



सत्यमेव जयते

GOVERNMENT OF MAHARASHTRA
LAW AND JUDICIARY DEPARTMENT

Bombay Act No. III Of 1959.

**THE MAHARASHTRA VILLAGE
PANCHAYATS ACT**

(As modified upto the 20th August, 2013)



[PRINTED IN INDIA BY THE MANAGER, GOVERNMENT PRESS, AND BOOK DEPOT, NAGPUR
AND PUBLISHED BY THE DIRECTOR, GOVERNMENT PRINTING, STATIONERY AND
PUBLICATIONS, MAHARASHTRA STATE, MUMBAI 400 004.]

2013

[Price—Rs.]

THE MAHARASHTRA VILLAGE PANCHAYATS ACT

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SCHEDULE I.

SCHEDULE II.

Bombay Act No. III of 1959¹

[THE MAHARASHTRA VILLAGE PANCHAYATS ACT].

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

Amended by Bom. 53 of 1959.

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

Amended by Mah. 48 of 1961.	Amended by Mah. 35 of 1972 (1-11-1973).*
" " " 5 of 1962.	" " " 38 of 1973 (1-11-1973).*
" " " 43 of 1962.	" " " 6 of 1975 (1-5-1975).†
" " " 26 of 1963.	" " " 13 of 1975.‡
" " " 35 of 1963.	" " " 16 of 1975 (1-4-1976).*
" " " 36 of 1965.	" " " 11 of 1976 (14-4-1976).*
" " " 50 of 1965.	" " " 4 of 1981 (2-3-1981).*
" " " 10 of 1968.	" " " 56 of 1981 (2-3-1981).*
" " " 34 of 1970.	" " " 2 of 1982 (6-1-1982).*
	" " " 10 of 1990.
	" " " 10 of 1992. §
	" " " 21 of 1994. £
	" " " 31 of 1994.
	" " " 52 of 1994 (16-12-1994).*
	" " " 5 of 1997 (2-1-1997).*

¹ For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1958, Part V, pp. 279-289.

* This indicates the date of commencement of Act.

† This indicates the date of commencement of Act so far as it amends the Bombay Village Panchayats Act, 1958.

‡ Section 1 of Mah. 13 of 1975 came into force on 28-5-1975, sections 3 to 17, 19 to 21 and 24 to 38 came into force on 15-8-1975 and sections 2, 22 and 23 of the said Act came into force on 1-10-1975 vide G.N.R.D.D., No. VPA. 1074/12739-XII, dated 1st August 1975 and section 18 came into force on 1-4-1979 vide G.N.R.D.D., No. VPA. 1074/12739/(1634)-XII, dated 16th March 1979.

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

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

	Amended by Mah. 40 of 1997 (7-8-1997).*
”	” ” 46 of 1997 (29-12-1997).*
”	” ” 1 of 1998 ().*
”	” ” 6 of 2000 (5-7-1999).*
”	” ” 21 of 2000 ().*
”	” ” 27 of 2000 (2-3-2000).*
”	” ” 34 of 2000 (5-8-2000).*
”	” ” 44 of 2000 (13-9-2000).*
”	” ” 16 of 2001 (10-2-2001).*
”	” ” 36 of 2001 (26-12-2001).*
”	” ” 3 of 2003 (16-10-2002).*@
”	” ” 23 of 2003. # \$ \$ @@
”	” ” 27 of 2003.
”	” ” 28 of 2003.
”	” ” 3 of 2004.
”	” ” 20 of 2005.
”	” ” 37 of 2006 (21-12-2006).*
”	” ” 38 of 2006 (21-12-2006).*

* This indicates the date of commencement of Act.

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

Sections 4 and 6 of Mah. 23 of 2003 came into force on 14-1-2003; and Sections 2, 3 and 5 of the said Act came into force on 2-7-2003.

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

\$\$ Section 6 of Mah. 23 of 2003 reads as under :—

Saving.

6. (1) Any notification issued under section 4 of the principal Act, or any order, direction or instruction issued under the principal Act on or after the coming into force of section 4 of the Bombay Village Panchayats (Second Amendment) Act, 2003, shall be deemed never to have been issued and on account of issue of such notification, order, direction or, as the case may be, instruction, the existing *panchayat* whose limits have been altered, shall not be dissolved or shall be deemed never to have been dissolved, and any member of such *panchayat* shall be deemed never to have vacated his office and accordingly all the members of such *panchayat* shall and shall be deemed to have been continued as such members till the completion of their term.

Mah.
XXIII
of
2003.

(2) No suit, application or any legal proceeding shall lie or be maintainable in any Court or before any officer or authority solely on the ground that the notification under section 4 of the principal Act, altering the limits of such existing *panchayat* was already issued on or before the date of coming into force of section 4 of the Bombay Village Panchayats (Second Amendment) Act, 2003.

Mah.
XXIII
of
2003.

”	”	”	21 of 2007 (12-6-2007).*@@@
”	”	”	5 of 2009 (9-1-2009).*
”	”	”	27 of 2009 (31-8-2009).*@@@@
”	”	”	16 of 2010 (6-5-2010).*
”	”	”	23 of 2010 (9-6-2010).*@@@@@
”	”	”	28 of 2010 (9-6-2010).*
”	”	”	33 of 2010
”	”	”	19 of 2011 (21-4-2011).*
”	”	”	27 of 2011 (8-6-2011).*##
”	”	”	39 of 2011 (5-10-2011).*###
”	”	”	16 of 2012.
”	”	”	22 of 2012.
”	”	”	24 of 2012 (22-8-2012).*
”	”	”	29 of 2012 (4-10-2012).*####

@ Maharashtra Ordinance No. IV of 2007 was repealed by Mah. 21 of 2007, s. 4.

@@@@ Maharashtra Ordinance No. XXI of 2009 was repealed by Mah. 27 of 2009, s. 9(I).

@@@@@ Maharashtra Ordinance No. V of 2010 was repealed by Mah. 23 of 2010, s. 4(I).

Maharashtra Ordinance No. XV of 2011 was repealed by Mah. 27 of 2011, s. 4(I).

Maharashtra Ordinance No. XIX of 2011 was repealed by Mah. 39 of 2011, s. 5(I).

Maharashtra Ordinance No. IX of 2012 was repealed by Mah. 29 of 2012, s. 4(I).

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

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

CHAPTER I.

PRELIMINARY.

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

2. (1) It extends to the whole of the ²[State of Maharashtra], except the areas within the limits of a municipal corporation, municipality or cantonment established by or under any law for the time being in force. Extent and commencement.

(2) It shall come into force on such date ³as the State Government may, by notification in the *Official Gazette*, appoint.

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

⁴[* * * * *]

Bom. XXV of 1930. (a-2) “Auditor” means an Auditor as defined in the Bombay Local Fund Audit Act, 1930 ⁵[and in relation to a *panchayat* having an annual income (including grant received from the State Government) of ⁶[not exceeding rupees Ten thousand includes a Gram sabha and exceeding rupees Ten thousand but less than rupees Twenty-five thousand] also includes an Extension Officer duly authorised in writing by the Chief Executive Officer] ;

⁷[(a-3) “Backward Class of citizens” means such classes or parts of or groups within such classes as are declared, from time to time, by the State Government to be Other Backward Classes and *Vimukta Jatis and Nomadic Tribes* ;]

⁸[(aa-1) “ballot box” or “ballot paper” includes an electronic voting machine used at an election for giving or recording of votes ;]

⁹[(a-4) “Beneficiary Level Sub-Committee” means a sub-committee constituted under section 49A for a particular programme, scheme, activity or utility having regard to the geographical, geohydrological, technological, economic, social and demographic situation of the habitation (*ward, wasti, wadi, tanda, pada* or by whatever name such independent habitation may be called) or part thereof in the *panchayat*.;]

¹ This short title is substituted for “the Bombay Village Panchayat Act, 1958., by Mah. 24 of 2012, s. 2, Schedule entry.

² These words were substituted for the words “State of Bombay” by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

³ 1st day of June 1959, *vide* G. N., L. S. G. and P. H. D., No. VPA. 1059-P, dated 23rd May, 1959.

⁴ This clause was deleted by Mah. 21 of 1994, s. 2(1).

⁵ This portion was added by Mah. 13 of 1975, s. 2(a).

⁶ These words were substituted for the words “less than Rs. 5,000,” by Mah. 3 of 2004, s. 2.

⁷ Clause (a-3) was inserted by Mah. 21 of 1994, s. 2(2).

⁸ This clause was inserted by Mah. 20 of 2005, s. 2.

⁹ This clause was inserted by Mah. 23 of 2003, s. 3(a).

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

(2) "bye-laws" means the bye-laws made by the ¹[*Zilla Parishad*] under section 177 ;

²[* * * * *]

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

³[(4A) "*Commissioner*" means the Commissioner of a revenue division appointed under section 6 of the Maharashtra Land Revenue Code, 1966;].

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

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

⁶[* * * * *]

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

⁷[(8A) "Finance Commission" means the Finance Commission constituted in accordance with the provisions of article 243-I of the Constitution of India ;]

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

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

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

⁹[(11A) "Local Body Tax" means a tax on the entry of goods, into the limits of any village falling within the limits of the notified area within the meaning of clause (11B), for consumption, use or sale therein, levied in accordance with the provisions of section 124A ;

¹ These words were substituted for the words "District Village Panchayat Mandal" by Mah. 5 of 1962, s. 286, Tenth Schedule.

² Clauses (3), (5) and (12) were deleted by Mah. 13 of 1975, s. 2(b).

³ Clause (4A) was inserted by Mah. 38 of 2006, s. 2.

⁴ Clause (5) was inserted by Mah. 27 of 2009, s. 2(a).

⁵ Clause (6) was substituted by Mah. 5 of 1962, s. 286, Tenth Schedule.

⁶ Clause (7) was deleted, *ibid*.

⁷ Clause (8A) was inserted by Mah. 21 of 1994, s. 2(3).

⁸ Clause (9) was substituted *ibid*, s. 2(4).

⁹ Clause (11A) and (11B) were inserted Mah. 27 of 2009, s. 8(6).

[(11B) "Notified area" means the area, adjacent to the City, notified by the State Government for the purposes of levy of the Local Body Tax, as defined in clause (11A) to which the provisions of clause (aaa) of sub-section (2) of section 127 and other provisions of the Bombay Provincial Municipal Corporation Act, 1949 in respect of levy, assessment and recovery of the Local Body Tax, apply ;]

¹[(11AA) "Local Panchayat Tax" means a tax on the entry of goods into the limits of any *panchayat* other than the area of *panchayat* included in the limits of the notified area within the meaning of clause (11B) for consumption, use or sale therein, levied in accordance with the provisions of section 124 ;]

²[* * * * *]

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

³[(14A) "population" means the population as ascertained at the last preceding census of which the relevant figures, ⁴[* * *] have been published ;

(15) "prescribed" means prescribed by rules ;

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

(17) "*Sarpanch*" and "*Upa-Sarpanch*" means a *Sarpanch* and *Upa-Sarpanch* elected under section 30, ⁵[30A,] 44 or 43 ;

⁶[(17A) "Scheduled Areas" means the Scheduled Areas referred to in clause (1) of article 244 of the Constitution of India ;]

(18) "Scheduled Castes" means such castes, races or tribes or parts of, or groups within, such castes, races or tribes as are deemed to be Scheduled Castes in relation to the ⁷[State of Maharashtra] under article 341 of the Constitution of India ;

(19) "Scheduled Tribes" means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the ⁸[State of Maharashtra] under article 342 of the Constitution of India ;

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

⁹[(20A) "State Election Commission" means the State Election Commission consisting of a State Election Commissioner appointed in accordance with the provisions of clause (1) of article 243-K of the Constitution of India ;]

¹ Clause (11AA) was inserted Mah. 22 of 2012, s. 2.

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

³ Clause (14A) was inserted by Mah. 13 of 1975, s. 2(e).

⁴ The words, "whether provisional or final" were deleted by Mah. 21 of 1994 s. 2(5).

⁵ These figures and letter were inserted by Mah. 21 of 1994 s. 2(6).

⁶ Clause (17A) was inserted by Mah. 40 of 1997, s. 2.

⁷ These words were substituted for the words "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

⁸ Clause (20A) was inserted by Mah. 21 of 1994, s. 2(7).

⁹ Clause (22) was deleted by Mah. 13 of 1975, s. 2(d).

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

¹[* * * * *]

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

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

³[(24A) "Village Development Committee" means a committee constituted under section 49, which shall be deemed to be a committee of the *panchayat* ;]

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

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

⁴[(27) the expressions "Standing Committee", "Panchayat Samiti",

⁵["Chief Executive Officer"], ⁶["Block Development Officer" and "block grant"] shall have the meaning respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.]

Mah.
V of
1962.

¹ Clause (24) was substituted by Mah. 21 of 1994, s. 2(8).

² Clause (24A) was inserted by Mah. 23 of 2003, s. 2(b).

³ Clause (27) was inserted by Mah. 5 of 1962, s. 286, Tenth Schedule.

⁴ These words were substituted for the words "and Chief Executive Officer" by Mah. 36 of 1965 s. 2(d).

⁵ These words were substituted for the words "and Block Development Officer" by Mah. 34 of 1970 s. 2.

CHAPTER II.

Gram Sabhas, ESTABLISHMENT AND CONSTITUTION OF *Panchayats*.

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

Provided that, where a group of revenue villages or hamlets or other such administrative unit or part thereof is ²[specified in that notification] to be a village, the village shall be known by the name of the revenue Village, hamlet or as the case may be, administrative unit or part thereof, having the largest population.

(2) ³[Where the circumstances so require to include or exclude any local area from the local area of a village or to alter the limits of a village or that a local area shall cease to be a village, then the notification issued in the like manner after consultation with the Standing Committee and ⁴[the *Gram Sabha* and] the *panchayat* concerned, at any time, may provide to—]

(a) include within, or exclude from any village, any local area or otherwise alter the limits of any village, or

(b) declare that any local area shall cease to be a village;

and thereupon the local area shall be so included or excluded, or the limits of the village so altered, or, as the case may be, the local area shall cease to be a village.

Establishment of *Panchayats*. **5.** In every village there shall be a *panchayat*.
⁵[* * * * *]

Meetings of *Gram Sabha*. **7.** (1) There shall be held at least ⁶[four meetings] of the *Gram Sabha* ⁷[every financial year] on such date, at such ⁸[time and place, and in such manner], as may be prescribed ⁹[and if the *Sarpanch*, or in his absence the *Upa-Sarpanch* fails without sufficient cause, to ¹⁰hold ¹¹[any of such four meetings he shall be

¹ This portion was substituted for the portion beginning with the words " After making " and ending with the words " Name of village " by Mah. 21 of 1994, s. 3(1)(a).

² These words were substituted for the word " declared ", by Mah. 21 of 1994, s. 3(1)(b).

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

⁴ These words were inserted by Mah. 28 of 2003, s.2.

⁵ Section 6 was deleted, *ibid.*, s. 4.

⁶ These words were substituted for the words " six meetings " by Mah. 16 of 2012, s.2(1)(a).

⁷ These words were substituted for the words " every year " by Mah. 36 of 1965, s. 4(a).

⁸ These words were substituted for the words " time and place " *ibid.*, s. 2(b).

⁹ These words were added *ibid.*, s. 4(a).

¹⁰ These words were substituted for the words " hold such two meetings " by Mah. 38 of 1973 s. 2.

¹¹ These words were substituted for the words " any one of such two meetings ", *ibid.*, s. 2(c).

disqualified for continuing as *Sarpanch* or, as the case may be, *Upa-Sarpanch* or for being chosen as such for the remainder of the term of office of the members ¹[of the *panchayat*; and the Secretary of the *panchayat* shall also if, *prima facie*, found responsible of any lapse in convening such meeting, be liable to be suspended, and for being proceeded against, for such other disciplinary action as provided under the relevant rules.] The decision of the Collector on the question whether or not there was such sufficient cause shall be final]:

²[Provided that, the *Sarpanch* may, at any time of his own motion, and shall, on requisition of the Standing Committee, *Panchayat Samiti*, or Chief Executive Officer, call a meeting of the *Gram Sabha* within the period specified in the requisition; and, on the failure to do so, the Chief Executive Officer shall require the Block Development Officer to call the meeting within fifteen days from the date he is so required to do. The meeting shall, notwithstanding the provisions of sub-section (3), be presided over by him or any officer authorised by the Block Development Officer, in that behalf.]:

³[Provided further that, a period of not more than ⁴[Four months]shall be allowed to elapse between the two meetings of the *Gram Sabha* :

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

(2) Any Officer authorised in this behalf by the ⁵[Standing Committee, *Panchayat Samiti* or Chief Executive Officer] by general or special order shall have the right to speak in, and otherwise to take part in, the proceedings of a meeting of the *Gram Sabha*, but shall not be entitled to vote.

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

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

¹ These words were substituted for the words "of the *panchayat*" by Mah. 21 of 2000, s.2(d).

² This proviso was substituted for the original by Mah. 36 of 1965, s. 4(b).

³ These provisos were inserted by Mah. 3 of 2003, s. 2 (a)(ii).

⁴ These words were substituted for the word "three months" by Mah. 16 of 2012, s. 2 (i)(b).

⁵ These words were substituted for the word "Collector", *ibid*.

⁶ Sub-section (3) was substituted by Mah. 3 of 2003, s. 2 (b).

¹[(5) The meeting of the women members of the *Gram Sabha* shall be held before every regular meeting of the *Gram Sabha*, convened under sub-section (1).

²[and the proceedings of such meeting shall invariably be brought or caused to be brought before every regular meeting of the *Gram Sabha* by the *Sarpanch*, and the *Gram Sabha* shall consider the recommendations made in the meeting of the women members, and the *panchayat* shall ensure the implementation of such recommendations ;

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

³[(5A) Every member of the *panchayat* representing a ward shall, before every regular meeting of the *Gram Sabha* and meeting of the women members of the *Gram Sabha*, convene a meeting of all the voters in such ward and such ward *sabha* may discuss issues relating to development of the ward, selection of individual beneficiaries for individual beneficiary schemes of the State, or as the case may be, of the Central Government, development projects and programmes and such other related issues as the ward *sabha* deems fit and which are likely to be placed before the regular meeting of the *Gram Sabha* for consideration and decision. The proceedings of such meeting shall be maintained by such member under his signature and a copy of the same shall invariably be sent to the *panchayat* which shall form part of the records of the *panchayat*.

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

⁴[Provided that, *Gram Sabha* may, by resolution, delegate its authority to the *panchayat* to exercise general supervision over the Government, semi-Government and *panchayat* employees including regular and timely attendance at their work place. The mode of recording of attendance and supervision shall be such as the Government may, from time to time, specify by an order in the *Official Gazette*.]

(7) The *Gram Sabha* ⁵[, or as the case may be, the *panchayat* shall report to the concerned Block Development Officer, the irregularities, if any, committed by any of such employees. The Block Development Officer shall consider such report within the period of three months from the date of its receipt. Such matters and the actions taken thereon shall be reviewed in the regular meetings of the *Panchayat Samiti*. If, the Block Development Officer fails to dispose of such reports within the specified period of three months, the same shall on the expiry of the said period,

¹ These sub-sections were added by Mah. 3 of 2003, s.2(c).

² This portion was added by Mah. 16 of 2012, s.2(2).

³ This sub-sections was inserted *ibid* s.3.

⁴ This proviso was added *ibid* s.4.

⁵ These words were inserted *ibid* s.5.

stand transferred to the Chief Executive Officer of the concerned *Zilla Parishad* for disposal, whose decision shall be final. The Chief Executive Officer of the *Zilla Parishad* shall take the decision on such reports so transferred to him, within a period of three months from the date of their receipt.

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

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

(10) Unless exempted by the *Gram Sabha*, ¹[or as the case may be, the *panchayat*] all the Government, semi-Government and *panchayat* employees working in the village shall attend the meetings of the *Gram Sabha*.

(11) The proceedings of every meeting of the *Gram Sabha* shall be prepared and maintained ²[in a separate register] by the concerned Secretary of the *panchayat* and in his absence, the proceedings shall be prepared by any Government, semi-Government or *panchayat* employee working in the village, such as Teacher, *Talathi* or *Anganwadi Sevika* as directed by the *Sarpanch* and the same shall be handed over to the *panchayat* for records.]

³[Provided that, it shall be a joint responsibility of the *Sarpanch* and Secretary of the concerned *panchayat* to maintain secured custody and proper safety of proceeding register, attendance register and other relevant records of the *Gram Sabha*, and they shall be primarily held responsible for any tampering, alteration, manipulation of entries or contents or loss or mutilation of such record unless proved otherwise and shall be liable to be prosecuted under relevant provisions of the Indian Code.]

8. (1) The first meeting of the *Gram Sabha* in ⁴[every financial year] shall be held within two months from the commencement of that year, and the *panchayat* shall place before such meeting—

- (i) the annual statement of accounts ;
- (ii) the report of the administration of the preceeding financial year ;
- (iii) the development and other programme of work proposed for the current financial year ;
- (iv) the last audit note and replies (if any) made thereto ;
- (v) any other matter which the ⁵[Standing Committee, *Panchayat Samiti* or Chief Executive or any officer authorised by the Standing Committee or *Panchayat Samiti*] in this behalf, requires to be placed before such meeting.

Panchayat
to place
before
Gram Sabha
Statement
of accounts
etc., and
duties of
Gram Sabha.

¹ These words were inserted *ibid* s.6.

² These words were inserted *ibid* s.7(a).

³ This proviso was added, *ibid* s.7(b).

⁴ These words were substituted for the words "every year" by Mah. 36 of 1965, s.5.

⁵ These words were substituted for the words "*Panchayat Mandal* or Collector or any Officer authorised by the Collector" by Mah. 5 of 1962, s.286, Tenth Schedule.

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

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

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

8A. [Deleted] by Mah. 27 of 2003, s.2

Powers
and
duties of
*Gram
Sabha*.

³**8AA.** It shall be competent for every *Gram Sabha*,—

(i) to approve the social or economic development plans, programmes and projects to be implemented by the *panchayat* before such plans, programmes and projects are taken up for implementation by such *panchayat* ;

(ii) to grant permission for incurring any expenditure by the *panchayat* on the development schemes ;

(iii) to convey its views to the *panchayat* before taking any decision by the *panchayat* in respect of any proposal for acquisition of any land falling within the jurisdiction of such *panchayat*, for the Government purpose, by the Land Acquisition Authority concerned.]

Incorporation
of
Panchayats.

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

Constitution
of
Panchayats.

10. (1) [* * * * *]

⁵[(a) A *panchayat* shall consist of,—

(i) such number of members not being less than seven and not more than ⁶[seventeen as the ⁷[State Government may prescribe] who shall be elected in accordance with section 11:

⁸[Provided that, the ration between the population of the territorial area of a *panchayat* and the number of seats in such *panchayat* to be filled by election shall, so far as practicable, be the same throughout the State].

⁹[* * * * *]

¹ This sub-section was inserted by Mah. 38 of 2006, s. 3(a).

² These words, brackets, figures and letter were substituted for “under sub-section (1), *ibid*, s. 3(b)

³ Section 8AA was inserted by Mah. 3 of 2003, s. 3.

⁴ The portion beginning with the words “Subject to” and ending with this words “in this behalf” was deleted by Mah. 52 of 1994, s. 2(a).

⁵ Clause (a) was substituted for the original by Mah. 6 of 1975, s.50, Schedule.

⁶ These words were substituted for the words “fifteen as the Collector may determines”, by Mah. 21 of 1994, s. 5(1)(a)(i).

⁷ These words were substituted for the words “State Election Commission may determine”, by Mah. 52 of 1994, s. 2(b).

⁸ This proviso was added *ibid.*, s. 5(1)(a)(ii).

⁹ Sub-clause (ii) and the *Explanation* thereto were deleted, *ibid*, s. 5(1)(a)(iii).

(b) each village shall be divided into such number of wards, and the number of members of a *panchayat* to be elected from each ward shall be such, as may be determined ¹[in the prescribed manner by the State Election Commission or an officer authorised by it.]:

²[Provided that, the *panchayat* area shall be divided into wards in such manner that, the ratio between the population of each ward and the number of seats allotted to it shall, so far as practicable, be the same throughout the *panchayat* area.]

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

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

⁴[Provided that, in a *Panchayat* comprising entirely the Scheduled Areas, the seats to be reserved for the Scheduled Tribes shall not be less than one half of the total number of seats in the *Panchayat* :

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

⁵[Provided also that], ⁶[one half of the total number of seats] so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes;

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

¹ These words were substituted for the words “by the Collector in the prescribed manner”, *ibid.*, s. 5(1)(b)(i).

² This proviso was added by Mah. 21 of 1994, s. 5(1)(b)(ii).

³ Sub-sections (2) and (2A) were substituted *ibid.*, s. 5(2).

⁴ These provisos were inserted by Mah. 40 of 1997 s. 3(a)(i).

⁵ These words were substituted for the words “Provided” *ibid.*, s. 3(a)(ii).

⁶ These words were substituted for the words “one third of the number of seats” by Mah. 19 of 2011, s. 2(a).

¹[Provided that, in a *Panchayat* comprising entirely the Scheduled Areas, the seats to be reserved for persons belonging to the Backward Class of citizens shall be 27 per cent. of the seats remaining, if any, after reservation of the seats for the Scheduled Tribes and the Scheduled Castes :

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

²[Provided also that], ³[one half of the total number of seats] so reserved shall be reserved for women belonging to the category of Backward Class of citizens ;

(d) ⁴[one half (including the number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) of the total number of seats to be filled in by direct election in a *panchayat* shall be reserved for women and such seats shall be allotted by rotation to different wards in a *panchayat*.

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

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

(4) Notwithstanding anything in sub-section (1) where two-thirds or more of the total number of members required to be elected ⁶[under sub-clause (i) of clause (a) of sub-section(1)] are elected, failure to elect the remaining members shall not affect constitution of the *panchayat*.

Person
contesting
election for
reserved
seat to
submit
Caste
Certificate
and
Validity
Certificate.

⁷["**10-1A.** Every person desirous of contesting election to a seat reserved for Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of Citizens, shall be required to submit, alongwith the nomination paper, Caste Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Virnukta Jatis*), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000:]

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of
2001.

⁸[Provided that, for the General or by-elections for which the last date of filing of nomination falls on or before the 31st December 2013, in accordance with the election programme declared by the State Election Commission, a person who has

¹ These provisions were inserted by Mah. 40 of 1997, s. 3 (b)(i)

² These words were substituted for the words "Provided that" by Mah. 40 of 1997, s. 3 (b)(ii).

³ These words were substituted for the words, "one third of the total number of seats", by Mah. 19 of 2011, s. 2 (b).

⁴ These words were substituted for the words "one third", by Mah 19 of 2011 S. 2

⁵ Sub-section (3) was substituted by Mah. 36 of 2001, s. 2.

⁶ These words, brackets, letter and figure were inserted by Mah. 6 of 1975, Schedule.

⁷ Section 10-1A was inserted by Mah. 37 of 2006, s. 2.

⁸ These provisions were substituted for existing provision by Mah. 29 of 2012, s. 2.

applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, alongwith the nomination papers,—

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee :

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

¹[10A. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the *Panchayats* shall vest in the State Election Commissioner. State Election Commission.

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

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

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

Election. ²[11. (1) An election to constitute a *panchayat* shall be completed—

(a) in the case of the establishment of a *panchayat* for the first time, as soon as may be practicable ;

(b) in the case of *panchayat*, existing for the time being, before the expiry of its duration of five years as prescribed in sub-section (1) of section 27 ;

(c) in the case of the dissolved *panchayat* before the expiration of a period of six months from the date of its dissolution :

Provided that, where the remainder of the period for which the dissolved *panchayat* would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the *panchayat* for such period ;

¹ Section 10A was inserted by Mah. 52 of 1994, s. 3.

² Section 11 was substituted for the original by Mah. 21 of 1994, s. 6.

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

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

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

¹[(3A) The voting at an election shall be by ballot or by electronic voting machine and no votes shall be received by proxy.]

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

List of voters.

12. (1) The electoral roll of the ²[Maharashtra Legislative Assembly] prepared under the provisions of the Representation of the People Act, 1950, and in force on such day as ³[the State Election Commissioner may by order] notify in this behalf for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village.

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of
1950.

(2) An officer designated by the ⁴[State Election Commission] in this behalf shall maintain a list of voters for each such ward or village.

13. (1) Every person ⁵[who is not less than 21 years of age on the last date fixed for making nomination for every general election or bye-election and] whose name is in the list of voters shall, unless disqualified under this Act, or any other law for the time being in force, be qualified to vote at the election of a member for the ward to which such list pertains.

Persons
quali-
fied to
vote
and
be
elected.

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

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

Vacation of Seats.

⁶**[13A.** If a person is elected to more than one seat in a village *panchayat*, then unless, within the prescribed time he resigns all but one of the seats by notice in writing signed by him and addressed to the ⁷[State Election Commission or any officer authorised by it] in this behalf, all the seats shall become vacant.]

¹ This sub-section was inserted by Mah. 20 of 2005, s. 3.

² These words were substituted for the words "Bombay Legislative Assembly" by the Maharashtra Adaption of Laws (State and Concurrent Subjects) Order, 1960.

³ These words were substituted for the words "the State Government may by general or special order" by Mah. 52 of 1994, s. 4.

⁴ These words were substituted for the word "Collector" by Mah. 21 of 1994, s. 7.

⁵ These words were inserted *ibid.*, s. 8.

⁶ Section 13A was inserted by Mah. 36 of 1965, s. 7.

⁷ These words were substituted for the words "Collector or any officer authorised by him" by Mah. 21 of 1994, s. 9.

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

(a) has, whether before or after the commencement of this Act, been convicted—

XXII of 1955. Bom. XXV of 1949. (i) of an offence under the Untouchability (Offences) Act, 1955, or under the Bombay Prohibition Act, 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 five years, or such lesser period as the State Government may allow in any particular case, has elapsed since his release ; or

²[(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

³[(c-1) having held any office under any Government or local authority, has whether before or after the commencement of this Act, been dismissed for misconduct, unless a period of five years has elapsed since his dismissal ; or]

(d) has been removed from office under sub-section (1) of section 39 and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the State Government notified in the *Official Gazette*, been relieved from the disqualification arising on account of such removal from office ; or

(e) has been disqualified from holding office under sub-section (2) of section 39 and the period for which he was so disqualified has not elapsed ; or

(f) holds any salaried office or place of profit in the gift or disposal of the *Panchayat*, while holding such office or place ; or

¹ This existing section 14 was renumbered as sub-section(1) by Mah. 34 of 2000, s. 2.

² Clause (a-1) was substituted by Mah. 21 of 1994, s. 10.

³ This clause was inserted by Mah. 36 of 1965, s. 8(1)

(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* ¹[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]

²[(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

³[(j-1) has more than two children :

Provided that, a person having more than two children on the date of commencement of the Bombay 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 :

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of
2000.

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]

⁴[(j-2) has been elected as a Councillor of the *Zilla Parishad* or as a member of the *Panchayat Samiti* ; or]

⁵[(j-3) has been encroached upon the Government land or public property; or]

⁶[(j-4) has been disqualified by the State Election Commission under section 14 B; or]

¹ These words were substituted for the portion beginning with the words “within three months” and ending with the words and figures “section 129 ; or “, *ibid.*, s. 8(2)

² Clause (h-1) was inserted by Mah. 13 of 1975, s. 4(b)

³ Clause (J-1) was inserted by Mah. 44 of 2000, s. (2)(a).

⁴ This clause was inserted by Mah. 28 of 2003, s. 3.

⁵ This clause was inserted by Mah. 38 of 2006, s. 4.

⁶ This clause was inserted by Mah. 16 of 2010, s. 2.

¹[(j-5) fails to submit a certificate of the concerned *panchayat*, along with the resolution of the *Gram Sabha* certifying that,—

(i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet ; or

(ii) he resides in a house not owned by him and has a toilet in regularly uses the public toilet :]

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XXXIII
of
2010.

²[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.

³[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; 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 ⁴[State of Maharashtra] be held to be interested in any contract entered into between the company or co-operative society and the *panchayat*.

⁵[*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

¹ This clause was inserted by Mah. 33 of 2010, s. 2.

² This proviso was substituted for the existing proviso by Mah. 39 of 2011, s. 2(a), w.e.f. 10th January 2011.

³ This proviso was added *ibid.*, s. 2(b).

⁴ These words were substituted for the words “State of Bombay” by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

⁵ This *Explanation* was inserted by Mah. 36 of 1965, s 8(3).

(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 the 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 executed, 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.

¹[*Explanation 3.*—For the purposes of clause (i), a Police Patil appointed under section 5 of the Maharashtra Village Police Act, 1967, shall be deemed to be a servant of Government.]

Mah.
XLVI
of
1967.

²[*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.]

³[*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.]

⁴[* * * * *]

Disqualifi-
cation
arising out
of certain
conviction
and corrupt
practices
under this
Act.

⁵[14A. If any person,—

(a) is convicted of an offence punishable under section 153A or section 171E or 171F or sub-section (2) or sub-section (3) of section 505, of the Indian Penal Code, or of an offence punishable under section 24, or clause (a) of sub-section (2) of section 25 of this Act; or

XLV
of
1860.

¹ This *Explanation* was substituted for the original by Mah. 13 of 1975, s. 4(c).

² This *Explanation* was inserted by Mah. 34 of 1970, s. 3.

³ This *Explanation* was added by Mah. 44 of 2000, s. 2 (b).

⁴ These sub-sections were added by Mah. 34 and 2000, s. 2.

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

(b) is upon trial of an election petition under section 15 of this Act, found guilty of any corrupt practice,

he shall be disqualified for being elected, or for continuing as a member, or for voting at any election to a *panchayat*, unless a period of six years from the date of the conviction or from the date on which a declaration that the candidate is disqualified is made under sub-section (5) of section 15 of this Act, or such lesser period which the State Government may allow in any particular case has elapsed.]

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

Disqualifi-
cation by
State
Election
Commis-
sion.

(a) has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and

(b) has no good reason or justification for such failure the State Election Commission may, by an order published in the *Official Gazette*, declare him to be disqualified and such person shall be disqualified for being a member of *panchayat* of for contesting an election for being a member for a period of five years from the date of the order.

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

15. (1) If the validity of any election of a member of a *panchayat* is brought in question by ²[any candidate at such election or by] any person qualified to vote at the election to which such question refers ³[such candidate or person] may, at any time within fifteen days after the date of the declaration of the result of the election, apply ⁴[* * * * *] to the Civil Judge (Junior Division) and if there be no Civil Judge (Junior Division) then to the Civil Judge (Senior Division) (hereafter, in each case referred to as “the Judge”) having ordinary jurisdiction in the area within which the election has been or should have been held for the determination of such question.

Determina-
tion of
validity of
elections;
enquiry by
Judge;
procedure.

(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. ⁵[If the election is set aside, a date for holding a fresh election shall forthwith be fixed under section 11.]

¹ Section 14B was inserted by Mah. 16 of 2010, s. 3.

² These words were inserted by Mah. 36 of 1965, s. 9(1).

³ These words were substituted for the words “such person”, *ibid*.

⁴ The portion from “(a) in the Hyderabad area” to “transferred territories” was omitted by the Maharashtra Adaptation of Laws (State and Concurrent Subject) Order, 1960.

⁵ This portion was added by Mah. 36 of 1965, s. 9(2).

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

(a) in which the validity of the election of members to represent the same ward is in question, shall be heard by the same Judge, and

(b) in which the validity of the election of the same member elected to represent the same ward is in question; shall be heard together.

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

(5) (a) If on holding such enquiry the Judge finds that a candidate has for the purpose of the election committed a corrupt practice within the meaning of sub-section (6) ¹ * * * he shall declare the candidate disqualified for the purpose of that election and of such fresh election as may be held under ²[sub-section (2)] and shall set aside the election of such candidate if he has been elected.

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

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

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

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

(a) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person, or

(b) who with a view to inducing any to stand or not to stand or to withdraw from

¹ These words were deleted by Mah. 37 of 2006, s. 4.

² These words, brackets and figure were substituted for the word and figures “section 17” by Mah. 36 of 1965, 9(3).

being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise of individual profit or holds out any threat of injury to any person, or

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

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

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

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

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

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

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

²[15A. No election to any *panchayat* shall be called in question except in accordance with the provisions of section 15; and no court other than the Judge referred to in that section shall entertain any dispute in respect of such election.]

Bar to
interference
by Courts
in electoral
matters.

¹ Sub-section (7) was added by Mah. 34 of 1970, s. 4.

² Section 15A was inserted by Mah. 21 of 1994, s. 11.

Disability
from
continuing
as member.

16. (1) If any member of a *panchayat*,—

(a) who is elected or appointed as such, was subject to any of the disqualifications mentioned in section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed, incurs any of the disqualifications mentioned in section 14,

he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) ¹[If any question whether a vacancy has occurred under this section is raised by the Collector *suo motu* or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member.] Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final :

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

17. [*Fresh election if election or appointment is invalid*] Deleted by Mah. 36 of 1965, s. 11.

Prohibition
of
canvassing
in or near
polling
stations.

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

(a) canvassing for votes; or

(b) soliciting the vote of any voter; or

(c) persuading any voter not to vote at the election; or

(d) persuading any voter not to vote for any particular candidate; or

(e) exhibiting any notice or sign (other than an official notice) relating to the election.

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

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

¹ This was substituted for the portion beginning with the words " In every case " and ending with the words " from continuing to be a member " by Mah. 36 of 1965, s. 10.

19. (1) No person shall, on the date or dates on which a poll is taken at any polling station,—

Penalty for disorderly conduct in or near polling station.

(a) use or operate, within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loud-speaker, or

(b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or any public or private place in the neighbourhood thereof so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

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

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

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

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

Penalty for misconduct at polling station.

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

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

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

21. (1) Where an election is held by ballot, every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

Maintenance of secrecy of voting.

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

Officers,
etc. at
elections
not to act
for
candidates
or influence
voting.

22. (1) No person who is a returning officer, or a presiding or polling officer at an election or an officer or a clerk appointed by the returning officer or the presiding officer to perform any duty in connection with an election shall, in the conduct or the management of the election, do any act (other than the giving of his vote) for the furtherance of the prospects of the election of a candidate.

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

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

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

Breaches
of official
duty in
connection
with
elections.

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

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

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

Removal of
ballot
papers
from
polling
stations
to be an of-
fence.

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

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

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

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

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

25. (1) A person shall be guilty of an offence if, at any election, he—

Other
offences
and
penalties
therefor.

(a) fraudulently defaces or fraudulently destroys any nomination paper ; or

(b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a returning officer ; or

(c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper ; or

(d) without due authority supplies any ballot paper to any person ; or

(e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in ; or

(f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purpose of the election ; or

(g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such act.

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

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

(b) if he is any other person, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

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

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

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

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

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

Commencement of term of office. **28.** (1) The term of office of the members elected at a general election ³[* * * * *] or appointed under sub-section (3) of section 10 shall be deemed to commence on the date of the first meeting of the *panchayat*. The first meeting of the *panchayat* shall be held on a day fixed by the ⁴[Collector] ⁵[as soon as may be after the publication of the names of the elected members under section 10 ; and such date shall not—

(i) in the case of first meeting after general election, be later than the day immediately following the day of expiry of the term of outgoing members; and

(ii) in the case of election held after the dissolution of the *panchayat*, later than the date of expiry of the period of six months from the date of dissolution of the *panchayat*.]

⁶[* * * * *]

⁷[* * * * *]

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

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

² Sub-section (2) was substituted for the original by Mah. 21 of 1994, s. 12.

³ The portion beginning with the word "including" and ending with the word and figures "section 10" was deleted *ibid*, s. 13(1)(a).

⁴ This word was substituted for the words "Chief Executive Officer" by Mah. 43 of 1962, s.26, Schedule.

⁵ This portion was substituted for the portion beginning with the words "within four weeks" and ending with the word and figures "section 10", by Mah. 21 of 1994, s. 13 (1)(b).

⁶ This proviso was deleted *ibid*, s. 13(1)(c).

⁷ Sub-section (2) was deleted *ibid*, s. 13(2).

⁸ Section 29 was substituted for the original by Mah. 13 of 1975, s. 6.

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

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

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

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

(6) The resignation shall take effect,—

(a) where there is no dispute regarding the genuineness, after the expiry of seven days from the date on which it is placed before the meeting of the *panchayat* ;

(b) where the dispute is referred to the Collector and no appeal is made to the Commissioner after the expiry of seven days from the date of rejection of the dispute by the Collector ;

(c) where an appeal is made to the Commissioner, immediately after the appeal is rejected by the Commissioner.]

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

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

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

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

¹ Section 30 was substituted by Mah. 21 of 1994, s. 14.

(a) the number of offices of *Sarpanchas* to be reserved for the Scheduled Castes and the Scheduled Tribes in the *panchayats* shall bear, as nearly as may be, the same proportion to the total number of such offices in the *panchayats* as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State ¹[excluding the population of the Scheduled Tribes in *panchayat* comprising entirely the Scheduled Areas] bears to the total population of the State :

²[Provided that, the office of the *Sarpanch* of a *Panchayat* comprising entirely the Scheduled Areas shall be reserved only for the persons belonging to the Scheduled Tribes :

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

³[Provided also that], ⁴[one-half of the total number of offices] so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes ;

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

Provided that, ⁵[one-half of the offices] so reserved shall be reserved for women belonging to the category of Backward Class of citizens ;

(c) ⁶[one-half of the total number of offices of *Sarpanchas*] (including the number of offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) in the *panchayats* shall be reserved for women.

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

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

¹ This proviso was inserted by Mah. 28 of 2003, s. 4(a)(i).

² This proviso was added by Mah. 5 of 1997, s. 2(2)(b).

³ These words were substituted for the words "Provided that" by Mah. 28 of 2003, s. 4 (a) (ii).

⁴ These words were substituted for the words " is not carried " by Mah. 10 of 1992, s. 3(2)(a).

⁵ These words were substituted for the words "a majority of" by Mah. 27 of 2000. s. 2(3).

⁶ These words were substituted for the words "one-third of the total number of offices of *Sarpanchas*" *ibid*, s. 3(c).

¹[30-1A. Every person desirous of contesting election to the office of the *Sarpanch* reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of citizens, shall be required to submit alongwith the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (*Vimukta Jatis*), Nomidic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issurance and Verification of) Caste Certificate Act, 2000]

Person contesting election for reserved office of *Sarpanch* to submit Caste Certificate and Validity Certificate.

²[Provided that, for the elections for the post of *Sarpanch* for which the last date of filing of nomination falls on or before the 31st December 2013, in accordance with the election programme declared, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, alongwith the nomination papers,—

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee :

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

³[30A. (1) Every *panchayat* shall elect one of its elected members to be *Upa-Sarpanch*.

Election of *Upa-Sarpanch*.

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

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

Term of office of *Sarpanch* and *Upa-Sarpanch*.

⁴[* * * * *]
⁵[* * * * *]

¹ Section 30-1A was inserted by Mah. 5 of 2009, s. 3.

² These proviso were substituted for the existing proviso by Mah. 29 of 2012, s. 3.

³ Section 30A was inserted by Mah. 21 of 1994, s. 15.

⁴ The words “and when the term is extended also for such extended term” were deleted by Mah. 21 of 1994, s. 16.

⁵ Section 32 was deleted, *ibid.*, s. 17

Travelling and daily allowances to members. ¹[32A. The members of a *panchayat* (including its *Sarpanch* and *Upa-Sarpanch*) may be paid such travelling and daily allowances for journeys undertaken in relation to any business of the *panchayat* as may be prescribed.]

Procedure for election of *Sarpanch* and *Upa-Sarpanch*. **33.** (1) On the establishment of a *panchayats* for the first time under this Act, or on its reconstitution or establishment under sections 145 and 146, or on the expiry of the term ²[* * * *] of a *panchayat* a meeting shall be called on the date fixed under sub-section (1) of section 28 by the ³[Collector], for the election of the *Sarpanch* and *Upa-Sarpanch*. In the case where the offices of both the *Sarpanch* and *Upa-Sarpanch* become vacant simultaneously, a meeting shall be called on the date fixed by the ³[Collector], for the election of the *Sarpanch* and *Upa-Sarpanch*.

(2) The meeting called under sub-section (1) shall be presided over by such officer as the ³[Collector] may by order appoint in this behalf. The officer aforesaid shall, when presiding over such meeting, have the powers and follow the procedure prescribed, but shall not have the right to vote.

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

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

(5) In the event of a dispute arising as to the validity of the election of a *Sarpanch* or *Upa-Sarpanch* under sub-section (1) ⁴[the Officer presiding over such meeting or any member ⁵[* * * *] may, within fifteen days from the date of the election, refer the dispute to the Collector for decision. An appeal against the decision of the Collector may, within fifteen days from the date of such decision, be filed before the Commissioner, whose decision shall be final. The Collector or Commissioner shall give his decision as far as possible within sixty days of the receipt of the reference, or as the case may be, appeal.]

¹ Section 32A was inserted by Mah. 36 of 1965, s. 15.

² The words "or extended term" were deleted by Mah. 21 of 1994, s. 18(1).

³ This word was substituted for the "Chief Executive Officer" by Mah. 43 of 1962, s. 26, Schedule.

⁴ This portion was substituted for the portion beginning with the words "the dispute shall be referred" and ending with the words "any such decision" by Mah. 36 of 1965, s. 16.

⁵ The brackets and words "(other than an associate member)" were deleted by Mah. 21 of 1994, s. 18(2).

Sumptuary allowance to *Sarpanch*.¹[33A. Subject to any rules made by the State Government in this behalf, there shall be placed at the disposal of the *Sarpanch*, a sum equal to two percent. of the annual income of the *panchayat* or six thousand rupees per annum, whichever is less, as sumptuary allowance.]

Resignation by *Sarpanch* or *Upa-Sarpanch*.²[34. (1) The *Sarpanch* may resign his office by writing under this hand addressed to the Chairman of the *Panchayat Samiti*.³[* * * *]

(2) The *Upa-Sarpanch* may resign his office by writing under his hand addressed to the *Sarpanch*.³[* * * *]

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

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

Motion of no confidence.⁵[35. (1) A motion of no confidence may be moved by not less than ⁶[one third] of the total number of the members ⁷[* * *] 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. ⁸[Such notice once given shall not be withdrawn.]

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

(3) If the motion is carried by ⁹[a majority of not less than two-third of] ¹⁰[* * * *] the total number of the members ¹¹[* * *] who are for the time being entitled to sit and vote at any meeting of the *panchayat* or the *Upa-Sarpanch*, as the case may be, ¹²[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*

¹ Section 33A was inserted by Mah. 10 of 1992, s. 2.

² Section 34 was substituted by Mah. 36 of 1965, s. 17.

³ The words "and his office shall thereupon become vacant" were deleted by Mah. 13 of 1975, s. 8(a).

⁴ Sub-section (4) was inserted, *ibid.*, s. 8(b).

⁵ These sub-sections were substituted for sub-sections (1), (2) and (3) by Mah. 13 of 1975, s. 9.

⁶ These words were substituted for the words "one fifth" by Mah. 27 of 2000, s. 2(1).

⁷ The brackets and words "(other than associate members)" were deleted by Mah. 21 of 1994, s. 19(1).

⁸ These words were added by Mah. 10 of 1992, s. 3(1).

⁹ These words were substituted for the words "a majority of" by Mah. 27 of 2000, s. 2(2).

¹⁰ The words "not less than two-thirds of" were deleted by Mah. 5 of 1997, s. 2(a).

¹¹ The brackets and words "(other than associate members)" were deleted by Mah. 21 of 1994, s. 19(2).

¹² This portion was substituted for the portion beginning with the words, "shall cease to hold office" and ending with the words, "shall be deemed to be vacant:", by Mah. 16 of 2012 s.3(i) (a)

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 further that, in cases where the officers 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 meeting of the panchayat.]

¹[²Provided 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* :]

³[⁴Provided also that], no such motion of no-confidence shall be brought within a period of six months from the date of election of *Sarpanch* or *Upa-Sarpanch*.]

(3A) If the motion ⁵[is not moved or is not carried] by ⁶[a majority of not less than ⁷[or, as the case may be, three-fourth, of] ⁸[* * *] the total number of the members ⁹[* * *] 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 ¹⁰[¹¹[one year] from the date of such special meeting.]

(3B) 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.]

¹³[* * *]

¹ This proviso was inserted by Mah. 28 of 2003, s. 4(a)(i).

² These words were substituted for the words "provided that" by Mah. 16 of 2012, s. 3 (i) (b).

³ This proviso was added by Mah. 5 of 1997, s. 2(2)(b).

⁴ These words were substituted for the words "provided further that" by Mah. 16 of 2012, s. 3 (i) (c).

⁵ These words were substituted for the words "is not carried" by Mah. 10 of 1992, s. 3 (2) (a).

⁶ These words were substituted for the words "a majority of" by Mah. 27 of 2000, s. 2(3).

⁷ These words were substituted for the words "two-third of" by Mah. 28 of 2003, s. 4(b).

⁸ These words "not less than two-thirds of" were deleted by Mah. 5 of 1997, s. 2(3) (a).

⁹ The brackets and words "(other than associate Members)" were deleted by Mah. 21 of 1994, s. 19(3).

¹⁰ These words were substituted for the words "six months from the date of the rejection of the motion", by Mah. 10 of 1992, s. 3(2) (d).

¹¹ These words were substituted for the words "six months", by Mah. 16 of 2001, s. (2).

¹² These words, figure and letter were substituted for the words, figure and letter of within fifteen days from the date on which it was received by him; and any such decision shall, subject to an appeal under sub-section 3(c), be final", by Mah. 16 of 2012, s. 3 (ii).

¹³ Sub-sections (3c), (3d) and 4 were deleted by Mah. 16 of 2012 s. 3(iii).

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

Time and place of sitting of *panchayat* and procedure at meetings.

¹[Provided that, if the *Sarpanch*, or his absence the *Upa-Sarpanch*, fails without sufficient cause, to convene the meeting of the *panchayat* in any financial year according to the rules prescribed in that behalf, he shall be disqualified for continuing as *Sarpanch* or, as the case may be, *Upa-Sarpanch* or for being chosen as such for the remainder of the term of office of the members of the *panchayat*. The decision of the Collector on the question whether or not there was sufficient cause shall be final.]

37. No resolution of *panchayat* shall be modified, amended, varied or cancelled by a *panchayat* within a period of three months from the date of the passing thereof, except by a resolution supported by two-thirds of the total number of members of such *panchayat*. ²[* * * *]

Modification or cancellation of resolutions.

38. (1) The executive power, for the purpose of carrying out the provisions of this Act and the resolutions passed by a *panchayat*, vests in the *Sarpanch* who shall be directly responsible for the due fulfilment of the duties imposed upon the *panchayat* by or under this Act. In the absence of the *Sarpanch*, the powers and duties of the *Sarpanch* shall, save as may be otherwise prescribed by rules, be exercised and performed by the *Upa-Sarpanch*.

Executive power of *panchayat*. Functions of *Sarpanch* and *Upa-Sarpanch*.

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

(i) the *Sarpanch* shall—

(a) ³[save where otherwise provided in this Act, preside over] and regulate the meetings of the *panchayat* ;

⁴[* * * *]

(c) exercise supervision and control over the acts done and action taken by all officers and servants of the *panchayat* ⁵[including supervision over the keeping and maintenance of records and registers of the *panchayat* in the custody of the Secretary] ;

⁶[* * * *]

¹ This proviso was added by Mah. 36 of 1965, s. 18.

² The brackets and words “(other than the associate members)” were deleted by Mah. 21 of 1994, s. 20.

³ These words were substituted for the words “preside over” by Mah. 13 of 1975, s. 10 (a).

⁴ Sub-clause (b) was deleted by Mah. 36 of 1965, s. 19 (a)(i).

⁵ This portion was added *ibid.*, s. 19 (a)(ii).

⁶ Sub-clauses (d), (e), (f) and (g) were deleted by Mah. 4 of 1981, s. 2(a).

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

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

¹[(i-a) A *Sarpanch* may issue under his signature and under the seal of the *panchayat*, income certificates which are required to be issued under any directions of Government;]

(j) call meeting of *Gram Sabha* as provided in section 7 and preside over them;

(ii) The *Upa-Sarpanch* shall,—

(a) in the absence of the *Sarpanch* preside over and regulate the meetings of the *panchayat* ²[except where otherwise provided in this Act];

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

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

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

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

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

¹ Clause (i-a) was inserted by Mah. 34 of 1970, s. 8.

² These words were added by Mah. 13 of 1975, s. 10 (b).

³ Sub-section (4) was added by Mah. 36 of 1965, s. 19 (b).

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

⁵ These words, brackets and figure were substituted for the words, brackets and figures, “sub-sections (3) and (4)”, by Mah. 38 of 2006, s. 5.

39. ¹[(1) The Commissioner may,—

Removal
from office.

(i) remove from office any member or any *Sarpanch* or *Upa-Sarpanch* who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A *Sarpanch* or an *Upa-Sarpanch* so removed may at the discretion of the Commissioner also be removed from the *panchayat*; or

(ii) remove from office the member, *Sarpanch* or, as the case may be, *Upa-Sarpanch*, if not less than twenty per cent of the total number of voters in the village who have paid all dues of the *panchayat* regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the *panchayat* on the development activities are not placed before the *Gram Sabha*; and the information thereof is not displayed on the notice board as required by sub-section (1) or (1A) of section 8 :

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

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

²[(1A) Where a person is removed from office of the *Sarpanch* or *Upa-Sarpanch*, he shall not be eligible for re-election as *Sarpanch* or *Upa-Sarpanch* during the remainder of the term of office of members of the *panchayat*.]

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

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

¹ This sub-section was substituted by Mah. 38 of 2006, s. 6, (a).

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

³ Sub-section 2 and 3 were substituted by *ibid.*, s. 6 (b)

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

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

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

Leave of absence. **40.** (1) Any member of a *panchayat* who, during his term of office,—

(a) is absent for more than four consecutive months from the village, ²[(such absence not being on account of his being a Chairman or Deputy Chairman of a *Panchayat Samiti*)], unless leave not exceeding six months so to absent himself has been granted by the *panchayat*, or

(b) absent himself for six consecutive months from the meetings of the *panchayat*, without the leave of the said *panchayat*,

shall cease to be a member and his office shall be vacant.

¹ Section 39A is inserted, *ibid*, s. 7.

² These brackets and words were inserted by Mah. 43 of 1962, s. 26, Schedule.

41. [Suspension of Sarpanch or Upa-Sarpanch.] Deleted by Mah. 2 of 1982, s. 2.

42. (1) A member of a *Panchayat* whose office has become vacant under ¹[section 16, if his disqualification or disability has ceased, or under section 40 shall] be eligible for re-election. Eligibility of certain members for re-election.

43. (1) Any vacancy of which notice has been given to the ²[Collector] in the prescribed manner due to the disablement, death, resignation, disqualification, ³[confirmation of no confidence motion,] absence without leave or removal of a *Sarpanch* or *Upa-Sarpanch* ⁴[* * *], shall be filled, by the election of a *Sarpanch* or *Upa-Sarpanch* ⁴[* * *], in whose place he has been elected would have held office if the vacancy had not occurred: Filling up of vacancies.

⁵[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.]

⁶[* * * * *]

⁷[* * * * *]

(2) The meeting for the election of a *Sarpanch* under sub-section (1) shall be convened by ³[Collector] in the manner described in sub-section (1) of section 33.

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

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

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

¹ These words were substituted for the words and figures "section 16 or under section 40 shall, if his disqualification or disability has ceased" by Mah. 36 of 1965, s. 22.

² This word was substituted for the words "Chief Executive Officer" by Mah. 43 of 1962, s. 26, Schedule.

³ These words were inserted by Mah. 16 of 2012, s. 4 (a).

⁴ The words "the member" were deleted by Mah. 21 of 1994, s. 21(a).

⁵ This proviso was added by Mah. 16 of 2012, s. 4(b).

⁶ The proviso was deleted by Mah. 13 of 1975, s. 12(a).

⁷ The proviso was deleted by Mah. 21 of 1994, s. 21(b).

⁸ Section 44 was renumbered as sub-section (1) and sub-sections (2) and (3) were inserted by Mah. 36 of 1965, s. 23.

⁹ This portion was substituted for the words "The *panchayat*" by Mah. 13 of 1975, s. 13.

CHAPTER III.

ADMINISTRATIVE POWERS AND DUTIES.

Administra-
tive powers
and duties
of
panchayats.

45. ¹[(1) Subject to the general control of the *Zilla Parishad* and the *Panchayat Samiti* it shall be the duty of a *panchayat* so far as the village fund and its disposal will allow to make reasonable provision within the village with respect to all or any of the subjects enumerated in Schedule I as amended from time to time under sub-section (2) (in this Act referred to as "the Village List"). ² [It shall also be the duty of a *panchayat*, when the *Zilla Parishad* or the State Government undertakes and completes, through its agencies, any piped water-supply schemes (including works), at the request of the *panchayat*, to take over and maintain ³ [out of the Village Water-Supply Fund constituted under section 132B] such water-supply schemes, whether completed before or after the date of commencement of the Maharashtra Zilla Parishads and Panchayat Samitis and Bombay Village Panchayats (Amendment) Act, 1981. Where any such schemes were completed and were not taken over by the *panchayat* before the said date, the *panchayat* shall take them over within thirty days from the said date, which shall be the period specified for such schemes, and where any such schemes are completed after the said date the *panchayat* shall take them over within such period as may be specified by the *Zilla Parishad* or the State Government, as the case may be.]

Mah.
LVI of
1981.

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

Provided that,—

(a) no such notification omitting any entry from Schedule I shall be issued without the previous approval of the State Legislature; and

(b) any other notification shall be laid before each House of the State Legislature as soon as may be after it is issued and shall be subject to such modification as the State Legislature may make, during the session in which it is so laid, and publish in the *Official Gazette*.

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

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

² This portion was added by Mah. 56 of 1981, s. 7.

³ These words were inserted by Mah. 5 of 1997, s. 3.

(2B) A *panchayat* may, by resolution ¹[and subject to the prescribed limits, give grant-in-aid to any institution (whether situated within or outside the village but not outside the limits of the revenue taluka within which the *panchayat* functions) in respect of matters falling in entries 17, 18, 19, 20, 22 and 23 of that Schedule provided that the institution serves the needs of the village, and to any person in respect of matters falling in entry 23 of the said Schedule ;] or contribute to any fund sponsored by the Government for the purpose referred to in entry 75 of that Schedule. If any doubts arises ²[whether or not the institution serves the needs of the village, or] whether or not the fund is sponsored by the Government, the question shall be decided by the Collector, and his decision shall be final :

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

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

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

³[Provided that, no *panchayat* shall incur expenditure on any such reception, ceremony, entertainment or gathering exceeding such amount as the State Government may, from time to time, by notification in the *Official Gazette*, determine and that, different amounts may be determined for different class or category of *panchayats*, with reference to their annual income.]

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

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

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

² These words were inserted, *ibid*, s. 14 (1)(b).

³ This proviso was substituted by Mah. 31 of 1994, s. 2.

¹[(6A) A *panchayat* shall endeavour to make use of voluntary organisations ²[of farmers of the village], and shall encourage co-operative societies ³[therein] in increasing and improving agricultural production.

⁴[(6B) A *panchayat* established for village (being a village comprising either a group of revenue villages or hamlets or *wadis* or any area called by any other designation forming a revenue village or forming part of a revenue village) shall execute works and development schemes in such village so however that in each such revenue village, hamlet, *wadi* or area or part thereof, the village fund is spent so far as may be practicable on the works and development schemes in proportion to the population of such revenue village or hamlet, *wadi* or area.]

(6C) A *panchayat* shall supervise primary school situate within the area of its jurisdiction.]

⁵[(6D) A *panchayat* shall obtain permission of the *Gram Sabha* for incurring any expenditure on the development schemes.

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

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

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

⁶[* * *]

⁸[Power of *Parishads* and *Samitis* to transfer management of institution or execution or maintenance of work.]

46. ⁷[Without prejudice to the provisions of sub-section (2) and sub-section (3) of section 124 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, a *Zilla Parishad* or *Panchayat Samiti* with the consent of a *Panchayat* may, at any time, transfer to such *Panchayat* the management of any institution or the execution or maintenance of any work, and it shall thereupon be lawful for such *Panchayat* to undertake the management of such institution or the execution or maintenance of such work :]

Mah. V of 1962.

Provided that in every such case the funds necessary for such management, ⁹[execution or maintenance] shall be placed at the disposal of the *Panchayat* by the ¹⁰[*Zilla Parishad* or *Panchayat Samiti*].

Powers of State Government to transfer execution of other works.

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

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

¹ Sub-sections (6A) to (6C) were inserted by Mah. 5 of 1962, s. 286, Tenth Schedule.

² These words were substituted for the words "of farmers" by Mah. 35 of 1963, s. 80, Schedule.

³ This word was inserted, *ibid*.

⁴ Sub-section (6B) was substituted by Mah. 13 of 1975, s. 14(2).

⁵ These sub-sections were inserted by Mah. 3 of 2003, s. 4.

⁶ Section 45A was deleted by Mah. 27 of 2003, s. 3.

⁷ This portion was substituted for the portion beginning with the words " the *Zilla Parishads* or *Panchayat Samiti* " and ending with the words " execution of such work " by Mah. 36 of 1965, s. 25(1).

⁸ This marginal note was substituted for the original, *ibid*, s. 25(3).

⁹ These words were substituted for the words "or execution" by Mah. 36 of 1965, s. 25(2).

¹⁰ These words were substituted for the words "District Local Board" by Mah. 5 of 1962, s. 286, Tenth Schedule.

48. Subject to such conditions as the State Government may impose, with the consent of the *panchayat* concerned, the *panchayat* shall perform such other administrative duties including the distribution of irrigation water, as may after consultation with the ¹[*Panchayat Samiti*] be assigned to it by the State Government by notification in the *Official Gazette*. Other duties.

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

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

(3) Such committees shall exercise such powers, discharge such duties and perform such functions of the *panchayat*, as may be delegated or assigned to them by the *Gram Sabha* in consultation with the *panchayat*, relating to the subjects and activities enumerated in Schedule I and such other works and activities related to or associated with the *panchayat* as may be entrusted by the *Gram Sabha*, *Zilla Parishad*, Government or any other competent authority to the *panchayat*, from time to time. The *Gram Sabha* may, subject to the general supervision and control of *panchayat*, regulate the procedure of such committees.

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

Provided that---

(a) not less than one-third of its members shall be from amongst the members of the *panchayat* ;

(b) not less than one-half of its members shall be women ; and

(c) such number of members, as may be specified by the Government in that behalf, shall be from the Scheduled Castes, Scheduled Tribes, *Vimukta Jatis* and Nomadic Tribes (hereinafter referred to as the "vulnerable class") :

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

(d) the *Gram Sabha* shall ordinarily nominate such women members to the Village Development Committee as recommended by village *Mahila Mandal* or a *Gram Sabha* of the women voters specially called for the purpose, unless it has sufficient reason, to be recorded in the proceedings, to reject any such recommendation ;

(e) the *Gram Sabha*, in its discretion, may give preference to the members of the village level institutions, if any, like *Mahila Mandals*, Youth Clubs, etc. ;

¹ These words were substituted for the words "*Panchayat Mandal* " by Mah. 5 of 1962, s. 286, Tenth Schedule.

² These sections were substituted for section 49 by Mah. 23 of 2003, s. 3.

(f) the *Gram Sabha* may, also invite any village level Government, semi-Government, *Zilla Parishad* officials or employees working in the village, such as teachers, *talathis*, *anganwadi sevikas*, village water men, village health workers, to attend any meeting or meetings of the Village Development Committee, as a special invitee for the purpose of assisting or advising it on any matter or matters. Such special invitee may take part in the deliberations in the meeting but, shall have no right to vote in such meeting.

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

(6) The annual statement of accounts and proceedings of the Village Development Committee shall be kept and managed separately for day-to-day convenience but shall form an integral part of the *panchayat* record, accounts and proceedings, and shall be presented through the *panchayat* in the meeting of the *Gram Sabha* specially called for the purposes of approving annual budget and passing of the annual accounts of the *panchayat*.

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

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

(i) by an express resolution passed by the *Gram Sabha* in a special meeting duly called for the purpose, or

(ii) when such member suffers from any of the disqualification specified in section 14 for the members of the *panchayats* ;

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

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

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

Beneficiary
Level Sub-
Committees.

49A. (1) The Village Development Committee constituted under sub-section (1) of section 49 may, in consultation with the *panchayat* and with the prior approval of the *Gram Sabha*, and if deemed expedient, having regard to the geographical, geohydrological, technological, economic, social and demographic

situation of the habitation within the area of the *panchayat*, constitute a Beneficiary Level Sub-Committee from amongst the voter beneficiaries of the existing or proposed activity, scheme or utility, exclusively serving a habitation, in a meeting held therefor, where each beneficiary household shall have one vote.

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

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

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

Provided that,—

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

(b) not less than one-half of its members shall be women ; and

(c) such number of seats on such committee, as may be specified by the Government in that behalf, shall be appointed from the vulnerable class.

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

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

(i) by an express resolution passed by the *Gram Sabha* or the beneficiary voters of the activity, scheme or utility, as the case may be, in a special meeting duly called for the purpose, or

(ii) when such member suffers from any of the disqualification specified in section 14 for the members of the *panchayats* ;

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

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

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

Joint committees of two or more local bodies.

50. (1) A *panchayat* may, from time to time, concur with any other *panchayat* or with any municipal corporation, municipality, ¹[*Zilla Parishad, Panchayat Samiti*], cantonment authority or committee appointed for a notified area or with more than one such *panchayat*, municipal corporation, municipality, ¹[*Zilla Parishad, Panchayat Samiti*], authority or committee,—

(a) in appointing out of their respective bodies a joint committee for any purpose in which they are jointly interested and in appointing a chairman of such committee ;

(b) in delegating to any such committee power to frame terms binding on each such body as to the construction and future maintenance of any joint work and any power which might be exercised by either or any of such bodies ; and

(c) in framing and modifying rules for regulating the proceedings of any such committee and the conduct of correspondence, relating to the purpose for which the committee is appointed.

(2) A *panchayat* may, subject to the sanction of the State Government, from time to time, enter into an agreement with any other *panchayat*, or with any municipal corporation, municipality, ²[* * * *] cantonment authority or committee appointed for a notified area, or with a combination of any such bodies, for the levy of octroi duty whereby the octroi duties, respectively, leviable by the bodies so contracting may be levied together instead of separately within the limits of the area subject to the control of the said bodies.

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

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

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

Government may vest certain lands in *panchayats*.

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

³[(1A) Where the State Government is of opinion that any property vested in a *panchayat* under sub-section (1) is required for the purpose of any national or State Development Plan or for any other public purpose, or where any such property is not required by the *panchayat* for the purpose for which it was vested, the State

¹ These words were substituted for the words " district local board " by Mah. 5 of 1965, s. 286, Tenth Schedule.

² The words "district local board" were deleted, *ibid*.

³ These sub-sections were inserted by Mah. 36 of 1965, s. 26.

Government may resume such property ; and upon such resumption, the property shall cease to vest in the *panchayat* and shall revest in the State Government.

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

Mah.
XXXVI
of
1965.

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

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

(3) Whenever any public road or street or any part thereof has been so discontinued or stopped up reasonable compensation shall be paid to every person who was entitled to use such road or street or part thereof, otherwise than as a mere member of the public, as a means of access to or from his property and has suffered damage from such discontinuance or stopping up, and the provisions in the *Bombay Highways Act, 1955, in relation to the assessment, apportionment and payment of compensation shall *mutatis mutandis* apply thereto as they apply in relation to the closure of a highway under section 52 of that Act.

Bom.
LV of
1955.

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

Control on
erection of
buildings.

(2) Permission shall be presumed to have been granted if the *panchayat* fails to ²[communicate its permission] or refusal in respect thereof within two months from the date of receipt of the application for permission. ³[In a case of refusal or in case of permission being granted subject to conditions, the *panchayat* shall communicate to the applicant the reason thereof ; and an appeal shall lie against any such order of refusal or of conditional permission to the Standing Committee within a period of thirty days from the date of communication of such order.]

¹ These words were added by Mah. 36 of 1965, s. 27(1).

² These words were substituted for the words "communicate its sanction", *ibid.*, s. 27(2)(a).

³ This portion was substituted for the portion beginning with the words "In case of refusal" and ending with the words "communication of such refusal", *ibid.*, s 27(2)(b).

* Now, the short title of the Act has been amended as "the Maharashtra Highways Act" (LV of 1955) by Mah. XXIV of 2012, ss. 2 & 3, Schedule, entry 58, with effect from the 1st May 1960.

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

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

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

(a) direct that the erection or re-erection be stopped ;

(b) by written notice require such erection or re-erection to be altered or demolished as it may deem necessary ;

and if the requirement under clause (b) is not complied with within the time fixed in the notice ¹[(such time being not less than thirty days)], the *panchayat* may cause the alteration or demolition to be carried out by its officers and servants and all the expenses incurred by the *panchayat* therefore, shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter IX.

(6) Nothing contained in this section shall apply to any building which is used or required for public service, or for any public purpose, and is the property of the State or Central Government or any local authority, or is to be erected or re-erected by the State or Central Government or the local authority ; but reasonable notice of the proposed construction shall be caused to be given to the *panchayat*, and the objections or suggestions of the *Panchayat*, if any, shall be considered. ²[Nothing in this section shall also apply to any building erected or re-erected for any industrial or commercial purpose.]

Explanation.—The expression “ erect ” or “ re-erect ” with reference to a building in this section, includes—

(a) any material alteration, or enlargement of or in any building ;

(b) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation ;

(c) such alteration of a building as would effect a change in the drainage or sanitary arrangement or materially affect its security ;

(d) the addition of any rooms, buildings, outhouses or other structures to any building ;

(e) the conversion by any structural alteration, into a place of religious worship or into a sacred building of any place or building not originally meant or constructed for such purpose ;

¹ These brackets and words were inserted by Mah. 36 of 1965, s. 27(3).

² This portion was added, *ibid.*, s. 27(4).

(f) roofing or covering an open space between walls and buildings, as regards the structure which is formed by roofing or covering such space ;

(g) conversion into a stall, shop, warehouse, or godown of any building not originally constructed for use as such or *vice-versa* ;

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

53. (1) Whoever, within the limits of the village,—

(a) builds or sets up any wall, or any fence, rail, post, stall, verandah, platform, plinth, step or structure or thing or any other encroachment or obstruction, or

(b) deposits, or causes to be placed or deposited, any box, bale, package or merchandise or any other thing, or

(c) without written permission given to the owner or occupier of a building by a *panchayat*, puts up, so as to protect from an upper storey thereof, any verandah, balcony, room or other structure or thing,

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

(2) The *panchayat* shall have power to remove any such obstruction or encroachment and to remove any crop unauthorisedly cultivated on grazing land or any other land, not being private property, and shall have the like power to remove any unauthorised obstruction or encroachment of the like nature in any open site not being private property, whether such site is vested in the *panchayat* or not, provided that if the site be vested in Government the permission of the Collector or any officer authorised by him in this behalf shall have been first obtained. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter IX. ¹[It shall be the duty of the *panchayat* to remove such obstruction or encroachment immediately after it is noticed or brought to its notice, by following the procedure mentioned above.]

²[(2A) If any *panchayat* fails to take action under sub-section (2) ³[* *], the Collector *suo motu* or on an application made in this behalf, may take action as ⁴[provided in that sub-section, and submit the report thereof to the Commissioner]. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment or unauthorised cultivation of the crop and shall be recoverable from such person as an arrear of land revenue.]

Obstructions and encroachments upon public streets and open sites.

¹ This portion was added by Mah. 38 of 2006, s. 8 (a).

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

³ The words "within such time as may be prescribed" were deleted by Mah. 38 of 2006, s. 8 (b)(i).

⁴ These words were substituted for the words "provided in that sub-section", *ibid.*, s. 8 (b)(ii).

(3) The power under ¹[sub-section (2) or sub-section (2A)] may be exercised in respect of any obstruction, encroachment or ²[unauthorised cultivation of any crop] referred to therein whether or not such obstruction, encroachment or ²[unauthorised cultivation of any crop] has been made before or after the village is declared as such under this Act, or before or after the property is vested in the *panchayat*.

³[(3A) Any person aggrieved by the exercise of the powers by the *panchayat* under sub-section (2) or (3) may, within thirty days from the date of exercise of such powers, ⁴[appeal to the Commissioner and the Commissioner, after making such enquiry as he thinks necessary shall pass such orders as he deems necessary] after giving such person a reasonable opportunity of being heard.]

⁵[(3B) Any order made by the Collector in exercise of powers conferred on him under sub-section (2A) or (3) shall be subject to appeal and revision in accordance with the provisions of the Maharashtra Land Revenue Code, 1966.]

Mah.
XLI of
1966.

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

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

Numbering of
premises.

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

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

¹ These words, brackets, figures and letters were substituted for the word, bracket and figure "sub-section (2)" by Mah. 34 of 1970, s. 10(2)(a).

² These words were substituted for the words "or projection", *ibid.*, s. 10(2)(b).

³ This sub-section was inserted by Mah. 36 of 1965, s. 28.

⁴ These words were substituted for the words " appeal to the standing Committee and the Standing Committee, after making such enquiry as it thinks necessary, shall pass such orders as it deems necessary" by Mah. 38 of 2006, s. 8(c).

⁵ Sub-section (3B) was inserted by Mah. 34 of 1970, s. 10(3).

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

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

¹[CHAPTER III-A.

SPECIAL PROVISIONS FOR GRAM SABHA AND PANCHAYAT IN
SCHEDULED AREAS.

²[**54-1A.** Notwithstanding anything contained in sections 4, 5 or any other provisions of this Act, in the Scheduled Areas,—

(a) a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs, and which is declared as a village in the prescribed manner shall be the village for the purposes of this Chapter ;

(b) every village, so declared under clause (a), shall have a *Gram Sabha* consisting of persons whose names are included in the electoral rolls for the panchayat at the village level and a panchayat may comprise of one or more than one of such villages.]

54A. It shall be competent for every *Gram Sabha* in the Schedule Areas,—

(a) to safeguard and preserve the traditions and customs of the tribals, their cultural identity, community resources and the customary mode of dispute resolutions ;

(b) to appove the plans, programmes and projects to be implemented by the *panchayat* for social and economic development before such plans, programmes and projects are taken up for implementation by such *panchayat* ;

(c) to issue to the *panchayat* certificate of utilisation of funds, spent by that *panchayat* for the plans, programmes and projects referred to in clause (b) ;

(d) to decide priority for implementation of various development schemes of the State or as the case may be, of the Central Government and also to identify and select persons as beneficiaries under the various poverty alleviation and similar other programmes or schemes ;

(e) to enforce prohibition or regulate or restrict through *panchayat* concerned, the sale and consumption of intoxicants ;

(f) to issue directions to the *panchayat* with regard to the regulation, exploitation, management and trade of minor forest produce vested in it, subject to the provisions of the Maharashtra Transfer of Ownership of Minor Forest Produce in the Scheduled Areas and the Maharashtra Minor Forest Produce (Regulation of Trade) (Amendment) Act, 1997 ;

(g) to make recommendations through the *panchayat* concerned to the Collector with a view to prevent alienation of land in the Scheduled Areas and to restore unlawfully alienated land of a Scheduled Tribe. It shall be incumbent on the Collector and the concerned *panchayat* to initiate necessary appropriate action for

Special provisions relating to village and *Gram Sabha*.

Powers and duties of *Gram Sabha* in Scheduled Areas.

Mah.
XLV
of
1997.

¹ This Chapter was inserted by Mah. 27 of 2003, s. 4.

² This section was inserted by Mah. 18 of 2014, s. 2.

prevention or as the case may be, restoration of the land in the Scheduled Area unlawfully alienated ;

(h) to be consulted through the *panchayat* concerned for grant of any licence for money lending under the Bombay Money Lenders Act, 1946 and to take annual review of the money lending business. Any decision taken by the majority of the *Gram Sabha* concerned shall be binding on the concerned authorities and the *panchayat* at the appropriate level ;

Bom.
XXXI
of
1947.

(i) to make recommendation to the *panchayat* concerned with a view to exercise control over local plans and resources for such plans including tribal sub-plans ;

(j) to plan the minor water bodies and grant approval to the decision taken in this regard by the *panchayat concerned*.

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

(k) to grant approval to the establishment of village market in the area of the village. Any decision taken by the majority of the *Gram Sabha* for the establishment of a village market and for management thereof shall be binding on the *panchayat* ;

(l) to be consulted before acquiring any land in the Scheduled Areas falling within its jurisdiction, for development projects and resetting or rehabilitating any person affected by such projects in the Scheduled Areas ;

(m) to be consulted before grant of any licence or any permission for prospective licence for mining lease for minor minerals by concession for the exploitation of minor minerals by auction. Any decision taken by the majority of the *Gram Sabha* concerned shall be binding on the concerned authorities and the *panchayat* at the appropriate level ;

(n) to monitor progress and supervise functioning of institutions and functionaries entrusted with implementation of social sector programmes in the village concerned and make suitable recommendations to the *Panchayat Samiti* and *Zilla Parishad* with regard to implementation of social sector programmes. Any decision taken by the majority of the *Gram Sabha* in this regard shall be binding on the *panchayat* at the appropriate level.

Explanation.--- For the purposes of this clause and clause (d) of section 54B, "social sector" means any scheme, programme, project or work entrusted to a *Zilla Parishad* under the provisions of sections 100, 102, 103 or 123 and to a *Panchayat Samiti* under section 101 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, so also to a *panchayat* under section 45 of this Act ;

Mah.
V of
1962.

(o) to make recommendations through the *panchayat* concerned to the concerned authorities for felling of trees. Any recommendation made by the majority of the *Gram Sabha* shall be binding on the concerned authorities and the *panchayat* ;

(p) to approve the budget for the *panchayat*. Any decision in this regard by the majority of the *Gram Sabha* shall be binding on the *panchayat* ;

(q) to be consulted through the *panchayat* by any Competent Authority in respect of land, water resources, forests and all other natural resources situated within the jurisdiction of such *panchayat*.

Powers and
duties of
panchayats
in Scheduled
Areas.

54 B. Every *panchayat* in the Scheduled Areas shall,---

(a) obtain from the *Gram Sabha* a certification of utilisation of funds , spent by the *panchayat* for the plans, programmes and projects approved under clause (b) of section 54 A ;

(b) be consulted by the Land Acquisition Authority, before acquiring any land in the Scheduled Areas falling within its jurisdiction, for development projects and re-setting or rehabilitating any person affected by such projects in the Scheduled Areas :

Provided that, every *panchayat* shall consult the *Gram Sabha* before conveying its views to the Land Acquisition Authority concerned ;

(c) be competent to make recommendations, to the licencing authorities concerned, and the licencing authorities shall not grant any licence or any permission for prospecting licence or mining lease for minor minerals and concessions for the exploitation of minor minerals by auction, in the Scheduled Areas, without consultation with the *Gram Sabha*. Any decision taken by the majority of the *Gram Sabha* concerned shall be binding on the concerned authorities and the *panchayat* at the appropriate level ;

(d) be competent to monitor progress and supervise functioning of institutions and functionaries entrusted with implementation of social sector programmes in the village concerned and make suitable recommendations to the *Panchayat Samiti* and *Zilla Parishad* with regard to implementation of social sector programmes :

Provided that, every *panchayat* shall consult the *Gram Sabha* before conveying any recommendations to the *Panchayat Samitis* and the *Zilla Parishad*. Any decision taken by the majority of the *Gram Sabha* in this regard shall be binding on the *panchayat* ;

(e) be competent to make recommendations pertaining to alienation of land of the persons belonging to the Scheduled Tribes, to the Collector with a view to prevent alienation of land in the Scheduled Areas and to restore unlawfully alienated land of a Scheduled Tribe :

Provided that, every *panchayat* shall consult the *Gram Sabha* before conveying any recommendation to the Collector ;

Bom. XXXI
of
1947. (f) be competent to make any recommendation to the Registrar appointed under the Bombay Money Lenders Act, 1946 for grant of any licence for money lending. Any decision taken by the majority of the *Gram Sabha* concerned shall be binding on the *panchayat* as well as on the concerned authorities at the appropriate level :

Provided that, every *panchayat* shall consult the *Gram Sabha* before conveying any recommendation to the Registrar :

Provided further that, the executive management of the money lending business shall be with the *panchayat* ;

Mah. XLV
of
1997. (g) be competent to regulate exploitation, management and trade of minor forest produce vested in it, subject to the provisions of the Maharashtra Transfer of Ownership of Minor Forest Produce in the Scheduled Areas, and the Maharashtra Minor Forest Produce (Regulation of Trade) (Amendment) Act, 1997 ;

(h) be competent to manage the minor water bodies.

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

(i) be competent to establish and manage a village market in the area of the village after obtaining approval therefor from the *Gram Sabha*. Any decision taken by the majority of the *Gram Sabha* in this regard shall be binding on the *panchayat* ;

(j) in the Scheduled Areas where the population of the Scheduled Tribes is more than fifty per cent. of the total population, the Office of the Chairperson of such *panchayat* shall be reserved only for the persons belonging to Scheduled Tribes ;

(k) be competent to make recommendations to the concerned authorities for felling of trees in the area of the village after obtaining recommendations of the *Gram Sabha* :

Provided that, any recommendations made by the *Gram Sabha* shall be binding on the *panchayat* ;

(l) be competent to prepare the budget and to get it approved by the *Gram Sabha* :

Provided that, any decision taken by the majority of the *Gram Sabha* concerned shall be binding on the *panchayat* ;

(m) be consulted by any competent authorities in respect of land, water resources, forests and all other natural resources situated within the jurisdiction of *panchayat* after making consultation with the *Gram Sabha* in this regard ;

(n) be competent to get the plans, programmes and projects to be implemented for social and economic development before such plans, programmes and projects are taken up for implementation by such *panchayat*, approved by the *Gram Sabha*.

Meetings of
Gram Sabha.

54 C. (1) Secretary of the *panchayat* shall be Secretary of the *Gram Sabha* and he shall be responsible to call the meetings of the *Gram Sabha*. Such Secretary shall prepare and maintain the proceedings of all meetings of *Gram Sabha* or in his absence any officer authorised in this behalf by the person who is presiding over the meeting shall prepare such proceedings.

(2) Secretary of the *panchayat* shall convey the date, time and place of every meeting of the *Gram Sabha*, not less than fifteen clear days before the date fixed for such meetings to the concerned Officials and members of the *Gram Sabha*.

(3) The first meeting of the *Gram Sabha* in every financial year shall be presided over by the *Sarpanch*, or in his absence by the *Upa-Sarpanch*. In the absence of the *Sarpanch* and *Upa-Sarpanch*, the members of the *Gram Sabha* shall elect one of the members of the *panchayat* present to preside. All other meetings in the financial year shall be presided by such persons who shall be elected by the majority of the members of the *Gram Sabha*.

(4) Unless exempted by the *Gram Sabha*, every meeting of the *Gram Sabha* shall be attended by the concerned village *Kotwal*, *Talathi*, Police Patil, Health Officer, Head Master of the Primary and Secondary School, Agriculture Officer, Junior Engineer of Maharashtra State Electricity Board and Officers in-charge of the Police Station.

(5) Notwithstanding anything contained in this Act or any rules made thereunder, twenty-five per cent. of total number of persons included in the list of voters or hundred of such persons, whichever is less, shall form a quorum for a meeting of the *Gram Sabha*. It shall not be allowed to be conduct any meeting including adjourned meeting without quorum.

(6) If any dispute arises between the *Gram Sabha* or any matter concerning to more than one *Gram Sabhas* within the area of the *panchayat*, shall be brought before the joint meeting of all the *Gram Sabhas* of that *panchayat* and the decision taken by majority at such joint meeting shall be deemed to be the decision taken by each of the *Gram Sabha*.

54D. (1) The *Sarpanch* and *Upa-Sarpanch* shall implement the suggestions and the resolutions made by the *Gram Sabha*. Any remiss on the part of such *Sarpanch* or, as the case may be, *Upa-Sarpanch*, shall be liable for the disqualification for continuing as *Sarpanch* or, as the case may be, *Upa-Sarpanch*, or for being chosen as such for the remainder of the term of office of the member of the *panchayat*, if the *Gram Sabha* makes resolution to that effect by three-fourth majority :

Motion of No
Confidence.

Provided that, no such resolution against the *Sarpanch* or, as the case may be, *Upa-Sarpanch* shall come into effect without the prior approval of the Government.

(2) All officials of the *panchayat* shall implement the suggestions and the resolutions made by the majority of the *Gram Sabha* and shall submit their work report to the *Gram Sabha*. Any remiss on the part of such official shall be punishable departmentally, if *Gram Sabha* makes resolution to that effect by three-fourth majority :

Provided that, no such resolution against any official shall come into effect without the prior approval of the Government.

(3) A *Sarpanch* or, as the case may be, the *Upa-Sarpanch* shall cease to be *Sarpanch* or, as the case may be, *Upa-Sarpanch*, if a motion of no confidence is passed by secret ballot at a special meeting of the *Gram Sabha* and conceded by the majority of more than fifty per cent. of the members of the *Gram Sabha* :

Provided that, a motion of the no confidence shall be moved by not less than one third of the total members of the *Gram Sabha* against *Sarpanch* or, as the case may be, *Upa-Sarpanch* after giving notice thereof to the Secretary of the *Gram Sabha*. The Secretary of the *Gram Sabha* shall immediately deliver such notice to the *Tahsildar*.

(4) The *Tahsildar* after receipt of the notice, within fifteen days from the date of receipt of such notice shall convene a special meeting of *Gram Sabha* at the office of the *panchayat* for considering the motion of no confidence. The Officer not below the rank of *Naib Tahsildar* shall preside over such meeting. The *Sarpanch* or, as the case may be, the *Upa-Sarpanch* against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting (including the right to vote).

(5) The meeting called for considering the no confidence motion under sub-section (4) shall not be adjourned for any reason unless the reasons therefor are recorded in writing by the Presiding Officer of the meeting.

(6) A motion of no confidence shall not be moved within a period of two and half years from the date of election of the *Sarpanch* or, as the case may be, *Upa-Sarpanch*.

(7) If the *Sarpanch*, or as the case may be, the *Upa-Sarpanch* desires to dispute the validity of the motion of no confidence carried under sub-section (3), he shall, within fifteen days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within fifteen days from the date on which it was received by him. Any person aggrieved by the decision of the Collector may, appeal to the Commissioner who shall decide the appeal, as far as possible, within fifteen days from the date on which it was received by him. Any such decision shall, subject to a second appeal under sub-section (8), shall be final.

(8) Any person aggrieved by the decision of the Commissioner, may, within fifteen days, appeal to the Government, and the decision of the Government shall be final.

(9) In case the offices of the *Sarpanch* or, as the case may be, the *Upa-Sarpanch* becomes vacant under sub-section (3) shall be filled, by the by-election of a *Sarpanch* or, as the case may be, *Upa-Sarpanch*, within fifteen days from the date of vacancy of such post and he shall hold office so long as the *Sarpanch* or, as the case may be, *Upa-Sarpanch*, in whose place he has been elected would have held office if the vacancy had not occurred.

(10) A member shall cease to be a member of *panchayat* in the Scheduled Areas, if a motion of no confidence is passed by secret ballot by not less than fifty per cent. of the votes of the electoral ward from which such member has been elected :

Provided that, the provisions of sub-sections (3) to (9) shall *mutatis-mutandis* apply to such no confidence.]

CHAPTER IV.

PANCHAYAT : ITS PROPERTY AND FUND.

Competency of *panchayat* to lease, sale or transfer property.

55. Every *panchayat* shall be competent to lease, sell or otherwise transfer moveable or immovable property which may become ¹[vested in (otherwise than under the provisions of sub-section (1) of section 51)] or be acquired by it and to contract and do all other things necessary for the purposes of this Act :

Provided that no lease of immovable property other than property referred to in sub-section (1) of section 56 for a term exceeding three years, and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer has been made with the previous sanction of the ²[Chief Executive Officer.]

¹ These words, brackets and figures were substituted for the words " vested in " by Mah. 36 of 1965, s. 29.

² These words were substituted for the word " Collector " by Mah. 5 of 1962, s. 286, Tenth Schedule.

IV of 1882. XVI of 1908. **56.** (1) ¹[It shall be competent for a *Zilla Parishad* from time to time to direct that any property vesting in it] shall vest in a *panchayat* and on such direction being issued, ²[the property shall, subject to rules made in that behalf, vest] in the *panchayat* notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908 :

Property of *panchayat*.

Provided that no lease, sale or other transfer of any such immovable property by the *panchayat* shall be valid without the previous sanction of the ³[Chief Executive Officer].

(2) Every work constructed by a *panchayat* out of the village fund, or with Government assistance or peoples' participation shall vest in such *panchayat* ⁴[and every work constructed by a *panchayat* with the assistance of *Zilla Parishad* or *Panchayat Samiti* shall vest in a *panchayat* in the manner provided by rules made in that behalf.]

57. (1) There shall be in each village a fund, which shall be called the village fund. Village fund.

(2) The following shall be paid into, and form part of, the village fund, namely :—

(a) the amount which may be allotted to the village fund by the State Government under the provisions of section 191 of the Bombay District Municipal Act 1901† ; or ⁵[* * *] under section 8 of the Central Provinces and Berar Municipalities Act, 1922† ;

Bom. III of 1901. C. P. and Berar Act II of 1922.

⁶[(b) the proceeds of any tax or fee imposed under section 124 except the general water rate and the special water rate levied under clauses (viii) and (xii), respectively, of sub-section (1) of that section ;]

Mah. V of 1962.

(c) the proceeds of a tax on professions, trades, callings and employments assigned to the *panchayat* ⁷[under clause (b) of section 163 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961];

⁸[(d) the sum representing the share of the *panchayat* in the net proceeds of the taxes, duties, tolls and fees levied by the State as distributed and allocated and determined by the State Government on the recommendations of the Finance Commission ;]

¹ These words were substituted for the words "It shall be competent to a *Zilla Parishad* or *Panchayat Samiti* from time to time to direct that any property vesting in such *Zilla Parishad* or *Panchayat Samiti*" by Mah. 36 of 1965, s. 30(1).

² These words were substituted for the words "the property shall vest", *ibid.*, s. 30(1).

³ These words were substituted for the words "Collector" by Mah. 5 of 1962, s. 286. Tenth Schedule.

⁴ These words were added, *ibid.*, s. 30(2).

† See now the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965 (Mah. XL of 1965) section 90(2).

⁵ The words "under the said Act in its application to the Saurashtra area of the State of Bombay and" were omitted by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

⁶ Clause (b) was substituted by Mah. 5 of 1997, s. 4(a).

⁷ This portion was substituted for the words, brackets, letters and figures "under clause (b) of sub-section (1) of section 102 C of the Bombay Local Boards Act, 1923" by Mah. 36 of 1965, s. 31(1).

⁸ Clause (d) was inserted by Mah. 21 of 1994, s. 22.

(e) all other sums ordered by a court to be placed to the credit of the village fund ;

(f) the sale proceeds of all dust, dirt, dung, refuse or carcasses of animals, except so far as any person is entitled to the whole or a portion thereof ;

¹[(fa) the sale proceeds or royalty of the minor forest produce collected in the Scheduled Areas within the jurisdiction of a *panchayat* and vested in that *panchayat* ;]

(g) sums contributed to the village fund by the State Government or a ²[*Zilla Parishad* or *Panchayat Samiti*] ;

(h) all sums received by way of loans from the State Government or the ³[*Zilla Parishad*] or out of the District Village Development Fund constituted under section 133 ³[and all sums borrowed under section 57A] ;

(i) all sums received by way of gift or contributions by the *panchayat* ;

(j) the income or proceeds of any property vesting in the *panchayat* ;

⁴* * * * *

(l) the net proceeds (after deducting the expenses of assessment and collection) of the cess authorised by section 127 ;

(m) all sums realised by way of rent or penalty otherwise than as the amount of any fine in a criminal case ;

(n) all sums received as pound fees after deducting the expenses ;

⁵[(o) all sums received by way of commission by a *panchayat*, when acting as an insurance agent for implementing any rural Insurance Scheme of the Life Insurance Corporation of India.]

⁶[(3) ⁷[The Secretary and the *Sarpanch* shall be jointly responsible for the safe custody of the village fund, the Village Water Supply Fund and other moneys received on behalf of the *panchayat*, from time to time, and shall jointly operate them for the following purposes], namely :—

(a) authorisation of payments, issue of cheques and refunds in compliance with the provisions of this Act and the rules made thereunder or the resolutions, duly passed by the *panchayat* ;

¹ Clause (fa) was inserted by Mah. 46 of 1997, s. 4.

² These words were substituted for the words "District Local Board" by Mah. 5 of 1962, s. 286. Tenth Schedule.

³ This portion was added by Mah. 35 of 1963, s. 80, Schedule.

⁴ Clause (k) was deleted by Mah. 13 of 1975, s. 15.

⁵ Clause (o) was added by Mah. 36 of 1965, s. 32(2).

⁶ Sub-sections (3) and (4) were added by Mah. 4 of 1981, s. 3.

⁷ These words, brackets and figures were substituted for the words, brackets and figures "Subject to the provisions of sub-section (5) of section 38, the Secretary shall be solely responsible for the safe custody of the village fund, the Village Water Supply Fund and other moneys received on behalf of the *panchayat*, from time to time, and shall operate them for the following purposes" by Mah. 38 of 2006, s. 9 (a).

(b) receive all sums of money on behalf of the *panchayat* in response to notices, bills, appeals and other processes issued by the *panchayat* ;

(c) issue of receipts in the prescribed manner for all sums of money received on behalf of the *panchayat* and crediting them in the relevant fund ;

(d) hold cash imprest on hand, of not more ¹[than one hundred and fifty] at a time, for contingent purpose of the *panchayat* ;

(e) incur contingent expenditure ²[upto one hundred rupees] at any occasion ;

(f) for performing such other duties and exercising such other powers in regard to the funds as may be prescribed.

(4) The Secretary shall submit a weekly statement of accounts to the ³[*panchayat*] and a monthly statement of account to the Block Development Officer, giving in particular the details of the receipts into and payments from and the balance in the funds ⁴[* *].

⁵[57A. A *panchayat* may borrow money for the purpose of carrying out its functions under this Act from such body or association (whether incorporated or not) as may be approved by the State Government in this behalf.] Power of *panchayat* to borrow.

58. ⁶[(1)] All property vested in the *panchayat* under this Act and all funds received by it in accordance with the provisions of this Act and all sums accruing to it under the provisions of any law for the time being in force shall be applied subject to the provisions and for the purposes of this Act and all such funds and sums shall be kept in such custody as may be prescribed. Application of village fund.

⁷[(2) Notwithstanding anything contained in sub-section (1), if any of the *panchayat* areas is falling partly in the Scheduled Area and partly in the non-Scheduled Area, the sale proceeds or royalty of the minor forest produce credited into the village fund under clause (fa) of sub-section (2) of section 57 shall be expended only for the development of the said area of *Panchayat* falling in the said Scheduled Areas.]

¹ These words were substituted for the letters and figures "than Rs. 50" by Mah. 1 of 1998, s. 2(a).

² These words were substituted for the words "upto ten rupees", *ibid.*, s. 2(b).

³ This word was substituted for the word "*Sarpanch*" by Mah. 38 of 2006, s. 9(b)(i).

⁴ The words "under his control" were deleted, *ibid.*, s. 9(b)(ii).

⁵ Section 57A was inserted by Mah. 35 of 1963, s. 80, Schedule.

⁶ This was renumbered as sub-section (1) by Mah. 46 of 1997, s. 5.

⁷ Sub-section (2) was inserted, *ibid.*, s. 5.

Decision of
claims to
property by
or against
panchayat.

59. (1) In any village ¹[* * * *] where any property or any right in or any property is claimed by or on behalf of the *panchayat*, or by any person against the *panchayat*, it shall be lawful for the Collector, after formal enquiry, of which due notice has been given, to pass an order deciding the claim.

(2) Any suit instituted in any Civil Court after the expiration of one year from the date of the communication of any order passed by the Collector under sub-section (1), or if one or more appeals have been made against such order within the period of limitation, then, from the date of the communication of any order passed by the final appellate authority, as determined according to section 204 of the Bombay Land Revenue Code, 1879* ²[* * * *], sub-section (2) of section 158 of the Hyderabad Land Revenue Act, 1317 Fasli, or section 41 of the Madhya Pradesh Land Revenue Code, 1954*, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has received due notice of such order.

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1879.
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of
1317 F.
M. P.
Act, II
of
1955.

(3)(a) The powers conferred by this section on the Collector may be exercised also by an Assistant or Deputy Collector or by a Survey Officer or such other Officer appointed under any of the Acts referred to in sub-section (2).

(b) The formal inquiry referred to in this section shall be conducted in accordance with the provisions relating to such enquiry under the Acts referred to in sub-section (2).

(c) A person shall be deemed to have due notice of any inquiry or order under this section if notice thereof has been given in the prescribed manner.

CHAPTER V.

ESTABLISHMENT, BUDGET AND ACCOUNTS.

Secretary of
panchayat.

60. (1) There shall be ³[one or more secretaries] for every *panchayat*, or a group of *panchayats* as the ⁴[Chief Executive Officer] may (having regard to the extent and population of the village and income of the *panchayat*), by a general or special order, determine.

⁵[Provided that, the Secretary shall also function as Secretary to the *Gram Sabha* of the respective *panchayat*.]

¹ The words "to which a survey of lands being lands not ordinarily used for the purpose only of agriculture has been or is extended under any law for the time being in force" were deleted by Mah. 34 of 1970, s. 11.

* See now the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966).

² The words "or that section of the said Code as applied to the Saurashtra and Kutch areas of the State Bombay" were omitted by the Maharashtra Adaptation of Laws (State and concurrent Subjects) Order, 1960.

³ These words were substituted for the words "a Secretary" by Mah. 36 of 1965, s. 32.

⁴ These words were substituted for the words "State Government" by Mah. 35 of 1963, s. 80, Schedule.

⁵ This proviso was added by Mah. 46 of 1997, s. 6.

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Amended by G.N., R.D.D., No. VPA. 1165/16920-p, dated 9th July, 1966 (M.G., Pt. I-A-C.S., p. 38).

Amended by G.N., R.D.D., No. VPA. 1165/2758-p, dated 31st January, 1967 (M.G., Pt. I-A-C.S., p. 17).

Amended by G.N., R.D.D., No. VPA. 1172/7384 P-II, dated 31st June, 1972 (M.G., Pt. I-A-C.S., p. 76).

Amended by G.N., R.D.D., No. VPE. 1072/37000-E, dated 3rd January, 1974 (M.G., Pt. I-A-C.S., p. 28).

Amended by G.N., R.D.D., No. VPA. 1175/13198-XXIII, dated the 18th June, 1976 (M.G., Pt. I-A-C.S., p. 55).

Amended by G.N., R.D.D., No. VPA. 1174/38428-75-XXIII, dated the 7th August, 1976 (M.G., Pt. I-A-C.S., p. 74).

Amended by Corrig. R.D.D., No. VPA. 1178/2945/CR-186/XXII-B, dated 10th March, 1981 (M.G., Pt. I-A-C.S., p. 12).

Amended by G.N., R.D.D., No. VPA. 1090/CR-1698/21-A, dated 30th August, 1991 (M.G., Pt. IV, p. 1249).

Mah. Act No. 52 of 1994 (M.G.G. Pt. IV-B, dated 16-12-1994).

Amended by G.N., R.D. & W.C.D., No. GPN-2000/CR-18/19, dated 5th August, 2000 (M.G.G. Pt. IV-B, p. 911).

Sec. 176(1)(2)(ii-a).—In exercise of the powers conferred by sub-section (1) and ²[clause (ii-a) and (iii)] of sub-section (2) of Section 176 read with clause (b) of sub-section (1) and sub-section (3) of Section 10 of the Bombay Village Panchayats Act, 1958 (Bom. III of 1959), and of all other powers enabling it in that behalf, the Government of Maharashtra hereby makes the following rules, the same having been previously published as required by sub-section (4) of the said Section 176, namely :—

³[1. Short title.—These rules may be called the Bombay Village Panchayats (Number of Members, Divisions into Wards and Reservation of Seats) Rules, 1966.]

1. M.G., Pt. I-A-C.S., p. 20.
2. Subs. by G.N. of 18-6-1976.
3. Subs. by Mah. Act 52 of 1994, Sec. 6.

2. Definitions.—In these rules, unless the context otherwise requires,—

- (i) "Act" means the Bombay Village Panchayats Act, 1958;
- (ii) "population" in relation to a village means the population of the village as ascertained at the last preceding census¹[of which the relevant figures are available.]
- (iii) "Section" means a section of the Act;
- (iv) "village chavdi" includes a place deemed to be a chavdi under the Bombay Land Revenue Code, 1879 or any law correspondings thereto in force in any part of the State.

²[2-A. Number of members to be elected in Panchayats.—Subject to the provisions of clause (a) of sub-section (1) of Section 10, the number of members to be elected by direct election in each panchayat shall be decided on the basis of the population in a panchayat area, as specified in the table below :—

TABLE

Sl. No.	Population	Number of members to be elected
(1)	(2)	(3)
1	1,500 or less than 1,500	7
2	1,501 to 3,000	9
3	3,001 to 4,500	11
4	4,501 to 6,000	13
5	6,001 to 7,500	15
6	7,501 and above	17.]

³[3. Division of village into wards and number of members to be elected from each ward.—Subject to the provisions of sub-section (1) of Section 10, a village shall be divided into wards and number of members to be elected from each ward shall be fixed in accordance with the following principles, namely :—

- (1) a village shall be divided into suitable number of wards so, however, that the ratio between the number of members to be elected from each ward and the population thereof shall, as far as practicable, be the same throughout all the wards in a village :

1. Subs. by G.N. of 13-6-1972.
 2. Ins. by Mah. Act 52 of 1994 Sec. 7.
 3. Subs. by G.N. of 30-8-1991.

Provided that, the localities in which the population of the Scheduled Castes or Scheduled Tribes is concentrated shall not, as far as practicable, be fragmented :

Provided further that, the geographical situation of a village shall be taken into consideration and geographical continuity of the area shall, as far as practicable, be followed;

- (2) the wards shall be numbered serially in the directions commencing from south, south-west, west, north-west, north, north-east, east and south-east :

Provided that, if more than one ward is situated at one direction, then the ward nearest to the boundary of the village in the said direction shall be numbered as first, the ward adjacent to it as second and so on;

- (3) the number of members to be elected from each ward shall not be more than three and less than two;
- (4) where the number of members to be elected to a village panchayat is divisible by the maximum number of members to be elected from a ward under clause (3), then, equal number of members shall be allotted to all the wards of a village;
- (5) if the number of members to be elected to a village panchayat is not divisible by the maximum number of members to be elected from a ward under sub-rule (3), there shall be allotted the maximum number of seats to the required number of wards and the maximum number of seats to the remaining wards :

Provided that at the time of first election allotment of maximum number of seats shall be from first ward and every subsequent election, till maximum number of seats have been allotted to every ward, from the ward next to the ward from which there was an allotment of maximum number of such seats at the time of preceding election.]

14. Manner of allotment and rotation of seats reserved for Scheduled Castes and Scheduled Tribes.—Subject to the provisions of clauses (a) and (b) of sub-section (2) of Section 10, the seats to be reserved for the Scheduled Castes and the Scheduled Tribes shall be allotted and rotated in accordance with the following principles, namely :—

- (1) Where the number of seats to be reserved for the Scheduled Castes or as the case may be, the Scheduled Tribes and

the number of wards in a village is the same, then there shall be allotted to such Castes, or as the case may be, the Tribes, one seat to every ward.

- (2) Where the number of seats to be reserved for the Scheduled Castes, or as the case may be, the Scheduled Tribes, is less than the number of wards in a village, then the seats shall be allotted in descending order beginning with a ward where the percentage of population of the Scheduled Castes or, as the case may be, the Scheduled Tribes with regard to the total population of such ward in the highest :

Provided that the seats to be reserved shall be rotated, in the subsequent elections, to the wards in the village in which no such seat has been reserved for such Castes or Tribes until such reservation is given to the wards in the village, by rotation in which seats are admissible for such Castes or Tribes, having regard to the proportion of their population in those wards.

- (3) Where the number of seats to be reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes is more than the number of wards in a village, then, with a view to securing representation to the members of such Castes or Tribes in as many wards as possible in the village, one seat shall be allotted to each ward for such Castes or Tribes and the remaining seats shall be allotted and rotated as provided in the proviso to sub-rule (2) :

Provided that, the seats to be reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes under sub-rules (1), (2) and (3) shall be allotted and rotated only among the wards in which seats are admissible for such Castes or Tribes having regard to the proportion of their population in those wards.

- (4) The allotment of seats as under sub-rules (1), (2) and (3) shall be made in such a way that at least one seat, as far as practicable, shall be kept unreserved in each ward.

Explanation.—While calculating the number of seats, the fraction of one-half or more of a seat shall be counted as one and the fraction of less than one-half shall be ignored.]

¹[4-A. Manner of allotment and rotation of seats reserved for Backward Class of citizens.—Subject to the provisions of clause (c) of sub-section (2) of Section 10, the seats to be reserved for Backward

Class of citizens shall be allotted and rotated in accordance with the following principles, namely :—

- (1) The seats to be reserved for the persons belonging to the category of Backward Class of citizens shall be allotted to the wards by drawing lots according to the instructions given by the State Election Commissioner from time to time :

Provided that, the seats to be reserved shall be rotated, in the subsequent elections, to the wards in the village in which no such seats have, in the previous elections been reserved for the category of Backward Class of citizens, until such reservation is given by rotation to each of the wards in the village :

Provided further that, while drawing lots, the seats already reserved for Scheduled Castes and Scheduled Tribes shall be excluded.

- (2) After allotment of seats for the Scheduled Castes or, as the case may be, the Scheduled Tribes, if number of seats left is less than the number of seats required to be reserved for the persons belonging to the category of Backward Class of citizens then, the available number of seats shall be so allotted to such category that at least one seat, as far as practicable, is left unreserved in each ward.

Explanation.—While calculating the number of seats the fraction on one-half or more of a seat be counted as one and the fraction of less than one-half shall be ignored.

¹[4-AA. Notwithstanding anything contained in these rules, if the seat of a member is reserved for the Scheduled Castes or the Scheduled Tribes or as the case may be, the category of Backward Class of citizens (including *Vimukta Jatis* and *Nomadic Tribes*) and no candidate belonging to such Castes, Tribes or, as the case may be, the category of Backward Class of citizens is available, then such seat for the same tenure shall be allotted by draw of lots to any of the categories for which the seat may be reserved under Section 10 of the Act :

Provided that, in case where the seat is reserved for women belonging to the Scheduled Caste or Scheduled Tribes or, as the case may be, the category of Backward Class of citizens (including *Vimukta Jatis* and *Nomadic Tribes*) and no candidate belonging to such Castes or Tribes or, as the case may be, the category of Backward Class of citizens is available, then such seat for the same tenure shall be treated as :
 (i) if originally reserved for women belonging to the Scheduled Caste, then for the Scheduled Castes, (ii) if originally reserved for women belonging to the Scheduled Tribes, then for the Scheduled Tribes, and

(iii) if originally reserved for women belonging to the Backward Class of citizens, then for the Backward Class of citizens.]

4-B. Manner of allotment and rotation of seats reserved for women.—Subject to the provisions of clause (d) of sub-section (2) of Section 10, the seats to be reserved for women shall be allotted and rotated in accordance with the following principles, namely :—

- (1) The seats to be reserved for women belonging to the Scheduled Castes, the Scheduled Tribes or, as the case may be, the category of Backward Class of citizens shall be allotted to the different wards where the seats are so reserved for such Castes, Tribes or the category, as the case may be, by drawing lots according to the instructions given by the State Election Commissioner from time to time from among such reserved seats :

Provided that, such seats shall be rotated only among such wards where the seats are to be reserved for such Castes, Tribes or category :

Provided further that, while rotating such seats, in different wards in village, at the time of subsequent elections, the wards where such seats were already reserved in earlier elections for women from such Castes, Tribes or category, as the case may be, shall be excluded until all the wards where such seats are required to be reserved, have been given such reservation by rotation.

- (2) Once seats are reserved in the appropriate wards for women belonging to the Scheduled Castes, Scheduled Tribes or the category of Backward Class of citizens, then the remaining seats for women shall be reserved in the different wards by drawing lots :

Provided that, while rotating such seats in different wards at the time of the subsequent elections, the wards in which the seats were reserved in the earlier elections for women shall be excluded until such reservation is given to all the wards in the village, by rotation.

- (3) Where only one seat is reserved either for the Scheduled Castes, Scheduled Tribes, or as the case may be, for the category of Backward Class of citizens, in a panchayat, then such seat shall be allotted to women, by drawing lots, once in every three consecutive elections commencing from the first election to be held after the commencement of the Bombay Village Panchayats (Amendment) Act, 1994.

- (4) Where only two seats are reserved either for the Scheduled Castes, Scheduled Tribes, or as the case may be, for the

category of Backward Class of citizens, in a panchayat, then out of those two seats one seat shall be allotted to women, by drawing lots in two out of the three elections, commencing from the first election.

4-C. Preparation of roster for Reservation of Seats.—Roster shall be prepared for a period of every five years, commencing from the twenty third April, 1994, for each village at the Tahsil level for reservation of the seats for the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women.]

5. Publication of constitution of panchayat.—(1) The number of members of a panchayat, the number of wards into which each village shall be divided, ¹[the extent of each such ward,] the number of members which shall be elected from each ward and the ward or wards in which seats are reserved for ²[Scheduled Castes, the Scheduled Tribes, the Backward Class of citizens and women] ³[shall be published by the ⁴[an officer authorised by the State Election Commissioner] a notification in Form 'A' hereto affixing it on the notice board in his office ⁵[and a copy of such notification shall be forwarded to the State Government ⁶[and the State Election Commissioner]. A copy of such notification shall also be affixed at the village chavdi] and also at a conspicuous place in the village; and in the case of a panchayat for a local area comprising a group of revenue villages or hamlets forming part of a revenue village at a conspicuous place, and the village chavdi (if any), in each of such village or hamlets.

(2) Before issuing a notification under sub-rule (1), ⁷[the State Election Commissioner] shall ⁸[cause a general notice in Form 'B' to be affixed on the notice-board in his office and at the village chavdi, and also at a conspicuous place in the village and in the case of a panchayat for a local area comprising a group of revenue villages or hamlets forming part of a revenue village at a conspicuous place and the village chavdi (if any), in each of such villages or hamlets requiring] any person affected by the issue of such notification to submit within such period as may be specified in the notice any objection to the proposal. ⁹[¹⁰[The State Election Commissioner] shall, not later than

1. Ins. by G.N. of 9-7-1966.
2. Subs. by Mah. Act 52 of 1994 Sec. 10.
3. Subs. by G.N. of 3-1-1974.
4. Subs. by Mah. Act 52 of 1994, Sec. 10.
5. Ins. by G.N. of 7-8-1976.
6. Ins. by Mah. Act 52 of 1994, Sec. 10.
7. Subs. by Mah. Act 52 of 1994, Sec. 10.
8. Subs. by G.N. of 9-7-1974.
9. Ins. by G.N. of 31-1-1967.
10. Subs. by Mah. Act 52 of 1994, Sec. 10.

the day immediately following the day on which the notice has been affixed, also cause an announcement to be made by beat of drum in each of the said villages or hamlets that such notice has been affixed as aforesaid.] ¹[The State Election Commissioner] shall then consider the objection submitted to him within the period specified in the notice.

²[FORM 'A'

[See Rule 5(1)]

NOTIFICATION

No. In pursuance of Rule 5(1) of the Bombay Village Panchayats (Number of Members, Divisions into Wards and Reservation of Seats) Rules, 1966, I,.....the officer authorised by the State Election Commissioner hereby notify that,—

- (a) the village panchayat ofshall consist of members;
- (b) the village of shall be divided into wards.
- (c) the number of members specified in column 2 of the Schedule hereto shall be the number of members to be elected from each ward specified against it in column 1;
- (d) the wards specified in column 1 of the Schedule shall be the wards in which seats shall be reserved for the Schedules Castes, the Schedules Tribes, the category of Backward Class of Citizens and Women as indicated in columns (3), (4), (5) and (6), respectively, of the said Schedule.]

³[SCHEDULE

Number and extent of wards	Number of members to be elected	Number of seats reserved for Scheduled Castes	Number of seats reserved for the Scheduled Tribes	Number of seats reserved for the Category of Backward Class of citizens	Number of seats reserved for women				
					From the Scheduled Castes (A)	From the Scheduled Tribes (B)	From the Category of Backward class of citizens (C)	General (D)	Total (A+B+C+D)
(1)	(2)	(3)	(4)	(5)	(6)				

The officer authorised by the State Election Commissioner.]

1. Subs. by Mah. Act 52 of 1994, Sec. 10.

2. Subs. by Mah. Act 52 of 1994, Sec. 10.

3. Subs. by Mah. Act 52 of 1994.

¹**[FORM 'B'**
[See Rule 5(2)]
NOTICE

The following draft of a notification which I..... the officer authorised by the State Election Commissioner propose to issue in pursuance of Rule 5(2) of the Bombay Village Panchayats (Number of Members, Divisions into Wards and Reservation of Seats) Rules, 1966 is hereby published for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration after the.....

2. Any objections or suggestions which may be received by me from any person with respect to the said draft notification before the..... will be considered by me.

NOTIFICATION

No.—In pursuance of Rule 5(2) of the Bombay Village Panchayat (Number of Members, Divisions into Wards and Reservation of Seats) Rules, 1966, I....., the officer authorised by the State Election Commissioner hereby notify that,—

- (a) the village panchayat ofshall consist of ...members;
- (b) the village of.....shall be divided intowards;
- (c) the number of members specified in column 2 of the Schedule hereto, shall be the number of members to be elected for each ward specified against it is column 1;
- (d) the wards specified in column (1) of the Schedule shall be the wards in which seats shall be reserved for the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women as indicated in columns (3), (4), (5) and (6), respectively, of the said Schedule.

²**[SCHEDULE**

Number and extent of wards	Number of members to be elected	Number of seats reserved for Scheduled Castes	Number of seats reserved for the Scheduled Tribes	Number of seats reserved for the Category of Backward Class of citizens	Number of seats reserved for women				
					From the Scheduled Castes (A)	From the Scheduled Tribes (B)	From the Category of Backward class of citizens (C)	General (D)	Total (A+B+C+D)
(1)	(2)	(3)	(4)	(5)	(6)				

The officer authorised by the State Election Commissioner.]

1. Subs. by Mah. Act 52 of 1994.

2. Subs. by Mah. Act 52 of 1994.

THE BOMBAY VILLAGE PANCHAYATS ELECTION RULES, 1959

G.N., L.S.G. & P.H.D., No. VPA. 1159-P, dated 6th June, 1959¹

Amended by G.N., L.S.G. & P.H.D., No. VPA. 1160-P, dated 1st April, 1960 (B.G., Pt. I-A-C., S., p. 56).

Amended by G.N., C. & R.D., No. VPA. 1160-P, dated 28th September, 1960 (M.G., Pt. I-A-C. S., p. 42).

Amended by G.N., C. & R.D.D., No. VPA. 1161-P, dated 1st December, 1961 (M.G., Pt. I-A-C, S., p. 77).

Amended by G.N., C. & R.D.D., No. VPS. 1160/26818-E, dated 29th March, 1962 (M.G., Pt. I-A-C. S., p. 19).

Amended by G.N., C. & R.D.D., No. VPS. 1162/19510-E, dated 16th June, 1962 (M.G., Pt. I-A-C. S., p. 30).

Amended by G.N., C. & R.D.D. No. VPA. 1163/81393-P, dated 23rd December, 1963 (M.G., Pt. I-A-C. S., p. 38).

Amended by G.N., R.D.D. No. VPA. 1165/4853-P, dated 12th December, 1966 (M.G., Pt. I-A.C., S., p. 78).

Amended by G.N., R.D.D. No. VPA. 1165/3184-P, dated 17th February, 1967 (M.G., Pt. I-A-C. S., p. 21).

Amended by G.N., R.D.D., No. VPA. 1167/10592-P, dated 25th March, 1967 (M.G., Pt. I-A-C. S., p. 29).

Amended by G.N., R.D.D. No. VPA. 1167/27256-N, dated 22nd August 1968 (M.G., Pt. I-A-C. S., p. 124).

Amended by G.N., R.D.D. No. VPA. 1168/4696-N, dated 7th May, 1969 (M.G., Pt. I-A-C. S., p. 42).

Amended by G.N., R.D.D. No. VPA. 1170/14886-E, dated 9th June, 1971 (M.G., Pt. I-A-C. S., p. 329).

Amended by G.N., R.D.D. No. VPE. 1071/51033-E, dated 27th December, 1971 (M.G., 1972, Pt. I-A-C. S., p. 1).

Amended by G.N., R.D.D. No. VPA. 1171/42141-E, dated 25th January, 1972 (M.G., Pt. I-A-C. S., p. 13).

Amended by G.N., R.D.D., No. VPA. 1171/7649-E, dated 3rd April, 1973 (M.G., Pt. I-A-C. S., p. 44).

Amended by G.N., R.D.D. No. VPE. 1072/14955-E, dated 31st May, 1973 (M.G., Pt. I-A-C. S., p. 64).

1. B.G., Pt. I-A-C. S., p. 106.

Amended by G.N., R.D.D. No. VPE. 1072/41422-E, dated 28th May, 1974 (M.G., Pt. I-A-C. S. p. 71).

Amended by G.N., R.D.D. No. VPE. 1078/3512/(CR-208) XXIII-B, dated 18th August, 1979 (M.G., Pt. I-A-C. S. p. 35).

Amended by Carrig. R.D.D., No. VPE. 1079/24578/CR-531/XXIII-B, dated 8th July, 1980 (M.G., Pt. I-A-C, S., p. 147).

Amended by Mah. Act 52 of 1994, Sec. 12.

Amended by G.N., R.D.D., No. GPN. 09-00/CR-223/06, dated 27th February, 2002 (M.G. Pt. IV-B, (Ex.) P. 3).

Amended by G.N., R.D.D., No. 2000/CR-05 (19)/06, dated 4th July, 2002 (M.G. Pt. IV-B, (Ex.) P. 712).

Amended by G.N., R.D.D., No. GPN. 1001/CR-247/06, dated 28th September, 2004 (M.G. Pt. IV-B, P. 1024).

Amended by G.N., R.D.D., No. GPN. 05-2000/CR-55/PR-2, dated 27th December, 2004 (M.G. Pt. IV-B, P. 1275).

Amended by G.N., R.D.D., No. VPE. 2005/CR-146/PR-2, dated 5th January, 2006 (M.G. Pt. IV-B, P. 10).

Sec. 176(1) and (2)(iii) and (iv).—In exercise of the powers conferred by sub-section (1) and clauses (iii) and (iv) of sub-section (2) of Section 176 read with sub-section (3) of Section 10 and Section 11 of the Bombay Village Panchayats Act, 1958 (Bom III of 1959), the Government of Bombay hereby makes the following rules, namely :—

1. Short title.—These rules may be called the Bombay Village Panchayats Election Rules, 1959.

NOTE

Requirement of Specific Rules.—Modification of Rules time to time increases to litigation which can be avoided if rules one specific; clear. [*Sadashiv Vishnu Nagarkar v. Maroti Baloba Vyavahare*, AIR 1970 Bom 99 (DB) : 1969 Mah LJ 740 : 71 BLR 519].

2. Definitions.—In these rules, unless the context requires otherwise,—

- (1) "Act" means the Bombay Village Panchayats Act, 1958;
- (2) "Election" means an election held to elect a member to a panchayat;
- (3) 1* * * * *
- 2* * * * *

1. Deleted by G.N. of 22-8-1968.

2. Deleted by G.N. of 23-12-1963.

- (4) "Presiding Officer" means any person appointed by a ¹[an officer authorised by the State Election Commissioner] under Rule-6 to be a presiding officer;
- ²[(4a) "Public holding" means any day which is a public holiday for the purposes of Section 25 of the Negotiable Instruments Act, 1881 (26 of 1881), or any day which is notified by the State Government] to be a holiday for Government offices in the State;]
- (5) "reserved seat" means a seat reserved for ³[the Scheduled Castes, the Scheduled Tribes or Backward Class of citizens and women];
- (6) "Returning Officer" means any person appointed by a ⁴[an officer authorised by the State Election Commissioner] under rule 6 to be a Returning Officer;
- (7) "Section" means a section of the Act;
- ⁵[(7a) ⁶[an officer authorised by the State Election Commissioner] includes a Naib-Tahsildar if he exercises the powers of ⁷[an officer authorised by the State Election Commissioner];]
- (8) "Village Chavdi" includes a place deemed to be a *chavdi* under the Bombay Land Revenue Code, 1879, or any law corresponding thereto in force in any part of the State;
- (9) "Voter" means a person entitled under sub-section (1) of Section 13 to vote at an election.

SYNOPSIS

1. Power of B.D.O.	647
2. Programme for election.	648

1. Power of B.D.O.—Block Development Officer of a village is not empowered determine election programme. [*Collector Buldana v. Shama*, 1968 Mh LJ 450].

It is unfortunate that neither counsel appearing on both sides brought to the notice of the Court that the proviso to Rule 2(3) of the Bombay Village Panchayats Election Rules was deleted. It also appears that the book which was referred to did not have the corrected provision of Rule 2(3). In view of his obvious mistake which has cropped in on account of reliance on the wrong rule, we direct that in view of the change in the definition of "Mamlatdar", it

1. Subs. by Mah. Act 52 of 1994, Sec. 12.
2. Ins. by G.N. of 25-1-1972.
3. Subs. by Mah. Act 52 of 1994, Sec. 12.
4. Subs. by Mah. Act 52 of 1994, Sec. 12.
5. Ins. by G.N. of 28-8-1968.
6. Subs. by Mah. Act 52 of 1994, Sec. 12.
7. Subs. by Mah. Act 52 of 1994, Sec. 12.

is the Mamlatdar or an officer included in the definition of Mamlatdar in Rule 2(3) who will be the officer properly entitled to exercise the power under Rule 7 for fixing the dates of election etc. [*Collector Buldhara and others v. Shama and others*, 1968 Mh LJ 450].

2. Programme for election.—The B.D.O. has power to fix programme for election to village panchayat under Rule 2(3) and not the Tahsildar. [*Shama v. Collector, Buldana*, 1967 Mh LJ Note 39].

3. Maintenance and custody of lists of votes.—(1) The Officer designated by ¹[the State Election Commissioner] under sub-section (2) of Section 12 of the Act shall maintain a list of voters of each ward of the village which shall contain the names of all persons who are enrolled as voters in the electoral roll of the ²[Maharashtra Legislative Assembly] from that part of the constituency of the Assembly as is included in each such ward. Such officer shall authenticate each list of voters so maintained and shall sign every page thereof and shall seal it with the common seal of the panchayat.

(2) The officer aforesaid shall from time to time carry out in the authentic copy of each list of voters maintained under sub-rule (1) all corrections which may be made in the electoral roll of the ³[Maharashtra Legislative Assembly] and shall initial below each correction so made.

(3) The lists of voters maintained under this rule shall be kept in the panchayat chest or safe under lock and key and the officer whose duty is to keep the key of the chest or safe shall be responsible for the safe custody of the said lists.

(4) Copies of lists of voters maintained under this rule shall be kept open for public inspection at the village *chavdi* ⁴[if any], and at the village panchayat office.

⁵[(5) The ⁶[an officer authorised by the State Election Commissioner] shall at least fifteen days before the date fixed for the nomination of candidates for every general election of the village panchayat, give a public notice of the places where copies of the relevant lists of voters are kept open for public inspection. Such notice shall be affixed at the village panchayat office and at the village *chavdi*, or if there be no village *chavdi*, at any other conspicuous public place in the village.]

SYNOPSIS

1. Govt. Notification under Section 12.	649
2. Correction of voters list Bombay Village Panchayat Act, 1959; Sections 12 and 13 Bombay Village Panchayat Election Rules, 1959, Rule 3.	649
3. Collection of voter list.	649

1. Subs. by Mah. Act 52 of 1994, Sec. 12.
2. Ins. by G.N. of 28-8-1968.
3. Ins. by G.N. of 28-8-1968.
4. Subs. by G.N. of 12-12-1966.
5. Ins. by G.N. of 12-12-1966..
6. Subs. by Mah. Act 52 of 1994, Sec. 12.

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1. Govt. Notification under Section 12.—Where the last date for notification was 25-8-1961 and supplementary list of voters made available on 25-8-1961 then voters in supplementary list cannot cast their voters. [*Faizu Mahadev v. Civil Judge, Hinganghat*, 1964 Mh LJ 25 : AIR 1964 Bom 160 : 65 Bom LR 755].

2. Correction of voters list Bombay Village Panchayat Act, 1959, Sections 12 and 13 Bombay Village Panchayat Election Rules, 1959, Rule 3.—In the discharge of his duties under Section 12(2) of Officer appointed has an important function to perform. It is he who has to correct the list of voters in accordance with the Bombay Legislative Assembly Rules as and when they are corrected; but when by the rules he is enjoined to do that it can only mean that he is enjoined to do it in accordance with the provisions of the Act under which the rules themselves are framed. Surely the rules empowering an officer to act cannot empower him to flout the very Act under which these rules are framed. Therefore, in the instant case was bound to have regard to the provisions of Section 12(1) and in fact give effect to that section in the orders which he passed upon the new list of voters which had come to him. As Court has said, Section 12(1) clearly provided that the electoral roll in force on the day prior to the date of nominations shall be the list of voters for the ward. Therefore, the list received on August 25, 1961, was not the list of voters as provided by Section 12(1) and he was, therefore, right in not permitting the correction of the list of voters in accordance with the corrections made in the Bombay Legislative Assembly electoral roll, after August 24, 1961.

Court set aside the finding of the civil Judge on this question and hold that the defect pointed out by the learned civil Judge that 10 voters as per the list were not allowed to vote was not a defect at all. On the contrary those 10 voters were rightly excluded from voting. Therefore, that would not be the objection vitiating the election. [*Faiju Mahadeo Chandekar and others v. Civil Judge Judicial Division*, 1964 Mh LJ 25 : 65 Bom LR 755].

3. Collection of voter list.—It is the Collector who has to correct the voter list, under rules means he has to perform duties under accordance with provisions of Act. [*Faiju Mahadeo Chandekar v. Civil Judge*, AIR 1964 Bom 160 (DB) : 1964 Mh LJ 25 : 65 Bom LR 755].

4. Voter list.—If the lists are not corrected within time, then it is a conclusive proof and cannot be disputed. [*Dhondba Adku v. Civil Judge*, AIR 1967 Bom 232 (DB) : 1966 Mh LJ 869].

5. Set aside of election.—To set aside the election for omission to specify the name is not proper being mere irregularity. [*Raja Ram Ganpat Patil v. Yashwant Datta Patil*, AIR 1971 Bom 104 (DB) : 1969 Mah LJ 669 : 71 BLR 458].

6. Assessment of Rule.—Assessment of Rules on non-observance not illegal. [*Bhairulal Chunnilal v. State of Bombay*, AIR 1954 Bom 116 : 1955 Bom LR 882].

4. Power of ¹[the State Election Commissioner] to determine reserved seats for wards.—Subject to the provisions of sub-section

1. Subs. by Mah. Act 52 of 1994, Sec. 12.

(2) of Section 10 of the Act and ¹[rules made thereunder] the ward or wards in which seats should be reserved ²[the Scheduled Castes, the Scheduled Tribes, Backward Class of citizens and women] shall be determined by ³[the State Election Commissioner].

⁴**5. Qualification of candidates for reserved seats.**—Where any seat is reserved for the Scheduled Castes, Scheduled Tribes the category of Backward Class of citizens or Women, only persons belonging to the Scheduled Castes, Scheduled Tribes, the category of Backward Class of citizens or Women, as the case may be, shall be qualified to be chosen to fill such seat.]

6. Appointment of election staff.—The ⁵[an officer authorised by the State Election Commissioner] shall, for purposes of every election, appoint a Returning Officer to hold the election and a Presiding Officer for each place fixed for the recording of votes (hereinafter referred to as the polling station). He may also appoint one or more polling officers to assist the Returning and Presiding Officers in the election work. Such officers may be appointed either by name or *ex officio*.

7. Power of ⁶[an officer authorised by the State Election Commissioner] to appoint dates etc. for various stages of election.—

⁷[(1) When fixing the date for holding an election under Section 11, ⁸[an officer authorised by the State Election Commissioner] shall subject to the provisions of Rule 31-A by order, appointed,—

- (a) the last date for making nomination which shall not be later than fifteen days before the date fixed for the poll; or if that day is a public holiday, the next succeeding day which is not a public holiday and the time and place for making nomination;
- (b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations, or, if that day is a public holiday, the next succeeding day which is not a public holiday, and the time and place for the scrutiny of nominations on that day;
- (c) the last date for the withdrawal of candidates, which shall be the second day after the date for the scrutiny of

1. Subs. by Mah. Act 52 of 1994, Sec. 13.
2. Subs. by Mah. Act 52 of 1994, Sec. 12.
3. Subs. by Mah. Act 52 of 1994, Sec. 12.
4. Subs. by Mah. Act 52 of 1994, Sec. 12.
5. Subs. by Mah. Act 52 of 1994, Sec. 12.
6. Subs. by Mah. Act 52 of 1994, Sec. 12.
7. Subs. by G.N. of 25.1.1972.
8. Subs. by Mah. Act 52 of 1994, Sec. 12.

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nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday, and the time and place for making withdrawals;

- ✓ 11
- (d) the date on which and the time during which a poll shall, if necessary, be taken which shall be a date not earlier than the fifteen day after the last date for making nominations; and
- (e) the date or dates (not being a date or dates falling on a public holiday or holidays) and the time and place for the counting of votes on such date or dates.

(2) On the issue of the order under sub-rule (1), ¹[an officer authorised by the State Election Commissioner] shall give a public written notice in Form-AA of the intended election inviting nominations of candidates for such election.

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(2-A) Copies of the order under sub-rule (1) and of the notice under sub-rule (2) shall be published, not later than fifteen days before the last date fixed for the nomination of candidates, by affixing at the office of the village panchayat and at the village *chavdi*, or, if there is no village *chavdi*, at any other conspicuous public place in the village appointed by ²[an officer authorised by the State Election Commissioner] in this behalf.]

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(3) The dates, hours and place or places appointed under sub-rule (1) shall not be changed except with the sanction of ³[the State Election Commissioner].

⁴[(4) Notwithstanding anything contained in sub-rule (3), where ⁵[an officer authorised by the State Election Commissioner] is of the opinion that it is necessary in the public interest so to do, he may, and during any period which is declared by Government to be a period of National or State Mourning, he shall, subject to such general or special instructions as the State Government may issue in this behalf, by order change any dated fixed as aforesaid. In cases falling in the former category, he shall record in the order the reasons for which the date has been changed in the public interest.

In either case, he shall forthwith send a copy of the order to the State Government and shall publish it by affixing it at the Village Panchayat Office and at the Village *chavdi* or if there is no Village *chavdi* at any other conspicuous place in the village.]

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1. Subs. by Mah. Act 52 of 1994, Sec. 12.
 2. Subs. by Mah. Act 52 of 1994, Sec. 12.
 3. Subs. by Mah. Act 52 of 1994, Sec. 12.
 4. Subs. by G.N. of 22.8.1968.
 5. Subs. by Mah. Act 52 of 1994, Sec. 12.

SYNOPSIS

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A Sarpanch who looses election or his majority used to allege irregularity, caution was required by trial Judge to seek corroboration. [*Raja Ram Ganpat Patil v. Yashwant Datta Patil*, AIR 1970 Bom 104 (DB) : 1969 Mh LJ 669].

1. Rejection of nomination paper.—Where the father of petitioner was in arrears of house tax then nomination paper of petitioner/son who is residing with his father liable to be rejected. [*Laxman v. Returning Officer, Khed*, 1977 Mh LJ Note 75].

2. Procedure.—Result of election for reserved seat has to be declared first followed by general seats. [*Bhika Poona Kanpate v. Civil Judge, Jr. Div., Gondia*, 1970 Mh LJ 648 : AIR 1971 Bom 277 : 73 Bom LR 352].

3. Authority to hold election.—The State Election Commission would be competent authority to hold election after coming into force of amended Act, 1994 of Gram Panchayat. [*Savalaram Hiraji Jadhav v. State of Maharashtra*, 1995 (2) Mh LJ 312 : 1995 (2) Bom CR 432].

4. Panchayat Election Process—Effect of.—The respondent No. 2 passed the impugned order dated 8th July, 1994 in view of the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 1994 having already been brought into force with effect from 23rd April, 1994 and the telephonic message received by him duly transcribed at Exhibit "J" to the petition. By Section 6 of the Amending Act No. 21 of 1994, Section 11 of the Bombay Village Panchayats Act, 1958 was amended. Section 11(2) of the Bombay Village Panchayats Act as amended reads as under :

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

In court's opinion, the respondents have clearly misread the said provision. In this case, the election process was commenced by the Tahsildar under the unamended provision as far back as on 5th April, 1994. It is not the mandate of law that the election process duly commenced by the Tahsildar stands reversed as a result of the provisions contained in Maharashtra Act 21 of 1994 and the State Election Commission should restart the election process from inception. The State Election Commission is the competent authority to hold the election after 23rd April, 1994 whereof the election process was not commenced prior to 23rd April, 1994.

In this view of the matter the impugned order dated 8th July, 1994 is set aside. The prescribed authority shall publish the names of elected members to the Gram Panchayat of Neral in accordance with the law and shall hold the election of Sarpanch and Upsarpanch of the said Gram Panchayat as expeditiously as possible. [*Savalaram Hiraji Jadhav v. State of Maharashtra*, 1995 (2) Mh LJ 312 : 1995 (2) Bom CR 432].

5. Requirements of Explan. 2.—Making payment on 22-3-1984 when the last date for filing nomination was 27-3-1984 fulfilled requirements of Explan. 2 of Section 14(4) of Act. [*Ram Krishna Vithoba Pardhi v. W.T. Kamhade*, 1984 Mh LJ 816 : AIR 1984 Bom 448].

6. Election of Sarpanch.—It is necessary to remember that jurisdiction under Articles 226 and 227 of the Constitution is limited and that we should not re-appreciate evidence and substitute our conclusion of fact for that recorded by the Tribunal below. There are, however, larger issues involved in this matter. Besides, the finding of fact recorded by the learned Judge that the notification issued by the Mamlatdar under Rule 7(1) was published in the village of Mhalunge not on March 28 but on March 31, 1967 is so predominantly based on unwarranted assumptions that it seems to us impossible to accept that finding. The learned Judge observes that the Mamlatdar of Karveer had issued the notification on March 28 and one should assume that the notification was despatched by him to the Sarpanch of Mhalunge by post. Not only is there no warrant for this assumption—and common experience in such matters runs counter to such an assumption—but there is a covering letter sent by the Mamlatdar to the Sarpanch along with the notification of the 28th which furnishes intrinsic evidence to show that the notification was not despatched by post but was personally forwarded through a messenger. The covering letter, a part of which is addressed to the Sarpanch, requests the latter in clear terms that the notification accompanying the letter should be published “to-day itself”. It is, in our opinion, impossible that the Mamlatdar, who, as is clear from the covering letter, was alive to the urgency of the publication of the notification on the very same day, would take the risk of despatching the notification by post.

What is important is that though the Sarpanch was requested by the Mamlatdar to make an immediate report as to the publication of the notification, the Sarpanch did not make any report to the Mamlatdar that he had published the notification on the 31st. In these circumstances, the Judge need not have felt constrained to accept the word of the Sarpanch that the Gram Sevak had gone on unauthorised leave from March 29, that the notification issued by the Mamlatdar under Rule 7(1) was found lying unattended in the desk of the Gram Sevak, that the Sarpanch accidentally hit upon it on the 31st and that he took immediate steps to have the notification published. If the evidence such as the one given by the Sarpanch in this case is accepted, the results of elections would have to depend upon the sweet will of the Sarpanchas. A Sarpanch, who loses an election or his majority, might allege after the election results are declared that certain illegalities were committed by him or by someone in his office and whether those illegalities have been committed or not would have to depend upon his bare word. Court, therefore, of the opinion that the learned Judge should have exercised the caution of seeking for some corroboration to the bare word of the Sarpanch. This is not a case in which in the very nature of things it might have been difficult to look out for some corroboration, because the best corroboration would have been a contemporaneous report made by the Sarpanch in accordance with the request made by the Mamlatdar that a report regarding the publication of the notification in the village should be immediately forwarded. There is no such report on the record and the Sarpanch has in fact admitted in his cross-examination that he did not make any contemporaneous report to the Mamlatdar. The Sarpanch, finding that he had lost the majority, has given an untruthful account in regard to the date of publication of the notification.

It must, therefore, be held that what was required to be done in the ordinary course of business was in fact done and that, as stated by the petitioners in their evidence, the notification of the Mamlatdar was published in the village not on the 31st but on the 28th itself. If the notification was published on the 28th, the last date for filing nominations could be fixed as April 13 and therefore, one of the three challenges made by respondent No. 1 to the election of the petitioners must clearly fail.

Normally, a period of not more than fifteen days is thus kept and therefore, it is necessary to scrutinise the nominations immediately after the period for filing nominations has expired. It is, however, not alleged in this case that the Mamlatdar had any oblique motive in postponing the scrutiny of nominations or that the postponement of scrutiny of nominations by one day had caused prejudice to any voter or candidate. The non-compliance, therefore, with the provision contained in the second part of the proviso to Rule 7(1) cannot invalidate the election. [*Raja Ram v. Yeshwant*, 1969 Mh LJ 669 (Bom)].

8. Nomination of candidates.—(1) On the day appointed for the nomination of candidates, and during the hours appointed by the Mamlatdar under Rule 7 in this behalf, each candidate shall make an application in writing in Form 'A' signed by him and present it either in person or through a representative authorised in writing in this behalf by such candidate to the Returning Officer signifying his willingness to serve as a member of the panchayat.

(2) On receiving a nomination paper under sub-rule (1), the Returning Officer shall write on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and exact time at which the application was delivered to him.

¹[(3) When an election is held at or about the same time for two or more wards in a village, one and the same person may stand for election in all or any number of such wards.]

²[*Explanation.*—A person who is unable to write his name shall be deemed to have duly signed the nomination paper if he has placed a mark or thumb impression in the presence of the Returning Officer or any other officer authorised by the Returning Officer in this behalf and such officer on being satisfied as to the identity of that person, has attested the mark or thumb impression as the mark or thumb impression of that person.]

SYNOPSIS

1. Election—Set aside of	655
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4. "Candidate at election".	656
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1. This sub-rule was inserted by G.N., L.S.G. and P.H.D., No. VPA. 1160-P, dated the 1st April, 1960.

2. Ins. *vide* G.N., R.D.D., No. VPE. 1072/14955-E, dated 31st May, 1973.

1. Election—Set aside of.—The language of Rule 8 of the Village Panchayat Election Rules provides that on the day appointed for the nomination of candidates, each candidate shall make an application in writing in Form 'A' signed by him and present it either in person or through a representative authorised in writing in this behalf by such candidate to the Returning Officer signifying his willingness to serve as a member of the panchayat. On receipt of such nomination paper the Returning Officer is required to write on the nomination paper its serial number and also to issue thereon a certificate stating the date on which and exact time at which the application was delivered to him. The nomination form, namely Form 'A' itself mentions that the name of the ward for which the candidate is nominated, full name of the candidate, his name and address and others and other particulars as mentioned in the said form shall be given. The signature of the candidate is to be made at the foot of this form. The date on which and time at which the nomination paper was delivered to the Returning Officer are to be mentioned. The bottom part of this form is a receipt which is to be signed by the Returning Officer and handed over to the candidate or to the person presenting the nomination paper on behalf of a particular candidate. From this entire rule and Form 'A' I do not see any provision to the effect that it is the duty of the Returning Officer to see that the nomination paper is complete in all its respects including the signature of the candidate. Apart from the total absence of a language indicating such a duty on the part of the Returning Officer, one must also on a *priori* reasoning hold that such a duty is not cast upon the Returning Officer, because there is a different date fixed for the scrutiny of the nomination papers and it is on that day that the Returning Officer has to scrutinise the nomination papers to see whether they are in accordance with the rule and the form prescribed under the rule. In fact if the Returning Officer is asked to scrutinise the nomination papers on the same day on which they are presented, he will, in my opinion be exceeding his jurisdiction because the stage of scrutinising the nomination papers is yet to arrive and till that stage is arrived the Returning Officer cannot scrutinise the nomination papers.

The Explanation deals only with a situation where a candidate is not able to put his signature on Form 'A' as required by the said form. In such a case the person who is unable to write his name is allowed to place a mark of thumb impression, which he shall do in the presence of the Returning Officer. If, however, such a candidate is rash enough or negligent enough to hand over his nomination paper to the Returning Officer without putting a mark or his thumb impression, then it is not the duty of the Returning Officer to point out the defect in the form to the candidate concerned. If a candidate wants to avail of the facility that is given by the Explanation then it is his duty to tell the Returning Officer to whom he is handing over the nomination paper that he is an illiterate person, that he wants to make a mark or put his thumb impression on Form 'A', and that the Returning Officer should satisfy about his identity as required by the said Explanation. Since it is not the duty of the Returning Officer at the stage of accepting the nomination papers to scrutinise them to see whether they are complete in all respects. It cannot be said to impose such a duty on the Returning Officer. Neither the language of the said Explanation nor the general scope of Rule 8 of which the said Explanation forms a part is capable of giving rise to such an inference. The reasoning of the learned civil Judge, therefore, is incorrect. It is wholly opposed to the language of Rule 8 read with Form 'A'. The order passed by the civil Judge, therefore, discloses a patent error of law calling for interference by this Court

under Article 227 of the Constitution. [*Maruti Dadakhe and another v. Baburao Jyoti Kamble*, 1986 Mh LJ 933 (Bom)].

2. Production of authority letter.—Where the nomination paper was presented by an Agent then authority of candidate not necessary to be produced at that relevant time. [*Shivshankar v. Anna Bala*, 1965 Mh LJ Note 68].

3. Nomination paper.—Sub-rule (1) of Rule 8 of the Bombay Village Panchayat Election Rules, 1959, requires that the nomination paper shall be presented by the candidate personally or through the representative authorised in writing in this behalf by the candidate. The rule gives an option to the candidate. He may present the nomination paper personally or he may present it through another person whom he had authorised in writing in this behalf. The rule does not require that where a candidate does not present a nomination paper personally but through another person, the authority authorising that person to present the nomination paper must also be produced along with the nomination paper. All that is required by the rule is that the person who presents the nomination paper must possess an authority in writing from the candidate authorising him to do so. The authority must, therefore, be in existence before the nomination paper is represented. It cannot be given after the nomination paper is presented, because in that case the nomination paper cannot be said to have been presented by a person who at that time had the authority to present such nomination paper. If, however, the authority in writing is given before the nomination paper is presented, then the mere fact that it is not produced along with the nomination paper will not make the nomination paper invalid. In cases in which, therefore, a nomination paper is not presented personally by the candidate the requirements of the rule will be complied with, if the authority authorising the representative to present the nomination paper on behalf of the candidate is given in writing before the nomination paper is presented, and it is immaterial whether such authority is produced or not at the time when the nomination paper is presented. The question whether the representative had been given the authority before the nomination paper was presented will have to be decided in each case on the facts of that case. [*Shivshankar Ramakrishna Kini v. Anna Bala*, 1965 Mh LJ Note 68].

4. "Candidate at election".—A candidate where nomination paper is wrongly rejected is competent to file election petition at any stage of election. [*Hanifabi v. Kamal*, 1977 Mh LJ 673].

5. Nomination form.—Omission to mention in nomination form whether candidate contesting general seat or reserved seat for woman would not invalidate nomination paper. [*Smt. Shashikalabai v. Returning Officer, Gram Panchayat, Election*, 1968 Mh LJ 391 : AIR 1968 Bom 445 : 70 Bom LR 310].

9. 1* * * *

10. Deposit on nomination.—(1) On or before the date appointed for the nomination of candidates each candidate shall deposit or cause to be deposited with the Returning Officer a sum of ²[five hundred rupees] in cash :

1. Rule 9 was deleted by G.N., L.S.G. and P.H.D., No. V.P.A. 1160-P, dated the 1st April, 1960.
2. Subs. for words "fifty rupees" by G.N. of 28.9.2004.

Provided that in a ward in which a seat or seats is or are reserved for ¹[the Scheduled Castes or ²[Scheduled Tribes and the Backward Class of citizens] ³[* * * *]] the sum to be deposited by or on behalf of a candidate who is a Woman or a member of a Scheduled Castes or Scheduled Tribes shall be ⁴[rupees hundred].

No candidate shall be deemed to be duly nominated unless the deposit referred to in this sub-rule has been made.

(2) Where a candidate by whom or on whose behalf such deposit has been made withdraws his candidature in the manner and within the time specified in Rule 13 or where the nomination paper of such candidate is rejected, the deposit shall be returned to the candidate or any other person who made the deposit, as the case may be, and, if any candidate dies before the commencement of the poll, such deposit shall be returned (a) if made by him, to his legal representative or (b) if not made by the candidate, to the person by whom it was made.

(3) If a candidate by whom or on whose behalf such deposit has been made is not elected and the number of votes polled by him does not exceed one-eighth of the total number of votes polled divided by the number of members to be elected, the deposit shall be forfeited to the State Government.

(4) For the purposes of sub-rule (3), the total number of votes polled shall be deemed to be the total number of counted voting papers, other than spoilt voting papers.

(5) A deposit made under sub-rule (1), if it is not returned under sub-rule (2), or forfeited under sub-rule (3), shall be returned to the candidate or any other person who made the deposit, as the case may be, as soon after the publication of the result of the election under Rule 37 as may be practicable.

SYNOPSIS

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3. Voting by Ballot—Election.	658

1. Demand for voting by ballot.—Perusal of Rule 10 indicates that if an election has to be held for said posts, the voting at such election shall be by show of hands. If, however, any member present at the meeting so demands, the voting shall be by ballot. [*Jabin Akhtar v. Samshad Iqbal*, 2006 (2) Mh LJ 555 : 2006 (2) Bom CR 9.]

2. Nomination for election.—Rules have been framed by the State Government called the Bombay Village Panchayats Election Rules, 1959 which prescribe the procedure for holding of the elections to the Village Panchayats.

1. Subs. by Mah. Act 52 of 1994, Sec. 12.
2. Subs. by G.N. of 28.9.2004.
3. Deleted by G.N. of 28.9.2004.
4. Subs. for words "rupees ten" by G.N. of 28.9.2004.

Under Rule 8 on the day appointed for the nomination of candidates each candidate has to make an application in writing in Form-A signed by him and present it either in person or through a representative authorised in writing.

Rule 10 requires that on or before the date appointed for the nomination of candidates each candidate has to deposit or cause to be deposited with the Returning Officer a sum of five rupees in cash, but under the proviso to this sub-rule (1) of Rule 10, in a ward in which a seat or seats is or are reserved for women, Scheduled Castes or Scheduled Tribes the sum to be deposited by or on behalf of a candidate who is a woman or a member of a Scheduled Caste or Scheduled Tribe shall be rupee one. The requirement of deposit has to be strictly followed because it is provided that no candidate shall be deemed to be duly nominated unless the deposit referred to in this sub-rule has been made.

Perusal of Rule 10(1), proviso, would indicate that in the case of women candidates the sum to be deposited is rupee one in a ward where the seat is reserved for woman. Thus, whether or not, woman candidate is nominated to fill the general seat or a seat reserved for woman in that ward, the nomination fee as the rule stands, in the case of a woman candidate is only rupee one. Thus, even the amount deposited could not determine whether or not, the candidature was for the general seat or the seat reserved for woman in this case.

There is a substantial defect in the rules and in the form inasmuch as the form does not require indication of choice in multi-member constituency where the candidate is a woman or a member of the Scheduled Caste or member of the Scheduled Tribe, requiring the candidate to state clearly whether such candidate is contesting the general seat or the seat reserved for woman or member of the Scheduled Caste or member of the Scheduled Tribes. This defect has to be immediately corrected by proper amendment to the rules and the form. The difficulties created by the rules do not stop there. After the poll is taken, the question to be decided is declaration of the result of the election. Instructions in Rule 34 would seem to lead to anomalous result and in some cases result in defeating the intention of the Legislature where seats are reserved for members of the Scheduled Castes or Scheduled Tribes or a woman. [*Shashikalabai v. Returning Officer*, 1968 Mh LJ 391 (Bom)].

3. Voting by Ballot—Election.—Rule 10 provides a regulatory procedure for achieving fair and free election. Therefore, interpretative process must advance the basic postulate of free and fair election. Secrecy of ballot is undoubtedly an indispensable adjunct of free and fair election. The election by ballot is to be held when demand, as to statutorily assure the voter that his identity will not be disclosed so that voter may vote without fear or favour and is also free from apprehensions. This rule subserves a very vital principle that a voter should be absolutely free to exercise his franchise untrammelled by any constraint. The provision of holding election by ballot is made in the rules to help voters to vote free from any inhibition, fear or apprehension of being subjected to some sort of calamity. Thus the provision goes to the very root of the matter, namely, of holding free and fair elections of the office bearers of the Village Panchayat. To hold otherwise is to perpetuate the very mischief which is sought to be suppressed. The word used namely "shall" has an inbuilt element of compulsion. If the provisions of Rule 10 construed in this background, in our opinion it is quite obvious that the word used *viz.* "shall" clearly indicates that the provision is mandatory and non-compliance of the said provision must result in certain consequences.

It is equally well-settled that such a mandatory rule has to be followed scrupulously as non-observance of such rule might affect the fairness and purity of election itself. Therefore, challenge in such cases is not only based on the ground of mere error but also on the ground that as a result of such non-observance the whole election process has been rendered unpure, which might result in the election not being free and fair. In this context a reference could usefully be made to a decision of this Court in *Madhavrao Tatyasaheb Ghatge v. Collector District Kolhapur and others*, 1965 Mh LJ 146 : AIR 1965 Bom 217. The provision in Rule 10 is made for securing free and fair election. Therefore, it cannot be said that this is merely a technical breach. As the said rule goes to the very root of the matter and ensures a free and fair election, which is the essence of purity of election, the non-observation of the said mandatory provision must vitiate the election as a whole.

It is quite clear that as the provision made in Rule 10 is mandatory and goes to the very root of the matter, its non-observance will vitiate the whole election. This being the position, the elections held in the present case without following the said mandatory procedure are obviously illegal and are liable to be set aside. [*Maruti Bandhu Path v. Village Panchayat Sidhnerli*, 1981 Mh LJ 255 (Bom)].

11. Scruting of nominations.—(1) At the time and place appointed for the scrutiny of nominations, intending candidates and any other person duly authorised in writing by such intending candidate shall alone be entitled to be present. The Returning Officer shall allow such persons reasonable facilities for examining the nomination papers of intending candidates.

(2) The Returning Officer shall examine the nomination papers and decide all objections which may be made before him to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he considers necessary, reject a nomination paper on any of the following grounds, namely :—

- (i) that the candidate is disqualified or is not qualified under the Act or these rules for election ; or
- (ii) that the candidate has failed to comply with any of the provisions required by these rules or the Act.

¹[(2-A) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.]

(3) For the purpose of sub-rule (1) the production of a certified copy of an entry made in the list of voters shall be conclusive evidence of the right of any voter named in that entry to stand for election unless it is proved that the candidate is disqualified.

SYNOPSIS

1. Late—Interpretation of and rejection of nomination.	660
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1. The new sub-rule (2-A) was inserted by G.N., R.D.D. No. VPA. 1165/48534-P, dated 12th December, 1966.

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1. Late—Interpretation of and rejection of nomination.—The use of the word "late" may have a different meaning in different contexts. It is not difficult to conceive of cases where the Returning Officer may have an incorrect idea as to the time limit up to which nomination papers are required to be delivered, and if he acts under some such impression that the nomination paper was delivered beyond time, the consequences of such negligence would be suffered by the candidate whose paper stands the risk of being rejected on the ground that it was delivered late. It must, therefore, hold that strict compliance with the rule requiring the Returning Officer to make an endorsement of the exact time and date on the nomination paper must be complied with in all cases, and if the Returning Officer fails to do his duty, then it is not possible to canvass that the nomination paper was delivered late merely on the strength of the subsequent endorsement made by the Returning Officer.

It requires the Returning Officer to put a serial number on each of the nomination papers indicating the order in which the nomination papers were received by the Returning Officer. This is another check ensured by the rule in requiring the Returning Officer to indicate as to when the nomination paper was delivered to him. In the instant case the Returning Officer is probably not aware of his duty to make such an endorsement of serial number at all. [*Manohar Ramchandra Manekar v. G.S. Solanke, Mamlaidar*, 1964 Mh LJ 739].

2. Right of hearing appeal in absence of notice.—A scrupulous adherence to this procedure is insisted upon by the rules and any dereliction of duty on the part of the Returning Officer in carrying out the provisions of these rules is not permitted. In the instant case what is to be found on close examination of the nomination paper is that the Returning Officer, *i.e.* respondent No. 2, has completely failed to do his duty in any of the three matters required to be done under sub-rule (2) of Rule 8. He has omitted to note on the nomination paper the serial number; in three cases at least he has omitted to note on the nomination paper the date on which the nomination paper was delivered to him; and he has omitted to note in all the papers the exact time or any time at all at which the nomination paper was delivered to him. The failure on the part of respondent to make the necessary endorsements required by sub-rule (2) of Rule 8 has created several difficulties in this case which should never ordinarily arise if the Returning Officer were to comply with the provisions of sub-rule (2). Instead of noting the exact time when the nomination papers were delivered to him, the Returning Officer seems to have made a subsequent endorsement on the application that the application was received late, and hence rejected. There is no power in the Returning Officer to reject the nomination paper whatever may be the defects in the paper on the same date. It is only on the date fixed for scrutiny of nomination papers according to the election programme that the Returning Officer is required to determine whether the nomination papers have been delivered in time and contained the necessary compliance with the rules in this behalf. It is at this time that he has to

consider the objections, if any are raised, regarding the nomination paper and either on objection or on his own motion and after a summary enquiry the Returning Officer can reject a nomination on the grounds stated in sub-rule (2) of Rule 11. One of the grounds on which the nomination paper is liable to be rejected is a failure of the candidate to comply with any of the provisions contained in the rules or the Act. Therefore, in a given case if it is found that the nomination paper is actually delivered beyond the time prescribed by the rules, the Returning Officer is well within his rights to reject the nomination paper on this ground. However, rejection of the nomination paper on the ground that it was filed late is intimately connected with the requirement of the rule that the Returning Officer shall endorse on the nomination paper the exact time at which and the date on which the nomination paper was delivered to him. If there is failure on the part of the Returning Officer to comply with this requirement of the law, that the Returning Officer has any jurisdiction subsequently at any rate on his own behalf to reject the nomination paper on the ground that it was delivered late was not thought by Court. Whether a nomination paper is or is not delivered late is a matter which can always be checked by reference to the endorsement of the exact time at which the nomination paper was delivered made by the Returning Officer. It is possible that an objection on that ground may well be raised at the time of scrutiny by a contesting or opposing candidate. That then will be a matter for summary enquiry and the Returning Officer may have to make enquiry into such an objection. But in the absence of such an objection the only material on which the Returning Officer will be justified in rejecting the nomination paper will be the endorsement on the nomination paper of the exact time when the nomination paper was delivered to the Returning Officer. If the nomination paper does not bear an endorsement in this behalf, even the Returning Officer will be acting in excess of his jurisdiction in rejecting the nomination as filed late or beyond time because he has deprived himself of the means to ascertain whether in fact the nomination paper was or was not filed within time as required by the rules. Therefore, the Returning Officer is not entitled to make any other endorsement on the nomination paper such as the nomination paper was filed late, except in the manner in which the time of delivery of nomination paper is to be indicated by endorsement given in the rule and that rule prescribes the endorsement of the exact time of delivery of nomination paper to the Returning Officer. Therefore, the view taken by the appellate authority that doubt arose in such cases whether the nomination paper was not delivered in time cannot be assailed. It is contended that even though the exact time of the delivery of nomination paper was not noted by the Returning Officer, his endorsement of even date that the nomination paper was received late should have been acted upon or accepted by the appellate authority. It was difficult to agree with this contention. [*Manohar Ramchandra Manekar v. G.S. Solanke, Mamlatdar, 1964 Mh LJ 739*].

3. Rejection of nomination paper on late delivery.—Those candidates whose nomination papers were rejected by the Returning Officer as being filed late, i.e. beyond 4 p.m., preferred appeals separately before the appellate authority, i.e. the Mamlatdar. The Mamlatdar reversed the order of rejection of the nomination paper of each of these persons and accepted their nomination papers. The Mamlatdar did not issue any notice to any of the petitioners before hearing the appeal or deciding the same. It is this order of Mamlatdar in respect of each of the respondents accepting the nomination papers that is challenged in this petition by the petitioners.

It is an admitted position that the Returning Officer did not accept the deposit which must have been offered by each of these candidates at the time of delivery of their nomination papers. So far as the record shows, Court does not find any separate order having been passed by the Returning Officer on the next date i.e. on June 4, 1962, when the nomination papers were scrutinized. However, along with the memorandum of appeal filed by each of the respondents they have attached a communication received by each of them from the Returning Officer intimating that the nomination paper of each of the appellants has been rejected as it was received late. This appears to be a communication of the order and not the order itself.

In court's opinion, the Returning Officer in this case has completely failed to do his duty as required by the election rules. Under the election rules, Rule 8 prescribes that on the date appointed for the nomination of candidates, each candidate has to make an application in writing in Form A signed by him and present it either in person or through a representative authorised in writing in this behalf by such candidate to the Returning Officer. [*Manohar Ramchandra Manekar and others v. G.S. Solanke, Mamlatdar, Gram Panchayat Election Section, Daryapur and others*, 1964 Mh LJ 739].

4. Delay in filing nomination paper.—The Returning Officer is not empowered to condone the delay in filing nomination paper. [*Manik v. R.Z. Naik*, 1974 Mh LJ Note 42].

5. Delay in filing—Nomination paper.—Where nomination paper under the Bombay Village Panchayats Election Rules, 1959, was filed 15 to 20 minutes after 5.00 p.m. on the last day of submitting nomination papers and the nomination paper was rejected. [*Manik v. R.Z. Naik*, 1974 Mh LJ Note 42].

6. Power of Returning Officer.—The Returning Officer is empowered to examine the nomination paper and can accept or reject it in judicial character. [*Ganga Ram v. Taru Ram*, AIR 1984 Raj 183].

7. Endorsement on nomination paper.—Absence of endorsement on nomination paper on exact time, when the delivery took place by Returning Officer, will be without jurisdiction. [*Manohar Ramchandra Manekar v. R.S. Solanke Mamlatdar Gram Panchayat*, 1964 Mh LJ 739 : 1964 Bom LR 578 : AIR 1965 Bom 868].

8. Late endorsement by Returning Officer.—Rejection of nomination paper due to delay in presentation is a failure to comply with the provisions of Rule 8(1) of Bombay Village Panchayats Election Rules, 1959 and action of Returning Officer is justified. [*Harjit Singh Mann v. Umrao Singh*, AIR 1980 SC 701 : (1980) 2 SCR 501 : (1980) 1 SCC 713].

9. Right of elected candidate.—If a nomination paper is rejected of a candidate, the opposite party can be declared as elected but it is not a legal right of person elected as declared. [*Manohar Ramchandra Manekar v. G.S. Solanke, Mamlatdar Gram Panchayat*, 1964 Mh LJ 739 : 1964 Bom LR 578 : AIR 1965 Bom 868].

10. Where defect is not of substantial character nomination paper is not to be rejected.—Nomination paper of a candidate was rejected on the ground that the caste certificate filed along with it was not in the prescribed format. In writ petition challenging said order, it was held that neither the rules nor the prescribed form provide for a format for submission of caste certificate. There being no prescribed format for tendering such caste certificate along with the nomination form, the Returning Officer could not have insisted on the caste certificate being tendered in the prescribed form. Rule 11(2-A) of

Village Panchayats Election Rules in unequivocal terms provide that Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The defect in the caste certificate annexed along with the nomination form pointed out by the Returning officer was not of substantial character and therefore, the nomination paper could not have been rejected. As a matter of fact, the ground for rejection of nomination paper is untenable in the eye of law. [*Anant Janardan Patil v. State of Maharashtra and others*, 2002 (2) Mh LJ 238 : 2002 (2) All MR 80 : AIR 2002 Bom 87 : 2002 (4) Bom CR 270 : 2002 (2) Mah LR 249.]

12. Completion of scrutiny.—(1) The scrutiny shall be completed on the day appointed in this behalf.

(2) The Returning Officer shall, on the same day, endorse on each nomination paper his decision accepting or rejecting the same, and, if the nomination paper is rejected, shall record a brief statement of his reasons for such rejection.

¹[(3) Immediately after, all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the Returning Officer shall prepare a list of validly nominated candidates, that is say, candidates whose nominations have been found valid, and affix it on the notice board of the village panchayat office and the village *chavdi*, or if there is no village *chavdi*, at any other conspicuous public place in the village]

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1. Rejection of nomination paper.—An elector has right to challenge election on the ground of wrongful rejection of nomination paper though appeal against rejection of decided by Mamlatdar. [*Radhabai Bajrang Lal v. State of Maharashtra*, 1964 Mh LJ Note 65].

2. Rule cannot prevail provision of section (Election).—It is well-settled that the right given by Section 15 of the said Act cannot be cut down or abridged by the election Rule 12(4). The finality which is given by the rule only means this that there is no further challenge at that stage to the decision of the Returning Officer or the Mamlatdar as an appellate authority so far as the rejection or acceptance of the nomination paper was concerned. But it cannot mean that the jurisdiction of the election tribunal created under Section 15 is in any way abridged in this matter. It was further observed that on the interpretation of Rule 12(4) of the Election Rules and Section 15 of the said Act which permitted an election petition the petitioners were not without a remedy in case the appellate authority had decided against them. [*Bhimaji v. C.N. Gite*, 1969 Mh LJ 759 (Bom)].

3. Appeal against acceptance of nomination paper.—In an election of a general seat to the Village Panchayat, the petitioner had filed his nomination paper, and on the date of scrutiny, an objection was raised by the respondent No. 1 that the petitioner was disqualified on the ground of non-payment of

1. Subs. by new sub-rule (3) *vide* G.N., No. VPA. 1171/42141-E, dated 25th January 1972.

arrears of taxes. This objection was overruled by the Returning Officer, and the nomination form accepted. Against this acceptance, the respondent No. 1 filed an appeal before the Block Development Officer exercising the powers of a Mamlatdar under the Act, who allowed the appeal, and directed that the nomination form be rejected. The petitioner moved the Bombay High Court to get this order quashed.

✓ Rule 12(4) of the Village Panchayats Election Rules, 1969, under the Act, gave only a limited right of appeal to a candidate whose nomination form is rejected by the Returning Officer, and no appeal is allowed against the acceptance of the nomination form. Hence the entertaining of the appeal by the Block Development Officer exercising the powers of the Mamlatdar under the Act was without jurisdiction. [*Sadanand v. Dada*, 1964 Mh LJ Note 2].

13. Withdrawal of candidature.—(1) Any candidate may withdraw his candidature by a notice in writing subscribed by him and delivered to the Returning Officer between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon ¹[on the day not later than the last day appointed for the withdrawal of candidature under Rule 7]. Such notice may be delivered either by the candidate in person or by a person authorised in writing by him in this behalf. Any notice of withdrawal which is given after the expiry of such last day shall not have any effect.

(2) No person who has given a notice of withdrawal of his candidature under sub-rule (1) shall be allowed to cancel the notice.

(3) The Returning Officer, on receiving notice of withdrawal under sub-rule (1) shall, as soon as may be thereafter, cause a notice of withdrawal to be affixed at the Village *chavdi* and at the Village Panchayat Office.

²[*Explanation.*—A person who is unable to write his name shall be deemed to have subscribed the notice of withdrawal if he has placed a mark or thumb impression thereon in the presence of the Returning Officer or any other officer authorised by the Returning Officer in this behalf and such officer on being satisfied as to the identity of that person has attested the marks or thumb impression as the mark or thumb impression of that person.]

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1. Withdrawal of candidate.—Section 11(1) of the Act of 1958 requires the election to be held by a panchayat on such date as may be appointed by the Collector in that behalf sub-section (2) provides that the election shall be conducted in the prescribed manner. The word “prescribed” has been defined

1. Subs. *vide* G.N., No. VPA. 1177/42141-E, dated 25, January, 1972.
2. Ins. *vide* G.N., R.D.D. No. VPA-1072/4955-E, dated 31st May, 1973.

under Section 3(15) to mean prescribed by rules. A duty is cast upon the Government to frame rules under Section 176 of the Act amongst other things for the purpose of prescribing the manner in which the election of members shall be held. Under sub-section (6) of Section 176 the rules are required to be laid before each house of the Legislature.

Under Rule 7(1) the Mamlatdar is required to appoint the dates; the hours and place or places for the stages of an election, namely (i) the nomination of candidates, (ii) the scrutiny of nominations, (iii) the recording of votes and (iv) the counting of votes, the condition being that between the fixed for the nomination of candidates and the date fixed for the poll there must be at least an interval of twenty-five days and that the date for the scrutiny of nominations should be the date immediately following the date fixed for the nomination of candidates. Sub-rule (2) is regarding the publication of all the necessary matters in a duty and proper manner and need not detain us. Sub-rule (3) prohibits the charge of venue appointed for various purposes under sub-rule (1) without the sanction of the Collector subject to the proviso. Rule 8 relates to the manner in which the nomination of candidates has to made. Rule 10 relates to the deposit to be made by a candidate who wants to be nominated as a candidate. Sub-rule (2) relates to the return of the deposit in the contingencies mentioned therein. Rule 11 relates to scrutiny of nominations. Under sub-rule (2) the Returning Officer has to examine the papers and decide all objections which may be made before him to any nomination and after such inquiry as he considers necessary, enables him to reject a nomination paper on the grounds mentioned therein. But he is not entitled to reject any nomination paper on the ground of a defect which is not of a substantial character. Rule 12 relates to completion of scrutiny and appeal against rejection of nominations. Under sub-rule (1) the Returning Officer is required to complete the scrutiny on the appointed day for the purpose. Under sub-rule (2) he has to endorse on the same day on each nomination paper his decision accepting or rejecting the same and in case of rejection he is required to record in brief the statement of his reasons for such rejection. By sub-rule (3) he is required to supply within twenty-four hours of the receipt of such application a copy of the decision along with his reasons for the same. By sub-rule (4) a candidate is permitted to present an appeal from the order of the Returning Officer rejecting his nomination paper to the Mamlatdar within two days of the date of the order of rejection and the Mamlatdar is required to decide the same within three days of the presentation of appeal and immediately communicate the decision to the Returning Officer. The order passed by the Mamlatdar is made final. Rule 13 relates to withdrawal of candidature. By sub-rule (1) of Rule 14 Returning Officer is required to prepare a list of candidates validly nominated and post it at the Village Chavdi and the Village Panchayat Office at least ten days before the date appointed for the poll. By sub-rule (2) he is required to give a notice by beat of drum in the village and invite the voters to remain present at the polling stations.

Now it is true that the rule which prescribes doing of certain things except in the manner provided must be held to be mandatory. But where, as in this case, it is difficult to enforce the rule at all and is, therefore invalid, it would not be right to say that the Returning Officer was not right in not showing them as candidates.

In the present case, the Tahsildar had fixed December 21, 1967 as the date of withdrawal from elections by a candidate. In the old rule a period of

seven days was provided for such withdrawal from the date of scrutiny. Apparently, the Tahsildar has acted under that rule. Inasmuch as Rule 13, in our view, is indefinite and vague and could not possibly be observed by the candidates, the Tahsildar was right in fixing a specific date for withdrawal from the elections by a candidate. That being so, the Returning Officer was right in not showing those candidates who had withdrawn from the elections as candidates. Rule 14, which is a peremptory rule, requires at least ten days to elapse between the publication of the list of validly nominated candidates and the poll, and that rule has been observed inasmuch as sixteen days are allowed between the two days.

That the election rules are being modified from time to time which results in much litigation of this kind and which can very well be avoided if the rules are specific, clear and are not changed or tinkered with so often. It would also appear that in order that elections should not be set aside on technical grounds because of errors of returning officers in conducting the elections to small bodies, it is desirable that a provision similar to the one in the Representation of the People Act, 1950 and in the Zilla Parishad Act which prevents election being set aside on such technical grounds should be added even to the Act of 1959 and the Municipal Act where it does not exist. If such a provision is added a great deal of waste of time of the Government, its officers, the public and also of the courts will be saved. [*Sadashiv v. Maruti*, AIR 1970 Bom 93 : 1969 Mh LJ 740].

2. Provisions of Rule 13 are invalid.—If the framers of the rule wanted that this rule should apply only to a candidate who appeals or does not appeal, they could have said so by adding the words “by him” after the words “where no appeal is presented” and before the words “under sub-rule (4) of Rule 12” and again after the words “where such appeal is presented” and before the words “under that sub-rule” in sub-rule (1) of Rule 13. The words “any candidate” are wide enough to apply to each of the candidates who have sent their nomination papers and cannot be confined only to those who are concerned with the appeal and want to withdraw. It is settled that “instruments and by-laws made under statutory powers enforceable by penalties are construed like other provisions encroaching on the ordinary rights of persons. They must on pain of invalidity, be clear and definite and free from ambiguity, and should not make unlawful things that are otherwise innocent” (*vide* Maxwell on Interpretation of Statutes, 11th Ed., p. 290). As Rule 13 of the Rules of 1959 is ambiguous and unworkable, it cannot be given effect in the same manner as where there is a clear rule which provides a particular terminal date for the withdrawal of a candidate from the election. [*Sadashiv v. Maruti*, AIR 1970 Bom 93 : 1969 Mh LJ 740].

3. Withdrawal of candidature.—Rule 13(1) is applicable to each candidate who have sent their nomination paper not necessary who intends to withdraw. [*Sadashiv Vishnu Nagarkar v. Maruti Baloba Vyavhare*, AIR 1970 Bom 93 (DB): 1969 Mh LJ 740].

14. Preparation of ¹[list of contesting candidates] and notice of election.—(1) On the expiry of the period for the withdrawal of candidature provided in Rule 13, the Returning Officer shall prepare

1. This was substituted for the words “1st of candidates”, by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.

under his signature a list of ¹[contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period] and post it or cause it to be posted up at ²[the village panchayat office and at the village *chavdi*, of it there be no village *chavdi*, at any other conspicuous public place in the village at least five days] before the date appointed for the poll.

(2) On the day immediately preceding the day appointed for recording votes, the Returning Officer shall cause notice to be given in the village by beat of drum inviting all voters to be present on such day during the hours and at the polling stations fixed for recording votes.

³[14-A. **Death of candidate before poll.**—If contesting candidate dies and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to ⁴[an officer authorised by the State Election Commissioner] and all proceeding with reference to the election shall be commenced a new in all respects as if for a new election :

Provided that,—

- (i) no further nomination shall be necessary in the case of a person who was a contesting candidate at the time of countermanding of the poll; and
- (ii) no person who has given a notice of withdrawal of his candidature under sub-rule (1) of Rule 13 before the countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding.]

15. Uncontested elections and failure to elect.—(1) In any ward in which no seat is reserved for ⁵[Scheduled Castes or Scheduled Tribes or Backward Class of Citizens or Women],—

- (i) where the number of candidates duly nominated is equal to the number of seats to be filled, the Returning Officer shall declare the candidates so nominated to be duly elected without any votes being taken;
- (ii) where the number of candidates duly nominated is less than the number of seats to be filled, the Returning Officer

1. Subs. *vide* G.N., No. VPA. 1171/42141-E, dated 25th January, 1972.

2. This was substituted for the words "the Village Chavdi and the Village Panchayat Office at least ten days", by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.

3. The new rule 14-A was inserted, *ibid.*

4. Subs. by Mah. Act 52 of 1994, Sec. 12.

5. Subs. by Mah. Act 52 of 1994, Sec. 12.

shall declare the candidates so nominated to be duly elected and in respect of the remaining seats or where there is no candidate duly nominated, in respect of all the seats, it shall be deemed to be that the election has not resulted in the return of the required number of qualified persons willing to take office within the meaning of sub-section (3) of Section 10;

- (iii) if the number of candidates duly nominated exceeds the number of seats to be filled, votes shall be taken for filling the vacancies in the manner provided by these rules.

(2) In any ward in which seats are reserved for, ¹[Scheduled Castes or Scheduled Tribes or Backward Class of Citizens or Women] the Returning Officer shall ascertain the number of candidates qualified to fill each reserved seat and thereafter proceed as follows :—

- (i) where the number of candidates qualified to be chosen to fill any of the reserved seats is equal to the number of such seats, all the candidates so qualified shall be declared by the Returning Officer to be elected to fill the respective reserved seats;
- (ii) where the number of candidates qualified to be chosen to fill any of the reserved seats is less than the number of such seats, all such candidates shall be forthwith declared to be duly elected to fill the respective reserved seats; and in respect of the remaining such reserved seats it shall be deemed that the election has not resulted in the return of the required number of qualified persons willing to take office within the meaning of sub-section (3) of Section 10.

(3) In any such ward as is referred to in sub-rule (2),—

- (i) where all the remaining seats not dealt with under that sub-rule are unreserved, they shall be filled in the manner provided in sub-rule (1).
- (ii) where the remaining seats include any reserved seats not dealt with ²[under that sub-rule, and]
- (a) ³[if the total number] of candidates for these remaining seats is equal to the number of such seats while the number of candidates qualified to fill such remaining reserved seats included therein exceeds the number of such seats, the Returning Officer shall first

1. Subs. by Mah. Act 52 of 1994, Sec. 12.

2. These words were substituted for the words "under that sub-rule" by G.N., L.S.G. and P.H.D. No. VPA. 1160-P, dated the 1st April, 1960.

3. These words were substituted for the words "the total number", *ibid.*

select from among the candidates qualified to be elected to the respective reserved seats, by lots to be drawn by him in such manner as he may determine, the candidates to be declared elected to the respective reserved seats and then declare the candidates so elected to be duly elected to fill the reserved seats and thereafter declare the remaining candidates to be duly elected to fill the remaining seats; ¹[or]

- (b) ²[if the total number] of candidates for these remaining seats and the candidates qualified to fill the reserved seats included therein exceeds such remaining seats and the reserved seats included therein respectively, votes shall be taken for filling all the seats in the manner specified in these rules.

SYNOPSIS

1. Right of hearing.	669
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1. Right of hearing.—It will be seen that the acceptance of nomination paper in spite of objection by a candidate is not liable to be challenged before an appellate authority. The time within which the appeal has to be filed in three days from the order of rejection. The appellate authority, constituted by the rules is the Mamlatdar who must necessarily dispose of the appeals, stationed at one place, distant from the place where the contesting candidates may be resident. It does not, therefore, appear likely that the rules intended that the right of hearing should be given to other contesting candidates who undoubtedly may be affected by the decision of the appellate authority one way or the other. It was not thought it could be seriously contended that a wrong rejection of a nomination paper by a Returning Officer creates any right in the remaining candidates as such. After all, in a democratic process the accepted means of choice of representatives is by election. It is only in exceptional circumstances that a person may become entitled to be declared elected unopposed either because the remaining candidates have withdrawn or because the names of some of the candidates are liable to be rejected according to law. Therefore, it is not correct to say that the petitioners have acquired any legal right to be declared elected. Such a right accrues to them under Rule 15 of the rules subject to the compliance of Rules 11, 12 and 13. Rule 12 itself postulates that the decision of the appellate authority in a given case setting aside rejection of a nomination paper of a particular candidate shall be final. Therefore, there is no legal right in any of the petitioners which is put in jeopardy by the appellate authority hearing the appeal filed by the candidate whose nomination paper is rejected without notice to the other

1. The word "or" was added by G.N., L.S.G. and P.H.D. No. VPA. 1160-P, dated the 1st April, 1960.
2. These words were substituted for the words "the total number" G.N., L.S.G. and P.H.D. No. VPA. 1160-P, dated the 1st April, 1960.

candidate who may or may not object to his nomination paper. In fact, the scheme of the rules appears to be that whenever a nomination paper is accepted either by the Returning Officer or by the appellate authority in the summary procedure prescribed for decision of these matters, the opposite party has no right to challenge. It is not, therefore, possible to uphold any right in the petitioners to be heard in support of an order of the Returning Officer rejecting a particular nomination paper. The view that a decision regarding acceptance or rejection of a nomination paper is not within the ambit of enquiry under Section 15 of the Bombay Village Panchayats Act is not correct. [*Manohar Ramchandra Manekar v. G.S. Solarke, Mamlatdar*, 1964 Mh LJ 739].

2. Identical symbol in election.—It will be seen that under Rule 16(1) it is the duty of the Returning Officer to assign to each candidate any one of the enumerated symbols. As many as 20 symbols are indicated in that sub-rule, but further power is given to the Returning Officer to allot any other symbols if all these symbols are exhausted. Then follows Rule 17 which prescribes the form for the voting paper given by way of appendage and that rule requires that the voting paper shall contain the names of all the candidates in alphabetical order together with distinguishing symbol assigned to each candidate by the Returning Officer under Rule 16.

A bare scrutiny of the rules will show that the rules do not require that the same symbol may not be given to more than one candidate, though in practice it may be a desirable thing. It is also unlikely that candidates contesting elections independently may agree to have a symbol already allotted or selected by another candidate. So far as distribution of symbols in the instant election is concerned it is an admitted position that all the candidates, namely, the petitioners as well as the respondents, agreed to assignment of identical symbols to candidates of their own party. In other words, it appears that the elections were fought on party basis, or at least on group basis, and candidates though contesting for more than one seat in the ward agreed to have the same symbols assigned to them provided they were different from symbols assigned to candidates of the opposing group. The Judge has considered the effect of assignment of similar symbols in paragraph 10 of his order. According to him, perusal of Rules 16 and 17 made it clear that each candidate was to be allotted a distinguishing symbol and symbols are allotted for distinguishing between different candidates.

The mention in Rule 17 of distinguishing symbols is concerned, it is contended that Rule 17 requires the printing or denoting of the distinguishing symbol assigned to each candidate against the name, and not that each symbol will be distinguishable from other symbols given to other candidates. In this context, according to the petitioners, the words "distinguishing symbol" means a symbol which distinguishes the particular candidates.

It is not possible to accept the view taken by the civil Judge as to the requirements of Rules 16 and 17 that a separate symbol must be given in all cases to each contesting candidate. In fact, wherever elections are held in a multi-member constituency and are contested by persons belonging to identical groups or parties, it is usual to find allotment of identical symbols to candidates of a particular party, whatever be the number of seats for which the party may have put up candidates in the constituency. Thus, there is nothing inherently wrong in allotment of identical symbols to different candidates provided they agree and the elections are fought on party or group basis. In a sense, it may facilitate the work of electioneering of the candidates if the same symbol is obtained for the candidate of a particular party or group.

Even assuming, however, that Rule 17 requires that distinguishing symbols in the sense two separate symbols ought to have been assigned to each contesting candidate at this election for three seats. There are only three candidates for this seat and a separate ballot paper was admittedly issued for voting for each seat. In the return filed by the respondents, they have shown in para 11 that separate symbols were allotted to the three candidates for the reserved seat, who were given the symbols of tree, man and bullock. Thus, so far as any possibility of alleged confusion that could at all be said to arise on account of the identical symbols being printed after assignment of a ballot paper is concerned, that contingency could never arise in the case of an election of a candidate to the reserved seat for which a separate ballot paper was given. Held that the learned Judge was not entitled to set aside the election of petitioner No. 3 in any case, who was returned to the reserved seat in this constituency on the ground of alleged possibility of confusion among the illiterate voters. The decision of the Judge to that extent is liable to be set aside.

The further weakness in the finding of the Judge is in his observation that the illiterate voters were either bound to be confused or were in fact confused in making use of the ballot paper containing identical symbols for more than one candidate. Merely because there was a possibility of some one being misled in casting vote, that cannot *ipso facto* lead to an inference that the result of the election has been vitiated or materially affected by an irregularity. Under the terms of Section 15, which indicate the circumstances in which an election may be challenged, violation of the observation of Rules 16 and 17 of the Election Rules is not stated to be one of the grounds which would vitiate election, and in the nature of things, this was not likely to be so provided. At the most, allotment of identical symbols would amount to an irregularity of procedure committed by the Election Officer. [*Eknath v. Gorakh*, 1964 Mh LJ 691 (Bom)].

3. Compensation of period for filing election petition.—For filing an election petition the period has to be computed from the date of actual declaration of names of successful candidates. [*Bhimji Laxman v. C.N. Gite*, 1969 Mh LJ 759].

4. Jurisdiction of election tribunal—Ousting of.—No limits found on the power of the Judge making an enquiry into an election petition under Section 15(2) which in any way hampers him from adjudicating as to the proper or improper acceptance of the nomination paper of a candidate. To take an illustration on the point : if any of the petitioners were to challenge before the Judge in an election petition in this very case that the nomination papers of any of the respondents were improperly accepted by the appellate authority, and if such a challenge is adjudicated, we do not see that there is any impediment in the exercise of powers by the Judge under Section 15 preventing him from embarking on such an enquiry. In fact, the very opening words of sub-section (1) of Section 15 are : "If the validity of any election of a member of a Panchayat is brought in question by any person qualified to vote at the election to which such question refers...". If general right is given to the electorate at large to question the validity of an election, it is difficult to see how one of the contesting candidates is deprived of a similar right simply because in a summary enquiry the conclusion of acceptance or rejection of a nomination paper either by the Returning Officer or by the appellate authority is declared to be final under the rules. It is well-settled that the right given by the section cannot be cut down or abridged by the rule. The finality which is given in the rule only means this that there is no further challenge at that stage to the decision of the Returning Officer or the Mamlatdar as an appellate authority

so far as the rejection or acceptance of the nomination paper is concerned. But it cannot mean that the jurisdiction of the election tribunal created under Section 15 is in any way abridged in this matter. Court therefore, do not think that either on the interpretation of Rule 12, sub-rule (4) or of any provision of Section 15 of the Act which permits an election petition, the petitioners are without a remedy, in case, they are not to be heard by the appellate authority against an appeal rejecting the nomination of a particular candidate. [*Manohar Ramchandra Manekar v. G.S. Solanke*, 1964 Mh LJ 739].

1[16. Assignment of symbols.—In the case of every contested election, the Returning Officer shall assign to each candidate any one of the symbols notified by the State Election Commission, Maharashtra :

Provided that, the Returning Officer may, if in his opinion, it is necessary so to do, add any symbol to the list of symbols notified by the State Election Commission and he shall forthwith inform the State Election Commission of such addition.]

2[17. Form of ballot paper.—The ballot paper shall be printed in the Form as prescribed by the State Election Commission.]

18. Specimen ³[ballot paper].—Specimen ⁴[ballot paper] shall be posted outside the polling station for the guidance of voters before the polling commences.

19. Election material and ballot boxes.—⁵[(1) The presiding officers shall each be supplied with a ballot box with an aperture for receipt of ballot papers, a copy of the sections of voters' list pertaining to the polling stations, sufficient number of ballot papers serially numbered and such other materials for the purposes of the polling as may be necessary.]

(2) Before the commencement of the poll, the presiding officer shall show the ballot box empty to such candidates or their agents as may be present at the polling station and shall then lock it and seal it in such manner as to prevent its being opened without breaking the seal.

20. Admission to polling booth.—(1) On the day of the election, every presiding officer, shall admit to the ante-room of the polling booth at which he presides,—

(a) the candidates and such agents (a) as may be selected by the candidates to assist in the identification of voters; and

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1. Subs. *vide* G.N., R.D.D. No. 2000/CR-05(19)/06, dated 4th July, 2002.
 2. Subs. *vide* G.N., R.D.D. No. VPE. 2005/CR-146/PR- 2, dated 5th January, 2006.
 3. This was substituted for the words "voting paper" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
 4. This was substituted for the words "voting paper" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
 5. This was substituted for sub-rule (1), G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.

(b) polling officers and other public servants on duty:

Provided that there shall be present at any time in addition to the candidates not more than one agent of each candidate in every polling booth.

(2) Besides the candidates and their agents, only voters, ¹* * and such persons (if any) as may be admissible under special directions given by the presiding officer in this behalf shall be admitted to the polling booth.

21. Candidates and agents not to communicate with voters.—

(1) The candidates and their agents shall not speak to or address any voters in any part of the polling station, but may address to the presiding officer objections to a voter on any one of the following three grounds, namely :—

- (i) that the voters' name does not appear in the voters' list as entitled to vote in the ward in respect of which the election is being held;
- (ii) that his claim to be a certain voter, whose name is entered in the voters' list, is false;
- (iii) that he has already voted at the election.

(2) Any person contravening the provisions of sub-rule (1) may be expelled from the polling station by the presiding officer, and a person so expelled shall not be re-admitted during the election.

NOTE

Address to voters.—Filing of objection against the voters, must be made to presiding officers of the polling station and candidate should not speak to voters. [*Ramdas Sheoramji Pathare v. Panjab Govindraoji*, AIR 1970 Bom 96 (DB) : 1969 Mh LJ 425 : 72 Bom LR 173].

22. Voters to attend polling stations.—Every voter desirous of recording his vote shall attend for the purpose at the polling station for the ward for which he is entered in the voters' list on such date and between such hours as have been appointed, by the ²[an officer authorised by the State Election Commissioner] in this behalf under Rule 7.

23. Recording of votes.—Votes shall be recorded in accordance with the following provisions, namely :—

- (i) every voter shall be entitled to give as many votes as there are seats for filling which votes are to be taken in his ward, but no voter shall give more that one vote to any one candidate;

1. The words "attendants of voters admitted under clause (vi) of rule 23" were deleted to G.N., R.D.D. No. VPA. 1165/48534-P, dated 12th December, 1966.

2. Subs. by Mah. Act 52 of 1994, Sec. 12.

- (ii) there shall be no voting by proxy;
- ¹[(iii) every ballot paper shall be stamped with such distinguishing mark as ²[the State Election Commissioner] may direct and before it is issued to an intending voter his name and his number in the voters' list shall be called out so that all present can hear them];
- (iv) in cases where no objection has been raised ³[after recording the serial number of the ballot paper against the entry relating to the voter in the copy of the voters' list, the polling officer shall give the ballot paper to the voter] and admit him to the polling room, ⁴[but not more than one voter shall be admitted to the polling room at a time];

Where objections are raised by candidates and their agents, the presiding officer shall dispose of such objections and when satisfied that the intending voter is entitled to vote and has not yet voted, shall direct the polling officer to ⁵[give the ballot paper to him after taking his signature or thump impression and recording the serial number of the ballot paper against his name in the voters' list. The voter shall then be admitted to the polling room.]

- ⁶[(v) the voter shall make a mark on the ⁷[ballot paper] with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote so however that no part of the mark so made shall appear in the space provided for other candidate. The voter shall thereafter fold the marked ⁸[ballot paper] into the ballot box and without undue delay leave the polling room;]

1. This was substituted for clause (iii), by G.N., R.D.D. No. VPA-1165/48534-P, dated 12th December, 1966.
2. Subs. by Mah. Act 52 of 1994, Sec. 12.
3. This was substituted for the portion beginning with the words "after taking the voters' signature" and ending with the words "give the foil to the voter", by G.N., R.D.D. No. VPA-1165/48534-P, dated 12th December, 1966.
4. These words were added by G.N., L.S.G. and P.H.D., No. VPA. 1160-P, dated the 1st April, 1960.
5. This was substituted for the portion beginning with the words "give the foil of the voting paper" and ending with the words "objection has been raised" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
6. This clause was substituted by G.N., C. and R.D.D., No. VPS. 1160/26818-E, dated the 29th March, 1962.
7. This was substituted for the words "voting paper" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
8. This was substituted for the words "voting paper" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.

- ¹[(vi) if, the presiding officer is satisfied that owing to blindness or other physical infirmity, a voter is unable to recognise the symbols on the ballot paper or to make a mark thereon without assistance, the presiding officer shall permit the voter to take with him a companion of not less than twenty- one years of age to the voting compartment for recording the vote on the ballot paper on his behalf in accordance with his wishes, and if necessary, for folding the ballot paper so as to conceal the vote and inserting it into the ballot box :

Provided that, no person shall be permitted to act as the companion of more than one voter at any polling station on the same day :

Provided further that, before any person is permitted to act as the companion of a voter on any day under this rule, such person shall be required to declare that he will keep secret the vote recorded by him on behalf of the voter and that he had not already acted as the companion of any other voter at any polling station on that day.

The presiding officer shall keep a record in Form 'B-1' of all cases under this rule;]

- ²[(vi-
a) no ballot paper shall be issued to any voter before the hour fixed for the commencement of the poll;]
(vii) no ballot paper shall be issued to any voter after the hour fixed for the closing of the poll, except to those voters who are present at the polling station at the time of the closing of the poll. Such voters shall be allowed to record their vote even after the poll closes. If any question arises whether a voter was so present at the polling station, it shall be decided by the presiding officer and his decision shall be final].

SYNOPSIS

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1. Setting aside of election.—When the Presiding Officer is satisfied that voter who gave his surname different from what was printed in voter's list,

1. This clause was substituted *vide* G.N., R.D.D., No. VPA. 1167/27256-N, dated 22nd August, 1968.
2. Ins. by Mah. Act 52 of 1994, Sec. 16.

was entitled to vote then election cannot be set aside only on this ground. [*Faizu Mahadeo v. Civil Judge, Hinganghat*, 1964 Mh LJ 25 : AIR 1964 Bom 160].

It appears that the Legislature, recognising the capacity and the type of the voter who would come to cast his vote at these elections, felt that it was necessary to publicly announce the name of each voter as he came to vote as mentioned in the list of voters and also made provision for prevention of impersonation. Therefore, in clause (iv) it provided that objections could be raised and if no objections were raised, after taking the voter's signature or thumb-mark on the counter-foil and making other endorsements, the polling officer was to give the foil to the voter and admit him to the polling room. When an objection is raised, what the polling officer has to do is mentioned in the latter part of clause (iv). The presiding officer has to dispose of the objection and "when satisfied that the intending voter is entitled to vote and has not yet voted" has to direct the polling officer to give the foil of the voting paper to him after taking his signature etc. Therefore, the presiding officer is given plenary power to satisfy himself that the intending voter is entitled to vote and has not yet voted and that is what the presiding officer in the instant case did. There is nothing brought out on the record nor alleged in the affidavits of the parties to show that the intending voters in these three cases, namely, were not entitled to vote. In fact, it was never the case of the election petitioner that these three individuals who were permitted to vote had no right of vote, nor has it been at all proved or alleged that any other persons had a right of vote under the three entries in dispute. The election petitioner's case was that the names did not tally and, therefore, they were not entitled to vote. Court does not think that having regard to the provisions of Rule 23 and even reading it in the light of Section 13(1) such a contention can be accepted. In fact, it is clear from Rule 23 that the presiding officer has to consider the substantial right of franchise and decide whether that individual has that right and not to consider whether technically his name appears in the list of voters or not. Court does not think that the provisions which the Legislature has made were intended to defeat the right of franchise, upon any such technical argument. The rule itself shows the anxiety of the Legislature to safeguard the substantial right of franchise and not have regard to a technical objection that someone has already voted under that entry. The rule, if anything, would reinforce an argument against the view taken by the learned civil Judge. This finding of the learned civil Judge, therefore, also cannot be sustained and Court hold that the three voters were validly allowed to vote and that they were allowed to vote does not vitiate the election of the petitioners. [*Faizu Mahadeo Chandekar and others v. Civil Judge, Jr. Division*, 1964 Mh LJ 25].

2. Validity of voting paper.—Putting a mark on voting paper by an instrument other than official instrument invalidate the voting paper. [*Dajiba v. Sangappa*, 1966 Mh LJ 804 : 68 Bom LR 470].

3. Voting paper.—There is no rule anywhere which states that putting more than one mark on a symbol of a candidate or against the name of the candidate on voting paper would amount to casting more than one vote against that candidate or would render the ballot paper invalid. Court may here state that as a matter of caution express provision has been made in respect of elections under Representation of the People Act, cautioning the Returning Officer that he shall not reject the ballot paper merely on the ground that the mark indicating vote is indistinct or made more than once, if the intention of the voter to vote for a particular candidate clearly appears from the way the

ballot paper is marked. Of course the provision is in respect of another, enactment and in that sense it has no direct application to the case before us. In our opinion, however, the provisions indicates a general principle. Right to vote and elect a representative is a valuable right. The right of casting votes is conferred on persons who may even be illiterate; literacy is not a qualification for being a voter. The said right is not to be denied on flimsy and technical grounds. As their Lordships of the Supreme Court have pointed out that what is to be ascertained is the intention of the voter as evidenced by the marking made by him on the ballot paper. If it clearly indicates that the voter wanted to vote for a particular candidate and has not done anything which law does not permit him to do, the mere fact that the mark indicating the vote is indistinct or made more than once would not invalidate the ballot paper. The question next arises is whether the combined effect of clause (i) of Rule 23 and clause (d) of Rule 33 is that if more than one mark is made by a voter against the name of a candidate or on the symbol of the candidate it invalidate the ballot paper.

Court is unable to see how on reading provisions of Rule 33 it emerges that making more than one mark against any one candidate tantamounts to giving more than one vote to that candidate. If the rule making authorities wanted to say so they could have said so in clear terms. They have not said so. All that it prohibited is giving more than one vote to any one candidate and that alone would render the ballot paper invalid and, therefore, liable to be rejected as recording of more votes than he is entitled to give. Now, here the voter was entitled to cast three votes, inasmuch as the voters from that ward had to elect three candidates two for the general seats and one for the reserved seat. The voters were entitled to cast two votes, one for each candidate they desired to elect for the general seat and one for a candidate whom they wanted to elect to represent them for the reserved seat. What is prohibited is casting two votes for any one candidate for the general seat, or casting more than one vote for any one candidate who was contesting the reserved seat. Now here as we have seen in all impugned ballot papers the voters have made marks against two candidates contesting the general seat and one candidate contesting the reserved seat. Of course, in respect of certain candidates there are more than one mark on his name or on his symbol. But looking at the voting papers it leaves no doubt that in making two marks the voter has not recorded more than one vote for that candidate. This is not a case where the voter has made more than one mark against the name or the symbol of one candidate leaving the paper blank. Such a circumstance may lead to an inference that the voter was casting more than one vote for any one candidate. The reason why in so many ballot papers more than one mark has been made appears to be the rule of recording votes contained in Rule 5, clause (3). The vote is to be recorded by making a mark with an instrument and the mark is to be made on or near the symbol of the candidate for whom the voter intends to vote. All the symbols are printed in darker shades. They are in black and white. In certain symbols the black shade is deep, for instance, symbols motor car and the cycle. On these symbols the voters are told to put marks with an instrument. For making the mark the voter has to put the instrument on the symbol. At times the print produced by the instrument is faint and at times incomplete and that appears to have led the voters to make another mark so that the marks made by them on the symbol should be distinctly seen. Perhaps had the manner of recording votes been differently provided and the ballot papers slightly different prepared, cases of this type may be less frequent. If

the ballot papers are so printed as to leave sufficient open white space between the name and the symbol and the voters are told to make their marks in the open space between the name and the symbol near the symbol then instances of making more than one mark may be reduced. However, as Court has stated making more than one mark against the name of any one candidate or on his symbol by itself does not amount or give rise to an inference that the voter has given more than one vote for that candidate. Respondent No. 6 was, in our opinion, in error in rejecting 22 out of 23 ballot papers which he had rejected for the reason that they were invalid because more than one mark had been made by the voter against the name or on the symbol of any one candidate. [*Dajiba v. Sangappa*, 1966 Mh LJ 804 (Bom)].

Sub-rule (1) of Rule 23 provides for a case of a plural constituency and it says that in such a constituency or such a ward a voter will have as many votes as there are seats. Thus if there are three seats, three candidates could be elected from a particular ward and every voter will have three votes. It lays down a further prohibition that such a voter, though he has got three votes, cannot cast all the three votes to a single candidate. He can only cast one vote in favour of one candidate. This clause does not, therefore, contemplate a case which is before us. Similarly, clause (d) of Rule 33(1) also does not help the respondent No. 1. This clause only shows that a voter cannot record more than one vote for one candidate. It also provides that if in a particular ward he has got only one vote, he cannot record more than one vote at that election for one candidate or for different candidates. This also has no bearing on the question that is before us. Here, Bainabai by reason of the inclusion of her name in the voters' list of Ward No. 1 has a vote for that ward. Similarly, by reason of the inclusion of her name in Ward No. 4 she has a vote in that ward and she could vote in both the wards unless there is a specific bar and if there was any such bar, then she could have exercised a choice of voting in either of these two wards. To such a case either Rule 23 or Rule 33 does not apply. [*Ramdas Sheo Ranji Pathak v. Punjab Govind Raoji Pathare*, 1969 Mh LJ 425 (Bom)].

4. Right of franchise—Power of Returning Officer.—Rule 23 is not made to defeat the right to franchise but to consider whether individual has a right to franchise. [*Faiju Mahadeo Chandekar v. Civil Judge*, AIR 1964 Bom 160 (DB) : 1964 Mh LJ 25].

5. Right of casting vote.—Right of casting votes cannot be denied to person who is illiterate. Right to franchise and elect a candidate is valuable right. [*Dajiba Gurunath Gavane v. Sangappa Sharanappa Patil*, AIR 1967 Bom 264 (DB)].

6. Mark on ballot paper.—Marking on ballot paper in casting of vote is an intention of voter in favour of candidate. Marking behind the ballot is illegal. [*M. Narayana Rao v. G. Venkata Reddy*, AIR 1977 SC 208 : 1977 (1) SCC 771].

[23-A. Safeguards against personation.—(1) With a view to prevent personation of voters, every voter, about whose identity the Presiding Officer or the Polling Officer, as the case may be, is satisfied, shall allow his left forefinger to be inspected by the Presiding Officer or the Polling Officer and an indelible-ink mark to be put on it.

(2) If any voter refuses to allow his left forefinger to be inspected or marked in accordance with sub-rule (1) or has already such a mark on his left forefinger or does any act with a view to removing the ink mark, he shall not be supplied with any ballot paper or allowed to vote.

Explanation.—Any reference in this rule to the left forefinger of a voter shall, in the case where the voter has his left forefinger missing, be construed as a reference to any other finger of his left hand and shall in the case where all the fingers of his left hand are missing be construed as a reference to the forefinger or any other finger of his right hand, and shall, in the case where all his fingers of both the hands are missing, be construed as a reference to such extremity of his left or right arm as he possesses.]

24. Duties of presiding and other polling officer.—¹[(1)] It shall be the duty of the officers and their assistants to see that votes are recorded with absolute secrecy; that only such persons as may be admitted to the polling booth under these rules are admitted thereto; and that persons who have recorded their votes, or against whom objections have been heard and upheld, leave immediately. It shall also be their duty to see that these rules and any special directions given by the Returning Officer thereunder are strictly observed in all respects.

²[(2)] The presiding officer shall keep the ballot box under his own observation for the purpose of preventing malpractices and securing the observance of the rules.]

25. Returning Officer to supervise conduct of election.—The election shall be conducted under the general supervision of the Returning Officer ^{3*} * *

26. Voting by officers on duty at polling station.—A presiding or polling officer or any person who is on duty at a polling station at which he is not entitled to vote may, if such officer or person is entitled to vote at the election in connection with which he is employed, record his vote at the polling station. ^{4*} * * ⁵[The ballot papers of such persons] shall be enclosed in sealed packets on which the names of the polling stations to which they pertain shall be inscribed and such packets shall be delivered to the Returning Officer with the other articles mentioned in rule 30.

1. This figure was inserted by G.N., L.S.G. and P.H.D., No. VPA. 1160-P, dated the 1st April, 1960.
2. This sub-rule was inserted, *ibid.*
3. The words beginning with "The Presiding Officer" and ending with "if present at the polling station" were deleted by G.N., L.S.G. and P.H.D., No. VPA. 1160-P, dated the 1st April, 1960.
4. The portion beginning with the words "The name of the polling station" and ending with the words "in lieu of his number in the voters' list" was deleted by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
5. This was substituted for the words "The voting papers of such persons", *ibid.*

27. Tendered ¹[ballot papers].—Where a person representing himself to be a particular voter entered in the voters' list applies for a ²[ballot paper] after another person has voted as such voter, the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to receive a ³[ballot paper]. The voter shall then record his votes in the manner provided by Rule 23 and hand over the ⁴[ballot paper] to the presiding officer. The presiding officer shall write thereon the name of the voter and his number in the voters' list and shall enclose the ⁵[ballot paper] in a separate packet and seal it. Such ⁶[ballot paper] shall not be counted by the Returning Officer and shall be termed "Tendered ⁷[ballot paper]". A list shall be maintained of the ⁸[ballot paper] so tendered in Form 'C' appended to these rules.

28. Spoilt ⁹[ballot papers].—A voter who has dealt with his ¹⁰[ballot paper] in such a manner that it cannot conveniently be used as a ¹¹[ballot paper] may, on delivering it to the presiding officer and satisfying him of the inadvertence, obtain another ¹²[ballot paper] in place in place of the spoilt paper; and the later shall ¹³* * * * be marked as "cancelled".

29. Challenged votes.—(1) Where any candidate, election agent or polling agent declares and undertakes to prove that any person by

1. This was substituted for the words "voting paper" "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
2. This was substituted for the words "voting paper" "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
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6. This was substituted for the words "voting paper" "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
7. This was substituted for the words "voting paper" "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
8. This was substituted for the words "voting paper" "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
9. This was substituted for the words "voting paper" "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
10. This was substituted for the words "voting paper" "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
11. This was substituted for the words "voting paper" "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
12. This was substituted for the words "voting paper" "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
13. The words "together with its counterfoil" were deleted, *ibid.*

applying for ¹[ballot paper] and claiming to be a particular voter has committed the offence of personation, the presiding officer shall require such person to enter in the list of challenged votes in Form 'D', his name and address or, if he is unable to write, to affix his thumb impression thereto, and may further require such person to produce evidence of identification :

Provided that no action shall be taken by the presiding officer under this sub-rule unless a sum of ²[two rupees] has been deposited in cash with the presiding officer by the candidate or such agent for each challenge he makes.

(2) Where the person so challenged refuses to comply with such requisition, he shall not be permitted to vote. But if such person does so comply, and on being questioned, gives unqualified answer in the affirmative to a question put to him whether he is the person named in the list and in the negative to a question whether he has voted at the said election in the ward or in any other ward, he shall be allowed to vote after he has been warned of the penalty for personation.

(3) Where the presiding officer after such inquiry on the spot as he thinks necessary is of opinion that the challenge made by the candidate or his agent under sub-rule (1) is frivolous and has not been made in good-faith, he shall direct the deposit made under sub-rule (1) to be forfeited to the State Government] and his order in his respect shall be final.

(4) Where the deposit made under sub-rule (1) is not forfeited under sub-rule (3), it shall be returned to the person by whom it was made after the close of the poll on the day on which it is made.

(5) The presiding officer shall, in every case, whether or not the person challenged is allowed to vote, make a note of the circumstances in the list of challenged votes.

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1. Voting right	681
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1. Voting right.—Since the name of a person appears in voter's list of more than one ward, he can vote in those wards if he is not disqualified under the Act. [*Ramdas S. Pathare v. G. Punjab*, 1969 Mh LJ 425].

2. Scope and applicability of.—Rule 29(2) in fact provides for the challenging of votes by a candidate or his election agent and it provides against personation at voting. If a candidate or his agent makes a challenge that any person applying for a ballot paper and claiming to be a particular voter is not that person entered in the list but in personating for him and when such a

1. This was substituted for the words "voting paper" by G.N., R.D.D., No. VPA. 1165/4834-P, dated 12th December, 1966.
2. Subs. by Mah. Act 52 of 1994, Sec. 18.

challenge is made, then he is to be confronted by the presiding officer under sub-rule (2) of Rule 29. He is required to enter his name and address in the list of challenged votes in Form 'D'. If, however, the alleged voter refuses to comply with such requisition, he shall not be permitted to vote. If he complies with the requisition under sub-rule (1) of Rule 29, then he is questioned by the presiding officer and after giving the answers as required by sub-rule (1) he is allowed to vote after he has been warned of the penalty for personation. The two questions that are to be asked to him are (1) whether he is the person named in the list and (2) whether he has voted at the said election in the ward or in any other ward. If he answers the first question in the affirmative and the second question in the negative, then alone he is allowed to vote after he has been warned of the penalty for personation.

Rule 29 only provides for finding out as to whether the particular voter is a genuine voter for that ward or is personating for some other person. For example, there may be two different persons in the same ward or the same village in different wards bearing the same name. Names of both these individuals are entered in the voters' list, each of them having a right of vote. Let us say, they are A and B. Now, A records his vote for himself and taking advantage of the similarity of the name and description also wants to record the vote in place of B. This would amount to personation for B. When anybody knowing A takes an objection then the presiding officer has to follow the procedure laid down in this rule. Such a precaution has to be taken to prevent personation as far as possible. If however, there is only one person of that name whose name is entered in the voters' list of more than one ward, either by mistake or because he may have some connection with each ward and he records his vote in each of those wards it could not be called a case of personation. The whole Rule 29 deals with the cases of personation at a voting and has nothing to do with the right of a voter to vote in a particular ward. It would thus be found that neither there is any express provision debarring a person from voting in more than one ward if his name is included in the voters' list of those wards, nor can such a provision be implied from the rules or the sections of the Bombay Village Panchayats Act. [*Ramdas Sheo Ranji Pathak v. Punjab Govind Raoji Pathare*, 1969 Mh LJ 425 (Bom)].

Court does not find any specific provision either in the Bombay Village Panchayats Act or in the rules framed under the said Act, just as, there is a specific provision in that respect in the Representation of the People Act, 1951 or the Maharashtra Municipalities Act, 1965. In the absence of a specific provision to that effect, the votes given by 'B' as well as in ward No. 4 cannot be excluded as she is not otherwise disqualified and in fact she is a qualified voter as contemplated by Section 13(1) of the Bombay Village Panchayats Act.

The provisions of the Representation of the People Act are not made applicable to the elections of the Village Panchayats under the Bombay Act and it is only in certain respects that the provisions of the Representation of the People Act have been referred to in the Bombay Village Panchayats Act. For example, the provisions of the Representation of the People Act could be brought in by reference for the purposes of Section 12 and Section 13 of the Bombay Village Panchayats Act. The said Act has specifically been referred to in Section 12 of the Bombay Village Panchayats Act and also would be included in the term 'any other law for the time being in force' under Section 13(1) of the Bombay Village Panchayats Act. However, the whole of the Representation

of the People Act cannot be made applicable to the elections under the Bombay Village Panchayats Act. [*Ramdas Sheoramji Pathare v. Panjab Govindraoji Pathare*, 1969 Mh LJ 425 (Bom)].

30. Sealing of ballot boxes, etc.—(1) The presiding officer shall, as soon as practicable after the close of the poll, in the presence of any candidate or representative of a candidate, if present, seal the aperture of the ballot boxes and seal with his own seal and the seal of any candidate or representative who may desire to affix his seal each ballot box in use at the polling station, unopened but with the key attached.

(2) The presiding officer shall then make up into separate packets,—

- (i) ¹[the unused ballot papers];
- (ii) the tendered ²[ballot papers];
- (iii) spoilt ³[ballot papers];
- (iv) the marked copies of the voters list;
- (v) 4* * * *
- (vi) the tendered votes list ; and
- (vii) list of challenged votes.

He shall seal with his own seal and the seal of any candidate or a representative of such candidate who may desire to affix his seal, all the packets prepared under this rule.

⁵[(3) The ballot box and the packets, shall be forwarded by the presiding officer to the Returning Officer or any other person appointed by the Returning Officer to take charge of them till the votes are counted. He shall also forward with them a ballot paper account prepared in Form 'E', appended to these rules and enclose it in a separate sealed cover with the words "Ballot Paper Accounts" subscribed thereon.]

NOTE

Local authority—Interpretation of.—Rule 30 merely refers to one of the special constituencies to election of members from special constituencies to the Assemblies of the States and it can have no relevance or reference in the context of Panchayat elections though the only words common to both are "local authorities". The expression "local authorities' constituency" does not refer to elections to a panchayat constituency but to a special seat from which persons are elected to the assembly from among local authorities. It does not

1. This was substituted for clause (i) by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
2. This was substituted for the words "voting papers", *ibid*.
3. This was substituted for the words "voting papers", *ibid*.
4. Clause (v) was deleted, *ibid*.
5. This was substituted for sub-rule (3) by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.

deal with local authorities but with local authorities' constituencies. Court does not think that Rule 30 is at all attracted in the present case. [*Fatzu Mahadeo v. Civil Judge, Jr. Division*, 1964 Mh LJ 25].

31. Adjournment of poll in emergencies.—(1) Where at an election the proceedings at any polling station for the poll are interrupted or obstructed by any riot or open violence, or where at an election it is not possible to take the poll at any polling station on account of any natural calamity, or any other sufficient cause, the Returning Officer or the presiding officer for such polling station shall announce an adjournment of the poll to a date to be appointed later, and where the poll is so adjourned by the presiding officer, he shall forthwith inform the Returning Officer concerned.

(2) Whenever a poll is adjourned under sub-rule (1), the Returning Officer shall immediately report the circumstances to the ¹[an officer authorised by the State Election Commissioner], who shall as soon as may be, appoint under Rule 7, the day on which the poll shall recommence and the hours during which, the poll shall be taken. The Returning Officer shall not count the votes at such election until such adjourned poll shall have been completed.

(3) The provisions of these rules shall *mutatis mutandis* apply to the adjourned poll taken under this rule as they apply to the original poll.

²[31-A. Fresh poll in case of destruction, etc. of ballot boxes.—

(1) If at any election,—

- (a) any ballot box used at a polling station is unlawfully taken out of the custody of the Presiding Officer or the Returning Officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station cannot be ascertained, or
- (b) any such error or irregularity in procedure as is likely to vitiate the poll, is committed at a polling station, the Returning Officer shall forthwith report the matter, to ³[an officer authorised by the State Election Commissioner].

(2) Thereupon, ⁴[an officer authorised by the State Election Commissioner] shall after taking all material circumstances into account, either,—

- (a) declare the poll at the polling station to be void, appoint a day and fix the hours, for taking a fresh poll at that

1. Subs. by Mah. Act 52 of 1994, Sec. 12.

2. The new Rule 31-A was inserted by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.

3. Subs. by Mah. Act 52 of 1994, Sec. 12.

4. Subs. by Mah. Act 52 of 1994, Sec. 12.

polling station and notify the day so, appointed and the hours so fixed in such ¹[manner] as he may deem fit, or

- (b) if satisfied that the result of a fresh poll at that polling station will not, in any way, affect the result of the election or that the error or irregularity in procedure is not material, issue such directions to the Returning Officer as he may deem proper for the further conduct and completion of the election.

(3) The provisions of the Act and if any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll.]

32. Counting of votes.—(1) The counting of votes shall be done by and under the supervision of the Returning Officer with the assistance of such persons as he may appoint to assist in the counting of votes.

(2) On the day and at the time and place appointed under Rule 7, for the counting of votes, the Returning Officer shall with respect to ballot boxes used at the poll proceed as followed :—

- (i) All the ballot boxes placed for the counting of votes shall be counted and checked and the Returning Officer shall satisfy himself that all such boxes as contain the ²[ballot papers] which are to be counted as such places have been received and accounted for.
- (ii) The Returning Officer shall then allow the candidates and their election agents and counting agents presents at the counting an opportunity to inspect the ballot boxes and their seal for satisfying themselves that they are in order.
- (iii) The Returning Officer shall also satisfy himself that none of the boxes has in fact been tampered with.
- (iv) If the Returning Officer is satisfied that all such ballot boxes as contain the ³[ballot papers] which are to be counted at such place have been received and are in order, he shall take up the counting of ⁴[ballot papers] contained in the ballot boxes.

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1. This was substituted for the word "matter" by G.N., R.D.D., No. VPA. 1167/ 10592-P, dated 25th March, 1967.
 2. This was substituted for the words "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
 3. These words were substituted for the words "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
 4. These words were substituted for the words "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.

- (v) After each ballot box is opened for counting, clearly valid ¹[ballot papers] shall be separate from invalid and doubtful ²[ballot papers]. The invalid and doubtful ³[ballot papers] shall be submitted to the Returning Officer for decision. The valid ⁴[ballot papers] shall thereafter be taken for counting and the votes recorded in favour of each candidate shall be counted with the aid of persons appointed to assist in the counting of votes.
- (vi) The Returning Officer shall allow the candidates and their election and counting agents, who may be present, reasonable opportunity to inspect all ⁵[ballot papers], which in the opinion of Returning Officer are liable to be rejected but shall not allow them to handle those or any other ⁶[ballot papers]. The Returning Officer shall on every ⁷[ballot paper] which is rejected, endorse the word "rejected". If any candidate or his election or counting agent questions the correctness of the rejection of any ⁸[ballot paper], the Returning Officer shall also record briefly on such ⁹[ballot paper] the grounds for its rejection.
- ¹⁰[(vii) After the counting of all ballot papers contained in all the ballot boxes used at a polling station has been completed, all the valid ballot papers shall be bundled together and kept along with the bundle of rejected ballot papers in a separate packet which the Returning Officer shall cause to be sealed up and on which shall be recorded the following particulars, namely :—
- (a) the name of the village panchayat.

1. These words were substituted for the words "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
2. These words were substituted for the words "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
3. These words were substituted for the words "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
4. These words were substituted for the words "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
5. These words were substituted for the words "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
6. These words were substituted for the words "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
7. These words were substituted for the words "voting papers" by G.N., R.D.D., No. VPA. 1165/48534-P, dated 12th December, 1966.
8. These words were substituted for the words "voting paper", *ibid.*
9. These words were substituted for the words "voting paper", *ibid.*
10. This was substituted for clause (vii), *ibid.*

- (b) the number or name of the ward,
- (c) the particulars of the polling station where the ballot papers have been used, and
- (d) the date of counting.

(3) The Returning Officer shall, as far as practicable, proceed continuously with the counting of the votes and shall, during the intervals when the counting has to be suspended, keep the ¹[ballot papers], packets and other documents relating to the election sealed with his own seal and the seal of such candidates or election or counting agents as may desire to affix their seals shall cause adequate precautions to be taken for their safe custody.

(4) After the counting of ²[ballot papers] contained in all the ballot boxes used at all the polling stations has been completed, the Returning Officer shall prepare a consolidated statement recording therein the total number of votes polled by each candidate.

NOTES

Limitation for filing election petition.—Limitation period for filing an election petition starts from the date of declaration of result under Rule 34. [*Bhika Poona Karpate v. Civil Judge, Jr. Divn., Gondia*, 1970 Mh LJ 648 : AIR 1971 Bom 277 : 73 Bom LR 352].

Counting of votes.—The counting of votes is restricted to ballot paper contained in ballot boxes. [*Laxman Damodhar Zoting v. Shamrao Vishwanath, Jawade*, AIR 1966 Bom 159 : 1965 Mh LJ 800].

33. Grounds for rejection of ballot papers.—(1) A ballot paper contained in a ballot box shall be rejected if,—

- (a) it bears any mark or writing by which the voter can be identified;
- (b) it bears any serial number and prefix or suffix or mark different from the serial numbers and prefixes or suffixes or marks of ballot papers authorised for use at the polling station at which the ballot box in which in which it was found, was used;
- (c) the Returning Officer is satisfied that it is a spurious ballot paper or that it has been so damaged or mutilated that its identity as a genuine ballot paper cannot be established;
- (d) a voter has recorded more votes than he is entitled to give or has recorded more than one vote for any one candidate;

1. These words were substituted for the words "voting papers" by G.N., R.D.D. No. VPA. 1165/48534-P, dated 12th December, 1966.

2. These words were substituted for the words "voting papers" by G.N., R.D.D. No. VPA. 1165/48534-P, dated 12th December, 1966.

¹[Provided that,—

- (i) where a Returning Officer is satisfied that any such defect as is mentioned in clause (b) has been caused by any mistake or failure on the part of the presiding officer or the polling officer, the ballot paper shall not be rejected merely on the ground of such defect;
- (ii) a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked.]

(2) The decision of the Returning Officer as to the validity of a ²[ballot paper] contained in a ballot box shall be final.

SYNOPSIS

1. Exclusion of ballot paper.	688
2. Ballot paper.	688
3. Validity of ballot paper.	688
4. Casted ballot papers—Validity of.	688
5. Rejection of voting paper.	690
6. Making more than one mark.	690

1. Exclusion of ballot paper.—Ballot paper found is prohibited ballot boxes liable to be excluded from consideration. [*Laxman v. Shamprao*, 1965 Mh LJ 800 : 67 Bom LR 41].

2. Ballot paper.—A ballot paper pertaining to any polling station must, therefore, be rejected if it is found in the ballot box of another polling station. It follows that a ballot paper contained in a ballot box for one constituency cannot be considered while counting votes of candidates from another constituency. [*Laxman v. Sham Rao*, 1965 Mh LJ 800 (Bom)].

3. Validity of ballot paper.—Putting another stamp mark on reverse side of ballot paper makes the ballot paper invalid. [*Bhagwat Anantrao Deshmukh v. Suresh Balbhim Lale*, 1989 Mh LJ 747 : 1989 (1) Bom CR 569].

4. Casted ballot papers—Validity of.—If this was the case of two distinct marks, then Court would have been inclined to hold that this is a case of giving two votes to the same candidate. *Maliksingh Sitaram Mainawale etc. etc. v. Jagatsingh Thakursingh and others etc.*, AIR 1987 Bom 206 and *Dajiba Gurunath Gavane and others v. Sangappa Shranappa Patil and others*, 1966 Mh LJ 804 : AIR 1967 Bom 264, take the view that even if two distinct marks are made still it does not amount to giving two votes to the same candidate when only one vote be given.

Even if two distinct marks are made it should not be held that two votes are given, then it would mean that by this judicial interpretation of Rule 33

1. The proviso was inserted by G.N., R.D.D., No. VPA. 1165/48534- P, dated 12th December, 1966.
2. This was substituted for the words "voting paper", *ibid.*

of the Village Panchayats Election Rules, clause (d) of sub-rule (1) of said Rule 33 is veritably deleted and repealed by the Court by judicial process.

If a voter wants to give two votes to one and the same candidate, (though disallowed by the Rules) the only way in which he can do so is to put two distinct marks against the name of the same candidate and if he does so, then the voting paper will have to be held to be valid. Both the decisions mentioned above do not lay down such a principle of law, which will be violative of the legislative dictate. But it may be added that the present case is not the case of two distinct marks at all. In the present case, so far as Ballot Paper No. 055 is concerned, one may see as one runs that the reason for making the 2nd mark is that the 1st mark, which is just upon the symbol 'Tiger' is extremely blurred and indistinct. A reasonable and legitimate inference must follow that it was on this account that the voter has put the 2nd mark to emphasize his intent to give vote to candidate Deshmukh. This is not the case of two votes to one candidate but is the case where one vote is given to one and the same candidate but with the emphasis added to the same.

Rule 23 provides for the manner in which voting should be done. The question of rejection of ballot paper is entirely an independent question. The grounds on which the ballot paper can be rejected are set out exclusively in Rule 33 and said Rule 33, though it purports to be quite exhaustive, does not lay down this overlapping of the mark as a ground for rejection of the ballot paper.

This question will depend upon the facts of each case. In the General Election where the votaries consist of millions of voters, making one mark on the reverse will obviously be not enough to indicate the identity of the voter. But, in the election of the institution such as Gram Panchayat the votary extends to just a few thousands or just a few hundreds. In such a case it will be easily possible for the voter to enter into some kind of understanding with the particular candidate with a view to get some reward for voting in his favour. To ensure such voting and to justify such reward, the candidate may require the voter to put a mark on the reverse side of the ballot paper. In this connection, it is significant that the mark made by the voter concerned on the reverse side of the said fifth ballot paper is not even on the reverse side of the space allotted to this candidate Deshmukh. It is on the reverse side of the space allotted to Lale. An intention to disclose his identity can, therefore, be legitimately imputed to this particular voter. This is precisely the thing spurned by the Rules.

In an election of such a small institution, consisting of modes number of voters, this is easily possible. What is contemplated by the Rule is not that the identity is actually established; what is looked down upon is that the identity must be capable of being established. Therefore, the 5th ballot paper No. 056 must be held to be answering the description of a ballot paper, the mark or marks on which are likely to indicate the identity of the voter. As such, this ballot paper shall have to be rejected having regard to the provisions of Rule 33(1)(a) of the Election Rules, which Rule states that a ballot paper shall be rejected if it bears any mark or writing by which the voter can be identified. Clause (a) of sub-rule (1) of Rule 33 does not require that the voter should be proved to have been identified. Even if the mark or writing upon the ballot paper is such that the voter is capable of being identified, the ballot paper must be held to be invalid, irrespective of the question whether he has in fact been identified or not.

Significantly enough, identical act of putting mark on the reverse side of the space reserved for another candidate (in addition to a mark on the symbol of candidate Yashodabai) is put by the voter concerned. This strongly reinforces the inference as regard the *modus operandi* resorted to by some voter or voters to indicate his or their identity. However, for the reasons stated above, this fact will have no impact upon the election of the petitioners. [*Bhagwat Anantrao Deshmukh v. Suresh Balbhim Lale*, 1989 Mh LJ 747 (Bom)].

5. Rejection of voting paper.—Voting paper bearing more than one stamp mark against the name of same candidate in space provided not liable to be rejected. [*Laxmibai v. Mainabai*, 1962 NLJ Note 56].

6. Making more than one mark.—Making mark on the symbol of candidate more than one does not mean that the voter has given more than one vote for the candidate. [*Dajiba Gurunath Gavane v. Sangappa Sharanappa Patil*, AIR 1967 Bom 264 (DB) : 1966 Mh LJ 804].

34. Returning Officer to declare result of election.—(1) On completion of the statement showing the number of votes recorded, the Returning Officer shall from amongst the candidates qualified to be chosen to fill reserved a seat, if any, declare subject to the provisions of Rule 5 the candidate who has secured the largest number of votes to be elected to fill such reserved seat :

Provided that if in the same ward there is a reservation of seats for women and for ¹[the Scheduled Castes the Scheduled Tribes, Backward Class of Citizens and Women] the result of the seat or seats reserved for Scheduled Castes or Scheduled Tribes or Backward class of citizens shall be declared first and than the result of the seat or seats reserved for women.

²[(2) The Returning Officer shall then declare the results of unreserved seat or seats from among the candidates who have contested election from unreserved seat and who have secured the largest number of votes to be elected to fill the unreserved seat or seats.]

(3) Where an equality of votes is found to exist between any candidates either for the reserved or the unreserved seats and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person or persons to whom such an additional vote shall be deemed to have been given shall be made by lots to be drawn in the presence of the Returning Officer and the candidates or their agents who may desire to be present, and in such manner as the Returning Officer may determine.

SYNOPSIS

1. Election in multiseats ward.	691
2. Election to multiseat ward—Result to seat reserved declared—Candidates securing the highest number of votes eligible to be elected for BVP Election Rules, Rule 34.	691
3. Effect of Rule 34.	693

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1. Subs. by Mah. Act 52 of 1994.
 2. Subs. by G.N. of 27.2.2002.

4. Validity of Rule 34.	693
5. Interpretation of sub-rule (1).	695
6. Declaration of result.	695
7. Minimum number of seats.	695
8. Power of Returning Officer to amend result.	695

1. Election in multiseats ward.—There is no bar to all seats being filled by candidates belonging to a particular category. [*Shobha Ashok Patil v. Mahananda Rajaram Nikam*, 1997 (3) Mh LJ 353 : 1997 (4) All MR 183].

2. Election to multiseat ward—Result to seat reserved declared—Candidates securing the highest number of votes eligible to be elected for BVP Election Rules, Rule 34.—The learned counsel for the petitioner contends that the order of the returning officer as also the judgment of the civil Judge, Junior Division is clearly contrary to the Rule 34 of the Bombay Village Panchayat Election Rules, 1959. In terms of the said Rules after elections have been notified for a ward a candidate seeking to file the nomination has to file the same in term of Rule 10 along with an amount of Rs. 50/- in cash. However in a ward in which a seat or seats is or are reserved for a woman, Scheduled Castes or Scheduled Tribes the sum to be deposited by or on behalf of a candidate who is a woman or a member of a Scheduled Castes or Scheduled Tribes shall be Rs. 10/-. There is no separate provision whereby a candidate who contests a reserved seat in order to contest the general seat from the same ward has to deposit another set of fees. Thereafter in terms of Rule 34 the returning officer has to declare the candidate who has secured the largest number of votes as elected to fill such reserved seat. There is a proviso which sets out that if there is a reservation of seat for woman and for Scheduled Castes and/or Scheduled Tribes the result of seat or seats reserved for Scheduled Castes shall be declared first and then result of the seat or seats reserved for woman. In other words in a ward where there is also a reserved seat the Returning Officer has to first declare as elected a member of the Scheduled Castes or Scheduled Tribes thereafter declare the result of the seat reserved for woman. After that has been complied with the Returning Officer shall then declare amongst all other candidates excluding those who have been declared elected to fill the reserved seat from amongst candidates who have secured the largest number of votes to be elected to fill the reserved seat. On a perusal of sub-rules (1) and (2), there is no manner of doubt that what is contemplated by the Rule is that in the first instance when there is a seat reserved for Scheduled Castes or Scheduled Tribes the result therein shall be first declare after that is declared, thereafter the result of the seat reserved for woman should be declared and only thereafter from the candidates who are left in the field, the candidate securing highest number of votes has to be declared elected for the remaining seat or seats. This is turn may possibly result in all seats being filled by candidate belonging to a particular category to say Scheduled Castes or Scheduled Tribes or Woman.

The question is whether the reasoning adopted by the returning officer and the civil Judge, Junior Division, holding that once a candidate is declare elected from a reserves seat then other candidates who had contested the reserved seat are barred from being considered for the seat or seats which are left is right? The answer according to Court is no, as the issue is no longer *res integra* considering the judgments of this Court.

The Apex Court while interpreting a similar provision under the Representation of Peoples Act in the case of the Double Member Constituency in the case of *V.V. Giri v. D. Suri Dora* reported in AIR 1959 SC 1318, interpreted Section 33(2), Section 54(4), Section 63 and other sections and held that even in the case of Double Member Constituency wherein one seat is reserved for a Scheduled Castes if both the candidates who secured highest number of votes after the result of the Scheduled Caste candidate is declared is also a Scheduled Caste then such candidate shall be declared to be elected. The argument that if a candidate has not opted to contest the general seat while giving the declaration; for the reserved seat and is ineligible to contest the general seat was also rejected.

Earlier a Division Bench of this Court in case of *Digambar Rao Bindu v. Dev Rao Kamble* reported in ELR Vol XV 187, had taken the same view. The Division Bench had further observed therein that no separate nomination is necessary for the general seat and a member of the Scheduled Caste is qualified by his filing a nomination to the reserved seat to contest the seat and it could not be said that if such a candidate had not filled in his nomination for the general seat his case ought not to be considered.

The matter thereafter has also arisen before another Division Bench of this Court in the case of *Smt. Manjuli v. Civil Judge, Senior Division, Wardha* reported in 1969 Mh LJ 435 : AIR 1970 Bom 1. In that petition also similarly one seat was reserved for a woman. After the counting of result the woman securing the highest number of votes was declared elected. Thereafter from the other candidates another woman topped the list from amongst the remaining candidates and she was declared to be elected by the returning officer. This was a subject-matter of an election petition. The election petition against the declaration of result by returning officer was dismissed and this is how the petition came before this Court. Before this Court a challenge was also made to Rule 34 of the Bombay Village Panchayat Election Rules on the ground that if such interpretation was possible the same would be unreasonable. The Division Bench relied on another unreported judgment in the Special Civil Application No. 127 of 1963 dated 14th September, 1964 Maharashtra wherein one of the questions was where one of the woman candidates had made an endorsement on a nomination paper that she was a candidate for a general seat. It had been held that this would not disqualify such a candidate from contesting the reserved seat. The Division Bench pointed out that the provisions of the Bombay Village Panchayat Election Rules seems to be copied from the Representation of the People Act, 1951. The Division Bench noticed the interpretation given by the Apex Court in the case of *V.V. Giri v. D. Suri Dora* reported in AIR 1959 SC 1318, in the case of multi candidates constituency. The Division Bench has thereafter observed as under :—

“We may point out that the reservation of seats for women and of the Scheduled Castes and Scheduled Tribes is in the nature of a facility given to them or a concession made to a weaker section of the society in order to offer them reasonable opportunity of being represented in the administration as such. The plea, therefore, is to see that minimum number of seats as contemplated by the Legislature are filled in. There is no objection if more members from these weaker sections are elected to the village panchayat or other elected bodies. This result of guaranteeing minimum seats as required by the statute is properly carried out by the provisions of Rule 34. We might

take up the instance of the present disputed Ward No. 2 and examine how Rule 34 is, in fact, beneficial and not obstructive of affording proper representation to women. This rule, according to us, fulfils two requirements. It ensures one seat from that ward being allotted to the woman candidate for which class a seat has been declared reserved in this ward. At the same time, it fulfils another important requirement of the democratic set up of the institution *viz.* those candidates who are favoured by the electorate and in whose favour highest number of votes are cast must represent the constituency."

The Court has, therefore, no hesitation to hold that the order of the Civil Judge, Junior Division dated 23rd June, 1995 has to be set aside.

In the result, order dated 23rd June, 1995 passed by the Joint Civil Judge, Junior Division, Madha, in Election Petition No. 2 of 1995 is quashed and set aside and the petitioner herein is declared elected from ward No. 3 in the place of Respondent No. 2 Haibarao Nivruti Nikam. The returning officer to make the necessary changes as required by the provisions of the Bombay Village Panchayat Act and the Bombay Village Panchayat Election Rules forthwith. [*Shobha Ashok Patil v. Mahananda Rajaram Nikam*, 1997 (3) Mh LJ 353 : 1997 (4) All MR 183].

3. Effect of Rule 34.—Where in a constituency there were two seats, one reserved and one general then result of reserved seat is to be declared first and then the result of general seat is to be declared. [*Smt. Manjuli v. Civil Judge, Sr. Divi., Wardha*, 1969 Mh LJ 435 : AIR 1970 Bom 1].

4. Validity of Rule 34.—That not only Rule 34 but almost all the provisions relating to the election to the Village Panchayats in the Election Rules framed by the State seem to be copied from the Representation of the People Act, 1951. Section 54 of that Act, which is not only in *pari materia* with Rule 34 but almost identical in words, was subject-matter of challenge before the Supreme Court. It is obvious from the discussion of the learned Judges that the judgment of the Supreme Court in *V.V. Giri v. D. Suri Dora* AIR 1959 SC 1318, was not brought to their notice. Court would, therefore, point out, with utmost respect to the learned Judges, that their discussion and observations relating to Rule 34 are obiter and they appear to have been made under the abovementioned circumstances.

That the reservation of seats for women and of the Scheduled Castes and Scheduled Tribes is in the nature of a facility given to them or a concession made to a weaker section of the society in order to offer them reasonable opportunity of being represented in the administration as such. The idea, therefore, is to see that minimum number of seats as contemplated by the Legislature are filled in. There is no objection if more members from these weaker sections are elected to the Village Panchayat or other elected bodies. This result of guaranteeing minimum seats as required by the statute is properly carried out by the provisions of Rule 34. Court might take up the instance of the present disputed Ward No. 2 and examine how Rule 34 is, in fact, beneficial and not obstructive of affording proper representation to women. This rule, according to us, fulfils two requirements. It ensures one seat from that ward being allotted to the women candidate for which class a seat has been declared reserved in this ward. At the same time, it fulfils another important requirement of the democratic set up of the institutions *viz.*, those candidates who are favour by the electorate and in whose favour highest number of votes are cast must represent the constituency.

Rule 34 is almost word to word similar to the provisions of Section 54, sub-section (4) of the Representation of the People Act, 1951.

Therefore, Rule 34 is not unreasonable. It is not a rule which does not implement the intention of the Legislature as expressed in sub-section (2) of Section 10. On the contrary, it appears a wholesome rule adopted from similar provisions of the Representation of the People Act, 1951 which have received judicial recognition from the highest Tribunal of this land.

In this election were declared on 31.5.1966 and the petition was presented by Mahadeo on 15.6.1966. Sub-section (1) of Section 15 of the Village Panchayats Act, 1958, provides that any person who is qualified to vote at the election is entitled to challenge the validity of the election by applying to the civil Judge, Junior Division, and if there be no civil Judge, Junior Division, to the civil Judge, Senior Division having ordinary jurisdiction in the area within which the elections were held "within 15 days after the date of the declaration of the result of the election". What is argued before us is that the election result having been declared on 31.5.1966 that date should be counted for the purpose of limitation and 15 days should be counted by including 31st May as one day. Another submission is that the wording 'within 15 days' means not on the 15th day but sometime before 15 days. We do not find any substance in either of these arguments. On the plain reading of this section, it appears that the election is permissible to be challenged within 15 days "after" the date of declaration of the election result. The date of the declaration of the result is, therefore, to be excluded because 15 days contemplated are after that day. 31st May, 1966 must, therefore, be excluded from consideration altogether. If that is done, the petition is presented on the 15th days after the result. There is no specific provision in the Village Panchayats Act as to how 15 days should be counted. Reference, therefore, must be made to Section 11 of the Bombay General Clauses Act, 1904. That section provides that where, by any Bombay Act or Maharashtra Act made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open. It is, therefore, clearly provided that when a certain time is allowed for doing an act, the last day of that time is included for the purpose of performing that act. If on such last day, the office or Court is closed, then the first day after re-opening will be considered the last day for the purposes of performing that act. It is, therefore, obvious to us that filing the petition on the 15th day after the result amounts to filing in within 15 days as required by law. Court therefore, hold that the petition is in time. [*Smt. Marjuli v. Civil Judge Sr. Divl.*, 1969 Mh LJ 435].

Under sub-rule (1) of Rule 34 it is provided that, first, on a counting of votes recorded the Returning Officer has to find which candidate is elected for the reserved seat and under the proviso this declaration in respect of a seat reserved for woman or members of Scheduled Castes or Scheduled Tribes has to be made first. Now in a given case, it may well be that a woman candidate may top the list amongst all the candidates including the candidates competing for the general seat, yet a faithful implementation of sub-rule (1) of Rule 34 will require the Returning Officer to declare such woman as elected for the reserved seat. The necessary consequence of woman who has topped to whole poll being declared elected to the seat reserved for woman is that no

other woman can claim to be elected to the seat reserved for woman because a woman candidate has topped the poll and had to be declared elected to seat reserved for woman. It was not intended by the Legislature that in the case of a multi-member constituency where a seat is reserved for a woman or the members of the Scheduled Castes or Scheduled Tribes, even though a candidate belonging to any of these categories topped the poll, he should be declared elected to the reserved seat for these categories. On the other hand, the intention of the Legislature undoubtedly appears to be to give additional opportunities to the candidates belonging to these categories to have representations for the reserved seat in any case and in addition to have a fair chance of competing for the general seats. This will be defeated by implementation of sub-rule (1) of Rule 34 of the Bombay Village Panchayats Election Rules, as it now stands. When the nomination form does not require a candidate, who is a woman or a member belonging to the Scheduled Caste or Scheduled Tribe, to declare whether or not such candidate wants to contest for the seat reserved for the member of his community or sex, it is unfair to force him as a candidate to represent the reserved constituency without any indication to that effect either by the electorate or even by the candidate.

Sub-rule (1) of Rule 34 is unjust in other respects because he next best woman candidate who would have a right to claim election to the reserved seat loses that opportunity simply because another woman, though she has topped the poll amongst all the candidates and would be entitled to be declared elected to the general seat, happens to be a woman. [*Shashikalabai v. Returning Officer, Gram Panchayat Election*, 1968 Mh LJ 391 (Bom)].

5. Interpretation of sub-rule (1).—The returning officer was in error in interpreting Rule 34(1). According to its proper interpretation the woman who got 104 votes must be declared to be elected in the reserved seat and the male candidate who secured 90 votes for the general seat. Rule 34 is not open to challenge on the ground of either being unreasonable or not being so worded as to implement the intention of the Legislature expressed in Section 10(2) of the Village Panchayats Act. [*Manjuli v. Civil Judge Wardha*, 1969 Mh LJ 435 (Bom)].

6. Declaration of result.—Endorsement by a candidate on nomination paper regarding general seat, did not disqualify him from being chosen for reserved seat. [*Daya Ram Sadhashiv Bante v. Zibal Jago*, Special Civil Appln. No. 121 of 1963 decided on 14.9.1969].

7. Minimum number of seats.—The reservation of seats for women and Schedule Caste and Scheduled Tribe is for weaker section of society, in order to give reasonable opportunity in administration. [*Smt. Manjuli v. Civil Judge*, AIR 1970 Bom 1 : 1969 Mh LJ 435].

8. Power of Returning Officer to amend result.—Under the scheme of the Bombay Village Panchayats Act, 1958 and that of the Bombay Village Panchayats Election Rules, 1959, once Returning Officer declares the results of elections under Rule 34 of the Rules of 1959, next step can be that the candidate, or, in his absence, his election agent may apply in writing to the Returning Officer for a recount of all or any of the ballot papers already counted stating the grounds taken and as contemplated under Rule 35 of the Rules of 1959, and if the Returning Officer decides to allow such an application, then he shall count the ballot papers again in accordance with his decision and amend the statement showing the number of votes recorded, referred to in sub-rule (4) of Rule 32 to the extent necessary after such recount and announce the

amendments so made by him and the result of the election. It is only in this contingency that the Returning Officer is vested with powers to amend the results of the elections and under Rule 36, he shall cause the names of elected candidates to be posted at Village *Chavdi* or at the village *Panchayat* office or at such other public place, if any, appointed in that behalf by him and shall report such names immediately to the Collector. It is thereafter that the Collector would cause publication of results of elections under Rule 37 of the Rules of 1959. The Collector also is vested with a limited jurisdiction before the publication of the names of the elected and appointed members *i.e.* to the extent of correcting any mistake in the names of the elected and appointed members. Therefore, in the whole process, commencing from declaration of results of the elections to its publication, the Rules do not permit or vest with the Returning Officer or the Collector, any power to add to amend, vary or rescind the declaration of results of elections, and, therefore, to borrow such powers from Section 21 of the Bombay General Clauses Act, 1904, would be nothing but acting beyond the jurisdiction vested by the Act and Rules. The Returning Officer having once exercised his power of declaring the results of elections, cannot exercise it again unless statute provides for or vests with him the right to do so. [*Sarla w/o Sopan Bopale v. State of Maharashtra and others*, 2001 (1) Mh LJ 453 : 2001 (1) All MR 462 : 2001 (2) Bom CR 730].

35. Recount of votes.—(1) After such declaration has been made, a candidate, or, in his absence his election agent may apply in writing to the Returning Officer for a re-count of all or any of the ballot papers already counted stating the grounds on which he demands such re-count.

(2) On such an application being made the Returning Officer shall decide the matter and may allow the application in whole or in part, or may reject it *in toto* if it appears to him to be frivolous or unreasonable.

(3) Every decision of the Returning Officer under sub-rule (2) shall be in writing and contain the reasons therefor.

(4) If the Returning Officer decides under sub-rule (2) to allow an application whether in whole or in part, he shall,—

- (a) count the ballot papers again in accordance with this decision;
- (b) amend the statement showing the number of votes recorded, referred to in sub-rule (4) of Rule 32 to the extent necessary after such re-count; and
- (c) announce the amendments so made by him and the result of the election.

SYNOPSIS

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1. Consideration of prayer for recount.—In an election of *Gram Panchayat*, both candidates obtained 267 votes each. Since both the candidates obtained similar number of votes, no result could be declared. Keeping in view Rule 34(3), procedure was followed to declare result by drawing lots. Lots were accordingly, drawn by inviting a minor child Ganesh who had taken up one chit bearing the name of the petitioner who was declared as elected. The election of the petitioner was challenged by filing Election Petition. An application was submitted by defeated candidate praying for a relief of recounting of votes. The trial Court allowed the application, granted the prayer and passed an order of recounting. In writ petition challenging the said order, it was held that it was undisputed that both the candidates had obtained 267 votes. In the circumstances, the procedure required to be followed was as laid down in Rule 34. Lots were accordingly drawn. Till then no objection was raised by any candidate, including respondent No. 5. Moreover, there was nothing on record to show that the defeated candidate had invoked Rule 35 which provides for recount of votes after the declaration under Rule 34 of the Rules. Except bare assertion and bald statement, nothing has been placed before the Court to substantiate the contention raised by respondent. Delay of about a week in approaching the Election Tribunal by making the prayer for setting aside the election, was significant. The order passed by the trial Court was not in consonance with well-settled principle of law and deserved to be quashed and set aside. [*Duryodhan Mahadev Kale and others v. Election Returning Officer, GramPanchayat Redni and others*, 2004 (2) Mh LJ 861 : 2003 (4) All MR 912].

2. Relevant factors for directing recount.—The following factors are relevant for directing recounting of votes :

- (i) *prima facie* case must be established;
- (ii) material facts must be pleaded stating irregularities in counting of votes;
- (iii) a roving and fishing inquiry shall not be directed by way of an order for re-counting of votes;
- (iv) an objection to the said effect should be raised; and
- (v) secrecy of ballot papers should be maintained. [*Sadhu Singh v. Darshan Singh*, 2006 (6) SCC 255].

3. Recount of votes not to be granted as a matter of course.— Recount of ballot papers cannot be, as a matter of course. The reason is twofold, firstly that such an order affects the secrecy of the ballot which under the law is not likely to be disturbed and secondly, the Rules provide an elaborate procedure and unless and until it is categorically established that the Returning Officer has colluded in the corrupt practice, recount cannot be directed. The Court would be justified in ordering a recount only when the election petition contains adequate statements of all material facts on which allegations of illegality or irregularity in counting are founded and on the basis of evidence adduced, such allegations are *prima facie* established affording a good ground for believing that there has been a mistake in counting and further, when the Court trying the petition is *prima facie* satisfied for making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties. [*Sheshrao Nivrati Surwase v. Nilkanth Jyotiba Gaikwad and others*, 2003 (6) Bom CR 784 : (2003) 195 (4) Bom LR 85].

4. Recounting of votes.—The returning officer is not empowered to entertain an application for recount of votes after he has given a certificate of election to returned candidate. [*Keshavrao Narayanrao Gadhave v. State of Maharashtra*, 1994 (2) Mh LJ 1641 : 1995 (2) Bom CR 450].

5. Panchayat Election—Recounting of votes.—Elections of the Village Panchayat established under Section 5 of the Bombay Village Panchayats Act, 1958 are governed by the Bombay Village Panchayats Election Rules, 1959. Rule 34 of the said Rules requires the returning officer to prepare a statement showing the number of votes recorded and then declare the candidates who are elected. As soon as the said declaration is made, Rule 35 enables a candidate or in his absence his election agent to apply in writing to the returning officer for a recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount. Sub-rule (2) of the said Rule contemplates a decision by the returning officer meaning thereby that he should bear the affected persons and apply his mind to the said prayer and then take a decision whether the application for the recount is to be allowed in whole or in part or is to be rejected *in toto*. Sub-rule (4) of the said Rule lays down that after the recount, if any, the statement showing the number of votes recorded shall be amended and the amendment so made along with the result shall be declared. Rule 36 requires that the returning officer shall cause the names of the elected candidates to be posted at the village Chavdi or at the village panchayat officer or at such other public place, if any, appointed in that behalf by him and shall report such names immediately to the Collector.

The scheme of the counting as elaborated in Rules 32 to 35 clearly indicates that the whole process will have to be completed on the same day and it would be a continuous one. Application for the recount to be given under Rule 35 will have to be given immediately after the statement of the votes and the result on the basis of the said statement is declared by the returning officer. While taking the decision on the application for the recount, parties particularly the candidate who is declared elected will have to be heard, if he has to say anything in the matter. Returning Officer has to record the reason for the decision which he would take and the recounting shall thereupon be undertaken as a continuation of the process of the counting. Result will have to be again announced on the basis of the amended statement of the votes secured by the candidates. Rules do not give any power to the returning officer to entertain an application for the recount after he has given a certificate of election to the returned candidate and has posted the names of the elected candidates at the village Chavdi or other place indicated under Rule 36. Once the names are forwarded to the Collector, returning officer ceases to hold any domain over the elections. Any further challenge to the election will have to be made only as permissible under Section 15 of the Bombay Village Panchayats Act, 1958 and not otherwise.

In the instant case, the recount was applied after four days after the election results were declared by the returning officer and the results declared were amended and the Collector on 11th November, 1992 declared the names of Respondent 3 and 4 having been elected from Ward No. 2 in the elections to Salgaon Village Panchayat. All these actions were without jurisdiction. [*Keshavrao Narayanrao Gadhave v. State of Maharashtra*, 1994 Mh LJ 1641: 1995 (2) Bom CR 450].

6. Recounting.—It was held by Apex Court that to direct inspection and recount by exercising judicial power is undoubted but will be exercised

sparingly. [*Baldeo Singh v. Teja Singh Swatanra*, AIR 1975 SC 693 : 1975 (4) SCC 406].

7. Recounting of votes.—It was held by Apex Court that the value of secrecy of the ballot must not be loosened. [*Chanda Singh v. Shiv Ram Verma*, AIR 1975 SC 403 : 1975 (4) SCC 393].

36. Posting of result of election by Returning Officer.—The Returning Officer shall cause the names of the elected candidates to be posted to the Village *chavdi* or at the village panchayat office or at such other public place, if any, appointed in that behalf by him and shall report such names immediately to ¹[the State Election Commissioner].

NOTE

Applicability of rule.—Rule 36 does not speak about the declaration of result. [*Bhika Poona Kanpate v. Civil Judge*, AIR 1971 Bom 277 (DB) : 1970 Mh LJ 648].

37. Publication of result of election.—²[The State Election Commissioner] shall forward the names of the elected persons to the ³[Standing Committee] and if the number of persons elected is less than the total number of members for the panchayat, ⁴[the State Election Commissioner] shall call upon the ⁵[Standing Committee] to make appointments to the remaining seats under sub-section (3) of Section 10.

⁶[Where two-thirds or more of the total number of members required to be elected are elected, ⁷[the State Election Commissioner] shall, within ten days from the date of receipt of the result of the election, publish the names of the elected members as reported by the Returning Officer, ⁸[x x] by causing a list of such members to be posted up at his office, the village *chavdi* and at the office of the village panchayat. Where the election results in the return of less than two-thirds of the total number of qualified persons willing to take office, ⁹[the State Election Commissioner] shall, within ten days from the date of receipt from the Standing Committee of the names of members appointed under sub-section (3) of Section 10, published the names of all the elected, ¹⁰[xx] and appointed members at the places referred to above.]

1. Subs. by Mah. Act 52 of 1994, Sec. 12.
2. Subs. by Mah. Act 52 of 1994, Sec. 12.
3. This was substituted for the words "District Village Panchayat Mandal" by G.N., R.D.D. No. VPA. 1165/48534-P, dated the 12th December, 1966.
4. Subs. by Mah. Act 52 of 1994, Sec. 12.
5. This was substituted for the words "Panchayat Mandal" by G.N., R.D.D. No. VPA. 1165/48534-P, dated the 12th December, 1966.
6. These words were substituted *vide* G.N., and R.D.D., No. VPA. 1170/14886-E, dated 9th June, 1971.
7. Subs. by Mah. Act 52 of 1994, Sec. 12.
8. Deleted by Mah. Act 52 of 1994, Sec. 19.
9. Subs. by Mah. Act 52 of 1994, Sec. 12.
10. Deleted by Mah. Act 52 of 1994, Sec. 19.

The ¹[the State Election Commissioner] shall also similarly publish ²[x x] the names of members appointed under sub-section (3) of Section 10 after their appointments :

Provided that ³[the State Election Commissioner] shall, before the publication of the names of the elected, ⁴[x x] and appointed members, be competent to correct any mistakes, if any, if the names of the elected, ⁵[x x] and appointed members.

38. Record of proceeding.—The Returning Officer shall keep a record of the proceedings of every election.

⁶**39. Custody of papers relating to election.**—The Returning Officer shall keep in custody the statement, packets and other documents referred to in Rules 30 and 32 and all other papers relating to the election.]

⁷**40. Production and inspection of election papers.**—(1) While in the custody of the Returning Officer,—

- (a) the packets of unused ballot papers;
- (b) the packets of used ballot papers whether valid, tendered or rejected;
- (c) the packets of marked copies of the list of voters;

shall not be opened and their contents shall not be inspected by, or produced before any person or authority except under the order of a competent Court or authority.

(2) All other papers relating to the election shall be open to public inspection.

41. Destruction of ballot and other papers.—(1) On the expiry of two months from the date of the publication of the result of the election or where an application challenging the validity of an election has been made on the expiry of two months, from the date of the decision on such application, whichever is later, the Returning Officer shall, with the previous sanction of ⁸[an officer authorised by the State Election Commissioner] destroy the ballot papers.

1. Subs. by Mah. Act 52 of 1994, Sec. 12.
2. Deleted by Mah. Act 52 of 1994, Sec. 19.
3. Subs. by Mah. Act 52 of 1994, Sec. 12.
4. Deleted by Mah. Act 52 of 1994, Sec. 19.
5. Deleted by Mah. Act 52 of 1994, Sec. 19.
6. This was substituted for Rule 39 by G.N., R.D.D., No. VPA. 1165/48534-P, dated the 12th December, 1966.
7. Subs. by G.N. of 12-12-1966.
8. Subs. by Mah. Act 52 of 1994, Sec. 12

(2) All other papers relating to the election shall be retained until the termination of the next election of the village panchayat and shall, thereafter, be destroyed, subject to any direction to the contrary given by ¹[the State Election Commissioner] or a competent Court or authority.

41-A. Multiple election.—If a person is elected to more than one seat in a village panchayat, the time within which he may resign all but one of the seats under Section 13-A shall be seven days from the date of the posting of the result of the election by the Returning Officer under Rule 36.]

42. List of voters and notification about the various stages of election etc., in regional language.—The lists of voters and the notice for public inspection of the lists under Rule 3, and notification about the various stages of the election and notice of the intended election under Rule 7 shall be in the regional language of the village.

43. Casual vacancies.—The provisions of these rules shall, *mutatis mutandis* apply to bye-elections provided that,—

- (i) no publication of voters' list as provided in the case of general election under sub-rule (5) of Rule 3, shall be necessary in the case of a bye-election :

²(ii) * * * * *

³[**44. Powers of State Election Commissioner to delegate his powers under these rules.**—The State Election Commissioner may delegate to an officer authorised by him not below the rank of a Tahsildar power exercisable by him under these rules.]

Note.—For Notifications see under Section 10-A of the Bombay Village Panchayat Act, Page No. 156 to 161

⁴[**44-A. No change in division of wards and reservation of seats for election after dissolution.**—In case of dissolution of a village panchayat before the expiry of its term, the elections to such village panchayat shall be held without making any changes in the formation of wards, reservation of seats and other related matter.]

45. Repeal and savings.—The Bombay Village Panchayats Election Rules, 1948 and all other rules corresponding thereto in force in any part of the State immediately before the commencement of these Rules are hereby repealed :

Provided that anything done or any action taken under any of the rules so repealed shall, unless such thing or action is inconsistent with

1. Subs. by Mah. Act 52 of 1994, Sec. 12
2. Deleted by G.N. of 18-8-1979.
3. Subs. by Mah. Act 52 of 1994, Sec. 20.
4. Ins. by Mah. Act 52 of 1994, Sec. 21.

any of the provisions of these Rules, be deemed to have been done or taken under the corresponding provisions of these Rules.

FORM 'A'
(See rule 8)

Nomination Paper

Name of the ward for which the candidates is nominated.

Full name of candidate

Age.....

Address.....

In the case of a ward in which a seat is reserved for Scheduled Castes or Scheduled Tribes, state whether or not belonging to such castes or tribes for which seat or seats is or are reserved. If member of a Scheduled Caste or Scheduled Tribe, state the name of the caste or tribe.

Name of ward in which candidate is entitled to vote, and his number in the Voters' List.

I hereby declare that I am willing to serve as a member, if elected.

Date :

Serial No.

Signature of candidate

Date on which and time at which nomination paper was delivered to Returning Officer.....

Receipt

Date :

Signature of the Returning Officer.

FORM 'AA'
[See rule 7(2)]

Notice of Election

Notice is hereby given that—

- (1) An election is to be held of a member(s) to the..... Village Panchayat in the.....Ward;
- (2)(here state designation) has been appointed as the Returning Officer to hold the elections;
- (3) Nomination papers may be delivered by a candidate or through a representative authorised in writing in this behalf by such candidate to the Returning Officer.

- at..... (place) between..... and (time) on any day (other than a public holiday) not later than the ...;
- (4) Forms of nomination paper may be obtained at the place and time aforesaid;
 - (5) the nomination papers will be taken up for scrutiny at..... (time) on..... (date) at (place);
 - (6) notice of withdrawal of candidature may be delivered by a candidate in person or by a person authorised in writing by him in this behalf to the Returning Officer specified in clause (2) above at his office before 3-00 on the.....;
 - (7) in the event of the election being contested, the pool will be taken on.... (date) between the hours of... and (time).

Place.....

Date.....

¹[An officer authorised by the State Election Commissioner.....

FORM 'B'
(See rule 17)

Form of Ballot paper

Serial No.....

.....Village Panchayat
Election for.....Ward
19

Name of candidate 1	Symbol assigned 2
.....
.....
.....
.....

Please read this carefully before recording your vote(s) :—

- (1) You have.....vote(s).
- (2) One mark means one vote.
- (3) Do not put more than one mark, opposite the name of any candidate.
- (4) Do not put more than..... mark(s) in all.

1. Subs. by Mah. Act 52 of 1994, Sec. 12.

¹[FORM 'B-1'

[See rule 23(vi)]

List of Blind and Infirm Voters

Election to the

Ward No.

Polling Station

Serial No. of Voter	Full name of voter	Full name of companion	Address of companion	Signature/Thumb Impression of companion
1	2	3	4	5

Date :

Signature of Presiding Officer.]

FORM 'C'

(See rule 27)

Tendered Votes List

The Village Panchayat of.....

.....Polling Station

Name or number of ward	Name of voter	Number in voters' list

Date.....

Signature of Presiding Officer

FORM 'D'

(See rule 29)

List of Challenged Votes

Election to the.....Village Panchayat

Polling Station.....

1. This Form was inserted by G.N., R.D.D., No. VPA. 1167/27256-N, dated 22nd August, 1968.

Name of voter	Serial number of voter in the list of voters	Signature or thumb impression of voter and his address	Name of identifier, if any	Name of persons challenging	Amount of deposit made	Orders of Presiding Officer in each case	Signature of challenger acknowledged receipt of deposit when deposit is returned
1	2	3	4	5	6	7	8

Date.....

Signature of Presiding Officer.

[FORM 'E']

[See rule 30(3)]

Ballot Paper Account

Election to the.....Village Panchayat.

Ward No.....

Polling Station.....

	Serial No. (1)	Total No. (2)
1.	Number of ballot papers received by the presiding Officer at the Polling Station.	
2.	Number of ballot papers issued to voters	
3.	Number of unused ballot papers returned	
4.	Number of ballot papers cancelled	
5.	Number of tendered ballot papers used	
6.	Number of ballot papers in ballot boxes	

Date :

Signature of the Presiding Officer.

1. The new Form was inserted by G.N., R.D.D., No. VPA- 1165/48534-P, dated 12th December, 1966.