

(2008) 05 OHC CK 0022
In the Orissa High Court

Dharmesh Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 106 CLT 8 : (2008) 2 OLR 1

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Judgement

B.P. Das, J.—The Petitioner, who is an elected Corporator of Ward No. II of Cuttack Municipal Corporation, has in this Writ Petition under Articles 226 and 227 of the Constitution of India challenged the final notification dated 18.2.2008 issued by the State Government in Housing and Urban Development Department, vide Annexure-11, in purported exercise of the power under Sub-section (1) of Section 60 of the Orissa Municipal Corporation Act, 2003 (shortly called "the Act") read with Sub-rule (5) of Rule 3 of the Orissa Municipal Corporation (Division of City into Wards, Reservation of Seats and Conduct of Election) Rules, 2003 (hereinafter called "the Rules") by which the State Govt. has divided the area of the Cuttack Municipal Corporation (hereinafter "CMC") into 54 wards and made reservation of seats u/s 7 of the Act.

2. The Petitioner has challenged the aforesaid final notification in Annexure-11 on the ground that (i) the notification has not been made in accordance with the provisions of Section 60 of the Act because there was no equitable distribution of population among various wards and compactness of the area forming each ward had not been maintained/taken into consideration in dividing the area of the Corporation into wards; (ii) the objections made by the Petitioner as well as certain citizens of the City to the proposal for division and formation of wards and reservation of seats as per the draft notification in Annexure-4 had not been taken into consideration; (iii) reservation of seats in 11 wards earmarked for women belonging to unreserved category has been done de hors Rule 4(3) of the

Rules, more particularly the reservation made in respect of ward Nos. III, IV, V, VI and XXV; and (iv) the method of rotation had not been followed in respect of the aforesaid 11 wards.

3. The case of the Petitioner in a nutshell is that the Director of Municipal Administration and ex officio Addl. Secretary to the Govt. in H & UD Department, O.P. No. 2 issued a letter dated 27.10.2007 to the Municipal Commissioner of CMC, O.P. No. 3 (Annexure-1) stating that since the State Election Commission desired to complete the General Election, 2008 to the CMC and required the State Govt. to complete the process of delimitation of wards and reservation of seats before 31.1.2008, it was necessary to divide the CMC into wards keeping in view equitable distribution of population as per 2001 Census among various wards and to maintain compactness of areas for framing of each ward as per the provisions laid down in Section 60 of the Act and reservation of seats for S.C., S.T, BCC and women etc. in accordance with the provisions of Section 7 of the Act read with Rule 4 of the Rules. O.P. No. 2 in the said letter indicated the date of submission of proposal for division of wards, date of issue of draft notification inviting objections and suggestions on the proposed delimitation of wards and reservation of seats, last date of receipt of objection/suggestion by the Govt. and the date of publication of final notification relating to delimitation of wards and reservation of seats by the Govt. and requested the Municipal Commissioner to take steps to furnish the resolution of the CMC and the sketch map indicating the division of wards and the population figures in the prescribed pro forma in Forms I and II. In terms of the aforesaid letter, the Council of the CMC by its resolution dated 27.11.2007 decided to increase the number of wards from 48 to 61, vide Annexure 2. After the aforesaid resolution was adopted, the Municipal Commissioner by letter dated 29.11.2007, Annexure-3, submitted the required information in the prescribed Form-I and Form-II along with sketch map of the proposed wards stating that the division of wards was made basing upon the population of 2001 census. It is alleged that though the Council of the CMC decided to increase the wards from 48 to 61, the Municipal Commissioner in the aforesaid letter sent the proposal to divide the city into 54 wards stating the same to have been done basing upon the population of 2001 census and keeping in view the compactness of the area.

4. According to the Petitioner, though Forms I and II were sent along with the letter in Annexure-3, the resolution of the Council was not sent to the Govt. and no information regarding reservation of any of the wards to which the city was divided was furnished in Col.15 of Form II and the said column was kept blank. There after O.P. No. 2 published the draft notification dated 12.12.2007, Annexure-4, inviting objections to the proposed division and formation of wards as well as reservation of seats. This draft notification was issued in exercise of the powers conferred by Section 60 of the Act read with Rule 3 of the Rules. In the draft notification, Annexure-4, it was indicated that the CMC would be divided into 54 wards as Specified in Statement-I and reservation thereof had been proposed in Statement-II. When the matter stood thus, the Municipal

Commissioner, O.P. No. 3 issued a letter dated 14.12.2007 to O.P. 2, vide Annexure-5, stating therein that the CMC in its meeting held on 27.11.2007 resolved to divide the existing 48 wards into 61 wards and to submit the resolution to the Govt., but prior to release of the said resolution, a proposal to divide the existing wards into 54 wards basing on the population of Enumeration Block of 2001 census and keeping in view the compactness of the area was submitted along with pro forma-I and II and map vide letter dated 29.11.2007 (Annexure-3). In aforesaid letter in Annexure-5 the Municipal Commissioner also stated that the revised proposal dividing the existing 48 wards into 61 wards was submitted in pro forma-I and II along with the map, as desired by the Mayor. Thus, according to the Petitioner, the second proposal was submitted by the Mayor.

5. The Petitioner, who is the Corporator of Ward No. II of the CMC, submitted an objection on the proposed delimitation of wards and reservation of seats as per the draft notification in Annexure-4 before O.P. No. 2 on 19.12.2007, vide Annexure-6. According to the Petitioner, objections were also submitted by several citizens of the city to the draft notification in Annexure-4. O.P. No. 2 on receipt of such objections including that of the Petitioner forwarded the same by letter dated 2.1.2008 to the Municipal Commissioner, vide Annexure-7, for enquiry and report. The Municipal Commissioner by letter dated 19.1.2008, Annexure-8, submitted his views to O.P. No. 2. Thereafter the Municipal Commissioner also wrote a letter dated 8.2.2008 to O.P. No. 2 vide Annexure-9, indicating therein that the claim of the objectors including the Petitioner could be accommodated as far as practicable but the ward boundaries would be affected and reservation as per the draft publication would undergo change in some cases. Thereafter the State Govt. issued the final notification dated 18.2.2008, Annexure-II, which the Petitioner has challenged on the grounds mentioned hereinbefore.

6. The State Govt. in H & UD Department as well as the Director of Municipal Administration and ex officio Addl. Secretary to the Govt. in the said Department, i.e., O.P. Nos. 1 and 2, have filed a counter affidavit through the Under Secretary stating therein that the population of the CMC as per 2001 census being 5,34,654, in terms of the provisions of Section 6 of the Act, the CMC justified only 54 Corporators. It has also been stated that though the CMC in its resolution dated 27.11.2007 resolved to increase the number of wards from 48 to 61, the State Govt. did not accept the same being contrary to the provisions of the Act, and the reservation of wards as made in the final notification was justified. So far the objections and suggestions received on the draft notification relating to the delimitation of wards and reservation of seats in the CMC are concerned, it is stated that the same were disposed of after careful consideration by the State Govt. According to the O.P. Nos. 1 and 2, the Govt. had only taken into consideration the proposal on delimitation of wards of the CMC submitted vide letter dated 29.11.2007 (Annexure-3) since the same was in consonance with the provisions of the Act and that the objections received by the Govt. within the

stipulated period were considered in consultation with the CMC.

7. As to the reservation of wards, it was argued by the Learned Advocate General that the same was done in terms of the statutory provisions and since the CMC did not send Form-II indicating the reservation of wards for various categories, Govt. did the reservation as per the provisions of the law, basing upon the population data (male, female break up), SC, ST and Women population figure ward-wise furnished by the CMC to the Govt. by letter dated 29.11.2007 and as per the descending order of population of all categories along with reservation status of the wards for election 2003 and 2008. Over and above, it was argued that the reservation of wards had been made on the basis of the information furnished by the CMC and taking into account the provisions laid down in the Act and the Rules. In regard to the objections/suggestions received on the draft notification, Annexure-4, the stand taken was that there was no provision in the Act for giving the Petitioner an opportunity of personal hearing. It was submitted that the Municipal Commissioner did not furnish any concrete views on the objection petitions received against the draft notification. However, the objections/suggestions received against the draft notification within the stipulated period were duly considered prior to the issuance of the final notification in Annexure-11.

8. The State Election Commission, O.P. No. 4 has filed a counter affidavit stating that since the division of city into wards and reservation of seats was done by the Govt. in H & UD Department u/s 60 and Section 7 of the Act read with Rule 3 of the Rules, the State Election Commission was in no way concerned with the said matter and hence has no comments to make on the merit of the case.

9. The Municipal Commissioner of the CMC, O.P. No. 3 has filed counter affidavit belatedly wherein he has averred that taking into consideration the population figures as per 2001 census, the existing 48 wards were re-organised and divided into 54 wards and proposal was submitted to the State Govt. in the prescribed Forms I and II but Col.15 of Form II was left blank keeping it open to the State Govt. to finalize on the facts and figures indicated therein. That too the State Govt. had no objection to the same nor any clarification was sought for from the CMC, instead the draft notification dated 12.12.2007 issued vide Annexure-4 on that basis was made inviting objections and suggestions. Thereafter the objections and suggestions received by the Govt. were forwarded to the CMC by letter in Annexure-7, to furnish a report on the same to the Govt. for consideration at their level. The sum and substance of the averments made in paragraph 14 of the counter affidavit is that the objection with regard to reservation aspect was left to be finalized and decided at the level of the Govt. In the counter affidavit it has been further stated that the CMC had carved out the wards taking into consideration the compactness of the area without disturbing/ breaking the enumeration blocks of 2001 census.

10. At this point, Learned Counsel for the Petitioner submitted that as per the proviso to Sub-section (1) of Section 60 of the Act, while dividing the city into

wards equitable distribution of population among various wards and compactness of area forming each ward shall be taken into consideration. On the other hand, according to the Petitioner, the O.Ps. have disturbed the compactness of the wards to keep the enumeration blocks of the census intact, which is wrong and against the spirit of the statute.

11. On the facts narrated above and the questions raised in the counter affidavits, bereft of various other allegations made therein, the issues that boiled down for decision are as follows:

(1) Whether in dividing the city into wards equitable distribution of population amongst various wards and compactness of the area for forming each ward were taken into consideration, as required by the proviso to Sub-section (1) of Section 60 of the Act?

(2) Whether the objection filed by the Petitioner was considered by the Govt. in its proper perspective?

(3) Whether there was consultation, if any, by the Govt. with the CMC in terms of Section 60(1) of the Act?

12. Let us first see the provisions of Section 60 of the Act, which are quoted below:

60. Division of the city into wards: (1) For the purposes of the election of the Corporators, the Government may, after consulting the Corporation, the Government may, after consulting the Corporation by notification,-

(a) divide the Corporation area into such number of wards as may be specified in the notification and in the like manner may alter the limits of such wards; and

(b) determine, subject to other provisions of this Act the wards in which the seats reserved for the Corporators belonging to the Scheduled Castes, the Scheduled Tribes, women and other backward class of citizens u/s 7 shall be set assigned;

Provided that in dividing the city into wards equitable distribution of population among the various wards and the compactness of the area forming each ward shall be taken into consideration.

(2) One Corporator shall be elected directly from every ward within the Corporation area.

(3) The Government shall, before making a notification under Sub-section (1), publish in the prescribed manner a draft thereof containing a statement showing the number of wards into which the city shall be divided, the extent of each such ward and wards in which the seats reserved u/s 7 shall be set assigned, with a notice inviting objection and suggestion from all persons interested within the prescribed period and shall consider the same.

It is worthwhile to mention here that Rule 3 in Chapter II of the Rules provides

the procedure for publication of notification for division of city into wards and reservation of seats. Sub-rule (4) of Rule 3 provides that objections and suggestions received under Sub-rule (2) shall be consolidated ward-wise and after considering the same and making such further enquiry, as may be necessary, the Govt. shall pass such orders as deemed appropriate.

13. Point Nos. (1) & (2) - The proviso to Sub-section (1) of Section 60 of the Act postulates that while dividing city into wards equitable distribution of population among the various wards and the compactness of the area forming each ward shall be taken into consideration. This is also the requirement of Rule 3(1) of the Rules. At this juncture, let us have a look at the population figures in respect of different categories of population in descending order, Annexure-10. Learned Counsel for the Petitioner submitted that the aforesaid would show that there was no equitable distribution of population amongst the wards because while Ward No. LII was having 14,681 population, Ward No. XXIII was having 7,291 population and Ward Nos. XXXIII, XXXII, XXVIII, XXXIX, XXXV and XV were having population of 7992, 7977, 7929, 7755, 7561 and 7355; respectively. A bare perusal of the aforesaid population figures in Annexure-10 would show that there was no equitable distribution of population. To this, Learned Advocate General submitted that the aforesaid discrepancy in population was bound to happen when compactness of wards was maintained.

14. Let us now see how the compactness of wards has been maintained while carving out the new wards. A perusal of Form II of the proposal letter of the CMC, Annexure-3 and Statement-I of the draft notification, Annexure-4, as well as the final notification in Annexure-11 would show that the same are also not in terms of the statutory mandates. Our attention was rightly drawn to the area Brajabiharipur, which is in Sector 14 of Abhinaba Bidanasi and included in Ward No. 1. Had there been an attempt to maintain compactness, Brajabiharipur could have been included within the cluster of Sectors 9, 10, 11, 12 and 13, as the same is situated in Sector 14, which forms Ward No. II. Likewise Nuasahi, which is adjacent to Bidanasi, could have been included in Ward No. 1 since Bidanasi has been included in Ward No. 1 instead Ward No. II, which consists of Sectors 9, 10, 11, 12 and 13. There is some truth in the argument of the Learned Counsel for the Petitioner that attempt has been made to disturb the compactness of the area forming each ward with an intention to debar some of the elected candidates from filing their nominations from their old seats and the same has been done in the case of the Petitioner, as alleged. According to the Petitioner, if anybody would have some idea about the geographical position of the areas of Cuttack city, which the revenue and municipal authorities are expected to know, Mathasahi and Revenue Colony could not have been included in Ward No. VI which totally disturbs the compactness of the ward. However, the State Govt. published the draft notification, Annexure-4, inviting objections and suggestions on delimitation of wards and reservation of seats.

15. Pursuant to such notification, the Petitioner filed his objection to the

proposed delimitation and reservation of proposed ward Nos. 11, III, IV, V, VI and XXV. The objection running into six pages is annexed to the Writ Petition as Annexure-6. The Petitioner argued that no opportunity of hearing was extended to him while considering his objection and that too the objection was dealt with in a slipshod manner and was rejected without due application of mind by the State Govt. An argument was advanced by the Learned Advocate General as well as Learned Counsel for the CMC that after receiving the objection the State Govt. asked for comments of the Municipal Commissioner on such objection and as no fruitful suggestion came, the State Govt. rejected the objection. We called for the concerned file of the Govt. to examine whether there is any truth in the averments made in the counter affidavit filed by the State that the objection of the Petitioner had been duly considered. The file was accordingly produced before us for perusal. Before going to examine the contents of the file and the manner in which the order was passed, let us have a re-look at the provisions of Section 60 of the Act. The language of Sub-section (3) of Section 60 is very clear as it provides that the State Govt. before making a notification under Sub-section (1), shall publish the draft thereof containing statement showing division of wards and reservation of seats with a notice inviting objection and suggestion from all persons interested within the prescribed period and shall consider the same. A bare reading of Sub-section (3) of Section 60 would go to show that before the final notification is made under Sub-section (1), the Govt. shall consider the objections and suggestions received from all persons interested on the draft notification. So, here the statute cast a responsibility on the State Govt. to consider the objection of the Petitioner. Therefore, the State Govt. cannot shift their responsibility by saying that the objection and suggestions have been considered in consultation with the Corporation. They may consult the Corporation but the final decision shall be of the State Govt. We shall now see what does the word "consider" mean. In the 21st Century Chambers Dictionary, it means "to go over something in one's mind, to look at someone or something thoughtfully; to think carefully; all things consider taking all the circumstances into account". The Supreme Court while interpreting the word "consider" in service jurisprudence in the case of *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, , stated that the word "merely connotes that there should be active application of mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee...." So, the catch words are "active application of mind". On going through the file dealing with the delimitation of wards and reservation of seats of the CMC, we find that O.P. No. 2-the Addl. Secretary to the Govt. in H & UD Department dealt with the objection petitions at pages 16-17/N thereof and submitted the following notes:

xxx xxx xxx As per the proposal of Municipal Commissioner, CMC was divided into 54 wards and accordingly reservation of seats was effected under the provision of the Orissa Municipal Corporation Act and Rules there under.

16. Thereafter Notification inviting objections/suggestions was issued vide No. 28166 dt. 12.12.07. In response to the said notification the petitions received at this end were sent to Municipal Commissioner, Cuttack to enquire into and to offer his views regarding its disposal. The enquiry report of Municipal Commissioner may be seen at P.168-148/C, wherein he has proposed to increase the wards from 54 to 55 and this being accepted by the Govt. he will submit details regarding the delimitation of wards. In his enquiry report on each individual petition requesting for delimitation he has observed that on creation of one additional ward, the enumeration blocks shall be adjusted accordingly and maps to be prepared. Against the petition suggesting for change in reservation he has remarked "will be finalized at Govt. level." As per provision 6 of the O.M.C. Act, 2003, the Corporation qualifies for 54 Corporators only. Thus there being no addition of wards, the suggestions received from the Petitioners, in the opinion of the Municipal Commissioner, merits no consideration. As regards, petitions suggesting change of reservation, it may be mentioned that reservation of seats is made as per the provision 7 of the Orissa M.C. Act 2003 read with Rule 3 & 4 of the Orissa, M.C. (Division of City into wards, reservation of seats and C.E.) Rules, 2003 and accordingly notification has been made as per the said principle. I have also examined the contents of the petitions filed suggesting/ objecting to delimitation.

17. The petition received from Sri Deepak Kumar Mohanty for Ward No. 4, Sibasankar Barik for Ward No. 35, Rukmani Das for Ward No 46 (old), Chittaranjan Panda and others for Ward No. 51, Snehalata Chowdhury for Ward No. 28 and Sukesh Ch. Patnaik for Ward No. 46, 47 and 48 were rejected as they were filed before/after the objection period. The petition of Sri Asit Kumar Bose for W.No. 3 and 48 was not considered, as the petition was unsigned one. While some of the petitions are general in nature i.e. against delimitation and reservation of wards, other petitions are against delimitation of wards in particular. The third category of petitions are for change in reservation status. Since no definite proposal has been given by the Municipal Commissioner affecting delimitation of wards covered under notification, no action at this end appears appropriate. And Govt. may consider to accept the earlier proposal of Municipal Commissioner regarding delimitation of wards at 54 and reservation of seats as per rules." The State Govt. under the signature of the Minister, Urban Development, passed the following order at page 18/N:

Examined the objection petitions and went through the proposal of DMA at P.16 to 17/N. Municipal Commissioner, CMC, Cuttack, has not submitted the detail proposal with required information to-increase the Ward No. from 54 to 55 in CMC. Called the Municipal Commissioner, CMC, Cuttack, other Officers of CMC and discussed with them. The Commissioner submitted a detailed proposal for carving out 55 wards in CMC. Form No. I & II along with population figures in descending order in respect of SC, SST, Women & General category and the map showing 55 wards are also submitted by the Municipal Commissioner, CMC. The same has been placed from P.169 to 208/C. The total population of CMC, Cuttack

is 5,34,654 (2001 Census). As per Section-6 of Orissa Municipal Corporation Act, 2003. There should be minimum 39 Corporators for population of 3,00,000 and one additional Corporator for every 15,000 population above population of 3,00,000 upto 6,00,000. As such the CMC qualifies for 55 Corporators. Examined the proposal of the Municipal Commissioner, CMC, Cuttack and found that 55 wards have been carved out keeping in mind the compactness, equitable distribution of population and communication barriers. As such the population figures for all the 55 wards and the descending order in respect of SC, ST, Women & General category population have undergone some changes for which the reservation of seats in respect of different wards will also undergo change. As such it is ordered that CMC may be divided into 55 wards as per the statement placed in Form No. 1 at P.207 to 180/C. The reservation of seats should be made as mentioned in Form No. -II-placed at P.178 to 170/C. The revised notification may be issued after vesting of the same by the Law Department.

18. On going through the aforesaid order, we have no hesitation to say that there is not only non-consideration of the materials brought by the Petitioner to the notice of the Govt. by way of objection and suggestion but the order passed on the objection of the Petitioner is the outcome of non-application of mind and non-consideration of the materials brought to the notice of the Govt. by way of objection. Had the Govt. considered the same and applied their mind, the present litigation could have been avoided. In this context, we were reminded of the words of the Apex Court in *Indira Sawhney Vs. Union of India and Others*, , which are quoted hereunder:

87. Unfortunately today, as a matter of political expediency, Governments tend to knowingly violate the rule of law and the Constitution and pass on the buck to the Courts to strike down the unconstitutional provisions. It would then become easy for the Government to blame the Courts for striking down the unconstitutional provisions. The case on hand is a typical illustration of such an attitude.

19. Point No. (3) - So far as consultation with the CMC is concerned, the principle is well settled in the case of *Supreme Court Advocates-on-Record Association and another Vs. Union of India*, . In paragraph 130 of the Judgment, the Apex Court referred to Stroud's Law Lexicon, wherein definition of "consultation" has been given as follows:

Consultation: (New Towns Act, 196 (9 and 1) Geo. 6, c.68), Sl. (1), "consultation with any local authorities". "Consultation means that, on the one side, the Minister must supply sufficient information to the local authority to enable them to tender advice" and on the other hand, a sufficient opportunity must be given to the local authority to tender advice" per Blucknil, L.J. in *Rollo v. Minister of Town and Country Planning* (1948) 1 All ER 13(CA); see also *Fletcher v. Minister of Town and Country Planning* (1947) 2 All. ER 496.

Then in paragraph 131, the Apex Court referred to the Word and Phrases -

Permanent Edition, wherein the meaning of "consult" has been given thus:

Consult means to seek opinion or advice of another, to take Counsel to deliberate together; to confer; to deliberate on; to discuss, to take Counsel to bring about; devise; contrive; to ask advice of; to seek the information of; to apply to for information or instruction; to refer to. *Tepllsky v. City of New York* 133 NYS 2d 260, 261.

In paragraph 136 of the aforesaid Judgment, the Apex Court referred to the decision in *Fletcher v. Minister of Town Planning* (1947) 2 All ER 496, wherein the word "consult" was subject of judicial scrutiny and it was observed thus:

The word "consultation" is one that is in general use and that is well understood. No useful purpose would, in my view, be served by formulating words of definition. Nor would it be appropriate to seek to lay down the manner in which the consultation must take place. The Act does not prescribe any particular form of consultation. If a complaint is made of failure to consult, it will be for the Court to examine the facts and circumstances of the particular case and to decide whether consultation was, in fact, held. Consultations may often be a somewhat continuous process and the happenings at one meeting may form the background of a later one.

20. The Apex Court in the aforesaid Judgment referred to the case of *R. Pushpam and Another Vs. The State of Madras and Another*, wherein a Bench of the Madras High Court interpreting the word "consult" in terms of the Madras District Municipalities Act, 1920, Section 3 of which read that "for the purpose of election of Councillors to a Municipal Council, the Local Government "after consulting the Municipal Council" may by notification decide the Municipality into wards..." observed thus:

The word "consult" implied a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct, or at least, a satisfactory solution. Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is important. The consultation must enable the consultor to consider the pros and cons of the question before coming to a decision. A person consults another to be elucidated on the subject-matter of the consultation. Many instances may be found in the statute when an authority is entrusted with a duty is directed to perform the same in-consultation with another authority which is qualified to give advice in respect of that duty. It is true that the final order is made and the ultimate responsibility rests with the former authority. But it will not, and cannot be, a performance of duty if no consultation is made, and even if made, is only in formal compliance with the provisions. In either case the order is not made in compliance with the provisions of the Act.

21. From the above, it is clear that the requirement of consultation can never be a mere formality. It is the statutory obligation on the part of the State Govt. to have consultation with the Corporation in terms of Section 60 of the Act. Rule

3(1) of the Rules lays down the procedure for publication of notification for division of city into wards and reservation of seats and mandates that the Govt. in consultation with the Corporation shall formulate proposal indicating equitable distribution of population among various wards proposed to be constituted taking into account the compactness and geographical conditions of the area of the Corporation as required under Clause (b) of Sub-section (1) of Section 60 of the Act in Form I and II.

22. So, our conclusion would be that neither compactness of the area forming wards was maintained nor the representation of the Petitioner was considered by the Govt. in accordance with the statutory provisions. Hence, the final notification issued by the State Govt. under Sub-section (1) of Section 60 of the Act vide Annexure-11 is in violation of the provision of Sub-section (3) thereof.

23. So far as denial of opportunity of hearing to the Petitioner is concerned, we are of the view that it is not possible to give opportunity of personal hearing to all the objectors in an electoral process and that too there is no such provision in the statute providing for giving opportunity of personal hearing. In this regard we observe that right of fair hearing does not necessarily include oral hearing. What is essential is that the party affected should be given sufficient opportunity to meet the case against him and this could be achieved by filing representation. See *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, . We, therefore, hold that the plea taken by the Petitioner that the impugned notification can be struck down only on the ground, of not giving an opportunity of x personal hearing to him is not acceptable.

24. As to reservation of seats, out of 54 wards, 18 wards are to be reserved for women and out of the said 18 wards meant for women, 11 wards are to be filled by women belonging to general category unreserved category. This figure is not in dispute. The Petitioner has challenged the manner of assignment of those 11 wards earmarked for women belonging to unreserved category. According to the Petitioner, ward Nos. III, IV, V, VI, VII, XIII, XX, XXV, XXVII, XLVIII and XLIX have been assigned to women belonging to unreserved category. At this stage, our attention was drawn to the chart filed by the Petitioner along with the memo during the course of hearing. The figures given in the chart are also not disputed by the O.Ps. Learned Counsel for the Petitioner submitted that the chart would show that the aforesaid wards have not been assigned for women in descending order of numerical strength of women population, and, therefore, the assignment of seats for women belonging to unreserved category has been *macre de hors* Rule 4(3) of the Rules. The same is also the case in respect of ward Nos. III, IV, V, VI and ward No. XXV, i.e., the reservation for women has not been done in accordance with the Rules as indicated above. But as we have already noted in the foregoing paragraph, the notification in Annexure-11 suffers from certain deficiencies and as we are inclined to quash the said notification, Annexure-11, no further order is required to be passed on the point of reservation of seats. The same can be taken care of by the State Govt. while complying with the order as

hereunder.

25. Accordingly, we quash the notification dated 18.2.2008 issued by the State Govt. vide Annexure-11, and direct the State Govt. to proceed in the matter afresh in accordance with the mandate of Sections 7 and 60 as well as Sub-rule (3) of Rule 4 of the Rules and take a fresh decision on the objection of the Petitioner in consonance with the aforesaid statutory provisions and keeping in view the principles of consultation as laid down by the Apex Court as well as the Madras High Court referred to in the foregoing paragraph.

26. The Writ Petition is disposed of with the above order. There shall be no order as to cost.

R.N. Biswal, J.

27. I agree.