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E & P. H (1948) Department.

Ms. SERIES.

G.O. NO. 1639 (Edu)

Dated 26. 6. 48

Closed. ces Sept

[Despatch Abstract.]

Sub: University - Madras - Elections of Srimathi Leelabai Kamath to the Senate - election petition - papers recorded.

Back Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Further Papers.

G.O.	No.	Department.	Date.	G O.	No.	Department.	Date.

299A/48-2 G3 (2)

Reading

PRIVATE SECRETARY MADRAS

MADRAS GOVERNOR'S CAMP

Ootacamund,
3rd May 1948.

SECRETARIAT, FIN., AND P.W. DEPTS. 5 - MAY 1948 GOVERNMENT OF MADRAS

ASST. SECRETARIAT TO GOVERNMENT 5 - MAY 1948 EDUCATION AND PUBLIC HEALTH DEPT.

Dear Mr. Subramanian,

University-Madras- Election of a member to the Senate by the members of the Municipal Councils in the South Kanara district- Objection petition from Dr.B.R.Hegde-

---

I am to send you the accompanying letter from the Vice-Chancellor, Madras University, and its enclosures, regarding an objection raised in connection with the election of Srimathi Leela Bai Kamath as a member of the Senate by the Councillors of the Municipalities in the South Kanara District on 20th February 1948, and to say that His Excellency would be glad if this could be examined urgently in consultation with the Legal Department and the case circulated through H.M.(Education).

PP3 Sempra
Pf 7-40 11

333.10

Yours sincerely,

Govindan Nair

(P.Govindan Nair)

M.V.Subramanian Esq,ICS.,
Secretary to Government,
E&PH Department.

SIR A. L. MUDALIAR,
M.L., LL.D., D.Sc., F.R.C.O.G., F.A.C.S.,
VICE-CHANCELLOR.

UNIVERSITY OF MADRAS.

UNIVERSITY BUILDINGS
TRIPLICANE
MADRAS

PRIVATE SECRETARY TO THE GOVERNOR
1 MAY 1948
MADRAS

No. A.1786.

29th April 1948.
30th

To

The Private Secretary to His Excellency the Chancellor,
Madras Governor's Camp.

Sir,

Sub: Election of a member to the Senate by the members of the Municipal Councils in the South Kanara District.

- - -

I have the honour to bring to the notice of the Chancellor an objection that has been raised in regard to the election of a member to the Senate by the Municipal Councillors of the Municipalities in the South Kanara District, under Section 14 (a), Class III (6) of the Madras University Act. In referring the objection to His Excellency the Chancellor, as provided for under Section 2 of Chapter XIX of the Laws of the University, I have to state as follows:--

2. The Collector of South Kanara District, Mangalore, was addressed in this Office letter dated the 23rd December 1947 to hold the election according to the programme suggested, and that if it was not possible for him to do the duties of Returning Officer for the election, he may empower a Gazetted Officer not below the rank of a Deputy Collector to carry out the duties in this behalf (vide statute 9 of Chapter XIX- Calendar, Vol.I Part I, 1945-46). The Collector of South Kanara, in his reply (Ref.B.105/4 dated 5-1-48) stated that the programme suggested for the election was suitable and that he had empowered the Treasury Deputy Collector, South Kanara, to conduct the elections. The election was conducted as scheduled and the Treasury Deputy Collector in his letter dated the 20th February 1948 intimated that Srimathi Leela Bai Kamath, Municipal Councillor, Udipi,

P.T.O

having secured the highest number of votes, was duly declared elected (copy enclosed).

3. Subsequently an objection petition (copy enclosed) was received from Dr.S.R.Hegde, Registered Medical Practitioner and Municipal Councillor, Mangalore Town (South Kanara), who was also a candidate for the election, stating that certain irregularities had taken place during the conduct of the election and that the election should therefore be set aside.

4. The Legal Adviser of the University, Sri K.Subba Rao, to whom the petition was referred for remarks stated that Dr.B.R.Hegde questions the election mainly on the following three grounds:

(1) The notification dated 17-1-48 does not disclose that M.M.Chinna Dorai had powers duly delegated to him by the Collector.
(2) That Sri Rathnam is not empowered to officiate as Returning Officer.
(3) 28 ballot papers were not in the custody of the Treasury Deputy Collector but were brought to him by a clerk, as the covers were addressed to the Collector.

Regarding the first two points the Legal Adviser stated that the University might get the necessary information from the Collector in regard to the delegation of powers to the Treasury Deputy Collector, but with reference to the third point he has stated as follows:--

"The third ground is based on the allegation that though the intimation signed by the Treasury Deputy Collector contained directions to send the envelopes addressed to him by registered post, in the covers enclosed, the address was that of the Collector. The suggestion is that the covers were received by the Collector and the clerk of the Collector brought them to the Treasury Deputy Collector at the time of the opening of the ballot box. It appears to me that the Treasury Deputy Collector's Office is in the Collector's Office itself. That is clear from the notification dated 17-1-1948 calling for nominations. It is signed by Mr.M.M.Chinna Dorai the Treasury Deputy Collector but the address was given as S.K.Collector Office, Mangalore. The same address must have been given on the cover enclosed. Further even if the letters were received by the Collector, the said fact cannot invalidate the election as under Statute 9 the Collector is a person who is entitled to hold the elections though he may empower his subordinates to act for him."

5. The objection petition was referred to the Collector of South Kanara for his remarks and a copy of his reply dated 13-3-1948 is sent herewith.

6. The remarks of the Collector of South Kanara, on the objection petition, were communicated to the Legal Advisor of the University who states as follows:

"The letter by the Collector of South Kanara, dated 13-3-48 to the Regisrar, University of Madras, discloses the necessary facts. It is clear from the letter that the Collector duly empowered the Treasury Deputy Collector, and not any particular individual, holding the post, to conduct the election. The letter also shows that the clerk who brought the covers was the Huzur Head Clerk with whom the covers were kept under the orders of the Treasury Deputy Collector."

The Legal Adviser states that on these facts the election held was valid and there are no merits in the objection petition.

7. Meantime, the further objection petition sent by Dr.B.R. Hegde dated 23-3-48 was received. This was also sent to the Collector of South Kanara for his remarks and a copy of his reply is also enclosed.

It will be observed from the last letter dated 16-4-48 from the Collector that the procedure followed has not been quite regular and the Ballot papers received should have been in the safe custdoy of the Treasury Deputy Collector and not entrusted to any other person in the Office. It is stated that the registered packets received from the voters were acknowledged by the Huzur Sheristedar as he is authorised to receive all covers intended for the Collector. The registered packets were then sent to the Treasury Deputy Collector and subsequently retained by the Huzur Head Clerk under lock and key as he is the Section-head concerned. Even if the address "Treasury Deputy Collector" were printed on the outer cover, the covers would have been received by the Huzur Head Accountant and not by the Treasury Deputy Collector himself according to the Office arrangements prevailing." This system seems to be

P.T.O

irregular and when dealing with election papers would naturally lead to other doubts apart from other procedural mistake. It therefore appears to me that the election should be set aside and a fresh election be held.

8. I request you to obtain the orders of the Chancellor and to communicate it to me at an early date.

I have the honour to be,

Sir,

Your most obedient servant,

A.S. Mudaliar

VICE-CHANCELLOR.

ks/

Enclosures:-

1. Copy of letter and declaration dated 20th February 1948

2. Objection petitions by Dr.Hegde dated 25-2-1948& 28-2-1948 with a copy of notification and copy of Collector's reply dated 26-2-1948.

3. Copy of South Kanara Collector's letter dated 13-3-1948.

4. Objection petition by Dr.Hegde dated 23-3-1948.

5. Dr.Hegde's letter dated 2-4-1948.

6. Copy of letter from Collector, South Kanara dated 6-4-1948.

7. Copy of letter of intimation, notification and envelope.

UNIVERSITY OF MADRAS.

Copy of letter No.B.4.105/48 dated the 20th February 1948 from G.Rajaratnam, B.A., Try.Dy. Collector, South Kanara, ~~M'lore.~~ Mangalore.

- - -

Elections - Senate - Mangalore and Udipi - Municipal Councils - Polling on 20-2-48 - Result - intimated

Ref: Your No.A.7000 dated 23-12-48.

- - -

There were two candidates contesting at the election of a member to the Senate on behalf of the Mangalore and Udipi Municipal councils. The counting and scrutiny of votes were done on 20-2-48 as notified. Srimathi Leela Bai Kamath, Municipal Councillor, Udipi, having secured the highest No. of votes, was duly declared to have been elected. A copy of the declaration made under statute 27 of the Statute regarding the election is enclosed. Copy of this declaration has been affixed to the notice Board of my office on 20-2-48.

ELECTION

Election to the Senate by the Members of the Municipal Councils of Mangalore and Udipi.

NOTIFICATION.

P257 of the Bk

Under Statute 27 of the Statutes regarding the elections to the Senate, contained in Chapter XIX of Volume I, Part I of the University Calendar 1942-43, Srimathi Leela Bai Kamath having received the highest number of votes among the contesting candidates, she is hereby declared duly elected as a member of the Senate of the University of Madras.

(By delegation by the Collector of S.Kanara)

S.K.Dt., Treasury,
Mangalore, 28-2-48.

Sd./-G.Rajaratnam,
Treasury Dy. Collector,
S. Kanara.

BEFORE THE VICE-CHANCELLOR OF THE UNIVERSITY OF MADRAS,
UNIVERSITY BUILDINGS, CHEPAUK, MADRAS.

Dr. B. R. Hegde,
Registered Medical Practitioner and
Municipal Councillor, Mangalore Town,
South Kanara ... Petitioner.

23 MAR 1948

versus

1. The Collector of South Kanara.
2. The Treasury Deputy Collector, S.K.
3. Mrs. Leela Bai Kamath,
Municipal Councillor,
Ajjarkadu, Udipi Town, South Kanara. } Respondents.

2 MAR 1948

Objection Petition under Statute 7 of Chapter XIX of Volume I, Part I of University Calendar 1942-'43.

The petitioner named above begs to bring the following facts for your kind consideration and for necessary action:-

1. That there is one seat for the Senate of the Madras University to be filled up by election by the members of Udipi and Mangalore Municipalities of the South Kanara District.

2. The official to hold the election is the Collector of the District or any gazetted officer not below the rank of a Deputy Collector who must be empowered by the Collector to hold the election and on whose behalf he acts under Statute 9.

3. Under date 17-1-1948 signed M. M. Chinnadorai the notification of the election on behalf of the University of Madras was published and the said notification does not disclose whether the said M. M. Chinnadorai had powers duly delegated to him by the Collector or that he is a Returning Officer and hence the said M. M. Chinnadorai has not been delegated with powers to hold the election.

4. Three nominations were filed in time and one withdrew with the result the petitioner and the 3rd respondent remained the contesting candidates. P11 ante

5. But in the subsequent notification of 30th January and 5th February which relates to valid nominations contained the signature of M. M. Chinnadorai, T.D.C. by delegation by the Collector of South Kanara.

6. Thirty-two ballot papers were sent to Mangalore Municipal Councillors and 16 to Udipi Councillors to elect the member to the Senate and the intimation letter is dated 6-2-1948 and signed by M. M. Chinnadorai as T.D.C. and Returning Officer by delegation by Collector. PP35-36 mfrn

7. On 9-2-1948 the ballot papers were posted to 48 electors bearing the initials of M. M. Chinnadorai and the date of posting as 9th.

8. Though the intimation dated 6-2-1948 signed by the T.D.C. the Returning Officer contained directions to send the envelopes addressed to him by registered post, -- in the covers enclosed the address was that of the Collector and so the covers were received by the Collectorate and the T.D.C. had no occasion to have them in safe custody as and when received.

9. In the Ballot Box there were only 19 envelopes containing the ballot papers. The remaining 28 were brought by one clerk and placed before the T.D.C. and these 28 envelopes must have been received between the 11th and the 20th. So these 28 envelopes were not in the

12 MAR 1948

13

custody of the T.D.C. who should have had the custody if he was properly empowered by the Collector and if the envelopes were properly addressed to the Returning Officer (T.D.C.)

10. On or about the 19th of February 1948 M. M. Chinnadorai handed over charge to one Sri Rathnam, who officiated as Returning Officer, and whether the latter was especially empowered to officiate as Returning Officer is not known, and I have reason to believe that the said Sri Rathnam was not empowered then to officiate as Returning Officer and therefore it has to be construed that the election held by the said Sri Rathnam must be necessarily deemed to be invalid.

11. After counting out 47, one was declared invalid as the cover did not contain the declaration paper of the elector. This envelope which contained this invalid paper seems to have been received by registered post.

12. Ballot papers were opened in the presence of the 2 contesting candidates, namely, the petitioner and 3rd respondent, and their two authorised representatives on either side in the presence of the Treasury Deputy Collector Sri Rathnam on 20-2-1948 at 4-15 p.m.

13. The petitioner applied for a certified copy of the order of delegation and the copy application has been rejected by the T. D. C. P21 mfrn

14. The petitioner submits that the present T.D.C. Sri Rathnam who declared the 3rd respondent as duly elected, has not been duly delegated as the Returning

Officer to hold the election. For the several reasons stated in the body of this petition, it is evident that there are very many serious legal flaws at every step, in the present election which have been clearly detailed in the body of the petition which has really vitiated the entire proceeding or the procedure in this case as to make the election of respondent 3 really illegal and therefore the whole election has to be set aside, as both the personnel were not empowered as per statute.

15. The petitioner further submits that due intimation of the facts stated in this petition be duly intimated to all the three respondents and the election set aside.

Mangalore,
25th February 1948.

Petitioner.

Encl: 1 copy of the notification dated 17-1-1948.

UNIVERSITY OF MADRAS

NOTIFICATION

Election of a member to the Senate to represent the Mangalore and Udipi Municipalities in the South Kanara District under section 14(a) class III(6) of the Madras University Act 1923 as subsequently amended.

Whereas a vacancy has arisen on the senate, to represent the councillors of Mangalore and Udipi Municipalities in the South Kanara District, it is hereby notified, by direction of the Chancellor of the University of Madras, that an election will be held to fill up the vacancy.

The programme for the election is as follows.

1. Date of notification of the vacancy (and issue of notices to members calling for nominations).	Tuesday 20th January '48.
2. Last day (and hour) for the receipt of nomination papers.	Friday 30th January '48 4 P. M.
3. Day and hour of the scrutiny of nomination papers.	Friday 30th January '48 4-15 P. M.
4. Day and hour of publication of the list of valid nominations (at the office of the returning officer).	Friday 30th January '48 4-30 P. M.
5. Last day and hour by which the candidates may withdraw their candidature by notice in writing.	Thursday 5th February '48 3 P. M.
6. Last day and hour of publication of the final list of valid nominations.	Thursday 5th February '48 3-15 P. M.
7. Date of despatch of the Election papers (if there is to be poll).	Monday 9th February '48
8. Last day and hour by which the election papers should be returned to the Returning Officer and the day and hour of polling.	Friday 20th February '48 4 P. M.
9. Day and hour when scrutiny and counting of votes will take place.	Friday 20th February '48 4-15 P. M.

Every councillor of the Municipal Councils named above shall be at liberty to nominate any one qualified member of the councils to fill the vacancy. Every nomination shall be made by an elector in writing and shall be seconded in writing by another elector of the electorate concerned. Every such nomination shall be accompanied by the consent in writing of the nominee agreeing to serve on the senate, if elected.

Nomination papers should reach the Treasury Deputy Collector, South Kanara at his office in Mangalore not later than 4 P. M. on Friday 30th January 1948.

S. K. Collector's Office,
Mangalore, dated 17—1—1948.

(Sd.) **M. M. Chinnadorai,**
Treasury Deputy Collector.

S P W Ltd. P I C No. S.K. 23—20-1-48/60

16

(10)

17

BEFORE THE VICE CHANCELLOR, UNIVERSITY OF MADRAS,
Madras

23 MAR 1948

Sub:- Election to the Senate - from the two Municipalities in South Kanara District.

Ref:- My objection petition dated 25-2-48 under statute 7 of Chapter XIX of General Rules of election.

PP11-14 cwte
Rule 247 of the Part

Dr. B. R. Hegde, Registered Medical Practitioner and Municipal Councillor, Mangalore. Petitioner.

PP11-14 cwte In supplementing my above referred ~~above~~ petition I may be permitted to state further on the irregularities and illegalities on the conduct of election held on 20-2-1948 at Mangalore.

1. That under Proceedings of the Collector a certified copy of the powers delegated or empoered by the Collector to the two officials who conducted the election under statute IX has been refused to me without assigning any reason. It is an essential document to render the election valid. Refusal to grant a copy of same to me, who is one of the candidates for election, is a grave injustice done to me. On this action of the officer I have valid reasons to infer that there does not exist any instrument duly drawn up and signed by the Collector empowering the official Sri. M. M. Chinnadurai, Treasury Deputy Collector and transmitted to the said official to act validly and hold the election, and of which instrument I applied for a certified copy.

PP 247-248 of the Book
P21 infra

2. That by not issuing opportune instructions as to the mode of addressing the ballot paper covers which were to be despatched by registered post to the Returning Officer the empowered official, and to whose safe custody they were to remain till the day of counting of votes, 28 ballot paper

covers which were mostly closed by gum and not sealed were allowed to be received from Postal authorities by persons who were not the proper authority to receive them or possess them for over a week without depositing them under the safe custody of the duly authorised official.

3. That from the date of notification to the day of election there was a change in the personnel of the Collector and also of the Treasury Deputy Collector. At any event, the official Mr.Ratnam, the Treasury Deputy Collector on 20-2-48 seemed to have not been empowered as he took charge of his office just on the eve of polling and it is evident from the facts mentioned in my petition of 25-2-48, that his predecessor Sri. M.M.Chinnadorai had not handed over the custody of the 28 ballot paper covers -- received by post in the office of the Collectorate till 19th February 1948.

pp 11-14 ants

4. That ifthe empowering was oral to the official to conduct the election (which if true is not valid in law) there being change in the personnel of both the officers there cannot exist any valid delegation at all.

5. The order from the Collector refusing to grant me the copy is annexed herewith.

P2 infm

6. That under the circumstances, I have every reason to believe that the election has not been conducted properly and validly, and I pray that the entire election may be set aside and orders may be passed to hold fresh election as per law and rules.

BKHegde

Madras,28/2/1948. PETITIONER.

20

Before the Vice-Chancellor
University of Madras,
Madras.

Re: Elections to the Senate -
from the two Municipalities of
South Kanara, District.

Dr. B.R.Hegde, Mangalore. Petr.

Petition.

party in person.

LDm C.P 85-48 (12) 21

Proceedings of the Collector of South Kanara.
S. R. Kaikini, Esqr., I.C.S.

Copies - certified - copies of certain records relating to the election for the Senate - Grant of

Ref. application of Sri B.R. Hegde, Basavanagudi, Mangalore dt 25-2-48

NOTED here

The copy applied for by the petitioner cannot be granted. One copy stamp paper is herewith returned to him.

(By order)

S. Mathewji
26/2/48.
(Huzur Head Clerk

To
The Petitioner
26/2/48

22

(13)

S. Kanara Collector's Office,
Mangalore dated 13-3-48.

URGENT.
Ref.C.No.105/48-B4

From
S.R. KAIWAR, ESQ., I.C.S.,
Collector of South Kanara.

To
The Registrar,
University of Madras, Madras.

Sir,

ELECTIONS: Senate - representative of the Minicipalities in South Kanara District - Objection Petition - remarks.
Your letter A.874 dated 3-3-48.-

The election of a member to the Senate by the Municipal Councillors of Mangalore and Udipi Municipalities was held on the notified date in accordance with your letters A.7000 dated 23-12-47 and notification dated 20-1-48. All the formalities were observed and the dates fixed for each stage were adhered to.

2. The Treasury Deputy Collector South Kanara who is a Gazetted Officer and is also a Personal Assistant to the Collector was authorised by me at the very outset to conduct the election and this fact was intimated to you in this office Ref.B4.105/48 dated 5-1-48. The delegation was by designation and not by name. Accordingly the notification was issued by the Treasury Dy. Collector on 17-1-48 and there is no rule that the notification should disclose whether the officer issuing the same had powers duly delegated by the Collector as contended by the petitioner in para 3 of the petition. The notification clearly specifies that nomination should reach the Treasury Dy. Collector by 4 P.M. on 30-1-48. There is ~~xiwx~~ thus no confusion in this and every Councillor would know before when to file nominations. It is for the learned Councillor to understand that the Treasury Dy. Collector must have been authorised in the matter and all things will be clear thereafter.

3. The main contention of the objection petitioner appears to be that there was a change in the person of the Treasury Dy. Collector in the middle and it is doubtful whether both of them viz. Sri M.M. Chinnadorai and Sri Rathnam (correct name Rajaratnam) had been empowered by the Collector separately. This question does not at all arise as the delegation was to the Treasury Dy. Collector and not any particular individual holding that post. Further it had been indicated in the letter of intimation sent to each voter with the ballot papers that Treasury Deputy Collector was the Returning Officer by delegation by the Collector of South Kanara.

4. The outer covers sent to the voters had the address 'Collector of South Kanara' printed on that. This also makes no difference. The Treasury Dy. Collector is after all a Personal Assistant to the Collector. No technical objection can also be raised to this as there is no bar to the Collector doing the duties of the Returning Officer though the Treasury Dy. Collector who had been authorised in this regard. The registered covers were kept by the Huzur Head Clerk under lock and key under instructions from the Treasury Dy. Collector and they were produced by him at the time of opening them before the Treasury Dy. Collector and not by a clerk as contended by the petitioner in para 9 of the petition.

5. The petitioner was refused the certified copy of the order of delegation as it is an election record which is considered to be confidential and priviledged.

6. The statements in other paras of the petition do not call for any remarks.

7. Copies of the notification, letter of intimation and one sample outer cover are enclosed for perusal. The petition received with your letter is also enclosed.

Sd/ x x x x x x
for Collector.

(TRUE COPY)

From

Dr. B.R. Hegde,

Registered Medical Practitioner
& Municipal Councillor,

Mangalore Town,

SOUTH KANARA.

To

The Chancellor,

University of Madras,

Governor's Camp.

Through

The Vice Chancellor,

of the University of Madras,

Triplicane Post, MADRAS.

MAY IT PLEASE YOUR EXCELLENCY,

Elections to the Senate from South Kanara Municipal Councils--objections.

In continuation of my objection petition under Statute VII, Chapter 19 of the University Regulations I beg to place the following for your Excellency's kind consideration:-

1. My objection petition is preferred against the declaration of the election of Mrs.Leela Bai Kamath on 20-2-1948 by the Returning Officer Mr. Rajarathnam the then Treasury Deputy Collector of Mangalore.

2. The facts may be shortly stated: There was one vacancy of membership to the Senate to be filled in by election by the members of the Municipalities of Mangalore and Udipi in South Kanara. Under Statute 9 the Returning Officer is the Collector of the District or a person not below the rank of a Gazetted Officer empowered by him in that behalf. On 17-1-1948 the then Treasury Deputy Collector

Mr.Chinnadurai published a notification intimating that the election to the Senate by the Members of the two municipalities would be held. The last day and hour by which the election papers should be retuned to the Returning Officer was said to be Friday the 20th February 1948 at 4 P.M. There were in all 48 members in the two municipalities. One Mr. M.Govinda Pai was in detention as a detenue under the Public Safety Act from 6-2-1948. He belongs to the community of the rival candidate. All the ballot papers were despatched by ordinary post to the voters and were received at Mangalore on 10-2-1948. It would appear that the Returning Officer Mr. Chinnadurai was acting as the delegate of Mr.Saunders the then Collector of the District. The covers containing the ballot papers bore the printed address of the Collector of South Kanara for despatch by the voters. 19 Ballot papers were put in the ballot box and 28 were sent by registered post not to the Returning Officer but to the Collector of South Kanara. They were received by the Collector's Sheristadar or Head clerk. They were not handed over either to Mr.Chinnadurai or Mr.Rajarathnam who took charge of his office of Treasury Deputy Collector from Mr.Chinnadurai on a day previous to the election i.e., 19-2-1948 as and when they were received. On 20-2-1948 when the counting started these 28 ballot papers were brought to Mr.Rajarathnam from the Collector's office by a clerk. There could be little doubt that all these papers were not in the custody of Mr.Chinnadurai; and it is understood that they were not among the papers handed over by Mr.Chinnadurai to Mr.Rajarathnam at the time when the latter took over charge as could be clearly seen from the charge list.

3. At the time when the votes were counted, one ballot paper was found invalid because the declaration paper was found

missing from the cover. 22 votes were found to have been given to me and 24 to Mrs.Leela Bai.

4. As a matter of fact I had been promised the support of at least 24 members; and I could rely on them. The missing declaration paper and subsequent enquiries set me thinking; and I am apprehensive that everything has not been fair or correct in the conduct of the election. I am led to suspect that there must have been tampering with the ballot papers at some stage or other.

5. The ballot papers which were sent were only stuck with gum and it would not be difficult to open and re-close them. If a declaration paper is extracted the vote of a person who had promised his vote to me could be rendered invalid, for the name of the person could be found out from the declaration paper which is enclosed in theouter cover. Again Mr.M.Govinda Pai's ballot paper must have been received at his house in Mangalore when he was away as a detenue at Vellore. If that ballot paper was got at it could be substituted for another ballot paper in a cover to which access could be obtained. It is to be remembered that two votes made all the difference.

6. The Collector is empowered to delegate his functions to a person not below the rank of a Gazetted Officer in order that there may be no room for any fraud. Lesser persons may succumb to temptations. The most essential duty of the Returning Officer is not merely to count the votes, for counting is done in the presence of both the candidates, but in securing the safe custody of the ballot papers in his own hands. He must keep them in personal custody so that there is no chance of their being tampered with by anybody. This is clear from the fact that under Statute 20 of

Chapter XIX the envelope containing the ballot paper has to be addressed to the Registrar i.e., the Returning Officer so that that may reach the Returning Officer himself. Again Statute 23 says that only the envelopes received from the voters by the Registrar (Returning Officer) may be counted, not others. In the present case once the Collector delegated the powers to Mr.Chinnadurai the Collector ceased to be the Returning Officer. The Collector therefore could not and should not have received the ballot papers, nor the covers super-scribed with his address. These 28 ballot papers should not therefore have been counted at all. It is not a mere technicality, because the essence of the entire election is the absence of any scope for tampering with the secrecy of the ballot papers. These 28 ballot papers were received not by the Returning Officer but by the Collector's Sheristadar or Head Clerk; and till they were brought into the Treasury Deputy Collector's room on 20-2-1948 at the time of counting they had been in the exclusive custody not of the Returning Officer but of some clerk of the Collector.

7. In these circumstances I feel considerable apprehension that on account of the custody of the ballot papers with a person other than the Returning Officer there was scope or opportunity for tampering with the same. I have reasons to think that 24 persons have recorded their votes for me.

8. There are other legal flaws also in the conduct of the election which I ha ve detailed in my objection petition. When I applied forthe certified copy of the power of delegation it was not granted to me. If it did exsist there is no reason why it should be withheld from me. I am led to think that Mr.Saunders the Collector has not executed

any power of delegation in favour of Mr.Chinnadurai and that it does not exsist. Secondly there is also this fact that Mr.Rajarathnam who actually conducted the election had not been delegated with any powers by the Collector. He was therefore incompetent to hold the election. These, if is true are technical; but these are technicalities which also vitiate the election.

9. To bear out my contention that the 28 ballot papers were not in the custody of the Returning Officer and had not been received by him, I request that your Excellency may be pleased to call for:-

(a) The ballot papers along with their covers, to show that the covers were addressed to the Collector of South Kanara.

(b) The inward register or other register of the Collector's Office, Mangalore showing the receipt of these ballot papers to indicate that they were all received by a clerk of the Collector's office and not by the Returning officer.

(c) The list of papers handed over by Mr.Chinnadurai to Mr.Rajarathnam when he took over charge, to show that these 28 ballot papers were not in the custody of Mr. Chinnadurai and had not been handed over by him to Mr. Rajarathnam.

(d) The instrument of delegation by the Collector in favour of Mr.Chinnadurai if it exists.

10. It may possibly be said that the custody of the ballot papers by a clerk of the Collector would not make

30

much of a difference; since he is the servant of the Collector. But I submit that the custody of the ballot papers before they are counted is extremely important since a person is appointed as the Returning Officer out of regard and respect for his integrity by reason of his status. If these ballot papers were not in the personal custody of the Returning Officer it would imply that there was an opportunity for these ballot papers to be tampered with. Of course it would be extremely difficult to prove the actual tampering since it must have been done in secrecy; but I submit that the essential requisite of a valid election has been violated by reason of the ballot papers not having reached the Returning Officer direct from the voter and also by their having been taken custody of by a stranger between the time when they were received in the Collector's Office and the time they were counted by the Returning Officer in the presence of the candidates.

11. I further pray that Your Excellency may be pleased to grant me a hearing preferably with the assistance of counsel before passing final orders on my objection.

Camp: Madras,
23-3-1948.

I beg to remain,
Your excellency,
Yours most obedient servant,

B R Hegde

31

(17)

From
Dr. B. R. Hegde,
Regd. Medical Practitioner,
Municipal Councillor, Mangalore Town,
S. Kanara.

Mangalore,
2-4-1948.

To
The Chancellor,
University of Madras,
Governor's Camp.

Through
The Vice-Chancellor,
University of Madras,
Triplicane, Madras.

May it Please Your Excellency,

I beg to invite Your Excellency's kind attention to my objection petition dated 23-3-1948 and request that the word "February" occuring in line 5 on page 2 thereof may kindly be corrected into "January" as the word February is a mistake for January.

The mistake is very much regretted.

I beg to remain,
Your Excellency's most obedient servant,

B R Hegde

32

33

UNIVERSITY OF MADRAS.

Copy of letter L.Dis.C.No.7815/48, dated the 16th April 1948 from the Collector of South Kanara, addressed to the Registrar, University of Madras, forwarding his remarks on the objection submitted to His Excellency the Chancellor by Dr. B.R.Hegde, on 23.3.48.

....

SUB: Elections - Senate - Representatives of Municipalities in South Kanara District - Objection petition of Dr. B.R.Hegde - Remarks.

Ref: Your letter dated A-15328 dated 6.4.48.

The previous petition of Mr. B.R.Hegde, received with your letter A.874, dated 3-3-38 was retransmitted to you with my report Ref.C.No.105/48-B4 dated 13-3-48 in which I have fully explained the facts. It will be clear that the allegations put forth by the petitioner are frivalous.

2. The registered packets received from voters were acknowledged by the Huzur Sheristedar as he is authorised to receive all covers intended for the Collector. The registered packets were then sent to the Treasury Deputy Collector and subsequently retained by the Huzur Head Clerk under lock and key as he is the Section-head concerned. Even if the address 'Treasury Deputy Collector' were printed on the outer cover, the covers would have been received by the Huzur Head Accountant and not by the Treasury Deputy Collector himself according to the office arrangements prevailing. The rules do not prescribe that the registered packets containing the ballot papers should be in the personal custody of the Registration Officer and it seems it may suffice if arrangements which the Returning Officer thinks suitable are made for the safe custody of the same. The packets were never in the hands of a clerk as contended by the petitioner and his apprehension of unfair and incorrect procedure is baseless.

3. The election was held as for back as 20-2-1948 and the result was also announced the same day; but the petitioner has preferred to put in this petition only on 23-3-1948. This delay will indicate that this is only an after-thought. The petitioner himself was present at the time of counting the votes; but did not raise any objections then.

4. The petition received with your letter cited is herewith enclosed.

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34

UNIVERSITY OF MADRAS

Election of one member to the Senate by the members of the Municipal Councils of Mangalore and Udipi under Section 14 (a) Class III (6) of the Act.

LETTER OF INTIMATION.

Sir,/Madam,

1. The persons whose names are printed on the ballot paper sent herewith have been nominated as candidates for the above election. Should you desire to vote at this election, I have to request that you will—

(a) fill up and sign the declaration paper;

(b) mark your vote, in the column provided for the purpose in the ballot paper, as directed on the ballot paper;

(c) enclose the ballot paper in the smaller cover and stick it; and

(d) put the smaller cover and the declaration paper in the envelope addressed to me and return the same to me *either* by registered post so as to reach me not later than 4 p. m. on Friday, the 20th day of February 1948 *or* deposit *or* cause to be deposited, the envelope addressed to me in the ballot box provided for the purpose at the South Kanara Collector's Office, Mangalore, between 11-0 a. m. and 4 p. m. on the same day.

2. The number of nominees for whom each elector may vote shall not be more than one.

3. Ballot papers will be rejected:—

(1) if the envelope enclosing the ballot paper cover and the declaration paper is not either

(i) sent by registered post and received not later than the hour fixed for the closing of the poll or

(ii) deposited in the ballot box on the date and between the hours fixed;

(2) if the outer envelope contains no declaration paper outside the smaller cover;

(3) if the ballot paper is not enclosed in the smaller cover;

(4) if the declaration paper is not the one sent by the Collector to the voter;

(5) if more than one declaration paper or cover containing ballot paper have been enclosed in one and the same envelope;

(6) if the declaration or attestation is not in order;

(7) if the ballot paper is invalid.

4. A ballot paper will be invalid—

(a) which does not bear the initials of the Treasury Deputy Collector; or

(b) on which a voter signs his name or writes any word or makes any mark by which it becomes recognizable; or

(c) on which no vote is recorded; or

(d) on which more votes are recorded than the number of vacancies to be filled; or

(e) if it is void for uncertainty.

5. Declaration papers need not be attested, but in the case of a voter who is incapacitated from blindness or other physical cause from voting in the manner prescribed, it shall be competent for him to record his vote by the hand of any of the following persons:—

Magistrates (as defined in the Code of Criminal Procedure); Judges of and above the rank of District Munsifs; District Registrars; Sub Registrars; District Educational Officers; and Inspectresses of Girls' Schools; Dy. Inspectors of Schools and Sub Assistant Inspectresses of Schools; Principals of constituent and Affiliated Colleges; Headmasters of recognized High Schools; Members of the Senate or the Academic Council; and Holders of Titles conferred by the Government.

Such person shall, on the declaration paper, certify the incapacity and attest the fact of his having been requested by the voter to mark the ballot paper for him and of its having been so marked by him in the presence of the voter.

6. If a voter inadvertently spoils a ballot paper, he can return it to the Registrar, who will, if satisfied of such inadvertence, issue to him another paper.

7. The scrutiny and counting of votes will begin on Friday the 20th February 1948 at 4-15 P. M.

8. No person shall be present at the scrutiny except the Returning Officer and such persons as the Returning Officer may appoint to assist him, the candidates and not more than two representatives of each candidate appointed in writing by him.

NOTE:—Every elector should send his or her cover containing election papers individually by Registered Post if it cannot be deposited in the Ballot Box on the above date.

(By delegation by the Collector of S. K.)

(Sd.) **M. M. Chinnadorai,**
Treasury Deputy Collector &
Returning Officer.

S. Kanara Collector's Office, Mangalore, 6—2—1948.

S P W Ltd P I C No. S K 23—7-2-48/55

Election to the Senate **To be Registered, if sent by Post**

TO

THE COLLECTOR,

SOUTH KANARA,

MANGALORE.

No......

38

39

UNIVERSITY OF MADRAS

23 MAR 1948

NOTIFICATION

Election of a member to the Senate to represent the Mangalore and Udipi Municipalities in the South Kanara District under section 14(a) class III(6) of the Madras University Act 1923 as subsequently amended.

Whereas a vacancy has arisen on the senate, to represent the councillors of Mangalore and Udipi Municipalities in the South Kanara District, it is hereby notified, by direction of the Chancellor of the University of Madras, that an election will be held to fill up the vacancy.

The programme for the election is as follows.

1.	Date of notification of the vacancy (and issue of notices to members calling for nominations).	Tuesday 20th January '48.
2.	Last day (and hour) for the receipt of nomination papers.	Friday 30th January '48 4 P. M.
3.	Day and hour of the scrutiny of nomination papers.	Friday 30th January '48 4-15 P. M.
4.	Day and hour of publication of the list of valid nominations (at the office of the returning officer).	Friday 30th January '48 4-30 P. M.
5.	Last day and hour by which the candidates may withdraw their candidature by notice in writing.	Thursday 5th February '48 3 P. M.
6.	Last day and hour of publication of the final list of valid nominations.	Thursday 5th February '48 3-15 P. M.
7.	Date of despatch of the Election papers (if there is to be poll).	Monday 9th February '48
8.	Last day and hour by which the election papers should be returned to the Returning Officer and the day and hour of polling.	Friday 20th February '48 4 P. M.
9.	Day and hour when scrutiny and counting of votes will take place.	Friday 20th February '48 4-15 P. M.

Every councillor of the Municipal Councils named above shall be at liberty to nominate any one qualified member of the councils to fill the vacancy. Every nomination shall be made by an elector in writing and shall be seconded in writing by another elector of the electorate concerned. Every such nomination shall be accompanied by the consent in writing of the nominee agreeing to serve on the senate, if elected.

Nomination papers should reach the Treasury Deputy Collector, South Kanara at his office in Mangalore not later than 4 P. M. on Friday 30th January 1948.

S. K. Collector's Office,
Mangalore, dated 17—1—1948.

(Sd.) **M. M. Chinnadorai,**
Treasury Deputy Collector.

S P W Ltd. P I C No. S.K. 23—20-1-48 60

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41

(27)

Government House,
Guindy,
22nd June 1948.

Dear Sir,

Subject: Election of a member to the Senate by the Members of the Municipal Councils in the South Kanara District.

Reference: Your letter No.A.1736 dated 29/30th April 1948.

I am to say that His Excellency the Chancellor has examined the objection petition from Dr.B.R.Hegde against the election of Srimathi Leela Bai Kamath to the Senate.

His Excellency has been advised as follows:- "It is not every irregularity that will vitiate an election; it must be of such a character that it has some bearing on the result. In the present case, even assuming that the acts complained of amounted to irregularities, they could not have influenced the decision to any extent at all".

His Excellency considers that there are no reasonable grounds to set aside the election in question and he therefore declines to interfere, but would be grateful if you would communicate the reasons to Dr.Manj Hegde.

I am also desired by His Excellency to suggest that the University may take steps to frame f rules for the safe custody of ballot papers for future guidance in order to obviate such complaints in future.

Yours faithfully,

Sd. P.Govindan Nair.

(P.Govindan Nair)
Private Secretary.

(True copy)

Superintendent,
Governor's Sectt.

The Vice-Chancellor, Madras University, Madras.

Copy for Sectt. file.

University - Madras - Election of a member to the Senate by the members of the Municipal Councils in the S.Kanara District - Objection petition from Dr. B.R.Hegde.

C.No.33390/48. P1 cf

From the P.S.G. D.O.No.299-A/48-2 dated 3-5-48.

Please see the D.O.from the P.S.G. on p.1 c.f and its enclosures on p.p.3-40 c.f. The file relates to the objection petition preferred by Dr.B.R.Hegde, Registered Medical Practitioner and Municipal Councillor Mangalore, against the election of Srimathi Leela Bai Kamath as a member of the Senate of the University of Madras by the Councillors of the Municipalities in the S.Kanara District on 20-2-1948. The P.S.G. has forwarded the papers to this deptt.for ~~re~~ examining the question in consultation with ~~Legal~~ the Legal Deptt. The remarks of the V.C.,Madras University, are at p.p.3-6 c.f., and special attention is solicited to his remarks ~~in~~ the ~~concluding paragraph~~ sub para. under para.7 of his letter ~~dated~~ on p.p.5-6 c.f. The file may be sent to Legal u.o. for remarks in the first instance.

P1 cf

VS
12/5/48

Box

P4 cf 4

SS.
12.5.48

The three main objections set out by Dr.B.R.Hegde are given in para.4 on p.4 c.f.

In ~~view~~ the circumstances reported by the Collector of South Kanara in para.2 of his letter on page 23 c.f., and in view of the ~~legal~~ opinion of the Legal Adviser of the University, objection (1) cannot be considered a valid one.

2) AS

2) As regards objection (2), it may be pointed out that the delegation made by the Collector of South Kanara was to the Treasury Deputy Collector and not to Mr.M.M.Chinnadorai. The objection that Sri G.Rajaratnam was not empowered to officiate as returning officer is not therefore valid as opined by the Legal Adviser to the University.

3) As regards the third objection, the Vice-Chancellor holds the view that the ballot papers received from the voters should have been kept in the safe custody of the T.D.C. and not entrusted to any other person in the office. He observes that the system is irregular and in dealing with election papers it would naturally lead to other doubts apartx from other procedural mistake. He accordingly suggests that the election should be set aside and that a fresh election should be held on this ground. // The Collector, however observes that the registered packets received from voters were acknowledged by the Huzur Sheristadar as he is authorised to receive all covers intended for the Collector. The registered packets were then sent to the T.D.C. and subsequently retained by the Huzur Head Clerk under lock and key as he is the section head concerned. He however points ~~out~~ that the rules do not prescribe that the registered packets containing the ballot papers should be in the personal custody of the ~~Registration~~ Returning Officer and that it would be sufficient if arrangements which the Returning Officer thinks ~~fix~~ suitable ~~were~~ are made for the safe custody of the same. He has added that the packets were never in the hands of a clerk as contended by the petitioner and that his apprehension of unfair and incorrect procedure is baseless.

4) It may be pointed out that it is desirable that the ballot papers received from voters are kept in the custody of a responsible officer rather ~~than~~ than by a head clerk of a section. However, this cannot be taken too far

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P23cf

P4cf

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P5cf

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P6cf

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in the absence of any evidence to the contrary to lead to any doubt of tampering with the papers. On this basis it cannot be held that the election is invalid. Legal may advise.

The collector has also brought out that there are no rules prescribing the custody of the voting papers with the Returning Officer

No specific rule has been prescribed. In the circumstances 14.5.48 Legal
as appears were the normal ones in vogue in the Univ.
There is no warrant for any 'suspicions'. If
do not think the election can be held
invalid.

14/5/48 Legal.

E+PH(G73)
Leo No. 3333093/48-1 Em
15/5/48.

60686

ASSISTANT SECRETARY
15 MAY 1948
LEGAL DEPARTMENT

Legal Department

This Department may agree with E. & P.H. that the first and second objections are not valid. As regards the third objection, according to the Collector's report, the registered covers were kept by the Huzur Head Clerk under lock and key under instructions from the Treasury Deputy Collector and were produced by him at the time of opening them before the T.D.C. It is stated that there is no rule requiring that the covers should be in the personal custody of the Returning Officer. In the absence of any express rule to that effect, the fact that the covers were in the custody of the Returning Officer's subordinate under lock and key under the instructions of the officer cannot be said to be an illegality vitiating the election. At the most it can only be said to be an irregularity. When the ballot papers were produced, the petitioner does not appear to have also raised any objection to the validity of receiving these ballot papers on the ground that the seal has been tampered with or that the votes were invalid on any other ground. As there are no circumstances to

If this is the case if the covers are sent by registered post & the seal is intact & the packet is not tampered with it does not matter if it does not enter the T.D.C kept in the locked bag or the Head clerk KM 15/5

indicate that this procedure has materially vitiated the result of the election, there seems to be no need to interfere with it.

7/6/48
S

I agree. It is not every irregularity that will vitiate an election; it must be of such a character that it has some bearing on the result. In the present case, even assuming that the acts complained of amounted to irregularities, they could not have influenced the decision to any extent at all. In the result the petition may therefore be dismissed.

7/6/48

E P H (G3)

Please see the legal Deptt. note on pp 3-4 above. ~~Whether Deptt. may agree with the opinion of legal adviser above.~~ The file may be circulated to Hon'ble Agri. Minister, Hon'ble Law Minister and H.E.

9.6.48 S

9/6/48 Hon'ble Agri. Minister
Hon'ble Law Minister
H.E.

The opinion of the Legal adviser of the Corporation (who is a High Court Judge now) is the same as that given by the Legal Deptt. I think the petition may be rejected. But the rules for safe custody of Ballot papers have to be framed for future guidance.

8/6/48

PSG H.E. has seen, thanks. A copy of the letter sent to the Vice-Chancellor is added to the c.f.

22/6/48

Legal D.O. No. 6068e/48-1
8.6.48.

SECRETARY, EDN. AND P. H. DEPT.
28 JUN 1948
GOVERNMENT OF MADRAS

Box.

8/7/48

In the P.S.G's letter to the V.C. mentioned it has been suggested to the V.C. that the University may take steps to frame rules for the safe custody of the ballot papers. No further action seems necessary. The papers may be

G.O. 1639 S 26/6/48.

Recorded.

25/6/48

Sub.
University - Madras -
Election of Srimathi Lakshmi Kumari CCS 24.6.48
to the Senate.
Objection petition.
Papers received.