HIGH COURT OF GUJARAT *(D.B.)*

INDIAN RAYON CORPORATION LIMITED, VERAVAL
V/S
VERAVAL PATAN JOINT MUNICIPALITY

Date of Decision: 06 August 1976

Citation: 1976 LawSuit(Guj) 72

Hon'ble Judges: S Obul Reddi, P D Desai

Eq. Citations: 1978 GLR 467

Case Type: Special Civil Application

Case No: 155 of 1976

Head Note:

Gujarat Municipalities Act (XXXIV of 1964) - S.266)1) - Extension of Area of Municipality - Power of extension of rules notification, order, etc. - Extension of such power to areas - (1) where formerly there was an existing Municipality - (2) in case there was no Municipality - Difference regarding application - There must be an existing municipality and its appointments and orders etc. must be in force before the rules etc. can be extended - If there is no such corresponding tax in force immediately before the appointed day State Government not entitled to make such an order under clause (x) of S.266(1) - On addition of a new area to the existing Municipality, it cannot be termed as successor Municipality.

Sub-sec. (1) of sec. 266 of the Gujarat Municipalities Act purports to deal with four contingencies. It comes into operation when any such or more of such contingencies arises. Those contingencies are :-(a) when any local area is added to a municipal borough: (b) when any local area is excluded form a municipal borough; (c) when two or more municipal boroughs are amalgamated into one municipal borough and (d) when a municipal borough is split up into two or more

municipal boroughs. Upon the happening of any one or more of the aforesaid events the said section empowers the State Government to provide for all or any of the matters referred to therein by an order published in the Official Gazette. The power thus conferred upon the State Government is overriding in nature because of the non-obstante clause which virtually operates to set aside as no longer valid anything contained in the Ace or any other law for the time being in force which is inconsistent with the provisions of sec. 266. It has to be borne in mind however that the various clauses of sub-sec. (1) of sec. 266 are not universally applicable to all the four situations envisaged in the opening part of sub-sec. (1). By the express words used in the said clauses or having regard to the subject matter with which they deal it becomes apparent that some of the clauses are relatable only to some of the eventualities contemplated by the opening part of sub-sec. (1). For example clauses (i) (ii) (iii) and (iv) of sub-sec. (1) are in terms relatable to the events specified in clauses (a) (b) (c) and (d) respectively of sub-sec. Clause (v) is attracted only when events specified in clauses (a) (c) or (d) occur and an action is consequently taken under clauses (i) (ii) (iii) and (iv) of sub-sec. (1). (Para 14) Under clause (x) of sec. 266(1) of the Gujarat Municipalities Act 1963 the State Government is enabled to provide for the extension and commencement of all or any appointments notifications notices taxes orders schemes licences permissions rules bye-laws or forms made issued imposed or granted under the Act by or in respect of any existing municipality and in force within its area immediately before the appointed day to and in all or any of the other areas of the successor borough municipality. The matters so extended and brought into force will remain operative until they are further superseded or modified under the Act. It is thus clear that before clause (x) could be attracted there must have been an existing municipality and within its area there must have been in force immediately before the appointed day that is to say before any of the four eventualities contemplated by clauses (a) (b) (c) and (d) of sub-sec. (1) takes place any appointments made etc. under the Act by or in respect of such municipality. It is such appointments etc. which would be extended to and brought into force in all or any of the other areas of the successor borough municipality in supersession of corresponding appointments etc. if any in force in such other areas immediately before the appointed day The question then is whether when any local area is added to a municipal borough a succession takes place so that the municipality which was in existence having a defined area immediately before the appointed day is replaced by the successor borough municipality : The further question which arises is whether even if such

a succession takes place clause (x) would be attracted unless there are corresponding appointments etc. in force in the other areas brought within the limits of the successor borough municipality. Two conditions must be satisfied before clause (x) can operate. First there must be an existing municipality and the successor borough municipality and secondly there must be appointments made etc. by or in respect of the existing municipality and in force within its area immediately before the appointed day which will upon their extension and commencement in all or any of the other areas of the successor borough municipality supersede the corresponding appointments made etc. if any in force in such other areas immediately before the appointed day. (Para 15) An existing municipality of a municipal borough in which a new area is added cannot by virtue of such alteration of its limits be treated as a successor borough municipality. No new municipal borough as defined in the Act thereby comes into existence and no new municipality thereupon is incorporated. The word successor as understood in legal parlance cannot be properly applied in such a situation. Clause (x) might therefore more appropriately be attracted in a situation contemplated by clauses (c) and (d) of sub-sec. (1) of sec. 266 where an amalgamation or split sup takes place. and a new municipality succeeds to an existing municipality. In cases covered by clause (a) of sub-sec. (1) of sec. 266 where a local area is merely added to an existing municipal borough the provisions contained in clause (x) would not be attracted. (Para 16) Even assuming that there is a succession when any local area is added to a municipal borough and that therefore clause (x) would in the first instance be attracted it is clear on a plain reading of the said clause that the extension and commencement of the various matters dealt with by the said clause can only take place to and in all or any of the other areas of the successor borough municipality provided there was in existence in such other areas prior to the appointed day corresponding matters. Until a corresponding tax is in force immediately before the appointed day in the local area added to a municipal borough the occasion for exercising power under clause (x) would not arise. Therefore clause (x) would not be attracted in a case where in the local area which is added to a municipal borough there are no corresponding taxes etc. in force immediately before the appointed day and it would not be competent for the State Government to make an order thereunder in such a situation. (Para 18) JUDICIAL PRECEDENTS - Decision only an authority for what it actually decides- Essence of decision is its ratio and not every observation. A decision is only an authority for what it actually decides.

What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it. (Para 20) Visakhapathnam Municipality v. Kandregula Nukaraju and Ors State of Orissa v. Sudhansu Sakhar Misra and Ors. referred to.

Acts Referred:
Gujarat Municipalities Act, 1963 Sec 266(1)

Final Decision: Petition allowed

Advocates: K S Nanavati, I M Nanavati, A H Mehta, J R Nanavati, Purnanand & Co

Reference Cases:
Cases Cited in (+): **3**
Cases Referred in (+): **2**

Judgement Text:-

P D Desai, J

[1] The petitioner, the Indian Rayon Corporation Ltd., is a company registered under the Indian Companies Act. It is engaged in the business of manufacturing rayon filament yarn. It holds about 250 acres of land which was, till recently, situate outside the municipal limits of Veraval town. Its factory is located on the said land and occupies approximately 163 acres out of the said land.

[2] The first respondent-Municipality (Veraval-Patan Joint Municipality) is a municipality constituted under the provisions of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act"). It was incorporated in 1955-56. Its jurisdiction extends to the areas comprised ,within the limits of the towns of Veraval and Patan. The second respondent is the State of Gujarat.

[3] By a notification dated January 15, 1976 (Annexure 'E') issued by the second respondent in exercise of the powers conferred by clause (b) of sub-sec. (1) of sec. 4 of the Act, the limits of the first respondent Municipality were altered with effect on and from February 1, 1976 by adding thereto the block of land named "Rayon factory Area",

that is to say, the land on which the factory of the petitioner is situate. By an order of even date made by the second respondent (Annexure 'F'), in exercise of the powers conferred by sec. 266 of the Act, certain consequential provisions were made. In so far as it is material for the purposes of this petition, the said order reads as under :-

> "(1) All appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws, or forms made, issued, imposed or granted or deemed' to have been made, issued, imposed or granted by or under the said Act in respect of Veraval-Patan Joint Municipality and in force within its areas immediately before the said date shall extend to and commence in the -said areas in supersession of corresponding appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms in force in the said areas immediately before the said date until the matters so extended and brought into force are further superseded or modified under the said Act.
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> (2) All Budget Estimates, assessments, assessment lists, valuations, measurements or divisions made or authenticated by or in respect of any local authority existing in the said areas immediately before the said date and in force in the said areas immediately before the said date shall continue in force until superseded or modified."
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> The petitioner has, thereupon, filed the present petition praying for a writ of or in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the notification (Annexure 'E') issued and the order (Annexure 'F') made by the second respondent.

[4] The case of the petitioner is that its factory was established in the backward area of Veraval at a point of time when no civic amenities ware available. The petitioner made its own provision for facilities such as street-lights, water, roads, drainage, recreation, school, garden, temple, etc. at a considerable cost. There was no local authority constituted either under the Act or under any corresponding law, having jurisdiction over the factory area of the petitioner, and till the inclusion of the factory area within the limits of the first respondent Municipality, the petitioner bad not to pay any local taxes. According to the petitioner, even after the extension of the municipal limits under the impugned notification (Annexure 'E'), the first respondent-Municipality is not competent

to levy and collect octroi and other taxes in the factory area of the petitioner for two reasons. First, since such taxes were to be imposed for the first time qua the areas newly included within the municipal limits, it was incumbent on the first respondent-Municipality to follow the procedure prescribed by law and, secondly, having regard to the notification dated October 9, 1961 (Annexure 'A') issued by the second respondent, in exercise of the powers conferred by sec. 4 of the Saurashtra Terminal Tax and Octroi Ordinance, 1949, whereby Rule 9 was introduced in the Rules made under the said Ordinance, the petitioner's industry, which was a new industry within the meaning of the said Rule, was entitled to exemption for a period of five years from the date of the extension of the municipal limits so as to cover the factory area of the petitioner.

[5] The respondents contest the petition and their case, briefly stated, is that by virtue of the provisions contained in sec. 266(1)(x) of the Act, the second respondent was empowered by an order to provide for the extension and commencement of all taxes imposed under the Act by the first respondent-Municipality and in force within its area immediately before the date of the notification, Annexure 'E', to the factory area of the petitioner which was newly included within the municipal limits and that accordingly, it had made necessary orders, Annexure 'E', and that the first respondent-Municipality was therefore, entitled to levy and collect taxes from the petitioner. As regards the petitioner's claim for exemption founded on the notification, Annexure 'A', the case of the respondents is that on a true and correct interpretation of the said notification, the petitioner was not entitled to such exemption.

[6] The controversy between the parties thus lies in a very narrow compass and at the hearing of the petition, only the following points were pollinated and canvassed on behalf of the petitioner :

(1)The petitioner is entitled to exemption from payment of taxes for a period of five years from January 15, 1976 (that being the date of the notification, Annexure 'E'), having regard to the provisions contained in the exemption notification, Annexure 'A'.

(2)On a true interpretation of the relevant provisions of sec. 226 of the Act, the taxes in force on January 15, 1976 within the area of the first respondent-Municipality could not have been extended to and brought into force within the newly included factory area of the petitioner inasmuch as -

(a) The factory area of the petitioner was not a "local area" within the meaning of clause (a) of sub-see. (1) of the said section and, therefore, the other provisions of the said section were not applicable;

(b) Clause (x) of sub-sec. (1) of the said section was not applicable because it was attracted only when an existing municipality was succeeded by a successor borough municipality, which was not the situation in the present case; and

(c) Under clause (x) of sub-sec. (1) of the said section, the taxes imposed by the existing Municipality and in force within the municipal area immediately before the day of alteration of limits could be extended to and brought into force in the area to which the municipal limits are extended only if there were corresponding taxes in force in the newly included area immediately before such day and since, in the instant case, there were no taxes levied by any local authority in the factory area of the petitioner prior to January 15, 1976, the provisions of'clause (x) were inapplicable:

(3) Before issuing an order under sec. 266(1), the first respondent was bound to afford to the petitioner an opportunity of being heard and since no such opportunity was afforded, the order, Annexure 'F', was void.

[7] We are of the view that it is not necessary to express any opinion on grounds Nos. I and 3 formulated above since the petition is capable of being disposed of on the contentions urged under heads (b) and (c) of ground No. 2. We shall, therefore, confine our attention only to the challenge formulated under those two heads. It might be clarified at this stage that though the challenge formulated under head (b) of ground No. 2 does not specifically find a place in the petition, its validity depends purely upon interpretation of the relevant provisions of sec. 266 of the Act and 60 new questions of fact are required to be investigated into. We have, therefore, allowed the petitioner to urge the said point and have also heard the respondents thereon.

[8] It would be convenient at this stage to refer to the relevant provisions of the Act. Sec. 2 is the definition section. Clause 13 thereof defines "Municipal Borough" to mean

a local area declared as or deemed to be a municipal borough under sec. 4 of the Act. Clause 14 defines "Municipality" to mean a municipality constituted or deemed to be constituted for a municipal borough. Sec. 4, which occurs in Chapter 11 entitled "Municipal Boroughs and constitution of Municipalities", reads as under :-

"(1) Subject to the provisions of sub-sec. (2)-

(a) the State Government may, by notification in the Official Gazette, with effect from a date to be specified therein, declare any local area to be a municipal borough;

(b) in the case of an existing municipal borough, the State Government may, after consulting the municipality (if already constituted), by notification in the Official Gazette, with effect from the date specified therein alter the extent and .limits of any municipal borough.

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

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

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

(d) No such notification as aforesaid shall be issued by the State Government unless the objections, if any, so submitted are in its opinion insufficient or invalid. (3) Each of the local areas which, immediately before the date of the coming into force of this Act, constituted a municipal borough or municipal district under relevant earlier municipal law shall, on and from the said date, be deemed to be a municipal borough constituted under this Act."

Sec. 5, inter alia, provides that in every municipal borough there shall be a municipality, and every such municipality shall be a body corporate 'having its own name and it shall have perpetual succession and a common 'seal. Sec. 6(1) provides that every municipality shall consist of elected councillors. Sub-sec. (2) provides for the number of such councillors. Sub-sec. (5) provides that subject to the provisions of the Act, an election shall be held in accordance with the rules made by the State Government in that behalf. Sub-sec. (6) provides for notification in the Official Gazette of the names of all councillors elected to any Municipality at a general election held in accordance with the provisions of sub-sec. (5) and further provides that upon the issue of such notification, the Municipality shall be deemed to be duly constituted notwithstanding any vacancy due to failure to elect the full number of councillors which under that section might be elected. Chapter XVII enacts special provisions applicable when municipal borough limits are altered or municipal boroughs are amalgamated with other local authorities or split up into different local authorities. Sec. 265 is .the interpretation section for the purposes of .the said Chapter. Clause (a) thereof defines the term "appointed day" to mean the day from which a change referred to in any of the clauses ;(a) to (d) of sub-sec. (1) of sec. 266 takes effect. Clauses (b) and (c) hereof define the expression "existing local authority" and "Successor local authority" to mean, in relation to any local area, the municipality or the panchayat. Sec. 266 is material and its relevant portion may be set out verbatim. It reads as under :-

"(1) When -

(a) any local area is added to a municipal borough;

(b) any local area is excluded from a municipal borough ;

(c) two or more municipal boroughs ore amalgamated into one municipal borough; or

(d) a municipal borough is split up into two or more municipal boroughs, the State Government may, notwithstanding anything contained ii this Act or any other law for the time being in force, by an order published in the Official Gazette, provide for all or any of the following matters, namely:-

(ix) the continuance within the area of an existing local authority of all or any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms made, issued, imposed or granted by, or in respect of, such existing local authority and in force within its area immediately before the appointed day, until superseded or modified;

(x) the extension and commencement of all or any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms made, sued, imposed or granted under this Act by, or in respect of, any existing municipality and in force within its area immediately before the appointed day, to and-in all or any of the other areas of the successor borough municipality, in supersession of corresponding appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms (if any) in force ii) such other Breas immediately before the appointed day, until the matters so extended and brought into force are further superseded or modified under this Act."

[9] The other set of sections to which reference may be made consists of Secs. 99 to 102. Sec. 99 of the Act empowers a municipality to impose certain taxes for the purposes of the Act. The power which has been conferred upon the municipality to impose taxes is however, subject to {1) any general or special orders which the State Government may make in that behalf and (2) the provisions of Secs. 101 and 102. Sec.

101 prescribes the procedure preliminary to imposing a tax and accordingly, the municipality has to pass a resolution at a general meeting, selecting one or other of the taxes specified in sec. 99 and approving rules prepared for the purposes of clause (1) of sec. 271 proscribing the tax selected. In such resolution and in such rules it has to specify several things mentioned in clause (a) of sec. 101. The rules so approved are required to be published with a notice and any inhabitant of the municipal borough is entitled to object to the imposition of the tax in questioner to the amount or rate proposed or to the classes of persons or property to be made liable thereto or to any exemptions proposed, within the preserved time, limit. The municipality has to take all such objections into consideration, or it may authorise a committee to consider the same and report thereof. Unless it decides to abandon the proposed tax, it is required to submit such objections with its opinion thereon and any modifications proposed in accordingly therewith, together with the notice and rules aforesaid to the State Government. Under sec. 102 the State Government may refuse to sanction the rules submitted under sec. 101, or may return them to the municipality for further consideration. If no objection or no objection which is in its opinion sufficient, was made to the proposed tax within the period prescribed under sec. 101, it may sanction the said rules without modification or subject to such modifications not involving an increase in the amount to be imposed, as it deems fit. It would thus appear that the power to impose a tax under sec. 99 is subject to the municipality following the preliminary procedure and obtaining sanction of the State Government to the proposed tax. Unless both those requirements are complied with, the municipality will not be competent to impost the tax within the municipal borough.

[10] The principal question which arises for consideration against the background of the aforesaid statutory provisions is whether the impugned order, Annexure 'F', in so far as it, in substance, authorises the first respondent-Municipality to levy and collect taxes, which were in force within its area immediately before January 15, 1976, from the petitioner in respect of the factory area which came to be included within the municipal limits as and from that date, without complying with the pro- visions relating to imposition of taxes contained in the Act, is valid.

[11] It has to be borne in mind that the requirement of following the preliminary procedure and obtaining the sanction as provided in Secs. 99 to 102 is not obligatory only if and when a tax is imposed for the first times within the municipal borough. Even if a municipality is levying the tax within the limits of the municipal borough, it would be incumbent on the municipality to follow the same procedure and obtain similar sanction,

qua the areas newly included within the municipal limits, for, the tax would be imposed in respect of such areas for the first time. In respect of such areas, the municipality exercises its powers to impose tax for the first time and since the residents and taxpayers of those areas never had an opportunity to object to the imposition of the tax, such valuable opportunity cannot be denied to them. The policy of the law clearly is to afford to those likely to be affected by the imposition of the tax a reasonable opportunity to object to the proposed levy and such opportunity could not be denied to the residents of the newly added areas. This legal position seems to be beyond doubt in view of the decision of the Supreme Court in Visakhaptnam Municipality v. Kandregula Nukaraju and Others, A.I.R. 1975 S.C. 2172.

[12] The respondents, however, rely upon the provisions contained in Chapter XVII of the Act and contend that the Legislature has stepped in and made suitable provision for levy and collection of taxes without complying with the preliminary procedure even qua areas newly-included within a municipal borough. Now, the said Chapter, as earlier stated, enacts certain special provision applicable when municipal borough limits are altered or municipal borough are amalgamated with other local authorities or split up into different local authorities. The provisions contained in this' chapter are essentially of a transitional nature and they are intended to apply during the poverty of transition following upon alteration of municipal limits or amalgamation or splitting up of local authorities. There would inevitably be some time-lag before a municipality can act under such situations and, therefore, provision has to be made to ensure that appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms etc. which might be in force in the concerned areas are kept alive or they are extended to the newly-added areas, as the case may be, so that the administration in such areas does not come to a standstill during the interregnum. It is for this purpose that sec. 266 has been enacted and it is against that background that its various clauses will require interpretation and its applicability, in the facts and circumstances of the instant case, will require examination.

[13] Now, in the present case, the second respondent, .in exercise of the powers conferred by sec. 4(1)(b) the Act, altered the extent and limits of the local area under the jurisdiction of the first respondent-Municipality by adding thereto the factory area of the petitioner. As a result of such action, the limits of an existing municipal borough have been extended to in area which was theretofore not within the jurisdiction of any local authority. In the said factory area, prior to the extension of the municipal limits, there were in existence or in force no appointments, notifications, notices, taxes, orders,

schemes, licences, permissions, rules, bye-laws etc. made, issued, imposed or granted under the Act or under any other corresponding law in force. By the inclusion of the said area within the municipal limits of the first respondent-Municipality, therefore, no vacuum would ordinarily arise, for, nothing which was in existence or in force in such area prior to its merger would cease to apply merely by its inclusion in the municipal area. Besides, since such area is for the first time being brought under the administration of a local authority, the residents and tax-payers of such area were never subjected the imposition of any tax by any local authority and they never had-any opportunity whatsoever to object to the imposition of any tax. If the policy of the Act and object and purpose behind enacting the provision of sec. 266, which, as earlier stated, is transitional in nature, is borne in mind, it would prima fade appear that in case like the present, such a provision would not ordinarily be attracted. Still, however, we will closely examine the language of sec. 266 and, particularly of clause (x) thereof upon which primary reliance has been placed on behalf of the respondents for the purpose of sustaining the relevant part of the impugned order, Annexure 'F', to ascertain whether the said provision is nevertheless attracted in the present case.

[14] Sub-sec. (1) of sec. 266, the material part of which has been set out earlier, purports to deal with four contingencies. It comes into operation when any one or more of such contingencies arises. This contingencies are :- (a) when any local area is added to a municipal borough; (b) when any local area is excluded from a municipal borough; (c) when two or more municipal boroughs are amalgamated into one municipal borough, and (d) when a municipal borough is split up into two or more municipal boroughs. Upon the happening of any one or more of the aforesaid events, the said section empowers the State Government to provide for all or any of the matters referred to therein by an order published in the Official Gazette. The power thus conferred upon the State Government is overriding in nature because of the non-obstante clause which virtually operates to set aside as no longer valid anything contained in the Act or any other law for the time being in force, which is inconsistent with the provisions of sue. 266. It has to be borne m mind, however, that the various's clauses of sub-see. (1) of sec. 266 are not universally applicable to all the .four situations envisaged in the opening part of sub-sec. (1). By the express words used in the said clauses, or having regard to the subject-matter with which they deal, it becomes apparent that some of the clauses are relatable only to some of the eventualities contemplated by the opening part of sub-sec. (1). For example, clauses (i), (ii), (iii) and (iv) of sub-sec. (1) are in terms relatable to the events specified in clauses (a), (b), (c) and (d) respectively of sub-sec. (1). Clause (v) is attracted only when events specified in clauses (a), (c) or (d) occur and an action is

consequently taken under clauses (i), (iii) and (iv) of sub-sec. (1). Another thing which is required to be broke in mind is that the legislature as carefully chosen its words in the various clauses of sub-sec. (1). It has at different places used different expressions, such as "existing municipality" "successor municipality", "successor borough municipality" "existing local authority" and "successor local authority". Not all of these expressions have been defined in the Act. For the purposes of Chapter XVII, however, the 'expressions "existing local authority" and "successor local authority" have been defined and they mean, in relation to any local area, the municipality or the panchayat, as the case may be. The words "Municipal Borough" and "Municipality "have also been defined in sec. 2 (13) and (1.4) and they mean respectively a local area declared as or deemed to be a municipal borough under sec. 4, and a municipality constituted or deemed to be constituted for a municipal borough respectively.

[15] Bearing in mind these Features of sec. 266(1), let us closely scrutinize the language of clause (x) to ascertain as to in which situation contemplated by the said sub-section the said clause comes into operation. Clause (x) as it terminology shows, uses the expressions "any existing municipality" and "the successor borough municipality". This most important feature of clause (x) will have to be constantly kept before the mind' eye while interpreting its provisions. Under the said clause, the state Government is enabled to provide for the extension and commencement of all or any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms made, issued, imposed or granted under the Act by, or in respect of, any existing municipality and in force within its area immediately before the appointed day, to and in all or any of the other areas of the successor borough municipality such extension and commencement will be made in supersession of corresponding appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms, if any, in force in such other areas immediately before the appointed day. The matters so extended and brought into forces will remain operative until they are further superseded or modified under the Act. It is thus clear that before clause (x) could be attracted, there must have been an existing municipality and within its area there must have been in force immediately before the appointed day, that is to say, before any of the four eventualities contemplated by clauses (a), (b), (c) and (d) of sub-sec. (1) takes place, any appointments made, etc. under the Act by, or in respect of, such municipality. It is such appointments, etc. which would be extended lo and brought into force in all or any of the other areas of the successor borough municipality in supersession of corresponding appointments, etc. if any, in force in such other areas immediately before the appointed day. Two conditions must, therefore, be

satisfied before clause (x) can operate. First, there must be an existing municipality and the successor borough municipality and, secondly, there must be appointments made etc. by, or in respect of, the existing municipality and in force within its area immediately before the appointed day, which will, upon their extension and commencement, in all or any of the other areas of the successor borough municipality, supersede the corresponding appointments made etc., if any, in force in such other areas immediately before the appointed day. The question then is whether, when any local area is added to a municipal borough, a succession takes place) so that the municipality which was in existence having a defined area immediately before the appointed day, is replaced by the "successor borough municipality. The further question which arises is whether even if such a succession takes place, clause (X) would be attracted unless there are corresponding appointments, etc. in force in the other areas brought within the limits of the successor borough municipality. These questions can be answered only upon an appreciation of the true position which obtains on a local area being added to a municipal borough.

[16] By the addition of a local area to an existing municipal borough, in exercise of the powers conferred by clause (b) of sub-sec. (1) of sec. 4, only the limits of such existing municipal borough are altered, unlike the exercise of powers under clause (a), whereby a local area is for the first time declared to be a municipal borough. Such alteration will also not result in the constitution of a municipal borough by the fiction enacted in sub-sec. (3) of sec. 4. Such addition, therefore, does not bring into existence a new municipal borough within the meaning of the Act. It will not call for the incorporation of a new municipality, though it might require the reconstitution of the existing municipality, even for an interim period, in order to give representation to such area, for which provision has been made in clause (i) of sub-sec. (1) of sec. 266. The municipality of the existing municipal borough, which was duly incorporated, continues in existence even after the alteration of its limits and its administration qua the area originally comprised in the existing borough remains unaffected. There is no need, in such a case, to make any provision for the commencement and extension of pre-existing appointments, etc. in die areas originally comprised within its limit? The phrases "existing municipality" and "successor borough municipality" used in contradistinction are inapt in such situation. The word "successor" means "he that followeth or cometh in another's place" (See Stroud's Judicial Dictionary, Fourth Edition, 5th Volume, page 2661). In Black's Law Dictionary, Fourth Edition, page 1600, the word "successor" is defined to mean "one that succeeds or follows; one who takes the place that another has left, and sustains the like part or character; one who takes the place of another by succession" and, in the

context of corporations, it generally means "another corporation which, through amalgamation, consolidation, or other legal succession, becomes invested with rights and assumes burdens of first corporation". It would thus appear that an existing municipality of a municipal borough in which a new area is added cannot, by virtue of such alteration of its limits, be treated as a successor borough municipality. No new municipal borough, as defined in the Act, thereby comes into existence and no new municipality thereupon is incorporated. It remains the same municipal borough with altered limits and continues to be the same incorporated municipality with a larger area within His jurisdiction. The word "successor" as understood in legal parlance, cannot be properly applied in such a situation. Clause (x) might, therefore, more appropriately be attracted in a situation contemplated by clauses (c) and (d) of sub- sec. (1) of sec. 266 where an amalgamation or split up takes place and a new municipality succeeds to an existing municipality. In our opinion, therefore, in cases covered by clause (a) of sub-sec. (1) of sec. 266, where a local area is merely added to an existing municipal borough, the provisions contained in clause (x) would not be attracted.

[17] On behalf of the respondents, considerable reliance was placed upon the provisions of clause (i) of sub-sec. (1) of sec. 266 which arc specifically made applicable only to a case where any local area is added to a municipal borough and it was contended that in the said clause also the expression "the successor municipality" is used by the legislature, which showed that even in such cases a succession takes place and the new municipality which is constituted after the addition of an area would be a successor municipality. We are unable to agree. It is required to be borne in mind that clause (i) deals with, an interim increase in the number of councillors of the municipality so as to give immediate representation to the local area added to a municipal borough. In so far as it is relevant, it provides for the State Government snaking an order, in a case falling under clause (a), for "the interim increase in the number of councillors ..... until the successor municipality is in due course constituted under this Act." Be it noted that whereas clause (i) uses the expression "the successor municipality", clause (x) uses the expression "the successor borough municipality". The "meaning and content of the two expressions is not the same nor is the subject-matter of the two clauses similar. Under the provisions of sec. 6, sub-sec. (6), a municipality shall be deemed to be duly constituted notwithstanding any vacancy, once the names of all councillors elected thereto at a general election held in accordance with law are notified. It would thus appear that upon the declaration of the result of a general election, each municipality is deemed to be duly constituted and it might be possible to say, therefore, that the newly elected, councillors constitute the successor municipality, as contra-

distinguished from the previously existing municipality constituted of the old councillors. If this position is borne in mind, the use of the expression "until the successor municipality is in due course constituted under this Act" in clause (i) of sub-sec. (1) of sec. 266 would be properly appreciated. Having regard to the subject-matter and the context and collocation in clause (x) which, as earlier stated, uses a slightly different expression, namely, "the successor borough municipality", the succession referred to therein is to a pre-existing incorporated institution or body, unlike succession in clause (i), which is confined to a body of individuals for the time being constituting the municipality. There is, therefore, no parallel between clauses (i) and (x) which use different expressions and deal with different situations. No guidance can be derived from the provision of clause (i) for the purpose of interpreting the provision of clause (x) since the two clauses operate in two entirely different situations and fields and deal with different subject-matters.

[18] Even assuming, however, that there is a succession when any local area is added to a municipal borough and that, therefore, clause (x) would in the first instance be attracted, it is clear on a plain reading of the said clause that the extension and commencement of the various matters dealt with by the said clause can only take place to and in all or any of the other areas of the successor borough municipality provided there was in existence in such other areas, prior to the appointed day, corresponding matters To illustrate, if there was in force in the local area added to a municipal borough any tax immediately before the appointed day, by virtue of the exercise of powers under clause (x), similar tax imposed by the existing municipality and in force in its area immediately before the appointed day might be extended to and brought into force in the newly added area in supersession of the corresponding tax. Until a corresponding tax is in force immediately before the appointed day in the local area added to a municipal borough the occasion for exercising power under clause (x) would not arise. The words "if any" following after the expression "in supersession of corresponding ....taxes" do not in any manner alter this position. It is obvious that this provision is made bearing in mind the fact that the residents of the newly-added area already had an opportunity to object to the imposition of such a tax by the previously existing local authority and that, therefore, extension of similar tax imposed by the successor borough municipality to such areas would not result in any prejudice. That is why the legislature has advisedly used the word "corresponding" in clause (x) so that there may not be a radical departure from the general policy and scheme of the Act. In our opinion, therefore, clause (x) would not be attracted in a case where In the local area which is added to a municipal borough there are no corresponding taxes, etc. in force immediately before the

appointed day and it would not be competent, for the State Government to make an order thereunder in such a situation.

[19] Once this conclusion is reached on the question of construction of construction (x) of sub-sec. (1) of sec. 266, it is apparent that the impugned order at Annexure 'F' issued by the State Government in the purported exercise of power thereunder is illegal and invalid in so far as it extends and brings into force in the factory area of the petitioner the various things mentioned in clause (1) thereof. There is no question in the present case of a successor municipality nor is there any question of extending and bringing into force of the taxes imposed by the first respondent municipality and in force within its area immediately before January 15, 1976 to the factory area of the petitioner in supersession of the corresponding taxes in the said area immediately before the said date. The petitioner must, therefore, succeed in its challenge to the impugned notification to the extent indicated above.

[20] We must mention that on behalf of the respondents reliance was placed upon an unreported decision of a Division Bench of this Court in Special Civil Applications Nos. 944 and 945 of 1968 which were decided on January 16, 1969. In that case, an area known as the Dock Estate area was added to the Municipal Borough of Bhavnagar. Thereafter, in exercise of the powers conferred by sec. 266, sub-sec. (1), clause (x) the State Government made an order whereby all taxes, etc. imposed under the Bombay Municipal Boroughs Act, 1925 as adapted and applied to the State of Saurashtra and by or in respect of Bhavnagar Municipal Borough were extended to the Dock Estate area. On the strength of the said order, the Bhavnagar Municipality started levying and collecting terminal tax within the Dock Estate area. Thereupon, the petitioners filed those above-mentioned two petitions in this Court challenging the order made by the State Government under clause (x). The challenge to the said order was substantially on different grounds than those which have been urged in respect of similar order in the present case. The first ground of challenge there was that the impugned order could not have extended the imposition of terminal tax in the Dock Estate area after the commencement of the Constitution and the second ground was that if the said order purported to do so, it was ultra vires Art. 162 read with Schedule 7, List I, Entry 89 and it was not saved by Art. 277 of the Constitution. The Division Bench allowed the petition in so far as it related to the imposition of terminal tax under the impugned order, holding that on the date on which the terminal tax was extended to the Dock Estate area, the State Legislature had no power or authority to impose such tax and that, therefore, such extension was invalid. Even the executive power of the State Government could not

have been exercised for the purpose of extending the said tax to the newly included area since the executive power was co-extensive with the legislative power and if there was no legislative power, the State Government would ipso facto have no executive power as well. We are unable to see how this decision can assist the respondents in the matter of construction of clause (x) in light of the challenge levelled by the petitioner herein. It is well-settled that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it. (See State of Orissa v. Sudhansu Sakhar Misra and Others, A.I.R. 1968 Supreme Court 647). Since the points which arise for our determination in the present petition were neither canvassed nor dealt with or decided in the unreported decision referred to by the respondents, we are unable to derive any useful assistance from the same for the decision of this case.

[21] Before concluding the judgment we must also deal with an argument which was faintly urged on behalf of the first respondent-Municipality in order to sustain the impugned notification, Annexure 'F'. It was urged that if the said order could not have been issued under clause (x) on its proper construction, it could still have been made under clause (ix) and that, therefore, it should not be held to be ultra vires. We are unable to uphold this contention. In the first place, the direction contained in clause (1) of the impugned order is in terms made in the language relatable to clause (x). The State Government has, therefore, applied its mind in exercising its delegated powers to clause (x) and not to clause (ix) and it is on its satisfaction that conditions exist for an exercise of power under the said clause that it has given the impugned direction. It would not be possible, therefore, to sustain the said directions on the basis of some other clause. In the next place, even assuming that it is permissible to do so, we are of the opinion that clause (ix) has no application in the facts and circumstances of the present case. Clause (ix) has been set out earlier its terminology makes it clear that it provides for the continuance within the area of an existing local authority of all or any appointments, etc. made etc. by, or in respect of, such existing local authority and in force within its area immediately before the appointed day, until superseded or modified. The expression "existing local authority" as early pointed out, has been defined to mean, in relation to any local area, the municipality or the panchayat. This clause would, therefore empower the State Government to make an order providing for the continuance of appointments, etc. which were in force within the area of a municipality or panchayat, as the case may be, immediately before the appointed day, until

superseded or modified, even after the appointed day. To illustrate, suppose a panchayat area has been added to a municipal borough and it becomes necessary to make transitory provisions in respect of the continuance of the several matters referred to in clause (ix) in the area formerly comprised within the jurisdiction of such panchayat until they are superseded or modified so that there is no interregnum. In such a case, directions may be given under clause (ix) which would have the result of continuing, within the newly-added area of an existing local authority, of all such matters which were in force within such area immediately before the appointed day, till they are superseded or modified. In the present case, the factory area was not comprised within the area of any local, authority and there were in force no pre-existing appointments etc. within its area immediately before the appointed day- Nothing could, therefore, be continued under clause (ix) after the inclusion of the said area within the limits of the first respondent-Municipality. In our opinion therefore, the argument based on clause (ix) is totally misconceived and it most be rejected.

[22] On the foregoing discussion, it would follow that the impugned direction No. I contained in the order at Annexure 'F' must be held to be invalid and ultra vires and the under of the second respondent, in so far as it seeks to extend and bring into force the taxes, etc. imposed by the first respondent-Municipality in its area immediately before the appointed day to the factory area of the petitioner, must be quashed. A Writ will issue accordingly.

[23] Rule is made absolute in terms aforesaid, with costs.

Petition allowed.