

(1959) 02 BOM CK 0013

In the Bombay High Court

Case No : Election Appeal No. 158 of 1958

Ramdayal Ayodhyaprasad Gupta

APPELLANT

Vs

K.R. Patil

RESPONDENT

Date of Decision : 20-02-1959

Acts Referred:

Constitution of India, 1950 — Article 171
General Clauses Act, 1897 — Section 3
Legislative Councils Act, 1957 — Section 12, 5
Representation of the People Act, 1950 — Section 13A, 13B, 15, 16, 18
Representation of the People Act, 1951 — Section 100, 116A, 22, 62, 81
States Reorganisation Act, 1956 — Section 34, 8

Citation : (1959) 61 BOMLR 1210

Hon'ble Judges : Tambe, J;Naik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tambe, J.—This is an appeal u/s 116-A of the Representation of the people Act, 1951 (hereinafter referred to as Act of 1951) by one Ramdayal Ayodhyaprasad Gupta, a defeated candidate at the election held on January 24, 1958, for electing five members to the Legislative Council of the State of Bombay from the Vidarbha Local Authorities" Constituency." The questions raised in this appeal relate to the scope and ambit of expressions "Municipality" and "Janapada Sabha (Rural Circle)" appearing in the Fourth Schedule of the Representation of the People Act, 1950 (hereinafter referred to as Act of 1950).

2. Article 171 of the Constitution relates to the composition of the Legislative Council. It provides that the Legislative Council of a State shall consist of members elected from certain electorates referred to in Sub-clauses (a) to (d) of Clause (3) of this article and of certain nominated members as provided in Sub-clause (e) of the said Clause (3). We are here concerned with the electorate mentioned in Sub-clause (a) of Clause (3) of Article 171 which is an electorate consisting of members of municipalities, district boards and such other local

authorities in the State as Parliament may by law specify. Clause (2) of this article provides that until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in Clause (3). The Act of 1950 was enacted by the Parliament to provide for the allocation of seats in; and the delimitation of constituencies for the purposes of elections to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union territories, and matters connected therewith. Part II-A of Act of 1950 relates to the appointment of the officers for carrying out duties enjoined on them under the Act. Section 13-A provides for appointment of a Chief Electoral Officer for a State, and Section 13-B empowers the State Government to appoint Electoral Registration Officer for each Assembly Constituency as well as Council Constituency, and he is entrusted with the work of preparation and revision of the electoral rolls. Section 27 (Part IV) deals with preparation of electoral rolls for Council Constituencies. Sub-section (1) of Section 27, inter alia, provides that the constituencies referred to in Sub-clause (a) of Clause (3) of Article 171 would be termed as "Local Authorities" Constituency." Clause (a) of Sub-section (2) of Section 27 provides that for the purpose of elections to the Legislative Council of a State in any local authorities" constituency the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule. Clause (b) thereof provides that every member of each such local authority within a local authorities" constituency shall be entitled to be registered in the electoral roll for that constituency. The local authorities specified in the Fourth Schedule in relation to the State of Bombay are-

- (1) Municipalities.
- (2) District Local Boards.
- (3) Cantonment Boards.

3. It is common knowledge that as a result of reorganisation of States brought into effect by the States Reorganisation Act of 1956, eight districts of former Madhya Pradesh, namely Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara and Chanda, known as Vidarbha area, were integrated with the new State of Bombay formed under Clause (c) of Sub-section (1) of Section 8 of the States Reorganisation Act. The former State of Bombay had a Legislative Council but the former State of Madhya Pradesh had no Legislative Council. The result thereof was that the aforesaid eight districts had no representation in the Bombay Legislative Council, and provisions had to be made to secure representation from this area. Similar situation also arose in respect, of certain other newly formed States. Section 34 of the States Reorganisation Act provided for the reconstitution of the Legislative Council for the new State of Bombay. The Parliament enacted the Legislative Councils Act, 1957 (No. 37 of 1957) to provide for the creation of a Legislative Council for the State of Andhra Pradesh

and the increasing of the strength of the Legislative Councils of the States having such Councils and for matters connected therewith. Sub-section (1) of Section 5 of this Act provided that the total number of seats in the Legislative Council of Bombay shall be increased to 108 and of these seats the numbers to be filled by persons elected by the electorates referred to in Sub-clause (a) of Clause (3) of Article 171 shall be 36. Sub-section (2) of Section 5 further provided that as from the commencement of this Act the Delimitation of Council Constituencies (Bombay) Order, 1951, shall, until other provision is made by law, have effect subject to the modifications directed by the Second Schedule and in the said Order as so modified, any reference to the State of Bombay shall be construed as a reference to that State as formed by Section 8 of the States Reorganisation Act, 1956. This sub-section read with Second Schedule resulted in the creation of a Local Authorities" Constituency for Vidhardha consisting of the aforesaid 8 districts and the number of representatives that were to be elected by this constituency was 5. Sub-section (5) of Section 5 further provided that as soon as may after such commencement, elections shall be held to fill such of the seats allotted to the several Council constituencies by the Delimitation of Council Constituencies (Bombay) Order, 1951, as modified by this Act and such of the seats to be filled by persons referred to in Clause (b) of Sub-section (1) as are then vacant, as if these seats had then become vacant. Clause (c) of Section 12 of this Act also amended the Fourth Schedule of the Act of 1950 and the changes effected by this Act, so far as it related to the State of Bombay, are contained in Sub-clause (ii) of Clause (c) of Section 12 of the Act, and it provided for addition of certain other authorities to the Schedule already referred to. The combined effect of the Act of 1950 as amended by this Act is that the Fourth Schedule of the Act of 1950 so far as it relates to the State of Bombay reads as follows:-

Local authorities for purposes of elections to Legislative Councils

* * * Bombay.

- (1) Municipalities.
- (2) District Local Boards.
- (3) Cantonment Boards.
- (4) District Boards.
- (5) District Panchayats.
- (6) Town Committees.
- (7) Janapada Sabhas (Rural Circle).

4. To implement the direction given by Sub-section (5) of Section 5 of the Legislative Councils Act, the Deputy Commissioner of Nagpur came to be appointed as Electoral Registration Officer u/s 13-B of the Act of 1950 for Vidarbha Local Authorities" constituency. The Chief Electoral Officer, Bombay, issued directions to various Electoral Registration Officers, including the Deputy

Commissioner, Nagpur, vide his letter dated November 4, 1957, the material part whereof reads as follows:

So far as the local authorities' constituencies are concerned, Government has proposed you for appointment as the Electoral Registration Officer for the constituency mentioned in column 1 of the attached statement. You are, therefore, requested to prepare the electoral rolls of the local authorities' constituency for which you are being appointed as Electoral Registration Officer. According to the provisions of Sub-section (2) of Section 27 of the Representation of the People Act, 1950, every member of the constituent local authority within a local authorities' constituency will be entitled to be registered in the electoral roll of that constituency without any reference either to the qualifying date or qualifying period. The electoral roll for the local authorities' constituency will consist of a list of such members. In view of this, the question of publishing these rolls either preliminarily or finally does not arise.

In pursuance of these directions, the Deputy Commissioner, Nagpur, in his capacity as Electoral Registration Officer of the Vidarbha Local Authorities' Constituency prepared the electoral roll, but it does not appear to have been formally published, presumably on account of the directions contained in the aforesaid letter of the Chief Electoral Officer, Bombay. In the Bombay Government Gazette of December 26, 1957, two notifications under the signature of Under Secretary to the Election Commission and purported to be of date December 17, 1957, were published. By one notification, Vidarbha Local Authorities' Constituency was called upon to elect 5 members. The second notification published the various dates appointed by the Election Commission in connection with the election. December 27, 1957, was the last date fixed for making nominations, December 30, 1957, for the scrutiny of the nomination papers, January 2, 1958, as the last date for withdrawal of candidatures, January 24, 1958, for taking a poll, if necessary, and February 8, 1958, was the date for completing the election.

5. For the election from the Vidarbha Local Authorities' Constituency, appellants and respondents Nos. 1 to 8 filed their nomination papers. On the date of the scrutiny of the nomination papers, an objection was raised to the validity of the nomination paper of respondent No. 2 Ishwar Deshmukh on the ground that his nomination form was subscribed by persons who were not qualified for being voters they being members of the Nagpur Corporation. The objection was overruled. Poll was taken on January 24, 1958, the method of voting being by single transferable vote. After counting, respondents Nos. 1 to 5 were declared duly elected on February 3, 1958. Feeling aggrieved, the appellant made this election petition to the Election Commissioner u/s 81 of the Act of 1951 on various grounds. We are, however, for purposes of this appeal, not concerned with all the grounds raised. The contentions raised by the appellant in the petition and which are material for purposes of this appeal in brief were:

6. Appellant contended that in preparation of the electoral roll of the Vidarbha

Local Authorities" Constituency, the Electoral Registration Officer was in error in including the names of 55 councillors of the Nagpur Corporation, 10 members of the Fatur Notified Area Committee, 13 members of the Tiroda Notified Area Committee, 84 members of the Janapada Sabhas who were elected from the urban circles, 50 members of the Janapada Sabhas who were elected directly as Presidents, Vice Presidents and Chairmen of the Standing Committee of Janapada Sabhas. In short, the contentions raised on behalf of the appellant were that the aforesaid members were not the members of any of the authorities specified in the Fourth Schedule of the Act of 1950, and were, therefore, not qualified to vote and their names were wrongly included in the electoral roll by the Electoral Registration Officer. The electoral roll was not published. The appellant or any other person had no opportunity to object to the wrong inclusion of these names in the electoral roll. No finality, therefore, could be attached to this electoral roll. This error has resulted in 212 unqualified persons casting their votes at the election. The total number voted at the poll was only 2,027. The voting was by single transferable vote. In these circumstances, it was contended on behalf of the appellant that a presumption could be raised that the result of the election had been materially affected. The aforesaid contentions of the appellant failed before the Election Tribunal appointed by the Election Commission. The appellant has, therefore, preferred this appeal.

7. The first question that arises is whether the names of the Councillors of the Nagpur Corporation, the members of the Notified Area Committees of Fatur and Tiroda and the members of Janapada Sabhas elected by the urban circles, and Presidents, Vice Presidents and Chairman of the Standing Committees were properly included in the electoral roll.

8. As regards the Councillors of the Nagpur Corporation, it is the contention of Mr. Gokhale, learned Counsel for the appellant, that these councillors were not qualified to get their names included in the electoral roll of this constituency. On a true construction of Article 171(3)(a) and Section 27 of the Act of 1950 read with the Fourth Schedule, persons who are qualified to vote are only members of such of the authorities as are specified in the Fourth Schedule. Municipal Corporation of Nagpur or any other City is not an authority specified in the Fourth Schedule. The authorities specified are only municipalities. A "Municipal Corporation" cannot be included in the expression "Municipality". Inclusion of the names of councillors of Corporation of City of Nagpur in the electoral roll was, therefore, bad. On the other hand, the contention on behalf of the respondent is that a municipal corporation is included within the expression "Municipality" appearing in the Fourth Schedule. In support of his contention Mr. Gokhale, learned Counsel for the appellant, has further argued that the expression "municipality" must be understood and has to be understood only with reference to the local Acts in force in various States and in no other sense. In support of the argument he has also referred us to the fifth entry in the Second List of the Seventh Schedule of the Constitution, Clause (31) of Section 3 of the Central General Clauses Act, 1897 (No. I of 1897), Clause (2) of Section 2 of the Madhya

Pradesh Local Authorities (Electoral Offences) Act, 1952 (No. XI of 1952) and the Notification issued u/s 3 of the C.P. and Berar Local Fund Audit Act, 1933 (Act IX of 1933). We find it difficult to accept this contention of Mr. Gokhale. The expression "municipality" occurs both in Article 171 of the Constitution as well as in the Fourth Schedule of Act of 1950. This expression has not been defined either in the Constitution or in the Act of 1950. In the absence of any definition or any other indication in the Act, it is difficult to assume that the Constituent Assembly or the Parliament was using the expression "municipality" in any narrower sense than what it actually means. The primary meaning of the word "municipality" as given in the Oxford Dictionary is "a town, city or district possessed of privileges of Local Self Government", and it is in this sense, in our opinion, that the expression has been used both in the Act of the Parliament and in the Constitution. It would not be reasonable to assume that the intention of the Legislature was to confer a right to vote only on the members of a body for the municipal administration of a town and deprive the councillors or members of the corporation, which is nothing but a body for the municipal administration of a city, of this right. There appears to be no good reason to infer any such intention. The provisions of the Central enactments referred to by Mr. Gokhale, also, in our view, are not of any assistance to him. Item 5 of List 2 of the Seventh Schedule of the Constitution reads as follows:

Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

True, the expression used is "municipal corporation" but it is to be noted that in this entry the expression "municipality" or "municipal committee" is not used. It cannot be assumed that the intention of the Constitution-makers was to empower the State Government to enact in respect of municipal corporation i.e. a body to conduct municipal affairs of a city only and not in respect of the municipal committee or municipality i.e. a body to conduct the municipal affairs of a town. It appears that the expressions "municipality" and "municipal corporation" have been interchangeably used in the Constitution, such expression meaning a body for conducting the municipal administration of cities or towns. Similar is the position also when we refer to Clause (31) of Section 3 of the General Clauses Act. It reads:

"local authority" shall mean a municipal committee, district board, of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

It is pertinent to note that the expression used is "municipal committee" and there is no reference to municipal corporation. For reasons already stated above, it is difficult to assume that the intention of the Legislature in enacting the General Clauses Act was to exclude a municipal corporation from the definition of local authority. The other two references to the Provincial Acts undoubtedly make

mention both of corporation as well as municipality. It is true that in Clause (2) of Section 2 of the Madhya Pradesh Local Authorities (Electoral Offences) Act, 1952, and in the list of local bodies published u/s 3 of the C.P. and Berar Local Fund Audit Act, 1933, both the expressions "City of Nagpur Corporation" and "municipal committee" are used, but it cannot be lost sight of that both these enactments have a specific objective. The former was enacted to provide for electoral offences of or in connection with the election of certain bodies, and the Legislature, therefore, was enumerating these bodies *ex abundanti cautela*. Similar is the case with the list published under the C.P. and Berar Local Fund Audit Act. It is to be noted that the accounts of every local authority is not subjected to audit under the Act unless the State Government, by notification, declares that the accounts of a particular body would be subject to audit under the Act. That being the position, the State Government had to enumerate in the notification all these bodies whose accounts it desired to be subjected to audit under the Act. Reference to the two aforesaid enactments, therefore, in our view, is hardly of any assistance to the appellant in his contention that the municipal corporation is not included in the expression "municipality".

9. In the result, therefore, in our opinion the expression "municipality" used in the Constitution as well as in the Fourth Schedule of the Act of 1950 is used in the most widest sense and includes all bodies entrusted with the administration of municipal affairs of a city or a town. The Electoral Registration Officer, therefore, was not in error in including the names of the councillors of the City of Nagpur Corporation in the electoral roll for the Vidarbha Local Authorities" Constituency.

10. Turning next to the contention of Mr. Gokhale relating to the members of the Notified Area Committees of Tiroda and Fatur, in our opinion, the contention is well founded, as, in our opinion, it is not possible to hold that a notified area committee is a body which carries on the municipal administration of a city or a town. We will first refer to the provisions contained in the C.P. and Berar Municipalities Act, 1922. Sub-section (1) of Section 240 provides that the Provincial Government may, by notification, declare that, with respect to some or all of the matters upon which a municipal fund may be expended u/s 63, improved arrangements are required within a specified local area, which, nevertheless, it is not expedient to constitute as a municipality. Sub-section (2) provides that such area would be called a "Notified Area". Under Sub-section (3) of Section 240, the area which the Provincial Government is authorised to declare as a notified area is one having a population less than 10,000. Sub-clause (d) of Clause (1) of Section 241 provides for the constitution of a committee to conduct the administration of the notified area. It was not possible for us to refer to the provisions of the enactments in force in all other States except the two Acts, namely the Bihar and Orissa Municipal Act of 1922 and the Bombay District Municipal Act of -1922. The provisions of these two enactments to certain extent are the same. We, therefore, consider that the body, that is the notified area committee, thus being a body not discharging the functions of

municipal administration of a city or a town, does not fall within the meaning of the term "municipality". Mr. Ghate, learned Counsel for respondents Nos. 2 and 5, referred us to the provisions of Section 242 of the G.P. and Berar Municipalities Act, and on the strength of these provisions he contends that the Act itself recognises a notified area committee as a municipal committee, and therefore, the expression "municipal committee" includes a notified area committee. He further contends that Section 240 onwards fall within Chapter XXXI-"Small Towns", and it is his contention that a notified area committee also is a body that conducts the municipal affairs of a town. In our opinion, there is little force in the contention raised by Mr. Ghate. "We have already shown that on the language of Sub-section (1) of Section 240 a notified area committee is constituted by the Government when the Government is of opinion that it is not expedient to constitute a municipality. Section 242 also does not provide that a notified area committee when constituted would have the rights and privileges of the municipal committee but the expression used is that for certain purposes mentioned in that section a notified area committee shall be deemed to be a municipal committee. Now the use of the word "deemed" affords answer to the contention of Mr. Ghate. In *Income Tax Commissioner, Bombay Presidency v. Bombay Trust Corporation* (1929) L.R. 57 IndAp 49, 32 Bom. L.R. 361 their Lordships of the Privy Council observed (p. 55) :

Now when a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were.

Thus, on the language of Section 242 itself it is clear that a notified area committee is, in fact, not a municipality but for certain purposes as provided in the section it would be treated as a municipality. This fiction, in our opinion, cannot be carried further so as to include a notified area committee in the expression "municipality" used in the Fourth Schedule of the Act of 1950.

11. Apart from this, there is another difficulty in the way of Mr. Ghate. If we turn to the Fourth Schedule, it would be seen that therein a "notified area committee" is specified as one of the authorities whose members are entitled to be enrolled in the electoral roll of the local authorities" constituency so far as they relate to the State of Bihar, State of Madhya Pradesh, State of Punjab and State of Uttar Pradesh but is not included so far as it relates to the State of Bombay, State of Madras, State of Mysore and State of "West Bengal. Now, when the Legislature has specifically included a notified area committee in this Schedule so far as it relates to some of the States and has omitted it from other States, it is clear that the omission is intentional. It is also pertinent to note that in those States where a notified area committee is included in this Schedule, the expression "municipality" is also separately used. This also indicates that the Legislature has treated a notified area committee as a local authority separate and distinct from a municipality. It would also be seen that so far as Vidarbha is concerned, the Act in force in the Vidarbha area, namely the C.P. and Berar Municipalities Act, which

provides for the formation of a "Notified Area Committee", is also in force in the areas which formed part of the former State of Madhya Pradesh and which now form part of the new State of Madhya Pradesh. In the list of local authorities relating to the formation of Madhya Pradesh Council, a notified area committee is specifically mentioned but relating to the Bombay State a notified area committee is not included. This omission also indicates that the Legislature did not intend to confer on the members of a notified area committee in the Vidarbha area a right to be enrolled in the electoral roll of the local authorities' constituency for electing members to the Legislative Council. In our opinion, therefore, the Electoral Registration Officer was in error in entering the names of 13 members of the Tiroda Notified Area Committee and 10 members of the Fatur Notified Area Committee in the electoral roll of the Vidarbha local authorities' constituency. Mr. Ghate has also advanced an argument that it is not open to the appellant to challenge the inclusion of the names of the aforesaid 23 members inasmuch as he has failed to call the Chief Electoral Officer to the witness box to explain as to why he had asked the names of the 23 members to be included in the electoral roll. In our opinion, the argument has very little substance. Whatever view the officer may be holding for including the names of the members of the notified area committee in the electoral roll is wholly irrelevant in construing a statute.

12. Turning to the inclusion of the names of the Janapada Sabhas elected from urban circles and inclusion of the names of the Presidents, Vice Presidents and Chairmen of the Standing Committees of the Janapada Sabhas, it is the contention of Mr. Gokhale that their names had been wrongly included. He referred us to the 7th item in the Fourth Schedule relating to the State of Bombay which reads:

Janapada Sabhas (Rural Circle).

and laying emphasis on the words "Rural Circle", he very vehemently contends that the intention of the Legislature is to confer a right only on the members elected from the rural circles and on no other member. He has also taken us through certain provisions of the C.P. and Berar Local Government Act, 1948 (XXXVIII of 1948) under which Janapada Sabhas are constituted. To summarise these provisions, Section 3 empowers the State Government to divide the State into administrative areas to be known as Janapada. It also empowers the State Government to sub-divide a Janapada area into two categories of circles (1) an urban circle and (2) a rural circle. The urban circle consists of the existing municipal and notified areas comprised in a janapada, and the rural circle consists of the areas in a janapada other than municipal, notified and cantonment areas. Sub-section (1) of Section 4 of the Act provides that for each Janapada a Sabha would be constituted. Sub-section (1) of Section 6 provides that such Sabha would consist of the councillors elected by the electoral divisions in the rural circle and such number of councillors, not exceeding one-sixth of the total number of councillors of the Sabha, as may be prescribed. Sub-section (5)

of Section 3 empowers the State Government to subdivide the rural circle into electoral divisions. On the other hand, the urban circle in the Janapada area constitutes only one electoral division. Sub-section (1) of Section 13 provides that after a Sabha has been constituted, it shall at its first meeting elect from its own body, or from other persons residing in the Janapada area and qualified to be a councillor, a chairman and a deputy chairman of the Sabha, and Sub-section (2) of Section 13 provides that the chairman and the deputy chairman, so elected shall be deemed to be councillors under the Act. Sub-section (1) of Section 23 provides that every Sabha shall appoint certain standing committees mentioned therein, and Sub-section (3) of Section 23 provides that every standing committee shall have a chairman elected either from the councillors or from other persons residing in the Janapada area and qualified to be a councillor, and a chairman when so elected would be deemed to be a councillor of the Janapada Sabha. The aforesaid provisions undoubtedly indicate that the Janapada is divided into two circles, rural circle and urban circle. The urban circle consists of the existing municipal and notified areas comprised in the Janapada. It is also clear that a chairman or a deputy chairman of the Janapada Sabha or a chairman of the standing committee need not necessarily be a person resident in the rural circle, and it is on the strength of these provisions and mention of the words "rural circle" in the entry in Fourth Schedule that the contention of Mr. Gokhale is founded. We find it difficult to accept this contention of Mr. Gokhale. In the first instance, if the contention is accepted, it would mean that the right to vote or in other words right to get the name entered in the electoral roll of the local authorities" constituency is conferred not on all the members of the Janapada Sabha but only on some of them, namely those elected to the Janapada Sabha from the rural circles. Had the Legislature so intended, it would have used the expression "members elected to the Janapada Sabha from rural circles". The expression used in the aforesaid 7th item is not that. To accept Mr. Gokhale's contention it would be necessary to read certain words in that item. A Court would refrain from adopting this course unless it is so compelled. We also find another difficulty in the way of Mr. Gokhale. In our opinion, the rule of construction requires us to read this entry in conjunction with the main provision contained in the section under which the schedule is framed, and it would not be proper to read that entry completely divorced from the provisions of the said section. The relevant provision is Clause (a) of Sub-section (2) of Section 27 of the Act of 1950. It reads:

For the purpose of elections to the Legislative Council of a State in any local authorities" constituency-

(a) the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule;

On the language of this clause, it is clear that in framing the Schedule, the intention of the Legislature was only to specify a local authority and was not to

confer the right only on certain members of that local authority. Had that been the intention, in our view, Clause (a) of Sub-section (2) of Section 27 would have read-

For the purpose of elections to the Legislative Council of a State in any local authorities" constituency-

(a) the electorate shall consist of such members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule.

To accept Mr. Gokhale's contention would mean to add the word "such" in Sub-clause (a) before the word "members". As already stated, a Court in interpreting a statute would refrain from adding anything to the statute unless the context clearly so indicates. Further, the Legislature has not left the matter in any doubt. After enacting Sub-clause (a) and the Schedule, it has further enacted Sub-clause (b) to Sub-section (2) of Section 27 of the Act and it reads:

every member of each such local authority within a local authorities" constituency shall be entitled to be registered in the electoral roll for that constituency;

Assuming that there is any ambiguity in the language of the aforesaid 7th item of the Fourth Schedule, no doubt is left in our mind on account of the provisions of Clause (b) of Sub-section (2) of Section 27 that the intention of the Legislature was to confer on all the members of the local authorities specified in the Fourth Schedule a right to get their names entered in the electoral roll of the local authorities" constituency. Mr. Gokhale in support of his contention also argued that the C.P. and Berar Local Government Act, 1948, is in force in the areas of the present Madhya Pradesh which formerly formed part of the old Madhya Pradesh. The expression used in the second item of the Fourth Schedule relating to the Madhya Pradesh is "Janapada Sabha". The expression used in the 7th item of the Bombay list is "Janapada Sabhas (Rural Circle)" Mr. Gokhale contends that the use of these different expressions in the aforesaid two items clearly indicates that the intention of the Legislature was to confer a right to vote on all members so far as Madhya Pradesh was concerned, but so far as the State of Bombay is concerned the intention was to confer the right only on members elected from rural circles. If these two entries are read only by themselves this argument no doubt is plausible, but in view of the clear indication of the intention of the Legislature contained in Clauses (a) and (b) of Sub-section (2) of Section 27 of the Act of 1950, cannot be accepted. In our judgment, therefore, the Electoral Registration Officer was not in error in including the names of all the members of the Janapada Sabhas in the electoral roll of the local authorities" constituency for Vidarbha.

13. The result is that the appellant has been able to establish his contention only in respect of 23 members of the Notified Area Committees of Tiroda and Patur.

14. The question that next arises is whether on account of this error on the part of the Electoral Registration Officer, the appellant is entitled to claim the relief claimed by him, namely setting aside the election. On our findings, it is not necessary to consider the contention of Mr. Gokhale, relating to the validity of the nomination paper of respondent No. 2. It is not in dispute that it was subscribed by councillors of the Nagpur Corporation whose names had been included in the electoral roll of the constituency. As already stated, inclusion of the names of the councillors was valid. That being the position, acceptance of the nomination paper of respondent No. 2 is not open to challenge. Mr. Gokhale next contends that the aforesaid error on the part of the Electoral Registration Officer in including the names of 23 members of the Notified Area Committees would attract the provisions of Sub-clauses (iii) and (iv) of Clause (d) of Sub-section (1) of Section 100 of the Act of 1951. Sub-clause (iii) reads:

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-...

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void....

This sub-clause contemplates two contingencies-(1) improper reception, refusal or rejection of any vote, and (2) reception of any vote which is void. The question of reception, refusal or rejection of a vote arises only at two stages, the first when the voter goes to the polling station to vote, and the second when the votes cast are counted. This clause obviously relates to something that happens at those two stages. The contention of Mr. Gokhale is not that either the Polling Officer or the Returning Officer was in error on account of his failure to comply with the duties which were cast on him, but his contention, as already stated, is that the Electoral Registration Officer was in error in including the names. Now, once the name is included in the electoral roll, the provisions of Section 62 come into play. Sub-section (1) of Section 62 provides that no person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency. Mr. Gokhale has not been able to show to us that the Act makes any express provision which would have entitled the appellant to raise an objection either before the Polling Officer or before the Returning Officer that the votes cast by the members of the Notified Area Committees should not be accepted even though their names had been entered in the roll. In our opinion, therefore, we do not think that there has been any improper reception of any vote within the meaning of the first part of the aforesaid Sub-clause (iii) even assuming that all the 23 members of the Notified Area Committees had voted at the election. It is next to be considered whether the votes cast by these 23 persons could be termed as votes which were void. In view of the language of Sub-section (1) of Section 62 of the Act of 1951, it is not possible for us to hold that these votes were void votes. On the language of the said sub-section, an error in including the name would: not by itself render a vote as a void vote. The

position becomes clear when we turn to Sub-sections (2), (3)(4) and (5) of Section 62, and when we turn to these Sub-sections it is clear that even when the name of a person has been entered in an electoral roll, he is debarred from voting or the vote cast by him is rendered void on account of certain circumstances mentioned in Sub-sections (2) to (5). Such votes alone, in our opinion, could be deemed to be void votes within the meaning of Sub-clause (in) of Clause (d) of Sub-section (1) of Section 100.

15. It is next to be seen whether the aforesaid error would fall within Sub-clause (iv) of Clause (d) of Sub-section (1) of Section 100. It reads:

That the result of the election, in so far as it concerns the returned candidates, has been materially affected by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the Tribunal shall declare the election of the returned candidate to be void.

It has been held by the Supreme Court that the expression "non-compliance" is wide enough to include any infraction of the Constitution or the Act or the rules or orders. In *Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others*, their Lordships observed (p. 279) :

There is no material difference between "non-compliance" and "non-observance" or "breach" and this item in Clause (c) of Sub-section (2) may be taken as a residuary provision contemplating cases where there has been infraction of the provisions of the Constitution or of the Act but which have not been specifically enumerated in the other portions of the clause.

As already observed, the appellant has no doubt established that in the inclusion of the 23 names of the members of the Notified Area Committees in the electoral roll. This no doubt is an infraction of Clause (a) of Sub-section (2) of Section 27 read with the Fourth Schedule of the Act of 1950. It is to be seen whether the said infraction would fall within the aforesaid Sub-clause (iv). It is the contention of Mr. Mandlekar, learned Counsel for respondent No. 3, that the non-compliance contemplated in Sub-clause (iv) is the non-compliance of the provisions of the Constitution, or of the provisions of the Act of 1951 or of the rules or orders made under the Act of 1951. Non-compliance of the provisions of the Act of 1950 does not fall within the scope and ambit of Sub-clause (iv). This contention, in our opinion, has substance. The relevant provisions of Section 100 contained Clause (c) of Sub-section (2) of Section 100, prior to their amendment, were:

(2) Subject to the provisions of Sub-section (3), if the Tribunal is of opinion-...

(c) that the result of the election has been materially affected...by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form,

the Tribunal shall declare the election of the returned candidate to be void.

The present provisions contained in the aforesaid Sub-clause (iv) and the provisions, as they were prior to the amendment of Section 100, when read together, it is clear that the former provision was wider in terms and the election was open to challenge on account of non-compliance of the provisions of all the Acts relating to election. The Legislature has amended this section and in the new provision has deleted the part so far as it related to the challenge to other enactments and has confined a right only to the infraction of the provisions of the Constitution, the Act of 1951 and the rules and orders framed, under that Act. That being the position, it would be reasonable to assume that the intention of the Legislature was to debar a challenge to an election on account of the non-compliance with the provisions of the Act of 1950 which inter alia provides for preparation of electoral rolls. It is, however, the contention of Mr. Gokhale that in, this case the electoral roll was not even published; his client had no opportunity to challenge the inclusion of the names of the aforesaid 23 members in the electoral roll; no finality to the electoral roll, therefore, could be attached. He further contends that that being the position, the election itself was void. He also referred us to the following decisions reported in *Kanglu v. Chief Executive Officer, Janapada Sabha, Durg* [1954] Nag. 875. *Vithaldas v. Sadanand A.I.R.* [1957] Nag. 63 and *Vinayak Vasudeo Mehendale Vs. Gopal Chimnaji Bhate*, in support of his contention that no finality could be attached to the electoral roll when there had been no opportunity to get the electoral roll corrected. There is a good deal of force in this contention. In *Chief Commissioner, Ajmer Vs. Radhey Shyam Dani*, , their Lordships of the Supreme Court observed (p. 308) :

It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned.

It must be conceded that this salutary rule laid down by their Lordships of the Supreme Court has not been observed. The Chief Electoral Officer had issued instructions to the Electoral Registration Officer only on November 4, 1957, for preparation of the electoral roll. It was also observed therein that the question of publishing the electoral roll either preliminarily or finally does not arise. The constituency was called upon to elect members by a notification appearing in the gazette of December 26, 1957. There is no material on record to show that in between these dates the electoral roll was, in fact, published or that any publicity was given to the publication of the electoral roll. By another notification, which appeared in the gazette of December 26, 1957, the date of nomination as fixed

was December 27, 1957. The interval was only of a day. In these circumstances, it does appear that the appellant had no opportunity to get the electoral roll corrected. On behalf of the respondents, we were referred to the provisions of Clauses (c) and, (d) of Sub-section (i) of Section 27 of the Act of 1950 and the provisions of Sections 15, 16, 18, 22 and 23 as they stood prior to the amendment in the year 1958, and it has been argued on their behalf that it was not obligatory on the part of the Electoral Registration Officer to publish the electoral roll and it is also contended that it was not open to anybody under the provisions, as they then stood, to complain of erroneous inclusion of the name of any person in the electoral roll. The contention is well-founded. It appears there had remained a lacuna in the Act which had resulted in a denial of a very valuable right of objecting to the inclusion of a name in the electoral rolls on the ground of lack of requisite qualifications. This lacuna has, however, now been removed by amendment of Section 22 by Act No. 58 of 1958. We are here concerned whether this lack of opportunity to challenge the wrongful inclusion of the names of the 23 aforesaid members can afford a ground for setting aside the election and whether it would be within our competence to grant that relief in exercising appellate power under the Act of 1951. As already shown, on the construction put by us on Sub-clause (iv) of Clause (d) of Sub-section (1) of Section 100, it cannot afford a ground to the appellant to get the election set aside. It, therefore, would not be within our competence in exercise of our appellate jurisdiction to set aside the election on this ground. The other decisions to which reference was made are also, in our opinion, not of any assistance to the appellant as they relate to the construction of the provisions of different statutes, and each case, therefore, turns on the provisions of the statute to which it relates. We have not been shown a case relating to the Act of 1951, as it now stands, where it is held that the lack of opportunity to get the election roll corrected would afford a ground for setting aside the election. On the other hand, the provisions of Sub-section (1) of Section 62 indicate that the Legislature intended to attach finality to the electoral roll subject to certain conditions mentioned in Sub-sections (2) to (5) of the Act.

16. Even assuming for a moment that the non-compliance with any of the provisions of the Act of 1950 would fall within the ambit and scope of the said Sub-clause (iv), there is another hurdle in the way of the appellant. It is to be noticed that it is not sufficient to establish that there had been non-compliance with any of the provisions. It has further to be established that the result of the election, in so far as it concerns the returned candidates, has been materially affected on account of that non-compliance. The burden to establish it lies on the appellant, and howsoever it may be difficult to discharge that burden, it is incumbent on him to discharge it. In *Vashit Narain Sharma Vs. Dev Chandra and Others*, it has been observed by their Lordships (p. 515):

This section indicates that an election is not to be declared invalid if it appears to the Tribunal that non-compliance with statutory rules or any mistake in the use of such forms did not affect the result of the election. This throws the onus on

the person who seeks to uphold the election. The language of Section 100(1)(c), however, clearly places a burden upon the objector to substantiate the objection that the result of the election has been materially affected.

After considering the case law on the question, their Lordships further observed (p. 516) :

...That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate.

It is to be seen whether the appellant has discharged this burden. The burden undoubtedly could have been discharged if a presumption that the result of the election has been materially affected could have been raised on the facts and circumstances. If the appellant had been able to establish his case in full and had been able to show that the names of as many as 212 members had been wrongly entered in the electoral roll, then it would have been possible to presume that the result of the election had been materially affected, but the position that is obtained on our findings is that the names of only 23 members had been wrongly entered in the electoral roll. It is not in dispute that the valid votes cast were 2001. In these circumstances, in the absence of any further evidence, it is not possible for us to hold that the result of the election has been materially affected.

17. Mr. Gokhale, however, contends that it was not necessary for the appellant to lead any evidence; he had made an application to the Tribunal to get the documents pertaining to the election brought before it; these documents were brought in the Court and amongst these documents is a marked voters' list, i.e. a voters list on which remarks were made as and when it was found necessary. Referring us to Rule 19 read with Rule 27(3) of the rules framed under the Act, Mr. Gokhale argues that by referring to these documents, it is possible for the Court to ascertain as to whether the result of the election has been materially affected or not and the case should be remanded to the Court for that purpose. "We find it difficult to accept this contention. No witness has deposed that even one out of these 23 voters has voted at the election. In our opinion, in these circumstances, it is not now open to the appellant to ask for a rambling enquiry involving scrutiny of documents requiring a special skill and take a chance on its result. We do not, therefore, consider it necessary to remand the case for this purpose. Appellant having failed to establish that the inclusion of the names of 23 members in the voters' list has materially affected the result of the election, the appeal must fail.

18. In the result, therefore, the appeal fails and is dismissed. The appellant shall pay 2/3 costs of the respondents throughout.