



# **KERALA**

## **Judicial Services Exam**

### **CIVIL JUDGE**

**High Court of Kerala**

**Paper - 1**

**Volume - 1**



# KERALA JUDICIARY EXAM

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# **Kerala Panchayat Raj Act**

**Kerala Panchayat Raj Act, 1994**  
**(Act 13 of 1994)**

**CHAPTER X**  
**Disputes Regarding Election**

**87. Election petitions.** - No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.

**88. The Court competent to try election petitions**

(1) The court having jurisdiction to try an election petition shall be, -

(a) In the case of a village panchayat, the Munsiff's Court having jurisdiction over the place in which the headquarters of the panchayat is located; and

(b) In the case of block panchayat or district panchayat the district court having jurisdiction over the place in which the headquarters of the panchayat concerned is located.

(2) The Government shall, in consultation with the High Court notify the appropriate courts in the Gazette.

**89. Presentation of petitions**

(1) An election petition calling in question any Election may be presented on one or more of the grounds specified in section 102 and section 103, to the appropriate court as specified in section 88, by any candidate at such election or by any elector within 30 days from, but not earlier than, the date on which the returned candidate was declared elected.

**Explanation.** - In this sub-section, 'elector' means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

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**90. Parties to the petition.** - A petitioner shall join as respondents to his petition.

- (a) Where to know the the petitioner, in addition to claiming a declaration that the election of the returned candidate is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, the returned candidates; and
- (b) any other candidate against whom allegations of any corrupt practice are made in the petition.

**91. Contents of petition**

**(1) An election petition**

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the verification of pleadings;

Provided that where the petitioner alleges any corrupt practice the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

- (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

**92. Relief that may be claimed by the petitioner.** - A petitioner may, in addition to claiming a declaration that the election of the returned candidate is void, claim a further declaration that he himself or any other candidate has been duly elected.

**93. Trial of election petition**

- (1) The Court shall dismiss an election petition which does not comply with the provisions of section 89 or section 90 or section 115.
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**Explanation.** - An order of the court dismissing an election petition under, this subsection shall be deemed to be an order made under clause (a) of section 100.

- (2) Where more election petitions than one are presented to the court in respect of the same election, the court may, in its discretion, try them separately or in one or more groups.
- (3) Any candidate not already a respondent shall, upon application made by him to the Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the court, be entitled to be joined as a respondent.

**Explanation.** - For the purposes of this sub-section and section 100 the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the court and answer the claim or claims made in the petition.

- (4) The court may upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner, as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.
- (5) Every election petition shall be tried as expeditiously as possible and shall be disposed of within six months from the date on which the election petition is presented to the Court for trial.

#### **94. Procedure before the court**

- (1) Subject to the provisions of this Act and of any rules made there under, every election petition shall be tried by the court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) to the trial of suits:

Provided that the court shall have the discretion to refuse for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the Party tendering such witness or witnesses is doing so in frivolous ground or with a view to delay the proceedings.

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(2) The provisions of the Indian Evidence Act, 1872 (Central Act 1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of any election petition.

**95. Documentary evidence.** - Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered.

**96. Secrecy of voting not be infringed.** - No witness or other person shall be required to state for whom he has voted at an election.

**97. Answering of criminating questions and certificate of indemnity**

(1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate or that it may expose or may tend to expose him to any penalty or forfeiture:

**Provided that**

(a) A witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the court;

(b) An answer given by a witness to a question put by or before the court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against in any civil or criminal proceeding.

(2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IXA of the Indian Penal Code (Central Act 45 of 1860), or Chapter XI of this Act arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by this Act or any other law.

**98. Expenses of witnesses.** - the reasonable expenses incurred by any person in attending to give evidence may be allowed by the court to such person and shall, unless the court otherwise directs, be deemed to be part of the costs.

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## 99. Recrimination when seat claimed

- (1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election: Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the court of his intention to do so and has also given the security and the further security referred to in section 115 and 116 respectively.
- (2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by section 91 in the case of an election petition and shall be signed and verified in like manner.

**100. Decision of the court.** - At the conclusion of the trial of an election petition the court shall make an order -

- (a) Dismissing the election petition; or
- (b) Declaring the election of the returned candidate to be void; or
- (c) Declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected.

**101. Other orders to be made by the court.** - At the time of making an order under section 100, the court shall also make an order -

- (a) Where any charge is made in the petition of any corrupt practice having been committed at the election, recording -
  - (i) A finding whether any corrupt practice has or has not been proved to have committed at the election, and the nature of that corrupt practice; and
  - (ii) The names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that any practice; and
- (b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless -

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- (i) He has been given notice to appear before the court and to show cause why he should not be so named; and
- (ii) If he appears in pursuance of the notice, he has been given an opportunity of cross examining any witness who has already been examined by the court and has given evidence against him, of calling evidence in his defence and of being heard.

## **102. Grounds for declaring election to be void**

(1) Subject to the provisions of subsection

(2) if the court is of opinion -

(a) That on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act; or

(b) That any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) That any nomination has been improperly rejected; or

[(ca) That the details furnished by the elected candidates under subsection (1A) of section 52 were fake; or]

(d) That the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) By the improper acceptance of any nomination, or

(ii) By any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent; or

(iii) By the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) By any non-compliance with the provisions of this Act or of any rules or orders made there under, the court shall declare that the election of the returned candidate to be void.

(2) if in the opinion of the court a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the court is satisfied. -

(a) That no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was

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committed contrary to the orders, and without the consent, of the candidate or his election agent;

- (b) That the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
- (c) That in all other respects the election was free from any corrupt practice on the part of the candidate or any of this agents, then the court may decide that the election of the returned candidate is not void.

**Explanation.** - In this section the term 'agent' has the same meaning as in section 120.

**103. Grounds for which a candidate other than the returned candidate may be declared to have been elected.** - If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the court is of opinion -

- (a) That in fact the petitioner or such other candidate received a majority of the valid votes; or
- (b) That but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the court shall after declaring the election of the returned candidate to be void declared the petitioner or such other candidate, as the case may be, to have been duly elected.

**104. Procedure in case of an equality of votes.** - If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of one vote would entitle any of those candidates to be declared elected, then-

- (a) Any decision made by the returning officer under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purpose of the petition; and
  - (b) In so far as that question is not determined by such a decision the court shall decide between them by lot and proceed as if the one on whom the lot then falls and received an additional vote.
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- 105. Communication of orders of the court.** - The court shall, as soon as may be, after the conclusion of the trial of an election petition, intimate the substance of the order to the State Election Commission and the President of the Panchayat concerned and, as soon as may be, thereafter, shall send to the State Election Commission an authenticated copy of the order.
- 106. Transmission of order to the appropriate authority etc., and its publication.** - As soon as may be after the receipt of any order made by the court under section 100 or section 101, the State Election Commission shall forward copies of the order to the President of the panchayat concerned and, shall cause the order to be published in such manner as the State Election Commission may deem fit.
- 107. Effect of orders of the court.** - (1) An order under section 100 or section 101 shall take effect as soon as it is pronounced by the court.  
(2) Where by an order under section 101 the election of a returned candidate is declared to be void, acts and proceedings in which that returned candidate has, before the date thereof participated as a member of a panchayat shall not be invalidated by a reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.
- 108. Withdrawal of election petitions.** - (1) An election petition may be withdrawn only by leave of the court, if an application for its withdrawal is made.  
(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the office of the panchayat concerned.
- 109. Procedure for withdrawal of election petition**
- (1) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent in writing of all the petitioners.
- (2) No application for withdrawal shall be granted if, in the opinion of the court and if the court is satisfied that such application has been induced by any bargain or consideration which ought not to be allowed.
- (3) If the application is granted -
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- (a) The petitioner shall be ordered to pay the costs of the respondents thereto for incurred or such portion thereof as the court may think fit;
- (b) The court shall direct that the notice of withdrawal shall be published in the office of the court and also in the office of the panchayat concerned;
- (c) A person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in the place of the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted, and to continue the proceedings upon such terms as the court may deem fit.

**110. Report of withdrawal by the court to the State Election Commission. -**

When an application for withdrawal is granted by the court and no person has been substituted as petitioner under clause (c) of sub-section (3) of section 109, in the place of the party withdrawing, the court shall report the fact to the State Election Commission.

**111. Abatement of election petitions**

- (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.
- (2) Where an election petition abates under sub-section (1), notice of the abatement shall be published in the Office of the Court, in the Office of the State Election Commission and in the Office of the panchayat concerned.
- (3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the court may deem fit.

**112. Abatement or substitution on death of respondent. -**

If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, the court shall cause notice of such event to be published

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in the Office of the Court, in the Office of the State Election Commission and in the office of the Panchayat concerned and thereupon any person who might have been a petitioner may, within fourteen days of such publication apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the court may think fit.

### **113. Appeals**

- (1) Any person aggrieved, by an order made by the court under section 100 or section 101, may prefer an appeal, on any question of law or of fact,
  - (a) Before the District Court on the decision of the Munsiff's Court; and
  - (b) Before the High Court on the decision of the District Court;
- (2) The Government shall, in consultation with the High Court notify the appropriate courts in the Gazette.
- (3) Every appeal under this section shall be preferred within a period of thirty days from the date of the order of the court under section 100 or section 101:

Provided that the Appellate Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

### **114. Procedure in appeal**

- (1) Subject to the provisions of this Act and of the rules, if any, made there under the District Court or the High Court may dispose of the appeal in accordance with the procedure laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the hearing of appeals and the decision of the Court in the appeal shall be final:

Provided that such appeals shall be disposed of, as far as possible within six months from the date of filing of such appeals.

- (2) As soon as an appeal is decided, the Appellate Court shall intimate the substance of the decision to the State Election Commission and the President of the Panchayat concerned and as soon as may be, thereafter shall send to the State Election Commission an authenticated copy of the decision; and upon its receipt, the State Election Commission shall -
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- (a) Forward copies thereof to the authorities to which copies of the order of the court were forwarded under section 106; and
- (b) Cause the decision to be published in such manner as the State Election Commission may deem fit.

**115. Security for costs.** - (1) At the time of presenting an election petition, the petitioner shall deposit in the court a sum of five hundred rupees as security or enclose with the petition a Government treasury receipt showing that the deposit of the said amount has been made by him in a Government treasury in favour of the Musiff or the District Judge, as the case may be, as security for the costs of the petition.

(2) During the course of the trial of an election petition, the court may at any time call upon the petitioner to give such further security for costs as it may direct and if the petitioner fails to do so inspite of allowing sufficient time, dismiss the petition.

**116. Security for costs from a respondent.** - No person shall be entitled to be joined as a respondent under sub-section (3) of section 93 unless he has given such security for costs as the court may direct.

**117. Costs.** - Costs shall be in the discretion of the court, provided that where a petition is dismissed under clause (a) of section 100, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the court shall make an order for costs in favour of the returned candidate.

**118. Payment of costs out of security deposits and return of such deposits**

(1) If in any order as to costs under the provisions of this Chapter there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Chapter on an application made in writing in that behalf within a period of one year from the date of such order to the court by the person in whose favour the costs have been awarded.

(2) If there is any balance left out of any of the said security deposits, after payment under sub-section (1) of the costs referred to in that sub-section, such balance, or where no costs have been awarded or no

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application as aforesaid has been made within the said period of one year the whole of the said security deposits may, on an application made in that behalf in writing to the court by the person by whom the deposit have been made, or if such person dies after making such deposits, by the legal representative of such person be returned to the said person or to his legal a representative, as the case may be.

**119. Execution of orders as to costs.** - Any order as to costs under the provisions of this Chapter may be produced before the principal civil court of original jurisdiction with the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Provided that where any such costs or any portion there of may be recovered by an application made under sub-section (1) of section 115, no application shall lie under this section within a period of one year from the date of such order unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under that sub section owing to the insufficiency of the amount of the security deposits referred to in that sub section.

## CHAPTER XI

### Corrupt Practices And Electoral Offences

**120. Corrupt practices.** - The following shall be deemed to be corrupt practices for the purposes of this Act -

(1) 'Bribery', that is to say, -

(A) Any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing -

(a) A person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) An elector to vote or refrain from voting at an election, or as a reward to -

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- (i) A person for having so stood, or not stood, or for having withdrawn or not having withdrawn his candidature; or
  - (ii) An elector for having voted or refrained from voting;
- (B) The receipt of, or agreement to receive, any gratification, whether as a motive or a reward -
- (a) By a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or
  - (b) By any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

**Explanation.** - For the purposes of this clause the term gratification is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of expenses bonafide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 85.

- (2) 'Undue influence', that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate, or his agent, or of any other person with the consent of the candidate or his election agent; with the free exercise of any electoral right:

**Provided that-**

- (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who -
    - (i) Threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or
    - (ii) Induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be tendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free
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exercise of the electoral right of such candidate or elector within the meaning of this clause.

- (b) A declaration of public policy or a promise of public action, or the more exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this clause.
- (3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to national symbols such as the national flag or the national emblem for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:  
Provided that no symbol allotted under any rules made under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.
- (4) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language by a candidate or his agent or any other person with the consent of a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.
- (5) The publication by a candidate or his agent or by other person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election.
- (6) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate
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