

The Disputed Elections (Prime Minister And Speaker) Act, 1977

UNION OF INDIA

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Act 16 of 1977

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1247.

Article 329-A of the Constitution makes special provisions in respect of the following elections:-(a) election in the case of Prime Minister or Speaker, that is to say, election to either House of Parliament of a person, who holds the office of Prime Minister at the time of such election or who is appointed as Prime Minister after such election; and (b) election in the case of Speaker, that is to say, election to the House of People of a person, who holds the office of Speaker of that House at the time of such election or who is chosen as Speaker of that House after such election.² According to this article, an election in the case of Prime Minister or Speaker can be questioned only before such Authority (not being any such authority as is referred to in clause (b) of article 329) or body and in such manner as may be provided for by or under any law made by the Parliament, as the House of the People was dissolved on the 13th January, 1977 and the Council of State was not in session, and general election for the purpose of constituting a new House of the People was to be held shortly, it became necessary to provide for the setting up of such Authority urgently. Hence, the Disputed Elections (Prime Minister and Speaker) Ordinance, 1977, was promulgated by the President on 3rd February, 1977.³ Government consider that the above Ordinance should be enacted subject to the modification that the Authority for trying a petition, questioning an election in the case of Prime Minister or Speaker, shall consist of a single member, who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India, and shall not be a Council consisting of nine members, as envisaged in the Ordinance. The Bill provides for such an Authority and contains the necessary consequential modifications.⁴ The procedure to be followed by the Authority, the ground on which the election may be called in question and other matters of detail relating to security for costs, reliefs that may be claimed by the petitioner, withdrawal and abatement of petitions, etc., are similar to those contained in the corresponding provisions of the Representation of the People Act, 1951 and do not make any significant departure from the provisions of the Ordinance in that behalf.

18th. [April., 1977]

An Act to provide for Authorities to deal with disputed elections to Parliament in the case of Prime Minister and Speaker of the House of the People and for matters connected therewith. BE it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:-

Chapter I

Preliminary

1. Short title and commencement.

(1) This Act may be called the Disputed Elections (Prime Minister and Speaker) Act, 1977. (2) It shall be deemed to have come into force on the 3rd day of February, 1977.

2.

Definition. In this Act, unless the context otherwise requires, - (a) "Authority" means an Authority constituted under section 4 for the trial of a petition; (b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election; (c) "costs" means all costs, charges and expenses of, or incidental to, trial of a petition under this Act; (d) "election" means an election in the case of Prime Minister or in the case of Speaker; (e) "election in the case of Prime Minister" means an election to either House of Parliament of a person who holds the office of Prime Minister at the time of such election or is appointed as Prime Minister after such election; (f) "election in the case of Speaker" means an election to the House of the People of a person who holds the office of Speaker at the time of such election or is chosen as the Speaker for that House after such election; (g) "Petition" means a petition calling in question an election; (h) "prescribed" means prescribed by rules made under this Act; (i) "returned candidate" means a candidate whose name has been published under section 67 of the Representation of the People Act, 1951, (43 of 1951) as duly elected at an election in the case of 43 of 1951. Prime Minister or, as the case may be, an election in the case of Speaker; (j) each of the expressions defined in the Representation of the People Act, 1951, 43 of 1951. but not defined in this Act shall have the same meaning as in that Act.

Chapter II

Authorities For Disputed Elections

3. Petitions on respect of disputed elections.

No election shall be called in question except by a petition presented in accordance with the provisions of this Act.

4. Authority to try a petition.

(1) Every petition shall be tried by an Authority, constituted for the purpose by the Central Government by notification in the official Gazette. (2) The Authority shall consist of a single member, who is a Judge of the Supreme Court, to be nominated in this behalf by the Chief Justice of India. (3) If for any reason a vacancy occurs in the office of member aforesaid, the Chief Justice shall, as soon as practicable, nominate a person to fill the vacancy, and thereupon the trial of the petition shall be continued as if that member had been the Authority from the commencement of the trial of such petition: Provided that the Authority may, if it thinks fit, recall and reexamine any of the witnesses already examined.

Chapter III

Presentation Of Petitions In Respect Of Disputed Elections

5. Presentation of petition.

(1) A petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 of the Representation of the People Act, 1951, (43 of 1951) to the Election Commission by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more returned candidates than one at the election and the dates of their election are different, the last of those dates: Provided that a petition calling in question the election of a person who does not hold the office of Prime Minister or, as the case may be, Speaker of the House of the People at the time of such election and who is appointed or chosen to that office after such election but before the expiry of the time for presenting such election petition, may be presented within forty-five days from the date on which such person was appointed as the Prime Minister or chosen as the Speaker of the House of the People. Explanation.-In this sub-section, "elector" means a person who was entitled to vote at the election to which the petition relates, whether he has voted at such election or not. (2) A petition shall be deemed to have been presented to the Election Commission when it is delivered to the Election Commission or to such other officer as may be appointed by it in this behalf- , or (a) by the person making the petition, or (b) by a person authorised in writing in this behalf by the person making the petition. (3) Every petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one more copy for the use of the Election Commission, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. (4) At the time of presenting a petition, the petitioner shall deposit with the Election Commission in such manner as may be prescribed a sum of two thousand rupees as security for costs. (5) The Authority trying a petition may at any time during the course of the trial of the petition call upon petitioner to give such further security for costs as it may direct. (6) No person shall be entitled to be joined as a respondent to a petition under sub-section (3) of section 10 unless he has given such security for costs as the Authority may direct. 6 Parties to the petition. 6. Parties to the petition. A petitioner shall join as respondents to his petition- (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting

candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and (b) any other candidate against whom allegations of any corrupt practice are made in the petition.

7.

(1) Contents of petition. A petition—(a) shall contain a concise statement of the material facts on which the petitioner relies; (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and (c) 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: Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

8. Relief that may be claimed by the petitioner.

A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

9. Procedure on receiving petitions.

(1) The Election Commission shall, as soon as may be after the receipt of a petition under section 5, forward it to the Authority for trying the petition. (2) Where more petitions than one have been received under section 5 in respect of the same election, the Election Commission shall forward them to the Authority and such Authority may, in its discretion, try them separately or in one or more groups.

Chapter IV

Trial Of Petitions

10. Trial of petitions.

(1) Subject to any rules made in this behalf, the Authority for the trial of any petition shall hold the trial at New Delhi. (2) The Authority shall dismiss the petition—(a) if the petition has not been presented within the period specified in sub-section (1) of section 5; (b) if the petition does not comply with the provisions of sub-section (3) or sub-section (4) of section 5 or section 6. Explanation.—An order dismissing a petition under this sub-section shall be deemed to be an order made under clause (a) of section 16. (3) Any candidate not already a respondent to a petition shall,

upon application made by him to the Authority within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the Authority, be entitled to be joined as a respondent. Explanation.-For the purposes of this sub-section and of section 15 the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Authority and answer the claim or claims made in the petition. (4) The Authority may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. (5) The trial of a petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the Authority finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded. (6) Every petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of commencement of the trial.

11. Procedure before the Authority.

(1) Subject to the provisions of this Act and of any rules made thereunder, every petition shall be tried by the Authority, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits: Provided that the Authority shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses, if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings. (2) For the purposes of any such trial, the Authority shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, (5 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; (c) receiving evidence on affidavits; (d) requisitioning any public record or copy thereof from any court or office ; (e) issuing commissions for the examination of witnesses or documents ; (f) such other matters as may be prescribed. (3) The provisions of the Indian Evidence Act, 1872, (1 of 1872) shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of a petition. (4) Any proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code. (45 of 1860)

12. Secrecy of voting not to be infringed.

No witness or other person shall be required to state for whom he has voted at an election.

13. Answering of criminating questions and certificate of indemnity.

(1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of a petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or

forfeiture: Provided that-(a) a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Authority; and (b) an answer given by a witness to a question put by or before the Authority shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding. (2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IXA of the Indian Penal Code (45 of 1860) Part VII of the Representation of the People Act, 1951, (43 of 1951) arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by this Act or any other law.

14. Expenses of witnesses.

The reasonable expenses incurred by any person in attending to give evidence before the Authority may be allowed by it to such person, and shall, unless the Authority otherwise directs, be deemed to be part of the costs.

15. Recrimination when seat claimed.

(1) When in a 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 : Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the Authority of his intention to do so and has also given the security and the further security referred to in sub-sections (4), (5) and (6) respectively of section 5. (2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by section

16. Decision of the Authority.

At the conclusion of the trial of a petition the Authority shall make an order-(a) dismissing the petition ; or (b) declaring the election of all or any of the returned candidates to be void ; or (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

17. Other orders to be made by the Authority.

(1) At the time of making an order under section 16, the Authority shall also make an order-(a) Where any charge is made in the petition of any corrupt practice having been committed at the election, recording-(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice ; and (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of

that practice; and (b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid: Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless—(a) he has been given notice to appear before the Authority and to show cause why he should not be so named; and (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Authority and has given evidence against him, of calling evidence in his defence and of being heard. (2) In this section and in section 18, the expression "agent" has the same meaning as in section 123 of the Representation of the People Act, 1951. (43 of 1951)

18. Grounds for declaring election to be void.

(1) Subject to the provisions of sub-section (2), if the Authority is of opinion—(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or the Representation of the People Act, 1951, (43 of 1951) or this Act or the Government of Union Territories Act, 1963; 20 of 1963 or (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or (c) that any nomination has been improperly rejected; or (d) that the result of the election, in so far as it concerns the returned candidate, has been materially affected—(i) by the improper acceptance of any nomination, or (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the Authority shall declare the election of the returned candidate to be void. (2) If in the opinion of the Authority a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Authority is satisfied—(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent; (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and (c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the Authority may decide that the election of the returned candidate is not void.

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

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Authority is of opinion—(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the Authority shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

20. Communication of orders of the Authority.

The Authority shall, as soon as may be after the conclusion of the trial of a petition, intimate the substance of the decision to the Election Commission and the Speaker or the Chairman, as the case may be, of the House of Parliament and, as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision.

21. Costs.

Costs shall be in the discretion of the Authority: Provided that where a petition is dismissed under clause (a) of section 16, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the Authority shall make an order for costs in favour of the returned candidate.

23. Effect of orders of Authority.

(1) An order made by an Authority under this Act shall take effect as soon as it is pronounced by the Authority. (2) Where by an order under section 16 the election of a returned candidate is declared to be void, acts and proceedings in which that returned candidate has, before the date thereof, participated as a member of Parliament or, as the Prime Minister or as the Speaker of the House of the People shall not be invalidated by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.

Chapter V

Miscellaneous

24. Withdrawal and abatement of petitions.

The provisions of sections 109 to 116 (both inclusive) of the Representation of the People Act, 1951, (43 of 1951) relating to withdrawal and abatement of election petitions shall, so far as may be, apply in relation to withdrawal and abatement of petitions under this Act subject to the modifications that the references therein to an election petition, High Court and petitioner shall be construed as references to a petition under this Act, the Authority for hearing such petition and the petitioner in respect of such petition respectively.

25. Payment of costs out of security deposits and return of such deposits.

(1) If in any order as to costs under the provisions of this Act there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Act on an application made in writing in that behalf within a period of one year, from the date of such order to the Election Commission by the person in whose favour the costs have

been awarded.(2)If there is any balance left of any of the said security deposits after payment under sub-section (1) of the costs referred to in that sub-section, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of one year, the whole of the said security deposits may, on an application made in that behalf in writing to the Election Commission by the person by whom the deposits have been made, or if such person dies after making such deposits, by the legal representative of such person, be returned to the said person or to his legal representative, as the case may be.

26. Execution of orders as to costs.

Any order as to costs under the provisions of this Act may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business or where such place is within a presidency-town before the court of small causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:Provided that where any such costs or any portion thereof may be recovered by an application made under sub-section (1) of section 25, no application shall lie under this section within a period of one year from the date of such order unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposits referred to in that sub-section.

27. Power to make rule.

(1)The Central Government may 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 deposit or further deposit to be made by the petitioner as security for the costs;(b)the appointment of officers and other employees for assisting the Authorities in the discharge of their functions and the conditions of service of such officers and other employees;(c)the custody of deposits made under this Act, the payment of costs out of such deposits on an application made under section 25 and other matters relating to the disposal of such application;(d)the fees, if any, payable in respect of any petition or application under this Act;(e)any other matter which has to be prescribed by or provided for by rules made under this Act.(3)Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament 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, 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.

28. Repeal and saving.

(1)The Disputed Elections (Prime Minister and Speaker) Ordinance, 1977, (4 of 1977) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.