

The Vice-Chairman may at any time be removed from his office by a resolution of the Commissioners in favour of which not less than two-thirds of the whole number of the Commissioners shall have given their votes at a meeting specially convened for the purpose.

**Three years.**—See secs 26 and 26A.

25A. If a Chairman or a Commissioner is appointed by official designation; the *Ex-officio* ap. *pointment* person for the time being holding the office shall be a Chairman or a Commissioner, as the case may be.

This section has been added by sec. 14 of Beng. Act IV of 1894

**Official designation** — See notes to sec. 14

26. The term of three years mentioned in sections 21, 24 and 25 shall be held to include any period which may elapse between the expiration of the said three years and the date of the first meeting of the body of Commissioners newly appointed and elected, at which a quorum shall be present, and any Chairman elected under sections 23 or 27 shall be competent to discharge the duties of his office after his election and pending the orders of the Local Government approving of his election.

**Change.**

The words from 'first' to 'election' have been substituted by sec. 15 of Beng. Act IV of 1894 for the words 'next subsequent appointment or election, not being an appointment or election under the next succeeding sections.'

**Notes.**

These new words distinctly fix the period of the tenure of office of the Commissioners, Chairman and Vice-Chairman to the date of first meeting of the new body. A Commissioner's tenure of office under the Act was hitherto terminable on the date of election or appointment and as appointment of Commissioners was generally made some time after the election, there was virtually an interregnum, which, in several cases, caused great inconvenience in the despatch of business. This change has removed that inconvenience; and the outgoing Commissioners continue in office till their successors actually undertake the administration. In the same way the out-going Chairman or Vice-Chairman remains in office till the first meeting of the new body. The Chairman who is then elected takes charge of his office pending approval of the Local Government, which he could not do under the old section, the Vice-Chairman, as before, taking charge immediately after his election, which does not require the approval of the Local Government.

26A Notwithstanding anything contained in sections 24, 25 and 27A, the Chair-  
Resignation of  
Chairman and Vice-  
Chairman man and Vice-Chairman of every municipality shall resign office at the first meeting of the Commissioners newly appointed and elected at which a quorum shall be present. The meeting shall thereupon proceed—

(a) to elect, or to request the Local Government to appoint, a Chairman, and

(b) to elect a Vice-Chairman :

Provided that if the municipality is in the second schedule of this Act, or if the meeting decides to request the Local Government to appoint a Chairman, the resignation of the Chairman shall not take effect until a new Chairman is appointed.

This section has been added by sec. 16 of Beng Act IV of 1894.

Notes.

The Hon'ble Mr. Bourdillon said "sometimes considerable delay occurs in the election of a Vice Chairman or in the appointment or election of a Chairman for a new body of Commissioners. As the ordinary official life of a Municipal Commissioner, a Vice-Chairman, or a Chairman is three years, the result is that the Commissioners at the end of their term go out of office some weeks or sometimes months before their Chairman and Vice-Chairman. In these circumstances, the old Chairman and Vice-Chairman continue to preside over a body of Commissioners who did not elect or nominate them. The Hon'ble the Advocate-General has given his opinion that such a state of things is quite legal, but it is obvious that the position may often be trying and especially will this be the case, when—as may easily happen—the old Chairman and Vice-Chairman may not be included in the new body of Commissioners." The object of the insertion of this section is to remove this difficulty.

The proviso covers the case of the municipalities in which the Chairman is appointed.

Another difficulty was pointed out at the debate on this section, as to what was to be done in the event of their being a tie at the meeting; and it was asked who was to preside at this meeting, whether the president should have a casting vote and whether a candidate would be entitled to vote for himself. "These are matters which," the Hon'ble Mr. Bourdillon said, "in the opinion of Government, need not be dealt with by legal enactment. Under section 90 of the present Bill (sec. 351A of Act), it is proposed to give to municipalities power to make rules among other things for the conduct of business; these rules require the sanction of the Local Government, and when they are prepared, opportunity will be taken to lay down definite and uniform rules on these and other points on which doubt still prevails." If the Local Government is requested to appoint a

Chairman the quorum required is two-third of the Commissioners [sec. 23 cl. (2)].

26B. The Commissioners at a meeting may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in in any one year.

*Leave may be granted to Chairman or Vice-Chairman*  
This section has been added by sec 17 of Beng Act IV of 1894 It supplies an omission.

Resignation of the officer not necessary—*vide* para 3, Beng. Govt. Munl. Cir No. 11M —22 Feb. 95 to Comrs.

27. If any Commissioner, Chairman or Vice-Chairman shall be unable to complete his full term of office, or shall avail himself of leave granted under section 26B, the vacancy caused by his resignation, or removal, or death or absence on leave shall be filled by the appointment or election, as the case may be, of another person; and the person so appointed or elected shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in office or during his absence on leave, as the case may be.

*Appointment or election of Commissioner Chairman or Vice-Chairman for unexpired term of office or during term of leave of absence*

#### Changes.

The words 'or shall avail himself of leave granted under section 25 B', 'or absence on leave' and 'or during his absence on leave as the case may be' have been added by section 18 of Beng. Act. IV of 1894.

#### Notes.

The Chairman and Vice-Chairman may avail of leave under sec 26B and a Commissioner under sec 20 cl. (c) of sub-sec (1) may absent himself from five consecutive meetings without leave, but



if it exceeds, he will have to obtain permission from the Commissioners at a meeting.

This section contemplates absence on leave granted under sec. 26B to a Chairman or a Vice-Chairman and not to a Commissioner. It is therefore obligatory to fill up the vacancy caused by the officer going on leave. There is, however, no provision in the law in the case of a Commissioner.

The election of a Chairman under this section is subject to the approval of the Local Government [Sec 59 cl. (a)].

27A. (1) A Chairman of a municipality may resign by notifying in writing his intention to do so to the Local Government, and on such resignation being accepted, shall be deemed to have vacated his office.

Resignation of  
Chairman, Vice-  
Chairman or Com-  
missioner.

(2) A Vice-Chairman or a Commissioner of a municipality may resign by notifying in writing his intention to do so to the Chairman, who shall forthwith lay such notice before the Commissioners at a meeting, and on such resignation being accepted by such Commissioners, shall be deemed to have vacated his office.

#### Changes.

This section is new and has been added by sec. 19 of Beng. Act IV of 1894. Section 16 of the Act under which a Commissioner might resign has been repealed by sec. 9 of Act IV of 1894.

28. The Chairman and Vice-Chairman of any municipality may, if the Commissioners think fit, receive such allowances out of the Municipal Fund as shall from time to time be fixed at a meeting by the Commissioners.

Allowances of  
Chairman and Vice-  
Chairman.

And in the case of a salaried Chairman or Vice Chairman, the Commissioners may grant such leave allowances as they may from time to time determine at a meeting.

Provided that the allowance so granted, together with the acting allowance, if any, of the officiating incumbent shall not exceed the salary fixed for the office.

#### Change.

Paragraphs 2 and 3 have been added by sec. 20 of Beng. Act. IV of 1894.

#### Note.

A resolution under this section requires confirmation of the of the Local Government under sec. 59 cl. (c).

29. The Commissioners shall, in the name of their Chairman, by the description of  
Incorporation of Commissioners. "The Chairman of the Municipal Commissioners of \_\_\_\_\_," be a body corporate, and have perpetual succession, and a common seal, and in such name shall sue and be sued.

Such common seal shall have the name of the Municipality engraved thereon in legible characters in the English language, and also in the vernacular of the district.

**Perpetual succession.**—*Of. Mahamahopadyaya Rangachariar v. The Municipal Council of Kumbakonam* (I. L. R. 29 Mad. 539) in which the Madras High Court has held that supersession and re-establishment of a corporation by the Local Government has not the effect of extinguishing the old corporation and creating a fresh one, but simply the temporary suspension and revival of the old corporation.

**Common Seal.**—For the importance of the common seal see sec. 37 and notes thereunder.

### JURISDICTION OF COURTS.

**English Law.**—The jurisdiction of a legal tribunal to interfere with the exercise by a corporation of powers, which are beyond the scope of its authority, is usually discussed in the English Law under the head of *ultra vires*. Under the English Law a municipal corporation is an ordinary corporation, whose powers and duties are defined by the statute which brings it into existence and by statutes of general application. A few instances may be considered here.—

(1) **Municipal fund.**—When the statute defines the purposes towards which the corporate funds may be applied, an injunction may be granted against the application of the fund to any other purpose [see *Attorney-General v. Aspinall*, 2 My & Cr. 613 and *Attorney-General v. Mayor of Poole*, 4 My. & Cr. 17. Cf. sec. 69 of this Act and the notes thereunder ]

(2) **Alienation.**—Courts have jurisdiction to prevent alienation except on certain defined conditions [See *Arnold v. Mayor of Gravesend* 25 L. J Ch. 776 Cf. sec 34 of this Act and the note thereunder ]

(3) **Bye-laws.**—Courts have also assumed jurisdiction to declare whether a bye-law or rule framed by a municipal corporation is *ultra vires* [See Brice on *Ultra Vires*, 195, 3rd edition. Cf. sec. 350 of this Act and the notes thereunder. ]

(4) **Corporate discretion.**—As the powers of a corporation are usually defined by statute, questions often arise as to the precise extent of such powers contemplated by law, involving an examination of the words employed capable of different interpretations. When, however, no doubt exists as to the powers, general and special with which a corporation is endowed, the court will not interfere with its operations when it is both " keeping within its authorization " and acting *bona fide*. It will be deemed the best judge not only of what is most conducive to its own interests, but also of what is proper and fitting as regards third parties, " and

it will be unchecked to take whatever action it deems proper [See the authorities cited in Brice on *Ultra Vires*, p. 475 (3rd edition)]. These principles apply with greater force to public corporations, which are allowed a greater latitude in the exercise of their powers other than privileged corporations [See *Galloway v. Mayor of London*, L. R. 1 H. L. 34 and *Quinton v. Corporation of Bristol*, 17 Eq. 524]. The only exception is when private rights are interfered with e.g., by an act of nuisance, which is illegal and amounts to an invasion of private rights, although the corporation may act with perfect *bona fides* for the public benefit [See *Attorney-General v. Mayor of Kingston*, 13. W. R. 888].

**Indian Case-law.**—Municipal as well as other public boards are included within the restraining and regulating jurisdiction of Civil Courts of the country, which are competent to enquire into and control the action of such bodies, when they have acted in excess or contravention of the powers conferred upon them, *Brindaban Chandra Roy v. Municipal Commissioners of Serampore* 19 W. R. 309. So where it appeared that the Municipal Commissioner of Gantur had conformed to the procedure laid down in law for the imposition of the profession tax on a person it was held by the High Court on reference that suit to obtain a refund of the tax levied in the case would not lie in the Civil Courts, *Kannayya v. Leman* I. L. R. 2 Mad 37. But there is nothing in the Bengal Municipal Act to prevent a rate-payer from seeking a decision in a Civil Court that the assessment made by a municipality is *ultra vires* and not binding upon him, *Navadip Chandra Pal v. Purnanand Saha*, 3 C. W. N. 73. When a municipal corporation in making an assessment acts in contravention of the provisions of the statute, it is open to a Civil Court to declare that the assessment is illegal, *Syed Shah Hamid Hossien v Patna Municipality*, 17 C. W. N. 812 (815). So where an assessment of the tax on persons under sec 85 cl. (a) was made in consideration of the assessee's circumstances and property (wholly or partly) outside the local limits of the municipality, it was held that action of the Commissioners was *ultra vires* and liable to be set aside by the Civil Courts, *Kameshwar Prosad v. Chairman of the Bhubua*

*Municipality*, I. L. R. 27 Cal. 849 But a Civil Court has no power to revise the valuation of houses made by a municipality for the purposes of imposing house tax, but is bound to accept it as conclusive, *Morar v. Borsad Town Municipality*, I. L. R. 24 Bom. 607. See also *Municipality of Wai v. Krisnaji Gangadhar*, I. L. R. 23 Bom 446, *Chairman of Giridhi Municipality v. Sirish Chandra Mazundar*, I. L. R. 35 Cal. 859, and *Chairman, Ohupra. v. Basudeb* I. L. R, 37 Cal. 374

Thus the result of all these decisions in India also is that the jurisdiction of the Civil Courts is limited to the determination of the question as to whether the act complained of was *ultra vires* i.e., not within the scope of the authority vested by the law in the municipality. It is not open to the Civil Courts to go into the question of propriety or necessity of the act complained of, when the legislature has designedly made the corporation the sole judge of such propriety or necessity. The matter would, of course, assume a different aspect, if the *bona-fides* of the act itself is questioned or malice imputed to the local authority, *Duke v. Rameswar Maliah* I. L. R. 26 Cal 811 In the case of *Lalbhai v. The Municipal Commissioners of Bombay* (10 Bom. L. R. 821) the Bombay High Court has been pleased to observe that where the legislature has vested a discretion in the Commissioner in a matter, the Court will not interfere in the exercise of it, merely because the object in view might be carried out in some other way, nor will it lightly impute bad faith to him But the Court is, in the first instance, entitled to enquire whether the discretion has been exercised. See also *Patel Panachand v. Ahmedabad Municipality*, I. L. R. 22 Bom. 230, *Tribhoban v. Ahmedabad Municipality*, I. L. R. 27 Bom. 221 and *Abdul Aziz v. Chairman Pilibhit*, A. W. N. (05) 79. It is not the practice of the Court to interfere with corporate bodies "unless they are manifestly abusing their powers," *Ahmedabad Municipality v. Manilal* I. L. R. 19 Bom. 212 and *Bhawanishankar v. Surat Municipality*, I. L. R. 29 Bom. 187 (191, 194 & 195). Certain discretion having been by law vested in the General Committee of the Calcutta Corporation, the High Court, in the exercise of its criminal revisional jurisdiction, has no power to

set aside or question acts done in the exercise of that discretion, if those acts have otherwise been done in accordance with the provisions of the law, *Shamul Dhone Dutta v. Corporation of Calcutta*, 1 I. L. R. 34 Cal. 30, 11 C. W. N. 671. The same principle was followed in *Atarmani Dasi v. Corporation of Calcutta*, 8 C. L. J. 507 (510). See also *Prosal Chandra De v. Corporation of Calcutta*, I. L. R. 40 Cal. 836.

In *Municipal Council of Mangalore v. The Codial Bail Press* (I. L. R. 27 Mad. 547) the Madras High Court held that the provisions of the Act not having been in substance and effect complied with, the Court could entertain a suit to recover an amount paid under an assessment; and in *Ali Mardan v. Municipal Committee of Kohat* (50 P. L. R. 1905) it was held that the acts done by the Municipal Committee, not being acts falling within the scope of the authority given to them by the Act, Civil Courts have jurisdiction to deal with such acts and to restrain them when necessary. In *Chairman, Municipal Board Baraich v. Parbhu* [12 O. C. 191 (B), 3 Ind. Cas. 516] it has been held that a Civil Court is not competent to discuss the advisability of actions of a municipal board and has no power to interfere with them unless the board's action is *ultra vires*. In *Oborono v. King Emperor*, (9 Cr. L. J. 578, 2 Ind. Cas. 357) it was held that when the order of a Municipal Committee is lawful, the Court has no jurisdiction to consider whether such order is reasonable or not.

Even in a case where a Civil Court ordinarily has jurisdiction to interfere on the ground that the local authority has acted *ultra vires*, the jurisdiction may be withdrawn by express legislation, e. g., as regards the amount of assessment made by the Commissioners under Act. It was accordingly held that even if the Commissioners, in fixing the assessment, had taken into consideration the means of the owner without confining their attention to the annual value of the holding, they might have acted improperly and exceeded their powers under the Act, but the Civil Court had no jurisdiction to question the assessment in view of the

special provision in the Municipal law contained in the old Act corresponding to sec. 116 of this Act, *Manswar Das v. The Collector and Municipal Commissioners of Chupra* I. L. R. 1 Cal 409. Where the law has given discretion to a corporation in any matter, such discretion must be held to be full discretion ; and if there is no reason to suppose that the corporation are not guided solely by the requirements of public interest, it must be presumed that the corporation know far better than the Court what is the best proposal to adopt in such interest.—*In matter of Jogendra Nath Mukhuti* I. L. R. 36 Cal. 271 (275), 13 C. W. N. 129. The Courts put a wider and more liberal construction on the powers vested for the benefit of the public in a municipal corporation, *Hansraj v. The Karachi Municipality*, 1 Sindh L. R. 228. In order to justify a Court in overriding the plain language of a statute by reference to its spirit and general tenor, the argument must be cogent and convincing, *Mahadeb Aon v. Chairman, Howrah Municipality*, 11 C. L. J. 524.

When a party had consented to a certain order passed by a municipality, which it had no power under the Act to make, and it is not shown that the municipality had acted, on the consent, to its prejudice, it was held that the party was not estopped from challenging the order as *ultra vires*, *Gopal Messer v Chairman of Gaya*, 20 C. L. J. 138.

The Municipal Commissioners are authorised to acquire lands for carrying out the purposes of the law. They are the sole judges of the necessity of such acquisition and no suit lies to restrain them from making the acquisition.—*Shastri Ram Chandra v. The Ahmedabad Municipality*, 1 L. R. 24 Bom. 600.

**Liability of Corporation to Criminal Prosecution.**—A corporation is liable under the Penal Code to be prosecuted for a nuisance in the same way as if the offence had been committed by an ordinary individual. Sanction of the Local Government is not necessary for such a prosecution, *Empress v. The Corporation of the Town of Calcutta*, 1 L. R. 3 Cal 758. See also *Chairman of the Serampore Municipality v. Inspector of Factories, Hooghly*, 1 L.

R. 25 Cal. 454. As to liability for neglect of duty see *Mayne's Oriental Law of India*, 2nd Edn. pp. 624—5, also *Patel Panachand v. Ahmedabad Municipality*, I. L. R. 22 Bom. 230.

**Civil v. Criminal Proceedings.**—It was held by the Allahabad High Court in the case of *Baldeo Prosad v. King Emperor* (7 A. L. J. 735) that the provisions of the Municipalities Act were not intended to enable municipal authorities to override the decision of a Civil Court, where the court had jurisdiction, and it was not therefore open to the municipal board to prosecute a person in respect of a building pending the decision of the Civil Court and to continue the prosecution after its decision.

A suit for a declaration that the land on which plaintiff's house was built belonged to him and was not a public road and for the withdrawal of an order issued by the Magistrate directing him to demolish it, is not barred by section 56 of the Specific Relief Act, *Jaganath v. The Chairman of Berhampur*, 9 C. L. J. 296.

29A. (1) The powers and functions of the Local Government under sections 30, 255, 259 and 331, may be delegated by the Local Government to Commissioners of Divisions.

Delegation of certain powers and functions of Local Government

(2) In regard to powers or functions delegated to them under this section, Commissioners of Divisions shall have the same authority as the Local Government, and the delegation shall continue until revoked by the Local Government.

(3) A delegation under this section may be of all or any of the powers and functions aforesaid and may be made generally in regard to all the municipalities within the Division of the Commissioner, or it may be made particularly in regard to certain municipalities only.



(4) The delegation may be by name or by official designation, and shall in each case be notified in the *Calcutta Gazette*.

This section is new and has been added by sec. 21 of Beng. Act IV of 1894.

#### Notes.

By this section certain powers hitherto exercised by the Local Government may be transferred to the Commissioners of Divisions with a view to secure despatch of business.

Sec. 30 para. 2 empowers the Local Government to exclude any road, bridge or drain from the operation of this Act or of any specified section.

Sec. 255 provides that no burial or burning ground shall be made or shall be again used, if one lapsed into disuse, without the permission of the Commissioners or of the Local Government.

By sec. 259 the Commissioners at a meeting may, with the sanction of the Local Government, provide out of the Municipal Fund fitting places to be used as burial or burning grounds, and may impose a fee for burying or burning.

By sec. 351 para. 3 the Commissioners with the approval of the Local Government may make, alter, add to or repeal rules for defining the duties of persons employed in the removal of sewage.

**Delegation.**—The powers and functions of the Local Government under sections 30, 255 and 259 have been delegated to the Commissioners of Divisions by Notification No. 1095 F.M. 1903 (*Vide Govt. Cir. Vol III, p. 1038*).

#### *Of the property of the Commissioners,*

30. All roads, including the soil, and all bridges, tanks, ghats, wells, channels and drains in any municipality (not being private property and not being maintained by

Public roads, &c.,  
vested in the Com-  
missioners.

Government or at the public expense), now existing, or which shall hereafter be made, and the pavements, stones and other materials thereof, and all the erections, materials, implements and other things provided therefor, shall vest in, and belong to, the Commissioners.

But the Local Government may, from time to time, by notification, exclude any road, bridge or drain from the operation of this Act or of 'any specified section of this Act and may cancel such notification wholly or in part.

Provided that, if the cost of the construction of the work shall have been paid from the Municipal Fund, such work shall not be excluded from the operation of this Act without the consent of the Commissioners at a meeting

#### Changes.

The words 'including the soil and' and 'or if any specified section of this Act' have been added by sec. 22 of Beng. Act IV of 1894.

#### Notes.

**Road**—For definition of, see sec. 6 cl. (13) and notes thereunder.

**Including the soil.**—In the cases of the *Chairman of the Naihati Municipality v. Kishori Lal Gossami* (I. L. R. 13 Cal. 38) and *Madhu Sudan Kundu v. Promoda Nath Roy* (I. L. R. 20 Cal. 732) it was held that the law relating to the ownership in the soil of the road was the same in India as in England, that is, the absolute property in the soil was not vested in the Commissioners but in the owners of adjoining lands, even if there was nothing to show that such road was ever carved out of such lands.

To put a stop to this obvious anomaly, the expression, "including the soil," was inserted in the section; and the result of

this insertion has been to nullify the effect of those decisions and to vest the property in the soil of roads, which are not shown to be private property or to be maintained by Government or at the public expense, in the Commissioners.

When, therefore, a road is shown to exist, to take away the soil thereof from the Commissioners, on such road ceasing to exist, either of the two things must be proved, that is, (1) that it is private property or (2) that it is maintained either by the Government or at the public expense.

**Not being private property and &c.**—*Per Mukerji J.* The word “and” in this expression is to be taken distributively and not collectively.—*Chairman of the Howrah Municipality v. Khetra Krishna Mitra*. I. L. R. 33 Cal. 1290, 4 C. L. J. 343, 10 C. W. N. 1044.

**Two classes of roads.**—Reading section 6 cl. (13) and this section together, it will appear that the Legislature contemplates the existence of two classes of roads in mofusil municipalities; namely,—(1) roads vested in the Commissioners, and (2) roads, not so vested, but under the control of the Commissioners. A careful study of sections 202, 203, 204 and 233 as well as of the cases of *Ram Ohanindra Ghosh v. Bally Municipality* (I. L. R. 17 Cal. 634) and *Mewa Sonar v. Emperor* (15 C. W. N. 111 notes) will lead to this conclusion. The following observations of his Lordship, Mukerji J., in the case of the *Chairman of the Howrah Municipality v. Khetra Krishna Mitra* (1 L. R. 33 Cal. 1290) supports this view;—

“The section clearly means that all roads, &c., shall vest in the Commissioners, but roads, &c., not being private property, shall not so vest and roads, &c., maintained by Government or at the public expense shall also not vest. The interpretation of the Legislature appears to have been not to vest in the Commissioners such roads, &c., as are either private property or are maintained by Government or at the public expense.”

In the case of *the Chairman of Howrah v. Haridas Datt* (I. L. R. 43 Cal. 130, 20 C. W. N. 613) Fletcher and

Richardson JJ. agreed with Mukerji J. in the view he had expressed in this case as to the meaning of the section. Their Lordships further remarked in the course of their judgment, that if the public have right to go over a private pathway, the municipality under the later sections of the Act have been given the power of control, to prevent the road from becoming a nuisance or the rights of the public from being interfered with.

It is necessary, however, here to examine the opinions of the other commentators of the Act on this point. The late Mr. Justice Pargiter in his edition of the Act has been pleased to observe at page 29,—“*All, ‘roads’ are vested in the Municipal Commissioners under sec. 30; see the notes thereunder.*” And the late Hon’ble Mr. Collier in his notes under this section has been pleased to observe as follows;—

“Their (the amendments) effect is to confer the full proprietary right in the land covered by public roads on the Commissioners \* \* \*. The second change is made by the insertion of the words “and all,” thus separating the term roads from the parenthesis “not being private property, &c.” As pointed out in the preceding editions of this work the reservation “not being private property” was unnecessary as regards roads, on account of the definition in clause 13 of section 6. A road over which the public has a right of way is public and not private property *qua* road. The mistake has now been rectified.”

With the greatest respect for this high authority, it is submitted that it is hardly possible to agree in this exposition. Mr. Collier was a member of the Bengal Legislative Council, when the amending Act IV of 1894 was passed, as also of the Select Committee for settling the Bill. Section 21 of the Bill, which proposed the insertion of the words, “including the soil and all” in this section, came out of the hands of the Select Committee without any comment. But the following remarks, occur in the note of dissent recorded by the Hon’ble Mr. Collier;—

“3. Section 21 of the Bill.—In amending section 30 of the Act I am of opinion that the words “not being private property”

should have been omitted as regards roads, having regard to the definition of road contained in section 6, clause (13). If the public has a right-of-way over a road, such road cannot be held to be private property; as regards roads, there seems to me to be a contradiction in terms in the section," (Cal. Gaz. Feby. 21, 1894, Part IV, p. 18).

This evidently goes to show that in the opinion of the Hon'ble gentleman himself, the effect of the proposed amendment was not to dissociate the expression "not being private property" from the term "roads" in the section.

In the debate on the Bill in Council, which followed, section 21 of the bill was quietly accepted, as it came out of the Select Committee, and became section 22 of the Act IV of 1894. It is difficult, in the circumstances, to see how this conclusion was arrived at.

The Letter, which the Government of Bengal addressed to the Commissioners of the Division subsequently to the passing of the Act, explaining the changes introduced by it, nowhere indicates that the effect of the insertion of the words "including the soil and all" was what Mr. Collier asserts to be in the note (*vide* para 12, Govt. Cir. No. 34M.—The 27th August, 1894.)

It is further submitted that the words of Mr. Justice Mukerji in the judgment of the case of *Khetra Krishna Mitra* quoted above shows clearly that even the incisive intellect of the eminent judge has failed to make out the meaning which Mr. Collier says that the section bears. The recent ruling in the case of *the Chairman of Howrah v. Haridas Datta* (I. L. R. 43 Cal. 130, 20 C. W. N. 613) has laid any doubt, that might still exist, at rest.

**Drains.**—(*Per Mukerji & Carnduff JJ.*) "A public drain *qua* drain always vests in and belongs to the Municipal Commissioners,—see section 10 of the District Municipalities Act of 1864, section 32 of the Bengal Municipal Act 1875 and section 30 of the present Municipal Act. So long as it continues to be a public drain, any private rights in the subsoil must remain, so to speak, dormant and in abeyance, and there remains nothing more than

a very remote and problemetical chance of the drain ceasing to be connected with the drainage of the town," *Chairman of the Municipal Commissioners of Howrah v. John King & Co.* (Original Appl. No. 540 of 1908, decided on 25-7-10 unreported).

**Vested right.**—Of the Commissioners is not a mere right of easement, but a special kind of property previously unknown to the law but created by statute (see *Basaweswaraswami v. Bellary Municipal Council*, I. L. R. 38 Mad. 6) and it must be exercised in accordance with the provisions of the statute. Thus a road vested in the Commissioners cannot be closed, or diverted or otherwise disposed of by them without the sanction of the Local Government.—*Jadu Nath Ghose v. Brojo Nath De*, I. L. R., 2 Cal. 425. See, however, the case of *Kalil Rahaman v. Dacca District Board* (11 Ind. cas, 28) where it has been held by *Oxze J.* that the Municipal Commissioners have power to abandon an old road for a new one, to exchange, under section 34, a piece of road land for another necessary for the improvement of a road

**Busti Roads.**—There is nothing preventing roads constructed by Commissioners under sec. 245 and used by municipal servants for conservancy purposes from vesting in the Commissioners under this section; nor are the purposes for which such a road may be used confined to cleaning the particular *busti* which it opens out—*Rama Nath Ghose v. F. W. Duke* (Appl. Ap. No 1105 of 1900, decided 6-2-02 unreported).

**Ghat.**—In this section was not intended to include a burning ground, *Chairman of the Howrah Municipality v. Khetra Krishna Mitra* I. L. R. 33 Cal. 1290 (1303), 10 C. W. N. 1044, 4 C. L. J. 343.

So far as *ghats* are concerned, however, sections 30 and 32 overlap and there is an apparent inconsistency, in view of the qualifying expression, "not being private property and not being maintained by Government or at the public expense" (*Ibid p.* 1304).

Under section 190 all drains shall be subject to the inspection, and control of the Commissioners, and as such no person can in-

terfere with any of them without their consent, even though they are private.

Sec. 191 provides for inspection of house drains by the Commissioners or officers authorized by them after six hours' notice in writing to the occupier between sun-rise and sun-set, and if necessary, they may cause the ground to be opened for preventing or removing any nuisance arising therefrom, and the expense, incurred thereby shall be paid by the owner or occupier.

31. The Commissioners at a meeting may agree with the person in whom the property in any road, bridge, tank, ghat, well, channel or drain is vested to take over the property therein or the control thereof, and after such agreement may declare, by notice in writing put up thereon or near thereto, that such road, bridge, tank, ghat, well, channel or drain has been transferred to the Commissioners.

Commissioners  
may with consent  
of owners take over  
and repair roads &c

Thereupon the property therein, or the control thereof (as the case may be), shall vest in the Commissioners, and such road, bridge, tank, ghat, well, channel or drain shall thenceforth be repaired and maintained out of the Municipal Fund.

#### Notes.

It will be noticed that the expression, "including the soil," added to the word "roads" in the preceding section, has not been incorporated in this section. Does it follow, therefore, that the proprietary right in the road, &c., transferred, remains in abeyance, to revert to the owner, if it is closed? See *Nehal Chand v. Azmat Ali Khan*. I. L. R. 7 All. 362. The point, if it arises in any case, shall perhaps, have to be decided with reference to the terms of the transfer.

32. Every hospital, dispensary, school, rest-house, ghat and market, not being private property or the property of a religious institution or society, and all medicines, furniture and other articles appurtenant thereto, not being such property, which at and after the commencement of this Act shall be found within any municipality may, by order of the Local Government duly published on the spot, be vested in the Commissioners of such municipality; and thereupon all endowments or funds belonging thereto shall be transferred to, and vested in such Commissioners as trustees for the purposes to which such endowments and funds were lawfully applicable at the time of such transfer :

Provided that no such order shall be published until one month after notice of the intention to transfer such property shall have been published in the *Calcutta Gazette*, and within the municipality in the vernacular language of the district.

See notes to section 30.

33. If the Commissioners at a meeting shall, after publication of the notice mentioned in the last preceding section, object to the transfer to themselves of any hospital, dispensary, school, rest-house, ghat or market, on the ground that their funds cannot bear the charge, then transfer shall not be made save under such conditions as the Commissioners at a meeting may agree to accept.

Existing hospitals,  
school, rest-house  
&c may be vested in  
the Commissioners.

Transfer to be  
conditional in cer-  
tain cases.



34. The Commissioners at a meeting may purchase or take on lease any land for the purposes of the Act, and may sell, let, exchange or otherwise dispose of any land not required for such purposes.

Power to purchase, lease and sell lands

#### Notes.

**For the purposes of the Act.**—A lease of land, taken for use as a trenching ground, is one for the purposes of the Act ; and it is not beyond the powers of a municipality to enter into such a lease, *Chairman, South Barrackpore Municipality v. Amulya Nath Chatterjee*, I. L. R. 34 Cal. 1030 (32), 12 C. W. N. 50.

It was further held in this case, at pages 1042-3 that this section must be read along with section 37 ; for although this section refers to certain class of contracts, section 37 applies to all contracts of whatever nature. Accordingly a *Kabuliyat*, involving a value exceeding Rs. 500, and executed on behalf of a municipality by its Chairman and signed by two Commissioners only as witnesses, and not as contracting parties, and not sealed with the common seal of the municipality, was held to be not binding on the Commissioners.

In view of the proviso to section 44, the exercise of the power of disposing of municipal land by the Chairman without a resolution of the Commissioners in meeting was held to be illegal and not binding on the municipality, *Jagannath v The Chairman of Berhampur* 9 C. L. J. 286.

An exercise of the powers, given by this section to the Commissioners, does not debar the Civil Courts from entertaining suits and giving relief in respect of any civil right which may be shewn to have been infringed thereby, *Fazal Haq. v. Maha Chand*, I. L. R. 1 All. 557. See also notes to sec. 29.

35. The Local Government, on the application of the Commissioners at a meeting that any land be acquired for the purposes of this Act, may, on being satisfied that the Com-

Land may be taken up under Land Acquisition Act, 1894.

missioners are in a position to pay for such land either at once or in such instalments as the Local Government may think proper, notify under the provisions of the Land Acquisition Act, 1894, or any similar Act for the time being in force for the acquisition of land for public purposes, that such land is required for a public purpose, and may cause such land to be acquired under the provisions of such Act; and, on payment by the Commissioners of the compensation awarded under such Act, the land shall vest in them for the purposes of this Act.

**For the purposes of this Act**—The Commissioners are authorised to acquire lands for carrying out the purposes of the law. They are the sole judges of the necessity of such acquisition and no suit lies to restrain them from making such acquisition.—*Shastri Ram Ohandra v. The Ahmedabad Municipality*, I. L. R. 24 Bom. 600.

36. The Commissioners shall be bound to pay to the Government the cost of any land which may be acquired for them on their application under the provisions of the last preceding section.

Commissioners to  
pay cost of such  
land.

#### Notes.

By sec. 50, sub-sec 1 of India Act I of 1894 (*The Land Acquisition Act*) the charges of and incidental to the acquisition of any land at the cost of any fund under the control or management of a local authority shall be defrayed from such fund.

By sub-sec. 2, the local authority concerned may appear before a Collector or Court in any proceeding in which it is concerned and adduce evidence for the purpose of determining the

amount of compensation but it shall not be entitled to demand a reference to a Court under sec. 18.

37. The Commissioners may enter into and perform any contract necessary for the purposes of this Act.

Execution of contracts.

Every contract made on behalf of the Commissioners of a municipality in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding five hundred rupees, shall be sanctioned by the Commissioners at a meeting, and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners.

Unless so executed, such contract shall not be binding on the Commissioners.

#### Notes

**Necessary for the purposes of this Act.**—This section authorizes the Commissioners to enter into contracts necessary for the purposes of this Act. - Any other contract is *ultra vires*. Agreements having for their object the creation of monopolies are void as opposed to public policy under English Law and under section 23 of the Indian Contract Act.—*Soma Pillai v. Municipal Council, Mayavaram*, I. L. R. 28 Mad. 520. See secs. 14 and 69 and the notes thereunder.

**Contract exceeding five hundred rupees.**—In the unreported case of *Govind Chandra Dutt v. Chairman of the Howrah Municipality* it was held (*per* Macpherson & Beverly, JJ.) that the provisions of sec. 65 and 70 of the Contract Act do not apply to the case of contract in respect of a sum exceeding five hundred rupees, not entered into in accordance with provisions of the section, even though the Commissioners may have been benefited

thereby—*Special Appeal No. 1828 of 1891, decided on the 5th June 1894. Of Ramaswamy Chetty v. The Municipal Council of Tanjore* (I. L. R. 29 Mad 30) decided under the corresponding section of the Madras District Municipalities Act (Mad. Act IV of 1884 as amended wherein it has been held that such a contract is not only not binding on the municipality, but the municipality cannot be rendered liable on the ground of executed consideration. *See also Raman Chetty v. The Municipal Council of Kumbakonam* (I. L. R. 30 Mad 290) in which such an agreement was held to be invalid and not binding on either of the parties to it and that the fact that such an agreement was partially acted upon could not render it an operative contract.

In a suit for damages brought by a municipality for breach of an executory contract, it is open to the defendant to show that it is not binding on him, in as much as it is not binding on the plaintiff by reason of the formalities prescribed in the section not having been complied with, *Ahmedabad Municipality v. Sulemanji*, I. L. R. 27 Bom. 618. *See also the elaborate judgment of Stanley C. J. and Burdett J. in the case of Radha Krishna Das v. The Municipal Board of Benares*, I. L. R. 27 All. 592 wherein their Lordships arrived at the same conclusion. But it must be noted that *Jenkins C. J. in the case of Abaji Sitaram v. Trimbak Municipality* (I. L. R. 28 Bom. 66) was pleased to hold that although a contract by a corporation must ordinarily be made under seal, still, where there is that which is known as an executed consideration, an action will lie though this formality has not been observed.

*See, however, The Municipal Board of Najibabad v. Sheo Narain* (I. L. R. 29 All 346) wherein an endorsement on the back of the contract, referring to and confirming its contents, by the Vice-Chairman and Secretary was held to be sufficient compliance with sec. 47 of the N. W. P. and Oudh Municipalities Act (1 of 1900).

In the case of the *Chairman South Barrackpore Municipality v. Amulya Nath Chatterjee*, (I. L. R. 34 Cal. 1030) it was held that

this section, applying, as it does, to all contracts of whatever nature, covers section 34, which refers to contracts of certain classes only. Accordingly, in that case a *Kabuliyat* for land, involving a value exceeding Rs. 500 and executed on behalf of a municipality by its Chairman and signed by two of its Commissioners only as witnesses and not as contracting parties and also not sealed with the common seal of the municipality, was held to be not binding on the Commissioners ( pp. 1002-3).

“An agreement for a lease is a contract though the lease when completed is a conveyance. Further, a covenant in the lease is a contract, and in this sense the covenant in respect of the lease is a contract,”—*per Woodroffe J. In the matter of Jogendra Nath Mukhuti*, I. L. R. 36. Cal. 271 (276).

Where upon a settlement of municipal land made by the Chairman exceeding his powers under the Act. the party, in whose favour the settlement was made, had erected a house, and about 2 years and 4 months after that, the party was allowed to construct a drain round the house, it was held that as the house was not erected and the drain made by the Commissioners' permission the municipality was not estopped from requiring the removal of the house, *Jagannath v. The Chairman of Berhampur*, 9 C. L. J. 286.

37A. The Commissioners of any municipality may join with the Commissioners of any other one or more municipalities or with any district board or with any cantonment authority, or with more than one such board or cantonment authority, in constituting out of their respective bodies a joint-committee consisting of not more than two members from each of such bodies for any purposes in which they are jointly interested, and in delegating to any such joint-committee any power which might be exercised by either or any of the

Formation of  
Joint-Committee

municipal bodies, or district boards, or cantonment authorities concerned, and such joint-committee may from time to time frame rules as to the proceedings of any such joint-committee, and as to the conduct of correspondence relating to the purpose for which such joint-committee is constituted.

#### Changes.

This and the next following sections 37B, 37C, 37D, 37E, 37F, 37G, 37H, 37I, 37J, 37K, 37L, and 37M are new and have been added by sec. 23 of Beng. Act IV of 1894.

This section has been redrafted on the model of sec. 30 of Bengal Act III of 1885 (*The Local Self-Government Act*) and sec. 27 of Act XX of 1891 (*The Punjab Municipal Act*).

#### Notes.

The word 'Commissioners' in this and the eleven subsequent sections means "Commissioners at a meeting" and not the Chairman as in all other sections where the word occurs in the Act (see secs. 37 M and 44 post).

37B. Whenever it appears expedient to the Commissioners of any municipality, or to the Commissioners of a municipality acting conjointly with the Commissioners of any other municipality or municipalities, or with one or more of any of the local authorities specified in the last preceding section, to provide a supply of water for domestic purposes, or to introduce a system of drainage, they may cause to be prepared a scheme and estimates of the cost of the works necessary for the purpose, together with such plans and specifications of the same as may be necessary, and may submit the same to the

Voluntary introduction of a water-supply or system of drainage

Local Government through the Commissioner of the Division within which the area, or the larger portion of the area, which it is proposed to supply with water or to drain, is situated.

This and the next following sections from 37C to 37L deal with the introduction of schemes of water-supply and drainage, and are the outcome of the resolutions passed at the Belvedere Conference, held on the 18th July 1892.

In the original Draft Bill it was proposed that Government would take the initiative in all schemes for water-supply and drainage, but on reconsideration it has been left in the hands of the local authorities, and the powers of control under sec. 64 are reserved to Government, if default is made in complying with the orders passed under *sec. 37K sub-sec (1)*.

37C. The Local Government may refer such Sanitary Board with a committee to consider and report on scheme. scheme, plans, specifications, and estimates to the Sanitary Board, who in consultation with a committee consisting of one member to be appointed by the municipality or by each of the municipalities or other local authorities concerned, and one member to be appointed by the Commissioner of the Division within which the area, or the larger portion of the area, which it is proposed to supply with water or to drain, is situated, shall consider the same and report thereon to the Local Government.

For the definition of "Sanitary Board" see sec 6 cl\* (14A).

37D. The Local Government shall consider the report, together with the plans, specifications and estimates, and may thereupon : Local Government may sanction, modify or refer scheme.

- (a) sanction the scheme, or
- (b) add to, alter or modify the scheme, and sanction the same so added to, altered or modified, or
- (c) add to, alter or modify the scheme and refer the same so added to, altered or modified together with the plans, specifications and estimates, to the Sanitary Board, who, in consultation with the said committee, shall further consider the scheme so added to, altered or modified, and report thereon to the Local Government.

37E (1) When the scheme recommended for <sup>Distribution of costs of scheme</sup> sanction extends to two or more municipalities or other local areas, the Sanitary Board, acting in consultation with the committee, as constituted under section 37C, shall include in their report proposals for distributing the cost of the scheme, including its maintenance and working expenses, between or among the local authorities benefited.

(2) In the case of municipalities, such distribution shall be in proportion to the income derived by each from taxation, allowance being made for any difference in the degree of benefit conferred on each, such as, in the case of a water-supply scheme, the pressure at which the water is delivered, the facilities for procuring water, the distance from the head-works, and the like



37F. (1) When the scheme has been approved by the Local Government, there shall be published in the *Calcutta Gazette* and locally in accordance with the provisions of section 354, the following particulars:—

Approved scheme  
to be published.

- (a) a general description of the scheme;
- (b) an estimate of the cost of carrying it out;
- (c) an estimate of the cost of maintaining it;
- (d) the source from which the cost will be met;
- (e) the amount of the loan, if any, the annual instalments by which it will be repayable, and the number of years required to repay it;

and, where several local authorities are concerned,

- (f) the distribution of the loan;
- and

(2) where the scheme is for providing or improving the water-supply, the following additional particulars in respect of each municipality concerned:—

- (a) the total annual charge to be incurred by reason of the water-supply and to be met by a water-rate;
- (b) the percentage of such water-rate on the annual value of holdings;
- (c) the average incidence of such water-rate per head of the population.

**Local Publication.**—Sec. 354 prescribes the mode in which the publications is to be made, i. e. the particulars shall be written in, or translated into, the vernacular of the district and deposited in the office of the Commissioners, and a copy shall be posted up at

such office and public places and a proclamation shall be made throughout the municipality by beat of drum.

37G. After the expiry of two months from the date of such publication, and after considering any objections or suggestions that may be submitted, the Local Government may sanction or reject the scheme as published, or may refer it, with such suggestions as it may think fit, to the Sanitary Board, who, in consultation with the same committee as aforesaid, shall consider the scheme with a view to its amendment, and when the scheme shall have been so considered, it shall be forwarded to the Local Government, and the provisions of this and the last preceding sections shall be applied.

37H. When a scheme has been sanctioned by the Local Government under the last preceding section, the Commissioners of the municipality or municipalities, or the local authorities concerned shall, if the rate and other monies to be collected, received or recovered for or in respect of the water-supply or drainage system be sufficient for the purpose, proceed to carry it out, and where two or more municipalities or local authorities are concerned, a joint-committee may be formed for that purpose according to rules to be framed in this behalf by the Local Government.

37I. The Local Government may order the works specified in any scheme, plans, specifications and estimates, or any portion thereof, to be executed by an

Scheme to be carried out by municipalities.

Local Government may appoint an officer to execute the works

officer to be appointed by it, and shall fix the remuneration of such officer, (provided that the cost of the scheme as sanctioned be not exceeded) : and may specify a period within which the work shall be completed, and may extend such period from time to time as may be necessary.

37J. The cost of making plans, specifications and estimates, and the travelling expenses incurred by the members of the committee in attending the meetings of the Sanitary Board for the consideration of the scheme, and the cost of carrying out the scheme if the same be proceeded with, may be advanced from the public funds on the security of the fund or funds of the municipality or municipalities or other local authority or authorities concerned, and shall be recoverable under the Loans Act, 1879, and all the provisions of that Act and the rules made under it referring to the recovery of loans shall be applicable to such advances.

For the Local Authorities Loans Act see App

37K. (1) When it appears to the Local Government that the Commissioners of any municipality, or the Commissioners of a municipality, acting conjointly with the Commissioners of any other municipality or municipalities or with one or more of any other local authorities specified in section 37A, should be required to provide a supply of water for domestic purposes, or to introduce a system of

Cost of the scheme may be advanced from the public funds

Compulsory introduction of water-supply or system of drainage

drainage, it may call upon such Commissioners to show cause within a specified time why they should not be so required, and the Local Government shall consider any objections which may be submitted by the Commissioners, and, if it considers such objections insufficient, it may, after publishing in the *Calcutta Gazette* a full statement of the reasons which have led to action being taken, by an order in writing, fix a time within which the Commissioners shall submit such a scheme, plans, specifications and estimates as are referred to in section 37B, in the manner therein provided :

Provided that when the Commissioners of one municipality are required to show cause, as aforesaid, a resolution against the introduction of such scheme passed at a meeting specially convened for the purpose, in favour of which a majority of not less than two-thirds of the whole number of Commissioners shall have voted, or when the Commissioners of two or more municipalities are required to act conjointly with each other for that purpose, a similar resolution passed by the joint-committee constituted under section 37A, in favour of which a majority of not less than two-thirds of the total number of votes allotted to such municipalities and apportioned to each of them, according to their respective income shall have been recorded shall be final, and in either case no further action shall be taken by the Local Government under the provisions of this section.

(2) When the said order has been complied with the provisions of sections 37C to 37J inclusive shall apply.

(3) If default is made in complying with the said order, the provisions of section 64 shall apply :

Provided that in the case of a municipality mentioned in the first schedule and not required to act conjointly with any other municipality or local authority, if within two months from the date of the publication of the particulars of any such scheme in the *Calcutta Gazette* under section 37F, a petition is presented to the Local Government by a majority of not less than two-thirds of the registered rate-payers of a municipality objecting to the compulsory introduction of such scheme into such municipality, the Commissioners thereof shall not be compelled to carry out such scheme.

#### Notes.

These two provisos have been added to the Draft Bill of the enlarged Select Committee as safe-guards against a compulsory and coercive measure

In the municipalities named in the first schedule the Commissioners are all appointed, and in order to safe-guard the interests of the rate-payers, who are not represented in such municipal boards, the second proviso has been added.

37L. The provisions of Part VII shall, notwithstanding anything in sections 86, 220, 221, 222, 223, 279 or 287, apply to every municipality in which a water-supply is provided under section 37K.

Application  
Part VII

**Change.**

This section was substituted for the former sec. 37L by Beng. Act II of 1896 sec. 4.

**Note**

Part VII contains provisions for water-supply.

37M. The powers conferred on the Commissioners by sections 37A to 37L inclusive shall not be exercised by the Chairman under section 44.

Chairman not to exercise powers of Commissioners.

*Of the Mode of Transacting the Business of the Municipality.*

38. The Commissioners shall meet for the transaction of business (if there be any business to be transacted) at their office, or at some other convenient place, at least once in every month, and as often as a meeting shall be called by the Chairman, or, in his absence, by the Vice-Chairman.

Commissioners to meet ordinarily once a month.

If there shall be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.

Accidental omission to serve notice of a meeting on any Commissioner shall not affect the validity of a meeting.

Meeting not invalidated by non-service of notice.

**Change.**

The last paragraph is new and has been added by section 24 of Beng. Act IV of 1894, on the model of the English Corporation Act.

## Notes

**Special Meeting.**—The Chairman, or, in his absence the Vice-Chairman may convene special or extraordinary meetings. It was held under the corresponding provision of the Bombay Act that in order that such a meeting should be properly constituted it must be called by the president. If the meeting is not so called, it is illegal, *Abaji Sitaram v. Trimbak Municipality*, I. L. R. 28 Bom. 66.

**Special Meetings.**—are necessary for the consideration of the following subjects :—

(a) under sec. 24 or 25 to remove a Chairman or Vice-Chairman.

(b) under sec. 37K to protest against the introduction of a water-supply or drainage scheme ;

(c) under section 47 to frame Provident or Annuity Fund rules, or rules for pensions or annuities ;

(d) under secs. 85 and 86 to impose rates and taxes ,

(e) under sec. 221 to apply to the Local Government for extension or exclusion of Parts VI, VII, VIII, IX or X ;

(f) under sec. 350 to frame bye-laws ;

(g) under sec. 69 (proviso) to sanction grants for the establishment and maintenance of schools, hospitals, or dispensaries or for the promotion of vaccination. This matter may also be considered at an ordinary general meeting of which special notice has been given.

The object of a special meeting is that each member may attend and consider a special or an emergent matter, and the notice of such meeting shall be such as to draw his special attention to it. A special meeting may precede or follow an ordinary meeting on the same day.

39. The Chairman, or, in his absence, the Vice-Chairman, shall call a special meeting on a requisition signed by not less than three of the Commissioners.

Commissioners to meet at other times on special requisition.

If the Chairman or the Vice-Chairman fails to call a special meeting within thirty days after any such requisition has been made, the meeting may be called by the persons who signed the requisition.

**Change.**

The last paragraph was added by sec. 5 of Beng. Act II of 1896.

40. The Chairman, or, in his absence, the Vice-Chairman shall preside at every meeting, and, in the absence of both the Chairman and Vice-Chairman, the Commissioners shall choose some one of their number to preside.

Who to preside at  
meetings of the  
Commissioners

**Note.**

At the first meeting of a new body of Commissioners appointed and elected in which a Chairman is to be elected the Commissioners shall choose one of their number to preside. *Cf. sec. 26.1.*

41. All questions which may come before the Commissioners at a meeting shall be decided by a majority of votes, unless otherwise provided in this Act.

Questions to be  
decided by majority.

In case of equality of votes, the President shall have a second or casting vote.

Casting Vote

**Notes.**

**Special majority.**—Resolutions on the following subjects cannot be carried merely by a majority of votes, but require the votes of two-thirds of the whole body of Commissioners:—

- (a) Removal of Chairman under sec. 24 ;
- (b) Removal of a Vice-Chairman under sec. 25 ;
- (c) A resolution showing cause against a requisition of the Local Government, under sec. 37K.

A resolution under section 47 for making rules for pensions, &c., requires the votes of two-thirds of the Commissioners present at the meeting.



For an excellent exposition of the duty of the Chairman in meetings see *The Indian Municipality* by H. T. S. Forrest, pp. 25 28.

**Casting vote.**—"The Chairman must give his vote whilst the vote of the other members is being taken, and before the tendency of the votes is visible. It would, therefore, be a grave irregularity if a Chairman reserved his votes and gave, if the numbers proved uneven, i.e., seven Ayes, and six Noes, first to the Noes his vote as member, then his casting vote as Chairman".—*Palgrave's Chairman's Hand Book 7th Ed. page 17*

**Poll.**—"A poll, unless forbidden by the clear words of a statute may be demanded on any question put to such a meeting as of right though the demander be satisfied regarding the correctness of the declaration by the Chairman on the vote by show of hands; and the moment after that declaration is made, and before the meeting proceeds to other business, is the proper time for urging that demand upon the Chairman of the meeting, who is the authority that grants the same."—*Palgrave's Chairman's Hand Book, 7th Ed.*

42. No business shall be transacted at a meeting of the Commissioners unless such Quorum meeting has been called by the Chairman or Vice-Chairman, or, under section 39 by persons signing a requisition, nor unless a quorum shall be present.

A quorum shall be, in any municipality, in which the Commissioners are more than fifteen, five; in any other municipality a number being not less than one-third of the entire number of Commissioners.

If, at the time appointed for a meeting, or within one hour thereafter, a quorum is not present, the meeting shall stand adjourned to some future day to be appointed by the Adjourned meeting.

President, and three days' notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum, whatever their number may be.

#### Changes.

The words "or under section 39, by persons signing a requisition" after "or Vice-Chairman" were added by sub-sec. (1) of sec 6 of Ben. Act II of 1896 and the word "President" was substituted for "Chairman or Vice-Chairman" in the last paragraph by sub-sec. (2) of the same section.

#### Notes.

**Adjourned Meeting.**—*Of. Abaji Sitaram v. Trimback Municipality* (I. L. R. 28 Bom. 66) in which **Jenkins, C. J.** was pleased to hold at page 70, that an adjourned meeting is only a continuation of its predecessor, and if that meeting was not properly convened, then the adjourned meeting was equally defective.

**Special quorum.**—The law has practically fixed the quorum at two-thirds of the whole number of Commissioners for the purposes of a meeting under sec. 24 for the removal of a Chairman, under sec. 25 for the removal of a Vice-Chairman and under sec. 37K.

It will also be seen that the attendance of at least two-thirds of the whole number is necessary for a resolution requesting the Local Government to appoint a Chairman under sec. 23.

If, in the course of the transaction of business at any meeting, the requisite quorum is wanting the Chairman shall suspend it. An adjourned meeting is held to be the continuation of the original meeting, and is not competent to transact any business, save that which the original meeting left unfinished.—*See Palgrave's Chairmans Hand-Book 7th Ed., page 37.*

43. Minutes of the proceedings of all meetings of the Commissioners shall be entered in a book to be kept for the purpose,

Minutes of proceedings,

and shall be signed by the President of the meeting, and such book shall be open to the inspection of the tax-payers.

#### Notes.

**Minutes of Proceedings.**—*Per* Edge, C J., Knox and Burkitt, JJ.—“The record of the proceedings of a Municipal body in British India is a public document, clause v of section 78 brings the record of the proceedings of a municipal body in British India within clause 2 of sub-section (1) of section 74, as the record of an official body.”—*Reference under sec. 46 of Act I of 1879*, I. L. R. 19 All. 293 (94-95). See also *Syed Mokram Ali v. Cuttack Municipality*, 17 C. W. N. 531. See also Woodroffe's *Evidence*, 2nd Edn., p. 529.

In letter No. 148 of 1894, Bombay Legislative Department, addressed to the Hon'ble Mr. Chiman Lal Hari Lal Setalvad B.A., L.L. B., the Governor in Council pointed out that documents, forming the acts or records of the acts of official bodies are public documents within the definition contained in sec. 74 of the Evidence Act, and cl. 5 of sec. 78 shows that a municipal body in British India is an official body within the contemplation of sec. 74.

**Proof of Proceedings.**—Sec. 78 cl. 5 of the Evidence Act (I of 1872) provides that the proceedings of a municipal body in British India may be proved by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body. The Municipal Secretary is a public officer for the purposes of such certificate, I. L. R. 19 All. 293.

**Stamp on Copy.**—Copies granted to private persons should bear an eight-anna stamp, under Art. 22 of schedule 1 of the Indian Stamp Act, 1879 (Art. 24 of the present Stamp Act). See the All. case quoted above. See also the Government letter printed in the Appendix.

**Confirmation of minutes.**—The minutes of the proceedings are usually submitted to the next meeting for confirmation.

"The object of this proceeding is, it must be remembered, solely to ensure the verbal accuracy of the minutes. No dispute can accordingly be raised thereon regarding the policy the minutes enforce, either by debate or by way of amendment; far less can general discussion be allowed."—*Palgrave's Chairman's Handbook, 7th Ed., page 23.*

44. The Chairman shall, for the transaction of the business connected with this Act, or for the purpose of making any order authorised thereby, exercise all the powers vested by this Act in the Commissioners:

Powers of Chair-  
man

Provided that the Chairman shall not act in opposition to, or in contravention of, any order of the Commissioners at a meeting, or exercise any power which is directed to be exercised by the Commissioners at a meeting.

#### Notes.

Under section 37M the Chairman shall not exercise, notwithstanding the provisions of this section, the powers conferred upon the Commissioners by sec. 37A to 37L, "The Commissioners' in those sections is, therefore, to be read as "the Commissioners at a meeting."

"It will be noted that the Commissioners cannot set aside any act of the Chairman which he had authority at the time to perform. They can, however pass a resolution that he should not perform similar acts in future, and after the passing of such a resolution, such acts, if performed, would be invalid and liable to be set aside."—*The Indian Municipality by H. T. S. Forrest p. 12.*

By section 34 the power of disposing of municipal land is reserved in the Commissioners in meeting. Under the proviso to this section, therefore, the Chairman is precluded from exercising that power, without a resolution of the Commissioners in meeting, *Jagannath v. Chairman of Berhampore.* 9 C. L. J. 286.

45. The Chairman may, by a written order, delegate to the Vice-Chairman all or any of the duties or powers of a Chairman as defined in this Act, subject to such restrictions as may seem fit to him, and may at any time by a written order withdraw or modify the same :

Chairman may delegate his duties or powers to Vice-Chairman.

Provided that nothing done by the Vice-Chairman which might have been done under the authority of a written order from the Chairman, shall be invalid for want of, or defect of such written order, if it be done with the express or implied consent of the Chairman previously or subsequently obtained.

#### Notes.

**Scope of the proviso.**—The proviso to this section cannot be considered as altogether overriding the body of the section, and relates only to specific acts in which an express or implied consent may have been given or held to have been given. It cannot be held to apply to a general authority, verbally given by a Chairman to a Vice-Chairman, to institute prosecutions under the Act, as such power can only, under the body of the section, be delegated by a written order.

In a prosecution instituted by a Vice-Chairman for obstructing a drain where it appeared that the Chairman had, many months previously, verbally given the Vice-Chairman general authority to institute all such prosecutions under sec. 353 of the Act, and where it was contended in revision before the High Court that, although there was no written order by the Chairman delegating his powers, it must be taken upon the facts proved and circumstances of the case that the prosecution had been instituted with express or implied consent of the Chairman obtained both previously and subsequently within the terms of the proviso to this section, *held*—that the proviso did not apply to the case

and that the prosecution had not been properly instituted, *Kherode Prosad Pal v. The Chairman of the Howrah Municipality* I. L. R. 20 Cal. 448.

Where a prosecution was instituted upon a notice signed by the Vice-Chairman and not by the Chairman as required by sec. 44, and there was no evidence to show that there was delegation of authority by the Chairman under sec. 45 or that his sanction had been either previously or subsequently obtained, it was held that the notice was not issued under proper authority and was therefore bad, and a conviction, based upon such a notice, was consequently bad.—In the matter of *Chairman of the Puri Municipality v. Kissori Lal Sen*, 1 C. W. N. ccxlv (notes).

*Of Powell V. The Municipal Board of Mussoorie*, I. L. R. 22 All. 123 (F. B.), *Emperor v. Hazari Lal*, I. L. R. 36 All. 227 and *Kikam v. The Crown* 3 S. L. R. 13. Where an objection is raised that a particular person who does an official act has no power to do it, it is for that person to prove that he has such power. No mere presumption under section 114 of the Evidence Act, that official acts have been rightly done, can dispose of the objection, *Harendra Nath v. The Chairman of Birnagar Municipality*, 1 C. L. J. 51.

A written order giving the Vice-Chairman powers under sec. 353 is a sufficient legal authority to institute prosecutions under the Act. It is not necessary that the order shall be given by the Commissioners at a meeting.—*Queen Empress v. Mokunda Chunder Chatterji*, I. L. R. 20 Cal. 662.

46. The Commissioners at a meeting shall from time to time decide whether a paid <sup>Appointment of subordinate officers.</sup> secretary, engineer, health-officer or assessor is required or not, and what number of subordinate officers, servants and collectors of taxes or tolls may be necessary for the municipality, and shall from time to time fix the salaries to be paid to such persons respectively out of the municipal

fund, and the allowances to be granted to such persons during absence on leave.

Subject to the scale of establishment decided upon by the Commissioners under this section, the Chairman shall have power to appoint such persons as he may think fit, and from time to time to remove such persons and appoint others in their places :

Provided that no person shall be appointed to an office, the salary of which is fifty rupees per mensem or upwards, without the sanction of the Commissioners at a meeting, and that no officer, whose salary is more than twenty rupees per mensem, shall be dismissed without such sanction.

#### Change.

The words ' or assessor ' have been added by sec. 25 of Beng. Act IV of 1894.

#### Notes.

The appointment of subordinate officers under this section is subject to the rules laid down in sec. 61.

It was held in a case under the Calcutta Municipal Act that where the statute has provided a special mode of appointing subordinate officers, any appointment made outside the terms authorised by the statute is *ultra vires*, *Kedar Nath Bhandary v. The Corporation of Calcutta*, I. L. R. 34 Cal. 863, 11 C. W. N. 801.

47. The Commissioners at a meeting, specially convened for the purpose, may, by a resolution in favour of which not less than two-thirds of the Commissioners present at such meeting shall have voted, from time to time make rules for—

Commissioners may frame rules for pensions and gratuities or for the creation of a provident or annuity fund.

- (a) the granting of pensions and gratuities out of the municipal fund ; or
  - (b) the creation and management of a provident or annuity fund, for compelling contribution thereto on the part of their officers and servants, and for supplementing such contribution out of the municipal fund ;
- and may repeal or alter such rules.

The Commissioners at a meeting may, from time to time, in accordance with such rules for the time being in force, grant such pensions or gratuities, or grant allowances or annuities out of such provident or annuity fund to any of their officers or servants, as they may see fit.

#### Notes.

A resolution under this section must be passed at a special meeting, in which, it appears, no other business is to be transacted, and such resolution, under sec. 59 cl. (d), shall be subject to the approval of the Local Government.

**Attachment of Provident fund money.**—The Provident Fund established by the Municipal Corporation of Calcutta was held to be governed by the provisions of the Provident Fund Act of 1897 and the Provident Funds (Amendment) Act of 1903 and subscriptions to the Fund in the hands of the Trustees of the Fund not liable to attachment, *Seth Manna Lal v. Gainsford*, I. L. R. 35 Cal. 641, 12 C. W. N. 633.

48. \* In the case of a Government official employed by the Commissioners, the Commissioners may—

Pensions &c to Government officials.

- (1) if his services are wholly lent to them, contribute to his pension, gratuities and



leave-allowances in accordance with the rules of the Government Civil Pension and Leave Codes for the time being in force ; and

- (2) if he devotes only a part of his time to the performance of the duties in behalf of the Commissioners, contribute as above in such proportion as may be determined by the Local Government.

49. The Commissioners may take such security as they may think proper from any officer or servant in their employ.
- Security from officers or servants.

### *Of Ward Committees*

50. The Commissioners at a meeting may divide any municipality into wards, and thereupon appoint, or cause to be elected for each ward, not less than three proper persons, whether such persons be or be not Commissioners for the time being, to be members of the ward committee ; and the Commissioners at a meeting may define the limits of the ward for which any ward committee may be appointed or elected.
- Appointment or election of ward committees.

51. The Commissioners at a meeting may lay down rules, not being inconsistent with the provision of this Act, in respect of the qualifications required to entitle any person who is not a Commissioner to stand as a candidate for such election, and to entitle
- Commissioners may lay down rules for election.

any person to vote for any candidate, and in respect of the mode of election.

And the Commissioners may at any time cancel any rule made by them under this section for such election.

52. Each ward committee may, for each year if it sees fit, elect its own Chairman and Vice-Chairman (if, necessary) from among its own number :

Election of Chair-  
man and Vice  
Chairman of ward  
committee.

Provided that, if one or more Commissioners are members of the ward committee, the Chairman of the ward committee shall be a Commissioner.

53. The Commissioners at a meeting may delegate to a ward committee, such of the powers of Commissioners under this Act as to them may seem fit ; and such ward committee, within the limits of its ward, as defined by the Commissioners at a meeting, may exercise all or any of such powers, and shall be liable to all the obligations imposed by this Act on Commissioners in respect of such powers.

All acts done, orders issued and assessments made by ward committees shall be subject to the control and revision of the Commissioners at a meeting, who may at any time withdraw all or any of such powers.

54. The provisions of sections 38 to 45 (both inclusive) shall, as far as possible, be applicable to the transaction of business by ward committees, and the

Certain sections  
applicable to trans-  
action of business  
by ward committees.

Commissioners shall sanction the establishments of ward committees in accordance with the provisions of section 46.

55. All questions regarding the removal, resignation and appointment of members of ward committees shall be settled by the Commissioners at a meeting.

Removal, resignation and appointment of members

*Liability of Commissioners and Ward Committees.*

56. No Commissioner or member of a ward committee shall be personally liable for any contract made, or expense incurred by, or on behalf of the Commissioners.

Personal liability of Commissioner or member of ward committee

Every Commissioner or member of a ward committee shall be personally liable for any wilful misapplication of money entrusted to the Commissioners to which he shall knowingly have been a party, and he shall be liable to be sued for the same.

**Notes.**

As to contracts and the mode which the Commissioners may adopt with respect thereto see *sec. 37*.

**Personal liability.**—Municipal Commissioners and their servants incur no personal responsibility, for what they do, so long as they act in the line of their duty. But if they do, or order to be done, that which is not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable to an action. There is no special law extend-

ing to members of municipalities, which protects them so long as they act *bona fide*.—*Soondar Lall v. Bailie and another*, 24 W. R. 287.

Disqualification of Commissioners having share or interest in contracts.

57. No Commissioner or member or a ward committee shall have, directly or indirectly, any share or interest in any contract of any kind whatsoever to which the Commissioners are a party or shall hold any office of profit under them and, if any Commissioner shall have such share or interest, or shall hold such office he shall thereby become disqualified to continue in office as Commissioner, and shall be liable to a fine not exceeding five hundred rupees :

Provided that a Commissioner shall not be so disqualified by reason only of his having a share or interest in—

- (a) a contract entered into between the Commissioners and any incorporated or registered company of which such Commissioner is a member or share-holder ;  
or
- (b) any lease, sale or purchase of land, or any agreement for the same ; or
- (c) any agreement for the loan of money, or any security for the payment of money only ; or
- (d) any newspaper in which any advertisement relating to the affairs of the municipality is inserted.

But no such Commissioner shall act as Commissioner or member of a ward committee, or take part in any proceedings relating to any matter in which he is so interested.

#### Changes.

By sec. 26 of Beng. Act. IV of 1894, the words " of any kind whatsoever to which the Commissioners are a party or shall hold any office of profit under them " have been substituted for " made with the Commissioners, " and the words " by himself or through others, " which stood after the words " indirectly " in the first paragraph, have been omitted, and the words " or shall hold such office " and " provided that " have been added.

#### Notes.

Under this section no person who is a lawyer or a doctor &c. can enter into a personal engagement for profit with the municipality of which he is a member.

" It is improper for a pleader, who is a Municipal Commissioner, to appear in a case against the municipality of which he is a Commissioner. "—See *B. Govt. Munl.* No. 1805. 28 March 1899. Govt. Cir. Vol. III. p. 1042

A Commissioner disqualified under this section may be removed by the Commissioner of the Division by a written judgment. When so removed, he has a right of appeal to the Local Government. [Sec. 20 sub-sec. 1 cl. (d).]

A Commissioner removed under this section may be re-elected. (Sec. 22).

58. No Commissioner or member of a ward committee shall vote on any matter affecting his own conduct or pecuniary interest, or on any question which regards exclusively the assessment of himself, or the valuation of any property in respect of which he is directly or indirectly in any way interested, or

Commissioners disqualified from voting on certain questions

of any property of or for which he is manager or agent, or his liability to any tax.

**Change.**

This section has been substituted by section 27 of Beng. Act IV of 1894.

**Note.**

The provision, prohibiting a Commissioner or a member of a ward committee from voting on matters affecting his own conduct or pecuniary interest is new.

*Control.*

Certain resolutions subject to approval of Government 59. All resolutions passed by the Commissioners under the following sections, that is to say :—

- (a) under section 23 or 27 for the election of a Chairman ;
  - (b) under section 24 for the removal of a Chairman from office ;
  - (c) under section 28 for the grant of allowances to a Chairman or Vice-Chairman ;
  - (d) under section 47 for the making, repeal, or alteration of rules for the grant of pensions or gratuities, or for the creation and management of provident or annuity funds,
- shall be subject to the approval of the Local Government.

**Change.**

The words ' or 27 ' have been added by sec. 28 of Beng. Act IV of 1894.

## Note.

Though the election of a Chairman is subject to the approval of the Local Government under cl. (a) yet the Chairman *elect* is competent to enter upon his duties immediately on his election pending the orders of the Local Government (Sec 26)

60. A copy of the minutes of the proceedings of all meetings of the Commissioners, referred to in section 43, shall be forthwith forwarded by the Commissioners to the Magistrate of the district.

Copy of minutes  
to be sent to Magistrate.

61. The appointment by the Commissioners of subordinate officers, as provided by section 46, shall be subject to the following rules :—

Sanction to appointment of subordinate officers.

- (a) no appointment, of which the salary is two hundred rupees per mensem or upwards shall be created or abolished, without the sanction by the Local Government ;
- (b) no person shall be appointed to, or dismissed from, an office, the salary of which is one hundred rupees per mensem or upwards without the sanction of the Commissioner of the Division.

62. The Magistrate of the district, or the Magistrate in charge of the division of the district in which a municipality is situate, may enter on and inspect, or cause to be entered on and inspected, any immoveable property occupied by the Commissioners, or any work in progress under their direction ; and may call for and

Magistrate's power of inspection.

inspect any document which may be, for the purposes of this Act, in the possession or under the control of the Commissioners.

63. The Commissioner of the Division or the Power to suspend action under Act Magistrate of the district may, by order in writing, suspend within the limits of the division or district (as the case may be) the execution of any resolution or order of the Commissioners of any municipality, or prohibit the doing within those limits of any act which is about to be done, or is being done, in pursuance of, or under cover of, this Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public, or to any class or body of persons.

When a Commissioner or Magistrate makes any order under this section, he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the Local Government, which may thereupon rescind the order or direct that it continue in force with or without modification, permanently or for such period as it thinks fit.

#### Notes.

By Municipal circular of the Local Government, No. 9T:—M., dated the 6th July 1885. District Officers were instructed to invariably submit their proceedings under this section through their Divisional Commissioners who in their turn should forward the



papers promptly with such reports and remarks of their own as might be necessary for a complete comprehension of the facts. In cases of extreme emergency a District Officer may submit direct to Government a copy of his report to the Commissioner.

**Jurisdiction of the civil court in case of suspension of order.—**

**A** Municipal Board granted permission to **B** to build a temple. The District Magistrate acting under section 183 of the Municipalities Act, which is an exact counterpart of this section, made an order cancelling the permission granted by the municipality and the Local Government confirmed this order of the District Magistrate. **B** brought a suit for declaration that he had right to build the temple.

*Held* that the suit was not maintainable; *held* further, that, the Civil Court had no power to disturb the order of the Magistrate who acted within his jurisdiction and whose order had been duly confirmed by the Local Government, *Bulaki Das v The Secretary of State* I. L. R. 31 All 371 1 Ind. Cas. 896.

64. If at any time it appears to the Local Government, on the report of the Magistrate of the district or of the Commissioner of the Division, that the Commissioners of any municipality have made default in performing any duty imposed on them by or under this or any other Act, the Local Government may, by an order in writing, fix a time for the performance of that duty.

If that duty is not performed within the period so fixed, the Local Government may appoint the Magistrate of the district to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to the Magistrate from the municipal fund.

Powers of Local Government in case of default.

If the expense is not so paid, the Magistrate, with the previous sanction of the Local Government, may make an order directing the person having the custody of the balance of the municipal fund to pay the expense, or so much thereof as is from time to time possible, from the balance, in priority to any or all other charges against the same.

Compare section 37 K

65. If, in the opinion of the Local Government, the Commissioners\* of any municipality are not competent to perform or persistently make default in the performance of the duties imposed on them by or under this Act or otherwise by law, or exceed or abuse their powers, the Local Government may, by an order published, with the reasons for making it, in the *Calcutta Gazette*, declare such Commissioners to be incompetent, or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order.

Power to supersede Commissioners in case of incompetency, default or abuse of powers

**Supersession** —Per Subrahmaniam Ayyar, J.—“Supersession is nothing more than the dismissal of the incompetent councillors, followed by the appointment of, to borrow the language of English law, a *custos* for the discharge of the functions of the council pending the nomination or election of other persons who would resume work in the normal way. In a word, supersession is but a suspension of the council,” *Mahamahopadhyaya Rangachariar v. The Municipal Council of Kumbakonam*, I. L. R. 29 Mad. 539 (544).

66. When an order of supersession shall have been passed under the last preceding section, the following consequences shall ensue :—

Consequences of  
supersession.

- (a) all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners ;
- (b) all the powers and duties of the Commissioners shall during the period of supersession, be exercised and performed by such person or persons as the Local Government may direct ;

**Powers of the Commissioners.**—The Commissioners of the Santipur Municipality were superseded for a certain period by the Local Government under section 65 and the Sub-Divisional Officer of Ranaghat was appointed under this clause to exercise the powers of the Commissioners. On the expiration of the period of supersession, the Commissioners were re-established, but their number was reduced on the recommendation of the Sub-Divisional Officer. The Commissioners, so re-established, imposed certain rates, and a person, compelled to pay the rates so imposed under pressure of a distress warrant, brought a suit for a refund of amount. On the case coming before the High Court in second appeal, *Carnduff, J.* was pleased to hold (*vide Bepin Behari Sen v. Chairman of Santipur Municipality*, 1 Ind. Cas. 358, 13 C. W. N. 132 notes) that the officer appointed under this clause could only exercise the powers of the Commissioners and not those of the Commissioners in meeting ; and as under section 9 cl. (e) the power to recommend alteration in the number of the Commissioners was exerciseable by the Commissioners at a meeting, the Commissioners re-established on the recommendation of the Sub-Divisional Officer were not a legally constituted body, and the rates imposed by them were therefore illegal.

There was an appeal under the Letters Patent against the decision of Carnduff, J. in which it was held that there was no Second Appeal in the case. The decision of Carnduff, J. was thus set aside on a preliminary ground without touching his opinion on the merits.

Seeing this difficulty, the Legislature intervened and passed the Bengal Municipal (Amendment and Validation) Act (Bengal Act II of 1910) section 2 of which runs as follows ;

“ 2. The expression ‘ all the powers and duties of the Commissioners ’ in clause (b) of sec. 66 of the Bengal Municipal Act, 1884, shall include, and shall be deemed always to have included, powers and duties which may be exercised and performed at a meeting of the Commissioners, as well as powers and duties which may be exercised and performed otherwise than at a meeting.”

[All doubts and difficulties have thus been removed by the enactment.]

(c) all property vested in such Commissioners shall, during the period of supersession, vest in the Government.

On the expiration of the period of supersession specified in the order, it shall be lawful for the Local Government to direct that the municipality shall be entered in the first schedule or, the second schedule, or in both the first and second schedules ; but otherwise the Commissioners shall be re-established by appointment and election, and the persons who vacated their offices under clause (a) shall not be deemed disqualified for appointment or election.

*Re-established.*—The expression, used in the corresponding section of the Madras District Municipalities Act (Sec. 4B, sub.

sec. (3) cl. (b) Mad. Act IV of 1884), is "*re-constituted*," and in construing that expression, the Madras High Court has held that "reconstitution" is the revival of the old corporation and not the creation of a fresh one, and all the rights and liabilities of the superseded council will devolve on the council so reconstituted as its rightful successor. *Mohamohopadhyaya Rangachariar v. The Municipal Council of Kumbakanam*, I L R. 20 Mad. 539.

The first schedule contains the names of the municipalities in which the Commissioners shall be appointed by the Local Government, and the second schedule the names of those in which the Chairman shall be appointed by the Local Government

66A. (1) If any dispute, for the decision of which this Act does not otherwise provide, arises between the Commissioners of two or more municipalities constituted under this Act, or between the Commissioners of any such municipality and a district board, or Cantonment authority, the matter shall be referred—

Disputes.

- (a) to the District Magistrate, if the local authorities concerned are in the same district ; or
- (b) to the Commissioner or Commissioners of the division or divisions, if the local authorities concerned are in different districts ; or
- (c) to the Local Government, if the local authorities concerned are in different divisions and the Commissioners of those divisions cannot agree.

(2) The decision of the authority to which any dispute is referred under this section shall be final.

(3) If, in the case mentioned in clause (a) the District Magistrate is a member of one of the local authorities concerned, his functions under this section shall be discharged by the Commissioner of the Division.

This section is new and has been added by sec. 29 of Beng. Act IV of 1894.

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### PART III.

#### OF THE MUNICIPAL FUND.

67. All sums received by the Commissioners, and all fines paid or levied in any municipality under this Act, and all other sums which, under the sanction of Government, may be transferred to the Commissioners, shall constitute a fund which shall be called the "municipal fund," and shall, together with all property of every nature or kind whatsoever which may become vested in the Commissioners, be under their control, and shall be held by them in trust for the purposes of this Act.

What shall constitute the municipal fund

All moneys, received under Part VII (Water supply), Part VIII (Lighting with Gas) and Part IX (cleansing of private privies and cess-pools) shall respectively be applied for the purposes of the Parts under which they are levied, and for payment of a proportionate share of the cost of collection and of general supervision.

The expenses incurred for the cleansing of cess-pools have, under sec. 186, hitherto been met out of the general fund, but cess-pools, having been included in Part IX, the costs of their

clearing shall be defrayed from the moneys received under that head.

Under Part X (Regulation of markets) all necessary expenses for the establishment of a municipal market may, under sec. 335, be defrayed from the general municipal fund, and the incomes, derived from it, constitute a part of such fund.

68. Except as is otherwise provided in this Act,

Payment on a c-  
count of interest on  
loans and establish-  
ment.

the Commissioners shall set apart and apply annually out of the municipal fund,—

- (a) firstly, such sum as may be required for the payment of the interest which may fall due on any loan contracted by the Commissioners ;
- (b) secondly, such sum as they are by this Act required to provide for payment of their own establishment, including such contributions as are referred to in section 48 ;
- (c) thirdly, such sum as the Local Government may direct towards the cost of establishments in any office of account or in any treasury, and towards the salary of any special officer who may be appointed under section 82 :

Provided that the total amount which any municipality may be required to pay under clause (c) otherwise than as the salary of a special officer appointed under section 82 shall not in any year exceed two per centum on the amount of the municipal income for such year.

**Changes.**

By sec. 30 of Beng. Act IV of 1894 the words "except as is otherwise provided in this Act," "towards the salary of any special officer who may be appointed under section 82" and "otherwise than as the salary of a special officer appointed under sec 82" have been added, and the word "and" in cl. (c) after the word "audit" has been omitted.

**Notes.**

**Cost of audit.**—"In supersession of previous orders, the Lieutenant Governor is now pleased to direct that, with effect from the 1st April next, in all municipalities (except Calcutta) an audit fee shall be levied at the rate of one per cent on income, subject, in the case of municipalities with an annual income of Rs. 20,000 and less, to a minimum fee of Rs. 100, and in the case of municipalities with an income exceeding Rs. 20,000 to an additional Rs. 100 for each additional Rs. 20,000 (or part thereof) of income."—*Govt. Cir. vol III, p 1006*

Under the proviso of sec 82 the Local Government may, under certain circumstances appoint a special officer to examine and report upon the accounts and shall fix the salary of such special officer

69. (1) After the said sums have been set apart under section 68, the Commissioners at a meeting shall, as far as the municipal fund permits, from time to time cause roads bridges, tanks, ghats, wells, channels, drains and privies, being the property of the Commissioners, to be maintained and repaired, and the municipality to be cleansed ;

Purposes to which  
municipal fund is  
applicable

and may, except as is otherwise provided in this Act, and subject to such rules and restrictions as the Local Government may from time to time prescribe, apply the municipal fund to any of the following purposes within the municipality, that is to say,—



- (i) the construction, maintenance and improvement of roads, tramways, bridges, squares, gardens, tanks, ghats, wells, channels, drains and privies ;
- (ii) The supply of water, and the lighting and watering of roads ;
- (iii) The erection and maintenance of offices and other buildings required for municipal purposes ;
- (iv) the construction and repair of school-houses, either wholly or by means of grants-in-aid ;
- (v) the establishment and maintenance of schools either wholly or by means of grants-in-aid ;
- (vi) the establishment and maintenance of hospitals and dispensaries ;
- (vii) the promotion of vaccination ,
- (viii) the acquiring and keeping of open spaces for the promotion of physical exercise and education ;
- (ix) the training and employment of female medical practitioners and of veterinary practitioners ;
- (x) the establishment and maintenance of veterinary dispensaries for the reception and treatment of horses, cattle and other animals ;

- (xi) the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals ;
- (xii) the improvement of the breed of horses, cattle and asses, and the breeding of mules ;
- (xiii) the establishment and maintenance of free libraries ;
- (xiv) the maintenance of a fire-brigade ;
- (xv) other works of public utility calculated to promote the health, comfort or convenience of the inhabitants ;
- (xvi) the establishment and maintenance of benches for the trial of offences under this Act or any bye-laws made thereunder ; and
- (xvii) generally, to carrying out the purposes of this Act :

Provided that no portion of the municipal fund shall be applied to any of the purposes specified in clauses (viii) to (xiii), both inclusive, unless a majority of the Commissioners present at the meeting are satisfied that the other purposes specified or referred to in this sub-section, or such of them as the majority consider it necessary to carry out, have been sufficiently provided for.

(2) The municipal fund shall also be applicable to the payment, at such rates as the Local Government may from time to time direct, of travelling expenses incurred by any of the Commissioners in

attending meetings convened under the rules made by the Local Government in pursuance of sub-section (4) of section 1 of the Indian Councils Act, 1892, for the purpose of recommending a person to be nominated as a member of the Lieutenant-Governor's Council.

(3) The Commissioners may do all things, not being inconsistent with this Act, which may be necessary to carry out the purposes of this section.

#### Changes.

This section and sections 69A and 69B are new and substituted by section 7 of Beng Act II of 1896 for the old section 69.

#### Notes.

See Government Circulars Nos 20T.—M (30-9 96) and 56M (7-12-96). See *App*

**Sub-section (1).**—For a proper construction of the expression,—“shall, as far as the municipal fund permits, from time to time cause roads to be repaired,” cf *Achratlal v Ahmedabad Municipality*, (I. L. R. 28 Bom 340), in which, an inhabitant of the town having sued the municipality for damages for injury caused to his horse and carriages in consequence of neglect of the municipality to repair a road, it was held (*per Jenkins, C. J*) as follows;—as the default leading to the damage was a mere nonfeasance, the plaintiff's suit fails, for the statute does not impose upon the municipality a duty towards the plaintiff, which they negligently failed to perform,” see, however, *Rajendra Lal v. Surat Municipality* (I. L. R. 33 Bom. 393) in which the municipality were held liable for damages, for misfeasance on their part, they having turned their works by their negligence into a nuisance and thus caused damage to the property of a private party.

**Maintenance.**—Of. *Aiyasami Aiyar v. The District Board, Tanjore* (I. L. R. 31 Mad. 117) in which their Lordships (*White C. J & Miller J.*) of the Madras High Court have explained the term with reference to roads.

**Tramways.** As to the procedure to be adopted for the construction of tramways in a municipality see extracts from the Bengal Tramways Act, *App.*

**Grants-in-aid to schools.**—"It is one of the first duties of a municipality to provide primary education for all boys and as many girls as will accept it and Sir Charles Elliott desires that in future Commissioners of Divisions when dealing with the annual estimates of municipalities will see that provision is made for the proper performance of this duty before any funds are allotted to the support of secondary education. \* \* A municipality may fairly be required to provide primary education for all boys of school-going age, a number which may be taken to be 15 per cent. of the male population of the town \* \* The demands of primary education, thus formulated must be held to take precedence over the secondary education, and Commissioners of Divisions are authorized to give effect to this principle in dealing with municipal budgets under section 76 of the Act"—*Government Resolution on the Administration of Bengal Municipalities, 1890-91, page 22.*

**Works of public utility.**—The cost of construction and maintenance of public latrines was hitherto a charge upon the fund raised under part IX but by the omission of the words "public latrines" from sec. 320 by sec. 81 of Beng Act IV of 1894 it has become a charge upon the General Fund under sec. 186. *See App. Govt. Lett para 36.* Serais, urinals and public latrines are works of public utility within the meaning of cl. (xv).

**Advances to municipal employees**—for the purposes of building houses are outside the scope of the Act and not authorised by section 68 or section 69.—*Opin. of Leg. Rememr. (Govt. Cir vol. III p. 1016).*

**Cost of prosecution of municipal servants**—should be paid out of the municipal fund and not by Government, in as much as the enforcement of honesty and probity on the part of municipal servants is an important step in carrying out the purposes of the

**Act.**—See *B. G. M. Cir. No. 32M*, 2 August, 1894 (Govt. Cir. Vol. III p. 1049).

**Contributions**—out of the municipal fund towards the re-excavation, repair, improvement or maintenance of any private tank or well, above one hundred rupees are subject to confirmation by the District Magistrate and are in all cases subject to the condition that the water of such tank or well shall be available for use by the public for domestic purposes and for watering cattle.—See *B. G. M. Not. No. 2260M*, (Gov. Cir. Vol. III p. 1064).

**Sub-section (2)**—The travelling expenses of delegates under this sub-section has been fixed “at the rates admissible under the Civil Service Regulations to officers of the second class”—See *B. G. M. Cir. No. 22 T M*, 13 June 1905 (Govt. Cir. Vol. III p. 1062)

**Travelling Allowance**—of Government officers conducting municipal elections should be paid by Government.—See *B. G. M. No. 747*, 6 March 1868 (Govt. Cir. Vol. III. p. 1025).

**Burning and Burial of paupers**—may be provided for out of the municipal fund see sec. 260.

**Misapplication of Municipal Fund.**—A tax-payer is competent to sue for an injunction to prevent an appropriation by a municipality of any portion of its fund to a purpose not allowed by the Act, and as he has an interest in the disposal of the municipal fund no objection to the maintenance of the suit can be raised under sec. 56 cl. (k) of the Specific Relief Act; nor would it be necessary for the plaintiff to proceed under sec. 30 of the Civil Procedure Code. *Vaman v. The Municipality of Sholapur*, L. L. R. 22 Bom 646.

In England such a suit is generally instituted by the Attorney-General. But a suit may also be maintained by either a single member of a corporation or at any rate by a person who is so related to the corporation that he is entitled to become a member, however small his interest may be. For the English authorities—See Brice on *Ultra Vires* pp. 714 to 718 (Third Edition).

69A. (1) The Commissioners shall cause to be kept, for each hospital and dispensary vested in them, accounts, in such form as may be prescribed by rules made by the Local Government, showing—

Receipts and expenditure on account of hospitals and dispensaries.

- (a) all endowments, funds and contributions received by them,
- (b) all sums directed by them to be applied to establishment or maintenance, and
- (c) all expenditure incurred by them.

(2) No money which has been received by the Commissioners on account of any hospital or dispensary, or directed by them to be applied to the establishment or maintenance of any hospital or dispensary, shall be expended on any other object.

For rules for the management of hospitals and dispensaries, see *App.*

69B. The Local Government may from time to time make rules—

- (i) prescribing the qualifications of candidates for employment under clause (xi) of section 69; and
- (ii) generally, for the guidance of the Commissioners in all matters connected with the carrying out of the purposes of sections 69 and 69A.

70. With the consent of two-thirds of the Commissioners obtained in writing, and with the sanction of the Local Government, the Commissioners may contribute a

Expenditure out of side municipality

portion of the municipal fund towards the expenses incurred in any other municipality, or elsewhere, for any of the purposes mentioned in section 69, sub-section (1); or towards the salary of any officer under another authority whose services are employed by them; and also towards the expenses of making, maintaining and repairing any work for the improvement of a river or harbour (by whomsoever such work may be done).

But no contribution shall be made under this section to any work, unless the same is calculated to benefit the inhabitants of the contributing municipality.

Notwithstanding anything in this section, the municipal fund may be applied, by the vote of the majority referred to in the proviso to section 69, sub-section (1), and without the consent and sanction mentioned in this section, to meeting expenses incurred beyond the limits of the municipality in the training of female medical practitioners or of veterinary practitioners.

#### Changes.

The words "section 69, sub-sec. (1)" after "in" in the first paragraph were substituted for the words "last preceding section" by sub-sec. (1) and the last paragraph was added by sub-sec. (2) of section 8 of Beng. Act II of 1896.

71. The account-books of the municipality shall be open to the inspection of any taxpayer at the office of the Commissioners on a day or days to be fixed in each month.

Account books to be kept open and quarterly statement published

An account showing the receipt and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter, and shall, with the account-books, be open to the inspection of any rate-payer.

A similar account shall be prepared for each year as soon as possible after its close and shall be open to inspection as aforesaid.

72. The Commissioners, at a meeting held at least two months before the close of the year, shall prepare in detail estimates showing the probable receipts and expenditure during the ensuing year and the objects in respect of which it is proposed to incur such expenditure.

For the form in which annual budget estimates are to be prepared—See *App*

73. Copies of the estimates and translations thereof in the vernacular of the district shall be lodged in the office of the Commissioners.

During fourteen days after the estimates shall have been so lodged in the said office, of which due notice shall be locally published, the estimates and translations in the vernacular of the district shall be open to inspection at all reasonable times by any tax-payer of such municipality who may desire to inspect the same.



Any written suggestion which may be deposited in the office of the Commissioners shall be recorded and laid before them for consideration at the next meeting.

As to the mode of publication of the notice under paragraph 2, see sec. 354.

Consideration of the written suggestions is compulsory under paragraph 3.

74. After the expiration of the said fourteen Estimate to be transmitted to Magistrate. days, and after such revision as may appear requisite, the estimates shall be transmitted to the Magistrate of the District.

75. The Magistrate may either forward the Magistrate may record remarks. estimates to the Commissioner of the Division, or may return them to the Commissioners with such remarks and suggestions as he shall think fit to record. And the Commissioners at a meeting shall take into consideration the Magistrate's remarks, and shall either adopt his suggestions or shall record in writing their reasons for refusing to do so: and the estimates shall thereupon be returned to the Magistrate for transmission to the Commissioner of the Division.

76. The Commissioner of the Division may Powers of Commissioner as to estimate. either sanction the estimate as it stands, or may cause it to be returned to the Commissioners for such modifications as he may think necessary; and, when such modifications have been made, the estimate shall be re-

submitted for ratification to the Commissioner of the Division or if such modifications as may be recommended are not made, it shall be open to the Commissioner of the Division to make such alterations as may seem to him fit :

Provided that the Commissioner of the Division shall not raise the total of the proposed expenditure above the sum shown by the estimate to be at the disposal of the Commissioners.

#### Changes.

The words "or if such modifications as may be recommended are not made it shall be open to the Commissioner of the Division to make such alterations as may seem to him fit" have been added by sec. 32 of Beng. Act IV of 1894, and the words "or sanction it after making such alterations therein as may seem to him fit" after the word "stands" have been omitted.

#### Note.

This omission gives the Commissioners an opportunity of replying to the criticisms and proposed modifications of the Commissioner of the Division. See Govt. Lett. para 16, *App.* p. 8a.

77. The Commissioners at a meeting may, from time to time, revise any estimate of expenditure with the view of providing for any modifications which they may deem it advisable to make in the appropriation of the amount at their disposal, and such revised estimate shall be published and forwarded in the manner hereinbefore prescribed ; and the Magistrate and the Commissioner of the Division may deal with such revised estimate in the manner provided above,

Estimate of ex-  
penditure may be  
revised

Compare sec. 80. and the note thereunder.

As to publication &c. of a revised estimate the provisions of secs. 73—76 shall apply.

78. After the estimates of the municipality for the year shall have been sanctioned as above, the Commissioners at a meeting may, from time to time, by a general or a special resolution, authorize the expenditure of any sum provided in such estimates, or any part of such sum, for the purpose to which it has been assigned in such estimate.

Notwithstanding anything contained in this section, the Local Government may lay down such rules as it may think fit limiting or regulating the powers of any municipality in respect to the expenditure of money for purposes which are provided for in the budget estimates of the year.

#### Notes.

Compare Sec. 84.

In addition to the sanction of the budget estimate by the Divisional Commissioner there must be a distinct resolution of the Commissioners at a meeting authorising the expenditures provided in the budget.

79. If any work is estimated to cost above five thousand rupees, the Local Government may require the plans and estimates of such work to be submitted for its approval, or for the approval of any officer of Government, before such work is commenced;

and may require statements of the progress and

completion of such work, with accounts of the expenditure on the same, to be submitted from time to time, in such form as it may prescribe, for its approval, or for the approval of such officer.

80. It shall not be lawful for the Commissioners to authorize the expenditure on any object during the year of a sum in excess of that which has been sanctioned in the estimate of the year, or in a revised estimate, for such object; but, if it be found necessary in the course of the year, the Commissioners may recommend to the Commissioner of the Division that the allotments which have been made to the different heads of the estimate shall be modified by transfer of any amount from one head to another and the Commissioner of the Division may sanction such transfers of allotment.

Previous sanction of the Divisional Commissioner is indispensable for expenditures by transfer

81. The Commissioners shall, at such time and in such form as the Local Government shall direct, furnish annually a report of their proceedings and statements of the works executed by them, and of all sums received and expended by them.

An annual report of proceedings &c, to be submitted

The report and any orders which may be passed thereon by Government shall be open to the inspection of the tax-payers at the office of the Commissioners, with the account-books and the quarterly and the annual accounts.

82. (1) The Commissioners shall keep such registers, use such forms and submit such returns as the Local Government may from time to time prescribe.

*keeping of registers and submission of returns.*

(2) The municipal accounts shall be audited each year in such manner as the Local Government may direct :

Provided that if the officer appointed to make the yearly audit in any municipality shall report that the accounts are in such confusion that the financial position of the municipality cannot readily be ascertained, the Local Government may, by an order in writing, require the Commissioners to submit, within a time and to a person to be specified in such order, the accounts duly adjusted, and if the Commissioners fail to comply with such order, the Local Government may appoint a special officer to examine and report upon the accounts, and shall fix the salary of such special officer, which salary shall be paid from the municipal fund, unless the Local Government shall otherwise direct.

*Local Government may appoint special officer to examine and report upon accounts.*

#### **Change.**

This section has been substituted by sec. 33 of Beng. Act IV of 1894 for "The municipal accounts shall be kept in such form, and shall be audited each year in such manner as the Local Government shall direct."

*Compare sec. 68 cl. (c).*

83. Unless the Local Government shall otherwise direct, all sums received on account of the municipal fund shall

*Custody of the municipal fund.*

be paid into a Government treasury, or into any bank or branch bank used as a Government treasury in or near to the municipality, and shall be credited to an account to be called the account of the municipality to which they belong :

Provided that the Commissioners may invest any moneys not required for immediate use either in Government securities, or in any other form of security which may be approved of by the Local Government.

84. Unless the Commissioner of the Division shall expressly extend (as he is hereby empowered to do, on the recommendation of the Commissioners at a meeting) the limit of the powers of the Chairman or Vice-Chairman in this behalf, all orders for the payment of money from the municipal fund, if for a sum not above five hundred rupees, shall be signed by the Chairman or Vice-Chairman ; and all orders for larger sums by both of the said officers, or by one of the said officers and another Commissioner.

No such orders shall be issued otherwise than for the payment of money of which the expenditure has been authorized by the Commissioners at a meeting, as provided in section 78.

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## PART IV.

## OF MUNICIPAL TAXATION.

85. The Commissioners may, from time to time, at a meeting convened expressly <sup>Tax upon persons or holdings</sup> for the purpose, of which due notice shall have been given, and with the sanction of the Local Government, impose within the limits of the municipality one or other, or both, of the following taxes:—

- (a) a tax upon persons occupying holdings within the municipality according to their circumstances and property within the municipality :

Provided that the amount assessed upon any person in respect of the occupation of any holding shall not be more than eighty-four rupees per annum ; or

- (b) a rate on the annual value of holdings situated within the municipality :

Provided that such rate shall not exceed seven and a half per centum on the annual value of such holdings, except within the municipalities of Howrah, Patna, Dacca and Darjeeling, in which it shall not exceed ten per centum on such annual value; and provided also that no rate shall be imposed on any holding of which the annual value is less than six rupees.