

**HIGH COURT of CHHATTISGARH, BILASPUR**

**WPIL No. 72 of 2019**

1. Ravi Mehar, S/o Shri Dwarika Prasad, aged about 39 Years, R/o Ward No. 09 Bataliyan Road, Naya Aawaspara, Nagar Panchayat Sakri Bilaspur, Police Station Sakri, Tahsil Takhatpur and District Bilaspur Chhattisgarh
2. Daras Ram Panik, S/o Shri Khor Bahara aged about 54 Years R/o Ward No. 05 Dal Dalihaapara Sikri Bilaspur Nagar Panchayat Sakri Bilaspur, Police Station Sakri, Tahsil Takhatpur and District Bilaspur Chhattisgarh
3. Manish Kumar Tiwari S/o Shri Chandra Kumar Tiwari aged about 31 Years R/o Ward No. 15, Nature City Sakri, Nagar Panchayat Sakri Bilaspur, Police Station Sakri, Tahsil Takhatpur and District Bilaspur Chhattisgarh
4. Santosh Suryavanshi S/o Shri Baldauprasad aged about 39 Years R/o Suryavanshi Mohalla, Sakri Road Ward No 12, Nagar Panchayat Sakri Bilaspur, Police Station Sakri, Tahsil Takhatpur and District Bilaspur Chhattisgarh
5. Anamika Dubey D/o Shri Dharamendra Dubey aged about 20 Years R/o Hafa Road Shanti Nagar Sakri, Ward No. 06 Nagar Panchayat Sakri Bilaspur, Police Station Sakri, Tahsil Takhatpur and District Bilaspur Chhattisgarh
6. Anil Koushik S/o Shri Latel Koushik aged about 48 Years R/o House No. 55 Ward No. 07 M.K. Electronics Main Road Sakri Nagar Panchayat Sakri Bilaspur, Police Station Sakri, Tahsil Takhatpur and District Bilaspur Chhattisgarh
7. Suresh Sonkar S/o Shri Ramlal Sonkar aged about 38 Years R/o House No. 53, Village Hafa Road, Ward No. 06 Nagar Panchayat Sakri Bilaspur, Police Station Sakri, Tahsil Takhatpur and District Bilaspur Chhattisgarh
8. Moti Lal Makhija S/o Shri Rewa Chand Makhija aged about 60 Years R/o House No. 633 Ward No. 06 Bataliyan Chauk, Nagar Panchayat Sakri Bilaspur, Police Station Sakri, Tahsil Takhatpur and District Bilaspur Chhattisgarh

**---- Petitioners**

**Versus**

1. State of Chhattisgarh Through The Chief Secretary General Administrative Department, Mantralaya Mahanadi Bhawan Nawa Raipur Atal Nagar District Raipur Chhattisgarh
2. The Secretary Ministry of Urban Administration and Development Department Mantralaya Mahanadi Bhawan Nawa Raipur, Atal Nagar District Raipur Chhattisgarh
3. The Collector Bilaspur Collectorate Bilapur, Tahsil and District Bilaspur Chhattisgarh
4. Municipal Corporation Bilaspur Through Commissioner of The Municipal Corporation Bilaspur, Vikas Bhawan Neharu Chouk Bilaspur, Tahsil and Dist. Bilaspur Chhattisgarh
5. Nagar Panchayat Sakri Bilaspur Through Chief Municipal officer, Nagar Panchayat Sakri Bilaspur Tahsil Takhatpur, Dist Bilaspur Chhattisgarh.

**-----Respondents**

---

|                           |                                                                                                  |
|---------------------------|--------------------------------------------------------------------------------------------------|
| For Petitioners           | : Shri Vijay K Deshmukh, Advocate                                                                |
| For Respondents/State     | : Shri SC Verma, Advocate General<br>with Shri Chandresh Shrivastava,<br>Deputy Advocate General |
| For Municipal Corporation | : Shri AS Kachhawaha, Advocate                                                                   |

---

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &  
Hon'ble Shri Justice Parth Prateem Sahu  
Order on Board**

**Per PR Ramachandra Menon,CJ**

**02.01.2020**

1. This petition, styled as a 'Public Interest Litigation', virtually questions the correctness of the process and proceeding pursued by the respondents as to the delimitation of the wards, adding some wards as part of the Bilaspur Municipal Corporation in connection with the election to the local authorities.
2. Heard Shri Vijay K Deshmukh, learned counsel for the petitioners, Shri Chandresh Shrivastava, learned Deputy Advocate General for the State, besides Shri AS Kachhawaha, learned standing counsel for the Municipal Corporation.
3. The sum and substance of the case projected before this Court is that, Annexure P2 notification was issued on 31.07.2019 with regard to the proposed steps for delimitation of various wards inviting objections, granting 15 days in this regard.
4. It is stated that the petitioners had preferred objections by way of Annexures P5 and P7, but it was without considering the same or giving

an opportunity of hearing, that the matter was finalised; ultimately leading to Annexure P3 final notification dated 20.08.2019, which put to challenge.

5. The main ground of challenge, as mentioned already, is that the proceedings have been finalised without considering the objections preferred, virtually defeating the very purpose of issuing the notification and inviting the objections and hence, contrary to the mandate of Section 405 (1) of the Chhattisgarh Municipal Corporation Act, 1956 (for short, '1956 Act').

6. It is also pointed out that the authorities concerned have not mentioned anything with regard to the objections preferred, why the same cannot be considered. No proceedings have been issued in this regard and the petitioners have lost the opportunity to substantiate the facts and figures, as there was no personal hearing.

7. The learned counsel further submits that exactly similar issue was considered by a Division Bench of the Madhya Pradesh High Court and the final notification issued without properly considering the objections as aforesaid was interdicted, giving direction to proceed after issuing fresh notification, strictly in compliance of the mandate of the statute (in Writ Petition- 3538 of 2014- *Anil Trivedi Vs The State of Madhya Pradesh*).

8. The learned counsel representing the State submits that the idea of understanding of the petitioners is wrong and misconceived. The objections preferred by the petitioners and such other persons were considered by the Competent Authority. It was only after that, the proceedings were finalised as per Annexure P3 notification. As a matter of

fact, the District Collector had no authority to decide the merit in the objections and his duty was to forward all the objections received, along with comments, to the Competent Authority, ie the Governor, who alone was having the power in terms of Section 405 (1) of the 1956 Act. This process has been completed and given effect to, before finalising the proceedings as per Annexure P4. It is also pointed out that the petitioners do not have any *locus standi* to file the petition and that, since the election notification has already been issued, no interference by this Court is possible.

9. With regard to the grievance projected by the petitioners as to their right to submit objections, the statute very much contemplates issuance of preliminary notification with liberty to submit objections only after considering the objections, if any, that the matter can be finalised by the competent authority; with regard to which there cannot be any dispute. It is the case of the respondents as pointed out in the reply and in particular, paragraph 5, that all the objections received pursuant to Annexure P2 Notification were forwarded by the District Collector to the Governor, who issued the final notification.

10. Paragraph 5 of the said reply is extracted below :

“5. Mere perusal of the aforesaid section would make it evident that the inclusion of area into municipal corporation does not gives right to the person resident therein to object and get it decided after which only notification be published. As per the section the power is vested in the Governor to take such objection into consideration while including or excluding any area in Corporation. In the instant case vide notification dated 31.07.2019 the intention has been

published and suggestions/objections in writing have been called to be submitted before the Collector. After due consideration of the suggestions and objections received under section 405 the Governor had issued the final notification dated 20.08.2019 in accordance with law in which there is no illegality. It is noteworthy to mention that the suggestions and objections received in the office of Collector within the prescribed period have been forwarded to the Governor and considering the same the decision has been taken to include 18 Municipal Council/Nagar Panchayat/Gram Panchayat within the limits of Bilaspur Municipal Corporation.”

11. It is pointed out from the part of the State that the inclusion of a particular area into or as part of a local authority is purely a 'legislative function' and there is no need or necessity to give any personal hearing in this regard; insofar as it is not an administrative decision which affects the rights of the persons concerned to grant an opportunity of hearing. It is pointed out that, as many as 945 objections were received in connection with the notification issued. The statutory requirement, insofar as Section 405(1) of the 1956 Act is concerned, does not envisage sending of any reply individually to such representations/objections, as pointed out in paragraph 10 & 12 of the reply statement; which are to the following effect:

“10. Reply to Para3(A): In reply to the contents of this para it is respectfully submitted that prior to the issuance of notification dated 20.08.2019 the objections filed by the petitioners and other citizens have been duly considered by the concerned authorities as per the mandate of law. As per Section 405 the suggestions and objections received have been duly considered and the final notification has been published however the law nowhere provides for the opportunity of hearing to be given to the objectors or directs for communication of the decision over

the said objection and it merely mandates for consideration for the same. Neither the petitioner has pleaded nor have disclosed regarding the problems being faced by the petitioners being resident of Nagar Panchayat Sakri with respect to the development schemes nor even the Nagar Panchayat Sakri had preferred the present petition showing any such grievance and as such the present petition is not maintainable at the behest of the petitioners.

11. xxxxx

12. Reply to Para 3(C): In reply to the contents of this para it is submitted that nowhere the petitioners had disclosed their identity or status and merely by saying that they elected president/former elected ward members/Social workers and all political parties members does not fulfil the requirement of the pleadings of the contents of said para. It is further submitted that in exercise of powers under section 405 it is no requirement that the representations/objections be individually replied and if the same would have been the mandate of law at no point of time any government or authority could have exercised the powers therein, for the reason that whenever any such development or welfare activity is being taken up there are several persons who attempt to interfere the same by making false and frivolous objections as in the instant case itself which is evident for the pleadings of the petitioner that more than 945 persons have filed their objections.”

12. Reference is made to paragraph 15 of the reply, in response to the averments raised by the petitioners in paragraphs 8.4 and 8.5 of the writ petition. It will be worthwhile to extract the said paragraphs as well, to have a complete understanding of the factual position, as given below:

“Para 8.4 and 8.5: It is respectfully submitted that nowhere the power is vested with the Collector to decide the objection of the petitioners under the provisions of Section 405. The Collector has to receive the suggestions/objections and with his comments has to forward the same to Governor, who in turn will take into consideration the said objections while taking final decision to include or exclude any area within the limits of the city. In the instant case the entire said procedure has been complied with where the respondent Collector had duly scrutinized the suggestions/objections and forwarded the same with his comments to the Governor from where the final notification has been issued after due consideration, which is in accordance with law.”

The learned counsel representing the State submits that the election is over and as such, no interference is possible; more so in view of the view already taken by this Court as per judgment dated 02.12.2019 passed in WPC-3540 of 2019 and connected cases.

13. With regard to the case law cited by the learned counsel for the Petitioner as rendered by the Division Bench of the Madhya Pradesh High Court in Writ Petition – 3538 of 2014, it was of course, a case involving the application of Section 405 of the M.P. Municipal Corporation Act, 1956, which is the same or similar provision as applicable to State of Chhattisgarh as well. There, the notification issued by the authority concerned was put to challenge earlier and the same was interdicted giving appropriate directions to have the objections considered. It was accordingly, that the matter was considered and a fresh notification was issued, which was put to challenge again. The main contention raised by

the petitioner in the said case was that, as per the mandate of the statute, the objections had to be considered by the Governor himself and not by anybody else. The stand of the State was that, it was not necessary to have the objections considered by the Governor himself and that the consideration by the Collector / Principal Secretary of the Department concerned and approval given by the Minister was sufficient compliance, for the purpose of Section 405 sub-section (2) and (3) of the 1956 Act. This factual dispute is discernible from paragraphs 4 and 10. Another contention raised from the part of the State was with regard to the locus of the petitioners to challenge the proceedings and this has been taken note of in paragraph 5 and elsewhere. Yet another contention was with regard to the maintainability of the petition before the High Court, when the Election Notification was already issued, with reference to Article 243-ZG of the Constitution of India.

14. The learned Judges, after taking note of the rival contentions and also the relevant provisions of law and the binding precedents, held that the writ petitioner was having locus to file the proceedings and further that Article 243-ZG will not be a bar insofar as it was not an 'election dispute', which will come within the purview of Section 441 and 441-B of the 1956 Act. The Bench also placed reliance on the various rulings rendered by the Supreme Court on the point and explained how the stand put forth by the State was not acceptable. The crucial point with regard to consideration of the objections by the competent authority, (which admittedly was not done by the Governor as conceded by the State, but asserting that consideration of the objections by the District Collector /

Principal Secretary of the Department concerned was enough, since it was approved by the concerned Minister and hence there was sufficient compliance with regard to the statutory mandate), was found as not acceptable to meet the statutory requirement and it was in the said circumstance, that the impugned Notification was set aside with liberty to proceed with further steps by issuing a fresh Notification after considering the objections by the competent authority as envisaged by the statute.

15. In the instant case, the position is entirely different; where the Petitioners' contention is that the objections have not been considered by the District Collector; whereas the stand of the State is that the District Collector had no power or authority to have considered the objections and that the competent authority to consider the objections was only the Governor. It was accordingly that all the objections received were forwarded by the Collector to the Governor, along with the comments and as pointed out in the reply, it was considered (as many as 945 objections) and finalized, leading to issuance of Annexure-P3. The proceedings so finalized by passing Annexure P3 is hence stated as not assailable, as the statutory requirement has been complied with. We find considerable force in the said submission. The learned counsel for the State asserts that, but for the vague nature of pleadings with reference to non-consideration of the objections preferred by the petitioners, no specific pleading is raised anywhere in the writ petition as to the prejudice, if any, resulted or in what manner it has affected the 'public interest'; more so when the present litigation is styled as a Public Interest Litigation.

16. After hearing both the sides, we are of the view that no sufficient material has been brought up before this Court to draw an inference that there is infringement to the statutory prescriptions in any manner or that the petitioners / all the objectors are having a right of opportunity for being heard in respect of all the objections received as per Section 405 (2) and (3) of the 1956 Act. In the said circumstance, no interference is possible. The writ petition fails. It is dismissed accordingly.

Sd/-  
**(PR Ramachandra Menon)**  
Chief Justice

Sd/-  
**(Parth Prateem Sahu)**  
Judge