

MAHARASHTRA ACT No. XX OF 1987¹

[THE MAHARASHTRA LOCAL AUTHORITY MEMBERS' DISQUALIFICATION ACT, 1986]

(This Act received the assent of the Governor on the 28th July 1987 ; assent first published in the *Maharashtra Government Gazette*, Part IV, Extraordinary, on the 29th April 1987).

Amended by Mah. 8 of 1997 (29-4-1996)[†]

" " " 50 of 2006 (19-10-2006)^{†*}

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. (1) This Act may be called the Maharashtra Local Authority Members' Disqualification Act, 1986.

Short title and commencement.

(2) It shall come into force on such date² as the State Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "aghadi" or "front" means a group of persons who have formed themselves into a 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* ;

Mah.
XLI
of
1966.

¹ For Statement of Objects and Reasons, See *Maharashtra Government Gazette*, 1987, Extraordinary, Part V, Page 585.

[†] This indicates the date of commencement of the Act.

^{*} Maharashtra Ordinance No. XI of 2006 was repealed by Mah. 50 of 2006, s 6.

² 1st November 1987 (*vide* G. N., R. D. D. No. ZPA. 1086/Cr-875/04, dated the 29th October 1987.).

- (f) "member" means a member of a *Panchayat Samiti* ;
(g) "Municipal Corporation" means a Municipal Corporation constituted under a relevant municipal law ;

(h) "Municipal Council" means a Municipal Council constituted under the Maharashtra Municipalities Act, 1965* ;

Mah.
XL of
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 ;

Mah.
V of
1962.

(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 ;

Bom.
III of
1888.

(ii) in relation to the Corporation of the City of Nagpur, means the City of Nagpur Corporation Act, 1948 ;

C. P.
and
Berar
II of
1950.

(iii) in relation to the Municipal Corporation of any other City, means the Bombay Provincial Municipal Corporations Act, 1949 ;

Bom.
LIX
of
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 ;

Mah.
V of
1962.

* Now see the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965.

** Now see the Mumbai Municipal Corporation Act.

(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. (1) Subject to the provisions of ¹[section 5] a councillor or a member belonging to any political party or *aghadi* or front shall be disqualified for being a councillor or a member—

Disqualification
on ground of
defection.

(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;

Mah. V
of
1962.

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 candidate for election as such councillor or member ;

(b) a nominated ² [concillor] shall

(i) where he is a member of any political party or *aghadi* or front on the date of his nomination³ * * * * 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 nominated⁴ * * * * ;

¹ This word and figure was substituted for the words and figures "sections 4 and 5" by Mah. 50 of 2006, s. 2(a)(1).

² The word "councillor" was substituted for the words "or co-opted councillor or member", *ibid*, s. 2(a) (2) (A) (i).

³ The words "or as the case may be, co-option as such councillor, or as the case may be, member" were deleted, *ibid*, s. 2(a) (2) (A) (ii).

⁴ The words "or co-opted as such councillor, or as the case may be, member" were deleted, *ibid*, s. 2(a) (2) (A) (iii).

(c) a "nominated member", in relation to a *Panchayat Samiti*, includes an associate member, referred to in clause (c) of sub-section (1) of section 57 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. Mah. V of 1962.

(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) ¹ * * * *

(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 nominated² * * * * as such councillor or member) shall—

(a) where he was 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) ³ * * * *

Disqualifi-
cation for
appoint-
ment on
remunerative
political post.

[3 A. 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 his 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

¹ Sub-section (3) was deleted by Mah. 50 of 2006, s. 2 (b).

² The words "or co-opted" were deleted, *ibid*, s. 2(c) (1).

³ The words "or as the case may be, be deemed to be a nominated or co-opted councillor, or as the case may be, a member for the purposes of sub-section (3)" were deleted, *ibid*, s. 2(c) (2).

⁴ Section 3A was inserted, *ibid*, s. 3.

(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.]

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5. (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—

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

(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 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 be original political party or *aghadi* or front for the purpose 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. A councillor, or as the case may be, member claiming ²[merger referred to in section 5] shall—

Councillor or member to vacate office or not to hold office after * * * merger.

(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 ³* * * merger and shall, on and from that date, cease to hold such office.

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Mah. V
of
1962.

¹ Section 4 was deleted, by Mah. 50 of 2006, s. 4.

² These words and figure were substituted for the words and figures "such split or merger as referred to in section 4 or 5 as the case may be" by Mah. 50 of 2006, s. 5(a).

³ The words "split or" were deleted, *ibid*, s. 5 (b).

⁴ Clause (b) was deleted by Mah. 8 of 1997, s.2.

⁵ The words "split or" were deleted, by Mah. 50 of 2006, s. 5 (c).

Decision on
question as
to disquali-
fication on
ground of
defection.

7. 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 ; and the decision of the Commissioner, or as the case may be, Collector shall be final.

Bar of
jurisdiction
of civil
courts, etc.

8. Notwithstanding anything contained in any relevant municipal law, of 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.

Mah.
XL of
1965.
Mah.
V of
1962.

Rules.

9. (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 ;

* Now see the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965.

(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 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) 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. (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.

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

(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.

Mah.
LXL
of
1965.

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

Amendment of certain enactments.

* Now see the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965.

SCHEDULE
(See section 11)

Serial No. (1)	Short title and Number of enactment (2)	Amendments (3)
1	The *Bombay Municipal Corpora- tion Act (Bom. III of 1888).	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' Disquali- fication Act, 1986 for being a councillor shall cease to hold office as such councillor.” Mah. XX of 1987.
2	The Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949).	In section 10, after sub-section (1), the following sub-section shall be inserted, namely :— “(1A) A person shall be disqualified for being a councillor, if such person has, at any time during the term of his office, become disqualified under the Maharashtra Local Authority Members' Disquali- fication Act, 1986 for being a councillor.” Mah. XX of 1987.
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 “or nominated” shall be inserted ; (2) After clause (a), the following clause shall be inserted, namely :— “(a-i) has been disqualified under the Maharashtra Local Authority Members' Disqualification Act, 1986, for being a councillor, or ”. Mah. XX of 1987.
4**	The Maharashtra Municipalities Act, 1965 (Mah. XL of 1965).	In section 16— (1) after sub-section (1), the following sub-section shall be inserted, namely :—

* Now see the Mumbai Municipal Corporation Act.

** Now see the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

(1)	(2)	(3)
Mah. XX of 1987.	5 The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Mah. V of 1962).	<p>“(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.”;</p> <p>(2) in sub-section (2), after the word, brackets and figure “sub-section (1)” the words, brackets, figure and letter “or in sub-section (1-A)” shall be inserted.</p> <p>In section 16, after sub-section (1), the following sub-section shall be inserted namely :—</p> <p>“(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.”</p>

Mah.
XX of
1987.