REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2348 OF 2004

M/s. OCL INDIA LTD. …APPELLANT(S)

VERSUS

STATE OF ORISSA & ORS. …RESPONDENT(S)

WITH

SPECIAL LEAVE PETITION (CIVIL) NO. 15179 OF 2008

CIVIL APPEAL NOS. 4649-4650 OF 2012

CIVIL APPEAL NO. 289 OF 2012

J U D G M E N T

S. RAVINDRA BHAT, J.

1. Since common questions of law relating to the interpretation of "local area" occurring under Entry 52 of List II of the Seventh Schedule to the Constitution are involved, this Court by its order dated 26.03.2015 referred the issue for the decision of a larger bench. The reference order took note of a previous Constitution Bench ruling in *Diamond Sugar Mills Ltd. & Anr. v. State of Uttar Pradesh & Anr.*[1] where the court held that a "local area" would be an area which is administered by a local body such as a municipality, a district Board, a local board, a Panchayat or the like and that factory premises

1 (1961) 3 SCR 242

are not covered by the aforesaid expression. The court also took note of the Constitution (Seventy-fourth) Amendment Act, 1992 which introduced Article 243-Q relating to the constitution and administration of municipal bodies and held that having regard to these developments, the issues which need adjudication in the present appeals have to be considered by a larger bench. Hence, the appeals are listed before this Bench.

2. For a proper determination of the issues involved, it would be necessary first to notice Entry 52 of List II which authorises State Legislatures to levy entry tax:

> *"taxes on the entry of goods into a local area for consumption, use or sale therein".*[2]

3. The term "local area" has not been defined in the Constitution; however, by Article 367, provisions of the General Clauses Act, 1897, subject to adaptations or modifications made under Article 372 shall apply for interpretation of the Constitution. The General Clauses Act, 1897 does not *per se* define a local area, however, it does define a "local authority", by Section 2(31) in the following terms:

> *"(31) "local authority" shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."*

4. The State of Orissa enacted the Orissa Entry Tax Act, 1999 (hereafter, "the Orissa Act") which defined the local area so as to include industrial townships among other areas[3] including areas within the industrial township constituted under Section 4 of the Orissa Municipal Act, 1950 (hereafter "the 1950 Act"), thereby subjecting goods entering into such areas, to entry tax.[4] .

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2 This entry was omitted by the Constitution (One Hundred and First) Amendment Act, 2016.

3 *(f) "Local area" means the areas within the limits of any –*
(i) Municipality constituted under the Orissa Municipal Act,1950 (Orissa Act 23 of 1950);
(ii) Grama Panchayat constituted under the Orissa Grama Panchayats Act, 1964 (Orissa Act 1 of 1965);
(iii) Other local authority by whatever name called, constituted or continued in any law for the time being in force, and includes the area within an industrial township constituted under Section 4 of the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950).

4 By Section 3, a levy and collection of tax on the entry of scheduled goods into local area for consumption, use or sale was imposed.

The 1950 Act, by Section 4 provides that the State Government can constitute (a) a notified area council for every "transitional" area; (b) a municipal council for every smaller urban area; and (c) a municipal corporation for every larger urban area. The proviso to Section 4(1), however, indicates that no such council or corporation:

> *"shall be constituted in any urban area or part thereof which the Governor may, having regard to the size of the area under 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 notification, specified to be an industrial township."*

5. Two of the appellants before this Court i.e., M/s. OCL India Ltd. and Steel Authority of India Ltd. (hereafter, "SAIL") impugned the Orissa Act especially the levy of entry tax. SAIL contended that imposition of entry tax violates Article 301 of the Constitution. It relied upon the five judge Bench decision in *Jindal Stainless Ltd. & Anr. V. State of Haryana & Ors.*[5] This Court had held that whenever a law is impugned as violative of Article 301, the court has to consider whether the enactment facially or patently indicates quantifiable data based on which compensatory taxes sought to be levied. The basis of SAIL's writ petition before the High Court was that the levy of entry tax on capital goods and raw-materials imported into India and raw-materials used in the factories or in work was unconstitutional. The High Court by its impugned judgment dismissed SAIL's writ petition holding that the Orissa entry tax did not violate any constitutional prohibition and was in conformity with Article 304(a) of the Constitution. SAIL relied on notification dated 15.04.1995 as modified on 07.03.1996 and 17.11.2014. It contended that the effect of these was to exclude the areas in its industrial area, which were part of the Rourkela Municipality; consequently, they ceased to be a "local area" under the Orissa Act.

6. OCL challenged the levy imposed upon it contending that by virtue of certain notifications dated 23.12.1998, the industrial townships set up by it

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5 (2006) 7 SCC 241

were excluded from the local limits of the Rajgangpur Municipality It, therefore, argued that the inclusion of its industrial township as a local area by virtue of the definition of that term in the Orissa Act was unconstitutional. OCL contended that having regard to the agreement (hereafter "Agreement")[6] which it had entered into with the Municipal Council, in regard to the provision of services and the nature of services provided, its industrial township could not be characterised as a local area. It also relied upon Article 243-Q of the Constitution and contended that any enactment by the Parliament or the State Government had to conform to the amended Constitution, especially provisions of Article 243-Q, the object of which was to exclude from within the purview of municipalities and municipal bodies, industrial establishments. Therefore, the imposed or levy of entry tax was void. The Writ Petitions of both OCL and SAIL were rejected by the Orissa High Court.[7]

7. This batch also comprises of two appeals[8] preferred by Hindustan Aluminium Company Ltd. (hereafter, “HINDALCO”). Both appeals are directed against the common judgment rendered by the Allahabad High Court dated 23.12.2011, which had negatived the contentions urged by it [along lines similar to those advanced by OCL and SAIL, before the Orissa High Court]. The Allahabad High Court by its elaborate reasoning in the impugned judgment noticed not only the provisions of the U.P. enactments but also took note of the definition of local area and referred to the other cognate statutes such as Uttar Pradesh Municipalities Act, 1916; The Uttar Pradesh Kshetrra Panchayats And Zila Panchayats Adhiniyam, 1961; United Provinces Panchayat Raj Act, 1947 and U.P. Industrial Area Development Act, 1976 (hereafter, “the UPIAD Act”).

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6 Agreement for transfer of assets and liabilities etc. entered into between Rajgangpur Municipality and OCL India Ltd, Rajgangpur dated 26-03-1999.

7 By two separate Judgments dated 28.03.2003 in OJC No. 14424/1999 (which is the subject matter of C.A. No. 2348/2004) and dated 18.02.2008 in W.P. 3019/2007 (which is the subject matter of SLP No. 15179 / 2008).

8 Civil Appeal No 4649-50 of 2012 and Civil Appeal No 289 /2012

HINDALCO, in its petitions had relied on notifications dated 07.04.2000 which declared its industrial area, in Renukoot Sonebhadra, as an "industrial township" under the UPIAD Act.

8. It was held by the Allahabad High Court that the inclusion of industrial townships within the definition of the local area for the purposes of entry tax did not exceed any constitutional limit and also did not violate Article 243-Q of Constitution.

A Submission of Parties

(i) Appellants' contentions

9. It was argued by Mr Braj K Mishra, learned counsel for OCL, that no octroi was being levied or leviable in its notified industrial township and therefore, it is not covered by the definition of "local area" under Entry 52 of List II of the Seventh Schedule to the Constitution. Consequently, the levy of entry tax on entry of goods into such industrial township for use, sale or consumption therein must be declared unconstitutional on the ground of incompetency of the State Legislature to levy the same.

10. It was also submitted by the counsel that interpretation of Entry 52 in List II (of the Seventh Schedule to the Constitution) declared in *Diamond Sugar Mills* (*supra*) is applicable, even after introduction of Article 243-Q, under Part IX-A of the Constitution. The purpose of introducing that provision was to strengthen functioning of local bodies because they were unable to perform effectively as vibrant units of self-government. The proviso to the article allows the Governor to exclude an area industrial establishment in which an industrial township may be set up and in which certain municipal services may be provided by such establishment. Counsel submitted that such industrial establishment cannot be equated with an area administered by local authority i.e., local self-government such as a municipal or town area. Therefore, its exclusion, by the proviso to Article 243-Q meant that it could not be considered as a *local area*, under any law, made by any state. The levy

of entry tax, into such areas covered by industrial establishments, lawfully declared as such, therefore, had to fail.

11. OCL's counsel also relied on the ruling of this Court in *Union of India v RC Jain*[9] and *Housing Board of Haryana v Haryana Housing Board Employees' Union*[10] and urged that OCL does not possess attributes and features or any power or functions of a 'local authority' like Municipal Committees, District Boards, Gram Panchayats, and Panchayat *Samitis*. Thus, its 'Industrial Township' cannot be construed to fall within the expression "Local Area" used in the Seventh Schedule to the Constitution. Reliance was also placed on *Diamond Sugar Mills Limited* (*supra*) to argue that though the interpretation of the term 'local area' was given in respect of factory premises, the interpretation must not be limited only to a case of factory premises. This Court in *Diamond Sugar Mills* (*supra*) held that:

> *"15. The etymological meaning of the word "local" is "relating to" or "pertaining to"a place. It may be first observed that whether or not the whole of the State can be a "local area", for the purpose of Entry 52, it is clear that to be a "local area" for this purpose must be an area within the State.*
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> *xxxxxx xxxxxx xxxxxx*
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> *28. The premises of a factory is therefore not a "local area".*

12. OCL relied on the Agreement between OCL and the Municipality to state that OCL's premises are excluded from the Rajgangpur Municipal area after its declaration as an Industrial Township. Further, Clause 5 of the minutes of discussions[11] dated 01-02-1999 between the State Government, Rajgangpur Municipality, and OCL declares that goods procured by OCL will not be liable for octroi. Learned counsel submitted that once the OCL is exempted from payment of octroi, the State Government cannot impose entry

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9 (1981) 2 SCC 308
10 (1996) 1 SCC 95
11 No 249/Res Re: formation of committee for settlement of assets and liabilities etc. between OCL India Ltd. and Rajgangpur Municipality

tax on goods procured by it since octroi duty is basically the predecessor of entry tax.

13. Counsel for SAIL, Mr. S.K. Bagaria, relied on the dicta in *Diamond Sugar Mills (supra)* and also placed reliance on *New Okhla Industrial Development Authority v Commissioner of Income Tax*[12] (hereafter, "NOIDA") to contend that Article 243-Q of the Constitution of India does not contemplate constitution of an industrial establishment as a municipality and thus merely because OCL was providing municipal services in its area, it cannot be said that OCL is a municipality. The court noted in NOIDA (supra) that:

> *"31. …exemption from constituting Municipality does not lead to mean that the industrial establishment which is providing municipal services to an industrial township is same as Municipality as defined in Article 243P€…..*

Learned counsel also asserted that exemption given to OCL from payment of octroi was made after taking into account that the amount of ₹ 2 crores deposited by it would be enough to set off the loss of octroi and that the municipality was compensated for even the potential future loss of revenue.

14. Mr Bagaria, learned senior, relied on *Diamond Sugar Mills (supra)* to urge that meaning of the term 'local area' as expounded in that decision must be applied in the present case to declare SAIL's industrial area as not a 'local area' within the meaning of Entry 52 of List II. It was further argued that merely because SAIL provided municipal services within its industrial township area, does not make its area a 'municipality' or 'local authority'. Furthermore, no powers, authority and responsibilities of municipalities under Article 243-W[13] were endowed upon SAIL by the State Government to enable

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12 (2018] 9 SCC 351

13 ***Article 243W - Powers, authority and responsibilities of Municipalities, etc.***
Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow--
(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—
(i) the preparation of plans for economic development and social justice;
(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

it to function as an institution of self-government and neither has SAIL been authorized to levy, collect and appropriate any taxes or duties or tolls or fee. The exclusion of industrial establishments, was also in the light of proviso to Article 243-Q. It was submitted that by Article 243-Q in every State, a Nagar Panchayat for transitional areas (areas in transition from a rural area to an urban area); a Municipal Council for a smaller urban area; and a Municipal Corporation for a larger urban area, has to be constituted. However, proviso to Article 243-Q exempts this requirement, in relation to declared industrial areas:

> *"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."*

15. It was submitted that in the present cases, notifications under the above provisions were issued, which meant that areas falling within industrial townships, were neither local areas, nor were they part of municipalities. Relying extensively on *Diamond Sugar Mills (supra)*, it was argued that the definition of "local area" was conclusively declared by the Constitution Bench, in that decision, to be an area "*administered by a local body like a Municipal District Board, a local Board, a Union Board a Panchayat or the like. The premises of a factory is therefore, not a 'local area'"*. It was urged that since the state law, by proviso to Section 4 (1) [i.e., Orissa Municipal Act, 1950] *excluded* from its operation, industrial establishments, the declaration of law in *Diamond Sugar Mills (supra)* bound the state, which could not then, *include* industrial establishments as local areas.

16. It was argued by Mr Bagaria that by including the area of industrial township in the definition of local area in Section 2(f) of the Orissa Act, the

State Legislature went beyond its legislative competence under Article 246[14] read with Entry 52 of List II as there is no entry in Seventh Schedule under which impugned legislation could have been made. Counsel also placed reliance on *ITC Ltd v Agriculture Produce Market Committee*[15] and argued that the scope of a constitutional taxation power cannot be determined with reference to a Parliamentary enactment. Otherwise, it would result in Parliament enacting and/or amending an enactment, thereby controlling the ambit and scope of the constitutional provision which should not be sustained.

17. Learned senior counsel submitted, furthermore, that levy of retrospective tax upon entry of goods, into industrial areas, was arbitrary, given that the original definition did not impose any tax, on goods which entered into those areas or local limits.

18. Learned counsel appearing on behalf of HINDALCO adopted the submissions made on behalf of OCL and SAIL. Learned counsel additionally argued that the UP Entry Tax Act of 2007, to the extent it was retrospective, has to be struck down, as it is unfair and arbitrary.

(ii) Respondents' contentions

19. Mr. Rakesh Dwivedi, learned senior Advocate appearing on behalf of the State of Orissa had submitted that the notifications cover not only the factory premises but also the other areas consisting of factory premises, residential colonies, other areas including roads, sewage, several common

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14 *Article 246 - Subject-matter of laws made by Parliament and by the Legislatures of States*
(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").
(2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State 1[**] also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
(3) Subject to clauses (1) and (2), the Legislature of any State 1[***] has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').
(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included 2[in a State] notwithstanding that such matter is a matter enumerated in the State List.
15 (2002) 9 SCC 232

amenities, play fields, open spaces, and other associated facilities and thus claiming that only the factory premise of OCL constitute industrial township should not be accepted.

20. Reliance was placed on the contents of the impugned notification to submit that the industrial township was open to public use and the concerned Rajanagar Municipality has right of using several amenities available including the drainage and sewage facilities to establish that the Industrial Township was open to public use just like any other Industrial Township in the country.

21. Further, it was submitted that it was mutually agreed between the parties that OCL shall pay ₹ 2 crores in four instalments by 31st March 1999 as a compensation for loss of revenue that would have otherwise accrued to the Municipality owing to OCL being declared an industrial township. It cannot be said that octroi was not payable by OCL *ipso facto* on declaration of Industrial Township, but the mentioned amount was merely a compensation for loss on account of revenue from octroi. Further, octroi was not payable only by the OCL and other industrial townships were still liable to pay octroi.

22. It was further submitted that the judgment of this Court in *Diamond Sugar Mills (supra)* is not applicable, as the court, in that case, confined the meaning of the expression “local area” to areas where octroi was being levied and which were administered by a local body. It was also argued that this Court in *Diamond Sugar Mills (supra)* did not consider the question of whether entire state can be declared a “local area” which is contemplated under the present 1950 Act. Furthermore, the mere exclusion of an industrial estate or area does not render it immune from entry tax, and there can be no dispute that it is a local area.

23. Counsel for the State of UP also submitted that the entire State is conglomerate of local areas and thus the distinction between 'local area' and 'state' has disappeared for all practical purposes. It was further contended that entry tax is levied by State and not by the 'local authority' and the levy was not restricted only to urban local area but each local area inside the state.

24. It was further argued that levy imposed is compensatory in character and cannot be considered to offend Article 301[16] of the Constitution. Local areas cannot be treated as insulated pockets within a State and the facilities provided by the State are availed by local areas and they form essential part of intra-state trade. The interest of a local area is the interest of the state and the State cannot neglect the interests of local areas. Also, it need not be established that every amount collected from the levy must be spent on trading facilities and only some connection between trading facilities provided and taxes levied needs to be established. The fact that OCL provides compensation for making the municipal services available inside the limits of industrial township cannot be considered to be relevant as they are already receiving other benefits in the form of other taxation reliefs.

25. It was further submitted that the Article 243-Q of the Constitution was inserted much after the judgment in *Diamond Sugar Mills (supra)*. The idea behind that provision is a recent phenomenon and does not find any correspondence history of India before the advent of the Constitution. The concept had evolved on account of the emergence of large industries where employees also occupied spaces which are similar to virtual townships with municipal services being provided by industrial establishments.

26. The counsel sought to distinguish the present case from *NOIDA (supra)* by arguing that while in latter, the court held that an industrial township

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16 *Article 301 - Freedom of trade, commerce and intercourse:*
Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

cannot be equated with a municipality defined under Article 243-(P)(e)[17] as industrial township is specified on account of non-constitution of municipality, nevertheless the court did not decide an important question that whether an industrial township constituted under proviso to Article 243-Q read with provisions of the UPIAD Act is an administrative unit obligated to provide all municipal services envisaged by the municipal enactments in the area of the industrial township and therefore its area would be a local area.

27. The learned senior advocate appearing for the respondents also sought to distinguish this case from *Diamond Sugar Mills (supra)* to argue that the latter involved a single factory premise while the former involved an industrial township which is constitutionally enacted as proviso to Article 243-Q(1) of the Constitution. Here, the industrial township is charged with rendering municipal services under a public notification and thus, the Industrial Township is administering the rendering of services like municipal services and the fact that industrial township is providing the services free of cost would not change the constitutional status.

28. It was lastly submitted by the senior counsel that Entry 52 must be interpreted in light of Part IX-A and Article 243 to the Constitution. Rendering municipal services is a precondition for specification of industrial area, and OCL is likely to retain substantial nexus with the erstwhile or adjacent municipalities for certain defined purposes, namely, registration of birth and death, planning, policing purposes, etc. It was further argued that industrial area is not excluded from the states' territories and remain subject to state's authority and legislative powers. Their inclusion as "local area" for the levy and collection of entry tax, is therefore not violative of any provision of the Constitution of India.

B. Analysis and Conclusions

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17 Article 243P - Definitions
… (e) 'Municipality' means an institution of self-government constituted under Article 243Q ;

29. From the facts narrated and the arguments of parties, it is quite evident that the narrow issue requiring determination in these appeals is whether the exclusion of an industrial area or areas from the limits of municipal councils or municipalities under the state laws in exercise of statutory power or by virtue of a declaration under proviso to Article 243-Q, would result in that area ceasing to be a "local area" within Entry 52 of List II and consequently precluding State from levying and collecting entry tax from those areas.

30. The Constitution Bench ruling in *Diamond Sugar Mills Ltd. (supra)*, which was heavily relied upon by the appellants, was rendered in the context of pointed authorization by the state enactment - U.P. Sugarcane (Regulations of State and Purchase) Act, 1953 in Section 20 and the U.P. Sugarcane Cess Act, 1956 in Section 3 to State to collect entry tax *"into the premises of a factory"*. The challenge in that judgment was on the ground that the levy was invalid as it was beyond the legislative competence of the State – the argument being that the factory premises could not be characterised as a "local area". This Court analysed Entry 52, by first considering the historical context in which it was enacted (for which it traced the previous legislation i.e., Entry 49 of List II of the Seventh Schedule to the Government of India Act, 1935). The court previously held that etymologically "local" is "relating to" or "pertaining to" a place.

31. Keeping these in mind, and also after considering the entry in Encyclopaedia Britannica relating "local area" for the purpose of collection of octroi as an indirect or consumption tax levied by political units, this Court concluded that under the Government of India Act, 1919 imposed a levy on import of goods into an area administered by local body i.e., a local government authority could be levied. This Court then concluded in *Diamond Sugar Mills (supra)* that:

> *22. "It was with the knowledge of the previous history of the legislation that the Constitution-makers set about their task in preparing the lists in the*

> *seventh schedule. There can bring title doubt therefore that in using the words "tax on the entry of goods into a local area for consumption, use or sale therein", they wanted to express by the words "local area" primarily area in respect of which an octroi was leviable under item 7 of the schedule tax rules, 1920- that is, the area administered by a local authority such as a municipality, a district Board, a local Board or a Union Board, "a Panchayat" or somebody constituted under the law for the governance of the local affairs of any part of the State. Whether the entire area of the State, as an area administered by the State Government, was also intended to be included in the phrase "local area", we need not consider in the present case*."

32. The next decision of note is *Shaktikumar M. Sancheti & Anr. V. State of Maharashtra & Ors.*[18], where the challenge was to levy under the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987. It was contended that the incidence of tax was on purchase value of motor vehicles and therefore the tax was really a purchase tax and further that a local area has a connotation of its own as being understood or administered by local authority and tax on entry of vehicle into a state as whole was invalid. This court, after noticing the previous decision in *Diamond Sugar Mills (supra)*, held that the question as to whether the entire area of a state was a local area had been left undecided in that decision. The court then noticed that "local area" had been used in several provisions of the Constitution, namely Articles 3(b), 12, 245(1), 246, 277, 321, 323-A, and 371-D. The court upheld the decision of the High Court that the taxable event is not the entry of a vehicle in any area of the state in a local area. The court also cited the previous holding in *State of Karnataka v. Hansa Corporation.*[19]

33. In *Saij Gram Panchayat v. State of Gujarat & Ors.*[20], the panchayat sought for quashing of certain notifications and a State Government resolution under which, in exercise of its power under Section 16 of the Gujarat Industrial Development Act, 1962, the Kalol industrial area was notified as a municipal area under Section 264A of the Gujarat Municipalities Act, 1963. Another notification excluded that area from the Saij Gram Panchayat under

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18 (1995) 1 SCC 351
19 (1981) 1 SCR 823
20 (1999) 2 SCC 366

Section 9(2) of the Gujarat Panchayats Act, 1961. The contentions urged was that the notification and the resolution were contrary to Parts IX and IX-A of the Constitution of India. This Court repelled the argument stating that the Gujarat Industrial Development Act, 1962 operates in a different sphere from Parts IX and IX-A of the Constitution as well as the Gujarat Panchayats Act, 1961 under the Gujarat Municipalities Act, 1962. The later enactments dealt with local self-government whereas the Gujarat Industrial Development Act, 1962 operates for orderly establishment and organization of industries in the State. It was further noticed that the industrial areas had been notified long back in 1972.

34. This Court repelled the argument with respect to the violation of Article 243-Q. It was noticed that Article 243-Q constitutes three types of municipalities i.e. nagar panchayat, a municipal council and a municipal corporation. It noted that by virtue of the proviso, and having regard to the size of the area, the nature of the municipal services provided or proposed to be provided by an industrial establishment, and other relevant factors – the Governor could by prior notifications specified that area to be an industrial township.

35. It was therefore concluded that if an area under provisions of the Gujarat Industrial Development Act, 1962, is equated with the industrial township under Article 243-Q, then there would be no breach of that provision. The Court then concluded as follows:

> *20. "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 converting it into a separate administrative 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 243ZF invalidates any Industrial Development Act."*

36. In two judgments i.e., *MGR Industries Association & Anr. V. State of Uttar Pradesh & Ors*[21] and *NOIDA* (supra), this Court had occasion to consider the question of applicability of Article 243-Q. In *MGR Industries* (supra), specifically the provisions of the U.P. Industrial Area Development Act, 1976 particularly, Section 12A was also considered. In *MGR Industries (supra)* the argument urged was that the appellant was an association of industrial areas which were declared as industrial areas under the U.P. enactment but in respect of which no notification had been issued under Article 243-Q, the levy of taxes by Panchayats was questioned. The court noticed Section 12A of the U.P. Industrial Areas Development Act, 1976, which reads as follows:

> *"12-A. No panchayat for industrial township --- Notwithstanding anything contained to the contrary in any Uttar Pradesh Act, where an industrial development area or any part thereof is specified to be an industrial township under the proviso to clause (1) of Article 243-Q of the Constitution, such industrial development area or part thereof, if included in a Panchayat area, shall, with effect from the date of notification made under the said proviso, stand excluded from such Panchayat area and no Panchayat shall be constituted for such industrial development area or part thereof under the United Provinces Panchayat Raj Act, 1947 or the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961, as the case may be, and any Panchayat constituted for such industrial development area or part thereof before the date of such notification, shall cease to exist."*

37. The court also noted that a joint reading of Section 12A with Article 243-Q clarified that unless a notification under proviso to Article 243-Q(1) was issued, industrial development areas were not *per se* excluded from the

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21 (2017) 3 SCC 494

ambit of panchayats. The court noted crucially that "*the exclusion of industrial development area from panchayats has serious consequences since the person residing within the industrial development are immediately deprived of facilities and benefits extended to them by from their respective panchayats. The deprivation of said benefits has to be a conscious decision in accordance with condition as contained in Article 243Q.*"

38. In *NOIDA (supra)*, the issue was with respect of whether, the appellant authority, also constituted under the UPIAD Act could claim the benefit of exemption under Section 10 (20) of the Income Tax Act, 1961 as a "local authority". The appellant had relied upon on a notification (dated 24.12.2011) issued by Governor under proviso to Article 243-Q(1). The argument made was since the industrial area i.e. NOIDA was excluded from the requirement of provisions of Part IX of the Constitution, it ceased to be a municipal area and therefore was itself a local authority. This Court rejected the argument and observed, – after noticing the Statement of Object and Reasons to the Constitution (Seventy-fourth) Amendment Act, 1992 and the memorandum, moved by the Minister on the floor of Parliament by piloting the Amendment Bill, that:

> *"28. The constitutional provisions as contained in Part IXA delineate that the Constitution itself provided for constitution of Municipalities, duration of Municipalities, powers of Authorities and responsibilities of the Municipalities. The Municipalities are created as vibrant democratic units of self-government. The duration of Municipality was provided for five years contemplating regular election for electing representatives to represent the Municipality. The special features of the Municipality as was contemplated by the constitutional provisions contained in Part IXA cannot be said to be present in Authority as delineated by statutory scheme of Act, 1976. It is true that various municipal functions are also being performed by the Authority as per Act, 1976 but the mere facts that certain municipal functions were also performed by the authority it cannot acquire the essential features of the Municipality which are contemplated by Part IXA of the Constitution. The main thrust of the argument of the learned counsel for the appellant that the High Court having not adverted to the notification dated 24.12.2001 issued under proviso to Article 243Q (1) the judgments relied on by the High Court for dismissing the writ petition is not sustainable. We thus have to focus on proviso to Article 243Q (1). For the purpose and object of the industrial township referred to therein whether industrial township mentioned therein can be equated with Municipality as defined under Article 243P€. Article 243P (e) provides that*

> *the "Municipality means an institution of self-government constituted under Article 243Q. Whether the appellant is an institution of self-government constituted under Article 243Q is the main question to be answered? Sub-clause (1) of Article 243Q provides that there shall be constituted in every State- a Nagar Panchayat, a Municipal Council and a Municipal Corporation, in accordance with the provisions of this Part. The proviso to sub-clause (1) provides that:*
> *"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 for an industrial establishment in that area and such other factors as may he may deem fit, by public notification, specify to be an industrial township.".*
> *29. Thus, proviso does not contemplate constitution of an industrial establishment as a Municipality rather clarifies an exception where Municipality under clause (1) of Article 243Q may not be constituted in an urban area. The proviso is an exception to the constitution of Municipality as contemplated by sub-clause (1) of Article 243Q. No other interpretation of the proviso conforms to the constitution scheme."*

39. It is immediately clear that in all the decisions, which the appellants relied upon, (save *Diamond Sugar Mills (supra)* and *Shaktikumar M. Sancheti* (supra)) the question which had arisen for consideration was whether after the exclusion of an industrial area, either under the provisions of some state law, or in terms of Article 243-Q, such an industrial area was part of a municipality, or a panchayat. In *Saij Gram Panchayat (supra)*, the court rejected the argument that exclusion of an area, which was previously declared as an industrial area, from a panchayat, by virtue of a notification, was contrary to the Gujarat Panchayats Act, 1961 or Article 243-Q of the Constitution of India. Likewise, in *MGR Industries (supra)*, the court held that without a notification under proviso to Article 243-Q, mere declaration of an area as an industrial area or township, did not result in the exclusion of that area, from the coverage of a panchayat. In *NOIDA (supra)*, the question which arose for decision was whether the NOIDA was a local authority for claiming income tax exemption status, under Section 10 (20) of the Income Tax Act, 1961. This Court held that the exclusion of an area from the limits of a municipality *ipso facto* did not result in its eligibility to seek tax exempt

status, under that act. This Court's observations about the effect of Article 243-Q are significant.

40. The view expressed in *Diamond Sugar Mills (supra)*, was that a local area, is an area, falling within a *"local authority such as a municipality, a district Board, a local Board or a Union Board, a Panchayat or somebody constituted under the law for the governance of the local affairs of any part of the State."* That articulation was relevant because the levy of tax involved in that decision imposed a duty on the entry of goods into *factory premises.* The court, in that context, held as it did, that entry tax can be imposed in relation to a local area, and the incidence is the point of entry.

41. In the present case, two or more sets of law, operate within the two states. The first set of statutes are the enactments, that impose the levy, which is entry tax. The incidence is *entry into a local area.* A "local area" is defined as including industrial establishments, or estates. The second set of laws that are involved, are the concerned municipalities laws, such as the Orissa Act of 1950- which by proviso to Section 4 (1) excludes industrial areas, from the rigours and requirements of the municipalities' enactments. In the U.P. Entry Tax law, "local area" has been defined expansively, to cover all areas, including industrial establishment areas. By the UP Municipalities Act, 1916, a municipality and a municipal area have been defined as follows:

> *'(9) "Municipality" means an institution of self Government referred to in clause (e) of Article 243P of the Constitution.*
>
> *(9A) "Municipal area" means the territorial area of a municipality."*

42. The decision of this Court, in *Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad & Ors*[22] , noticed the object and purpose of Constitution (seventy-fourth) Amendment Act, 1992. The court stated that:

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22 2006 (8) SCC 352

> *"12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Constitution (Seventy-fourth) Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. These views were expressed by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections. In the Statement of Objects and Reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated:[…]"*

43. The provisions in Part IX-A of the Constitution provide for constitution of municipalities, their duration, powers and responsibilities of authorities of the municipalities. Municipalities were conceived as vibrant democratic units of self-governance. Their term or duration was provided to be for five years; regular elections, to elect representatives of municipalities was contemplated. The special features of the municipalities contemplated by the provisions contained in Part IX-A, however need not be present in other bodies created by law, such as Boards, etc. Such statutory bodies, like industrial estates may perform *some* municipal functions. However, that *some* municipal functions are performed by such bodies *ipso facto* does not result in their acquiring the features of municipalities which are contemplated by Part IX-A of the Constitution.

44. The burden of the appellants' song, so to say, is that when a notification is issued, excluding industrial areas or estates from municipal areas, they cease to be *local areas*, and cannot be treated as such for the purpose of levy of entry tax. As noticed earlier, all the judgments, dealing with provisions of Part IX-A of the Constitution were not rendered in the context of applicability or imposition of entry tax, or whether such areas excluded by virtue of notifications under proviso to Article 243-Q(1) ceased to be local areas. To this Court, it is plain that the introduction of Part IX-A by the 74th Amendment

to the Constitution was with the intention of strengthening units of local self-government, and ensuring that they were subjected to minimum democratic standards. The proviso to Article 243-Q(1), therefore, has to be read in context, that industrial areas and estates, administered in terms of some legal regime, where some municipal services were provided, could be exempt from the requirements spelt out in Part IX-A of the Constitution. These provisions spell out the elements of democratic governance, such as representation of different sections of society, regularity of elections, a three-tier structure of local government, reservation, mechanism for deciding election disputes, and elected bodies which were tasked with decision making in regard to various heads or subject matter, that concerned people at village, taluk and District levels.

45. The focus of provisions of Part IX-A of the Constitution inserted through the 74th Amendment was on local self-governance and all provisions concerning it. It had no relevance to the issue of State taxation. Furthermore, the exercise of power by the Governor to exclude from the limits of a municipal area, industrial estates or large areas that were predominantly industrialised areas is upon the condition that such areas provided a minimum modicum of municipal services. The pattern of State enactments – which emerges from a reading of various decisions of this Court is that every State has a set of municipal or local self-governance laws, such as those dealing with municipalities, cantonments, panchayats, gram panchayats, etc., on the one hand, and those that deal with industrial areas – as for instance, the UPIAD Act, Gujarat Industrial Development Act, 1962 etc. on the other. The latter enactments prescribe the kind of services (analogous to the municipal services provided by the municipalities) that every industrial area has to provide. Given these circumstances, the exemption from application of municipality laws or such enactments in relation to industrial areas – as also the exemption from the application of Part-IX A by virtue of proviso to

Article 243-Q(1) is to exclude the application of certain requirements, such as election etc. As far as the nature of services provided in industrial areas are concerned, those are relevant factors taken into account by the State or Governor while issuing exemptions under municipal laws or proviso to Article 243Q (1). These, however, do not in any manner impact or undermine the fact that such industrial areas or estates are equally "local areas". *Diamond Sugar Mills (supra)* itself acknowledged that the word "local" means relating to or "pertaining to a place". This Court also very pertinently held that a local area is one which is administered by municipal law, district board or a local board, union board, a panchayat or some body constituted by the Government for the governance of local affairs of any part of the State. The application of state laws regarding industrial areas, therefore, squarely falls within the expression "description of a body constituted for the purposes of local affairs of the State" since no one denies that industrial areas are also part of the State. The record in the present case indicates that the areas excluded from the municipality in OCL's case comprise of several villages. The material on record placed by SAIL also acknowledge that not less than 24,000 houses exist in its industrial area. Likewise in the case of HINDALCO as also SAIL indicate that the industrial estates or area cover large areas. If one keeps these facts in mind, there can be no doubt that such areas would fall within the description "local areas".

46. Reliance placed upon *Diamond Sugar Mills (supra)* by the appellants in this case is misplaced because in that decision, the Court had to deal with a different set of facts. The levy on sugarcane imposed by the State of U.P. was on the incidence of entry into factory premises. The Court, therefore, correctly concluded that factory premises *per se* could not constitute a local area. The subsequent decision in *Shakti Kumar Sancheti (supra)* explained that entry into the State with the ultimate destination within the State, constituted a taxable event the moment the goods, i.e. the vehicles reached within the limits

of municipality of its ultimate destination. In *Sahaj Gram Panchayat (supra)*, the argument that the industrial areas could not be excluded in exercise of the powers under Article 243-(Q)(1) was repelled. *MGR Industries (supra)* is an important judgment because the Court held that the mere exclusion of an industrial area under a local enactment was insufficient for it to be removed from the coverage of Panchayat's jurisdiction in the absence of a notification under Article 243-Q (1). The judgment in *NOIDA (supra)* explained the intent and purport of the provision of Part IX-A of the Constitution. None of these, in the opinion of the Court, can be of any assistance to the appellants, who contend that industrial areas or industrial estates can be treated as local areas the moment they are excluded from the limits of municipality or whenever they are excluded by virtue of exercise of power under proviso to Article 243-Q (1) of the Constitution.

47. It is also a cardinal rule of interpretation that words of a taxing statute should be read in their ordinary, natural, and grammatical meaning. Further, in construing the words in a constitutional enactment that confers legislative power, a liberal construction should be placed upon the words so that they may have effect in their widest amplitude.[23]

48. The object of the levy, i.e., entry tax, is the regulation of entry of goods in a regular area for consumption, i.e., manufacture, use or sale. There is no dispute that entry of goods into an industrial area or estate is for their use for manufacturing or for processing or for the purposes of their delivery as their ultimate point of destination, i.e. for the purpose of their "consumption, use or sale" within that area. It could even be that the goods enter within the industrial area or estate, as the ultimate point of destination for their use. In any case, the levy would be attracted because the incidence is the entry into the local area.

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23 *Navinchandra Mafatlal v Commissioner of Income Tax, 1955 (1) SCR 829*

49. The Court is of the opinion that the argument – made by counsel that the levy could not be retrospective, in the facts of this case, is insubstantial. The earlier effort to tax the assessee by demand led to petitions which quashed them – where the legal regime was that some compensatory element had to be disclosed. With the object of curing this defect, the fresh law was enacted by the State of U.P., with retrospective effect which on the application of principles enunciated by this Court, in *Sri Prithvi Cotton Mills v. Baroda Borough Municipality & Ors.*[24], is valid.

50. In view of the foregoing discussions, this Court finds no reason to interfere with the decision of the Orissa and Allahabad High Courts. The special leave petition and appeals are consequently dismissed as unmerited without any order on costs.

.....CJI.
[UDAY UMESH LALIT]

…….....J.
[S. RAVINDRA BHAT]

.....J.
[J.B. PARDIWALA]

NEW DELHI,
NOVEMBER 04, 2022.

24 1970 (1) SCR 388