The Maharashtra Endowing Upon the Panchayats in the Scheduled Areas the Powers to Function as Self-Government (Amendment of Certain State Laws) Act, 1997

Act 46 of 1997

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THE MAHARASHTRA ENDOWING UPON THE PANCHAYATS IN THE SCHEDULED AREAS THE POWERS TO FUNCTION AS SELF-GOVERNMENT (AMENDMENT OF CERTAIN STATE LAWS) ACT, 1997

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MAHARASHTRA ACT No. XLVI OF 1997

[THE MAHARASHTRA ENDOWING UPON THE PANCHAYATS IN THE SCHEDULED AREAS THE POWERS TO FUNCTION AS SELF-GOVERNMENT (AMENDMENT OF CERTAIN STATE LAWS) ACT, 1997.]

[This Act received the assent of the Governor on the 28th December 1997; assent was published in the Maharashtra Government Gazette, Part IV, on the 29th December 1997.]

An Act further to amend certain State Laws for endowing upon the Panchayats in the Scheduled Areas the powers to function as self-Government.

WHEREAS it is expedient further to amend certain State Laws for endowing upon the Panchayats in the Scheduled Areas the powers to function as self-Government and for the purposes hereinafter appearing: It is hereby enacted in the Forty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Maharashtra endowing upon the Panchayats in the Scheduled Areas the powers to function as self-Government (Amendment of certain State Laws) Act, 1997.

CHAPTER II

AMENDMENTS TO THE BOMBAY VILLAGE PANCHAYATS ACT, 1958

Bom. 2. After section 8 of the Bombay Village Panchayats Act, 1958 (hereinafter in III of this Chapter referred to as “the principal Act”), the following section shall be inserted, namely:—

“8A. It shall be competent for every Gram Sabha in the Scheduled Areas,—

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

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

(iii) to issue to the panchayat certificate of utilisation of funds by that panchayat for the plans, programmes and projects referred to in clause (ii);

(iv) to identify and select persons as beneficiaries under the poverty alleviation and similar other programmes or schemes;

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

(vi) to issue to the panchayat with regard to the exploitation and regulation of trading of minor forest produce, 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;

(vii) to make recommendations through panchayat concerned with a view to prevent transfer or alienation of land in the Scheduled areas and to take appropriate action through the panchayat to restore any unlawfully transferred or alienated land of a Scheduled Tribe;

(viii) to make recommendations through the panchayat concerned with a view to exercise control over money-lending to the Scheduled Tribes;

(ix) to make recommendations through the panchayat concerned with a view to exercise control over local plans and resources for such plans including tribal sub-plans.

3. After section 45 of the principal Act, the following section shall be inserted, namely:

"45A. Every panchayat in the Scheduled Areas shall,—

(i) obtain from the Gram Sabha a certification of utilization of funds by the panchayat for the plans, programmes and projects approved under clause (ii) of section 8A;

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

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

(iii) be competent to make recommendations, to the licensing authorities concerned, prior to grant of a licence or premission by such authority for,—

(a) prospecting licence or mining lease for minor minerals in such Scheduled Areas; and

(b) concession for the exploitation of minor minerals by auction;

(iv) 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.

Explanation.—For the purposes of this clause, "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;

(v) having regard to the provisions of any law for the time being in force pertaining to alienation of land of the persons belonging to the Scheduled Tribes, be competent to make suitable recommendations to the Collector with a view to prevent unlawful alienation of land and to restore any unlawfully alienated land of members of the Scheduled Tribes;

(vi) be competent to make suitable recommendations to the Registrar appointed under section 3 of the Bombay Money Lenders Act, 1946 whenever a person applies for a licence for money lending in the area of the Panchayat concerned;

(vii) be competent to regulate exploitation, management and trade of minor forest produce vested in it under the Maharashtra Transfer of Ownership of Minor Forest Produce in the Schedule Areas, and the Maharashtra Minor Forest Produce (Regulation of Trade) (Amendment) Act, 1997."
4. In section 57 of the principal Act, in sub-section (2), after clause (f), the following clause shall be inserted, namely:

"(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;”.

5. Section 58 of the principal Act, shall be re-numbered as sub-section (1) thereof and after sub-section (1), as so re-numbered, the following shall be added, as sub-section (2), namely:

"(2) Notwithstanding anything contained in sub-section (1), if any of the Panchayat area 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.”.

6. In section 60 of the principal Act, to sub-section (1), the following proviso shall be added, namely:

"Provided that, the Secretary shall also function as Secretary to the Gram Sabha of the respective Panchayat.”.

7. After section 153A of the principal Act, the following section shall be inserted, namely:

"153-B. The State Government may give to any Gram Sabha or Panchayat in the Scheduled Areas general or special instructions as to the matters of policy to be followed by the Gram Sabha or Panchayat, as the case may be, in the interest of the tribals in the Scheduled Areas with reference to the implementation of or in compliance with, the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996. Upon the issue of such instructions or directions it shall be the duty or the Gram Sabha or the Panchayat, as the case may be, to give effect to such instructions or directions.”.

CHAPTER III

AMENDMENTS TO MAHARASHTRA ZILLA PARISHADS AND PANCHAYAT SAMITIS ACT, 1961.

Mah. 8. After section 100 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter in this Chapter referred to as “the principal Act”), the following section shall be inserted, namely:

"100-A. Every Zilla Parishad having Scheduled Area falling in more than one blocks in the District concerned,—

(i) shall be consulted by the Land Acquisition Authority, before such Authority acquires any land in the Scheduled Areas for the development projects and for re-settlement or rehabilitation of persons affected by such projects in such Scheduled areas;"
(ii) shall be competent to make recommendations, to the licensing authorities concerned, prior to grant of a licence, or permission by such authority for,—

(a) prospecting licence or mining lease for minor minerals in such Scheduled Areas;

(b) concession for the exploitation of minor minerals by auction;

(iii) having regard to the provisions of any law for the time being in force pertaining to transfer or alienation of land of the persons belonging to the Scheduled Tribes, shall be competent to make suitable recommendations to the Collector with a view to prevent unlawful transfer or alienation of land and to restore any unlawfully transferred or alienated land of members of the Scheduled Tribes;

(iv) shall be competent to make suitable recommendations to the Registrar appointed under section 3 of the Bombay Money Lenders Act, 1946 whenever a person applies for a licence for money-lending in such Scheduled Area:

Provided that the decision taken by the majority of the Gram Sabhas concerned by passing a resolution in any of the above matters shall be binding on the concerned Zilla Parishad.”

9. After section 101 A of the principal Act, the following section shall be inserted, namely:—

"101-B. Every Panchayat Samiti having Scheduled Areas falling in more than one Panchayat area in the Block concerned,—

(i) Shall be consulted by the Land Acquisition Authority, before such Authority acquires any land in the Scheduled Area for the Development project and for re-settlement or re-habilitation of persons affected by such projects in such Scheduled Areas;

(ii) Shall be competent to make recommendations subject to the provisions of any laws or regulations for the time being in force, to the licensing authorities concerned, prior to grant of a licence or permission by such authority for,—

(a) prospecting licence or mining lease for minor minerals in such Scheduled Areas;

(b) concession for the exploitation of minor minerals by auction;

(iii) Shall be competent to monitor, progress and supervise functioning of institutions and functionaries entrusted with the implementation of social sector programmes in such Scheduled Areas;

Explanation.—For the purpose of this clause “Social Sector” means any scheme, programme, project or work entrusted to Zilla Parishad under the provisions of sections 100, 102, 103 or 123 and Panchayat Samiti under section 101 of this Act so also to a Panchayat under section 45 of the Bombay Village Panchayat Act, 1958.

(iv) having regard to the provisions of any law for the time being in force pertaining to transfer or alienation of land of the persons belonging to the Scheduled Tribes, to make suitable recommendations to the Collector with a view to prevent unlawful transfer or alienation of land and to restore any unlawfully transferred or alienated land of members of the Scheduled Tribes;
(v) Shall be competent to make suitable recommendations to the registrar appointed under section 3 of the Bombay Money-lenders Act, 1946, whenever a persons applies for a licence for money-lending in such Scheduled Areas:

Provided that the decision taken by the majority of Gram Sabhas concerned by passing a resolution in any of the above matters shall be binding on the concerned Panchayat Samiti.”.

CHAPTER IV

AMENDMENT TO THE BOMBAY MONEY-LENDEES ACT, 1946.

10. In section 7 of the Bombay Money-lenders Act, 1946, to sub-section (1) the following provisos shall be added, namely:

Provided that, the Registrar shall grant such licence in the Scheduled Areas after consultation with the Gram Sabha and the Panchayat concerned, and where the area of the licence extends to more than one Gram Sabha or Panchayat then all the concerned Gram Sabha and Panchayat Samiti, within whose area of jurisdiction the money-lender carries on or intends to carry on, the business of money lending:

Provided that the decision taken by majority of the Gram Sabhas concerned by passing a resolution in any of the above matters shall be binding on the concerned Panchayat Samiti.

Explanation.—For the purpose of these provisos,—

(i) the expression “Gram Sabha”, “Panchayat” and “Scheduled Areas” shall have the meanings, respectively, assigned to them in the Bombay Village Panchayat Act, 1958;

(ii) the expression “Panchayat Samiti” shall have the meaning, assigned to it in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.”.

CHAPTER V

AMENDMENT TO THE MAHARASHTRA INDUSTRIAL DEVELOPMENT ACT, 1961.

11. In section 32 of the Maharashtra Industrial Development Act, 1961 to sub-section (2), the following provisos shall be added, namely:

“Provided that, if the land proposed to be acquired falls within a Scheduled Area then the State Government shall before such acquisition consult,—

(i) the Gram Sabha and the Panchayat concerned if the land is falling within the area of one Panchayat;

(ii) the concerned Gram Sabhas and the Panchayat Samiti if the land is falling within the area of more than one Panchayats in the Block concerned;

(iii) the concerned Gram Sabhas and the Zilla Parishad if the land is falling within the area of more than one Block in the district concerned;

such consultation shall be carried out in the manner as may be laid down by the State Government by issuing a general or special order in this behalf:

Provided that, the decision taken by the majority of the Gram Sabhas concerned by passing a resolution in the above matters shall be binding on the concerned Panchayat Samiti or the Zilla Parishad as the case may be.
Maharashtra Endowing upon the panchayats in the Scheduled Areas the powers to function as Self Government (Amendment of certain State Laws) Act, 1997.

Explanation.—For the purposes of these provisos,—

(i) the expressions "Gram Sabha" or "Panchayat" and "Scheduled Areas" shall have meanings, respectively, assigned to them in the Bombay Village Panchayats Act, 1958;

(ii) the expressions "Panchayat Samiti" and "Zilla Parishad" shall have the meanings, respectively, assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

CHAPTER VI

Amendment to the Maharashtra Housing and Area Development Act, 1976.

12. In section 41 of the Maharashtra Housing and Area Development Act, 1976, to sub-section (I), after the existing proviso, the following provisos shall be added, namely:

"Provided further that, if the land proposed to be acquired falls within the Scheduled Areas then the State Government shall before such acquisition and before re-setting or rehabilitating of persons affected consult,—

(i) the Gram Sabha and the Panchayat concerned, if the land falls within the area of one Panchayat;

(ii) concerned Gram Sabhas and the Panchayat Samiti, if the land falls within the area of more than one village in the Block concerned;

(iii) the concerned Gram Sabhas and the Zilla Parishad concerned, if the land falls within the jurisdiction of more than one Blocks in the district concerned;

such consultation shall be done in the manner as may be laid down by the State Government by issuing general or special order issued in this behalf:

Provided that, the decision taken by the majority of the Gram Sabhas concerned by passing a resolution in the above matter shall be binding on the concerned Panchayat Samiti or the Zilla Parishad, as the case may be.

Explanation.—For the purpose of these provisos,—

(i) the expressions "Gram Sabha," "Panchayat" and "Scheduled Areas" shall have the meaning respectively assigned to them in the Bombay Village Panchayats Act, 1958;

(ii) the expressions "Panchayat Samiti" and "Zilla Parishad" shall have the meanings respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

CHAPTER VII

Amendment to the Bombay Prohibition Act, 1949.

13. After section 11 of the Bombay Prohibition Act, 1949, the following section shall be inserted, namely:

"Provided that, the decision taken by the majority of the Gram Sabhas concerned by passing a resolution in the above matter shall be binding on the concerned Panchayat Samiti or the Zilla Parishad, as the case may be.

Explanation.—For the purpose of these provisos,—

(i) the expressions "Gram Sabha," "Panchayat" and "Scheduled Areas" shall have the meaning respectively assigned to them in the Bombay Village Panchayats Act, 1958;

(ii) the expressions "Panchayat Samiti" and "Zilla Parishad" shall have the meanings respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

CHAPTER VII

Amendment to the Bombay Prohibition Act, 1949.

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"Provided that, the decision taken by the majority of the Gram Sabhas concerned by passing a resolution in the above matter shall be binding on the concerned Panchayat Samiti or the Zilla Parishad, as the case may be.

Explanation.—For the purpose of these provisos,—

(i) the expressions "Gram Sabha," "Panchayat" and "Scheduled Areas" shall have the meaning respectively assigned to them in the Bombay Village Panchayats Act, 1958;

(ii) the expressions "Panchayat Samiti" and "Zilla Parishad" shall have the meanings respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

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"Provided that, the decision taken by the majority of the Gram Sabhas concerned by passing a resolution in the above matter shall be binding on the concerned Panchayat Samiti or the Zilla Parishad, as the case may be.

Explanation.—For the purpose of these provisos,—

(i) the expressions "Gram Sabha," "Panchayat" and "Scheduled Areas" shall have the meaning respectively assigned to them in the Bombay Village Panchayats Act, 1958;

(ii) the expressions "Panchayat Samiti" and "Zilla Parishad" shall have the meanings respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

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"Provided that, the decision taken by the majority of the Gram Sabhas concerned by passing a resolution in the above matter shall be binding on the concerned Panchayat Samiti or the Zilla Parishad, as the case may be.

Explanation.—For the purpose of these provisos,—

(i) the expressions "Gram Sabha," "Panchayat" and "Scheduled Areas" shall have the meaning respectively assigned to them in the Bombay Village Panchayats Act, 1958;

(ii) the expressions "Panchayat Samiti" and "Zilla Parishad" shall have the meanings respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

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"Provided that, the decision taken by the majority of the Gram Sabhas concerned by passing a resolution in the above matter shall be binding on the concerned Panchayat Samiti or the Zilla Parishad, as the case may be.

Explanation.—For the purpose of these provisos,—

(i) the expressions "Gram Sabha," "Panchayat" and "Scheduled Areas" shall have the meaning respectively assigned to them in the Bombay Village Panchayats Act, 1958;

(ii) the expressions "Panchayat Samiti" and "Zilla Parishad" shall have the meanings respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

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Explanation.—For the purpose of these provisos,—

(i) the expressions "Gram Sabha," "Panchayat" and "Scheduled Areas" shall have the meaning respectively assigned to them in the Bombay Village Panchayats Act, 1958;

(ii) the expressions "Panchayat Samiti" and "Zilla Parishad" shall have the meanings respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

CHAPTER VII

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"Provided that, the decision taken by the majority of the Gram Sabhas concerned by passing a resolution in the above matter shall be binding on the concerned Panchayat Samiti or the Zilla Parishad, as the case may be.

Explanation.—For the purpose of these provisos,—

(i) the expressions "Gram Sabha," "Panchayat" and "Scheduled Areas" shall have the meaning respectively assigned to them in the Bombay Village Panchayats Act, 1958;

(ii) the expressions "Panchayat Samiti" and "Zilla Parishad" shall have the meanings respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.
“IIA. Notwithstanding anything contained in section 11 or any other provisions of this Act, in respect of any Scheduled Area falling within the jurisdiction of a Gram Sabha and a Panchayat or a Panchayat Samiti or a Zilla Parishad, as the case may be, it shall be competent for such Gram Sabha or a Panchayat or the Panchayat Samiti or the Zilla Parishad to enforce prohibition or to regulate or restrict the sale and consumption of intoxicant in Scheduled areas within its jurisdiction:

Provided that, the decision taken by majority of the Gram Sabhas concerned by passing a resolution in the above matter shall be binding on the concerned Panchayat Samiti or the Zilla Parishad, as the case may be.

Explanation.—For the purpose of this section,—

(i) the expression “Gram Sabha,” “Panchayat” and “Scheduled Areas” shall have the meanings, respectively assigned to them in the Bombay Village Panchayat Act, 1958;

(ii) the expression “Panchayat Samitis” and “Zilla Parishads” shall have the meanings respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.”

CHAPTER VIII

AMENDMENT TO MAHARASHTRA IRRIGATION ACT, 1976.

14. In section 44 of the Maharashtra Irrigation Act, 1976, in sub-section (2), the following provisos shall be added, namely:

“Provided that, if the land proposed to be acquired falls within the Scheduled Area then the State Government shall, before such acquisition or before resettling or rehabilitating the persons affected by such projects in such Scheduled Areas consult,—

(i) the Gram Sabha and Panchayat concerned, if the land is falling within the area of one Panchayat;

(ii) the concerned Gram Sabhas and Panchayat Samitis, if the land is falling within the area of more than one Panchayats in the Block concerned;

(iii) concerned Gram Sabhas and Zilla Parishads, if the land is falling within the area of more than one Blocks in the District concerned;

Such consultation shall be done in the manner as may be laid down by the State Government, by issuing a general or a special order in this behalf:

Provided that, the decision taken by majority of Gram Sabhas concerned by passing a resolution in the above matter shall be binding on the concerned Panchayat Samiti or the Zilla Parishad, as the case may be.

Explanation.—For the purpose of this proviso,—

(i) the expressions “Gram Sabha”, “Panchayat” and “Scheduled Areas” shall have the meanings, respectively assigned to them in the Bombay Village Panchayat Act, 1958;

(ii) the expression “Panchayat Samiti” and “Zilla Parishad” shall have the meaning, respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.”
CHAP. IX

MISCELLANEOUS

Removal of difficulties. 15. If any difficulty arises in giving effect to the Bombay Village Panchayat Act, 1958, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, the Bombay Money Lenders Act, 1946, the Maharashtra Industrial Development Act, 1961, the Maharashtra Housing and area Development Act, 1976, the Bombay Prohibition Act, 1949, or the Maharashtra Irrigation Act, 1976, as amended by this Act, or by reason of anything contained therein, or in giving effect to provisions of any of those Acts in respect of the matters contained in this Act, the State Government may, as occasion arises, by order do anything not inconsistent with the provisions of this Act which appears to it to be necessary for the purpose of removing such difficulty:

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