L. A. BILL No. LVI OF 2017

A BILL

further to amend the Maharashtra Village Panchayats Act.

WHEREAS, both Houses of the State Legislature were not in session;
AND WHEREAS, the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Maharashtra Village Panchayats Act, for the purposes hereinafter appearing; and, therefore, promulgated the Maharashtra Village Panchayats (Amendment) Ordinance, 2017 on 19th July 2017;
AND WHEREAS it is expedient to replace the said Ordinance by an Act of the State Legislature; it is hereby enacted in the Sixty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Maharashtra Village Panchayats (Amendment) Act, 2017.

(2) It shall be deemed to have come into force on the 19th July 2017.

Short title and commencement.

2. In section 3 of the Maharashtra Village Panchayats Act (hereinafter referred to as the principal Act),—
   
   (a) after clause (11AA), the following clause shall be inserted, namely:—

   
   “(11 AAA) “member” means a member duly elected as a member of panchayat under section 11 and include the Sarpanch of panchayat elected directly under section 30A-1A;”;

   
   (b) in clause (17) after the word and figures “section 30” the figures, letters and sign “ , 30A- 1A” shall be inserted.

3. In section 7 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

   
   “(3A) In respect of the panchayat to which the Sarpanch is elected directly under section 30A-1A, unless otherwise provided in this Act, all meetings of the Gram Sabha after each general election to a panchayat, shall be presided over by the Sarpanch and in his absence by the Upa-Sarpanch; and in absence of both Sarpanch and Upa-sarpanch, it shall be presided over by senior most member of panchayat by age present in that meeting of the Gram Sabha. In case no member of panchayat is present, it shall be presided over by a person elected by the persons present in that meeting of Gram Sabha .” .

4. In section 10 of the principal Act, after sub-section (1), following sub-section shall be inserted, namely:—

   
   “(1A) In respect of the panchayat to which the Sarpanch is directly elected under section 30A-1A, the provisions of this section shall apply with the modifications that, in sub-section (1), in clause (a), before sub-clause (i) the following sub-clause shall be inserted, namely:—

   
   “(i-A) Sarpanch elected under section 30A-1A- ex-officio member; and ”.

5. In section 13 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

   
   “(1) Every person whose name is in the list of voters shall, unless disqualified under this Act, or any other law for the time being in force, be qualified to vote at the election of, a member for the ward to which such list pertains and, Sarpanch of panchayat to be elected directly.

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

   
   (2A) Every person 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 and who is born on or after 1st January 1995, and who is not disqualified under this Act, or under any other law for the time being in force, shall, unless possesses minimum 7th standard of school education passing certificate or acquired educational qualification equivalent to 7th standard, as certified by the competent authority, be qualified to be elected as Sarpanch.”.
6. In section 14 of the principal Act, in sub-section (1),—
   (i) in clause (a), in sub-clause (ii), for the words “five years” the words “six years” shall be substituted;
   (ii) in clause (d), for the words “five years” the words “six years” shall be substituted.

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

8. In section 16 of the principal Act, in sub-section (2), for the words “State Government” where they occur at both the places, the word “Commissioner” shall be substituted.

9. In section 29 of the principal Act, in sub-section (2), for the words “forward it to the Secretary” the words “forward it within seven days to the Secretary” shall be substituted.

10. In section 30 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely :

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

   (a) for sub-section (1), the following sub-section shall be substituted, namely :

   “(1) Every panchayat shall be presided over by a Sarpanch.”;

   (b) sub-section (2) shall be deleted ;

   (c) in sub-section (4), for the words “the members belonging to” the words “persons belonging to” shall be substituted. ”.

11. After section 30, the following section shall be inserted, namely :

   “30A-1A. (1) After the date of commencement of the Maharashtra Village Panchayats (Amendment) Act, 2017 in respect of the panchayat to which the general election is to be held, subject to provisions of sub-sections (4), (5) and (6) of section 30, every panchayat shall have a Sarpanch who shall be elected by the persons whose names are included in the list of voters for village under section 12.

   (2) Election of the Sarpanch shall be held simultaneously with the general elections of the panchayat and the procedure regarding holding of elections to the panchayat shall, mutatis mutandis, apply to such election.

   (3) If at an election, no Sarpanch is elected, a fresh election shall be held to elect a Sarpanch, and if there is a failure to elect a Sarpanch at the fresh election, such vacancy may, notwithstanding anything contained in this Act, be filled by election by the elected members from amongst themselves and the term of Sarpanch elected under this sub-section shall be co-terminus with the term of members of the panchayat.

   (4) Any person elected under sub-section (3) shall be deemed to be duly elected at an election under this section.

   (5) If, in the election of the Sarpanch, there is an equality of votes, the result of the election shall be decided by lots to be drawn by the State Election Commissioner or the officer appointed by him for the purpose.
(6) In case of a dispute regarding election of the Sarpanch, the provisions of section 15 shall, mutatis mutandis, apply.”

12. In section 30A of the principal Act,—

(a) after sub-section (1) the following sub-section shall be inserted, namely :

“(1A) In respect of the panchayat to which the Sarpanch is directly elected, the election of the Upa-Sarpanch shall be held in the first meeting held after every general election.”;

(b) after sub-section (2), the following sub-section shall be added, namely :

“(2A) In respect of the panchayat to which the Sarpanch is directly elected, the provisions of sub-section (3) of section 30 shall, mutatis mutandis, apply in the case of Upa-Sarpanch.

13. In section 33 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely :

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

(a) in sub-section (1), for the words “election of Sarpanch and Upa-Sarpanch” where they occurs at both the places, the words “election of Upa-Sarpanch” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely :

“(1A) The election of the Sarpanch shall be held in accordance with the provisions of section 30A-1A of this Act.”;

(c) in sub-section (2), after the words “presided over by” the words “the Sarpanch and if the post of Sarpanch is vacant by” shall be inserted;

(d) in sub-section (3), the words “Sarpanch and” shall be deleted;

(e) for sub-section (4), the following sub-section shall be substituted,—

“(4) If, in the election of Upa-Sarpanch there is an equality of votes, the Sarpanch shall have the right to exercise casting vote, and if the post of Sarpanch is vacant, the result of elections shall be decided by lot drawn in the presence of the officer presiding in such manner as he may determine.”;

(e) in sub-section (5),—

(i) the words “Sarpanch or” shall be deleted;

(ii) after the word, brackets and figure “sub-section (1)” the words “Sarpanch or” shall be inserted.”.

14. In section 35 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely :

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

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

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

“ If the motion of no-confidence is carried by a majority of not less than three-fourth of the total number of the members who are for the
time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch or the Upa-Sarpanch, as the case may be, and ratified before the special Gram Sabha by the secret ballot in the presence and under the Chairmanship of the Officer appointed for the purpose by the Collector, shall forthwith stop, exercising all the powers and, performing all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the Upa-Sarpanch, in case the motion is carried out against the Sarpanch ;”;

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

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

Provided also that, if the no-confidence motion fails, then no motion shall be brought before the passage of time of next two years.

15. In section 38 of the principal Act, in sub-section (2), after clause (i) the following clause shall be inserted, namely :

“(i-a) in respect of the panchayat to which the Sarpanch is directly elected under section 30A-1A, the Sarpanch shall also exercise the following powers, functions and duties,—

“(a) finalise the agenda of panchayat meetings :

Provided that, if three or more members demands regarding inclusion of any item on agenda for immediate next meeting, the Sarpanch shall include the same in next meeting :

Provided further that, no ad-hoc financial business shall be transacted unless it forms a part of the circulated agenda :

Provided also that, if the panchayat resolves on any subject that is detrimental to the well-being of the village at large in the opinion of Sarpanch, the Sarpanch shall cause the resolution to be kept for final decision immediately in the next following Gram Sabha, and decision of the said Gram Sabha shall be final :

(b) prepare the annual budget of panchayat ;

(c) exercise all other powers to implement the schemes in consultation with panchayat ; ”.”.

16. In section 39 of the principal Act, in sub-section (2), for the words “five years” the words “six years” shall be substituted.

17. In section 43 of the principal Act, in sub-section (1), after the existing proviso, the following proviso shall be added, namely :–

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

18. In section 49 of the principal Act, in sub-section (4), in proviso,—

(i) before clause (a), the following clause shall be inserted, namely :

“(a1) the Sarpanch shall be the ex-officio Chairman ; ” ;

(ii) after clause (f), the following clause shall be inserted, namely :

“(g) Gramsevak shall be ex-officio Member- Secretary . ”.
19. In section 62 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

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

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

“(1) A Sarpanch shall determine annually on or before 5th January of every year in such form as may be prescribed, a statement of,—

(a) the opening balance in the fund and estimated income of the panchayat for the following financial year;

(b) the expenditure proposed on establishment and discharge of its duties under section 45;

(c) the amount to be contributed to the District Village Development Fund established under section 133;

(d) the statement made under clause (a), (b) or (c), as the case may be, shall be placed by the Sarpanch, before the panchayat;

(e) the panchayat shall in respect of the said statement, finalise its recommendations on or before the 31st of January;

(f) the statement along with the recommendation of the panchayat under clause (e), shall be placed before the Gram Sabha, which may ratify it on or before 28th of February;

(g) after the decision of the Gram Sabha under clause (f), the said statement shall be submitted to the Panchayat Samiti.

(1-A) If, on or before the date specified in sub-section (1)—

(a) the Sarpanch fails to submit the statement; or

(b) the panchayat fails to make recommendation in respect of the statement; or

(c) the Gram Sabha fails to take decision in respect of ratification of the recommendations,

the Secretary shall prepare the statement, regarding the mandatory and office expenditure to be carried out and submit it to the Panchayat Samiti in the form prescribed under the said sub-section.”;

(b) in sub-section (2), for the portion beginning with words “The Panchayat Samiti” and ending with words “increased or decreased:” the portion “The Panchayat Samiti shall, either approve the statement or direct that the proposed expenditure on any of the duties falling under section 45 shall be increased or decreased on or before 31st March of the every year. Expenditure shall be carried out as per this statement till the date budgetary process outlined in sub-section (1) of this section is completed:” shall be substituted;

(c) in second proviso of sub-section (2), after the words “be increased or decreased” the words and figure “on or before 31st March of every year and in case of revised and supplementary statement” shall be inserted.”.
20. Section 62A of the principal Act, shall be re-numbered as sub-section
(1) of that section and after sub-section (1) as so re-numbered, the following
sub-section shall be added, namely:

“(2) In respect of the panchayat to which the Sarpanch is directly
elected under section 30A-1A, a Sarpanch may at anytime during the
financial year for which any such statement has been approved as
aforesaid cause a revised or supplementary statement to be prepared.
Every such revised or supplementary statement shall be considered
and approved by the Panchayat Samiti in the same manner as if it were
an original statement, and the provisions of section 62 shall apply in
relation to such revised or supplementary statement.”.

21. In section 145 of the principal Act, sub-section (1 A) shall be deleted.

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

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

(2) Every order made under sub-section (1) shall be laid, as soon as may
be, after it is made, before each House of the State Legislature.

23. (1) The Maharashtra Village Panchayats (Amendment) Ordinance,
2017, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken
(including any notification or order issued) under the corresponding
provisions of the Maharashtra Village Panchayats Act, as amended by the
said Ordinance, shall be deemed to have been done, taken or issued, as the
case may be, under the corresponding provisions of the said Act, as amended
by this Act.
STATEMENT OF OBJECTS AND REASONS.

As per the then existing provisions of the Maharashtra Village Panchayats Act (III of 1959), the Sarpanch was being elected from amongst the elected members of the Panchayat for which the candidate contesting the election for the post of Sarpanch would require the majority votes amongst them. The then existing provisions of the said Act provided that the motion of no confidence may be moved by not less than one-third of the total number of members. Consequently, the members were moving such no confidence motion frequently, which was affecting the efficiency of the Sarpanch and causing the disturbances in smooth functioning of Panchayat.

2. Therefore, after due deliberation, it was considered necessary to adopt a system of direct election for the post of Sarpanch of panchayat from the public which will give stability in the functioning of the Panchayat. It was, therefore, considered expedient further to amend the provisions of the Maharashtra Village Panchayats Act (III of 1959) suitably, so as to strengthen the post of Sarpanch for effective functioning and development of the panchayat.

3. The salient features of the then proposed amendments were as under:

   (i) It was proposed to provide that the Sarpanch shall be elected through the secret ballot by qualified voters of the panchayat.

   (ii) It was proposed to provide that the Sarpanch shall be the Chairman of all the Gram Sabhas and Village Development Committees of the panchayat.

   (iii) It was proposed to provide that the no-confidence motion against the Sarpanch if passed by the panchayat shall be kept before the Gram Sabha, for ratification.

   (iv) The responsibility of preparing the budget was proposed to be given to the Sarpanch.

   (v) The Sarpanch so elected would be directly accountable to the public of his village.

4. As both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Maharashtra Village Panchayats Act (III of 1959), for the purposes aforesaid, the Maharashtra Village Panchayats (Amendment) Ordinance, 2017 (Mah. Ord. XVI of 2017), was promulgated by the Governor of Maharashtra on the 19th July 2017.

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

Mumbai,
Dated the 8th August, 2017.

PANAJA MUNDE,
Minister for Rural Development.
MEMORANDUM REGARDING DELEGATED LEGISLATION.

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

Clause 22.— Under this clause, power is taken to the State Government to issue an order for removing any difficulty, which may arise in giving effect to the provisions of the Maharashtra Village Panchayats Act (III of 1959) as amended by this Act, within a period of two years from the date of commencement of the this Act.

2. The above-mentioned proposal for delegation of legislative power is of a normal character.