

The U.P. Antarim Zila Parishad (Election of Upadhyakshas) Rules, 1961

UTTAR PRADESH

India

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Rule

THE-U-P-ANTARIM-ZILA-PARISHAD-ELECTION-OF-UPADHYAKSHAS of 1961

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047.

RULES

1. Short title and commencement.

(1)These rules maybe called "the U.P. Antarim Zila Parishad (Election of Upadhyakshas) Rules, 1961".(2)They shall come into force at one.

2. Definitions.

- In these rules, unless the context otherwise requires, -(a)"the Act" means the U.P. Antarim Zila Parishad Act, 1958, as amended from time to time;(b)"Distirct Magistrate" means the District Magistrate appointed under section 10 of the Code of Criminal Procedure, 1898 and includes, in his absence or ;in case of his becoming incapacitated for performing his functions, an Additionlal District Magistrate or other Magistrate who assumes charge of his work;(c)"Member" means member of an Antarim Zilal Parishad other than an Official member thereof;(d)"Sign" means in relation to a person who is unable to write his name means affix thumb-mark;(e)"Form" means form Schedule 1 to these rules;(f)"Rules" means the U.P. Antarim Zila Parishad (Election of

Upadhyaksha) Rules, 1961.

3. Returnign Officer.

- The District Magistrate shall be the Returning Officer for every election to the office of Upadhyaksha of a Parishad.

4. Assistant Returning Officer.

(1)The Returning Officer may appoint one or more persons as Assistant Returning Officers to assist him in the performance of his functions under these rules. -(2)Every Assistant Officer shall be competent to perform all or any of the functions of the Returning Officer.Meeting to Elect Upadhyaksha

5.

(1)Whenever a vacancy occurs in the office of Upadhyaksha, there shall be held an election in the manner laid down in the rules to fill up the same.(2)The Returning Officer shall fix a date, hour and place for the election and at least 10 days' notice thereof shall be sent to every member under certificate of posting.

6.

(1)The presence of at least half the total number of the members shall be necessary to enable the election to be held.(2)In case at least half the total number of the members fails to assemble within and hour of the time fixed for the election by the Returning Officer under rule 5(2), a fresh date with time shall be fixed for the election by the Returning Officer as if for a new election.

7. List of members.

(1)Before issuing a notice under rule 5 (2) the Returing Officer shall cause to be prepared a list of members of the Antarim Zila Parishad and give public notice of the same by giving an authentic copy of the list affixed on the notice board of each of the office of the District Magistrate, the highest Civil Judicial Officer in the District and the Antarim Zila Parishad.(2)The Returning Officer may at any time before the commencement of the poll make such corrections in the list as may be necessary by reason of any changes in the membership or upon discovery of any error in the list whether upon the consideration of any claim or objection to the inclusion of any name make by any person or otherwise:Provided that no name included in the list shall be deleted there from without prior notice to such person of the proposed deletion and giving him an opprotunity of showing casue against the proposed deletion.

8. Nomination and declaration of result in uncontested election.

(1)The Returning Officer shall invite nominations by asking the members present in the meeting to propose names. A member whose name is proposed shall signify his consent to the proposal orally and if he is not present in the meeting the proposer must file before the Returning Officer the consent in writing of the member proposed for nomination.(2)When no more proposals are forthcoming, the Returning Officer shall read out the names of the duly proposed members as candidates for the election.(3)If only one name has been proposed, the Returning Officer shall forthwith declare the member so proposed to be duly elected to the office of Upadhyaksha. In case more than one name has been proposed, he shall allow a period of five minutes for the withdrawal of any candidature.

9. Withdrawal of candidature and declaration of result if election becomes uncontested.

(1)Any candidate may withdraw his candidature by presenting to the returning Officer a writing signed by himself unequivocally signifying his intention to withdraw.(2)If there is only one candidate left after the withdrawal, the Returning Officer shall forth with declare him to be duly elected.

10.

If there are more than one candidate left after the withdrawal, the Returning Officer shall have the names of contesting candidates entered in the ballot papers in Form I in Hindi in alphabetical order determined with reference to the names as entered in the list of members.

11.

The election shall be held in accordance with the system of proportional representation by means of a single transferable vote and the voting shall be by secret ballot.

12.

The Returning Officer shall provide in a corner of the hall where the members are assembled, a polling compartment screened from observation in which the members shall enter one by one to record their votes.

13.

The Returning Officer shall keep on his table a ballot box of the design approved by the Director of Elections for use at the election of Adhyaksha. Ballot box shall, before the commencement of the polling, be followed to be inspected by such candidates as may be present and shall then be secured and sealed leaving, however, the slit open for insertion of the ballot paper.

14.

Procedure for giving ballot papers. - (1) The Returning Officer shall have before him the list of the members entitled to vote.(2)Immediately before the ballot paper is delivered to a member, a mark shall be place against him in that list and the name of the member as shown in that list shall be entered in the counterfoil of the ballot paper.(3)The member shall sign his name in the list in token of receipt of ballot paper, whereupon, but not earlier, the ballot paper shall be delivered to him.-(4)Before delivery of ballot paper to a member, the Returning Officer shall satisfy about the identity of the member and for that purpose he may take the assistance of such persons as he may think fit.(5)If the Returning Officer is not satisfied about the identity of any person he may refuse to deliver a ballot paper to him after recording a brief-note about the circumstances in which the refusal was made.

15.

Supply of fresh ballot paper in certain circumstances. - (1) A member who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering it to the Returnign Officer and on satisfying him of the inadvertence, obtain another ballot paper in place of the ballot paper so delivered, and the later shall, together with its counterfoil, be marked as cancelled by the Returning Officer.(2)Any ballot papers, so cancelled, shall be kept in a separate envelope set apart for the purpose.

16.

Return of unused basllot papers by members. - If a member after obtaining any ballot paper for the purpose of recording his vote decides not to use the same he shall return the ballot paper to the Returning Officer, who shall mark it "Returned and cancelled" and keep it in a separate envelope set apart for the purpose.

17.

Manner of recording votes. - (1) Every member shall have as many preferences as there are candidates, but no ballot paper shall be cosidered invalid solely on the ground that all such preferences are not marked.(2)A member in signing his vote -(a)shall place on his ballot paper the number 1 in the space opposite the name of the candidate whom he chooses for his first prefernce; and(b)may, in addition mark as many subsequent preferences as he wishes by placing in his ballot paper the number 2, 3, 4 and so on, in the space opposite the names of other candidates in order of preferences.(3)The Returning Officer shall, if requested by a member, explain to him the instructions contained on the ballot paper for the recording of votes.(4)For making his preference a member shall enter a polling compartment provided at the place of polling and screened from observation.(5)After the preferences have been marked the member shall fold the the ballot paper and put it into the ballot box through the slit provided for the purpose.(6)If owing to physical incapacity or illiteracy a member is unable to mark his preference on the ballot paper or to read it,

the Returning Officer shall, on being so requested by the member, record the vote in the ballot paper according to the direction of the member. The member shall then himself or with the assistance of the Returning Officer shall have this done with as much secrecy as is feasible and shall keep a brief record of each such instance without indicating the manner in which the vote has been casted.

18. Tendered votes.

- If a person representing himself to be a member name in the list of members prepared under rule 7, applies for a ballot paper after another person has already voted as such member, the applicant shall, after duly answering such questions as the Returning Officer may ask, be entitled to receive a ballot paper (referred to in these rules as a "tender ballot paper") in the same manner as any other member. A tendered ballot paper shall be in Form II and shall instead of being put in the ballot box, be handed over by such person to the Returning Officer who shall thereupon take such person inside the polling compartment and shall in the presence of such person mark the preference on the ballot paper against the name or names of the candidate or candidates for whom such person desires to vote and also record on the ballot paper the name of the member and his serial number in the list. The Returning Officer shall then place the ballot paper in a separate packet set apart for the purpose. At the end of the poll the packet containing such ballot papers shall be sealed. Such votes shall not be counted by the Returning Officer. The name of the member and his serial number in the list prepared under rule 7 shall be entered in a list in Form III. The person tendering such ballot paper shall sign against the entry relating to him in that list.

19. Adjournment of poll in emergencies.

(1) If the proceedings at the place of polling are interrupted or obstructed by riot or open violence or it is not possible to take the poll on account of a natural calamity or other sufficient cause, the Returning Officer shall announce an adjournment of poll to a date to be notified later. (2) Whenever a poll is adjourned under sub-rule (1) the Returning Officer shall, as soon as may be, fix the date on which and the hours during which the adjourned poll shall be taken and shall intimate the said details to all concerned in such manner as he may think fit. (3) On the date on which such adjourned poll is taken, the members who have already voted at the poll before its adjournment would not be entitled to vote, but only the remaining members who are entitled to vote before its adjournment may vote.

20.

As soon as the issue of ballot papers is finished, the Returning Officer shall place the counterfoils of the ballot papers in an envelope and close and seal the same. The envelope shall not be opened except under the orders of the court or other authority deciding any dispute relating to the election. Counting

21. Procedure at the counting.

(1)As soon as the poll is closed the Returning Officer shall, in the presence of the candidates and members who may be present, proceed to count the votes.(2)The Returning Officer shall open the ballot box and shall -(a)count the number of ballot papers taken out therefrom and record it in a statement:(b)scrutinize the ballot papers and separate those which in his opinion are valid from those which in his opinion are invalid endorsing on the latter the word" rejected" and the ground of rejected; and(c)arrange all the valid ballot papers in parcels according to the first preference recorded for each candidate;(3)A ballot paper shall be rejected as invalid on which -(a)the number 1 is not marked; or(b)the number 1 marked opposite the name of more than one candidate or is so marked as to render it doubtful to which candidate it is intended to apply; or(c)the number 1 and some other number are marked opposite the name of the same candidate; or(d)any mark is made by which the member may afterward be identified.

22. Determination of result.

- After all the valid ballot papers have been arranged in parcel according to the first preference recorded for each candidate, the Returning Officer shall proceed to determine the result of the voting in accordance .with the instructions contained in Schedule II of these Rules.

23. Re-counting.

- The Returning Officer may, either on his own initiative or at the instance of any candidate recount votes, whether once or more than once when the Returning Officer is not satisfied as to the accuracy of a previous counting:Provided that nothing herein contained shall make it obligatory on the Returning Officer to recount the same votes more than once.

24. Declaration of result.

- When the counting is completed and the result of the voting has been determined, the Returning Officer shall forthwith -(a)announce the result of those present;(b)report the result to the State Government;(c)prepare and certify a return of the election in Form IV ; and(d)seal up in separate pakets the valid ballot papers and the rejected ballot papers and record on each such packet description of its contents.

25. Notification of results.

- The District Magistrate shall as soon as may be after the declaration of the result under rule 8, 9 or 23 notify the result by casusing it to be published in the Official Gazette.

26. Time and manner to present petitions.

(1)An election petition may be presented at any time within thirty days after the date of declaration of result of the election.(2)It shall be presented in person by the petitioner or if there are more than one petitioners, by any one or more of them to the District Judge of the place in which the Parishad is situated.(3)An election petition so presented shall be transferred to and heard by the tribunal consisting of a Civil Judicial Officer not below the rank of a Civil Judge appointed by the District Judge of the place in which the Parishad is situated.

27. Form, etc. of petition.

(1)An election petition shall specify the ground or grounds on which an election of the returned candidate is questioned and shall contain a summary of the circumstances alleged to justify the election being questioned on such grounds.(2)The person whose election is questioned, and where the petitioner claims that any other candidate shall be declared elected in the room of such person, every succesful candidate shall be made a respondent to the petition.

28. Relief that may be claimed by the petitioner.

- A petitioner may claim either of the following declarations -(a)that the election of the returned candidate is void;(b)that the election of the returned candidate is void and that he himself or any other candidate has been duly elected.

29. Security.

- At the time of presenting an election petition the petitioner shall enclose with it a receipt showing that sum of two hundred rupees has been deposited by him or on his behalf, in a Government Treasury or in the State Bank of India as security for the costs of the petition.

30. Recrimination when seat claimed.

- When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election.

31. Place of trial.

- The trial of an election petition shall be held in the Distirct in which the Parishad concerned is situated..

32. Procedure before the Tribunal.

(1) Except so far as provided by the Act or elsewhere in the Rules the procedure provided in the Civil Procedure Code in regard to suits; shall, so far as it is not inconsistent with the Act or any provisions of these. Rules and so far as it can be made applicable, be followed in the gearing of election petitions: Provided that - (a) any two or more election petitions relating to the election of the same person may be heard together; (b) the tribunal shall not be required to record or have recorded the evidence in full but shall make a memorandum of the evidence sufficient in its opinion for the purpose of deciding the case; (c) the tribunal may, at any stage of the proceedings, require the petitioner to give further cash security for the payment of the costs incurred or likely to be incurred by any respondent; (d) for the purpose of deciding any issue the tribunal shall be required to order production of or to receive only so much evidence, oral or documentary, as it considers necessary; (e) no appeal or revision shall lie on a question of fact or law against any decision of the tribunal; (f) the tribunal may review its decision on any point on application of any person considering himself aggrieved thereby, being made within fifteen days from the date of the decision. (2) The provisions of the Indian Evidence Act, 1972, shall be deemed to apply in all respects to the trial of an election petition.

33. Withdrawal of petition.

(1) Before the appointment of a tribunal to try an election petition, the petition may be withdrawn by the petitioner or the petitioners, as the case may be, by making an application to the officer to whom it was presented stating the intention to withdraw the petition and upon the making of such an application the petition shall stand withdrawn and no further action shall be taken for its trial. (2) After the appointment of a tribunal to try election petitioner the petition may be withdrawn with the leave of the tribunal by making an application as aforesaid to the tribunal.

34. Abatement of petitions.

(1) An election petition claiming a declaration mentioned in clause (a) of rule 28 shall abate upon the death of the returned candidate. (2) An election petition shall abate upon the death of the sole petitioner or all the petitioners. (3) If any election petition claims the declarations mentioned in clause (b) of rule 28 and the returned candidate dies, the tribunal shall cause notice of such event to be published in the official Gazette and thereupon any person who might have been a petitioner may within fourteen days of the publication apply, to be substituted in place of the returned candidate to oppose the petitioner and shall be entitled to continue the proceedings upon such terms as the tribunal may think fit.

35. Powers of the tribunal.

(1) The tribunal shall have the same power and privileges as a Judge of Civil Court, and may for the purpose of serving any notice or issuing any process for doing any other similar act, be entitled to employ with the consent of the District Magistrate, any peon or other officer or clerk attached to the

Court of the District Magistrate.(2)If the petition is found to be frivolous the tribunal may direct that the security or any part thereof shall be forfeited to the State Government.(3)An order for cost passed by the election tribunal may be sent by the District Magistrate for execution to the Munsif within whose jurisdiction the Parishad, the election of the Up- Adhyaksh of which is questioned, is situated and the order so sent shall be executed by the Munsif in the same manner as if it were a decree passed by him in favour of the person who has been awarded costs.

36. Order of the tribunal.

(1)If the tribunal after making such inquiry as it deems fit finds in respect of any person whose election is called in question by a petition, that his election was valid, it shall dismiss the petition as against such person and award cost at its discretion.(2)If the tribunal finds that the election of any person was invalid it shall either - '(a)declare a casual vacancy to have been efeated; or(b)declare another candidate to have been duly elected and in either case may award costs at its discretion.

37. Grounds for which the candidate other than the returned candidate may be declared to have been elected.

- If any person who has lodged an election petition has, in addition to calling in question the election of the returned candidate claimed a declaration that tribunal is of the opinion that in fact the petitioner or such other candidate receive a majority of the valid votes, the tribunal shall after declaration the election of the returned candidate to be void, declare the petitioner of such other candidate as the case may be, to have been duly elected:Provided that the petitioner or such other candidate shall not be declared to be duly elected if it is proved that the election of the petitioner or such-candidate would have been void if he had been returned candidate and a petition had been presented calling in question his election.

38. Procedure in case of equality of votes.

- If during the trial of an election . petition it appears that there is an equality of votes between any candidates at the election and that one of them is to be eliminated then -(a)any decision, made by the Returning Officer under the provision of these Rules shall in so far as it determines the question between those candidates be effective also for the purposes of the petition; and(b)so far as that question is not determined by such a decision, the tribunal shall decide between them in accordance with the provisions of the instructions in Schedule II to these Rules.

39. Taking effect of Tribunal's order.

- An order of the tribunal shall take effect from the day next following the date of the order.

40. Communication of order and transmission of record.

(1)The tribunal shall as soon as may be after announcing the orders made by it send a copy thereof to the District Magistrate.(2)The tribunal shall also send the record of the case to the District Magistrate of the district within which the Parishad concerned is situated for being dealt with within such a manner as may be specified by the Government.

41. Disposal of security deposit and recovery of costs.

(1)Subject to the provisions of sub-rule (2) of rule 35 costs if any, awarded to any respondent by tribunal shall be recoverable out of the security deposited under rules and the balance of the security deposit, if any, shall be refunded to the petitioner.(2)The costs or any portion thereof, awarded to any respondent and not recovered from the security deposit referred to in sub- rule (1) and costs payable to a petitioner from any respondent shall be recoverable in accordance with the provisions of sub-rule (3) of rule 35.(3)While making its orders under rule 36, the tribunal shall also pass orders about the recovery of costs and the refund of security deposits in accordance with provisions of this rule and the District Magistrate shall carry out the orders accordingly on receipt of a copy of the tribunal's orders under rule 40.

I

Form I(Rule 10)Form of Ballot Paper

Counterfoil

Antarim Zila Parishad.....

Election of up Adhyaksh,
19.....

Name of elector.....

Serial No. of Ballot Paper.....

Outerfoil (Front)

Antarim Zila Parishad.....

Election of up Adhyaksh 19.....

Name Preferences

1.....

2.....

3.....etc.

Instructions

1. The persons whose name are given on the ballot paper have been nominated as candidates for election to the Office of Up-Adhyaksh of Antarim Zila Parishad.....

2. The vote shall be recorded by placing the number 1 in the space opposite the name of the candidate whom the voter chooses for his first preference and the voter may, in addition, mark as many subsequent preferences as he wishes by placing the numbers 2, 3 and so on in the space opposite the names of other candidates in order of

preference.

Counterfoil (Back)Serial Number of Bailor Paper..

Form II(Rule 18)Form of Tendered Ballot PaperAntarim Zila

Parishad.....Election to the office of AdhyakshaName of

member.....Serial number of member on the

list.....Name or names of candidate or candidates for whom this is tendered and the order of preference.

1.

.....

2.

.....

3.

.....etc.Dated.....Returing Officer.Form III(Rule 18)Tendered Votes ListAntarim Zila Parishad.....Election of Adhyaksha.

Serial No.	Name of member	Serial number of member on the list	Address of the member on the list	Signature or thumb-impression of the member
1	2	3	4	5

1

2

3

4

5

Dated.....Returning Officer.Form IV(Rule 24)Result of Election to the office of the Up-Adhyaksh, Antarim Zila Parishad.....Returning Officer

Serial no.	Name of candidate	Votes secured at first count	Votes credited		Total of columns 3 and 4	Votes credited at second exclusion	Total of columns 5 and 6	Votes credited at third exclusion	Total of columns 7 and 8	Votes credited at fourth exclusion
			of credited at first exclusion							
1	2	3	4	5	6	7	8	9	10	

Exhausted

votes.....

Total.....

Total number of valid ballot papers..... representing.....votes.Total number of invalid papers.....representing.....votes.I declare that
-(Name).....(Address).....has been duly elected to the office of the Up-Adhyaksha of Antarim Zila Parishad ...Place.....Date.....Returning Officer

II

(Rule 22)Instruction for the Determination of Result

1. In this schedule -

(1)The expression "continuing candidate" means any candidate not elected and not excluded from the poll at any given time;(2)the expression "First preference" means the number 1 set opposite the name of any candidate, the expression "second preference" similarly means the number 2, the expression "third preference" the number 3, and so on;(3)the expression "next available preference" means the second or subsequent preference recoded in consecutive numerical order for a continuing candidate, preference for candidates already excluded being ignored;(4)the expression "unexhausted paper" means a ballot paper on which a further preference is recorded for a continuing candidate provided that a paper shall be deemed to be exhausted in any case in which
-(a)the names of two or more candidates whether continuing or not are marked with the same figure, and are next in order of preference; or(b)the names of the candidates next in order of preference whether continuing or not, is marked by a number not following consecutively after some other number on the ballot paper or by two or more numbers.

2. Ascertain the number of first preference votes secured by each candidate and credit him with that number.

3. Add up the number so credited to all the candidates, divide the total by two and add one to the quotient disregarding any remainder. The resulting number is the quota sufficient to secure the return of a candidate at the election.

4.

(1)If there are only two contesting candidate then -(a)if one candidates gets larger number of first preference votes than the other, declare the former as elected, or(b)if both the candidates get equal number of first preference votes, exclude one of them by drawing of lot and declare the other as elected.(2)If there are more than two candidates then -(a)if one of them is found to secure first preference notes equal to or more than the quota determined under instruction no. 3 declare him as elected, or(b)if none of them secures first preference votes equal to or more than the quata aforesaid, proceed according to the instructions hereinafter taking into consideration second and subsequent preference as may be necessary.

5. If at the end of the first or any subsequent count the total number of votes credited to any candidate is equal to, or greater than the quota, or there is only one contesting candidate, that candidate is declared elected.

6. If at the end of any count, no candidate can be declared elected -

(a)exclude the candidate who upto that stage has been credited with the lowest number of votes;(b)examine all the ballot papers in his parcel and sub-parcel, the arrange unexhausted papers in sub-parcels according to the next available preferences recorded thereon for the continuing candidates, count the number of votes in each such sub-parcel and credit it to the candidate for whom such preference is recorded, transfer the sub-parcel to that candidate and make a separate sub-parcel of all the exhausted papers, and(c)see whether any of the continuing candidates has, after such transfer and credit, secured the quota.If, when a candidate has to be excluded under clause (a) above, two or more candidates have been credited with the same number of votes and stand lowest on the poll, exclude that candidate who has secured the lowest number of first preference votes, and if that number also was the same in the case of two or more candidates, decide by lot which of them shall be excluded.Illustration. - Suppose there are four candidates, A, B, C and D and the number of first preference votes secured them are -A = 12B = 11C = 7D = 5_____

35.

_____The quota will be $35/2 + 1 = 18$ No candidate having obtained votes equal to or over the quota at the first count, the candidate having the lowest votes, namely D will be excluded.Suppose there are second preferences marked on only four ballot papers in the parcel of D as below:A = 2B = 2the fifth ballot paper will be placed in the sub-parcel of exhausted papers and the two papers recording second preference for A and B each will be placed in separate sub-parcels for A and B each of them will be credited with two additional votes. The votes for A, B and C will now be -A = 12 + 2B = 11 + 2C = 7Since at the end of second count no candidate can be declared elected the candidate C having the lowest votes out of three continuing candidates will now be excluded and his votes transferred to other continuing candidate A and B.Suppose second preferences are recorded in all the ballot papers in the parcel of C and are below:A = 4B = 3After crediting A and B with these additional votes A would be secured 18 votes, that is, equal to the quota and B 16 votes. A will, therefore, be declared elected.