
Tamil Nadu Panchayats (Seventh Amendment) Act, 2008**39 of 2008**

CONTENTS

1. Short Title And Commencement
2. Amendment Of Section 34
3. Amendment Of Section 35
4. Amendment Of Section 37
5. Substitution Of Section 38
6. Amendment Of Section 39
7. Substitution Of Section 41
8. Insertion Of New Sections 41-A, 41-B, 41-C And 41-D

Tamil Nadu Panchayats (Seventh Amendment) Act, 2008**39 of 2008**

Statement of Objects and Reasons² The 73rd Constitution Amendment Act, 1992 has given constitutional status to the Local Bodies and also provided for disqualification of elected members of Panchayat Raj Institution under Article 243-F of Constitution of India. 2. The Government have decided to incorporate suitable provisions in the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994) regarding disqualification for being chosen as, and for being, a member of a panchayat, similar to the provisions contained in the Representation of the People Act, 1951 (Central Act 43 of 1951) for disqualification of a member of either House of the State. The Government have also decided to empower the Government to decide the question of disqualification for being chosen as, and for being, a member of a panchayat in consultation with the Tamil Nadu State Election Commission, similar to those powers vested with the President under the said Central Act 43 of 1951 and also to vest with the Tamil Nadu State Election Commission powers in connection with enquiries as to disqualification of members of the panchayats. To give effect to the above decisions, the Government have decided to amend the said Tamil Nadu Act 21 of 1994 suitably. 3. The Bill seeks to give effect to the above decisions. PREAMBLE An Act further to amend the Tamil Nadu Panchayats Act, 1994. Be it enacted by the Legislative

Assembly of the State of Tamil Nadu in the Fifty-ninth Year of the Republic of India as follows:-- 1. Received the Assent of the Governor of Tamil Nadu on May 29, 2008 -- Published in Tamil Nadu Government Gazette, Extraordinary, Part IV, Section 2, Iss. No. 168, pages 147-150, dated May 30, 2008. 2. Vide L.A. Bill No.41 of 2008 -- Published in T.N. Govt. Gazette, Extra., Part IV, Section 1, Issue No.146, pages 175-179, dated May 14, 2008. 3. Act came into force w.e.f. June 18, 2008 -- G.O. Ms. No. 104, Rural Development and Panchayat Raj (PR. 1), June 18, 2008 -- As published in Tamil Nadu Government Gazette, Extra., Part II, Section 2, Iss. No.118, page 1, dated June 18, 2008

1. Short Title And Commencement :-

(1) This Act may be called the Tamil Nadu Panchayats (Seventh Amendment) Act, 2008.

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

2. Amendment Of Section 34 :-

In Section 34 of the Tamil Nadu Panchayats Act, 1994 (T.N. Act 21 of 1994) (hereinafter referred to as the principal Act),--

(1) for sub-section (2), the following sub-section shall be substituted, namely:--

"(2) A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for election as a member or for holding office as a member for a period of five years from the date of such dismissal.";

(2) sub-section (3) shall be omitted.

3. Amendment Of Section 35 :-

In Section 35 of the principal Act, for the expression "five years ", the expression "six years " shall be substituted.

4. Amendment Of Section 37 :-

In Section 37 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:--

"(1) A person convicted of an offence punishable under--

(a) Section 153-A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence,

language, etc., and doing acts prejudicial to maintenance of harmony) or Section 171-E (offence of bribery) or Section 171-F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of Section 376 or Section 376-A or Section 376-B or Section 376-C or Section 376-D or Section 498-A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of Section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (Central Act XLV of 1860); or

(b) the Protection of Civil Rights Act, 1955 (Central Act XXII of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) Section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (Central Act 52 of 1962); or

(d) Sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (Central Act 37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (Central Act 46 of 1973); or the Foreign Exchange Management Act, 1999 (Central Act 42 of 1999); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985); or

(g) Section 7 (offence of contravention of the provisions of Sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (Central Act 41 of 1988); or

(h) Section 125 (offence of promoting enmity between classes in connection with the election) or Section 135 (offence of removal of ballot-papers from polling stations) or Section 135-A (offence of booth capturing) or clause (a) of sub-section (2) of Section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of the Representation of the People Act, 1951 (Central Act 43 of 1951); or

(i) Section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991 (Central Act 42 of 1991); or

(j) Section 2 (offence of insulting the Indian National Flag or the

Constitution of India) or Section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (Central Act 69 of 1971); or

(k) the Prevention of Corruption Act, 1988 (Central Act 49 of 1988); or

(l) any law providing for the prevention of hoarding or profiteering; or

(m) any law relating to the adulteration of food or drugs; or

(n) any provisions of the Dowry Prohibition Act, 1961 (Central Act 28 of 1961) shall be disqualified for election as a member, where the convicted person is sentenced to--

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

Explanation.-- In this sub-section,--

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, Rule or notification having the force of law, providing for--

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be bought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodity Act, 1955 (Central Act 10 of 1955);

(d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (Central Act XXXVII of 1954).

(2) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) shall be disqualified for election as a member from the date of such conviction and shall continue to be disqualified for a further period of six years since his release."

5. Substitution Of Section 38 :-

For Section 38 of the principal Act, the following Section shall be substituted, namely:--

"38. Disqualification of members.--(1) A member convicted of an offence as described under sub-section (1) of Section 37 shall be disqualified, where the convicted member is sentenced to--

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(2) A member convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) of Section 37 shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) Subject to the provisions of Section 41, a member shall cease to hold office as such, if he--

(a) becomes of unsound mind, or a deaf-mute;

(b) applies to be adjudicated, or is adjudicated, as an insolvent;

(c) acquires any interest in any subsisting contract made with or any work being done for, any panchayat except as a shareholder (other than a director) in a company or except as permitted by Rules made under this Act.

(d) is employed as paid legal practitioner on behalf of the panchayat or as legal practitioner against any panchayat;

(e) is found that he does not belong to Scheduled Caste or Scheduled Tribe, but has been elected from the seat reserved for Scheduled Caste or Scheduled Tribe;

(f) is appointed as an officer or servant under this Act;

(g) ceases to reside in the village, panchayat union or the district, as the case may be;

(h) fails to pay arrears of any kind due by him, (otherwise than in fiduciary capacity) to a panchayat within three months after such arrears became due; or

(i) absents himself from the meetings of the panchayat for a period of three consecutive months reckoned from the date of the commencement of his term of office, or of the last meeting which he attended, or of his restoration to office as member under sub-section (1) of Section 39, as the case may be, or if within the said period, less than three meetings have been held, absents himself in the three consecutive meetings held after the said date:

Provided that no meeting from which a member absented himself shall be counted against him under this clause if--

- (i) due notice of that meeting was not given to him; or
- (ii) the meeting was held after giving shorter notice than that prescribed for an ordinary meeting; or
- (iii) the meeting was held on a requisition of members".

6. Amendment Of Section 39 :-

In Section 39 of the principal Act,--

- (1) in sub-section (1), for the expression "clause (a) or clause (b) of Section 38", the expression "sub-section (1) or sub-section (2) of Section 38 " shall be substituted;
- (2) "in sub-section (2), for the expression "under clause (j) of Section 38", the expression "under clause (i) of sub-section (3) of Section 38 " shall be substituted.

7. Substitution Of Section 41 :-

For Section 41 of the principal Act, the following Section shall be substituted, namely:--

"41 Authority to decide Questions of disqualification or cessation of members.--

(1) If any question arises as to whether any person who has been elected as a member of a panchayat or who becomes a member of a panchayat is not qualified or has become disqualified under Section 33 or Section 34 or Section 35 or sub-section (3) of Section 38 or 38-A or cessation under Section 40, the question shall be referred by the Inspector to the Government whose decision shall be final.

(2) Before taking any such decision on such question, the Government shall obtain the opinion of the Tamil Nadu State Election Commission and shall act according to such opinion."

8. Insertion Of New Sections 41-A, 41-B, 41-C And 41-D :-

After Section 41 of the principal Act, the following Sections shall be inserted, namely:--

"41-A. Powers of the Tamil Nadu State Election Commission.--

(1) Where in connection with the tendering of any opinion to the Government under Section 41, the Tamil Nadu State Election Commission considers it necessary or proper to make an inquiry, and the Tamil Nadu State Election Commission is satisfied that on

the basis of the affidavits filed and the documents produced in such inquiry by the parties concerned of their own accord, it cannot come to a decisive opinion on the matter which is being inquired into, the Tamil Nadu State Election Commission shall have, for the purposes of such inquiry, the powers of a Civil Court, while trying a Suit under the Code of Civil Procedure, 1908 (Central Act V of 1908), in respect of the following matters, 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 material object producible as evidence;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or a copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents.

(2) The Tamil Nadu State Election Commission shall also have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the Tamil Nadu State Election Commission may be useful for, or relevant to, the subject-matter of the inquiry.

(3) The Tamil Nadu State Election Commission shall be deemed to be a Civil Court and when any such offence, as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code (Central Act XLV of 1860), is committed in the view or presence of the Tamil Nadu State Election Commission, the Tamil Nadu State Election Commission may after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(4) Any proceeding before the Tamil Nadu State Election Commission shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code (Central Act XLV of 1860).

41-B. Statements made by person to the Tamil Nadu State Election Commission.-- No statement made by a person in the course of giving evidence before the Tamil Nadu State Election Commission

shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement--

(a) is made in reply to a question which he is required by the Tamil Nadu State Election Commission to answer, or

(b) is relevant to the subject-matter of the inquiry.

41-C. Procedure to be followed by the Tamil Nadu State Election Commission.--

The Tamil Nadu State Election Commission shall have the power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private).

41-D. Protection of action taken in goodfaith.-- No suit, prosecution or other legal proceeding shall lie against the Tamil Nadu State Election Commission or any person acting under the direction of the Tamil Nadu State Election Commission in respect of anything which is in good faith done or intended to be done in pursuance of the foregoing provisions of Sections 41-A to 41-C or of any order made thereunder or in respect of the tendering of any opinion by the Tamil Nadu State Election Commission to the Government or in respect of the publication, by or under the authority of the Tamil Nadu State Election Commission of any such opinion, paper or proceedings.".