

GOVERNMENT OF WEST BENGAL
LAW DEPARTMENT
Legislative

West Bengal Act VIII of 1994

**THE WEST BENGAL STATE ELECTION
 COMMISSION ACT, 1994.**

[Passed by the West Bengal Legislature.]

*[Assent of the Governor was first published in the Calcutta Gazette,
 Extraordinary, of the 22nd March, 1994.]*

[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 in the Forty-fifth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the West Bengal State Election Commission Act, 1994.

Short title
and
commence-
ment.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

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

Definitions.

- (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 a member 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;

(Section 3.)

- (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 243 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—

(i) the Bengal Municipal Act, 1932,

Ben. Act XV of 1932.

(ii) the Chandernagore Municipal Act, 1955,

West Ben. Act XVIII of 1955.

(iii) the West Bengal *Panchayat* Act, 1973,

West Ben. Act XLI of 1973.

(iv) the Howrah Municipal Corporation Act, 1980,

West Ben. Act LVIII of 1980.

(v) the Calcutta Municipal Corporation Act, 1980,

West Ben. Act LIX of 1980.

(vi) the Siliguri Municipal Corporation Act, 1990,

West Ben. Act XXX of 1990.

(vii) the Asansol Municipal Corporation Act, 1990, or

West Ben. Act XXXI of 1990.

(viii) the Chandernagore Municipal Corporation Act, 1990.

West Ben. Act XXXII of 1990.

State
Election
Commis-
sion.

3. (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.

VIII of 1994.]

(Sections 4, 5.)

(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.

4. (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:

Elections to
the
Panchayats.

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 rules made thereunder in so far as they are not inconsistent with the provisions of this Act or the rules made thereunder.

5. (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:

Elections to
the
*Municipali-
ties*.

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.

(Section 6.)

(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—

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| (a) the Bengal Municipal Act, 1932, | Ben. Act XV of 1932. |
| (b) the Chandernagore Municipal Act, 1955, | West Ben. Act XVIII of 1955. |
| (c) the Howrah Municipal Corporation Act, 1980, | West Ben. Act LVIII of 1980. |
| (d) the Calcutta Municipal Corporation Act, 1980, | West Ben. Act LIX of 1980. |
| (e) the Siliguri Municipal Corporation Act, 1990, | West Ben. Act XXX of 1990. |
| (f) the Asansol Municipal Corporation Act, 1990, or | West Ben. Act XXXI of 1990. |
| (g) the Chandernagore Municipal Corporation Act, 1990, | West Ben. Act XXXII of 1990. |

as the case may be, and the rules made thereunder in so far as they are not inconsistent with the provisions of this Act or the rules made thereunder.

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

6. (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 the 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 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 may be prescribed:

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.

VIII of 1994.]

(Section 6.)

(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 may be prescribed.

(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 may be prescribed.

(4) Subject to such rules as may be made by the State Government in this behalf, 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 such rules as may be made by the State Government in this behalf, 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.

(Sections 7-10.)

Staff of
Commission.

7. (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.

Fixing date
and time for
poll.

8. The State Government shall, in consultation with the Commission, by 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.

Bar on
jurisdiction
of civil
court.

9. 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.

Grant by
State
Government.

10. (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).

(Sections 11, 12.)

11. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Accountant-General, West Bengal.

Accounts
and Audit.

(2) The annual accounts of the Commission shall be audited by the Accountant-General, West Bengal.

(3) The Accountant-General, West Bengal, shall have the same rights and privileges and the authority in connection with such audit as the Accountant-General, West Bengal, generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission, as certified by the Accountant-General, West Bengal, together with the audit report thereon shall be forwarded annually to the State Government by the Commission.

12. (1) The State Government may, make rules which may provide for all or any of the matters which, under any provision of this Act, are required to be prescribed or to be provided for by rules.

Power to
make rules.

(2) All rules made under this Act shall be published in the *Official Gazette*, and shall, unless some later date is appointed by the State Government, come into force on the date of such publication.

(3) All rules made under this Act shall be laid for not less than fourteen days before the State Legislature as soon as possible after they are made and shall be subject to such modification as the State Legislature may make during the session in which they are so laid.