

The West Bengal State Election Commission Act, 1994.

WEST BENGAL

India

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Act 8 of 1994

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The West Bengal State Election Commission Act, 1994. West Bengal Act 8 of 1994 [22nd March, 1994.] Assent of the Governor was first published in the Calcutta Gazette, Extraordinary, dated the 22nd March, 1994. An Act to provide for matters relating to the constitution of a State Election Commission for the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats and the Municipalities; Whereas it is expedient to provide for matters relating to the constitution of a State Election Commission for the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats and the Municipalities: It is hereby enacted as follows :-

1. Short title and commencement.

(1) This Act may be called the West Bengal State Election Commission Act, 1994. (2) It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires, - (a) "Commission" means the West Bengal State Election Commission referred to in sub-section (1) of section 3; (b) "constituency" means an area declared as such under any law for the time being in force for the purpose of [election of members] [Words substituted for the words 'election of a member' by W.B. Act 47 of 1994.], not exceeding two, from that area to a Panchayat or Municipality; (c) "constitution" means the Constitution of India; (d) "District Municipal Election Officer" means the officer appointed as such under sub-section (1) of section 6; (e) "District Panchayat Election Officer" means the officer appointed as such under sub-section (1) of section 6; (f) "Governor" means the Governor, appointed as such under Article 155, read with Article 153, of the Constitution, for the State of West Bengal; (g) "Municipality" has the same meaning as in clause (e) of Article 243P of the Constitution; (h) "Municipal Electoral

Registration Officer" means the officer appointed as such under sub-section (1) of section 6;(i)"Municipal Returning Officer" means the officer appointed as such under sub-section (1) of section 6;(j)"notification" means a notification published in the Official Gazette;(k)"Panchayat" has the same meaning as in clause (e) of Article 213 of the Constitution;(l)"Panchayat Electoral Registration Officer" means the officer appointed as such under sub-section (1) of section 6;(m)"Panchayat Returning Officer" means the officer appointed as such under sub-section (1) of section 6;(n)"prescribed" means prescribed by rules made under this Act;(o)"State Election Commissioner" means the State Election Commissioner referred to in sub-section (1) of section 3;(p)[words and expressions used in this Act and not otherwise defined shall have the meanings respectively assigned to them in- [[Clause (p) substituted by W.B. Act 7 of 2004, which was earlier as under :-(p) words and expressions used in this Act and not otherwise defined shall have the meanings respectively assigned to them in -(i)the West Bengal Municipal Elections Act, 1994.* * * * * (iii)West Bengal Panchayat Act, 1973.* * * * * .']](i)the West Bengal Panchayat Act, 1973;(ii)the West Bengal Municipal Elections Act, 1994;(iii)the West Bengal Panchayat Elections Act, 2003.]

3. State Election Commission.

(1)With effect from such date as the State Government may by notification, appoint, there shall be a Commission, to be called the West Bengal State Election Commission, consisting of a State Election Commissioner appointed by the Governor under clause (1) of Article 243K of the Constitution.(2)If -(a)the State Election Commissioner is, by reason of leave, illness or other cause, temporarily unable to exercise the powers and perform the duties of his office, or(b)a vacancy occurs in the office of the State Election Commissioner by reason of death, resignation or expiry of the term of his office, removal or otherwise,then, the Governor shall, by notification, designate an officer of the State Government who shall act as the State Election Commissioner during the period of such temporary inability or pending the appointment of a State Election Commissioner, as the case may be.(3)The functions of the Commission may, subject to such general or special directions, if any, as may be given by the Commission in this behalf, be performed also by such officers of the Commission as the State Election Commissioner may, by order, specify.

3A. [Appointment and other conditions of service etc. of State Election Commissioner. [Section 3A inserted by W.B. Act 31 of 2010.]

(1)The State Election Commissioner shall be appointed from amongst, their persons, who had been or are in an All India Service or in any Civil Service of the State or in a civil post under the State Government for not less than twenty-five years, having Knowledge and experience in conducting elections.(2)There shall be paid to the State Election Commissioner such salary which is equal to the salary of a Judge of the High Court :Provided that if a person who, immediately before the date of assuming office as the State Election Commissioner was in receipt of, or, being eligible so to do, had elected to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Government of the Union or under the Government of a State, his salary in respect of service as the State Election Commissioner shall be reduced -(a)by the amount of that pension, and(b)if he had, before assuming of office, received, in lieu of a portion of the pension due to him in

respect of such previous service, the commuted value thereof, by the amount of that portion of the pension.(3)The State Election Commissioner shall hold office for a term of six years from the date on which he assumes his office :Provided that where the State Election Commissioner attains the age of sixty-five years before the expiry of the term of six years, he shall vacate his office on the date on which he attains the said age :Explanation. - For the purpose of this section, the term of six years in respect of State Election Commissioner holding office immediately before the commencement of this Act, shall be computed from the date on which he had assumed office :Provided further that where no appointment is made on the expiry of term of the State Election Commissioner in position, the incumbent would continue in office for a period of not more than two months thereafter or till the new incumbent is appointed, whichever is earlier.(4)(a)A person who, immediately before the date of assuming office as the State Election Commissioner, was in service of Government may be granted during his tenure of office but not thereafter leave in accordance with the rules for the time being applicable to the Service to which he belonged before such date and he shall be entitled to carry forward the account of leave standing at this credit on such date, notwithstanding anything contained in sub-section (5).(b)The power to grant or refuse leave to the State Election Commissioner and to revoke or curtail leave granted to him, shall vest in the Governor.(5)(a)A person, who immediately before the date of assuming office as the State Election Commissioner was in service of Government, shall be deemed to have retired from service on the date on which he enters upon office as the State Election Commissioner but his subsequent service as the State Election Commissioner shall be reckoned as continuing approved service counting for pension in service to which he belonged.(b)Where the State Election Commissioner demits office (whether in any manner specified in clause (c) or by resignation), he shall, on such demission be entitled to -(i)a pension which is equal to the pension, liable to a Judge of the High Court in accordance with the provisions of part III of the First Schedule to the High Court Judges (Salaries and Conditions of Service) Act, 1954, for the period of his service rendered as the said Election Commissioner after deduction of such period, if any, reckoned in terms of clause (a), as continuing approved service counting for pension in service to which he earlier belonged; and(ii)such pension (including commutation of pension) as referred to in sub-clause (i), family pension and gratuity as are admissible to a Judge of the High Court under the said Act and the rules made thereunder.(c)Except where the State Election Commissioner demits office by resignation, he shall be deemed, for the purposes of this Act, to have demitted his office if, and only if, -(i)he has completed the term of office specified in sub-section (3), or(ii)he has attained the age of sixty-five years, or(iii)his demission of office is medically certified to be necessitated by ill health.(6)Every person holding office as the State Election Commissioner shall be entitled to subscribe to the General Provident Fund.(7)Save as otherwise provided in this Act, the conditions of service relating to travelling allowance, provision of rent-free residence and conveyance facilities, sumptuary allowance, medical facilities and such other conditions of service as are for the time being applicable to a Judge of High Court under Chapter IV of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the rules made thereunder, shall, as far as may be deemed appropriate, apply to the State Election Commissioner.]

4. Elections to the Panchayats.

(1)The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall vest in the Commission:Provided that the electoral

roll for the time being in force for the election of Members to the West Bengal Legislative Assembly may, at the discretion of the State Election Commissioner, be adopted as the electoral roll for election of members, by whatever name called, to a Panchayat to such extent and in such manner as the State Election Commissioner thinks fit.(2)Subject to the provisions of sub-section (1), all matters relating to, or in connection with, elections to the Panchayats shall be regulated in accordance with the provisions of the West Bengal Panchayat Act, 1973, [and the West Bengal Panchayat Elections Act, 2003] [Words and figures inserted by W.B. Act 7 of 2004.] and the rules made thereunder in so far as they are not inconsistent with the provisions of this Act or the rules made thereunder.

5. Elections to the Municipalities.

(1)The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall vest in the Commission:Provided that the electoral roll for the time being in force for the election of Members to the West Bengal Legislative Assembly may, at the discretion of the State Election Commissioner, be adopted as the electoral roll for election of members, by whatever name called, to a Municipality to such extent and in such manner as the State Election Commissioner thinks fit.(2)[Subject to the provisions of sub-section (1), all matters relating to, or in connection with, elections to the Municipalities shall be regulated in accordance with the provisions of the West Bengal Municipal Elections Act. 1994, and the rules made thereunder, in so far as they are not inconsistent with the provisions of this Act or the rules made thereunder.] [[Sub-section (2) substituted by W.B. Act 47 of 1994, which was earlier as under:-'(2) Subject to the provisions of sub-section (1), all matters relating to, or in connection with, elections to the Municipalities shall be regulated in accordance with the provisions of -(a)the Bengal Municipal Act, 1932,(b)the Chandernagore Municipal Act, 1955,(c)the Howrah Municipal Corporation Act, 1980,(d)the Calcutta Municipal Corporation Act, 1980,(e)the Siliguri Municipal Corporation Act, 1990,(f)the Asansol Municipal Corporation Act, 1990,(g)the Chandernagore Municipal Corporation Act, 1990,as the case may be, and the rules made thereunder in so far as they are not inconsistent with the provisions of the Act or the rules made thereunder.]]

6. Appointment of officers for preparation of electoral rolls for, and conduct of, elections to Panchayats and Municipalities.

(1)For the purpose of preparation of electoral rolls for, and conduct of, elections to the Panchayats and the Municipalities, the State Election Commissioner shall, in consultation with State Government, appoint such officers of the State Government to be the-(a)District Municipal Election Officer for every district,(b)District Panchayat Election Officer for every district,(c)Municipal Electoral Registration Officer for one or more Municipalities,(d)Panchayat Electoral Registration Officer for one or more Blocks,(e)[Municipal Returning Officer for one or more constituencies of one or more Municipalities,] [[Clause (e) substituted by W. B. Act 47 of 1994, which was earlier as under:-'(e) Municipal Returning Officer for one or more Municipalities, and.'.]](f)Panchayat Returning Officer for one or more Panchayat,as he thinks fit, who shall exercise such powers and perform such functions [as provided in West Bengal Municipal Elections Act, 1994, and the rules made thereunder] [Words and figure substituted for the words 'as may be prescribed:' by W.B. Act 47 of 1994.], [or the West Bengal Panchayat Elections Act, 2003,] [Words and figures substituted for

the words and figures 'or the West Bengal Panchayat Act, 1973,' by W.B. Act 7 of 2004.] and the rules made thereunder, as the case may be: Provided that if the territorial jurisdiction of a Municipality is spread over the administrative jurisdiction of two or more districts, the State Election Commissioner may appoint one District Municipal Election Officer for the purpose of preparation of electoral rolls for, and conduct of, elections to that Municipality. (2) Subject to the direction and control of the State Election Commissioner, the District Municipal Election Officer shall appoint such number of officers of the State Government to be the -(a) Assistant Municipal Electoral Registration Officer, and (b) Assistant Municipal Returning Officer, as may be necessary, and such Assistant Municipal Electoral Registration Officer and Assistant Municipal Returning Officer shall exercise such powers and perform such functions [as provided in the West Bengal Municipal Elections Act, 1994, and the rules made thereunder.] [Words and figures substituted for the words 'as may be prescribed.' by W.B. Act 47 of 1994.] (3) Subject to the direction and control of the State Election Commissioner, the District Panchayat Election Officer shall appoint such number of officers of the State Government to be the -(a) Assistant Panchayat Electoral Registration Officer, and (b) Assistant Panchayat Returning Officer, as may, be necessary, and such Assistant Panchayat Electoral Registration Officer and Assistant Panchayat Returning Officer shall exercise such powers and perform such functions [[as provided in the West Bengal Panchayat Elections Act, 2003,)] [Words and figures substituted for the words 'as may be prescribed.' by W.B. Act 47 of 1994.] and rules made thereunder.] (4) [Subject to the provisions of the West Bengal Municipal Elections Act, 1994, and the rules made thereunder,] [Words and figures substituted for the words 'Subject to such rules as may be made by the State Government in this behalf,' by W.B. Act 47 of 1994.] the Municipal Returning Officer shall appoint such number of persons to be the -(a) Presiding Officer, and (b) Polling Officer, as may be necessary for holding elections or bye-elections to a Municipality: Provided that no person, who has been employed by or on behalf of, or has otherwise been working for, a candidate in or about the election or bye-election to a Municipality, shall be appointed to be the Presiding Officer or Polling Officer for holding such election or bye-election, as the case may be. (5) [[(Subject to the provisions of the West Bengal Panchayat Elections Act, 2003,)] [Words and figures substituted for the words 'Subject to such rules as may be made by the State Government in this behalf,' by W.B. Act 47 of 1994.] and the rules made thereunder,] the Panchayat Returning Officer shall appoint such number of persons to be the -(a) Presiding Officer, and (b) Polling Officer, as may be necessary for holding elections or bye-elections to a Panchayat: Provided that no person, who has been employed by or on behalf of, or has otherwise been working for, a candidate in or about the election or bye-election to a Panchayat, shall be appointed to be the Presiding Officer or Polling Officer for holding such election or bye-election, as the case may be.

7. Staff of Commission.

(1) The Commission shall have such staff, made available to it by the Governor when so requested by it, as may be necessary for the discharge of the functions conferred on it by sub-section (1) of section 4 and sub-section (1) of section 5. (2) The terms and conditions of service of the members of the staff made available to the Commission by the Governor shall be regulated in accordance with the rules regulating the terms and conditions of service of the employees of the State Government for the time being in force.

8. Fixing date and time for poll.

- The State Government shall, in consultation with the Commission, notification, fix the date or dates on which, and the hours during which, the poll will be taken: Provided that the poll on any day shall continue for a period of not less than eight hours without interruption.

9. Bar on jurisdiction of Civil Court.

- Notwithstanding anything contained in this Act or in any other law for the time being in force,
-(1)no Civil Court shall have jurisdiction -(a)to entertain or adjudicate upon any question whether any person is or is not entitled to have his name entered in the electoral roll for a constituency, or(b)to question the legality of any action taken by or under the authority of the State Election Commissioner relating to preparation and revision of an electoral roll;(2)the validity of any law relating to delimitation of constituencies or allotment of seats to such constituencies made or purporting to be made shall not be called in question in any Court;(3)no election to any Panchayat or Municipality shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the State Legislature.

10. Grant by State Government.

(1)The State Government shall, under appropriation made by the State Legislature by law in this behalf, pay to the Commission by way of grant such sums of money and in such manner as the State Government may think fit for being utilised for the purposes of this Act.(2)The Commission may spend such sums of money as it thinks fit for performing the functions under this Act, and such sums of money shall be treated as expenditure payable out of the grant referred to in sub-section (1).