

ALLAHABAD HIGH COURT

Ghulam Mohiuddin

Vs.

Election Tribunal

Civil Misc. Writ No. 1462 of 1958

(Raghubar Dayal, M.L. Chaturvedi and Jagdish Sahai, JJ.)

14.11.1958

JUDGMENT

R. Dayal, J.

1. I agree with brother Chaturvedi that this writ petition be allowed and that a writ of certiorari be issued quashing the impugned order of the Election Tribunal. In view of the importance of the question, I would like to note in brief my reasons for coming to that conclusion.

2. The question is whether the Election Tribunal hearing an election petition challenging the election of the Chairman of the Town Area Committee can look into the contention that the names of certain persons should not have found a place in the electoral rolls prepared for certain wards in the Town Area on the grounds that some of them were minors and that some did not reside within the wards concerned.

The Election Tribunal in this case considered whether the finality attached to the electoral roll applied to pre-election stage or also to the post-election stage and held that it applied to the pre-election stage. He came to the same conclusion on considering the effect of the latter provision in clause (a) of paragraph 48 of the Notification No. 165/IX-(E)-I.T.-47 dated 26-2-1948 printed at page 23 of The Government of Uttar Pradesh, Statutory Provisions and Rules and Notifications Re : Election Petitions relating to Municipal Boards, Town Areas and Notified Areas. Paragraph 48 is :

"48. The election of any person as chairman or member of the committee may be questioned on any of the following grounds :

(a) that such person was declared to be elected by reason of the improper rejection or admission of any or more votes, or for any other reason was not duly elected by a majority of lawful votes;

(b) that such person committed a corrupt practice as defined in Rule 49 below for the

purpose of the election.

"(c) that such person was not qualified to be nominated as a candidate for election or that the nomination paper of a petitioner was improperly rejected."

He expressed his reasons thus :

"If the electoral rolls are regarded as final and conclusive, all the persons who voted on the basis of those rolls would be treated as lawful votes and there is no question of there being any unlawful votes. A vote can be unlawful only if it offends against any of the provisions of the Act or Rules, and if for the decision thereof it has to be seen whether the vote was lawful or unlawful then certainly the electoral roll cannot be regarded as final and conclusive at the time of the hearing of election petitions."

3. The contention for the appellant is that the electoral roll prepared is not open to question with respect to the correctness of the entries noted therein, though the Election Tribunal can consider whether any of the persons entered in that roll suffered from any disqualification and that the fact that a person had not attained the age of 21 years or did not reside within the particular ward does not amount to disqualification. I agree with this contention.

4. Sub-Section (2) of Section 8-A of the United Provinces Town Areas Act 1914 (hereinafter referred to as the Act) is :

"The chairman shall be elected by the electors of the town area at an election held simultaneously with the general election of members of the committee."

Sub-Section (4-A) of Section 8-A of the Act is :

"No election of the Chairman shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under this Act."

5. Rule 5 of The Uttar Pradesh Town Areas (Conduct of Election of Chairman) Rules 1953 is :

"Electors for election of Chairman - The electors in a town area shall for the purpose of election of the chairman, be the electors entered in the electoral rolls of the wards of that town area and it shall not be necessary to prepare or revise separately the electoral rolls for the election of the Chairman."

6. Clause (13) of Section 2 of the Act provides :

" 'elector', in relation to a ward, means a person whose name is for the time being entered in the electoral roll of that ward."

It follows therefore that the electors for the purpose of election of the Chairman are the persons whose names are for the time being entered in the electoral rolls of the wards of the Town Area. The expression "for the time being" is significant and can only mean that the entries are to be taken as final for the purpose of holding that those persons are the electors of the Town Area. The status of an elector is given by the entry of the name in the electoral roll.

7. Section 6-F. of the Act is :

"(1) 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 ward, shall be entitled to vote in that ward.

(2) No person shall vote at an election in any ward if he is subject to any of the disqualifications provided for by or under this Act.

(3) No person shall vote at a general election in more than one ward, and if a person votes in more than one such ward, his votes in all such wards shall be void.

(4) No person shall at any election vote in the same ward more than once, notwithstanding that this name may have been registered in the electoral rolls for that ward more than once, and if he does so vote, all his votes in that ward shall be void.

(5) No person shall vote at any election if he is confined in a prison whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the Police :

Provided that nothing in this Sub-Section shall apply to a person subject to detention under any law for the time being in force."

These provisions also mean that every person whose name is for the time being entered in an electoral roll has the right to vote. His right to vote cannot therefore be questioned at any stage - be it at the time of the election or at the stage of the hearing of the election petition after election. His right is however taken away if for any reason he happens to be subject to any of the disqualifications provided for by or under the Act.

8. This therefore takes us to the determination of what are the disqualifications which take away the right of voting from an elector, that is, a person whose name is for the time being entered in the electoral roll of a ward. Sub-Sections (3), (4) and (5) of Section 6-F of the Act provide other circumstances which take away the right of a person to vote on the basis of the entry of his name in the electoral roll. He cannot take advantage of his name being entered in the rolls of several wards by voting as many times as be the number of the entries. He can vote only in one ward and in case he votes in more than one ward his votes in all such wards become void. Similarly, a person whose name 19 entered more than once in the electoral rolls of a particular ward cannot vote as many times as be the number of the entries but can only vote once and if he votes more than once all his votes become void. These provisions further make, it clear that, in the first place, it is the existence of a person's name in the electoral roll of a ward which gives him the

right to vote and that this right is taken away completely if the aforesaid sub-sections apply to him, and that his right to vote, on the basis of several entries, be they in the rolls of different wards or in the roll of the one particular ward, is subject to the condition that he can vote only once.

In the present case, we are not concerned with the provisions of Sub-Sections (3), (4) and (5) affecting the validity of the votes cast. We are concerned with the question whether the voters who had not attained the age of 21 years or who did not reside within the ward in whose electoral rolls their names were recorded suffer from a disqualification contemplated by Sub-Section (2) of Section 6-F of the Act.

9. Section 6-H of the Act empowers the State Government to apply, by Order, to an election under the Act the provisions of the U.P. Municipalities Act 1916 regarding the preparation and publication of electoral rolls for each ward including qualifications and disqualifications for registration in the electoral rolls. Sections 12-B to 12-H of the Municipalities Act have been applied to an election under the Act. 12-C of the Municipalities Act is :

"12-C. Subject to the provisions of Section 12-D, every person who is qualified to be registered in the Assembly electoral roll relating to the area comprised in the ward or whose name is entered therein shall be entitled to be registered in the electoral roll of the ward."

Section 12-D is :

"12-D. (1) A person shall be disqualified for registration in an electoral roll if he is disqualified for registration in the Assembly rolls.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll of the ward in which it is included;

Provided that the name of any person struck off the electoral roll of a ward by reason of disqualification under Sub-Section (1) shall forthwith be reinstated in that roll if such disqualification is, during the period such roll is in force, removed under the provisions of this Act, or under any other law authorizing such removal".

10. Section 16 of the Representation of the People Act, 1950 (XLIII of 1950) is :

"Disqualifications for registration in an electoral roll - (1) A person shall be disqualified for registration in an electoral roll if he -

(a) is not a citizen of India; or

(b) is of unsound mind and stands so declared by a competent Court; or

(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt and illegal practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith

be struck off the electoral roll in which it is included.

Provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under clause (c) of Sub-Section (1) shall forthwith be reinstated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorizing such removal".

11. This section does not mention that a person who has not attained the age of 21 years or who does not reside within a constituency is disqualified for registration in an electoral roll of that constituency. Sections 17 and 18 provide against a person being registered more than once either in the same constituency or in different constituencies. Section 19 is;

"Condition of registration. - Subject to the foregoing provisions of this Part, every person who-

(a) has been ordinarily resident in a constituency for not less than 180 days during the qualifying period, and

(b) was not less than 21 years of age on the qualifying date shall be entitled to be registered in the electoral roll for that constituency".

12. The age and residence therefore were considered as conditions for registration. A person got the right to be enrolled or was qualified to be enrolled in an electoral roll if he was not less than 21 years of age and if he had resided for the prescribed period in a particular constituency. A person's non-residence for the prescribed period or not attaining the age of 21 years is not his disqualification for registration but amounts to his being not qualified to be registered. So long as one is not qualified no question of disqualification arises. According to Murray's New English Dictionary, 'disqualification' means "the action of depriving of requisite qualifications" and 'to disqualify' means 'to deprive of the qualifications required for some purpose.' A disqualification is therefore not identical with the absence of qualification. It is further to be noticed that sub-section (2) of Section 16 of the Representation of the People Act provides for the striking off the name from the electoral roll of a person who becomes disqualified after registration and does not provide for the striking off the name of a person who was disqualified but whose disqualification could not be discovered at the time of entering his name in the electoral roll. His disqualification could be considered by the Election Tribunal if he had exercised his right to vote on the basis of the entry of his name in the electoral roll of a particular constituency.

13. The Election Tribunal held that the reverse of the qualifications mentioned in Sections 17, 18 and 19 of the Representation of the People Act would amount to a disqualification. This view finds support from the case of *Prabhakar Yajnik v. District Magistrate, Bukndshahr¹*, wherein Mootham, J. (as he then was) had to consider the scope of the expression "disqualification" in Section 12-D of the Municipalities Act and said at page 669 (of All LJ) :

"The conclusion which I have reached, although not without some hesitation, is that in Section 12-D of the Municipalities Act the word 'disqualified' is used as meaning the

opposite to 'qualified', that is as meaning 'not qualified'."

With respect, I do not agree with this interpretation for the reasons mentioned above. It is true that the name of a person who suffers from any of the disqualifications mentioned in Section 16 will not be entered in the electoral roll though he satisfies the conditions of registration and therefore the result would be the same as would be if the person did not satisfy the conditions of registration mentioned in Section 19, But the rationale of the non-entry is different in the two cases.

In the former case a person satisfies the conditions and therefore has the right to have his name entered in the electoral roll and it is due to the disqualification that his name is not entered. Notionally it can be said that on the basis of his right his name had been entered but had been removed on account of the disqualification, though this will not be exactly correct as Sub-Section (2) of Section 16 does not provide for the

¹1953 All LJ 667 : AIR 1954 All 415

removal of the name of a person who had the disqualification prior to the registration of his name in the electoral roll.

14. Section 19 of the Municipalities Act has been made applicable to the election of members of the Town Area. Its Sub-Section (1) is practically the same as paragraph 48 of the Notification governing the election petitions questioning the election of Chairman of a Town Area. Its Sub-Section (2) is :

"(2) The election of any person as a member of a Town Area Committee shall not be questioned -

(a) on the ground that the name of any person qualified to vote has been omitted from, or the name of any person not qualified to vote has been inserted in the electoral roll or rolls;

(b) on the ground of any non-compliance with this Act or any rule, or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers-charged with carrying out this Act or any rules, unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election."

The absence of any similar provision in the aforesaid paragraph 48 is relied upon for the respondents in support of the contention that the election of a Chairman is open to question on the ground that the name of a person not qualified to vote had been inserted in the electoral roll or rolls. I am of opinion that no such inference can be drawn from a mere omission unless a ground for challenging the election can be deduced from the grounds of challenge mentioned in paragraph 48. The relevant portion of this paragraph relied upon for the purpose is the ground that such person for any other reason was not duly elected by a majority of lawful votes. The contention is that if a person was not entitled to have his name entered in the electoral roll he could not cast a lawful vote and therefore the Election Tribunal could look into this question. I do

not agree. A lawful vote is one which is cast by a person who had the right to vote in circumstances which do not in any way invalidate the vote. I have already mentioned that the right to vote is given by Section 6-F of the Act to a person who is for the time being entered in the electoral roll of any ward. If a person whose name is entered on the roll votes, his vote is prima facie a lawful vote. It can become an unlawful vote for various reasons. It would be an unlawful vote if any of the provisions of Sub-Sections (2) to (5) of Section 6-F affect the validity of the vote.

It can also be an unlawful vote if it has been obtained by corrupt practice. It cannot however be an unlawful vote merely on account of the fact that the person had no right to have his name entered in the electoral roll. The right to vote is not on account of his having attained a certain age or on account of his having resided in a certain constituency for the prescribed period but is conferred by Sub-Section (1) of Section 6-F of the Act and is simply based on existence of his name in the electoral roll of any ward. The vote of a person having a right to vote is therefore a lawful vote, and it is therefore not open to the Election Tribunal to go behind the electoral roll to determine whether the entry of the persons named in the electoral roll was rightly made or not. In this connection we have been referred to Section 6-A of the Act which provides that the election of the members of a Committee shall be on the basis of adult suffrage. The view I take does not in any way offend this provision.

The election is on the basis of adult suffrage as the entries in the electoral roll are on that basis. The mere fact that the name of a person has been wrongly entered in the electoral roll when he had not attained a particular age does not make the election to be on any other basis. Section 6-F of the Act provides that no person who is not for the time being entered in the electoral roll of any ward shall be entitled to vote in that ward. Taking the two Sections 6-A and 6-F together, the only conclusion that can be formed is that it is the provisions of Section 6-F which determine the right of a person to vote and it is not the fact of his actually becoming an adult which gives him the right to vote. In this connection I may mention that there is nothing in the Act which lays down what the requirements of adult suffrage are. Art. 326 of the Constitution does not stop after providing that the election will be on the basis of adult suffrage but explains this provision by saying; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election'.

15. I am therefore of the opinion that it was not open to the Election Tribunal to determine whether the persons whose names were entered in the electoral roll possessed the necessary qualifications for the registration of their names in the electoral roll.

M. L. Chaturvedi, J.

16. This petition has been ordered to be laid before a Full Bench

for hearing, because the Bench, which heard it, was of the opinion that the view taken in a previous Division Bench case, namely, 1953 All LJ 667 : AIR 1954 Allahabad 415, needed further consideration.

17. The facts of the case in brief are that the petitioner and the 2nd respondent were candidates for election to the office of Chairman, Town Area Committee, Sakit, district Etah in the general elections held in October 1957. The petitioner was declared to be the duly elected candidate as he received 581 votes as against the 2nd respondent who received 569 votes. The 2nd respondent then filed an election petition challenging the validity of the petitioner's election on a number of grounds.

The Temporary Civil and Sessions Judge of Etah was appointed to hear and decide the election petition. The petitioner filed a written statement before him challenging the correctness of the allegations made by the 2nd respondent in his election petition. The election tribunal framed a number of issues in the case, but we are concerned in the present writ petition only with one of them, namely, issue no. 3, which is in the following words :

"is the petitioner entitled to challenge the enrolment and addition of the voters of Schedules A, B, C and D in the electoral rolls at this stage ? Its effect ?"

18. The allegation of the 2nd respondent in the election petition, which gave rise to the above issue, was that the names of a number of persons who were minors and of others who were not residents within the limits of the Town Area were wrongly added in the electoral rolls prepared for the Town Area. The petitioner denied that any names of minors or non-residents had been added in the electoral roll and further pleaded that the electoral roll was final and its correctness could not be challenged in the proceedings of the election petition. The election tribunal heard the arguments on this issue treating it to be a preliminary issue and decided it against the petitioner by the impugned order dated the 29th April 1958. The election tribunal has arrived at the conclusion that it is open to the 2nd respondent to raise the question in the election petition that the electoral roll had been wrongly prepared.

19. In the present writ petition the correctness of this order has been challenged and it is prayed that this Court should issue a writ of certiorari quashing the order of the election tribunal.

20. The learned counsel for the petitioner has urged that there is an apparent error in the judgment of the election tribunal and the tribunal is clearly wrong in holding that the correctness of the electoral roll could be challenged in an election petition. The learned counsel for the 2nd respondent has tried to support the decision of the election tribunal on the point. The only question that arises for consideration by us is whether an election tribunal can go into the question that the names of some of the persons had been wrongly entered in the electoral roll, when the persons were not qualified to have their names so entered.

21. In order to appreciate the controversy it is necessary to mention the relevant provisions of law on the point. The elections were held for choosing the Chairman of the Town Area of Sakit, in the district of Etah. The electoral rolls in the Town Areas situate in this State are to be prepared under the relevant provisions of the U.P. Town Areas Act, Act No. II of 1914, as amended from time to time. It is not necessary to refer to earlier amendments made in the Act before the U.P. Act No. V of 1953 was passed. By the latter Act, substantial amendments were made in the U.P. Town Areas Act. Section 6-A lays down that the ejection of the members of a Town Area Committee shall be on the basis of adult suffrage. Section 6-B says that for purposes of elections there shall be wards provided by Order issued under Section 6-H. Section 6-C lays down that there shall be an electoral roll for every ward which shall be prepared in the manner provided for by or under the Town Areas Act. The next section which may be referred is Section 6-F which makes provision as regards the persons who shall be entitled to vote in the ward. Section 6-H provides that the State Government may, by order, apply to an election under the Act the provisions of the U.P. Municipalities Act of 1916 regarding delimitation of wards for purposes of elections, preparation and publication of electoral rolls for each ward including qualifications and disqualifications for registration in the electoral rolls, conduct of elections, the removal of disqualifications, the decision on doubts or disputes relating to elections and certain other matters. Section 6-1 (1) bars the jurisdiction of civil courts to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll of a ward, or the legality of any action taken by or under the authority of an Electoral Registration Officer, or to question the legality of any action taken or any decision given by the Returning Officer. Sub-Section (2) says that no election can be called in question except by an election petition presented in-accordance with the provisions of the Act. Section 6-J provides for qualifications for membership of the Committee, and Section 6-K provides for disqualifications from being chosen as a member or Chairman of the Committee.

The last relevant section is Section 8-A which makes certain provisions concerning the election duties and other matters pertaining to a Chairman. Sub-Section (1) provides that the Chairman shall be an elector of the Town Area. Sub-Section (2) says that the Chairman shall be elected by the electors of the Town Area at an election held simultaneously with the general election of members of the Committee. Sub-Section (3) lays down how a vacancy in the office is to be filled and Sub-Section (4) says that the term of office of a Chairman shall expire on the expiry of the terra of the Town Area Committee. Sub-Section (4-A) says,

"No election of the Chairman shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under this Act."

With the rest of the Sub-Sections we are not concerned.

22. It would appear that under the Town Areas Act the ejection of the members of a Committee is to be had on the basis of adult suffrage and there shall be an electoral roll prepared in the

manner provided by or under the Act. The Act itself does not lay down the procedure for the preparation of the electoral roll and authority in that respect has been conferred on the State Government under Clause (b) of Section 6-H. The Government framed separate rules under the Town Areas Act for the conduct of elections of members and of Chairman. There was also an Order issued called the Town Areas (Preparation and Revision of Electoral Rolls) Order, 1953. It is not necessary to go into details of the above rules and orders for our present purposes.

23. I have already stated that under Section 6-H(a) and (b) the State Government was authorized to apply the provisions of the U.P. Municipalities Act regarding delimitation of wards for purposes of elections and preparation and publication of electoral rolls for each ward, including qualifications and disqualifications for registration in the electoral rolls. Under the above provision, the U.P. Government issued a notification on 8-4-1953 applying, amongst others, the provisions of Section 12-B to 12-H of the Municipalities Act to the Town Areas Act. Sections 12-C and 12-D are important. Section 12-C says that every person who is qualified to be registered in the Assembly electoral roll relating to the area comprised in the ward, or whose name is entered therein, shall be entitled to be registered in the electoral roll of the ward. Section 12-D says that a person shall be disqualified for registration in the electoral roll if he is disqualified for registration in the Assembly electoral rolls.

For elections to Municipal Boards the Legislature thus accepted the Assembly electoral rolls as the electoral rolls for the relative areas of the Municipal Board. By the application of Section 12-C and Section 12-D to the Town Areas, the same rolls became the rolls for electing members and Chairman of the Town Areas Committees. Thus for finding out the qualifications and disqualifications for entry in the rolls for elections to Town Areas, we have to go to the Representation of the People Act of 1950.

Section 16 of the said Act lays down the disqualifications for registration in an electoral roll and Section 19 lays down the conditions of registration, which are only two, namely, the minimum age limit of 21 years and the ordinary residence in a constituency. The disqualifications mentioned in Section 16 are three, which need not be detailed. Apart from Secs. 16 and 19 of the Representation of the People Act, Section 6-A of the Town Areas Act further says that the election of the members of a Committee shall be on the basis of adult suffrage.

24. It would thus appear that the Representation of the People Act has separately provided for the conditions which a person must fulfill before he would be entitled to have his name entered in the electoral roll and the disqualifications which would disqualify him from having his name so entered, even if he fulfils the conditions.

The contention of the learned counsel for the petitioner is that the entries in the electoral roll are final and not open to challenge in an election petition, in so far as they indicate that a person has fulfilled the conditions or qualifications for having his name brought on the electoral roll, but they are not final and are open to scrutiny by an election tribunal in so far as the allegation that the persons are disqualified from voting is concerned. In short, the electoral roll is to be deemed final and conclusive as far as the fulfilment of qualifications of a voter is concerned, but it is not

to be deemed final and conclusive by the election tribunal so far as the disqualifications attaching to such persons are concerned. I think that there is substance in the contention of the learned counsel.

25. The subject of election petitions is dealt with in Section 1 of Part IV of Halsbury's Laws of England, Vol. 14, 3rd Edition. Item (vii) deals with scrutiny and after considering its history it is stated at the bottom of paragraph No. 544,

"Accordingly it would appear that the votes of persons who were not entitled to be registered because they did not have a resident or non-resident or a service qualification would not be questioned on a scrutiny."

The above statement is based on two cases. I propose to refer to only the latter of the two cases, namely, *Petersfield case*, *Stowe v. Jolliffe*². After a consideration of the history of legislation on the point Lord Coleridge, C.J. expressed the opinion that from the Reform Act to the Ballot Act the tendency of legislation had been to make the register of voters conclusive, with certain exceptions. He then says at page 750.

"I think the true constructions of these sections, which alone remain, is, to make the register conclusive not only on the Returning Officer, but also on any Tribunal which has to enquire into elections, except in the case of persons ascertained by the proviso. These are, persons prohibited from voting by any statute or by the common law of Parliament."

26. The law laid down above still holds the field in England and it is well settled there that it is not open to a Tribunal which has to enquire into elections to consider the correctness of the entry in a register of voters, except in so far as to see whether the person whose name is entered was prohibited from voting by any statute or by the

²(1874) 9 C.P. 734

common law of Parliament.

I think the Representation of the People Act has adopted the same principle and that is the reason why separate provisions have been made laying down the conditions of registration in the electoral roll for Assembly constituency and those laying down disqualifications for registry in the roll Section 19 of the Act deals with the former and Section 16 with the latter. As far as the preparation of the electoral roll itself is concerned, the authority responsible for its preparation has got to consider both matters. It has to see whether a citizen fulfils the conditions of registration and also whether he is disqualified for registration in the roll. There was an reason for providing for the above two matters under two separate sections of the Act so far as the preparation of the roll was concerned. It could easily have been said under Section 16 that a person shall be disqualified for registration in the electoral roll if ha was less than 21 years of age and if he did not ordinarily reside in the constituency. The only reason for making two separate provisions about qualifications and disqualifications, in my opinion is that the two have been

treated differently, as in England, so far as the binding nature of the entry in the electoral roll is concerned. If a person's name has been entered in the electoral roll, as it has been finally prepared, the entry would be taken to be conclusive proof of the fact that the person fulfils the conditions, namely, that he was not less than 21 years of age and was ordinarily resident in the constituency. But the position with respect to the disqualifications enumerated in Section 16 of the Representation of the People Act is different. In spite of the entry in the electoral roll, it is open to an election tribunal to see whether the person was really disqualified for registration in the roll. Finality has been given to the decision of the Officer preparing the roll in so far as the fulfillment of conditions of registration is concerned. But it has not been considered desirable to extend the same finality to the decision on the subject of disqualifications; as the latter is a more serious matter. The U.P. Town Areas Act is quite explicit on the point. Section 6-F(1) says,

"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 ward, shall be entitled to vote in that ward."

27. The above provision confers a right on a person, whose name is entered in the electoral roll, to exercise his franchise. The right to vote that has been conferred is simply by virtue of the fact that his name is entered in the electoral roll. This obviously means that it is not possible to go behind the roll either for proving that a person's name should have been entered but has been wrongly omitted or for showing that a person's name should not have been entered but has been wrongly entered. If the above provision of law had stood by itself, it might have been possible to say that the election Tribunal could not consider even the question whether a person had any disqualifications which disentitled him to have his name entered in the electoral roll. But, following the English practice, it has been provided in Sub-Section (2) that

(2) No person shall vote at an election in any ward if he is subject to any of the disqualifications provided for by or under this Act."

This is in the nature of an exception to Sub-Section (1), and the exception is confined to persons suffering from disqualifications. Section 6-F was inserted in the U.P. Town Areas Act in 1953 and it can be presumed that the Legislature was aware of the fact that in the Representation of the People Act qualifications and disqualifications were separately dealt with in Sections 10 and 19. Still Sub-Section (2) of Section 6-F of the Town Areas Act imposes a restriction on the right of voting on persons subject to disqualifications and not on persons not fulfilling the qualifications or conditions of registration in roll.

28. So Far the position appears to be clear, but the learned counsel for the respondent laid stress on the wording of R. 48 framed by the Government under S. G-H of the Town Area Act. These rules were subsequently validated by U.P. Act No. XIX of 1955. The language of R. 48 in all material particulars is the same as of Section 10(1) of the U.P. Municipalities Act, Section

19(1)(b) is in the following words :

"That such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful votes."

Stress has been laid on the words "lawful votes" and it is argued that votes cast by persons, who were not qualified to be entered in the electoral roll, cannot be said to be lawful votes. I think that in construing the above words we have to refer back for purposes of the Town Areas Act, to Section 6-F(1) wherein it is stated that every person who is, for the time being entered in the electoral roll of any ward shall be entitled to vote in that ward. To my mind, it is no straining of language to say that the vote of such a person would be a lawful vote. It is true that Section 6-A of the Town Areas Act lays down that the election of the members shall be on the basis of adult suffrage, and Section 19 of the Representation of the People Act lays down that the minimum age for entry in the electoral roll is 21 years. But that is a matter which has been left for the authority preparing the electoral roll to decide finally. The mere entry thus means that a person has fulfilled the necessary qualifications or conditions of enrolment and it is not open to objection at any subsequent stage, after the electoral roll has become final, that the person so entered really did not fulfill the conditions. His name being there, it must be taken that he fulfils the conditions. The Nagpur High Court has taken the same view in the cases of *Mahadeo v. Bisan Laghuji*³, and *Vithal Das Kunwarji v. Sadanand*⁴,

29. The learned counsel for the respondent relied upon two cases of this Court. The first case mentioned by him is the case of 1953 All LJ 167 : AIR 1954 Allahabad 415. The facts of this case are clearly distinguishable from the facts of the case before me. Prabhakar Yajnik's name was ordered to be removed from the Municipal electoral roll by the Electoral Registration Officer and Sri Yajnik approached this Court with a writ petition praying for the quashing of the order removing his name. The question that arose was whether the Electoral Registration Officer had jurisdiction to remove the name and this Court held that he had jurisdiction to do so. What this Court had to decide in Prabhakar Yajnik's case 1953 All LJ 166 : AIR 1954 Allahabad 415 was whether the Electoral Registration Officer had jurisdiction to remove the name on the ground of want of qualifications. But the question before me in the present case is

³ AIR 1953 Nag 166

⁴ AIR 1957 Nag 63

whether the election tribunal can go into the question that a person whose name stood on the electoral roll did not fulfill the conditions for the entry of his name. In the course of the judgment, the learned Judges have made certain observations to the effect that there did not appear to be any difference between saying that a person was not qualified and saying that he was disqualified. I think there is a difference between the two and that difference I have already indicated above. The exact point however, decided in that case does not arise for decision in the present petition.

30. The other Allahabad case cited by the learned counsel is the case of *Shyam Kishore v. Marian Copal Mahendra*⁵. This case arose out of an election petition by a candidate for the presidentship of the Municipal Board of Sitapur, whose nomination paper had been rejected by the Returning Officer on the finding that he had not attained the age of 30 years. He filed the election petition on the ground that his nomination paper has been improperly rejected by the Returning Officer. The election petition was allowed on the finding that the decision of the returning officer was wrong and the petitioner had attained the age of 30 years. A writ petition was then filed challenging the order of the election tribunal and the contention was that the election tribunal had no jurisdiction to arrive at a finding as to the age of the respondent on the basis of additional evidence recorded by it. This Court held that it was open to the election tribunal to consider the question of age of the person whose nomination paper had been rejected, because one of the grounds on which the election petition could be filed was that the nomination paper of the petitioner was improperly rejected. It was further observed that the rejection of a nomination paper had been previously held to be a ground even failing within the expression "was not elected by a majority of the lawful votes." The question before me in the present case is clearly different and the Division Bench, which decided *Shyam Kishore's* case AIR 1958 Allahabad 14, did not consider and was not called upon to consider whether the entry of the name in the electoral roll could be challenged before the election tribunal on the ground that the person whose name was so entered did not fulfill the necessary conditions. It was called upon mainly to consider whether the ground could be said to fall within the expression "the nomination paper was improperly rejected" and it answered the question in the affirmative. That case also thus does not help the respondent.

31. The last case cited by the learned counsel for the respondent is the case of *Durga Shankar v. Raghuraj Singh*⁶. In this case one of the questions for decision was whether it was open to the election tribunal to allow the election petition on the ground that the Returning Officer had improperly accepted the respondent's nomination paper. The case was governed by the Representation of the People Act of 1951, which lays down, in Section 100, the grounds on which the election of a member to a Legislative Assembly or Lok Sabha can be challenged. The learned Judges held that in that case the election tribunal could not allow the election petition on the ground that the nomination paper had been wrongly accepted by the Returning Officer, but it could have allowed the election petition on the ground

⁵ AIR 1953 All 14

⁶ AIR 1954 SC 520

of constitutional disqualifications of the candidate. This case also does not, in any way, help the respondent, as the points for decision were very different. But there is an important observation in the judgment, which to some extent supports the view that I have taken above. Their Lordships say :

"The English law after the passing of the Ballot Act of 1872 is substantially the same as

has been explained in the case of (1874) 9 C.P. 734. The register which corresponds to our electoral roll is regarded as conclusive except in cases where persons are prohibited from voting by any statute or by the common law of Parliament."

Their Lordships did not say that the law in India in this respect is different from that of England.

32. For the reasons given above, I have come to the conclusion that the impugned order of the election tribunal is clearly erroneous. I would accordingly allow this writ petition with costs and direct the issue of a writ of certiorari quashing the impugned order of the election tribunal.

J. Sahai, J.

33. I have read with the greatest respect the learned judgments of my brothers Dayal and Chaturvedi, but for reasons which I shall state in this judgment I am unable to agree with their views and, therefore, it has become necessary for me to give my reasons for the disagreement and to express my own views in respect of the matter which has been referred to us in a separate judgment.

34. It is not necessary to give in detail the facts giving rise to the present case. It is sufficient to state that the petitioner was declared duly elected chairman of the Town Area Committee, Sakit, defeating the respondent No. 2. The respondent No. 2 filed an election petition challenging the election of the petitioner on several grounds.

One of the grounds of the respondent No. 2 in the election petition was that the names of a number of persons who were minors and of others who were not residing within the limits of the Town Area of Sakit had been wrongly added in the electoral roll prepared for the said Town Area. The petitioner denied the allegations mentioned above and also raised a legal plea that the electoral roll was final and its correctness could not be challenged in the proceedings before the election tribunal. The election tribunal framed several issues in the case. Issue No. 3 runs as follows :

"Is the petitioner entitled to challenge the enrolment and addition of the voters of Schedule A, B, C and D in the electoral rolls at this stage ? Its effect ?"

Treating this issue as a preliminary issue the election tribunal decided it against the petitioner on 29-4-1958 holding that the tribunal could go into the question whether certain persons whose names were entered in the electoral roll were lawful voters or not. The present writ petition is directed against the finding of the election tribunal on this issue, and the prayer in the petition is for the quashing of the order of the election tribunal mentioned above by this Court by means of a writ of certiorari.

There is also a prayer for the issue of a writ of mandamus or order or direction in the nature of mandamus directing the election tribunal to decide the election petition in accordance with the

directions of this Court. This petition came up for hearing before a Division Bench of this Court who by their order dated 30-7-1958 have referred the case to a Full Bench, and the petition has accordingly been listed before us for hearing.

35. The main question for decision in the case is whether under the provisions of the U.P. Town Areas Act and the Rules framed there under it is permissible for an election tribunal to go into the question whether the names of certain persons entered in the electoral roll were rightly or wrongly entered. It is well known that the right to get elected as the chairman of a Town Area Committee is not a common law right; it is a right created by the U.P. Town Areas Act. Similarly, the right to challenge an election is also not a common law right and must be exercised within the limitations imposed by the Act or the Rules creating that right. Section 8(4A) of the U.P. Town Areas Act runs as follows :

"No election of the chairman shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under this Act."

Rule 48 of the Rules framed under the U.P. Town Areas Act (hereinafter referred to as the Rules) deals with election petitions relating to the election of the chairman. It runs as follows :

"The election of any person as Chairman or member of the committee may be questioned on any of the following grounds -

- (a) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful votes;
- (b) that such person committed a corrupt practice as defined in R. 49 below for the purpose of the election;
- (c) that such person was not qualified to be nominated as a candidate for election or that the nomination paper of a petitioner was improperly rejected."

It may be mentioned that this rule does not now apply to the election of a member of the committee because Sections 19 to 28 of the U.P. Municipalities Act have been made applicable to Town Areas elections under Section 6-H of the U.P. Town Areas Act and, therefore, the words "or member" in the beginning of rule 48 are redundant.

However, that does not in any way affect the question that is for consideration before us. I am of the opinion that the words "or for any other reason was not duly elected by a majority of lawful votes" occurring in clause (a) of R. 48 of the Rules are wide enough to include the investigation of the question of the right of a person to be entered in the electoral roll. It would be noticed that the expression "or for any other reason" is extremely wide.

One of the rules of interpretation of statutes is that effect must be given to every word appearing in a section or rule. The substance of clause (a) of R. 48 of the Rules, to my mind, is that it would

be lawful for a petitioner to challenge the entry of a person's name in the electoral roll, and for the election tribunal to determine whether or not his name could be entered on the electoral roll under the law. I find nothing in clause (a) of rule 48 of the Rules which limits the right of the petitioner to urge, and that of the election tribunal to hold, that a particular person declared elected has not been elected by a majority of lawful votes because some persons whose names have been entered on the electoral roll could not be voters under the law, I consider the use of the words "for any other reason" by the legislature as denoting that, on whatsoever ground, the legality of a vote may be challenged. If the intention was not to keep the jurisdiction of the election tribunal so wide I fail to see why the legislature used this expression which necessarily has a very wide import. The expression "lawful votes" also to my mind is a very wide expression and the tribunal cannot be precluded from going into the question of the legality of a vote to its very root. In this connection it is worthy of note that in the U.P. Municipalities Act as also the U.P. District Boards Act where provisions similar to Rule 48(a) exist a Sub-Section in the nature of a proviso has been added which curtails the effect of the words "or for any other reason was not duly elected by a majority of lawful votes." Section 19 of the U.P. Municipalities Act, which deals with an election petition relating to the election of a member of a Municipal Board and which is similar to R. 48 of the Rules, runs as follows :

"Power to question municipal election by petition.

(1) The election of any person as a member of a board may be questioned by an election petition on the ground

(b) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful votes;

(c) that such person was not qualified to be nominated as a candidate for election or that the nomination paper of the petitioner was improperly rejected.

(1) The election of any person as a member of a board shall not be questioned -

(a) on the ground that the name of any person qualified to vote has been omitted from, or the name of any person not qualified to vote has been inserted in the electoral roll or rolls;

(b) on the ground of any non-compliance with this Act or any rule, or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers charged with carrying out this Act or any rules, unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election."

A provision analogous to Sub-Section (2) of Section 19 of the U.P. Municipalities Act does not find place in R. 48 of the Rules. By virtue of the provisions of Clause (a) of sub-section (2) of Section 19 the question whether "the name of any person qualified to vote has been omitted from, or the name of any person not qualified to vote has been inserted in the electoral roll or rolls" cannot be gone into by an election tribunal created under the provisions of the U.P. Municipalities Act.

36. It would be noticed that the provisions of Section 19 of the U.P. Municipalities Act apply also to election petitions relating to the election of a person as a member of a notified Area. Therefore, with regard to Notified Areas also there is a definite provision which debar the election tribunal from catering into the question of the correctness or otherwise of an entry in the electoral roll.

37. The provisions of Section 15 of the U.P. District Boards Act are similar to R. 48 of the Rules. The said Section 15 runs as follows :

"Power to question election by petition.

(1) The election of any person as a member of a board may be questioned by an election petition on the ground

(a) that such person committed during or in respect of the election proceedings a corrupt practice as defined in Section 24 : or

(b) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful votes; or

(c) that such person, though enrolled as an elector, was disqualified for election under the provisions of sub-section (2) of Section 12 :

(d) that such person was not qualified to be nominated as a candidate for election or that the nomination paper of the petitioner was improperly rejected.

(2) The election of any person as a member of a board shall not be questioned -

(a) on the ground that the name of any person qualified to vote has been omitted from, or the name of any person not qualified to vote has been inserted in, the electoral roll or rolls;

(b) on the ground of any non-compliance with this Act or any rule or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers charged with carrying out this Act or any rules, unless such non-compliances, mistake, error, irregularity or informality has materially affected the result of the election."

It would be noticed that Clause (b) of Section 15(1) of the U.P. District Boards Act is similar to Clause (a) of R. 48 of the Rules. There is, however, in Section 15(2) of the U.P. District Boards Act a clause similar to one in Section 19 of the U.P. Municipalities Act, but an analogous provision is not to be found in R. 48 of the Rules. The election of the president of either a Municipal Board or a District Board is not a direct election but an indirect election i.e., they are elected by the members of the Municipal Board or the District Board as the case may be and not by the general public. There is therefore no question of there being any provision which may enable an election petition being filed on the ground of a person's name having been omitted from or a person's name having been wrongly entered in the electoral roll. Consequently there is

no provision in Section 43-B of the U.P. Municipalities Act similar to Rule 48(a) of the Rules or Section 19(2)(a) of the U.P. Municipalities Act and Section 15(2)(a) of the U.P. District Boards Act. The provisions of Section 19 of the U.P. Municipalities Act apply to election petitions challenging the election of a member of a Town Area Committee, with the result that even in the case of a member of a Town Area the jurisdiction of the election tribunal to go into the question of the correctness of an electoral roll has been excluded by the provisions of Section 19(2) of the U.P. Municipalities Act.

The Town Areas Act, the Municipalities Act and the District Boards Act are all Acts of the U.P. Legislature. To me it appears that whenever the legislature wanted to exclude the jurisdiction of an election tribunal from entering into the question of the correctness or otherwise of the electoral roll they have expressly said so in the very sections which deal with election, petitions. In as much as that has not been done in connection with an election petition regarding the election of the chairman of a Town Area Committee there is no provision which in any manner curtails the scope of rule 48(a) of the Rules. What is remarkable is that whereas practically the same words as are found in Rule 48(a) of the Rules find place in Section 19 of the U.P. Municipalities Act and Section 15 of the U.P. District Boards Act, provisions similar to those contained in Section 19(2) of the U.P. Municipalities Act and Section 15(2) of the District Boards Act do not find any place in R. 48 of the Rules. The result is that there is nothing which curtails the right of a person filing an election petition to challenge the election of a person on the ground that some persons who could not have been enrolled as voters have been enrolled. If the intention of the rule making authority was to exclude the jurisdiction of an election tribunal from going into the question of the correctness or otherwise of the electoral roll it could have either made the provisions of Section 19 of the U.P. Municipalities Act applicable also to election petitions regarding the election of the chairman of a Town Area Committee as was done in the case of the members of the Town Area Committee, or could have added a sub-rule analogous to Section 19(2)(a) of the U.P. Municipalities Act or Section 15(2)(a) of the U.P. District Boards Act. It would also be noticed that in Section 6-I of the U.P. Town Areas Act the jurisdiction of the civil court has been expressly barred to go into the question as to whether or not a particular person is entitled to be entered in the electoral roll. There is no such restriction on the power of an election tribunal appointed under the provisions of any rules. Section 6-1 of the U.P. Town Areas Act runs as follows :

"6-1. (1) No Civil Court shall have jurisdiction (a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll of a ward...."

It appears to me that if it was the intention of the legislature that the jurisdiction of an election tribunal should also be barred in respect of this matter they could have made a provision similar to Section 6-1(1)(a) of the Town Areas Act. The fact that the legislature has not done so along with the fact that the language of rule 48(a) of the Rules is wide enough to include the examination of the right of a person to be entered in the electoral roll and the further fact that

though in other cases there are express provisions curtailing the right of the election tribunal to go into that question there is no such curtailment in the case of an election tribunal contemplated by R. 48, show that the election tribunal is competent in the present case to go into the question of the correctness or otherwise of the electoral roll. The argument that there has been an accidental omission in not adding a sub-rule analogous to Section 19(2)(a) of the Municipalities Act or Section 15(2)(a) of the District Boards Act does not appeal to me-because we have to construe the rule as it stands, and, if there has been an omission, the rule making authority can make suitable amendments. In my opinion it is not possible for a court to depart from the plain meaning of the rule.

38. Reliance has been placed upon Section 6-F of the U.P. Town Areas Act and it is contended that inasmuch as a person whose name is entered in the electoral roll is entitled to vote it cannot be said that his vote is not a lawful vote. Section 6-F of the Town Areas Act runs as follows :

"6-F (1) No person who is not, except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any ward, shall be entitled to vote in that ward.

(2) No person shall vote at an election in any ward if he is subject to any of the disqualifications, provided for by or under this Act.

(3) No person shall vote at a general election in more than one ward, and if a person votes in more than one such ward, his votes in all such wards shall be void.

(4) No person shall at any election vote in the same ward more than once, notwithstanding that his name may have been registered in the electoral rolls for that ward more than once, and if he does so vote, all his votes in that ward shall be void.

(5) No person shall vote at any election if he is confined in a prison whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the Police:

Provided that nothing in this Sub-Section shall apply to a person subject to detention under any law for the time being in force. The argument is that inasmuch as Sub-Section (1) of Section 6-F gives a person absolute right to vote if his name is entered in the electoral roll it cannot be said that his vote is not a lawful vote for the purposes of R. 48 of the Rules. In my opinion Section 6-F deals with the manner in which an election is to be conducted at the time of polling Section 6-F(1) only entitles a person to vote at the time of polling and the electoral roll is final so far as the Polling Officer or the Returning Officer is concerned but it is not final, to my mind, so far as the election tribunal is concerned. An examination of the various clauses of Section 6-F irresistibly leads to this conclusion. Section 13-E of the U.P. Municipalities Act runs as follows :

"13-E. Right to vote.

(1) 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 role of any ward shall be entitled to vote in that ward.

(2) No person shall vote at an election in any ward if he is subject to any of the disqualifications referred to in Section 12-D.

(3) No person shall vote at a general election in more than one ward and if a person votes in more than one such wards his votes in all such wards shall be void.

(4) No person shall at any election vote in the same ward more than once, notwithstanding that his name may have been registered in the electoral roll for that ward more than once, and if he does so vote, all his votes in that ward shall be void.

(5) No person shall vote at any election if he is confined in a prison whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police :

Provided that nothing in this Sub-Section shall to a person subject to preventive detention under any law for the time being in force."

It would be noticed that the provisions of Section 13-E of the Municipalities Act are exactly similar to the provisions of Section 6-F of the Town Areas Act and the same interpretation would have to be placed on the language of Section 6-F of the Town Areas Act as on that of Section 13-E of the Municipalities Act. It may be mentioned that notwithstanding the fact that Section 13-E existed in the Municipalities Act the legislature thought it necessary to enact Section 19(2)(a) of the Act. If the intention of the legislature was that by virtue of the provisions of Section 13-E the election tribunal was precluded from entering into the question of a person's right to be enrolled as a voter they would not have thought it necessary to enact Section 19(2)(a) of the Municipalities Act. It cannot be said that in view of Section 13-E the provisions of Section 19(2)(a) are a mere waste of words, because it is a well accepted rule of interpretation of statutes that the legislature is deemed not to waste its words or to say anything in vain.

39. It has also been contended that an electoral roll is final under the provisions of rule 12 of the U.P. Town Areas (Preparation and Revision of Electoral Rolls) Order, 1953 (hereinafter referred to as the Order) and it is argued that even an election tribunal is precluded from questioning its finality. Rule 12 of the Order runs as follows :

"Hearing and decision of claims and objections.

(1) The Electoral Registration Officer shall hold a summary inquiry into the claim of objection preferred and shall record his decision thereon and order any addition to, omission from or alteration in the electoral roll in accordance with his decision.

For the purposes of the inquiry the electoral roll as published under para 7 shall be presumed to be correct.

(2) The decision of the Electoral Registration Officer shall be final.

(3) A list of claims and objections shall be maintained by the Electoral Registration Officer in Form II of the Schedule."

40. In my opinion there is nothing in this rule which makes the election register final even as against the election tribunal. Rule 9 of the Order provides for objections being filed to the entries in the electoral roll. Rule 10 provides for the manner in which the objection shall be filed and as to what will be the contents of the objection. Rule 11 provides for notice being issued in connection with objections and rule 12 deals with the hearing and decision of the claims and objections. What is final in rule 12 is the decision of the Electoral Registration Officer with regard to an objection. In other words, if he finds that the name of a particular person should be entered it shall be so entered in the electoral roll. Only to that extent is his decision final.

41. The learned counsel for the petitioner has placed reliance upon the English case of (1874) 9 C.P. 734 and has submitted that the section which came up for interpretation before the English Court was similar to Section 6-F of the Town Areas Act, and while interpreting it the English Court held that the electoral roll (or the register as it is called there) is conclusive except in cases where persons are prohibited from voting by any statute or by the common law of Parliament. It was also contended that that decision has been noticed by the Supreme Court in the case of AIR 1954 Supreme Court 520 and their Lordships of the Supreme Court had said that that case clearly lays down the law on the subject in England. I have examined that case with great care. The circumstances and the law under which that decision was given are quite different from the circumstances and the law in our case. It was contended that the 7th section of the Ballot Act, 1872 (35 and 36 Vict. c. 33) (hereinafter referred to as the English Act) is very similar to Section 6-F of the U.P. Town Areas Act. Section 7 of the English Act runs as follows :

"At any election for a county or borough, a person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot paper and to vote Provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of Parliament, or relieve such person from any penalties to which he may be liable for voting."

It is submitted that Section 7 of the English Act and Sub-Sections (1) and (2) of Section 6-F of the U.P. Town, Areas Act (which I have already quoted in an earlier part of this judgment) are very similar and, therefore, the decision of the English Court in Stowe's, case (1874) 9 CP 734 mentioned above must be followed by this Court. But, a full reading of the report of the English case shows that the decision is not based only on an, interpretation of Section 7 of the English Act but also on an interpretation of Section 79 of the Registration Act, 6 and 7 Vict. c 18, which existed from before and was allowed to continue in the Ballot Act after deleting the provisos to that Section 79, and also on the history of legislation. Section 79 of the Registration Act, after deleting the provisos, runs as follows.

"At every future election for a member or members to serve in Parliament for any county,

city, or borough, the register of voters so made as aforesaid shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which are annexed to their names respectively in the register in force at such election."

The argument advanced at the English bar was, to quote the learned Judges from the report of the case mentioned above, as follows.

"The effect of the Ballot Act, it was contended, was, by repealing the 98th section of the Registration Act and the 60th section of the Reforms Act, to remove from the Statute Book the provisions which made the register conclusive; and the 79th section, as it applied only when it was first enacted to the procedure at elections and affected only the returning officer, so such was its only effect now; and the 7th section of the Ballot Act is to be read, in the same manner, as applying only to procedure at elections, and by its proviso practically leaving open the inquiry into any voter's vote, which, although it may be on the register, is capable of being impeached on any legal ground."

Lord Chief Justice Coleridge, while dealing with this argument, observed as follows :

"The argument is ingenious, but, I think, untenable. From the Reform Act to the Ballot Act, the tendency of legislation has been to make, with certain exceptions, the register conclusive. There is nothing in the words 'at' or 'in' 'any election' (for, both propositions are used), to limit the enactment to the time of polling only; and, although it is true that the 58th and 60th sections of the Reforms Act and the 98th section of the Registration Act have been repealed, the enacting part of the 79th section of the Registration Act has been carefully kept in force; which is the more remarkable, because the provisos to that section which insist on the retention of certain incidents of the qualification up to the time of voting are expressly repealed.

"No answer has been given to the question, and probably no answer could be given to it, what effect is to be ascribed to this 79th section of the Registration Act, beyond and other than the 7th section of the Ballot Act, if both these sections have to do with procedure only. The retention of the earlier section would be only conclusive on the returning officer.

I think the time construction of these sections, which alone remain is, to make the register conclusive not only on the returning officer, but also on any tribunal which has to inquire into elections, except in the case of persons ascertained by the proviso. These are, persons prohibited from voting by any statute or by the common law of Parliament."

42. It would therefore be noticed that the English case is based upon the interpretation not only of Section 7 of the Ballot Act but also Section 79 of the Registration Act. Lord Chief Justice Coleridge held that because of the retention of Section 79 it could not be held that the 7th section

of the Ballot Act makes the register only conclusive on the returning officer. In the U.P. Town Areas Act there is no section analogous to Section 79 of the Registration Act. We have only one section i.e. Section 6-F of the U.P. Town Areas Act. In the absence of a provision in the U.P. Town Areas Act similar to Section 79 of the Registration Act, I do not see how it can be said that the English case is a direct authority on the facts of our case. Lord Chief Justice Coleridge also held that the register of voters was final on the ground that, from the Reform Act to the Ballot Act; the tendency of legislation has been to make the register conclusive. There is no such legislative history in our case and, in my opinion, the English case is quite distinguishable and can have no application to the facts of the case before us.

43. Learned counsel for the petitioner has placed reliance upon the case of AIR 1953 Nagpur 166. In that case an application for a writ of mandamus and other reliefs was made by person who had been defeated in an election held to the Corporation of the City of Nagpur. It appears that in that case no election petition was filed and a writ was moved in the Nagpur High Court praying for a declaration that the election in question was not in accordance with law, having been held on erroneous electoral rolls, and for prohibiting the State Government from notifying the names of the respondents in the case as councilors under Section 16 of the City of Nagpur Corporation Act, and further for restraining the respondents from taking part in the selection of six councilors. The learned Judges held that the provision of the City of Nagpur Corporation Act made the electoral roll conclusive on the point of the right of a voter to vote in any particular ward or constituency. First of all, that case was decided on the provisions of the City of Nagpur Corporation Act and it has not been shown to us that the provisions of that Act are similar to the provisions of the U.P. Town Areas Act. Secondly, there the question was not as to whether an election tribunal had the power to go into the question as to whether a particular person was rightly or wrongly enrolled as a voter. We are here concerned with the interpretation of rule 48 of the Rules and that case is no guide in deciding the question before us.

44. The next case on which the learned counsel for the petitioner placed reliance is that of AIR 1957 Nagpur 63. In this case the learned Judges followed the earlier case i.e. the one mentioned above. This case also cannot help us in interpreting the language of rule 48 of the Rules as also the other provisions of the U.P. Town Areas Act.

45. The learned counsel for the petitioner has also placed reliance upon paragraph 544, page 302 Vol. 14 of Halsbury's Laws of England (Simon's Edition). It is not necessary to reproduce that paragraph here because that paragraph deals with the law in England and can be no guide in interpreting rule 48 of the Rules. It may also be noticed that that paragraph is based upon the decision of the case reported in (1874) 9 CF 734 which I have already discussed above. In my opinion the present case has got to be decided on the provisions of the U.P. Town Areas Act and especially on the language of rule 48 of the Rules.

46. It has also been contended that clause (13) of Section 2 of the U.P. Town Areas Act defines

an 'elector' as follows :

" 'elector', in relation to a ward, means a person whose name is for the time being entered in the electoral roll of that ward."

47. Rule 5 of the Uttar Pradesh Town Areas (Conduct of Election of Chairman) Rules 1953 reads as follows :

"Electors for election of Chairman - The electors in a town area shall for the purpose of election of the Chairman be the electors entered in the electoral rolls of the wards of that town area and it shall not be necessary to prepare or revise separately the electoral rolls for the election of the Chairman."

It is contended that for the purpose of election of the Chairman the persons whose names are for the time being entered in the electoral roll will be deemed to be of the electors. It is contended that reading these provisions with Section 6-F of the U.P. Town Areas Act it is clear that if a person's name is entered in the electoral roll he has got a right to vote. It is not disputed that he has got such a right. The question is that even though the inclusion of the name of a person in the electoral roll may be conclusive against the polling officer and the person so named has got a right to vote, does it justify the conclusion that the tribunal cannot go into the question whether or not the name of that person was correctly entered in the electoral roll in my opinion there is nothing in the U.P. Town Areas Act or rule 48 of the Rules which takes away from the tribunal the power to decide that question.

48. It has been argued on behalf of the petitioner that there is a difference between "unqualification" (or want of qualification) and "disqualification" and it is contended that even though a person may not be qualified to be enrolled as an elector, if his name is entered in the electoral roll he has got a right to vote and that right cannot be questioned even before an election tribunal, but if that person incurs a disqualification he has got no right to vote and if he has no right to vote the election tribunal can go into that question. It is true that there is a difference between "unqualification" and "disqualification". The provisions of Sections 12-B to 12-11 of the U.P. Municipalities Act have been made applicable to Town Areas. Section 12-C of the U.P. Municipalities Act runs as follows :

"12-C. Subject to the provisions of Section 12-D, every person who is qualified to be registered in the Assembly electoral roll relating to the area comprised in the ward or whose name is entered therein shall be entitled to be registered in the electoral roll of the ward."

Section 12-D of the same Act is :

"12-D. (1) A person shall be disqualified for registration in an electoral roll if he is disqualified for registration in the Assembly rolls.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll of the ward in which it is included :

Provided that the name of any person struck off the electoral roll of a ward by reason of disqualification under Sub-Section (1) shall forthwith be reinstated in that roll if such disqualification is, during the period such roll is in force, removed under the provisions of this Act, or under any other law authorizing such removal."

Inasmuch as there is a reference under Section 12-C of the U.P. Municipalities Act to the Assembly electoral roll it is necessary to examine the provisions of Section 19 of the Representation of the People Act, 1950 (XLIII of 1950) which deals with the conditions of registration or, in other words, the qualifications for being registered as a voter. Section 19 says :

"Condition of registration - Subject to the foregoing provisions of this Part, every person
(a) has been ordinarily resident in a constituency for not less than 180 days during the qualifying period, and
(b) was not less than 21 years of age on the qualifying date,

shall be entitled to be registered in the electoral roll for that constituency."

Section 16 of the Representation of the People Act deals with disqualifications. It runs as follows :

"Disqualifications for registration in an electoral roll - (1) A person shall be disqualified for registration in an electoral roll if he -

(a) is not a citizen of India; or

(b) is of unsound mind and stands so declared by a competent court; or

(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt and illegal practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included.

Provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under clause (c) of Sub-Section (1) shall forthwith be reinstated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorizing such removal."

In the Representation of the People Act conditions of registration or qualifications to be enrolled as an elector have been separately treated from disqualifications. To my mind want of qualification or unqualification is distinctly different from disqualification. As the provisions of Sections 16 and 19 of the Representation of the People Act apply to Town Areas also it must be held that there is a difference between disqualification and want of qualification in the law

relating to the elections in a Town Area also.

49. The learned counsel for the respondents relied upon the case of 1953 All LJ 667 : AIR 1954 Allahabad 415 and the following passage has been cited before us :

"The conclusion which I have reached, although not without some hesitation, is that in Section 12-D of the Municipalities Act the word 'disqualified' is used as meaning the opposite to 'qualified', that is ns meaning 'not qualified'." On the basis of this case it is contended that there being no difference between disqualification and want of qualification, if it is open to an election tribunal to investigate as to whether or not a person who has voted was disqualified from voting it was equally open to the tribunal to decide whether or not he was qualified at all to be enrolled as an elector.

With the greatest respect I am unable to agree with the decision mentioned above because I nave already held that want of qualification or "unqualification" is quite distinct from "disqualification". The result of unqualification or want of qualification is that a person cannot at all be enrolled as a voter, but the result of a disqualification is that I though he is entitled to be recorded as a voter his name is liable to be struck off on any of the grounds I en which he can be disqualified under the law.

It is not possible to support the judgment of the election tribunal on the basis of this decision. But as I have said above I am of the opinion that the language of R. 48 of the Rules is wide enough to entitle an election tribunal to decide whether or not a particular person was correctly enrolled as a voter. For these reasons I hold that the decision of the election tribunal is correct and does not require any interference.

50. I would, therefore, dismiss the petition with costs.

BY THE COURT

51. We allow this petition and direct that a writ of certiorari shall issue quashing the order of the Election Tribunal, opposite party No. 1, dated the 29th April 1958. The Tribunal shall now proceed to decide the election petition according to law.

Petition allowed.