

(2015) 05 AHC CK 0133

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9899 of 2015

Rakam Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:

Constitution of India, 1950 — Article 243, 243(c), 243(d), 243-B, 243-B(1)
Uttar Pradesh Industrial Area Development Act, 1976 — Section 12-A, 2(b), 2(d)

Citation : (2015) 5 ADJ 144 : (2015) 3 AWC 2995 : (2015) 128 RD 214 : (2015) 2 UPLBEC 1703

Hon'ble Judges : D.Y. Chandrachud, C.J.;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : Dinesh Kumar Rai and Rakesh Pande, for the Appellant; V.K. Rai, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The constitutional validity of Section 12-A of the Uttar Pradesh Industrial Area Development Act, 1976 and of a notification of the State Government dated 14 January 2015 is in issue. The challenge is on the ground that Section 12-A is ultra vires Part IX of the Constitution. District Gautam Budh Nagar was constituted a district on 6 May 1997, comprising of revenue villages from the tehsils of Dadri, Sikandarabad and Khurja of district Bulandshahr. After the creation of the new district, the State Government, in exercise of powers conferred by Section 17 of the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (Adhiniyam of 1961), constituted a Zila Panchayat for the district. Elections were held after de-limitation of constituencies and wards. On 17 April 1976, a notification was issued by the State Government declaring an "industrial development area" under the provisions of Section 2(b) of the U.P. Industrial Area Development Act, 1976 (Act of 1976).

2. Part IX of the Constitution deals with Panchayats. Article 243(d) defines the expression "Panchayat" to mean an institution (by whatever name called) of self-

Government constituted under Article 243-B for rural areas. In Article 243-B, the Constitution has made provisions for the constitution of Panchayats. Clause (1) of Article 243-B requires that there shall be constituted in every state, Panchayats at the village, intermediate and district levels in accordance with the provisions of the Part. Part IX-A deals with Municipalities. Under Article 243-P(c), the expression "Metropolitan area" is defined to mean an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification. Article 243-P(d) defines the expression "Municipal area" to mean the territorial area of a Municipality as is notified by the Governor. Article 243-P(e) defines the expression "Municipalities" to mean an institution of self-Government constituted under Article 243-Q. Article 243-Q provides as follows:

"243-Q. Constitution of Municipalities.--(1) There shall be constituted in every State,--

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

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

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

in accordance with the provisions of this Part;

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

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

3. Municipalities envisaged by clause (1) of Article 243-Q are of three kinds: (i) Nagar Panchayats for transitional areas, which are areas in transition from rural to the urban; (ii) a Municipal Council for a "smaller urban area"; and (iii) a Municipal Corporation for a larger urban area".

4. The proviso to Article 243-Q(1) is in the nature of an exception because it stipulates that the mandate to create a municipality under the substantive part may not be observed in a situation governed by the proviso. Under the proviso, a municipality may not be constituted in an urban area or its part as the Governor may, by a public notification, specify to be an "industrial township". Before an

area is declared as an industrial township, it has to meet the description of an urban area. While specifying an urban area to be an industrial township, due regard has to be had 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 the Governor may deem fit. Clause (2) of Article 243-Q vests the Governor with authority to specify, by a public notification, an area as a transitional area or urban area. In doing so, the relevant considerations are the population of the area, the density of the population, the revenue generated for local administration, the percentage of employment in non-agricultural activities, its economic importance or such other factors as the Governor may deem fit.

5. These provisions of the Constitution in Part IX indicate that Panchayats are contemplated to be constituted as institutions of self-Government for rural areas. Those Panchayats may be at the village level, intermediate level (defined in Article 243(c) to be a level between a village and a district) and district level. On the other hand, Part IX-A contemplates the constitution of Municipalities for urban areas comprised into Nagar Panchayats for transitional areas, Municipal Councils for smaller urban areas and Municipal Corporations for larger urban areas. However, by the proviso to clause (1) of Article 243-Q, a Municipality may not be constituted in respect of an area which is notified as an industrial township. Where the Governor has specified an area to be an industrial township having due 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 as well as on the basis of other factors, a Municipality need not to be constituted.

6. The state legislature in Uttar Pradesh enacted the U.P. Industrial Area Development Act, 1976. Section 2(d) defines the expression "industrial development area" as an area declared by the State Government by a notification to do so. The Act was amended by U.P. Act 4 of 2001 by the insertion of Section 12-A, which provides 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.

Explanation: The expression "Panchayat and Panchayat area" shall have the meanings respectively assigned to them in part IX of the Constitution."

7. The Statement of Objects and Reasons accompanying the introduction of the Bill in the State Legislature provided the following rationale for the amendment:

"The Uttar Pradesh Industrial Area Development Act, 1976 provides, inter alia, for declaration of an area as Industrial Development Area and for constitution of an Industrial Development Authority for such area to perform certain functions, such as to acquire land, to prepare plan for such area, to demarcate and develop sites, and provide infrastructure, for industrial, commercial and residential purposes, to provide amenities and to regulate the erection of buildings and setting up of industries. The local bodies having jurisdiction over such area also perform similar functions as a consequence of which sometimes disputes arise between the Industrial Development Authority and the local authority over the exercise of jurisdiction in respect of such area. Article 243-Q of the Constitution empowers the Governor to specify, by public notification, any urban area or part thereof, 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, to be an industrial township. Upon the declaration of an area as Industrial Township under the said Article 243-Q, constitution of a municipality for such area is not necessary. It has, therefore, been decided to amend the said Act so that where an Industrial Development Area is specified to be an industrial township under the said Article 243-Q, such area would stand excluded from any panchayat area, and no panchayat would be constituted for such area, and any panchayat constituted for such area, or part thereof, before its declaration as industrial township would cease to exist.

The Uttar Pradesh Industrial Area Development (Amendment) Bill, 2001 is introduced accordingly."

8. On 24 December 2001, a notification was issued pursuant to the proviso to clause (1) of Article 243-Q recording that by the earlier notification of 17 April 1976, an area comprised in the New Okhla Industrial Development Authority which had been declared as the industrial development area having regard to its size and the municipal services being provided, would be an industrial township with effect from the date of publication of the notification in the Official Gazette. A similar notification was issued on the same date in respect of the Greater New Okhla Industrial Development Area which came to be specified as an industrial township.

9. The effect of Section 12-A is that where an industrial development area or a part is specified to be an industrial township under Article 243-Q(1), such an area, if it has been included in a Panchayat area, shall stand excluded from the Panchayat area. Thereupon no Panchayat shall be constituted for such an industrial development area or part under the United Province Panchayat Raj Act, 1947 or the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961. Any Panchayat constituted for such industrial development area or a part before the date of the notification shall thereupon cease to exist.

10. On 14 January 2015, a notification was issued by the State Government in regard to reconstitution and de-limitation of Gram Panchayats falling within the area of jurisdiction of NOIDA and Greater NOIDA. The notification stated that on 24 December 2001, the areas comprised within NOIDA and Greater NOIDA have been declared as industrial townships. In view of the provisions of Section 12-A, the notification provides that the areas comprised within these industrial townships would not be rural areas within the purview of the Adhiniyam of 1961. Hence, it was stated that since these cease to be rural areas, there would be no reconstitution or de-limitation of Panchayats falling within them.

11. The writ petition has been filed seeking a declaration that Section 12-A of the Act of 1976 is ultra vires the provisions of Part IX of the Constitution. The petition also seeks to impugn the legality of the notification issued on 14 January 2015 and seeks a mandamus restraining the respondents from excluding the areas of NOIDA and Greater NOIDA or any other authority constituted under the provisions of the Uttar Pradesh Panchayat Raj Act, 1947 (Act of 1947) and the Uttar Pradesh Kshettra Panchayat & Zila Panchayat Adhiniyam, 1961. The petitioner has moved these proceedings as a resident of a village in district Gautam Budh Nagar and claiming to be a prospective candidate from Ward 10 of the Zila Panchayat of Gautam Budh Nagar.

12. The submissions which have been urged on behalf of the petitioner are as follows:

(i) The declaration of an area as an industrial township under the proviso to Article 243-Q(1) would not ipso facto result in the dissolution of the Gram Panchayat or, as the case may be, the Zila Panchayat constituted in pursuance of the provisions of Part IX of the Constitution;

(ii) For the proviso to Article 243-Q(1) to apply, an area must be constituted as a Municipality and it is only thereafter, upon the specification of the area as an industrial township, that the proviso would apply;

(iii) There is no analogous provision in Part IX of the Constitution corresponding to the proviso to Article 243-Q(1) to Part IX-A and, hence, once an area is comprised within a Panchayat under Article 243-B, the Panchayat would not cease to exist merely on the declaration of the area as an industrial township; and

(iv) Section 12-A creates a consequence which is not contemplated by Part IX of the Constitution. By Section 12-A, upon the specification of an industrial development area as an industrial township under Article 243-Q(1), that area would stand excluded from the Panchayat area; no Panchayat can be constituted and any Panchayat constituted shall cease to exist. Such a consequence has not been envisaged in Part IX of the Constitution.

13. On the other hand, it has been submitted on behalf of the State that;

(i) The scheme of Part IX of the Constitution, which deals with Panchayats,

contemplates Panchayats as institutions of self-Government for rural areas;

(ii) Part IX-A, on the other hand, contemplates the creation of Municipalities for areas which are not rural areas since Nagar Panchayats are constituted for areas in transition from rural to the urban areas, while Municipal Councils and the Municipal Corporations are constituted respectively for smaller urban areas and larger urban areas;

(iii) An industrial township is specified under the proviso to Article 243-Q(1) having due regard to various circumstances, including the size of the area and the municipal services being offered or proposed to be offered by an industrial establishment in that area. Similarly, the considerations which have been specified in clause 243-Q are all indicative of the area having ceased to retain the defining characteristics of a rural area;

(iv) Hence, Section 12-A makes explicit something which is a necessary consequence of the constitution of Municipalities or, as the case may be, the specification of an industrial township under the proviso to Article 243-Q(1); and

(v) On its plain terms, the proviso to Article 243-Q(1) does not require that an area has to be first declared as a Municipality in order to be specified as an industrial township.

14. The rival submissions now fall for consideration.

15. Part IX of the Constitution was inserted by the Constitution 73rd Amendment Act, 1992, while Part IX-A was introduced by the Constitution 74th Amendment Act, 1992, with effect from 24 April 1993 and 1 June 1993 respectively. Part IX deals with Panchayats. Clause (d) of Article 243 is a clear indication of the position that a Panchayat is an institution of self-Government constituted for rural areas. Hence, under Article 243-B(1), Panchayats are contemplated to be constituted at the village, intermediate and district levels. Part IX-A deals with Municipalities which are defined in Clause (e) of Article 243-P to be institutions of self-Government constituted under Article 243-Q. Article 243-Q contemplates the existence of Municipalities of three descriptions; (i) Nagar Panchayats for areas which are in transition from rural to the urban; (ii) Municipal Councils for smaller urban areas; and (iii) Municipal Corporations for larger urban areas. The specification of areas as transitional areas, smaller urban areas or larger urban areas is indicative of the fact that by their very nature, these areas have ceased to be rural in nature and characteristics. Clause (2) of Article 243-Q requires the Governor to have due regard to the population of the area, the density of population, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit. These are all indicia of urbanization as distinct from a predominantly rural area. Just as Article 243-B mandates the constitution of Panchayats for rural areas, Article 243-Q mandates the constitution of Municipalities for areas which are in transition to be becoming urban areas or areas which have already become smaller or larger urban areas.

16. What Article 243-Q(1) does, is to provide that a Municipality under clause (1) may not be constituted in respect of an area which has been specified as an industrial township having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment. An industrial township is a subset of an urban area which fulfils the characteristics provided by the proviso to Article 243-Q(1). But for the proviso, a Municipality would have had to be constituted under the substantive part of Article 243-Q(1) in respect of an area which has been specified as an industrial ownership. An industrial township, however, is an area in which an industrial establishment has provided or proposes to provide municipal services and which is so specified by the Governor having regard to the size of the area. Where an industrial township has been specified, the requirement of constituting a Municipality stands lifted. If this constitutional scheme providing for Panchayats on one hand and Municipalities on the other is construed so as to effectuate the purpose and intent of the provisions of Part IX and Part IX-A, there can be no ambiguity about the position. Once a Municipality is constituted in respect of an area under Article 243-Q(1), it would be far fetched to contend that nonetheless, the very same area must necessarily fall within the jurisdiction of a village Panchayat that was constituted under Article 243-B. The whole object of constituting a Municipality is to provide an institution of local self-Government in those areas which have ceased to be villages within Part-IX and which do not meet the description of a rural area. The constitution of an industrial township under the proviso to Article 243-Q(1) obviates the necessity of constituting a Municipality for that area. Once an industrial township is constituted, regulation of that township would take place under the enabling provision of state legislation governing such a township.

17. Initially, as we have noted, an area comprised within NOIDA was designated as an industrial development area under Section 2(d) of the Act of 1976 on 17 April 1976. On 28 January 1990, a further notification was issued. As a result of the enactment of Section 12-A, once an industrial development area is specified to be an industrial township under the proviso to Article 243-Q(1), the following consequences would emanate:

(i) If the area is included in a Panchayat area, it would, with effect from the date of the notification made under the proviso, stand excluded from the Panchayat area;

(ii) No Panchayat can be constituted for such an industrial development area or a part under the Act of 1947 or the Adhiniyam of 1961;

(iii) Any Panchayat constituted for such an industrial development area or a part before the date of the notification would cease to exist. These provisions of Section 12-A are not contrary to Part-IX of the Constitution. In fact, the provisions of Section 12-A only make explicit a consequence which would emerge from a harmonious construction of the provisions of Part-IX read with Part-IX-A of the Constitution. Once an industrial township has been notified under the

proviso to Article 243-Q(1) in respect of an area, that is on the foundation that the size of the area and the nature of the municipal services which are provided by an industrial establishment warrant the specification of that area as such. Such an area ceases to have the defining characteristics which govern a rural area for which alone a Panchayat can be constituted having due regard to the provisions of Article 243(d) of Part-IX. In this view of the matter, there is no inconsistency between Section 12-A and Part-IX of the Constitution.

18. The Supreme Court considered the interplay between the provisions of Part-IX and Part-IX-A of the Constitution and of legislation enacted by the state legislature in *Saij Gram Panchayat Vs. The State of Gujarat and Others*, AIR 1999 SC 826 : (1999) 1 JT 223 : (1999) 1 SCALE 176 : (1999) 2 SCC 366 : (1999) 1 SCR 263 : (1999) 1 UJ 341 : (1999) AIRSCW 452 : (1999) 1 Supreme 248 . In that case, the Government of Gujarat issued a notification on 7 September 1993 under Section 16 of the Gujarat Industrial Development Act, 1962, declaring a particular industrial area as a notified area under Section 264A of the Gujarat Municipalities Act. By another notification of the same date, the State Government excluded the notified area from Saij Gram Panchayat under Section 9(2) of the Gujarat Panchayat Act, 1961. The Gram Panchayats, which were affected, contended that the notification which was issued under Section 16 of the Gujarat Industrial Development Act was contrary to Parts-IX and IXA of the Constitution, submitting that if any area forms part of a Panchayat under Part-IX of the Constitution, it cannot be treated as an industrial township under Part-IXA of the Constitution. The Supreme Court observed as follows:

"16. The contention is based on a misconception about the relationship of the provisions of Parts IX and IXA of the Constitution with any legislation pertaining to industrial development. The Gujarat Industrial Development Act operates in a totally different sphere from Parts IX and IXA of the Constitution as well as the Gujarat Panchayats Act, 1961 and the Gujarat Municipalities Act, 1962 - the latter being provisions dealing with local self Government while the former being an Act for industrial development, and orderly establishment and organisation of industries in a State. The industrial areas which have been notified under Section 16 of the Gujarat Industrial Development Act on 7.9.1993 were notified as industrial areas under the Gujarat Industrial Development Act long back in the year 1972. These industrial areas have been developed by the Gujarat Industrial Development Corporation and they can hardly be looked upon as rural areas covered by Part DC of the Constitution. It is only such industrial areas which can be notified under Section 16 of the Gujarat Industrial Development Act, 1963. If by a notification issued under Section 16, these industrial areas are deemed to be notified areas under the Gujarat Municipalities Act and are equated with industrial township under the proviso to Clause (1) of Article 243-Q, the constitutional scheme is not violated. In fact, under Chapter 3 of the Gujarat Industrial Development Act, 1962, the Gujarat Industrial Development Corporation, has been given power, inter alia, to develop land for the purpose of facilitating the location of industries and commercial centers. It has also been

given the power to provide amenities and common facilities in such areas including provision of roads, lighting, water supply, drainage facilities and so on. It may do this either jointly with Government or local authorities or on an agency basis in furtherance of the purposes for which the corporation is established. The industrial area thus has separate provision for municipal services being provided by the Industrial Development Corporation. Once such an area is a deemed notified area under the Gujarat Municipalities Act, 1964, it is equated with an industrial township under Part IXA of the Constitution, where municipal services may be provided by industries. We do not see any violation of a constitutional provision in this scheme."

(emphasis supplied)

19. The Supreme Court held that by reason of the notification of 7 September 1993, an industrial area developed under the Gujarat Industrial Development Act was also deemed to be an industrial township for the purpose of local self Government. In that context, the Supreme Court further observed as follows:

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

20. By Section 12-A, the Legislature has merely provided a consequence which in any event, it would have been open to the Legislature to achieve by means of separate notifications. The fact that the Legislature has chosen to enact a general provision of the nature in Section 12-A does not affect the legitimacy of the statutory enactment. If the legislature has the power, as it does possess in the first place, to exclude an area from the Panchayat area, once the area is designated as an industrial development area and an industrial township, the

same consequence can be envisaged under a legislative prohibition.

21. For these reasons, we have come to the conclusion that there is no merit in the challenge to the constitutional validity of the provisions of Section 12-A of the Uttar Pradesh Industrial Area Development Act, 1976, as amended, or to the notification issued by the State Government on 14 January 2015. The petition shall, accordingly, stand dismissed. However, there shall be no order as to costs.