AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 28.01.2021

Order delivered on 09.02.2021

WPC No. 1839 of 2020

1. Piyush Mishra S/o Shri Sadhan Mishra Aged About 33 Years R/o HIG 2353, Housing Board Industrial Colony, Bhilai, District : Durg, Chhattisgarh

2. Smt. Shaheen Akhtar W/o Mohammad Azhar Aged About 58 Years R/o 1/C, Spa, Sector-8, Bhilai- West, Bhilai District : Durg, Chhattisgarh

3. Bashisht Narayan Mishra S/o Late Shailendra Narayan Mishra, Aged About 39 Years R/o Quarter No. 6A, Street No.6 Sector 2 Bhilai, District- Durg, (C.G.). **--- Petitioners**

Versus

1. The State of Chhattisgarh through Secretary Department of Urban Administration and Development, Mantralaya, Mahanadi Bhawan, Raipur, District : Raipur, Chhattisgarh

2. The Municipal Corporation Bhilai through Its Commissioner Bhilai- 490020, District : Durg, Chhattisgarh

3. The Collector Durg , District : Durg, Chhattisgarh **--- Respondents**

WPC No. 2075 of 2020

Rinkoo Rajesh Prasad @ Rinkoo Devi W/o Shri Rajesh Prasad Aged About 28 Years R/o Mother Teresa Nagar, Camp - 1, Bhilai, District Durg Chhattisgarh. **--- Petitioner**

Versus

1. The State of Chhattisgarh through Secretary, Department of Urban Administration and Development, Mantralay, Mahanadi Bhawan, Raipur District : Raipur, Chhattisgarh

2. The Municipal Corporation Bhilai through its Commissioner Bhilai 490020.

3. The Collector Durg, District Durg Chhattisgarh. **--- Respondents**

WPC No. 1759 of 2020

1. Sanjay J. Dani(Ex Ward Member) S/o Lt. J.V. Dani, Aged About 57 Years R/o MIG- II/12 Ward No. 69, HUDCO,, Bhilai, District Durg Chhattisgarh,

2. Jay Prakash Yadav (Present Ward Member) S/o Lt. Manharan Yadav, Aged About 36 Years R/o Parsad, Ward No. 03, Bhilai, District : Durg, Chhattisgarh **--- Petitioners**

Versus

1. Municipal Corporation Bhilai through Commissioner Bhilai, District Durg Chhattisgarh.

2. Collector District Durg Chhattisgarh.

3. Principal Secretary Urban Administration and Development Department Mahanadi Bhavan, Mantralaya, Atal Nagar, Raipur, District Raipur Chhattisgarh. **--- Respondents**

For Petitioners : Mr. Abhishek Sinha, Mr. T.K. Jha, & Mr. Animesh Verma, Mr. Bhaskar Jha, Mr. N.K. Thakur & Mr. Aditya Pandey, Advocates

For the State : Mr. Amrito Das, Addl. Advocate General.

For the Municipal Corpn. : Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate Mr. Samrath Pandey, Advocate on behalf of Mr. Chandresh Shrivastava, Advocate in WPC No.1839 of 2020

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. JUDGMENT/ORDER

1. As the facts pleaded and questions of law involved in all the petitions are almost similar, they are decided together by this common order.

2. The challenge made in all the petitions is to the notification dated 10th July, 2020 (Annexure P-1) whereby the State in exercise of powers u/s 10(1) of the Municipal Corporation Act, 1956 has determined the number and extent of wards of Nagar Palik Nigam, Bhilai, District Durg. By such notification, as many as 70 wards were constituted.

3. WPC No. 1839/2020 - The undisputed facts of the case are that earlier on 20th November 2019, the State Government constituted the Municipal Corporation Rishali, Distt. Durg by excluding 13 wards from the limits of Municipal Corporation, Bhilai and were

included in the newly constituted wards of Municipal Corporation, Rishali. The said notification was issued on 20th November, 2019. Subsequent thereto, vide notification dated 28.12.2019 fresh determination of wards were made for Municipal Corporation, Bhilai. The Municipal Corporation, Bhilai in its meeting held on 28.01.2020 resolved to constitute 70 number of wards instead of 60 as notified earlier considering the increase in population. The State Government subsequently on 10.02.2020 notified the number of wards of Bhilai Municipal Corporation to be 70 (Annexure R-2). After determination of wards of Bhilai Municipal Corporation in accordance with the provisions of the ***Chhattisgarh Municipal Corporation (Extent of wards) Rules 1994*** *(hereinafter referred to as Rules 1994)*, a proposal was made for determining the limits of different areas of wards and their numbers and areas were comprised therein. Subsequently on 20.02.2020 *(Annexure R-3)*, the preliminary notification was published and objections were invited, publication in the local newspaper and affixture of notice on the board in the office of the Municipal Corporation were made. As many as 595 objections and different opinions, suggestions were received and thereafter, the Collector along-with his opinion forwarded the same to the State Government for taking final decision. The State Government on receipt of the said report issued the final notification dated 10.07.2020 (Annexure P-1) and notified the extent of wards. The said notification is under challenge.

4. Mr. Abhishek Sinha, learned counsel appearing for the petitioners assisted by Mr. T.K. Jha & Mr. Animesh Verma, Advocates would submit that in the preliminary notification dated 20.02.2020 and the final notification of 10.07.2020, lot of different wards came into

being. Referring to documents, the submission was made that for instance Ward No.17 was described as Vaisali Nagar in the preliminary notification and in the final notification Ward No.17 came up as Nehru Bhawan with a change of extent of area. Like-wise, Ward No.18 was shown as Rajeev Nagar in the preliminary notification whereas in the final notification, it became as Ward No.18 Contractor Colony with change of dimensions and boundaries. Similarly, Ward No.11 was primarily notified as contractor colony which came up as Ward No.11 Farid Nagar in the final notification. Likewise Ward No.6 which came up as Radhika Nagar stands changed as Ward No.6 Priyadarshniya Parisar. Therefore with the change of dimensions in the boundaries, there has been a radical change which violates the Rules of 1994. Ward No.35 came as Baikunthdham Mother Teresa Nagar which stands changed as Ward No.29 as Vrinda Nagar. Likewise, Ward No.30 was shown as Sundar Nagar whereas it stands changed as Pragatinagar with change of dimensions. Therefore there was violation of Rules of C.G. Municipal Corporation (Extent of Wards) Rules, 1994. Learned counsel for the petitioners would further submit that for the first time some new wards came into existence for other than what was was being proposed in preliminary notification.

5. It is further stated that since the new wards and change of dominions never existed in the preliminary notification, the petitioners could not make any objections for the new wards which came into being. Consequently, there has been blatant violation of Rules and statutory right which is conferred by Rules of 1994 on individual citizen. He would submit that according to the Rules of 1994, the objections are required to be decided by the State

Government and not by the Collector. However, in this case, as per the return of the State, the Collector changed the proposal which he was not empowered to do so and therefore, there was a gross violation of Rules and statute. It is further submitted that what is mandated in Rules are shown in Rule 6 to Rule 8 of the Rules 1994 which were never followed. It is further contended that under the Municipal Corporation Act 1956, it is the State Government which is to determine the extent of the wards and not the Collector and the Collector having done so by sending the proposal with his opinion and the State without application of mind, accepted the same, as a result, the opinion of the Collector prevailed over the decision of the State Government, which is against the spirit of statute and Rules. It is further submitted that according to the census of population, the bifurcation of the wards meant for SC/ST are also required to be made but this was not adhered to. So the fair representation of the people in each ward was not followed.

6. Learned counsel would further submit that since the new wards were never existed in preliminary notifications, in the eye of law no preliminary notification was ever made of the newly constituted wards, which came up first time in the final notification. It is further submitted that in this petition, the constitution of wards by the State which is a legislative act is not under the challenge, but the determination of extent of wards is an executive act to be performed according to the Rules of 1994, which were not followed. He would submit that the petitioners' right to be heard as per their objection was compromised. The petitioners placed reliance in **WPC No. 3855/2019** ***(Hemlal Verma Vs. State of Chhattisgarh)*** decided by the Coordinate Bench of this Court on

28.11.2019 and would submit that in case of delimitation where there is difference between preliminary notification and the final notification, the State could not have deviated from the preliminary notification to avoid the hearing of objection. It is further submitted that in such writ petition, the earlier decision rendered by this Court in *Gramvasi Gram Khari Gram Panchayat, Dhamni Vs. The Collector, Balodabazar, AIR 2015 CG 7* has not been followed and the subsequent decision is of 2019. It is contended that this Court even if differs with the order passed in 2019, the issue is required to be referred to the larger Bench.

7. Further reliance is placed in *1996 SCC Online Delhi 746* in between *Chand Kumar vs. Union of India* and it is submitted that the exercise of power in delimitation of ward when falls foul of the statutory power under which it has been made and smacks arbitrariness, whim or fancy it would be offensive of Article 14 and would be open to judicial review. Further reference is made in *2015 (1) MPLJ Ashish Singh Bhadouria vs. State of Madhya Pradesh* and would submit that when preliminary publication of determination of extent of wards, the new wards were created and the general public have been deprived to make any objection on the basis of preliminary notification then valuable rights of citizens as created under Rules of 1994 is taken away. It is contended that the process of final notification is required to be made in conformity with Rules 6 to 8 of the Rules of 1994. It is further submitted that in some wards, the size of the population is also disproportionate to the extent of wards which would show that some of the wards have a double population and the object of the law is that the equal development should be

carried out on the basis of population which exists in the wards and if there is variation in ratio of population and if some wards are consisting of more population and the other wards are having less population, then the uniform development cannot take place as it has a necessary budgetary nexus and therefore, there is gross violation to follow the rules. It is contended the Supreme Court in ***I.R. Coelho (dead) Versus State of Tamilnadu (2007) 2 SCC 1 Para 50*** has laid down that when the consequences would be a determinative factor, the judicial review would be necessary. Therefore, when the notification has been made by not following the mandate of law, the same is liable to be set aside.

8. Per contra, Shri H.B. Agrawal, learned senior counsel appearing for the Municipal Corporation would submit that the objection to the ratio of population cannot be applicable in the present set of facts inasmuch as within Bhilai Municipal Corporation, the Steel Plant of Steel Authority of India exists and in township of Plant, various sectors exist as Ward Nos.52 to 65. It is stated that all fall in the sector area of the Bhilai Steel Plant, therefore, the Plant Sectors being separate and distinct, they are managed by the Bhilai Steel Plant, they could not have been amalgamated, as for instance one sector cannot be joined with each other and it would be impractical. It is further submitted that the minimum limit of wards according to the statute is required to be 40 and maximum is 70. In this case, the maximum 70 wards have been made, therefore, as per the ratio of Population according to geographical set-up as exists in the Steel Plant and the adjoining parts of Bhilai, the formation and determination of ward has been validly created.

9. Mr. Amrito Das, Addl. Advocate General appearing for the State would submit that initially the Municipal Corporation, Rishali, was constituted and bifurcated from Municipal Corporation, Bhilai and thus new Corporation Rishali came into being. Thereafter, initially since there was 60 wards for Bhilai, all the councilors held a meeting on 28.01.2020 and decided to have 70 wards. Learned State counsel referred to section 10 of the Municipal Corporation Act, 1956 and would submit that sub-section (3) of Section 10 the Act gives power to the State Government that formation of wards would be made in such a way that as far as practicable the population of wards shall be the same through out the city and the area included in the ward is compact. He would submit that initially according to Rules of Rules 1984, the proposal was prepared by the Collector and after inviting the objections along-with the opinion not in a particular form are required to be given by the Collector. He would submit that when the Collector considered all the objections and forwarded the same to the State Government as per Rule 8 of 1994, then the State Government had a holistic approach and thereafter determined the extent of wards by notification dated 10.07.2020.

10. Learned State counsel further referred to the order passed by the division Bench of this Court on 05.12.2019 in WPC No. 3900/2019 and would submit that the Division Bench has held that in the like nature of cases when the determination of extent of area with respect to Gram Panchayat is made, it is only a legislative function, therefore, the principles of natural justice is not attracted. He further submits that in such judgment of division bench, the reference of decision in which the petitioner has relied upon in WPC No. 3855/2019 decided on 28.11.2019 finds place,

however, the analogy of learned single Bench has not been followed, therefore, the judgment of the Division Bench will prevail over the decision of the single Bench.

11. He would submit that the rules cannot over-ride the Act and therefore, in case of conflict, harmonious construction has to be made and the rule cannot be given precedent over section 10 of the Act. He placed his reliance in ***British Airways PLC Vs. Union of India (2002) 2 SCC 95*** and the judgment of this Court reported in ***AIR 2015 C.G. 7 (Supra)*** and would submit that in the judgment of this Court, the Constitution of the municipal corporation and determination of number and extent of wards has been held to be a legislative function. Further the reliance was placed in ***Sundarjas Kanyalal Bhatija Vs. Collector, Thane, Maharashtra (1989) 3 SCC 396*** and would submit that substantial compliance was made of the rules as no fixed format has been prescribed under Rule 8 of the Rules 1994 by the Collector who sends the proposal to the State Government for determination of the ward. With respect to the judgment relied on by the petitioners whereby the earlier judgment of this High Court was not followed. It is contended that that the decision of ***National Insurance Co.Ltd. V. Pranay Sethi (2017) 16 SCC 680*** would govern the field. It is stated that when on the same issue one judgment exists, the single Bench could not have differed from it and should have referred the case to the larger bench, otherwise it would be *per-incurium* Further the counsel relying on judgment passed in Writ Appeal No.194/2007 decided on 29.11.2018 would submit that the earlier judgment passed by this Court in *Gramvasi Gram Khari Gram Panchayat, Dhamni Vs. The Collector, Balodabazar, AIR 2015 CG 7*

was upheld by the Division bench, thereby the judgment of the single Bench wherein the petitioner placed heavy reliance is presided over by Division Bench of this Court, therefore, it would be of no avail to the petitioner.

12. Learned State counsel further placed his reliance on a judgment in WPC No.2272 of 2018 decided on 09.08.2018 and would submit that the substantial compliance having been made and without prejudice even if the non-compliance of the Rule is there, no penal consequences are shown for such non-observance of the Rules. Therefore, the rule would be directory in nature and not mandatory. It is further submitted that the State Government after receipt of the proposal has decided the objection and that being the legislative act under section 10 of the Act of 1956, no illegality can be attached for that the Rules of natural justice were not followed. It is further stated that even if the whole contents of preliminary notifications are evaluated, only the geography of 3 wards were changed which do not cover even 5% of the total number of wards. Therefore, the prejudice as has been projected by the petitioners is completely foreign especially considering their pleading which is contrary to the submission made. It is further submitted that the petitioners do not have any *locus-standi* to maintain as the petitioners are elected members of the different wards and objection, if any, was not with respect to the complaint and only on the basis of ground that opportunity of hearing to the petitioners was projected, the petitions would not lie. It is further stated that otherwise than pleading during the course of hearing, subsequent grounds were tried to be projected and on those grounds petitioners have not based their case, as such, the petitions are liable to be dismissed.

13. Heard learned counsel for the parties and perused the documents. The State Counsel was directed to place the original records to evaluate the decision making process during the course of adjudication. The same was produced. The issue relates to determination of the wards u/s 10 of the Act of 1956. For the sake of brevity, relevant part of section 10 of the Act of 1956 is reproduced here-in-below:

> **Section 10. Determination of number and extent of wards and conduct 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 :
>
> (2) .....
>
> (3) 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 through out the city and the area included in the ward is compact.

14. Further in exercise of the powers conferred by Section 433 of the Madhya Pradesh/Chhattisgarh Municipal Corporation Act, 1956 (No.23 of 1956) the State Government made the Rules named and styled as “The M.P/Chhattisgarh Municipal Corporation (Extent of wards) Rules, 1994. Relevant part of the Rules, 1994 i.e., Rule 3 to Rule 8 is reproduced hereinbelow :

> **Rule 3. Division of Municipal area into wards.-** (1) A Municipal Area shall be divided into wards in number equal to the number of wards as determined by the state Government under sub-section (1) of Section 10.

(2) The formation of wards, as far as practicable shall be made in such a way that the population of each of the wards be the same in all wards throughout the city and the area included in the wards be compact area."

(3) The area comprised within every ward shall be compact.

Rule 4. Extent of wards .-- The four/dimensional extent of every ward shall be determined as follows :-

(1) In the North ....

(2) In the East ....

(3) In the South ....

(4) In the West ....

Rule 5. Number and the name of wards.-- Every ward shall be given its number and such numbers shall be in serial order. Every ward shall be given a name also.

Rule 6. Preparation of proposal to determine the extent of wards,--(1) The proposals to determine the extent of wards shall be prepared by the Collector of the District in which the Municipal Corporation is situated and for this purpose, any information as called for by the Collector from the Commissioner for which the Commissioner shall be bound to make available such information within the specified time, otherwise, the Collector may prepare the proposals at the cost of Municipal Corporation concerned.

(2) The following information regarding extent of wards shall be included in the proposals as prepared by the Collector :-

(i) Four dimensional extent of the proposed wards.

(ii) Map showing all the four dimensions of every proposed ward in such a way that the boundaries of each ward may be visible separately.

(iii) Statement regarding population in which the total population of the Municipal Area as per the figures published of the last census, total population of Scheduled Castes and of Scheduled Tribes, the total number of wards as determined by the State Government for concerning Municipal area and on that basis the average population of each ward.

(iv) the Population of each of the proposed ward and the figures of population of Scheduled Castes and Scheduled Tribes therein.

Rule 7. Preliminary publication of determination of the extent of wards.--A notice regarding the proposal as prepared under Rule 6shall be published by the Collector in the local news papers in the form appended to these rules and the copies of the notice shall be pasted on the notice board of the office of the Collector and office of the Municipal Corporation and on the conspicuous places in the wards for the information of the general public.

Rule 8. Disposal of the objections/suggestions as received and final publications – Any citizen may submit his objection or suggestion in regard to the proposed limits of the wards within seven days from the date of publication of notice by the Collector which shall be forwarded to the State Government by the Collector along-with his opinion and the State Government after considering the opinion of the Collector, shall take the decision on the objections/suggestions as received and shall publish the Notification in the “Madhya Pradesh Gazette” in regard to extent of the wards as determined. A notification published in the “Madhya Pradesh Gazette” under these rules shall be conclusive evidence that the extent of the wards have finally been determined for the purpose of sub-section (1) of Section 10.

15. The dates and events in preparation of the wards are not in dispute. As per the new notification, 70 wards were determined

which is the maximum limit prescribed u/s 10 of the Act, 1956. A perusal of the pleading in WPC No.2075/2020 would show that petitioner Rinku Rajesh is Councilor of Ward No.21. At para 8.6, it is stated that for newly formed Baikunthdham Sundar Nagar Wards, objections were never notified whereas in the preliminary notification at Serial No.32 Baikunthdham Sundar Nagar exists and in the final notification, Serial No.32 Baikunthdham has found place. The pleading is silent as to how it has affected such determination by change of numbers. Further at para 8.15, the petitioners submitted that he has made objections, meaning thereby the objections were invited. As such, it shows that the objections were invited after preliminary notification of wards was made. In the same breath it is stated at Para 8.19 that the petitioners have awaited opportunity of hearing.

16. Likewise in WPC No.1839/2020, petitioner No.1 at Para 8.6 pleaded that he is an elected member of Ward No.26 and petitioner No.2 is also an elected Councilor from Ward No.8. In this writ petition, the formation of ward nos. 38 & 39 are subject of challenge. In the entire pleadings of writ petition, nothing exists that how they were affected with the formation of Wards No.38 & 39. The petitioners at para 8.19 have stated that the objections though were made but they were not heard. Therefore, the unanimous stand of the petitioners is that they made objections against the formation of the wards but they were not heard, thereby opportunity of hearing was required to be given to the objectors. The question falls for consideration is whether such opportunity was required to be given to petitioners in exercise of power u/s 10(3) of the Act, 1956 ? The obvious answer would be 'no'. This can be ascertained from the plain reading of section

10(3) of the Act 1956 which clearly speaks that formation of wards shall be made in such a way that the population of each of the wards shall so far as practicable be the same through out the city and sub-section(1) of Section 10 gives the power to the State Government to determine the extent of ward. Therefore, the exercise of power u/s 10 of the Act of 1956 would be a legislative act.

17. The main objection of the petitioners appears that certain wards which did not exist in the preliminary notification came up in the final notification where the new wards were found and the petitioners were not given the opportunity of hearing. As against this pleading, a close scrutiny would show that few wards were proposed but later on dropped and new 3 wards came up, which were comprised in total 70 wards.

18. Applying the analogy of the petitioners when it is tested in terms of the law laid down by the Division Bench of this Court in WPC No.3900 of 2019 decided on 05.12.2019, the submission of the petitioners is to be repelled. The Division Bench of this Court while hearing the case under the *Chhattisgarh Panchayat Raj Adhiniyam 1993* and the Rules of *Chhattisgarh Panchayat (Alteration of Limits, Disestablishment or Chance of Headquarters) Rules, 1994*, held that the formation of Gram Panchayat is an adjudicatory process under the Panchayat Raj Adhiniyamj and it is a legislative function. The Division Bench of this Court made a reference to the judgment passed by the Single Bench of this Court on 28.11.2019 in WPC No. 3855/2019 wherein the petitioners have placed reliance. Though the judgment of learned Single Bench of this Court Court is relied on by the petitioners, the Division Bench

did not follow the principles laid down by it. At Para 17, the Division Bench held as under :

> "17. On going through the above provisions, this Court does not find any step as in the case of 'adjudication' by affording any opportunity of hearing. What the provision (Section 125 of the Adhiniyam, 1993) says is only to have a preliminary notification published, with opportunity to file objections/ suggestions and to have the same finalized after considering the same. The provision does not say that after getting the objections/suggestions, an opportunity of hearing has to be given to all the persons, who made objection/suggestion, before an order/notification is issued by the Governor. The law stands declared by the Apex Court holding that it is only a 'legislative' function and therefore, the principles of natural justice are not attracted. As it stands so, the respondents are justified in saying that the idea and understanding of the petitioner to the contrary is not correct or sustainable. We answer the question against the petitioner and in favour of the respondent State in this regard."

19. The Supreme Court in ***Sundarjas Kanyalal Bhatija v. Collector, Thane, Maharashtra (supra)*** while hearing the constitution of municipalities has held the function of the government in establishing a corporation under the Act is neither executive nor administrative. Therefore, no judicial duty is laid down on the Government to discharge the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. It further held that the formation of the Corporation being the legislative act, the rules of natural justice of hearing cannot be pressed upon. Paras 27 & 28 are relevant here and quoted below:

> "27. Reverting the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support establishing a Corporation under theAct is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. In the present case, the government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even *"its juster will for theirs".*
>
> 28. Equally, the rule issued by the High Court to hear the parties is untenable. The government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the government to hear the parties who are not entitled to be heard under law".

20. Now coming back to the Rules of 1994, Rule 6 provides for preparation of proposal to determine the extent of wards. It has prescribed that to determine the extent of ward, the Collector of the District in which the Municipal Corporation is constituted for determination of extent of ward will call for information from the Commissioner and every ward shall be given a number. Thereafter

the information regarding extent of wards shall be included in the proposal describing the four dimensional map, population etc. Thereafter the publication shall be made in the local newspapers in prescribed format as per Rule 7 and the copies of notice shall be affixed on the board in the office premises of the Collector and the Office of the Municipal Corporation for information of the general public. The procedure for disposal of the objections/ suggestions as received and final publication is provided in Rule 8. it speaks that any citizen may object or suggest in regard to the proposed limits of wards within 7 days from the date of publication of notice. Thereafter the Collector within prescribed time forwards the same to the State Government along-with his opinion and the State Government after consideration of the opinion shall take decision on the objections and shall publish the notification in the gazette in regard to extent of the wards and that would be the conclusive evidence.

21. Here in the instant case, a perusal of the records which was called for would show that after receipt of the objections and suggestions, the opinion was given by the Collector along-with documents, map etc. thereafter it was forwarded to the State Government. The note sheet of record on inspection would show that the State Govt. considered the objection on the basis of the opinion of the Collector and thereafter decided to form 70 wards for Bhilai Municipal Corporation. In view of such documents and on perusal of file, it would show that the State has exercised its power under sub-section (3) of Section 10 of the Act, 1956. A perusal of sub-section (3) of Section 10 of the Act clearly shows that the formation of the wards would be made by the State and the population of each ward so far as practicable would be the

same throughout the city. Therefore, the exercise of the power of the State was made under sub-section (1) of Section 10 of the Act.

22. The submission of the petitioners is that the opinion of the Collector does not have any locus to determine the ward. As against this, a perusal of the file would show that determination of the ward was made by the State Government and not by the Collector. Therefore, the submission of the petitioners that the collector has by way of opinion has decided the extent of ward is completely misconceived and without any substance to support. The supreme Court in a case law laid down in ***State of Punjab v. Tehal Singh (2002) 2 SCC Page 7*** while adjudicating the issue of Panchayat Raj Adhiniyam about declaration of the territorial area of Gram Sabha and the constitution of Gram Sabha has held that the provisions of sections 3 & 4 of the Act which provide for declaring territorial area of a Gram Sabha and establishing a Gram Sabha for that area do not concern with the interest of an individual citizen or a particular resident of that area. It was also held that declaration was made under the Act about the constitution of Gram Sabha.

23. Here in the instant case, the extent of ward to the Municipal Corporation is not in exercise of judicial or quasi judicial function where the very nature of function involves the principle of natural justice or in case of any administrative function affecting the rights of an individual. It was held in said case (supra) that where the Legislature has provided the opportunity of hearing before excluding an area from a Gram Sabha and including it in another local authority or the body, an opportunity is *sine qua non* and failure to give such opportunity of hearing to the residents would

render the declaration invalid. But where the legislature in its wisdom has not chosen to provide for any opportunity of hearing or observance of principles of natural justice before issue of a declaration either under section 3 or Section 4 of the Act, the residents of the area cannot insist for giving an opportunity of hearing before the area where they are residing is included in another Gram Sabha or local authority.

24. A reading of section 10 of the Municipal Corporation Act and the Rules of 1994 would show that the same analogy as laid down in ***State of Punjab v. Tehal Singh (2002) 2 SCC Page 7*** would be applicable to the present case. Section 10 of the Act of 1956 and the Rules of 1994 do not lay down any opportunity of hearing to the local residents. Therefore, the declaration of ward u/s 10 of the Act, 1956 would be a legislative function and opportunity of hearing cannot be said to be implicit in it. This Court in a case law reported in ***AIR 2015 C.G. 7 (supra)*** while adjudicating the issue under the *Chhattisgarh Panchayat (Alteration of Limits, Disestablishment or Change of Headquarters) Rules, 1994* held that the constituency whether it is Parliamentary constituency/Legislative Assembly constituency or the Municipal Ward/Gram Panchayat cannot be constituted with a mathematical precision having number of identical residents/voters. It has further held that an alteration or amalgamation of villages or Gram Panchayats being a legislative function wherein the right of an individual is not affected, the mandate of Rules 1994 would be directory in nature. At paras 16, 17 & 31, the Court held thus:

> "16. The State Government having issued the communication to all the Collectors directing them to take into consideration the matters like population,

convenience of the villagers etc., the residents of the concerned area are definitely concerned with the proposed changes, therefore, publication of proposal bringing into notice the proposed changes should be made aware to the villagers. Thus publication of proposal as required under the proviso to Section 125(1) of the Adhiniyam is mandatory. However, Rule 3 of the Rules, 1994 requires publication in the Gazette as also by affixure of such notification on the notice board of the Gram Panchayat and at one or two conspicuous places in the area affected by the proposal. Thus, on the one hand section 125(1) speaks only about publication and does not mandate publication only in Official Gazette. Rule 3 of the Rules, 1994 permits three different modes of publication which shows that while prescribing the modes of publication the legislature was conscious of the fact that notifying the affected villagers by affixture in the notice board of the Gram Panchayat may also be effective than by publishing it in the Official Gazette only.

17. Considering all the relevant factors including the statutory scheme and the purpose and the object of the statute and for the reason that the exercise to notify a village as Gram Panchayat, its alteration or amalgamation being legislative function wherein rights of any individual is not affected, this Court is of the considered opinion that the provisions of Rule 3 of the Rules, 1994 is directory in nature.

31. Thus, it is now settled that a constituency whether it be Parliamentary Constituency/Assembly Constituency/Municipal Ward or a Gram Panchayat cannot be constituted with mathematical precision having identical number of residents/voters. Similarly, there is no statutory prescription that when a particular Gram Panchayat consists of more than one villages, the headquarter has to be established in the village having the largest population. As would be discernible from the

guidelines issued by the State Government, several factors are to be considered for establishment of a village i.e., Gram Panchayat and thereafter declaration of a particular village as its headquarter, therefore, the argument to the contrary has no substance and noticed to be rejected. In any case, this Court cannot sit in appeal against the impugned notification because the decision is general in character and not directed to a particular resident of that area".

25. The petitioner has heavily relied on a judgment passed by the Single Bench of this Court in WPC No.3855 of 2019 *(Hemlal Verma Vs. State of C.G)* decided on 28.11.2019 (Supra) wherein section 125 of the *Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993* was subject of issue. For the sake of brevity and comparison to section 125 of the Act 1993, Paras 11 & 12 of the said decision are reproduced here-in-below :

> 11. ..... Section 125 of the Act, 1993 deals with the change of headquarters of a Gram Panchayat, division, amalgamation and alteration of Panchayat area. For ready reference, Section 125 of the Act, 1995 is being reproduced hereinunder :
>
> > 125. Change of headquarters of Gram Panchayat division, amalgamation and alteration of Panchayat area. - (1) The Governor or the authority authorized by him may by order change the headquarters of a Gram Panchayat or alter, the limits of a Gram Panchayat area by including within it any local area in the vicinity thereof or by excluding therefrom any local area comprised therein or amalgamate two or more Gram Panchayat areas and from one Gram Panchayat area in their place or split up a Gram Panchayat area and from two or more Gram Panchayat areas in its place :
> >
> > Provided that no order under this section shall be made unless a proposal in this behalf is published for inviting suggestions and objections in such manner as may be prescribed and objections are considered.
>
> 12. Likewise, the Government has also framed the Rules called as *Chhattisgarth Panchayat (Alteration of Limits, Disestablishment or Change of Head Quarters) Rules, 1994*. Rule 3 of Rules, 1994 deals with the manner as to how the

change of headquarters of Gram Panchayat, deviation, amalgamation or alteration of Gram Panchayat. The relevant portion of Rule 3 read as under:

"3. Change of headquarters of Gram Panchayat, division, amalgamation or alteration of Gram Panchayat area -

(1) When the Governor or the authority authorized by him decides under sub-section (1) of Section 125;

(I) to change the headquarters of Grampanchayat; or

(ii) to alter the limits of a Gram Panchayat area by including within it any local area in the vicinity thereof or by excluding thereom any local area comprised therein; or

(iii) to amalgamate two or more Gram Panchayat area and from one Gram Panchayat area in their place; or

(iv) to split up a Gram Panchayat area and form two or more Gram Panchayat areas in its place, he/it shall declare his/its intention in the form of a proposal to do so by publishing a notification in the "Madhya Pradesh Gazette" and by affixing a copy of such notification on the notice board of the Gram Panchayat's concerned and on one or two conspicuous places in the area affected by such intention.

(2) Every such notification shall specify -

(I) in case of clause (I) of sub-rule (1), the existing headquarters of a Gram Panchayat and proposed headquarters;

(ii) in case of clause (ii) of sub-rule(1), the Khasra numbers of the area proposed to be included in a Gram Panchayat or proposed to be excluded therefrom;

(iii) In case of Clause (iii) of sub-rule(1), the Gram Panchayats proposed to be amalgamated; and

(iv) in case of clause (iv) of sub-rule (1), the particulars of each of the area proposed to be split up.

(3) Every such notification shall invite suggestion and objections by the date to be mentioned therein and any objection or suggestion received from any person with respect to the proposal before the expiry of the date specified above shall be considered by the Governor or the authority authorized by him, as the case may be.

By notification dated 23.02.1999, the Governor of Madhya Pradesh has authorized the Collectors of the concerned revenue districts, to function as the Authority for the purposes of Section 125 of the Act."

26. Whereas section 10 of the Municipal Corporation Act, 1956 which is reproduced here-in-above does not contain a proviso clause as that of Section 125 of the Act 1993. It gives an absolute power to

the State and the Rules of M.P (C.G). Municipal Corporation (Extent of Wards) Rules 1994 prescribes that after the proposal is made and suggestions are received, the Collector would forward it along-with his opinion to the State Government under Rule 8. therefore, it is the State Government which is the ultimate authority. Section 10 of the Act of 1956 does not speak about any opportunity of hearing as contained in Section 125. Hence in the event of any conflict, the harmonious construction of the Municipal Corporation Act, 1956 and the Rules of 1994 have to be adopted.

27. In ***British Airways PLC Versus Union of India (2002) 2 SCC Page 95***, the Court has held that while interpreting the statue the Court should try to sustain and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. Para 8 is relevant here and quoted below:

> 8. While interpreting a statute the court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for

defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation.

28. Further the Supreme Court in ***Anwar Hasan Khan Vs. Mohd. Shafi and others (2001) 8 SCC 540*** held the statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provisions to make the provisions consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a “dead letter” is not harmonious construction. Para 8 is relevant and quoted below:

> 8. It is settled that for interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The

statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a “dead letter” is not a harmonious construction. With respect to law relating to interpretation of statutes the Court in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama (1990) 1 SCC 277 held: (SCC P.284, Para 16) :

> “Paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. Words are certainly not crystals, transparent and unchanged' as Mr. Justice Holmes has wisely and properly warned. (Towne v. Eisner 245 US 418, 425 (1918) Learned Hand J, was equally emphatic when he said : “Statutes should be construed, not as theorems of Euclid, but with some imagination of the purpose which lie behind them.' (Lenigh Valley Coal Co. v. Yensavage 218 FR 547, 553.

29. Therefore, reading of section 10 of the Act 1956 would show that it gives absolute legislative power to the State to determine the extent of wards. The petitioners though had claimed that the names and numbers of wards have been changed but close reading would show that Ward No.17 Vaishal Nagar which was at Serial No.17 in the preliminary notification came up as serial No.20 in the final notification. Likewise, Rajendra Nagar which was Ward No.18 in the preliminary notification, came out as Ward No.20 in the final notification and Radhikanagar which was shown as ward No.6 in Preliminary notification came out as Rajendra Nagar in the final notification. Therefore, the submission of the petitioners cannot be considered for the reason that firstly the Act does not

provide for opportunity of hearing and secondly that the Collector is only empowered to forward the number of wards along-with suggestions and it is the State Government which will decide. There may be instances that two objections or suggestions may contradict with each other that one may support and another may oppose. Therefore, the analogy of the petitioners that for new wards no preliminary notification was made, would render the entire process unending and it is not the object of the Rules or the Act as maximum number of wards has not exceeded 70.

30. Further more, the Act does not contemplate that even if the rules are not followed in its verbatim then what would be the consequence. The judgment rendered by this Court in WPC No.227/2018 (Ustav Dey vs. Sushil Kumar Bhadraja) decided on 09.08.2018 has laid down that when consequences of non-compliance are not provided and certain rules are not followed, it would be directory in nature. This court in paras 11, 12 & 13 held thus:

> **"11.** ..... The Supreme Court in Balwant Singh Vs. Anand Kumar Sharma (2003) 3 SCC 433 has also emphasized the effect of law that when no consequence is provided, it would be directory in nature. The relevant extract is reproduced hereunder:-
>
> 7. xxx xxx xxx
>
> "As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive.
>
> 8. It is in the aforementioned backdrop the decisions of this Court relied upon by Mr. Upadhyay are required to be considered.

12. The Supreme Court in State of Uttar Pradesh Vs. Babu Ram Upadhyay (AIR 1961 SC 751) has held that it is well established that an enactment in form mandatory might in substance be directory. It was further held that it is the duty of the Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. The reference is made to Maxwell on "The interpretation of Statutes", 10th Edition, at Page 381 and the Court ruled the following:

"On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

This passage was accepted by the judicial Committee of the Privy Council in the case of Montreal Street Rly. Com. v. Normandin 1917 AC 170: (AIR 1917 PC l42) and by this Court in 1958 SCR 533: ((S) AIR 1957 SC 912)

13. The Supreme Court in Mohan Singh and others Versus International Airport Authority of India (1997) 9 SCC 132 has made a reference to the book of mandate on the construction of statute and has fortified the principle the question as to whether a statute is mandatory or director depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these arte to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way of the other. The Supreme Court in this case further laid down that where

the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.

31. Applying the aforesaid principles even if the submission of the petitioners are considered and further the Act and Rules are read together, it would show that only one result comes out to hold that the Rules of 1994 are directory in nature as no consequences are provided. Entire reading of original file of the State which culminated into deciding extent of wards would show that substantial major compliance of the Rules of 1994 were made and the Rules of 1994 being directory, exercise of legislative power u/s 10(1)&(3) of the Act of 1956 will hold the sway.

32. Another submission which is made by the parties that despite the judgment rendered by this court in *Gramvasi Gram Khari Gram Panchayat, Dhamni (Supra)* wherein the the provisions of Rule 3 of the Rules, 1994 framed under C.G. Panchayat Raj Swaraj Adhiniyam were held to be directory in nature, this Court in another case bearing WPC No.3855 of 2019 (Hemlal Verma Vs. State of C.G) has differed with the view taken by the single Bench. The submission has been made by the State that the case law reported in ***(2017) 16 SCC 680 – National Insurance Company Ltd v. Pranay Sethi*** would govern the filed wherein the Supreme Court has held that a decision or judgment can be *per-incuriam* any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be a *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. The Supreme Court further held that if the reconciliation is not possible when such difference of opinion arises, the Bench hearing the cases would refer the case to a full

Bench.

33. In the opinion of this Court, the issue would not fall consideration in the instant petitions for the reason that section 125 of the Panchayat Raj Adhiniyam 1993 and Section 10 of the Municipal Corporation Act, 1956 when are compared, these are operations on the different subject as Section 10 of the Act of 1956 is not in conflict to the decision rendered by the Single Bench. Therefore, the submission of parties could be considered in another round of litigation and this Court does not consider it proper to go into that issue at this moment as the judgment passed by the learned single Judge in WPC No.3855/2019 would not be applicable. The petitioners have further placed reliance on a decision of the Supreme Court reported in ***1996 SCC OnLine, Delhi 746 (Chand Kumar Versus Union of India)*** to show that in case of delimitation where it falls foul of the statutory power under which it purported to be made, the judicial review under Article 226 of the Constitution of India would be permissible. Here in the instant case, it would show that the Collector after receiving the objections from different persons forwarded it to the State Government and the note sheet and the file would show that the State Government after due consideration exercised its legislative power and all the objections were turned down. Therefore, this Court will not sit as an appellate authority as the alleged arbitrariness, whim or fancy do not come to fore to make the judgment applicable. Further the reliance is sought to be placed by the petitioners in ***Ashish Singh Bhadoriya Vs. State of M.P. 2015 1 MPLJ 222***. The said judgment would show that no publication was at all made as required under Rule 6 and methodology of the Rule for preparation of proposal to determine

the extent of wards was not followed. However, in this case, after preliminary notification of extent of wards was made, the objections were invited by publication in the newspapers in compliance with Rule 7 and petitioners too made objections. Therefore, the said judgment would also not be applicable to the petitioners in the facts of the present case.

34. After careful perusal of the pleading and the records, this Court is of the opinion that the petitioners have failed to make out a case that there was foul exercise of the power by the State in determining the extent of wards which smacks of arbitrariness, whim or fancy, instead the determination of extent of wards was made by the State Government in exercise of legislative power conferred under section 10 of the Act 1956 and the decision making process too was without any prejudice, whim or fancy. Therefore, this Court will not sit as an appellate authority over the legislative function exercised by the State. Consequently, the petitions sans merit and are hereby dismissed. No order as to cost.

Sd/-

(GOUTAM BHADURI)
JUDGE

Rao