

The M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995

MADHYA PRADESH

India

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Rule

THE-M-P-PANCHAYATS-ELECTION-PETITIONS-CORRUPT-PRACTICE of 1995

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The M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 Published vide Notification No. B-1-21 (1) 95-22-P-2, dated 2-6-1995, M.P. Rajpatra (Asadharan), dated 3-6-1995 at pp. 516 (6) to (12) In exercise of the powers conferred by the sub-section (1) of Section 95 read with sub-sections (1) and (3) of Section 122 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No. 1 of 1994), the State Government hereby makes the following rules, the same having been previously published as required by sub-section (3) of Section 95 of the said Act, namely

1. Short title.

- These rules may be called the Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995.

2. Definitions.

- In these rules, unless the context otherwise requires, -(a) "Act" means the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No. 1 of 1994); (b) "Pleader" means any person entitled to appear and plead for another in a Civil Court and includes an Advocate, a Vakil and an Attorney of a High Court; (c) "Returned Candidate" means a candidate whose name has been published under Section 19, 26 or 33 of the Act as duly elected; (d) "Specified Officer" means the Officer specified in

sub-section (1) of Section 122 of the Act in relation to Gram Panchayat, Janpad Panchayat and Zila Panchayat, as the case may be.

3. Presentation of election petition.

(1) An election petition shall be presented to the specified officer during the office hours by the person making the petition, or by a person authorised in writing in this behalf by the person making the petition. (2) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

4. Parties to the petition.

- 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 he shall join as respondents to his petition all the contesting candidates at the election.

5. Contents of the petition.

- An election petition shall-(a) contain a concise statement of all material facts on which the petitioner relies; (b) set forth with sufficient particulars, the grounds on which the election is called in question; (c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verifications of pleadings.

6. Relief that may be claimed by the petitioner.

- A petitioner may claim-(a) a declaration that the election of all or any of the returned candidates is void; and (b) in addition thereto, a further declaration that he himself or any other candidate has been duly elected.

7. Deposit of security.

- At the time of presentation of an election petition, the petitioner shall deposit with the specified officer a sum of Rs. five hundred as security. Where the election of more than one candidate is called in question, a separate deposit of an equivalent amount shall be required in respect of each such returned candidates.

8. Procedure on receiving petition.

- If the provisions of Rule 3 or Rule 4 or Rule 7 have not been complied with, the petition, shall be dismissed by the specified officers : Provided that the petition shall not be dismissed under this rule without giving the petitioner an opportunity of being heard.

9. Copy of the election petition to be served on each respondent.

- The specified officer shall, as soon as may be, cause a copy of petition to be served on each respondent.

10. Election petitions to be enquired into through one or more proceedings.

- When, in respect of any election of a candidate, more petitions than one are presented, the specified officer may, at his discretion, enquire into the petitions either in one or more proceedings as he deems fit.

11. Procedure before the specified officer and his powers.

(1) Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits : Provided that it shall have only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him. (2) The specified officer, shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908. when trying a suit in respect of the following matters :-(a) discovery and inspection; (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses; (c) compelling the production of document; (d) examination of witnesses on oath; (e) reception of evidence taken on affidavit; and (f) issuing commission for examination of witnesses and summoning and examining suo motu any person whose evidence, appears to him to be material.

12. Parties to produce their witnesses.

- It shall be the duty of the parties to produce their witnesses on the date fixed for evidence, and they shall not be entitled to an adjournment for non-attendance of their witnesses: Provided that the specified officer may, at his discretion, order the issue of summons to any witness on the necessary process fee and costs being deposited by the party concerned.

13. Withdrawal of election petition.

(1) No election petition shall be withdrawn without the leave of the specified officer. (2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners. (3) When an application for withdrawal is made, a notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition. (4) No application for withdrawal shall be entertained after the evidence of the petitioner is over. (5) If the application is granted, the petitioner shall be ordered to pay the costs of the respondents thereto as incurred or such portion thereof as the specified officer may deem fit.

14. Abatement of election petition.

- An election petition shall abate duly on the death of the petitioner or of the several petitioners or of the sole respondent.

15. Recrimination when seat claimed.

- Whereas, at an enquiry into an election, any candidate claims, the seat for himself, the elected 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 elected candidate and a petition had been presented calling in question his election.

16. Application of the Indian Evidence Act, 1872.

- Subject to the provisions of these rules, the provisions of the Indian Evidence Act, 1872 (1 of 1872) shall apply in all respects to an enquiry into an election petition.

17. Appearance before the specified officer.

- An appearance, application or act before the specified officer may be made or done by the party in person or by a pleader or an agent duly appointed to act on his behalf: Provided that it shall be open to the specified officer to direct any party to appear in person whenever it considers if necessary.

18. Documentary evidence.

- No document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

19. Secrecy of voting not to be infringed.

- No witness or other person shall be required to or allowed to state for whom he has voted.

20. 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 any enquiry 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 answered truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the specified officer; (b) an answer given by a witness to a question put by or before the specified officer 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 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 defense to or upon any criminal charge

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 the Act or the rules made thereunder.

21. Grounds for declaring election to be void.

(1) Subject to the provisions of sub-rule (2) if the specified officer is of opinion—(a) that on the date of his election the returned candidate who was not qualified or was disqualified to be chosen to fill the seat under the Act; 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 paper has been improperly rejected; or (d) that the result of the election in so far as it concerns returned candidate has been materially affected—(i) by the improper acceptance of any nomination; or (ii) by a corrupt practice having been committed in the interest of the returned candidate by a person acting with the consent of the candidate or his agent; or (iii) by the improper acceptance, 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 Act or of any rules or orders made thereunder; the specified officer shall declare the election of the returned candidate to be void. (2) If in the opinion of the prescribed authority a returned candidate has been guilty by an agent of any corrupt practice, but the prescribed authority is satisfied—(a) that no such corrupt practice was committed at the election by the candidate and every such corrupt practice was committed contrary to the instructions and without the consent of the candidate; (b) that the candidate took all reasonable means for preventing the commission of corrupt practice 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 agent; then the prescribed authority may decide that the election of the returned candidate is not void.

22. Corrupt practices.

- The following shall be deemed to be corrupt practices for the purposes of these rules ;—(i) Bribery' as defined and explained in clause (1) of Section 123 of the Representation of the People Act, 1951 (No. 43 of 1951). (ii) Undue influence as defined in clause (2) of Section 123 of the Representation of the People Act, 1951. (iii) The systematic appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent, to vote or refrain from voting on grounds of caste, race, community or religion or the use of or appeal to, religious symbols or, the use of or appeal to national symbol such as the national emblem, for national flag, for the furtherance of the prospects of that candidate's election. (iv) The publication by a candidate or his agent or by any other person with the consent whether direct, indirect or implied of the candidate or his election agent of any statement of fact in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal from contest of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election. (v) The hiring or procuring whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or any other person with the consent of the candidate or his election agent for the conveyance of any elector other than the candidate himself, and the members of his family or his agent, to or from any polling station provided in accordance with the rules made under the Act: Provided that the hiring of a

vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to or from any such polling station, shall not be deemed to be a corrupt practice under this clause and if the vehicle or vessel so hired is a vehicle or vessel not propelled by a mechanical power :Provided further that the use of any public transport vehicle by an elector at his own cost for the purpose of going to or coming from, any such polling station shall not be deemed to be a corrupt practice under this clause.Explanation. - In this clause the expression 'vehicle' means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.(vi)The holding of any meeting in which intoxicating liquors are served.(vii)The issuing of any circular, placard or poster having a reference to the election which does not bear the name and address of the printer and publisher thereof.(viii)Personation at election as defined in Section 171-D of the Indian Penal Code, 1860.(ix)The employment or connivance at the employment of any Panchayat officer or servant or an employee as mentioned in sub- clause (d) of clause (1) of Section 36 of the Act as an agent for canvassing.(x)Acting of any Panchayat officer or servant of an employee as mentioned in sub-clause (d) of clause (1) of Section 36 of the Act as an agent in connection with the election of the candidate.

23. Decision.

(1)At the conclusion of the enquiry the specified officer shall make an order-(a)dismissing the election 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 candidate to be void and the petitioner or any other candidate to have been duly elected.(2)If any person who has filed an election petition has in addition to calling in question the election of the returned candidate, claimed declaration that he himself or any other candidate has been duly elected and the specified officer is of opinion-(a)that in fact the petitioner or such other candidate received a majority of valid votes; or(b)that but for the votes obtained by the returned candidate the petitioner or such other candidate would have obtained a majority of valid votes;the specified officer 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.(3)At the time of making order under this rule, the specified officer 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 name of all persons, if any, who have been proved 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 whom the costs shall be paid :Provided that a person who is not 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 him and 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 specified officer and had given evidence against, of calling evidence in his defence and of being heard.

24. Procedure in case of equality of votes.

- If during the enquiry it appears to the specified officer that there is an equality of votes between and candidate at the election and that an addition of a vote would entitle any of these candidates to be declared elected then, specified officer shall decide between them by lot and proceed as if the one in whose favour the lot falls, had received an additional vote.

25. Finality of decision.

- The decision of the specified officer shall be final.

26. Costs.

(1) The expenses as per the following table incurred by any person in attending to give evidence shall unless the specified officer otherwise directs, be deemed to be part of the cost-(i) Actual fares of travel by any mode of conveyance including bus, train or taxi or combination thereof from his place of residence or work to the Court of the specified officer. (ii) Rs. 40/- per day or part thereof to cover the expenses incurred towards daily allowance. (2) Costs shall be at the discretion of the specified officer who shall have full powers to determine as to by and to whom and to what extent such costs are to be paid. (3) The pleader's fees payable by a party shall be determined by the specified officer which shall not exceed more than Rs. Five Hundred.

27. Payment of costs out of security and its refund.

(1) The costs as determined by the specified officer shall, if they have not already been paid, be paid in full, or so far as possible, out of the security deposit under Rule 7, on an application made in writing in that behalf within a period of three months from the date of such order to the specified officer by the person in whose favour the costs have been awarded. (2) If there is any balance left out of the said security deposit after payment of the costs, such balance, or where no costs have been awarded or no application as aforesaid has been made within said period of three months, the whole of said deposit may, on an application made in that behalf in writing to the specified officer by the person by whom deposit has been made or if such person dies after making such deposit, by the legal representative of such person, be returned to the said person or to his legal representative as the case may be.

28. Execution of orders as to costs.

- An order as to costs under the provisions of these rules may be produced before the Principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person direct by such order to pay any sum of money has a place of residence or business, 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 suit.

29. Disability arising out of corrupt practices.

- If any person, upon the trial of an election petition, is found guilty of any corrupt practice, he shall, for a period of six years from the date on which such finding takes effect, be declared by the specified officer to be disqualified for the membership of any Panchayat: Provided that the State Government may, for reasons to be recorded in writing, remove the disqualification incurred under this rule, with effect from such date as may be specified therein or reduce the period of such disqualification.

30. Repeal.

- All previous rules on the subject shall stand repealed from the date of final publication of these rules in the "Madhya Pradesh Gazette".