

Power of the Commissioner exercisable with the approval of the standing Committee. 38. Whenever the Commissioner takes any action in anticipation of the approval, sanction, consent or concurrence of the Corporation in pursuance of the powers delegated to him under Section 35 he shall forthwith inform the Mayor.

Reservation of control in respect of power delegated. 39. The exercise or discharge by any municipal officer of any powers, duties or functions delegate to him under Section 37 shall be subject to such restrictions, limitations and conditions, if any, as may be laid down by the Commissioner and shall also be subject to his control and revision.

Delegation of Commissioner's emergency powers. 40. The Commissioner may on his own responsibility and by an order in writing authorise the Health Officer, the Engineer, the Revenue Officer or any other officer who is the head of a department working under the Commissioner, or any person in temporary charge of the duties of any of the offices aforesaid to exercise the emergency powers conferred upon him by Section 35.

Administration Report

Submission of annual Administration report to Government. 41. (1) As soon as may be after the first day of April in every year and not later than such date as may be fixed by the Government, the Commissioner shall prepare a detailed administration report on the preceding year in such form as the Government may prescribe.

(2) The Corporation shall consider the report and forward the same to the Government with their resolutions thereon, if any.

(3) Copies of the administration report shall be kept for sale at the municipal office.

CHAPTER III

Election of Councillors

Declaration of local areas as Gauhati city. 42. (1) For the purposes of this Act the areas within the limits to be specified by the State Government in this behalf and duly notified in the Official Gazette shall constitute the city of Gauhati.

(2) The Government may, from time to time, after consultation with the Corporation, by a notification in the official Gazette, alter the limits so as to include therein, or to exclude therefrom, such area as is specified in the notification.

(3) The power to issue a notification under sub-section 2 shall be subject to the following conditions, namely:—

(a) a draft of the proposed notification shall be published in the official Gazette for the information of all persons likely to be affected thereby inviting objections and suggestions within 60 days from the date of such publication as may be specified in such notification ;

(b) a copy of the draft notification shall be referred to the Corporation for expressing its views thereon within the period specified in such notification ; and

(c) such draft shall not be further proceeded with until after the period specified in the notification has expired ;

(d) On the expiry of the period specified in the notification issued under clause (a) of this sub-section and after considering any objection or suggestion which may be received by Government within the specified period of the said notification, the State Government may by notification within a period of six months from the expiry of the period specified in the notification referred to above, include the proposed area or any part thereof in the Corporation or exclude it therefrom.

Delimitation of wards. 43. (1) For the purposes of election of councillors the Corporation with the approval of the Government shall—

(a) divide the city into such number of wards as there are councillors to be elected ; and

(b) determine the extent of each ward

(2) Each ward shall return one councillor and all the electors of a ward shall be entitled to vote for election of a councillor from that ward.

Power to alter or amend delimitation orders 4. The Government may, from time to time, after consulting the Corporation, by order published in the official Gazette, alter or amend any orders made by the Corporation under Section 43.

Election of Councillors 45. The election of Councillors shall be held in the prescribed manner.

Qualifications for Councillorship. 46. A person shall not be qualified to be chosen as a councillor unless his name is registered as an elector in the electoral roll for any ward in the city:

Disqualifications for Councillorship of Corporation. 47. (1) A person shall be disqualified for being chosen as, and for being, a councillor :—

- (a) if he is of unsound mind and stands so declared by a competent court ;
- (b) if he is an undischarged insolvent ;
- (c) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance or adherence to a foreign State ;
- (d) if he holds any office of profit under the Government or under the Corporation or under any other local authority ;
- (e) if he has in proceedings for questioning the validity or regularity of an election been found to be guilty of—
 - (i) any corrupt practice, or
 - (ii) any offence punishable under section 171-E or Section 171-F of the Indian Penal Code unless a period of five years has elapsed since the date of the finding or the disqualification has been removed either retrospectively or prospectively by the Government.

- f) if he has been sentenced on conviction by a criminal court to imprisonment for any of the offences referred to in clause (e) or to imprisonment for an offence involving moral turpitude unless in each case a period of five years has elapsed since the date of the conviction or the disqualification has been removed either retrospectively or prospectively by the Government ;
- (g) if he is directly interested in any subsisting contract made with, or any work being done for the Corporation except as a shareholder (other than a director) in an incorporated company or as a member of a co-operative society ;
- (h) if he is retained or employed in any professional capacity either personally or in the name of a firm of which he is a partner or with which he is engaged in a professional capacity in connection with any cause or proceedings in which the Corporation or any of the municipal authorities is interested or concerned ;
- (i) if he fails to pay any arrears of any kind, due from him, otherwise than as an agent, receiver, trustee or an executor, to the Corporation within three months after a notice in this behalf has been served upon him.

(2) Notwithstanding anything contained in sub-section (1)—

- (a) a person shall not be deemed to have incurred any disqualification under clause (d) of that sub-section by reason only of his receiving—
- (i) any pension ; or
 - (ii) any allowance or facility for serving as the Mayor or Deputy Mayor or as a Councillor ; or
 - (iii) any fee for attending a meeting of any committee of the Corporation ;

- (b) a disqualification under clauses (e) and (f) of sub-section (1) shall not take effect until three months have elapsed since the date of such disqualification or if within the period of limitation for submitting an appeal or petition for revision is brought in respect of the conviction or sentence, until that appeal or petition is disposed of ; or
- (c) a person shall not be deemed to have any interest in a contract or work such as is referred to in clause (h) of that sub-section by reason only of his having share or interest in—
- (i) any lease, sale, exchange or purchase of immovable property or any agreement for the same ; or
 - (ii) any agreement for the loan of money or any security for the payment of money ; or
 - (iii) any newspaper in which any advertisement relating to the affairs of the Corporation is inserted ; or
 - (iv) the sale to the Corporation or to any municipal authority or any employee of the Corporation on behalf of the Corporation of any article in which he regularly trades or the purchase from the Corporation or from any such authority, or any such employee on behalf of the Corporation, of any article of a value in either case not exceeding two thousand rupees in the aggregate in any year during the period of the contract or work ; or
 - (v) the letting out on hire to the Corporation or the hiring from the Corporation of any article of a value not exceeding two thousand rupees in the aggregate in any year during the period of the contract or work ;
or
 - (vi) any agreement or contract with the Corporation or any municipal authority for taking water or electricity or any other thing which the Corporation may generally supply.

(3) If a person sits or votes as a Councillor of the Corporation when he knows that he is not qualified or that he is disqualified to be a Councillor he shall be liable in respect of each day on which he so sits or votes to a penalty of two hundred and fifty rupees to be recovered as an arrear of tax under this Act.

Disqualities
from
continuing
as
Councillor.

48. (1) If a Councillor—

(a) becomes disqualified for being a member by reason of the provisions of section 47 ; or

(b) absents himself during three successive months from the meetings of the Corporation except from temporary illness or other cause to be approved by the Corporation ; or

(c) absents himself from, or is unable to attend, the meetings of the Corporation during six successive meetings for any cause whatever, whether approved by the Corporation or not;

he shall cease to hold office as such and the Government, may, by notification in the official Gazette, declare his seat to be vacant.

(2) When a Councillor ceases to hold office as such the Commissioner shall at once intimate in writing the fact to such Councillor and the Government, and report the same to the Corporation at its next ensuing meeting.

Right to vote
and method
of voting.

49. (1) Every person whose name is, for the time being entered in the electoral roll for a ward, prepared in the prescribed manner, shall be entitled to vote at the election of a Councillor from that ward.

(2) Voting shall be by secret ballot and every elector shall have one vote.

General election of Councillors. 50. (1) A general election of Councillors shall be held for the purposes of constituting the Corporation under section 5.

(2) A bye-election shall be held for the purposes of filling up vacancies arising in the offices of the Councillors.

Notification for election of Councillors. 51. For the purposes of constituting the Corporation, the Commissioner shall, by one or more notifications published in the official Gazette, call upon all the wards to elect Councillors in accordance with the provision of this Act and the rules and orders made thereunder before such date or dates as may be specified in the notification or notifications.

Vacancy in office of Councillor. 52. When a vacancy occurs in the office of a Councillor, the Commissioner shall, as soon as may be, after the occurrence of such vacancy by a notification in the official Gazette call upon the ward concerned to elect a person for the purpose of filling the vacancy:

Provided that no election shall be held to fill a vacancy occurring within six months prior to the holding of a general election under section 50 (1).

Procedure if election falls or is set aside. 53. (1) If at a general election or a subsequent bye-election held to fill a vacancy no Councillor is elected or an insufficient number of Councillors are elected or the election of any or all of the Councillors is set aside under this Act and there is no other candidate or candidates who can be deemed to have been elected in his place or their places, the Commissioner shall fix another day for holding a fresh election and fresh election shall be held accordingly in the prescribed manner.

(2) A Councillor elected under this section shall be deemed to have been elected to fill a vacancy.

Procedure on failure of election in case of equality of votes. 54. If at a general election or an election held to fill a vacancy there is an equality of votes between two or more candidates, the Commissioner shall decide by drawing lots which candidate shall be deemed to have been elected.

Term of office of Councillors. 55. (1) Subject to the provision of this Act, the term of office of a Councillor shall be for five years and shall commence on the date of first meeting of the result of the general election under section 56:

Provided that the Government may, by notification in the official Gazette extend for reasons to be specified therein the said term to such period as it thinks fit and provided further that the total period so extended shall not exceed one year under section 50(1).

(2) A Councillor elected to fill a vacancy shall hold office for the unexpired period of office of the Councillor in whose place he has been elected.

(3) An outgoing Councillor shall continue in office until the election of his successor is notified under section 56.

Publication of results of election. 56. The names of all persons elected as Councillors shall as soon as may be after such election be published by the Government in the official Gazette :

Provided that the names of all Councillors elected at a general election shall be so published as far as possible simultaneously.

Oath or affirmation by Councillors. 57. (1) Every Councillor shall before taking his seat make and subscribe at a meeting of the Corporation an oath or affirmation according to the following form, namely:—

“I, A. B. having been elected a Councillor of the Municipal Corporation of the city of Gauhati do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.”

(2) If a person sits or votes as a Councillor before he has complied with the requirements of sub-section (1) he shall be liable in respect of each day on which he so sits or votes to a penalty of two hundred and fifty rupees to be recovered as an arrear of tax under this Act.

Resignation of office by Councillor. 58. Any Councillor may by writing under his hand addressed to the Mayor resign his office and such resignation shall take effect from the date on which it is accepted by the Mayor.

Trial of Election Petitions

Definitions. 59. In this chapter unless there is anything repugnant in the context—

- (a) "costs" mean all costs, charges and expenses of or incidental to the trial of an election petition;
- (b) "corrupt practice" means any of the practices so defined in the Representation of Peoples' Act, 1951 as amended from time to time;
- (c) "election" means an election held under the provisions of this Act or of any rules made thereunder; and
- (d) "advocate" means any person entitled to appear and plead for another in a Civil Court and includes a Pleader, a vakil and an Attorney of High Court.

Election petition. 60. (1) No election shall be called in question except by an election petition presented in accordance with the provisions of this section.

(2) Such election petition shall be presented to the prescribed authority within forty-five days from the date on which the result of the election is notified.

(3) An election petition calling in question any such election may be presented on one or more of the grounds specified in Section 62, by any candidate at such election or, by any elector of the ward concerned.

(4) An election petition—

- (a) shall contain concise statement of the material facts on which the petitioner relies;
- (b) shall with sufficient particular set forth the ground or grounds on which the election is called in question;
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings; and

- (d) shall be accompanied by a sum of rupees two hundred and fifty for election petition.

Appointment of District Judge. 61. The procedure provided in the Code of Civil Procedure, 1908 (5 of 1908), in regard to the suits shall be followed by the Court of the District Judge as far as it can be made applicable in the trial and disposal of an election petition under this Act.

Ground for declaring elections to be void. 62. (1) Subject to the provisions of sub-section (2) if the District Judge is of opinion—

- (a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a Councillor under this Act; or
- (b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or
- (c) that any nomination paper has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
 - (i) by the improper acceptance of any nomination; or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent; or
 - (iii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or
 - (iv) by the non-compliance with the provisions of this Act or of any rules or orders made;
- (v) the District Judge shall declare the election of the returned candidate to be void.

(2) If in the opinion of the District Judge, the agent of a returned candidate has been guilty of any corrupt practice, but the Judge is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate, and every such corrupt practice was committed contrary to the orders; and without the consent of the candidate;
- (b) that the candidate took all reasonable means for preventing the commission of corrupt practices at the election; and
- (c) that in all other respects, the election was free from any corrupt practice on the part of the candidate or any of his agents;

then the District Judge may decide that the election of the returned candidate is not void.

Decision of the District Judge. 63. (1) At the conclusion of the trial of an election petition, the District Judge shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner and any other candidate to have been duly elected.

(2) If any person who has filed an election petition has, in addition to calling in question the election of the returned candidate, claimed declaration that he himself or any other candidate has been duly elected and the District Judge is of opinion—

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
- (b) that, but for the votes obtained by the returned candidate, the petitioner or such other candidate would have obtained a majority of the valid votes;

the District Judge shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

(3) The District Judge after pronouncing orders made under this section shall send a copy thereof to the Corporation and the Government.

(4) Every order of the District Judge under this section shall take effect as soon as it is pronounced by him :

Provided that an application may be made to the District Judge's Court for stay of operation of an order made by him under this Section before the expiration of the time allowed for appealing therefrom and the District Judge may, on sufficient cause being shown and on such terms and conditions as he may think fit, stay operation of the order, but no application for stay should be made to the District Judge after an appeal has been preferred to the High Court :

Provided further that where by any such order the election of a returned candidate is declared to be void, acts and proceedings in which that candidate has, before the date of the order, participated as a member of the Corporation shall not be invalidated by reason of that order.

Appeals from the orders of District Judge. 64. (1) An appeal shall lie from every order passed by the District Judge under section 63 to the High Court.

(2) The High Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority, and follow the same procedure, with respect to an appeal under this section as if it were an appeal from the original decree passed by a Civil Court situated within the local limits of its civil appellate jurisdiction.

(3) Such appeal shall be preferred within a period of forty-five days from the date of the order of the District Judge under section 63:

Provided that the High Court may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within such period :

Provided further that where an appeal has been preferred against an order made under this section, the High Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order appealed from.

(4) The decision of the High Court on an appeal under this section shall be final and conclusive.

**Execution
of orders as
to costs.**

65. Any order as to costs under the provisions of this Chapter may be produced before the Principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

**Maintenance
of secrecy
of voting.**

66. (1) Every officer or clerk, agent or other person, who performs any duty in connection with recording or counting of votes at an election, shall maintain and aid in maintaining the secrecy of the voting and shall not, except for some purpose authorised by or under any law, communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

CHAPTER IV

Municipal Officers and staff

**Appointment
of officers
of the Cor-
poration.**

67. (1) The Corporation may appoint proper persons, including officers on deputation from State Government to be the Chief Engineer, the Collector, the Chief Accounts and Audit Officer, the Chief Health Officer, the Municipal Secretary and such other posts, on such other terms and conditions as may be determined in this behalf.

(2) An officer referred to in sub-section (1) may be appointed on probation before he is confirmed in the post.

(3) The qualifications, salary, allowance, the period of probation, if any, the period of service, the age of superannuation and all other conditions of service of the officers referred to in sub-section (1) shall be prescribed by rules made by the Corporation.

(4) (a) The appointment of every officer referred to in sub-section (1) shall be subject to the approval of the State Government.

(b) If the State Government does not communicate its approval to the appointment of any officer referred to in sub-section (1) within 45 days from the date of receipt of the communication from the Corporation, the appointment shall be deemed to have been approved.

(c) If the State Government refuses to approve the appointment of any officer referred to in sub-section (1), the Corporation shall make a fresh appointment to the post of such officer within forty-five days from the date of receipt of the communication refusing such approval, and in the event of the failure of the Corporation to make a fresh appointment within such time, the State Government may appoint a person to the post of such officer:

Provided that pending the approval of the appointment by the State Government as aforesaid, the Corporation may appoint a person to such post for a temporary period on salary and allowances not exceeding those provided for such officer

Powers and duties of Municipal Secretary. 68. The Municipal Secretary shall be the Secretary of the Corporation and also of the Standing Committee and shall—

(a) perform such duties as he is directed by or under this Act to perform and such other duties in and with regard to the Corporation and the Standing Committee as shall be required of him by those bodies respectively;

(b) have the custody of all papers and documents connected with the proceedings of—

(i) the Corporation and any Committee appointed by the Corporation under Section 86;

(ii) the Standing Committee and any sub-committee thereof;

- (c) prescribe, subject to such direction as the Standing Committee may from time to time give, the duties of the officer and employees immediately subordinate to him; and
- (d) subject to the orders of the Standing Committee exercise supervision and control over the acts and proceedings of the said officers and employees and subject to the regulations, dispose of all questions relating to the service, remuneration and privileges of the said officers and employees.

Explanation.—Where a municipal officer or employees immediately before the commencement of this Act was holding a post tenable for a limited period, nothing in this Act shall be deemed to extend the term of his office beyond such period.

Schedule of posts-

69. (1) The Commissioner shall from time to time prepare and lay before the Standing Finance Committee a schedule setting forth the designation and grades of the officers and staff other than those mentioned in sub-section (1) of section 67 who should in his opinion constitute the Corporation establishment indicating the salaries, fees and allowances payable to them.

(2) The Standing Finance Committee may either approve or amend such schedule as he thinks fit and shall lay such schedule before the Corporation for its consideration and approval.

(3) The Corporation may sanction such schedule with or without modifications as it thinks fit and may from time to time amend it either of its own motion or after ascertaining the opinion of the Standing Finance Committee.

Persons not included in Schedule not to be appointed.

70. (1) No officer or employee shall be entertained in any department of the Municipal Corporation unless he has been appointed under section 67 or his office and emoluments are included in the Schedule for the time being in force prepared and sanctioned under section 69.

(2) Nothing in this section shall be construed as affecting the right of the Corporation or the Commissioner to make any temporary appointment for period not exceeding six months which it or he is empowered to make under this Act

Authority empowered to make appointment. 71. Subject to other provisions of this Act, appointment to the Corporation establishment shall be made—

- (a) by the Corporation if the maximum salary of the officer is not below two hundred and fifty rupees per month;
- (b) by the Commissioner in all other cases with the approval of the Corporation.

Appointment to be made on the recommendation of the Municipal Service Commission. 72. (1) Appointment to posts referred to in sub-section (1) of section 67 and to posts carrying a maximum salary not below one thousand rupees per month should be made on the recommendation of the Assam Public Service Commission.

(2) Appointments to posts carrying maximum salary not below two hundred and fifty rupees but below one thousand rupees per month shall be made on the recommendation of the Municipal Service Commission.

(3) The Municipal Service Commission shall hold examination periodically for recommending candidates for appointment to posts mentioned in the Schedule referred to in section 69, the maximum salary of which is not below two hundred and fifty rupees but below one thousand rupees per month.

(4) Notwithstanding anything contained in sub-section (2), if the appointing authority proposes that any particular vacancy, the maximum salary of which is not below two hundred and fifty rupees but below one thousand rupees per month, should be filled up by promotion from subordinate ranks, then the Municipal Service Commission shall decide whether such vacancy shall be filled up by promotion or by direct recruitment and in the latter case shall invite applications and take such other steps as it may consider necessary for the purpose of recommending candidates for appointment to the vacancy.

(5) Notwithstanding anything contained in sub-sections (1), (2), (3) and (4) it shall not be necessary to consult the Public Service Commission and the Municipal Service Commission, where a vacancy in a post is not likely to exceed three months or if the post is created for a temporary period not likely to exceed six months.

(6) Appointments to posts, the maximum salary of which is below two hundred and fifty rupees per month shall be made by the Commissioner with the approval of the Corporation subject to regulations relating to such appointment as may be framed by the Municipal Service Commission, and approved by the Corporation.

Constitution of Municipal Service Commission. 73. (1) The Corporation shall, as soon as may be after the commencement of this Act, constitute a Municipal Service Commission consisting of—

(a) a Chairman who shall be a member of the State Public Service Commission, deputed by such Commission from time to time;

(b) the Secretary to the Government of Assam Municipal Administration Department or his nominee and

(c) two Councillors selected by the Corporation.

(2) The Corporation shall by rules made in this behalf provide for—

(a) the manner in which the Commission shall perform the duties imposed upon it by or under the Act; and

(b) the number of members of the staff of the Commission and their conditions of service.

Powers of Standing Finance Committee to make regulations. 74. (1) Subject to other provisions of this Act, the Corporation may, in consultation with the Standing Finance Committee and the Municipal Service Commission, frame regulations—

(a) fixing the amount and nature of security, if any, to be furnished ;

(b) regulating the grant of leave, leave allowance and officiating allowance ;

(c) regulating the grant of pension, bonus and gratuities ;

(d) regulating the grant of travelling allowance and house-rent allowance ;

(e) regulating the fixation of initial pay on a time-scale of pay ;

- (f) regulating compassionate allowance and gratuities to municipal officers and staff and families of deceased municipal officers and staff ;
- (g) establishing and maintaining provident or annuity fund and making contributions thereto compulsory by both the municipal employees and the Corporation ;
- (h) prescribing the qualification for employment of municipal officers and staff ;
- (i) regulating conduct of municipal officers and staff ; and
- (j) generally prescribing the conditions of service of Municipal officers and staff :

Provided that in framing regulations as aforesaid express provision shall be made so as to ensure that any money payable to a municipal officer or staff upon his retirement from any provident fund or annuity fund or as gratuity shall be paid to him within six months of such retirement.

(2) The Corporation may, in accordance with the regulations framed under sub-section (1) grant—

- (a) pensions, allowances, bonuses and gratuities to municipal officers and staff ; and
- (b) compassionate allowances and gratuities to members of the families of deceased municipal officer and staff and may also supplement contributions to a provident fund or an annuity fund in accordance with the said regulations.

(3) Subject to any regulations framed under sub-section (1), the Commissioner may grant leave of absence to any municipal officer or staff :

Provided that the Commissioner shall not grant leave of absence for any period exceeding one month to any municipal officer or staff not appointed by the Commissioner, without obtaining the sanction of the Standing Finance Committee to such leave.

Explanation:—For the purposes of this Chapter the family of a municipal officer or staff shall be deemed to include his wife, children, father, mother, brother or sister, dependent upon him for support.

Punishment of Municipal officer or staff. 75. (1) Every Municipal officer and staff may be fined, reduced in rank suspended or dismissed for any breach of departmental rules or discipline or for carelessness, negligence of duties or other misconduct by the authority by whom such officer or staff is appointed, as may be provided for in the rules to be made in this behalf.

(2) (a) In the case of a Municipal officer or staff drawing a salary not exceeding one thousand rupees per mensem and appointed by the Commissioner or by any authority to whom the power of appointment has been delegated by the Commissioner, an appeal shall lie to the Standing Finance Committee.

(b) In the case of a Municipal officer or staff appointed by the Corporation on the recommendation of the Municipal Service Commission or the Assam Public Service Commission an appeal shall lie to the State Government.

CHAPTER V

CONDUCT OF BUSINESS

Transaction of Business by the Corporation

Meetings. 76. (1) The Corporation shall meet not less than once a month for the transaction of business.

(2) The Mayor or, in his absence, the Deputy Mayor may, whenever he thinks fit, and shall upon a requisition made in writing by any fifteen Councillors, call a meeting of the Corporation.

First meeting after general election. 77. The first meeting of the Corporation after the general election of Councillors shall be held as early as possible but not later than six weeks from the date of announcement of the results of the election and shall be convened by the District Magistrate (Executive).

Notice of meetings and business. 78. A notice of meeting along with a list of the business to be transacted at every meeting except at an adjourned meeting shall be delivered at registered address of each Councillor at least five days before the time fixed for such meeting and no business shall be brought before, or transacted at, any meeting other than the business of which notice has been so given:

Provided that any Councillor may send or deliver to the Municipal Secretary notice of any resolution going beyond matters mentioned in the notice given of such meeting so as to reach him at least three days before the date fixed for the meeting and the Municipal Secretary shall with all possible despatch take steps to circulate such resolution to every Councillor in such manner as he may think fit.

*Explanation:—*In this section, "Registered address" means the address for the time being entered in the register of addresses of Councillors maintained in this behalf by the Municipal Secretary.

Votes of
Majority
decisive.

79. (1) All matters required to be decided by the Corporation shall, save as in this Act otherwise provided, be determined by a majority of the Councillors voting at the meeting before which the matter is brought.

(2) The voting shall be by show of hands provided that the Corporation may, subject to such rules as may be made by it, resolve that any question or class of questions shall be decided by ballot.

(3) At any meeting, unless a poll be demanded by at least five members, a declaration by the Presiding Officer of such meeting that a resolution has been carried or lost, and an entry to that effect in the minutes of the meeting shall, for the purpose of this Act, be conclusive evidence of the fact without proof, of the number or the proportion of the votes recorded in favour of or against such resolution.

(4) If a poll be demanded, the votes of all the members present who desire to vote shall be taken under the direction of the Presiding Officer of the meeting, and the result of such poll shall be deemed to be the decision of the Corporation at such meeting.

Presiding
Officer at
meeting.

80. (1) The Mayor, or, in his absence, the Deputy Mayor, shall preside at every meeting of the Corporation, and shall have a second or casting vote in all cases of equality of votes and his ruling in conducting the proceedings of the meeting shall be final.

(2) In the absence of the Mayor and the Deputy Mayor, the Councillors present at the meeting shall choose one of their members to preside, who shall in case of equality of votes have a second or casting vote.

(3) The Presiding Officer of any meeting at which a quorum of the Councillors is present may, with the consent of a majority of the members present adjourn the meeting.

(4) The Presiding Officer in an abnormal situation arising in a meeting, may adjourn the same if in his opinion the situation demand adjournment or ask the Councillor or Councillors responsible for the abnormal situation to leave the House and on his or their refusal to do so, may have him or them removed by the Marshall appointed by the Corporation.

Presiding
Officer at
meeting for
the election
of the
Mayor.

81. (1) Notwithstanding anything contained in Section 80 or elsewhere in this Act, a meeting for election of the Mayor and the Deputy Mayor, shall be presided over by the Commissioner of the Plains Division :

Provided that such Presiding Officer shall not have any vote.

(2) If equality of votes is found to exist between any candidates for election as Mayor or Deputy Mayor, the determination of the person who shall be deemed to have been elected shall be made by lot, to be drawn in the meeting in such a manner as the Presiding Officer may determine.

(3) The Presiding Officer shall report to the State Government the name of the person elected as Mayor or Deputy Mayor and the State Government shall publish such name in the official gazette.

Provision as
to Council-
lors having
pecuniary
interest in
any con-
tract, etc.
with Corpo-
ration.

82. (1) If a Councillor has any pecuniary interest direct or indirect in any contract or employment or other matter and is present in a meeting of the Corporation or of a Committee at which the contract or other matter is the subject of consideration, he shall at the meeting as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to the contract or other matter :

Provided that this section shall not apply to an interest which a member may have as a rate-payer or inhabitant of the area or an ordinary consumer of gas, electricity or water, or to an interest in any matter relating to the terms on which the right to participate in any service including the supply of goods is offered to the public.

(2) For the purpose of this section a person shall be treated as having indirectly a pecuniary interest in a contract, employment or other matter, if he or any nominee of his is a member of any company or other body with which the contract is made or is proposed to be made or which has a direct pecuniary interest in the employment or other matter under consideration or if he is a partner or is in employment of a person with whom the contract is made or is proposed to be made or who has a direct pecuniary interest in the employment or other matter under consideration :

Provided that—

(i) this sub-section shall not apply to a membership of or employment under any public body; or

(ii) a member of a company or other body shall not by reason only of his membership, be treated as being so interested if he has no beneficial interest in any shares or stock of that company or other body.

(3) In the case of married persons living together, the interest of one spouse shall be deemed for the purpose of this section to be also the interest of the other spouse.

(4) A general notice given to the Mayor by a Councillor to the effect that he or his spouse is a member of a specified company or he or his spouse is a partner or in the employment of a specified person, shall unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any contract, proposed contract, employment or other matter relating to the company or other body or to that person which may be the subject of consideration after the date of the notice.

(5) The Municipal Secretary shall record in a book to be kept for the purpose particulars of any disclosure made under sub-section (1) and of any notice given under sub-section (4) and the book shall remain open at all reasonable hours for the inspection of any Councillor.

Meeting to
ordinarily
open to
Public.

§83. (1) Every meeting shall be open to the public, unless a majority of the Councillors present at the meeting decide by a resolution that any enquiry or deliberation pending before the Corporation shall be held in private.

(2) The Corporation may make rules for regulating the admission of the members of the public to its meetings and for the removal by force, if necessary, of any member of the public admitted to a meeting under such rules, for interrupting or disturbing the proceeding of the meeting.

Quorum

84. (1) No business shall be transacted at any meeting of the Corporation unless such meeting has been called by Mayor or Deputy Mayor or by a person authorised to sign a requisition, nor unless a quorum shall be present.

(2) The quorum necessary for the transaction of business at a meeting shall be one half of the total number of Councillors of the Corporation when any of the following subjects are to be disposed of at such meeting:—

- (i) Scale of establishment and salaries.
- (ii) The framing of regulation and bye-laws under sections 415 and 416.
- (iii) The annual budget estimate.
- (iv) The appointment or the fixing of the pay or allowances of a paid Secretary, Engineer, Water Works Superintendent, Health Officer, Assessor or other officers.
- (v) Imposition of Taxes, fees and tolls under section 144 of the Act.
- (vi) The Election of Mayor or Deputy Mayor or members of the Standing Committees.
- (vii) Raising of a loan.
- (viii) The subject of a meeting specially convened for the purpose.
- (ix) Any other subject prescribed by regulation and bye-law framed in this behalf.

(3) For all other business the quorum shall be one-third of the total number of Councillors:

Provided that in cases where the number of Councillor is not evenly divisible by three, the one third shall be ascertained by taking the number next above the whole number which is evenly divisible by three, as the number to be divided.

(4) If at any meeting the prescribed quorum is not present, the meeting shall stand adjourned to some future day to be appointed by the Mayor and three days' notice of such adjourned meeting shall be given.

(5) The Councillors present at such adjourned meeting for transaction of business other than those mentioned in sub-section (2) shall form a quorum of whatever their number may be.

Power of Corporation to make rules.

85. The Corporation may make rules for the conduct of the business at its meeting.

Special Committees and other Committees.

86. (1) The Corporation may from time to time, by specific resolution, constitute a Special Committee consisting of such Councillors as it thinks fit to enquire into a report up or any matter to be specified in such resolution which may arise in connection with any of the powers, duties and functions of the Corporation and which is not at the time under consideration by a Standing Committee.

(2) The Corporation may at any time, constitute any (other Committee for any purpose it thinks fit.

Provisions relating to Special Committees.

87. (1) Every Special Committee shall conform to any instructions that may from time to time be given to it by the Corporation.

(2) The Corporation may at any time dissolve or alter the constitution of any Special Committee, and may also at any time withdraw from any Special Committee any of the powers, duties and functions delegated to it.

(3) In the absence of the Chairman from any meeting the members of the Special Committee shall choose one of their number to preside over the meeting.

(4) The report of every Special Committee shall, as soon as may be practicable, be laid before the Corporation which may thereupon take such action as it thinks fit, or may refer back the matter to the Special Committee for further investigation and report.

Transaction of Business by Standing and other Committees

Presiding Officers at meetings of the Standing Committees.

88. (1) The Chairman or in his absence the Deputy Chairman shall preside at every meeting of a Standing Committee.

(2) In the absence of the Chairman and the Deputy Chairman from any meeting, the members of the Standing Committee shall choose one of their member to preside over the meeting.

Conduct of business at meetings of Standing Committees, etc.

89. (1) The Corporation may make rules for regulating the conduct of business at meetings of Standing Committees, and Special Committees and Sub-Committees, and for providing for the constitution and conduct of business of Joint Committee of two or more Standing Committees in respect of matters in which two or more Standing Committees may be jointly interested.

(2) In making such rules, the Corporation may provide that all or any of the provisions of section 79 and of sections 82 to 84 (inclusive) may with such modification as it thinks fit apply to such Standing Committees, Special Committees, Joint Committees or Sub-Committees.

Sub-Committees of Standing Committees. 90. (1) Any Standing Committee, Special Committee or Joint Committee may appoint one or more Sub-Committees consisting of such Councillors as it thinks fit for any purpose with which it is entitled to deal and which in its opinion, can be more usefully carried out by a Sub-Committee.

(2) A Sub-Committee may be appointed for such time and shall be subject to such limitations and conditions as the Committee appointing the Sub-Committee may from time to time think fit.

(3) No Sub-Committee shall continue to exist after the Committee appointing it has ceased to exist.

(4) All proceedings of any Sub-Committee shall be subject to confirmation by the Committee appointing it.

(5) It shall not be necessary for a member of a Sub-Committee to be a member of the Committee appointing such Sub-Committee.

Minutes and Reports of Proceedings

Keeping of minutes and Proceedings. 91. Minutes, in which shall be recorded the names of the members present at, and the proceedings of, each meeting of the Corporation and of every Standing Committee, Special Committee or Joint Committee, respectively, shall be drawn up and entered in a book to be kept for that purpose, duly signed by the presiding officer, and shall, thereafter, be laid before the next meeting of the Corporation or of such Committee, as the case may be, for confirmation.

Copy of the proceedings of each meeting shall be circulated amongst the members well ahead of the next meeting.

Forwarding of minutes and reports in proceedings to State Government. 92. (1) The Commissioner shall forward to the State Government a copy of the minutes of the proceedings of each meeting of the Corporation, within ten days from the date on which the minutes of the proceedings of such meeting were signed as provided in section 91.

(2) The State Government may also in any case call for a copy of any paper or all the papers which were laid before the Corporation or the Standing Committee or Special Committee or Joint Committee as the case may be and the Commissioner shall forward to the State Government a copy of such paper or all such papers.

Validation

Validation of acts and Proceedings. 93. (1) No act done or proceedings taken under this Act shall be questioned on the ground merely of—

- (a) the existence of any vacancy in, or any defect in the constitution of, the Corporation, or any Standing Committee or Special Committee or Joint Committee, or
- (b) any Councillor having voted or taken part in any proceedings in contravention of section 82, or
- (c) any defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Corporation, or of any Standing Committee or Special Committee or Joint Committee the minutes of the proceedings of which have been duly signed and confirmed as prescribed in section 91 shall be deemed to have been duly convened and to be free from all defects or irregularity.

Works and Contracts

Execution of works. 94. The Corporation may determine either generally for any class of cases or specially for any particular case whether the Commissioner shall execute the work by a contract or otherwise.

Power of Commissioner to sanction estimates not exceeding Rupees five thousands and fifty thousands. 95. (1) The Commissioner may sanction any estimate for a particular work the amount of which does not exceed five thousand rupees.

(2) If the amount of estimate exceeds five thousand rupees but does not exceed fifty thousand rupees the Commissioner may sanction the estimate with the approval of the Standing Finance Committee.

Estimate
exceeding
rupees fifty
thousand.

96. (1) Where a project is framed for the execution of any work or series of works the entire estimated cost of which exceeds fifty thousand rupees,

(a) the Commissioner shall cause a detailed report to be prepared including such estimates and drawings as may be requisite and forward the same to the Standing Committee who shall submit the same before the Corporation with its suggestions, if any;

(b) the Corporation shall consider the report and the suggestions and may reject the project or may approve it either in its entirety or subject to modification.

(2) (a) Where the Corporation approves the project and the entire estimated cost exceeds five lakhs of rupees the report, subject to any modifications as aforesaid, shall be submitted to the State Government.

(b) The State Government may reject the project or may sanction it either in its entirety or subject to modification.

(c) The work shall not be commenced before the project has been sanctioned by the State Government with or without modification.

(d) No material change in the project sanctioned as aforesaid shall be carried into effect without the sanction of the State Government.

*Explanation:—*In this section and in section 95, the expression "estimate" means the total estimate for the whole of the project including the whole of the series of transactions constituting the project.

Certain pro-
visions rela-
ting to exe-
cution of
contracts.

97. (1) With respect to the making of contracts under or for any purpose of this Act, the following provisions shall have effect, namely:—

(a) Every contract shall be made on behalf of the Corporation by the Commissioner.

(b) No contract for any purpose, which in accordance with any provisions of this Act or any rules made thereunder the Commissioner may not carry out without the sanction of one or the other municipal authority, shall be made by him unless such sanction has been given.

(c) No contract involving an expenditure exceeding ten thousand rupees shall be made by the Commissioner unless it has been sanctioned by the Standing Finance Committee.

(d) No contract involving an expenditure exceeding fifty thousand rupees shall be made by the Commissioner unless it has been sanctioned by the Corporation.

(2) The foregoing provisions of this section shall apply to every variation or discharge of a contract as well as to an original contract.

Manner of Execution. 98. (1) Every contract entered into by the Commissioner on behalf of the Corporation shall be entered into in such manner and form as prescribed in this behalf:

Provided that (a) the common seal of the Corporation shall be affixed to every contract which, if made between private persons should require to be sealed and (b) every contract for execution of any work or the supply of the materials or goods shall be in writing, shall specify—

- (i) the work to be done or the materials or goods to be supplied, as the case may be,
- (ii) the amount to be paid for such work, materials or goods, and
- (iii) the time within which the contract or specified portion thereof shall be carried out.

(2) The common seal of the Corporation shall remain in the custody of the Commissioner.

(3) No contract executed otherwise than as provided in this section shall be binding on the Corporation.

Tender 99. (1) At least seven days before entering into any contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding five thousand rupees, the Commissioner shall give notice by an advertisement inviting tenders for such contract subject to the approval of the Standing Committee concerned.

Explanation.—In this sub-section the expression "contract" includes cash purchases.

(2) On receipt of the tenders made in pursuance of the notice given under sub-section (1) the Commissioner may, subject to the provisions of sections 95, 96 and 97, accept any tender which appears to him to be most advantageous.

Security for performance of contract. 100. The Commissioner shall ordinarily take sufficient security for due performance of every contract into which he enters under this Act.