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PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL

DEPARTMENT OF PANCHAYATS AND RURAL DEVELOPMENT

PANCHAYAT WING

Jessop Building

63, Netaji Subhas Road, Kolkata-700 001

No. 534/PN/O/I/1A-6/99 (Pt. I). Kolkata, the 17th February, 2004.

NOTIFICATION

In exercise of the power conferred by sub-section (3) of section 1 of the West Bengal Panchayat Elections Act, 2003 (West Ben. Act XXI of 2003), the Governor is pleased hereby to appoint the 1st day of March, 2004, as the date on which the said Act shall come into force.

By order of the Governor,

M. N. ROY,
Secy. to the Govt. of West Bengal.

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PART III—Acts of the West Bengal Legislature.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 1385-L.—22nd August, 2003.—The following Act of the West Bengal Legislature, having been assented to by the Governor, is hereby published for general information:—

West Bengal Act XXI of 2003

THE WEST BENGAL *PANCHAYAT* ELECTIONS ACT, 2003.

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West Bengal Act XXI of 2003

THE WEST BENGAL *PANCHAYAT* ELECTIONS ACT, 2003.

[*Passed by the West Bengal Legislature.*]

[Assent of the Governor was first published in the *Kolkata Gazette, Extraordinary*, of the 22nd August, 2003.]

An Act to consolidate and amend the laws relating to holding of elections to the Panchayats *in West Bengal.*

WHEREAS it is expedient to consolidate and amend the laws relating to holding of elections to the *Panchayats* in West Bengal;

It is hereby enacted in the Fifty-fourth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

PART I

CHAPTER I

Preliminary

Short title, extent and commencement.

1. (1) This Act may be called the West Bengal *Panchayat* Elections Act, 2003.

(2) It extends to the whole of West Bengal, except the areas referred to in sub-section (2) of section 1 of the West Bengal *Panchayat* Act, 1973. West Ben. Act XLI of 1973.

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

Definitions.

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

(1) "article" means an article of Constitution;

(2) "Assistant *Panchayat* Electoral Registration Officer" means an officer appointed as such under sub-section (3) of section 6 of the West Bengal State Election Commission Act, 1994; West Ben. Act VIII of 1994.

(3) "Assistant *Panchayat* Returning Officer" means an officer appointed as such under sub-section (3) of section 6 of the West Bengal State Election Commission Act, 1994;

(4) "cognizable offence" has the same meaning as in clause (c) of section 2 of the Code of Criminal Procedure, 1973; 2 of 1974.

(5) "Commission" means the West Bengal State Election Commission referred to in sub-section (1) of section 3 of the West Bengal State Election Commission Act, 1994;

(6) "Constitution" means the Constitution of India;

(7) "corrupt practice" has the same meaning as specified in section 123 of the Representation of the People Act, 1951; 43 of 1951.

(8) "District *Panchayat* Election Officer" means an officer appointed as such by the State Election Commissioner under sub-section (1) of section 6 of the West Bengal State Election Commission Act, 1994;

(9) "election" means the election to fill a seat or seats in a *Gram Panchayat, Panchayat Samiti* and *Zilla Parishad* or *Siliguri Mahakuma Parishad,* as the case may be;

(10) "elector", in relation to a constituency of a *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or *Siliguri Mahakuma Parishad*, means the person whose name is entered in the electoral roll of that *Gram Panchayat, Panchayat Samiti, Zilla Parishad or Siliguri Mahakuma Parishad,* for the time being in force, and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950; 43 of 1950.

(11) "local party" means a party recognized as such by the Commission;

(12) "member" means a person elected at an election to fill seats in a *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or *Siliguri Mahakuma Parishad*;

(13) "notification" means a notification published in the *Official Gazette*;

(14) "Presiding Officer" includes any polling officer when performing any of the functions of a Presiding Officer;

(15) "polling station" in relation to an election means the place for taking poll of that election;

(16) "*panchayat* area" means the territorial area of a *panchayat* as referred to in clause (e) of article 243 of the Constitution;

(17) "*Panchayat* Electoral Registration Officer" means an officer appointed as such by the State Election Commissioner under sub-section (1) of section 6 of the West Bengal State Election Commission Act, 1994 and includes an Assistant *Panchayat* Electoral Registration Officer; West Ben. Act VIII of 1994.

(18) "*Panchayat* Returning Officer" means an officer appointed as such by the State Election Commissioner under sub-section (1) of section 6 of the West Bengal State Election Commission Act, 1994 and includes an Assistant *Panchayat* Returning Officer;

(19) "prescribed" means prescribed by rules made under this Act;

(20) "prescribed authority" means an authority appointed by the State Government, by notification, for all or any of the purposes of the Act;

(21) "public holiday" means any day which is a public holiday for the purposes of section 25 of the Negotiable Instruments Act, 1881; 26 of 1881.

(22) "qualifying date" means the date specified as such by the Commission by notification for the purposes of this Act;

(23) "recognized political party" means a National party or a State party recognized as such by the Election Commission of India by notification for the time being in force;

(24) "sign" in relation to a person who is unable to write his name, means to authenticate in such manner as may be prescribed;

(25) "State Election Commissioner" means the State Election Commissioner referred to in sub-section (1) of section 3 of the West Bengal State Election Commission Act, 1994;

(26) "State Government" has the same meaning as in the West Bengal *Panchayat* Act, 1973; West Ben. Act XLI of 1973.

(27) "voter on election duty" means any presiding officer, polling officer, any other public servant or any polling agent who is a voter and is, by reason of his being on election duty, unable to vote at the polling station where he is entitled to vote;

(28) other expressions used in this Act have the meanings respectively assigned to them in the West Bengal *Panchayat* Act, 1973 and the West Bengal State Election Commission Act, 1994.

Power to delimit *Panchayat* areas into constituencies.

3. For the purpose of election of members of *Panchayats*, the Commission shall, having regard to the number of electors, issue direction, by any general or special order, for the prescribed authority for division of any *Panchayat* area into such number of constituencies in accordance with such rules as may be prescribed by the State Government in this behalf, subject to the provisions of the West Bengal *Panchayat* Act, 1973.

PART II

QUALIFICATIONS AND DISQUALIFICATIONS

CHAPTER II

Qualifications

Qualifications for membership of a *Gram Panchayat.*

4. A person shall be qualified to be chosen to fill a seat in a *Gram Panchayat*, if—

(a) such person is a citizen of India and his name is included in the electoral roll prepared in accordance with such rules made by the State Government in this behalf and in force on such date as the State Election Commissioner may declare for the purpose of an election pertaining to the area comprised in that *Gram Panchayat* and he is not less than twenty-one years of age on the date fixed for scrutiny of the nomination papers of an election;

(b) such person is a member of any of the scheduled castes and is an elector in relation to that *Gram Panchayat*, in the case of a seat reserved for the Scheduled Castes;

(c) such person is a member of any of the scheduled tribes and is an elector in relation to that *Gram Panchayat*, in the case of a seat reserved for the Scheduled Tribes;

(d) such person is a woman and is an elector in relation to that *Gram Panchayat*, in the case of a seat reserved for Women;

(e) such person is an elector in relation to that *Gram Panchayat*, in the case of any other seat.

Qualifications for membership of a *Panchayat Samiti.*

5. A person shall be qualified to be chosen to fill up a seat in a *Panchayat Samiti*, if—

(a) such person is a citizen of India and his name is included in the electoral roll prepared in accordance with such rules made by the State Government in this behalf and in force on such date as the State Election Commissioner may declare for the purpose of an election pertaining to any *Gram* comprised in the Block and is not less than twenty-one years of age on the date fixed for scrutiny of the nomination papers of an election;

(b) such person is a member of any of the scheduled castes and is an elector in relation to that *Panchayat Samiti* in the case of a seat reserved for the Scheduled Castes;

(c) such person is a member of any of the scheduled tribes and is an elector in relation to that *Panchayat Samiti* in the case of a seat reserved for the Scheduled Tribes;

(d) such person is a woman and is an elector in relation to that *Panchayat Samiti* in the case of a seat reserved for Women;

(e) such person is an elector in relation to that *Panchayat Samiti* in the case of any other seat.

Qualifications for membership of a *Zilla Parishad* or the *Siliguri Mahakuma Parishad.*

6. A person shall be qualified to be chosen to fill up a seat in a *Zilla Parishad* or the *Siliguri Mahakuma Parishad*, if—

(a) such person is a citizen of India and his name is included in the electoral roll prepared in accordance with such rules made by the State Government in this behalf and in force on such date as the State Election Commissioner may declare for purposes of an election pertaining to any Block within the District and is not less than twenty-one years of age on the date fixed for scrutiny of the nomination papers of an election;

(b) such person is a member of any of the scheduled castes and is an elector in relation to that *Zilla Parishad* or the *Siliguri Mahakuma Parishad* in the case of a seat reserved for the Scheduled Castes;

(c) such person is a member of any of the scheduled tribes and is an elector in relation to that *Zilla Parishad* or the *Siliguri Mahakuma Parishad* in the case of a seat reserved for the Scheduled Tribes;

(d) such person is a woman and is an elector in relation to that *Zilla Parishad* or the *Siliguri Mahakuma Parishad* in the case of a seat reserved for Women;

(e) such person is an elector in relation to that *Zilla Parishad* or the *Siliguri Mahakuma Parishad* in the case of any other seat.

CHAPTER III

Disqualifications

Disqualifications for membership of *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or *Siliguri Mahakuma Parishad.*

7. A person shall not be qualified to be member of a *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or *Siliguri Mahakuma Parishad*, as the case may be, if—

(a) he is a member of a municipal authority constituted under any of the Acts referred to in sub-section (2) of section 1 of the West Bengal *Panchayat* Act, 1973; or West Ben. Act XLI of 1973.

(b) he is in service of the Central or the State Government or a *Gram Panchayat* or a *Panchayat Samiti* or a *Zilla Parishad* or the *Siliguri Mahakuma Parishad* or the Council.

Explanation.—For the purposes of this clause, a person in the service of any Undertaking of the Central or the State Government or any Statutory Body or Corporation or any Public or Government Company or any Local Authority or any Co-operative Society or any Banking Company or any University or any Government sponsored Institution or any educational or other institution or Undertaking or Body receiving any aid from the State Government by way of grant or otherwise or a person not under the rule-making authority of the Central or the State Government or a person receiving any remuneration from any undertaking or body or organization or association of persons as an employee or being in service of such undertaking or body or organization or association of persons out of funds provided or grants made or aid given by the Central or the State Government shall not be deemed to be in the service of the Central or the State Government; or

(c) he has,—

(i) in case of a *Gram Panchayat*, directly or indirectly by himself or by his partner or employer or an employee, any share or interest in any contract with, by or on behalf of the *Gram Panchayat* or the *Panchayat Samiti* of the Block comprising the *Gram* concerned or the *Zilla Parishad* or the *Siliguri Mahakuma Parishad* of the District or in the case of a *Gram Panchayat* in Darjeeling District or the Council:

Provided that no person shall be deemed to be disqualified for being elected a member of a *Gram Panchayat* by reason only of his having a share or interest in any public company as defined in the Companies Act, 1956 which contracts with or is employed by the *Gram Panchayat* or *Panchayat Samiti* of the Block comprising the *Gram* or the *Zilla Parishad* or the *Siliguri Mahakuma Parishad* or the Council; or 1 of 1956.

(ii) in case of a *Panchayat Samiti*, directly or indirectly by himself or by his partner or employer or an employee, any share or interest in any contract with, by or on behalf of, the *Panchayat Samiti* or a *Gram Panchayat* within the Block concerned or the *Zilla Parishad* or the *Siliguri Mahakuma Parishad* or in the case of *Panchayat Samiti* in Darjeeling District or the Council:

Provided that no person shall be deemed to be disqualified for being elected a member of a *Panchayat Samiti* by reason only of his having a share or interest in any public company as defined in the Companies Act, 1956 which contract with or is employed by the *Panchayat Samiti* or any such *Gram Panchayat* or *Zilla Parishad* or the *Siliguri Mahakuma Parishad* or the Council;

(iii) in the case of *Zilla Parishad,* or the *Siliguri Mahakuma Parishad,* directly or indirectly by himself or by his partner or employer or an employee, any share or interest in any contract with, by or on behalf of the *Zilla Parishad,* or the *Siliguri Mahakuma Parishad,* or a *Gram Panchayat* or a *Panchayat Samiti* within the district or in the case of *Siliguri Mahakuma Parishad* or the Council:

Provided that no person shall be deemed to be disqualified for being elected a member of a *Zilla Parishad,* or the *Siliguri Mahakuma Parishad* by reason only of his having a share or interest in any public company as defined in the Companies Act, 1956 which contracts with or is employed by a *Gram Panchayat* or a *Panchayat Samiti,* within the district or the *Zilla Parishad* or the *Siliguri Mahakuma Parishad* or the Council; or

(d) he has been dismissed from the service of the Central or a State Government or a local authority or a co-operative society or a Government company or a corporation owned or controlled by the Central or State Government for misconduct involving moral turpitude and five years have not elapsed from the date of such dismissal; or

(e) he has been adjudged by a competent court to be of unsound mind; or

(f) he is an undischarged insolvent; or

(g) he being a discharged insolvent has not obtained a certificate from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or

(h) he has been convicted by a court—

(A) of an offence involving moral turpitude punishable with imprisonment for a period of more than six months, or

(B) of an offence under Chapter IXA of the Indian Penal Code, or — 45 of 1860.

(C) under section 3 or section 9 of the West Bengal Local Bodies (Electoral Offences and Miscellaneous Provisions) Act, 1952 and five years have not been elapsed from the date of the expiration of the sentence; or — West Ben. Act X of 1952.

(i) he is disqualified for the purpose of election to the State Legislature under the provisions of Chapter III of Part II of the Representation of the People Act, 1951; or — 43 of 1951.

(j) he has been convicted under section 189 of the West Bengal *Panchayat* Act, 1973, at any time during the last ten years; or — West Ben. Act XLI of 1973.

(k) he has been surcharged or charged under section 192 of the West Bengal *Panchayat* Act, 1973, at any time during the last ten years; or

(l) he has been removed under section 213 of the West Bengal *Panchayat* Act, 1973, at any time during the period of last five years; or

(m) he has been convicted under section 9A of the West Bengal *Panchayat* Act, 1973.

Bar to simultaneous candidature for election.

8. No person, while standing as a candidate for election as a member—

(a) of a *Gram Panchayat,* shall be entitled to stand as a candidate for election as a member of a *Panchayat Samiti* or the *Zilla Parishad* or the *Siliguri Mahakuma Parishad*;

(b) of a *Panchayat Samiti,* shall be entitled to stand as a candidate for election as a member of a *Gram Panchayat* or the *Zilla Parishad* or the *Siliguri Mahakuma Parishad*;

(c) of a *Zilla Parishad,* or the *Siliguri Mahakuma Parishad,* shall be entitled to stand as a candidate for election as a member of a *Gram Panchayat* or a *Panchayat Samiti*:

Provided that no person shall be entitled to stand as a candidate for election for more than one constituency or seat, as the case may be, in a General Election.

Bar to simultaneous membership.

9. A member,—

(a) of a *Gram Panchayat* on being elected a member of a *Panchayat Samiti* or a *Zilla Parishad* or *Siliguri Mahakuma Parishad* shall cease to be the member of a *Gram Panchayat* with effect from the date on which he is declared elected to such *Panchayat Samiti* or *Zilla Parishad* or *Siliguri Mahakuma Parishad,* and continue to be a member of such *Panchayat Samiti* or *Zilla Parishad* or *Siliguri Mahakuma Parishad,* as the case may be, to which he is elected;

(b) of a *Panchayat Samiti* on being elected a member of a *Gram Panchayat* or a *Zilla Parishad* or *Siliguri Mahakuma Parishad* shall cease to be the member of such *Panchayat Samiti* with effect from the date on which he is declared elected to such *Gram Panchayat* or *Zilla Parishad* or *Siliguri Mahakuma Parishad,* and shall continue to be a member of such *Gram Panchayat* or *Zilla Parishad* or *Siliguri Mahakuma Parishad,* as the case may be, to which he is elected;

(c) of a *Zilla Parishad,* or *Siliguri Mahakuma Parishad,* on being elected a member of a *Gram Panchayat* or a *Panchayat Samiti* shall cease to be the member of such *Zilla Parishad* or the *Siliguri Mahakuma Parishad,* with effect from the date on which he is declared elected to such *Gram Panchayat* or *Panchayat Samiti,* and shall continue to be a member of such *Gram Panchayat* or *Panchayat Samiti,* as the case may be, to which he is elected.

Bar to simultaneous membership to Assembly, Parliament and *Panchayats.*

10. A member of a *Gram Panchayat* or *Panchayat Samiti* or *Zilla Parishad* or *Siliguri Mahakuma Parishad,* on being elected to the Legislative Assembly or the Parliament, or a member of the Legislative Assembly or the Parliament, on being elected to the *Gram Panchayat* or *Panchayat Samiti* or *Zilla Parishad* or *Siliguri Mahakuma Parishad,* shall tender his resignation immediately from any of the elected offices in order to participate subsequently as a member in the other elected office.

Cessation of membership when character of the constituency is altered or changed.

11. Notwithstanding anything contained elsewhere in this Act, if at any time the whole of the area of a constituency or a portion thereof of a *Gram Panchayat* or *Panchayat Samiti* or *Zilla Parishad* or *Siliguri Mahakuma Parishad* is included in a municipality, town committee or a cantonment, member or members elected from such constituency to such *Gram Panchayat* or *Panchayat Samiti* or *Zilla Parishad* or *Siliguri Mahakuma Parishad* shall cease to be a member of such *Gram Panchayat* or *Panchayat Samiti* or *Zilla Parishad* or *Siliguri Mahakuma Parishad* from the date of such inclusion.

PART III

CHAPTER IV

Allocation and Reservation of Seats

Total number of members in a *Gram Panchayat.*

12. Subject to the provision of sub-section (2) of section 4 of the West Bengal *Panchayat* Act, 1973, the prescribed authority shall allocate to each constituency, the number of members to be elected to a *Gram Panchayat* as far as practicable be on the following basis, namely:— West Ben. Act XLI of 1973.

(i) in the case of hill areas, one member for every two hundred and fifty voters and one additional member for every fraction thereof;

(ii) in the case of other areas, one member for every seven hundred voters and one additional member for every fraction thereof.

Allocation of seats by the prescribed authority.

13. The prescribed authority shall allocate to each constituency such number of seats not exceeding two as may conform to the number of voters determined under clauses (i) and (ii) of section 12.

Total number of members in a *Panchayat Samiti.*

14. (1) The number of members to be elected to a *Panchayat Samiti* from a *Gram* in hill areas shall be—

(i) one, if the number of voters in such *Gram* is 1200, or less;

(ii) two, if the number of voters in such *Gram* is more than 1200 but less than 2001; and

(iii) three, if the number of electors in such *Gram* is 2001 and above.

(2) The number of members to be elected to a *Panchayat Samiti* from a *Gram* in the areas other than hill areas shall be—

(i) one, if the number of voters in such *Gram* is 4500 or less;

(ii) two, if the number of voters in such *Gram* is more than 4500 but less than 9001; and

(iii) three, if the number of the voters in such *Gram* is 9001 and above.

Total number of members in a *Zilla Parishad* or *Siliguri Mahakuma Parishad.*

15. The number of members to be elected to a *Zilla Parishad* or the *Siliguri Mahakuma Parishad* from a Block shall be—

(i) one, if the number of voters in the Block is 60000 or less;

(ii) two, if the number of voters in the Block is more than 60000 but less than 120001; and

(iii) three, if the number of the voters in the Block is 120001 and above.

Determination of constituencies of *Gram Panchayat, Panchayat Samiti* and *Zilla Parishad* or *Siliguri Mahakuma Parishad.*

16. Determination of constituencies of *Gram Panchayat, Panchayat Samiti* and *Zilla Parishad* or the *Siliguri Mahakuma Parishad,* as the case may be, shall be done according to the procedure as may be prescribed.

Reservation of seats for Scheduled Castes, Scheduled Tribes and Woman Candidates.

17. (1) Seats shall be reserved for the Scheduled Castes in every *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad* in such manner as may be prescribed and the number of the seats so reserved shall bear as nearly as may be, the same proportion with the total number of seats to be filled by direct election to the *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad,* as the case may be, as the population of the Scheduled Castes in the area of the *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad,* as the case may be, bears with the total population of that area, and such seats may be allotted by rotation to different constituencies of that *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad* in such manner as may be prescribed.

(2) Seats shall be reserved for the Scheduled Tribes in every *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad* in such manner as may be prescribed and the number of seats so reserved shall bear as nearly as may be, the same proportion with the total number of seats to be filled by direct election to the *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad,* as the case may be, as the population of the Scheduled Tribes in the area of the *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad,* as the case may be, bears with the total population of that area, and such seats may be allotted by rotation to different constituencies of that *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad* in such manner as may be prescribed.

(3) Not less than one-third of the total number of seats reserved under sub-section (1) and sub-section (2) shall be reserved for Women belonging to the Scheduled Castes, or the Scheduled Tribes, as the case may be, in such manner as may be prescribed.

(4) Not less than one-third of the total number of seats, including the seats reserved for Women belonging to the Scheduled Castes and the Scheduled Tribes under sub-section (3), to be filled by direct election to a *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad* shall be reserved for Women, and such seats may be allotted by rotation to different constituencies of the *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad,* as the case may be, in such manner as may be prescribed.

Explanation.—A member of the Scheduled Castes or the Scheduled Tribes or Women shall not be disqualified to hold a seat not reserved for members of the Scheduled Castes or the Scheduled Tribes or Women if he is otherwise qualified to hold such seat under this Act.

Reservation of seats for office bearers of *Gram Panchayat* and *Panchayat Samiti.*

18. (1) Offices of the *'Pradhan'* and *'Upa-pradhan'* in *Gram Panchayats* in a district shall be reserved for the Scheduled Castes and the Scheduled Tribes by rotation in such manner as may be prescribed and the number of the offices so reserved shall bear, as nearly as may be, the same proportion with the total number of the offices of the *'Pradhan'* or the *'Upa-Pradhan'*, as the case may be, in the district as the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, in all the Blocks within the district bears with the total population in the same area.

(2) Not less than one-third of the total number of offices reserved under sub-section (1) shall be reserved by rotation in such manner as may be prescribed, for Women belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be.

(3) Not less than one-third of the total number of offices, including the seats reserved for Women belonging to the Scheduled Castes and the Scheduled Tribes under sub-section (2) shall be reserved for Women by rotation in such manner, as may be prescribed.

(4) For the purpose of reservation under sub-sections (1), (2) and (3) preference shall be given to reservation of the offices of the *Pradhan* and after such reservation, offices of the *Upa-Pradhan* shall not be reserved in the same *Gram.*

(5) Notwithstanding anything contained elsewhere in this Act, if in a district, for any term of election, the number of offices of the *Upa-Pradhan,* available for reservation after exclusion of the *Grams* where offices of the *Pradhan* have been reserved for that term of election, is less than the number of offices determined under sub-section (1) or sub-section (2), or sub-section (3), such number of offices of the *Upa-Pradhan* as are available for reservation shall be reserved for that term of election, and the number of offices determined under sub-section (1) or sub-section (2) or sub-section (3), as the case may be, shall be deemed to be redetermined accordingly.

(6) Offices of the *'Sabhapati'* and the *'Sahakari Sabhapati'* in *Panchayat Samitis* in a district shall be reserved for the Scheduled Castes and the Scheduled Tribes by rotation in such manner, as may be prescribed, and the number of the offices so reserved shall bear, as nearly as may be, the same proportion with the total number of the offices of the *'Sabhapati'* and the *'Sahakari Sabhapati'*, as the case may be, in the district as the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, in all the Blocks within the districts bears with the total population in the same area.

(7) Not less than one-third of the total number of offices, reserved under sub-section (6), shall be reserved by rotation in such manner as may be prescribed, for Women belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be.

(8) Not less than one-third of the total number of offices including the seats reserved for Women belonging to the Scheduled Castes or Scheduled Tribes under sub-section (7) shall be reserved for Women by rotation in such manner as may be prescribed.

(9) For the purpose of reservation under sub-sections (6), (7) and (8) preference shall be given to reservation of the offices of the *Sabhapati* and after such reservation, offices of the *Sahakari Sabhapati* shall not be reserved in the same Block.

(10) Notwithstanding anything contained in this Act, if in a district for any term of election, the number of offices of *Sahakari Sabhapati*, available for reservation after exclusion of the Blocks where offices of the *Sabhapati* have been reserved for that term of election, is less than the number of offices determined under sub-section (6) or sub-section (7) or sub-section (8), such number of offices of the *Sahakari Sabhapati* as are available for reservation shall be reserved for that term of election, and the number of offices determined under sub-section (6) or sub-section (7) or sub-section (8), as the case may be, shall be deemed to be redetermined accordingly.

Explanation.—A member of the Scheduled Castes or Scheduled Tribes or Women shall not be disqualified to hold an office of the *'Pradhan'*, *'Upa-Pradhan'*, *'Sabhapati'* or *'Sahakari Sabhapati'* not reserved for the Scheduled Castes, Scheduled Tribes or Women, as the case may be, if such member is otherwise qualified to hold such office under this Act.

The West Bengal Panchayat *Elections Act, 2003.*

(Part III.—Chapter IV.—Allocation and Reservation of Seats.—Sections 19, 20.)

Reservation of office bearers of *Zilla Parishad* or *Siliguri Mahakuma Parishad.*

19. (1) Offices of the '*Sabhadhipati*' and '*Sahakari Sabhadhipati*' of *Zilla Parishads* or the *Siliguri Mahakuma Parishad* shall be reserved for the Scheduled Castes and the Scheduled Tribes by rotation in such manner, as may be prescribed, and the number of offices so reserved shall bear, as nearly as may be, the same proportion with the total number of the offices of the *Sabhadhipati* and the *Sahakari Sabhadhipati* in the State as the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, in the Blocks under the jurisdiction of all *Zilla Parishads* and the *Siliguri Mahakuma Parishad* within the State bears with total population in the same area.

(2) Not less than one-third of the total number of offices, reserved under sub-section (1), shall be reserved by rotation in such manner as may be prescribed, for Women belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be.

(3) Not less than one-third of the total number of offices including the seats reserved for Women belonging to the Scheduled Castes and the Scheduled Tribes under sub-section (2) shall be reserved for Women by rotation in such manner, as may be prescribed.

(4) For the purpose of reservation under sub-sections (1), (2) and (3) preference shall be given to reservation of the offices of the *Sabhadhipati* and after such reservation, offices of the *Sahakari Sabhadhipati* shall not be reserved in the same *Zilla Parishad* or the *Siliguri Mahakuma Parishad*, as the case may be.

(5) Notwithstanding anything contained in this Act, if in a district, for any term of election, the number of offices of the *Sahakari Sabhadhipati*, available for reservation after exclusion of the *Zilla Parishads* or the *Siliguri Mahakuma Parishad*, as the case may be, where offices of the *Sabhadhipati* have been reserved for that term of election, is less than the number of offices determined under sub-section (1) or sub-section (2) or sub-section (3), such number of offices of the *Sahakari Sabhadhipati* as are available shall be reserved for that term of elcetion, and the number of offices determined under sub-section (1) or sub-section (2) or sub-section (3) as the case may be, shall be deemed to be redetermined accordingly.

Explanation.—A member of the Scheduled Castes or the Scheduled Tribes or Women shall not be disqualified to hold an office of the *Sabhadhipati* or *Sahakari Sabhadhipati* not reserved for the Scheduled Castes, Scheduled Tribes or Women, as the case may be, if such member is otherwise qualified to hold such office under this Act.

Co-option of persons in respective category.

20. In case of non-availability of persons of reserved category for filling up the office of *Pradhan* or *Upa-Pradhan, Sabhapati* or *Sahakari Sabhapati* and *Sabhadhipati* or *Sahakari Sabhadhipati* so reserved, a person of that reserved category may be co-opted to fill up of that office after swearing in an oath of affirmation before the authority as may be specified:

Provided that such person so co-opted shall have to be elected within six months from the date of his co-option in regard to that office against a suitable casual vacancy of that body:

Provided further that the person so co-opted shall have the powers and obligations of an ordinary member.

PART IV

CHAPTER V

Administrative Machinery for Election

Officers.

21. The officers for the purpose of election, shall be appointed in accordance with the provisions of section 6 of the West Bengal State Election Commission Act, 1994, and they shall exercise powers and perform functions in accordance with the provisions of this Act and the West Bengal State Election Commission Act, 1994. West Ben. Act VIII of 1994.

General duties of the District *Panchayat* Election Officer.

22. (1) The District *Panchayat* Election Officer shall, subject to the superintendence, direction and control of the Commission, co-ordinate and supervise all work within his jurisdiction in connection with the preparation and revision of electoral rolls for, and conduct of, all elections to the *Panchayats.*

(2) The District *Panchayat* Election Officer shall perform such other functions as may be entrusted to him by the Commission.

Panchayat Returning Officer.

23. (1) There shall be a *Panchayat* Returning Officer, appointed in accordance with the provisions of sub-section (1) of section 6 of the West Bengal State Election Commission Act, 1994 for every constituency to fill up a seat or seats in the *Panchayats.*

(2) The *Panchayat* Returning Officer, subject to the direction and control of the Commission, shall do all such acts and things as may be necessary for effectually conducting the election in the manner provided under this Act.

Assistant *Panchayat* Returning Officer.

24. The District *Panchayat* Election Officer shall, subject to the direction and control of the Commission appoint, from amongst the officers of the State Government, as many Assistant *Panchayat* Returning Officers as may be necessary, for one or more *Zilla Parishad* or *Siliguri Mahakuma Parishad* constituencies within a sub-division of a district and for one or more *Panchayat Samiti* and *Gram Panchayat* constituencies within a Block. Every Assistant *Panchayat* Returning Officer shall, subject to the direction and control of the *Panchayat* Returning Officer, exercise all or any of the powers and perform all or any of the functions of the *Panchayat* Returning Officer, as may be prescribed.

Panchayat Electoral Registration Officer.

25. The Commission shall, in consultation with the State Government and by notification, appoint, from amongst the officers of the State Government a *Panchayat* Electoral Registration Officer of the Blocks comprising a sub-division of a district, Every *Panchayat* Electoral Registration Officer shall, subject to the direction and control of the Commission and the District *Panchayat* Election Officer, prepare and, as and when necessary, revise the electoral rolls for election to the *Panchayats.*

Assistant *Panchayat* Electoral Registration Officer.

26. The District *Panchayat* Election Officer shall, subject to the direction and control of the Commission, appoint, from amongst the officers of the State Government, as many Assistant *Panchayat* Electoral Registration Officers as may be necessary for each sub-division of a district or any administrative division thereof. Every Assistant *Panchayat* Electoral Registration Officer shall, subject to the direction and control of the *Panchayat* Electoral Registration Officer, be competent to exercise all or any of the powers and functions of the *Panchayat* Electoral Registration Officer as may be prescribed.

Polling stations.

27. The District *Panchayat* Election Officer shall, subject to such direction as may be issued by the Commission, provide sufficient number of polling stations for each constituency for election of members of *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or *Siliguri Mahakuma Parishad* and shall, not later than twelve days before the date of poll, publish a list showing the polling stations for the areas for which they would be set up, and shall forward a copy of the list to the Commission.

Appointment of Presiding Officers and polling officers.

28. (1) Subject to the provisions of sub-section (5) of section 6 of the West Bengal State Election Commission Act, 1994, the *Panchayat* Returning Officer shall, with the prior approval of the District *Panchayat* Election Officer, appoint a Presiding Officer for each polling station and such number of polling officer or officers to assist the Presiding Officer as he thinks necessary but shall not appoint any person who has been employed by, or on behalf of, or has been otherwise working for, a candidate in or about the election as a Presiding Officer or a polling officer: West Ben. Act VIII of 1994.

Provided that if any polling officer is absent from the polling station, the Presiding Officer may appoint in his place any person who is present at the polling station other than a person who has been employed by, or on behalf of, or has been otherwise working for, a candidate in or about the election to be the polling officer and shall, when such appointment is made, inform the *Panchayat* Returning Officer accordingly.

(2) A polling officer shall, if so directed by the Presiding Officer, perform all or any of the functions of a Presiding Officer under this Act or the rules made thereunder.

(3) If the Presiding Officer, owing to illness or for other unavoidable causes, is obliged to absent himself from performing his functions in the polling station, his functions shall be performed by such polling officer as has been previously authorised by the *Panchayat* Returning Officer to perform such function during such absence.

(4) In the event of simultaneous election of members to *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad,* or in the case of any of the two simultaneous elections, as the case may be, the same set of persons referred to in sub-section (1) shall be appointed as Presiding or polling officers to conduct the poll.

Explanation.—A Presiding Officer shall, unless the context otherwise requires, be deemed to include a person performing any function which he is authorised to perform under sub-section (2) or sub-section (3), as the case may be.

General duty of Presiding Officer.

29. Subject to the general guidance, superintendence and control of the *Panchayat* Returning Officer, it shall be the general duty of the Presiding Officer, at a polling station, to keep peace and order therein and to see that the poll is fairly taken and counting of votes is done.

Duties of polling officer.

30. It shall be the duty of a polling officer at a polling station to assist the Presiding Officer for such polling station.

PART V

CHAPTER VI

Electoral Rolls

Preparation of electoral roll.

31. Subject to the provisoins of section 4 of the West Bengal State Election Commission Act, 1994, the *Panchayat* Electoral Registration Officer shall prepare and revise an electoral roll for each Block within his jurisdiction: West Ben. Act VIII of 1994.

Provided that an electoral roll shall consist of Parts relating to the *Gram Panchayat* constituencies delimited for the last general elections, and such Parts shall be assigned consecutive serial numbers:

Provided further that there shall be one electoral roll in any area for elections from *Gram Panchayat, Panchayat Samit* and *Zilla Parishad* or *Siliguri Mahakuma Parishad* constituencies:

Provided also that the names of electors in each Part of the electoral roll shall be arranged according to *mahalla, para* or house number unless the District *Panchayat* Election Officer, subject to any general or special order by the Commission, determines in respect of any Part that the alphabetical order is more convenient or that the names shall be arranged partly in one way and partly in another.

Eligibility for registration.

32. (1) Unless disqualified under the provisions of section 16 of the Representation of the People Act, 1950, every person in a constituency who— 43 of 1950.

(a) is not less than 18 years of age on the qualifying date, and

(b) is ordinarily a resident in that constituency, shall be entitled to be registered in the electoral roll pertaining to that constituency.

(2) No person shall be entitled to be registered in the electoral roll for more than one constituency.

(3) No person shall be entitled to be registered in the electoral roll for any constituency more than once.

Meaning of 'ordinarily resident'.

33. If, in any case, a question arises as to whether a person is ordinarily resident of any area at any relevant time, the question shall be determined by reference to all the facts of the case and such determination shall be made subject to the provisions of sub-sections (1) to (6) of section 20 of the Representation of the People Act, 1950.

Preparation, publication and revision of electoral roll.

34. (1) The electoral roll for each Block shall be prepared with reference to a qualifying date as may be specified, by an order, by the Commission and shall come into force immediately upon its final publication after at least fifteen days of the publication of the draft of such electoral roll.

(2) The electoral roll for a Block shall,—

(a) unless otherwise directed by the Commission and for reasons to be recorded in writing, be revised, wholly or in part, with reference to the qualifying date referred to in sub-section (1)—

(i) before each general election to any *Panchayat*, and

(ii) before each by-election to fill a casual vacancy in a seat allotted to the constituency, and

(b) notwithstanding anything contained in clause (a), be revised in any year, if such revision has been directed by the Commission, with reference to a qualifying date as may be specified in such direction.

(3) Notwithstanding anything contained in sub-section (2), the Commission may at any time, for reasons to be recorded in writing, direct a special revision of the electoral roll for any Block or a part thereof in such manner as it thinks fit:

Provided that subject to the other provisions of this Act, the electoral roll for a Block, as in force at the time of issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

Adoption of Assembly electoral roll.

35. Notwithstanding anything contained in section 34, if the Commission may, by an order in writing, adopt the electoral roll meant for election of members to the West Bengal Legislative Assembly, for the time being, to such extent, and in such manner, as may be specified in the order for the purpose of any election to the *Panchayats* from any Block.

Correction of entries in electoral roll.

36. If the *Panchayat* Electoral Registration Officer for a Block, on an application made to him or in his own motion, is satisfied after such enquiry, as he thinks fit, that any entry in any part of an electoral roll of a constituency—

(a) is erroneous or defective in any particular, or

(b) should be transposed to another place in the electoral roll on the ground that the person concerned has changed his place of ordinary residence within the jurisdiction of such constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in such constituency or is otherwise not entitled to be registered in that electoral roll,

the *Panchayat* Electoral Registration Officer shall, subject to such general or special directions, if any, as may be given by the Commission in this behalf, amend, transpose or delete the entry in such part of the electoral roll:

Provided that the *Panchayat* Electoral Registration Officer, before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident within the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.

Inclusion of names in electoral roll.

37. (1) Any person whose name is not included in the electoral roll of a Block may apply to the *Panchayat* Electoral Registration Officer in the prescribed Form for inclusion of his name in the electoral roll.

(2) The *Panchayat* Electoral Registration Officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if name of the applicant is registered in the electoral roll of any Municipality or any other *Panchayat*, the *Panchayat* Electoral Registration Officer shall inform the Municipal Electoral Registration Officer of that Municipality or the *Panchayat* Electoral Registration Officer of the other *Panchayat* to that effect and the Municipal Electoral Registration Officer of that Municipality or the *Panchayat* Electoral Registration Officer of that other *Panchayat*, as the case may be, shall on receipt of the information, strike off the applicant's name from the electoral roll.

(3) No direction for amendment, transposition or deletion of any entry shall be made under section 36, and no direction for the inclusion of a name in the electoral roll of a constituency under section 37, shall be given under this section after the last date for making nominations for an election in that constituency and before the completion of such election.

Bar to jurisdiction of the Civil Courts.

38. No Civil Court shall have the jurisdiction—

(a) to entertain or adjudicate upon any question whether any person is, or is not, entitled to be registered in an electoral roll for a constituency; or

(b) to question the legality of any action by, or under, the authority of a *Panchayat* Electoral Registration Officer or of any decision given by any authority appointed under this Act for preparation or adoption of any such electoral roll, as the case may be.

Punishment for false declaration.

39. If any person makes, in connection with,—

(a) the preparation, revision or correction of an electoral roll, or

(b) the inclusion or exclusion of any entry in, or from, an electoral roll, a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true,

he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

Appeal.

40. An appeal shall lie within such time, and in such manner, as may be prescribed to the District *Panchayat* Election Officer from any order of the *Panchayat* Electoral Registration Officer under section 36 or section 37.

Fees for applications and appeals.

41. Every application under section 36 or section 37 and every appeal under section 40 shall be accompanied by the prescribed fee which shall in no case be refunded.

PART VI

CONDUCT OF ELECTIONS

CHAPTER VII

Nomination of Candidates

Notification for election.

42. The State Government shall, in consultation with the Commission, by notification, appoint the date or dates and hour or hours of poll for any election or bye-election.

Appointment of dates of various stages of election.

43. After the issue of the notification under section 42, the Commission shall, by notification, appoint the dates for various stages of election in the manner as follows:—

(a) the last date for making nomination which shall be not later than twenty-one days but earlier than thirty-five days before the date fixed for the poll;

(b) the date for the scrutiny of nominations, which shall be the second day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(c) the last date for withdrawal of candidature, which shall be the third day immediately following the date for scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date on which a poll shall, if necessary, be taken; and

(e) the date before which the election shall be completed:

Provided that the Commission may, for reasons which it considers sufficient, extend, by notification, the date for completion of any election.

The West Bengal Panchayat *Elections Act, 2003.*

(Part VI.—Conduct of Elections.—Chapter VII.—Nomination of Candidates.—Sections 44-46.)

Public notice of election.

44. On the issue of a notification under section 43, the District *Panchayat* Election Officer shall, in such manner as may be prescribed give public notice of the intended election inviting the nomination of candidates for such election and specifying the place at which the nomination papers are to be delivered.

Nomination of candidates.

45. Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of this Act or the rules made thereunder.

Presentation of nomination papers and requirement for valid nomination.

46. (1) On or before the date appointed under clause (a) of section 43 each candidate shall, either in person or by his proposer, between the hours as may be prescribed, deliver, to the *Panchayat* Returning Officer at the place specified in this behalf in the notice issued under section 44, a nomination paper completed in the prescribed form and signed by the candidate and by a voter of the constituency as proposer:

Provided that no nomination paper shall be delivered to the *Panchayat* Returning Officer on a day which is a public holiday.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), if the Commission, on receipt of complaints from the intending candidates or the recognized political parties, either from or through the District *Panchayat* Election Officer or its own machinery or any other agency, is satisfied that there is reasonable apprehension of prevention of, or obstruction to, the intending candidates from making nominations at the place or before the authority for the *Gram Panchayat* and *Panchayat Samiti* constituencies specified in the notice under section 44, the Commission may, by order, issue a direction to the *Panchayat* Returning Officer appointed for any Block, to depute one Assistant *Panchayat* Returning Officer at the office of the Sub-Divisional Officer having jurisdiction, for receiving nomination papers within the specified date and hour from the intending candidates for one or more *Gram Panchayat* or *Panchayat Samiti* constituencies, as the case may be:

Provided that the Commission may also, by the said order, extend the last date for making nomination for one day and also direct that all the nomination papers received under sub-sections (1) and (2) for any *Gram Panchayat* or *Panchayat Samiti* constituency, as the case may be, shall be taken up by the *Panchayat* Returning Officer for scrutiny of all such nomination papers, at one sitting, one after another, in terms of the notice under section 44:

Provided further that on receipt of such order of the Commission, the *Panchayat* Returning Officer shall arrange to display a notice accordingly in his office and in the office of the sub-divisional officer and District *Panchayat* Election Officer and shall also arrange for wide publicity within the polling area.

(3) The nomination paper for any seat, reserved for a candidate of the Scheduled Castes or the Scheduled Tribes, shall be accompanied by a copy of certificate of the Scheduled Castes or the Scheduled Tribes, granted by a competent authority and that the original copy of such certificate shall be produced at the time of making delivery of such nomination paper to the *Panchayat* Returning Officer.

Explanation.—The expression 'competent authority' shall mean the authority competent to issue certificate under section 5 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994.

West Ben. Act. XXXVIII of 1994.

(4) Where the candidate is a person who having held any office referred to in section 9 of the Representation of the People Act, 1951 has been dismissed and a period of five years has not elapsed since such dismissal, such person shall not be qualified to be nominated as a candidate. 43 of 1951.

(5) Any person whose name is entered in the electoral roll of a constituency for which the candidate has been nominated, and who is not otherwise disqualified, may subscribe as a proposer and he shall not subscribe as a proposer for more than one nomination:

Provided that where in a constituency more than one seat.are to be filled up, such person may subscribe as proposer for such number of nomination papers as there are seats to be filled up in that constituency.

(6) On the presentation of a nomination paper, the *Panchayat* Returning Officer shall satisfy himself that the names and serial numbers in the electoral roll of the candidate and his proposer, as entered in the nomination paper, are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to serial numbers in the electoral roll of any such person or the nomination paper, shall effect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood, and the *Panchayat* Returning Officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected in order to bring them in conformity with the corresponding entries in the list of voters, and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(7) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by, or on behalf of, any candidate or accepted by the *Panchayat* Returning Officer.

(8) Failure to complete or a defect in the declaration as to symbol shall not be deemed to be a defect of substantial character within the meaning of sub-section (4) of section 49.

Deposits.

47. A candidate shall not be deemed to be declared nominated for election from a constituency unless he deposits or causes to be deposited in cash with the *Panchayat* Returning Officer concerned—

(a) in the case of an election from a seat in a constituency of a *Gram Panchayat*, a sum of rupees one hundred and fifty, or where the candidate is a member of Scheduled Castes or Scheduled Tribes or is a Woman, a sum of rupees seventy-five;

(b) in the case of an election from a constituency of a *Panchayat Samiti*, a sum of rupees five hundred or where the candidate is a member of Scheduled Castes or Scheduled Tribes or is a Woman, rupees two hundred and fifty; and

(c) in the case of an election from a constituency of a *Zilla Parishad* or the *Siliguri Mahakuma Parishad*, a sum of rupees one thousand or where the candidate is a member of Scheduled Castes or Scheduled Tribes or is a Woman, a sum of rupees five hundred:

Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this section.

Notice of nomination and the time and place for their scrutiny.

48. The *Panchayat* Returning Officer shall on receiving the nomination paper under sub-section (1) of section 46, inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations, and shall incorporate in the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the proposer.

Scrutiny of nominations.

49. (1) On the date fixed for the scrutiny of nominations under section 48 the candidates or their election agents, and such other persons as may be prescribed, may attend at such time and place as the *Panchayat* Returning Officer may appoint; and the *Panchayat* Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time, and in the manner, laid down in section 46.

(2) The *Panchayat* Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—

(a) that on the day fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—

(i) article 243F of the Constitution of India, and

(ii) Part II of this Act;

(b) that there has been a failure to comply with any of the provisions of section 45 or section 46, or section 47;

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine;

(d) that the proposer is not a voter of the constituency concerned.

(3) Nothing contained in clause (a) or clause (b) or clause (c) of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The *Panchayat* Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The *Panchayat* Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 43 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case an objection is raised by the *Panchayat* Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it not later than the next day following the date fixed for scrutiny, and the *Panchayat* Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The *Panchayat* Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purposes of this section, a certified copy of an entry in the elecoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of People Act, 1950. 43 of 1950.

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the *Panchayat* Returning Officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it on his notice board.

Withdrawal of candidature.

50. (1) Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three O'clock in the afternoon on the day fixed under clause (c) of section 43 to the *Panchayat* Returning Officer either by such candidate in person or by his proposer or election agent who has been authorised in this behalf in writing by such candidate.

(2) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.

(3) The *Panchayat* Returning Officer shall, on being satisfied as to the genuineness of a notice of withdrawal and the identity of the person delivering it under sub-section (1), cause the notice to be affixed in some conspicuous place in his office.

Preparation of list of contesting candidates and allotment of symbol.

51. (1) Immediately after the expiry of the period within which candidature may be withdrawn under section 50, the *Panchayat* Returning Officer shall prepare, in the prescribed manner, a list of contesting candidates whose nominations have been finally accepted and who have not withdrawn their candidature.

(2) The said list shall contain the names in alphabetical order and the addresses of the contesting candidates as given in the nomination papers and shall be prepared in Nepali and English in the hill areas and in Bengali and English in other areas.

(3) The alphabetical order as referred to in sub-section (2) shall be determined with reference to the surnames of the candidates where the surnames are written first. In other cases, proper names of the candidates shall be considered for determining the alphabetical order.

(4) Where a poll becomes necessary, the *Panchayat* Returning Officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall,—

(a) allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice;

(b) if more than one contesting candidate have indicated their preference for the same symbol, decide by lot to which of the candidates the symbols will be allotted; and

(c) allot symbol to a candidate set up by a recognised political party or a local political party reserved for that party, as the case may be, if a declaration to that effect has been made by the candidate in his nomination paper and a notice in writing has been issued by the prescribed authority of the recognised political party or local political party in such manner as may be prescribed.

(5) The allotment of any symbol by the *Panchayat* Returning Officer to a candidate shall be final.

(6) Every candidate or his election agent shall forthwith be informed of the symbol allotted to him and be supplied with specimen thereof by the *Panchayat* Returning Officer.

Publication of list of contesting candidates.

52. Immediately after the allotment of symbols under section 51, the *Panchayat* Returning Officer shall, in the prescribed form, cause a list of contesting candidates to be published whose names are included in the list of validly nominated candidates and who have not withdrawn their candidature. The list shall be affixed on the notice board in his office and also supply a copy thereof to each of the contesting candidates or his election agent.

CHAPTER VIII

Candidates and their Agents

Appointment of election agents.

53. A candidate at an election may appoint, in the prescribed manner, any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the *Panchayat* Returning Officer.

Disqualification for being an election agent.

54. Any person who is, disqualified under the Act shall not be eligible for appointment as an election agent.

Revocation of appointment, or death, of an election agent.

55. (1) The appointment of the election agent may be revoked by the candidate at any time by a declaration in writing to be signed by the candidate and lodged with the *Panchayat* Returning Officer. Such revocation shall take effect from the date on which it is so lodged.

(2) In the event of such revocation or of the death of an election agent before or during the election, the candidate may appoint, in the prescribed manner, any person to be his election agent and when such appointment is made, notice of the appointment shall be given in the prescribed manner, to the *Panchayat* Returning Officer.

Functions of election agent.

56. An election agent shall perform such functions in connection with the election as are authorised by or under this Act to be performed by an election agent.

Appointment of polling agent.

57. (1) A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station.

(2) The candidate or his election agent shall deliver the duplicate copy of the letter of appointment to the polling agent who shall, on the date fixed for the poll, present it to, and sign the declaration contained therein before the Presiding Officer and the Presiding Officer shall retain the duplicate copy presented to him in his custody. No polling agent shall be allowed to perform any duty at the polling station unless he has complied with the provisions of this sub-section.

Appointment of counting agent.

58. (1) A contesting candidate or his election agent may appoint such number of persons, as may be prescribed, as his counting agents to be present at the counting of votes, and notice of such appointment shall be given in the prescribed manner to the *Panchayat* Returning Officer.

(2) Before the commencement of the counting of votes, the candidate or his election agent shall deliver the copy of the appointment of such counting agent to the Presiding Officer concerned.

(3) The candidate or his election agent shall also deliver the duplicate copy of the letter of appointment to the counting agent who shall, on the date fixed for the counting of votes, present it to, and sign declaration contained therein, before the Presiding Officer. The Presiding Officer shall retain the duplicate copy presented to him, in his custody. No counting agent shall be allowed to perform any duty at the place fixed for the counting of votes, unless he has complied with the provisions of this sub-section.

Revocation of the appointment, or death, of a polling agent or counting agent.

59. (1) Any revocation of the appointment of a polling agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with the *Panchayat* Returning Officer, and in the event of such a revocation or of the death of a polling agent before the close of the poll, the candidate or his election agent may appoint, in the prescribed manner, another polling agent at any time before the poll is closed and shall forthwith give notice of such appointment, in the prescribed manner, to the *Panchayat* Returning Officer.

(2) Any revocation of the appointment of a counting agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with the *Panchayat* Returning Officer, and in the event of such revocation or of the death of a counting agent before the commencement of the counting of votes the candidate or his election agent may appoint, in the prescribed manner, another counting agent at any time before the counting of votes is commenced and shall forthwith give notice of such appointment, in the prescribed manner, to the *Panchayat* Returning Officer.

Functions of polling agents and counting agents.

60. (1) A polling agent may perform such functions in connection with the poll as are authorised by or under this Act, to be performed by a polling agent.

(2) A counting agent may perform such functions in connection with the counting of votes as are authorised by or under this Act to be performed by a counting agent.

Attendance of a contesting candidate or his election agent at polling stations, and performance by him of the functions of a polling agent or counting agent.

61. (1) At every election where a poll is taken, each contesting candidate at such election and his election agent shall have a right to be present at any polling station provided under section 27 for the taking of the poll.

(2) A contesting candidate or his election agent may himself do any act or thing which any polling agent or the counting agent of such contesting candidate if appointed, would have been authorised by or under this Act to do, or may assist any polling agent or the counting agent of such contesting candidate in doing any such act or thing.

Non-attendance of polling or counting agents.

62. Where any act or thing is required or authorised by or under this Act to be done in the presence of the polling or counting agents, the non-attendance of any such agent or agents at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

The West Bengal Panchayat *Elections Act, 2003.*

(Part VI.—Conduct of Elections.—Chapter VIII.—Candidates and their Agents.—Sections 63, 64.—Chapter IX.—Poll.—Sections 65, 66.)

Death of candidate before poll.

63. If a candidate whose nomination has been found valid on scrutiny under section 49 and who has not withdrawn his candidature under section 50 dies and a report of his death is received before the publication of the list of contesting candidates under section 52, or if a contesting candidate dies and a report of his death is received before the commencement of the poll, the *Panchayat* Returning Officer shall, upon being satisfied of the fact of the death of the candidate, announce countermanding of the poll and report the fact to the Commission and also to the District *Panchayat* Election Officer concerned and all proceedings with reference to the election shall be commenced a new in all respects as if for a new election:

Provided that no further nomination shall be necessary in the case of a person who was a contesting candidate at the time of the countermanding of the poll:

Provided further that no person who has given a notice of withdrawal of his candidature under sub-section (1) of section 50 before the countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding.

Procedure in contested and uncontested elections.

64. If, at any election to a *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or *Siliguri Mahakuma Parishad,*—

(a) the number of contesting candidates is more than the number of seats to be filled in a constituency, a poll shall be taken,

(b) the number of such candidates is equal to the number of seats to be filled in a constituency, the *Panchayat* Returning Officer shall forthwith declare in the prescribed manner of all such candidates to be duly elected to fill those seats,

(c) the number of such candidates is less than the number of seats to be filled in a constituency, the *Panchayat* Returning Officer shall forthwith declare, in the prescribed manner, all such candidates to be duty elected and the Commission shall, by notification in the *Official Gazette,* call upon the constituency to elect a person or persons to fill the remaining seat or seats:

Provided that where the constituency having already been called upon under this sub-section, has failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Commission shall not be bound to call again upon the constituency, to elect a person or persons until it is satisfied that if called upon again, there will be no such failure on the part of the constituency.

CHAPTER IX

Poll

Fixing the time of poll.

65. The hours during which the poll will be taken shall be fixed in accordance with the provisions of section 8 of the West Bengal State Election Commission Act, 1994. West Ben. Act VIII of 1994.

Adjournment of poll in emergencies.

66. (1) If, at an election, the proceedings at any polling station provided under section 27 for the poll are interrupted or obstructed by any riot or open violence, or if at any election it is not possible to take the poll at any polling station on account of any natural calamity, or any other sufficient cause, the Presiding Officer for such polling station at the material point of time shall announce an adjournment of the poll to a date to be notified later and where the poll is so adjourned by a Presiding Officer, he shall forthwith inform the *Panchayat* Returning Officer concerned.

(2) Whenever a poll is adjourned under sub-section (1), the *Panchayat* Returning Officer shall immediately send a report stating the circumstances under which the poll is adjourned to the District *Panchayat* Election Officer and the Commission. On receipt

of the report, the District *Panchayat* Election Officer shall immediately send a detailed report to the Commission. The Commission shall, by notification, fix the date on which, and the hours at which, the adjourned poll shall recommence and the District *Panchayat* Election Officer shall fix the polling station at which the poll shall be taken.

Fresh poll in the case of destruction, etc., of ballot boxes.

67. (1) If at any election—

(a) any ballot box or any ballot paper used or intended to be used at a polling station at any time before or after the commencement of poll or during counting is unlawfully taken out of the custody of the Presiding Officer, or is accidentally or intentionally destroyed or is lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station cannot be ascertained, or

(b) any voting machine develops a mechanical failure during the course of the recording of votes; or

(c) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station,

the Presiding Officer shall forthwith report the matter to the *Panchayat* Returning Officer and the *Panchayat* Returning Officer shall forthwith report to the District *Panchayat* Election Officer.

(2) Thereupon, the District *Panchayat* Election Officer shall, after taking all material circumstances into account, either—

(a) declare the poll at that polling station to be void; or

(b) if satisfied that the result of a fresh poll at that polling station will not in any way, affect the result of the election or that the error or irregularity in procedure is not material, issue such directions to the *Panchayat* Returning Officer as he may deem proper for further conduct and completion of the election:

Provided that on any such occasion referred to in clause (a) or (b), the District *Panchayat* Election Officer shall send a complete report to the Commission.

(3) The Commission may,—

(a) on receipt of any of the reports referred to in sub-section (2)—

(i) accept the report and proceed in terms of sub-section (4) or allow completion of the election; or

(ii) modify in any manner, as it deems fit, the order or the directions referred to in sub-section (2) by an order specifying its decision and the action thereon;

(b) in consideration of the report of the material circumstances obtained from or through the District *Panchayat* Election Officer, its own machinery or any other agency, may issue any order in terms of sub-section (2) and upon issue of such order, the poll at a polling station may be void and provisions of sub-section (4) shall apply *mutatis mutandis.*

(4) Where a poll at a polling station is declared to be void under clause (a) of sub-section (2), the District *Panchayat* Election Officer shall immediately report the matter to the Commission and also to the State Government. The Commission shall, by notification, fix a date and time for taking the fresh poll and thereupon the District *Panchayat* Election Officer shall fix the polling station at which poll shall be taken.

Adjournment of poll or countermanding of election on the ground of booth capturing.

68. (1) If at any election—

(a) booth capturing has taken place at a polling station or at a place fixed for the poll in such a manner that the result of the poll at that polling station cannot be ascertained; or

(b) booth capturing or snatching or forcible occupation of any polled ballot box or polled ballot paper takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained, the *Panchayat* Returning Officer shall forthwith report the

matter to the District *Panchayat* Election Officer, and on receipt of the said report the District *Panchayat* Election Officer shall immediately send a report to the Commission.

(2) The Commission shall, on receipt of the report from the District *Panchayat* Election Officer under sub-section (1) and after taking all material circumstances into account, either—

(a) declare that the poll at that polling station be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit, or

(b) countermand the election in that constituency, provided the Commission is satisfied that in view of the large number of polling stations involved in booth capturing, the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such manner as to affect the result of the election.

Explanation.—In this section, "booth capturing" has the same meaning as in section 135A of the Representation of the People Act, 1951. 43 of 1951.

Manner of voting at elections.

69. At every election where a poll is taken, votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy.

Safeguard against personation.

70. With a view to preventing personation of electors, provision may be made by rules made under this Act—

(a) for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him;

(b) for the production before the Presiding Officer or a polling officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him if, under the rules made in that behalf under the Representation of the People Act, 1950 43 of 1950. electors of the constituency in which the polling station is situated have been supplied with identity cards with or without their respective photographs attached thereto; and

(c) for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the Presiding Officer or a polling officer of the polling station.

Voting machine at elections.

71. Notwithstanding anything contained in this Act or the rules made thereunder, the giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Commission may, having regard to the circumstances of each case, specify.

Explanation.—For the purpose of this section "voting machine" means any machine or apparatus whether operated electronically or otherwise used for giving or recording of votes and any reference to a ballot box or ballot paper in this Act or the rules made thereunder shall, save as otherwise provided, be construed as including a reference to such voting machine wherever such voting machine is used at any election.

Right to vote.

72. (1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950.

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or otherwise, or is in the lawful custody of the police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

CHAPTER X

Counting of Votes

Counting of votes.

73. At every election where a poll is taken, votes shall be counted by or under the supervision and direction of the *Panchayat* Returning Officer at such a place as would be determined by State Election Commission and each contesting candidate, his election agent and his counting agents, shall have a right to be present at the time of counting.

Destruction, loss etc. of ballot papers at the time of counting.

74. (1) If, at any time before the counting of votes is completed any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the *Panchayat* Returning Officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the *Panchayat* Returning Officer shall forthwith report the matter to the District *Panchayat* Election Officer who shall report the matter forthwith to the Commission.

(2) Thereupon, the Commission shall, after taking all material circumstances into account, either—

(a) direct that the counting of votes shall be stopped, declare the poll at that polling station to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit, or

(b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election, issue such directions to the *Panchayat* Returning Officer as it may deem proper for the resumption and completion of the counting and for the further conduct and completion of the election in relation to which the votes have been counted.

(3) The provisions of this Act and of any rules made thereunder shall apply to every such fresh poll as they apply to the original poll.

Equality of votes.

75. If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the *Panchayat* Returning Officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Declaration of result.

76. When the counting of the votes has been completed, the *Panchayat* Returning Officer shall, in the absence of any direction by the Commission to the contrary, forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder.

Report and publication of the result.

77. As soon as may be after the result of an election has been declared, the *Panchayat* Returning Officer shall report the result to the District *Panchayat* Election Officer and the Director of *Panchayat* and Rural Development, West Bengal and the Commission, and the Director of *Panchayat* and Rural Development, West Bengal shall cause to be published in the *Official Gazette* the declarations containing the names of the elected candidates.

PART VII

DISPUTES REGARDING ELECTIONS

CHAPTER XI

Interpretation

Definitions.

78. In this Part unless the context otherwise requires,—

(1) "Judge" means:—

(a) for the purpose of elections to the *Gram Panchayat* and *Panchayat Samiti*, the Civil Judge having jurisdiction where such elections were held,

(b) for the purpose of elections to a *Zilla Parishad* or the *Siliguri Mahakuma Parishad*, the District Judge of the district where such elections were held and includes any Judicial Officer, not below the rank of subordinate judge, subordinate to him to whom the election petition may be transferred by the District Judge;

(2) "candidate" means a person who has been, or claims to have been, duly nominated as a candidate at any election;

(3) "costs" means all costs, charges and expenses of, or incidental to, a trial of an election petition;

(4) "returned candidate" means a candidate whose name has been published as duly elected.

CHAPTER XII

Presentation of Election Petitions

Disputes as to elections.

79. (1) If any dispute arises as to the validity of an election under this Act, any person entitled to vote at such election may, within thirty days after the date of declaration of the results of such election, file a petition, calling in question such election on one or more of the grounds specified in sub-section (1) of section 93 and section 94—

(a) before the Civil Judge having jurisdiction where such election is in respect of a *Gram Panchayat* or a *Panchayat Samiti*,

(b) before the District Judge of the district, where such election is in respect of a *Zilla Parishad* or the *Siliguri Mahakuma Parishad.*

(2) When filing a petition under sub-section (1), the petitioner shall deposit in court, as security for the costs likely to be incurred,—

(a) five hundred rupees, where the petition is filed before the Civil Judge,

(b) one thousand rupees, where the petition is filed before the District Judge.

(3) Every 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) The District Judge may transfer any petition filed before him under sub-section (1) to any Judicial Officer subordinate to him not below the rank of a Subordinate Judge.

(5) In dealing with a petition under sub-section (1), the Civil Judge, the District Judge or the Judicial Officer to whom the petition is transferred under sub-section (4) (hereinafter referred to as the Judge) may hold such enquiry as he deems necessary.

(6) The Judges shall have all the powers of a civil court for the purposes of receiving evidence, administering oath, enforcing the attendance of witnesses and compelling the discovery and production of documents.

(7) The decision of the Judge shall be final and shall not be called in question in any court.

Election petitions.

80. No election petitions to *Panchayats* shall be called in question except by an election petition presented in accordance with the provision of this Part.

Parties to the petition.

81. A petitioner shall join as respondent to his petition—

(a) where the petitioner, in addition to claiming 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, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candiates, and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

Contents of petition.

82. (1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies,

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice, and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings: 5 of 1908.

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Relief that may be claimed by the petitioner.

83. A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

CHAPTER XIII

Trial of Election Petitions

Trial of election petitions.

84. (1) The Court shall dismiss an election petition which does not comply with the provisions of section 79 or section 80.

Explanation.—An order of the Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 91.

(2) Where more election petitions than one are presented to the Court in respect of the same election, all of them shall be referred for trial to the same Court who may, in his discretion, try them separately or in one or more groups.

(3) Any candidate not already a respondent shall, upon application made by him to the Court within fourteen days from the date of commencement of the trial be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 90, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Court and answer the claim or claims made in the petition.

(4) The Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in his opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(5) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(6) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the Court for trial.

Procedure before the Court.

85. (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Court as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits: 5 of 1908.

Provided that the Judge shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if he is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delaying the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition. 1 of 1872.

Documentary evidence.

86. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered.

Secrecy of voting not to be infringed.

87. No witness or other person shall be required to state for whom he has voted at an election.

Answering of criminating questions and certificate of indemnity.

88. (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition 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 answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Court, and

(b) an answer given by a witness to a question put by or before the Court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against in any civil or criminal 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 defence to or upon any charge under Chapter IXA of the Indian Penal Code or Part VIII of this Act 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 this Act or any other law. 45 of 1860.

Expenses of witnesses.

89. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Court to such person and shall, unless the Court otherwise directs, be deemed to be part of the costs.

Recrimination when seat is claimed.

90. (1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned 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 returned candidate and a petition had been presented calling in question his election:

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the Court of his intention to do so.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by section 82 in the case of an election petition and shall be signed and verified in like manner.

Decision of the Court.

91. At the conclusion of the trial of an election petition the Court 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 candidates to be void and the petitioner or any other candidate to have been duly elected.

Other orders to be made by the Court.

92. At the time of making an order under section 91 the Court 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 names of all persons, if any, who have been proved at the trial 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 and to whom costs shall be paid:

Provided that a person who is not a 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 the Court and to 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 Court and has given evidence against him, of calling evidence in his defence and of being heard.

Grounds for declaring election to be void.

93. (1) Subject to the provisions of sub-section (2) if the Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act;

(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 has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, 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 this Act, or of any rules made under this Act, the Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices 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 agents, then the Court may decide that the election of the returned candidate is not void.

Grounds for which a candidate other than the returned candidate may be declared to have been elected.

94. If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Court is of opinion—

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the Court 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.

Procedure in case of an equality of votes.

95. If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of one vote would entitle any of those candidates to be declared elected, then—

(a) any decision made by the *Panchayat* Returning Officer under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and

(b) in so far as that question is not determined by such a decision the Court shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

Communication of orders of the Court.

96. The order of the Court under sections 91 and 92 shall be communicated forthwith to the District *Panchayat* Election Officer concerned, the Commission and the State Government.

Effect of orders of the Court.

97. Where by an order under section 84 the election of a returned candidate is declared to be void, acts and proceedings in which that returned candidate has, before the date thereof, participated as a member of *Zilla Parishad, Siliguri Mahakuma Parishad, Panchayat Samiti* or *Gram Panchayat* shall not be invalidated by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.

Withdrawal of election petitions.

98. (1) An election petition may be withdrawn only by leave of the Court.

(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition.

Procedure for withdrawal of election petitions.

99. (1) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.

(2) No application for withdrawal shall be granted if, in the opinion of the Court, such an application has been induced by any bargain or consideration which ought not to be allowed.

(3) If the application is granted—

(a) the petitioner shall be ordered to pay the costs of the respondents theretofore incurred or such portion thereof as the Court may think fit;

(b) the Court shall direct that the notice of withdrawal shall be published in such manner as it may specify and thereupon the notice shall be published accordingly;

(c) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Court may deem fit.

Report of withdrawal by the Court to the Commission.

100. When an application for withdrawal is granted by the Court and no person has been substituted as petitioner in place of the party withdrawing, the Court shall report the fact to the Commission.

Abatement of election petitions.

101. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

(2) Where an election petition abates under sub-section (1), the Court shall cause the fact to be published in such manner as he may deem fit.

(3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Court may deem fit.

Abatement or substitution on death of respondent.

102. If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, the Court shall cause notice of such event to be published in the *Official Gazette,* and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Court may think fit.

Fresh election when an election is set aside.

103. When an election is declared void by the Court and a fresh election is ordered, the seat or seats of the returned candidate shall be deemed to be vacant from the date of the order of the Court and the State Government in consultation with the Commission shall forthwith take necessary steps for holding such fresh election.

PART VIII

CHAPTER XIV

Electoral Offences

Promoting enmity between classes in connection with election.

104. Any person who is connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

Prohibition of public meetings during period of forty-eight hours fixed for conclusion of Poll.

105. (1) No person shall—

(a) convene, hold, attend, join or address any public meeting or procession in connection with an election; or

(b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or

(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto,

in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both.

(3) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.

Disturbances at election meetings.

106. (1) Any person who at a public meeting to which this section applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

(2) An offence punishable under sub-section (1) shall be cognizable.

(3) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

(4) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant.

Restrictions on the printing of pamphlets, posters, etc.

107. (1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

(2) No person shall print or cause to be printed any election pamphlet or poster—

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicates; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document to the District *Panchayat* Election Officer concerned.

(3) For the purpose of this section—

(a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression "printer" shall be construed accordingly; and

(b) "election pamphlet or poster" means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

(4) Any person who contravenes any of the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

Maintenance of secrecy of voting.

108. (1) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

Officers etc. at elections not to act for candidates or to influence voting.

109. (1) No person who is a District *Panchayat* Election Officer or a *Panchayat* Returning Officer or an Assistant *Panchayat* Returning Officer or a Presiding or Polling Officer at an election, or an officer or clerk appointed by the *Panchayat* Returning Officer or the Presiding Officer to perform any duty in connection with an election shall in the conduct or the management of the election do any act (other than the giving of vote) for the furtherance of the prospects of the election candidate.

(2) No such person as aforesaid, and no member of a police force, shall endeavour—

(a) to persuade any person to give his vote at an election, or

(b) to dissuade any person from giving his vote at an election, or

(c) to influence the voting of any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment which may extend to six months or with fine or with both.

(4) An offence punishable under sub-section (3) shall be cognizable.

Prohibition of canvassing in or near polling stations.

110. (1) No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of one hundred metres of the polling station, namely:—

(a) canvassing for votes; or

(b) soliciting the vote of any elector; or

(c) persuading any elector not to vote for any particular candidate; or

(d) persuading any elector not to vote at the election; or

(e) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.

(3) An offence punishable under sub-section (2) shall be cognizable.

The West Bengal Panchayat *Elections Act, 2003.*

(Part VIII.—Chapter XIV.—Electoral Offences.—Sections 111-115.)

Penalty of disorderly conduct in or near polling stations.

111. (1) No person shall, on the date or dates on which a poll is taken at any polling station,—

(a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loudspeaker, or

(b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof;

so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

(2) Any person who contravences, or wilfully aids or abets the contravention of, the provisions of sub-section (1) shall be punishable with imprisonment which may extend to three months or with fine or with both.

(3) If the Presiding Officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this section, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(4) Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1), and may seize any apparatus used for such contravention.

Penalty for misconduct at the polling station.

112. (1) Any person who during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the Presiding Officer may be removed from the polling station by the Presiding Officer or by any police officer on duty or by any person authorized in this behalf by such Presiding Officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the Presiding Officer, he shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both.

(4) An offence punishable under sub-section (3) shall be cognizable.

Penalty for failure to observe procedure for voting.

113. If any elector to whom a ballot paper has been issued, refuses to observe the procedure prescribed for voting the ballot paper issued to him shall be liable for cancellation.

Penalty for illegal hiring or procuring of conveyance at election.

114. If any person is guilty of any such corrupt practice as is specified in clause (5) of section 123 of the Representation of the People Act, 1951 at or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine. 43 of 1951.

Breaches of official duty in connection with election.

115. (1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

(2) An offence punishable under sub-section (1) shall be cognizable.

(3) No suit or other legal proceedings shall lie against any such persons for damages in respect of any such act or omission as aforesaid.

(4) The person to whom this section applies are the District *Panchayat* Election Officer, *Panchayat* Returning Officer, Assistant *Panchayat* Returning Officer, Presiding Officer, polling officer and any other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act.

Penalty for the State Government servants for acting as election agent, polling agent or counting agent.

116. If any person in the service of the State Government acts as an election agent or a polling agent or a counting agent of a candidate at an election, he shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

Prohibition of going armed to, or near, polling station.

117. (1) No person, other than the *Panchayat* Returning Officer, the Presiding Officer, any police officer and any other person appointed to maintain peace and order at a polling station who is on duty at the polling station, shall, on a polling day, go armed with arms, as defined in the Arms Act, 1959, of any kind within the neighbourhood of a polling station. 54 of 1959.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

(3) Notwithstanding anything contained in the Arms Act, 1959, where a person is convicted of an offence under this section, the arms as defined in the said Act found in his possession shall be liable to confiscation and the licence granted in relation to such arms shall be deemed to have been revoked under section 17 of that Act.

(4) An offence punishable under sub-section (2) shall be cognizable.

Removal of ballot papers from polling station to be an offence.

118. (1) Any person who at any election unauthorisedly takes, or attempts to take, a ballot paper out of a polling station or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the Presiding Officer of a polling station has reason to believe that any person is committing, or has committed, an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

Provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(3) Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the presiding officer or when the search is made by a police officer, shall be kept by such officer in safe custody.

(4) An offence punishable under sub-section (1) shall be cognizable.

Offence of booth capturing.

119. (1) Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the State Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine.

Explanation.—For the purpose of this sub-section and section 134, "booth capturing" includes, among other things, all or any of the following activities, namely—

(a) seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections;

(b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from free exercise of their right to vote;

(c) coercing or intimidating or threatening directly or indirectly any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;

(e) doing by any person in the service of the State Government of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.

(2) An offence punishable under sub-section (1) shall be cognizable.

Liquor not to be sold, given or distributed on polling day.

120. (1) No spirituous, fermented or intoxicating liquors or other substances of a like nature shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, public or private, within a polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(2) Any person who contravenes the provisions of sub-section (1), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both.

(3) Where a person is convicted of an offence under this section, the spirituous, fermented or intoxicating liquors or other substances of a like nature found in his possession shall be liable to confiscation and the same shall be disposed of in such manner as may be prescribed.

Other offence and penalties thereof.

121. (1) A person shall be guilty of an electoral offence if at any election he—

(a) fraudulently defaces or fraudulently destroys any nomination paper; or

(b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of *Panchayat* Returning Officer; or

(c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration or identity or official envelop used in connection with voting by postal ballot; or

(d) without due authority supplies any ballot paper to any person or receives any ballot paper from any person or is in possession of any ballot paper; or

(e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or

(f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election; or

(g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

(2) Any person guilty of an electoral offence under this section shall,—

(a) if he is a *Panchayat* Returning Officer or an Assistant *Panchayat* Returning Officer or a Presiding Officer at a polling station or any other officer or clerk employed on official duty in connection with the election, be punishable with imprisonment for a term which may extend to two years or with fine or with both;

(b) if he is any other person, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(3) For the purposes of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act.

PART IX

CHAPTER XV

Miscellaneous

Local political party.

122. (1) A political party shall be recognised as a local political party if it—

(i) has been engaged in political activity for a continuous period of five years, and

(ii) has at least one elected member in any tier of *Panchayats* for every existing twenty-five members elected to that tier of *Panchayat* from the area of a sub-division of a district or, if there is no elected body of *Panchayat* in that sub-division, one elected member in the Municipality or Municipalities for every existing twenty-five members elected to the Municipality or Municipalities within the area of that sub-division.

(2) Any association or body of individual citizens of India calling itself a political party and intending to be recognised as a local political party may make an application, in such manner as may be prescribed, to the Commission for recognition as a local political party.

(3) After considering all particulars in its possession and any other information that may be necessary and after giving the representatives of that political party the opportunity of being heard, the Commission shall either recognise that political party as a local political party for the purpose of this Act or decide not to recognise it as a local political party.

(4) The decision of the Commission shall be final.

Protection of action taken in good faith.

123. No suit, prosecution or other legal proceedings shall lie against the Commission or any person acting under the direction of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule or order made thereunder or in respect of the tendering of any opinion by the Commission to the Governor or in respect of the publication by, or under the authority of, the Commission of any such opinion, paper or proceedings.

Casual vacancies in *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad.*

124. When the seat of a member elected to a *Gram Panchayat, Panchayat Samiti, Zilla Parishad* or the *Siliguri Mahakuma Parishad* becomes vacant by reasons of his death, resignation, removal or otherwise, the Commission shall fix a date as soon as may be convenient for holding bye-election to fill the seat, and the provisions of this Act shall thereupon apply *mutatis mutandis.*

Return or forfeiture of candidate's deposit.

125. (1) The deposit made under section 47 shall either be returned to the person making it or his representative or be forfeited to the State Government in accordance with the provisions of this section.

(2) Except in cases hereafter mentioned in this section, the deposit shall be returned as soon as practicable after the result of the election is declared.

(3) If the candidate is not shown in the list of contesting candidates, or if he dies before the commencement of the poll, the deposit shall be returned as soon as practicable after the publication of the list or after his death, as the case may be.

(4) Subject to the provisions of sub-section (3), the deposit shall be forfeited if at an election where a poll has been taken, the candidate is not elected and the number of valid votes polled by him does not exceed one-sixth of the total number of valid votes polled by all the candidates or in the case of election of more than one member at the election, one-sixth of the total number of valid votes so polled divided by the number of members to be elected.

Staff of every local authority to be made available for election work.

126. Every local authority in a State shall, when so required by the Commission or the District *Panchayat* Election Officer, make available to any *Panchayat* Returning Officer such staff as may be necessary for the performance of any duties in connection with an election.

Requisitioning of premises, property, vehicles etc. for election purpose.

127. (1) If it appears to the District *Panchayat* Election Officer that in connection with an election under this Act—

(a) any premises are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken, or

(b) any vehicle, vessel or animal is needed or is likely to be needed for the purpose of transport of ballot boxes to, or from, any polling station, or transport of members of the police force for maintaining order during the conduct of such election, or transport of any officer or other person for performance of any duties in connection with such election,

the District *Panchayat* Election Officer may, by order in writing, requisition such premises or such vehicle, vessel or animal, as the case may be, and may make such further orders as may appear to him to be necessary or expedient in connection with the requisitioning:

Provided that no vehicle, vessel, or animal which is being lawfully used by a candidate or his agent for any purpose connected with the election of such candidate shall be requisitioned under this sub-section until the completion of the poll at such election.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the District *Panchayat* Election Officer to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

Explanation.—For the purposes of this section—

(a) "premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;

(b) "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise.

Payment of compensation.

128. (1) Whenever in pursuance of section 127, the District *Panchayat* Election Officer requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:—

(i) the rent payable in respect of the premises or if no rent is so payable, the rent payable for similar premises in the locality;

(ii) if in consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested, being aggrieved by the amount of compensation so determined, makes an application within the prescribed time to the

District *Panchayat* Election Officer for referring the matter to an arbitrator, appointed in this behalf by the State Government, the amount of compensation to be paid shall be such as the arbitrator, may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the State Government to the arbitrator appointed under the first proviso for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.—For the purposes of this sub-section, the expression "person interested" means the person who was in actual possession of the premises requisitioned under section 127 immediately before the requisition, or where no person was in such actual possession, the owner of such premises.

(2) Whenever in pursuance of section 127, the District *Panchayat* Election Officer requisitions any vehicle, vessel or animal, there shall be paid to the owner thereof compensation the amount of which shall be determined by the Commission on the basis of the fares or rates prevailing in the locality for the hire of such vehicle, vessel or animal:

Provided that where the owner of such vehicle, vessel or animal being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the District *Panchayat* Election Officer for referring the matter to an arbitrator, appointed in this behalf by the State Government, the amount of compensation to be paid shall be such as the arbitrator may determine:

Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined under this sub-section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner, in such manner, as they may agree upon, and in default of agreement, in such manner as an arbitrator, appointed under the first proviso, may decide.

Power to obtain information.

129. The District *Panchayat* Election Officer may by order, with a view to requisitioning any property under section 127 or determining the compensation payable under section 128, require any person to furnish to such authority as may be specified in the order such information in his possession relating to such property as may be so specified.

Powers of entry into, and inspection of, premises.

130. Any person authorized in this behalf by the District *Panchayat* Election Officer may enter into any premises and inspect such premises and any vehicle, vessel or animal therein for the purpose of determining whether, and if so in what manner, an order under section 127 should be made in relation to such premises, vehicle, vessel or animal, or with a view to securing compliance with any order made under that section.

Explanation.—For the purposes of this section, the expressions "premises" and "vehicle" have the same meanings as in section 127.

Eviction from requisitioned premises.

131. (1) Any person remaining in possession of any requisitioned premises in contravention of any order made under section 127 may be summarily evicted from the premises by any officer empowered by the District *Panchayat* Election Officer in this behalf.

(2) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or break open any door of any building or do any other act necessary for effecting such eviction.

The West Bengal Panchayat *Elections Act, 2003.*

(Part IX.—Chapter XV.—Miscellaneous.—Sections 132, 133.—
Part X.—Chapter XVI.—General.—Sections 134, 135.)

Release of premises from requisition.

132. (1) When any premises requisitioned under section 127, are to be released from requisition, the possession thereof shall be delivered to the person from whom possession was taken at the time when the premises were requisitioned, or if there were no such person, to the person deemed by the District *Panchayat* Election Officer to be the owner of such premises, and such delivery of possession shall be a full discharge of the District *Panchayat* Election Officer from all liabilities in respect of such delivery, but shall not prejudice any rights in respect of the premises which any other person may be entitled by due process of law to enforce against the person to whom possession of the premises is so delivered.

(2) Where the person to whom possession of any premises requisitioned under section 127 is not readily ascertainable or has no agent or any other person empowered to accept delivery on his behalf, the District *Panchayat* Election Officer shall cause a notice declaring that such premises are released from requisition to be affixed on some conspicuous part of such premises.

(3) When a notice referred to in sub-section (2) is affixed on some conspicuous part of the premises, the premises specified in such notice shall cease to be subject to requisition on and from the date of such affixation and be deemed to have been delivered to the person entitled to possession thereof, and the District *Panchayat* Election Officer shall not be liable for any compensation or other claim in respect of such premises for any period after the said date.

Penalty for contravention of any order regarding requisitioning.

133. If any person contravenes any order made under section 127, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

PART X

CHAPTER XVI

General

Observers.

134. (1) The Commission may nominate an Observer who shall be an officer of the State Government to watch the conduct of election or elections in a constituency or a group of constituencies and to perform such other functions as may be entrusted to him by the Commission.

(2) The Observer, nominated under sub-section (1), shall have the power to direct the *Panchayat* Returning Officer for the constituency or for any of the constituencies for which he has been nominated, to stop the counting of votes at any time before the declaration of the result or not to declare the result if, in the opinion of the Observer, booth capturing has taken place at a large number of polling stations or at places fixed for counting of votes or any ballot papers used at a polling station are unlawfully taken out of the custody of the *Panchayat* Returning Officer or are accidentally or intentionally destroyed or lost or damaged or tampered with to such an extent that the result of the poll at that polling station or place cannot be ascertained.

(3) Where an Observer has directed the *Panchayat* Returning Officer under this section to stop counting of votes or not to declare the result, the Observer shall forthwith report the matter to the Commission and thereupon the Commission shall, after taking all material circumstances into account, issue appropriate directions.

Power to make rules.

135. (1) The State Government may, after consulting the Commission, 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 duties of Presiding Officers and polling officers at polling stations;

(b) the checking of voters by reference to the electoral roll;

(c) the manner in which votes are to be given both generally and in the case of illiterate voter or voters under physical or other disability;

(d) the manner in which votes are to be given by a Presiding Officer, polling officer, polling agent or any other person, who being an elector for a constituency is authorised or appointed for duty at a polling station at which he is not entitled to vote;

(e) the procedure to be followed in respect of the tender of vote by a person representing himself to be an elector after another person has voted as such electors;

(f) the manner of giving and recording of votes by means of voting machines and the procedure as to voting to be followed at polling stations where such machines are used;

(g) the scrutiny and counting of votes including cases in which a recount of the votes may be made before the declaration of the result of the election;

(h) the procedure as to counting of votes recorded by means of voting machines;

(i) the safe custody of ballot boxes, voting machines, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;

(j) any other matter required to be prescribed by this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the 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, the State Legislature agrees in making any modification in the rule or the State Legislature agrees that the rule should not be made, the rule shall thereafter 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.

Bar to jurisdiction of civil courts.

136. No civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the *Panchayat* Returning Officer or by any other person appointed under this Act in connection with an election.

Removal of difficulties.

137. (1) The Commission, in consultation with the State Government, may issue such general or special directions as may, in its opinion be necessary for the purpose of giving effect to the provisions of this Act or the rules made thereunder or holding any election under this Act.

(2) If any difficulty arises in giving effect to the provisions of this Act or the rules made thereunder or in holding any election, the Commission as occasion requires, may by order, do anything which appears to it to be necessary for the purpose of removing the difficulty.

By order of the Governor,

A. K. BHATTACHARYA,
Principal Secy. to the Govt. of West Bengal
& Secy., Law Department.

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