

(2021) 03 CHH CK 0005

Chhattisgarh High Court

Case No: Writ Appeal No. 59 Of 2021

Piyush Mishra

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: March 10, 2021

Acts Referred:

- Chhattisgarh Municipal Corporation Act, 1956 - Section 7, 10, 10(1), 405, 433
- Chhattisgarh Municipal Corporation (Extent Of Wards) Rules, 1994 - Rule 3, 4, 5, 6, 7, 8

Hon'ble Judges: P. R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: Abhishek Sinha, Animesh Verma, Chandresh Shrivastava, H.B. Agrawal, Pankaj Agrawal, Richa Dwivedi

Final Decision: Dismissed

Judgement

P. R. Ramachandra Menon, CJ

1. Delimitation of wards in the Municipal Corporation, Bhilai (2nd Respondent) forms the centre of dispute. The challenge raised against Annexure-

P/1 Final Notification dated 10.07.2020, contending that it is in substantial variation from the Preliminary Notification issued by the District Collector

vide Annexure-P/2 and that no opportunity of hearing was given with reference to the objections/suggestions raised by the Petitioners came to be

turned down by the learned Single Judge; correctness of which is put to challenge in this appeal. The main grounds raised are that; there is infraction

of Rules 6, 7 and 8 of the M.P. / Chhattisgarh Municipal Corporation (Extent of Wards) Rules, 1994 (hereinafter referred to as 'the Rules, 1994')

insofar as no opportunity of hearing on the objection was ever given before effecting the substantial variations and further, the decision has been made

by the District Collector himself on the objections, as revealed from the 'return' filed from the part of the State; which task ought to have been pursued

only by the State in view of the mandate under Section 10 of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to 'the Act,

1956') and the relevant Rules.

2. In connection with the elections to be held in the 2nd Respondent local authority, the tenure of which was to expire by December, 2020. Annexure-

P/2 Notification dated 20.02.2020 was issued by the 3rd Respondent /District Collector along with the proposal inviting objections/suggestions from the

general public. It is the case of the Appellant/Writ Petitioner that he had filed specific objections vide Annexure-P/7 dated 24.02.2020 and that similar

objections were filed from other stakeholders as well. It was all of sudden, that Annexure-P/1 was notified in the official gazette on 10.07.2020

finalizing the proceedings, whereby substantial variations were affected to the proposal contained in Annexure-P/2. It is contented that some wards

already mentioned in Annexure-P/2 proposal simply vanished in the air and some new wards have been brought in as revealed from Annexure-P/1;

with regard to which no objection could be raised at any point of time. No opportunity of hearing was also given before such substantial variation was

effected while issuing Annexure-P/1 Notification in terms of Section 10 of the Act, 1956 and the Rules, 1994 which have been framed by the State in

exercise of power under Section 433 of the very same Act, 1956. This made the Writ Petitioners to challenge the said proceedings by filing the writ

petition, seeking to set aside Annexures-P/1 and P/2 along with the impugned Schedule Annexures-P/9, simultaneously seeking to direct the

Respondents to determine the extension of wards of the Municipal Corporation, Bhilai, District Durg afresh, after considering the

objections/suggestions and after affording an opportunity of hearing.

3. A detailed replied was filed from the part of the State (Respondents No. 1 and 3), contending that the writ petition itself was not maintainable; that

there was no illegality in the proceedings issued by the District Collector vide Annexure-P/2; that the proceedings were finalized by the 1st

Respondent/State as per Annexure-P/1 with regard to the determination of the number and extent of wards and that it was not an administrative or executive function, but a 'legislative act' performed by the State in terms of section 10 of the Act, 1956. It was contended that the statute does not provide for any opportunity of hearing and that it is not concerned with the interest of any particular individual and rather relates to the public in general. Since, it is a legislative function, the principles of natural justice are not attracted and hence no opportunity of hearing is ever contemplated.

4. The circumstances leading to the impugned proceedings have been described pointing out that, earlier on 20.11.2019 a Notification was issued in exercise of the powers under Section 7, read with Section 405 of the Act, 1956, whereby the State Government had constituted the Municipal Corporation, Rishali, District Durg; for which 13 wards have been excluded from the limits of the Municipal Corporation, Bhilai and they were included in the newly constituted Municipal Corporation, Rishali, District Durg, vide Annexure-R/1 Notification dated 28.11.2019. In consequence thereof, a further Notification was issued on 28.12.2019, reconstituting the Municipal Corporation, Bhilai and determining the number of wards to be '60' in terms of Section 10 of the Act, 1956 followed by directions given to the authorities concerned for pursuing further steps. However, the 2nd Respondent / Municipal Corporation in its meeting held on 28.01.2020 resolved to constitute '70' wards instead of '60' (notified earlier), there having been increase in the population in the area. In the said circumstance, the said proposal and recommendation were duly considered by the State Government and in exercise of the powers under Section 10(1) of the Act, 1956, a fresh Notification vide Annexure-R/2 dated 10.02.2020 was issued, re-fixing the number of wards for the 2nd Respondent / Municipal Corporation as '70'.

5. After determination of the number of wards in accordance with the Rules, 1994, Annexure-R/3 proposal dated 20.02.2020 (Annexure-P/2) was issued by the District Collector and the same was published in the local newspapers, besides pasting it on the notice board of the office of the District Collector, office of the Municipal Corporation as well as in the office of different zones calling for objections/suggestions from the general public in

terms of Rule 6 of the Rules, 1994. In response thereof, about 595 objections/suggestions were received and after considering the same, the District Collector formulated his opinion and all the said objections/suggestions along with his opinion and amended proposal were forwarded to the State

Government for final decision along with Annexure-R/4 covering letter dated 15.06.2020. It was after considering the same, that the State

Government, with due application of mind, processed the same and finalized the proceedings by issuing Annexure-P/1 final Notification dated

10.07.2020, determining the number and extent of wards in accordance with the Rules, 1994. It was pointed out that the objections/suggestions have

been duly considered, looking to the public convenience and their geographical location, total population as per 2011 Census as well as the population

of the Scheduled Caste and Schedule Tribes of the particular wards; by virtue of which, there is no illegality or infringement of any of the provisions of

law. It was also contended that no mathematical precision was required with regard to identification of the wards with reference to the number of

residents/citizens/voters living therein. It was further pointed out that the provisions contained in the Act, 1956 and the Rules, 1994, only prescribed

that the wards shall be made in such a way with the population of each of the wards shall "so far as practicable" be the same throughout the city

and that it does not direct for equal distribution with mathematical precision.

6. The 2nd Respondent / Municipal Corporation filed a separate reply, virtually adopting the contentions raised by the Respondents No.1 & 3. The

Writ Petitioners filed a rejoinder reiterating the submissions in the writ petition and also producing some details of the ward-wise population as

Annexure-D/1.

7. Considering the nature of challenge, the learned Single Judge called for the relevant records to analyse the decision making process, particularly, in

the light contention raised by the Writ Petitioners with reference to the return filed by the State that the Annexure-P/1 Final Notification has been

issued 'as decided by the District Collector' who had no power or jurisdiction of the same; which stands exclusively vested with the State Government.

After considering the pleadings and prayers and also the contents of the records, in the light of the mandate of Section 10 of the Act, 1956 and the

Rules 3 to 8 of the Rules, 1994 and referring to the various judicial pronouncements cited on behalf of the parties on both the sides it was held that, the statute did not provide for any opportunity of hearing before the objections/suggestions raised by the general public in response to the Preliminary Notification issued in terms of Rule 6 / 7 of the Rules, 1994 are finalized; simultaneously holding that the Rules, 1994 were only directory. The fact that the original file was called for by the learned Single Judge as discernible from the observations in paragraphs 13, 21 and 22 and further in paragraph 31. It was after reference to the entire materials on record, that the learned Single Judge arrived at a finding that the Writ Petitioners had failed to make out a case that there was any foul or arbitrary exercise of the power by the State in determining the extent of wards. On the other hand, the determination of extent of wards was held as made by the State Government in exercise of the legislative power conferred under Section 10 of the Act, 1956 and that the decision making process was without any prejudice, whim or fancy, thus declining interference, leading to dismissal of the writ petition.

8. It is to be noted that the judgment under challenge is a common verdict passed by the learned Single Judge in WPC No. 1839/2020, WPC No.2075/2020 and WPC No. 1759/2020. The present Appellant was the 1st Petitioner in WPC No. 1839/2020 and obviously the other two Petitioners have not joined to challenge the verdict and hence they have been shown as Respondents No.4 and 5. Since no appeal has been preferred in respect of the common verdict in WPC No.2075/2020 and WPC No.1759/2020 and further since the Petitioners therein have not been impleaded in the party array, the verdict passed by the learned Single Judge stands unchallenged in respect of the findings and reasoning given as per the common judgment with reference to those two cases.

9. Mr. Abhishek Sinha, the learned counsel for the Appellant submits that the challenge is mainly of two folds. Firstly that, no opportunity of hearing was ever given to the Appellant despite the substantial variation of the extent of wards / inclusion of new wards in Annexure-P/1 Final Notification and secondly, the objections against Annexure-P/2 Preliminary Notification were considered and finalized by the District Collector himself as

discernible from 'paragraph 8' of the return, leaving Annexure-P/1 Final Notification issued by the State only as mechanical and without proper

application of mind; whereas the power to have the objections considered is an exclusive power to be exercised by the State Government and not by the District Collector.

10. With regard to the first ground as to substantial variation of the wards / extent of wards in Annexure-P/1 Final Notification, as different from

Annexure-P/2 Preliminary Notification, the learned counsel submits that the ward by name 'Priyadarshani Parisar' at Sl.No. 6 of Annexure-P/1 was

not there in Annexure-P/2 Preliminary Notification where the ward by name 'Radhika Nagar' was shown at Sl.No. 6. The extent of the boundaries of

'Radhika Nagar' was also shown in Annexure-P/2; which is now shown at Sl.No. 7 of Annexure-P/1. Since there was no proposal to have a ward by

name 'Priyadarshani Parisar' in Annexure-P/2, identification of such ward with boundaries as specified in Annexure-P/1 is without giving any

opportunity to file objection or hearing and hence bad. Similarly, it is pointed out that the ward by name 'Nehru Bhawan Ward' shown at Sl.No. 17 of

Annexure-P/1 was not therein Annexure-P/2 Preliminary Notification. Reference is also made to the ward by name 'Kabir Mandir Ward' at Sl.No.47

of Annexure-P/2 Preliminary Notification, which does not find a place in Annexure-P/1. Similarly, the ward by name 'Sahid Kaushal North' at

Sl.No.69 and the ward by name 'Sahid Kaushal South' at Sl.No.70 of Annexure-P/2 Preliminary Notification came to be merged and shown as 'Sahid

Kaushal Yadav Ward' at Sl.No. 70 of Annexure-P/1 Final Notification. Ward by name 'Sunder Nagar' at Sl.No. 30 of Annexure-P/2 got changed as

'Baikunthdham Sundar Nagar' at Sl.No.32 of Annexure-P/1. This according to the Appellant is an arbitrary exercise, contending that, though the

boundaries could have been changed, no new wards could have been introduced after considering the objections. If any radical change was to be

brought about, the State Government had to fall back to Rule 7 of the Rules, 1994 by causing publication of the same inviting objections/suggestions

and to deliberate further giving an opportunity of hearing. It is also contended that there was no objection from any corner with reference to Ward

Nos. 24, 29 and 30, despite which those wards also have undergone substantial change. It is pointed out that the version of the State that all objections were considered and rejected, has been simply accepted as taken note of in paragraph 33 of the judgment, which is not correct insofar as, if all the objections were rejected, no amendment was necessary while finalizing the proceedings as per Annexure-P/1.

11. Mr. Abhishek Sinha, the learned counsel for the Appellant submits that the Rules, 1994 are quite specific as to how delimitation of the ward is to be carried out by the State and that it has to be with reference to the population of the last Census and with due regard to the population of Scheduled Castes / Scheduled Tribes, ensuring that the number of inhabitants in each of the wards is equitably distributed, ensuring that there is no accumulation in any particular ward. The learned counsel has also cited the rulings rendered by the Supreme Court in *Udai Singh Dagar and Ors. v. Union of India* (UOI) and Ors. {paragraph 74} reported in (2007) 10 SCC 306 to contend that Rules may become part of the Act and hence opportunity of hearing is to be given. The learned counsel made a reference to the verdict passed by the Division Bench of the High Court of Delhi in *Chand Kumar v. Union of India* reported in 1996 SCC OnLine Del 746 {paragraph 15, 18, 20} with regard to delimitation of wards, besides placing reliance on such other rulings as cited before the learned Single Judge in support of the contentions.

12. Mr. H.B. Agrawal, the learned Senior Counsel, representing the 2nd Respondent / Municipal Corporation submits that the terminology used under Section 10(3) of the Act, 1956 with regard to the quantum of population is : "as far as practicable" and hence, no mathematical precision can be acquired or intended under any circumstance. The learned counsel also referred to the specific pleadings of the State, as adopted by the 2nd Respondent / Corporation, as to circumstances under which the delimitation exercise had to be done pursuant to Annexure-R/1 Notification dated 20.11.2019, constituting a new Municipal Corporation by name Rishali, after excluding 13 wards from the erstwhile Municipal Corporation of Bhilai and reconstitution of the Bhilai Municipal Corporation ordered as per Notification dated 28.12.2019. It is pointed out that the delimitation of the ward is

a 'legislative function' and neither the Act nor the Rules envisage any opportunity of hearing, but for giving a chance to raise objections/suggestions to

be considered by the State. It is pointed out that there is absolutely no merit or bona fides in the submission that the objections were considered and

finalized by the District Collector. The District Collector has only amended 'his proposal' with reference to objections/suggestions to formulate his

opinion, which infact has been forwarded along with covering letter Annexure-R/4 dated 15.06.2020. It is the Government, who considered all the

objections and suggestions and finalized the proceedings as per Annexure-P/1, which is in conformity with the statutory provisions and prescriptions.

13. Mr. Chandresh Shrivastava, the learned Deputy Advocate General appearing on behalf of the Respondents 1 and 3 submits that each and every

point raised by the Writ Petitioners was considered by the learned Single Judge in the light of the relevant provisions of law and the precedents,

besides going through the original file produced during the course of hearing. Submissions were made by the learned counsel in terms of the specific

pleadings raised in the return filed by the State. Besides making reference to other relevant rulings already cited before the learned Single Judge,

specific reference is made to the Division Bench verdict passed by this Court in WPC No.3900/2019 {Faguram Markam v. State of Chhattisgarh}

and connected cases reported in ILR 2020 CHH 790, whereby it has been categorically held that the delimitation of wards, in terms of the similar

provisions under the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and the Chhattisgarh Panchayat (Alteration of Limits, Disestablishment or Change

of Headquarters) Rules, 1994, is a 'legislative function' and that the principles of natural justice as to granting an opportunity of hearing would not be

attracted.

14. With regard to the first question as to the denial of opportunity of hearing before the variations were effected vide Annexure-P/1 Final

Notification, it is to be noted that power to effect the delimitation stands exclusively vested upon the State Government, as given under Section 10 of

the Act, 1956, which is to the following effect :

â€œ10. Determination of number and extent of wards and conduct of elections.

(1) The State Government shall from time to time, by notification in

the official gazette, determine the number and extent of wards to be constituted in each Municipal area:

Provided that the total number of wards shall not be more than seventy and not less than forty in any municipal area.

Â Only one councillor shall be elected from each ward.

Â The formation of the wards shall be made in such a way that the population of each of the wards shall so far as practicable, be the same throughout

the city and the area included in the ward is compact.

Â As soon as the formation of wards a municipal area is completed, the same shall be reported by the State Government to the State Election

Commission.

Â Omitted

Â Omittedâ€

15. In exercise of the powers conferred under Section 433 of the Act, 1956, the Rules, 1994 have been framed by the State Government.Â Rule 3 of

the said Rules requires the Municipal area to be divided into wards, as determined by the Government under Section 10(1) of the Act, 1956.

Sub-Rule (2) of the said Rule stipulates that the population of every Municipal area on dividing by the number of wards as determined for that

MunicipalÂ areaÂ andÂ theÂ quotientÂ soÂ arrivedÂ shallÂ beÂ theÂ average population of a ward, in which a variation upto 15 percent

may be allowed.Â It is further stipulated in sub-Rule (3) that the area comprised within every ward shall be compact.Â Under Rule 4, the extent of

wards are required to be shown with reference to the four-positions on the North, East, South and West. Rule 5 mandates that every ward shall be

given a number in a serial order and a name as well. Preparation of Â proposal to determine the extent of wards is given under Rule 6, fixing the duty

in this regard upon the District Collector in whose jurisdiction the Municipal Corporation is situated. It is made clear under sub-Rule (2) that the

particulars under Clauses (i) to (iv) mentioned therein shall be included in the proposal. This proposal requires to be published by the District Collector

in the Newspapers and also such other places inviting objections/suggestions, as envisaged under Rule 7. The objections/ suggestions so received

within 7 days from the date of publication of notice by the District Collector are to be forwarded by the District Collector to the State Government and

it shall be for the State Government to consider the same, finalize and effect gazette publication of the Final Notification under Rule 8. The gazette

notification so published shall be the conclusive evidence that the extent of the wards have finally been determined for the purpose of sub-section (1)

of Section 10.

16. As mentioned already, the circumstances under which the delimitation had to be done in respect of the wards in the 2nd Respondent/Municipal

Corporation have been mentioned in the return filed by the Respondents with specific reference to as per Annexure-R/1 Notification dated

20.11.2019, whereby a new Municipal Corporation by name Rishali was created by excluding 13 wards from the 2nd Respondent / Bhilai Municipal

Corporation, thus necessitating reconstitution of the Bhilai Municipal Corporation. There is no dispute that the Appellant had filed objection in response

to Annexure-P/2 Preliminary Notification. There were similar objections/suggestions from different corners and it was after considering the same, that

some changes were required to be effected, thus leading to Annexure-P/1 Final Notification. It is true that some of the wards as mentioned in

Annexure-P/1 Final Notification were not there in Annexure-P/2, but that is quite natural or consequential to the objections/ suggestions obtained from

different corners by virtue of which appropriate variation to appropriate extent had to be made by the Government to resolve the issue. There is no

law which says that the Final Notification shall be fully in conformity with the Annexure-P/2 Preliminary Notification, which otherwise will only defeat

the very purpose of raising the objections/suggestions. The contention of the learned counsel for the Appellant that, if all the objections filed were

considered and decided, there was no necessity for effecting any change vide Annexure-P/1 Notification does not weigh much, insofar as the general

public were free to make "objections" as well as "suggestions" and it was after considering the same, that appropriate modification was

made by the State strictly in conformity with the provisions.

17. Insofar as the power to effect the Final Notification determining the wards stand exclusively conferred upon the State, the only question is whether

an opportunity was given to general public as to the proposal notified and whether the objections/suggestions obtained in response to the Preliminary

Notification were considered by the State and that's all. This aspect has been verified and the compliance has been recorded by the learned Single

Judge while scrutinizing the 'decision making process' done by the State, after calling for the original records as mentioned in paragraphs 13, 21, 22 and

31. The only right conferred upon the general public including the Appellant, who is stated as a Councillor in one of the wards, is to raise

objection/suggestion to the proposal so as to have it considered by the State Government. Insofar as the Act, 1956 or the Rules, 1994 do not

contemplate or provide for any opportunity of hearing while considering the objections/suggestions, before issuing the Final Gazette Notification, the

idea and understanding of the Appellant to the contrary is not correct or sustainable. We have already held in WPC No.3900/2020 that the delimitation

of wards is a 'legislative function' and we do not find any reason to take a different view. Since the only contention of the Appellant is that, even if it is

a legislative function, since the Act, 1956 and the Rules, 1994 provide for filing of objections/ suggestions, an opportunity of hearing should be read into

it, the said proposition does not hold any water insofar as no principles of natural justice could be attracted to legislative function; which hence has

been rightly turned down by the learned Single Judge.

18. The contention of the Appellant that once the State Government found it necessary to effect substantial variations from Annexure-P/2 Preliminary

Notification by creating new wards or by effecting other drastic changes as to extent of wards proposed in the Preliminary Notification, it had to be

put back to the general public, inviting further objections/suggestions is difficult to be acceded to. If it is accepted, that will be an unending process,

which is not the intention of the law makers. We hold that no right of hearing on the objections/suggestions preferred by the general public is

envisaged either under Section 10 of the Act, 1956 or under Rules 6 to 8 of the Rules, 1994.

19. With regard to second limb of the argument that the proceedings have been finalized by the District Collector himself and not by the State

Government and hence bad; it is a contention raised for the 1st time in the writ appeal and no such case was ever put-forth in the writ petition. The

basis for making such contention is with reference to a sentence contained in 'paragraph 8' of the return filed by the State. For easy reference, we

find it appropriate to extract the said paragraph :

“8. That, after determination of number of wards in accordance with the provisions of the Rules, 1994 a proposal has been drawn determining the

limits of different areas, their numbers and the areas comprising therein and the same was published in the local newspapers as well pasted on the

notice board of the office of the Collector, office of the Municipal Corporation as well as in the office of different zones calling of objections /

suggestions from the general public with respect to the proposal as made in accordance with the Rules 6 of the Rules, 1994. Copy of the proposal is

filed and marked herewith as ANNEXURE R-3. That, in reply to the said information given regarding determination of extent of wards in total 595

objections / suggestions were received which were duly considered by the Collector and the amended proposal alongwith opinion has been forwarded

to the State Government for taking final decision in accordance with the Rules, 2008. Copy of the letter dated 15.06.2020 alongwith the opinion with

respect to different objections and the amended proposal is collectively filed and marked herewith as ANNEXURE R-4.”

On going through the pleading as above, we find it extremely difficult to get ourselves persuaded to accept the version of the Appellant that the

Respondents have conceded in the return that the proposal was finalized by the District Collector and not by the Government. The penultimate

sentence of the said paragraph only says that the 595 objections/ suggestions received by the District Collector were duly considered and the

'amended proposal' along with opinion was forwarded to the State Government for taking final decision in accordance with the relevant Rules.

20. The Appellant is trying to make a mountain of a mole from the terminology used as 'amended proposal'. The proposal, even if amended, still

remains to be a proposal and not a decision or order to be published in the Official Gazette in terms of Rule 8 of the Rules, 1994. This is more so since,

Rule 8 specifically mandates a duty upon the District Collector to forward his 'opinion' as well, along with the objections/suggestions to the State

Government for final decision. In discharge of this duty for formulating the opinion, appropriate modification may be necessary with regard to the

proposal, based on the objections/suggestions and this alone has been done by the District Collector and nothing else. This is discernible from the last

paragraph of Annexure-R/4 covering letter dated 15.06.2020 of the District Collector, addressed to the Government which reads as follows :

â€™â€™ 595 / /

â€™â€™â€™â€™

â€™â€™ â€™â€™ â€™â€™

21. It is always open for the Government, who is the competent authority, to consider the proposal in the light of the objections/suggestions and the

opinion given by the District Collector before taking a final decision and it is the final decision of the Government, so taken, that is to be published in

the Official Gazette; which shall be the conclusive evidence that the extents of wards have finally been determined for the purpose of sub-section (1)

of Section 10 of the Act, 1956 as envisaged under Rule 8 of the Rules, 1994. In any view of the matter, to rule out any apprehension expressed by the

Appellant / Writ Petitioner, the learned Single Judge decided to call for the original files and the contents were perused, as discernible from paragraphs

13, 21, 22 and 31 of the judgment. It was after perusing the contents of the original file, that the finding / satisfaction was recorded by the learned

Single Judge that the 'decision making process' done by the 1st Respondent / State, considering the objections/suggestions raised by the Writ

Petitioners/Appellant and proposal/opinion of the District Collector, was quite proper and not assailable. This being the position, the challenge raised in

this regard does not hold any water at all. The scope of the various rulings cited from both the sides has already been discussed in detail by the learned

Single Judge and we do not find it necessary to reproduce or reiterate the same, as the discussion made by the learned Single Judge is perfectly in

order.

In the above facts and circumstances, we do not find any merit in the appeal and none of the grounds raised in support of the same could be held as

tenable. The appeal stands dismissed accordingly.