

Kerala Local Authorities (Prohibition Of Defection) Act, 1999

11 of 1999

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Kerala Local Authorities (Prohibition Of Defection) Act, 1999

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AN ACT to prohibit defection among members of local authorities in the State of Kerala and to provide for disqualification of the defecting members for being members of local authorities. WHEREAS, it is expedient to bring out a comprehensive legislation for removing the ambiguity in the existing laws in so far as they relate to prohibition of defection among members of local authorities and disqualification of the defecting members for being members of the local authorities; BE it enacted in the Fiftieth Year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

(2) It shall be deemed to have come into force on the 2nd day of October, 1995.

2. Definition :-

In this Act, unless the context otherwise requires,--

(i) "block panchayat" means a block panchayat constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994);

(ii) "coalition" means a coalition made between more than one political parties or between more than one political parties and one or more independents or between one political party and one or more than one independents or between more than one independents for the purpose of contesting any election of a local authority.

Explanation:-A member who stood as a candidate in an election with the support of any one of the political parties or coalition shall be deemed to be a member included in that political party or coalition;

(iii) "council" means the Council of a Town Panchayat, Municipal Council or a Municipal Corporation;

(iv) "councillor" means Councillor elected to the Council of any Municipality constituted under the Kerala Municipality Act, 1994 (20 of 1994);

(v) "district panchayat" means a district panchayat constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994);

(vi) "independent" means a person not belonging to any political party;

(vii) "local authority" means a Panchayat at any level or a Municipality;

(viii) "member" means a Councillor or a member of a Panchayat at any level elected under the Kerala Panchayat Raj Act, 1994 (13 of 1994);

(ix) "municipality" means a Town Panchayat, a Municipal Council or a Municipal Corporation, constituted under the Kerala Municipality Act, 1994 (20 of 1994);

(x) "panchayat" means a village panchayat, a block panchayat or a district panchayat;

(xi) "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (Central Act 43 of 1951);

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

- (xiii) "Schedule" means the schedule annexed to this Act;
- (xiv) "State" means the State of Kerala;
- (xv) "State Election Commission" means the State Election Commissioner appointed by the Governor under article 243K of the Constitution of India;
- (xvi) "Village Panchayat" means the Village Panchayat constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994);
- (xvii) The words and expressions used but not defined in this Act, and defined in the Kerala Panchayat Raj Act, 1994 (13 of 1994) or in the Kerala Municipality Act, 1994 (20 of 1994) shall have the meanings respectively assigned to them in those Acts.

3. Disqualification On Ground Of Defection :-

(1) Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act,-

(a) if a member of a local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting,-

(i) in a meeting of a Municipality, in an election of its Chairperson, Deputy Chairperson, a member of a Standing Committee or the Chairman of a Standing Committee; or

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee or the Chairman of the Standing Committee; or in an voting on a no-confidence motion against any one of them except a member of a Standing Committee;

(b) if an independent member belonging to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorised by the coalition in this behalf in the manner prescribed, votes or abstains from Voting,-

(i) in a meeting of a Municipality, in an election of its President, Vice President, a member of a Standing Committee or the Chairman of the Standing Committee; or

(ii) in a meeting of a Panchayat in an election of its President, Vice-President, a member of a Standing Committee or the Chairman of

the Standing Committee; or in an voting on a no-confidence motion against any one of them except a member of a Standing Committee;

(c) if an independent member not belonging to any coalition, joins any political party or coalition; he shall be disqualified for being a member of that local authority.

Explanation.--For the purpose of the section an elected member of a local authority shall be deemed to be a member belonging to the political party if there is any such party, by which he was set up as a candidate for the election.

4. Decision On Question As To Disqualification On Ground Of Defection :-

(1) If any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this Act a member of that local authority or the political party concerned or a person authorised by it in this behalf may file a petition before the State Election Commission for decision.

(2) The State Election Commission shall, after making such enquiry as it deems necessary, decide whether such member has become subject to such disqualification or not and its decision thereon shall be final.

(3) Where the State Election Commission decides that a member has become subject to disqualification under sub-section (2), he shall cease to be a member from the date of such decision and shall be disqualified for contesting as a candidate in an election to any local authority for six years from that date.

5. Powers Of The State Election Commission :-

(1) Every petition under sub-section (1) of section 4 shall be disposed of by the State Election Commission in accordance with the procedure as applicable while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908),

(2) The State Election Commission shall, while trying petition under sub-section (1), have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matter, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

b) requiring the discovery and production of any document or other

materials that may be produced as evidence;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commission for taking evidence from witness or document .

(3) The State Election Commission shall be deemed to be a Civil Court and every proceeding before the Commission shall be deemed to be judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860)

6. Bar Of Jurisdiction Of The Civil Courts :-

No Civil Court shall have jurisdiction in respect of a matter in so far as it relates to disqualification of a member of a local authority under this Act.

7. Power Of The Government To Make Rules :-

1) The Government may, by notification in the Gazette and in consultation with the State Election Commission, make rules, either prospectively or retrospectively, for carrying out all or any of the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session, for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides 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.

8. Validation Of Action Taken By The State Election Commission In Respect Of Defection :-

Notwithstanding anything contained in any other law or in any judgement, decree or order of a Court, any petition relating to defection of a member of any local authority filed before the State Election Commission before the 2nd day of October, 1998 or any

action or decision taken by the Commission thereon or any order disqualifying a member shall be deemed, as the case may be, to have been filed or taken or issued under the provisions of this Act.

9. Amendment Of Certain Acts :-

The Kerala Panchayat Raj Act, 1994 (13 of 1994) and the Kerala Municipality Act, 1994 (20 of 1994) shall have effect, subject to the modifications specified in the First Schedule and Second Schedule respectively, from the 2nd day of October, 1998.

10. Repeal And Saving :-

(1) The Kerala Local Authorities (Prohibition of Defection) Ordinance, 1998 (14 of 1998) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Act.

SCHEDULE 1

First Schedule

AMENDMENT TO THE KERALA PANCHAYAT RAJ ACT, 1994

(1) In section 34, after clause (k), in sub-section (1), the following clause shall be inserted, namely:--

"(kk) has been disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 and six years have not elapsed from the date of disqualification; or ";

(2) In section 35, after clause (m), the following clause shall be inserted, namely:--

"(n) is disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999;"

(3) In sub-section (1) of section 36, for the words and figures "or section 35", the words, figures, letters and brackets "or section 35, except clause (n)" shall be substituted;

(4) In section 153, after sub-section (7); the following sub-section shall be inserted, namely:--

"(7A) Election shall be made by means of open ballot and the member who casts his vote shall write his name and affix his signature on the reverse side of the ballot paper;"

(5) In section 157, after sub-section (9), the following sub-section shall be inserted, namely:--

"(9A) Election shall be by means of open ballot and the member who casts his vote shall write his name and affix his signature on the reverse side of the ballot paper."

SCHEDULE 2

Second Schedule

AMENDMENTS TO THE KERALA MUNICIPALITY ACT, 1994

(20 of 1994)

(1) In section 12, after sub-section (3), the following sub-section shall be inserted,

namely:--

"(3A) Election shall be by means of open ballot and the Councillor who casts his vote shall write his name and affix his signature on the reverse side of the ballot paper;"

(2) In sub-section (9) of section 19 for the words "which shall be by means of secret ballot" the words which shall be by means of open ballot and the Councillor who casts his vote shall write his name and affix his signature on the reverse side of the ballot paper" shall be substituted;

(3) In section 90, after clause (k) in sub-section (1), the following clause shall be inserted, namely:--

"(kk) has been disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 and six years have not elapsed since the date of his disqualification; or;"

(4) In section 91, after clause (1), the following clause shall be inserted, namely:--

"(11) has been disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999; or;"

(5) In sub-section (1) of section 92, for the words and figures "or section 91" the words, figures, letters and brackets, "or section 91."