

Ashwini

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7924 OF 2023

- 1. BAPU RAJARAM KALEL,**
Age: 36 years, Occ: Agriculture
- 2. SUNITA MAHADE KOKARE**
Age: 45 years, Occ: Agriculture
- 3. SINDHU KUNDALIK KOKARE,**
Age: 62 years, Occ: Housewife
- 4. KAVITA BHAGWAT SARGAR,**
Age: 30 years, Occ: Agriculture
- 5. RANI BHARAT KALEL,**
Age: 32 years, Occ: Agriculture
- 6. CHANDRABAI CHHAGAN KALEL,**
Age: 47 years, Occ: Agriculture
- 7. SWATI SIDDHESHWAR KALEL,**
Age: 34 years, Occ: Agriculture
- 8. SIDDHARATH PRAKASH
TORANE,**
Age: 38 years,
All residing at village Jambulani
Taluka Man, District Satara

... PETITIONERS

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through Department of Rural
Development, Mantralaya, Mumbai

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2. **THE TAHSILDAR,**
through Addl Tahsildar,
Man, Taluka Man, District Satara
3. **SUSHILA SITARAM KALEL,**
Age: 55 years, Occ: Agriculture
4. **SUDHIR VILAS KALEL,**
Age: 34 years, Occ: Agriculture
5. **GAJENDRA TUKARAM KALEL,**
Age: 51 years, Occ: Agriculture
Nos. 3 to 5 are residing at village
Jambulani, Tal Man, District Satara
6. **THE COLLECTOR, SATARA,**
District: Satara
7. **THE DIVISIONAL
COMMISSIONER,**
Pune Division, Pune
8. **THE VILLAGE PANCHAYAT,
JAMBULANI,**
Through Gram Sevak, Jambulani,
Taluka Man, District Satara

... RESPONDENTS

APPEARANCES

FOR THE PETITIONERS

**Mr AV Anturkar, Senior Advocate, with Dr Uday
Warunjikar, Sumeet Kate & Vivek Vijay Salunke, i/b Vivek Vijay
Salunke.**

FOR RESPONDENTS NOS. 1, 2, 6 & 7

Mr SH Kankal, AGP with Mr Vikas Mali, AGP.

FOR RESPONDENTS NOS. 3, 4 & 5

Mr Nilesh Desai, h/f Laxman Kalel, i/b Anand Shalgaonkar.

**CORAM : GS Patel &
Kamal Khata, JJ**

DATED : 20th September 2023

ORAL JUDGMENT (Per GS Patel J):-

1. Rule. Since there are affidavits in Reply, , Rule made returnable forthwith.

2. When he opened the case, Mr Anturkar, learned Senior Advocate for the Petitioners, in his typical fashion said that this was not a Petition that involved any complicated questions of fact or even law but was simply one of numbers. “Simple arithmetic,” he said, “will substantiate the Petition completely.” Having since considered rival arguments including those supplemented by Dr Warunjikar for the Petitioners, we have every reason to believe that this submission was entirely accurately placed.

3. The question is whether the 3rd Respondent, Sushila Sitaram Kalel, the Sarpanch of Gram Panchayat Jambulani has or has not survived a ‘No Confidence Motion’ (“NCM”). This depends entirely on whether her most ardent supporter, Sudhir Vilas Kalel, Respondent No.4, has or has not suffered a statutory disqualification. If Sudhir is not disqualified then the necessary percentage to pass the NCM is not met, and the motion is lost. But should it be found that Sudhir was indeed disqualified, then the NCM must be held to have been carried by the requisite majority, resulting in Sushila’s removal as the Sarpanch.

4. The Jambulani Gram Panchayat in Taluka Man, Satara District, has 11 members. They were elected at the election held in January 2021. Results were declared on 21st January 2021 by the District Collector, Satara. We have before us eight Writ Petitioners. All were elected to the Gram Panchayat. So too were was Sushila, Sudhir and the 5th Respondent, Gajendra Tukaram Kalel. The Petitioners and these three Respondents are from different wards and fall into different categories. Sudhir was, at that time, and this will be critical to the discussion, elected in the category of Backward Class for which there was a reservation at the elections.

5. Since Sudhir was elected following a reservation, he had to produce a Caste or Tribe Validity Certificate. This takes us immediately to Section 10-1A of the Maharashtra Village Panchayats Act, 1959. This Section was added by Maharashtra Act XXXVII of 2006. It carried a proviso that was substituted by a further amending Maharashtra Act IV of 2022 with effect from 6th December 2021.

6. The amended Section 10-1A with its amended proviso now reads as follows:

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

Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before the 31st December 2023, 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, along with 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 twelve months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee:**

Provided further that, if such person fails to produce the Validity Certificate within a period of twelve 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.”

(Emphasis added)

7. The case in the Petition is that Sudhir did not submit and produce a Caste Validity Certificate in this statutory period of 12 months from the date of declaration of the election. According to Mr Anturkar and Dr Warunjikar, this resulted in a self-operative or

automatic disqualification under Section 10-1A read with Section 14. This is because the substituted proviso itself has a proviso, emphasized above, which provides for the disqualification and says that such a person's election shall be "deemed to have been terminated retrospectively" and that he shall be disqualified from being a member.

8. We note Section 14 because it provides for a range of disqualifications, but sub-clause (k) speaks of a general disqualification under any other section of the Act.

14. Disqualifications.—

(1) No person shall be a member of a panchayat, or 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 been sentenced to imprisonment for not less than six months, unless a period of six years, or such lesser period as the State Government may allow in any particular case, has elapsed since his release; or

(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

(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 six 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 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

(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

(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 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

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

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

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

(j-5) fails to submit a certificate of the concerned panchayat, along with the resolution of the Gram Sabha or of the Chief Executive Officer or an Officer designated by him; or a self certificate 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:

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)

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 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 shareholder 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 State of Maharashtra be held to be interested in any contract entered into between the company or co-operative society and the panchayat.

Explanation 1A.—A person shall not be disqualified under clause (g) by reason only of such person,—

- (i) having a share or a interest in any newspaper in which any advertisement relating to the affairs of the panchayat is inserted; or
- (ii) having a share or a 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 in 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 purpose 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.

Explanation 3.—For the purposes of clause (i), a Policepatil appointed under section 5 of the Maharashtra Village Police Act, 1967 (Mah. XLVI of 1976), shall be deemed to be a servant of Government.

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.

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.

(Emphasis added)

9. Of particular interest here is the concept of *termination retrospectively*. That is indeed as it must be, because all that this says is that the election cannot be held to be good any longer, and that the disqualification relates back to the election itself.

10. By the middle of 2023, Sushila, the Sarpanch, had managed to incur the displeasure of the eight Petitioners. The reasons are unimportant. What matters is that on 13th June 2023, the eight Petitioners moved their NCM against her. There is no dispute that the necessary notice was given, including to the Tahsildar. He fixed 19th June 2023 as the date for the special meeting to consider the NCM.

11. It is at this stage, on 19th June 2023, that we come to Mr Anturkar’s arithmetic. All eight Petitioners voted in favour of the NCM against Sushila. Sushila, Sudhir and Gajendra (the 5th Respondent) voted against it. This means that there were eight members in favour of the NCM against Sushila, and three (including Sushila) against that Motion. What of the 4th Respondent, Sudhir? If he was disqualified and his election was ‘terminated retrospectively’ in the words of the statute, then the only valid votes would have been eight in favour of NCM and two

against. Then the majority in percentage terms would be 80%. But if Sudhir's election was *not* terminated, i.e., he continued to be a member of the Gram Panchayat and, therefore, entitled to vote, this ratio and percentage would change. It then meant that there would be eight persons in favour of the NCM and three persons, Respondents Nos. 3, 4 and 5, Sushila, Sudhir and Gajendra against it. The ratio would be then 8:3, i.e., 72.73% and that is short of the 75% majority required to carry a special resolution of this kind.

12. Section 35 deals with NCM. For completeness, we reproduce the whole it although there has been no controversy before us on that aspect of the matter.

“35. Motion of no confidence.—

(1) A motion of no confidence may be *moved by not less than two third of the total number of the members 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. Such notice once given shall not be withdrawn.

1A Deleted.

(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).

(a) If the motion is carried 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 the Sarpanch or the Upa-Sarpanch, as the case may be, 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 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*:

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*:

Provided also that, no such motion of no-confidence shall be moved within a period of two years from the date of election of *Sarpanch* or *Upa-Sarpanch* and before six months preceding the date on which the term of panchayat expires:

Provided also that, if the no-confidence motion fails, then no motion shall be moved within next two years from the date of failure of no-confidence motion.

(b) After the motion of no-confidence against the directly elected *Sarpanch* is carried 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* then the same shall be ratified by the *Gram Sabha*, in a special meeting convened, within fifteen days from passing of such motion, by an officer appointed by a Collector in this behalf, in the presence and under the Chairmanship of such officer, by a simple majority by the method of counting of heads. After such ratification of motion by the *Gram Sabha*, the *Sarpanch* shall forthwith stop, exercising all the powers and performing all the functions and duties of the office and thereupon, such powers, functions

and duties shall est in the *Upa-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.

(3-A) If the motion is not moved or is not carried by a majority of not less than two-third of or, as the case may be, 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*, no such fresh motion shall be moved against the *Sarpanch* or, as the case may be, the *Upa-Sarpanch* within a period of 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, within thirty days from the date on which it was received by him and his decision shall be final.”

(Emphasis added)

13. The Village Panchayats Act was further amended by the Maharashtra Village Panchayats (Amendment) Act 2022, with effect from 27th July 2022. Sub-section (3) was renumbered as clause (a), and sub-clause (b) was added, as quoted above. A copy of the Amendment Act 2022 is appended to this order.

14. Now, in the facts of the case, there is no doubt that Sudhir did not produce his validity certificate within the 12-month period. Yet, for reasons that we will examine below, the Tahsildar held that the

requisite number (as opposed to the percentage) of this 11-member Gram Panchayat for carrying the Motion would be nine, as there were totally 11 members. The Petitioners protested. They said that Sudhir stood disqualified and that his election was terminated retrospectively. Thus, the requisite number required to carry the motion was only eight since the aggregate strength was reduced from 11 to 10. The Tahsildar was unmoved. He declared the NCM lost and not carried by the requisite majority by his communication of 19th June 2023, assailed in this Petition, a copy of which is at Exhibit I, at page 59.

15. On 21st June 2023, the Petitioners made a representation to various authorities and sought that Sushila be restrained from continuing or acting as the Sarpanch.

16. This, then, is Mr Anturkar's arithmetical Petition. Prayers (a) and (b) at pages 29 and 30 read as follows:

“(a) By suitable writ, order or direction this Hon'ble Court may be pleased to hold and declare that the no confidence motion against the present Respondent No. 3 moved by the Petitioners on 13th June 2023 has been duly and validly carried with the requisite majority in the special meeting conveyed by the Respondent No.2 and held on 19th June 2023 and consequently the direction be issued to the Respondents that the Respondent No. 3 shall forthwith stop exercising all the powers, functions and duties as the Sarpanch in the village Panchayat Jambulani Taluka Man, District: Satara and thereafter, further directions be issued to the Respondent No.2 and Respondent No.6—the Collector to declare the election for the post of the village Sarpanch for electing the new Sarpanch in the said Village Panchayat.

(b) By suitable writ, order or direction the declaration made by the Respondent No.2 in the special meeting held on 19th June 2023 and as recorded in the minutes of the said meeting declaring that the no confidence motion against the Respondent No.3 has failed be quashed and set aside.”

17. Mr Anturkar and Dr Warunjikar draw our attention to decided law in this regard. The first decision is *Anant H Ulahalkar and Anr v Chief Election Commissioner and Anr*,¹ decided by a Full Bench (AS Oka, J, as he then was, MS Sonak, J and AS Gadkari, J; per MS Sonak, J). The matter fell within the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. It has a similar provision though with a different time period. The question was whether this time limit was or was not mandatory. The Full Bench held that the failure on the part of an elected councillor to produce a validity certificate within the statutorily stipulated period would *automatically* result in a termination of his or her election *with retrospective effect*. The phrase “*with retrospective effect*” is, therefore, common to both Acts.

18. The Full Bench held that even if the caste claim was validated by the scrutiny committee after the statutorily prescribed period, it would have *no effect* on the statutory consequences prescribed under the section in question. Indeed, the Full Bench went to the extent of holding that a subsequent or later validation or issue of a validity certificate would be irrelevant for the purposes of restoration of that councillor’s election. All that would happen was that such a subsequent validation would entitle the candidate to contest any

1 2016 SCC OnLine Bom 9862 : 2017 (1) MhLJ 431.

election to be held on account of the vacancy created by the termination of his election.

19. The Full Bench decision was affirmed by the Supreme Court in *Shankar Raghunath Devre (Patil) v State of Maharashtra*.² It was once again reaffirmed by a 3-Judge Bench of the Supreme Court in *Ganesh Sukhdeo Gurule v Tashildar, Sinnar & Ors*.³

20. This is the essential point that Dr Warunjikar makes. It is irrelevant, he submits, whether by an act of a scrutiny committee, a piece of legislation or, for that matter, an act of God, the caste claim is *later* validated. The time period is absolute. Within that period the validity certificate must be produced. If it is not produced, the consequences are, so to speak, written in stone. There is not the slightest possibility of flexibility. There is no question here of retrospective *validation*, but only of retrospective *invalidation* of an election. The wording of the statute, i.e., the Maharashtra Village Panchayats Act, 1959 is not only plain, clear and unambiguous but it is exactly parallel to that in the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Township Act, 1965 which was before the Full Bench. The only difference is that in a Gram Panchayat covered by the Maharashtra Village Panchayats Act, a candidate has six months more to produce a Caste Validity

² (2019) 3 SCC 220 : (2018) Mh LJ Online (SC) 112. Also affirming the Bombay High Court decision in *Shankar Raghunath Devre v State of Maharashtra*, 2016 SCC Online 10869 : (2017) 6 Bom CR 704 : (2017) 2 Mh LJ 368. A review petition was also dismissed by the Bombay High Court (*Shankar Raghunath Devre v State of Maharashtra*, 2016 SCC OnLine Bom 15934), and this decision in review was also affirmed by the Supreme Court.

³ (2019) 3 SCC 211.

Certificate. The consequences under the two statutes are identical. Once a Full Bench has settled this aspect of the law, it cannot be said is any longer to be *res integra*.

21. Even on the question of interpretation of statutes and interpretation of provisos, as also the function of provisos, the Full Bench dealt with this jurisprudence extensively in paragraphs 38, 47, 48, 53 to 55 and 63.

22. We will summarize those findings. The Full Bench reiterated and reaffirmed the well-established principle that words in a statute must receive their ordinary meaning unless this construction yields an absurdity, or there is something in the context or in the object of the statute to the contrary. Words in a statute declare legislative intent. This is especially so where the language of the statute is clear, plain, and unambiguous. A Court must strive to give appropriate meaning to every word in the legislature. None can simply be swept aside as being redundant or surplus. Any interpretation that results in a statutory provision being rendered otiose, redundant, or surplus cannot be preferred to an interpretation that gives effect and meaning to every portion and every word. A Court shall presume that a legislature knew what it was about when it framed the legislation, and that it knew the effect, impact and import of every word of the statute that it framed. Legislatures are not to be accused of linguistic redundancy on the mere say-so of a disgruntled party. Where a proviso carves out an exception or makes an exemption or a concession subject to certain conditions being fulfilled, then those conditions must be met.

23. Normally, provisos provide an exception. In another manner of speaking, that which the proviso considers would fall within the main section. The proviso thus carves out an exception or makes an exclusion. The section is the rule, and the proviso is usually the exception to the rule. No proviso can thus be interpreted in a manner to invert this, where the proviso becomes the rule, and the section becomes the exemption.

24. In the present case, as we have seen, there is the insertion of a section. It had a proviso. The proviso was substituted. The amended proviso itself has a proviso. This gives us an interesting structure. The proviso within the proviso is, therefore, an exception to an exception. If we take this in the form of, since we are succumbing to Mr Anturkar's temptation an arithmetical syllogism, this is what happens: under the main Section, anyone who wishes to contest an election from a reserved seat must submit along with the nomination papers, a caste certificate, and a Validity Certificate by the Scrutiny Committee. This is the rule. Now comes the first exception. The exception is that for general or bye-elections for which the last date of filing nominations is on or before 31st December 2023, where a person has applied for a verification of the caste claim before filing the nomination papers, but has not received it on the date of filing of the nomination papers, such a person must submit (i) a true copy of the application for a Validity Certificate and (ii) an undertaking to submit within 12 months the Validity Certificate. Now the proviso within the proviso tells us of what is to happen if that person does *not* furnish the Validity Certificate within that 12-month period. It is then that the candidate's election is "deemed", i.e., by a statutory fiction, to have been 'terminated

retrospectively' and that person is disqualified from being a member from the date of the election. This is logical, because otherwise it would mean that a person whose caste or tribe claim is invalidated still functions as a gram panchayat member from the date of the election to the date of invalidation. That can never be, for the election is from a reserved seat. Thus, the rule is a submission of both the caste claim and the Validity Certificate with nomination papers. The exception is for a certain class of elections where a copy of the application and an undertaking is permitted, but subject to the Validity Certificate coming within 12 months, and then the exception is that if despite giving this true copy of the application and the nomination, the Validity Certificate is not produced, consequences follow.

25. Read like this, the second proviso, i.e., the proviso within the proviso, might fairly be said to be clarificatory because it provides for the consequence of a failure to fulfil the condition set out in the proviso. The second proviso is the consequence. Let us consider what would happen if we did not have the second proviso. In that scenario, the mere filing of an undertaking and a true copy of the application would be good for all time until the next Gram Panchayat election. That would defeat the statutory intent. It is, therefore, not possible to ignore the second proviso. It is the second proviso that defines the boundaries of the first proviso and ring fences it, so to speak. Even for that limited class of elections, it is not sufficient for a candidate to merely file a true copy of the application for a Validity Certificate and an undertaking without any fear of consequence. The 12-month period for furnishing the Validity

Certificate is required, and it is the second proviso that has to be read with the main section which tells us why this is important.

26. Another perspective or way of looking at it, is that if we ignore or overlook the second proviso, then the impact of the main section itself is lost. The entire section would be rendered otiose and utterly meaningless.

27. Now, in the facts of the case, there is no doubt that Sudhir did not produce his validity certificate within the 12-month period. The matter should have ended at that. But there comes to his rescue, first an ordinance, and now the Maharashtra Temporary Extension of Period for Submitting Validity Certificate (for certain elections to Village Panchayats, Zilla Parishads and Panchayat Samitis) Act, 2023 (“**Temporary Extension Act**”). A copy of this Act as notified is given to us. It is not formally part of the record and hence we have appended a copy for ease of reference. The Act tells us that the Government thought it was expedient to provide for an extension of time to submit Validity Certificates. At the time when this need was felt, both houses of the State Legislature were not in session. The Governor of Maharashtra therefore promulgated an ordinance on 10th July 2023. That Ordinance is now sought to be replaced by this Act. Section 1(2) tells us that it is deemed to have come into force on 10th July 2023.

28. We pause for a moment to note that the Petition was filed on 23rd June 2023. The 12-month period available to Sudhir ended on 21st January 2022. This would have terminated with retrospective

effect his election of 21st January 2021. Section 3 of the Temporary Extension Act opens with a non obstante clause:

“3. (1) Notwithstanding anything contained in sections 10-1A and 30-1A of the Maharashtra Village Panchayats Act and sections 12A, 42 and 67 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, for contesting General or bye-elections to the Village Panchayats, *Zilla Parishads* and *Panchayat Samitis* which were held on or after 1st January 2021 and till the date of commencement of this Act, —

(a) a person, who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers and who is elected on the reserved seat of a member or *Sarpanch* of Village *Panchayat*, Councillor or President of *Zilla Parishad* or member or Chairman of *Panchayat Samiti*, but whose application is pending before the Scrutiny Committee on the date of commencement of this Act, shall submit his Validity Certificate within a period of twelve months from the date of commencement of this Act; and

(b) a person, whose election has been terminated or deemed to have been terminated or a person who is disqualified for being a member or *Sarpanch* of Village *Panchayat*, Councillor or President of *Zilla Parishad* or member or Chairman of *Panchayat Samiti* for not submitting the Validity Certificate within the period specified in sections mentioned above, shall be deemed to be and shall continue to be a member or *Sarpanch* of Village *Panchayat*, Councillor or President of *Zilla Parishad* or member or Chairman of *Panchayat Samiti*, as the case may be, and shall not be disqualified till the period of twelve months from the date of commencement of this Act for not submitting the Validity Certificate:

Provided that, if such person fails to produce the Validity Certificate within a period of twelve months from the date of commencement of this Act, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member or *Sarpanch* of Village *Panchayat*, Councillor or President of *Zilla Parishad* or member or Chairman *Panchayat Samiti*.

(2) The provisions of sub-section (1) shall not be applicable, —

(a) where bye-elections have been held on the seats specified in sub-section (1) before the date of commencement of this Act ; or

(b) where a member whose application of Validity Certificate has been rejected by the Scrutiny Committee.”

(Emphasis added)

29. Interestingly, Sushila has entered no appearance before us. The entirety of her support comes from Sudhir. On his behalf, it is argued on the strength of Section 3 of this Temporary Extension Act that Sudhir’s election is saved in light of Section 3(1)(a) read with sub-Section (b). What the Act does is to extend by a further of 12 months the time available for furnishing a validity certificate. This, it is argued, also applies to persons whose elections have been terminated or are deemed to have been terminated under sub-Section (b) of sub-Section 1 of Section 3 of the Temporary Extension Act. The submission is that the period of disqualification is further extended. It is difficult to see how this Temporary Extension Act can possibly come to the rescue of somebody like Sudhir.

30. The question is not of an interpretation of Section 3, but when it comes into play. Now Sudhir was disqualified, and his election terminated well before the date of the Petition itself, i.e., 23rd June 2023. Indeed, his disqualification was even earlier, of 20th or 21st January 2022 and invalidated or terminated his election of one year prior, 21st January 2021. If the interpretation on behalf of Sudhir is to be accepted, it would mean that a termination or disqualification that has already taken place six months before the effective date of the Temporary Extension Act is somehow suddenly revived and extended by a period of 12 months. That results in an absurdity because it would mean, in this case, that Sudhir functioned in a disqualified fashion from 21st January 2022 to 10th July 2023, i.e., for a year and half, and abruptly got an extension of another 12 months to sanctify his election.

31. What is entirely overlooked in this argument is sub-section (2), emphasised above. The whole of sub-section(1) has *no application* where a member's validity certificate application has been rejected by the scrutiny committee. Obviously, the Temporary Extension Act only takes care of what we may call "the caste certificate twilight zone" where an application is made, but remains pending for months together.

32. In this particular case, Sudhir's application for a Validity Certificate was rejected on 1st April 2021. The argument that this rejection is technical is totally irrelevant. In fact, the order seems to us to expose precisely the mischief that is sought to be cured and addressed by Section 10-1A and the amended proviso. It is not permissible for a candidate to simply file an application and do

nothing further. That application for a Validity Certificate must be properly filed and followed through. The mere filing of the application is not in sufficient compliance with the statute. The Validity Certificate has to be obtained within the time provided, whether by the original statute or by the Temporary Extension Act. Simply filing some sort of defective application with incomplete documents does not meet the statutory purpose.

33. Thus, if even the mischief rule of interpretation, the oldest interpretation doctrine by far,⁴ is adopted for the purposes of the Maharashtra Village Panchayats Act, 1959 and the Temporary Extension Act, it is clear that defective or incomplete applications that result in a rejection are no different from a rejection on merits. Yet, Section 3(2)(b) of the Temporary Extension Act is thus an essential safeguard.

34. Viewed from either perspective, the Temporary Extension Act cannot come to Sudhir's rescue. We note from the Ordinance, a copy of which is at pages 93 and 96, that it was necessitated because of the huge backlog of applications pending before the scrutiny committee.

35. To complete the dates, we note that there is a Circular of 10th May 2022 that purported to extend the time to get a validity certificate till 17th January 2023. Even in this time frame Sudhir did not get his validity certificate.

4 *Heydon's case*, 1584, 76 ER 637 : [1584] EWHC Exch J36.

36. We finally note the short decision of a Single Judge of this Court in *Kishor Baburao Wadaskar Prasad v Collector, Collectorate Office at Chandrapur & Ors*,⁵ per AS Chandurkar J. That was a case that is uncannily similar to ours. A NCM against a Sarpanch was passed with five members voting in favour and two against. One of the five had not produced a Validity Certificate. The Court held that there was a disqualification, and this member could not vote in any meeting of the Gram Panchayat. The requirement of Section 35(3) of the Act was not met. In the *Kishor Baburao Wadaskar Prasad* matter, therefore, it was held that the NCM failed. It did not meet the necessary majority.⁶ We reaffirm the findings of the learned Single Judge in that matter.

37. Lastly, it is now argued that Sudhir has now obtained a validity certificate on 12th July 2023 (Exhibit “C” page 125). But as the Full Bench said, at best this will entitle him to contest the election resulting from the vacancy that he himself has created. It will not validate with retrospective effect his election of 2021 nor will it result in his retrospective disqualification of January 2021 being rendered otiose. To hold otherwise would be directly contrary to the express findings of the Full Bench, affirmed by the Supreme Court.

38. The impugned communication from the Tehsildar, of 19th June 2023, at Exhibit “I” at page 59, does not even note these aspects. It cannot be sustained. It is contrary to settled law.

5 2019 SCC OnLine Bom 13086 : 2021 (2) MhLJ 292.

6 Two-thirds at that time, and now three-fourths after the 2022 Amendment Act.

39. Accordingly, Rule is made absolute in terms of prayer clauses (a) and (b).

40. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)

ANNEXURE 1: 2022 AMENDMENT ACT

L.A. BILL No. XVIII OF 2022.

A BILL

further to amend the Maharashtra Village Panchayats Act.

WHEREAS both Houses of the State Legislature were not in session ;

5 AND WHEREAS the Governor of Maharashtra was satisfied that
circumstances existed which rendered it necessary for him to take
immediate action further to amend the Maharashtra Village Panchayats
Act, for the purposes hereinafter appearing ; and, therefore, promulgated
the Maharashtra Village Panchayats (Amendment) Ordinance, 2022, on
the 27th July 2022 ;

III of 1959. Mah. Ord. V₁₀ of 2022.

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

Short title and
commencement.

1. (1) This Act may be called the Maharashtra Village Panchayats (Amendment) Act, 2022.

(2) It shall be deemed to have come into force on the 27th July 2022.

Amendment of
section 13 of
III of 1959.

2. In section 13 the Maharashtra Village Panchayats Act (hereinafter referred to as “the principal Act”),—

III of
5 1959.

(1) in sub-section (1), for the words “such list pertains.”, the words “such list pertains and, *Sarpanch* of *panchayat* to be elected directly.”, shall be substituted ;

(2) for sub-section (2), the following sub-section shall be substituted, namely :—

10

“(2) Every person whose name is in the list of voters and who is not less than twenty-one years of age on the last date fixed for making nomination for every general election or bye-election shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected as a member from any ward of the village or for *Sarpanch* of *panchayat*. No person whose name is not entered in the list of voters for such village shall be qualified to be elected as a member of any ward of the village or *Sarpanch* of *panchayat*.”.

Amendment
of section 15
of III of
1959.

3. In section 15 of the principal Act, in sub-section (2), for the word and figures “section 11”, the words, figures and letters “section 11 or section 30A-1A, as the case may be”, shall be substituted.

20

Amendment
of section
30A-1A of
III of 1959.

4. In section 30A-1A of the principal Act, in sub-section (1), for the words and figures “the Maharashtra Village Panchayats (Amendment) Act, 2017”, the words and figures “the Maharashtra Village Panchayats (Amendment) Act, 2022”, shall be substituted.

Mah.
LIV of
2018.
Mah.
of 2022.

Deletion of
section 30A-
1B of III of
1959.

5. Section 30A-1B of the principal Act, shall be deleted.

Amendment
of section 35
of III of
1959.

6. In section 35 of the principal Act,—

(1) sub-section (1A) shall be deleted ;

(2) sub-section (3) shall be re-lettered as clause (a) thereof; and after clause (a) as so re-lettered, the following clause shall be inserted, namely :—

30

“(b) After the motion of no-confidence against the directly elected *Sarpanch* is carried 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*, then the same shall be ratified by the *Gram Sabha*, in a special meeting convened, within fifteen days from passing of such motion, by an officer appointed by a Collector in this behalf, in the presence and under the Chairmanship

35

of such officer, by a simple majority by the method of counting of heads. After such ratification of motion by the *Gram Sabha*, the *Sarpanch* shall forthwith stop, exercising all the powers and performing all the functions and duties of the office and thereupon, such powers, functions
 5 and duties shall vest in the *Upa-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.”.

10 **7.** In section 43 of the principal Act, in sub-section (1), for the second proviso, the following proviso shall be substituted, namely :—

Amendment
of section
43 of III
1959.

“Provided further that, if the post of the directly elected *Sarpanch* fallen vacant under this sub-section, then it shall be filled in by election in the manner laid down in section 30A-1A within six months from
 15 the date of such vacancy.”.

8. (1) If any difficulty arises in giving effect to the provisions of the principal Act, as amended by this Act, the State Government may, by an order published in the *Official Gazette*, as the occasion arises, make such provisions not inconsistent with the provisions of
 20 the principal Act, as amended by this Act, as may appear to it to be necessary or expedient for the purposes of removing the difficulty:

Power to
remove
difficulty.

Provided that, no such order shall be made after expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon
 25 as may be, after it is made, before each House of the State Legislature.

Mah.
Ord. V
of
2022. **9.** (1) The Maharashtra Village Panchayats (Amendment) Ordinance, 2022 is hereby repealed.

Repeal of
Mah. Ord. V
of 2022 and
saving.

(2) Notwithstanding such repeal, anything done or any action taken (including any notification or order issued) under the corresponding
 30 provisions of the principal Act, as amended by the said Ordinance, 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.

STATEMENT OF OBJECTS AND REASONS

As per the provisions of section 30 of the Maharashtra Village Panchayats Act (III of 1959), a *Sarpanch* is elected by and from amongst the elected members of the *panchayat*. After due deliberation, it was considered necessary to adopt a system of direct election for the post of *Sarpanch* of *panchayat* from the eligible voters of village which will give stability in the functioning of the *panchayat*.

2. It was also considered expedient to provide that, a no-confidence motion against the directly elected *Sarpanch* shall be ratified by the *Gram Sabha* by simple majority by the method of counting of heads.

For the above purposes, sections 30A-1A and 35 of the said Act were amended suitably. Certain other consequential amendments in the said Act were made.

3. As both Houses of the State Legislature were not in session and the Governor of Maharashtra is satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Maharashtra Village Panchayats Act, for the purposes aforesaid, the Maharashtra Village Panchayats (Amendment) Ordinance, 2022 (Mah. Ord. V of 2022), was promulgated by the Governor of Maharashtra on the 27th July 2022.

4. The Bill is intended to replace the said Ordinance by an Act of the State Legislature.

Mumbai,
Dated the 12th August 2022.

EKNATH SAMBHAJI SHINDE,
Chief Minister.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposal for delegation of legislative power, namely :—

Clause 8.—Under this clause, power is taken to the State Government, to issue an order published in the *Official Gazette*, for removing any difficulty which may arise in giving effect to the provisions of the Act.

2. The abovementioned proposal for delegation of legislative power is of a normal character.

**ANNEXURE TO THE L.A. BILL No. XVIII OF 2022—
THE MAHARASHTRA VILLAGE PANCHAYATS
(AMENDMENT) BILL, 2022.**

(Extracts from the Maharashtra Village Panchayats Act, 1958)

(Mah. III of 1959)

1. to 12. ** ** ** **

13. (1) Every person 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. Person qualified to vote and elected.

(2) Every person whose name is in the list of voters and who is not less than 21 years of age on the last date fixed for making nomination for every general election or bye-election shall, unless disqualified under this Act, or under any other law for the time being in force, be qualified to be elected as a members for any ward of village. No person whose name is not entered in the list of voters for such village shall be qualified to be elected as a member for any ward of the village.

(2A) ** ** ** **

(3) ** ** ** **

13A. ** ** ** **

14. and 14A. ** ** ** **

15. (1) ** ** ** **

(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 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. If the election is set aside, a date for holding a fresh election shall forthwith be fixed under section 11. Determination of validity of elections; enquiry by Judge; procedure.

(3) to (7) ** ** ** **

15A. ** ** ** **

16. to 30. ** ** ** **

(30-1A) ** ** ** **

30A. ** ** ** **

30A-1A. (1) After the date of commencement of the Maharashtra Village Panchayats (Amendment) Act, 2017 in respect of the panchayat to which the general election is to be held, subject to provisions of sub-sections (4), (5) Direct election of the Sarpanch.

and (6) of section 30, every panchayat shall have a Sarpanch who shall be elected by the persons whose names are included in the list of voters for village under section 12.

(2) to (6) ** ** ** **

Non-
application of
section 30A-
1A. **30A-1B.** After the date of commencement of the Maharashtra Village Panchayats (Amendment) Act, 2020, in respect of the general elections and by-elections to panchayat, the provisions of section 30A-1A shall cease to apply and every panchayat have a Sarpanch, who shall be elected under section 30 and the provisions of section 33 shall apply therefor.

31. to 34. ** ** ** **

Motion of no
confidence. **35.(1)** ** ** ** **

(1A) In respect of the panchayat to which the Sarpanch is directly elected under section 30A-1A the provisions of this section shall apply with the following modifications :—

(a) in sub-section (1), for the words “one-third” the words “two-third” shall be substituted;

(b) in sub-section (3), for the portion beginning with the words “If the motion” and ending with the words “against the Sarpanch” the following portion shall be substituted, namely :—

If the motion of no-confidence is carried 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, the Sarpanch or the Upa-Sarpanch, as the case may be, and ratified before the special Gram Sabha by the secret ballot in the presence and under the Chairmanship of the Officer appointed for the purpose by the Collector, shall forthwith stop, exercising all the power and, performing 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.

(c) for the fourth proviso, the following provisos shall be substituted, namely :—

Provided also that, no such motion of no-confidence shall be moved within a period of two years from the date of election of Sarpanch or Upa-Sarpanch and before six months preceding the date on which the term of panchayat expires :

Provided also that, if the no-confidence motion fails, then no motion shall be moved within next two years from the date of failure of no-confidence motion.

(2) and (3) ** ** ** **

(3A to 3C) ** ** ** **

36. to 42. ** ** ** **

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

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:

Provided further that, the post of the directly elected Sarpanch fallen vacant, then such post shall be filled in by election from amongst the member of the panchayat themselves, within thirty days from the date of such vacancy.

(2) ** ** ** **

44. to 188. ** ** ** **

SCHEDULES. ** ** ** **

**MAHARASHTRA LEGISLATURE
SECRETARIAT**

[L. A. BILL No. XVIII OF 2022.]

**[A Bill further to amend the
Maharashtra Village Panchayats Act.]**

[SHRI EKNATH SAMHAJI SHINDE,
Chief Minister.]

RAJENDRA BHAGWAT,
Principal Secretary,
Maharashtra Legislative Assembly.



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

वर्ष ९, अंक ४८(२)]

सोमवार, ऑगस्ट १४, २०२३/श्रावण २३, शके १९४५

[पृष्ठे ३, किंमत : रुपये २७.००

असाधारण क्रमांक ८६

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Temporary Extension of Period for Submitting Validity Certificate (for certain elections to Village *Panchayats*, *Zilla Parishads* and *Panchayat Samitis*) Act, 2023 (Mah. Act No. XXXV of 2023), is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

SATISH WAGHOLE,

Secretary (Legislation) to Government,

Law and Judiciary Department.

MAHARASHTRA ACT No. XXXV OF 2023.

(First published, after having received the assent of the Governor in the "Maharashtra Government Gazette", on the 14th August 2023.)

An Act to provide for extension of a period for submitting validity certificate by persons elected on reserved seats of member, Sarpanch, Councillor, President and member and Chairman in certain general or bye-elections to Village *Panchayats*, *Zilla Parishads* and *Panchayat Samitis* and for matters connected therewith or incidental thereto.

WHEREAS it was expedient to provide for extension of a period for submitting Validity Certificate by persons elected on reserved seats of member, *Sarpanch*, Councillor, President and member and Chairman in certain general or bye-elections to Village *Panchayats*, *Zilla Parishads* and *Panchayat Samitis* and for matters connected therewith or incidental thereto ;

AND WHEREAS both Houses of the State Legislature were not in session ;

(१)

AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a law for the purposes hereinafter appearing and, therefore, promulgated the Maharashtra Temporary Extension of Period for Submitting Validity Certificate (for certain elections to Village *Panchayats*, *Zilla Parishads* and *Panchayat Samitis*) Ordinance, 2023 on the 10th July 2023 ;

Mah.
Ord. VI
of 2023.

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

Short title and
commencement.

1. (1) This Act may be called the Maharashtra Temporary Extension of Period for Submitting Validity Certificate (for certain elections to Village *Panchayats*, *Zilla Parishads* and *Panchayat Samitis*) Act, 2023.

(2) It shall be deemed to have come into force on the 10th July 2023.

Definitions.

2. The words and expressions used in this Act shall have the same meanings as respectively assigned to them in the Maharashtra Village Panchayats Act and the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

III of
1959.
Mah. V
of 1962.

Extension of
period for
submitting
Validity
Certificate.

3. (1) Notwithstanding anything contained in sections 10-1A and 30-1A of the Maharashtra Village Panchayats Act and sections 12A, 42 and 67 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, for contesting General or bye-elections to the Village Panchayats, *Zilla Parishads* and *Panchayat Samitis* which were held on or after 1st January 2021 and till the date of commencement of this Act,—

III of
1959.
Mah. V
of 1962.

(a) a person, who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers and who is elected on the reserved seat of a member or *Sarpanch* of Village *Panchayat*, Councillor or President of *Zilla Parishad* or member or Chairman of *Panchayat Samiti*, but whose application is pending before the Scrutiny Committee on the date of commencement of this Act, shall submit his Validity Certificate within a period of twelve months from the date of commencement of this Act ; and

(b) a person, whose election has been terminated or deemed to have been terminated or a person who is disqualified for being a member or *Sarpanch* of Village *Panchayat*, Councillor or President of *Zilla Parishad* or member or Chairman of *Panchayat Samiti* for not submitting the Validity Certificate within the period specified in sections mentioned above, shall be deemed to be and shall continue to be a member or *Sarpanch* of Village *Panchayat*, Councillor or President of *Zilla Parishad* or member or Chairman of *Panchayat Samiti*, as the case may be, and shall not be disqualified till the period of twelve months from the date of commencement of this Act for not submitting the Validity Certificate :

Provided that, if such person fails to produce the Validity Certificate within a period of twelve months from the date of commencement of this Act, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member or *Sarpanch* of Village *Panchayat*, Councillor or President of *Zilla Parishad* or member or Chairman of *Panchayat Samiti*.

(2) The provisions of sub-section (1) shall not be applicable,—

(a) where bye-elections have been held on the seats specified in sub-section (1) before the date of commencement of this Act ; or

(b) where a member whose application of Validity Certificate has been rejected by the Scrutiny Committee.

4. All legal proceedings pending immediately before the date of commencement of this Act, before any court or authority relating to disqualification of a member or *Sarpanch* of Village *Panchayat*, Councillor or President of Zilla *Parishad* or member or Chairman of *Panchayat Samiti*, for not submitting the Validity Certificate by them in cases where extension of period for submission of Validity Certificate is granted under this Act, shall abate.

Abatement of legal proceedings.

5. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion arises, by an order published in the *Official Gazette*, do anything not inconsistent with the provisions of this Act which appears to it to be necessary or expedient for removing the difficulty :

Power to remove difficulty.

Provided that, no such order shall be made after the expiry of a period of one year from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

Mah.
Ord.
VI of
2023.

6. (1) The Maharashtra Temporary Extension of Period for Submitting Validity Certificate (for certain elections to Village *Panchayats*, Zilla *Parishads* and *Panchayat Samitis*) Ordinance, 2023 is hereby repealed.

Repeal of Mah. Ord. VI of 2023 and saving.

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