

The Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986

GUJARAT

India

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Act 23 of 1986

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The Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 Gujarat Act No. 23 of 1986 (First published, after having received the assent of the Governor in the "Gujarat Government Gazette" on the 11th September, 1986). An Act to provide for disqualification of members of certain local authorities on the ground of defection and for matters connected therewith It is hereby enacted in the Thirty-seventh Year of the Republic of India, as follows:-

1. Short title, extent and commencement.

(1) This Act may be called the Gujarat Provision for Disqualification of Members of Local Authorities for Defection 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) "Councillor" means a councillor of a Municipal Corporation or, as the case may be, a municipality; (b) "Member" means a member of a panchayat; (c) "Municipal Corporation" means a municipal corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949 (Bombay LIX of 1949); (d) "municipal party" in relation to a councillor belonging to any political party 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 the councillors of the municipal corporation for the time being belonging to that political party in accordance with the said Explanation; (ii) in the case of a councillor of a municipality the group consisting of all the councillors of the municipality for the time being belonging to that political party in accordance with the said Explanation; (e) "Municipality" means a municipality constituted or

deemed to be constituted under the Gujarat Municipalities Act, 1963 (Gujarat 34 of 1964);(f)"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;(g)"panchayat" means a district panchayat or, as the case may be, a taluka panchayat constituted under the Gujarat Panchayats Act, 1961 (Gujarat VI of 1962);(h)"panchayat party" in relation to a member belonging to any political party in accordance with the Explanation to Section 3 means the group consisting of all the members of the panchayat for the time being belonging to that political party in accordance with the said Explanation.

3. Disqualification on ground of defection.

(1)Subject to the provisions of Sections 4 and 5, a councillor or a member belonging to any political party shall be disqualified for being a councillor or a member,-(a)if he has voluntarily given up his membership of such political party; or(b)if he votes or abstains from voting in any meeting of a municipal corporation, panchayat or as the case may be, municipality contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf without obtaining in either case the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person orExplanation. - (1) For the purpose 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, if any, by which he was set up as a candidate for election as such councillor or member;(b)an appointed councillor or member shall,-(i)where he is a member of any political party on the date of his appointment as such councillor or, as the case may be, member be deemed to belong to such political party;(ii)in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes a member of such party before the expiry of six months from the date on which he is appointed as such councillor, or as the case may be, a member.(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 shall be disqualified for being a councillor or, as the case may be, a member if he joins any political party after such election.(3)An appointed councillor or, as the case may be, member shall be disqualified for being a councillor or, as the case may be, a member if he joins any political party after the expiry of six months from the date on which he is appointed as such councillor, or as the case may be, a member.(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 appointed as such councillor or member) shall,-(a)where he was a member of a political party immediately before such commencement, be deemed, for the purposes of sub-section (1) to have been elected as councillor or, as the case may be, a member as a candidate set up by such political party;(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 for the purpose of sub-section (2) or, as the case may be, deemed to be an appointed councillor or, as the case may be, a member for the purposes of sub-section (3).

4. Disqualification on ground of defection not to apply in case of Split.

(1)Where a councillor or, as the case may be, a member makes a claim that he and any other members of the municipal party or, as the case may be, the panchayat party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the councillors of such municipal party or, as the case may be, members of such panchayat party (a) he shall not be disqualified under sub-section (1) of Section 3 on the ground, - (i) that he has voluntarily given up membership of his original political party; or (ii) that he has voted or abstained from voting in the meeting of such municipal corporation, panchayat or, as the case may be, municipality contrary to any direction issued by such party or by any person or authority authorized by it in that behalf without obtaining the prior permission of such party, person, authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and (b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-section (1) of Section 3 and to be his original political party for the purposes of this section.

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 merges with another political party and he claims that he and any other members of his original political party, - (a) have become members of such other political party 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 merger such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-section (1) of Section 3 and to be his original political party for the purpose of this sub-section. (2) For the purposes of sub-section (1) the merger of the original political party 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 concerned or, as the case may be, panchayat party concerned, have agreed to such merger.

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

- If any question arises as to whether, - (1) a councillor of a municipal corporation; or (2) a member of a panchayat; or (3) a councillor of a municipality has become subject to disqualifications under this Act, the question shall be referred to the Chief Secretary to the State Government or to such officer not below the rank of a Secretary of any Department of the State Government as may be designated by the State Government in this behalf and his decision shall be final.

7. Bar of jurisdiction of civil courts.

- No Civil Court and no other authority or officer under the Bombay Provincial Municipal Corporation Act 1949 (Bombay LIX of 1949), or the Gujarat Panchayats Act, 1961 (Gujarat VI of

1962) or the Gujarat Municipalities Act, 1963 (Gujarat 34 of 1964), 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 Chief Secretary to the State Government or an Officer not below the rank of a Secretary of any Department of the State Government designated by the State Government in this behalf is empowered to deal with or decide under Section 6 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 Chief Secretary or the designated officer in pursuance of any power conferred on him by or under this Act.

8. 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 of any of the following matters, namely :-(a)the maintenance of registers or other records as to the political parties, if any, to which different councillors or, as the case may be, members belong;(b)the report which the leader of a municipal party in relation to a councillor and the leader of a panchayat 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 authority to whom such report shall be furnished;(c)the reports which a political party shall furnish with regard to admission to such political party of any councillors or members and the officer of the municipal corporation, panchayat or, as the case may be, municipality to whom such reports shall be furnished;(d)the procedure for deciding any question referred to in Section 6 including the procedure of any inquiry which will be made for the purpose of deciding such question; and(e)any other matter 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)All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid on the session immediately following:(5)Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon, take effect.

9. Amendment of section 10 of Bombay 59 of 1949.

- In the Bombay Provincial Municipal Corporations Act, 1949 (Bombay LIX of 1949), in Section 10, after sub-section (2), the following sub-section shall be added, namely:-"(3) A person who at any time during the term of his office is disqualified under the Gujarat Provisions for Disqualifications of Members of Local Authorities for Defection Act, 1986 (Gujarat of 1986) for being a councillor shall cease to hold office as such councillor."

10. Amendment of section 23 of Gujarat 6 of 1962.

- In the Gujarat Panchayats Act, 1961 (Gujarat 6 of 1962), in Section 23, after sub-section (1), the following sub-section shall be added, namely:-(2) A person who at any time during the term of his officer is disqualified under the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 (Gujarat of 1986) for being a member of a taluka panchayat or, as the case may be, a district panchayat shall cease to hold office as such member."

11. Amendment of section 11 of Gujarat 34 of 1964.

- In the Gujarat Municipalities Act, 1963 (Gujarat 34 of 1964), in Section 11, after sub-section (3), the following sub-section shall be added, namely:-(4) A person who at any time during the term of his office is disqualified under the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 (Gujarat of 1986) for being councillor shall cease to hold office as such councillor."