

Fifteenth Kerala Legislative Assembly

Bill No. 43

**THE KERALA MUNICIPALITY (AMENDMENT)
BILL, 2021**

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[Translation in English of “ 2021-ലെ കേരള മുനിസിപ്പാലിറ്റി (ഭേദഗതി ബിൽ)”
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THE KERALA MUNICIPALITY (AMENDMENT) BILL, 2021

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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 (20 of 1994) for the purposes hereinafter appearing;

BE it enacted in the Seventy-second Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Municipality (Amendment) Act, 2021.

(2) Save as otherwise provided in this Act,—

(a) section 3 shall be deemed to have come into force on the 4th day of May, 2020;

(b) sub-section (1) of section 4 and section 5 shall be deemed to have come into force on the 30th day of September, 2020;

(c) sub-section (2) of section 4 shall be deemed to have come into force on the 19th day of November, 2020;

(d) section 2 and sections 6 to 11 shall be deemed to have come into force on the 12th day of February, 2021.

2. *Amendment of section 2.*—In the Kerala Municipality Act, 1994 (20 of 1994) (hereinafter referred to as the principal Act) in section 2,—

(i) after clause (17), the following clause shall be inserted, namely:—

“(17A) “empanelled licensee” means any institution, architect, engineer, building designer, supervisor or town planner, as the case may be, registered under the Regional Joint Director of Urban Affairs Department or deemed to be registered under the Kerala Municipality Building Rules, 2019, and empanelled in such manner as may be prescribed, by the Local Self Government Department for the purpose of issuing self-certification .”;

(ii) after clause (22), the following clause shall be inserted, namely:—

“(22A) “low risk buildings” include residential buildings under Group A1 occupancy, with built-up area of less than three hundred square meters and height less than seven meters and limited to two storeys, hostel, orphanage, dormitory, old age home, seminary under Group A2 occupancy having built-up area less than two hundred square meters, educational buildings under Group B occupancy having built-up area less than two hundred square meters, Group D occupancy buildings where persons congregate for religious and patriotic purposes having built-up area less than two hundred square meters, Group F occupancy buildings having built-up area less than one hundred square meters, Group G1 occupancy buildings without any nuisance and not dangerous and having built-up area less than one hundred square meters.”;

(iii) after clause (43), the following clause shall be inserted, namely:—

“(43A) “self-certification” means self-certification issued jointly by the owner of the building and the empanelled licensee to the effect that, the building plan and site plan for the construction or reconstruction of the low risk buildings, are in accordance with the provisions of the Act and rules, for the time being in force, and any lawful direction issued, any stipulation as to the standard of specifications, laws, rules and directions.”.

3. *Amendment of section 6.*—In the principal Act, in sub-section (3) of section 6,—

(a) in clause (a),—

(i) in sub-clause (i), for the words “twenty six”, the words “twenty five” shall be substituted;

(ii) in sub-clause (ii), for the words “twenty six”, the words “twenty five” and for the words “fifty three”, the words “fifty two” shall be substituted;

(b) in clause (b),—

(i) in sub-clause (i), for the words “fifty six”, the words “fifty five” shall be substituted;

(ii) in sub-clause (ii), for the words “fifty six”, the words “fifty five” and for the words “one hundred and one”, the words “one hundred” shall be substituted.

4. *Amendment of section 126.*—In section 126 of the principal Act,—

(1) the existing provision shall be numbered as sub-section (1) thereof, and in the proviso to sub-section (1) as so numbered, for the figures, word and letters “7 a. m. and 5 p. m.” the figures, word and letters “7 a. m. and 6 p. m.” shall be substituted;

(2) after sub-section (1) as so numbered, and the proviso thereunder, the following sub-section shall be inserted, namely:—

“(2) The last one hour of the time fixed under sub-section (1) shall be used for voting by such classes of persons as specified under section 130 A.”.

5. *Insertion of new section after section 130.*—In the principal Act, section 130A shall be renumbered as section 130B, and before section 130B as so renumbered, the following section shall be inserted, namely:—

“130 A. *Special provision for postal ballot to certain classes of persons.*—(1) Without prejudice to the generality of the provisions contained in section 130, the following classes of voters shall have the opportunity to give their vote by postal ballot in such manner, as may be prescribed, namely:—

- (a) any person who is affected by epidemic disease;
- (b) any person in quarantine;

Explanation.—For the purpose of this section,—

(i) “epidemic disease” means epidemic disease as defined under clause (a) of section 2 of the Kerala Epidemic Diseases Act, 2021 (4 of 2021) and notified by the Government under section 3 of the said Act from, time to time;

(ii) “person in quarantine” means a person who is in quarantine in the State as per the guidelines issued by the Ministry of Health and Family Welfare, Government of India, from time to time, to prevent the spread of epidemic diseases.

(2) A voter as specified in any of the classes under sub-section (1) may, give his vote by postal ballot or may give his vote directly at the polling station, at the time fixed under sub-section (2) of section 126.

Note:—The provisions of sub-section (2) shall be deemed to have come into force on the 19th day of November, 2020.”.

6. *Amendment of section 387.*—In section 387 of the principal Act,—

(i) in sub-section (1), after the word “hut”, the words “or low risk buildings” shall be inserted;

(ii) in clause (a), for the words “an application in writing”, the words “an application in writing or through online” shall be substituted;

(iii) in clause (b), for the words “an application in writing”, the words “an application in writing or through online” shall be substituted.

7. *Amendment of section 389.*—In section 389 of the principal Act, after the words “re-construction of a building”, the words “including low risk buildings” shall be inserted.

8. *Amendment of section 390.*—In section 390 of the principal Act, for the words “ within thirty days ”, the words “within fifteen days” shall be substituted.

9. *Amendment of section 391.*—In section 391 of the principal Act,—(i) for the words “thirty days”, the words “fifteen days” shall be substituted;

(ii) in the proviso, for the words “thirty days”, the words “fifteen days” shall be substituted.

10. *Insertion of new section 392A.*—After section 392 of the principal Act, the following section shall be inserted, namely:—

“392A. *Application for the construction of low risk buildings.*—(1) Any person who intends to construct or reconstruct a low risk building, shall file an application to the Secretary, for approval of the building site and for permission to execute the work of such building along with a self-certification, in such form and along with such documents, as may be prescribed .

(2) On receipt of an application under sub-section (1), complete in all respect, the Secretary shall, within five working days, issue an Acknowledgement Certificate, in such form, as may be prescribed.

(3) On receipt of an Acknowledgement Certificate under sub-section (2), such Acknowledgement Certificate shall be deemed to be approval of the building site and permission to execute the work of such building.”.

11. *Amendment of section 515.*—After sub-section (2) of section 515 of the principal Act, the following sub-sections shall be inserted, namely:—

“(3) In the case of issue of self-certification by the empanelled licensee for the construction or reconstruction of low risk buildings, if the Registering Authority finds that the empanelled licensee issued the self-certification to such

building in violation of the provisions of this Act or the rules made thereunder or any lawful directions issued, or provisions of any Act for the time being in force, or concealing any fact, such registering authority may debar the empanelled licensee from practising in the State for a period of not less than five years, and after issuing a show cause notice to such licensee, a fine as provided in sub-section (4) may be realised from such licensee.

(4) Where a building is constructed or reconstructed in violation of the provisions specified in the self-certification, an amount of rupees two lakh each for building with built-up area upto one hundred square meters, four lakh rupees each for building with built-up area upto two hundred square meters, six lakhs rupees each for building with built-up area upto three hundred square meters, shall be realised as fine from such owner and empanelled licensee who have issued such self-certification after giving a show cause notice and considering the reply, if any, furnished by such owner or licensee.

(5) A person who is aggrieved by the actions taken or the orders issued by the Registering Authority, may file an appeal before the Government against such order or action within thirty days from the date of receipt of the order under sub-section (3).”.

12. *Repeal and saving.*—(1) The Kerala Municipality (Amendment) Ordinance, 2021 (126 of 2021) is hereby repealed.

(2) Notwithstanding such repeal, 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 have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

As the population of Kerala, has been increased as per Census of 2011, and the population of many municipalities have exceeded one lakh, the ratio between population and number of seats of the Councillors to be filled by election have increased, the number of seats of the Municipal Councillors was increased by one each as per the Kerala Municipality (Amendment) Act, 2020 (3 of 2020) by amending sub-section (3) of section 6 of the Kerala Municipality Act, 1994. Due to

nation wide lock down declared as a preventive measure against the spread of COVID-19 epidemic and restrictions were in force, delimitation process of wards could not be completed. As social distancing was to be implemented and the COVID-19 restrictions were in force, delimitation process of wards could not be completed. As the above process could not be completed in a time bound manner, and the elections to Local Self Government Institutions were to be conducted immediately, the Government have decided to amend sub-section (3) of section 6 of the Kerala Municipality Act, 1994 suitably, so as to maintain the number of seats of Municipal Councillors in the Municipality as before the amendment by Act No. 3 of 2020.

2. As the Legislative Assembly of the State of Kerala was not in session and the above proposals had to be given effect to immediately, the Kerala Municipality (Amendment) Ordinance (31 of 2020) was promulgated by the Governor of Kerala on the 2nd day of May, 2020 and the same was published in the Kerala Gazette Extraordinary No. 1126 dated 4th day of May, 2020.

3. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Kerala Legislative Assembly in its session which convened on the 24th day of August, 2020.

4. As the provisions of the said Ordinance had to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Kerala Municipality (Amendment) Ordinance, 2020 (63 of 2020) was promulgated by the Governor of Kerala on the 26th day of September, 2020 and the same was published in the Kerala Gazette Extraordinary No 2221 dated 29th day of September, 2020.

5. As the polling has to be conducted complying the COVID-19 Protocol it was not possible to complete the polling within the stipulated time as provided in the proviso to section 126 of the Kerala Municipality Act, 1994, the Government had decided to amend section 126, in such a way to provide that, the total period allotted on any one day for polling at an election “shall not be less than eight hours between 7 a.m. and 6 p.m.” instead of “shall not be less than eight hours between 7 a.m. and 5 p.m.” and also decided to insert a new section 130A after section 130 in order to provide postal ballot facility to the persons affected by COVID -19 and to those who are under quarantine.

6. As the Legislative Assembly of the State of Kerala was not in session, and the above proposals had to be given effect to immediately, the Kerala Municipality (Second Amendment) Ordinance, 2020 (70 of 2020) was promulgated by the Governor of Kerala on the 26th day of September, 2020 and the same was published in the Kerala Gazette Extraordinary No.2233 dated 30th day of September, 2020.

7. As per the provisions of section 130 A of the Act amended by the above said Ordinance, postal ballot facility was provided to the persons affected by epidemic diseases and also to the persons who are in quarantine. The Government have decided to bring suitable amendments in sections 126 and 130A of the Act so as to permit such persons to cast their vote in polling station during the last hour of the poll.

8. As the Legislative Assembly of the State of Kerala was not in session and the above proposals had to be given effect to immediately, the Kerala Municipality (Third Amendment) Ordinance, 2020 (77 of 2020) was promulgated by the Governor of Kerala on the 19th day of November, 2020 and the same was published in the Kerala Gazette Extraordinary No. 2847 dated 19th day of November, 2020.

9. A Bill to replace the said Ordinances by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala in its session which convened on the 31st day of December, 2020 and also during its session which commenced on the 8th day of January, 2021, and ended on the 22nd day of January, 2021.

10. As the provisions of the Kerala Municipality (Amendment) Ordinance, 2020 (63 of 2020) and the Kerala Municipality (Third Amendment) Ordinance, 2020 (77 of 2020) had to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Kerala Municipality (Amendment) Ordinance, 2021 (13 of 2021) was promulgated by the Governor of Kerala on the 9th day of February, 2021 and the same was published in the Kerala Gazette Extraordinary No. 668 dated 10th day of February, 2021.

11. As per the provision of section 389 of the Kerala Municipality Act 1994, the construction or reconstruction of a building shall not be commenced unless and until the Secretary has granted permission for the execution of work. In order to alleviate the hardships of the general public in building construction, to expedite the projects undertaken by the public authorities and as part of measures to be taken in the industrial sector as part of the Ease of Doing Business, the Government have decided to include a category of low risk building and also decided to incorporate a provision for issuing an acknowledgement certificate within five working days which shall be deemed to be a permit for the construction of building on filing an application for approval of the building site along with self-certification by inserting a new section 392 A and by amending sections 2, 387, 389, 390, 391, 392, 515 of the Kerala Municipality Act, 1994 respectively. It was also decided to realise fine from the owners of the building who construct building in violation of the provisions of self-certification and also decided to reduce the period for obtaining permit for the construction of buildings other than the low risk buildings from 30 days to 15 days and also decided to bring consequential amendments in the Act.

12. As the Legislative Assembly of the State of Kerala was not in session, and the above proposals had to be given effect to immediately, the Kerala Municipality (Second Amendment) Ordinance, 2021 (34 of 2021) was promulgated by the Governor of Kerala on the 12th day of February, 2021 and the same was published in the Kerala Gazette Extraordinary No. 726 dated 12th day of February, 2021.

13. A Bill to replace the said Ordinances by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 24th day of May, 2021 and ended on the 10th day of June, 2021.

14. As the provisions of the Kerala Municipality (Amendment) Ordinance, 2021 (13 of 2021) and the Kerala Municipality (Second Amendment) Ordinance, 2021 (34 of 2021) had to be kept alive and the the Legislative Assembly of the State of Kerala was not in session, the Kerala Municipality (Amendment) Ordinance, 2021 (88 of 2021) was promulgated by the Governor of Kerala on the 1st day of July, 2021 and the same was published in the Kerala Gazette Extraordinary No. 1943 dated 3rd day of July, 2021.

15. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 22nd day of July, 2021, and ended on the 13th day of August, 2021.

16. As the provisions of the said Ordinance had to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Kerala Municipality (Amendment) Ordinance, 2021 (126 of 2021) was promulgated by the Governor of Kerala on the 23rd day of August, 2021 and the same was published in the Kerala Gazette Extraordinary No. 2480 dated 25th day of August, 2021.

17. The Bill seeks to replace Ordinance No. 126 of 2021 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause (17A) of section 2 of the principal Act proposed to be inserted by Clause 2 of the Bill, seeks to empower the Government to prescribe the manner of empanelling institution, architect, engineer, building designer, supervisor or town planner for the purpose of issuing self-certification.

2. Sub-section (1) of section 130A of the principal Act, proposed to be inserted by Clause 5 of the Bill, seeks to empower the Government to prescribe the manner of casting postal ballot by any person affected by epidemic disease and persons who are in quarantine.

3. Sub-section (1) of section 392A of the principal Act, proposed to be inserted by Clause 10 of the Bill, seeks to empower the Government to prescribe the form and documents to be furnished along with an application for the approval of the building site and for permission to execute the work of such building by a person who intends to construct or reconstruct a low risk building. Sub-section (2) of the said section seeks to empower the Government to prescribe the manner of the form for issuing the acknowledgement certificate to the applicant.

4. The matters in respect of which rules may be made or notification may be issued are matters of procedure and are of routine or administrative in nature. Further, the rules, after they are made, are subject to scrutiny by the Legislative Assembly. The delegation of legislative powers is, thus, of a normal character.

M. V. GOVINDAN MASTER.

EXTRACT FROM THE KERALA MUNICIPALITY ACT, 1994

(20 OF 1994)

** ** ** **

2. *Definitions.*—In this Act, unless the context otherwise requires,—

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(17) ‘*Electoral Registration Officer*’ means an officer designated or nominated by the State Election Commission to discharge the functions of the Electoral Registration Officer under this Act;

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(22) ‘*lodging house*’ means a hotel, a boarding house, a choultry, dharmasala or rest house not maintained by the Government or a local authority, or any place where casual visitors are received and provided with sleeping accommodation, with or without food, on payment, but does not include—

(a) student’s hostel under public control or recognised control; or

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(d) rooms situated within the compound of any place of worship and used by devotees for taking rest;

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(43) “*Secretary*” means the Secretary of a Municipality;

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6. *Constitution of Council.*—(1) The Government shall, in accordance with the criteria specified in sub-section (3), notify the total number of seats of the Councillors to be filled up by direct election in a Town Panchayat, Municipality and Municipal Corporation considering the population of the area of the Municipality concerned.

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(3) The number of seats of Councillors notified under sub-section (1) or sub-section (2), shall be,—

(a) In the case of a Town Panchayat or a Municipal Council,—

(i) twenty-six, where the population in the area of the Town Panchayat or Municipal Council does not exceed twenty thousand, and

(ii) Where the population of the Town Panchayat or Municipal Council exceeds twenty thousand, twenty-six councillors for the population of first twenty thousand, and one each for every two thousand and five hundred of the population exceeding twenty thousand, subject to a maximum of fifty-three Councillors;

(b) In the case of a Municipal Corporation,—

(i) fifty six, where the population in the area of the Municipal Corporation does not exceed four lakhs, and

(ii) Where the population exceeds four lakhs, fifty six councillors for the population of first four lakhs and one each for every ten thousand exceeding four lakhs subject to a maximum of one hundred and one Councillors.

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126. *Fixing time for poll.*—The State Election Commission shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner, as may be prescribed:

Provided that the total period allotted on any one day for polling at an election in a ward shall not be less than eight hours between 7 a.m. and 5 p.m.

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130. *Manner of voting at elections.*—At every election where a poll is taken, votes shall be given by ballot in such a manner as may be prescribed, and no vote shall be received by proxy.

130A. *Use of voting machine in elections.*—Notwithstanding anything contained in this Act or rules made thereunder, the system of giving vote and recording of vote by using voting machine as may be prescribed may be adopted in every election decided by the State Election Commission considering the circumstances in each region.

Explanation:—For the purpose of this section, “voting machine” means any electronic machine or any other machine used for giving or recording of votes and it shall also be construed that any reference as to ballot box or ballot paper in this Act or the rules made thereunder save as otherwise provided shall include the references to a voting machine which is being used in any election.

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387. *Application to construct or reconstruct building.*—(1) Where any person intends to construct or reconstruct a building other than a hut within a municipal area, he shall send to the Secretary-

(a) an application in writing together with a site plan of the land for the approval of the site; and

(b) an application in writing together with a ground plan, elevation and sections of the building and specification of the work for permission to execute the work.

Explanation.—Building in this sub-section shall include a wall or fence of whatever height bounding or abutting on any public street.

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389. *Prohibition of commencement of work without permission.*—The construction or reconstruction of a building shall not be begun unless and until the Secretary has granted, permission for the execution of the work.

390. *Period within which approval or disapproval shall be intimated.*—Within thirty days after the receipt of an application made under section 387 for approval of a site or of any information or further information required under any rules or bye-laws made under this Act, the Secretary shall, by written order, either approve or refuse to approve the site on any of the grounds mentioned in section 393 and intimate the fact to the applicant.

391. *Period within which Secretary is to grant or refuse to grant permission to execute work.*—Within thirty days after the date of receipt of an application under section 387 for permission to execute any work or of any information or of document or further information or documents required under the rules or bye-laws made under this Act, the Secretary shall, by written order either grant or refuse to grant such permission on any of the grounds mentioned in section 393 and intimate the fact to the applicant in writing:

Provided that the said period of thirty days shall not begin to run until the site has been approved under section 390.

392. *Reference to Council where Secretary delays grant or refusal of approval or permission.*—(1) Where, within the period specified in section 390 or section 391, as the case may be, the Secretary has neither given nor refused his approval of a building site or his permission to execute any work, as the case may be, the Council shall be bound, on the written request of the applicant, to determine whether such approval or permission should be given or not.

(2) Where the Council does not, within one month from the date of receipt of such written request, determine whether such approval or permission should be given or not, such approval or permission shall be deemed to have been given, and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made thereunder.

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315. *Penalty for unlawful building.*—Where the construction or reconstruction of any building or digging of any well—

(a) is commenced without the permission of the Secretary; or

(b) is carried on or completed otherwise than in accordance with the particulars on which such permission was based; or

(c) is carried on or completed in contravention of any lawful order or in breach of any provision contained in this Act or in any rule or bye-law made thereunder or of any direction or requisition lawfully given or made; or

(d) about which any, alteration or addition required by any notice issued under section 395 or section 405 is not duly made; or

(e) about which any person to whom a direction if any, given by the Secretary under section 406 fails to obey such direction.

The owner of the building or the well or such person, as the case may be, shall be liable , on conviction to a fine which may extend, in the case of a building, to ten thousand rupees and in the case of a well or hut to one thousand rupees and to a further fine which may extend in the case of a building to one thousand rupees and in the case of a well or hut to two hundred and fifty rupees for each day during which the offence continued.

Provided that the unlawful construction, reconstruction or digging of well carried out by a person may be regularised under sub-section (1) of section 406 and he shall not be punished if so regularised by the Secretary.

(2) Where any building constructed in violation of any stipulation as to the Standards or conditions mentioned in the provisions of this Act or the rules made thereunder or any lawful directions issued, poses threat to public safety danger to human life, the owner or builder of such building shall, on conviction, be punishable with imprisonment for a term which may extend up to one year.

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