

STATE ELECTION COMMISSION

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To

All the Collectors and District Election Authorities.

Sir/Madam,

Sub: State Election Commission – 4th ordinary elections to MPTCs/ZPTCs – Qualifications and disqualifications to contest elections – Certain clarification – Reg.

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 specific direction given by the Commission interpreting provisions of the Act relating to qualifications and disqualifications will amount to influencing him in taking judicious decisions.

The Commission has already prepared, communicated and made available on the Commission's website (www.apsec.gov.in) Frequently Asked Questions (FAQs) for the guidance of Returning Officers. Further, based on some judicial pronouncements, some important clarifications relating to eligibility of candidates are enclosed to this letter.

It is, further, made clear that the FAQs and the clarifications appended to this letter are only for the guidance of the Returning Officers and he has to take independent decisions based on the relevant provisions relating to qualifications and disqualifications available in the A.P. Panchayat Raj Act, 1994 while performing scrutiny as it is a quasi-judicial function.

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) read with Sections 156(2) and 184(2) of A.P. Panchayat Raj 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 the said provision.

Similarly, Petrol bunk dealers and Gas distribution agency dealers are not disqualified for contesting elections as they will not fall within the ambit of Section 19(2)(d) read with Sections 156(2) and 184(2) of A.P.P.R. Act, 1994.

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) read with Sections 156(2) and 184(2) 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 MPTC/ZPTC.

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 Sec. 18(1) read with Sections 156(2) and 184(2) 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) read with Sections 156(2) and 184(2) 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) read with Sections 156(2) and 184(2) 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) read with Sections 156(2) and 184(2) 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, MPTC/ZPTC.

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 following judgments are relevant to this matter.

- 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) read with Sections 156(2) and 184(2) 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) read with Sections 156(2) and 184(2) 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) read with Sections 156(2) and 184(2). 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) read with Sections 156(2) and 184(2).

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. (a) Sec. 19(2)(i) read with Sections 156(2) of A.P.P.R. Act, 1994 reads as under:

'A person shall be disqualified for being chosen as Member, MPTC if on the date fixed for scrutiny of nominations he is in arrears of any dues including the sums surcharged otherwise than in a fiduciary capacity, to the Mandal Praja Parishad up to and inclusive of the previous year in respect of which a bill or notice has been duly served upon him and the time, if any, specified therein for payment has expired;

Provided that where any person has paid such dues into the Government Treasury or into a bank approved by the Government to the credit of the MPP Fund and obtained a challan or receipt therefore in token of such payment, he shall not be disqualified to become a member of the MPP on and from the date of such payment.

Under this provision, a candidate for the post of Member, MPTC will not incur disqualification if he is in arrears of any dues to the Gram Panchayat. However, if he is in arrears of any dues to the Mandal Praja Parishad concerned only, he will become liable for disqualification under this Act if he fails to clear the dues as on the date of scrutiny.

(b) Sec. 19(2)(i) read with Sections 184(2) of A.P.P.R. Act, 1994 reads as under:

'A person shall be disqualified for being chosen as Member, ZPTC if on the date fixed for scrutiny of nominations he is in arrears of any dues including the sums surcharged otherwise than in a fiduciary capacity, to the Zilla Praja Parishad up to and inclusive of the previous year in respect of which a bill or notice has been duly served upon him and the time, if any, specified therein for payment has expired;

Provided that where any person has paid such dues into the Government Treasury or into a bank approved by the Government to the credit of the ZPP Fund and obtained a challan or receipt therefore in token of such payment, he shall not be disqualified to become a member of the ZPP on and from the date of such payment.

Under this provision, a candidate for the post of Member, ZPTC will not incur disqualification if he is in arrears of any dues to the Gram Panchayat or Mandal Praja Parishad. However, if he is in arrears of any dues to the Zilla Praja Parishad concerned only, he will become liable for disqualification under this Act if he fails to clear the dues as on the date of scrutiny.

10. 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.

**Sd/- Navin Mittal
Secretary**

// Attested //


Joint Secretary