counsel for the respective parties and having gone through the materials on record, in our opinion, the following questions fall for our consideration :-

(1) Whether Rule 19(5) is ultra vires the provisions of the parent Act of 2005 on the premise that it travels beyond the rule making power as contained in Section 55 of the Act ?

(2) Whether Rule 19(4) which provides that if the unit has not commenced production or service activity within the validity period or the extended validity period under sub-rule (4). the Letter of Approval shall be deemed to have been lapsed with effect from the date on which its validity expired, is in any way in conflict with Section 16 of the Act, which provides that a Letter of Approval shall not be cancelled on persistent contravention of any of the terms and conditions unless the entrepreneur has been afforded a reasonable opportunity of being heard ?

(3) Whether in the facts of the present case. Section 16 of the Act 2005 which provides for cancellation of Letter of Approval to entrepreneur would be attracted or not ?

(4) Whether the Authority committed any error in passing the order impugned ?

21. Before adverting to the rival submissions made on either side, it will be profitable for us to look into the few relevant provisions of the Act as well as the Rules including the objects and reasons of the Act 2005.

Statement of Objects and Reasons :-

The Government of India had announced a Special Economic Zone Scheme in April 2000 with a view to provide an internationally competitive environment for exports. The objectives of Special Economic Zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious

and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth.

2. There are at present eleven functioning Special Economic Zones. While seven Zones have been set up by the Central Government, four by the private/joint/State sector. In addition, approvals have been given for setting up of thirty-five new Special Economic Zones in the private/joint/State sector.

3. While the policy relating to the Special Economic Zones is contained in the Foreign Trade Policy, incentives and other facilities offered to the Special Economic Zone developer and units are implemented through various-notifications and circulars issued by the concerned Ministries/Departments. The present system, therefore, does not lend enough confidence for investors to commit substantial funds for development of infrastructure and for setting up of the units in the Zones for export of goods and services. In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, a Central Act for Special Economic Zones has been found to be necessary in line with international practice. To achieve this purpose, a "Special Economic Zones Bill, 2005" is proposed. The salient features of the Bill are as under :-

(i) matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements. obligations and entitlements'.

(ii) matters relating to requirements for setting up of off-shore Banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;

(iii) the fiscal regime for developers of Special Economic Zones and units set up therein;

(iv) single window clearance mechanism at the Zone level;

(v) establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy, and

(vi) designation of special Courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

4. The Bill seeks to achieve the aforesaid objects.

22. Section 5 provides guidelines for notifying Special Economic Zone, which reads as under :-

"5. Guidelines for notifying Special Economic Zone :-

The Central Government, while notifying any area as a Special Economic Zone or an additional area to be included in the Special Economic Zone and discharging its functions under this Act, shall be guided by the following, namely :-

a. generation of additional economic activity;

b. promotion of exports of goods and services;

c. promotion of investment from domestic and foreign sources;

d. creation of employment opportunities;

e. development of infrastructure facilities; and

f. maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

23. Section provides for the duties, powers and functions of the Board constituted under Section 8 of the Act, which reads as under :-

"9. Duties, powers and functions of Board :-

1. Subject to the provisions of this Act, the Board shall have the duty to promote and ensure orderly development of the Special Economic Zones.

2. Without prejudice to the generality of the provisions contained in Sub-Section (1), the powers and functions of the Board shall include-

a. granting of approval or rejecting proposal or modifying such proposals for establishment of the Special Economic Zones;

b. granting approval of authorised operations to be carried out in the Special Economic Zones by the Developer;

c. granting of approval to the Developers or Units (other than the Developers or the Units which are exempt from obtaining approval under any law or by the Central Government) for foreign collaborations and foreign direct investments (including investments by a person resident outside India), in the Special Economic Zone for its development, operation and maintenance;

d. granting of approval or rejecting of proposal for providing infrastructure facilities in a Special Economic Zone or modifying such proposals;

e. granting, notwithstanding anything contained in the Industries (Development and Regulations) Act, 1951 (65 of 1951), a licence to an industrial undertaking referred to in clause (d) of Section 3 of that Act, if such undertaking is established, as a whole or part thereof, or proposed to be established, in a Special Economic Zone;

f. suspension of the Letter of Approval granted to a Developer and appointment of an Administrator under Sub-Section (1) of Section 10;

g. disposing of appeals preferred under Sub-Section (4) of Section 15;

h. disposing of appeals preferred under Sub-Section (4) of Section 16;

i. performing such other functions as may be assigned to it by the Central Government.

3. The Board may, if so required for the purposes of this Act or any other law for the time being in force relating to Special Economic Zones, by notification, decide as to whether a particular activity constitutes manufacture as defined

in clause (r) of Section 2 and such decision of the Board shall be binding on all Ministries and Departments of the Central Government.

4. The Board may delegate such powers and functions as it may deem fit to one or more Development Commissioners for effective and proper discharge of the functions of the Board.

5. Without prejudice to the foregoing provisions of this Act, the Board shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

6. The decision of the Central Government whether a question is one of policy or not shall be final."

24. Section 11 provides for a Development"" Commissioner, which reads as under :

"11. Development Commissioner :-

1. The Central Government may appoint any of its officers not below the rank of Deputy Secretary to the Government of India as the Development Commissioner of one or more Special Economic Zones.

2. The Central Government may appoint such officers and other employees as it considers necessary to assist the Development Commissioner in the performance of his functions in the Special Economic Zones established by a Developer (other than the Central Government) under this Act on such terms and conditions as it deems fit.

3. Every Development Commissioner, officer and other employee shall be entitled to such salary and allowances and subject to such terms and conditions of service in respect of leave, pension, provident fund and other matters as may, from time to time, be specified by the Central Government."

25. Section 12 provides for functions of a Development Commissioner, which reads as under :-

"12. Functions of Development Commissioner :-

1. Every Development Commissioner shall take all steps in order to discharge his functions under this Act to ensure speedy development of the Special Economic Zone and promotion of exports therefrom.

2. Without prejudice to the generality of the foregoing provisions, the Development Commissioner shall-a. guide the entrepreneurs for setting up of Units in the Special Economic Zone;

b. ensure and take suitable steps for effective promotion of exports from the Special Economic Zone;

c. ensure proper co-ordination with the Central Government or State Government Departments concerned or agencies with respect to, or for the purposes, of clauses (a) and (b);

d. monitor the performance of the Developer and the Units in a Special Economic Zone;

e. discharge such other functions as may be assigned to him by the Central Government under this Act or any other law for the time being in force; and

f. discharge such other functions as may be delegated to him by the Board.

3. Every Development Commissioner shall be overall in charge of the Special Economic Zone and shall exercise administrative control and supervision over the officers and employees appointed under Sub-Section (2) of Section 11 (including the officials deputed to such Special Economic Zone) to discharge any of the functions under this Act.

4. Without prejudice to the provisions of Sub-Sections (1) to (3), every Development Commissioner shall discharge such functions and exercise such powers as may be delegated to him by a general or special order by the Central Government or the State Government concerned, as the case may be.

5. Every Development Commissioner may call for such information from a Developer or Unit from time to time as may be necessary to monitor the performance of the Developer or the Unit, as the case may be.

6. The Development Commissioner may delegate any or all of his powers or functions to any of the officers employed under him."

26. Section 16 provides for cancellation of Letter of Approval to entrepreneur, which reads as under :-

"16. Cancellation of Letter of Approval to entrepreneur :-

1. The Approval Committee may, at any time, if it has any reason or cause to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligations subject to which the Letter of Approval was granted to the entrepreneur, cancel the Letter of Approval :-

Provided that no such Letter of Approval shall be cancelled unless the. entrepreneur has been afforded a reasonable opportunity of being heard.

2. Where the Letter of Approval has been cancelled under Sub-Section (1), the Unit shall not, from the date of such cancellation, be entitled to any exemption, concession, benefit or deduction available to it, being a Unit, under this Act.

3. Without prejudice to the provisions of this Act, the entrepreneur whose Letter of Approval has been cancelled under Sub-Section (1), shall remit, the exemption, concession, drawback and any other benefit availed by him in respect of the capital goods, finished goods lying in stock and unutilised raw materials relatable to his Unit, in such manner as may be prescribed.

4. Any person aggrieved by an order of the Approval Committee made under Sub-Section (1), may prefer an appeal to the Board within such time as may be prescribed.

5. No appeal shall be admitted it it is preferred after the expiry of the time prescribed therefor :-

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Board that he had sufficient cause for not preferring the appeal within the prescribed time.

6. Every appeal made under Sub-Section (4) shall be in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

7. The procedure for disposing of an appeal shall be such as may be prescribed :-

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard."

27. Section 55 provides for power to make rules, which reads as under :-

"55. Power to make rules :-

1. The Central Government may, by notification, make rules for carrying out the provisions of this Act.

2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the infrastructure facilities lecessary for the development of the Special Economic Zones under clause (p) and services in the Special Economic Zones under clause (z) of Section 2;

(b) the period within which the person concerned shall obtain the concurrence of the State Government under Sub-Section (3) of Section 3;

(c) the form and the manner in which a proposal may be made and the particulars to be contained therein under Sub-Section (5) of Section 3;

(d) the period within which the State Government may forward the proposal together with its recommendation under Sub-Section (6) of Section 3;

(e) the requirements subject to which the Board may approve, modify or reject the proposal under Sub-Section (8) of Section 3;

(f) the period within which the grant of Letter of Approval shall be communicated to the State Government or Developer or entrepreneur under Sub-Section (10) of Section 3;

(g) the other requirements for notifying the specifically identified area in a State as a Special Economic Zone under Sub-Section (1) of Section 4;

(h) the terms, conditions and limitations subject to which the goods or serviced exported out of, or imported into, or procured from the Domestic Tariff Area to, a Special Economic Zone, be exempt from payment of taxes, duties, or cess under Section 7;

(i) the procedure for transfer of Letter of Approval in case of suspension of Letter of Approval of a Developer under clause (a) of Sub-Section (9) of Section 10;

(j) the form and the manner in which a proposal may be submitted and the particulars to be contained therein under Sub-Section (1) of Section 15;

(k) the time within which a person aggrieved by the order of the Approval Committee may prefer an appeal under Sub-Section (4) of Section 15;

(1) the form in which the appeal shall be made and the fees for making such appeal under Sub-Section (6) of Section 15;

(m) the procedure for disposing of an appeal under Sub-Section (7) of Section 15;

(n) the requirements (including the period for which a Unit may be set up) subject to which the proposal may be approved, modified or rejected under clause (a) of Sub-Section (8) of Section 15;

(o) the terms and conditions for the Unit subject to which it shall undertake authorised operations under clause (b) of Sub-Section (8) of Section 15 and the obligations and entitlements of the Unit;

(p) the time within which a person aggrieved by the order of the Approval Committee may prefer an appeal under Sub-Section (4) of Section 16;

(q) the form in which the appeal shall be made and the fees for making such appeal under Sub-Section (6) of Section 16;

(r) the procedure for disposing of an appeal under Sub-Section (7) of Section 16;

(s) the form and the manner in which an application may be made for setting up of an Offshore Banking Unit in a Special Economic Zone under Sub-Section (1) of Section 17;

(t) the requirements for setting up and operation of an International Financial Services Centre in a Special Economic Zone under Sub-Section (1) of Section 18;

(u) the requirements and terms and conditions subject to which a Unit in the International Financial Services Centre may be set up and operated in a Special Economic Zone under Sub-Section (2) of Section 18;

(v) the form of single application for obtaining any licence, permission or registration or approval under clause (a) of Section 19;

(w) the form of single return or information to be furnished by an entrepreneur or Developer under clause (c) of Section 19:

(x) the manner in which and the terms and conditions subject to which the exemptions, concessions, draw back or other benefits shall be granted to every Developer and entrepreneur under Sub-Section (2) of Section 26;

(y) the period during which any goods brought into, or services provided in. any Special Economic Zone shall remain of continue to be provided in such Unit or Special Economic Zone under Section 28:

(z) the terms and conditions subject to which transfer of ownership in any goods brought into, or produced or manufactured in, any Unit or Special Economic Zone, or removal thereof from such Unit or Zone, shall be allowed under Section 29;

(za) the conditions subject to which the Units shall be entitled to sell the goods manufactured in a Special Economic Zone to the Domestic Tariff Area under Section 30;

(zb) the term of office of the Members, other than ex officio Members, of every Authority and the manner of filling of vacancies under Sub-Section (6) of Section 31;

(zc) the manner in which and the conditions subject to which and the purposes for which any person may be associated under Sub-Section (7) of Section 31;

(zd) the times and the places of meetings and the procedure to be followed in the transaction of business at the meetings under Sub-Section (10) of Section 31;

(ze) the powers and the functions of every Development Commissioner under Sub-Section (1) of Section 32;

(zf) the method of appointment of officers and other employees of every Authority, conditions of their service and the scale of pay and allowances under Sub-Section (3) of Section 32;

(zg) the other, functions to be performed by the Authority under clause (e) of Sub-Section (2) of Section 34;

(zh) the form in which the accounts and other relevant records of every Authority shall be maintained and annual statement of accounts shall be prepared under Sub-Section (i) of Section 37;

(zi) the form and the manner in which and the time at which every Authority shall furnish returns and statements and other particulars to the Central Government under Sub-Section (1) of Section 39;

(zj) the form in which and the date before which every Authority shall furnish to the Central Government the report of its activities, policy and programmes under Sub-Section (2) of Section 39;

(zk) the form in which and the particulars to be contained in the identity cards under Section 46;

(zl) any other matter which, is to be, or may be, prescribed.

3. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or. the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

28. Rule 19 with which we are concerned reads as under :-

"19. Letter of Approval to a Unit :-

(1) On approval of a proposal under rules 18 and 19, Development Commissioner shall issue a Letter of Approval in Form G, for setting up of the Unit;

(2) The Letter of Approval shall specify the items of manufacture or particulars of service activity, including trading or warehousing, projected annual export and Net Foreign Exchange Earning for the first five years of operations,

limitations, if any on Domestic Tariff Area sale of finished goods, by-products and rejects and other terms and conditions, if any, stipulated by the Board or Approval Committee: Provided that the Approval Committee may also approve proposals for broad-banding, diversification, enhancement of capacity of production, change in the items of manufacture or service activity, if it meets the requirements of rule 18 :-

Provided that no such approval shall be granted by the Approval Committee in those cases which fall within the competence of the Board of Approval :-

Provided also that the Approval Committee may also approve change of the entrepreneur of an approved unit, if the incoming entrepreneur undertakes to take over the assets and liabilities of the existing Unit.

(3) An entrepreneur holding Letter of Approval issued under sub-rule (1) shall only be entitled to set up a Unit in processing area of the Special Economic Zone or Free Trade and Warehousing Zone, as the case may be :

Provided that a proposal for setting up of a Unit in a Special Economic Zone or Free Trade Warehousing Zone shall be entertained only after the processing area of the Special Economic Zone or Free Trade Warehousing Zone has been demarcated under rule 11.

(4) The Letter of Approval shall be valid for one year within which period the Unit shall commence production or service or trading or Free Trade and Warehousing activity and the Unit shall intimate date of commencement of production or activity to Development Commissioner :

Provided that upon a request by the entrepreneur, further extension may be granted by the Development Commissioner for valid reasons to be recorded in writing for a further period not exceeding two years :-

Provided further that the Development Commissioner may grant further extension of one year subject to the condition that two-thirds of activities including construction, relating to the setting up of the Unit is complete and a chartered engineer's certificate to this effect is submitted by the entrepreneur :-

Provided also that the Board of approval may, upon a request in writing by the entrepreneur, and after being satisfied that it is necessary and expedient so to do grant further extension for a further period not exceeding one year, at a time.

(5) If the Unit has not commenced production or service activity within the validity period or the extended validity period under sub-rule (4), the Letter of Approval shall be deemed to have been lapsed with effect from the date on which its validity expired.

(6) The Letter of Approval shall be valid for five years from the date of commencement of production or service activity and it shall be construed as a licence for all purposes related to authorized operations, and, after the completion of five years from the date of commencement of production, the Development Commissioner may, at the request of the Unit, extend validity of the Letter of Approval for a further period of five years, at a time.

(7) If an enterprise is operating both as a Domestic Tariff Area unit as well as a Special Economic Zone Unit, it shall have two distinct identities with separate books of accounts, but it shall not be necessary for the Special Economic Zone unit to be a separate legal entity :-

Provided that foreign companies can also set up manufacturing units as their branch operations in the Special Economic Zones in accordance with the provisions of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 as amended from time to time."

29. In the present case, it is not in dispute that till this date the Company has not been able to implement the project and commence the production. The land which was allotted by the respondent No. 4 in favour of the petitioner still remains an open plot of land. It is also not in dispute that in terms of Rule 19(4) of the Special Economic Zones Rules, 2006, the respondent No. 2, vide order dated 1st October 2009, had extended the validity of the Letter of Approval for a further period of about one year and nine months i.e. upto 31st March 2011, but even during that extended time period, the petitioner failed to implement the project and commence the production. In such circumstances, by a deeming fiction as provided in Rule 19(5), the Letter of Approval is deemed to have been lapsed. Therefore, the first question which we need to answer is. whether Section 16 of the Act on which strong reliance has been placed by the petitioner will apply so as to contend that before cancellation of the Letter of Approval the Authority ought to have afforded a reasonable opportunity to the petitioner of being heard.

30. In Section 16 of the Act 2005, the phrase "persistently contravened any of the terms and conditions or its obligations" is a phrase of wide import. The intention of the Legislature is very clear that if there is a persistent default of any of the terms and conditions as laid in the Letter of Approval, then the Letter of Approval could be liable to be cancelled, but before cancelling the same, the entrepreneur must be afforded a reasonable opportunity of being heard.

31. The word "persistent" denotes making default obstinately and persevering in its default. The Chambers Dictionary (Twentieth Century) gives meaning of the word persistent as to continue steadfastly or obstinately especially against opposition (often within) : to persevere; to insist. Stroud's Judicial Dictionary, (third edition) states that the epithet persistent necessarily implies some degree of repetition. The word persistent would, therefore, imply to continue in the default obstinately against opposition. Persistent default must mean contumacious continuance in some course and neglect or breach of duty against opposition or remonstrance. The expression "persistently makes efault" assumes the attitude of defiance, an element of obduracy and of a consistent course of conduct in spite of opposition, remonstrance, direction, guidance to the contrary.

32. We shall now see as to which are those terms and conditions in the Letter of Approval which arc capable of being contravened persistently. The terms and conditions as contained in the Letter of Approval dated 6th June 2008 are as under:-

"6th June 2008 M/s.Biomedical Lifesciences Pvt. Ltd.

305, Asiatic Trade Centre, Nr.Navrangpura Jain Derasar, Rasala Marg, Navfangpura, Ahmedabad - 380 006.

Gentlemen.

Sub:- Setting up a unit in the Pharmez (Zydus) Special Economic Zone.

Please refer to your letter dated 14th March, 2008 for setting up a unit in the Pharmez (Zydus), Special Economic Zone.

Development Commissioner, Kandla Special Economic Zone is pleased to extend to you all the facilities and entitlements admissible to a unit in the Pharmez (Zydus) Special Economic-Zone subject to the provisions of the Special Economic Zones Act, 2005 and the rules and orders (as amended) made thereunder and for the establishment

of a new unit at Plot No.4, Pharmez (Zydus) Pharmaceutical Special Economic Zone, Sarkhej-Bavla, N.H.N0.8-A, Near Village Matoda, Taluka Sanand, Dist. Ahmedabad in the State of Gujarat for undertaking authorized operations, viz. Manufacturing.

Authorized Operations :-

Sr.No.	Items of Manufacture (under Chapter-90 & 39 of 1TC (HS))	Capacity (Unit) per annum
1	Foldable Intra Ocular Lens	420000
2	Foldable Lenses Kits	180000

2. This approval is subject to the following terms and conditions :-

(i) You shall export the goods manufactured, as per provisions of the Special Economic Zones Act, 2005 and Rules made thereunder for a period of five years from the date of commencement of production/service activities. For this purpose, you shall execute the Bond-Cum-Legal Undertaking as prescribed under the Special Economic Zones Rules. 2006.

(ii) You shall fulfill the pollution control requirements, as may be prescribed by the pollution control Authorities.

(iii) You shall achieve positive Net Foreign Exchange (NFE) as prescribed in the Special Economic Zone Rules. 2006 for the period you operate as a Unit in the Special Economic Zone from the commencement of production, failing which you shall be liable for penal action under the Foreign Trade (Development and Regulation) Act. 1992.

(iv) You may import or procure from the Domestic Tariff Area all the items required for your authorized operations under this approval, except those prohibited under the ITC (HS) Classifications of Export and Import items.

(v) You may supply/sell goods or services in the Domestic Tariff Area in terms of the provisions of the Special Economic Zones Act, 2005 and Rules and orders made thereunder.

(vi) This letter of Approval is valid for a period of one year from its date of issue. You shall implement the project and commence production within one year period or within such period us may be extended.

(vii) Date of commencement of production shall be intimated to the Development Commissioner.

(viii) This Letter of Approval shall be valid for a period of five years from the date of commencement of production.

(ix) The approval is based on the details furnished by you in your project proposal/application.

(x) You shall abide by the provisions of Special Economic Zones Act, 2005 and the rules and orders made thereunder.

(xi) You have the option to renew the approval or exit in terms of the provisions of Special Economic Zones Act, 2005 and the rules and orders made there under.

(xii) You shall confirm acceptance of the above terms and condition to the Development Commissioner within forty-five days of issue of this Letter of Approval.

(xiii) If you fail to comply with the conditions stipulated above, this Letter of Approval shall be cancelled as per the provisions of the Special Economic-Zones Act. 2005 and the rules and orders made there under.

(xiv) All future correspondence including for amendments/changes in terms and conditions of the Letter of Approval or for extension of its validity shall be addressed to the Development Commissioner.

(xv) No plant or machinery previously used for any purpose in Domestic Tariff Area shall be permitted."

33. The Condition No.(vi) states that the Letter of Approval would be valid for a period of one year from its date of issue and that the Company shall implement the project and commence the production within one year period or within such period as may be extended. Is this condition capable of being contravened or defaulted persistently ? Why we are saying so. is for the simple reason that a Letter of Approval will be liable to be cancelled under Section 16 only if the Authority is satisfied that there has been a persistent default or contravention.

34. We cannot ignore or overlook the language employed in the Section. The principles of construction require that the true legislative intent has to be determined. The intention of the Legislature has, however, to be gathered primarily from the language used in the statute. In construing any statute, any word used in the statute should generally be given its plain and ordinary meaning unless any contrary intention appears expressly or by necessary implications. In appropriate cases, true interpretation may require giving any

particular word a special meaning for ascertainment of the true intention of the Legislature.

35. In our opinion. Section 16 would apply only in cases-where the Company has been able to implement the project and has commenced production and thereafter if there is any persistent contravention or default on the part of the Company of the terms and conditions as contained in the Letter of Approval, then perhaps the Authority would be justified in cancelling the Letter of Approval after giving opportunity of hearing.

36. In taking this view, we derive support from sub-clause (3) of Section 13, which provides that without prejudice to the provisions of the Act, the entrepreneur whose Letter of Approval is cancelled under Sub-Section (1) then in such circumstances, the entrepreneur shall remit, the exemption, concession, drawback and any other benefit availed by him in respect of the capital goods, finished goods lying in stock and unutilized raw-material relatable to his unit in such a manner as it may have been prescribed. This is possible only if the entire project is implemented and the Company has started production. Here, in the present case, there is nothing except an open plot of land. In such circumstances, we find it very difficult to accept the submission of Mr. Nanavati that Section 16 provides for a reasonable opportunity of hearing which, in the present case, has not been provided to his client.

37. The aforesaid finding takes us to the second question as regards the deeming fiction contained in Rule 19(5) of the Rules 2006. Rule 19(4) provides that the Letter of Approval shall be valid for one year within which period the unit shall commence production. The first proviso empowers the Development Commissioner upon a request by the entrepreneur to extend such a period for a further period not exceeding two years. In the present case, the petitioner already availed of the benefit of the first proviso to Rule 19(4). The second proviso further empowers the Development Commissioner to extend the period by one more year but subject to the condition that 2/3rd of activities including construction relating to the setting up of the unit is complete and a Chartered Engineer's certificate to that effect is submitted by the entrepreneur. This second proviso will have no application to the facts of the case as there is nothing but just an open plot of land.

38. Rule 19(5) provides for adeemed lapse of the Letter of Approval if the unit has not commenced production or service activity within the validity period or the extended validity period under sub-rule (4). What is the effect of such a deeming provision and what could be the legislative intent behind providing such a deeming provision.

39. In Consolidated Coffee Ltd. v. Coffee Board, Bangalore, reported in AIR 1980 SC 1468, the purpose of the word 'deemed' occurring in Section 5(3) of the Central Sales Tax Act, 1956 came for consideration. The issue that emanated was whether a legal fiction had been created by use of the word

'deemed'. It is fruitful to reproduce what has been exposited by Their Lordships :-

"A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the legislature has made such a deeming provision. In St. Aubyn and Ors. v. Attorney General, 1952 A.C. 15 at p.53 Lord Radeliffe observed thus :-

"The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is. in the ordinary sense, impossible."

40. In State of Tamil Nadu v. M/s. Arooran Sugars Ltd., reported in AIR 1997 SC 1815, a Constitution Bench, while dealing with the deeming provision in a statute, opined that the role of a provision in a statute creating legal fiction is well settled. Their Lordships referred to the decisions in East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109, Chief Inspector of Mines v. Karani Chand Thapar, AIR 1961 SC 838, J. K. Cotton Spinning and Weaving Mills Ltd. v. Union of India, AIR 1988 SC 191, M.Venugopal v. Divisional Manager, Life Insurance Corporation of India, AIR 1994 SC 1343 and Harish Tandon v. Add/. District Magistrate, Allahabad, AIR 1995 SC 676, and came to hold that when a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the Court has to examine and ascertain as to for what purpose and between which persons such a statutory fiction is to be resorted to and thereafter the Courts have to give full effect

"6. ... It is a well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the Section by which it is created..."

41. From the aforesaid pronouncements, the principle discernible is that, it is the bounden duty of the Court to ascertain for what purpose the legal fiction has been created. It is also the duty of the Court to imagine the fiction with all real consequences and instances unless prohibited from doing so. That apart, the use of the term "deemed" has to be read in its context and further the fullest logical purpose and import are to be understood. It is because in

modern legislation, the term "deemed" has been used for manifold purposes. The object of the Legislature has to be kept in mind. (See Andaleeb Sehgal v. Union of India and another, AIR 2011 Delhi 29 (FB))

42. In the aforesaid context, we may also profitably state that the language employed in Rule 19(5) of the Rules 2006 must be read in a holistic and purposeful manner. The Court has a sacrosanct duty to understand the intention of the Legislature while interpreting a provision.

43. In Lt. Col. Prithi Pal Singh Bedi v. Union of India and Ors., reported in AIR 1982 SC 1413, the Apex Court has expressed the view as follows :-

"The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambiguity in the language used in Rule 40. If there is none, it would mean the language used speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the Authority by which the rule is framed This necessitates examination of the broad features of the Act."

44. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others, reported in AIR 1987 SC 1023, Their Lordships have ruled thus :

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual.

A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then Section by Section, clause by clause, phrase by phrase and word by word. If a statute is looked at. in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme. the Sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each Section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act.

No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and evcrythins is in its place..."

45. In our opinion, having regard to the Statement of Objects and Reasons, which we have quoted earlier, the intention of the Legislature in providing such a deeming fiction is to see that without there being any inordinate delay, the entrepreneur must implement the project and commence the production so that a project in a Special Economic-Zone is able to attract large flow of foreign and domestic investment leading to generation of additional economic activity and creation of employment opportunities. By keeping a plot open and not availing of the benefits as provided in the Act 2005. the whole purpose for which the plot is allotted would be frustrated.

46. In the aforesaid context, the other question for our consideration would be. whether we should read the principles of natural justice in Rule 19(5) despite the fact that Rule 19(5) provides a deeming fiction so far as lapse of the Letter of Approval is concerned. To appreciate this aspect, once again we need to look into the intention of the Legislature, more particularly, the objects and reasons for enacting the Act 2005.

47. In Maneka Gandhi v. Union of India and another, reported in AIR 1978 SC 597, the Apex Court, while posing the question as to how far natural justice is an essential element of procedure established by law', has held thus :-

".....There are certain well recognised exceptions to the audi alteram partem rule established by judicial decisions and they are summarised by S. A. de Smith in Judicial Review of Administrative Action, 2nded., at pages 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle which requires fair play in administrative action. The word 'exception' is really a misnomer because in these exclusionary cases, the audi alteram partem rule is held inapplicable not by way of an exception to "fair play in action", but because nothing unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the

Court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk [1949] 1 All Eng. Reports 109 that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case".

48. In the said case. Kailasm. J., while dealing with the concept of applicability of natural justice, referred to the decision in Union of India v. J. N. Sinha, AIR 1971 SC 40 and held as follows :

".... Rules of natural justice cannot be equated with the fundamental rights. As held by the Supreme Court in Union of India v. J. N. Sinha (1970) I SCR 791 :

(AIR 1971 SC 40), that "Rules of natural justice are not embodied rules nor can they be elevated to the position of Fundamental Rights, Their aim is to secure justice or to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. If a statutory provision can be read consistently with the principles of natural justice, the Courts should do so. But if a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice then the Court cannot ignore the mandate of the legislature or the statutory Authority and read into the concerned provision the principles of natural justice." So also the right to be heard cannot be presumed when in the circumstances of the case, there is paramount need for secrecy or when a decision will have to be taken in emergency or when promptness of action is called for where delay would defeat the very purpose or where it is expected that the person affected would take an obstructive attitude. To a limited extent it may be necessary to revoke or to impound a passport without notice if there is real apprehension that the holder of the passport may leave the country if he becomes aware of any intention on the part of the passport Authority or the Government to revoke or impound the passport. But that by itself would not justify denial of an opportunity to the holder of the passport to state his case before a final order is passed. It cannot

be disputed that the legislature has not by express provision excluded the right to be heard...."

49. In Swadeshi Cotton Mills v. Union of India, reported in AIR 1981 SC 818. the majority speaking through Sarkaria. J. adverted to the concept of basic facets of natural justice, the twin principles, namely, audi alteram partem and nemo judex in re sua, the decisions rendered in Maneka Gandhi (supra), State of. Orissa v. Dr. Bina Pani Dei, AIR 1967 SC 1269 and A.K. Kraipak v. Union of India, AIR 1970 SC 150 and eventually held thus :-

"31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (Per Hegde, J. in A.K. Kraipak, (1969)2 SCC 262 : (AIR 1970 SC 150). If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the Court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (See Union of India v. Col. J.N. Sinha, (1970) 2 SCC 458 : (AIR 1971 SC 40).

33. The next general aspect to be considered is :- Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors : such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature....."

50. Mr. Trivedi, the learned Advocate General, very vociferously contended that to give an opportunity to the petitioner Company of hearing would be an empty formality as it is not disputed by the Company that they have not been in a position to implement the project and commence the production not even within the first one year but even thereafter during the extended period of one year and nine months too. According to Mr. Trivedi, the second proviso to clause (4) of Rule 19 would have no application because it makes it very clear that extension under second proviso would be permissible only if 2/3rd of activities including construction relating to setting up of the unit was complete and a Chartered Engineer's certificate to that effect was submitted by the entrepreneur.

51. Mr. Trivedi placed strong reliance on the decision of the Supreme Court in the case of Aligarh Muslim University and others v. Mansoor Ali Khan,

reported in AIR 2000 SC 2783. This decision has been relied upon by Mr. Trivedi in support of his submission that there could be certain situations in which even though the order is passed in violation of natural justice the same need not be set-asideunder Article 226 of the Constitution of India. Mr. Trivedi pressed into service the "useless formality" theory, which of course is an exception. Mr. Trivedi placed reliance on the observations of the Supreme Court made in paragraphs 20, 21, 22, 23, 24 and 25, which read as under :

"20. As pointed recently in M. C.Mehta v. Union of India, (1999) 6 SCC 237 :1999 AIR SCW 2754 : (AIR 1999 SC 2583), there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao v. Government of Andhra Pradesh, (1965) 2 SCR 172 : (AIR 1966 SC 828), it is not necessary to quash the order merely because of violation of principles of natural justice.

21. In M. C. Mehta it was pointed out that at one time, it was held in Ridge v. Baldwin, (1964) AC 40, that breach of principles of natural justice was in itself treated as prejudice and that no other 'de facto' prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In S. L. Kapoor v. Jagmohan, (1980) 4 SCC 379 : (AIR 1981 SC 136), Chinnappa Reddy, J. followed Ridge v. Baldwin and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

22. Chinnappa Reddy, J. in S. I.Kapoor's case (AIR 1981 SC 136), laid two exceptions (at p. 395 of SCC) : (at pp. 147 and 148 of AIR) namely, "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

23. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K. L. Tripathi v. State Bank of India, (1984) 1 SCC 43 : (AIR 1984 SC 273 : 1983 Lab IC 1680). Sabyasachi Mukharji, J. (as he then was) also laid down principle that not mere violation of natural justice but de facto prejudice (other than non-issue of

notice) had to be proved. It was observed quoting Wade Administrative Law (5th Ed. Pp. 472-475) as follows (Para 31):-

"..... it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent.....There must have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject-matter to be dealt with and so forth." Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S. K. Sharma, (1996) 3 SCC 364 : (1996 AIR SCW 1740 : AIR 1996 SC 1669). In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P., (1996) 5 SCC 450 : (1996 AIR SCW 3424 : AIR 1996 SC 2736).

24. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, - there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M. C. Mehta, 1999 AIR SCW 2754 : (AIR 1999 SC 2583). referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Singham, Megarry, J. and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs, Garner. Craig. De Smith, Wade, D. H.Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

25. It will be sufficient, for the purpose of the case of Mr. Mansoor Ali Khan to show that his case will fall within the exceptions stated by Chinnappa Reddy, J. in S. L. Kapoor v. Jagmohan, AIR 1981 SC 136, namely, that on the admitted or indisputable facts - only one view is possible. In that event no prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued."

52. The aforesaid now takes us to the third question, whether Rule 19(4) and Rule 19(5) are ultra viresthe parent Act.

53. According to Mr. Nanavati, the power to frame rules flows from Section 55 of the Act. Section 55(1) states that the Central Government may, by notification, make rules for carrying out the provisions of the Act. Section 55(2)

states that in particular without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters as contained in Sections 2(a) to 2(zl). Section 2(zl) states that ''any other matter which is to be or may be prescribed".

54. It is true that a delegated legislation can be challenged before the Courts on the ground of being ultra viresthe parent Act. The Courts can adjudge the legality and validity of delegated legislation by applying the doctrine of ultra vires. The doctrine of ultra vires has two aspects : substantive and procedural. When delegated legislation goes beyond the scope of the Authority conferred by, or it is in conflict with, the parent statute it is invalid and this is known as substantive ultra vires. When the rule-making Authority deviates from the procedure, if any, prescribed by the parent statute for making rules, it is known as procedural ultra vires. In these writ petitions, what is urged is the substantive ultra vires only and not procedural ultra vires. Whenever any person or body of persons, exercising statutory Authority acts beyond the powers conferred upon him or them by statute, such acts become ultra vires and, accordingly, void. In other words, substantive ultra vires means the delegated legislation goes beyond the scope of the Authority conferred on it by the parent statute. It is a fundamental principle of law that a public Authority cannot act outside the powers i.e., ultra vires, and it has been rightly described as the central principle and foundation of large part of administrative law by Prof. Wade in his Treatise on Administrative Law. The act which is for any reason in excess of power is ultra vires. In Indian Express Newspapers v. Union of India, AIR 1986 SC 515, E.S.Venkataramaiah, J. (as he then was) stated (para 73) :-

"A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary".

55. In the same case, the Court also opined that the power delegated by the statute to the delegate is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted and on relevant consideration of material facts. It has also stated that all his decisions must be in harmony with the Constitution and other laws of the land; if they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, Court might well say. Parliament never intended to give Authority to make such rules, they are unreasonable and ultra vires. Thus,

delegated legislation or subordinate legislation can be held valid only if it conforms exactly to the power granted. Rules, whether made under the Constitution or a statute, must be intra vires the parent law under which power has been delegated. If the rule-making power is conferred and the rules made arc in excess of that power the rule would be void even if the Act provided that they shall have effect as if enacted in the Act. The validity of the rule is always open to challenge on the ground that it is unauthorised. The validity of the delegated legislation is a question of vires, that is, whether or not the power has been exceeded or otherwise wrongfully exercised or is inconsistent with the parent Act.

56. The doctrine of ultra vires quite often is one of the recognised principles/grounds to invalidate a delegated legislation. The basic principle of this doctrine is that an Authority being the creature of the law it has only such powers as are granted to it by the law. Declaring a rule in the Karnataka Motor Vehicle Rules. 1963 ultra vires the Motor Vehicles Act, 1939 as the rule was inconsistent with a Section in the Act, the Supreme Court, in State of Karnataka v. H.Ganesh Kamath, AIR 1983 SC 550, held that the rule- making power cannot include within its scope the power to make a rule contrary to the provisions of the Act conferring the rule-making power and that conferment of rule-making power by an Act does not enable the rule making Authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. The Apex Court in State of U. P. v. Renusagar Power Co., reported in AIR 1988 SC 1737, held (Para 76) :

"If the exercise of power is in the nature of subordinate legislation, the exercise must conform to the provisions of the statute. All the conditions of the statute must be fulfilled. Thus, delegated legislation repugnant to, or inconsistent with or in contravention of, or in excess of, or overriding the provisions of, the parent Act is ultra vires."

57. Thus, it is clear that if power is conferred to legislate only with respect to certain topics or for certain purposes or in certain circumstances, the limits of the power must not be crossed. For this purpose, the phraseology of the delegating provision becomes relevant. In applying the doctrine, the Court has a three-fold task : first, to determine the meaning of the words used in the Act itself to describe the delegated legislation which the delegate is authorised to make; secondly, to determine the meaning of the subordinate legislation itself, and, finally, to decide whether the subordinate legislation complies with that description.

58. It also needs to be emphasised before proceeding further to deal with the contention of the learned Counsel for the petitioner, that in evaluating the vires of the delegated legislation, the Courts start with the presumption of constitutionality, competence and reasonableness of the delegated legislation impugned before it just as the Courts do in respect of primary legislation by the

legislature. As a general proposition, delegated legislation is regarded as validly made, and part of the law of the land, until a Court decides otherwise. In HoffmanLa Roche v. Secretary of State for Trade and Industry, (1975) AC 295, Lord Diplock speaking for the House of Lords referred to this aspect and observed ;-

.....the presumption that subordinate legislation is intra vires prevails in the absence of rebuttal, and that it cannot be rebutted except by a party to legal proceedings in a Court of competent jurisdiction who has locus standi to challenge the validity of the subordinate legislation in question."

59. Thus, the Court while reviewing the validity of a delegated legislation, should presume such delegated legislation prima facie to be intra vires and it is for the person aggrieved to prove affirmatively that the presumption in favour of constitutionality, competence, fairness and reasonableness is unsustainable as held by the Apex Court in State of U. P. v. Baburam, AIR 1961 SC 751. The onus of establishing invalidity is on the challenger.

60. We need to examine the submission, whether the power to make rules in respect of "any other matter, which is to be or may be prescribed" will authorize the framing of Rule 19(5), which is impugned before us.

61. "Any other matter which is to be prescribed" must mean, any other matter which has to be prescribed under the Act, and "any other matter which may be prescribed" must mean, any other matter regarding which there is a discretion to prescribe or not to prescribe under the Act.

62. Section 9 of the Act provides for the duties, powers and functions of the Board. Under Section 9(2), the powers and functions of the Board shall include the grant of the Letter of Approval. It is only after the Letter of Approval is issued that the unit desirous of obtaining benefits under the Act 2005 will be entitled to start with the project.

63. In such circumstances, we are not impressed with the submission of Mr. Nanavati that Rule 19(5) travels beyond the rule making power. Section 55 of the Act 2005 did not require that the enumerated rules would be exhaustive. Any rule, if it could be shown to have been made "to carry into effect the purpose of the Act", would be within the rule making power.

64. Rule 19(5) being statutory, entitled to the insignia of all the presumptions available to a statutory provision. The Supreme Court. through Subbarao, J. (as His Lordship then was), considering the scope of the rule when its vires was assailed vis-a-visthe power of the Court to take judicial notice of presumption for the purpose of construction of the rule, held thus :-

"Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation. The statutory rules cannot be described as, or equated with administrative directions."

65. In J. K. Cotton Spinning and Weaving Mills v. State of Uttar Pradesh, reported in AIR 1961 SC 1170 at p.1174, Das Gupta, J. held :-

"In the Interpretation of Statutes the Court always presume that the Legislature inserted every part thereof for a purpose and the legislation intention is that every part of the Statute should have effect. These presumptions will have to be made in the case of rulemaking Authority also."

66. We shall now consider the last submission of Mr. Nanavati that the impugned order will result in lot of hardships and difficulties for the petitioner Company. According to Mr.Nanavati, his client has invested a huge amount to the tunc of Rs.2,59,67,340=00 towards development charges and such charges are non-refundable charges. According to Mr. Nanavati, one chance should be given to his client on equitable considerations.

67. To appreciate such a submission, we would like to take into consideration the following aspects which are not in dispute :

(i) The Execution of the bond-cum-legal undertaking was after a period of 9 months i.e. on 23.3.2009, which the petitioner No. 1 was obliged to execute it immediately after the issuance of Letter of Approval dated 6.6.2008;

(ii) The Application for exemption from payment of the stamp duty and registration fee was filed on 2.3.2009 i.e. almost after a period of 9 months which the petitioner No. 1 could have done it immediately upon the issuance of the Letter of Approval dated 6.6.2008;

(iii) The petitioner No.1 as obliged under the conditions has till date not applied for the approval from the Gujarat Pollution Control Board;

(iv) Till date, the petitioner No.1 has not applied to the Development Committee comprising - (i) Developer i.e. respondent No. 4, (ii) Office of the Development Commissioner, and (iii) Office of the Industries Commissioner, for drawing approvals for the construction of his unit;

(v) Till this date, the petitioner No.1 has not bothered to make payment towards the lease rent and user/maintenance charges to the respondent No. 4.

(vi) The petitioner Company, after a lapse of almost a period of nine months, preferred the present writ-petition challenging the communication dated 12th April 2012 issued by the office of the Development Commissioner, the respondent No.2 before this High Court.

68. It is now well-settled that the drastic power of resumption and forfeiture should be exercised only as a last resort, but this does not mean that the statutory right conferred on the Authority under the Act should never be resorted to, more particularly, in gross facts like the present case.

69. We are not satisfied with the conduct of the petitioner. Sympathy or sentiment by itself should not be a ground for passing an order in favour of a litigant who has failed to comply with the statutory obligations, and more particularly, when such non-compliance has resulted in frustrating the very object with which a piece of legislation is enacted.

70. It is equally well-settled that the remedy under Article 226 of the Constitution of India is discretionary in nature, and in a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court, while exercising its extraordinary jurisdiction there under, may refuse to upset with a view to doing substantial justice between the parties.

71. For the foregoing reasons, we are of the view that there is no merit in this petition and the petition deserves to be rejected.

72. The petition is accordingly rejected.

However, in the facts and circumstances of the case, there shall be no order as to costs.

(Petition is rejected accordingly)