

GENERAL DEPARTMENT.
(The Council of State Electoral Rules.)

No. 140

Dated Rangoon, the 14th August 1923.

No.140.- The following notification by the Government of India in the Home Department, dated the 30th July 1923, is republished for information: -

No. F.-213-I. – In exercise of the powers conferred by sections 64 and 129A of the Government of India Act, and in supersession of the notification of the Government of India in the Reforms Office No. 767-F., dated the 27th July 1920, and of all notifications amending the rules issued therewith, the Governor General in Council, with the sanction of the Secretary of State in Council, is pleased to make the following rules for the nomination and election of members of the Council of State:-

Preliminary.

Short title and commencement.

1. (1) These rules may be called the Council of State Electoral Rules.
- (2) They shall come into force at once.

Definitions.

2. In these rules, unless there is anything repugnant in the subject or context,-
 - (a) “ the Act” means the Government of India Act;
 - (b) “Commissioners” means the Commissioners appointed for the purpose of holding an election inquiry under these rules;
 - (c) “corrupt practice” means any act deemed to be a corrupt practice under the provisions of Schedule V;
 - (d) “ election agent” means the person appointed under these rules by a candidate as his agent for an election;
 - (e) “Gazette” means the Gazette of India; and
 - (f) “Schedule” means a Schedule to these rules.

PART I.

COMPOSITION OF COUNCIL OF STATE AND CONSTITUENCIES.

Composition of Council of State.

3. The Council of State shall consist of –

- (1) thirty- three elected members, and
- (2) twenty-seven members nominated by the Governor General, of whom not more than twenty may be officials, and one shall be a person nominated as the result of an election held in Berar.

Elected Members.

Constituencies.

4. The elected members shall be elected by the constituencies specified in Schedule I, subject to the provisions of that Schedule in regard to constituencies entitled to elect in rotation, and the number of members to be elected by each constituency shall be as stated therein against that constituency; provided that the Governor General in Council may by regulation divide into two or more constituencies any of the plural-member constituencies and may distribute among the new constituency so created the seats entered in Schedule I against the constituency which has been so divided.

PART II.

QUALIFICATIONS OF ELECTED MEMBERS.

General disqualification for being elected.

5. (1) A person shall not be eligible for election as a member of the Council of State if such person-
- (a) is not a British subject; or
 - (b) is a female; or
 - (c) has already made the oath or affirmation as a member of the Council of State; or
 - (d) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court; or
 - (e) has been adjudged by a competent court to be of unsound mind; or
 - (f) is under 25 years of age; or
 - (g) is an undischarged insolvent; or
 - (h) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part:

Provided that, if the Ruler of a State in India or any subject of such a State is not, ineligible for election to the Legislative Council of a province, such Ruler or subject shall not by reason of not being a British subject be ineligible for election to the Council of State by any constituency in that province:

Provided further that the disqualification mentioned in clause (d) may be removed by as under of the Governor General in Council in this behalf.

- (2) A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible: for election for five years from the date of the expiration of the sentence.
- (3) If any person is convicted of an offence under Chapter IXA of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to the legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule V, such person shall not be eligible for election for five years from the date of such conviction or of the finding of the Commissioners, as the case may be; and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for three years from such date.
- (4) If in respect of an election to any legislative body constituted under the Act a return of the election expenses of any person who has been nominated as a candidate at that election is not lodged within the time and in the manner prescribed by or under the rules made in that behalf, or if any such return is lodged which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding to be false in any material particular, neither the candidate nor his election agent shall be eligible for election for five years from the date of such election:

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this rule may be removed by an order of the Governor General in Council in that behalf.

Special qualifications for election in case of certain constituencies.

6. (1) No person shall be eligible for election as a member of the Council of State to represent –
 - (a) a general constituency situate in the United Provinces or in the Province of Assam, unless his name is entered on the electoral roll of a general constituency situate within the same province;
 - (b) a general constituency situate in the province of Madras, Bombay, Bengal, the Punjab or Bihar and Orissa unless his name is entered on the electoral roll of the constituency or of another constituency situate in the same province and of the same communal description as that by which he desires to be elected;

(c) a general constituency situate in the Central Provinces or in the province of Burma unless his name is entered on the electoral roll of the constituency.

(2) No person shall be eligible for election as a member of the Council of State to represent a special constituency unless his name is entered on the electoral roll of the constituency.

(3) For the purposes of these rules-

(1) "special constituency" means a European Commerce constituency;

(2) "general constituency" means any constituency specified in Schedule I other than a European Commerce constituency.

PART III.

THE ELECTORAL ROLL.

General conditions of registration and disqualifications.

7. (1) Every person shall be entitled to have his name registered on the electoral roll of a constituency who has the qualifications prescribed for an elector of that constituency and who is not subject to any of the disqualifications hereinafter set out, namely:-

(a) is not a British subject; or

(b) is a female; or

(c) has been adjudged by a competent court to be of unsound mind; or

(d) is under 21 years of age:

Provided that, if the Ruler of a State in India or any subject of such a State is not disqualified for registration on the electoral roll of a constituency of the Legislative Council of a province, such Ruler or subject shall not by reason of not being a British subject be disqualified for registration on the electoral roll of any constituency of the Council of State in that province:

Provided further that, if a resolution is passed by the Council of State after not less than one month's notice has been given of an intention to move such a resolution, recommending that the sex disqualification for registration should be removed either in respect of women generally or any class of women, the Governor General in Council shall make regulations providing that women, or a class of women, as the case may be, shall not be disqualified for registration by reason only of their sex, if they are not so disqualified for registration as electors for the Legislative Council of their province:

Provided further that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency.

- (2) If any person is convicted of an offence under Chapter IXA of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners, appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule V, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of five years from the date of the conviction or the report, as the case may be, or, if not on the electoral roll, shall not be so registered for a like period; and if any person is reported by any such Commissioners as guilty of any other corrupt practice, his name if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of three years from the date of the report or, if not on the electoral roll, shall not be so registered for a like period:

Provided that the Governor General in Council may direct that the name of any person to whom this sub-rule applies shall be registered on the electoral roll.

Qualifications of electors.

8. (1) The qualifications of an elector for a general constituency shall be such qualifications based on-

- (i) residence, or residence and community, and
- (ii) (a) the holding of land, or
- (b) assessment to or payment of income-tax, or
- (c) past or present membership of a legislative body, or
- (d) past or present tenure of office on a local authority, or
- (e) past or present university distinction, or
- (f) the tenure of office in a co-operative banking society, or
- (g) the holding of a title conferred for literary merit,

as are specified in Schedule II in the case of that constituency.

- (2) The qualifications of an elector for a special constituency shall be the qualifications specified in Schedule II in the case of that constituency.

Electoral Roll.

9. (1) An electoral roll shall be prepared for every constituency, on which shall be entered the names of all persons appearing to be entitled to be registered as electors for that constituency. It shall be published in the constituency together with a notice specifying the mode in which and the time within which any person whose name is not entered in the roll and who claims to have it inserted therein, or any person

whose name is on the roll and who objects to the inclusion of his own name or of the name of any other person on the roll, may prefer a claim or objection to the Revising Authority.

(2) The regulations for the time being in force in any province for the purpose of elections to the Legislative Council of that province in regard to the following matters, namely:-

- (1) the authority by whom the electoral roll shall be prepared and the particulars to be contained in the roll,
- (2) the time at which the roll shall be prepared,
- (3) the publication of the roll in the constituency to which it relates,
- (4) the mode in which and the time within which claims and objections may be preferred,
- (5) the constitution and appointment of Revising Authorities to dispose of claims and objections,
- (6) the manner in which notices of claims or objections shall be published,
- (7) the place, date, and time at which and the manner in which claims or objections shall be heard,

shall apply for the purpose of the holding of elections within that province to the Council of State:

Provided that the Governor General in Council may, by notification in the Gazette, direct that such modifications and adaptations as he may specify shall be made in the application of those regulations.

(3) The orders made by the Revising Authority shall be final, and the electoral roll shall be amended in accordance therewith and shall as so amended, be republished in the case of each province in such manner as may be prescribed by the regulations aforesaid for the republication of electoral rolls of constituencies of the Legislative Council.

(4) The electoral roll shall come into force from the date of such republication, and shall continue in force, for a period of three years after the expiration of which period a fresh roll shall be prepared in accordance with these rules:

Provided that the Governor General in Council may, by notification in the Gazette, direct the preparation in accordance with these rules of a fresh roll at any time before the expiration of the said period.

(5) If a constituency is called upon to elect a member or members after an electoral roll has ceased to have force and before the completion of the new electoral roll, the old electoral roll shall for the purposes of that election continue to operate as the electoral roll for the constituency.

(6) Notwithstanding anything hereinbefore contained, any person may apply to such authority as may be appointed in this behalf by the Governor General in Council for the amendment of any electoral roll for the time being in force, and the Governor General in Council may, at any time after any such

application has been made in respect of an electoral roll, by notification in the Gazette, direct the preparation of a list of amendments thereto, and all the provisions of this rule shall apply in the case of every such list in like manner as they apply in the case of electoral rolls:

Provided that, where any such application is made for the correction of an existing entry in the electoral roll and the said authority is satisfied after such inquiry as the Governor General in Council may by regulation prescribe that the entry relates to the applicant and is erroneous or defective in any particular, he may amend the roll or cause it to be amended accordingly.

(7) When any list of amendments has been republished under sub-rule (6), the electoral roll to which it relates shall be deemed to have been amended accordingly.

Right to vote

10. (1) Every person registered on the electoral roll for the time being in force for any constituency shall while so registered be entitled to vote at an election of a member or members for that constituency:

Provided that-

- (a) no person shall vote at any general election in more than one general constituency, and
- (b) no person shall vote at any election if he is subject to any disability stated in rule 7.

(2) If any person is in the course of the hearing of an election petition under these rules proved to have voted at the election in contravention of the proviso to sub-rule (1), his vote shall be void.

PART IV.

ELECTIONS.

Nomination of Candidates.

11. (1) Any person may be nominated as a candidate for election in any constituency for which he is eligible for election under these rules.

(2) The local Government shall appoint for each constituency-

- (a) a date, not later than the fourteenth day after the date of the notification calling upon the constituency to elect a member, for the nomination of candidates;
- (b) a further date, not later than the seventh day after the first mentioned date, for the scrutiny of nominations; and
- (c) a further date or dates on which a poll shall, if necessary, be taken;

and the dates so appointed shall be notified in the constituency in such manner as the local Government thinks fit.

- (3) On or before the date so appointed for the nomination of candidates, each candidate shall, either in person or by his proposer and seconder together, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer or to such other person as may be authorised in this behalf by regulation a nomination paper completed in the form prescribed in Schedule III and subscribed by the candidate himself as assenting to the nomination and by two persons as proposer and seconder whose names are registered on the electoral roll of the constituency.
- (4) Any person whose name is registered on the electoral roll of the constituency, and who is not subject to any disability stated in rule 7, may subscribe, as proposer or seconder, as many nomination papers as there are vacancies to be filled but no more.
- (5) Every nomination paper delivered under sub-rule (3) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed or does thereby appoint as his election agent for the election either himself or some one other person who is not disqualified under these rules for the appointment and who shall be named in the declaration; and no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper.
- (6) Any nomination paper which is not received before three o'clock in the afternoon on the date appointed by the local Government for the nomination of candidates shall be rejected.
- (7) The Returning Officer or other person authorised shall, on receiving a nomination paper under sub-rule (3), inform the person or persons delivering the same of the date, hour and place appointed for the scrutiny of nominations, and shall enter in the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions, similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder.
- (8) Any candidate may withdraw his candidature by notice in writing subscribed by him and delivered to the Returning Officer, or other person authorised on or before three o'clock in the afternoon on the date succeeding that appointed by the local Government for the scrutiny of nominations. A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be re-nominated as a candidate for the same election.

- (9) The Returning Officer or other person authorised shall, on receiving a notice of withdrawal under sub-rule (8), as soon as may be, cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

Deposit on nomination.

12. (1) On or before the date appointed for the nomination of candidates, each candidate shall deposit or cause to be deposited with the Returning Officer the sum of five hundred rupees in cash or in Government Promissory Notes of equal value at the market rate of the day; and no candidate shall be deemed to be duly nominated unless such deposit has been made.
- (2) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made withdraws his candidature in the manner and within the time specified in sub-rule (8) of rule 11, or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made: and, if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative or, if not made by the candidate, shall be returned to the person by whom it was made.
- (3) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is not elected and the number of votes polled by him does not exceed, in the case of a constituency returning one or two members, one-eighth of the total number of votes polled or, in the case of a constituency returning more than two members, one-eighth of the number of votes polled divided by the number of members to be elected, the deposit shall be forfeited to the Government.
- (4) For the purpose of sub-rule (3), the number of votes polled shall be deemed to be the number of ballot papers, other than spoilt ballot papers, counted; and, where the election is held according to the system or proportional representation by means of the single transferable vote, the number of votes polled by a candidate shall be the number of votes polled by him as first preferences.
- (5) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is elected and thereafter his seat is declared vacant under these rules owing to his failure to make the oath or affirmation hereinafter prescribed, the deposit shall be forfeited to the Government.
- (6) The deposit made in respect of a candidate who is not elected shall, if it is not forfeited under sub-rule (3), be returned to the candidate or to the person who has made the deposit on his behalf, as the case may be, as soon as may be after the publication of the result of the election in the Gazette; and the deposit made in respect of a candidate who is elected shall, if it is not forfeited under sub-rule (5), be

so returned as soon as may be after the candidate has made the oath or affirmation hereinafter prescribed:

Provided that, if a candidate is duly nominated at a general election in more than one constituency, not more than one of the deposits made by him or on his behalf shall be returned, and the remainder shall be forfeited to the Government.

Death of candidate before poll.

13. If a candidate who has been duly nominated dies after the date appointed for the scrutiny of nominations and before the date appointed for the taking of a poll, the Returning Officer or other authorised person referred to in sub-rule (3) of rule 11 shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the local Government, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election:

Provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermanding of the poll.

Procedure at election.

14. (1) If the number of candidates who are duly nominated and who have not withdrawn their candidature in the manner and within the time specified in sub-rule (8) of rule 11 exceeds that of the vacancies, a poll shall be taken.
- (2) If the number of such candidates is equal to the number of vacancies, all such candidates shall be declared to be duly elected.
- (3) If the number of such candidates is less than the number of vacancies all such candidates, if any, shall be declared to be elected, and the Governor General shall, by a notification in the Gazette, call upon the constituency to elect a person or persons, as the case may be, within such time as may be prescribed by the notification:

Provided that where the constituency, having already been called upon under this sub-rule, has failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Governor General shall not be bound to call again upon the constituency to elect a person or persons until such time, if any, as he thinks fit.

- (4) Votes shall be given by ballot, and no votes shall be received by proxy;
- (5) In plural-member constituencies every elector shall have as many votes as there are members to be elected but no elector shall give more than one vote to any one candidate except in the case of the

Bombay (non-Muhammadan) constituency, in which constituency an elector may accumulate all his votes on any one candidate or may distribute them among the candidates as he pleases:

Provided that, in the Madras (non-Muhammadan) constituency, the election shall be made according to the principle of proportional representation by means of the single transferable vote, and votes shall be given in accordance with regulations made in that behalf by the Governor General in Council.

(6) Votes shall be counted by, or under the supervision of, the Returning Officer, and each candidate, the election agent of each candidate, and one representative of each candidate authorised in writing by the candidate shall have a right to be present at the time of counting.

(7) When the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidate or candidates, as the case may be, to whom the largest number of votes has been given to be elected:

Provided that, in the Madras (non-Muhammadan) constituency, the Returning Officer shall determine the candidates to whom the largest number of votes has been given in accordance with the regulations made in that behalf.

(8) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

(9) The Returning Officer shall without delay report the result of the election to the Secretary to the Government of India in the Legislative Department, and the name or names of the candidate or candidates elected shall be published in the Gazette.

Regulations regarding the conduct of elections.

15. The regulations for the time being in force in any province for the purpose of elections to the Legislative Council of that province in regard to the following matters, namely,-

- (1) for the scrutiny of nominations and, in particular for the manner in which such scrutiny shall be conducted and for the conditions and circumstances in which any person may be present or may enter objections thereat,
- (2) for the appointment in each constituency of a Returning Officer and for his powers and duties, and for the performance by other persons of any power or duty of the Returning Officer,

- (3) for the division of general constituencies into polling areas and for the appointment of polling stations for these areas,
- (4) for the appointment of officers to preside at polling stations, and for the duties of such officers,
- (5) for the checking of voters by reference to the electoral roll,
- (6) for the manner in which votes are to be given, both generally and in the case of illiterate voters or voters under physical or other disability,
- (7) for the procedure to be followed in respect of tender of votes by persons representing themselves to be electors after other persons have voted as such electors,
- (8) for the scrutiny of votes,
- (9) for the safe custody of ballot papers and other election papers, for the period for which such papers shall be preserved, and for the inspection and production of such papers, and
- (10) for the conduct of elections generally,

shall apply for the purpose of the holding of elections within that province to the Council of State:

Provided that the Governor General in Council may, by notification in the Gazette, direct that such modifications and adaptations as he may specify shall be made in the application of those regulations.

In particular the Governor General in Council may, if a resolution, in favour of the introduction of proportional representation is passed by the Council of State after not less than one month's notice has been given of an intention to move such a resolution, introduce for any plural-member constituencies the method of election by the single transferable vote, and may make all necessary regulations for the purpose and may group together single-member constituencies so as to make new plural-member constituencies.

Multiple elections.

16. (1) If any person is elected by more than one constituency, he shall by notice in writing signed by him and delivered to the Secretary to the Government of India in the Legislative Department within seven days from the date of the publication of the result of such election in the Gazette, choose for which of these constituencies he shall serve, and the choice shall be conclusive.
- (2) When any such choice has been made, the Governor General shall call upon any constituency or constituencies for which such person has not chosen to serve to elect another person or persons.

- (3) If the candidate does not make the choice referred to in sub-rule (1) of this rule, the elections of such person shall be void, and the Governor General shall call upon the constituency or constituencies concerned to elect another person or persons.

Election Agents and Return of Expenses.

Disqualification for being an election agent.

17. No person shall be appointed an election agent who is himself ineligible for election as being subject to any disqualification mentioned in sub-rule (3) or sub-rule (4) of rule 5.

Revocation of the appointment of election agent.

18. (1) The appointment of an election agent, whether the election agent appointed be the candidate himself or not, may only be revoked in a writing signed by the candidate and lodged with the officer receiving nominations and shall operate from the date on which it is so lodged.
- (2) In the event of such a revocation or of the death of any election agent, whether such event occurs before, during or after the election, then the candidate shall appoint. Forthwith another election agent and declare his name in writing to the said officer.

Return of election expenses.

19. (1) Within thirty-five days from the date of the publication of the result of an election under sub-rule (9) of rule 14, there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate for the election a return, in such form as the Governor General in Council may by regulation prescribe, of the election expenses of such person containing the particulars specified in Schedule IV and signed both by the candidate and by his election agent.
- (2) Every such return shall contain a statement of all payments made by the candidate or by his election agent or by any persons on behalf of the candidate or in his interests for expenses incurred on account of or in respect of the conduct and management of the election, and further a statement of all unpaid claims in respect of such expenses of which he or his election agent is aware.
- (3) The return shall be accompanied by declarations by the candidate and his election agent which shall be in the form contained in the said Schedule, and shall be made on oath or affirmation before a Magistrate.
- (4) Notwithstanding anything hereinbefore contained, where a candidate is, owing to absence from India, unable to sign the return of election expenses and to make the declaration within the period prescribed in this rule, the return shall be signed and lodged by the election agent only and shall be

accompanied by a declaration by the election agent under sub-rule (3), and, within fourteen days after the return of the candidate to India, he shall cause to be lodged with the Returning Officer a declaration made on oath or affirmation before a Magistrate in the special form for the purpose contained in the said Schedule.

(5) When any return and the declarations made in respect thereof have been lodged with the Returning Officer, the Returning Officer shall, as soon as may be, cause a notice of the date on which the return and declarations in question have been lodged, and of the time and place at which they can be inspected, to be fixed in some conspicuous place in his office and to be published in the local official Gazette, and any person shall, on payment of a fee of one rupee, be entitled to inspect any such return or declaration and, on payment of such fee as the local Government may prescribe, to obtain a copy or copies thereof or of any part thereof.

(6) The Governor General in Council shall cause to be prepared in such manner, and maintained for such time, as he may direct, a record showing the names of all candidates at every election under these rules and the name of the election agent of each such candidate and the date on which the return of election expenses of each candidate has been lodged with the Returning Officer.

Power to fix maximum scales of expenditure and to regulate employment for pay.

20. (1) The Governor General in Council may, by notification in the Gazette:-

- (a) fix maximum scales of election expenses, which shall be applicable to any election held after the first elections under these rules; and
- (b) prescribe the numbers and descriptions of persons who may be employed for payment in connection with any election held under these rules.

(2) Any notification issued under this rule may make different provisions for different constituencies.

Accounts of agents.

21. Every election agent shall for each election for which he is appointed an election agent keep separate and regular books of account in which the particulars of all expenditure of the nature referred to in rule 19 shall be entered, whether such expenditure is incurred by the candidate or by the election agent or by any person under the direction of the candidate or the election agent.

PART V.

NOMINATED MEMBERS.

General disqualifications for nomination.

22. (1) Save as expressly provided in these rules in regard to the nomination of a person elected in Berar, no person shall be nominated to the Council of State who-
- (a) is not a British subject ; or
 - (b) is a female ; or
 - (c) has already made the oath or affirmation as a member of the Council of State; or
 - (d) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court; or
 - (e) has been adjudged by a competent court to be of unsound mind; or
 - (f) is under 25 years of age; or
 - (g) is an undischarged insolvent; or
 - (h) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part I.

Provided that, if the Ruler of a State in India or any subject of such a State is not disqualified for nomination to the Legislative Council of a province, such Ruler or subject shall not by reason of not being a British subject be disqualified for nomination to the Council of State to represent that province:

Provided further that the disqualification mentioned in clause (d) may be removed by an order of the Governor General in Council in this behalf.

- (2) A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for nomination for five years from the date of the expiration of the sentence.
- (3) If any person is convicted of an offence under Chapter IXA of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule V, such person shall not be eligible for nomination for five years from the date of such conviction or of the finding of the Commissioners, as the case may be; and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for three years from such date.

- (4) If in respect of an election to any legislative body constituted under this Act a return of the election expenses of any person who has been nominated as a candidate at the election is not lodged within the time and in the manner prescribed by or under the rules made in that behalf, or if any such return is lodged which is found either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, neither the candidate nor his election agent shall be eligible for nomination for five years from the date of the election:

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this rule may be removed by an order of the Governor General in Council in that behalf.

Term of office of nominated member.

23. (1) A nominated non-official member shall hold office for the duration of the Council of State to which he is nominated.
- (2) Official members shall hold office for the duration of the Council of State to which they are nominated or for such shorter period as the Governor General may, at the time of nomination, determine.

PART VI.

GENERAL PROVISIONS.

Obligation to take Oath.

Taking of oath.

24. Every person who is elected or nominated to be a member of the Council of State shall before taking his seat make, at a meeting of the Council of State, an oath or affirmation of his allegiance to the Crown in the following form, namely:-
- I, A.B. having been (elected/nominated) a member of this Council, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.

Vacation of Seat.

Effect of subsequent disabilities or failure to take oath.

25. If any person having been elected or nominated subsequently becomes subject to any of the disabilities stated in clauses (a), (d), (e), (g) and (h) of sub-rule (1) or in sub-rules (2), (3) and (4) of rule 5 or of rule 22, as the case may be, or fails to make the oath or affirmation prescribed by rule 24 within such time as the Governor General considers reasonable, the Governor General shall, if the disqualification has not been removed under these rules by notification in the Gazette, declare his seat to be vacant.

Casual vacancies.

26. (1) When a vacancy occurs in the case of an elected member by reason of his election being declared void or his seat being declared vacant, or by reason of absence from India, inability to attend to duty, death, acceptance of office or resignation duly accepted, the Governor General shall, by notification in the Gazette, call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such notification.
- (2) If a vacancy occurs in the case of a nominated member, the Governor General shall nominate to the vacancy a person having the necessary qualification under these rules.

General Elections.

Reconstitution of Council of State.

27. (1) On the expiration of the duration of a Council of State or on its dissolution a general election shall be held in order that a new Council of State may be constituted.
- (2) On such expiration or dissolution, the Governor General shall, by notification in the Gazette, call upon the constituencies referred to in rule 4 to elect members in accordance with these rules within such time after the date of expiration or dissolution as may be prescribed by such notification:
- Provided that, if the Governor General thinks fit, such notification may be issued at any time not being more than three months prior to the date on which the duration of the Council of State would expire in the ordinary course of events.
- (3) Before the date fixed for the first meeting of the Council of State, the Governor General shall make such nominations as may be necessary to complete the Council of State.

Publication of result of election.

28. As soon as may be after the expiration of the time fixed for the election of members at any general election, the names of the members elected for the various constituencies at such election shall be notified in the Gazette.

Powers of Governor General in Council in case of difficulty.

29. If any difficulty arises as to the preparation or publication of any electoral roll or of any list of amendments to any such roll or as to the holding of any election under these rules, the Governor General in Council may by order do anything not inconsistent with these rules which appears to him to be necessary for the proper preparation or publication of the roll or for the proper holding of the election.

PART VII.

THE FINAL DECISION OF DOUBTS AND DISPUES AS TO THE VALIDITY OF AN ELECTION.

Definitions

30. In this Part and in Schedule V, unless there is anything repugnant in the subject or context,-

- (a) “agent” includes an election agent and any person who is held by Commissioners to have acted as an agent in connection with an election with the knowledge or consent of the candidate;
- (b) “candidate” means a person who has been nominated as a candidate at any election or who claims that he has been so nominated, or that his nomination has been improperly refused, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election;
- (c) “electoral right” means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election; and
- (d) “returned candidate” means a candidate whose name has been published under these rules as duly elected.

The election petition.

31. No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

Presentation of the petition.

32. (1) An election petition against any returned candidate may be presented to the Governor General-

- (a) by any candidate or elector within fourteen days from the date on which the return of the election expenses of the returned candidate and the declarations referred to in rule 19 are received by the Returning Officer; or
- (b) within thirty days from that date by an officer empowered by the Governor General in Council in this behalf on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed; or
- (c) on the ground that the returned candidate or his election agent or any other person acting with the connivance of the candidate or of his election agent has been guilty of the offence of bribery, undue influence or personation as defined in Chapter IXA of the Indian Penal Code in respect of the election, by any candidate or elector within fourteen days from the date on which such returned candidate, election agent or other person is convicted of such offence.

- (2) An election petition shall be deemed to have been presented to the Governor General when it is delivered to the Governor General or to any officer appointed by him in this behalf-
- (a) by the person making the petition; or
 - (b) by a person authorised in writing in this behalf by the person making the petition; or
 - (c) by registered post.
- (3) When the last day of the period for the presentation of an election petition under this rule is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881, or has been notified by the local Government of the Province in which the petition is presented as a day to be observed as a holiday in Government offices, the petition shall be considered as having been received in due time if it is presented on the next succeeding day which is neither such a public holiday nor a day so notified.
- (4) For the purposes of clause (a) of sub-rule (1), the date on which the return of the election expenses and the declarations referred to in rule 19 are received by the Returning Officer shall, in the case of a candidate who has made such return and declaration in the manner provided in sub-rule (4) of that rule, be deemed to be the date on which the declaration of the candidate under that sub-rule is received.

Contents of the petition.

33. (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.
- (2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice.
- (3) The Commissioners may upon such terms as to costs and otherwise as they may direct at any time allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in their opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

Against whom it may be presented.

34. The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected; in which case he shall join as respondents to his petition all other candidates who were nominated at the election.

Deposit of security.

35. At the time of presentation of the petition, the petitioner shall, except where the petition is presented under clause (b) of sub-rule (1) of rule 32, deposit with it the sum of one thousand rupees in cash or in Government Promissory Notes of equal value at the market rate of the day as security for the costs of the same.

Dismissal for default.

36. (1) If the provisions of rule 32, rule 33, or rule 35 are not complied with, the Governor General shall dismiss the petition.

Appointment of Commissioners.

- (2) If the petition is not dismissed under sub-rule (1)-

- (a) the Governor General shall appoint as Commissioners for the trial of the petition three persons who are or have been or are eligible to be appointed Judges of a High Court within the meaning of section 101 (3) of the Act, and shall appoint one of them to be the President, and thereafter all applications and proceedings in connection therewith shall be dealt with and held by such Commissioners;
- (b) the President of the Commission shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the Gazette, and may call on the petitioner, to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on giving security in a like amount and procuring the execution of a like bond:

Provided that the execution of such a bond by the petitioner shall not be required in any case where the petition has been presented under clause (b) of sub-rule (1) of rule 32.

- (3) When in respect of an election in a constituency more petitions than one are presented, the Governor General shall refer all such petitions to the same Commissioners, who may at their discretion inquire into the petitions either in one or in more proceedings as they shall think fit.

- (4) If the services of any Commissioner are not available for the purpose of the inquiry, or if, during the course of the inquiry, any Commissioner is unable to continue to attend the same, the Governor General shall appoint another Commissioner, and the inquiry shall re-commence before the Commission as so reconstituted:

Provided that the Commissioners may direct that any evidence already recorded may remain upon the record, in which case it shall not be necessary to re-examine those witnesses who have already been examined and discharged.

- (5) Nothing in this rule shall be deemed to prevent the appointment of the President of a Commission before the other Commissioners are appointed and, if the President is so appointed, all references to the Commissioners in these rules shall, in respect of any matter which may be or is to be done before the commencement of the inquiry, be deemed to be references to the President.

Inquiry by Commissioners.

37. Subject to the other provisions of these rules, every election petition shall be inquired into by the Commissioners, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided that it shall only be necessary for the Commissioners to make a memorandum of the substance of the evidence of any witness examined by them.

Place of inquiry.

38. The inquiry shall be held at such place as the Governor General may appoint:

Provided that the Commissioners may in their discretion sit for any part of the inquiry at any other place in the province in which the constituency in question is situated, and may depute any one of their number to take evidence at any place in that province.

Withdrawal of petition.

39. (1) An election petition may be withdrawn only by leave of the Commissioners or, if an application for withdrawal is made before any Commissioner has been appointed, of the Governor General.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application for withdrawal is made to the Commissioners, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Gazette.

(4) No application for withdrawal shall be granted if, in the opinion of the Governor General or of the Commissioners, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(5) If the application is granted-

- (a) the petitioner shall, where the application has been made to the Commissioners, be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commissioners may think fit;
- (b) notice of the withdrawal shall be published in the Gazette by the Governor General or by the Commissioners, as the case may be;
- (c) any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and, upon compliance with the conditions of rule 35 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit

Abatement or substitution on death of petitioner.

40. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners: Provided that where such sole petitioner was an officer empowered under clause (b) of sub-rule (1) of rule 32, the proceedings may be continued by any other officer empowered in this behalf by the Governor General in Council.

(2) Notice of the abatement of an election petition shall be published in the Gazette by the Commissioners or, if, the petition abates before any Commissioner has been appointed by the Governor General.

(3) Any person who might himself have been a petitioner may within fourteen days of such publication, apply to be substituted as petitioner, and, upon compliance with the conditions of rule 35 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

Abatement or substitution on death of respondent.

41. If before the conclusion of the trial of an election petition the respondent dies or gives notice that he does not intend to oppose the petition, the Commissioners shall cause notice of such event to be published in the Gazette, and thereupon any person who might have been a petitioner may, within

fourteen days of such publication, apply to be substituted for such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Commissioners may think fit.

Recrimination when seat claimed.

42. (1) Where at an inquiry into an election petition any candidate, other than the returned candidate, claims the seat for himself, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented complaining of his election:

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of the publication of the election petition under clause (b) of sub-rule (2) of rule 36, given notice of his intention to the Commissioners and made the deposit and procured the execution of the bond referred to in rules 35 and 36, respectively.

- (2) Every notice referred to in sub-rule (1) shall be accompanied by the statement and list of particulars required by rule 33 in the case of an election petition, and shall be signed and verified in like manner.

Attendance of law officers.

43. When at an inquiry into an election petition the Commissioners so order, the Advocate General or some person acting under his instructions shall attend and take such part therein as they may direct.

Explanation.- The expression "Advocate General" includes also a Government Advocate, or where there is no Advocate General or Government Advocate, such other officer as the Local Government may appoint in this behalf.

Grounds for declaring election void.

44. (1) Save as hereinafter provided in this rule, if in the opinion of the Commissioners-
- (a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by a corrupt practice, or
 - (b) any corrupt practice specified in Part I of Schedule V has been committed, or
 - (c) the result of the election has been materially affected by the improper acceptance or refusal of any nomination or by the improper reception or refusal of a vote or the reception of any vote which is void or by any non-compliance with the provisions of the Act or the rules or regulations made thereunder, or by any mistake in the use of any form annexed thereto, or

(d) the election has not been a free election by reason of the large number of cases in which undue influence or bribery, within the meaning either of Part I or of Part II of Schedule V has been exercised or committed, the election of the returned candidate shall be void.

- (2) If the Commissioners report that a returned candidate has been guilty by an agent (other than his election agent) of any corrupt practice specified in Part I of Schedule V which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commissioners further report that the candidate has satisfied them that-
- (a) no corrupt practice was committed at such election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent, and
 - (b) such candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at such election, and
 - (c) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character, and
 - (d) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents,

then the Commissioners may find that the election of such candidate is not void.

Explanation.- For the purpose of this sub-rule “treating” means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.

Report of Commissioners and procedure thereon.

45. (1) At the conclusion of the inquiry the Commissioners shall report whether the returned candidate, or any other party to the petition who has under the provisions of these rules claimed the seat, has been duly elected, and in so reporting shall have regard to the provisions of rule 44.
- (2) The report shall further include a recommendation by the Commissioners as to the total amount of costs which are payable and the persons by and to whom such costs should be paid. Such recommendation may include a recommendation for the payment of costs to the Advocate General or a person acting under his instructions, attending in pursuance of an order made under rule 43.

(3) The report shall be in writing and shall be signed by all the Commissioners. The Commissioners shall forthwith forward their report to the Governor General who, on receipt thereof, shall issue orders in accordance with the report and publish the report in the Gazette, and the orders of the Governor General shall be final.

Form of report.

46. If either in their report or upon any other matter there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail, and their report shall be expressed in the terms of the views of the majority.

Finding as to corrupt practices and persons guilty thereof.

47. Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in their report-

(a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with the connivance of any candidate or his agent, and the nature of such corrupt practice, and

(b) the names of all persons (if any) who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of such corrupt practice with any such recommendations as they may desire to make for the exemption of any such person from any disqualifications they may have incurred in this connection under these rules.

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

PART VIII.

SPECIAL PROVISION.

Interpretation in case of doubt.

48. If any question arises as to the interpretation of these rules otherwise than in connection with an election inquiry held thereunder, the questions shall be referred for the decision of the Governor General, and his decision shall be final.

C. W . GWYNNE,
Joint Secy. to the Govt. of India.

----- Attachment -----

[ATTACH LIST 1] 01 SCHEDULE I. (See Rule 4.) II. – LIST OF CONSTITUENCIES ENTITLED TO
REPERSENTATION IN EVERY COUNCIL OF STATE

[ATTACH LIST 2] 02 SCHEDULE II. (See Rule 8.) Qualifications of Electors. PART 1.- MADRAS.

[ATTACH LIST 3] 03 SCHEDULE III. (See Rule 11.) Form of Nomination Paper NOMINATION PAPER.

[ATTACH LIST 4] 04 SCHEDULE IV. (See Rule 19.) RETURN OF ELECTION EXPENSES.

[ATTACH LIST 5] 05 SCHEDULE V. (See Rules 5, 7, 22, 33, 44 and 47.)

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