

Gujarat Provision For Disqualification Of Members Of Local Authorities For Defection Rules, 1987

CONTENTS

1. Short title and commencement
2. Definitions
3. Information to be furnished by leader of municipal party or panchayat party
4. Information to be furnished by Councillors and Members
5. Register of information as to members
6. References to be by petitions
7. Procedure
8. Decision on petition
9. Direction as to detailed working of these rules

Gujarat Provision For Disqualification Of Members Of Local Authorities For Defection Rules, 1987

In exercise of the powers conferred by section 8 of the Gujarat Provision for Dis-qualification of Members of Local Authorities for Defection Act, 1986, (Gujarat 23 of 1986) the Government of Gujarat hereby makes the following rules, namely:-

1. Short title and commencement :-

(1) These rules may be called the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules, 1987.

(2) They shall come into force on 7th February, 1987.

2. Definitions :-

In these rules, unless the context otherwise requires,-

(a) "designated officer" means an officer designated by the State Government under section 6;

(b) "Form" means a form appended to these rules;

(c) "leader" in relation to a municipal party or, as the case may be, a panchayat party means a member of the party chosen by it as its leader and includes any other member of the party authorised by the party to act, in the absence of the leader as, or discharge, the functions of, the leader of the party for the purposes of these rules;

(d) "specified officer" in relation to-

(i) a municipal corporation, means the Municipal Secretary of the Corporation;

(ii) a panchayat, means the Secretary of the Panchayat;

(iii) the municipality, means the Chief officer of the Municipality.

3. Information to be furnished by leader of municipal party or panchayat party :-

(1) The leader of each municipal party or, as the case may be, Panchayat party (other than a municipal party consisting of only one member or a panchayat party consisting of only one member) shall, before the first meeting of the municipal corporation, the panchayat, or the municipality, or where such municipal party or panchayat party is formed after the first such meeting, within thirty days after its information or, in either case within such further period as the designated officer may for sufficient cause allow, furnish the following information to the designated officer, namely:-

(a) a statement (in writing) containing the names of members of such municipal party or, as the case may be, panchayat party together with other particulars regarding such members in Form 1 and the names and designations of the members of such party who have been authorised by it for communicating with the designated officer for the purposes of these rules;

(b) a copy of the rules and regulations (whether known as such or as constitution or by any other name) of the political party concerned, and

(c) whether such municipal party or panchayat party has any separate set of rules and regulations (whether known as such or as constitution or by any other name), also a copy of such rules and regulations.

(2) Where a municipal party or panchayat party consists of only one member, such member shall furnish a copy of the rules and regulations mentioned in clause (b) of sub-rule (1) to the designated officer, before the first meeting of the municipal corporation, panchayat or, as the case may be, municipality or, where he has become a councillor of such corporation, or municipality or a member of a panchayat after the first meeting, within thirty days after the meeting of the municipal corporation, panchayat or municipality which he first attends or, in either case within such further period as the designated officer may for sufficient cause allow.

(3) In the event of any increase in the strength of a municipal party consisting of only one councillor or member or, as the case may be, panchayat party consisting of only one member, the provisions of sub-rule (1) shall apply in relation to such municipal party or, as the case may be, panchayat party as if such municipal party or, as the case may be, panchayat party had been formed on the first date on which its strength increased.

(4) Whenever any change takes place in the information furnished by the leader of a municipal party or, as the case may be, panchayat party under sub-rule (1) or by a member under sub-rule (2), he shall, within thirty days thereafter, or, within such further period as the designated officer may for sufficient cause allow, furnish in writing information to the designated officer with respect to such change.

(5) In the case of the municipal corporation, panchayat or municipality in existence on the date of commencement of these rules, the reference in sub-rules (1) and (2) to the first meeting of the municipal corporation, panchayat or municipality shall be construed as a reference to the meeting held immediately after the commencement of these rules.

(6) Where a member belonging to any political party votes or abstains from voting in any meeting of a municipal corporation panchayat or municipality contrary to any direction issued by such political party or by any person or authority authorised by it in this behalf, without obtaining in either case, the prior permission of such political party, person or authority, the leader of the municipal party or panchayat party concerned or where such member is the leader, or as the case may be, the sole member of such municipal party, or panchayat party, such member, shall as soon as may be after the expiry of fifteen days from the date of such voting or abstention, and in any case within thirty days from the date of such voting or abstention inform the designated officer in Form 1 whether such voting or abstention has or has not been condoned by such political party, person or authority.

Explanation.-A member may be regarded as having abstained from voting only when he, being entitled to vote, refrains from voting.

4. Information to be furnished by Councillors and Members :-

(1) Every person who has before the date of commencement of these rules become a Councillor of the Municipal Corporation or

Municipality or a Member of a Panchayat shall furnish to the specified officer within thirty days from such date or within such further period as the designated officer may for sufficient cause allow, a statement of particulars and declaration in Form III.

(2) Every person who on the constitution of a municipal corporation, panchayat or municipality after the date of commencement of these rules, becomes a Councillor of the municipal corporation or the municipality or a member of the Panchayat shall, before attending the first meeting of the Municipal Corporation, Panchayat or municipality so constituted deposit with the specified officer, a specified certificate certifying his election and also furnish to the specified officer a statement of particulars and declaration in Form III.

Explanation.-For the purposes of this sub-rule the expression "specified certificate" means,-

(a) in relation to a Councillor of a Municipal Corporation a certificate from the Municipal Commissioner.

(b) In relation to a panchayat, a certificate from the Chief Electoral officer of the State of Gujarat and;

(c) in relation to a Councillor, of the municipality, a certificate from the Collector of the district in which the municipal borough of the municipality is situate.

1 "Provided that a Councillor of the Municipal Corporation or the Municipality or a member of the Panchayat who contested as a of any political party and had already made declaration to the election officer to that effect shall not be required to furnish to the specified officer a statement of particulars and declaration in form III"

(3)(a) A summary of the information furnished under this rule shall be published by affixing it on the notice board.-

(i) of the office of the Municipal Corporation or as the case may be, municipality if it relates to the councillors,

(ii) of the office of the panchayat, if it relates to the members;

(b) If any discrepancy in the summary of information published under clause (a) is pointed out to the satisfaction of the specified officer, necessary corrigendum shall be published in the manner specified in the said clause (a).

In Section 4, before sub-section (3) proviso shall be inserted by GUJARAT PROVISION FOR DISQUALIFICATION OF MEMBERS OF LOCAL AUTHORITIES FOR DEFECTION (AMENDMENT) RULES, 2007 Gujarat Government Gaz., Exty., Part I, No. 10, date 13/2/2007, page 10-1

5. Register of information as to members :-

(1) The specified officer shall maintain, in Form IV, a register based on the information furnished under rules 3 and 4 in relation to the councillors or, as the case may be, members.

(2) The Information in relation to each councillor or member shall be recorded on a separate page in the Register.

6. References to be by petitions :-

(1) No reference of any question as to whether a councillor or member has become subject to disqualification under the Act shall be made except by a petition in relation to such councillor or member made in accordance with the provisions of this rule.

(2) A petition in relation to a councillor or member may be made in writing to the Chief Secretary to the Government of Gujarat or designated officer by any other councillor or, as the case may be, member.

(3) Before making any petition in relation to any councillor or member the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such councillor or member has become subject to disqualification under the Act

(4) Every petition,-

(a) shall contain a concise statement of the material facts on which the petitioner relies; and

(b) shall be accompanied by copies of the documentary evidence if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person a statement containing the names and addresses of such persons and the gist of such information as furnished by each such person.

(5) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings.

(6) Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

7. Procedure :-

(1) On receipt of a petition under rule 6 the Chief Secretary to the State Government or the designated officer shall consider whether the petition complies with the requirement of rule.

(2) If the petition does not comply with the requirements of rule 6,

the Chief Secretary or as the case may be, the designated officer shall dismiss the petition and intimate the petitioner accordingly.

(3) If the petition complies with the requirements of rule 6, the Chief Secretary or, as the case may be, the designated officer shall cause copies of the petition and of the annexures thereto to be forwarded.-

(a) to the councillor or member in relation to whom the petition has been made; and

(b) where such councillor or member belongs to any municipal party or a panchayat party and or such petition has not been made by the leader thereof also to such leader, and such or councillor member or leader shall, within seven days of the receipt of such copies, or within such further period as the designated officer may for sufficient cause allow, forward his comments in writing thereon the Chief Secretary or the designated officer.

(4) After considering the comments, if any, in relation to the petition, received under sub-rule (3) within the period allowed (whether originally or on extension under that sub-rule) the Chief Secretary or designated officer may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to such officer as he deems fit for making a preliminary inquiry and submitting a report to him.

(5) The Chief Secretary or the designated officer shall, as soon as may be after referring a petition to the officer under sub-rule (4), intimate the petitioner accordingly and cause an announcement to be made with respect to such reference in a meeting of the municipal corporation, panchayat or municipality or if such meeting is not likely to be held soon, cause the information as to the reference to be published in the manner specified in clause (b) of sub-rule (3) of rule 4.

(6) Where the Chief Secretary or designated officer makes a reference under sub-rule (4) to the officer he shall proceed to determine the question as soon as may be after receipt of the report from the officer.

(7) The procedure which shall be followed by the Chief Secretary or designated officer for determining any question and the procedure which shall be followed by the officer for the purpose of making a preliminary inquiry under sub-rule (4) shall be consistent with the rules of natural justice and neither the Chief Secretary or designated officer shall come to any findings that a councillor or member has become subject to disqualification under the Act

without affording a reasonable opportunity to such councillor or member to represent his case and to be heard in person.

8. Decision on petition :-

A petition rising the question as to whether a councillor or member has become subject to disqualification under the Act shall be determined as expeditiously as possible and an 1 "endeavor to determine the question within two months" from the date on which the petition is made under Rule 6.

(1) At the conclusion of the consideration of the petition, the Chief Secretary or designated officer shall by order in writing,-

(a) dismiss the petition, or

(b) declare that the councillor or member in relation to whom the petition has been made has become subject to disqualification under the Act, and cause copies of the order to be delivered or forwarded to the petitioner, the councillor or member in relation to whom the petition has been made and to the leader of the municipal party or panchayat party if any concerned.

(2) Every decision declaring a councillor or member to have become subject to disqualification under the Act shall be reported to the municipal corporation, the panchayat, or, as the case may be the Municipality.

(3) Every decision referred to in sub-rule (1) shall be published by affixing a copy thereof on the notice board of the office of the municipal corporation, Panchayat or, as the case may be, municipality, and notified in the official gazette.

In Rule 8, the words "endeavor shall be made to determine the question within six months" the words" endeavor to determine the question within two months" shall be substituted by GUJARAT PROVISION FOR DISQUALIFICATION OF MEMBERS OF LOCAL AUTHORITIES FOR DEFECTIVE (AMENDMENT) RULES, 2007 Gujarat Government Gaz., Exty., Part I, No. 10, date 13/2/2007, page 10-1

9. Direction as to detailed working of these rules :-

The Chief Secretary or designated officer, may, from time to time, issue such directions (not inconsistent with the Act and these Rules) as he may consider necessary for the purpose of carrying out these rules.

