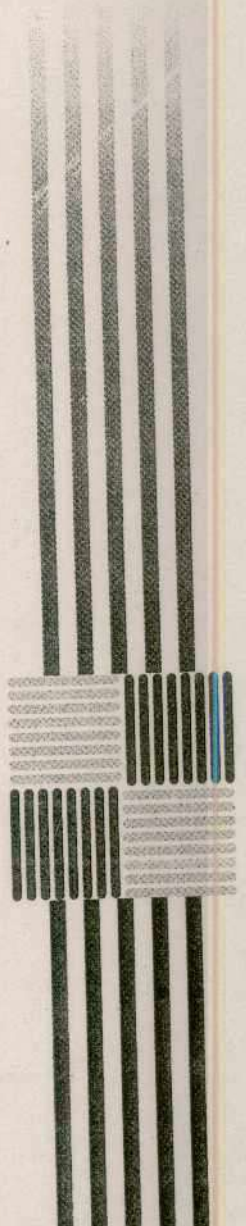


**THE
MAHARASHTRA
VILLAGE
PANCHAYATS
ACT**

(ACT-NO. III OF 1959)

**[As Amended upto the Maharashtra Village Panchayats
and the Maharashtra Regional and Town Planning
(Amendment) Act, 2014
(Mah. Act No. 43 of 2014), dated 29-12-2014]**

**with
Short Notes**



THE MAHARASHTRA VILLAGE PANCHAYATS ACT

(ACT NO. III OF 1959)

[As Amended upto the Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014 (Mah. Act No. 43 of 2014), dated 29-12-2014]

with

➤ Short Notes

2015

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The Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning
(Amendment) Act, 2014

**THE MAHARASHTRA VILLAGE PANCHAYATS AND THE MAHARASHTRA
REGIONAL AND TOWN PLANNING (AMENDMENT) ACT, 2014**

MAHARASHTRA ACT NO. XLIII OF 2014

(First published, after having received the assent of the Governor in the "Maharashtra Government Gazette", on the 29th December, 2014)

An Act further to amend the Maharashtra Village Panchayats Act and the Maharashtra Regional and Town Planning Act, 1966

WHEREAS it is expedient further to amend the Maharashtra Village Panchayats Act (III of 1959) and the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966) for the purposes hereinafter appearing; it is hereby enacted in the Sixty-fifth Year of the Republic of India as follows:

**CHAPTER I
PRELIMINARY**

1. Short title and commencement.- (1) This Act may be called the Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette* appoint and different dates may be appointed for different sections of this Act.

**CHAPTER II
AMENDMENTS TO THE MAHARASHTRA VILLAGE
PANCHAYATS ACT**

2. Amendment of section 52 of III of 1959.- In section 52 of the Maharashtra Village Panchayats Act (III of 1959) (hereinafter referred to as "the Village Panchayats Act"), -

(a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:

"(1) In the village, for which a draft Regional plan or final Regional plan has been published under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), no person shall erect or re-erect or commence to erect or re-erect any building,-

(i) in the *gaathan* area of the village, within the meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966), without obtaining the previous permission of the panchayat, in the prescribed manner;

(ii) in other areas of the village, without obtaining the previous permission of the Collector or any other officer, not below the rank of Tahsildar to whom the powers of the Collector are delegated.

The Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning
(Amendment) Act, 2014

- (1A) In the village for which a draft Regional plan or final Regional plan has not been published, no person shall erect or re-erect or commence to erect or re-erect any building, without obtaining the previous permission of the panchayat in the prescribed manner.
- (2) Any permission under sub-section (1) or sub-section (1A), as the case may be, shall be granted by the panchayat, upon an application made for this purpose, only after obtaining the prior approval of the Town Planning Officer of the State Government, posted at the Panchayat Samiti level or, in case, no such officer has been posted at the Panchayat Samiti level, the Town Planning Officer at the Zilla Parishad level.
- (2A) If the panchayat fails to communicate its permission or refusal in respect thereof, within sixty days from the date of receipt of such application or, within sixty days from the date of receipt of the reply from the applicant, in respect of the requisition, if any, made by the panchayat, whichever is later, such permission shall be deemed to have been granted to the applicant, on the day immediately following the Expiry of the said period of sixty days:
Provided that, such permission shall be deemed to have been granted subject to the condition that, the erection or re-erection or commencement of erection or re-erection of any building, shall be in strict conformity with the relevant Development Control Regulations or the draft of final Regional plan, as the case may be, in accordance with the provisions of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966) or any bye-laws or regulations framed under any other law for the time being in force:
Provided further that, any erection or re-erection or commencement of erection or re-erection of any building, in contravention of the preceding proviso, shall be deemed to be unauthorised development.
- (2B) Any applicant aggrieved by an order granting permission on conditions or for refusing permission under sub-section (1) or (1A), as the case may be, may within forty days from the date of communication of the order to him, prefer an appeal to the District Head of the Town Planning Department posted at the Zilla Parishad. The appeal shall be in such form and shall bear such court-fees as may be prescribed. Such District Head, after giving an Appellant a reasonable opportunity of being heard, may by order, passed within a period of ninety days from the date of receipt of appeal, either allow the appeal unconditionally or subject to such conditions, as he may deem fit, or reject the appeal. The decision of the District Head on such appeal shall be final and binding on all concerned.
- (2C) Notwithstanding anything contained in any judgment, order or decree of any court, on and with effect from the date of commencement of the Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014 (Mah. XLIII of 2014), the Maharashtra Village Panchayats (Extension of Village Sites) Rules, 1967 shall, stand repealed.

The Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning
(Amendment) Act, 2014

(2D) On and with effect from the date of commencement of the Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014 (Mah. XLIII of 2014), until the rules, under this section are made, the Standardised Development Control and Promotion Regulations for Regional Plans in Maharashtra, framed under sub-section (4) of section 20 of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), in respect of grant of permission to erect or re-erect the buildings shall apply.”;

(b) in sub-section (3), for the words, brackets and figures “sub-section (1) or (2)” the words, brackets, figures and letters “sub-section (1), (1A), (2), (2A) or (2B)” shall be substituted.

3. Amendment of section 53 of III of 1959.- In section 53 of the Village Panchayats Act, in sub-section (1), for the words “within the limits of the village”, the words “within the limits of the *gaathan* area of the village” shall be substituted.

4. Amendment of section 176 of III of 1959.- In section 176 of the Village Panchayats Act, in sub-section (2), after clause (xii), the following clause shall be inserted, namely:-

“(xii-1a) under sub-sections (1) and (1A) of section 52, prescribing the manner in which permission to erect or re-erect or commence to erect or re-erect any building shall be obtained; and under sub-section (2B) thereof, prescribing the form of appeal and the court-fees to be paid alongwith the appeal;”.

THE MAHARASHTRA VILLAGE PANCHAYATS (AMENDMENT AND CONTINUANCE) ACT, 2014

MAHARASHTRA ACT NO. XVIII OF 2014

(First published, after having received the assent of the Governor in the "Maharashtra Government Gazette", on the 25th June 2014).

An Act further to amend the Maharashtra Village Panchayats Act.

WHEREAS the Governor of Maharashtra promulgated the Maharashtra Village Panchayats (Amendment) Ordinance, 2014 (Mah. Ord. II of 2014), on the 30th January 2014;

AND WHEREAS upon the re-assembly of the State Legislature on the 24th February 2014, the Maharashtra Village Panchayats (Amendment) Bill, 2014 (L.C. Bill No. I of 2014), for replacing the said Ordinance by an Act of the State Legislature was passed by the Maharashtra Legislative Council on the 28th February 2014, and transmitted to the Maharashtra Legislative Assembly;

AND WHEREAS thereafter, as the session of the Maharashtra Legislative Assembly was prorogued on the 28th February 2014, the said Bill could not be passed by the Maharashtra Legislative Assembly;

AND WHEREAS as provided by article 213 (2) (a) of the Constitution of India, the said Ordinance would have ceased to operate at the expiration of six weeks from the re-assembly of the State Legislature, that is, after the 6th April 2014;

AND WHEREAS both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to continue the operation of the provisions of the said Ordinance, for the purposes hereinafter appearing; and, therefore, promulgated the Maharashtra Village Panchayats (Amendment and Continuance) Ordinance, 2014 (Mah. Ord. IX of 2014), on the 5th April 2014;

AND WHEREAS, it is expedient to replace the said Ordinance by an Act of the State Legislature; it is hereby enacted in the Sixty-fifth Year of the Republic of India as follows:-

1. Short title.- (1) This Act may be called the Maharashtra Village Panchayats (Amendment and Continuance) Act, 2014.

(2) It shall be deemed to have come into force on the 30th January 2014.

2. Insertion of section 54-1A in III of 1959.- In Chapter III-A of the Maharashtra Village Panchayats Act (III of 1959) (hereinafter referred to as "the principal Act"), before section 54-A, the following section shall be inserted, namely:-

The Maharashtra Village Panchayats (Amendment and Continuance) Act, 2014

“54-1A. Special provisions relating to village and Gram Sabha.- Notwithstanding anything contained in sections 4, 5 or any other provisions of this Act, in the Scheduled Areas,-

- (a) a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs, and which is declared as a village in the prescribed manner shall be the village for the purposes of this Chapter;
- (b) every village, so declared under clause (a), shall have a *Gram Sabha* consisting of persons whose names are included in the electoral rolls for the panchayat at the village level and a panchayat may comprise of one or more than one of such villages.”.

3. Repeal of Mah. Ord. IX of 2012 and saving.- (1) The Maharashtra Village Panchayats (Amendment and Continuance) Ordinance, 2014 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the principal Act as amended by the said Ordinance (including any notification issued) shall be deemed to have been done, taken or issued, as the case may be, under the corresponding provisions of the principal Act, as amended by this Act.

'THE MAHARASHTRA VILLAGE PANCHAYATS ACT

(ACT NO III OF 1959)²

This Act received the assent of the President on the 14th January 1959; the assent was first published in the Maharashtra Government Gazette, Part IV, on the 23rd January, 1959.

Amended by Bom. Act No. 53 of 1959.

Adapted and modified by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

Amended by Mah. Act No. 48 of 1961.

Amended by Mah. Act No. 5 of 1962.

Amended by Mah. Act No. 43 of 1962.

Amended by Mah. Act No. 26 of 1963.

Amended by Mah. Act No. 35 of 1963.

Amended by Mah. Act No. 36 of 1965.

Amended by Mah. Act No. 50 of 1965.

Amended by Mah. Act No. 10 of 1968.

Amended by Mah. Act No. 34 of 1970.

Amended by Mah. Act No. 35 of 1972 (1.11.1973)*

Amended by Mah. Act No. 38 of 1973 (1.11.1973)*

Amended by Mah. Act No. 6 of 1975 (1.5.1975)*

Amended by Mah. Act No. 13 of 1975]³

Amended by Mah. Act No. 16 of 1975 (1.4.1976)*

Amended by Mah. Act No. 11 of 1976 (14.4.1976)*

Amended by Mah. Act No. 4 of 1981 (2.3.1981)*

Amended by Mah. Act No. 56 of 1981 (2.3.1981)⁴

Amended by Mah. Act No. 2 of 1982 (6.1.1982)*

Amended by Mah. Act No. 10 of 1990.

1 Substituted for "The Bombay Village Panchayats Act, 1958" by the Maharashtra (Change of Short Titles of Certain Bombay Acts) Act, 2011 (Mah. Act No. 24 of 2012) and shall be deemed to have been amended w.e.f. 1st May, 1960.

2 For Statement Objects and Reasons see Bombay Government Gazette, 1958, Part V, pp. 279-289.

* This indicates the date of commencement of Act.

3 Section 1 of Mah. 13 of 1975 came into force on 28.5.1975. Sections 3 to 17, 19 to 21 and 24 to 38 came into force on 15.8.1975 and sections 2, 22 and 23 of the said Act came into force on 1.10.1975 vide G.N., R.D.D., No. VPA 1074/12739-XII, dated 1st August, 1975 and section 18 came into force on 1.4.1979 vide G.N., R.D.D., No. VPA, 1074/12739 (1634)-XII, dated 16th March, 1979.

4 This indicates the date of commencement of Act.

Amended by Mah. Act No. 10 of 1992.⁵
 Amended by Mah. Act No. 21 of 1994.⁶
 Amended by Mah. Act No. 31 of 1994.
 Amended by Mah. Act No. 52 of 1994 (16.12.1994)*
 Amended by Mah. Act No. 5 of 1997 (2.1.1997)*
 Amended by Mah. Act No. 40 of 1997 (7.8.1997)*
 Amended by Mah. Act No. 46 of 1997 (29.12.1997)*
 Amended by Mah. Act No. 1 of 1998
 Amended by Mah. Act No. 6 of 2000 (5.7.1999)*
 Amended by Mah. Act No. 21 of 2000
 Amended by Mah. Act No. 27 of 2000 (2.3.2000)*
 Amended by Mah. Act No. 34 of 2000 (5.8.2000)*
 Amended by Mah. Act No. 44 of 2000 (13.9.2000)*
 Amended by Mah. Act No. 16 of 2001 (10.2.2001)*
 Amended by Mah. Act No. 36 of 2001 (26.12.2001)*
 Amended by Mah. Act No. 3 of 2003 dated 08-01-2003 (w.e.f. 16-10-2002)*⁷
 Amended by Mah. Act No. 23 of 2003 dated 01-08-2003 (w.e.f. 02-07-2003)*⁸
 Amended by Mah. Act No. 27 of 2003 dated 08-08-2003
 Amended by Mah. Act No. 28 of 2003 dated 08-08-2003
 Amended by Mah. Act No. 3 of 2004 dated 12-01-2004
 Amended by Mah. Act No. 20 of 2005 dated 04-05-2005
 Amended by Mah. Act No. 37 of 2006 dated 21st December 2006
 Amended by Mah. Act No. 38 of 2006 dated 21st December 2006.
 Amended by Mah. Act No. 21 of 2007 dated 27-07-2007 (w.e.f. 12-06-2007)*
 Amended by Mah. Act No. 5 of 2009 dated 7th January 2009 (w.e.f. 01-08-2009)*
 Amended by Mah. Act No. 27 of 2009 dated 24th December, 2009 (w.r.e.f 31-08-2009)*
 Amended by Mah. Act No. 16 of 2010 dated 6th May, 2010
 Amended by Mah. Act No. 23 of 2010 dated 2nd August, 2010 (w.e.f. 09-06-2010)*
 Amended by Mah. Act No. 28 of 2010 dated 18th December, 2010 (w.e.f. 09-06-2010)*

5 This Act came into force on 2-10-1992, vide G. N., R. D. and W.C.D. No. VPM. 2692/223 CR-3824/21, dated 16th September 1992.

6 This Act came into force on 23-4-1994, vide G. N., R. D. and W.C.D. No. PRJ. 1093 CR-2194/06, dated 23rd April 1994.

* This indicates the date of commencement of Act.

7 Maharashtra Ordinance No. XII of 2002 was repealed by Mah. 3 of 2003, s. 5(1).

8 Maharashtra Ordinance No. V of 2003 and Maharashtra Ordinance No. VII of 2003 were repealed by Mah. 23 of 2003, s. 8(1).

Amended by Mah. Act No. 33 of 2010 dated 23rd December, 2010 (w.e.f. 10-01-2011)*

Amended by Mah. Act No. 19 of 2011, dated 21st April, 2011

Amended by Mah. Act No. 27 of 2011 (w.e.f. 08-06-2011)*

Amended by Mah. Act No. 39 of 2011 (w.e.f. 05-10-2011)* (Mah. Ord. XIX of 2011 repealed)

Amended by Mah. Act No. 16 of 2012 (w.e.f. 02-10-2012)

Amended by Mah. Act No. 22 of 2012

Amended by the Maharashtra (Change of Short Titles of Certain Bombay Acts) Act, 2011 (Mah. Act No. 24 of 2012) (Sr. No. 74) and shall be deemed to have been amended w.e.f. 1st May, 1960.

Amended by Mah. Act No. 29 of 2012 (w.e.f. 04-10-2012). (Mah. Ord. IX of 2012 repealed)

Amended by the Maharashtra Village Panchayats (Amendment and Continuance) Act, 2014 (Mah. Act No. 18 of 2014), dated 25-06-2014 (w.e.f. 30-01-2014) (Mah. Ord. IX of 2014 repealed)

Amended by Notification No. RB/TC/e-11019(89)(2013)/Notification-4/1120/2014, dated 30-10-2014

Amended by Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014 (Mah. Act No. 43 of 2014), dated 29-12-2014

An Act to amend and consolidate the law relating to the constitution and administration of village *Panchayats* in the State of Bombay, and for certain other matters

WHEREAS it is expedient to amend and consolidate the law relating to the constitution and administration of Village *Panchayats* in the State of Bombay with a view to establishing a Village *Panchayats* for every village or group of villages and investing them with such powers and authority as may be necessary to enable them to function as units of local self-government and of development activities in rural areas, and for certain other matters; It is hereby enacted in the Ninth year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. Short title.-This Act may be called ⁹[the Maharashtra Village *Panchayats* Act].

2. Extent and commencement.- (1) It extends to the whole of the ¹⁰[State of Maharashtra], except the areas within the limits of a Municipal Corporation, Municipality or Cantonment established by or under any law for the time being in force.

* This indicates the date of commencement of Act.

⁹ Substituted for "The Bombay Village Panchayats Act, 1958" by the Maharashtra (Change of Short Titles of Certain Bombay Acts) Act, 2011 (Mah. Act No. 24 of 2012) and shall be deemed to have been amended w.e.f. 1st May, 1960.

¹⁰ These words were substituted for the words "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

(2) It shall come into force on such date¹¹ [as the State Government may, by notification in the *Official Gazette*, appoint.]

3. Definitions.-In this Act unless the context otherwise requires,

¹²[***]

(a-2) "Auditor" means an Auditor as defined in the Bombay Local Fund Audit Act, 1930 ¹³[and in relation to a *Panchayat* having an annual income (including grant received from the State Government) of ¹⁴[not exceeding rupees ten thousand includes a *Gram Sabha* and exceeding rupees ten thousand but less than rupees twenty-five thousand] also includes an Extension Officer duly authorised in writing by the Chief Executive Officer];

¹⁵[(a-3) "Backward Class of Citizens" means such classes or parts of or groups within such classes as are declared, from time to time, by the State Government to be Other Backward Classes and Vimukta Jatis and Nomadic Tribes;]

¹⁶[(aa-1) "bollot box" or "ballot paper" includes an electronic voting machine used at an election for giving or recording of votes;]

¹⁷[(a-4) "Beneficiary Level Sub-Committee" means a sub-committee constituted under section 49A for a particular programme, scheme, activity or utility having regard to the geographical, geohydrological, technological, economic, social and demographic situation of the habitation (ward, wasti, wadi, tanda, pada or by whatever name such independent habitation may be called) or part thereof in the *Panchayat*];

(1) "building" includes a hut, shed, or other enclosure, whether used as a human dwelling or for any other purpose whatsoever and also includes walls, verandahs, fixed platforms, plinths, doorsteps and the like;

(2) "by-laws" means the by-laws made by the ¹⁸[Zilla Parishad] under Section 177;

¹⁹(3) ***

(4) "cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, swine, sheep, ewes, rams, lambs, goats and kids;

²⁰[(4A) "Commissioner" means the Commissioner of a revenue division appointed under section 6 of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966);]

11 1st day of June, 1959, vide G.N., L.S.G. and P.H.D., No. VPA 1059-P, dated 23rd May, 1959.

12 This clause was deleted by Mah. 21 of 1994, S.2(1).

13 This portion was added by Mah. 13 of 1975, S.2(a).

14 Substituted for the words "less than Rs. 5000" by Mah. 3 of 2004 dated 12-01-2004 s.2.

15 Clause (a-3) was inserted by Mah. 21 of 1994, S.2(2).

16 Inserted by Mah. 20 of 2005 dated 04-05-2005 s.2.

17 Inserted by Mah. 23 of 2003 dated 01-08-2003 (w.e.f. 02-07-2003), s. 3(a).

18 These words were substituted for the words "District Village *Panchayat* Mandal" by Mah. 5 of 1962, S.286, Tenth Sch.

19 Clause (3) was deleted by Mah. 13 of 1975, S.2(b).

20 Clause (4A) inserted by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

²¹[(5) "Designated Authority" means the authority designated by the State Government for the purpose of levy and collection of the Local Body Tax;]

²²[(6) "Zilla Parishad" means a Zilla Parishad constituted under the Maharashtra Zilla Parishad and *Panchayat* Samitis Act, 1961 (Mah. V of 1962);]

²³[(7) ***

(8) "factory" means a factory as defined in the Factories Act, 1948 (LXIII of 1948);

²⁴(8-A) "Finance Commission" means the Finance Commission constituted in accordance with the provisions of Article 243-I of the Constitution of India];

²⁵[(9) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to village comprised within the area of the *Panchayat*];

(10) "land" includes land which is built upon, or covered with water;

(11) "list of voters" means a list of voters provided for and maintained under Section 12;

²⁶[(11A) "Local Body Tax" means a tax on the entry of goods, into the limits of any village falling within the limits of the notified area within the meaning of clause (11B), for consumption, use or sale therein, levied in accordance with the provisions of section 124A;

²⁷[(11AA) "Local Panchayat Tax" means a tax on the entry of goods into the limits of any *panchayat* other than the area of *panchayat* included in the limits of the notified area within the meaning of clause (11B) for consumption, use or sale therein, levied in accordance with the provisions of section 124;]

(11B) "notified area" means the area, adjacent to the City, notified by the State Government for the purposes of levy of the Local Body Tax, as defined in clause (IIA), to which the provisions of clause (aaa) of sub-section (2) of section 127 and other provisions of the Maharashtra Municipal Corporations Act (Act No. LIX of 1949) in respect of levy, assessment and recovery of the Local Body Tax, apply;]

²⁸(12) ***

²⁹(13) ***;

(14) "*Panchayat*" means a *Panchayat* established or deemed to have been established under this Act;

³⁰[(14-A) "population" means the population as ascertained at the last preceding census of which the relevant figures, ³¹***have been published;]

21 Clause (5) deleted by Mah. 13 of 1975 and re-inserted by Mah. 27 of 2009 dated 24th December, 2009 (w.r.e.f 31-08-2009).

22 Clause (6) was substituted by Mah.5 of 1962, S.286, Tenth Sch.

23 Clause (7) was deleted by Mah. 5 of 1962, S.286, Tenth Sch.

24 Clause (8-A) was inserted by Mah. 21 of 1994, S.2(3).

25 Clause (9) was substituted by Mah. 21 of 1994, S.2(4).

26 Clauses (11A) and (11B) inserted by Mah. 27 of 2009 dated 24th December, 2009 (w.r.e.f 31-08-2009)

27 Clause (11AA) inserted by Mah. 22 of 2012, s.2.

28 Clause (12) was deleted by Mah. 13 of 1975, S.2(b).

29 Clause (13) was deleted by Mah. 6 of 2000, s. 2.

30 Clause (14-A) was inserted by Mah. 13 of 1975, S.2(c).

31 The words "whether provisional or final" were deleted by Mah. 21 of 1994, S.2(5).

(15) "prescribed" means prescribed by rules;

(16) "rules" means rules made, or deemed to have been made, under this Act;

(17) "*Sarpanch*" and "*Upa-Sarpanch*" means a *Sarpanch* and *Upa-Sarpanch* elected under Section 30, ³²[30-A], 44 or 43;

³³[(17-A) "Scheduled Areas" means the Scheduled Areas referred to in clause (1) of Article 244 of the Constitution of India];

(18) "Scheduled Castes" means such castes, races or tribes or parts of, or groups within, such castes, races or tribes as are deemed to be Scheduled Castes in relation to the ³⁴[State of Maharashtra] under Article 341 of the Constitution of India;

(19) "Scheduled Tribes" means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the [State of Maharashtra] under article 342 of the Constitution of India ;

(20) "Secretary" means a secretary of a *Panchayat* appointed or deemed to be appointed under section 60 of this Act;

³⁵[(20A) "State Election Commission" means the State Election Commission consisting of a State Election Commissioner appointed in accordance with the provisions of clause (1) of article 243-K of the Constitution of India;]

(21) "Street" means any road, footway, square, court, alley or passage accessible whether permanently or temporarily to the public, whether a thoroughfare or not;

³⁶[***]

(23) "Tax" means a tax, cess, rate or other impost leviable under this Act, but does not include a fee;

³⁷[(24) "Village" and "a group of villages" means the village or, as the case may be, a group of villages specified in the notification issued under clause (g) of Article 243 of the Constitution of India;]

³⁸[(24A) "Village Development Committee" means a committee constituted under section 49, which shall be deemed to be a committee of the *panchayat*;]

(25) "Ward" means an area into which a village is divided under clause (b) of sub-section (1) of section 10 for the purpose specified therein;

(26) The expression "the term of a *Panchayat*" means the period for which the members thereof elected or deemed to be elected shall hold office under section 27;

32 These figures and letters were inserted by Mah. 21 of 194, S.2(6).

33 Clause (17-A) was inserted by Mah. 40 of 1997, S.2 (w.e.f. 7-8-1997).

34 These words were substituted for the words "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

35 Clause (20A) was inserted by Mah. 21 of 1994, s.2(7).

36 Clause (22) was deleted by Mah. 13 of 1975, s.2(d).

37 Clause (24) was substituted by Mah. 21 of 1994, s. 2(8).

38 Inserted by Mah.23 of 2003 dated 01-08-2003 (w.e.f.01-07-2003), s.26.

³⁹[(27) The expression "Standing Committee", *Panchayat Samiti*" ⁴⁰["Chief Executive Officer",] ⁴¹["Block Development Officer" and "block grant"] shall have the meaning respectively assigned to them in the Maharashtra Zilla Parishads and *Panchayat Samitis* Act, 1961 (Mah. V of 1962).]

CHAPTER II

GRAM SABHAS, ESTABLISHMENT AND CONSTITUTION OF *PANCHAYATS*

4. **Declaration of village.**- (1) ⁴²[Every village specified in the notification issued under clause (g) of Article 243 of the Constitution of India shall be known by the name of that village specified in that notification:]

Provided that, where a group of revenue villages or hamlets or other such administrative unit or part thereof is specified in that notification] to be a village, the village shall be known by the name of the revenue village, hamlet or as the case may be, administrative unit or part thereof, having the largest population.

⁴³[(2) Where the circumstances so require to include or exclude any local area from the local area of a village or to alter the limits of a village or that a local area shall cease to be a village, then the notification issued in the like manner after consultation with the Standing Committee and ⁴⁴[the *Gram Sabha* and] the *Panchayat* concerned, at any time, may provide to-

- (a) include within, or exclude from any village, any local area or otherwise alter the limits of any village, or
- (b) declare that any local area shall cease to be a village; and thereupon the local area shall be so included or excluded, or the limits of the village so altered, or, as the case may be, the local area shall cease to be a village.

NOTES

☐ Right to collect taxes - Disputes about territories of respondent village *Panchayat* - Some areas of respondent *Panchayat* were notified as areas of petitioner *Panchayat* without hearing objections by notification in 1995 - But later in 2004 corrigendum issued deleting said areas from petitioner *Panchayat* back to respondent Dhutum *Panchayat* - Petitioner *Panchayat* complaining that corrigendum deleting the areas from this *Panchayat* back to respondent *Panchayat* 2004 was without following the procedure - Facts show that disputed areas right from 1966 were with respondent *Panchayat* and but for short period of notification in 1995 they were shown in petitioner *Panchayat* and restored back by corrigendum of 2004 - Held, it is correct that the areas reallocated back to Dhutum village (respondent) have been done by not following procedure under section 4 of Bombay *Panchayat* Act. It is not an empty formality and *Panchayats* may have their own objections. But this had not been followed while issuing notification of 1995 which has

39 Clause (27) was inserted by Mah. 5 of 1962, s.286, Tenth Schedule.

40 These words were substituted for the words "and Chief Executive Officer" by Mah. 36 of 1965 s.2(d).

41 These words were substituted for the words "and Block Development Officer" by Mah. 34 of 1970, s.2.

42 Substituted by Mah. 21 of 1994, s. 3(1A).

43 This portion was substituted for the portion beginning with the words "After, consultation" and ending with the words "any time" by Mah. 21 of 1994, S. 3(2).

44 Inserted by Mah.28 of 2003 dated 08-08-2003 s.2.

now been corrected by notification of 2004 therefore, no error can be formed with Minister's order under section 155 of Act. *Jasai Grampanchayat through its Sarpanch v/s State of Maharashtra, through the Minister & others 2005(4) Bom.C.R. 502; 2005 (3) All.M.R. 596*

- ❑ Excluding/carving out area from local village-Annexing to another village-No consultation for the same with village *Panchayat* before notification issued-Held, as held in 1967 Mh.L.J. 354(D.B.) such action taken under section 4(2), to be struck down as an exercise of power without due compliance with requirement of section itself regarding consultation with village *Panchayat*. 1967 Mh.L.J. 354 relied on. *Gramsudhar Samiti, Mahadulla v/s Grampanchayat Mahadulla & others 2004(6) Bom.C.R. 739; 2004 (4) All.M.R. 310; 2004 (4) Mh.L.J. 309*
- ❑ Inclusion or exclusion of local area from village---Declaration of village---Held, section 4 of Bombay Village *Panchayats* Act provides for declaration of village. Every village specified in the notification issued under Article 243(g) of Constitution is known by name of village specified in that notification and where circumstances so require, provision is made to include or exclude any local area from local area of a village or to alter the limits of a village or to take away that local area from the concerned village by notification issued. In like manner after consultation with standing committee and upon such declaration local area is either included or excluded from village and limits of village accordingly stand altered. Upon exclusion, it ceases to be a village under Bombay Village *Panchayats* Act. *Bima Office Premises Co-operative Society v/s Kalamboli Village Panchayat, Kalamboli & others 2002(Supp.) Bom.C.R. 200; 2001 (0) AIR(Bom) 83; 2001 (1) Mh.L.J. 806*
- ❑ Notice by Gram *Panchayat*---Demanding property tax---Warrant of attachment in event of failure to pay---Establishment of New Town Development Authority under section 113(3-A) of MRTP Act---Contention powers of Gram *Panchayat* to assess and levy tax on lands and buildings standing thereon had been eclipsed by operation of virtue of section 113(5) of MRTP Act---Further contention, Gram *Panchayat* has ceased to exist as such it has lost its authority to levy tax---Held, so long as notification is not issued under section 4(2) of Bombay Village *Panchayats* Act, Gram *Panchayat* cannot be said to have ceased to exist or to none ceased to be Gram *Panchayat* within provisions of the Bombay Village *Panchayats* Act. Thus it has right to levy tax on lands and building situated within its jurisdiction and consequently act of Gram *Panchayat* levying, assessing and calling upon petitioners to pay tax cannot be said to be bad and illegal. *Bima Office Premises Co-operative Society v/s Kalamboli Village Panchayat, Kalamboli & others 2002(Supp.) Bom.C.R. 200; 2001 (0) AIR(Bom) 83; 2001 (1) Mh.L.J. 806*
- ❑ *Audi-alteram partem*---Violation of---Bifurcation of *Panchayat*---Into two---Obligation to give hearing to Gram *Panchayat* and villagers---Held, by now it settled that after introduction of Chapter IX in the Constitution and consequent amendment of section 4 of Bombay Village *Panchayats* Act an opportunity of hearing before delimitation order is passed is mandatory. Amended section 4 of the Act reflects constitutional mandate and it will not be sufficient to mere consult the villagers/*Village Panchayat* but also to give a hearing to them. This can be done by public notice by beat of drums etc. Such opportunity

having not been given in this case orders are not valid. A.I.R. 1995 S.C. 1512 referred to. *Shri Ashok Ganapat Jadhav & another v/s State Election Commission & others* 2000(Supp.) Bom.C.R. 337; 2000 (4) All.M.R. 565; 2001 (4) Bom.L.R. 615; 2000 (4) Mh.L.J. 150

- ☐ Altering boundaries of a local body - Government Notification - Whether properly published - To include some areas of Bamni Village in Kalmeshwar Municipal Council and exclude from limits of Bamni Village - An industrial unit situated and developed by Village Panchayat, sought to be included by adjoining Municipal Council in its own area - Opposed by Village Panchayat on ground inter alia that Government wants to drive Village Panchayat to bankruptcy and has discriminated in choosing this area to discriminate Dahegaon Village which is also 3 Kms. away from Kamaleshwar Council and that notification was not properly published - Held, a Divisional Bench decision in 2002(Supp. 2) Bom.C.R. (A.B.)35 had observed that altering boundaries of a local body will require compliance with procedure under section 4(2) of Panchayat Act and section 6 of Municipal Council Act . In this case Government Notification dt. 3-11-1979 was published in Marathi "Loksatta". It is contended that paper was not published from Nagpur so it was not proper compliance. Place of publication may not be criteria, but whether Loksatta circulation in Nagpur is be seen. Hence publication in Kamleshwar was adequate compliance. Further petitioner had themselves objected to Government Notification, by a resolution dt. 8 - 4 -1980, therefore contention of inadequate publication has to be rejected. *Gram Panchayat, Bamni & ors v/s State of Maharashtra & ors.* 2008(3) Bom.C.R. 794; 2008 (2) All.M.R. 533; 2008 (1) Mh.L.J. 603
- ☐ Bifurcation of villages - As also notification for election to Panchayats - Challenged inter alia on ground that because election programme has been given and code of conduct has commenced, bifurcation proposal should not be processed - Whereas facts as per Collector are that bifurcation proposal has been finalised on 7-8-2007 and election notification is issued on 23-8-2007 i.e. after bifurcation was over - Contention, that election process will be deemed effective from July, 2007 when Collector took steps for constituencies of wards, and would end with conclusion of result - That Government Resolution dt. 12-2-2004 also places a bar on creation of new village within this process - Held, objection by Advocate for petitioners on wording of Government Resolution cannot be brushed aside lightly. As per if election process had commenced on 3.7.2007 when election programme was declared. In view of it Government notification (bifurcating villages) is vitiated. *Village Grampanchayat & ors. v/s State of Maharashtra & ors.* 2008(1) Bom.C.R. 542; 2008 (1) All.M.R. 905; 2008 (2) Mh.L.J. 620
- ☐ Altering boundaries of a local body - Objection to amalgamation - Whether considered - Of some areas of Village Panchayat sought to be added to Municipal Council - Opposed by Village Panchayat on ground that by taking out Industrial units from its preview, it will affect financial position of Panchayat and that notification discriminates in favour of another Panchayat (Dahegaon) which is also at a distance of 3 Km. from Kamleshwar Municipal Council - Contention, objections of Village Panchayat were not considered - Held, Government view that "objection" raised does not carry any meaning, shows that objection had been considered but was rejected. During pendency of petition a compromise

was also attempted but Village *Panchayat* backed out and as per interim orders it has been collecting taxes from disputed area for past over 20 years - Held, authorities have got adequate authority to alter boundaries and reconsider matter in response to public demand. Hence challenge on this ground is also liable to be negated. Petition dismissed. *Gram Panchayat, Bamni & ors v/s State of Maharashtra & ors.* 2008(3) Bom.C.R. 794; 2008 (2) All.M.R. 533; 2008 (1) Mh.L.J. 603

- ☐ Bifurcation of villages - Breach of section 4(2) of Act - Concerned village *Panchayats* were not consulted - Held, provision for consultation of village *Panchayat* is not a mere formality as emphasized by Division Bench of this Court as also Apex Court that consultation by State Government is necessary at three levels. (1) Standing Committee of Zilla Parishad (2) *Gram Sabha* i.e. population of village and (3) *Panchayat*. In view of it notification of bifurcation is bad for non-consultation of village *Panchayat* also. *Village Grampanchayat & ors. v/s State of Maharashtra & ors.* 2008(1) Bom.C.R. 542; 2008 (1) All.M.R. 905; 2008 (2) Mh.L.J. 620

5. Establishment of *Panchayats*.- In every village there shall be a *Panchayat*.

⁴⁵[6. ***]

7. Meetings of *Gram Sabha*.-(1) There shall be held at least ⁴⁶[four meetings] of the *Gram Sabha* ⁴⁷[every financial year] on such date, at such ⁴⁸[time and place, and in such manner], as may be prescribed ⁴⁹[and if the *Sarpanch* or in his absence the *Upa-Sarpanch* fails without sufficient cause to] ⁵⁰[hold] ⁵¹[any of such four meetings], he shall be disqualified for continuing as *Sarpanch*, or as the case may be, *Upa-Sarpanch* or for being chosen as such for the remainder of the term of office of the members ⁵²[of the *Panchayat*; and the Secretary of the *Panchayat* shall also if, prima facie, found responsible of any lapse in convening such meeting, be liable to be suspended, and for being proceeded against, for such other disciplinary action as provided under the relevant rules.] The decision of the Collector on the question whether or not there was such sufficient cause shall be final:]

⁵³[Provided that, the *Sarpanch* may, at any time of his own motion, and, shall, on requisition of the Standing Committee, *Panchayat Samiti*, or Chief Executive Officer, call a meeting of the *Gram Sabha* within the period specified in the requisition; and, on failure to do so, the Chief Executive Officer shall require the Block Development Officer to call the meeting within fifteen days from the date he is so required to do. The meeting shall,

45 Section 6 was deleted by Mah. 21 of 1994, s. 4.

46 Substituted for "six meetings" by Mah. 16 of 2012, s.2(1)(a) (w.e.f. 02-10-2012).

47 These words were substituted for the words "every year" by Mah. 36 of 1965, S. 4(a).

48 These words were substituted for the words "time and place" by Mah. 21 of 2000, S. 2(b).

49 These words were added by Mah. 36 of 1965 S. 4(a).

50 Substituted for "hold two such meetings" by Mah. 38 of 1973, s. 2.

51 These words were substituted for the words "any one of such two meetings" by Mah. 38 of 1973, S. 2(c) (w.e.f. 17.4.2000).

52 These words were substituted for the words "of the *Panchayat*" by Mah 21 of 2000, s. 2(a).

53 This proviso was substituted for the original by Mah. 36 of 1965, s.4(b).

notwithstanding the provisions of sub-section (3), be presided over by him or any officer authorized by the Block Development Officer, in that behalf.]

⁵⁴[Provided further that, a period of not more than ⁵⁵[four months] shall be allowed to elapse between the two meetings of the Gram Sabha:

Provided also that, if the *Sarpanch* or *Upa Sarpanch*, as the case may be, fails to call any such meeting within the specified period, the Secretary shall call the meeting and it shall be presumed that such meeting has been called with the concurrence of the *Sarpanch* or, as the case may be, *Upa Sarpanch*];

(2) Any officer authorised in this behalf by the ⁵⁶[Standing Committee, *Panchayat Samiti* or Chief Executive Officer] by general or special order shall have the right to speak in, and otherwise to take part in the proceedings of a meeting of the Gram Sabha, but shall not be entitled to vote.

⁵⁷[(3) Unless otherwise provided in this Act, the first meeting of the *Gram Sabha* after each general election to a *Panchayat* and thereafter the first meeting of every year, shall be presided over by the *Sarpanch* and in his absence by the *Upa-Sarpanch*; and all other subsequent meetings of the year of the Gram Sabha, shall be presided over by a person elected by the persons present in that meeting of the Gram Sabha]

(4) If any dispute arises as to whether a person is entitled to attend a meeting of Gram Sabha, such dispute shall be decided by the person presiding, regard being had to the entry in the list of voters for a whole village or ward thereof, as the case may be, and his decision shall be final.

⁵⁸[(5) The meeting of the women members of the Gram Sabha, shall be held before every regular meeting of the Gram Sabha, convened under sub-section (1) ⁵⁹[and the proceedings of such meeting shall invariably be brought or caused to be brought before every regular meeting of the *Gram Sabha* by the *Sarpanch*, and the *Gram Sabha* shall consider the recommendations made in the meeting of the women members, and the *panchayat* shall ensure the implementation of such recommendations:

Provided that, if the *Gram Sabha* is not agreeable to the recommendations made in the meeting of the women members, it shall record the reasons therefor.]

⁶⁰[(5A) Every member of the *panchayat* representing a ward shall, before every regular meeting of the *Gram Sabha* and meeting of the women members of the *Gram Sabha*, convene a meeting of all the voters in such ward and such ward *sabha* may discuss issues relating to development of the ward, selection of individual beneficiaries for individual beneficiary schemes of the State, or as the case may be, of the Central Government, development projects and programmes and such other related issues as the ward *sabha* deems fit and which are likely

54 These provisos were inserted by Mah. 3 of 2003, dated 08-01-2003 (w.e.f. 16-10-2002) S. 2(a)(ii).

55 Substituted for "three months" by Mah. 16 of 2012, s.2(1)(b) (w.e.f. 02-10-2012).

56 These words were substituted for the word "Collector" by Mah. 36 of 1965, S.4(b).

57 Substituted by Mah. 3 of 2003 dated 8-01-2003 (w.e.f. 16-10-2002) S. 2(b).

58 Sub-Sections 5 to 11 were added by Mah. 3 of 2003, dated 08-01-2003 (w.e.f. 16-10-2002) s. 2(c).

59 Added by Mah. 16 of 2012, s.2(2) (w.e.f. 02-10-2012).

60 Added by Mah. 16 of 2012, s.2(3) (w.e.f. 02-10-2012).

to be placed before the regular meeting of the *Gram Sabha* for consideration and decision. The proceedings of such meeting shall be maintained by such member under his signature and a copy of the same shall invariably be sent to the *panchayat* which shall form part of the records of the *panchayat*.]

(6) The *Gram Sabha* shall have the disciplinary control over the Government, semi-Government and *Panchayat* employees working in the village including the matters relating to their daily attendance in the office. The annual evaluation of such employees shall be brought to the notice of their respective higher authorities by the *Gram Sabha*.

⁶¹[Provided that, *Gram Sabha* may, by resolution, delegate its authority to the *panchayat* to exercise general supervision over the Government, semi-Government and *panchayat* employees including regular and timely attendance at their work place. The mode of recording of attendance and supervision shall be such as the Government may, from time to time, specify by an order in the *Official Gazette*.]

(7) The *Gram Sabha* ⁶²[, or as the case may be, the *panchayat*] shall report to the concerned Block Development Officer, the irregularities, if any, committed by any of such employees. The Block Development Officer shall consider such report within the period of three months from the date of its receipt. Such matters and the actions taken thereon shall be reviewed in the regular meetings of the *Panchayat Samiti*. If, the Block Development Officer fails to dispose of such reports within the specified period of three months, the same shall on the expiry of the said period, stand transferred to the Chief Executive Officer of the concerned Zilla Parishad for disposal, whose decision shall be final. The Chief Executive Officer of the Zilla Parishad shall take the decision on such reports so transferred to him, within a period of three months from the date of their receipt.

(8) The *Gram Sabha* shall select the beneficiaries for individual beneficiary schemes of the State, or as the case may be, of the Central Government.

(9) The *Gram Sabha* shall generally fix the date, time and place of the next meeting of the *Gram Sabha*, in its previous meeting.

(10) Unless exempted by the *Gram Sabha* ⁶³[, or as the case may be, the *panchayat*] all the Government, semi-Government and *Panchayat* employees working in the village shall attend the meetings of the *Gram Sabha*.

(11) The proceedings of every meeting of the *Gram Sabha* shall be prepared and maintained ⁶⁴[in a separate register] by the concerned Secretary of the *Panchayat* and in his absence, the proceedings shall be prepared by any Government, semi-Government or *Panchayat* employee working in the village, such as Teacher, Talathi or Anganwadi Sevika as directed by the *Sarpanch* and the same shall be handed over to the *Panchayat* for records.]

⁶⁵[Provided that, it shall be a joint responsibility of the *Sarpanch* and Secretary of the concerned *panchayat* to maintain secured custody and proper safety of proceeding register,

61¹ Added by Mah. 16 of 2012, s.2(4) (w.e.f. 02-10-2012).

62 Inserted by Mah. 16 of 2012, s.2(5) (w.e.f. 02-10-2012).

63 Inserted by Mah. 16 of 2012, s.2(6) (w.e.f. 02-10-2012).

64 Inserted by Mah. 16 of 2012, s.2(7)(a) (w.e.f. 02-10-2012).

65 Proviso added by Mah. 16 of 2012, s.2(7)(b) (w.e.f. 02-10-2012).

attendance register and other relevant records of the *Gram Sabha*, and they shall be primarily held responsible for any tampering, alteration, manipulation of entries or contents or loss or mutilation of such record unless proved otherwise and shall be liable to be prosecuted under relevant provisions of the Indian Penal Code (45 of 1860).]

NOTES

□ Petitioner disqualified as *Sarpanch* - On ground he had not held required number of *Gram Sabha* meetings - Respondents 3 to 8 filed application before Collector for disqualification - Petitioner denied lapses - Additional Collector heard parties and held meetings not called under section 7(1) of Act and Rule 3(1) of Village *Panchayats* Rules and disqualified petitioner - Held, by virtue of 2003 amendment, concession given to avert disqualification is taken away and all holding of six of such meetings is made mandatory. Proper interpretation of section 7(1) is that minimum number of *Gram Sabha* meetings is provided for meetings. Unless sufficient cause is shown by *Sarpanch* or *Upa-Sarpanch* for holding less than required number of *Gram Sabhas*, disqualification would follow. Petitioner did not offer any explanation for omission to convene required number of meetings. Impugned order need not be interfered with. *Nanasaheb Dhondiram Mundhe v/s Additional Collector & ors.* 2010(4) *Bom.C.R.* 823

8. Panchayat to place before *Gram Sabha* statement of accounts etc., and duties of *Gram Sabha*.-(1) The first meeting of the *Gram Sabha* in ⁶⁶[every financial year] shall be held within two months from the commencement of that year, and the *Panchayat* shall place before such meeting,

- (i) the annual statement of accounts;
- (ii) the report of the administration of the preceding financial year;
- (iii) the development and other programme of work proposed for the current financial year;
- (iv) the last audit note and replies (if any) made thereto;
- (v) any other matter which the ⁶⁷[Standing Committee, *Panchayat Samiti* or Chief Executive Officer or any officer authorised by the Standing Committee or *Panchayat Samiti*] in this behalf, require to be placed before such meeting.

⁶⁸[(1A) The *panchayat* shall place the report of the expenditure incurred on the development activities before the *Gram Sabha* once in every six months, and display the information thereof on the notice board of the *panchayat*.]

(2) It shall be open to the *Gram Sabha* to discuss any or all of the matters placed before it ⁶⁹[under sub-section (1) or sub-section (1A)] and the *Panchayat* shall consider suggestions, if any made by the *Gram Sabha*.

66 These words were substituted for the words "every year" by Mah. 36 of 1965, S.5.

67 These words were substituted for the words "*Panchayat Mandal* or *Collector* or any other authorised by the *Collector*" by Mah. 5 of 1962, S.286, Tenth Sch.

68 Sub-section (1A) inserted by the *Bombay Village Panchayats (Amendment) Act, 2006* (38 of 2006) dated 21st December 2006

(3) A *Gram Sabha* shall carry out any other functions as the State Government may by general or special order require.

8A ⁷⁰[***]

⁷¹[8AA. Powers and duties of Gram Sabha.- It shall be competent for every, Gram Sabha,-

- (i) to approve the social or economic development plans, programmes and projects to be implemented by the *Panchayat* before such plans, programmes and projects are taken up for implementation by such *Panchayat*.
- (ii) to grant permission for incurring any expenditure by the *Panchayat* on the development schemes;
- (iii) to convey its views to the *Panchayat* before taking any decision by the *Panchayat* in respect of any proposal for acquisition of any land falling within the jurisdiction of such *Panchayat*, for the Government purpose, by the Land Authority concerned.]

9. **Incorporation of Panchayats.-** Every *Panchayat* shall be a body corporate by the name of "the Village *Panchayat* of....." having perpetual succession and a common seal, with power to acquire and hold property, both moveable and immoveable, whether within or without the limits of the village over which it has authority and may in its corporate name sue and be sued.

10. **Constitution of Panchayats.-** (1) ⁷²[***]

⁷³[(a) A *panchayat* shall consist of,-

- (i) such number of members not being less than seven and not more than ⁷⁴[seventeen as the ⁷⁵[State Government may prescribe]], who shall be elected in accordance with Section 11:

⁷⁶[Provided that, the ratio between the population of the territorial area of a *Panchayat* and the number of seats in such *Panchayat* to be filled by election shall, so far as practicable, be the same throughout the State.]

⁷⁷[(ii) ***]

69 Substituted for "under sub-section (1)" by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

70 Deleted by Mah.27 of 2003 dated 08-08-2003 s.2.

71 Inserted by Mah. 3 of 2003 dated 08-01-2003 (w.e.f. 16-10-2002.) s.3.

72 This portion was deleted by Mah. 52 of 1994, s.2(a) (w.e.f. 16-12-1994).

73 Clause (a) was substituted for the original by Mah. 6 of 1975, s.50, Sch.

74 These words were substituted for the words "fifteen as the Collector may determine" by Mah. 21 of 1994, s. 5(1)(a)(i).

75 These words were substituted by Mah. Act 52 of 1994, s.2(b) (w.e.f. 16-12-1994).

76 This proviso was added by Mah. 21 of 1994, s.5(1)(a)(ii).

77 Sub-clause (ii) and the Explanation thereto were deleted by Mah. 21 of 1994, s. 5(1)(a)(iii).

- (b) each village shall be divided into such number of wards, and the number of members of a *Panchayat* to be elected from each ward shall be such, as may be determined ⁷⁸[in the prescribed manner by the State Election Commission or an officer authorised by it]:

⁷⁹[Provided that, the *panchayat* area shall be divided into wards in such manner that, the ratio between the population of each ward and the number of seats allotted to it shall, so far as practicable, be the same throughout the *panchayat* area.]

⁸⁰[(2) (a) In the seats to be filled in by election in a *Panchayat* there shall be seats reserved for persons belonging to the Scheduled Castes, the Scheduled Tribes, Backward Class of Citizens and Women, as may be determined by the State Election Commission in the prescribed manner;

(b) the seats to be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in a *Panchayat* shall bear, as nearly as may be, the same proportion to the total number of seats to be filled in by direct election in that *Panchayat* as the population of the Scheduled Castes or, as the case may be, the Scheduled Tribes, in that *Panchayat* area bears to the total population of that area and such seats shall be allotted by rotation to different wards in a *Panchayat*];

⁸¹[Provided that, in a *Panchayat* comprising entirely the Scheduled Areas, the seats to be reserved for the Scheduled Tribes shall not be less than one half of the total number of seats in the *Panchayat*:

Provided further that, the reservation for the Scheduled Tribes in *Panchayat* falling only partially in the Scheduled Areas shall be in accordance with the provisions of clause (b).]

⁸²[Provided also that], ⁸³[one-half of the total number of seats] so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes;

(c) the seats to be reserved for persons belonging to the category of Backward Class of Citizens shall be 27 per cent. of the total number of seats to be filled in by election in a *panchayat* and such seats shall be allotted by rotation to different wards in a *Panchayat*:

⁸⁴[Provided that, in a *Panchayat* comprising entirely the Scheduled Areas, the seats to be reserved for persons belonging to the Backward Class of Citizens shall be 27 per cent. of the seats remaining, if any, after reservation of the seats for the Scheduled Tribes and the Scheduled Castes:

78 These words were substituted by Mah.21 of 1994, for the words "by the Collector in the prescribed manner", s.5(1)(b)(i).

79 This proviso was added by Mah. 21 of 1994, s.5(1)(b)(ii).

80 This sub-section was substituted for sub-section (2) by Mah. 21 of 1994, s.5(2).

81. These provisos were inserted by Mah. 40 of 1997, s.3(a)(i).

82 These words were substituted for the words "Provided" by Mah. 40 of 1997, s.3(a)(ii)

83 Substituted for "one third of the total number of seats" by the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act (Mah. 19 of 2011), dated 21st April, 2011.

84 These provisos were inserted by Mah. 40 of 1997, s.3(b)(i).

Provided further that, the reservation for the persons belonging to the Backward Class of Citizens in a *Panchayat* falling only partially in the Scheduled Areas shall be as per the provisions of clause (c):

⁸⁵[Provided also that], ⁸⁶[one-half of the total number of seats] so reserved shall be reserved for women belonging to the category of Backward Class of citizens;

(d) ⁸⁷[one-half] (including the number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of Citizens) of the total number of seats to be filled in by direct election in a *panchayat* shall be reserved for women and such seats shall be allotted by rotation to different wards in a *panchayat*.

(2-A) The reservation of seats (other than the reservation for women) under sub-section (2) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India].

⁸⁸[(3) The names of the members falling under clause (a) of sub-section (1) shall be published by the State Election Commissioner in the prescribed manner.]

(4) Notwithstanding anything in sub-section (1) where two-thirds or more of the total number of members required to be elected ⁸⁹[under sub-clause (i) of clause (a) of sub-section (1)] are elected, failure to elect the remaining members shall not affect constitution of the *Panchayat*.

NOTES

☐ Vacancy occasioned by resignation by member - Power of Election Commissioner to fill-up vacancy - Held, in respect of vacancy occasioned during term of *Panchayat*, that vacancy can be filled in by holding election for that seat. This is an independent power of Election Commissioner unconnected with section 43. *Shivaji Maruti Shingate & ors. v/s State of Maharashtra & ors 2007(4) Bom.C.R. 695; 2007 (5) Mh.L.J. 109*

⁹⁰[10-1A. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate- Every person desirous of contesting election to a seat reserved for Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of Citizens, shall be required to submit, alongwith the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special

85 These words were substituted for the words "Provided that" by Mah. 40 of 1997, s.3(a)(ii)

86 Substituted for "one third of the total number of seats" by the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act (Mah. 19 of 2011), dated 21st April, 2011.

87 Substituted for "one third" by the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act (Mah. 19 of 2011), dated 21st April, 2011.

88 Sub-section (3) was substituted by Mah. 36 of 2001, s.2.

89 These words, brackets, letters and figure were inserted by Mah. 6 of 1975, Sch.

90 Section 10-1A inserted by the Bombay Village *Panchayat* (Amendment) Act, 2006 (37 of 2006) dated 21st December 2006, s. 2.

Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah. XXIII of 2001).

⁹¹[Provided that, for the General or by-elections for which the last date of filing of nomination falls on or before the 31st December 2013, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination paper, shall submit, alongwith the nomination papers,-

- (i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and
- (ii) an undertaking that he shall submit, within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee :

Provided further that, if the person fails to produce the Validity Certificate within a period of six months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member.]

NOTES

☐ Disqualification - For election of Sarpanch - For not submitting caste certificate with nomination paper - Held, as per second proviso to section 10-1A a member can submit such certificate within 3 months of his election provided he has filed a copy of application for issue of such certificate by Scrutiny Committee alongwith nomination paper. In instant case petitioner had not applied for such a certificate as required by first proviso. Therefore, she is not entitled to benefit of second proviso to submit it within three months. Hence, petition is liable to be dismissed. *Sangeeta Sanjay Lakhote v/s State of Maharashtra & Ors 2011 (3) AIR(BomR) 208 : 2011 (3) All.M.R. 160 : 2011 (5) Bom.C.R. 453 : 2011 (3) Mh.L.J. 899*

91 Provisos substituted by Mah. 29 of 2012, s.2 (w.e.f. 04-10-2012). Prior to substitution provisos read as:
 "Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before the 31st December 2011, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, alongwith the nomination papers,—
 (i) a true copy of the application preferred by him to the Scrutiny committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and
 (ii) an undertaking that he shall submit, within a period of four months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee:
 Provided further that, if the person fails to produce the Validity Certificate within a period of four months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member."

⁹²[10A. **State Election Commission.**-The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to the *Panchayats* shall vest in the State Election Commissioner.

(2) The State Election Commissioner may, by order, delegate any of his powers and functions to any officer of the Commission or any officer of the State Government not below the rank of Tahsildar.

(3) All the officers and members of the staff appointed or deployed for preparation of electoral rolls and conduct of election of *Panchayats* under this Act or the rules shall function under the superintendence, direction and control of the State Election Commissioner.

(4) Notwithstanding anything contained in this Act and the rules, the Commissioner may issue such special or general orders or directions which may not be inconsistent with the provisions of the Act for fair and free elections.]

⁹³[11. **Election.**- (1) An election to constitute a *Panchayat* shall be completed-

- (a) in the case of the establishment of a *Panchayat* for the first time, as soon as may be practicable;
- (b) in the case of *Panchayat*, existing for the time being, before the expiry of its duration of five years as prescribed in sub-section (1) of Section 27;
- (c) in the case of the dissolved *Panchayat*, before the expiration of a period of six months from the date of its dissolution:

Provided that, where the remainder of the period for which the dissolved *Panchayat* would have continued is less than six months, it shall be necessary to hold any election under this clause for constituting the *Panchayat* for such period;

- (d) in the case of an interim *Panchayat* referred to in Section 157, before the expiry of the period of one year as specified in sub-section (1) of Section 158.

(2) The election of members of *Panchayat* or election to fill any vacancy shall be held on such date as the State Election Commission may appoint in this behalf.

(3) Notwithstanding anything contained in Section 10, if the vacancy of a member occurs within six months preceding the date on which the term of office of the members of the *Panchayat* expires under Section 27, the vacancy shall not be filled.

⁹⁴[(3A) The voting at an election shall be by ballot or by electronic voting machine and no votes shall be received by proxy.]

(4) Such election shall be conducted in the prescribed manner.]

NOTES

❑ Elections of 2167 Village *Panchayats* in thirteen flood affected Districts - Commencement of election process on 26th October, 2005 and voting to take on process on 26th

92 Section 10-A was inserted by Mah. 52 of 1994, s.3.

93 Section 11 was substituted for the original by Mah. 21 of 1994, s.6.

94 Inserted by Mah. 20 of 2005 dated 04-05-2005 s.3.

September, 2005 - State Government issued notification on 31st August, 2005, directing Constitution of Board of Administrators - Consisting of erstwhile members, under Chairmanship of *Sarpanch* - Term of office of Village *Panchayat* had expired - Issuance of directing by State Election Commission to State Government on 21st September, 2005 for dismissal of Administrative Boards - Challenged - Contention, State had powers under section 151(1)(a) - Contra, it would obstruct conduct of impartial election in fearless and clean environment - Held, in background of unprecedented monsoon rains resultant floods, disturbing common course of life, view of election commission that continuance of erstwhile members of Village *Panchayat* in Boards of Administrators could upset impartiality and fairness in forthcoming electioners, cannot be regarded as extraneous exercise of powers under Article 243-K. Petition dismiss. 1978(1) S.C.C. 405 referred to. *State of Maharashtra v/s State Election Commission & others* 2005(6) Bom.C.R. 903; 2005 (4) All.M.R. 679

- ❑ Elections of 2167 Village *Panchayats* in flood affected Districts - State Government notification directing appointment of Board of Administrators consisting of erstwhile members, *Sarpanch*, *Up-Sarpanch* - State Election Commission directives for dismissal of Boards - Challenged - Contention by State, involve administrative difficulties in conferring powers upon existing Gram Sevaks and in replacing authority conferred on *Sarpanch* - Held, the holding of free and fair elections in democracy is paramount importance. Administrative exigencies cannot be allowed to override constitutional prescription of free and fair elections. The State shall do everything that is necessary to co-operate with mandate of State Election Commission. *State of Maharashtra v/s State Election Commission & others* 2005(6) Bom.C.R. 903; 2005 (4) All.M.R. 679
- ❑ *Audi-alteram partem*---Violation of---Bifurcation of *Panchayat*---Into two---Obligation to give hearing to Gram *Panchayat* and villagers---Held, by now it settled that after introduction of Chapter IX in the Constitution and consequent amendment of section 4 of Bombay Village *Panchayats* Act an opportunity of hearing before delimitation order is passed is mandatory. Amended section 4 of the Act reflects constitutional mandate and it will not be sufficient to mere consult the villagers/Village *Panchayat* but also to give a hearing to them. This can be done by public notice by beat of drums etc. Such opportunity having not been given in this case orders are not valid. A.I.R. 1995 S.C. 1512 referred to. *Shri Ashok Ganapat Jadhav & another v/s State Election Commission & others* 2000(Supp.) Bom.C.R. 337; 2000 (4) All.M.R. 565; 2001 (4) Bom.L.R. 615; 2000 (4) Mh.L.J. 150

12. List of voters.-(1) The electoral roll of the ⁹⁵[Maharashtra Legislative Assembly] prepared under the provisions of the Representation of the People Act, 1950 (XLII of 1950), and in force on such day as the ⁹⁶[the State Election Commissioner may by order] notify in this

95 These words were substituted for the words "Bombay Legislative Assembly" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

96 These words were substituted for the words "the State Government may by general or special order" by Mah. 52 of 1994, S 4.

behalf for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village.

(2) An officer designated by the ⁹⁷[State Election Commission] in this behalf shall maintain a list of voters for each such ward or village.

13. Persons qualified to vote and be elected.-(1) Every person ⁹⁸[who is not less than 21 years of age on the last date fixed for making nomination for every general election or bye-election and] whose name is in the list of voters shall, unless disqualified under this Act, or any other law for the time being in force, be qualified to vote at the election of a member for the ward to which such list pertains.

(2) Every person whose name is in the list of voters shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected for any ward of the village. No person whose name is not entered in the list of voters for such village shall be qualified to be elected for any ward of the village.

(3) Subject to any disqualification incurred by a person, the list of voters, shall be conclusive evidence for the purpose of determining under this Section whether any person is qualified or is not qualified to vote, or as the case may be, is qualified or is not qualified to be elected, at any election.

⁹⁹[**13A. Vacation of seats.**- If a person is elected to more than one seat in a village *Panchayat* then unless within the prescribed time he resigns all but one of the seats by notice in writing signed by him and addressed to the ¹⁰⁰[State Election Commission or any officer authorised by it] in this behalf, all the seats shall become vacant.

14. Disqualifications.-¹⁰¹[(1) No person shall be a member of a *Panchayat* continue as such, who-

- (a) has, whether before or after the commencement of this Act, been convicted
 - (i) of an offence under the Untouchability (Offences) Act, 1955, (XXII of 1955), or under the Maharashtra Prohibition Act (Act No. XXV of 1949) or any law corresponding thereto in force in any part of the State, unless a period of five years, or such lesser period as the State Government may allow in any particular case, has elapsed since his conviction, or
 - (ii) of any other offence and has been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the State Government may allow in any particular case, has elapsed since his release; or

97 These words were substituted for the words "Collector" by Mah. 231 of 1994, s. 7 (w.e.f. 22-4-1994).

98 These words were inserted by Mah. 231 of 1994, s. 8 (w.e.f. 22-4-1994).

99 Section 13-A was inserted by Mah. 36 of 1965, S.7.

100 These words were substituted for the words "Collector or any officer authorised by him" by Mah. 21 of 1994, S.9.

101 Section 14 renumbered as sub-section (1) by Mah. 34 of 2000, S.2 (w.e.f. 5-8-2000).

¹⁰²(a-1) has been disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the Maharashtra State:

Provided that, no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

- (b) has been adjudged by a competent Court to be of unsound mind;
- (c) has been adjudicated an insolvent and has not obtained his discharge; or
- ¹⁰³[(c-1) having held any office under any Government or local authority, has whether before or after the commencement of this Act, been dismissed for misconduct, unless a period of five years has elapsed since his dismissal; or]
- (d) has been removed from office under sub-section (1) of section 39 and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the State Government notified in the *Official Gazette*, been relieved from the disqualification arising on account of such removal from office; or
- (e) has been disqualified from holding office under sub-section (2) of Section 39 and the period for which he was so disqualified has not elapsed; or
- (f) holds any salaried office or place of profit in the gift or disposal of the *Panchayat* while holding such office or place, or
- (g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the *Panchayat*, or in any contract with, by or on behalf of, or employment with or under, the *Panchayat*; or.
- (h) fails to pay any tax or fee due to the *Panchayat* ¹⁰⁴[or the Zilla Parishad within three months from the date on which the amount of such tax or fee is demanded, and a bill for the purpose is duly served on him; or]
- ¹⁰⁵[(h-1) fails to pay the amount of surcharge or charge under Section 140 or the amount ordered to be paid under Section 178 together with interest, if any, within the period provided in that behalf, and where an appeal has been made, then within one month from the date of receipt of the decision rejecting such appeal;]
- (i) is a servant of the Government or a servant of any local authority; or
- (j) has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; or
- ¹⁰⁶[(j-1) has more than two children]

Provided that, a person having more than two children on the date of commencement of the Maharashtra Village *Panchayats*, and the Maharashtra

102 Clause (a-1) was substituted by Mah. 21 of 1994, S.10.

103 Clause (c-1) was inserted by Mah. 36 of 1965, S.8(1).

104 These words were substituted for the portion beginning with the words "within three months" and ending with the words and figures "section 129; or" by Mah. 36 of 1965 S. 8(2).

105 Clause (h-1) was inserted by Mah. 13 of 1975, S. 4(b).

106 Clause (j-1) was inserted by Mah. 44 of 2000, S. 2(a) (w.e.f. 13.9.2000)

Zilla Parishads, and *Panchayat Samitis* (Amendment) Act, 1995 (hereinafter in this clause referred to as “the date of such commencement”), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase:

Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause; or]

¹⁰⁷[(j-2) has been elected as a Councillor of the Zilla Parishad or as a member of the *Panchayat Samiti*; or]

¹⁰⁸[(j-3) has encroached upon the Government land or public property; or]

¹⁰⁹[(j-4) has been disqualified by the State Election Commission under section 14B; or]

¹¹⁰[(j-5) fails to submit a certificate of the concerned *panchayat*, alongwith the resolution of the *Gram Sabha* certifying that,—

- (i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or
- (ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet:

¹¹¹[Provided that, no member of a *panchayat* shall be disqualified under this clause, if he submits such certificate to the Block Development Officer, within a period of one year from the 10th January, 2011, being the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010 (Mah. XXXIII of 2010):]

¹¹²[Provided further that, nothing contained in this clause shall affect the member holding office on the 10th January, 2011, who has not submitted the certificate within a period of ninety days from the said date, as required under the provisions of this Act, as amended by the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010 (Mah. XXXIII of 2010); and he shall not be deemed to be disqualified and shall continue to hold his office for a period of one year from the said date, unless he is

107 Inserted by Mah. 28 of 2003 dated 08-08-2003 s.3.

108 Clause (j-3) inserted by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006, s. 4.

109 Inserted by the Bombay Village *Panchayats* and Maharashtra Zilla Parishads and *Panchayat Samitis* (Amendment) Act, 2010 (Mah. 16 of 2010) dated 6th May, 2010, s. 2.

110 Inserted by the Bombay Village *Panchayats* and Maharashtra Zilla Parishads and *Panchayat Samitis* (Second Amendment) Act, 2010 (Mah. 33 of 2010) dated 23rd December, 2010, s. 2 w.e.f. 10-01-2011 *vide* Notification No. Sankirna.2010/C.R.-122/PR-2, dated 10-1-2011.

111 Substituted by the Bombay Village *Panchayats* and Maharashtra Zilla Parishads and *Panchayat Samitis* (Second Amendment) Act, 2011 (Mah. XXXIX of 2011) (w.e.f. 10-01-2011).

112 Inserted by the Bombay Village *Panchayats* and Maharashtra Zilla Parishads and *Panchayat Samitis* (Second Amendment) Act, 2011 (Mah. XXXIX of 2011) (w.e.f. 05-10-2011).

disqualified under any other provisions of this Act or any other law for the time being in force; or]

- (k) is disqualified under any other provisions of this Act, and the period for which he was so disqualified has not elapsed.

Explanation 1- A person shall not, by reason only of his being a share holder in or a member of, any incorporated or registered company or a co-operative society registered under any law for the time being in force in the ¹¹³[State of Maharashtra], be held to be interested in any contract entered into between the company or co-operative society and the *Panchayat*.

¹¹⁴[Exp

lanation 1-A-- A person shall not be disqualified under clause (g) by reason only of such person-

- (i) having a share or interest in any newspaper in which any advertisement relating to the affairs of the *Panchayat* is interested; or
- (ii) having a share or interest in the occasional sale to the *Panchayat* of any article in which he regularly trades, or in the purchase from the *Panchayat* of any article, of a value in either case not exceeding in any financial year two hundred rupees; or
- (iii) having a share or interest in the occasional letting out on hire to the *Panchayat* or in the hiring from the *Panchayat* of any article for an amount not exceeding any financial year twenty-five rupees or such higher amount not exceeding one hundred rupees, as the *Panchayat*, with the sanction of the Collector may fix in this behalf; or
- (iv) having any share or interest in any lease for a period not exceeding ten years of any immovable property or in agreement for the same; and before such lease or agreement is extended, the Block Development Officer certifies that no other suitable premises were available to the *Panchayat* on lease.]

Explanation 2- For the purposes of clause (h)-

- (i) a person shall not be deemed to be disqualified if he has paid the amount of any tax or fee due, prior to the day prescribed for the nomination of candidates;
- (ii) failure to pay any tax or fee due to the *Panchayat* by a member of an undivided Hindu family, or by a person belonging to a group or unit the members of which are by custom joint in estate or residence, shall be deemed to disqualify all members of such undivided Hindu family or as the case may be all the members of such group or unit.

113 These words were substituted for the words "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

114 Explanation 1 was inserted by Mah. 36 of 1965, S. 8(3).

¹¹⁵[Explanation 3- For the purposes of clause (i), a Police Patil appointed under Section 5 of the Maharashtra Village Police Act, 1967 (Mah. XLVI of 1967), shall be deemed to be a servant of Government.]

¹¹⁶[Explanation 4- For the purposes of clause (g) a person shall not be deemed to have any share or interest in any employment by reason only of any relation of his being employed with or under a *Panchayat*, as an officer or servant thereof.]

¹¹⁷[Explanation 5- For the purpose of clause (j-1),

- (i) where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity;
- (ii) "child" does not include an adopted child or children.]

¹¹⁸[***]

NOTES

- ❑ Disqualification - Members of Gram *Panchayat* - Failed to pay taxes within three months from date of demand - Additional Collector upheld disqualified - Divisional Commissioner confirmed - W.P. dismissed - In application for amendment it is submitted orders passed by authorities below cannot be sustained considering provisions of section 14(1)(h) read with section 129(1) - Further section 129 requires a bill to be issued specifying amount and date on or before which said amount is to be paid - As per Clause (h) of section 14(1) period of three months is to be counted from date of demand and date of demand is to be understood as last date of demand, therefore, tax paid was within period of limitation, could not incurred disqualification - Contra, appellants not entitled to raised point which was never raised earlier - Period of three months is to be counted from date of service of bill demanding tax - Section 14(1)(h) specifically provides that amount should be paid within three months from date of demand and date of demand has to be necessarily from date of bill - Held, in present case ground to be raised, is based purely on undisputed facts. Merely because appellants had not raised said point earlier, it would not be just and fair not to allow to raise said point in appeal. Principle is clearly to effect that appellate court should exercise appellate power for an appropriate order to be passed on undisputed facts in matter. *Rameshwar Ramaji Rewatkar v/s Dilip Tulsiram Rewatkar & ors.* 2007(1) *Bom.C.R. 836*; 2006 (5) *All.M.R. 401*; 2006 (5) *Mh.L.J. 292*
- ❑ Disqualification of member - On ground of failure to pay property taxes due, within prescribed period - Held, petitioner could not pinpoint any illegality in impugned order. Impugned order are legal and proper to extent of petitioner Ramanbai Shimpi, Bhaskar Shewale and Shravan Patil who are at Serial Nos. 2, 4, and 5 in Writ Petitions No. 2195 of 2006. *Ramrao Chudaman Patil v/s State of Maharashtra & ors.* 2007(1) *Bom.C.R. 931*

115 Explanation 3 was substituted for the original by Mah. 13 of 1975, S. 4(c).

116 Explanation 4 was inserted by Mah. 34 of 1970, S. 3

117 Explanation 5 was added by Mah. 44 of 2000, S 2(b)

118 Sub-sections (2) and (3) deleted by the Bombay Village *Panchayat* (Amendment) Act, 2006 (37 of 2006) dated 21st December 2006

- ❑ Disqualification of member - On ground of failure to pay property taxes due, within prescribed period - Challenged - Contention, voters list show that petitioner not owner or occupier of house property - Held, petitioner's statement recorded and made explicit that they are neither occupier nor owner of house property, statements were duly corroborated. Consequently difficult to say that they were preliminary liable under Rule 18. Impugned order unsustainable to extent of petitioners Pramilabai Patil and Bhursing Bhil who are not at Serial Nos. 1 and 3 in Writ Petition No. 2195 of 2006. 1971 Mh.L.J. 749 referred to. *Ramrao Chudaman Patil v/s State of Maharashtra & ors.* 2007(1) Bom.C.R. 931
- ❑ Disqualification of member - Petitioner 'Sarpanch' of Gram Panchayat - Obtained advantage of scheme for construction of houses for poor people - Got construction of house under scheme sanctioned in favour of her husband - Application for disqualification - Rejected by Additional Collector - Appeal allowed - Challenged - Contention of petitioner, name of husband was already included in list of below poverty line since 1997-98 when she was not concerned with Gram Panchayat - Held, petitioner got material interest in construction of house of her husband and said construction was being done as per order/resolution of Gram Panchayat selecting him as beneficiary and petitioner was incurred disqualification. A.I.R. 1966 S.C. 1339; 1975 Raj. L.W. 15. distinguished. A.I.R. 2000 Raj. 371; A.I.R. 1977 S.C. 82 referred to. *Ashabai Laxman Gawande v/s Additional Commissioner, Amravati Division & others* 2005(4) Bom.C.R. 335; 2005 (2) All.M.R. 626; 2005 (3) Bom.L.R. 563; 2005 (3) Mh.L.J. 183
- ❑ Disqualification of Sarpanch - Whether amendment in section is in prospective or retrospective effect - As per amendment no person shall be a member of a Panchayat, or continue as such, who has been elected as Councillor of Zilla Parishad or as a member of Panchayat Samiti - Stated expressly that amendment would apply also to a case where elected candidate had been elected as a member of Panchayat earlier thereto - Held, it not only incorporates within its purview all persons who would be members of Panchayat in future, but also those who were sitting members. In other words, bar created to hold post of member of Panchayat would bring within its purview also those who were continuing to hold post. Ordinarily a statute is construed to have prospective effect, but same rule does not apply to a disqualifying provision. *Vijay v/s State of Maharashtra & ors.* 2006(5) Bom.C.R. 541; 2006 (5) Mh.L.J. 782
- ❑ Disqualification-Complaint against elected members on the ground that they were defaulter in payment of property tax inspite of notice and therefore, disqualified to continue as elected members-Collector holding that notices of alleged arrears were not dated and could not be taken as notices, hence dismissed the petition-Held, in matters of disqualification complaint has only indicate that default has taken place and it is not necessary to give other particulars of default. It is duty of the concerned authority to make enquiries and find out whether disqualification has been incurred. Facts in the case show that three conditions required for proving disqualification : (i) failure to pay a bill presented under section 129(1) of Act; (ii) default must continued for a period of 3 months; and (iii) that amount remained unpaid, have been proved by records of the Gram Panchayat which are presumed to be correct and Collector ought to have given findings of disqualification. 1993(2) S.C.C. 703; A.I.R. 1965 S.C. 1892; 1978(4) S.C.C. 181 referred

to. *Suvarna Prakash Patil v/s Anil Hindurao Powar & others* 2003(Supp. 2) Bom.C.R. 19; 2004 (1) All.M.R. 61; 2004 (1) Mh.L.J. 1062

- ❑ Jurisdiction-To interfere with-Election process-Rejection of nomination paper-On account of failure for payment of house tax in which petitioner was living-Held, that Article 329(b) of Constitution bar courts from interfering with election process at intermediate stages even under Article 226 of Constitution. This can be done only by an election petition after conclusion of the process. Apex Court in 1978(1) S.C.C. 405 carved out an exception to this bar that is, in cases where objection accelerates the process of election rather than obstructs it, it will not be covered by the bar of Article 329(b) of Constitution. In the instant case rejection of nomination paper without making summary enquiry under Rule 11 of B.V.P. Rules is not sustainable and liable to be quashed under Article 226. Further it is to be seen whether it calls the election process in question and obstructs it or does it subserve the purpose. In facts of this case petitioner is the only reserved candidates for this reserved constituency and in case his nomination paper is accepted he is straightway liable to be declared elected. Therefore, interfering with order of Returning Officer will subserve and expedite the process of election and interference with the process will not be covered by bar of Article 329(b) of the Constitution. 1978(1) S.C.C. 405 referred to and relied upon. *Mayaraju Ghavghave v/s Returning Officer & another* 2004(5) Bom.C.R. 146; 2004 (4) All.M.R. 258
- ❑ *Sarpanch* - Removed from post of *Sarpanch* by resolution of Gram Panchayat - Contention that he is removed as *Sarpanch* of Panchyat, but not as a member of Panchayat and therefore his removal does not attract disqualification under section 14(1)(d) of Act i.e. prohibiting him from contesting as member of Panchayat for next 5 years - Held, case is squarely covered by decision in 2005(Supp.) Bom.C.R. (A.B.)348. Division Bench after considering provisions of section 39(1) of Act expressly observed that said sections do not permit any action against *Sarpanch* or Up-*Sarpanch* beyond period of term for which they were elected as members of Gram Panchyat. In view of it orders of disqualification passed by authorities are not sustainable and liable to be quashed. Petition allowed. *Sunil Balaram Roy v/s Divisional Commissioner & ors* 2007(1) Bom.C.R. 217; 2006 (6) All.M.R. 215; 2006 (5) Mh.L.J. 612
- ❑ Whether Collector was empowered under sections 14 and 16 of Bombay Village Panchayats Act to disqualify member of village Panchayat - Ground caste certificate was not issued by Competent Authority in favour of such member - Held, Collector not empowered and entitled under provision of sections 14 and 16 of Village Panchayats Act to disqualify elected candidate and unseat him by declaring his seat as fallen vacant on ground that caste certificate was not issued by Competent Authority or caste certificate was forged and bogus one. 1995(2) Bom.C.R. (S.C.)690; 2003(Supp.) Bom.C.R. (A.B.)110; 2004(5) Bom.C.R. (F.B.)497; 2006(6) Bom.C.R. 820 relied on. *Shivling Umrao Jadhav v/s State of Maharashtra & ors.* 2008(1) Bom.C.R. 622; 2008 (1) All.M.R. 538; 2008 (2) Mh.L.J. 553
- ❑ Jurisdiction of - Scrutiny Committee enquiry into genuineness of caste certificate and investigated into allegations of forged and bogus and decide issue of verification and validity of caste claim - Held, caste Scrutiny Committee is empowered to enquiry into

genuineness of caste certificate. *Shivling Umrao Jadhav v/s State of Maharashtra & ors.* 2008(1) Bom.C.R. 622; 2008 (1) All.M.R. 538; 2008 (2) Mh.L.J. 553

- ❑ Disqualification of *Sarpanch* - Petitioners 2 had filed objection application before Returning Officer stating respondent 3 ineligible for nomination - Further contended third child born after cut-off date and as per G.R. and policy, respondent 3 could not be permitted to contest election - Objection was overruled by Returning Officer and elections held, respondent 3 elected later on elected as *Sarpanch* - Petitioner filed dispute challenging eligibility on ground he was disqualified under section 14(1)(j-1) of Act - Additional Collector disqualified respondent 3 - On appeal Additional Divisional Commissioner by impugned order allowed appeal holding third child born prior to cut-off date, hence, this petition - Held, entries in survey register shows birth date of third child of respondent 3 is 25-9-2002 and entries verified by Competent Public Authority. Public record available to show that third child was born after cut-off date. Respondent 3 did not adduce any tangible evidence to show third female child was born on 10-8-2001 i.e. before stipulated date (13-9-2001). Additional Collector was right while relying on entries in order to reach conclusion that third child was born after stipulated date. Impugned order of Additional Commissioner is based on subsequent rectification of Municipal birth register. Respondent 3 filed application for rectification of date of birth after 6/7 years. Doctor of hospital where third child born alleged, report submitted by respondent 3 is incorrect and denied his signature on letter. Appellate Authority should not have interfered with order of Additional Collector when it was based on material gathered during course of enquiry. Petition allowed. Impugned order is set aside. Additional Collector is directed to lodge report with Police Station for taking cognizance of forgery documents, issued by respondent 5 (doctor). Effect of judgment is stayed for four weeks. *Ravikiran Abasaheb Deshmukh & anr. v/s Additional Commissioner & ors.* 2010(4) Bom.C.R. 249; 2010(3) Mh.L.J 184; 2010(2) All.M.R 5
- ❑ Disqualification of member - On ground of non-payment of tax bill within stipulated time - Contention, petitioner not owner of house - Petitioner's address in voters list shown same house - Both authorities below held tax amount was due towards joint family of which petitioner is member - Held, case squarely falls under provisions of section 14(1)(h) Explanation (ii). Authorities below taken reasonable and plausible view and arrived correct conclusion. 2008(3) Bom.C.R. 802 relied on. *Ajitsingh Bhimsingh Deore v/s Sahebrao Bhata Wagh & ors.* 2009(6) Bom.C.R. 88; 2010(3) Mh.L.J 941; 2010(2) AIR(BomR) 549
- ❑ Petitioner disqualified - As petitioner given birth to third child - Complaint filed by respondents - Show cause notice issued by Collector - Collector held petitioner acquired disqualification under section 14(1) Clause (j-1) of Act - Petitioner preferred appeal which dismissed - Petitioner submits, being female not have choice of her own - Further submits provision of Act are contrary to right to equality - Held, challenge both under Articles 14 and 21 of Constitution of India to be rejected. Restriction on number of children is to create awareness of danger of increasing population. Those seeking to be leaders cannot contend that their fundamental rights are being violated. Right to contest elections is merely statutory. There is no merit in this petition. *Mangasha Ashok Chavan v/s Sayajirao*

Damodhar Khamkar & ors. 2010(1) Bom.C.R. 136; 2010(1) All.M.R. 799; 2010(1) Mh.L.J. 513; 2010(1) AIR(BomR) 371

- ❑ Disqualification of petitioner - Allegation made by respondent 3 against petitioner about encroachment of land - Petitioner submitted his great grand father was granted land for residential purposes - Further stated he executed agreement before Tahsildar - Additional Collector relying on report of Talathi, disqualified petitioner - Aggrieved by order, petitioner filed revision before Additional Commissioner confirmed findings of Additional Collector - Held, petitioner filed documents dating back to year 1923. Additional Collector not recorded any finding as regards four documents produced by petitioner. Merely relying upon report of Talathi, concluded petitioner is encroacher. Both impugned orders are set aside and matter remanded back to Additional Collector for de novo consideration. Additional Collector to record specific finding as regards four documents produced by petitioner. *Gajanan Hariba Susar v/s Additional Commissioner & Ors. 2011 (6) Bom.C.R. 427*
- ❑ Disqualification of Sarpanch - On ground that her husband had encroached on E-class land - Tahsildar allowed complaint and disqualified petitioner - On appeal Additional Collector remanded matter back to verify whether encroachment was there - On appeal against it to Additional Commissioner (who was same person who as Additional Collector had remanded matter for enquiry) dismissed appeal of petitioner under Bombay Act holding that her husband having raised unauthorized constructions, she was disqualified under section 14(1) of Act - Petition against - Held, same person as Additional Collector under Maharashtra Revenue Code had remanded matter for enquiry, but as Additional Commissioner passed orders for disqualification (of petitioner) under Bombay Panchayat Act. He ought to have stayed order of disqualification under Bombay Act pending enquiry as to encroachment in remanded case under Maharashtra Land Revenue Code. In view of it order of Additional Commissioner dated 31-1-2011 is liable to be quashed, because matter of encroachment is kept pending for enquiry (under Maharashtra Land Revenue Code). Authority under Maharashtra Land Revenue Code is directed to expedite its enquiry and give report after hearing both sides. Parties to appear before Tahsildar on 4-7-11. *Savitabai Sanjay Meshram v/s Arvind Bhimraoji Mhala & Ors. 2011 (4) AIR(BomR) 752 : 2011 (5) Bom.C.R. 541 : 2011 (5) Mh.L.J. 59*
- ❑ Petitioner-Assistant Teacher - Elected member and subsequently Sarpanch of Gram Panchayat - Not obtained prior permission of management - Said school getting aid from Zilla Parishad - Petitioner whether servant of a 'local authority' - Held, school run by a private management simply because it receives grant-in-aid from Zilla Parishad cannot come within ambit and purview of terminology 'local authority'. School of which petitioner is Assistant Teacher is not entrusted by statute with such governmental function and duties as are generally entrusted to municipal bodies, such as those connected with providing amenities to inhabitants of locality or civic duties and functions which otherwise are governmental duties and functions. Petitioner as such cannot be said to be a servant of a 'local authority'. *Shivaji Manohar Kale v/s Additional Divisional Commissioner Aurangabad Division & Ors. 2012 (2) Bom.C.R. 130 : 2011 (6) Mh.L.J. 344 : 2011 (5) All.M.R. 650*

- ❑ Disqualification of petitioner - Petition - Against Additional Commissioner's order in appeal by which petitioner was disqualified from standing in elections to panchayat, because he as per report of Talathi was found to have encroached on Government land. This document was not produced before Additional Collector who had earlier rejected respondent's plea to disqualify petitioner - Held, order of Additional Commissioner deserves to be set aside, for violation of principles of natural justice. He ought to have been given petitioner an opportunity to contest Talathi's report before decision. Hence ordered that matter be remanded to Additional Collector for decision de novo giving opportunity to petitioner to be heard. *Ganesh Shankar Landge v/s Additional Commissioner & Ors 2011 (5) All.M.R. 666 : 2012 (1) Bom.C.R. 692 : 2011 (6) AIR(BomR)(NOC) 472*
- ❑ Disqualification of member of panchayat - On ground that he had encroached on Government land - Petition against Additional Commissioner - Order setting aside Additional Collector findings that petitioner was staying in rented premises and had not encroached on Government land - Held, Additional Commissioner's order is without reasons and most cryptic and laconic. Authority has gone by particulars voters list ignoring other documents like 7/12 extract etc. Petition therefore, deserves to be allowed and matter remanded with directions for de novo consideration of appeal. *Yunus Shah Anwar Shah v/s Additional Commissioner & Ors 2012 (2) Bom.C.R. 405 : 2011 (5) Mh.L.J. 249 : 2012 (1) All.M.R. 389*
- ❑ Disqualification of petitioner - It is alleged petitioner made encroachment on Government land - Additional Collector held petitioner not encroached on Government land and rejected application of respondent 3-complainant - On appeal before Additional Commissioner, which allowed by impugned order - Held, Additional Commissioner not considered findings recorded by Additional Collector. Additional Commissioner ought to have considered matter from perspective of case of respective parties and documents produced by them qua plot. Impugned order set aside. Matter relegated back to Additional Commissioner for de novo consideration of appeal filed by respondent 3. *Jaitunabi Shekh Musa v/s Additional Commissioner & Ors. 2012 (1) All.M.R. 168 : 2012 (3) Bom.C.R. 387*
- ❑ Disqualification - For encroachment on village land near road and also for misappropriation of amounts by father of petitioner - As to encroachment same has been removed and order of Tahsildar in that regard stayed by High Court - As to amount of alleged misappropriation 50% of it has been directed to be deposited by her father but that misappropriation is by father of petitioner and she cannot be disqualified on that account - Held, on point of encroachment no disqualification is ordered but as regards misappropriation of amounts by father of petitioner 1 for some earlier period 1989 to 1999, but petitioner belongs to joint Hindu family she has been disqualified for that. Relevant section 140 of Act, makes it clear that on receipt of audit note Panchayat should correct irregularity and/or send report to Panchayat Samiti within 3 months time. Samiti will send report of its decision to CEO within one month. In this case irregularity pertains to years 1989 to 1999, and it is by father of petitioner for which case has been registered and law will take its own course. In such a case disqualification of petitioner for actions of her father cannot be countenanced. Consequences of his actions are to be faced by father and

not petitioners. Order therefore, cannot be sustained in view of section 140 of Act. *Sumit Sanjay Jaiswal & anr. v/s State of Maharashtra & ors. 2012(5) Bom.C.R. 425*

❑ Disqualification - On account of 4th child having born to petitioner on 16-2-2002 who got elected to Panchayat on 28-8-2005 - Cut off date for disqualification was 12-9-2001 - Collector rejected this plea holding that 4th child so born had died on 21-2-2002 before election took place - On appeal Commissioner however reversed it holding that petitioner was not protected under proviso to section 14(1)(j-1) - Hence, this petition in High Court - On ground that disqualification was there on date of filing nomination papers under section 13 and it could be challenged by filing an election petition under section 15 of Act further that Civil Court jurisdiction in election matters is barred by section 15-A of Act - Held, Full Bench in 1975 B.C.I. (soft) 79(N.B.)(F.B.) has held that disqualification under section 44 may exist when nomination paper were filed, but may not be there when polling took place and results were declared. Contention that implied limitation be read in section 21 of Municipalities Act in view of section 44 of said Act was rejected by Court by holding that when a disqualification is challenged in election petition enquiry is pertaining to disqualification existing on date of nomination and upto date of result and not thereafter. Further even if proceedings under section 44 of said Act were taken simultaneous to election petition decision of a judicial forum (with powers of a Court) must prevail. Ratio of A.I.R. 2007 S.C. 903 holding that election petition is applicable only where there is already an order passed by a Competent Authority prior to date he has been declared elected. In present case even though petitioner had incurred disqualification prior to date of election, but was not so declared, because no such objection was raised at nomination stage. Hence, ratio of Apex Court case does not apply to these facts. Hence, no merit in petition and same is dismissed. *Dnyaneshwar Patiram @ Ratiraj Shirbhiye v/s Divisional Commissioner & ors. 2012(5) Bom.C.R. 225*

❑ Removal from service of Police Patil who contested elections to Wasi Sahakari Sanstha and took active part in political activities and canvassing for his brother - Sub-Divisional Magistrate removed him from service - Additional Commissioner however allowed his appeal - Petition against it - Held, as per section 12 of Maharashtra Village Police Patil Act, State Government can by order can apply Bombay Civil Service Rules and Discipline and Appeal Rules, made thereunder. Maharashtra Civil Services Rules now are applicable to this case. Further section 14(1)(i) of Bombay Village Panchayat Act provide that no person shall be member of a panchayat or continue if he is servant of Government or of a local authority and as per Explanation (3) to section provides that a Police Patil will be deemed to be a Government Service (1992 B.C.I. (soft) 128). In spite of a prohibition respondent took part in active politics. Hence, order of Additional Commissioner is set aside and that of Sub-Divisional Magistrate restored. *Shriram Dattu Bhojar v/s Asok Kashinath Raut & anr 2012(5) Bom.C.R. 45*

❑ Issuance of bill for payment of taxes - Period of seven days within amount of bill to be pays - Period of seven days - How to be counted - Period of seven days are to be considering to be expiring at end of period of seven days contemplated by Sec. 129(1). *Shri Uttam H. Jadhav vs. Shri Vishwanath N. Jadhav & Others 2012(4)BCR90; 2012(4)AIRBOMR304; 2012(3)ALLMR382; 2012(3)MHLJ563; 2012(2)CPMH5*

- Bill of tax - To be paid within 3 months - Calculation of three months - Commencement of period is born 9 June 2011 - Period of three months end on 9th Sept. 2011. The month means 12th part of a solar year called a solar month and not a lunar month of 30 days duration. According to the British Calendar a solar year is divided into 12 parts as January, February and so on. The period of one month will not, therefore, necessary of 30 days duration. The duration of the month in a particular case would depend upon the number of days in the relevant month. If the relevant month has 31 days, the period of one month will be of 31 days. Hence, if the period of one month is to be calculated from 1st January, the period of one month will expire on 1st February. Therefore, while calculating the period of three months as contemplated by Sec. 14(1)(h), it will commence from 9th June, 2011 and will end on 9th September, 2011. (1929) 1 SCC 75 Rel. On. *Shri Uttam H. Jadhav vs. Shri Vishwanath N. Jadhav & Others* 2012(4)AIRBOMR304; 2012(3)ALLMR382; 2012(4)BCR90; 2012(3)MHLJ563; 2012(2)CPMH5
- Member of Gram Panchayat - Disqualifications - Member having one son from first wife divorced by mutual consent and two children from second wife - First wife taken custody of son - Disqualification does not come to an end merely because couple has parted with child by giving child in custody of wife - Disqualification attracted no sooner third child is born and living after two living children - Case does not fall within exception - Held, Order holding member as disqualified would be proper - Rule discharged. *Ashok Balasaheb Chaugule vs. The State Of Maharashtra & Ors* 2012(6)ALLMR274; 2012(6)MHLJ782; 2012(9)CPMH23
- Petitioner is a Sarpanch - Allegation of encroachment upon public property - Application for disqualifications and for calling the Gram Sevak Report filed - Allowed - No encroachment found - Another Application filed seeking permission to cross examine the Gram Sevak and making further enquiry - Allowed - Challenged - U/s. 16 (2) Collector has power to decide the question of occurrence of vacancy - No Authority is prescribed to make enquiry into disqualification - Petition appears to be frivolous in nature - Order is a interim in nature - Held, Cost of Rs. 5000/- imposed - Petition dismissed. *Vivek S/o Vishwanath Mane vs. Akhtarkha Ganikha Pathan; Rekha W/o Pundlik Kapase* 2013(6)ALLMR172; 2013(6)MHLJ233; 2013(8)CPMH62
- Appeal against Disqualification, on ground of non-payment of House Tax, as Panchayat member allowed - Challenged - Three Conditions for Disqualification - It is held in the case *Suvarna Prakash Patil* 2004(1)Mh.L.J.1062 that first, there must be a failure to pay a bill presented U/s. 129(1) of this Act - Secondly, the default must have continued for a period of three months. And third, the amount remained unpaid. In absence of specific demand, the time limit to pay tax or fee due to the Panchayat, is not possible to be reckoned. In absence of any demand of dues, the provisions of Sec. 14(h) cannot be invoked to incur the disqualification - Writ Petition dismissed. *Shaukat Ali Mohd. Hussain vs. Shaikh Ayub S/o Sk. Haji Sk. Ahmed* 2014(4)ALLMR99; 2013(12)CPMH58

¹¹⁹[14A. Disqualification arising out of certain convictions and corrupt practices under this Act.- If any person-

- (a) is convicted of an offence punishable under Section 153-A or Section 171-E or Section 171-F or sub-section (2) or sub-section (3) of Section 505 of the Indian Penal Code, or of an offence punishable under Section 24, or clause (a) of sub-section (2) of Section 25 of this Act; or
- (b) is upon trial of an election petition under Section 15 of this Act, found guilty of any corrupt practice, he shall be disqualified for being elected, or for continuing as a member, or for voting at any election to a *Panchayat* unless a period of six years from the date of the conviction or from the date on which a declaration that the candidate is disqualified is made under sub-section (5) of Section 15 of this Act, or such lesser period which the State Government may allow in any particular case has elapsed.]

¹²⁰[14B. Disqualification by State Election Commission.- (1) If the State Election Commission is satisfied that a person,—

- (a) has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and
- (b) has no good reason or justification for such failure,

the State Election Commission may, by an order published in the *Official Gazette*, declare him to be disqualified and such person shall be disqualified for being a member of *panchayat* or for contesting an election for being a member for a period of five years from the date of this order.

(2) The State Election Commission may, for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any such disqualification.]

15. Determination of validity of elections: enquiry by Judge; procedure.-(1) If the validity of any election of a member of a *Panchayat* is brought in question by ¹²¹[any candidate at such election or by] any person qualified to vote at the election to which such question refers, ¹²²[such candidate or person] may, at any time within fifteen days after the date of declaration of the result of the election, apply ¹²³[***] to the Civil Judge (Junior Division), and if there be no Civil Judge (Junior Division) then to the Civil Judge (Senior Division) (hereinafter in each in case, referred to as "the Judge") having ordinary jurisdiction in the area within which the election has been or should have been held for the determination of such question.

(2) Any enquiry shall thereupon be held by the Judge and he may after such enquiry as he deems necessary pass an order, confirming or amending the declared result, or setting the

119 Section 14A inserted by Mah. 13 of 1975, s. 5.

120 Inserted by the Bombay Village *Panchayats* and Maharashtra Zilla Parishads and *Panchayat* Samitis (Amendment) Act, 2010 (Mah. 16 of 2010) dated 6th May, 2010.

121 These words were inserted by Mah. 36 of 1965, S.9(1).

122 These words were substituted for the words "such person" by Mah. 36 of 1965, S.9(1).

123 The portion from "(a) in the Hyderabad area" to "transferred territories" was omitted by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

election aside. For the purposes of the said enquiry the said Judge may exercise all the powers of a Civil Court, and his decision shall be conclusive. ¹²⁴[If the election is set aside, a date for holding a fresh election shall forthwith be fixed under Section 11.]

(3) All applications received under sub-section (1)-

- (a) in which the validity of the election of members to represent the same ward in question, shall be heard by the same Judge, and
- (b) in which the validity of the election of the same member elected to represent the same ward is in question, shall be heard together.

(4) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908), the Judge shall not permit (a) any application to be comprised or withdrawn or (b) any person to alter or amend by pleading unless he is satisfied that such application for compromise or withdrawal or the application for such alteration or amendment is *bona fide* and not collusive.

(5) (a) If on holding such enquiry the Judge finds that a candidate has for the purpose of the election committed a corrupt practice within the meaning of sub-section (6), ¹²⁵[***], he shall declare the candidate disqualified for the purpose of that election and of such fresh election as may be held under ¹²⁶[sub-section (2)] and shall set aside the election of such candidate if he has been elected.

(b) If, in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected:

Provided that for the purpose of such computation, no vote shall be reckoned as valid if the Judge finds any corrupt practice was committed by any person known or unknown, in giving or obtaining it:

Provided further that after such computation, if an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in favour of such candidate or candidates, as the case may be, selected by lot drawn in the presence of the Judge in such manner as he may determine.

(6) A person shall be deemed to have committed a corrupt practice-

- (a) who, with a view to inducing any voter to give or to refrain, from giving a vote in favour of any candidate, offers or gives any money or valuable consideration or holds out any promise of individual profit, or holds out any threat of injury to any person, or
- (b) who with a view to inducing any person to stand or not to stand or to withdraw from being a candidate at an election, offers or gives any money or valuable

124 This portion was added by Mah. 36 of 1965, S.9(2).

125 Words "or submitted a false claim or a false caste certificate" deleted by the Bombay Village Panchayat (Amendment) Act, 2006 (37 of 2006) dated 21st December 2006, s 4.

126 These words, brackets and figure were substituted for the word and figures "section 17" by Mah. 36 of 1965, 9(3).

consideration or holds out any promise of individual profit or holds out any threat of injury to any person, or

- (c) who hires or procures, whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station:

Provided that the hiring of a vehicle or vessel by a voter or by several voters at their cost for the purpose of conveying him or them to or from any such polling station shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tram-car or railway carriage by any voter at his own cost for the purpose of going to or coming from any such polling station shall not be deemed to be a corrupt practice under this clause.

Explanation 1- A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2- "A promise of individual profit" does not include a promise to vote for or against any particular measure which may come before a *Panchayat* for consideration, but subject thereto, includes a promise for the benefit of the person himself or any person in whom he is interested.

Explanation 3- The expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.

¹²⁷[(7) If the validity of any election is brought in question only on the ground of an error made by the officer charged with carrying out the rules made in this behalf under Section 176 read with sub-section (2) of Section 10 and Section 11, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.

NOTES

☐ Recount of votes Order by the Court Validity Contention that Returning Officer had colluded with the opponents and not allowed the recount Court allowing recount without first insisting that such application ought to have been filed with Returning Officer Held, as per Apex Court such application cannot be allowed by the Court unless such application is earlier made before the Returning Officer. Hence writ petition allowed. A.I.R. 1997 S.C. 3072; A.I.R. 1975 S.C. 376 referred to. *Sheshrao Nivrati Surwase v/s Nilkanth Jyotiba Gaikwad & others* 2003(6) Bom.C.R. 784

☐ Recount of votes When can be permitted Recount permitted without first their being any application before the Returning Officer Holding it is not permissible unless evidence is led and ground for recount made But in this case where such application has been allowed directed that parties be allowed to lead evidence in support of their petition before the Tribunal. A.I.R. 1997 S.C. 3072; A.I.R. 1975 S.C. 376 referred to. *Sheshrao Nivrati Surwase v/s Nilkanth Jyotiba Gaikwad & others* 2003(6) Bom.C.R. 784

- ❑ Election petition Order of recounting of votes Challenge to Held, order of recounting must be based on evidence adduced before the Election Tribunal. Justification for an order for examination of ballot papers and recounting of votes is not to be derived from hind sight and by result of recounting of votes. 2000(8) S.C.C. 355; A.I.R. 1989 S.C. 640 relied upon. *Bhagwat Vithoba More v/s Civil Judge, Jr. Division & others* 2003(1) Bom.C.R. 21; 2003 (1) All.M.R. 13
- ❑ Election of Village *Panchayat*-Rejection of nomination form-Caste certificate not annexed-By way of interim order of High Court Returning Officer directed to accept nomination-Petitioner declared elected unopposed-Whether petitioner barred from filing writ petition in view of Article 243-O of Constitution-Held, bar of Article 243-O, fundamentally rests on two planks, (i) election must culminate in declaration of result without intermediate interruptions; and (ii) aggrieved party must have remedy under election laws to exclusion of other forum. Here petitioner cannot now be relegated to pursue remedy under election laws. Section 15 of Village *Panchayats* Act, provides for election petition on ground of rejection of nomination papers. Petitioner's papers were accepted by interim orders and declared elected unopposed. Thus remedy under election laws not available. Matter has to be examined by High Court under Article 226 of Constitution. *Anant Janardan Patil v/s State of Maharashtra & others* 2002(4) Bom.C.R. 270; 2002 (0) AIR(Bom) 87; 2002 (2) All.M.R. 80; 2002 (2) Bom.L.R. 40; 2002 (2) Mh.L.J. 238
- ❑ Election petition--Limitation for challenge starts when--Election petition against wrongly accepting caste certificate of candidate, as valid filed within 15 days from declaration of result of the election---Rejected by the C.J. (J.D.) on the ground that election process started from the time when nomination paper was wrongly accepted and that limitation for filing petition also started from that date and petition filed after more than 15 days was barred by limitation---Held, as per section 15 of Bombay Village *Panchayats* Act limitation of 15 days is to start from the date of declaration of results and not from the date of acceptance/rejection of nomination paper. Though the election process starts from the date notification for election is issued, but that is not starting point for limitation. Severe remarks passed against the Judge for taking a view which is not supported by the legal decisions or even the statute. A.I.R. 1952 S.C. 64; A.I.R. 1978 S.C. 851 referred to. *Shobha Kashinath Bhavaskar v/s Returning Officer for the Election of Grampanchayat & another* 2001(3) Bom.C.R. 168; 2001 (1) All.M.R. 654
- ❑ Modification of result--By Returning Officer---Invoking powers under section 21 of General Clauses Act---Validity---Held, under Rules, Returning Officer has a limited power to allow recount the votes for good reasons and likewise Collector also can correct mistake in names of candidates and barring that they have no power to modify, add or vary the results already declared under Rule 34(2) of Rules. To invoke provisions of section 21 of Bombay General Clauses Act, would be to act contrary to provisions of the Rules and the Act as authorities cannot go beyond the statute. 2000(6) SCALE 182; W.P. 4516 of 2000(Bom.); A.I.R. 1976 Kant. 233; A.I.R. 1980 Pat. 189 referred to. *Sarla w/o Sopan Bopale (Smt.) v/s State of Maharashtra & others* 2001(2) Bom.C.R. 730; 2001 (0) AIR(Bom) 159; 2001 (1) All.M.R. 462; 2001 (1) Mh.L.J. 453

- ☐ Maintainability of writ petition---Election to village *Panchayat*---Modification of results---Whether can be challenged in writ petition---Returning Officer modifying the declared results invoking section 21 of General Clauses Act---Held, Officer could not go beyond powers vested in him by statute i.e. Village *Panchayats* Act and Rules. But remedy against it would be by way of election petition under section 15 of the Act and not a writ petition. Directed that limitation for election petition would start from this decision and authority would decide it without being influenced by this decision. *Sarla w/o Sopan Bopale (Smt.) v/s State of Maharashtra & others* 2001(2) Bom.C.R. 730; 2001 (0) AIR(Bom) 159; 2001 (1) All.M.R. 462; 2001 (1) Mh.L.J. 453
- ☐ Scrutiny of nominations—Election programme of gram *Panchayat* published—Nomination form of petitioner rejected—Challenged in writ petition—Whether provisions of Article 226 of Constitution can be invoked—Held, since nomination papers of petitioner have been rejected, keeping in view the mandate of Constitution in Article 243-O(b) and sections 15 and 15-A of Act, remedy available to petitioners is to file election petition in accordance with provisions of Act and not to invoke extraordinary jurisdiction of High Court under Article 226 of Constitution. A.I.R. 1952 S.C. 64; 1998(2) Bom.C.R. (A.B.)352 followed; 1994(4) S.C.C. 526 distinguished. *Vinod Pandurang Bharsakade v/s Returning Officer, Akot & another* 2004(Supp.) Bom.C.R. 1 : 2003(4) Mh.L.J. 359
- ☐ Election to *Panchayat* - Challenge to - Ground that allotment of reserved category seats in various wards as provided for by Collector were interpolated by Tehsildar office thus committed an illegality - Held, elected members have not controverted version of respondents 2 and 5 in their affidavits which accepted that interpolations were made, only submission of respondents (elected members) is that it can only be challenged in an election petition under section 15 of Bombay Village *Panchayat* Act. But in given facts when foundation of election itself is based on manipulations depriving other persons of right to be elected, it would be a fit case for exercising extra ordinary jurisdiction of Court under Article 226 of Constitution to discourage any move to disrupt free and fair elections. *Baburao Kalu Koli v/s State of Maharashtra & ors* 2007(6) Bom.C.R. 6
- ☐ Condonation of delay - Election petition - Under Village *Panchayats* Act - Filed after period of 15 days prescribed under Act, with application for condonation of delay allowed by C.J.,J.D.- Petition against - Contention, section 5 of Limitation Act is not applicable to these proceedings therefore, delay could not be condoned - Contra, C.J.,J.D. in enquiry under section 15(1) of Village *Panchayats* Act is a Civil Court and there is no limitation on its powers and or as to applicability of section 5 of Limitation Act - Held, Apex Court in 1973 DGLS 420 has held that applicability of Act is not to be judged from provisions of Limitation Act, but by provisions of Act relating to filing of petitions to determine whether Act is a complete Code in itself and does not admit of application of provisions of Limitation Act. Same principles were adopted by Court in 2002(2) Bom.C.R. (S.C.) 123. Further law relating to election originates from legislation. It is not a common law right. Herein Bombay Village *Panchayats* Act has specified a limitation of 15 days for challenging validity of an election from date of declaration of results. Object is to adjudicate matter expeditiously and not relegate it to uncertain future. Courts power under section 15 cannot by any logic be extended to condonation of delay in filing it. Thus

provisions of section 5 of Limitation Act stand expressly excluded by special/local law. Order of C.J.,J.D. condoning delay was without jurisdiction. Hence petition liable to be dismissed. *Umesh Tukaram Kamble & ors. v/s Shamrao Sakharam Patil & ors. 2008(1) Bom.C.R. 639; 2008 (2) Mh.L.J. 727*

- ❑ Disqualification of members - Order by Additional Collector on account of default in payment of house tax - Contention that receipts certifying that there were no dues outstanding at time of nomination was produced and hence plea of default is incorrect - Held, plain reading of section 14 of Bombay Village Panchayat Act refers to disqualification of a member in respect of an election or his continuation as elected member of Panchayat. It provides that house tax is to be paid within 3 months of service of tax bill on a member. First clause states that a person will not be deemed as disqualified if he has paid it prior to date for nomination of candidates and second clause that if it is due from a Joint Hindu Undivided Family, joint by custom, it shall disqualify all members of such family. Section 16 provides for disqualification of members under section 14 of Act. Such power to disqualification of members under section 14 of Act. Such power to disqualify a member can be exercised by Collector suo motu or on application from another person. This limit of 60 days is imposed to decide, it can file an appeal to State Government within 15 days and Government decision will be final. There would be no disqualification unless Collector decided question and declares seat as vacant. In instant case Collector on first application asked appellants to file appropriate proceeding in Civil Court under section 15 of Act, and closed file on 23-11-2005. In Court's opinion such an endorsement by Collector was not a decision to disqualify member. Collector had authority to decide it. Hence this action does not amount to a decision and is not a bar under section 11 of C.P.C. for further application. Collector moved on second application dt. 20-12-2005 and heard it. A certificate produced shows that no house tax was due from respondent 2, but this could not be a valid 'no dues' certificate in view of Explanation 2 to section 14(1) because Collector has recorded a finding of house tax due in name of members of joint family. Same is case with petitioner No. 3 as also with petitioner 1 against whom no personal amounts are due. In circumstances it can't be said that petitioners were not defaulters. Petitions dismissed. *Gangubai Laxman Bansode & ors. v/s State of Maharashtra & ors. 2008(3) Bom.C.R. 802; 2008 (1) All.M.R. 310; 2008 (1) Mh.L.J. 619*
- ❑ Code of Civil Procedure, 1908, O. 1, Rr. 1, 2 & O. 2, R. 3 - Election petition of respondents 3 to 5 - Civil Judge allowing - On ground that nomination papers of respondents 3 to 5 herein were wrongly rejected on ground that they had not taken permission from their schools in which they were employed and that this permission was not necessary - Objections of present petitioners were rejected - Petition on grounds inter alia that a joint election petition could not be filed - That Rules of C.P.C. do not apply to election petitions and they have to be decided as per statute only - Held, reading of section 15(1) of Act show that provisions of C.P.C. are applicable to election petitions and further that no compromise, deletion or amendment to pleadings is to be allowed unless there are special circumstances for it. Herein common plea of all respondents was that their nomination papers were wrongly rejected. Therefore, joining them in single election petitions was in accordance with Order 1, Rule 1 & 2 and Order 2, Rule 3 of C.P.C. and all causes of action were joint in single petition. Hence, plea is not tenable. However, decision

of Civil Judge is not proper as it has set aside election of all candidates of ward 4 and 5 whereas challenge was restricted to election of one seat in ward 5, which was reserved for men (Scheduled Tribe and Other Backward Class). Order therefore, went beyond scope of election petition and order to that extent is liable to be set aside. 1969 Mh.L.J. 759 referred. *Deepak Dashrath Chahande & ors. v/s Civil Judge, Junior Division & Ors.* 2011 (5) AIR(BomR) 54 : 2011 (5) All.M.R. 54 : 2011 (5) Bom.C.R. 871 : 2011 (6) Mh.L.J. 29

- ❑ Election petition of respondents 3 to 5 - Teachers in private schools - Whether permission of management was necessary - Held, teachers in private schools cannot be said to be holding office of profit under Government, therefore, such permission was not required. Civil Judge was right in rejecting this plea in view Apex Court decision in 1992 DGLS (soft) 559. Hence, petition partly allowed setting aside order so far it pertains to seats which were not under challenge. *Deepak Dashrath Chahande & ors. v/s Civil Judge, Junior Division & Ors.* 2011 (5) AIR(BomR) 54 : 2011 (5) All.M.R. 54 : 2011 (5) Bom.C.R. 871 : 2011 (6) Mh.L.J. 29

¹²⁸[15A. Bar to interference by Court in electoral matters.-No election to any Panchayat shall be called in question except in accordance with the provisions of Section 15; and no Court other than the Judge referred to in that Section shall entertain any dispute in respect of such election.]

NOTES

- ❑ Scrutiny of nominations—Election programme of gram Panchayat published—Nomination form of petitioner rejected—Challenged in writ petition—Whether provisions of Article 226 of Constitution can be invoked—Held, since nomination papers of petitioner have been rejected, keeping in view the mandate of Constitution in Article 243-O(b) and sections 15 and 15-A of Act, remedy available to petitioners is to file election petition in accordance with provisions of Act and not to invoke extraordinary jurisdiction of High Court under Article 226 of Constitution. A.I.R. 1952 S.C. 64; 1998(2) Bom.C.R. (A.B.)352 followed; 1994(4) S.C.C. 526 distinguished. *Vinod Pandurang Bharsakade v/s Returning Officer, Akot & another* 2004(Supp.) Bom.C.R. 1 : 2003(4) Mh.L.J. 359

16. Disability from continuing as member.- (1) If any member of a Panchayat

- (a) who is elected or appointed as such, was subject to any of the disqualification mentioned in Section 14 at the time of his election or appointment, or
- (b) during the term for which he has been elected or appointed incurs any of the disqualifications mentioned in Section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) ¹²⁹[If any question whether a vacancy has occurred under this Section is raised by the Collector *suo motu* or on an application made to him by any person in that behalf, the Collector

128 Section 15-A was inserted by Mah. 21 of 1994, S.11.

129 This was substituted for the portion beginning with the words "In every case" and ending with the words "from continuing to be a member" by Mah. 36 of 1965, S.10.

shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member.] Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final:

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.

NOTES

- ❑ Disqualification-Complaint against elected members on the ground that they were defaulter in payment of property tax inspite of notice and therefore, disqualified to continue as elected members-Collector holding that notices of alleged arrears were not dated and could not be taken as notices, hence dismissed the petition-Held, in matters of disqualification complaint has only indicate that default has taken place and it is not necessary to give other particulars of default. It is duty of the concerned authority to make enquiries and find out whether disqualification has been incurred. Facts in the case show that three conditions required for proving disqualification: (i) failure to pay a bill presented under section 129(1) of Act; (ii) default must continued for a period of 3 months; and (iii) that amount remained unpaid, have been proved by records of the Gram Panchayat which are presumed to be correct and Collector ought to have given findings of disqualification. 1993(2) S.C.C. 703; A.I.R. 1965 S.C. 1892; 1978(4) S.C.C. 181 referred to. *Suvarna Prakash Patil v/s Anil Hindurao Powar & others* 2003(Supp. 2) Bom.C.R. 19; 2004 (1) All.M.R. 61; 2004 (1) Mh.L.J. 1062
- ❑ Non payment of tax - It is alleged petitioner-elected member of panchayat failed to pay tax - Against judgment of Collector, petitioner filed appeal before Additional Divisional Commissioner who dismissed appeal hence this writ petition - Proceedings under section 16 read with section 14(h) of Act were initiated by respondents 1 to 4 for petitioner's disqualification - Defence of petitioner was that he was not member of Joint Family of his brother - Held, there is no finding recorded by Collector that petitioner and real paternal cousin of petitioner are members of joint family on whose name bill was served. Amount of bill deposited, on last date of bill. Learned Commissioner and Collector proceeded on erroneous assumption that period of 3 months will be equivalent to 90 days. They have clearly proceeded on assumption that period of 3 months will begin from 2-6-2011 instead of 9-6-2011. Impugned judgment set aside. *Uttam H. Jadhav v/s Vishwanath N. Jadhav & ors* 2012(4) Bom.C.R. 90

17. [Fresh election if election or appointment is valid] deleted by Mah. 6 of 1965, S.11.

18. Prohibition of canvassing in or near polling stations.-(1) No person shall, on the date or dates on which a poll is taken in any polling station commit any of the following acts within the polling station, or in any public or private place within a distance of one hundred yards of the polling station, namely.

- (a) canvassing for votes; or
- (b) soliciting the vote of any voter; or
- (c) persuading any voter not to vote at the election; or

- (d) persuading any voter not to vote for any particular candidate; or
- (e) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to two hundred and fifty rupees.

(3) An offence punishable under this Section shall be cognizable.

19. Penalty for disorderly conduct in or near polling station.-(1) No person shall, on the date or dates on which a poll is taken at any polling station,

- (a) use or operate, within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loud-speaker, or
- (b) shout, or otherwise act in a disorderly manner, or at the entrance of the polling station or in any public or private place in the neighbourhood thereof, so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

(2) Any person who contravenes, or willfully aids or abets the contravention of, the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to two hundred and fifty rupees.

(3) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this Section he may direct any police officer to arrest such person and thereupon the police officer shall arrest him.

(4) Any police Officer may take such steps and use such force, as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1), and may seize any apparatus used for such contravention.

20. Penalty for misconduct at polling station.-(1) Any person who during the hours fixed for the poll at any polling station, misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the presiding officer, he shall, on conviction, be punished with fine which may extend to two hundred and fifty rupees.

(4) An offence punishable under sub-section (3) shall be cognisable.

21. Maintenance of secrecy of voting.-(1) Where an election is held by ballot, every officer, clerk, agent or other person who performs any duty in connection with the recording or

counting of votes at an election shall maintain and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine or with both.

22. Officers etc., at elections not to act for candidates or influence voting.- (1) No person who is a returning officer, or a presiding or polling officer at an election or an officer or clerk appointed by the returning officer or the presiding officer to perform any duty in connection with an election shall, in the conduct or the management of the election, do any act (other than the giving of his vote) for the furtherance of the prospects of the election of a candidate.

(2) No such person as aforesaid, and no member of a police force, shall endeavour.

- (a) to persuade any person to give his vote at an election, or
- (b) to dissuade any person from giving his vote at an election, or
- (c) to influence the voting of any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

23. Breaches of official duty in connection with elections.-(1) If any person to whom this Section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall, on convictions, be punished with fine which may extend to five hundred rupees.

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such Act or omission as aforesaid.

(3) The persons to whom this Section applies are the returning presiding officers, polling officers and any other persons appointed to perform any duty in connection with the maintenance of the list of voters, the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election and the expression "official duty" shall for the purposes of this Section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act.

24. Removal of ballot papers from polling stations to be an offence.-(1) Any person who, at any election, fraudulently takes, or attempts to take a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

Provided that, when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(3) Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the presiding officer, or when the search is made by a police officer, shall be kept by such officer in safe custody.

(4) An offence punishable under sub-section (1) shall be cognizable.

25. Other offences and penalties therefor.- (1) A person shall be guilty of an offence if, at any election, he-

- (a) fraudulently defaces or fraudulently destroys any nomination paper; or
- (b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a returning officer; or
- (c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or
- (d) without due authority supplies any ballot paper to any person; or
- (e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or
- (f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election; or
- (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

(2) Any person guilty of an offence under this Section shall—

- (a) if he is returning officer or a presiding officer at a polling station or any other officer or clerk employed on official duty in connection with the election, on conviction, be punished with imprisonment for a term which may extend to two years or with fine or with both;
- (b) if he is any other person, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

(3) For the purposes of this Section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act.

(4) An offence punishable under clause (b) of sub-section (2) shall be cognizable.

26. Prosecution in certain offences.- No Court shall take cognizance of an offence punishable under Section 22 or under Section 23 or under clause (a) of sub-section (3) of section 25 unless there is complaint made by an order for under authority from the Collector.

27. Term of office of members.-(1) The members of a *Panchayat* shall, save as otherwise provided in this Act, hold office for a ¹³⁰[term of five years].

¹³¹[(2) The members of a *Panchayat* constituted upon its dissolution before the expiration of its duration shall continue only for the remainder of the period for which the members of the dissolved *Panchayat* would have continued under sub-section (1) had it not been so dissolved.]

28. Commencement of term of office.-(1) The term of office of the members elected at a general election ¹³²[***] or appointed under sub-section (3) of Section 10 shall be deemed to commence on the date of the first meeting of the *Panchayat*. The first meeting of the *Panchayat* shall be held on a day fixed by the ¹³³[Collector] ¹³⁴[as soon as may be after the publication of the names of the elected members under Section 10; and such date shall not-

- (i) in the case of first meeting after general election, be later than the day immediately following the day of expiry of the term of outgoing members; and
- (ii) in the case of election held after the dissolution of the *Panchayat* be later than the date of expiry of the period of six months from the date of dissolution of the *Panchayat*.]

¹³⁵[***]

¹³⁶[***]

¹³⁷**29. Registration of member and disputes regarding resignation.**-(1) Any member who is elected may resign his office by writing under his hand addressed to the *Sarpanch* and the *Sarpanch* may resign his office of member by writing under his hand addressed to the Chairman of the *Panchayat* Samiti. The resignation shall be delivered in the manner prescribed.

(2) On receipt of the resignation under sub-section (1), the *Sarpanch* or, as the case may be, the Chairman of the *Panchayat* Samiti shall forward it to the Secretary who shall place it before the meeting of the *Panchayat* next following.

(3) If any member or the *Sarpanch* whose resignation is placed before the meeting of the *Panchayat* wants to dispute the genuineness of the resignation, he shall refer such dispute to the Collector within seven days from the date on which his resignation, is placed before the meeting of the *Panchayat*. On the receipt of dispute, the Collector shall decide it, as far as possible, within fifteen days from the date of its receipt.

130 These words were substituted for the words "term of four years" by Mah. 38 of 1973, S. 3(1).

131 Sub-section (2) was substituted by Mah. 21 of 1994, S. 12.

132 The words "including the Chairman or Chairman of the co-operative society or societies, as the case may be, referred to in clause (a) of Sub-section (1) of Section 10" were deleted by Mah. 21 of 1994, S. 13(1)(a).

133 This word was substituted for the words "Chief Executive Officer" by Mah. 43 of 1962, S. 26 Sch.

134 This portion was substituted for the portion beginning with the words "within four weeks" and ending with the word and figures "Section 10" by Mah. 21 of 1994, S. 13(1)(b).

135 This proviso was deleted by Mah. 21 of 1994, S. 13(1)(c).

136 Sub-section (2) was deleted by Mah. 21 of 1994, S. 13(2).

137 Section 29 was substituted for the original by Mah. 13 of 1975, S. 6.

(4) The member of *Sarpanch* aggrieved by the decision of the Collector may, within seven days from the date of receipt of the Collector's decision, appeal to the Commissioner who shall decide it, as far as possible, within fifteen days from the date of receipt of the appeal.

(5) The decision of the Collector, subject to the decision of the Commissioner in appeal, shall be final.

(6) The resignation shall take effect,-

- (a) where there is no dispute regarding the genuineness, after the expiry of seven days from the date on which it is placed before the meeting of the *Panchayat*;
- (b) where the dispute is referred to the Collector and no appeal is made to the Commissioner after the expiry of seven days from the date of rejection of the dispute by the Collector;
- (c) where an appeal is made to the Commissioner, immediately after the appeal is rejected by the Commissioner.]

NOTES

☐ Interpretation of statute - Dispute - As to resignation by *Sarpanch* - *Sarpanch* contending that he had not written letter by his hand nor did he tender it - Resolution affirming that he had resigned and that same was voluntary was wrongly passed - Collector on enquiry rejected his contention - Appeal also dismissed - Petition against that - Held, proceedings shows that members concentrated on only fact that resignation was tendered and did not think it necessary to discuss matter further. But because petitioner had raised objection in meeting shows his unwillingness to resign. Authorities below have not applied their mind to this aspect and failed to apply judicial mind to contentions issue. Order cannot be regarded as an order in eye of law. Section 34(1) of Act provides that *Sarpanch* can resign his office by writing in his hand to Chairman of *Panchayat* Samiti. Petitioner denies this fact that resignation was in his handwriting. Authorities have not taken pains to verify this aspect. Expression genuineness of resignation in section 29 of Act will have to be interpreted broadly. It was necessary to examine whether he really wanted to give up post. He was at liberty to withdraw it before it was given effect in legal parlance. Petition allowed. *Ravindra Bhaskar Lumpataki v/s Chairman & ors 2006(6) Bom.C.R. 595; 2006 (6) Mh.L.J. 74* Appeal against resignation by a Member—Appeal against order of Additional Collector under section 29(3) entertained by Commissioner under section 29(4)—Held, provisions of section 29(4) have to be read in harmony with section 29(1), (2) and (3). Commissioner can hear appeal against resignation by *Sarpanch* and not against resignation by a member. Such appeal has to be heard by Collector and right to 2nd appeal can only accrue to a aggrieved member or *Sarpanch* under section 29(4). 1991(2) Bom.C.R. 383 referred to. *Pushpa Pundlik Salame v/s Additional Commissioner, Amravati Division & others 2003(Supp.) Bom.C.R. 640; 2003 (2) All.M.R. 640; 2003 (2) Bom.L.R. 544; 2003 (1) Mh.L.J. 756*

☐ Resignation of members---Acceptance of, in meeting of village *Panchayat*---Application to Collector stating resignation not voluntary---Collector ordering re-election to seats of resigned members without notice explanation or hearing---Contention order of Collector in violation of principles of natural justice, relying upon Division Bench decision in 2003(2)

Bom.C.R. 821 Held, decision of Division Bench involved dissolution of *Panchayat*. Here all members had not been unseated by dissolution. Those who resigned were to vacate office and re-election was ordered. Order did not adversely affect or prejudice those members still in office. Ratio regarding observance of principles of natural justice has no application in this case. 2003(2) Bom.C.R. 821 distinguished. *Anil Kalgonda Patil & others v/s Gram Panchayat, Chipri & others* 2003(5) Bom.C.R. 667; 2004 (1) Mh.L.J. 245

¹³⁸[30. Election of *Sarpanch*.-(1) Every *Panchayat* shall be presided over by a *Sarpanch* who shall be elected by, and from amongst, the elected members thereof.

(2) The election of the *Sarpanch* shall be held in the first meeting held after every general election.]

(3) No member of a *Panchayat* shall be eligible for being elected, or for continuing, as *Sarpanch* if he holds the office of the President or Vice-President of any Zilla Parishad or Chairman of any Subjects Committee thereof or the Chairman or the Deputy Chairman of any *Panchayat* Samiti; and if a *Sarpanch* is elected to any of such offices, his office as *Sarpanch* shall become vacant from the date of such election.

(4) There shall be reservation in the offices of the *Sarpanchas* in the *Panchayat* for the members belonging to the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women as follows.

- (a) the number of offices of *Sarpanchas* to be reserved for the Scheduled Castes and the Scheduled Tribes in the *Panchayat* shall bear, as nearly as may be, the same proportion to the total number of such offices in the *Panchayats* as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State ¹³⁹[excluding the population of the Scheduled Tribes in a *Panchayat* comprising entirely the Scheduled Areas] bears to the total population of the State:

¹⁴⁰[Provided that, the office of the *Sarpanch* of a *Panchayat* comprising entirely the Scheduled Areas shall be reserved only for the persons belonging to the Scheduled Tribes:

Provided further that, the office of the *Sarpancha* of a *Panchayat* falling only partially in the Scheduled Areas shall be reserved for the persons belonging to the Scheduled Tribes in accordance with the provisions of clause (a):]

¹⁴¹[Provided also that], ¹⁴²[one-half of the total number of offices] so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes;

138 Section 30 was substituted by Mah. Act 21 of 1994, S. 14.

139 These words were inserted by Mah. 40 of 1997, S. 4(a) (w.e.f. 7.8.1997)

140 These provisos were inserted by Mah. 40 of 1997, S. 4(b) (w.e.f. 7.8.1997)

141 These words were substituted for the words "Provided that" by Mah. 40 of 1997, S. 4(c) (w.e.f. 7.8.1997)

- (b) the offices of *Sarpanchas* to be reserved for persons belonging to the category of Backward Class of citizens shall be 27 per cent of the total number of such offices in the *Panchayats*:

Provided that, ¹⁴³[one-half of the offices] so reserved shall be reserved for women belonging to the category of Backward Class of Citizens.

- (c) ¹⁴⁴[one-half of the total number of offices of *Sarpanchas*] (including the number of offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of Citizens) in the *Panchayat* shall be reserved for women.

(5) The number of offices reserved under this Section shall be allotted by rotation to different *Panchayats* in the prescribed manner.

(6) The reservation of offices of *Sarpanchas* (other than the reservation for women) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.]

NOTES

- ❏ Post of *Sarpanch*—Reserved for women of general category—Whether de-reservation is possible in absence of eligible candidate in view of Rule 4-A of Proviso of Bombay Village *Panchayats* Election Rules—Held, though women candidate of general category is not available for allotment of office, it cannot be said that any other male candidate belonging to general category or Scheduled Castes or Scheduled Tribes or Backward Class of citizens is entitled for such allotment of same post. The Rules do not make provision for such contingency and it is not possible to accept that petitioner can be allotted post or same can be filled in by drawing lots. De-reservation of such post can only be done by legislature. *Suresh Balkrishna Pogale v/s State of Maharashtra & others 2004(1) Bom.C.R. 821; 2003 (3) Mh.L.J. 782*

¹⁴⁵[30-1A. Person contesting election for reserved office of *Sarpanch* to submit Caste Certificate and Validity Certificate.- Every person desirous of contesting election to the office of the *Sarpanch* reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of citizens, shall be required to submit alongwith the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward

142 Substituted for "one third of the total number of offices" by the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act (Mah. 19 of 2011), dated 21st April, 2011.

143 Substituted for "one third of the offices" by the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act (Mah. 19 of 2011), dated 21st April, 2011.

144 Substituted for "one third of the total number of offices of *Sarpanchas*" by the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act (Mah. 19 of 2011), dated 21st April, 2011.

145 Section 30-1A inserted by Mah. 5 of 2009 dated 9th January 2009 (w.e.f. 01-08-2009), s. 3.

Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah. XXIII of 2001).]

¹⁴⁶[Provided that, for the elections for the post of Sarpanch for which the last date of filing of nomination falls on or before the 31st December 2013, in accordance with the election programme declared, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, alongwith the nomination papers,-

- (i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and
- (ii) an undertaking that he shall submit within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee:

Provided further that, if the person fails to produce the Validity Certificate within a period of six months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Sarpanch.]

¹⁴⁷[30A. Election of *Upa-Sarpanch*.- (1) Every *Panchayat* shall elect one of its elected members to be *Upa-Sarpanch*.

(2) The provisions of sub-sections (2) and (3) of Section 30 shall *mutatis mutandis* apply in the case of *Upa-Sarpanch*].

31. Terms of office of Sarpanch and Upa-Sarpanch.-Save as otherwise provided in this Act, a *Sarpanch* and an *Upa-Sarpanch* shall hold office for the term of the *Panchayat*.

¹⁴⁸[***]

¹⁴⁹[32 *** *Sarpanch* to carry on current duties until his successor is appointed] Deleted by Mah. 21 of 194, S.17.

146 Provisos substituted by Mah. 29 of 2012, s.3 (w.e.f. 04-10-2012). Prior to substitution provisos reas as:
"Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before the 31st December 2011, in accordance with the election programme declare by the State Election Commission, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, alongwith the nomination papers,—

- (i) a true copy of the application preferred by him to the Scrutiny committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and
- (ii) an undertaking that he shall submit, within a period of four months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee:

Provided further that, if the person fails to produce the Validity Certificate within a period of four months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Sarpanch."

147 Section 30-A was inserted by Mah. 21 of 1994, S. 15.

148 The words "and when the term is extended also for such extended term" were deleted by Mah. 21 of 1994, S. 16.

¹⁵⁰[32A. Travelling and daily allowances to members.- The members of a *Panchayat* (including its *Sarpanch* and *Upa-Sarpanch*) may be paid such travelling and daily allowances for journeys undertaken in relation to any business of the *Panchayat* as may be prescribed.]

33. Procedure for election of *Sarpanch* and *Upa-Sarpanch*.-(1) On the establishment of a *Panchayats* for the first time under this Act, or on its reconstitution or establishment under Sections 145 and 146, or on the expiry of the term ¹⁵¹[***] of a *Panchayat* a meeting shall be called on the date fixed under sub-section (1) of Section 28 by the ¹⁵²[Collector], for the election of the *Sarpanch* and *Upa-Sarpanch*. In the case where the offices of both the *Sarpanch* and *Upa-Sarpanch* become vacant simultaneously, a meeting shall be called on the date fixed by the ¹⁵³[Collector], for the election of the *Sarpanch* and *Upa-Sarpanch*.

(2) The meeting called under sub-section (1) shall be presided over by such officer as the ¹⁵⁴[Collector] may by order appoint in this behalf. The officer aforesaid shall, when presiding over such meeting, have the powers and follow the procedure prescribed, but shall not have the right to vote.

(3) No business other than the election of the *Sarpanch* and *Upa-Sarpanch* shall be transacted at such meeting.

(4) If in the election of the *Sarpanch* or *Upa-Sarpanch* there is an equality of votes, the result of the election shall be decided by lot drawn in the presence of the officer presiding in such manner as he may determine.

(5) In the event of a dispute arising as to the validity of the election of a *Sarpanch* or *Upa-Sarpanch* under sub-section (1) ¹⁵⁵[the officer presiding over such meeting or any member ¹⁵⁶[***] may, within fifteen days from the date of the election, refer the dispute to the Collector for decision. An appeal against the decision of the Collector may, within fifteen days from the date of such decision, be filed before the Commissioner, whose decision shall be final. The Collector or Commissioner shall give his decision as far as possible within sixty days of the receipt of the reference, or as the case may be, appeal.]

NOTES

☐ Election of *Sarpanch*---Order for repoll---Validity---In first round petitioner polling 3 votes and respondent 7 polling 2 votes valid and 2 votes declared invalid---Election Officer wrongly believing that 2/3 majority vote was required for success ordered repoll---In repoll respondent 7 getting 4 votes out of 7 declared as elected---Addl. Collector in appeal setting aside order of repoll and declared petitioner as elected---But Addl. Commissioner again upset Addl. Collector's order and ordered repoll---Held, *Panchayat* Act or Rules do not

149 Section 32 was deleted by Mah. 21 of 1994, S. 17.

150 Section 32A was inserted by Mah. 36 of 1965, S. 15.

151 The words "or extended term" were deleted by Mah. 21 of 1994, S. 18(1).

152 This word was substituted for the "Chief Executive Officer" by Mah. 43 of 1962, S. 26, Sch.

153 This word was substituted for the "Chief Executive Officer" by Mah. 43 of 1962, S. 26, Sch.

154 This word was substituted for the "Chief Executive Officer" by Mah. 43 of 1962, S. 26, Sch.

155 This portion was substituted for the portion beginning with the words "the dispute shall be referred" and ending with the words "any such decision" by Mah. 36 of 1965, S. 16.

156 The brackets and words "(other than an associate member)" were deleted by Mah. 21 of 1994, S. 18(2)

require that 2/3 votes are required for success. Petitioner who got more votes ought to have been declared elected. Addl. Commissioner had wrongly interfered with Addl. Collector's order who correctly declared petitioner as elected. *Meena Shriram Thakre v/s Election Officer appointed for conducting election of Sarpanch and Up-Sarpanch of Gram Panchayat & others 2001(Supp. 2) Bom.C.R. 24; 2001 (3) All.M.R. 568; 2001 (4) Mh.L.J. 691*

- ❑ Election of *Sarpanch*---Petitioner's identity---Dispute at time of election of *Sarpanch* on the ground that one who got elected to *Panchayat* from Ward I was Najir and not Najer as is the name of petitioner---Najir was name of petitioner's brother who has not contested the election and was voter of other Ward No. 2 had given affidavit that his brother Najer only had contested from Ward I and won---Other affidavits of Talathi and Police Patil also confirming the same fact that name at Sr. 521 of Ward I was wrongly recorded as Najir instead of Najer---Additional Collector holding that petitioner was not the person who got elected---Held, Additional Collector had not considered the affidavits other evidence on records at all and had gone only by the voter's list fact that Najir was listed in another Ward 2 made it clear that it was Najer who contested and won from Ward I: Directed that Additional Collector to reconsider the entire evidence on record and pass appropriate orders. *Sayed Najer @ Sayed Najir s/o Baba & another v/s Returning Officer & others 2002(3) Bom.C.R. 405; 2002 (1) All.M.R. 556*
- ❑ Election petition - Petition challenging election of *Sarpanch* and up-*Sarpanch* - On ground of procedural requirements for holding secret ballot - Election set aside by Additional Collector - Order upheld by Additional Commissioner - Challenged - Held, no cross-examination of dependants of affidavits of respondents and they have not substantiated pleas. By relying upon minutes of meeting and absence of entry therein pertaining to demand for secret ballot, not open for Additional Collector and Additional Commissioner to render finding election was vitiated. Both courts proceeded erroneously and failed to discharge their duty in law while deciding election dispute. 1994(3) Bom.C.R. (S.C.)498 distinguished. *Jabin Akhtar Shirgonkar & ors. v/s Samshad Iqbal Mukadam & ors. 2006(2) Bom.C.R. 9*
- ❑ Elections - Of *Sarpanch*, up-*Sarpanch* - Challenged before Additional Collector - Elections set aside holding that there was no demand for holding election by secret ballot - Appeal dismissed by Additional Collector - Challenged - Contention, material facts with regard to demand for secret ballot not pleaded at all - Held, gross error committed by Additional Collector by allowing petitioners to argue petition on basis that voting by secret ballot was without any demand and elections vitiated in law. It was not noticed in appeal. Authorities allowed parties to travel beyond pleadings and complaint of council for petitioners that there was a mis-direction in law, justified. 1994(3) Bom.C.R. (S.C.)498 distinguished. *Jabin Akhtar Shirgonkar & ors. v/s Samshad Iqbal Mukadam & ors. 2006(2) Bom.C.R. 9*
- ❑ Scrutiny of nomination---Whether can be done in a meeting without requisite quorum---Presiding Officer proceeding to examine papers and rejecting nomination paper---Held, commencement of meeting without quorum was invalid. *Jyoti Gautam Patil (Smt.) v/s Presiding Officer & others 2001(2) Bom.C.R. 725; 2001 (1) All.M.R. 472; 2001 (1) Mh.L.J. 424*

- Writ jurisdiction---Scope---Election petition against Election Officer's action ordering repoll though petitioner had secured more votes---Addl. Collector declaring petitioner elected but Addl. Commissioner in appeal ordering repoll---Held, scope of judicial review is basic structure of the Constitution and where the action of authorities below are violative of statutory or constitutional provisions---Court can interfere. A.I.R. 1999 S.C.W. 1353 referred to. *Meena Shriram Thakre v/s Election Officer appointed for conducting election of Sarpanch and Upa-Sarpanch of Gram Panchayat & others 2001(Supp. 2) Bom.C.R. 24; 2001 (3) All.M.R. 568; 2001 (4) Mh.L.J. 691*
- Draw of lots - Whether prejudiced appellants - Additional Commissioner upholding decision of Additional Collector to declare successful candidate by draw of chits as both sides had secured equal votes - Contention that while putting chits for draw, Returning Officer had also put blank chits which was not proper - Additional Commissioner upheld this contention - But Single Judge has allowed appeal against Additional Commissioner's orders and elected candidates stand restored - L.P.A. against it - Held, section 33 prescribes procedure for election of Sarpanch/Upa-Sarpanch and sub-section (4) of section 33 of Panchayats Act, provides for draw of lots in case of equality of votes. There is no provision for putting blank chits in draw, therefore, this action was illegal. But on facts no prejudice is caused to appellants by introduction of these chits. Draw could be in manner as he (officer) may determine. If child had picked up a blank chits first he was again asked to pick up another and on second occasions he picked up one with candidate name. Hence no error of law is committed by Single Judge in this case and there is no case for interfere in appeal. *Ramdas Motiramji Matode & anr. v/s Additional Commissioner & Ors 2011 (3) AIR(BomR) 283 : 2011 (3) AIR(BomR) 368 : 2011 (4) Bom.C.R. 619 : 2011 (3) Mh.L.J. 462*
- Letters Patent Appeal - Against Single Judge rejecting writ petition of appellants against decision of Additional Commissioner who after setting aside election of appellant 1, declared respondent 5 as elected in his place - Contention that Additional Commissioner could set aside election but could not declare respondent 5 as elected in place of appellant 1 - Reliance on section 84 of Representation of People Act and section 21 of Maharashtra Municipalities Act which permit such a course is contested on ground that provisions of section 33(5) of Bombay Village Panchayats Act and Rule 10(2) Maharashtra Village Panchayats Election Rules are not similar to provisions of referred Acts hence not applicable to Bombay Village Panchayats Act - Held, issue in present case is whether in spite of two votes been declared invalid Returning Officer was justified in declaring appellant 1 as elected. Particularly when secrecy of voting was vitiated by allowing assistance to two voting members. Further provisions of section 33(5) of Act and Rule 10(2) of Rules do not empower authorities to declare a candidate elected in proceedings under section 33(5) of Act. View adopted by Additional Commissioner and affirmed by Single Judge in writ petition are therefore, liable to be quashed and election held on 11-10-2008 is also set aside. Tahsildar will take steps to hold fresh elections at earliest. Letter Patent Appeal allowed. 2009(1) Bom.C.R. 243(N.B.); 1991(3) Bom.C.R. 585; 2001(Supp.) Bom.C.R. 139(A.B.) referred to and relied upon. *Mahadeo Rambhau Athawale & ors. v/s Additional Divisional Commissioner & Ors. 2011 (6) Bom.C.R. 313 : 2012 (2) All.M.R. 572 : 2012 (1) AIR(BomR) 367 : 2012 (3) Mh.L.J. 381*

☐ Election to village Panchayat Sarpanch - Reserved for OBC candidate - Respondent though belongs to OBC category he was not elected from a reserved seat - He contested for Sarpanch's post reserved for OBC, but his nomination paper was rejected on ground that he was not elected from OBC seat, he had not produced OBC certificate for this election - Subsequently there was no other candidate opposing petitioner he was declared unopposed - On election petition his election was set aside - Held, decision is not sustainable. Settled position of law is that respondent 1 belonged to OBC class and could not be barred to be Sarpanch reserved for OBC category merely because he was not elected from OBC seat. 1998(1) Bom.C.R. (S.C.)679. That he had not produced validity certificate of OBC for election is equally untenable, because he was contesting from a general seat, there was no need for him to file his OBC certificate then. Hence both reasons for setting aside his election are untenable and petition liable to be rejected. *Maruti Rayba Karche v/s Nana Jayram Rane & Ors.* 2012 (3) Bom.C.R. 31 : 2012 (3) All.M.R. 750

¹⁵⁷[33A. **Sumptuary allowance to Sarpanch.**-Subject to any rules made by the State Government in this behalf, there shall be placed at the disposal of the *Sarpanch*, a sum equal to two per cent of the annual income of the *Panchayat* or six thousand rupees per annum, whichever is less, as sumptuary allowance.]

¹⁵⁸[34. **Resignation by Sarpanch or Upa-Sarpanch.**- (1) The *Sarpanch* may resign his office by writing under his hand addressed to the Chairman of the *Panchayat Samiti*. ¹⁵⁹[***]

(2) The *Upa-Sarpanch* may resign his office by writing under his hand addressed to the *Sarpanch* ¹⁶⁰[***].

(3) The notice of resignation shall be delivered in the manner prescribed.

¹⁶¹[(4) The provisions of sub-sections (2), (3),(4), (5) and (6) of section 29 shall *mutatis mutandis* apply to the resignations tendered under sub-sections (1) and (2) of this Section as they apply to the resignation tendered under sub-section (1) of that Section.

NOTES

☐ Interpretation of statute - Dispute - As to resignation by *Sarpanch* - *Sarpanch* contending that he had not written letter by his hand nor did he tender it - Resolution affirming that he had resigned and that same was voluntary was wrongly passed - Collector on enquiry rejected his contention - Appeal also dismissed - Petition against that - Held, proceedings shows that members concentrated on only fact that resignation was tendered and did not think it necessary to discuss matter further. But because petitioner had raised objection in meeting shows his unwillingness to resign. Authorities below have not applied their mind to this aspect and failed to apply judicial mind to contentions issue. Order cannot be regarded as an order in eye of law. Section 34(1) of Act provides that *Sarpanch* can resign

157 Section 33A was inserted by Mah. 10 of 1992, S. 2

158 Section 34 was substituted by Mah. 36 of 1965, S. 17.

159 The words "and his office shall thereupon become vacant" were deleted by Mah. 13 of 1975, S. 8(a).

160 The words "and his office shall thereupon become vacant" were deleted by Mah. 13 of 1975, S. 8(a).

161 Sub-section (4) was inserted by Mah. 13 of 1975, S. 8(b).

his office by writing in his hand to Chairman of *Panchayat* Samiti. Petitioner denies this fact that resignation was in his handwriting. Authorities have not taken pains to verify this aspect. Expression genuineness of resignation in section 29 of Act will have to be interpreted broadly. It was necessary to examine whether he really wanted to give up post. He was at liberty to withdraw it before it was given effect in legal parlance. Petition allowed. *Ravindra Bhaskar Lumpataki v/s Chairman & ors 2006(6) Bom.C.R. 595; 2006(6) Mh.L.J. 747*

35. Motion of no confidence- ¹⁶²[(1) A motion of no confidence may be moved by not less than ¹⁶³[one-third] of the total number of the members ¹⁶⁴[***] who are for the time being entitled to sit and vote at any meeting of the *Panchayat* against the *Sarpanch* or the *Upa-Sarpanch* after giving such notice thereof to the Tahsildar as may be prescribed. ¹⁶⁵[Such notice once given shall not be withdrawn].

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the *Panchayat* for considering the motion of no confidence at the office of the *Panchayat* at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the *Sarpanch*, or the *Upa-Sarpanch* against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting (including the right to vote).

(3) If the motion is carried by ¹⁶⁶[a majority of not less than two-third of] ¹⁶⁷[***] the total number of the members ¹⁶⁸[***] who are for the time being entitled to sit and vote at any meeting of the *Panchayat* the *Sarpanch* or the *Upa-Sarpanch*, as the case may be, ¹⁶⁹[shall forthwith stop exercising all the powers and perform all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the *Upa-Sarpanch* in case the motion is carried out against the *Sarpanch*; and in case the motion is carried out against both the *Sarpanch* and *Upa-Sarpanch*, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:

Provided that, if the dispute so referred is decided in favour of the *Sarpanch* or, as the case may be, *Upa-Sarpanch*, thereby setting aside such motion, the powers, functions and duties of the *Sarpanch* or *Upa-Sarpanch* shall forthwith stand restored, and if the dispute is

162 These sub-sections were substituted for sub-section (1),(2) and (3) by Mah. 13 of 1975, S. 9.

163 These words were substituted for the words "one fifth" by Mah. 27 of 2000, S. 2(1) (w.e.f. 22.4.2000)

164 The brackets and words "other than associate members" were deleted by Mah. 21 of 1994, S. 19(1) (w.e.f. 22.4.1994)

165 These words were added by Mah. 10 of 1992, S. 3(1)(w.e.f. 28.4.1992)

166 These words were substituted for the words "a majority of" by Mah. 27 of 2000, s. 2(2).

167 The words "not less than two-thirds of" were deleted by Mah. 5 of 1997, S.2(2).

168 The brackets and words "(other than associate members)" were deleted by Mah. 21 of 1994, S. 19(2) (w.e.f. 22.4.1994).

169 Substituted for "shall cease to hold office after seven days from the date on which the motion was carried unless he has resigned earlier or has disputed the validity of the motion so carried as provided in sub-section (3-B); and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant" by Mah. 16 of 2012, s.3(i)(a) (w.e.f. 02-10-2012).

decided confirming the motion, the office of the *Sarpanch* or, as the case may be, *Upa-Sarpanch* shall be deemed to have fallen vacant from the date of the decision of the dispute, unless the incumbent has resigned earlier:

Provided further that, in cases where the offices of both the *Sarpanch* and *Upa-Sarpanch* become vacant simultaneously, the officer authorised under this sub-section shall, pending the election of the *Sarpanch*, exercise all the powers and perform all the functions and duties of the *Sarpanch* but shall not have the right to vote in any meetings of the *panchayat*:]

¹⁷⁰[¹⁷¹ [Provided also that], where the office of the *Sarpanch* being reserved for a woman, is held by a woman *Sarpanch*, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the *Panchayat*.];

¹⁷²[¹⁷³ [Provided also that], no such motion of no-confidence shall be brought within a period of six months from the date of election of *Sarpanch* or *Upa-Sarpanch*.]

(3-A) If the motion ¹⁷⁴[is not moved or is not carried] by ¹⁷⁵[a majority of not less than two-third of ¹⁷⁶[or, as the case may be, three fourth, of] ¹⁷⁷ [***] the total number of the members ¹⁷⁸ [***] who are for the time being entitled to sit and vote at any meeting of the *Panchayat*, no such fresh smotion shall be moved against the *Sarpanch* or, as the case may be, the *Upa-Sarpanch* within a period of ¹⁷⁹[¹⁸⁰ [one year from the date of such special meeting].

(3-B) If the *Sarpanch* or, as the case may be, the *Upa-Sarpanch* desires to dispute the validity of the motion carried under sub-section (3), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it as far as possible, ¹⁸¹[within thirty days from the date on which it was received by him and his decision shall be final].

¹⁸²[* * *]

170 Inserted by Mah. 28 of 2003 dated 08-08-2003 s.4(a)(i).

171 Substituted for "Provided that" by Mah. 16 of 2012, s.3(i)(b) (w.e.f. 02-10-2012).

172 Proviso added by Mah. 5 of 1997, s.2(2)(b).

173 Substituted for "Provided further that" by Mah. 16 of 2012, s.3(i)(c) (w.e.f. 02-10-2012).

174 These words were substituted for the words "is not carried" by Mah. 10 of 1992, S. 3(2)(a).

175 These words were substituted for the words "a majority of" by Mah. 27 of 2000, S. 2(3) (w.e.f. 2.3.2000).

176 Inserted by Mah. 28 of 2003 dated 08-08-2003 s. 4 (b).

177 The words "not less then two-thirds of" were deleted by Mah. 5 of 1997, S. 2(3) (a) (w.e.f. 2.1.1997).

178 The brackets and words "(other than associate member)" were deleted by Mah. 21 of 1994, S. 19(3).

179 These words were substituted by Mah. 10 of 1992, S. (3)(2)(b).

180 These words were substituted for the words "six months" by Mah. 16 of 2001, S.2 (w.e.f. 10.2.2001).

181 Substituted for "within fifteen days from the date on which it was received by him; and any such decision shall, subject to an appeal under sub-section (3-C), be final" by Mah. 16 of 2012, s.3(ii) (w.e.f. 02-10-2012).

182 Sub-sections (3C), (3D) and (4) deleted by Mah. 16 of 2012, s.3(iii) (w.e.f. 02-10-2012). Prior to deletion the sub-sections (3C), (3D) and (4) read as:

"(3-C) Any person aggrieved by the decision of the Collector may, within seven days from the date of receipt of such decision, appeal to the Commissioner who shall decide the appeal, as far as possible, within fifteen days from the date on which the appeal is received by him, and any such decision shall be final.

"(3-D) Where on a reference made to him under sub-section (3B), the Collector upholds the validity of the motion carried under sub-section (3) and no appeal is made by the *Sarpanch* or the *Upa-Sarpanch* under sub-section (3-C) within the limitation period specified in that sub-section, or where an appeal is made under sub-section (3-C) but it is rejected by the Commissioner, the *Sarpanch* or as the case may be, the *Upa-Sarpanch*

NOTES

- ❑ Condonation of delay—Whether permissible—Collector deciding dispute under section 35(3-B) of the Village *Panchayats* Act—Held, is not a proceedings before this Court and section 5 of the Limitation Act, has no application in the matter of dispute as raised. *Prabhakar Sabaji Kandalkar v/s Tahsildar, Sangamner & others* 2002(Supp.) Bom.C.R. 548; 2002 (1) All.M.R. 606; 2002 (1) Mh.L.J. 881
- ❑ Days of notice---How to be counted---Notice for no confidence motion received by Tahsildar on 6th November and meeting convened on 13th November---Contention that meeting was not held within 7 days as required under section 35(1) of the Bombay Village *Panchayats* Act hence same is not legal---Held, while considering service of notice the day on which notice is served has to be excluded.---In the instant case day of 6th November was to be excluded and when done so meeting on 13th November was clearly on the 7th day and therefore, valid meeting. A.I.R. 1970 Bom. 1 referred to. *Prabhakar Madhav Jadhav v/s State of Maharashtra & others* 2003(2) Bom.C.R. 871
- ❑ Interpretation of statutes—No confidence motion resolution—Provision of additional copies—Resolution under Rule 2(2) whether mandatory—Held, word 'shall' is used in Rules and in ordinary parlance is a 'word of command' and denotes 'obligation'. But where no right or benefit to any one depends on its being taken in imperative sense, word can be taken as merely permissive or directory. Interpretation has to be done in light of context circumstance, consequence and object. Having regard to underlying object, resolution cannot get vitiated by non-supply of additional copies under Rule 2(2) of Rules. A.I.R. 1961 S.C. 1480; A.I.R. 1961 S.C. 751 referred to. *Arjun Sambhaji Khade & others v/s Mangal Ankush Kharmate & others* 2003(Supp.) Bom.C.R. 552; 2003 (1) All.M.R. 986; 2003 (2) Mh.L.J. 295
- ❑ Interpretation of statutes---No confidence motion---Meeting whether to be convened within 7 days or to be held within 7 days---Held, Rule 2 of Bombay Village *Panchayats* No-confidence Motion Rules provides that tahsildar has to take immediate action on receipt of the notice and after ascertaining that 1/3 members have supported it has to call for a meeting within 7 days of receipt of notice. Period of 7 days prescribed is not only for issuance of notice for the meeting but also for holding it. Rules framed under section 176 of Bombay Village *Panchayat* Act have to be given same meaning, throughout unless context requires otherwise because meeting under section 35 of Bombay Village *Panchayat* Act is also a special meeting and the provisions of statute cannot be read in a way which may defeat purpose of it. 1965 Mh.L.J. 663 (F.B.) referred to, but held not applicable as provisions of section 35 of this Act and section 72 of Maharashtra Zilla Parishad & *Panchayat* Samitis Act are not para materia. *Mandabai Balnath Rohom &*

shall cease to hold office, in the former case immediately after the expiry of the said limitation period and, in the latter case, immediately after the rejection of the appeal, and thereupon the office held by such *Sarpanch* or *Upa-Sarpanch* shall be deemed to be vacant.]

(4) In cases where the offices of both the *Sarpanch* and *Upa-Sarpanch* become vacant simultaneously, the District Village *Panchayat* Officer or such other officer as he may authorise in this behalf shall, pending the election of the *Sarpanch* exercise all the powers and perform all the functions and duties of the *Sarpanch* but shall not have the right to vote in any meetings of the *Panchayat*."

others v/s Ashok Fakira Chandar & others 2002(2) Bom.C.R. 772; 2002 (2) All.M.R. 316; 2002 (1) Mh.L.J. 916

- ☐ Meeting for 'No Confidence Motion'-To be held within seven days from date of receipt by person concerned-Meeting convened after stipulated period of seven days-Effect-Held, when meeting was convened after stipulated period of seven days, action of passing 'No Confidence Motion' and all consequential action on pursuance of said 'No Confidence Motion' are required to be quashed and set aside. Accordingly they are set aside. Consequently election held for vacant office due to passing of 'No Confidence Motion', cannot be held legal. *Ganesh Raghunath Samel v/s State of Maharashtra & others 2002(4) Bom.C.R. 425*
- ☐ Motion of no confidence - Issued by respondents - Resolution of no confidence passed by majority of members of gram *Panchayat* - Appeal by *Sarpanch* and *Upa-Sarpanch* - Allowed by Collector on ground that copy of requisition not furnished containing reasons of no confidence motion - Confirmed by Commissioner - Challenged - Whether omission to comply with provisions of sub-rule (2) of Rule 2 will vitiate resolution passed in pursuance of notice issued by requisitioner - Held, even if the form which is prescribed by statute requires that ground for misconduct be mentioned in notice of intention to move motion, it does not follow therefrom that actual ground must be specified when motion is passed. Meeting was convened by requisite number of members. Resolution was debated and discussed. Both *Upa Sarpanch* and *Sarpanch* participated in meeting. Resolution was duly carried by majority of two-third of those entitled to sit and vote at meeting. Orders passed by Collector and Commissioner are in the circumstances unsustainable. 1974(2) S.C.C. 706 relied on. *Yamunabai Laxman Chavan & others v/s Sarubai Tukaram Jadhav & others 2004(Supp. 2) Bom.C.R. 1031; 2004 (3) All.M.R. 93; 2004 (2) Mh.L.J. 1004*
- ☐ No confidence motion against *Sarpanch*—Notice of convening meeting beyond 7 days from receipt of notice alleged—Tahsildar receiving notice on 30-7-2003 and convening meeting on 6-8-2003—Held, Tahsildar rightly excluded day of receipt of notice i.e 30-7-2003 and thus was right in holding meeting on 6-8-2003. Therefore, there was proper compliance of section 35 of the Bombay Village *Panchayats Act*. *Nandkishor Shrimantrao Deshmukh v/s Presiding Officer/Tahsildar, Jafrabad & others 2004(4) Bom.C.R. 592; 2004 (2) Mh.L.J. 485*
- ☐ No confidence motion resolution—Non-furnishing of additional copies—Whether vitiates resolution—Motion carried out by majority of 8 to 1—Challenge on ground that notice of resolution as per Rule 2(2) ought to have been accompanied with 7 additional copies to be sent to *Sarpanch*, *Upa-Sarpanch* and other authorities—Divisional Commissioner in appeal upholding this contention on ground that provision was mandatory—Held, not tenable. As per section 35(1) of the Act, resolution has to be moved by not less than 1/3 members and as per Rule 2(2) additional copies have to be served on *Sarpanch* or *Upa-Sarpanch* who are affected parties and others. Provisions of other copies to other authorities cannot be said to be mandatory, because their role comes only after resolution is carried out and in that case Tahsildar is required to furnish all particulars of resolution and result of motion. This submission of additional copies is thus a subsequent compliance under Rule 3 and does not affect resolution passed after service of copies of resolution on

Sarpanch against whom it was proposed. Non-supply of additional copy to Standing Committee could be an irregularity but will not vitiate resolution. *Arjun Sambhaji Khade & others v/s Mangal Ankush Kharmate & others 2003(Supp.) Bom.C.R. 552; 2003 (1) All.M.R. 986; 2003 (2) Mh.L.J. 295*

- ❑ No confidence motion Service of notice On another member of the family Held, was not proper service nor it was proved. Motion could not be discussed without giving the notice to the petitioner to defend it. As mandatory provision was not followed it vitiates the motion. *Indubai Vedu Khairnar v/s State of Maharashtra & others 2003(2) Bom.C.R. 239; 2002 (4) All.M.R. 110; 2002 (3) Bom.L.R. 743*
- ❑ No confidence motion Whether carried out by requisite 2/3rd majority In a *Panchayat* consisting of 21 members by 11 members present and voting and 12th member was brought in ambulance and Tahsildar ascertained her wishes by going outside the Hall and considering her vote also in favour of the motion Motion thus carried out Held, was not proper. Assistance can be rendered to the member in enabling her to cast the vote inside the Hall. Extending such assistance outside the hall or in a hospital or even outside the town cannot be done. Thus there was effective voting of 11 members only and it was short of 2/3rd majority and motion cannot be said to have been carried out. 2001(Supp.) Bom.C.R. (A.B.)139 referred to. *Indubai Vedu Khairnar v/s State of Maharashtra & others 2003(2) Bom.C.R. 239; 2002 (4) All.M.R. 110; 2002 (3) Bom.L.R. 743*
- ❑ No confidence motion—Against *Sarpanch* passed by majority of 7 members in *Panchayat* of 9 members—Additional Commissioner holding that resolution was not proper as it was written in bad handwriting and was not written by a *Sarpanch* a member or Secretary, but by a third person—Held, in facts of the case where *Sarpanch* had resigned and remained absent at the meeting the resolution ought not to have been held invalid merely because writer's handwriting was bad. When meeting had been convened properly and within 7 days of requisition it was not proper for Additional Commissioner to interfere with it appeal. *Sanjay Pandurang Chavan & others v/s State of Maharashtra & others 2004(Supp.) Bom.C.R. 128; 2003 (4) All.M.R. 242; 2003 (2) Bom.L.R. 771; 2003 (2) Mh.L.J. 596*
- ❑ No confidence motion against *Sarpanch*—Passed by 7 out of 8 members present and voting—Additional Commissioner in appeal upsetting order of rejection of complaint of *Sarpanch* that meeting was not properly conducted and it was not convened within 7 days of requisition for meeting—Held, Additional Commissioner should have considered Rule 2(3) of Rules the requisition was to be signed by 1/3 members and Tahsildar had to convene the meeting within 7 days of this requisition. Requisition in this case was made 7 out of 8 members i.e. more than 1/3 of the members therefore, if it was not signed by 8th member it was not material. Further terms of *Sarpanch* is at pleasure of members hence after no-confidence motion is passed by majority, he has no right to continue as *Sarpanch*. Assistant Commissioner's decision does not stand to reason. *Sanjay Pandurang Chavan & others v/s State of Maharashtra & others 2004(Supp.) Bom.C.R. 128; 2003 (4) All.M.R. 242; 2003 (2) Bom.L.R. 771; 2003 (2) Mh.L.J. 596*
- ❑ No confidence motion---Amendment of period of limitation---Moving second motion---Period of limitation of 2nd no confidence reduced to 6 months instead of one year as it

was earlier---Contentions as previous motion was moved in August, 96 and period then was of one year, therefore, irrespective of amendment in between 2nd motion could not be moved within one year of 31-8-96---Held, not tenable. Right claimed by petitioner is statutory right and not a vested one. It can be amended by amendment of the statute and period as available on the day of second motion will be applicable. Motion moved on 14-5-1997 after 6 months as per amended section 35(3-A) is properly convened. *Kashinath s/o Shivlingappa Arbale v/s Tahsildar i.e. Presiding Officer Nilanga & others 2000(Supp.) Bom.C.R. 884*

- ❑ No confidence motion---Carried out without allowing members to speak on the ground that only persons against whom motion was moved could speak under section 35(2) of the Act---Held, not tenable. Discussion on meetings is valuable democratic rights and notice of motion under Rule 26 of Village *Panchayat* Meeting Rules, provides that motion has to be put to vote only after it is thoroughly discussed. Motion passed in contravention of rules is not valid. Directed that fresh meeting be convened. *Shri Ashok Krishnakant Mehta v/s State of Maharashtra & others 2000(4) Bom.C.R. 724; 2000 (3) All.M.R. 772; 2000 (4) Mh.L.J. 197*
- ❑ No confidence motion---Convening of meeting by Naib Tahsildar instead of Tahsildar challenged as illegal---Held, 'Tahsildar' is not defined in *Panchayat* Act hence under section 10(b) of Maharashtra Land Revenue Code, Naib Tahsildar could act for Tahsildar in his absence. *Mrs. Chandrakalabai w/o Kondiram Wankhede v/s Balaji s/o Shahaji Dhoke & others 2000(4) Bom.C.R. 157; 2000 (1) Mh.L.J. 73*
- ❑ No confidence motion---Effect of non-service on associate member---No confidence motion against petitioner opposed on ground that no notice on associate member (chairman of society) was served---Held, not tenable. Provisions of section 243-C(2) of Constitution or section 10 of the Village *Panchayat* Act provide for service of notice on elected members and not on co-opted or associate members. *Mrs. Chandrakalabai w/o Kondiram Wankhede v/s Balaji s/o Shahaji Dhoke & others 2000(4) Bom.C.R. 157; 2000 (1) Mh.L.J. 73*
- ❑ No confidence motion---Meeting of Gram *Panchayat*---Tahsildar delegating power to conduct meeting to Naib Tahsildar---Contention section 35(2) states meeting to be presided over by Tahsildar hence meeting presided over by Naib Tahsildar incurably illegal, invalidating entire meeting and motion of no confidence---Held, provision of section 35(2) is directory. Under section 35 meeting is to be convened and held within seven days of receipt of notice of motion of no confidence. If Tahsildar is on leave for more than seven days or is involved in problems of law and order, the motion of no confidence passed by the requisite majority should not fail only on a technical ground. *Sahebrao Khandu Patil & others v/s Joharabai Latif Patel & others 2003(1) Bom.C.R. 172; 2002 (4) All.M.R. 81; 2002 (4) Bom.L.R. 121*
- ❑ No confidence motion---Non grant of adjournment---Whether ground for invalidating---No confidence motions against *Sarpanch* and *UpaSarpanch* carried out inspite of their request to adjourn the same on health and other grounds---Contention that section 35(2) of *Panchayats* Act does not mandate that special meetings cannot be adjourned---Held, even if *Panchayat* Act does not make specific provision it does not mean that Tahsildar will

adjourn the meeting. When both *Sarpanch* and *UpaSarpanch* were served the notices, it was for them to attend or not. If such meetings are allowed to be adjourned it will prolong the proceedings and defeat very purpose of motion. If there is quorum for the meeting it has to be held. *Dayandev Mohiniraj Nipunage & another v/s The State of Maharashtra & others* 2000(2) Bom.C.R. 849; 2000 (2) All.M.R. 371

- ❑ No confidence motion---Service of notice---By affixation on door---Validity---Govt. Cir. dt. 4-7-1998, Cl. 22---Held, the service by affixing on the door in presence of witnesses can be accepted only when other mode of service provided under Rules are not feasible. There is no finding on this point either by the Additional Collector or by the Additional Commissioner. Evidence of witnesses before whom affixation on door was done was a hearsay and does not disclose attempt to serve notice on respondent 6 or member of his house. Hence though reasoning that resolution be set aside on ground of non-compliance of Clause 22 of Circular is not correct, but final order of setting aside the order for non-compliance with service of notice cannot be faulted as to hold it otherwise would revive the illegal resolution. Petition dismissed. W.P. No. 575 of 2001 dt. 13-6-2001 and 1999(8) S.C.C. 16 referred to. *Bhika Narayan Gangurde & others v/s State of Maharashtra & others* 2002(1) Bom.C.R. 186
- ❑ No confidence motion---Validity---Govt. Cir. dt. 4-7-1998, Cl. 22---Clause 22 of Government circular whether mandatory---Circular providing that signatures of all members present and attending the meeting should be obtained at end of the meeting---In instant case signatures were so obtained in beginning but not at the end of proceedings---Held, purpose behind provision to ensure authenticity of proceedings. Mere non-compliance with that cannot render proceedings as bad, unless any flagrant violation of procedure is shown as preparation of report is different from conduct of meeting. A.I.R. 1974 S.C. 2105 referred to. *Bhika Narayan Gangurde & others v/s State of Maharashtra & others* 2002(1) Bom.C.R. 186
- ❑ No-confidence motion---Scope of appeal---Against rejection of no-confidence motion allowed by Collector---Contention that only if motion was carried, appeal could lie and not against a rejected motion---Held, wording of section 35(3-B) of Act clearly specify that appeal will lie against a motion which is carried and therefore, Collector could not invoke section 154 of Act, had no power to entertain appeal against motion which was not carried out. *Balaji Tulsiram Chaudhari v/s State of Maharashtra & others* 2002(4) Bom.C.R. 702; 2002 (2) Mh.L.J. 508
- ❑ Resolution of no confidence motion against *Sarpanch*-Duly passed-Upheld by Additional Collector-Confirmed by Additional Commissioner-Challenged on ground that unless and until motion specifically moved or seconded, such motion not to put to vote at all as contrary to provisions and as was not done, entire proceedings vitiated-Held, even if no confidence motion which was neither proposed nor seconded would be immaterial so long as same was duly approved by 2/3rd majority and that there is no need to look into general Rules, namely Maharashtra Village Panchayat Rules, 1959 in that behalf. There is absolutely no substance in petition. 1999(1) Bom.C.R. 153; 1967 Mh.L.J. 36 followed. *Shital Sudhir Sonavle v/s Group Gram Panchayat & others* 2003(4) Bom.C.R. 31; 2003 (3) All.M.R. 19; 2003 (2) Mh.L.J. 565

- Resolution of no confidence-Moved by petitioners and respondent No. 9 against respondent No. 4-Carried by requisite majority-Respondent No. 4 filed dispute to Collector-Dismissed-Appeal to Commissioner allowed-Challenged-Contention that inspite of said two findings, Additional Commissioner ought not to have interfered with order of Additional Collector-Further contended that form of notice as also declaration prescribed under Rules is directory and not mandatory and section 35 of Act does not lay down that notice of motion of no confidence should contain any grounds nor does it require that contents of notice should be verified like verification of plaint required under C.P.C.-Held, resolution against respondent No. 4 was passed by 2/3 majority. Respondent No. 4 should have therefore, gracefully walked out, instead she chose to challenge resolution substantial compliance was done. Notice was given. Present petitioners also typed verification but there was typing error inasmuch as one line was not typed due to error of typist. To void resolution of no confidence, which was passed by 2/3 majority of total members on this technical ground would mean that person who does not enjoy confidence of majority would continue as *Sarpanch* against wishes of majority. That could not be intention of legislature. Hence, order of Additional Collector restored. A.I.R. 1974 S.C. 2105; 1999(1) Bom.C.R. (A.B.)546 followed. *Durgadas Ukhaji More & others v/s Additional Commissioner, Nasik Division & others 2002(Supp. 2) Bom.C.R. 755 : 2003(1) Mh.L.J. 420; 2002 (3) Bom.L.R. 747*
- Second no confidence motion---Limitation how to be counted---Rules providing that 2nd no confidence motion could not be moved within 6 months (one year as it then was)---Contention that limitations will count from the day the *Sarpanch* vacates the office or is deemed to vacate office---Held, time has to be calculated from the day special meeting for consideration was convened and not from date when *Sarpanch* is deemed to vacate office. Previous special meeting was held on 31-8-1996 and fresh one on 14-5-1997 being beyond period of 6 months was properly convened. *Kashinath s/o Shivlingappa Arbale v/s Tahsildar i.e. Presiding Officer Nilanga & others 2000(Supp.) Bom.C.R. 884*
- Service of notice---Meeting---Proof---*Sarpanch* challenging proceedings of meeting to consider no confidence motion against her on the ground that no notice of meeting was served on her, though she attended meeting allegedly because she had notice of meeting to consider no confidence motion against Up-*Sarpanch*---Contention that notice was served on her but she had refused to sign on copy of process server who filed affidavit to that effect---Held, the stand taken by *Sarpanch* first stating that notice of motion against Up-*Sarpanch* was received by her and now alleging that her signatures were forged on that is contradictory. If there could be forgery on notice for Up-*Sarpanch*, same could be on her notice too. Contention not tenable. *Mrs. Chandrakalabai w/o Kondiram Wankhede v/s Balaji s/o Shahaji Dhoke & others 2000(4) Bom.C.R. 157; 2000 (1) Mh.L.J. 73*
- No confidence motion - Notice to Tahsildar on 2-8-2006 and motion passed in meeting on 10-8-2006 - Contention notice required Tahsildar to convey meeting within 7 days, meeting held with contravention of provision of sub-section (2) of section 35 of Act - Proceedings bad in law - How to calculate 7 days limitation as per sub-section (2) of section 35 - Held, that period of seven days would expire even if an arithmetical calculation seventh day falls on holiday and period would get extended till next following

working day in order to enable parties to perform act required to be performed within seven days. *Seema Ashok Kamble v/s Collector, Pune & ors. 2008(3) Bom.C.R. 683; 2008 (3) Mh.L.J. 781*

- ❑ No confidence motion - Whether meeting can be held on public holiday to consider motion - Held, after taking into consideration all facts and relevant provisions of Act, Court observed that, if day on which meeting is required to be held happens to be holiday or office of *Panchayat* is required to be kept closed, certainly proceedings can be taken on following day. *Seema Ashok Kamble v/s Collector, Pune & ors. 2008(3) Bom.C.R. 683; 2008 (3) Mh.L.J. 781*
- ❑ No confidence motion - Relevance of irregular service of notice - Motion against *Sarpanch* and *Up-Sarpanch* carried out - Collector and Divisional Commissioner rejected their appeals against motion under section 35(3-B) and (3-C) - Petition against that on ground that notice of no-confidence motion were not given to them and served on son of petitioner was a farce - Held, as far W.P. 6811/2007 is concerned it is proved that notice was correctly served on his son by Gram Sevak and this being concurrent finding of authorities below Court would not interfere under Article 227 of Constitution. As to its effect Apex Court in 1964 DGLS 116 (soft) had considered it and held that merely because some Councillors had received less than three days clear notice in Court's view did not vitiate proceedings which was carried out with clear majority only an irregularity in service of notice and did not cause any prejudice to appellants. In view of it contention cannot be accepted. Likewise in W.P. 6811/2007 records show notice was properly served on son of petitioner and it was informed that she had gone on a pilgrimage to Zarkhand. Since motion has been carried out by 2/3 majority no prejudice can be said to have been caused to her. Hence both petitions are liable to be rejected. *Prabhawati Vijaykumar Khivsara & anr. v/s State of Maharashtra & ors. 2008(3) Bom.C.R. 755; 2008 (2) Mh.L.J. 274*
- ❑ Applicability - Meeting Rules in particular Rule 17 of Rules - To meeting conveyed specifically for considering no confidence - Held, provisions of Meeting Rules generally and provisions of Rule 17 of Rules in particular apply to meeting convened under section 35 of Village Panchayats Act. *Viswas Pandurang Mokal v/s Group Gram Panchayat Shihu & ors. 2011(3) Bom.C.R. 495; 2011(3) All.M.R 778; 2011(3) Mh.L.J 500 (FB)*
- ❑ Powers of Collector - To issue direction convening fresh meeting - After expiry of period of seven days on basis of no confidence motion - Which is held to be illegal - Held, there is no power conferred by section 35 of Act on Collector who hears dispute referred to him by *Sarpanch* or *Upa sarpanch* to issue any direction to *Tahsildar* for convening fresh special meeting on basis of same requisition. *Viswas Pandurang Mokal v/s Group Gram Panchayat Shihu & ors. 2011(3) Bom.C.R. 495; 2011(3) All.M.R 778; 2011(3) Mh.L.J 500 (FB)*
- ❑ No confidence motion passed against *Sarpanch* - Case of *Sarpanch* notice for special meeting not served on him or adult male member but served on sister-in-law i.e. adult member of his family - Validity of - Held, Additional Collector whilst deciding appeal has not even adverted to ground on which respondent *Sarpanch* had approached him under section 35(3-C) of Bombay Village Panchayats Act. In so far as Additional Commissioner is concerned, he has decided appeal on a wrong premises viz. that he has decided issue of

service of notice on touch stone of Rule which had already undergone change wherein words "an adult male member" of family has been substituted by "adult member" of family Additional Collector has, oblivious of said change decided appeal. *Baliram Fakira Khandare & ors. v/s Additional Commissioner & Ors. 2012 (2) Bom.C.R. 475 : 2011 (6) Mh.L.J. 316*

36. Time and place of sitting of Panchayat and procedure at meeting.-The time and place of sitting, and the procedure at a meeting of the *Panchayat* shall be such as may be prescribed:

¹⁸³[Provided that, if the *Sarpanch* or in his absence the *Upa-Sarpanch*, fails without sufficient cause, to convene the meetings of the *Panchayat* in any financial year according to the rules prescribed in that behalf, he shall be disqualified for continuing as *Sarpanch* or, as the case may be, *Upa-Sarpanch* or for being chosen as such for the remainder of the term of office of the members of the *Panchayat*. The decision of the Collector on the question whether or not there was sufficient cause shall be final.]

NOTES

❏ Disqualification of *Sarpanch* - Petitioner challenged order of Additional Collector - Petitioner disqualified on ground of failure to hold mandatory meetings under section 7 of Act - Respondent 2 of Block Development Officer conducted enquiry - Notice issued to petitioner in respect of allegations - Petitioner contends she has not served with proper notice of enquiry nor she received copy of complaint - Held, notice issued by Collector not discloses charges. Procedure adopted for holding enquiry is not proper. Order is not sustainable. Additional Collector dealt with matter in most casual manner and impugned order demonstrates non-application of mind. Petitioner not been informed about charges. Person against whom enquiry is initiated is entitled to know as to what are charges levelled against him. Whole procedure adopted and final order of authority vitiated. Impugned order of disqualification is quashed and set aside. Copy of this order transmitted to Secretary, Revenue Department to hold enquiry. *Pratibha Sanjay Hulle v/s Additional Collector & ors. 2010(4) Bom.C.R. 700; 2010(4) All.M.R 728; 2010(5) Mh.L.J 47*

37. Modification or cancellation of resolutions.-No resolution of a *Panchayat* shall be modified, amended, varied or cancelled by a *Panchayat* within a period of three months from the date of the passing, thereof, except by a resolution supported by two-thirds of the total number of members of such *Panchayat* ¹⁸⁴[***].

38. Executive power of Panchayat Functions of Sarpanch and Upa-Sarpanchas.-(1) The executive power, for the purpose of carrying out the provisions of this Act and the resolutions passed by a *Panchayat* vests in the *Sarpanch* who shall be directly responsible for the due fulfilment of the duties imposed upon the *Panchayat* by or under this Act. In the

183 This proviso was added by Mah. 36 of 1965, S. 18.

184 The brackets and words "(other than the associate members)" were deleted by Mah. 21 of 1994, S. 20.

absence of the *Sarpanch*, the powers and duties of the *Sarpanch* shall, save as may be otherwise prescribed by rules, be exercised and performed by the *Upa-Sarpanch*.

(2) Without prejudice to the generality of the foregoing provisions

(i) the *Sarpanch* shall, -

(a) ¹⁸⁵[save where otherwise provided in this Act, preside over] and regulate the meeting of the *Panchayat*;

¹⁸⁶(b) ***

(c) exercise supervision and control over the acts done and action taken by all officers and servants of the *Panchayat* ¹⁸⁷[including supervision over the keeping and maintenance of records and registers of the *Panchayat* in the custody of the Secretary.];

¹⁸⁸(d) ***

¹⁸⁹(e) ***

¹⁹⁰(f) ***

¹⁹¹(g) ***

(h) cause to be prepared all statements and reports required by or under this Act;

(i) exercise such other powers and discharge such other functions as may be conferred or imposed upon him by this Act or rules made thereunder.

¹⁹²[(i-a) a *Sarpanch* may issue under his signature and under the seal of the *Panchayat*, income certificates which are required to be issued under any directions of Government;]

(i) call meetings of *Gram Sabha* as provided in Section 7 and preside over them;

(ii) the *Upa-Sarpanch* shall,-

(a) in the absence of the *Sarpanch* preside over and regulate the meetings of the *Panchayat* ¹⁹³[except where otherwise provided in this act;]

(b) exercise such of the powers and perform such of the duties of the *Sarpanch* as the *Sarpanch* may, from time to time, delegate to him;

185 These words were substituted for the words "preside over" by Mah. 13 of 1975, S. 10(a).

186 Sub-clause (b) was deleted by Mah. 36 of 1965, S. 19(a)(i).

187 This portion was added by Mah. 36 of 1965, S. 19(a)(ii).

188 Sub-clauses (d), (e), (f) and (g) were deleted by Mah. 4 of 1981, S. 2(a).

189 Sub-clauses (d), (e), (f) and (g) were deleted by Mah. 4 of 1981, S. 2(a).

190 Sub-clauses (d), (e), (f) and (g) were deleted by Mah. 4 of 1981, S. 2(a).

191 Sub-clauses (d), (e), (f) and (g) were deleted by Mah. 4 of 1981, S. 2(a).

192 Clause (i-a) was inserted by Mah. 34 of 1970, S. 8.

193 These words were added by Mah. 13 of 1975, S. 10(b).

- (c) pending the election of a *Sarpanch* or in case the *Sarpanch* has been continuously absent from the village for more than fifteen days or is incapacitated, exercise the powers and perform the duties of the *Sarpanch*.

(3) Every meeting of a *Panchayat* shall, in the absence of both the *Sarpanch* and the *Upa-Sarpanch* be presided over by such one of the members present as may be chosen by the meeting to be Chairman for the occasion.

¹⁹⁴[(4) Save as otherwise provided by this Act, the powers, duties and functions of the *Sarpanch* shall, in cases where there is no person competent to exercise or perform them for any reason whatsoever, be exercised and performed by any member of the *Gram Sabha* nominated by the *Panchayat* Samiti who is qualified to be elected. The member so nominated shall, when presiding over any meeting of the *Panchayat*, have powers and follow the procedure prescribed, but shall not have the right to vote.]

¹⁹⁵[(5) Nothing contained in this Section shall make the *Sarpanch* liable for any action taken by the Secretary for which he is made solely responsible under ¹⁹⁶[sub-section (4)] of Section 57].

39. Removal from office.- ¹⁹⁷[(1) The Commissioner may,--

- (i) remove from office any member or any *Sarpanch* or *Upa-Sarpanch* who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A *Sarpanch* or *Upa-Sarpanch* so removed may at the discretion of the Commissioner also be removed from the *panchayat*, or
- (ii) remove from office the member, *Sarpanch* or as the case may be, *Upa-Sarpanch* if not less than twenty per cent, of the total number of voters in the village who have paid all dues of the *panchayat* regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the *panchayat* on the development activities are not placed before the *Gram Sabha*; and the information thereof is not displayed on the notice board as required by sub-section (1) or (1-A) of section 8:

Provided that, no such person shall be removed from office unless, in case of clause (i), the Chief Executive Officer or in case of clause (ii), the Deputy Chief Executive Officer as directed by the Chief Executive Officer; under the orders of the Commissioner, holds an inquiry after giving due notice to the *Panchayat* and the person concerned; and the person concerned has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer concerned

194 Sub-section (4) was added by Mah. 36 of 1965, S. 19(b).

195 Sub-section (5) was inserted by Mah. 4 of 1981, S. 2(b).

196 Substituted for "sub-sections (3) and (4)" by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

197 Sub-section (1) substituted by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006), s. 6(a) dated 21st December 2006.

through the Chief Executive Officer, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month:

Provided further that, the Commissioner shall, after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer, within a period of one month from the date of receipt thereof.]

¹⁹⁸[(1-A) Where a person is removed from office of the *Sarpanch* or *Upa-Sarpanch*, he shall not be eligible for re-election as *Sarpanch* or *Upa-Sarpanch* during the remainder of the term of office of members of the *Panchayat*].

¹⁹⁹[(2) The Commissioner may subject to like condition disqualify for a period of not exceeding five years, any person who has re-signed his office as a member, *Sarpanch* or *Upa-Sarpanch* and has been guilty of the acts and omission specified in sub-section (1).

(3) Any person aggrieved by an order of the Commissioner under sub-section (1) or (2) may, within a period of fifteen days from the date of the receipt of such order, appeal to the State Government and the Government shall decide the appeal within a period of one month from the date of receipt thereof.]

NOTES

- ☐ Removal of *Sarpanch* - Effect on his further re-election - Extent - *Sarpanch* removed for misappropriation - Again removed from the post after re-election in the new term of *Panchayat* - Held, the removal contemplated under section 39(1) and (1-A) was for remainder of the term of the *Panchayat*. It could not extend beyond that term and he could not be removed when elected in the next term. *Narayan Atmaram Borase v/s State of Maharashtra & others 2005(Supp.) Bom.C.R. 348 : 2005(2) Mh.L.J. 1093*

²⁰⁰[39A. Power of Government to direct inquiry.-(1) Notwithstanding anything contained in section 39, the State Government may, *suo motu* or on an application made to it against any member, *Sarpanch* or *Upa-Sarpanch* regarding any act or omission specified in sub-section (1) of section 39, direct the Chief Executive Officer concerned to hold an inquiry against such member, *Sarpanch* or as the case may be *Upa-Sarpanch*, and submit its report, within a period of one month, to the Commissioner.

(2) The Commissioner shall, after giving a reasonable opportunity of being heard to the *panchayat* and the person concerned, take a decision, within a period of one month, on the inquiry report.

(3) Any person aggrieved by an order of the Commissioner under sub-section (2), may, within a period of fifteen days from the date of receipt of such order, appeal to the State Government and the decision of the Government thereon shall be final.]

198 Sub-section (1-A) was inserted by Mah. 36 of 1965, S. 20(2).

199 Sub-sections (2) and (3) substituted by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

200 Sections 39A inserted by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

40. Leave of absence.—(1) Any member of *Panchayat* who, during his term of office,
- (a) is absent for more than four consecutive months from the village ²⁰¹[(such absence not being on account of his being a Chairman or Deputy Chairman of a *Panchayat Samiti*)], unless leave not exceeding six months so to absent himself has been granted by the *Panchayat* or
 - (b) absents himself for six consecutive months from the meetings of the *Panchayat* without the leave of the said *Panchayat*, shall cease to be a member and his office shall be vacant.

²⁰²[(2) If any question whether a vacancy has occurred under this Section is raised by the President of a Zilla Parishad suo motu or on an application made to him in that behalf, the President shall as far as possible decide the question within sixty days from the date of receipt of such application. Until the President decides the question, the member shall not be disabled from continuing to be a member of the *Panchayat*. Any person aggrieved by the decision of the President may, within fifteen days from the date of such decision, appeal to the State Government and the decision of the State Government in appeal shall be final.

Provided that, no decision shall be given under this sub-section by the President against any member without giving him a reasonable opportunity of being heard.]

(3) Whenever leave is granted under sub-section (1) to a member who is an *Upa-Sarpanch* another member shall, subject to the conditions to which the election of the *Upa-Sarpanch* so absenting himself was subject, be elected to perform all the duties and exercise all the powers of an *Upa-Sarpanch* during the period for which such leave is granted.

41. Suspension of *Sarpanch* or *Upa-Sarpanch*.—Deleted by Mah. 2 of 1982, S.2.

42. Eligibility of certain members for re-election.—A member of a *Panchayat* whose office has become vacant under ²⁰³[Section 16, if his disqualification or ability has ceased, or under Section 40 shall] be eligible for re-election.

43. Filing up of vacancies.—(1) Any vacancy of which notice has been given to the ²⁰⁴[Collector] in the prescribed manner due to the disablement, death, resignation, disqualification, ²⁰⁵[confirmation of no confidence motion,] absence without leave or removal of a *Sarpanch* or *Upa-Sarpanch* ²⁰⁶***, shall be filled, by the election of a *Sarpanch* or *Upa-Sarpanch* ²⁰⁷*** who shall hold office so long as the *Sarpanch* or *Upa-Sarpanch* ²⁰⁸*** in whose place he has been elected, would have been elected, would have held office if the vacancy had not occurred:

201 These brackets and words were inserted by Mah. 43 of 1962, S. 26 Sch.

202 Sub-section (2) was substituted for the original by Mah. 36 of 1965, S.21.

203 These words were substituted for the words and figures "Section 16 or under Section 40 shall if his disqualification or disability has ceased" by Mah. 36 of 1965, S.22.

204 This word was substituted for the words "Chief Executive Officer" by Mah. 43 of 1962, S.26, Sch.

205 Inserted by Mah. 16 of 2012, s.4(a) (w.e.f. 02-10-2012).

206 The words "the member" were deleted by Mah.21 of 1994, S.21(a).

207 The words "the member" were deleted by Mah.21 of 1994, S.21(a).

208 The words "the member" were deleted by Mah.21 of 1994, S.21(a).

²⁰⁹[Provided that, the post of the *Sarpanch* or *Upa-Sarpanch*, as the case may be, fallen vacant under this sub-section shall be filled in within thirty days from the date of such vacancy.]

(2) The meeting for the election of a *Sarpanch* under sub-section (1) shall be convened by the ²¹⁰[Collector] in the manner described in sub-section (1) of Section 33.

NOTES

□ Vacancy occasioned by resignation by member - Power of election Commissioner to fill-up vacancy - Held, in respect of vacancy occasioned during term of *Panchayat*, that vacancy can be filled in by holding election for that seat. This is an independent power of Election Commissioner unconnected with section 43. *Shivaji Maruti Shingate & ors. v/s State of Maharashtra & ors 2007(4) Bom.C.R. 695; 2007 (5) Mh.L.J. 109*

44. Vacancy not to affect proceedings of *Panchayat*.²¹¹[(1) During any vacancy in the *Panchayat* the continuing members may act as if no vacancy had occurred.

²¹²[(2) ²¹³[Subject to the provisions of sub-section (1-A) of Section 145, the *Panchayat*] shall have power to act notwithstanding any vacancy in the membership or any defect in the constitution thereof; and such proceedings of the *Panchayat* shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled to do so sat or voted or otherwise took part in the proceedings.

(3) No act or proceedings of a *Panchayat* shall be deemed to be invalid on account of any defect or irregularity in any such act or proceeding not affecting the merits of the case or on account of any irregularity in the service of notice upon any member or for mere informality.]

CHAPTER III

ADMINISTRATIVE POWERS AND DUTIES

45. Administrative powers and duties of *Panchayats*.²¹⁴[(1) Subject to the general control of the Zilla Parishad and the *Panchayat* Samiti it shall be the duty of a *Panchayat* so far as the village fund at its disposal will allow to make reasonable provision within the village with respect to all or any of the subjects enumerated in Schedule I as amended from time to time under sub-section (2) (in this Act referred to as "the village List"). ²¹⁵[It shall also be the duty of a *Panchayat*, when the Zilla Parishad or the State Government undertakes and completes, through its agencies, any piped water supply schemes (including works), at the request of the *Panchayat*, to take over and maintain ²¹⁶[out of the Village Water Supply Fund

209 Proviso added by Mah. 16 of 2012, s.4(b) (w.e.f. 02-10-2012).

210 This word was substituted for the words "Chief Executive Officer" by Mah. 43 of 1962, S.26, Sch.

211 Section 44 was renumbered as sub-section (1) and sub-sections (2) and (3) were inserted by Mah. 36 of 1965, S.23.

212 Section 44 was renumbered as sub-section (1) and sub-sections (2) and (3) were inserted by Mah. 36 of 1965, S.23.

213 This portion was substituted for the words "The *Panchayat*" by Mah. 13 of 1975, S. 13.

214 Sub-sections (1), (2) (2-A) and (2-B) were substituted for the original sub-sections (1) and (2) by Mah. 36 of 1965, S. 24.

215 This portion was inserted by Mah. 56 of 1981, S. 7.

216 These words were inserted by Mah. 5 of 1997, S. 3 (w.e.f. 2.1.1997).

constituted under Section 132-B] such water supply schemes, whether completed before or after the date of commencement of the Maharashtra Zilla Parishad, and *Panchayat* Samitis and Maharashtra Village *Panchayats* (Amendment) Act, 1981. Where any such schemes were completed and were not taken over by the *Panchayat* before the said date, the *Panchayat* shall take them over within thirty days from the said date, which shall be the period specified for such schemes, and where any such schemes are completed after the said date the *Panchayat* shall take them over within such period as may be specified by the Zilla Parishad or as the State Government, as the case may be.]

(2) The State Government may, by notification in the *Official Gazette*, omit any entry from Schedule I or add any entry thereto or amend any such entry and the Schedule shall, on the issue of the notification, be deemed to be amended accordingly:

Provided that,—

- (a) no such notification omitting any entry from Schedule I shall be issued without previous approval of the State Legislature; and
- (b) any other notification shall be laid before each House of the State Legislature as soon as may be after it is issued and shall be subject to such modification as the State Legislature may make, during the session in which it is so laid, and publish in the *Official Gazette*.

(2-A) A *Panchayat* may, with the previous sanction of the President of the Zilla Parishad, also make provision for carrying out, outside the village, any work in the nature specified in Schedule I; and subject to any directions made by the State Government in that behalf, may also incur expenditure outside the village in respect of any scheme or for any purpose sponsored by the Government.

(2-B) A *Panchayat* may, by resolution,²¹⁷ [and subject to the prescribed limits, give grant-in-aid to any institution (whether situated within or outside the village but not outside the limits of the revenue taluka within which the *Panchayat* functions) in respect of matters falling in entries 17, 18, 19, 20, 22 and 23 of that Schedule provided that the institution serves the needs of the village, and to any person in respect of matters, falling in entry 23 of the said Schedule;] or contribute to any fund sponsored by the Government for the purpose referred to in entry 75 of that Schedule. If any doubt arises,²¹⁸ [whether or not the institution serves the needs of the village, or] whether or not the fund is sponsored by the Government, the question shall be decided by the Collector, and his decision shall be final:

Provided that, such grant-in-aid shall not be paid out of any grant made to the *Panchayat* by the State Government or Zilla Parishad or *Panchayat* Samiti.]

(3) A *Panchayat* may also make provision for carrying out within the village any other work or measure which is likely to promote the health, safety, education, comfort, convenience, or social or economic, or cultural well-being of the inhabitants of the village.

217 This portion was substituted for the portion beginning with "give grant-in-aid" and ending with "Schedule I" by Mah. 13 of 1975, S. 14(1)(a).

218 These words were inserted by Mah. 13 of 1975, S. 14(1)(b).

(4) A *Panchayat* may by resolution passed at its meeting and supported by two-thirds of the whole number of its members make provision for any public reception ceremony or entertainment within the village or may make contribution towards an annual gathering or such other gathering of *Panchayat* in the district or the State:

²¹⁹[Provided that, no *Panchayat* shall incur expenditure on any such reception, ceremony, entertainment or gathering exceeding such amount as the State Government may, from time to time, by notification in the *Official Gazette*, determine and that, different amounts may be determined for different class or category of *Panchayats*, with reference to their annual income.]

(5) If it comes to the notice of a *Panchayat* that on account of the neglect of a landholder or dispute between him and his tenant the cultivation of his estate has seriously suffered, the *Panchayat* may bring fact to the notice of the Collector.

(6) A *Panchayat* shall in regard to the measures for the amelioration of the condition of Scheduled Castes and Scheduled Tribes and other Backward Classes and in particular, in the removal of untouchability carry out the directions or orders given or issued in this regard from time to time by the State Government, the Collector or any officer authorised by the Collector.

²²⁰[(6-A) A *Panchayat* shall endeavour to make use of voluntary organisations ²²¹[of farmers of the village], and shall encourage co-operative societies ²²²[therein] in increasing and improving agricultural production.

²²³[(6-B) A *Panchayat* established for a village (being a village comprising either a group of revenue villages or hamlets or Wadis or any area called by any other designation forming a revenue village or forming part of a revenue village) shall execute works and development schemes in such village so however that in each such revenue village, hamlet, Wadi or area or part thereof, the village fund is spent so far as may be practicable on the works and development schemes in proportion to the population of such revenue village or hamlet, Wadi or area.]

(6-C) A *Panchayat* shall supervise primary school situated within the area of its jurisdiction.]

²²⁴[(6-D) A *Panchayat* shall obtain permission of the *Gram Sabha* for incurring any expenditure on the development schemes.

(6-E) A *Panchayat* shall be consulted by the concerned Land Acquisition Authority, before such Authority acquires any land falling within the jurisdiction of that *Panchayat*, for the Government purpose:

Provided that, every *Panchayat* shall obtain and consider the views of the *Gram Sabha* before conveying its views to the Land Acquisition Authority concerned.]

219 This proviso was substituted by Mah. 31 of 1994, S. 2.

220 Sub-sections (6-A) to (6-C) were inserted by Mah. 5 of 1962, S. 286, tenth Sch.

221 These words were substituted for the words "of farmers" by Mah. 35 of 1963, S. 80, Sch.

222 This word was inserted by Mah. 35 of 1963, S. 80 Sch.

223 Sub-section (6-B) was substituted by Mah. 13 of 1975, S. 14(2).

224 Sub-sections (6-D) & (6-E) were inserted by Mah. 3 of 2003 dated 08-01-2003 (w.e.f. 16-10-2002)s.4.

(7) A *Panchayat* shall perform such other duties and functions as are entrusted to it by any other law for the time being in force.

45A ²²⁵[***]

46. ²²⁶[Power of Parishads and Samitis to transfer management of institution or execution or maintenance of work.-²²⁷[Without prejudice to the provisions of sub-section (2) and sub-section (3) of Section 124 of the Maharashtra Zilla Parishads and *Panchayat* Samitis Act, 1961, a Zilla Paishad or *Panchayat* Samiti with the consent of a *Panchayat* may, at any time, transfer to such *Panchayat* the management of any institution or the execution or maintenance of any work, and it shall thereupon be lawful for such *Panchayat* to undertake the management of such institution or the execution or maintenance of such work;

Provided that in every such case the funds necessary for such management, ²²⁸[execution or maintenance] shall be placed at the disposal of the *Panchayat* by the ²²⁹[Zilla Parishad or *Panchayat* Samiti].

47. Powers of State Government to transfer execution of other work.-The State Government with the consent of the *Panchayat* may at any time transfer to such *Panchayat* the execution of any work promoting directly or indirectly the welfare of the villagers and it shall thereupon be lawful for such *Panchayat* to undertake the execution of such work:

Provided that, in every such case the funds necessary for such execution shall be placed at the disposal of the *Panchayat* by the State Government.

48. Other duties.-Subject to such conditions as the State Government may impose, with the consent of the *Panchayat* concerned, the *Panchayat* shall perform such other administrative duties including the distribution of irrigation water, as may after consultation with the ²³⁰[*Panchayat* Samiti] be assigned to it by the State Government by notification in the *Official Gazette*.

²³¹[49. Village Development Committees.-] (1) A *Gram Sabha* may, in consultation with the *Panchayat*, from amongst the members of the *Panchayat*, representatives of community based organizations working in the *Panchayat* area, village level functionaries of *Panchayat*, Zilla Parishad, State Government and voters, constitute one or more Village Development Committees, by whatever name called.

(2) The term of such committee shall be co-terminus with the term of the *Panchayat*:

(3) Such committees shall exercise such powers, discharge such duties and perform such functions of the *Panchayat*, as may be delegated or assigned to them by the *Gram Sabha* in

225 Deleted by Mah. 27 of 2003 dated 08-08-2003 s. 3.

226 This marginal note was substituted for the original by Mah. 36 of 1965, S.25(1).

227 This portion was substituted for the portion beginning with the words "The Zilla Parishad or *Panchayat* Samitis" and ending with the words "execution of such work" by Mah. 36 of 1965, S.25(1).

228 These words were substituted for the words "on execution" by Mah. 36 of 1965, S. 25(3).

229 These words were substituted for the words "District Local Board" by Mah. 5 of 1962, S. 286, Tenth Sch.

230 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 286, Tenth Sch.

231 Section 49 and 49A were substituted by Mah. 23 of 2003 dated 01-08-2003 (w.e.f.02-07-2003) s.3.

consultation with the *Panchayat*, relating to the subjects and activities enumerated in Schedule I and such other works and activities related to or associated with the *Panchayat* as may be entrusted by the Gram Sabha, Zilla Parishad, Government or any other competent authority to the *Panchayat*, from time to time. The *Gram Sabha* may, subject to the general supervision and control of the *Panchayat*, regulate the procedure of such committees.

(4) The total number of the members in a Village Development Committee shall not be less than twelve and not more than twenty-four:

Provided that.-

- (a) not less than one-third of its members shall be from amongst the members of the *Panchayat*;
- (b) not less than one-half of its members shall be women; and
- (c) such number of members, as may be specified by the Government in that behalf, shall be from the Scheduled Castes, Scheduled Tribes, Vimukta-Jatis and Nomadic Tribes (hereinafter referred to as the "vulnerable class").

Provided further that, the strength of the women members of the vulnerable class members on the Village Development Committee shall be not less than three-fourths of the total strength of such committee members, when such committee is constituted for the purpose of an activity, scheme or utility exclusively for the benefit of women or, as the case may be, for the vulnerable class;

- (d) the *Gram Sabha* shall ordinarily nominate such women members to the Village Development Committee as recommended by village Mahila Mandal or a *Gram Sabha* of the women voters specially called for the purpose, unless it has sufficient reason, to be recorded in the proceedings, to reject any such recommendation;
- (e) the Gram Sabha, in its discretion, may give preference to the members of the village level institutions, if any, like Mahila Mandals, Youth Clubs, etc;
- (f) the *Gram Sabha* may, also invite any village level Government, semi-Government, Zilla Parishad officials or employees working in the village, such as teachers, talathis, anganwadi sevikas, village water men, village health workers, to attend any meeting or meetings of the village Development Committee, as a special invitee for the purpose of assisting or advising it on any matter or matters. Such special invitee may take part in the deliberations in the meeting but, shall have no right to vote in such meeting.

(5) The Village Development Committee constituted under sub-section (1) shall be deemed to be a committee of the *Panchayat* and shall be under the overall supervision and control of the *Panchayat*. The administrative machinery of the *Panchayat* shall assist such committee as it assists the *Panchayat*.

(6) The annual statement of accounts and proceedings of the Village Development Committee shall be kept and managed separately for day-to-day convenience but shall form an integral part of the *Panchayat* record, accounts and proceedings, and shall be presented

through the *Panchayat* in the meeting of the *Gram Sabha* specially called for the purposes of approving annual budget and passing of the annual accounts of the *Panchayat*.

(7) The *Panchayat* shall normally not exercise the powers, discharge the duties and perform the functions entrusted to the Village Development Committee by the *Gram Sabha* unless, so resolved by the *Gram Sabha* in an extra-ordinary circumstances to be mentioned and approved by the majority of not less than two-thirds of the members present and voting, in a meeting specially called for the purpose of withdrawing such powers, duties and functions of the Village Development Committee, and allowing the *Panchayat* to take over the same.

(8) (a) The members of the Village Development Committee, once appointed, shall not be removed or withdrawn before the completion of their term as provided in sub-section (2) except,-

- (i) by an express resolution passed by the *Gram Sabha* in a special meeting duly called for the purpose, or
- (ii) when such member suffers from any of the disqualification specified in section 14 for the members of the *Panchayats*;

(b) Any vacancy caused by the death, resignation, removal or withdrawal, or otherwise disqualification of a member of the Village Development Committee, shall be filled up as provided under sub-section (1) read with sub-sections (2) and (4).

(9) On constitution of a new *Panchayat*, the Village Development Committee shall be re-constituted within forty-five days of the constitution of the new *Panchayat*:

Provided that, there shall be no bar for the members of the previous committee to be re-appointed on the new committee, if otherwise eligible.

49A. Beneficiary Level Sub-Committees.- (1) The Village Development Committee constituted under sub-section (1) of section 49 may, in consultation with the *Panchayat* and with the prior approval of the *Gram Sabha*, and if deemed expedient, having regard to the geographical, geohydrological, technological, economic, social and demographic situation of the habitation within the area of the *Panchayat*, constitute a Beneficiary Level Sub-Committee from amongst the voter beneficiaries of the existing or proposed activity, scheme or utility, exclusively serving a habitation, in a meeting held therefor, where each beneficiary household shall have one vote.

(2) The term of such committee shall be co-terminus with the term of the *Panchayat*.

(3) The Village Development Committee may, with the approval of the *Panchayat*, entrust its powers, authority, functions and duties as regards the specific activity, scheme or utility to the Beneficiary Level Sub-Committee.

(4) The total number of the members in the Beneficiary Level Sub-Committee shall not exceed twelve:

Provided that,-

- (a) the *Panchayat* members who are the beneficiaries of the scheme, activity or utility for which the Beneficiary Level Sub-Committee is constituted shall be the members of such Beneficiary Level Sub-Committee;

- (b) not less than one-half of its members shall be women; and
- (c) such number of seats on such committee, as may be specified by the Government in that behalf, shall be appointed from the vulnerable class.

(5) The Beneficiary Level Sub-Committee shall exercise the powers and authority, and discharge the duties and perform the functions in respect of the activity, scheme or utility for which it is constituted, and shall be under the overall superintendence, control and guidance of the Village Development Committee.

(6)(a) The members of the Beneficiary Level Sub-Committee once appointed, shall not be removed or withdrawn before the completion of their term as provided in sub-section (2), except,-

- (i) by an express resolution passed by the *Gram Sabha* or the beneficiary voters of the activity, scheme or utility, as the case may be, in a special meeting duly called for the purpose, or
- (ii) when such member suffers from any of the disqualification specified in section 14 for the members of the *Panchayats*;

(b) Any vacancy caused by the death, resignation, removal or withdrawal, or otherwise disqualification of a member of the Beneficiary Level Sub-Committee, shall be filled up as provided under sub-section (1) read with sub-sections (2) and (4).

(7) On constitution of a new *Panchayat*, the Beneficiary Level Sub-Committee shall be re-constituted within forty-five days of the constitution of the new *Panchayat*.

Provided that, there shall be no bar for the members of the previous sub-committee to be re-appointed on the new sub-committee, if otherwise eligible.]

50. Joint Committees of two or more local bodies.-(1) A *Panchayat* may, from time to time, concur with any other *Panchayat* or with any Municipal Corporation, Municipality,²³²[Zilla Parishad, *Panchayat Samiti*], Cantonment authority or committee appointed for a notified area or with more than one such *Panchayat*, Municipal Corporation, Municipality,²³³[Zilla Parishad, *Panchayat Samiti*], authority or committee,-

- (a) in appointing out of their respective bodies a joint committee for any purpose in which they are jointly interested and in appointing a Chairman of such committee;
- (b) in delegating to any such committee power to frame terms binding on each such body as to the construction and future maintenance of any joint work and any power which might be exercised by either or any of such bodies; and
- (c) in framing and modifying rules for regulating the proceedings of any such committee and the conduct of correspondence, relating to the purpose for which the committee is appointed.

(2) A *Panchayat* may subject to the sanction of the State Government from time to time, enter into an agreement with any other *Panchayat*, or with any Municipal Corporation,

²³² These words were substituted for the words "District Local Board" by Mah. 5 of 1965, S. 286, Tenth Sch.

²³³ These words were substituted for the words "District Local Board" by Mah. 5 of 1965, S. 286, Tenth Sch.

Municipality, ²³⁴[***] Cantonment authority or committee appointed for a notified area, or with a combination of any such bodies, for the levy of octroi duty whereby the octroi duties, respectively, leviable by the bodies so contracting may be levied together instead of separately within the limits of the area subject to the control of the said bodies.

(3) Where a *Panchayat* has requested the concurrence of any other local authority under the provisions of sub-section (1) or (2) in respect of any matter and such other local authority has refused to concur, the Commissioner may pass such orders as he may deem fit requiring the concurrence of such other such local authority (not being a cantonment authority) in the matter aforesaid, and such other local authority shall comply with such orders.

(4) If any difference of opinion arises between local bodies acting under this Section, the decision thereon of the State Government, or of such officer as it appoints in this behalf, shall be final:

Provided that, where one of the local bodies is a cantonment authority, the decision of the State Government, or of the officer, shall be subject to the concurrence of the Central Government.

51. Government may vest certain lands in *Panchayat*.-(1) For the purposes of this Chapter the State Government may, subject to such conditions and restrictions as it may think fit to impose, vest in a *Panchayat*, open sites, waste, vacant or grazing lands or public roads and streets, bridges, ditches, dikes and fences, wells, river beds, tanks, streams, lakes, nallas, canals, water courses, trees or any other property in the village vesting in the Government.

²³⁵[(1-A) Where the State Government is of opinion that any property vested in a *Panchayat* under sub-section (1) is required for the purpose of any national or State Development plan or for any other public purpose, or where any such property is not required by the *Panchayat* for the purpose for which it was vested, the State Government may resume such property; and upon such resumption, the property shall cease to vest in the *Panchayat* and shall revert in the State Government.

(1-B) Notwithstanding anything contained in sub-section (1) or in any order vesting grazing or other lands in a *Panchayat*, such of the grazing or other lands vested in a *Panchayat* as were under cultivation immediately before the day on which the Maharashtra Village *Panchayats* (Amendment) Act, 1965 comes into force shall, on the commencement of that Act, cease to vest in such *Panchayat* and revert in the State Government, subject to all limitations, conditions and right or interest of any person in force or subsisting immediately before such commencement.]

(2) Subject to any conditions and restrictions imposed by the State Government under sub-section (1), and with the previous sanction of the Collector, a *Panchayat* may discontinue or stop up any such public road or street vested in it by the State Government, but which is no longer required as a public road or street and may lease or sell any such land theretofore used for the purposes of such public road or street:

234 The words "District Local Board were deleted by Mah. 5 of 1965, S. 286, Tenth Sch.

235 Sections (11-A) and (1-B) were inserted by Mah. 36 of 1965, S. 26.

Provided that atleast one month before it is decided to stop up or discontinue such public road or street the *Sarpanch* shall, by notice signed by him and affixed in the part of the public road or street which it is proposed to discontinue or stop up and published in such other manner as is prescribed, inform the residents of the village of the said proposal, and consider any objections in writing made thereto. The notice shall indicate the alternative route, if any, which it is proposed to provide or which may already be in existence.

(3) Whenever any public road or street or any part thereof has been so discontinued or stopped up, reasonable compensation shall be paid to every person who was entitled to use such road or street or part thereof, otherwise than as a mere member of the public, as a means of access to or from his property and has suffered damage from such discontinuance or stopping up, and the provisions in the Maharashtra Highways Act (Act No. LV of 1955), in relation to the assessment, apportionment and payment of compensation shall *mutatis mutandis* apply thereto as they apply in relation to the closure of a highway under Section 52 of that Act.

52. Control on erection of buildings.- ²³⁶[(1) In the village, for which a draft Regional plan or final Regional plan has been published under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), no person shall erect or re-erect or commence to erect or re-erect any building,-

- (i) in the *gaathan* area of the village, within the meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966), without obtaining the previous permission of the panchayat, in the prescribed manner;
- (ii) in other areas of the village, without obtaining the previous permission of the Collector or any other officer, not below the rank of Tahsildar to whom the powers of the Collector are delegated.

(1A) In the village for which a draft Regional plan or final Regional plan has not been published, no person shall erect or re-erect or commence to erect or re-erect any building, without obtaining the previous permission of the panchayat in the prescribed manner.

(2) Any permission under sub-section (1) or sub-section (1A), as the case may be, shall be granted by the panchayat, upon an application made for this purpose, only after obtaining the prior approval of the Town Planning Officer of the State Government, posted at the Panchayat Samiti level or, in case, no such officer has been posted at the Panchayat Samiti level, the Town Planning Officer at the Zilla Parishad level.

236 Sub-sections (1) and (2) substituted by Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014 (Mah. Act No. 43 of 2014), dated 29-12-2014, s.2(a). Prior to substitution, the sub-sections (1) and (2) read as: "

"(1) No person shall erect or re-erect or commence to erect or re-erect within the limits of the village, any building without the previous permission of the *Panchayat*. Such permission may be granted with or without conditions or may be refused.

(2) Permission shall be presumed to have been granted if the *Panchayat* fails to communicate its permission] or refusal in respect thereof within two months from the date of receipt of the application for permission. In a case of refusal or in case of permission being granted subject to conditions, the *Panchayat* shall communicate to the applicant the reasons therefor; and an appeal shall lie against any such order of refusal or of conditional permission to the Standing Committee within a period of thirty days from the date of communication of such order."

(2A) If the panchayat fails to communicate its permission or refusal in respect thereof, within sixty days from the date of receipt of such application or, within sixty days from the date of receipt of the reply from the applicant, in respect of the requisition, if any, made by the panchayat, whichever is later, such permission shall be deemed to have been granted to the applicant, on the day immediately following the Expiry of the said period of sixty days:

Provided that, such permission shall be deemed to have been granted subject to the condition that, the erection or re-erection or commencement of erection or re-erection of any building, shall be in strict conformity with the relevant Development Control Regulations or the draft of final Regional plan, as the case may be, in accordance with the provisions of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966) or any bye-laws or regulations framed under any other law for the time being in force:

Provided further that, any erection or re-erection or commencement of erection or re-erection of any building, in contravention of the preceding proviso, shall be deemed to be unauthorised development.

(2B) Any applicant aggrieved by an order granting permission on conditions or for refusing permission under sub-section (1) or (1A), as the case may be, may within forty days from the date of communication of the order to him, prefer an appeal to the District Head of the Town Planning Department posted at the Zilla Parishad. The appeal shall be in such form and shall bear such court-fees as may be prescribed. Such District Head, after giving an Appellant a reasonable opportunity of being heard, may by order, passed within a period of ninety days from the date of receipt of appeal, either allow the appeal unconditionally or subject to such conditions, as he may deem fit, or reject the appeal. The decision of the District Head on such appeal shall be final and binding on all concerned.

(2C) Notwithstanding anything contained in any judgment, order or decree of any court, on and with effect from the date of commencement of the Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014 (Mah. 43 of 2014), the Maharashtra Village Panchayats (Extension of Village Sites) Rules, 1967 shall, stand repealed.

(2D) On and with effect from the date of commencement of the Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014 (Mah. 43 of 2014), until the rules, under this section are made, the Standardised Development Control and Promotion Regulations for Regional Plans in Maharashtra, framed under sub-section (4) of section 20 of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), in respect of grant of permission to erect or re-erect the buildings shall apply.]

(3) No person who becomes entitled under ²³⁷[sub-section (1), (1A), (2), (2A) or (2B)] to proceed with any intended work of erection or re-erection shall commence such work after the expiry of one year from the date on which he became entitled so to proceed therewith, unless he shall have again become so entitled by a fresh compliance with the provisions of the preceding sub-sections.

237 Substituted for "sub-section (1) or (2)" by Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014 (Mah. Act No. 43 of 2014), dated 29-12-2014, s.2(b).

(4) Whoever erects or re-erects, or commences to erect or re-erect any building without such permission or in any manner contrary to the provisions of sub-section (1) or any by-law in force, or to any conditions imposed by the *Panchayat* shall be punished with fine, which may extend to fifty rupees, and in the case of a continuing contravention, he shall be liable to an additional fine which may extend to five rupees for each day during which such contravention continues after conviction for the first such contravention.

(5) Without prejudice to the penalty prescribed in sub-section (4) the *Panchayat* may,

- (a) direct that the erection or re-erection be stopped;
- (b) by written notice required such erection or re-erection be altered or demolished as it may deem necessary;

and if the requirement under clause (b) is not complied with within the time fixed in the notice ²³⁸[(such time being not less than thirty days)], the *Panchayat* may cause the alteration or demolition to be carried out by its officers and servants and all the expenses incurred by the *Panchayat* therefor, shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter IX.

(6) Nothing contained in this Section shall apply to any building which is used or required for public service, or for any public purpose, and is the property of the State or Central Government or any local authority, or is to be erected or re-erected by the State or Central Government or the local authority, but reasonable notice of the proposed construction shall be caused to be given to the *Panchayat*, and the objections or suggestions of the *Panchayat*, if any, shall be considered. ²³⁹[Nothing in this Section shall also apply to any building erected or re-erected for any industrial or commercial purpose.]

Explanation:- The expression "erect" or "re-erect" with reference to a building in this Section, includes,

- (a) any material alteration, or enlargement of or in any building;
- (b) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;
- (c) such alteration of a building as would affect a change in the drainage or sanitary arrangement or materially affect its security;
- (d) the addition of any rooms, buildings, outhouses or other structures to any building;
- (e) the conversion by any structural alteration, into a place of religious worship or into a sacred building of any place or building not originally meant or constructed for such purpose;
- (f) roofing or covering an open space between walls and buildings, as regards the structure which is formed by roofing or covering such space;
- (g) conversion into a stall, shop, warehouse or godown of any building not originally constructed for use as such or vice versa;

238 These brackets and words were inserted by Mah. 36 of 1965, S. 27(3).

239 This portion was added by Mah. 36 of 1965, S.27(4).

- (h) construction in a wall adjoining any street or land not vested in the owner of the wall, of a door opening on such street or land.

NOTES

- Establishment of New Town Development Authority---Effect of publication of notification in *Official Gazette*---Powers of Gram *Panchayat* to levy tax---Held, effect is to take away right to control development, erection or re-erection of buildings by Gram *Panchayat* and District Collector vested in section 52 of Bombay Village *Panchayats* Act. All such powers are transferred to newly designated authority. Only powers under section 52 of BVP Act are taken away and nothing more. Besides as per Article 265 of Constitution no tax can be levied without authority of law. There is no provision in MRTTP Act conferring any such power on development authority. Gram *Panchayat* was perfectly justified in assessing, imposing and recovering taxes from petitioners notwithstanding designation of new authority. *Bima Office Premises Co-operative Society v/s Kalamboli Village Panchayat, Kalamboli & others 2002(Supp.) Bom.C.R. 200; 2001 (0) AIR(Bom) 83; 2001 (1) Mh.L.J. 806*

53. Obstructions and encroachments upon public streets and open sites.-(1) Whoever,²⁴⁰ [within the limits of the *gaathan* area of the village]

- (a) builds or sets up any wall, or any fence, rail, post, stall, verandah, platform, plinth, step or structure or thing or any other encroachment or obstruction, or
- (b) deposits, or causes to be placed or deposited, any box, bale, package or merchandise or any other thing, or
- (c) without written permission given to the owner or occupier of a building by a *Panchayat*, puts up, so as to protect from an upper storey thereof, any verandah, balcony, room or other structure or thing.

in or over any public street or place, or in or over or upon any open drains, gutter, sewer or aqueduct in such street or place, or contravenes any conditions subject to which any permission as aforesaid is given or the provisions of any byelaw made in relation to any such projections or cultivates or makes any unauthorised use of any grazing land, not being private property, shall on conviction, be punished with fine, which may extend to fifty rupees, and with further fine which may extend to five rupees for every day on which such obstruction, deposit, projection, cultivation or unauthorised use continues after the date of first conviction for such offence.

(2) The *Panchayat* shall have power to remove any such obstruction or encroachment and to remove any crop unauthorisedly cultivated on grazing land or any other land, not being private property, and shall have the like power to remove any unauthorised obstruction or encroachment of the like nature in any open site not being private property, whether such site is vested in the *Panchayat* or not, provided that if the site be vested in Government the

²⁴⁰ Substituted for "within the limits of the village" by Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014 (Mah. Act No. 43 of 2014), dated 29-12-2014, s.3.

permission of the Collector or any officer authorised by him in this behalf shall have first been obtained. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recovered in the same manner as an amount claimed on account of any tax recoverable under Chapter IX.

²⁴¹[It shall be the duty of the *panchayat* to remove such obstruction or encroachment immediately after it is noticed or brought to its notice, by following the procedure mentioned above.]

²⁴²[(2-A) If any *Panchayat* fails to take action under sub-section (2) ²⁴³[***], the Collector *suo motu* or on an application made in this behalf, may take action as ²⁴⁴[provided in that sub-section, and submit the report thereof to the Commissioner]. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment or unauthorised cultivation of the crop and shall be recoverable from such person as an arrear of land revenue.]

(3) The power under ²⁴⁵[sub-section (2) or sub-section (2-A)] may be exercised in respect of any obstruction, encroachment or ²⁴⁶[unauthorised cultivation of any crop] referred to therein whether or not such obstruction, encroachment or ²⁴⁷[unauthorised cultivation of any crop] has been made before or after the village is declared as such under this Act, or before or after the property is vested in the *Panchayat*.

²⁴⁸[(3-A) Any person aggrieved by the exercise of the powers by the *Panchayat* under sub-section (2) or (3) may, within thirty days from the date of exercise of such powers, ²⁴⁹[appeal to the Commissioner and the Commissioner, after making such enquiry as he thinks necessary, shall pass such orders as he deems necessary] after giving such person a reasonable opportunity of being heard.]

²⁵⁰[(3-B) Any order made by the Collector in exercise of powers conferred on him under sub-section (2-A) or (3) shall be subject to appeal and revision in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1960).

(4) Whoever, not being duly authorised in that behalf removes earth, sand and other material from, or makes any encroachment in or upon an open site which is not private property, shall, on conviction, be punished with fine which may extend to fifty rupees, and in the case of an encroachment, with further fine, which may extend to five rupees for every day in which the encroachment continues after the date of first conviction.

241 Added by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

242 Sub-section (2-A) was inserted by Mah. 34 of 1970, S.10(1).

243 Words "within such time as may be prescribed" deleted by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

244 Substituted for "provided in that sub-section" by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

245 These words were substituted for the word and figure "sub-section (2)" by Mah. 34 of 1970, S.10(2)(a).

246 These words were substituted for the words "or projection" by Mah. 34 of 1970, S.10(2)(b).

247 These words were substituted for the words "or projection" by Mah. 34 of 1970, S.10(2)(b).

248 This Sub-section (3A) was inserted by Mah. 36 of 1965, S.28.

249 Substituted for "appeal to the Standing Committee and the Standing Committee, after making such enquiry as it thinks necessary, shall pass such orders as it deems necessary" by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

250 Sub-section (3B) was inserted by Mah. 34 of 1970, S.10(3).

(5) Nothing contained in this Section shall prevent the *Panchayat*, from allowing any temporary occupation of, or erection in, any public street on occasions of festivals and ceremonies or the piling of fuel in by lanes and sites for not more than seven days, and in such manner as not to inconvenience the public or any individual or from allowing any temporary erection on, or putting projection over, or temporary occupation of, any such public street or place for any other purpose in accordance with the bye laws made under this Act.

54. Numbering of premises.-(1) The *Panchayat* may, from time to time, by written notice require the owner of any premises or a part thereof either to put up by means of a metal plate a number or sub-number on such premises or part thereof in such position and manner as may be specified in such notice or to signify in writing his desire that such work shall be executed under the orders of the *Panchayat*.

(2) Any person who destroys, pulls down or defaces any such number or sub-number or puts any number or sub-number different from that put up by order of the *Panchayat* and any owner of any premises or part thereof who does not at his own expense keep such number or sub-number in good order after it has been put up thereon, shall, on conviction, be punished with fine which may extend to twenty rupees.

(3) Where a number or sub-number is put up on any premises or part thereof under the orders of the *Panchayat* in accordance with sub-section (1), the expenses of such work shall be payable by the owner of such premises or part thereof, as the case may be.

Explanation.— In this Section “premises” means a house, outhouse, stable, shed, hut or other structure whether of masonry, bricks, wood, mud, metal, or any other material whatsoever whether used as a human dwelling or otherwise.

²⁵¹[CHAPTER III-A

SPECIAL PROVISIONS FOR GRAM SABHA AND PANCHAYAT IN SCHEDULED AREAS

²⁵²[54-1A. Special provisions relating to village and *Gram Sabha*.- Notwithstanding anything contained in sections 4, 5 or any other provisions of this Act, in the Scheduled Areas,-

- (a) a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs, and which is declared as a village in the prescribed manner shall be the village for the purposes of this Chapter;
- (b) every village, so declared under clause (a), shall have a *Gram Sabha* consisting of persons whose names are included in the electoral rolls for the panchayat at the village level and a panchayat may comprise of one or more than one of such villages.]

54A. Powers and duties of *Gram Sabha* in Scheduled Areas.- It shall be competent for every *Gram Sabha* in the Scheduled Areas,-

251 Inserted by Mah.27 of 2003 dated 08-08-2003 s. 4.

252 Section 54-1A inserted by the Maharashtra Village Panchayats (Amendment and Continuance) Act, 2014 (Mah. Act No. 18 of 2014), dated 25-06-2014 (w.e.f. 30-01-2014), s.2.

- (a) to safeguard and preserve the traditions and customs of the tribals, their cultural identity, community resources and the customary mode of dispute resolutions;
- (b) to approve the plans, programmes and projects to be implemented by the *Panchayat* for social and economic development before such plans, programmes and projects are taken up for implementation by such *Panchayat*;
- (c) to issue to the *Panchayat* certificate of utilization of funds, spent by that *Panchayat* for the plans, programmes and projects referred to in clause (b);
- (d) to decide priority for implementation of various development schemes of the State or as the case may be, of the Central Government and also to identify and select persons as beneficiaries under the various poverty alleviation and similar other programmes or schemes;
- (e) to enforce prohibition or regulate or restrict through *Panchayat* concerned, the sale and consumption of intoxicants;
- (f) to issue directions to the *Panchayat* with regard to the regulation, exploitation, management and trade of minor forest produce vested in it, subject to the provisions of the Maharashtra Transfer of Ownership of Minor Forest Produce in the Scheduled Areas, and the Maharashtra Minor Forest Produce (Regulation of Trade) (Amendment) Act, 1997 (Mah. XLV of 1997)²⁵³ [and Chapter III A of The Indian Forest Act, 1927 (16 of 1927), in its application to the State of Maharashtra].
- (g) to make recommendations through the *Panchayat* concerned to the Collector with a view to prevent alienation of land in the Scheduled Areas and to restore unlawfully alienated land of a Scheduled Tribe. It shall be incumbent on the Collector and the concerned *Panchayat* to initiate necessary appropriate action for prevention or as the case may be, restoration of the land in the Scheduled Area unlawfully alienated;
- (h) to be consulted through the *Panchayat* concerned for grant of any licence for money lending under the Bombay Money Lenders Act, 1946 (Bom. XXXI of 1947) and to take annual review of the money lending business. Any decision taken by the majority of the *Gram Sabha* concerned shall be binding on the concerned authorities and the *Panchayat* at the appropriate level;
- (i) to make recommendations to the *Panchayat* concerned with a view to exercise control over local plans and resources for such plans including tribal sub-plans;
- (j) to plan the minor water bodies and grant approval to the decision taken in this regard by the *Panchayat* concerned²⁵⁴ [and also to manage fishing activities in minor water bodies within its jurisdiction].

253 Inserted by Notification No. RB/TC/e-11019(89)(2013)/Notification-4/1120/2014, dated 30-10-2014.

254 Inserted by Notification No. RB/TC/e-11019(89)(2013)/Notification-4/1120/2014, dated 30-10-2014.

Explanation.—For the purposes of this clause “minor water bodies” means any water storage and irrigation storage including village tanks, percolation tanks, lift irrigation works upto 100 hectares;

- (k) to grant approval to the establishment of village market in the area of the village. Any decision taken by the majority of the *Gram Sabha* for the establishment of a village market and for management thereof shall be binding on the *Panchayat*;
- (l) to be consulted before acquiring any land in the Scheduled Areas falling within its jurisdiction, for development projects and resetting or rehabilitating any person affected by such projects in the Scheduled Areas;
- (m) to be consulted before grant of any licence or any permission for prospective licence for mining lease for minor minerals by concession for the exploitation of minor minerals by auction. Any decision taken by the majority of the *Gram Sabha* concerned shall be binding on the concerned authorities and the *Panchayat* at the appropriate level;
- (n) to monitor progress and supervise functioning of institutions and functionaries entrusted with implementation of social sector programmes in the village concerned and make suitable recommendations to the *Panchayat Samiti* and Zilla Parishad ²⁵⁵[and to other Departments concerned with the implementation of programmes, projects, and schemes in the social sector] with regard to implementation of social sector programmes. Any decision taken by the majority of the *Gram Sabha* in this regard shall be binding on the *Panchayat* at the appropriate level.

Explanation.—For the purposes of this clause and clause (d) of section 54B, “social sector” means any scheme, programme, project or work entrusted to a Zilla Parishad under the provisions of section 100, 102, 103 or 123 and to a *Panchayat Samiti* under section 101 of the Maharashtra Zilla Parishads and *Panchayat Samitis Act, 1961* (Mah. V of 1962), so also to a *Panchayat* under section 45 of this Act ²⁵⁶[and any Department of the State Government executing similar schemes, programs, and projects.].

- (o) to make recommendations through the *Panchayat* concerned to the concerned authorities for felling of trees. Any recommendation made by the majority of the *Gram Sabha* shall be binding on the concerned authorities and the *Panchayat*;
- (p) to approve the budget for the *Panchayat*. Any decision in this regard by the majority of the *Gram Sabha* shall be binding on the *Panchayat*;
- (q) to be consulted through the *Panchayat* by any competent Authority in respect of land, water resources, forests and all other natural resources situated within the jurisdiction of such *Panchayat*.

255 Inserted by Notification No. RB/TC/e-11019(89)(2013)/Notification-4/1120/2014, dated 30-10-2014.

256 Inserted by Notification No. RB/TC/e-11019(89)(2013)/Notification-4/1120/2014, dated 30-10-2014.

54B. Powers and duties of Panchayats in Scheduled Areas.- Every *Panchayat* in the Scheduled Areas shall,-

- (a) obtain from the *Gram Sabha* a certification of utilization of funds, spent by the *Panchayat* for the plans, programmes and projects approved under clause (b) of section 54A;
- (b) be consulted by the Land Acquisition Authority, before acquiring any land in the Scheduled areas falling within its jurisdiction, for development projects and re-setting or rehabilitating any person affected by such projects in the Scheduled Areas:

Provided that, every *Panchayat* shall consult the *Gram Sabha* before conveying its views to the Land Acquisition Authority concerned;

- (c) be competent to make recommendations, to the licencing authorities concerned, and the licencing authorities shall not grant any licence or any permission for prospecting licence or mining lease for minor minerals and concessions for the exploitation of minor minerals by auction, in the Scheduled Areas, without consultation with the *Gram Sabha*. Any decision taken by the majority of the *Gram Sabha* concerned shall be binding on the concerned authorities and the *Panchayat* at the appropriate level;
- (d) be competent to monitor progress and supervise functioning of institutions and functionaries entrusted with implementation of social sector programmes in the village concerned and make suitable recommendations to the *Panchayat Samiti* and Zilla Parishad with regard to implementation of social sector programmes:

Provided that, every *Panchayat* shall consult the *Gram Sabha* before conveying any recommendations to the *Panchayat Samitis* and the Zilla Parishad. Any decision taken by the majority of the *Gram Sabha* in this regard shall be binding on the *Panchayat*;

- (e) be competent to make recommendations pertaining to alienation of land of the persons belonging to the Scheduled Tribes, to the Collector with a view to prevent alienation of land in the Scheduled Areas and to restore unlawfully alienated land of a Scheduled Tribe:

Provided that, every *Panchayat* shall consult the *Gram Sabha* before conveying any recommendation to the Collector;

- (f) be competent to make any recommendation to the Registrar appointed under the Bombay Money Lenders Act, 1946 (Bom. XXXI of 1947) for grant of any licence for money lending. Any decision taken by the majority of the *Gram Sabha* concerned shall be binding on the *Panchayat* as well as on the concerned authorities at the appropriate level:

Provided that, every *Panchayat* shall consult the *Gram Sabha* before conveying any recommendation to the Registrar:

Provided further that, the executive management of the money lending business shall be with the *Panchayat*;

- (g) be competent to regulate exploitation, management and trade of minor forest produce vested in it, subject to the provisions of the Maharashtra Transfer of Ownership of Minor Forest Produce in the Scheduled Areas, and the Maharashtra Minor Forest Produce (Regulation of Trade) (Amendment) Act, 1997;
- (h) be competent to manage the minor water bodies ²⁵⁷[and also to manage fishing activities in minor water bodies within its jurisdiction].
- Explanation.*—For the purposes of this clause “minor water bodies” means any water storage and irrigation storage including village tanks, percolation tanks, lift irrigation works upto 100 hectares;
- (i) be competent to establish and manage a village market in the area of the village after obtaining approval therefor from the Gram Sabha. Any decision taken by the majority of the *Gram Sabha* in this regard shall be binding on the *Panchayat*;
- (j) in the Scheduled Areas where the population of the Scheduled Tribes is more than fifty per cent. of the total population, the Office of the chairperson of such *Panchayat* shall be reserved only for the persons belonging to Scheduled Tribes;
- (k) be competent to make recommendations to the concerned authorities for felling of trees in the area of the village after obtaining recommendations of the Gram Sabha.
- Provided that, any recommendations made by the *Gram Sabha* shall be binding on the *Panchayat*;
- (l) be competent to prepare the budget and to get it approved by the Gram Sabha: Provided that, any decision taken by the majority of the *Gram Sabha* concerned shall be binding on the *Panchayat*;
- (m) be consulted by any competent authorities in respect of land, water resources, forests and all other natural resources situated within the jurisdiction of *Panchayat* after making consultation with the *Gram Sabha* in this regard;
- (n) be competent to get the plans, programmes and projects to be implemented for social and economic development before such plans, programmes and projects are taken up for implementation by such *panchayat*, approved by the Gram Sabha.
- ²⁵⁸[(o) be competent to exercise control over local plans and resources for such plan including the Tribal sub-Plan:

257 Inserted by Notification No. RB/TC/e-11019(89)(2013)/Notification-4/1120/2014, dated 30-10-2014.

258 Clause (o) inserted by Notification No. RB/TC/e-11019(89)(2013)/Notification-4/1120/2014, dated 30-10-2014.

Provided that not less than 5% of the total Tribal sub-Plan funds of the respective annual plan shall be devolved to the *Gram Panchayats* in Scheduled Areas in proportion to their population:

Provided further that the *Panchayat* shall utilise these funds for the purpose and to the extent as recommended by the *Gram Sabha*;

Provided also that in case a *Panchayat* has more than one *Gram Sabha* these funds shall be utilized in proportion to the population of the respective *Gram Sabhas*.]

54C. Meetings of Gram Sabha.- (1) Secretary of the *Panchayat* shall be the Secretary of the *Gram Sabha* and he shall be responsible to call the meetings of the *Gram Sabha*. Such Secretary shall prepare and maintain the proceedings of all meetings of the *Gram Sabha* or in his absence any officer authorized in this behalf by the person who is presiding over the meeting shall prepare such proceedings.

(2) Secretary of the *panchayat* shall convey the date, time and place of every meeting of the *Gram Sabha*, not less than fifteen clear days before the date fixed for such meetings to the concerned Officials and *members* of the *Gram Sabha*.

(3) The first meeting of the *Gram Sabha* in every financial year shall be presided over by the *Sarpanch*, or in his absence by the *Upa-Sarpanch*. In the absence of the *Sarpanch* and *Upa-Sarpanch*, the members of the *Gram Sabha* shall elect one of the members of the *panchayat* present to preside. All other meetings in the financial year shall be presided by such persons who shall be elected by the majority of the members of the *Gram Sabha*.

(4) Unless exempted by the *Gram Sabha*, every meeting of the *Gram Sabha* shall be attended by the concerned village Kotwal, Talathi, Police Patil, Health Officer, Head Master of the Primary and Secondary School, Agriculture Officer, Junior Engineer of Maharashtra State Electricity Board and Officers incharge of the Police Station.

(5) Notwithstanding anything contained in this Act or any rules made thereunder, twenty-five per cent. of total number of persons included in the list of voters or hundred of such persons, whichever is less, shall form a quorum for a meeting of the *Gram Sabha*. It shall not be allowed to conduct any meeting including adjourned meeting without quorum.

(6) If any dispute arises between the *Gram Sabhas* or any matter concerning to more than one *Gram Sabhas* within the area of the *Panchayat*, shall be brought before the joint meeting of all the *Gram Sabhas* of that *Panchayat* and the decision taken by majority at such joint meeting shall be deemed to be the decision taken by each of the *Gram Sabha*.

54D. Motion of No Confidence.- (1) The *Sarpanch* and *Upa-Sarpanch* shall implement the suggestions and the resolutions made by the *Gram Sabha*. Any remiss on the part of such *Sarpanch* or, as the case may be, *Upa-Sarpanch*, shall be liable for the disqualification for continuing as *Sarpanch* or, as the case may be *Upa-Sarpanch*, or for being chosen as such for the remainder of the term of office of the member of the *Panchayat*, if the *Gram Sabha* makes resolution to that effect by three-fourth majority:

Provided that, no such resolution against the *Sarpanch* or, as the case may be, *Upa-Sarpanch* shall come into effect without the prior approval of the Government.

(2) All officials of the *Panchayat* shall implement the suggestions and the resolutions made by the majority of the *Gram Sabha* and shall submit their work report to the *Gram Sabha*. Any remiss on the part of such official shall be punishable departmentally, if *Gram Sabha* makes resolution to that effect by three-fourth majority:

Provided that, no such resolution against any official shall come into effect without the prior approval of the Government.

(3) A *Sarpanch* or, as the case may be, the *Upa-Sarpanch* shall cease to be *Sarpanch* or, as the case may be, *Upa-Sarpanch*, if a motion of no confidence is passed by secret ballot at a special meeting of the *Gram Sabha* and conceded by the majority of more than fifty per cent. of the members of the *Gram Sabha*:

Provided that, a motion of the no confidence shall be moved by not less than one third of the total members of the *Gram Sabha* against *Sarpanch* or, as the case may be, *Upa-Sarpanch* after giving notice thereof to the Secretary of the *Gram Sabha*. The Secretary of the *Gram Sabha* shall immediately deliver such notice to the Tahsildar.

(4) The Tahsildar after receipt of the notice, within fifteen days from the date of receipt of such notice shall convene a special meeting of *Gram Sabha* at the office of the *Panchayat* for considering the motion of no confidence. The Officer not below the rank of Naib Tahsildar shall preside over such meeting. The *Sarpanch* or, as the case may be, the *Upa-Sarpanch* against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting (including the right to vote).

(5) The meeting called for considering the no confidence motion under sub-section (4) shall not be adjourned for any reason unless the reasons therefor are recorded in writing by the Presiding Officer of the meeting.

(6) A motion of no confidence shall not be moved within a period of two and half years from the date of election of the *Sarpanch* or, as the case may be, *Upa-Sarpanch*.

(7) If the *Sarpanch*, or as the case may be, the *Upa-Sarpanch* desires to dispute the validity of the motion of no confidence carried under sub-section (3), he shall, within fifteen days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within fifteen days from the date on which it was received by him. Any person aggrieved by the decision of the Collector may, appeal to the Commissioner who shall decide the appeal, as far as possible, within fifteen days from the date on which it was received by him. Any such decision shall, subject to a second appeal under sub-section (8), shall be final.

(8) Any person aggrieved by the decision of the Commissioner, may, within fifteen days, appeal to the Government, and the decision of the Government shall be final.

(9) In case the offices of the *Sarpanch* or, as the case may be, the *Upa-Sarpanch* becomes vacant under sub-section (3) shall be filled, by the by-election of a *Sarpanch* or, as the case may be, *Upa-Sarpanch*, within fifteen days from the date of vacancy of such post and he shall hold office so long as the *Sarpanch* or, as the case may be, *Upa-Sarpanch*, in whose place he has been elected would have held office if the vacancy had not occurred.

(10) A member shall cease to be a member of *Panchayat* in the Scheduled Areas, if a motion of no confidence is passed by secret ballot by not less than fifty per cent. of the voters of the electoral ward from which such member has been elected:

Provided that, the provisions of sub-sections (3) to (9) shall *mutatis mutandis* apply to such no confidence.]

CHAPTER IV

PANCHAYAT: ITS PROPERTY AND FUND

55. Competency of *Panchayat* to lease, sell or transfer property.- Every *Panchayat* shall be competent to lease, sell or otherwise transfer moveable or immoveable property which may become ²⁵⁹[vested in (otherwise than under the provisions of sub-section (1) of Section (51)] or be acquired by it and to contract and do all other things necessary for the purposes of this Act:

Provided that no lease of immovable property other than property referred to in sub-section (1) of Section 56 for a term exceeding three years and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer has been made with the previous sanction of the ²⁶⁰[Chief Executive Officer].

NOTES

☐ Alleged illegalities in allotment of shop - Purpose regarding statement not communicated to appellant/petitioners - No show cause notice or opportunity was given - Held, action for eviction of appellant and notice issued for that purpose is in breach of principles of natural justice. Eviction notice issued by *Sarpanch* and impugned order passed by Single Judge are quashed and set aside. *Narayan Wamanrao Charade & ors. v/s State of Maharashtra & ors.* 2007(5) Bom.C.R. 801; 2007 (6) All.M.R. 912; 2007 (4) Mh.L.J. 91

56. Property of *Panchayat*.-(1) ²⁶¹[It shall be competent for a Zilla Parishad from time to time to direct that any property vesting in it] shall vest in a *Panchayat* and on such direction being issued, ²⁶²[the property shall, subject to rules made in that behalf, vest] in the *Panchayat* notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908:

Provided that no lease, sale or other transfer of any such immovable property by the *Panchayat* shall be valid without the previous sanction of the ²⁶³[Chief Executive Officer].

(2) Every work constructed by a *Panchayat* out of the village fund, or with Government assistance or peoples' participation shall vest in such *Panchayat* ²⁶⁴[and every work constructed

259 These words, brackets and figures were substituted for the words "vested in" by Mah. 36 of 1965, S.29.

260 These words were substituted for the words "Collector" by Mah. 5 of 1962, S.286, Tenth Sch.

261 These words were substituted for the words "It shall be competent to a Zilla Parishad or *Panchayat* Samiti from time to time to direct that any property vesting in such Zilla Parishad or *Panchayat* Samiti" by Mah.36 of 1965, S.30(1).

262 These words were substituted for the words "the property shall vest" by Mah. 36 of 1965, S.30(1).

263 These words were substituted for the words "Collector" by Mah. 5 of 1962, S.286, Tenth Sch.

264 These words were added by Mah. 36 of 1965, S. 30(2).

by a *Panchayat* with the assistance of Zilla Parishad or *Panchayat Samiti* shall vest in a *Panchayat* in the manner provided by rules made in that behalf.]

57. Village fund.-(1) There shall be in each village a fund, which shall be called the village fund.

(2) The following shall be paid into, and form part of, the village fund namely.

- (a) the amount which may be allotted to the village fund by the State Government under the provisions of Section 191 of the Bombay District Municipal Act, 1901]²⁶⁵ (Bom. III of 1901); or ²⁶⁶ *** under Section 8 of the Central Provinces and Berar Municipalities Act, 1922 (C.P. and Berar Act II of 1922);
- ²⁶⁷[(b) the proceeds of any tax or fee imposed under Section 124 except the general water rate and the special water rate levied under clauses (viii) and (xii), respectively, of sub-section (1) of that Section.
- (c) the proceeds of a tax on professions, trades, callings and employments assigned to the *Panchayat* ²⁶⁸[under clause (b) of Section 163 of the Maharashtra Zilla Parishads and *Panchayat Samitis* Act, 1961 (Mah. V of 1962).]
- ²⁶⁹[(d) the sum representing the share of the *Panchayat* in the net proceeds of the taxes, duties, tolls and fees levied by the State as distributed and allocated as determined by the State Government on the recommendations of the Finance Commission];
- (e) all other sums ordered by a Court to be placed to the credit of the village fund;
- (f) the sale-proceeds of all dust, dirt, dung, refuse or carcasses of animals, except in so far as any person is entitled to the whole or a portion thereof;
- ²⁷⁰[(fa) the sale proceeds or royalty of the minor forest produce collected to the Scheduled Areas within the jurisdiction of a *Panchayat* and vested in that *Panchayat*];
- (g) sums contributed to the village fund by the State Government or a ²⁷¹[Zilla Parishad or *Panchayat Samiti*];
- (h) all sums received by way of loans from the State Government or the ²⁷²[Zilla Parishad] or out of the District Village Development Fund constituted under Section 133 ²⁷³[and all sums borrowed under Section 57-A];

265 See now the Maharashtra Municipalities Act, 1965 (Mah. XL of 1965).

266 The words "under the said Act in its application to the Saurashtra area of the State of Bombay and" were omitted by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

267 Clause (b) was substituted by Mah. 5 of 1997, S. 4(a) (w.e.f. 2.1.1997).

268 This portion was substituted for the words, brackets, letters and figures "under clause (b) of sub-section (1) of Section 102 C of the Bombay Local Boards Act, 1923" by Mah. 36 of 1965, S. 31(1).

269 Clause (d) was inserted by Mah. 21 of 1994, S. 22.

270 Clause (fa) inserted by Mah. 46 of 1997, s. 4.

271 These words were substituted for the words "District Local Board" by Mah. 5 of 1962, S. 286, Tenth Sch.

272 These words were substituted for the words "District Local Board" by Mah. 5 of 1962, S. 286, Tenth Sch.

273 This portion was added by Mah. 35 of 1963, S. 80, Sch.

- (i) all sums received by way of gift or contributions by the *Panchayat*;
- (j) the income or proceeds of any property vesting in the *Panchayat*;
- (k) ^{274***}
- (l) the net proceeds (after deducting the expenses of assessment and collection) of the cess authorised by Section 127;
- (m) all sums realised by way of rent or penalty otherwise than as the amount of any fine in a criminal case;
- (n) all sums realised as pound fees after deducting the expenses;
- ²⁷⁵[(o) all sums received by way of commission by a *Panchayat* when acting as an insurance agent for implementing any Rural Insurance Scheme of the Life Insurance Corporation of India.]

²⁷⁶[(3) ²⁷⁷[The Secretary and the *Sarpanch* shall be jointly responsible for the safe custody of the village fund, the Village Water Supply Fund and other moneys received on behalf of the *panchayat*, from time to time, and shall jointly operate them for the following purposes], namely.

- (a) authorisation of payments, issue of cheques and refunds in compliance with the provisions of this Act and the rules made thereunder or the resolutions, duly passed by the *Panchayat*;
- (b) receive all sums of money on behalf of the *Panchayat* in response to notices, bills, appeals and other processes issued by the *Panchayat*;
- (c) issue of receipts in the prescribed manner for all sums of money received on behalf of the *Panchayat* and crediting them in the relevant fund;
- (d) hold cash imprest on hand, of not more ²⁷⁸[than rupees one hundred and fifty] at a time, for contingent purposes of the *Panchayat*;
- (e) incur contingent expenditure ²⁷⁹[upto one hundred rupees] at any one occasion;
- (f) for performing such other duties and exercising such other powers in regard to the funds as may be prescribed.

(4) The Secretary shall submit a weekly statement of accounts to the ²⁸⁰[*Panchayat*], and a monthly statement of accounts to the Block Development Officer, giving in particular the details of the receipts into and payments from the balance in the funds ²⁸¹[***].]

274 Clause (k) was deleted by Mah. 13 of 1975, S. 15.

275 Clause (o) was added by Mah. 36 of 1965, S. 3(2).

276 Sub-sections (3) and (4) were added by Mah. 4 of 1981, S. 3.

277 Substituted for "Subject to the provisions of sub-section (5) of Section 38, the Secretary shall be solely responsible for the safe custody of the village fund, the Village Water Supply Fund and other moneys received on behalf of the *Panchayat*, from time to time, and shall operate them for the following purposes" by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

278 These words were substituted for the words "than Rs. 50" by Mah. 1 of 1998, S. 2(a) (w.e.f. 3.1.1998)

279 These words were substituted for the words "upto ten rupees" by Mah. 1 of 1998, S. 2(b) (w.e.f. 3.1.1998)

280 Substituted for "*Sarpanch*" by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006

²⁸²[57A. **Power of Panchayats to borrow.**-A *Panchayat* may borrow money for the purpose of carrying out its functions under this Act from such body or association (whether incorporated or not) as may be approved by the State Government in this behalf.]

58. Application of Village fund.-²⁸³[(1)] All property vested in the *Panchayat* under this Act and all funds received by it in accordance with the provisions of this Act and all sums accruing to it under the provisions of any law for the time being in force shall be applied subject to the provisions and for the purposes of this Act and all such funds and sums shall be kept in such custody as may be prescribed.

²⁸⁴[(2)] Notwithstanding anything contained in sub-section (1), if any one of the *Panchayat* areas is falling partly in the Scheduled Area and partly in the non-Scheduled Area, the sale proceeds or royalty of the minor forest produce credited into the village fund under clause (fa) of sub-section (2) of section 57 shall be expended only for the development of the said area of *Panchayat* falling in the said Schedule Areas.]

59. Decision of claims to property by or against Panchayat.-In any village ²⁸⁵*** where any property or any right, in or any property is claimed by or on behalf of the *Panchayat*, or by any person against the *Panchayat*, it shall be lawful for the Collector, after formal enquiry, of which due notice has been given, to pass an order deciding the claim.

(2) Any suit instituted in any Civil Court after the expiration of one year from the date of the communication of any order passed by the Collector under sub-section (1), or if one or more appeals have been made against such order within the period of limitation, then, from the date of the communication of any order passed by the final appellate authority, as determined according to Section 204 of the Bombay Land Revenue Code, 1879]²⁸⁶ (Bom. V of 1879) ²⁸⁷***sub-section (2) of Section 158 of the Hyderabad Land Revenue Act, 1317 (Hyd. VII of 1317 F) fasli, or Section 41 of the Madhya Pradesh Land Revenue Code, 1954 (M. P. Act II of 1955), shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has received due notice of such order.

(3)(a) The powers conferred by this Section on the Collector may be exercised also by an Assistant or Deputy Collector or by a Survey Officer or such other officer appointed under any of the Acts referred to in sub-section (2).

(b) The formal inquiry referred to in this Section shall be conducted in accordance with the provisions relating to such enquiry under the Acts referred to in sub-section (2).

281 Words "under his control" deleted by the Bombay Village *Panchayats* (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006, s. 9(6)(a).

282 Section 57A was inserted by Mah. 35 of 1963, S. 80, Sch.

283 Section 58 re-numbered as sub-section (1) by Mah. 46 of 1997, S. 5 (w.e.f. 29.12.1997).

284 Sub-section (2) inserted by Mah. 46 of 1997, s. 5 (w.e.f. 29.12.1997).

285 The words "to which a survey of lands being lands not ordinarily used for the purpose only of agriculture has been or is extended under any law for the time being in force were deleted by Mah. 34 of 1970, S. 11.

286 See now the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966).

287 The words "or that Section of the said Code as applied to the Saurashtra and Kutch areas of the State of Bombay" were omitted by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

(c) A person shall be deemed to have due notice of any inquiry or order under this Section if notice thereof has been given in the prescribed manner.

CHAPTER V

ESTABLISHMENT, BUDGET AND ACCOUNTS

60. Secretary of Panchayat.- (1) There shall be ²⁸⁸[one or more Secretaries] for every Panchayat, or a group of Panchayat as the ²⁸⁹[Chief Executive Officer] may (having regard to the extent and population of the village and income of the Panchayat), by a general or special order, determine:

²⁹⁰[Provided that, the Secretary shall also function as Secretary to the *Gram Sabha* of the respective Panchayat.]

²⁹¹[(2) The Chief Executive Officer shall appoint a Secretary (who may bear such other designations as a Zilla Parishad may assign to him) from District Service (Class III). The Secretary shall be posted to Panchayat but his salary and allowances shall be paid from the district fund.]

²⁹²(3) ***

²⁹³(4) ***

²⁹⁴[*Explanation.-* In this Section the expressions "District Fund" and "District Service (Class III)" shall have the meanings, respectively, assigned to them in Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Mah. V of 1962)].

²⁹⁵[**60A. Certain duties of Secretary.-** (1) In addition to any other duties case on the Secretary, it shall be the duty of the Secretary to prepare the report of the expenditure incurred by the Panchayat on the development activities to be placed before the *Gram Sabha* and display the information thereof on the notice board of the Panchayat as required by sub-section (1A) of section 8.

(2) If the Secretary fails to prepare the report of the expenditure incurred on the development activities to be placed before the *Gram Sabha* and display the information thereof on the notice board as required by sub-section (1), he shall be liable for disciplinary action under clause (v), (vi) or (vii) of rule 4 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rule, 1964.]

61. Appointment of servants.- ²⁹⁶[(1) A Panchayat may appoint such servants as may be necessary for the proper discharge of its duties under this Act and pay their salaries from the

288 These words were substituted for the words "a Secretary" by Mah. 36 of 1965, S. 32.

289 These words were substituted for the words "State Government" by Mah. 35 of 1963, S. 80, Sch.

290 Proviso inserted by Mah. 46 of 1997, s. 6.

291 Sub-section (2) was substituted by Mah. 5 of 1962, S. 286, Tenth Sch.

292 Sub-sections (3) and (4) were deleted by Mah. 5 of 1962.

293 Sub-sections (3) and (4) were deleted by Mah. 5 of 1962.

294 This Explanation was added by Mah. 5 of 1962, S. 286, Tenth Sch.

295 Section 60A inserted by the Bombay Village Panchayats (Amendment) Act, 2006 (38 of 2006) dated 21st December 2006, s. 10.

296 Section 61 was re-numbered as sub-section (1) and sub-section (2) was inserted by Mah. 36 of 1965, S. 33.

village fund. A *Sarpanch* may also, in cases of emergency, engage such temporary servants as he may deem necessary. A *Panchayat* may, from time to time, by written order, fine, suspend or dismiss any servant appointed by it; but an appeal shall lie against any such order passed by the *Panchayat* to the ²⁹⁷[Block Development Officer], within one month from the date of the communication of the order to the servant. ²⁹⁸[An application for revision may be made to the Chief Executive Officer against the decision of the Block Development Officer in such appeal:

Provided that, no such application shall be entertained if it is not made within a period of one month from the date of such decision:

Provided further that, no such appeal or application shall be decided unless the servant of the *Panchayat* is given an opportunity of being heard.]

²⁹⁹[(2) Without prejudice to the power of a *Panchayat* under sub-section (1), the State Government may ³⁰⁰[make rules to regulate recruitment and] the terms and conditions of service of servants appointed under sub-section (1)].

³⁰¹[61A. Provisions for development of *panchayats* as growth centres.- (1) Notwithstanding anything contained in this Act, taking into consideration the population, income and potential of the *panchayat* and such other factors as may be prescribed, the State Government shall, by notification in the *Official Gazette*, direct that a *panchayat* or a group of *panchayats* may engage experts, technical support agencies and skilled manpower on contract or on consultancy basis for conceiving, preparing, executing, operating, managing, maintaining and supervising the *panchayat* Development Plan, Land Development Plan and Environmental Development Plan for planned growth of the *panchayat* as well as the Livelihood and Employment Development Plan, Physical and Social Infrastructure Development Plan and other related activities to develop such *panchayats* or group of *panchayats* as growth centres.

(2) The experts, technical support agencies and skilled manpower engaged under sub-section (1) shall be from a panel prepared by the officer authorised by the State Government in this behalf, and the persons so engaged shall possess such qualifications and experience and shall be engaged on such terms and conditions as may be prescribed.

(3) The State Government may, direct such *panchayats* or group of *panchayats* to allocate such portion of funds from any scheme, project, programme or work sponsored by the State Government or the Central Government, as permissible, or from Village Development Fund or other own sources of the *panchayats* or group of *panchayats* which shall be utilised for engaging such persons.]

62. Budget and accounts.-(1) A *Panchayat* shall determine annually and shall submit to the ³⁰²[*Panchayat Samiti*] on or before such date and in such form as may be prescribed, a statement of,

297 These word were substituted for the words "*Panchayat Mandal*" by Mah. 35 of 1963, S. 80 Sch.

298 This portion was added, by Mah. 35 of 1963.

299 Sub-section (2) added by Mah. 35 of 1963.

300 These words were substituted for the words "make rules regulating" by Mah. 34 of 1970, S. 12.

301 Section 61A inserted by Mah. 16 of 2012, s.5 (w.e.f. 02-10-2012).

302 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286. Tenth Sch.

- (a) the opening balance in the fund and estimated income of the *Panchayat* for the following ³⁰³[financial year];
- (b) the expenditure proposed on establishment and discharge of its duties under ³⁰⁴[***] Section 45;
- (c) the amount to be contributed to the District Village Development Fund established under Section 133.

³⁰⁵[(1-A) If a *Panchayat* fails to submit such statement as required by sub-section (1) on or before the date prescribed under that sub-section, the Secretary shall prepare such statement and submit it to the *Panchayat* Samiti in the form prescribed under that sub-section on or before such date as may be prescribed.]

(2) The ³⁰⁶[*Panchayat* Samiti] shall, within two months from the date of the receipt of such statement, either approve the same or direct that the proposed expenditure on any of the duties ³⁰⁷[falling under Section 45] shall be increased or decreased:

Provided that, the ³⁰⁸[*Panchayat* Samiti], shall not have power ³⁰⁹[either to disapprove the statement or] to direct that the total proposed expenditure shall exceed the estimated income of the *Panchayat* for the following ³¹⁰[financial year] and the opening balance in the fund;

³¹¹[Provided further that, if a *Panchayat* Samiti fails either to approve such statement or to direct that the expenditure on any of the duties falling under Section 45 be increased or decreased, within two months from the date of receipt of such statement, the statement shall be deemed to have been duly approved by the *Panchayat* Samiti.

(3) A *Panchayat* shall contribute every ³¹²[financial year] to the ³¹³[District Village Development Fund] constituted under Section 133 such percentage of its income from all sources (including contributions from the State Government) ³¹⁴[but not including any sums received from the State Government, Zilla Parishad or *Panchayat* Samiti by way of grant or loans for all specific work] not exceeding 10 per cent thereof as may be prescribed.

(4) The Secretary shall keep the accounts of the *Panchayat* in such form as may be prescribed. He shall prepare the annual report of the administration of the *Panchayat* and shall place the accounts and the report for approval before the *Panchayat*. The annual statement of such accounts together with the annual report as approved shall be sent to the ³¹⁵[Zilla Parishad] on or before such date and in such form as may be prescribed.

303 These words were substituted for the words "year" by Mah. 36 of 1965, S. 34(1).

304 The word "sub-section (1) of" were deleted by Mah. 36 of 1965, S. 34(2).

305 Sub-section (1-A) was inserted by Mah. 13 of 1975, S. 16.

306 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 286, Tenth Sch.

307 These words were substituted for the words "specified in section 45" by Mah. 36 of 1965, S. 34(3).

308 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 286, Tenth Sch.

309 These words were inserted by Mah. 34 of 1970, S. 13(a).

310 These words were substituted for the word "year" by Mah. 36 of 1965, S. 34(1).

311 This proviso was added by Mah. 34 of 1970, S. 13(b).

312 These words were substituted for the word "year" by Mah. 36 of 1965, S. 34(1).

313 These words were substituted by Mah. 38 of 1973, S. 5

314 These words were inserted by Mah. 36 of 1965, S. 34(4)

315 Substituted for "*Panchayat* Mandal" by Mah. 5 of 1962, s. 286 Tenth Schedule.

³¹⁶[62A. Revised or supplementary budget.-A *Panchayat* may at any time during the financial year for which any such statement has been approved as aforesaid cause a revised or supplementary statement to be prepared. Every such revised or supplementary statement shall be considered and approved by the *Panchayat* Samiti in the same manner as if it were an original statement, and the provisions of Section 62, shall apply in relation to such revised or supplementary statement.]

CHAPTER VI, VII AND VIII

³¹⁷[DELETED BY MAH. 13 OF 1975, S. 17]

CHAPTER IX

TAXATION AND RECOVERY OF CLAIMS

³¹⁸[124. Levy of taxes and fees by *Panchayats*.-] (1) ³¹⁹[Subject to the minimum and maximum rates which may be fixed by the State Government and in such manner and subject to such exemptions as may be prescribed, a *Panchayat* shall levy taxes referred to in ³²⁰[clauses (i), (i-a) and (i-aa)] of this sub-section and ³²¹[where the *Panchayat* has taken over any water supply schemes under sub-section (1) of Section 45, it shall also levy taxes referred to in clauses (viii) and (xii) of this sub-section and the *Panchayat*] may levy all or any of the taxes and fees referred to in the remaining clauses of this sub-section.]

(i) a tax on buildings (whether subject to payment of agricultural assessment or not) and lands (which are not subject to payment of agricultural assessment), within the limits of the village;

³²²[(i-a) a betterment charge on the lands benefited from schemes or projects undertaken by a *Panchayat* from the village fund;]

³²³[(i-aa) the Local Panchayat Tax;]

316 Section 62A was inserted by Mah. 34 of 1970, S. 14.

317 On deletion of these chapters, --

All Nyaya *Panchayats* functioning immediately before such commencement shall be deemed to have been abolished, and the members thereof shall be deemed to have vacated their offices,

All suits and all cases pending before a Nyaya *Panchayat* immediately before such commencement shall stand transferred to the Civil or Criminal Court competent to try the same: and such Civil or Criminal Court may proceed to hear and dispose of such suit or case from the stage it reached before its transfer to it, or may commence the proceeding *de novo* by itself;

All other pending, proceedings and applications for the execution of decrees or orders in suits and for the recovery of fines and compensation in cases, shall stand transferred to the Civil or Criminal Court, as the case may be, who would have been competent to try the suit or case if the Nyaya *Panchayat* had not been constituted, and such Civil or Criminal Court, shall deal with the proceedings or applications as if the suit or case out of which the proceedings or applications arose had been heard and decided by such Civil or Criminal Court:

The unexpended balance of the funds provided to Nyaya *Panchayat* shall vest in the State Government. (vide section 38 of Mah. 13 of 1975).

318 Amendments made by Section 18 of Mah. 13 of 1975 have not been brought into force.

319 This portion was substituted for the portion beginning with "It shall be competent" and ending with "prescribed, namely, - "by Mah. 13 of 1975, S. 18(1)(a).

320 Substituted for "clauses (i) and (i-a)" by Mah. 22 of 2012, s.3(i).

321 These words, brackets and figures were inserted by Mah. 56 of 1981, S. 8.

322 Clause (i-a) was inserted by Mah. 13 of 1975, S. 18(1)(b).

³²⁴[(ii) ***]

- (iii) a pilgrim tax;
 - (iv) a tax on fairs, festivals and other entertainments;
 - (v) a tax on bicycles and on vehicles drawn by animals;
 - (vi) subject to the provisions of Article 276 of the Constitution, a tax on the following professions, trades, callings or employments, that is to say.-
 - (a) shop-keeping and hotel-keeping
 - (b) any trade or calling (other than agriculture) which is carried on with the help of machinery run by steam, oil or electric power or by manual labour;
 - (c) the profession or calling of brokers in cattle markets;
 - (vii) a general sanitary cess for the construction or maintenance, or both the construction and maintenance of public latrines and for the removal and disposal of refuse;
 - (viii) a general water rate which may be imposed in the form of a rate assessed on buildings and lands or in any other form as may be best adopted to the circumstances of any class of cases;
- ³²⁵[(viii-a) a lighting tax;]
- (ix) any other tax ³²⁶[(not being a tax or toll on motor vehicles save as provided in Section 2 of the Maharashtra Motor Vehicles Tax Act) (Act No. LXV of 1958)] which the State Legislature has, under the Constitution, power to impose in the State and which has been sanctioned by the State Government;
 - (x) a fee on markets and weekly bazars;
 - (xi) a fee on car-stands and tonga stands;
 - (xii) a special water rate for water supplied by the *Panchayat* through pipes, which may be imposed in any form including that of charges for such water supplied, fixed in such mode or modes as shall be best adopted in the circumstances of any class of cases;
 - (xiii) a fee for the supply of water from wells and tanks vesting in it, for purposes other than domestic use and for cattle;
 - (xiv) a fee for temporary erection on, or putting up projections over, or temporary occupation of, any public street or place;
 - (xv) a special sanitary cess upon private latrines, premises or compounds cleaned by the *Panchayat* agency;

323 Clause (i-aa) inserted by Mah. 22 of 2012, s.3(ii), s.3(ii).

324 Clause (ii) was deleted by Mah. 6 of 2000, S. 3 (w.e.f. 5.7.1999).

325 Clause (viii-a) was inserted by Mah. 36 of 1965, S. 48(1)(b).

326 This portion was substituted for "not being a toll (on motor vehicles or trailers, save as provided by section 14 of the Bombay Motor Vehicles Tax Act, 1935)" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

- (xvi) a fee for cleaning a cess pool constructed on land whether belonging to a *Panchayat* or not;
- (xvii) a fee for grazing cattle or grazing lands vesting in a *Panchayat*;
- ³²⁷[(xviii) a fee on the registration of animals sold in any market or place belonging to or under the control of a *Panchayat*.]

(2) The tax on buildings or lands referred to in clause (i) of sub-section (1) shall be leviable from the owners or occupiers thereof:

Provided that when an owner of a building or land has left the village or cannot otherwise be found, any person to whom such building or land has been transferred shall be liable for the tax leviable from the owner.

(3) The State Government may, by notification in the *Official Gazette*, direct that tax upon buildings or lands referred to in clause (i) of sub-section (1) shall not be levied on all buildings and lands or on any class of building or lands situated in an area predominantly populated by members of Scheduled Castes or Scheduled Tribes.

³²⁸[(3-A) For the purposes of levying a betterment charge, the *Panchayat* shall give notice to persons believed to be owners of, or interested in, the lands benefited by any scheme or project, make an inquiry and after hearing any objections, determine the lands benefited by the scheme or project, increase in the value of the land as a result of any scheme or project, the rate of betterment charge leviable on each of such lands and the date from which the betterment charges shall be leviable. The State Government may make rules for such supplemental and incidental matters including provisions for giving exemption from such charges in respect of the levy of betterment charges as it thinks fit.]

³²⁹ ***]

(5) Any person aggrieved by the assessment, levy or imposition of any tax or fee may appeal to the ³³⁰[*Panchayat Samiti*]. ³³¹[A further appeal against the order of the *Panchayat Samiti* shall lie to the Standing Committee, whose decision shall be final. ³³²[The first appeal shall be made within thirty days after the presentation of the bill complained of, and the further appeal within thirty days from the date on which the *Panchayat Samiti* decides the appeal.]

³³³[(6) If at any time it appears to the State Government on complaint made or otherwise, that any tax or fee leviable by a *Panchayat* is unfair in its incidence, or that the levy thereof, or any part thereof is obnoxious to the interest of the general public or violates any promises made or undertakings given by the State Government or adversely affects the development of the village or any part thereof, the State Government may require the said *Panchayat* within such period as it fixes in this behalf, to take measures for removing any objection which

327 Clause (xviii) was added by Mah. 36 of 1965, S. 48(1)(c).

328 Sub-Section (3-A) was inserted by Mah. 13 of 1975, S. 18(2)

329 Sub-Section (4) was deleted by Mah. 16 of 1975, S. 28, Sch.II.

330 These words were substituted for the words "*Panchayat Mandal*", by Mah. 5 of 1962, S. 286, Tenth Sch.

331 These words were substituted for the words "The decision of the *Panchayat Mandal* thereon shall be final" by Mah. 5 of 1962, S. 286, Tenth Sch.

332 This portion was added by Mah. 36 of 1965, S. 48(2).

333 Sub-section (6) was substituted for the original by Mah. 36 of 1965, S. 48(3).

appears to it to exist to the said tax or fee. If, within the period so fixed, such requirement is not carried into effect to the satisfaction of the State Government, the State Government may, after giving the *Panchayat* an opportunity to give an explanation, by notification in the *Official Gazette*, suspend the levy of such tax or fee, or such part thereof, until such time as the objection thereto is removed.]

NOTES

- ☐ Notice by Gram *Panchayat*---Demanding property tax---Warrant of attachment in event of failure to pay---Establishment of New Town Development Authority under section 113(3-A) of MRTP Act---Contention powers of Gram *Panchayat* to assess and levy tax on lands and buildings standing thereon had been eclipsed by operation of virtue of section 113(5) of MRTP Act---Further contention, Gram *Panchayat* has ceased to exist as such it has lost its authority to levy tax---Held, so long as notification is not issued under section 4(2) of Bombay Village *Panchayats* Act, Gram *Panchayat* cannot be said to have ceased to exist or to none ceased to be Gram *Panchayat* within provisions of the Bombay Village *Panchayats* Act. Thus it has right to levy tax on lands and building situated within its jurisdiction and consequently act of Gram *Panchayat* levying, assessing and calling upon petitioners to pay tax cannot be said to be bad and illegal. *Bima Office Premises Co-operative Society v/s Kalamboli Village Panchayat, Kalamboli & others 2002(Supp.) Bom.C.R. 200; 2001 (0) AIR(Bom) 83; 2001 (1) Mh.L.J. 806*
- ☐ Tax bill issued by Gram *Panchayat* void ab initio Revision against order of not having jurisdiction Stay of suit granted in revision Application by respondent for stay of implementation and execution of bill granted Challenged Contended that entertaining of application and passing order thereon would virtually amount to contempt of Court Held, learned Judge of trial Court no doubt was aware of position and pendency of revision with stay order to further proceedings and hence he committed error in entertaining and passing order on that application. Order granting application liable to be set aside. *Gram Panchayat & another v/s Krishna Charitable Trust & others 2003(5) Bom.C.R. 122*

³³⁴[124A. Provisions relating to Local Body Tax.- (1) Every *Panchayat* in a notified area shall levy and collect the Local Body Tax on entry of goods for consumption, use or sale in such notified area in accordance with the provisions of this section.

(2) The State Government may, by general or special order, designate any authority, Secretary of the *Panchayat* or any other officer to be the Designated Authority.

(3) It shall be the responsibility of the Designated Authority to levy and collect the Local Body Tax on the entry of the goods into the notified area, for consumption, use or sale therein in accordance with the provisions of Chapter XIB of the Maharashtra Municipal Corporations Act (Act No. LIX of 1949), and the rules made thereunder and to deposit or cause to be deposited into the treasury of the Government, such Local Body Tax.

(4) The State Government shall, every year, after due appropriation made by law in this behalf, place in the hands of the Collector to pay to each of the *Panchayats* whose area falls

within a notified area, a grant-in-aid approximately equal to the amount of the Local Body Tax collected from the area of that *Panchayat*.

(5) The sum of money required to meet the expenditure by the State Government under sub-section (4), shall be charged on the Consolidated Fund of the State.]

NOTES

Statement of Objects and Reasons (Act No 27 of 2009) - Octroi is an important source of revenue for the Municipal Corporations in the State. However, it has been brought to the notice of the State Government that, the method of levy and collection of octroi often leads to disruption of free movement of goods and is a major deterrent to the business. Apart from this, there is traffic congestion at the Octroi Posts, creating traffic problems.

2. To overcome the above difficulties, as an alternative system, the State Government had introduced Cess in lieu of Octroi in 'D' class Municipal Corporations. However, while implementing the levy and collection of the Cess, various difficulties were faced, consequent to which the State Government has allowed the Municipal Corporations to switch over to the earlier system of octroi.

3. In view of the persistent demand from the traders to abolish octroi system and evolve an alternative system, the State Government had decided to introduce a new system of Local Body Tax in lieu of Octroi in the Municipal Corporation Areas of 'D' class Municipal Corporations.

Apart from this, there is rapid urbanisation adjacent to the Municipal Corporation limits due to which there is heavy load on the existing infrastructure in such rural areas. To develop this infrastructure, it was necessary to financially strengthen the *Panchayats*. Hence, the State Government had decided to introduce Local Body Tax in such adjacent areas also. The Government, therefore, considered it expedient to amend the Maharashtra Municipal Corporations Act (Act No. LIX of 1949) and the Maharashtra Village *Panchayats* Act (Act No. III of 1959), suitably.

4. As both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Maharashtra Municipal Corporations Act and the Maharashtra Village *Panchayats* Act, for the purposes aforesaid, the Bombay Provincial Municipal Corporations and the Bombay Village *Panchayats* (Amendment) Ordinance, 2009 (Mah. Ord. XXI of 2009), was promulgated by the Governor of Maharashtra on the 31st August 2009.

5. The Bill is intended to replace the said Ordinance by an Act of the State Legislature.

125. Lump sum contribution by factories in lieu of taxes levied by *Panchayat*-(1)

Subject to any rules that may be made under the Act, and regard being had to the fact that a factory itself provides in the factory area all or any of the amenities which such *Panchayat* provides, a *Panchayat* may arrive at an agreement with any factory with the sanction of the State Government to receive a lump sum contribution in lieu of all or any of the taxes levied by the *Panchayat*.

(2) Where no such agreement as is referred to in sub-section (1) can be reached the matter may be referred to the State Government in the manner prescribed and the State Government may after giving to the *Panchayat* and the factory concerned an opportunity of being heard decide the amount of such contribution. The decision of the State Government shall be binding on the *Panchayat* and the factory concerned.

126. Framing of fees on markets, etc.-It shall be lawful for a *Panchayat* to lease by public auction or private contract the collecting of any fees levied by it on markets and weekly bazars:

Provided that the lessee shall give security for the due fulfillment of the conditions of the lease.

³³⁵[127. Levy and collection of ³³⁶[**] cess on every rupee of land revenue.-(1) The State Government shall levy a cess at the rate of ³³⁷[one hundred paise] on every rupee of every sum payable to the State Government as ordinary land revenue in the area within the jurisdiction of a *Panchayat* and thereupon, the State Government shall (in addition to any cess) leviable under the Maharashtra Zilla Parishads and *Panchayat Samitis Act, 1961* (Mah. V of 1962) levy and collect such cess in such area.]

³³⁸[(2) ***]

³³⁹[(3) ***]

³⁴⁰[(4) ***]

(5) For the purposes of levying and collecting the cess referred to in sub-section (1), in the Bombay area the provisions of Section 144 (including the Fourth Schedule), 145, ³⁴¹[147] and 149, in the Vidarbha area, the provisions of Section 151, and in the Hyderabad area, the provisions of Section 152 of the Maharashtra Zilla Parishads and *Panchayat Samitis Act, 1961* (Mah. V of 1962), shall apply thereto as they apply to the levy of cess leviable under Sections 144, 151, or as the case may be, Section 152 of that Act.]

³⁴²[127A. Suspension or remission of cesses.-The State Government may, on the application of a *Panchayat* to which the cess is payable, suspend or remit the collection of cess or any portion thereof in any year in any area subject to the jurisdiction of such *Panchayat*.]

128. Power of ³⁴³[*Panchayat Samiti*] to increase taxation on *Panchayat*.-(1) If in the opinion of the ³⁴⁴[*Panchayat Samiti*] the income of the *Panchayat* falls below what is

335 Section 127 was substituted by Mah. 5 of 1962, S 286, Tenth Sch.

336 The words "twenty naye paise" were deleted by Mah. 10 of 1992, S. 4(3).

337 These words were substituted for the portion beginning with the words "twenty naye paise" and ending with the words "by the State Government under this Section by Mah. 10 of 1992, S. 4(1).

338 Sub-sections (2), (3) and (4) were deleted by Mah. 10 of 1992, S. 4(2).

339 Sub-sections (2),(3) and (4) were deleted by Mah. 10 of 1992, S. 4(2).

340 Sub-sections (2),(3) and (4) were deleted by Mah. 10 of 1992, S. 4(2).

341 These figures were substituted for the figures "148", by Mah. 36 of 1965, S. 49(2).

342 Section 127-A was inserted by Mah. 36 of 1965, s. 50.

343 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

344 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

necessary for the proper discharge of the duties specified in sub-section (2) of Section 45, the ³⁴⁵[*Panchayat Samiti*] may require the *Panchayat* to take steps within six months, to increase its income to such extent as the ³⁴⁶[*Panchayat Samiti*] considers necessary. If the *Panchayat* fails to take adequate steps to increase its income to the required extent the ³⁴⁷[*Panchayat Samiti*] may require it to levy any of the taxes or fees specified in Section 124 or increase the rate at which any of such taxes and fees is levied:

Provided that, the ³⁴⁸[*Panchayat Samiti*] shall not compel the *Panchayat* to levy any tax or fee or increase the rate thereof beyond the maximum rate prescribed in this behalf.

(2) A *Panchayat* may appeal to the ³⁴⁹[Standing Committee] against an order made under sub-section (1) and the ³⁵⁰[Standing Committee] may stay the execution of such order until ³⁵¹[it] has decided the appeal.

129. Recovery of taxes and other dues.-(1) When any tax or fee, has become due, a *Panchayat* shall, with the least practicable delay, cause to be presented to the persons liable for the payment thereof a bill for the amount due from him, specifying the date on or before which the amount shall be paid.

(2) If any person fails to pay any tax or fee or any other sum due from him to a *Panchayat* under this Act or the rules on or before the specified date of payment, the *Panchayat* shall cause a writ of demand in the prescribed form to be served on the defaulter.

(3) The presentation of every bill under sub-section (1) and the service of every writ of demand under sub-section (2) shall be effected by an officer or servant of the *Panchayat* in this behalf-

- (a) by giving or tendering the bill or writ to the person to whom it is addressed, or
- (b) if such person is not found, by leaving the bill or writ at his last known place of abode, if within the limits of the village, or by giving or tendering the bill or writ to some adult male member or servant of his family; or
- (c) if such person does not reside within the limits of the village, and his address elsewhere is known to the *Sarpanch* or other person directing the issue of the bill or writ, then by forwarding the bill or writ to such person by registered post, under cover bearing the said address; or
- (d) if none of the means aforesaid be available, then by causing the bill or writ to be affixed on some conspicuous part of the building or land, if any, to which the bill or writ relates in the presence of at least two Panchas.

345 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

346 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

347 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

348 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

349 These words were substituted for the words "Commissioner" by Mah. 36 of 1965, S. 51.

350 These words were substituted for the words "Commissioner" by Mah. 36 of 1965, S. 51.

351 This word was substituted for the word "be" by Mah. 36 of 1965, s 51.

(4) If the sum for which a writ of demand has been served is not paid within thirty days from the date of such service, the *Panchayat* may levy such sum by distraint and sale of the moveable property of the defaulter in the prescribed manner.

(5) Fees for

- (a) every writ of demand issued under sub-section (2).
- (b) every distress made under sub-section (4).
- (c) the costs of maintaining any livestock seized under sub-section (4), shall be chargeable at such rates as may be prescribed.

(6) Notwithstanding anything contained in the foregoing sub-sections, any tax or fee payable on demand in accordance with the rules shall be recoverable in such manner as may be prescribed.

(7) If a *Panchayat* is unable to recover a tax or fee or other sum due to it as aforesaid, it may furnish to the Mamlatdar, Tahsildar or Naib-Tahsildar or Mahalkari, a statement of the arrears due with a request for the recovery of the same ³⁵²[***] and on receipt of such statement of arrears, the Mamlatdar, Tahsildar or Naib-Tahsildar or Mahalkari shall proceed to recover the same as an arrear of land revenue. ^{353*** 354***}

³⁵⁵[(8)(a) If a *Panchayat* fails to recover any tax, fee or any sum due to it, or neglects to take action under sub-sections (2) and (4) of this Section, ^{356**}

^{357***}

the *Panchayat* Samiti may apply to the Collector to recover the same as an arrear of land revenue.]

On receipt of such application, the Collector shall, after holding such inquiry as he thinks fit ³⁵⁸[and after ascertaining that three years from the date when the same has become recoverable have not elapsed], proceed to recover the sum as an arrear of land revenue unless such sum is, under Section 130, directed to be written off.

NOTES

- ❑ Issuance of bill for payment of taxes - Period of seven days within amount of bill to be pays - Period of seven days - How to be counted - Period of seven days are to be considering to be expiring at end of period of seven days contemplated by Sec. 129(1). *Shri Uttam H. Jadhav vs. Shri Vishwanath N. Jadhav & Others 2012(4)AIRBOMR304; 2012(3)ALLMR382; 2012(4)BCR90; 2012(3)MHLJ563; 2012(2)CPMH5*
- ❑ Bill of tax - To be paid within 3 months - Calculation of three months - Commencement of period is born 9 June 2011 - Period of three months end on 9th Sept. 2011. The month

352 The words "through the village officer" were deleted by Mah. 34 of 1970, S. 18(1).

353 The words "through the village officer" were deleted by Mah. 34 of 1970, S. 18(1).

354 The words "For the recovery of such sums, the village officers shall be remunerated by the *Panchayat* in such manner as may be prescribed" were deleted by Mah. 34 of 1970, S. 18(2).

355 Sub-section (8) was substituted for the original by Mah. 26 of 1963, S. 3 Second Sch.

356 The word "or" and clause (b) were deleted by Mah. 13 of 1975, S. 19.

357 The word "or" and clause (b) were deleted by Mah. 13 of 1975, S. 19.

358 These words were inserted by Mah. 36 of 1965, S. 52.

means 12th part of a solar year called a solar month and not a lunar month of 30 days duration. According to the British Calendar a solar year is divided into 12 parts as January, February and so on. The period of one month will not, therefore, necessary of 30 days duration. The duration of the month in a particular case would depend upon the number of days in the relevant month. If the relevant month has 31 days, the period of one month will be of 31 days. Hence, if the period of one month is to be calculated from 1st January, the period of one month will expire on 1st February. Therefore, while calculating the period of three months as contemplated by Sec. 14(1)(h), it will commence from 9th June, 2011 and will end on 9th September, 2011. (1929) 1 SCC 75 Rel. On. *Shri Uttam H. Jadhav vs. Shri Vishwanath N. Jadhav & Others* 2012(4)AIRBOMR304; 2012(3)ALLMR382; 2012(4)BCR90; 2012(3)MHLJ563; 2012(2)CPMH5

- ❏ **Disqualification** - Members of Gram *Panchayat* - Failed to pay taxes within three months from date of demand - Additional Collector upheld disqualified - Divisional Commissioner confirmed - W.P. dismissed - In application for amendment it is submitted orders passed by authorities below cannot be sustained considering provisions of section 14(1)(h) read with section 129(1) - Further section 129 requires a bill to be issued specifying amount and date on or before which said amount is to be paid - As per Clause (h) of section 14(1) period of three months is to be counted from date of demand and date of demand is to be understood as last date of demand, therefore, tax paid was within period of limitation, could not incur disqualification - Contra, appellants not entitled to raised point which was never raised earlier - Period of three months is to be counted from date of service of bill demanding tax - Section 14(1)(h) specifically provides that amount should be paid within three months from date of demand and date of demand has to be necessarily from date of bill - Held, in present case ground to be raised, is based purely on undisputed facts. Merely because appellants had not raised said point earlier, it would not be just and fair not to allow to raise said point in appeal. Principle is clearly to effect that appellate court should exercise appellate power for an appropriate order to be passed on undisputed facts in matter. *Rameshwar Ramaji Rewatkar v/s Dilip Tulsiram Rewatkar & ors.* 2007(1) Bom.C.R. 836; 2006 (5) All.M.R. 401; 2006 (5) Mh.L.J. 292
- ❏ **Disqualification-Complaint** against elected members on the ground that they were defaulter in payment of property tax inspite of notice and therefore, disqualified to continue as elected members-Collector holding that notices of alleged arrears were not dated and could not be taken as notices, hence dismissed the petition-Held, in matters of disqualification complaint has only indicate that default has taken place and it is not necessary to give other particulars of default. It is duty of the concerned authority to make enquiries and find out whether disqualification has been incurred. Facts in the case show that three conditions required for proving disqualification : (i) failure to pay a bill presented under section 129(1) of Act; (ii) default must continued for a period of 3 months; and (iii) that amount remained unpaid, have been proved by records of the Gram *Panchayat* which are presumed to be correct and Collector ought to have given findings of disqualification, 1993(2) S.C.C. 703; A.I.R. 1965 S.C. 1892; 1978(4) S.C.C. 181 referred to. *Suvarna Prakash Patil v/s Anil Hindurao Powar & others* 2003(Supp. 2) Bom.C.R. 19; 2004 (1) All.M.R. 61; 2004 (1) Mh.L.J. 1062

- ☐ Recovery of property tax Limitation for Village *Panchayat* issuing demand notice for recovery of increased property tax for past upto 30 years on the ground that Rule 20 of Village *Panchayat* Rules does not prescribe any limitation Validity Held, section 129 of Village *Panchayats* Act is a complete Code for recovery of due amounts for which *Panchayat* has been given powers and further to report to Mamlatdar/Collector who after making his enquiries will act to recover the amounts as land revenue provided the amount is within 3 years. This clearly shows that limitation of 3 years as provided under section 129(8) of Act is applicable to these cases and demand notices can not claim amounts for more than 3 years. Rule 20 even if not prescribing any limitation would be governed by section 129 of Act. *Prakashchandra Prithviraj Panpalia & others v/s Village Panchayat, Mandwa through its Secretary* 2003(3) Bom.C.R. 314; 2003 (1) All.M.R. 1061; 2003 (1) Mh.L.J. 572
- ☐ Suppression of material facts Writ petitions challenging demand notices for arrears of increased property tax for as far as back 30 years Contention the writ petitions be dismissed because they have suppressed material facts i.e. notices for enhanced tax were served on them from time to time was not disclosed Held, petitioner have averred that respondent-*Panchayat* has not followed the procedure for levy of tax and petitioner had no information as to the levy. Further the notices were not issued in name of petitioner but in his father's name, cannot be said to be case of suppression of facts. *Prakashchandra Prithviraj Panpalia & others v/s Village Panchayat, Mandwa through its Secretary* 2003(3) Bom.C.R. 314; 2003 (1) All.M.R. 1061; 2003 (1) Mh.L.J. 572

130. Collector's power to direct irrecoverable sums to be written off.-The Collector may direct-

(a) ^{359***}

³⁶⁰[any sum recoverable by him on an application by the *Panchayat* Samiti] under sub-section (8) of Section 129;

(b) any arrears of a tax or fee or any other sum due to a *Panchayat* and recoverable through a Mamlatdar, Tahsildar, Naib-Tahsildar or Mahalkari under sub-section (7) of Section 129;

³⁶¹[(bb) any sum forming part of the village fund which has been stolen or misappropriated and any person prosecuted in that behalf has been duly acquitted;]

(c) any other sum due to a *Panchayat* whether under this Act or otherwise to be written off, if in the opinion of the Collector such sum or arrears are irrecoverable:

359 The words and figures "any sum certified by a Nyaya *Panchayat* and recoverable by him under Sections 114, 115 and 117 and" were deleted by Mah. 13 of 1975, S. 20.

360 These words were substituted for the words "any sum certified by a *Panchayat* and recoverable by him" by Mah. 26 of 1963, S. 3, second Sch.

361 Clause (bb) was inserted by Mah. 34 of 1970, S. 19(1).

Provided that no sum exceeding rupees five hundred shall be written off under ³⁶²[clause (bb) or clause (c)], except the previous sanction of the Commissioner.

³⁶³ ***

CHAPTER X

FINANCIAL ASSISTANCE TO PANCHAYATS

³⁶⁴[131. ³⁶⁵Grant of sum equal to average of amounts of land revenue realized during each quinquennium commencing on 1st April 1964.]- (1) Subject to the provisions of this Section, every *Panchayat* shall, after a due appropriation made by law in this behalf, be entitled to receive every year ³⁶⁶[commencing on the 1st day of April 1972] a grant from the State Government of a sum equal to ³⁶⁷***the average of the amounts of the ordinary land revenue (including non-agricultural assessment) realized during each quinquennium commencing on the 1st day of April, 1964 from lands within the limits of the village *Panchayats*.

³⁶⁸[(2) Where a *Panchayat* has been established for any wadi or any area called by any other designation and such wadi or area forms part of a revenue village, the payment of grant of land revenue shall be in the same proportion as the population of such wadi or area bears to the population of the entire revenue village.

³⁶⁹ ***

132. Loans by ³⁷⁰[Zilla Parishad].-Notwithstanding anything contained in ³⁷¹[the Maharashtra Zilla Parishads and *Panchayat* Samitis Act, 1961 (Mah. V of 1961) [the Zilla Parishad] may, subject to rules, grant a loan to a *Panchayat* within the district for the purposes of this Act.

³⁷²[132A. Equalisation grant.-Where the amount of grant of land revenue payable to a *Panchayat* under sub-section (1) of Section 131 is found to be less than the amount arrived at on the basis of one per capita of the population of the village, then that *Panchayat* shall be entitled to the equalization grant equal to the difference between the amount arrived at on a per capita basis and the amount payable to the *Panchayat* under sub-section (1) of Section 131; and such grant shall be made by the State Government]

362 These words were substituted for the words "clause (c) by Mah. 34 of 1970, S. 19(2).

363 The second proviso was deleted by Mah. 36 of 1965, S. 53.

364 Section 131 was substituted for the original by Mah. 34 of 1970, S. 20.

365 This marginal note was substituted by Mah. 38 of 1973, S. 6(3).

366 These words, figures and letters were inserted by Mah. 13 of 1975, S. 21(a).

367 The words "thirty percent of" were deleted by Mah. 38 of 1973, s. 6(1).

368 Sub-section (2) was deemed to have been substituted from 1st April 1972 for sub-sections (2) to (6), by Mah. 38 of 1973, S. 6(2).

369 The Explanation was deleted by Mah. 13 of 1975, S. 21(b).

370 These words were substituted for the words "District Local Boards" by Mah. 43 of 1962, S. 26, Sch.

371 These words and figures were substituted for the words and figures "the Bombay Local Boards Act, 1923, or any corresponding law in force in the State of Maharashtra" by Mah. 43 of 1962, S. 26, Sch.

372 Section 132A was substituted by Mah. 34 of 1970, S. 21.

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³⁷⁴[132B. **Village Water Supply Fund.**- (1) There shall be in each village, a separate Fund, which shall be called the "Village Water Supply Fund". There shall be in each village.

(2) The following shall be paid into, and form a part of, the Village Water Supply Fund, namely:—

- (a) the amount credited to and outstanding in the Village Employment Fund, on the date of commencement of the Maharashtra Village *Panchayats* (Amendment) Act, 1996;
- (b) an amount not less than thirty-five per cent of the amount of grant received by a *Panchayat* under sub-section (1) of section 131, with effect from the financial year 1996-97 and every year thereafter. In the case of a *Panchayat* constituted for any Devasthan Inam Village, such amount shall be in accordance with such order as the State Government may, from time to time, make in this behalf, regard being had to the land therein which may be exempt from the payment of land revenue either wholly or partially;
- (c) the proceeds of the general water rate and the special water rate under clauses (viii) and (xii) respectively, of sub-section (1) of section 124;
- (d) all sums received by way of deposits, etc. in relation to domestic water supply or non-domestic use through pipes or otherwise;

(3) The amount standing to the credit of this Fund shall be utilized only for the purpose of supply of water for domestic use or for cattle or for other non-domestic uses excluding agricultural and industrial use.

(4) The State Government may make rules relating to all matters connected with the Fund and its accounts, including the manner in which the Fund shall be maintained, operated upon and expended.]

133. District Village Development Fund.-In each district, there shall be established out of the contributions made by *Panchayats* under sub-section (3) of Section 62, a fund to be called the District Village Development Fund. The fund shall vest in such officer or authority ³⁷⁵[(including any officer or authority of the Zilla Parishad or of *Panchayat* Samiti concerned)] and shall be invested in such manner as may be prescribed. The fund shall be utilized for the purpose of granting loans to *Panchayats* and the payment of interest on contributions made by *Panchayats* ³⁷⁶[and with the sanction of the Commissioner, for meeting expenditure on staff engaged for operating the fund and on all charges incidental thereto, such as, printing, stationary, stamps and the like]. The State Government shall make rules prescribing from time to time the purposes for which such loans may be granted, the terms and conditions (including

373 The Explanation was deleted by Mah. 13 of 1975, S. 22.

374 Section 132-B was substituted by Mah. 5 of 1997, S. 5 (w.e.f. 2.1.1997)

375 These brackets and words were inserted by Mah. 43 of 1962, S. 26 Sch.

376 These words were inserted by Mah. 34 of 1970, S. 22.

the rate of interest) on which such loans may be made, the period therefor, the manner of repayment, and all matters incidental to the grant of such loans.

CHAPTER XI

CONTROL

134. [Constitution of District Village *Panchayat* Mandal].-Deleted by Mah. 5 of 1962, S. 286, Tenth Sch.

[134A. Special provision consequent on Bombay Re-organisation Act, 1960].- Deleted by Mah. 43 of 1962, S. 26, Sch.

135. Duties of ³⁷⁷[Zilla Parishads and *Panchayat* Samitis].-Subject to the provisions of this Act and the rules made thereunder it shall be the duty of the ³⁷⁸[Zilla Parishad and the *Panchayat* Samiti] to,

- (a) encourage the establishment and foster the development of *Panchayat* in the ³⁷⁹[area for which they are established];
- (b) supervise and control the administration of *Panchayat* in the ³⁸⁰[area for which they are established];
- (c) perform such other functions as are imposed by the Act, and as the State Government may from time to time prescribe.

³⁸¹[136. Appointment of District Village *Panchayat* Officers.-The State Government may appoint for each district such officer working under a Zilla Parishad as it may specify to be a District Village *Panchayat* Officer to discharge such functions as may be prescribed under this Act.]

137. Power to call for proceedings, etc.-(1) The ³⁸²[Zilla Parishad and the *Panchayat* Samiti] shall have power

- (a) to call for any proceedings of a *Panchayat* or an extract therefrom, any book or document in the possession or under the control of a *Panchayat* and by return, statement, account or report within the ³⁸³[Zilla Parishad and the *Panchayat* Samiti] thinks fit to require such *Panchayat* to furnish; and
- (b) to require a *Panchayat* to take into consideration,
 - (i) any objection which appears to ³⁸⁴[Zilla Parishad and the *Panchayat* Samiti] to exist to the doing of anything which is about to be done, or is being done by such *Panchayat*; or

377 These words were substituted for the words "*Panchayat* Mandal" by Mah. 36 of 1965, S. 56.

378 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 286, Tenth Sch.

379 These words were substituted for the words "district" by Mah. 5 of 1962, S. 286, Tenth Sch.

380 These words were substituted for the words "district" by Mah. 5 of 1962, S. 286, Tenth Sch.

381 Section 136 was substituted for the original by Mah. 43 of 1962, S. 26, Sch.

382 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 5 286, Tenth Sch.

383 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 5 286, Tenth Sch.

384 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 286, Tenth Sch.

- (ii) any information which the ³⁸⁵[Zilla Parishad and the *Panchayat Samiti*] is able to furnish and which appears to the ³⁸⁶[Zilla Parishad and the *Panchayat Samiti* to necessitate the doing of a certain thing by the *Panchayat*,

and to make a written reply to the ³⁸⁷[Zilla Parishad and the *Panchayat Samiti*] within a reasonable time stating its reasons for not desisting from doing or for not doing such things.

³⁸⁸[(2) All or any of the powers given to the Zilla Parishad or *Panchayat Samiti* under sub-section (1) may be delegated by the Zilla Parishad or to the President or any other officer of the Zilla Parishad or by the *Panchayat Samiti* to the Chairman or any other officer of the *Panchayat Samiti*.

138. Delegation of duties, etc.-(1) The ³⁸⁹[Zilla Parishad or the *Panchayat Samiti* may delegate to any of its presiding authorities or any officer], the duties of encouraging the establishing and fostering the development of *Panchayats* and of assisting *Panchayats* in the proper exercise of the powers and performance of the duties conferred or imposed by or under this Act.

(2) It shall be competent to the ³⁹⁰[Zilla Parishad or the *Panchayat Samiti*] to accept and utilize in an honorary capacity, in the performance of any of the duties which may be delegated under sub-section (1), the services of any person who in the opinion of ³⁹¹[such Zilla Parishad or as the case may be, *Panchayat Samiti*] is specially fitted to assist it in this behalf.

139. Power of entry.-The ³⁹²[Zilla Parishad may authorize its President or Chief Executive Officer or the *Panchayat Samiti* may authorize its Chairman] ³⁹³[or Block Development Officer] to enter on and inspect, or cause to be entered on and inspected, at all reasonable times any immovable property occupied by any *Panchayat* or any work in progress under its direction.

³⁹⁴[**139A. Power of authorized officer or person to inspect and give technical guidance, etc.**-If for the purpose of efficient and economical execution or maintenance of any works or development schemes undertaken by a *Panchayat*, an officer or person authorised by general or special order of the Zilla Parishad considers it necessary for that purpose to give technical guidance or assistance to the *Panchayat* then the officer or person so authorised may periodically inspect such works or development schemes, and may give such guidance, assistance or advice as he thinks necessary in relation to such works or development schemes;

385 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

386 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

387 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

388 Sub-section (2) was substituted by Mah. 5 of 1962, S. 286 Tenth Sch.

389 These words were substituted for the words "The *Panchayat Mandal* may delegate to the Chairman, Vice-Chairman or the District Village *Panchayat Officer*", by Mah. 5 of 1962 S. 286, Tenth Sch.

390 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

391 These words were substituted for the words "such *Mandal*" by Mah. 5 of 1962 S. 286, Tenth Sch.

392 These words were substituted for the words "*Panchayat Mandal* may authorise its Chairman, Vice-Chairman or Secretary" by Mah. 5 of 1962 S. 286, Tenth Sch.

393 These words were inserted by Mah. 36 of 1965, S. 57.

394 Section 139-A and 139-B were inserted by Mah. 36 of 1965, S. 58.

and shall forward to the *Sarpanch* through the Block Development Officer, a report on the inspection made, pointing out therein any irregularities noticed, and his suggestions for improvement.

139B. Power of Chief Executive Officer or any officer to inspect office of Panchayat.—The Chief Executive Officer or any officer not below the rank of an Extension Officer duly authorized by him in writing in this behalf may enter the office of any *Panchayat* and inspect any records, register or other document, kept therein; and the *Panchayat* shall comply with the inspection notes, if any, made by the Chief Executive Officer or as the case may be, the officer.]

140. Audit of accounts of Panchayats.—(1) The audit of the accounts of a *Panchayat* shall be carried out ³⁹⁵[by such authority and] in such manner as may be prescribed and a copy of the audit note ³⁹⁶[shall be forwarded to ³⁹⁷[the Chief Executive Officer], the *Panchayat* Samiti and the *Panchayat*] within ³⁹⁸[two months] of the completion of the audit.

(2) On receipt of the audit note referred to in sub-section (1), the *Panchayat* shall either remedy any defects or irregularities which may have been pointed out in the audit note and send to the ³⁹⁹[*Panchayat* Samiti] within three months an intimation of its having done so or shall, within the said period, supply to the ⁴⁰⁰[*Panchayat* Samiti] any further explanation in regard to such defects or irregularities as it may wish to give.

(3) On receipt of such intimation or explanation, the ⁴⁰¹[*Panchayat* Samiti] may, in respect of all or any of the matters discussed in the audit note,

- (a) accept the intimation or explanation given by the *Panchayat* and recommend to the ⁴⁰²[Chief Executive Officer] to ⁴⁰³[drop] the objection,
- (b) ⁴⁰⁴[suggest] that the matter be reinvestigated at the next audit or at any earlier date, or
- (c) hold that the defects or irregularities pointed out in the audit note or any of them, have not been removed or remedied.

(4) The ⁴⁰⁵[*Panchayat* Samiti] shall send a report of its decision to the ⁴⁰⁶[Chief Executive Officer] within one month of the date of receipt by it of the intimation or explanation referred to in sub-section (2), or in the event of the *Panchayat* failing to give such intimation or

395 These words were substituted for the words "by the State Government" by Mah. 13 of 1975 S. 23(a)(i).

396 These words were substituted for the words "to the *Panchayat* and the Zilla Parishad and *Panchayat* Samiti" by Mah. 36 of 1965, S. 59(1).

397 These words were substituted for the words "the Collector, the Zilla Parishad" by Mah. 13 of 1975, S. 23(a)(ii).

398 These words were substituted for the words "one month" by Mah. 34 of 1970, S. 23.

399 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 286, Tenth Sch.

400 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 286, Tenth Sch.

401 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 286, Tenth Sch.

402 These words were substituted for the word "Collector" by Mah. 13 of 1975, S. 23(b).

403 This word was substituted for the word "withdraw" by Mah. 36 of 1965, S. 59(2)(a).

404 These words were substituted for the word "direct" by Mah. 36 of 1965, S. 59(2)(b).

405 These words were substituted for the words "*Panchayat* Mandal" by Mah. 5 of 1962, S. 286, Tenth Sch.

406 These words were substituted for the word "Collector" by Mah. 13 of 1975, S. 23(b).

explanation on the expiry of the period of three months referred to in the said sub-section (2), or in the event of the *Panchayat* failing to give such intimation or explanation on the expiry of the period of three months referred to in the said sub-section (2) ⁴⁰⁷[and shall forward a copy of such report to the auditor and the *Panchayat*]. If the ⁴⁰⁸[*Panchayat Samiti*] holds that any defects or irregularities have not been removed or remedied, the ⁴⁰⁹[*Panchayat Samiti*] shall state in the report whether in its opinion the defects or irregularities can be regularized and if so, by what method and if they do not admit of being regularized, whether they can be condoned, and if so, by what authority. The ⁴¹⁰[*Panchayat Samiti*] shall also state whether the amounts to which the defects or irregularities relate should in its opinion be ⁴¹¹[surcharged or charged] as hereinafter provided.

⁴¹²[(5) The Chief Executive Officer may, after considering the report of the *Panchayat Samiti* and after making such further inquiry as he considers necessary, disallow any item which appears to him contrary to law and surcharge the same on the person making or authorizing the making of, the illegal payment, and may charge against any person responsible therefor the amount of any deficiency or loss caused by the gross negligence or misconduct of that person, or any sum received which ought to have been, but is not, brought into account, by that person; and may after taking explanation of such person, direct by order in writing that such person shall pay to the *Panchayat* the amount surcharged or charged and where the Chief Executive Officer considers it necessary, also an interest on the amount so surcharged or charged at such rate as may be determined by him. If the amount or interest directed to be paid by the Chief Executive Officer under his order is not paid by the person aforesaid within one month from the date of receipt of such order by him, the Chief Executive Officer shall request the Collector to recover it as an arrear of land revenue and credit it to the village fund, and thereupon the Collector shall be bound to do so.

(6) Any person aggrieved by any order of ⁴¹³[surcharge or charge or interest thereon] made by the ⁴¹⁴[Chief Executive Officer] under this Section, may, within one month from the date of receipt by him of the decision of ⁴¹⁵[Chief Executive Officer], apply to the District Court to modify or set aside such order, and that Court after taking such evidence as it thinks necessary, may confirm, modify or remit such ⁴¹⁶[surcharge or charge or interest thereon] and make such order as to costs as it thinks proper in the circumstances.

⁴¹⁷[(7) ***

407 These words were substituted for the words "and shall forward a copy of such report to the *Panchayat*" by Mah. 36 of 1965, S. 59(3)(a).

408 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

409 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

410 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

411 These words were substituted for the word "surcharged" by, Mah. 36 of 1965, S. 59(3)(b)

412 Sub-section (5) was substituted by Mah. 13 of 1975, s. 23(c).

413 These words were substituted for the words "surcharge or charge" by Mah. 13 of 1975, S. 23(d)(i).

414 These words were substituted for the word "Collector" by Mah. 13 of 1975, S. 23(d)(ii).

415 These words were substituted for the word "Collector" by Mah. 13 of 1975, S. 23(b).

416 These words were substituted for the words "surcharge or charge" by Mah. 13 of 1975, S. 23(d)(i).

417 Sub-section (7) was deleted by Mah. 5 of 1962, S. 286, Tenth Sch.

141. Reduction of establishment.-If, in the opinion of the ⁴¹⁸[Standing Committee] the number of persons maintained by a *Panchayat* as officers or servants, or the remuneration given or proposed to be given by the *Panchayat* to such persons, is excessive, the *Panchayat* shall, on being required by the ⁴¹⁹[Standing Committee] reduce such number or remuneration.

(2) The *Panchayat* may appeal to the Commissioner against any requisition made under sub-section (1), and the decision of the Commissioner shall be final.

142. Suspension of execution of order.-(1) If, in the opinion of the ⁴²⁰[Standing Committee], the execution of any order or resolution of a *Panchayat* or the doing of anything which is about to be done, or is being done by or on behalf of a *Panchayat*, is causing or is likely to cause injury or annoyance to the public, or to lead a breach of peace, or ⁴²¹[is, in the public interest, unlawful] ⁴²²[it] may by order in writing suspend the execution or prohibit the doing thereof.

(2) When the ⁴²³[Standing Committee] makes an order under sub-section (1), ⁴²⁴[it] shall forthwith send to the *Panchayat* affected thereby a copy of the order, with a statement of the reasons therefor.

(3) The ⁴²⁵[Standing Committee] shall ⁴²⁶[forthwith forward] to the Commissioner a report of every case occurring under this Section, and the Commissioner may revise or modify any order made therein and make in respect thereof any other order which the ⁴²⁷[Standing Committee] could have made.

NOTES

☐ Accepting of lump sum amounts - The power to decide - Whether rests with Zilla Parishad - Agreement of *Panchayat* with the factory - Returned by Zilla Parishad with observations that amount agreed to be recovered by the *Panchayat* is inadequate and they should revise it to higher amount of around Rs. 14 lakhs - Contention that Standing Committee of Zilla Parishad had to forward the papers to State Government for action and not withheld and returned it to *Panchayat* - Held, Chief Executive Officer, Zilla Parishad could suspend the resolution and forward the papers to State Government under section 142 of Maharashtra Village *Panchayats* Act hence contention that the action was contrary to Rule 7 of Payment of Lump sum Contribution by Factory in Lieu of Taxes Rules is not justified. But in facts of the case action of Standing Committee of Zilla Parishad in cancelling the resolution of Gram *Panchayat* and returning papers to *Panchayat* for reversing the amount was totally beyond its purview. It is correct that Zilla Parishad has a role to play to hold up the resolution but ultimate decision on the point as to how much should be lumpsum

418 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

419 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

420 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

421 These words were substituted for the word "is unlawful" by Mah. 36 of 1965, S. 60.

422 These words were substituted for the word "he" by Mah. 5 of 1962, S. 286, Tenth Sch.

423 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

424 These words were substituted for the word "he" by Mah. 5 of 1962, S. 286, Tenth Sch.

425 These words were substituted for the word "Collector" by Mah. 5 of 1962, s. 286, Tenth Sch.

426 These words were substituted for the word "forth with submit" by Mah. 5 of 1962, S. 286 Tenth Sch.

427 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

amount rested with the State Government and not with Zilla Parishad resolution of Standing Committee of Zilla Parishad is therefore, liable to be quashed. *Suryalaxmi Cotton Mills Limited v/s State of Maharashtra & others* 2005(5) Bom.C.R. 454; 2005 (3) All.M.R. 718

- ❑ No confidence motion resolution—Non-furnishing of additional copies—Whether vitiates resolution—Motion carried out by majority of 8 to 1—Challenge on ground that notice of resolution as per Rule 2(2) ought to have been accompanied with 7 additional copies to be sent to *Sarpanch*, *Upa-Sarpanch* and other authorities—Divisional Commissioner in appeal upholding this contention on ground that provision was mandatory—Held, not tenable. As per section 35(1) of the Act, resolution has to be moved by not less than 1/3 members and as per Rule 2(2) additional copies have to be served on *Sarpanch* or *Upa-Sarpanch* who are affected parties and others. Provisions of other copies to other authorities cannot be said to be mandatory, because their role comes only after resolution is carried out and in that case Tahsildar is required to furnish all particulars of resolution and result of motion. This submission of additional copies is thus a subsequent compliance under Rule 3 and does not affect resolution passed after service of copies of resolution on *Sarpanch* against whom it was proposed. Non-supply of additional copy to Standing Committee could be an irregularity but will not vitiate resolution. *Arjun Sambhaji Khade & others v/s Mangal Ankush Kharmate & others* 2003(Supp.) Bom.C.R. 552; 2003 (1) All.M.R. 986; 2003 (2) Mh.L.J. 295

143. Execution of work in case of emergency.—(1) In cases of emergency the ⁴²⁸[Standing Committee] may provide for the execution of any work or the doing of any act which a *Panchayat* is empowered to execute or do, and the immediate execution or doing whereof, is in ⁴²⁹[its] opinion, necessary for the health or safety of the public and may direct that the expense of executing the work or doing the act shall be forthwith paid by the *Panchayat*.

(2) If the expense is not so paid, the ⁴³⁰[Standing Committee] may direct the ⁴³¹[person in whose custody the village fund is kept] to pay such expense or so much thereof as is possible, from the balance of such fund in his hands ⁴³²[and such person] shall comply with such directions.

(3) The ⁴³³[Standing Committee] shall forthwith report to the Commissioner every case in which ⁴³⁴[it] exercises ⁴³⁵[its] powers under sub-section (1).

428 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

429 These words were substituted for the word "he" and "his" respectively by Mah. 36 of 1965, S. 61.

430 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

431 These words were substituted for the words "Officer in charge of the treasury in which the village fund is kept" by Mah. 36 of 1935, S. 61.

432 These words were substituted for the words "and the Officer-in-charge of the treasury" by Mah. 36 of 1935, S. 61.

433 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

434 These words were substituted for the word "he" and "his" respectively by Mah. 36 of 1965, S. 61.

435 These words were substituted for the word "he" and "his" respectively by Mah. 36 of 1965, S. 61.

144. Default in performance of duty.-If at any time, it appears to the ⁴³⁶[Standing Committee] that a *Panchayat* has made default in the performance of ⁴³⁷[any duty under Section 45], it may order the duty to be performed within a specified period, and if the duty is not performed within the period specified, the ⁴³⁸[Standing Committee] may appoint a person to perform it, and direct that the expense of performance shall be paid by the defaulting *Panchayat* within such period as the ⁴³⁹[Standing Committee] may fix.

(2) If the expense is not so paid, the ⁴⁴⁰[Standing Committee] may direct the person in custody of the village fund to pay such expenses, or so much thereof as is possible, from the balance of such fund in his hands, and such person shall pay such expense or part thereof accordingly.

⁴⁴¹[(2-A) If at any time it appears to the ⁴⁴²[Standing Committee] that a *Panchayat* has failed to contribute or pay in any financial year the amount as required by sub-section (3) of Section 62 or has committed default in payment of any instalment towards repayment of the loan taken by the *Panchayat* from the District Village Development Fund, in accordance with the rules made for the purpose in pursuance of the provisions of Section 133, the ⁴⁴³[Standing Committee] may, by an order in writing, direct the person in custody of the village fund to pay to the credit of the District Village Development Fund such sums as may be due to it at such intervals and in such instalments as it may, regard being had to the finances of the *Panchayat*, direct, and the *Panchayat* shall comply with such directions.

(3) If at any time it appears to the State Government or any officer authorised by the State Government in this behalf, that a *Panchayat* has made default in the performance of ⁴⁴⁴[any duty under Section 45] ⁴⁴⁵[or in the payment of any amount to the credit of the District Village Development Fund under sub-section (2-A)] and that the ⁴⁴⁶[Standing Committee] has failed or neglected to take action under sub-section (1) ⁴⁴⁷[or under sub-section(2-A)], the State Government or the officer authorised, as the case may be, may take such action as could have been taken by the ⁴⁴⁸[Standing Committee] ⁴⁴⁹[under sub-sections (1), (2) and (2-A)].

(4) The ⁴⁵⁰[Standing Committee] or the officer authorised, as the case may be, shall forthwith report to the Commissioner every case occurring under this Section and the

436 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

437 These words and figures were substituted for the words, figures and brackets "any duty specified in sub-section (1) of Section 45" Mah. 36 of 1965, S. 62.

438 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

439 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

440 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

441 Sub-section (2-A) was inserted by Mah. 38 of 1973, S. 8(1)

442 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

443 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

444 These words and figures were substituted for the words, brackets and figures "any duty specified in sub-section (1) of Section 45" by Mah. 36 of 1965, S. 62.

445 These words were inserted by Mah. 38 of 1973, S. 8(2)(a).

446 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

447 This portion was inserted by Mah. 38 of 1973, S. 8(2)(b).

448 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

449 This portion was substituted for "under sub-sections (1) and (2)" by Mah. 38 of 1973, S. 8(2)(c).

450 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

Commissioner may revise or modify any order made therein, and make in respect thereof, any other order which ⁴⁵¹[Standing Committee] could have made.

⁴⁵²[144A. Power to take action, where default is made by *Panchayat* in taking over or maintaining rural drinking water supply schemes.-] (1) Where a *Panchayat* makes a default in taking over any rural drinking water schemes within the specified period, which it is its duty to take over under sub-section (1) of Section 45, or makes a default in maintaining such schemes properly, the State Government may, without prejudice to any action that may be taken against such *Panchayat* under any other provisions of this Act, arrange for the operation and maintenance of such schemes through the Zilla Parishad. It shall then be competent for the Zilla Parishad to levy a general water tax and a special water tax, within the limits of such *Panchayat*, and the provisions of Sections 157, 163 and 164 of the Maharashtra Zilla Parishads and *Panchayat Samitis* Act, 1961 (Mah. V of 1962), shall *mutatis mutandis* apply to the levy and collection of such taxes.

(2) It shall also be competent for the State Government or the Zilla Parishad to recover the expenditure incurred by it for the operation and maintenance of such schemes, by making necessary adjustment against any grants or other moneys due and payable to the *Panchayat* under any statute or otherwise.]

145. Dissolution ⁴⁵³[***] of *Panchayat* ⁴⁵⁴[***].-(1) If, in the opinion of the State Government a *Panchayat* exceeds or abuses its power or is incompetent to perform, or makes persistent default in the performance of, the duties imposed on it or functions entrusted to it under sub-section (1) of Section 45 or any other provision of this Act or by or under any other law for the time being in force, ⁴⁵⁵[or has failed to levy taxes referred to in clauses (i) and (I-a) of sub-section (1) of Section 124,] ⁴⁵⁶[or has failed to levy taxes referred to in clauses (viii) and (xii) of sub-section (1) of Section 124 when it was compulsory to levy such taxes under sub-section (1) of Section 124] or fails to obey an order made by the ⁴⁵⁷[*Panchayat Samiti*] under Section 128 or persistently disobeys any of the orders of the ⁴⁵⁸[Standing Committee] or by Commissioner under Section 142 ⁴⁵⁹[or wilfully disregards any instructions given by the Zilla Parishad or *Panchayat Samiti* under Section 152 or by any competent authority arising out of audit of accounts under this Act or inspection of the office and work of the *Panchayat* or instructions given or directions issued by the State Government under Section 153-A], the State Government may, after consultation with the ⁴⁶⁰[Zilla Parishad] and after giving the *Panchayat* an opportunity of tendering an explanation, by order in the *Official Gazette*.

451 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

452 Section 144-A was inserted by Mah. 56 of 1981, s. 9.

453 The words "or supersession" were deleted by Mah. 36 of 1965, S. 63(1).

454 The words, "for default", were deleted by Mah. 13 of 1975, S. 24(d).

455 These words, brackets, figures and letter were inserted by Mah. 13 of 1975, S. 24(a).

456 These words, brackets and figures were inserted by Mah. 56 of 1981, S. 10.

457 These words were substituted for the words "Pinhead Manual" by Mah. 5 of 1962, S. 286, Tenth Sch.

458 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

459 This portion was inserted by Mah. 36 of 1965, S. 63 (1).

460 These words were substituted for the word "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

- (i) dissolve such *Panchayat*,⁴⁶¹ ***
 (ii) ⁴⁶² ***

⁴⁶³[(1-A) If more than half the total number of seats in a *Panchayat* have become vacant, the State Government may, by order in the *Official Gazette*, dissolve such *Panchayat*.]

⁴⁶⁴[(2) When a *Panchayat* ⁴⁶⁵[is dissolved ⁴⁶⁶*** as provided in the preceding sub-sections] the following consequences shall ensue, that is to say.

- (a) all members of the *Panchayat* shall, in the case of dissolution, as from the date specified in the order of dissolution, ⁴⁶⁷[***] vacate their office as such members;
- (b) all powers and duties of the *Panchayat* shall, during the period of dissolution ⁴⁶⁸*** be exercised and performed by such person or persons as the State Government may, from time to time, appoint in that behalf; and
- (c) all property vested in the *Panchayat* shall, during the period of dissolution ⁴⁶⁹*** vest in State Government].

(3) When the *Panchayat* is dissolved, it shall be reconstituted in the manner provided in this Act.

⁴⁷⁰[(4) ***]

NOTES

☐ Dissolution of Gram *Panchayat* - Direction for by-elections - Four members of Gram *Panchayat* disqualified on ground, remained absent for meetings - Respondent 3-Commissioner passed order for dissolution - Respondents 5 to 8 felt aggrieved by order, preferred revision under section 154 before Commissioner - Further preferred application for stay which allowed, stay continued for period of one year, later dismissed - On dismissal of revision respondents 5 to 8 preferred revision before respondent 2-Minister, who granted stay - Petitioner challenged order of stay by way of writ petition - Petitioner submits, order passed by Minister is illegal - Held, it is obvious from section 145(1-A) that power to dissolve is to be exercised by State. State Government delegated its powers to Commissioner under section 145 of Act. Power cannot now be exercised by State. Honourable Minister could not have entertained revision. Entertaining appeal and granting stay initially by Commissioner was illegal and corrected by vacating stay. Order passed by Honourable Minister is set aside. *Mohan Ajabrao Telkhade v/s State of Maharashtra & ors.* 2009(4) Bom.C.R. 517 Dissolution of village *Panchayat* Majority of seats falling

461 The word "for default" was deleted by Mah. 13 of 1995, S. 24(d).

462 Clause (ii) was deleted by Mah. 21 of 1994, S. 23(1)(b).

463 Sub-section (1-A) was inserted by Mah. 13 of 1975, S. 24(b).

464 Sub-section (2) was substituted by Mah. 36 of 1965, S.63 (2)

465 These words were substituted for the words "is so dissolved or suspended" by Mah. 13 of 1975, S. 24(c).

466 The words "or suspended" were deleted by Mah. 21 of 1994, S. 23(2)(a).

467 The words "and in the case of supersession, as from the date of order of the supersession", were deleted by Mah. 21 of 1994, S. 23(2)(b).

468 The words "or supersession" were deleted by Mah. 21 of 1994, S. 23(2)(c).

469 The words "or supersession" were deleted by Mah. 21 of 1994, S. 23(2)(d)

470 Sub-section (4) was deleted by Mah. 21 of 1994, S. 23(3).

vacant No confidence motion against woman *Sarpanch* Commissioner dissolving village *Panchayat* invoking powers under section 145(1-A) of the Act Contention section does not state that Government 'shall' dissolve but states that 'may' dissolve and thus it is a discretionary power and not mandatory one Further contended resignations were given to see that *Panchayat* would be dissolved and the petitioner/woman *Sarpanch* would no longer remain the *Sarpanch*—Held, normally when majority of seats fall vacant, it is better to go for dissolution of the *Panchayat* and to hold re-election for entire village. However, present case provides for an exceptional case where a hearing ought to be provided to petitioners, thereafter Commissioner ought to arrive at a decision as to dissolution. It becomes necessary particularly when a no confidence motion had been moved against petitioner/*Sarpanch* and it was defeated for failure to obtain the requisite majority. Thus provision of section 145(1-A) will have to be read as directory, containing discretion with the State Government. It is not that when majority of seats fall vacant Government can straightway dissolve a *Panchayat*. A.I.R. 1965 S.C. 895 relied on. *Kavita Sakharam Chavan & others v/s Commissioner, Konkan Division & others* 2003(2) Bom.C.R. 821; 2002 (4) All.M.R. 741

- ❑ Dissolution of village *Panchayat*—Following resignation of more than half members—Principles of natural justice to be followed by giving opportunity of hearing to remaining members—Contention, opportunity not given, hence dissolution bad in law—Held, observation in 2003(2) Bom.C.R. 821, leave no doubt that members of village *Panchayat* ought to be heard before decision of dissolution is arrived at. Said right of hearing is read in provisions of section 145(1-A) of Act. Admittedly the *Panchayat* was not heard in the matter. On this count decision of Commissioner dissolving *Panchayat* fall to the ground. 2003(2) Bom.C.R. 821 relied on. *Janardhan Kishanrao Gawande v/s State of Maharashtra & others* 2004(Supp.) Bom.C.R. 561; 2004 (2) All.M.R. 521
- ❑ Majority seats falling vacant Dissolution of *Panchayat* by Commissioner Members' right of notice and being heard Held, it is just and necessary that when at any time such a decision to dissolve a *Panchayat* is to be arrived at, members of village *Panchayat* ought to be heard. *Kavita Sakharam Chavan & others v/s Commissioner, Konkan Division & others* 2003(2) Bom.C.R. 821; 2002 (4) All.M.R. 741
- ❑ Resignation of members Acceptance of, in meeting of village *Panchayat* Application to Collector stating resignation not voluntary. Collector ordering re-election to seats of resigned members without notice explanation or hearing Contention order of Collector in violation of principles of natural justice, relying upon Division Bench decision in 2003(2) Bom.C.R. 821 Held, decision of Division Bench involved dissolution of *Panchayat*. Here all members had not been unseated by dissolution. Those who resigned were to vacate office and re-election was ordered. Order did not adversely affect or prejudice those members still in office. Ratio regarding observance of principles of natural justice has no application in this case. 2003(2) Bom.C.R. 821 distinguished. *Anil Kalgonda Patil & others v/s Gram Panchayat, Chipri & others* 2003(5) Bom.C.R. 667; 2004 (1) Mh.L.J. 245
- ❑ Vacancy occasioned by resignation by member - Power of election Commissioner to fill-up vacancy - Held, in respect of vacancy occasioned during term of *Panchayat*, that vacancy can be filled in by holding election for that seat. This is an independent power of

Election Commissioner unconnected with section 43. *Shivaji Maruti Shingate & ors. v/s State of Maharashtra & ors 2007(4) Bom.C.R. 695; 2007 (5) Mh.L.J. 109*

- ☐ Constitution of India, Arts. 226 & 227 - Dissolution of Gram Panchayat - No Confidence Motion against Sarpanch holding post reserved for O.B.C. (Women) - Resignation by 12 members out of 15 on failure of motion - Appellants continued to run panchayat with three members - Chief Executive Officer reported that dissolution not warranted - 2nd report recommending dissolution after 9-10 months - Dissolution ordered by Divisional Commissioner - Appeal against - Held, provisions of section 145 of Bombay Village Panchayats Act, directory and not mandatory in nature. Dissolution would not further either democratic process and constitutional mandate whereby object to allow large amount of freedom to panchayat in process of development at local level has been promoted. No material recorded in order to indicate that during period of 14 months Gram Panchayat did not function or could not function. Material produced by petitioners and having bearing on said issue has not been even looked into by respondent 2. Application of mind and thought process appears to be lacking in impugned order. Order quashed and set aside. *Ujwala Anil Thakare & ors. v/s State of Maharashtra & Ors. 2011 (2) All.M.R. 796 : 2011 (4) Bom.C.R. 686 : 2011 (3) Mh.L.J. 588*

146. Dissolution and reconstitution of Panchayat on alteration of limits of village.-(1)

When during the term of the *Panchayat*, the limits of a village are altered, the Commissioner may, by order in writing, dissolve such *Panchayat* and direct a *Panchayat*

- (i) to be reconstituted for the village for which the *Panchayat* has been dissolved; or
- (ii) to be established for a village which has been newly ⁴⁷¹[specified by notification issued under clause (g) of Article 243 of the Constitution of India].

The members of the *Panchayat* which has been dissolved shall vacate their office from the date specified in the order.

(2) The *Panchayat* reconstituted or established under the provisions of sub-section (1) shall consist of ⁴⁷²[the elected members and the appointed members, if any,]

The *Sarpanch* and *Upa-Sarpanch* of the *Panchayat* so reconstituted or established shall be elected in the manner provided in this Act.

⁴⁷³(3) ***

⁴⁷⁴(4) ***

147. Vesting of property, etc. of Panchayat which has been dissolved and reconstituted or established.-(1) When a *Panchayat* has been dissolved and reconstituted or established under Section 146 and so much of the village fund and other property vesting in the

471 These words were substituted for the word "declared" by Mah. 21 of 1994, S. 24(a).

472 These words were substituted for the portion beginning with the words "such members" and ending with the words "in writing direct" by Mah. 21 of 1994, S. 24(2).

473 Sub-sections (3) and (4) were deleted by Mah. 21 of 1994, S. 24(3).

474 Sub-section (4) was deleted by Mah. 21 of 1994, S. 23(3).

Panchayat which has been dissolved shall vest in, and such portion of the debts and obligations shall be transferred to the reconstituted or established *Panchayat* as the Commissioner may, by order in writing, direct.

(2) The rights and liabilities of the *Panchayat* which has been dissolved in respect of contracts, agreements and other matters or things arising in or relating to any part of the area subject to the authority of the reconstituted or established *Panchayat* shall vest in such *Panchayat*.

(3) Any notice, tax, order, licence, permission, rule or bye-law, issued, imposed, granted or made in respect of any part of the area subject to the authority of the reconstituted or established *Panchayat* shall be deemed to have been issued, imposed, granted or made by or in respect of such *Panchayat*, unless and until it is superseded by any notice, tax, order, licence, permission, rule or bye-law, issued, imposed, granted or made by or in respect of such *Panchayat*.

148. Effect of area being excluded from village.-Where ^{475***} under Section 4 any local area forming part of a village excluded from such village, and such area is not included in or declared to be a village, so much of the village fund and other property vesting in the *Panchayat* of the village of which such area formed part, as the Commissioner may by order in writing direct, shall vest in the Collector to be utilized for the benefit of the area as the Collector may think fit.

149. Effect of area ceasing to be a village.- On any area ceasing to be a village ^{476***} under Section 4,

- (a) the *Panchayat* shall be dissolved and all members of the *Panchayat* shall vacate office as from the date ⁴⁷⁷[on which such area has ceased to be a village];
- (b) the unexpended balance of the village fund and the property vesting in the *Panchayat* shall vest in the Collector, to be utilized for the benefit of the inhabitants of the areas as the Collector may think fit.

⁴⁷⁸(c) ***

150. [Effect of dissolution or supersession of *Panchayat* or of withdrawal of judicial powers of Nyaya *Panchayat* or Nyaya *Panchayats* and proceedings pending before them.]-Deleted by Mah. 13 of 1975, S. 26.

475 The words "by a notification" were deleted by Mah. 21 of 1994, S. 25.

476 The words "by virtue of any notification" were deleted by Mah. 21 of 1994, S. 26(2).

477 These words were substituted for the words "of the notification" by Mah. 21 of 1994, S. 26(2).

478 Clause (c) was deleted by Mah. 13 of 1975, S. 25.

151. Powers and duties of *Panchayats*⁴⁷⁹ [***] not validly constituted to be performed by person appointed by Government⁴⁸⁰ [***].- (1)(a) Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder, if at any time it appears to the State Government that a *Panchayat* has not been validly constituted under this Act, the State Government may, by notification in the *Official Gazette*,⁴⁸¹ [dissolve such *Panchayat* and by the same notification or like notification cause all] or any of the powers and duties performed by such person or persons, in such manner and for such period and subject to such conditions as it may think fit:

Provided that on the reconstitution of the *Panchayat* under sub-section (2), such notification shall cease to have effect from the date on which the first meeting of the *Panchayat* so reconstituted is held under Section 28.

⁴⁸²(b) ***

(2) On the issue of such notification all the members of the *Panchayat* shall be deemed to have vacated their office as members and the *Panchayat* shall be reconstituted⁴⁸³ *** in the manner provided in this Act.

(3) All the powers and duties of the *Panchayat*⁴⁸⁴ *** exercised and performed *bona fide* till the date of the notification referred to in sub-section (1) by the persons who constituted such *Panchayat*⁴⁸⁵ *** shall be deemed to be and always to have been validly exercised and performed by the said persons; and no acts done by the said persons shall be deemed to be invalid or be called in question on the ground merely that the persons were not members of a validly constituted *Panchayat*⁴⁸⁶ *** and the said persons shall be deemed to have been indemnified and discharged from liability in respect of such acts.

NOTES

☐ Elections of 2167 Village *Panchayats* in thirteen flood affected Districts - Commencement of election process on 26th October, 2005 and voting to take on process on 26th September, 2005 - State Government issued notification on 31st August, 2005, directing Constitution of Board of Administrators - Consisting of erstwhile members, under Chairmanship of *Sarpanch* - Term of office of Village *Panchayat* had expired - Issuance of directing by State Election Commission to State Government on 21st September, 2005 for dismissal of Administrative Boards - Challenged - Contention, State had powers under section-151(1)(a) - Contra, it would obstruct conduct of impartial election in fearless and clean environment - Held, in background of unprecedented monsoon rains resultant floods,

479 The words "or Nyaya *Panchayats*" and "or by Courts as the case may be" were deleted by Mah. 13 of 1975, S. 27(c).

480 The words "or Nyaya *Panchayats*" and "or by Courts as the case may be" were deleted by Mah. 13 of 1975, S. 27(c).

481 These words were substituted for the words "cause all" by Mah. 21 of 1994, S. 27(1)

482 Clause (b) was deleted by Mah. 13 of 1975, S. 27(a).

483 The words "before the expiry of the period specified in such notification" were deleted by Mah. 21 of 1994, S. 27(2).

484 The words "or Nyaya *Panchayat*" were deleted by Mah. 13 of 1975, S. 27(b).

485 The words "or Nyaya *Panchayat* as the case may be" were deleted by Mah. 13 of 1975, S. 27(b).

486 The words "or Nyaya *Panchayat* as the case may be" were deleted by Mah. 13 of 1975, S. 27(b).

disturbing common course of life, view of election commission that continuance of erstwhile members of Village *Panchayat* in Boards of Administrators could upset impartiality and fairness in forthcoming electioners, cannot be regarded as extraneous exercise of powers under Article 243-K. Petition dismiss. 1978(1) S.C.C. 405 referred to. *State of Maharashtra v/s State Election Commission & others* 2005(6) Bom.C.R. 903; 2005 (4) All.M.R. 679

- ☐ Elections of 2167 Village *Panchayats* in flood affected Districts - State Government notification directing appointment of Board of Administrators consisting of erstwhile members, *Sarpanch*, *Up-Sarpanch* - State Election Commission directives for dismissal of Boards - Challenged - Contention by State, involve administrative difficulties in conferring powers upon existing Gram Sevaks and in replacing authority conferred on *Sarpanch* - Held, the holding of free and fair elections in democracy is paramount importance. Administrative exigencies cannot be allowed to override constitutional prescription of free and fair elections. The State shall do everything that is necessary to co-operate with mandate of State Election Commission. *State of Maharashtra v/s State Election Commission & others* 2005(6) Bom.C.R. 903; 2005 (4) All.M.R. 679

⁴⁸⁷[152. *Panchayat* to conform to instructions given by Parishad and Samiti.-A *Panchayat* shall conform to any instructions that may, from time to time, be given to it by the Zilla Parishad or the *Panchayat* Samiti or both, in the execution by the *Panchayat* of its duties and functions under this Act.]

153. Inquiry by officers of ⁴⁸⁸[State Government].-⁴⁸⁹[(The State Government may order an inquiry to be held by any officer appointed by it in this behalf into any matters concerning the village administration of any *Panchayat* or any matters with respect to which the sanction, approval, consent or order of the State Government is required by this Act.)]

(2) The Officer holding such inquiry shall have the powers of a Court under the Code of Civil Procedure, 1908 (V of 1908), to take evidence and to compel the attendance of witnesses and the production of documents for the purposes of the inquiry.

(3) The State Government may make orders so as to the cost of inquiries under sub-section (1) and as to the parties by whom and the funds out of which they shall be paid and any such order may, on the application of the State Government or of any person named therein, be executed as if it were a decree of a Civil Court.

⁴⁹⁰[153A. Power of State Government to give instructions and issue of directions to the *Panchayats*.-The State Government ⁴⁸⁸may give to any *Panchayat* general instructions as to matters of policy to be followed by the *Panchayat* in respect of its duties or functions, and in particular, it may issue directions in the interest of the national or State Development Schemes.

487 Section 152 was inserted by Mah. 36 of 1965, S. 66.

488 These words were substituted for the words "*Panchayat* Mandal" by Mah. 36 of 1965, S. 67.

489 Sub-section (1) was substituted by Mah. 5 of 1962, S. 286, Tenth Sch.

490 Section 153-A was inserted by Mah. 36 of 1965, S. 68.

Upon the issue of such instructions and directions it shall be the duty of the *Panchayat* to give effect to such instructions and directions.]

⁴⁹¹[153B. Power of State Government to give instructions and issue directions to *Gram Sabha* or *Panchayat* in Scheduled Areas.-The State Government may give to any *Gram Sabha* or *Panchayat* in the scheduled areas general or special instructions as to the matters of policy to be followed by the *Gram Sabha* or *Panchayat*, as the case may be, in the interest of the tribals in the scheduled areas with reference to the implementation of or compliance with the provisions of the *Panchayats (Extension to the Scheduled Areas) Act, 1996*. Upon the issue of such instructions or directions it shall be the duty of the *Gram Sabha* or the *Panchayat*, as the case may be, to give effect to such instructions or directions.]

154. ⁴⁹²[Authority of State Government, Commissioner and Collectors.-⁴⁹³[(1) In all matters connected with this Act, the State Government, and the Commissioners and Collectors shall have and exercise the same authority and control over the Commissioner, the Collectors and their subordinates, respectively as they have the exercise over them in the general and revenue administration.

⁴⁹⁴[(2) In all matters connected with this Act, the State Government shall have and exercise the same authority and control over the Zilla Parishad and the *Panchayat Samiti* as it has and exercises over them under the Maharashtra Zilla Parishad and *Panchayat Samitis Act, 1961 (Mah. V of 1962).*]

NOTES

☐ No-confidence motion---Scope of appeal---Against rejection of no-confidence motion allowed by Collector---Contention that only if motion was carried, appeal could lie and not against a rejected motion---Held, wording of section 35(3-B) of Act clearly specify that appeal will lie against a motion which is carried and therefore, Collector could not invoke section 154 of Act, had no power to entertain appeal against motion which was not carried out. *Balaji Tulsiram Chaudhari v/s State of Maharashtra & others 2002(4) Bom.C.R. 702; 2002 (2) Mh.L.J. 508*

155. State Government may call for proceedings.-The State Government may call for and examine the record of proceedings of the ⁴⁹⁵[Zilla Parishad, *Panchayat Samiti* or Standing Committee, as the case may be] or of any officer ⁴⁹⁶*** for the purpose of satisfying itself as to the legality or propriety of any order passed and may revise or modify the order as it shall deem just.

491 Section 153-B was inserted by Mah. 46 of 1997, S. 7 (w.e.f. 29.12.1997).

492 This was substituted for the original marginal note by Mah. 36 of 1965, S. 69(ii).

493 Section 154 was renumbered as sub-section (1) and sub-section (2) was inserted by Mah. 36 of 1965, S. 69(i).

494 Section 154 was renumbered as sub-section (1) and sub-section (2) was inserted by Mah. 36 of 1965, S. 69(i).

495 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

496 The brackets and words "(except any proceedings of the District or the Sessions Court in judicial proceedings in revision or reference from the proceedings of a *Nyaya Panchayat*)" were deleted by Mah. 13 of 1975, S. 28.

NOTES

- ☐ Right to collect taxes - Disputes about territories of respondent village *Panchayat* - Some areas of respondent *Panchayat* were notified as areas of petitioner *Panchayat* without hearing objections by notification in 1995 - But later in 2004 corrigendum issued deleting said areas from petitioner *Panchayat* back to respondent Dhutum *Panchayat* - Petitioner *Panchayat* complaining that corrigendum deleting the areas from this *Panchayat* back to respondent *Panchayat* 2004 was without following the procedure - Facts show that disputed areas right from 1966 were with respondent *Panchayat* and but for short period of notification in 1995 they were shown in petitioner *Panchayat* and restored back by corrigendum of 2004 - Held, it is correct that the areas reallocated back to Dhutum village (respondent) have been done by not following procedure under section 4 of Bombay *Panchayat* Act. It is not an empty formality and *Panchayats* may have their own objections. But this had not been followed while issuing notification of 1995 which has now been corrected by notification of 2004 therefore, no error can be formed with Minister's order under section 155 of Act. *Jasai Grampanchayat through its Sarpanch v/s State of Maharashtra, through the Minister & others 2005(4) Bom.C.R. 502; 2005 (3) All.M.R. 596*

CHAPTER XII

PROVISIONS FOR CONVERSION OF A MUNICIPALITY INTO A *PANCHAYAT*
AND FOR AMALGAMATION AND DIVISIONS OF *PANCHAYATS*

156. Interpretation.-For the purposes of this Chapter, unless the context otherwise requires, the expression ***

- (a) "municipality" includes a person or persons appointed to exercise the powers and perform the functions of a municipality under Section 179 of the Bombay District Municipal Act, 1901 (Bom. III of 1901),⁴⁹⁷ ***or under Section 57 of the Central Provinces and Berar Municipalities Act, 1922 (C.P. and Berar Act II of 1922), or of a Town Municipality under Section 254 of the Hyderabad District Municipalities Act, 1956 (Hyd, Act XVIII of 1956) (the aforesaid Acts being hereafter in this Chapter referred as "the municipal laws");
- (b) "*Panchayat*" includes a person or persons appointed to exercise the powers and to perform the functions of a *Panchayat* under Section 145.

157. Effect of conversions of municipality into *Panchayat*.-When any local area ceases to be a municipal district by virtue of, or when the whole area comprised in a municipality is withdrawn from, or when any municipality ceases to be a municipality by virtue of any municipal law, and such area is⁴⁹⁸ [specified] to be a village under Section 4, with effect from the date on which such local area is so⁴⁹⁹ [specified] to be a village (in this Section referred to

497 The words "or that Act in its application to the Saurashtra area of the State of Bombay" were omitted by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

498 This word was substituted for the word "declared" by Mah. 21 of 1994, S. 28.

499 This word was substituted for the word "declared" by Mah. 21 of 1994, S. 28.

as "the said date"), the following consequences shall notwithstanding anything in the relevant municipal law, ensue, that is to say

- (a) the municipality of such local area shall cease to exist;
- (b) there shall, notwithstanding anything contained in any law for the time being in force, be constituted for the village an interim *Panchayat* consisting of persons vacating office as councilors of the municipality or members of the Committee or members of a Town Committee of such municipality and the President and Vice-President of the Municipality or as the case may be of a Committee or Town Committee shall, respectively, be deemed to be the *Sarpanch* and *Upa-Sarpanch* of the interim *Panchayat*;
- (c) the unexpended balance of the municipal fund and property including arrears of rates, taxes and fees, belonging to the municipality, and all rights and powers, which prior to such notification, vested in the municipality shall, subject to all charges and liabilities affecting the same, vest in the interim *Panchayat* as the village fund until the new *Panchayat* is constituted in pursuance of the provisions of sub-section (1) of Section 158;
- (d) any appointment, notification, notice, tax, order, scheme, licence, permission, rule bye-law or form made, issued, imposed or granted under any municipal law immediately before the said date in respect of such local area shall continue in force and be deemed to have been made, issued imposed or granted in respect of the village until it is superseded or modified by any other appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made, issued, imposed, or granted under this Act;
- (e) all budget estimates, assessments, assessment lists, valuations or measurements made or authenticated under any of the municipal laws immediately before the said date in respect of such local area shall be deemed to have been made or authenticated under this Act;
- (f) all debts and obligations incurred and all contracts made by or on behalf of the municipality immediately before the said date and subsisting on the said date shall be deemed to have been incurred and made by the interim *Panchayat* in exercise of the powers conferred on it by or under this Act;
- (g) all officers and servants in the employ of the municipality immediately before the said date shall be officers and servants of the interim *Panchayat* under this Act and shall, until other provision is made in accordance with the provisions of this Act, receive salaries and allowances and be subject to the conditions of service to which they were entitled or subject on such date:

Provided that, it shall be competent to the interim *Panchayat* subject however, to the previous sanction of the State Government, to discontinue the services of any officer or servant who, in its opinion, is not necessary or suitable to the requirements of the service of the interim *Panchayat*, after giving such officer or servant such notice as is required to be given by the terms of his employment and every officer or servant whose services are discontinued,

- shall be entitled to such leave, pension, provident fund and gratuity as he would have been entitled to take or receive on being invalidated out of service as if the municipality in the employ of which he was, had not ceased to exist;
- (h) all proceedings pending at the said date before the municipality shall, so far as may be practicable, be disposed of as if such local area had been included in the village when they were filed;
 - (i) all appeals pending at the said date before the municipality shall, so far as may be practicable, be disposed of as is such local area had been included in the village when they were filed;
 - (j) all prosecutions instituted by or on behalf of the municipality and all suits or other legal proceedings instituted by or against such municipality or any officer of such municipality pending at the said date shall be continued by or against the interim *Panchayat* as if such local area had been included in the village when such prosecutions, suits or proceedings were instituted.

158. Term of office of members of interim *Panchayat* and their powers.-(1) The ⁵⁰⁰[State Election Commission] shall, within a period not exceeding one year from the date on which the interim *Panchayat* has been constituted, take steps to hold election for a new *Panchayat*;

(2) The members of the interim *Panchayat* shall hold office until the day immediately preceding the day of the first meeting of the new *Panchayat*;

(3) Any vacancy in the office of the interim *Panchayat*, shall be filled as soon as conveniently may be, by appointment by the ⁵⁰¹[Standing Committee];

⁵⁰²(4) ***

(5) All arrears of rates, taxes and fees vesting in the interim *Panchayat* shall be recoverable under the provisions of this Act as if the rates, taxes and fees were imposed and recoverable under this Act:

Provided that, steps to recover arrears of rates, taxes and fees shall be taken within a period of three years from the date on which they vest in the interim *Panchayat*;

(6) In other respects the provisions of this Act shall, *mutatis mutandis* apply to the interim *Panchayat* and its members;

⁵⁰³(7) ***

159. Effect of amalgamation of villages.-(1) When two or more villages cease to be villages and the local areas constituting such villages are amalgamated and ⁵⁰⁴[specified to be one village (hereinafter in this Section referred to as 'the amalgamated village') under Section

500 These words were substituted for the word "Collector" by Mah. 21 of 1994, S. 29(1).

501 These words were substituted for the word "Collector" by Mah. 5 of 1962, S. 286, Tenth Sch.

502 Sub-section (4) was deleted by Mah. 13 of 1975, S. 29.

503 Sub-section (7) was deleted by Mah. 21 of 1994, S. 29(2).

504 This portion was substituted for the portion beginning with the word "declared" and ending with the word "issued" by Mah. 21 of 1994, S. 30(1)(a).

4, with effect from the date on which it is so specified] (hereinafter in this Section referred to as "the said date") the following consequences shall ensue, that is to say,

- (a) the *Panchayats* of such local areas⁵⁰⁵ [shall be deemed to have been dissolved and shall cease to exist and all the members of such *Panchayats* shall vacate office;]
- (b) all powers and duties of such *Panchayats* shall be exercised and performed by such person or persons (hereinafter referred to as the administrator or administrators) as the State Government appoints in this behalf;
- (c) the unexpended balance of the village funds and all the properties including arrears of rates, taxes and fees belonging to such *Panchayats* and all rights and powers which prior to the said date, vested in such *Panchayats*, shall subject to all charges and liabilities affecting the same, vest as the village fund,
 - (i) in the administrator or administrators, until the *Panchayat* for the amalgamated village is constituted and holds its first meeting under sub-section (1) of Section 28, and
 - (ii) thereafter, in the amalgamated *Panchayat*;
- (d) the 'unexpended balance of the village funds and all the properties (including arrears of rates, taxes and fees) shall, until the amalgamated *Panchayat* is constituted and holds its first meeting, be utilized for the benefit of the inhabitants of such local areas in such manner as the administrator or administrators may think fit;
- (e) any appointment, notification, notice, tax, order, scheme, licence, permission, rule bye-law or form made, issued, imposed, granted in respect of such local areas and in force on the said date shall continue in force and be deemed to have been made, issued, imposed or granted in respect of the amalgamated village until it is superseded or modified by any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made, issued, imposed or granted under this Act;
- (f) all budget estimates, assessments, assessment lists, valuations or measurements made or authenticated by such *Panchayats* immediately before the said date shall be deemed to have been made or authenticated in respect of the amalgamated village under this Act;
- (g) all debts and obligations incurred and all contracts made by or on behalf of such *Panchayat* immediately before the said date and subsisting on the said date shall be deemed to have been incurred and made by the amalgamated *Panchayat* in exercise of the powers conferred on it by this Act;
- (h) all officers and servants in the employ of such *Panchayat* immediately before the said date shall be officers and servants of the amalgamated *Panchayat* and shall until other provision is made in accordance with this Act, receive salaries

505 These words were substituted for the words "shall cease" by Mah. 21 of 1994, S. 30(1)(b)

and allowances and be subject to the conditions of service to which they were entitled or subject on such date:

Provided that, it shall be competent to the administrator or administrators or the amalgamated *Panchayat*, subject however, to the previous sanction of the State Government, to discontinue the services of any officer or servants who, in his, their or its opinion, is not necessary or suitable to the requirements of the service of the amalgamated village, after giving such officer or servant such notice as is required to be given by the terms of his employment and every officer or servant whose services are discontinued, shall be entitled to such leave, pension, provident fund and gratuity, as he would have been entitled to take or receive on being invalided out of service, as if the *Panchayat* in the employ of which he was, had not ceased to exist;

- (i) all proceedings, pending at the said date before such *Panchayats* shall be deemed to be transferred to, and continued by, the administrator or administrators or the amalgamated *Panchayat*, as the case may be;
- (j) all appeals pending before such *Panchayats* at the said date shall, so far as may be practicable, be disposed off by the administrator or administrators or the amalgamated *Panchayat*, as the case may be;
- (k) all prosecutions instituted by or on behalf of such *Panchayats* and all suits or other legal proceedings instituted by or against such *Panchayats* or any officer of such *Panchayats* pending at the said date shall be constituted by or the amalgamated *Panchayat*.

(2) ⁵⁰⁶[Before the expiration of a period of six months from] the said date a *Panchayat* for the amalgamated village shall be constituted in accordance with the provisions of this Act.

160. Effect of division of village.-(1) Where any local area comprised within the limits of a village ceases to be a village and is ⁵⁰⁷[so specified as constituting two or more villages under Section 4 with effect from the date on which they are so specified] (hereinafter in this Section referred to as "the said date"), the following consequences shall ensue, that is to say,

- (a) the *Panchayats* constituted in respect of such local area ⁵⁰⁸[shall be deemed to have been dissolved and shall cease], to exist and all the members of the *Panchayat* shall vacate office;

⁵⁰⁹[Provided that where any local area comprised within the limits of a village is excluded from the local area of such village and declared as a separate village solely for rehabilitation of the project affected persons, without in any way affecting or resulting in more than ten per cent. Migration of the population of such existing village to the newly declared village, then, in such

506 These words were substituted for the words "within one year of" by Mah. 21 of 1994, S. 30(2).

507 This portion was substituted for the portion beginning with the word "declared" and ending with the word "issued", by Mah. 21 of 1994, S. 31(1)(a).

508 These words were substituted for the words, "shall cease" by Mah. 21 of 1994, S. 31(1)(b).

509 Added by Mah. 23 of 2003 dated 01-08-2003 (w.e.f. 14-01-2003)s. 4.

a case, notwithstanding anything contained in this clause or in any other law for the time being in force, such exclusion of the local area and the consequential alteration of the limits of the existing village shall not be deemed to be alteration of the limits of such village as envisaged by sub-section (2) of section 4 and sub-section (1) of section 160, and the existing *Panchayat* of such affected existing village shall not be deemed to have been dissolved as provided in this clause, and all the members of the *Panchayat* shall continue to be the members of such *Panchayat* for the remainder of their term;].

- (b) until *Panchayats* are constituted for the new villages the State Government shall appoint an administrator or administrators to exercise the powers and perform the functions of the *Panchayat* for each of the new villages;
- (c) the unexpended balance of the village fund and all the property (including arrears of rates, taxes and fees) belonging to such *Panchayat* shall vest in the new *Panchayat* in such proportion and in such manner as the State Government may direct;
- (d) the officers and servants of such *Panchayat* shall be allocated by the State Government to the new *Panchayats* in such manner as the State Government may direct;
- (e) subject to clauses (a) to (d) the provisions of Section 159 shall *mutatis mutandis* apply to the administrator or administrators of the new *Panchayats* and their members;

⁵¹⁰(f) ***

(2) ⁵¹¹[Before expiration of a period of six months from] the said date the *Panchayats* for the new village shall be constituted in accordance with the provisions of this Act.

⁵¹²(3) ***

CHAPTER XIII CATTLE POUNDS

161. Cattle-trespass Act to cease to apply.-In any local area which is declared to be a village under Section 4 of this Act, or deemed to be a village under sub-section (1) of Section 186, the provisions of the Cattle-trespass Act, 1871 (I of 1871), or any law corresponding to that Act in force in any part of the State shall cease to apply in relation to such local area:

Provided that

- (a) nothing in this Section shall affect the liability of any person to any penalty under any law so ceasing to be in force;
- (b) any appointment, notification, order, rule made or issued under any such law in respect of any cattle pounds within the limits of any *Panchayat* area shall,

510 Clause (f) was deleted by Mah. 13 of 1975, S. 30.

511 These words were substituted for the words "within one year of" by Mah. 21 of 1994, S. 31(2)

512 Sub-section (3) was deleted by Mah. 21 of 1994, S. 31(3).

so far as it is not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act and continue in force until superseded by any notification, order or rule made under this Act;

- (c) any cattle pound in the local area established under any law so ceasing to be in force shall be deemed to be vested in the *Panchayat* within whose limits it is situate and shall be maintained and managed by the *Panchayat* in accordance with the provisions of this Act.

162. Power to establish cattle pounds and appoint pound keepers.-(1) Notwithstanding anything contained in any law for the time being in force, every *Panchayat* within the limits of its jurisdiction shall from time to time, appoint such places as it thinks fit to be public pounds, and may appoint to be keepers of such pounds such persons as may be approved by the ⁵¹³[Block Development Officer]. The duties of pound keepers shall be such as may be prescribed.

(2) Every pound keeper so appointed shall, in the performance of his duties, be subject to the direction and control of the *Panchayat*.

163. Penalty for allowing cattle to stay in street or to trespass upon private or public property.-(1) Whoever, within the limits of a village, allows any cattle which are his property or in his charge to stray in any street or to trespass upon any private or public property shall, on conviction, be punished,

- (i) for the first offence, with imprisonment for a term which may extend to one month or with fine which may extend to three hundred rupees or with both;
- (ii) for a second or subsequent offence, with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

(2) The Magistrate trying the offence under sub-section (1), may order,

- (a) that the accused shall pay such compensation, not exceeding two hundred and fifty rupees as the Magistrate considers reasonable, to any person for any damage proved to have been caused to his property or to the produce of land, by the cattle under the control of the accused, trespassing on his land; and also;
- (b) that the cattle in respect of which an offence has been committed shall be forfeited to the State Government.

(3) Any compensation awarded under sub-section (2) may be recovered as if it were a fine imposed under this Section.

(4) An offence under this Section shall be cognizable.

164. Impounding cattle.-(1) It shall be the duty of every Police Officer and a Watch and Ward appointed by the *Panchayat*, and it shall be lawful for any other person, to seize and take to any such public pound for confinement therein, any cattle pound straying in any street or trespassing upon any private or public property within the limits of the village.

513 These words were substituted for the words "District Magistrate" by Mah. 10 of 1992, S. 5.

(2) Whoever forcibly opposes the seizure of cattle liable to be seized under this Act, and whoever rescues the same after seizure, either from a pound or from any person taking or about to take them to a pound, shall, on conviction, be punished with imprisonment for a term not exceeding six months or with fine not exceeding five hundred rupees, or with both.

165. Delivery of cattle claimed.—If the owner of cattle which are impounded under Section 164 or his agent appears and claims the cattle, the pound-keeper shall deliver them to him on payment of the pound-fees and expenses chargeable in respect of such cattle under Section 167.

166. Sale of cattle not claimed.—(1) If within ten days after any cattle has been impounded, no person appearing to be the owner of such cattle offer to pay the pound-fee and expenses chargeable under Section 167 such cattle shall be forthwith sold by auction in the prescribed manner and the surplus remaining after deducting the fee and expenses aforesaid from the proceeds of the sale, shall be paid to any person, who, within fifteen days after the sale, proves to the satisfaction of such officer as the *Panchayat* authorises in this behalf, that he was the owner of such cattle and shall in any other case, form part of the village fund:

⁵¹⁴[Provided that, when a complaint is made under Section 168, no auction shall be held until the complaint is examined and disposed of as provided by that Section.]

(2) No Police Officer, or officer, member or servant of the *Panchayat* including the pound-keeper shall, directly or indirectly, purchase any cattle at a sale under sub-section (1).

167. Pound-fees and expenses chargeable to be fixed.—(1) The pound-fee chargeable shall be such as the State Government may from time to time, by notification in the *Official Gazette*, specify for each kind of cattle.

(2) The expenses chargeable shall be at such rates for each day during any part of which any cattle is impounded, as shall from time to time be fixed by the *Panchayat* with the previous approval of the ⁵¹⁵[*Panchayat Samiti*].

168. Complaints of illegal seizure or detention.—(1) Any person whose cattle have been seized under this Act or having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the first class.

(2) The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. If the Magistrate on examining the complaint or his agent sees reason to believe the complaint to be well-founded, he shall summon the person complained against, and make an enquiry into the case.

(3) If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant for the loss caused by the seizure or detention reasonable compensation not exceeding one hundred rupees to be paid by the person who made the seizure or detained the cattle, together with all fees paid and expenses incurred by the complainant in procuring the

514 This proviso was added by Mah. 36 of 1975, S. 70.

515 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

release of the cattle, and, if the cattle have not been released the Magistrate shall, besides awarding such compensation order their release, and direct that the fees and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

(4) The compensation fees and expenses mentioned in this Section may be recovered if they were fines imposed by the Magistrate.

⁵¹⁶[168A. **Security in respect of impounded cattle.**-(1) In any local area within the jurisdiction of a *Panchayat* to which the State Government may, by notification in the *Official Gazette*, apply this Section, every pound-keeper shall, before releasing any impounded cattle, require the owner of the impounded cattle or his agent to make, in the prescribed form, a declaration regarding the ownership of such cattle and to deposit by way of security such sum as the State Government may by rules, prescribe. Different scales may be prescribed for different areas or different classes of cattle.

(2) If any cattle belonging to such owner are impounded within a period of six months from the date on which the security is deposited, and if the seizure is not adjudged illegal, the amount of deposit or a part thereof, as may be directed by the State Government by rules made in this behalf, shall stand forfeited to the *Panchayat*. If the cattle are not impounded as aforesaid, the amount of security deposit shall, on an application made by or on behalf of the depositor, be refunded to him on the expiry of that period.

(3) On every occasion on which the release of the cattle impounded under this Act is claimed, the owner of the cattle shall deposit a fresh security.

168B. Removal of cattle to specified places.-(1) If a Mamlatdar, Tahsildar, Naib-Tahsildar or Mahalkari is satisfied that the crops or grass standing on any agricultural land or grazing land set apart for the use of cattle of one or more villages within the jurisdiction of a *Panchayat* are likely to be damaged by cattle belonging to any persons (whether or not residents of such village or villages), who own more than twenty head of cattle, he may, by special or general order, direct the owner of such cattle to remove or cause to be removed, within a period specified in the order, all or any of the cattle to such place or places within the State as may be specified in the order.

(2) If the owner of the cattle fails to remove the cattle as directed under sub-section (1), the Mamlatdar, Tahsildar, Naib-Tahsildar or Mahalkari, as the case may be, may direct a police officer not below the rank of a head constable to remove or cause to be removed such cattle to the place or places specified in the order.

(3) If the Mamlatdar, Tahsildar, Naib-Tahsildar or Mahalkari is satisfied that the order issued by him under sub-section (1) is contravened by any owner or keeper of cattle, he may impose a fine not exceeding five hundred rupees. Any fine so imposed, may, on failure of such owner or keeper to pay the same within the specified time, recovered by sale of all or any of the cattle ordered to be removed under sub-section (1)].

CHAPTER XIV
RECOVERY OF LAND REVENUE
 [DELETED BY MAH. 13 OF 1975, S. 31]

CHAPTER XV
RULES AND BYE-LAWS

176. Rules.-(1) The State Government may, by notification in the *Official Gazette*, make rules for carrying into effect the purposes of this Act.

(2) In particular but without prejudice to the generality of the foregoing provision, the State Government may make rules

⁵¹⁷(i) ***

(ii) under sub-section (1) of Section 7, prescribing the date, ⁵¹⁸[place, time and manner of convening] meetings of the Gram Sabha;

⁵¹⁹[(ii-a) under clause (b) of sub-section (1) of Section 10, prescribing the manner in which the number of wards and the number of members to be elected from each ward may be determined;]

(iii) under sub-section (2) of Section 10, ⁵²⁰[the manner in which the ⁵²¹[State Election Commission] shall determine the number of seats to be reserved] for the Scheduled Castes and Scheduled Tribes ⁵²²[and Backward Class of Citizens and Women] ⁵²³[and prescribing the manner and rotation of ⁵²⁴[such reservations of seats] in each *Panchayat* and under sub-section (3) of the said Section, prescribing the manner of ⁵²⁵[publication of the names of members falling under clause (a) of sub-section (1)];

(iv) under Section 11, prescribing the manner in which the election of members shall be held;

⁵²⁶[(iv-aa) under sub-section (1) of Section 29, prescribing the manner in which the resignation shall be delivered;]

⁵²⁷[(iv-aaa) under Section 30, prescribing the number of officer of *Sarpanchas* of *Panchayats* to be reserved for Scheduled Castes, Scheduled Tribes, Backward

517 Clause (i) was deleted by Mah. 21 of 1994, S. 32(1).

518 These words were substituted for the words, "place and time for" by Mah. 21 of 2000, s.3.

519 Clause (ii-a) was inserted by Mah. 36 of 1965, S. 73 (1)

520 These words were substituted for the words "prescribing the number of seats to be reserved" by Mah. 13 of 1975, S. 32(a)(i).

521 These words were substituted for the word "Collector" by Mah. 21 of 1994, S. 32(2)(a)

522 These words were inserted by Mah. 21 of 1994, S. 32(2)(b).

523 These words were inserted by Mah. 10 of 1990, S. 9 (w.e.f. 1.7.1980)

524 These words were substituted for the words "reservation of seats for women" by Mah. 21 of 1994, s. 32(2)(c).

525 These words were substituted for the words, "publication of elected and appointed members of a *Panchayat*" by Mah. 36 of 2001, s.3.

526 Clause (iv-aaa) was inserted by Mah. 13 of 1975, S. 32(a)(ii).

527 Clause (iv-aaa) was inserted by Mah. 21 of 1994, S. 32(3).

Class of citizens, and women in a *Panchayat* and the manner and rotation of such reservation;]

- ⁵²⁸[(iv-a) under Section 32-A, prescribing the travelling and daily allowances to be paid to the members of the *Panchayat* including its *Sarpanch* and *Upa-Sarpanch*;]
- (v) under sub-section (2) of Section 33, prescribing the powers of, and the procedure to be followed by, the ⁵²⁹ *** officer presiding;]
- ⁵³⁰[(v-aa) under Section 33-A, prescribing the manner in which the sumptuary allowance shall be placed at the disposal of the *Sarpanch*.]
- ⁵³¹[(v-a) under sub-section (3) of Section 34, prescribing the manner in which the notice of resignation shall be delivered;]
- (vi) prescribing the form of notice under sub-section (1) of Section 35;
- (vii) under Section 36, prescribing the time and place of sitting and the procedure at a meeting of the *Panchayat*;
- (viii) under sub-section (1) of Section 38, prescribing the rules for the performance and exercising of powers and duties of *Sarpanch* by *Upa-Sarpanch* in the absence of *Sarpanch*;
- ⁵³²(viii-a) ***
- (ix) under sub-section (1) of Section 43, regulating the manner in which the notice of a vacancy in the office of a *Sarpanch*, *Upa-Sarpanch* or member of a *Panchayat* shall be given;
- (x) ⁵³³[under entry 44 of Schedule I], prescribing the principles for the extension of village sites and regulation of buildings;
- ⁵³⁴[(x-a) under sub-section (2-B) of Section 45, prescribing the limits subject to which grant-in-aid may be given by a *Panchayat* to institutions specified in that sub-section;]
- ⁵³⁵[(x-b) under sections 49 and 49A, for any matter for which rules are required to be made or generally for carrying out the purposes of the said sections;”.
- (xi) ⁵³⁶under [entry 50 of Scheduled I], prescribing the persons in the village from whom and the manner in which the costs of watch and ward shall be levied and recovered;

528 Clause (iv-a) was inserted by Mah. 36 of 1965, S. 73(2).

529 The words “Collector or other” were deleted by Mah. 5 of 1962, S. 286, Tenth Sch.

530 Clause (v-aa) was inserted by Mah. 10 of 1992, S. 6.

531 Clause (v-a) was inserted by Mah. 36 of 1965, S. 73(3).

532 Clause (viii-a) was deleted by Mah. 4 of 1981, s. 4.

533 This was substituted for the words, figures and letters “under Section 45(1) II(2)” by Mah. 36 of 1965, S. 73(5).

534 Clause (x-a) was inserted by Mah. 13 of 1975, S. 32(a)(iii).

535 Clause (x-b) was inserted by Mah. 23 of 2003 dated 01-08-2003 (w.e.f. 02-07-2003) s.5.

536 These words were substituted for the words, figures and letters” under Section 45(1), IV(aa)”, by Mah. 36 of 1965, S. 73(d).

- (xii) under the proviso to sub-section (2) of Section 51, prescribing the manner of publishing the notice for the stoppage or discontinuance of public road or street;
- ⁵³⁷[(xii-1a) under sub-sections (1) and (IA) of section 52, prescribing the manner in which permission to erect or re-erect or commence to erect or re-erect any building shall be obtained; and under sub-section (2B) thereof, prescribing the form of appeal and the court-fees to be paid alongwith the appeal;]
- ⁵³⁸[(xii-a) under sub-section (1) of Section 56, for the purposes of vesting property of the Zilla Parishad or *Panchayat Samitis* in a *Panchayat*; and under sub-section (3) of the said Section, for the purpose of vesting work in a *Panchayat*;]
- (xiii) under Section 58, prescribing the custody in which all funds received by and all sums accruing to a *Panchayat* shall be kept;
- (xiv) under clause (c) of sub-section (3) of Section 59, prescribing the manner in which the notice of any inquiry shall be given to any person;
- ⁵³⁹(xv) ***
- ⁵⁴⁰[(xv-a) under Section 61, prescribing the rules, regulating the terms and conditions of service of servants referred to therein;]
- (xvi) under Section 62, prescribing the date and form of the statement, the percentage of the total income from all sources to be contributed to the District Village Development Fund and the form in which account shall be kept;
- ⁵⁴¹[(xvii) to (xxiv-a) ***
- ⁵⁴²[(xxv) ***
- (xxvi) under Section 124, laying down the maximum and the minimum rates and the manner in which and the exemptions subject to which taxes and fee specified in the Section shall be leviable;
- (xxvii) under Section 125, prescribing the manner in which the dispute regarding lumpsum contribution by factories may be referred to State Government.
- (xxviii) under sub-section (1) of Section 128, prescribing the maximum rate of tax;
- (xxix) under sub-section (2) of Section 129, prescribing the form of the writ to be presented to the defaulter.
- (xxx) under sub-section (4) of Section 129, prescribing the manner of distraint and sale of the moveable property of the defaulter;

537 Clause (xii-1a) inserted by Maharashtra Village Panchayats and the Maharashtra Regional and Town Planning (Amendment) Act, 2014 (Mah. Act No. 43 of 2014), dated 29-12-2014, s.4.

538 Clause (xii-a) was inserted by Mah. 36 of 1965, S. 73(7).

539 Clause (xv) was deleted by Mah. 11 of 1976, S. 3. Second Sch.

540 Clause (xv-a) was inserted by Mah. 36 of 1965, S. 73(8).

541 Clauses (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv) and (xxiv-a) were deleted by Mah. 13 of 1975, S. 32(a)[iv].

542 Clause (xxv) was deleted by Mah. 36 of 1965, S. 73(11).

- (xxxii) under sub-section (5) of Section 129, prescribing the rates of fees for writ of demand, distress and cost of maintaining any live-stock seized;
- ⁵⁴³[(xxxiii) under sub-section (6) of Section 129, prescribing the manner of recovery of any tax or fee payable on demand;]
- ⁵⁴⁴(xxxiiii) ***
- (xxxv) prescribing the manner in which refunds may be allowed and paid, in respect of any amount of tax, fee or other sum, not due or paid in excess;
- ⁵⁴⁵[(xxxvi-a) under sub-section (3) of Section 132-B, prescribing for all matters connected with the ⁵⁴⁶[Village Employment Fund];]
- ⁵⁴⁷(xxxvii) ***
- (xxxviii) under Section 133, prescribing the officer or authority in whom the District Village Development Fund shall vest, the manner of the investment of the fund, the rate of interest to be paid on the contributions made to the fund by *Panchayats*, the purpose for which and the terms and conditions on which loans may be granted, and all matters incidental to the grant and repayment of such loans;
- ⁵⁴⁸(xxxviii) ***
- ⁵⁴⁹(xxxix) ***
- (xl) under Section 135, prescribing the other functions which may be performed by a ⁵⁵⁰[Zilla Parishad and *Panchayat Samiti*];
- (xli) under Section 136, prescribing the functions of the District Village *Panchayat* Officer;
- (xlii) under Section 140, prescribing ⁵⁵¹[the authority by which and] and manner in which the audit of accounts of a *Panchayat* shall be carried out;
- (xliii) under Section 162, prescribing the duties of the pound-keeper;
- (xliv) under Section 166, prescribing the manner in which auction shall be held;
- ⁵⁵²[(xlv-a) under Section 168-A, prescribing the form of, and the procedure relating to the declaration, and the scales of deposits to be made;]
- (xlvi) under sub-section (2) of Section 179, prescribing the form of the warrant;
- ⁵⁵³[xlv] ***

⁵⁴³ Clause (xxxii) was inserted by Mah. 43 of 1962, S. 26, Tenth Sch.

⁵⁴⁴ Clause (xxxiii) was deleted by Mah. 34 of 1970, S. 25.

⁵⁴⁵ Clause (xxxiv-a) was inserted by Mah. 35 of 1972, S. 6.

⁵⁴⁶ These words were substituted for the words "Village Employment Fund" by Mah. 5 of 1997, S. 6 (w.e.f. 2.1.1997)

⁵⁴⁷ Clauses (xxxv) and (xxxviii) were deleted by Mah. 5 of 1962, S. 286, Tenth Sch.

⁵⁴⁸ Clause (xxxvii) was deleted by Mah. 43 of 1962, S. 26, Tenth Sch.

⁵⁴⁹ Clauses (xxxv) and (xxxviii) were deleted by Mah. 43 of 1962, S. 26, Tenth Sch.

⁵⁵⁰ These words were substituted for the words "Zilla Parishad" by Mah. 36 of 1965, S. 73(12)

⁵⁵¹ These words were inserted by Mah. 13 of 1975, S. 32(a)(v).

⁵⁵² Clause (xlv-a) was inserted by Mah. 36 of 1965, S. 73(13).

(xlvi) authorizing the payment of contributions, at such rates and subject to such conditions as may be prescribed in such rules, to any provident fund which may be established by a *Panchayat* or with the approval of the *Panchayat* by the officers and servants of the *Panchayat*,

(xlvii) for any other matter for which rules are required to be made under this Act, or generally for carrying out the purposes thereof.

(3) In making any rule, under this Section, the State Government may provide that for any breach thereof the offender shall, on conviction, be punished with fine which may extend to fifty rupees, and in the case of continuing breach, with fine which may extend to five rupees for every day during which the breach continues, after conviction for the first breach.

(4) The rules to be made under this Section shall be subject to the condition of previous publication:

⁵⁵⁴[***]

⁵⁵⁵[(5) Every rule (except rules made under clause (xxvi) of sub-section (2)] made under this Section shall be laid, as soon as may be, after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made and notify such decision in the *Official Gazette*, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect, as the case may be, so, however, that any modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

(6) The draft of every rule made under clause (xxvi) of sub-section ⁵⁵⁶[(2) shall, as soon as may be after it is published in the *Official Gazette* as required by sub-section (4), be laid before each House of the State Legislature and shall be subject to such modifications as may be made by the State Legislature, before it is finally published as required by sub-section (1)].

177. Byelaws.-The ⁵⁵⁷[Zilla Parishad] may, with the previous sanction of the Commissioner, make bye-laws generally for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of the foregoing provision, the ⁵⁵⁸[Zilla Parishad] may make by-laws

(a) under Section 45

553 Clause (xlv) was deleted by Mah. 13 of 1975, s. 32(a)(vi)

554 Proviso deleted by Mah. 52 of 1994, s. 5.

555 Sub-section (5) was substituted for the original by Mah. 13 of 1975, S. 32(b).

556 These brackets and figures were substituted for the brackets and figure "(1)" by Mah. 11 of 1976, S. 3, Second Sch.

557 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

558 These words were substituted for the words "*District Village Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

- (i) for the purification and protection from pollution of all sources of water used for drinking purposes;
 - (ii) for the prohibition of the removal or use for drinking purposes of any water from any stream, tank, well or other source, where such removal or use causes, or is likely to cause, disease or injury to health, and the prevention of such removal or use by the filling in or covering over of such tank, or well, or by any other method, which may be considered advisable;
 - (iii) for the prohibition of the deposit or storage of manure, refuse or other offensive matter in a manner or in places prejudicial to the public health, comfort, or convenience;
 - (iv) for the regulation of offensive callings, or trades;
 - (v) for the disposal of corpses by burning or burial;
 - (vi) for the excavation of earth and the filling up of excavations and depressions injurious to the health or offensive to the neighbourhood;
 - (vii) for the removal of noxious vegetation;
 - (viii) for the repair and removal of dangerous or ruinous buildings;
 - (ix) for the prevention of the erection of buildings without adequate provisions for ventilation, or the laying out and location of streets;
 - (x) for the control of fairs and bazaars, and the regulations of markets, slaughter-houses and cart-stands;
 - (xi) for the inspection and destruction of unfit food and drink exposed for sale; and
 - (xii) for the general regulation of sanitation and conservancy and the disposal of carcasses of dead animals;
- (b) under Section 53 for the temporary erection on, or projections over, or temporary occupation of, any public street or place.

(3) Any bye-law made under the foregoing sub-sections may provide that a contravention thereof shall be punishable-

- (a) with a fine which may extend to fifty rupees;
- (b) in the case of a continuing contravention with a fine, which may extend to five rupees per day after conviction for the first contravention, during the period within such contravention continues.

CHAPTER XVI MISCELLANEOUS

178. Liability of members for loss, waste or misapplication.-(1) Every member of a *Panchayat* shall be personally liable for the loss, waste or misapplication or any money or other property of the *Panchayat* to which he has been party or which has been caused or facilitated by his misconduct or gross neglect of his duty as a member.

(2) If after giving the member concerned a reasonable opportunity for showing cause to the contrary, the Collector is satisfied that the loss, waste or misapplication of any money or other property of the *Panchayat* is a direct consequence of misconduct or gross neglect on his part, the Collector shall by order in writing direct such member to pay to the *Panchayat* before a fixed date, the amount required to reimburse it for such loss, waste or misapplication.

(3) If the amount is not so paid the Collector shall recover it as an arrear of land revenue and credit it to the village fund.

(4) Any person aggrieved by the decision of the Collector may apply to the District Court as provided in sub-section (6) of Section 14, within the like time for redress of his grievance, and that Court may pass any order thereon which it can pass under that Section.

179. Power of Collector to recover record and money.-(1) Where on an application of a *Panchayat*⁵⁵⁹ [or otherwise] the Collector is of the opinion that any person, who in his capacity⁵⁶⁰ [as a *Sarpanch*, *Upa-Sarpanch*, member,] officer, servant or Secretary of a *Panchayat* had in his custody any record or money belonging to the *Panchayat* is⁵⁶¹ [on his vacating or ceasing to hold, his office for any reason whatsoever.] or suspension from office, as the case may be, not likely to deliver such record or pay such money, the Collector may by a written order require that the record or money so detained be delivered or paid to the *Panchayat* forthwith.

(2) If any such person as aforesaid shall not deliver the record or pay the money as directed, the Collector may cause him to be apprehended and may send him with a warrant in such form as may be prescribed, to be confined in a civil jail till he delivers up the record or pays the money:

Provided that no such person shall be so detained in confinement for a period longer than one calendar month.

(3) it shall be lawful for the Collector

- (a) for recovering any such money to direct that such money be recovered as an arrear of land revenue and on such direction being given, such money shall be recoverable as an arrear of land revenue from such person;
- (b) for recovering any such record to issue a search warrant and to exercise all such powers with respect thereto as may lawfully be exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure, 1898.

(4) No action under sub-section (1), (2) or (3) shall be taken unless reasonable opportunity has been given to the person concerned to show cause why such action should not be taken against him.

180. Bar of action against *Panchayats*, etc., and previous notice before institution.-(1) No action shall lie against any member, officer, servant or agent of a *Panchayat*^{562***} acting

559 These words were inserted by Mah. 43 of 1962, S. 26 Sch.

560 These words were substituted for the words "as a member" by Mah. 43 of 1962, S. 26, Sch.

561 These words were substituted for the words "on the expiry of his term of office or after his removal" by Mah. 36 of 1965, S. 74.

562 The words "or *Nyaya Panchayat*" were deleted by Mah. 13 of 1975, S. 33.

under its direction, in respect of anything in good faith done under this Act or any rule or by-law.

(2) No action shall be brought against any *Panchayat*^{563***} or any member, officer, servant or agent of such *Panchayat*^{564***} acting under its direction for anything done or purporting to have done by or under this Act, until the expiration of three months next after notice in writing has been left or delivered at the office of the *Panchayat*^{565***} and also at the residence of the member, officer, servant or agent thereof against whom the action is intended to be brought. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the person who intends to bring the action.

(3) Every such action shall be commenced within six months after the accrual of the cause of action, and not afterwards.

(4) If any *Panchayat*^{566***} or person to whom a notice under sub-section (2) is given shall, before an action is brought, tender sufficient amends to the plaintiff and pay into Court the amount so tendered, the plaintiff shall not recover more than the amount so tendered. The plaintiff shall also pay all costs incurred by the defendant after such tender.

181. Bar of action against⁵⁶⁷ [Zilla Parishad, Standing Committee or *Panchayat Samiti*,] etc., and previous notice before institution.-(1) No suit shall be commenced against any⁵⁶⁸ [Zilla Parishad, Standing Committee or *Panchayat Samiti*] or against any officer or servant of a⁵⁶⁹ [Zilla Parishad, Standing Committee or *Panchayat Samiti*] or any person, acting under the orders of a⁵⁷⁰ [Zilla Parishad, Standing Committee or *Panchayat Samiti*] for anything done or purporting to have been done in pursuance of this Act, without giving to such⁵⁷¹ [Zilla Parishad, Standing Committee or *Panchayat Samiti*] officer, servant or person, one month's previous notice in writing of the intended suit and of the cause thereof not after three months from the date of the act complained of.

(2) In the case of any such suit for damages, if tender of sufficient amounts shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.

182. Delegation of powers.-(1) The State Government may, by notification in the *Official Gazette*, authorise the Commissioner or any other officer to exercise⁵⁷² ***any of the powers which may be exercised by the State Government under this Act.⁵⁷³ ***

563 The words "or Nyaya *Panchayat*" were deleted by Mah. 13 of 1975, S. 33.

564 The words "or Nyaya *Panchayat*" were deleted by Mah. 13 of 1975, S. 33.

565 The words "or Nyaya *Panchayat*" were deleted by Mah. 13 of 1975, S. 33.

566 The words "or Nyaya *Panchayat*" were deleted by Mah. 13 of 1975, S. 33.

567 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

568 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

569 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

570 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

571 These words were substituted for the words "*Panchayat Mandal*" by Mah. 5 of 1962, S. 286, Tenth Sch.

572 The words "in respect of *Panchayats*" were deemed always to have been deleted by Mah. 34 of 1970, S. 26(1).

⁵⁷⁴(2) ***

⁵⁷⁵(3) ***

(4) Subject to the general or special orders of the State Government, the Commissioner or Collector may delegate to an officer not below the rank of a Mamlatdar, Tahsildar, Naib-Tahsildar or Mahalkari, powers exercisable by the Commissioner or as the case may be, the Collector under this Act.

⁵⁷⁶(5) Subject to the general or special orders of the State Government, the Chief Executive Officer may delegate to any officer working under a Zilla Parishad all or any of the powers exercisable by him under this Act.

NOTES

Delegation of power - Whether to be done by notification in *Official Gazette* - Orders of learned Single Judge - Challenged by Letters Patent Appeals - Question is whether Deputy Commissioner has powers to pass orders for deciding appeal, though he was put into charge of post of Additional Commissioner - Held, entrustment of charge of post of Additional Commissioner to Deputy Commissioner is done by Memorandum issued by State Government. It is not order of delegation either by Commissioner or by Additional Commissioner himself. Contention that Deputy Commissioner not have power by virtue of said designation and post is perfectly legal. Therefore, case at hand cannot be regarded as delegation of powers by Additional Commissioner or Commissioner, or even by State Government. Deputy Commissioner officially put into charge of post of Additional Commissioner. There were no barriers on his exercise of powers, and so long he was holding charge of post, he was for all purposes Additional Commissioner, equipped with all legal powers, functions, duties, jurisdiction etc. Appeals have no merit, and are rejected. *Mohd. Izaz Abdul Rafique v/s Additional Commissioner & ors.* 2010(1) Bom.C.R. 77; 2010(2) All.M.R 355

183. Local enquiry and reports by Panchayat.-It shall be the duty of every Panchayat to enquire and report in any of the following cases:

- (a) any case where a Magistrate has directed that a previous local investigation be made by a Panchayat under Section 202 of the Code of Criminal Procedure, 1898⁵⁷⁷ and the words "such other person" in sub-section (1) of the said Section shall be deemed to include a Panchayat;
- (b) any case in which a Magistrate making an enquiry under Section 488 of the Code of Criminal Procedure, 1898⁵⁷⁸, may require from the Panchayat in whose village either the wife or child for whose maintenance the application is

573 The words "except the powers in respect of Nyaya Panchayat under Chapter IV" were deleted by Mah. 13 of 1975, S. 34(a).

574 Sub-sections (2) and (3) were deleted by Mah. 13 of 1975, S. 34(b).

575 Sub-sections (2) and (3) were deleted by Mah. 13 of 1975, S. 34(b).

576 Sub-section (5) was inserted by Mah. 43 of 1962, S. 26, Sch.

577 See now the Code of Criminal Procedure, 1973 (2 of 1974).

578 See now the Code of Criminal Procedure, 1973 (2 of 1974).

made or the husband or parent respectively of such wife or child resides, report as to the amount of maintenance which, having regard to the circumstances of the parties, should be payable and such report shall be evidence in such enquiry:

Provided that no member of the *Panchayat* shall be required to attend as a witness touching any matter on which the report is itself evidence, but the Magistrate, in his discretion, call for a further report.

184. Members, etc., of *Panchayats* ^{579***} to be public servants.-Every member of a ^{580***} *Panchayat* ^{581***} and every officer and servant maintained by or employed under a ^{582***} *Panchayat* ^{583***} shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

NOTES

☐ Public servants Who are Government sanction for prosecution Whether necessary Held, *Sarpanch, Upa-Sarpanch* and other members of the Village *Panchayat* are not always removable by the State Government, hence are not public servants within the meaning of section 21 of I.P.C. and no sanction of State Government before launching prosecution against them is necessary. *Shantaram Balya Sankhe & others v/s Kaliram Gajanan Sankhe & others 2002(Cri. Supp.) Bom.C.R. 772; 2001 (1) Bom.L.R. 640*

⁵⁸⁴[184A. *Panchayat Samiti* to exercise duties in respect of *Panchayats* within its area.-(1) Nothing in this Act shall be construed as empowering a *Panchayat Samiti* to exercise any powers or perform any functions under this Act in relation to a *Panchayat* the area of which is not within its jurisdiction.

(2) If any Block comprises only a part of a village for which a *Panchayat* has been established, the State Government may, by notification in the *Official Gazette*, declare which *Panchayat Samiti* shall exercise the powers and perform the functions under this Act in respect of such *Panchayat*.]

⁵⁸⁵[184B. Powers of police officers.-It shall be the duty of every police officer to give immediate information to the *Panchayat* ^{586***} of any offence committed against this Act or the rules or byelaws made thereunder and to assist the *Panchayat* ^{587***} in the exercise of its lawful authority.

579 The words "or Nyaya *Panchayat*" were deleted by Mah. 13 of 1975, S. 35(b).

580 The words "*Panchayat Mandal* or" were deleted by Mah. 5 of 1962, S. 286, Tenth Sch.

581 The words "or Nyaya *Panchayat*" were deleted by Mah. 13 of 1975, S. 35(a).

582 The words "or Nyaya *Panchayat*" were deleted by Mah. 13 of 1975, S. 35(a).

583 Section 184-A was inserted by Mah. 5 of 1962, S. 286, Tenth Sch.

584 Section 184-A was inserted by Mah. 5 of 1962, S. 286, Tenth Sch.

585 Section 184-B was inserted by Mah. 36 of 1965, S. 75.

586 The words "or Nyaya *Panchayat*" were deleted by Mah. 13 of 1975, S. 36.

587 The words "or Nyaya *Panchayat*" were deleted by Mah. 13 of 1975, S. 36.

⁵⁸⁸[184C. Suspension of operation of Act, rules and bye-laws.-If the State Government is satisfied that circumstances have arisen by reason of earthquake or similar natural calamity rendering it necessary that certain provisions of this Act or any rules or bye-laws made thereunder, which impede or delay the rapid rehabilitation or giving of relief to persons affected thereby, should be suspended or relaxed in the public interest, the State Government may, by notification in the *Official Gazette*, suspend or relax for such period and in such area as may be specified in the notification the operation of any of the provisions of this Act or any rules or bye-laws made thereunder.]

185. Repeal.-The Bombay Village *Panchayats* Act, 1933 (Bom. VI of 1933), of that Act in its application to the Kutch area of the ⁵⁸⁹[State of Bombay, the Saurashtra Gram *Panchayat* Ordinance, 1949 (Sau. Ord. No. 57 of 1949), the Hyderabad Gram *Panchayat* Act, 1956 (Hyd. Act XVII of 1956) and the Central Provinces and Berar *Panchayats* Act, 1946 (C. P. and Berar Act I of 1947), are hereby repealed.

186. Savings.-Notwithstanding the repeal of the said laws and the foregoing provisions of this Act

- (1) any local area declared to be a village immediately before the coming into force of this Act shall be deemed to be a village under this Act;
- (2) the *Panchayats* constituted under the said Act immediately before the said date (hereinafter called "the old *Panchayats*") shall be deemed to be *Panchayats* of the respective villages (hereinafter called "the new *Panchayats*");
- (3) the *Sarpanch*, the *Deputy Sarpanch* or *Upa-Sarpanch* and the members of *Panchayats* elected or appointed for the *Panchayats* and holding office immediately before the said date shall respectively be deemed to be the *Sarpanch*, the *Upa-Sarpanch*, and the members of the new *Panchayats*;
- (4) the said *Sarpanch*, the *Upa-Sarpanch*, and the members shall hold office as such *Sarpanch*, the *Upa-Sarpanch*, and the members for the period for which they would have held office under the said Act, subject however, to the provisions relating to disqualifications, resignations, removal and vacancy provided in this Act;
- ⁵⁹⁰(5) ***
- (6) the unexpended balance of the village fund and all the properties (including arrears of rates, taxes and fees) vesting in the old *Panchayats* shall from the said date vest in the new *Panchayats* and such arrears of rates, taxes and fees shall be recoverable under the provisions of this Act as if they had been imposed and recoverable under the provisions of this Act;
- ⁵⁹¹(6A) ***

588 Section 184-C was inserted by Mah. 10 of 1968, s. 2. This Section shall remain in force for a period of three years and then expire, except as respects things done or omitted to be done [See Mah. 10 of 1968, S. 1(2)].

589 The words "State of Bombay" shall stand unmodified vide Maharashtra Adaptation of Laws (State and Concurrent Subject) Order, 1960.

590 Clauses (5) and (6-A) were deleted by Mah. 13 of 1975, S. 37(a).

- (7) all debts and obligations incurred and all contracts made by or on behalf of the old *Panchayats* immediately before the said date and subsisting on the said date shall be deemed to have been incurred and made by the new *Panchayats* in exercise of the powers conferred on them by this Act;
- (8) any appointment, notification, notice, tax, fees, order, scheme, licence, permission, rule, bye-laws or form made, issued, imposed or granted in respect of the said villages and in force on the date of the commencement of this Act shall insofar as they are not inconsistent be deemed to have been made, issued, imposed or granted under this Act in respect of the village and shall continue in force until it is superseded or modified by any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-laws or form made, issued, imposed or granted under this Act;
- (9) All budget estimates, assessments, assessment lists, valuations or measurements made or authenticated immediately before the commencement of this Act by the old *Panchayats* shall be deemed to have been made or authenticated by the new *Panchayats* under this Act;
- (10) the Secretaries, Karbharis, all officers and servants in the employ of the old *Panchayat* immediately before the said date shall be the Secretaries, Karbharis, officers and servants of the new *Panchayats*;
- (11) all proceedings pending before the old *Panchayats*^{592***} shall be deemed to have been instituted and to be pending before the new *Panchayats*.^{593***} and shall be heard and disposed of by the said *Panchayats*^{594***} under this Act;
- (12) all appeals pending before the old *Panchayats* at the said date shall be disposed of by the new *Panchayat*;
- (13) all prosecutions instituted by or on behalf of the old *Panchayats* and all suits or other legal proceedings instituted by or against the old *Panchayats* or any officer of *Panchayats* pending at the said date shall be continued by or against the new *Panchayats*;
- (14) the Saurashtra Gram Panchayats Madhyastha Mandal constituted under Section 45 of the Saurashtra Gram *Panchayats* Ordinance, 1949 (Sau. Ord. 57 of 1949), or any District *Panchayat* Mandal or Taluka *Panchayat* Mandal appointed by it shall be dissolved and cease to function and any unexpended balances of money in their custody shall vest in the State Government. The provisions of sub-section (4) of Section 60 shall, so far as may be applicable, apply in relation to the officers and servants of the Saurashtra Gram Panchayats Madhyastha Mandal, or the District Village *Panchayat* Mandal or Taluka Village *Panchayat* Mandal;

591 Clauses (5) and (6-A) were deleted by Mah. 13 of 1975, S. 37(a).

592 The words "and Nyaya *Panchayats* of the old *Panchayats*" were deleted by Mah. 13 of 1975, S. 37(b).

593 The words "and Nyaya *Panchayats* of the new *Panchayats*, as the case may be" were deleted by Mah. 13 of 1975, S. 37(b).

594 The words "or Nyaya *Panchayats*, as the case may be" were deleted by Mah. 13 of 1975, S. 37(b).

- (15) any reference to any enactment or in any instrument to any of the laws repealed or to any provision thereof or any authority elected or appointed thereunder shall be construed as a reference to the Maharashtra Village Panchayats Act (Act No. III of 1959), or to the corresponding provision thereof or to the corresponding authority elected or appointed thereunder.

187. Provision for removal of difficulties.-If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by an order published in the *Official Gazette*, do anything not inconsistent with the provisions of this Act which appear to it to be necessary or expedient for the purpose of removing the difficulty.

188. Amendment of certain Acts.-During such time as this Act and the rules and bye-laws made thereunder are in operation in any village, the enactments mentioned in Schedule II shall be amended, modified or repealed in the manner and to the extent specified in the third column thereof.

⁵⁹⁵[SCHEDULE I

(VILLAGE LIST)

(SEE SECTION 45)

Subjects of Activities (including Development Activities)

AGRICULTURE

1. Making arrangement for co-operative management of lands and other resources in village, organisation of collective co-operative farming.
2. Improvement of agriculture (including provision of implements and stores) and establishment of model agricultural farms.
3. Bringing under cultivation waste and fallow lands vested by Government in the *Panchayats*.
4. Reclamation of waste land and bringing waste land under cultivation with the previous permission of the State Government.
5. Establishment and maintenance of nurseries for production of improved seeds and encouraging their use.
6. Crop experiments.
7. Crop protection.
8. Ensuring conservation of manurial resources, preparing compost and sale of manure.
9. Securing minimum standards of cultivation in the village with a view to increasing agricultural production.
10. Assistance in the implementation of land reform schemes.
11. Establishment of granaries.

ANIMAL HUSBANDRY

12. Improvement of cattle and cattle breeding and general care of livestock.

FORESTS

13. Raising, preservation, improvement and regulation of the use of village forests and grazing lands including lands assigned under Section 28 of the Indian Forest Act, 1927.

SOCIAL WELFARE

14. Relief of the crippled, destitute and the sick.
 15. Promotion of social and moral welfare of the village including promotion of prohibition, the removal of untouchability, amelioration of the condition of backward classes, eradication of corruption and the discouragement of gambling and useless litigation.
 16. Women's and Children's organisations and welfare.

EDUCATION

17. Spread of education.
 18. Other educational and cultural objects.
⁵⁹⁶[18-A. Maintenance and Repairs of Primary School Buildings ⁵⁹⁷[vesting for the time being in the Zilla Parishad]
 19. Provision of equipment and playgrounds for schools.
 20. Adult literacy centres, libraries and reading rooms.
 21. Rural Insurance.

MEDICAL AND PUBLIC HEALTH

22. Providing medical relief.
 23. Maternity and child welfare.
 24. Preservation and improvement of public health.
 25. Taking of measures to prevent outbreak, spread or recurrence of any infectious disease.
 26. Encouragement of human and animal vaccination.
 27. Regulation by licensing or otherwise of tea, coffee and milk shops.
 28. Construction and maintenance or control of slaughter houses.
 29. Cleansing of public roads, drains, bunds, tanks and wells (other than tanks and wells used for irrigation) and other public places or works.
 30. Reclaiming of unhealthy localities.
 31. Removal of rubbish heaps, jungle growth, prickly pear, filling in of disused wells, insanitary ponds, pools, ditches, pits or hollows, prevention of water-logging in irrigated areas and other improvement of sanitary conditions.
 32. Construction and maintenance of public latrines.
 33. Sanitation, conservancy, prevention and abatement of nuisance and disposal of unclaimed corpse and carcasses of dead animals.
 34. ⁵⁹⁸[* * *]
 35. Excavation, cleansing and maintenance of ponds for the supply of water to animals.

⁵⁹⁶ Entry 18-A was inserted by G.N., R.D.D. No. VPA 1075/1949/III, dated 20th September, 1971, M.G.G., Pt. IV-B, 7.10.1976, P. 1184.

⁵⁹⁷ These words were substituted for the words "which may be vesting in the Zilla Parishad or "Panchayat Samiti" by G.N., R.D.D. No. VPA 1075/1949/XXIII, dated 20th September, 1977.

⁵⁹⁸ Entry 34 deleted by Mah. 5 of 1997, s. 7.

36. Management and control of bathing or washing ghats which are not managed by any authority.

37. Provision, maintenance and regulation of burning and burial grounds.

BUILDINGS AND COMMUNICATIONS

38. Maintenance and regulation of the use of public buildings, tanks and wells (other than tanks and wells used for irrigation) vesting in or under the control of the *Panchayat*.

39. Removal of obstruction and projections in public streets or places and in sites, not being private property, which are open to the public whether such sites are vested in the *Panchayat* or belong to Government ⁵⁹⁹[removal of unauthorised cultivation of any crop on any grazing land or any other land not being private property.]

40. Construction, maintenance and repair of public roads, drains, bunds and bridges:

Provided that, if the roads, drains, bunds and bridges vest in any other public authority such works shall not be undertaken without the consent of that authority.

41. Planting of trees along roads, in market places and other public places and their maintenance and preservation.

42. Provision and maintenance of playgrounds, public parks and camping grounds.

43. Construction and maintenance of dharmashalas.

44. Extension of village sites and regulation of buildings in accordance with such principles as may be prescribed.

45. Lighting of the village.

IRRIGATION

46. Minor irrigation.

INDUSTRIES AND COTTAGE INDUSTRIES

47. Promotion, improvement and encouragement of cottage and village industries.

CO-OPERATION

48. Organisation of credit societies and multi-purpose co-operative societies.

49. Promotion of co-operative farming.

SELF-DEFENCE AND VILLAGE DEFENCE

50. Watch and Ward of the village:

Provided that the cost of watch and ward shall be levied and recovered by the *Panchayat* from such person in the village, and in such manner as may be prescribed.

51. Village Volunteer Force and Defence Labour Bank.

52. Rendering assistance in extinguishing fires and protecting life and property when fire occurs.

53. Regulating, checking and abating of offensive or dangerous trades or practices.

GENERAL ADMINISTRATION

54. Preparation, maintenance and up-keep of *Panchayat* records.

55. Numbering of premises.

56. Registration of births, deaths, and marriages in such manner and in such form as may be laid down by Government by general or special order in this behalf.

⁵⁹⁹ These words were added by Mah. 34 of 1970, S. 27.

57. Collection of land revenue ⁶⁰⁰[when entrusted by the State Government under] Section 169.
58. Maintenance of village records relating to land revenue in such manner and in such form as may be prescribed from time to time by or under any law relating to land revenue.
59. Preparation of plans for the development of the village.
60. Drawing up of programmes for increasing the output of agriculture and non-agricultural produce in the village.
61. Preparation of the statement showing requirement of supplies and finances needed for carrying out rural development schemes.
62. Establishment, control and management of cattle pounds.
63. Destruction of stray and ownerless dogs and pigs.
64. Disposal of unclaimed cattle.
65. Construction and maintenance of houses for the conservancy staff of the *Panchayat*.
66. Reporting to proper authorities village complaints which are not removable by the *Panchayat*.
67. Making surveys.
68. Acting as a channel through which assistance given by the Central or State Government for any purpose reaches the village.
69. Establishment, maintenance and regulation of fairs, pilgrimages and festivals.
70. Establishment and maintenance of markets, provided no markets shall be established without prior permission of the Zilla Parishad.
71. Control of fairs, bazaars, tonga stands and cart stands.
72. Establishment and maintenance of warehouses.
73. Establishment and maintenance of works or the provision of employment in time of scarcity.
- ⁶⁰¹[73-A. Provision of employment to needy local persons seeking manual work under any scheme for employment guarantee undertaken or adopted by, or transferred to, the *Panchayat*.]
74. Preparation of statistics of unemployment.
75. Assistance to the residents when any natural calamity occurs.
76. Organising voluntary labour for community works and works for the uplift of the village.
77. Opening fair price shops.
78. Control of cattle stands, threshing floors, grazing grounds and community lands.
- ⁶⁰²[79. Securing ⁶⁰³[or continuing] postal facilities of experimental post offices in the village by providing for payment of non-refundable contribution to the Posts and Telegraphs Department, wherever necessary.]

⁶⁰⁰ These words were substituted for the words "to the extent provided under" by Mah. 50 of 1965, S. 3(c).

⁶⁰¹ Entry 73-A was added by G.N., R.D.D., No. VPA 1070/20354-E, dated 25.7.1970.

⁶⁰² Entry 79 was added by G.N., R.D.D., No. VPS. 1266/1737-E, dated 20.2.1969.

⁶⁰³ These words were inserted by G.N., R.D.D. No. VPS 1266/1737-E, dated 24.11.1970.

SCHEDULE II
(SEE SECTION 188)

| Number and year of enactment (1) | Subject or title (2) | Extent of repeal or amendment (3) |
|-------------------------------------|--------------------------------------|--|
| 1. | Bombay Act VII of 1867. | Sections 33 and 34 shall be repealed. |
| 2. | C.P. and Berar Act, XXXVIII of 1948. | <p>(1) In Section 3, in subsection (9) the words "Subject to the general power of control vested in a Sabha over the Gram <i>Panchayats</i>" shall be deleted.</p> <p>(2) Section 52A shall be repealed.</p> <p>(3) In Section 109, subsection (1) shall be repealed.</p> <p>Section 203 shall be repealed.</p> |
| 3. | Hyderabad Act I of 1956. | The Hyderabad District Boards Act, 1955. |
| 4. | Saurashtra Act XXV of 1956. | <p>The Saurashtra District <i>Panchayat</i> Act, 1956.</p> <p>(1) In Section 28, in the first paragraph for the words, "Gram <i>Panchayat</i>" wherever they occur the words "Village <i>Panchayat</i>", and for the words and letters "Saurashtra-Gram-<i>Panchayats</i> Ordinance, 1949" the words and letters "the Bombay Village <i>Panchayats</i> Act, 1958" shall respectively be substituted; and the proviso shall be repealed.</p> <p>(2) Sections 30 and 83 shall be repealed.</p> |