

ELECTIONS/URGENT

**PROCEEDINGS OF THE ELECTION AUTHORITY & COMMISSIONER &
DIRECTOR OF MUNICIPAL ADMINISTRATION::HYDERABAD:: TELANGANA**

**Present: Dr. B.Janardhan Reddy, I.A.S.,
Election Authority and
Commissioner & Director**

Roc.No.309/2014/H-1

Dated.28.06.2014

Sub:- ELECTIONS- 4th Ordinary elections to 53 Municipalities
/Nagarpanchayats- Convening of first meeting- Fixing of date of
first meeting of the Municipal Council - Orders - Issued.

Read: SECs Order.No.1517/SEC-F2/2014, Dt.26.06.2014

ORDER:

In the reference read above, the State Election Commission has issued order for conduct of elections to the Office of Chairperson/Vice Chairperson in (53) Municipalities/Nagarpanchayats on 03.7.2014.

2. It is specifically stated that the term of office of elected members shall, save as otherwise expressly provided in this Act, be five years from the date appointed by the Election Authority for the first meeting of the Council as per Section 20 (1)(a) of A.P. Municipalities Act, 1965. Therefore, in order to meet the requirements of provision of Sec 20 (1)(a) of the A.P. Municipalities Act, 1965, the date for the first meeting of the Council has to be fixed by the Election Authority. ***Further, according to the provisions of sub section (1) of section 23 of A.P. Municipalities, Act, 1965 the election to office of Chairperson and Vice-Chairperson shall be held at the first meeting of the Municipality after the ordinary elections.***

3. Therefore, in exercise of the powers conferred under clause (a) of sub-section (1) of Section 20 and sub-section (1) of Section 23 of the A.P. Municipalities Act, 1965, the Election Authority and Commissioner and Director of Municipal Administration hereby **appoints 03 of July, 2014** as

the date on which the first meeting of the Municipal Councils of **(31)** Municipalities/Nagarpanchayats will be held ***and from this first meeting, the elected members will come into the office of the ward members of the (31) Municipal Councils as annexed to this proceedings..***

4. A copy of extract of Section 386 of A.P. Municipalities, Act, 1965 in which the procedure of oath taking has been prescribed, is herewith annexed to the proceedings for ready reference.

Encl: As above

**Sd/- Dr.B.Janardhan Reddy
ELECTION AUTHORITY AND
COMMISSIONER & DIRECTOR**

To

The Municipal Commissioners of (31) Municipalities and Nagarpanchayats
as per the list enclosed.

Copy to the District Election Authorities & Collectors concerned,
Copy to the Regional Director-cum-Appellate Commissioner of Municipal
Administration, Warangal and Hyderabad.
Copy to the Secretary, State Election Commission, Secunderabad.
Copy submitted to the Principal Secretary to Government, Municipal
Administration & Urban Development Department, Hyderabad.

LIST OF MUNICIPALITIES / NAGARPANCHAYATS	
S.No	Name of the Mpty/ Np
1	Jangaon
2	Jagityal
3	Sircilla
4	Korutla
5	Metpalli
6	Kothagudem
7	Yellandu
8	Sattupalli
9	Adilabad
10	Bellampally
11	Mancherial
12	Nirmal
13	Kagaznagar
14	Bhainsa
15	Tandur
16	Vikarabad
17	Kamareddy
18	Bodhan
19	Armur
20	Nalgonda
21	Suryapet
22	Miryalguda
23	Bhongir
24	Sangareddy
25	Sadasivapet
26	Zaheerabad
27	Medak
28	Mahaboobnagar
29	Gadwal
30	Narayanapet
31	Wanaparthy

Miscellaneous

381. Application of term of 'Public Servant' to Municipal Officers, Agents and sub-agents :—Every municipal officer or employee, every contractor or agent for the collection of any municipal tax, fee or other sum due to the council and every person employed by any such contractor or agent for the collection of such tax, fee or sum shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

382. Prohibition against obstruction of municipal authorities, employees and contractors :—No person shall obstruct or molest the council, the Chairperson, any Member, the Commissioner or any other municipal officer or employee or any person employed by the council or any person with whom a contract has been entered into on behalf of the council, in the performance of their duty or of anything which they are empowered or required to do by virtue or in consequence of this Act or of any bye-law, rule, regulation or order made under it.

383. Prohibition against removal of mark :—No person shall remove any mark set up for the purpose of indicating any level or direction incidental to the execution of any work authorised by this Act or by any bye-law, rule or order made under it.

384. Prohibition against removal or obliteration of notice :—No person shall, without authority in that behalf, remove, destroy, deface or otherwise obliterate, any notice exhibited by, or under the orders of the council or the Commissioner or other officer authorised by him in this behalf.

385. Prohibition against unauthorised dealings with public place or materials :—No person shall, without authority in that behalf, remove earth, sand or other material or deposit any matter or make any encroachment from, in, or on, any land vested in the council, or river, estuary, canal, backwater or water course, not being private property or in any way obstruct the same.

386. Oath of allegiance to be taken by ¹[Chairperson or Members]:—
(1) ¹[Every person who is elected to be a Chairperson or Member] shall,

1. Subs. by Act 33 of 1986.

before taking his seat, make at a meeting of the council on oath or affirmation of his allegiance to the Constitution of India in the following form, namely:-

"I, having become a '[Chairperson/Member] of the Municipal Council swear in the name of God/solemnly affirm, that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter".

(2) Any such '[Chairperson or Member] who fails to make, within three months of the date on which his term of office commences or at one of the first three meetings held after the said date, whichever is later, the oath or affirmation laid down in sub-section (1), shall cease to hold his office and his seat shall be deemed to have become vacant.

(3) No such '[Chairperson or Member] shall take his seat at a meeting of the council or do any act as such Member, unless he has made the oath or affirmation as laid down in this section.

(4) Where a person ceases to hold office under sub-section (2) the Commissioner shall report the same to the council at its next meeting and on application of such person made within thirty days of the date on which he has ceased to be a member under that sub-section the council may grant him further time which shall not be less than three months for making the oath or affirmation and if he makes the oath or affirmation within the time so granted, he shall, notwithstanding anything in the foregoing sub-sections, continue to hold his office.

387. Delegation of powers by the Government :—(1) The Government may, by notification in the Andhra Pradesh Gazette, delegate to any person or authority all or any of the powers vested in them by this Act except the power to make rules and may, in like manner, withdraw any powers so delegated.

(2) The exercise of any powers delegated under sub-section (1) shall be subject to such restrictions and conditions as may be prescribed or as may be specified in the notification and also to control and revision by the Government.

3. Writ of quo warranto cannot be issued when the alternative remedy under Section 17 is not availed of :—

The Act provides the machinery for adjudication of disputes arising out of an alleged disqualification of any member to hold office and if the applicant has failed to avail himself at the special remedy, relief in the nature of *quo warranto* cannot be granted.¹

(A) Election offences

18. Infringement of secrecy of election :—Every polling officer, clerk or other person in attendance at the polling room who, except for some purpose authorised by law, communicates to any person any information showing directly or indirectly for which candidate any voter, has voted, and every person who by any improper means procures any such information, shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

19. Disqualification of persons convicted of election offences :—Every person convicted of an offence punishable under Section 18 or under Chapter IX-A of the Indian Penal Code shall be disqualified from voting or from being elected in any election to which this Act applies or from holding the office of member for a period of five years from the date of his conviction or for such shorter period as the court may, by order, determine.

²[20. Term of office of members and filling of seats :—(1) (a) The term of office of elected members shall, save as otherwise expressly provided in this Act, be five years from the date appointed by the election authority for the first meeting of the Council;

³[x x x]

(b) An ex-officio member shall hold office so long as he continues to be the member of the Legislative Assembly of the State or as the case may be, of the House of the People.

⁴[(2) Ordinary vacancies in the office of the members shall be filled at

1. *A.P. Kadirvelu Naicker v. K.M. Lakshmana Mudaliar and another*, AIR 1962 Mad 314.
2. Subs. by Act 33 of 1986, w.e.f. 1-11-1986.
3. Omitted by Act 18 of 1992, w.e.f. 27-2-1992.
4. Subs. by Act 17 of 1994, w.e.f. 1-6-1994.

immediately arrange election of Chairperson. Under Section 21A though it is lawful for the Government to postpone the election of the Chairperson, but such postponement shall be lawful only if an order is passed by the Government assigning reasons for such postponement. In view of the plain language of Section 26A and Section 21A of the Act, the Council cannot brook any delay in conducting election of Chairperson otherwise, a situation would develop when the Vice-Chairperson would be acting as Chairperson without holding election of Chairperson till the expiry of entire remaining term. It should be remembered that the Chairperson is elected directly by all the electors of the Municipality and the Vice-Chairperson having been elected by members of the Municipality cannot be allowed to perform the functions of the Chairperson for a long time. The Chairperson is also one of the important authorities in the municipality as enumerated in Section 4 of the Act, whereas the Vice-Chairperson has not been given any such importance in the administration of the municipality. The election of Vice-Chairperson thus cannot get precedence over that of the Chairperson. This position is also evident from the scheme of the Act. It is, however, possible in a given situation that the election of Vice-Chairperson can be held when there is vacancy of office of Chairperson. But such a situation should be avoided in all cases, since the Chairperson has to conduct the meeting for the election of Vice-Chairperson and the Chairperson being an important authority in the municipality, his election should be given preference. Ordinarily the election of Vice-Chairperson cannot be conducted when the office of Chairperson is vacant. It would be wholly contrary to the Act and the Rules. Even in case when, for good reasons, the election of Chairperson was postponed as contemplated under Section 21-A of the Act, the election of Vice-Chairperson can be held, but such a meeting shall be presided over by a Member. Hence, the impugned notice issued by R.D.O. to conduct the election of Vice-Chairperson is wholly contrary to the provisions of the Act and the Rules and is liable to be set aside.¹

22. Procedure when no member is elected :—(1) If at an ordinary or casual election held under Section 20 or Section 21, no member is elected, a fresh election shall be held on such day as the election authority may fix.

(2) The term of office of a member elected under this section shall expire at the time at which it would have expired if he had been elected at the ordinary or casual election, as the case may be.

(B) Chairperson

23. Election of Chairperson :—(1) (a) In the case of every municipality, the Chairperson shall be elected by the persons whose names

1. *Kodamanchili George v. Commissioner and Director of Municipal Administration, AP., Hyderabad and another*, 1998 (1) ALD 421.
2. Subs. by Act 33 of 1986, w.e.f. 1-11-1986.

appear in the electoral roll for the municipality, from among themselves, in the manner prescribed. A person shall not be qualified to stand for election as Chairperson unless he is not less than twenty-one years of age.

- (b) If at any election held under this sub-section no Chairperson is elected, a fresh election shall be held:

Provided that if a member of the Legislative Assembly of the State or of either House of Parliament is elected as Chairperson, he shall cease to hold the said office of Chairperson unless within fifteen days from the date of election to the said office, he ceases to be a member of the Legislative Assembly of the State or as the case may be, of either House of Parliament and if a Chairperson subsequently becomes a member of the Legislative Assembly of the State or as the case may be, of either House of Parliament, he shall cease to hold the said office of the Chairperson unless, within fifteen days from the date on which he so becomes such member he ceases to be member of Legislative Assembly of the State or as the case may be, of either House of Parliament:

¹[x x x]

²[x x x]

- ³[(c) Out of the total number of offices of chairperson in the State, the Government shall, subject to such rules as may be prescribed, by notification reserve—

- (i) such number of offices to the Scheduled Castes and Scheduled Tribes as may be determined subject to the condition that the number of offices so reserved shall bear, as nearly as may be, the same proportion to the total number of offices to be filled in the State as the population of the Scheduled Castes or Scheduled Tribes, as the case may be, in the Municipalities of the State bears to the total population in the Municipalities of the State and such offices may be allotted by rotation to different Municipalities in the State;

- (ii) one-third of the offices to the Backward Classes and such

1. Omitted by Act 17 of 1994, w.e.f. 1-6-1994.

2. Omitted by Act 1 of 1995, w.e.f. 3-2-1995.

3. Ins. by Act 17 of 1994, w.e.f. 1-6-1994.

offices may be allotted by rotation to different municipalities in the State;

- (iii) not less than one-third of the total number of offices reserved under clauses (i) and (ii) for women belonging to the Scheduled Castes, Scheduled Tribes, or as the case may be Backward Classes; and
- (iv) not less than one-third (including the number of offices reserved for women belonging to the Scheduled Castes, Scheduled Tribes and the Backward Classes) of the total number of offices to be filled in the State, for women; and such offices may be allotted by rotation to different Municipalities in the State.

(2) The election of the Chairperson may be held ordinarily at the same time and in the same place, as the ordinary election of the members of the municipality.

(3) Save as otherwise expressly provided in this Act, the term of office of the Chairperson who is elected at an ordinary election shall be five years from the date, appointed by the election authority for the first meeting of the council.

¹[x x x]

(4) Subject to the provisions of sub-section (5), any casual vacancy in the office of the Chairperson shall be filled at a casual election and a person elected as Chairperson in any such vacancy shall enter upon office forthwith and hold office only so long as the person in whose place he is elected would have been entitled to hold office, if the vacancy had not occurred.

(5) No casual vacancy in the office of the Chairperson shall be filled ²[within six months] before the date on which the ordinary election of the Chairperson under sub-section (1) is due.

(6) The provisions of ³[Sections 13-A to 19] (both inclusive) shall, as far as may be, apply in relation to the office of the Chairperson, as they apply in relation to the office of an elected member.

1. Omitted by Act 18 of 1992, w.e.f. 27-2-1992.

2. Subs. by Act 3 of 1994, w.e.f. 1-3-1994.

3. Subs. by Act 17 of 1994, w.e.f. 1-6-1994.

(7) The Chairperson shall, by virtue of his office be a member of the municipality and shall have all the rights and privileges of an elected member of municipality and he shall be entitled to vote at all the meetings of the Council.

COMMENTARY

Reservation of seats for Scheduled Castes and Scheduled Tribes - Treating the persons belonging to Scheduled Castes and Scheduled Tribes residing in Urban areas differently from those living in rural areas - Valid :—

Having due regard to Article 243-D, 243-T, 330 and 332 of the Constitution it is difficult to accept the contentions that the State Government while enacting Section 23(1)(c)(i) has treated the Scheduled Castes or as the case may be Scheduled Tribe in the urban areas as a different class. This Court can take note of the fact that rural population is more than the urban population. Similarly, this Court can also take note of the fact that among the Scheduled Castes and Scheduled Tribes, their population is more in rural areas than their population in urban areas, and that seems to be the underlying idea in the emission of necessary provision for fixing the number of the Chairpersons to be reserved in the municipalities. Therefore, having due regard to the said difference, taking the population of the Scheduled Castes or as the case may be Scheduled Tribes in the State in proportion to the total population in the State for the purpose of providing reservation in number of offices of Chairpersons in the Gram Panchayats, there is a clear discernable differentia which has a reasonable relation to the object behind providing reservation. In as much as the population of the Scheduled Castes or as the case may be Scheduled Tribes in the urban areas is less than their counter-parts in the rural areas, adopting a different basis for providing reservation in respect of number of offices of Chairpersons in the municipalities cannot be said to be bereft of any intelligible differentia. Under the circumstances, the contention that Scheduled Castes and Scheduled Tribes in urban areas have been treated as a different class among the equals namely their counter-parts in the rural population, is fallacious and cannot, therefore, be countenanced. Assuming for a moment that SCs and STs in municipal areas have been treated as a different class, a critical examination of the provisions, as afore-discussed, would clearly show that the absence of a necessary provision like the one incorporated under Clause 4 of Article 243-D, in Article 243-T is based upon an intelligible differentia which makes the classification reasonable. There is no legitimate basis for the contention that Section 23(1)(c)(i) of the Act is unconstitutional having been enacted treating the Scheduled Castes or as the case may be Scheduled Tribes of urban areas as a different class.