

(1976) 08 GUJ CK 0009
In the Gujarat High Court

Naroda Nagar Panchayat

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-08-1976

Acts Referred:

Constitution of India, 1950 — Article 133(1)
Gujarat Industrial Development Act, 1962 — Section 16, 16(a)
Gujarat Municipalities Act, 1963 — Section 264A, 264B, 264C, 264D, 4
Gujarat Panchayats Act, 1961 — Section 9
Panchayats Act — Section 9(2)

Citation : (1977) 18 GLR 814

Hon'ble Judges : Seshareddi Obul Reddi, C.J.; P.D. Desai, J

Bench : Division Bench

Judgement

P.D. Desai, J.—In this group of nine Writ Petitions, the petitioners are three Nagar Panchayats and six Gram Panchayat constituted under the Gujarat Panchayats Act, 1961 (hereinafter referred to as "the Panchayats Act"). The challenge in the petitions is directed towards two sets of notifications; (1) six notification", each dated May 6, 1975, issued by the State Government in exercise of the powers conferred by Section 16 of the Gujarat Industrial Development Act, 1962 (hereinafter referred to as "the G.I.D.C. Act") and published in the Gujarat Government Gazette dated May 7, 1975, declaring, inter alia, that the provisions relating to notified areas as contained in Chapter XVI-A of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Municipality Act") and other specified provisions of that Act shall extend to and be brought into force in six industrial areas notified by the State Government under the G.I.D.C. Act and directing that the provisions of the Panchayats Act, which were in force in the said industrial areas, shall cease to apply thereto; and (2) six notifications, each dated May 4, 1975, issued by the Development Commissioner, Gujarat State, in exercise of the delegated powers of the State Government under Sub-section (2) of Section 9 of the Panchayats Act and published in the Gujarat Government Gazette, dated May 6, 1975, excluding local areas, which constituted the afore-mentioned six industrial areas, from the

respective limits of the petitioner-Panchayats. Since common questions of law arise in all these petitions; they were heard together and they are being disposed of by this common judgment.

2. In order to appreciate the merit of the challenge, it would be necessary at the very outset to refer to the relevant statutory provisions. Each of the petitioner-Panchayat is established and constituted u/s 3 read with Sections 12 and 13 of the Panchayats Act. They have been designated as Nagar Panchayats or Gram Panchayats as the case may be, in accordance with the description of the local area under their jurisdiction as per provisions of Section 9. They are the local authority for the purposes of the administration pertaining to local Government in the areas comprised within their jurisdiction. They, inter alia, levy and collect taxes and perform functions and duties assigned to them under the Panchayats Act. For the purposes of the present case, it would be necessary to set out Sub-section (2) of Section 9 of the Panchayats Act which reads as under:

9(1)...

(2) After consultation with the taluka Panchayat, the district Panchayat and the nagar or gram Panchayat concerned (if already constituted) the State Government may, by like notification, at any time--

(a) include within or exclude from, any nagar or gram, any local area or otherwise alter the limits of any nagar or gram; or

(b) declare that any local area shall cease to be a nagar or gram; or

(c) having regard to Clauses (a) and (b) of Sub-section (1) declare the whole area comprised in a gram or the part thereof to be a nagar or two or more grams or the whole area comprised in a nagar to be a gram or split up the area comprised in the nagar into a nagar and a gram or into two or more grams;

and thereupon the local area shall be so included or excluded, or the limits of the nagar or gram so altered or, the local area shall cease to be a nagar or gram or, as the case may be, the area declared to be a nagar or gram shall be a nagar, or gram as the case may be."

3. The Gujarat Legislature has enacted the G.I.D.C. Act and it came into force on August 9, 1962. As the long title and preamble of the said Act lays down, it is an Act to make special provision for securing the orderly establishment of industries in industrial areas and industrial estates in the State of Gujarat, and to assist generally in the organisation thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid. The Act extends to the whole of the State of Gujarat. Section 2, Clause (d) defines "Corporation" to mean the Gujarat Industrial Development Corporation established u/s 3 (hereinafter referred to as "the Corporation"). Section 2, Clause (g) defines "industrial area" to mean 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. Section

2, Clause (h) defines "industrial estate" to mean any site selected by the State Government, where the Corporation builds factories and other buildings and makes them available for any industries or class of industries. Section 3 provides for the establishment and incorporation of the corporation for the purposes of securing and assisting in the rapid and orderly establishment and organisation of industries in industrial areas and Industrial estates in the State of Gujarat. Section 13 prescribes the functions of the Corporation and accordingly, the Corporation has, inter alia, generally to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Gujarat, and for that purpose, to establish and manage industrial estates at place selected by the State Government, to develop industrial areas selected by the State Government and make them available for undertakings to establish themselves, to develop land on its own account or for the State Government for the purpose of facilitating the location of industries thereon, and to undertake schemes or works, either jointly with other corporate bodies or institutions, or with Government or local authorities, or on any agency basis, in furtherance of the purposes for which the Corporation is established and all matters connected therewith. Section 14 deals with the powers of the Corporation and it, inter alia, authorises the Corporation to acquire and hold movable and immovable properties, to provide or cause to be provided amenities and common facilities in industrial estates and industrial areas and construct and maintain or cause to be maintained works and buildings therefore, to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings, and to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its business and the carrying into effect the purposes of the G.I.D.C. Act. Section 16 is material for the purposes of these petitions and it reads as follows:

Not with standing anything contained in the provisions for the time being in force relating to notified areas in the Gujarat Municipalities Act, 1968, the State Government may, by notification in the Official Gazette--

- (a) declare 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;
- (b) appoint the Corporation or any officer or committee thereof for the purposes of the assessment and recovery of any taxes, when imposed under the provisions so extended and for enforcing such provisions;
- (c) provide that the provisions of any other law relating to local authorities which is in force in that area shall cease to apply and thereupon such provisions shall cease to apply thereto;
- (d) make such other provision as is necessary for the purposes of the enforcement of the provisions so extended to that area

Section 17 authorises the State Government from time to time to issue to the

Corporation such general or special directions of policy as it thinks necessary or expedient for the purpose of carrying out the purposes of the G.I.D.C. Act and enjoins that such directions shall be binding upon the Corporation which would be bound to follow the same. Sections 30 and 31 provide for acquisition and disposal of land and Section 32A to 32 G provide for the levy and collection of betterment charges. Section 33 and succeeding sections make supplementary and miscellaneous provisions. Sections 33 to 35 confer powers upon the Corporation to deal with cases of default by owners of land in an industrial area and to order demolition of buildings or to stop building operations in certain cases. Section 37 provides for power to lay pipe-lines, etc. Section 40 confers overriding power on the State Government, if it is satisfied either on a recommendation made in that behalf by the Corporation or otherwise, that the setting up of an industrial undertaking (whether within an industrial area or outside) is impeded by a local authority's refusal to grant, or by such authority's insistence on conditions which the State Government considers unreasonable for the grant of, any amenity, to direct such local authority to grant the said amenity on such conditions as it considers fit and further provides that thereupon the amenity shall be granted. There are two provisos to the section laying down conditions which must be satisfied before direction as aforesaid is issued by the State Government. Section 57 is again material and it reads as under:

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

4. The Municipalities Act makes provisions with regard to management of municipal affairs. In these cases, we are concerned with only two of its provisions. Section 4 relates to declaration of municipal boroughs and alteration of their limit. Under Sub-section (1) thereof, the State Government is authorised by notification in the Official Gazette, to declare any local area to be a municipal borough with effect from the specified date. Sub-section (2) of the said section is relevant and it reads as under:

(2)(a) Not less than three months before the publication of a notification under Sub-section (1) the State Government shall cause to be published in the Official Gazette ; and in at least one of the local newspapers, if any, and to be posted up in conspicuous places in the local area or, as the case may be. municipal borough, a proclamation announcing that it is proposed to declare the local area specified in the notification as a municipal borough or, as the case may be, to include in or exclude from the municipal borough the area specified in the notification and requiring all ; persons who entertain any objection to the said proposal to submit the same with ; the reasons therefore in writing to the Collector within two months from the date of the said proclamation; and whenever it is proposed to add to or exclude from a*-.-municipal borough any area, it shall be the duty of the municipality also to cause a copy of such proclamation to be posted up in conspicuous places in such area;

(b) Such proclamation shall be published in English as well as in Gujarati:

(c) The Collector shall, with all reasonable dispatch, forward to the State Government every objection so submitted.

(d) No such notification as aforesaid shall be issued by the State Government unless the objections if any, so submitted are in its opinion insufficient or invalid.

Chapter XVI-A comprising of Sections 264-A to 264-E makes provisions with regard to notified areas. Sections 264-A and 264-D, which are material for the purposes of these petitions, read as under:

264A. Constitution of notified areas. (1) The State Government may by notification declare that with respect to some or all of the matters upon which a municipal fund may be expended under this Act, improved arrangements are required within a specified area, which, nevertheless, it is not expedient to constitute as a municipal borough u/s 4.

(2) An area in regard to which a notification has been issued under Sub-section (1) is hereinafter called a notified area.

264D. Preliminaries to notification.(d) Before issuing any notification under Sub-section (1) of Section 264A or under Clause (a) or (b) of Sub-section (1) of Section 264B, the State Government shall, so far as may be, follow the procedure prescribed in Section 4(2) The State Government may at any time cancel any notification issued u/s 264A or 264B.

Section 264-B empowers the State Government to impose taxation and regulate expenditure of the proceeds thereof in any notified area. Under the said provision, the State Government is empowered to impose in any such area any tax, which might be imposed therein under the provisions of the Municipalities Act if the said area were a municipal borough and to appoint a person or a committee for the purposes of the assessment and recovery of any such tax, and in order to arrange for the due expenditure of the proceeds of such taxes, and generally for enforcing the provisions of any section or rules applied or adapted under Clause (a) to the notified area. Section 264-C provides that for the purposes of any section of the Municipalities Act, which may be applied to a notified area, the person or committee appointed for such area u/s 264B shall be deemed to be a Municipality under the Act, and the area shall be deemed to be a municipal borough. Section 264-E provides for vesting, recovery and application of property, and rights and liabilities of persons or committees appointed for areas ceasing to be notified area. With the rest of the provisions of the Municipalities Act we are not concerned in the present group of petitions.

5. The Corporation was established and incorporated by the State Government on August 4, 1962. At the material time, the industries in the State of Gujarat were concentrated in or around certain big industrial areas. It was not possible for entrepreneurs to establish industries in interior areas of the State for lack of essential facilities like roads, street lights, water supply, electricity power, drainage facilities, effluent discharge facilities and several other amenities which

are required for a planned industrial growth of any area. On its establishment, the Corporation took up the task of developing industrial areas in different parts of the State, and more particularly in the rural and backward areas. Within a span of about twelve years, the Corporation has developed seventy-nine industrial areas covering almost all the districts of the State of Gujarat. Nearly 4000 hectares of land has been acquired by it for development of industrial areas and nearly half of this land is already developed and allotted to industrial units which number around 3000. The Corporation has constructed nearly 4000 factory sheds of requisite sizes and it has also provided housing tenements, shopping centers, canteens for workers, communication facilities, hospitals, dispensaries, labour welfare centers and even cinemas and other social amenities. In the industrial areas, common amenities like roads, street lights, industrial power, water supply, drainage and affluent discharge facilities, etc. are provided. Nearly Rs. 45 crores have been spent on the development of the above-mentioned industrial areas some of which, according to the Corporation, have become "satellite self-sufficient townships".

6. By the six impugned notifications issued u/s 16 of the G.I.D.C. Act, six industrial areas have been carved out of the limits of the three Nagar Panchayats and six Gram Panchayats, who are the petitioners herein, and such industrial areas have been constituted into "notified areas." For the sake of reference, we shall set out one such notification which relates to Naroda Industrial area and affects the Naroda Nagar Panchayat which is the petitioner in Special Civil Application No. 941 of 1975. The material part of the said notification reads as under:

Industries, Mines and Power Department

Notification

Sachivalaya, Gandhinagar, 6th May, 1975.

Gujarat Industrial Development Act, 1962. No. GHU/7V36/GID 1974/4084 (1) Ch.--In exercise of the powers conferred by Section 16 of the Gujarat Industrial Development Act, 1962 (Guj. XXIII of 1962), the Government of Gujarat, with effect on and from the date of its publication in Government Gazette,

(1) declares that the provisions relating to notified areas as contained in Chapter XV1-A of the Gujarat Municipalities Act, 1963 (Guj. 34 of 1964) and other provisions of that Act as specified in Schedule I annexed hereto, shall extend to and be brought into notice in the Naroda Industrial Area specified in Schedule II annexed hereto,

(2) appoints the Senior Officer, Gujarat Industrial Development Corporation, Ahmedabad, for the purposes of assessment and recovery of taxes, when imposed under the provisions so extended and in order to arrange for the due expenditure of the proceeds of such taxes and for the preparation and maintenance of proper accounts and generally for enforcing the provisions so

extended, and

(3) directs that the provisions of the Gujarat Panchayats Act, 1961 (Guj. VI of 1962) which are in force in the said industrial area shall cease to apply thereto.

Schedule I

The provisions of the Gujarat Municipalities Act, 1963 Sections 2, 5, 44(J), 64 to 98, 105 to 264, 267 to 270-271 (subject to the restriction that no rules shall be made in relation to matters covered by Clause (b) of Sub-section (1) of Section 264(B), 272, 273 and 275 to 280; and Schedules II to VI.

Schedule II

Naroda Industrial Area declared under Government Notification, Industries, Mines and Power Department No. GHU/124/IND. 1669/978-G, dated the 21st February 1970.

7. By the six impugned notifications issued by the Development Commissioner, Gujarat State, in exercise of the delegated powers under Sub-section (2) of Section 9 of the Panchayats Act, the local area which constituted each of the industrial areas, has been excluded from the respective Nagar or Gram Panchayat, as the case may be. For the sake of reference, we shall set out one of such notifications which relates to the same industrial area and inter alia affects the same petitioner-Panchayat. The material part of the said notification reads as under:

Office of the Development Commissioner

Notification

Gujarat Panchayats Act, 1961. No. KPN/135/DVN/P-L-In exercise of the powers of the State Government under Sub-section (2) of Section 9 of the Gujarat Panchayats Act, 1961 (Guj. VI of 1962) delegated to him by the State Government under Government Notification, Agriculture and Rural Development Department No. PRN-23-63-G, dated the 13th June, 1963, read with Government Notification, Rural Development Department, No. KP-53-PRN-41-64-J, dated the 5th May, 1964, the Development Commissioner, Gujarat State, after consultation with the City and Dascroi Taluka Panchayat, the Ahmedabad District Panchayat and the Naroda N.P., Muthia and Hanspura Gram Panchayat hereby excludes from the Naroda N.P., Mmhia Hanspura Gram Panchayat the local area specified in the Schedule annexed hereto.

----- Gratn/Nagar
Panchayat Schedule Local area 1. Naroda Nagar Panchayat As per Appendix A attached herewith. 2. Muthia Gram Panchayat -do- 3. Hanspura Gram Panchayat -do-

Appendix A

8. It might be stated that all the other impugned notifications under the G.I.D.C.

Act and the Panchayats Act are in identical terms subject to the variations with regard to the description of the industrial area and the particulars of the areas constituted into notified areas after their exclusion from the local limits of the respective Panchayats.

9. It would appear from the text of the impugned notifications issued under the two different Acts that as a result of their combined as well as individual operation, the areas mentioned therein have been excluded from the local limits of the respective Panchayats and that they have been constituted into notified areas. The provisions of the Panchayats Act have since ceased to apply to such areas and the provisions of the Municipalities Act relating to notified areas as contained in Chapter XVI-A and certain other provisions of the Municipalities Act have been extended to and brought into force in such notified areas. As a result of the operation of these notifications the respective Panchayats have lost jurisdiction over those areas which have been so carved out and it is the happening of that event which has given them the cause of action to file the present petitions.

10. The impugned notifications have been challenged on various grounds in different petitions. However, at the hearing of the petitions, the challenge was confined only to the following five grounds:

(1) Section 16 of the G.I.D.C. Act empowers the State Government by a declaration to extend to and bring into force in any industrial area all the provisions relating to notified areas contained in Chapter XVI-A of the Municipalities Act and the State Government has made a declaration accordingly in the impugned notifications; therefore, before constituting the concerned industrial areas as notified areas, it was necessary for the State Government to follow the procedure prescribed in Section 264A and 264-H of the Municipalities Act and accordingly to invite objections from all persons who entertain any objection to the constitution of such industrial areas into notified areas; since the aforesaid procedure was not followed, the constitution of the concerned industrial areas into notified areas is ultra vires and null and void.

(2) Section 16 of the G.I.D.C. Act suffers from the vice of excessive delegation and is, therefore, ultra vires.

(3) u/s 9(2) of the Panchayats Act, consultation with the affected Panchayat is mandatory and such consultation is not intended to be a mere pretence ; "consultation" in the context must be construed as "concurrence" or "consent" and since such concurrence or consent was not given by any of the petitioner-Panchayats, the impugned notifications u/s 9(2) are ultra vires,

(4) Exclusion of areas under the impugned notifications in so far as it concerns some of the petitioner-Panchayats is in contravention of the provisions of Section 9(2) of the Panchayats Act and Rule 2 of the Gujarat Panchayats (Declaration of Nagar or Gram Inquiry) Rules, 1962 and the exclusion is, therefore, ultra vires.

(4) The industrial areas in question admittedly formed a part of the petitioner-Panchayats and such areas can be only declared to be "specified areas" under Chapter XV-A of the Panchayats Act and they can never be declared to be notified areas under the Municipalities Act and the relevant provisions of the Panchayats Act and not of the Municipalities Act must be applied to such areas.

11. We shall proceed to deal with these grounds of challenge seriatim.

Re. Ground No. 1

12. The argument urged on behalf of the petitioners under this head was that on a true construction of Clause (a) of Section 16 of the G.I.D.C. Act, the State Government is authorised to declare that the provisions relating to notified areas and any other specified provisions of the Municipalities Act shall extend to and be brought into force in any industrial area and that a declaration has accordingly been made in the impugned notifications. Consequently, Sections 264-A and 264-D of the Municipalities Act, which are provisions relating to notified areas, have become applicable in the instant cases and unless the formalities prescribed in the said provisions are complied with, the industrial areas in question cannot be treated as notified areas. It was, therefore, incumbent upon the State Government to follow the procedure prescribed in Sections 264-A and 264-D read with Section 4 of the Municipalities Act before constituting the industrial areas into notified areas and since such procedure, which is mandatory, has not been followed, the impugned notifications are ultra vires. We are of the opinion that there is no merit in this contention and that it proceeds upon a basic misconception about the true scope and effect of the relevant statutory provisions and the source of power in exercise of which the impugned notifications have been issued in the present cases.

13. It is true that before the declaration of notified area under the Municipalities Act, certain procedure is required to be followed as laid down in Sections 264-A and 264-D of the said Act. u/s 264-D, before issuing any notification u/s 264-A(1) constituting a notified area, the State Government is under a duty, so far as may be, to follow the procedure prescribed in Section 4. Accordingly, the State Government will have to publish, before declaring an area to be a notified area, a proclamation inter alia requiring all persons, who entertain any objections to the proposal, to submit the same to the competent authority. The State Government is also under a duty to consider such objections and it may issue a notification constituting a notified area u/s 264-A only if it is of the opinion that the objections are insufficient or invalid. It must, however, be remembered that Section 264-D is in terms applicable only if a notification is to be issued under Sub-section (1) of Section 264-A. To put it differently, if a notified area is not to be constituted under Sub-section (1) of Section 264-A, the procedure prescribed in Section 264-D would not be required to be followed. The submission on behalf of the petitioners, however, is that since Section 16 of the G.I.D.C. Act provides for a declaration being made by the State Government extending to and bringing into force in any industrial area the provisions relating to notified areas contained

in the Municipalities Act and that by the impugned notification, such a declaration has, in fact, been made, the provisions of Sections 264-A and 264-D have become applicable and they are both required to be complied with and all the formalities therein prescribed must be observed before the industrial areas could be constituted into notified areas. In other words, according to the petitioners, even after a notification is issued u/s 16 of the G.I.D.C. Act, a fresh notification will have to be issued u/s 264-A(1) of the Municipalities Act and before issuing such notification, the procedure prescribed in Section 264-D will have to be followed. In our opinion, this argument ignores several material aspects and proceeds upon a misconstruction of the provisions of Section 16.

14. Section 16 opens with a non-obstinate Clause the effect of which is to set aside as no longer valid anything contained in the Municipalities Act in relation to notified areas which is inconsistent with the provisions of the said section. The prefatory legislative mandate is thus clear and specific, namely, that the provisions contained in the Municipalities Act in respect of notified areas will not be an impediment in giving effect to the provisions of Section 16 which must be given an overriding effect. Bearing in mind this peremptory edict, let us examine the enacting part of Section 16 which authorises the State Government by a notification in the Official Gazette to provide for several matters. Clause (a), which is the material provision, empowers the State Government to declare that the provisions relating to notified areas and any other provisions of the Municipalities 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 the Act. Now, be it noted, in the first place, that Clause (a) of its own force empowers the State Government to make applicable to any industrial area the provisions of the Municipalities Act relating to notified areas by merely making a declaration to that effect and that, having regard to the non-obstinate clause, such a declaration can be made even if the conditions mentioned in Section 264-A(1) are not in existence. Indeed, the power to make such a declaration having been conferred by the G.I.D.C. Act, it would be exercisable within the frame-work of the guidelines furnished by that Act and those guidelines need not necessarily be the same as those laid down by Section 264-A(1). In the next place, the concluding word; of Clause (a) enact a fiction where under once a declaration as therein contemplated is made by the State Government in relation to any industrial area, such industrial area is deemed to be a notified area under the Municipalities Act. The scheme of Section 16 thus is to straightaway bring into existence a notified area by the operation of statute once the requisite declaration under Clause (a) is made by the State Government. The fiction has obviously been enacted with a view to eliminating the requirement of following the procedure prescribed in the Municipalities Act before any industrial area could be declared as a notified area and to bring into existence at once a notified area and to apply the provisions of the Municipalities Act to such area forthwith so as not to create any vacuum in the local administration of such area if a direction under Clause (c) of Section 16 is also simultaneously given. It would thus appear

that the provisions of Clause (a) on their own operation bring into existence a notified area upon the satisfaction of only one condition, namely, a declaration being made by the State Government, in terms of the first part of the said clause.

15. It is true, as emphasized on behalf of the petitioners, that under Clause (a) the declaration which the State Government has to make is to the effect that the provisions inter alia relating to notified areas contained in the Municipalities Act shall extend to and be brought into force in any industrial area. However, the said provision cannot be construed in isolation devoid of its context and setting in the scheme of Section 16. The construction for which the petitioners contend would not only defeat the object of enacting the non-obstinate clause in the opening part of Section 16 but also stultify the fiction contained in the concluding part of Clause (a). It is well-settled that ordinarily there is a close approximation between the non-obstinate clause used in the opening part of a section and the enacting part thereof and that the former may throw light on the scope and ambit of the latter in case of ambiguity and that both must be read together to bring about harmonious construction and that in case of conflict, an overriding effect must be given to the enacting part. It is also well-settled that the Court must ascertain, in the first instance, as to for what purpose a fiction is created and having done so, the Court must assume all those facts and consequences which are incidental or inevitable corollaries to the giving of effect to the said fiction, that is to say, it must assume all those facts on which alone the fiction can operate. If these principles of construction are borne in mind, the true scope and effect of Clause (a) would become apparent. The fiction in the last part of Clause (a) comes into operation at the self- same moment at which the requisite declaration there under is made by the State Government. This becomes clear by the use of the word "thereupon" in Clause (a). In order to give effect to that fiction, we must assume all those facts and consequences on which alone the fiction can operate. In other words, the notified area must be taken to have come into existence simultaneously with the declaration as if all the formalities for bringing it into existence under the Municipalities Act had been complied with. It is only then that the fiction would operate within its legitimate field with full vigor. The non-obstinate clause in the opening part of Section 16 also points in the same direction and lends further support to the above construction. Ordinarily, once the provisions relating to notified areas contained in the Municipalities Act are made applicable to any industrial area, it would be necessary to comply with the provisions of Sections 264-A and 264-D before such industrial area could be converted into a notified area. However, the non-obstinate clause operates to give full effect to the fiction contained in Clause (a) by giving it an overriding effect over the provisions of Section 264-A and 264-D. It would thus appear that by using a two-pronged legislative device, namely, the non-obstinate Clause and the fiction, the legislature has made it amply clear that an industrial area in respect of which a declaration is made under Clause (a) shall, to all intents and purposes, straightaway become a notified area under the Municipalities Act and that the provision of the said Act relating to notified areas

shall thereupon apply to such areas accordingly.

16. In this connection, it requires to be borne in mind that Clause (b) of Section 16 is a provision which is supplemental to Clauses (b) and (c) of Section 264-B and Section 264-C of the Municipalities Act, for, it enables the State Government to appoint the Corporation or any officer or committee thereof for the purposes of the assessment and recovery of any taxes, when imposed, under the provisions so extended, and for enforcing such provisions. Similarly, Clause (c) provides for a direction being given by State Government providing that the provisions of any other law relating to local authorities which is in force in that area shall cease to apply and thereupon such provisions shall cease to apply thereto. This power has been conferred so that the industrial area which is deemed to be a notified area under the Municipalities Act can be forthwith administered under the provisions of the Act. It would thus appear that there is a close approximation between the provisions relating to notified areas in the Municipalities Act and the provisions of Section 16 of the G.I.D.C. Act and that between themselves they provide for the instantaneous set-up of a separate unit of administration in an industrial area in respect of which action has been taken u/s 16.

17. The construction suggested on behalf of the petitioners would not only render the whole scheme of Section 16 nugatory and frustrate the very object for which it was enacted but it would also entail re-writing of a material part of Clause (a). The word "thereupon" will have to be deleted from the said clause and the words "upon compliance with the provisions thereof will have to be substituted in its place. It would also render the fiction enacted in the last part of Section 16 totally ineffective. It would also require the issuance of two successive notifications, one u/s 16 of the G.I.D.C. Act and the other u/s 264-A of the Municipalities Act. It is difficult to contemplate why the Legislature should provide for such a circumlocutory procedure. Indeed, the very purpose for which Section 16 was enacted would be frustrated, for, under Chapter XVI-A the State Government could as well have declared a notified area in cases of industrial areas after complying with the requisite procedure under the Municipalities Act. In our opinion, therefore, the construction canvassed by the petitioners is wholly unacceptable. Upon a proper construction of Section 16, in our opinion, it was not necessary for the State Government to follow the procedure prescribed in Section 4 of the Municipalities Act before enforcing the provisions relating to notified areas contained in the Municipalities Act in the industrial areas in question.

18. The conclusion which we have arrived at on the basis of the language of Section 16 is further strengthened by the provisions of Section 57 of the G.I.D.C. Act. The said section in terms enacts that the provisions of the said Act shall have effect not with standing anything inconsistent therewith contained in any other law. Therefore, if on a proper construction of Section 16 a notified area comes into existence by a fiction no sooner the declaration contemplated by

Clause (a) of Section 16 is made, it could not be said that it would be necessary to follow the procedure prescribed in Section 264-D of the Municipalities Act. The fiction would operate notwithstanding the provisions of Section 264-D.

19. It is true that the impugned notification u/s 16 declares that the provisions relating to notified areas "as contained in Chapter XVI-A of the Gujarat Municipalities Act, 1963" shall extend to and be brought into force in the industrial areas in question. However, the said notification must be read, as far as possible, in conformity with the provisions of Section 16 and the power which it confers on the State Government and, accordingly, the provisions of Sections 264-A and 264-D would not be required to be complied with over again even in spite of the applicability of the provisions contained in Chapter XVI-A of the Municipalities Act.

20. It would thus appear that the first contention urged on behalf of the petitioner-Panchayats is without substance and it must be rejected.

Re. Ground No. 2

21. The submission under this head of challenge was that Section 16 suffers from the vice of excessive delegation inasmuch as (a) it leaves to the State Government to declare as to what provisions of the Municipalities Act shall extend to and be brought into force in any industrial area, and (b) it also leaves to the State Government to pick and choose the industrial areas in respect of which powers u/s 16 might be invoked. In our opinion, this challenge is without any substance. In the context of this challenge, it cannot be overlooked that the power u/s 16 is conferred upon the State Government itself and there is no provision in the Act for the delegation of such power. The power has to be exercised bearing in mind the policy of the G.I.D.C. Act, viz, to secure the orderly establishment of industries in industrial areas and industrial estates in the State of Gujarat and to assist generally in the organisation thereof. For achieving this purpose it might be necessary to exclude an industrial area from within the jurisdiction of any local authority and to make it a separate unit of administration. The Act provides that the Corporation shall have power to provide amenities and common facilities in industrial estates and industrial areas and to construct and maintain or cause to be maintained works and buildings therefore. It has been pointed out earlier that in exercise of these powers, the Corporation has, in fact, provided several amenities like roads, street lights, industrial power, water supply, drainage and effluent discharge facilities in the various industrial areas set up by it. It has also provided shopping centers, communication facilities, hospitals, dispensaries, labour welfare centers, etc. in those industrial areas. In order to provide these facilities the Corporation levied certain charges upon those who set up industries in those industrial areas. The industrial area ordinarily is, therefore a self-sufficient township in itself which provides its own amenities and recovers charges therefore. Any local authority, having jurisdiction over that area, will have to perform very few of its statutory or discretionary duties in respect of such industrial areas and yet it will have administrative

control and it may levy and collect taxes from those who set up industries in the industrial areas. 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. These guidelines will have to be borne in mind by the State Government in exercising its power u/s 16 in relation to any industrial area and in selecting the provisions of the Municipalities Act other than those relating to notified areas for the purpose of their applicability to such industrial areas. In the very nature of things, the Legislature itself could not have named the industrial area to which the provisions relating to notified areas or other provisions of the Act should be made applicable and the necessary discretion had to be left to some authority and it has, therefore, properly left it to the State Government to take necessary action bearing in mind the guidelines laid down in the Act itself. The Legislature has laid down a clear policy in the Act in light of which this discretion has to be exercised and it cannot be said that in the very conferment of discretion there is discrimination. Under the circumstances, in our opinion, the challenge based on the ground of excessive delegation of legislative powers is without substance.

Re. Ground No. 3

22. The argument under this head of challenge was that the provision about consultation in Section 9 (2) of the Panchayats Act is mandatory and that it was obligatory on the Government not only to consult the concerned panchayats before exercising the powers of exclusion of any area from within the limits of the respective panchayats but also to have abided by the views of the concerned Panchayat, for, "consultation" is equivalent to "consent" or "concurrence". This submission cannot be accepted because it is concluded against the petitioners by the decision of the Division Bench of this Court in *Kalubhai v. State* 6 G.L.R. 451. It was there held that the provision as to "consultation" contained in Section 9 (2) of the Act was directory in nature and that although it indicated a duty to consult the Panchayat before passing an order under that section, it did not follow that every departure from that duty would taint the whole proceeding with a fatal blemish and render it void and ineffective. It was further observed that there was nothing in the Panchayats Act to show that even after consultation the sense indicated by the Panchayat concerned would be binding on the Government. We are in complete agreement with the aforesaid observations in *Kalubhai's* case. As pointed out in the said decision, the provision about consultation has not been included as a safe-guard of a right of any person. Whatever rights, if any, that may be of having a local self-Government body or of membership of the Panchayat are the creation of the Statute which itself brings into existence a Panchayat and its electorate body and provides for its re-arrangement. Such an action of reconstituting or rearranging the areas would not totally and for ever deprive the people of a local self-Government body, or the right of the people to elect their representatives to a Panchayat. The word "consultation" cannot be equated with "consent" or "concurrence" as contended

for by the petitioners. The two sets of expressions have clearly different meanings in common parlance.

23. In *Chandramouleshwar Prasad v. The Patna High Court and Ors.* AIR 1970 S.C. 570, the question as to the true connotation of the word "consultation" arose in the context of Article 233 of the Constitution which provides for the appointment of a person to be a District Judge to be made by the Governor in consultation with the High Court. Even in the context of such a provision it was observed that though it was required of the Governor to obtain from the High Court its views on the merits or demerits of persons proposed to be appointed, it would not mean that the Governor must accept whatever advice is given by the High Court. It is thus clear that even judicially interpreted, the word "consultation" has not been held to mean a binding advice. In our opinion, therefore, this ground of challenge is without any substance.

Re. Ground No. 4

24. The argument under this head was specifically advanced on behalf of the petitioner in Special Civil Application No. 947 of 1975. Our attention was invited on behalf of the petitioner-panchayat in that case to a map which shows that as a result of the carving out of the areas comprised in the industrial area from within the local limits of the concerned Panchayat, the area over which the Panchayat has jurisdiction is broken up in such a manner as to leave two isolated pockets unconnected with the remaining area within the jurisdiction of the Panchayat. According to the petitioner-Panchayat, power u/s 9(2) could not have been exercised in such a manner as to split the local area comprised within the jurisdiction of a Panchayat in such a manner as to leave such pockets which it would be difficult to administer. Reliance was also placed in this behalf on Rule 2 of the Gujarat Panchayats (Declaration of Nagar or Gram Inquiry) Rules, 1962 which provides that before declaring any local area to be a nagar or gram under Sub-section (1) of Section 9 of the Act, the State Government shall make inquiries as to the population and the ordinary land revenue of the revenue village or each of the revenue villages or hamlets, or as the case may be, any other administrative unit or part thereof, comprised in the local area and whether the revenue villages or hamlets or other administrative units or parts thereof can be conveniently grouped so as to form a gram or nagar, as the case may be. It was urged that these guidelines should also be borne in mind while exercising powers u/s 9(2). Now, in the first place, there is no allegation in the petition that as a result of the issuance of the impugned notification affecting the petitioner-Panchayat, the local area within the jurisdiction of the said Panchayat is broken up in such a manner as to leave two isolated pockets unconnected with each other. Since there is no such averment in the petition, the respondents have had no opportunity to meet the same. Under the circumstances, it is not open to the petitioner-Panchayat to raise this contention at the hearing of the petition. In the next place, even assuming that there is a breaking up of the local area within the jurisdiction of the petitioner-Panchayat into separate blocks unconnected with

each other, it cannot be said that in no case powers u/s 9(2) could be exercised if such result ensues. It is well-known that areas which are far removed from each other and are totally unconnected are often brought under single administration. Rule (2) upon which reliance has been placed, even if it is applicable, cannot therefore be pressed into service. Contiguity of areas is only one of the factors, though an important one, in judging whether the administration of a local area could be conveniently carried on under a single local government. It would be legitimate to assume that the petitioner-Panchayat in this case must have objected to the proposal of exclusion of areas from within its local limits on the aforesaid ground when it was consulted and that the Development Commissioner must have taken that objection into consideration. We are unable to hold that merely because as a consequence of the exercise of power u/s 9(2) in the case of the petitioner-Panchayat its area is split up into independent blocks, the exercise of power is ultra vires. The petitioner-Panchayat can still bring the difficulties, if any, in the administration of the isolated pockets to the notice of the competent authorities in course of time and we have no doubt that if there are any genuine problems, they will be attended to and resolved by such competent authorities.

Re. Ground No. 5

25. The submission under this head was that when notified area has to be declared in respect of any local area within the jurisdiction of a Panchayat, the proper procedure to be followed is the one contained in Chapter XV-A of the Panchayats Act and that the said procedure having not been followed and the area having not been carved out into "specified areas", the impugned action of the competent authority is wholly ultra vires. The submission, in our opinion, proceeds entirely upon a misconception. As earlier discussed, the action here is taken u/s 16 of the G.I.D.C. Act and not under the Panchayats Act. The said section of the G.I.D.C. Act empowers the Government to make applicable only the provisions contained in the Municipalities Act in relation to notified areas to the industrial area in question and does not authorise the State Government to make applicable the provisions contained in Chapter XV-A of the Panchayats Act. There is no need to have resort to Chapter XV-A of the Panchayats Act once the power u/s 16 of the G.I.D.C. Act is exercised in relation to an industrial area. This submission must also, therefore, be rejected as without substance.

26. These were the only grounds of challenge raised at the hearing of the petitions and since there is no merit in any of them, the petitions fail and are dismissed. Rule is discharged in each petition with costs.

27. Before parting with this case, we might observe that certain interim orders were made by this Court during the dependency of the petitions. It would be open to the respondents to move this Court for appropriate directions, if any, for properly enforcing the obligations which the petitioners might have incurred as a result of the interim orders made by this Court. Suitable orders in this behalf will be made if and when this Court is approached at a subsequent stage.

28. Rule discharged in each petition with costs.

29. After this judgment was pronounced in the Court today, the learned advocates appearing on behalf of the petitioner panchayat in each case, save and except Special Civil Application No. 944 of 1975 and Special Civil Application No. 994 of 1975, orally applied for a certificate under Article 133(1) of the Constitution of India. Since, in our opinion, this group of cases does not involve any substantial question of law of general importance which in our view needs to be decided by the Supreme Court, the applications are rejected.