

EXTRACTS FROM THE ODISHA MUNICIPAL ACT, 1950

ODISHA ACT 23 OF 1950

CHAPTER I

Preliminary

Short title, extent,
Commencement
and application.

1. (1) This Act may be called the Odisha Municipal Act, 1950.
- (2) It shall extend to the whole of the State of Odisha.
- (3) It shall come into force in such area or areas on such date or dates as the State Government may appoint from time to time.
- (4) Notwithstanding anything contained in sub-section (3) it shall take effect in any Cantonment or part of a Cantonment.
- (5) Any notification, order or rule and any appointment to an office, may be made or election held under this Act, after it shall have received the assent of the Governor and shall take effect on this Act coming into force.
- (6) Nothing in this Act shall apply to the scheduled areas referred to in clause (1) of Article 244 of the Constitution.

Definitions

3. In this Act, unless there is anything repugnant in the subject or context,
 - (1) 'Assembly Constituency' shall have the same meaning as has been assigned to it in Representation of the People Act, 1950.
 - (7-a) 'Director' means the Director of Municipal Administration appointed under Section 393-A;
 - (8-a) 'Election Commission' means the State Election Commission consisting of a State Election Commissioner appointed by the Governor under Article 243-K of the Constitution;
 - (9-a) 'Finance Commission' means the Finance Commission constituted by the Governor under Article 243-I of the Constitution;
 - (17-a) 'Municipal area' means the territorial area of a Municipality;
 - (17-b) 'Municipality' means a Notified Area Council or a Municipal Council or a Municipal Corporation;
 - (21-a) 'Panchayat' means a Grama Panchayat as defined in the Odisha Grama Panchayats Act, 1964, or Panchayat Samiti as defined in the Odisha Panchayat Samiti Act, 1959, or a Zilla Parishad as defined in the Odisha Zilla Parishad Act 1991, and
 - (23-A) 'Population' means the population as ascertained at the last preceeding census of which the relevant figures have been published;

(24) ‘Prescribed’ means prescribed by rules made under this Act;

(32) “Residence” - ‘reside’- a person is deemed to have his ‘residence’ or to ‘reside’ in any house if he sometimes uses any portion thereof as a sleeping apartment; and a person is not deemed to cease to reside in any such house merely because he is absent from it or has elsewhere another dwelling in which he resides if he is at liberty to return to such house at any time and has not abandoned his intention of returning:

CHAPTER II

Constitution of Municipalities

Constitution of
Municipalities

4. (1) There shall be constituted by the State Government-
- (a) a Notified Area Council for every transitional area;
 - (b) a Municipal Council for every smaller urban area; and
 - (c) a Municipal Corporation for every larger urban area, in accordance with the provisions of this Act:

Provided that no such Municipality or Corporation shall be constituted in any urban area or part thereof which the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by notification, specify to be an industrial township.

(2) In this section, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non- agricultural activities, the economic importance or such other factors as he may deem fit, specify by notification under clause (2) of Article 243-Q of the Constitution:

Provided that before publication of the notification under this sub-section, the State Government shall publish in the prescribed manner a draft of such notification inviting objections and suggestions from all persons likely to be affected thereby within such period as may be prescribed, and shall consider the objections and suggestions, if any, as may be received on the said draft.

Explanation - For the purposes of this Section—

(a) save as may otherwise be deemed fit by the Governor, a population of not less than ten thousand, twenty five thousand and three lakhs, respectively, may be taken as sufficient population for the purpose of specifying respectively “a transitional area”, “a smaller urban area” and “a larger urban area”;

(b) the factors relating to density of population, percentage of employment in non-agricultural activities, generation of revenue for local administration economic importance and such other factors for the purpose of specifying “a transitional area”, “a smaller urban area” and “a larger urban area” shall be such as the Governor may, from time to time, determine.

(3) Notwithstanding anything contained in this Section,—

(a) the territorial area of every Notified Area Council and that of the every Municipal Council constituted prior to, and existing at, the commencement of the Odisha Municipal (Amendment) Act, 1994 shall respectively be deemed to be a transitional area and a smaller urban area within the meaning of sub-section (2) of Section 4; and

(b) every Notified Area Council (including its Chairman and Vice-Chairman) and every Municipality (including its Chairperson, Vice-Chairperson and Additional Vice-Chairperson), continuing in office at the commencement of the Odisha Municipal (Amendment) Act, 1994 shall continue till the expiration of the term as provided in sub-section (1) of Section 41 as it stood prior to such commencement, unless sooner dissolved by resolution passed to that effect by the Legislative Assembly.

(4) When any transitional area or smaller urban area within the meaning of sub-section (2) is subsequently specified to be—

(a) a smaller urban area in the case of a transitional area, or

(b) a larger urban area in the case of a smaller urban area, then, notwithstanding anything contained in this Act,—

(i) the Notified Area Council for the existing transitional area shall be deemed to be the Municipal for the smaller urban area so subsequently specified;

(ii) the Municipality for the existing smaller urban area shall be deemed to be the Municipal Corporation for the larger area so subsequently specified;

(iii) the Chairperson, Vice-Chairperson and other Members of the existing Notified Area Council or Municipality shall be deemed to be Chairperson, Vice-Chairperson and other Members of the deemed Municipality or, as the case may be, of the deemed Municipal Corporation;

(iv) all the assets and liabilities of the existing Notified Area Council shall devolve upon the deemed Municipal or, as the case may be, that of the existing Municipal shall devolve upon the deemed Municipal Corporation;

(v) the provisions of this Act and of the rules, bye-laws, notifications or orders made there under which were in force throughout such transitional area or, as the case may be, the Municipal area shall apply to the territorial of such deemed Municipality or, as the case may be, deemed Municipal Corporation;

(vi) the proceeding commenced, if any, for reconstitution of the existing Notified Area Council or, as the case may be, existing Municipal shall continue as if such proceedings were commenced in relation to the deemed Municipal or, as the case may be, deemed Municipal Corporation,

Application of Act and Subsidiary orders in areas included within a Municipality

5. When any local area is included in a Municipal area by a notification referred to in sub-section (2) of Section 4, all the provisions of this Act and of the rules, bye-laws, notifications or orders made, there under which, immediately before such inclusion were in force throughout such Municipal area shall be deemed to apply to such local area, unless it is otherwise directed in and by the said notification.

Continuance of Act and subsidiary orders in Municipalities formed by division

6. When any Municipal area is divided into two or more such areas by a notification referred to in sub-section (2) of Section 4 then, notwithstanding anything contained in this Act, all the provisions of this Act and of the rules, bye-laws, notifications or orders made there under which, immediately before such division, were in force in any part of the original Municipal area shall be deemed to be in force in the same part of the Municipal areas formed by such division unless it is otherwise directed in and by the said notification

Abolition of Municipalities

7. (1) The Governor may, by notification, abolish any Municipality to which this Act, applies:

Provided that—

(a) the Governor shall, before they issue such notification, communicate to the Municipality the grounds on which they propose to do so, fix a reasonable period for the Municipality to show cause against the proposal and consider its explanations and objections, if any;

(b) the notification shall contain a statement of the Governor's reason.

(2) From such date, as may be specified in such notification this Act and all notifications, rules, bye-laws, regulations, orders, directions and powers issued, made or conferred under this Act, shall cease to apply to the area previously comprised in the

Municipality; the balance of the Municipal fund and all other property vested in the Municipality shall vest in the State Government and the liabilities of the Municipality shall be transferred to the State Government.

(3) All property vested in the State Government under sub-section (2) shall be applied, under the orders of the State Government, to discharge the liabilities imposed on the State Government by that sub-section or for the promotion of the safety, health, welfare and convenience of the inhabitants of the area previously comprised in the Municipality.

Composition of
Municipalities

8. Every Municipality shall be composed of—

- (a) a Chairperson directly elected by the electors of the within the Municipal area;
- (a-1) one Councillor elected directly from every ward within the Municipal area;
- (b) a person having special knowledge or experience in Municipal

Administration as may be nominated by the State Government:

Provided that the Councillor so nominated shall not have the right to vote at any meeting of the Municipality but shall have the right to attend every meeting thereof except the meetings convened under Sections 47,49 and 54;

(c) every Member of the House of the People and of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area and every Member of the Council of States registered as elector within the Municipal area :

Provided that no such Member shall have right to attend any meeting of the Municipality convened under Sections 47, 49 or 54:

Provided further that where any such Member is unable to attend any meeting of the Municipality (except as aforesaid) for any reason, he may authorize a person to attend such meeting as his representative but, in no case, the representative so authorized shall have the right to vote at such meeting.

Incorporation of
Municipality

9. Every Municipality shall be a body corporate by the name of the Municipality by reference to which it is known, shall have perpetual succession and a common seal and subject to any restriction and qualification imposed by or under this or any other enactment shall have power to acquire and hold property, both movable and immovable, and subject to any rules prescribed to transfer any such property held by it, to enter into contracts and to do all other things necessary, proper or expedient for the purposes of this Act and may sue and be sued in its corporate name.

10. (1) The election to the office of the Chairperson and Councillors respectively, specified in clause (a) and (a-1) of Section 8 election of shall be held in the prescribed manner:

Provided that where such election is contested on political party basis, the candidates contesting such election shall use their respective party ' symbols.

Explanation-For the purposes of this Section—

(a) “Candidates” means candidates duly sponsored by respective political parties;

(b) “Party Symbol” means the symbol allotted to a particular political party under the Elections Symbols (Reservation and Allotment) Order, 1968; and

(c) “Political Party” means a National Party or as the case may be ‘State Party within the meaning of paragraph 7 of the order referred to in clause (b).

(2) the names of the elected Chairperson and Councillors shall be published by the Election Commission in the Gazette.

11. (1) There shall be reserved by the District Magistrate, seats in every Municipality for the Scheduled Castes and Scheduled Tribes and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the concerned Municipal area or of the Scheduled Tribes in that area bears to the total population of that area and such seats shall be allotted by rotation to different Wards in a Municipal area after every one terms of General election.

Provided that where the population of the Scheduled Castes or, as the case may be, Scheduled Tribes in a Municipal area is not sufficient for reservation of any seat, one seat for the, Scheduled Castes or, as the case may be, one seat for the Scheduled Tribes shall be reserved in that Municipal area.

(2) As nearly as may be but not less than, one-half of the total number of seats reserved under sub-section (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes:

(3) As nearly as may be, but not less than twenty-seven percentum of the total number of seats to be filled up by direct election in every Municipality shall also be reserved in favour of backward class of citizens as referred to in clause (6) of Article, 243-T of the Constitution and such seats shall be allotted by the rotation to different wards in a Municipal Area after every one terms of General Election.

(3A) As nearly as may be, but not less than one-half of the total number of seats reserved under sub-section (3) shall be reserved for women belonging to the backward class of citizens :

(4) As nearly as may be, but not less than, one-half including the number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the backward class of citizens of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats shall be allotted by rotation to different Wards in a Municipal area after every one terms of General Election.

(5) Where a particular Ward is reserved for the Scheduled Castes or the Scheduled Tribes or the backward class of citizens, or for women whether or not belonging to the Scheduled Castes or Scheduled Tribes, and no eligible candidate is available or comes forward to contest the election in relation to that Ward, the State Government shall nominate a person who is otherwise eligible to contest such election, as the Councillor for the Ward.

(6) The procedure regarding reservation of seats for the purposes of subsections (1), (2), (3) and (4) shall be such as may be prescribed.

(7) The reservation of seats under sub-sections (1) and (2) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

CHAPTER-III

Election and Election Petition

Superintendence direction and control of elections to vest in the Election Commission Election Officer, Presiding Officer, Polling Officer, etc deemed to be on deputation to Election Commission	<p>11-A. The Superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all Elections to Municipalities shall be vested in the Election Commission.</p> <p>11-B. Any Officers and employees of the State Government made available to the Election Commission pursuant to clause (3) of Article 243-K of the Constitution for the discharge of the functions conferred on the Election Commission by clause (1) of that Article, when appointed by the Election Commission as the Election Officer, Presiding Officer, Polling Officer or any other Officer, or otherwise designated for the time being, for the conduct of any election under this Act, shall be deemed to be on deputation to the Election Commission for the period commencing on the date of notification calling for such election and ending with the date of declaration of the result of such election and,</p>
---	--

accordingly, such Officers and employees shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

General Election of
Chairperson and
Councillors and
formation of wards

12. (1) A general election of the Chairperson and Councillors respectively, specified in clause (a) and (a-1) of Section 8 shall be completed :—

(a) for the purpose of constituting new Municipality, as soon as may be, but not later than six months, after the publication of the notification referred to in sub-section (2) of Section 4 ;

(b) for the purpose of reconstituting a Municipality, before the expiry of a period of five years from the date appointed for its first meeting referred to sub-section (2) of Section 47.

(2) For the purpose of election under sub-section (1), the State Government shall, by one or more notifications published on such date or dates as may be recommended by the Election Commission, call upon all Wards in the Municipal area to elect a Chairperson and Councillors in accordance with the provisions of this Act and of the rules and orders made thereunder.

(3) For the purpose of election of Chairperson and Councillors to a Municipality, the District Magistrate shall, in the case of a new Municipality, of his own motion and, in the case of a Municipality already in existence at the time the notification is made, after consulting the concerned Municipality, by notification;

(a) divide the Municipal area into Wards;

(b) determine, subject to other provisions of this Act, the Wards in which the seats reserved under Section 11 shall be set assigned :

Provided that-(i) in dividing a Municipal area into Wards, equitable distribution of population among the various Wards and the compactness of area forming each Wards shall be taken into consideration; and

(iii) the number of Wards in any Municipal area shall not be less than eleven and more than forty:

Provided further that notwithstanding anything contained in this Section, if any person is aggrieved by the decision as to the division of the Municipal area into wards or the assignment of wards, as referred in clauses (a) and (b), he may prefer an appeal to the State Government within fifteen days from the date of publication of the notification which shall be disposed of by the appellate authority within thirty days from the date of its filing, after giving the person concerned an opportunity of being heard, and the decision of the appellate authority shall be final.

(3-A) (a) The District Magistrate shall before making the notification under sub-section (3), publish in the prescribed manner a draft thereof containing a statement showing the number of Wards into which the Municipal area shall be divided, the extent of each such Ward and the Wards in which the seats reserved under Section 11 shall be set assigned, with a notice inviting objections and suggestions from all persons interested within the prescribed period.

(b) The District Magistrate shall consider the objections and suggestions so received, and, for that purpose, he may make such further enquiry as he may consider necessary.

(4) All the electors of a Ward shall irrespective of their community, be entitled to vote at an election in respect of that Ward.

(4-a) All the electors of a Municipality, irrespective of their community shall be entitled to vote at an election in respect of the Chairperson of that Municipality.

(5) When a new Ward is formed or when an existing Ward is abolished, the State Government shall, after consulting the Municipality concerned, determine—

(a) the Ward which each Councillor then in the Municipality shall be deemed to represent; and

(b) the Ward or Wards in which election shall be held to fill up the vacancies, if any, in the Municipality.

Electoral Roll 13. (1) Unless the Election Commission by order published in the Gazette directs, otherwise all persons registered by virtue of the Representation of the People Act of 1950 in so much of the electoral roll for any Assembly Constituency for the time being in force as relates to the Municipality shall be entitled to cast their votes at an election to the Municipality and the said portion of the roll shall be deemed to be the electoral roll of the Municipal area.

(2) So much of the electoral roll of the Municipality as relates to the area comprised within a Ward thereof shall be embodied in a register to be maintained for the Ward and such register shall be deemed to be the electoral roll for the Ward for the purposes of this Act.

(3) The manner of splitting up of the electoral roll for the purpose of preparation of the aforesaid register, the manner of the revision of such register from time to time and the Officer or authority by whom such splitting up or revision is to be carried out shall be as may be prescribed.

(4) Nothing in this section shall debar the Election Commission to adopt, or provide for, any other mode for the preparation of electoral rolls for the purpose of elections to Municipalities.

Electors

14. (1) Omitted

(2) No person who is not for the time being in the electoral roll of a Municipality, shall be entitled to vote at an election for the office of the Chairperson of that Municipality.

(3) No person who is not for the time being on the electoral roll of the Ward shall be entitled to vote at an election in respect of the Ward.

Removal of
the name from
electoral roll

15. (1) Omitted

(2) If any person is convicted of an offence, under Chapter IX-A of the Indian Penal Code, punishable with imprisonment for a term exceeding six months, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of three years from the date of conviction or, if not on the electoral roll, shall not be so registered for a like period:

Provided that the Governor may direct that the name of any person to whom this sub-section applies shall register on the electoral roll:

Provided further that conviction for offences of a political character shall not operate as a disqualification under this sub-section.

Disqualification
of Candidates
for election

16. (1) No person shall be qualified for election as the Chairperson or a Councillor of a Municipality if such person-

(i) is not included in the electoral roll of that Municipality; or

(ii) is less than twenty-one years of age; or

(iii) is unable to read and write either English, Hindi or the language of state; or

(iv) has been adjudged by a competent court to be of unsound mind; and

(v) is an undischarged insolvent or being a discharged insolvent has not obtained from the Court a certificate that insolvency was caused by misfortune without misconduct on his part; or

(vi) is in arrear or any dues payable to the Municipality without sufficient cause shown to the satisfaction of the Election Officer, for a period of one year immediately preceding the year in which the election is held; or

(vii) is a person against whom an order of surcharge for willful negligence or misconduct has either been certified for payment or confirmed in case of an appeal in

respect of any money or property of a Municipality, under the provisions of the Orissa Local Fund Audit Act, of 1948 or a person against whom a decree has been passed under Section 375; or

(viii) is interested in a subsisting contract, either directly or indirectly made with or any work being done for the Municipality, except as a shareholder in a registered joint stock Company or Co-operative Society, constituted under the laws for the time being in force :

Provided that a person shall not be deemed to have any interest in such contract or work by reason only of his having a share or interest in—

(a) any lease, sale or purchase of immovable property or any agreement for the same; or

(b) any agreement for the loan of money or any security of the payment of money only; or

(c) any newspaper in which any advertisement relating to the affairs of the Municipality is or may be inserted; or

(d) the sale to the Municipality of any articles in which he regularly trades or the purchase from the Municipality of any article to a value in either case, not exceeding fifteen hundred, rupees in the aggregate, in any year during the period of the contractor work; or

(ix) is employed as a paid legal practitioner on behalf of the Municipality or as legal practitioner against the Municipality; or

(x) is an Officer or servant holding office under the Municipality or a Honorary Magistrate with jurisdiction over any part of the area of the Municipality; or

(xi) is a Government servant either whole time or part-time or has been dismissed from Government service for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal:

Provided that if any question arises, either before or after an election whether any person is or not disqualified under this clause, the question shall be referred to the State Government whose decision shall be final; or

(xii) has been sentenced by a Criminal Court to transportation or to imprisonment for a period of more than six months for any offence, other than an offence of a political character, or an offence not involving moral delinquency (such sentence not having been reversed or the offence pardoned) so long as he is undergoing the sentence and for three years from the date of the expiration of the sentence :

Provided that notwithstanding anything contained above the Governor may direct that such sentence shall not operate as a disqualification and upon such a direction being given or if and when the sentence is superseded on appeal or revision he shall be

restored to office for such portion of the period for which he was elected, as may remain unexpired at the date if such restoration and any person elected to fill the vacancy in the interim shall on such restoration, vacate office; or

(xiii) has been convicted or found to have been guilty of offence of corrupt or legal practice relating to election, which has been declared by the State Government under prescribed rules, to be an offence or practice entailing disqualification of membership unless such period has elapsed as may be prescribed in that behalf; or

(xiv) is disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State; or

(xv) is disqualified by or under any law made by the Legislature of the State; or

(xvi) has more than one spouse living; or

(xvii) has more than two children :

(xviii) has given appointment to any person in contravention of the provisions of this Act and the rules made thereunder during his tenure in the Municipality immediately preceding the election;

(xix) has been removed under Section 53 during the term of his office as the Chairperson or the Vice-Chairperson of the Municipality immediately preceding the election :

provided that the disqualifications under clause (xvii) shall not apply to a person who has more than two children on the date of commencement of the Odisha Municipal (Amendment) Act, 1994, or as the case may be, within a period of one year of such commencement, unless he begets an additional child after the said period of one year; and

(2) Subject to the provisions of Sec. 38 where a person, who becomes disqualified by virtue of clause (xii) of sub-section(1) is at the date of the disqualification a Chairperson or a Councillor, his seat shall, notwithstanding anything contained in this section, not become vacant by reason of the disqualification until three months have lapsed from the date thereof or if within those three months, an appeal or petitions for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of but during any period during which his Chairpersonship or Councillorship, as the case may be is preserved under this section, he shall not sit or vote in the council.

17. (1) Subject to the provisions of Section 38, a Chairperson or Councillor shall cease to of hold his office, if he-

(a) subject to the proviso to clause (xii) of sub-section (1) of Section 16 is sentenced by Criminal Court to such punishment and for such offence, as is prescribed in that clause; or

(b) has been adjudged by a competent court to be of unsound mind; and

(c) applies to be adjudicated or is adjudicated an insolvent; or

(d) subject to the proviso to clause (viii) of sub-section (1) of Section 16 acquires any interest in any subsisting contract, either directly or indirectly made with or work being done for, the Municipality except as share-holder in a registered joint stock company or a Co-operative Society, constituted under the laws for the time being in force; or

(e) is employed as a paid legal practitioner on behalf of the Municipality or accepts employment as a legal practitioner against the Municipality; or

(e-1) has failed to pay any arrears of Municipal dues within six months from the date of service of a notice demanding payment of the same; or

(f) is appointed as an officer or servant under Municipality or as an Honorary Magistrate with jurisdiction over any part of the Municipality; or

(g) is a salaried Government servant either wholetime or part-time:

Provided that if any question arises, whether any person is or not disqualified under this clause, the question shall be referred to the State Government, whose decision shall be final; or

(h) ceases to be resident within the Municipality; or

(i) in the case of a Councillor absents himself from four consecutive meetings without obtaining previous permissions from the Chairperson or without an excuse sufficient in the opinion of the Municipality:

Provided that no meeting room which a Councillor absents himself shall be counted against him under clause, if due notice of that meeting was not given to him;

Explanation - Emergent or special meetings shall not be deemed to be meetings within the meaning of this clause; or

(j) has been convicted or found to have been guilty of any offence or corrupt or illegal practice relating to elections which has been declared by State Government under prescribed rules to be an offence or practice entailing disqualification for Councilorship, unless such period has elapsed as may be prescribed in that behalf;

(k) incurs any of the disqualifications specified in clauses (xiv) to (xvii) of sub-section (1) of Section 16.

Limitation on
election
expenditure, and
accounts thereof

17-A. (1) No candidate for an election as a Chairperson or as a Councillor to a Municipality shall, either by himself or through any person authorised by him, incur expenditure in connection with such election an amount exceeding twenty-five thousand rupees:

Provided that the Election Commission may, by-notification from time to time and in consultation with the State Government, enhance the limit of such expenditure.

(2) For the purposes of this section, every candidate referred to in sub-section (1) shall maintain, or cause to be maintained, a true and separate account of all expenditure incurred or authorised by him in connection with the election between the date on which he has been nominated as a candidate and the date of declaration of the result of the election.

(3) Any person who contravenes any of the provisions of this sections shall be deemed to have committed corrupt practice within the meaning of ^Section 28.

(4) The account shall contain such particulars as may be notified by the Election Commission.

(5) Within one month from the date of declaration of the result of the election, every candidate, either personally or through his agent, shall lodge, or cause to be lodged, with the Election Commission the account of the election expenditure maintained under sub-section(2).

Power to
question
election by
petition

18. (1) The election of any person as a Chairperson or Councillor may be questioned by election petition on the ground-

(a) that such person committed, during or in respect of the election proceedings, a corrupt practice as defined in Section 28; or

(b) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful vote; or

(c) that such person though enrolled as an elector was disqualified for election under the provisions of Sections 15,16 and 29.

(2) The election of any person as a Chairperson or Councillor shall not be questioned-

(a) on the ground that the name of any person qualified to vote has been omitted from or the name of any person not qualified to vote has been inserted in the electoral roll;

(b) on the ground that any non-compliance with this Act or any rule or of any mistake in the forms required thereby or of any error, irregularity or informality on the part of the officer or officers charged with carrying out the provisions of this Act or any rules, unless such non-compliance mistake, error, irregularity or informality has materially affected the result of the election.

Form and
presentation
of petition

19. (1) The petition shall be presented before the District Judge, together with a deposit of two hundred rupees as security for cost within fortyfive* days, after the day on which the result of the election was announced and shall specify the ground or grounds on which the election of the opposite party is questioned and shall contain a summary of the circumstances alleged to justify the election being questioned on such grounds.

(2) The petition may be presented by any candidate in whose favour votes have been recorded and who claims to be declared elected in place of the person whose election is questioned, or by twenty-five or more electors of the ward.

(3) A person whose election is questioned and when the petition state that any other candidate shall be declared elected in place of such person, every successful candidate, who has polled more votes than such candidate, shall be made opposite party to the petition.

Right of
candidates
whose election
is questioned

20. Every opposite party may give evidence to prove that any person in respect of whom a claim is made that such person be declared elected in his place or in priority to him should not be elected in the same manner as if he had presented a petition against the election of such person.

Tribunal

21. (1) An election petition shall be heard by the District Judge within whose jurisdiction the Municipality is situated.

(2) Such District Judge (hereinafter referred to as 'Tribunal') shall be deemed to exercise jurisdiction as persona designata and not acting in capacity of a judge or Civil Court.

22. Except so far as may be otherwise provided by this Act or by rule, the procedure provide in the Code of Civil Procedure, 1908 in regard to suits, shall so far as it is not inconsistent with this Act or any rule and so far as it can be made applicable be followed in the hearing of election petitions :

(a) Provided that any two or more election petitions relating to the election of the same persons may be heard together;

(b) the Tribunal shall not be required to record or to have recorded the evidence in full but shall make a memorandum of the evidence sufficient in its opinion for the purpose of deciding the case;

(c) the Tribunal may at any stage of the proceedings, require the petitioner to give further security for the payment of all cost incurred or likely-* to be incurred by any opposite party and is within the time fixed by it or within such further time, as it may allow such security is not furnished may dismiss the petition;

(d) the Tribunal for the purpose of deciding any issue shall only be bound to require the production of or to receive so much evidence, oral or documentary, as it considers necessary;

(e) there shall be no appeal either on a question of law or fact and no application in revision against or in respect of the decision of the Tribunal;

(f) the Tribunal may review its decision on any point on the application of any person, considering himself aggrieved thereby, if the application is presented within one month from the date of decision.

23. (1) Unless it is otherwise prescribed, the Tribunal shall have the same powers and privileges as the judge of Civil Court, and may for the purpose of serving any notice or issue of any, process or doing any other such thing, be entitled to employ, with the consent of the Magistrate of the district, any peon or other officer or clerk, attached to the Court of the Magistrate of the district.

(2) An order for costs, or an order for the realization of security bond for costs passed by the Tribunal may be sent by that Tribunal for execution to the Collector of a District within which the Municipality concerned is situated and an orders sent shall be executed by the Collector in the same manner as if it was an order passed by the Collector under the Tenancy Law in force in the district or part of the district, as the case may be.

24. (1) If the Tribunal, after making such inquiry, as it deems necessary finds in respect of any person whose election is called in question by a petition that his election was valid, it shall dismiss the petition as against such person and may award cost at its discretion.

(2) If the Tribunal finds that the election of any person was invalid, it shall either—

(a) declare a casual vacancy to have been created; or

(b) declare another candidate to have been duly elected, whichever course appears in the particular circumstances of the case, the more appropriate and in either case, may award costs at its discretion.

(3) In the event of the Tribunal declaring a casual vacancy to have been created, it shall direct the Magistrate of the district or other authority prescribed in this behalf to take proceedings for filling the vacancy.

25. Notwithstanding anything contained in the preceding sections, if the Tribunal, in the course of hearing of an election petition, is of opinion that the evidence discloses—

(i) that corrupt practices have prevailed at the election proceeding in question to such an extent as to render it advisable to set aside the whole proceedings; or

(ii) the result of election has been materially affected by any non-compliance with this Act or any rules made thereunder or by any mistake in the forms required thereby or by any error, irregularity or informality on the part of any officer charged with or carrying out any duty under this Act or rules made thereunder; or

(iii) the result of election has been materially affected by improper acceptance or refusal of a candidate's nomination; it shall set aside the whole proceedings and pass an order to this effect and shall direct the Magistrate of the district or other authority prescribed in this behalf to take measure for holding fresh election proceedings and if the election is set aside for any cause which is the result of acts of a candidate or his agent, may declare that the candidate to be disqualified for the purpose of such fresh election .

Explanation-In this section the expressions “the election proceedings in question” and “the whole proceedings” shall mean all proceedings (inclusive of nomination and declaration of election) taken in respect of a single poll in any Municipality.

- Disqualification for corrupt practice 26. The Tribunal may declare any candidate found to have committed any corrupt practice under the preceding section, to be incapable for any period not exceeding five years of being elected as a member of the Municipality or of being appointed or retained in any office or place in the gift, disposal, pay or service of the Municipality:
- Provided that disqualification under this section may be removed by an order of the Governor in this behalf.
- Savings of acts by a Chairperson or Councillor before his election is set aside 27. Where a candidate, who has been elected to be a Chairperson or Councillor of a Municipality, is declared by the Tribunal not to have been duly elected, acts done by him in execution of the office, before the time when the decision is certified to the Municipality, shall not be invalidated by reason of that declaration.
- Corrupt practices 28. A person shall be deemed to have committed a corrupt practice who directly or indirectly by himself or by any other person—
- (a) induces, or attempts to induce by fraud, intentional misrepresentation, coercion or threat of injury, any voter to give or to refrain from giving a vote in favour of any candidate;
 - (b) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate or in consideration of any voter having voted or refrained from voting for any candidate, offers or gives any money or valuable consideration or any place or employment or holds out any promise of individual advantage or profit to any person including a promise of spiritual salvation;
 - (c) induces or attempts to induce candidates or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure with a view to influencing him in any way in connection with the election;
 - (d) employs, instigates or threatens any form of social boycott of any voter or candidate or of any one in whom such voter or candidate is interested;
 - (e) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote;
 - (f) makes or promises to make any payment to any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of recording his vote or hires, employs, borrows or uses for the purpose of election any boat, vehicle or animal usually kept for letting on hire or for convenience of the passengers by hire except for carrying himself or his agents and messengers:

Provided that nothing contained in this clause shall prevent a conveyance being hired by a voter or several voters at their joint cost for the purpose of conveying him or them to or from the poll;

(g) offers any money or valuable consideration to any person to induce him to withdraw from being a candidate at an election or being a candidate accepts any money or valuable consideration so offered;

(h) abets within the meaning of the Indian Penal Code XLV of 1860 the doing of any of the acts specified in clauses (a), (b), (c), (d), (e), (f) and ; (g)- ;

Explanation-(I) “A promise of individual advantage or profit to a person includes a promise for the benefit of the person himself or of any one in whom he is interested, but does not include a promise to further propose or to vote for or against any particular municipal measure or work;

(ii) No agent, clerk, messenger or other person, who may in accordance with prescribed rules, be employed for remuneration by a candidate at an election shall, by reason of such employment alone, be deemed to come within the provisions of the section;

(iii) A corrupt practice shall be deemed to have been committed by a candidate if it has been committed with his knowledge or consent or by a person who is acting under the general or special authority of such candidate with reference to the election;

(iv) Every person, who is guilty of a corrupt practice at, or in connection with an election held under the provisions of this Act shall be punishable with imprisonment which may extend to six months or with fine or with both.

Person convicted of election offences disqualified for voting and for being elected

29. Every person convicted of an offence punishable under this Chapter of under Chapter IX-A of the Indian Penal Code XLV of 1860 shall be disqualified from voting or from being elected in any election to which this Act applies or from holding the office of the Chairperson or Councillor of a Municipality for a period of four years from the date of his conviction or for such shorter period as the Court may by order determine.

Offences in respect of electoral rolls

30. (1) Every person who by claiming a qualification which he knows that he does not possess to vote at a municipal election or by using false document or by a false declaration or by any other deceitful means, procures or attempts to procure, the improper entry of the name whether of himself or of any other person in the electoral roll or the improper omission of any name therefrom shall be punishable with imprisonment which may extend to three months or with fine or with both.

(2) Every Municipal Officer or servant or Polling Officer, or any other Officer, whether designated as Election Officer or otherwise, engaged in or associated with the work of preparation of electoral rolls pursuant to Section 13 of this Act who willfully makes or procures or attempts to make or procure any improper entry in the electoral roll or any improper omission therefrom shall be punishable with imprisonment which may extend to six months or with fine or with both.

Falsifying result
of election

31. Every person, who in the course of electoral operations falsifies or attempts to falsify the record of an election by removing, destroying, altering or fabricating nomination papers or voting papers or by any other act or by an omission, shall be punishable with imprisonment which may extend to one year or with fine or with both.

Fraudulent voting
& personation

32. (1) Every person, who applies for a ballot paper at an election having already voted once at the same election and in any electoral ward on knowing that his name is not included in the electoral roll shall be punishable with imprisonment which may extend to six months or with fine or with both.

(2) Every person who applies for a ballot paper in the name of any other person, living or dead, or of fictitious person shall be punishable with punishment provided in sub-section (1).

Infringement of
secrecy of election

33. Every Presiding Officer, Polling Officer, clerk or other person, in attendance at the polling station who, except for some purpose authorised by law, communicates to any person information, showing directly for which candidate any voter as voted, and every person who by improper means procure any such information, shall be punishable with imprisonment of either description for a term which may extend to six months or with fine or with both.

Offences by
Presiding Officer
& Polling Officer

34. Every Presiding Officer or Polling Officer, who permits a person to vote knowing that such person is not entitled to vote or who prevents a person from voting, knowing that such person is entitled to vote, shall be punishable with imprisonment which may extend to six months or with fine or with both.

Procedure before
Magistrate

35. No Magistrate, other than a Magistrate of the first class, shall take cognizance of any offence punishable under Sections 28,30,31,32,33 and 34 nor shall any Magistrate take cognizance of such—

(a) except on the complaint of a person whose name is on the electoral roll;

(b) unless such complaint has been made within fourteen days of the date of the declaration of the result of any election to which the offence relates or within seven days of the date on which the offence is alleged to have been committed; and

(c) except in the case of an offence punishable under Sections 31, 33 and 34 unless the person complaining shall have deposited fifty rupees.

The deposit mentioned in clause (c) shall be refunded to the complainant, if the complaint is found to be true or if for any other reason, the Magistrate so directs-.

Bar to interference
by courts in
election matter

37. No election of a Chairperson or a Councillor shall be called in question in any Court except under the procedure provided by this Act and the rules, if any, made thereunder and no orders passed by the Tribunal in any proceeding under this Chapter for hearing of an election petition shall be called in question in any Court and no Court shall grant an injunction—

(i) to postpone an election of a Chairperson or a Councillor; or

(ii) to prohibit a person, declared to have been duly elected under this Act, from taking part in the proceedings of the Municipality of which he has been elected a Chairperson or a Councillor ; or

(iii) to prohibit a Chairperson or a Councillor formally elected to a Municipality from entering upon his duties.

Protection of action
taken in good faith

37-A. No suit, prosecution or other legal proceeding shall lie against the Election Commission or any person acting under the direction of the Election Commission in respect of any thing which is in good faith done or intended to be done in pursuance of the foregoing provisions of this chapter or of any order made thereunder or in respect of tendering of any opinion by the Election Commission to the Governor or in respect of the publication, by or under the authority of the Election Commission, of any such opinion, or any paper or proceedings.

District Judge to
decide question of
disqualification of
Chairperson and
Councillors

38. (1) Whenever it is alleged that any person, who has been elected as a Chairperson or Councillor is disqualified under Sections 16 or 17 and such person does not admit the allegation or whenever any a Chairperson or Councillor himself is in doubt, whether or not he has become disqualified for office under Sections 16 or 17, such a Chairperson or Councillor or any other Councillor may, and the Chairperson at the request of the Council shall apply to District Judge of the district in which the Municipality is situated,

(2) The said Judge after making such inquiry as he deems necessary shall determine whether or not such person is disqualified under Sections 16 or 17 and his decision shall be final.

(3) Pending such decision, the Chairperson or the Councillor, as the case may be shall be entitled to act as if he were not disqualified.

CHAPTER-IV

REMOVAL, RESIGNATION AND TERM OF COUNCILLORS

Removal of
Chairperson or
Councillor by
Government

38-A (1) Without prejudice to the provisions contained in the foregoing section, the State Government may remove any a Chairperson or Councillor, if they are satisfied he has become subject to any of the disqualifications specified in Section 17:

Provided that no order for removal shall be made without giving a Chairperson or Councillor an opportunity of showing cause against proposed removal:

Provided further that no such order shall be made in cases where an application in respect of the said a Chairperson or Councillor made under Section 38 on the same ground as aforesaid, is pending or where any such application having been made has been finally disposed of under the said section.

(2) Any Chairperson or Councillor against whom an order of removal is made under sub-section (1) may within thirty days of such order, prefer an appeal before the District Judge of the district in which the Municipality is situated.

Publication of
names

39. The names of the Chairperson and the Councillors of every Municipality including its Chairperson and Vice-Chairperson shall be published in the Gazette.

No Councillor
to receive
remuneration

40. No Councillor shall receive or be paid from the funds at the disposal of or under the control of such Municipality any salary or other remuneration for services rendered by him in any capacity whatsoever but shall be allowed travelling allowance as prescribed:

Provided that the Chairperson and Vice-Chairperson may receive such monthly allowances as may be prescribed :

Provided further that the Councillors, Chairperson and the Vice- Chairperson may receive such sitting allowances as may be prescribed.

Terms of office
of Chairperson
and Councillors

41. (1) Save as otherwise provided in this Act,—

(i) a Chairperson or Councillor whether elected at a general election, or nominated, to a Municipality shall hold office for five years from the date appointed for the first meeting of the Municipality as referred to in clause (a) of sub-section(2) of Section 47;

(ii) a Chairperson or Councillor elected at a by-election or elected or nominated against a casual vacancy in a Municipality shall hold office for the unexpired period of the term of office of a Chairperson or Councillor in whose place he has been so elected or, as the case may be, nominated.

(2) An outgoing a Chairperson or Councillor, if otherwise qualified, shall be eligible for re-election.

(3) Whenever the number of Councillors of an existing Municipality is increased as a result of increase in the number of wards thereof, the additional Councillor or Councillors elected for the purpose shall, save as otherwise provided, continue till the expiry of the term of office of the other Councillors of the Municipality as provided in sub-section(1).

Procedure when
no Councillor is
elected at an
election

42. (1) If at a general election or by-election to a Municipality referred to in Section 41 no Councillor is elected, a fresh election shall be held by such authority on such date and in such manner as may be prescribed in that behalf.

(2) If at such fresh election no Councillor is elected, the State Government shall nominate a person or persons to fill the vacancy.

(3) The term of office of a Councillor elected or nominated under this section shall expire at the time at which it would have expired if he would have been elected at the general election or by-election, as the case may be.

Resignation of
Councillor

43. (1) A Councillor not being the Vice-Chairperson may resign his office by writing under his hand addressed,—

(a) if he is an elected Councillor, to the Chairperson who shall place the letter of resignation before the Municipality at its next meeting of which notice shall be given to the Councillor; and

(b) if he is a nominated Councillor; to the State Government

(2) On the resignation being accepted,—

(a) by the Municipality, in the case of an elected Councillor; and

(b) by the State Government, in the case of a nominated Councillor . the Councillor shall cease to hold office with effect from the succeeding date of such acceptance:

Provided that the Councillor may, at any time before the acceptance of the resignation, withdraw the same by writing under his hand.

Vacation of office by Councillor	44. A Councillor of a Municipality shall be deemed to have vacated his office on the expiry of his term of office as, or on his otherwise ceasing to be, a Councillor of that Municipality or on being elected or nominated as a Councillor of any other Municipality.
Casual Vacancies	45. If a Councillor, elected or nominated ceases to be a Councillor of Municipal area by reason of his death, resignation, removal or otherwise the vacancy so caused shall be filled by the election or nomination, as the case may be of another Councillor in the manner prescribed.
Power to leave casual vacancies unfilled in certain areas	46. Where a vacancy occurs in the office of a Chairperson or Councillor by reason of death, resignation, removal or otherwise and the term of office of that Councillor would, in the ordinary course of events, have terminated within six months of the occurrence of the vacancy, the State Government may direct that the vacancy be left unfilled until the next general election.

CHAPTER IV-A

DISQUALIFICATION ON THE GROUND OF DEFECTION

Disqualification on the ground of defection	<p>46A. (1) Subject to the provisions of sections 46B, 46C and 46D a Chairman or Councillor, belonging to any political party, shall be disqualified for being such Councillor,—</p> <p style="margin-left: 40px;">a) if he has voluntarily given up his membership of such political party; or</p> <p style="margin-left: 40px;">b) if the Councillor votes or abstains from voting in, or intentionally remains absent from, any meeting of the Municipality in an election of its Vice Chairperson or a vote of no confidence, under section 54, contrary to any direction issued by the Political Party to which he belongs or by any person or authority authorised by such political party in this behalf, without obtaining, in either case, the prior permission of such party, person or authority and such voting, abstention or absence has not condoned by such political party, person or authority, as the case may be, within fifteen days from the date of such voting, abstention or absence.</p>
---	--

Explanation:- For the purpose of the sub-section,-

(a) a person elected as a Chairperson or councillor shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such Chairperson or councillor;

(b) a person elected as a councillor otherwise than as a candidate set up by a political party shall be deemed to belong to the political party of which he becomes a member before the expiry of six months from the date of commencement of his term of office;

(2) An elected Chairperson or Councillor who has been elected as such, otherwise than as a candidate set up by a political party shall be disqualified for being a Chairperson or councillor if he joins a political party after expiry of six months from the date of commencement of his term.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a person who on the date of commencement of the Odisha Municipal Law (second Amendment) Act, 2015 is a Chairperson or Councillor shall,-

(a) Where he was a member of a political party immediately before such commencement, be deemed for the purpose to have been elected as a Councillor as a candidate set up by such political party;

(b) In any other case, be deemed to be an elected councillor who has been elected as such otherwise than as a candidate set up by any political party for the purpose of sub-section(2).

Disqualification
not to apply in
case of split

46B. where a councillor makes a claim that he and any other Councillors of his political party constitute the group representing a faction which has arisen as a result of a split in his political party and such group consist of not less than two thirds of the members of such political party ,-

(a) He shall not be disqualified under sub-section(1) of section 46A on the ground ,-

(i) that he has voluntarily given up his membership of his political party; or

(ii) that he has voted or abstained from voting in or Intentionally remained absent from, any meeting of the Municipality in an election of its Vice-Chairperson or a Vote of no confidence under section 54,contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by such political party in this behalf, without obtaining in either case, the prior permission of such political party, person or authority and such voting ,abstention or absence has not been condoned by such political party, person or authority as the case may be ,within fifteen days from the date of voting or such abstention or absence; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purpose of sub-section(1) of section 46A and to be his political party for the purpose of this section.

Disqualification
not to apply in
case of merger

46C. (1) Chairperson or a Councillor shall not be disqualified under sub-section (1) of section 46A where his political party merges with another political party,-

(a) have become members of such other political party, or as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group and from the time of such merger, such other political party or new political party or group, as the case be, shall be deemed to be the political party to which he belongs for the purposes sub-section (1) of section 46A and to be this political party for the purpose of the section.

(2) For the purposes of sub-section (1) of this section, the merger of the political party of a Chairperson or a Councillor shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the political party concerned have agreed to such merger.

Explanation- The expressions “such other political party” and “new political party” shall include a political party whether such political party has been recognized or not by the Election Commission of India as a National Party of a State Party in the State of Odisha under the Election Symbols(Reservation and Allotment) Order, 1968.

Decision as to
disqualification
on the ground of
defection

46D. (1) A Complaint that a Chairperson or Councillor has become subject to the disqualification under section 46A, may be made by the Councillor or political party to the Election Commission;-

(a) in a case falling under clause (a) of sub-section(1) of section 46A, within fifteen days from the date the Chairperson or the Councillor gives up the membership of his political party;

(b) in a case falling under clause(b) of sub-section (1) of section 46A within fifteen days after expiry of period of fifteen days as specified therein.

(c) in a case falling under sub-section(2) of section 46A,fifteen days after he joins the political party.

(2) where complaint is received under sub-section(1), the Election Commission shall decide the question of disqualification within thirty days from the date of such receipt and his decision shall be final.

Election of
Chairperson
and Vice-
Chairperson

46E. Notwithstanding anything contained in any law, no court shall be jurisdiction in respect of matters connected with disqualification under this chapter.

CHAPTER-V

ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON

Election of
Chairperson and
Vice-Chairperson

47. (1) Every Municipality shall have a Chairperson who shall be elected at a general election under section 12 by the electors of the Municipality; and

(2) Every Municipality shall have a Vice Chairperson who shall be elected by the Councillors from among themselves at the first meeting of the Municipality which shall be convened by the District Magistrate soon after the publication of the names of the Chairperson and the Councillors under sub-section(2) of section 10 and such meeting shall be presided over by the Chairperson and in his absence by an officer not below the rank of an Additional District Magistrate authorized by the District Magistrate.;

Provided that where the office of the Chairperson of a Municipality is not reserved under sub-section (3) for women or where the Chairperson elected under this Act is not a woman, the office of the Vice-Chairperson of the Municipality shall be reserved for woman.

(3) Notwithstanding anything to the contrary in sub-section (1),—

(a) offices of Chairperson in the Municipalities shall be reserved for the Scheduled Castes and the Scheduled Tribes and the number of offices so reserved for the Scheduled Castes and the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of such offices as the population of the Scheduled Castes and the Scheduled Tribes respectively in the Municipal areas of State bears to the population of such Municipal areas;

(b) as nearly as may be but not less than one-half of the total number of seats reserved under clause (a) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes; and

(c) as nearly as may be but not less than one-half including the number of offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the backward class of citizens of the total number of offices of Chairperson in the Municipalities shall be reserved for women ; and

(d) as nearly as may be, but not less than, twenty-seven percentum of the offices of Chairpersons of Municipalities shall also be reserved in favour of backward class of citizens as referred to in clause (6) of Article 243-T of the Constitution; and

(e) as nearly as may be, but not less than one-half of the total number of seats reserved under clause (d) shall be reserved for women belonging to the backward class of citizens.

(4) Reservation of offices of Chairperson under sub-section (3) shall be made by the State Government by rotation among different Municipalities after every two of General Election in the prescribed manner and shall be published in the Gazette:

Provided that the procedure provided in sub-section (3-A) of Section 12 relating to reservation of seats in the Municipalities for the Scheduled Castes, Scheduled Tribes, Backward Class of Citizens and Women shall, as far as may be, be applicable for the purpose of reservation of offices of Chairpersons to be made by the State Government under this sub-section; and

(5) The reservation of offices of Chairpersons (other than reservation for women and backward class of citizens) under sub-section (3) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

(6) If at an election, no Chairperson is elected under sub-section(1) or no Vice-Chairperson under sub-section (2),—

(a) If at an election, no Chairperson is elected under sub-section(1) or no Vice-Chairperson is elected under sub-section (2), a fresh election shall be held within thirty days from the date of its first election; and

(b) no Vice-Chairperson is elected, a fresh election shall be held within thirty days from the date of the first election.

(7) If at the subsequent election held under sub-section (6) no Chairperson or Vice-Chairperson, as the case may be, is elected, the State Government shall nominate a person who is otherwise eligible to hold the office, to fill the office, and the person so nominated shall, subject to other provisions of this Act, hold office till the expiry of five years from the date appointed for the first meeting referred to sub-section (2) of Section 47.

Vacation of the
office by
Chairperson and
Vice-Chairperson

48. The Chairperson or the Vice-Chairperson of a Municipality shall be deemed to have vacated his office,—

(a) on the expiry of his term of office as, or on his otherwise ceasing to be a Councillor of that Municipality; or

(b) on his election or nomination as a Councillor of any other Municipality.

Filling up casual vacancies

49. On a vacancy occurring in the office of the Chairperson or Vice Chairperson of Municipality by reason of death, resignation, removal or otherwise, it shall be filled up by election as soon as may be after the occurrence of the vacancy in the prescribed manner:

“Provided that where a vacancy occurs in the office of Vice-Chairperson which was held by a woman, such vacancy shall be filled up by a woman, unless the Chairperson continuing in the office as such is a woman”.

49-A. Omitted.

Grant of leave to Chairperson or Vice Chairperson

51. The Municipal Council may grant leave of absence to its Chairperson or Vice-Chairperson for any period not exceeding three months in any one year.

Resignation of Chairperson or Vice-Chairperson

52. (1) A nominated Chairperson or Vice-Chairperson of a Municipality may resign his office by writing under his hand addressed to the State Government and, on such resignation being accepted, shall be deemed to have vacated his office.

(2) An elected Chairperson may resign his office by writing under his hand addressed to the Municipality.

(3) An elected Vice-Chairperson may resign his office by writing under his hand addressed to the Chairperson of the Municipality who shall forthwith lay the letter of resignation before the Municipality.

(4) On a resignation under sub-sections (2) or (3) being accepted by the Municipality the Chairperson or, as the case may be, the Vice-Chairperson shall be deemed to have vacated his office.

(5) A resignation tendered under this section may, at any time before its acceptance, be withdrawn by the person tendering the same by writing.

Removal of Chairperson or Vice-Chairperson

53. (1) If at any time during the term of office of the Chairperson or a Vice-chairperson it comes to the notice of the State Government that such chairperson Chairperson or Vice-Chairperson willfully omits or refuses to carry out, or disobeys the provisions of this Act or any rules, bye-laws, regulations or lawful orders issued there under, they may cause an enquiry to be made by the Director or by an officer not below the rank of a Deputy Secretary of the State Government, as the Government may, by notification, direct.

(2) On receipt of the report from the enquiring officer, the State Government shall give an opportunity to the concerned Chairperson or Vice-Chairperson to submit his explanation within a period of three weeks through the enquiring officer.

(3) The State Government after considering the report and the explanation together with the comments, if any, of the enquiring officer and on being satisfied that the Chairperson or the Vice-Chairperson has failed to discharge the duties of his office or has acted illegally or in contravention of any of the provisions of this Act or any rules, regulation or bye-laws, shall, by notification issued as far as practicable, within six weeks from the date of receipt of the explanation, remove the Chairperson or as the case may be, the Vice-Chairperson.

Vote of no
confidence against
Chairperson or
Vice- Chairperson

54. (1) Where at a meeting of the Municipality specially convened by the District Magistrate in that behalf a resolution is passed, supported by not less than two-thirds of the total number of Councillors recording want of confidence in the Chairperson or Vice-Chairperson the resolution along with the records of the proceedings at such meetings shall forthwith be forwarded to the State Government who shall publish the same in the Gazette and with effect from the date of passing of the resolution the person holding the office of the Chairperson, or Vice-Chairperson as the case may be, shall be deemed to have vacated such office. In the event of both Chairperson and Vice-Chairperson vacating office the District Magistrate or his nominee shall discharge the responsibilities of the Chairperson till a new Chairperson is elected:

“Provided that no such resolution recording want of confidence in the Chairperson or the Vice-Chairperson” —

(i) shall be passed within two years from the date of his election or nomination as the case may be;

(ii) shall be moved more than once during a calendar year.

(2) In convening a meeting under sub-section (1) and in the conduct of business at such meeting the procedure shall be in accordance which the rules, made under this Act, subject however to the following provisions, namely:—

(a) no such meeting shall be convened except on a requisition signed by at least one-third of the total number of Councillors along with a copy of the resolution proposed to be moved at the meeting;

(b) the requisition shall be addressed to the District Magistrate;

(c) the District Magistrate shall, within 10 days of receipt of such requisition, fix the date, hour and place of such meeting and give notice of the same to all the Councillors holding office on the date of such notice along with a copy of the resolution and of the proposed resolution, at least three clear days before the date so fixed ;

(d) the District Magistrate or if he is unable to attend, any Gazetted Officer above the rank to which the Executive Officer of the Municipality belongs who is specially authorised by him in that behalf shall preside over, conduct and regulate the proceedings of the meeting ;

(e) the voting at all such meeting shall be by secret ballot;

(f) no such meeting shall stand adjourned to a subsequent date and no item of business other than the resolution for recording want of confidence in the Chairperson or Vice-Chairperson, as the case may be, shall be taken up for consideration at the meeting;

(g) if the number of Councillors present at the meeting is less than two-third of the total number of Councillors the resolution shall stand annulled;

(h) if the resolution is passed at the meeting supported by the requisite number of Councillors as specified in sub-section (1) the Presiding Officer shall immediately forward the same in original along with the records of the proceedings to the State Government who shall forthwith publish the resolution in accordance with the provisions of sub-section (1); and

(i) where any Gazetted Officer presides at the meeting he shall, without prejudice to the provisions of clause (h) also send a copy of the resolution along with a copy of the proceedings to the District Magistrate for information and such action as may be necessary.

Officiation in
case of vacancy in
the office of
Chairperson and
Vice-Chairperson

55. (1) When the office of the Chairperson is vacant or the Chairperson has been temporarily absent including absence on leave availed under Section 51 or is incapacitated and also there is a vacancy in the office of the Vice-Chairperson or the Vice-Chairperson has been temporarily absent including absence on leave availed under Section 51 or is incapacitated, the powers and functions of the Chairperson shall devolve on a Councilor of the Municipality from out of a panel of three such Councillors in order of priority nominated by the Chairperson in that behalf who Shall be the officiating Chairperson and shall exercise the powers and perform the functions of the Chairperson, subject to such restrictions and condition's as may be prescribed, until the Chairperson or Vice-Chairperson assumes office on being duly elected or as the case may be, takes charge of his office.

(2) The Chairperson shall nominate the panel as referred to in sub-section (1) within a period of one month from the date of the first meeting of the Municipality,

failing which the Municipality shall nominate the panel in its first meeting held after the expiry of the aforesaid period of one month.

(3) Where the Chairperson of a Municipality existing immediately before the commencement of the Orissa Municipal (Amendment) Act, 2007 has not nominated the panel, he shall nominate it within a period of one month from the date of commencement of the said amendment Act, failing which the Municipality shall nominate the panel in its first meeting held after the expiry of the aforesaid period of one month.

Proceedings not to be invalidated by casual vacancies

56. No act of a Municipal Council shall be deemed to be invalid only by invalidated by reason of the existence of a casual vacancy in such Council.

Civil Court not to grant temporary injunctions in certain cases

57. No Civil Court shall, in the course of any suit, grant any temporary injunction or make any interim order,—

(a) restraining any person from exercising the power of performing the functions or duties of a Member, Chairperson, Vice-Chairperson, Officer or servant of a Municipality or of a Committee or Sub-Committee of Municipality on the ground that such person has not been duly elected or appointed as such Member, Chairperson, Vice-Chairperson, Officer or servant; or

(b) restraining any person or persons or any such Council or Committee or Sub-Committee of a Municipal Council from holding any election, or from holding any election in any particular manner.

CHAPTER-IX

FUNCTIONS OF THE MUNICIPALITY AND ITS EXECUTIVE

Exercise of Chairperson's functions by Vice-Chairperson during vacancy in office

89. A Vice-Chairperson shall—

(a) during the vacancy of office of the Chairperson or incapacity or temporary absence of the Chairperson perform any of the duties and when occasion arises, exercise any of the powers of the Chairpersons;

(b) at any time perform any duty and exercise when occasion arises, any power delegated to him by the Chairperson under Section 90:

Provided that the Chairperson shall have power to control and revise the exercise or discharge of any of the powers and functions by the Vice- Chairperson:

Provided further that the Vice-Chairperson, exercising powers and performing duties, during the vacancy of the office of Chairperson or incapacity or temporary absence of the Chairperson, shall be responsible to the Municipality for exercising such powers and performing such duties.

CHAPTER-XXVII

PENALTIES

Penalty for acting as Councillor, Chairperson or Vice-Chairperson of a Municipality when disqualified

384. (1) Whoever acts as a Councillor, knowing that under this Act or the rules and regulations made thereunder, he is not entitled or has ceased to be entitled to hold such office, shall be punishable with fine which may extend to fifty rupees for every' such offence.

(2) Whoever acts as the Chairperson or Vice-Chairperson of a Municipality or exercises any of his functions knowing that under this Act or the rules or regulations made thereunder he is not entitled or has ceased to be entitled to hold such office or to exercise such functions shall be punishable with fine which may extend to one hundred rupees for every such offence.

(3) If the Chairperson or Vice-Chairperson of a municipality intentionally omits to deliver up or to hand over any documents of, or any moneys or other properties vested in, or belonging to the Municipality which are in or have come into his possession or control, to his successor in office or*other prescribed authority in every cases as soon as his term of office as such Chairperson or Vice-Chairperson expires and in the case of the Vice- Chairperson also on demand by the Chairperson; such Chairperson or Vice- Chairperson shall punishable with fine which may extend to five hundred rupees for every such offence.

CHAPTER-XXVIII

RULES, REGULATIONS, BYE-LAWS AND SCHEDULE

Power of State Government to make rules

387. (1) The State Government may make rules to carry out all or any of the purpose of this Act and prescribe forms for any proceeding for which they consider that a form should be provided:

(2) In particular and without prejudice to the generality of the foregoing power, they shall have power to make rules-

(i) with reference to all matters expressly required or allowed by this Act to be prescribed;

(ii) with reference to all matters not expressly provided for in this Act, which relate to elections of Chairperson, Vice-Chairperson or councillors including deposits to be made by candidates standing for election as councillors and the condition under which such deposits may be forfeited and generally determining the mode and time of election of councillors and members of committees, term of office and

qualification of such members and the registration of voters and candidates and for regulating all elections under this Act;

Procedure for making rules, regulations and bye-laws

392. The State Government, before making any rules under subsection (2) of Section 81 and Section 387, and a Municipality, before making any regulation or bye-laws under Section 388, shall publish, in such manner as the State Government deems sufficient for giving information to person interested, the proposed rules or regulations or bye-laws together with a notice specifying a date on or after which the same will be taken into consideration; and shall before making such rules or regulations or bye-laws, receive and consider any objection or suggestion which may be made by any person with respect to the same before the date so specified.

Every such rule or regulation or bye-law shall be published in the Gazette in English and in Oriya and such publication shall be evidence that the rule or regulation or bye-law has been made as required by this Section.

CHAPTER-XXIX

CONTROL AND DELEGATION OF POWERS

Dissolution and reconstitution of Municipality

401. (1) If in the opinion of the State Government a Municipality is incompetent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its powers, they may, by notification published in the prescribed manner, direct that the Municipality be dissolved.

(2) Before publishing a notification under sub-section(1), the State Government shall communicate to the Municipality the grounds on which they propose to do so, fix a reasonable period for the Municipality to show cause against the proposal and consider the explanations and objections, if any, of the Municipality.

(3) On and with effect from the date of publication of such notification, all the Councillors including the Chairperson and Vice-Chairperson of the Municipality shall be deemed to have vacated their office as such and the election to constitute the Municipality in accordance with the provisions of this Act shall be completed before the expiration of a period of six months from the said date :

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this sub-section for constituting the Municipality for such period.

(4) The Councillors including the Chairperson and Vice-Chairperson of the Municipality constituted on such dissolution shall continue only for the remainder of the period for which the Councillors including the Chairperson and Vice-Chairperson of the dissolved Municipality would have continued had there been no such dissolution.

(5) During the interval between the dissolution of a Municipality and the reconstitution thereof, all or any of the powers and duties of the Municipality and its Chairperson may be exercised and discharged, as far as may be, and subject to such extent, as the State Government may determine, by a person to be appointed by the State Government as the Administrator, and the Administrator so appointed may, if the State Government so direct, receive such payment for his services from the Municipal Fund as may be determined by them.

CHAPTER-XXXI

SUPPLEMENTARY & TRANSITIONAL PROVISIONS

Special Provision
in the case of a
newly constituted
and reconstituted
Municipality

423. (1) Notwithstanding anything contained in this Act, when any area is specified as a transitional area, smaller urban area or larger urban area as referred to in sub-section (2) of Section 4, for the first time, until a Municipality is constituted for that area in accordance with the provisions of this Act ,a person appointed by the State Government as Administrator shall exercise the powers, discharge the duties and perform the functions of Municipality for that area including that of its Chairperson.

(2) The Administrator appointed under sub-section (1) may, if the State Government so direct, receive such payment for his services from the Municipal Fund that may be constituted for such Municipality, as may be determined by the Government.

Power of State
Government in
case of doubts and
difficulties.

425. If any difficulty arises in giving effect to the provisions of this Act, the State Government may by order as occasion may require, do anything which appears to them to be necessary to remove the difficulty.