

Thirteenth Kerala Legislative Assembly
Bill No. 193

**THE KERALA MUNICIPALITY (SECOND AMENDMENT)
BILL, 2013**

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[Translation in English of “2013-ലെ കേരള മുനിസിപ്പാലിറ്റി (രണ്ടാം ഭേദഗതി) ബിൽ” published under the authority of the Governor.]

THE KERALA MUNICIPALITY (SECOND AMENDMENT) BILL, 2013

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BILL

further to amend the Kerala Municipality Act, 1994.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Municipality Act, 1994 for the purposes hereinafter appearing ;

BE it enacted in the Sixty-fourth Year of the Republic of India, as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Municipality (Second Amendment) Act, 2013.

(2) Sections 2 and 3 of this Act shall be deemed to have come into force on 14th day of June, 2010 and the remaining sections shall come into force at once.

2. *Amendment of section 69.*—In the Kerala Municipality Act, 1994 (20 of 1994) (hereinafter referred to as the principal Act), in section 69, after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Every order issued by the Delimitation Commission with regard to the division of wards and the determination of their boundaries under this section shall be published in the Gazette and it shall have the force of law.”.

3. *Amendment of section 86.*—In sub-section (1) of section 86 of the principal Act, the existing Explanation shall be numbered as “Explanation 1” and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:—

“*Explanation 2:*—For the purpose of this section, the part time employees and persons receiving honorarium except the Anganwadi and Balawadi workers shall be deemed to be employees.”.

4. *Amendment of section 407.*—In sub-section (1) of section 407 of the principal Act, for the word, letters and figures “15th October, 1999”, the word, letters and figures “31st October, 2012” shall be substituted.

5. *Validation.*—(1) Notwithstanding the cesser of operation of the Kerala Municipality (Amendment) Ordinance, 2011 (35 of 2011) (hereinafter referred to as the said Ordinance),—

(a) anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to be valid and in so far as it is not inconsistent with the provisions of this Act, shall be deemed to have been done or taken under the provisions of the principal Act as amended by this Act;

(b) anything done or any action taken after the cesser of operation of the said Ordinance and before the publication of this Act in the Gazette, other than anything done or deemed to have been done or any action taken or deemed to have been taken in the case of Anganwadi workers and Balawadi workers as per Explanation 2 of section 86 of the principal Act as amended by section 4 of the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act as if it would have been done or taken under the principal Act as amended by the said Ordinance.

(2) Though section 86 of the principal Act was in operation as amended by the said Ordinance, the provisions of the said section as so amended shall not become a bar, in so far as it relates to the Anganwadi employees and Balawadi employees, in continuing in the respective posts in which they worked, even if they had resigned from the job for contesting the election during the period in which the said Ordinance was in operation and the orders being issued by the Government shall be applicable in respect of the terms and conditions of service during the period of operation of the said Ordinance,

(3) The cesser of operation of the said Ordinance shall not,—

(a) affect any right, liability or authority accrued under the provisions of the principal Act as amended by its provisions;

(b) affect any legal proceedings or remedy in respect of any such right, liability, power or exercise of power as stated above and shall not affect the initiation, continuation or enforcement of any legal proceedings or remedy under the provisions of the principal Act as so amended, in so far as it is not inconsistent with the provisions of the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Government have decided to amend section 69 of the Kerala Municipality Act, 1994 in order to provide that every order with regard to the division of ward and determination of their boundaries issued under section 69 by the Delimitation Commission shall be published in the Gazette and it shall have the force of law and also to amend section 86 of the Act to include the part-time employees and persons receiving honorarium among the category of officers disqualified for being elected to the Local Self Government Institutions and to amend section 407 of the Act to regularise, subject to conditions, the unauthorized building constructions carried out up to the 31st day of December, 2008 so as to avoid the revenue loss caused due to the non-regularisation of unauthorised building constructions made after the 15th day of October, 1999.

2. As the Legislative Assembly was not in session and the above proposals had to be given effect to immediately, the Kerala Municipality (Amendment) Ordinance, 2010 (26 of 2010) was promulgated by the Governor of Kerala on the 12th day of June, 2010 and the same was published in the Kerala Gazette Extraordinary No. 1339 dated 14th June, 2010.

3. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 361 of the 12th Kerala Legislative Assembly the same could not be introduced in, and passed by, the Legislative Assembly during the session which commenced on the 28th day of June, 2010 and ended on the 29th day of July, 2010.

4. In order to keep alive the provisions of the said Ordinance, the Kerala Municipality (Amendment) Ordinance, 2010 (32 of 2010) was promulgated by the Governor of Kerala on the 8th day of August, 2010 and the same was published in the Kerala Gazette Extraordinary No. 1813 dated 8th August, 2010.

5. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 375 of the 12th Kerala Legislative Assembly the same could not be introduced in, and passed by, the Legislative Assembly during the session which commenced on the 21st day of December, 2010 and ended on the 3rd day of January, 2011.

6. In order to keep alive the provisions of the said Ordinance, the Kerala Municipality (Amendment) Ordinance, 2011 (11 of 2011) was promulgated by the

Governor of Kerala on the 22nd day of January, 2011 and the same was published in the Kerala Gazette Extraordinary No. 162 dated 23rd January, 2011.

7. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 420 of the 12th Kerala Legislative Assembly the same could not be introduced in, and passed by, the Legislative Assembly during the session which commenced on the 4th day of January, 2011 and ended on the 24th day of February, 2011.

8. In order to keep alive the provisions of the said Ordinance, the Kerala Municipality (Amendment) Ordinance, 2011 (35 of 2011) was promulgated by the Governor of Kerala on the 17th day of March, 2011 and the same was published in the Kerala Gazette Extraordinary No. 657 dated 18th March, 2011.

9. As per the provisions of sub-clause (a) of clause (2) of article 213 of the Constitution of India, an Ordinance promulgated by the Governor under the said article shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature. Accordingly, the said Ordinance ceased to operate on the 13th day of July, 2011. Government have also decided to include the part-time employees and persons receiving honorarium except Anganwadi and Balawadi workers in the group of employees disqualified to be elected to the Local Self Government Institutions in the amendment to section 86 of the principal Act as per the said Ordinance and to extend the date of regularisation of unauthorised building constructions till 31st October, 2012 as per section 407.

10. This Bill seeks to bring into force the provisions of the said Ordinance with the above said changes.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MANJALAMKUZHI ALI

EXTRACT OF RELEVANT PORTIONS FROM THE KERALA
MUNICIPALITY ACT, 1994
(20 OF 1994)

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69. *Division of Municipalities into wards for election, reservation etc.*—(1) For the purpose of election of Councillors to Municipalities, the Delimitation Commission constituted by Government under sub-section (1) of Section 10 of the Kerala Panchayat Raj Act, 1994 shall, after previous publication of the proposals inviting objections or suggestions, if any and after considering the same, divide the Municipalities into as many wards as there are number of seats as notified under section 6 and determine the boundaries thereof:

Provided that the population of each ward in a Municipality shall, as far as practicable, be equal.

(2) Copies of the proposals published and final orders issued under sub-section (1) shall be published by affixing copies thereof on the notice board of the office of the Municipality concerned, and in such conspicuous places within the concerned municipal area. The fact of such publication shall be published in the Gazette and in two local newspapers having wide circulation within the municipal area concerned.

(3) Only one Councillor shall be elected for each ward and election shall be by secret ballot.

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86. *Disqualification of officers and employees of Government, local authorities etc.*—(1) No officer or employee in the service of a State or Central Government or a local authority or a Corporation owned or controlled by a State or the Central Government or of a company in which a State or Central Government or local authority has not less than fifty one per cent share or of Boards or any University established under a State enactment shall be qualified for election as or for holding the office of Councillor of a Municipality.

Explanation:—For the purpose of this section, company means a Government Company as defined in section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a Co-operative Society registered or deemed to have been registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969).

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407. *Power to regularise the unlawful building construction.*—(1) Notwithstanding anything contained in this Act, if any person or institution unlawfully developed any land or constructed any building on or before 15th October 1999, the Government may after consultation with the concerned Municipality on realisation of a compounding fee as prescribed, regularise such land development or building construction:

Provided that such regularisation shall not adversely affect any Town Planning Scheme or master plan approved under the existing provisions of the Town Planning Act:

Provided further that no building construction shall be regularised, which is done in contravention of the provisions in respect of the Security arrangements provided in this Act, or the Building Rules made thereunder.

(2) Application for regularisation under sub-section (1) shall be submitted within such time and in such manner as prescribed.

Explanation:—For the purpose of this Act, unlawful construction means any construction for which the Secretary shall have no power to regularise under Section 406 of this Act or any construction or re-construction done in contravention of the provision of this Act or the Building Rules made thereunder or in contravention of any approved plan or any construction done in deviation of any exemption order sanctioned by the Government or any condition specified therein.

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