

Maharashtra Local Authority Members' Disqualification Act, 1986

MAHARASHTRA

India

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Act 20 of 1987

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Maharashtra Local Authority Members' Disqualification Act, 1986 Maharashtra Act No. 20 of 1987 (First published, after having received the assent of the Governor in the "Maharashtra Government Gazette" on the 29th July, 1987) In exercise of the powers conferred by sub-section (2) of section 1 of the Maharashtra Local Authority Members' Disqualification Act, 1986 (Maharashtra XX of 1987) (hereinafter referred to as "the said Act"), the Government of Maharashtra hereby appoints the 1st day of November, 1987, to be the date on which the said Act shall come into force. An Act to provide for disqualification of members of certain local authorities on ground of defection and for matters incidental and connected therewith. Whereas, it is expedient to provide for disqualification of members of certain local authorities on the ground of defection and for matters incidental and connected therewith; It is hereby enacted in the Thirty-seventh Year of the Republic of India as follows:-

1. Short title and commencement.

(1) This Act may be called the Maharashtra Local Authority Members' Disqualification Act, 1986. (2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions.

- In this Act unless the context otherwise requires,-(a) "aghadi" or "front" means a group of persons who have formed themselves into party for the purpose of setting up candidates for election to a local authority; (b) "Collector" means the Collector of a district; (c) "Commissioner" means the Commissioner of a revenue division appointed under section 6 of the Maharashtra Land Revenue Code, 1966; (d) "Councillor" means a Councillor of a Municipal Corporation, or a Municipal Council,

or a Zilla Parishad;(e)"local authority" means(i)a Municipal Corporation,(ii)a Municipal Council,(iii)a Zilla Parishad, or(iv)a Panchayat Samiti;(f)"member" means a member of a Panchayat Samiti;(g)"Municipal Corporation" means Municipal Corporation constituted under a relevant municipal law;(h)"Municipal Council" means a Municipal Council constituted under the Maharashtra Municipalities Act, 1965;(i)"municipal party", in relation to the Councillor belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means(i)in the case of a Councillor of a Municipal Corporation, the group consisting of all Councillors of the Municipal Corporation for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;(ii)in the case of a Councillor of a Municipal Council, the group consisting of all the Councillors of the Municipal Council for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;(j)"original political party", in relation to a Councillor or a member, means the political party to which he belongs for the purposes of sub-section (1) of section 3;(k)"Panchayat Samiti" means a Panchayat Samiti constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961;(l)"Panchayat Samiti party", in relation to a member belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means the group consisting of all the members of the Panchayat Samiti for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;(m)"relevant municipal law",- (i)in relation to the Municipal Corporation of Greater Bombay, means the Bombay Municipal Corporation Act;(ii)in relation to the Corporation of the City of Nagpur, means the City of Nagpur Corporation Act, 1948;(iii)in relation to the Municipal Corporation of any other City, means the Bombay Provincial Municipal Corporations Act, 1949;(n)"Schedule" means the Schedule appended to this Act;(o)"Zilla Parishad" means a Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961;(p)"Zilla Parishad Party", in relation to a Councillor of a Zilla Parishad belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means the group consisting of all the members of the Zilla Parishad for the time, being belonging to that political party or aghadi or front in accordance with the said Explanation.

3. Disqualification on ground of defection.

(1)Subject to the provisions of [section 5] [Substituted by Maharashtra 50 of 2006 section 2 (w.e.f. 19-10-2006).], a councillor or a member belong to any political party or aghadi or front shall be disqualified for being a councillor or a member,-(a)if he has voluntarily given up his membership of such political party or aghadi or front; or(b)if he votes or abstains from voting in any meeting of a Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any direction issued by the political party or aghadi or front to which he belongs or by any person or authority authorised by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or aghadi or front, person or authority and such voting or abstention has not been condoned by such political party or aghadi or front, person or authority within fifteen days from the date of such voting or abstention:Provided that, such voting or abstention without prior permission from such party or aghadi or front, at election of any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause;Explanation.-For the purposes of this section-(a)a person elected as a councillor, or as the case may be, a member shall be deemed

to belong to the political party or aghadi or front, if any, by which he was set up as a candidate for election as such councillor or member;(b)a nominated [councillor] [Substituted by Maharashtra 50 of 2006 section 2 (w.e.f. 19-10-2006).] shall -(i)where he is a member of any political party or aghadi or front on the date of his nomination, [* * *] [These words were deleted by Maharashtra 50 of 2006] be deemed to belong to such political party or aghadi or front,(ii)in any other case, be deemed to belong to the political party or aghadi or front of which he becomes, or as the case may be, first becomes a member of such party or aghadi or front before the expiry of six months from the date on which he is nominated [* * *] [These words were deleted by Maharashtra 50 of 2006, section 2 (w.e.f. 19-10-2006)];(c)[* * *] [Clause (c) deleted by Maharashtra 50 of 2006 section 2(8) (w.e.f. 19-10-2006).](2)An elected Councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party or aghadi or front shall be disqualified for being a Councillor, or as the case may be, a member if he joins any political party or aghadi or front after such election.(3)[* * *] [These words were deleted by Maharashtra 50 of 2006](4)Notwithstanding anything contained in the foregoing provisions of this section a person who on the commencement of this Act, is a councillor, or as the case may be, a member (whether elected or nominated [* * *] [These words were deleted by Maharashtra 50 of 2006, section 2 (w.e.f. 19-10-2006).] as such councillor or member) shall-(a)where he has a member of a political party or aghadi or front immediately before such commencement, be deemed, for the purposes of sub-section (1) to have been elected as a Councillor, or as the case may be, a member as a candidate set up by such political party or aghadi or front;(b)in any other case, be deemed to be an elected Councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party or aghadi or front for the purpose of sub-section (2), [* * *] [These words were deleted by Maharashtra 50 of 2006, section 2 (w.e.f. 19-10-2006).].

3A. [Disqualification for appointment on remunerative political post. - A councillor or; as the case may be, a member belonging to any political party, aghadi or front who is disqualified for being a councillor or as the case may be, a member; under section 3 shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of 1-is disqualification till the date on which the term of his office as such councillor or, as the case may be, a member expires or till the date on which he contests an election to a local authority and is declared elected, whichever is earlier.

Explanation.- For the purpose of this section, the expression "remunerative political post" means any office, -(i)under the State Government where the salary or remuneration for such office is paid out of the public revenue of the State Government or Consolidated Fund of the State; or(ii)under a body, whether incorporated or not, which is wholly or partially owned by the State Government and the salary or remuneration for such office is paid by such body; or(iii)under a local authority, where the salary or remuneration for such office is paid by the local authority out of such local authority's fund, except where such salary or remuneration paid is compensatory in nature]

**4. Disqualification on ground of defection not to apply in case of split. [* * *]
[Section 4 deleted by Maharashtra 50 of 2006, section 4 (w.e.f. 19-10-2006).]**

5. Disqualification on ground of defection not to apply in case of merger.

(1) A Councillor or a member shall not be disqualified under sub-section (1) of section 3 where his original political party or aghadi or front merges with another political party or aghadi or front and he claims that he and any other members of his original political party or aghadi or front-(a) have become members of such other political party or aghadi or front or as the case may be, of a new political party formed by such merger; or (b) have not accepted the merger and opted to function as a separate group, and from the time of such of such merger, such other political party or new political party or aghadi or front or group, as the case may be, shall be deemed to be the political party or aghadi or front to which he belongs for the purpose of sub-section (1) of section 3 and to the original political party or aghadi or front for the purposes of this sub-section. (2) For the purposes of sub-section (1), the merger of the original political party or aghadi or front of a Councillor, or as the case may be, a member shall be deemed to have taken place if, and only if, not less than two-thirds of the members of municipal party, Zilla Parishad party, or as the case may be, Panchayat Samiti party, concerned, have agreed to such merger.

**6. Councillor or member to vacate office or not to hold office after [* * *]
[These words were deleted by Maharashtra 50 of 2006, section 5(b) (w.e.f. 19-10-2006).] merger.**

- A Councillor, or as the case may be, member claiming [merger referred to in section 5] [These words were substituted by Maharashtra 50 of 2006, section 5(a) (w.e.f. 19-10-2006).], shall-(a) if holding any office other than such councillor or member under any relevant municipal law, or as the case may be, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall be deemed to vacate such office on the date of such [* * *] [These words were deleted by Maharashtra 50 of 2006, section 5(b) (w.e.f. 19-10-2006).] merger and shall, on and from that date, cease to hold such office; (b) [* **] [Deleted by Maharashtra Act 8 of 1997, (w.e.f. 29-4-1996).]

7. Decision on question as to disqualification on ground of defection.

(1) If any question arises as to whether,-(a) a Councillor of a Municipal Corporation; or (b) a Councillor of a Municipal Council; or (c) a Councillor of a Zilla Parishad; or (d) a Member of a Panchayat Samiti, has become subject to disqualification under this Act, the question shall be referred (i) in the case of a Councillor of a Municipal Corporation, to the Commissioner, and (ii) [in the case of any other councillor or member, to the Collector, for his decision:] [Substituted by Maharashtra Act No. 1 of 2018, dated 15.1.2018.] (2) [The decision of the Commissioner or the Collector, as the case may be, shall forthwith be communicated to all concerned. (3) Any person aggrieved by the decision of the Commissioner or Collector may, prefer an appeal to the State Government within a period of thirty days from the date of such order.] [Added by Maharashtra Act No. 1 of 2018, dated 15.1.2018.]

8. Bar of jurisdiction of civil courts, etc.

- Notwithstanding anything contained in any relevant municipal law, or the Maharashtra Municipalities Act, 1965, or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, no civil court and no other authority or officer shall have any jurisdiction to deal with or decide any question as to disqualification of a councillor or a member on the ground of defection or as to any matter connected therewith, which the Commissioner or the Collector is empowered to deal with and decide under section 7; and no injunction shall be granted by any civil court or any authority or officer in respect of any action taken or to be taken by the Commissioner or Collector in pursuance of any power conferred on him by or under this Act.

9. Rules.

(1)The State Government may, by notification in the Official Gazette, 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 maintenance of registers or other records as to the political parties aghadi or fronts, If any, to which different Councillors, or as the case may be, members belong;(b)the report which the leader of a municipal party or a Zilla Parishad party, in relation to a Councillor and the leader of a Panchayat Samiti party in relation to a member shall furnish with regard to any condonation of the nature referred to in clause (b) of sub-section (1) of section 3 in respect of such councillor, or as the case may be, member, the time within which and the authority to whom such report shall be furnished;(c)the reports which a political party or aghadi or front shall furnish with regard to admission to such political party or aghadi or front of any councillors or members and the officer of the Municipal Corporation, Municipal Council, Zilla Parishad, or as the case may be, Panchayat Samiti to whom such reports shall be furnished;(d)the procedure for deciding any question referred to in section 7 including the procedure of any inquiry which will be made for the purpose of deciding such question; and(e)any other matters which is required to be or may be prescribed.(3)In making rules under this section, the State Government may provide that for any breach thereof, the offender shall on conviction be punished with fine which may extend to one thousand rupees and in the case of continuing breach with fine which may extend to fifty rupees for every day during which the breach continues after conviction for the first breach.(4)Every rule made by the State Government under this Act, shall be laid, as soon as may be after it is made, before each House of State Legislature, while it is in session, for a total period of thirty 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, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, then on publication of such decision in the Official Gazette, the rule shall 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.

10. Act to have overriding effect, but shall be in addition to existing local authority laws.

(1)The provisions of this Act and the rules shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.(2)Subject to the provisions of sub-section (1), the provisions of this Act shall be in addition to and shall not, save as expressly provided hereinbefore, be in derogation of the provisions of any law relating to Municipal Corporation Municipal Council or other local authority concerned.(3)Notwithstanding anything contained in the foregoing provisions of this section nothing in this Act shall apply when a Government servant is nominated as a Councillor of a Municipal Council for a municipal area specified in Part II or Part III of Schedule I to the Maharashtra Municipalities Act, 1965, or to any person who holds the office as a member of a Panchayat Samiti by virtue of his being a Government servant and appointed as Administrator of a co-operative society.

11. Amendment of certain enactments.

The enactments specified in the second column of the Schedule are hereby amended the manner and to the extent specified in the third column thereof.

Schedule

(See section 11)

Serial No.	Short title and Amendments	Number of enactment
1	2	3
1.	The, Bombay Municipal Corporation Act (Bombay III of 1888).	In section 16, after sub-section (1), the followingsub-section shall be inserted, namely:-"(1A) A person who at any time during the term of hisoffice is disqualified under the Maharashtra Local AuthorityMembers' Disqualification Act, 1986 for being a councillor shallcease to hold office as such councillor."
2.	The Bombay Provincial Municipal Corporations Act, 1949 (BombayLIX of 1949).	In section 10, after sub-section (1), the followingsub-section shall be inserted namely:—"(1A) A person shall be disqualified for being aCouncillor, if such person has, at any time during the term ofhis office, become disqualified under the Maharashtra LocalAuthority Members' Disqualification Act, 1986 for being acouncillor."
3.	The City of Nagpur Corporation Act, 1948 (C. P. and Berar II of 1950).	In Section 19-(1) after the words "been elected" the words "ornominated" shall be inserted;(2) after clause (a), the following clause shall be inserted,namely:—"(a-i) has been disqualifiedunder the Maharashtra Local Authority Members' DisqualificationAct, 1986, for being a councillor, or".
4.		

The Maharashtra Municipalities Act, 1965 (Maharashtra XL of 1965). In Section 16-(1) after sub-section (1), the following sub-section shall be inserted, namely:—"(1A) A person who at any time during the term of his office is disqualified under the Maharashtra Local Authority Members' Disqualification Act, 1986 for being a Councillor." (2) in sub-section (2), after the word, brackets and figure "sub-section (1)" the words, brackets, figure and letter "or in sub-section (1A)" shall be inserted.

5. The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Maharashtra V of 1962). In section 16, after sub-section (1), the following sub-section shall be inserted, namely:—"(1A) A person who at any time during the term of his office is disqualified under the Maharashtra Local Authority Members' Disqualification Act, 1986 for being a councillor shall cease to hold office as such Councillor."

Notifications G.N., R.D. D., No. ZPA. 1086/CR-875/04, dated 29th October, 1987 (M.G., Part IV-B, pages 1053) - In exercise of the powers conferred by sub-section (2) of section 1 of the Maharashtra Local Authority Members' Disqualification Act, 1986 (Maharashtra XX of 1987) (hereinafter referred to as "the said Act"), the Government of Maharashtra hereby appoints the 1st day of November, 1987, to be the date on which the said Act shall come into force. [Section 3A inserted by Maharashtra 50 of 2006, section 3 (w.e.f 19-10-2006).]