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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 26th March, 2018/Chaitra 5, 1940 (Saka)

THE ANDAMAN AND NICOBAR ISLANDS (MUNICIPAL) AMENDMENT REGULATION, 2018

No. 3 OF 2018

Promulgated by the President in the Sixty-ninth Year of the Republic of India as follows:—

A Regulation to amend the Andaman and Nicobar Islands (Municipal) Regulation, 1994.

In exercise of the powers conferred by article 240 of the Constitution, the President is pleased to promulgate the following Regulation made by him:—

1. (1) This Regulation may be called the Andaman and Nicobar Islands (Municipal) Amendment Regulation, 2018.

Short title and commencement.

(2) It shall come into force on the date of its publication in the Official Gazette.

Reg. 5 of 1994.

2. Throughout the Andaman and Nicobar Islands (Municipal) Regulation, 1994 (hereinafter referred to as the principal Regulation), for the words "servant" and "servants", wherever they occur, the words "employee" and "employees" shall respectively be substituted, and such other consequential amendments as the rules of grammar may require shall also be made.

Substitution of reference of certain expressions by certain other expressions.

3. In section 2 of the principal Regulation, in clause (26), after the words "Official Gazette", the following shall be inserted, namely:—

Amendment of section 2.

'and the expression "notified" shall be construed accordingly'.

Amendment
of section 12.

4. In section 12 of the principal Regulation, in sub-section (2), after the word "Constitution", the words "or on the ground of defection specified in the Schedule" shall be inserted.

Amendment
of section 17.

5. In section 17 of the principal Regulation, for sub-sections (4), (5), (6), (7), (8), (9) and (10), the following sub-sections shall be substituted, namely:—

"(4) Every Chairperson or Vice-Chairperson of the Municipality may be removed from his office if a resolution of the Municipality expressing want of confidence in him is passed by a majority of the total members of the Municipality present at a meeting specially convened for the purpose:

Provided that no such resolution shall be moved unless,—

(a) a notice of the intention to move the resolution has been given within such period as may be prescribed and signed by a majority of one-third members of the Municipality; and

(b) it contains a proposal for election of a new Chairperson or Vice-Chairperson of the Municipality.

(5) At any meeting of the Municipality, while any resolution for removal of the Chairperson from his office is under consideration, the Chairperson, or while any resolution for removal of the Vice-Chairperson from his office is under consideration, the Vice-Chairperson, shall not, though he is present, preside.

(6) The meeting shall be presided over by the Vice-Chairperson if the motion is against the Chairperson and by the Chairperson if the motion is against the Vice-Chairperson.

(7) At any meeting of the Municipality, while any resolution for electing a successor to the office of the Chairperson is under consideration, the candidate to the office of the Chairperson, or while any resolution for electing a successor to the office of the Vice-Chairperson is under consideration, the candidate to the office of the Vice-Chairperson, shall not, though he is present, preside.

(8) The Chairperson or Vice-Chairperson shall have right to speak in, and otherwise to take part in the proceeding of such meeting of the Municipality while any resolution for removal from his office is under consideration in the Municipality and shall be entitled to vote only in the first instance on such resolution or on any other matter during such proceeding but not in the case of an equality of votes.

(9) The provisions of sub-sections (6), (7) and (8) shall apply *mutatis mutandis* to the person contesting the election for the post of Chairperson or Vice-Chairperson of the Municipality.

(10) The procedure to be followed for the meeting shall be such as may be prescribed."

Substitution of
new section
for section 27.

6. For section 27 of the principle Regulation, the following section shall be substituted, namely:—

Punishment of
officers and
employees.

"27. (1) Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good reasons, be imposed upon any officer or employee of the Municipality,—

(a) minor penalties—

(i) censure;

(ii) withholding of promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Municipality by negligence or breach of orders;

(iv) withholding of increments of pay;

(b) major penalties—

(i) reduction to a lower post on a fixed pay or a time scale or to a lower stage in a time scale;

(ii) removal from the service, which does not disqualify from future employment;

(iii) dismissal from the service, which ordinarily disqualifies from future employment.

(2) The major penalties mentioned in clause (b) of sub-section (1) may be imposed on an officer or employee of the Municipality by the authority competent to make the appointment of the officer or employee:

Provided that the minor penalties mentioned in clause (a) of sub-section (1) may be imposed by the Secretary (Urban Development), Andaman and Nicobar Administration:

Provided further that suspension of an officer or employee pending inquiry into the allegations against such officer or employee shall not be deemed to be a penalty and shall be ordered only by the authority competent to make appointment to the post held by such officer or employee.

(3) No officer or employee shall be imposed major penalties mentioned in clause (b) or sub-section (1) unless he has been given a reasonable opportunity of showing cause against such penalties:

Provided that this sub-section shall not apply where a person is reduced, removed or dismissed on the ground of conduct which has led to his conviction on a criminal charge.

(4) An appeal against any order imposing any penalty mentioned in sub-section (1) may be made—

(i) in case if an order imposing any minor penalty mentioned in clause (a) of sub-section (1), to the Secretary (Urban Development), Andaman and Nicobar Administration;

(ii) in case if an order imposing any major penalty mentioned in clause (b) of sub-section (1), to the Administrator.

(5) No such appeal may be entertained if not preferred within one months from the date of receipt of the order appealed against by the officer or employee concerned.

(6) The appellate authority referred to in sub-section (4), within six months of the date of the order passed, may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made for reduction to a lower post or rank or removal or dismissal from the service, and may—

(i) confirm, modify, reduce, enhance or set aside the order; or

(ii) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as he or it may consider proper in the circumstances of the case; or

(iii) pass such orders as he or it may deem fit.

(7) The Administrator may, at any time, either on his own motion or otherwise, review any order passed under this section, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice.”.

Insertion of new Chapter IIIA.

7. After section 31 of the principal Regulation, the following Chapter shall be inserted, namely:—

"CHAPTER IIIA

OMBUDSMAN FOR MUNICIPALITIES

Establishment, term of office and conditions of service of Ombudsman.

31A. (1) The Government shall, by notification in the Official Gazette, establish an authority to be known as the Ombudsman for making investigations and inquiries, in respect of charges on any action involving corruption or maladministration or irregularities in the discharge of administrative functions by the members of the Municipality under this Regulation.

(2) The Ombudsman shall consist of one member to be appointed by the Administrator, on the recommendation of a committee referred to in sub-section (4).

(3) The Ombudsman shall not be a Government employee.

(4) The Committee referred to in sub-section (2) shall comprise of the following, namely:—

(a) Secretary (Urban Development), Andaman and Nicobar Administration;

(b) a retired District Judge;

(c) a retired civil employee who has held a post in the Central Government or State Government not below the rank of a Joint Secretary to the Government of India; and

(d) two persons of impeccable integrity from the civil society nominated by the Administrator.

(5) A person appointed to be the Ombudsman shall, before he enters upon his office, make and subscribe before the Administrator or any other officer appointed in that behalf by him, an oath or affirmation according to the form set out below:—

'I, A.B. having been appointed as the Ombudsman for the _____ Municipality under the Andaman and Nicobar Islands (Municipal) Regulation, 1994, do swear in the name of God/Solemnly affirm that I will bear true faith and allegiance to the Constitution of India and I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will'.

(6) The Ombudsman shall hold office for a term of three years from the date on which he enters upon his office:

Provided that—

(a) the Ombudsman may, by writing under his hand addressed to the Administrator, resign his office; and

(b) the person appointed as Ombudsman may be removed from his office in the manner provided in section 31B.

(7) The salary and allowance payable to, and the other terms and conditions of service of, the Ombudsman shall be such as may be prescribed.

(8) On expiry of his term of office as Ombudsman, he shall not be eligible for re-appointment as Ombudsman or for further appointment to any office under the Government or in any corporation, company, society or university by or under the control of the Government.

Removal of Ombudsman.

31B. (1) The Ombudsman may be removed from his office, by an order of the Administrator, on the ground of proved misbehaviour or incapacity.

(2) The procedure for the removal of the Ombudsman under sub-section (1) and for the investigation and proof of the misbehaviour or incapacity of the Ombudsman shall be such as may be prescribed.

31C. (1) The Government may, in consultation with the Ombudsman provide such officers and staff to assist the Ombudsman in the discharge of its functions under this Regulation.

Staff of
Ombudsman.

(2) The salaries, allowances and other conditions of the service of the officers and staff provided to the Ombudsman shall be such as may be prescribed.

(3) The Ombudsman may require the assistance of any officer of any Government Department in order to ascertain the veracity of an allegation under investigation and such officer shall be bound to render such assistance in addition and without detriment, to his official duties.

(4) The Ombudsman may utilise the services of any person having experience and expertise in any particular subject in deciding the questions before it.

31D. (1) The Ombudsman shall perform all or any of the following functions, namely:—

Functions of
Ombudsman.

(i) investigate into any allegation contained in a complaint or on a reference from the Government, or that has come to the notice of the Ombudsman;

(ii) inquire into any complaint in which corruption or maladministration of a member of a Municipality is alleged;

(iii) pass an order on the allegation in the following manner, namely:—

(a) where the irregularity involves a criminal offence committed by a member of the Municipality, the matter shall be referred to the appropriate authority for investigation;

(b) where the irregularity causes loss or inconvenience to a citizen, direct the Municipality to give him compensation and to reimburse the loss from the person responsible for such irregularity;

(c) where the irregularity involves loss or waste or misuse of the fund of the Municipality, realise such loss from those who are responsible for such irregularity; and

(d) where the irregularity is due to omission or inaction, cause to supply the omission and to rectify the mistake.

(2) In addition to the functions enumerated in sub-section (1), the Ombudsman may pass interim order restraining the Municipality from doing anything detrimental to the interest of the complainant, if it is satisfied that much loss or injury shall be caused to the complainant due to the alleged act.

(3) The Ombudsman may, if it is of the opinion that the irregularity involves corrupt practice for personal gain, by an order, impose penalty in addition to compensation.

31E. (1) The Ombudsman shall, for the purpose of any investigation or inquiry under this Regulation, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

Powers of
Ombudsman.

(a) summoning and enforcing the attendance of any witness and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witness or documents; and

(f) any other matter which may be prescribed.

(2) Where the Ombudsman finds that the allegation contained in a complaint is without any substance or trivial in nature, it may, by order, direct the complainant to pay to the opposite party so much of the amount specified in the order by way of cost.

(3) Where the allegation contained in a complaint is about the loss or waste or misapplication of the fund of the Municipality or in respect of the loss or inconvenience caused to a citizen, the Ombudsman may, during inquiry, collect evidence, determine the loss and direct in its order the amount to be realised from the person responsible.

(4) If the amount payable as per the order passed by the Ombudsman under sub-section (2) or sub-section (3) is not paid within the period specified by it, the same shall be recoverable as if it were an arrears of land revenue.

Service of
Government
Departments.

31F. The Government may, at the request of the Ombudsman make available the services of officers and employees of the Government including police personnel to assist the Ombudsman in the conduct of investigation and inquiry, and in respect of such functions, such officer or employee shall be deemed to be the officer or employee of the Ombudsman.

Investigation.

31G. (1) The Ombudsman may, in accordance with the provisions of this Regulation, investigate into any complaint filed before it under this Regulation.

(2) Notwithstanding anything contained in this Regulation, the Government may refer any allegation of corruption or maladministration against a Municipality or a member of the Municipality which is within its knowledge or brought to its notice, to the Ombudsman and the Ombudsman shall investigate into it as if, it was a complaint filed under this Regulation.

(3) The Ombudsman may, on receipt of a complaint, conduct an investigation in the matter and where there is a *prima facie* case, it may conduct a detailed inquiry under section 31H.

(4) The Ombudsman shall not investigate or inquiry into matters relating to,—

(a) any matter in respect of which a formal and public inquiry has been ordered by the Government;

(b) any matter in respect of which a remedy is available from the Court for Municipality;

(c) any matter in respect of which an inquiry has been ordered under the Commission of Inquiries Act, 1952 or any matter pending before a Court; and

(d) any complaint filed after the expiry of three years from the date on which the matter complained against has taken place:

Provided that the Ombudsman may entertain such complaint, if the complainant satisfies that he had sufficient reason for not filing the complaint within the specified period.

Inquiry.

31H. (1) After an investigation, if the Ombudsman is satisfied that—

(a) the complaint is frivolous or vexatious or is not made in good faith; or

(b) there is no sufficient ground to initiate proceedings; or

(c) other remedies are available to the complainant and it shall be more beneficial for the complainant to avail of such remedies in view of the circumstances of the case,

it may, after recording its findings and stating the reason therefor, dispose of the complaint and communicate the same to the complainant.

(2) If the Ombudsman is of the opinion that there is a *prima facie* case against a member of the Municipality complained of, it shall record its findings to this effect and send notices of the proposed inquiry to the complainant and to the opposite party.

(3) Subject to the provisions of this Regulation and rules made thereunder, the Ombudsman shall regulate its own procedure for the purpose of holding its meeting (including time and place of sitting).

(4) In any proceeding before the Ombudsman, no legal practitioner shall be permitted to represent any person, unless the Ombudsman, by an order, permits a person to be represented by a legal practitioner for reasons to be recorded.

31-I. (1) Notwithstanding anything contained in any other law for the time being in force, any proceeding relating to a member of the Municipality which is pending before any authority under this Regulation before the establishment of the Ombudsman under sub-section (1) of section 31A, shall, on such establishment, be transferred to the Ombudsman and the Ombudsman shall decide the proceeding in accordance with the provisions of this Regulation.

Existing cases to be transferred to Ombudsman.

(2) All cases, with regard to the loss, wastage and misappropriation of any land of the Local Self Government Institution, pending before the Government or any other authority shall be transferred to the Ombudsman and the Ombudsman shall dispose of the proceeding in accordance with the provisions of this Regulation.

31J. (1) If, after an investigation or inquiry, the Ombudsman finds that there is a *prima facie* case against the accused, the Ombudsman may, for the reasons to be recorded in writing, refer the complaint to a competent authority to initiate prosecution.

Initiation of prosecution.

(2) The competent authority referred to in sub-section (1) shall conduct a detailed inquiry and if necessary, shall frame the charge.

31K. (1) The Ombudsman may consider and dispose of complaints other than those involving criminal offences, in the following manner, namely:—

Disposal of complaints.

- (i) award of compensation, to a citizen in case of loss or grievance;
- (ii) order the recovery of loss caused to the Municipality from the person responsible;
- (iii) order the supply of omission or rectification of defects due to inaction;
- (iv) order the recovery of loss from the accused failing which, order realisation through revenue recovery proceedings; and
- (v) order other necessary remedial measures considering the facts and circumstances of the case.

(2) Where the Ombudsman finds that the procedure or practice regarding the administration of the Municipality gives room for complaint, it may give suggestions to the Government or the Municipality relating to the measures for avoiding the recurrence of such complaint.

(3) The Ombudsman shall give annually a detailed report regarding the performance of its functions under this Regulation to the Government.

31L. (1) The Government may make rules to carry out the provisions of this Chapter.

Power to make rules under this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the salary and allowances payable to, and other terms and conditions of service of, the Ombudsman under sub-section (7) of section 31A;

(b) the procedure for the removal of the Ombudsman and investigation of proof of the misbehaviour or incapacity under sub-section (2) of section 31B;

(c) the salary and allowances payable to, and other terms and conditions of service of, the officers and staff provided to the Ombudsman under sub-section (2) of section 31C; and

(d) any other matter which is required to be, or may be, prescribed."

Amendment
of section 32.

8. In section 32 of the principal regulation, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Notwithstanding anything contained in this Regulation or the rules made thereunder, the giving or recording of vote by Electronic Voting Machine may be adopted in such ward or wards of the Municipality as the Election Commission may, having regard to the circumstances of each case, specify.

Explanation.—For the purposes of this section, "Electronic Voting Machine" means any machine or apparatus whether operated electronically or otherwise, used for giving or recording of vote and any reference to a ballot box or ballot paper in this Regulation or the rules made thereunder shall, save as otherwise provided, be construed as including a reference to such Electronic Voting Machine wherever such Electronic Machine is used at any election."

Amendment
of section 47.

9. In section 47 of the principal Regulation, for clause (b), the following clause shall be substituted, namely:—

"(b) subject to the provisions of this Regulation, the Chairperson shall have general powers of inspection and may call any record of the Municipality from the Secretary and the same shall be made available to him and shall be returned by him within fifteen days from the date they are made available to him."

Amendment
of section 52.

10. In section 52 of the principal Regulation, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) The Secretary shall exercise all the powers of the Head of the Department as per the provisions of the General Financial Rules in respect of the Departments of Union territory."

Amendment
of section
108.

11. In section 108 of the principal Regulation, in sub-section (2), for the words "shall be punishable with fine which may extend to twenty rupees and with a further fine not exceeding ten rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government and with a further fine not exceeding such amount as may be notified by the Government" shall be substituted.

Amendment
of section
115.

12. In section 115 of the principal Regulation, for the words "shall be punishable with fine which may extend to fifty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.

Amendment
of section
116.

13. In section 116 of the principal Regulation, for the words "shall be punishable with fine which may extend to twenty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.

Amendment
of section
119.

14. In section 119 of the principal Regulation, in sub-section (4), for the words "shall be punishable with fine which may extend to ten rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.

Amendment
of section
121.

15. In section 121 of the principal Regulation, in sub-section (2), for the words "shall be punishable with fine which may extend to twenty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.

Amendment
of section
123.

16. In section 123 of the principal Regulation, for the words "shall be punishable with fine which may extend to fifty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.

- 17.** In section 124 of the principal Regulation, for the words "shall be punishable with fine which may extend to fifty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted. Amendment of section 124.
- 18.** In section 125 of the principal Regulation, in sub-section (2), for the words "shall be punishable with fine which may extend to two hundred rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted. Amendment of section 125.
- 19.** In section 127 of the principal Regulation, in clause (c), for the words "shall be punishable with fine which may extend to twenty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted. Amendment of section 127.
- 20.** In section 129 of the principal Regulation, in sub-section (4), for the words "shall be punishable with fine which may extend to fifty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted. Amendment of section 129.
- 21.** In section 130 of the principal Regulation, in sub-section (2), for the words "shall be punishable with fine which may extend to ten rupees", the words "shall be liable to pay a fine which may extend to such amount as may be notified by the Government" shall be substituted. Amendment of section 130.
- 22.** In section 137 of the principal Regulation, in sub-section (4), for the words "shall be punishable with fine which may extend to fifty rupees and in the case of continuing offence with a further fine which may extend to ten rupees", the words "shall be liable to pay a fine which may extend to such amount as may be notified by the Government and in the case of continuing offence, with a further fine which may extend to such amount as may be notified by the Government" shall be substituted. Amendment of section 137.
- 23.** In section 138 of the principal Regulation, for the words "shall be punishable with fine which may extend to rupees fifty", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted. Amendment of section 138.
- 24.** In section 141 of the principal Regulation, in sub-section (2), for the words "rupees one hundred and in the case of continuing failure, with a further fine which may extend to ten rupees", the words "such amount as may be notified by the Government and in the case of continuing failure, with a further fine which may extend to such amount as may be notified by the Government" shall be substituted. Amendment of section 141.
- 25.** In section 144 of the principal Regulation, for the words "shall be punishable with fine which may extend to twenty rupees and in the case of continuing offence with further fine which may extend to five rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government and in the case of continuing offence, with further fine which may extend to such amount as may be notified by the Government" shall be substituted. Amendment of section 144.
- 26.** In section 145 of the principal Regulation,—
 (i) for the words "shall be punishable with fine which may extend to twenty-five rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted;
 (ii) in the *Explanation*, for the word "punishable", the word "fined" shall be substituted. Amendment of section 145.
- 27.** In section 146 of the principal Regulation, for the words "shall be punishable with fine which may extend to twenty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted. Amendment of section 146.

- Amendment of section 150. **28.** In section 150 of the principal Regulation, in sub-section (1), for the words "shall be punishable with fine which may extend to fifty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.
- Amendment of section 155. **29.** In section 155 of the principal Regulation, for the words "shall be punishable with fine which may extend to ten rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.
- Amendment of section 156. **30.** In section 156 of the principal Regulation, for the words "shall be punishable with fine which may extend to twenty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.
- Amendment of section 157. **31.** In section 157 of the principal Regulation, in sub-section (2), for the words "shall be punishable with fine which may extend to twenty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.
- Amendment of section 158. **32.** In section 158 of the principal Regulation, for the words "shall be punishable with fine which may extend to twenty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.
- Amendment of section 159. **33.** In section 159 of the principal Regulation, for the words "shall be punishable with fine which may extend to twenty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.
- Amendment of section 160. **34.** In section 160 of the principal Regulation,—
 (i) in sub-section (1), for the words "shall be punishable with fine which may extend to fifty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted;
 (ii) in sub-section (2), for the words "one hundred rupees", the words "ten thousand rupees" shall be substituted.
- Amendment of section 203. **35.** In section 203 of the principal Regulation,—
 (a) in sub-section (2), after clause (a), the following clause shall be inserted, namely:—
 "(aa) the period of notice under clause (a) of proviso to sub-section (4) of section 17;
 (ab) the procedure for the special meeting under sub-section (10) of section 17;"
- (b) in sub-section (3), for the words "shall be punishable with fine which may extend to fifty rupees", the words "shall be liable to pay fine which may extend to such amount as may be notified by the Government" shall be substituted.
- Insertion of new Schedule. **36.** After Chapter XIV of the principal Regulation, the following Schedule shall be inserted, namely:—

“THE SCHEDULE

[See section 12(2)]

Provision as to disqualification on ground of defection

1. Disqualification on ground of defection.—(1) Subject to the provisions of paragraph 2, member belonging to any political party shall be disqualified for being a member—

(a) if he has voluntarily given up his membership of such political party; or

(b) if he votes or abstains from voting in the Municipality contrary to any direction issued by the political party to which he belongs or by any person or

authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation.—For the purposes of this sub-paragraph, a member shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such a Member.

(2) A member who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a Member if he joins any political party after such election.

(3) Notwithstanding anything contained in sub-paragraphs (1) and (2), a person who, on the commencement of the Andaman and Nicobar Islands (Municipal) Amendment Regulation, 2018 is a Member shall,—

(i) where he was a Member of a political party immediately before such commencement, be deemed, for the purpose of sub-paragraph (1) of this paragraph, to have been elected as a member of such Municipality as a candidate set up by such political party;

(ii) in any other case, be deemed to be a member who has been elected as such otherwise than as a candidate set up by any political party for the purpose of sub-paragraph (2) of this paragraph.

2. Disqualification on ground of defection not to apply in case of merger.—(1) A member shall not be disqualified under sub-paragraph (1) of paragraph 1 where his original political party merges with another political party and he claims that he and any other Members of his original political party—

(a) have become Members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 1 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1), the merger of the original political party of a member shall be deemed to have taken place if, and only if, not less than two-thirds of the Members of such political party in the Municipality concerned have agreed to such merger.

3. Decision on question as to disqualification on ground of defection.—(1) If any question arises as to whether a member has become subject to disqualification under this Schedule, the question shall be referred to the Administrator and the decision of the Administrator thereon shall be final.

(2) Before giving any decision on any such question referred under sub-paragraph (1), the Administrator shall obtain the opinion of the Election Commission.

4. Rules—The Administrator may make rules for giving effect to the provisions of this Schedule, and in particular and without prejudice to the generality of the foregoing powers, such rules may provide for—

(a) the maintenance of registers or other records as to the political parties, if any, to which different members belong;

(b) the report which the leader of a political party in relation to a member shall furnish with regard to any condonation of the nature referred to in

clause (b) of sub-paragraph (1) of paragraph 1 in respect of such member, the time within which and the authority to which such report shall be furnished;

(c) the report, which a political party, shall furnish with regard to admission to such political party of any member and the officer of the Municipality to which such report shall be furnished; and

(d) the procedure for deciding any question referred to in paragraph 3 including the procedure for any inquiry which may be made for the purpose of deciding such question.”

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.