

Gujarat High Court

Shree Chamundamataji Dungal ... vs State Of Gujarat on 4 May, 2023

Bench: Biren Vaishnav

C/WPPIL/72/2022

CAV JUDGMENT DATED: 04/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
 R/WRIT PETITION (PIL) NO. 72 of 2022
 With
 CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2023
 In R/WRIT PETITION (PIL) NO. 72 of 2022
 With
 CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2023
 In R/WRIT PETITION (PIL) NO. 72 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE A.J. DESAI
 and
 HONOURABLE MR. JUSTICE BIREN VAISHNAV

=====

1 Whether Reporters of Local Papers may be allowed to Yes see the judgment ?

- | | | |
|---|---|-----|
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of | No |

law as to the interpretation of the Constitution of India or any order made thereunder ?

===== SHREE
 CHAMUNDAMATAJI DUNGAR TRUST Versus STATE OF GUJARAT
 ===== Appearance:

MR MAULIN RAVAL, SENIOR ADVOCATE WITH MR RISHABH JAIN, MR. TAPAS JAIN AND MR DIGANT M POPAT, ADVOCATES for the PETITIONER(s) No. 1 MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MR VINAY B VISHEN, ASST GOVERNMENT PLEADER for the Opponent(s) No. 1,2,3 MR SHALIN MEHTA, SENIOR ADVOCATE WITH MR TEJAS P S A T T A (3 1 4 9) f o r t h e

===== CORAM:HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE A.J.DESAI and HONOURABLE MR. JUSTICE BIREN VAISHNAV C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 Date : 04/05/2023 CAV JUDGMENT (PER : HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE A.J.DESAI) [1.0] Shree Chamundamataji Dungal Trust through one of the

Trustee Shri Gosai Dilipgiri Shamgiri, by way of present writ petition in the nature of Public Interest Litigation, has prayed to issue writ of mandamus or any other appropriate writ, order or direction to quash and set aside the Notification dated 06.07.2022 issued by the Energy and Petrochemical Department, Government of Gujarat by which M/s. MARS Entertainment Pvt. Ltd. ("MEPL" in short) i.e. respondent No.4 herein has been authorized for construction of an aerial ropeway at Shree Chamundamataji Temple Hill, near village Nani Paliyad, Taluka Chotila, District Surendranagar mainly on the ground with regard to granting the said work to respondent No.4 without issuing tender, without following the procedure prescribed under the Gujarat Aerial Ropeways Act, 1955 (hereinafter referred to as "GAR Act"), the proposed charges for to and fro, to reach the hill upon which the Chamundamataji Temple is located, is much on higher side, with regard to the safety of the pilgrims since the technology upon which the private respondent has been granted installation of ropeway and also on the ground that the petitioner is ready and willing to provide cheaper and safe ropeways for the pilgrims.

[2.0] By an oral order dated 05.09.2022, a notice came to be issued to all the respondents granting petitioner leave to delete C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 respondent No.5 i.e. one M/s. Usha Breco Limited ("UBL" for short) in view of the fact that the said Company i.e. UBL which had initially supplied the details about the installation of ropeway on the said hill had shown its unwillingness to continue with the said project. Accordingly, respondent No.5 was deleted.

[3.0] In response to the notice issued by this Court an affidavit in reply was initially filed by respondent No.4 on 10.10.2022 opposing the reliefs sought for by the petitioner.

[3.1] The State Authorities filed an affidavit in reply on 21.10.2022 and produced necessary and relevant documents for the consideration of the Court. A rejoinder was filed by the petitioner in the month of February, 2023 to which a sur- rejoinder was filed by the State Authority on 06.02.2023. Additional affidavit has also been filed by respondent No.1 i.e. Chief Electrical Inspector and Chairman of Advisory Board for aerial ropeway. Thereafter, the matter was listed for hearing before the Bench to which the reply was filed by the present petitioner on 29.03.2023. On completion of the pleadings, the matter was taken up for hearing.

[4.0] The short facts emerging from the record of the case are as follows:

[4.1] That, the present petitioner is a Public Charitable Trust viz. Shree Chamundamataji Dungar Trust (hereinafter referred to as "petitioner Trust").

C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 [4.2] The petitioner Trust is registered under the provisions of the Gujarat Public Trusts Act. The petitioner Trust administers and carries on the religious activities which are carried out at the Temple which is located on a hill which is popularly known as Chamunda Hill.

[4.3] It is the case of the petitioner Trust that it is also responsible to ensure smooth ingress and outgress of the pilgrims and believers in the Goddess 'Chamunda'. To reach the said Temple, which

is located on the hill, there are nearly 500 steps which are required to be climbed for those who come for Darshan of Shree Chamundamataji. It is the case of the petitioner Trust that elderly people, children and handicapped persons in large number who have tremendous faith, do visit the Temple regularly. Apart from these type of pilgrims, thousands of devotees regularly visit the Temple and on certain auspicious days, lakhs of people from all over the State of Gujarat do visit the Temple by climbing these 500 steps. Therefore, the petitioner Trust had requested the State Government in the year 2008-09 to construct an Aerial Ropeway for the benefit of such visitors of Chotila Temple.

[4.4] The State of Gujarat, under the provisions of the GAR Act and more particularly under Sections 6 and 7 of the GAR Act, invited applications from the intending promoters to provide the Aerial Ropeway at Chamunda Hill in the year 2008-09. Two companies viz. MEPL i.e. respondent No.4 and UBL i.e. respondent No.5 herein (deleted) were interested for installation C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 of Ropeway. After following the procedure as provided under Section 8 of the GAR Act, the State decided to issue the draft order in form of the Notification under Section 9(2) of the GAR Act in favor of MEPL alongwith publication of notice inviting objection or suggestion, if any, with respect to said draft order before the expiry of 90 days from the date of publication of the draft order.

[4.5] The present petitioner Trust filed a writ petition in the nature of public interest litigation being Writ Petition (PIL) No.95/2011 challenging the decision of the State Authority sanctioning the installation of Aerial Ropeway. UBL also filed a writ petition challenging the said decision by way of filing petition being Special Civil Application No.17361/2011 against the said notification which was issued on 21.05.2011. During the pendency of the above referred two petitions, the State Government issued another Notification on 04.10.2013 exercising its powers under sub-Section (1) of Section 3 of the GAR Act i.e. constituting 'Advisory Board for Aerial Ropeway' (hereinafter referred to as "ABAR") consisting of 8 members.

[4.6] The Advisory Committee after deliberating the installation of Ropeway and availability of different technology for installation of ropeway through the Chief Electrical Inspector, addressed a communication dated 23.06.2014 to the Additional Secretary, Energy and Petrochemical Department and advised that fresh applications be invited and the order dated 21.05.2011 granting sanction in favor of MEPL be rescinded. An affidavit was C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 filed in the aforesaid two petitions i.e. Writ Petition (PIL) No.95 of 2011 and SCA No.17361/2011. Considering the above affidavits, both the petitions were disposed of by the Division Bench of this Court on 22.07.2014. Subsequent thereto, by a Notification dated 20.10.2014, the State Government rescinded the above referred draft order dated 21.05.2011 which was issued in favor of present respondent No.4 - MEPL. The said decision dated 20.10.2014 came to be challenged by respondent No.4 - MEPL by way of filing Special Civil Application No.17272/2014 before this Court.

[4.7] Again the State Government issued an expression of interest by a public advertisement in two daily newspapers, one in vernacular i.e. in "Sandesh" and also in "Times of India" inviting fresh applications for developing an Aerial Passenger Ropeway from bottom of the hill to Shree

Chamundamataji Temple at Chamunda Hill. The said advertisement was published on 13.08.2018 as provided under Section 6 of the GAR Act.

[4.8] In response to the aforesaid advertisements, both, MEPL and UBL made fresh applications for construction of Ropeway at Chamunda Hill pursuant to which both were granted sanction under Section 8 of the GAR Act vide Notification to conduct preliminary survey for construction of Aerial Ropeway. The petition which was filed by the present respondent No.4 - MEPL being Special Civil Application No.17272/2014 challenging the rescinding order came to be dismissed by the Division Bench of this Court by an oral judgment dated 20.09.2019.

C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 [4.9] As provided under the GAR Act, preliminary survey reports were submitted by both the companies viz. MEPL and UBL to the respondent State which were forwarded to the ABAR constituted under Section 3 of the GAR Act. The reports were analyzed by the members of the ABAR in its earlier meeting dated 05.01.2021 and thereafter another meeting was convened on 19.01.2021. The members of ABAR opined that MEPL (respondent No.4 herein) had not attached any credentials regarding manpower, technical expertise etc. against UBL which had strong technical competence. MEPL had offered "Mono-Cable Fixed Grip Jig-Back System" and causing various issue owing to frequent start-stop mechanism, against UBL's offer of "Mono-Cable Detachable Grip System" and in view thereof, UBL came to be recommended. However, before the minutes though recorded by the members of ABAR, shared with respondent State Authorities, which is supposed to accept the report, MEPL had submitted its additional proposal offering "Mono-Cable Detachable Grip System" in association with another private company viz. Ropeway Resorts Pvt. Ltd. (hereinafter referred to as "RRPL"), which came to be forwarded to the ABAR for consideration.

While responding to the above Notification dated 13.08.2018, UBL by a Notification dated 10.12.2020 had conveyed to the State Authorities that if the State Government decides to choose any other bidder / developer, UBL will not have any objection.

[4.10] Having received the additional proposal at the instance of MEPL - respondent No.4, a meeting was convened by C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 ABAR on 16.03.2021 and members of ABAR, who attended the meeting on 16.03.2021, opined that both the intending promoters i.e. MEPL and UBL were competent to construct ropeway with Mono-Cable Detachable Grip System and accordingly, submitted its opinion to the respondent State Authorities. The Chairman of ABAR i.e. Chief Electrical Inspector, by a communication dated 22.03.2021, informed the State Government that though both the parties viz. MEPL and UBL are competent for installation of Ropeway, it was clarified that the MEPL had already been granted necessary land by the State Authorities required for the project with the necessary approval of the concerned Authority of Central and State Government as back as in the year 2008. Considering the report submitted by ABAR, it was specified that since MEPL has the land having clearance certificate from several departments particularly the Forest Department, a decision was taken at the highest level in the State Government to accord sanction under Section 9 of the GAR Act in favor of MEPL (respondent No.4 herein).

[4.11] Subsequent to the aforesaid development and keeping in mind the fact that MEPL had obtained requisite approvals and clearances and other relevant approvals, a draft order came to be issued on 05.04.2021 under Section 9(2) of the GAR Act granting sanction in favor of MEPL (respondent No.4 herein). As provided under Section 9 of the GAR Act, a notice was given for raising any objection or suggestion with regard to the said draft order before expiry of 90 days from the date of C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 publication of the draft order in the official gazette which was published in Gazette on 24.06.2021.

[4.12] Against the aforesaid proposal relating to the award of contract in favor of MEPL, again the petitioner Trust preferred a Writ Petition (PIL) No.80/2021 challenging the aforesaid draft order on 05.04.2021. The said petition came to be disposed of by the Division Bench of this Court on 16.09.2021 directing the petitioner Trust to file its representation against the said draft order on or before 24.09.2021 further directing the State Government to decide by giving sufficient opportunity of hearing to the petitioner Trust. It was further observed that if the representation is rejected, final order shall not be published for a period of two weeks from the date of receipt of the said order. A representation was received by the State Authorities on 21.09.2021. The State Authorities rejected the representation by its speaking order dated 10.06.2022. Thereafter, by an order dated 06.07.2022, final order has been issued under Section 10(1) of the GAR Act in favor of respondent No.4 - MEPL to undertake the construction of Ropeway of Chamunda Hill.

Hence, this petition.

[5.0] Mr. Maulin Raval, Senior Advocate with learned advocates Mr. Rishabh Jain, Mr. Tapas Jain and Mr. Digant Popat appearing for the petitioner Trust would submit that the respondent State Authorities before authorizing the MEPL to construct the Aerial Ropeway at Shree Chamundamataji Temple Hill had never floated any tender and invited all interested persons and on this C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 ground alone the entire procedure adopted by the State Government authorizing respondent No.4 to construct the Ropeway is illegal and invalid and therefore, the Notification dated 06.07.2022 issued by the Authority is required to be quashed and set aside and the State Government may be directed to issue fresh public notice inviting tenders and only thereafter, if any decision taken by the Authority, can be treated as valid as far as procedural part is concerned. He would submit that the case put forward by the State Authorities that there is no need to float a tender under Section 6 of the GAR Act is without basis since when government itself is undertaking a big project of installation of Ropeway involving crores of rupees, it is the duty of the State Government to invite tenders by incorporating appropriate terms and conditions for accepting any bid submitted by the interested person.

[5.1] He would submit that when in the year 2008-09 government initiated proceedings under Sections 6 and 7 of the GAR Act, MEPL and UBL had shown interest and had sought for approval from the State Government to construct the Aerial Ropeway on the site. These two companies had applied to carry out the construction work at the Chamunda Hill and thereafter the respondent State Authority issued a draft order in form of Notification under Section 9(2) of the GAR Act in favor of respondent No.4 herein - MEPL, against which the present petitioner Trust as well as UBL had preferred writ petitions raising certain grounds. He would submit that during the pendency of the

aforesaid petitions, the State Government C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 issued Notification in exercise of powers under sub-Section (1) of Section 3 of the GAR Act i.e. constituting ABAR consisting of 8 members. Chief Electrical Inspector, Gujarat State was the Chairperson of ABAR. He would submit that as per the case put forward by the respondent State itself, the Chief Electrical Inspector being the Chairperson of ABAR advised the State Authorities for inviting fresh applications and the order which was granted in favor of the MEPL came to be rescinded.

He would submit that the said decision of rescinding in favor of respondent No.4 was challenged by respondent No.2 which also came to be dismissed.

[5.2] Learned Senior Advocate Mr. Raval by taking us through the minutes of meeting of ABAR dated 19.01.2021, would submit that 6 members of ABAR remained present in the meeting and after deliberating several aspects with regard to installation of Ropeway found that the case of MEPL shall not be considered due to lack of experience, manpower strength and adaption of advanced innovative technology and had strongly recommended another company namely UBL for construction of proposed Ropeway at Shree Chamundamataji Temple at Chamunda Hill for safety of pilgrims in particular and comfort of passengers at large. He would submit that before the said report was sent to the State Authority, respondent No.4 came with additional proposal offering Mono-Cable Detachable Grip System for the proposed Ropeway not on its own but in association with another company viz. RRPL, which has allegedly expertise for installation C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 of the aforesaid Mono-Cable Detachable Grip System. He would submit that thereafter only 4 members of ABAR examined the additional proposal submitted by the MEPL and accepted the same which is contrary to the mandatory provisions of Section 3(2) of the GAR Act since 8 members were not present in the subsequent meeting which was held in the month of March, 2021. He would submit that as per Section 3(2) of the GAR Act, ABAR requires 8 members including Chairperson who would be the Chief Electrical Inspector however, if the report dated 22.03.2021 is perused, only 4 persons have signed the report which has been wrongly accepted by the State Authority. The State Authority ought not to have accepted the report which was not submitted in accordance with law.

[5.3] Mr. Raval, learned Senior Advocate would further submit that as per the mandatory provision of Section 3(2) of the GAR Act about inclusion of the members of ABAR, the State Government is duty bound to see that apart from Chairperson who shall be the Chief Electrical Inspector, other persons must have knowledge and expertise in the field of ropeway structural, mechanical, electrical and metallurgical engineering. He would submit that in the present case one of the member is Director of Electrical Research and Development Association (hereinafter referred to as "ERDA"), another person is Assistant Director of ERDA and fourth is Deputy Chief Electrical Inspector and Member Secretary and considering the status of aforesaid members, it cannot be said that they are possessing knowledge or expertise in the fields of ropeway structural, mechanical, electrical and C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 metallurgical engineering and on this count also, the report submitted by ABAR ought not to have been accepted by the State Authority and accordingly the MEPL should not have been granted sanction to install the Aerial Ropeway. By taking us through the conclusive part of the report dated 25.03.2021 which offers comments of

ABAR, he would submit that MEPL itself has no expertise of installing the ropeway which has been offered but has again entered into agreement with RRPL which has allegedly competence in designing, engineering, procurement, construction, operation and maintenance of ropeway and therefore, respondent No.4 cannot be stated to have sufficient knowledge or expertise which is required for installation of the ropeway and in such circumstances if respondent No.4 - MEPL is permitted to carry on further work, it may result into disaster and may affect the safety of pilgrims who may use the ropeway instead of climbing 500 steps.

[5.4] He would further submit that as provided under Section 7(g) of the GAR Act, the desirous applicant is supposed to include a description of basic engineering design and risk analysis of ropeway, schemes for safety requirements and emergency plan for rescue operations, which is missing in the entire procedure. Even no procedure has been followed in the sanctioning of the installation of Aerial Ropeway of following Section 8 of the GAR Act. He would submit that the procedure which is mandatory in nature as provided under Section 9 of the GAR Act has not been followed and particularly as per Section 9(4)(xv) of the GAR Act, the rates provided by respondent No.4 is on much higher side, C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 which the poor pilgrims would not be able to afford wherein the petitioner Trust who has now offered the alternative installation of ropeway is much cheaper and therefore, the authority can now consider the case of the petitioner Trust who is ready and willing to install ropeway which is known as Funicular System. He would submit that installing ropeway in the Funicular System would be more safer for the pilgrims since the same would provide facility to pilgrims to get down at any step while climbing through the ropeway. He, therefore, would submit that the decision of the State Authorities to accord sanction in favor of respondent No.4

- MEPL may be quashed and set aside and the respondent be directed to issue fresh tenders by inviting public at large to apply for the project of installation of the ropeway at Chamunda Hill. In support of his submissions, learned Counsel Mr. Raval appearing for the petitioner Trust has relied upon the decision dated 02.02.2012 rendered by Hon'ble Apex Court in the case of Centre for Public Interest Litigation vs. Union of India with Dr. Subramanian Swamy vs. Union of India reported in (2012)3 SCC

1. By relying upon the said decision, he would submit that the Hon'ble Apex Court has held that the policy adopted by the State Authorities was against the public interest and accordingly the allocation of the licenses were quashed and set aside.

[5.5] By relying upon another decision of Hon'ble Apex Court in the case of M/s. Indian Medicines Pharmaceuticals Corporation Ltd. vs. Kerala Ayurvedic Co-operative Society Ltd. & Anr. reported in 2023 SCC OnLine 5, he would submit that in the said decision it has been held that a contract can be granted by C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 private negotiation only in exceptional circumstances having regard to the 'nature of the trade or largesse or for some other good reason and only under exceptional circumstances, without inviting the tender, a contract can be awarded. He would submit that it has been further held that granting of contract by the government authorities must be transparent process which is lacking in the present case and therefore, in absence of such transparency in the present case, the notification be quashed and set

aside.

[5.6] Mr. Raval, learned Senior Counsel initially argued about the applicability of the GAR Act to the State of Gujarat, however has not put much emphasis on it.

[6.0] On the other hand, learned Advocate General Mr. Kamal Trivedi assisted by learned Assistant Government Pleader Mr. Vinay Vishen appearing for respondent - State Authorities has vehemently opposed the present petition. He would submit that the petition filed by the petitioner Trust is not a public interest litigation since the petitioner Trust itself, during the pendency of the present petition has requested the State Authorities by a communication dated 26.09.2022 to permit it to install the ropeway having Funicular System at Chamunda Hill. Therefore, it seems that the petitioner Trust is interested in laying down the ropeway. He would submit that the intention of the State Authorities to lay down ropeway at Chamunda Hill began way back in the year 2008. The petitioner Trust is fully aware about the same since the petitioner Trust has always challenged the C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 decision taken by the Authorities for the purpose of installing the ropeway at Chamunda Hill. The petitioner Trust is challenging such action since 2011 by filing various writ petitions before this Court. Therefore, finally when the public notice as provided under Section 6 of the GAR Act was issued in daily newspapers, the petitioner Trust could have applied and ought to have submitted the details prescribed under Section 7 of the GAR Act as sought for in the public notice. Instead of submitting any application in response to the public advertisement, the petitioner Trust started raising objections and that too during the pendency of the petition. He would further submit that the intention of the petitioner Trust seems to be different than what is pleaded before this Court when the present writ petition in the nature of public interest was filed.

[6.1] Mr. Kamal Trivedi, learned Advocate General would submit that the GAR Act has been enacted to regulate the installation and maintenance of ropeway installed at a public place for their utility. He would further submit that installation of ropeways need special knowledge in the field of ropeway structural, mechanical, electrical and metallurgical engineering and there are few such companies which have always come forward for installation of the ropeway in various parts of India. He would submit that therefore, a detailed procedure is prescribed in the GAR Act before authorizing a person to construct such ropeway. Considering the previous litigation with regard to installation of ropeway at Chamunda Hill, the State Authorities issued a public advertisement in two daily newspapers viz. Times of India and C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 Sandesh, a newspaper published in vernacular language, on 13.08.2018. By taking us through the said public advertisements, he would submit that the Chief Electrical Inspector, Gujarat State, Gandhinagar who is Chairperson of ABAR had invited applications from the interested parties with certain requirements which have been referred to in the said notification. He would submit that the intention to install ropeway at Chamunda Hill was widely published by the State Authorities since both the newspapers are having wide circulation in the area where Chamunda Hill is located and therefore, if the petitioner Trust was interested, which now seems so, could have applied by supplying the details at that stage. The petitioner Trust never applied in response to the aforesaid public advertisements. Only two companies viz. MEPL and UBL submitted the detailed report as sought for by the Authorities referred to in the public advertisement. He would submit that if the

petitioner Trust had filed an application alongwith necessary material, the petitioner Trust's case also could have been examined by ABAR. Having missed the opportunity for number of years i.e. almost four years from the date of publication of advertisement, the petition came to be filed in the year 2022 that too after grant of permission of respondent No.4 with ulterior motives. He, therefore, would submit that only on this ground, the petition is required to be dismissed.

[6.2] Mr. Kamal Trivedi, learned Advocate General would further submit that there should not be judicial review in the matter of policy decisions relating to administrative and technical matters.

C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 He would submit that this Court does not have the expertise to correct a combined administrative and technical decisions, in view of the fact that this Court is not sitting as a Court of appeal but is merely examining the manner in which the decision has been taken by the State Authorities and that while doing so, this Court must grant certain measure of freedom to the executive. In support of his above submission, learned Advocate General has relied on paragraphs 82, 89, 92 and 94 of the decision of Hon'ble Apex Court in the case of Tata Cellular vs. Union of India reported in (1994) 6 SCC 651.

[6.3] He would further submit that inviting tenders and holding public auction cannot be held to be a constitutional requirement and therefore, every method other than public auction, cannot be struck down as ultra vires the constitutional mandate. He would submit that without prejudice to the contention that a public auction is a more preferable mode which should not be alienated for commercial pursuits of profit maximizing private entrepreneurs, the same can be differed with when the State wants to develop certain facilities for the public at large through private participation. He therefore would submit that other than the method of conducting a tender inquiry, there can also be a legislation providing for a different method to select a developer which is permissible mode and cannot be faulted on the ground of there being no tender inquiry. He would further submit that the provisions of the GAR Act do not provide for an option of inviting tender by a public notice for selection of a developer for construction of an Aerial Ropeway. He would submit that the C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 State Authorities had issued public notices inviting "Expression of Interest" from the interested parties for the construction of the Aerial Ropeway in question, which was nothing but a tender inquiry, leading to auction and hence, the petitioner Trust cannot find fault with the same. In support of his above submissions, learned Advocate General has placed reliance on the decisions of Hon'ble Apex Court in the case of Natural Resources Allocation Re. Special Reference No.1 of 2012 reported in (2012) 10 SCC 1 (Paras 142 to 146, 193 to 195 and 199) as well as in the case of Villianur Iyarkkai Padukappu Maiyam vs. Union of India reported in (2009) 7 SCC 561 (166 to 175 and 180).

[6.4] He would further submit that ABAR is merely a re- commendatory body and that in the present case its final recommendations were conveyed to the State Government only after the conclusion of its all the three meetings dated 05.01.2021, 19.01.2021 and 16.03.2021. He would submit that none of the provisions of the GAR Act provide that the recommendations of ABAR bind the State Government and therefore, it is not permissible for the petitioner to contend that the State Government has no authority to take a final call for the purpose of authorizing any eligible intending promoter for constructing and working of Aerial Ropeway. He would submit that communication

dated 22.03.2021 of ABAR specifically states that government may kindly decide the matter as may be deemed fit while considering the minutes of its meetings dated 19.01.2021 and 16.03.2021. He would further submit that ABAR in its initial meetings dated 05.01.2021 and 19.01.2021 had C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 recommended UBL and not MEPL however, before the minutes of the said meetings could be shared with the State, MEPL submitted its additional proposal, which came to be forwarded to ABAR and in turn, ABAR considered the same in its subsequent meeting dated 16.03.2021 and accordingly, as per the recommendations of ABAR in its communication dated 22.03.2021, on 01.04.2021, a decision was taken at the highest level in the State Government and sanction was accorded to respondent No.4 - MEPL under Section 9 of the GAR Act. He would further submit that while awarding the project in question in favor of MEPL, the State Government had considered the availability of 0.7888 Hectare of land with MEPL right from the bottom of the hill till the top, which was very much required for the purpose of construction of the ropeway in question. He would submit that another intending promoter viz. UBL was not having such a chunk of land and fresh acquisition of such an extant of land at the behest of UBL would have taken lot of time resulting into huge delay in the project in question, which is under consideration since the year 2008.

[6.5] Mr. Kamal Trivedi, learned Advocate General would further submit that there is no provision under the GAR Act providing for fixing the quorum for the meeting of ABAR and therefore, merely because number of members of ABAR did not remain present, final recommendations of ABAR to the State Government as contained in communication dated 22.03.2021 do not get invalidated. In support of his above submissions, learned Advocate General has relied on decisions of Hon'ble Apex Court C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 in the case of (1) Shri Ishwar Chandra vs. Shri Satyanarain Sinha [(1972) 3 SCC 383 (Paras 2, 4 & 10)]; (2) Arti Sapru vs. State of J.K. [(1981) 2 SCC 484 (Para 14)]; (3) People's Union For Civil Liberties vs. Union of India [(2005) 5 SCC 363 (Paras 13 and

15)]; (4) Arun Kumar Modi vs. State of Rajasthan [1974 SCC Online Raj 164 (Paras 6(3), 24 and 25)] and (5) Talluri Srinivas vs. Union of India [2018 SCC Online Del 7765 (Paras 1, 16, 17, 19 and 21)].

[6.6] As against the contention raised on behalf of the petitioner Trust that the State Government is bent upon to favor respondent No.4 - MEPL, learned Advocate General would submit that rates of tariff quoted by MEPL and UBL are merely estimates, which are within the scope of revision by the State Government and even the tariff proposed by MEPL is not final but subject to the approval of the State Government, which may be granted after examining all the relevant aspects in that regard. He would therefore submit that the assertion made by the petitioner Trust that State Government is bent upon favouring respondent No.4 - MEPL is factually incorrect.

Making above submissions, learned Advocate General has requested to dismiss the present petition.

[7.0] Learned Senior Advocate Mr. Shalin Mehta assisted by learned advocate Mr. Tejas Satta appearing for respondent No.4

- MEPL in addition to supporting the submissions canvassed by the learned Advocate General, would submit that the petitioner Trust has referred only to minutes of meeting dated 19.01.2021 C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 of ABAR whereas it has forgot to mention about the subsequent minutes of meeting dated 16.03.2021 of ABAR wherein ABAR had again analyzed the documents provided by respondent No.4 and only thereafter ABAR had arrived at the decision that respondent No.4 is competent to undertake the project and therefore, he would submit that the petitioner Trust has deliberately suppressed the true and correct facts of the case before this Court.

[7.1] Learned Counsel Mr. Mehta would submit that the Trust consists of the members from one family and the petitioner Trust has come before this Court with personal agenda and therefore, present petition in the form of Public Interest Litigation is required to be dismissed on that ground alone. He would submit that earlier also, the petitioner Trust had moved this Court twice or thrice and intentionally created hurdles in implementation of the project of Aerial Ropeway to Chamunda Hill. He would further submit that in earlier round of litigation at the behest of the petitioner Trust, the coordinate Bench of this Court had given directions to the respondent Authorities to consider the matter of petitioner Trust and the respondent Authorities after following due process of law, had passed the order in favor of respondent No.4 - MEPL and even thereafter the petitioner Trust has been harassing the respondent No.4 by filing multiple proceeding before this Court only because the petitioner Trust do not want the ropeway to get constructed at Chamunda Hill.

[7.2] He would further submit that the petitioner Trust is having C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 alternative remedy in law under Section 28 of the GAR Act which provides for review of order under Section 10 or Section 21 of the GAR Act. He would further submit that the respondent No.4 - MEPL had acquired the land for the said project after getting due permission from the concerned Forest Department. He would further submit that respondent No.4 is running a ropeway for more than 10 years now at Sundhamata Ropeway in Rajasthan and thus is capable of carrying out the Aerial Ropeway project at Chamunda Hill. He would therefore submit that the petition be dismissed.

[8.0] We have heard the learned Counsel appearing for the respective parties at length.

The facts narrated hereinabove with regard to previous litigation are not in dispute and therefore, this Court would like to appreciate the case put forward by the parties from the date of publishing the notice by the State Authorities with regard to inviting the interested parties for installation of Aerial Ropeway at Chamunda Hill. The said public notice was circulated through two daily newspapers by which the Chief Electrical Inspector, Gujarat State, Gandhinagar invited those interested firms / promoters / companies which wish to take up the development of the project of Passenger Ropeway at Chamunda Hill, District Surendranagar, State of Gujarat under PPP Mode. It was clarified by the Chief Electrical Inspector that Government of Gujarat invites Expression of Interest (EOI) which shall include several aspects like Company Profile, Experience in Infrastructure Sector especially ropeways, Experience in implementing projects in hilly C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 regions, availability of required technical know-how / personnel, Financial Resources such as net-worth, turnover, profits etc. in last

5 years and Suggestions on ropeway alignment, project profile, associated costs, etc. [8.1] The said notice came to be published under Section 6 of the GAR Act. As per Section 6 of the GAR Act, the intending promoter may file application and show his interest so that such intending promoter can undertake preliminary investigation in regard to proposed Aerial Ropeway and the same shall be submitted to the State Government. Section 7 of the GAR Act prescribe the necessary and relevant details which are required to be made part of application under Section 6 of the GAR Act which includes description of the undertaking of the route to be followed by the proposed aerial ropeway etc. It also includes the details which are required to be supplied by intending promoter showing the description of basic engineering design and risk analysis of ropeway, schemes for safety requirements and emergency plan for rescue operations. Sections 6 and 7 of the GAR Act are reproduced hereinbelow:

"6. Every application by an intending promoter other than State Government for permission to undertake the necessary preliminary investigation in regard to a proposed aerial ropeway shall be submitted to the State Government.

7. Every application to be made under section 6 shall include.-

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- (a) a description of the undertaking and of the route to be followed by the proposed aerial ropeway;
- (b) a description of the system of construction and management and of the advantage to the community to be expected from such ropeway;
- (c) an estimate of the cost of construction thereof;
- (d) a statement of the estimated working expenses and profit in respect thereof;
- (e) a statement of the maximum and minimum rates which it is proposed to charge;
- (f) such maps, plans, section and drawing in connection therewith as the State Government may require in order to form an idea of the proposal;
- (g) a description of basic engineering design and risk analysis of ropeway, schemes for safety requirements and emergency plan for rescue operations;
- (h) drawings showing the electrical layouts control circuits, lighting circuits and earthing system;"

[8.2] It is not in dispute that in response to the public notice, the petitioner Trust had not applied as an intending promoter though it seems from several communications at the instance of the petitioner Trust that the Trust had developed interest in laying down the aerial ropeway at Chamunda Hill.

There is not a single provision in the GAR Act of mandatory nature by which the State Authority is supposed to issue the public tender. Being a special skill for installation of aerial ropeway and only few companies are undertaking such exercise C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 i.e. installation of ropeway in India, applications are invited which was made known to the public at large by issuing the public notice. There are various methods of installing the aerial ropeway and therefore, ABAR is constituted having expertise in this field.

In this background, whether not issuing any tender would be fatal to the exercise undertaken by the State Authorities by different mode is to be examined by this Court in view of the background of the facts and circumstances of the case.

[8.3] A Bench of 5 Hon'ble Judges of the Apex Court in the case of Natural Resources Allocation Re. Special Reference No.1 of 2012 (Supra), while deciding a reference raising certain questions has held that auction is not the only permissible method to undertake certain project and particularly when the Court finds that the method adopted by the Authority is a fair one. It has also held that the Court cannot sit in an appeal to decide whether any better policy would have been applied or not. Following seven questions were referred to the Bench of 5 Hon'ble Judges of the Apex Court.

"Question 1. Whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions ?

Question 2. Whether a broad proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 several judgments of the Supreme Court including those of the larger Benches ?

Question 3. Whether the enunciation of a broad principle, even though expressed as a matter of constitutional law, does not really amount to formulation of a policy and has the effect of unsettling policy decisions formulated and approaches taken by various successive governments over the years for valid considerations, including lack of public resources and the need to resort to innovative and different approaches for the development of various sectors of the economy ?

Question 4. What is the permissible scope for interference by courts with policy-making by the Government including methods for disposal of natural resources ?

Question 5. Whether, if the court holds, within the permissible scope of judicial review, that a policy is flawed, is the court not obliged to take into account investments made under the said policy including investments made by foreign investors under multilateral/bilateral agreements?

Question 6. If the answers to the aforesaid questions lead to an affirmation of the judgment dated 02.02.2012 then the following questions may C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 arise, viz.

(i) whether the judgment is required to be given retrospective effect so as to unsettle all licences issued and 2G spectrum (800, 900, and 1800 Mhz bands) allocated in and after 1994 and prior to 10.01.2008?

(ii) whether the allocation of 2G spectrum in all circumstances and in all specific cases for different policy considerations would nevertheless have to be undone?

And specifically

(iii) Whether the telecom licences granted in 1994 would be affected?

(iv) Whether the Telecom licences granted by way of basic licences in 2001 and licences granted between the period 2003-2007 would be affected?

(v) Whether it is open to the Government of India to take any action to alter the terms of any licence to ensure a level playing field among all existing licensees?

(vi) Whether dual technology licences granted in 2007 and 2008 would be affected?

(vii) Whether it is necessary or obligatory for the C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 Government of India to withdraw the Spectrum allocated to all existing licensees or to charge for the same with retrospective effect and if so on what basis and from what date?

Question 7. Whether, while taking action for conduct of auction in accordance with the orders of the Supreme Court, it would remain permissible for the Government to:

(i) Make provision for allotment of Spectrum from time to time at the auction discovered price and in accordance with laid down criteria during the period of validity of the auction determined price?

(ii) Impose a ceiling on the acquisition of Spectrum with the aim of avoiding the emergence of dominance in the market by any

licensee/applicant duly taking into consideration TRAI recommendations in this regard?

(iii) Make provision for allocation of Spectrum at auction related prices in accordance with laid down criteria in bands where there may be inadequate or no competition (for e.g. there is expected to be a low level of competition for CDMA in 800 MHz band and TRAI has recommended an equivalence ratio of 1.5 or C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 1.3X1.5 for 800 MHz and 900 Mhz bands depending upon the quantum of spectrum held by the licensee that can be applied to auction price in 1800 Mhz band in the absence of a specific price for these bands)?

Question 8. What is the effect of the judgment on 3G Spectrum acquired by entities by auction whose licences have been quashed by the said judgment?"

[8.4] The Hon'ble Apex Court in the said decision, relying upon several decisions, keeping in mind different types of cases, has observed in paragraphs 142, 143 and 144 as under:

"142. In BALCO (supra), the Court took notice of the judgment in Peerless General Finance and Investment Co. Ltd. & Anr. Vs. Reserve Bank of India 67 and observed that some matters like price fixation are based on such uncertainties and dynamics that even experts face difficulty in making correct projections, making it all the more necessary for this Court to exercise non-

interference: (Peerless General Finance case⁷², SCC p. 375, para 31) "31. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts." (BALCO case⁷¹, SCC p. 358, para 38)

143. In an earlier case in M/s Prag Ice & Oil Mills & Anr. Vs. Union of India ⁷³, this Court had observed as under: (SCC p. 478, Para 24) "We do not think that it is the function of this Court or of any court to sit in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."

144. In State of Madhya Pradesh Vs. Narmada Bachao Andolan & Anr.⁷⁴, this Court said that the judiciary cannot engage in an exercise of comparative analysis over the fairness, logical or scientific basis, or wisdom of a policy. It held that: (SCC pp. 670-71, para 36) "36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer, or more scientific or logical, or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power."

[8.4.1] In paragraph No.146 of the said decision, which is reproduced hereinafter, it has been observed by the Apex Court that Court will not compare which policy is fairer than other unless the policy or procedure adopted by the Authority for C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 granting any contract is patently unfair, which is not the case on hand.

"146. To summarize in the context of the present Reference, it needs to be emphasized that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavor of this Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the Courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down."

[8.4.2] In paragraph No.150 of the said decision, the Hon'ble Apex Court has observed as under:

"150. In conclusion, our answer to the first set of five questions is that auctions are not the only permissible method for disposal of all natural resources across all C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 sectors and in all circumstances."

[8.4.3] It is not in dispute that the petitioner Trust itself was aware about the public notice and has never applied to the State Authorities submitting necessary requirement as provided under Sections 6 and 7 of the GAR Act and has now come forward with alternate mode of installation of ropeway that too vague in nature and which is produced on record.

[8.5] It is pertinent to note that only two companies viz. MEPL and UBL had shown interest in installation of the aerial ropeway at Chamunda Hill. A detailed report in the nature of minutes of meeting of ABAR has been placed on record which has compared the capabilities of two intending promoters viz. MEPL and UBL. Ultimately, ABAR has specifically opined that proposal made by MEPL shall not be considered due to lack of experience, manpower strength and adaption of advanced innovative technology. However, before the said report is placed before the State Authorities, the respondent No.4 - MEPL submitted additional material before ABAR for re-considering its case by a communication dated 22.02.2021. ABAR again examined the material placed by MEPL and ultimately, a meeting of the members of ABAR was convened on 16.03.2021. The minutes of meeting which is produced on record suggests that the members of ABAR had examined the additional material which was placed by MEPL and found that the case of MEPL for installation of aerial ropeway can be considered in favor of respondent No.4 MEPL. Comments of

ABAR recorded on 16.03.2021 read as under:

C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 "Earlier, MARS offered proposal with monocable fixed grip system while M/s. Usha Breco Limited (UBL) offered for monocable detachable grip system for ropeway at Chotila. Both the proposals were analyzed during the Board meeting dated 19-01-2021 and the ABAR recommended monocable detachable system offered by UBL for the proposed ropeway at Chotila. Subsequently, MARS submitted an additional proposal to the Government with monocable detachable grip system which was analyzed by the Board during the meeting dated 16-03-2021. MARS has submitted an agreement entered into with RRPL who has competence in designing, engineering, procurement, construction and operation & maintenance of ropeway.

In view of the, above MARS jointly with RRPL is found competent to construct the ropeway with monocable detachable grip system. Thus, proposal of M/s. Mars Entertainment Pvt. Ltd. Is found suitable with the help of RRPL for consideration for Ropeway at Chotila Mata Temple. Government may decide on the proposal for the said project."

[8.6] The office of the Chief Electrical Inspector, Gujarat State, Gandhinagar by a communication dated 22.03.2021 itself, i.e. the day on which the meeting was convened and minutes were recorded, wrote a letter to the Officer on Special Duty (Power), Energy and Petrochemical Department, Gandhinagar and has opined that ABAR is finally of the view that Government may authorize either of the intending promoters to construct the ropeway at Chamunda Hill i.e. M/s. UBL and M/s. MEPL jointly with M/s. RRPL. It is pertinent to note that UBL vide its communication dated 10.12.2020 had already informed that UBL will not have any objection if the Government decides to choose any other bidder / developer and therefore, finally, a Notification under Section 9 of the GAR Act impugned herein came to be C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 issued on 06.07.2022 in favor of MEPL.

[9.0] The next question with regard to presence of members in the subsequent meeting in which a decision was taken to consider the case of MEPL and the basic qualifications to become a part of ABAR, which according to the submission made by the Advocate for the petitioner Trust, are not in consonance with sub-section (2) of Section 3 of the GAR Act is concerned, we would like to reproduce section 3(2) of the GAR Act, which reads as under:

"3(2) The Advisory Board shall consist of a Chairperson who shall be the Chief Electrical Inspector and seven other members to be appointed by the State Government amongst the persons having knowledge or experience in the fields of ropeway, structural, mechanical, electrical and metallurgical engineering;"

[9.1] As per Section 3(2) of the GAR Act, the Chairperson of ABAR shall be the Chief Electrical Inspector and seven other members to be appointed by the State Government amongst the persons having knowledge or experience in the fields of ropeway, structural, mechanical, electrical and metallurgical engineering. It is not in dispute that the Chairperson of ABAR is the Chief Electrical Inspector of the State of Gujarat.

[9.2] If the report dated 19.01.2021 is perused, the following members had attended the meeting.

- (1) Mr. H.H. Khoja, Chief Electrical Inspector and Chairman, RAB
- (2) Dr. S.K. Dutta, Prof. & Head, Dept. Of Metallurgical &

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- (3) Material Engg., M.S. Univ.
- (3) Dr. C.S. Sanghvi, Prof. & Head, Applied Mechanics, LDCE
- (4) Anil Suthar, Head (Mechanical Section) ERDA, Vadodara
- (5) Dr. I.I. Pandya, Prof. & Head, Structural Engineering, M.S. Univ.
- (6) Mr. A.B. Chaudhari, Dy.Chief Electrical Inspector and Member Secretary, RAB

If we peruse the qualification of each of the members it cannot be said that they do not have any knowledge or experience in the field of ropeway and/or structural and/or mechanical and/or electrical and/or metallurgical engineering whereas in the minutes of meeting which was convened on 16.03.2021 by which the case of respondent No.4 MEPL was considered, following persons remained present.

(1) Mr. H.H. Khoja, Chief Electrical Inspector and Chairman, ABAR (2) Shri H.R. Karandikar, Director, ERDA, Vadodara (3) Dr. U.N. Puntambekar, Assistant Director, ERDA, Vadodara (4) Mr. A.B. Chaudhari, Dy.Chief Electrical Inspector and Member Secretary, ABAR [9.3] It is true that in the said meeting, four persons had examined the material which was placed before ABAR however, the said report was placed before the highest authorities of the State of Gujarat. The Court has also perused the original file produced before this Court with regard to the statement made C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 by respondent No.4 in its affidavit dated 06.02.2023 and we do not find any incorrect statement made in the said affidavit. Therefore, it cannot be said that there is any procedural defect while finally granting the project of installation of aerial ropeway in favor of MEPL.

[10.0] In the affidavit dated 27.03.2023 filed on behalf of the State Authorities, it has been clarified in paragraphs 5, 6, 7 and 8 that appropriate precautions have been taken by the respondent - State Authorities before issuing the Notification impugned in the present petition.

[10.1] In the case of Shri Ishwar Chandra vs. Shri Satyanarain Sinha reported in (1972) 3 SCC 383, it has been held by the Hon'ble Apex Court that in absence of any rule or regulation, if any meeting is convened and a decision is taken, it cannot be said to be illegal. In the present case, under the

provisions of the GAR Act, there is no provision that all the members must remain present and therefore, submission made by the learned Counsel appearing for the petitioner about absence of other members in the second meeting of ABAR vitiated the proceeding cannot be accepted and therefore, the same is rejected.

Though several judgments have been relied upon by learned Advocate General Mr. Kamal Trivedi appearing for the State Authorities, we are not discussing all of them for the sake of convenience.

C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 [11.0] We do find some force in arguments made by learned Advocate General Mr. Kamal Trivedi that since the petitioner Trust has shown interest in laying down or installing the ropeway, the present petition in the nature of public interest litigation may not be entertained and in support of his submission, he has relied upon several judgments however, considering the issue involved in the present case, we have dealt with the case in detail.

Even otherwise, considering the overall facts and circumstances and law, we do not find any substance in the present petition.

[12.0] Hence, present petition being devoid of any substance is hereby dismissed. Interim relief, if any, stands vacated forthwith. Rule is hereby discharged.

In view of dismissal of Writ Petition (PIL) No.72 of 2022, Civil Application (For Orders) No.1 of 2023 and Civil Application (For Joining Party) No.2 of 2023 also stand dismissed.

Sd/-

(A.J. DESAI, ACJ) Sd/-

(BIREN VAISHNAV, J.) FURTHER ORDER After the pronouncement of the judgment, learned Senior Advocate Mr. Maulin Raval appearing for the petitioner requests to stay implementation, execution and operation of the present C/WPPIL/72/2022 CAV JUDGMENT DATED: 04/05/2023 judgment by submitting that this Court had granted stay while issuing notice.

Having heard learned Senior Advocate Mr. Maulin Raval appearing for the petitioner and in view of the observations made in the present judgment, we do not find any reason to continue the interim arrangement granted by this Court. Hence, request made on behalf of the petitioner is refused.

Sd/-

(A.J. DESAI, ACJ) Sd/-

(BIREN VAISHNAV, J.) Ajay