

CHAPTER-VI

POWERS AND FUNCTIONS OF THE VILLAGE COUNCIL.

Subjects to be under the control and administration of the Village Council.

43. Notwithstanding anything contained in any other law or rules for the time being in force, Village Council shall have the executive power in relation to the Village Council Area over the following subjects :-

1. Agriculture including Agricultural Extension,
2. Animal Husbandry, Dairy Development and Poultry,
3. Fisheries,
4. Social and Farm Forestry/Minor Forest produce , fuel & fodder,
5. Khadi, Village & Cottage Industries,
6. Rural Housing,
7. Drinking water,
8. Road, building, culverts, bridges, tunnels, waterways and other means of communication,
9. Rural Electrification,
10. Non Conventional Energy Sources,
11. Poverty alleviation programme,
12. Education including Primary Schools,
13. Adult & non-formal education,
14. Libraries,
15. Cultural activities,
16. Markets and Fairs,
17. Rural Sanitation,
18. Public Health & Family Welfare,
19. Women & Child Development,
20. Social Welfare including Welfare of handicapped & mentally retarded,
21. Welfare of weaker section and in particular the SC/ST,
22. Public Distribution System,
23. Maintenance of community assets,
24. Construction and maintenance of Dharamsalas and

similar institutions,

25. Construction and maintenance of cattle sheds , pounds and cart stands,

26. Maintenance of public parks and play grounds,

27. Construction and maintenance of slaughter houses,

28. Maintenance and regulation of manure,

29. Such other functions as may be entrusted by the Government from time to time.

Other matters to be under the control and administration of the village council.

44. Subject to the General policy of the Government and subject to the general control and supervision of the General Council, the Village Council shall –

- (i) formulate integrated development plans for the Village Council Areas,
- (ii) implement schemes and programmes for the development of the Village Council Area,
- (iii) have powers to appoint Class-III and Class-IV staff of the Village Council,
- (iv) have powers to regulate trade and commerce within the Village Council Area in accordance with the existing laws including issue of permits or licenses to individuals within the Village Council Area.
- (v) guide customs and traditions and social justice of Deori community according to their traditional laws, and
- (vi) allot permits for trade and commerce to the people residing in the Village Council Area preference being given to the Deori Community.

Power to impose levy and collect taxes.

45. (1) Subject to the provisions of any other laws for the time being in force and subject to the previous approval of the General Council, the Village Council shall have the power to collect within the Village Council Area such taxes as are payable under the law for the time being in force in the manner as may be prescribed :

Provided that the tax or taxes as aforesaid shall be collected from such date as may be appointed by the Government by notification in this behalf in the Official Gazette.

(2). Subject to sub-section (1) and such maximum rates as the Government may prescribe, the Village Council shall,-

- (a) levy tolls on persons, vehicles or animals of any class for the use of any bridge, or road other than kacha road, or ferry constructed or established by it

(b) levy the following fees and rates namely –

- (i) fees on the registration of boats or vehicles ;
- (ii) fees for providing sanitary arrangements as such places or worships, pilgrimage, fairs, melas or other public places within the Village Council Area as may be specified by the Government by notification in the official Gazette ;
- (iii) fees for licenses ;
- (iv) water rates where arrangements for irrigation or drinking water is made by it within the Village Council Area ;
- (v) lighting rate where arrangements for lighting on public streets or places are made by it within the Village Council Area.

(3). Notwithstanding anything contained in the foregoing sub-sections, the Village Council shall not undertake registration of any vehicle or levy any fee in respect thereof and shall not provide sanitary arrangements at places of worship, pilgrimage, fairs, melas or other public places within the Village Council Area or levy any fees in respect thereof, if such vehicle has already been registered by any other authority under the law for the time being in force or if such provision for sanitary arrangements has already been made by the Government or any other local authority.

(4). The collection of tolls, fees or rates and the terms and conditions for the imposition thereof shall be such as may be prescribed by the bye-laws. Such bye-laws may, inter alia, provide for exemption from all or any class of cases.

Power to entrust functions.

46. Notwithstanding anything contained in this Act, the Government may, in consultation with the Village Council, entrust either conditionally or without any condition to the Village Council or its officers any functions in relation to any matter not enumerated in Section 43 to which the executive power of the Government extends.

Power to acquire, hold and dispose of property.

47. Notwithstanding anything contained in Section-3, the Village Council subject to the previous approval of the Government and subject to such terms and conditions as may be imposed by the Government, shall have the power to acquire, hold and dispose of any immovable property or movable property the value of which exceeds rupees fifty thousand and to enter into any agreement or contract with any party or authority.

CHAPTER -VII

ELECTION

Delimitation.

48. (1). There shall be 10 (ten) constituencies in a Village Council Area for electing members to the Village Council. Each such constituency shall be a single member constituency and shall be territorial.

(2). There shall be 26 (twenty six) constituencies covering the Council Area for electing members to the General Council. Each constituency shall be a single member constituency and territorial.

(3). The Government shall, by order published in the official Gazette, determine the territorial limits of the constituencies into which the village Council Area or the Council Area shall be delimited for the purpose of election of members to the Village Council and the General Council.

Power to amend or alter delimitation.

49. Notwithstanding anything contained in Section 48 above, the Government may, by order published in the official Gazette, alter or amend the order made under Section 48:

Provided that no such order shall be made after the commencement of the election process.

Electoral rolls.

50.(1) Subject to the provisions of this Act and the rules made thereunder, so much of the electoral roll the Assembly Constituency in force on the last date of nomination, as is relatable to a village Council constituency, as defined in clause (b) of section 2, shall be the electoral roll for that Village Council constituency.

(2) The electoral rolls of the Village Council constituencies as are relatable to a constituency of the General Council, as defined in clause (b) of section 2, shall be the electoral roll for the constituency of the General Council.

(3) Persons whose names are included in the electoral roll as aforesaid in sub-section (1) or (2) above, shall be the electorate for the election of members of the Village Council or the General Council, as the case may be.

(4) The Government shall, at the time and in the manner prescribed, cause to be published the electoral roll in respect of a constituency.

Right to vote.

51.(1) Save as otherwise provided in this Act every person whose name is entered in the electoral roll for the time being in force, of any constituency shall be entitled to vote in that constituency.

- (2) No person shall vote at an election in any constituency, if he is subject to any of the disqualification referred to in Section 10 of the Representation of Peoples Act, 1951. **Central Act, 43 of 1951.**
- (3) No person shall vote in more than one constituency.
- (4) No person shall vote in the same constituency more than once.
- (5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or otherwise or in the lawful custody of police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

Election of members.

52. Election of members shall be held in accordance with the rules made under section 60 and the first election for the purpose of constituting the General Council and the Village Council shall be held on such date or dates as the Government may direct in consultation with the interim Deori Executive Council referred to in section 80.

Qualification for member ship of village council or General Council.

53. A person shall be qualified to be elected as member of either the Village Council or the General Council if he is an elector as defined in clause (f) of section 2.

Disqualification for membership of Village Council or General Council.

54. (1) A person shall not be qualified for being elected either to the Village Council or the General Council, if –

- (a). he is not a citizen of India.
- (b). he is less than 18 years of age on such date as may be fixed by the Government ; or
- (c). he has been elected to any Municipality, Panchayat within the State of Assam ; or
- (d). he is in service of the Central or State Government, Municipality or other authority ; or
- (e). he has either directly or indirectly by himself, or by the person or employer or employee, any share or interest in any contract with, by or on behalf of the Village Council, General Council or a Municipality or Panchayat within the Council Area :

Provided that no person shall be deemed to be so disqualified by reason only of his having a share or interest in a public company , as defined in the Companies Act, 1956, which contracts with or is employed by a Municipal Authority or

Central Act of 1956.

Panchayat within the Council Area; or

(f) he has been dismissed from the service of the Central or State Government or a local authority or a Co-operative Society or a Government Company as defined in the Companies Act, 1956 or a Corporation owned or controlled by the Central or the State Government for misconduct involving moral turpitude and five years have not elapsed from the date of such dismissal ; or

Central
Act of
1956.

(g) he has been adjudged by a competent court to be of unsound mind ; or

(h) he has been convicted by a court of an offence involving moral turpitude punishable with imprisonment for a period of more than six months or an offence under Chapter IX A of the Indian Penal Code or Chapter-III, Part III or Part VII of the Representation of peoples Act, 1951 and five years have not elapsed from the date of expiration of the sentence :

Central
Act
No.43 of
1951.

Provided that a person shall not be disqualified under this section, by reason only of his being a member, President or Vice-President of the Village Council or a member of Chief Executive Councilor or Executive Councilor of the General Council.

Filling up of vacancies.

55. Where the office of any member becomes vacant by reason of his death, resignation, removal or otherwise, the vacancy shall be filled by election in accordance with the provisions of this Act and the rules made thereunder.

Validation.

56. Where the members elected at an election are restrained from functioning on account of the election as a whole being set aside by order of court, anything done or any action taken by such members before they are so restrained or before the election is so set aside, as the case may be, shall be deemed to have been validly done or taken.

Publication of results of elections.

57. The names of all persons elected to Village Councils and the General Council shall be published by the Commission in the Official Gazette and upon such publication, the Village Councils and the General Council shall be deemed to have been duly constituted.

Vacation of post.

58. If an elected member is chosen to be a Member of Parliament or the State Legislature, and of General Council in case of a member of the Village Council, then at the expiration of fourteen days from the date of publication in the Gazette of India of the Official Gazette, as the case may be, of the declaration that he has been so chosen, the seat of such member in the General Council or the Village Council, as the

case may be, shall become vacant unless he has previously resigned his seat in the Parliament, or the State Legislature or the General Council, as the case may be.

**Disputes
regarding
election.**

59. (1) No election shall be called in question except by an election petition presented in such manner as may be prescribed and before such authority as may be appointed by the Government, from time to time, by notification in the Official Gazette :

Provided that no person below the rank of Assistant District Judge, in case of member of Village Council and District Judge, within the meaning of Article 236 of the Constitution, in case of member of the General Council, shall be appointed for the purpose.

(2). No election shall be called into question except on anyone or more of the following grounds, namely :-

(a) that on the date of his election the returned candidate was not qualified or was disqualified to be chosen to fill the seat in the Village Council or the General Council, as the case may be;

(b) that corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent.

Explanation.

For this purpose, 'corrupt practice' shall mean any of the corrupt practices specified in section 123 of the Representation of Peoples Act, 1951.

**Central Act
43 of 1951**

(c). that any nomination has been improperly rejected;

(d). that the result of the election in so far as it concerns the returned candidates has been materially affected -

(i) by the improper acceptance of any nomination ; or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent ; or

(iii) by improper reception, refusal or rejection of any vote ; or

(iv) by reception of any vote which is void ; or

(v) by any non-compliance with the provisions of this Act, or of any rules or order made thereunder.

(3) At the conclusion of trial of any election petition, the authority appointed under sub-section (1) shall make an order -

(a) dismissing the election petition ; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidates to have been duly elected.

(4) If a petitioner, in addition to calling in question the election of a returned candidate, make a declaration that he himself or any other candidate has been duly elected and the authority under sub-section (1) is of the opinion that -

(a) in fact the petitioner or such other candidate has received the majority votes, or

(b) but for the votes obtained by the returned candidate by corrupt practice the petitioner or such other candidate would have been obtained the majority of the valid votes, the authority as aforesaid shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

Powers to make rules regulating the election of members

60. The Government may, by notification in the official Gazette make rules to regulate all or any of the following matters for the purpose of holding election to the Village Councils and to the General Council under this Act :-

- (a) the designation of the officer or authority to whom the power to determine the territorial limits of the constituencies under the sub-section (2) of section 48 may be delegated and maintain the electoral roll under section 50.
- (b) the appointment of Returning Officers, Presiding Officers and Polling Officers for election ;
- (c) the drawing up of programme for election ;
- (d) the nomination of candidates and security of nominations;
- (e) the deposits to be made by the candidates and the time and manner of making such deposits
- (f) Withdrawal of candidature ;
- (g) Appointment of agents of candidates ;
- (h) the filling up of casual vacancies ;
- (i) the general procedure at the election including the time, place and hours of poll and the methods by which votes shall be cast ;
- (j) the fee to be paid on election petition ;
- (k) any other matter relating to election or election disputes in respect of which the Government deems it necessary to make rules under this section or in respect of which there is no provision in this Act or the provision is insufficient and in the opinion of the Government, adequate provision is necessary.

CHAPTER-VIII
FUNDS, AUDIT AND BUDGET

**General Council
Fund and Village
Council Fund.**

61. (1) there shall be two funds to be called respectively the General Council Fund, meant for the General Council and the Village Council Fund meant for the Village Councils.

(2) Each fund as aforesaid shall be under separate Sub-Heads within the state budget to be held for the purpose of this Act and all moneys realised or realisable under this Act and all moneys otherwise received by the General Council or the Village Council, as the case may be, shall be credited to its respective fund.

(3). The Government shall provide funds to the General Council Fund and the Village Council Fund from the Tribal Sub-Plan and other resources in accordance with the appropriate formulas to be worked out keeping in mind the resources of the Government, priorities or development works in other areas including other tribal areas along with other relevant deciding factors.

(4). The following shall be deposited to the village Council Fund :-

- (a) contributions and grants received from the Government.
- (b) contributions and grants from the General Council.
- (c) all receipts on account of donation, rates, fees, taxes etc.
- (d) all other sums received by or on behalf of the Village Council.
- (e) land revenue and local rates, if any, on land including Tea Garden, which falls in the Village Council Area.

(5) The allocation made under these Sub-Heads shall be in keeping with the guidelines laid down by the Government of India from time to time in the spirit of the Constitution of India.

(6) The Government shall not divert the fund allocated under these Sub-Heads except in exigencies, when there is unavoidable budget deficit.

(7) All funds, as may be allocated by the Central Government or the State Government for the General Council or the Village Council, as the case may, be shall be assigned to it and shall be credited to the General Council Fund or the Village Council Fund, as the case may be,

(8) The General Council or the Village Council, as the case may be, subject to the provisions of loans by any law relating to the raising of local authorities, may raise with the approval of the Government loans for the purposes of this Act and create a sinking fund for the repayment of such loan.

(9) The money credited to the General Council Fund or the Village Council Fund shall be applied for the payment of all sums, charges and costs necessary for carrying out the purposes of this Act.

(10) No payment shall be made out of the General Council Fund or the Village Council Fund unless such expenditure is covered by a current budget grant :

Provided that the General Council or the Village Council as the case may be, may make payments in terms of refund of deposits by contractors or for urgent works undertaken in an emergency or when required by the Government in the interest of the public or under the decree or order of a civil or criminal court against the General Council or the Village Council, as the case may be, and for such others cases as may be prescribed ;

Provided further that such expenditure shall be reported to the General Council or the Village Council, as the case may be, for taking such action under the provisions of this Act as may appear to it to be feasible for covering the amount of such payments.

(11) Surplus moneys standing at the credit of the General Council or the Village Council, as the case may be, at the end of the financial year, shall be invested in accordance with such bye-laws as may be made by the General Council, in this behalf.

Provided that no funds standing at the credit of the General Council or the Village Council, as the case may be, shall be lapsed but shall be carried over to the budget of the next financial year.

(12) The General Council shall make bye-laws for the management of the General Council Fund and the Village Council Fund and for the procedure to be followed in respect of payment of money into the said funds, withdrawal of moneys there from, the custody of the moneys therein and any other matter incidental thereto or connected there with.

(13) The accounts of the General Council and the Village Council shall be kept in such form and manner as may be prescribed in consultation with the Accountant General, Assam.

Audit 62. Subject to the provisions of the Comptroller and Auditor General's (Duties, Power and Conditions of Service) Act, 1971 and the rules and the orders made thereunder, the audit of the accounts of the General Council and Village Council shall be entrusted by the Government to the Comptroller and Auditor General of India who may submit to Government such report thereon as it may deem fit. The Government shall transmit the report to the General Council and the Village Councils for discussion and consideration. The General Council and the Village Councils shall return the report to the Government with comments, if any. The Government shall lay such report along with the comments of the General Council and the Village Councils before the State Legislature.

Central Act 56 of 1971.

Budget 63. (1) The General Council shall at such time and in such manner as may be prescribed to prepare in each financial year a budget of its estimated receipts and disbursements for the following financial year and submit it to the Government by 1st November of the current financial year. The Village Councils also shall prepare its budget in the like manner and shall submit the same to the General Council for consideration and onward transmission to the Government on or before the 1st October of the current financial year.

(2) The Government may within such time as may be prescribed, either approve the budget or return it to General Council or the Village Council concerned, as the case may be, for reconsideration on the observations of the Government, if any. The General Council or the Village Council concerned as the case may be, shall there-upon resubmit the budget along with its comments on the observation and if the approval of the Government upon such submission or resubmission as the case may be, is not received by the General Council or the Village Councils as the case may be, the budget shall be deemed to have been approved by the Government.

(3) No expenditure shall be incurred unless the budget of the General Council as well as the budget of the Village Councils are either approved or deemed to have been approved by the Government.

(4) The accounts of the General Council and the Village Council shall be kept in such form and manner as may be prescribed in consultation with the Accountant General.

CHAPTER-IX
MISCELLANEOUS

Effect of bye-law, etc.

64. All the bye laws, regulations, orders, passed and notifications issued under this Act by the General Council or the Executive Council or the Village Councils, as the case may be shall be subject to maintenance of security and safety of the State of Assam and Government and shall have the powers to take such steps as may be deemed necessary for the purpose.

Power to issue instructions

65. The Government shall have the general power to issue instructions from time to time for the purpose of implementation of this Act.

Protection of the right of the non-tribal and other ethnic:

66. All rights and interest of the non-tribal citizens and other ethnic groups other than the Deori Community within the Council Area as exist at the commencement of this Act, in matters pertaining to their language, literature, culture, religion, customs and traditions, trade and commerce, industry, land, etc, shall be protected.

Properties situated in the Council Area.

67. (1) Subject to such restriction as the Government may impose, all properties specified below and situated in the Council Area shall vest in and belong to General Council, namely -

- (a) all public buildings constructed or maintained out of the General Council Fund;
- (b). all public roads which have been constructed and maintained out of the General Council Fund and stones and other materials thereof and also trees, erections, material implements and things provided for such roads ;
- (c). all land and other properties movables or immovable transferred to the General Council by the Government ;
- (d). such properties owned and controlled by the Municipality or the Panchayat as may be assigned, to the General Council by the Government.

(2). Notwithstanding anything contained in sub-section (1) above all the properties specified in sub-section (1) and construction and maintenance of which has been done out of the Village Council Fund shall vest in and belong to the Village Council within the area in which the property is situated.

(3). The properties vested under sub-section (1) or (2) above and all other properties which may become vested in the General Council, as the case may be, shall be under the

management, direction and control of the General Council or the Village Council concerned as the case may be.

**Dissolution of
General Council
Executive
Council, and
Village Council.**

68. (1) The Governor may, if he is satisfied, on receipt of a report or other wise and in consultation with the Judicial Department of the Government that a situation has arisen in which the administration of the Council Area cannot be carried out in accordance with the provisions of the law for the time being in force or the general or the special instructions issued by the Government from time to time, by notification in the Official Gazette, dissolve the General Council, the Executive Council and the Village Council before the expiry of the term and assume to himself all or any of the powers and functions of the General Council, the Executive Council and the Village Councils and declare that such power and functions shall be exercised by such persons or authority as he may specify in this behalf for a period not exceeding six months at a time.

(2). Every order made under sub-section (1) above shall be laid before the state legislature for approval and unless approved by the State Legislature shall cease to operate on the expiry of thirty days from the date on which the Assam legislative Assembly first sits after the issue of the orders.

**Effect of
dissolution.**

69. When an order of dissolution is made under section 68, with effect from the date of the orders –

(a). all the members of the General Council, the Executive Council and the Village Councils shall vacate their offices ; and

(b). all powers, duties, functions of the General Council, the Executive Council and the Village Council shall be exercised, discharge and performed by such authorities or person as may be appointed by the Governor in this behalf.

**Special
provision for
Council Areas.**

70. The Government shall consult and give due regard to the views of the General Council before any law is made and implemented in the Council Area on the following subjects, namely –

(i) the religions and social practice of the Deori Community ;

(ii) the customary laws and procedures of the Deori Community ;

(iii) ownership and transfer of land within the Council Area.

**Reservation for
services.**

71. Subject to the provisions of the law for the time being in force the General Council shall have the power to reserve jobs for the Scheduled Tribes within its jurisdiction.

**Members,
Officers and
employees to
public servants.**

72. The Chief Executive Councilor, the Executive Councilors of the General Council and the President and the Vice President of the Village Councils shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Validation

73. No act or proceedings of the General Council or the Executive Council or the Village Council, as the case may be, shall be deemed to be invalid merely by reason of existence of any vacancy therein or any defect or irregularity in the constitution thereof.

Immunity

74. No suit or other legal proceedings shall lie against the General Council or the Executive Council or the Village Council or any member, or officer or employees thereof for anything done in good faith or intended to be done in pursuance of this Act, or any rules or bye-law made thereunder.

Interpretation

75. If any question arises as to the interpretation of this Act or the rules made thereunder the same shall be referred to the Government whose decision thereon shall be final.

**Removal of
difficulties.**

76. If any difficulty arises in giving effect to any provision of this Act, the Government may, by order, do anything not inconsistent with the provisions of this Act as may appear necessary or expedient for the purpose of removing the difficulty.

Special status.

77. The General Council shall, within the laws for the time being in force, take steps to protect the demographic complexion of the areas falling within its jurisdiction.

**Application of
Acts of the
legislature of
the State.**

78. If any provision of the bye-law made by the General Council is repugnant to any provision of the law made by the Legislature of the State of Assam, with respect to that matter then the bye-law so made, whether before or after the laws made by the Legislature of the State of Assam, shall to the extent of repugnancy be void and the law made by the Legislature shall prevail.

**Power to make
rules.**

79. (1) The Government may make rules providing for any matter which under any provision of this Act is required to be prescribed or to be provided for by rules.

(2) Every rules made under this section shall be laid, as soon as may be after it is made before the State legislature, while it is in session for a total period of fourteen days which may be comprised in one session or in two or more successive sessions and if before the expiry of the sessions immediately following the session or the successive sessions aforesaid, the State Legislature agree in making any modification in the rule or the State Legislature agrees that the rule should not be made, the rule shall thereafter have

effect only in such modified form or be of no effect, as the case may be:

Provided however that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.

Transitional provisions.

80. The Government shall, as soon as possible, take steps for the constitution of an Interim Deori Executive Council by nomination until the General Council is constituted under this Act. The interim Executive Council shall, in addition, look after the duties of the Village councils till the same are constituted under this Act.

Saving.

81. Nothing in this Act shall affect the application of any law, whether made before or after this Act, to the Council Area unless such law specifically provides for exclusion of the Council Area of such application.

Explanation.

For the purpose of this section ' Law' shall, include any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having the force of law.

**M.K.DEKA
COMMISSIONER & SECY. TO THE GOVT.OF ASSAM
LEGISLATIVE DEPTT.**