IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 2750 OF 2024 (F)
WITH
CONTEMPT PETITION NO. 999 OF 2025 (FILING)
IN
WRIT PETITION NO. 2750 OF 2024 (F)

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1. The Mormugao Stevedores Association, Though its authorised representative Mr. Vinod Parkkot, s/o late Bhaskar Menon Parkkot, r/o MHN 17, Parkkot House, Swatantra Path, Vasco-da-Gama, Goa, 403 802, with office at Pereira Chambers, St. Jose Vaz Road, Vasco-da-Gama, Goa, 403 802.

2. Mr. Shaikh Usman, s/o late Mr. Shaikh Nuha, aged 52 years, Proprietor of the proprietorship concern M/s. Shaikh Nuha & Sons Logistics Services, with office at Karma Heights, 6, X-Block, 1st Floor, near Goa Shipyard Ltd., Vaddem, Vasco, Goa. ... Petitioners

Versus

1. The Mormugao Port Authority, Through its Chairperson, With office at Headland, Sada, Goa - 403 804.

2. Delta Infralogistics (Worldwide) Ltd., Delta House, 6" Floor, Bangra — Kulur Road, Kulur, Dakshina Kannada, Mangalore, Karnataka — 575 013.

3. Delta Ports Mormugao Terminal Pvt. Ltd., 401, 4" Floor, Anand Trade Center, Vasco da Gama, Mormugao, Goa — 403 802. ... Respondents

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Versus

1. Dr. Vinodkumar Nair, The Chairperson of The Mormugao Port Authority, with Office at Headland, Sada, Goa – 403 804.

2. Capt. Himanshu Shekar, The Traffic Manager of The Mormugao Port Authority, with office at Headland, Sada, Goa, 403 804.

3. Mr. Ahmed Mohiuddin, Managing Director, Delta Infralogistice (Worldwide) Lts., Delta House, 6th Floor, Bangra Kulur Riad, Kulur, Dakshina Kannada, Mangalore, Karnataka – 575 013.

4. Mr. Shamil Ahmed Mouzam, Managing Director, Delta Porta Mormugao Terminal Pvt. Ltd., 401, 4th Floor, Anand Trade Center, Vasco

da Gama, Mormugao, Goa – 403 802. ... Contemnors

Mr. A. F. Diniz, Senior Advocate *with Mr. Ryan Menezes, Mr Nigel Fernandes and Ms. S. Alvares, Advocates for the Petitioners.*

Mr. Y. V. Nadkarni, Advocate *with Ms. Simran Khadilkar and Mr. Nilay Advocates for Respondent No. 1.*

Mr. S. S. Kantak, Senior Advocate *with Ms. Shloka Narayanan, Mr.Manu Kulkasrni (through VC), Mr. Jitendra Supekar, Ms. Neha Kholkar, Ms. Saicha Desai, Mr. Roger Ray D'Souza and Mr. K. Simoes, Advocates for Respondent nos. 2 and 3.*

CORAM: BHARATI DANGRE & NIVEDITA P. MEHTA, JJ.

RESERVED FOR JUDGMENT ON: 2nd May, 2025

DATE: 7th May, 2025

JUDGMENT (*Per Bharati Dangre, J.*)

1. The Petitioner no.1, Mormugao Stevedores' Association, through its authorised representative Mr. Vinod Parkkot, has approached this Court being aggrieved by the decision taken by the Mormugao Port Authority (MPA), Respondent no. 1 to tender general Berths 10 and 11 at the Mormugao Port for operation and maintenance on Public Private Partnership (PPP) basis and this action is alleged to be in violation of Section 22 of the Major Port Authorities Act, 2021.

The Petition is being filed on behalf of the stevedores, who are agents and authorised to load, unload, and stow cargo on board vessels at the Mormugao Port and who are issued licenses for stevedoring by the Mormugao Port Authority, under the Mormugao Port Trust (Licensing of Stevedores) Regulations, 2010.

2. The Petition filed by the Petitioner no.1-Association along with Petitioner no. 2 Mr Shaikh Usman, proprietor of M/s. Shaikh Nuha & Sons, a member of the Petitioner no. 1 and a licensed stevedore seek the following reliefs :-

> (a) That by a writ of Certiorari, and / or a writ, order and / or direction in the nature of Certiorari, and / or any other appropriate writ, order or direction, under Article 226 and / or 227 of our Constitution, quashing and setting aside, the decision of the Respondent No. 1 to tender general Berths 10 & 11 at the Mormugao Port for operation and maintenance on PPP basis. And the consequential Letter of Award dated 27/10/2023 issued by Respondent No. 1 in favour of Respondent No. 2, and the Concession Agreement dated 14/12/2023 entered into between Respondent No. 1 and Respondent No. 3, with all its legal consequences;
>
> (a-1) That by a Writ of Certiorari, and / or a writ, order and / or direction in the nature of Certiorari, and / or any other appropriate writ, order, or direction, under Article 226 and / or 227 of our

Constitution, the letter dated 08/08/2024 issued by Respondent No. 1 be quashed and set aside, and it be declared that the Letter of Award dated 27/10/2023 and the Concession Agreement dated 14/12/2023, do not confer upon Respondent Nos. 2 and/ or 3, an exclusive right to conduct stevedoring operations, with all its legal consequences;

By way of an interim Order, stay is sought to the effect of operation of the Letter of Award issued by Respondent No. 1 in favour of Respondent No. 2, as well as the Concession Agreement entered into between Respondent No. 1 and Respondent No. 3, thereby preventing the Respondents from infringing /transgressing the rights of licensed stevedores under the prevailing Stevedoring Regulations.

3. We have heard Senior Counsel Mr. A. F. Diniz for the Petitioner and Mr. Y. V. Nadkarni representing the Mormugao Port Authority. The Respondent no. 2, the Concessionaire and the Respondent no. 3, the Special Purpose Vehicle constituted by the said purpose are represented by the learned Senior Counsel Mr. Subodh Kantak.

In the wake of the Contempt Petition No. 999 of 2025 filed by the Petitioner alleging disobedience of the Order passed by this Court on 10.03.2025, which directed that the stevedores may enforce their right under the license and any action taken by the respondents will be subject to the outcome of the Petition being violated, when we took up the Petition for hearing, our attention was invited to the Order of 10.03.2025, where it was noted that on the pleadings being completed, an endeavour shall be made to hear the Petition finally at the stage of admission.

Hence by consent of the respective Counsel, on the pleadings being completed, we deem it appropriate to take up the Petition for final hearing.

Hence, we issue ‘Rule’, which is made returnable forthwith.

4. Mormugao Port Authority is a Major Port and it carries operations which include the operation of Stevedores and Shore Handling. There are eleven Berths with the Port, where the ships can dock, amongst which Berth nos. 1 to 4 are developed for use as terminals for passengers of cruise ships, which do not involve any loading/unloading of cargo. Berth no. 5 A and 6A are “Captive Berths” which have been allotted to JSW Group, to handle import or export of cargo of its companies exclusively, whereas, Berth no. 7, which is also a “Captive Berth” is allotted to Aadani Group of Companies, as a consequence of which Berth nos. 5A, 6 and 7 do not permit any general traffic.

As far as Berth no. 8 is concerned, it is exclusively used for cargo oil and as per the Petitioners, stevedores have no role to play since pipelines have been installed for loading and unloading of the liquid cargo. Berth no. 9 is a non-operational Berth and this leaves Berth no. 10 and 11 which are “General Cargo Berths”, which are available for the import or export of General Cargo. Stevedores are permitted to operate from these Berths and can offer services provided they are licensed by the Port. An importer/exporter would pay the necessary charges to the Port for use of the said Berth and then select a stevedore of their choice for loading and unloading their cargo. Thus, the Port itself did not indulge in such operations, but have issued licences to stevedores like Petitioner no. 2 and other members of Petitioner no.1.

5. In the past, grant of stevedore licences was governed by the Mormugao Port Trust (Licensing of Stevedores) Regulations, 2010, framed in exercise of the powers under Section 123 of the Major Port Trusts Act, 1963, with the approval of the Central Government.

The stevedoring licences could be issued upon compliance of the conditions stipulated therein and the licence issued shall have a validity period of three financial years from the date of its issuance, which was permitted to be renewed on the basis of achieving minimum guaranteed thorough output prescribed on its parametres as fixed by the Port.

6. The Petitioner No. 1 claim to be an Association of the stevedores, being registered as Society registered under the Societies Registration Act, 1860 comprising of stevedores, working at Mormugao Port Authority and undertaking stevedoring operations on the basis of the licence issued in their favour. By specifically contending that its members complied with and continue to comply with the duties and responsibilities cast upon them by way of the said licence, the specimen copies of which are placed as a part of the Petition at Exhibit P-1 collectively, a specific statement is made in the Petition that the said licence has not been cancelled or revoked and it continue to subsist as on date.

7. The background of the Petition lie in the statutory regime prevailing in the field, with the Parliament, enacting the Major Port Authorities Act, 2021, to regulate, operation and planning of Major Ports in India and to vest the administration, control and management of such Ports upon the Boards of Major Ports Authorities. The said enactment was necessitated, in the background of the Major Port Trust Act enacted in the year 1963 for constitution of Port Authorities for certain Major Port Authorities in India and pursuant thereto Major Port Trusts were created following the service code model.

8. In order to provide greater autonomy, flexibility to the Major Ports and to professionalize their governance, it was proposed and necessary to repeal the Major Port Trusts Act of 1963 and to replace it with new legislation, so as to constitute the Board of Major Port Authority for each Major Port in place of Board of Trustees and to enable the Board of Major Port Authority to -

> "*(a) to use its property, assets and funds in such manner and for such purposes as it may deem fit for the benefit of the Major Port;*
>
> *(b) to enter into and perform any contract necessary for the performance of its functions under the proposed legislation;*
>
> *(c) to create master plan for development of any infrastructure within the port limits; and*
>
> *(d) to make regulations for the purpose of operations, development and planning of Major Ports;*

The Act was brought into force on 03.11.2021.

9. On 30.10.2023, the Board of Major Port Authority for Mormugao Port, framed the Mormugao Port Authority stevedoring and shore handling Regulations 2023 in exercise of the powers conferred by sub-section (2) of Section 72 of the Act, to be known as "Mormugao Port Authority (Stevedoring and Shore Handling) Regulations 2023" in supercession of Mormugao Port Trust (Licensing of Stevedores) Regulations 2010.

The Regulations being brought into force, by virtue of clause 3 thereof, were made applicable to the stevedoring and shore handling activities undertaken by the agent but did not apply to the stevedoring and shore handling activities by the Port, Public Private Partnership Projects, built- operate-transfer operations, agreements or such agreements as has been entered into by the Board.

The said Regulations clearly specify that no person shall undertake to perform the stevedoring and shore handling activities in the port unless he has been issued a licence under these regulations.

The Chairman of the Board is declared as a Licensing Authority under the Regulations and it specifically carved out the duties and responsibilities of the stevedores and shore handling agents. The licences of the Members of Petitioner no. 1-Association received renewal under the 2023 Stevedoring Regulations.

10. On gaining knowledge that the Mormugao Port Authority had entered into a Concession Agreement with Respondent no. 3, the Petitioners made sincere attempts to obtain the necessary information by filing applications under the Right to Information Act, 2005, seeking copy of the Memorandum of Understanding and Agreement so entered but that was refused on the ground that the "third party is not entitled for the copy of the Agreement".

Being aggrieved, the process was taken ahead with the Appellate Authority.

In response to the RTI application dated 20.02.2024, to the query whether the award of tender give the tenderer right to explore other Port users including ship agents, stevedores, barge owners, truck operators, machinery owners, work contractors, etc. holding MPA Licenses from using MPA facilities, the response given was "please refer to the details given in the document provided at serial no. 9."

These documents are the Request for Qualification ("RFQ"), Request for Proposal ("RFP") and the Draft Concessionaire Agreement.

On obtaining these documents, the Petitioners gained knowledge that the scope of the work awarded to the Concessionaire includes development of infrastructure of the Ports in order to include the cargo handling capacity but did not include stevedores operations.

The Petitioners attempted to seek more information but ultimately instituted a Writ Petition on 24.10.2024 with the reliefs set out therein.

The Petition was permitted to be amended upon certain information being received pursuant to an RTI application being filed, informing that no Regulations are framed by the Port Authority under Section 22(2) and 24(3) of the Major Port Authorities Act, 2021.

11. On the Respondents being issued notice on 10.03.2025, the Court took note of the contention advanced on behalf of the Petitioners in the backdrop of the Major Port Authorities Act, 2021, was in reference to the Concession Agreement executed between the Mormugao Port Authority and Delta Infralogistics (Worldwide) Ltd., with focus on the clause pertaining to the right of the Concessionaire.

On appreciating the contention of the Petitioners that the stevedores continue to manage and operate the project and offer their services on a first come first serve basis, which is open to all shipping lines, importers, exporters, shippers, etc. and that the Respondent no. 1 was not justified in restricting the stevedores, grant of interim relief was strongly opposed by relying upon the Regulations 2023 and also by submitting that the Concession Agreement was already executed and this would now be governed by the Regulations of 2023.

By appreciating the contentions, this Court on 10.03.2025, passed a detailed order and in specific issued the direction as below :

"*8. We find that the licenses to operate in favour of the petitioners are still subsisting. At this stage all that we can observe is that the stevedores may enforce their rights under the license and any action taken by the respondents will be subject to the outcome of this petition.*"

It is this order which has given rise to filing of Contempt Petition No. 999 of 2025, which is also listed before us.

12. In the aforesaid factual background and the statutory regime in force, Mr. Diniz, the learned Senior Counsel representing the Petitioners, has formulated the point that fall for our consideration :

> "Whether the action of Mormugao Port Authority in issuing letter dated 08.08.2024 and the Trade Notice dated 03.04.2025, consequently preventing the stevedores from exercising their rights under their prevailing licences to conduct stevedoring operations in Berth Nos. 10 and 11 is illegal and void, in absence of any Regulations being framed."

13. The aforesaid question deserve an answer in the wake of the submission of Mr. Diniz, that as long as the licences issued in favour of the stevedores continue to remain in operation, and this include their operations at Berth Nos. 10 and 11, during the subsistence of the said licences, the Respondent cannot curtail their rights by restricting their operation at specific parts of the Port, as their licences are valid up till 2027.

It is his specific contention, that when the decision was taken by the Port Authority to assign the operation and maintenance of Berth Nos. 10 and 11 to the private operators on PPP basis, the 2010 Stevedoring Regulations were in operation. The RFQ was published on 03.03.2023 whereas the RFP was opened on 10.10.2023 and the Letter of Award was issued in favour of Respondent no. 2 on 27.10.2023.

The Marmugao Port Authority Regulations 2023 came into force on 30.10.2023 and in this background, it is contended by Mr. Diniz, that the Regulations which govern the stevedoring operations at the Port are the 2010 Regulations, which clearly conveyed that in order to conduct stevedoring at the Port, one had to obtain a licence under the Regulations and only licensed stevedores like the Petitioners can undertake stevedoring. It is also his specific submission that these Regulations did not permit outsourcing of the stevedoring activity and did not contemplate a PPP Scheme as stevedoring was to be carried out only by licensed holders under the 2010 Regulations, as stevedore was defined under the Regulations, as an authorized Agent for loading and unloading and storage of cargo in any form on board the vessels in the Port.

It is his specific contention that after the contract Letter of Award was issued in favour of Respondent no.2, three days thereafter, the stevedoring Regulations of 2023 are notified, which are a departure from 2010 Regulations, as it excludes its applicability to the Public Private Partnership Projects as well as BOT operations entered by the Board, as it is not mandatory for them to be a licence holder.

14. Another contention advanced before us, on behalf of the Petitioners is, the licence of the members of the Petitioner no. 1 as well as the Petitioner no. 2, while it subsists, is for the Port and not restricted to finger jetties and therefore the Concessionaire cannot prevent stevedores from operating at the Berths and there can be no conferment of exclusive rights on the Concessionaire to the exclusion of the Petitioners.

The action of the Respondent no. 1 initiating the Trade Notice on 03.04.2025 and blocking access of the licenced stevedores at Berth nos. 10 and 11 so as to prevent them from conducting stevedoring operations is described to be an illegal and arbitrary action, as it is the specific contention raised that Respondent Nos. 2 and 3 do not have exclusive right to conduct stevedoring as long as the licences in favour of the Petitioners continue to remain in operation.

15. In addition to the aforesaid, Mr. Diniz has also called into question the decision on the part of the Respondent no. 1 to tender and consequently to award the tender without justifying its feasibility and necessity as he would submit that prior to inviting the tenders Aarvi Associates had prepared the technical feasibility report for development at Berth Nos. 10 and 11 to set out the traffic projections. It is his specific contention that despite independently presenting the projections, Aarvi Associates record that the Port Authority gave instructions to consider 2.5 MPA as a base and increase only by 0.5 every year till it reaches 4.5 MPA. According to him, the traffic projection for the bid itself was artificially reduced, contrary to the expert independent assessment of Aarvi Associates and because of this, upon the bid being floated, its price would be heavily reduced and the Concessionaire would make less payments, on high revenues which would be detrimental to the interest of the Port and on this ground also the decision to enter into an agreement on Public Private Partnership basis is called into question.

16. Yet another important point which Mr. Diniz has pressed into service is that no Regulation had been framed and Section 22 of the Major Port Authorities Act, 2021 is invoked to submit that, the manner of any contract or arrangement by work, or sale of land or immoveable property or period and for manner for lease of land for Port related use and non Port related use, shall be permitted only in such manner as may be prescribed and further if Public Private Partnership Project is to be implemented by the Port, it shall be subject to the policy notified by the Central Government in respect of such Public Private Partnership Project.

In support of this submission, Mr. Diniz has placed reliance on the decision of the Apex Court in case of **Consumer Online Foundation & Ors. vs. Union of India & Ors.**[1] to submit that, when the statute prescribe a particular power to be exercised subject to certain stipulations then the exercise of the power is permissible only upon such conditions being complied with.

By contending that privatization of Berth No. 10 and 11 in favour of one entity is subject to the policy of Central Government, as proviso appended to Section 22, clearly set out that a contract or agreement for sale, lease or licence, of the Ports property shall be in accordance with the policy of the Central Government.

17. At the end, Mr. Diniz would describe the act of the Respondent no. 1 as violative of the fundamental right of the Petitioners, who have a right to livelihood as they have been engaged as stevedors for considerable period of time and by a arbitrary and unfair decision by

1 2011 (5) SCC 360

the Respondent no. 1, their right to means of livelihood has been taken away. For this proposition, he would place reliance on the case of **Senior Divisional Commercial Manager, South Central Railways & Ors. vs. S. C. R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & anr.**[2], where the Apex Court was confronted with a grievance of non renewal of the licences of those persons who were members of Respondents and who were completely dependent on self earnings from the small units and their decision to make them participate in public competition was held to be completely unfair, unreasonable and arbitrary. The Supreme Court heavily came down upon the careless attitude for the inaction on the part of the State in tackling the problem of rising unemployment and the appellants under the guise of policy being denied the renewal of licenses, definitely was held to be deprivation of their right to freedom of occupation guaranteed under 19(1)(g) of the Constitution as well as the right to livelihood, which action was directly opposed to the constitutional duty towards social justice and uplifting the weaker sections of the society and unemployed youth of the Country.

18. Contesting the claim raised in the Petition, Mr. Nadkarni representing the Port, began his arguments by submitting that the Petition is founded on a wrong premise that the Members of the Petitioner no. 1 Association are denied any workload and he would

2 2016 (3) SCC 582

submit that from the date on which the operations by Respondent nos. 2 and 3 were permitted i.e. from 04.04.2025 till date i.e. for a period of 24 days, the Respondent No. 3 was given workload of 1,54,000 metric tons whereas the Petitioners had operated a load of 2,38,854 metric ton, despite exclusion of their operation at Berth nos. 10 and 11. It is submitted by him that the licences of the members of the Petitioner no.1 are valid and they are permitted to operate as stevedores on the outer anchorage as well as Barge jetty and therefore the specious plea that their source of livelihood is snatched away is completely false. He has instructions to make a statement that the Respondent no. 1-Port require the services of the licenced stevedores and if their operation is excluded at Berth no. 10 and 11, that has not caused any harm to them as they are permitted to operate in the balanced area of the Port, for which licence was granted to them.

Mr. Nadkarni would also submit that the Petitioners are aware that in the past also, Berth No. 5A and 6A as well as Berth no. 7 were restricted in its operation and they were given out on PPP basis but the Petitioners never perceived any threat of livelihood on both the occasions.

19. Contesting the claim raised in the Petition and in specific in prayer clause (a) and (a-1), wherein a challenge is raised to the process of Respondent no. 1 to invite tender for Public Private Partnership of managing the operation at Berth Nos. 10 and 11, by alleging that it affected their right, it is the submission of Mr. Nadkarni that a conscious decision was taken by the authority, in the wake of the fact that the Port Owned Harbour Mobile Crane (HMC), Commissioned in 2013, had outlived its use and was frequently under break down. This significantly impacted the Port's traffic and led to negative publicity with the trade and stakeholders.

He would submit that the Port continued to receive representation from the Port users, shipping lines, vessel agents and Goa Chamber of Commerce and Industries complaining about the inadequate infrastructure at the General Cargo Berths. Submitting that, the Ports financial condition was not supporting procurement of HMCs, as it contemplated an estimated cost of Rs.168.24 crores, the Mormugao Port Authority in its Board meeting dated 29.03.2022 resolved to outsource the existing operation and maintenance of the Berth nos. 10 and 11 to private operators on PPP mode for a concession period of 30 years for handling of Cargo, except POL, all liquids, LPG, LNG and CNG.

Thereafter, according to Mr. Nadkarni, the Port forwarded the proposal for its approval to the Ministry of Ports, Shipping and Waterways along with the Financial Appraisal Report, Draft Concession Agreement, etc.

Pursuant thereto, the Ministry conveyed the approval of the competent authority to the Standing Finance Committee's proposal for Operation and Maintenance of Berth no. 10 & 11 on PPP basis at the cost of 139.63 crores.

A copy of the said communication is a part of the affidavit filed on behalf of Respondent no. 1 in opposing the grant of relief in the Petition. Mr. Nadkarni would therefore submit that there is no substance in the submission that the requisite permissions were not obtained as before the RFQ and RFP was processed and the Concession Agreement was entered into, a Draft of Concession Agreement was received from the Central Government indicating that the Government was conversant with the steps being taken by the Respondent no. 1 in outsourcing the cranes and letting its Berth nos. 10 and 11 to operate on PPP basis.

20. Resisting the contention of Mr. Diniz, as regards applicability of Section 22 of the Act of 2021, he would submit that the restriction imposed is about the Board not selling, alienating or diversifying its assets, properties, rights, powers and authorizations vested in it without prior sanction of the Central Government but since from time to time, the concerned Ministry was kept in loophole, there is no cause for alleging that the provisions of Section 22 were violated.

Mr. Nadkarni has stressfully argued before us that by virtue of sub-section (1) of Section 22 of the Act of 2021, the Board of each Major Port is entitled to use its property, assets, and funds in such a manner or for such purpose as it deem fit for the benefit of that Major Port.

Submitting that once this power is available to the Board, merely because the Regulations are not framed can be no ground to prevent exercise these powers, he would invoke the principle of law laid down in case of **Surinder Singh vs. Central Government & Ors.**[3], which has analysed a similar provision, when the exercise of the power is henched by a clause "subject to" and by relying upon sub-section (1) of Section 22, his submission is, that merely because the Regulations are not framed and particularly because the Mormugao Port Authority has been recently constituted on 28th January 2022 and the Regulations no being yet framed, shall not prohibit exercise of the power by the Board.

21. In addition, Mr. Nadkarni has also opposed the submission of Mr. Diniz, by submitting that the members of the Petitioner no. 1 could not have participated in the tender process as according to him the RFQ floated for operation and management of Berth nos. 10 and 11 on Public Private Partnership basis at Mormugao Port, permitted a bid to

3 1986(4) SCC 667

be submitted either by a company which is in existence or by an entity which would convert itself into a company.

He has invited our attention to the RFQ dated February, 2023, which entail the scope of work as "Operations, Maintenance and Management of Berth No. 10 and 11 and the PPP format contemplated Design, Build, Finance, Operate and Transfer (DBFOT)".

Our attention is also invited to the relevant clauses of the RFQ, with the necessary stipulations, highlighting the scope of the work to include installing two HMCs of 100 MT each, mobile conveyors and other ancillary works for successful completion and operation of the terminal to create capacity to handle bulk, break bulk cargo including containers of a minimum volume of 6.00 million tons per annum and the Management, Operation, and Maintenance thereof. According to Mr. Nadkarni, the process which was adopted at the Port earlier was time consuming as it involved manual lifting of the cargo, which would consume more time, thereby reducing the traffic flow, and as a result the Port was able to handle less traffic meaning there was less earning. He would submit that from the year 2013, there was no container traffic at the Port and in order to increase the efficiency as well as profitability of the Port, the requisite steps were taken.

22. Mr.Nadkarni would also invite our attention to the draft of the Concession Agreement and in particular the relevant clause which contain conferment of exclusive right in the Concessionaire for operating Berth Nos. 10 and 11 since the tender was for operation-maintenance and management of Berth No. 10 and 11.

According to him, once the Port is handed over to the Concessionaire, it is his choice to engage the services of the stevedores and it is not impermissible for the Concessionaire to engage its own staff, whom it trusts, since any dereliction in slowing down the operation by the stevedores would cause tremendous loss to it.

In short, the submission of Mr. Nadkarni is, that the decision taken by the Port Authority is in larger public interest as it is going to generate more revenue, which is ultimately a decision in larger public interest and in any case, it is his specific contention that the operation by the Petitioners is not impacted except that they are not permitted to operate at Berth Nos. 10 and 11.

23. The learned Senior Counsel, Mr Subodh Kantak, representing Respondent No.2 and 3 has adopted the submissions of Mr Nadkarni, as regards the necessity of the entering into a Public Private Partnership Project for operation and maintenance of berth No.10 and 11, as even according to him as the crane which was installed at the Port was insufficient to cater to the activities contemplated and when it became non-functional, even these activities came to a standstill.

Justifying the activities on the said Berth Nos. 10 and 11 through private operators on PPP basis, he would submit that Jawarhalal Nehru Port Trust (JNPT), one of the largest Port in the Country is also operating on 100% Public Private Partnership.

Mr Kantak would also invite our attention to the Maritime India Vision (MIV) 2030, a document published by the Ministry of Ports, Shipping & Waterways, Government of India, which encourages the Landlord Model adoption for berth operations across major Ports in order to maximise mechanised bulk berth operations.

By relying upon the Regulations of 2023, in specific, Rule 3, he would submit that the new Regulations have upset the 2010 Regulations and as per the new regime, Stevedoring, and Shore handling activities undertaken by the agent are to be covered by the Regulations of 2023 but it did not apply to the Stevedore and Shore handling activities by the Port itself, or by a Public Private Partnership Project or BOT operations which are entered into by the Board.

24. Mr Kantak has adopted the arguments of Mr Nadkarni as regards Section 22 of the Ports Act and he would place reliance upon the decision in the case of **Sonvir alias Somvir v/s. State (NCT of Delhi)**[4] in the backdrop of the interpretation of Section 4 and 5 of Identification of Prisoners Act, 1920, which contain approval requiring

4 (2018) 8 SCC 24

the procedure to be followed "in the prescribed manner" and the approach adopted by the Apex Court, in specific, i.e. the provisions do not justify the arguments that 'subject to regulations' to be framed and in absence which the power cannot be exercised. According to Mr Kantak, whatever has been done by the Port is in consultation with the Central Government and therefore its decision to award Berth No.10 and 11 on PPP basis do not warrant any interference.

Apart from this, it is the specific contention that the other two Berths are allotted to Adani and JSW, merely for captive use, the Petitioners Association never objected. It is his specific contention that being allotted the work to operate and manage the Berths, he has every right to have his own staff who shall work as per his instructions and it is his specific contention that his client itself is a Stevedore who is licenced under the Licencing Policy.

25. Apart from this, Mr Kantak by relying upon the rejoinder filed by Respondent No.2 and 3 would submit that the Respondents have already procured 2 HMCs at a cost of Rs.86 Crores and the cranes are made operational from 04.04.2025 after they were assembled. In addition, it has also incurred additional expenditure including Rs.5.7 Crores for electrical work, Rs.4.89 Crores for procurement of grabs for cargo operation, Rs.1.49 Crores for road sweeper machine, Rs. 89

Lakhs for mist cannon and Rs.89 Lakhs towards installation of weigh bridges.

Therefore, it is his submission advanced on behalf of Respondent No.2 and 3, that about 100 Crores have been expended preceding the commencement of operations at Berth No.10 and 11 and since the Respondent No.2 and 3 have now changed their position, any reversion would be detrimental to their interest. Mr Kantak would, therefore, seek dismissal of the Writ Petition.

26. We have considered the rival claims raised in the pleadings placed before us as well as the those put forth during the oral arguments advanced by the respective Counsel.

The grievance of the Petitioner no.1 Association of which the Petitioner No.2, is a Member, is the action of the Mormugao Port Authority, Respondent No.1 to tender general Berths No.10 and 11 at the Port, for operation and management on PPP basis and consequential Award in favour of Respondent No.2 on 27.10.2023, to be followed by the Concession Agreement executed on 14.12.2023 and subsequent Trade Notice No.2 of 2025, thereby restricting the entry of Stevedores on these berths. It is the contention of the Petitioner No.1-Association that the Concession Agreement dated 14.12.2023 cannot confer upon the Respondent No.2 or 3 an exclusive right to conduct stevedoring operations.

In order to appreciate the contention, it is necessary to make reference to the background statutory regime.

The Major Port Authorities Act, 2021 received the assent of the President on 17.02.2021, in form of an Act entitled to provide for regulation, operation and planning of Major Ports in India and to vest the administration, control and management of such Ports upon the Boards of Major Port Authorities. The said Act has repealed the Major Port Trust Act, 1963 nonetheless with a saving clause contained in Section 75(2) and a transitional provision, in form of Section 76, prescribing that notwithstanding anything contained in the Act, the Board of Trustees function as such immediately before the commencement of the Act shall continue to function until the Board for each unit is constituted.

27. The Act of 2021 define "Major Port Authority" to mean Major Port as defined in Clause 8 of Section 3 in Indian Ports Act. Port assets are defined in Section 2(1) (x) as below:

> *"(x) "port assets" means any asset within the port limits including land, movable or immovable property or any other property, whether tangible or intangible, owned by or vested with the Board through the Central Government or the State Government, as the case may be;*

The Act also provide a definition for Public Private Partnership Project in Section 2(zc) as below:

> *"2. (zc) "Public Private Partnership project" means the projects taken up through a concession contract entered into by the Board under sub-section (1) of Section 24;"*

28. Under the Major Port Trust Act, 1963, the power was conferred on the Board to frame Regulations and in exercise of the said power the Board of Trustees of the Mormugao Port Trust had framed the Mormugao Port Trust (Licensing of Stevedores) Regulations, 2010, with the approval of the Central Government.

The said Regulations define "Stevedores" as an authorised agent for loading and unloading and storage of cargo in any form on board the vessels in Ports.

The Regulations cover the following activities: -

> (i) Stevedoring undertaken by the Port
>
> (ii) Stevedoring by the licenced stevedore
>
> (iii) Stevedoring by the BOT terminal operator as prescribed under the Licence Agreement.
>
> The stevedoring covered the activities on board involving workmen and extending to hooking for export (loading) cargo and unhooking of import (unloading) cargo involving workmen on-board or whatever practice prevalent in ports.

29. The Regulations contemplate licence for stevedore/stevedoring to be issued by the Chairman of the Board, subject to stipulation of deposit of security deposit as well as providing minimum equipment gear either owned or hired.

The licence issued carried a validity of three financial years from the date of its issuance with a clause for its renewal, on the basis of achieving minimum guaranteed throughout/prescribed performance parameters as fixed by the Port.

The Regulations of 2010 also enlisted the duties and responsibilities of a Stevedore as well as contained the provision for cancellation of licence.

30. With the new regime of Major Port Authorities Act, 2021 coming into force, by invoking the powers conferred by Sub-section 1 of Section 72, the Central Government approved the Mormugao Port Authority (Stevedoring and Shore Handling) Regulations, 2023 made by the Board of Mormugao Port Authority and published the same in the Official Gazette of Government of Goa on 27.10.2022, which came into force on 30.10.2023.

Under the Regulations of 2023, "Licence" means a stevedoring and shore handling licence issued under regulation 4, whereas "Licencee" mean a person to whom a stevedoring and shore handling licence has been issued under the Regulations. It also specify that the term "Stevedoring" shall include loading, unloading and stowage of cargo in any form on board the vessel.

Section 3 and 4 of the Regulation reads thus:

"3. Application.-These regulations shall apply to the stevedoring and shore handling activities undertaken by the agent but shall not apply to the stevedoring and shore handling activities by the Port, Public Private Partnership projects, Build-Operate-Transfer operations or agreements or such other agreements as have been entered into by the Board.

4. Licensing of stevedoring and shore handling agent.-

(1) Any eligible person fulfils the eligibility criteria can apply for licence in writing to the Chairperson in Form-A, alongwith the documents specified therein and with fee as the Board may fix.

(2) The licence shall be issued to the applicant subject to fulfillment of following criteria:

(a) the applicant is a company registered under the Companies Act, 2013(18 of 2013) or a partnership firm or any other legal entity;

(b) the applicant shall deposit interest free refundable security amount of rupees five lakhs to meet any contingency, which shall be refunded after adjusting the claims, if any, when the licensee ceases to operate;

(c) the applicant possesses equipments required for stevedoring and shore handling activities as specified by the Board;

(d) the applicant shall submit an undertaking to employ atleast six supervisory personnel with minimum two years of cargo handling or stowage experience and their profiles shall be enclosed alongwith the application.

(3) No person shall undertake to perform the stevedoring and shore handling activities in the port unless he has been issued a licence under these regulations"

31. In the wake of the aforesaid provisions, in terms of Regulation 2023 no person shall undertake the stevedoring and shore handling activities in the port unless he has been issued a licence under the said Regulations. However, Regulation No.3 clearly stipulate that the Regulations shall not apply to the stevedoring and shore handling activities by the Port, Public Private Partnership projects, Build-Operate-Transfer operations or agreements or such other agreements as have been entered into by the Board.

32. The Major Port Authorities Act, 2021 which is an Act to provide for regulations, operation and planning of Major Ports in India and to vest the administration, control and management of such Ports upon the Boards of Major Port Authorities, under Chapter III has set out the norms for management and administration.

The Board of Major Port Authorities constituted under Section 3 of the Act is deemed as successor of Board of Trustees of Major Port from the date of its constitution and all the assets and liabilities of Board of Trustees are transferred to and vested in the Board.

33. Section 22 of the said Act prescribe for usage of Port assets by the Board and since it is the contention advanced by Mr Diniz that the procedure contemplated therein is not followed, we deem it appropriate to re-produce Section 22, which reads thus :

> "***22. Usage of port assets by Board.-*** *(1) The Board of each Major Port shall be entitled to use its property, assets and funds in such manner and for such purposes as it may deem fit for the benefit of that Major Port.*
>
> *(2) All port assets shall be used and developed as per the regulations made by the Board in that behalf and to the exclusion of any municipal, local or Government regulation:*
>
> *Provided that the manner of any contract or arrangement by the Board for sale of land or immovable property, or period and manner for lease of land or immovable property for port related use and non-port related use, shall be in such manner as may be prescribed:*
>
> *Provided further that the tenure for lease of land or immovable property for Public Private Partnership projects by the Board shall be subject to the policy notified by the Central Government in respect of such Public Private Partnership projects.*
>
> *(3) ...*

34. With this provision in background, the submission advanced on behalf of the Petitioners is that the Port which is entitled to use its property, assets and funds, shall permit it to be used and developed as per the Regulations made by the Board in that behalf and the manner of a contract or arrangements by the Board in sale of its land or immovable property or period and manner for lease of the land for Port related use and Non-Port related use, shall be in such manner as may be '*prescribed*'.

The Act of 2021 has conferred power on the Board, to make Regulations consistent with this Act and the rules made thereunder to carry out the provisions, with the previous approval of the Central Government and after previous publication by a Notification. As per sub-clause (2) of Section 72, the Regulations may provide for various matters including; (d) the use and development of the port assets under sub-section (2) of section 22; (e) The form and manner in which contracts shall be made by the Board under sub-section (3) of section 24.

35. It is not in dispute that Respondent No.4 resolved to outsource the "existing Operations and Maintenance" of Berth Nos. 10 and 11 to private operators on PPP basis for Concession period of 30 years.

The aforesaid Berths constructed in the year 1985 and 1994 respectively, are continuous Berths with a total length of 550ms having consent to operate/handle 6 MTPA. The Port handled its operations through a harbour mobile crane which are outlived its use and was frequently under breakdown which impacted the traffic on the Port. The Port had submitted a proposal for procurement of two harbour mobile cranes of 120 MT capacity each for estimated cost of Rs.168.24 Crores including its operation and a request was made for financial assistance.

In the meeting held by the Board on 29.03.2022, a decision was taken to outsource the existing operations of berth No.10 and 11 as it was foreseen as the only viable solution. For this purpose, the Mormugao Port Trust submitted the draft of its proposal to the Government, Ministry of Ports along with the feasibility report, duly concurred by the Board of Trustees for its approval.

The reply was received from the Ministry of Ports on 20.04.2022, in response to the SFC proposal by stating that no upgradation/mechanisation of the berths has been envisaged in the proposal and therefore the proposal did not appear viable. It was also suggested that the Mormugao Port Authority had submitted a proposal to Sagarmala Wing for procurement of cranes, etc involving a CAPEX of Rs.170 Crores and this may form part of the SFC proposal and therefore it was suggested to revisit the proposal and re-structure the project suitably considering the upgradation/mechanisation of the existing berths to Private Public Partnership (PPP Mode) entailing capacity addition and ensuring efficiency in the operations.

Accordingly, a fresh proposal was prepared and pursuant to the meeting of the SFC held under the Chairmanship of Secretary (Port, Shipping & Waterways) on the projected proposal 'Operation and Maintenance of Berth no.10 and 11 on PPP basis at Mormugao Port'.

The Meeting of the SFC contemplated installation of 2 HMCs, Mobile Hopper with conveyor systems, and other allied equipment with the stipulation that the Concessionaire will pay to the Port royalty per tonne of cargo handled, with all cargo related charges being collected by the Concessionaire. The estimated project cost was worked out as Rs.139.63 Crores. The SFC recommended the proposal with the expectation that the traffic at the Port will increase significantly in the coming years.

36. In the wake of the aforesaid decision, RFQ was published on e-portal and port website on 03.03.2023, and it was opened on 26.04.2023 with the participation of three bidders, and M/s. Delta Infra Logistics(Worldwide) Ltd being prequalified for RFP stage. Upon scrutiny, it emerged as the successful bidder and the tender was allotted in its favour at offered price of 126.55 as Royalty per tonne of cargo handled and a letter of Award was issued by the Port on 27.10.2023.

A copy of the Concession Agreement executed between Respondent No. 1 and 3 for operation and maintenance of berth No. 10

and 11 is placed before us along with the affidavit filed by Respondent No.1.

The Concession Agreement dated 14.12.2023 record a procedure that has been followed by the Concessioning Authority which has accepted the proposal of the Concessionaire, being created as a Special Purpose Company in India to implement the project. The Agreement clearly contemplate the Concession awarded in favour of the Concessionaire by stating that in consideration of the Concessionaire agreeing to pay to the Concessioning Authority, the licence fee and the royalty, and performing it's obligations set out in the Agreement, it is conferred with an exclusive licence for designing, engineering, financing, constructing, equipping, operating, maintaining replacing the project facilities and services as per the scope of work.

The Concession is granted for a period of 30 years, during which the Concessionaire is authorised and obliged to implement the project and provide project facilities and services as per the scope of work in accordance with the provisions thereof.

37. In consideration of the Concessionaire agreeing to perform and discharge its obligations, the Concessioning Authority granted to the Concessionaire the exclusive right to enter upon, occupy and use the project site and Ports assets for the purpose of implementing the project and provision of project facilities and services in accordance with the Agreement.

The Concessionaire accepted the possession of the Ports assets and project site on 'as is where is' basis.

The Agreement include other details but since we are not called upon to pronounce upon a detailed reference thereof is unwarranted however, it must be noted that the Agreement enlisted the obligation to the Concessionaire to manage, operate, maintain and repair the project facilities and services entirely at its costs, charges, expense and risk in accordance with the Agreement on the Berth terminals. The corresponding obligations are also imposed on the Concessioning Authority, which shall offer to the Concessionaire, the scheduled entry, berthing and sailing of the vessels, pilotage and stowage on a non-administrative basis subject to norms and sailing schedule as well as travel and maintenance of general Port infrastructure.

38. The Concession Agreement read with terms of the RFQ make it clear that the Respondent No.1 invited the tender by highlighting the scope of work as below:

> "*i) Capital Investment for procurement of 2 nos HMC, mobile hopper with conveyor systems, Environment protection measures, Re-roofing of T1 shed with modular structures, structural repairs and replacement of sheets and flooring*

of T2 and T3 sheds, other civil and electrical works including roads.

ii) Operations, maintenance and management of berths 10 & 11.

iii) Undertaking allowed commercial activities at the Project Site."

The PPP format contemplate "Design, Build, Finance, Operate and Transfer" (DBFOT). Since the scope of the work entail investment by the bidder and the project operates on PPP format, the successful bidder, vide the Concession Agreement was conferred with exclusive right for operating and maintenance of Berth Nos. 10 and 11 at Mormugao Port Trust. The corresponding obligation of the bidder extended to installation of 2 HMCs of 100MT each mobile whereas and other necessary works so as to successfully create capacity to handle bulk, traffic bulk cargo about 6.00 million tons per annum and the management, operation, and maintenance thereof. Through participatory public process, the Respondent No.2 was selected as a successful bidder, which resulted in execution of the agreement with the aid of Respondent no. 3 for implementing the project.

39. The Maritime India Vision (MIV) 2030 of the Ministry of Ports, Shipping and Waterways, Government of India, has recognised that the country's maritime sector plays a crucial role in the overall trade and growth of the country with 95% of the country's trade volume and 65% of the trade value being undertaken through maritime transport. With the objective of propelling India to the forefront in Global Maritime Sector, the Ministry formulated the Vision (MIV) 2030 a blueprint to ensure coordinated and accelerated growth of India's maritime sector in the next decade.

The MIV, 2030 is formulated in consultation with public and private sector stakeholders, comprising ports, shipyards, inland waterways, trade bodies and associations, national and international industry and legal experts and it aim at enhancing logistic efficiency of the Ports through technology and innovation as well as enhancing the global share of the country in shipbuilding, repair and recycling. The Vision document include the Mormugao Port as a port of South MH and Goa cluster.

Recognising that India has 5 major ports and two non-major ports with significant opportunity to set up Mega Ports and compete with global ports, the vision document identify that for India transhipment hub to be successful in attracting traffic, it must make the ports economically viable for shipping lines to invest in capital cost of shifting existing operations as well as to provide an economic incentive for liners to shift and incur the cost of re-configuring of their routes and also to counter the cost of additional shipping time for feeder traffic.

The Vision document also focus on infrastructure modernisation by identifying and prioritizing 39 berths across Major Ports for landlord model adoption in Phase-I and berth No.9, 10 and 11 of Mormugao Port Trust are identified for landlord model adoption with timeline of 2022.

The document emphasise the need for increased mechanization at Indian ports where all berths should be adequately equipped with high capacity cranes, conveyor systems, Harbour Mobile Cranes (HMC's), grab unloaders, etc. by adopting five world-class mechanization models to be evaluated by Major ports to improve berth productivity. The mechanization of 21 berths across Major Ports in Phase-I cover the Mormugao Berth Nos. 9 and 10.

The Vision 2030 assist the potential impact of economy, trade by analysing the factor of creation of additional jobs, from the point of investment, cost savings to EXIM clients with reduced cost per transshipment container. The Maritime India Vision (MIV), 2030 which intend to take India to global maritime leadership has encouraged the PPP model and specifically targeted the Mormugao Port.

40. We find the decision of Mormugao Port Authority to be in tune with the Maritime India Vision (MIV), 2030 and with the documents placed on record along with the affidavit in reply we note that all the while the Central Government was kept in the loophole, before said decision was taken to float a tender for operation and maintenance of berth no.10 and 11 to private operators on PPP basis. The draft of the Concession Agreement as well as the letter of Award, received approval from the Government of India, and therefore, we do not find any merit in the submission advance on behalf of Petitioner No.1 that the permission of the Central Government was not sought.

41. Coming to the objection as regards exercise of the said power without framing of such Regulations by the Board and this being in violation of Section 22 of the Major Port Authorities Act, 2021, we have noted that sub-section (1) of Section 22 has conferred on the Board of each Major Port, the power to use its property, assets and funds in such manner and for such purposes as it may deem fit for the benefit of that Major Port.

Before the RFQ was published and bids were invited, a threadbare discussion and deliberations took place in the Standing Finance Committee (SFC) of the Port and all the while the Ministry of Ports, Shipping and Waterways was privy to the said discussion and we find presence of the Government of India in the meeting held under the chairmanship of Secretary (Ports, Shipping and Waterways) and therefore, it is well assumed by us, that the activity undertaken by the Board in consultation with the Central Government was for the benefit of the Port.

The arguments advanced on behalf of the Petitioners that in absence of the Regulations being framed, the power could not have been exercised, is a misreading of Section 22 of the Act of 2021.

Sub-section (1) of Section 22 do not make exercise of this power subject to formulation of Regulations, as it is a power to be exercised by the Board, with a freehand being given to the Board to use its property, assets and funds, which it deem fit for the benefit of the Port. It is to note that the Major Port Authorities Act, 2021 is a recent enactment and though there is a specific power conferred on the Board to make Regulations, the Regulations are not yet framed but merely on that count, Sub-clause (1) of Section 22 cannot be reduced nugatory and it cannot be said that the Board shall not be permitted to use its property, assets and funds, even if it is of the opinion that it is for the benefit of the Port.

42. A similar situation had arisen before the Apex Court in case of **Surinder Singh** (supra), when under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, providing for disposal of urban agricultural property, was questioned on the ground that

Government had not framed regulations and the use of the word "*Subject to any rules framed*" was held to be not authorising the exercise of the powers since no rules were framed by the Central Government with regard to disposal of urban agricultural property, forming part of compensation. The High Court held that unless rules are framed as contemplated by the Act, the Central Government has no authority in law to issue executive directions for the sale and disposal of urban agricultural property.

The Apex Court found this view to be incorrect and the following observations are relevant to take note of:

> *"6. In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute. In T. Cajee v. U.*

Jormanik Siem [AIR 1961 SC 276 : (1961) 1 SCR 750] the Supreme Court reversed the order of the High Court whereby the order of District Council removing Siem, was quashed by the High Court on the ground that the District Council had not framed any rules for the exercise of its powers as contemplated by para 3(1)(g) of 6th Schedule to the Constitution. The High Court had taken the view that until a law as contemplated by para 3(1)(g) was made there could be no question of exercise of power of appointment of a Chief or Siem or removal either. Setting aside the order of the High Court, a Constitution Bench of this Court held that the administration of the district including the appointment or removal of Siem could not come to a stop till regulations under para 3(1)(g) were framed. The view taken by the High Court that there could be no appointment or removal by the District Council without framing of the regulation was set aside. Similar view was taken by this Court in B.N. Nagarajan v. State of Mysore [AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 Lab LJ 698] and Mysore State Road Transport Corpn. v. Gopinath [AIR 1968 SC 464 : (1968) 1 SCR 767 : (1968) 2 Lab LJ 144] In U.P. State Electricity Board v. City Board, Mussoorie [(1985) 2 SCC 16 : AIR 1985 SC 883 : (1985) 2 SCR 815] validity of fixation of Grid Tarrif was under challenge. Section 46 of the Electricity (Supply) Act, 1948 provide that tariff known as the Grid Tariff shall be fixed from time to time in accordance with any regulations made in that behalf. Section 79 of the

Act conferred power on the Electricity Board to frame regulations. The contention that Grid Tariff as contemplated by Section 46 of the Electricity (Supply) Act could not be fixed in the absence of any regulations laying down for fixation of tariff, and that the notification fixing tariff in the absence of such Regulations was illegal, was rejected and this Court observed: (SCC pp. 20-21, para 7)

"It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made is this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff."

Recording that under the Act, the Central Government has ample power to take steps for disposal of pool property by auction and it has authority to issue administrative directions and particularly when neither Section 8, 16, 20 nor Section 40 laid down a condition that payment of compensation by sale of the pool property to a displaced person shall not be done unless rules are framed, it was held that framing of Rules regulating the mode or manner of disposal of urban agricultural property by sale to a displaced person is not a condition precedent for the exercise of power by the authorities. The view taken by the High Court was therefore not found to be sustainable.

43. The decision taken in the case of ***Sonvir alias Somvir v/s. State (NCT of Delhi)*** (supra) has also reiterated the said position, by relying upon its earlier decision in the case of ***Surinder Singh v/s. Central Government*** (supra) in its applicability to the provisions of Section 4 and 5 of the Identification of Prisoners Act, 1920.

Section 3 of the Act provide for taking of measurement of convicted persons and it contemplate that every person who has been convicted for an offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence which would render him liable to enhanced punishment on a subsequent conviction or ordered to give security for his good behaviour, shall if so required, allow his measurements and photograph to be taken by a Police Officer in the prescribed manner.

Section 4 of the Act deal with taking of measurement of non-convicted persons, in the prescribed manner. Section 5 of the Act deal with the power of a magistrate to order a person to be measured or photographed and it state that if a Magistrate is satisfied that it is expedient to direct any person to allow his measurements or photograph to be taken, he shall attend at the time and place specified in the order and allow his measurements or photograph to be taken, as the case may be, by a Police Officer.

Taking note of the scheme of the Act, being that Section 3, 4 and 5 are separate and independent provisions pertain to taking of measurements, the case involved taking of fingerprints of the appellant by the Police Officer after he was arrested which was referable to Section 4 of the Act, the question that fell for consideration was whether in absence of the manner prescribed, in which the measurement and photograph are to be taken, the evidence collected would be admissible and whether the power of the Police Officer cannot be exercised till the State make rules under Section 8.

Dealing with the aforesaid contention, it was held that the power given to the Police Officer to ask the person arrested to give his measurement is a substantive power and this power cannot be curtailed only because of imposition of condition that such measurement is "to be taken in the prescribed manner", and if there is any prescribed manner that cannot be breached by the Police Officer. Taking of the measurement in the prescribed manner is a procedural part of the section which does not affect the substantive power of the Police Officer to ask the accused who is under arrest, to give his measurement. The argument that unless rules are framed under Section 8, the power cannot be exercised, is observed, to be not in consonance with the purpose and object for which Section 4 was enacted. It is held that the argument advanced on behalf of the appellant that in absence of the Rule being framed, Section 5 shall not be resorted to by the Investigating Officer, was also not correct argument since the power to be exercised by the Police Officer under Section 4 was not permitted to be exercised with the condition that it can be exercised only after obtaining the order under Section 5.

The conclusion drawn from the detailed discussion with specific observation by the Apex Court in the case of ***Surinder Singh*** (supra) reads to the following effect:-

> "*78. What has been laid down above is fully attracted in the facts of the present case. Non-framing of any rules under Section 8 by the State Government does not prohibit the exercise of powers given under Sections 3 and 4 of the Act. Exercise of power under Sections 3 and 4 is hedged by conditions as prescribed but in a case where no rules have been framed, the authorities as empowered under Sections 3 and 4 are not denuded of their powers to act under Sections 3 and 4. In a case, the interpretation put by the learned counsel for the appellant that in the absence of rules framed under Section 8, no power can be exercised under Sections 3 and 4 is accepted, the provisions of Sections 3 and 4 shall become dead letter, which has never been the intention of the legislature in enacting the 1920 Act.*"

44. By applying the aforesaid proposition of law to the present scenario, where power under sub-section (1) of Section 22 is sought to be restricted on the ground that no Regulations are framed and therefore this power could not be exercised, according to us, the argument deserve rejection, since we find that if the Trust under the Major Port Authorities Act, 2021, which is enacted to provide greater autonomy and flexibility to the Major Ports and to professionalise their governance, and the statute intended to enable the Board of Major Port Authorities to use its property, assets and funds in such manner and for such purpose as it may deem fit so as to benefit the Port, in our considered view, the exercise of this power in absence of Regulations cannot be called in question as long as the decision of the Major Port is for the benefit of the Port.

Sub-Section (2) of Section 22 stipulate the Port assets to be used and developed as per the regulations made by the Board with an embargo that the manner of any contract or arrangement by the Board either in sale of its land or for lease shall be in such manner as may be prescribed and with a further stipulation that the tenure for lease of land for Public Private Partnership projects by the Board shall be subject to the policy notified by the Central Government.

In the present case we find that the decision taken by the Port to tender its open Berth nos. 10 and 11 for management on PPP basis, was with the approval of the Central Government and rather it advances the object underlining the Maritime India Vision, 2030.

We are therefore not convinced by the submission advanced by Mr Diniz that the power cannot be exercised by the Board in absence of regulations being framed under Section 22(2).

45. The contention of the Petitioner that despite the licence being valid up to the year 2027, by restricting their operations on berth no.10 and 11, their fundamental right under 19(i)(g) has been violated, we do not find substance in the said submission on two counts, as firstly, in law, the right to carry on their trade or business is not an absolute right and the restrictions, which are imposed, whether they are reasonable, fair, non-arbitratory and non-discriminatory can be decided by the Court in exercise of the power for judicial review.

The Respondent No.1 has filed an affidavit on 30.04.2025 making a categorical statement as below:-

> *"2. I say that in terms of the Concession Agreement dated 14th December 2023, the operations at Berth Nos 10 and 11 of the Mormugao Port have been commenced from 04th April 2025 by Delta Ports Mormugao Terminal Private Limited, Respondent No.3 herein.*

3. I say that the total quantity handled at Berth Nos 10 & 11 at Mormugao Port for the period from 04th April 2025 to 29th April 2025 is 1,56,766 MT. Out of this total quantity, the Respondent No.3 had handled a quantity of 1,22,339 MT and the balance quantity of 34,427 MT is the liquid cargo handled by the Mormugao Port Authority.

4. I say that during the said period from 04th April 2025 to 29th April 2025, the licensed stevedores of Mormugao Port have handled a total quantity of 2,72,740 MT at West Break Waters (WOB), Mooring Dolphins 1 & 2 (MD1-2) and the Finger Jetty, the details whereof are given hereunder:-

i. Stevedore, Bhavani Shipping Services (I) Pvt. Ltd. has handled a total quantity of 2,10,360 MT at West of Break Water (WOB);

ii. Stevedore, Delta Infra Logistics (Worldwide) Ltd. has handled a total quantity of 56,370 MT at Mooring Dolphins 1&2. Further it is stated that they are a member of the Mormugao Stevedores Association.

iii. Stevedore, M/s Rodrigues & Associates has handled a total quantity of 6,010 MT at the Finger Jetty."

46. There is no denial to the aforesaid statement in the additional rejoinder filed by the Petitioner on 01.05.2025 but the restricted contention is three licenced stevedores (out of 12) have managed to undertake operations at WOBs and finger jetties but 9 other licenced stevedores were not able to operate at all as Berth nos. 10 and 11 have now been handed over to Respondent Nos.2 and 3.

Going by the affidavit, the Petitioner no.1 has admitted that 2,16,370 MT of cargo is handed over by other licenced stevedores.

47. The aforesaid statement placed before us make it clear that it is not that the Petitioners who are the licenced stevedores are completely out of their business as they have carried out huge activity of stevedoring to the exclusion of berth no.10 and 11 and have been given the business. We are informed by the Port that there is sufficient business in the form of stevedoring and of shore handling which is available to the members of the Petitioner No.1 Association and, therefore, we are unable to accept the submission advanced on their behalf that by permitting the private operator, i.e. Respondent No.2 and 3 to operate and manage Berth nos.10 and 11, their right to livelihood has been taken away. Respondent No.1 Port has allotted stevedoring licence undisputably for operating throughout the Port but we find that no grievance is made by the Petitioners when two of its berths were permitted for captive use by the two companies.

When Berth nos. 10 and 11 are handed over to Respondent Nos.2 and 3 for enhancing the activity on the Port which was otherwise being conducted in a slow motion as the manner of lifting of cargo consumed more time, permitting less handling of the cargo and less docking of the vessels, we find the decision of the Port to be in consonance with the Vision Policy of the Government of India and with the betterment of the traffic at the Port, and particularly when it is not the case that the Petitioner No.1 and members of the Petitioner No.1 Association are completely debarred from carrying out stevedoring activity as the loading of the cargo coming by rakes and transported through finger jetties as well as lowering of cargo coming by rakes and barge and exported through mooring dolphins or finger jetties, the members of the Petitioner No.1 Association are permitted to operate. The Trade circular issued by the Respondent No.1 Authority clarify that there should be no overlapping of PPP project areas and other Port areas and a direction is issued that all cargo equipment/cranes lying in the PPP operated areas will have to be shifted out of that area leaving clear cut demarcated areas for the licenced stevedores.

In these circumstances, we do not find that the Petitioners are deprived of their right as to livelihood as, being licenced under the Regulations of 2023, they are permitted to operate in the Port except at Berth nos. 10 and 11 and the latest affidavit filed by the Port clearly indicate that the stevedoring activity was undertaken by the members of the Petitioner No.1 Association despite the Respondent No.2 and 3 operation on Berth nos. 10 and 11. Since we do not find any merit and substance in the submissions raised on behalf of the Petitioners, the Petition is liable to be dismissed.

Hence, we discharge the Rules and dismiss the Petition.

48. Once we have arrived at the aforesaid conclusion, we are also not persuaded to entertain the Contempt Petition alleging disobedience of the Order dated 10.03.2025 and therefore we dismiss the Contempt Petition as, according to us, no case for entertaining the same is made out.

NIVEDITA P. MEHTA, J. **BHARATI DANGRE, J.**