HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION Nos.25287 of 2006 and 13749 of 2007

COMMON ORDER:

1. Since the issue involved in the writ petitions is one and the same, both the writ petitions are heard together and are being disposed of by this common order.

2. W.P.No.25287 of 2006 is filed by the petitioner challenging G.O.Ms.No.938 M.A. & U.D. Department, dated 21.11.2005 and seeking to direct the 1st respondent to consider the representation dated 23.8.2006 of the petitioner to declare its areas an industrial township. W.P.No.13749 of 2007 is filed seeking to direct the 1st respondent to consider the township and the areas of the petitioner as an Industrial Township.

3. The case of the petitioner in brief is as follows:

(i) The petitioner-organization is a Government of India undertaking. It has established a shore based integrated Steel Plant near Visakhapatnam in the year 1989 with a manufacturing capacity of 3 million tonnes of liquid steel per annum. A vast land was acquired by the Government of India and the possession of the same was handed over to the petitioner for establishing the steel plant. Besides an integrated steel plant, the petitioner established all other administrative and infrastructural facilities within its area to ensure an effective and interrupted process of steel manufacturing. It has also established a Township for its employees, CISF personnel and various other agencies, which operate within the area of the petitioner. The petitioner constructed a township with 8,033 dwelling units spread over an area of Ac.4875.00. The township has a population of about 40,000. The township also comprises of various facilities like educational institutions, libraries, religious places, community halls, commercial establishments, hospitals, markets and parks. The petitioner is also providing all the municipal facilities. The petitioner company incurs an expenditure of about Rs.23 Crores every year towards various municipal services, maintenance and development of infrastructure facilities. After 74th amendment to the Constitution of India, the petitioner in terms of the provisions therein approached the 1st respondent to declare the areas belonging to it as an industrial township. Pursuant to the said request, the 1st respondent called for a detailed report and remarks from the Commissioner and Director of Municipal Administration and the Municipal Commissioner of Gajuwaka Municipality. While the request of the petitioner was under consideration, the 1st respondent vide G.O.Ms.No.694, dated 18.7.2005 initiated a proposal to include Gajuwaka Municipality and 32 other Grampanchayats including the petitioner's area in the limits of the Visakhapatnam Municipal Corporation and the 1st respondent also issued G.O.Ms.No.695, dated 18.7.2005 calling for objections from all concerned. In response thereto, the petitioner submitted objections. The 1st respondent without considering the objections raised by the petitioner issued G.O.Ms.No.938, dated 21.11.2005 for inclusion of Gajuwaka Municipality and 32 Grampanchayats including the area of the petitioner within the limits of Visakhapatnam Municipal Corporation. The petitioner made a detailed representation dated 23.8.2006 seeking to examine the matter in terms of proviso to Article 243 Q(1) of the Constitution of India and Section 3 (1) of the A.P. Municipalities Act. After inclusion of the petitioner's area, the 2nd respondent initiated proceedings to determine the property tax leviable against the buildings and other structures within the area of the petitioner and also the vacant land tax. Meanwhile, the 1st respondent considered a similar request made by Gangavaram Port Limited to exclude its area of

Ac.1800.00 from the local limits of Greater Visakhapatnam and to declare the same as a notified area by issuing G.O.Ms.No.349, dated 18.7.2006. Similar request of Steel plants and their townships located in other states was considered in terms of the constitutional provision and such areas are declared as industrial townships. The 1st respondent has not considered the request of the petitioner in terms of the statutory and constitutional provisions and that the steps are being taken up by the 2nd respondent to impose a substantial liability in the form of property tax. The 2nd respondent had not spent any amount for maintenance of the municipal services to the township area of the petitioner and that the petitioner is continuing to provide all the necessary municipal services through its Town Administration Department. But the 1st respondent rejected the representations of petitioner dated 10.4.2004 and 23.8.2006 vide G.O.Rt.No.507 dated 23.4.2007 and G.O.Rt.No.541 dated 1.5.2007 on the grounds that the petitioner-company is in the limits of Greater Visakhapatnam Municipal Corporation and that the petitioner has not fulfilled the criteria to the satisfaction of the Government of A.P. as required under the proviso to Article 243 Q (1) of the Constitution of India.

(ii) It is stated in the additional affidavit that total extent of Ac.21,592.50 cents was acquired for the Union of India to establish the steel plant near Visakhapatnam and to have railway network in the vicinity. Pursuant to acquisition, entire land stood vested with the Union of India. In terms of power of attorney document executed by the President of India, earlier SAIL and now RINL are in possession of the acquired land being used for various purposes related to Visakhapatnam Steel Plant activity. Ever since the petitioner was put in possession of the acquired land, it was not treated as part of any local self Government. The petitioner developed the township and plant area with all civic amenities. The petitioner-organization has a full-fledged town administration Department to administer and manage all the affairs of township as a self regulated unit. The acquired area was spread over 26 villages and out of which six villages were acquired in total including their habitation areas. The lands in other villages were acquired in part. Soon after the constitution amendment introducing Part IX A in the year 1994, the petitioner-organization submitted a representation dated 19.10.1995 requesting the 1st respondent to declare the township and other areas of the petitioner as an industrial township since all the municipal services are being provided without depending on any other local authority or State Government. The State Government constituted Gajuwaka Municipality by including some of the neighbouring villages and part of land of the petitioner-organization. After inclusion of the petitioner's land, a demand was raised against the petitioner for payment of property tax without providing any municipal services. After series of discussions with the Gajuwaka Municipality, MOU dated 19.12.1995 was entered into agreeing to pay 1/3 of the property tax assessed as service charges. Pursuant to the said MOU, the State Government/1st respondent issued G.O.Ms.No.25 MA dated 22.1.1996 permitting the petitioner and other Public Sector undertakings to pay service charges as per the guidelines in the office memorandum of Government of India. Accordingly, the service charge payable by the petitioner was determined at Rs.37.64 lakhs per annum. Contrary to the memorandum issued by the Government of India, the State Government made provision for increase the service charges payable at the rate of 5% per annum. During the period 1995-96 to 2003-2004 the petitioner paid total sum of Rs.6,03,40,175/- towards service charges without availing any municipal services. During the year 2005, the State

Government initiated a proposal for extending the limits of Visakhapatnam Municipal Corporation, so as to convert the same into Greater Visakhapatnam Municipal Corporation.

4. A counter affidavit was filed by the 1st respondent in W.P.No.13749 of 2007 with the following averments:

(i) The impugned notification issued in G.O.Ms.No.938, MA & UD (Elec.II) Department, dated 21.11.2005 has been challenged before this Court after lapse of two years and therefore, the writ petition has to be dismissed on the ground of delay and laches. During the interregnum period, the entire election process had already been commenced and completed, and the elected body is in office in Ward Nos.53, 54, 55 and 58. Normally, the Courts would not entertain any writ petition under Article 226 of the Constitution of India once the elections are completed. The objections raised by the petitioner have been considered and rejected on 20.11.2005. The subsequent representations of the petitioner dated 19.4.2004 and 23.8.2006 have been examined and disposed of through G.O.Rt.No.507, MA & UD (Elec.II) Department, dated 23.4.2007, G.O.Rt.No.541, MA & UD (Elec.II) Department, dated 1.5.2007 respectively. The Visakhapatnam is the second largest Urban agglomeration both in terms of population and area in the State of Andhra Pradesh. With a view to provide better civic services, better administrative mechanism and to ensure better planning focused development in and around Visakhapatnam, more equitable devolution of finances and utilization of resources and ensure uniform enforcement and to make the Visakhapatnam and its suburbs internationally competitive with World class infrastructure and services, the Government proposed to expand the limits of Visakhapatnam Municipal Corporation by merging Gajuwaka

Municipality and 32 surrounding Grampanchayats with Visakhapatnam Municipal Corporation. The Government issued draft notification declaring the intention of the Government and calling for objections from public. The petitioner-company filed objections on the said proposal and requested the Government to declare the areas of Visakhapatnam Steel Plant as an Industrial Township. The Government examined the objections of the petitioner and rejected the same observing that Steel Plant and its Township area shall form an integral part of Greater Visakhapatnam Municipal Corporation. Therefore, it cannot be said that the objections of the petitioner were not taken into consideration while constituting the Greater Visakhapatnam Municipal Corporation. Since its establishment, the petitioner-organization has been an integral part of the local bodies viz., erstwhile Gajuwaka Municipality and erstwhile Desapatrunipalem panchayat. As such lot of connectivity developmental work has been taken up by the local bodies from the holistic point of view. All the employees working in the steel plant are not staying in the township only and majority of employees are residing outside the township area for whom the Greater Visakhapatnam Municipal Corporation is providing civic amenities.

(ii) It is stated that as per Section 3 of the A.P. Municipalities Act, specification of "urban area or part thereof as an industrial town ship" is subject to Governor discretion having regard to the size of the area of 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. The petitioner submitted representations to declare the areas of Visakhapatnam Steel Plant covered in Gajuwaka Municipality as Industrial Township. The Government taking into consideration the developmental activity coming up in and around Visakhapatnam Municipal

Corporation, took a decision to expand the limits of Visakhapatnam Municipal Corporation by merging erstwhile Gajuwaka Municipality and 32 surrounding Grampanchayats and therefore, rejected the representations of the petitioner. It is submitted that on the representations made by the petitioner seeking to declare the area covered by the petitioner as Industrial Township, the Government while sending a copy of the representation to the Commissioner and Director of Municipal Administration Hyderabad, and the Commissioner, Gajuwaka Municipality, requested them to send a detailed report with specific remarks. On the report submitted by the said authorities, the Government passed orders in G.O.Rt.No.507 dated 23.4.2007 rejecting the request of the petitioner. Similarly, the petitioner made another representation dated 23.8.2006 and the Government after examination of the reports from the Commissioner, GVMC and the material on record, issued G.O.Rt.No.541, dated 1.5.2007 rejecting the request of the petitioner. Even prior to merging in GVMC area, 7 sectors of Steel Plant were under the control of Gajuwaka Municipality and 4 sectors were under the control of panchayats. The entire steel plant consisting of 11 sectors was under the control and maintenance of respective local bodies.

(iii) Insofar as the Gangavaram Port is concerned, as per the agreement, the State Government provided Ac.1800.00 cents of land towards Government share of equity of 11% to Gangavaram Port Limited. With a commitment to promote industries in the State, the Government itself became partner in that Port. Considering the same and in view of the nature of the activities, the area covered by Gangavaram Port Limited was declared as notified area, whereas the petitioner-organization was spread over on very large extent of Ac.21,813 cents, out of which residential township itself is in Ac.4875.00 cents acres and that the said area for all practical purposes has to depend upon the GVMC. Therefore, the request of the petitioner was rejected. Further, it is stated that a similar request of steel plants in other States might have been considered on different grounds. The circumstances in the present case are different. In the instant case, the Government examined the request of the petitioner and after getting reports from the authorities concerned, the Government rejected the request of the petitioner. The petitioner has not developed any facilities to the people in the township area. The 2nd respondent took up the developmental works and has been providing civic amenities to the rehabilitation colonies adjoining the township. The petitioner is providing all the facilities to the executive staff residing in the town ship and it is not providing any facilities to non-executive employees of the rehabilitation colonies. The area of the petitioner cannot be declared as township as the 2nd respondent is providing all civic amenities to the township and its peripheral areas.

5. A counter-affidavit was filed on behalf of the 2nd respondent in both the writ petitions:

The erstwhile Gajuwaka Municipality has spent 9.98 Crores and the 2nd respondent-corporation from 1st December, 2005 to 31.10.2014 spent an amount of Rs.123.35 Crores under JNNURM for providing infrastructure development works and maintenance in peripheral areas of steel plant. The establishment of the steel plant has been integral part of the then local bodies viz., Gajuwaka Municipality and Desapatrunipalem Panchayat and lot of connectivity works and other development works have been taken up by GVMC. Further, the municipal elections for the respondent-corporation were conducted in the year 2007 and the petitioner company and its township areas are covered by the elected representatives in Ward Nos.53,54,55 ad 58. The provisions of A.P. Municipalities Act are not applicable to the Corporation. The area of the petitioner cannot be declared as Industrial Township as the 2nd respondent has been providing all civic amenities in the peripheral areas of the township.

6. Heard and perused the material available on record.

7. Learned Counsel for the petitioner submitted that that the Government issued G.O.Ms.No.938 dated 21.11.2005 including the areas of the petitioner within the limits of Greater Visakhapatnam Municipal Corporation (GVMC) in contravention of the provisions of Article 243 Q(1) of the Constitution of India and Section 3 (1) of A.P. Municipalities Act, and that the petitioner is providing all amenities in the township and that GVMC has not incurred any expenditure towards any civic amenities in the township area of the petitioner. It is further submitted that the action of the Government is discriminatory and that the Government declared Ac.1800 of land allotted to Gangavaram Port Limited as notified area by issuing G.O.Ms.No.250 dated 1.7.2008. It is further submitted that in terms of size of the area and population therein, the petitioner fulfilled the criteria to the satisfaction of the Government of A.P. as required under the Proviso to Article 243 Q (1) of the Constitution of India and therefore, the request of the petitioner to declare it as an industrial township cannot be rejected. The learned Counsel for the petitioner relied upon Article 243 Q (1) of the Constitution of India and Section 3(1) of A.P. Municipalities Act and the judgments of various Courts viz., Saij Gram Panchayat v. State of Gujarat and others.[1];Jawaharlal Sharma v. State of Jharkhand and Ors.[2]; The State of Maharashtra and another v. The

[1] AIR 1999 SUPREME COURT 826
[2] AIR 2006 JHARKAND 135

Jalgaon Municipal council and others[3]; S.R. Chaudhuri V. State of Punjab and others[4] ; Nasiruddin and others Vs. Sita Ram Agarwal[5];M/s Siddeshwari Cotton Mills (P) Limited Vs. Union of India and another[6]; and State of U.P. and others v. Pradhan Sangh Kshetra Samiti and others[7] and also the judgments of this Court in W.P.No.9784 of 2013 dated 9.9.2014 and W.A.No.1294 of 2014, dated 26.11.2014.

8. The learned Standing Counsel appearing for the GVMC reiterated the grounds raised in the counter.

9. The very object of inclusion of the surrounding villages or a part of the villages, comes under the purview of the policy of the Government for the purpose of development of the villages and the city. In this regard, it is pertinent to note that prior to issuance of the G.O.Ms.No.938, dated 21.11.2005 impugned herein, there was a memorandum of understanding (MOU) stated to have been executed by the petitioner in the year 1995 agreeing for inclusion of a part of the area of the petitioner into the limits of Visakhapatnam Municipality and also agreeing to pay 1/3rd of the tax assessed by the municipality as service charges. Accordingly, it is stated to have been paid from 1995 till 2004-2005. Subsequently, due to the changed circumstances, for the purpose of development of the city as well as the surrounding villages, the Government issued G.O.Ms.No.938, dated 21.11.2005.

10. The fact that remains undisputed is that M.O.U was entered into between the petitioner and the Municipality in the year 1995 to include a part of the area of the petitioner-organization into Municipality and the

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3 AIR 2003 SUPREME COURT 1659(1)
4 AIR 2001 SC 2707(1)
5 (2003) 2 SCC 577
6 AIR 1989 SC 1019
7 AIR 1995 SUPREME COURT 1512

petitioner agreed to pay 1/3rd of the tax assessed by the Municipality as service charges till the year 2004-2005. Subsequently, the petitioner filed the present writ petition in W.P.No.25287/2006 challenging the G.O. Ms.No:938, M.A and U Department, dated 21.11.2005 insofar as inclusion of the areas of the petitioner into the limits of G.V.M.C. During the pendency of W.P.25287 of 2006, the petitioner made representations seeking to declare its Township and other areas as an Industrial Township as contemplated under Article 243 (1) Q of the Constitution of India read with Section 3 (1) of the Municipalities Act and the said representations were rejected by issuing G.O.Rt.No.507 dated 23.4.2007 and G.O.Rt.No.541 dated 1.5.2007. Challenging the said orders, another writ petition in W.P.No:13749 of 2007 was filed by the petitioner.

11. Irrespective of the fact whether the case of the petitioner has to be considered in the light of Article 243 (1) Q of the Constitution of India read with section 3 (1) of the Municipalities Act, the fact that remains undisputed is that the M.O.U, which was entered into between the petitioner and the Corporation, is in existence. Therefore, during the subsistence of the M.O.U that was entered into between the parties in the year 1995, the very approach of the petitioner before this Court, is not reasonable.

12. As already discussed in the foregoing paragraphs, the very object of conversion of the Municipality to that of the G.V.M.C, is only to develop the small areas on par with the urban areas for the betterment of the city. In exercise of such powers conferred under the enactments, it is for the Government to take a policy decision with regard to the inclusion or otherwise of the areas for the betterment of the city and the small areas including the urban areas.

13. Further according to the petitioner, it has fulfilled all the requisite factors as contemplated under Article 243(1) Q read with section 3 (1) of the Municipalities Act and that on the representations made by the petitioner, the Government issued the impugned G.O.Rts rejecting the said representations on the ground that the petitioner did not fulfill all the requisite factors. In this back ground of the matter, the question as to whether the requisite factors are fulfilled or not for the purpose conceding the request of the petitioner, is a matter to be dealt with only by the Governmental authorities, but not in a proceedings of this nature, the scope of which is very limited.

14. In the above circumstances, this Court is of the view that there are no grounds to interfere with the G.Os impugned in these writ petitions.

15. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Justice Raja Elango

Dated: 11.09.2017
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HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION Nos.25287 of 2006 and 13749 of 2007

11.9.2017

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