L, & M.
2,000—1-3-98.

Local & Munl. (1898) Department.

MISCELLANEOUS.

G.O., No. 840 M

DATED 2-5-98.

INDEXED.

Election Rules

DESPATCHED

[Despatch Abstract.]

Munl: Council

Informing, with remarks, the Collector of South Canara, that the Mangalore Munl: Chairman's interpretation of Rule 31A. of the rules for the Election of Munl: Councillors is not correct.

BACK PAPERS.

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

FURTHER PAPERS.

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

300—2-12-97.

LOCAL AND MUNICIPAL DEPARTMENT.

Papers to be read in Proceedings :—

Again G.O., No. , dated 189 .

Again G.O., No. , dated 189 .

Cu[illegible]nt No. 1029 M of 1898, dated 5-3-98, from Collr. of S. Canara.

" " " 189 , " , "

" " " 189 , " , "

Mis. ORDER. No. 840 M. Mis of 2/5/98.

The Govt. does not
Consider that the view
taken by the Chairman
i[illegible] correct. As however
the [illegible]ording of Rule 31-A
is [illegible]t clear, the words
"i[illegible]uch cases Rule 22
sha[illegible] apply" will
be [illegible]itted in the
[illegible]d Rules which
wi[illegible] issued shortly.

~~The Govt. does not consider that it is necessary to follow the procedure prescribed in Rule 22 in the case of elections where a candidate withdraws after the close of the poll, although such a course will be necessary when he withdraws before the commencement or close of the poll. The words " in such cases rule 22 shall apply " will accordingly be omitted from Rule 31. A. and inserted in Rule 22. A in the revised in the revised rules which will be issued shortly.~~

2. The election of Mr. F. J. Mascarenhas has already been notified the Fort St. George Gazette.

To The Collr. of South Canara. ✓
Issd. 3/5/98

PR
19/4/98

H. T.
28. 4 98

18/3.

Chan

Again G.O., No. / , dated 189 .
Current No. / of 189 , dated from the
Current No. 1029. M. of 1898, dated 5. 3. 98 from the Collr. of S. Canara.

SUBJECT Election of a Councillor, Mangalore.

~~H.M.~~

FOR ORDERS.

Two vacancies having occurred on the 8th November 1897 among the elected members of the Municipal Council of Mangalore, an election was held on the 18th December 1897 for filling them up. Five candidates were nominated and of these, A. Mahiuddin Khan Sahib and M.R.Ry. K. Vittal Rao obtained the largest number of votes. But the former having subsequently withdrawn his candidature, Mr. F. J. Ma numbe r of who obtained the next

to have been of votes, was

3. The intention of Govt been elected

Rule 31. A, however, do ction ru

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rd of the Man lore

Municipality.

18/3.

Chan

the Fort. St. George Gazette. Vide G.O. No. 474. M. dated 2nd March 1898.

A

2. The Collector of South Canara now forwards a letter from the Chairman. Municipal Council, Mangalore, stating that under No. 31.A of the election rules, a fresh poll should be taken for filling up the vacancy for which Mr. Mascarenhas was elected and requests orders in the matter. Rule 31.A of the election rules says that "a "candidate who has been duly "elected may withdraw (in writing "to the Chairman) before his appoint-"ment is gazetted under Rule 34 and "that in such cases Rule 22. shall "apply, and the candidate who "obtains the next highest number "of votes shall, subject to the "provisions of Rules 32 + 33, be "deemed to have been elected", and Rule 22A lays down that

Vide G.O. 107. M / 26.1-98 B

of the number in

-nations exceeds ncies,

poll sh nd

C.

Please see para 3. of the Collr's letter cd 1029.

or less than that of the vacancies, the person or persons nominated shall be deemed to have been elected. The Chairman states that under Rule 31.A the effect of withdrawal by an elected Councillor before his election is notified in the Gazette is merely to do away with the preliminaries of a fresh election, such as calling for nominations etc, and argues that, as in the present case there is only one vacancy and there are three valid nominations remaining, a fresh poll is necessary, that if it was the intention of the rules that no fresh poll is necessary in such cases, Rule 31.A need not have mentioned that Rule 22 shall app and that it could have simpl said that the candidate who has obtained the next highe number of votes shall be deeme to have been elected.

3. The intention of Govt. in framing Rule 31.A, however, does not

to have b

or for the

rd of the Mangalore Municipality.

18/3.

Chan

clear, that the expression "in such cases Rule 22 shall apply" was intended to be inserted in the proposed rule 22-A. Further the provisions of Rule 22 apply appropriately to the case of withdrawals of candidates before the commencement of the poll or before its close, while the application of the provisions of that rule to the cases contemplated by Rule 31-A would defeat the object of the latter rule, which was apparently intended to avoid the trouble and inconvenience of a further poll. Moreover, it is clear that it was not intended to insist on a fresh poll in the cases falling under Rule 31-A as the rule lays down that the candidate who obtains the next highest number of votes shall be considered to have been elected.

It appears therefore that the
in Rule 31-A of the
-ner in such cases Rule 22
poll" instead of in Rule 22-A.
the re-

---

elections in Municipalities in the linked file. The election of Mr. F. J. Mascarenhas having already been notified, it does not appear that the Government has power to cancel it. The accompanying draft order is submitted for approval.

V.R.
19/4/98

No doubt the wording of 31-A was an error.

Simply say that the Chairman's view is incorrect.

H.T.
28 4 98.

-or for the
-rd of the Mangalore Municipality.

18/3.

Chan

Local & Munl. (1898) Department.

CURRENT No. 1029 M

UNDER SECY TO GOV
11 MAR 98

Order

From

The Acting Collector of
South Canara

Ref on P.R. No. 27/Eng of 1898.

Dated 5th March 1898.

Received 11-3-98

Registered

Enclosures 5. five.

Spare copies

SUBJECT.

Soliciting orders whether under the circumstances stated a fresh poll should be taken for the election of a councillor for the Golit Ward of the Mangalore Municipality.

18/3.

100

BACK PAPERS.

G.O.	No.	Department.	Date.
Go	474	LM	2-3-98
-	107	M	26-1-93
-	1826	M	7-11-92

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Enclosure No 1 in a letter to the Secretary to Government L.&M. Dept. Ref. on P.R. 27 / Eng. 198

To

F. A. Pinhey, Esquire
Collector of South Canara.

Humble petition of Fabian John
Mascarenhas 1st Grade Pleader
dated 12th February 1898.

Respectfully sheweth:-

1. That Petitioner was one of the 5 candidates at the election held on the 18th December last to fill up 2 vacancies of Municipal Councillorships for the Golikatte ward of the Mangalore Municipality.

2. That one Mr Mohidin Khan a Taluk Kachri Incometax Clerk and Dr Vittal Rao were declared as the successful candidates and their names were sent up to be gazetted Councillors as both of them secured the highest number of votes. Petitioner was next in poll.

3. That before these two names were gazetted Mr Mohidin Khan has, petitioner learns, sent in his withdrawal and so petitioner as being 3rd in poll ventures to represent that he may be appointed. In petitioner's humble opinion there can not be a reelection on account of Mohidin

Khan

Khan's withdrawal as that cannot be said to be a vacancy in the office of Municipal Councillorship, which occurs only when a Municipal Councillor whose name is published in the Fort Saint George Gazette resigns or his term of office expires; and if there should be a reelection the result will be that the reelection will be for a vacancy in consequence of which an election has already taken place.

4. Trusting that Petitioner's claims were good he sent 2 messages to Government, one on Monday and another on Tuesday last praying the Government to appoint petitioner as a Councillor because Mohidin Khan has resigned.

5. That as the appointment of Mr. Mohidin Khan has not been gazetted, petitioner seems to have a fair chance of being appointed if your Honor is pleased to recommend him, as at the election he has secured the highest number of votes after Mr. Mohidin Khan and Dr. Vittal Rau and

6 Petitioner therefore prays that your Honor may be pleased to recommend that petitioner may be appointed a Municipal Councillor for the Golikatte ward of the Mangalore Municipality

(signed) F. J. Mascarenhas

(True Copy)

P. [illegible]

For Ag. Collector

1029 M of 1898

Enclosure No 2 in a letter to the [illegible]
L. & M. Dept. Ref on P.R. 27/eng /98

South Canara Collector's Office

Dis No. 91 A./eng of 1898. Mangalore 5th February 1898.

From

A. F. Pinhey Esquire,
Ag: Collector of South Canara

To

The Chairman of
the Municipal Council,
Mangalore.

Sir,

I have the honor to inform you that A. Mohidin Khan Sahib one of the candidates who were elected as Councillors for the Golikatte Ward, has tendered his resignation of his Councillorship and to request that you will arrange to hold a fresh election under the Rules.

I have &c
(signed) A. F. Pinhey
Ag: Collector

(True Copy)

P. [illegible]

For Ag. Collector

Br. 7.3

2/1029 M of 4/98

Refer on P.R. No 27/eng/98. South Canara Collector's Offic
Mangalore 16th February 1898.

From

A. F. Pinhey Esquire
Ag: Collector of South
Canara,

To

The Chairman of the
Municipal Council,
Mangalore.

Sir,

In forwarding herewith copy of a petition dated the 12th Instant, received from Mr. F. J. Mascarenhas, 1st Grade Pleader, I have the honor to request that you will favour me with your remarks on the allegations contained therein, and refrain from taking any action on my letter Dis No 91-A/eng of 1898, dated the 5th Instant, until I write to you again on the subject.

2. I also request that a copy of your letter No 814 dated 3rd January 1898, may be sent to me.

I have &c
(signed) D. Ananthaya
For Ag: Collector.

(True copy)
D. Ananth
For Ag: Collector

8m/7 3

Enclosure No 4 in a letter to the Secretary to Govt L & M Deptt Ref on P.R. $\frac{27}{Eng}$ / 98

No 999.

Municipal Office
Mangalore 18th February 1898.

~~From~~

M. R. Ry. D. Ananthaya Avargal
Chairman, Municipal Council,
Mangalore

To

The Collector of
South Canara.

Sir,

With reference to your letter of the 16th Instant, Ref: on P. R. No $\frac{27}{eng}$, I have the honor to inform you that your letter of the 5th instant, Dis No $\frac{91 A}{eng}$, was, before the receipt of your letter of the 16th Instant, intended to be placed before the Council at the meeting held today, under paragraph 16 of the Election rules, and it had also been circulated to the Councillors for the purpose. I have, however, withdrawn the paper from the agenda of the meeting and held your instructions in abeyance as requested in your last letter.

Enclosures 3.
viz:- One Rule book, one Reference and one petition

2. As regards the allegations contained in the petition of Mr Mascarenhas I beg to state as follows

Paragraph

3/1029 W of 1548

Paragraph 31-A of the Election rules was newly added by G. O. No 107 M. dated 26th January 1893 based on G. O. No 1826 M. dated 7th November 1892, Local and Municipal.

It is laid down in Rule 31-A that in case where a candidate withdraws in writing before his appointment is gazetted under Rule 34, Rule 22 shall apply, and the candidate who obtains the next highest number of votes, shall, subject to the provisions of Rules 32 and 33 be deemed to have been elected.

The first question is whether a fresh poll shall take place because there are three candidates that did not succeed at the last election, or whether Mr Mascarenhas should be deemed elected without a fresh polling.

It is clearly stated in Rule 31-A that in the case of a withdrawal before the appointment is gazetted, Rule 22 shall apply. Rule 22 (b) lays down that if the number of valid nominations exceeds that of the vacancies, a poll shall be taken. In the present case there is only one vacancy and there are three valid nominations remaining, and, in my humble opinion, a fresh poll seems to be necessary. If it was otherwise, the Rule 31 A need not have mentioned that Rule 22 shall apply. The Rule 31 A could have simply said that the candidate who has obtained the next highest numbe of votes shall be deemed to have been elected.

If Mr Mascarenhas was the only remaining valid candidate he could have been deemed duly elected under clause (b) of Rule 22.

Rules 32 and 33 need not at all be considered in this case, as there are not two candidates having an equality of votes, and one candidate has not been elected for two wards.

In my humble opinion the object of Rule 31A appears to be to avoid taking the necessary preliminaries for the second polling such as calling for nominations etc.

If you think that my view of the rules is correct I shall carry out the instructions contained in your letter of the 5th Instant. If you think that my view of the rules is wrong I shall abide by any advice you may be pleased to give me. If you feel any doubt on the point, I beg to suggest that the matter may be submitted for the orders of Government.

3. According to Rule 31 A, the withdrawal should have been presented to the Chairman, and the Chairman should have proceeded in the matte according to the rules. and it was not a resignation to be accepted by the Collector under the power

delegated

delegated by Government to the Collectors under G.O. No. 1683 M. dated 12th November 1894. It does not however matter much in this case.

4. I beg to forward herewith for perusal and kind return, a petition presented to the Council by some of the Muhammadan voters of the ward, on the subject, and a copy of my communication No 814 dated 3rd January 1898, to Government as desired in paragraph 2 of your letter under reply.

5. For ready reference I beg also to send herewith (to be kindly returned) the printed pamphlet containing the election rules revised or corrected up to date. vide pages 9 and 10.

I have &c.

Signed/ D. Ananthaya
Chairman.

(True Copy)

For Ag: Collector

4/
orig No of 1898

5th/7.3

Enclosure No 3
Government Lr. M. Dept.

To

The Municipal Council
Mangalore.

Humble Petition of the Muhammadan
Electors of the Golikatta Ward,
Mangalore.
Dated 18th February 1898.

Most Respectfully Sheweth,

That the Golikatte ward being inhabited mainly by Mahammadans, it is but perfectly just and reasonable that they should desire to have at least one representative of their own on the Municipal Council, which has, at present among its members, only a single Muhammadan, who, however, is a Mopla, while the Hindu and native Christian Elected Councillors number as many as 7 and 5 respectively.

2. That it was with this view that in the recent elections they had tried to secure the highest number of votes for Mohidin Khan Saheb, thus neglecting for his sake the other two Muhammadan Candidates, who consequently fell at the bottom of the poll.

3. That when Mohidin Khan Saheb was so elected they had not the least fear that his official subordinate position

resignation

position would in any way interfere with the independent popular choice of the Electors or find disfavour with his official superiors.

4. That the resignation of the said Mohidin Khan Saheb recently was a surprise to them, and they are now grieved to find that, by tendering this resignation before his election was formally gazetted, he has in a way totally deprived the Muhammadan community of the opportunity for returning another duly qualified and efficient candidate in his place.

5. That in these circumstances Petitioners pray that the Council may be pleased to recommend to Government that Mohidin Khan Saheb's resignation should be accepted after formally gazetting his Election, so that a fresh election may be held (as already proposed by the Revenue Divisional Officer and the District Collector) and the Muhammadan community thereby enabled to return their own representative.

Signed by ten persons.

(True Copy.)

Mangalore.
5th March 1898

For Ag. Collector

5/1029 M of 1898

Rifon. P.R. No. 27/Eng/98.

SOUTH CANARA COLLECTOR'S OFFICE,
Mangalore
5th March 1898.

LOCAL & MUNICIPAL DEPT.
CURRENT No. 1029 M

FROM

A. F. Pinhey Esquire,
Acting Collector of
South Canara,

To

The ~~CHIEF~~ SECRETARY to GOVERNMENT,
Local and Municipal Department,
Fort St. George.

Sir,

GO 474 LM / 2-3-98

With reference to my endorsement Dis. on C. No. 32/Eng/98 dated the 8th January last on the Mangalore Municipal Chairman's statement No. 814/3.1.98 in re the election of two Municipal Councillors for the Golikatte Ward and in continuation of my letter Dis No. 91/Eng/98 dated the 5th ultimo, intimating the resignation tendered by A. Mohidin Khan Saheb, one of the successful candidates, I have the honor to submit the following for the orders of Government:-

2. Mr. F. J. Mascarenhas who was the third on the poll has put in a petition praying that as he has secured the next highest number of votes to those obtained by A. Mohidin Khan Saheb and Dr. Vittal Rao in the election already held and as Mohidin Khan Saheb has tendered his

resignation

resignation before publication of his election in the Fort St. George Gazette, he (the petitioner) may be recommended to Government for being appointed as a councillor for the Ward in question.

3. The Chairman of the Municipal Council is of opinion that under Sec 31-A of the Election Rules the effect of withdrawal by an elected Councillor before his election is notified in the Gazette is merely to do away with the preliminaries of a fresh election such as calling for nominations, &c, and that in the present case a fresh poll is necessary under Rule 22 to which a reference is made in Rule 31-A, as there is only one vacancy and there are three valid nominations still remaining. He further remarks that if it was otherwise, Rule 31-A need not have mentioned that Rule 22 shall apply and could have simply said that the candidate who has obtained the next highest number of votes shall be deemed to have been elected.

4. The wording of Rule 31-A and the last sentence of para 2 of G.O. No. $\frac{1826\ M.}{7\cdot 11\cdot 92}$, on which, Rule 31-A is based, is not, in my opinion, sufficiently definite.

If

If it were intended to lay down that in a case like the present one a fresh election should be held, the words "the next highest number of votes" in the second sentence of Rule 31-A would not, I think, have been used, whereas, if it were intended that no fresh poll need be taken the words "has obtained" ought to have been used instead of the word "obtains", as has been done in the second sentence of Rule 33. The point whether a fresh poll should be taken or not does not, therefore, seem to be free from doubt.

5. I beg to enclose copies of the marginally noted⊗ papers for the information of Government and solicit orders whether a fresh poll should be taken in the present case or whether Mr. Mascarinhas may be deemed to have been elected; in the latter case I request that his election may be ordered to be notified in the Fort St. George Gazette.

⊗ 1. Petition of Mr. F. J. Mascarinhas dated 12th February 1898.
2. This office letter to the Chairman Dis No. $\frac{91\text{-}A}{Sug}$/98 dated 5th February 1898.
3. This office letter to the Chairman Ref on P.R. $\frac{27}{Sug}$/98 dated 16th February 1898.
4. The Chairman's reply No. $\frac{999}{18\cdot 2\cdot 98}$.
5. Petition dated 18th February 1898 referred to in para 4 of the Chairman's letter No. $\frac{999}{18\cdot 2\cdot 98}$.

I have the honor to be,
Sir,
Your most obedient servant

For Ag. Collector

When given for copying ______
When copied 2-5-98
en examined ______ 189 .
n signed 2/5

AGAIN G.O., No. , DATED
189 ,

RRENT No.

ENCLOSURES TO C. No.

OF GOVERNMENT .. .. .. A A A A A A A

LETT GOVERNMENT.

AT WITH DITTO.

T FILED UP, BEING MEANT FOR DESPATCH
ORIGINAL.

N.B.—

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.