

THE GOVERNMENT OF MYANMAR (CONSTITUENT ASSEMBLY) ELECTION PETITIONS RULES.

No. 77.

The 24th February 1947.

[ Amendment : 18.06.1989 ]

No.77. - The following rules to regulate the procedure relating to the trial of Election Petitions are published for general information:-

1. (1) These Rules may be cited as **the Government of Myanmar (Constituent Assembly) Election Petitions Rules**.  
(2) They shall apply to election petitions arising out of or in connection with the elections to fill seats in the Constituent Assembly.  
[Amendment 18.06.1989]
2. In these Rules, except where it is otherwise expressly provided or the context otherwise requires-
  - (a) **“election”** means an election to fill a seat or seats in the Constituent Assembly;
  - (b) **“candidate”** means a person who has been or claims to have been duly nominated as a candidate at any election and a person who, with the election in prospect, has held himself out as a prospective candidate, shall be deemed to have been a candidate as from the time when he began so to hold himself out;
  - (c) **“agent”** includes an election agent and any person who, on the trial of an election petition, is held by the Commissioners to have acted as an agent in connection with the election with the knowledge or consent of the candidate;
  - (d) **“returned candidate”** means a candidate whose name has been published by a Returning Officer as duly elected;
  - (e) **“pleader”** means any person entitled to appear and plead for another in a Civil Court , and includes an Advocate of the High Court;
  - (f) **“corrupt practice”** means any of the corrupt practices specified in Schedule II of Government of Myanmar, Judicial Department, Legislative II Branch Notification No. 76, dated 19th February 1947.
  - (g) **“oath”** includes affirmation;
  - (h) **“sign”** in relation to a person who is unable to write his name means authenticate by making a mark.

<Amendment 18.06.1989>

3. No election shall be called in question except by an election petition against a returned candidate.
  4. An election petition against any returned candidate may be presented to the Governor by any candidate or elector on the ground that-
    - (i) the returned candidate, his election agent or any other person acting with the connivance of the candidate or his election agent has committed corrupt practice or practices, or
    - (ii) the returned candidate owes his election to the use of corrupt practice or practices by himself, his election agent or by any other person acting with the connivance of the candidate or his election agent.
- A petitioner, who is a candidate, may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself has been duly elected on the ground that but for votes obtained for the returned candidate by corrupt practices, the petitioner would have obtained a majority of the valid votes.
5. If a petitioner claims a declaration that he himself has been duly elected, he shall join as respondents to his petition all other candidates who were nominated at the election.
  6. An election petition against a returned candidate shall be deemed to have been duly presented to the Governor when it is delivered to the Governor or to any officer appointed by him in this behalf-
    - (i) by the person making the petition or,
    - (ii) by a person authorized in writing in this behalf by the person making the petition.
  7. An election petition against a returned candidate shall be presented within 45 days from the date on which the name of the returned candidate was published by the Returning Officer as duly elected.
  8. (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for verification of pleadings in the Code of Civil Procedure, 1908.  
(2) The petition shall be accompanied by a list signed and verified in like manner, setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice.

- (3) The Commissioners may, upon such terms as to costs and otherwise as they may direct, at any time allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may, in their opinion, be necessary for the purpose of ensuring a fair and effectual trial of the petition.
9. At the time of presentation of the petition, petitioner shall deposit with the petition the sum of one thousand rupees in cash or in Government Promissory notes of equal value at the market rate of the day as security for the costs of the same.
10. If the provisions of paragraphs 7, 8 and 9 are not complied with, the Governor, exercising his individual judgment, may dismiss the petition.
11. (1) Unless the Governor, exercising his individual judgment, dismisses a petition for non-compliance with the provisions of paragraphs 7, 8 and 9, he shall, exercising his individual judgment, appoint as Commissioners for the trial of the petition, three persons, who are, or have been, or are eligible to be appointed, Judges of the High Court and appoint one of them to be the President:  
Provided that nothing in this sub-paragraph shall be deemed to prevent the appointment of the President of a Commission before the other Commissioners are appointed.
- (2) Where in respect of an election in a constituency more petitions than one are presented, the Governor shall refer all those petitions to the same Commissioners, who may at their discretion, inquire into the petitions either separately or in one or more groups, as they think fit.
12. If the services of any Commissioner are not available for the purposes of the inquiry or if during the course of the inquiry any Commissioner is unable to continue to attend thereat, the Governor, exercising his individual judgment, shall appoint another Commissioner and the inquiry shall re-commence before the Commission as so re-constituted:  
Provided that the Commissioners may direct that any evidence already recorded shall remain upon record, and in that case, it shall not be necessary to re-examine those witnesses who have already been examined and discharged.
13. When at an inquiry into an election petition the Commissioners so order, the Advocate-General, or some person acting under his instructions, shall attend and shall take such part therein as the Commissioners may direct.
14. When a Commission or a President is appointed, the President shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the Myanmar Gazette and may call

on the petitioner to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on giving security in a like amount and procuring the execution of a like bond.

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15. Subject to the provisions of these rules, every election petition shall be inquired into by the Commissioners, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided that it shall only be necessary for the Commissioners to make a memorandum of the substance of the evidence of any witness examined by them.

16. The inquiry shall be held at such place as the Governor may appoint:

Provided that the Commissioners may, in their discretion, sit at any other place in Myanmar for any part of the inquiry and may depute any one of their number to take evidence at any such place.

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17. (1) An election petition may be withdrawn only by leave of the Commissioners or, if an application for withdrawal is made before any Commissioner has been appointed, of the Governor exercising his individual judgment.

(2) If there are more petitions than one, no application to withdraw a petition shall be made, except with the consent of all the petitioners.

(3) When an application for withdrawal is made to the Commissioners, 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 Myanmar Gazette.

(4) No application for withdrawal shall be granted if, in the opinion of the Governor, exercising his individual judgment, or of the Commissioners, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(5) If the application is granted-

(a) the petitioner shall, where the application has been made to the Commissioners, be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commissioners may think fit;

- (b) notice of the withdrawal shall be published in the Myanmar Gazette by the Governor, or by the Commissioners, as the case may be: and
- (c) any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing and, upon compliance with the conditions of Rule 9 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

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18. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.
- (2) Notice of the abatement of an election petition shall be published in the Myanmar Gazette by the Commissioners or, if the petition abates before any Commissioner has been appointed, by the Governor.
- (3) Any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with conditions of Rule 9 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

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19. If before the conclusion of the trial of an election petition the respondent dies or gives notice that he does not intend to oppose the petition, the Commissioners shall cause notice of such event to be published in the Myanmar Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted for such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Commissioners may think fit.

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20. (1) Where at an inquiry into an election petition any candidate other than the returned candidate claims the seat for himself, 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 complaining of 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 of the date of the publication of the election petition

under Rule 14 given notice of his intention to the Commissioners and made the deposit and procured the execution of the bond referred to in Rules 9 and 14, respectively.

(2) Every notice referred to in the proviso to sub-rule (1) shall be accompanied by the statement and list of particulars required by Rule 8 in the case of an election petition and shall be signed and verified in like manner.

21. The provisions of the Evidence Act shall, subject to the provisions of these rules, be deemed to apply in all respects to an inquiry.

22. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

23. Any appearance, application or act before the Commissioners may be made or done by the party in person or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the Commissioners so direct be made by the party in person.

24. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commissioners to such person.

25. (1) If in the opinion of the Commissioners-

- (a) a returned candidate has committed corrupt practice or practices, or
- (b) a returned candidate owes his election to the use of corrupt practice or practices by himself, his election agent or by any other person with their connivance, they shall find the election of the returned candidate void.

(2) Provided that if the Commissioners are of opinion that the returned candidate has been guilty by an agent other than his election agent of corrupt practice or practices, and if they are satisfied that-

- (a) the agent other than his election agent committed the corrupt practice or practices contrary to the orders and without the sanction or connivance: of the candidate or his election agent;
- (b) the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election;
- (c) the corrupt practices mentioned were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election; and
- (d) in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, that they may find that the election of the returned candidate is not void.

26. (1) At the conclusion of the inquiry the Commissioners shall report whether the returned candidate or any person who has lodged a petition and claimed a seat has been duly elected and in so reporting shall have regard to the provisions of the last preceding paragraph. The report shall further include a recommendation by the Commissioners as to the total amount of costs which are payable and the persons by and to whom costs shall be paid Any such recommendation may include a recommendation for the payment to the Advocate-General or a person acting under his instructions, attending the trial in pursuance of an order of the Commissioners, of costs in respect of that attendance, but shall not include a recommendation for the payment of costs in respect of any other Government expenditure in connection with the inquiry.

(2) The report shall be signed by all the Commissioners and the Commissioners shall forthwith forward their report to the Governor, who on receipt thereof shall issue orders in accordance with the report and publish the report in the Myanmar Gazette and the orders of the Governor shall be final.

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27. If either in their report or in any other matter, there is a difference of opinion amongst the Commissioners, the opinion of the majority shall prevail and their report should be expressed in terms of the views of the majority.

By order,  
HLA SHAIN,  
Elections Commissioner and  
Addl. Secy. to the Govt. of Myanmar.  
Judicial Department.