

ANDHRA PRADESH HIGH COURT

Chirala Goverdhanareddy

Vs.

Election Tribunal, Bapatla

Writ Petns. Nos.1522 and 1684 of 1964

(P. Jaganmohan Reddy, C.J., Sambasiva Rao and Kuppuswami, JJ.)

27.12.1967

JUDGMENT

Sambasiva Rao, J.

1. A common question that arises in both these writ petitions is whether the Election Tribunal, constituted under the Andhra Pradesh Gram Panchayat Act, can enquire into the age of a candidate in order to find out whether he was qualified to stand as a candidate on the date of his nomination. A Division Bench consisting of our learned brothers, Basi Reddy and Gopalrao Ekbote JJ, referred the two writ petitions to a Full Bench as they raised the question which is of great importance and is frequently raised and in view of the conflict between two Division Bench decisions of this Court (viz In *Radhakrishna Murthy v. Sub Judge, Bapatla*¹. and *K. Ramachandram v. Seshayya*²,

2. The material facts which are necessary for the determination of this question may be stated briefly.

3. In Writ Petition No. 1522 of 1964 the petitioner was declared to have been elected as a member of the Gram Panchayat of Nallamothuvaripalem Panchayat in the Guntur District from Constituency No. 3 with a majority of seven votes, in an election held on 2-6-1964, under the Andhra Pradesh Gram Panchayats Act (2 of 1964) which will hereinafter be referred to as the Act. The respondent filed an election petition in O. P. No. 24 of 1964 before the Election Tribunal, at Bapatla, under Rule 49 (1) of the Rules framed under the Act, for conduct of election of members to Gram Panchayats, for setting aside the election of the petitioner on two grounds. The first was that the petitioner had not the requisite age of 21 years when he was enrolled as a voter in the voters list and also when he filed the nomination and that, therefore, he was not entitled to be included in the voters list and to contest in the election held on 2-6-1964. The second ground was that the petitioner committed or abetted the commission of various election offences. However, when the matter came up for trial the second ground was given up. It was contended for the petitioner before the Election Tribunal that his name was found on the electoral rolls of the Panchayat and, therefore, he had every right to be nominated as a candidate and to contest the election and that the Election Tribunal cannot go behind the electoral roll and

¹(1960) 2 Andh WR 308

²(1961) 2 Andh WR 23

investigate into the question of age of a candidate. The Election Tribunal found on the basis of a birth extract filed before it that the petitioner was only 19 years of age and that he being below the requisite age of 21 years, which gives him the qualification to be enrolled as a voter, could not contest for the election. Holding that it had the jurisdiction to go into the question of the age of the candidate it set aside the election of the petitioner and directed a fresh election to be held. The petitioner, therefore, filed the present writ petition for quashing the said order of the Election Tribunal.

4. Similarly in the Writ Petition No 1684 of 1964 the petitioner's election, as a member of the Repaka Gram Panchayat, in the election held on 4-6-64 from Constituency No. 2, was questioned by the first respondent in the election petition O. P. No. 24 of 1964 on the file of the Election Court, Rajam. The ground there also was that the petitioner was below 21 years of age and that therefore, he had no right to be included in the voters list and to seek election on 4-6-1964. The election tribunal found that the petitioner was aged less than 21 years at all material times and therefore, his inclusion in the electoral roll and his nomination as a candidate, was illegal and contrary to the provisions of law and in that view set aside his election. Aggrieved by that decision the petitioner came up to this Court by way of this writ petition for quashing that order.

5. The age of the two petitioners is a question of fact and the Election Tribunal found in both the cases that the petitioners were below 21 years of age at the material times. That question cannot be canvassed in writ petitions and the learned counsel have not sought to question those findings before us. They have proceeded to argue on the basis that the two petitioners were below the age of 21 years when they were enrolled as voters when they were nominated as candidates for election, and also when the election actually took place.

6. What they have, however, contended is that it is a fact that they were enrolled as voters and their names were found in the electoral rolls. The electoral roll prepared under the Act is final and conclusive. A person, whose name is entered in the electoral roll is qualified to stand as a candidate. The election Tribunal has no jurisdiction to go behind what is contained in the electoral roll and to make an enquiry in regard to the age of a candidate and to hold that he was not entitled to contest the election. It has been contended that the Act does not prescribe the qualification of age but merely adopts the assembly roll as the basis of election and it is not, therefore, competent for the Tribunal to go behind the roll.

7. On the other hand, it has been contended by the Government Pleader for the respondents that the very fact the assembly roll is adopted for the purpose of the Gram Panchayat Election also brings in its wake the objections which can be raised in regard to the qualification and lack of qualification of a voter, as well as a candidate. Article 326 of the Constitution of India lays down the principle of adult suffrage for the Assembly and Parliament elections and it is on the basis of that adult suffrage prescribed by the Constitution that the electoral roll for the legislative assembly is prepared. Therefore the electoral roll prepared for the election to the legislative assembly must be in conformity with the Constitutional provisions. Since that electoral roll is adopted for the Gram Panchayat Election also the electoral roll for the Gram Panchayat election should also be in consonance with the Constitutional provisions. Since a person below the age of

21 years cannot be enrolled as a voter, in view of the provisions of the Constitution read with the Representation of the People Act, 1950, the inclusion of a person below the age of 21 years in the electoral roll of the Gram Panchayat also is null and void. Therefore, it has been contended for the respondents that the inclusion of the petitioners' names in the electoral rolls must be deemed to be non est and the election Tribunal has every jurisdiction to go into the question and set aside the election of the petitioners, as their election was vitiated by non-compliance with the provisions of law.

8. In order to appreciate the relative merits of these contentions, it is necessary to notice the scope and extent of the relevant provisions of the Act and the Rules made thereunder as also the provisions of the Constitution and the Representation of the People Act, 1950. Section 14 of the Act which relates to the preparation and publication of the electoral roll for a Gram Panchayat lays down.

"Preparation and publication of electoral roll for a gram panchayat:

(1) The person authorised by the prescribed authority in this behalf shall prepare every calendar year for the gram panchayat a draft of electoral roll, which shall consist of such part of the electoral roll for the Assembly Constituency published under the Representation of the People Act, 1950 as revised or amended under the said Act, up to a date to be specified by the Government in this behalf, as relates to the village or any portion thereof, and shall cause such draft to be published in such manner as the Government may direct.

Explanation: Where in the case of any Assembly Constituency there is no distinct part of the electoral roll relating to the village, all persons whose names are entered in such roll under the registration area comprising the village and whose addresses as entered in such roll are situated in the village shall be entitled to be included in the electoral roll for the gram panchayat prepared for the purpose of this Act.

(2) After the expiration of thirty days from the date of the publication of the draft of the electoral roll under sub-section (1), the person authorised by the prescribed authority in this behalf shall publish in such manner as the Government may direct, the final electoral roll for the gram panchayat, incorporating therein such alterations or amendments as are necessary for the purpose of bringing it into accord with the electoral roll for the relevant Assembly Constituency as it stands on the date of expiration of the thirty days aforesaid.

(3) The final electoral roll published under sub-section (2) shall be the electoral roll for the gram panchayat and it shall remain in force till a fresh electoral roll for the gram panchayat is published in the succeeding calendar year in the manner specified in the foregoing subsections.

(4) The electoral roll for the gram panchayat shall be divided into as many parts as there are constituencies so that the parts relating to all constituencies shall have equal number of voters;

Provided that the surplus number of voters, if any, remaining after such division shall be included in the part relating to the last constituency.

(5) Every person whose name appears in the part of the electoral roll relating to a

constituency shall subject to the other provisions of this Act, be entitled to vote at any election which takes place in that constituency while the electoral roll remains in force and no person whose name does not appear in such part of the electoral roll shall vote at any such election.

(6) No person shall vote at an election under this Act in more than one constituency or more than once in the same constituency and if he does so all his votes shall be invalid.

Explanation: In this section, the expression "Assembly Constituency" shall mean a constituency provided by law for the purpose of the elections to the Andhra Pradesh Legislative Assembly." Section 16 which deals with qualification of candidates provides:

"No person shall be qualified for election as a member of a Gram Panchayat unless his name appears on its electoral roll."

Section 17 deals with disqualification of officers and servants of State or Central Government or of local authorities and Section 18 deals with disqualification of persons convicted of election offences. Then Section 19 which provides for disqualification of candidates lays down- "(1) A person who has been sentenced by criminal court-

(a) to imprisonment for an offence under the Untouchability (Offences) Act, 1955,

(b) to imprisonment for a period of not less than two years for any offence other than an offence not involving moral delinquency, such sentence not having been reversed or the offence pardoned, shall be disqualified for election as a member while undergoing the sentence and for five years from the date of expiration thereof;

Provided that the Government may direct that such sentence shall not operate as a disqualification.

(2) A person shall be disqualified for being chosen as a member, if on the date fixed for scrutiny of nominations for election, or on the date of nomination under sub-section (2) of Section 13;

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

(b) a deaf, mute or suffering from leprosy;

(c) an applicant to be adjudicated an insolvent or an undischarged insolvent;

(d) interested in a subsisting contract made with, or any work being done for, the gram panchayat;

Provided that a person shall not be deemed to have any interest in such contract or work by reason only of his having a share or interest in-

(i) a company as a mere share-holder but not as a director;

(ii) any lease, sale or purchase of immovable property or any agreement for the same; or

(iii) any agreement for the loan of money or any security for the payment of money only; or

(iv) any newspaper in which any advertisement relating to the affairs of the gram panchayat is inserted;

(e) employed as paid legal practitioner on behalf of the gram panchayat or as legal practitioner against the gram panchayat;

- (f) an honorary magistrate under the Code of Criminal Procedure, 1898, with jurisdiction over any part of the village;
- (g) already a member of the gram panchayat whose term of office will not expire before his fresh election can take effect or has already been elected as a member of the gram panchayat whose term of office has not yet commenced;
- (h) in arrears of any dues otherwise than in a fiduciary capacity, to the gram panchayat up to and inclusive of the previous year, in respect of which a bill or notice has been duly served upon him and the time, if any, specified therein for payment has expired."

Thus, while Section 19 provides for disqualifications of candidates, Section 14 (1) adopts the electoral roll for the assembly constituency, published under the Representation of the People Act, 1950, as the draft of the electoral roll, for the Gram Panchayat and that such draft shall be published in the manner prescribed. Sub-section (2) requires that after the expiration of 30 days from the date of the publication of the draft of the electoral roll, the final electoral roll for the Gram Panchayat, shall be published incorporating therein such alterations or amendments as are necessary for the purpose of bringing it into accord with the electoral roll for the relevant Assembly Constituency as it stands on the date of expiration of the aforesaid 30 days. It should be noted in this context that the alterations or amendments that can be made in the draft of the electoral roll are only such as would be necessary to bring the electoral roll of the Gram Panchayat into accord with the Electoral roll for the relevant Assembly Constituency. Thus the scope of the amendments or alterations is strictly limited. It is also to be noticed that there are no separate rules framed for the purpose of making the alterations or amendments. The reason is obvious. Since the electoral roll for the Assembly Constituency as prepared under the Representation of the People Act, 1950 is adopted for the Gram Panchayat Election also there is no need, and the legislature did not think it necessary to provide for the independent and separate procedure, in regard either to the preparation of the electoral roll for the Gram Panchayat or for preferring any objections thereto. Even the alterations or amendments that are to be made at the time of the preparation of the final roll are for the very limited purpose of bringing it into accord with the assembly electoral roll. It is thus clear that the electoral roll for the relevant assembly constituency, as it stands on the date of the expiry of the 30 days after the publication of the draft, is the roll for the Gram Panchayat election. It is also significant to note that the Act does not lay down any qualifications for enrolment as a voter in the electoral roll for the Gram Panchayat. It must necessarily follow that the qualifications for being a voter in the Gram Panchayat election are identical with the qualification, for being a voter in the assembly election. To put it in other words, it follows from the language of Sub-sections (1) and (2) of Section 14 that only those persons who are qualified to be enrolled as voters in the electoral roll for the assembly constituency are to be enrolled as voters in the electoral rolls for the Gram Panchayat. If one is not qualified to be registered as a voter for the assembly constituency he has neither the qualification nor the right to be enrolled as a voter in the electoral roll for the Gram Panchayat.

9. At this stage it is necessary to examine the material provisions of the Constitution and the Representation of the People Act, 1950, that are relevant for the purpose of preparing electoral roll for the Assembly Constituency, because it is these provisions that determine the basis on which the electoral roll to the Gram Panchayat also, is prepared. Article 326 of the Constitution lays down that-

"The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; 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."

This Article not only lays down the qualifications for persons being registered as a voter in so far as the elections to the House of the People and the legislative assemblies are concerned, but also the disqualifications. The two qualifications that are prescribed under this Article are firstly, one should be a citizen of India and secondly he should not be less than 21 years of age, on the date prescribed in that behalf, in order to be entitled to be registered as a voter. It is important to note that the provision that elections to the House of the People and the legislative assemblies shall be on the basis of adult suffrage is mandatory. Therefore, the Constitutional requirements in regard to the qualification of person for being registered as a voter are that one should not only be a citizen of India but should also be not less than 21 years of age on the prescribed date. If these two Constitutional requirements are not satisfied a person has no right to be registered as a voter. In order to implement these constitutional requirements the Representation of the People Act, 1950 also lays down in Section 19 the conditions of registration in the following terms:

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

(a) is not less than twenty-one years of age on the qualifying date, and

(b) is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency." Section 19 of the Representation of the People Act, 1950, merely carries out and implements the principle and mandate of the Constitution, by fixing the minimum age for qualification to be registered as a voter as 21 years. It is true that a law can be made prescribing the minimum qualifying age as more than 21 years. But, in view of Article 326 it cannot be less than 21 years. Even if the Representation of the People Act, 1950 or any other Act lays down any age limit less than 21 years of age as a qualification for a person to be registered as a voter for an assembly it would be unconstitutional and, therefore, invalid. On the same reasoning, it ought to follow that if any person who is less than 21 years of age is registered as a voter such registration is null and void, though he may be a citizen of India and does not incur the other disqualifications provided in Article 326. The same rule should apply to the electoral roll for the Gram Panchayat also because by virtue of Section 14 of the Act, the electoral roll for the legislative assembly is made the electoral roll for the Gram Panchayat also. If a person has no qualification to be registered as a voter of the legislative assembly, he cannot be a voter for the Gram Panchayat also. It follows that a person who is less than 21 years of age shall not be registered as a voter in the assembly electoral roll, and, therefore, in the Gram Panchayat electoral roll as well. If any such registration is made it is unconstitutional, as it is repugnant to the provisions of Article 326 of the Constitution.

10. We have already observed that neither the Act nor the Rules provide for any procedure in regard to the registration of voters. It simply adopts the electoral roll prepared for the assembly constituency under the Representation of the People Act, 1950. Rules providing for the registration of voters, preparation of electoral rolls and preferring of claims and objections in regard thereto, are made under the Representation of the People Act under the name and style of 'the Registration of Electors Rules, 1960". Rules 10 to 27 of the said rules provide for an elaborate procedure for the publication of draft rolls for lodging claims and objections, procedure to be adopted in hearing the claims and objections, enquiries into claims and objections and appeals from the orders of the electoral officer and for the preparation of the final rolls.

11. Section 100 of the Representation of the People Act, 1951 lays down the procedure for declaring an election as void. The relevant provision of that section is-

- (1) "Subject to the provisions of subsection (2) if the High Court is of opinion-
- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act (or the Government of Union Territories Act); or
 - (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
 - (c) that any nomination has been improperly rejected; or
 - (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-
 - (i) by the improper acceptance of any nomination, or
xx xx xx
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act."

It can be seen that rule 59 (c) made under the Act for conduct of the elections largely corresponds with the aforesaid provision. Section 100 of the Representation of the People Act, 1951. It is very significant to note that Section 100 (1) (a) provides for declaring an election of a returned candidate void on the ground that on the date of his election he was not a qualified candidate. If he was not qualified to be registered as a voter then he would not be a qualified candidate, and for that reason his election can be set aside.

12. Coming back to the provisions of the Act a comparative reading of subsection (5) of Section 14 and Section 16 brings out the distinction between the right to vote and the qualification for becoming a candidate in the election of Gram Panchayat. Sub-section (5) to Section 14 puts the right to vote in both positive and negative forms. It lays down that every person whose name appears in the electoral roll shall be entitled to vote at any election held during the time while that electoral roll remains in force and it also forbids any person whose name does not appear in the roll from voting in any such election. It is, therefore, to be seen that in so far as the right to vote at an election of the Gram Panchayat is concerned it is sufficient if the person's name appears in the electoral roll. If his name appears in the electoral roll, he shall have the right to vote and if it

does not so appear, he has no such right. But, Section 16 of the Act which deals with the qualification of candidates puts the position only in a negative form. According to it unless his name appears in the roll, no person shall be qualified to be elected as a member. From this it follows that the mere appearance of a person's name in the electoral roll is not by itself, sufficient to qualify him to seek election as a member. He must satisfy the other requirements of law.

13. This distinction between the qualification to be a voter and the qualification to be a member is also brought out by the relevant rules framed under Section 217 (2) (i) of the Act for the conduct of election of members to Gram Panchayats. Rule 25 of the said Rules provides that –

"When a person presents himself to vote and at any time before a ballot paper is supplied to him, the polling officer may of his own accord and shall, if so required by a candidate or polling agent, put to such person either or both of the following questions:

(i) are you the person enrolled as follows: (reading the whole entry from the roll)?

(ii) have you already voted at the present election at this polling station or at any other polling station?

and the person shall not be supplied with a ballot paper unless he gives an unqualified answer to the question or questions put to him and unless his answer to the first question is in the affirmative and the second is in the negative. Except as mentioned herein, every person whose name is found on the electoral rolls shall be entitled to be supplied with a ballot paper."

14. Thus every person whose name is found in the electoral roll, subject to his answers to the aforesaid two questions is entitled to vote. The position in regard to the nomination of candidates is different. Rule 4 (1) of the aforesaid Rules provides that every nomination of every candidate shall be made in form No. 1. Form No. 1, framed as per R. 4 (1), prescribes the form of the nomination paper. Item 5 in the nomination form relates to age. The candidate who filed the nomination paper should not only give his age in item (5) of the form, but also should make the following declaration.

"I declare that I am willing to stand for election and my age as shown above is correct."

Rule 8, which corresponds with Section 36 of the Representation of the People Act, 1951 provides for procedure for scrutiny of nomination papers. Under the provisions of that rule any nomination is liable to be rejected on certain stated grounds. The first and third of such grounds are-

"(1) that the candidate is ineligible as a member of Gram Panchayat under Sections 16, 17, 18 or 19 of the Act; or

(3) that the candidate or his proposer has failed to comply with any of the provisions of Rule 4 or 6."

Therefore, if a person's name does not appear in the electoral roll, or if he is subject to any of the disqualifications mentioned in Sections 17, 18 or 19 his nomination paper will be rejected. Similarly, if the nomination paper of a candidate fails to comply with the requirement of Rule 4

(1) viz., requirement of the nomination paper as prescribed by Form No. 1, the nomination paper is liable to be rejected. That shows that if the declaration as to the age is not done by a candidate in accordance with Form No. 1 his nomination paper can be rejected. Rule 8 (2) also provides that-

"The Election Officer shall then examine the nomination papers and shall decide all objections which may be made at the time to any nomination and may either on such objection or on his own motion after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds."

Then a number of grounds on which a nomination can be rejected are enumerated. Then Sub-rule (3) of Rule 8 further lays down that :

"The Election Officer shall endorse on each nomination paper, his decision accepting or rejecting the same and, if the nomination paper is rejected, he shall record in writing a brief statement of his reasons for such rejection. The scrutiny shall be completed on the date appointed in this behalf under rule 3 and no adjournment of the proceedings shall be allowed."

Then Rule 9 provides for an appeal to the Revenue Divisional Officer or to the Deputy Collector against any order of the Election Officer, rejecting the nomination of a candidate. Then Rule 59 of the Rules provides for the decision of an election petition filed questioning the validity of an election. It provides that-

"If in the opinion of the election Court

(c) the result of the election has been materially affected by any irregularity in respect of a nomination paper or by the improper reception or refusal of a nomination paper or vote or by any non-compliance with the provisions of the Act or the rules made thereunder.

"The election of such returned candidate shall be void."

Either the improper reception or refusal of a nomination paper or vote or any non-compliance with the provisions of the Act or the Rules can be a ground for declaring the election as void.

15. Section 16 of the Act has to be read in the light of the above provisions of the Constitution, the Representation of the People Act and Section 14 of the Act. Simply because a person's name appears on the electoral roll, he is not qualified by that reason alone, to file a nomination or to be elected as a member of a Gram Panchayat. It is true that he must satisfy the requirement of his name appearing in the electoral roll. But, it does not follow that because a person's name appears in the electoral roll he is entitled to have his name included in it or that he is entitled to file his nomination or to be elected as a member of the Gram Panchayat. While Section 14 (5) which corresponds with Section 62 (1) of the R. P. Act, 1951 declares both positively and negatively the right of every person, whose name appears in the electoral roll to vote and thereby ensures the right of every person whose name so appears in the electoral roll to vote, Section 16 significantly puts the right to be nominated, only in the negative form. That is why Rule 8 of the Rules

provides for the scrutiny of the nomination papers and rejection of the nomination papers if certain grounds exist. Had Section 16 unqualifiedly declared the qualification and right of every person, whose name appears in the electoral roll, to be nominated and elected as a member of the Gram Panchayat, then Rule 8 would become wholly otiose. In the same manner as Rule 25 provides for two questions being put to every voter, who seeks to vote, regarding his registration as a voter in the electoral roll rules would also have limited the scrutiny of the nomination paper only to the appearance of the name of the nominated person in the electoral roll. Rule 8 is clearly not only consistent but also in conformity with the provisions of Rule 16. It provides for examination as to whether the nominated candidate satisfies the other requirements prescribed under law in this behalf and Section 16 of the Act leaves full scope to this. The age of the candidate is certainly one of such requirements. If he is of less than 21 years of age he does not have the qualification prescribed by the Constitution and the law, which is necessary for him to be registered as a voter. Despite the lack of qualification if he is enrolled, such entry would be unconstitutional and, therefore, null and void. It means that though his name appears in the registered list in black and white, it is non est for all election purposes and it has no existence. That means, his name is not in the voters' list. Therefore, by virtue of the bar contained in Section 16 he cannot file his nomination and he cannot be a valid candidate in the election.

16. Rule 59 (c) of the Rules provides that an election can be set aside and declared void, if the result of the election has been materially affected by an improper reception or refusal of a nomination paper or a vote or by any non-compliance with the Act and the Rules made thereunder. Since the nominated person's name formally appears in the electoral roll, and no objection was raised at the time of scrutiny despite the fact that he was below 21 years of age, the case may not strictly come within the first limb of the rule, viz., improper reception of the nomination paper. But it is certainly covered by the latter limb of the rule viz., "by any non-compliance with the provisions of the Act or the Rules made thereunder." Because the very registration of the name of the nominated person in the voters' list is repugnant to the Constitution and to the Representation of the People Act which by necessary implication have been imported into the preparation of the electoral roll for a Gram Panchayat by Section 14 of the Act. Such registration would be vitiated by non-compliance with those provisions. The Election Tribunal has every jurisdiction under Rule 59 (c) to examine whether the election has been vitiated for any of the reasons mentioned therein. In order to examine whether the election has been materially affected by improper reception of a nomination paper or by any non-compliance with the provisions of the Act it must necessarily have the jurisdiction to go into the question whether the nominated candidate had the necessary qualification to be registered as a voter and thus had the qualification to contest the election. The aforesaid examination of the relevant provisions of law and the Rules made thereunder can lead only to this conclusion that the Election Tribunal can enquire into the age of the candidate in order to find out whether he was qualified to stand as a candidate on the date of his nomination and at the time of the election.

17. An examination of the case law on the point would also lead to the same conclusion. In *Durga Shankar Mehta v. Raghuraj Singh*³, the Supreme Court considered the scope and the applicability of Sections 36 and 100 (1) (c) and (2) (c) of the Representation of the People Act, 1951. As already stated, these two provisions roughly correspond to Rules 8 and 59 of the Rules relating to the Election Disputes framed under the Act. The election of one of the two successful candidates to an assembly constituency was under dispute in

³ AIR 1954 SC520

the case before the Supreme Court and the substantial ground on which that election petition was filed was that the candidate who was declared to have been elected was under 25 years of age at all material times and was consequently not qualified to be chosen to fill the seat in the Legislative Assembly. No objection was, however, taken before the returning officer in respect of the nomination of the successful candidate. Upholding the contention of the appellant and setting aside the election of the successful candidate. Their Lordships of the Supreme Court held-

"If the want of qualification of a candidate does not appear on the face of the nomination paper or of the electoral roll, but is a matter which could be established only by evidence, an enquiry at the stage of scrutiny of the nomination papers is required under the Act only if there is any objection to the nomination. The Returning Officer is then bound to make such enquiry as he thinks proper on the result of which he can either accept or reject the nomination. But when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to the nomination, the Returning Officer has no other alternative but to accept the nomination. This would be apparent from section 36, sub-section (7) of the Act, under which the electoral roll is conclusive as to the qualification of the elector except where a disqualification is expressly alleged or proved. The acceptance of the nomination paper by the Returning Officer in the latter case must be deemed to be proper acceptance. It is certainly not final and the Election Tribunal may, on evidence placed before it, come to a finding that the candidate was not qualified at all. But the election should be held to be void on the ground of the constitutional disqualification of the candidate and not on the ground that his nomination was improperly accepted by the Returning Officer. A case of this description comes under sub-section (2) (c) of Section 100 and not under sub-section (1) (c) of the section as it really amounts to holding an election without complying with the provisions of the Constitution." Their Lordships also held that-

"The expression "non-compliance with the provisions of the Constitution" in Section 100 (2) (c) is sufficiently wide to cover such cases where the question is not one of improper acceptance or rejection of the nomination by the Returning Officer, but there is a fundamental disability in the candidate to stand for election at all." Their Lordships proceeded further and observed that-

"When a person is incapable of being chosen as a member of a State Assembly under the provisions of the Constitution itself but has nevertheless been returned as such at an election, it can be said without impropriety that there has been non-compliance with the provisions of the Constitution materially affecting the result of the election. There is no material difference between "non-compliance" and "non-observance" or "breach" and this item in clause (c) of Sub-Section (2) may be taken as a residuary provision contemplating cases where there has been infraction of the provisions of the Constitution or of the Act but which have not been specifically enumerated in the other portions of the clause." Under Section 98 of the Act this is one of the orders which the Election Tribunal is competent to make. If it is said that Section 100 of the Act enumerates exhaustively the grounds on which an election could be held void either as a whole or with regard to the

returned candidate, we think that it would be a correct view to take that in the case of a candidate who is constitutionally incapable of being returned as a member there is non-compliance with the provisions of the Constitution in the holding of the election and as such sub-section (2) (c) of Section 100 of the Act applies."

Thus the Supreme Court, construing the provisions of Sections 36 and 100 of the Representation of the People Act, 1951, which are practically in pari materia with Rules 8 and 59 of the Rules under the Act, upheld the power of the Election Tribunal to declare the election of a candidate to be void, when the successful candidate has suffered the constitutional disability of not having the age qualification. It was also held in that case that if a candidate, who is constitutionally incapable of being returned as a member, his election would be vitiated by non-compliance with the provisions of the Constitution, in holding the election.

18. Satyanarayana Raju J., (as he then was) considered an identical question, as in the instant case, in *Viswanadhuni Venkata Kondayya v. Election Commissioner, Kanigiri*⁴, That case arose under the Madras Village Panchayats Act, which is a predecessor to the present Andhra Pradesh Gram Panchayat Act and whose provisions are largely in pari materia with the provisions of the present Act. In that case also, the petitioner's name was in the electoral roll, but he was, however, actually found to be below 21 years of age. Therefore, the Election Commissioner set aside his election. Rejecting the writ petition filed by the petitioner whose election has been set aside by the Election Commissioner, the learned Judge held that-

"Section 13 of the Madras Village Panchayats Act provides that no person shall be qualified for election as a member of a Panchayat unless his name appears on its electoral roll and Section 12(2) provides that every person whose name is included or who is qualified to be included in that part of the electoral roll for any territorial constituency of the State Legislative Assembly which relates to the village or any portion thereof shall be entitled to be included in the electoral roll for the panchayat and the electoral rolls for the legislative assembly are prepared on the basis of the provisions contained in Sections 19 to 21 of the Representation of the People Act. Under Section 19 of that Act a person must not be less than 21 years of age before he can be registered. The qualification as to age must be held by necessary intendment to be an essential requisite even in the case of a person who is qualified to vote or stand for election as a member of the Panchayat. It is no doubt true that the electoral roll must be regarded as final and conclusive except in cases where persons are prohibited from standing for election by any statute. In other words the rule is conclusive as to the qualification of the elector except where disqualification is expressly alleged or proved. On a review of the evidence, the Election Commissioner came to the finding that the petitioner was below 21 years of age at all material times. The propriety of this finding of fact, which is based on an appreciation of the evidence is not open to challenge before this Court.

The fact that no objection was taken to the nomination of the petitioner before the Returning Officer at the time of the scrutiny will not make any difference. The Returning Officer is bound

to take the entry in the electoral roll as conclusive but it is not certainly final. It is open to the Election Commissioner on the evidence placed before him to come

⁴1955 Andh LT (Civil) 75 : 1955 Andh WR 133

to the conclusion that the candidate was not qualified at all, he having been below 21 years of age at the time of the nomination and at the time of the election and also at the time when his name was included in the electoral roll." In coming to this conclusion the learned Judge relied upon the decision of the Supreme Court above referred to.

19. Similar, was the case in (1960) 2 Andh WR 308. It was a case of Municipal election, held under the Madras District Municipalities Act. The election of the successful candidate was questioned on the main ground that he was ineligible to stand as a candidate, being under 21 years of age. The Election Commissioner on an examination of the evidence placed before him, reached the conclusion that the successful candidate was less than 21 years of age and as such was not competent to stand as a candidate; with the result he invalidated the election. Aggrieved by that decision, the candidate filed a Writ Petition in the High Court. The relevant provisions of the Madras District Municipalities Act also are in pari materia with the provisions of the Act and the Rules framed thereunder. Section 44 of that Act also adopts the electoral roll for the Assembly Constituency as the electoral roll for the Municipal election. Therefore, one of the questions that arose in this case was, whether it was open in an election petition to raise the ground of want of qualification. Their Lordships of the Division Bench dealing with this contention referred to Section 19 of the Representation of the People Act, 1950 and Section 44 of the District Municipalities Act and observed that –

"A combined reading of Sections 19 and 44 of the Representation of the People Act established that it is only a person who is at least 21 years old that could get his name entered in the Electoral Roll and be qualified to seek election to the Municipal Council as a candidate. Any person who is below 21 years of age is not competent to stand as a candidate. The election of a candidate who is below 21 years of age is, therefore, contrary to law. It, therefore, amounts to "non-compliance with the provisions of the Act." It follows that the election of a person who lacks the requisite qualifications can be called in question under Rule 10(c) of the Rules made under the District Municipalities Act. Therefore, an election petition is open to a person entitled to launch it to raise the ground of want of qualification".

In coming to that conclusion their Lordships relied upon the Full Bench decision of the Madras High Court in *Selvarangaraju v. Doraiswami Mudaliar*⁵, wherein it was laid down that the disqualification under Section 49 of the Madras District Municipalities Act, 1920 could be made a ground for a petition before an Election Tribunal, challenging the election under Rules 1 and 10 (c) of the Rules framed under Section 303 of the Act.

20. The next decision that may be usefully referred to is that of the Supreme Court in *Brijendralal v. Jwalaprasad*⁶, The question that arose in that case was whether the candidate was of 25 years of age or not, and whether the Election Tribunal could go into that question. It was contended on the other side that the electoral roll was final and conclusive and would preclude any such enquiry. Repelling that contention, their Lordships referred to Section 36 (7) of the

Representation of the People Act, 1951 and observed:

⁵ ILR 52 Mad 732 (FB)

⁶ AIR 1960 SC 1049

"The use of the adjective 'conclusive' which qualifies 'evidence' is technically inappropriate because the presumption arising from the production of the certified copy is by no means conclusive". Again their Lordships observed that -

"Thus the position is that the certified copy of the relevant entry would prima facie show that the person concerned is not subject to any of the said disqualifications, but this prima facie presumption can be rebutted by evidence to the contrary." Then their Lordships proceeded to consider the relative scope of Section 19 of the Representation of the People Act 1950 and Section 36 of 1951 Act, and held that -

"Thus when a presumption is raised under Section 36 (7) it may mean prima facie that the person concerned is not less than 21 years of age and is ordinarily resident in that constituency; but for the validity of the nomination paper it has to be proved that the candidate has completed 25 years of age."

Once again, the Supreme Court by this decision, reiterated the jurisdiction of the Election Tribunal to go into the question in respect of the age of the candidate and that the entry in the electoral roll is not conclusive or final.

21. The Madras High Court had an occasion to consider this question in a very recent decision of a Division Bench in *S. V. Viswanathan v. Rangaswamy*⁷, That was a case which arose under the Madras District Municipalities Act. In an election to a Municipal Council both the writ petitioner and the first respondent secured equal number of votes. Lots were cast, as prescribed by the procedure, which resulted in the writ petitioner being declared elected. The first respondent questioned the election of the petitioner in an election petition. The material ground on which the election was challenged was, that one of the votes which were polled in favour of the petitioner was invalid, because on the date of the poll, the voter was below 21 years of age and was, therefore, incompetent to vote. After taking evidence, the Election Commissioner found that the said allegation was established. That decision resulted in the petitioner securing one vote less than the first respondent. Therefore, the Election Commissioner set aside the election of the petitioner and declared the first respondent to have been duly elected. The writ petition was filed against that decision of the Election Commissioner. This is thus a case where the validity of a vote was in question. The Writ Petition was allowed by a Single Judge of the High Court, on the ground that investigation into the disqualification of a voter, by reason of his being below 21 years of age, within the meaning of Article 326 of the Constitution, was outside the jurisdiction of the Election Tribunal. Thereupon the first respondent filed the Letters Patent Appeal which was considered by the Division Bench. Ramakrishnan J., who delivered the main judgment, reviewed the entire case law and observed in paragraph 14 that:

"Before us, learned counsel Sri M. K. Nambiar, appearing for the appellant, does not dispute the broad proposition thus laid down, that there is no provision in the District Municipalities Act which incorporates the age disqualification under Article 326 of the Constitution; but he urged that if it is found by the Tribunal that the voter in question, suffered a constitutional disability, it would have the effect of rendering the electoral roll,

so far as his inclusion therein is concerned non est and void. The reception of his vote would, therefore, be a case of an improper reception of a vote within the meaning of the first part of Rule 10(c) because it

⁷ AIR 1967 Mad 244

would amount to the receiving of the vote of a non-existent voter. This argument no doubt involves a fiction, the fiction being to treat the actual entry in the roll, of a voter's name, when the voter suffers from a fundamental constitutional disability, as null and void. The problem that we have been asked to consider in this case, is whether such an approach to the question can be permitted in the light of the various legal principles that have been pressed before us."

Later summing up the discussion the learned Judge, observed in the last sub-paragraph of paragraph 14 that –

"Learned counsel for the appellant urges that the case before us, is one where the action of the Returning Officer in receiving the vote of the disputed voter was improper because by a fiction his name itself should be deemed to have been not in the roll. We have to observe that the point stressed before us in this form, by the learned counsel for the appellant was not urged by him either before the Election Commissioner or before the learned Judge. This point was also not considered in the Full Bench decision of the Allahabad High Court quoted earlier and which was followed by Srinivasan, J. Learned counsel urges that it is the duty of Courts of Law as well as of Tribunals, to act in accordance with the provisions of the Constitution, and whenever and at whatever stage, their attention is drawn to the fact that there has been a patent violation of a constitutional provision, whether in legislating an enactment or in preparing a statutory instalment, the Court as well as Tribunals have a duty to give effect to the Constitution. In the present case, apart from the question about the self-contained nature of the District Municipalities Act and the rules framed thereunder, limiting the scope of investigation of Election Tribunal and determining their jurisdiction, when a specific breach of the Constitution in the preparation of the statutory instrument, whose contents have to be relied upon for decision in the present dispute, has been brought to the notice of the Election Tribunal, as well as of this Court, effect will have to be given to the consequences which will follow from such a breach. In the light of the authorities quoted above, we are of the opinion that such a constitutional breach involves the rendering of the electoral roll a nullity so far as the disputed voter's name is concerned, and his name entered in the roll must be deemed as non est, for the purpose of acceptance or reception of his vote."

In that view their Lordships allowed the appeal and set aside the election of the Writ Petitioner confirming the order of the Election Tribunal.

22. The case law above discussed would yield the result, that the mere entry in an electoral roll is not final or conclusive, in regard to the age of the candidate and it is open to the Election

Tribunal to enquire, in an election petition, into the age of the candidate and to find out whether he was duly qualified to seek the election. If a person does not complete the age of 21 years, when his name is registered in the electoral roll, he suffers a constitutional disability and, therefore the very entry of his name in the electoral roll is null and void and is non est. When such is the case, the Election Tribunal can set aside the election, as the election has been vitiated by non-compliance with the Act and the rules made there under.

23. The learned counsel for the petitioner, however, has relied upon some decisions of this Court, the Supreme Court and Other High Courts, which according to him take a different view. He has strongly relied upon a Division Bench decision of this Court in (1961) 2 Andh WR 23. In fact the conflict that is apparent between this decision and the earlier Division Bench decision of this Court, in (1960) 2 Andh WR 308, has led to the reference of these cases to a Full Bench. The question that arose in *Ramachandram v. D. Seshaiya*⁸, was whether an election could be impeached on the ground that voters who exercised their franchise were minors. It was also a case of an election of a village panchayat held under the provisions of the Madras Village Panchayats Act (10 of 1960). The contention raised there was that the electoral roll published for a Panchayat is final and conclusive as to the qualifications of the voters registered therein and that the election tribunal had no jurisdiction to go behind that electoral roll and enquire into the age of the voters. This contention found acceptance with the learned Judges. Chandra Reddy, C. J., speaking for the Division Bench observed :

"Hence, an elector who is a minor, i.e., who has not attained the age of 21, is not debarred from exercising his franchise when once his name is entered in the electoral roll. The minority of a person is more an absence of qualification than a disqualification, which imposes a restriction on the recording of his vote."

In that view, their Lordships held that there was neither an improper reception of the votes nor was there an infraction of the provisions of the Act or the Rules made thereunder, so as to bring the reception of the votes of the minors within the mischief of Rule 11 (c). In coming to this conclusion, their Lordships placed reliance on the Full Bench decision in *Ghulam Mohiuddin v. Election Tribunal, for Town Area, Sakit, AIR 1959 Allahabad 357 (FB)*, which we will presently refer to. But, what is to be noted in this case is, the contention that the voters who were found to be below the age of 21 years suffered a constitutional disability and for that reason their registration as voters was null and void and non est, was not raised before their Lordships and was not considered there.

24. What is more, when two earlier decisions of this Court including the one in (1960) 2 Andh WR 308, were relied on before them, their Lordships distinguished them by saying that the said two decisions

"afford no parallel to the instant case. Those two cases dealt with the disqualification of a candidate. They were not cases of persons below the age of 21 casting their votes. The question in both the cases was whether a candidate was qualified to stand for election to the Village Panchayat in one case and to the Municipal Council in the other. It was laid down in both the cases that a person below the age of 21 was not competent to stand as a candidate and the election of such a candidate was contrary to law. The qualifications

requisite for a candidate have relation to the election process. Hence those two decisions cannot give us much assistance in the context of the present enquiry."

Thus a distinction was sought to be made between the lack of qualification in a voter and lack of qualification in a candidate. In the present Act also distinction between the right of a person whose name appears in the electoral roll, to poll his vote and his right to seek

⁸(1961) 2 An WR 23

election is very much borne out by the difference in the language of Section 14 (5) and Section 16 of the Act, which has already been adverted to above. That apart, it is very doubtful, to what extent a person, who has incurred the constitutional disability in regard to the age, can validly exercise his vote, simply because his name finds a place in the electoral roll. If he has suffered a constitutional disability, in regard to age, and if for that reason, the very entry of his name in the electoral roll is null and void and non est, that would mean that he is not a voter and cannot, therefore, exercise his vote. That might lead to the result, that when such persons exercise their franchise in an election, such election would be vitiated by non-compliance with the provisions of the Act or the rules made thereunder. Anyway, the question of validity of a vote is not before us and it is not necessary for us to decide that question in these writ petitions. We do not, therefore, propose to deal with that question in these writ petitions.

25. But, the fact remains that in this decision in (1961) 2 Andh WR 23, the objection to the reception of the votes on the basis of the constitutional disability of the voters was not raised and the learned Judges themselves in the case kept the distinction between the voter's right to vote and the qualification of a candidate to seek election, when he is below the age of 21, in view. They, therefore, limited their decision to the case of a person below the age of 21 years exercising his vote and did not throw any doubt on the principle of the earlier decision of this Court in (1960) 2 Andh WR 308. Therefore, the decision in (1961) 2 Andh WR 23, does not render any assistance to the petitioner's contention.

26. The next decision that has been relied upon is the Full Bench decision in AIR 1959 Allahabad 359 (FB). That is also a case, where only the question of the validity of the reception of the votes of persons whose age was less than 21 years, was raised and on that basis the election was impugned. The majority view (Sahai J., dissenting) was that the fact of non-attainment of 21 years of age was not a disqualification for a person to exercise his franchise, once his name finds a place in the electoral roll. This conclusion was based upon the reasoning that in the provisions of the Uttar Pradesh Municipalities Act which fell for consideration before the learned Judges, the fact of non-attainment of 21 years of age was not specifically mentioned as a disqualification either for entry in the electoral roll or to vote. That Act provided that persons, whose names were, for the time being, entered in the electoral roll would be the electors for the purpose. The absence of such a disqualification and the provision empowering all persons, whose names appear in the electoral roll, to exercise their franchise, were the two reasons on which the learned Judges came to the aforesaid conclusion. It should be noted that the aspect of the constitutional disability of the voter and for that reason the voter's name should be deemed not to have been in the electoral roll, was not placed before the Full Bench and it was not, therefore, considered. For that reason, and also for the reason that the case before the Allahabad High Court also, was limited to the reception of a vote and not a case of the qualification of a candidate, we must hold that this decision also does not help the contention of

the petitioners. Before we part with this Full Bench decision of the Allahabad High Court we must refer to the view of Dayal J., that –

"Though the electoral roll prepared is not open to question with respect to the correctness of the entries noted therein, the election Tribunal can consider whether any of the persons entered in that roll suffered from any disqualification and 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."

Chaturvedi J., also held that :-

"The electoral roll is to be deemed final and conclusive as far as the fulfillment of qualification 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."

Sahai J., who expressed the minority view went further and held that :-

"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 though he is entitled to be recorded as a voter his name is liable to be struck off on any of the grounds on which he can be disqualified under the law." and also expressed the opinion that :-

"the language of Rule 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."

Therefore, this Full Bench decision of the Allahabad High Court also upheld the power of the Election Tribunal to enquire into the matter and find out whether a person whose name is entered in the electoral roll suffers from any disqualification.

27. Next, the learned counsel for the petitioners strongly relied upon the decision of the Supreme Court in *Ramaswamy v. B. M. Krishnamurthy*⁹, That case arose under the Mysore Village Panchayats and Local Boards Act (10 of 1959). An election petition was filed for a declaration that the appellant was not duly elected and for a further declaration that the first respondent was duly elected. The case of the first respondent was that on the date fixed for filing of nominations, the appellant's name was not in the authenticated list of voters. A further contention was also raised that the appellant was not ordinarily a resident of the village, and therefore, he was disqualified from standing for election from that constituency. The election Tribunal held that the appellant was ordinarily a resident of the said village and was therefore, qualified to be included in the electoral roll of the Panchayat. It further found that the appellant's name was not included in the authenticated list of voters. On that finding it set aside the election of the appellant and declared the first respondent as elected. On appeal, the High Court did not agree with the finding of the Election Tribunal that the appellant's name was not included in the authenticated list of voters. But, finding that the inclusion of the appellant's name was in direct violation of Rule 26 of the Representation of the Peoples Rules 1956, the High Court held that the inclusion of the appellant's name was void. In that view, the High Court also set aside the appellant's election.

Allowing the appeal, their Lordships of the Supreme Court relied upon Section 30 of the Representation of the People Act, 1950 wherein it is provided that no Civil Court shall have jurisdiction to question the legality of any action taken by and under the authority of the Electoral Registration Officer. Their Lordships, therefore said:

"The terms of Section 30 are clear and the action of the electoral registration
⁹ AIR 1963 SC 458

officer including the name of the person in the electoral roll, though illegal cannot be questioned in a civil Court; but it could be rectified only in the manner prescribed by law i. e., by preferring an appeal under Rule 27 of the Rules or by resorting to any other appropriate remedy."

After stating this, a distinction was made between illegality and nullity. It was held that the action of the electoral registration officer could not be considered a nullity, because he had made the order without giving notice, as required by the rules, that the non-compliance with the prescribed procedure did not affect his jurisdiction; and that such non-compliance could not make the officer's act non est. Their Lordships did not express any view about a case where an entry is non est or a nullity, though by necessary implication it should mean that any entry which is non est, cannot confer any qualification or right for a person, to seek election. Relying upon Section 10 of the Mysore Act which was before them their Lordships laid down that :-

"Every person whose name is in the list of voters of any Panchayat constituency shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected as a member of the Panchayat....."

Their Lordships of the Supreme Court held that since none of the disqualifications enumerated in Section 11 of the Act was attached to the appellant the appellant was certainly qualified to be elected as a member of the Panchayat.

28. Strong reliance has been placed by the learned counsel for the petitioners on the following observations of the Supreme Court in Para. 10 of its judgment :

"In view of Section 10 of the Act, it cannot be said that there is any improper acceptance of the nomination of the appellant, for, his name being in the list of voters, he is qualified to be elected as a member of the Panchayat. There is, therefore, no provision in the Act which enables the High Court to set aside the election on the ground that though the name of candidate is in the list, it had been included therein illegally."

This observation of the Supreme Court, does not afford any support to the contention of the petitioners in this case. It should be borne in mind that their Lordships were dealing with a case where the election of the appellant was questioned on the ground that he had not acquired the residential qualification. Absence of a residential qualification is not a constitutional disability. Article 326 of the Constitution lays down two qualifications for a person to be registered as a voter; viz., that he should be a citizen of India and that he should not be less than 21 years of age. Therefore, absence of a residential qualification is not a constitutional disability unlike the age

qualification. Therefore, their Lordships of the Supreme Court considered the inclusion of the name of a person who did not have the residential qualification as a mere illegality which could be rectified by an appeal or in any other manner prescribed by law. That was why their Lordships made a distinction between an illegality and a nullity. Even in the passage above quoted, their Lordships once again reiterated the distinction, by stating that the High Court was not empowered to set aside the election when the name of the candidate had been included in the electoral roll illegally. It is thus clear that the Supreme Court decision is no authority for the proposition that even in cases of the entries being null and void and non est, the person would have the right to seek election and that the Election Tribunal would have no jurisdiction to enquire into the validity of such an election. On the other hand, in our view, it is suggestive of the opposite view, which we have taken.

29. A decision of the Bombay High Court in *Dhondba Adku v. Civil Judge, Junior Division, Hinganghat*¹⁰, has also been brought to our notice. It was a case which arose under the Bombay Village Panchayats Act. The ground on which the election was questioned there was, that the voters' list did not conform to the wards, framed by the Collector. It was contended before Bombay High Court that having regard to the provisions of Section 13 of the Bombay Act, it was not open to the respondents to challenge the finality of the voters list in an election petition. The Bombay High Court took the view that once the voters' list is got corrected and finally published, it would be conclusive evidence under Section 13 (3) and could not be challenged. As has already been stated, the ground on which the electoral roll was questioned was that it did not conform to the wards, framed by the Collector. Obviously it is not a case, where certain voters incurred the constitutional disability and the entries relating to their names should be considered non est. Therefore, this decision does not give any support to the petitioners' contention.

30. The above discussion results in the conclusion that the Election Tribunal has jurisdiction to enquire into the age qualification of a candidate and set aside the election, if the successful candidate has not acquired the qualification in regard to age despite the fact that his name has appeared in the electoral roll, as a voter. It would, therefore, follow that the Writ Petitions fail and are dismissed with costs of the respondents. Advocate's fee Rs. 100.

Petitions dismissed.

¹⁰ AIR 1967 Bom 232