

Varsha

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8906 OF 2023

VITTHAL RAJARAM SHITOLE,
Age: 52 years, Occ: Agriculturist,
residing at Post Koregaonmul,
Taluka Haveli, District-Pune

... PETITIONER

~ VERSUS ~

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- 1. THE COLLECTOR, PUNE,**
Having his office at New Collector
Office Building, Opp. Sasoon Hospital,
Station Road, Pune 411 001.
- 2. THE TAHSILDAR,**
Taluka Haveli, District Pune, having
address at Shukrawar Peth, Khadak
Mal, Ali, Pune 411 002.
- 3. GRAM VIKAS ADHIKARI,**
Gram Panchayat Koregaonmul,
Taluka Haveli, District Pune.
- 4. BHANUDAS KHANDERAO JEDHE,**
Age: 44 years, Occ: Agriculturist
- 5. BAPUSAHEB YASHWANT BODHE,**
Age: 68 years, Occ: Agriculturist

6. **LEELAVAI BAPUSAHEB BODHE,**
Age: 67 years, Occ: Agriculturist
7. **VAISHALI AMIT SAWANT,**
Age: 40 years, Occ: Housewife
8. **ASHWINI CHINTAMANI GADH,**
Age: 36 years, Occ: Housewife
9. **SACHIN GULAB NIKALJE,**
Age: 35 years, Occ: Agriculturist
10. **MANGAL JAGANNATH PAWAR,**
Age: 40 years, Occ: Housewife
11. **RADHIKA SANTOSH KAKADE,**
Age: 39 years, Occ: Housewife
12. **MANGESH ASHOK KANKATE,**
Age: 28 years, Occ: Agriculturist
13. **PALLAVI RAMESH NAZIRKAR,**
Age: 35 years, Occ: Agriculturist
14. **DATTATRAYA DNYANESHWAR KAKADE,**
Age: 35 years, Occ: Agriculturist
15. **MANISHA NANDAKISHORE KAD,**
Age: 42 years, Occ: Agriculturist,
Respondent Nos. 4 to 15 are residing at
Post Koregaonmul, Taluka Haveli,
District: Pune 412 202.
16. **THE TALATHI,**
Koregaonmul, Taluka Haveli,
District: Pune.
17. **STATE OF MAHARASHTRA**

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr Surel Shah, with Chaitanya B Nikte, Ritvij Kale & Hitanshu Jain, i/b Prajit S Sahane.
FOR RESPONDENTS NOS. 4 TO 13.	Mr PS Dani, Senior Advocate, with Prem Mhatre, i/b Abhijit B Kadam.
FOR THE RESPONDENT-STATE	Mr AA Alaspurkar, AGP.

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 1st December 2023

ORAL JUDGMENT (Per GS Patel J):-

1. The Petitioner was the Sarpanch of the Gram Panchayat Koregaonmul. For a time, he believed he enjoyed not just the friendship but the political support of Respondents Nos 9 to 13. But he was soon disabused of these notions for, at a meeting to consider a motion of no confidence, Respondents Nos 9 to 13 voted against the Petitioner. Had they not, they would undoubtedly have continued to be the best of friends. But since they did, the Petitioner now contends that his former friends and supporters were disqualified as members of the Gram Panchayat and could not have voted at all on that No Confidence Motion (“NCM”). If their votes are discounted, the motion of no confidence is not pass with the statutorily mandated majority and the Petitioner continues as the Sarpanch.

2. The entirety of the Petition therefore is, in one line, this:
“with you or without you, I am the Sarpanch”.

3. The facts are only three. The arguments are many. Elections were held to the Gram Panchayat on 15th January 2021. The results were declared on 18th January of that year, and 13 persons, including the present Petitioner, were elected to that Gram Panchayat. The Petitioner was then elected as the Sarpanch. On 15th February 2023, the Tehsildar issued a letter or a notice to all 13 members of the Gram Panchayat intimating them that a special meeting would be held to consider a No Confidence Motion filed against the Petitioner. That meeting took place on 21st February 2023. The vote at that meeting was 10:3 in favour of the NCM, i.e., 10 persons out of 13 voted for the Motion, i.e., against the Petitioner, and three against the Motion i.e., in favour of the Petitioner.

4. What Mr Shah argues is that if Respondents Nos 9 to 13 are indeed held to be disqualified, then the vote on the NCM has to be reduced by that many invalid votes. The number in favour of the Motion against the Petitioner would drop from 10 to 6. This means that there would be only six in favour of the Motion and against the Petitioner (and three in favour of the Petitioner against the Motion), which does not meet the statutory requirement for a NCM to pass.

5. The Tehsildar wrote to the 1st Respondent, the Collector, about the outcome of the meeting on 21st February 2023. The Petitioner filed a dispute application under Section 35 of the

Maharashtra Village Panchayats Act, 1959 on 27th February 2023. The Collector rejected this on 23rd March 2023. The Petitioner filed Writ Petition No 3971 of 2023. On 3rd April 2023, this Court quashed the order of 23rd March 2023 and remanded the matter for a fresh adjudication. On 10th July 2023, the State Government issued an Ordinance which is now an Act and to which we will have reference hereafter. On 13th July 2023, the Collector passed the impugned order dismissing the dispute application but this time invoking the Ordinance in question (now the Act).

6. First, as to the provisions of this statute. We had occasion to consider this at some length in our judgment in *Bapu Rajaram Kalel & Ors v State of Maharashtra & Ors*.¹ The relevant portions of that judgment should suffice for the purposes of this statutory framework.

7. We are concerned here with Section 10-1A of the Maharashtra Village Panchayats Act, 1959. We reproduce first paragraphs 5 and 6 of our judgment in *Bapu Rajaram Kalel*, which reads as under:

“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.

¹ Writ Petition No. 7924 of 2023; judgment dated 20th September 2023, *Neutral Citation*: 2023:BHC-AS:27994-DB.

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) ”

8. The other relevant Section which we must note is Section 35 which deals with a No Confidence Motion. This is important because it sets out the requisite majority for passing such a resolution. Again, this is referenced in and considered in our judgment in *Bapu Rajaram Kalel*. We reproduce paragraphs 12 and 13:

“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.”

9. We also considered and indeed appended to that judgment itself the Maharashtra Village Panchayats (Amendment) Act, 2022 as also 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**”), and which replaced the Ordinance

in question. For convenient reference these are once again appended to this judgment as well.

10. In *Bapu Rajaram Kalel*, we considered the position in law in paragraphs 27 to 34:

“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,² 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."

(Emphasis added)

11. The present case is no different. Mr Shah's argument is that the Extension Act did not come into play till July 2023. Without the Extension Act, it is his submission that Respondents Nos 9 to 13 had until 15th January 2022 and not one day later to submit — i.e., not merely apply for — their caste validity certificates. The failure to do so resulted in their automatic and instant disqualification. He

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

submits that it is totally irrelevant that those applications *were not in fact rejected but were pending even on the date of the No Confidence Motion* or, as Mr Dani points out, were later actually granted. Mr Shah's submission is that what is critical is the submission of a validity certificate not a mere application. The disqualification attaches to a failure to *submit* the validity certificate.

12. On the basis of our previous judgment in *Bapu Rajaram Kalel*, and even otherwise we have not the slightest hesitation in rejecting this submission.

13. On Mr Shah's formulation this would create a wholly anomalous situation. Respondents Nos 9 to 13 would be held to be disqualified merely because the scrutiny committee never decided their application in time although at a later date it did so and favourably. It would also create a situation where every Gram Panchayat member everywhere who faced a one-year deadline before July 2023 would automatically and axiomatically stand disqualified although the Extension Act clearly makes reference to applications that were 'pending' as on 14th July 2023.

14. It is our view that the disqualification will attach in only two circumstances in view of the Extension Act. Either the Gram Panchayat member has not even applied for a validity certificate at all, in which case the Extension Act cannot come to his or her rescue, or that application, though made, has been rejected. Every other case, and which we will call for convenience a pipeline case, is saved by the Extension Act and there is no resultant disqualification.

15. The consequence of this is that the Petition must necessarily fail. There is no ground made out before us to sustain the challenge to the vires of the Ordinance or the Act. Indeed, none has been argued before us. The prayer to set aside the Collector's order must therefore be rejected because the Collector correctly relied on and correctly interpreted the Ordinance which has now become the Extension Act.

16. The result is that the Petition is lost and so is the Sarpanchship. But given the very many things that the Petitioner has lost since 2021 we will not burden him with a further financial loss and therefore we refrain from imposing an order of costs. The Petition is rejected.

17. The application for an extension of the ad-interim order is refused. This has nothing at all to do with the individual relations or concerns of the merits of the No Confidence Motion. We have not even addressed that. It is purely a matter of interpretation of the statute. The other reason for rejecting the application for a continuance of the ad-interim relief is that today the Upa-sarpanch is in charge. The election of the Sarpanch is not a matter that can be delayed indefinitely. That election must be held without further delay.

(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 15 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 20 word and figures “section 11”, the words, figures and letters “section 11 or section 30A-1A, as the case may be”, shall be substituted.

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 25 (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 30 after clause (a) as so re-lettered, the following clause shall be inserted, namely :—

“(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 35 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 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.”.

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 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 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 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 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.