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Ceasing of membership under Section 40
of the Bombay Village Panchayats
Act, 1958 and under sections 40, 60
and 82 of the Maharashtra Zilla
Parishads and Panchayat Samitis
Act, 1961.

GOVERNMENT OF MAHARASHTRA
Rural Development Department.
Circular No. VPM 1470/11948 - E.
Sachivalaya, Bombay-32 (BR), Dated the 3rd June 1971.

C I R C U L A R

Sub-section(1) of Section 40 of the Bombay Village Panchayat Act, 1958, inter-alia provides that a member of a Panchayat who, during his term of office, absents himself for the period and under the circumstances referred to in clause (a) or (b) of that sub-section, shall cease to be a member and his office shall be vacant. Sub-section(2) of the said section 40 provides that if any question whether a vacancy has occurred under that section is raised by the President of a Zilla Parishad suo motu or on an application made to him in that behalf, the President shall decide the question and that no decision shall be given by the President against any member without giving him a reasonable opportunity of being heard. There are parallel provisions in Sections 40, 62 and 82 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 with the difference that the question whether a vacancy has arisen is to be decided under the latter Act by the Commissioner instead of by the President of the Zilla Parishad. The procedure to be followed in such cases was explained in Government Letter, Rural Development Department No. VPA 1064/49236-E, dated the 3rd February 1965 and No. ZPA-1465/38163-N, dated the 28th December, 1966.

2. The provisions of section 40 of the Bombay Village Panchayats Act, 1958 recently come in for scrutiny by the High Court of Bombay in Chandrakant Ramrao Saraf and others-Vs- Shri Pande and others (AIR 1970-Bombay 221) and the Court has made the following observations :-

"Apparently, the question of a member of Panchayat having ceased to be a member and vacated his office can never be decided without giving him a reasonable opportunity of being heard. Apparently that question does not automatically stand decided and must be raised before the President of a Zilla Parishad in the manner mentioned in sub-section (2)".

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3. In the light of the aforesaid High Court ruling Government is directed to direct, in supersession of the instructions contained in the letters referred to in para 1 ante, that when it is brought to the notice of the Village Panchayat or Zilla Parishad or Panchayat Samiti or the Standing/Subjects Committee that the provisions of Section 40 of the Bombay Village Panchayats Act, 1958, or Section 40, 62 or 82 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 respectively are attracted in the case of any member or Councillor, then the question whether he has ceased to be a member or councillor should be referred to the President of the Zilla Parishad or the Commissioner of Division, as the case may be, for decision.

OFFICE OF THE COLLECTOR
RATNAGIRI
Date: 13 JUN 1971
Branch: ...

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4. The report regarding the occurrence of the vacancy should be sent to the Collector or other authority competent to fill in the vacancy only if the decision of the President (subject to appeal) or the Commissioner, as the case may be, is in the affirmative.

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

D.V. SAURKAR,
Under Secretary to Government.

To

All Commissioners of Divisions,
Presidents of all Zilla Parishads,
All Collectors of Districts (except Bombay and Bombay Suburban District),
All Chief Executive Officers of Zilla Parishads,
Chairmen of all Panchayat Samitis,
All Block Development Officers,
'N' Branch.