

ASSAM ACT IV OF 1935.
THE ASSAM MUNICIPAL (AMENDMENT)
ACT, 1935.

[Published in the Assam Gazette of the 11th December 1935.]

An Act further to amend the Assam Municipal Act, 1923.

WHEREAS it is expedient further to amend the Assam Municipal Act, 1923;

Assam Act I of 1923.
5 and 6 Geo. V, c. 61; 6 and 7 Geo. V, c. 57; and 9 and 10 Geo. V, c. 101.

And whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Assam Municipal (Amendment) Act, 1935.

Amendment of section 13 of Assam Act I of 1923.

2. The second proviso to section 13 of the Assam Municipal Act, 1923 (hereinafter referred to as the principal Act) shall be deleted.

Assam Act I of 1923.

Insertion of new sections 13A, 13B, 13C, 13D, 13E, 13F, 13G and 13H. Proceedings to be set aside on election.

3. After section 13 of the principal Act the following sections shall be inserted, namely:—

“13A. If the validity of any election of a member is brought in question by an unsuccessful candidate or person qualified to vote at the election to which such question refers, such person may, at any time within twenty-one days after the date of the declaration of the result of the election, file a petition in the prescribed manner before the District Judge of the district within which the election has been or should have been held and in the case of the Shillong Municipality to the Judge, Assam Valley Districts, and shall at the same time deposit fifty rupees in Court as security for the costs likely to be incurred:

Provided that the validity of such election shall not be questioned in any such petition—

(a) on the ground that the name of any person qualified to vote has been omitted from the electoral roll; or

(b) on the ground that the name of any person not qualified to vote has been inserted in the electoral roll.

Procedure and powers of Judge holding enquiry.

“13B. (1) Where a petition has been filed under section 13A the District Judge, or any judicial officer subordinate to him and not below the rank of a Subordinate Judge other than an officer exercising the powers of a Subordinate

Judge *ex-officio* (hereinafter referred to in this chapter as the Judge) to whom the District Judge may transfer the petition, may after holding such inquiry as he deems necessary, in accordance with the prescribed procedure and subject to the provisions of sections 13C and 13D, pass an order confirming or amending the declared result of the election or setting the election aside.

(2) For the purposes of the said inquiry the Judge may summon and enforce the attendance of witnesses and compel them to give evidence as if he were a Civil Court, and may also direct by whom the whole or any part of the costs of such inquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.

Act V of 1908.

(3) The Judge may, at any stage of the proceedings, require the petitioner to deposit in Court a further sum as the costs incurred or likely to be incurred by any respondent, or to give security, or further security, for the payment of the same, and if, within the time fixed by him, or within such further time as he may allow, such costs are not deposited or such further security is not furnished, as the case may be, may dismiss the petition.

(4) An appeal shall lie to the District Judge from any decision or order of a Subordinate Judge, and a decision or order of the District Judge, either when he has himself made the enquiry or on appeal, shall be final.

Setting aside of election.

"13C. The Judge, if he is satisfied that the election ought to be set aside for any reasons for which an election might be rendered void under the Assam Electoral Rules, shall set aside the election, and if the election is set aside for any cause which is the result of acts of a candidate or his agents may declare that candidate to be disqualified for the purpose of such fresh election as may be held under section 13G.

Scrutiny of votes and declaration in other cases.

"13D. If, in any case to which section 13C does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall, after scrutiny and computation of the votes recorded in favour of each such candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected :

Provided that for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person, known or unknown, in giving or obtaining it.

Disqualification of persons from being candidates who commit corrupt practices.

"13E. If the Judge sets aside an election under section 13C, he may, if he thinks fit, declare any person by whom a corrupt practice has in his opinion been committed to be disqualified from being a candidate for election in that or any other municipality for a period not exceeding five years, from the date of decision, and the Judge's decision shall be final :

Provided, however, that the Local Government may, by order at any time, remove such disqualification.

Saving of acts done by a member before his election is set aside.

"13F. Where a candidate, who has been elected to be a member, is declared by the Judge not to have been duly elected, acts done by him in execution of the office before the time when the decision is communicated to the Board shall not be invalidated by reason of that declaration.

Fresh election when election set aside.

"13G. If an election is set aside by the Judge, a date shall forthwith be fixed and the necessary steps taken for holding a fresh election for filling up the vacancy, as though it had been a casual vacancy.

Bar to interference by courts in election matters.

"13H. No election of a member shall be called in question in any Court except under the procedure provided by this Act, and no order passed in any proceeding under sections 13A to 13E (both inclusive), shall be called in question in any Court and no Court shall grant an injunction—

- (i) to postpone an election, or
- (ii) to prohibit a person, declared to have been duly elected under this Act, from taking part in the proceedings of a Municipal Board of which he has been elected a member, or
- (iii) to prohibit the members formally elected or appointed to a Municipal Board from entering upon their duties."

Amendment of section 296 (2) (i) of Assam Act I of 1923.

4. In sub-section 2 (i) of section 296 of the principal Act, for the words "determine the authority who shall decide disputes relating to such elections" the words "regulate and determine the procedure to be followed by a Judge in inquiring into election petitions" shall be substituted.