

2000 SCC OnLine Gau 17 : (2000) 2 Gau LR 356 : AIR 2001 Gau 83

In the High Court of Gauhati
(BEFORE A.K. PATNAIK, J.)

Hills Syndicate ... Petitioner;

Versus

North Chchar Hills Autonomous Council & Others ... Respondent.

W.P. (C) No. 1056 of 1999

Decided on March 9, 2000

Constitution of India, Articles 162 and 246(2) — Executive power of a State extends to the matters with respect to which the Legislature of the State has power to make laws — Executive power of the State shall be subject to and limited by the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union



Page: 357

or authorities thereof — Forest — State has executive power in respect of Forest — Both Parliament and a State Legislature have powers to make laws with respect to Forests.

It is clear from Article 162 of the Constitution quoted above that the Executive power of a State extends to the matters with respect to which the Legislature of the State has power to make laws. The opening words however make it clear that such Executive power of a State on matters with respect to which the Legislature of State has power to make laws is subject to the provisions of the constitution. The proviso to Article 162 of the constitution further stipulates that in any matter with respect to which the legislature of State and Parliament have power to make laws, the Executive power of the State shall be subject to, and limited by, the Executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. "Forest" is listed as item No. 17-A in List III-Concurrent List in the Seventh Schedule to the Constitution, and under Article 246(2) of the Constitution, both Parliament and a State Legislature have power to make laws with respect to "Forest". Thus, under the main provision in Article 162, a State has Executive power in respect of "Forest". But as both Parliament and a State Legislature have power to make laws with respect to "Forest", as is made clear, in the proviso to Article 162 of the Constitution, the Executive power of a State shall be subject to, and limited by, the Executive power expressly conferred by the Constitution or by any law made by the Parliament upon the union or authorities thereof. The Executive power of a State in respect of any matter to which it has the power to make law including "Forest" is thus derived from Article 162 of the Constitution and not from any law made by Parliament or the state Legislature. Article 258(2) of the Constitution contemplates a situation where a State does not under Article 162 have Executive power in relation to a particular matter and enables Parliament by any law to confer powers and impose duties upon a State to its officers or authorities in relation to such matter.

[Para 9]


Constitution of India, Sixth Schedule, paragraph 2(4) — Administration of an autonomous district shall be vested in the District Council — Vesting of administration of an autonomous district in the District Council is subject to the provisions of the Sixth Schedule.

Under paragraph 2(4) quoted above, the administration of an autonomous district shall be vested in a District Council for such district. But such vesting of administration of an autonomous district in the District Council is subject to the provisions of the Sixth Schedule as would be clear from the opening words of the said paragraph 2(4) of the Sixth Schedule. For administration of an autonomous district, however, Executive powers will have to be entrusted to the District Council.

[Para 10]

Constitution of India, Sixth Schedule, paragraph 6(2) — Forest — Functions relating to

forest can be entrusted and delegated to District Council — District Council has the Executive power with respect to the management of a reserved forest.

 Page: 358

Paragraph 6(2) of the Sixth Schedule, therefore, provides that the Governor may, with the consent of any District Council entrust either unconditionally or unconditionally to that District Council or its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare and village planning or “any other matter to which the executive power of the State extends”. The expression, “any other matter to which the executive power of the State extends”, it is true as has been submitted by Mr. Lahiri, has to be construed in the context of other matters mentioned in paragraph 6(2) of the Sixth Schedule, namely, agriculture, animal husbandry, community projects, co-operative societies, social welfare and village planning, but even so interpreted will not exclude “forest” to which the Executive power of the State extends as indicated above. The word “any other”, in my considered opinion, are wide enough to include “forest” to which the Executive power of the State extends. As a matter of fact, by notification dated 25.9.1996, the Governor of Assam in exercise of the powers conferred by paragraph (2) of the Sixth Schedule has entrusted and delegated the functions in relation to forest”, amongst other matters, to the Council, namely, North Cachar Hills Autonomous Council.


[Para 10]

Thus, a District Council cannot make any law with respect to the management of a reserved forest. But this does not mean that the District Council cannot have any Executive power with respect to the management of a reserved forest. This is because the source of such Executive power of the District Council is not a law made by the District Council under paragraph-3 of the Sixth Schedule, but the entrustment of Executive functions to District Council by the Governor under paragraph 6(2) of the Sixth Schedule and the source of the Executive power of the Governor in relation to Forest in Article 162 of the Constitution and not any law made by Parliament or the State Legislature.

[Para 11]

Constitution of India, Sixth Schedule, paragraph 6(2) — Executive Power of the District Council — Limitations.

Such Executive power of the District Council will be subject to the 3 (three) limitations indicated in Article 162 of the Constitution; (i) such power will be subject to the provisions of the Constitution; (ii) such power will be subject to, and limited by, the Executive power expressly conferred by the Constitution upon the Union or authorities thereof; and (iii) such power will be subject to, and limited by, the executive power expressly conferred by any law made by the Parliament upon the Union or authorities thereof. Such Executive power of the District Council will also be subject to two other limitations; (i) such Executive power will be subject to the provisions of any existing law or any other law relating to Reserved Forest made either by Parliament or by the State Legislature or by both because of Article 256 of the Constitution and because the District Council has now power to make law in respect of management of Reserved Forest under paragraph 3(1)(b) of the sixth schedule; and (ii) such Executive power will be subject to the conditions if any, imposed by the Governor while entrusting the Executive function in relation to Forest or Reserved Forest under paragraph 6(2) of

 Page: 359

the Sixth Schedule. The net result of the aforesaid discussion is that the Executive power of the Council in relation to Reserved Forest will be subject to provisions of the Constitution, law made by parliament including the Forest (Conservation) Act, 1980, law made by the State Legislature and the Assam Forest Regulation, 1891.

[Para 12]

Advocates who appeared in this case:

Mr. N. Dutta, Mr. S.S. Dey, Mr. M. Nath, for the petitioner.
Mr. N.M. Lahiri, Mr. B.D. Das, Mr. N. Choudhury, Mr. S.C. Kayal, Mr. B.W. Phira and
Mr. P.C.S. Bordoloi, for the respondents.

Cases referred: Chronological

Ashok Kr. Gupta v. State of U.P. (1997) 5 SCC 201.

Re: Presidential Election, 1974, (1974) 2 SCC 33 : AIR 1974 SC 1682.

Devadasan v. Union of India, AIR 1964 SC 179.

T. Cajee v. U. Jormanik Siem, AIR 1961 SC 276.

JUDGMENT AND ORDER

1. In this application under Article 226 of the Constitution, the petitioner has prayed for directions of the respondents to issue necessary work order for operating in the Langting West Region Coupe Nos. 7, 9 and 11 for extraction of bamboo and to issue necessary transit passes and to forebear from cancelling the settlement for extraction of bamboos granted in favour of the petitioner in pursuance of the agreement dated 5.11.1998.

2. The petitioner's case in this writ petition is that on coming to learn that the respondents were interested to lease out the bamboos growing in some reserved forests within the jurisdiction of North Cachar Hills Autonomous Council, (hereinafter referred to as "the Council"), the petitioner applied for settlement for extraction of bamboos from the said reserved forests and the Council agreed to settle some of the areas of the reserved forests within its jurisdiction for extraction of bamboos in favour of the petitioner. Accordingly, an agreement dated 5.11.1998 was executed between the Council and the petitioner for extraction of bamboos growing in (i) Hatikhali North; (2) Hatikhali South; and (3) Langting West of Langting - Mupa Reserved Forest under the disposal of the said Council. Under the said agreement dated 5.11.1998, the petitioner was granted a licence for a period of 20 years for extracting 37,500 MT of Air Dried Bamboos of various varieties from the aforesaid reserved forest areas annually. Under clause-7 of the said agreement, the petitioner was to pay an advance royalty of Rs. 2.5 lakhs to the Council, and accordingly, the petitioner paid the said royalty amount of Rs. 2.5 lakhs on 5.11.1998,



and on 18.11.1998, the Divisional Forest Officer, NC Hills Division, issued an order to the Range Officer, Langting/Hatikhali, asking him to demarcate the coupe area jointly with the petitioner and submit a report along with the sketch map at an early date. In the said order date 18.11.1998, it was indicated that the petitioner was to harvest during the year 1998-1999, 500MT of Air-dried Bamboos from Hatikhali North Coupe No. 2, 10,500 MT of Air-dried Bamboos from Hatikhali South Coupe Nos. 2 and 6 and 21,000 MT of Air-dried Bamboos from Langting West Coupe Nos. 7, 9 and 11, Pursuant to the said order dated 18.11.1998, the Range Officer and the petitioner jointly demarcated the coupes and a report was submitted by the Range Officer to the Divisional Forest Officer, and the Divisional Forest Officer issued an order on 23.11.1998 enclosing therewith the annual table of bamboo operation for the petitioner in the aforesaid three reserved forest areas. The petitioner's further case in the writ petition is that after receipt of the said order from Divisional Forest Officer, it constructed roads inside the coupe areas for transportation of bamboo to the nearest main road and engaged more than 700 labourers for harvesting bamboos. The petitioner also constructed sheds for the labourers in different coupe areas and

engaged trucks on hire for transportation of bamboos. The petitioner's case is that it has invested more than Rs. 32 lakhs for development of necessary infrastructure for successfully operating the coupes. Notwithstanding the said investment, the Divisional Forest Officer issued an order to the Range Officer, Hatikhali Range on 27.11.1998 for allowing the petitioner to harvest and transport bamboos from Hatikhali North and Hatikhali South areas of the reserved forest only. The result was that the petitioner was not allowed to harvest and transport bamboos from Langting West Region of the reserved forest and as against the total 37,500 MT of Air-dried bamboos to be extracted by the petitioner under the agreement dated 5.11.1998, the petitioner was allowed to extract only 16,500 MT of Air-dried bamboos from Hatikhali North and Hatikhali South areas and was not allowed to extract the balance 21,000 MT of Air-dried bamboos from Langting West. The petitioner's further case in the writ petition is that the Divisional Forest Officer prevented the petitioner from extracting bamboos from Langting West area due to political pressure from the ruling party members of the NC hills Autonomous Council. The petitioner further apprehended that on account of such political pressure, the very agreement dated 5.11.1998 between the petitioner and the Council might be cancelled. In the circumstances, the petitioner submitted a representation dated 21.1.1999 before the Principal Secretary of the Council stating therein that no work order



Page: 361

in respect of Langting West Region had been issued in its favour and that according to its information a process was under way for cancellation of the settlement. The petitioner requested the Principal Secretary of the Council in the said representation dated 21.1.1999 to pass an order in its favour. When no action was taken on the said representation of the petitioner, the present writ petition case was filed for appropriate relief.

3. On 8.3.1999, when the writ petition was moved before this court, a notice of motion was issued to the respondents and an interim order was passed directing that in the meanwhile status quo as regards operation of the allotted coupes of the petitioner be maintained. On 12.3.1999, however, the Divisional Forest Officer issued an order to the Range Officer, Diyungbra, asking him not to allow movement of the bamboos harvested by the petitioner through his Range under any circumstances until further orders. The petitioner then filed Misc. Case No. 365/99 praying for interim orders, and this court ordered on 7.4.1999 that the operation of the order dated 12.3.1999 of the Divisional Forest Officer would remain suspended and that the respondents would not create any obstruction in movement of harvested bamboos by the petitioner from the areas specified in the agreement dated 5.11.1998. Thereafter, Misc. Case No. 722/99 was filed by one Sri Joygen Johori for being impleaded as a respondent in Writ Petition (Civil) No. 1056/99. His case was that he was harvesting and transporting bamboos from some coupes in Langting area under a contract with the Hindustan Paper Corporation Limited, (for short, 'The HPC'). By order dated 28.6.1999, this court allowed the said Misc. Case and directed that Sri Joygen Johori be impleaded as respondent No. 4 in the Writ petition. The said respondent No. 4 then filed Misc. Case No. 811/99 with a prayer to modify and vacate the interim order dated 8.3.1999 passed by this court in the main writ petition for maintenance of status quo. This court after hearing the parties passed order on 26.8.1999 to the effect that the interim order for maintenance of status quo passed on 8.3.1999 related to operation of the allotted coupes to the petitioner in Hatikhali North and Hatikhali South for extracting of 16,500 MT of Air-dried bamboos and that by the said order dated

8.3.1999, the petitioner had not been allowed to operate in Langting West area in which the respondent No. 4 was operating and, therefore, the said interim order dated 8.3.1999 did not affect the respondent No. 4 and no modification of the said interim order was called for. By the said order dated 26.8.1999, it was, however made clear that till the writ petition was disposed of, the agreement between the petitioner and the Council would not be



Page: 362

cancelled or modified in any manner and that the matter would be listed for hearing on 23.9.1999 at the stage of admission.

4. For the hearing of the case, the respondent No. 1 has filed an affidavit-in-opposition. In the said affidavit-in-opposition, the Council has not disputed the fact that an agreement dated 5.11.1998 was executed under which the petitioner was allowed to extract bamboos from Hatikhali North and Hatikhali South and Langting West of Langting Mupa Reserved Forest. In the said affidavit-in-opposition, the Council has also acknowledged receipt of Rs. 2.5 lakhs towards the advance royalty on 5.9.1998, but has denied that the petitioner was allowed to harvest 37,500 MT of Air-dried bamboos and has stated that the petitioner was allowed to harvest and transport only 16,500 MT of Air-dried bamboos as per the order of the Divisional Forest Officer dated 27.11.1998. The Council has disputed the averments in the writ petition that the petitioner had engaged more than 700 labourers for harvesting bamboos and had constructed sheds for the labourers in the coupe areas and had engaged trucks on hire for transportation of bamboos and had invested Rs. 32 lakhs for developing the infrastructure. The Council has further stated in the said affidavit-in-opposition that by an agreement dated 23.12.1980 executed between the HPC, the Government of Assam and the Council, the HPC was allowed 30 years' lease of the Reserved Forest areas and unclassified areas for extracting one Lakh tonnes of Air-dried bamboos. By letter dated 18.8.1998, however, the Principal Secretary of the Council informed the Chief Executive Director of the HPC that the Council received applications for allotment of bamboos from the areas of forest in which the HPC had not operated so far and considering the present financial position of the Council, it was proposed to tap all the resources. In the said letter dated 18.8.1998 the Principal Secretary of the Council requested the Chief Executive Director of the HPC to intimate the views of the HPC as to whether the remaining quantity of bamboos could be allotted to other agency or augmenting the resources of the Council. In reply to the said letter dated 18.8.1998, the Executive Director of the HPC informed the Principal Secretary of the Council in his letter dated 23.9.1998 that the HPC did not have any objection for allotment of bamboos to other applicants from forest areas of the Council in which the HPC had never operated. After receipt of the said letter dated 23.9.1998, the Council granted lease of the three coupes within the jurisdiction of the Council by agreement dated 5.11.1998 for 20 years. But by letter dated 23.11.1998, the Senior Manager (Forest), HPC, objected to the decision of the Council for leasing out the areas of HPC to the petitioner



Page: 363

on the ground that such leasing out to another party was in violation of the terms of the agreement between the HPC and the Council. It is in these circumstances that the Chief Executive Member of the Council put up a note before the Principal Secretary of

the Council that the Divisional Forest Officer be asked to find out the areas where the HPC had not operated for last 2-3 years and also the areas which were outside their bamboo felling sites and suitable areas be found out both in RF and USF areas for allotment of bamboo to the petitioner. In the said affidavit-in-opposition, however, it has been stated that since this court passed an interim order on 8.3.1999 directing maintenance of status quo as regards operation of coupes no further action could be initiated by the Council to meet the grievances of the HPC and other persons who have also filed petition ventilating their grievances against the order of lease in favour of the petitioner.

5. An affidavit-in-opposition has also been filed by the respondent No. 4 contending mainly that the Council had no jurisdiction to settle the three areas of the Langting Mupa Reserved Forest in favour of the petitioner for extracting bamboos under the agreement dated 5.11.1998 and that in any case the said areas had already been leased out to the HPC under the tripartite agreement dated 23.12.1980 executed by the HPC, State Government of Assam and the Council for extraction of bamboos by the HPC from the very same areas and other areas for a period of 30 years. According to the respondent No. 4, since the HPC had awarded the contract to the respondent No. 4 to extract and transport bamboos from the areas covered under the agreement dated 23.12.1980 between the HPC, the State of Assam and the Council, the respondent No. 4 was entitled to extract bamboos from the concerned areas. The further case of the respondent No. 4 is that the respondent No. 1 was duty bound to withdraw, rescind and cancel the agreement dated 5.11.1998 whereunder the petitioner has been settled with the three areas out of the Langting Mupa Reserved Forest inasmuch as the Council had no jurisdiction to make such settlement.

6. At the hearing, Mr. N. Dutta, learned counsel for the petitioner, submitted that the main question that needs to be decided by the court in this case is as to whether the Council had jurisdiction to settle the three areas in the Reserved Forest in favour of the petitioner for extraction of bamboos under the agreement dated 5.11.1998. He submitted that Article 244(2) of the Constitution of India provided that the provisions of the Sixth Schedule would apply to the administration of the tribal areas in the State of Assam Paragraph -



2(4) of the Sixth Schedule to the Constitution stated that subject to the provisions of the said Schedule, the administration of an autonomous district shall, in so far as it is not vested under the said Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region. According to Mr. Dutta, therefore, subject to the provisions of the Sixth Schedule, the administration of an autonomous district is vested in the District Council for the concerned District. Mr. Dutta further pointed out that under paragraph 6(2) of the Sixth Schedule, the Governor may, with the consent of any District Council entrust either conditionally or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or "any other matter to which the executive power of the State extends". Thus any matter other than those specified in the said paragraph-6(2) of the Sixth Schedule can also be entrusted by the Governor if such matter is such to which the Executive power of the State extends. Mr. Dutta argued that under Article 162 of the Constitution and in particular the proviso thereto the Executive power of the State extends also to matters with respect to which the Legislature of a State has power to

make law; only limitation being that such Executive power of the State shall be subject to, and limited by, the Executive power expressly conferred by the Constitution or by any law made by the Parliament upon the union or authorities thereof. Mr. Dutta therefore submitted that the Executive power of the State extends also to matters enumerated in the concurrent list subject to, and limited by, the Executive power expressly conferred by the Constitution or by any law made by the Parliament upon the Union or authorities thereof. Entry 17-A of the concurrent list in the Seventh Schedule to the Constitution relates to "Forest". Thus, the State has the Executive power in relation to forest and such Executive power of the State can be entrusted by the Governor to the District Council under paragraph 6(2) of the Sixth Schedule to the Constitution. Mr. Dutta further submitted that as a matter of fact by a notification dated 25.9.1996, the Governor of Assam in exercise of his power under the said paragraph 6(2) of the Sixth Schedule to the Constitution has with the consent of the Council entrusted and delegated the functions in relation to forest to the Council. According to Mr. Dutta, the word "Forest" in the notification dated 25.9.1996 would also cover Reserved Forest, and the contention of the respondent No. 4 in his affidavit-in-opposition that the Council had no jurisdiction to settle the three areas in the Langting Mupa Reserved Forest in favour



Page: 365

of the petitioner for extraction of bamboos under the agreement dated 5.11.1998 has no merit. Mr. Dutta vehemently argued that the provisions of the Sixth Schedule to the Constitution have been enacted to ensure a larger amount of autonomy to the District Councils and the Regional Councils and that the court should accordingly interpret the Sixth Schedule and allow such autonomy to the District Council. According to Mr. Dutta, the need of the present time is to ensure that the District Councils and the Regional Councils contemplated in the Sixth Schedule to the Constitution are allowed more and more powers for healthy functioning of democracy and for speedy and economic development of the tribal areas. He cited the decision of the Supreme Court in *Ashok Kumar Gupta v. State of UP*, (1997) 5 SCC 201, in which the Supreme Court observed that the Constitution is not only designed to meet the needs of the day when it is enacted but also the needs of the altering conditions the future. According to Mr. Dutta, therefore, a dynamic view of the Sixth Schedule has to be taken, and considering the present day need for more and more autonomy, the court should hold that reserved forest can also be entrusted to the Council by the Governor under the Sixth Schedule to the Constitution. Mr. Dutta also relied on the decision of the Supreme Court in *T. Cajee v. U. Jormanik Siem*, AIR 1961 SC 276, wherein it was held that under the scheme of the Sixth Schedule the District Council is not an administrative and legislative body. He argued that paragraph 3(1) of the Sixth Schedule which vests power in the District Council to make laws with respect the management of any forest not being a reserved forest should not be so interpreted as to destroy paragraph 6(2) of the Sixth Schedule to the Constitution. He cited the decision of the Supreme Court in *Devadasan v. Union of India*, AIR 1964 SC 179 and in *Re: Presidential Election, 1974*, (1974) 2 SCC 33 : AIR 1974 SC 1682, for the proposition that no provision of the Constitution or of any other enactment can be construed so as to destroy another provision contemporaneously enacted therein.

7. Mr. N.M. Lahiri, learned senior counsel appearing for the respondent No. 4, on the other hand submitted that under paragraph 3(1)(b) of the Sixth Schedule to the Constitution, District Council has been vested with the power to make law with respect to management of any forest not being a reserved forest. He point out that the

expression "reserved forest" has been defined in paragraph 3(2) of the Sixth Schedule as any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question. According to Mr. Lahiri, since the District Council has no power to make law with respect to



Page: 366

management of reserved forest as defined in the Assam Forest Regulation, 1891, the District Council cannot be entrusted with the Executive power in respect of reserved forest under paragraph 6(2) of the Sixth Schedule to the Constitution. He further argued that although under paragraph 6(2) of the Sixth Schedule, the Governor has been vested with the power to entrust to the District Council or to its officers functions in relation to "any other matter to which the Executive power of the State extends", the matters in respect of which the functions can be entrusted to the District Council or its officers will be those similar to the subject which are mentioned in the said paragraph 6(2) of the Sixth Schedule, namely, agriculture, animal husbandry, community projects, co-operative societies, social welfare and village planning. Reserved forest being a matter entirely different from the aforesaid subjects mentioned in paragraph 6(2) of the Sixth Schedule. The Governor cannot entrust the functions in relation to reserved forest to the District Council or its officers. He also pointed out that while under Article 258(2) of the Constitution, Parliament may by law confer powers and impose duties upon State or its officers or authorities with respect to a matter to which the Legislature of the State has no power to make laws, there is no provision in the Sixth Schedule allowing conferment of powers and duties on a District Council or to any of its officers on a matter in respect of which the District Council has no power to make law. He also submitted that "Forest" initially figure in Entry-19 of List-II-State List in the Seventh Schedule to the Constitution, but the Forty-second Amendment Act, 1976, "Forest" has been transferred to Entry-17A of List -III Concurrent List with effect from 3.1.1977 and Parliament has now enacted the Forest (Conservation) Act, 1980 in exercise of the said concurrent power. He submitted that the Forest (Conservation) Act, 1980, received the assent of the President on 27.12.1990 and thereafter by an amendment made in 1988 in section 2 (iii) of the said Act, it has been provided that assignment by way of lease or otherwise of any forest land or any portion thereof by the State Government is prohibited save and except with prior approval of the Central Government. According to Mr. Lahiri, the said provision will over-ride any law made by the State Legislature or by a District Council by virtue of Article 254 of the Constitution and paragraph 3A(2) & (3) of the Sixth Schedule unless such law is reserved for consideration of the President and has received his assent. Thus, even a law made by the State Legislature or District Council on reserved forest cannot be valid unless the same is assented to by the President. Mr. Lahiri further submitted that Article 256 of the Constitution further made it clear that the Executive power of every



Page: 367

State shall be so exercised as to ensure compliance with the laws made by the Parliament. According to Mr. Lahiri, therefore, the District Council has no Executive power in relation to reserved forest.

8. Article 162 of the Constitution and the relevant provisions of the Sixth Schedule to the Constitution are quoted hereinbelow:

"162. Extent of Executive Power of State. - Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the Executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

"2(4). Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region."

"3. Powers of the District Councils and Regional Councils to make laws - (1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

- (a) * * *
- (b) the Management of any forest not being a reserved forest; "

"3(2). In this paragraph, a 'reserved forest' means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question."

"3(3). All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

"6(2). The Governor may with the consent of any Executive power entrust either conditionally or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive

power of the State extends."

9. It is clear from Article 162 of the Constitution quoted above that the Executive power of a State extends to the matters with respect to which the Legislature of the state has power to make laws. The opening words, however, make it clear that such Executive power of a State on matters with respect to which the Legislature of the State has power to make laws is subject to the provisions of the Constitution. The proviso to Article 162 of the Constitution further stipulates that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the Executive power of the State shall be subject to, and limited by, the Executive power expressly conferred by the Constitution or by any law made by Parliament upon the union or authorities thereof. "Forest" is listed as item No. 17-A in List-III-concurrent list in the Seventh Schedule to the Constitution, and under Article 246(2) of the Constitution, both Parliament and a State Legislature have power to make laws with respect to "Forest". Thus, under the main provision in Article 162, a State has Executive power in respect of "Forest". But as both Parliament and a State Legislature have power to make laws with respect to "forest", as is made clear in the proviso to Article 162 of the Constitution, the Executive power of a State shall be subject to, and limited by, the Executive power expressly conferred by the Constitution or by any law

made by the parliament upon the Union or authorities thereof. The Executive power of a State in respect of any matter to which it has the power to make law including "Forest" is, thus, derived from Article 162 of the Constitution and not from any law made by Parliament or the State Legislature. Article 258(2) of the Constitution contemplates a situation where a State does not under Article 162 have Executive power in relation to a particular matter and enables Parliament by any law to confer powers and impose duties upon a State or its officers or authorities in relation to such matter.

10. Coming now to the Sixth Schedule to the Constitution relating to District Council, under paragraph 2(4) quoted above, the administration of an autonomous district shall be vested in a District Council for such district. But such vesting of administration of an autonomous district in the District Council is subject to the provisions of the Sixth Schedule as would be clear from the opening words of the said paragraph 2(4) of the Sixth Schedule. For administration of an autonomous district, however, Executive powers will have to be entrusted to the District Council. Paragraph 6(2) of the Sixth Schedule, therefore, provides that the Governor may, with



Page: 369

the consent of any District Council entrust either conditionally or unconditionally to that District Council or its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare and village planning or "any other matter to which the Executive power of the state extends". The expression, "any other matter to which the Executive power of the State extends", it is true as has been submitted by Mr. Lahiri, has to be construed in the context of other matters mentioned in paragraph 6(2) of the Sixth Schedule, namely, agriculture, animal husbandry, community projects, co-operative societies, social welfare and village planning, but even so interpreted will not exclude 'forest' to which the Executive power of the State extends, as indicated above. The words "any other", in my considered opinion, are wide enough to include 'forest' to which the Executive power of the State extends. As a matter of fact, by notification dated 25.9.1996, the Governor of Assam in exercise of the powers conferred by paragraph 6(2) of the Sixth Schedule has entrusted and delegated the functions in relation to 'forest', amongst other matters, to the Council, namely, North Cachar Hills Autonomous Council.

11. The aforesaid notification dated 25.9.1996 does not say that functions in relation to forest other than reserved forest have been entrusted and delegated to the Council. Mr. Lahiri's contention, however, is that since under paragraph 3(1)(b) the District Council for an autonomous district in respect of all areas within such district has been conferred with the power to make laws with respect to the management of any forest not being a reserved forest, the District Council cannot exercise any Executive power in respect of a reserved forest. But paragraph 3(1) relates to powers of the District Council to make laws and does not relate to the Executive powers of the District Council. Thus, a District Council cannot make any law with respect to the management of a reserved forest. But this does not mean that the District Council cannot have any Executive power with respect to the management or reserved forest. This is because the source of such Executive power of the District Council is not a law made by the District Council under paragraph-3 of the Sixth Schedule, but the entrustment of Executive functions to District Council by the Governor under paragraph 6(2) of the Sixth Schedule and the source of the Executive power of the Governor in relation to Forest is Article 162 of the Constitution and not any law made by Parliament or the State Legislature.

12. But such Executive power of the District Council will be subject to the 3(three) limitations indicated in Article 162 of the



Page: 370

Constitution: (i) such power will be subject to the provisions of the Constitution; (ii) such power will be subject to, and limited by, the executive power expressly conferred by the Constitution upon the union or authorities thereof; and (iii) such power will be subject to, and limited by, the executive power expressly conferred by any law made by the Parliament upon the Union or authorities thereof. Such Executive power of the District Council will also be subject to two other limitations: (i) such Executive power will be subject to the provisions of any existing law or any other law relating to Reserved Forest made either by Parliament or by the State Legislature or by both because of Article 256 of the Constitution and because the Dist. net Council has no power to make law in respect of management of Reserved Forest under-paragraph 3 (1)(b) of the Sixth Schedule; and (ii) such Executive power will be subject to the conditions, if any, imposed by the Governor while entrusting the Executive function in relation to Forest or Reserved Forest under paragraph 6(2) of the Sixth Schedule. The net result of the aforesaid discussion is that the Executive power of the Council in relation to Reserved Forest will be subject to provisions of the Constitution, law made by Parliament including the Forest (Conservation) Act, 1980, law made by the State Legislature and the Assam Forest Regulation, 1891.

13. It was not contended by Mr. N. Dutta, learned counsel appearing for the petitioner, that the Council is now attempting to cancel the agreement dated 5.11.1998 with the petitioner on the ground that the forest areas covered by agreement dated 5.11.1998 had earlier been leased out to the HPC under the agreement dated 23.12.1980. But the MFC had itself intimated to the Council that it had no objection if some of the forest areas were leased out to others and it was for this reason that the Council entered into the agreement dated 5.11.1998 with the petitioner for extraction of bamboos from the three forest areas, namely, Hatikhali North, Hatikhali South and Langting West of Langting Mupa Reserved Forest. He further contended that, as a matter of fact, the HPC has not come before the court and instead respondent No. 4 who claims to be a contractor under the HPC has raised the contention that in view of the subsisting lease dated 23.12.1980 in favour of the HPC in respect of the very same areas, the agreement dated 5.11.1998 could not have been executed in favour of the petitioner. Mr. Dutta further submitted that in any case the petitioner was entitled to any opportunity of showing cause before cancellation of the said agreement dated 5.11.1998 in its favour, but no such notice had intact been issued to the petitioner.



Page: 371

14. Mr. Lahiri, on the other hand, has vehemently contended that since there was a pre-existing lease under which all the forest areas within the territory of the Council including the aforesaid three forest areas had been leased out to the HPCV for extraction of bamboos, the agreement dated 5.11.1998 could not have been executed in favour of the petitioner. He argued that since the respondent No. 4 was a contractor under the HPC, the respondent No. 4 was entitled to raise this contention before the

court. Mr. BD Das, learned Standing counsel, appearing for the Council however stated that no decision has yet been taken by the Council to cancel the agreement dated 5.11.1998 between the petitioner and the Council. He explained that since the HPC had objected to the grant of the aforesaid three forest areas to the petitioner under the said agreement dated 5.11.1998, the Chief Executive Member had asked the Divisional Forest Officer to identify the areas where the HPC was not operating for allotment of bamboos to the petitioner by his order dated 30.12.1998, but the agreement executed in favour of the petitioner dated 5.11.1.1998 has not been cancelled as yet on account of the pendency of the writ petition and on account of the interim order of status quo passed by this court. He further submitted that in case the Council decides to cancel the agreement dated 5.11.1998 with the petitioner, a show cause notice will be issued to the petitioner.

15. Any decision of the court as to whether or not the three forest areas covered under the lease dated 23.12.1980 with the HPC could have been granted to the petitioner under the agreement dated 5.11.1998 for extraction of bamboos would obviously affect the HPC, but the HPC has not been made a respondent in the writ petition. Further, the Council has taken a clear stand before this court that the agreement dated 5.11.1998 between the petitioner and the Council has not yet been cancelled. The records produced before this court also do not indicate that the said agreement dated 5.11.1998 between the petitioner and the Council has been cancelled. But pursuant to objections raised by the HPC, the Council has made some moves for allotment of some areas other than those covered by agreement dated 5.11.1.1998 to the petitioner. The Council has also taken a stand through its Counsel, Mr. BD Das, as indicted above, that before the agreement dated 5.11.1998 is sought to be cancelled, the petitioner will be issued with a show cause notice. On these facts, therefore, the court should not issue any writ or direction to the respondents to forbear from cancelling the settlement for extraction of bamboos granted in favour of the petitioner under the agreement dated 5.11.1998. Since, however, the petitioner has not been allowed to extract bamboos from Langting West Region Coupe



Nos. 7, 9 and 11 as per the said agreement dated 5.11.1998, ends of justice require that a final decision is taken by the Council as early as possible.

16. In the result, the writ petition is disposed of with the directions that the Council will take a final decision on the aforesaid matters in accordance with law and the observations in this judgment relating to the Executive power of the Council and limitations thereof within a period of three months from the date of receipt of a certified copy of this judgment and order from the petitioner after giving due opportunity to the petitioner and the HPC to represent their cases. Until such decision is finally taken, the petitioner will continue to operate the coupes in Hatikhal North and Hatikhali South as per the interim orders passed by this court on 8.3.1999 and as clarified, on 26.8.1999. Considering, however, the entire fact and circumstances of the case, I leave the parties to bear their respective costs.