

MADHYA PRADESH HIGH COURT

Bhupendra Kumar Jain

Vs.

Y.S. Dharmadhikari

Misc. Petn. No. 763 of 1974
(S.M.N. Raina and M.L. Malik, JJ.)

28.11.1975

JUDGMENT

Raina, J.

1. This is a petition under Articles 226 and 227 of the Constitution.
2. The petitioner is an Advocate practicing in the High Court of Madhya Pradesh at Jabalpur and is as such a voter having a right to vote at the elections of the Madhya Pradesh State Bar Council (hereinafter referred to as 'the Council'). The elections of the members of the Council were held on 4-5-1974 and the result was published by the Secretary of the Council (respondent No. 2) on 4th June, 1974 vide Annexure A. Respondents 3 to 22 were declared duly elected and their names were published in the Madhya Pradesh Gazette, dated 21st June, 1974.
3. The petitioner has challenged the election of respondents Nos. 3 to 22 as contrary to law on the following, among other grounds:
 - (1) The term of office of the members of the previous Council expired on 19-10-1973 and, therefore, there was no validly constituted Council thereafter competent to hold the elections of the present Council under the Bar Council of Madhya Pradesh Election Rules, 1968 (hereinafter referred to as 'the Election Rules').
 - (2) No Returning Officer was appointed by the State Bar Council as required by clause (p) of Rule 3 of the Election Rules. The Secretary of the Council, who performed the functions of the Returning Officer at the elections, was not legally competent to discharge those functions and as such the election of

respondents 3 to 22 as member of the Council is wholly void.

(3) In the extract of the list of voters supplied to the Polling Officer for Indore polling centre, the name of Sri Basantilal Barania, Advocate, was omitted even though his name was on the electoral roll at S. No. 1 in the supplementary list of the electoral roll prepared by the Council. Shri Barania was, therefore, not permitted by the Polling Officer to cast his vote and this vitiated the entire election.

(4) Three hundred votes were wrongly rejected on the ground that the voter had indicated his first preference by the Roman 'T' and not by figure '1'.

4. In another petition, Misc. Petition No. 666 of 1974, the petitioner Shri R.C. Pandey, Advocate, Jabalpur who was one of the contesting candidates at the election but lost, has challenged the election of respondents 3 to 22 on some of the grounds specified above. The additional ground on which the election of the aforesaid members has been challenged is as follows:

"The names of the contesting candidates were printed on the ballot papers in alphabetical order and not in the order in which the nomination papers were filed and this caused prejudice to the petitioner."

5. Both the petitions were heard together as they involve several common questions of law and they will be considered in this order.

6. Before dealing with these petitions on merits, we propose to consider the preliminary objection raised by the respondents that the petitions are liable to be thrown out as petitioners had the alternative remedy of challenging the elections by an election petition under Rule 31 of the Election Rules. The relevant sub-rules of the said rule are as follows:

"31. Disputes as to the validity of Election:-

(1) Any voter may contest the validity of the election of a candidate declared to have been elected to the Council by a petition signed by him and supported by an affidavit and delivered to the Secretary personally or sent by registered post so as to reach him within 15 days from the date of publication of the results of the election.

(2) ** ** *

(3) ** ** *

(4) All disputes arising under the above sub-rule shall be decided by a Tribunal to be known as Election Tribunal comprising of 3 Advocates whose names are on the State Roll and who are not less than of 10 years standing.

(5) The Election Tribunal shall be appointed by Bar Council on or before the date on which the time of the election is fixed under Rule 4. Where there is or are one or more vacancies in the tribunal by reason of death, resignation or any cause whatsoever, the same shall be filled up by the Bar Council of India from amongst the Advocates on the roll of the State Bar Council of Madhya Pradesh.

(6) The Election Tribunal shall have all or any of the following powers:

(i) To dismiss a petition;

(ii) To order recount;

(iii) To declare any candidate to have been duly elected on a recount;

(iv) To set aside the election of the candidate who either by himself or through any other person acting with his consent is guilty of corrupt practices.

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7. It has been urged that the alternative remedy being adequate as well efficacious, the proper course for the petitioners was to avail of it and having failed to do so without adequate reasons, the petitioners cannot be permitted to take advantage of the extraordinary remedy under Article 226 of the Constitution. On behalf of the petitioners it has been submitted that sub-rule (1) of Rule 31 of the Rules contemplates the election of a single candidate being challenged and, therefore, an election petition cannot be filed where the election of a number of candidates is challenged by the petitioner. This argument is based mainly on the use of the expression "the election of a candidate" in sub-rule (1) of Rule 31. We are, however, not impressed by this argument because in Section 13 of the General Clauses Act, 1897, the words in the singular include the plural. No doubt, Section 13 of the Act is applicable to Central Acts and Regulations only; but unless the context otherwise requires, the same rule of construction should be applied to the rules framed under the Advocates Act, 1961 (hereinafter referred to as 'the Act') which is a Central Act. We, therefore, hold that it is permissible to challenge the validity of the election of more than one candidate by an election petition.

8. The law is almost settled that the High Court would not ordinarily entertain a petition under Article 226 of the Constitution where an equally efficacious remedy is open to the petitioner under the general law vide *Than Singh v. Superintendent of*

Taxes,¹ and *Tata Engineering and Locomotive Co. Ltd. v. Assistant Commr. of Commercial Taxes*,² In *Municipal Council, Khurai v. Kamal Kumar*,³ their Lordships, however, pointed out that even though the High Court would not ordinarily entertain a petition under Article 226 of the Constitution where an alternative remedy is open to the aggrieved party, it has jurisdiction to grant relief to such a party if it thinks proper to do so in the circumstances of the case. In *Malam Singh v. Collector, Sehore*,⁴ it was held by Full Bench of this Court that there is no constitutional bar to the exercise of writ jurisdiction in respect of elections to local bodies, such as, municipalities, panchayats and the like; but the High Court may decline to invoke its writ jurisdiction in an election dispute if the alternative remedy of an election petition is available. This decision was followed by a Division Bench of this Court in *Kalka Prasad v. Election Officer, Bhopal*,⁵ The rule of alternative remedy in the context of writ jurisdiction under Article 226 of the Constitution is a rule of convenience and the exercise of discretion is governed by this rule; but where it is more convenient to all concerned to seek relief by a writ petition it would not be proper to throw out a petition merely on the ground that an alternative remedy open to the petitioner has not been availed of. We are of opinion that the alternative remedy of an election petition cannot be considered as an appropriate or equally efficacious remedy in a case like this.

9. In the present case the petitioners are not challenging the validity of the election of any particular candidate or candidates but the validity of the entire process of election whereby respondents Nos. 3 to 22 were declared elected. There is a clear distinction between challenging the validity of the election of a particular candidate on certain grounds and challenging the validity of the election itself whereby certain candidates at the election were declared elected. We are of the view that where the entire election is challenged, an election petition would not be an appropriate remedy. In any case, it cannot be considered as an equally efficacious remedy. Moreover, since these petitions were admitted for hearing by this Court and were not rejected *in limine* on the ground that an alternative remedy was open to the petitioner, it would not be proper to throw them out on this ground at this stage.

10. Another objection raised by the respondents is that the Council should have been made a party. In Miscellaneous Petition No. 666 of 1974 the Council has already been made a party. It has, however, not been made a party in the other petition; but its Secretary has been made a party thereto who can effectively represent the interests of the Council. Apart from this, the Council can, at best, be considered to be a proper party but not a necessary party to a petition of this nature and since no objection was

taken by respondents on this score in the return and it was raised for the first time during arguments, the abjection can be ignored. In any case, the respondents are not prejudiced, in any way, by the non-joinder of the Council. Learned counsel for the petitioner in Misc. Petition No. 763 of 1974 has filed an application praying that the Council be allowed to be joined as a respondent even at this stage in case its joinder is considered necessary. We do not wish to prolong this case by joining the Council at this stage, which would mean further protraction of these long-pending petitions without any particular advantage. The application is, therefore, rejected.

11. We now proceed to consider the principal contention of the petitioners that the entire process of election is vitiated as no appointment of Returning Officer was made by the Council and the Secretary, who actually functioned as the Returning Officer, was not competent to discharge his functions. In order to appreciate this contention, it is necessary to refer to the following provisions of the Election Rules.

12. 'Returning Officer' is defined in clause (p) of Rule 3 which reads as under:

" 'Returning Officer' means the person appointed by the Bar Council as such to conduct an election."

'Polling officer, is defined in clause (o) of Rule 3 in the following terms.

" 'Polling Officer' means a person appointed as such by the Returning Officer and includes the person appointed by the Returning Officer to assist the Polling Officer."

13. Rule 4 lays down that the election of members of the Council shall be held at such place or places, on such date or dates, and during such hour or hours as the Council may appoint. It is, therefore, clear that the election programmed is settled by the Council and is notified under its authority. The notice of election is issued by the Secretary of the Council (hereinafter referred to as 'the Secretary'). Under Rule 8, the nomination papers are to be delivered to the Secretary personally or through an agent or sent by registered post. Under Rule 9, which is reproduced below, the Secretary is empowered to scrutinize the nomination papers:

"Rule 9.-Doubt as to validity of proposals: The Secretary shall scrutinize the

nomination papers received at the place and time notified under Rule 6, and if in his opinion any nomination paper is invalid, he shall report the same to the Advocate General who shall decide the validity or otherwise of such nomination paper, and his decision shall be final. The candidates or their agents shall be entitled to be present both at the time of scrutiny before the Secretary as well as before the Advocate General and make their submissions. No nomination papers shall be rejected except for a defect of a substantial character and the Advocate-General may allow any defect to be rectified."

It would appear that although the Secretary is competent to accept a nomination paper after scrutiny, he is not competent to reject it; and if in his opinion, any nomination is invalid, he is bound to report the same to the Advocate General who is competent to decide the validity or otherwise of such nomination paper and his decision is final. Under Rule 10, a candidate may withdraw his candidature by a communication in writing to the Secretary by the specified date. Rule 11 lays down the circumstances in which the duly nominated candidates may be declared elected. It does not, however, say who is entitled to declare them duly elected. Under Rule 12 it is the duty of the Secretary to publish the names of the candidates validly nominated, except those who have withdrawn. Rule 14 provides that the voting paper shall bear on it the facsimile of the Secretary's signature. It is pertinent to notice that no function has been assigned to the Returning Officer in any of the rules to Rule 14.

14. The functions of the Returning Officer are specified in Rules 15, 23, 25, 26, 27, 28, 29 and 30. Under Rule 15, the power of appointing Polling Officers is conferred on the Returning Officer. In Rules 23 to 30 the functions relating to opening of the ballot boxes, counting of votes, rejecting of invalid voting papers and declaring the results are assigned to the Returning Officer. There can thus be no doubt that certain important functions in connection with the Bar Council Elections, such as counting of votes and declaration of the results, are to be performed by the Returning Officer under the rules.

15. In the instant case, the accepted position is that the Bar Council did not appoint any one as 'Returning Officer' within the meaning of clause (p) of Rule 3 and the Secretary functioned as the Returning Officer throughout. According to the petitioners, this omission on the part of the Council is fatal and vitiates the entire process of the election. The respondents, on the other hand, rely on Rule 32 of the rules in support of their contention that the Secretary is competent to function as Returning Officer where

no Returning Officer is appointed by the Council. Rule 32 of the rules reads as under:

"32. Conduct of Elections: Except as otherwise provided in these rules, the Secretary shall be in charge of the conduct of the election. Explanation: For the purposes of these rules, 'Secretary' shall mean a person appointed as Secretary under Section 7 of the Act, or any other person appointed by the Bar Council to perform the duties of the Secretary under these rules."

16. Before we proceed to deal with the merits of the rival contentions, it is necessary to take into consideration certain material facts which have an important bearing on the question. It was stated by Sri R.P. Verma, learned counsel for the respondents that no 'Returning Officer' was appointed for the election held during the year 1969, although these very rules were in force at that time and for the said elections the Secretary functioned as the Returning Officer without any objection by any party at any stage. According to him, the Secretary followed the previous practice even in regard to these elections in the absence of any appointment of 'Returning Officer' by the Council; and no objection was raised on this account by anyone at any time before the declaration of the election results. Although the previous practice cannot be considered as an authority for the interpretation of the rules as canvassed by the respondent, it is certainly relevant to some extent.

17. Another important consideration in this connection is that Rule 2 of the Rules lays down that they shall be subject to the rules made by the Bar Council of India. A State Council is competent to make rules in regard to various matters specified in sub section (2) of Section 15 of the Act. Sub-section (3) of Section 15 of the Act, however, lays down that no rules made under the section by a State Council shall have effect unless they have been approved by the Bar Council of India. The Election Rules were, no doubt, approved by the Bar Council of India; but, as pointed out above, there is a specific provision in the Rules that they would be subject to the rules made by the Bar Council of India. Similarly, clause (b) of Rule 1 of the rules framed by the Bar Council of India under Sections 3 and 49 of the Act regarding election of members of the State Councils in India clearly lays down that in the case of any repugnancy between the said rules and any rule or rules of any of the State Councils, the said rules shall prevail and the rules framed by the State Councils shall be void to the extent of such repugnancy. The said rules contain provisions in detail regarding counting of votes and declaration of results; and therein the Secretary and the Returning Officer

have been treated at par as is clear from sub-clause (b) of clause (1) of Rule 4, the relevant part of which reads as under:

"The Secretary or Returning Officer conducting the election shall exclude from the poll-

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18. It is thus clear that the rules framed by the Bar Council of India contemplate that where no Returning Officer is appointed, the Secretary shall perform the functions of the Returning Officer in regard to counting of votes and declaration of results. It appears that the Bar Council of India approved the Rules assuming that the scheme thereof was also to the effect that the Secretary was to perform the functions of the Returning Officer where no Returning Officer was appointed by the Council. This assumption has a foundation in Rule 32 of the Rules which provides that the Secretary shall be in charge of the conduct of the election. The person in charge of the conduct of an election must necessarily be competent to perform all the functions in connection therewith, including the functions of the Returning Officer where no Returning Officer is appointed.

19. Sri R.S. Dabir, learned counsel for the petitioners, laid considerable stress on the expression "except as otherwise provided in these rules" in Rule 32 and vehemently argued that from the aforesaid expression it is clear that the Secretary cannot perform the functions of the Returning Officer specified in the foregoing rules. There is, no doubt, some force in this contention; but the said expression is susceptible to two interpretations. According to one construction, the Secretary is not at all competent to perform the functions of the Returning Officer and can only perform such functions as have not been specifically assigned to the Returning Officer. The other construction is that the powers of the Secretary under Rule 32 would be curtailed only if the Council chooses to appoint a Returning Officer under clause (p) of Rule 3; but if the Council does not appoint anyone as Returning Officer, the Secretary is competent to perform all the functions in connection with the election, including those of the Returning Officer. According to this construction, Rule 32 empowers the Secretary to perform even the functions of the Returning Officer unless Returning Officer, other than the Secretary, is appointed by the Council. We are of the view that the latter construction would be reasonable in the circumstances of this case and it would not only be consistent with the rules framed by the Bar Council of India but also with the previous

practice of the Council. The principle of harmonious construction applicable to the different provisions of a statute can legitimately be extended to the provisions of different sets of rules framed under the same Act and, therefore, we must accept a construction which harmonizes the rules of the State Council with the rules of the Bar Council of India.

20. The aforesaid construction is also reinforced by the consideration that there is no rule making it obligatory for the Council to appoint Returning Officer. Clause (p) of Rule 3 of the Rules merely defines "Returning Officer" and by implication gives an option to the Council to appoint a Returning Officer of its choice to conduct the election, if it so desires; but if the Council, either deliberately or through inadvertence, does not appoint anyone as Returning Officer, Rule 32 confers wide powers on the Secretary to perform all the functions necessary for the conduct of the election, including those of the Returning Officer. It would be pertinent to mention in this connection that no qualifications have been laid down for the appointment of "Returning Officer" and as such the Secretary can very well be appointed as Returning Officer. Secretary is a responsible Officer himself and performs several important functions in connection with the election as laid down in Rules 6 to 14 of the Rules, including acceptance of nomination papers. Rule 11, which provides for the declaration of the nominated candidates as elected where their number is less than the number of seats, makes no mention of Returning Officer. It can, therefore, be legitimately inferred from this rule that the Secretary is himself competent to declare the nominated members to be elected there under. This is also a very important function in connection with the election.

21. Thus, after carefully examining the provisions of the various rules, both of the Council as well as of the Bar Council of India, we are of the view that under Rule 32 of the Rules the Secretary is competent to perform the functions of the Returning Officer where no other person is appointed as Returning Officer by the Council. It was not disputed before us that the Secretary performed all the functions of the Returning Officer, including the appointment of polling officers, counting of votes, rejection of votes and declaration of results. As no one was appointed Returning Officer by the Council, we hold that the Secretary was competent to perform all the functions of the Returning Officer and as such the election cannot be assailed on this ground.

22. Another contention of the petitioners is that the old Council, the members of which

had been elected in 1969, ceased to function on the expiration of its term of four years sometime in 1973 and, therefore, there was no legally constituted Council in existence to hold the election under Rule 4 of the Rules. It was not disputed that the previous election of the Council was held on 24-8-1969 and the result of the said election was declared on 8-9-1969 and published in the Madhya Pradesh Gazette on 19-10-1969. It would, therefore, appear that the term of office of the members of the Council, which under Section 8 (1) of the Act is four years, expired on 18-10-1974; but from sub-section (2) of the said section it is clear that a member of the State Bar Council does not automatically cease to hold office on the expiry of his term and, notwithstanding the expiration of his term of office, he continues to hold office until the publication of the result of the election of his successor. Thus, in view of sub-section (2) of Section 8 of the Act, the contention of the petitioners that there was no legally constituted Council to hold the election in question is completely devoid of merit and must be rejected.

23. The next contention of the petitioners is that one of the voters, Shri Basantilal Barania, was not permitted to vote at the Indore polling booth because his name was not in the extract of the electoral roll supplied to the polling officers. The facts stated by the petitioners are not disputed. It is also not disputed that the name of Sri Basantilal Barania was in the electoral roll and as such he was competent to exercise his right of vote. But the question is, whether the denial of the aforesaid right to him vitiates the entire election as contended by the learned counsel for the petitioners. In this connection it would be pertinent to refer to sub-rule (8) of Rule 31 of the Rules which reads as follows:

"No petition shall lie on the ground that any nomination paper was wrongly rejected the name of any voter wrongly included in or omitted from the electoral roll or any error or irregularity which is not of a substantial character."

Under this sub-rule no petition challenging an election is maintainable on any of the grounds specified therein. It is clear that since an election cannot be challenged on the aforesaid grounds by an election petition, it cannot even be challenged by a writ petition. It is also clear from the sub-rule that any error or irregularity in the conduct of an election, which is not of a substantial character, cannot be a ground for challenging the election. An error or irregularity, which does not materially affect the result of the election, must be construed as one not of a substantial character within the meaning of

the said sub-rule. In any case it has not been stated or demonstrated that the single vote of Sri Basantilal Barania would have made any difference to the result of the election. We, therefore, hold that the irregularity, being not of a substantial character, is of no consequence and the entire election cannot be challenged on this ground.

24. Another contention of the petitioners is that the entire election is vitiated because 300 votes were wrongly rejected merely on the ground that the first preference was indicated by the Roman numeral 'I' and not by the figure '1' according to the international form of Indian numerals. In this connection it is necessary to refer to Rule 21 of the Rules which is reproduced below:

"21. Voting Papers when Invalid: A voting paper shall be invalid on which:-

- (a) the figure '1' is not marked; or
- (b) the figure '1' is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply; or
- (c) the figure '1' and some other figures are set opposite the name of the same candidate; or
- (d) there is any mark in writing by which the voter can be identified;
- (e) the preferences are indicated in words as 'ONE', 'TWO' etc.
- (f) the marking on the voting paper is not in the international form of Indian numerals."

25. According to clause (b) of the said rule, a voting paper is liable to be rejected as invalid if the marking on the voting paper is not in the international form of Indian numerals, such as 1, 2, 3 etc. It was not disputed before us that a number of voting papers were rejected because the preferences were not indicated in the international form of Indian numerals. There can be no doubt that where the preferences are indicated in the form of Roman numerals, such as, I, II, III, IV, etc., it is not in accordance with the Rules and a voting paper is liable to be rejected on this ground being in contravention of the provisions of Rule 21 of the Rules; but it appears to us that a number of voting papers were rejected merely because the figure '1' was written in such a manner that it resembled the Roman numeral 'I' even though the 2nd, 3rd and 4th preferences were in figures 2, 3 and 4 in accordance with Rule 21. We find no justification for the rejection of such voting papers, because the question whether the preferences are indicated in Roman numerals or in the international form of Indian numerals must be decided by scrutinizing the voting paper as a whole and not by

looking at the shape of the figure '1'. The figure '1' closely resembles Roman numeral 'I' as would appear from the figure '1' as printed in Rule 21 itself. In fact, in clause (a) of sub-rule (1) of Rule 20 the figure '1' as printed therein exactly resembles the Roman numeral 'I'. This clearly demonstrates the fact that the figure '1' bears close resemblance to Roman numeral 'I'; and when written in a hurry, it may be difficult to say whether it is figure '1' or the Roman numeral 'I'. But this doubt can very well be resolved by taking into consideration the 2nd and 3rd preferences. If they are indicated in the international form of Indian numerals, there can be no room for doubt that the first preference is indicated by the figure '1' and not by Roman numeral 'I'.

26. There can be no doubt that Rule 21 is mandatory and must be strictly complied with; but strict compliance does not mean compliance divorced from commonsense. We, therefore, hold that where in the voting paper a voter has indicated his 2nd, 3rd and other successive preferences by the figures '2', '3' and so on, the voting paper is not liable to be rejected merely because the figure '1' relating to the first preference resembles the Roman numeral 'I'. It was not disputed before us that a fairly large number of voting papers have been rejected on this flimsy ground which has not only resulted in grave injustice but vitiates the result of the entire election. It is difficult to say at this stage what would be the actual result if such rejected voting papers are duly taken into consideration. It is, therefore, necessary to quash the result of the election on this ground and direct the Secretary to declare the result afresh after a recount in the light of the observations made above.

27. Lastly, we may consider an objection of a very trivial nature in the petition filed by Sri R.C. Pandey. The grievance is that his name in the voting papers was not put at the top even though he was the first to file his nomination; but was placed at No. 37 in the alphabetical order. He was, however, unable to point out any rule to the effect that the names of candidates should be printed on the voting papers in the order in which the nomination papers are filed. In the absence of such a rule, printing of names of the candidates on the voting papers in the alphabetical order was perfectly reasonable for the convenience of the voters. We, therefore, do not find any substance in the contention of the petitioner that the election is vitiated on this ground.

28. No other point was pressed before us by the learned counsel.

29. Although most of the contentions of the petitioners have failed, these petitions

must be partly allowed in view of the decision of this Court that a number of voting papers were wrongly rejected, because it is difficult to say what would be the ultimate result of the election if the rejected ballot papers are taken into account.

30. After the draft of the order was placed on the table, certain oral representations were made to us regarding the logical consequences of the final order as proposed. An application was filed on behalf of the petitioner in Miscellaneous Petition No. 763 of 1974 for taking into consideration the submissions made therein and for pronouncing the draft order forthwith with such modifications as the Court may think fit. Another application was filed by Sri Dabir praying for certain directions in connection with the recount after including the wrongly rejected ballot papers. We, therefore, heard learned counsel for both the sides this day, particularly in regard to the matters pertaining to the final order as proposed by us.

31. In the proposed order, there was a direction that the election of the Council shall be quashed and the Secretary of the Council shall declare the result of the election afresh after taking into account the ballot papers which had been wrongly rejected. After hearing the learned counsel, it appears to us that it would not be proper to make an order in these terms because it is very likely that the election of a number of members may not be affected even after taking into account the wrongly rejected ballot papers. If the result of the election is quashed now, even before the re-count, such members would unnecessarily be unseated till the declaration of the result afresh giving rise to lot of inconvenience and unnecessary embarrassment to them. We have, therefore, decided to modify our proposed order; but, before we do so, we would deal with an argument which was advanced by Sri R.S. Dabir, learned counsel for the petitioners, in this connection.

32. It has been argued that under sub-rule (1) of Rule 30 of the Election Rules, a list of the candidates elected to the Council can be prepared only upon the completion of the count; and since, according to the finding of this Court, a number of valid votes were rejected, it necessarily follows that there was no completion of the count and as such the list contemplated by the said sub-rule could not be prepared nor could it be published in the official gazette as required by sub-rule (2) of Rule 30. Sri Dabir, therefore urged that as a logical consequence of the finding of this Court that a number of valid votes were rejected, the Court is bound to quash the result of the election, irrespective of its consequences. We are, however, not impressed with this argument.

Merely because some votes were wrongly rejected, it does not mean that there was no completion of the count. The expression 'completion of the count' means 'completion of the process of counting' which would include both acceptance of valid votes and rejection of invalid votes. Merely because there was some error in accepting or rejecting a vote it does not mean that the process of counting itself was not completed. We, therefore, hold that our finding that a number of valid votes were rejected need not necessarily affect the election of each and every elected member, until fresh result of the election is declared after taking into account the ballot papers which were wrongly rejected.

33. The petitions are, therefore, partly allowed; and it is hereby directed that the Secretary of the Council shall take necessary action in accordance with the Election Rules to declare the result of the election afresh after taking into account the ballot papers, which were wrongly rejected, in the light of the observations made by us in paragraphs 21 to 26 of this order. A list of the candidates elected to the Council in accordance with such result shall be duly published and forwarded to the authorities specified in the Rules in supersession of the previous list, provided that the members of the Council, whose election is not affected by such result, shall be deemed to have been elected on the date of publication of their names in the official gazette previously. The election of the members, who may be found to be not elected after taking into account the wrongly rejected ballot papers, shall be deemed to have been set aside with effect from the date of declaration of the fresh result of the election. Recounting shall be completed within period of one month from the date of this order.

34. We make no order as to costs of these petitions. The security amounts deposited by the petitioners shall be refunded to them.
Order accordingly.

Cases Referred.

1. AIR 1964 SC 1419
2. AIR 1967 SC 1401
3. AIR 1965 SC 1321
4. 1971 MPLJ 531 (FB)
5. 1972 MPLJ 792