

Local & Munl. (1899) Department.

MISCELLANEOUS.

G.O., No. 1845 M

DATED 11-12-99.

[Despatch Abstract.]

Petition

Withholding the — of P. Muhammed
Magthoom Ronthor, Diindigul to the Govt.
India as the local Govt is competent to
pass orders on his request that he may be
declared eligible for election as a Municipal
Councillor.

R

BACK PAPERS.

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

FURTHER PAPERS.

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

Local & Munl. (1897) Department.

CURRENT No. 2920 m

his
Order
No 1645 m
11.12.99
MA 8.12.99

From

P. Muhammed Waqthoom
 Routtler.
 Din digub.

No.

The memorial to the Govern-
 ment of India will be withheld
 under the following rule :-

[H.E. Section III, Rule 3 (3) of the Dated 10-11-99
 B. Memorial Rules].

1/2
24/11/99

27 11 99

Received 11-11-99

Registered 13-11-99

Enclosures 5

Spare copies

Before the mem. can be withheld
 under the rule quoted, the previous
 petn. of the memorialist to this Govt
 should be put up that it may be
 seen whether or not it relates to the
 same subject. It was disposed of
 in E.O. no. 345 J.D. of 4-3-99. Vis 20.471 M. 175.4.99.
 make sure there was no petn in
 L.M.

Note for the Secretary

Please see separate note
 put up. flagged W

SUBJECT.

MA 7.12.99. 120 4
 The Petitioner (with enclosures
 setd)
 H.4. Please note at W.
 11-12-99

Submitting a
 petition to the Viceroy in Council
 praying that under the
 circumstances stated he
 may be declared eligible
 for election as a Mumb.
 Councillor.

BACK PAPERS.

BACK PAPERS

G.O.	No.	Department.	Date.
-	471 mis 4-4-99		
-	1950 m of 98		
-	883 mis 3-12-97		
-	2691 mis 2-2-94		

FURTHER PAPERS.

G.O.	No.	Department.	Date.

[L. & M.]
[500-20-2-99.]

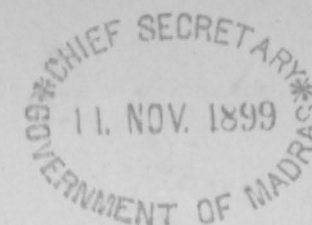
LOCAL AND MUNICIPAL DEPARTMENT.

NOTE FOR THE Secretary.

Please see the petition stitched with G.O. No. 345. J.D. dated 4th March 1899, flagged Y in the file. In this petition the Memorialist requested His Excellency the Governor to exercise his prerogative of mercy and remit the sentence passed on the petitioner. A copy of this petition was received in the L & M Department also and transferred to the Judicial Department, where it was lodged with reference to the G.O. quoted above - vide flag X. In the present petition the Memorialist's request is to reinstate him as a Municipal Councillor of Dindigul or to declare him to be eligible for municipal elections. No other petition on this subject has been received in the L and M Department.

1/R
5/12/99

No. 181 . .



RETURNED to the Petitioner with the intimation that any representation which he may wish to make on the subject to the Governor-General in Council must be submitted through the Local Government.

By order, etc.,

HOME DEPARTMENT,
Simla, the 17th Oct. 1899. } *Shadha*
Municipalities } Under Secretary to the Government of India.

H. D. Regr. No. 24.

G. I. C. P. O.—No. 251 H. D —8-8-99.—100.—R. R. C.

TO

HIS EXCELLENCY

LORD CURZON, & C. I. E.,

VICEROY OF INDIA IN COUNCIL.

*The humble petition of P. S. MUHAMMED
MAGTHOOM ROUTHER, late a Commis-
sioner of the Municipality of Dindigul.*

RESPECTFULLY SHOWETH,

That your Petitioner was a Commissioner of the Municipality of Dindigul, in the District of Madura, from 1893 to 1896, and that he sought re-election in the 4th Ward of the said Municipality on the 27th July 1897.

2. That on the 1st of April 1897, Your Petitioner submitted a petition to the Sub-Collector, who was the Chairman of the aforesaid Municipal Council wherein he stated that he had been exempted from paying Income Tax and prayed that as he was otherwise qualified for election by reason of having "engaged a house" in the 4th Ward belonging to one Mr. N. Mahomed Miah Rowther & Co. on a monthly rental of Rs. 10, his name on the list of eligible candidates may be retained changing the column of qualification. In the said Petition your petitioner offered to produce rent deeds and acknowledgments for payment of rent, if required.

3. That on the 13th July 1897 one Muthukarappan Chetty, who had, on two previous occasions, unsuccessfully taken objection to Your Petitioner's name being on the list of voters again objected to his (Petitioner's) nomination as a candidate for election. An enquiry was held and Petitioner was asked to produce receipts for rent which he did. He also called as a witness the agent of the landlord who rented the premises to him, and the Chairman over-ruled the objection made by Muthukarappan Chetty and passed the following order:—"House rent receipts are in order. The agent of the house-owner supports Mr. Magthoom Routhier. Under these circumstances, I over-rule the objection."

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2920/mj/99.

4. That on the 27th of July 1897, the election was held and Petitioner was duly elected by a large majority of votes.

5. That jealous of Petitioner's election, the said Muthukarappan Chetty next filed a petition of revision to the Collector against the said order of the Chairman as provided by Rule 19 of the rules prescribed under sec. 250 (1) (a) of the Madras District Municipalities Act IV of 1884, but the Collector confirmed the order of the Chairman and rejected the Petition (herewith attached and marked A). The aforesaid Rule 19 provides as follows :

19. "The Chairman shall attend at the Municipal office on the day next after the day upon" "which the list of candidates nominated has been published, in order to hear any objections which" "may be made to that list. Such objections may be put forward by any registered voter in writing." "The Chairman shall give his decision on every such objection in writing, which decision shall be final," "unless, with in one week of giving the same, a petition for revision be put in before the Collector ; in" "such case, the Collector's decision shall be final. In case the objection is allowed the decision of the" "Chairman shall be communicated to the candidate affected thereby."

33. "The validity of any election may be questioned by a petition put in before the Collec-" "tor by any candidate at the election, or at least ten electors within 15 days after the day on which" "the election was held."

34. "The Collector shall then proceed to inquire either himself or by the Divisional Officer" "in charge of the division in which such Municipality is situated, into the validity of the election" "held, which may only be questioned on the ground."—

- (a) That fraud, intimidation or bribery was practised at such election ;
- (b) that the person whose election is questioned was, at the time the election was held, not qualified as a candidate ;
- (c) that he was not duly elected by a majority of votes.

6. That, on the 9th August 1898, one Venkata Dasari Naidoo, the rival candidate, presented a Petition to the Collector impugning the validity of Petitioner's election on the same grounds which had been over-ruled previously both by the Chairman and the Collector. This Petition was forwarded to the Sub-Collector *qua* Chairman for enquiry and report.

7. That the Sub-Collector accordingly held an enquiry, in the course of which Petitioner was summoned to produce his account books, and on examination of these accounts, he came to the conclusion that the entries as to payments of rent were interpolations. He accordingly recommended that the election should be set aside.

8. That under Rule 37 of the Election Rules the Proceedings were reported to the Madras Government by the Collector of Madura (Reference in C. No. 3201/General of 1897 dated 1st September 1897) and His Excellency's Government, after obtaining the opinion of the Advocate-General, passed an order No. 2691, M. Mis. on 3rd Decembr 1897, holding that under Rule 19 of the Election Rules "the Collector's decision in the matter is final and the objection now raised against the validity of the election on the same ground under Rule 34 (a)

cannot be entertained. The Petition of objection is accordingly rejected and the name of the successful candidate will be published in the Fort St. George Gazette" (Order herewith attached and Marked B). In this connection it is respectfully Submitted that the effect of this Order of the Government of Madras is that the Sub-Collector had no authority to hold the enquiry after the Collector's decision was given and his proceedings were therefore *ultra vires*.

9. Further, on the 7th February 1898, and, as will be observed, subsequent to the G. O. of 3rd December 1897, the Sub-Collector granted sanction, on the petition of Muthukarappan Chetty, to prosecute Your Excellency's Petitioner under sections 193, 465 and 109 of the Indian Penal Code, for offences purporting to have been committed before him in the course of enquiry referred to in para 7 hereof and which the Government of Madras had already held to be illegal.

10. That next in consequence of such sanction Your Excellency's Petitioner was prosecuted in the Sessions Court of Madura in Calendar Case No. 43 of 1898 and convicted under sections 193, 109, 196 465 and 471 of the Indian Penal Code and sentenced to 2 years' rigorous imprisonment. Against the said conviction and sentence Your Petitioner appealed to the High Court and it was pleased to reverse the finding of the Sessions Judge under sections 196, 465 and 471, but confirmed the conviction under sections 193 and 109. It further reduced the sentence to 6 months' rigorous imprisonment and imposed a fine of Rs. 200, or, in default of payment, 6 months further imprisonment (Judgments of both Courts are herewith attached and marked C and D). Your Petitioner then appealed to his Excellency the Governor in council, but his Government declined to interfere (order herewith attached marked E).

11. That in connection with the foregoing Judgments passed by the Sessions Judge and the High Court, Your Excellency's Petitioner craves leave to submit that both the Sessions Judge and the High Court concurred in finding that Petitioner was in occupation of the premises belonging to N. Mahomed Mea Routhier & Co., the rental of which it is not disputed was Rs. 10 per mensem. The Sessions Judge further found that "probably rent was not paid" and the High Court agreed in that finding and held that the entries to that effect in the accounts were fabrications "with a view to induce the Sub-Collector to believe that it was paid."

12. That, Your Petitioner in reference to these findings craves leave to submit that the prosecution entirely failed to prove fraud on the part of Your Petitioner and from the evidence of the only two witnesses who were called it will be seen that they charged Petitioner entirely upon hearsay evidence and were unable to give the names of any of their informants. Further, the Sessions Judge found as a fact, that the accounts were kept in a slipshod manner and that there appeared in them other entries and alterations similar to those having reference to the payment of rent,

13. That turning next to sec. 192 of the Indian Penal Code, it will be observed that "fabricating false evidence" is defined as follows:

"Whoever causes any circumstances to exist, or makes any false entry in any book or record or makes any document containing a false statement, intending that such circumstances, false entry, or false statement, may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who in such proceedings is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said to fabricate false evidence"

In connection with this definition Petitioner craves leave to contend that the enquiry of the Chairman was not a "judicial proceeding" inasmuch as he was not sitting as a Court and the statements of the persons examined before him were not made on oath. The enquiry at most was of a departmental nature. Petitioner's conviction could, therefore, only be sustained if the said enquiry was a proceeding taken by law; for if it were not a proceeding taken by law the act complained of would not be a fabrication of false evidence within the definition of sec. 192 and would, therefore, not constitute an offence under the second part of sec. 193. Indian Penal Code, *viz.*, "whoever gives or fabricates, false evidence in any other case."

14. Again, Your Excellency's Petitioner very humbly submits that according to the Government order already referred to (Marked B) and the opinion of the legal officers of Government the proceedings of the Sub Collector in which Your Petitioner is accused of fabricating false evidence were *ultra vires* and as such was not a "proceeding taken by law." It consequently follows that Your Petitioner cannot be found guilty of any offence under sec. 193, Indian Penal code.

15. Your Petitioner submits that he has been convicted solely upon the suspicions which arise from the way in which the accounts have been kept by his Gumastahs and he craves leave to invite attention to sec. 34 of the Evidence Act wherein it is enacted that "entries in books and accounts regularly kept in the course of business are relevant but are not alone sufficient to charge any person with liability," they are only corroborative evidence. Your Petitioner respectfully submits that where accounts are as in his case, not regularly and properly kept, a conviction cannot be based solely upon any adverse inference which may legitimately be drawn from them; some foundation for fraud must first be affirmatively proved by the Prosecution to exist, and such proof Your Petitioner confidently submits is entirely absent. Your Petitioner has produced rent deeds and receipts for payments of rent and it has been found by both Courts that he was in occupation of the premises in question in accordance with that finding and the presumption ought to be that he paid rent for the same. A careful perusal of the Judgments will disclose the fact that Your Petitioner has been convicted purely on suspicion attaching to his accounts and that his conviction under sec. 193 and 109 of the I. P. C. was wrong and that there has been a miscarriage of justice.

16. Your Petitioner respectfully submits that the reasons given by the Sessions Judge in paras 12 and 13 of his Judgment, for holding that the local Government was wrong in its construction of Rules 19 and 34 framed under sec. 250 of Madras Act IV of 1882 are erroneous. Your Petitioner also begs to point out that no reasons appear in the Judgment of the High Court why the Sessions Judge's view of the matter is correct and it can only be implied from their silence that that embodied in the G. O. (Enclosure B) is wrong. Your Petitioner, in the circumstances, and as two contrary opinions exist in the case, ventures to approach Your Excellency and to humbly submit that the view taken by the local Government is the correct one, based as it is on the opinion of the Advocate General and he craves leave to give a few reasons therefor.

17. Your Petitioner humbly begs to submit that in construing the rules they must be read together as a whole, and in so reading Rule 19 with rule 34, it is clear that when once an objection has been disposed of by the Chairman of a Municipality and confirmed on revision by the Collector under Rule 19, it was intended that the same objection cannot be taken and the matter re-opened after the election is over. The Rule expressly states that the decision of the Collector is *final*. If it were, otherwise it would lead to inconvenient results, for every ten voters would have it in their power to raise the same objection, so that in a Ward in which there are, say 500 voters an objection once disposed of under Rule 19, may be raised fifty times and fifty different enquiries be held with regard to the very same objection. Your Petitioner takes leave further to point out that there is no provision with regard to the finality of enquiries provided for in any of the rules other than Rule 19, so that the logical consequences of the construction put upon the rules by the Sessions Judge would be to render it possible for an indefinite number of objections to be taken with respect to the same matter and practically render an election interminable. This Your Petitioner respectfully submits could not have been the intention of the Legislature.

18. In conclusion your Petitioner begs to submit that the very important question of the construction of Sections 19, 33 and 34 of Act IV of 1884 (The Madras Municipalities) has been erroneously determined by the Sessions Judge in para 12 and 13 of his Judgment; has not been determined at all by the High Court of Madras; and is directly opposed to the G. O. (Enclosure B). Your Petitioner also begs to point out that the Government of Madras in their proceedings dated 4th March 1899 No. R. 345 in declining to interfere with his conviction and sentence, do not say whether they endorse the view taken by the Sessions Judge as to his interpretation of the Municipal Act or whether they abide by the construction placed on the Act by the aforesaid G. O. (Exhibit B), and in consequence of the very unsatisfactory state in which the construction of the said Act has been left by reason of the divergent views expressed thereon by the Courts and the local Government your Petitioner humbly prays that in the interest of the public in general, and of those gentlemen who may aspire to be Municipal Commissioner in particular, some steps may

be taken either to modify the law or that a definite pronouncement be made as to the Correct meaning and effect of Section 19, 33 and 34 of the existing Act.

19. Should your excellency be pleased to hold that the proceedings of the Sub-Collector were *ultra vires*, and that your Petitioners conviction was consequently illegal, your Petitioner humbly prays your excellency will be pleased to direct that he be reinstated as Municipal Commissioner or declare that he be eligible for election as a Municipal Commissioner in the future.

September 1899

W. K. K. K.
K. K. K. K.



From

P. S. Mohan and Anugthoon
Lawther
Late Municipal Councillor
Mudigal

The Chief Secretary
to

LOCAL & MUNICIPAL DEPT.
CURRENT No. 2920m

The Government of Madras

Sir
I have the honour to submit
herewith a petition to the Mayor
in Council and will thank
you to forward the same in
the usual way

I beg to remain
Sir

Your most obedient servant

P. S. Mohan
10-11-99

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2920m/99

When given for copying _____
When copied _____
When examined _____
When signed _____ 11/12

189 .

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

CURRENT No. _____

ENCLOSURES TO C. No. _____

ORDER OF GOVERNMENT A A A A A A A

STATE OF GOVERNMENT.

STATEMENT WITH DITTO.

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IN ORIGINAL.

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