

(2008) 04 BOM CK 0156

In the Bombay High Court

Case No : Writ Petition No. 3370 of 2003

The Tata Power Company Limited (Formerly known as Tata Electric Companies) and Rameshkumar Tilakraj Choudhary

APPELLANT

Vs

State of Maharashtra and Sarpanch, Patnus Gram Panchayat

RESPONDENT

Date of Decision : 21-04-2008

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 124(6)

Constitution of India, 1950 — Article 226, 227

Electricity (Supply) Act, 1948 — Section 44, 72

Maharashtra Village Panchayats Taxes and Fees Rules, 1960 — Rule 35, 35(8)

Citation : (2008) 3 ALLMR 692 : (2008) 6 BomCR 152 : (2008) 110 BOMLR 1500 : (2008) 6 MhLj 635

Hon'ble Judges : V.M. Kanade, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : R.A. Dada and C.S. Balsara and Anurag Gokhale, Mulla and instructed by Mulla and Craigie Blunt and Caroe, for the Appellant; N.P. Deshpande, AGP for the Respondent No. 1 and S.M. Oka, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—By this Petition filed under Article 226 and 227 of the Constitution of India, the Petitioners are seeking the following reliefs.

(a) that this Hon"ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate, writ, order or direction under Article 226 of the Constitution of India calling for the papers and proceedings in respect of the impugned order dated 13th August, 2004 (Exh. "KK14" hereto) and after going into the legality and validity thereof, to quash and set aside the same;

(b) that this Hon"ble Court may be pleased to declare that under Rule 35 Sub-rule (8) of the Maharashtra Village Panchayat Taxes & Fees Rules, 1960, the Petitioner is exempted from levy of octroi duty;

(c) that this Hon"ble court be pleased to issue a writ of mandamus or a writ in

the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents to grant exemption to the Petitioner under Rule 35(8) of the Maharashtra Village Panchayat Taxes & Fees Rules, 1960;

2. Brief facts in a nutshell are as under:

3. The Petitioner No. 1 is a Company incorporated and registered under the Companies Act 1 of 1956. The petitioner No. 2 is a shareholder of the Petitioner No. 1 Company. Respondent No. 1 is the State of Maharashtra. Respondent No. 2 is the Gram Panchayat of Village Patnus. The Government of Maharashtra through its Industries, Energy and Labour Department had set up a Committee known as Shastri Committee. This was done by Government Resolution dated 4th July, 1988. The Committee was set up to recommend the solution to the frequent instances of power failure in the City of Mumbai and its Suburban areas, which had taken place in 1986, 1987 and 1988. The Committee made recommendation of pump storage plant. The Government accepted the recommendation of the Committee and decided to install Bhira Pump Storage Power Plant.

4. Petitioners prepared a project for installation of the said plant and necessary applications were made to the Maharashtra State Electricity Board under Sections 44 and 72 of the Electricity (supply) Act, 1948. The necessary approval was obtained from various authorities. The project was also cleared by the Government of India. The necessary applications were also made to the World Bank and the International Finance Corporation and other Financial Institutions for funding the project. Petitioners obtained the necessary approval and permission u/s 44 of the Electricity (supply) Act, 1944 from the Maharashtra Electricity Board. The application was made to the Government of Maharashtra which granted necessary permission by its letter dated 30/12/1988 through the Ministry of Industries, Energy and Labour Department for putting up the said Project. The Government of India also granted approval and granted environmental clearance.

5. The Government of India also furnished a guarantee to the World Bank Project for securing finance from the World Bank and other international financial institutions. The Central Government also granted specific exemption from payment of various taxes in respect of equipment and machinery which were required to be installed for setting up the plant. The exemption was also granted under the Indian Stamp Act. The said plant of generating 150 MW of electricity and also pumping back water was established. A new building for installing various imported new plants and machineries from foreign countries was erected. The plant was set up for generation of electricity and distribution and was admittedly in the public interest and larger public welfare to get over the problem of frequent electrical break down in the city of Mumbai. It is the case of the Petitioners that the said plant was a New Industrial Undertaking and was exempted from octroi duty. It is the case of the Petitioners that the Petitioners"

New Industrial Undertaking was exempted from levy of octroi duty under Rule 35(8)(a) of the Maharashtra Village Panchayat Taxes & Fees Rules 1960.

6. It is an admitted position that the project started functioning and became operational some time in the year 1992. Respondent No. 2, however, on or about 13/07/1992 issued a demand notice for a sum of Rs 67,584.92, claiming octroi duty. Thereafter, several letters were sent and, finally, on 31/10/1992 the Petitioners were once again reminded to pay the octroi duty of the sum of Rs 67,584.92 in respect of the construction material arrived for the purpose of construction work which was to be carried out at the site of the project. Several meetings were held between the Petitioners and Respondent No. 2 and, finally, on 14/12/1992 Respondent No. 2 threatened to take legal action in respect of recovery of the said amount outstanding in respect of the octroi duty. By letter dated 03/12/1993, the Government informed the petitioner that they had granted sanction for the recovery of octroi to all the Gram Panchayats which were in existence prior to 01/10/1965.

7. Petitioners made a representation by letter dated 01/02/1994, seeking exemption of payment of the octroi duty in view of Sub-rule (8) of Rule 35. The Government granted temporary stay to the order of recovery on 03/03/1994. Thereafter, again, several meetings were held in the Government Department and the Petitioners and correspondence was exchanged between the parties. In the meantime, some time in or about 1995/96, the project was commissioned for generation of electricity. Thereafter, again, several correspondence was exchanged and meetings were held between the parties.

8. In the meantime, an Ordinance was issued by the Government of Maharashtra, amending the provisions of Bombay Village Panchayats Act, 1958 and the levy of octroi was abolished by amending Ordinance No. XIV of 1999. The Government by its letter dated 25/02/2000 lifted the stay which was granted on 03/03/1994 without deciding the main issue. Respondent No. 2 issued a letter dated 18/03/2000 addressed to the Petitioners and again demanded payment of octroi duty. On 17/11/2000, Respondent No. 2 issued a warrant of attachment in respect of the properties of the petitioner and claimed a sum of Rs. 5,03,00,000/- as an outstanding amount towards payment of octroi duty from the petitioners. Petitioners, thereafter, filed a Writ Petition No. 6723 of 2000. The Division Bench of this court set aside the order dated 18/03/2000 and the warrant of attachment dated 17/11/2000 was also set aside. A specific direction was given by this Court, directing the State Government to decide the issue raised by the Petitioners regarding exemption claimed by the Petitioners under Rule 35(8) of the said Rules and also exemption from payment of octroi u/s 124(6) of the Bombay Village Panchayats Act.

9. After the matter was remanded to the State Government, it was heard by the Ministry for Rural Development on various dates. The written submissions were submitted by the Petitioners and on 10/09/2001, the Deputy Secretary of the Government of Maharashtra passed an order and he held that the Petitioners"

Bhira Pump Storage Power Plant established by the Petitioners at Bhira was not a new company and, therefore, not eligible for exemption under Rule 35(8) of the said Rules. He further held that in respect of exemption u/s 124(6), the Divisional Commissioner would decide the said question after the application was made by the Petitioners.

10. Petitioners again challenged the aforesaid order vide Writ Petition No. 4838 of 2001. The matter was heard by the Division Bench of this Court and the impugned order was set aside and, again, the matter was remanded to the Hon''ble Minister for deciding it afresh. After remand, the Hon''ble Minister fixed the matter for hearing. Petitioners again filed their written submissions and, finally, on 06/08/2002, the Deputy Secretary, Government of Maharashtra informed the Petitioners that the Hon''ble Minister had passed the order rejecting the Petitioners' application for exemption under Rule 35(8) of the said Rules and u/s 124(6) of the Bombay Village Panchayats Act, 1958.

11. Petitioners again challenged the said order by filing Writ Petition No. 5101 of 2002 in this court inter alia contending that no reasons were given by the Hon''ble Minister in spite of specific directions being given in the order passed in Writ Petition No. 4838 of 2001. At the hearing of the third Writ Petition, the Additional Government Pleader, who appeared on behalf of the State, submitted that the order dated 06/08/2002 and consequent demand notice would be withdrawn and the Government would pass a fresh reasoned order as directed by this Court.

12. Thereafter, again the matter was remanded to the Hon''ble Minister. After remand, no fresh hearing was given and the Hon''ble Minister substituted its earlier order by passing a speaking order dated 30/03/2003. Petitioners, being aggrieved by the said order filed the present Writ Petition. After this Petition was filed, this Court on 29/03/2004 gave oral directions to respondent No. 1 to grant hearing to the Petitioners. Accordingly, hearing was granted to the Petitioners on 26/05/2004. Petitioners filed written submissions before the Hon''ble Minister and, thereafter, the Hon''ble Minister again passed an order dated 13/08/2004. Petitioners made an application for amendment of the Writ Petition and, consequently, the Writ Petition was allowed to be amended and the the Petitioners also challenged the impugned order dated 13/08/2004 passed by the Hon''ble Minister.

13. Shri Dada, the learned Senior Counsel appearing on behalf of the petitioners firstly submitted that by order dated 13/08/2004, the Hon''ble Minister had not complied with the directions which were given by three Benches of this Hon''ble Court to compute the octroi in accordance with law. He submitted that these directions had not been followed by the Hon''ble Minister. He then submitted that the Petitioner No. 1 Company was a new industrial undertaking within the meaning of Sub-rule (8) of Rule 35 of the said Rules and was exempted from payment of octroi. He submitted that on the conjoint reading of Sub-rule (8) of Rule 35, it was abundantly clear that the requirement of registration of the

undertaking with the Director of Industries was not a mandatory requirement but was a directory requirement. He submitted that the Petitioner No. 1 Company was registered with the Secretary of Industries and, therefore, the requirement of registration had been complied with. He submitted, therefore, that the decision of the Hon"ble Minister that the requirement was mandatory was patently illegal. He then submitted that the four conditions which were given below the explanation to Rule 35(8) had to be read disjunctively and, therefore, condition Nos. (i) and (ii) would be read together and condition Nos. (iii) and (iv) had to be read disjunctively and separately. He submitted that the said interpretation was clear from the perusal of the said provision. He submitted that after the first condition No. (i), there is a semicolon followed by the word "and" and, thereafter, the condition No. (ii) is mentioned, after which there was a semicolon and, thereafter, the condition No. (iii) was mentioned, which, again, ended with the semicolon and the word "and" and, thereafter, condition No. (iv) was mentioned. He submitted that even assuming for the sake of argument that the provision of registration is mandatory even then in view of the disjunctive interpretation of the four conditions it was apparent that either condition Nos. (i) and (ii) had been complied with or condition Nos. (iii) & (iv) had been complied with. He submitted that the Petitioner No. 1 Company, in any case, had admittedly complied with condition Nos. (iii) & (iv) and, as such, were entitled to get exemption under Rule 35(8). He also invited our attention to Clause (c) of Sub-rule 8 of Rule 35 and more particularly the words in the said Clause viz. "from the date of licence of registration of such new industrial undertaking".... He submitted that the words "date of licence of registration" were meaningless and, therefore, the word "of", after the words "date of licence", had to be read as "or" and, if so read, it clearly indicated that in cases where the registration was compulsory, condition Nos. (i) and (ii) of the explanation would apply and in cases where the licence was necessary, condition Nos. (iii) and (iv) became applicable. He submitted that the Petitioners had obtained necessary licence and, therefore, condition Nos. (iii) and (iv) would apply in the case of Petitioners and, therefore, the Petitioners were entitled to exemption. In support of the said submissions, he relied upon the judgment of the Apex Court in Tirath Singh Vs. Bachittar Singh and Others, . He also relied upon the judgment of the Apex Court in Modern School Vs. Union of India (UOI) and Others, . In support of the submission that the requirement of registration with the Directorate of Industries was a directory requirement, he relied upon the following judgments:

i) AIR 1917 PC 142 Montreal St. Ry. Co. v. Normandin.

(ii) Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others,

(iii) Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur,

He also invited our attention to the Manual of Departmental Functions and Procedures issued by the Government of Maharashtra, Directorate of Industries. He submitted that from the said Manual it was apparent that the direction in respect of registration of industry with the Directorate of Industries was not

statutory requirement but was a procedure prescribed under the Manual of the Departmental Functions and Procedures.

14. Mr. Deshpande, the learned Assistant Government Pleader appearing on behalf of the Government, on the other hand, submitted that the requirement of registration with the Directorate of Industries was mandatory. He submitted that only Small Scale Industries would be registered with the Directorate of Industries. He further submitted that exemption in respect of the new industrial undertaking was meant to be granted only to Small Scale Industries and as the Petitioners, admittedly, not being registered with the Directorate of Industries, were not entitled to get exemption. He submitted that the conditions which were mentioned below the explanation of Sub-clause (8) of Rule 35 could not be construed disjunctively and all these conditions had to be read together and unless all conditions were complied with by any industry, exemption under the said provision would not be granted in its favour. He submitted that though there was no statutory provision in respect of registration of Small Scale Industry with the Directorate of Industries, it was a tradition which had been followed for innumerable years and, therefore, in the present case, contemporary construction had to be applied and merely because the said requirement did not have any statutory force, it would not mean that the said provision is directory. In support of the said submission, he relied upon the judgment of the Apex Court in *National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay*, . He submitted that the Hon"ble Minister had taken into consideration the letter dated 11/07/2003 written by the Directorate of Industries to the Government in which it is stated that only Small Scale Industry would be registered with the Directorate of Industries and had further observed that the said provision would not be said to be directory but was a mandatory provision.

15. Mr. Oka, the learned Counsel appearing on behalf of respondent Nos. 2 & 3 submitted that the said provision was mandatory. He relied upon the judgment of the Apex Court in the case of *State of Jharkhand and Others Vs. Ambay Cements and Another*, .

16. It is apparent that the present case has had a chequered history and the matter had to be remanded on four occasions to the Hon"ble Minister for one reason or the other. Perusal of the impugned order indicates that though on two/three earlier occasions specific directions were given to pass a speaking order, the said directions were not followed and, therefore, the matter had to be remanded back. On one occasion, after the remand, though matter was to be decided afresh, the order was passed without giving hearing to the Petitioners and merely an old order was substituted by a new reasoned order. Secondly, on third occasion specific directions were given to compute the octroi duty which was demanded on the face of factual material and, thereafter, issue a proper demand notice, indicating the manner in which the amount of demand was arrived at. In spite of these directions being given, even in the present impugned order, those directions had not been complied with. We have also noticed certain

discrepancies in the present impugned order. In view of the above, therefore, we are of the opinion that the matter now will have to be decided by this Court and no useful purpose would be served by again remanding the matter to the Government.

17. From the letters which are annexed to the Petition, it is evident that the project which is set up by the Petitioners is a public utility project. Even otherwise, this fact has not been disputed by the Government. Shastri Committee, consisting of experts on the subject, was set up to go into the question of frequent break down of electric supply to the City of Mumbai and its suburban areas in the years 1986, 1987 and 1988 and the said Committee was called upon to give its recommendations and, accordingly, it was unanimously recommended that the project be set up so that problem would be resolved. Petitioner No. 1 Company gave its proposal for setting up the Project at Village Patnus in view of the exemption which was granted by the Central and State Government in respect of various taxes so that electric supply would be made to the City of Mumbai and its adjoining areas at cheaper rate.

18. Rule 35 of the Maharashtra Village Panchayats Taxes and Fees Rules, 1960 is pertaining to the exemption which can be granted to Industries from levy of octroi. So far as the present Petition is concerned, we are concerned with Sub-rule (8) of Rule 35 of the said Rules. Rule 35(8) reads as under:

35. Exemption from octroi. The following articles shall be exempted from payment of octroi:

1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) ...

[(8) (a) Plant and machinery including spares and replacements [of a new industrial undertaking]"

(b) Construction materials, that is to say, iron, steel, cement, bricks, wood and the like required for the construction of buildings [of a new industrial undertaking];

(c) Raw materials and tools for manufacturing finished articles imported by any new industrial undertaking. Provided that such exemption from payment of octroi on raw materials and tools shall cease on the expiry of a period of thirteen years from the date of licence of registration of such new industrial undertaking unless

the panchayat, having regard to its financial position otherwise decides.

Explanation. For the purposes of Clause (8) "a new industrial undertaking" means any industrial undertaking (including an industrial undertaking run by a cooperative society)

(i) which is registered with the Directorate of Industries, Maharashtra State, but is not located within the Bombay-Thane and Poona-Pimpri-Chinchwad areas specified in the Appendix to this Part ; and

(ii) which is not formed by the splitting up or the reconstruction of a business already in existence in the village;

(iii) which is not formed by the transfer to new business of a building, machinery or plant previously used for any purpose at the village; and

(iv) which has begun or begins to manufacture or to produce articles for the first time on or after the 1st day of May, 1963 or at any time within a period of five years immediately preceding that date.]

19. Perusal of Rule 35 and Sub-rule (8) of Rule 35 clearly indicates that various exemptions had been granted to certain industries. Sub-rule (8) of Rule 35 indicates that the purpose for granting exemption to new undertaking was to ensure that such undertaking would be set up as new industry in backward areas, probably because it would generate employment and finance to the Gram Panchayat and residents of the locality. The idea being that the income would be generated by setting up of such new industry would be far greater than some collection of octroi on the plant and machinery, construction material, raw material and tools for setting up that industry and it would outweigh the mere collection of octroi. Though there is no material to indicate that, that was the object and purpose of granting exemption, since no material has been placed before us to the contrary, that would be the obvious inference that can be drawn if the said Rule 35(8) is construed in its proper perspective.

20. In any event, the Petitioner No. 1 Company admittedly was set up for the project which was a public utility project and it was set up at the instance of the Central and State Government in order to give benefit to the large number of individuals in Mumbai and its suburban areas to meet the requirement of providing essential electricity services. Further, perusal of Sub-rule (8) indicates that the exemption has been granted only to new undertaking which has not been defined under Rules but has been specifically defined below the explanation to the said Sub-rule. Further, it indicates that exemption is granted to category (a) Plant and machinery, (b) Construction materials used for setting up an industry and category (c) Raw materials and tools which would be imported for the purpose of manufacturing product. So far as plant and machinery in category (a) and construction materials in category (b) are concerned, exemption is granted obviously because the plant and machinery and construction material, under normal circumstances, would be used only once for the purpose of setting

up the industry or at the time when there has to be an expansion of the industry. The category (c), on the contrary, viz. raw materials and tools would be required to be used for on going basis and, therefore, outer limit of 13 years had been put and discretion is given to the Gram Panchayat, depending on its financial status, whether exemption should be continued or not. In all these three categories, the essential requirement is that it should be a new industrial undertaking. Therefore, the words "new industrial undertaking" have been explained in the explanation. Since the explanation is relevant to the present problem, it would be fruitful to again reproduce the explanation which reads as under:

Explanation. For the purposes of Clause (8) "a new industrial undertaking" means any industrial undertaking (including an industrial undertaking run by a cooperative society)

(i) which is registered with the Directorate of Industries, Maharashtra State, but is not located within the Bombay-Thane and Poona-Pimpri-Chinchwad areas specified in the Appendix to this Part; and

(ii) which is not formed by the splitting up or the reconstruction of a business already in existence in the village;

(iii) which is not formed by the transfer to new business of a building, machinery or plant previously used for any purpose at the village; and

(iv) which has begun or begins to manufacture or to produce articles for the first time on or after the 1st day of May, 1963 or at any time within a period of five years immediately preceding that date.]

21. From the perusal of the explanation, it is evident that what is a new undertaking has been explained in four clauses, stating therein what is and what is not a new undertaking. Clause (i) prescribes that it should be registered with the Directorate of Industries with the further rider that it should not be located within the Bombay-Thane and Poona-Pimpri-Chinchwad areas specified in the Appendix to this part. So, the first part is couched with the positive part and the second part excludes such industries which are registered but not located in certain areas. Clause (ii) again excludes certain new industrial undertakings by stating therein that such industries should not be formed by the splitting up or the reconstruction of a business already in existence. Clause (iii) also is couched in a negative language but excludes those new industrial undertakings which are formed by transfer of plant, building, machinery which was previously used for any purpose at the village and Clause (iv) denotes in positive language those industries which have started its manufacturing activity on or after the 1st day of May, 1963 or at any time within a period of five years immediately preceding that date i.e. 1st May, 1958. On conjoint reading of these four conditions, it is apparent that the requirement is that (i) it should be registered and located outside the Bombay-Thane and Poona-Pimpri-Chinchwad areas specified in the Schedule, (ii) it should not be formed by the splitting industry which is already in existence and by creating a new industry out of existing one for the purpose of

taking benefit of the exemption of octroi, (iii) a new undertaking is not formed by transferring plant and machinery, building of an old undertaking to a new undertaking and (iv) it started its manufacturing activity from 1st May, 1958 onwards. Condition Nos. (ii) and (iii), therefore, have been imposed to ensure that existing old undertakings do not try to take advantage of the exemption by creating new undertaking by either splitting the old undertaking or by transferring its existing plant, machinery and building to a new undertaking and condition No. (i) is that it should be registered in order to ensure that it is accountable and it is not a flybynight operator but it is an undertaking which is genuine, bonafide and there to stay at that village and condition No. (iv) lays emphasis on the manufacturing activity being commenced from a particular date. The conjoint reading of these four conditions, in our view, indicate that it cannot be read disjunctively as is submitted by the learned Senior Counsel Shri Dada, appearing on behalf of the Petitioners. The submission of Shri Dada, the learned Senior Counsel appearing on behalf of the Petitioners, that in view of the wording of the term "date of licence of registration" being construed to mean "date of licence or registration" and, therefore, Clauses (i) and (ii) pertain to undertakings which are required to be registered and Clauses (iii) & (iv) pertain to Government Policy and, therefore, should be so read disjunctively cannot be accepted. In any event, so far as the present Petition is concerned, we are not concerned with Clause (c) even otherwise and at least for the purpose of Clause (a) and (b), in our view, the said conditions have to be construed as separate conditions which have to be complied with for the purpose of falling within the definition of words "a new industrial undertaking".

However, even otherwise, it is an admitted position that so far as condition Nos. (ii), (iii) and (iv) are concerned, the Petitioner Company has complied with the said conditions and the only objection which is raised by the Government is in respect of registration with the Directorate of Industries. It is an admitted position that the Petitioner No. 1 is not registered with the Directorate of Industries but is registered with the higher authority to the Directorate of Industries, namely, the Secretary. The question, therefore, which has to be considered is: whether registration with the Directorate of Industries is mandatory or directory. It is a well settled position in law that the provision has to be construed as mandatory, if not following the provision has some definite consequences and, secondly, the requirement of following the condition is either backed by a statutory requirement or is not vague or ambiguous. In the present case, it is an admitted position that the requirement of registration with the Directorate of Industries is not a statutory requirement. This fact has been clearly stated in the Manual of Departmental Functions and Procedures issued by the Government of Maharashtra, Directorate of Industries. Chapter VI deals with Small Scale Industries and their registration. Para 1.1 clearly states that the registration of Small Scale Industries is not statutory. It would be relevant to reproduce para 1.1. which reads as under:

1.1 Registration of Small Scale Industries is being done by the Directorate of

Industries from 1960. The procedure to be followed for registration has undergone changes over the years and so also the definition of SSI units. Though registration of Small Scale Industries is not statutory, such a registration enables a unit to obtain various types of assistances at Government/SemiGovernment level and hence the importance of registration. The registration of Small Scale Industries is done on the lines of the guidelines issued by the Development Commissioner (SSI), New Delhi.

The said paragraph also indicates that requirement of registration is done on the lines of the guidelines issued by the Development Commissioner (SSI), New Delhi. In the sphere of regulatory functions of Directorate, this is what has been mentioned in Chapter I. Functions and Organization.

2. Functions

2.1 Functions of the Directorate in the context of the industrial development in the State can be broadly divided into two categories:

i) Promotional.

(ii) Regulatory.

For obvious reason, the Government has been very keen to see that industrial activities get dispersed from the congested Bombay-Pune corridor. This policy has been implemented on the one hand by giving incentives to the units that go to the backward areas and on the other by making the regulatory functions of the Directorate very restrictive. From the time, the promotional Corporations came into the existence, they took the initiative in granting the incentives and the Directorate concentrated in its regulatory activities. Of late, the government has redefined the role of the Directorate by giving it the role of the leader of all the organizations working in the State for promotion of industrial development. This is the reason why the post of Industries Commissioner has been redesignated as Development Commissioner (Industries). Under the regulatory functions, Officers of the Directorate of Industries at various levels broadly discharge following functions:

i) Registration of Small Scale Units;

(ii) Recommendation for I.I./D.G.T.D. registration in case of medium and large scale industries;

(iii) Allotment of plots in MIDC area;

(iv) Approval of schemes and allotment of plots in cooperative industrial estates;

(v) Recommendation in respect of N.A. permission;

(vi) Grant of NOC within the Bombay Metropolitan Region;

(vii) Recommendations for allotment of power;

- (viii) Granting/Recommending financial assistance;
- (ix) Recommendation for hire purchase machinery;
- (x) Recommendation for registration with the Export Promotion Council;
- (xi) Registration with CSPO/NSIC for marketing;
- (xii) Assessment of capacity;
- (xiii) Utilisation of raw material.

Although the Directorate is required to do the above regulatory functions, with the change in the strategy of industrial development and policy of the Government for giving priority to the rural industrialisation, the main role of the Directorate is that of development and to help the prospective entrepreneurs to set up their ventures and not to control them.

This also indicates that function of the Directorate are promotional and regulatory. The Government was directed to file an affidavit indicating the nature of the letter which is referred to by the Hon"ble Minister in para 27 of his order wherein there is a reference to letter dated 11/07/2003 written by the Directorate of Industries to the Government. An affidavit dated 19/03/2008 has been filed by Digambar Rajaram Bhamare, Joint Director of Industries. A perusal of letter makes interesting reading. In para 1 of the affidavit it is stated as under:

1. I say that the Writ Petition involves, interalia, interpretation of the expression "new industrial undertaking" as used in the Maharashtra Village Panchayat's Taxes and Fees Rules, 1960. One of the conditions for an undertaking to be a new industrial undertaking is that it should be registered with the Directorate of Industries. In this regard, I wish to place on record the long practice of the State Government. The long standing practice is that registration of small scale industries is being done by the Directorate of Industries from 1960. With effect from 1981, apart from small scale industries, service industries are also registered with the Directorate of Industries. It is submitted that no other industry was registered with the Directorate of Industries upto 01.10.2006. Thereafter, the registration procedure has been done away with by the Micro Small And Medium Enterprises Development Act, 2006 came into force with effect from 02/10/2006.

It is stated in the said affidavit that no other industry was registered with the Directorate of Industries upto 01/10/2006. The said affidavit, however, does not state whether Small Scale Industries can also be registered with other authorities. The said affidavit is blissfully vague and does not support the case of the Government. The Manual issued by the Directorate of Industries as also the affidavit clearly indicate that the requirement of registration with the Directorate of Industries is not backed by any statutory rule or regulation. It is only a procedure that has to be followed. The affidavit filed by the Joint Director of Industries also indicates that there is lot of ambiguity regarding the procedure

followed in respect of registration of industry. It is not clear whether any other industry also can be registered with the Directorate of Industries. In view of the ambiguity and vagueness of the situation, therefore, it is difficult to say that the requirement of registration with the Directorate of Industries can be said to be a mandatory requirement since one of the conditions of mandatory requirement is that it should be strictly complied with and noncompliance of such requirement would entail in denial of getting exemption. In these circumstances, therefore, submissions made by Shri Dada, learned Senior Counsel appearing on behalf of the Petitioners will have to be accepted and it will have to be held that the requirement of registration is not mandatory but is directory. In our view, the essential requirement of Clause (i) is that it should be registered with the Government in order to ensure that such undertaking is capable of being monitored and is not a flybynight operator. It is an admitted position that the petitioner No. 1 is registered with the higher authority of the Directorate of Industries viz Secretary and, therefore, in our view, the petitioners have complied with the requirement which is mentioned in Clause (i) viz. that it should be registered, if not with the Directorate of Industries then certainly with its higher authority viz. Secretary. The submissions made by the learned Counsel appearing on behalf of the Government and Gram Panchayat, therefore, cannot be accepted. The Hon"ble Minister, in our view, has clearly misdirected himself and has wrongly interpreted the said provision by holding that the requirement of registration with the Directorate of Industries is mandatory and noncompliance of the said requirement entails in exemption being denied to the petitioner undertaking. The impugned order is liable to be set aside on that ground alone.

22. The learned Counsel appearing on behalf of Gram Panchayat has relied upon the judgment of the Apex Court in State of Jharkhand (supra). He submitted that the Apex Court had, in the said case, while considering the question of granting exemption to new industrial units and while considering the eligibility, had held that the condition of obtaining permission before 31/08/2000 from the State Government (Industries Department) was condition precedent for such units to be eligible to exemption. He submitted that, in the present case also, considering the language of the said conditions, it was specifically mentioned in the conditions that a new undertaking should be registered with the Directorate of Industries. He submitted that, admittedly, the Petitioner No. 1 Company was not registered with the Directorate of Industries and, therefore, it had not complied with the mandatory provision which was the condition precedent for obtaining exemption and, therefore, the Hon"ble Minister had rightly rejected the claim of the Petitioners.

23. The submission made by the learned Counsel appearing on behalf of Gram Panchayat, cannot be accepted. In our view, the ratio of the said judgment in the case of State of Jharkhand (supra) will not apply to the facts of the present case. In order to distinguish the ratio laid down in the said case, it would be essential to state the facts which arose in the said case. The facts in short which are stated on page 371 of the said judgment reported in State of Jharkhand and

Others Vs. Ambay Cements and Another, read as under

The erstwhile government of Bihar came out with an Industrial Policy, 1995 providing certain incentives to the newly setup industrial units in the smallscale sector. Clause 16.1 and Clause 16.2 of the said Industrial Policy provided for exemption from sales tax on purchase of raw material and exemption of sales tax on sale of finished products. The Commercial Taxes Department of the State Government issued statutory notifications for implementation of the said Industrial Policy vide SOs 478/479 dated 22.12.1995. The said Industrial Policy was amended vide Notification No. 5680 dated 27.08.1997 for providing certain reliefs to the pipeline industries. The Industrial Policy, 1995 was amended with a view to provide extension of time limit for the date of start of commercial production in case of pipeline industries where substantial investment capital has been made subject to the condition that such pipeline industrial unit shall seek prior permission of the State Government in the Industries Department before 31.08.2000 and commercial production shall be started within five years from the date of obtaining such prior permission. On 02.03.2000, the Commercial Taxes Department issued Notifications Nos. SOs 57 and 58 dated 02.03.2000 pursuant to the above amendment in the Industrial Policy, 1995. As per the Industrial Policy, 1995 and notifications issued for the implementation of the Industrial Policy, 1995, that is, SO 478 and SO 479 dated 22.12.1995 newly setup smallscale industries were entitled to taxfree purchase of raw material as also taxfree sale of finished products provided that the date of start of such industries was between 01.09.1995 and 31.08.2000. The statutory Notifications Nos. SO 57 and SO 58 dated 02.03.2000 amended Notifications Nos. SO 478 and SO 479 dated 22.12.1995 accordingly to provide for prior permission of the Industries Department which will have to be obtained by the pipeline industrial unit before 31.08.2000 for availing of the tax incentive under Notifications Nos. SO 478 and SO 479 of 22.12.1995.

As can be seen from the facts, in order to provide certain reliefs to certain industries which were in pipeline, the Industrial Policy was amended on 27/08/1997 and therefore the Industrial Policy, 1995 was amended with a view to provide extension of time limit for the date of start of commercial production in case of pipeline industries where substantial investment capital has been made. This was, however, subject to conditions (1) that such pipeline industrial unit shall seek prior permission of the State Government in the Industries Department before 31/08/2000 and (2) that commercial production should be started within five years from the date of obtaining such prior permission. In the said case, temporary registration certificate was obtained by M/s Ambay Cements and the question was, whether it could be treated as permission from the State Government (Industries Department). After the application was made by M/s Ambay Cements, provisional registration of smallscale industrial unit was allotted and the said registration was held to be valid for five years from the date of the issue of the said registration. The Joint Commissioner, Commercial Taxes on 26/08/2000 passed the following order:

Appearance filed. Prior permission is being given on the condition that production will be commenced soon. Besides, prior permission of the Industrial Department shall be taken.

The Joint Commissioner, Commercial Taxes in his order dated 11/09/2000 has observed that the prior permission from the Industries Department had not been taken by the industrial unit and, therefore, the recommendation for exemption was not granted. In the light of these facts, the Apex Court came to the conclusion that, in addition to the temporary registration, a separate prior permission of the Industries Department before 31/08/2000 was an important condition for any new unit to become eligible to be deemed as new industrial unit for the purpose of exemption and, in this context, observed that the condition of obtaining prior permission was a mandatory condition. In our view, the ratio of the said judgment would not apply to the facts of the present case. We have already observed in the preceding paragraphs that the condition of registration as is found in Clause (i) below the explanation to Sub-clause (8) of Rule 35, is directory and not mandatory. In the case of State of Jharkhand (*supra*), the Apex Court observed that prior approval was a mandatory condition since M/s Ambay Cements were contending that the temporary registration which was granted in their favour itself amounted to prior approval which submission was not accepted by the Apex Court. In the present case, however, we have observed that the condition of registration was compulsory but the condition of registration with Directorate of Industries was not compulsory since it did not have backing of a statutory provision. The said Sub-rule (8) had been amended on three occasions and, initially, the word "new undertaking" which was found in Clause (c) of Sub-clause (8) was also added to Clause (a) and (b). If the State Government intended that the registration of a new industrial undertaking as a small scale industry was necessary, it would have so mentioned in Clause (i) below the explanation. As has been observed by us that even in the affidavit dated 19/03/2008 filed by the State, a categorical statement has not been made that other industries can also be registered with the Directorate of Industries. That being the position, we are unable to accept the submission made by Shri Oka, the learned Counsel appearing on behalf of Gram Panchayat and the ratio of the said judgment in the case of State of Jharkhand (*supra*), therefore, would not apply to the facts of the present case.

24. The learned Assistant Government Pleader appearing on behalf of the State also relied upon the judgment of the Apex Court in *National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay*, . He submitted that the Apex Court in the said judgment has observed that in a case where the meaning of enactment is obscure, the Court may resort to contemporary construction that is the construction which the authorities have put upon it by their wage and conduct for a long period of time. It was submitted that the principle of *contemporanea expositio* applies and a long time contemporaneous exposition should be upheld. He submitted that, in the present case also, there was no statutory provision. All smallscale industries were registered with the Directorate

of Industries and, therefore, in view of the long tradition, he submitted that this Court may interpret the condition of registration with the Directorate of Industries to mean registration of smallscale industries. We are unable to accept the said submission. In the present case, the Government has nowhere in the first place either pleaded or made out a case that it was a long standing tradition that only smallscale industries are registered with the Directorate of Industries and no other industry is registered with the Directorate of Industries. We have also referred to the affidavit filed by the State Government dated 19/03/2008 which is blissfully vague on this aspect. For the purpose of following the principle of *contemporanea expositio*, a case has to be made out in respect of long standing tradition. Even assuming that there is such tradition, the said tradition cannot make the condition mandatory. On the contrary, this itself would make the condition directory. It is a settled law that since an exception or exemption provision in a taxing statute has to be construed strictly, at the same time, duty is cast on the Court to ensure that there is no ambiguity or vagueness in respect of the said provision and that it is backed by necessary statutory provision. Since neither of these two conditions have been noticed in the said conditions, the ratio of the said judgment on which the reliance is placed by the learned Assistant Government Pleader would not be of any assistance to the State.

25. We have already held that the Petitioners, therefore, have complied with all the conditions which are mentioned in Sub-rule (8) of Rule 35 and, as such, there is no question of demanding any amount towards octroi from the petitioners herein. The impugned order passed by the Hon''ble Minister is, therefore, liable to be quashed and set aside. The demand notice issued by the respondents also is liable to be quashed and set aside.

26. Since we have held that the Petitioners are entitled to get exemption under Sub-rule (8) of Rule 35, the question of demand, therefore, does not arise, yet, we would like to note here that three successive Division Benches of this Court, while remanding the matter, have specifically directed that the State Government should first calculate the octroi payable by the Petitioner No. 1 Company after following the procedure laid down under the Act and Rules and after such computation is made, issue a demand notice. In spite of these specific directions, even in the present impugned order, the Hon''ble Minister in para 39 has observed as under:

39. For these reasons I pass the following Order.

ORDER

(1) ...

(2) The Tata Power Company Limited is liable to pay Octroi to Gram Panchayat Patnus in Mangaon Taluka, District Raigad, as per the various demand notices issued to it by the said Gram Panchayat.

The said order, obviously, even otherwise, was contrary to the directions given by

this Court and, therefore, the said observation is liable to be quashed.

27. In the result, Writ Petition is allowed. Rule is made absolute in terms of prayer Clauses (a), (b) and (c). In the facts and circumstances of the case, there shall be no order as to costs.

28. At the request of the learned Counsel appearing for respondent Nos. 2 & 3, it is directed that despite this judgment, the interim arrangement presently in force shall continue to operate for a period of eight weeks from today.