

## **WEST BENGAL MUNICIPAL ELECTIONS ACT, 1994**

**34 of 1994**

**[July 20, 1994]**

### CONTENTS

#### **CHAPTER 1 :- Preliminary**

1. Short title, extent and commencement
2. Definitions
33. Power to delimit municipal areas into wards

#### **CHAPTER 2 :- Officers**

4. Officers
5. Co-ordination and supervision
6. Preparation and revision of electoral roll
7. Functions of Assistant Municipal Electoral Registration Officer
8. General duties of District Municipal Election Officer
9. Municipal Returning Officer
10. Assistant Municipal Returning Officer
11. General duty of the Municipal Returning Officer
12. Provision of polling stations for constituencies
13. Appointment of Presiding Officers and Polling Officers for polling stations
14. General duty of the Presiding Officer
15. Duties of a Polling Officer

#### **CHAPTER 3 :- Electoral rolls for Municipalities**

16. Electoral rolls for Municipalities
- 16A. Adoption of electoral rolls for Municipalities
17. Condition for registration as a voter
18. Disqualifications for registration
19. Dispute as to whether a person is ordinarily resident
20. Preparation and revision of electoral rolls
21. Correction of entries in electoral rolls
22. Inclusion of names in electoral rolls
23. Appeal
24. Fee for applications and appeals

#### **CHAPTER 4 :- General**

25. Power to make rules
26. Staff of local authorities

27. Making false declarations

28. Breach of official duty in connection with the preparation etc. of electoral rolls

## **CHAPTER 5 :- Elections**

29. Reservation of seats

29A. Qualifications for membership of a Municipality

30. General disqualifications for membership of a Municipality

31. Election of ineligible persons and disqualifications subsequently incurred

32. Disqualification on ground of corrupt practices

33. Disqualification for dismissal for corruption of disloyalty

34. Disqualification for failure to lodge account of election expenses

35. Disqualification arising out of conviction and corrupt practices

36. Notification for general election to a Municipality

## **CHAPTER 6 :- Conduct of Elections**

37. Appointment of dates for nominations etc

38. Public notice of election

39. Nomination of candidates for election

40. Presentation of nomination paper and requirements for valid nomination

41. Deposits

42. Notice of nominations and the time and place for their scrutiny

43. Scrutiny of nomination

44. Withdrawal of candidature

45. Allotment of symbol

46. Publication of list of contesting candidates

47. Election agents

48. Disqualification for being an election agent

49. Revocation of appointment, or death, of election agents

50. Functions of election agents

51. Appointment of polling agents

52. Appointment of counting agents

53. Revocation of appointment, or death, of polling agent or counting agent

54. Functions of polling agents and counting agents

55. Attendance of contesting candidate or his election agent at polling stations and performance by him of the functions of polling agent or counting agent

56. Non-attendance of polling or counting agents

57. Death of candidate before poll

58. Procedure in contested and uncontested elections

59. Eligibility of members of Scheduled Castes or Scheduled Tribes or women to hold seats not reserved for them

## **CHAPTER 7 :- The Poll**

60. Fixing time for poll

- 61. Adjournment of poll in emergencies
- 62. Fresh poll in the case of destruction etc. of ballot boxes
- 63. Adjournment of poll or countermanding of election on the ground of booth capturing
- 64. Manner of voting at elections
- 65. Special procedure for preventing personation of electors
- 66. Right to vote
- 67. Counting of votes
- 68. Destruction, loss, etc. of ballot papers
- 69. Equality of votes
- 70. Declaration of results
- 71. Report of the results
- 72. Account of election expenses and maximum thereof
- 73. Lodging of account with the District Municipal Election Officer

#### **CHAPTER 8 :- Disputes regarding election**

- 74. Definition
- 75. Election petition and procedure
- 76. Setting aside of election
- 77. Scrutiny of votes and declaration or confirmation of result
- 78. Bar to jurisdiction of Court
- 79. Fresh election when an election is set aside
- 80. Saving of acts done by a member before his election is set aside
- 81. Electoral offences for the purposes of the Act

#### **CHAPTER 9 :- Miscellaneous**

- 82. Protection of action taken in good faith
- 83. Casual vacancies in the Municipality
- 84. Extension of time for completion of election
- 85. Return or forfeiture of candidates deposit
- 86. Staff of every local authority to be made available for election work
- 87. Requisition and derequisition of premises, vehicles, etc. for election purposes
- 88. Power to make rules
- 89. Jurisdiction of Civil Courts barred
- 90. Removal of difficulty

### **WEST BENGAL MUNICIPAL ELECTIONS ACT, 1994**

**34 of 1994**

**[July 20, 1994]**

An Act to consolidate and amend the laws relating to the holding of elections to the Municipalities in West Bengal. WHEREAS it is expedient to consolidate and amend the laws relating to the holding of elections to the Municipalities in West Bengal; It is

hereby enacted as follows

## CHAPTER 1

### Preliminary

#### **1. Short title, extent and commencement :-**

(1) this Act may be called the West Bengal Municipal Elections Act, 1994.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

#### **2. Definitions :-**

In this Act, unless the context otherwise requires,

(a) "article" means an article of the Constitution;

(b) "Commission" means the West Bengal State Election Commission referred to in sub-section (1) of S.3 of the West Bengal State Election Commission Act, 1994;

(c) "constituency" means a ward of a Municipality;

(d) "Constitution" means the Constitution of India;

(e) "election" means the election to fill a seat or seats in a Municipality. \* Assent of the Governor was first published in the Calcutta Gazette, Extraordinary, dated the 20th July, 1994.

(f) "elector", in relation to a constituency of a Municipality, means the person whose name is entered in the electoral roll of that Municipality for the time being in force and who is not subject to any of the disqualifications mentioned in S.16 of the Representation of the People Act, 1950;

(g) "member" means a person elected at an election to fill a seat in a Municipality;

(h) "Municipal area" means the territorial area of a Municipality;

(i) "Municipality" has the same meaning as in clause (e) of article 243P of the Constitution;

(j) "notification" means a notification published in the Official Gazette;

(k) "order" means an order published in the Official Gazette;

(l) "ordinarily resident" has the same meaning as assigned to it in S.20 of the Representation of the People Act, 1950;

(m) "Panchayat" has the same meaning as in [clause (e)] of article 243 of the Constitution;

(n) "person" does not include a body of persons;

(o) "prescribed" means prescribed by rules made under this Act;

(p) "public holiday" means any day which is a public holiday for the purposes of Section 25 of the Negotiable Instruments Act, 1881 ;

(q) "qualifying date" means the date specified as such by the Commission by notification for the purposes of this Act;

(r) "sign", in relation to a person who is unable to write his name, means to authenticate in such manner as may be prescribed;

(rr) "voting machine" means any machine or apparatus, whether operated electronically or otherwise, used for giving, or recording of, votes, and any reference to a ballot-box or ballot-paper in this Act or the rules made thereunder shall, save as otherwise provided, be construed to include a reference to a voting machine used at any election;

(s) "ward" means an administrative division of Municipality;

(t) other expressions have the meanings respectively assigned to them in the West Bengal State Election Commission Act, 1994.

### **33. Power to delimit municipal areas into wards :-**

?

(1) For the purpose of election of members of a Municipality, the Commission shall, having regard to population, dwelling pattern, geographical conditions and economic considerations of any municipal area, by notification, in the case of a new Municipality, of its own motion, and in the case of a Municipality already in existence at the time the notification is made, after consideration of the views of the Municipality, divide, in such manner as it thinks fit, such municipal area into such number of wards as may be determined by the State Government in this behalf:

Provided that the number of wards in the municipal areas of the Calcutta Municipal Corporation and the Howrah Municipal Corporation and the boundaries of the wards shall be such as is

provided in the Calcutta Municipal Corporation Act, 1980 and the Howrah Municipal Corporation Act, 1980 , respectively.

(2) Each ward of a Municipality shall be a single-member constituency.

## CHAPTER 2

### Officers

#### **4. Officers :-**

? The officers for the purpose of election shall be appointed in accordance with the provisions of S.6 of the West Bengal State Election Commission Act, 1994, and they shall exercise powers and perform functions in accordance with the provisions of this Act and the West Bengal State Election Commission Act, 1994.

#### **5. Co-ordination and supervision :-**

(1) Subject to the superintendence, direction and control of the Commission, the District Municipal Election Officers shall co-ordinate and supervise all work within his jurisdiction in connection with the preparation and revision of electoral rolls for all Municipalities.

(2) The District Municipal Election Officers shall perform such other functions as may be entrusted to him by the Commission.

#### **6. Preparation and revision of electoral roll :-**

(1) The electoral roll for each Municipality shall be prepared and revised by a Municipal Electoral Registration Officer.

(2) A Municipal Electoral Registration Officer may, subject to any prescribed restrictions, employ such persons as he thinks fit for the preparation and revision of the electoral roll for the Municipality.

Provided that the number of wards in the municipal area of the Calcutta Municipal Corporation and the Howrah Municipal Corporation shall be such as is provided in the Calcutta Municipal Corporation Act, 1980 and the Howrah Municipal Corporation Act, 1980 , respectively."

#### **7. Functions of Assistant Municipal Electoral Registration Officer :-**

Every Assistant Municipal Electoral Registration Officer shall, - subject to the direction and control of the Municipal Electoral Registration Officer, be competent to perform any of the functions of the Municipal Electoral Registration Officer.

## **8. General duties of District Municipal Election Officer :-**

Subject to the superintendence, direction and control of the Commission, the District Municipal Election Officer shall supervise the conduct of all elections within his jurisdiction. The District Municipal Election Officer shall perform such other functions as may be entrusted to him by the Commission.

## **9. Municipal Returning Officer :-**

Subject to the provisions of subsection (1) of S.6 of the West Bengal State Election Commission Act, 1994, there shall be a Municipal Returning Officer for every constituency for every elections to fill a seat or seats in a Municipality:

Provided that nothing in this section shall prevent the Commission from designating or nominating the same person to be [the] Municipal Returning Officer for more than one constituency.

## **10. Assistant Municipal Returning Officer :-**

Subject to the provisions of sub-section (2) of S.6 of the West Bengal State Election Commission Act, 1994, every Assistant Municipal Returning Officer shall, subject to the control of the Municipal Returning Officer, be competent to perform any of the functions of the Municipal Returning Officer.

## **11. General duty of the Municipal Returning Officer :-**

It shall be the general duty of the Municipal Returning Officer at any election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by this Act or the rules or the orders made thereunder.

## **12. Provision of polling stations for constituencies :-**

The Municipal Returning Officer shall, subject to such directions as may be issued by the Commission in this behalf, provide a sufficient number of polling stations for every constituency and shall publish, in such manner as the Commission may direct, a list showing the polling stations so provided and the polling areas or group's of voters for which they have respectively been provided.

## **13. Appointment of Presiding Officers and Polling Officers for polling stations :-**

(1) Subject to the provisions of sub-section (4) of S.6 of the West Bengal State Election Commission Act, 1994, there shall be a Presiding Officer and such number of Polling Officer or Officers for each polling station as the Municipal Returning Officer thinks

necessary:

Provided that nothing in this sub-section shall prevent the Municipal Returning Officer from appointing the same person to be the Presiding Officer for more than one polling station in the same premises:

(2) A Polling Officer shall, if so directed by the Presiding Officer, perform all or any of the functions of a Presiding Officer under this Act or the rules or the orders made thereunder.

(3) If the Presiding Officer, owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such Polling Officer as has been previously authorised by the Municipal Returning Officer to perform such functions during any such absence.

(4) Any reference in this Act to the Presiding Officer shall, unless the context otherwise requires, be deemed to include a reference to any person performing any functions which he is authorised to perform under sub- section (2) or sub-section (3), as the case may be.

**14. General duty of the Presiding Officer :-**

? It shall be the general duty of the Presiding Officer at a polling station to keep order thereat and to see that the [poll is fairly taken].

**15. Duties of a Polling Officer :-**

It shall be the duty of the Polling Officer at a polling station to assist the Presiding Officer for such polling station in the performance of his functions.

**CHAPTER 3**

Electoral rolls for Municipalities

**16. Electoral rolls for Municipalities :-**

? The electoral roll for every Municipality shall consist of electoral rolls for all the Constituencies comprised within the Municipality and the electoral rolls of a Constituency shall be divided into different parts for different localities comprised in that Constituency.

**16A. Adoption of electoral rolls for Municipalities :-**

?The electoral roll for the time being in force for the election of Member to the West Bengal Legislative Assembly may, at the discretion of the State Election Commissioner, be adopted as the



electoral roll for election of members, by whatever name called, to a Municipality to such extent, and in such manner, as the State Election Commissioner thinks fit.

**17. Condition for registration as a voter :-**

(1) Every person who?

(a) is not less than 18 years of age on the qualifying date, and

(b) is ordinarily resident in a municipal area, shall be entitled to be registered in the electoral roll for that municipal area.

(2) No person shall be entitled to be registered in the electoral roll for any Municipality in more than one place.

(3) No person shall be entitled to be registered in the electoral roll for any Municipality if his name has already been registered as a voter in the electoral roll for any other Municipality or Panchayat.

(4) No person shall be entitled to be registered in the electoral roll for any Municipality more than once.

**18. Disqualifications for registration :-**

? The disqualifications for registration in an electoral roll for a Municipality shall be the same as provided in S.16 of the Representation of the People Act, 1950

**19. Dispute as to whether a person is ordinarily resident :-**

? If, in any case, a question arises as to whether a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and such rules as may be made in this behalf by the State Government in consultation with the Commission.

**20. Preparation and revision of electoral rolls :-**

(1)(If the State Election Commissioner does not adopt the electoral roll referred to in section Section 16A ,) the electoral roll] for each Municipality shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

(2) The electoral roll shall,?

(a) unless otherwise directed by the Commission, for reasons to be recorded in writing, be revised in the prescribed manner by

reference to the qualifying date?

(i) before each general election to the Municipality, and

(ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency, and

(b) notwithstanding anything contained in clause (a), be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Commission:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.

(3) Notwithstanding anything contained in sub-section (2), the Commission may, at any time, for reasons to be recorded in writing, direct a special revision of the electoral roll of any Municipality in such manner as it may think fit:.

Provided that subject to the other provisions of this Act, the electoral roll for the Municipality as in force at the time of issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

## **21. Correction of entries in electoral rolls :-**

? If the Municipal Electoral Registration Officer for a Municipality, on an application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the Municipality?

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the electoral roll on the ground that the person concerned has changed his place of ordinary residence within the jurisdiction of the Municipality, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident within the jurisdiction of the Municipality or is otherwise not entitled to be registered in that electoral roll, the Municipal Electoral Registration Officer shall, subject to such general or special directions, if any, as may be given by the Commission in this behalf, amend, transpose or delete the entry:

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that

the person concerned has ceased to be ordinarily resident within the jurisdiction of the Municipality or that he is otherwise not entitled to be registered in the electoral roll of that Municipality, the Municipal Electoral Registration Officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.

## **22. Inclusion of names in electoral rolls :-**

?

(1) Any person whose name is not included in the electoral roll of a Municipality may apply to the Municipal Electoral Registration Officer for the inclusion of his name in the electoral roll.

(2) The Municipal Electoral Registration Officer shall, if he is satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other Municipality or Panchayat, the Municipal Electoral Registration Officer shall inform the Municipal Electoral Registration Officer of that other Municipality or the Panchayat Electoral Registration Officer of that Panchayat to that effect and the Municipal Electoral Registration Officer of that other Municipality or the Panchayat Electoral Registration Officer of that Panchayat, as the case may be, shall, on receipt of the information, strike off the applicant's name from that electoral roll.

(3) No amendment, transposition or deletion of any entry shall be made under section 21 and no direction for the inclusion of a name in the electoral roll of a Municipality shall be given under this section after the last date for making nominations for an election in that Municipality and before the completion of such election.

## **23. Appeal :-**

? An appeal shall lie within such time and in such manner as may be prescribed to the District Municipal Election Officer from any order of the Municipal Electoral Registration Officer under section 21 or section 22 .

## **24. Fee for applications and appeals :-**

? Every application under section 21 or section 22 and every appeal under section 23 shall be accompanied by the prescribed fee which shall, in no case, be refunded.

**25. Power to make rules :-**

(1) The State Government may, [after consulting] the Commission, by notification, make rules for carrying out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:?

(a) the particulars to be entered in the electoral roll;

(b) the preliminary publication of electoral rolls;

(c) the manner in which and the time within which claims and objections as to entries in electoral rolls may be preferred;

(d) the manner in which notices of claims or objections shall be published;

(e) the place, date and time at which claims or objections shall be heard and disposed of;

(f) the final publication of electoral rolls;

(g) the revision and correction of electoral rolls and inclusion of names therein;

(h) any other matter required to be prescribed by this Act.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature, while it is in session, for a total period of fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid the State Legislature agrees in making any modification in the rule or the State Legislature agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**26. Staff of local authorities :-**

? Every local authority in the State shall, when so required by the Commission, make available to any Municipal Electoral Registration Officer such staff as may be necessary for the performance of any

duties in connection with the preparation and revision of electoral rolls.

**27. Making false declarations :-**

? If any person makes, in connection with?

(a) the preparation, revision or correction of an electoral roll, or

(b) the inclusion or exclusion of any entry in or from an electoral roll, a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

**28. Breach of official duty in connection with the preparation etc. of electoral rolls :-**

(1) If any Municipal Electoral Registration Officer, Assistant Municipal Electoral Registration Officer or other person required by or under this Act to perform any official duty in connection with the preparation, revision or correction of an electoral roll or inclusion or exclusion of any entry in or from such electoral roll is, without reasonable cause, guilty of any act or omission in breach of such official duty, he shall be punishable with fine which may extend to five hundred rupees.

(2) No suit or other legal proceeding shall lie against any such officer or other person for damages in respect of any such act or omission as aforesaid.

(3) No court shall take cognizance of any offence punishable under sub-section (1) unless there is a complaint made by an order of, or under the authority from, the Commission.

CHAPTER 5

Elections

**29. Reservation of seats :-**

(1) Seats shall be reserved [\* \* \* \* \*] for the Scheduled Castes and the Scheduled Tribes in every Municipality, [in such manner as may be prescribed], and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election to that Municipality as the population of the Scheduled Castes in the municipal area or the Scheduled Tribes in the municipal area, as the case may be, bears to the total population of that municipal area, and such seats may

be allotted by rotation to different constituencies of that municipality by the Commission [in such manner as may be prescribed].

(2) Not less than one-third of the total number of seats reserved under sub-section (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third of the total number of seats, including the seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes under sub-section (2), to be filled by direct election to a Municipality, shall be reserved for wo'men, and such seats may be allotted by rotation to different constituencies of that Municipality by the Commission [in such manner as may be prescribed].

(4) The office of Chairperson of a Municipality shall be reserved for a woman candidate for the first term if at least 50 per cent of the total number of elected members are women. The office of Chairperson of a Municipality shall be reserved for a Scheduled Caste candidate for the next term if at least 50 per cent of the elected members belong to the Scheduled Caste and the Scheduled Tribe communities. The office of Chairperson of a Municipality shall be reserved for a Scheduled Tribe candidate for the next term where at least 50 per cent of the elected members belong to the Scheduled Caste and the Scheduled Tribe communities.

**29A. Qualifications for membership of a Municipality :-**

? A person shall not be qualified for being chosen to fill a seat in a Municipality unless,?

(a) in the case of a seat reserved for the Scheduled Castes or the Scheduled Tribes, such person is a member of the Scheduled Castes or the Scheduled Tribes, as the case may be, and is an elector in relation to that Municipality;

(b) in the case of a seat reserved for a woman, such person is a woman, and is an elector in relation to that Municipality;

(c) in the case of any other seat, such person is an elector in relation to that Municipality.

**30. General disqualifications for membership of a Municipality :-**

?

(1) A person shall not be eligible for election as a member if such person?

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

(b) is under twenty-one years of age; or

(c) is an undischarged insolvent; or

(d) being a discharged insolvent, has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or

(e) holds any office of profit under the Municipality; or

(f) has, directly or indirectly by himself or by his partner or employer or any employee, any share or interest in any contract or employment with, by, or on behalf of, the Municipality; or

(g) is in the service of, or receives remuneration from, the Central or the State Government or the Municipality; or

(h) has been elected to, or appointed under, any other Municipality or Panchayat or the Darjeeling Gorkha Hill Council constituted under the Darjeeling Gorkha Hill Council Act, 1988 :

Provided that notwithstanding anything contained in clause (f), no person shall be deemed to be disqualified thereunder by reason only of his having a share or interest in?

(i) any lease, sale or purchase of land or any agreement for the same; or

(ii) any agreement for the loan of money or any security for the payment of money only; or

(iii) any newspaper in which any advertisement relating to the affairs of the Municipality is inserted; or

(iv) any incorporated or registered company which contracts with, or is employed by, the Municipality.

(2) A person shall be disqualified for being chosen as, and for being, a member of a Municipality if he is so disqualified by or under any law for the time being in force for the purposes of elections to the State Legislature:

Provided that no person shall be disqualified on the ground that he

is less than twenty-five years of age, if he has attained the age of twenty-one years.

(3) If any question arises as to whether any person or any member has become subject to any of the disqualifications mentioned in [sub-section (1) or] sub-section (2), the question shall be referred for decision to such authority and in such manner as the State Government may notify from time to time.

### **31. Election of ineligible persons and disqualifications subsequently incurred :-**

(1) Where a person elected to be a member was not eligible for such election on account of any disqualification referred to in section 30 or where a person incurs such disqualification subsequent to his election as a member, the election of such person shall be void upon [the Commission making a declaration to that effect by notification:]

Provided that no such declaration shall be made if the question of such disqualification was raised in an election petition presented under this Act.

(2) No act done by a member as aforesaid while remaining in office, shall be invalid on account of his election being declared void subsequently.

(3) The casual vacancy arising out of any election being declared void under this section shall be filled up in accordance with the provision of this Act.

### **32. Disqualification on ground of corrupt practices :-**

?

(1) Any person who stands disqualified [under section] Section 76 may, if the period of such disqualification has not expired, submit a petition to the Governor [for removal] of such disqualification for the unexpired portion of the said period.

(2) Before giving his decision on any question, or on any petition submitted under sub-section (2), the Governor may obtain the opinion of the Commission on such question or petition.

### **33. Disqualification for dismissal for corruption or disloyalty**

:-

?



(1) A person who having held an office under the Government of India or under the Government of any State or under any Municipality has been dismissed for corruption or for disloyalty to the State or the Municipality, shall be disqualified for a period of five years from the date of such dismissal.

(2) For the purposes of sub-section (1), a certificate issued by the Commission to the effect that a person having held office under the Government of India or under the Government of a State or under any Municipality has or has not been dismissed for corruption or for disloyalty to the State or Municipality shall be conclusive proof of that fact:

Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State or Municipality shall be issued unless such person has been given an opportunity of being heard.

#### **34. Disqualification for failure to lodge account of election expenses :-**

? If the Commission is satisfied that a person?

(a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act, and

(b) has no good reason or justification for such failure, the Commission shall, by order published in the Official Gazette, declare him to be disqualified, and such person shall be disqualified for a period of three years from the date of the order.

#### **35. Disqualification arising out of conviction and corrupt practices :-**

?

(1) If any person, after the commencement of this Act, is convicted Section 171E of the Indian Penal Code, 1860 , or S.171P of the Indian Penal Code, 1860, or under S.125 of the Representation of the People Act, 1951 or S.135 of the Representation of the People Act, 1951, or clause (a) of sub-section (2) of S.136 of the Representation of the People Act, 1951, he shall, for a period of six years from the date of conviction or from the date on which the order takes effect, as the case may be, be disqualified for voting at any election, and his name shall be struck off from the electoral roll.

(2) Any person disqualified by a decision of the District Judge under section 76 for any period shall be disqualified for the same period for voting at any election.

### **36. Notification for general election to a Municipality :-**

(1) The first general election to a Municipality, newly constituted, shall be held not later than six months from the date of notification constituting the Municipality.

(2) A general election shall be held for the purpose of constituting a new Municipality on the expiration of the duration of the existing Municipality or on its dissolution and completed before the expiry of the duration of the Municipality.

(3) For the purpose as aforesaid, the State Government shall, subject to the provisions of S.8 of the West Bengal State Election Commission Act, 1994, by one or more notifications published in the Official Gazette on such date or dates as may be determined, call upon the Municipality to elect members in accordance with the provisions of this Act and the rules and the orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing Municipality, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of such Municipality would expire:

Provided further that when a Municipality has been dissolved, elections to constitute the Municipality shall be completed before the expiry of six months from the date of its dissolution:

Provided also that where the period for which such dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections to constitute such Municipality for such period.

## **CHAPTER 6**

### **Conduct of Elections**

### **37. Appointment of dates for nominations etc :-**

As soon as the notification calling upon a Municipality to elect a member or members is issued, the Commission shall, by notification, appoint (a) the last date for making nominations, which shall be seventh day after the date of publication of the first mentioned notification or, if that day is a public holiday, the next

succeeding day which is not a public holiday;

(b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

Provided that one or more successive dates may be appointed for the scrutiny of nominations;

(c) the last date for the withdrawal of candidatures, which shall be the second day after the last date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the twenty-fifth day after the last date for the withdrawal of candidatures; and

(e) the date before which the election shall be completed.

**38. Public notice of election :-**

? On the issue of a notification under section 37 , the Municipal Returning Officer shall, in such form and manner as may be prescribed, give public notice of the intended election inviting nominations of candidates for such election and specifying the place at which the nomination papers shall be delivered.

**39. Nomination of candidates for election :-**

? Any person may be nominated as a candidate for election to fill a seat in a Municipality if he is qualified to be chosen to fill that seat under the provisions of this Act.

**40. Presentation of nomination paper and requirements for valid nomination :-**

?

(1) On or before the date appointed under clause (a) of section 37 , each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, deliver to the Municipal Returning Officer at the place specified in this behalf in the notice issued under section 38 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:

Provided that a candidate not set up by a recognised Political Party, shall not be deemed to be duly nominated for election unless the nomination paper is subscribed by ten proposers being electors of the Constituency:

[Provided further that] no nomination paper shall be delivered to the Municipal Returning Officer on a day which is a public holiday.

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste, or, as the case may be, Scheduled Tribe of the State of West Bengal.

(3) Where the candidate is a person who, having held any office referred to in section 33 has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(4) On the presentation of a nomination paper, the Municipal Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer [or the proposers, as the case may be,] as entered in the nomination paper are the same as those entered in the electoral roll:

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood, and the Municipal Returning Officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and, where necessary, direct that any such misnomer or inaccurate description or clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(5) Where the candidate is an elector of a different constituency of Municipality, a copy of the electoral roll of the constituency or of the relevant part thereof or a certified copy of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the Municipal Returning Officer at the time of scrutiny.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the Municipal Returning Officer for election in the same constituency.

(7) Every candidate shall, with the nomination paper, file an affidavit in such manner as may be prescribed by the Commission. The affidavit under this sub-section shall, unless it is produced along with the nomination paper, be produced before the Municipal Returning Officer at the time of scrutiny.

#### **41. Deposits :-**

(1) A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited a sum of five hundred rupees, or, where the candidate is a member of the Scheduled Castes or Scheduled Tribes or a woman, a sum of two hundred and fifty rupees:

Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub-section.

(2) Any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless, at the time of delivery of the nomination paper under sub-section (1), the candidate has either deposited or caused to be deposited that sum with the Municipal Returning Officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.

#### **42. Notice of nominations and the time and place for their scrutiny :-**

? The Municipal Returning Officer shall, on receiving the nomination paper under sub-section (1) of section 40 , inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nomination and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him, and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the proposer.

#### **43. Scrutiny of nomination :-**

(1) On the date fixed for the scrutiny of nomination under section 37 , the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the Municipal Returning Officer may appoint, and the Municipal Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 40 .

(2) The Municipal Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:?

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under this Act;

(b) that there has been a failure to comply with any of the provisions of section 40 or section 41; or

(c) that the signature of the candidate or the proposer on the nomination papers is not genuine.

(3) Nothing contained in clause (b) or clause (c) of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Municipal Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The Municipal Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 37 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case an objection is raised by the Municipal Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the Municipal Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The Municipal Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reason for such rejection.

(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a Municipality shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that Municipality, unless it is proved that he is subject to disqualification mentioned in this Act or the rules made thereunder.

(8) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the Municipal Returning Officer shall prepare a list or validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to the notice board.

#### **44. Withdrawal of candidature :-**

(1) Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three o'clock in the afternoon on the day fixed under clause (c) of section 37 to the Municipal Returning Officer either by such candidate in person or by his proposer or election agent who has been authorised in this behalf in writing by such candidate.

(2) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.

(3) The Municipal Returning Officer shall, on being satisfied as to the genuineness of a notice of withdrawal and the identity of the person delivering it under sub-section (1), cause the notice to be affixed in some conspicuous place in his office.

**45. Allotment of symbol :-**

? Immediately after the expiry of the period within which candidates may withdraw their candidature under section 44 , the Municipal Returning Officer shall forthwith consider the allotment of symbols in the prescribed manner to the candidates who have not withdrawn their candidature.

**46. Publication of list of contesting candidates :-**

(1) Immediately after the allotment of symbols under section 45 , the Municipal Returning Officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates', that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period.

(2) For the purpose of listing the names under sub-section (1), the candidates shall be classified as follows,, namely :?

(i) candidates of recognised political parties;

(ii) candidates of registered political parties other than those mentioned in clause (i);

(iii) other candidates.

(3) The candidates mentioned in sub-section (2) shall be arranged in the order specified therein and the names of candidates in each category shall be arranged in alphabetical order and the addresses of the contesting candidates as given in the nomination papers together with such other particulars as may be prescribed.

**47. Election agents :-**

? A candidate at an election may appoint in the prescribed manner any one person, other than himself, to be his election agent, and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the Municipal Returning



Officer.

**48. Disqualification for being an election agent :-**

Any person who is for the time being disqualified under this Act for being a member of a Municipality or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.

**49. Revocation of appointment, or death, of election agents :-**

(1) Any revocation of the appointment of an election agent shall be signed by

"(2) The list as aforesaid, shall contain the names in alphabetical order and the addresses of the contesting candidates as given in the nomination papers together with such other particulars as may be prescribed."

(2) In the event of the revocation of the appointment of an election agent or death of an election agent, whether such event occurs before or during the election or after the election but before the account of the candidate's election expenses has been lodged in accordance with the provisions of section 73 , the candidate may appoint in the prescribed manner another person to be his election agent and when such appointment is made, notice of the appointment shall be given in the prescribed manner to the Municipal Returning Officer.

**50. Functions of election agents :-**

An election agent may perform such functions in connection with the election as are authorised by or under this Act to be performed by an election agent.

**51. Appointment of polling agents :-**

A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed, to act as polling agents of such candidates at each polling station provided under section 12 for the poll.

**52. Appointment of counting agents :-**

A contesting candidate or his election agent may appoint in the prescribed manner one or more persons, but not exceeding such number as may be prescribed, to be present as his counting agent or agents at the counting of votes 17\*\*\*\*\*.

**53. Revocation of appointment, or death, of polling agent or counting agent :-**

?

(1) Any revocation of the appointment of a polling agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with such officer as may be prescribed and, in the event of such revocation or the death of a polling agent before the close of the poll, the candidate or his election agent may appoint in the prescribed manner another polling agent at any time before the poll is closed and shall forthwith give notice of such appointment in the prescribed manner to such officer as may be prescribed.

(2) Any revocation of the appointment of a counting agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with [such officer as may be prescribed] and, in the event of such revocation or the death of a counting agent before the commencement of the counting of votes, the candidate or his election agent may appoint in the prescribed manner another counting agent at any time before the counting of votes is commenced and shall forthwith give notice of such appointment in the prescribed manner to [such officer as may be prescribed].

**54. Functions of polling agents and counting agents :-**

?

(1) A polling agent may perform such functions in connection with the poll as are authorised by or under this Act to be performed by a polling agent.

(2) A counting agent may perform such functions in connection with the counting of votes as are authorised by or under this Act to be performed by a counting agent.

**55. Attendance of contesting candidate or his election agent at polling stations and performance by him of the functions of polling agent or counting agent :-**

?

(1) At every election where a poll is taken, each contesting candidate at such election and his election agent shall have a right to be present at any polling station provided under section 12 for the taking of the poll.

(2) A contesting candidate or his election agent may himself do any act or thing which any polling agent or the counting agent of such contesting candidate, if appointed, would have been authorised by or under this Act to do, or may assist any polling agent or the counting agent of such contesting candidate in doing any such act or thing.

**56. Non-attendance of polling or counting agents :-**

Where any act or thing is required or authorised by or under this Act to be done in the presence of the polling or counting agents, the non-attendance of any such agent or agents at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

**57. Death of candidate before poll :-**

? If a candidate whose nomination has been found valid on scrutiny under section 43 and who has not withdrawn his candidature under section 44 dies and a report, of his death is received before the publication of the list of contesting candidates under section 46 or if a contesting candidate dies and a report of his death is received before the commencement of the poll, the Municipal Returning Officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Commission and also to the appropriate authority, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election:

Provided that no further nomination shall be necessary in the case of a person who was a contesting candidate at the time of the countermanding of the poll:

Provided further that no person who has given a notice of withdrawal of his candidature under sub-section (1) of section 44 before the countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding.

**58. Procedure in contested and uncontested elections :-**

?

(1) If the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken.

(2) If the number of such candidates is equal to the number of seats to be filled, the Municipal Returning Officer shall forthwith

declare all such candidates to be duly elected to fill those seats.

(3) If the number of such candidates is less than the number of seats to be filled, the Municipal Returning Officer shall forthwith declare all such candidates to be elected and the Commission shall, by notification, call upon the constituency to elect a person or persons to fill the remaining seat or seats:

Provided that where the constituency having already been called upon under this sub-section, has failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Commission shall not be bound to call again upon the constituency to elect a person or persons until it is satisfied that if called upon again, there will be no such failure on the part of the constituency.

**59. Eligibility of members of Scheduled Castes or Scheduled Tribes or women to hold seats not reserved for them :-**

? For the avoidance of doubt, it is hereby declared that a member of the Scheduled Castes or the Scheduled Tribes or a woman shall not be disqualified to hold a seat not reserved for members of the Scheduled Castes or the Scheduled Tribes or women, if he or she is otherwise qualified to hold such seat under this Act.

**CHAPTER 7**

**The Poll**

**60. Fixing time for poll :-**

? The hours during which the poll will be taken shall be fixed in accordance with the provisions of S.8 of the West Bengal State Election Commission Act, 1994.

**61. Adjournment of poll in emergencies :-**

(1) If at an election the proceedings at any polling station provided under section 12 for the poll are interrupted or obstructed by any riot or open violence, or if at any election it is not possible to take the poll at any polling station or such place on account of any natural calamity or any other sufficient cause, the Presiding Officer for such polling station or the Municipal Returning Officer presiding over such place, as the case may be, shall announce an adjournment of the poll to a date to be notified later and where the poll is so adjourned by a Presiding Officer, he shall forthwith inform the Municipal Returning Officer concerned.

(2) Whenever a poll is adjourned under sub-section (1), the

Municipal Returning Officer shall immediately report the circumstances to the appropriate authority and the Commission and shall, as soon as may be, with the previous approval of the Commission appoint the day on which the poll shall recommence, and fix the polling station or place at which, and the hours during which, the poll will be taken, and shall not count the votes cast at such election until such adjourned poll shall have been completed.

(3) In every such case as aforesaid, the Municipal Returning Officer shall notify in such manner as the Commission may direct the date, place and hours of polling fixed under sub-section (2).

## **62. Fresh poll in the case of destruction etc. of ballot boxes**

:-

?

(1) If at any election,?

(a) any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the Presiding Officer or the Municipal Returning Officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with to such extent that the result of the poll at that polling station or place can not be ascertained, or

(aa) any voting machine develops a mechanical failure during the course of giving, or recording of, votes; or

(b) any such error or irregularity as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll, the Municipal Returning Officer shall forthwith report the matter to the Commission.

(2) Thereupon the Commission shall, after taking all material circumstances into account, either?

(a) declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at the polling station or place and notify the date so appointed and the hours so fixed in such manner as it may deem fit, or

(b) issue such directions to the Municipal Returning Officer as it may deem proper for the further conduct and completion of the election,

provided the Commission is satisfied that the result of a fresh poll

at that polling station or place will not, in any way, affect the result of the election or that the error or irregularity in procedure is not material.

(3) The provisions of this Act and the rules and the orders made thereunder shall apply to every such fresh poll as they apply to the original poll.

**63. Adjournment of poll or countermanding of election on the ground of booth capturing :-**

?

(1) If at any election?

(a) booth capturing has taken place at a polling station or at a place fixed for the poll in such manner that the result of the poll at that polling station or place cannot be ascertained, or

(b) booth capturing takes place in any place for counting of votes in such manner that the result of the counting at that place cannot be ascertained, the Municipal Returning Officer shall forthwith report the matter to the Commission.

(2) The Commission shall, on receipt of the report from the Municipal Returning Officer under sub-section (1) and after taking all material circumstances into account, either?

(a) declare that the poll at the polling station or place be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit, or

(b) countermand the election the constituency, provided the Commission is satisfied that in view of the large number of polling stations or places involved in booth capturing, the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such manner as to affect the result of the election.

Explanation.? In this section, "booth capturing" shall have the same meaning as in S.135A of the Representation of the People Act, 1951.

**64. Manner of voting at elections :-**

? At every election where a poll is taken, votes shall be given by ballot in such manner as may be prescribed, and no votes shall be

received by proxy:

Provided that notwithstanding anything contained in this Act or the rules made thereunder, the manner of giving, or recording of, votes by a voting machine shall be such as may be prescribed:

Provided further that a voting machine may be used at an election in such constituency or constituencies as the Commission may, having regard to the circumstances in each case, by notification, specify.

#### **65. Special procedure for preventing personation of electors**

:-

? With a view to preventing personation of electors, provision may be made by rules made under this Act ?

(a) for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him;

(b) for the production before the Presiding Officer or a Polling Officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him if, under the rules made in that behalf under the Representation of the People Act, 1950, electors of the constituency in which the polling station is situated have been supplied with identity cards with or without their respective photographs attached thereto; and

(c) for prohibiting the delivery of any ballot paper to any person for voting at a polling station if, at the time such person applies for such paper, he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the Presiding Officer or a Polling Officer of the polling station.

#### **66. Right to vote :-**

?

(1) No person who is not, and, except as expressly

provided by this Act, every person who is for the time being entered in the electoral roll of any constituency shall be entitled to vote in the constituency.

(2) No person shall vote at an election in any constituency if he is

subject to any of the disqualifications referred to in S.16 of the Representation of the People Act, 1950.

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

#### **67. Counting of votes :-**

? At every election where a poll is taken, votes shall be counted in such manner as may be prescribed, and each contesting candidate, his election agent and his counting agents shall have a right to be present at the time of counting.

#### **68. Destruction, loss, etc. of ballot papers :-**

(1) If at any time before the counting of votes is completed, any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the Presiding Officer or the Municipal Returning Officer or are accidentally or intentionally destroyed or lost or are damaged or tempered with, to such extent that the result of the poll at that polling station or place cannot be ascertained, the Municipal Returning Officer shall forthwith report the matter to the Commission.

(2) Thereupon, the Commission shall, after taking all materials circumstances into account, either?

(a) direct that the counting of votes shall be stopped, declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner



as it may deem fit, or

(b) issue such directions to the Municipal Returning Officer as it may deem proper for the resumption and completion of the counting and for the further conduct and completion of the election in relation to which the votes have been counted, provided that the Commission is satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election.

(3) The provisions of this Act and the rules and the orders made thereunder shall apply to every such fresh poll as they apply to the original poll.

**69. Equality of votes :-**

? If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of those candidates to be declared elected, the Presiding Officer or the Municipal Returning Officer, as the case may be, shall forthwith decide between those candidates by lot and proceed as if the candidate on whom the lot falls had received an additional vote.

**70. Declaration of results :-**

? When the counting of the votes has been completed, the Presiding Officer or the Municipal Returning Officer, as the case may be, shall, in the absence of any direction by the Commission to the contrary, forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder.

**71. Report of the results :-**

? As soon as may be after the result of an election has been declared, the Municipal Returning Officer shall report the result to the appropriate authority and the Commission who shall immediately publish the names of elected member in the Official Gazette.

**72. Account of election expenses and maximum thereof :-**

?

(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof,

both dates inclusive.

Explanation I.? Notwithstanding any judgement, order or decision of any court to the contrary, and expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual other than the candidate or his election agent shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purpose of this sub-section:

Provided that nothing contained in this Explanation shall affect any judgement, order or decision of the Civil Court whereby the election of a candidate has been declared void or set aside.

Explanation II.? For removal of doubt, it is hereby declared that any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of S.123 of the Representation of the People Act, 1951, in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

(2) The account shall contain such as may be notified by the Commission.

(3) The total of the said expenditure shall not exceed such amount as may be notified by the Commission.

### **73. Lodging of account with the District Municipal Election Officer :-**

? Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their elections are different, the latter of those two dates, lodge with the District Municipal Election Officer on account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 72 .

#### **CHAPTER 8**

Disputes regarding election

#### **74. Definition :-**

In this Chapter, "District Judge" shall mean, ?

(a) for the purposes of elections to the Calcutta Municipal Corporation constituted under the Calcutta Municipal Corporation Act, 1980, the Chief Judge of the Court of Small Causes of Calcutta, or

(b) for the purposes of elections to the Siliguri Municipal Corporation constituted under the Siliguri Municipal Corporation Act, 1990, the District Judge of Darjeeling or the District Judge of Jalpaiguri as the State Government may, by notification [determine, or] 22(c) for the purposes of elections to a Municipality in any district, the District Judge of that district.

#### **75. Election petition and procedure :-**

(1) If the validity of any election of a member is called in question by any person qualified to vote at such election, such person may, at any time within ten days immediately after the date of declaration, of the result of the election, file a petition before the District Judge of the district within which the election has been or should have been held and shall, at the same time, deposit two hundred rupees in the Court as security for the cost likely to be incurred:

Provided that the validity of such election shall not be called in question 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 had been inserted in the electoral roll :

Provided further that if only two candidates contested such election, the petitioner may, in addition to calling in question the election of the returned candidate, claim that if the election of the returned candidate is set aside, the other candidate may be declared duly elected.

(2) The provisions of the Code of Civil Procedure, 1908 , shall apply, as far as may be, in the matter of adjudication of an election petition under sub-section (1).

#### **76. Setting aside of election :-**

? If the District Judge, after holding such inquiry as he deems fit in respect of an election petition, is satisfied that?

(a) a candidate has committed any corrupt practice within the meaning of S.123 of the Representation of the People Act, 1951, or

(b) the result of the election has been materially affected by any act or omission in violation of the provisions of this Act or the rules made thereunder, or

(c) the result of the election has been vitiated by any offence punishable under the West Bengal Local Bodies (Electoral Offences and Miscellaneous Provisions) Act, 1952, he shall set aside the election of such candidate, if he has been elected, and may, if the election is set aside for any cause which is the result of any act of a candidate or his agent, declare that candidate to be disqualified for the purpose of a fresh election caused by such setting aside:

Provided that if the District Judge in setting aside the election holds a candidate guilty of any corrupt practice, he may declare such candidate disqualified for contesting an election to a Municipality for a period not exceeding six years.

Explanation.? A person shall be deemed to have committed an offence of corrupt practice if he commits an act relating to a corrupt practice within the meaning of S.123 of the Representation of the People Act, 1951.

## **77. Scrutiny of votes and declaration or confirmation of result :-**

?

(1) If the election petition is confined to the question of validity of votes cast or counting, the District Judge shall, after such scrutiny and computation of votes as may be deemed necessary, declare the result.

(2) If there be only two candidates contesting the election in dispute and the election petition contains a claim by one of the candidates for declaring him elected, the District Judge may, while deciding upon the election petition, declare such candidate duly elected.

(3) If after computation, there be an equality of votes among two or more candidates, the District Judge shall select one among them by drawing lots.

(4) If the District Judge is satisfied that no ground exists for setting aside the election or modifying the results thereof, he shall confirm the election.

**78. Bar to jurisdiction of Court :-**

Save as provided in this Act, no Court shall entertain any application in any form whatsoever for adjudication of any matter relating to election to a Municipality.

**79. Fresh election when an election is set aside :-**

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

**80. Saving of acts done by a member before his election is set aside :-**

Where a candidate, who has been elected to be a member is declared by the District Judge to have not been duly elected, no act done by him by virtue of the office of member before such declaration, shall be invalidated by reason of such declaration.

**81. Electoral offences for the purposes of the Act :-**

For the purposes of this Act, the electoral offences under Chapter III [of Part VII] of the Representation of the People Act, 1951, shall be the electoral offences under this Act, and the provisions of Chapter III [of Part VII] of that Act shall apply to the electoral offences under this Act.

**CHAPTER 9**

**Miscellaneous**

**82. Protection of action taken in good faith :-**

No suit, prosecution or other legal proceeding shall lie against the Commission or any person acting under the direction of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of the foregoing provisions of this Act or of any order made thereunder or in respect of the tendering of any opinion by the Commission to the Governor or in respect of the publication by, or under the authority of, the Commission of any such opinion, paper or proceedings.

**83. Casual vacancies in the Municipality :-**

(1) When the seat of a member [elected to a Municipality] becomes vacant or is declared vacant or his election to the Municipality is

declared void, the Commission shall, by notification, call upon the constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of this Act and the rules and the orders made thereunder shall apply, as far as may be, in relation to the election of member to fill such vacancy.

(2) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of this predecessor's term of office.

**84. Extension of time for completion of election :-**

? Subject to the provisions of the Constitution, it shall be competent] for the Commission for reasons which it considers sufficient, to extend the time for the completion of any election by making necessary amendments in the notification issued by it under section 37 .

**85. Return or forfeiture of candidates deposit :-**

?

(1) The deposit made under section 41 shall either be returned to the person making it or his legal representative or be forfeited to the appropriate authority in accordance with the provisions of this section.

(2) Except in cases hereinafter mentioned in this section, the deposit shall be returned as soon as practicable after the result of the election is declared.

(3) If the candidate is not shown in the list of contesting candidates or if he dies before the commencement of the poll, the deposit shall be returned as soon as practicable after the publication of the list or after his death, as the case may be.

(4) Subject to the provisions of sub-section (3), the deposit shall be forfeited if at an election where a poll has been taken, the candidate is not elected and the number of valid votes polled by him does not exceed one-sixth of the total number of valid votes polled by all the candidates

(5) Notwithstanding anything in sub-section (2), (3) and (4) if at a general election, the candidate is a contesting candidate in more than one constituency, not more than one of the deposits shall be returned, and the other shall be forfeited.

**86. Staff of every local authority to be made available for**

**election work :-**

? Every local authority in the State shall, when so required by the Commission, make available to any Municipal Returning Officer such staff as may be necessary for the performance of any duties in connection with an election.

**87. Requisition and derequisition of premises, vehicles, etc. for election purposes :-**

? Provisions for requisitioning premises and vehicles and payment of compensation therefor, power to obtain information in this regard, powers of entry into and inspection of premises, eviction from requisitioned premises, release of premises from requisition, delegation of functions of the State Government with regard to requisitioning, and penalty for contravention of any order regarding requisitioning shall be such as are provided in S.162 of the Representation of the People Act, 1951, S.163 of the Representation of the People Act, 1951, S.164 of the Representation of the People Act, 1951, S.165 of the Representation of the People Act, 1951, S.166 of the Representation of the People Act, 1951 and S.167 of the Representation of the People Act, 1951.

**88. Power to make rules :-**

(1) The State Government may, [after consulting] the Commission, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:?

(a) the duties of Presiding Officer and Polling Officers at polling stations;

(b) the checking of voters by reference to the electoral roll;

(c) the manner in which votes are to be given both generally and in the case of illiterate voter or voters under physical or other disability;

(d) the manner in which votes are to be given by a Presiding Officer, Polling Officer, polling agent or any other person, who being an elector for a constituency is authorised or appointed for duty at a polling station at which he is not entitled to vote;

(e) the procedure to be followed in respect of the tender of vote by

a person representing himself to be an elector after another person has voted as such elector;

(f) the manner of giving and recording of votes by means of voting machines and the procedure as to voting to be followed at polling stations where such machines are used;

(ff) the procedure of counting of votes recorded by a voting machine;

(g) the scrutiny and counting of votes including cases in which a recount of the votes may be made before the declaration of the result of the election;

(h) the safe custody of ballot boxes, voting machines, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;

(i) any other matter required to be prescribed

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the State Legislature, while it is in session, for a total period of fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the State Legislature agrees in making any modification in the rule or the State Legislature agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### **89. Jurisdiction of Civil Courts barred :-**

? No Civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by the Municipal Returning Officer or by any other person appointed [under the West Bengal State Election Commission Act, 1994 or] under this Act in connection with an election.

### **90. Removal of difficulty :-**

If any difficulty arises in giving effect to the provisions of this Act, the State Government, in consultation with the Commission, may, as occasion may require, by order, not inconsistent with the provisions of this Act, do or cause to be done anything which may



be necessary for removing the difficulty.