

STATE ELECTION COMMISSION

3rd Floor, Buddha Bhavan, M.G. Road, Hyderabad-500003, A.P.

Navin Mittal, IAS
Secretary

Off: 27545350, 27543122
Fax: 27544580, 27544428
Email: secy.apsec@gmail.com
Website: www.apsec.gov.in

Lr.No. 877/SEC-B2/2013

Date: 06.7.2013

To

All the Collectors and District Election Authorities.

Sir/Madam,

Sub: State Election Commission – 4th ordinary elections to Gram Panchayats – Qualifications and disqualifications to contest elections – Certain clarifications sought regarding persons holding certain offices and also regarding 2-Children norm stipulated in Sec.19(3) of APPR Act, 1994 – Reg.

The State Election Commission has been receiving fax messages from various districts seeking specific clarification on eligibility of persons holding various posts to contest elections to Gram Panchayats. Clarifications are also sought regarding disqualification for having more than two children under Sec.19(3) of the A.P. Panchayat Raj Act, 1994.

The State Election Commission has given Handbook of Election Law (Panchayat Raj) and Handbook of Returning Officer, which contain provisions relating to qualifications and disqualifications. It is also specifically mentioned in both the Handbooks that the Returning Officer will be discharging a quasi-judicial function while performing scrutiny of nominations. He has to take independent decisions with regard to eligibility of the candidate based on the provisions made in the Act with regard to qualifications and disqualifications. Any suggestions made to him will amount to influencing him in taking judicious decisions.

Based on some judicial pronouncements, some important clarifications relating to eligibility of candidates are enclosed to this letter.

Further, the District administration shall desist from seeking clarifications regarding eligibility to contest elections mentioning various posts in different departments receiving honorarium or remuneration such as Asha Worker, Adarsa Rythu, Cluster Resource Person, Gram Panchayat Saksharatha Bharath Village Coordinators, Community Mobilizers, Gopala Mithra, Senior Mate in MGNREGS, Field Assistant, etc.

(PTO)

The eligibility of persons holding certain posts is to be examined with reference to Sec. 18(1) of the A.P.P.R. Act, 1994 which reads as under:

"No village servant and no officer or servant of the Government of India or any State Government or of a local authority or an employee of any institution receiving aid from the funds of the Government and no office-bearer of any body constituted under a law made by the Legislature of the State or of Parliament shall be qualified for being chosen as or for being a member of a Gram Panchayat."

All the Collectors & District Election Authorities are requested to give necessary instructions to the Returning Officers on this matter.

Yours faithfully,
Sd/- Navin Mittal
Secretary

Encl: As above.

// Attested //


Joint Secretary

IMPORTANT CLARIFICATIONS REGARDING ELIGIBILITY TO CONTEST ELECTIONS TO PANCHAYAT RAJ BODIES

1. Fair Price Shop dealers are eligible to contest elections:

Section 19(2)(d) of A.P.P.R. Act, 1994 disqualifies a person interested in a subsisting contract made with, or any work being done for, the Gram Panchayat, Mandal Parishad, Zilla Parishad or any State or Central Government. The Hon'ble High Court of Andhra Pradesh in W.P.No.14189/2006 and batch relied upon the judgment of Somnath Rath V. Bikram K. Arukh reported in AIR 1999 Supreme Court, 3417, held that the Fair Price Shop dealers are eligible to contest to all offices in Panchayat Raj bodies. Licence for distribution of some articles pursuant to an agreement with the Government cannot be considered as performance of a contract under Sec.19(2)(d) of A.P.P.R. Act.

2. Anganwadi workers are not eligible to contest in elections to P.R. Bodies:

The Hon'ble High Court in its order dated 9.4.2007 in W.P.No.6894/2007 held that Anganwadi workers are not eligible to contest elections to Panchayat Raj bodies in terms of Section 18(1) of the A.P.P.R. Act, 1994, which reads as under:

No village servant and no officer or servant of the Government of India or any State Government or of a local authority or an employee of any institution receiving aid from the funds of the Government and no office-bearer of any body constituted under a law made by the Legislature of the State or of Parliament shall be qualified for being chosen as or for being a member of a Gram Panchayat.

3. A member of Water Users Association is disqualified for contesting elections to P.R. Bodies:

The Hon'ble High Court of Andhra Pradesh in its order 13.11.2010 in W.P.No.13294/2010 held that office-bearers of Water Users Associations constituted under the Andhra Pradesh Farmers' Management of Irrigation Systems Act, 1997 are not eligible to contest elections to Panchayat Raj bodies under Section 18(1) of A.P.P.R. Act, 1994.

4. Market Committee is a body constituted under the Market Committees Act which is a law enacted by the State Legislature. Therefore, the Chairman and Members of a Market Committee are disqualified under Sec.18(1) of the A.P.P.R. Act, 1994. However, if they resign as office bearers of the Market Committee and their resignations are accepted on or before the date of scrutiny, their nominations can be accepted.

5. Cooperative Societies are all organisations registered under the Cooperative Societies Act, 1964. The Cooperative Societies are not directly constituted under the said Act. Therefore, office bearers of Cooperative Societies of all types are entitled to contest elections to P.R. Bodies.
6. The Trust Board of a Charitable or Religious institution is appointed under Sec. 15 of the A.P. Charitable and Hindu Religions Institutions and Endowments Act, 1987 which is the law enacted by the State Legislature. Therefore, the Chairman and Member of the Trust Board appointed under the said Act are disqualified under Sec. 18(1) of A.P.P.R. Act, 1994.
7. **Person having more than two children is disqualified for contesting elections to P.R. Bodies:**

Section 19(3) of A.P.P.R. Act, 1994 stipulates that a person having more than two children shall be disqualified for election or for continuing as member:

Provided that the birth within one year from the date of commencement of the A.P.P.R. Act, 1994 hereinafter in this section referred to as the date of such commencement (30.5.1994), of an additional child shall not be taken into consideration for the purposes of this section:

Provided further that a person having more than two children (excluding the child if any born within one year from the date of such commencement) shall not be disqualified under this section for so long as the number on such commencement does not increase;

Provided also that the Government may direct that the disqualification in this section shall not apply in respect of a person for reasons to be recorded in writing.

The above provision can be interpreted as under:

- a) It was held by the Hon'ble High Court in W.P.No.23854 and 24267 of 2008 on 31.12.2008 that where one child is born in the first delivery and twins or triplets are born in the second delivery, the natural parents of the three children are not disqualified as things have happened beyond human control. Similarly, where triplets or quadruplets were born in a single delivery, their natural parents are also not disqualified as the court has made an interpretation of the law and delivered a judgment in rem.

b) As per the judgment delivered by the Hon'ble High Court of Andhra Pradesh in WP No.17947 of 2005 dated 19.7.2006, the children claimed to have been given in adoption shall also be counted against the natural parents for the purpose of arriving at the number of children under Sec. 19(3) of APPR Act 1994. If a person gave birth to three children and gave one child on adoption and has only two children now, such person will incur disqualification under this section as the plea of adoption is unsustainable.

8. Person employed in any company or corporation other than a cooperative society:

Section 19(2)(f) of A.P.P.R. Act, 1994 stipulates that a person employed as a Manager or Secretary of any company or corporation (other than a cooperative society) in which not less than twenty-five per cent of the paid up share capital is held by the State Government, shall be disqualified from contesting elections to P.R. bodies.

It was already clarified by the State Election Commission that persons working in APSRTC, except Managers or Secretaries, are eligible to contest elections under Section 19(2)(f). Those who are eligible to contest include Drivers and Conductors.

Similarly, persons working in Singareni Collieries other than Managers or Secretaries are eligible to contest elections under Section 19(2)(f).

However, if the service conditions of the corporation concerned impose restrictions on contesting elections, the employing organisations have to take appropriate decision. The State Election Commission deals with the matter as per the provisions of the A.P.P.R. Act, 1994 and it is unconcerned about the service conditions prescribed by the corporation for its employees.

9. Persons working on contract basis in the Government departments are not eligible to contest elections as they are being paid directly or indirectly from the Consolidated Fund of the State. They have to resign from the post held by them to contest elections.
10. Similarly persons working in any post for which payment of remuneration or honorarium is made either from the funds released by the Government either as grant or as aid are disqualified from contesting elections.
11. The State Election Commission cannot give clarifications with regard to eligibility of persons holding different posts in various institutions. As the Returning Officer is the quasi-judicial authority, he has to take a decision on his own examining each case with reference to the provisions made in the A.P.P.R. Act, 1994 on the issue of qualifications and disqualifications.

