

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

West Bengal Act XLV of 1994

THE WEST BENGAL MUNICIPAL (SECOND AMENDMENT) ACT, 1994.

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette, Extraordinary*, of the 10th October, 1994.]

[10th October, 1994.]

An Act to amend the West Bengal Municipal Act, 1993.

West Ben.
Act XII of
1993.

WHEREAS it is expedient to amend the West Bengal Municipal Act, 1993, for the purposes and in the manner hereinafter appearing;

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

1. (1) This Act may be called the West Bengal Municipal (Second Amendment) Act, 1994.

Short title
and
commencement.(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

2. In section 2 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the principal Act),—

Amendment
of section 2
of West Ben.
Act XII of
1993.

(1) after clause (15), the following clause shall be inserted:—

‘(15A) “District Magistrate” means the District Magistrate referred to in sub-section (1) of section 20 of the Code of Criminal Procedure, 1973;’;

2 of 1974.

(2) in clause (19), the words and figures “under section 29” shall be omitted;

(3) clause (62A) shall be renumbered as clause (62B), and before clause (62B) as so renumbered, the following clause shall be inserted:—

‘(62A) “Sub-divisional Magistrate” means the Sub-divisional Magistrate referred to in sub-section (4) of section 20 of the Code of Criminal Procedure, 1973;’.

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[West Ben. Act

(Sections 3-7.)

Amendment
of section 8.

3. In section 8 of the principal Act, after the proviso, the following proviso shall be inserted:—

“Provided further that the State Government may, by notification, determine the number of wards in the municipal area of a Municipality in such phases as that Government may deem fit.”.

Amendment
of section
14.

4. In sub-section (1) of section 14 of the principal Act, after the words “a general election”, the words “or by-election” shall be inserted.

Amendment
of section
15.

5. In sub-section (2) of section 15 of the principal Act, for the words “such oath of secrecy as may be prescribed.”, the words, figures and letter “oath of secrecy under section 50A.” shall be substituted.

Amendment
of section
17.

6. In sub-section (1) of section 17,—

(a) for the words “whether elected or appointed,”, the words, figures and letter “in its first meeting under section 50B,” shall be substituted,

(b) after the words “one of its”, the word “elected” shall be inserted, and

(c) after the words “assume office forthwith”, the words, figures and letter “after taking oath of secrecy under section 50A” shall be inserted.

Substitution
of new
section for
section 22.

7. For section 22 of the principal Act, the following section shall be substituted:—

“Borough 22. (1) Every Municipality having a population of three Committee. lakhs or more, may, at its first meeting after the election of members thereto or as soon as may be thereafter, group the wards of the Municipality into five Boroughs so that each Borough consists of not less than six contiguous wards, and, constitute a Borough Committee for each Borough.

(2) Each Borough Committee shall consist of Councillors elected from the wards constituting the Borough.

(3) A member of the Borough Committee representing a constituent ward shall hold office till he ceases to be the Councillor representing such ward.

(4) The members of each Borough Committee shall elect from amongst themselves one member to be its Chairman who shall not be a member of the Chairman-in-Council.

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(Sections 8, 9.)

(5) The Chairman of a Borough Committee may at any time resign his office by giving notice in writing to the Chairman of the Municipality, and the resignation shall take effect from the date of acceptance by the Chairman.

(6) A Borough Committee shall, subject to general supervision and control of the Chairman-in-Council, discharge within the local limits of the Borough such functions of the Municipality as the Municipality may require it to discharge.

(7) The manner of transaction of business of the Borough Committee shall be such as may be determined by the Municipality by regulations.”.

8. To sub-section (1) of section 23 of the principal Act, the following proviso shall be added:—

Amendment
of section
23.

“Provided that where the territorial area of a Municipality has a population of three lakhs or above, that Municipality shall constitute a ward Committee for each ward.”.

9. After section 50 of the principal Act, the following sections shall be inserted:—

Insertion of
new sections
50A and
50B.

‘Oath of secrecy to be taken by Chairman Vice-Chairman and members of Chairman-in-Council’ 50A. (1) The Chairman, the Vice-Chairman, and a member of the Chairman-in-Council shall assume office after taking the oath of secrecy in the following form:—

“I, A. B., do swear in the name of God/solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as Chairman/Vice-Chairman/a member of the Chairman-in-Council except as may be required for the due discharge of my duties as such Chairman/Vice-Chairman/member of the Chairman-in-Council.”.

(2) In the case of the Chairman, the oath of secrecy shall be administered by the District Magistrate or the Sub-divisional Magistrate in whose jurisdiction the Municipality is situated or an officer of the State Government authorised in this behalf by the District Magistrate. In the case of the Vice-Chairman or a member of the Chairman-in-Council, the oath of secrecy shall be administered by the Chairman.

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[West Ben. Act

(Sections 10, 11.)

First meeting of the Board of Councillors after the general election of Councillors to the Municipality, shall be convened by the District Magistrate or any other Executive Magistrate authorised by the District Magistrate in this behalf for election of the Chairman under sub-section (1) of section 17, within thirty days from the date of publication of the names of elected members in the *Official Gazette* under section 71 of the West Bengal Municipal Elections Act, 1994. Seven days' notice shall be given for the meeting.'

West Ben.
Act XXXIV
of 1994.

Insertion of
new section
51A.

10. After section 51 of the principal Act, the following section shall be inserted:—

"Quorum. 51A. (1) The quorum necessary for the transaction of business at any meeting of a Municipality under this Act shall be one-third of the total number of members of the Municipality.

(2) If at any time during a meeting of the Municipality there is no quorum, it shall be the duty of the Chairman or the person presiding over such meeting either to adjourn the meeting or to suspend it till there is a quorum.

(3) Where a meeting has been adjourned under sub-section (2), the business which would have been brought before such meeting if there had been a quorum, shall be brought before, and may be transacted at, an adjourned meeting, whether there is a quorum or not.

(4) All matters required to be decided by the Municipality at a meeting shall, save as otherwise provided in this Act, be determined by a majority of the members of the Municipality present and voting at such meeting.”.

Substitution
of new
section for
section 53.

11. For section 53 of the principal Act, the following section shall be substituted:—

"Municipal establishments. 53. (1) Save as otherwise provided in this Act, a Municipality may have the following officers:—

- (a) an Executive Officer;
- (b) a Health Officer;
- (c) an Engineer;
- (d) a Finance Officer;
- (e) a Medical Officer;
- (f) a Secretary;
- (g) an Office Superintendent;
- (h) one or more than one Sub-Assistant Engineer;
- (i) one or more than one Sanitary Inspector;

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(Section II.)

- (j) a Head Clerk;
- (k) a Head Assistant;
- (l) an Accountant;
- (m) a Surveyor;
- (n) a Draftsman;
- (o) such other officers as may be designated by the State Government in this behalf:

Provided that the State Government may reduce the number of posts of the officers as aforesaid for any Municipality:

Provided further that the State Government may by order redesignate any of the posts of the officers as aforesaid in respect of any Municipality.

(2) Until the cadre of common municipal service for the State is constituted under sub-section (1) of section 54, and subject to the provisions of sub-section (1) of this section, the Board of Councilors may, at a meeting, determine which of the officers referred to in sub-section (1) of this section are necessary for a Municipality, and, with the prior sanction of the State Government, create posts of such officers and fix the salaries and allowances to be paid and granted to such officers.

(3) The Board of Councillors at a meeting may, subject to the norms regulating the size of the municipal establishment for each Municipality and the categories or designations of officers and other employees of each Municipality with their scales of pay as may be fixed by the State Government from time to time, determine what officers and other employees, other than the officers mentioned in sub-section (1), are necessary for a Municipality, create posts of such officers and other employees, and fix the salaries and allowances to be paid and granted to such officers and other employees.

(4) Subject to the norms regulating the size of a municipal establishment as may be fixed by the State Government under sub-section (3), no post of an officer or other employee shall be created under sub-section (3) by the Board of Councillors of a Municipality without the prior sanction of the State Government, if the number of posts to be so created in a year for a Municipality is more than one per cent of the total number of sanctioned posts of officers and other employees in existence in the year immediately preceding:

Provided that the number of posts so admissible for creation in a year without the prior sanction of the State Government after the commencement of this Act, if not created in that year, may be carried forward to the next year, subject to a minimum of one and a maximum of ten.

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(Section 12.)

(5) Notwithstanding anything contained in sub-section (1), sub-section (2), sub-section (3) or sub-section (4), the Board of Councillors of a Municipality may, with the prior sanction of the State Government, create, if it considers necessary so to do for due discharge of municipal functions, a post of an officer or other employee which is not included in the norm as may be fixed by the State Government under sub-section (3), and fix the salaries and allowances to be paid and granted to such officer or other employee.

(6) Until norms are fixed under sub-section (3), no post of any officer or other employee shall be created by the Board of Councillors of any Municipality without the prior sanction of the State Government.”.

Amendment
of section
54.

12. In section 54 of the principal Act,—

(a) to sub-section (2), the following proviso shall be added:—

“Provided that until the cadre of common municipal service for the State is constituted under sub-section (1), no appointment of any officer, other than an Executive Officer, Health Officer, Engineer or Finance Officer, referred to in sub-section (1) of section 53, shall be made by a Municipality without the prior approval of the State Government.”;

(b) to sub-section (3), the following proviso shall be added:—

“Provided that the State Government may determine the category and the scale of pay of a post to which no appointment shall be made by the Municipality without the prior sanction of the State Government even though the creation of such post is within the limit of one per cent of the total number of sanctioned posts of officers and other employees in existence in the year immediately preceding.”;

(c) after sub-section (3), the following sub-section shall be inserted:—

“(3A) The recruitment to the posts of officers and other employees not required to be made through the Municipal Service Commission constituted under sub-section (1) of section 55, shall be made through the local employment exchange or through such other method as the State Government may determine from time to time.”;

(d) in sub-section (4), for the words “mode of”, the words “qualifications for” shall be substituted.

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(Sections 13-15.)

13. For section 60 of the principal Act, the following section shall be substituted:—

“Appointment of officers of State Government for Municipalities.

60. Notwithstanding anything contained elsewhere in this Act, the State Government may appoint an officer of that Government possessing such qualifications as may be determined by it for a Municipality or group of Municipalities as Executive Officer, Health Officer, Engineer or Finance Officer referred to in sub-section (1) of section 53 or with such designation as the State Government may consider necessary, in such manner, and on such terms and conditions of service, as may be determined by the State Government in this behalf. The expenditure on account of salaries and allowances of any such officer shall be borne by the State Government:

Provided that the officer so appointed shall be under the administrative control of the Board of Councillors of the Municipality and may be withdrawn by the State Government *suo motu* or if a resolution to that effect is passed by the Councillors at a meeting called for this purpose by a majority of the total number of members holding office for the time being and, in the case of a group of Municipalities, if such resolution is so passed by the Councillors of the majority of such group of Municipalities.”.

14. After section 60 of the principal Act, the following section shall be inserted:—

“Powers and functions of Executive Officer and Finance Officer.

60A. (1) The Executive Officer shall be the principal executive officer of the Municipality and all officers and other employees of the Municipality shall be subordinate to him. He may be required to be present at a meeting of the Councillors or of any committee by the Chairman to make a statement or to explain facts, but he shall not vote for or against, or make, any proposition at such meeting.

(2) Subject to the supervision and control of the Chairman, the Executive Officer and the Finance Officer shall exercise such powers and perform such functions as may be notified by the State Government from time to time.”.

15. In section 61 of the principal Act, for sub-section (4), the following sub-sections shall be substituted:—

“(4) In all disciplinary matters involving dismissal from service and reduction in rank, an appeal shall lie before the Board of Councillors which shall be the appellate authority.

(4A) No disciplinary action shall be taken by a Municipality against any officer borne in cadre of common municipal service for the State constituted under sub-section (1) of section 54 or any officer of the State Government appointed for a Municipality or group of Municipalities under section 60.”.

Substitution of new section for section 60.

Insection of new section 60A.

Amendment of section 61.

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(Sections 16-20.)

Amendment
of section 64.

16. In sub-clause (a) of clause (1) of section 64 of the principal Act, for the words "famine or scarcity," the words "famine, flood or earthquake," shall be substituted.

Amendment
of section 87.

17. In clause (b) of sub-section (2) of section 87 of the principal Act, after the word "deficiency", the words "or defalcation" shall be inserted.

Amendment
of section 95.

18. After sub-section (2) of section 95 of the principal Act, the following sub-section shall be inserted:—

"(3) Notwithstanding the repeal of the Bengal Municipal Act, 1932, under sub-section (1) of section 441, the fees which could have been levied and the charges which could have been imposed under the Bengal Municipal Act, 1932, shall continue to be levied and imposed at the rate in force immediately before such repeal until the scale of such fees and charges are prescribed under sub-section (2) of this section.".

Ben. Act XV
of 1932.

Amendment
of
section 110.

19. In section 110 of the principal Act,—

(a) in sub-section (1), for the words "and the preparation of valuation list including determination of all objections", the words and figures "and the preparation of valuation list, amount of property tax determined under section 96 on the basis of such valuation list, and disposal of all applications for review" shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted:—

"(3) A new valuation list under sub-section (1) or sub-section (2) shall, unless otherwise directed by the State Government, be prepared in the same manner in which the original list was prepared, once in every six years:

Provided that if an existing valuation list is not revised for any unavoidable reason, the validity of operation of such valuation list shall not be called in question until a new valuation list takes effect under this Act.".

Substitution
of new
section for
section 150.

20. For section 150 of the principal Act, the following section shall be substituted:—

"Amount of tax payable, and tax to be paid in advance.

150. (1) Unless the amount entered in the assessment list is subsequently altered as provided in this Act, the amount entered in the list, the notice relating to which is published under sub-section (1) of section 111, shall be deemed to be the amount due on account of property tax on the annual value of holdings. In the case of subsequent alteration, if any, the amount in relation to which the assessment or rating is so altered shall be deemed to be the amount due.

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(Sections 21-26.)

(2) Such tax shall be payable in quarterly instalments and every such instalment shall be deemed to be due in the first day of the quarter in respect of which it is payable.

(3) If any amount due is paid within thirty days from the date of presentation of the bill under section 149, a rebate, not exceeding ten per cent of such amount as may be determined by the Board of Councillors, shall be allowed.

(4) Subject to the provisions of sub-section (2), the payment of taxes may be made in such manner as may be prescribed.”.

21. For sub-section (5) of section 151 of the principal Act, the following sub-section shall be substituted:—

“(5) On the amount of a bill remaining unpaid after its presentation under sub-section (1) of section 149, simple interest shall be payable at such rate, not exceeding 10 per cent per annum, as may be determined by the State Government from time to time, on the said amount from the day next after the expiry of thirty days from the commencement of the quarter following that in which the bill is presented.

Amendment
of
section 151.

Explanation.—In calculating the interest payable under this sub-section, a fraction of a rupee in the amount of a bill on which interest is to be calculated shall,—

- (a) where it is less than 50 paise, be left out of account, and
- (b) where it is not less than 50 paise, be taken as one rupee.”.

22. In sub-section (2) of section 198 of the principal Act, after clause (t), the following clause shall be inserted:—

“(tt) special provision for buildings in the hill areas;”.

Amendment
of
section 198.

23. In section 393 of the principal Act, for the words “Municipal Secretary,”, the word “Chairman,” shall be substituted.

Amendment
of
section 393.

24. In sub-section (4) of section 417 of the principal Act, for the words “before the Government”, the words “before the commencement” shall be substituted.

Amendment
of
section 417.

25. In section 425 of the principal Act,—

- (a) in sub-section (1), after the words “the Director of Local Bodies” in the two places where they occur, the words “or the District Magistrate or the Sub-divisional Magistrate” shall be inserted;
- (b) sub-section (3) shall be omitted.

Amendment
of
section 425.

26. In section 426 of the principal Act,—

- (a) in sub-section (1), after the words “the Director of Local Bodies”, the words “or the District Magistrate or the Sub-divisional Officer” shall be inserted;
- (b) in sub-section (2), after the words “the Director of Local Bodies”, the words “or the District Magistrate or the Sub-divisional Officer” shall be inserted.

Amendment
of
section 426.

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(Sections 27-29.)

Amendment
of
section 431.

27. In sub-section (2) of section 431 of the principal Act, after the words "or if the answers do not convince the State Government", the words "or where more than two-thirds of the total number of Councillors holding office for the time being have, for any reason, resigned" shall be inserted.

Insertion
of new
section 435A.

28. After section 435 of the principal Act, the following section shall be inserted:—

"Financial and technical help by Darjeeling Gorkha Hill Council to a Municipality in the hill areas such financial and technical assistance as it may require in any emergent circumstances".

West Ben.
Act XIII of
1988.

Omission of
section 436.

29. Section 436 of the principal Act shall be omitted.

Amendment
of section
436.

435A. The Darjeeling Gorkha Hill Council constituted under the Darjeeling Gorkha Hill Council Act, 1988, may provide to a Municipality in the hill areas such financial and technical assistance as it may require in any emergent circumstances".

Amendment
of section
436.

435A. The Darjeeling Gorkha Hill Council constituted under the Darjeeling Gorkha Hill Council Act, 1988, may provide to a Municipality in the hill areas such financial and technical assistance as it may require in any emergent circumstances".