Saij Gram Panchayat

Vs

State of Gujarat

Civil Appeal No. 364 of 1999

(Sujata V. Manohar, G. B. Pattanaik JJ)

27.01.1999

JUDGMENT

Mrs. Sujata V. Manohar J.

1. Leave granted. All these appeals raise common questions of law. For the sake of convenience we are referring to the facts pertaining to Saij Gram Panchayat in appeal arising from SLP (C) No. 3765 of 1998.

2. The Gujarat Industrial Development Act, 1962 was enacted to make special provisions for securing the orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Gujarat and for the purpose of establishing commercial centres in connection with the establishment and organisation of such industries; and for that purpose to establish an Industrial Development Corporation and, for purposes connected with these matters. This is the avowed purpose of the Act as set out in the preamble. Under Section 2(g) of the Gujarat Industrial Development Act, 1962, "industrial area" means "any area declared to be an industrial area by the State Government by notification in the Official Gazette, which is to be developed and where industries are to be accommodated".

3. On 29.9.1972 a notification was issued by the State Government under Section 2(g) of the Gujarat Industrial Development Act, 1962, declaring certain lands of village Saij, Kalol Taluka, District Mehsana as Kalol Industrial Area. By a subsequent notification of 24.8.1978 issued by the State Government under Section 2(g), the Survey numbers described in the earlier notification pertaining to Kalol Industrial Area were modified.

4. Under Section 16 of the Gujarat Industrial Development Act, 1962 which was in force at all material times it is provided as follows :-

> *"Section 16* : Notwithstanding anything contained in the provisions for the time being in force relating to notified areas in the Gujarat Municipalities Act, 1963, the State Government may, by notification, in the official gazette,
>
> (a) declared that the provisions relating to notified areas and any other provisions of that Act shall extend to and be brought into force in any industrial area, and thereupon such area shall be deemed to be a notified area under that Act;

....."

Section 16 gives power to the State Government to issue a notification under which it can declare that an industrial area as defined in the Gujarat Industrial Development Act, 1962 would also be a deemed notified area under the Gujarat Municipalities Act, 1963. This can be done simply by a notification issued by the State Government and it does not require the formalities prescribed under the Gujarat Municipalities Act, 1963. This can be done simply by a notification issued by the State Government and it does not require the formalities prescribed under the Gujarat Municipalities Act, 1963 for creating a notified area, because the section begins with the words "notwithstanding anything contained in the provisions for the time being in force relating to notified areas in the Gujarat Municipalities Act, 1963". Therefore, there are two important aspects of Section 16 of the Gujarat Industrial Development Act, 1962. First, it enables the State Government to equate an industrial area under the Gujarat Industrial Development Act, 1962 with a notified area under the Gujarat Municipalities Act, 1963 by a fiction. This fiction can be brought into existence by a notification. Therefore, the provisions of the Gujarat Municipalities Act, 1963 for the creation of a notified area will not apply to a notified area created under Section 16. Also, a notified area, so created, would be governed by all the provisions of the Gujarat Municipalities Act, 1963, applicable to notified areas under that Act.

5. Section 264-A(1) of the Gujarat Municipalities Act, 1963 as it stood prior to its amendment on 20.8.1993, dealt with the creation of a notified Area. It provided that the State Government could, by notification declare that with respect to some or all of the matters upon which a municipal fund may be expanded, improved arrangements are required within a specified area, which, nevertheless, it is not expedient to constitute as a municipal borough under Section 4. On such declaration by a notification, under sub-section (2), an area in regard to which such a notification has been issued would be called a notified area. An industrial area notified under Section 16 of the Gujarat Industrial Development Act would also be such a notified area.

6. In 1988 the State Government made a proposal for declaring certain industrial areas of different panchayats in the Kalol Industrial Area as notified areas under Section 16 of the Gujarat Industrial Development Act, 1962. In 1990 a committee was appointed to submit a report as to whether it was in the interest of the local inhabitants to declare these areas as notified areas. The committee submitted a report in August, 1991. After negotiations with different panchayats, it came to a conclusion that declaration of a notified area may not serve any purpose. Instead a provision could be made for a lump sum contribution from industrial units in lieu of taxes levied by the panchayats in question.

7. With effect from 1.6.1993 the Constitution 73rd and 74th Amendments came into effect. As a result, Parts IX and IXA were introduced in the Constitution. Part IX of the Constitution which dealt with the panchayats provided under Article 243B, for constitution in every State of panchayats at the village, intermediate and district levels in accordance with the provisions of that part. Under Article 243N, any provision of law relating to panchayats in force in a State immediately before the commencement of the 73rd Amendment which is inconsistent with the provisions of this Part shall continue to be in force until amended or repealed or until the expiration of one year from such commencement, whichever is earlier. Part IXA which came into force under the Constitution 74th Amendment Act of 1992 deals with municipalities. Under Article 243Q which deals with the constitution of municipalities, it is provided as follows :-

"243A. Constitution of Municipalities -

(1) There shall be constituted in every State -

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part :

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."

Under Article 243ZF, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed or unit the expiration of one year from such commencement, whichever is earlier. The Gujarat Municipalities Act, therefore, continued to operate and would do so until 1.6.1994 unless earlier repealed or amended.

8. The Gujarat Municipalities Act, 1962 was amended on 20.8.1993 in view of the insertion of Part IXA in the Constitution. Section 264A was substantially amended. It now provided that "for the purpose of this chapter notified area means an urban area or part thereof specified to be an industrial township area under the proviso to Clause (1) to Article 243Q of the Constitution of India". Thus, as a result of this amendment in the Gujarat Municipalities Act, an industrial area under the Gujarat Industrial Development Act, which is notified under Section 16 of the Gujarat Industrial Development Act would become a notified area under the new Section 264A of the Gujarat Municipalities Act and would mean an industrial township area under the proviso to Clause (1) of Article 243Q of the Constitution of India.

9. On 7.9.1993 the Government of Gujarat issued a notification under Section 16 of the Gujarat Industrial Development Act declaring Kalol Industrial Area as notified area under Section 264A of the Gujarat Municipalities Act. By another notification of the same date 7.9.1993 the Government of Gujarat excluded the notified area from Saij Gram Panchayat under Section 9(2) of the Gujarat Panchayat Act, 1961.

10. Earlier the State Government had also issued a Government resolution dated 30.8.1993 whereby 1/3rd of the amount recovered as consolidated tax by the proposed notified area authority shall be

used for the benefit of the gram panchayats.

11. By another subsequent notification dated 14th of April, 1994 issued by the Gujarat Government in exercise of powers conferred by Clause (2) of Article 243Q of the Constitution the Gujarat Government specified certain local areas comprised in a Gram or a Nagar as the case may be, declared as such under Section 9 of the Gujarat Gram Panchayats Act, 1961 to be a transitional area mentioned against it in column 3 of the schedule attached to the notification. The areas which are the impugned notified areas in these appeals are covered by that notification.

12. The appellants filed a writ petition in the High Court for quashing the impugned notifications of 7.9.1993 as well as the Government resolution dated 30.8.1993. The writ petition has been dismissed by the High Court and hence these appeals have come before us.

13. The Gram Panchayats affected have contended that the notification of 7.9.1993 issued under Section 16 of the Gujarat Industrial Development Act is contrary to Parts IX and IXA of the Constitution brought into force by the 73rd and 74th Amendments. Hence the notification is illegal and void. The said Gram Panchayats also contend that the notification of 7.9.1993 issued under Section 9(2) of the Gujarat Panchayat Act, 1961 excluding the notified area from the gram panchayat is also contrary to Parts IX and IXA of the Constitution. The contention appears to be that if any area forms a part of a panchayat under Part IX of the Constitution it cannot be treated as an industrial township under Part IXA of the Constitution.

14. The contention is based on a misconception about the relationship of the provisions of Parts IX and IXA of the Constitution with any legislation pertaining to industrial development. The Gujarat Industrial Development Act operates in a totally different sphere from Parts IX and IXA of the Constitution as well as the Gujarat Panchayats Act, 1961 and the Gujarat Municipalities Act, 1962 - the latter being provisions dealing with local self Government while the former being an Act for industrial development, and orderly establishment and organisation of industries in a State. The Industrial areas which have been notified under Section 16 of the Gujarat Industrial Development Act on 7.9.1993 were notified as industrial areas under the Gujarat Industrial Development Act long back in the year 1972. These industrial areas have been developed by the Gujarat Industrial Development Corporation and they can hardly be looked upon as rural areas covered by Part IX of the Constitution. It is only such industrial areas which can be notified under Section 16 of the Gujarat Industrial Development Act, 1963. If by a notification issued under Section 16, these industrial areas are deemed to be notified areas under the Gujarat Municipalities Act and are equated with industrial townships under the proviso to Clause (1) of Article 243Q, the constitutional scheme is not violated. In fact, under Chapter 3 of the Gujarat Industrial Development Act, 1962, the Gujarat Industrial Development Corporation has been given power, *inter alia*, to develop land for the purpose of facilitating the location of industries and commercial centres. It has also been given the power to provide amenities and common facilities in such areas including provision of roads, lighting, water supply, drainage facilities and so on. It may do this either jointly with Government or local authorities or on an agency basis in furtherance of the purposes for which the corporation is established. The industrial area thus has separate provision for municipal services being provided by the Industrial Development Corporation. Once such an area is a deemed notified area under the Gujarat Municipalities Act, 1964, it is equated with an industrial township under Part IXA of the Constitution, where municipal services may be provided by industries. We do not see any violation of a constitutional provision in this scheme.

15. As held by this Court in *Solapur MIDC Industries Association etc. v. State of Maharashtra and*

others, JT 1996(7) SC 14, a municipal corporation Act and an industrial development Act have distinct fields of operation and there is no *inter se* conflict between the two. By reason of the notifications of 7.9.1993, the industrial area developed under the Gujarat Industrial Development Act is also deemed to be an industrial township for the purposes of local self Government. Any possible conflict is also removed by the second notification of 7.9.1993 removing this area from the ambit of the Gujarat Panchayats Act, 1961. The contention, therefore, that an area forming a part of a panchayat under the Gujarat Panchayats Act, 1961 cannot be a notified area under the Gujarat Municipalities Act loses all force.

16. It is next contended that the proviso to Clause (1) of Article 243Q applies only to urban areas. It does not apply to a transitional area. Since the industrial areas in question have been subsequently notified as transitional areas they cannot be equated with industrial townships. This contention also cannot be accepted. Article 243Q deals with constitution of municipalities. Municipality is defined under Article 243P(e) to mean "an institution of self-government constituted under Article 243Q. Article 243Q constitutes three types of municipalities - (a) a Nagar Panchayat (b) a Municipal Council and (c) a Municipal Corporation. The proviso to Article 243Q deals with all three types of municipalities constituted under Clause (1). It provides that a municipality under Clause (1) may not be constituted in certain circumstances. This would refer to any of the three types of municipalities. Although the proviso refers to such urban area or part thereof, this "ruban" area also covers a transitional area, in transition from rural to urban. It is because this area is also in the process of turning into an urban area that it is put under Part IXA which deals with municipalities in urban areas. Therefore, in respect of any of these three types of areas set out in Clause (1) of Article 243Q, having regard to the size of the area, and such other factors as the Governor will deem fit to consider, he may, by public notification specify such area to be an industrial township. All these relevant factors would be in operation in an industrial area already notified many years back under an Industrial Development Corporation Act as in the present case. Therefore, there is no breach of Article 243Q if such an area is, under the provisions of an Industrial Development Act, equated with an industrial township under Article 243Q.

17. It was also contended that in order to be a notified area under the Gujarat Municipalities Act, certain procedure is required to be followed. Therefore, unless this procedure is followed an industrial area cannot become a notified area simply by issuing a notification under Section 16 of the Gujarat Industrial Development Act, 1962. This contention was earlier raised before the Gujarat High Court in the case of *Naroda Nagarpanchayat Ahmedabad v. State of Gujarat and others, 1977 GLR 814.* The High Court repelled this contention by pointing out that on a proper construction of Section 16 it is not necessary for the State Government to follow the procedure prescribed in Section 4 of the Gujarat Municipalities Act before enforcing the provisions relating to notified areas contained in the Gujarat Municipalities Act in the industrial areas in question. It, therefore, held that the requirements of Section 264A and 264D as then in force, were not required to be complied with before a notification is issued under Section 16.

18. Explaining the purpose behind Section 16 the High Court has rightly held that having regard to the power conferred upon the Gujarat Industrial Development Corporation in the matter of provision of amenities and common facilities in industrial estates and industrial areas, on levy of certain charges upon those who set up industries therein, an industrial area would ordinarily be a self-sufficient township in itself which provides its own amenities and recovers charges therefor. A local authority having jurisdiction over such area will have to perform very few of its statutory or discretionary duties in respect of such area. Yet it may levy and collect taxes from those who set up industries in the area. It is to avoid this virtual dual control and administration which might impede

the growth and development of industries that provision has, presumably, been made in Section 16 for constituting an industrial area into a notified area and thereby covering it into a separate administration unit. As we have stated earlier, creation of such a separate administrative unit is not contrary to the scheme of Parts IX and IXA of the Constitution when Article 243Q provides for the creation of such a separate administrative unit in the form of an industrial township. It has also been pointed out by the respondents that neither Article 243N nor 243F invalidates any Industrial Development Act.

19. It was also contended by the appellants that under Section 9(2) of the Gujarat Panchayats Act, 1961 the Gram Panchayats have to be consulted before issuing a notification under Section 9(2). The respondents have, however, pointed out that in the present case there has been extensive consultation with the panchayats before the notifications of 7.9.1993 were issued. The appellants-Panchayats as well as the Taluka and District Panchayats were consulted through the District Development Officer. He had also asked for resolutions from the appellant-Panchayats, the Taluka Panchayats and District Panchayats for being forwarded to the Development Commissioner. All these have been taken into account before issuing the notifications in question. The respondents have also pointed out that the Government has taken care to issue a resolution dated 30th August, 1993 by which 1/3rd of the revenue recovered as consolidated tax by the notified area committee would be given for the benefit of the concerned Gram Panchayats, thus avoiding any financial prejudice to them.

20. It was also contended by the appellants that before any notification could be issued under Section 16 of the Gujarat Industrial Development Act, 1962, a hearing should have been given to the residents. Because notifying an area under Section 16 of the said Act has civil consequences. If the residents had any objections, they should have been considered. Reliance was placed upon a decision of this Court in *Baldev Singh and others v. State of Himachal Pradesh and others, AIR 1987 SC 1239.* In that case under the Himachal Pradesh Municipal Act, a notified area had been declared under Section 256. This Court said that the inclusion of an area governed by a Gram Panchayat within a notified area would certainly involved civil consequences. In such circumstances it is necessary that people who will be effected by the change should be given an opportunity of being heard otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidence of tax and the life. Although the section did not, in clear terms, provide a right of hearing, the Court held that denial of such an opportunity was not in consonance with the scheme of the Rule of Law governing our society. A similar view has been taken in *State of U.P. and others v. Pradhan Sangh Kshettra Samiti and others, 1995 Supp.(2) SCC 305* at page 334. In this case delimitation of panchayat areas and Gram Sabhas under the U.P. Panchayat Raj Act of 1947 was considered by this Court. It said that an opportunity of being heard should have been given to the people of the areas concerned. In that case, action having already been taken without giving an opportunity of hearing, in view of the urgency, post-decisional hearing was considered as sufficient compliance with the principle of *audi alterm partem.* In the present case, however, there has been a long drawn out exchange of views, consultations as well as consideration of objections over the issuing of a notification under Section 16 of the Gujarat Industrial Development Act, 1962 which was also linked with the exclusion of this area from the panchayat area under Section 9(2) of the Gujarat Panchayats Act, 1961. It was precisely because of these consultations that GR of 30.8.1993 was also issued to provide revenue to the Gram panchayats from out of taxes collected from notified areas which were removed from the jurisdiction of gram panchayats. Therefore, the appellants cannot complain of any violation of the principles of natural justice in the present case.

21. In the premises, we do not see any reason to take a view different from the view taken by the High Court. The appeals are, therefore, dismissed. There will, however, be no order as to costs.