

THE LAW  
OF  
MUNICIPAL ELECTIONS

BY  
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*Vakil, Madura.*

WITH A FOREWORD BY  
EARDLEY NORTON, ESQUIRE

DEDICATED TO

THE HON. JUSTICE V. V. SRINIVASA IYENGAR  
*of the High Court of Judicature, Madras.*

PUBLISHED BY THE AUTHOR

MADRAS:

PRINTED AT THE LAW PRINTING HOUSE, MOUNT ROAD.

1925

PRICE RS. 3-8-0]

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AT THE

THE EXHIBIT AND RECORD CHIEF  
HIS LORDSHIP THE NOBLE JUSTICE  
OF THE PEACE  
IN THE COURT OF COMMONS  
AT THE

WITH LOVE  
REMEMBERS.

THE LORDS OF THE COMMONS  
AND THE LORDS OF THE HOUSE OF COMMONS

209 11371  
F5

AT THE FEET

OF

MY AFFECTIONATE AND BELOVED CHIEF  
HIS LORDSHIP, THE HON'BLE JUSTICE

V. V. SRINIVASA IYENGAR, B.A., B.L.,  
OF THE HIGH COURT OF JUDICATURE, MADRAS.

WITH LOVE, REGARDS

AND

GRATEFUL MEMORIES.

'KALYAN LEELA," }  
Madura,  
28th Aug. 1925. }

E. S. SUNDA.





## FOREWORD.

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In this little book the author has collected the Law of Municipal Elections and the Rules promulgated under the Acts as notified by the Government of Madras in the Fort St. George Gazette. It lays no claim to profundity of legal learning or to the display of legal reference. None the less it will be found useful by those who aspire to seats on Municipal Councils, whether candidates are content to remain there for the rest of their lives or until their merits shall have earned the *imprimatur* of official transfer to positions more exalted (and remunerative) or whether they intend to utilise their sojourn as stepping stones to altitudes of greater legislative heights. Ever before the Politician, Moderate or Extremist (Swarajist is a misnomer, for all pant after Dominion Home Rule, alike) beckons the lure of the Provincial Council or the Legislative Assembly, or let it be spoken of with bated breath that haven of repose, the somnolent Chamber wherein cluster the distinguished veterans who have been described by Royalty as a Museum of "Elder Statesmen." To all these alike this book will respond, unless indeed he be a "deaf mute." That unfortunate biped is strictly ostracised from all hope of advance. He

is not qualified to vote for, much less to sit as, an elected member. Some there are—though I am not of their number—who regret the legislation which forbids a deaf mute from participating in civic affairs. Remembering the overflow of too luxuriant eloquence which characterises the meetings of our Councils, they argue that the business of the country would be very sensibly accelerated if the Councils were composed, in the main, of deaf mutes! However that may be, I entertain no doubt but that the elimination of the unfortunate bereft of hearing and speech will provoke an outburst of sympathy with him in the breasts of all right thinking men.

The sight of the book recalls to my memory a famous election fight at Madras in which I figured, in the early years of this century, for a seat on the City Municipal Commission. I sought re-election as member for Triplicane and found myself opposed by my wealthy friend Lodd Govind Doss. I fixed on the Police Station on the Mount Road, opposite Misquith's, as my Head Quarters. I was assisted by many stalwart supporters, among whom were my old pupil Seshagiri Iyer afterwards a Judge of the High Court, Sundrum Shastri, the father of two High Court Judges, and a host of others, now mainly burnt and forgotten, I subsidised a band: my opponent spent a considerable sum in hiring carriages—the Motor Car had not yet made its appearance—for the convenience of those who were to vote for him. The carriages were to convey his swarm of supporters to the Polling Station. Unfortunately, my adversary had miscalculated his battalions. He began well but I soon overhauled him, then passed him, then swept down on

his string of vehicles in which my voters were triumphantly borne to register their votes for me at his expense ! I had a fine majority due in some measure to the facility with which my voters reached the polling booths in strong relays, thanks to the forethought of Lodd Govind Doss providing carriages, at his own cost for my use ! In those happy days there were no strict rules for the guidance of candidates. We did pretty well what we liked. I wonder of what offence I should be convicted under the present rules !

With the advance of political growth will come advance in political rivalry, accentuating the ambition for place and power and greatly augmenting the cost of election expenses. Already candidates—successful or otherwise—complain of the stress upon their purses. The soft spots of the English system are more faithfully copied here than the strong. Soon, if not already, legislation will be necessary to curtail the expenditure of candidates and their Agents. But bribery in that quarter, even if met and crushed, will leave bribery in other quarters virile and rampant. The art of nursing a constituency has already taken fertile root in India. Subscriptions to Hospitals, concerts and other insignia of charitable advertisement drain the resources of English representatives at home. These weaknesses will spread with amazing fertility to India where the art of ingratiating oneself with Authority finds a congenial home among a population athirst for Knight-hoods, C.I.Es. and the other gewgaws which enable the Government to view the onslaughts of the Apostles of the Spinning Wheel, of immediate Home Rule and of cognate



inspirations of temporary insanity with immoveable serenity and irritating self confidence. Even the patriotism of Surendranath Bannerjee, at one time the idol of the Indian public, was not proof against the vulgar blandishment of title. He avenged himself on the Civil Service from which he had been unjustly expelled and the Benchers of his Inn for their refusal to admit him to the Bar by dying in the sanctity of a Knight Bachelorhood. The Secretary of State for India paid Mr. Das the compliment of enshrining him as a Saint in his lifetime. On his death Englishmen, who abused him alive, joined in praising him dead. The Governor of Bengal must have opposed a vigilant resistance to the prompting to silence his activities with the gift of a step in the local peerage.

This amenability to peacock in unsuitable affixes is a weakness which will grow apace in India. It has already plunged its talons into the Englishman. But that is a minor matter, as the bemedalled Englishman fades on retirement into well deserved insignificance and no one is the worse for his sunning himself on the top of a Bus in Bermondsey in the full dress paraphernalia of a K. C. S. I. With the Indian it is otherwise. He remains among his people a warning and a caricature. The worst part of his offence is that it is symptomatic of his race. As he himself falls before the blandishment of a piece of riband, so his countrymen are hungry for the more valuable donations which follow in the wake of a promised vote. Against the increase of this amiable copying of a British weakness the Legislature in the near future will have to be alert. When that time comes, the

edition of this work will be increased in bulk and—let me hope—in value. In the meantime, if my good wishes be of any avail, these accompany the efforts of my friend, the Author, to add himself to the number of successful legal publicists.

"Merton Lodge," }  
KODAIKANAL, }  
•August, 1925. }

EARDLEY NORTON.





## PREFACE.

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THIS little offspring of mine is old a half dozen months since its conception. Last year election fights threw the seed and a statement by one of their Lordships that there was no publication on the subject nursed the idea of writing one. Fortunately it developed and its graceful birth to-day with the help of the amiable Law Printing House is a matter of personal rejoicing. It enjoys the good fortune of an anointment by my esteemed, versatile and aged-still juvenile-friend Mr. Eardley Norton. Hon. Justice V. V. Srinivasa Iyengar, my beloved chief, has been kind enough to own it as the product of his protegee.

I am sure that the book will justify its birth by its usefulness to the lawyers and the general public. All the available Indian Case-law with a statement of the essential principles is given and references to the English and analogous provisions are made when the Indian Law is silent.

This little attempt was watched with interest by many a friend of mine—in Madura and elsewhere—and the orders I have received hitherto are indicative of the sincere interest they take in me and the success in store for this book.

I should not fail to express my sense of deep obligation to all who have offered suggestions in this maiden enterprise of mine.

This book ought to have been before the public earlier but for a serious mishap. My eldest brother Mr. E. S. Sankaranarayanan the enviable and astute *pater* of our family left us on May 23rd. But his gentle eyes are still on his favourite brother and his blessings are sure to make the way smoother.

'Kalyan Leela', }  
MADURA,  
28th August 1955. }

E. S. SUNDA.

## APPRECIATORY NOTICES.

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(1)

*K. G. Sesha Ayyar, Esq., B.A., B.L., M.R.A.S., Retired Judge of the High Court of Judicature, Travancore, Trivandrum :—*

“ I have read your ‘ Law of Municipal Elections ’ with great interest. I am sure it will be much appreciated by all those who have anything to do with Elections. The sections and rules relating to Election Law are carefully annotated by reference to judicial decisions, Indian, English and even American, which are succinctly digested in appropriate places. I have, in some instances tested the accuracy of your statements of the case-law, and the result has been very satisfactory, you must have taken great pains in writing this useful book.”

(2)

*Diwan Bahadur T. Rangachariar, B.A., B.L., M.L.A., C.I.E. :—*

“ I have just glanced through your booklet. It is a very useful handy volume. The notes are clearly arranged and in every way councillors and would-be councillors will find valuable matter in these pages. I congratulate you on your valuable effort and wish it every success.”







# LIST OF THE NAMES OF CASES CITED.

Indian Cases.				PAGE
Abbas Ali, <i>In re the election of</i>	...	...	...	73
Abdul Behari Lal v. Kesri Prasad Singh	...	...	...	9, 45, 87
Amulyadban Addy, <i>In the matter of</i>	...	...	...	10, 27
Agra Municipal Board v. Asharfi Ali	...	...	...	27, 34
Arunachela Iyer v. Subbaramiah	...	...	...	76
Atal Haq. v. Maniktolla Municipality	...	...	...	33
Basti (I. E. P.)	...	...	...	3
Bakshikan, M. A. v. Siraj-ul-Hasan	...	...	...	72, 74
B. Ali v. M. Ali	...	...	...	73, 87
Chairman of Dacca v. Krishnadas	...	...	...	9, 26
Charu Chandra Mazumdar v. Chairman of Faridpur Municipality	...	...	...	25
Chunilal v. Kripashankar	...	...	...	31
Corkhill, <i>In the matter of</i>	...	...	...	33, 43
Diraviam Pillai v. Cruz Fernandez	...	...	...	25, 27, 26
Dindigul Municipality Case	...	...	...	53
D. Khan v. M. Khan	...	...	...	73
Gopalakrishna Kone, <i>In re the Election</i>	...	...	...	25
Govardhandas v. Lal Chand	...	...	...	43, 86
Gurdharan Das v. Har Sarup	...	...	...	72
Gopalakrishna Pillai v. Kunjithapadam Pillai	...	...	...	75
Holder v. Mallick	...	...	...	45
Howrah Municipality v. H. R. Chowdury	...	...	...	51
<i>In the matter of</i> Goswami	...	...	...	81
<i>In the matter of</i> Sarafally Mamooji	...	...	...	74, 82
<i>In the matter of</i> Mutty Lal Ghose	...	...	...	85
Indian General Navigation & Railway Co. v. The Delohan Tea Company	...	...	...	87
Kalkar, S. A. v. R. V. Mahajani & Co.	...	...	...	43
Kanniappa Mudaliar v. Ohinnaswamy Chettiar	...	...	...	50
Krishnan Reddiar v. Muthuvera Reddiar	...	...	...	75
K. Samban v. S. Samban	...	...	...	76
Krishnaswami v. Wali Mahomad	...	...	...	81

## Indian Cases—(Continued).

	PAGE
Khuni Lal v. Raghunath Prasad ...	82, 83
Lakshminarasimha v. Ramalingam ...	71
Mahamad Baksh v. Makamad Abdul Bogi Khan ...	14
Manoranjan v. Brijoo Cropal ...	21
Municipal Commissioner, <i>In the matter of</i> ...	26
Maniktolla Municipality Case ...	31
Manindra v. Provas ...	45, 85
Marakayar, A. T. v. Marakayar ...	69
Mahamad Inamul Haq v. Mahamad Aasn ...	72
M. A. Khan v. S. H. Khan ...	73
Md. I. A. Khan v. Mir Md. Khan ...	86
Molla Ataul v. Manicktolla Municipality ...	87
Marton v. Covill ...	82
Nataraja Mudaliar v. Municipal Council of Mayavaram ...	8, 86
Narendra Nath v. Nagendra Nath ...	10
Narendra Nath Babu v. Stephenson ...	32
Narayana Sastry v. Sambanda Mudaliar... ..	41
N. N. Mitter v. R. C. Pal ...	42
Narendranath v. Radha Chāran ...	44
Nawab Khan v. Md. Zamin ...	74
Nand v. Chetty Lal ...	82
Nagenedra Nath ...	88
Palaniswami Pillai, R. V. v. R. Srinivasa Ranga Chariar ...	33
Purnia Case ...	45, 55
Parthasarathy v. Koteswara ...	83, 85
Rajendra Lal Mitter, <i>In the matter of</i> ...	25
Rahtak (1921) I E.P. ...	45
Ramanjulu v. Parthasarathi ...	73, 80
Rahim Bosrie v. Wali Mahamad ...	81
Ramnath v. Emperor ...	83, 85
R. Prasad v. S. Prasad ...	85
Sethurama Mudaliar v. Mangala Gounder ...	4, 53
Secretary of State v. P. R. V. Naidu ...	17
Secretary of State v. Cheiva Perumal ...	18
Sesha Iyer v. Venketasubha Chetty ...	21
Sham Chandra Bosak v. Narendra Nath Basak ...	31
Surat Municipality v. Chunla ...	31
Sarvothama v. Saidapet Municipality ...	32, 45
Sham Chandra Bosak v. Chairman of Decca Municipality ...	41, 87

**Indian Cases—(Concluded).**

PAGE

Shakir Ali v. Abdul Hakim	...	...	...	43
Sultan Baksh v. Abdul Hamid	...	...	...	46, 86
Suraj Narain v. Jany Bahadur	...	...	...	72, 74
Sarojini Naidu Case	...	...	...	83
Secretary of State v. Appa Rao	...	...	...	85
Vijayaraghavalu, <i>In re</i>	...	...	...	32
Viswanatha Pillai v. Periaswami Pillai	...	...	...	53, 85
Venkatasubbiah Chettiar v. Sesha Iyer	...	...	...	77
Vijayaraghavalu v. Thegaroya	...	...	...	83
Xavier T. C. v. Joseph	...	...	...	54.

**English Cases.**

Ashby v. White	...	...	...	...	34
Athlone case	...	...	...	...	87
Bland v. Buchannan	...	...	...	...	7
Beesley	...	...	...	...	7
Buckrose	...	...	...	...	51, 54
Berwick	...	...	...	...	54
Clementson v. Mason	...	...	...	...	48
Davies v. Lord Kensingston	...	...	...	...	48
Droitwitch case	...	...	...	...	55
Ex parte Pick and others	...	...	...	...	7
East Nottingham	...	...	...	...	20
Flinthum v. Raxburgh	...	...	...	...	9
Ford v. Newth	...	...	...	...	83
Gloucester Election Petition	...	...	...	...	14, 83
Harnam v. Park	...	...	...	...	42
Hackney	...	...	...	...	48, 87
Ipswich	...	...	...	...	41
Knill v. Towse	...	...	...	...	26
Kingston Upon Hull	...	...	...	...	20
Lewis v. Oarr	...	...	...	...	14
Lowth County case	...	...	...	...	76
Lane v. Fern	...	...	...	...	41
Middleton v. Simpson	...	...	...	...	33
Monkswell v. Thompson	...	...	...	...	75
Maidenhead Corporation	...	...	...	...	77
Northcote v. Pulsford	...	...	...	...	82
Pickering v. James	...	...	...	...	53



## English Cases—(Concluded).

PAGE

Pritchard v. Mayor of Bangor	...	...	...	53
Pontardawe District Council Election	...	...	...	54
Queen v. White	...	...	...	69
Queen v. Owen	...	...	...	69
Regina v. Rippon	...	...	...	3
Rex v. West Riding of Yorkshire	...	...	...	8
Rex v. Samuel	...	...	...	53
Rainham Parish case	...	...	...	57
Regina v. Beer	...	...	...	85
Simpson v. Ready	...	...	...	14
Stowe v. Jolliffe	...	...	...	33
Stafford	...	...	...	81
Stirlinshire	...	...	...	55
Stroudborough case	...	...	...	76
Stewart	...	...	...	77
Staley Bridge Election Petition	...	...	...	77
Tebba v. Smith	...	...	...	41
Wakefield	...	...	...	47
West Bromwich	...	...	...	54
Walsh v. Grimsly	...	...	...	14
Woodward v. Sarsons	...	...	...	54

# TABULAR LIST OF CASES CITED.

## Allahabad.

				PAGE
34 A. 391 ...	...	...	...	72
35 „ 308 ...	...	...	...	86
35 „ 450 ...	...	...	...	82, 83
35 „ 578 ...	...	...	...	82
41 „ 696 ...	...	...	...	72, 74
44 „ 202 ...	...	...	...	34
45 „ 687 ...	...	...	...	72
45 „ 720 ...	...	...	...	14

## Allahabad Law Journal.

11 A.L.J. 349	...	...	...	85
11 „ 659	...	...	...	82, 83
22 „ 497	...	...	...	83, 85

## All India Reporter.

1924 All. 132	...	...	...	74, 85
1924 „ 134	...	...	...	85
1923 Mad. 254	...	...	...	69
1924 „ 38	...	...	...	50

## Bombay.

30 Bom. 409	...	...	...	31
31 „ 37	...	...	...	31
34 „ 659	...	...	...	74, 82
47 „ 724	...	...	...	83

## Calcutta.

19 C. 192 ...	...	...	...	85
19 „ 195 ...	...	...	...	25
22 „ 717 ...	...	...	...	33, 43, 53



**Calcutta—(Concluded).**

PAGE

38 C. 501 ...	...	...	...	...	10, 25
39 „ 754 ...	...	...	...	...	26
41 „ 384 ...	...	...	...	...	7
46 „ 119 ...	...	...	...	...	42, 44
46 „ 132 ...	...	...	...	...	10, 27
48 „ 378 ...	...	...	...	...	38

**Calcutta Law Journal.**

28 C.L.J. 289	...	...	...	...	44
30 „ 270	...	...	...	...	41, 87
32 „ 124	...	...	...	...	88
38 „ 189	...	...	...	...	26, 31
39 „ 58	...	...	...	...	45, 85

**Calcutta Law Reports.**

15 C.L.R. 488	...	...	...	...	26
---------------	-----	-----	-----	-----	----

**Calcutta Weekly Notes.**

19 C.W.N. 129	...	...	...	...	32
22 „ 678	...	...	...	...	21, 81
22 „ 943	...	...	...	...	42
24 „ 944	...	...	...	...	44
24 „ 189	...	...	...	...	41
24 „ 969	...	...	...	...	31, 33, 87
26 „ 147	...	...	...	...	31
26 „ 412	...	...	...	...	25
28 „ 127	...	...	...	...	45
28 „ 302	...	...	...	...	87
28 „ 892	...	...	...	...	51

**Madras.**

29 M. 166	...	...	...	...	81
30 „ 113	...	...	...	...	17
36 „ 120	...	...	...	...	86
40 „ 793	...	...	...	...	83
46 „ 60	...	...	...	...	76
46 „ 153	...	...	...	...	63
47 „ 369	...	...	...	...	83

Madras Law Journal.

PAGE

21	M.L.J.	878	...	...	...	...	86
26	"	310	...	...	...	...	22
29	"	704	...	...	...	25, 27, 29	69
44	"	69	...	...	...	...	32
45	"	23	...	...	...	...	85
45	"	156	...	...	...	...	50
45	"	329	...	...	...	...	75
45	"	349	...	...	...	...	7
45	"	543	...	...	...	...	83
46	"	201	...	...	...	...	53, 85
46	"	491	...	...	...	...	53
46	"	494	...	...	...	...	85
46	"	601	...	...	...	...	77
46	"	Short Notes 50	...	...	...	...	3
47	"	494	...	...	...	...	77
47	"	201	...	...	...	...	10
48	"	Short Notes 38	...	...	...	...	

Madras Law Times.

1	M.L.T.	435	...	...	...	...	17
7	"	245	...	...	...	...	18
10	"	219	...	...	...	...	8
18	"	518	...	...	...	27, 29	50
33	"	(H.C.) 37...	...	...	...	...	3, 53
34	"	204	...	...	...	...	53, 85
34	"	207	...	...	...	...	

Madras Weekly Notes.

1915	M.W.N.	290	...	...	...	...	73, 80
1920	"	648	...	...	...	...	8
1923	"	447	...	...	...	...	50
1924	"	Weeks Cases p. 36	...	...	...	...	53
1924	"	Weeks Cases p. lxxvii	...	...	...	...	31
1924	"	538	...	...	...	...	77
1924	"	603	...	...	...	...	83
1924	"	Weeks Cases p. 51	...	...	...	...	84
1924	"	Weeks Cases p. lxiv	...	...	...	...	87
1925	"	Weeks Cases p. 20	...	...	...	...	54, 83
1925	"	Weeks Cases p. 64	...	...	...	...	81

## Law Weekly.

## PAGE

12 L.W. 202	...	...	...	...	71
12 " 427	...	...	...	...	8
17 " 187	...	...	...	...	76
18 " 169	...	...	...	...	50
18 " 299, 844	...	...	...	...	75
19 " Short Notes 79	...	...	...	...	57
19 " " 80	...	...	...	...	73
19 " " 31	...	...	...	...	81
19 " " 77	...	...	...	...	84
19 " 201	...	...	...	...	21
19 " 636	...	...	...	...	53
20 " Short Notes 72	...	...	...	...	7, 41
20 " 148	...	...	...	...	77
20 " 581	...	...	...	...	33

## Indian Cases.

6 I.C. 394	...	...	...	...	18
7 " 958	...	...	...	...	74
10 " 43	...	...	...	...	10
14 " 191	...	...	...	...	72
20 " 490	...	...	...	...	85, 86
20 " 676	...	...	...	...	7
21 " 497	...	...	...	...	82
31 " 322	...	...	...	...	27, 29
31 " 619	...	...	...	...	32
46 " 729	...	...	...	...	81
48 " 314	...	...	...	...	42
49 " 394	...	...	...	...	33
50 " 307	...	...	...	...	10, 27, 81
52 " 67	...	...	...	...	72, 74
53 " 741	...	...	...	...	41
59 " 846	...	...	...	...	43
60 " 870	...	...	...	...	43
61 " 315	...	...	...	...	43, 86
61 " 337	...	...	...	...	73
61 " 357	...	...	...	...	73
61 " 744	...	...	...	...	73
63 " 6	...	...	...	...	9, 45
63 " 666	...	...	...	...	86

# TABULAR LIST OF CASES.

xxiii

## Indian Cases—(Concluded).

PAGE

64	"	188	...	...	...	...	9
73	"	540	...	...	...	...	50
74	"	490	...	...	...	...	14

## Queen's Bench Decisions.

* Q.B.D.	217	...	...	...	...	3
7	"	369	...	...	...	42
17	"	44	...	...	...	9
23	"	79, 139	...	...	...	82
29	"	189	...	...	...	82

## King's Bench Decisions.

* 1 K.B.	74	...	...	...	...	82
2	"	75	...	...	...	7
2	"	693	...	...	...	85
3	"	436	...	...	...	7
1901	"	683	...	...	...	83



General's Branch Resolutions

King's Branch Resolutions



# CONTENTS.

---

## PART I.

### ELECTION SECTIONS OF MADRAS ACT V OF 1920.

	PAGE
1. Chap. III—Constitution of Authorities ...	1—7
2. Chap. IV—Election and Appointment of Municipal Councillors (Ss. 43-51) ...	7—18

## PART II.

Election Offences (Ss. 52-60) ...	17—23
-----------------------------------	-------

## PART III.

### RULES FOR THE PREPARATION OF ELECTORAL ROLLS.

1. Preparation ...	24
2. Claims and Objections ...	28
3. Revising Authority ...	30
4. Final Publication ...	32
5. General Rules ...	34
6. Forms ...	35
7. G. O. No. 2344 L. & M. (30—11—21) ...	35

## PART IV.

RULES FOR THE CONDUCT OF MUNICIPAL  
COUNCILLORS' ELECTION.

	PAGE
1. Notice of Election ... ..	40
2. Nomination of Candidates ... ..	42
3. Scrutiny of Nomination Papers ... ..	44
4. Voting ... ..	47
5. Disposal of Ballot Papers ... ..	58
6. General ... ..	59
7. Forms ... ..	61

## PART V.

RULES FOR THE CONDUCT OF THE ELECTION  
OF CHAIRMAN AND VICE-CHAIRMAN  
OF MUNICIPAL COUNCILS.

1. Notice of Meeting for Election ... ..	66
2. Voting ... ..	67
3. Withdrawals ... ..	68
4. Disposal of the Ballot Papers ... ..	69

## PART VI.

RULES FOR DECIDING ELECTION DISPUTES  
AND PETITION.

1. Presentation of a Petition ... ..	71
2. Deposit of Costs ... ..	75
3. Enquiry ... ..	76
4. Withdrawal of Petition ... ..	78
5. Abatement ... ..	78
6. Parties to a Petition ... ..	79
7. Legal Practitioner on behalf of the Municipality	79
8. Election Offences ... ..	79
9. Judge's Order ... ..	82

PART VII.	PAGE
GENERAL CASE LAW.	85
APPENDICES.	
APPENDIX I—G. O. 320-L. & M.— <i>Re</i> Certificate in the Electoral Roll	89
APPENDIX II—G. O. 1876-L. & M.— <i>Re</i> Preliminary Electoral Roll	90-91
APPENDIX III—G. O. 2715-L. & M.	
1. Correctness of the Certificate	91
2. 'Taxes' defined	92
APPENDIX IV—G. O. No. 1773-L. & M.—Revising Authority, Meetings of	92
APPENDIX V—G. O. No. 576-L. & M.—Amendment in rule 1 of the Election Rules	93
APPENDIX VI—G. O. No. 1367-L. & M.—The Government does not want to entrust the duty of conducting elections to the Revenue Department	93
APPENDIX VII—G. O. 1982-L. & M.—Amendments to Election Rules especially in Nomination Papers and Signature slips*	94
APPENDIX VIII—G. O. No. 577-L. & M.—Amendments <i>Re</i> questions of interpretation of rules etc.	104
List of the Names of Cases cited (English and Indian)	...xvi—xviii
Tabular List of Cases cited	...xix—xxiii
Index	107

\* The amendments are placed before the public for criticism. As they happen to be all embracing and the latest, they are given here. They were published when the book was in print.—9—6—25.

# THE LAW OF MUNICIPAL ELECTIONS.

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## Part I MADRAS ACT V OF 1920.

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### CHAPTER III.—CONSTITUTION OF MUNICIPAL AUTHORITIES.

#### *Authorities.*

The municipal  
authorities and their  
incorporation.

6. (1) The municipal authorities  
charged with carrying out the provisions  
of this Act are a council and its chairman.

(2) The municipal council shall by the name of the  
municipality be a body corporate, shall have perpetual succes-  
sion and a common seal and subject to any restriction or  
qualification imposed by this or any other enactment shall be  
vested with the capacity of suing or being sued in its corporate  
name, of acquiring, holding and transferring property moveable  
or immoveable, of entering into contracts and of doing all  
things necessary for the purposes of its constitution.



7. (1) The municipal council shall consist of such number of councillors as may be notified by the Governor in Council in accordance with the following table :—

	Number of councillors.
Municipalities with a population—	
Not exceeding 20,000 at the last census ...	16
Exceeding 20,000 but not exceeding 30,000 ...	20
Exceeding 30,000 but not exceeding 40,000 ...	24
Exceeding 40,000 but not exceeding 50,000 ...	28
Exceeding 50,000 but not exceeding 100,000 ...	32
Exceeding 100,000 ...	36

(2) The Governor in Council shall notify from time to time what proportion of the total number of councillors shall be elected: Provided that such proportion shall not be less than three-fourths.

Provided also that before issuing any notification modifying the constitution of a municipal council the Governor in Council shall communicate to such council the grounds on which he proposes to do so, fix a reasonable period for the council to show cause against the proposal and consider its explanations and objections if any, and the notification shall contain a statement of the reasons for modifying the constitution.

(3) The remainder shall be appointed by the Governor in Council, who in making such appointments shall have regard to the representation of Muhammadans and other minorities.

8. (1) The term of office of elected councillors shall, save as otherwise expressly provided, be three years beginning and expiring at noon on the first day of November.

Term of elected  
councillors and  
filling up of elective  
seats.

(2) Vacancies arising by efflux of time in the office of an elected councillor shall be filled at ordinary elections which shall be fixed by the chairman to take place on such days in the months of August and September next preceding the vacancies as he thinks fit.

(3) A casual vacancy in the office of an elected councillor shall be filled at a casual election which shall be fixed by the chairman to take place as soon as may be after the occurrence of the vacancy :

Provided that no casual election shall be held to fill a vacancy occurring within three months before the ordinary date of retirement and that such vacancy shall be filled at the next ordinary election.

(4) A councillor elected at a casual vacancy shall enter upon office forthwith but shall hold office so long only as the councillor in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

### NOTES.

**Cls. (2) & (3) Shall be filled.**—*Cf.* a casual vacancy shall be held within fourteen days after notice in writing to the mayor or town clerk by two burgesses (England's) Municipal Corporation Act, 1882, S. 66 (1).

**Cls. (2) & (3) Shall.**—Vacancies must be filled up as they occur. If the authorities neglect, they may be compelled by a mandamus. *Alexander v. Jenkins*, (1865) 1 Q.B. 797. *Regina v. Reppon*, (1876) 1 Q.B.D. 217. Halsbury, Vol. XII, pp. 339—41.

**Cl. (2) Preceding.**—This method of election insures the perpetual succession of a corporate body working without any void in the middle, Thus the vacancies are already filled up even before they fall vacant.

**Cl. (3) Casual vacancy.**—Defined in S. 3 (7) as "one occurring otherwise than by efflux of time in the office of an elected councillor, vice-chairman, or chairman."

9. (1) If from any cause no councillor is elected at an ordinary election held under the previous section the retiring councillor shall, if willing to serve, be deemed to have been re-elected.

Procedure when no councillor is elected.

(2) If in any such case the retiring councillor is not willing to serve or if at a casual election no councillor is elected the chairman shall without delay inform the council and thereupon the council may appoint a qualified person to fill the vacancy and if the council fails within thirty days after receipt of such information to appoint a person as aforesaid the chairman shall fix a day for a fresh election.

(3) The term of office of a councillor appointed, elected or deemed to have been re-elected under this section shall expire at the time at which it would have expired if he had been elected at the ordinary or the casual election as the case may be.

### NOTES.

Cl. (1) Retiring councillor.....re-elected.—*Sethurama Mudaliar v. Mangala Gounder*, 46 M.L.J. 494=34 M.L.T. 204.

Cl. (1) applies to a case where no candidates were nominated and voters did not vote. Where an election was held and if for any reason the election of the successful candidate is declared void, the Court cannot declare the retiring councillor to be re-elected but should order only a fresh election.

Cl. (2) Council may appoint.—The powers of appointment are given to a corporate body to choose one who should join them in their deliberations. This is an extraordinary case and such instances are rare. The procedure to appoint one is not stated.

10. Every councillor appointed by Government shall save as otherwise expressly stated in the notification itself, hold office for a term of three years from the date of the *Fort St. George Gazette* wherein his appointment is notified.

Term of nominated councillors.



## NOTES.

**Notification.**—Three years run from the date of the notification save where it is expressly stated otherwise in the notification itself. *Cf.* Rule 29 of the Election Rules, which enjoins on the chairman to forward the name of the duly elected candidate without delay to the Superintendent, Government Press, for publication in the Gazette.

This section suggests that the councillor is to take his seat from the date of notification. Is notification a condition precedent for a councillor to take his seat?

\* Filling up of vacancies among appointed councillors.

11. Vacancies among councillors appointed by the Governor in Council shall be filled up by him.

12. (1) Unless the Governor in Council has directed by notification that the chairman shall be appointed by him every council shall at its first meeting after the first day of November in each year elect one of its members to be its chairman :  
The chairman and vice-chairman of the municipality.

Provided that before issuing a notification under this sub-section in respect of any municipal council already vested with the right of electing its chairman, the Governor in Council shall communicate to such municipal council the grounds on which he proposes to do so, fix a reasonable period for the council to show cause against the proposal and consider its explanation and objections, if any, and the notification shall contain a statement of the reasons for the final decision of the Governor in Council.

The notification shall be laid on the table of the Legislative Council except when a municipality is constituted for the first time.

(2) Subject to the sanction of the Governor in Council, the council may fix a salary for the chairman and the amount



thereof. Except as provided in this sub-section no chairman shall receive any salary or other remuneration.

(3) A council may elect one of its members to be vice-chairman \* \* \* (*omitted by Madras Act I of 1922, S. 3 (2).*)

(4) A chairman appointed by Government shall hold office for one year.

(5) An elected chairman or vice-chairman shall be entitled to hold office till the election of his successor provided that in the meantime he does not cease to be a councillor, or in the case of the chairman until the issue of a notification under sub-section (1). (*added by Mad. Act I of 1922*).

On the occurrence of any casual vacancy in the office of an elected chairman or vice-chairman the council shall at its next meeting elect a successor, who shall be entitled to hold office so long as the person in whose place he is elected would have been entitled to hold it if the vacancy had not occurred.

(6) When the office of chairman is vacant the vice-chairman shall exercise the functions of chairman till a new chairman assumes office.

(7) If the office of chairman is vacant and there is no vice-chairman, any five councillors may after giving reasonable notice to the other councillors convene a meeting for the election of a chairman.

(8) An out-going elected chairman or vice-chairman is eligible for re-election.

#### NOTES.

Cl. (1) First.—This shall be the first business transacted at the quarterly meeting of the council. *Ref. S. 61 of M.C.A. 1882 (English).* See the Rules for the Election of the Chairman and Vice-Chairman published elsewhere.

**Cl. (1) First.**—This should succeed that of the Councillors. *Cf. R. V. Owens*, 1859, 2 E. & E. 86. A councillor whose election is declared void subsequently cannot give a valid vote, prior to his avoidance of his election, for the election of a chairman. *Bland v. Buchanan*, 1901, 2 K.B. 75.

**Cl. (1).**—Election of a chairman by persons who have not taken the prescribed oath of allegiance is invalid. *Beesley*, 1910, 2 K.B. 930. Refer to the M.D.M.A. Amendment Act (Act II of 1922). 45 M.L.J. 543, 20 L.W. Short Notes, p. 72, which insists on the oath of allegiance.

**Cls. (2) & (3) One of its members.**—*Cf.* 41 Cal. 384=20 I.C. 676. The omission by a member to take the oath of allegiance does not make him incompetent to vote in the election, (according to Calcutta during the days of 41 Cal.)

**Cl. (1).**—Woman can be elected as chairman in England.—Qualification of Women Act, 1907, (7 Edw. 7, C. 33).

**Cl. (5) So long.**—The chairman of the old council continues till another is elected. If he presided at an election where there was a tie, he is entitled to a casting vote. *Cf. Madras Rules*, published elsewhere. *Ex parte Pick and others*, 1913, 3 K.B. 436. According to Rule II (2) all councillors present are entitled to vote. Under Rule III (ii) if there is a tie, lots are cast by the presiding councillor.

**Cl. (7) Election.**—A salutary provision to make the council self-supporting. It is not under the whimsicalities of the chairman or vice-chairman.

## CHAPTER IV.—ELECTION AND APPOINTMENT OF COUNCILLORS.

### *Elections.*

**43. (1)** The Governor in Council may by notification divide any municipality into wards for the purpose of the election of councillors.

Power to divide municipality into wards.

(2) "When issuing under sub-section (i) a notification which materially alters the existing division of a Municipality into wards the Local Government may direct that the municipal council be dissolved and reconstituted."

## NOTES.

**Councillor.**—A Municipal councillor is the creation of statute and that creation is subject *inter-alia* to the conditions imposed by the election rules framed by the Governor in Council or Local Government and invested with the force of law. Election means a valid election one which is not set aside. *Nataraja Mudaliar v. Municipal Council of Mayavaram*, 10 M.L.T. 219.

**Divide.**—*Rex v. West Riding of Yorkshire*, 1922, 24 B. 368.

Division cannot be questioned in a Court of Law.

Publication of  
electoral roll.

**44.** (1) The chairman shall annually prepare and publish an electoral roll showing the names of persons qualified to vote.

(2) Every person whose name appears in the final electoral roll published under this section shall so long as it remains in force be entitled to vote at an election; and no person whose name does not appear in such roll shall vote at an election.

(3) When a municipality has been divided into wards the electoral roll shall be divided into separate lists for each ward.

(4) The electoral roll published in any year shall remain in force till the publication of a fresh electoral roll.

## NOTES.

**Cl. (1) Chairman.**—Includes chairman delegate, 12 L.W. 427 = 1920 M.W.N. 648. See Explanation to S. 30.

**Cl. (1) Annually.**—The list should be constantly revised and an annual revision at least is necessary to provide for changes in a rapidly developing municipality. It should also take stock of the changes from one ward to another. See G.O. No. 2334 L.& M. 30—11—23, regarding the amendment to the Rules for the Preparation of the Electoral Rolls especially Rule 7 (e)—published elsewhere under the Electoral Roll Rules.

**Cl. (2) So long.....force.**—*Ref.* Rule 8 (2) of the Rules for the Preparation of the Electoral Rules in Municipalities. It shall remain in force



*till the publication of a fresh electoral roll.* So the rules provide for an electoral roll—one or the other—being in force *always*. Such roll refers to one such roll having force. Ref. also S. 44 (3).

**Cl. (2) & S. 48 (1) (a) Name does not appear.**—*Cf. Abdul Behari Lal v. Kesri Prasad Singh*, 63 I.C. 6. A fraudulent removal of a person's name from the electoral roll is of no effect. His name shall be deemed to be still on the roll and he cannot be taken as disqualified to stand as a candidate on the ground that his name is not on the roll.—The Madras Act is more stringent and very prohibitive.

**Cl. (2) Shall.**—The rule is mandatory. However faulty the roll may be, however obviously incorrect it is, all the persons who are on the rolls are entitled to vote. The officer presiding has no concern with a person who votes, provided he satisfies the description. *Fraser's Elections*, p. 50. *Parker's Election Agent*, p. 308. *Hammonds candidate*, p. 18.

**Cl. (2) Shall vote.**—*Flintham v. Razburgh*, 17 Q.B.D. 44. A person whose name is on the roll, though he is not entitled to it, is nevertheless entitled to vote.

**45.** No person shall be included in the electoral roll as qualified to vote unless—

Disqualifications  
for voting.

(a) he is a British subject or a subject of a State in India :

Provided that the Governor in Council may exclude, from the scope of this restriction any aliens or class of aliens ;

(b) he has attained the age of twenty-one years in the year preceding that in which the electoral roll is published ; and

(c) he has paid the taxes, if any, due by him under the Act for such preceding year.

#### NOTES.

**Person.**—*Cf. Bengal Act. Chairman. Municipal Commissioner's of Dacca v. Krishnadas Nag*, 64 I.C. 168. Word 'person' does not exclude the members of a joint family. No prohibition against a person otherwise qualified to vote, is specifically mentioned. Refer rule 2 (a) "not in both capacities"—Electoral Roll Rules.



**Cl. (b) Attained the age.**—He should be twenty-two at the time he is entitled to vote hence “21, the year preceding”

**Cl. (c) Taxes.**—38 C. 501=13 C.L.J. 471=15 C.W.N. 586=10 I.C. 43. *Narendra Nath v. Nagenara Nath*. The person must be the person legally liable to pay the same. A father lives at Benares in retirement. His son who looks to the House within the municipality is rightly looked upon as the ‘owner’ by the Municipality and is liable to pay the rates assessed and entitled to vote. Mere over payment by one not liable to pay will not make him a voter.

**Cl. (c) Taxes.**—Even where a person who was in arrears and whose name was wrongly entered on the rolls though in arrears and he got elected, the Election Court cannot go into the question whether the name was properly entered in the Electoral Roll or not. 48 M.L.J. *Short Notes* 38.

**Cl. (c) and S. 46.**—Taxes.—Refer Appendix III. “They shall include the tax on carriages and animals and the tax on carts but not licence fees.” G.O. No. 2715 L. & M. (4-12-23). Also Refer to G.O. No. 1141 L. & M.O. 17-6-21, G.O. No. 1054 L. & M. 13-6-22.

**Cl. (c) and S. 48 (a).**—C.R.P., 113 of 1924.—1925 M.W.N. *Weeks cases*, p. 21.—The Election Court cannot go behind the Electoral Roll as finally published. That a candidate is disqualified to stand because of his non-payment of taxes is not a point that could be taken in an election petition or agitated upon in an Election Court :

Sections 46 & 47 exhaustively define the qualifications of a voter and his claim to be one. But in Calcutta it is different, Persons living in flats cannot be enrolled as voters in the Municipal Election Roll. *In the matter of Amulyadhan Addy*, 46 C. 132=50 I.C. 307. See Definition of ‘Reside’ in S. 3 (25) of the M.D.M.A. “A person is deemed to have his residence or to reside in any house if he sometimes uses in any portion thereof as a sleeping apartment and a person is not deemed to cease to reside in any such house merely because he is absent from it or has elsewhere another dwelling in which he resides, if he is at liberty to return thereto at any time and has not abandoned its intention of returning.”

**46. (1)** No person shall be included in the electoral roll as qualified to vote at a municipal election unless he has resided in the municipality for one hundred and twenty

Personal qualifications to vote,

days in the aggregate in the year preceding that in which the electoral roll is published and has paid in such preceding year any tax mentioned in clause (a), (b) or (c) of section 78 (1) or the tax mentioned in clause (a) of section 79.

*Explanation.*—A person shall be deemed to have made the payment required by this section if he has paid the tax as sole mortgagee, tenant, guardian or executor, or as sole administrator or trustee, not being the Administrator-General or Official Trustee.

(2) Any company or association which for the year preceding that in which the electoral roll is published has paid the tax mentioned in clause (a), (b) or (c) of section 78 (1) or the tax mentioned in clause (a) of section 79 shall be entitled to vote in the ward in which the principal office of such Company or association is situated such vote being given by the Secretary of the company or association or some other person duly authorized in that behalf.

### NOTES.

**Cl. (1) Reside.**—He should have resided for at least 120 days in the year preceding that in which the electoral roll is published. *Residence in the year in which it is published* does not entitle him to a place on the electoral roll.

**Cl. (2) Duly authorised.**—If it is the Secretary, obviously no authorisation is necessary. If it is the case of some other person, it is necessary. But rule 2 (b) of the Rules for the preparation of the Electoral Rolls would imply even a Secretary should have authorisation. To be on the safer side better a Secretary also sends an authorisation letter for entry in the Rolls.

**47.** No person who is of unsound mind or a deaf-mute shall be qualified to vote and no person shall be qualified to vote for the period fixed in an order passed by a Court under section 60 and still in force.

Disqualifications of voters.

*Qualifications for membership of Council.*

Qualification of candidates. **48.** (1) No person shall be qualified for election as a councillor unless—

(a) the name of such person appears on the electoral roll of the municipality ; and

(b) such person is of the male sex.

(2) No salaried officer of Government other than a village officer shall be qualified for election as a councillor.

**NOTES.**

**Cl. (1) (b) Male Sex.**—In Bombay a person of female sex can be a councillor. Section 8 of Bombay Amendment Act VI of 1922. Section 3 of Madras Amendment Act III of 1923.

**49.** (1) A person who has been sentenced by a criminal court to transportation or to imprisonment for a period of more than six months (such sentence not having been reversed or the offence pardoned) shall be disqualified for election or appointment as a councillor while undergoing the sentence and for five years from the date of the expiration of the sentence.

Disqualification of candidates.

(2) A person shall be disqualified for election or appointment as a councillor if such person is at the date of nomination, election or appointment—

(i) of unsound mind, a deaf-mute or a leper ;

(ii) an uncertificated bankrupt or undischarged insolvent ;

(iii) interested in a subsisting contract made with or any work being done for, the municipal council except as a share-holder (other than a director) in an incorporated company ;



- (iv) an officer or servant holding office under this Act, or an honorary magistrate for the municipal town ;
- (v) already a councillor whose term of office as such will not expire before his fresh election or appointment can take effect ; or
- (vi) the servant or employer of a councillor.

• Provided that a person shall not be deemed to have any interest in such a contract or work as aforesaid by reason only of his having a share or interest in—

- (i) any lease, sale or purchase of immoveable property or any agreement for the same ; or
- (ii) any agreement for the loan of money or any security for the payment of money only ; or
- (iii) any newspaper in which any advertisement relating to the affairs of the council is inserted ; or
- (iv) the sale to the council of any articles in which he regularly trades, or the purchase from the council of any articles to a value in either case not exceeding fifteen hundred rupees in the aggregate in any year during the period of the contract or work.

(3) Notwithstanding anything contained in sub-section (1), the Governor in Council may direct that such sentence shall not operate as a disqualification.

(4) No persons shall be qualified for election or appointment for the period fixed in an order passed under section 60 and still in force.



## NOTES.

**Cls. (1) & (8) Disqualification.**—The Local Government has powers to remove the disqualification. Disqualification continues even after five years from the date of the expiration of the sentence. See Sec. 60.

**Cl. (2) (iii) and exemption under (iv) Contract.**—*Cf. U.P.M. Act II of 1916* Sec 16 (3) (c). *Mahamad Baksh v. Mahamad Abdul Bagi Khan*, 45 A. 720=21 A.L.J. 661=L.R. 4 A. 587=74 L. C. 490. A contractor who is remunerated by the municipality for his supply of articles is not holding a place of profit.

**Cl. (2) (iii) Interests.**—*Pootetract Corporatoin v. Lowden*, 79 J.P. 392. Concealing the interest with another as the nominal contractor won't save—*Walsh v. Grimsby* (*Times* 30th November 1900) and *Simpson v. Ready*, 12 M. and W. 736 ; first case refers to a contract in the name of the son and the latter in the name of the trustee.

**Cl. (2) (iii) Subsisting Contract.**—*Lewis v. Carr*, 1 Ex. 484. The disqualification continues as long as the contract subsists. *Gloucester Election Petition*, 1900.

**Cl. (2) (iv) Honorary Magistrate.**—It is right he is not allowed to stand for Councillorship. Invariably municipal prosecutions come before the Bench Magistrates and it is not good that one in one capacity, should allow or refuse an act to be done by a citizen and himself in another capacity sit in judgment over that act or omission or its legal consequences.

**Cl. (2) (ii) Uncertificated.**—May include unadjudicated insolvents whose petitions are pending adjudication.

**Cl. (2) (iv) Officer.**—Under S. 48 (2) the prohibition was against the Government Officers. Here it is "against the Officers or servant holding office under the Act." So other servants of other bodies may stand and compete for election. There is no prohibition against Railway Officials standing for elections if the Railway authorities permit it. Similarly in the case of Private Industrial Mills and Banking Concerns.

**Cl. (2) (v) Whose term on.....election.**—A Councillor can resign his seat but seek election for *another* ward with greater duration of Office of Councillorship. Then it may not be, *his* (whose) term of office *as such*.

**Cl. (2) (i) & S. 30 (1) (b)—Deaf-mute.**—One to be disqualified should be both deaf and dumb. A deaf man without being dumb can stand ; but dumb persons are always deaf also.

**Cl. (2) (vi) Servant.....councillor.**—This is vague. A Secretary of a Big Industrial Firm, may be a councillor. Is the manager of the firm, who is for all practical purposes *bound to obey the orders of the Secretary under the rules of the company and who is de facto his servant* disqualified to stand? But all the same the Secretary is not his *employer*. He does not pay the manager's salary. This question may crop up very often in limited companies. One noteworthy point is that the Secretary may in his turn be the servant of the directorate. We can explain that the Secretary and manager are colleagues.

**Disqualification of councillors.**                      **50. (1)** Subject to the provisions of section 51, a councillor shall cease to hold his office, if he—

(a) is sentenced by a court to such punishment as is described in sub-section (1) of section 49 ;

(b) becomes of unsound mind, a deaf, mute, or a leper ;

(c) applies to be adjudicated or is adjudicated, a bankrupt or insolvent ;

(d) subject to the proviso to section 49, sub-section (2), acquires any interest in any subsisting contract made with, or work being done, for the council except as a shareholder (other than a director) in an incorporated company, or is employed as paid legal practitioner on behalf of the council or accepts employment as legal practitioner against the council ;

(e) is appointed to any office or post referred to in section 49, sub-section (2), clause (iv) ;

(f) accepts employment under any other councillor,

(g) is subjected to an order under section 60 and still in force ; or

(h) ceases to reside in the municipality or within two miles thereof ; or

(i) fails for three consecutive months to attend the meetings of the council.



(2) Notwithstanding anything contained in clause (a) of sub-section (1) the Governor in Council may direct that such sentence shall not operate as a disqualification.

(3) Where a person ceases to be a councillor under clause (a) or clause (g), he shall be restored to office for such portion of the period for which he was elected or appointed as may remain unexpired at the date of such restoration, if and when the sentence or order is annulled on appeal or revision or the disqualification caused by the sentence is removed by an order of the Governor in Council.

(4) In the case of a person who has ceased to be a councillor in consequence of failure to attend meetings the matter shall be reported by the chairman at the next meeting of the council which may at that meeting restore such person to office.

### NOTES.

**Cl. 1 (c) Applies.**—Mere “application” is enough to throw the councillor out of office. Refer also S. 49 (2) (ii).

**Cl. 1 (d) Legal practitioner.**—He should not appear either *on behalf* of the council or *against the council*. In the first capacity he apparently is his own servant, in the latter capacity he criticises the Council, *i.e.*, himself. To take up the latter role is indeed difficult. To forget for the time all the knowledge he knows about one side of the case in the capacity of a councillor (in fact he has free access to all records, S. 20 (3)) and argue on behalf of his client the other side, is humanly impossible and it is unfair for both the parties in question.

**Shall cease.**—It is imperative-subject only to the decision of the District Judge in case of doubts. In other cases it (the disqualification) acts *ipso facto*.

**Cl. (3) Order of Governor in Council.**—This is a condition precedent to the Councillor taking up office again as Councillor.—‘*if*’ and ‘*when*’. This is probably in cases where there was no appeal or revision or one or both of these went against the Councillor. Still the Governor in Council has powers to remove the disqualification.

In the case of successful appeals or revisions, the councillor regains his seat from the date of his appeal or revision-decision annulling the sentence.

**Cl. (4) May.....restore.**—The council is not bound to do that though the unwritten law is that it is generally done. The Chairman himself cannot do that. Probably the council, if there is any disagreement, will have to decide by votes.

**51. (1)** Whenever it is alleged that any person who has been elected or appointed as a councillor is disqualified under section 49 or section 50, and such person does not admit the allegation, or whenever any councillor is himself in doubt whether or not he has become disqualified for office, such councillor or any other councillor may, and the chairman, at the request of the council, shall apply to the district judge of the district in which the municipality is situated.

(2) The said judge, after making such inquiry as he deems necessary, shall determine whether or not such person is disqualified under section 49 or section 50, and his decision shall be final.

(3) Pending such decision the councillor shall be deemed to be qualified.

### NOTES.

This is, besides the election petition, another remedy to set aside the election of disqualified men.

**Alleged.**—By whom and to whom it is not stated.

**Whenever.**—No time limit. It may be immediately after the election or on the occurrence of any of the disqualifying factors.

The Chairman shall apply, at the request of the Council. But a person cannot be ejected except on a due enquiry and decision which is final by the District Judge of the District (according to this rule). *Secretary of State v. P. R. Venkatesalu Naidu*, 1 M.L.T. 435=30 M. 113.



Mere statement that the Councillor was likely to bring the municipal administration to contempt without such inquiry as is provided for and a disqualification pronounced on the basis of such inquiry cannot be supported. *Venkatesalu Naidu's case*. See above 30 M. 113=1 M.L.T. 435; Refer *Secretary of State v. Chelva Perumal Chettiar*, 7 M.L.T. 245=6 I.C. 304.

Though the S. 40 of the old Act of 1884 (Act IV) contained provision for the removals of councillors too, the present Act and S. 19 do not have any reference to them. Probably S. 51 was found to be quite sufficient.

\* \* \* \* \*

## Part II

### ELECTION OFFENCES.

**52.** (1) Every person who by claiming a qualification to vote or to be elected which he knows he does not possess or by using false documents or by a false declaration or by any other deceitful means procures the improper entry of any name in the electoral roll or the improper omission of any name therefrom shall be punished with imprisonment of either description which may extend to three months or with fine or with both.

(2) Every municipal officer or servant or polling officer who wilfully makes or procures any improper entry in the electoral roll or any improper omission therefrom shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

**53.** (1) Every person who with intent to procure in the interests of himself or any other person the vote of any voter or his abstention from voting or the withdrawal of a candidate—

(a) lends or agrees to lend, offers, promises or gives to any person, any property, money, valuable security, public or private employment or any gratification whatever other than a benefit affecting the public in general, or

(b) offers, promises or gives to any person the means of obtaining an electoral qualification for himself or any other person,

shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Every voter or candidate who accepts any such offer, promise or gift or contracts for or accepts a loan as a motive or reward for voting or abstaining from voting or for withdrawing his candidature shall be punished with the same punishment.

*Explanation.*—No agent, clerk, messenger or other person who may in accordance with rules made by the Governor in Council be employed for remuneration by a candidate at an election shall by reason of such employment alone be deemed to be within this section.

### NOTES.

**Bribery.**—Refer *East Nottingham*, 1911 6 O'm and H. 300, *Sweets to children Kingston upon Hull*, 1911 O'm and H. 374 is bribery.

Undue influence.

### 54. Every person who—

(a) threatens any voter or candidate with injury to his person, reputation or property, or to the person or reputation of any one in whom he is interested with intent—

- (i) to induce such voter to vote for any candidate or to abstain from voting, or
- (ii) to induce such candidate to withdraw his candidature, or

(b) (i) commits wrongful restraint,

(ii) publishes statements which he knows to be false and which materially affect a candidate or his election, or

(iii) employs any deceitful means, and thereby prevents the free exercise of the right of any voter or candidate,

shall be punished with imprisonment of either description which may extend to six months or with fine or with both.



**55.** (1) Every person who applies for a ballot paper at an election, having already voted once at the same election or knowing that he is not qualified to vote thereat, shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Every person who applies for a ballot paper in the name of any other person living or dead, or of a fictitious person, shall be punished with the same punishment.

### NOTES.

The tendency of recent legislation is to bring the offences under the Municipal Election Rules in line with those under the Legislative Council Election Rules.

**Knowing.**—*Mans rea* should be existent and that too either in the candidate or in the agent. *Manoranjan v. Brijo Cropal*, 22 C.W.N. 678. If it is in the case of others, that would not avoid the election.

**I. P. C. Ss. 40, 109 and 171-A.**—Case of abetting a voter to vote twice at a Municipal election. It is an offence under S. 55 read with S. 109, I.P.C., even though the facts constituted an offence under S. 171-A, I.P.C. *Sesha Iyer v. Venkatasubba Chetty*, 19 L.W. 201.

**56.** Every polling officer, clerk or other person in attendance at the polling room who, except for some purpose authorized by law, communicates to any person any information showing directly or indirectly for which candidate any voter has voted, and every person who by any improper means procures any such information, shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

**57.** Every polling officer who permits a person to vote knowing that such person is not entitled to vote, or who prevents a person from voting knowing that such person is entitled to

Offences by polling officers.

vote, shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

**58.** Every person who in the course of electoral operations falsifies or attempts to falsify the record of an election by removing, destroying, altering or fabricating nomination papers or voting papers or by any other act or by any omission, shall be punished with imprisonment of either description which may extend to one year or with fine or with both.

Falsifying result  
of election.

#### NOTES.

**Every person.**—This includes Polling officers, candidates and election agents, etc., in fact any person.

**59.** No magistrate other than a first-class magistrate shall take cognizance of any offence punishable under sections 52 to 58 (both inclusive) nor shall he take cognizance—

Procedure before  
magistrate.

(a) except on the complaint of a person whose name is on the electoral roll, and

(b) unless such complaint has been made within seven days of the date of the declaration of the result of any election to which the offence relates, or within seven days of the date on which the offence is alleged to have been committed, and

(c) unless the person complaining shall have deposited Rs. 200.

An appeal shall lie to the District Judge from any conviction and sentence passed under sections 52 to 58.

60. Every person convicted of an offence punishable under sections 52 to 58 (both inclusive) shall be disqualified from voting or from being elected in any election to which this Act applies or from holding the office of chairman, or councillor under this Act for such period, not being less than three years nor more than five years from the date of his conviction, as the court may by order determine.

Order of disqualification.



## Part III

### NOTIFICATIONS.

FORT ST. GEORGE, OCTOBER 12, 1920.

No. 953.—In exercise of the powers conferred on him by section 303 (2) (b) of the Madras District Municipalities Act, 1920, the Governor in Council is pleased to make the following rules for the preparation of electoral rolls for the election of municipal councillors.

### RULES FOR THE PREPARATION OF ELECTORAL ROLLS IN MUNICIPALITIES.

#### PREPARATION.

1.—(a) The *Electoral roll* for each municipality shall be maintained in form I annexed and shall be divided into parts for each ward in cases where the municipality is divided into wards. Each ward shall be separately numbered and the electors therein shall be numbered in a separate series. In each ward the streets and the names in each street shall be arranged alphabetically provided that, where such an arrangement is not convenient, the names alone may be arranged alphabetically for each ward.

(b) The roll shall be kept in the chief vernacular of the town, provided that the municipal council may direct that any roll or part of a roll may be kept in any language.

#### NOTES.

R. 1 (a). Form I.—As per Notification No. 98 hereafter a certificate is added to the Electoral Roll thus making an officer of the municipality responsible for the entries in the rolls. The Revenue Officer of the Madura Municipality was severely warned for failure to discharge his duties

properly and a case depending upon among other things, such an electoral roll—*In Re the Election of E. M. Gopalakrishna Kone*—is pending in the High Court. See Appendix I for Notification No. 98.

2. (a) A person may be registered in the Electoral roll either in his personal capacity or in the capacity of a representative of a company, firm, association, body of two or more guardians or trustees, joint family or other body possessing joint rights but not in both capacities.

(b) No person shall be registered as representative of a body unless he has been authorized in writing by a majority of such body.

Provided that in a case of a Hindu joint family the person qualified to be registered shall be either a member of the family so authorized by a majority of the family or the manager thereof.

(c) No person shall be registered as an elector whether in his personal or in a representative capacity in more than one ward.

### NOTES.

**R. 2 (a). Personal capacity.**—*Charu Chandra Mazumdar v. Chairman of the Fadirpur Municipality*, 26 C.W.N. 412. When the income of both the father and the son have been assessed, both of them were qualified to claim vote under section 15 (2); 38 Cal. 501 *Dist.* So two different persons can be voters in two different personal capacity.

**R. 2 (a). Trustees.**—One having no beneficial interest in the property, *i.e.*, manager of a debutter property, was held not eligible to stand as a candidate.

*In the matter of Rajendra Lall Mitter*, 19 Cal. 195 note. But according to the Madras Rules, a trustee of a property has a vote.

**R. 2 (b). Authorised in writing.**—This makes an authorisation in writing by a majority a condition precedent to the registration of the representative in the electoral roll. *Cf.* 29 M.L.J. 704; *Diraviam Pillai v. Cruz Fernandez* which declares that the nomination of a representative does not necessarily constitute an amendment of the register of voters.

**R. 2 (b). Provided.**—*In Re N.C. Sen*, 39 C. 754=15 C.L.R. 488. Representative alone is entitled to vote and he should be a member of a joint family. *Contra. In the matter of the Election of Municipal Commissioner*, 19 C. 198.

**R. 2 (b). Dacca Municipality v. Krishna Das**, 36 C.L.J.R. 189. Other members of the joint Hindu family are entitled to vote.

**R. 2 (c). More than one ward.**—Refer *Knill v. Towse*, (1890) 24 Q.B. D. 697, C.A., decided by Lord Esher, M.R. "I see no inconsistency in holding that though a person may be registered in several divisions he can only vote at the same election for one of those divisions, at p. 701."

This rule is a very important provision which definitely prohibits certain privileges which a voter may claim in its absence and cause incalculable hardship. Equity and commonsense would support such a rule. Whatever may be the different capacities, or different qualifications a man may have entitling him for several votes, still his opinion *re* the selection of a particular candidate is bound to be one. For such a person to give too many votes will be a waste. Votes should not be allowed to gather into the hands of a few rich individuals.

**3. (a)** It shall be the duty of the chairman to cause inquiry to be made and to prepare, or cause to be prepared, lists of all persons appearing to be entitled to be registered as elector in the roll for the municipality or for each of the wards comprised therein. The lists shall be prepared in the form prescribed for the roll and shall also contain such other particulars as the council may require.

**(b)** The preliminary roll shall be prepared from these lists and published in the municipal office not later than the 30th April.

**(c)** The chairman shall also simultaneously publish a notice in form 11 specifying the mode in which, and the time within which, claims and objections are to be preferred and the date on and the place at which the revising authority will begin to sit for their disposal. The notice shall state in the preliminary roll will be open to inspection at the municipal office daily between 11 a.m. and 4 p.m. up to the 15th May.



Copies of the notice should be affixed in the municipal office and in one conspicuous place in each ward or where there are no wards in not less than three conspicuous places in the municipality.

### NOTES.

**R. 3 (a). Form.**—Lists shall be prepared in the form prescribed :— Misdescription alone in the register is not a good ground for rejection, *Purnea Case*, Indian Election Petitions 53.

• **R. 3 (a). Particulars.**—The materials gathered by the officers of the Municipality shall form the basis to represent the case of the Municipality when objections are raised before the Revising Authority.

**Council may require.**—As years roll on and as objections are taken the council may understand what all materials the roll (preliminary) should gather to meet the objections just or unjust raised by the intending electors under Rule 4.—Refer also Rule 6 for gathering of additional information.

**R. 3 (b). Refer Appendix II. Preliminary Roll.**—As part G.O. No. 1876, L. & M. No. 694, the following is added at the end of the rule.

“If it be convenient a printed copy of the roll in force or of a roll previously in force with printed list of additions and corrections may be published as the preliminary roll.”

This, as the G. O. itself specifically says, is “optional which may be availed of if convenient.”

**R. 3 (c) and R. 8 (a). Notice.**—*In re Amulyadhan Addy*, 46 C. 132=50 I.C. 307. Failure to give notice under rule 3 (c) is a very grave irregularity. Persons objecting should be given time to take steps within a certain time.

**R. 3, 8 (g) and 6; 20 A.L.J. 1. Duty.....therein.**—*Municipal Board, Agra v. Acharji Ali*.—The name of a qualified voter is left out. If it is proved it was due out of malice, damages ought to be granted which may be even punitive.

The liability to pay the damages should be placed on the right shoulders which must be decided upon under the general law of Principal and Agent.

29 M.L.J. 704=18 M.L.T. 518=31 I.C. 322. *Diraviam Pillai v. Cruz Fernandez*.—“The Chairman’s refusal to register a qualified voter, if not in good faith is a good ground for damages.”—This is a case under the old Act. Now there are rules 6 and 7 which provide a ‘Revising

Authority' and Rule 8 (g) specifically exempts all responsible for the completeness or accuracy of the electoral roll from any liability nor can damages be claimed from them *by reason only of an omission or inaccuracy.*

### CLAIMS AND OBJECTIONS.

4. (a) Any person who claims to be entitled to be registered as an elector and whose name is not entered or entered in an incorrect place or manner or with incorrect particulars, on the preliminary roll and who objects to the inclusion of the name of any other person whose name is on the roll may prefer a claim or an objection to the revising authority. Such claim or objection shall be sent in form III or form IV to the chairman as to reach him on or before 15th May.

(b) Claims and objections may be preferred in person or sent by post.

(c) Claims and objections received after the prescribed date shall be rejected.

(d) The chairman shall supply forms of claims and of notices of objection free on the application of any person.

### NOTES.

**R. 4 (a). Claims and Objections—Distinguished.**—A person.

- (i) whose name is not entered as an elector
- (ii) or entered in an incorrect place
- (iii) or entered in an incorrect manner
- (iv) or with incorrect particulars.

Can put in a claim.

But the objection "to the inclusion of the name of any other person whose name is on the roll" must be *by one whose name is on the roll.* The first is a claim and the latter is an objection. It is a good feature that the objector should be one having a *locus standi* to contest. The significance of the words "*and who objects*" should not be lost sight of. None other than those on the Rolls can do it. In this, the preliminary roll itself is a check. Refer Form IV signature, and II.

**R. 4 (b). In person or sent by post.**—Only two ways are suggested. Post is as good as presenting in person. It may ensure safe delivery or there is a presumption that it will reach the addressee if properly addressed. Can a claim be sent to the chairman through a messenger? The closing sentence of (a) merely says "be sent to the chairman as to reach him on or before the 15th May". It implies sending by any way. But the claim or objection shall be in Forms III and IV—See Rule 10,—"by post" and "sufficiently sent"—See Form II, 5th paragraph.

**R. 4 (c) and R. 6. Date.**—The prescribed date seems to coincide with the date fixed for the sitting of the Revising Authority as under rule 6 objections and claims can be sent *before the date fixed for the sitting of the Revising Authority*.

**R. 4 and R. 7 (b). Rejection of a claim.**—29 M.L.J. 704 = 18 M.L.T. 518 = 31 I.C. 322. *Diraviam Pillai v. Cruz Fernandez*.—A case (under the old Act) of summary rejection of a petition presented for the registry of the name of a person as a voter which was found as not a *bona fide* act on the part of the officer. Now it shall be (rejection or admission of a person) according to the procedure prescribed in rule 7(b).

The chairman is liable in damages if the refusal is not in good faith. Express malice is not necessary.

**5. (a)** The chairman shall, not later than 20th May.

(i) publish lists of all claims and objections received in the line in form V in the municipal office, and

(ii) send a copy of every notice of objection to the person to whose registration objection has been taken.

(b) In the lists referred to in clause (a) (i) and in the copy sent under clause (a) (ii), chairman shall give notice that the claims and objections will be taken into consideration by the revising authority at a place and on a date to be specified not later than 1st June.

**6.** The chairman shall have necessary inquiries relating to claims and objections made before the date fixed for the



sitting of the revising authority and may also of his own motion remove from the lists the names of persons whom he has reason to believe to be dead, and may make such other corrections as may be necessary, provided that he shall publish a list of all such corrections with the list of claims and objections as provided in rule 5.

### NOTES.

**R. 6. Own motion.**—Dead person's names can be removed by the chairman himself. Corrections of *such* a nature are also allowed. It is not all corrections. The force of "such" in close proximity to 'dead' should be understood in its restricted sense.

Even these are subject to the security of the Revising Authority under rule 7 (b).

### REVISING AUTHORITY.

7. (a) For each municipality, there shall be constituted a revising authority consisting of the chairman and two non-official gentlemen to be nominated by the Collector of the district. The chairman shall act as president.

(b) The revising authority shall sit in open court on the day fixed and from day to day until all the claims and objections are disposed of. Orders shall be passed in writing on each claim or objection, with reasons if a claim is rejected or an objection contested. The revising authority shall also pass orders on the lists of corrections made by the chairman of his own motion. The orders passed by the revising authority shall be final.

### NOTES.

**R. 7 (a). Non-official.**—A councillor is a non-official. In ordinary parlance it refers to people who are not in Government service. So two councillors may be appointed to help the chairman. There is no legal prohibition.

**Each.**—The reader's attention is drawn to the G. O. No. 2334, L. & M., 30-11-21 published below the rules and above the forms. It introduces the words "for each electoral roll of a municipality."

**R. 7 (b). Sit.**—Refer G. O. No. 1773. L. & M., dated 11-8-1923. Appendix IV which specifically insists on the presence of all the three members. If one is unable to be present for a long time he should be asked to resign his membership. Three persons are also essential for decision of disputes as two cannot decide either way.

**Sit how long ?**—Till their work ceases. Then it goes out of its existence. Refer G. O. No. 2334, L. & M., 30-11-21 published above the forms.

**R. 7 (b). Court**—Is Revising Authority a Court? Are objections and claims given on oath? Do they take evidence? What is the procedure? Is "sitting in open court" a mere phrase, Refer to Appendix IV. Where we have the statement "that the meetings of the Revising Authority should be convened only by the chairman" so when the Revising Authority sit, it is a meeting, though their meetings, should be open and not in camera. This is obviously the intention of the legislators when they framed Rule 7. But see Rule 12. It is given the powers of a court and can take evidence on oath. So the words "meeting and convened" are loosely used. We can get over it by saying that the meeting evolve into a court after they meet.

**R. 7 (b). Final.**—Compare Rules 4 and 7 of Bengal Municipal Electoral Rules 4, 7, and 29.

*Shyam Chand Basak v. Nabendra Nath Basak*, 26 C.W.N. 147. Rule 29 of Bengal Rules gives general power to the magistrates to decide all disputes regarding insertion or removal of names in the electoral rolls.

**R. 7 and 8 (c).** (1924) M.W.N. p. lxxvii.—The final electoral roll was final and conclusive and any irregularity in the preparation of the same cannot be questioned in election proceedings under rule 8 (c) for the preparation of the electoral rolls and that the word 'proceeding' is wide enough to cover election inquiry also.

**R. 7 (b). Final.**—*Surat Municipality v. Chunla*, 30 Bom. 409.

1. The Municipality cannot be sued for a refusal or omission to enter a voter.

2. Remedy lies against the Officer if he had acted with malice. *Chunilal v. Kripashankar*, 31 Bom. 37.

3. To declare a person's right to vote a suit is maintainable. *Manictolla Municipality case*, 24 C.W.N. 969, *Dacca Municipality case*, 36 C.L.J. 189.

4. Writ of mandamus whether lies in case of grievances, (by civil courts. *In Re Vijaraghavalu*, 26 M.L.J. 310.

5. Suffering party has a right to prevent an action which illegally interferes with his privileges. *Sarvothama v. Saidapet Municipality*, 45 M.L.J. 23.

**R. 7 (b). Final.**—19 C.W.N. 129=31 I.C. 618. *Narendra Nath Babu v. Stephenson*. Case under Rule 16 of the Bengal Medical Act of 1914, which said that the decision was final. The order cannot be questioned in any Civil Court. Even if the rules were *ultra vires*, an application for mandamus to compel the Returning Officer to include the applicant's name is not sustainable.

### FINAL PUBLICATION.

8. (a) The chairman shall correct the rolls in accordance with the orders of the revising authority and the rolls or parts of rolls so corrected shall be printed and copies made available not later than the 1st July.

(b) The rolls shall also be published as required by section 44 of the Act and shall come into force from the date of such publication and remain in force till the publication of a fresh electoral roll.

(c) Two copies of the roll shall be signed by the chairman. One of them shall be kept in his office and the other forwarded to the Collector of the district for record in his office.

(d) The chairman shall not alter the roll while it continues in force, except in order to correct clerical errors.

(e) No failure to observe the dates prescribed in these rules or to observe other directions regarding the preparation of the electoral roll shall entitle any one to question the validity and conclusiveness of the registers in election proceedings.

(f) Notwithstanding anything contained in these rules, where the limits of a ward are materially changed or



where a new ward is created, the preparation, revision and publication of the electoral roll may take place on or before such dates as the council may prescribe in that behalf and such electoral roll when so revised and finally published shall come into force from the date of final publication and remain valid until the publication of the next final electoral roll.

(g) None of the officers entrusted with the preparation of the rolls shall be held legally liable for their completeness or accuracy; neither shall they be held liable to any action for damages by reason only of any omission or inaccuracy in respect of such rolls or any non-compliance with the dates prescribed in these rules.

#### NOTES.

**R. 8 (b) and (f).** In force till.....roll *Cf. Stowe v. Jolliffe*, (1874) L.R. 9 C.P. 734.—It was conclusive not only *at* but also *after* the election. In India it is in force till a fresh roll according to rules is made. Refer Sec. 44 (4) of Madras District Municipalities Act and Rule 8 (f) herein.

**R. 8 (d). Error**—C.R.P. 223 of 1933—(1925) M.W.N. *Weeks casss*, p. 21.—Where a voter's name was put down in two words and were by mistake it was struck out in both the places, the chairman has got powers under rule 8 (2) to restore it in one place. It is purely a clerical error.

**R. 8 (d). Alter.**—The Chairman has no powers to issue a supplementary list of voters. *In the matter of Corkhill*, 22 Cal. 717.

**R. 8 (e). Failure.**—Is a handsome statutory license to take shelter under in cases of unwitting omission and *bona fide* mistakes.

**R. 8 (e). Conclusiveness.**—12 S. L.R. 73=49 I.C. 394, *Rahim Basrie v. Wali Mahomed*.—An error in a list of voters giving the name of a voter twice by mistake does not invalidate the election unless there is evidence that the error was corruptly caused.

**R. 8 (e). Conclusiveness**—*Middleton v. Simpson*, 1880, 5 C.P.D. 13; *Atal Hag v. Maniktolla Municipality*, 48 C. 378=24 C.W.N. 969=Roll is conclusive of a gentleman's right to vote but not as to the qualification of a candidate.

**R. 8 (e). Preparation.**—*R. V. Palaniswami Pillai v. R. Srinivasa ranga Chariar*, 20 L.W. 851 at 853. The word is used both in a general

and in a restricted sense in different portions of the same rules and we find that in rule 8 (e) preparation is in the general sense and includes the action of the revising authority.

'Election Proceedings'.—The phrase is of the widest import and may well include an inquiry into an election dispute.—An inquiry under these rules must be regarded as an election proceeding (p. 853).

**R. 8. (1), Damages.**—It will have to be borne by the man who is responsible for it which will have to be decided under the general principles of Principal and Agent.—44 All. 202, *Agra Municipal Board Case*; Refer *Ashby v. White*.

### GENERAL.

**9.** The Chairman shall keep printed copies of the rolls for inspection and sale in his office and for supply to the presiding officers at the polls.

**10.** Any notice which is required to be sent by the chairman under these rules to any person shall be sufficiently sent if sent by post to the address of that person as given by him for the purpose, or as appearing on the roll, or if there is no such address, to his last known place of abode.

**11.** On the consideration of any claim or objection or other matter by the revising authority any person appearing to be interested therein may appear and be heard either in person or by duly authorized agent.

**12.** The revising authority may in its direction, or at the request of any person interested require that the evidence tendered by any person should be on oath and may administer an oath for the purpose.

**13.** Notwithstanding anything contained in these rules the Local Government may fix such dates as they may deem fit for the preparation, revision and publication of the electoral rolls in 1920.





## FORM II.

The preliminary electoral roll of voters for the Municipality is open to inspection at the Municipal Office daily between 11 A.M. and 4 P.M. up to the 15th May.

Any person who claims to be entered in this roll and who is not entered in it or it is entered in an incorrect place or manner or with incorrect particulars may put in a claim addressed to the chairman to have his name entered, or the registry corrected.

Any person whose name is on this roll and who objects to the correctness of the entry or to the inclusion of the name of any other person whose name is on the roll may prefer an objection addressed to the chairman.

Claims shall be preferred in Form III and objections in Form IV appended to this notice. Copies of the forms will be supplied free by the chairman on application.

Claims and objections may be presented to the chairman at any time during office hours or sent by post, but must reach him on or before the 15th May.

Claims and objections which are not preferred in proper form or are not received by the date prescribed will be rejected.

All claims and objections received in time and in proper form will be heard by the revising authority at on

*Chairman.*

FROM III.

- Notice of claim for correction of registry  
registration.

To

## The Chairman of

Municipality.

Sir,

I hereby give you notice that I claim to have the registry of  
my name

my name corrected  
entered in the roll of electors for the

Municipality as follows :—

Name in full of claimant and father's, karnavan's or husband's name.	Address (ward, or street and door number.)	Head of qualifica- tion.	Kind and amount of tax paid.
1	2	3	4

I declare that I am British subject and that I attained the age of 21 years on      Date

Signature of claimant.

## FORM IV.

*Notice of objection to registration.*

To  
 The Chairman of  
 Municipality.

Sir,

I hereby give you notice that I object to the name of the person mentioned and described below retained in the elector's roll for the ward in the Municipality :—

Name of person.	Objected to number in preliminary roll.	Nature of objection.
1	2	3

*Signature of Objector.*

Date Address  
 Ward and number in preliminary roll.

## FORM V.

*List and claims and objections.*

(a) The following persons have put in claims to be registered as electors (or to have the registry of their names corrected) on the roll for the Municipality :—

Ward.	Name of claimant.	Address.	Head of qualification.
1	2	3	4



(b) The following objections have been received regarding entries in the roll Municipality :—

Ward.	Name of objector and number on roll.	Name of person objected to and number on roll.
1	2	3

(c) The following corrections have been made by the Chairman of his own motion in the roll for the Municipality :—

Ward.	Number on Roll.	Nature of Correction.
1	2	3

. The above claims and objections will be heard and corrections finally considered by the revising authority on at

*Chairman.*

F. J. RICHARDS,  
Ag. Secy. to Government.

## Part IV

### NOTIFICATION.

*Fort St. George, November 23, 1920.*

No. 1120.—In exercise of the powers conferred on him by section 303 (2) (b) of the Madras District Municipalities Act, 1920, the Governor in Council is pleased to make the following rules for the conduct of elections of municipal councillors in municipalities :—

#### RULES FOR THE CONDUCT OF ELECTIONS OF MUNICIPAL COUNCILLORS.

1. (1) Not less than twenty days before the date fixed for the holding of an election, the chairman shall prepare and publish a notice stating—

(a) the number of persons to be elected ;

(b) the wards for which they are to be elected ;

(c) the date on which, and the hours between which, nomination papers should be presented to him ;

(d) the date on which the nomination papers will be taken up for scrutiny, not being less than seven days before the date of the election ;

(e) the day on which, and the place or places where, the votes of the electors will be taken, should there be a poll ; and the hours during which the poll will be open, not being less than six hours between 8 a.m. and 5 p.m. ; and

(f) the day on which, and the place and hour at which, the chairman will commence the counting of the votes.

(2) The notice shall be published by being affixed at the municipal office and in three conspicuous places in each

ward for which an election is to be held, and, where the municipality is not divided into wards, is not less than three conspicuous places in the town.

### NOTES.

**R. 1 (e). The 'day' on which.**—*Cf.* 20 L.W. *Short Notes*, p. 72. The election on a day other than that fixed is void.

**R. 1 (e). Place or places.**—The chairman under this rule shall notify the place of election *i.e.*, where the votes of the electors will be taken. The rules do not provide for any change of place under any extraordinary or emergent circumstances. But according to English law where the change of place was in good faith and the election remained unaffected, the change may be a mere irregularity. 9. *R. C. L. pp.* 1105.

This was one of the points raised in the election petition *K. Narayana Sastry against Sambanda Mudaliar's elections to the Legislative Assembly. (Coimbatore group).*

**R. 1 (e). Hours.**—If voter had received ballot paper before the time fixed, they should be allowed to vote. *Ipswich*, K and O. 380. According to rule 9, the polling officers have jurisdiction to regulate the number of voters to be admitted at one time into the polling station. So at the most, the persons who stay on to vote after the prescribed time may not exceed that number. Strictly read, one doubts the validity of any vote received or allowed to be deposited into the box after the time according to Rule 1 (e) the poll will be open only till certain time, and votes will be taken only till that time.

**R. 1 (e).—Hours.**.....*six hours between 8 a. m. and 5 p. m.* 30 C.L.J. 270=24 C.W.N. 189=53 I.C.741, *Shyam Chand Basak v. Chairman of Darca Municipality*. A provision as to the time of opening and closing the polls is merely directory.

Where polls remained opened from 1 P.M. until 6 P. M., instead of from one hour after sunrise to sunset as required by law, the election was held invalid. *Tebba v. Smith*, (1895) 49 *Am. St. Rep.* 68 ; 29 L. R. A. 673. If this departure from rules does not affect election result, the election will hold, *Lane v. Fern*, (1910) *Am. Cas.* (1913) ; B. 155.

**Hours.**—Improper extension or reduction of time is a material irregularity affecting the result of the election. 9 R.C.L. 107.



## NOMINATION OF CANDIDATES.

2. (1) The nomination of every candidate shall be made by means of a nomination paper in Form No. I, which shall, on application, be supplied free by the chairman to any elector whose name is on the electoral roll for the ward.

(2) Every nomination paper shall be subscribed by two such electors as proposer and seconder and the candidate shall subscribe a declaration on it expressing his willingness to stand for election.

(3) The same elector may subscribe as many nomination papers as there are vacancies to be filled. Each candidate shall be nominated by a separate nomination paper.

(4) Every nomination paper shall be presented by the proposer or seconder on the date and during the hours appointed, to the chairman at the municipal office.

(5) Nomination papers received after the date and time so appointed shall be rejected.

## NOTES.

Rule (2) (1). "Form".—The direction is mandatory. The nomination paper cannot be altered or added, *Harnam v. Park*, (1881) 7 Q.B.D. 369.

R. 2. (2), (3) and R. 4:—46 Cal. 119=22 O.W.N. 943=48 I.C. 314, *N.N. Mitter v. R.C. Pal*. A nomination paper is invalid in law if it does not contain the description of the candidate. It should be self contained, complete in itself and a letter could not be taken as a part of the nomination paper. *Per Woodroffe, J.*—Alternative nomination papers may be given so that if one is held either in whole or part in valid the other may stand. Importance of the "Forms" of nomination papers is emphasised. Do the Madras Rules allow alternative nomination papers? Only the same elector may subscribe as many nomination papers as there are vacancies. Can a elector present two nomination persons suggesting the same candidate—to avoid any mishap—when there is only one vacancy? No.

**R. (2) (a). Signed.**—Cf. United Provinces Electoral Rules 11 (2), *Shakir Ali v. Abdul Hakim*, 59 I.C. 846. The rule does not require that the declaration should be signed in the presence of the Attesting Officer or in fact any one." Rule 2 (4) states and imagines two people signing somewhere else and only one of them presenting it.

**R. 2 (2). Subscribed.**—The "subscribing" need not be in the presence of any one or before the chairman. *Basti*, (1921) 1 I.E.P. 47.

**R. 2 (2). Declaration.**—Each nomination paper should contain the candidate's declaration of willingness—in case of several nomination papers for the same candidate.

**R. 2 (4). Presented.**—It should be done personally and not by an agent. If done by an agent it can be questioned in election-proceedings. *Monks v. Jackson*, 1876 1 C.P.D. 683.

**R. 2 (4) (5). Refusal.** *Gowardhandas v. Lal Chand*, 61 I.C. 315. Improper refusal to receive nomination paper presented in time is a grave irregularity affecting the results of the election.

**R. 2 (4).** Presentation shall be by the proposer or seconder. It cannot be allowed to be done by his agent unless there is clear authority for it. (This is not conceded by the Madras Rule). When the rules insist on the transmission of the nomination papers by the proposer or seconder, its despatch by the candidate makes it invalid. See *S. A. Kelkar v. Rao Sahib R. V. Mahajani Co.*, 60 I.C. 870. A Secnder's peon can post the nomination paper validly.

**R. 2 (5).** Every candidate for election must send his nominations before the prescribed date. The chairman has no power to waive this rule. *In the matter of Cockrill*, 22 Cal. 717.

**3.** On the day appointed for the receipt of nomination papers and immediately after the hour for their receipt is past, the chairman shall publish in the municipal office a list in Form No. II of such nominations as appear to him to be valid with a notice that the nomination papers will be taken up by him for scrutiny at the municipal office on the date fixed in rule 1 at the hour specified by him.

#### NOTES.

**R. 3 and 5.** There is no rule prescribing that nominations should be announced along with the list of the proposer's and seconder's names. *In the matter of Cockrill*, 22 Cal. 717.

### SCRUTINY OF NOMINATION PAPERS.

4. (1) On the date and at the time appointed for the scrutiny of nomination papers, every candidate and his proposer and seconder and any other elector of the town or ward may attend at the place appointed, and the chairman shall give them all reasonable facilities for examining the nomination papers of all candidates which have been received by him as aforesaid.

(2) The chairman shall examine the nomination papers and shall decide all objections which may be made to any nomination paper on the ground that it is not valid under rule 2 and may reject, either of his own motion or on such objection, any nomination paper on such ground; the decision of the chairman shall in every case be endorsed by him on the nomination paper in respect of which such decision is given.

### NOTES.

**R. 4 (1). Every candidate.....attend**—In England candidates and their representatives alone are allowed to appear in the proceedings before the Mayor and they may object Rules 12 and 13 of the M. C. A. In India the rule is broader and provides for the presence of any other elector."

**R. 4 (2). Objections.**—In English Law it should be in writing—Municipal Corporation Act, 1882, Sch. III, Part II, r. 9. Here nothing is stated. It may be oral or in writing.

**R. 4 (2). Objections.**—Should certainly include *all* objections from *all* persons who are allowed to be present in these proceedings before the chairman under rule 4 (1). *So even an elector present can object to the validity of the nomination.*

**Rr. 4 and 5.** Rule 2 regarding nomination papers with emphasis on form, subscription, separate nomination paper, presented by specified individuals at specified time and to a specified person in his office should be strictly complied with. Otherwise the court can declare the same to be invalid. *Narendranath v. Radha Charan*, 46 Cal. 119=22 C.W.N. 943=28 C.L.J. 289.



**R. 4 (2). Rejection.**—The only remedy open to a rejected candidate, if he has any grievance, is by way of an election petition. *Sarvothama Rao v. Saidapet Municipal Council*.

**R. 4 (2).** Compare Bengal Rules No. 40 under Sec. 15. *Abdul Behari v. Lal Kesri Prasad Singh*, 63 I.C. 6.

The decision of the District Magistrate as to nomination is final. Whether the candidate was *disqualified* to stand as a candidate is a matter for Civil Court to adjudicate.

**R. 4 (2).** *and Sec. 45 of the Specific Relief Act.* An application for a mandamus lies to the High Court which may in its discretion refuse to interfere. *Halder v. Mallik*, 28 C.W.N. 127.

**R. 4 (2). Examine and decide—decision.**—These words used in this rule are very important. They are deliberately put in obviously to give "the authority of a judge" to the acts of the chairman and his decision is in consequence a judicial decision. *Manindra v. Provas*, 39 C.L.J. 58.

**R. 4 (2). Reject of.**—Rejection of a nomination paper is a grave irregularity and a good basis for avoiding the election. But the officer who did it, is not a necessary party—cannot be made a party—to the Election proceedings. *Purnia case*, 1 Indian Election Petition 178.

**R. 4 (2). Ground.**—The chairman shall state the grounds of his rejection; else his act is subject to the interpretation of having been malicious and unreasonable. A groundless rejection is surely a material irregularity affecting the result of an election.

**5.** Immediately after the scrutiny and the acceptance or rejection of nomination papers in the manner described in rule 4 is completed, the chairman shall make up a final list of valid nominations in Form No. III and publish it on the notice board of his office not later than four days before the date fixed for the election.

### NOTES.

**R. 5. Rejection.**—Improper refusal is a serious irregularity—*Rohtak*, (1921) 1, Indian Election Petition 186.

**R. 5. Final list of valid nominations.**—This is subject—in England—to reversal in election petition questioning the validity of the nomination. Ref. Rule 14 of the M.C.A. 1882 (English).

6. (1) Any candidate who has been duly nominated for election may withdraw his candidature at any time by written notice signed by him and delivered to the chairman before midday of the day previous to that fixed for the poll; but no candidate who has withdrawn his candidature may subsequently cancel his withdrawal and stand at the same election.

(2) The chairman shall remove from the ballot paper the name of any candidate who

(a) dies at any time before the poll is taken, or

(b) has withdrawn his candidature in accordance with the provisions of sub-rule (1).

### NOTES.

**R. 6. (1). Withdrawal.**—Should be before midday on the day previous to the date of election. *Cf. Sultan Baksh v. Abdul Hamid*, 45 All. 685. Where a contesting candidate withdrew from the contest on the date of election, the returning officer closed the poll and declared the other candidate as elected. — Good in law.

**R. 6 (1). Delivered.**—Strict reading may mean it shall be delivered by the candidate *himself*. "It should be signed *by him* and delivered." Had the framers of rules wanted to imply that it may be done through an agent, they could have stated "or *cause it to be delivered*." *Cf. Urban District Councillor's Election Order, 1898, rule 8, Refer also "Rules Common to all Provinces" Rule No. 8, Hammond, p. 180 where the very words of this rule occur.*

7. (1) If the number of candidates who have been validly nominated and have not withdrawn their candidature is equal to the number of vacancies, all such candidates shall be deemed to be duly elected.

(2) If the number of such candidates is less than the number of vacancies all such candidates shall be deemed to be duly elected and the chairman shall start election proceedings afresh for filling up the remaining vacancy or vacancies and repeat the formalities prescribed in rules 1 to 5.



8. (1) If, owing to there being more candidates than there are vacancies, a poll has to be taken, the chairman shall appoint forthwith one or more polling officers for each polling station and may pay them reasonable remuneration for their services. The chairman may also, if necessary, appoint one or more identifying officers to assist the polling officer in identifying the voters. Polling officers shall neither be councillors for the wards for which the poll is to be taken nor registered voters therein.

(2) If, after the taking of a poll has become necessary under sub-rule (1), the number of validly nominated candidates becomes, owing to the death of a candidate before the poll is taken, equal to, or less than, the number of vacancies, election proceedings shall be started afresh and the formalities prescribed in rules 1 to 5 repeated.

#### NOTES.

R. 8. Can Polling Officers resign? Refer *Wakefield*, 1842. B, and *Aust.* 271, which prohibits the resignation of the Returning Officers once they are appointed.

#### VOTING.

9. (1) The polling officer shall keep order at the station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at one time, and shall exclude all persons except his own clerks, the candidates or agents whom the candidates may have appointed in writing to appear in their stead at the polling station, the Police on duty, and such persons as may be admitted for the purpose of identifying the electors.

(2) The letter of a candidate appointing an agent to represent him at the polling station shall be sent so as to reach the polling officer before the voting commences.



## NOTES.

**R. 9 (1). Agent.**—There is no provision for 'agents' in the English Municipal Elections. Ref. *Municipal Elections Act*, 1884, 47, 48 Vict., C. 70, but a candidate has got the option to appoint a number of paid assistants.

**R. 9 (1). Candidates or agents.**—Candidate's right to be at the polling station or that of his appointed agents is granted by the rules. Cf. *Clementson v. Mason*, (1875) L.R. 10 C.P. 209,

**10.** The ballot box shall be so constructed that the ballot papers can be introduced therein but cannot be withdrawn therefrom without the box being unlocked. Just before the commencement of the poll the polling officer shall show the ballot box empty to such persons as may be present at the polling station and shall then lock it up and place a seal upon it in such manner as to prevent its being opened without breaking such seal and place it in his view for the receipt of ballot papers and shall keep it so locked and sealed. The key of the ballot box shall also be placed under seal.

## NOTES.

**R. 10. Boxes.....unlocked.**—*Hackney*, 2 O.M. and H 77; *Davies v. Lord Kensington*, 1874 L.R. I.C.P. 723. The construction of the ballot box in the proper prescribed manner is one of the promoting factors in a valid election. Otherwise a mischievous voter would under the guise of voting may remove the votes of a candidate whose election to the office is not to his pleasure.

**11.** The chairman shall provide for each polling officer such number of clerks as he may consider desirable and shall supply him with a copy of the electoral roll, a list of the nominations, ballot papers and boxes, and such other papers, stationery and forms as may be necessary.

## NOTES.

**R. 11. Ballot paper.**—The word ballot is derived from the Greek word *balle* to throw. The word is used both as a verb and as a noun—

in the former sense to ballot; In the latter sense the term is applied to the implements of voting, which originally were shells, pebbles, beans or balls. Later, a slip of paper was substituted on which were printed the names of the candidates to be voted for; and it is in this sense that the word has come to be generally used. The word however is not restricted in meaning to a slip or a sheet of paper or parchment" *vide* p. 63, 65. *P. Duraiswami Iyengar's Law of Municipal Corporations*, 2nd Edn.

**12.** Every ballot paper shall be in Form No. V and shall have the names of the candidates printed on it in alphabetical order. If there are two candidates of the same name, they shall be distinguished by the addition of their occupation or in some other suitable way.

**13.** (1) The name of every person presenting himself to vote and his number on the electoral roll shall be entered in a signature slip maintained in Form No. IV, and the voter shall thereafter, if he is literate, sign his name in the column provided for that purpose, or, if he is illiterate, shall fix his thumb-impression thereto.

(2) The voter shall present his slip to the polling officer who, after satisfying himself that it has been duly signed by the voter or impressed with his thumb-mark, shall file it; provided that the polling officer may, if any doubt should arise as to the identity of the voter, require that the slip be attested by any person present who can identify the voter. If there is no such person present, the polling officer shall note on the slip the fact that the voter's identity has been questioned.

(3) Special facilities shall be accorded to women voters who observe the gosha system in accordance with the regulations framed by the council in that behalf.

#### NOTES.

**Rs. 13 (2) and 18. Satisfying.—Himself—**Can the polling officer put questions? Is he allowed under the rules to do so? Stirof understanding of the rules tends to make us feel that he cannot under rule 13. The rules expressly give him the power in the rule 18. Where it is stated expressly



"after duly answering such questions." This is obviously denied in rule 13.

**Such questions.....ask.**—What should be the character of these questions? Extending to what limits Does the word refer back and suggest that questions can be only questions relating the just preceding idea and phrase "particular elector named on the electoral roll" and towards deciding the same? It should be so. Refer Draft Amendments in Appendix VII.

**14.** Immediately before a ballot paper—that is the counterfoil of Form No. V—is handed over to the voter, the polling officer shall

- (i) initial it on the back;
- (ii) enter the voter's number in the electoral roll on the corresponding counterfoil of Form No. V; and
- (iii) affix his initials against the voter's name in the electoral roll.

The polling officer shall then tell the voter how many votes may be given and shall give him the ballot paper.

### NOTES.

**R. 14. Ballot Paper.**—i.e. Counterfoil of Form No. V.—The presiding officer should see that official mark is affixed to or on it. *Thonbury* (1886) 4 O.M. and H, 65. But in India the form of the ballot and the initial of the officer are insisted upon—rule 14 (i) and (iii).

See the "instructions given for printing the ballot papers" in the accompanying forms of the Election Rules.

**Rs. 14 and 17.** Absence of Printer's Impress on the placards or bills or posters is an illegal practice. Ref. Municipal Elections Act, 1884, Sec. 15. Impress corresponds to the initials of the Polling Officer in the Madras Rules.

**R. 14 (1). Initials.**—*Kannippa Mudaliar v. Chinnaaswamy Chettiar*, 45 M.L.J. 329=18 L.W. 160=(1923) M.W.N. 447=73 I.C. 540=33 M.L.T. (H. C.) 37=(1924) Mad. 38. Mere infringement of rules does not



invalidate the election. The rule is not mandatory. The mere absence of the Polling Officer's signature does not vitiate it. Scope of Rules 13 to 15 considered.

**15.** The voter on receiving the ballot paper shall forthwith proceed to the place set apart for the purpose and there mark a cross against the name of the candidate or candidates for whom he intends to vote. He shall then fold up the ballot paper so as to conceal his vote and put it into the ballot box.

### NOTES.

**R. 15. Forthwith.**—This implies that a ballot paper should be given to the voter only at the time and just before voting. After receiving the ballot paper the voter can go to the polling-booth only and nowhere else. After the receipt of the ballot, the voter is made free from the persuasion of candidates and agents.

**R. 15. "Place set apart."**—*Howrah Municipality v. H.R. Chowdary*, 38 C.W.N. 892.

- (i) Candidates are not given any statutory right to claim the privilege of remaining in the place where votes are recorded.
- (ii) A prohibition against his presence is not inconsistent with the provisions of the Act (Bengal Act).

**Rr. 15, 17 (2) & (3).** The mark in India shall be a cross. The following were held good in England.

- (i) A star instead of a cross. *Buckrose*, (1886) 4 O. M. & H. 110.
- (ii) "P" with a cross.
- (iii) A star.
- (iv) Three or more crosses.
- (v) Vertical Line.
- (vi) An oblique line.
- (vii) A line striking the candidate and a cross.
- (viii) A cross placed on the leftside. Rule 17 (2) says merely "against" a name.
- (ix) a cross against the name in right or left the border end of paper.

**Rr. 15 & 17.** The voter is asked to do only these and these only.—

(i) cross against the name of the candidate, or candidates,

(ii) fold up the ballot paper.

(iii) and put it into the box. Anything in excess or short of it nullifies the vote. So a voter destroys the validity of his vote by putting his name or number on or behind it. 9 R. C.L. 1055.

**R. 15. Name of the candidate.**—A candidate's name will be printed only once though there were several nominations in his favour, 9 R. C.L., p. 1055.

**16.** (1) If the voter is unable to read the ballot paper or to make a cross thereon, and applies for assistance in doing so, the polling officer shall read it for him and, if so required, mark the ballot paper according to the directions of the voter and give it to him to put in the ballot box.

(2) In the case of every voter whose ballot paper is marked in this manner by the polling officer, a note shall be made on the corresponding counterfoil of Form No. V by the polling officer of the reason why it was so marked.

(3) The marking of a ballot paper by the polling officer under clause (1) shall not be questioned subsequently on the ground that it was not in accordance with the voter's directions.

**17.** (1) Any ballot paper which is not duly marked or on which votes are given to more candidates than there are members to be elected or on which any mark is made by which the voters may afterwards be identified, shall be invalid.

(2) If more than one cross is placed against any candidate's name, they shall count only as one vote in his favour, provided that the voter has not placed crosses against more candidates than there are members to be elected.

(3) If the cross or any one of the crosses is so placed as to render it doubtful for which candidate such mark is

intended to apply, the vote concerned, but not the whole ballot paper in the cases where more than one vote can be given on the same ballot paper, shall be invalid, provided again that the voter has not placed crosses against more candidates than there are members to be elected.

### NOTES.

**R. 17 of the Election Rules and Sec. 9 (1). Invalid.**—*Dindigul Municipality case*, (1924) M.W.N. *Weeks cases*, p. 36. All the voting papers were invalid as they bore on their back the electoral numbers by which the voters may be identified. Sec. 9. (1) is confined to cases where no voter goes to the poll or no candidate is nominated for election.

**R. 17. Invalid.**—*Sethurama Mudaliar v. Mangala Gounder*, 46 M.L.J. 494=34 M.L.T. 204. The polling officers putting on the back of the ballot papers the voters' own number on the electoral roll makes all the voting papers invalid and this rule stands infringed. It is immaterial whether the writing of the number is by the officer or by the voter. A mere possibility of identification makes the election invalid.

*Visvanatha Pillai v. Periaswami Pillai*, 46 M.L.J. 491=34 M.L.T. 207. To hold that secrecy is infringed, it must be possible to identify the voter concerned. The mere placing of the initials by the polling officer on the face of the ballot paper would not contravene rule 14. (Ref. 10 C.P. D. 733, F.)

**R. 17. Initial of the Polling Officer.** (1924) M.W.N. *Weeks cases* 36. The court allowed the votes though they contained the initials of the polling officer on their front as they would not lead to any identification.

**R. 17 cl. (1).** *R. Visvanatha Pillay v. T. K. Periaswamy Pillai*, 19 L.W. 636. Serial numbers printed on both sides do not invalidate the election. The Rule providing for the marking of serial number is not *ultra vires* as votes should bear some mark for identification and for preventing false ballot papers being introduced.

**R. 17 (1).** *Pickering v. James*, (1873) L. R. 8 C. P. 489. Polling officer's duties are ministerial. He is liable for damages for any wilful omission. Is he not a judicial officer when rejecting a voter? *Pritchard v. Mayor of Bangor*, 13 App. Cases 241; *R. v. Samuel*, 1 Q. B. D. 815.

**R. 17 (1) (2) & (3).** Strict adherence to these rules will avoid many difficulties which the voters create for election Courts. But it always



depends upon the text of the rules to reject or allow votes. The leading English case is (1875) L. R. 10 C. P. 733. *Woodward v. Sarsons*.

**R. 17 (1).** C. R. P. 541 of 23. (1925) M.W.N. *Weeks cases*, p. 20. The decision of a District Judge rejecting a voting paper which was 'not duly marked' is not revisable under Sec. 115, C. P. C. A voting paper not duly verified by the initials of the polling officer is a paper 'not duly marked.'

**R. 17 (2).** Against.—(i) A mark not against—not opposite—but above the line is not a valid vote. *Berwick*, (1880) 3 O.M. & H. 182.

(ii) A mark 'against' but on the back the ballot paper is not a good vote. *Buckrose*, (1886) 4 O. M. & H. 110. If we read the whole text of the rules, one understands that the mark shall be against and on the front of the ballot paper.

(iii) One line of the cross extending against the name of another candidate—The vote was declared good in favour of one against whose name the actual cross was put, i.e., major portion. (1880) 3 O. M. & H. 181.

(iv) *Ridley, J.*, in (1907) 2 K.B. 313, *Pontardawe Rural District Council Election* insists on the clearness of the mark being in favour of a candidate.

(v) Refer *West Bromwich*, (1911) 6 O. M. & H. 256—257.

**R. 17. Mark.**—A voter struck out the name of the candidate for whom he did not vote. It does not make the vote invalid. Similarly the writing of something other than the mark does not make the vote invalid. Only point is these additional writings should not be capable of giving clue to identify the voter.

Intention of the voter can be easily gathered though one line of the mark is slightly longer and cuts another column. *T.C. Xavier v. E.C. Joseph*, 48 M.L.J. 268.

**18.** If a person representing himself to be a particular elector named on the electoral roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering such questions as the polling officer may ask, be entitled to mark the ballot paper in the same manner as any other voter. The ballot paper (called in these rules a tendered ballot paper) shall, instead of being put into

the ballot box, be given to the polling officer, and endorsed by him, with the name of the voter and his number on the electoral roll and set aside in a separate packet and is not to be counted by the chairman. The signature or thumb impression of the voter concerned shall be taken on signature slips in Form No. IV, but should be attached to their connected tendered ballot papers and separately filed.

### NOTES.

**R. 18. Duly.**—What is the force of the word? Is it to the satisfaction of the polling officer? Can a polling officer refuse to give a tender ballot even if the answers to his questions are not very convincing? The rules throw a condition precedent on the voter *i.e.*, to answer but here the polling officer is not to *satisfy himself* as in rule 13 (2) before he gives a ballot paper. He need not be even satisfied. It is inconsistent and mutually contradictory for the polling officer to satisfy himself *twice*, once under Rule 13 (2) and again under Rule 18. It will virtually be no satisfaction at all! So when due answers are given, the applicant *shall be entitled to have a ballot paper. But answering questions is essential.* *Droitwich Case*, (1835) K. & O. 54.

Can polling officer hold an inquiry? *Cf. Purnea*, 1921, I.E.P. 179.

**19.** A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering it to the polling officer and satisfying him of the inadvertence, obtain another ballot paper in place of the spoilt one, the latter one together with its counterfoil being marked as cancelled.

### NOTES.

**R. 19. Inadvertence.**—This gives discretion to the polling officer who ought to be satisfied of the inadvertence.—“Satisfying him” *Cf. Stirlingshire*, (1838) F. and F. 542.

**20.** Immediately after the close of the poll, the polling officer shall, in the presence of the candidates or their agents, make up into separate packets and seal with his own seal and

the seal of such candidates or their agents as may desire to affix their seal—

- (1) each ballot box in use at his station unopened ;
- (2) the keys of such boxes ;
- (3) the unused and spoilt ballot papers, both ordinary and tendered, with their counterfoils ;
- (4) the tendered ballot papers with the signature slips attached to them ;
- (5) the marked copies of the electoral roll and the counterfoils of ballot papers ; and
- (6) the file of signature slips.

**21.** The packets shall be forwarded at once by the polling officer to the chairman accompanied by a statement in Form No. VI. Each packet shall be numbered and shall bear a note as to its contents.

**22.** On the day and at the hour appointed for the counting of votes, and in the presence of such candidates or their agents as may be in attendance the chairman shall proceed as follows :—

(a) The ballot box or boxes relating to each polling station shall be opened one after another ; the chairman shall take out the papers therefrom, count them or cause them to be counted and record the number thereof in a statement in Form No. VII.

(b) The chairman shall then mix together the whole of the ballot papers of all the ballot boxes. The examination and counting of the votes will then commence. The chairman shall, on every ballot paper which is wholly or partially rejected, endorse the word 'rejected.' If any candidate or agent present questions the correctness of his rejection order, he



shall also record on the ballot paper the grounds of rejection briefly.

(c) The chairman shall, as far as practicable, proceed continuously with the counting of the votes ; and shall, during any necessary intervals during which the counting has to be suspended, place the ballot papers, packets and other documents relating to the election under his own seal and the seals of such candidates or their agents as may desire to affix them ; and adequate precautions shall be taken for their custody.

#### NOTES.

• R. 22 (b). *Rejected*.—19 *L. W. Short Notes*, p. 79—80. The polling officer is bound to write the word 'Rejected' on every vote which he rejects.

A candidate or his agent may object to the rejections and on their objections shall be recorded the grounds of rejection.

R. 22 (c). *Counting*.—A mistake in counting is necessarily a material irregularity interfering with the result of the elections. In England the Returning Officer is held liable for the costs incurred in setting aside the election. *Rainham Parish Case*, (1919) 83 J.P. 267.

R. 22. *Shall declare*.—Declaration is essential as an item of procedure.

23. (a) After the chairman has completed the scrutiny and counting he shall prepare a return of the results of the polling in Form No. VIII, and, after verifying the totals of the votes with the figures in Forms Nos. VI and VII shall, subject to the provisions of rule 28, declare the election of the candidate or candidates to whom most valid votes have been given.

(b) Any candidate or his agent shall, on application, be permitted to take a copy or an extract from the return in Form No. VIII.

#### NOTES.

R. 23. *Declare*.—It should be in the prescribed form or in a form to the like effect—Urban District Councillors Election Order rule 23 (1) (English).

**24.** The chairman shall not open the sealed packets containing the tendered ballot papers and their connected signature slips or the marked copies of the electoral roll.

**25.** Upon the completion of the counting and the declaration of the results, the chairman shall seal up in separate packets

(1) the ballot papers, all or some of the votes on which have been counted, and

(2) the ballot papers, all the votes on which have been rejected,

and shall mark on each packet the number of papers it contains. A note shall be made giving a description of the contents of each packet and the election to which it relates.

*Disposal of ballot papers.*

**26.** (1) The chairman shall, after declaring the result, forward a copy of the return to the District Collector and shall retain in his custody the packets of ballot papers, whether counted, rejected or tendered, and of the counterfoils thereof. These packets shall not be opened and their contents shall not be inspected or produced except under the orders of an election or other competent court.

(2) The chairman shall retain the packets for a year and shall then, unless otherwise directed by the orders of an election or other competent court, cause them to be destroyed. The marked copies of the electoral roll shall be preserved for three years.

**NOTES.**

**R. 26. Other competent court.**—The Rules imagine other courts besides the Election Courts having something to do with the packets. This takes us to other remedies the candidates may have in other courts.

**R. 26 (2). Year.**—Better any action this at proposed to be taken by anybody regarding the last election is taken within a year as the packets will be destroyed after that period.

### GENERAL.

**27.** (1) If any person has been elected for more wards than one, he shall, within 24 hours from the date of the last of such elections, intimate to the chairman the ward for which he chooses to serve.

(2) In default of such intimation the chairman shall notify the ward for which such person shall serve.

(3) The said person shall be deemed to have been elected for the ward so chosen or notified as the case may be: and thereupon the voters of the other ward or wards for which such person has been elected shall proceed to elect a member in the manner hereinbefore provided.

### NOTES.

**Rr. 27-32.** In these, there is a provision for a contingency. If it does not happen, the rules also provide for the elections as though the contingency never arose.—Refer Amendments G. O. 577-L. & M.—Appendix VIII.

**28.** If there is an equality of votes between any two or more candidates, the chairman, shall, after notice to the candidates concerned, decide by drawing lots which candidate or candidates shall be deemed to have been elected.

### NOTES.

**R. 30. Withdraw.**—There is no withdrawal of a withdrawal. This is not at all allowed in any of the Election rules.

**R. 30. Withdraw.**—A withdrawal before the election is gazetted gives the power to the chairman to announce the next candidate as elected. If the withdrawal is after the gazette publication, he cannot do it. A regular election proceeding should go on again.



**29.** The name of the candidate or candidates duly elected shall be forwarded without delay by the chairman to the Superintendent, Government Press, for publication in the *Fort St. George Gazette*.

**30.** A candidate who has been duly elected may submit his withdrawal in writing to the chairman at any time before his election is gazetted. In such cases the chairman shall declare the candidate who has obtained the next highest number of votes to have been elected. No candidate who has submitted his withdrawal may subsequently cancel it.

**31.** If any question arises as to the interpretation of these rules, otherwise than in connexion with an election inquiry, the question shall be referred to the Local Government whose decision shall be final.

**32.** If no chairman or vice-chairman is, in the opinion of the Local Government, available to conduct the first elections under the District Municipalities Act, 1920, the Local Government may direct the Revenue Divisional Officer or any other person to exercise the functions of a chairman under these rules.

#### NOTES.

**R. 32.** 'Any other person.'—He need not be a councillor or a Government servant. But when the local Government directs that he shall conduct the proceedings, he in fact becomes the chairman appointed by the Governor in Council and is consequently, an *ex officio* Municipal Councillor under Sec. 14 of M. D. M. Act. As such he is the "chairman or the presiding councillor under the rules for the election of the chairman and vice-chairman also.

## FORM I.

NOMINATION PAPER.

1. Name of candidate.
2. Father's karnavan's or husband's name.
3. Age.
4. Address.
5. Signature of proposer.
6. Signature of seconder.

CANDIDATE'S DECLARATION.

I declare that I am willing to stand for election.

*Signature of Candidate.*

*Signature of Chairman.*

### INSTRUCTION.

Nomination papers which are not received by the Chairman before the  
day of 192 shall be invalid.

FORM II.

## PRELIMINARY LIST OF NOMINATIONS.

1. Serial number.
2. Name of candidate.
3. Father's karnavan's or husband's name.
4. Occupation and address.
5. Name of proposer.
6. Name of seconder.

NOTE.

The nomination papers will be taken up for scrutiny at

a.m.  
p.m.

on

the

day of (at place).

Chairman.





## FORM V.

• Counterfoil. Ballot paper. Outerfoil.  
 Serial No. Municipality. Ward.

Serial number.	Name and description of candidate.
(1)	(2)
1	
2	
3	
4	
5	
6	

Municipality.

Ward.

Date of election.

Number of elector.

## FORM OF BACK OF BALLOT PAPER.

No.

## INSTRUCTIONS FOR PRINTING BALLOT PAPER.

The names of the candidates should be printed in bold type. The form should be printed in books of 100 forms each. The forms should be serially numbered for each ward and shall be bound into books of 100 forms each. On the wrapper of each book the name of the ward, the number of the book, and the first and last number of the forms in the book, shall be printed.

## FORM VI.

Statement sent by Polling officer at \_\_\_\_\_ in the  
 municipality of \_\_\_\_\_ after the polling on  
 192 \_\_\_\_\_ for the \_\_\_\_\_ ward.

Description.	Number received.	Number used.	Number spoilt.	Balance.	Remarks.
(1)	(2)	(3)	(4)	(5)	(6)
I. Ballot papers—					
(a) Ordinary ...					
(b) Tendered ...					
II. Signature slips.					

Particulars of packets sent to the Chairman.

*Signature of Polling Officer.*

## FORM VII.

Name of polling station.	Number of ballot box.	Number of ballot papers in box.
(1)	(2)	(3)
Total ...	...	...

## FORM VIII.

Return showing results of the election for  
seats forward in the municipality.

Name of candidate.	Number of valid votes.
(1)	(2)
A	
B	
C	
D	
E	
F	
Total number of valid votes. Total number of invalid votes.	

I do hereby declare that the following candidates.

A  
B  
C

have been duly elected.

*Chairman.*

*Chairman.*

F. J. RICHARDS,  
*Acting Secretary to Government.*



## Part V

### RULES FOR THE CONDUCT OF THE ELECTION OF CHAIRMAN AND VICE-CHAIRMAN OF MUNICIPAL COUNCILS.

I. (i) The election of Chairman or Vice-chairman shall be held by the councillors at a meeting specially convened for the purpose.

(ii) Such meeting shall be convened by the council on the date of occurrence of the vacancy or on a date within seven days of such occurrence. Notice of the hour and day of the meeting shall be given at least three days previous to the day of the meeting.

#### NOTES

R. I. This rule is altogether new. A special meeting and a three days' notice previous to the date fixed are put down as necessary.

II. A candidate for the office of chairman or vice-chairman must be proposed by one councillor and seconded by another. The names of all the candidates proposed and seconded shall be read by the chairman or the presiding councillor.

III. (i) If there is only one duly nominated candidate there shall be no ballot and he shall be deemed to have been elected.

(ii) If there are two or more candidates the votes of the councillors present at the meeting shall be taken.

IV. Every councillor wishing to vote shall be supplied without a voting paper on which the names of all the candidates shall be printed or typed in the following form :—

*Name**Vote*

1.

2.

3.

4.

The voter shall then proceed to the place set apart for the purpose and there place a mark (X) against the name of the candidate for whom he wishes to vote. He shall then fold up the voting paper so as to conceal his vote and deposit the same in a ballot box placed in the view of the chairman or the presiding councillor and so constructed that the paper may be placed therein but not extracted therefrom without the box being opened. The chairman or the presiding councillor shall then open the box and count the votes in the presence of the councillors and declare the result of the election in accordance with the following instructions.

(i) If there are only two candidates, the one who secures the larger number of votes shall be considered to have been elected.

(ii) If there are more than two candidates the one who obtains the fewest number of votes shall be eliminated and the votes taken again. If there is an equality of votes among all the candidates or if two or more candidates lowest on the list have obtained an equal number of votes, the chairman or the presiding councillor shall ascertain by casting lots in the presence of councillors which of them shall be eliminated. The elimination shall be repeated until two candidates only are left, when votes shall be taken for the last time and the candidate who secures the larger number of votes shall be considered to have been elected. In the event of there being an equality of votes at the final stage between the two remaining candidates, the chairman or the presiding councillor

shall draw lots in the presence of the councillors and the person whose name is first drawn shall be considered to have been elected.

### NOTES.

**R. IV.** The old rule III is now rule IV. It read thus "Every councillor wishing to vote shall be supplied with a slip of paper. He shall forthwith proceed to the place set apart for the purpose and there write on the slip so supplied the name of the candidate for whom he wishes to vote. He shall then fold up the slip so as to conceal his vote and deposit the same...opened."

Now the voting paper contains the names and a mark (X) only is asked to be placed. This is a definite improvement, as the identity of the voter can be easily seen by the handwriting of the voter who writes the candidate's name according to the old arrangement.

**R. IV (iii)** i.e., old **R. III.** Which ran thus in the end "shall ascertain by casting lots in the presence of the councillors which of the two shall be considered to have been elected."

Now a definite procedure has been prescribed to be followed in the matter of 'lots.'

**V.** No candidate whose name has been proposed and seconded shall take part in a ballot, but a candidate may withdraw at any stage, and after so withdrawing he may take part in any ballot. Similarly a candidate who has been eliminated at any stage under Rule IV (ii) may take part in any ballot at subsequent stages.

### NOTES.

**R. V (old r. 4.)—Secs. 18, 28 and r. 4 of Chairman Election rules.**

(i) If the outgoing chairman is a candidate for re-election, he should appoint a chairman delegate under Section 18 of the Act.

(ii) A breach of such a rule is a fact to be decided upon evidence.

(iii) Failure to do that is a serious irregularity.

**Wallace, J.—**"It is admitted that the petitioner whose name had been duly proposed and seconded, himself presided at the meeting and



conducted the ballot, opened the ballot box, counted the votes and acted as the Returning Officer,

I am in full agreement with the Lower Court that it is taking part in a ballot and this 'phrase' is not restricted to the mere act of voting. *Queen v. Owen*, (1859) 2 El. and El. 89. *Queen v. White*, (1867) 2 Q.B. 557.

*A. T. Marakayar v. B. Marakayar*, 44 M.L.J. 69=46 M. 163=(1923) Mad. 254. Though the decision tries to avoid all delicate situations that may arise when the presiding chairman is a candidate for chairmanship; yet we find no definite prohibition, against such procedure in the rules published for the election of the chairman. If a chairman does not vote (as under the new rule 5) and yet is put down as *taking part in a ballot*, is it not saying that *Hamlet* can be staged without the Prince? With great respect to Wallace, J., I feel that the interpretation does not hold. The Local Government may pass a rule with little difficulty that a candidate for the chairman or vice-chairman's place shall not preside. This would put the situation clearer. What is "taking part in a ballot," if one does not use the ballot paper?

VI. Any voting paper which contains the signature of any of the voting councillor on which the mark (X) is placed against more than one name shall be invalid.

VII. Immediately after the meeting, the chairman or presiding councillor shall forward the name of the person elected as chairman or vice-chairman to the Superintendent, Government Press, for publication in the *Fort St. George Gazette*.

VIII. An elected chairman or vice-chairman shall enter on his office from the date of his election.

### NOTES.

R. VIII is now defining the time when the elected chairman shall take up his office.

IX. (i) The chairman or presiding councillor shall then seal up the ballot papers whether counted or rejected and note on each packet the number of papers it contains and the election to which it relates.

(ii) These packets shall not be opened and their contents shall not be inspected or produced except under the orders of an election or other competent court.

(iii) The packets shall be retained in safe custody in the municipal office for a year and shall then unless otherwise directed by the orders of an election or other competent court, be destroyed.

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In the above rules G.O. Nos. 430, L.&M., dated 17—2—23 and ordinary, No. 851, *Fort St. George Gazette*, dated 5—12—22 regarding the corrections and amendments are incorporated.

## Part VI

Fort St. George, Nov. 30, 1920.

No. 1134.—In exercise of the powers conferred on him by section 303 (2) (b) of the Madras District Municipalities Act, 1920, the Governor in Council is pleased to make the following rules for the decision of disputes as to the validity of an election held under the Madras District Municipalities Act:—

### RULES FOR THE DECISION OF DISPUTES AS TO THE VALIDITY OF AN ELECTION HELD UNDER THE MADRAS DISTRICT MUNICIPALITIES ACT, 1920.

1. No election held under the Madras District Municipalities Act, whether of a councillor, chairman or vice-chairman, shall be called in question except by an election petition presented in accordance with these rules, to the district or subordinate judge having jurisdiction, by any candidate or elector against the candidate (hereinafter called the returned candidate) who has been declared by the chairman to have been duly elected.

### NOTES.

R. 1. "The same procedure as that used in parliamentary election petitions is followed *mutatis mutandis*; for this also, the only real difference being that the tribunal to whom these petitions are referred for trial is a commissioner appointed by the election Judges on the *rota* for the year. The importance of the responsibility reposed in this official is shown by the proviso that he must be a barrister of sixteen years' standing. Ref. Municipal Elections Act, 1884 (47 & 48 Vict. c. 70), Sec. 36 (2).—*Halsbury on Municipal Election Petitions*.

R. 1. Candidate or elector.—They alone can present petitions. Refer Indian Electoral Rolls and *Lakshminarasimha v. Ramalingam*, 12 L.W. 202.



**Candidate.** He should have stood as a candidate but not one who never volunteered and announced himself as a candidate. *Suraj Narain v. Jang Bahadur*, 45 All, 687.

**Rs. 1 and 2. Candidate.**—41 All. 696=17 A.L.J. 844=52 I.C. 67 ; *M. A. Bakshi Khan v. Siraj-ul-Hasan*. An unsuccessful candidate can join or present a single petition against all the successful candidates praying that all or any one of them be declared not duly elected.

**R. 1. Presented.....Rules.**—It is such a presentation that clothes the court with the jurisdiction to try it, else the petition goes. The presentation should be a *love blame* and then alone proceedings will begin.

**R. 1. Elector.**—According to Municipal Corporation Act, 1882. (45, 46 Vict.) Sec. 88, only four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the elections can present petition.—Halsbury, Vol. XII p. 492.

**R. 1. Judge.**—To follow the rule strictly better the petition is presented to the *Judge* and not to his Sheristadar or to the Court. Such a presentation avoids technical objections.

**R. 1. "District or Subordinate Judge having jurisdiction."**—The Madras Rules are clearer as compared with those of the U.P. Rules. Pointed reference is made to the *Judge*. Cf. 34 All. 391=14 I.C. 191, *Gurdharan Das v. Har Sarup*.

**R. 1. Note the 'provision',**—See Appendix V.

**Election Petition.**—12 A.L.J. 459=21 I.C. 655. *Muhamad Inamul Hag v. Muhamad Ashan*. A *suit* to contest the validity of such election does not lie. *Petition* presented in accordance with the rules is the remedy.

**R. 1, (e). Place or places.**—In England the discretion is restricted by certain conditions—Refer Urban District Councillors Election Order, 1868, rule 14.—Conditions are

- (i) no intoxicating liquor to be used on the premises ;
- (ii) if polls are for two elections it should be in one place ;
- (iii) one place if the number of voters is below 500, and one more for additional 500. See Halsbury, p. 371, Vol. XII.

**2. The petition shall be presented within seven days of the date of the declaration of the result of the election and shall**

contain a statement, in concise form, of the material facts on which the petitioner relies and the particulars of any corrupt practice which he alleges, and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.

### NOTES.

**R. 2, and 6, Facts.**—"No evidence may be given against the validity of any vote or under any head of objection not specified in the list unless by leave of the Court upon such terms as to amendment of the list, postponement of the inquiry and payment of costs as may be ordered. Similar particulars are ordered of votes which are sought to be added. On failure to produce them in stated time the Court has no power to extend the time." Halsbury, Vol. XII, p. 507.

**R. 2. Material Facts.**—The Election court won't take notice of inferences and probabilities. *Ramanjulu v. Parthasarathi*, (1915) M.W.N. 290.

**R. 2. Material Facts and Particulars.**—*In re the Mahomedan Urban constituency of Madura—cum—Trichinopoly*, 19 L.W. Short Notes, p. 79. Allegation was that polling agents might have voted twice, once in their own ward and once again in the wards where their certificates allowed them to vote. Held that the allegation was not definite and too vague to deserve a general scrutiny of the votes. In the absence of the names of the agent who voted twice, there is no legal basis for a charge of invalidity. (Petition against Abbas Ali, M.L.C.)

**R. 2. Facts.**—Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 and 48 Vict., C. 70) gives opportunity for the petitions to amend with the leave of the High Court. Refer Sections 25 (3) and 25 (4) of the Act.

**P. 2. Facts.**—Amendment of the petition with fresh particulars can be allowed if the case latterly presented is not a new one. *M.A. Khan v. S. H. Khan*, 61 I.C. 744; Refer *B. Ali, v. M. Ali*, 61 I.C. 337 and *D. Khan v. M. Khan*, 61 I.C. 357.

**R. 2. Particulars.**—Particulars of bribery, undue influence should be given. According to English Law they may include facts and events which happened after the election but before the date of the petition.



Additional cases of personation, etc., may be allowed *even after filing* the petition. *Nawab Khan v. Md. Zamin*, 34 All. 649=10 A.L.J. 289; Cf. S. 187 of the U.P. Municipalities Act of 1916.

**R. 2. Presentation.**—Presentation to the Joint-Magistrate instead of the Collector, when the *former* was *usually receiving* petitions addressed to the latter and when it reached his hands in time, the presentation is valid. 1924 All. 132, *Suraj Narain v. Jang Bahadur*. Presentation to the Deputy Collector and the petition not reaching the Collector in time is not valid presentation.

1924 All. 132, may even help the procedure of presenting the petition to the Sheristadar of Sub or District Courts as they are the officers who are *usually receiving* the petitions addressed to their respective officers.

**R. 2. Verified.**—Cf. need not be verified as a plaint according to the U. P. Act of 1916. *Suraj Narain v. Jang Bahadur*, 1924 All. 132. Verification is compulsory under the Madras Rules.

**Rs. 2 & 3. Candidate.**—Cf. 41 All. 696=52 I.C. 67, *M.A. Baqishan v. Siraj-ul-Hasan*. The unsuccessful candidates may petition that all the successful candidates' election be declared void and that he may be declared elected. It was competent for the petitioner to join a claim against all the successful candidates—Rule 3 is wider. It says merely 'a candidate' he might have succeeded or not.

**Rr. 2, 3 and 12.** Cf. Sec. 33 of Bombay City Municipal Act. 34 Bom. 659=12 Bom. L. R. 737=7 I. C. 958. *In re Sharaf Aly*. An application shall state the persons objected to. The candidate with the next highest number of votes is to be declared elected in whose election no objection was found.

**3.** The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected; in such case he shall join as respondents to his petition all other candidates who were nominated for the election but had not withdrawn before the polling.

### NOTES.

**R. 3.** The latter part of rule 3 is mandatory. If the petitioner feels he or any other candidate should be declared elected, he shall join as



respondents *all* other candidates who were nominated but who had not withdrawn before the date of election. He is not given the option in such cases to join *only some* and leave others. The English Law materially differs on the point. In *Monkswell v. Thompson*, 1 Q.B. 479, it was enough for the petitioner to prove that the *only* respondent against whom *alone* he has petitioned got less number of valid votes than himself. *Lovering v. Dawson*, 1875 L. R. 10 C.P. 711 is *against* the principle of joining all the candidates elected and unelected as parties.

4. (1) At the time of the presentation of the petition the petitioner shall deposit with it, as security for the costs of the same, a sum of two hundred rupees in cash.

(2) If the provisions of the sub-rule (1) are not complied with, the district or subordinate judge shall dismiss the petition.

(3) Upon compliance with the provisions of sub-rule (1) the district or subordinate judge shall proceed to inquire into the petition.

### NOTES.

**R. 4 (1). Deposit....Rupees.** Deposit should be *at the time of the presentation* of the petition. It is mandatory and under (2) the petition stands the risk of a dismissal for failure to comply with (1). But if the failure to pay the amount was due to any action taken by the court, the court has got powers to receive the amount even later as the doctrine that "the action of the court should not prejudice any one" will apply.—*Krishnai Reddiar v. Muthuvera Reddiar*, 18 L. W. 299 at 301 and 304. *At the time* i.e., the deposit also should be within seven days from the date of the declaration of the election as in Rule 2.

**R. 4 (1). Deposit and at the time.**—The intervention of an inevitable accident is a good excuse for the delay in deposit. *Gopalakrishna Pillai v. Kunjidapadam Pillay*, 18 L. W. 844=45 M. L. J. 849. This is a case of an accident to the horse of the jutka which conveyed the depositor to the Bank and he reached the Treasury Office at 1-50 P.M. The Treasury officer took an hour to return the *challan*. The person went to the bank straight for payment but it was 3-5 P.M. when the money could not be received as the Bank closes at 3 P.M. At p. 848, 18

L.W. it is rightly held "the payment must be deemed to have been made on the date the money is produced and the challan obtained." *Arunachala Iyer v. Subbaramiah* (46 Mad. 60) and *K. Samban v. S. Samban*, 17 L.W. 187, followed.

**R. 4. Security.**—English law will take and recognise Securities instead of deposit, but no provision for initial deposit in Indian Law. Refer See 89 (2) of M.C.A. 1882.

It may be by the petitioner or on his behalf. *Pease v. Norwood*, (1869) L.R. 4 C.P. 235.

Deposit is fixed. It shall not vary even if the respondents' number is large and there are too many. But under rule 5 for any further costs the court may order the execution of a bond in such amount and with such sureties...for payment of any further costs. So rule 5 relates only to additional costs probably in case of additional respondents.

**R. 4. Costs**—The general rule is that the costs follow the event. *Lowth County case*, (1880) 3 O.M. & H. 161, 177.

But the court's discretion is unlimited and can be changed according to the special circumstances of each case. *Stroud-Borough case*, (1869) 1 O.M. & H. 264.

For special reasons and orders thereon as to costs refer p. 472, Vol. XII, Halsbury's Laws of England.

**R. 4 (3). Upon**—Implies it is an essential condition.

**5.** The judge shall, as soon as may be, cause a copy of the petition to be served on each respondent and on the chairman of the municipal council. Copies shall also be affixed to the notice board of his court and of the municipal office. He may also call on the petitioner to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on furnishing similarly such security as may be demanded by the judge.

**6.** Every election petition shall be enquired into by the judge as nearly as may be, in accordance with the procedure



applicable under the Code of Civil Procedure, 1908, to the trial of suits provided that it shall be only necessary for the judge to make a memorandum of the substance of the evidence of any witness examined by him.

### NOTES.

**R. 6. Code of Civil Procedure.**—All the provisions of the code are not applicable. No interim injunction can be granted by the Election Court nor any interlocutory orders interfering with the rights of the elected candidate. 46 *Short Notes*, 50 M.L.J.

**R. 6 (2) (a). Dies at any time.**—*Cf. R. v. Stewart*, 1 Q.B. 552. The office must countermand the notice of poll.

**Rr. 6 & 9. Procedure.**—The Rules do not state whether and when a respondent or one of the respondents can file his statement or a counter case or a case supporting the case of the petitioner. According to the English Municipal Election Petition Rule 8 he is entitled to file it within six days before the day appointed for the trial. Halsbury, Vol. XII, p. 507. We have in Rule 9 (Madras) the concession to a candidate other than the returned, to give such evidence that would make the previous election void.

**Rr. 6 and 11 (c). Procedure.**—The Election Court has power to go into the question of the validity of the nomination when it affects the results of the election irrespective of the fact whether it was raised in the petition or not.

**R. 6. Civil Procedure.**—Elections Courts are certainly courts and election matters are certainly civil matters, though the evidence disclosed may lead to criminal offences.

**S. 302 (2) ; r. 6. Venkatasubbiah Chettiar v. Sesha Iyer**, 20 L. W. 148 = (1924) M.W.N. 538 = 47 M.L.J. 201. Courts trying election petitions have no inherent power to grant interim injunction restraining the successful candidate from taking his seat on the council. *Rule 6 applies only to procedure and not to all incidental remedies provided for in the C.P.C.*

**R. 6.** A witness who is very sick can be examined in commission by the election court.

**Staley Bridge Election Petition**, (1869) 19 L.T. 703, *R. v. Maidenhead Corporation*, 9 Q.B.D. 496, C.A.



7. (1) No election petition shall be withdrawn without the leave of the judge.

(2) If they are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application for withdrawal is made, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published as in rule 5 *supra*.

(4) No application for withdrawal shall be granted if the judge is of opinion that such application has been induced by any bargain or consideration which he considers ought not to be allowed.

(5) If the application is granted,

(a) the petitioner shall be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the judge may think fit, and

(b) such withdrawal shall be communicated to the chairman of the municipal council by the judge.

#### NOTES.

R. 7 (3). **Withdrawal with the leave of the judge.**—This is necessary in view of the persuasions hinted at in rule 7 (4) and (2) it is equally good to avoid the whimsicalities of one petitioner. The rules make room to satisfy the erstwhile apparently aggrieved party to go out of court fully satisfied.

8. An election petition shall abate on the death of a sole petitioner or of the survivor of several petitioners, and such abatement shall be communicated to the chairman of the municipal council by the Judge.

#### NOTES.

R. 8. **Abatement.**—Substitution is not allowed in the Rules—not so in England. Refer M.E.P. Rules n. 63 and Municipal Corporation

Act, 1882 (45 and 46 Vict. c. 50) Sec. 95 (3). Cf. Rules for the Legislative Council and Assembly (India) Election Dispute, where it is allowed.

**R. 8. Death and abatement.**—Do in no way affect the liability of the petitioner to the costs already incurred.

**9.** Where at an inquiry into an election petition any candidate, other than the returned candidate, claims the seat for himself the returned candidate, or any other party to the proceeding may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented complaining of his election.

**10.** At an inquiry into an election petition the municipal council may appoint a legal practitioner or other person to attend and take such part therein as the judge may allow.

**11.** If in the opinion of the judge—

(a) the returned candidate, his agent, or any other person with the convenience of such candidate or agent, has committed or abetted the commission of, any one of the offences described in sections 52 to 58 or the Madras District Municipalities Act, or

(b) the election of the returned candidate has been procured or induced, or the result of the election has been materially affected, by any of the following corrupt practices:—

(i) any election offence falling under sections 52—58 of the Madras District Municipalities Act when committed by a person who is not a candidate, or his agent, or a person who is not a candidate or his agent, or a person acting with the connivance of a candidate or his agent,

(ii) any payment or promise of payment to any person whomsoever on account of the conveyance

of any elector to or from any place for the purpose of recording his vote ;

- (iii) the hiring, employment, borrowing or using for the purposes of election of any boat, vehicle or animal usually kept for letting, on hire or for the conveyance of passengers by hire :

Provided that any elector may hire any boat, vehicle or animal or use any boat, vehicle or animal which is his own property to convey himself to or from the place where the vote is recorded,

- (iv) the hiring, using or letting as a committee-room or for the purpose of any meeting to which electors are admitted of any building, room or other place where intoxicating liquor is sold to the public :—or,

(c) the result of the election has been materially affected by any irregularity in respect of a nomination paper, or by the improper reception or refusal of a vote, or by any non-compliance with the provisions of the Act or the rules made thereunder, the election of the returned candidate shall be void.

### NOTES,

**R. 11 (a) (b).** *Ramanjulu v. Parthasarathi*, (1915) M.W.N. 290=2 L.W. 383=28 I.C. 612=17 M.L.T. 331. A good case on irregularities and corrupt practices.

**Personation.**—(1) false personation of a dead voter—held that this by itself would not invalidate an election though it would in the case of an election with a very narrow majority of one or two—(1915) M.W.N. 290.

**Conveyance.**—is prohibited according to Municipal Rules. Sadasiva Iyer, J., would excuse it in this Temple Election case where obviously there were no rules. (1915) M.W.N. 290.

**Any offence.**—Napier, J., “one or two cases of bribery would not invalidate the election”. But attention should be paid to the wording of the Municipal Rules, i.e. (a) any one of the offences from Sec. 52 to 58 of



the M.D.M.A ; (b) *any* of the following corrupt practices (b) (i) *any* election offences. Obviously one offence is enough. The M.D.M.A. Rules are very stringent. But this should be considered with Rule 11 for materially affecting the result.

**R. 11 (b).** (i) Tendered Ballot and the other ballot—the two votes are evidence in any trial on the charge of personation.

**R. 11 (a) and Sec. 55.**—22 C.W.N. 678=46 I.C. 729. *In the matter of B. C. Goswami*, *Mens rea* is essential. If no fraud is shown against the candidate or his agents the election will not be set aside. Influencing voters becomes an offence *only* if it is done *by the candidate or his agents*. It should be shown that the candidates or his agents did the acts of intimidation and undue influence.

**R. 11 (b) (ii) Payment.**—On account of conveyance—*Krishnaswami v. Sivaswami*, 39 Mad. 166. Such payments are prohibited.

**R. 11 (b) (iii) Hiring.**—12 S.L.R. 73=49 I.C. 394, *Rahim Basrie v. Wali Mahamad*. The hiring of carriages for the convenience of the voters does not amount to corrupt practice under Bom. M. Act. The Madras Rules are definitely against it.

**R. 11.**—Riot at the polling station making it impossible for persons to vote—a good ground for avoiding the election. *Stafford*, (1869) 1 O.M. & H. 229.

**R. 11 (c).**—C.R.P. 767 of 1924. (1925) M.W.N. *Weeks cases*, p. 64. Cf. An erroneous order based upon a misinterpretation of the provisions of Local Boards Act and rules framed thereunder is not a legal ground for interference with the order of the Election Enquiry Court under Sec. 115, C.P.C.

**R. 11 (c) and Rule 17 (1).** *of the Election Rules*. Initials—C. R. P. 1703 of 23. 19 L.W. *Short notes* 31. Initials both in front as well as back. Initials would not lead to identification and the votes were valid.

The absence in the “Madras Rules for Municipal elections” of the provision that the backs of the ballot papers should not be looked at when votes are counted as there is in rule 34 does not make the rules *ultra vires*, on the ground that the ballot, secretary is trespassed.

*There is always room for mischief makers if they are determined about doing mischief, however stringent the rules may be. Rules have their limitation.*

**R. 11 (c).** *Nomination Paper.*—Refer notes under rule 60

**R. 11 (c). Non-compliance—***Northcote v. Pulsford*, (1874) L.R. 10 C.P. 476. *Marton v. Corrill* (1889) 23 Q.B.D. 139. Substantial compliance with law is enough.

**12.** (1) At the conclusion of the inquiry the judge shall declare whether the election of the returned candidate is void under R. 11.

(2) If he declares the election of the returned candidate, he shall further pass an order either.

(a) declaring any other party to the petition who has under these rules claimed the seat has been duly elected; or

(b) ordering a fresh election.

(3) The judge's order under sub-rules (1) and (2) shall be final.

### NOTES.

**R. 12-2 (a) and (b). Declare.**—C.R.P. 115 of 1924, (1925) M.W.N. *Week's cases*, p. 21 'When the election of a person is declared void on account of his contractual interest in the municipality, the other candidate who got the next highest number of votes is not entitled to get a declaration that he is elected in the absence of an express allegation and proof that the voters had notice of such disqualification of the candidate. The order of the court should not throw away the votes for no fault of the voters, (1904) I.K.B. 74; followed 23 Q.B.D. 79 and 13 A.C. 252. *referred to.*

**R. 12 (2) (b). Declare.**—An election court can be compelled to declare the candidate with the next highest number of votes or one from the "unsuccessfuls," as the successful candidate. *In the matter of Sarafally Mamooji*, 34 Bom. 659.

**R. 12 (3). Final.**—Cf. 11 A.L.J. 659=35 A. 450=21 I.C. 497. *Khuni Lal v. Raghunath Prasad*. Neither the act nor the rules makes any provision for any appeal from the order of a competent court. 35 A. 578=11 A.L.J. 945=21 I.C. 575. *Nand v. Chetty Lal*. A case under the Allahabad Rules 42 and 48. It is true no appeal lies from an order. *They do intend to provide that the validity of Municipal elections should be tried by one court alone and that court's decision should be final.*



**R. 12 (3). Final.**—In 46 M.L.J. 201, a Full Bench has held that an Election Court is subordinate to the jurisdiction of the High Court, *Parthasarathy v. Kaleswara*. But this view is doubted by *Coutts-Trotter C.J.* in subsequent judgments. But Bombay has consistently held and more in conformity with the spirit of the rules that an Election Court is merely a *persona designata* and is not subject to the High Court revision. *Mrs. Sarojini Naidu's case*, (1923) 25 Bom. L.R. 463; 38 Mad. 581, *Vijayaraghavalu v. Thegaroya*, is a case not in full conformity with 46 M.L.J. The Madras Full Bench has practically denied its force to the word "Final". It was—with great respect to the Bench—I should say, with considerable wisdom that the Legislature wanted to see that election cases—cases of temporary interest and excitement and affecting no honest party vitally—should be allowed to be settled by the Election Courts themselves without further ado. Once the High Court has almost destroyed the importance of the word "Final" it shall be the turn of the Legislature to assert and say specifically "no appeal or revision lies against the orders of an election court passed under rule 12." We can tolerate an unbridled Election Court but not a perpetual and long drawn litigation on after all a personal matter of local importance, going up to the High Court and down again.

**R. 12 (c). Final.**—The High Court cannot interfere with its decision under Sec. 115 of the C. P. C. or 107 of the Government of India Act. *Ram Nath v. Emperor*, 22 A. L. J. 497.

**R. 12 (3). Order.**—35 All. 450=11 A. L. J. 659=20 1 C. 497. *Khunni Lal v. R. Prasad*. The order is not a decree under Sec. 2 of the C. P. C. and is not appealable.

C. R. P. 541 of 1923; (1925) M. W. N. *Weeks Cases*, p 20. In this case *Coutts-Trotter, C. J.*, doubts the decision of the Full Bench in 47 Mad. 369 which held that the Sub-Court and the District Court enquiring into election petitions is subject to the powers of revision of High Court. 40 Mad. 793; 1913 A. C. 546; 47 Bom. 724; (1923) M. W. N. 603, referred to.

**R. 12 (2).** After a decision under (1), the judge is bound to pass one of two orders mentioned in (2) (a) and (b). It is his duty to do that.

**R 12 (3). Final.**—He has power to reserve a question of law for the consideration by a higher tribunal if he feels the question deserves it. *Gloucester Municipal Election*, 1903; *Ford v. Newsh*; 1901 K. B. 683.

**13.** When an election is declared void under rule 12 (1) and a fresh election is ordered under Rule 12 (2) (b), the seat



of the returned candidate shall be deemed to be vacant from the date of the judge's order and the Chairman shall forthwith take necessary steps for holding fresh election.

### NOTES.

**R. 13 and Sec. 53.**—C. R.P. 808 and 809; 323, (1924) M. W. N. *Weeks cases*, p. 51; 19 L. W. *Short Notes*, p. 77.—A candidate returned is entitled to sit under Sec. 50 and Rule 13 till his election is set aside.

The granting of an injunction is not contemplated by the Election Rules.

## Part VII

### GENERAL CASE LAW.

• Rules should not be declared *ultra vires* but should be supported as far as possible. *Secretary of State v. Appa Row*, 40 M.L.J. 156.

*In the matter of Mutty Lal Ghose*, 19 Cal. 192, also 22 Cal. 717. The High Court has power to interfere under Sec. 45 of the Specific Relief Act in the Preparation and Revision of lists if there is a serious breach of duty by the officers.

*Regina v. Beer*, 2 K.B. 693 (1903). The High Court upon information can eject the disqualified councillor.

*Persona Designata*, 46 M.L.J. 201, *K. Parthasarathy Naidu v. Kaleshwara Row*.

A direction by the Government contrary to rules is *ultra vires* and an election in compliance with that direction is contrary to Law. *R. Prasad v. S. Prasad*, 35 All. 308 = 11 A.L.J. 349 = 20 I.C. 490.

*Manindra Chandra v. Provaschandra*, 39 C.L.J. 58. There being no question of *mala fides* on the part of the Returning Officer his decision whether right or wrong was one within his jurisdiction. The High Court will not interfere under Sec. 45 of the Specific Relief Act.

*Viswanatha Pillai v. Perlaswani Pillai*, 46 M.L.J. 491 = 34 M.L.T. 207. Provision regarding the marking of the serial number on the back of the ballot paper is a reasonable one. It is not *ultra vires* of the Government.

*Ram Nath v. Emperor*, 22 A.L.J. 497=10 O & A.L.R. 581 M.P. Act Sec. 23 (3).

- (i) A Commission when sits as an election tribunal is entitled to all the powers of a Civil Court.
- (ii) It can direct prosecution of petitioners on the charge of forgery or false personation.
- (iii) Such an order by the Commissioner is final and could not be revised by the High Court under Sec. 115, C.P.C. and Sec. 107, Government of India Act.

*Suraj Narain v. Jang Bahadur*, 1924 All. 132. A candidate who did not contest and in whose favour no votes were recorded and consequently who cannot demand that he should be declared elected in case the successful candidate goes out, cannot present an election petition.

*Sultan Baksh v. Abdul Hamed*, 1924 All. 134,

A candidate can withdraw even during the middle of the polling. The Returning Officer may be informed of the same and he will be acting rightly if he closes.

36 M. 120=21 M.L.J. 878=1911 (2) M.W.N. 233, *Nataraja Mudaliar v. The Municipal Council of Mayavaram*. The validity of an order passed in substantial conformity with the rules cannot be questioned in a Civil Court.

35 A. 308=20 I.C. 490=11 A.L.J. 349. A suit for setting aside election is controlled by article 120 of the Limitation Act when the special provisions relating to declaratory suits in the rules don't apply.

*Mahamad I.A. Khan v. Mir Md. Khan*, 63 I.C. 666. A corrupt motive should be shown to prove a corrupt practice. Candidate not taking any steps to dissociate himself from corrupt practices must be held to be one conniving at them.



*Govardhan Das v. Lal Chand*, 61 I.C. 315. Election rendered invalid, by the irregularities of the Returning Officer. In such cases there shall be no order as to costs.

*Barkat Ali v. Muharram Ali*, 61 I.C. 337. There is no undue influence when there was no threat of divine displeasure.

*Dauran Khan v. Muhabbrat Khan*, 61 I.C. 357. An election petition presented cannot be rejected for want of particulars. Further and better particulars can be allowed only with the conditions that the petitioner does not come in with a new case.

*Abdul Behari Lal v. Kesri Prasad Singh*, 63 I.C. 6. A suit will lie to declare an election void even though the period of office of the elected candidate had come to an end.

1924 M.W.N. p. LXIV. Misinterpretation of the provisions (Local Board) is not a legal ground for interference with the order of that (Election Enquiry) court under Sec. 115, C.P.C.

*The Indian General Navigation and Railway Coy. v. The Delchari Tea Coy.*, 28 C.W.N. 302=1924 P.C 40 (P.C.) Reference to English Law is unnecessary where the point to be decided arises under the Law of India.

30 C.L.J. 270, *Shyam Chand Basak v. Chairman of the Dacca Municipality*. Rules are to be obeyed and violation of the rules may imperil the election, throwing a heavy burden upon those who notwithstanding the breach of the rule, wish to support the election and to satisfy the court that the purpose of the election has been in fact achieved.

*Athlone case*, 1874 I.R. 8 C.L. 240. *Hackney case*, (1874) 2 O.M. & H. 87.

**Costs.** The ordinary rule is that the costs are borne by the unsuccessful party, but where the suit has been caused by the conduct of the returning officer, each party may in the discretion of the court be ordered to pay his own costs.

**Suit for Injunction.**—24 *C.W.N.* 969=57 *I.C.* 960, *Molla Ataul v. Manicktolla Municipality*. A suit for injunction by a voter against the chairman of the municipality for refusal to insert his name on a technical ground is maintainable under C.P.C. Sec. 9, Sp. Rel. Act, S. 42 and B.M. Act, Sec. 15 pro. 2.

**Number of votes.**—32 *C.L.J.* 124, *Nagendra Nath*. Where the number of votes recorded exceeds the maximum that can be given, the election by majority of votes is invalid and void when there are no rules providing for any such contingency.

## APPENDIX I.

*Fort St. George, February 3, 1923, G.O. No. 320 L and M.*

No. 178. In G.O. No. 2373 L and M., dated 1st December 1922 a draft addition which the Government proposed to make to Form 1 appended to the rules for the preparation of electoral rolls in municipalities was published for general information and criticism. The Chairman, Municipal Council, Madura, suggests that the words "or Revenue Officer" may be inserted after the words "Secretary or Manager" occurring in the draft certificate. The Government accept this suggestion. The words "if any" will also be omitted. The necessary notification has been published in Part 1-A of the *Fort St. George Gazette*, Vide Notification No. 98, dated 30th January 1923.

### NOTIFICATION NO. 98.

In exercise of the powers conferred on them by clause (b) of sub-section (2) of section 303 of the Madras District Municipalities Act, 1920, the Government are pleased to make the following addition of the rules for the preparation of electoral rolls for the election of municipal councillors published on pages 505 to 508 of Part 1-A of the *Fort St. George Gazette*, dated 12th October 1920.

### ADDITION.

At the end of Form 1 appended to the rules for the preparation of electoral rolls in municipalities the following certificate shall be inserted.



## CERTIFICATE.

I hereby certify that I have verified the entries in the rolls with the demand and other registers and that every person whose name is entered in the roll has paid all the taxes due by him for the preceding year 192 — 192 .

Signature.

*Secretary or Manager or Revenue Officer.*

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## APPENDIX II.

*Fort St. George, July 8, 1924, G.O. No. 1876 L and M.*

No. 694. In G.O. No. 769 L and M., dated 24th March, 1924, a draft addition which the Government proposed to make to rule 3 (b) of the rules for the preparation of electoral rolls in municipalities was published for general information and criticism. The Dindigul and the Bellary Municipal Councils object to the proposed change on the grounds that it will be difficult to find out an elector entitled to vote in any one of the three years during which the electoral roll will be in force and that the proposal will entail more labour than the preparation of electoral rolls every year. The Chairman of the Saidapet Municipal Council suggests that the rule may be left to stand as at present.

2. Under sub-section (1) of section 44 of the Madras District Municipalities Act, 1920, the Chairman shall annually prepare and publish an electoral roll showing the names of persons qualified to vote. Under rule 8 (a) of the rules for the preparation of electoral rolls it is only the final electoral roll which shall be printed. There is no need to print the preliminary roll every year nor does the proposed amendment restrict the preparation of the preliminary roll to only once in

three years. The Government see no force in the objections referred to above especially as the addition gives only an option which may be availed of, if convenient. They therefore confirm the addition proposed to rule 3 (b).

### NOTIFICATION.

In exercise of the powers conferred on them by clause (b) of sub-section 303 of the Madras District Municipalities Act, 1920, the Government are pleased to make the following addition to rule 3 (b) of the rules for the preparation of electoral rolls in municipalities published on pages 505 to 508 of Part 1-A of the *Fort St. George Gazette*, dated 12th October 1920.

### DRAFT ADDITION.

At the end of the rule 3 (b) the following shall be added :

" If it be convenient a printed copy of the roll in force or of a roll previously in force with printed lists of additions and corrections may be published as the preliminary roll."

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## APPENDIX III

*Fort St. George, December 4, 1923, G.O. No. 2715 L and M.*

Extract of letter from Chairman, Municipal Council, Periyakulam, No. 579'Gi, 23-24, dated, 20th November 1923.

In G. O. Mis. 2318 L and M., dated 19th October 1923, published in Part 1-A of the *Fort St. George Gazette*, dated the idem, Government have drawn special attention to the importance and correctness of the certificate required to be made under G. O. No. 320 L and M., dated 4th February 1923 by the Secretary, Manager or Revenue Officer of the verification made by him of the entries in the municipal electoral rolls

2. One of the qualifications required for one's name on the electoral roll is that one should have paid in full all the taxes due by one of the preceding year. Section 46 of the Municipal Act makes mention of (1) the property tax, (2) the company's tax, (3) the profession tax and (4) the surcharge of income-tax as the taxes that one should have paid if one had been assessed to one or more of them. Clause (c) of section 45 of the Act however requires that the taxes due by a person under the Act should have been paid. The phrase "the taxes" may embrace the taxes on animals, vehicles and carts along with the property and profession taxes, notwithstanding that fact that the tax on animals etc. partakes of the character of license fees.

#### ORDER.

The Chairman is informed that before a person's name can be included in the electoral roll he must have paid all the taxes and that before the 31st March of the year in which the roll is prepared. *Taxes include the tax on carriages and animals and the tax on carts but not licence fees.*

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#### APPENDIX IV.

*Fort St. George, August 11, 1923, G. O. No. 1773 L and M.*

No. 693. The Chairman is informed that the Revising authority should not sit unless all the three members are present and if any member is unable to attend the meetings for any length of time he should be asked to resign his membership.

The meetings of the Revising Authority should be convened only by the Chairman.



## APPENDIX V.

*May 5, 1925.*

No. 482. In G. O. No. 576 L. and M. dated 18th February 1925, the draft of an amendment to the rules for the decision of disputes as to the validity of an election held under the Madras District Municipalities Act, 1920, was published for general information and criticism. No objection or suggestion having been received, the amendment is now confirmed. The appended notification will be published in the *Fort St. George Gazette*.

## APPENDIX.

*Notification.*

In exercise of the powers conferred on them by clauses (b) and (c) of sub-section (2) of section 303 of the Madras District Municipalities Act, 1920, the Government are pleased to make the following amendment in the rule for the decision of disputes as to the validity of an election held under the Madras District Municipalities Act, 1920, published on pages 607-609 of Part I-A of the *Fort St. George Gazette*, dated 30th November, 1920.

*Amendment.*

At the commencement of rule 1, the words "save as otherwise provided" shall be inserted.

## APPENDIX VI.

*Fort St. George, April 3, 1925, G. O. No. 1367 L. and M.*

No. 488. Chairmen of Municipal Councils and Presidents of local boards are at present in charge of the elections of members to the Local Bodies concerned. It has been alleged that in certain instances these officers have abused the

powers vested in them by rejecting on insufficient grounds the nominations of members belonging to an opposite party, or by postponing the elections unnecessarily or by resorting to other undesirable methods. This has often led to suits in defending which public money has been spent. In order to remedy these defects, it has been suggested that independent agency should be entrusted with the conduct of elections. The Local and Municipal Advisory Committee to whom the question was referred, recommended that the Revenue Department should be entrusted with the work. The Government do not agree to entrust the duty of conducting elections to the Revenue Department. They consider that the existing agency should be continued. In cases, however, where the Chairman of a Municipal Council or the President of a Local Board desires to have the services of an officer of the Revenue Department for the conduct of a particular election, he may apply to the Collector and the Collector may spare an officer's services if he is able to do so.

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## \* APPENDIX VII

FORT ST. GEORGE, June 9, 1925.

G. O. No. 1982, L. and M.

No. 651 :—The following draft of certain amendments to the rules for the conduct of elections of municipal councillors published with the notification of the Local Government in the Local and Municipal Department, No. 1120, on pages 596, 600 of Part I-A of the *Fort St. George Gazette*, dated 23rd November, 1920, which it is proposed to make in exercise of the powers conferred under clause (b) of sub-section (2) of section 303 of the Madras District Municipalities Act, 1920, is published as required by clause (a) of section 305 for the information

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\* A Criticism and Study of the Amendments by the Author is published in the *Swarajya* (Madras), dated 10-7-25.

of all persons likely to be affected thereby. Notice is hereby given that the said draft will be taken into consideration by the Local Government six weeks after the date of publication of this notification.

*Draft alterations.*

In sub-rule (1) of rule 2, the following amendments shall be made, *viz.* :—

(a) after the words 'a notice' the words "in English and in the vernacular of the locality" shall be inserted.

(b) At the end of clause (c), the words "an interval of at least seven days being allowed between the date of publication of the notice and the date of presentations of nomination papers" shall be added.

(c) In clause (e) for the words and figures "six hours between 8 a.m. and 5 p.m.," the words and figures "ten hours between 7 a.m. and 6 p.m." shall be substituted.

2. In rule 2, the following amendments shall be made, *viz.* :—

(i) At the end of the first sentence of sub-rule (3) the words 'but no more' shall be added.

(ii) The following clauses shall be inserted under sub-rule (3), the existing sub-rule being numbered as clause (a) of that sub-rule. :—

(b) where a person has subscribed whether as proposer or seconder, a larger number of nomination papers than there are vacancies to be filled those of the papers so subscribed which have been first received up to the number of vacancies to be filled, shall be deemed to be valid.



"(c) the rejection of a nomination paper of any candidate on the ground of any irregularity in respect thereof shall not affect the validity of the nomination of the candidate if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed."

(iii) In sub-rule (4) for the words 'by the proposer or seconder, the words 'by the candidate in person or by his proposer and seconder together' shall be substituted.

(iv) In sub-rule (5) for the words 'received after the date and time so appointed shall be rejected' the words "presented after the time so appointed shall not be received" shall be substituted.

3. After rule 2 the following rule shall be inserted, viz :—

"2-A. On the presentation of a nomination paper, the Chairman may require the person or persons presenting the same to produce a copy of the electoral roll on which the candidate and his proposer and seconder are registered or of the necessary entries therein and shall satisfy himself that the name and number on the electoral roll of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral roll. Where necessary he shall direct that the former be amended so as to be in accordance with the latter.

4. In rule 3, for the words 'of such nominations as appear to him to be valid' the words 'of the nominations received by him' shall be substituted.

5. For rule 4, the following shall be substituted :—

"4. (1) On the date and at the time appointed for the scrutiny of nominations, the candidates, one election agent,

one proposer and one seconder of each candidate, and one other person duly authorised in writing by each candidate, and except for the purpose of assisting the Chairman, no other person may attend at such time and place as the Chairman may appoint, and the Chairman shall give such persons all reasonable facilities to examine the nomination papers of all candidates which have been received by him as aforesaid.

“(2) The Chairman shall then examine the nomination papers and shall decide all objections which may be made at the time to any nomination and may, either on such objection or on his own motion after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :—

- (i) that the candidate is ineligible for election under section 48 or 49 of the Madras District Municipalities Act, 1920 ;
- (ii) that the proposer or seconder is a person whose name is not registered on the electoral roll ;
- (iii) that there has been any failure on the part of the candidate or his proposer or seconder to comply with any of the provisions of rule 2.

(3) “ The Chairman shall endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection. The scrutiny shall be completed on the day appointed on this behalf under rule 1 and no adjournment of the proceedings shall be allowed ”.

6. For rule 5 the following shall be substituted, *viz.* :—

“ 5. (a) On completion of the scrutiny of nominations and after expiry of the period within which candidatures may be withdrawn under rule 6 (1) (a), the Chairman shall prepare

a list of persons whose nominations have not been rejected and who have not withdrawn their candidature in form III and publish it on the notice board of his office not later than four days before the date fixed for election.

"(b) The list shall describe the candidates as in their nomination papers and exhibit their names in alphabetical order."

7. For rule 6, the following shall be substituted, *viz.* :—

"6 (1). (a) Any candidate may withdraw his candidature by notice in writing subscribed by him and delivered to the Chairman on or before 3 o'clock in the afternoon on the date succeeding that appointed by the Chairman for the scrutiny of nominations. A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be re-nominated as a candidate for the same election.

(b) The Chairman on receiving a notice of withdrawal shall, as soon as may be, cause a notice of the withdrawal to be published on the notice board of his office.

"(2) The Chairman shall remove from the ballot papers the name of any candidate who dies at any time before the poll is taken.

8. In sub-rule (2) of rule 7 for the word "formalities" the word "procedure" shall be substituted.

9. In sub-rule (2) of rule 8 the following amendments shall be made, *viz.* :—

(i) After the words "the number of vacancies" the words "the Chairman shall countermand the poll and shall" be inserted.

(ii) For the word 'formalities' the word 'procedure' shall be substituted.



(iii) The following proviso shall be added, *viz.* :—

“ Provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermanding of the poll.”

10. To rule 12 the following sentence shall be added, *viz.* :—

“ Ballot papers shall be printed either in English or in the vernacular as the council may decide. They shall be serially numbered, the number being printed on the face of the counterfoil and on the back of the counterfoil ”.

11. Rule 13 shall be omitted.

12. In clause (ii) of rule 14 after the word ‘ voter’s ’ the words “ name and ” shall be inserted.

13. In the last sentence of rule 15 between the word ‘ and ’ and the word ‘ put ’ the words ‘ after showing to the polling officer his (polling officer’s) initials thereon ’ shall be inserted.

14. In rule 16 the following amendments shall be made, *viz.* :—

(i) In sub-rule (1).

(a) After the word ‘ mark ’ the words ‘ at his own table and in the presence of the candidates or their polling agents, if any, ’ shall be inserted.

(b) The following sentence shall be added :—

“ The candidates and their agents shall have a right to hear the elector’s request and to watch the polling officer when he marks the ballot paper.”

(ii) In sub-rule (3) for the word ‘ clause ’ the word ‘ sub-rule ’ shall be substituted.

15. After rule 16, the following rule shall be inserted :—

" 16-A. Special facilities in accordance with regulations framed by the council in that behalf shall be accorded to women voters who observe the gosha system."

16. After rule 17, the following shall be added, viz.:—

" 17-A. When a person presents himself to vote and at any time before a ballot paper is supplied to him the polling officer may of his own accord and shall if so required by a candidate or his agent put to such person any or all of the following questions :

(i) are you the person enrolled as follows (reading the whole entry from the roll) ;

(ii) have you already voted at the present election in this polling station or in any other polling station ;

and the person shall not be supplied with a ballot paper unless if questioned he answers the first question in the affirmative and the second in the negative. Except as mentioned herein every person whose name is found on the electoral roll shall be entitled to be supplied with a ballot paper."

17. For the last sentence of rule 18 the following shall be substituted :—

" The name of the voter and his number in the electoral roll and the name or distinctive number of the polling station to which the roll relates shall be entered in a list in Form IV which shall bear the heading 'tendered votes list.' The person tendering such ballot paper shall sign his name and address on the list or affix his thumb impression thereto".

18. After rule 18, the following shall be inserted, viz.:—

" 18-A. If any candidate or polling agent declares and undertakes to prove that any person by applying for a ballot

paper has committed the offence of personation, the polling officer may require such person to enter in the list of challenged votes which shall be in Form IV-A his name and address and if he is unable to write to affix his thumb impression thereto and may further require such person to produce evidence of identification. If such person on being questioned in the manner prescribed in rule 17-A answers the first question in the affirmative and the second in the negative, he shall be allowed to vote after he had been informed of the penalty for personation. The polling officer shall make a note of the circumstances and of his decision in the list of challenged votes”.

19. In rule 20, the following amendments shall be made, viz.:—

(i) In clause (4) the words ‘with the signature slips attached to them’ shall be omitted.

(ii) In clause (5) the word “and” shall be omitted.

(iii) For clause (6) the following shall be substituted,

“(6) Tendered votes list”.

(iv) After clause (6), the following shall be added, viz.:—

“(7) The list of challenged votes”.

20. In the second sentence of clause (b) of rule 22 for the word “will” the word “shall” shall be substituted.

21. In rule 24, the following amendments shall be made, viz.:—

(i) The words “and their connected signature slips” shall be omitted.

(ii) The words “or the counterfoils of the ballot papers” shall be added at the end.

22. For sub-rule (1) of rule 27 the following shall be substituted:—



"If any person has been elected for more wards than one, he shall intimate to the Chairman so as to reach him within 24 hours from the hour of the publication of the name of the candidate elected at the last of the elections at which he stood as a candidate, the ward for which he chooses to serve."

23. In rule 30 the following shall be added as the penultimate sentence :—

"In doing so the provisions of rules 27 to 29 shall be observed."

24. For Form I the following shall be substituted, viz.:—

### FORM I.

#### NOMINATION PAPER.

1. Name or number of the ward.
2. Name of candidate.
3. Number of candidate in the electoral roll.
4. Father's, karnavan's or husband's name.
5. Age.
6. Address and occupation.
7. Name of proposer.
8. Number of proposer in the electoral roll.
9. Signature of the proposer.
10. Name of the seconder.
11. Number of the seconder in the electoral roll.
12. Signature of the seconder.

#### *Candidate's declaration.*

I declare that I am a British subject and am willing to stand for election.

*Signature of the candidate.*



(ii) In the counterfoil for the words "Number of elector" the words "Name and number of elector on the electoral roll" shall be substituted.

(iii) At the end of "Instructions for printing ballot paper" the following shall be added, *viz.* :—

"The serial number printed in the counterfoil of the ballot paper should be the same as that printed at the back of the outerfoil.

30. For the entries in column (i) of Form VI, the following shall be substituted, *viz.* :—

"Ballot papers—

(a) Ordinary.

(b) Tendered.

(c) Challenged."

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## APPENDIX VIII.

FORT ST. GEORGE, FEBRUARY, 18, 1925.

G. O. No. 577 L. and M.

No. 252.—The following draft of certain amendments to the rules for the conduct of elections of Municipal Councillors published with the notification of the Local Government in the Local and Municipal Department No. 1120 on pages 596-600 of Part I-A of the Fort St. George Gazette, dated 23rd November 1920, which it is proposed to make in exercise of the powers conferred under clause (b) of sub-section (2) of section 303 of the Madras District Municipalities Act, 1920, is published as required by clause (a) of section 305 for the information of all persons likely to be affected thereby. Notice is hereby given that the said draft will be taken into consideration by the Local Government after six weeks from the date of the publication of this notification.



*Draft amendments.*

## 1. In rule 7.—

(a) in sub-rule (i) for the words "all such candidates shall be deemed to be duly elected" the words the Chairman shall declare all such candidates to be duly elected" shall be substituted; and

(b) in sub-rule (2) for the words "all such candidates shall be deemed to be duly elected and the Chairman" the words "the Chairman shall declare all such candidates to be duly elected and he" shall be substituted.

2. For sub-rules (2) and (3) of rule 27 the following shall be substituted, *viz.*:—

"(2) On receipt of intimation, the Chairman shall declare the said person to have been elected for the ward chosen by him. In default of such intimation, the Chairman shall declare him to have been elected for one of the wards. Thereupon the voters of the other ward or wards for which such person has been elected shall proceed to elect a councillor in the manner hereinbefore provided.

## 3. In rule 28 for the words "shall be deemed" the words "he shall declare" shall be substituted.

4. For rule 31 the following rule shall be substituted, *viz.*:—

"31 (1) If any question arises as to the interpretation of these rules otherwise than in connection with an election enquiry held under the rules for the decision of disputes as to the validity of an election, the question shall be referred to the Local Government whose decision shall be final.

"Pending the decision of the Local Government on any such reference made to them or the issue of final orders on any

enquiry which the Local Government may institute upon receipt of information that an election is being or about to be held in contravention of the rules, it shall be lawful for the Local Government to direct the stay of the election proceedings at any stage thereof prior to the declaration of the result. Any election held or continued in contravention of the orders of the Local Government under this rule shall be void and of no effect whatsoever.

“(2) Unless it is otherwise ordered by the Local Government election proceedings stayed under this rule, shall, on cancellation of the stay order, proceed from the stage at which they were stayed on fresh dates to be fixed.”

5. At the end of the declaration in Form VIII the following shall be added, *viz.*:—

“under rule (s) 7

23 and 27 for.....ward,

23 and 28”

## INDEX.

---

### Ballot—

- Box—Construction of, 48.
- Construction—essential factor, 48.
- Deposit of vote in, 52.
- Paper, 48.
- Form of ballot paper, 49.
- Initials on, 50.
- Various kinds of marks and their validity, 51, 52.
- Marking by polling officer according to the directions of voter, 52.
- Paper not duly marked invalid, 52.
- Electoral Numbers on the back of the ballot-paper invalid, 53.
- Initials do not invalidate, 53.
- Serial Numbers permissible, 53, 56.
- Mark on the back, bad, 54.
- Extension of Cross, 54.
- Intention of the voter, 54.
- Tendered votes, 54.
- Sealing up of ballot papers, 56.
- Disposal of ballot papers, 58.
- Counting of, 56.
- Mistake in counting—irregularity, 57.

### Candidates—

- Qualification and disqualification, 11, 12, 13.
- Powers to remove disqualification, 12, 14.
- Contracts with Municipality—disqualification, 14.
- Concealment of interest disqualifies, 14.
- Honorary Magistrates disqualified, 14.
- Servant of a councillor, 14.



**Candidates—(Concluded).**

Bankrupts, 14, 16.

Legal Practitioner, 16.

Decision of disqualifications by the District Judge, 17.

Due enquiry by District Judge necessary, 17, 18.

Disqualification Order, 23.

**Chairman & Vice-Chairman—**

Election at the first meeting, 5.

Governor in Council's proposal against the right of electing the  
Chairman, 5.

Election—one of its own members—casual vacancy, 6.

Election of a Chairman in the case of no chairman and vice-  
chairman—election of a councillor, 6.

Councillor whose election is declared void cannot vote for  
Chairman's election, 7.

Chairman includes chairman-delegate, 8.

Oath of allegiance necessary on the part of councillors to give a valid  
vote, 7.

Old Chairman continues, till a new one is elected, 7.

Chairman's election at a special meeting, 66.

No ballot in case of one candidate, 60.

Councillors present alone can vote, 66.

Elimination of votes in the case of three or more candidates, 67.

Lots, 68.

What is taking part in a ballot, 69.

Publication of the result, 67.

Safe custody of votes, 69, 70.

**Civil Procedure—**

Procedure, 77.

Election Courts are Civil Courts, 77.

**Company—**

Vote—authorisation, 11.

**Costs—**

Follow the event, 76, 87.

Court's Discretion, 76.

Irregularities of the Polling officer—no order as to costs, 86.

**Councillors—**

- Their term of office, 2.
- Vacancy, 3.
- Casual vacancy, 3.
- When no one elected, 4.
- Fresh election in case of an elected one being declared void, 4.
- Nomination—Term of, 4.
- Creation of Statute, 8.

**Declaration—**

- Return of the next candidate with the next highest number of votes, 82.
- No appeal against the declaration, 82.

**Deposit—**

- In time, 75.
- Inevitable accidents saving time, 75.
- Security, 76.

**Election—**

- Means a valid election not set aside, 8.
- Notice of, 40.
- Method of publication of notice, 41.
- Change of place, 41.
- Hours—no departure, 41.
- Improper extension or reduction of hours, 41.
- Provision as to hours merely directory, 41.

**Election Offences—**

- Bribery, 19.
- Offering sweets, 20.
- Undue influence, kinds of, 20, 87.
- Personation, 21, 80.
- Mens rea* in the offence, 21, 81.
- Abetment of an offence, 21.
- Secrecy of election, 21.
- By polling officer, 21.
- Falsifying Result, 22.
- Punishment of, and procedure, 22.

**Election Petitions—**

Presentation by candidate or elector. 70, 74.

Candidate who actually contested can present—not one who has not, 72, 86.

Presentation should be to the judge, 72.

Should be in accordance with rules, 72.

Within seven days of the result, 72.

Material facts and particulars should be given, 73.

Amendment of—if not a new case, 73, 87.

Petition against successful candidates, 74, 76.

Verification necessary, 74.

Withdrawal of petition, 78.

Abatement, 78.

Cannot be rejected for want of particulars, 87.

**Electoral Roll—**

Annual, 8.

Entitling a man to vote or not to vote, 8.

In force till a fresh one, 8, 33.

Constant revision, 8.

Fraudulent removal from, of no effect, 9.

A person whose name is on the roll entitled to vote though not entitled to be there, 9.

Divisions into wards, 24.

Alphabetically arranged and in vernacular, 24.

Responsible for the—, 24, 25.

Entry in several capacities, 25.

Son and Father in different capacities allowed, 25.

Trustee, 25.

Joint family—authorisation, 25.

Voting in one place alone allowed in spite of several votes, 25.

Preliminary Roll, 28, 90, 91.

Misdescription not a good ground for rejection, 27.

Notice necessary, 27.

Name left out of malice good ground for damage, 27.

Refusal to register a qualified voter, if due to malice—damages, 27.

Certificate, 90.

Claims and objections, 28, 29.

Summary rejection of a claim not valid, 29.

Removal of names from the Roll—own motion, 30.



**Electoral Roll—(Concluded).**

- Revising authority for the roll, 30, 35.
- Final roll, 32.
- No powers to issue a supplementary list, 32.
- Errors do not make roll invalid, 33.
- Conclusiveness as to right and not to qualification, 33.
- "Preparation" of the roll explained, 33.
- Local Government's powers to fix dates for revision of rolls, 34.

**High Court—**

- Powers to interfere under S. 45 of the Specific Relief Act, 85.
- Can eject the disqualified Councillor, 85.
- Won't interfere if the Returning Officer has not acted on *mala fides*, 85.

**Injunction—**

- Election Court no jurisdiction to grant interim injunction, 77.
- Not contemplated by Election Court, 84.

**Joint Family—**

- Authorisation necessary for a member to vote, 26.
- Representative—should be a member of the family, 26.

**Legal Practitioner—**

- Council may appoint one to attend Election Petition inquiry, 79.
- Legal Practitioner of the Council cannot contest election, 16.

**Mandamus—**

- An application for—lies to interfere with the result of the scrutiny of nominations, 45.

**Municipal Council—**

- Statutory Basis, 1.
- Constitution, 2.
- Perpetual succession, 2, 3.

**Nomination—**

- Form of—mandatory, 42.
- Should be complete, 42.
- Should be presented in time, 42.
- Need not be signed in the presence of the officer, 43.
- Personal presentation and not by an agent, 43.
- Chairman no power to waive the date of nominations, 43.

**Scrutiny of Nomination—**

Who could be present, 44 (and new amendment).

Nominations not in form should be rejected, 44.

Decision to be endorsed, 44.

Rejection of a paper—remedy is an election petition, 45.

Wanton rejection—a grave irregularity, 45, 94.

Decision—grounds of rejection, 45.

**Notice—**

may be sent by post, 34.

**Order of the Election Court—**

Final, 83.

No appeal, 83.

Powers to reserve a question of law, 83.

**Person—**

Does not exclude the members of a joint family, 9.

**Polling Officers—**

Can they resign, 47.

Duties of, 47.

Offences by, 21.

Showing the ballot box, 48.

Clerks for the, 49.

Questions by, 49.

Initials by, 50.

Duties ministerial, 53.

Inquiry—how far, 55.

Packing of votes, 56.

Rejection of votes should be noted, 57.

Declaration by polling officer, 57.

**Reside—**

For 120 days in the year preceding, 11.

What is residence, 10.

**Revising Authority—**

For each electoral Roll, 30, 35.

Three persons essential, 31, 92.

Continues as long as their work lasts, 31.

Is it a court? 31.

**Revising Authority—(Concluded).**

Conclusions final, 31.

Evidence on oath, 34.

Meeting, 91.

**Riot—**

At the polling station—a good ground for avoiding the election, 81.

**Rules—**

Should not be declared *ultra vires* but should be supported as far as possible, 85.

Direction contrary to rules is *ultra vires*, 85.

Order passed in substantial conformity with rules cannot be questioned, 86.

Misinterpretation of the rules not a good ground for interference, 87.

Are to be obeyed, 87.

Reference to English Rules unnecessary, 87.

**Suits—**

Lies to declare an election void, 87.

A suit to set aside an election—Limitation, 86.

Suit for compelling the chairman to insert a name lies, 88.

**Taxes—**

Payment of Taxes, to be on the roll, 9.

What are Taxes, 10, 91.

One should be legally entitled to pay them—to be on the rolls, 10.

Non-payment cannot be agitated in an election court, 10.

**Trustee—**

Entitled to a place on the roll, 25.

**Wards—**

Power to divide municipality into, 7.

Alteration of wards, 7.

Division cannot be questioned in a court of law, 8.

Separate lists for wards, 8.

**Withdrawal—**

Of a candidate, 46.

Letter shall be delivered, 43.

No withdrawal of a withdrawal, 59.

Candidate can—at the middle of an election, 86.



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